

Before the
**STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

Global NAPs, Inc.,
Complainant,

versus

BellSouth Telecommunications, Inc.
Defendant

Docket No. 991267-TP

Rebuttal Testimony

of

LEE L. SELWYN

on behalf of

Global NAPs, Inc.

December 20, 1999

AFA	_____
APP	_____
CAF	_____
CMU	_____ <i>Marsh</i>
CTR	_____
EAG	_____
LEG	_____ <i>I</i>
MAS	_____ <i>3108</i>
OPC	_____
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SEC	_____ <i>I</i>
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REBUTTAL TESTIMONY

1

2

3 **Introduction**

4

5 Q. Please state your name, position and business address.

6

7 A. My name is Lee L. Selwyn; I am President of Economics and Technology, Inc.

8 ("ETI"), One Washington Mall, Boston, Massachusetts 02108.

9

10 Q. On whose behalf is this testimony being submitted?

11

12 A. This testimony is being submitted on behalf of Global NAPs, Inc. ("Global

13 NAPs").

14

15 Q. Have you previously submitted testimony in this proceeding?

16

17 A. Yes. On November 24, 1999, I submitted pre-filed direct testimony in this matter

18 on behalf of Global NAPs.

19

20 Q. What is the purpose of your testimony at this time?

21

22 A. I will respond to and rebut certain statements and assertions made by BellSouth

23 witnesses Beth Shiroishi and Albert Halprin.

1 Even under the FCC's "one call" paradigm in which the jurisdictional character
2 of Internet traffic is based upon the locations of the end user and the point on the
3 Internet to which the user is connected, the overwhelming majority of ISP-bound
4 calls are nevertheless jurisdictionally "local" in nature.

5

6 Q. Dr. Selwyn, Ms. Beth Shiroishi, testifying for BellSouth, argues that the intercon-
7 nection agreement between BellSouth and Global NAPs obligates BellSouth to
8 make reciprocal compensation payments to Global NAPs only with respect to
9 local calls which, she explains, are defined at Section 49 of the Interconnection
10 Agreement as "telephone calls that originate in one exchange or LATA and
11 terminates [sic] in either the same exchange or LATA, or a corresponding
12 Extended Area Service (EAS) exchange." Shiroishi (BellSouth), at 11, emphasis
13 in original. She also contends that ISP-bound traffic does not terminate at the
14 ISP, and for that reason ISP-bound traffic is interstate in nature and therefore not
15 subject to reciprocal compensation payments. Putting aside the matter of whether
16 reciprocal compensation payments are due for ISP-bound traffic that is
17 jurisdictionally interstate in nature, do you agree with Ms. Shiroishi that all ISP-
18 bound traffic is, in fact, not "local" as that term is defined in the Interconnection
19 Agreement?

20

21 A. No, I do not. In fact, the overwhelming majority of ISP-bound traffic satisfies the
22 definition of "local" as stated by Ms. Shiroishi. It would appear that Ms.

1 Shiroishi does not understand how the Internet works and how access to the
2 Internet is furnished by ISPs to their end user customers.

3

4 Q. Please explain.

5

6 A. In her discussion of “the nature of ISP traffic,” Ms. Shiroishi seeks to portray the
7 ISP as performing little more than a passive interconnection function between the
8 Public Switched Telephone Network (PSTN) and the Internet: “The ISP converts
9 the signal of the incoming [PSTN] call to a digital signal and routes the call,
10 through its modems, over its own network to a backbone network provider, where
11 it is ultimately routed to an Internet-connected host computer.” Shiroishi
12 (BellSouth), at 5. This description, together with her Exhibit ERAS-1, portrays a
13 continuous flow of data across the ISP from the end user to some remote Internet
14 host web site: “The call from an end user to an ISP only transits through the
15 ISP’s local point of presence; it does not terminate there. There is no interruption
16 of the continuous transmission of signals between the end user and the host
17 computers.” Shiroishi, at 7, emphasis in original. Mr. Goldstein covers this issue
18 in greater detail. But suffice it to say here that Ms. Shiroishi’s testimony
19 describing the manner in which end users communicate with remote host
20 computers over the Internet is simply wrong. It is utterly inaccurate as a
21 description of the manner in which the Internet and ISPs actually operate.

