ORIGINAL

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF JERRY D. HENDRIX

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000636-TP

SEPTEMBER 8, 2000

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc., ("BellSouth") as Senior Director – Customer Markets, Wholesale Pricing Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

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

Q. HAVE YOU TESTIFIED PREVIOUSLY?

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

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to show that BellSouth does not owe Sprint Communications Company Limited Partnership ("Sprint") reciprocal compensation for traffic bound for Internet service providers ("ISPs") for two primary reasons: first, ISP-bound traffic is, and always has been, interstate traffic; and, second, the parties did not agree to pay reciprocal compensation for ISP-bound traffic under the terms of the Agreement between the parties.

Q. WHAT IS RECIPROCAL COMPENSATION?

A. Section 251 (b)(5) of the Telecommunications Act of 1996 obligated all telecommunications carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." In basic terms, reciprocal compensation is a two-way, or reciprocal, arrangement requiring a local exchange carrier ("LEC") who originates a local call to compensate the LEC who terminates the local call. By law, this obligation

applies only if the call is local, and if the call is originated and terminated by different LECs. As the FCC has confirmed, this obligation does not extend to ISP traffic. Footnote 87 of the February 26, 1999 Declaratory Ruling (see *Declaratory Ruling*, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68 ("Declaratory Ruling"), released February 26, 1999) states:

> As noted, section 251(b)(5) of the Act and our rules promulgated pursuant to that provision concern inter-carrier compensation for interconnected *local* telecommunications traffic. We conclude in this Declaratory Ruling, however, that 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 Commission's rules do not govern inter-carrier compensation for this traffic.

Q. DID SPRINT AND BELLSOUTH INTEND TO ASSUME AN OBLIGATION TO PAY RECIPROCAL COMPENSATION BEYOND THAT REQUIRED BY THE TELECOMMUNICATIONS ACT OF 1996?

A. No. BellSouth and Sprint executed the agreement in order to fulfill their duties under the Telecommunications Act of 1996 – nothing more, nothing less. Nothing in the Agreement can reasonably be read to suggest that

BellSouth and Sprint agreed to go beyond their obligations under the Telecommunications Act, including the scope of their duty to pay reciprocal compensation.

Q. WHY IS ISP TRAFFIC NOT SUBJECT TO THE RECIPROCAL COMPENSATION REQUIREMENTS UNDER THE TELECOMMUNICATIONS ACT OF 1996?

A. Internet service is a subset of the services that the Federal Communications Commission ("FCC") has classified as enhanced services. The FCC, for a variety of public policy reasons, has exempted enhanced service providers ("ESPs"), of which ISPs are a subset, from paying interstate access charges since 1983. Hence, ISPs are permitted to use the networks of LECs to collect and transport their interstate traffic. Moreover, ILECs, such as BellSouth, are not permitted to charge ISPs access charges for the access services ISPs receive. Instead, ISPs pay ILECs for the access services they use at rates equal to local exchange rates. However, as the FCC recently confirmed in its *Order On Remand In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability* ("Order on Remand") released December 23, 1999, the access charge exemption does not alter the fact that the service provided by Local Exchange Carriers ("LECs") to ESPs, which includes ISPs, is "exchange access." FCC 99-413, ¶ 43 (Dec. 23, 1999). Exchange access traffic is, by definition, interstate in nature, not local.

Q. PLEASE DESCRIBE THE NATURE OF ISP TRAFFIC.

A. To put the Agreement in question in this docket in context, I will describe how traffic from an end user with dial-up Internet service is routed to the Internet. End users gain access to the Internet through an ISP. The ISP location, generally referred to as an ISP Point of Presence ("POP"), represents the edge of the Internet and usually consists of a bank of modems. Due to the FCC's access charge exemption for ISPs, ISPs can use the public switched network to collect their subscribers' calls to the Internet. To access the Internet through an ISP, subscribers dial a seven- or ten-digit telephone number via their computer modem. To receive exchange access service, the ISP typically purchases business service lines from various LEC end offices and physically connects those lines to an ISP premise, which contains modem banks that connect to the Internet. The ISP converts the signal of the incoming communication to a digital signal and routes the traffic, through its modems, over its own network to a backbone network provider, where it is ultimately routed to an Internet-connected host computer. Internet backbone networks can be regional or national in nature. These networks not only interconnect ISP POPs but also interconnect ISPs with each other and with online information content.

