

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 991267-TP
:
Complaint and/or petition :
for arbitration by Global :
NAPS, Inc. for enforcement :
of Section VI(B) of its :
interconnection agreement :
with BellSouth :
Telecommunications, Inc., :
and request for relief. :

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VOLUME 1
Pages 1 through 175

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, January 25, 2000

TIME: Commenced at 11:00 a.m.
Concluded at 3:30 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Florida Public Service Commission
Chief, Bureau of Reporting

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P R O C E E D I N G S

COMMISSIONER DEASON: Call the hearing to order. Thank you. Take appearances.

MR. EDENFIELD: Good morning, Commissioner Deason. Kip Edenfield on behalf of BellSouth. With me today is Michael Goggin, also on behalf of BellSouth.

COMMISSIONER DEASON: I'm sorry, you're Mr. Edenfield, right?

MR. EDENFIELD: Yes, sir. Kip Edenfield.

COMMISSIONER DEASON: Okay.

MR. MOYLE: Good morning, Commissioners. John Moyle on behalf of Global NAPs, Inc. It's a pleasure to be here today. With me is Chris Savage from Washington, D.C, who is also representing Global NAPs. He is to my right. And Bill Rooney, who is the General Counsel to Global NAPs is also here today. I'm serving as local counsel to Global NAPs in this proceeding.

MS. KEATING: And Beth Keating for Commission staff.

COMMISSIONER DEASON: Okay. Preliminary matters, Ms. Keating.

MS. KEATING: Actually there are a few now. We have been discussing the possibility of stipulating some of the witness' testimony into the record. And I just wanted to kind of bring you up to speed on where we are at

1 on that.

2 COMMISSIONER DEASON: Okay.

3 MR. EDENFIELD: These are preliminary matters
4 that fall in the category of good news, for a change.

5 COMMISSIONER DEASON: That's great.

6 MR. EDENFIELD: The parties have agreed to
7 stipulate in certain witness' testimony. What we envision
8 is that Mr. Rooney will take the stand for Global NAPs. We
9 will then stipulate in Dr. Selwyn and Mr. Goldstein. That
10 would then conclude Global NAPs case.

11 BellSouth would then present the testimony of
12 Mr. Scollard, Ms. Shiroishi, Mr. Halprin. And we would
13 stipulate in the testimony of Dr. Banerjee and Mr. Milner.

14 COMMISSIONER DEASON: Very well.

15 MR. SAVAGE: In addition to that, Your Honor, we
16 received in response to a document request yesterday some
17 information from BellSouth, much of which they claim to be
18 confidential. One of the things we did over last evening
19 was go through, and we have identified a small number of
20 documents in the interrogatory answers that they have
21 produced that I think can simply be introduced into the
22 record. We are not proposing to ask anybody any questions
23 about them, we just want when the briefing comes around to
24 be able to refer to them. We are not concurring that they
25 are confidential, but unless we make an appropriate motion

1 we would treat them as confidential for purposes of the
2 proceeding and file proprietary and public versions of
3 any briefing.

4

5 COMMISSIONER DEASON: Okay. Mr. Edenfield, you
6 are in agreement with that?

7 MR. EDENFIELD: I am, Commissioner Deason,
8 thank you.

9 COMMISSIONER DEASON: Okay. This information
10 that I understand you do not agree is confidential, but
11 you are willing for purposes of this proceeding to treat
12 it confidential, are you going to be engaging in cross
13 examination of information contained therein, or do you
14 just want the information itself just entered into the
15 record?

16 MR. SAVAGE: The latter, You Honor. We don't
17 see a need to ask folks about this. It simply is what it
18 is and we would refer to it in our briefing.

19 COMMISSIONER DEASON: Very well. That would
20 simplify matters, then.

21 Are you prepared, then, to have that identified
22 as an exhibit at least during some part of this proceeding
23 so we can enter it in as an exhibit.

24 MR. SAVAGE: Yes. And one of the questions that
25 I guess we can work out at a break with the staff is what

1 is the best way to do that, since we just were assembling
2 it in final form this morning. We have copies for
3 everybody and we can pass those out. Whether we are just
4 going to call it Global NAPs 1 through 6, or however many
5 pieces of paper there are, whatever would be the
6 Commission's pleasure on that.

7 MS. KEATING: I will suggest that it just get
8 marked as a stipulated hearing exhibit. But we need to be
9 real careful that since it is under a claim of
10 confidentiality that if you pass out copies they need to
11 be picked up again before we leave today.

12 MR. MOYLE: Yes, we have them all, as the
13 prehearing order indicated, in envelopes. And so I think
14 during a break we can --

15 COMMISSIONER DEASON: If you are not going to
16 get into cross examination, there may not be the necessity
17 of actually disseminating that. But I would let you speak
18 to staff at the first break that we take and see which is
19 the best course of action to take.

20 MS. KEATING: But I would suggest it go ahead
21 and be marked.

22 COMMISSIONER DEASON: You think it can be
23 marked?

24 MS. KEATING: Uh-huh.

25 COMMISSIONER DEASON: Okay. At the appropriate

1 time, then, we will simply mark that. And if there is no
2 objection we will just have it admitted into the record.

3 MR. EDENFIELD: Okay. And there was one final
4 matter, Beth, if you want to take that up now, about the
5 depositions and what we have agreed to do.

6 MS. KEATING: Right. There were a number of
7 depositions taken in this case; Witness Banerjee, Rooney,
8 Halprin, Milner, Rooney, and Shiroishi. Staff was not
9 able to actually obtain transcripts of those depositions
10 until today. So we haven't had an opportunity to read
11 through those and see whether they should be or are
12 necessary for the record.

13 The parties have, therefore, agreed in lieu of
14 actually just dumping them into the record now when we may
15 or may not need them, that if we can make a determination
16 by the end of the week that we would like them to be in
17 the record, that if we file a motion to have those added
18 into the record it will be an unopposed motion.

19 COMMISSIONER DEASON: Are all parties in
20 agreement with that procedure?

21 MR. EDENFIELD: BellSouth is in agreement.

22 MR. SAVAGE: Yes, sir.

23 COMMISSIONER DEASON: Very well.

24 MS. KEATING: And, Commissioner, the last thing
25 is the official recognition list.

1 COMMISSIONER DEASON: Okay. Let's go ahead and
2 identify as Exhibit Number 1 the official recognition list
3 which has been distributed by staff. Is there any
4 objections or any additions to this list?

5 MR. GOGGIN: Commissioner, this is Michael
6 Goggin for BellSouth. We received the list yesterday, and
7 unfortunately it came to me and I was out of the office.
8 It appears to be reasonably complete, but we would like to
9 reserve the right to add additional authorities to the
10 list by stipulation of the parties after today's hearing.

11 MR. SAVAGE: We have no objection to that. We
12 would reserve the same right since we got it at the same
13 time. We did take a look at it this morning, and there
14 were two items that we did want to add that we were able
15 to identify. With regard to the FCC orders, we would want
16 to add a document that is known as in the matter of
17 Federal State Joint Board on Universal Service Common
18 Carrier Docket No. 96-45 (Report to Congress), which was
19 released on April 10, 1998. I couldn't find this morning
20 the official FCC record cite to that, but that is the
21 document itself.

22 The other item that we would add would be the
23 order of the Alabama Public Service Commission, in re:
24 Emergency petitions of ICG Telecom Group , Inc. and ITC
25 DeltaCom Communications, Inc. for a declaratory ruling in

1 their Docket 26-619 issued on March 4, 1999.

2 COMMISSIONER DEASON: Okay. BellSouth, any
3 objection to those two additions?

4 MR. GOGGIN: We have no objection to those
5 additions.

6 COMMISSIONER DEASON: Very well. Then the
7 official recognition list, with those two additions, and
8 with the understanding that it can be modified with
9 additional matters with stipulation of the parties, with
10 that understanding it will be identified as Exhibit Number
11 1, and will be admitted into the record.

12 (Exhibit Number 1 marked for identification and
13 admitted into evidence.)

14 COMMISSIONER DEASON: Any other preliminary
15 matters?

16 MS. KEATING: None that staff is aware of,
17 unless you want to go ahead and mark that confidential
18 discovery exhibit, if it is not actually going to be used
19 for cross.

20 MR. SAVAGE: The only thought I had is it might
21 be helpful to sit down at a break and go over it. Because
22 it may be that we can agree that certain of it isn't
23 confidential at all and then simply have as the
24 confidential material treated -- for example, some of the
25 interrogatory responses, I don't think -- I'm not sure you

1 marked them confidential, but we had a lot of paper going
2 around, and we just put them in. We would like to get
3 their judgment. So if we could do that at a break, I
4 think it might be a little more convenient.

5 COMMISSIONER DEASON: Okay. We will give you
6 that opportunity and we will take it up at a later time.

7 All witnesses that are present and will be
8 testifying, I'm going to ask you to stand and raise your
9 right hand.

10 (Witnesses sworn.)

11 COMMISSIONER DEASON: Thank you. Please be
12 seated.

13 I guess we will take Mr. Rooney up first, and
14 then when we get to a witness that is going to be
15 stipulated we will just deal with it in the order as they
16 appear in the prehearing order.

17 MR. MOYLE: Mr. Chairman, if I could just make a
18 brief request. I had mentioned this to BellSouth and
19 staff. If we could be afforded maybe three or four
20 minutes to make a brief opening statement, I think it
21 might be helpful in terms of setting the stage and the
22 issues that are before you today.

23 COMMISSIONER DEASON: Well, I will treat that
24 just like I do all requests. If it is not in the
25 prehearing order, I will allow it only if there is no

1 objection by any of the parties. If there is an
2 objection, then it will not be allowed.

3 MR. EDENFIELD: Actually, BellSouth does have an
4 objection to that. If we had known a day in advance, I
5 could have prepared something and would have been happy to
6 do it. But hearing it this morning for the first time I
7 think it's a little late. And my understanding and
8 recollection of the prehearing order is that it is not
9 allowed in that order.

10 COMMISSIONER DEASON: My review of the
11 prehearing order indicates that there has been no mention
12 of that. And given that fact and that there is an
13 objection, we will not have opening statements.

14 So you may call your first witness.

15 MR. SAVAGE: Global NAPs would call William
16 Rooney to the stand.

17 COMMISSIONER DEASON: Please proceed.

18 Thereupon,

19 WILLIAM J. ROONEY
20 was called as a witness on behalf of Global NAPs, Inc.,
21 and having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SAVAGE:

24 Q Will you please state your name and address for
25 the record.

1 A William Mooney, 185 Stoneaded (phonetic) Road,
2 Dedham, Massachusetts.

3 Q Mr. Rooney, did you cause to be filed in this
4 case a document entitled direct testimony of William
5 Rooney, Jr.?

6 A Yes, I did.

7 Q If you were asked the questions contained in
8 that document today, would your answers be the same?

9 A Yes, they would.

10 Q And do you adopt that prefiled written testimony
11 as your testimony in this case?

12 A I adopt that testimony, yes.

13 Q Could you please give a brief summary of your
14 testimony.

15 A Certainly. I am the Vice President and General
16 Counsel of Global NAPs. I was the one who looked through
17 the agreements to make a determination as to what
18 agreement we wanted to opt into. I chose to opt into the
19 DeltaCom agreement primarily because the DeltaCom
20 agreement clearly seemed to me to have by its terms
21 payment for reciprocal compensation, terms that were not
22 onerous, terms we could work with, and it had a good
23 duration, a term of two years. At the time I opted into
24 this agreement, it was my understanding that I was going
25 to be getting all of the rights that DeltaCom had and it

1 was my understanding that we would be paid reciprocal
2 compensation on ISP-bound traffic.

3 MR. SAVAGE: Your Honor, just a procedural
4 question. My understanding from the prehearing order is
5 that I should wait until after cross examination to
6 formally move in Mr. Rooney's evidence and testimony?