22

23 Q. Please explain.

1 A. First, and contrary to Ms. Shiroishi's description, the flow of data between the end
2 user and the remote host across the ISP is anything but continuous. Consider the
3 following examples:

- 4
- 5 • A user dials up his or her ISP and establishes a connection by transmitting
6 user identification information that is then validated by the ISP. Depending
7 upon the ISP, that validation exchange may utilize a user data base that is
8 maintained locally (at the same physical location at which the ISP's modems
9 are located) or remotely. If the latter, the ISP assembles and transmits a
10 packet of data containing the user identification data to a remotely-located
11 host, which responds by transmitting either an acceptance or a rejection
12 message back to the ISP. If the validation is confirmed, a "home page" is
13 transmitted over the Internet to the ISP and then on to the end user. Once
14 that transmission is completed, however, and until some other transmission
15 takes place, *there is no data flowing across the ISP between the end user and*
16 *the Internet*; i.e., the connection terminates at the ISP. This condition persists
17 while the user is reading the home page content and until he/she clicks on a
18 link to access another page. The request (initiated by a mouse click or by
19 typing an Internet address (a "URL") into an Internet browser) is then
20 transmitted by the ISP up to a remote host via the Internet, which
21 (presumably) will respond by downloading another page of text or graphics to
22 the user. *The only time that an actual connection between the end user and*
23 *the remote host computer is in existence in which a continuous flow of data*

1 *signals is taking place is when data is actually being uploaded or*
2 *downloaded; at all other times, the end user's "call" terminates in all*
3 *relevant senses at the ISP's modem bank.* Thus, as long as the ISP's local
4 service from the ALEC is obtained in a manner that makes calls from the end
5 user to the ISP's location "local," the call fully comports with and satisfies the
6 definition of "local" as contained in the interconnection agreement and as
7 conceded by Ms. Shiroishi.

8

9 • Even in those situations in which actual transmission of data is occurring, if
10 the remote host is itself physically located in the same exchange or LATA, or
11 EAS exchange, as the end user, then the call is also "local" as defined in the
12 Interconnection Agreement. Thus, if an Internet user in Miami clicks on the
13 Miami Herald's web site (whose host server is also located in Miami), both
14 the call origination and termination are within the same exchange or LATA,
15 and the call satisfies the definition of "local."

16

17 • The end user places a PSTN call to his or her ISP and then enters a "chat
18 room" to converse with others who live in the same town (e.g., schoolmates).
19 Irrespective of where the physical switching function takes place, this type of
20 call is inherently "local" in nature, because both the origination and
21 termination locations are within the same exchange or LATA.

22

1 In each of these examples, the point of origination and the point of termination of
2 the call (defined as the end user and the location on “the Internet” being
3 contacted) are both wholly within the same exchange or LATA; indeed, the only
4 situation in which a “cross-LATA” (i.e., “non-local” call, as defined by Ms.
5 Shiroishi), is in place is where data is actually flowing across the ISP *and* where
6 the remote host is *not* located within the same exchange or LATA as the end user.
7 Even then, not all such calls are “non-local.” To avoid tying up long-haul circuit
8 bandwidth, ISPs utilize a technique known as “caching” in which the page of data
9 that is downloaded from a remote host web site is stored locally at the ISP; for
10 many popular web sites where repetitive accesses are made, the ISP can often
11 provide the contents to its subscribers right out of its own local storage device
12 rather than repetitively downloading it from the remote host each time it is
13 requested. In that case, a user’s request for a particular page of data is not
14 transmitted upstream (and out of state), but is actually fulfilled locally using
15 “cached” copies of the requested material.

16

17 Q. Has the FCC recognized “caching” and its possible implications for determining
18 the jurisdictional character of Internet use?

