BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF BETH SHIROISHI

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000075-TP

JANUARY 10, 2001

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Elizabeth R. A. Shiroishi. I am employed by BellSouth as Managing Director for Customer Markets – Wholesale Pricing Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME ELIZABETH R. A. SHIROISHI WHO FILED DIRECT TESTIMONY IN THIS CASE?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut testimony filed in this docket by Mr. James Falvey, witness for e.spire Communications, Inc. ("e.spire"), Mr. Michael Hunsucker, witness for Sprint Corporation ("Sprint"), Mr. Gregory Fogleman, witness on behalf of the Florida Public Service Commission ("the

Commission"), and Mr. Lee Selwyn, witness for AT&T Communications of the Southern States, Inc. ("AT&T"), TCG of South Florida ("TCG"), Time Warner of Telecom of Florida, LP ("Time Warner"), Allegiance Telecom of Florida, Inc. ("Allegiance"), Florida Cable Telecommunications Association, Inc ("FCTA"), and the Florida Competitive Carriers Association ("FCCA").

***Issue 1(a): Does the Commission have the jurisdiction to adopt an intercarrier compensation mechanism for delivery of ISP-bound traffic?***

***Issue 1(b): If so, does the Commission have the jurisdiction to adopt such an intercarrier compensation mechanism through a generic proceeding?***

Q. PLEASE ADDRESS MR. HUNSUCKER AND MR. FALVEY'S ASSERTIONS (ON PAGES 4 AND 3 OF THEIR TESTIMONY, RESPECTIVELY) THAT THE FLORIDA COMMISSION HAS JURISDICTION TO DETERMINE INTER-CARRIER COMPENSATION FOR ISP-BOUND TRAFFIC.

A. Both Mr. Hunsucker and Mr. Falvey rely on the Declaratory Ruling (see *Declaratory Ruling, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68* ("Declaratory Ruling"), released February 26, 1999), as the authority by which the Florida Commission has jurisdiction to establish inter-carrier compensation for ISP-bound traffic. Obviously, since the Declaratory Ruling is vacated, and it was the only order conferring authority to the state commissions to establish an inter-carrier compensation for ISP-bound traffic, there now is no order conferring such authority.

***Issue 2: Is delivery of ISP-bound traffic subject to compensation under Section 251 of the Telecommunications Act of 1996?***

Q. PLEASE ADDRESS MR. FALVEY'S ASSERTION, ON PAGE 5 OF HIS TESTIMONY, THAT "A CALLER'S DIAL-UP CALL TO AN ISP IS 'TELECOMMUNICATIONS' AS DEFINED IN THE ACT . . . AND IS THEREFORE SUBJECT TO RECIPROCAL COMPENSATION."

A. 47 U.S.C. § 153(43) defines telecommunications as:

> (43) TELECOMMUNICATIONS. – The term "telecommunications" means 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. § 153(20) defines information service as:

> (20) INFORMATION SERVICE. – The term "information service" means the 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.

A dial-up call to an ISP is an information service. The FCC made this clear when it exempted enhanced service providers, of which information service providers are a subset, from access charges. This exemption delineates information services from telecommunications. Why is this delineation relevant? Because quite simply, in today's environment, access charges can be assessed on long-distance telecommunications, but they cannot be assessed (due to the 1983 access charge exemption) on long-distance information services.

Mr. Falvey goes on to state that the FCC left in place the access charge regime, and limited reciprocal compensation to local traffic "not encompassed by the access charge regime." This is not altogether true, as Mr. Falvey has drawn some conclusions that are not set forth in the FCC's August 1996 Local Interconnection Order (CC Docket No. 96-98). That Order does not state that reciprocal compensation applies to anything not encompassed by the access charge regime. Instead, Paragraph 1034 of that Order states:

> *We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area . .*

That issue aside, Mr. Falvey is incorrect in assuming is that ISP-bound traffic is not encompassed by the access charge regime. As I have stated previously, the FCC has expressed, time and time again, that ISP-bound traffic is access traffic which has been exempted from access charges for policy reasons. Mr. Falvey seems to have taken a jump to conclude that all calls that are not compensated as access must be subject to reciprocal compensation. This is simply not the case.

