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February 15, 2000

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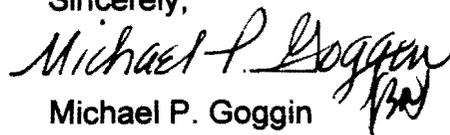
Re: Docket No. 991267-TP (Global NAPS Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of Law and the Evidence, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


Michael P. Goggin

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

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CERTIFICATE OF SERVICE
Docket No. 991267-TP

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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:) Docket No. 991267-TP
)
Complaint of Global NAPs, Inc., against)
BellSouth Telecommunications, Inc. for)
Enforcement of Section VI(B) of its)
Interconnection Agreement with BellSouth)
Telecommunications, Inc. and Request for Relief)
_____) Filed: February 15, 2000

**BELLSOUTH TELECOMMUNICATIONS, INC.
BRIEF OF LAW AND THE EVIDENCE**

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TABLE OF CONTENTS

<u>STATEMENT OF THE CASE</u>	1
<u>STATEMENT OF BASIC POSITION</u>	3
<u>STATEMENT OF POSITION ON THE ISSUES</u>	5
<u>Issue 1:</u> Under their Florida Partial Interconnection Agreement, are Global NAPs, Inc. and BellSouth Telecommunications, Inc. Required to compensate each other for delivery of traffic to Internet Service Providers (ISPs)? If so, what action, if any, should be taken?	5
<u>Issue 2:</u> Is the prevailing party entitled to attorney's fees under the Agreement?	16
<u>CONCLUSION</u>	16

STATEMENT OF THE CASE

Section 251(b)(5) of the Telecommunications Act of 1996 (the "Act") imposes upon local exchange carriers ("LECs") the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Shortly after passage of the act, the FCC made clear in its August 8, 1996 Local Competition Order and applicable rules that the reciprocal compensation obligation imposed on LECs by Section 251(b)(5) only applies to *local* traffic. *First Report and Order*, CC Docket No. 96-98 (Aug. 8, 1996), ¶¶ 1033-1040. In particular, the FCC stated that the reciprocal compensation provisions in Section 251(b)(5):

should apply only to traffic that originates and terminates within a local area . . . [R]eciprocal compensation for transport and termination is intended for a situation in which two carriers collaborate to complete a local call . . .

Id. at ¶¶1034-1035. Section 51.703(a) of the FCC rules requires LECs to "establish reciprocal compensation arrangements for the transport and termination of local telecommunications traffic with any requesting telecommunications carrier." Section 51.701(e) defines a reciprocal compensation arrangement as:

one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

For purposes of reciprocal compensation, "local telecommunications traffic" means traffic "that originates *and terminates* within a local service area established by the state commission." 47 C.F.R. § 51.701(b)(emphasis added).

On January 19, 1999, Global NAPs ("GNAPs") and BellSouth Telecommunications, Inc. ("BellSouth") entered into an interconnection agreement (the

"Agreement") under which GNAPs agreed to adopt the terms of an interconnection agreement between BellSouth and ITC^DeltaCom. Like the FCC's rules, the Agreement provides that reciprocal compensation shall be exchanged for the transport and termination of local traffic, which is defined as traffic that originates and terminates in the same local calling area. The Agreement does not include any provision regarding intercarrier compensation for the shared provision of access services to enhanced services providers ("ESPs"), such as Internet Service Providers ("ISPs"). In addition, ISP-bound traffic, which, as the FCC has repeatedly stated, does not terminate locally and is interstate access traffic, is not expressly included in the definition of "local traffic" in the Agreement. The Agreement expired on July 1, 1999.

On August 31, 1999, GNAPs filed a complaint against BellSouth in which it alleged that BellSouth had breached the reciprocal compensation provisions of the Agreement. GNAPs alleged that, contrary to the plain language of the Agreement, the parties intended to include ISP-bound traffic in the definition of "local traffic" for purposes of the Agreement, and that BellSouth had failed to pay reciprocal compensation for such traffic. The formal hearing of this matter took place on January 25, 2000. BellSouth submitted the direct and rebuttal testimony of Albert Halprin, Beth Shiroishi, the direct testimony of David Scollard and the rebuttal testimony of Keith Milner and Andy Banerjee. The hearing produced a transcript of 417 pages and 17 exhibits.