19

20 A. Indeed, it has. At para. 18 of its *Declaratory Ruling in CC Docket No. 96-98 and*
21 *Notice of Proposed Rulemaking in CC Docket No. 99-68* (FCC 99-38, Adopted
22 February 25, 1999, Released February 26, 1999), the FCC concluded that:

23

1 ... Further complicating the matter of identifying the geographical
2 destinations of Internet traffic is that the contents of popular websites
3 increasingly are being stored in multiple servers throughout the Internet,
4 based on “caching” or website “mirroring” techniques. After reviewing
5 the record, we conclude that, although some Internet traffic is intrastate, a
6 substantial portion of Internet traffic involves accessing interstate or
7 foreign websites.

8

9 Footnotes omitted. I would note that, while the Commission concluded that a
10 “substantial” portion of Internet traffic is interstate, it did not quantify any specific
11 percentage.

12

13 Q. What fraction of total end user-ISP connection time actually involves a direct
14 flow-through of data between the end user and the remote host?

15

16 A. According to Mr. Goldstein, on average less than 10% of the total connection time
17 that an average end user has with the local ISP actually involves direct flow-
18 through of data between the end user and a remote host.

19

20 Q. But doesn't the FCC's *Declaratory Ruling* effectively classify all ISP-bound calls
21 as inherently interstate in nature?

22

1 A. No, it certainly does not. The *Ruling* merely holds that where a connection
2 between an end user and a remote host crosses state (or national) boundaries, the
3 jurisdictional character of the call is determined by the locations of those two end-
4 points (i.e., the end user and the remote host) rather than by the location of the
5 ISP through which the end user obtains access to the Internet. If no through-
6 connection involving an out-of-state host is in progress, or if the through-
7 connection involves a host that is situated within the same exchange or LATA as
8 the end user, then the call is inherently local, and nothing in the *Declaratory*
9 *Ruling* can change that fact. Indeed, the *Declaratory Ruling*, in the rulemaking
10 portion of the order, expressly seeks comment on the question of whether and
11 how to segregate interstate versus intrastate portions of ISP-bound calls.

12
13 Q. It would appear that Ms. Shiroishi does not agree. She states (at 8) that “ISP-
14 bound traffic is interstate. The FCC, in its recent *Declaratory Ruling*, clearly
15 stated it had always considered ISP-bound traffic to be interstate.” Is her
16 portrayal of the FCC’s position accurate?

17
18 A. No. In fact, in the specific language that she quotes from Paragraph 16 of the
19 *Declaratory Ruling*, the Commission states that “[i]n the *MTS/WATS Market*
20 *Structure Order*, for instance, the Commission concluded the ESPs are ‘among a
21 variety of users of access service’ in that they ‘obtain local exchange services or
22 facilities which are used, *in part or in whole*, for the purpose of completing
23 interstate calls which transit its location and, commonly, another location in the

1 exchange area.” Emphasis supplied. The Commission thus found that *some*
2 ESP/ISP traffic is interstate but, contrary to Ms. Shiroishi’s contention, it *never*
3 found that *all* ISP-bound traffic is interstate. Indeed, in the context of access
4 services generally, interexchange carriers utilize the same access facilities to carry
5 both interstate and intrastate toll calls, and report the relative percentages of each
6 to the ILEC as a basis for determining the applicability of interstate vs. intrastate
7 switched access rates. Access services may carry interstate traffic, but not all
8 traffic carried by access services is interstate. The same is true with respect to
9 ISP-bound calls: Under the FCC’s “one-call” paradigm as adopted in the
10 *Declaratory Ruling*, the use of the ILEC’s and ALEC’s networks to establish a
11 connection between an end user and an ISP would be deemed to be jurisdic-
12 tionally interstate only while an interstate connection is actually taking place; at
13 all other times, the facility is being used entirely for local and/or intrastate traffic.

14

15 **Whether ISP-bound calls are local or interstate, BellSouth receives payments**
16 **from its end user customers for these calls, and avoids call termination costs**
17 **when the calls are handed off to an ALEC for completion.**

18

19 Q. At page 12 of her direct testimony, Ms. Shiroishi states that “[r]eciprocal compen-
20 sation was established in order to ensure that each carrier involved in carrying a
21 local call is compensated for its portion of that call.” Do you agree?

