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United States District Court

DISTRICT OF _____

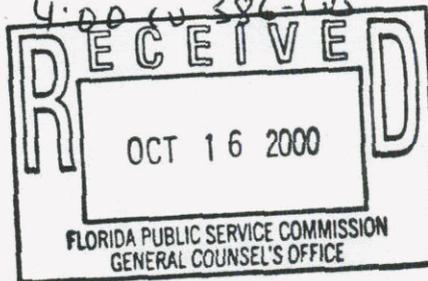
INTERMEDIA COMMUNICATIONS INC.,

SUMMONS IN A CIVIL CASE

v.

The Florida Public Service Commission;
J. Terry Deason, Chairman; E. Leon Jacobs,
Lila A. Jaber, and Braulio L. Baez, in their
capacity as Commissioners for the Florida
Public Service Commission, and BELLSOUTH
TELECOMMUNICATIONS, INC.,

CASE NUMBER: 4:00 CV 386-LWS



TO: (Name and address of defendant)

Catherine Bedell, General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

- APP _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- LEG _____
- OPC _____
- PAI _____
- RGO _____
- SEC 1
- SER _____
- OTH _____

Carolyn S. Raeppe
Hopping Green Sams & Smith, P.A.
Post Office Box 6526
Tallahassee, FL 32314

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OCT 20 AM 10:38

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

~~ROBERT A. MOSSINGGATE~~

CLERK

DATE

10-13-00

(BY) DEPUTY CLERK

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

INTERMEDIA COMMUNICATIONS INC.,)

Plaintiff,)

v.)

The Florida Public Service Commission;)
J. Terry Deason, Chairman, E. Leon Jacobs,)
Lila A. Jaber, and Braulio L. Baez, in their)
capacity as Commissioners for the Florida)
Public Service Commission,)

and)

BELLSOUTH TELECOMMUNICATIONS,)
INC.,)

Defendants.)

Civil Action No. _____

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff Intermedia Communications, Inc. ("Intermedia") brings this Complaint for declaratory and injunctive relief under section 252(e)(6) of the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. § 252(e)(6), to obtain review of an Order issued on September 14, 2000 by the Florida Public Service Commission ("FLPSC" or "the Commission"). The FLPSC's decision resulted from serious procedural and substantive defects and must be reversed.

2. First, the FLPSC's decision is procedurally flawed. Although two Commissioners heard evidence presented by Intermedia at a Hearing, one retired soon thereafter, and the FLPSC's decision was issued by a single Commissioner (Chairman J. Terry Deason). This decision violated Florida Statutes § 350.01(5), which requires (1) that FLPSC decisions must be rendered by "two or more commissioners," and (2) that, when a commissioner assigned to a proceeding becomes unavailable, "the chair *shall assign* a substitute commissioner" (emphasis added). The Court should vacate Chairman Deason's Order as *ultra vires* and null and void, and remand the case for new proceedings before a panel of at least two Commissioners of the FLPSC.

3. The FLPSC's decision is also fatally flawed on the merits. Chairman Deason's Order held that rates BellSouth Telecommunications, Inc. ("BellSouth") would pay Intermedia for reciprocal compensation set forth in a negotiated, lengthy Interconnection Agreement entered into between Intermedia and BellSouth in 1996 were greatly reduced in a two-page amendment signed by lower-level employees several years later. Chairman Deason's Order should be reversed because he misconstrued the plain language of the amendment - which states in its first paragraph that lower rates would apply only "upon request" by Intermedia. Chairman Deason also completely ignored clear evidence provided by Intermedia of the parties' intent when entering into the amendment - such as the fact that BellSouth continued to pay Intermedia at the rates contained in the Interconnection Agreement for a substantial period of time after execution of the amendment that supposedly lowered the rates automatically. Finally, Commissioner Deason's Order violated the fundamental principle that contracts must be interpreted, whenever possible, to avoid bizarre and unjust results - because his Order

decreases the compensation that BellSouth is required to pay Intermedia under the Interconnection Agreement by 60% in Florida (and even greater percentages in other states) – even though Intermedia received absolutely *no* corresponding benefit.

PARTIES

4. Intermedia is a Delaware corporation with its principal place of business at 3265 Queen Palm Drive, Tampa, Florida. Intermedia is authorized to provide telecommunications services in Florida.

5. Defendant FLPSC is an agency of the State of Florida. The FLPSC is a "State commission" within the meaning of 47 U.S.C. §§ 153(41), 251 and 252.

6. Defendant J. Terry Deason is Chairman and a Commissioner of the FLPSC. Chairman Deason is sued in his official capacity for declaratory and injunctive relief only.

7. Defendant E. Leon Jacobs is a Commissioner of the FLPSC. Commissioner Jacobs is sued in his official capacity for declaratory and injunctive relief only.

8. Defendant Lila A. Jaber is a Commissioner of the FLPSC. Commissioner Jaber is sued in her official capacity for declaratory and injunctive relief only.

9. Defendant Braulio L. Baez is a Commissioner of the FLPSC. Commissioner Baez is sued in his official capacity for declaratory and injunctive relief only.

10. BellSouth is a Georgia corporation with its principal place of business at 675 West Peachtree Street, Atlanta, Georgia. BellSouth is authorized to and does provide telecommunications services in the State of Florida and does business in this District.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action under 47 U.S.C. § 252(e)(6), which grants federal district courts jurisdiction to review determinations by state public service commissions involving interconnection agreements.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the defendants reside in this district and a substantial part of the events giving rise to Intermedia's claims occurred in this district.

FACTUAL BACKGROUND

I. THE TELECOMMUNICATIONS ACT OF 1996

13. In 1996, Congress amended the Communications Act of 1934 by passing the Telecommunications Act of 1996, Pub. L. No. 104, 110 Stat. 56. The 1996 Act removed the historic monopoly enjoyed by the former Regional Bell Operating Companies and encouraged new entrants to enter the local market for telecommunications services. Congress's stated purpose in passing the 1996 Act was "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the *rapid* deployment of new telecommunications technologies." 110 Stat. 56 (emphasis added).

14. The Act created a number of mechanisms by which incumbent local exchange carriers ("ILECs"), such as BellSouth, would be required to allow competitive local exchange carriers ("CLECs"), such as Intermedia, to enter the local telephone marketplace.

15. Of particular importance to this case, Congress directed ILECs to allow any requesting telecommunications carrier to "interconnect" with the ILECs' local network, facilities and equipment. Congress also directed ILECs to negotiate in good faith with a requesting CLEC the terms and conditions of an agreement to implement the interconnection duty. 47 U.S.C. §§ 251(c)(2) & (c)(2). These "Interconnection Agreements" provide the primary means by which ILECs like BellSouth allow new entrants like Intermedia access to BellSouth's network so that Intermedia can begin competition and provide local telecommunications services to its own customers.

16. Congress also required ILECs and CLECs to compensate each other for calls carried to and from each other's local networks. Under Section 251(b)(5), local carriers must establish "reciprocal compensation arrangements" to pay each other for the transport and termination of local calls that are handed off from one carrier's network to be terminated to a customer who is served by a different carrier within the same local service area or "LATA." *See* 47 U.S.C. § 251(b)(5). The revenue derived from these payments are essential to new entrants like Intermedia who face substantial start-up costs in seeking to compete with entrenched monopolists like BellSouth.

II. THE INTERCONNECTION AGREEMENT

17. Intermedia began providing service in Florida in the mid-1980s, primarily over networks that it built itself. In 1996, following passage of the 1996 Act, Intermedia attempted to use the new rights that the Act gave to competitive carriers to expand its presence throughout the nine states where BellSouth enjoyed a monopoly: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

18. Intermedia thereafter engaged in extensive negotiations with BellSouth over a period of several months to establish the terms and conditions for the interconnection of Intermedia's and BellSouth's networks.

19. On June 21, 1996, Intermedia and BellSouth entered into a formal Interconnection Agreement covering Florida and the other eight states where BellSouth provides local communications services. *See* Exhibit 1 hereto.

20. Section IV(A) of the Interconnection Agreement provides for interconnection of networks, stating that "[t]he delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement."

21. Section IV(B) provides that "[e]ach party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B.1." Attachment B.1 provides charts listing the applicable reciprocal compensation rates for each of the nine states (including Florida) covered by the Agreement.

22. The Interconnection Agreement was submitted to and approved by the FLPSC, which has jurisdiction to approve such agreements pursuant to Section 252(e)(1) of the 1996 Act. *See* 47 U.S.C. § 252(e)(1). State commissions in the other eight states covered by the Agreement also approved the Agreement.

III. BELLSOUTH REFUSES TO PAY COMPENSATION FOR ISP CALLS

23. Not long after the Interconnection Agreement was approved, BellSouth unilaterally decided it would make no payments to Intermedia for local calls made by Intermedia customers to Internet Service Providers ("ISPs"). In August 1997, BellSouth

announced that it would not pay *any* reciprocal compensation for ISP calls because BellSouth believed these calls were not "local traffic" under the Interconnection Agreement.

24. Intermedia was forced to file numerous complaints at state PSCs for past-due reciprocal compensation, for ISP-bound traffic as a result of BellSouth's conduct. Each PSC, including the FLPSC, rejected BellSouth's position and ordered BellSouth to make reciprocal compensation payments to Intermedia for ISP-bound calls. *See, e.g., In re Complaint of Intermedia Communications, Inc.*, Docket No. 980495 (Florida Public Service Commission Sept. 15, 1998), attached hereto as Exhibit 2.

25. BellSouth persisted further, appealing each PSC decision to federal courts in those states. These courts denied BellSouth's requests to stay its reciprocal payment obligations, ordering BellSouth to make the required payments (either to Intermedia or into court registries pending review).

IV. BELLSOUTH DEVISES THE MTA AMENDMENT

26. BellSouth's determination not to pay reciprocal compensation was not limited to its blatant refusal to pay for ISP-bound calls. BellSouth also fraudulently induced Intermedia to enter into an amendment to the Interconnection Agreement to address a dispute about service in the Atlanta, Georgia metropolitan area that BellSouth later claimed reduced its reciprocal compensation obligations to Intermedia by tens of millions of dollars in all nine markets where the parties compete.

27. Tandems are central offices where an ILEC such as BellSouth receives calls from various locations, and reroutes the calls for end-users located in the same geographic area as the tandem. BellSouth maintains several tandems in the Atlanta area, two of which are

known as the "Buckhead tandem" and the "Norcross tandem." BellSouth trunks connect the two tandems, allowing BellSouth end users served by one tandem to call BellSouth end users served by the other tandem.

28. In or about May 1997, Intermedia purchased trunk lines from BellSouth that connect its network to the Buckhead tandem. By doing this, Intermedia established a "point of interconnection" at the Buckhead tandem. This point of interconnection allowed Intermedia's customers to place calls to end users served by the Buckhead tandem. However, in mid-1997, Intermedia had no point of interconnection at the Norcross tandem. Thus, Intermedia customers who wished to call end users served by the Norcross tandem had their calls first routed to the point of interconnection at the Buckhead tandem, after which they were routed over BellSouth trunks to the Norcross tandem serving the desired end user.

29. BellSouth carried calls from Intermedia's customers through the Buckhead tandem, and on to end users served by the Norcross tandem, in this fashion until early 1998. At the time, BellSouth abruptly cut service to Intermedia customers seeking to route calls into the Buckhead tandem to reach end users served by the Norcross tandem, stating that it was no longer willing to allow its trunks to be used to connect the Buckhead and Norcross tandems for Intermedia's traffic. BellSouth cut off Intermedia's traffic with no prior notice to Intermedia. As a result, no Intermedia customer could place a local call to an end user served by the Norcross tandem - an act that prevented Intermedia's customers from making local telephone calls to *tens of thousands* of users in about one-quarter of the Atlanta metropolitan region.

30. Intermedia contacted BellSouth about this problem. BellSouth told Intermedia that it could restore service by constructing a point of interconnection at the Norcross tandem

and sending calls destined for Norcross end users directly to that tandem, thereby bypassing the Buckhead tandem entirely. While Intermedia had no objection to procuring a trunk to the Norcross Tandem, this suggestion was unacceptable to Intermedia and not a practical solution to the crisis, since construction of such a point of interconnection would take substantial time, and Intermedia needed to restore service to its customers immediately.

31. BellSouth also said that it would restore service between the Buckhead and Norcross tandems if Intermedia switched from its then-current interconnection arrangement at the Buckhead tandem, known as "Single Tandem Architecture," to a different configuration known as "Multiple Tandem Architecture," or "MTA." BellSouth drafted and provided Intermedia with an amendment to the Interconnection Agreement and stated that the amendment would accomplish the switch to MTA and restore service to Norcross end users. A copy of the amendment, known as the "MTA Amendment," is attached as Exhibit 3.

32. The MTA Amendment drafted by BellSouth proposed new reciprocal compensation rates for each of BellSouth's nine states. These rates were set at levels 60-80% below the rates that were currently in effect under the Interconnection Agreement. However, BellSouth stated that it would provide MTA to Intermedia under the MTA Amendment only if Intermedia specifically ordered MTA in a particular state, and only if Intermedia agreed to receive lower reciprocal compensation rates for MTA in areas where Intermedia ordered MTA. BellSouth's statement was consistent with paragraph 1 of the MTA Amendment, which states that "BellSouth will *upon request*, provide, and [Intermedia] will accept and pay for, Multiple Tandem Access" (emphasis added). BellSouth's statement was also consistent with

the attachment to the MTA Amendment, which states that "Multiple Tandem Access shall be *available* according to the following rates for local usage . . ." (emphasis added).

33. Based on BellSouth's representations that the MTA Amendment would restore service to the Norcross tandem, its representation that Intermedia would receive lower rates only if it ordered MTA in a specific area, and the plain language of the Interconnection Agreement, Intermedia executed the MTA Amendment on June 3, 1998.

34. Intermedia is informed and believes, and on that basis alleges, that BellSouth did not intend to use the MTA Amendment as a means of restoring service between the Buckhead and Norcross tandems. To the contrary, Intermedia is informed and believes, and on that basis alleges, that BellSouth was in fact unable to provide MTA at the Buckhead tandem at the time the parties executed the MTA Amendment because BellSouth's switch in the Buckhead tandem was already exhausted, with no additional capacity.

35. Moreover, Intermedia is informed and believes, and on that basis alleges, that BellSouth did not intend that Intermedia be allowed to request MTA in specific locations and receive lower reciprocal compensation in accordance with those specific requests. Rather, Intermedia is informed and believes, and on that basis alleges, that BellSouth contrived the MTA Amendment as a pretext to reduce its huge reciprocal compensation debt owed to Intermedia. Indeed, BellSouth took the position that the lower reciprocal compensation rates attached to the MTA became effective *immediately* in *all* nine states where Intermedia and BellSouth interconnect *regardless* of whether Intermedia made a request for MTA in a particular state or not. Since then, BellSouth has since unilaterally reduced its required payments to Intermedia by 60-80% in all nine states where the parties compete.

36. Further evidence of BellSouth's fraud occurred several months after the MTA Amendment was executed. Employees of BellSouth contacted employees of Intermedia to request that Intermedia submit an Access Service Request ("ASR") to provide MTA at the Buckhead tandem, stating that the ASR was needed as a "recordkeeping" matter. By this time, however, Intermedia had *already* constructed a point of interconnection at the Norcross tandem, and thus MTA was unnecessary at the Buckhead tandem. Intermedia is informed and believes, and on that basis alleges, that BellSouth's statement that an ASR was needed as a "recordkeeping" matter was a deliberate attempt by BellSouth to obtain a request by Intermedia to order MTA to bolster BellSouth's fraudulent scheme to lower its reciprocal compensation rates. (Intermedia employees, unaware of BellSouth's scheme, twice submitted an ASR as requested; BellSouth employees returned the ASR both times and never provided a firm order confirmation.)

V. INTERMEDIA'S COMPLAINT AND CHAIRMAN DEASON'S ORDER

37. On October 8, 1999, Intermedia filed a complaint with the FLPSC alleging that BellSouth was breaching the Interconnection Agreement by failing to pay Intermedia reciprocal compensation at rates set forth in the Agreement. BellSouth contended that all of the rates in the MTA Amendment governed, rather than the rates in the Interconnection Agreement, regardless of whether Intermedia ordered MTA. Intermedia argued that the rates in the MTA Amendment applied only if Intermedia ordered and received MTA in a particular state..

38. The FLPSC held a hearing on June 13, 2000. Two Commissioners presided over the hearing – Chairman Deason and then-Commissioner Susan F. Clark.

39. Testimony at the hearing confirmed that BellSouth contrived the MTA problem as a way to reduce reciprocal compensation rates. BellSouth's Senior Director of Interconnection Services, W. Keith Milner, testified that BellSouth was not able to provide MTA at the Buckhead tandem when the parties executed the MTA Amendment because BellSouth's switch in the Buckhead tandem was already at exhaust, with no additional capacity. See Exhibit 4, Cross-Examination of W. Keith Milner, at page 356, lines 5-17.

40. Before a decision was rendered, Commissioner Clark left the Commission. Chairman Deason did not assign any substitute Commissioner to render a ruling on Intermedia's Complaint, but rather proceeded to render a decision as the sole Commissioner assigned to the proceeding.

41. Chairman Deason issued an Order on September 14, 2000. See Exhibit 5 hereto. Chairman Deason found that the MTA Amendment was "somewhat ambiguous" and proceeded to consider extrinsic evidence of the parties' intent. Order at 7. Chairman Deason then adopted BellSouth's position that the rates in the MTA Amendment applied to exchange of local traffic regardless of whether MTA was ordered. Specifically, he found that (1) Intermedia *could have* knowingly entered into the MTA Amendment, including the required elemental rates for all local traffic, even though this would constitute a huge reduction in reciprocal compensation revenue with no corresponding benefit to Intermedia; (2) the testimony of BellSouth witness Jerry Hendrix should be given more weight due to the fact that the Intermedia witnesses were not present at the signing of the MTA Agreement; and (3) the language of the MTA Amendment, although ambiguous, was more consistent with BellSouth's interpretation.

CLAIMS FOR RELIEF

COUNT I

(Declaration That Chairman Deacon's Order Violated Fla. Stat. § 350.01(5))

42. Intermedia incorporates by reference Paragraphs 1-41 as if fully set forth herein. Section 350.01(5) of the Florida Statutes provides that proceedings pending before the Commission must be decided "by two or more commissioners," and states that "[i]f a commissioner becomes unavailable after assignment to a particular proceeding, the chair *shall assign* a substitute commissioner" (emphasis added).

43. After Commissioner Clark resigned, Chairman Deason did not assign any additional Commissioners to consider Intermedia's Complaint but rather issued the Order alone.

