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January 31, 2000

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. 990874-TP (US LEC Complaint)

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Direct Testimonies of Jerry Hendrix and David Scollard, which we ask that you file in the above-referenced matter.

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,

Bennett L. Ross
Bennett L. Ross (BR)

cc: All Parties of Record

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- APP _____
- CAF _____
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CERTIFICATE OF SERVICE
Docket No. 990874-TP (US LEC Complaint)

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

U.S. Mail this 31st day of January, 2000 to the following:

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF JERRY HENDRIX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 990874-TP
JANUARY 31, 2000

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Senior Director - Interconnection Services Revenue Management, Network and Carrier Services. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Morehouse College in Atlanta, Georgia, in 1975 with a Bachelor of Arts Degree. I began employment with Southern Bell in 1979 and have held various positions in the Network Distribution Department before joining the BellSouth Headquarters Regulatory organization in 1985. On January 1, 1996, my responsibilities moved to Interconnection Services Pricing in the Interconnection Customer Business Unit. In my current position as Senior Director, I oversee the negotiation of interconnection agreements between BellSouth and

1 Alternative Local Exchange Carriers ("ALECs") in BellSouth's nine-state
2 region.

3

4 Q. HAVE YOU TESTIFIED PREVIOUSLY?

5

6 A. Yes. I have testified in proceedings before the Alabama, Florida,
7 Georgia, Kentucky, Louisiana, Mississippi, South Carolina public
8 service commissions, the North Carolina Utilities Commission, and the
9 Tennessee Regulatory Authority.

10

11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

12

13 A. The purpose of my testimony is to show that BellSouth does not owe
14 US LEC of Florida, Inc. ("US LEC") reciprocal compensation for traffic
15 bound for Internet service providers ("ISPs") for two primary reasons:
16 first, ISP-bound traffic is, and always has been, interstate traffic; and,
17 second, the parties did not agree to consider ISP-bound traffic to be
18 local traffic under the terms of any of the agreements between the
19 parties.

20

21 Q. WHAT IS RECIPROCAL COMPENSATION?

22

23 A. Section 251 (b)(5) of the Telecommunications Act of 1996 obligated all
24 telecommunications carriers to "establish reciprocal compensation
25 arrangements for the transport and termination of telecommunications."

1 In basic terms, reciprocal compensation is a two-way, or reciprocal,
2 arrangement requiring a local exchange carrier ("LEC") who originates
3 a local call to compensate the LEC who terminates the local call. By
4 law, this obligation applies only if the call is local, and if the call is
5 originated and terminated by different LECs. Recently, the Federal
6 Communications Commission ("FCC") confirmed that the obligation
7 imposed under § 251(b)(5) applies only to the transport and termination
8 of local traffic. (See *Declaratory Ruling, In the Matter of*
9 Implementation of the Local Competition Provisions in the
10 Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-
11 Bound Traffic, CC Docket Nos. 96-98, 99-68 ("Declaratory Ruling"),
12 released February 26, 1999.)

13

14 Q. DESCRIBE THE NATURE OF ISP TRAFFIC.

15

16 A. Internet service is a subset of the services that the FCC has classified
17 as enhanced services. The FCC, for a variety of public policy reasons,
18 has exempted enhanced service providers ("ESPs"), of which ISPs are
19 a subset, from paying interstate access charges since 1983. Hence,
20 ISPs are permitted use the networks of LECs to collect and transport
21 their interstate traffic.

22

23 To put the agreements in question in this docket in context, I will
24 describe how a call by an end user is routed to the Internet. (Exhibit
25 JDH-1 provides an illustration.) End users gain access to the Internet

1 through an ISP. The ISP location, generally referred to as an ISP Point
2 of Presence ("POP"), represents the edge of the Internet and usually
3 consists of a bank of modems. Due to the FCC's access charge
4 exemption for ISPs, ISPs can use the public switched network to collect
5 their subscribers' calls to the Internet. To access the Internet through
6 an ISP, subscribers dial a seven- or ten-digit telephone number via
7 their computer modem. The ISP typically purchases business service
8 lines from various local exchange carrier ("LEC") end offices and
9 physically connects those lines to an ISP premise, which contains
10 modem banks that connect to the Internet. The ISP converts the signal
11 of the incoming call to a digital signal and routes the call, through its
12 modems, over its own network to a backbone network provider, where
13 it is ultimately routed to an Internet-connected host computer. Internet
14 backbone networks can be regional or national in nature. These
15 networks not only interconnect ISP POPs but also interconnect ISPs
16 with each other and with online information content.

17
18 The essence of Internet service is the ease with which a user can
19 access and transport information from any server connected to the
20 Internet. The Internet enables information and Internet resources to be
21 widely distributed and eliminates the need for the user and the
22 information to be physically located in the same area. ISPs typically
23 provide, in addition to Internet access, Internet services such as e-mail,
24 usenet news, and Web pages to their customers. When a user
25 retrieves e-mail or accesses usenet messages, for example, it is highly

1 unlikely that the user is communicating with a server that is located in
2 the same local calling area as the user. To the contrary, the
3 concentration of information is more likely to result in an interstate, or
4 even international, communication.

5

6 In short, an ISP takes a call and, as part of the information service it
7 offers to the public, transmits that call to and from the communications
8 network of other telecommunications carriers (e.g., Internet backbone
9 providers such as MCI or Sprint) whereupon it is ultimately delivered to
10 Internet host computers, almost all of which are located outside of the
11 local serving area of the ISP.

12

13 As I stated earlier, the ISP generally purchases business service lines
14 from various LEC end offices. This methodology was prescribed (and
15 in fact compelled) by the FCC in order to ensure compliance with the
16 access charge exemption extended to ESP/ISPs. The fact that an ISP
17 obtains local business service lines from a ALEC switch in no way
18 alters the continuous transmission of signals between an incumbent
19 local exchange carrier's ("ILEC") end user to a host computer. In other
20 words, if a ALEC puts itself in between a BellSouth end user and the
21 Internet service provider, as in Exhibit JDH-1, it is acting like an
22 intermediate transport carrier or conduit, not a local exchange provider
23 entitled to reciprocal compensation.

24

25 Q. DOES ISP TRAFFIC TERMINATE AT THE ISP?

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A. No. The call from an end user to the ISP only transits through the ISP's local point of presence; it does not terminate there. There is no interruption of the continuous transmission of signals between the end user and the host computers. This fact was confirmed by the FCC in the Declaratory Ruling. Paragraph 12 of the Declaratory Ruling states:

We conclude, as explained further below, that the communications at issue here do not terminate at the ISP's local server, as ALECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state.