22

1 A. Yes. As Ms. Shiroishi goes on to explain, “BellSouth receives a monthly fee
2 from its end user to apply towards the cost of that call. BellSouth would then pay
3 the ALEC a per minute of use rate to compensate the ALEC for terminating that
4 local call over its network.” Shiroishi (BellSouth), at 12.

5

6 Q. Does BellSouth in fact receive revenue from its end user subscribers for calls
7 placed by them to ISPs served by ALECs such as Global NAPs?

8

9 A. Yes. Ms. Shiroishi concedes (at 20) that BellSouth is compensated by its own
10 customers for such usage: “BellSouth currently serves residence customers in
11 Miami for \$10.65 per month (flat-rate local rate).” That \$10.65 charge, however,
12 applies in addition to the monthly interstate Subscriber Line Charge (SLC) of
13 \$3.50 and PICC charge (paid by the customer’s presubscribed interexchange
14 carrier) of \$1.04 or, if a second access line in the same residence, \$6.07 per
15 month for the SLC plus \$2.53 for the PICC, for a total of as much as \$19.25 in
16 monthly revenue. (A heavy Internet user of the type described in Ms. Shiroishi’s
17 example would likely use an additional residential access line for this purpose, so
18 the \$19.25 in total monthly revenue would be the correct basis for comparison.)
19 For flat-rate business customers, BellSouth receives \$29.10 in basic service
20 revenue plus \$13.16 in SLC and PICC revenue, for a total of \$42.26. (BellSouth
21 also receives revenue from various other sources, including vertical service
22 features, intraLATA toll, and intrastate and interstate switched access charges paid

1 by interexchange carriers, all of which provide “contribution” toward the total cost
2 of the access line and associated usage.)

3

4 Q. But according to Ms. Shiroishi, the Company would be losing money on this
5 service if it is required to pay reciprocal compensation to Global NAPs. In her
6 example at page 20, she suggests that BellSouth would have to pay Global NAPs
7 \$15.04 per month, whereas it would receive only \$10.65 in usage revenue from its
8 own customer. Doesn’t this argument demonstrate the inappropriateness of
9 requiring BellSouth to make reciprocal compensation payments to ALECs for ISP-
10 bound traffic?

11

12 A. No. First, as I have just noted, the \$10.65 figure advanced by Ms. Shiroishi
13 significantly understates the actual revenue that BellSouth receives from its flat-
14 rate residence customers. But even if her revenue figure were correct, all that this
15 “example” demonstrates is that BellSouth may have entered into what turned out
16 (after the fact) to have been a bad business decision for the Company, in connec-
17 tion with *some* of its customers. First, the reciprocal compensation rate itself
18 (\$.009 per minute in this case) was supposed to have been set on the basis of cost.
19 That is, the \$.009 per minute represents the cost that each participating LEC
20 (BellSouth and the interconnecting ALEC) incur in terminating local traffic, or
21 conversely avoid when someone else assumes responsibility for that function.
22 Assuming that the rate was properly set in relation to cost when the
23 Interconnection Agreement was initially established with DeltaCom in 1996, then

1 BellSouth would be incurring exactly the same \$15.04 in call termination cost for
2 the end user in Ms. Shiroishi's example *irrespective of whether an ALEC or*
3 *BellSouth furnished service to the ISP that the end user is calling.* That is, if a
4 residence customer spends a lot of time on-line connected to an ISP served by
5 BellSouth, then BellSouth itself incurs the switching costs which, at \$0.009 per
6 minute, lead to the same \$15.04 call termination cost Ms. Shiroishi identifies. If
7 an ALEC serves the ISP, BellSouth avoids incurring the cost itself, but has to pay
8 it to the ALEC. This should be economically neutral to BellSouth.