44. In acting as a sole Commissioner, and in failing to assign a substitute Commissioner to preside over Intermedia's case, Chairman Deason violated Fla. Stat. § 350.01(5). His Order is therefore *ultra vires* and null and void.

45. For these reasons, an actual and justiciable controversy exists, within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201, authorizing this Court to declare the rights and legal relations of the parties.

COUNT II

(Declaration That Chairman Deason's Order Was Legally Erroneous)

46. Intermedia incorporates by reference Paragraphs 1-45 as if fully set forth herein.

47. Chairman Deason's Order is legally defective and should be reversed for at least the following reasons, among others:

(a) Chairman Deason ignored the plain language of the MTA Amendment. Paragraph 1 of the Amendment states that "BellSouth will, *upon request*, provide, and [Intermedia] will accept and pay for, Multiple Tandem Access" (emphasis added). Attachment A to the MTA Amendment, which sets forth the rates to be applied, states that "MTA *shall be available* according to the following rates" (emphasis added). These provisions make clear that the rates in Appendix A would be applied if – and only if – MTA was ordered, provided, and used by Intermedia. Chairman Deason's conclusion that the MTA Amendment was ambiguous is therefore legally erroneous.

(b) Although he believed the MTA Amendment ambiguous, Commissioner Deason was thereafter required to resolve any ambiguity against BellSouth, which drafted the MTA Amendment. Chairman Deason's interpretation of the MTA Amendment failed to apply this basic principle of contract law anywhere in his Order.

(c) Chairman Deason ignored extensive testimonial and documentary evidence presented by Intermedia showing that the rates contained in the MTA Amendment applied if, and only if, Intermedia ordered MTA from BellSouth. Among other things, Chairman Deason ignored (1) evidence that Intermedia presented showing that BellSouth developed the MTA Amendment to address a single problem at one tandem in Norcross, Georgia; (2) a March 25, 1999 letter

from Intermedia stating a contemporaneous, pre-litigation position that rates in the Interconnection Agreement continued to apply; (3) the fact that Intermedia was litigating reciprocal compensation issues with BellSouth over ISP traffic, and would not have modified the Interconnection Agreement without also resolving that litigation; (4) evidence showing that BellSouth continued to bill Intermedia for reciprocal compensation at the Interconnection Agreement rates even after the MTA Amendment was executed; (5) summaries of the MTA Amendment filed by BellSouth with state PSCs that made no mention of any alteration or modification of the rates in the Interconnection Agreement; and (6) evidence showing that, when BellSouth was required by courts to make reciprocal compensation payments into court registries while it appealed adverse PSC rulings, BellSouth did so at the rates contained in the Interconnection Agreement, not at the rates in the MTA Amendment.

(d) Chairman Deason's Order imposes a bizarre and absurd result. Under his interpretation of the MTA Amendment, Intermedia agreed to accept an immediate 60% reduction in reciprocal compensation payments in the state of Florida – even though Intermedia never requested MTA in Florida, and thus received no benefit in return for reducing its rates.

48. For these reasons, an actual and justiciable controversy exists, within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201, authorizing this Court to declare the rights and legal relations of the parties.

PRAYER FOR RELIEF

WHEREFORE, as relief for the harms alleged herein, Intermedia requests that this Court:

A. as to Count I, declare under the Declaratory Judgment Act that Chairman Deason lacked power under Fla. Stat. 350.01(5) to decide Intermedia's Complaint as a single Commissioner, vacate the Order, and remand to the FLPSC for a proper determination of Intermedia's Complaint by at least two Commissioners;

B. (i) as to Count II, declare under the Declaratory Judgment Act that Chairman Deason's interpretation of the Interconnection Agreement and the MTA Amendment was clearly erroneous and contrary to the evidence presented;

(ii) is to Count II, declare under the Declaratory Judgment Act that composite rates in the Interconnection Agreement govern payment of reciprocal compensation between Intermedia and BellSouth, and that the elemental rate contained in the MTA Amendment apply only to situations where Intermedia orders and receives MTA from BellSouth;

C. as to Counts I and II, permanently enjoin Chairman Deason and the Commission from taking any action to require Intermedia to perform under the Master Agreement and MTA Amendment as interpreted by the Chairman Deason; and

D. grant such other relief as may be sought by Intermedia in further pleadings and as may be appropriate in this case.

Respectfully submitted,



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Attorneys for Intermedia Communications, Inc.

Dated: October 13, 2000

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EXHIBIT 1

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JUN 25 1996

AGREEMENT

Executive Secretary
Ga. Public Service Commission

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and Intermedia Communications Inc., ("ICI"), a Delaware corporation and shall be deemed effective as of July 1, 1996. This agreement may refer to either BellSouth or ICI or both as a "party" or "parties."

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, ICI is an alternative local exchange telecommunications company ("ALEC" or "OLEC") authorized to provide or is intending to be authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the parties wish to interconnect their facilities, purchase unbundled elements, and exchange traffic for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996 and to replace any and all other prior agreements, both written and oral, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida;

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and ICI agree as follows:

I. Definitions

A. Affiliate is defined as a person that (directly or indirectly) owns or controls is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

B. Commission is defined as the appropriate regulatory agency in each of BellSouth's nine state region, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

C. Intermediary function is defined as the delivery of local traffic from a local exchange carrier other than BellSouth; an ALEC other than ICI; another telecommunications company such as a wireless telecommunications provider through the network of BellSouth or ICI to an end user of BellSouth or ICI.

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

E. Local Interconnection is defined as 1) the delivery of local traffic to be terminated on each party's local network so that end users of either party have the ability to reach end users of the other party without the use of any access code or substantial delay in the processing of the call; 2) the LEC unbundled network features, functions, and capabilities set forth in this Agreement; and 3) Service Provider Number Portability sometimes referred to as temporary telephone number portability to be implemented pursuant to the terms of this Agreement.

F. Percent of Interstate Usage (PIU) is defined as a factor to be applied to terminating access services minutes of use to obtain those minutes that should be rated as interstate access services minutes of use. The numerator includes all interstate "nonintermediary" minutes of use, including interstate minutes of use that are forwarded due to service provider number portability less any interstate minutes of use for Terminating Party Pays services, such as 800 Services. The denominator includes all "nonintermediary", local, interstate, intrastate, toll and access minutes of use adjusted for service provider number portability less all minutes attributable to terminating party pays services.

G. Percent Local Usage (PLU) is defined as a factor to be applied to intrastate terminating minutes of use. The numerator shall include all "nonintermediary" local minutes of use adjusted for those minutes of use that only apply local due to Service Provider Number Portability. The denominator is the total intrastate minutes of use including local, intrastate toll, and access, adjusted for Service Provider Number Portability less intrastate terminating party pays minutes of use.

H. Telecommunications Act of 1996 ("Act") means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

I. Multiple Exchange Carrier Access Billing ("MECAB") means the document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions ("ATIS") and by Bellcore as Special Report SR-BDS-000983. Containing the recommended guidelines for the billing of Exchange

Service access provided by two or more LECs and/or ALECs or by one LEC in two or more states within a single LATA.

II. Purpose

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution including, without limitation, the Act at Sections 251, 252 and 271 and to replace any and all other prior agreements, both written and oral, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida concerning the terms and conditions of interconnection. The access and interconnection obligations contained herein enable ICI to provide competing telephone exchange service and private line service within the nine state region of BellSouth.

III. Term of the Agreement

- A. The term of this Agreement shall be two years, beginning July 1, 1996.
- B. The parties agree that by no later than July 1, 1997, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginning July 1, 1998.
- C. If, within 135 days of commencing the negotiation referred to in Section II (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the commissions to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the commissions to issue its order regarding the appropriate local interconnection arrangements no later than March 11 1997. The parties further agree that in the event the Commission does not issue its order prior to July 1, 1998 or if the parties continue beyond July 1, 1998 to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the parties, will be effective retroactive to July 1, 1998. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

IV. Local Interconnection

- A. The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Bas

Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

B. Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to be billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made. Late payment fees, not to exceed 1% per month after the due date may be assessed, if interconnection charges are not paid, within thirty (30) days of the due date of the quarterly bill.

C. The first six month period after the execution of this Agreement is a testing period in which the parties agree to exchange data and render billing. However, no compensation during this period will be exchanged. If, during the second six month period, the monthly net amount to be billed prior to the cap being applied pursuant to subsection (D) of this section is less than \$40,000.00 on a state by state basis, the parties agree that no payment is due. This cap shall be reduced for each of the subsequent six month periods as follows: 2nd period--\$40,000.00; 3rd period--\$30,000.00; and 4th period--\$20,000.00. The cap shall be \$0.00 for any period after the expiration of this Agreement but prior to the execution of a new agreement.

D. The parties agree that neither party shall be required to compensate the other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month on a statewide basis. This cap shall apply to the total billed local interconnection minutes of use measured by the local switching element calculated for each party and any affiliate of the party providing local exchange telecommunications services under the party's certificate of necessity issued by the Commission. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available or at the expiration of the first year after the execution of this Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. The calculations, including examples of the calculation of the cap between the parties will be pursuant to the procedures set out in Attachment A, incorporated herein by this reference. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

E. The parties agree that there are three appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7)

services tariff or as contained in Attachment B-1 for local interconnection, incorporated herein by this reference.

F. The parties agree to accept and provide any of the preceding methods of interconnection. Reciprocal connectivity shall be established at each and every BellSouth access tandem within the local calling area ICI desires to serve for interconnection to those end offices that subtend the access tandem or may elect to interconnect directly at the end offices for interconnection to end users served by that end office. BellSouth will connect at each end office or tandem inside that local calling area. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to BellCore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. The parties agree that their facilities shall provide the necessary on-hook, off-hook answer and disconnect supervision and shall hand off calling party number ID when technically feasible. The parties further agree that in the event a party interconnects via the purchase of facilities and/or services from the other party, the appropriate intrastate access tariff, as amended from time to time will apply.

G. Nothing herein shall prevent ICI from utilizing existing collocation facilities, purchased from the interexchange tariffs, for local interconnection; provided, however, that if ICI orders new facilities for interconnection or rearranges any facilities presently used for its alternate access business in order to use such facilities for local interconnection hereunder and a BellSouth charge is applicable thereto, BellSouth shall only charge ICI the lower of the interstate or intrastate tariffed rate or promotional rate.

H. The parties agree to establish trunk groups from the interconnecting facilities of subsection (E) of this section such that each party provides a reciprocal of each trunk group established by the other party. Notwithstanding the foregoing, each party may construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency. The parties agree that either no charges will be assessed or reciprocal charges will be assessed for network to network interfaces where the parties are certified as providers of local exchange services. BellSouth's treatment of ICI as to said charges shall be consistent with BellSouth treatment of other local exchange carriers for the same charges.

I. Whenever BellSouth delivers traffic to ICI for termination on ICI's network, if BellSouth cannot determine because of the manner in which ICI has utilized its NXX codes whether the traffic is local or toll BellSouth will not compensate ICI pursuant to this section but will, instead, charge ICI originating intrastate network access service charges as reflected in BellSouth's intrastate Access Service Tariff. Notwithstanding the foregoing, BellSouth will make the appropriate billing adjustments if

ICI can provide sufficient information for BellSouth to make a determination as to whether said traffic was local or toll. If BellSouth deploys an NXX code across its local calling areas in such a manner that ICI cannot determine whether the traffic it delivers to BellSouth is local or toll, this subsection shall apply to the parties.

J. If either party provides intermediary tandem switching and transport services for the other party's connection of its end user to a local end user of: (1) an ALEC other than ICI; (2) a local exchange telecommunications company other than BellSouth ("ICO"); or (3) another telecommunications company such as a wireless telecommunications service provider, the parties agree that compensation shall be on the basis of mutual traffic exchange. The parties agree that any billing to the ICO or other telecommunications company under this section shall be pursuant to subsection (L) of this section.

K. When the parties provides an access service connection between an interexchange carrier ("IXC") and each other, each party will provide their own access services to the IXC on a multi-bill, multi-tariff meet-point basis. Each party will bill its own access services rates to the IXC with the exception of the interconnection charge. The interconnection charge will be billed by the party providing the intermediary tandem function.

L. The parties agree to adopt MECAB as the terms and conditions for meet point billing for all traffic to which MECAB applies, including traffic terminating to ported numbers, and to employ 30 day billing periods for said arrangements. The recording party agrees to provide to the initial billing company, at no charge, the switched access detailed usage data within a reasonable time after the usage is recorded. The initial billing company will provide the switched access summary usage data to all subsequent billing companies within 10 days of rendering the initial bill to the IXC. The parties agree that there will be technical, administrative, and implementation issues associated with achieving the intent of this subsection. As such, the parties further agree to work cooperatively toward achieving the intent of this provision within nine months of the effective date of this Agreement.

M. The ordering and provision of all services purchased from BellSouth by ICI shall be as set forth in the OLEC-to-BellSouth Ordering Guidelines (Facilities Based) as those guidelines are amended by BellSouth from time to time during the term of this Agreement.

V. IntraLATA and InterLATA Toll Traffic Interconnection

A. The delivery of intrastate toll traffic by a party to the other party shall be reciprocal and compensation will be mutual. For terminating its toll traffic on the other party's network, each party will pay BellSouth's intrastate terminating switched access rate, inclusive of the Interconnection Charge and the Carrier Common Line rate

elements of the switched access rate. The parties agree that their terminating switched access rates may change during the term of this Agreement and that the appropriate rate shall be the rate in effect when the traffic is terminated.

B. For originating and terminating intrastate toll traffic, each party shall pay the other BellSouth's intrastate switched network access service rate elements on a per minute of use basis. Said rate elements shall be as set out in BellSouth's Intrastate Access Services Tariff as that Tariff is amended from time to time during the term of this Agreement. The appropriate charges will be determined by the routing of the call. If ICI is the BellSouth end user's presubscribed interexchange carrier or if the BellSouth end user uses ICI as an interexchange carrier on a 10XXX basis, BellSouth will charge ICI the appropriate tariff charges for originating network access services. If BellSouth is serving as the ICI end user's presubscribed interexchange carrier or if the ICI end user uses BellSouth as an interexchange carrier on a 10XXX basis, ICI will charge BellSouth the appropriate BellSouth tariff charges for originating network access services.

C. The parties agree that to the extent ICI provides intraLATA toll service to its customers, it may be necessary for it to interconnect to additional BellSouth access tandems that serve end office outside the local calling area.

D. Each party agrees to compensate the other, pursuant to the appropriate originating switched access charges, including the database query charge, for the origination of 800 traffic terminated to the other party.

E. Each party will provide to the other party the appropriate records necessary for billing intraLATA 800 customers. The records provided will be in a standard EMR format for a fee of \$0.013 per record.

F. If during the term of this Agreement, either party provides interLATA 800 services, it will compensate the other for the origination of such traffic pursuant to subsection A, above. Each party shall provide the appropriate records for billing pursuant to subsection B, above.

G. Should ICI require 800 Access Ten Digit Screening Service from BellSouth, it shall have signaling transfer points connecting directly to BellSouth's local or regional signaling transfer point for service control point database query information. ICI shall utilize SS7 Signaling links, ports and usage as set forth in Attachment C-7, incorporated herein by this reference. ICI will not utilize switched access FGD service. 800 Access Ten Digit Screening Service is an originating service that is provided via 800 Switched Access Service trunk groups from BellSouth's SSP equipped end office or access tandem providing an IXC identification function and delivery of call to the IXC based on the dialed ten digit number. The rates and charges for said service shall be as set forth in BellSouth's Intrastate Access Services Tariff as said tariff is amended from time to time during the term of this Agreement.

VI. Service Provider Number Portability

A. Service Provider Number Portability (SPNP) is an interim service arrangement provided by each party to the other whereby an end user, who switches subscription of his local exchange service from BellSouth to ICI, or vice versa, is permitted to retain use of his existing assigned telephone number, provided that the end user remains at the same location for his local exchange service or changes locations and service providers but stays within the same serving wire center of his existing number. SPNP services are available in two arrangements, SPNP-Remote and SPNP-DID. Notwithstanding the foregoing, SPNP is not available when the end user's existing account has been denied or disconnected for nonpayment and an outstanding balance remains unpaid.

B. SPNP services and facilities will only be provided, where technically feasible, subject to the availability of facilities and may only be furnished from properly equipped central offices. SS7 Signaling is required for the provision of SPNP services. SPNP is available from either party on either a per DS0, DS1 or DS3 basis. Where SPNP-DID is provided on a DS1 or a DS3 basis, applicable channelization rates as specified in Attachment C-16, incorporated herein by this reference. SPNP is available only for basic local exchange service. Section E6.8.1.H of the BellSouth intrastate Switched Access tariff, as said tariff is amended from time to time during the term of this Agreement.

C. SPNP is available only where ICI or BellSouth is currently providing, or will begin providing concurrent with provision of SPNP, basic local exchange service to the affected end user. SPNP for a particular ICI assigned telephone number is available only from the central office originally providing local exchange service to the end user. SPNP for a particular assigned telephone number will be disconnected when any end user, Commission, BellSouth, or ICI initiated activity (e.g. a change in exchange boundaries) would normally result in a telephone number change had the end user retained his initial local exchange service.

D. SPNP-Remote is a telecommunications service whereby a call dialed to an SPNP-Remote equipped telephone number, is automatically forwarded to an assigned seven or ten digit telephone number within the local calling area as defined in Section A3 of the BellSouth General Subscriber Service Tariff. The forwarded-to number is specified by ICI or BellSouth, as appropriate. Where technologically feasible, the forwarding party will provide identification of the originating telephone number, via SS7 signaling, to the receiving party. Neither party guarantees, however, identification of the originating telephone number to the SPNP-Remote end user. SPNP-Remote provides a single call path for the forwarding of no more than one simultaneous call to the receiving party's specified forwarded-to number. Additional call

E. SPNP-DID service provides trunk side access to end office switches for direct inward dialing to other company's premises equipment from the

telecommunications network to lines associated with the other company's switching equipment and must be provided on all trunks in a group arranged for inward service. A SPNP-DID trunk termination, provided with SS7 Signaling only, charge applies for each trunk voice grade equivalent. In addition, direct facilities are required from the end office where a ported number resides to the end office serving the ported end user customer. The rates for a switched local channel and switched dedicated transport apply as contained in Section E6 of BellSouth's intrastate Access Services tariff, as said Tariff is amended from time to time during the term of this Agreement. Transport mileage will be calculated as the airline distance between the end office where the number is ported and the POI using the V&H coordinate method. SPNP-DID must be established with a minimum configuration of 2 channels and one unassigned telephone number per switch, per arrangement for control purposes. Transport facilities arranged for SPNP-DID may not be mixed with any other type of trunk group, with no outgoing calls placed over said facilities. SPNP-DID will be provided only where such facilities are available and where the switching equipment of the ordering party is properly equipped. Where SPNP-DID service is required from more than one wire center or from separate trunk groups within the same wire center, such service provided from each wire center or each trunk group within the same wire center shall be considered a separate service. Only customer dialed sent paid calls will be completed to the first number of a SPNP-DID number group, however there are no restrictions on calls completed to other numbers of a SPNP-DID number group. Interface group arrangements provided for terminating the switched transport at the party's terminal location are as set forth in E6.1.3.A. of BellSouth's intrastate Access Services tariff, as amended from time to time during the term of this Agreement.