The essence of Internet service is the ease with which a user can access and transport information from any server connected to the Internet. The Internet enables information and Internet resources to be widely distributed and eliminates the need for the user and the information to be physically located in the same area. ISPs typically provide, in addition to Internet access, Internet

services such as e-mail, usenet news, and Web pages to their customers. When a user retrieves e-mail or accesses usenet messages, for example, it is highly unlikely that the user is communicating with a server that is located in the same local calling area as the user. To the contrary, the concentration of information is more likely to result in an interstate, or even international, communication.

In short, an ISP takes a communication and, as part of the information service it offers to the public, transmits that communication to and from the communications network of other telecommunications carriers (e.g., Internet backbone providers such as MCI or DeltaCom) whereupon it is ultimately delivered to Internet host computers, almost all of which are located outside of the local serving area of the ISP. As one can see, Sprint's claim that a local call and an ISP-bound call are similar with respect to the origination and termination is not accurate. Thus, ISP traffic is not entitled to the reciprocal compensation structure for local calls.

As I stated earlier, the ISP generally purchases exchange access service by leasing business service lines from various end offices. In the case of ILECs, this methodology was prescribed (and in fact compelled) by the FCC in order to ensure compliance with the access charge exemption extended to ESP/ISPs. The fact that an ISP obtains local business service lines from an ALEC switch in no way alters the continuous transmission of signals between an incumbent local exchange carrier's ("ILEC") end user to a host computer. In other words, if an ALEC puts itself in between a BellSouth end user and the Internet service

provider, it is acting like an intermediate transport carrier or conduit, using exchange access service, not a local exchange provider entitled to reciprocal compensation.

Q. WHAT ARE THE RECIPROCAL COMPENSATION REQUIREMENTS IN THE SPRINT AGREEMENT AS EXECUTED ON JULY 1, 1997?

A. The Sprint Agreement defines "Local Traffic" in Attachment 11 as follows: "Local Traffic" means any telephone call that originates and terminates in the same LATA and is billed by the originating Party as a local call, including any call terminating in an exchange outside of BellSouth's service area with respect to which BellSouth has a local interconnection agreement with an independent LEC, with which Sprint is not directly interconnected."

Attachment 6, Section 5.1 of the Agreement states:

> "The Parties shall bill each other reciprocal compensation in accordance with the standards set forth in this Agreement for Local Traffic terminated to the other Party's customer. Such local traffic should be recorded and transmitted to Sprint and BellSouth in accordance with this Attachment. When a Sprint Customer originates traffic and Sprint sends it to BellSouth for termination, Sprint will determine whether the traffic is local or intraLATA toll. When a BellSouth Customer originates traffic and BellSouth sends it to Sprint for termination, BellSouth will determine whether the traffic is local or intraLATA toll. Each Party will provide the other with information that

will allow it to distinguish local from intraLATA toll traffic. At a minimum, each Party shall utilize NXX's in such a way that the other Party shall be able to distinguish local from intraLATA toll traffic. When Sprint interconnects with BellSouth's network for the purpose of completing local and intraLATA toll traffic, Sprint will, at its option, interconnect at either the tandem or end office switch to complete such calls paying local interconnection rates for its customers' local calls and switched access rates for its customers' intraLATA toll calls. Such interconnection will be ordered as needed by Sprint to complete such local and intraLATA toll calls. Further, the Local Traffic exchanged pursuant to this Attachment shall be measured in billing minutes of use and shall be in actual conversation seconds. The total conversation seconds per chargeable traffic type will be totaled for the entire monthly billing cycle and then rounded to the next whole conversation minute. Reciprocal compensation for the termination of this Local Traffic shall be in accordance with Part IV to this Agreement.

Q. DID BELLSOUTH CONSIDER ISP TRAFFIC TO BE LOCAL TRAFFIC SUBJECT TO THE PAYMENT OF RECIPROCAL COMPENSATION AT THE TIME THE JULY 1997 AGREEMENT TOOK EFFECT?

A. No. It has always been BellSouth's view that ISP traffic is interstate in nature and should be subject to the payment of access charges. BellSouth has expressed this view both publicly and internally for years. As far back as 1987, BellSouth urged that the FCC eliminate the access charge exemption for

ESPs. In fact, BellSouth filed comments with the FCC in April 1997 making clear BellSouth's view that reciprocal compensation only applies to the transport and termination of local traffic, which does not extend to ISP traffic. A copy of BellSouth's comments filed April 23, 1997 in CC Docket 96-263 is attached as Exhibit JDH-1.