7 COMMISSIONER DEASON: Yes. But we can go ahead
8 and identify his exhibits at this point.

9 MR. SAVAGE: Again, one procedural question I
10 apologize for. Should his prefiled direct testimony
11 itself be an exhibit or is it only his exhibits that are
12 the exhibits?

13 COMMISSIONER DEASON: Okay. You should move his
14 prefiled testimony, that it be inserted into the record
15 since he has affirmed the correctness of that testimony
16 and has adopted it. So you so move at this point?

17 MR. SAVAGE: I'll do that, yes.

18 COMMISSIONER DEASON: Then without objection
19 that testimony will be inserted into the record. And now
20 we will identify the accompanying exhibit.

21 MR. SAVAGE: Okay. There are actually three of
22 them.

23 BY MR. SAVAGE:

24 Q Mr. Rooney, did you cause to be attached to your
25 testimony what should be marked as WJR-1, the

1 interconnection agreement between DeltaCom, Inc. and
2 BellSouth Telecommunications, Inc. as amended?

3 A Yes, I did.

4 MR. SAVAGE: If that could be reflected in the
5 record as Exhibit WJR-1.

6 COMMISSIONER DEASON: There are two other
7 exhibits accompanying that?

8 MR. SAVAGE: Yes. And I simply was going to
9 identify them --

10 COMMISSIONER DEASON: Okay. We will just
11 identify -- you can go through that process of identifying
12 the other two, but we will identify that as a composite
13 exhibit and it will be Exhibit Number 2.

14 MR. SAVAGE: Okay.

15 BY MR. SAVAGE:

16 Q Then the second attachment to your testimony,
17 was it not, was the adoption agreement between Global NAPs
18 and BellSouth dated January 18, 1999?

19 A Yes, it was.

20 Q And then the third attachment to your testimony
21 was the testimony of James C. Wilkerson on behalf of ITC
22 DeltaCom in Georgia Commission Docket 26-619, is that
23 correct?

24 A Yes, it was.

25 MR. SAVAGE: Then, Your Honor, if those

1 collectively could be marked as a composite exhibit of
2 Exhibit Number 2.

3 COMMISSIONER DEASON: They will be so
4 identified.

5 (Composite Exhibit Number 2 marked for
6 identification.)

7 COMMISSIONER DEASON: And at the conclusion of
8 cross examination you may move those exhibits.

9 MR. SAVAGE: That would be the time for that.

10 COMMISSIONER DEASON: Yes.

11 MR. SAVAGE: With that, then, I believe Mr.
12 Rooney is available for cross examination.

13 COMMISSIONER DEASON: Very well. Mr. Edenfield.

14 MR. EDENFIELD: Thank you, Commissioner Deason.

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CROSS EXAMINATION

1

2 BY MR. EDENFIELD:

3 Q Good morning, Mr. Rooney.

4 A Good morning.

5 Q Let me ask you just a few questions about your

6 testimony today. I say a few, but don't hold me to it.

7 As I understand it, you are not an employee of Global

8 NAPs, but are retained as a lawyer for them?

9 A Well, as I explained in my deposition testimony,

10 I am their general counsel. I maintain my own law

11 practice. Right now I have essentially one client for

12 99.9 percent of everything that I do. I was at all times,

13 though, a director and an officer of Global NAPs.

14 Q So you are a shareholder in Global NAPs?

15 A No, I'm not.

16 Q Do you have any ownership interest in Global

17 NAPs?

18 A No, I don't.

19 Q And your address, as I understand it, is at the

20 Global NAPs place of business?

21 A No, that is my business address. My business

22 address is the same as Global NAPs; that is where I have

23 my office.

24 Q Okay. Is Global NAPs currently doing business

25 in Florida?

1 A Yes, it is.

2 Q Whereabouts in the state?

3 A In Miami.

4 Q Does Global NAPs have any facilities-based --
5 or, I'm sorry, any facilities here in Miami?

6 A Yes, it does.

7 Q Do you have any facilities-based residential
8 customers in Florida?

9 A No, we don't.

10 Q Do you have any resale residential customers in
11 Florida?

12 A No, we do not.

13 Q Do you provide resale services at all?

14 A I do not believe that we do.

15 Q Will you agree that the bulk of Global NAPs' end
16 user customers are ISPs?

17 A The majority certainly are.

18 Q Okay. And by an ISP, I'm talking about an
19 Internet service provider?

20 A Yes.

21 Q And will you agree that the bulk of Global NAPs'
22 traffic is comprised of dial-up calls to these Internet
23 providers?

24 A Again, I would say the majority of the traffic
25 is our calls to ISPs. We have other customers that take a

1 lot of telecommunications, yes, but the majority would
2 definitely be ISPs.

3 Q What kind of majority are we talking about?

4 A Oh, I don't know. I would guess somewhere like
5 60 to 80 percent. But I have done no analysis of it, so I
6 don't know.

7 Q I'm sorry, did you say 68 or 60 to 80?

8 A No, 60 to 80 percent. But we have done no
9 analysis, or at least none that I am aware of. So I can't
10 give you a precise number.

11 Q Does Global NAPs have any ownership interest in
12 an Internet service provider?

13 A No, certainly not in Florida. We have one in
14 Massachusetts, a small one called Worldnet (phonetic),
15 but I do not believe that Global NAPs actually owns it. I
16 believe that it is owned by the same holding company.

17 Q What holding company owns Global NAPs?

18 A I believe it is Ferris Miner Holding, I'm not
19 sure.

20 Q I'm sorry, Ferris --

21 A Miner.

22 Q M-I-N-E-R?

23 A Uh-huh.

24 Q Do you know whether Ferris Miner owns any
25 Internet service providers other than the one you just

1 mentioned?

2 A To the best of my knowledge, no. At one time it
3 had an Internet service provider that provided services
4 exclusively to school teachers in Massachusetts. But I
5 believe that is now no longer providing service.

6 Q Does Global NAPs maintain any arrangement with
7 its ISP customers where the ISP receives a discount based
8 on the volume of traffic it receives?

9 A To the best of my knowledge, no. The only time
10 we ever gave anyone a discount was when we were providing
11 a discount to the one that provided services to
12 Massachusetts school teachers to bring down the price to
13 the state.

14 But with the exception of that one ISP, and that
15 no longer is engaged in that business, we never give
16 discounts. We basically charge the same thing all the
17 time.

18 Q Okay. Let's turn to the interconnection
19 agreement, which is the issue here in this case. The
20 January 18th, 1999 interconnection agreement between
21 BellSouth and Global NAPs, that is the first
22 interconnection agreement between those two companies?

23 A Yes, it is.

24 Q This was Global NAPs' first foray into the
25 southeast?

1 A Yes.

2 Q Let's talk about the events leading up to your
3 adoption of the agreement.

4 A Excuse me, I might have misspoken. If you would
5 consider Virginia to be part of the southeast, we were
6 already in Virginia with regard to Bell Atlantic. But in
7 the area that is covered by BellSouth this was our first
8 foray.

9 Q It generally depends on what state you are in as
10 to whether you consider Virginia a part of the south.

11 A Well, I know its north of where I am right now.

12 Q Will you agree that prior to deciding to do
13 business in Florida that Global NAPs was generally aware
14 that BellSouth had taken the position that ISP-bound
15 traffic was interstate traffic for which reciprocal
16 compensation was not due?

17 A Yes. We were generally aware that all of the
18 ILECs were taking the position that they did not want to
19 pay reciprocal compensation on ISP-bound traffic, just as
20 all of the CLECs were of the view that ISP-bound traffic
21 was clearly local traffic.

22 Q And in August of 1998, Global NAPs approached
23 BellSouth about negotiating an interconnection agreement?

24 A I believe that would be correct.

25 Q And do you know the exact date of that?

1 A No, that is the only part I'm unsure of. It was
2 definitely in the latter part of 1998, I simply don't
3 recall the exact date.

4 Q And as I understand your testimony, in response
5 to your request to negotiate an interconnection agreement,
6 BellSouth sent you a copy of its standard interconnection
7 agreement as a starting point for negotiations?

8 A That is my recollection.

9 Q Did you review that interconnection agreement?

10 A I think I reviewed it very briefly.

11 Q Did you look at the reciprocal compensation
12 provisions of that agreement?

13 A I may very well have, but I don't really recall
14 that clearly, because that was not the way I wanted to go.

15 Q Will you agree that the provisions of the
16 standard agreement that we sent to you to start
17 negotiations excluded ISP traffic from the reciprocal
18 compensation provision?

19 A I honestly can't agree or disagree because I
20 don't really recall those provisions. Early on in this I
21 had made the decision that I wanted to opt into a
22 contract, as I had been faced with so many delays in
23 trying to negotiate from scratch contracts dealing with
24 Bell Atlantic, and we wanted to get into business in
25 Florida.

1 So the standard BellSouth contract was really
2 not much of a consideration for me. I was pretty sure I
3 wanted to get into business much sooner than that, and so
4 I was going to opt in.

5 Q Okay. You were aware that BellSouth was going
6 to take the position that reciprocal compensation was not
7 due for ISP traffic?

8 A I knew that all of the ILECs would consistently
9 take a position that they opposed paying, just like all of
10 the CLECs consistently took the position that paying was
11 required. And at that time, back in the very end of 1998,
12 a number of states had already dealt with this and every
13 state that actually came up with a decision ruled that
14 reciprocal compensation was due.

15 So back then, although I knew that BellSouth,
16 just like all the other ILECs kept resisting that the
17 clear overwhelming position in the country was reciprocal
18 compensation was due for ISP-bound traffic.

19 Q Did you ever discuss reciprocal compensation
20 with BellSouth prior to your opting into the DeltaCom
21 agreement?

22 A No, I don't believe that I did. I had very,
23 very few discussions with them.

24 Q Okay. And if I understand what you are saying,
25 based on a history you had had with Bell Atlantic you had

1 decided fairly early on to go the 252(i) route and opt
2 into an interconnection agreement as opposed to
3 negotiating one?

4 A Yes. Really early on I had made the decision I
5 wanted to do that. The reason was if I'm going to go
6 through the arbitration route, it is going to take me like
7 135 days before the arbitration window even opens, and
8 then you go through the process of the arbitration and the
9 whole thing has a limit, but the end limit is nine months.
10 We wanted to get into business right away. So the most
11 efficient way to do that would be to opt into a contract.

12 When we started we thought we would go ahead
13 and we would negotiate contracts with Bell Atlantic and we
14 realized how long that took. Now it makes more sense we
15 thought, certainly when we were coming here we wanted to
16 get into business to just make use of Section 252(i) and
17 opt into a contract that already existed.

18 Q Did any part of part of your decision revolve
19 around the fact that you were having problems in New
20 Jersey getting paid for reciprocal comp for ISP traffic?

21 A I honestly don't think I was thinking about New
22 Jersey very much at all in terms of this. Again, my focus
23 at the time was that we wanted to get into business fast
24 and this was the most efficient way of doing it.

25 Q All right. As I understand it in deciding which

1 agreement you were going to adopt for BellSouth's region
2 you sent an associate down to Tallahassee to cull through
3 interconnection agreements?

4 A That is correct.

5 Q You all then picked out a few and chose from
6 there?

7 A Yes, that is exactly what we did. I sent him
8 down, he brought back a number of them. I looked through
9 the agreements and I made a choice.

10 Q Did your choice -- was it in any way based upon
11 factors such as ISP provisions and ISP rates?

12 A Well, certainly it was to the degree that I was
13 not going to choose a contract that did not have payment
14 for ISP-bound traffic. And to my mind at that point the
15 only way you wouldn't have payment for ISP-bound traffic
16 would be if you specifically excluded it in the contract.
17 So I certainly would not have chosen a contract in which
18 it was specifically excluded.

19 And, secondly, as a large portion of our
20 business is ISP-bound traffic, I was certainly not going
21 to try to find one that had the lowest rate of reciprocal
22 compensation. But those were not the only factors that
23 were important to me. Those factors would basically allow
24 me to take the ones that are brought to me and maybe cut
25 them down to maybe three or four.