F. SPNP services will be provided at the charges contained in Attachment B-3 for SPNP-RCF and Attachment B-4 for SPNP-DID. Both Attachments are incorporated herein by this reference.

G. The calling party is responsible for payment of the applicable charges for sent-paid calls to the SPNP number. For collect, third-party, or other operator-assisted non-sent paid calls to the ported telephone number, BellSouth or ICI is responsible for the payment of charges under the same terms and conditions for which the end user would have been liable for those charges. Either party may request that the other block collect and third party non-sent paid calls to the SPNP assigned telephone number. If the party does not request blocking, the other party will provide itemized local usage data for the billing of non-sent paid calls on the monthly bill of usage charges, provided at the individual end user account level. The detail will include itemization of all billable usage. As an alternative to the itemized monthly bill, each party shall have the option of receiving this usage data on a daily basis via a data file transfer arrangement. This arrangement will utilize the existing industry uniform standard, known as EMR standards, for exchange of billing data. Files of usage data will be created daily for the optional service. Usage originated and recorded in the sending BellSouth RAO will be provided in unrated format. ICI usage originated elsewhere and delivered via CMDS to the sending BellSouth RAO will be provided in rated format.

H. Each party is responsible for obtaining authorization from the end user for the handling of the disconnection of the end user's service, the provision of new local service and the provision of SPNP services. Each party is responsible for coordinating the provision of service with the other to assure that its switch is capable of accepting SPNP ported traffic. Each party is responsible for providing equipment and facilities that are compatible with the other's service parameters, interfaces, equipment and facilities and is required to provide sufficient terminating facilities and services at the terminating end of an SPNP call to adequately handle all traffic to that location and is solely responsible to ensure that its facilities, equipment and services do not interfere with or impair any facility, equipment, or service of the other party or any of its end users. In the event that either party determines in its sole judgment that the other party will likely impair or is impairing, or interfering with any equipment, facility or service or any of its end users, that party may either refuse to provide SPNP service or terminate SPNP to the other party.

I. Each party is responsible for providing an appropriate intercept announcement service for any telephone numbers subscribed to SPNP services for which it is not presently providing local exchange service or terminating to an end user. Where either party chooses to disconnect or terminate any SPNP service, that party is responsible for designating the preferred standard type of announcement to be provided.

J. Each party will be the other's party's single point of contact for all repair calls on behalf of each party's end user. Each party reserves the right to contact the other party's customers, if deemed necessary, for maintenance purposes.

K. Neither party is responsible for adverse effects on any service, facility or equipment for the use of SPNP services. End-to-end transmission characteristics may vary depending on the distance and routing necessary to complete calls over SPNP facilities and the fact that another carrier is involved in the provisioning of service. Therefore, end-to-end transmission characteristics can not be specified by either party for such calls. Neither party is responsible to the other if any necessary change in protection criteria or in any of the facilities, operation, or procedures of either renders any facilities provided by the other party obsolete or renders necessary modification of the other party's equipment.

L. For that terminating IXC traffic ported to either party which requires use of either party's tandem switching, the tandem provider will bill the IXC tandem switching, the interconnection charge, and a portion of the transport, and the other party will bill the IXC local switching, the carrier common line and a portion of the transport. If the tandem provider is unable to provide the necessary access records to permit the other party to bill the IXCs directly for terminating access to ported numbers, then the parties agree to work cooperatively to develop a surrogate method to approximate the access minutes, and a settlement process to recover those access revenues due it as a co-

provider of access services to IXCs. During the interim, while the surrogate is being developed, the tandem provider will bill the IXC full terminating switched access charges, keep the interconnection charge, tandem switching and a portion of transport, and remit the local switching, a portion of transport and CCL revenues to the other party. If a toll intraLATA call is delivered, the delivering party will pay terminating access rates to the other party. This subsection does not apply in cases where SPNP-DID is utilized for number portability.

M. If either party has direct connections to the IXCs for the termination of all interLATA traffic and it is only through the use of SPNP services that the tandem is being utilized and the tandem provider receives network access service revenues from the terminating IXC, the other party will bill the network access charges for the terminating facilities used for that interLATA traffic. This circumstance may also arise where an intraLATA toll call from one party's customer is sent to a number that is, in turn, forwarded through the use of SPNP services to the other party's customer. If so, terminating party will bill the other party the network access charges for the terminating facilities used for that intraLATA toll traffic.

N. If during the term of this Agreement, the Federal Communications Commission issues regulations pursuant to 47 U.S.C. §251 to require number portability different than that provided pursuant to this subsection, the parties agree to fully comply with those regulations.

VII. Provision of Unbundled Elements

A. BellSouth will offer an unbundled local loop to ICI at the current rates as set forth in Attachment C-15, incorporated herein by this reference. Special construction charges, if applicable, will be as set forth in BellSouth's Intrastate Special Access Tariff as said tariff is amended from time to time during the term of this Agreement. BellSouth will also offer, as a new service loop concentration as set forth in Attachment C-16, incorporated herein by this reference. The parties agree that loop concentration service as offered above is not an unbundled element.

B. BellSouth will offer to ICI unbundled loop channelization system service which provides the multiplexing function to convert 96 voice grade loops to DS1 level for connection with ICI's point of interface. Rates are as set forth in Attachment C-16, incorporated herein by this reference.

C. BellSouth will offer to ICI unbundled local transport from the trunk side of its switch at the rates as set forth in Attachment B-1, incorporated herein by this reference.

D. BellSouth will offer to ICI unbundled local switching at the rates as set forth in Attachment C-17, incorporated herein by this reference, for the unbundled exchange service port.

E. BellSouth shall, upon request of ICI, and to the extent technically feasible, provide to ICI access to its Network Elements for the provision of an ICI telecommunications service. Any request by ICI for access to a BellSouth Network Element that is not already available shall be treated as a Network Element bona fide request. ICI agrees to pay the costs associated with the bona fide request if ICI cancels the request or fails to purchase the service once completed. ICI shall provide BellSouth access to its Network Elements as mutually agreed by the Parties or as required by a state commission or the FCC.

F. A Network Element obtained by one Party from the other Party under this section may be used in combination with the facilities of the requesting Party only to provide a telecommunications service, including obtaining billing and collection, transmission, and routing of the telecommunications service.

VIII. Access To Poles, Ducts, Conduits, and Rights of Way

BellSouth agrees to provide to ICI, pursuant to 47 U.S.C. § 224, as amended by the Act, nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by BellSouth.

IX. Access to 911/E911 Emergency Network

A. For basic 911 service, BellSouth will provide to ICI a list consisting of each municipality in each state that subscribes to Basic 911 service. The list will also provide, if known, the E911 conversion date for each municipality and, for network routing purposes, a ten-digit directory number representing the appropriate emergency answering position for each municipality subscribing to 911. ICI will arrange to accept 911 calls from its end users in municipalities that subscribe to Basic 911 service and translate the 911 call to the appropriate 10-digit directory number as stated on the list provided by BellSouth. ICI will route that call to BellSouth at the appropriate tandem or end office. When a municipality converts to E911 service, ICI shall discontinue the Basic 911 procedures and begin the E911 procedures, set forth in subsection (B), below.

B. For E911 service, ICI shall install a minimum of two dedicated trunks originating from ICI's serving wire center and terminating to the appropriate E911 tandem. The dedicated trunks shall be, at minimum, DS0 level trunks configured either as a 2 wire analog interface or as part of a digital (1.544 Mb/s) interface. Either configuration shall use CAMA type signaling with multifrequency (MF) pulsing that will deliver automatic number identification (ANI) with the voice portion of the call. If the

user interface is digital, MF pulses, as well as other AC signals, shall be encoded per the u-255 Law convention. ICI will provide BellSouth daily updates to the E911 database.

C. If a municipality has converted to E911 service, ICI will forward 911 calls to the appropriate E911 tandem, along with ANI, based upon the current E911 end office to tandem homing arrangement as provided by BellSouth. If the E911 tandem trunks are not available, ICI will alternatively route the call to a designated 7-digit local number residing in the appropriate PSAP. This call will be transported over BellSouth's interoffice network and will not carry the ANI of the calling party.

D. BellSouth and ICI agree that the practices and procedures contained in the E911 Local Exchange Carrier Guide For Facility-Based Providers, as it is amended from time to time during the term of this Agreement by BellSouth, shall determine the appropriate procedures and practices of the parties as to the provision of 911/E911 Access.

E. The applicable rate elements are as set forth in Attachment C-3, incorporated herein by this reference.

X. Provision of Operator Services

A. The parties agree to mutually provide busy line verification and emergency interrupt services pursuant to each party's published Tariffs as the Tariffs are amended from time to time during the term of this Agreement.

B. BellSouth will offer to ICI Operator Call Processing Access Service; and Directory Assistance Access Services (Number Services). Rates, terms and conditions are set forth in Attachment C-8 for Operator Call Processing Access Service and Attachment C-9 for Directory Assistance Access Services. Both Attachments are incorporated herein by this reference.

C. BellSouth will offer to ICI CMDS Hosting and the Non Sent Paid Report System pursuant to the terms and conditions set forth in Attachment C-11, incorporated herein by this reference.

XI. Directory Listings

A. Subject to execution of an agreement between ICI and BellSouth's affiliate, BellSouth Advertising & Publishing Corporation, ("BAPCO"), substantially in the form set forth in Attachment C-1, (1) listings shall be included in appropriate White Pages or alphabetical directories; (2) ICI's business subscribers' listings shall also be included in appropriate Yellow Pages, or classified directories; and (3) copies of such directories shall be delivered to ICI's subscribers.

B. BellSouth will include ICI's subscriber listings in BellSouth's directory assistance databases and BellSouth will not charge ICI to maintain the Directory Assistance database. The parties agree to cooperate with each other in formulating appropriate procedures regarding lead time, timeliness, format and content of listing information.

C. BellSouth will provide ICI a magnetic tape or computer disk containing the proper format for submitting subscriber listings. ICI will provide BellSouth with its directory listings and daily updates to those listings, including new, changed, and deleted listings, in an industry-accepted format.

D. BellSouth and BAPCO will accord ICI's directory listing information the same level of confidentiality which BellSouth and BAPCO accords its own directory listing information, and BellSouth shall limit access to ICI's customer proprietary confidential directory information to those BellSouth or BAPCO employees who are involved in the preparation of listings.

E. Additional listings and optional listings may be provided by BellSouth at the rates set forth in the General Subscriber Services Tariff as the tariff is amended from time to time during the term of this Agreement.

XII. Access to Telephone Numbers

A. BellSouth, during any period under this Agreement in which it serves as a North American Numbering Plan administrator for its territory, shall ensure that ICI has nondiscriminatory access to telephone numbers for assignment to its telephone exchange service customers. It is mutually agreed that BellSouth shall provide numbering resources pursuant to the BellCore Guidelines Regarding Number Assignment and compliance with those guidelines shall constitute nondiscriminatory access to numbers. ICI agrees that it will complete the NXX code application in accordance with Industry Carriers Compatibility Forum, Central Office Code Assignment Guidelines, ICCF 93-0729-010. This service will be as set forth in Attachment C-2, incorporated herein by this reference.

B. If during the term of this Agreement BellSouth is no longer the North American Numbering Plan administrator, the parties agree to comply with the guidelines, plan or rules adopted pursuant to 47 U.S.C. § 251(e).

XIII. Access to Signaling and Signaling Databases

A. Each party will offer to the other party use of its signaling network and signaling databases on an unbundled basis at published tariffed rates. Signaling functionality will be available with both A-link and B-link connectivity.

B. BellSouth agrees to input the NXXs assigned to ICI into the Local Exchange Routing Guide ("LERG").

C. BellSouth will enter ICI line information into its Line Information Database ("LIDB") pursuant to the terms and conditions contained in Attachment C-5, incorporated herein by this reference. Entry of line information into LIDB will enable ICI's end users to participate or not participate in alternate billing arrangements such as collect or third number billed calls.

D. If ICI utilizes BellSouth's 800 database for query purposes only, the rates and charges shall be as set forth in Attachment C-4, incorporated herein by this reference.

XIV. BellSouth's Offer of Services Available for Resale

A. The rates pursuant by which ICI is to purchase services from BellSouth for resale shall be at a discount rate off of the retail rate for the telecommunications service. The discount rates shall be as set forth in Attachment D, attached hereto and incorporated herein by this reference. Such discount shall reflect the costs avoided by BellSouth when selling a service for wholesale purposes.

B. ICI may resell the tariffed telecommunications services of BellSouth, including any broadband exchange line or SynchroNet® service, subject to the terms, and conditions specifically set forth herein. Notwithstanding the foregoing, the following are not available for purchase: Grandfathered services; promotional and trial retail service offerings; lifeline and linkup services; contract service arrangements; installment billing options; 911 and E911 services; interconnection services for mobile service providers; legislatively or administratively mandated specialized discounts (e.g. education institutions discount); and discounted services to meet competitive situations. BellSouth agrees that ICI may resell the broadband exchange line or Synchronet service as provided by BellSouth in any technically feasible manner alone or in conjunction with its own service offering.

C. The provision of services by BellSouth to ICI does not constitute a joint undertaking for the furnishing of any service.

D. ICI will be the customer of record for all services purchased from BellSouth. Except as specified herein, BellSouth will take orders from, bill and expect payment from ICI for all services.

E. ICI will be BellSouth's single point of contact for all services purchased pursuant to this Agreement including all ordering activities and repair calls. For all repair requests, ICI accepts responsibility for adhering to BellSouth's prescreening

guidelines prior to referring the trouble to BellSouth. BellSouth may bill ICI for handling troubles that are found not to be in the BellSouth network. The parties agree that BellSouth may contact ICI's customers, if in its sole discretion it deems necessary for maintenance purposes. BellSouth shall have no other contact with the end user except to the extent provided for herein.

F. BellSouth will continue to bill the end user for any services that the end user specifies it wishes to receive directly from BellSouth. BellSouth maintains the right to serve directly any end user within the service area of ICI and ALEC agrees not to interfere with the right of any end user to obtain service directly from BellSouth. BellSouth will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of ICI

G. In most circumstances, the current telephone number of an end user may be retained by the end user unless the end user has past due charges associated with the BellSouth account for which payment arrangements have not been made. BellSouth will not, however, make the end user's previous telephone number available to ICI until the end user's outstanding balance has been paid. Denied service means that the service of an end user provided by a local exchange telecommunications company, including BellSouth has been temporarily suspended for nonpayment and subject to complete disconnection.

H. BellSouth may provide any service or facility for which a charge is not established herein, as long as it is offered on the same terms to ICI for a charge not less than BellSouth's cost.

I. The characteristics and methods of operation of any circuits, facilities or equipment provided by any person or entity other than BellSouth shall not:

1. Interfere with or impair service over any facilities of BellSouth, its affiliates, or its connecting and concurring carriers involved in its service;
2. Cause damage to their plant;
3. Impair the privacy of any communications; or
4. Create hazards to any employees or the public.

ICI assumes the responsibility of notifying BellSouth regarding less than standard operations with respect to services provided by ICI.

J. ICI agrees that its resale of BellSouth services shall be as follows:

- 1. The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.**
- 2. To the extent ICI is a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines, ICI shall not jointly market its interLATA services with the telecommunications services purchased from BellSouth pursuant to this Agreement in any of the states covered under this Agreement. For purposes of this subsection, to jointly market means any advertisement, marketing effort or billing in which the telecommunications services purchased from BellSouth for purposes of resale to customers and interLATA services offered by ICI are packaged, tied, bundled, discounted or offered together in any way to the end user. Such efforts include, but are not limited to, sales referrals, resale arrangements, sales agencies or billing agreements. This subsection shall be void and of no effect for a particular state covered under this Agreement as of February 8, 1999 or on the date BellSouth is authorized to offer interLATA services in that state, whichever is earlier.**
- 3. Hotel and Hospital PBX service are the only telecommunications services available for resale to Hotel/Motel and Hospital end users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to COCOTS customers. Shared Tenant Service customers can only be sold those telecommunications services available in BellSouth's A23 or A27 Shared Tenant Service Tariff, as appropriate.**
- 4. ICI is prohibited from furnishing both flat and measured rate service on the same business premises to the same subscribers (end users) as stated in A2.3.2.A. of BellSouth's Tariff.**
- 5. Resold services can only be used in the same manner as specified in BellSouth's Tariff. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of BellSouth in the appropriate section of BellSouth's Tariffs. Specific tariff features, e.g. a usage allowance per month, shall not be aggregated across multiple resold services. Resold services cannot be used to aggregate traffic from more than one end user customer except as specified in Section A23. of BellSouth's Tariff referring to Shared Tenant Service.**

K. Telephone numbers transmitted via any resold service feature are intended solely for the use of the end user of the feature. Resale of this information is prohibited.

L. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. ICI is strictly prohibited from any use, including but not limited to sale, marketing or advertising, of any BellSouth name or trademark.

M. Services resold under BellSouth's Tariffs and facilities and equipment provided by BellSouth shall be maintained by BellSouth. ICI or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by BellSouth, other than by connection or disconnection to any interface means used, except with the written consent of BellSouth.

N. BellSouth will not perform billing and collection services for ICI as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within BellSouth.

O. Until such time as BellSouth receives permission from the FCC to bill the End User Common Line (EUCL) charge to ICI, BellSouth will, on an interim basis, bill ICI the charges shown below which are identical to the EUCL rates billed by BST to its end users.

| | Monthly Rate |
|-----------------------------------|--------------|
| 1. Residential | |
| (a) Each Individual Line or Trunk | \$3.50 |
| 2. Single Line Business | |
| (b) Each Individual Line or Trunk | \$3.50 |
| 3. Multi-line Business | |
| (c) Each Individual Line or Trunk | \$6.00 |

P. The procedures for discontinuing end user service purchased by ICI for resale to an end user are as follows:

1. Where possible, BellSouth will deny service to ICI's end user on behalf of, and at the request of, ICI. Upon restoration of the end user's service, restoration charges will apply and will be the responsibility of ICI.
2. At the request of ICI, BellSouth will disconnect a ICI end user customer.