Q. DID BELLSOUTH ADVISE SPRINT OF ITS VIEW THAT ISP TRAFFIC IS NOT SUBJECT TO RECIPROCAL COMPENSATION PRIOR TO THE AUGUST 1997 AGREEMENT TAKING EFFECT?

A. Yes. On August 8, 1997, only one month after the execution of Sprint's executed Agreement, BellSouth posted a notice on its Carrier Notification website advising all ALECs, including Sprint, of BellSouth's view that ISP traffic was interstate in nature and not subject to the payment of reciprocal compensation. A copy of this notice, which is still on BellSouth website, is attached as Exhibit JDH-2. BellSouth also sent a letter dated August 12, 1997 to all ALECs confirming BellSouth's position on the ISP issue.

Clearly, BellSouth would never have executed an agreement intending to include ISP-bound traffic under the reciprocal compensation provisions shortly after stating publicly precisely the opposite position to Sprint and other ALECs.

Q. IS RECIPROCAL COMEPNSATION DUE FOR ISP TRAFFIC UNDER THE JULY 1997 AGREEMENT?

A. No. First, nothing in Agreement alters the definition of "local traffic" to which the parties had originally agreed. Second, at a minimum, the Agreement requires the termination of traffic on either BellSouth's or Sprint's network for reciprocal compensation to apply. As I explain below in more detail, when an end user accesses the Internet via an ISP server, that call does not terminate at the ISP server, regardless of whether the ISP is served by BellSouth or an ALEC. Further, the definition of local traffic requires the origination and termination of telephone calls to be in the same exchange and EAS exchanges as defined and specified in Section A.3 of BellSouth's General Subscriber Service Tariff ("GSST"). Local traffic as defined in Section A.3 in no way includes ISP traffic. The FCC has concluded that enhanced service providers ("ESPs"), of which ISPs are a subset, use the local network to provide interstate services.

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

Q. DOES ISP TRAFFIC TERMINATE AT THE ISP?

A. Absolutely not. The call from an end user to the ISP only transits through the ISP's local point of presence; it does not terminate there. There is no interruption of the continuous transmission of signals between the end user and the host computers. This fact was confirmed by the FCC in the February 26, 1999 Declaratory Ruling (see *Declaratory Ruling*, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68 ("Declaratory Ruling"), released February 26, 1999) Paragraph 12 states:

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

While the United States Court of Appeals for the District of Columbia Circuit vacated this order on March 24, 2000, the D.C. Circuit did not establish any principle of law, but rather -- as the Court itself said over and over -- simply determined that the FCC had failed to provide a sufficient explanation for its conclusions. Furthermore, the Chief of the FCC's Common Carrier Bureau has stated publicly that he believes that the FCC can and will provide the requested clarification and reach the same conclusion that it has previously -- that is, that ISP-bound calls do not terminate locally. *See* TR Daily, Strickling Believes FCC Can Justify Recip. Comp. Ruling In Face Of Remand, March 24, 2000 (stating that the Chief of the FCC's Common Carrier Bureau "still

believes calls to ISPs are interstate in nature and that some fine tuning and further explanation should satisfy the court that the agency's view is correct").

Furthermore, the FCC's recent Order on Remand released December 23, 1999, emphasizes again that ISP-bound traffic does not terminate at the ISP. Paragraph 16 states:

> With respect to xDSL-based advanced services used to connect Internet Service Providers (ISPs) with their dial-in subscribers, the Commission has determined that such traffic does not terminate at the ISP's local server, but instead terminates at Internet websites that are often located in other exchanges, states or even foreign countries. Consistent with this determination, we conclude that typically ISP-bound traffic does not originate and terminate within an exchange and, therefore, does not constitute telephone exchange service within the meaning of the Act. As explained more fully below, such traffic is properly classified as "exchange access."

This Order clearly states that the traffic does NOT terminate at the ISP, and this is not qualified by any type distinction which would limit the meaning of that conclusion. In fact, the Order clearly goes on to say that ISP-bound traffic is not telephone exchange traffic, but exchange access traffic.

Q. WHAT IS THE BASIS FOR YOUR TESTIMONY THAT THE FCC CONSIDERS A CALL TO "TERMINATE" AT THE END POINT OF THE COMMUNICATION?

