

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Global NAPs, Inc., Against)
BellSouth Telecommunications, Inc., for)
Enforcement of Section VI(B) of its Interconnection)
Agreement with BellSouth Telecommunications, Inc.,)
and Request for Relief.)

Docket No. 991267-TP
Filed December 20, 1999

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PREHEARING STATEMENT OF GLOBAL NAPs, INC.

GLOBAL NAPs, INC., by and through its undersigned attorneys, hereby submits this Prehearing Statement in the above-styled proceeding.

WITNESSES TO BE CALLED BY GLOBAL NAPs, INC.

<u>Witnesses</u>	<u>Issues (by number)</u>
Fred R. Goldstein (Direct and Rebuttal)	Issue 1
William J. Rooney, Esquire (Direct and Rebuttal)	Issues 1 and 2
Dr. Lee L. Selwyn (Direct and Rebuttal)	Issue 1

EXHIBITS TO BE USED BY GLOBAL NAPs, INC.

<u>Witness</u>	<u>Exhibit</u>	<u>Description of Exhibit</u>
William J. Rooney, Esq.	WJR-1	Interconnection Agreement Between DeltaCom, Inc. and BellSouth Telecommunications Inc., as amended.
	WJR-2	Adoption Agreement Between Global NAPs and BellSouth, January 18, 1999.
	WJR-3	Testimony of James C. Wilkerson on Behalf of ITC DeltaCom, Docket 26619

AFA _____
APP _____
CAF _____
CMJ *Marsh*
CTR _____
EAG _____
LEG 1
MAS 3
OPC _____
RRR _____
SEC 1
WAW _____
QTH _____

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Dr. Lee Selwyn	LLS-1	Statement of Qualifications of Dr. Lee L. Selwyn
	LLS-2	bellsouth.net dial-in access numbers for Florida

Documents Produced Pursuant to Discovery Requests

Documents Attached or Referenced in Prefiled Testimony

GLOBAL NAPs, INC.'s STATEMENT OF BASIC POSITION

BellSouth has breached its Agreement with Global NAPs, Inc., under which Global NAPs adopted the Interconnection Agreement Between DeltaCom, Inc. and BellSouth Telecommunications, Inc. (hereafter "Interconnection Agreement"), by failing to pay to Global NAPs reciprocal compensation due for Global NAPs' delivery of local traffic that originates with BellSouth end-user customers and is delivered to Internet Service Providers (ISPs) that are Global NAPs end-user customers, as required by the underlying Interconnection Agreement. The Interconnection Agreement requires the parties to exchange traffic and to pay reciprocal compensation to each other for delivery of local traffic. The Interconnection Agreement defines local traffic as "any telephone call that originates in one exchange or LATA and terminates in either the same exchange or LATA, or a corresponding Extended Service Area ("EAS") exchange." The Interconnection Agreement further provides that "[E]ach party agrees to terminate local traffic originated and routed to it by the other party. Each party will pay the other for terminating its local traffic on the other's network the local interconnection rate of \$.009 per minute of use in all states." Despite the plain language of these provisions, BellSouth refuses to compensate Global NAPs for calls that originate with BellSouth customers and are delivered to

ISPs that are Global NAPs customers within the same LATA or EAS. This is contrary to the *Interconnection Agreement, the Adoption Agreement, and decisions of this Commission and regulatory authorities in other states that have interpreted similar agreements or the same Interconnection Agreement that is at issue in this proceeding.*

QUESTIONS OF FACT AT ISSUE
POSITION ON EACH, AND WITNESSES TO ADDRESS

Global NAPs posits that there are no material facts at issue in this proceeding. Global NAPs and BellSouth agree that they entered into an Adoption Agreement, through which Global NAPs adopted the *Interconnection Agreement*. The Florida Public Service Commission previously has interpreted "local traffic" and reciprocal compensation provisions that are substantially the same as those at issue in the *Interconnection Agreement*, in *In re: Request for Arbitration Concerning Complaint of American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. et al. against BellSouth Telecommunications, Inc. Regarding Reciprocal Compensation for Traffic Terminated to Internet Service Providers*, Docket No. 981008-TP (hereafter "e.spire Case"). In that case, the Commission determined that ISP-delivered calls within the same LATA or EAS in which the call originated fall within the definition of "local traffic," for which reciprocal compensation was due. Accordingly, the Commission ordered BellSouth to pay reciprocal compensation to e.spire for its delivery of these calls to ISPs that were e.spire's end-user customers. Global NAPs posits that the Commission's determination in the e.spire case controls in this case, and, therefore, Global NAPs is entitled to the payment of reciprocal compensation by BellSouth for ISP-delivered calls originating with BellSouth customers

within the same LATA or EAS.

Global NAPs, Inc. will call William J. Rooney, Esquire, Fred Goldstein, and Dr. Lee Selwyn to testify on its behalf in this proceeding.

QUESTIONS OF LAW AT ISSUE AND POSITION

Issue 1: Under the Adoption Agreement and underlying Interconnection Agreement Between DeltaCom, Inc. and BellSouth Telecommunications, Inc. that was adopted by Global NAPs, Inc., are Global NAPs and BellSouth required to pay each other reciprocal compensation for the delivery of calls to Internet Service Providers (ISPs) that originate within the same LATA or EAS? If so, what action should be taken?