3. All requests by ICI for denial or disconnection of an end user for nonpayment must be in writing.
4. ICI will be made solely responsible for notifying the end user of the proposed disconnection of the service.
5. BellSouth will continue to process calls made to the Annoyance Call Center and will advise ICI when it is determined that annoyance calls are originated from one of their end user's locations. BellSouth shall be indemnified, defended and held harmless by ICI and/or the end user against any claim, loss or damage arising from providing this information to ICI. It is the responsibility of ICI to take the corrective action necessary with its customers who make annoying calls. Failure to do so will result in BellSouth's disconnecting the end user's service.

Q. The procedures for discontinuing service to ICI are as follows:

1. BellSouth reserves the right to suspend or terminate service for nonpayment or in the event of prohibited, unlawful or improper use of the facilities or service, abuse of the facilities, or any other violation or noncompliance by ICI of the rules and regulations of BellSouth's Tariffs.
2. If payment of account is not received by the bill day in the month after the original bill day, BellSouth may provide written notice to ICI, that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. If BellSouth does not refuse additional applications for service on the date specified in the notice, and ICI's noncompliance continues, nothing contained herein shall preclude BellSouth's right to refuse additional applications for service without further notice.
3. If payment of the account is not received, or arrangements made, by the bill day in the second consecutive month, the account will be considered in default and will be subject to denial or disconnection, or both.
4. If ICI fails to comply with the provisions of this Agreement, including any payments to be made by it on the dates and times herein specified, BellSouth may, on thirty days written notice to the person designated by ICI to receive notices of noncompliance, discontinue the provision of existing services to ICI at any time thereafter. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If BellSouth

does not discontinue the provision of the services involved on the date specified in the thirty days notice, and ICI's noncompliance continues, nothing contained herein shall preclude BellSouth's right to discontinue the provision of the services to ICI without further notice.

5. If payment is not received or arrangements made for payment by the date given in the written notification, ICI's services will be discontinued. Upon discontinuance of service on a ICI's account, service to ICI's end users will be denied. BellSouth will also reestablish service at the request of the end user or ICI upon payment of the appropriate connection fee and subject to BellSouth's normal application procedures.
6. If within fifteen days after an end user's service has been denied no contact has been made in reference to restoring service, the end user's service will be disconnected.

R. BellSouth may require ICI to make a deposit, if evidence of good credit cannot be provided, when purchasing services for resale purposes to be held by BellSouth as a guarantee of the payment of rates and charges. Any such deposit may be held during the continuance of the service and may not exceed two month's estimated billing. The fact that a deposit has been made in no way relieves ICI from the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of BellSouth providing for the discontinuance of service for non-payment of any sums due BellSouth. In the event that ICI defaults on its account, service to ICI will be terminated and any deposits held will be applied to its account. In the case of a cash deposit, interest at the rate of six percent per annum shall be paid to ICI during the continuance of the deposit. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to ICI by the accrual date.

XV. Ordering of Services From BellSouth For Resale Purposes

A. The ordering and provision of services purchased from BellSouth for resale purposes by ICI shall be as set forth in the OLEC-to-BellSouth Ordering Guidelines (Reseller) as those guidelines are amended by BellSouth from time to time during the term of this Agreement.

B. When the initial service is ordered by ICI, BellSouth will establish an accounts receivable master account for ICI.

C. BellSouth shall bill ICI on a current basis all applicable charges and credits.

D. Payment of all charges will be the responsibility of ICI. ICI shall make payment to BellSouth for all services billed. BellSouth is not responsible for payments not received by ICI from ICI's customer. BellSouth will not become involved in billing disputes that may arise between ICI and its customer. Payments made to BellSouth as payment on account will be credited to an accounts receivable master account and not to an end user's account.

E. BellSouth will render bills each month on established bill days for each of ICI's accounts.

F. BellSouth will bill ICI in advance charges for all services to be provided during the ensuing billing period except charges associated with service usage, which charges will be billed in arrears. Charges will be calculated on an individual end user account level, including, if applicable, any charges for usage or usage allowances. BellSouth will also bill all charges, including but not limited to 911 and E911 charges, telecommunications relay charges, and franchise fees, on an individual end user account level.

G. The payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available U.S. funds. Payment is considered to have been made when received by BellSouth.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in I. following, shall apply.

H. Upon proof of tax exempt certification from ICI, the total amount billed to ICI will not include any taxes due from the end user. ICI will be solely responsible for the computation, tracking, reporting and payment of all federal, state and/or local jurisdiction taxes associated with the services resold to the end user.

I. As the customer of record, ICI will be responsible for, and remit to BellSouth, all charges applicable to its resold services for emergency services (E911 and 911) and Telecommunications Relay Service (TRS) as well as any other charges of a similar nature.

J. If any portion of the payment is received by BellSouth after the payment due date as set forth preceding, or if any portion of the payment is received by

BellSouth in funds that are not immediately available to BellSouth, then a late payment penalty shall be due to BellSouth. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be the lesser of:

1. The highest interest rate (in decimal value) which may be levied by law for commercial transaction, compounded daily for the number of days from the payment due date to and including the date that ICI actually makes the payment to BellSouth, or
2. 0.000590 per day, compounded daily for the number of days from the payment due date to and including the date that ICI actually makes the payment to BellSouth.

K. Any Carrier Common Line charges (CCL) associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, BellSouth.

L. In general, BellSouth will not become involved in disputes between ICI and ICI's end user customers over resold services. If a dispute does arise that cannot be settled without the involvement of BellSouth, ICI shall contact the designated Service Center for resolution. BellSouth will make every effort to assist in the resolution of the dispute and will work with ICI to resolve the matter in as timely a manner as possible. ICI may be required to submit documentation to substantiate the claim.

M. ICI is responsible for payment of all appropriate charges for completed calls, services, and equipment. If objection in writing is not received by BellSouth within twenty-nine days after the bill is rendered, the account shall be deemed correct and binding upon ICI.

XVI. Network Design and Management

A. The parties agree to work cooperatively to install and maintain reliable interconnected telecommunications networks, including but not limited to, maintenance contact numbers and escalation procedures. BellSouth agrees to provide public notice of changes in the information necessary for the transmission and routing of services using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

B. The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria

C. The parties will work cooperatively to apply sound network management principles by invoking appropriate network management controls, e.g., call gapping, to alleviate or prevent network congestion.

D. Neither party intends to charge rearrangement, reconfiguration, disconnection, termination or other non-recurring fees that may be associated with the initial reconfiguration of either party's network interconnection arrangement contained in this Agreement. However, the interconnection reconfigurations will have to be considered individually as to the application of a charge. Notwithstanding the foregoing, the parties do intend to charge non-recurring fees for any additions to, or added capacity to, any facility or trunk purchased.

E. The parties agree to provide LEC-to-LEC Common Channel Signaling (CCS) to one another, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. All CCS signaling parameters will be provided, including automatic number identification (ANI), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored, and the parties agree to cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate full interoperability of CCS-based features between the respective networks.

F. For network expansion, the parties agree to review engineering requirements on a quarterly basis and establish forecasts for trunk utilization as required by Section V of this Agreement. New trunk groups will be implemented as state by engineering requirements for both parties.

G. The parties agree to provide each other with the proper call information, i.e. originated call party number and destination call party number, CIC, and OZZ, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. The exchange of information is required to enable each party to bill properly.

XVII. Disconnection of Existing End User Service

A. BellSouth will accept requests from ICI to disconnect the service of an existing BellSouth end user. BellSouth will accept a request directly from an end user for conversion of the end user's service from ICI to BellSouth or will accept a request from another ALEC or ICI for conversion of the Service Provider Number Portability service associated with an end user's service from ICI to the second ALEC or Reseller. BellSouth will notify ICI that such a request has been processed. BellSouth will not require end user confirmation prior to disconnecting the end user's service. ICI must, however, provide proof of authorization upon request.

B. If BellSouth determines that an unauthorized change in local service provider has occurred, BellSouth will reestablish service with the appropriate local service provider as requested by the end user and will assess ICI an Unauthorized Change Charge of \$19.41 per line or trunk for Residence of Business. The appropriate nonrecurring charges to reestablish the customer's service with the appropriate local service provider will also be assessed to ICI because of the unauthorized change. These charges may be adjusted if ICI provides satisfactory proof of authorization.

C. BellSouth may designate BellSouth as the preferred provider of local exchange service for its own pay telephones.

XVIII. Implementation of Agreement

The parties agree that within 30 days of the execution of this Agreement they will adopt a schedule for the implementation of this Agreement. The schedule shall state with specificity, conversion, reconfiguration, ordering, testing, and full operational time frames. Both parties agree to provide the appropriate staff support to ensure effective implementation, administration of this Agreement and conversion of existing services to the appropriate rates contained in this Agreement. Any changes in billing to ICI shall be as of the effective date of this Agreement. The implementation schedule shall be attached to this Agreement as an addendum and specifically incorporated herein by this reference.

XIX. Auditing Procedures

A. Upon thirty (30) days written notice, each party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic between the parties. The parties agree to retain records of call detail for a minimum of nine months from which the PLU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the party being audited. Audit request shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by a mutually acceptable independent auditor paid for by the party requesting the audit. The PLU shall be adjusted based upon the audit results and shall apply to the usage for the quarter the audit was completed, the usage for the quarter prior to the completion of the audit, and to the usage for the two quarters following the completion of the audit. If, as a result of an audit, either party is found to have overstated the PLU by twenty percentage points (20%) or more, that party shall reimburse the auditing party for the cost of the audit.

B. For combined interstate and intrastate ICI traffic terminated by BellSouth over the same facilities, ICI shall provide a projected Percentage Interstate Usage ("PIU") as defined herein to BellSouth. All jurisdictional report requirements, rules and regulations for Interexchange Carriers specified in E2.3.14 of BellSouth's Intrastate Access Services Tariff will apply to ICI. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU factor will be

used for application and billing of local interconnection and intrastate toll access charges.

C. BellSouth reserves the right to periodically audit services purchased by ICI for the purposes of resale to confirm that such services are being utilized in conformity with this Agreement. ICI agrees to make any and all records available to BellSouth or its auditors on a timely basis. BellSouth shall bear the cost of said audit that shall not occur more than once in a calendar year. If the audit determines that the services are being utilized in violation of this Agreement, ICI shall be notified and billing for the service will be immediately changed to conform with this Agreement. Service charges, back billing and interest may be applied.

XX. Liability and Indemnification

A. With respect to any claim or suit by ICI, an ICI customer or by any other person or entity, other than for willful misconduct, for damages associated with any of the services provided by BellSouth pursuant to this Agreement or otherwise, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of B. through G. following, BellSouth's liability shall not exceed an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected.

B. BellSouth shall not be liable for any act or omission of any other telecommunications company providing a portion of a service, nor shall BellSouth hold liable any other telecommunications company providing a portion of a service for any act or omission of BellSouth.

C. BellSouth is not liable for damages to ICI's terminal location, POI nor ICI's customer's premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, unless the damage is caused by BellSouth's gross negligence.

D. BellSouth shall be indemnified, defended and held harmless by ICI against any claim, loss or damage arising from ICI's use of services provided by BellSouth under this Agreement, involving: 1) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from ICI's own communications; 2) Claims for patent infringement arising from ICI's acts combining or using the service furnished by BellSouth in connection with facilities or equipment furnished by ICI or ICI's customer; 3) any claim, loss, or damage claimed by a ICI customer, arising from ICI's uses of services provided by BellSouth under this Agreement; or 4) all other claims arising out of an act or omission of ICI in the course of using services provided pursuant to this Agreement.

E. BellSouth assumes no liability for the accuracy of the data provided to it by ICI and ICI agrees to indemnify and hold harmless BellSouth for any claim, action, cause of action, damage, injury whatsoever, that may result from the supply of data from ICI to BellSouth in conjunction with the provision of any service provided pursuant to this Agreement.

F. BellSouth does not guarantee or make any warranty with respect to its services when used in an explosive atmosphere. BellSouth shall be indemnified, defended and held harmless by ICI or ICI's customer from any and all claims by any person relating to ICI's or ICI's customer's use of services so provided.

G. No license under patents (other than the limited license to use) is granted by BellSouth or shall be implied or arise by estoppel, with respect to any service offered pursuant to this Agreement. BellSouth will defend ICI against claims of patent infringement arising solely from the use by ICI of services offered pursuant to this Agreement and will indemnify ICI for any damages awarded based solely on such claims.

H. BellSouth's failure to provide or maintain services offered pursuant to this Agreement shall be excused by labor difficulties, governmental orders, civil commotion, criminal actions taken against BellSouth, acts of God and other circumstances beyond BellSouth's reasonable control.

I. This obligations of the Parties contained within this section shall survive the expiration of this Agreement.

XXI. More Favorable Provisions

A. In the event an appropriate regulatory agency or judicial body orders or directs BellSouth or ICI to provide any substantive portion of this Agreement in a way different than that provided for herein, including but not limited to BellSouth's provision of broadband exchange line services, the parties agree to implement said order so that the parties can incorporate the order on the same day that the order becomes effective. The parties agree that such action shall take place only after all administrative and judicial remedies have been exhausted. The party pursuing any administrative or judicial remedy agrees to apply the regulatory or judicial order retroactively to the date that the order was initially entered and apply simple interest at a rate based on the thirty day commercial paper rate for high grade, unsecured notes sold through dealers by major corporations in multiples of \$1,000.00 as regularly published in the Wall Street Journal. The preceding sentence shall survive the expiration of this Agreement.

B. In the event BellSouth executes an interconnection, unbundling and resale agreement with any other local exchange carrier, the parties agree that ICI shall be eligible to supersede this Agreement with the identical rates, terms and conditions contained in the BellSouth agreement with the other local exchange carrier. If ICI

chooses to adopt another agreement in its entirety, the parties agree that the effective day shall be the date the agreement is approved by the Commission.

C. In the event BellSouth files and receives approval for a tariff offering to provide any substantive service of this Agreement in a way different than that provided for herein, the parties agree that ICI shall be eligible for subscription to said service at the rates, terms and conditions contained in the tariff. The parties agree that such eligibility shall be as of the effective date of the tariff.

D. The Parties acknowledge that BellSouth will guarantee the provision of universal service as the carrier-of-last-resort throughout its territory in Florida until January 1, 1998 without contribution from ICI.

XXII. Treatment of Proprietary and Confidential Information

A. Both parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Information"). Both parties agree that all Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. Both parties agree that the Information shall not be copied or reproduced in any form. Both parties agree to receive such Information and not disclose such Information. Both parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees of the parties with a need to know such Information and which employees agree to be bound by the terms of this Section. Both parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

B. Notwithstanding the foregoing, both parties agree that there will be no obligation to protect any portion of the Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; or 3) previously known to the receiving party without an obligation to keep it confidential.

XXIII. Resolution of Disputes

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the individuals in each company that negotiated the Agreement. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute.

However, each party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

XXIV. Limitation of Use

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

XXV. Waivers

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

XXVI. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

XXVII. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

XXVIII. Notices

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.
Rich Dender - Acct. Manager
South E4E1 Colonnade Prkwy
Birmingham, AL 35243

ICI--Pat Kurlin
3625 Queen Palm Drive
Tampa, Florida
33619

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

B. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

XXIX. Entire Agreement

This Agreement and its Attachments, incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the parties, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida, relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

BellSouth Telecommunications, Inc.

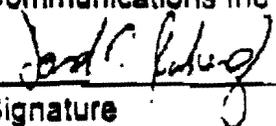


Signature


Title

Date 7/1996

Intermedia
Communications Inc



Signature
CEO

Title
6/21/96

Date

Attachment B-1
Local Interconnection Service

Service: Local Interconnection

Description: Provides for the use of BellSouth Switching and transport facilities and common subscriber plant for connecting calls between an ALEC's Point of Interface (POI) and a BellSouth end user.

It can also be used to connect calls between an ALEC and an Interexchange Carrier (IC), and Independent Exchange Telephone Company (ICO), or a Mobile Service Service Provider (MSP), or between two ALECs.

It is furnished on a per-trunk basis. Trunks are differentiated by traffic type and directionality. There are two major traffic types: (1) Local and (2) Intermediary. Local represents traffic from the ALEC's POI to a BellSouth tandem or end office and Intermediary represents traffic originated or terminated by an ALEC which is interconnected with an IC, ICO, MSP or another ALEC.

Rates and charges will be applied as indicated below.

| RATE ELEMENTS | Alabama | | | | Florida | | | | | | | |
|------------------------------|--|-------------|--|-------------|------------|-------------|--|-------------|--|-------------|------------|-------------|
| | Per MOU | Applied Per | Monthly Recur. | Applied Per | Non-Recur. | Applied Per | Per MOU | Applied Per | Monthly Recur. | Applied Per | Non-Recur. | Applied Per |
| DS1 Local Channel | - | - | \$133.81 | LC | \$486.87 | LC - First | - | - | \$133.81 | LC | \$486.87 | LC - First |
| DS1 Dedicated Transport | - | - | \$23.50 per mile \$80.00 fac. term. | - | \$486.83 | LC - Add'l | - | - | \$18.75 per mile \$58.75 fac. term. | - | \$486.83 | LC - Add'l |
| DS1 Common Transport | \$0.00004 per mile \$0.00038 fac. term. | - | - | - | - | - | \$0.00004 per mile \$0.00038 fac. term. | - | - | - | - | - |
| Local Switching L32 (FGO) | \$0.00758 access mo. | - | - | - | - | - | \$0.00876 access mo. | - | - | - | - | - |
| Tandem Switching | \$0.00074 access mo. | - | - | - | - | - | \$0.00080 access mo. | - | - | - | - | - |
| Information Surcharge | \$0.00218 100 min. | - | - | - | - | - | - | - | - | - | - | - |
| Tandem Intermediary Charge** | \$0.002 access mo. | - | - | - | - | - | \$0.002 access mo. | - | - | - | - | - |
| Composite Rate-DS1 Dedicated | \$0.00878 | - | - | - | - | - | \$0.01028 | - | - | - | - | - |
| Composite Rate-DS1 Tandem Sw | \$0.00991 | - | - | - | - | - | \$0.01058 | - | - | - | - | - |

| RATE ELEMENTS | Georgia | | | | Kentucky | | | | | | | |
|------------------------------|--|-------------|--|-------------|------------|-------------|--|-------------|--|-------------|------------|-------------|
| | Per MOU | Applied Per | Monthly Recur. | Applied Per | Non-Recur. | Applied Per | Per MOU | Applied Per | Monthly Recur. | Applied Per | Non-Recur. | Applied Per |
| DS1 Local Channel | - | - | \$133.81 | LC | \$486.87 | LC - First | - | - | \$133.81 | LC | \$486.87 | LC - First |
| DS1 Dedicated Transport | - | - | \$23.50 per mile \$80.00 fac. term. | - | \$486.83 | LC - Add'l | - | - | \$18.75 per mile \$80.00 fac. term. | - | \$486.83 | LC - Add'l |
| DS1 Common Transport | \$0.00004 per mile \$0.00038 fac. term. | - | - | - | - | - | \$0.00004 per mile \$0.00038 fac. term. | - | - | - | - | - |
| Local Switching L32 (FGO) | \$0.00787 access mo. | - | - | - | - | - | \$0.00736 access mo. | - | - | - | - | - |
| Tandem Switching | \$0.00074 access mo. | - | - | - | - | - | \$0.00074 access mo. | - | - | - | - | - |
| Information Surcharge | - | - | - | - | - | - | \$0.00218 100 min. | - | - | - | - | - |
| Tandem Intermediary Charge** | \$0.002 access mo. | - | - | - | - | - | \$0.01448 Trans/100 min. \$0.002 access mo. | - | - | - | - | - |
| Composite Rate-DS1 Dedicated | \$0.00878 | - | - | - | - | - | \$0.00878 | - | - | - | - | - |
| Composite Rate-DS1 Tandem Sw | \$0.00991 | - | - | - | - | - | \$0.00991 | - | - | - | - | - |

*Rates are displayed at the DS1-1.544 Mbps. level. Per rates and charges applicable to other arrangement levels, refer to Section 25 of BellSouth Telecommunications, Inc.'s Interstate Access Tariff.