This Brief of the Evidence is submitted in accordance with the post hearing procedures of Rule 25-22.056, Florida Administrative Code. A summary of BellSouth's

positions on each of the issues to be resolved in this docket is delineated in the following pages and marked with an asterisk.

STATEMENT OF BASIC POSITION

BellSouth respectfully requests that the Commission deny the relief sought by GNAPs in its Complaint. The plain language of the Agreement clearly states that the reciprocal compensation obligations apply only to local traffic. This mirrors the requirements of Section 251(b)(5) of the Act and the applicable FCC rules. Local traffic is defined in the Agreement to include only traffic that originates and terminates in the same local calling area, in conformance with the FCC's rules. The Agreement's reciprocal compensation provisions are in all respects, coextensive with the parties' obligations to one another under Section 251 (b)(5) of the Act. Because ISP traffic is interstate access traffic, not local, neither party had an obligation to pay reciprocal compensation under either Section 251(b)(5) or the virtually identical requirements of the Agreement.

GNAPs does not claim that the plain language of the Agreement includes an express provision to treat ISP traffic as local traffic or to require the parties to pay reciprocal compensation for such traffic. In its Prehearing Statement, filed December 20, 1999, GNAPs states that "[t]he Interconnection Agreement requires the parties to exchange traffic and to pay reciprocal compensation to each other for the delivery of local traffic. The Interconnection Agreement defines local traffic as 'any telephone call that originates in one exchange or LATA and terminates in either the same exchange or LATA, or a corresponding Extended Service Area ("EAS") exchange.'" Prehearing Statement of Global NAPs, Inc. (Filed Dec. 20, 1999) at 2. Despite agreeing with

BellSouth that the parties' reciprocal compensation obligations are limited to local traffic, however, GNAPs claims that BellSouth was obligated to pay reciprocal compensation on ISP traffic. GNAPs apparently bases this assertion on two alternative theories: that ISP traffic *is* local; or that BellSouth and GNAPs *intended to treat it as local* for purposes of the Agreement. Each theory is without any basis in law or fact.

To the extent that GNAPs bases its claim on the theory that ISP traffic is *local*, i.e. that as a matter of fact or a matter of law, ISP traffic is local exchange traffic or that it terminates at the ISP, GNAPs runs into a wall of federal precedent. Starting with the FCC's original access order in 1983, it has been held consistently that ESPs (including ISPs) use interstate access service to serve their customers. In particular, the FCC has consistently held that ISP traffic does not terminate at the ISP but continues on to the internet and is, therefore, not local. This precedent is consistent with any common sense understanding of the service that ISP's provide. No one would pay \$19.99 every month to AOL for internet access if his communications were terminated at AOL's local server.

GNAPs' suggestion that the parties intended to include non-local ISP traffic within the definition of ISP traffic for purposes of the Agreement is equally absurd. GNAPs had received draft language from BellSouth prior to entering into the Agreement in which BellSouth redundantly clarified that ISP traffic was not to be considered local traffic for purposes of reciprocal compensation. GNAPs also admits that, prior to the time it entered into the Agreement, it was aware that BellSouth understood that the precise terms GNAPs adopted in the Agreement limited the application of reciprocal compensation obligations to local traffic and did not include ISP

traffic within the definition of local traffic. Lastly, GNAPs admits that it did not negotiate with BellSouth regarding the issue of whether non-local ISP traffic should be included in the definition of local traffic for purposes of the Agreement. In other words, GNAPs had no reason to believe that BellSouth "intended" to consider ISP traffic to be local for purposes of the Agreement. Indeed, it knew that BellSouth would vehemently oppose such a proposed change to the Agreement.