1 Other matters that I had to look at would be are
2 there any other terms in this interconnection agreement
3 that would be onerous, that would not enable us to be able
4 to do business. And the term of the agreement. I was
5 looking for an agreement that would go for a reasonable
6 length of time. So my goal was not to find one that was
7 going to by its terms expire on such and such a date if it
8 was going to be a short date, but an agreement that was
9 actually for a length of time, like this contract which
10 said a term of two years.

11 Q Okay. Now, as I understand it, also in
12 preparation for deciding which agreement you were going to
13 adopt, you also looked at DeltaCom's interpretation of the
14 agreement?

15 A I was aware of their view of the reciprocal
16 compensation issue. So I was aware that it was their view
17 that they had a right to get paid.

18 Q I'm sorry, Mr. Rooney, you keep pausing, and I
19 thought you were done. I'm sorry. I don't mean to keep
20 trying to talk over you.

21 And in deciding that, you reviewed testimony
22 from the BellSouth/DeltaComm proceeding in Alabama?

23 A No. As I told you in the deposition the other
24 day, actually I don't know that I actually looked at that
25 testimony at the time. I was aware of their viewpoint. I

1 included a copy of the testimony because that sets out
2 their viewpoint in detail.

3 Q And I assume then, since you were aware of their
4 position in that proceeding, you were also aware of
5 BellSouth's position in that proceeding, which was that
6 that exact language did not require us to pay reciprocal
7 comp for ISP traffic?

8 A Yes. As I stated before, I was aware of the
9 viewpoint of all the ILECs, and BellSouth had exactly the
10 same viewpoint as every other ILEC as far as I understood
11 at the time. And I was aware of the CLEC position. And
12 DeltaCom certainly had the same viewpoint as we had, as
13 WorldCom had. It was really pretty clear what the views
14 of the parties were, as it was clear at that point how the
15 great majority of states had been ruling.

16 Q And, just to put a point on this, I'm not sure
17 you answered my specific question. You were aware as to
18 this specific language that BellSouth did not interpret it
19 to require reciprocal compensation for ISP traffic?

20 A I was aware that BellSouth contended that the
21 agreement -- they contended generally that the
22 agreements -- I'll put the plural because it is, in
23 essence, the same kind of language that you find in most
24 of the agreements, do not require payment of ISP-bound
25 traffic, just as the CLECs were aware -- my apologies.

1 Just as CLECs took the position that this language
2 definitely required payment for ISP-bound traffic.

3 Q Let's take a quick look at the agreement that
4 you adopted. You have that in your testimony?

5 A Yes, I do.

6 Q I don't know if the Commission has copies of the
7 attachments of the testimony. What provisions does Global
8 NAPs contend entitle it to reciprocal compensation for ISP
9 traffic?

10 A I'm sorry, not having the contract in front of
11 me right here, my memory isn't that good. I can give you
12 a particular section -- if I can get a copy of the
13 contract.

14 Q Well, I can give you a copy. I thought you had
15 a copy of your testimony with you, I'm sorry. My
16 apologies for assuming. You know what they say about
17 assume.

18 To help you along, if I may be so presumptuous,
19 I think you are talking about two provisions, one of which
20 is in the fourth amendment?

21 A As I recall they had a general provision
22 initially, and then there were a number of changes in the
23 amendments, yes. Thank you.

24 Q Reciprocal compensation, I think it is on
25 Page 2 of the fourth amendment?

1 A I'm just trying to find the fourth amendment,
2 that's my problem.

3 Q It's so thick, I'm not sure I can help you.

4 A The trouble is that pagination doesn't help,
5 because you have pagination and it begins again, and
6 again, and again as you get into the amendments.

7 Q Tell me when you get there, Mr. Rooney.

8 A I'm here, it's just I'm reading what I believe
9 it is to make sure that I'm correct.

10 Q Maybe I can short circuit some of this, Mr.
11 Rooney.

12 A I'm sorry, I can't hear you.

13 Q It may be that I can short circuit some of this.

14 A Oh, yes, please.

15 Q Let me just ask you a couple of questions about
16 it. In your summary you said you had an understanding of
17 your rights under the agreement you were adopting. Did I
18 understand that correctly from your --

19 A I'm sorry, can you repeat that again, please.

20 Q As I understood your summary, you indicated that
21 you personally, or on behalf of Global NAPs had an
22 understanding of the rights that you were acquiring when
23 you opted into the DeltaCom agreement?

24 A Yes.

25 Q You did not get that understanding from

1 BellSouth, did you?

2 A No, I did not.

3 Q That is your interpretation of your rights under
4 252(i)?

5 A My understanding of my rights under 252(i)
6 basically come from the statute itself, Section 252(i).
7 And from that it is my understanding that when I opt into
8 a contract I get exactly the same rights that the party
9 had whose contract I adopted into. That otherwise it
10 would be discriminatory, and certainly in violation of the
11 whole philosophy of the act. Moreover, the express
12 language of Section 252(i) is pretty clear that it has to
13 be the same.

14 Q Okay. And I assume you would agree that
15 BellSouth at no time voluntarily agreed to pay Global NAPs
16 reciprocal compensation for ISP traffic, is that a fair
17 statement?

18 A Well, no, I don't think I would agree with that.
19 I think BellSouth did agree to pay us reciprocal
20 compensation for ISP-bound traffic in the interconnection
21 agreement.

22 Q Do you have anything in writing in the form of a
23 letter, a memorandum, any type of correspondence, or any
24 notes from a telephone call where BellSouth told you that
25 it was agreeing to pay Global NAPs reciprocal compensation

1 for ISP traffic?

2 A Again, I have the interconnection agreement, and
3 that's where they agreed to pay us reciprocal compensation
4 for ISP-bound traffic. Beyond that, we didn't have a
5 discussion. As you note from the correspondence, we had a
6 disagreement as to the term of the agreement and there is
7 correspondence speaking about that.

8 But BellSouth never took the position, never
9 came to me and said we specifically will not pay you under
10 this contract. I knew they did not like the idea of
11 paying for ISP-bound traffic, I knew that they would fight
12 that generally whenever they could, but they never said in
13 this specific contract for Global NAPs specifically we
14 will not pay you.

15 And the reason I found that I think that is
16 somewhat important is that in my experience in the north,
17 certainly when we did try to MFN contracts, Bell Atlantic
18 would certainly come out and be express, you can MFN it,
19 but here are the conditions. And then we would have to
20 fight that issue out.

21 BellSouth was express about the issue of term,
22 but they never came to me and said, we will not pay you,
23 pay Global NAPs specifically. And the contract setting
24 out absolutely no mechanism for segregating out ISP-bound
25 traffic from other local traffic, it is pretty clear to me

1 that it requires payment, because that is the fundamental
2 basis upon which I understand the great majority of states
3 rule.

4 Q Let me ask you this. Do you agree that 252(i)
5 precludes BellSouth from trying to put limitations, terms,
6 and conditions on an interconnection agreement that you
7 are opting into?

8 A Absolutely. I believe that under Section 252(i)
9 I have the right to step entirely into the shoes of the
10 entity that got that contract. And the rights under that
11 contracts are the rights under that contract no matter who
12 has it, period.

13 Q Okay. I'm going to ask you some questions about
14 the interconnection agreement, and let me see if I can do
15 this in a way that you don't necessarily have to find the
16 exact provision. Will you agree that BellSouth's
17 obligation to pay reciprocal compensation only applies to
18 local traffic?

19 A Only applies to local traffic under the
20 agreements. The importance of that is certainly at the
21 time that these agreements were being made the
22 contemplation would be that ISP-bound traffic was being
23 treated as local traffic. Thus, local traffic under the
24 agreement would include ISP-bound traffic. I know that
25 subsequently, well after the DeltaCom agreement was

1 executed between BellSouth and DeltaCom, the FCC came down
2 with a ruling that says this traffic is jurisdictionally,
3 at least partially jurisdictionally interstate. But they
4 also said in that ruling that their ruling did not change
5 any of the contracts, the way contracts are to be dealt
6 with, and they set a series of criteria, and an awful
7 large part of those criteria are do you find a way in the
8 contract to segregate out ISP-bound traffic, and if you
9 don't that certainly is a strong indication it is to be
10 treated as local traffic.

11 So just as BellSouth and other ILECs for
12 purposes of their own internal accounting, as I understand
13 it, have to treat ISP-bound traffic as local, under these
14 agreements ISP-bound traffic is treated as local.

15 Q That is a mouthful. My question was a lot
16 simpler than that, I thought. Under the terms of the
17 BellSouth/Global NAPs interconnection agreement, is
18 BellSouth's obligation to pay reciprocal compensation
19 limited to local traffic as defined in the agreement?

20 A Local traffic as it is in the agreement, yes.

21 Q Okay. Turn with me in the agreement -- this
22 will be a little bit easier to find. This is in
23 Attachment B, Page 8.

24 A Uh-huh.

25 Q Look at entry number 49.

1 A Uh-huh.

2 Q Do you agree that that is the definition of
3 local traffic for purposes of this interconnection
4 agreement?

5 A That's what it says in this interconnection
6 agreement, yes.

7 Q Okay. Do you agree that before traffic is
8 considered to be local traffic that the call must
9 originate in one exchange and terminate in the same
10 exchange?

11 MR. SAVAGE: I would object to that. The
12 document speaks for itself.

13 COMMISSIONER DEASON: I will allow the question.

14 THE WITNESS: Well, what it says is that any
15 telephone call that originates in one exchange or LATA and
16 terminates in either the same exchange or LATA, or a
17 corresponding extended area of service exchange.

18 BY MR. EDENFIELD:

19 Q Would you agree that there are basically two
20 requirements for a traffic to be considered local, one of
21 those being that the call has to originate in a particular
22 LATA, the second being that it has to terminate in that
23 same LATA, or exchange, or corresponding EAS?

24 A Well, that's what it appears to say here.

25 Q And you agree with that?

1 A Well, it says what it says, and that is in the
2 contract.

3 Q Would you agree that if a call originates in one
4 exchange or LATA and does not terminate in that same
5 exchange or LATA, that the traffic is not local traffic?

6 A Well, I guess the critical point becomes what is
7 terminating. Because my understanding is that traffic
8 terminates for purposes of this agreement at the place
9 where it is rated for terminating. So if you are
10 terminating -- if you are calling an ISP and it has an NXX
11 code within the same LATA, that that would be local
12 traffic within that LATA. For purposes of the agreement
13 it has terminated there within the LATA, even though it
14 may still have a jurisdictionally interstate quality. In
15 part, only in part.

16 Q Okay. Again, my question is -- you have kind of
17 jumped ahead. My question is a little more simple than
18 that. Would you agree that if a call does not originate
19 in one exchange and terminate in that same exchange, that
20 that traffic is not local traffic under the terms of this
21 interconnection agreement?

22 A Well, I would agree that, as it says here, it
23 must originate and terminate within the same exchange or
24 LATA. But, again, as I just explained, then we go down to
25 what is terminating under the agreement.

1 Q Sure. Is it Global NAPs' contention that
2 traffic bound for ISPs terminates in the same exchange or
3 LATA in which it originated?

4 A Under the terms of the contract, yes, because
5 the contract doesn't separate out ISP-bound traffic.

6 Q Will you agree with me that the law according to
7 the FCC is that ISP-bound traffic does not terminate at
8 the ISP, but, in fact, continues on to destinations either
9 in other states, other countries, et cetera?

10 MR. SAVAGE: I object to that. It is true that
11 Mr. Rooney is a lawyer, but that calls for a legal
12 conclusion which I don't think is an appropriate subject
13 for testimony, first. And my second objection is that the
14 FCC's rulings speak for themselves. And if there is a
15 particular ruling that you are referring to, I think it
16 would be reasonable if we can inquire into this at all for
17 him to present the witness with what the FCC has said.