Q. IS ISP-BOUND TRAFFIC INTERSTATE OR LOCAL TRAFFIC?

A. ISP-bound traffic is interstate. The FCC, in the Declaratory Ruling, clearly stated it had always considered ISP-bound traffic to be interstate. Footnote 87, attached to paragraph 26, of the Declaratory Ruling defines ISP-bound traffic as non-local, interstate traffic. Paragraph 16 of the Declaratory Ruling points out that the FCC considered this traffic to be interstate as early as 1983 (See Memorandum Opinion and Order, In the Matter of MTS and WATS Market Structure, CC Docket No. 78-72 ("MTS/WATS Market Structure Order"), released August 22, 1983) and, therefore, saw the need to affirmatively exempt it from access charges. Paragraph 16 of the Declaratory Ruling reads, in part:

1 *The Commission traditionally has characterized the link from an*
2 *end user to an ESP as an interstate access service. In the*
3 *MTSWATS Market Structure Order, for instance, the*
4 *Commission concluded the ESPs are “among a variety of users*
5 *of access service” in that they “obtain local exchange services or*
6 *facilities which are used, in part or in whole, for the purpose of*
7 *completing interstate calls which transit its location and,*
8 *commonly, another location in the exchange area.” The fact that*
9 *ESPs are exempt from access charges and purchase their*
10 *PSTN links through local tariffs does not transform the nature of*
11 *traffic routed to ESPs. That the Commission exempted ESPs*
12 *from access charges indicates its understanding that ESPs in*
13 *fact use interstate access service; otherwise, the exemption*
14 *would not be necessary.*

15
16 Throughout the evolution of the Internet, the FCC repeatedly has
17 asserted that ISP-bound traffic is interstate. For instance, the *Notice of*
18 *Proposed Rulemaking, In the Matter of Amendments to Part 69 of the*
19 *Commission’s Rules Relating to Enhanced Service Providers, CC*
20 *Docket No. 87-215 (“1987 NPRM”), released July 17, 1987, in which*
21 *the FCC proposed to lift the ESP access charge exemption, is clearly in*
22 *keeping with the FCC’s position on the interstate nature of ESP/ISP*
23 *traffic. Paragraph 7 reads:*

24 *We are concerned that the charges currently paid by enhanced*
25 *service providers do not contribute sufficiently to the costs of the*

1 *exchange access facilities they use in offering their services to*
2 *the public. As we have frequently emphasized in our various*
3 *access charge orders, our ultimate objective is to establish a set*
4 *of rules that provide for recovery of the costs of exchange*
5 *access used in interstate service in a fair, reasonable, and*
6 *efficient manner from all users of access service, regardless of*
7 *their designation as carriers, enhanced service providers, or*
8 *private customers. Enhanced service providers, like facilities-*
9 *based interexchange carriers and resellers, use the local*
10 *network to provide interstate services. To the extent that they*
11 *are exempt from access charges, the other users of exchange*
12 *access pay a disproportionate share of the costs of the local*
13 *exchange that access charges are designed to cover.*

14 (i emphases added)

15

16 The resulting order in Docket No. 87-215 (the "ESP Exemption Order"),
17 released in 1988, is further evidence of the FCC's continued pattern of
18 considering ISP-bound traffic to be access traffic. It referred to "certain
19 classes of exchange access users, including enhanced service
20 providers" (emphasis added).

21

22 Q. YOU HAVE SHOWN THAT THE FCC CONSIDERS ISP-BOUND
23 TRAFFIC TO BE INTERSTATE TRAFFIC. WERE LOCAL CALLING
24 RATES IN FLORIDA STRUCTURED TO COVER THE COSTS OF
25 NON-LOCAL TRAFFIC?

1

2 A. No. Local exchange rates do not take into account and compensate
3 for non-local traffic such as Internet-bound traffic. Internet-bound traffic
4 characteristics were never considered when local rates were
5 established. For BellSouth the typical call duration for a local call is
6 between three and four minutes. On the other hand, an Internet
7 session generally lasts much longer than three to four minutes.
8 According to Bellcore's 1996 report, "*Impacts of Internet Traffic on LEC*
9 *Networks and Switching Systems*," the typical call duration for an
10 Internet-bound call is approximately 20 minutes (3-4). There is little
11 similarity between local exchange traffic and Internet-bound traffic.

12

13 Q. DO BELLSOUTH AND US LEC HAVE AN INTERCONNECTION
14 AGREEMENT THAT HAS BEEN APPROVED BY THIS
15 COMMISSION?

16

17 A. Yes, the parties have had three agreements. The first Agreement
18 between BellSouth and US LEC was entered into on November 1,
19 1996, and approved by this Commission on June 12, 1997. BellSouth
20 sent US LEC the first bill for operations in Florida in June 1998, and US
21 LEC began billing BellSouth in Florida in August 1998. The first
22 Agreement had an expiration date of October 31, 1998. On June 26,
23 1998, US LEC adopted ALEC, Inc.'s existing Interconnection
24 Agreement (the "second Agreement"). The second Agreement was
25 approved by this Commission on October 12, 1998, became effective

1 in November 1998, and expired on June 15, 1999. On June 30, 1999,
2 US LEC adopted Intermedia Communications, Inc.'s existing
3 Interconnection Agreement (the "third Agreement"). This Commission
4 approved the third Agreement on August 4, 1999.

5

6 Q. WERE YOU INVOLVED IN THE NEGOTIATIONS OF THE FIRST
7 AGREEMENT WITH US LEC?

8

9 A. Yes. I was the lead negotiator for BellSouth and actually signed the
10 agreement. I am aware of what was discussed during the negotiation
11 process and the reasons that the agreement contains the language that
12 appears there.

13

14 Q. HOW WOULD YOU CHARACTERIZE THE FIRST NEGOTIATION
15 BETWEEN BELL SOUTH AND US LEC?

16

17 A. In many ways, the negotiations were fairly typical, and they yielded an
18 agreement that deals with reciprocal compensation and local traffic in a
19 way that is both consistent with BellSouth's experience in negotiating
20 other contracts and the common practice in the telecommunications
21 industry. The principal difference is that US LEC placed special
22 emphasis on its expectation that traffic would be reasonably balanced
23 and its desire to ensure that this would be the case.

24

25

1 Q. WHAT WERE THE MAJOR ISSUES REGARDING RECIPROCAL
2 COMPENSATION?

3

4 A. The major issues surrounding reciprocal compensation were the rate
5 and the elements comprising that rate. The composite rate in the first
6 Agreement was based on the approved traffic-sensitive rates contained
7 in Section 6 of the Intrastate Access Service Tariff. The composite rate
8 included end office switching, tandem switching and either common or
9 dedicated transport elements. The resulting rate per minute of use was
10 \$0.01056. Given the level of these rates, US LEC expressed a desire
11 to ensure that the traffic was reasonably balanced to alleviate its
12 concern that more traffic would be terminated to BellSouth than to US
13 LEC. I will explain later in my testimony what was done to address
14 those concerns.

15

16 Q. PLEASE EXPLAIN HOW RECIPROCAL COMPENSATION APPLIES
17 UNDER THE TERMS OF THE FIRST AGREEMENT.

18

19 A. Reciprocal compensation applies when a local call is placed by an end
20 user of one party to an end user of the other party. The first party
21 (referred to as the originating party) pays the second party (the
22 terminating party) according to the rates set forth in the agreement for
23 terminating that call. These charges are billed monthly and paid
24 quarterly.

25

1 Q. WHAT WAS THE PERTINENT LANGUAGE IN THE FIRST
2 AGREEMENT IN REGARDS TO RECIPROCAL COMPENSATION?

3

4 A. Section IV of the first agreement contained the following pertinent
5 language regarding reciprocal compensation:

6 *The delivery of **local traffic** between the parties shall be*
7 *reciprocal and compensation will be mutual according to the*
8 *provisions of this Agreement. (Section IV-A)*

9

* * *

10 *Each party will pay the other for terminating its **local traffic** on*
11 *the other's network [at] the local interconnection rates as set for*
12 *the in Attachment B-1, by this reference incorporated herein.*
13 *(Section IV-B) (Emphases added)*

14

15 Q. WHAT IS THE DEFINITION OF "LOCAL TRAFFIC" IN THE FIRST
16 AGREEMENT?

17

18 A. Section I-C of the first Agreement states:

19 *Local Traffic is defined as any telephone call that originates in*
20 *one exchange and terminates in either the same exchange, or a*
21 *corresponding Extended Area Service ("EAS") exchange. The*
22 *terms Exchange, and EAS exchanges are defined and specified*
23 *in Section A3. of BellSouth's General Subscriber Service Tariff.*

24

25

1 Q. DO THE SECOND AND THIRD AGREEMENTS BETWEEN
2 BELLSOUTH AND US LEC CONTAIN THE SAME PROVISIONS
3 REEGARDING RECIPROCAL COMPENSATION AND THE SAME
4 DEFINITION OF "LOCAL TRAFFIC" AS THE FIRST AGREEMENT?