ISP traffic is not "local traffic" for purposes of Section 251(b)(5) of the Act, or the plain language of the Agreement, which is coextensive with the requirements of Section 251(b)(5) of the Act. GNAPs has provided no evidence to suggest that the Commission should depart from the plain language of the Agreement or the solid wall of federal precedent holding that ISP traffic is interstate access traffic. Moreover, GNAPs cannot demonstrate that BellSouth and GNAPs mutually intended to treat ISP traffic as though it *were* local for purposes of the Agreement. For all of these reasons, the Commission should rule in favor of BellSouth and deny GNAPs' claims.

STATEMENT OF POSITION ON THE ISSUES

Issue 1: Under their Florida Partial Interconnection Agreement, are Global NAPs, Inc. and BellSouth Telecommunications, Inc. Required to compensate each other for delivery of traffic to Internet Service Providers (ISPs)? If so, what action, if any, should be taken?

****Position: No. Both parties agree that the Agreement's plain language limits reciprocal compensation obligations to the delivery of local traffic. ISP traffic is interstate access traffic, not local traffic. GNAPs cannot demonstrate any mutual intent to include ISP traffic in the definition of local traffic for purposes of the Agreement.**

A. The Agreement's Reciprocal Compensation Requirement, Like the Reciprocal Compensation Provision of the Act, Only Applies to Local Traffic.

It is well settled that the plain meaning of a contract is controlling in the absence of ambiguity. *See, e.g. Green v. Life & Health of Am.*, 704 So. 2d 1386, 1391 (Fla. 1998); *Vernon, v. Resolution Trust Corp.*, 907 F2d 1101, 1109 (11th Cir. 1990). This fundamental legal rule is dispositive in this case. There is no disagreement between the parties as to whether the language of the Agreement is plain and unambiguous. Each agrees that it is. *See, e.g. Prehearing Statement of Global NAPs, Inc.* (Filed Dec. 20, 1999)(“GNAPs Prehrg.”) at 3 (“there are no material facts at issue in this proceeding”); *Pre-Hearing Statement of BellSouth Telecommunications, Inc.* (Filed Dec. 20, 1999)(BellSouth Prehrg.) at 3 (“The plain language of the contract clearly states that reciprocal compensation will only apply to local traffic.”) Likewise, there is agreement that the reciprocal compensation obligations in the Agreement are limited to local traffic, and that local traffic is clearly defined in the agreement to include only traffic that originates and terminates in the same local calling area. GNAPs Prehrg. at 2; BellSouth Prehrg. at 3. Thus, the reciprocal compensation obligations of the parties under the agreement are precisely coextensive with their reciprocal compensation obligations under the Act—reciprocal compensation only applies to local traffic.

GNAPs nevertheless asserts that the parties are obligated, under the Agreement, to pay reciprocal compensation for ISP traffic, which, according to a solid wall of federal precedent stretching back more than 15 years, is interstate access traffic, not local traffic. GNAPs Prehrg. at 2-3 (“BellSouth refuses to compensate Global NAPs

for calls that originate with BellSouth customers and are delivered to ISPs that are Global NAPs customers within the same LATA or EAS.”). *But see In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Dkt. No. 96-98 (FCC Feb. 26, 1999)(the “Declaratory Order”) at ¶ 5 (citing FCC orders dating back to 1983 for the proposition that ESPs, including ISPs, use interstate access services).¹ GNAPs apparently bases this assertion on two alternative theories: either the FCC is wrong (and ISP traffic is local, after all); or the parties, notwithstanding the plain language to the contrary, agreed to define non-local ISP traffic as “local traffic” for purposes of their agreement. Both theories are clearly incorrect.