18 MR. EDENFIELD: I will be happy to provide him
19 with a copy of it. Certainly Mr. Rooney as a lawyer for
20 the company is imminently qualified to talk about the FCC
21 opinion. He has not indicated any lack of familiarity
22 with it.

23 COMMISSIONER DEASON: Provide the FCC reference
24 and I will allow the witness to answer the question.

25 MR. EDENFIELD: And I have copies for the group.

1 BY MR. EDENFIELD:

2 Q Mr. Rooney, do you have a copy of the
3 declaratory ruling dated February 26, 1999?

4 A Yes, I do.

5 Q In FCC Docket 96-98?

6 A Uh-huh.

7 Q Turn with me, if you would, to Paragraph 12, I
8 believe. It is on Page 9.

9 A Uh-huh.

10 Q Do you agree that the FCC has ruled that the
11 communications at issue, which in this particular instance
12 are ISP-bound traffic, do not terminate at the ISP's local
13 server, but continue to the ultimate destination or
14 destinations, specifically at an Internet web site often
15 located in another state?

16 A Well, in fairness I must say that in looking at
17 these matters we don't -- or I cannot rely upon my own
18 interpretation alone because that is why we have very able
19 counsel assisting us with regard to FCC matters.

20 I can give you my understanding, and that brings
21 me now to the next issue. When you say "this traffic," do
22 you mean traffic as defined under the contract or the
23 traffic the FCC is talking about, which is much more
24 generic? Because in the subset of the contract the
25 contract alone controls. Generically, what the FCC said,

1 and I will just have to tell you my general understanding
2 of it unless you want me to read it and waste everybody's
3 time.

4 Q Well, what I would like for you to do is address
5 the issue I have raised in Paragraph 12.

6 COMMISSIONER CLARK: Can I ask a question? What
7 page are you on, again?

8 MR. EDENFIELD: I'm sorry. At least on my copy
9 it is Page 9 and Paragraph 12.

10 COMMISSIONER CLARK: Are you aware that this
11 doesn't have the even numbered pages?

12 MR. EDENFIELD: I was not.

13 MR. SAVAGE: Maybe that is the whole problem,
14 Your Honor.

15 MS. KEATING: I believe I brought a copy.

16 COMMISSIONER CLARK: Is that the thing you gave
17 to us earlier?

18 MS. KEATING: That is the thing. So you should
19 have a full copy in your packet.

20 MR. EDENFIELD: If I may be so bold, we have
21 always said the FCC decisions were odd, but I didn't
22 realize they were limited to odd pages now.

23 COMMISSIONER CLARK: So you agree this
24 particular decision is odd.

25 MR. SAVAGE: Global NAPs will stipulate to that,

1 Your Honor.

2 MR. EDENFIELD: Fortunately this is an odd
3 numbered page.

4 BY MR. EDENFIELD:

5 Q Again, Mr. Rooney, my question to you is in
6 Paragraph 12 does the FCC discuss terminate as the way I
7 have talked to you about?

8 A Well, for the portion of Paragraph 12 I have,
9 because I only have the first half of it, they are saying
10 that some of the communication is interstate. It goes
11 beyond the confines of one state. That is to say some of
12 the communication, not all of it.

13 Q So you would agree, then, that there are some
14 ISP-bound communications that do not terminate at the ISP?

15 A Do you mean under the contract or do you mean
16 under the FCC's ruling?

17 Q I mean under the FCC's look at how ISP traffic
18 works in the real world, what they have determined?

19 A What the FCC is saying is that some of the
20 traffic goes beyond the state, and therefore that portion
21 would be interstate. And some of the traffic stays
22 entirely within the state.

23 Q Will you agree that the FCC at least at this
24 stage has not been able to find a way to segregate which
25 portions of the traffic stay in the so-called -- I'll

1 just use LATA for lack of a better term -- stay in the
2 LATA and are intrastate, and which portions go outside of
3 the LATA which would be interstate?

4 A Well, again, now we are talking simply to my
5 understanding of the opinion. And my understanding is
6 that they only spoke qualitatively about the amount that
7 was interstate and the amount that was intrastate.
8 However, they have the NPRM, and obviously that issue
9 might be further developed.

10 Q Would you agree with me that under the terms of
11 the interconnection agreement between BellSouth and Global
12 NAPs that reciprocal compensation is not due for
13 interstate traffic?

14 A Under the terms of the agreement reciprocal
15 compensation is due for local traffic as it is defined to
16 the agreement. To the extent that it is not local as
17 defined in the agreement, it wouldn't be due.

18 Q You are not suggesting that the definition of
19 local traffic found in the interconnection agreement
20 includes interstate traffic, are you?

21 A No, but at this moment I don't recall if there
22 is a specific definition for the word interstate traffic
23 in the agreement.

24 Q But you do have the definition of local traffic.

25 A Yes, we do.

1 Q And what I'm asking you is does that definition
2 include interstate traffic?

3 A That definition includes traffic that begins and
4 ends within one LATA. And as I understand it, for
5 purposes of the contract you begin and end in a LATA if it
6 is rated to begin and end in a LATA. The thing is that at
7 the time this contract came about, this is before the
8 decision by the FCC. So you have nothing that is going to
9 suggest that what was understood here to be subject to
10 reciprocal compensation is what the FCC is talking about.
11 The FCC is saying there that a percentage of
12 communications are interstate. We don't know exactly what
13 percentage that is going to be.

14 But this decision comes down in February of
15 1999, this contract is entered into well before that. And
16 so at the time of this contract people were not trying to
17 address the FCC's decision. So here you just have to look
18 entirely within the contract as to what this means. And
19 in here there is no way of separating out ISP-bound
20 traffic from other local traffic, thus ISP-bound traffic
21 is being treated like other local traffic.

22 Q Will you agree with me, Mr. Rooney, that the
23 FCC's decision is based in large part on precedent dating
24 all the way back to 1983?

25 A There is certainly references in precedent

1 dating back to -- I can't tell you the first date, but
2 going back a ways.

3 Q And the other part of that is will you agree
4 that as of the time you opted into the DeltaCom agreement
5 that I think it is fair to say the entire country was
6 sitting around waiting for the FCC to issue its ruling?

7 A My memory is that the FCC said they were going
8 to issue the ruling and there was delay, and delay, and
9 delay, and delay, and delay. And by then I don't think
10 anybody had any idea of when the FCC was going to come up
11 with a ruling.

12 Q All right. And just so I'm clear on this, you
13 have looked at DeltaCom's interpretation of the contract
14 as the basis for wanting to opt into this agreement?

15 A Well, DeltaCom's interpretation along with the
16 understanding at that time that, as I said, just about
17 every state that had entertained the issue concluding that
18 ISP-bound traffic was subject to reciprocal compensation
19 to lead me to read and understand this contract to mean
20 that it was subject to reciprocal compensation.

21 That fact coupled with the other facts that I
22 mentioned, the term of the contract, the fact there were
23 no other onerous provisions in this contract were the
24 reasons why I thought this was a contract we would want to
25 opt into.

1 Q If DeltaCom had expressed an opinion that ISP
2 traffic was interstate, meaning non-local traffic, under
3 the terms of its agreement would you have opted into that
4 agreement?

5 A Then I probably would not have, because then
6 that would have been obviously a very strange thing, but
7 then I would have gone to a contract where the CLEC was
8 of the clear view as we were that this was compensable.

9 Q I guess it would be safe to say that if DeltaCom
10 had taken the view that ISP traffic was interstate traffic
11 that it would not be entitled to reciprocal comp under the
12 terms of its agreement?

13 A This is kind of a hypothetical that is hard to
14 come up with. If, in fact, DeltaComm did not want to be
15 paid reciprocal compensation, I would expect you to find a
16 provision in here that would say DeltaCom didn't want it.
17 I mean there is no way that BellSouth could have not paid
18 DeltaCom reciprocal compensation without setting up a
19 mechanism within their contract for divvying up, this is
20 local traffic, that is local, this is local traffic, but
21 it is going to an ISP so we are not going to pay you.

22 As BellSouth and DeltaComm created no mechanism
23 whatsoever for separating ISP-bound traffic from other
24 local traffic, I don't see conceptually how it would have
25 been possible for BellSouth not to pay DeltaCom reciprocal

1 compensation. I don't know why if the parties wanted that
2 result why they wouldn't have done the obvious thing of
3 putting a mechanism in.

4 Q Mr. Rooney, would you agree with me that if, in
5 fact, ISP traffic is interstate traffic and not included
6 within the definition of local traffic in the
7 interconnection agreement that they would not, you would
8 not be entitled to reciprocal compensation for that
9 traffic?

10 MR. SAVAGE: I object to that, it is compound.

11 COMMISSIONER DEASON: Break out your question,
12 please.

13 BY MR. EDENFIELD:

14 Q Let's see if I can try this again. Do you agree
15 that if ISP traffic is interstate traffic, that under the
16 provisions -- specifically the definition of local traffic
17 of the interconnection agreement, that Global NAPs, nor
18 DeltaCom for that matter, would be entitled to reciprocal
19 compensation under the provisions of the interconnection
20 agreement?

21 A If I understand your question you are saying
22 that if, in fact, if was agreed that Internet bound
23 traffic was not local traffic under this agreement, then
24 would I agree that it would not be subject to reciprocal
25 compensation under this agreement?

1 Q You said it much better than I did.

2 A Than I guess that is obvious. Because you get
3 reciprocal compensation on local traffic under this
4 agreement. So if, in fact, we could find an express
5 agreement here, or if we found a mechanism which would be
6 necessary for an express agreement for divvying up the
7 ISP-bound traffic versus other local traffic, then that
8 could make sense. But there is no such statement in this
9 contract and there is no such mechanism.

10 Q Okay. So to put it succinctly, if DeltaCom, at
11 least in their instance, said ISP traffic is interstate,
12 then they probably wouldn't be entitled to reciprocal
13 compensation under the terms of the agreement, would you
14 agree with that?

15 MR. SAVAGE: Calls for speculation, what do you
16 think if probably DeltaCom said.

17 MR. EDENFIELD: I'm just asking him what he
18 thinks if they said it. I'm not suggesting that DeltaCom
19 said it. Not yet, anyway.

20 COMMISSIONER DEASON: I'll sustain the
21 objection. He cannot predict what DeltaCom had in their
22 mind at the time they entered that contract.

23 MR. EDENFIELD: If I may, I will tie it together
24 on the next question.

25 COMMISSIONER DEASON: Just go to your next

1 question.

2 BY MR. EDENFIELD:

3 Q Are you aware that DeltaCom gave a deposition in
4 its arbitration proceeding in front of this Commission?

5 A I'm not aware of a deposition, no.

6 Q Let me hand you, Mr. Rooney, a copy of the
7 deposition of Christopher Rozycki of DeltaCom. This
8 deposition was taken in Docket No. 990750-TP, which is the
9 DeltaCom petition for arbitration, which was just a few
10 months ago.

11 MR. SAVAGE: While you are passing that out, I'm
12 pretty sure I'm going to have some redirect on the cross
13 examination about this order. And I'm quite confident
14 that there are some of the things I wanted to ask about
15 that are on the mysteriously missing even pages. I'm not
16 quite sure how to handle that. I have it on my computer,
17 but I don't have a document.

18 COMMISSIONER DEASON: Staff has distributed that
19 to at least the Commissioners. They may have some extra
20 copies.

21 MR. SAVAGE: That has all the pages?

22 COMMISSIONER DEASON: Yes.

23 MR. SAVAGE: Oh, okay. If I could just borrow
24 one of those when it's my turn, that would be great.

25 MR. EDENFIELD: My apologies for the

1 odd-numbered pages.

2 BY MR. EDENFIELD:

3 Q Mr. Rooney, if you would, turn in that
4 transcript of the deposition to Page 42. It is numbered
5 up in the upper right-hand corners. And if you would,
6 read for me Lines 5 through 12.

7 A It says, "Does DeltaCom consider traffic bound
8 for ISPs to be interstate traffic." Line 7, "Mr. Adleman
9 (phonetic): Mr. Edenfield, did you say -- just to be
10 sure, did you say inter or intra?"