**The Tandem Intermediary Charge applies only to Intermediary Traffic.

- DS1 Local Channel: denotes a DS1 dedicated transport facility between the ALEC's serving wire center and the ALEC's POI, also called an Entrance Facility. The element will apply when associated with services ordered by an ALEC which utilizes a BellSouth facilities. This element is not required when an ALEC is conceived.
- DS1 Dedicated Transport: provides transmission and facility termination. The facility termination system for each DS1 interface channel terminates. Can be used from the ALEC's serving wire center to the end users and office or from the ALEC's serving wire center to the tandem.
- Common Transport: Composed of Common Transport facilities as determined by BellSouth and permits the transmission of calls terminated by BellSouth.
- Access Tandem Switching: provides function of switching traffic from or to the Access Tandem from or to the end office switch(es). The Access Tandem Switching charge is assessed on all terminating minutes of use switched at the access tandem.
- Compensation Credit (CAP): Bellsouth and the ALECs will not be required to compensate each other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month.

Attachment B-1
Local Interconnection Service

Service: Local Interconnection* (CARF)

| State(s) | Louisiana | | | | | | Mississippi | | | | | |
|------------------------------|--|-------------|-------------------------------------|---------------------|-------------------|--|-------------|--------------------------------------|---------------------|-------------------|-------------------|-------------|
| | Per MOU | Applied Per | Monthly Recur. | Applied Per | Non-Recur. | Applied Per | Per MOU | Applied Per | Monthly Recur. | Applied Per | Non-Recur. | Applied Per |
| DS1 Local Channel | - | - | \$133.81 LC | \$466.97 LC - First | \$466.83 LC - Add | - | - | \$133.81 LC | \$466.97 LC - First | \$466.83 LC - Add | - | - |
| DS1 Dedicated Transport | - | - | \$16.75 per mile \$8.75 fac term | - | \$100.49 fac term | - | - | \$23.50 per mile \$80.00 fac term | - | - | \$100.49 fac term | - |
| DS1 Common Transport | \$0.00004 per mile \$0.00036 fac term | - | - | - | - | \$0.00004 per mile \$0.00036 fac term | - | - | - | - | - | - |
| Local Switching LS2 (FGD) | \$0.00468 access mou | - | - | - | - | \$0.00787 access mou | - | - | - | - | - | - |
| Tandem Switching | \$0.00060 access mou | - | - | - | - | \$0.00074 access mou | - | - | - | - | - | - |
| Information Surcharge | - | - | - | - | - | - | - | - | - | - | - | - |
| Tandem Intermediary Charge** | \$0.002 access mou | - | - | - | - | \$0.002 access mou | - | - | - | - | - | - |
| Composite Rate-DS1 Dedicated | \$0.01021 | - | - | - | - | \$0.00976 | - | - | - | - | - | - |
| Composite Rate-DS1 Tandem Sw | \$0.01049 | - | - | - | - | \$0.00991 | - | - | - | - | - | - |

| State(s) | N. Carolina | | | | | | S. Carolina | | | | | |
|------------------------------|--|-------------|--------------------------------------|---------------------|-------------------|--|-------------|--------------------------------------|---------------------|-------------------|-------------------|-------------|
| | Per MOU | Applied Per | Monthly Recur. | Applied Per | Non-Recur. | Applied Per | Per MOU | Applied Per | Monthly Recur. | Applied Per | Non-Recur. | Applied Per |
| DS1 Local Channel | - | - | \$133.81 LC | \$466.97 LC - First | \$466.83 LC - Add | - | - | \$133.81 LC | \$466.97 LC - First | \$466.83 LC - Add | - | - |
| DS1 Dedicated Transport | - | - | \$23.50 per mile \$80.00 fac term | - | \$100.49 fac term | - | - | \$23.50 per mile \$80.00 fac term | - | - | \$100.49 fac term | - |
| DS1 Common Transport | \$0.00004 per mile \$0.00036 fac term | - | - | - | - | \$0.00004 per mile \$0.00036 fac term | - | - | - | - | - | - |
| Local Switching LS2 (FGD) | \$0.01140 access mou | - | - | - | - | \$0.01086 access mou | - | - | - | - | - | - |
| Tandem Switching | \$0.00074 access mou | - | - | - | - | \$0.00074 access mou | - | - | - | - | - | - |
| Information Surcharge | - | - | - | - | - | \$0.03741 100 mou | - | - | - | - | - | - |
| Tandem Intermediary Charge** | \$0.002 access mou | - | - | - | - | \$0.002 access mou | - | - | - | - | - | - |
| Composite Rate-DS1 Dedicated | \$0.01331 | - | - | - | - | \$0.01323 | - | - | - | - | - | - |
| Composite Rate-DS1 Tandem Sw | \$0.01344 | - | - | - | - | \$0.01328 | - | - | - | - | - | - |

| State(s) | Tennessee | | | | | |
|------------------------------|--|-------------|--------------------------------------|---------------------|-------------------|-------------|
| | Per MOU | Applied Per | Monthly Recur. | Applied Per | Non-Recur. | Applied Per |
| DS1 Local Channel | - | - | \$133.81 LC | \$466.97 LC - First | \$466.83 LC - Add | - |
| DS1 Dedicated Transport | - | - | \$23.50 per mile \$80.00 fac term | - | \$100.49 fac term | - |
| DS1 Common Transport | \$0.00004 per mile \$0.00036 fac term | - | - | - | - | - |
| Local Switching LS2 (FGD) | \$0.01750 access mou | - | - | - | - | - |
| Tandem Switching | \$0.00074 access mou | - | - | - | - | - |
| Information Surcharge | - | - | - | - | - | - |
| Tandem Intermediary Charge** | \$0.002 access mou | - | - | - | - | - |
| Composite Rate-DS1 Dedicated | \$0.01961 | - | - | - | - | - |
| Composite Rate-DS1 Tandem Sw | \$0.01964 | - | - | - | - | - |

*Rates are displayed at the DS1-1.544 Mbps. level. Per rates and charges applicable to other arrangement levels, refer to Section E8 of BellSouth Telecommunications, Inc.'s Wholesale Access Tariff.

**The Tandem Intermediary Charge applies only to intermediary traffic.

-DS1 Local Channel: denotes a DS1 dedicated transport facility between the ALEC's serving wire center and the ALEC's PCI, also called an Entrance Facility. This element will apply when associated with services ordered by an ALEC which utilizes a BellSouth facilities. This element is not required when an ALEC is collocated.

-DS1 Dedicated Transport: provides transmission and facility termination. The facility termination applies for each DS1 Interoffice Channel terminated. Can be used from the ALEC's serving wire center to the end users and office or from the ALEC's serving wire center to the tandem.

-Common Transport: Composed of Common Transport facilities as determined by BellSouth and permits the transmission of calls terminated by BellSouth.

-Access Tandem Switching: provides function of switching traffic from or to the Access Tandem from or to the end office center(s). The Access Tandem Switching charge is assessed on all terminating minutes of use switched at the access tandem.

-Competition Credit (CAP): BellSouth and the ALEC's will not be required to compensate each other for more than 100% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month.

EXHIBIT 2

WARNING:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of WorldCom Technologies, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 971478-TP
ORDER NO. PSC-98-1216-FOF-TP
ISSUED: September 15, 1998

Complaint of Teleport Communications Group Inc./TCG South Florida against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement under Section 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 980184-TP

Complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 and request for relief.

DOCKET NO. 980495-TP

Complaint by MCI Metro Access Transmission Services, Inc. against BellSouth Telecommunications, Inc. for breach of approved interconnection agreement by failure to pay compensation for certain local traffic.

DOCKET NO. 980499-TP

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman J. TERRY DEASON SUSAN F. CLARK JOE GARCIA E. LEON JACOBS, JR.

• **FINAL ORDER RESOLVING COMPLAINTS**

APPEARANCES:

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On behalf of Intermedia Communications, Inc.

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On behalf of BellSouth Telecommunications, Inc.

Charles J. Pellegrini, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.

On behalf of the Commission Staff.

CASE BACKGROUND

MFS Communications Company, Inc. (MFS), and BellSouth Telecommunications, Inc. (BellSouth), entered into a Partial ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 3 Florida Interconnection Agreement pursuant to the Telecommunications Act of 1996 (Act) on August 26, 1996. The Commission approved the Agreement in Order No. PSC-96-1508-FOF-TP, issued December 12, 1996, in Docket No. 961053-TP. The Commission approved an amendment to the Agreement in Order No. PSC-97-0772-FOF-TP, issued July 1, 1997, in Docket No. 970315-TP. On November 12, 1997, WorldCom Technologies, Inc. (WorldCom), filed a Complaint Against BellSouth and Request for Relief, alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by WorldCom's affiliate, MFS, to Internet Service Providers (ISPs). The complaint was assigned Docket No. 971478-TP. BellSouth filed its Answer and Response on December 22, 1997. In Order No. PSC-98-0454-PCO-TP, issued March 31, 1998, the Commission directed that the matter be set for hearing.

Teleport Communications Group, Inc./TCG South Florida (TCG), and BellSouth entered into an Interconnection Agreement pursuant to the Act on July 15, 1996. The Commission approved the Agreement in Order No. PSC-96-1313-FOF-TP, issued October 29, 1996, in Docket No. 960862-TP.

On February 4, 1998, TCG filed a Complaint for Enforcement of Section IV.C of its Interconnection Agreement with BellSouth, also alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by TCG to ISPs. The complaint was assigned Docket No. 980184-TP. BellSouth filed its Answer and Response on February 25, 1998.

MCImetro Access Transmission Services, Inc. (MCIm), and BellSouth entered into an Interconnection Agreement pursuant to the Act on April 4, 1997. The Commission approved the Agreement in Order Nos. PSC-97-0723-FOF-TP, issued June 19, 1997, and PSC-97-0723A-FOF-TP, issued June 26, 1997, in Docket No. 960846-TP. On February 23, 1998, MCIm filed a Complaint against BellSouth, which was assigned Docket No. 980281-TP. Among other things, MCIm also alleged in Count 13 that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by MCIm to ISPs. On April 6, 1998, MCIm filed a separate Complaint embodying the complaint set forth in Count 13 of the first Complaint. The separate complaint was assigned Docket No. 980499-TP.

Intermedia Communications, Inc. (Intermedia), and BellSouth entered into an interconnection Agreement pursuant to the Act on July 1, 1996. The Commission approved the Agreement in Order No. PSC-96-1236-FOF-TP, issued October 7, 1996, in Docket No. ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 4 960769-TP. The Commission approved an amended Agreement in Order No. PSC-97-1617-FOF-TP, issued December 30, 1997, in Docket No. 971230-TP. On April 6, 1998, Intermedia filed a Complaint against BellSouth alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by Intermedia to ISPs. That complaint was assigned Docket No. 980495-TP.

On March 9, 1998, GTE Florida Incorporated (GTEFL) filed a petition to intervene in this proceeding. By Order No. PSC-98-0476-PCO-TP, we denied GTEFL's petition. Subsequently, on May 6, 1998, GTEFL filed a petition to be permitted to file a brief. We denied that petition at the commencement of the hearing in these complaint dockets.

By Order No. PSC-98-0561-PCO-TP, issued April 21, 1998, the four complaints were consolidated for hearing purposes. The hearing was held on June 11, 1998.

DECISION

This case is about BellSouth's refusal to pay reciprocal compensation for the transport and termination of ISP traffic under the terms of its interconnection agreements with WorldCom, Teleport, Intermedia, and MCIm. In a letter dated August 12, 1997, BellSouth notified the complainants that it would not pay compensation for the termination of ISP traffic, because "ISP traffic is jurisdictionally interstate" and "enjoys a unique status, especially [as to] call termination." The case is primarily a contract dispute between the parties, and that is the foundation of our decision below. As TCG stated in its brief, "This is a contract dispute in which the Commission must decide whose meaning is to be given to the term 'Local Traffic' in the Agreement."

Accordingly, in this decision we only address the issue of whether ISP traffic should be treated as local or interstate for purposes of reciprocal compensation as necessary to show what the parties might reasonably have intended at the time they entered into their contracts. Our decision does not address any generic questions about the ultimate nature of ISP traffic for reciprocal compensation purposes, or for any other purposes.

While there are four complainants in the consolidated case, their arguments contain many common threads. Also, BellSouth's position on each issue is the same, and its brief addresses all ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 5

four together. For the sake of efficiency, we will address the main themes in our discussion of the WorldCom-BellSouth agreement. We will address the particular language of the other agreements separately.

The WorldCom-BellSouth Agreement

On August 26, 1996, MFS (now WorldCom) and BellSouth entered into a Partial Interconnection Agreement, which we approved in Order No. PSC-96-1508-FOF-TP. WorldCom witness Ball testified on the pertinent provisions of that Agreement. Section 1.40 of the Agreement defines local traffic as:

[C]alls between two or more Telephone Exchange service users where both Telephone Exchange Services bear NPA-NXX designations associated with the same local calling area of the incumbent LEC or other authorized area [such as EAS]. Local traffic includes traffic types that have been traditionally referred to as "local calling" and as "extended area service (EAS)." All other traffic that originates and terminates between end users within the LATA is toll traffic. In no event shall the Local Traffic area for purposes of local call termination billing between the parties be decreased.

Section 5.8.1 provides that:

Reciprocal Compensation applies for transport and termination of Local ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 6 Traffic (including EAS and EAS-like traffic) billable by BellSouth or MFS which a Telephone Exchange Service Customer originates on BellSouth's or MFS's network for termination on the other Party's network.

The question presented for decision is, as it is in the other complaints, whether, under the WorldCom - BellSouth Florida Partial Interconnection Agreement, the parties are required to compensate each other for transport and termination of traffic to Internet Service Providers; and if they are, what relief should the Commission grant? The issue is whether the traffic in question, ISP traffic, is local for purposes of the agreements in question.

According to witness Ball, the language of the WorldCom- BellSouth Agreement itself makes it clear that the parties owe each other reciprocal compensation for the traffic in question. He stated that "if a BellSouth customer utilizes a BellSouth telephone exchange service that has a local NPA-NXX and they call a WorldCom customer that buys a WorldCom telephone exchange service that has a WorldCom NPA-NXX, that's local traffic." Witness Ball explained that this is what happens when a BellSouth local customer calls a WorldCom customer that happens to be an ISP. He pointed out that there is no exclusion for any type of customer based on what business the customer happens to be in. Witness Ball noted that where exceptions were needed for certain types of traffic, they were expressly included in the Agreement. He argued that WorldCom understood ISP traffic to be local, and if BellSouth wanted to exclude ISP calls, it was BellSouth's obligation to raise the issue at the time the Agreement was negotiated.

Witness Ball stated that "the Agreement is entirely clear and unambiguous" on the treatment of ISP traffic as local; but if we determine that the Agreement is ambiguous on this point, the ambiguities should be resolved by considering:

(1) the express language of the Telecommunications Act of ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 7 1996;

(2) relevant rulings, decisions and orders of this Commission;

(3) relevant rulings, decisions and orders of the FCC interpreting the

Act;

(4) rulings, decisions and orders from other, similarly situated state regulatory agencies; and

(5) the custom and usage in the industry.

BellSouth witness Hendrix agreed that the contract did not specify whether ISP traffic was included in the definition of local traffic. Witness Hendrix argued, however, that it was WorldCom's obligation to raise the issue in the negotiations. In fact, the record shows that while BellSouth and the complainants all reached a specific agreement on the definition of local traffic to be included in the contracts, none of them raised the particular question of what to do with ISP traffic.

According to BellSouth, all the complainants assumed that BellSouth agreed to include ISP traffic as local. BellSouth asserts that it cannot be forced to pay reciprocal compensation just because it did not "affirmatively except ISP traffic from the definition of 'local traffic'" in negotiating the Agreement. BellSouth argues that the existing law at the time the contracts were negotiated "reflects that it was unreasonable for the Complainants to blithely assume that BellSouth agreed with their proposed treatment of ISP traffic."

It appears to us from our review of the record, however, that BellSouth equally assumed, and implied in its brief and testimony at the hearing, that the complainants in fact knew ISP ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 8 traffic was interstate in nature. In its brief, BellSouth states that "parties to a contract are presumed to enter into their Agreement with full knowledge of the state of the existing law, which in turn is incorporated into and sheds light on the meaning of the parties' Agreement." BellSouth witness Hendrix asserted that the FCC had explicitly found that ISPs provide interstate services. Therefore, witness Hendrix argued, there was no need for BellSouth to believe ISP traffic would be subject to reciprocal compensation. The result of this misunderstanding, BellSouth asserts, was that the parties never had an express meeting of the minds on the scope of the definition of local traffic.

Discussion

Upon review of the language of the agreement, and the evidence and testimony presented at the hearing, we find that the Agreement defines local traffic in such a way that ISP traffic clearly fits the definition. Since ISP traffic is local under the terms of the Agreement, then, a priori, reciprocal compensation for termination is required under Section 5.8 of the Agreement. There is no ambiguity, and there are no specific exceptions for ISP traffic. Since there is no ambiguity in the language of the agreement, we need not consider any other evidence to determine the parties' obligations under the agreement. Even if there were an ambiguity in the language of the agreement, however, the other evidence and argument presented at the hearing leads to the same result: the parties intended to include ISP traffic as local traffic for purposes of reciprocal compensation under their agreement.