Additionally, reciprocal compensation is not applicable to ISP-bound traffic because under the Telecommunications Act of 1996 (the "Act") and the FCC's Local Competition First Report and Order issued August 8, 1996 ("Local Competition Order"), the reciprocal compensation obligations set forth in Section 251(b)(5) apply only to local traffic. ISP-bound traffic constitutes access service, which is clearly not local traffic.

Q. PLEASE ADDRESS MR. FALVEY'S DISTINCTION BETWEEN AND DISCUSSION OF ACCESS AND RECIPROCAL COMPENSATION ON PAGES 5 THROUGH 7.

A. Again, Mr. Falvey seemingly suggests that all calls that are not compensated as access must be subject to reciprocal compensation. And again, this is simply not the case. In his discussion, on pages 6 and 7 of his testimony, Mr. Falvey discusses how the "the functionality provided [in transport and termination] does not differ based on whether or not the end user of one LEC called by an end user of another LEC is a pizza parlor or an ISP." For the most part, this is true (though there are some potential differences in switching equipment used). However, that is not a fact that makes any difference in this case. To illustrate that, I will take Mr. Falvey's argument one step further. Assume that instead of comparing an ISP to a pizza parlor, you compare a local call from a Miami end user to a pizza parlor in Miami with an interstate call from that same Miami end user to a pizza parlor in New York. Assuming the same potential differences in switching equipment used, Mr. Falvey's statement still holds true: the functionality provided does not differ based on whether or not the end user of one LEC called by an end user of another LEC is a pizza parlor in Miami or a pizza parlor in New York. However, no one would argue that a call from Florida to New York is local just because the functionality did not differ. The FCC has set forth rate structures based on a jurisdictional analysis that judges the end-to-end points of a call, not the functionality used. Paragraph 1033 of the August 1996 Local Interconnection Order (CC Docket No. 96-98) states:

> *We recognize that transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions. Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge. We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport*

*and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic.*

Thus, there is a "legal distinction" between local traffic and long-distance or access traffic. The 1983 access charge exemption makes it evident that the FCC considers such users as users of access services. Otherwise, such an exemption of access charges would not have been needed.

Q. MR. SELWYN, THROUGH HIS DISCUSSION OF THE "SENT-PAID" MODEL, AND MR. FALVEY, ON PAGE 7 OF HIS TESTIMONY, SEEM TO INDICATE THAT THE ORIGINATING CARRIER IS RECEIVING A FREE RIDE IF RECIPROCAL COMPENSATION IS NOT PAID ON ISP-BOUND CALLS. IS THAT THE CASE?

A. Absolutely not. The fact ignored in these arguments is that no compensation is being received by the ILEC for calls to ISPs. As everyone is well aware, the local exchange monthly rates paid by end user customers were never intended to recover costs associated with providing access service and were established long before the Internet became popular. Local exchange rates do not take into account compensation for non-local traffic such as Internet-bound traffic. Internet-bound traffic characteristics were never considered when local rates were established.

***Issue 3: What actions should the Commission take, if any, with respect to establishing an appropriate compensation mechanism for ISP-bound traffic in light of current decisions and activities of the courts and FCC?***

Q. DO YOU AGREE THAT THE COMMISSION SHOULD, AS MR. FALVEY, MR. HUNSUCKER, AND MR. FOGLEMAN SUGGEST, MOVE FORWARD TO DEVELOP A COMPENSATION MECHANISM FOR ISP-BOUND TRAFFIC?

A. No. As I stated in my direct, it is not appropriate for the Commission to take any action on this issue because intercarrier compensation for ISP-bound traffic is not an obligation under Section 251 of the Act. At a minimum, the Commission should wait until the FCC issues an order before spending resources developing a plan that may be rendered moot by ultimate FCC decision or which may be overturned by a court on jurisdictional grounds. The Commission should determine that ISP-bound traffic is not local traffic, and therefore no reciprocal compensation is due.