11 Line 9, "Mr. Edenfield: Interstate."

12 Line 10, "The Witness: I guess the answer is we
13 consider it today to be interstate because the FCC has
14 determined it to be so."

15 13, "Mr. Edenfield: Okay. That is all I have.
16 Thank you."

17 Q Thank you, Mr. Rooney. Let's move forward to
18 April of 1999.

19 MR. SAVAGE: Excuse me, move forward from where?
20 That's moving back from the date of this deposition.

21 MR. EDENFIELD: Let's move forward from the date
22 of the adoption agreement to April of 1999.

23 BY MR. EDENFIELD:

24 Q At this point Global NAPs and BellSouth have their
25 interconnection agreement in place, do you agree with

1 that?

2 A In April of 1999?

3 Q Yes, sir.

4 A Yes.

5 Q And the FCC had already issued its declaratory
6 ruling?

7 A Yes.

8 Q On April 14th, Global NAPs filed a tariff at the
9 FCC concerning ISP traffic, is that true?

10 A Yes, it is. Or at least thereabouts. I know we
11 did it in April.

12 Q And, in fact, you were the attorney responsible
13 for filing that tariff?

14 A Well, I directed that it be done.

15 Q Mr. Rooney, if you would turn to Section 7A, and
16 hopefully I have all the pages copied, of the tariff that
17 Global NAPs filed at the FCC.

18 A Uh-huh.

19 Q As I read this, Global NAPs filed a tariff with
20 the Federal Communications Commission indicating that the
21 tariff applied to telecommunications delivered to the
22 company, which I assume is Global NAPs, by local exchange
23 carrier for further delivery to an ISP, which obtains
24 connections to the public switched network from the
25 company. Is that basically in a nutshell what Global NAPs

1 did?

2 A Well, not entirely, because you didn't cover all
3 of it. It goes on to say the tariff applies to all
4 ISP-bound traffic for which the company does not --

5 COMMISSIONER DEASON: Sir, could you slow down
6 just a little.

7 THE WITNESS: I'm sorry, my apologies, this
8 tariff applies to all ISP-bound traffic for which the
9 company does not receive compensation from the delivering
10 LEC under the terms of an interconnection agreement
11 entered into pursuant to Sections 251 and 252.

12 BY MR. EDENFIELD:

13 Q So in April of 1999, Global NAPs went to the FCC
14 to get relief on ISP traffic, is that a fair statement?

15 A We filed a tariff.

16 Q To try to get money for reciprocal compensation
17 for ISP traffic?

18 A In those cases where it is not covered by our
19 interconnection agreement and we are not being paid under
20 the interconnection agreement.

21 Q And any LEC -- and I assume BellSouth would be a
22 LEC for purposes of this tariff?

23 A Yes, of course.

24 Q Any LEC who disagreed with Global NAPs that
25 reciprocal compensation was due under their

1 interconnection agreement because such traffic is
2 interstate, would then have been bound to pay reciprocal
3 comp under this federal tariff?

4 A Well, actually it is not triggered by
5 disagreeing, it is triggered by not paying. So the point
6 is Global NAPs is providing a service, certainly a service
7 that costs us money and a service that is valuable to the
8 LEC terminating phone calls. And if we are not being paid
9 for that service under the terms of our interconnection
10 agreement, then and only then would our federal tariff
11 apply.

12 Q Okay. Let me reference you down to 7A.3,
13 application of tariff. The second sentence there, if I'm
14 reading this correctly, says, "To the extent that a
15 delivering LEC asserts that the terms of an
16 interconnection agreement do not apply to some or all
17 ISP-bound traffic due to the jurisdictionally interstate
18 nature of the traffic, that assertion certain shall
19 constitute a binding election to treat all ISP-bound
20 traffic not subject to an interconnection agreement as
21 jurisdictionally interstate."

22 Do you want to reconsider on what triggers it?
23 Because it looks like to me it says asserts.

24 A No, because you see, again, under 7A.1, if they
25 are paying under the interconnection agreement then they

1 can never have to pay under this tariff. So as I
2 understand the tariff, if you are making payments, you
3 don't have to really do any analysis or thinking, if you
4 are writing a check for the work we are doing under the
5 interconnection agreement, then you don't have to pay us
6 under the tariff. If you are not paying under the
7 interconnection agreement, then actually regardless of
8 your mind-set you are still going to have to pay under the
9 tariff.

10 Q Looking at Section 8 real quick, I had a
11 question about is Section 8 tied to the ISP, are you
12 referencing ISP promotions there? Maybe asked a better
13 way, is there anything in tariff 8.1 that precludes
14 promotions as to ISPs?

15 A No, I don't see anything in 8.1 that would
16 preclude it. I know we never have done that, and I don't
17 expect that we ever will, it is not consistent with our
18 policy. But there is nothing in there that is
19 inconsistent with it as far as I can tell.

20 Q Well, if you would never do it and you never
21 have done it, why did you feel a need to file a tariff
22 giving you the right to promote subscription or stimulate
23 network usage by offering to waive some or all of the
24 nonrecurring or recurring charges?

25 A Well, I can envision at least one possibility

1 where that would be the case. What happened if everybody
2 else in the marketplace was reducing prices, let's say
3 BellSouth was reducing prices, everybody else was reducing
4 prices in some fashion, and we were just trying to meet
5 the market.

6 Q Okay.

7 A We wouldn't want to be barred from meeting the
8 market.

9 Q Now, the FCC ultimately ruled on a complaint
10 filed by, I guess, Bell Atlantic and others challenging
11 the appropriateness of this tariff?

12 A I think just Bell Atlantic, although it might
13 have been their various state entities, yes, they did.
14 The FCC ruled based on two grounds that our tariff was not
15 valid. And the two grounds were that it incorporated
16 language from another document, which would be
17 interconnection agreement, and there was ambiguity because
18 you would have to know whether or not you were paying
19 under the interconnection agreement. Those two grounds
20 were not the grounds that were asserted by Bell Atlantic
21 at all during the proceedings and it is under
22 reconsideration now.

23 Q All right. Well, let's take a second and talk
24 about this, as Mr. Goggin is kind enough to pass this out.
25 This is a copy of file Number E-99-22, which is a

1 memorandum, opinion and order dated December 2nd, 1999 on
2 the complaint of Bell Atlantic, et al., versus Global
3 NAPs. And this is concerning the tariff you filed,
4 correct?

5 A I would have to look at it, but I believe so.

6 COMMISSIONER CLARK: Mr. Edenfield, if you want
7 these as part of the record, you probably need to ask the
8 Chairman to include them.

9 MR. EDENFIELD: What I was going to do, and this
10 may have been the hard way to do it, at the end I was just
11 going to ask that we add all of these to the official
12 recognition list, or I could have them potentially marked
13 as exhibits, if that would be the Commission's preference.

14 COMMISSIONER DEASON: Whatever your preference.

15 COMMISSIONER CLARK: Mr. Chairman, I would just
16 point out that I don't think some of these qualify for
17 things for which official recognition can be taken.

18 MR. EDENFIELD: Given that, at the end,
19 Commissioner Deason, if that is acceptable to the
20 Commission, I will just move each of these individually
21 in. I would have them identified and then move them in.

22 COMMISSIONER DEASON: Well, we will have to go
23 through the process of identifying them and then you may
24 --

25 MR. EDENFIELD: For expedience sake, let me try

1 to go through and then maybe at the lunch break I can
2 identify those and we can have that so we don't take up
3 any more time.

4 MR. SAVAGE: Your Honor, would it be appropriate
5 to defer any objections or concerns I have until the time
6 when he tries to move them in?

7 COMMISSIONER DEASON: Yes, as far as their being
8 admitted into the record. Obviously if you have problems
9 with the questions he is asking, make your objection as
10 needed.

11 MR. SAVAGE: Sure.

12 BY MR. EDENFIELD:

13 Q Mr. Rooney, will you agree that this
14 December 2nd order is the first opportunity the FCC took
15 to kind of give a look back and discuss its findings in
16 the declaratory ruling again?

17 A No, I can't agree with that, because I simply
18 don't know. I mean, I know what this says. I have read
19 it. It has been a little while since I read it, but I
20 don't know if they have made any other decisions that
21 might have had some bearing upon it. I must say I haven't
22 read anything and I read a great deal every day about
23 this.

24 Q Will you agree that they took the opportunity,
25 whether it was the first opportunity, they did take the

1 opportunity to kind of look back and discuss their
2 declaratory ruling back from February 26, 1999?

3 A Well, to some degree; they said some things.

4 Q I'm looking specifically at Page 4 and going
5 over to Page 5, and I hope I have all the pages here.
6 This copy appears to have odd and even numbers. I'm
7 looking at the very last sentence on Page 4. Do you agree
8 that in December of 1999, just a little over a month ago,
9 the FCC reiterated that it had found that ISP-bound
10 traffic does not terminate at the ISP's local server, but
11 continues to the ultimate destination or destinations,
12 specifically at an Internet website, that is often located
13 in another state?

14 A I'm sorry, you are referring to -- is that what
15 they said in this decision?

16 Q Correct.

17 A Well, actually I think you are missing a
18 sentence there. The sentence before the one you pointed
19 to says, "In reaching this conclusion, we analyzed ISP
20 traffic for jurisdictional purposes as a continuous
21 transmission from the end user to a distant internet
22 site." They go on to say it is that for jurisdictional
23 purposes. But jurisdictional purposes does not mean by
24 any means 100 percent of traffic.

25 Q I'm not sure, you are making some relevant

1 distinction between jurisdictional purposes and other
2 purposes?

3 A Well, yes. Some portion of traffic could be
4 interstate, some portion of it could be intrastate.

5 Q Well, hasn't jurisdictionally the FCC taken
6 control of all of this traffic?

7 A Yes, for jurisdictional purposes. That is what
8 I just said. I'm sorry, I might have been unclear.

9 Q And this two-call theory again comes up, the
10 theory where you have one call and two components that are
11 separable. And the FCC again addressed that and held that
12 the two-call theory still is inapplicable to ISP traffic,
13 do you agree with that?

14 A It doesn't change anything in that regard from
15 its order, yes.

16 Q Do you agree that in Paragraph 8 the FCC also
17 reiterated that whether compensation is due in any
18 particular instance hinges on the parties' contractual
19 intent in entering into their interconnection agreement --

20 MR. SAVAGE: Were you going to finish the
21 sentence or leave it hanging?

22 MR. EDENFIELD: We can go on to finish.

23 BY MR. EDENFIELD:

24 Q Or on the state commission's application of
25 other legal or equitable principles to the parties

1 compensation dispute?

2 A Well, when you added the last part you read it
3 correctly, yes.

4 Q Well, I had read it correctly up to there.

5 A Well, you read only the first part initially
6 then you read the rest of it.

7 Q Do you agree with that?

8 A That is what it says, yes.

9 Q Aside from what it says, do you agree that the
10 parties would have to have intended to enter into a
11 reciprocal compensation obligation before the party would
12 actually have that obligation?

13 A Well, actually no in one regard, because as you
14 see there are other grounds upon which you could have
15 reciprocal compensation, the other legal or equitable
16 principles. Certainly back in 1996 at the time that most
17 of the contracts initially came out, the conclusion was
18 that the parties actually did intend to include ISP-bound
19 traffic in the contracts because they didn't send out a
20 mechanism for separating it.

21 Q You are talking '96. This agreement is in 1999,
22 correct?

23 A You mean our DeltaCom agreement when we opted
24 into it?

25 Q No, I'm talking about the BellSouth/Global NAPs

1 interconnection agreement is dated January, I think, 18th,
2 1999?

3 A Yes, that is when we opted into the DeltaCom
4 agreement that already existed.

5 Q You are not suggesting that you are a party to
6 the DeltaCom interconnection agreement, are you?

7 A No, we are not a party to it, we just stepped
8 right into the shoes of DeltaCom under Section 252(i).
9 Because that is own the only way we can get all of the
10 rights that DeltaComm has, and anything else would be
11 discriminatory.