9
10 But Ms. Shiroishi's analysis is actually wrong for a more fundamental reason.
11 BellSouth collects the same \$10.65 in local usage charges from all of its flat-rate
12 Miami residence customers, including those who do not use their telephone
13 service to call ISPs. If, for example, a particular customer uses her telephone for
14 500 minutes per month for "ordinary" local (voice) calls, and if the call
15 termination *cost* incurred by BellSouth (whether it or an ALEC completes the call)
16 is the \$.009 established in the Interconnection Agreement, then BellSouth's *cost*
17 for that particular line would be only \$5.40 which, at the \$10.65 monthly rate,
18 would result in a net *profit* of \$5.15. The point here is that where a flat-rate
19 usage charge applies, there will be some customers whose usage falls below
20 average, and others whose usage is above average. In any event, if the particular
21 manner in which BellSouth prices its local exchange usage is the source of its
22 problem, then it can apply to the Commission for a change in rate level and/or
23 rate structure.

1 The bottom line, however, is that BellSouth is receiving revenue from its
2 customers for usage that is completed by ALECs (a fact that Ms. Shiroishi readily
3 admits), yet at the same time is arguing that it has no obligation to compensate
4 those ALECs for their participation in carrying this traffic. This outcome would
5 unjustly enrich BellSouth while denying ALECs compensation for services that
6 they are lawfully furnishing.

7

8 **Unless BellSouth is required to make reciprocal compensation payments to**
9 **ALECs, ALECs will be forced to provide a service and incur costs for which they**
10 **will receive no compensation.**

11

12 Q. At page 23 of her testimony, Ms. Shiroishi states that “When a BellSouth end user
13 dials into the Internet through an ISP served by a [sic] ALEC, the ALEC is
14 compensated by the ISP. The ISP is compensated by the end user. BellSouth is
15 the only party involved in this traffic that is not receiving revenue for these calls.”
16 Is Ms. Shiroishi correct in making these assertions?

17

18 A. Ms. Shiroishi is wrong on all three counts. First, the ALEC is not compensated
19 by the ISP for call transport and termination, because calls rated as “local” (which
20 these calls are expressly required to be under the FCC’s frequently-reiterated ISP
21 access charge exemption) are handled on a “sent paid” basis (see my Direct
22 Testimony at 7-12). Thus, while the ISP will typically pay the ALEC for the

1 exchange access dial tone lines that terminate in its modem banks, it will not pay
2 for local usage, because that is the responsibility of the call originator.

3

4 Second, Ms. Shiroishi claims that the ISP is compensated by the end user for its
5 local usage payments to the ALEC. Again, since the ISP does not pay the ALEC
6 for receiving the incoming local calls, there are no ISP costs for this function that
7 are to be recovered from end users. More importantly, because calls originated by
8 the end user are in all instances *sent-paid*, the end user is already paying
9 BellSouth for the calls he or she places to the ISP, and there would be no basis
10 for the ISP to collect additional revenues from its end users for telephone charges
11 that they have already paid directly to the telephone company. In fact,
12 BellSouth's own web site admonishes its customers to be sure that the calls they
13 place to BellSouth.net are rated as local: "Before dialing any number, check with
14 your phone company to find out if you will incur any toll charges. BellSouth will
15 not reimburse customers for any long distance toll charges associated with
16 connecting to *BellSouth.net* service." (See Attachment 2 to my Direct
17 Testimony.)

18

19 Finally, Ms. Shiroishi contends that "BellSouth is the only party involved in this
20 traffic that is not receiving revenue for these calls." This is, of course, a
21 remarkable claim, in light of her own testimony (at 20) that BellSouth in fact
22 receives flat-rate local usage revenue from customers who use BellSouth's service
23 to call ISPs served by ALECs (\$10.65 for Miami residence customers); indeed, it

1 is the ALEC that completes the call that will not be compensated if BellSouth is
2 permitted to escape its obligations to make reciprocal compensation payments.