B. ISP Traffic is Not Local Traffic.

GNAPs expends a great deal of effort attempting to persuade this Commission that, common sense and years of federal precedents notwithstanding, ISP traffic really is local exchange traffic. For example, in its Complaint, GNAPs asserts that the terms of the Agreement “provide for reciprocal compensation for the delivery of local traffic, including calls to ISPs within the LATA.” *Complaint of Global NAPs, Inc.* (Filed Aug. 31, 1999)(the “Complaint”) at 4. Indeed, GNAPs proffers testimony to the effect that the FCC’s consistently held view that ISP traffic is interstate access traffic is a mere legalism created for purposes of jurisdiction, and that ISP traffic is just like “normal local calls to any other end user such as a bank, pizza parlor, school or government agency.” *See, e.g.* Testimony of Fred R. Goldstein (“Goldstein Dir.”) at Tr. 92-93; Testimony of Lee L. Selwyn (“Selwyn Dir.”) at Tr. 139.

¹ The FCC’s Declaratory Order is reported at 14 FCC Rcd 3689.

GNAPs position, however, demonstrates an utter refusal to accept that, both as a matter of law and a matter of fact, ISP traffic is not, and has never been, local traffic.² The FCC has consistently and correctly found that ESPs use interstate access service, not local exchange service, and that ISP traffic does not terminate at the ISP's servers, but continues onto the Internet. As Mr. Halprin details in his testimony, the FCC has unequivocally stated that ISP traffic does not "terminate" locally but is interstate in nature. Direct Testimony of Albert Halprin ("Halprin Dir.") at Tr. 257-258. *See also, Declaratory Order* at ¶ 12 ("[ISP-bound communications] do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state.")(citations omitted). Indeed, as GNAPs was no doubt aware, the FCC had specifically found in the context of ADSL services, that ISP traffic does not terminate at the ISP before the Agreement was signed. *See Memorandum Opinion and Order, GTE Operating Cos., CC Dkt. No. 98-79 (Oct. 30, 1998) at ¶ 19.*³

Moreover, the FCC has consistently found that ESPs, including ISPs, use interstate access service, not local exchange service. *See Declaratory Order* at ¶ 16 ("That the [FCC] exempted ESPs from access charges indicates its understanding that ESPs in fact use interstate access service; otherwise, the exemption would not be necessary."). *See also, id.* at ¶ 5 (citing authority dating back to 1983 for the proposition that ESPs use interstate access service). The Commission has noted that, for certain limited purposes, including the price that incumbent local exchange providers

² BellSouth is aware that this Commission once ruled, with the encouragement of BellSouth, that ISP traffic is local in nature. Order No. 21815 (Sept. 5, 1989). Subsequent federal authorities proved BellSouth wrong in this regard.

("ILECs") may charge ESPs for this interstate access service, the FCC has decided to treat ESP traffic as if it were local, *id.*, but such limited regulatory anomalies do not "transform the nature of traffic routed to ESPs." *Id.* at ¶ 16.

This wall of federal precedent, holding that ESP traffic, including ISP traffic, is not "local traffic," cannot be dismissed as some sort of legal fiction, as GNAPs would have the Commission do. It is no doubt true that the FCC, despite the interstate nature of ISP traffic, has decided to treat it as if it were not interstate for certain limited regulatory purposes.⁴ But in the only sense that matters here, the FCC has refused to treat this traffic as anything other than what it is—interstate access traffic. In its *Declaratory Order*, the FCC unequivocally stated that the reciprocal compensation provisions in the Act and the FCC's rules do not apply to ISP traffic *because it is not local traffic*. *Declaratory Order* at ¶ 26, fn. 87 ("ISP-bound traffic is non-local interstate traffic. Thus, the reciprocal compensation requirements of section 251(b)(5) of the Act and Section 51, Subpart H (Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic) of the [FCC's] rules do not govern inter-carrier compensation for this traffic."). Thus, as a matter of law, ISP traffic is not local.⁵

³ This Memorandum Opinion and Order is reported at 13 FCC Rcd. 22466.