12 Q I assume you would agree that BellSouth and
13 Global NAPs have a stand-alone agreement. Obviously the
14 language is identical to that in DeltaComm, but BellSouth
15 and Global NAPs' agreement is a stand-alone
16 interconnection agreement?

17 A I'm not sure that I even would agree to that,
18 because we opt into exactly the same rights that DeltaCom
19 has. You can't look at opting in under Section 252(i) the
20 same as you would negotiating a contract. We had a
21 contract, and we had a meeting of the minds. And the
22 meeting of the minds was I want DeltaCom; okay, under
23 252(i) you can have it. That was the extent of our
24 meeting of the minds.

25 But what we are getting when we opt into

1 DeltaCom is that an entire bundle of rights that DeltaCom
2 had. That was the whole point, as I understand it, of
3 Section 252(i), so a little CLEC like us would be able to
4 go and opt into a contract that a large CLEC was able to
5 get through better positioning for negotiating because it
6 was richer, stronger, et cetera.

7 So we would be able to get into the business
8 fast without spending a long, long time trying to
9 negotiate a contract and get all the same rights like AT&T
10 could get or somebody like that. So my understanding was
11 that when we opted in we got absolutely everything
12 DeltaCom had, period. No exceptions. Whatever rights
13 they got, we got.

14 Q Are you suggesting, Mr. Rooney, that if the
15 Commission enters an order in this proceeding that it is
16 somehow binding on the BellSouth/DeltaComm interconnection
17 agreement because it is the same terms?

18 A I would say it would have a remarkably strong
19 persuasive effect. And the reason I say it has a
20 remarkably strong persuasive effect is that, again, you
21 have agreements. If I opt into that agreement, I get the
22 same rights. So obviously whatever rights I have, they
23 have; whatever rights they have, I have.

24 Q Are you aware that in this proceeding DeltaCom
25 actually attempted to intervene and that motion was denied

1 by the prehearing officer, Commissioner Jacobs?

2 A Yes, I am.

3 Q Are you aware that that order that he entered
4 said that there would be no precedential effect between
5 the two?

6 A I do not remember the order, no, in that regard.
7 Again, my view was it would have a strong persuasive
8 effect.

9 Q Let's look at Paragraph 9 of that and then I
10 will move on. In the middle there, do you agree that the
11 FCC again reiterated from its prior ruling that where a
12 state commission determines that the parties did, indeed,
13 voluntarily include compensation for ISP-bound traffic in
14 their interconnection agreement, the parties are bound by
15 those interconnection agreements as interpreted and
16 enforced by the state commission?

17 A Yes, that appears in there.

18 Q As part and parcel of that, will you agree that
19 BellSouth would have had to have voluntarily agreed to
20 include ISP-bound traffic in its interconnection agreement
21 before it is obligated to pay reciprocal compensation
22 under that interconnection agreement?

23 A Well, actually, no. Because at the time
24 contracts are entered into the parties take their
25 positions. And if, in fact, there is a difference, then

1 the difference is arbitrated. You could end up with
2 something that you didn't want as a result of an
3 arbitration. And, again, my view with regard to 252(i)
4 situations, whatever the rights are, they are; you just
5 step right into them.

6 Q Now, bringing this order to a conclusion,
7 ultimately the FCC ruled that Global NAPs had acted
8 unreasonably in implementing tariff provisions?

9 A Yes, for the reasons that I gave. For the two
10 limited reasons that I gave. They also were very precise
11 that they did not reach or did not deal with Bell
12 Atlantic's arguments.

13 Q Okay. And I take it that tariff is no longer in
14 effect?

15 A To the best of my knowledge it is not.

16 MR. EDENFIELD: I think I'm done. If I could
17 just have one second to go back through my notes,
18 Commissioner Deason.

19 COMMISSIONER CLARK: Mr. Rooney, I have a
20 question. Is it your position that when you adopt a
21 contract, I guess you adopted this contract or used this
22 contract in January of 1999?

23 THE WITNESS: Yes, we did.

24 COMMISSIONER CLARK: And is it correct that
25 DeltaCom's contract provided that it would be effective

1 for a two-year period?

2 THE WITNESS: It said it was a two-year term,
3 yes.

4 COMMISSIONER CLARK: So does your two-year term
5 begin January 1999, or is it the same term that DeltaCom
6 has and it would end at the same point that DeltaCom's
7 would end?

8 THE WITNESS: It would be our view that it would
9 be a two-year term that would begin in January 1 of 1999.
10 That if they didn't want us to have a two-year term, there
11 is provisions under 804, I believe, of the rules of the
12 FCC that would enable them to have objected to our being
13 able to opt into it. But this contract specifically said
14 two years for its term as opposed to what most of the
15 contracts I have seen say, which is it expires on such and
16 such a date.

17 MS. KEATING: And, Commissioners, if I could
18 just point out that that particular issue is an issue in
19 another docket between these two parties.

20 COMMISSIONER CLARK: Oh, it's in another docket?

21 MS. KEATING: Yes. There is an arbitration that
22 is pending between these two parties.

23 MR. GOGGIN: Commissioner, if I might be so bold
24 as to add, too, the parties had stipulated to file briefs
25 in order to decide the issue of when the contract

1 terminates in lieu of any testimony or other evidence.

2 COMMISSIONER CLARK: In the other case?

3 MR. GOGGIN: In the other case.

4 COMMISSIONER CLARK: Well, let me ask you just
5 this question, how do you ever end a contract then? How
6 does BellSouth ever end any of these contracts?

7 THE WITNESS: The way it would end as I
8 understand it is this, just because a contract is out
9 there doesn't mean that one can always opt into it. You
10 can only opt into it if you meet the criteria of Section
11 804, which means --

12 MR. SAVAGE: If I could interrupt just briefly.
13 Just so the record is clear, it's actually Section 809 of
14 the FCC rules if you go and look. I just didn't want you
15 to be confused later about that if you go look at it.

16 THE WITNESS: My apologies to everyone. But
17 only if you meet those criteria, and if you do meet those
18 criteria then it would be appropriate to have it for the
19 term that is set out. But at some point the contract will
20 no longer meet that criteria, and then it will no longer
21 be available for opting into.

22 But as long as you opt into it, if the term of
23 the contract is for a length of time as opposed to a
24 contract that expires on a specific date. I mean, I know
25 most contracts do expire on a specific date, but if by

1 reading the contract you can reach the conclusion that
2 this is a contract for a term of time instead of a date
3 certain, then if you still comply with all the rules of
4 809 you can get in. But if you don't, that there have
5 been technological or economic changes that make it unfair
6 for you to be able to get it, then you can't opt in.

7 COMMISSIONER CLARK: Okay.

8 MR. EDENFIELD: At this time, Commissioner
9 Deason, I have no more questions. But over the lunch
10 break, as I said, I will identify -- of course, I guess
11 procedurally I'm not sure I can stop and then open it back
12 up to identify documents that I would like to have placed
13 into evidence, but whatever the Commission's pleasure is
14 on that.

15 COMMISSIONER DEASON: We will give you that
16 flexibility. Staff.

17 COMMISSIONER JACOBS: I have a question briefly.
18 It appears that setting aside for the moment the whole
19 question of whether or not traffic is deemed local or not
20 and, therefore, whether or not it gets reciprocal
21 compensation, it looks like the FCC spoke to and the
22 Massachusetts Commission spoke to the whole issue of
23 compensation generally.

24 THE WITNESS: Actually, if I may, the
25 Massachusetts Commission -- and actually the answer goes

1 to both. The FCC in its February order basically only
2 went so far, and it said now we are starting the NPRM and
3 when we complete that we will give you the new rules that
4 you will go by. But we are all waiting for that.

5 Massachusetts was kind of interesting. In
6 October of 1998, Massachusetts adopted an order saying you
7 have to pay reciprocal compensation on ISP-bound traffic.
8 And they based it, they say, exclusively on the two-call
9 theory. The February decision comes out from the FCC.
10 And so on reconsideration Massachusetts says, well, the
11 two-call theory no longer applies, so we are going to
12 basically void that order. But it didn't go further. It
13 didn't go on to construe the contracts to make a
14 determination if under the language of the contracts
15 reciprocal compensation was due or if on other equitable
16 grounds, as the FCC set out, reciprocal compensation was
17 due.

18 COMMISSIONER JACOBS: My question is not even to
19 that point. Let's say -- I'm trying to avoid getting into
20 what those entities actually concluded. What I do want to
21 say is what the scope -- what scope they considered, I
22 will put it that way. It appears that in both of those
23 decisions that there was some determination or some
24 discussion that in the event you do not get reciprocal
25 compensation, okay, that is a form of compensation. But

1 in the event that you do not prevail on that issue, that
2 there remains an issue of compensation generally with
3 regard to this traffic.

4 THE WITNESS: Yes, sir. What happens --

5 COMMISSIONER JACOBS: I don't want to go much
6 further than that. I just wanted to get to that the
7 point.

8 THE WITNESS: Yes, definitely.

9 COMMISSIONER JACOBS: Okay.

10 COMMISSIONER DEASON: Staff.

11 COMMISSION STAFF: Staff has no questions.

12 COMMISSIONER DEASON: Further questions from
13 Commissioners? We are going to take -- before we do
14 redirect, we are going to take a lunch break, and we are
15 going to take a short break. We will reconvene at
16 1:00 o'clock and then we will do redirect and we will
17 identify whatever exhibits need to be identified.

18 (Lunch recess.)

19 COMMISSIONER DEASON: Call the hearing back to
20 order.

21 I believe we were going to conduct redirect and
22 at some point there are some exhibits which may need to be
23 identified. You may proceed with redirect.

24 REDIRECT EXAMINATION

25 BY MR. SAVAGE:

1 Q Mr. Rooney, I have provided you with a copy,
2 which is a complete copy from the Commission staff of the
3 FCC's February 26th, 1999 declaratory ruling.

4 A Yes.

5 Q Do you have that in front of you?

6 A Yes, I do.

7 Q And following up on a question from Commission
8 Jacobs, could you take a look at the very end of Paragraph
9 26 of that order?

10 A I'm sorry, I grabbed the wrong order initially.
11 My apologies. Here we are. Yes.

12 Q Do you have that?

13 A Yes, I do.

14 Q Could you read the last two sentences starting
15 with a state commission's decision?

16 A Yes, sir. "A state commission's decision to
17 impose reciprocal compensation obligations in an
18 arbitration proceeding or a subsequent state commission
19 decision that those obligations encompass ISP-bound
20 traffic, does not conflict with any commission rule
21 regarding ISP-bound traffic. By the same token, in the
22 absence of governing federal law, state commissions also
23 are free not to require the payment of reciprocal
24 compensation for this traffic and to adopt another
25 compensation mechanism."

1 Q What is your understanding of those two
2 sentences with regard to the authority of state
3 commissions in the area of compensation for ISP-bound
4 traffic?

5 A Well, in terminating ISP-bound traffic, we do
6 real work and incur real costs. And as I understand this,
7 it says that the states may either say, yes, you get paid
8 under the reciprocal compensation provision of your
9 interconnection agreements, or they may come up with
10 another mechanism for compensation.

11 Q Do you believe that this FCC ruling, and
12 particularly the parts we have been talking about, permit
13 a state commission to establish a no compensation regime
14 for ISP-bound traffic?

15 A No, because that would be confiscatory. It
16 costs us money to terminate calls. It would be hard for
17 me to understand. Now, I admit I am not an economist, but
18 it would be terribly hard for me to understand any logical
19 theory that would say that a small CLEC or ALEC, as they
20 are in Florida, should be subsidizing one of the ILECs,
21 like BellSouth, by providing work for them for free.

22 Q Now, moving down to Paragraph 27 just below
23 that, there is a long sentence at the end that starts, "We
24 recognize that our conclusion"?