3

4 **The possible presence of a disparity between the reciprocal compensation rate**
5 **and the ALEC's costs for completing ISP-bound calls is not a basis for permitting**
6 **BellSouth to escape its obligations to compensate ALECs for the call termination**
7 **services that they provide.**

8

9 Q. At page 38 of his Direct Testimony, Mr. Albert Halprin claims that “[r]eciprocal
10 compensation for ISP Internet traffic leads to the recovery of many times the
11 actual costs ALECs incur to carry ISP Internet traffic that originates on
12 BellSouth’s network.” Assuming, for the moment that the reciprocal
13 compensation rate is “many times the actual costs ALECs incur to carry ISP
14 Internet traffic” as Mr. Halprin contends, is that a *per se* basis for denying such
15 payments to Global NAPs or other ALECs?

16

17 A. No, and for several reasons. Mr. Halprin states (at 38-39) that “[c]all set-up
18 represents a significant portion of the total costs a LEC incurs to terminate a call
19 that originates on another LEC’s network. However, the per-minute reciprocal
20 compensation rate is the same for each minute of a call. The rate represents the
21 average of the call set-up and other costs over the duration of a call and is set on
22 the basis of the average duration of a call. *Thus, on average, the terminating LEC*
23 *recovers its actual costs.* But because the average Internet communication lasts

1 far longer than the average voice call, application of the reciprocal compensation
2 rate to such ISP-bound traffic will result in a significant over-recovery of the
3 ALEC's costs." Emphasis supplied.
4

5 First, and as Mr. Halprin readily concedes, "on average, the terminating LEC
6 recovers its actual costs." In that regard, one must recognize that the \$.009 rate
7 was the result of an arm's length *negotiation* between BellSouth and an ALEC
8 (DeltaCom, in this case). Since the same rate was intended to apply for traffic
9 flows in either direction, it satisfied the classic "you cut, I choose/I cut, you
10 choose" type of negotiation process. At the time it entered into the contract,
11 BellSouth was (or should have been) fully aware of the fact that, as Mr. Halprin
12 now readily concedes (at 35), ALECs have a much greater ability than do ILECs
13 to specialize (through marketing emphasis) in particular types of customers, such
14 as ISPs.
15

16 If that \$.009 rate were set too low relative to cost, then ALECs would be seeking
17 out high-volume call origination customers (such as telemarketers) because it
18 would be underpaying BellSouth for terminating that traffic; by contrast, if the
19 rate were set too high relative to cost, ALECs would be expected to seek out
20 high-volume call termination customers, because they would be compensated by
21 BellSouth at a rate that was above their own call termination cost. Putting ISPs
22 aside, these high-volume call termination customers could have included voice
23 mail service providers, pizza delivery services, taxicab dispatchers, and "call

1 centers” operated by government agencies and companies to receive and process
2 inquiries from individuals, all of which would have been indisputably *local* call
3 applications. Obviously, BellSouth had a strong incentive, in setting the specific
4 reciprocal compensation rate in the DeltaCom contract, to get it right, and Mr.
5 Halprin himself appears to believe that in fact BellSouth did get it right, i.e., the
6 \$.009 rate assures that BellSouth will “on average ... recover[] its actual costs.”
7 If, in fact, BellSouth did not “get it right,” that is a management error that was
8 perhaps caused by a mis-assessment of the nature of the local telephone service
9 market, but is in any event not a basis for allowing BellSouth to now renege on
10 its contractual agreement. (It is also possible that BellSouth believed, at the time
11 it negotiated the DeltaCom agreement, that it would actually be a net recipient of
12 terminating usage, and deliberately set the terminating usage charge in excess of
13 its own costs so as to extract monopoly rents from its ALEC rivals. Given that
14 BellSouth is currently negotiating substantially lower reciprocal compensation rate
15 levels in all new interconnection agreements, it would seem that this scenario may
16 well have driven the DeltaCom negotiation. In that case, BellSouth acted based
17 upon a serious error in judgment, apparently ignoring the potential impact of the
18 Internet upon the demand for local calling and the ability of ALECs to specialize
19 in serving ISPs. The Commission should not now “bail out” BellSouth from the
20 business consequences of this management miscalculation.)