⁴ It should be noted that there are only two FCC rules that require BellSouth to treat ISPs differently from other users of interstate access services. The access exemption requires BellSouth to provide interstate access to ISPs at the same price as it charges end users in its intrastate business tariffs. *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Dkt. No. 87-215, Order, 3 FCC Rcd 2631 (1988) (ESP Exemption Order). BellSouth also is required to count ISP revenue as intrastate for separations purposes. *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, CC Dkt. No. 89-79, Notice of Proposed Rulemaking, 4 FCC Rcd. 3983 (1989). Because neither of these requirements apply to GNAPs, which is not an ILEC, GNAPs has never been required to treat non-local ISP traffic as local for even these limited purposes. Halprin Dir. at Tr. 287.

⁵ GNAPs appears to have expressly acknowledged that ISP traffic is not local by filing an interstate tariff with the FCC attempting to charge for "ISP Traffic Delivery Service." Halprin Dir. at Tr. 277.

To the extent GNAPs suggests that, as a matter of fact, ISP traffic is local in nature, it is also clearly incorrect. See *Halprin Dir. at Tr. 255-258*. While the FCC, in its orders, the BellSouth's witnesses, in their testimony, provide ample explanations regarding the manner in which the internet works, one need go no further than the name behind the ISP acronym—"Internet Service Provider." Millions of people pay companies like Mindspring and AOL around \$19.99 per month for *internet access*, not local exchange service. It would be difficult to imagine why anyone would pay for internet service if all communications were terminated at the local ISP server. It would defeat the purpose of *internet service*. As Mr. Haprin notes, an ISP's customer buys internet service in order to gain access to what is beyond the ISP's server—"a worldwide network of networks with website destinations in various countries and states." *Halprin Dir. at Tr. 255*. For GNAPs witnesses to attempt to equate internet access to a "normal" local call to a "pizza parlor" is laughable.⁶

The Commission need go no further than this in its analysis. Both parties agree that the Agreement's language with respect to reciprocal compensation is clear and unambiguous. Both agree that the Agreement's reciprocal compensation obligations are limited to local traffic. As a matter of fact and a matter of law, ISP traffic is not local. Accordingly, by the plain terms of the Agreement, reciprocal compensation simply does not apply to this traffic.

⁶ GNAPs pursues a number of other, tired arguments (such as the "7-digit number theory") to support its attempt to convince us that ISP traffic is, in fact, local. BellSouth's witnesses effectively refute each one. See, e.g. *Rebuttal Testimony of W. Keith Milner, Tr. at 355-365; Rebuttal Testimony of Albert Halprin, Tr. at 291-314; Rebuttal Testimony of Andy Banerjee ("Banerjee Reb.") at Tr. 367-413.*

C. The Parties Did Not Intend to Include Non-Local ISP Traffic in the Definition of Local Traffic for Purposes of the Agreement.

In this case, the intent of the parties is clear from the plain language of the Agreement. The reciprocal compensation provisions, like those in the Act, are limited to local traffic. Thus, as under the Act, the reciprocal compensation provisions of the Agreement clearly were not intended to apply to non-local ISP traffic. Because the language of the Agreement is not ambiguous or unclear, the Commission need not consider any factual issues surrounding the negotiation of the Agreement or what the parties did or omitted to do after the contract was signed. Nevertheless, an examination of such issues would merely reinforce the conclusion that the Agreement does not include non-local ISP traffic within the definition of local traffic for purposes of reciprocal compensation or for any other purpose.

In its prior orders construing reciprocal compensation provisions, the Commission has considered such factors as the circumstances in existence at the time the contract was signed, or the behavior of the parties after the contract was made. *See e.g. Order No. PSC-99-0658-FOF-TP (April 6, 1999) at 6-7.* Similarly, the FCC has invited state commissions to consider a number of factors in considering whether parties to an interconnection agreement intended to treat ISP traffic as local for purposes of their agreement. *Declaratory Order at ¶ 24.* An evaluation of such factors clearly indicates that the Agreement means what it clearly says—reciprocal compensation is limited to local traffic, and ISP traffic is not local.