25 A Yes.

1 Q Could you read that, please?

2 A Certainly. "We recognize that our conclusion
3 that ISP-bound traffic is largely interstate might cause
4 some state commissions to reexamine their conclusion that
5 reciprocal compensation is due to the extent that those
6 conclusions are based on a finding that this traffic
7 terminates at an ISP server. But nothing in this
8 declaratory ruling precludes state commissions from
9 determining pursuant to contractual principles or other
10 legal or equitable considerations that reciprocal
11 compensation is an appropriate interim intercarrier
12 compensation rule pending completion of the rulemaking we
13 initiate below."

14 Q Now, when you were being asked questions by
15 BellSouth's counsel there was a sentence from another FCC
16 order that we made clear that had to be read in its
17 entirety regarding the application of legal or equitable
18 principles?

19 A Yes.

20 Q Do you have an understanding of what legal or
21 equitable principles might permit or require a state
22 commission to provide for compensation for ISP-bound calls
23 even in the absence of an agreement?

24 A Well, certainly you have the legal principle of
25 quantum meruit, and I suppose it also falls into the area

1 of an equitable principle. If you are doing work you have
2 to get compensated and you have to have a mechanism for
3 it. And then going back to the interconnection agreements
4 that we had back in -- that were initially created back in
5 1996, looking at that language without this at all, one
6 can reach the conclusion and, in fact, as I understand
7 there are the criteria here that tell you how to reach
8 that conclusion, how to analyze these things, that they
9 require payment of reciprocal compensation for
10 Internet-bound traffic.

11 Q Now, with respect to those criteria, directing
12 your attention to Paragraph 24 of this order. Are you
13 familiar with Paragraph 24?

14 A Yes, I am.

15 Q And, generally speaking, what does that
16 paragraph talk about?

17 A Well, this is a paragraph that says if you are
18 going to look at an agreement, what are the factors you
19 should look at to determine whether or not compensation is
20 due on ISP-bound traffic. And this sets out a series of
21 factors that you should look at.

22 Q Now, based on your understanding of the DeltaCom
23 agreement that Global NAPs opted into, generally speaking,
24 how do these factors apply?

25 A As I understand it, under these factors

1 reciprocal compensation is due. I think the most
2 important factor is the fact that there is no other
3 mechanism for determining what is ISP traffic and what is
4 not.

5 Q Now, is there another witness that Global NAPs
6 has put forward in this proceeding who addresses that
7 issue in detail?

8 A Yes, there is.

9 Q And who would that be?

10 A I believe that Fred Goldstein's testimony speaks
11 to that and also Lee Selwyn's testimony.

12 Q Now, going back for a moment to Paragraph 27
13 that we were looking at. At the beginning of the sentence
14 that you read, the FCC says that we recognize our
15 conclusion that ISP-bound traffic is largely interstate
16 might cause. Do you have any understanding of what
17 proportion -- well, let me back up for a second.

18 As you understand the FCC thinking about what
19 portion of ISP-bound traffic is interstate and what
20 portion is intrastate, how do they do that as you
21 understand it?

22 A Well, my understanding is that certainly a large
23 portion of communications with ISPs are entirely
24 intrastate. For instance, all the time you are spending
25 just sitting there looking at a web screen when nothing is

1 going back but just modem communication between your modem
2 and the ISP, or times that you are just going and getting
3 your E-mail, or times that you are getting information
4 from a site that actually is housed within the state,
5 sometimes some of the packets do go across state lines so
6 there is some percentage of time that is interstate.

7 I understand that Fred Goldstein's testimony
8 speaks to that and it was his analysis as to how much that
9 percentages was. I believe it is something under 10
10 percent.

11 Q That is under 10 percent interstate?

12 A Yes.

13 Q Based on an application of the FCC's rules as
14 you understand that or based on some other analysis?

15 A As I understand it, yes.

16 Q Okay. Now, you were asked some questions about
17 a deposition that I guess someone from DeltaCom gave in
18 October, 1999, do you recall that?

19 A Yes.

20 Q And do you recall that the witness, whoever it
21 is, apparently said I guess the answer is we consider it
22 today to be interstate because the FCC has determined it
23 to be so, do you remember that?

24 A Yes.

25 Q Does it strike you as odd or inconsistent with

1 anything Global NAPs has said to have a DeltaCom witness
2 in October '99 make that statement?

3 A Well, I certainly realize that what he is
4 thinking today doesn't have any bearing at all upon what
5 was happening at the time that DeltaComm negotiated the
6 contract. That is even far subsequent to the time when we
7 opted into the contract. So his perception now based upon
8 the FCC's February order would have nothing at all to do
9 with the expectations back when the DeltaComm contract
10 came into being.

11 Q Now, early on in your examination, BellSouth's
12 counsel made a reference, if I recall correctly, to, I
13 suppose, difficulties or something to that effect we were
14 having in New Jersey. Do you recall that question?

15 A Yes.

16 Q Could you outline for the Commission what Global
17 NAPs' situation was with regard to ISP-bound calls in New
18 Jersey in the fall of 1998?

19 A What had happened was we wanted to get a
20 contract in New Jersey. This was early on when we were
21 still trying to go ahead and negotiate and arbitrate them
22 from scratch, not realizing how terribly long and
23 difficult it would be. So we were doing that in New
24 Jersey and we had an arbitration proceeding. And the
25 arbitrator ruled in our favor on everything. He ruled in

1 our favor with regard to ISP-bound traffic, he ruled in
2 our favor as to the term that that contract would extend.
3 It was a three-year contract, we were looking for three
4 years from that time. He just basically went entirely in
5 our favor. And that would be subsequently overturned by
6 the Board, but not in the fall of '98. In the fall of '98
7 we had won.

8 Q Now, focusing again on DeltaCom, and I was
9 intrigued by this deposition quote maybe more than I
10 should have been. Putting aside what is going on in an
11 arbitration case, do you have an understanding of what
12 DeltaCom thinks about the ISP-bound traffic issue with
13 regard to the actual agreement we are talking about here?

14 MR. EDENFIELD: Object to the form of the
15 question. He is asking for speculation on the part of
16 this witness as to DeltaCom's understanding.

17 COMMISSIONER DEASON: Objection sustained.

18 BY MR. SAVAGE:

19 Q Have you had occasion to learn in the course of
20 your business what DeltaCom's publicly stated position is
21 with regard to whether this contract calls for
22 compensation for ISP-bound traffic?

23 A Yes, I have.

24 Q Could you describe what you have learned and how
25 you have learned it?

1 A Certainly. Two grounds; one is talking to
2 DeltaComm people in order to -- the possibility of them
3 intervening in this action, which I know that they filed a
4 motion to do. And, secondly, they filed their own
5 complaint seeking payment of reciprocal compensation on
6 ISP-bound traffic. And I don't think one could have a
7 more public statement than filing a complaint saying that
8 it is their view it is their right to be paid.

9 Q Mr. Rooney, based on your reading of the
10 applicable FCC orders, what should govern this
11 Commission's determination of whether ISP-bound traffic is
12 subject to compensation as between BellSouth and Global
13 NAPs?

14 A The interconnection agreement should govern it,
15 that we get the interconnection with all the same rights
16 that DeltaComm has. And it is just a matter of looking at
17 the interconnection agreement and making a determination.
18 And I understand this interconnection agreement was
19 already construed in Alabama, that is to say it is the
20 very same one, this DeltaComm one, certainly is a strong
21 indication that that is the correct interpretation, that
22 ISP-bound traffic is covered with reciprocal compensation.

23 MR. SAVAGE: I have nothing further for my
24 witness.

25 COMMISSIONER DEASON: Exhibits.

1 MR. EDENFIELD: Commissioner Deason, before we
2 move on, I know this is a little unusual, but Commissioner
3 Jacobs had asked a question after I had done my cross
4 examination that gave rise to a couple of questions on
5 redirect. And if I could have leeway to ask two questions
6 in follow-up to that, I would appreciate it.

7 COMMISSIONER DEASON: I will allow that, and
8 then likewise if we need further redirect we will allow
9 that likewise.

10 RECROSS EXAMINATION

11 BY MR. EDENFIELD:

12 Q Mr. Rooney, Mr. Savage just asked you about
13 Paragraph 26 --

14 A Uh-huh.

15 Q -- of the FCC's February 26, 1999 order?

16 A Yes.

17 Q Do you agree that that talks about, in the
18 sentence you read, prohibits a state commission from
19 concluding in an arbitration, are they referring to a 252
20 arbitration?

21 A Well, that actual sentence -- it says a state
22 commission's decision to impose reciprocal compensation
23 obligations in an arbitration proceeding --

24 COMMISSIONER DEASON: Sir, you need to slow
25 down.

1 THE WITNESS: I'm sorry.

2 A (Continuing) It says in Paragraph 26, "A state
3 commission's decision to impose reciprocal compensation
4 obligations in an arbitration proceeding or a subsequent
5 state commission decision that those obligations encompass
6 ISP-bound traffic does not conflict with any Commission
7 rule regarding ISP-bound traffic."

8 Then in the last sentence they seem to be just a
9 little broader, I think, when they say, "By the same
10 token, in the absence of governing federal law, state
11 commissions are also free not to require the payment of
12 reciprocal compensation for this traffic, and to adapt
13 another compensation mechanism. So certainly they seem
14 to be saying, as I'm reading it, that the states are free
15 to come up with a system of compensation.

16 Q I guess maybe you didn't understand the
17 question. The question is the compensation mechanism to
18 which they are referring, is that something to be
19 established in the course of a 252 arbitration?

20 A Well, they certainly make reference to the term
21 arbitration, but I have been reading the paragraph, and it
22 is my understanding from the opinion as a whole that what
23 they are saying is that the states are free to make a
24 determination if reciprocal compensation has to be paid.

25 Q Let me ask you this: Is this a 252 arbitration

1 proceeding?

2 A It is not an arbitration proceeding, it is a
3 complaint under 252(i).

4 Q Thank you.

5 A I'm sorry, not a complaint under 252(i), I
6 misstate. We got this under 252(i). This is a complaint
7 that -- what should have been a one second answer becomes
8 a little more complicated. My understanding of how it is
9 that a state has the jurisdiction to make a determination
10 on a complaint such as this stems, I believe, from Section
11 252. And for that reason, this is kind of like indirectly
12 related to a 252(i) proceeding.

13 Q I'm not sure if that answered the question. I
14 lost it somewhere. Is this proceeding a 252 arbitration?

15 A Not a 252 arbitration in the sense of getting an
16 initial contract, but in construing one.

17 MR. EDENFIELD: Okay, thank you. Thank you,
18 Commissioner Deason.

19 COMMISSIONER DEASON: Further redirect.

20 MR. SAVAGE: Nothing, Your Honor.

21 COMMISSIONER DEASON: Exhibits.

22 MR. EDENFIELD: As to the exhibits, Commissioner
23 Deason, one of the documents I had identified was the
24 declaratory ruling dated February 26, 1999. It is already
25 on the official notice list, so I don't think there is any

1 reason to put that in.

2 The other three exhibits that I referenced, the
3 first one was -- I'm not sure if this is the order in
4 which I referenced them, but the first one I've got is a
5 memorandum, opinion and order of the FCC, File E-99-22. I
6 would ask that that be marked for identification as
7 BellSouth's exhibit -- and I guess at this stage I'm not
8 sure if we do BellSouth or just consecutive -- the next
9 numbered exhibit.

10 COMMISSIONER DEASON: It would be identified as
11 Exhibit 3.

12 MR. EDENFIELD: I would move that document into
13 evidence.

14 COMMISSIONER DEASON: Any objection?

15 MR. SAVAGE: We are talking about this one?

16 MR. EDENFIELD: File Number E-99-22, dated
17 December 2, 1999.

18 MR. SAVAGE: We have no objection to that.

19 COMMISSIONER DEASON: It will be admitted as
20 Exhibit Number 3.

21 (Exhibit Number 3 marked for identification and
22 received into evidence.)