***Issue 4: What policy considerations should inform the Commission's decision in this docket?***

Q. PLEASE ADDRESS MR. FOGLEMAN'S DISCUSSION, ON PAGES 13 AND 14, OF A BILL-AND-KEEP APPROACH.

A. First, let me point out that Mr. Fogleman makes the assumption that, under bill-and-keep and for ISP-bound calls, the originating carrier can bill the end user and recover the cost of providing the service. For an ILEC this is simply not the case. As I have discussed previously in this testimony, local exchange rates do not take into account Internet-bound traffic, and this Commission has oversight authority over any changes to BellSouth's rates or rate structure. I make this point only to demonstrate that the originating carrier is not receiving any revenue for ISP-bound calls, and thus, has no revenue to share in the form of reciprocal compensation (this is the same as and holds true for the remittance theory discussed by Mr. Selwyn on page 29).

While I agree with the benefits of bill-and-keep as described by Mr. Fogleman, I believe he drastically oversimplifies the issue. While the benefits he lists (eliminates the need for billing and the costs associated with monitoring traffic and reduces the ability of carriers to target customers solely for expected reciprocal compensation revenues) are true, he does not address one huge policy consideration – FCC rules and regulations. The FCC has exempted ISPs from access charges, thus confirming that ISP-bound traffic is not local traffic, but instead is interstate access traffic that has been exempted from access charges for policy reasons. Given that the FCC, who has jurisdiction over this traffic, has set no other intercarrier compensation mechanism for ISP-bound traffic, the only option for a compensation mechanism is bill-and-keep.

Q. MUST TRAFFIC BE ROUGHLY BALANCED TO IMPLEMENT A BILL-AND-KEEP APPROACH?

A. The Code of Federal Register (§ 51.713) only discusses the requirement of a rough balance of traffic for bill-and-keep on local traffic. No such requirement exists for bill-and-keep on ISP-bound traffic, which is non-local.

Mr. Fogleman suggests that adopting a bill-and-keep mechanism when the traffic is not roughly balanced would cause customer erosion for a carrier and a decline in competition in the industry. I disagree. To the contrary, bill-and-keep on ISP-bound traffic would shift competition from one that focuses on the ISP to one that focuses on the end-user. Further, Mr. Fogleman states that bill-and-keep for ISP-bound traffic would force ALECs to pass on costs "to their own customers, even though their customers did not directly cause these costs to be incurred." This seems to infer that the ISP receives no benefit from the end user that is calling the ISP, which is obviously not the case. As pointed out by Dr. Taylor on page 8, the ISP acts like an agent of the end user.

***Issue 5: Is the Commission required to set a cost-based mechanism for delivery of ISP-bound traffic?***

Q. DO YOU AGREE WITH MR. FALVEY AND MR. HUNSUCKER'S RATIONALE FOR WHY THIS COMMISSION SHOULD SET A COST-BASED RATE?

A. No. As I discussed in my direct testimony, state commissions are only required and authorized to establish a compensation mechanism for local traffic pursuant to Section 251 of the Act. The obligations of Section 251 of Act do not extend to non-local ISP-bound traffic. However, if the Commission decided to establish a rate for ISP-bound traffic, it should be, for policy reasons, cost based. Further, the rate should be based on the actual cost incurred by the carrier who serves the ISP and, as I discuss below in the context of Issue Number 6, the rate previously established for local switching is not appropriate.

Q. PLEASE ADDRESS MR. FOGLEMAN'S STATEMENT ON PAGE 18 THAT "THE BILL-AND-KEEP APPROACH TO RECOVERY HAS NOTHING TO DO WITH HOW THE COSTS ARE INCURRED."

A. While it is true that the bill-and-keep approach does not accurately reflect cost causation principles, it is more closely aligned than an approach which prescribes payment of reciprocal compensation for ISP-bound traffic. Payment of reciprocal compensation for ISP-bound traffic actually prescribes that the originating carrier, who receives no revenue for the ISP-bound call, pay the LEC serving the ISP, who presumably is already receiving revenue from the ISP for the service. As Dr. Taylor discusses, if true cost causation principles were followed, the ALEC should share revenues with the originating LEC for the use of the originating LEC's network to originate the call.

***Issue 6: What factors should the Commission consider in setting the compensation mechanisms for delivery of ISP-bound traffic?***

Q. PLEASE ADDRESS THE PROPOSAL MADE BY MR. HUNSUCKER AND MR. FOGLEMAN WHICH SETS FORTH A RATE STRUCTURE CONSISTING OF A CALL SET-UP COMPONENT AND A CALL DURATION COMPONENT.