The first factor to be considered is the negotiation of the Agreement. In short, there was none. To be sure, GNAPs knew where BellSouth stood. Mr. Rooney

admitted that he had received a proposed agreement from BellSouth months before the Agreement was formed. Rooney at Tr. 26. In the draft agreement, BellSouth proposed, redundantly, to expressly exclude ISP traffic from the definition of local traffic. Moreover, Mr. Rooney admitted that he was aware that BellSouth understood that ISP traffic was not local, and that BellSouth specifically understood that ISP traffic was not subject to reciprocal compensation under the very language GNAPs ultimately adopted. Rooney at Tr. 31-32. Not surprisingly, GNAPs did not negotiate with BellSouth. *Id.* at 27-28. Direct Testimony of Beth Shiroishi ("Shiroishi Dir.") at Tr. 204-205; 218-219. He clearly understood that BellSouth would not agree to change the terms he wished to adopt to include ISP traffic in the definition of local traffic.

It was obvious by January 1999 that BellSouth did not assume that ISP traffic would be treated as local, and did not intend, given the Agreement's plain language defining local traffic, that non-local ISP traffic should be implicitly included in the definition. BellSouth's views on this subject had been repeatedly and consistently expressed in public debate. Shiroishi Dir. at Tr. 216-217, 219-220. Moreover, it would have been economically irrational for BellSouth to even consider including ISP traffic within the definition of local traffic, particularly in light of the fact that it was not obligated under the Act to do so. Shiroishi Dir. at Tr. 221-222; Rebuttal Testimony of Beth Shiroishi ("Shiroishi Reb.") at Tr. 231-232; Halprin Dir. at 265-269. Accordingly, there is nothing about the circumstances at the time the Agreement was formed that could support the notion that BellSouth intended to pay reciprocal compensation on traffic that is not local.

Similarly, BellSouth's conduct after the Agreement was formed shows that BellSouth did not intend to treat ISP traffic as local. BellSouth has never knowingly charged reciprocal compensation for ISP traffic, and, except when ordered to do so, BellSouth has never knowingly paid reciprocal compensation for this non-local traffic. Direct Testimony of David Scollard ("Scollard Dir.") at Tr. 188; Shiroishi Dir. at Tr. 217. Indeed, long before it entered into the Agreement with GNAPs, BellSouth devised the means to measure and segregate ISP traffic for billing purposes. Scollard Dir. at Tr. 187-189. Accordingly, these factors demonstrate that BellSouth had no intent to depart from the plain language of the Agreement by including non-local ISP traffic as local for purposes of reciprocal compensation.

Two factors the FCC suggests be considered are simply not relevant. BellSouth charges ISPs for the access services they use at rates taken from its intrastate tariffs, and BellSouth counts revenues it receives for the provision of interstate access to its ISP customers as intrastate revenue for separations purposes. As noted earlier, BellSouth is required to do so by rule. Its compliance with a regulatory mandate says nothing about BellSouth's intentions with regard to whether it intended to include non-local ISP traffic within the definition of local for purposes of reciprocal compensation. These "factors" should not count in the balance at all. Halprin Dir. at Tr. 268-269.

The FCC also suggests that, in jurisdictions where ILECs bill their end users by message units, it might be helpful to see if dial up access is included among local telephone charges. *Declaratory Order* at ¶ 24. There is little evidence in the record on this point and, as Dr. Banerjee explains, this factor also should not count in the balance. Banerjee Reb. at Tr. 386. In a case where an ISP customer is also a BellSouth end

user, the ISP's customer pays the ISP, not BellSouth, for providing dial-up access. Banerjee Reb. at Tr. 377-380. If the ISP is also a BellSouth customer, BellSouth is compensated for delivering such traffic to the ISP through the charges paid by the ISP for the access services it uses. Banerjee Reb. at 386-387. If the ISP is not a BellSouth customer, BellSouth is not paid for its efforts in delivering ISP customer traffic on behalf of the ISP.