Local vs. Interstate Traffic

The first area to explore is the parties' basis for considering ISP traffic to be jurisdictionally local or interstate. BellSouth witness Hendrix contended that for reciprocal compensation to apply, "traffic must be jurisdictionally local." He argued that ISP traffic is not jurisdictionally local, because the FCC "has concluded that enhanced service providers, of which ISPs are a subset, use the local network to provide

interstate services." He added that they do so just as facilities-based interexchange carriers and resellers use the local network to provide interstate services. He stated that "[t]he FCC stated in Paragraph 12 in an order dated February 14, 1992, in Docket Number 92-18, that:

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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.

Further, according to Witness Hendrix, in its April 10, 1998, Report to Congress (CC Docket No. 96-45), "the FCC indicated that it does have jurisdiction to address whether ALECs that serve ISPs are entitled to reciprocal compensation." We will discuss that report in more detail below.

BellSouth does acknowledge in its brief that the "FCC has not held that ISP traffic is local traffic for purposes of the instant dispute before the Commission." Nor has the FCC "held that ISPs are end users for all regulatory purposes." We agree with this assessment. The FCC has not yet decided whether ISP traffic is subject to reciprocal compensation. While the FCC has determined that ISPs provide interstate services, it appears that the FCC may consider these services severable from telecommunications services, as we explain below. No FCC order delineates exactly for what purposes the FCC intends ISP traffic to be considered local. By the same token, the FCC has not said that ISP traffic cannot be considered local for all regulatory purposes. It appears that the FCC has largely been silent on the issue. This leads us to believe the FCC intended for the states to exercise jurisdiction over the local service aspects of ISP traffic, unless and until the FCC decided otherwise. Even Witness Hendrix agreed that the FCC intended ISP traffic to be treated as though local. He did not expound on what exactly that meant.

BellSouth contends in its brief that there is no dispute that an Internet transmission may simultaneously be interstate, international and intrastate. BellSouth also contends that the issue should be resolved in pending proceedings before the FCC. Those proceedings include one the FCC initiated in response to a June 29, 1997, letter from the Association for Local Telecommunications Services (ALTS). ALTS requested clarification from the FCC that ISP traffic is within the FCC's exclusive ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 10 jurisdiction. ALTS has also asked the FCC for a ruling on the treatment of ISP traffic as local.

Regardless of what the FCC ultimately decides, it has not decided anything yet, and we are concerned here with an existing interconnection agreement, executed by the parties in 1996. Our finding that ISP traffic should be treated as local for purposes of the subject interconnection agreement is consistent with the FCC's treatment of ISP traffic at the time the agreement was executed, all pending jurisdictional issues aside.

Termination

In its brief, BellSouth places considerable emphasis on the point of

termination for a call. The basic question is whether or not ISP traffic terminates at the ALEC premises. Witness Hendrix testified that "call termination does not occur when an ALEC, serving as a conduit, places itself between BellSouth and an ISP." "[I]f an ALEC puts itself in between BellSouth's end office and the Internet service provider, it is acting like an intermediate transport carrier or conduit, not a local exchange provider entitled to reciprocal compensation." "Thus, 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." BellSouth states in its brief that "the jurisdictional boundaries of a communication are determined by its beginning and ending points, and the ending point of a call to an ISP is not the ISP switch, but rather is the database or information source to which the ISP provides access."

MCIm contends in its brief that BellSouth witness Hendrix' testimony that a call to an ISP terminates not at the local telephone number, but rather at a distant Internet host misunderstands the nature of an Internet call. MCIm witness Martinez contended that the ability of Internet users to visit multiple websites at any number of destinations on a single call is a clear indication that the service provided by an ISP is enhanced service, not telecommunications service. According to MCIm, this does not alter the nature of the local call. While BellSouth would have one believe that the call involved is not a local call, MCIm points out that in the case of a rural customer using an IXC to connect with an ISP, the call "is suddenly two parts again: a long distance call, for which BellSouth can charge access, followed by an enhanced service."

ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 11 BellSouth argues in its brief that "in interpreting the language of a contract, words referring to a particular trade will be interpreted by the courts according to their widely accepted trade meaning." We agree, but it appears to us that BellSouth then chooses to ignore the industry standard definition of the word "termination." The other parties provided several examples of industry definitions on this point.

WorldCom witness Ball stated that "[s]tandard industry practice is that a call is terminated essentially when it's answered; when the customer that is buying the telephone exchange service that has the NPA-NXX answers the call by--whether it's a voice grade phone, if it's a fax machine, an answering machine or, in the case of an ISP, a modem."

TCG witness Kouroupas testified that the standard industry definition of "service termination point" is:

Proceeding from a network toward a user terminal, the last point of service rendered by a commercial carrier under applicable tariffs.... In a switched communications system, the point at which common carrier service ends and user-provided service begins, i.e., the interface point between the communications systems equipment and the user terminal equipment, under applicable tariffs.

Witness Kouroupas further explained that "A call placed over the public switched telecommunications network is considered 'terminated' when it is delivered to the telephone exchange bearing the called telephone number." Call termination occurs when a connection is established between the caller and the telephone exchange service to which the dialed telephone number is assigned, answer supervision is returned, and a call record is generated. This is the case whether the call is received by a voice grade phone, a fax machine, an answering machine, or in the case of an ISP, a modem. Witness Kouroupas contended that this is a widely accepted industry definition.

ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 12 MCI argues in its brief that:

a "telephone call" placed over the public switched telephone network is "terminated" when it is delivered to the telephone exchange service premise bearing the called telephone number... specifically, in its Local Competition Order (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶1040), the FCC defined terminations "for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." MCI terminates telephone calls to Internet Service Providers on its network. As a communications service, a call is completed at that point, regardless of the identity or status of the called party.

Witness Martinez testified that "[w]hen a BellSouth customer originates a telephone call by dialing that number, the telephone call terminates at the ISP premises, just as any other telephone ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 13 call terminates when it reaches the premises with the phone number that the end user dialed."

Severability

Recent FCC documents have described Internet traffic as calls with two severable parts: a telecommunications service part, and an enhanced service part. In the May 1997 Universal Service Order at ¶789, the FCC stated:

When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet service provider's offering.

In that Report, the FCC also stated that ISPs "generally do not provide telecommunications." (¶¶ 15, 55) WorldCom argues in its

brief that:

The FCC's determination that ISPs do not provide telecommunications was mandated by the 1996 Act's express distinction between telecommunications and information services. "Telecommunications" is "The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. Section 153(48). By contrast, "information services" is "the ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 14 offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. Sec. 153(20)

WorldCom adds that:

[t]he FCC recognized that the 1996 Act's distinction between telecommunications and information services is crucial. The FCC noted that "Congress intended 'telecommunications service' and 'information service' to refer to separate categories of services" despite the appearance from the end user's perspective that it is a single service because it may involve telecommunications components. (Report to Congress, ¶¶56, 58) [Emphasis supplied by WorldCom]

BellSouth argues that the complainants misinterpret the FCC's decision. BellSouth points out that this passage is only discussing whether or not ISPs should make universal service ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 15 contributions. That is true; but the passage is nevertheless as significant an indication of how the FCC may view ISP traffic as the passages BellSouth has cited.

In its brief, BellSouth claims that the FCC "specifically repudiated" the two-part theory. BellSouth cites the FCC's Report to Congress, CC Docket No., 96-45, April 10, 1998, ¶220. There the FCC stated:

We make no determination here on the question of whether competitive LECs that serve Internet service providers (or Internet service providers that have voluntarily become competitive LECs) are entitled to reciprocal compensation for terminating Internet traffic. That issue, which is now before the [FCC], does not turn on the status of the Internet service provider as a telecommunications carrier or information service

provider. [emphasis supplied by BellSouth]

> BellSouth claims that this means the FCC believes the distinction is "meaningless in the context of the FCC's pending reciprocal compensation decision." The other parties point out, however, that it is not at all clear what the FCC means in this passage. It appears to us that the FCC is talking here about the status of the provider, not about the severability of the telecommunications service from the information service. Indeed, in the same report, the FCC brought up the severability notion, as discussed above.

BellSouth also argues that the severability theory is contradicted by the FCC's description of Internet service in its Non-Accounting Safeguards Order (Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the ORDER NO.

PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 16 Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (released Dec. 24, 1996), note 291), where the FCC states:

The Internet is an interconnected global network of thousands of i n t e r o p e r a b l e packet-switched networks that use a standard protocol...to enable information exchange. An end user may obtain access to the Internet from an Internet service provider, by using dial-up or dedicated access to connect to the Internet service provider's processor. The Internet service provider, in turn, connects the end user to an Internet backbone provider that carries traffic to and from I n t e r n e t h o s t sites.

BellSouth claims that the significance of this is that calls to ISPs only transit through the ISP's local point of presence. Thus, the call does not terminate there. In support of this conclusion, BellSouth mentions several other services, such as Asynchronous Transfer Mode (ATM) technology, that use packet switching. BellSouth makes the point that the jurisdictional nature of a call is not changed through the conversion from circuit switching to packet switching.

BellSouth also discussed an example where an end user made a long-distance call to access voice mail. In that case the call was an interstate call, and the FCC found that it did not lose that interstate character upon being forwarded to voice mail. Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, 7 FCC Rcd 1619 (1992), aff'd, Georgia Public Service Commission v. FCC, 5 F.3d 1499 (11th Cir. 1993). We do not comprehend BellSouth's point. By that logic, if a local call is used to access an information service, it follows ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 17 that the entire transmission would be local. In yet another case cited by BellSouth, the FCC found that interstate foreign exchange service was interstate service, and thus came under the FCC's jurisdiction. New York Telephone Co.—Exchange System Access Line Terminal Charge for FX and CCSA Service, Memorandum Opinion and Order, 76

FCC 2d 349 (1980). Once again, it is difficult to discern BellSouth's point. We do not find this line of argument at all persuasive.

BellSouth further argues that "[t]he FCC has long held that the jurisdiction of a call is determined not by the physical location of the communications facilities or the type of facilities used, but by the nature of the traffic that flows over those facilities." This, too, is a perplexing argument in light of BellSouth's claims that the distant location of the host accessed over the Internet makes ISP traffic interstate, and that the nature of ISP traffic as either telecommunications or information service is irrelevant.

As mentioned above, witness Hendrix did admit that "the FCC intended for ISP traffic to be 'treated' as local, regardless of jurisdiction." He emphasized the word treated, and explained that the FCC "did not say that the traffic was local but that the traffic would be treated as local."

FPSC Treatment

BellSouth dismisses Commission Order No. 21815, issued September 5, 1989, in Docket No. 880423-TP, Investigation into the Statewide Offering of Access to the Local Network for the Purpose of Providing Information Services, as an interim order. In that order, the Commission found that end user access to information service providers, which include Internet service providers, is by local service. In the proceeding, BellSouth's own witness testified that:

[C]onnections to the local exchange network for the purpose of providing an information service should be treated like any other local exchange service. (Order 21815, p. 25)

ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 18 The Commission agreed with BellSouth's witness. The Commission also found that calls to ISPs should be viewed as jurisdictionally intrastate local exchange calls terminating at an ISP's location in Florida. BellSouth's position, as stated in the Order, was that:

calls should continue to be viewed as local exchange traffic terminating at the ESP's [Enhanced Service Provider's] location. Connectivity to a point out of state through an ESP should not contaminate the local exchange. (Order, p. 24) (ISPs are a subset of ESPs.)

In this case, Witness Hendrix claimed that Order 21815 was only an interim order that has now been overruled. He could not identify any Commission order establishing a different policy; nor could he specify the FCC order that supposedly overrules the Florida Commission order. Further, and most importantly, BellSouth admitted that this definition had not been changed at the time it entered into its Agreements.

It is clear that the treatment of ISP traffic was an issue long before the parties' Agreement was executed. We found, in Order No. 21815, as

discussed above, that such traffic should be treated as local. Both WorldCom and BellSouth clearly were aware of this decision, and we presume that they considered it when they entered into their Agreement.

Intent of Parties

In determining what was the parties' intent when they executed their contract, we may consider circumstances that existed at the time the contract was entered into, and the subsequent actions of the parties. As WorldCom argues in its brief, "the intent of the parties is revealed not just by what is said, but by an analysis of all the facts and circumstances surrounding the disputed issue." In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953) the Florida Supreme Court cited with favor Contracts, 12 Am.Jur. § 250, pages 791-93, as a ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 19 general proposition concerning contract construction in pertinent part as follows:

Agreements must receive a r e a s o n a b l e interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language ... Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred ... An interpretation which is just to both parties will be preferred to one which is unjust.

In the construction of a contract, the circumstances in existence at the time the contract was made should be considered in ascertaining the parties' intention. Triple E Development Co. v. Floridagold Citrus Corp., 51 So.2d 435, 438, rhg. den. (Fla. 1951). What a party did or omitted to do after the contract was made may be properly considered. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246, rhg. den., (5th Cir.). Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958).

As noted above, Section 1.40 of the Agreement defines local traffic. The definition appears to be carefully drawn. Local traffic is said to be calls between two or more service users bearing NPA-NXX designations within the local calling area of the incumbent LEC. It is explained that local traffic includes traffic traditionally referred to as "local calling" and as "EAS." No mention is made of ISP traffic. Therefore, nothing in Section 1.40 sets ISP traffic apart from local traffic. It is further explained that all other traffic that originates and

terminates between end users within the LATA is toll traffic.

As evidence of its intent, BellSouth argues that the interpretation of a contract must be one consistent with reason, probability, and the practical aspect of the transaction between the parties. BellSouth contends that it was "economically irrational for it to have agreed to subject ISP traffic to payment of reciprocal compensation." BellSouth claims it "had no rational economic reason to have agreed to pay reciprocal compensation for the ISP traffic, because...such assent would have likely guaranteed that BellSouth would lose money on every customer it serves who subscribed to an ISP served by a complainant."

In an example provided by BellSouth, a BellSouth residential customer subscribes to an ISP that is served by an ALEC. The customer uses the Internet for two hours per day. This usage would generate a reciprocal compensation payment to the ALEC of \$36.00 per month, assuming a 1 cent per minute reciprocal compensation rate. A Miami BellSouth customer pays \$10.65 per month for residential service. Thus, BellSouth would pay \$25.35 per month more to the ALEC than it receives from its customer. BellSouth claims that this unreasonable result is proof that it never intended to include ISP traffic as local for reciprocal compensation purposes.

Not all parties receive reciprocal compensation of 1 cent per minute. The MCI Agreement specifies a rate of \$0.002 per minute, not \$0.01. In this case, using BellSouth's example, the total reciprocal compensation would be \$7.20. MCI points out in its brief that the contract containing the \$0.01 rate is one to which BellSouth agreed. They argue that "[w]hether BellSouth agreed to this rate because they mistakenly thought that a rate five times higher than cost would give it some competitive advantage, or whether BellSouth agreed to it without thinking at all, it is not the Commission's role to protect BellSouth from itself."

In support of its position that ISP traffic was intended to be treated as local in the Agreement, WorldCom points out that BellSouth charges its own ISP customers local business line rates for local telephone exchange service that enables the ISP's customers within the local calling area to connect with the ISP by means of a local call. Such calls are rated and billed as local, not toll.

MCI also points out that BellSouth treats calls to ISPs that are its customers as local calls. BellSouth also offers its own ISP customers service out of its local exchange tariffs. MCI asserts that while it treats its own customers one way, BellSouth would have ISP customers of the ALECs treated differently.

Besides BellSouth's treatment of its own ISP customers' traffic, there is nothing in the parties' agreements that addresses the practical aspect of how to measure the traffic. As TCG points out in its brief, BellSouth failed to take any steps to develop a tracking system to separately account for ISP traffic. The TCG contract was entered into in July 1996, but BellSouth did not attempt to identify ISP traffic until

May or June of 1997. If the agreement did in fact exclude ISP traffic from the definition of local traffic, and thus the reciprocal compensation provisions of the agreement, it would be necessary to develop a tracking system. The evidence indicates that the tracking system currently used by BellSouth is based on identifying the seven-digit number associated with an ISP. Absent that, as BellSouth witness Hendrix conceded, BellSouth must rely on estimates.

Intermedia also points out in its brief that:

If ISP traffic is not local as BellSouth contends, it would have been imperative for the parties to develop a system to identify and measure ISP traffic, because there is no ready mechanism in place for tracking local calls to ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 22 ISPs. The calls at issue are commingled with all other local traffic and are indistinguishable from other local calls. If BellSouth intended to exclude traffic terminated to ISPs from other local traffic, it would have needed to develop a way to measure traffic that distinguishes such calls from all other types of local calls with long holding times, such as calls to airlines and hotel reservations, and banks. In fact, there is no such agreed-upon system in place today.

This is perhaps the most telling aspect of the case. BellSouth made no effort to separate out ISP traffic from its own bills until the May-June 1997 time frame. WorldCom argues in its brief that BellSouth's "lack of action is especially glaring given Mr. Hendrix's acknowledgment that there are transport and termination costs associated with calls terminating at an ISP." Prior to that time, BellSouth may have paid some reciprocal compensation for ISP traffic. Witness Hendrix admitted, "We may have paid some, I will not sit here and say that we did not pay any." The other parties made no effort to separate out ISP traffic, and based on their position that the traffic should be treated as local, this is as one would expect. In some cases the contracts were entered into more than a year before this time period.

It appears from the record that there was little, if any, billing of reciprocal compensation by the ALECs until just before BellSouth began to investigate the matter. It was the receipt of the bills for considerable amounts of reciprocal compensation that triggered BellSouth's investigation of the matter, and its decision to begin removing ISP traffic from its own bills. If these large bills were never received, would BellSouth have continued to bill the ALECs for reciprocal compensation on ISP traffic? There would have been no reason for BellSouth to ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 23 investigate, and therefore no reason for them to start separating their own traffic. Under the circumstances, we have difficulty concluding that the parties all knew that ISP traffic was interstate, and should be separated out before billing for reciprocal compensation on local traffic, as BellSouth contends.

Impact on Competition

The potential impact of BellSouth's actions on local competition is perhaps the most egregious aspect of the case. As witness Hendrix testified, The Telecommunications Act of 1996 "established a reciprocal compensation mechanism to encourage local competition." He argued that "The payment of reciprocal compensation for ISP traffic would impede local competition." We are more concerned with the adverse effect that BellSouth's refusal to pay reciprocal compensation could have on competition. We agree with this assessment by TCG witness Kouroupas:

As competition grows, the smaller, leaner ALECs may well win other market segments from ILECs. If each time this occurs the ILEC, with its greater resources overall, is able to fabricate a dispute with ALECs out of whole cloth and thus invoke costly regulatory processes, local competition could be stymied for many years.