A. Again let me state that the appropriate inter-carrier compensation mechanism for ISP-bound traffic, were this Commission to set a compensation mechanism, is bill-and-keep. While the concept of a bifurcated rate structure does more closely align with the cost of the switching, Mr. Hunsucker makes several statements that are not accurate. On page 14, he states "There is nothing unique about Internet calls that causes the per message and per MOU unit cost components to change. Only the call duration changes." This is not true. As I discussed in my direct testimony, the costs for traditional reciprocal compensation as discussed above take into account conventional switching equipment used in an ILEC's network for conventional voice traffic. With new technologies, a LEC could deploy less costly switches that are used exclusively for ISP-bound traffic. This is a perk that an ALEC can enjoy due to the fact that it can target which customers it wishes to serve. Unlike an ILEC, who must serve all customers (and whose costs account for that), an ALEC can choose to target only one type of customer and thus configure its network in a more efficient and less costly manner.

Additionally, it must be recognized that the rates currently established for end office or local switching that Mr. Hunsucker refers to were established for unbundled local switching, which contemplates the originating switch of a call. With ISP-bound traffic, the switch would never be the originating switch, but the switch that directly serves the ISP. The call set-up involved in the originating switch is more complex than the call set-up on subsequent end office switches. As such, this difference would need to be included in any cost study that would purport to represent the cost of switching for ISP-bound traffic. In summary, contrary to Mr. Hunsucker's assertion that only call duration changes, at a minimum the following factors would need to be considered if this Commission were to determine that a rate should be established for ISP-bound traffic: cost of equipment, call duration, and call set-up cost differences for originating end office switching and subsequent end office switching. Dr. Taylor discusses other cost differences and factors in his testimony.

Q. MR. SELWYN, ON PAGE 68, SUGGESTS THAT THE FCC INTENDED, THROUGH ITS SYMMETRY RULE, FOR AN ALEC TO BE ABLE TO ATTAIN A LOWER COST AND THUS BE REWARDED WITH A HIGHER PROFIT. DO YOU AGREE?

A. No. I do not believe that Congress, or the FCC, intended for the requirement for symmetrical rates to be an avenue for ALECs to gain profit. I believe one intent of a competitive market is for each company to recover its costs of providing service from the revenues received by its customers. And while the FCC did intend for ALECs to be pressured to make economically wise decisions, I do not believe it intended for ALECs to target users with specific characteristics and thus attempt to game the system. This is not "promoting competition" as Mr. Selwyn suggests, but a subsidy from ILECs to ALECs.

***Issue 7: Should intercarrier compensation for delivery of ISP-bound traffic be limited to carrier and ISP arrangements involving circuit-switched technologies?***

Q. PLEASE COMMENT ON MR. HUNSUCKER AND MR. FALVEY'S ASSERTIONS THAT INTERCARRIER COMPENSATION SHOULD NOT BE LIMITED TO CARRIER AND ISP ARRANGEMENTS INVOLVING CIRCUIT SWITCHED TECHNOLOGIES.

A. It seems as if Mr. Hunsucker and Mr. Falvey are attempting to extend the "gravy train" by now arguing that intercarrier compensation should not only apply to circuit switched arrangements, but also to non-circuit switched arrangements. This "gravy train" must stop. It is not appropriate to subject non-circuit switch arrangements to an intercarrier compensation mechanism.

***Issue 9: Should the Commission establish compensation mechanisms for delivery of ISP-bound traffic to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanism?***

Q. PLEASE COMMENT ON MR. FALVEY'S COMMENTS THAT THE ESTABLISHMENT OF A DEFAULT COMPENSATION MECHANISM WILL ENSURE THAT ISPS WILL CONTINUE TO HAVE COMPETITIVE ALTERNATIVES.

A. This is exactly the point that I make in my direct testimony – establishment of an intercarrier compensation mechanism for ISP-bound traffic ensures competition for ISPs, while discouraging an ALEC from serving the primary type of customer for which the Act intended to create competition.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.