5

6 A. Yes, they do although the reciprocal compensation provisions in the
7 second Agreement are contained in Sections IV-B and IV-C and the
8 definition of local traffic can be found in Section I-D.

9

10 Q. PLEASE EXPLAIN THESE PROVISIONS.

11

12 A. At a minimum, the first Agreement requires the termination of traffic on
13 either BellSouth's or US LEC's network for reciprocal compensation to
14 apply. As I explained earlier in more detail, when an end user
15 accesses the Internet via an ISP server, that call does not terminate at
16 the ISP server, regardless of whether the ISP is served by BellSouth or
17 a ALEC. Further, the definition of local traffic requires the origination
18 and termination of telephone calls to be in the same exchange and
19 EAS exchanges as defined and specified in Section A.3 of BellSouth's
20 General Subscriber Service Tariff ("GSST"). Local traffic as defined in
21 Section A.3 in no way includes ISP-bound traffic. The FCC has
22 concluded that enhanced service providers ("ESPs"), of which ISPs are
23 a subset, use the local network to provide interstate services.

24

25

1 The reciprocal compensation obligations in the first Agreement outlined
2 above address the statutory mandate of the Telecommunications Act,
3 as interpreted by the FCC, to provide reciprocal compensation for the
4 transport and termination of local traffic. Traffic bound for the Internet
5 through ISPs is outside the scope of this obligation, and the scope of
6 this obligation was never intended to be artificially stretched to include
7 anything other than what federal law required.

8

9 Q. DID US LEC TAKE ISSUE WITH THE DEFINITION OF "LOCAL
10 TRAFFIC" OR PROPOSE A DIFFERENT DEFINITION AT ANY TIME
11 DURING THE FIRST NEGOTIATIONS?

12

13 A. No.

14

15 Q. DID BELLSOUTH CONSIDER ISP-BOUND TRAFFIC AS LOCAL
16 TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION AT THE
17 TIME IT ENTERED INTO THE FIRST AGREEMENT?

18

19 A. Absolutely not. Considering the FCC rules in effect at the time of the
20 negotiation and execution of the Agreement dating back to 1983,
21 BellSouth would have had no reason to consider ISP-bound traffic to
22 be anything other than jurisdictionally interstate traffic. Further, had
23 BellSouth understood that US LEC considered ISP-bound traffic to be
24 local traffic under the Agreement, the issue would have been discussed
25 at length.

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I am the person responsible for all negotiations with ALECs. I specifically was involved with the negotiation of this agreement. BellSouth has entered into hundreds of agreements with ALECs across its region and has included in those agreements language discussing payment of reciprocal compensation. Nowhere in those agreements has BellSouth acknowledged or agreed to define ISP-bound traffic as local traffic for reciprocal compensation purposes. Further, BellSouth has not knowingly paid reciprocal compensation to ALECs for transporting traffic to their ISP customers, nor has BellSouth knowingly billed ALECs for performing that same service.

BellSouth's interconnection agreements intend for reciprocal compensation to apply, if at all, only when local traffic is terminated on either party's network in a local calling area or LATA, as evidenced by the language in the first Agreement. BellSouth's interpretation is consistent with the Telecommunications Act of 1996, which established a reciprocal compensation mechanism to encourage local competition. The payment of reciprocal compensation for ISP-bound traffic impedes local competition. The FCC, in its August 1996, Local Interconnection Order (CC Docket No. 96-98), Paragraph 1034, made it perfectly clear that reciprocal compensation rules did not apply to interstate or interLATA traffic such as interexchange traffic:

We conclude that Section 251(b)(5), reciprocal compensation obligation, should apply only to traffic that originates and

1 *terminates within a local area assigned in the following*
2 *paragraph... We find that reciprocal compensation provisions of*
3 *Section 251(b)(5) for transport and termination of traffic do not*
4 *apply to the transport and termination of interstate or intrastate*
5 *interexchange traffic.*

6

7 In Paragraph 1035 of that same Order, the FCC stated:

8 *State Commissions have the authority to determine what*
9 *geographic areas should be considered "local areas" for the*
10 *purpose of applying reciprocal compensation obligations under*
11 *section 251 (b)(5), consistent with the state commissions'*
12 *historical practice of defining local service areas for wireline*
13 *LECs. Traffic originating or terminating outside of the applicable*
14 *local area would be subject to interstate and intrastate access*
15 *charges.*

16

17 Q. DID US LEC INDICATE DURING THE NEGOTIATIONS OF THE
18 FIRST AGREEMENT THAT IT CONSIDERED ISP-BOUND TRAFFIC
19 TO BE LOCAL TRAFFIC?

20

21 A. Absolutely not. No indication was given that US LEC considered ISP-
22 bound traffic to be anything other than jurisdictionally interstate, as the
23 law held and still holds that it is. To the contrary, the negotiated terms
24 indicate that US LEC did not consider ISP-bound traffic to be local
25 traffic at the time. During the negotiations, it was made very clear by

1 both parties that they intended to ensure that the level of traffic
2 exchanged was approximately equal. Section IV- C was included at
3 US LEC's request specifically to address its concern that terminating
4 traffic might be imbalanced in BellSouth's favor. The relevant portion of
5 this section reads as follows:

6 *US LEC and BellSouth enter into this Agreement with the*
7 *understanding that the carriers would be interconnecting with*
8 *each other for comparable types of calls and that the usage*
9 *would likely be **reasonably balanced**, i.e., US LEC would be*
10 *terminating to BellSouth approximately the same level of usage*
11 *that BellSouth would be terminating to US LEC. If at any time*
12 *during the term of this Agreement traffic is imbalanced to the*
13 *degree that US LEC feels a cap on amounts owing under this*
14 *Agreement is required, US LEC has the option to adopt the*
15 *comparable billing provisions contained in any agreement*
16 *BellSouth negotiates or has entered into with another ALEC*
17 *which contains cap provisions, after August 8, 1996 provided*
18 *that US LEC adopt the billing provisions of such other*
19 *agreement that are comparable to those contained in this*
20 *Section IV. (Emphasis added)*

21
22 This provision was intended to, and in actuality did, protect US LEC
23 from the possibility of having to pay disproportionate amounts in
24 compensation to BellSouth for completing calls made by US LEC's end
25 users to BellSouth's end users.

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Clearly, the parties understood at the time that they entered into the first Agreement that the traffic exchanged between the companies would be "reasonably balanced." It would have been senseless to state that the traffic would be "reasonably balanced" if the parties believed local traffic included one-way ISP-bound traffic.

Q. DID BELLSOUTH GIVE US LEC ANY INDICATION ABOUT ITS POSITION THAT ISP-BOUND TRAFFIC WAS NOT LOCAL TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION PRIOR TO THE SECOND OR THIRD AGREEMENTS?