A. The FCC has long held that jurisdiction of traffic is determined by the end-to-end nature of a call. It is, therefore, irrelevant that the originating end user and the ISP's POP are in the same local calling area, because the ISP's POP is not the terminating point of this ISP traffic. In paragraph 12 of Order 92-18 (February 14, 1992), the FCC ruled:

> Our jurisdiction does not end at the local switch, but continues to the ultimate termination of the call. The key to jurisdiction is the nature of the communication itself, rather than the physical location of the technology.

As the FCC has made clear, the ending point of a call to the Internet is not the ISP's POP, but rather the computer database or information source to which the ISP provides access. Calls that merely transit an ALEC's network without terminating on it, cannot be eligible for reciprocal compensation.

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

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

Order"), released August 22, 1983) and, therefore, saw the need to affirmatively exempt it from access charges. Paragraph 16 of the Declaratory Ruling reads, in part:

> The Commission traditionally has characterized the link from an end user to an ESP as an interstate access service. In the MTS/WATS Market Structure Order, for instance, the Commission concluded the ESPs are "among a variety of users of access service" in that they "obtain local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit its location and, commonly, another location in the exchange area." The fact that ESPs are exempt from access charges and purchase their PSTN links through local tariffs does not transform the nature of traffic routed to ESPs. That the Commission exempted ESPs from access charges indicates its understanding that ESPs in fact use interstate access service; otherwise, the exemption would not be necessary.

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

> We are concerned that the charges currently paid by enhanced service providers do not contribute sufficiently to the costs of the exchange

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

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

These orders all predate execution of the 1997 Agreement. In December 1999, the FCC only confirmed its longstanding view that ISP traffic is considered exchange access traffic. Again, Paragraph 16 of the Order on Remand states, in part:

With respect to xDSL-based advanced services used to connect Internet Service Providers (ISPs) with their dial-in subscribers, the Commission

has determined that such traffic does not terminate at the ISP's local server, but instead terminates at Internet websites that are often located in other exchanges, states or even foreign countries. Consistent with this determination, we conclude that typically ISP-bound traffic does not originate and terminate within an exchange and, therefore, does not constitute telephone exchange service within the meaning of the Act. As explained more fully below, such traffic is properly classified as "exchange access."

Q. DID SPRINT AND BELLSOUTH MUTUALLY AGREE TO PAY RECIPROCAL COMPENSATION FOR EXCHANGE ACCESS TRAFFIC LIKE ISP TRAFFIC?

A. No. The executed agreement does not define ISP traffic as local traffic. The Agreement only obligates the parties to pay reciprocal compensation for "terminating local traffic." Exchange access traffic such as ISP traffic does not fit within the definition of local traffic. Indeed, the Agreement draws a distinction between "exchange access" and "local traffic." Nothing in the Agreement obligates BellSouth to pay reciprocal compensation for exchange access traffic.

Q. IF SPRINT AND BELLSOUTH DID NOT MUTUALLY AGREE TO PAY RECIPROCAL COMPENSATION FOR ISP TRAFFIC, CAN EITHER PARTY BE REQUIRED TO PAY RECIPROCAL COMPENSATION FOR THAT TRAFFIC?

A. No. If both of the parties did not mutually agree to pay reciprocal compensation for ISP traffic, then BellSouth is under no contractual obligation to pay reciprocal compensation for such traffic. I was present and a part of the negotiations leading up to the execution of the Sprint Agreement, and I can unequivocally state that it was not BellSouth's intent, nor was it discussed during negotiations, that ISP traffic would be subject to reciprocal compensation.

Q. IF ISP-BOUND TRAFFIC IS NOT SUBJECT TO RECIPROCAL COMPENSATION, WILL BELLSOUTH AND SPRINT BE TRANSPORTING ISP-BOUND TRAFFIC WITHOUT COMPENSATION?

A. No. Both BellSouth and Sprint are compensated for handling ISP traffic from the revenues received by each from their respective ISP customers for services provided to the ISP. It may be that certain ALECs have contracted to provide services to ISPs at greatly reduced rates in an effort to lure them away from other carriers, anticipating that the enormous revenues generated through reciprocal compensation would more than offset any loss on provisioning the service. Some ALECs are attempting to turn reciprocal compensation, a mechanism for recovering the cost of transporting and terminating local traffic, into a separate, wildly profitable, line of business. When a BellSouth end user dials into the Internet through an ISP served by an ALEC, the ALEC is compensated by the ISP. The ISP is compensated by the end user. BellSouth

is the only party involved in this traffic that is not receiving revenue for these calls, and yet BellSouth is being asked to pay the ALEC for the use of a portion of the ALEC's network for which it is already receiving compensation.

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

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

Q. WHAT DO YOU BELIEVE THE FLORIDA PUBLIC SERVICE COMMISSION SHOULD DO?

A. This Commission should deny Sprint's request for relief. ISP-bound traffic is not now, nor has it ever been, local traffic, and the parties never mutually agreed to pay reciprocal compensation for such traffic.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Direct Exhibit JDH-1

BELLSOUTH TELECOMMUNICATIONS, INC.
FPSC Docket 000636-TP

E.L. Bush's August 12, 1997 Memorandum to All Competitive Exchange Carriers

BELLSOUTH

BellSouth Telecommunications, Inc.
Room 4423
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

404 927-7130
Fax 404 420-8251
Internet Ernest.L.Bush
@bridge.bellsouth.com

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

SN91081223

August 12, 1997

To: All Competitive Local Exchange Carriers

Subject: Enhanced Service Providers (ESPs) Traffic

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

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

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

Please contact your Account Manager or Marc Cathey (205-977-3311) should you wish to discuss this issue further. For a name or address change to the distribution of this letter, contact Ethylyn Pugh at 205-977-1124.

Sincerely,

E. L. Bush

JDH-1

Direct Exhibit JDH-2

BELLSOUTH TELECOMMUNICATIONS, INC.
FPSC Docket 000636-TP

Comments & Reply Comments of
Bellsouth Corporation and BellSouth
Telecommunications, Inc
CC Docket No. 96-263, March 24, 1997 &
April 23, 1997, respectively.

BellSouth

March 24, 1997

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Usage of the Public Switched by Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	
	)	

COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit their comments on the Notice of Inquiry released by the Commission on December 24, 1996, to consider the actions the Commission should take regarding information and Internet providers interstate use of the public switched network.[1]

I. INTRODUCTION

Under the existing access charge regime, enhanced service providers (ESPs) are exempt from paying interstate access charges to the extent that they use local exchange switched facilities to originate and terminate interstate calls. The ESP exemption was established when the original access charge rules were adopted because the Commission had concluded that the immediate application of access charges might unduly burden incipient ESP operations and possibly cause

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[1] *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers,* CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 91-213, CC Docket No. 96-263, FCC 94-488, Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry, released December 24, 1996. (hereinafter "NOI")

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disruptions in providing service to the public.[2] The exemption, however, was not intended to be permanent.[3] The outstanding concern of the Commission has been that ESPs through the local charges that they pay may not contribute sufficiently to the interstate costs of the exchange access facilities they use in offering their services to the public. As a result, the Commission has observed that the ESP exemption may force other users of switched access to bear a disproportionate share of the local exchange costs that access charges are designed to cover.[4]

When the Commission last considered the ESP exemption in 1988, it reached the conclusion that the changing telecommunications environment made it inappropriate to terminate the ESP exemption.[5] The Commission further found that any discrimination that existed by reason of the exemption remained reasonable as long as the enhanced services industry remained in a state of change and uncertainty.[6]

In the recent access charge reform proceeding the Commission tentatively concluded to continue the ESP exemption and not to apply an access charge regime that was designed for circuit switched voice telephony. BellSouth concurred in the Commission's tentative conclusion. In BellSouth's view, the marketplace should be free to operate to provide the choice of product/network solutions that will optimize network usage. Thus, the challenge is to create the environment that will permit innovative solutions to develop.

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2 *See Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631 (1988).

3 *Id.*

4 *Id.*

5 *Id.* at 2633.

6 *Id.*

The NOI provides the opportunity to consider creative approaches and a regulatory framework that will encourage both voice and high-speed data networks. The concern expressed by the Commission that just applying access charges to information services might hinder the development of new data services highlights the complexity of the issues that are presented. Without a doubt, the issues go beyond the sole question of whether access charges should apply. The Commission must be prepared to review and revise a broad range of policies and rules if the Commission wants to facilitate investment and innovation in underlying voice and data networks.

It is also clear that the time is ripe for Commission action. While the information services industry has been in a state of transformation, unlike past periods when the Commission has considered the use of the local network by ESPs, there now exists a significant amount of ESP traffic on the public switched network in the form of Internet usage. The expectation is that such traffic will continue to grow. Indeed, public policy initiatives are being proposed to increase Internet connectivity which in turn will stimulate such traffic on local networks.