23 MR. EDENFIELD: If I could have marked as Number
24 4, this is the FCC tariff that was filed by Global NAPs.
25 It appears to be filed on April 14, 1999. I would ask

1 that document be identified.

2 COMMISSIONER DEASON: It would be identified as
3 Exhibit Number 4.

4 MR. EDENFIELD: Then I would move that exhibit
5 into evidence.

6 COMMISSIONER DEASON: Any objection?

7 MR. SAVAGE: Actually, I think I do have one.
8 If you look at the page that we were talking about, at the
9 top it indicates that it is original Page 82. This, in
10 fact, is an extract from a very large document. And in
11 fairness to Global NAPs -- the litigation that gave rise
12 to this order involved parts of that tariff in addition to
13 and other than the parts that they have included here.

14 And just very briefly, Bell Atlantic, who was
15 the complainant in that case, argued that entirely other
16 sections of the tariff actually govern the relationship.
17 There was a great deal of discussion about the process by
18 which one becomes a customer under this tariff, and so the
19 definition section of the tariff about what a customer is
20 became relevant.

21 I don't have a problem with the FCC statements
22 or what they are, I mean, that is an official thing, but
23 if they want to talk about what our tariff said and what
24 it meant, I think it is appropriate to have the tariff in
25 the record. I understand there is a lot of it, but I

1 don't think that it is appropriate just to pick a few
2 little pieces, because other parts were involved in the
3 litigation.

4 MR. EDENFIELD: Commissioner Deason, I have no
5 objection. If you would like to take official recognition
6 of the entire FCC Tariff Number 1, that is fine. But
7 certainly the provisions that I have moved into evidence
8 are relevant to this proceeding. They certainly go to
9 Global NAPs' state of mind as to the nature of ISP
10 traffic.

11 COMMISSIONER DEASON: Okay.

12 MR. SAVAGE: I'm not sure they go to that, but
13 --

14 COMMISSIONER DEASON: What has been identified
15 as Exhibit 4 will be admitted. To the extent that this
16 needs to be supplemented in any way, you always may make a
17 motion to add this to the list of matters which we will
18 recognize. And since it is a tariffed filing with the
19 FCC, I believe it would be permissible to include that.

20 MR. SAVAGE: Okay. Thank you.

21 MR. EDENFIELD: The final document that I would
22 ask to have identified, Commissioner Deason, is a copy of
23 Christopher Rozycki's deposition that was in Docket
24 990750-TP taken on October 14th, 1999. If I could have
25 that identified.

1 COMMISSIONER DEASON: It will be identified as
2 Exhibit Number 5.

3 MR. EDENFIELD: Then I would move this
4 deposition transcript into evidence.

5 MR. SAVAGE: And I object to that completely.
6 We have never seen this before. It relates to opinions
7 people have under a legal regime that wasn't in place when
8 the contract at issue here was established. I don't think
9 it has anything to do with this case.

10 COMMISSIONER DEASON: There has been an
11 objection, Mr. Edenfield.

12 MR. EDENFIELD: Certainly to the extent that
13 Global NAPs claims the relevancy of the intent between
14 BellSouth and DeltaCom, not that BellSouth acknowledges or
15 agrees in any way that it is relevant, but to the extent
16 that they contend it is relevant to this proceeding, this
17 document goes directly to the state of mind of DeltaCom
18 and what their view of ISP traffic is jurisdictionally
19 being interstate and, therefore, it is relevant to this
20 proceeding to the extent the Commission finds that
21 DeltaCom's intent is relevant.

22 MR. SAVAGE: Your Honor, I mean, first on a
23 purely procedural level, I had understood that we were
24 required to designate the exhibits in advance somehow that
25 were going to be brought in, and this is completely new.

1 But putting that aside, DeltaCom's intent in October 1999
2 in establishing a new interconnection agreement with
3 BellSouth based on lots of legal precedent that has
4 occurred doesn't have any bearing on what their intent
5 could possibly have been, again, to the extent it is
6 relevant.

7 COMMISSIONER DEASON: Do you in any way question
8 the accuracy of this transcription?

9 MR. SAVAGE: Nothing that I --

10 COMMISSIONER DEASON: Okay. Very well --

11 MR. SAVAGE: The short answer to that is I
12 don't see that it has been signed by the deponent. I have
13 no idea --

14 COMMISSIONER DEASON: I will allow this exhibit
15 to be admitted subject to you verifying its accuracy. If
16 it is not accurate, you may file an objection at that
17 time. It will be admitted into record, it will be give
18 whatever weight the Commission deems advisable.

19 (Exhibit Number 4 and 5 marked for
20 identification and received into evidence.)

21 MR. EDENFIELD: The last document --
22 Commissioner Deason, this is not to be marked as an
23 exhibit, but I have talked to both staff and counsel for
24 Global NAPs, I would like to add a copy to the official
25 recognition list of the order on remand dated December 23,

1 1999 in CC Docket 94-147, and I have copies for everyone.

2 COMMISSIONER DEASON: Okay. Please distribute
3 those, and this will be -- without objection?

4 MR. SAVAGE: No objection.

5 COMMISSIONER DEASON: Hearing no objection, this
6 will be added to the official recognition list.

7 MR. EDENFIELD: And hopefully I have odd and
8 even pages.

9 MR. SAVAGE: Now, I actually have one item --
10 are you done, I'm sorry? Was this your last one?

11 COMMISSIONER DEASON: I believe Mr. Edenfield is
12 finished with his exhibits. I believe you have an
13 exhibit.

14 MR. SAVAGE: Indeed, I do. I would like to move
15 into evidence the consolidated Exhibit 2, which was the
16 attachments to Mr. Rooney's testimony.

17 COMMISSIONER DEASON: Without objection.

18 MR. GOGGIN: No objection.

19 COMMISSIONER DEASON: Hearing no objection,
20 Composite Exhibit 2 is admitted into the record.

21 (Composite Exhibit Number 2 admitted into
22 evidence.)

23 MR. SAVAGE: And I would like to add an item to
24 the official recognition list, which is a result of the
25 last colloquy with Mr. Rooney. Under court decisions we

1 have the Supreme Court's decision in AT&T Corp v. Iowa
2 Utilities Board. The matter Mr. Rooney was referring to,
3 as will be seen, about the Commission's authority to make
4 these decisions actually is articulated in the Eighth
5 Circuit's intervening decision. And I would just like to
6 add the Eighth Circuit's decision that was later partly
7 reversed and partly vacated by the Supreme Court to the
8 court decision list. This was their decision from July of
9 1997. I don't have the citation right with me, but I
10 didn't realize before he was done that it was going to
11 come up.

12 COMMISSIONER DEASON: Any objection?

13 MR. GOGGIN: No objection.

14 COMMISSIONER DEASON: Likewise, that will be
15 added to the recognition list. And Mr. Rooney may be
16 excused, and we need to have testimony inserted for the
17 remaining two Global witnesses, I believe, whose testimony
18 is to be stipulated.

19 MR. SAVAGE: Yes. It was direct and rebuttal
20 testimony in each case for Lee Selwyn and Fred Goldstein.

21 COMMISSIONER DEASON: Let's do Mr. Goldstein
22 first. And this is both direct and rebuttal testimony of
23 Mr. Goldstein?

24 MR. SAVAGE: That's correct.

25 COMMISSIONER DEASON: Okay. Without objection,

1 both the direct and rebuttal testimony of Mr. Goldstein
2 will be inserted into the record.

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1 COMMISSIONER DEASON: Are there exhibits to be
2 identified?

3 MR. SAVAGE: There are no exhibits to Mr.
4 Goldstein's testimony.

5 COMMISSIONER DEASON: Very well.

6 COMMISSIONER CLARK: Mr. Chairman, I think there
7 is a typo in Mr. Goldstein's rebuttal. Are you on the
8 rebuttal yet? And I think it needs to be corrected. A
9 "not" needs to be added, I think.

10 MR. SAVAGE: It sounds like one of those things
11 we hear a lot about.

12 MR. EDENFIELD: I'm sorry, Commissioner Clark,
13 where was that?

14 COMMISSIONER CLARK: Page 16 of his rebuttal. I
15 think it's his rebuttal, yes. I think at the end of Line
16 7 you need a not.

17 MR. SAVAGE: Oh. A copy of a popular web page
18 do not impose network and bandwidth costs?

19 COMMISSIONER CLARK: Right.

20 MR. SAVAGE: Thank you, Commissioner Clark. We
21 had missed that one.

22 COMMISSIONER CLARK: I read it several times
23 trying to figure out what it meant.

24 COMMISSIONER DEASON: So then on Page 16 of the
25 rebuttal testimony, Line 7, insert the word not after the

1 word do?

2 MR. SAVAGE: That is correct. And certainly
3 although the parties have stipulated, obviously if the
4 Commissioners would like to hear any detail from any of
5 our witnesses, we would be delighted to have them appear.

6 COMMISSIONER DEASON: Okay. We now can proceed
7 to the testimony of Mr. Selwyn?

8 MR. SAVAGE: Yes. Doctor Selwyn has direct
9 testimony with some attachments and then rebuttal
10 testimony.

11 COMMISSIONER DEASON: Go right ahead.

12 MR. SAVAGE: I just wanted to point out that in
13 the prehearing order there were actually three attachments
14 to Doctor Selwyn's opening testimony, and it only lists
15 two. And I wanted to make clear that there was a third.
16 It is a single page. It is more information about
17 BellSouth.net and it is discussed in the body of his
18 testimony, but for some reason this didn't show up on the
19 final list.

20 COMMISSIONER DEASON: Okay. The direct
21 testimony of Doctor Selwyn will be inserted into the
22 record.

23 COMMISSIONER DEASON: And we will identify the
24 exhibits attached thereto as a composite exhibit, and they
25 will be identified as Composite Exhibit Number 6. And

1 without objection, those exhibits shall also be admitted.
2 (Composite Exhibit Number 6 marked for
3 identification and admitted into evidence.)
4 COMMISSIONER CLARK: Mr. Chairman, I think there
5 is also a typo on Page 14, and I think it needs to be
6 clarified. It says not, and I think it needs to say nor
7 on Line 10.
8 MR. SAVAGE: Let me find my copy. Here we go.
9 COMMISSIONER DEASON: We are in the direct, and
10 it's on Page 14. What line?
11 COMMISSIONER CLARK: Ten.
12 MR. SAVAGE: I'm suffering from too many pieces
13 of paper at the moment, Your Honor, excuse me.
14 THE WITNESS: The second not should be nor.
15 MR. SAVAGE: The second not should be nor.
16 COMMISSIONER DEASON: We will then make the
17 correction. The second not will become nor.
18 COMMISSIONER DEASON: And Doctor Selwyn's
19 rebuttal testimony, there are no exhibits to the rebuttal,
20 correct?
21 THE WITNESS: That is correct.
22 COMMISSIONER DEASON: Okay. The rebuttal
23 testimony will likewise be inserted into the record.
24 COMMISSIONER DEASON: And there were no
25 exhibits. And Composite Exhibit 6, which is the prefiled

1 exhibits to the direct, will be admitted into the
2 record --

3 MR. SAVAGE: Thank you, Your Honor.

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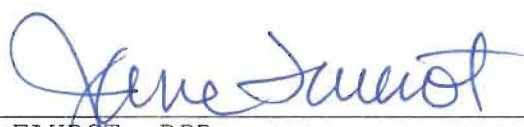
1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

3 I, JANE FAUROT, RPR, Chief, FPSC Bureau of,
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing
6 Conference in Docket No. 991267-WS was heard by the
7 Florida Public Service Commission at the time and
8 place herein stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed by me; and that this transcript, Volume 1,
12 consisting of 175 pages, constitutes a true
13 transcription of my notes of said proceedings
14 and the insertion of the prescribed prefiled
15 testimony of the witness.

16 DATED this 1ST DAY OF FEBRUARY, 2000.

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JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting