BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000075-TP

In the Matter of

INVESTIGATION INTO APPROPRIATE METHODS TO COMPENSATE CARRIERS FOR EXCHANGE OF TRAFFIC SUBJECT TO SECTION 251 OF THE TELECOMMUNICATIONS ACT OF 1996.

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VOLUME 1
PAGES 1 THROUGH 199

PROCEEDINGS:	**HEARING**
BEFORE:	**CHAIRMAN E. LEON JACOBS, JR.** **COMMISSIONER J. TERRY DEASON** **COMMISSIONER LILA A. JABER** **COMMISSIONER BRAULIO L. BAEZ** **COMMISSIONER MICHAEL A. PALECKI**
DATE:	**Wednesday, March 7, 2001**
TIME:	**Commenced at 9:35 a.m.**
PLACE:	**Betty Easley Conference Center** **Room 148** **4075 Esplanade Way** **Tallahassee, Florida**
REPORTED BY:	**TRICIA DeMARTE** **Official FPSC Reporter**

APPEARANCES:

MORTON POSNER, 1150 Connecticut Avenue, N.W., Suite 205, Washington, D.C. 20036, appearing on behalf of Allegiance Telecom of Florida, Inc.

MARSHA E. RULE, AT&T Communications of the Southern States, Inc., 101 North Monroe Street, Suite 700, Tallahassee, Florida 32301-1549, appearing on behalf of AT&T Communications of the Southern States, Inc., MediaOne, and TCG of South Florida.

E. EARL EDENFIELD, JR., c/o Nancy Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301, and JOHN MEZA, III, 150 West Flagler Street, Suite 1910, Miami, Florida 33130, appearing on behalf of BellSouth Telecommunications, Inc.

NORMAN H. HORTON, JR., Messer, Caparello & Self, P.A., 215 South Monroe Street, Post Office Box 1876, Tallahassee, Florida 32302-1876, appearing on behalf of American Communications Services of Jacksonville, Inc., d/b/a e.spire Communications and ACSI Local Switched Services, Inc., d/b/a e.spire Communications, Inc.

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MICHAEL A. GROSS, Florida Cable Telecommunications Association, Inc., 246 East 6th Avenue, Suite 100, Tallahassee, Florida 32301, appearing on behalf of Florida Cable Telecommunications Association, Inc.

JON C. MOYLE, JR., and CATHY SELLERS, Moyle Law Firm, The Perkins House, 118 North Gadsden Street, Tallahassee, Florida 32301, and CHRISTOPHER SAVAGE, Cole, Raywid & Braverman, L.L.P, 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006, appearing on behalf of Global NAPS, Inc.

KENNETH A. HOFFMAN and MARTIN P. McDONNELL, Rutledge, Ecenia, Underwood, Purnell & Hoffman, P. O. Box 511, 215 South Monroe Street, Suite 420, Tallahassee, Florida 32302-0551, appearing on behalf of Level 3 Communications, LLC, and US LEC of Florida, Inc., AT&T Communications of the Southern States, MediaOne, TCG of South Florida, and Allegiance Telecom of Florida, Inc.

APPEARANCES CONTINUED:

JOSEPH A. McGLOTHLIN and VICKI GORDON-KAUFMAN, McWhirter, Reeves, McGlothlin, Davidson, Dekker, Kaufman, Arnold & Steen, 117 South Gadsden Street, Tallahassee, Florida 32301, appearing on behalf of the Florida Competitive Carriers Association and Intermedia Communications, Inc.

DONNA C. McNULTY, 325 John Knox Road, Suite 105, Tallahassee, Florida 32303-4131, appearing on behalf of MCI WorldCom, Inc.

SUSAN S. MASTERTON, P. O. Box 2214, Tallahassee, Florida 32316-2214, appearing on behalf of Sprint-Florida, Incorporated, and Sprint Communications Limited Partnership.

KAREN CAMECHIS and PETER DUNBAR, Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunlap, P.A., Post Office Box 10095, Tallahassee, Florida 32302-0551, appearing on behalf of Time Warner Telecom of Florida, L.P.

KIMBERLY CASWELL, P. O. Box 100, FLTC0007, Tampa, Florida 33601-0110, appearing on behalf of Verizon-Florida, Inc.

APPEARANCES CONTINUED:

SCOTT A. SAPPERSTEIN, One Intermedia Way, MC FLT-HQ3, Tampa, Florida 33647-1752, appearing on behalf of Intermedia Communications, Inc.

FELICIA BANKS and BETH KEATING, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, appearing on behalf of the Commission Staff.

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PROCEEDINGS

CHAIRMAN JACOBS: Counsel, read the notice.

MS. BANKS: Pursuant to notice, this time and place has been set for a hearing in Docket Number 000075-TP, which is an investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

CHAIRMAN JACOBS: Take appearances.

MR. EDENFIELD: For BellSouth, Kip Edenfield. I have with me today Jim Meza.

MS. CASWELL: For Verizon-Florida, Kim Caswell.

MS. MASTERTON: For Sprint, Susan Masterton.

MR. HOFFMAN: Mr. Chairman, good morning. My name is Kenneth Hoffman; with me is Martin McDonnell. We're appearing on behalf of AT&T Communications of the Southern States, Allegiance Telecom of Florida, Level 3 Telecommunications, TCG of South Florida, MediaOne Florida Telecommunications, Inc., and US LEC of Florida, Inc. And I would also like to enter an appearance for Morton Posner on behalf of Allegiance Telecom of Florida, Inc., as well as Marsha Rule on behalf of AT&T Communications of the Southern States, MediaOne, and TCG of South Florida.

MR. McGLOTHLIN: Joe McGlothlin, appearing on

behalf of the Florida Competitive Carriers Association and also for Intermedia Communications. I'd like to enter the appearance of Vicki Gordon-Kaufman from my firm in the same capacity, and also an appearance for Scott Sapperstein of Intermedia who is here today.

MR. HORTON: Mr. Chairman, Norman H. Horton, Jr., appearing on behalf of e.spire Communications.

MS. McNULTY: Good morning. I'm Donna McNulty, appearing on behalf of WorldCom, Inc.

MR. MOYLE: Jon Moyle, Jr., with the Moyle, Flanigan Law Firm here in Tallahassee, appearing on behalf of Global NAPS. Also on the pleadings are Cathy Sellers with our firm and Chris Savage. I'd like to enter an appearance for them as well.

MS. CAMECHIS: Good morning. Karen Camechis on behalf of Time Warner Telecom of Florida, L.P. And I would also like to enter an appearance for Peter Dunbar.

MR. GROSS: Good morning. Michael Gross on behalf of the Florida Cable Telecommunications Association. Thank you.

CHAIRMAN JACOBS: Thank you.

MS. BANKS: Felicia Banks and Beth Keating on behalf of PSC Staff.

COMMISSIONER JABER: Mr. Chairman, this might be a --

CHAIRMAN JACOBS: Right. Go right ahead, Commissioner Jaber.

COMMISSIONER JABER: -- good time for me to extend my apologies but express my gratitude also for how well the parties worked together on a very spontaneous informal prehearing conference that I had to miss because of illness. It was one of those rare moments where I'm speechless. I had bronchitis and laryngitis. And I really wanted to extend my gratitude for you-all working together on that. And it also went too smoothly, Mr. Chairman. That was a turnoff --

CHAIRMAN JACOBS: Scary.

COMMISSIONER JABER: -- because I don't want to send the message that Commissioners are not needed for prehearing conferences, but I do want to extend my gratitude.

CHAIRMAN JACOBS: Very well. That's quite commendable, given this community. Staff, we have preliminary matters?

MS. BANKS: Yes, Mr. Chairman. There are several preliminary matters that Staff has been advised of. The first is a pending motion to compel, which was filed on February the 27th by BellSouth. And this was an emergency global motion to compel ALECs to produce responses to BellSouth's discovery prior to hearing.

Staff has received several responses to the motion. The time to respond was on yesterday, Tuesday, March 6th.

CHAIRMAN JACOBS: Very well. And I see that the FCCA has a motion for a protective order, but that's really just their response; correct?

MS. BANKS: That is correct, Mr. Chairman.

CHAIRMAN JACOBS: Is that -- Mr. Hoffman, is that your intent? Oh, I'm sorry. Mr. McGlothlin.

MR. McGLOTHLIN: We filed a response to the motion to compel yesterday.

CHAIRMAN JACOBS: Okay. But it was labeled as a motion for a protective order. You didn't want to raise that as an additional motion, did you?

MR. McGLOTHLIN: No. We combined that in the same response.

CHAIRMAN JACOBS: Great. Okay.

MR. HOFFMAN: Mr. Chairman?

CHAIRMAN JACOBS: Yes.

MR. HOFFMAN: AT&T and Allegiance also filed a response to BellSouth's motion to compel yesterday.

CHAIRMAN JACOBS: Very well.

MR. MOYLE: As did Global NAPS.

CHAIRMAN JACOBS: Very well. Staff has informed me that we would like to go ahead and take deliberations on this today, the BellSouth motion. I'd like to limit

argument on this. Does everybody feel they need to have a say on this? If so, we can -- or can we just do it per side?

MR. MEZA: Mr. Chairman, I must tell you that I have been unable to read, and I have just received most of the responses. In fact, I have not received AT&T's response, and I have not read it. So we can argue it today, but I will be ill-prepared to address their argument.

CHAIRMAN JACOBS: If we don't do it today, what does that do with regard to the hearing? Can the results of whatever our decision is be dealt with in the course of the regular process?

MR. EDENFIELD: Chairman Jacobs, I'd make the following suggestion. Why don't we just let the Staff and the Commission -- well, the Commission rule on this in due course just like they normally would? Because even if we have argument today and even if BellSouth prevailed, we wouldn't get the documents in time to do anything with them in the next, you know, ten minutes anyway. So why don't we just have -- let the Staff make its rec and the Commission rule on it in due course? And we would just ask that, you know, it would be expedited as much as possible so that if, in fact, you find that they do need -- the other side needs to produce documents, we

would have those in time to do the brief.

CHAIRMAN JACOBS: Okay. That sounds reasonable. Any opposition to that approach?

MR. MOYLE: I guess I would just raise a question with respect to -- assuming that their motion was successful, you know, the discovery standard is much broader, that wouldn't then necessarily mean that those documents would be part of the record. I guess I'm procedurally unclear as to Mr. Edenfield's suggestion.

CHAIRMAN JACOBS: Mr. Edenfield.

MR. EDENFIELD: Well, I mean, I guess what we could do is almost make a contingency to have them admitted as late-filed exhibits. To the extent -- I mean, I assume Staff is going to move in discovery responses. And what we would do is, we would just have a placeholder as part of those discovery responses. To the extent the Commission orders the ALECs to produce documents, they would just become part of that exhibit.

MS. BANKS: Excuse me, Mr. Chairman. One recommendation that Staff would make is that, I don't know how much time a day will give parties, but maybe we could defer an announcement of a ruling until the morning? That's an option.

CHAIRMAN JACOBS: That works for me. I think we still have the basic concerns, though. Even if we -- the

ruling comes out, the documents are probably not going to be available immediately, so there's sometime off in the future when those documents would actually be presented. And so then two issues that are raised is: How will we get them into the record, number one, and, number two, how do the parties address them in the context of the proceeding?

MS. KEATING: Mr. Chairman, maybe we can make one other suggestion. I'm a little uncomfortable automatically reserving a placeholder within Staff's stipulated discovery exhibits for the responses to the ALEC -- the responses the ALECs may provide simply because none of the parties have had a chance to see exactly what is in those responses. I would suggest, though, maybe that they be given the option to file -- that BellSouth be given the option to file those responses as late-filed exhibits if they see it may be necessary, but then the parties would still have the option to submit objections.

MR. EDENFIELD: That is acceptable to BellSouth.

CHAIRMAN JACOBS: That works?

MR. MOYLE: I think with the caveat that we can still object on evidentiary grounds, that would be satisfactory.

CHAIRMAN JACOBS: Great. I think that that should suffice then. We'll just let you do that at the

close of your case then. Is that fine?

MR. EDENFIELD: That's fine.

CHAIRMAN JACOBS: Great. Thank you.

MR. HOFFMAN: Mr. Chairman?

CHAIRMAN JACOBS: Yes.

MR. HOFFMAN: Before you move from that issue, and AT&T and Allegiance are satisfied with that process, we don't have an objection to that process, but I think that the parties and the Commission should be mindful of the fact that if the Prehearing Officer were to determine that some level of these documents are to be produced after the hearing, that the parties would have the right to seek further review of that before the full Commission.

That's part of the problem, and I don't want to get into the substance of our response, but that's part of the problem with the fact that these discovery requests were served, you know, 13 months after this docket was opened. And, you know, we find ourselves on the first day of a hearing having to deal with a motion to compel. I'm not aware of a prior occurrence before this Commission where we have dealt with discovery in this fashion, reserving the right to move discovery documents into evidence after the hearing.

I don't object to it so long as we have the right in the event the motion to compel is granted in part

to raise our objection to the admission of the documents. But I do want to make the Commissioners aware that there are due process rights that we have here, and one of them would be to seek further review of any order of the Prehearing Officer.

CHAIRMAN JACOBS: I understand.

MS. KEATING: Mr. Chairman, could I respond to that?

CHAIRMAN JACOBS: Yes.

MS. KEATING: It may alleviate some concerns, hopefully. We have done this in the past in a few cases, and the process has worked out really well, if late-filed exhibits are submitted. We've received objections and made the Commissioners aware of that in our posthearing recommendation, and then they can determine there whether to consider those late-filed exhibits.

Also, I did want to point out that at this point in the process, normally it's up to the Presiding Officer to make a ruling on this type of motion, although it's at the Presiding Officer's discretion to defer it to the entire panel, which in this case would be the entire Commission, which may be an option to consider at this point in the case.

CHAIRMAN JACOBS: Okay. So it sounds like we can work through those concerns.

MR. HOFFMAN: Yes, sir.

CHAIRMAN JACOBS: I'll leave it at your option, Staff. If you want to bring forward a recommendation tomorrow, you're free to do so, but I think given what we've worked out, you could do it at a later time also. Okay. Thank you very much. Staff.

MS. BANKS: Mr. Chairman, there's another preliminary matter. Staff has been advised that there is a stipulation of witnesses.

CHAIRMAN JACOBS: Great.

MS. BANKS: And parties can announce that at this time.

CHAIRMAN JACOBS: Great. Who would like to go forward? Mr. Edenfield.

MR. EDENFIELD: I'm not exactly sure whether I need to announce the stipulation of my witnesses. It is my understanding that the ALECs have agreed to stipulate in BellSouth's witness David Scollard. They have also offered to stipulate in Dr. Taylor, but I thought the Commission may have questions for him. So he will be here and will give a summary. And to the extent there's cross examination or questions, he'll be available.

We have agreed to stipulate in from the ALECs' witness, Dr. Selwyn, who I understood got caught up in the weather up in Boston. And we are happy to stipulate him

in to accommodate that problem.

MR. HOFFMAN: Mr. Chairman, if I may add to that. Mr. Edenfield has accurately stated the situation with respect to those three witnesses. The ALECs have also agreed to stipulate in Dr. Beauvais and Mr. Jones who have filed testimony on behalf of Verizon-Florida.

MS. CASWELL: Mr. Chairman?

CHAIRMAN JACOBS: Yes. Just let me make sure now because we're kind of going very quickly now. Mr. Edenfield, could you give me the witnesses that you agreed to stipulate again?

MR. EDENFIELD: Yes, sir. BellSouth, we will agree to stipulate in David Scollard. He has direct and rebuttal testimony.

CHAIRMAN JACOBS: Very well. And then, Mr. Hoffman, you had stipulated Mr. Selwyn, Mr. Beauvais, and Mr. Jones?

MR. HOFFMAN: Yes. And we also, Mr. Chairman, advised BellSouth that we could stipulate Dr. Taylor, but BellSouth has elected to bring him here nonetheless. I just wanted to make you aware of it.

MR. EDENFIELD: That is correct. They did make the offer.

CHAIRMAN JACOBS: Ms. Caswell.

MS. CASWELL: Mr. Chairman, Verizon's witnesses

are Howard Lee Jones and Ed Beauvais. And as Mr. Hoffman pointed out, we've agreed to stipulate Howard Lee Jones in, but similar to the situation of Dr. Taylor, we would like to have Mr. Beauvais take the stand, give his summary, and offer him for questions if the Commissioners have any questions, if that's acceptable.

CHAIRMAN JACOBS: All right. Sounds good.

MS. CASWELL: And we would also agree to stipulate Mr. Selwyn in.

CHAIRMAN JACOBS: Okay. So the list as I have it now, these are the witnesses who are stipulated in -- if there's an objection, please let me know now -- Mr. Selwyn, Mr. Beauvais, Mr. Jones, Mr. Scollard.

MS. CASWELL: Mr. Chairman, I'm not sure if Mr. Beauvais will be technically stipulated. He will be taking the stand. I don't know if there are going to be any questions for him, but just in case the Commissioners do have some, we'll have him take the stand and give his summary.

CHAIRMAN JACOBS: Very well.

MS. CASWELL: Thank you.

COMMISSIONER JABER: Mr. Chairman, just from my standpoint, I'm not ready to say I don't have questions for Beauvais, Jones, and Taylor.

CHAIRMAN JACOBS: Okay. So Mr. Jones is

available?

MS. CASWELL: He's available, and if -- he's available, yes.

CHAIRMAN JACOBS: All right.

MR. EDENFIELD: Chairman Jacobs, if the Commission does not have questions for Mr. Scollard, I would ask that he be excused unless Staff has questions for him.

CHAIRMAN JACOBS: Commissioners, anyone have questions for Mr. Scollard? Or Staff, cross?

MS. BANKS: Staff has no problem with Mr. Scollard being a stipulated witness.

MR. EDENFIELD: Mr. Scollard has other engagements in Alabama I think he's trying to get back to. So if --

CHAIRMAN JACOBS: Show then that Mr. Scollard and I assume Mr. Selwyn are both excused.

MR. EDENFIELD: Thank you, Chairman Jacobs.

CHAIRMAN JACOBS: All right. That takes care of witnesses? Very well. No more preliminary matters. We'll swear the witnesses.

MS. BANKS: Mr. Chairman, excuse me. We have one more preliminary matter by Staff. If we could go ahead and move Staff's exhibits into the record, we'd like to do that at this time.

CHAIRMAN JACOBS: That's fine. Very well.

MS. BANKS: And this is Staff's stipulated exhibits. Parties have been given copies of these. Stip-1, which is Staff's official -- or official recognition list, we'd like that to be marked as Exhibit 1.

CHAIRMAN JACOBS: Show it marked as Exhibit 1.

MS. BANKS: And also show that as a part of the official recognition list attached are AT&T's official recognition list, BellSouth's official recognition list, and Verizon's official recognition list. So that would be marked as Staff's -- correction, Staff's Composite Exhibit Number 1.

CHAIRMAN JACOBS: Show it marked as Composite Exhibit 1.

(Exhibit 1 marked for identification.)

MS. BANKS: Stip-2, which is BellSouth's responses to Staff's interrogatories and PODs, we would like that to be marked as Exhibit Number 2.

CHAIRMAN JACOBS: Show that marked as Exhibit 2.

(Exhibit 2 marked for identification.)

MS. BANKS: Stip-3, which is Sprint's responses to Staff's interrogatories and PODs, we'd like that to be marked as Staff's Exhibit Number 3.

CHAIRMAN JACOBS: Show that marked as Exhibit 3.

(Exhibit 3 marked for identification.)

MS. BANKS: Stip-4, which is Verizon's responses to Staff's interrogatories and PODs, we'd like that marked as Staff's Exhibit Number 4.

CHAIRMAN JACOBS: Show Stip-4 marked as Exhibit 4.

(Exhibit 4 marked for identification.)

MS. BANKS: Stip-5, which is responses to Staff's interrogatories, we'd like that marked as Staff's Exhibit Number 5.

CHAIRMAN JACOBS: These are responses from whom? I'm sorry. AT&T?

MS. BANKS: By AT&T, MediaOne, and Allegiance.

CHAIRMAN JACOBS: Okay. Show that marked as Exhibit 5.

(Exhibit 5 marked for identification.)

MS. BANKS: Stip-6, which is Global NAPS' responses to Staff's interrogatories, we'd like that marked as Staff's Exhibit Number 6.

CHAIRMAN JACOBS: Show Stip-6 marked as Exhibit 6.

(Exhibit 6 marked for identification.)

MS. BANKS: Stip-7, which is Verizon's responses to AT&T's interrogatories and PODs, we'd like that marked as Staff's Exhibit Number 7.

CHAIRMAN JACOBS: Show that marked as Exhibit 7.

(Exhibit 7 marked for identification.)

MS. BANKS: Stip-8, which is BellSouth's responses to AT&T's interrogs and PODs, we'd like that marked as Staff's Exhibit Number 8.

CHAIRMAN JACOBS: Show that marked as Exhibit 8.

(Exhibit 8 marked for identification.)

MS. BANKS: Stip-9, which is Sprint's responses to AT&T's interrogatories and PODs, we'd like that marked as Staff's Exhibit Number 9.

CHAIRMAN JACOBS: Show that marked -- Stip-9 marked as Exhibit 9.

(Exhibit 9 marked for identification.)

MS. BANKS: Stip-10, which is Global NAPS' responses to BellSouth's interrogatories, Items Number 13 through 28, we'd like that marked as Staff's Exhibit Number 10.

CHAIRMAN JACOBS: Show Stip-10 marked as Exhibit 10.

(Exhibit 10 marked for identification.)

MS. BANKS: Stip-11, which is FCCA's responses to BellSouth's interrogatories, Items 16 through 28, we'd like that marked as Staff's Exhibit Number 11.

CHAIRMAN JACOBS: Show that marked as Exhibit 11.

(Exhibit 11 marked for identification.)

MS. BANKS: Stip-12, which is FCTA's responses to BellSouth's interrogatories, Items Number 15 through 28, we'd like that marked as Staff's Exhibit Number 12.

CHAIRMAN JACOBS: Show that marked as Exhibit 12.

(Exhibit 12 marked for identification.)

MS. BANKS: E.spire's responses to BellSouth's -- Stip-13, which is e.spire's responses to BellSouth's interrogatories, we'd like that marked as Staff's Exhibit Number 13.

CHAIRMAN JACOBS: Show that -- show Stip-13 marked as Exhibit 13.

(Exhibit 13 marked for identification.)

MS. BANKS: Stip-14, which is TCG's responses to BellSouth's interrogatories, we'd like that marked as Staff's Exhibit Number 14.

CHAIRMAN JACOBS: Show Stip-14 marked as Exhibit 14.

(Exhibit 14 marked for identification.)

MS. BANKS: Then Stip-15, which is MediaOne's responses to BellSouth's interrogatories, we'd like that marked as Staff's Exhibit Number 15.

CHAIRMAN JACOBS: Show that marked as Exhibit 15.

(Exhibit 15 marked for identification.)

MS. BANKS: Then Stip-16, which is Allegiance's responses to BellSouth's interrogatories, we'd like that marked as Staff's Exhibit Number 16.

CHAIRMAN JACOBS: Show Stip-16 marked as Exhibit 16.

(Exhibit 16 marked for identification.)

MS. BANKS: Stip-17, which is AT&T's responses to BellSouth's interrogatories and PODs, we'd like that marked as Staff's Exhibit Number 17.

CHAIRMAN JACOBS: Show Stip-17 marked as Exhibit 17.

(Exhibit 17 marked for identification.)

MS. BANKS: Then Stip-18, which is e.spire's responses to Staff's interrogatories and PODs, we'd like that marked as Staff's Exhibit Number 18.

CHAIRMAN JACOBS: That is marked as Exhibit 18.

(Exhibit 18 marked for identification.)

MS. BANKS: And Staff would ask that these exhibits be moved into the record.

CHAIRMAN JACOBS: Without objection, show Exhibits 1 through 18 are admitted into the record.

(Exhibits 1 through 18 admitted into the record.)

CHAIRMAN JACOBS: Anything else?

MS. BANKS: Mr. Chairman, that's all Staff has as preliminary matters.

CHAIRMAN JACOBS: Anything from the parties? Great.

MR. HOFFMAN: Mr. Chairman?

CHAIRMAN JACOBS: Yes.

MR. HOFFMAN: I think in light of the stipulation, I don't know if this is the appropriate time or not, but perhaps now would be the time to move Dr. Selwyn's testimony and exhibits into the record.

CHAIRMAN JACOBS: We can do that now unless there's an objection.

MR. HOFFMAN: Mr. Chairman, I would move Dr. Selwyn's prefiled direct testimony, including revised Pages 23 and 24 of his prefiled direct testimony, into the record as though read.

CHAIRMAN JACOBS: Without objection -- someone had a question? Without objection, show Mr. Selwyn's prefiled direct and rebuttal?

MR. HOFFMAN: I would also move Dr. Selwyn's prefiled rebuttal testimony into the record as though read.

CHAIRMAN JACOBS: Show that moved into the record as though read without objection.

MR. HOFFMAN: Mr. Chairman, I would also ask

that Dr.Selwyn's prenumbered exhibits LLS-1 through LLS-3, which were appended to his prefiled direct testimony, be marked for identification and admitted into the record.

CHAIRMAN JACOBS: Show those marked as Composite Exhibit 19.

(Exhibit 19 marked for identification.)

MR. HOFFMAN: Thank you.

CHAIRMAN JACOBS: And without objection, show Composite Exhibit 19 entered into the record.

(Exhibit 19 admitted into the record.)

INTRODUCTION

Qualifications

Q. Please state your name, position and business address.

A. My name is Lee L. Selwyn; I am president of Economics and Technology, Inc., One Washington Mall, Boston, Massachusetts 02108. Economics and Technology, Inc. (ETI) is a research and consulting firm specializing in public utility economics, regulation, management and public policy.

Q. Please summarize your educational background and previous experience in the field of utility regulation and policy.

A. I have been actively involved in the field of public utility economics, policy and regulation for more than thirty years; my overall experience and education are summarized in my Statement of Qualifications, which is provided as Exhibit __ (LLS-1) hereto.

Q. Have you previously testified before the Florida Public Service Commission (the "Commission")?

A. Yes. I have testified before this Commission on a number of occasions dating back to the mid-1970s, on the subjects of rate design and service cost analysis on behalf of business telecommunications users as well as the State of Florida Department of General Services. These cases have included Dockets 74805-TP, 760842-TP, 810035-TP and 820294-TP involving Southern Bell, Docket 74792-TP involving General Telephone Company of Florida, Docket 750320-TP involving Central Telephone Company of Florida. I also testified in Docket 950696-TP on the subject of Universal Service, on behalf of Time Warner AxS and Digital Media Partners. In 1997, I offered testimony in Docket No. 960833-TP/960847-TP on behalf of AT&T Communications of the Southern States, Inc. ("AT&T"), MCI Telecomm and MCI METRO Access. I also have testified before this Commission on certain reciprocal compensation issues on two prior occasions. In November 1999, I testified on behalf of Global NAPS, Inc. ("GlobalNAPS") in a complaint proceeding, Docket 991267-TP. In May 2000, I provided testimony on behalf of Global NAPs in Docket 991220-TP, concerning certain reciprocal compensation issues relating to Global NAPs' interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth").

Summary of testimony

Q. On whose behalf is this testimony being offered?

A. This testimony is offered on behalf of AT&T Communications of the Southern States, Inc., TCG of South Florida, Global NAPS, Inc., MediaOne Florida Telecommunications, Inc., Time Warner Telecom of Florida, LP, Allegiance Telecom of Florida, Inc., Florida Cable Telecommunications Association, Inc. and the Florida Competitive Carriers Association ("FCCA").

Q. What is the purpose of your testimony?

A. My testimony responds to the issues designated for this proceeding[1] by explaining the economic and policy basis for "reciprocal compensation" arrangements between interconnecting local exchange carriers, and more specifically the basis for establishment of the reciprocal compensation payment by an incumbent local exchange carrier ("ILEC") for calls originated by an ILEC's end-user customers that is handed-off to a competitive local exchange carrier ("CLEC") for termination. It explains why such payments are appropriate, and discusses the economic basis for their determination. It

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1.For convenience, I have marked each section title in my testimony with the numbers of the relevant issues as they were identified in Order No. PSC-00-2229-PCO-TP issued November 22, 2000. I have not addressed Issue 1 construed as a legal matter; however, as my testimony explains that ISP-bound traffic should be treated the same as any other local traffic for reciprocal compensation purposes, if the Commission has already determined that it has jurisdiction over inter-carrier compensation for non-ISP-bound local traffic, then it may not need to reach Issue 1.

also specifically addresses the application of these principles when the CLEC customer being called is an Internet Service Provider ("ISP").

Q. Please summarize your testimony.

A. The first section of my testimony ("Reciprocal Compensation") explains the existing compensation arrangements applied to traditional telecommunications traffic. One must first take these arrangements into account in order to reach a proper understanding of the financial implications of ISP-bound traffic for ILECs, CLECs, and their customers. My testimony explains that local telephone calls in Florida and elsewhere in the US are nearly always undertaken on a "sent-paid" basis, meaning that the customer who originates the call pays his or her local carrier to get the local call from the point of origin all the way to its intended destination. Most importantly for the purposes of this proceeding, under the "sent-paid" framework, the costs of terminating the call are paid in full by the call originator (to the carrier that originates the call), so that the recipient of the call need not and should not make any additional payments for the termination of that call. When two interconnecting carriers jointly complete a local call, the originating carrier is responsible for remitting a portion of the sent-paid revenue to the carrier that terminates the call. Reciprocal compensation is simply the payments made by the first (originating) carrier to the second (terminating) carrier for its work in completing the call. Despite ILEC

arguments to the contrary, there is no compelling economic or policy basis to deviate from the traditional "sent-paid" framework and reciprocal compensation obligations in the case of ISP-bound traffic. Some ILECs have contended that heavy use of dial-up ISP services has been driving up their average per-line local usage and associated costs but, in fact, ILECs have enjoyed strong growth in residential second lines so that the average volume of local usage per line has not materially increased, although ILEC revenues from additional residential access lines have experienced strong and sustained growth.

The major alternative to the "sent-paid" approach to inter-carrier compensation is the access charge framework applied to interLATA toll calls. Some ILECs and ILEC-sponsored economists have argued that ISPs are functionally equivalent to interexchange carriers, and have urged regulators to allow ILECs to adopt the access charge framework for ISP-bound calls as a substitute for the "sent-paid" framework. However, as the D.C. Circuit Court of Appeals confirmed earlier this year, ISPs are *users* of telecommunications services, and are not telecommunications providers like interexchange carriers, and therefore should not be treated any differently in this respect from other businesses subscribing to telephone services. ILEC arguments that an access charge regime is justified by an analysis of cost-causation for ISP-bound calls are equally without merit. Furthermore, if ILECs were allowed to apply their existing intrastate switched access charges to ISP

traffic, Internet users would be exposed to prohibitive increases in the rates they pay for dial-up connection to ISPs, as much as $7.14 per month in Bell South's Florida service territory.

Under the sent-paid framework, when the exchange of traffic between two carriers is roughly equal, carriers may elect a "bill and keep" system, thereby eliminating the need for explicit inter-carrier payments. However, explicit reciprocal compensation payments must be made for call termination when inter-carrier traffic flows are significantly out of balance, in order to ensure that each carrier is properly compensated for the termination work that it performs.

In Florida and elsewhere, the ILECs' ability to effectively dictate reciprocal compensation rates in their negotiations with CLECs meant that CLECs have faced call termination rates that are significantly higher than they had originally proposed. As I shall explain, this condition is a result of a fundamental misassessment by the ILECs, at the time that the various interconnection agreements were initially negotiated, of the potential impact of the Internet. Because the ILECs elected to impose high termination charges for traffic handed-off *to them* for completion, and because these rates were to apply symmetrically to both the ILEC and the interconnecting CLEC, many CLECs elected to pursue the market for call termination services needed by ISPs and other businesses with high volumes of inbound traffic,

frequently leading to unbalanced one-way traffic flows with interconnecting ILECs. However, under a system of explicit reciprocal compensation payments and as long as the ILEC's rates are based upon the ILEC's costs, there is no logical connection between the traffic flow and associated compensation due in one direction, and the traffic flow and compensation that might occur in the reverse direction. Assuming that ISP-bound calls are subject to reciprocal compensation at all, then in each direction compensation must be paid for the work performed by the terminating carrier and thus the volume of traffic that may or may not flow in the reverse direction is not relevant to the matter of the terminating carrier's entitlement to reciprocal compensation payments for its work in completing calls.

The second section of my testimony ("CLEC Costs of Local Terminations") responds to the argument being made by some ILECs that reciprocal compensation arrangements with CLECs should make a distinction between traffic that is destined for (terminated at) a conventional voice telephone line and traffic that is terminated to an ISP. In fact, *there is no technical difference in the manner by which these two types of traffic are handled in the ILEC's network* and by suggesting otherwise, such ILECs are attempting to introduce a market-driven price discrimination based upon the *use* to which local telephone service is put rather than upon the processes by which it is produced or the costs incurred in its production. My testimony explains why such an attempt to create a distinction between "ordinary" and ISP-bound

traffic is without economic or technical merit and should be rejected by this Commission. In fact, it is a sheer impossibility for ILECs to accurately identify ISP-bound calls even if a discriminatory pricing regime were to be adopted, which of course it should not.

My testimony also describes and compares the architecture and design of ILEC networks vis-a-vis CLEC networks, and explains why a CLEC should be considered to be providing the same traffic aggregation function as occurs via an ILEC's tandem switching, despite the fact that the design of CLECs' local networks differs from that used by ILECs such as BellSouth. Indeed, not only do CLECs confront costs that are no lower than those of an ILEC, it is reasonable to expect that the significant differences in the structure of these networks accounts for differences in both the structure and the level of the ILECs' and the CLECs' respective costs of processing and terminating local calls. In fact, several ILECs previously have submitted studies to the FCC that claim that the concentrated nature of ISP-bound traffic has caused them to incur network investments and costs incremental to their ordinary call termination costs - costs that presumably those CLECs specializing in terminating concentrated inbound traffic must also be incurring.

Finally, I explain that the appropriate inter-carrier compensation for the termination and transport of ISP-bound local calls, as well as other forms of local traffic, is a symmetric rate based upon the ILEC's prevailing TELRIC

cost level, which creates incentives for continual reductions in the costs of call termination services and harms neither ILECs nor end users. These incentives and the positive market developments they engender were expressly recognized by the FCC during its design of the prevailing reciprocal compensation rules for local telecommunications traffic, and similarly should be recognized by the Commission.

RECIPROCAL COMPENSATION

A "sent-paid" compensation arrangement has traditionally been applied to local telecommunications traffic, and remains the most rational approach to apply to ISP-bound traffic that is rated as local and subject to local exchange tariff charges. (Issues 2, 3, and 6)

Q. Dr. Selwyn, what is the traditional practice in Florida and across the US generally for compensating local exchange carriers (LECs) for their carriage of local telephone calls?

A. The almost universal practice in Florida as well as generally throughout the US is for local calls to be provided on a "sent paid" basis by the local exchange carrier on whose network the call originates. By that I mean that the customer who originates the call pays his or her local carrier to get the local call from the point of origin all the way to its intended destination on the public switched telephone network (PSTN), which means that the originating carrier is compensated by its customer for local switching at both the originating and terminating ends of the call as well as for transporting the call the entire distance between the originating LEC switch and the terminating LEC switch. Most importantly in the context of this proceeding, the "sent paid" approach means that the calling party pays in full for the termination of the call, as well as for its origination even if a carrier other than the originating (and billing) carrier ultimately terminates the call.

Q. Is the "sent paid" approach used in Florida today?

A. Yes, it is. In Florida, both BellSouth and Verizon offer local usage services under a combination of flat and message rate elements, but in all cases the charges for these services are paid by the customer who originates calls. Exhibit __ (LLS-2) to my testimony provides a summary of these two ILECs' basic local exchange offerings in Florida, all of which are founded on the "sent-paid" model.

Q. Most residential and business exchange service in Florida is provided on a "flat-rate" basis. Does the "sent-paid" model still apply even where there is no explicit charge for each originated local call?

A. Yes. As Exhibit __ (LLS-2) to my testimony illustrates, "sent paid" payment arrangements can take many forms. Among its possible forms are: flat-rated local calling over a wide area; "extended area service" or "extended area calling" plans that have the same effect; flat-rated local calling over a smaller area with some type of message unit or local measured charge for local calls outside that area; flat-rated local calling for a certain number of calls per month, with a per-message or other charge for usage above that level; and even local service with no usage included in the base price at all, with each call subject to a separate local message unit or measured service charge. Whatever the specific method of charging, the originating customer pays either for each individual call (if billed on a measured-rate basis) or for the

"package" of local usage (if billed on a "flat-rate" basis). Just because calls may be billed on a flat-rate basis does not in any sense make them "free" to the originating caller or create a condition whereby the originating LEC is not fully compensated (through the flat monthly charge) for the costs in incurs in handling these calls.

In sum, whatever the precise form of local service plan, and whether priced on a flat-rate or usage-sensitive basis, what is common to all of them is that the *originating end user* pays the *originating local carrier* an amount designed to cover the entire cost of getting the call from the origin to its destination.

Q. Is this "sent paid" approach to local calling a recent development, or has it been in place for some time?

A. This arrangement has been in place since the introduction of local telephone service more than a century ago, and has provided the framework both for the interchange of traffic as well as for the allocation of usage revenues as between two incumbent local exchange carriers (e.g., BellSouth and an Independent Telephone Company). With the introduction of Competitive Local Carriers ("CLECs") into the local service market, this same longstanding framework has now been extended to the new entrants as well.

Q. How are connecting carriers compensated, under the "sent paid" paradigm, for terminating calls that are originated by customers of a different local carrier?

A. When two interconnecting carriers (A and B) jointly participate in the completion of a local call, the originating carrier is responsible for paying the carrier that terminates the call. Carrier A is paid by its customer to complete a "full call," but performs a "half-call" itself (from origination to hand-off point), and thus must pay Carrier B to perform the second "half-call" (from hand-off point to termination).

Reciprocal compensation is simply the payments made by the first (originating) carrier to the second (terminating) carrier for its work in completing the call. In this arrangement, the flow of payments is intended to mirror the flow of traffic; i.e., Carrier A pays Carrier B for terminating calls originated on A and handed off to B for termination, and Carrier B pays Carrier A for terminating calls originated on B and handed off to A for termination. The per-minute amount for these payments is supposed to be equal, such that if the traffic flow is precisely in balance (i.e., A gives B the same amount of traffic as B gives A), then no net payment, in either direction, would take place. Specific compensation mechanisms, including explicit reciprocal compensation payments and bill-and-keep arrangements, are discussed further below.

Q. Is this type of inter-carrier compensation arrangement peculiar to the telecommunications industry?

A. No, in fact it has long been both the tradition and the practice throughout common carrier industries like transportation and telecommunications for certain types of customer-initiated service requests to be fulfilled by more than one service provider. Rail shipments frequently involve several different railroad companies; indeed, it is not at all uncommon for one railroad's rolling stock to be transported over another railroad's tracks where the ultimate destination of a particular shipment goes beyond the geographic extent of the originating railroad's network. In some cases, multiple carriers may be involved even where it is possible for the entire service to be furnished by one provider. For example, a passenger might want to travel from Tallahassee to Boston. Although this trip could be completed on the same airline, the passenger might want to change airlines at some interconnecting point in order to obtain preferred flight times or simply because he or she needs to stop off at that location. Where two or more carriers are involved in a particular routing, the customer typically deals only with the first carrier in effecting the service transaction (i.e., arranging and paying for the freight shipment or making flight reservations and paying for the ticket for the entire trip). In this context, that first carrier acts as an agent for all subsequent carriers, and hands over a portion of the total payment received for the entire service to the subsequent (connecting) carrier(s) in

some proportion to each's respective role in fulfilling the totality of the service delivery. This payment is not a "cost" to the initial carrier; rather, it is simply a remittance paid by it to one or more other carriers for their share of the total service that is being furnished to the customer.[2]

Reciprocal compensation payments made by originating LECs to terminating LECs are entirely analogous. They are not "costs" to the originating carrier in the traditional sense, although one might argue that they represent competitive losses in that the originating ILEC might have in the past carried the entire call if the CLEC were not present in the market. However, the payment made by the ILEC to the CLEC for traffic handed-off to the CLEC is simply a remittance of monies collected from the ILECs customer for a total end-to-end service a portion of which is furnished by a connecting carrier rather than by the ILEC itself.

Q. Some ILECs have contended that they are not adequately compensated for the additional usage costs they incur due to ISP-bound traffic, and thus need to reduce or entirely eliminate their reciprocal compensation remittances to CLECs for termination of ISP-bound calls. How do you respond to that claim?

2.The initial carrier might incur transaction costs relating to its role in facilitating the end-to-end service, e.g. in performing billing and collection functions for the connecting carriers. However, any such costs are conceptually distinct from (and typically minimal in comparison to) the revenues that ultimately must flow to the connecting carriers as compensation fro their services.

A. Under the "sent-paid" compensation framework, to the extent that an ILEC incurs additional network usage costs because of local dial-up calls to ISPs, those costs are to be recovered from the originating customer through that customer's payments under the originating carrier's local exchange tariffs. If for some reason an ILEC is unable to obtain sufficient local service revenues from its end user subscribers to cover the usage costs associated with that customer's dial-up ISP calls, the ILEC's recourse is to adjust its local exchange rate structure, rather than to attempt to escape its reciprocal compensation obligations to CLECs which terminate those calls.

Q. Some ILECs have argued that the total local usage per residential access line has increased significantly over time because of the growth of ISP-bound calls, so that the average local usage level recovered through the ILECs' flat-rate tariffs is being exceeded. Do you agree with that contention?

A. No, in fact, there is evidence that no such effect has occurred as a general matter. Data routinely collected by the FCC and published in its annual Statistics of Communications Common Carriers demonstrate that the Internet has had a significant impact upon the demand for additional residential access lines, but has had little impact upon the average volume of local traffic carried over each line. As shown in Figure 1, beginning in about 1990 the demand for additional residential access lines began to mushroom, and by the end of 1998 — the latest year for which FCC data is available — over

one-fifth of all US households had an additional residence line, representing some 20.4-million such lines nationwide. During that same period, the per-line volume of local calling increased by only 19% (Figure 2). ILECs such as BellSouth and Verizon realize substantial additional revenues from the sale of additional residential access lines and to the extent that CLECs participate in the carriage of traffic generated over those lines, it is both appropriate and essential that CLECs be compensated for the services they supply.

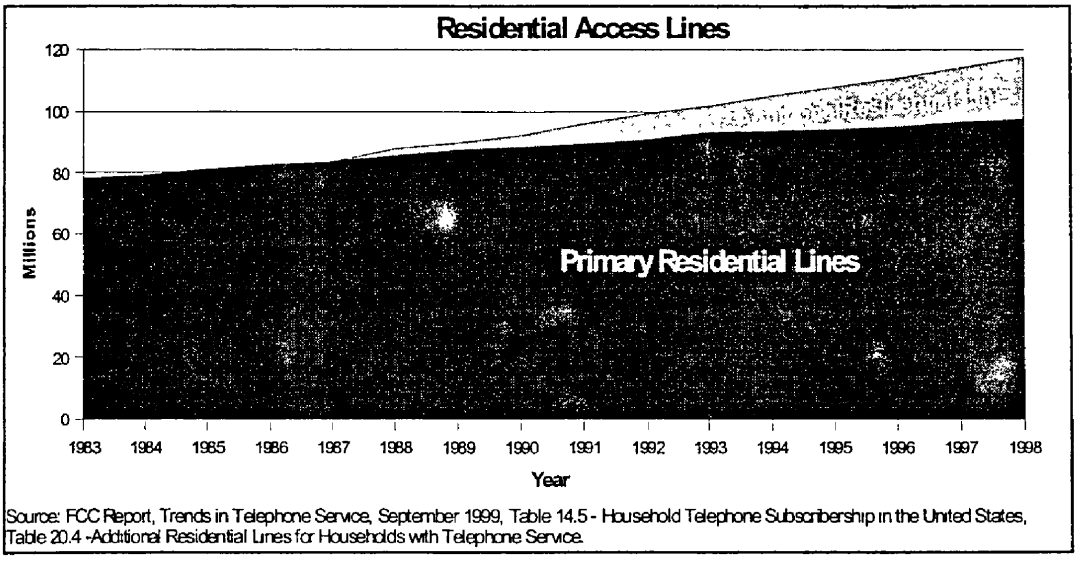

Figure 1. Demand for additional residence access lines has grown substantially over the past decade.

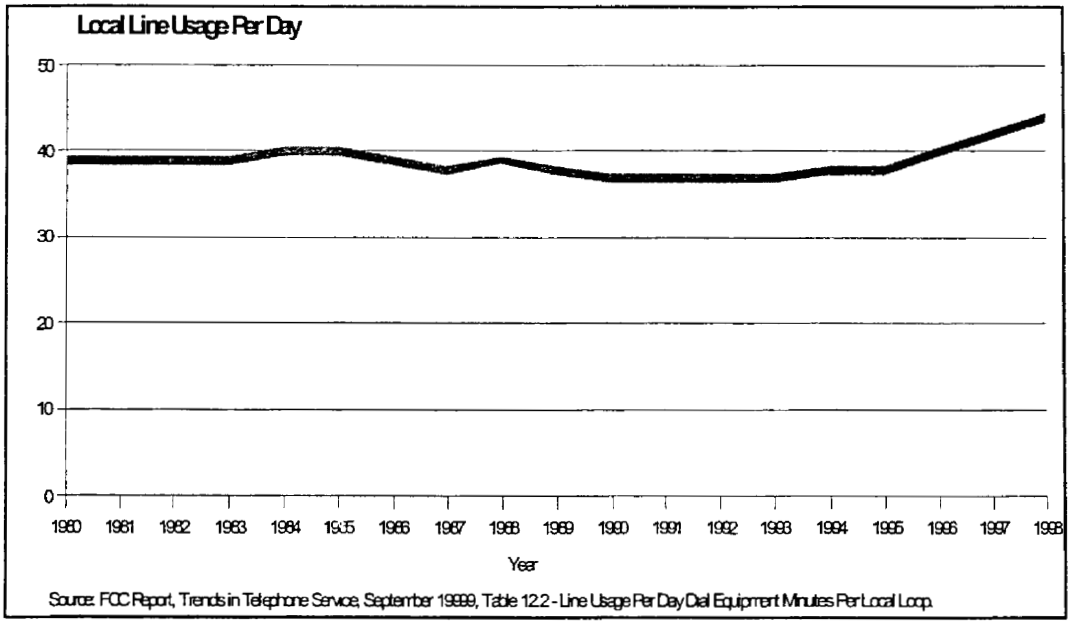

Figure 2. Local usage per line has risen modestly overall, despite the growth in Internet-related calling.

Because ISPs are end users of telecommunications services and are not telecommunications service providers, the compensation arrangements applied to interexchange carriers (IXCs) should not be applied to ISPs. (Issues 3 and 4)

Q. It has been suggested by some ILECs that the most efficient economic arrangement would be for ISPs to pay to receive incoming calls and recover those costs from their Internet users. Is that an appropriate arrangement?

A. No, it is not. As I have previously discussed, local calls are in all cases sent-paid by the call originator. Calls to ISPs are rated as local calls (if the called number is included within the caller's local calling plan). If ISPs were to be charged for receiving incoming calls, the effect would be a *double*

charge, because the call originator would have already paid for the call termination.

Q. Don't interexchange carriers (IXCs) pay for calls delivered to them by ILECs?

A. Yes, they do, but the "access charge" model that applies in the case of IXCs is not appropriate nor applicable in the case of ISPs.

Q. Please explain.

A. Under the access charge model, the customer of the ILEC is the IXC, not the originator of a long distance call. That is, when I place a call via an IXC, the call is routed from my phone to the IXC by the ILEC as a "switched access" service, and the charge for that switched access service is billed to the IXC. Indeed, the IXC will be charged for the switched access connection even if the ultimate call is not completed, i.e., if it reaches a busy or no-answer condition. The IXC also pays switched access to the ILEC at the terminating end of the call, for transporting and delivering the call from the IXC's "point of presence" ("POP") to the ultimate recipient of the call. Neither the call originator nor the call recipient are billed by their respective ILECs for the switched access service.

The IXC, however, is billed for this service, and recovers those payments, along with its other costs (e.g., the cost of transporting the call between LATAs, retailing costs associated with marketing, billing and collection, etc.) in retail long distance rates that it charges to its end-user customer.

Q. Are there other differences between the "sent-paid" regime applicable to local calls and the "access charge" regime applicable to long distance (toll) calls?

A. Yes. Since their introduction in approximately 1984, access charges have been set substantially in excess of the traffic-sensitive costs actually associated with this service so as to make a "contribution" toward the cost of the basic subscriber access line, *replacing* the contribution that had previously be made by toll calls prior to the creation of access charges. By contrast, reciprocal compensation rates for termination of local calls are required by Section 252(d)(2)(A)(ii) of the federal *Telecommunications Act of 1996* to be set at *incremental* cost. While the physical functions are similar, the rate level applicable to access charges is substantially greater than that for termination of local traffic. Were access charges to apply in the case of ISP-bound local calls, rates for such calls would necessarily have to experience a substantial increase, dramatically raising the cost to Internet users of reaching their chosen ISP.

Q. Why isn't the access charge model applicable to or appropriate for calls delivered by ILECs to ISPs?

A. There are several reasons. First, the FCC has expressly *exempted* such calling from interstate switched access charges, requiring that calls to ISPs be treated and rated as local calls and that access line services furnished to ISPs be provided as local business exchange service lines out of the local exchange tariff.[3] Second, while I am not an attorney and do not offer a legal opinion, in my view ISPs, unlike IXCs, are distinctly not telecommunications common carriers as defined under current law. Rather, ISPs are themselves end-user customers of telecommunications carriers, and thus are entitled to exactly the same treatment as any other end-user customer. Indeed, in a March 24, 2000 ruling reversing in part the FCC's February 1999 *Reciprocal Compensation* order,[4] the District of Columbia Circuit Court of Appeals saw no particular reason why ISPs were any different from any other telecommunications intensive end user:

3.See *MTS and WATS Market Structure*, Memorandum Opinion and Order, Docket No. 78-72, 97 FCC 2d 682, 711-22 (1983) (Access Charge Reconsideration Order); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Services Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd 2631 (1988) (ESP Exemption Order); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges*, CC Docket No. 96-262, 94-1 et al, First Report and Order, 12 FCC Rcd 15982 (1997) at paras. 341-348.

4.*Bell Atlantic Telephone Companies v. FCC and U.S.*, 2000 WL 273383 (D.C. Cir. March 24, 2000).

> Even if the difference between ISPs and traditional long-distance carriers is irrelevant for jurisdictional purposes, it appears relevant for purposes of reciprocal compensation. Although ISPs use telecommunications to provide information service, they are not themselves telecommunications providers (as are long-distance carriers).
>
> In this regard an ISP appears, as MCI WorldCom argued, no different from many businesses, such as "pizza delivery firms, travel reservation agencies, credit card verification firms, or taxicab companies," which use a variety of communication services to provide their goods or services to their customers. Comments of WorldCom, Inc. at 7 (July 17, 1997). Of course, the ISP's origination of telecommunications as a result of the user's call is instantaneous (although perhaps no more so than a credit card verification system or a bank account information service). But this does not imply that the original communication does not "terminate" at the ISP. The Commission has not satisfactorily explained why an ISP is not, for purposes of reciprocal compensation, "simply a communications-intensive business end user selling a product to other consumer and business end-users."[5]

Indeed, were ISPs to be singled out among all business telephone users for special treatment, the effect would be to discriminate based upon the *content of the individual telephone calls* themselves, a move without any precedent of which I am aware. Finally, I would note that the FCC itself, in an April 1998 report to Congress regarding the application of universal service assessments against ISPs, expressly concluded that ISPs are users of telecommunications, not telecommunications carriers, and that Congress intended the terms "information services" (that is, what ISPs provide) and "telecommunications

5.*Id.*, at *6.

services" (that is, what carriers such as IXCs provide) to be mutually exclusive.[6] Indeed, the D.C. Circuit noted that conclusion in its discussion of the proper classification of ISPs and ISP-bound calls noted above.

Q. What would be the effect upon Internet users if ISPs were required to pay for the incoming calls they receive?

A. Most ISPs today employ a flat-rate type of pricing plan whereby users pay a fixed monthly charge for unlimited access to the Internet. According to industry statistics, the average dial-up Internet user spends approximately 25 hours per month on the Internet. As shown in Table 1, if BellSouth's current intrastate switched access charges in Florida were to apply for each of these 1500 minutes per month, assuming an average call duration of 30 minutes, the ISP would be required to pay some $16.48 for each customer to receive calls for which those customers had already paid in their local telephone service rate. Obviously, ISPs would be forced to flow-through these additional costs to their Internet user customers, effectively increasing the cost of Internet access from the roughly $20 per month that typically applies today to as much as $36 per month. Moreover, once faced with usage-based call termination charges, the ISPs may find it far more difficult to offer flat-rate Internet access, and would be forced to adopt measured-use pricing, something that would fundamentally alter the manner in which the Internet is

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6.*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11536-11540 (1998).

used.

Table 1 Calculation of Potential Impact on Internet Users of Application of BellSouth Florida's Intrastate Switched Access Charges to ISP-bound calls		Corrected 2/12/01
Average monthly connect time of Internet user, hours		25
Average duration of Internet calls, minutes		30
Total minutes per month:		1500
BellSouth-Florida's Intrastate SWAC: Source: BellSouth-Florida Access Services Tariff, Section E.6 (BellSouth SWA Service)		
Local Switching LS2 (Feature Groups C and D):		
Per access minute	$	0.008128
Tandem switching, per access minute:	$	0.00050
Tandem switched transport, per access minute:		
Facilities Termination (fixed charge) per access minute of use:	$	0.00036
Per Mile per access minute of use:	$	0.00004
Assumed transport mileage		50
Total monthly charges if SWAC applied to ISP-bound traffic terminated by CLEC:		
LS2 charges	$	12.19
Tandem switching charges	$	0.75
Tandem transport charges	$	3.54
Total monthly charges:	$	16.48
Note: This assumes that call is handed off to a CLEC for termination, so it includes (only) originating local switching, plus transport and tandem switching elements.		

Q. Some ILECs have contended that ISPs provide an interexchange function in terminating calls to the Internet, and that therefore the toll model is the most

appropriate compensation arrangement from an economic standpoint. Do ISPs provide an interexchange function?

A. No. As the DC Circuit Court of Appeals recognized, ISPs do not provide a telecommunications service, and in particular do not provide an interexchange carrier function either. When a customer dials an ISP, the call is delivered to the location where the ISP maintains a bank of devices called "Remote Access Servers," or RAS's. These devices include both modems and basic authentication capability (that is, matching the dial-up caller's user name and password to ensure that the caller may properly access the ISPs' services). The RAS's are connected to the ISP's own host computers and routers that provide the gateway to the larger Internet itself. If the ISP is served by the same carrier as the caller (e.g., BellSouth), then the call is processed entirely on that ILEC's network; if the ISP uses a different carrier (e.g., a CLEC), then the call is handed-off by the ILEC to the CLEC at their agreed-upon "point of interconnection." In either case, the call itself is physically "terminated" at the point at which the terminating carrier — ILEC or CLEC — switches the call on its way to the ISP's CPE (in this case, the RAS/modem). This is no different than how call termination works for any other customer.

This shows that there is no merit to the ILEC suggestion that an end user's call to an ISP does not really "terminate" with the ISP, but instead in some

mystical sense "continues" on into the Internet. Customer-originated data no doubt are processed and forwarded by the ISP to web sites hosted on physically distant computers, but that activity entails the ISP performing its information services, not a telecommunications carrier performing any telecommunications functions. Put bluntly, however one might fairly characterize what it is that "continues" on into the Internet, it is certainly not the end user's "call." That call "terminates" (in the sense of the FCC's rules) at the end office switch serving the ISP, and "terminates" (in a more colloquial sense) at the ISP's CPE (again, the RAS/modem combination).

Consider the following as a simplified example. I dial a local number to reach an airline reservation desk. I talk to the reservationist and describe the trip that I want to take. The reservationist then punches some keys on a computer terminal or work station and looks at her screen to see if the flights I want are available. She then tells me what she sees on the screen. Technically, the reservationist is performing what amounts to modem functions. She translates my voice instructions into keystrokes for entry into the computer, and translates the screen display into spoken words that are communicated to me over the phone. Under the so-called "one call" theory (which holds that ISPs are performing an interexchange function because the call actually terminates on the remote web site rather than at the local ISP's modem bank), this call to the airline reservation desk would be no different than a call to the Internet. In fact, under this theory, a call to any business

that uses out-of-state information sources in telephonic transactions with its customers would also satisfy this same "one call" theory. The sole difference between these examples and the Internet is that Internet calls involve data whereas these others involve voice communication. Since the public switched telephone network (PSTN) is entirely indifferent as to whether it is carrying voice or data traffic (i.e., there is no difference in the manner in which the call is handled or in its cost), there is no basis for any price discrimination on the basis of the content of an individual call, i.e., voice vs. data.

ISP-bound dial-up calls terminate at the ISP's modem, not at Internet websites; in fact, as Mr. Fred Goldstein explained in his testimony on behalf of Global NAPs in Docket 991267-TP, more than 90% of the time that an Internet user is connected to his or her ISP, there is not even any data flow beyond the ISP actually taking place. Hence, even under a "one call" theory, the call would still be terminated at the ISP's modem bank in excess of 90% of the total time that the call is "up." As the DC Court of Appeals recognized in its March ruling to remand the FCC's Declaratory Ruling on ISP-bound traffic, ISPs are users of telecommunications services, similar to other businesses that utilize inbound calling services, such as call answering bureaus, mail-order shopping services, and other telecommunications-intensive business enterprises.

Q. ILECs have argued that the ISP, not the end user, is the "cost-causer" in the case of ISP-bound calls. Do you agree?

A. No. Under that theory, any business that advertises its telephone number encouraging prospective customers to call would be considered to have "caused" the incoming call to be placed. The originating caller is the cost-causer because the originating caller is exercising free will in deciding to place the call. The ISP is offering Internet access service, and is providing that service via dial-up telephone calls placed to it by its customers. That is no different than any other business that engages in transactions or provides services over the phone.

The exception to this is found in the case of 800-type services, where the called party has explicitly decided that it will pay for the cost of the calls it receives. However, 800 service is an option that is selected by a particular firm to encourage calls that might not otherwise take place if the charge were imposed upon the caller.

Under the sent-paid framework, explicit reciprocal compensation payments must be made for call termination when traffic flows are significantly out of balance. (Issues 3 and 4)

Q. ILECs typically portray their reciprocal compensation payments to CLECs for the termination of ISP-bound traffic originated by ILEC end users as

"costs" that are being imposed by CLECs upon ILECs. Do you agree with that characterization?

A. No, I don't. As I explained, reciprocal compensation payments represent "remittances" that are collected by the carrier whose customer originates the call and that are then paid to the carrier that terminates the call. A far more accurate characterization of reciprocal compensation payments is that of a "competitive loss" to the originating carrier to the extent that carrier could have itself furnished the call termination, but did not because the call recipient had selected an alternative service provider.

Q. Should the ILEC be insulated from such competitive losses?

A. Clearly not. The loss of call termination business constitutes a competitive loss to the incumbent. However, a careful examination of the circumstances associated with this particular competitive loss will reveal that it resulted from mis-assessments of the market and mispricing of services by the incumbents, and is certainly not the "fault" of CLECs who made entirely legitimate market responses to the pricing signals that they were receiving from BellSouth and Verizon.

Q. Please explain.

A. Call origination and call termination are separable activities each one of which confronts its own set of market conditions. There is nothing in the 1996 federal *Telecommunications Act* nor in any other competitive telecom policy framework of which I am aware that requires that CLECs become mere clones of the incumbents, that the nature and mix of the services they provide mirror precisely those being offered by the ILECs. Indeed, unless CLECs were somehow compelled to purchase and deploy the same technologies that the ILECs use, one would expect the different cost and other characteristics of the (generally newer) technology being deployed by the CLECs to lead them to focus on those portions of the overall market that their new technology allows them to serve most efficiently. As a result, it would be remarkable if CLECs ever adopted a competitive strategy of simply cloning the ILEC's operations.

The relevant distinction here is between call origination and call termination. In a competitive local telecom market, carriers can compete for call termination business without having to necessarily compete for the corresponding call origination business. If a CLEC is able to furnish the call termination service more efficiently than the ILEC, the goals of competition are served when customers requiring this service are induced to switch from the ILEC to a CLEC.

Under a system of explicit reciprocal compensation payments and as long as the ILEC's rates are based upon the ILEC's costs, there is no logical connection between the traffic flow and associated compensation due in one direction, and the traffic flow and compensation that might occur in the reverse direction. Assuming that ISP-bound calls are subject to reciprocal compensation at all (which is taken up below), then in each direction, compensation must be paid for the work performed by the terminating carrier. As a result, the volume of traffic that may or may not flow in the reverse direction is not relevant to the matter of the terminating carrier's entitlement to reciprocal compensation payments for its work in completing calls.

Q. Has BellSouth itself supported the application of explicit reciprocal compensation payments for termination of local traffic in the past?

A. Yes. BellSouth's various interconnection agreements with CLECs have typically provided for reciprocal compensation. Moreover, it is my understanding that BellSouth continues to apply reciprocal compensation principles in dealings with CLECs that are providing POTS-type services (i.e., "plain old telephone service") as distinct from those CLECs that are specializing in terminating ISP-bound traffic.

Q. Has BellSouth generally opposed "bill-and-keep" arrangements in favor of reciprocal compensation payments based upon actual traffic flows in each direction?

A. Yes, that is my understanding. In opposing "bill-and-keep," BellSouth and other ILECs apparently believed that they would be net recipients of interchanged traffic, i.e., that there would be more traffic flowing from CLECs to ILECs than from ILECs to CLECs. That determination was a business judgment that appears to have been wrong. In assessing the market outcome, BellSouth appears to have failed to recognize the fact that (a) call origination and call termination are different services, and that (b) CLECs could be selective in the mix of customers they elected to pursue and to serve. When CLECs faced much higher reciprocal compensation rates than the CLECs themselves proposed in negotiations, they elected to "sell" rather than to "buy" at that price, and solicited customers — including ISPs as well as others — with relatively high inward calling requirements. Thus, ILECs such as BellSouth lost the opportunity to serve these high-volume call termination customers by mispricing their services, and it would be entirely inappropriate for the Commission to now engage in what amounts to nothing short of a bail-out of those ILEC business errors. *In competitive markets, competitors live or die by their own business judgments and decisions, and it is not the role of regulators to backstop these market choices by after-the-fact protective measures.*

Q. Was there anything unreasonable or inappropriate about this deliberate attempt on the part of some CLECs to seek out particular types of customers with unusually high inward calling needs and thereby to become net recipients of terminating traffic?

A. No, not at all. In fact, this outcome is fully consistent with the proper functioning of a competitive market. In this instance, the ILEC, as the dominant player in the market, established and held out a price at which it was willing to either buy or sell call termination service. If a competitor was able to furnish the same service at a lower cost than the price signals it was receiving from the dominant ILEC, both the CLEC and the economy overall are well served by the CLEC pursuing this market opportunity.

In dictating the reciprocal compensation rate, the ILEC was engaging in a form of economic negotiation sometimes described as "I cut, you choose/you cut, I choose." Suppose that Bob and Bill are trying to evenly divide a chocolate cake between them. Under "I cut, you choose," Bob, for example, would cut the cake into what he believed were two equal pieces, and Bill would then have the right to select which piece he would get. Obviously, in such a process, Bob has a powerful incentive to make his slice as close to a 50/50 split as possible since, if the two pieces are unequal, Bill will then have the right to select the larger piece. Note also that under this type of negotiation arrangement, it doesn't actually matter which party does the

slicing and which does the choosing, since both would share the identical incentive no matter which role each assumes.

The establishment of a symmetric reciprocal compensation rate by the ILEC that the CLEC is then free to either pay to the ILEC or have the ILEC pay to it should provide the ILEC with precisely the same incentive to "get it right" as Bob has in slicing the chocolate cake. So it is therefore entirely reasonable and correct to assume that in setting their existing reciprocal compensation rates, BellSouth and Verizon attempted to get as close to their actual costs as possible, since the risk of being wrong (too high or too low) would necessarily cost these companies money. In fact, BellSouth and Verizon would have deliberately set their price in excess of cost only if they believed that CLECs would be *unable* to achieve a net traffic flow in their favor. That error would be in the nature of a bad business judgment which, like other management decisions, firms must live with in competitive market environments. Of course, in the instant situation, it would appear that both BellSouth and Verizon engaged in precisely this market behavior, mistakenly believing that CLECs could not be so selective as to focus their initial marketing efforts upon customers with high-volume inward calling requirements.

Q. But what if the ILECs had deliberately overstated their costs and thereby quoted excessive prices for call terminations?

A. In setting their call termination reciprocal compensation rates, the ILECs were well aware that the price would apply in both directions, and therefore should have had the incentive to set a price level that was at or very close to the actual costs involved in providing call termination functions. But if, for example, BellSouth or Verizon had deliberately established an excessive price, that action would necessarily have been driven by an erroneous business judgment as to competitors' ability to be selective in seeking out and serving customers with high inward calling needs. In competitive markets, there are often serious consequences of mispricing one's product or service, and competitors are certainly entitled to take full advantage of the conditions they confront in developing their business strategies and in defining the market segments that they will serve.

In the instant situation, however, the specific reciprocal compensation rates that had been dictated by the ILECs were proffered as being cost-based; indeed, they were required by law and by regulation to be cost-based. Section 252(d)(2) of the *Telecommunications Act of 1996* sets forth the specific relationship between the reciprocal compensation rate and the underlying costs of terminating calls:

> Section 252(d)(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC-

> (A) IN GENERAL- For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless-
>
> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

It was thus entirely reasonable and appropriate, then, for regulators and for competitors to rely upon BellSouth's and Verizon's respective representations with respect to their costs for terminating local traffic. When ILECs attempt to introduce "new" cost studies in support of a changed agenda that produce dramatically different results than those proffered by the very same companies a few years ago, the new results must necessarily be viewed with extreme skepticism.

Even worse, some ILECs are now attempting to manufacture a distinction between traffic that CLECs hand off to them and traffic that they hand off to CLECs, and based thereon to establish differential prices whose effect is to eliminate the existing symmetry in the treatment of reciprocal compensation. Specifically, ILECs are seeking to differentiate between the cost associated with traffic that CLECs terminate to them and the cost associated with traffic that they terminate to CLECs. Not surprisingly, the ILECs' new "cost

studies" produce dramatically higher values for the former than for the latter. Both of these results purport to be based upon these companies' own costs, but in fact as I explain elsewhere in my testimony, there is substantial reason to expect that, all else being equal, CLEC costs may actually be higher than an ILEC's costs for providing the equivalent call termination service.

Under an explicit reciprocal compensation regime, the appropriate compensation for calls terminated by one of two interconnected carriers is entirely independent from the volume of traffic and associated compensation flowing in the reverse direction. (Issues 3 and 4)

Q. ILECs often portray situations in which traffic flows are significantly out of balance as somehow inconsistent with the intent of opening local markets to competition, and argue that CLECs with heavily-lopsided inbound traffic are somehow taking advantage of a "loophole" in the ILEC's tariff. Do you agree with such contentions?

A. No. As I have noted above, in a competitive local telecom market, carriers can compete for call termination business and, if one carrier is able to furnish the call termination service more efficiently than the ILEC, the goals of competition are served when customers are induced to switch from the ILEC to a CLEC for this service.

Under a system of explicit reciprocal compensation payments and as long as the ILEC's rates are based upon the ILEC's costs, there is no logical

connection between the traffic flow and associated compensation due in one direction, and the traffic flow and compensation that might occur in the reverse direction. In fact, if the symmetric reciprocal compensation rate is set at the ILEC's cost, then only those CLECs that are able to provide call termination services more efficiently than the ILEC will elect to engage is this particular market segment. On the other hand, inasmuch as the *Telecommunications Act* and resulting FCC regulations required that the reciprocal compensation rate be set at the ILEC's cost, CLECs acted reasonably in assuming that the rate confronting them in their respective interconnection agreements did in fact represent the ILEC's cost. If the CLEC found that it was able to furnish high-volume call termination services at a lower cost, then it acted legitimately in making the necessary investment in switching and related equipment and in developing a business plan premised on the reciprocal compensation price that was dictated to it by the ILEC. The volume of traffic that may or may not flow in the reverse direction - i.e., from the CLEC to the ILEC, is irrelevant.

In this regard, it is important not to confuse what CLECs have done under the initial pricing conditions established by the ILECs with long-term CLEC behavior and incentives. As noted above, ILECs originally represented that their call termination costs were relatively high; now they are claiming that their call termination costs are relatively low. The law provides that state regulators such as the Florida PSC will, ultimately, have the final say. But

once a rate is set, CLECs will assess for themselves whether the technology available to them on the market makes it easier for them to compete for call origination business, call termination business, or some mix. So if one believes that the initial call termination rates established by the ILECs were too high (based upon the ILECs' own costs), then the solution to the "problem" of CLECs focusing upon call termination functions is not to ban payment for those functions but, rather, to allow the normal process to work to bring the call termination rates down to an appropriate level. As noted above, however, because CLECs will be deploying different technology than the ILECs use, no matter how precisely one sets the call termination price, there is no reason to think that any particular CLEC, or CLECs as a group, will ever try to closely match the mix of service offerings that characterize the ILECs' operations. For this same reason, any regulatory policy designed to encourage CLECs to match the ILECs' service mix, or to penalize them for failing to do so, will necessarily result in a loss of economic efficiency. Such a policy amounts to regulators trying to micro-manage the business plans of individual CLECs to ensure that they do not compete in the most efficient way possible. The only beneficiary of such a misguided policy would be the ILECs.

ISP-bound traffic is technically indistinguishable from other data and voice local traffic, and should not be singled out for discriminatory treatment with respect to an ILEC's reciprocal compensation arrangements. (Issues 3 and 8)

Q. Is there any technical basis for differentiating ISP-bound and "ordinary" traffic, as some ILECs have contended?

A. No, there is not. Fundamentally, the cost characteristics of local traffic do not depend upon the *content* of the call or the purpose or use motivating the call (e.g., to connect to and transmit data to/from an ISP vs. a voice call to a friend or to a nearby retail or service establishment). The factors affecting the cost of processing a call through an ILEC's local network, or of processing a call from an ILEC's customer to the point of interconnection with a CLEC, depend solely upon the PSTN resources that are utilized by the call — primarily switching and transport — which are affected, to varying degrees, by the call's duration, the number of switching operations involved in processing the call, the distance over which the call travels, and the extent to which the use of these resources affects their peak-demand capacity at the time that the call is in progress.

For this reason, calls to ISP modem lines with numbers that are included within the calling party's local calling plan are technically indistinguishable from "ordinary" end-user to end-user local calls, whether completed entirely on the ILEC's network or involving a hand-off by the ILEC to a CLEC for termination.

There is no technical difference between the way ordinary end-user to end-user calls are handled vs. the manner in which an end-user to ISP call is handled where the call is originated by an ILEC customer and terminated to a CLEC customer. Routing a call from an originating end user to an ISP's incoming modem line is technically identical to routing a call from the same end user to any local telephone number served by the incumbent or other LEC. As shown in Figures 3 and 4, the switch serving the recipient end user's line receives the incoming call on a trunk from another switch (either another end office switch or a tandem switch), identifies the appropriate line to "ring" (i.e., the line on which to signal an incoming call), and then proceeds to generate an "incoming call" signal to the recipient access line.

When the incoming call is answered (whether by a person picking up a handset, an answering or fax machine going "off-hook" in response to the ringing signal, or by a modem automatically going "off-hook") the "incoming call" signal is immediately terminated and a direct (circuit-switched) connection between the calling and called parties is established. This same sequence of events takes place when someone in Tallahassee or a nearby suburb calls the Commission, his or her local bank, or places any other local call, *including a call to an ISP POP whose number is within the originating party's local calling plan*. In terms of the use of local network resources, it is also essentially the same thing that happens when an incoming long distance

call reaches the switch serving the called customer. On a technical basis, there is no reason to distinguish among any of these types of PSTN traffic.

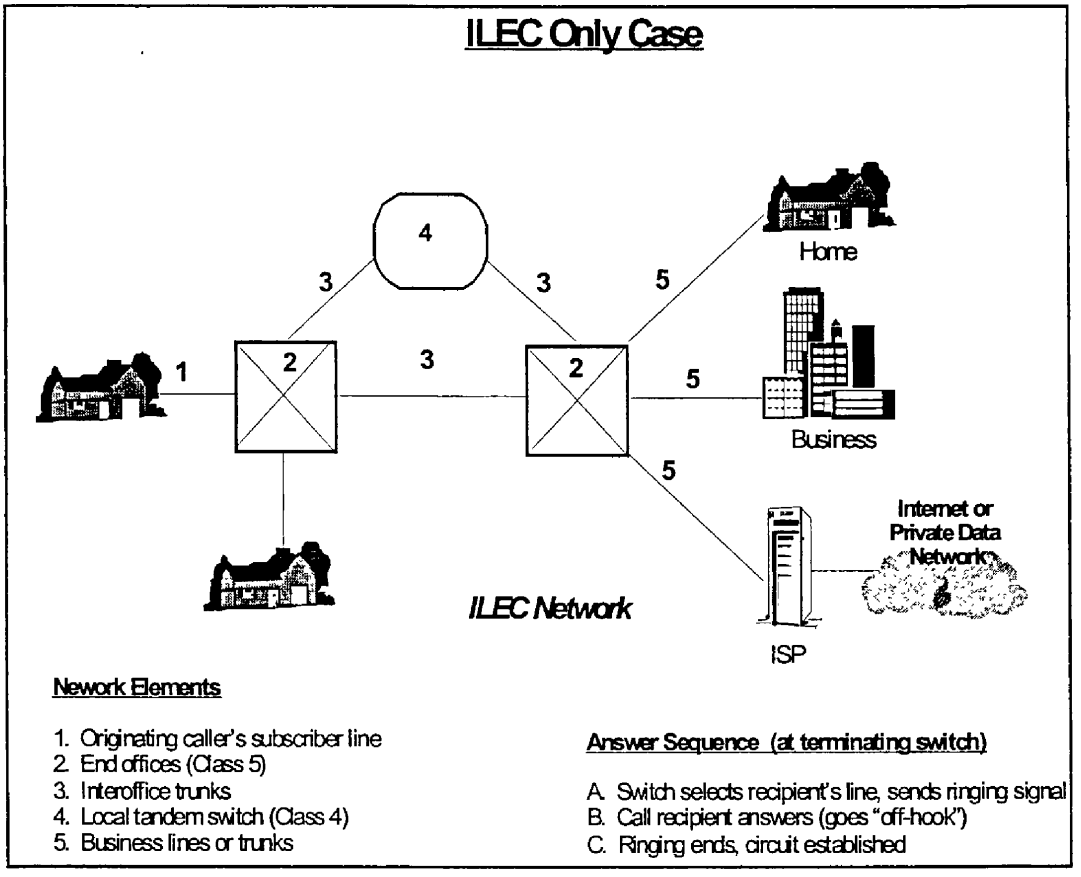

Figure 3. Routing a call to an ISP is technically identical to routing a call to any other local telephone number (Case1: ILEC customer calls an ISP served by the ILEC).

As shown in Figure 4, where the call is directed to a customer (end user or ISP) served by a CLEC, the originating LEC (typically an ILEC) routes the call from the originating Class 5 end office to a Class 4 tandem office from which it and other calls from other Class 5 end offices that are bound for the same CLEC are aggregated and routed to the CLEC's Point of

Interconnection ("POI") with the ILEC. The CLEC then routes the call from the POI through its network to its ISP customer.

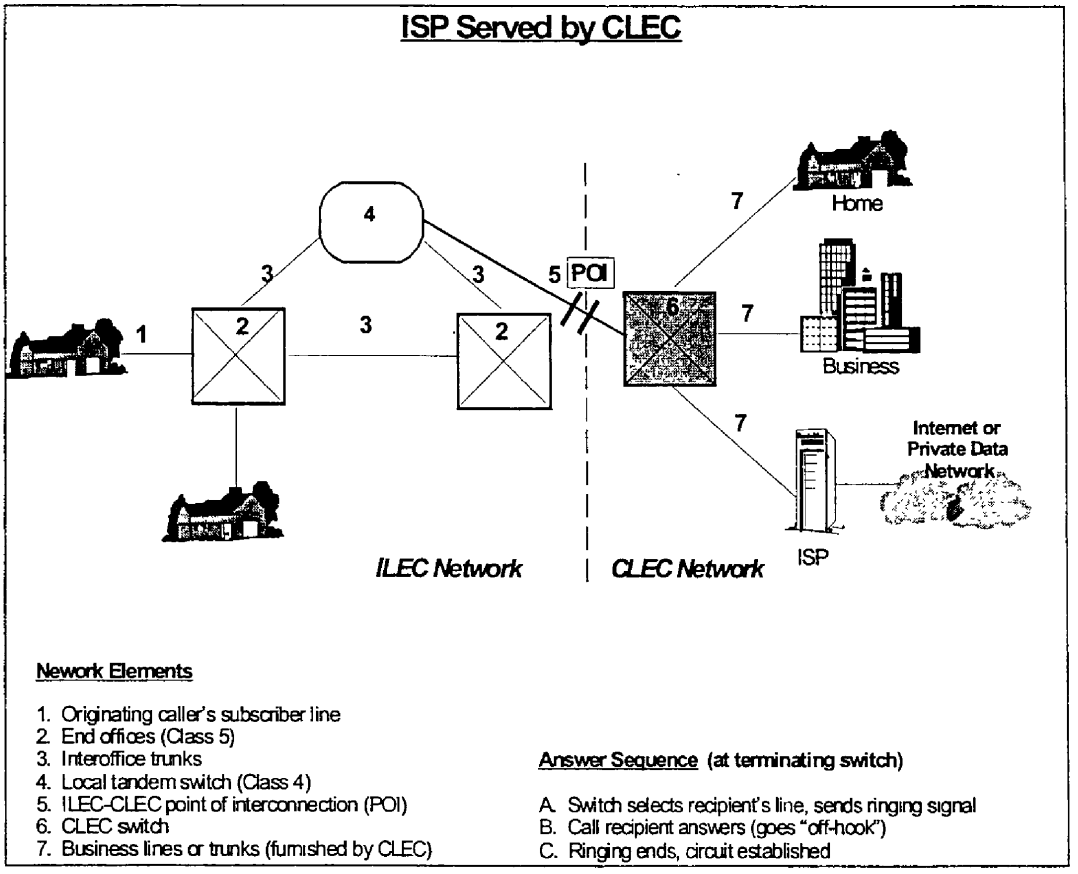

Figure 4. Routing a call to an ISP is technically identical to routing a call to any other local telephone number (Case 2: ILEC customer calls ISP served by a CLEC).

If the ISP is served directly by the ILEC, calls would be routed either from the originating Class 5 end office to a tandem office, and then to the terminating Class 5 end office from which the ISP's service is furnished, i.e., to which the ISP's access lines are connected, or directly to that end office via

a Class 5-to-Class 5 interoffice trunk (Figure 3). Where a high volume of traffic exists between the originating and terminating end offices, the use of direct interoffice trunk routing that bypasses the tandem may in some cases be more efficient. The matter of direct vs. tandem routing is an economic decision for the ILEC to make based upon the volume and variability of the traffic, and the relative costs of direct trunking and tandem switching in each instance.

Q. Does the customer who originates calls to an ISP's modem bank perceive any distinction between these calls and "ordinary" voice calls?

A. No. From the consumer's perspective, an ISP-bound call is dialed just like any other local call. Also from the consumer's perspective, an ISP-bound call is covered under whatever local calling plan the consumer has chosen from his or her LEC. If the ISP's phone number is outside the consumer's local calling area, then toll charges apply (although, in this case, the consumer would be highly reluctant to call that ISP, and would likely look for another one with a locally dialable number). If it is within the consumer's local calling area but the consumer has elected to take measured local service, then measured local service rates apply. From the consumer's perspective, there is no distinction between a local call placed to an ISP and a local call placed to a neighbor; both are dialed in the same manner, priced in the same manner, and are included or not included in the consumer's local calling area on

exactly the same basis. In economic terms, ISP-bound calls -- specifically the portion of the call that is carried over the local public switched telephone network from the originating caller to the ISP -- are "local" in nature and are fully embraced within the applicable state tariffs covering local exchange service.

Q. When an ISP-bound call is originated by a retail subscriber of BellSouth or Verizon and routed to the central offices serving their own ISP affiliates, do they treat the call as local for rating purposes, as long as the dialed number is included in the originating caller's local calling plan?

A. Yes, they do. In fact, the ISP affiliates of BellSouth and Verizon, BellSouth.net and Verizon Online, routinely advertise the availability of toll-free local calling on the Web pages that market their Internet services to retail users. BellSouth.net's website has a page that allows a user to find which of its dial-in numbers may be within the user's local calling area. The Verizon Online website has a page which allows a user to enter his or her home NPA-NXX (i.e., first six digits of the telephone number) or a state and obtain a listing of the nearest dial-up access numbers. A representative web page for Florida is provided in Exhibit __ (LLS-3) to my testimony.[7] As shown therein, before listing the dial-up access numbers, Verizon Online

7.Source: http://cgi.gte.net/dialin/results.asp (for Florida), accessed 11/17/2000.

directs potential ISP users to confirm the local treatment of the called number:

> In order to confirm that a number is local to you, please refer to the front pages of your local telephone book where the area codes and first three digits within your calling area are listed. Also, check with your local telephone company to find out if there is an extended calling plan available in your area that will allow you to connect locally to a nearby Verizon Online access number.
>
> **Note:** Be sure to check with your local phone company to make sure the numbers you choose are local, toll-free call from your area. Simply call the operator and ask whether the numbers are local or toll call.

Clearly, if the Commission were to treat as non-local (and thus exclude from reciprocal compensation) the ISP-bound calls originated by BellSouth and Verizon subscribers that are routed to ISPs served by CLECs, but allow local rating of such calls routed to ISPs served by the two ILECs, then the ILECs and their ISP affiliates would be afforded an enormous and unwarranted market advantage relative to the CLECs and their ISP customers.

There is no practical means for reliably differentiating between "ordinary" calls and those that are terminated to ISPs. (Issues 6 and 8)

Q. As a practical matter, do means exist today to reliably and accurately distinguish ISP-bound calls from other local data and voice calls?

A. No, in fact, I am not aware of any ILEC proposing a method that could reliably and accurately distinguish ISP-bound calls from other forms of local

traffic, despite ILECs' vigorous attempts to exclude ISP-bound calls from their reciprocal compensation obligations. Some ILECs have attempted to apply indirect methods to identify ISP-bound traffic after the fact, using billing records, analysis of call holding times and/or other means, but these approaches inject an unacceptably high degree of speculation and uncertainty into the results they can produce.

Moreover, the fact that modem pools may be shared among multiple subscribers, including ISPs and non-ISP businesses, means that ILEC attempts to identify all ISP-bound calls by associating telephone numbers with ISPs will necessarily fail.

Q. What sort of traffic other than that bound for ISPs would share these modem pools?

A. These modem pools might, for example, also provide connectivity to corporate networks for use by telecommuting employees, access to specialized online service providers that do not involve the Internet, and various other types of dedicated data traffic.

Q. What would be required in order to establish an ISP-bound traffic identification system that would be sufficiently robust to support an exclusion of ISP-bound calls from reciprocal compensation?

A. The most basic requirement for such a system is that it must have a high degree of accuracy, i.e., it would have to minimize both false positives (calls identified as ISP-bound which in fact are not) and false negatives (calls identified as other than ISP-bound, which in fact are ISP-bound calls). Both types of errors must be avoided, particularly in a context in which inter-carrier payments for call termination would depend upon whether or not the call was classified as ISP-bound. Second, the identification process should produce repeatable results, meaning that the classification of any given call should come out the same each time the identification process would be applied to it. Third, the process should be verifiable, so that the affected CLEC (as well as third parties such as the Commission) could review the accuracy of the ILECs' call classification results and propose corrections if necessary.

Q. Would an identification method that concluded that particular telephone numbers terminate to an ISP based upon statistical sampling, or that relied upon assumptions that all calls possessing particular traffic characteristics are ISP-bound, be adequate to identify ISP-bound calls for inter-carrier compensation purposes?

A. No, neither method would be adequate for that purpose, because neither system could guarantee that the calls terminated to specific CLEC-served telephone numbers (and thus, specific CLEC customers) would be correctly

identified as ISP-bound . This is particularly clear in the latter case, because there is no combination of traffic characteristics (i.e., call duration, time-of-day, distance) that will uniquely mark a call as ISP-bound. For example, several ILECs have claimed that ISP-bound calls tend to have longer average call durations than non-ISP bound calls, but this is also likely to be true for other types of voice calls, such as second-line usage by teenagers, or for dial-up data calls by telecommuters that access a corporate computer network rather than the Internet. In fact, it is a logical fallacy to extrapolate from a group's average characteristics to the characteristics of individuals comprising that group. Thus, an identification method that assumed that all calls over 60 minutes in duration were ISP calls would be akin to inferring from the fact that, on average men are taller than women, to the conclusion that every person over six feet tall must be a man.

Moreover, an ILEC's failure to correctly classify ISP versus non-ISP usage could have unintended adverse effects on end users. Assume that a CLEC provided local exchange service to a mix of ISP and non-ISP business customers using a total of 100 telephone numbers, 80 of which terminate onto ISP modem banks, and 20 of which terminate to ordinary business telephones or FAX machines. Suppose that the ILEC devised an ISP-bound traffic identification mechanism that correctly identified 75 of the ISP-terminated telephone numbers, but mis-classified the remaining five as non-ISP terminating numbers, and also mis-classified three of the 20 non-ISP numbers

as terminating at an ISP. If the ILEC were to cease paying reciprocal compensation for calls to the telephone numbers that the ILEC identified as ISP, then the CLEC might be forced to attempt to recover its costs of call termination directly from those customers. In that case, the ILEC's identification errors would produce a situation of unfair (and potentially unlawful) price discrimination: the CLEC customer(s) subscribing to the three telephone numbers mis-classified as ISP would pay more to the CLEC than similarly-situated, but correctly classified CLEC customers, and the CLEC customer(s) subscribing to the five telephone numbers that were ISPs, but mis-classified as non-ISPs, would pay less to the CLEC than their ISP competitors. While I do not recommend the segregation of ISP-bound calls or treating those calls any differently than other local traffic subject to reciprocal compensation, any workable system would have to ensure that individual calls and/or telephone numbers were in all cases correctly identified as ISP-bound or not.

Q. Some ILECs have proposed a method of differentiating ISP-bound for "ordinary" traffic based upon the ratio of originating to terminating usage. Is that an appropriate method?

A. No, it is not. Under this theory, where a CLEC, for example, has a volume of terminating traffic that exceeds its originating traffic by more than a given multiple, the "excess" terminating traffic is "assumed" to be ISP-bound.

CLECs that specialize in serving customers with high inward calling requirements do not limit their customers to ISPs. Other examples of customers with disproportionate inward calling demand are voice mail providers, taxicab dispatchers, pizzarias, paging carriers, and unified messaging service providers. Most, if not all, of calls to these types of customers are indisputably local even by the ILECs' own definitions, yet adoption of an arbitrary inward/outward ratio as a means for separating ISP-bound calls from other calls would almost assuredly capture this type of inward traffic as well.

Q. Even if it could be done, is that any basis for differentiating between ISP-bound and other types of calls?

A. No, there is not. The ILECs' costs to transport calls from their point of origin to the hand-off point is not affected in any manner by the nature of the call (voice vs. data, ISP-bound vs. "ordinary" local calling) or by its content (Internet data vs. ordinary voice conversation). Any such attempt would constitute a gross and unreasonable discrimination against ISP-bound calls, and should not be accepted by this Commission.

The Commission should defer consideration of whether inter-carrier compensation for ISP-bound traffic should apply to carrier and ISP arrangements other than circuit-switched technologies. (Issue 7)

Q. Staff has raised the issue of whether inter-carrier compensation for ISP-bound traffic should be limited to carrier and ISP arrangements which involve circuit-switched technologies. Should the Commission impose any such limitation at this time?

A. No, there is no need to do so. The interconnection requirements of Section 251 of the *Telecommunications Act of 1996*, and the corresponding reciprocal compensation obligations set forth therein and in Section 252, apply to the "transmission and routing of telephone exchange service and exchange access," which traditionally has been achieved through circuit-switched technologies. That said, the reciprocal compensation provisions in Section 251(b)(5) apply generally to the "transport and termination of telecommunications." Alternative technologies based on non-circuit switched architectures, such as packet-switching and ATM Frame Relay, generally are used today to provide computer-to-computer data connectivity rather than telephone exchange service or exchange access, and in fact often function separate and apart from the public switched telephone network (other than reliance in some cases on local loop facilities).[8] On the other hand, services based on these technologies almost certainly fall within the broad definition of "telecommunications." Whether services based on these

8.For example, when a line sharing arrangement is used to provide Digital Subscriber Loop (DSL) service for access to the Internet, the DSL capability is provided over the end user's existing copper loop, but it bypasses the PSTN and instead connects to the Internet via a packet-switching network.

technologies would fall within the FCC's narrowing regulation, to the effect that Section 251(b)(5) only applies to "local" telecommunications, is not clear.

In any event, in practical terms it appears that, to the extent that ISP-bound traffic is handled via non-circuit-switched arrangements, these arrangements have not generally been of the sort that would call for inter-carrier compensation, and ILECs and CLECs are not making inter-carrier payments relative to this traffic today. While non-circuit switched technologies can in principle be used to provide telephone exchange and exchange access services (e.g., via IP telephony), such use is negligible today and would have no bearing on inter-carrier compensation relative to ISP-bound traffic, since it would be a very inefficient and unlikely event for an end user to use IP telephony over their non-circuit-switched arrangement (e.g., a DSL service) to reach an ISP.

In these circumstances, there is no reason for the Commission to take action at this time. To the contrary, it would be preferable to wait to see if this issue ever arises as a practical matter. If it does, the Commission can make a determination (assuming that the FCC has still not addressed the problem by then) based on a clearer factual understanding of the particular serving arrangements within which reciprocal compensation would arguably apply in a non-circuit-switched context.

CLEC COSTS OF LOCAL TERMINATIONS

CLEC transport and switching networks differ materially from ILEC networks both with respect to their architecture and their design. (Issues 4 and 6)

Q. What are the major architectural features of ILEC and CLEC local networks?

A. Local telephone networks are comprised of three principal components:

- *Subscriber loops* — dedicated facilities interconnecting the local exchange carrier wire center with the subscriber's premises;
- *End office switches* — the switching systems at which individual subscriber loops terminate and which interconnect subscribers with each other and with interoffice and interexchange network facilities; and
- *Interoffice network* — trunking and switching facilities that provide interconnections among end offices and between end offices and other telecommunications carriers.

The principal architectural differences between ILEC and CLEC networks arise largely in the relative *mix* of these various network components.

Q. Please explain.

A. ILEC networks have been built up over more than a century and generally consist of a large number of end offices that are physically located in relatively close geographic proximity to the subscribers they directly serve. For example, BellSouth currently operates 215 local, end office ("Class 5") switches in its Florida service areas,[9] at which subscriber loops are terminated and connected. When a call involves customers served by different end offices (for example, customers located in different communities), completion of the call requires that it be routed between the two end offices over an interoffice trunk. In order to avoid deploying dedicated interoffice trunks between every possible pair of ILEC end offices, in most cases individual end offices are connected (via interoffice trunks) to an intermediate switching point known as a "tandem" office. The tandem switch (sometimes referred to as a "Class 4" switch in the North American network hierarchy) can then interconnect any of the individual end offices to which it is directly trunked. Where the end offices involved in a particular call are trunked to (subtend) *different* tandem switches, the call is completed via an interoffice trunk between the two tandems. In certain situations in which particularly high volumes of traffic exist within pairs of end offices, direct interoffice trunks may be used to connect the two end office switches involved.

9.FCC ARMIS Database, Report 43-07, Table I: Switching Equipment, for BellSouth-Florida (COSA "BSFL"), row 111 (year-end 1999 local switches in BellSouth's Florida serving area equals 215). Source: http://gullfoss.fcc.gov:8080/cgi-bin/websql/prod/ccb/armis1/forms/output.hts, accessed 11/17/00.

Q. Why might not a CLEC network adopt this same type of design?

A. The differences between ILEC and CLEC network architectures are best explained in terms of the relative economics of switching, transport, and location.

Q. Are switching, transport, and location economic substitutes for one another?

A. In some cases, yes. Let's start with switching and transport. One way of looking at the principal network components is in terms of their primary functions of switching and transport. Subscriber loops support a transport function, carrying traffic between the customer's premises and the serving wire center; interoffice trunks also provide a transport function, carrying traffic from one switch to another. Switching and transport facilities are often economic substitutes for one another; for example, as I described above, by introducing a tandem switch to interconnect a number of individual end offices, one avoids the need to deploy direct interoffice trunks between every possible pair of end offices on the ILEC's network. Similarly, by deploying end office switching facilities in close geographic proximity to the individual subscriber, it is possible to concentrate traffic on a smaller complement of transport facilities than would be possible if, for example, individual switches are used to serve subscribers located across a large geographic area.

The specific mix of switching vs. transport facilities in a network thus depends heavily upon the relative cost of each and the overall scale of operations of the network. ILECs such as BellSouth serve millions of individual subscribers statewide and can thus afford to deploy relatively efficient, large-scale switching systems in close geographic proximity to their customers. CLECs typically serve a customer population that is a minute fraction of the size of the ILEC's customer base. In order to achieve switching efficiencies, CLECs will typically deploy a relatively small number of large switches, and so must transport their customers' traffic over relatively large distances.

This switching vs. transport trade-off has always been present in telecom network design: you can generally reduce switching costs by concentrating demand in a small number of large switches, but by so doing you increase the transport capacity that is required to connect the switches to customers over greater distances. In recent years, however, the scales have been tipped — *shoved* would probably be a better word — decidedly in the direction of substituting transport for switching. Transport costs have become far less distance-sensitive and, with the use of high-capacity fiber optics, massive amounts of capacity can be deployed at little more than the cost of more conventional transport capacity sizes. ILECs have been consolidating multiple switches into large main frame/remote configurations. In the case of

CLECs, the substantially smaller scale of their customer base and traffic load makes any other approach infeasible as an economic matter.

Q. How does location affect this mix?

A. In two ways. First, as just noted, by locating switching facilities near to pre-existing customer locations, a LEC may avoid expensive and relatively inefficient transport (individual customer loops). (Of course, a proliferation of switches requires more interoffice transport facilities, but these are much more efficient than loops). Second, when a carrier is serving a customer base that is itself growing or facing rapidly changing needs, a carrier can work with its customers to collocate the carrier's network equipment with the customers' own facilities. This activity, in effect, substitutes the cost of space for the collocated equipment for the cost of transport facilities between the switch and the customer.

Q. How might a typical CLEC network be designed?

A. I would hesitate to say that there is such a thing as a "typical" CLEC. But one network design favored by CLECs with actual or planned deployment of fiber outside plant would be to use Unbundled Network Element (UNE) loops leased from ILECs and CLEC-owned subscriber loop facilities collected at centralized locations in each community in which the CLEC

offers service. At these collection points, the traffic is concentrated onto high-capacity transport facilities (that may be leased from the ILEC or from other carriers or owned by the CLEC itself) for the sometimes long trip to the CLEC switch. There are several different types of concentration arrangements that may be used, depending upon the aggregate amount of traffic that is involved. For relatively low-volume situations, passive multiplexing of the individual subscriber loops onto specific dedicated channels in the high-capacity "pipe" may be most efficient; in other cases, small stand-alone switches or Remote Service Units (RSUs) subtending the distant Host Switch may be deployed. Where the CLEC's customers are concentrated within a small, relatively confined area (e.g., within a shopping mall), a small PBX-like switch may be used to interconnect individual end users with a common pool of facilities for the trip to the CLEC central office switch.

The differences between ILEC and CLEC network architectures, as well as the substantially smaller scale of CLEC operations, are key sources of cost differences between the two types of carriers. (Issues 4 and 6)

Q. Is it reasonable to expect that a CLEC's costs will differ, with respect to both level and structure, from the cost conditions confronting an ILEC?

A. Indeed, yes. There are in fact two principal sources of cost variation as between a CLEC and an ILEC with respect to the provision of local exchange

service and, in particular, the costs of transporting and terminating local calls: *scale* and *facilities mix*.

Scale. The overall cost of constructing and operating a telecommunications network are heavily impacted by the overall volume of traffic and number of individual subscribers that the network is designed to serve; that is, telecom networks are characterized by substantial *economics of scale and scope*. As I have previously noted, CLECs serve a far smaller customer population and carry far less traffic than do ILECs. Because they are necessarily forced to operate at a far smaller scale, CLEC networks may exhibit higher average costs than ILEC networks. These higher average costs may be combated in some cases if a CLEC is able to achieve *economies of specialization*, i.e., focusing upon a narrow range of customers and services, but serving those customers extremely efficiently. From this perspective, CLECs that have concentrated their marketing efforts thus far on customers that receive calls may be attempting to achieve economies of specialization, precisely to offset the cost disadvantages associated with relatively small scale and limited scope.

Q. Are there other ways in which a CLEC's relatively small scale of operations may affect the level of its costs?

A. Yes. The effects of these scale and scope economics are further compounded by the fact that ILECs are able to purchase switching, transport and other network components at a far more favorable price than their much smaller CLEC rivals. For example, testimony offered by SBC in the 1998 Connecticut DPUC proceeding to consider the Joint Application of SBC and SNET for approval of their merger[10] indicated that following the merger SNET's costs of equipment purchases would decrease substantially due to the increased purchasing power of SBC relative to that of a stand-alone SNET. Specifically, SBC indicated that it expected cost savings synergies from the merger "particularly from using SBC's scope and scale to drive costs out of the business." SBC stated that it has "learned from the SBC/Pacific Telesis merger that scope and scale, especially in the purchasing area, are tangible and significant."[11] SBC's Chief Financial Officer also stated that "we know that SNET pays over 20 percent more for purchases of switching and transport equipment than we do at SBC."[12] SBC also indicated that the savings experienced in contract negotiations to date for the combined SBC/Pacific Telesis "tend to support the consultants' estimates" during the

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10. *Joint Application of SBC Communications, Inc. And Southern New England Telecommunications Corporation for Approval of a Change of Control,* Connecticut Department of Public Utility Control Docket No. 98-02-20.

11. *Id.* SBC Response to MCI-4, Exhibit A, "Introduction and Opening Comments of Don Kiernan," January 5, 1998, SBCSNET004573.

12. *Id.*

SBC/PTG merger discussions of procurement savings (expense and capital) in the 7%-10% range.[13]

Of course, a stand-alone SNET, with some 2.3-million residential and business access lines in Connecticut, is itself still much larger than many CLECs. Accordingly, it is entirely reasonable to expect that, without the volume discounts available to a large ILEC such as SBC, Verizon, or BellSouth, a CLEC will experience higher capital-related costs.

A CLEC's capital-related costs will also tend to exceed the corresponding ILEC items due to the substantially greater level of risk that investors reasonably ascribe to CLECs. CLECs can thus expect to confront higher costs of debt and equity capital as well as the need to recover their capital investments over a somewhat shorter period of time than would be required for an ILEC with more stable and predictable demand.

Mix. All else being equal, it would not be surprising to see a CLEC's network as consisting of relatively less switching and relatively more transport than would an ILEC network. While switching costs are sensitive both to the

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13. *Id.* SBC Response to OCC-12. However, according to a study conducted by SBC, procurement savings had originally been estimated at only 3% for the SBC-PacTel merger. *See* California Public Utilities Commission, 96-05-038, *In the Matter of the Joint Application of Pacific Telesis Group ("Telesis") and SBC Communications Inc. ("SBC") for SBC to Control Pacific Bell*, Decision 97-03-067, March 31, 1997, at 30.

number of call set-ups as well as to aggregate call duration, transport costs tend to vary primarily with duration. Accordingly, it is reasonable to expect that CLEC local usage costs will exhibit proportionately greater duration-sensitivity and proportionately less set-up sensitivity than do ILEC usage costs.

The appropriate inter-carrier compensation for the termination and transport of ISP-bound local calls, as well as other forms of local traffic, is a symmetric rate based upon the ILEC's prevailing TELRIC cost level, which creates incentives for continual reductions in the costs of call termination services and harms neither ILECs nor end users. (Issues 3, 4, 5 and 6)

Q. When the FCC devised its rules for reciprocal compensation between ILECs and CLECs for the exchange of local traffic, what principle did the FCC adopt concerning the use of a symmetric rate?

A. In the *First Report and Order*[14] establishing the FCC's rules for reciprocal compensation for the exchange of local traffic, the FCC determined that the rates applied for reciprocal compensation purposes should be presumptively

14. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order),* aff'd in part and vacated in part sub nom., *Competitive Telecommunications Ass'n v. FCC,* 177 F.3d 1068 (8th Cir. 1997) and *Iowas Utils. Bd. V. FCC,* 120 F.3d 753 (8th Cir. 1997), aff'd in part and remanded, *AT&T v. Iowa Utils. Bd.,* 119 S. Ct. 721 (1999).

symmetric and based upon the ILEC's costs, unless a CLEC believes that its own costs are greater. The specific rule implementing this requirement is 47 CFR ' 51.711(b), which provides that:

> A state commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in Secs. 51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

The rules in Section 51.505 and 51.511 referenced therein define the "forward-looking economic cost" that is to be the basis for pricing, in terms of the FCC's "total element long run incremental cost" (TELRIC) methodology plus a reasonable allocation of forward-looking common costs. Thus, the FCC allows a CLEC to rebut the presumptive symmetric rate by filing its own TELRIC-based cost study if the CLEC believes its transport and termination costs are *higher* than the ILEC's.[15] The FCC did not contemplate the filing of separate CLEC cost studies in the event a CLEC's costs were lower than the ILEC's.

15. See also the *Local Competition Order* at para. 1089 for elaboration of this point.

Q. Is it appropriate to apply the same type of presumptive symmetry framework to the rates for the inter-carrier compensation for transport and termination of ISP-bound local calls, even if the Commission decides to treat ISP-bound calls separately from other forms of local traffic for reciprocal compensation purposes?

A. Yes, it is. Whether or not the Commission determines that the FCC's reciprocal compensation rules are directly applicable to local (or for our present purposes, at least toll-free) ISP-bound calls, their underlying economic justification applies with undiminished force.

First, Section 252(d)(2)(ii) of the Telecommunications Act requires that inter-carrier charges for the transport and termination of traffic must reflect "a reasonable approximation of the additional costs of terminating such calls." As a forward-looking, long run incremental costing methodology, the TELRIC-based approach, as defined by the FCC and implemented by the CPUC, satisfies this requirement. During the FCC's consideration of this issue, some ILECs, including Verizon's parent company GTE Service Corporation (GTE), argued that application of a symmetric reciprocal compensation rate based upon the ILEC's costs would violate this provision of the Act.[16] The FCC correctly rejected those arguments, since Section 252(d)(2)(ii) does not require precise identification of each carrier's call

16. *Local Competition Order* at para. 1072.

termination costs, but instead a reasonable approximation which is afforded by the ILEC's forward-looking cost level.[17]

Second, adopting a symmetric rate based upon the ILEC's TELRIC cost level minimizes the ILEC's incentives for strategic gaming of its termination rate. If the ILEC's claimed costs are overstated, the resulting symmetric rate would create opportunities for CLECs to pursue customers with high volumes of inbound traffic, and thereby become net recipients of (overstated) termination charges. If the ILEC understates its costs, CLECs could pursue outbound traffic-oriented customers, and thus pay (understated) termination charges.[18] The FCC concluded similarly that "symmetrical rates may reduce an incumbent LEC's ability to use its bargaining strength to negotiate excessively high termination charges that competitors would pay the incumbent LEC and excessively low termination rates that the incumbent LEC would pay interconnecting carriers."[19] Clearly, the FCC intended that, by requiring symmetry, the result would approximate the classic "you cut, I choose/I cut, you choose" form of negotiation that I described earlier in my testimony, which provides both parties with the incentive to "divide the pie" equally between them.

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17. *Id.* At para. 1085.

18. In fact, it appears that ILECs pursued the first strategy during their initial arbitrations with CLECs, thereby stimulating CLEC's targeting of in-bound calling services markets.

19. *Local Competition Order* at para. 1087.

The ILEC's TELRIC cost level represents the ILEC's avoided cost of termination, which would otherwise be incurred by the ILEC; consequently, if it is used to establish a symmetric termination rate, the ILEC should be indifferent as an economic matter to whether it or a CLEC completes the ISP-bound calls. That is, if the ILEC is the net recipient of traffic, it will be compensated for its work at a rate than accurately reflects the actual costs it incurs; conversely, if the CLEC is the net recipient, then the ILEC will avoid costs precisely in proportion to the quantity of traffic that is delivered to the CLEC for termination.

In addition, use of a symmetric rate based upon the ILEC's TELRIC cost level creates incentives for all carriers, including CLECs, to find innovative ways to reduce their costs below that level. The FCC also recognized the possibility that CLECs' own termination costs may be lower than the level implicit in the symmetric rate, finding that (id., para. 1086) "a symmetric compensation rule gives the competing carriers correct incentives to minimize its own costs of termination because its termination revenues do not vary directly with changes in its own costs". Nothing in the FCC's rules suggested that the symmetric reciprocal compensation rate would subsequently be adjusted based upon the CLEC's (lower, more efficient) costs, as BellSouth and Verizon are here seeking to accomplish.

Thus, the FCC correctly viewed the possibility of CLECs lowering their own termination costs below the symmetric rate (and thereby receiving payments higher than their forward-looking economic costs) as a positive development and a consequence of competition and innovation.

Q. Some ILECs have contended that CLECs' costs of terminating ISP-bound calls are substantially less than those confronting ILECs because CLECs have been able to acquire specialized switches that are designed specifically to handle high inward calling volumes. Under those circumstances, would it be reasonable for CLEC termination charges to be set below those being imposed by ILECs?

A. No, it would not. As I have just explained, the FCC established the requirement for symmetric termination rates for reciprocal compensation fully recognizing that some CLECs may achieve a lower cost level than the ILEC's, and thus be rewarded with higher profits. To the extent that certain CLECs are deploying advanced switching technologies designed to efficiently provide high-volume inward calling services, they simply are responding to the economic incentives created by the FCC's symmetry rule, and by succeeding in this market, they are showing that the rule is in fact promoting competition.

CONCLUSION

Q. What are your principal recommendations to the Commission in this proceeding?

A. As my testimony demonstrates, there is no sound economic or policy foundation to support introducing a distinction between local voice traffic and ISP-bound traffic for reciprocal compensation purposes. Moreover, I have explained that as a practical matter, there is no means today to reliably and accurately distinguish ISP-bound calls from other local data and voice calls. Consequently, the Commission should refrain from attempting to establish such a distinction, and instead should make a finding that ISP-bound traffic that terminates to a number within a subscriber's local calling plan is subject to reciprocal compensation pursuant to Sections 251 and 252 of the *Federal Telecommunications Act of 1996.*

In addition, the Commission should determine that the appropriate inter-carrier compensation for the termination and transport of ISP-bound local calls, as well as other forms of local traffic, is a symmetric rate based upon the ILEC's prevailing TELRIC cost level, because a symmetric rate creates incentives for continual reductions in the costs of call termination services and harms neither ILECs nor end users.

By adopting these recommendations, together with findings consistent with the remaining issues discussed in my testimony, the Commission can best facilitate continued growth in local exchange competition, the ISP marketplace, and the availability of the Internet to Florida's citizens and businesses.

Q. Does this conclude your direct testimony at this time?

A. Yes, it does.

REBUTTAL TESTIMONY

Introduction

Q. Please state your name, position and business address.

A. My name is Lee L. Selwyn. I am President of Economics and Technology, Inc., One Washington Mall, Boston, Massachusetts 02108.

Q. Are you the same Lee L. Selwyn who submitted Direct Testimony in this proceeding on December 1, 2000?

A. Yes, I am.

Q. What is the purpose of your Rebuttal Testimony at this time?

A. This testimony responds to certain arguments and evidence supplied in the Direct Testimony presented by BellSouth witnesses Beth Shiroishi and David P. Scollard, Verizon witnesses Dr. Edward C. Beauvais and Howard Lee Jones, Sprint witness Michael R. Hunsucker, and Staff witness Gregory D.

Fogleman. For convenience, I have organized my Rebuttal Testimony according to the various issues designated for consideration in this case[1]

Summary of testimony

Q. Please summarize your testimony.

A. The majority of the parties in this proceeding support a policy in which cost-based reciprocal compensation payments would continue to be applied to ISP-bound traffic exchanged between LECs. Many of the arguments raised by the two ILECs that oppose such a policy, BellSouth and Verizon, have already been anticipated and addressed in my Direct Testimony. For example, BellSouth and Verizon propose that "bill-and-keep" should be adopted on an interim basis, but my Direct Testimony (page 6) already explained that bill-and-keep arrangements are not appropriate or equitable whenever traffic flows between LECs are significantly out of balance. Similarly, BellSouth contends that it is feasible to segregate ISP-bound traffic from other forms of locally-rated traffic for inter-carrier compensation purposes. However, I have already explained why such segregation is

1. I am not responding to the testimony addressing Issue 1 (Commission jurisdiction to adopt an intercarrier compensation mechanism for delivery of ISP-bound traffic), because this is essentially a legal issue.

generally impractical (Direct Testimony, pages 46-51), and I demonstrate herein that BellSouth's specific segregation methods are equally unsatisfactory. A third example is that BellSouth attempts to apply the long-distance service "access charge" model to the treatment of inter-carrier compensation for ISP-bound traffic, which is another proposition that I have already addressed in my Direct Testimony (pages 18-28). In summary, it is clear that the testimony of the other parties reinforces the conclusions and policy recommendations set forth in my Direct Testimony.

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

Ms. Shiroishi's analysis of the FCC's treatment of ISP-bound traffic is fundamentally moot, because the FCC's longstanding policy of exempting ISPs and other enhanced services providers from the access charge regime means that the only available alternative, the "sent paid" regime (including reciprocal compensation), must continue to be applied to ISPs.

Q. Ms. Shiroishi contends, on the basis of her examination of various FCC decisions, that the FCC has classified ISP-bound traffic as jurisdictionally-interstate "exchange access service" and on that basis contends that the

reciprocal compensation obligations set forth in the *Telecommunications Act of 1996* cannot apply to this traffic.[2] How do you respond to these assertions?

A. Whether or not one agrees with Ms. Shiroishi's interpretation of the FCC decisions cited in her testimony (and I largely do not), Ms. Shiroishi has utterly missed the key point, which is that it is the FCC's *pricing* policy that is determinative here, not the FCC's jurisdictional findings. Essentially, Ms. Shiroishi seeks to apply the IXC switched access charge regime to ISP-bound traffic, even though the FCC has expressly *exempted* ESP/ISP calls from access charge treatment, on a theory that the IXC traffic is "analogous" to ISP traffic (Shiroishi Direct, at 9-10). As a policy matter, of course, the FCC continues to uphold its longstanding policy of *exempting* ISPs and other enhanced services providers from access charges, and requiring LECs to offer ISPs service via their local exchange tariffs, like any other end user.[3] Ms. Shiroishi herself acknowledges that this is the case (Shiroishi Direct, at 14).

What she fails to admit is that this settled pricing policy makes her conclusions concerning "exchange access" fundamentally beside the point: By

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2. See, e.g., Shiroishi Direct, pages 2-14 (especially pages 4-5, 7-8, and 12).

3. See my Direct Testimony at page 21 for citations to the FCC orders that have carried out the ESP exemption.

establishing the enhanced services provider (ESP) exemption from access charges, the FCC has chosen the sent-paid, local exchange service model for locally-rated ISP-bound calls. As a consequence, from a policy standpoint,[4] state regulators, including this Commission, the only rational result is to adhere to that same model. That is, in practical and economic terms, it just doesn't make any sense to deviate from that model and require ISPs to pay access charges in any form for dial-up calls in-bound to ISPs. And because the sent-paid model requires that the originating carrier must pay the terminating carrier compensation for the latter's work in terminating the sent-paid call (as I explained at page 13 of my direct testimony), reciprocal compensation arrangements must continue to be applied to all locally-rated ISP-bound calls that are terminated by ALECs.

The issue is not, from this perspective, the legal (one might say metaphysical) one of how end users are charged for making these calls, and how ISPs are charged for receiving them. Under this practical criterion — and consistent with the FCC rulings mandating that ISPs be treated like end users in purchasing their connections to the network — ISP-bound calls are "local,"

4. I am not an attorney and thus am not offering a legal opinion.

which compels the result that they should be treated that way for purposes of intercarrier compensation.

Q. Does Verizon's witness Dr. Beauvais overlook this implication of the ESP exemption as well?

A. Yes, he appears to. Like Ms. Shiroishi, Dr. Beauvais takes note of the ESP exemption (Beauvais Direct, at 7), but perceives it only in terms of supporting his interpretation that ISP-bound traffic is interstate and thus not subject to reciprocal compensation obligations (*id.*). Accordingly, his conclusion must be rejected for the same reason that Ms. Shiroishi's position must also be rejected.

Contrary to Ms. Shiroishi's claim, as an empirical matter, most ISP-bound traffic is jurisdictionally local in nature rather than interstate.

Q. Ms. Shiroishi also claims that ISP-bound traffic "is predominantly interstate in nature" (page 2, lines 17-18). Does she or any other witness in this proceeding offer any empirical evidence concerning the actual mechanics of an ISP-bound call that would support that contention?

A. No. In fact, a careful examination of how the Internet works and how access to the Internet is furnished by ISPs to their end user customers, as an empirical matter, leads to the conclusion that the majority of ISP-bound traffic is jurisdictionally local in nature, not interstate.

Q. Please explain.

A. First, the flow of data between the end user and the remote host across the ISP is anything but continuous. Consider the following examples:

- A user dials up his or her ISP and establishes a connection by transmitting user identification information that is then validated by the ISP. Depending upon the ISP, that validation exchange may utilize a user data base that is maintained locally (at the same physical location at which the ISP's modems are located) or remotely. If the latter, the ISP assembles and transmits a packet of data containing the user identification data to a remotely-located host, which responds by transmitting either an acceptance or a rejection message back to the ISP. If the validation is confirmed, a "home page" is transmitted over the Internet to the ISP and then on to the end user. Once that transmission is completed, however, and until some other transmission takes place, *there*

is no data flowing across the ISP between the end user and the Internet; i.e., the connection terminates at the ISP. This condition persists while the user is reading the home page content and until he/she clicks on a link to access another page. The request (initiated by a mouse click or by typing an Internet address (a "URL") into an Internet browser) is then transmitted by the ISP up to a remote host via the Internet, which (presumably) will respond by downloading another page of text or graphics to the user. *The only time that an actual connection between the end user and the remote host computer is in existence is when data is actually being uploaded or downloaded and a continuous flow of data signals is taking place; at all other times, the end user's "call" terminates in all relevant senses at the ISP's modem bank.* During that time, as long as the ISP's local service from the ALEC is obtained in a manner that makes calls from the end user to the ISP's location "local," the call is jurisdictionally local in nature.

- Even in those situations in which actual transmission of data is occurring, if the remote host is itself physically located in the same exchange or LATA, or EAS exchange, as the end user, then the call is also jurisdictionally local. Thus, if an Internet user in Miami clicks on the Miami Herald's web site (whose host server is also located in Miami),

both the call origination and termination are within the same exchange or LATA, and the call satisfies the definition of "local."

- The end user places a PSTN call to his or her ISP and then enters a "chat room" to converse with others who live in the same town (e.g., schoolmates). Irrespective of where the physical switching function takes place, this type of call is inherently "local" in nature, because both the origination and termination locations are within the same exchange or LATA.

In each of these examples, the point of origination and the point of termination of the call (defined as the end user and the location on "the Internet" being contacted) are both wholly within the same exchange or LATA; indeed, the only situation in which a "cross-LATA" (i.e., "non-local" call), is in place is where data is actually flowing across the ISP *and* where the remote host is *not* located within the same exchange or LATA as the end user. Even then, not all such calls are "non-local." To avoid tying up long-haul circuit bandwidth, ISPs utilize a technique known as "caching" in which the page of data that is downloaded from a remote host web site is stored locally at the ISP; for many popular web sites where repetitive accesses are made, the ISP can often provide the contents to its subscribers right out of its

own local storage device rather than repetitively downloading it from the remote host each time it is requested. In that case, a user's request for a particular page of data is not transmitted upstream (and out of state), but is actually fulfilled locally using "cached" copies of the requested material. Whenever caching is being employed in this manner, the dial-up call to the ISP will be jurisdictionally local.

Q. Has the FCC recognized "caching" and its possible implications for determining the jurisdictional character of Internet use?

A. Indeed, it has. At para. 18 of its *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68* (FCC 99-38, Adopted February 25, 1999, Released February 26, 1999), the FCC concluded that:

> ... Further complicating the matter of identifying the geographical destinations of Internet traffic is that the contents of popular websites increasingly are being stored in multiple servers throughout the Internet, based on "caching" or website "mirroring" techniques. After reviewing the record, we conclude that, although some Internet traffic is intrastate, a substantial portion of Internet traffic involves accessing interstate or foreign websites.

Footnotes omitted. I would note that, while the Commission concluded that a "substantial" portion of Internet traffic is interstate, it did not quantify any specific percentage.

Q. What fraction of total end user-ISP connection time actually involves a direct flow-through of data between the end user and the remote host?