The public switched network is the primary means of access for individual Internet users. The usage characteristics of such Internet users vary significantly from typical voice users. As Internet usage grows, the potential for congestion on the public switched network increases. Indeed, as Internet providers move to flat-rate pricing, more Internet traffic can be expected on the public switched network with increasing possibilities of congestion.[7]

BellSouth has endeavored to manage the increased network usage and minimize the congestion. For example, ISDN provides a service that minimizes the potential for congestion at

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[7] America Online's experience when it converted to a flat-rate Internet service serves as a sufficient warning that affirmative steps must be taken now to avoid a critical public switched network failure.

the switch serving the Internet provider, a critical aggregation point in which congestion is most likely to occur first. Such steps, however, are short-term. They afford the Commission time, however, to take the necessary steps to develop and implement a long-term solution.

As discussed further below, BellSouth believes it has an approach that would enable it to serve the information service providers with a high-speed switched data service. The data service will offer information service providers the same ubiquity that the local public switched network provides for the purposes of having their users access their services, but the traffic will be transported over a data network rather than the voice network.

BellSouth identifies areas where the Commission will have to modify its rules and policies in order for this data service to be brought to the marketplace. Accordingly, BellSouth urges the Commission to begin the rulemaking immediately and consider BellSouth's proposal.

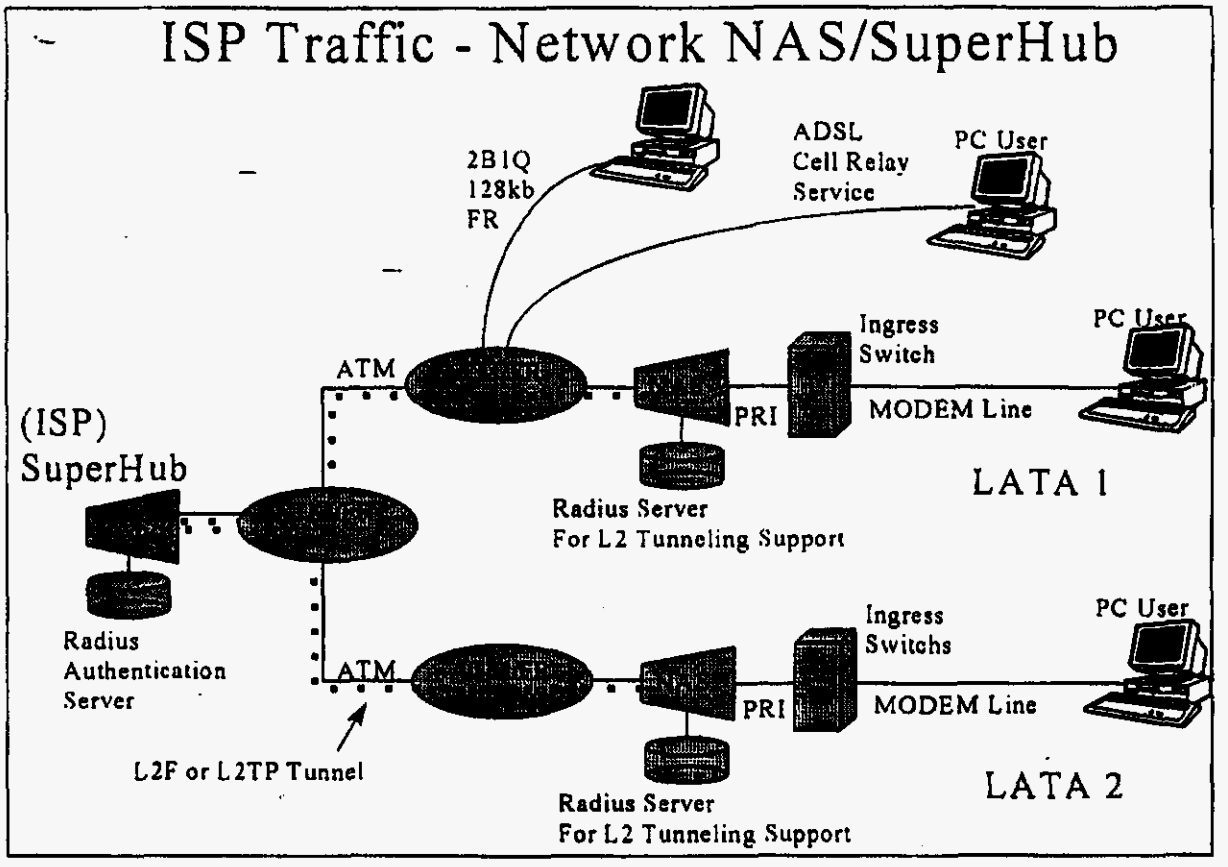
II. THE COMMISSION'S RULES SHOULD BE AMENDED TO FACILITATE THE DEVELOPMENT OF A HIGH-SPEED DATA NETWORK SOLUTION