A. Yes. In mid-1997, BellSouth began receiving invoices from CLECs that sought to collect reciprocal compensation for ISP-bound traffic. In a letter to all its ALEC customers dated August 12, 1997 (attached as Exhibit JDH-2), BellSouth reiterated its position that ISP-bound traffic was not local traffic subject to the payment of reciprocal compensation. BellSouth expressed its long-held understanding of the interstate nature of ISP-bound traffic. This August 12, 1997, letter was sent months prior to US LEC beginning operations in Florida in mid-1998.

After viewing this letter, US LEC wrote BellSouth on or about August 29, 1997, disagreeing with BellSouth's position. Indeed, US LEC filed a complaint against BellSouth with the North Carolina Utilities Commission ("NCUC") on October 24, 1997, complaining about

1 BellSouth's position that ISP-bound traffic was non-local interstate
2 traffic not subject to the payment of reciprocal compensation. In short,
3 there could have been no doubt that at no time did BellSouth' agree to
4 treat ISP-bound traffic as local for reciprocal compensation purposes,
5 particularly when the parties' second and third agreements were signed
6 in June 1998 and June 1999, respectively.

7

8 **Q. KNOWING THAT BELLSOUTH AND US LEC DISAGREED AS TO**
9 **THE INTERPRETATION OF "LOCAL TRAFFIC" AND THE**
10 **APPLICATION OF RECIPROCAL COMPENSATION UNDER THE**
11 **FIRST AGREEMENT, WHY WAS BELLSOUTH WILLING TO ENTER**
12 **INTO TWO SUBSEQUENT AGREEMENTS WITH US LEC WHICH**
13 **CONTAINED THE SAME PROVISIONS REGARDING THE**
14 **RECIPROCAL COMPENSATION AND THE SAME DEFINITION OF**
15 **LOCAL TRAFFIC?**

16

17 **A. An ALEC is entitled by law to adopt another existing ALEC's**
18 **Interconnection Agreement in its entirety, which is precisely what US**
19 **LEC did when it adopted the ALEC, Inc. Interconnection Agreement**
20 **and the Intermedia Communications, Inc. ("ICI") Interconnection**
21 **Agreement. BellSouth had no choice but to allow US LEC to do so.**
22 **Furthermore, even when aware of the parties' dispute, BellSouth**
23 **believed, and still believes, that the definition of local traffic in all three**
24 **agreements excludes ISP-bound traffic.**

25

1 Q. DID US LEC AND BELL SOUTH INTEND TO GO BEYOND THE
2 REQUIREMENTS OF THE TELECOMMUNICATIONS ACT OF 1996
3 BY MUTUALLY AGREEING TO TREAT ISP-BOUND TRAFFIC AS
4 LOCAL TRAFFIC AS UNDER THEIR AGREEMENTS?

5
6 A. No. All of the agreements made clear that the parties were entering
7 into the agreements consistent with the 1996 Act and to comply with
8 their obligations under the 1996 Act; nothing more, nothing less. I can
9 unequivocally state that it was not BellSouth's intent, nor was it
10 discussed during negotiations, that ISP traffic would be subject to
11 reciprocal compensation under any of the parties' three interconnection
12 agreements.

13
14 Q. WOULD IT HAVE MADE ECONOMIC SENSE FOR BELL SOUTH TO
15 HAVE AGREED TO CLASSIFY ISP TRAFFIC AS LOCAL TRAFFIC
16 UNDER ANY AGREEMENT?

17
18 A. Absolutely not, and this reality is further proof that BellSouth never
19 intended for ISP traffic to be considered local traffic under the terms of
20 the US LEC Agreement. A simple example will illustrate that point.
21 First, it should be realized that traffic collected by non-voice ISPs will
22 always be one-way, not two-way, as intended by the Act. That is, the
23 traffic will originate from an end user and transit through the ISP's
24 server to a host computer on the Internet. Reciprocal compensation
25 becomes one-way compensation to those ALECs specifically targeting

1 large ISPs. Hence, if ISP traffic were subject to payment of reciprocal
2 compensation, the originating carrier in most instances would be forced
3 to pay the interconnecting carrier more than the originating carrier
4 receives from an end user to provide local telephone service.
5 BellSouth would have never agreed to such an absurd result.

6
7 For example, assume a BellSouth residential customer in Ft.
8 Lauderdale subscribes to an ISP and that ISP is served by an ALEC.
9 Assume that customer uses the Internet a mere 6.5 hours per week,
10 i.e., a little under 56 minutes per day. This usage would generate a
11 reciprocal compensation payment by BellSouth to the ALEC of \$22.24
12 per month assuming \$0.01331 cents per minute for reciprocal
13 compensation, which was the rate for calls switched only through an
14 end office under the first two BellSouth/US LEC agreements [$\$0.01331$
15 $\cdot 55.7$ minutes/day $\cdot 30$ days]. BellSouth currently serves residence
16 customers in Ft. Lauderdale for \$10.65 per month (flat-rate local rate).
17 Therefore, in this example, BellSouth will be forced to turn over to the
18 ALEC not only every dollar of the local service revenue it receives from
19 its end users each month but also an additional \$11.59. Further, a
20 significant portion of additional residential lines are bought primarily to
21 access the Internet and would not require more than a simple flat-rate
22 line with no additional features. This situation makes no economic
23 sense and would place an unfair burden on BellSouth and its
24 customers. It is incomprehensible that BellSouth would have willingly

25

1 **agreed to pay any ALEC more than what it receives per month per**
2 **customer for providing local service.**

3

4 **Q. HOW HAS THE FCC DIRECTED BELLSOUTH TO TREAT ISP-**
5 **BOUND TRAFFIC? WHY?**

6

7 **A. BellSouth and other carriers have been directed by the FCC to allow**
8 **ISPs to purchase services through local tariffs and to characterize**
9 **expenses and revenues from ISP traffic as intrastate for separations**
10 **and reporting purposes. Paragraph 5 of the Declaratory Ruling clearly**
11 **expresses the reasoning behind this:**

12 *Although the Commission has recognized that enhanced service*
13 *providers (ESPs), including ISPs, use interstate access services,*
14 *since 1983 it has exempted ESPs from the payment of certain*
15 *interstate access charges. Pursuant to this exemption, ESPs*
16 *are treated as end users for purposes of assessing access*
17 *charges, and the Commission permits ESPs to purchase their*
18 *links to the public switched telephone network (PSTN) through*
19 *intrastate business tariffs rather than through interstate access*
20 *tariffs. (emphasis added)*

21

22 **These rules are simply a matter of implementing the access charge**
23 **exemption for ESPs/ISPs. These rules do not, however, change the**
24 **FCC's jurisdiction over ISP-bound traffic nor do they imply that the FCC**

25

1 has extended this characterization to ISP-bound traffic for any purpose
2 other than for the access charge exemption.

3

4 Q. PLEASE ADDRESS, IN THE CONTEXT OF THE US LEC
5 AGREEMENTS, THE CRITERIA FOR STATE COMMISSIONS TO
6 USE, AS SUGGESTED BY THE FCC, IN DETERMINING THE
7 APPLICABILITY OF RECIPROCAL COMPENSATION FOR
8 INTERNET-BOUND TRAFFIC.

9

10 A. Paragraph 22 of the Declaratory Ruling states:

11 *Currently, the Commission has no rule governing inter-carrier*
12 *compensation for ISP-bound traffic. In the absence of such a*
13 *rule, parties may voluntarily include this traffic within the scope*
14 *of their interconnection agreements under sections 251 and 252*
15 *of the Act, even if these statutory provisions do not apply as a*
16 *matter of law. Where parties have agreed to include this traffic*
17 *within their section 251 and 252 interconnection agreements,*
18 *they are bound by those agreements, as interpreted and*
19 *enforced by the state commissions. (emphasis added)*

20

21 **BellSouth has never voluntarily included this traffic in the scope of any**
22 **agreement, nor did BellSouth agree to include this traffic within any of**
23 **the agreements with US LEC. Because BellSouth has long considered**
24 **ISP-bound traffic to be interstate in nature, a deviation from this norm**
25 **would have been explicitly explained and described in the agreements.**

1 The fact that ISP-bound traffic is not mentioned obviously points to the
2 fact that neither BellSouth nor US LEC voluntarily included or agreed to
3 include this traffic in the agreements.

4

5 Q. IF ISP-BOUND TRAFFIC IS NOT SUBJECT TO RECIPROCAL
6 COMPENSATION, WILL BELLSOUTH AND US LEC BE
7 TRANSPORTING ISP-BOUND TRAFFIC WITHOUT
8 COMPENSATION?

9

10 A. No. Both BellSouth and US LEC are compensated for handling ISP
11 traffic from the revenues for services provided to the ISP. It may be
12 that certain ALECs have contracted to provide services to ISPs at
13 greatly reduced rates in an effort to lure them away from other carriers,
14 anticipating that the enormous revenues generated through reciprocal
15 compensation would more than offset any loss on provisioning the
16 service. Some ALECs are attempting to turn reciprocal compensation,
17 a mechanism for recovering the cost of transporting and terminating
18 local traffic, into a separate, wildly profitable, line of business. When a
19 BellSouth end user dials into the Internet through an ISP served by a
20 ALEC, the ALEC is compensated by the ISP. The ISP is compensated
21 by the end user. BellSouth is the only party involved in this traffic that
22 is not receiving revenue for these calls, and yet BellSouth is being
23 asked to pay the ALEC for the use of a portion of the ALEC's network
24 for which it is already receiving compensation.

25

1 Q. WHAT IS THE ESTIMATED FINANCIAL IMPACT TO INCUMBENT
2 LOCAL EXCHANGE CARRIERS IF ISP TRAFFIC WERE SUBJECT
3 TO THE PAYMENT OF RECIPROCAL COMPENSATION?
4

5 A. If Internet traffic were subject to the payment of reciprocal
6 compensation for such traffic, BellSouth conservatively estimates that
7 the annual reciprocal compensation payments by incumbent local
8 exchange carriers in the United States for ISP traffic could easily reach
9 \$2.6 billion by the year 2002. This estimate is based on 64 million
10 Internet users in the United States, an average Internet usage of 6.5
11 hours per week, and a low reciprocal compensation rate of
12 \$.002/minute. (Exhibit JDH-3 documents the Internet usage figures.)
13 This is a totally unreasonable and unacceptable financial liability on the
14 local exchange companies choosing to serve residential and small
15 business users which access ISPs that are customers of other LECs.
16 ALECs targeting large ISPs for this one-way traffic will benefit at the
17 expense of those carriers pursuing true residential and business local
18 competition throughout the country.

19
20 Q. WHAT DO YOU BELIEVE THIS COMMISSION SHOULD DO?
21

22 A. This Commission should deny US LEC its baseless request for relief.
23 ISP-bound traffic is not now, nor has it ever been, local traffic. The
24 parties did not consider it to be local traffic when they entered into the
25 first Agreement, and they clearly did not agree that ISP-bound traffic

1 was local traffic when they entered into the second and third
2 Agreements.

3

4 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A. Yes. Thank you.

7

8

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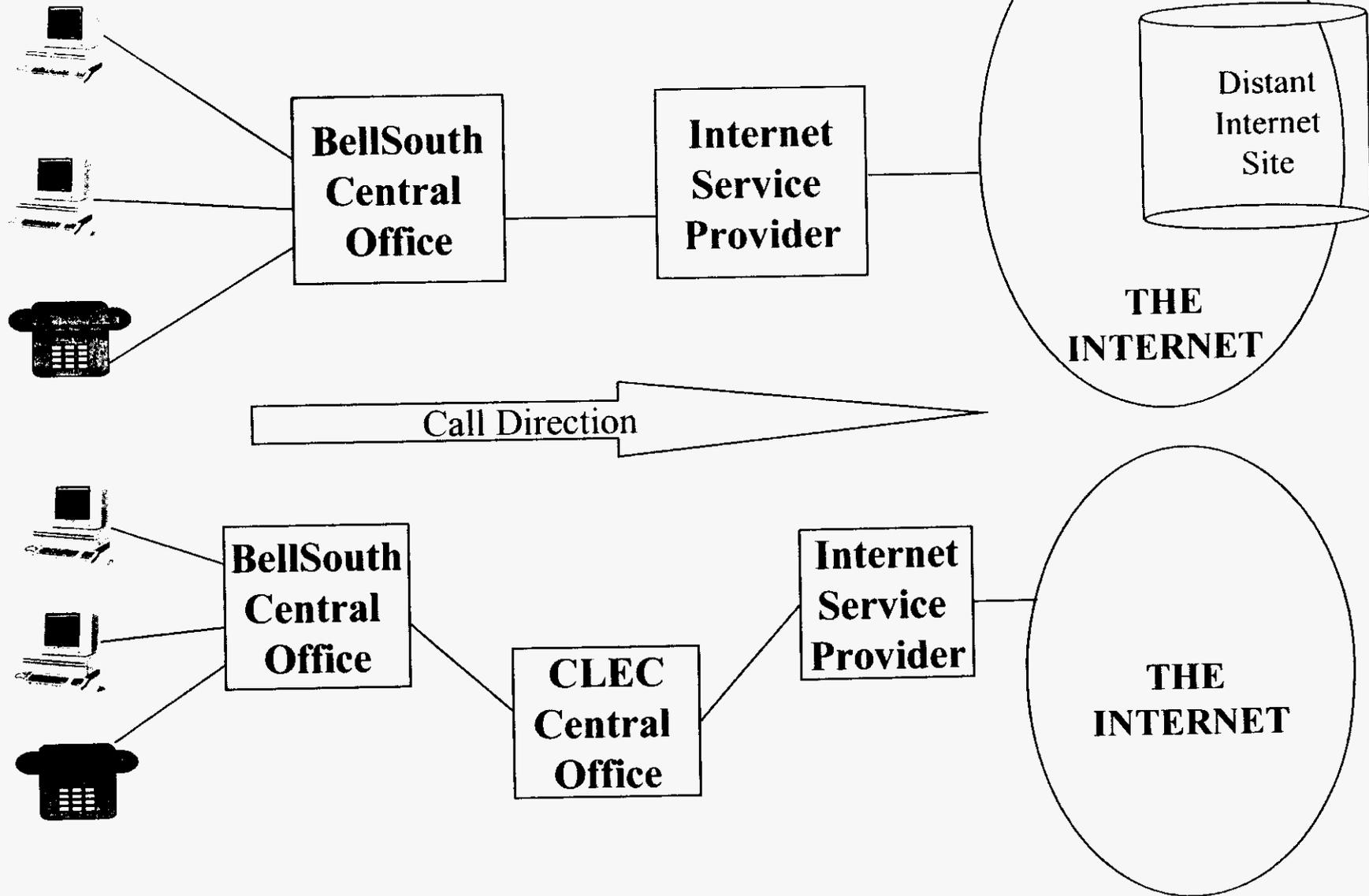
22

23

24

25

BellSouth Telecommunications, Inc.
FPSC Dkt. 990874-TP
Exhibit JDH-1





RECEIVED AUG 27 1997

B BELLSOUTH

BellSouth Telecommunications, Inc.
Room 4428
675 West Peachtree Street, N.E.
Atlanta, Georgia 30378

404 527-7100
Fax 404 438-6231
Internet: Ernie.L.Bush
@bridge.bellsouth.com

Ernie L. Bush
Assistant Vice President -
Regulatory Policy & Planning

EN91081223

August 13, 1997

To: All Competitive Local Exchange Carriers

Subject: Enhanced Service Providers (ESPs) Traffic

The purpose of this letter is to call to your attention that our interconnection agreement applies only to local traffic. Although enhanced service providers (ESPs) have been exempted from paying interstate access charges, the traffic to and from ESFs remains jurisdictionally interstate. As a result, BellSouth will neither pay, nor bill, local interconnection charges for traffic terminated to an ESP. Every reasonable effort will be made to insure that ESP traffic does not appear on our bills and such traffic should not appear on your bills to us. We will work with you on a going forward basis to improve the accuracy of our reciprocal billing processes. The ESP category includes a variety of service providers such as information service providers (ISPs) and internet service providers, among others.