Conclusion

We think the question of whether ISP traffic is local or interstate can be argued both ways. While it appears that the FCC may believe Internet usage is an interstate service, it also appears that it believes that it is not a telecommunications service. The FCC itself seems to be leaning toward the notion of severability of the information service portion of an Internet call from the telecommunications portion, which is often a local call. Further, the FCC has allowed ISPs to purchase local service for provision of Internet services, without ever ruling on the extent to which the "local" characterization should apply. ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 24 Indeed, as recently as April, 1998, the FCC itself indicated that a decision has not been made as to whether or not reciprocal compensation should apply. Thus, while there is some room for interpretation, we believe the current law weighs in favor of treating the traffic as local, regardless of jurisdiction, for purposes of the Interconnection Agreement. We also believe that the language of the Agreement itself supports this view. We therefore conclude on the basis of the plain language of the Agreement and of the effective law at the time the Agreement was executed, that the parties intended that calls originated by an end user of one and terminated to an ISP of the other would be rated and billed as local calls; else one would expect the definition of local calls in the Agreement to set out an explicit exception.

Even if we assume for the sake of discussion that the parties' agreements concerning reciprocal compensation can be said to be ambiguous or susceptible of different meanings, the parties' conduct at the time of, and subsequent to, the execution of the Agreement indicates that they intended to treat ISP traffic as local traffic. None of the parties singled ISP traffic out for special treatment during their negotiations. BellSouth concedes that it rates the traffic of its own ISP customers as local traffic. It would hardly be just for BellSouth to conduct itself in this way while treating WorldCom differently.

Moreover, BellSouth made no attempt to separate out ISP traffic from its bills to the ALECs until it decided it did not want to pay reciprocal compensation for ISP traffic to the ALECS. BellSouth's conduct subsequent to the Agreement was for a long time consistent with the interpretation of Section 1.40 urged by WorldCom. A party to a contract cannot be permitted to impose unilaterally a different meaning than the one shared by the parties at the time of execution when it later becomes enlightened or discovers an unintended consequence.

BellSouth states in its brief that "the Commission must consider the extant FCC orders, case law, and trade usage at the time the parties negotiated and executed the Agreements." We have. By its own standards, BellSouth is found wanting. The preponderance of the evidence shows that BellSouth is required to pay WorldCom reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to WorldCom for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the WorldCom and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 25 Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate WorldCom according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

The Teleport/TCG South Florida-BellSouth Agreement

Local traffic is defined in Section 1.D. of the Agreement between BellSouth and TCG as:

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 arrangement with an independent LEC, with which TCG is not directly interconnected.

This Agreement was entered into by the parties on July 15, 1996, and was subsequently approved by the Commission in Docket No. 960862-TP. Under TCG's prior Agreement with BellSouth, ISP traffic was treated as local.

The TCG Agreement states in Section IV.B and part of 1.C:

The delivery of local traffic between parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement.

Each party will pay the other for terminating its ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 26 local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, incorporated herein by t h i s reference.

No exceptions have been made to the definition of local traffic to exclude ISP traffic. The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to TCP for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the TCG and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate TCG according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

The MCI-BellSouth Agreement

The Agreement between MCI and BellSouth defines local traffic in Attachment IV, Subsection 2.2.1. That subsection reads as follows:

The parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the FPSC. Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 27 corresponding Extended Area (EAS) exchange. The terms Exchange and EAS exchanges are defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff.

MCI witness Martinez testified that no exception to the definition of local traffic was suggested by BellSouth. MCI argues in its brief that "[i]f BellSouth wanted a particular exception to the general definition of local traffic, it had an obligation to raise it."

The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay MCI reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to MCI for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the MCI and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate MCI according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

The Intermedia-BellSouth Agreement

The Agreement with Intermedia defines Local Traffic in Section 1(D) as:

any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service (EAS) exchange. The terms Exchange, and EAS exchanges are defined and ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 28 specified in Section A3 of BellSouth's General Subscriber Service T a r i f f . (T R 142-143)

The portion regarding reciprocal compensation, Section IV(A) states:

The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. (TR 143)

Section IV(B) states:

Each party will pay the other party for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference i n c o r p o r a t e d herein.

The evidence shows that no exceptions were made to the definition of local traffic to exclude ISP traffic in the Intermedia-BellSouth Agreement. The facts surrounding this Agreement, and the arguments made by the parties,

are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay Intermedia reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to Intermedia for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the Intermedia and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 29 from other local dialed traffic. We find that BellSouth must compensate Intermedia according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that under the terms of the parties' Interconnection Agreements, BellSouth Telecommunications, Inc. is required to pay Worldcom Technologies, Inc., Teleport Communications Group Inc./TCG South Florida, Intermedia Communications, Inc., and MCI Metro Access Transmission Services, Inc., reciprocal compensation for the transport and termination of telephone exchange service that is terminated with end users that are Internet Service Providers or Enhanced Service Providers. BellSouth Telecommunications, Inc. must compensate the complainants according to the interconnection agreements, including interest, for the entire period the balance owed is outstanding. It is further

ORDERED that these dockets shall be closed.

By **ORDER** of the Florida Public Service Commission this 15th Day of September, 1998.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director

Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

MCB

**NOTICE OF FURTHER PROCEEDINGS OR
JUDICIAL REVIEW**

The Florida Public Service Commission is required by Section 120.569(1), *Florida Statutes*, to notify ORDER NO. PSC-98-1216-FOF-TP DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP PAGE 30 parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, *Florida Statutes*, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, *Florida Administrative Code*; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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EXHIBIT 3

**AMENDMENT
TO
MASTER INTERCONNECTION AGREEMENT BETWEEN
INTERMEDIA COMMUNICATIONS, INC. and
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED JULY 1, 1996**

Pursuant to this Agreement (the "Amendment"), Intermedia Communications, Inc. ("ICI") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Master Interconnection Agreement between the Parties effective July 1, 1996 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ICI and BellSouth hereby covenant and agree as follows:

1. The Parties agree that BellSouth will, upon request, provide, and ICI will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2. following:
2. This arrangement provides for ordering interconnection to a single access tandem, or, at a minimum, less than all access tandems within the LATA for ICI's terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from other ALECs, Interexchange Carriers, Independent Companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of ICI's NXXs must be associated with these access tandems; otherwise, ICI must interconnect to each tandem where an NXX is "homed" for transit traffic switched to and from an Interexchange Carrier.
3. The Parties agree to bill Local traffic at the elemental rates specified in Attachment A.
4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.
5. The Parties agree that all of the other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.
6. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Intermedia Communications, Inc.

James A. Lewis
Signature

Name

Title

Date

BellSouth Telecommunications, Inc.

Jerry D. Hendrix
Signature

Jerry D. Hendrix

Name

Director-Interconnection Services

Title

6/3/98

Date

ATTACHMENT A

Multiple Tandem Access shall be available according to the following rates for local usage:

1. Each Party's local usage will be determined by the application of its reported Percent Local Usage ("PLU") to its intrastate terminating minutes of use as set forth in Paragraph 1.D. in ICI's February 24, 1997. Amendment to its Interconnection Agreement.
2. The Parties agree to bill Local traffic at the elemental rates specified below:

| ELEMENT | AL | FL | GA | KY | LA |
|--|-----------|------------|-------------|-------------|-------------|
| Local Switching | | | | | |
| End Office Switching, per MOU | \$0.0017 | \$0.0175 | \$0.0016333 | \$0.002562 | \$0.0021 |
| End Office Switching, add'l MOU ⁽¹⁾ | NA | \$0.005 | NA | NA | NA |
| End Office Interoffice Trunk Port - Shared, MOU | NA | NA | NA | NA | \$0.0002 |
| Tandem Switching, per MOU | \$0.0015 | \$0.00029 | \$0.0006757 | \$0.001096 | \$0.0008 |
| Tandem Interoffice Trunk Port - Shared | NA | NA | NA | NA | \$0.0003 |
| Tandem Intermediary Charge, per MOU ⁽²⁾ | \$0.0015 | NA | NA | \$0.001096 | NA |
| Local Transport | | | | | |
| Shared, per mile, per MOU | \$0.00004 | \$0.000012 | \$0.000008 | \$0.0000049 | \$0.0000083 |
| Facility Termination, per MOU | \$0.00036 | \$0.0005 | \$0.0004152 | \$0.000426 | \$0.00047 |

| ELEMENT | MS | NC | SC | TN |
|--|------------|-----------|------------|------------|
| Local Switching | | | | |
| End Office Switching, per MOU | \$0.00221 | \$0.0040 | \$0.00221 | \$0.0019 |
| End Office Switching, add'l MOU ⁽¹⁾ | NA | NA | NA | NA |
| End Office Interoffice Trunk Port - Shared, MOU | NA | NA | NA | NA |
| Tandem Switching, per MOU | \$0.003172 | \$0.0015 | \$0.003172 | \$0.000676 |
| Tandem Interoffice Trunk Port - Shared | NA | NA | NA | NA |
| Tandem Intermediary Charge, per MOU ⁽²⁾ | NA | NA | NA | NA |
| Local Transport | | | | |
| Shared, per mile, per MOU | \$0.000012 | \$0.00004 | \$0.000012 | \$0.00004 |
| Facility Termination, per MOU | \$0.00036 | \$0.00036 | \$0.00036 | \$0.00036 |

(1) This rate element is for use in those states with a different rate for additional minutes of use.

(2) This charge is applicable only to intermediary traffic and is applied in addition to applicable switching and/or interconnection charges.

EXHIBIT 4

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 991534-TP

REQUEST FOR ARBITRATION CONCERNING:
 COMPLAINT OF INTERMEDIA :
 COMMUNICATIONS, INC. AGAINST :
 BELLSOUTH TELECOMMUNICATIONS, INC.:
 FOR BREACH OF TERMS OF :
 INTERCONNECTION AGREEMENT UNDER :
 SECTIONS 251 AND 252 OF THE :
 TELECOMMUNICATIONS ACT OF 1996, :
 AND REQUEST FOR RELIEF :



VOLUME 2
Pages 166 through 375

*
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 * THE OFFICIAL TRANSCRIPT OF THE HEARING *
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PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
 COMMISSIONER SUSAN F. CLARK

DATE: Tuesday, June 13 2000

TIME: Commenced at 2:15 p.m.
 Concluded at 6:36 p.m.

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

REPORTED BY: TRICIA DeMARTE
 Official FPSC Reporter
 (850) 413-6736

APPEARANCES: (As heretofore noted.)

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1 table and take a set of rates.

2 I was directly involved in that process, and
3 none of that was discussed in any planning meeting that
4 had to do with relief of the Buckhead tandem.

5 Q But by the same -- well, do you agree or do you
6 not agree that the MTA amendment was brought to
7 Intermedia's attention as a means of solving call blocking
8 that BellSouth was performing in the Buckhead tandem?

9 A Absolutely not. And here's why. The Buckhead
10 tandem was at exhaust. There's a finite number of trunk
11 terminations that a 4-ESS can accommodate and Buckhead had
12 all of those. To try to bring -- to try to force on
13 Intermedia this MTA requirement would bring more traffic
14 to the Buckhead tandem, not less. So, I mean, it's just
15 absolutely contraindicated that BellSouth would try to
16 force MTA on Intermedia in a switch that it already knew
17 was out of capacity.

18 Q Well, do you think that that is why Intermedia
19 ultimately established its own direct trunks to the
20 Norcross tandem at the time the MTA agreement was signed?

21 A I have no idea of Intermedia's motivation for
22 why it establishes any of its trunk groups, but I can tell
23 you as a traffic engineering that those choices are made
24 looking at the distance between switches, the amount of
25 traffic that's carried. I know that both of Intermedia's

FLORIDA PUBLIC SERVICE COMMISSION

EXHIBIT 5

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 991534-TP
ORDER NO. PSC-00-1641-FOF-TP
ISSUED: September 14, 2000

The following Commissioner participated in the disposition of this matter:

J. TERRY DEASON, Chairman

APPEARANCES:

CHARLIE PELLEGRINI, ESQUIRE, and PATRICK WIGGINS, ESQUIRE, Wiggins & Villacorta, P.A., Post Office Drawer 1657, 2145 Delta Boulevard, Tallahassee, FL 32302, and SCOTT SAPPERSTEIN appearing on behalf of Intermedia Communications, Inc.

JONATHAN CANIS, ESQUIRE, Kelley, Drye & Warren LLP, 1200 19th Street, N.W., Suite 500, Washington, DC 20036, appearing on behalf of Intermedia Communications, Inc.

KIP EDENFIELD, ESQUIRE, and NANCY B. WHITE, ESQUIRE, BellSouth Telecommunications, Inc., c/o Nancy Sims, 150 South Monroe Street, Suite 400, Tallahassee, FL 32301, appearing on behalf of BellSouth Telecommunications, Inc.

MARLENE STERN, ESQUIRE, and C. LEE FORDHAM, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL, appearing on behalf of the Commission Staff.

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FINAL ORDER RESOLVING COMPLAINT

BY THE COMMISSION:

I. Background

On June 25, 1996, Intermedia Communications Inc. (Intermedia) and BellSouth Telecommunications, Inc. (BellSouth) negotiated a Master Interconnection Agreement (the Master Agreement) and filed it with this Commission pursuant to Section 252 of the Telecommunications Act of 1996 ("Act"). The Agreement was approved on October 7, 1996 in Order No. PSC-96-1236-FOF-TP. On June 3, 1998, Intermedia and BellSouth executed an Amendment to the Master Agreement (the "Amendment"). The Amendment was filed with this Commission on July 13, 1998, in accordance with Section 252 of the Act and approved in Order No. PSC-98-1347-FOF-TP, issued October 21, 1998.

On October 8, 1999, Intermedia filed a Complaint against BellSouth for breach of the terms of the Agreement and Amendment. On November 2, 1999, BellSouth filed its response to Intermedia's Complaint. An administrative hearing was held on June 13, 2000, regarding this matter.

The primary issue is the rate that should be used to bill for reciprocal compensation. Before the Amendment was signed, reciprocal compensation for all local traffic was billed at a composite rate of \$0.01056 per minute of use (MOU). According to BellSouth, the Amendment requires that reciprocal compensation for all local traffic be billed at the new elemental rates established in the Amendment. According to Intermedia, the Amendment requires that reciprocal compensation for all local traffic be billed at the composite rate unless Intermedia orders multiple tandem access (MTA), in which case elemental rates apply.

Two additional issues arose during the course of the hearing and those issues are addressed in this Order. First, BellSouth made an oral motion to strike testimony of Intermedia witness Heather Gold. After Ms. Gold had summarized her prefiled rebuttal testimony, BellSouth claimed the summary exceeded the scope of that prefiled testimony. The presiding officer postponed ruling on the motion until the transcript was available so the testimony at issue could be clearly identified. The Commissioner stated that to the extent the summary exceeded the scope of the prefiled testimony, it would be stricken. BellSouth filed its written Motion to Strike on June 21, 2000, and Intermedia filed its Response on June 23, 2000.

Also during the hearing, Intermedia was granted leave to submit a late-filed exhibit, numbered 20, in which it was to

identify the tandems to which Intermedia was connected at the time the Amendment was signed. Exhibit 20 was to be filed before the post-hearing briefs were due. Although the exhibit was timely filed with the Commission, BellSouth claims it did not receive the exhibit within the specified time frame. Intermedia claims it timely delivered the exhibit to BellSouth. After BellSouth received the exhibit, it responded by letter dated July 7, 2000. The response contained additional arguments but also objections that the Forward to Exhibit 20 exceeded the scope granted at the hearing.

BellSouth's Motion to Strike and objections to Exhibit 20 will be addressed in Parts II and III of this Order, respectively. The principal issue of rates will be addressed in Part IV of this Order.

Two Commissioners were initially assigned to this panel. Both were present at the hearing, however Commissioner Clark left the Commission before the decision in this case was rendered. The parties were notified of her departure and agreed to allow the remaining Commissioner to complete the proceedings in this docket.

The Commission has jurisdiction to resolve this dispute pursuant to Sections 251 and 252 of the Telecommunications Act of 1996. See also Iowa Utilities Bd. V. FCC, 120 F. 3d 753, 804 (8th Cir. 1997) (state commissions' authority under the Act to approve agreements carries with it the authority to enforce the agreements).

II. BellSouth's Post-hearing Motion to Strike

At the hearing, Intermedia witness Heather Gold stated the following in summarizing her prefiled rebuttal testimony:

BellSouth, in fact, told Intermedia personnel that we had to sign the amendment if we wanted BellSouth to stop blocking our traffic in the Norcross tandem in Georgia.

BellSouth argues that this statement should be stricken because Ms. Gold's prefiled rebuttal testimony made no mention of this problem.

Intermedia contends that the statement appropriately represents the substance of the prefiled rebuttal testimony. The prefiled testimony includes the following statement:

As I explained in my direct testimony, the MTA Amendment was executed for the sole purpose of making multiple tandem access available to

Intermedia upon our election for the alleviation of traffic congestion. There were no provisions in our then existing interconnection agreement that addressed multiple tandem access. Because of this, it was necessary to establish applicable rates when this different type of access is elected by Intermedia.

Intermedia contends that the purposes of this testimony were: 1) to rebut BellSouth's claim as to the purpose of the Amendment; and 2) to point out that if an MTA arrangement was needed to alleviate congestion, it would have to be incorporated into an agreement specifying the terms and conditions of that arrangement. Intermedia further contends that, in her summary at the hearing, Ms. Gold explains that Intermedia came to understand these two points when congestion occurred in early 1998 at the Norcross tandem. That is, the "traffic congestion" in the prefiled testimony refers to the blockage at Norcross. For this reason, Intermedia contends that Ms. Gold was furthering the explanation of the circumstances that gave rise to the MTA Amendment.

The prefiled rebuttal testimony of Ms. Gold addresses the issue of who initiated the request for MTA and makes reference to congestion problems. However, the prefiled testimony does not assign any special significance to the Norcross tandem and in fact does not mention that location. More importantly, the prefiled testimony does not suggest that the blockage at Norcross resulted from an intentional act of BellSouth. In light of these facts, I find that Ms. Gold's summary exceeded the scope of her prefiled rebuttal testimony. Lines 22-25 on page 282 of the hearing transcript, shall therefore be stricken.

III. Late-filed Exhibit 20

As described in the Section I, BellSouth claims it did not receive late-filed Exhibit 20 by the June 20, 2000, deadline. Intermedia filed the exhibit with the Commission on June 19, and claims to have delivered it to BellSouth on the same day. Intermedia was not aware of the problem until BellSouth stated, in its post-hearing brief, that it never received the exhibit. Intermedia immediately delivered the exhibit to BellSouth. BellSouth addressed the exhibit in a letter dated July 7, 2000, in which it asked that only the Foreword of the Exhibit be stricken.