Based on currently available technologies, a network solution could be developed by BellSouth that would afford Internet providers an alternative to the public switched network for the purposes of gaining access to their individual users. The data service not only could be used for Internet access but also would support the emerging demand for intranet access arrangements. The high-speed data service would be based on a network access server. This network service could support multiple means of access to the data network such as modem dial-up, ISDN, frame relay, asynchronous transfer mode (ATM) and asymmetrical digital subscriber line (ADSL). Thus, an Internet provider could use a single network service to connect to its customers regardless of the means by which its customers access the data network. Further, the underlying

data network would be a common network and, therefore, have the same cost sharing benefits of the public switched network.

Figure 1 depicts the network architecture for the proposed data service. Dial up connections would be routed to the network access server. The network access server

Figure 1



would be connected to a radius server. The radius server would act as a routing database. In other words, based on the number dialed by the Internet subscriber, the radius server would identify the Internet provider to which the network access server should establish a data connection. In addition, using the L2 Tunneling protocol, the Internet provider would be able to authenticate that the end user is authorized to connect to the Internet provider's network. The

network access server would then make the connection to the underlying ATM/Frame Relay network to which the Internet provider would also be connected. As Figure 1 also illustrates, end users could also be directly connected to the underlying data network.

There is a regulatory hurdle to be overcome before this network solution can be implemented. This architecture would involve protocol conversion. For example, with Frame Relay and Connectionless Data Service (CDS) as well as with Analog Modem and ISDN dial-up, the ingress protocol is different from the egress protocol. In the case of 2B1Q Frame Relay Service, the ingress protocol is frame relay and the egress protocol is ATM. With CDS, the ingress protocol is SMDS DXI and the egress protocol is ATM. With either analog or ISDN dial-up the ingress protocol is Point-to-Point Protocol (PPP) and the egress protocol is IP over ATM. In each case, protocol conversion would be done in the public network. Such protocol conversions have typically been viewed by the Commission as service interworking and, hence, enhanced services.

While protocol conversion can be done on a deregulated basis, the complexity and additional cost of compliance with the Commission's rules render the service arrangement unacceptable. Indeed, the cumbersome way in which the Commission's rules would require BellSouth to provide protocol conversion effectively insures that the arrangement would be unacceptable in the marketplace. These rules add artificial operating costs that raise the price of the service beyond a reasonable market price.

It is for this reason that the Commission should consider amending its rules regarding protocol conversion. In continuing the access charge exemption for ESPs, the Commission believed it was inappropriate to apply a set of rules that were designed for a circuit switched voice

network and that had not considered data services. In the same vein, the Commission should be equally concerned with rigid application of the protocol conversion rules that were established long before and never contemplated the current circumstances.

Moreover, the Commission should consider whether there is an overriding public policy that would warrant either a different approach in these circumstances or possibly forbearance. The Telecommunications Act encourages the Commission to use pro-competitive mechanisms such as forbearance to remove regulatory obstacles that inhibit the widespread deployment and availability of advanced telecommunications. In BellSouth's opinion, its proposed data network service would contribute to the achievement of the goals of the Telecommunications Act by providing cost-effective, high-speed data access to the Internet. At a minimum, however, the Commission should, as part of its rulemaking proceeding, consider the impact BellSouth's proposed network solution would have on access to advanced telecommunications.

If a data network solution can be implemented that is acceptable in the marketplace, such a solution would also resolve the ongoing question of whether access charges should be continued. The network solution would in fact resolve the Commission's outstanding concern that the access charge regime never explicitly considered data networks. Indeed, once a data network solution becomes available, ESP traffic that remains on public switched network would be there by the choice of the ESP. In these circumstances, it would be appropriate to terminate the access charge exemption.