On December 24, 1996, the Federal Communications Commission (FCC) released a Notice of Proposed Rule Making (NPRM) on interstate access charge reform and a Notice of Inquiry (NOI) on the treatment of interstate information service providers and the Internet, Docket Nos. 96-262 and 96-263. Among other matters, the NPRM and NOI addressed the information service provider's exemption from paying access charges and the usage of the public switched network by information service providers and internet access providers.

Traffic originated by and terminated to information service providers and internet access providers enjoys a unique status, especially call termination. Information service providers and internet access providers have historically been subject to an access charge exemption by the FCC which permits the use of basic local exchange telecommunications services as a substitute for switched access service. The FCC will address this exemption in the above-captioned proceedings. Until any such reform affecting information service providers and internet access providers is accomplished, traffic originated to and terminated by information service providers and internet access providers is exempt from access charges. This fact, however, does not make this interstate traffic "local", or subject it to reciprocal compensation agreements.

Please contact your Account Manager or Marc Cathey (202-977-3311) should you wish to discuss this issue further. For a name or address change to the distribution of this letter, contact Ethelyn Fugh at 202-977-1124.

Sincerely,



BellSouth Telecommunications, Inc.
FPSC Docket No. 990874-TP
Exhibit JDH-2



Last e-holiday.
Web traffic rose
80% in just
6 days

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Young or Old, Many More Consumers Are Online

16 November 1999: More consumers buy, more women buy, and teens pass up TV for the net. Find out what other wonders are happening online!

US Net Users Top 100 Million

15 November 1999: In a new report Strategis Group not only finds lots and lots and lots of users online in America, but that they are getting more savvy too.

Who's Earning from Ads, Who's Not

15 November 1999: According to ActivMedia, the web is not, for the most part, supported by advertising revenues.

Browser War Comes to an End

15 November 1999: Once there were many, now there are two. It's "Last Man Standing" played among the browsers.

Internet Changes Shopping Habits, But Web Ads Find Little Popularity

15 November 1999: They say once you shopped the net, you never go back. eConsumers may like the web a lot but interstitials are still annoying.

Euro-Consumers Spend Online

Advertising
The new trends in online ads. How high will revenues soar?

Geography
Track the internet as it goes global! From Argentina to Zimbabwe.

Demographics
The profile of the net: age, gender, income, race and every other demo.

Usage
What people do online. Where, when and how.

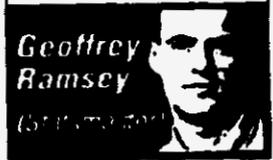
eRetail
How much e-consumers are spending and what they are buying.

eCommerce: B2B
All the key stats on the nuts and bolts of e-commerce.

Doing Business Online
What does it take to succeed online?

Net Take-Aways
11 Net take-aways for online business professionals.

eStats Methodology
How do we do it?



8 November 1999: To the tune of \$16 billion, the highest estimate to date.

Japan's Users Take Advantage of Network Services

8 November 1999: Internet providers in Japan are growing, and the number of Japanese users is growing too.

New Report on Internet Economy

4 November 1999: If you want some indicators of how large the economy surrounding the internet is, this report on the Internet Economy Indicators is just for you.

75% of Online Shoppers Abandon Their Carts

1 November 1999: The internet is littered with abandoned shopping carts. Find out why so many online consumers get cold feet when it comes to the check out.

Online Shopping Grows in Germany

1 November 1999: Germany, more than ever, is getting online shopping fever and they are racking impressive revenues.

A Quarter of Britain Surfs!

1 November 1999: Brits are finding many reasons for using the net. Find out who's online and what they are doing.

Logging on for Catalogs

1 November 1999: The natural affinity between catalog shopping and buying on the net is further explored in research from the Direct Marketing Association.

Reports Available from eMarketer

Want to know more about what is happening on the net? eMarketer takes today's net news and puts it in context. Whatever the topic, there is an eMarketer report with the most

eQuiz

Answer: Travel \$6 Billion
(32% of total e-retail revenues)



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This Week's ePoll

Within 5 years, how much of the workforce will telecommute full-time

10% -- 20%

20% -- 30%

Almost half

No change from today

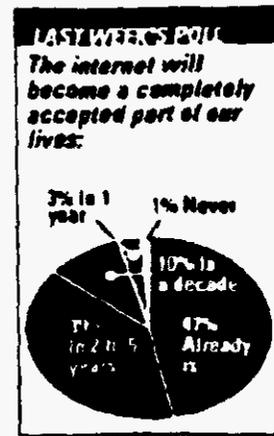
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Submit Answer

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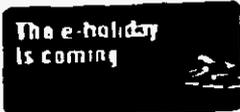
comprehensive, detailed and up-to-the-minute picture of the internet marketplace.

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By Jeff J. Jones, J.D., Ph.D.

Don't buy online advertising.

eStats Methodology

Data Chaos

If you are feeling overwhelmed by the barrage of confusing and conflicting statistics you've seen relating to the internet, you are not alone (and you have come to the right place).

The often-wide discrepancies seen between research figures create confusion and frustration among online marketers, e-merchants, ad agencies, consultants, entrepreneurs and other industry watchers struggling to get their arms around the constantly evolving internet marketplace.

For instance, eMarketer counted no less than 12 different estimates from 12 different researchers for the dollar value of consumer electronic commerce revenues transacted over the 1998 holiday shopping season. The figures ranged from a low of \$2 billion to a high of \$8 billion (see grid below). Similarly, we have looked at 23 different estimates for the number of people online in the United States.

Why Don't Researchers' Numbers Agree?

Three principal factors explain the discrepancies seen in the published figures:

1. different definitions
2. different methodologies
3. hidden biases

In addition, though most researchers won't admit it, there is a considerable amount of guesswork involved in measuring anything to do with the internet.

How is eStats Different?

eStats (the statistical arm of eMarketer) cuts through the hype, misinformation and sheer

Questions or comments on eStats?

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Don't buy online advertising.

data tonnage to give you straightforward answers on every aspect of the internet.

Unlike other research organizations, eStats does not conduct primary research. As a result, we have no testing technique to protect, no research bias and no clients to please.

Aggregation Approach

The eStats methodology is founded on a simple philosophy of aggregation:

The key to approaching quantitative truth -- particularly when examining the internet marketplace -- is to consider data from as many reputable sources as possible. No one has all the answers. But taken together, multiple sources, coupled with healthy doses of common sense and business intelligence, create a reasonably accurate picture.