21

22 Second, the very fact that the ALEC’s call termination costs are lower than
23 BellSouth’s — thereby permitting the ALEC to realize a profit — cannot be a

1 basis to abrogate or limit the reciprocal compensation agreement. In a
2 competitive local service market environment, it is expected that some providers
3 will be able to produce their service more efficiently than BellSouth; if that
4 entirely desirable outcome arises, the entrant should certainly not be penalized for
5 accomplishing something that the incumbent was not itself able to do.

6

7 Q. What about Mr. Halprin's contention that the *reason* that call termination costs for
8 ISP-bound traffic is lower than for ordinary voice calls is due to the relatively
9 long duration of these calls? If his facts are accurate, doesn't that suggest that the
10 use of a per-minute reciprocal compensation rate is not appropriate?

11

12 A. No, not at all. Mr. Halprin states that "because the average Internet
13 communication lasts far longer than the average voice call, application of the
14 reciprocal compensation rate to such ISP-bound traffic will result in a significant
15 over-recovery of the ALEC's costs." That the existing reciprocal compensation
16 rate has been established on a per-minute basis is merely the result of the
17 BellSouth/DeltaCom negotiation; *there is no reason why the rate could not have*
18 *consisted of separate call set-up and call duration elements if in fact the long*
19 *duration property of ISP-bound calls would materially affect the ALEC's (as well*
20 *as the ILEC's) costs.* Once again, however, that is not what is in the
21 Interconnection Agreement. If by relying solely upon a uniform per-minute
22 reciprocal compensation rate BellSouth made yet another error in judgment, that is
23 not a basis to permit it to escape its obligations under the terms of the Agreement.

1 **In specifically allowing ALECs to “opt in” to an existing interconnection**
2 **agreement, the 1996 Act sought to assure that all ALECs are treated on an equal**
3 **and nondiscriminatory basis by the incumbent LEC.**

4

5 Q. BellSouth's witnesses also contend that ISP-bound calls are not covered by the
6 agreement between Global NAPs and BellSouth because BellSouth made clear
7 that it did not view them to be covered at the time that Global NAPs was opting
8 into the DeltaCom agreement. Is that position consonant with the non-
9 discrimination policies of the Telecommunications Act of 1996?

10

11 A. No. Obviously, the ultimate legal question of what the statute “means” is for
12 lawyers, not policy analysts. But from a policy perspective, it is clear that one of
13 the key concerns addressed by the 1996 federal Act is nondiscrimination. The
14 sections of the law dealing with ILEC-specific duties (mainly, the subsections of
15 Section 251(c)) repeatedly require that interconnection, unbundled elements, etc.,
16 be provided by ILECs on terms that are just, reasonable, and non-discriminatory.
17 State regulators may generally not reject agreements voluntarily entered into by
18 carriers, but must do so (under Section 252(e)(2)(A)(i)) if the voluntary agreement
19 discriminates against a carrier not a party to it.

20

21 And, a key non-discrimination obligation in the law is Section 252(i). Section
22 252(i) lets any ALEC choose to operate under the same terms and conditions that
23 apply to any other ALEC. It would be completely inconsistent with that nondis-

1 crimination principle if ALEC #1 enters into a deal with BellSouth, approved by
2 the PSC, which imposes certain obligations on BellSouth, but then when ALEC
3 #2 “opts into” that same deal under Section 252(i), BellSouth's obligations to
4 ALEC #2 are somehow *different from* BellSouth's obligations to ALEC #1. That
5 approach would actually *create* discrimination between the two ALECs under the
6 guise of a statutory provision whose plain purpose (at least from my non-legal
7 perspective — but based upon more than 30 years' experience in this industry) is
8 to *prevent* discrimination.

9

10 So, while I will certainly leave to the lawyers the question of the “legal effect,” if
11 any, of BellSouth's statements about ISP-bound calls at the time Global NAPs
12 opted into the DeltaCom agreement, from a public policy perspective it would be
13 a serious mistake to allow BellSouth to *create* discrimination among different
14 ALECs, each supposedly operating under the same agreement, simply by declaring
15 that it doesn't like what the agreement in question means with respect to the first
16 ALEC who obtained it.

17

18 Q. Does this conclude your rebuttal testimony?

19

20 A. Yes, it does.



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