III. CONCLUSION

The growth of Internet and other information services has raised serious concerns regarding congestion on the public switched network. BellSouth has proposed a network-based

solution that will alleviate the congestion on the public switched network. In order to bring this solution to the marketplace, however, the Commission must adopt a market approach to regulation and amend or forebear from applying its protocol conversion rules. BellSouth urges the Commission to commence a rulemaking proceeding that will lead to the removal of the regulatory obstacles that prevent innovative network options from being implemented.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

M. Robert Sutherland
Richard M. Sbaratta

Their Attorneys

Suite 1700
1155 Peachtree Street, N. E.
Atlanta, Georgia 30309-3610
(404) 249-3386

Date: March 24, 1997

BellSouth

April 23, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	

REPLY COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit their Reply Comments to the comments filed in response to the Commission's Notice of Inquiry ("NOI") concerning the actions the Commission should take regarding information services and Internet providers interstate use of the public switched network.[1]

The core issue confronted in the Commission's NOI is the identification of the steps the Commission should take that would encourage and facilitate the development of high speed voice and data telecommunications networks. A fundamental concern expressed by the Commission and echoed by many parties in their comments is that the actions ultimately taken must be constructed so as not to chill the development of Internet and other information services that use the telecommunications network.

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[1] *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers,* CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 91-213, CC Docket No. 96-263, FCC 94-488, Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry, released December 24, 1996 (hereinafter "NOI").

BellSouth shares the Commission's objective and vision of a state of the art, high speed voice and data telecommunications network that can support and foster the growth of new and innovative information applications. To achieve the objective, however, will require a commitment to a new regulatory framework that will create an environment which will encourage investment and innovation.

As BellSouth pointed out in its Comments, the question is not merely whether or not access charges, as presently constructed, should apply. A far greater range of policies are implicated. In its Comments, BellSouth has presented an approach that, if implemented, would alleviate the congestion on the public switched voice network through the creation of a high speed switched data transport service based on a network access server. This network-based solution would provide Internet and other information service providers a means of access to their subscribers that would have the same ubiquity they currently obtain from the public switched voice network.

There are, nevertheless, regulatory hurdles to be overcome before such a network-based solution can be implemented. The network architecture would involve protocol conversion. The Commission's current rules regarding the manner in which local exchange carriers such as BellSouth may provide protocol conversion effectively insure that the arrangement would be unacceptable in the marketplace because the complexity and cost of the arrangement would be increased. Thus, the Commission should address eliminating the regulatory barriers that inhibit the successful introduction of arrangements such as that suggested by BellSouth.

Regardless of whether one supports BellSouth's proposal, it is readily apparent that the time has come for the Commission to act and establish an interstate solution to an interstate

problem. Under the current rules, enhanced service providers ("ESPs") are exempt from paying interstate access charges for the use that they make of exchange access facilities to originate and terminate interstate traffic. While the exemption allows ESPs to use local exchange services to originate and terminate interstate traffic, the exemption is a "rate" exemption; the exemption does not, nor could it change the underlying jurisdiction of the traffic.[2]

Nevertheless, it now appears that the interstate access charge exemption is being misconstrued. In their joint comments, Bell Atlantic and NYNEX state that some competitive local exchange carriers claim that traffic terminating at an ESP location is subject to reciprocal compensation. Bell Atlantic and NYNEX correctly point out that reciprocal compensation only applies to the transport and termination of local traffic, not interstate interexchange traffic such as the originating and terminating traffic that is subject to the Commission's interstate access charge exemption. This confusion can and should be corrected by the Commission. A rulemaking proceeding that would establish an interstate access solution would assure similar problems do not arise in the future.

CONCLUSION

Thus, it is clear that the status quo is no longer acceptable. The status quo does not form a solid foundation for the development of innovative advanced information services. The status quo

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[2] The jurisdiction of telecommunications traffic is determined by the nature of the traffic on an end-to-end basis, not the physical location of the facilities used to carry the traffic. *See e.g., National Ass'n of Regulatory Utility Commissioners v. FCC*, 746 F. 2d 1492 (D.C. Cir. 1984). There can be little dispute that the majority of Internet traffic, for example, is jurisdictionally interstate.

will not achieve a quality, high speed data and voice network. Public policy demands clear and decisive leadership by the Commission and the first step is for the Commission to begin a rulemaking proceeding.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

M. Robert Sutherland
Richard M. Sbaratta

Their Attorneys

Suite 1700
1155 Peachtree Street, N. E.
Atlanta, Georgia 30309-3610
(404) 249-3386

Date: April 23, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of April, 1997 served the following parties to this action with a copy of the foregoing **REPLY COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

Juanita H. Lee

Juanita H. Lee