The eStats research team gathers research studies, surveys and reports from hundreds of published, publicly available sources from around the world; we then filter, organize and synthesize the information so it can be entered into our eStatNet Model™, a proprietary statistical model of the entire web.

From the model, we develop our own analyses, estimates and projections about the size, shape and direction of the internet. This information is presented, along with detailed source comparison data, in the form of tables, charts, graphs and analysis. As a result, each set of findings reflects the collected wisdom of numerous research firms and industry analysts. The benefits to our readers are three-fold:

- The information is more objective and comprehensive than that provided by any other single research source.
- The information is available in one place -- easy to find, evaluate and compare.
- The information can be quickly accessed to make intelligent, well-informed business decisions.

"We see the growing proliferation of new internet research studies, surveys and reports as an exciting challenge -- to continuously assimilate these new datapoints into a

meaningful, coherent whole -- to make sense out of chaos."

--Geoffrey Ramsey, Statsmaster, eMarketer

eStats: Range of Estimates for Dollar Value of Consumer eCommerce Revenues During the 1998 Holiday Shopping Season

Source	1998	4Q 1998 (Holiday)	4Q as a % of Total Year
Cyber Dialogue	6,200	\$2,000	32.3%
InnBeads (Ziff Davis)	Na	\$2,000	Na
eStats	5,300	\$2,014	38.0%
Jupiter Communications	5,900	\$2,300	39.7%
Volpe Brown Whelan	6,000	\$2,300	38.3%
Dataquest-Gartner Group	6,180	\$2,370	38.5%
Yankee Group	7,200	\$2,550	35.4%
Binary Compass	Na	\$2,900	Na
IDC	11,500	\$3,444	29.9%
Fitzner Research (re-cast \$'s)	7,600	\$2,900	44.9%
Boston Consulting Group	13,000	\$4,400	33.8%
MCA (Interpublic Cos)	Na	\$8,200	Na

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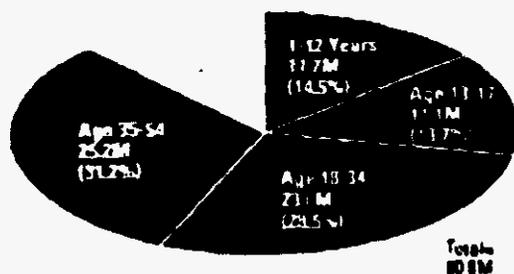
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eUser & Usage Report

The Definitive Guide to Who's Online in the U.S. -- and What They Do.

The eUser & Usage Report, 179 pages with 305 charts and graphs and packed with statistical profiles for all U.S. internet users, goes beyond the latest on market size and growth. It Report, paints an up-to-the-minute three-dimensional portrait of the internet.

US Internet User Population, by Age Group, for 1999



Source: eMarketer, 1999

Whatever demographic profile you need – age, gender, income, occupation, marital status, household size, race or ethnicity – the eUser & Usage Report has it. The report targets the internet user categories that are re-shaping the web, including: women, children, teens, students, seniors, minorities, gays and business users.

This report shows, how, where and when people go online – and why. It is full of detailed statistics on what users do online: from downloading music to banking to playing games.

Do you know?:

- How many people are online in the US?
- What are the income breakdowns for US internet users?
- How many kids, teens, adults and seniors surf the web?
- What do teens do most online?
- How do people find sites on the web?
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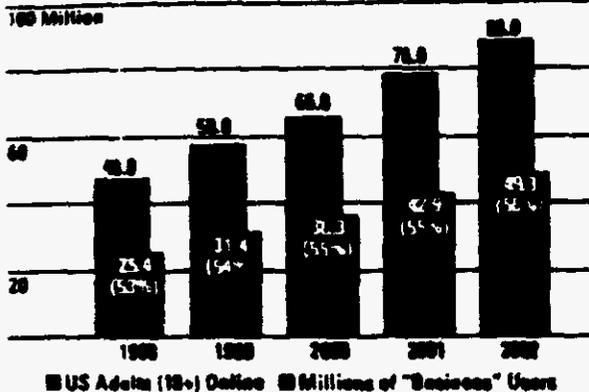
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- How does African-American usage compare to other minorities?
- How many hours a week do seniors go online?

These and hundreds of other questions you need to know are answered in the eUser & Usage Report.

Primary Business Users Out-Number Primary Home Users*



Source: eMarketer, 1999. *Business users spend more than 50% of their time online for business matters.

This report offers a host of data points from the most reputable and reliable sources available, including the US Census, Forrester Research, Jupiter Communications, Media Metrix and more. The collective wisdom of the world's leading research organizations gives you a plete and comprehensive understanding of who's doing what online

Published: September 1999
 172 pages, 305 charts and graphs
 \$795

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eUser & Usage Report



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eStats estimates that there are 36 million internet users worldwide today, up from only 19 million in 1996. The United States currently has 24.0 million users, accounting for two-thirds of net people worldwide.

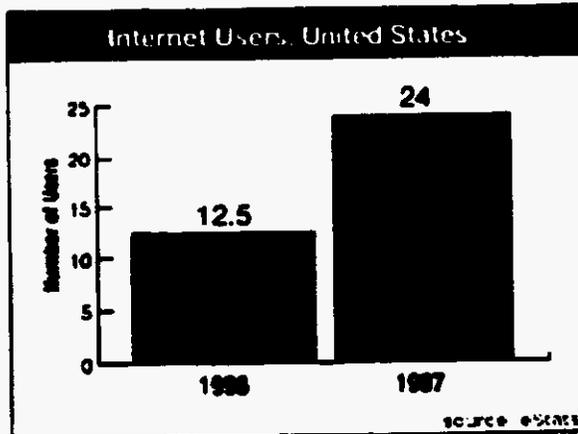
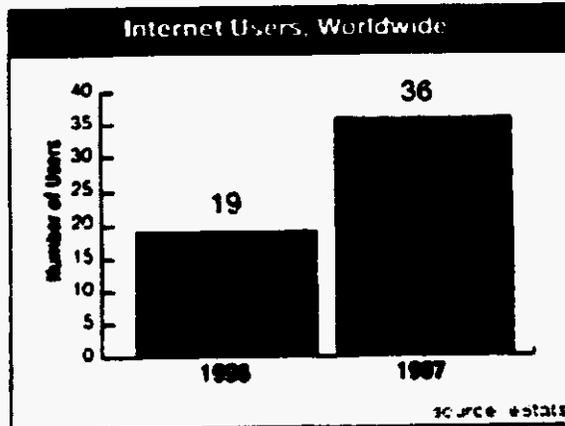
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Worldwide, eStats projects that the number of internet users will nearly quadruple over the next five years, from 36.0 million in 1997 to 142.0 million by the year 2002. This represents an average annual growth rate of 79%.

In the United States we see the number of internet users growing from 24.0 million in 1997 to 64.0 million in 2002, based on an average annual growth rate of 53%.

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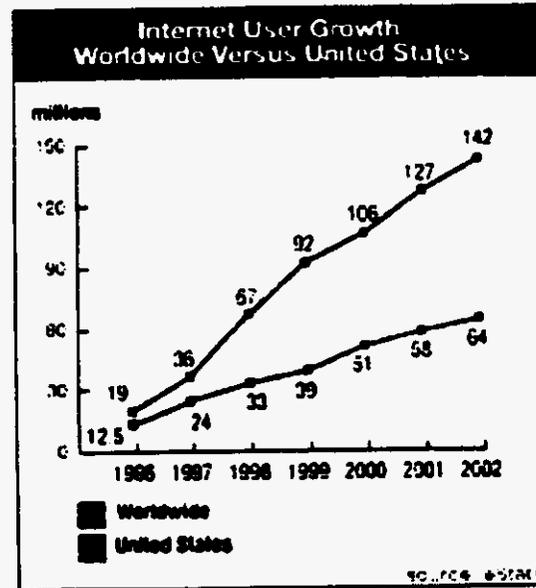
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There are two opposing forces governing the size, shape and growth of the ISP marketplace today:

1. the industry trend towards consolidation, led by the giant cable and telecom companies which have the infrastructure and financial resources to swallow up smaller ISP firms, and
2. the emergence and proliferation of segmented or "vertical" ISPs dedicated to a specific industry, region or user group.