Global NAPs' Position: Yes. Global NAPs adopted the Interconnection Agreement pursuant to an Adoption Agreement it executed with BellSouth in January 1999. Section VI(B), as amended, of the Interconnection Agreement requires each party to pay the other for terminating its local traffic on the other's network at the rate of \$.009 per minute. The Interconnection Agreement defines "Local Traffic" as "any telephone call that originates in one exchange or LATA and terminates in either the same exchange or LATA or a corresponding Extended Service Area ("EAS") exchange." Attachment B of Interconnection Agreement, Definitions, paragraph 49. The Interconnection Agreement makes no distinction, for local traffic purposes and for reciprocal compensation purposes, between ISP traffic and non-ISP traffic that is delivered within the same LATA or EAS in which the call originated. Had the parties intended for ISP-delivered traffic within the same LATA or EAS as the call originates to be excluded from the definition of local traffic or not subject to reciprocal compensation, the Interconnection Agreement would have

expressly provided such a distinction.

This Commission previously has interpreted local traffic and reciprocal compensation provisions contained in the Interconnection Agreement Between ACSI and BellSouth, in the e.spire case, Docket No. 98-1008TP. The local traffic and reciprocal compensation provisions in that agreement are substantially the same as the local traffic and reciprocal compensation provisions in the Interconnection Agreement at issue in this case. In the e.spire Case, the Commission determined that ISP traffic delivered within the same LATA or EAS as the call originated was included within the definition of local traffic for purposes of being subject to the payment of reciprocal compensation under the agreement. The Commission expressly stated that had the parties intended otherwise, the Interconnection Agreement would have distinguished between ISP-traffic and non-ISP traffic within the same LATA or EAS as the original call, for reciprocal compensation purposes. The Commission thus ordered BellSouth to pay e.spire reciprocal compensation for ISP-delivered traffic within the same LATA or EAS in which the call originated.

Likewise, in this case -- which involves substantially the same provisions as were at issue in the e.spire case -- the Interconnection Agreement does not make such a distinction. Accordingly, under the language of the Interconnection Agreement, as that language previously has been interpreted by this Commission in precedential proceedings, Global NAPs is entitled to payment of reciprocal compensation by BellSouth for its delivery of ISP-bound traffic that originates with BellSouth customers within the same LATA or EAS.

Therefore, the Commission should enter an Order requiring BellSouth to pay to Global NAPs the reciprocal compensation that is due to Global NAPs pursuant to the terms of the

Adoption Agreement and Interconnection Agreement.

Issue 2: Is the prevailing party entitled to attorney's fees under the Interconnection Agreement?

Global NAPs' Position: Yes. Section XXV.A. of the Interconnection Agreement provides for payment by the non-prevailing party of all reasonable costs, including reasonable attorney's fees and other legal expenses, to the prevailing party. Under this provision, the prevailing party is entitled to the payment of reasonable attorney's fees and costs incurred in this proceeding.

STATEMENT OF POLICY QUESTIONS AT ISSUE

Presently, there are no policy questions at issue in this proceeding.

STIPULATED ISSUES

Presently, there are no issues that have been stipulated to by the parties in this proceeding.

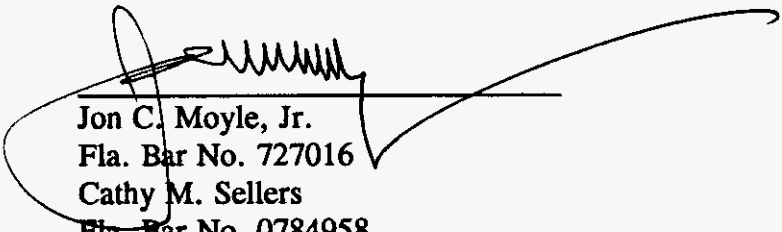
PENDING MOTIONS OR OTHER MATTERS

The Petition of ITC DeltaCom Communications, Inc. to Intervene in this matter, filed by ITC DeltaCom on November 12, 1999 and supported by Global NAPs' Memorandum of Law in Support of ITC DeltaCom's Petition to Intervene, is pending before the Commission. Global NAPs respectfully requests the Commission to enter an Order permitting ITC DeltaCom to intervene in this proceeding.

**REQUIREMENTS IN PREHEARING ORDER
THAT CANNOT BE COMPLIED WITH**

There are no procedural or other requirements set forth in the Prehearing Order in this matter with which Global NAPs cannot comply. Global Naps reserves the right to call additional witnesses or introduce additional exhibits, provide witnesses to address issues not presently identified and to call witnesses to respond to questions or issues raised by the Commission that are not addressed in prefiled testimony.

Respectfully submitted this 20th day of December, 1999.



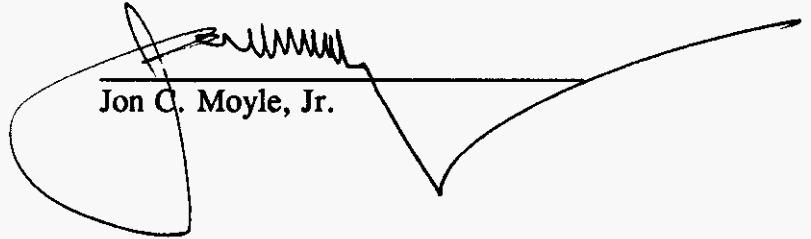
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished this 20th day of December, 1999 by hand delivery to Nancy White, General Counsel, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, FL 32301, and Beth Keating, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 3239, and by U. S. Mail to Michael P. Goggin, BellSouth Telecommunications, Inc., Museum Tower, Suite 1910, 150 West Flagler Street, Miami, FL 33130, R. Douglas Lackey and E. Earl Edenfield, Jr., BellSouth Telecommunications, Inc., BellSouth Center, Suite 4300, 675 W. Peachtree Street, N.E., Atlanta, GA 30375, and Nanette Edwards, Regulatory Attorney, ITC DeltaCom, 700 Boulevard South, Suite 101, Huntsville, AL 35802.



Jon C. Moyle, Jr.