The final factor that the FCC suggests be considered is whether the carriers would be compensated for aggregating ISP traffic if reciprocal compensation were not imposed on ISP traffic. The answer is, the LEC who serves the ISP will always have an opportunity to be compensated by charging the ISP for providing the access services used by the ISP. The LEC who serves the ISP's customer will only be compensated if it also serves the ISP, or the carriers agree to share the revenues received from the ISP in exchange for the interstate access services it uses. Banerjee Reb. at Tr. 394. Indeed, because the access charge exemption only applies to BellSouth, GNAPs is constrained only by market forces in deciding how much to charge for the interstate access services it provides. Halprin Dir. at Tr. 287. Indeed, as BellSouth demonstrated, requiring reciprocal compensation to be paid for ISP traffic would, in effect, award a subsidy to ALECs and would be economically inefficient. Banerjee at Tr. 398-410.

When each of these factors is considered, none suggest that BellSouth had any intention of including ISP traffic within the definition of local traffic for purposes of the Agreement. When one considers BellSouth's actions prior to and after the Agreement was formed, it would be impossible to assume that the parties mutually intended to pay

reciprocal compensation on ISP traffic. Accordingly, even if it were not clear, from the plain language of the Agreement, that ISP traffic is not subject to reciprocal compensation under the Agreement, after the FCC's factors were taken into account, it certainly would be.

GNAPs argues that, because the Commission has held, in the context of interconnection agreements between BellSouth and other carriers, such as e.spire, that the parties intended to include ISP traffic in the definition of local traffic for purposes of reciprocal compensation, it must conclude that BellSouth and GNAPs have done so in this case. *See Complaint at 6* ("The Commission's Order in the e.spire case controls the interpretation of the instant Interconnection Agreement with respect to the type of traffic considered local for purposes of requiring payment of reciprocal compensation."). GNAPs is wrong. GNAPs was not a party to the agreements in the cases it cites. The decisions in those cases apply only to the parties to those agreements. *See, e.g. Order No. PSC-99-2526-PCO-TP (Dec. 23, 1999) at 5* (a Commission decision regarding the terms of an interconnection agreement will only bind the parties to that agreement and "will have no precedential value for any other case involving the same terms and conditions of an agreement between different parties.") Even if BellSouth had intended, for purposes of its agreement with e.spire, to include ISP traffic in the definition of local traffic, that would not necessarily mean that it had done so in this case. Moreover, the e.spire case is markedly different. In e.spire, the Commission found that BellSouth had done (or failed to do) a number of things, such as segregating ISP traffic for billing purposes, that might be viewed as support for the notion that it intended to treat ISP traffic as local for purposes of that agreement. *Order No. PSC-99-0658-FOF-TP (April*

6, 1999) at 7-10. As the discussion above makes clear, the circumstances in that case that led the Commission to conclude that the parties had agreed to reciprocal compensation for ISP traffic do not exist in this case.

In short, contrary to GNAPs assertions, other Commission decisions about other Agreements are not controlling. The unambiguous plain language is. ISP traffic is not local traffic. Under the Agreement, as under the Act, reciprocal compensation only applies to local traffic. Accordingly, the Commission should reject GNAPs attempts to rewrite the Agreement to include ISP traffic within the definition of local traffic.

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

****Position:** Yes, the prevailing party is entitled to the recovery of reasonable attorney's fees under the provisions of the Agreement.

As with Issue 1, the plain language of the Agreement is unambiguous. The prevailing party is entitled to recover its reasonable attorney's fees under the Agreement.

CONCLUSION

The Commission should enforce the plain meaning of the Agreement and determine that the parties did not intend, contrary to the plain meaning of the Agreement, to require the payment of reciprocal compensation for ISP traffic. For the foregoing reasons, BellSouth requests that GNAPs claims be denied and that its Complaint be dismissed.

Respectfully submitted this 15th day of February, 2000.

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