As I specified at the hearing, the purpose of Exhibit 20 was to clarify the tandems to which Intermedia was connected when the

amendment was signed. The first two paragraphs of the Foreward describe the events that lead up to the presiding officer's request for the late-filed exhibit. Paragraph three describes the types of diagrams and the spreadsheet included in the exhibit. Paragraph four provides a brief summary of the information conveyed in the diagrams and spreadsheet. The last two paragraphs address alleged problems with BellSouth's ability to adequately track Intermedia's trunking arrangements. Only paragraphs three and four fall within the scope of the exhibit and shall not be stricken. Paragraphs one, two, five and six exceed the designated scope of the exhibit and shall be stricken.

IV. Determination of Rates at Which to Bill Reciprocal Compensation

The central issue in this case was stated as follows:

What is the applicable rate(s) that Intermedia and BellSouth are obligated to use to compensate each other for transport and termination of local traffic in Florida pursuant to the terms of their Interconnection Agreement approved by the Commission?

To resolve the dispute, it must be determined whether the Amendment requires that elemental rates be used for reciprocal compensation for the transport and termination of all local traffic or just local traffic in those Local Access and Transport Areas (LATAs) where Intermedia requests and BellSouth provides MTA.

Intermedia claims that performance under the Amendment requires reciprocal compensation for the transport and termination of local traffic to be billed at the composite tandem switching rate of \$0.01056 per MOU, unless it orders MTA. If MTA is ordered and provided, then reciprocal compensation for the transport and termination of local traffic is to be billed at the elemental rates specified in the Amendment.

BellSouth claims that performance under the amendment requires reciprocal compensation for transport and termination of local traffic to be billed at the elemental rates, whether or not it provides MTA to Intermedia.

BellSouth witness Milner describes MTA as one form of interconnection available to Intermedia.

The MTA option provides for LATA wide transport and termination of a facility based Alternative Local Exchange Carrier's (ALEC's) originated intraLATA toll traffic and local

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traffic. Such traffic is transported by BellSouth on behalf of the ALEC. The ALEC establishes a Point of Interconnection (POI) at a single BellSouth access tandem with BellSouth providing additional transport and routing through other BellSouth access tandems in that same LATA as required. The facility-based ALEC must establish Points of Interconnection at each BellSouth access tandem where the facility-based ALEC's NXX'S are "homed". If the facility-based ALEC does not have NXX's homed at a given BellSouth access tandem within a LATA and elects not to establish Points of Interconnection at such a BellSouth access tandem, the facility-based ALEC can instead order MTA in each BellSouth access tandem within the LATA where the ALEC does have a Point of Interconnection and BellSouth shall terminate traffic to end-users served through those BellSouth access tandems where the facility-based ALEC does not have a Point of Interconnection.

He further explains that for a facility-based ALEC's originated local traffic and intraLATA toll traffic, transported by BellSouth but destined for termination by a third party network (transit traffic), MTA is available if the use of multiple BellSouth access tandems is necessary to deliver the call to the third party network.

Intermedia witness Thomas describes MTA as a means by which congested traffic may be "alternate routed." He continues that MTA is not, however, an efficient use of network facilities, since calls transported over MTA architectures are switched many more times than if they were to be transported over direct trunks to the called party's end office.

BellSouth witness Milner responds that with MTA, when an ALEC sends a call to a BellSouth Access Tandem that is destined for an end user served by an office subtending another BellSouth Access Tandem, only one additional switching function is required. He further argues that while MTA can be used to "alternate route" traffic, this is not the purpose for which MTA was designed. Instead, the witness contends that MTA allows an ALEC to minimize the points of interconnection between the ALEC's network and BellSouth's network.

As stated in the issue, the dispute in this complaint is whether the agreement calls for elemental rates or composite rates.

According to BellSouth witness Hendrix, elemental rates break down reciprocal compensation into several components that reflect various network functions. The customer is charged based on how much each function is used. Composite rates, explained Mr. Hendrix, are made up of averages.

In their briefs, Intermedia and BellSouth argue that the MTA Amendment is plain on its face. Intermedia witness Gold testified that the Amendment is a conditional contract. "If" Intermedia elects and BellSouth provides MTA, "then" the elemental rates in Attachment A will be used to bill and compensate each other for the transport and termination of all local traffic within the LATA in which MTA is provisioned. Intermedia maintains that all the paragraphs in the Amendment are interrelated and should be read collectively. In other words, the Amendment outlines the conditions under which Intermedia can obtain MTA from BellSouth. Therefore, according to Intermedia the elemental rates in the Amendment apply only if Intermedia orders, implements and uses multi-tandem access in a given LATA. Intermedia adds that it is Intermedia's preference to directly trunk to access tandems, rather than using MTA, so that Intermedia is not dependent upon anyone else.

In contrast, BellSouth witness Hendrix testified that the Amendment is a quid pro quo between the parties. In exchange for BellSouth agreeing to provide Intermedia multiple tandem access when requested, Intermedia would give BellSouth elemental rates for all local traffic in all of the BellSouth states. BellSouth witness Hendrix contends that the elemental rates are not tied to MTA. Instead, he states, the elemental rates in the Amendment entirely replace the composite rates in the Master Agreement. BellSouth clarifies that paragraphs three and four of the Amendment are to be interpreted independently because they are separately numbered paragraphs that were intended to accomplish a specific purpose -- namely, the establishment of cost-based reciprocal compensation rates.

Although both parties contend that the Amendment is clear on its face, I find the Amendment to be somewhat ambiguous. One part of the Amendment indicates that elemental rates apply only to MTA, while another part indicates elemental rates apply to local traffic in general. The statement at the top of Attachment A to the Amendment reads: "MTA shall be available according to the following rates for local usage:". In contrast, paragraph three of the Amendment specifies that "(t)he Parties agree to bill Local traffic at the elemental rates specified in Attachment A," with no mention of MTA. Paragraph three of the amendment thus, could be read to require elemental rates for all local traffic. Each statement refers to the same set of rates.

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When the language of a contract is ambiguous or unclear, evidence extrinsic to the contract may be used to determine the intent of the parties at the time the contract was executed. See Gulf Cities Gas Corp. v. Tangelo Park Service Company, 253 So. 2d 744, 748 (Fla. 4th DCA 1971). The intent of the parties to a contract should govern interpretation of the contract. See Florida Power Corp. v. City of Tallahassee, 154 So. 2d 638, 643-4 (Fla. 1944); American Home Assurance Co. v. Larkin General Hospital Ltd., 593 So. 2d 195, 197.

In determining the intent of the parties when they executed their contract, we may consider circumstances that existed at the time the contract was entered into, and the subsequent actions of the parties. In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953) the Florida Supreme Court cited with favor Contracts, 12 Am.Jur. § 250, pages 791-93, as a general proposition concerning contract construction in pertinent part as follows:

Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language. . . . Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred. . . . An interpretation which is just to both parties will be preferred to one which is unjust.

When interpreting a contract, the circumstances in existence at the time the contract was made should be considered in ascertaining the parties' intentions. Triple E Development Co. v. Floridagold Citrus Corp., 51 So.2d 435, 438, rehg. den. (Fla. 1951). What a party did or omitted to do after the contract was made may be properly considered. Vane Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246 (Fla. SCA 1934), rehg. den. 292 US 643, 78 L. Ed. 1494, 54 S. Ct. 776. Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958). Although recitals and titles are not operative components of a contract, they may be used to ascertain

intent when the operative components are ambiguous. See Johnson v. Johnson, 725 So. 2d 1209, 1213 (Fla. 3d DCA 1999). Ambiguous terms in a contract should be construed against the drafter. Vane Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246 (Fla. 5CA 1934); Sol Walker & Co. v. Seaboard Coast Line Railroad Co., 362 So. 2d 45, 49; MacIntyre v. Green's Pool Service, 347 So. 2d 1081, 1084; City of Homestead v. Johnson, 760 So.2d 80 (Fla. 2000).

BellSouth claims that the language at the top of Attachment A is a title or recital and should not be considered when interpreting the Amendment. See Johnson v. Johnson, 725 So. 2d 1209, 1212 (Fla. 3d DCA 1999). Based on the record, however, I find that the language at the top of Attachment A provides instruction on how to apply the elemental rates and is therefore an operative part of the Agreement.

Intermedia and BellSouth disagree about the circumstances that led to the execution of the Amendment. According to Intermedia witness Gold, in early 1998, BellSouth stopped terminating local traffic from Intermedia end users to BellSouth end users that subtended BellSouth's Norcross, Georgia tandem. BellSouth informed Intermedia's engineering manager, that since Intermedia was not directly trunked to the Norcross tandem, the only way to alleviate the problem was to request MTA between the Buckhead and Norcross tandems. Such an arrangement would require an amendment to the Master Agreement.

Ms. Gold explained that in response to BellSouth's proposed resolution, Intermedia requested the MTA Amendment. Ms. Gold also explained that it ordered an outgoing trunk to Norcross so that it could trunk directly to the Norcross tandem. According to Intermedia witness Thomas, the plan was to go with whatever happened first. The trunk was completed before the Amendment.

Between the time BellSouth stopped connecting calls to end users subtending the Norcross tandem and the time Intermedia completed the direct trunk to Norcross, Intermedia witness Thomas explained that outgoing calls from its customers were completed by redirecting that traffic to the long distance side of the BellSouth switch at an access or long distance rate.

According to BellSouth witness Hendrix, Intermedia initially came to BellSouth wanting MTA. He stated that the reason Intermedia wanted MTA was to reduce trunking costs. Witness Hendrix alleges that Intermedia foresaw MTA as a vehicle that would give them lower tandem and trunking costs since Sprint won on this very same issue in Georgia.

Mr. Hendrix testified that of all the witnesses who testified at the hearing, only he was present during the negotiations for the Amendment. Mr. Hendrix noted that Intermedia witness Gold did not join the company until three months after the execution of the Amendment. Therefore, BellSouth contends that witness Gold's testimony is not credible because she cannot speak to the intent of the parties first hand.

Intermedia witness Gold stated that Ms. Julia Strow, who is no longer with the company, was the only person from Intermedia who participated in negotiating the Amendment. Ms. Gold explained that Ms. Strow's understanding of the Amendment's intent is reflected in her March 25, 1999, letter, a response to correspondence from BellSouth. BellSouth's letter to Ms. Strow indicated that it would be backbilling Intermedia at elemental rates, from June 1998, the month the Amendment became effective, to March 1999. Ms. Strow responded that she did not understand the need to backbill because BellSouth was not providing MTA to Intermedia and the elemental rates only applied to MTA. Thus, Intermedia witness Gold argues that Ms. Strow understood the Amendment to impose elemental rates only when MTA was ordered.

Ms. Gold also explained that she directly supervised Ms. Strow for 15 months. Therefore, Ms. Gold maintained that she was well aware of the circumstances and negotiations of the Amendment.

As evidence of BellSouth's intent, BellSouth witness Scollard testified that BellSouth's Carrier Access Billing System (CABS) was not capable of billing a given ALEC in a given state, at both composite and elemental rates. He explained that, in Florida, CABS could either bill an ALEC reciprocal compensation using a composite rate structure or using an elemental rate structure, but not both. Therefore, witness Scollard claims that BellSouth's intent was for only one rate structure to be in effect. Intermedia contends that the system can, at any time, be revised to provide that capability.

As additional evidence of its intent, BellSouth witness Hendrix explained that state commissions had begun ordering BellSouth to replace composite rates with elemental rates in its Standard Interconnection Agreement. In its brief, BellSouth noted that this Commission required BellSouth to implement elemental rates into its interconnection agreements with AT&T and MCIWorld. See Order No. PSC-96-1579-FOF-TP ("AT&T" Order). BellSouth explained that composite rates were the norm when Intermedia and BellSouth signed their Master Agreement. BellSouth further explained that when Intermedia requested MTA, BellSouth took that opportunity to incorporate elemental rates into the agreement.

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In response, Intermedia witness Gold pointed out that BellSouth imported only the switching and transport rates into the Amendment, although the AT&T Order established rates for a number of other elements. Intermedia noted that BellSouth never explained the reason for importing only the two rates into the Amendment and not the others. Ms. Gold also noted that the rulings in the AT&T Order were specific to the litigants in that docket and were not intended to apply generically to all ALECs.

In a separate argument, Intermedia witness Gold described previous litigation between itself and BellSouth over the Master Agreement, and explained how that litigation illuminates Intermedia's intent with respect to the Amendment. The litigation was ongoing when the amendment negotiations were in progress and when the Amendment was signed. See Order No. PSC 98-1216-FOF-TP, issued in Docket No. 971478-TP, on September 15, 1998. The litigation resulted from BellSouth's refusal to pay Intermedia reciprocal compensation for traffic originating from a BellSouth customer and terminating to ISPs on Intermedia's network in the same local calling area. Over \$7.5 million dollars was at issue. Intermedia witness Gold testified that it "is implausible" to believe, that Intermedia would modify the Master Agreement to receive a 60% reduction in reciprocal compensation, without settlement of the outstanding \$7.5 million balance. In addition, witness Gold noted that at the time the Amendment was signed, Intermedia had already resolved the Norcross problem by directly trunking to that tandem.

As evidence that BellSouth's intent was the same as Intermedia's when they signed the Amendment, Intermedia's brief and witness Gold noted three facts. First, BellSouth continued to bill Intermedia at composite rates for several months after the Amendment was signed. Second, BellSouth was required to provide summaries of the Amendment upon filing in Georgia and North Carolina. The summaries said nothing about elemental rates replacing composite rates globally. The summaries only mentioned that MTA would be made available. The summary for North Carolina stated:

On October 10, 1996, the Commission approved and interconnection agreement between BellSouth and ICI. I enclose an amendment to that agreement that provides for Multiple Tandem Access.

The summary for Georgia stated:

This Amendment reflects that BellSouth will, upon request, provide and Intermedia will accept and pay for, Multiple Tandem Access, otherwise referred to as Single

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Point of Interconnection. . . All other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.

Intermedia contends that a global rate change is far more significant than provisioning MTA upon request, and if BellSouth's intent was, in fact, a global rate change, the filings would have reflected that.

Third, Intermedia's brief explained that in Georgia, under a federal court order to make deposits into the court's registry of the amounts invoiced by Intermedia for ISP traffic, BellSouth made deposits after the execution of the Amendment based on the composite rates. This conflicts with BellSouth's claim that the reduced elemental rates were in effect starting June 1998 for all local traffic in all other states.

BellSouth also makes arguments regarding billing inconsistencies. BellSouth elicited testimony from Intermedia witness Gold that Intermedia never came to BellSouth after the Amendment questioning why BellSouth was billing Intermedia the elemental rates. BellSouth claims that as of June 1998, they billed Intermedia using the elemental rates, making the invoices to Intermedia 20 to 30% less than they had been prior to the Amendment.

The record demonstrates that after the execution of the Amendment there was some correspondence between the parties regarding rates and billing. The correspondence is contained in Exhibit 4 of the record and was proffered by BellSouth. On June 4, 1998, one day after the Amendment was signed, BellSouth sent Intermedia a letter responding to an inquiry about a possible error in an end office switching rate. BellSouth claims that the letter made it apparent that rates had, at least, been discussed during the negotiations of the Amendment. Intermedia witness Gold agreed, but made clear that the letter did not say or contemplate that MTA was ever implemented. Intermedia never responded to the letter.

On March 3, 1999, BellSouth sent Intermedia another letter noticing its mistake in the end office switching rate and indicating to Intermedia that the correct rate should be \$0.002. BellSouth also indicated in the letter that it would be back billing this corrected rate to June 3, 1998, since that rate should have been in effect at the same time as the MTA Amendment.

In a letter dated March 25, 1999, Intermedia responded to BellSouth's March 3rd letter, stating that while Intermedia was open to the rate correction, Intermedia was confused by BellSouth's

statement about back billing Intermedia's invoices using the elemental rates since Intermedia had not implemented MTA.

On April 2, 1999, BellSouth explained to Intermedia, in a letter, that pursuant to the Amendment, the elemental rates in the Attachment apply to all local traffic, regardless of whether or not MTA had been provided. Intermedia filed this complaint with the Commission on October 9, 1999.

Upon consideration, I find that elemental rates should be applicable for transport and termination of all local traffic, in all LATAs, regardless of whether MTA was ordered and provided.

First, while witness Thomas testified that Intermedia was direct trunked to all applicable tandems in Florida prior to the signing of the amendment, the record shows that this was not the case in Georgia. Indeed, witness Thomas testified that Intermedia requested an MTA amendment to the Agreement which was regional, while also investigating other options to allow its customers to call exchanges subtending the Norcross, Georgia tandem. In addition, Intermedia witness Thomas and BellSouth witness Milner agree that MTA may be used to alternate route traffic. Thus, even with direct trunking to all applicable tandems, Intermedia might still have had an interest in MTA. Consequently, I find that Intermedia could have knowingly entered into an amendment which required elemental rates for all local traffic, even though this constituted a significant reduction in reciprocal compensation revenue.

Second, BellSouth witness Hendrix participated in negotiations and signed the agreement, while the Intermedia witnesses were not involved in the process. As a result, I believe that the testimony of witness Hendrix must be given more weight, particularly since his interpretation appears to be supported by the above mentioned circumstances in Georgia at the time and the possible use of MTA for alternate routing.

Third, I find that the language of the agreement, while somewhat ambiguous, is more consistent with BellSouth's interpretation. If the statement in the Amendment which reads "(t)he Parties agree to bill Local traffic at the elemental rates specified in Attachment A," was intended to apply only in the MTA context, this dependency should have been clearly stated; it was not. The same is true for the statement in the Amendment which reads "(t)his amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A." I find that a more reasonable interpretation is that the statement was designed to show that the rates had generic applicability to all local traffic, not merely

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for local traffic in those LATAs where MTA was requested and provided.

Finally, this conclusion is consistent with BellSouth witness Scollard's testimony regarding CABS. The witness alleges that CABS does not have the capability to bill based on the manner in which calls are routed. It would be awkward to bill local traffic in one LATA differently from local traffic in another LATA, since this would necessitate comparing originating and terminating telephone numbers (area code and prefix) to determine the LATA. In addition, local traffic can be interLATA, which raises the question of which rate(s) would apply if MTA has been provided in one LATA and not the other.

V. Conclusion

These proceedings have been conducted pursuant to the directives and criteria of Sections 251 and 252 of the Act. This decision is consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been vacated, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that elemental rates shall apply to transport and termination of all local traffic, in all LATAs, regardless of whether BellSouth Telecommunications, Inc. provisions multiple tandem access to Intermedia Communications, Inc. It is further

ORDERED that BellSouth's Post-Hearing Motion to Strike is granted. It is further

ORDERED that paragraphs one, two, five and six of the Foreward to Intermedia's late-filled Exhibit 20 are stricken from the record of this proceeding. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of September, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: s/ Kay Flynn

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Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).