Reconciling these two trends, eMarketer foresees a continued build-up in the number of ISPs through the year 1999, followed by a gradual consolidation as the smaller, less competitive players get weeded out.

The ramp-up and subsequent decline in number of ISP entities will resemble a bell curve, based on 1,340 estimated for 1996, rising to a projected peak of 4,700 in 1999 and followed by a precipitous drop-off to only 2,600 in 2002.

- Number of Net Users, Today
- Number of Net Users, Projected
- Set Top Boxes
- Browser Wars
- Domains, Hosts, & Sites
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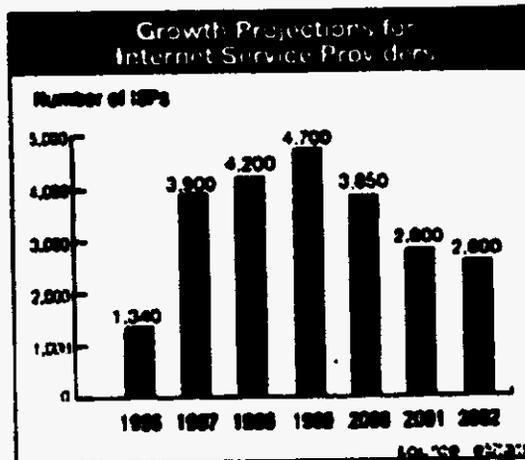
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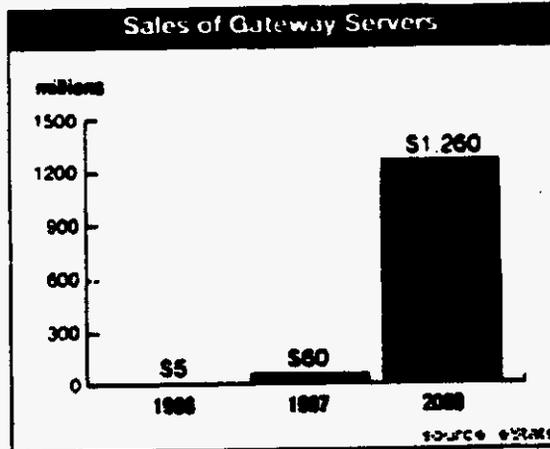
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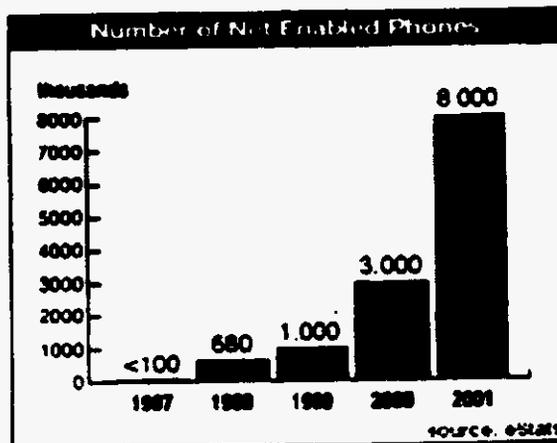
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Net Market Size and Growth: Net Telephony

Net telephony is gradually building steam as the number of gateway servers continues to grow. Gateway servers enable people to call long distance over the internet -- at dramatically reduced prices.



By the year 2002, Probe Research predicts that nearly 20% of all domestic phone traffic will be carried over data lines, up from only 0.2% this year.



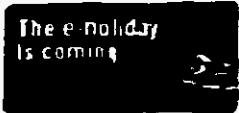
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Usage Patterns: How Much Time Spent Online

Based on our analysis of current as well as historical research data, people are spending an increasing amount of time online. In 1997 the average net user household spent 4.9 hours per week online, but that number has now risen to 5.4 hours, representing an increase of about 10%.

Despite this increase in average hours per week, only about 26% of net users get online on a daily basis.

Average Net Hours Per Week, Per Household	
Source	Average Hours Per Week
Intelligence	9.8
Odyssey Homefront	9.4
Computer Intelligence	6.3
Net Ratings	6.1
Strategic Group	6.0
eStats	5.4
Media Matrix	5.0
ZD Market Intelligence	4.5

Source: eStats

The average America Online user, in contrast, spends about 47 minutes per day online, or roughly 5.5 hours per week.

Average Number of Minutes Spent Per Day on AOL	
America Online	30
Net Search	51
Media Matrix 1998	46.6
eStats (1999)	47

Source: eStats

Another way to evaluate time online is to examine frequency distributions. Here, too, eStats has seen more net users creep up into the higher frequency brackets.

eStats: Time Online Per Week

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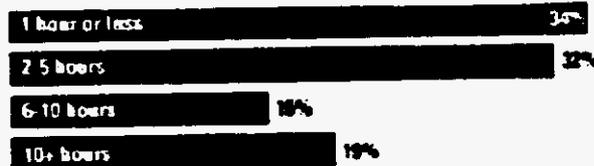
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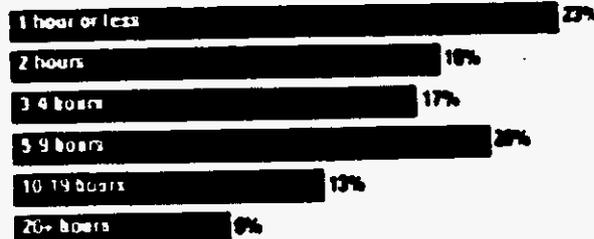
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MarketFacts: Time Online Per Week



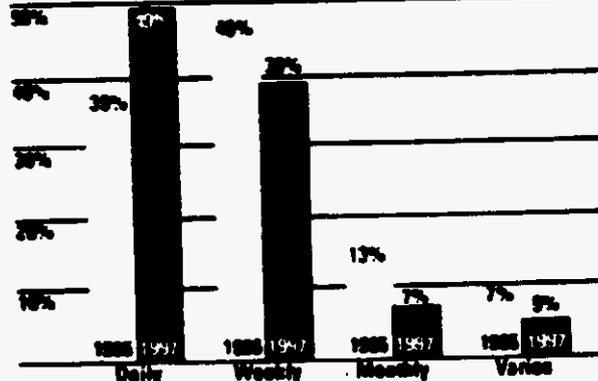
Source: MarketFacts, 1997

Intelliquest: Time Online Per Week



Source: Intelliquest, 1997

Find/SVP: Frequency of Online Use



Source: Find/SVP

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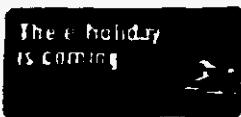
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GVU-8: Frequency of Net Usage	
Net Users Who Use the Net	Percent
Daily	88%
1 - 4 times per day	43%
use it more frequently	41%
use it less frequently	20%

InternetTrak: Frequency of Net Usage	
At least once a week	80%
Daily	23%
< Once a week	20%

InternetTrak: 4Q 1997

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Reasons for Being Online
How Much Time Spent Online
Navigation Tools Used on the Web

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