A. Mr. Fred Goldstein, an ISP consultant and expert witness with particular expertise in this area, previously has testified to this Commission that on average less than 10% of the total connection time that an average end user has with the local ISP actually involves direct flow-through of data between the end user and a remote host.[5] Thus, for 90% or more of the time of an average Internet session, the *only* communication taking place terminates at the ISP's modem bank and is thus local in nature.

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 the FCC?

This issue is addressed in conjunction with Issues 2, 4, and 6 *infra.*

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5. See Docket No. 991267-TP, Rebuttal Testimony of Fred Goldstein, December 20, 1999, pages 18-19.

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

Ms. Shiroishi's understanding of the cost-causation applicable to ISP-bound calls is flawed and does not support the cessation of reciprocal compensation payments for ALEC termination of ISP-bound traffic.

Q. Do you agree with the analysis of cost-causation that Ms. Shiroishi supplies at page 17 of her Direct Testimony, to support her view that an ALEC should not be compensated for ISP-bound traffic "originated by an ILEC's local service customer"?

A. No, and in fact the very phrasing used in Ms. Shiroishi's testimony ("originated by an ILEC's local service customer" -- lines 7-8) undercuts her analysis. Ms. Shiroishi appears to believe that, because "an end user accessing the Internet is a customer of the ISP for that service" (lines 12-13), despite the fact that the end user is also the ILEC's local service customer, the ISP is somehow responsible for the costs incurred by the originating ILEC as the end user makes use of the ILEC-supplied local service. She then draws an analogy to interexchange service, concluding that "the end user is no more the ILEC's customer on Internet calls than it is the ILEC's customer for interLATA long distance calls" (lines 17-18).

Ms. Shiroishi can only arrive at this conclusion with the help of a myopic and

ultimately erroneous view of the customer relationships extant between a person placing a telephone call, their serving LEC, and the called party (i.e., an ISP, other business, a friend, etc.). In summary, Ms. Shiroishi believes that the caller *is* the originating LEC's customer when the caller places a local call to a friend or to a non-ISP business (irrespective of whether another LEC is involved), but that the same caller is *not* the customer of the originating LEC when the call is a long distance call or a call to an ISP. At root, Ms. Shiroishi errs by assuming that an end user cannot be a customer of more than one entity at a time, and that it is somehow necessary to have a *single* party acting on behalf of the cost-causer, who must handle all billing and compensation arrangements for all of the services utilized by an end user. While Ms. Shiroishi may be misled by the fact that, as an empirical matter, interexchange services are treated in the latter manner in the US,[6] the underlying economics of cost-causation do not have any necessary relationship to the billing and compensation arrangements that are established in such cases.

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6. It is worth noting that in some European countries, end users who make a toll call pay local measured usage charges to their local service provider (the originating LEC) in addition to the toll charges paid to the toll services provider, which belies the notion that a single point of contact to the retail customer must apply in that situation.

Q. Can you elaborate on this point?

A. Yes. The basic question at issue here is whose "customer" the end user is under various scenarios (e.g., when someone uses a telephone to call a friend, a non-ISP business, an ISP, or to make a long distance call).

One way of looking at the question of who is whose 'customer' is to look simply at who pays who for what. From this perspective, when an end user makes a long distance call, the end user is the 'customer' of the IXC (to whom it pays all per-minute charges associated with the call). Also from this perspective, although the end user actually makes use of the originating LEC's switching and transmission facilities (and the switching and transmission facilities of the terminating LEC as well), the end user is neither the originating nor terminating LEC's customer for purposes of this call. On this level (trivial from an economic perspective), who is whose 'customer' is simply a matter of regulatory fiat. In this regard, while I am not a lawyer, I note that Section 201(a) of the Federal *Communications Act* expressly states that the FCC generally can decide who pays whom in cases where multiple carriers collaborate to provide an interstate service -- referred to in the statute as a 'through route.' This illustrates why this 'who pays who' perspective is not helpful in sorting out the economics of the situation.

Q. If an analysis of billing arrangements is not helpful, can one analyze customer relationships from an economic standpoint?

A. Yes. From an economic perspective, what matters in assessing who is the ultimate "customer" in a multi-party transaction are familiar principles of cost causation. An end user making a call causes the costs associated with that call and, ultimately (except in situations where a subsidy has purposely been built into the system) should pay those costs. As a result, from an economic perspective, the end user making a call that involves multiple carriers is the customer of *all of the carriers involved in getting the call to its intended destination*. Now, for various practical or other reasons, the customer may not write separate checks to each of the entities involved. To the contrary, the more common practice is for the customer to pay only one of the carriers, who then becomes responsible, directly or indirectly, for passing money on to the other carriers who are jointly involved in carrying the call to its ultimate destination.

Consider the following (non-telecommunications) examples. I buy an airline ticket originating on a Delta Airlines flight from Boston to Orlando connecting to an American Airlines flight from Orlando to Miami. Delta, as the originating carrier, will normally issue the ticket covering the entire trip,

and I will pay Delta the entire fare. However, even though I will be using a Delta-issued ticket on the Orlando-Miami flight, at that point I am unambiguously a customer of American Airlines, and not Delta.

Or consider an example that is perhaps closer to the ISP situation. I use my local BellSouth telephone service to order a pizza. In that instance, I am unambiguously BellSouth's customer with respect to the telephone call, and the pizza place's customer with respect to the pizza. Similarly, when I use my BellSouth phone to call an ISP, I am BellSouth's customer with respect to the local call and the ISP's customer with respect to the Internet service that I purchase from the ISP.

Thus, in economic terms, in all of the cases cited above (calls to a friend, a non-ISP business, an ISP, or a long distance call), the end user is the customer of all the entities involved, since the end user is originating a call that involves all of their services. Economic efficiency is in no way impaired by having two separate parties acting on behalf of the same cost-causer, which is precisely the case when an ILEC local telephone customer places a dial-up call to an ISP which is terminated by an ALEC. All this means is that such a person is using two services from two different entities simultaneously. As long as the cost-causer compensates those two entities

for the services that they render – which is precisely what occurs today given existing compensation arrangements between each Florida ILEC and its telephone subscribers, and ISPs and their subscribers – there would be no improvement in economic efficiency by merging those two transactions together.[7]

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

Q. Do you agree with Ms. Shiroishi's claim (page 18, lines 20-21) that "the FCC has established no parameters or requirements for a compensation mechanism for the delivery of ISP-bound traffic"?

A. No. As I explained earlier in my testimony, by firmly establishing the policy that enhanced services providers are exempt from access charges, the FCC has chosen the sent-paid, local exchange service model for locally-rated ISP-bound calls. As a policy matter, this forecloses any inter-carrier compensation alternatives for this traffic that would not have the effect of

7. One might think that transaction costs would be reduced if there was a single point of contact with the end user which handled billing the end user, but any such cost savings would be offset by the cost of the inter-carrier compensation which would then have to occur and would otherwise not be required if the two entities billed the end user separately.

ensuring that the originating carrier compensates the terminating carrier for its work in completing the ISP-bound call. Also, while I am not a lawyer, I would note nonetheless that the FCC order in which it was stated that there were "no rules" governing inter-carrier compensation for ISP-bound calls — which seems to be what Ms. Shiroishi is referring to — is the same order that was later vacated by the D.C. Circuit.

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

The proposals of BellSouth and Verizon to replace reciprocal compensation for ISP-bound calls with a "bill-and-keep" arrangement are fundamentally incompatible with the sent-paid arrangements used for locally-rated calls.

Q. What compensation mechanisms for ISP-bound traffic have the ILECs participating in this proceeding recommended that the Commission adopt?

A. The ILECs take a variety of positions on this issue. Sprint recommends that cost-based reciprocal compensation rates should be applied to ISP-bound calls, just as they would be applied to any other type of local traffic.[8] In contrast, BellSouth contends that "bill-and-keep" arrangements should be

8. Hunsucker (Sprint) Direct, pages 10-12.

applied to ISP-bound traffic on an interim basis.[9] "Bill-and-keep" means that interconnecting carriers would hand-off their ISP-bound traffic for termination without the payment of any explicit compensation from the originating carrier. Verizon would have the Commission apply bill-and-keep on an interim basis to *all* "local" traffic, including ordinary voice local calls as well as ISP-bound calls.[10]

Q. Would it be reasonable to establish a bill-and-keep system for ISP-bound traffic?

A. No, certainly not. Those proposals entirely ignore the fact that all local calls made via an ILEC's local exchange service, including locally-rated ISP-bound calls, are undertaken on a sent-paid basis, in which the originating telephone subscriber has paid to have the call delivered on an end-to-end basis. As I explained in my Direct Testimony (page 6), in the context of the sent-paid framework, a bill-and-keep system is only appropriate when inter-carrier traffic flows are roughly in balance, so that explicit payments for call termination would generally net out. When inter-carrier traffic flows are

9. Shiroishi (BellSouth) Direct, page 19.

10. Beauvais (Verizon) Direct, page 11.

significantly out of balance, explicit reciprocal compensation payments must be made for call termination, so as to ensure that each carrier is properly compensated for the termination work that it performs. To the extent that the ISP-bound traffic exchanged between two carriers is strongly one-directional, a bill-and-keep system would, to the same degree, fail to compensate the carrier that terminated the bulk of the exchanged traffic.

Q. Does Staff recognize that bill-and-keep fails to be equitable when traffic is not roughly balanced?

A. Yes. Staff's witness Mr. Fogleman acknowledges that under such circumstances the application of a bill-and-keep regime would mean that "carriers that have to terminate more traffic would be forced to pass these costs on to their own customers, even though their customers did not directly cause these costs to be incurred" (Fogleman Direct, page 14, lines 14-17).

Q. Is there an additional reason that the Commission should not adopt a bill-and-keep regime for ISP-bound traffic exchanged between carriers?

A. Yes. In order to adopt bill-and-keep, or any other mechanism intended to apply solely and exclusively to ISP-bound traffic, the Commission would

have to implement procedures that it was confident could accurately identify all ISP-bound calls and distinguish them from all other types of locally-rated calls. As I shall explain later in my testimony (relative to Issue 8), the ISP traffic identification methods advanced by some of the ILECs fall far short of this requirement, and there is no practical method available at this time to support any sort of differential treatment of ISP-bound calls for reciprocal compensation purposes.

Mr. Jones mis-attributes certain cost characteristics to ISP-bound traffic that in fact apply to the wider category of high-volume inbound traffic, and thus is in error when he concludes that cost studies for inter-carrier compensation purposes should consider a distinct network design for ISP-bound traffic.

Q. Verizon witness Mr. Jones argues (page 6, lines 20-22) that "since the network design for ISP bound traffic is different than for standard voice traffic, an inter-company cost study should recognize this difference." Do you agree?

A. No. Mr. Jones reaches this conclusion by first observing that "most" carriers switch ISP-bound calls via trunk-to-trunk arrangements rather than line-side (trunk-to-line) switching (pages 5-6). However, Mr. Jones admits that this is done "simply because it is more efficient with the call volume and handling time involved" (page 6, lines 1-2). Of course, given such efficiency benefits,

trunk-side connections are not used solely for terminating ISP-bound traffic, but are used generally for terminating traffic to all types of end users who receive high volumes of in-bound calls. Consequently, Mr. Jones is mis-attributing a distinction to ISP-bound traffic which in fact applies to a different and far wider traffic category (i.e., high-volume traffic). Clearly, his erroneous logic cannot offer any support for the imposition of discriminatory treatment of ISP-bound traffic for reciprocal compensation purposes.

Applying traffic imbalance adjustments to a regime of explicit reciprocal compensation payments is inequitable and discriminatory, and should not be considered by the Commission.

Q. Staff witness Mr. Fogleman has observed (pages 16-17) that some states have adopted "traffic imbalance adjustments," under which reciprocal compensation payments may be reduced for traffic exceeding a pre-defined ratio of incoming to outgoing traffic. Should this Commission consider adopting such a mechanism?

A. No, it should not. At pages 35-38 of my Direct Testimony, I have already explained that under an explicit reciprocal compensation regime, the appropriate compensation for calls terminated by one of two interconnected carriers is entirely independent from the volume of traffic and associated

compensation flowing in the reverse direction. Such "traffic imbalance adjustments" are discriminatory against those carriers that have elected to specialize in serving customers with high inbound calling requirements, and as such are neither necessary nor appropriate, and should not be considered by the Commission.

Issue 8. How can ISP-bound traffic be separated from non-ISP bound traffic for purposes of addressing any reciprocal compensation payments?

The ILEC witnesses' testimony and interrogatory responses confirm that there is at present no reliable means to identify and segregate ISP-bound vs. non-ISP bound calls.

Q. At pages 46-51 of your Direct Testimony, you explained that currently there is no practical means to reliably and accurately distinguish ISP-bound calls from other local data and voice calls. Does any of the testimony from ILEC witnesses in this proceeding demonstrate that this fundamental problem has been overcome?

A. No, and in fact, the ILECs' testimony and data responses to date concerning this issue have confirmed the fundamental impracticability of isolating ISP-bound traffic from non-ISP-bound traffic on an ongoing basis for the purpose of segregating ISP-bound traffic from reciprocal compensation.

Q. Please explain.

A. First of all, it is striking that one of the ILEC witnesses, Mr. Hunsucker, recommends that a segregation of ISP-bound from non-ISP-bound traffic should not be made, as he has concluded that it would be "extremely administratively burdensome to do so."[11] While Mr. Hunsucker's testimony speaks for itself, it is particularly noteworthy that he has described several means by which ILECs have attempted to segregate ISP-bound traffic, and he concludes that none of them have proven to be workable.[12]

Moreover, the evidence supplied by BellSouth further underscores the infeasibility of such segregation. First, in response to AT&T Interrogatory No. 7, BellSouth has described procedures that BellSouth (or "BST" as used in the interrogatory response) has undertaken in order to estimate ISP-bound minutes of use for calls that originate with BellSouth's end users and terminate to an ALEC. As summarized therein, the essentials of that process are as follows:

(1) Attempt to compile a list of ISP telephone access numbers "from all

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11. Hunsucker (Sprint) Direct, page 19, lines 7-8.

12. *Id.*, pages 19-20. Staff has also concluded that segregation of ISP-bound traffic is "problematic at best" and should not be attempted for reciprocal compensation purposes. Fogleman (Staff) Direct, page 19.

sources."

(2) Assume that all traffic terminating to the telephone numbers on that list constitutes ISP-bound traffic.

(3) Estimate additional ISP-bound traffic that has not been identified by Step 2. For that purpose, BST assumes that whenever the average call holding time for traffic terminating to an ALEC-served NPA-NXX is 15 minutes or greater (as calculated by dividing total MOU for the NPA/NXX, by total messages for that NPA/NXX), then all of the minutes terminating to that NPA/NXX are assumed to be ISP-bound.

(4) Require ALECs to provide "factual ISP usage information" to allow BST to true up its invoiced amounts for ISP-bound traffic payments.

Second, BellSouth Florida's witness Mr. Scollard describes the process that BellSouth currently uses to attempt to segregate ISP-bound traffic for calls that originate with an ALEC and are destined to an ISP served by BellSouth (i.e., the reverse of the situation described in the interrogatory response cited

above).[13] Mr. Scollard describes the following steps in that process:

(1) Attempt to compile a list of ISP telephone access numbers.

(2) Dial all suspected numbers "to verify that the tones returned are consistent with those used for ISP access" (*Id.*, page 3, lines 21-22).

(3) Add all such "verified" numbers into a database accessed by BellSouth's Carrier Access Billing System (CABS), which marks each ALEC-originated call that is destined to any of the telephone numbers in the database as an ISP-bound call.

(4) Update the database of assumed ISP access numbers "on a periodic basis as new information becomes available" (*Id.*, page 4, line 11).

Both of these procedures represent specific instances of the *indirect methods* for identifying ISP-bound traffic that I discussed in my Direct Testimony. As I explained there (at pages 46-51), such indirect methods cannot identify ISP-bound traffic with sufficient accuracy to permit segregation of ISP-bound and

13. Scollard (BellSouth) Direct, page 2.

non-ISP-bound traffic for reciprocal compensation purposes.

Q. Why are the indirect identification methods that BellSouth describes infeasible as a practical matter?

A. There are several crucial weaknesses to these indirect methods:

First, as a practical matter, BellSouth and other ILECs simply are not able to accurately identify all telephone numbers which may be used to access ISPs. In the interrogatory response I have cited, BellSouth admits that "BellSouth has attempted to obtain a list of ISP access numbers from all sources. It has only been able to obtain a fraction of such access numbers."[14] Moreover, even when certain telephone numbers can be identified as serving ISPs, the fact that modem pools may be shared among multiple subscribers, including ISPs and non-ISP businesses, means that one cannot be certain that 100% of the traffic terminating to those telephone numbers is actually destined for an ISP (see page 47 of my Direct Testimony). Dialing a suspect telephone number to listen for a modem tone, as Mr. Scollard describes, also cannot uniquely distinguish ISPs from other (non-ISP) users of modems.

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14. *Id.*, page 1.

Second, it is striking that the procedure described by Mr. Scollard does not even attempt to identify the ISP-bound minutes that have not been accounted for by identifying ISP access numbers *per se*, even though the Company admits that the telephone number-based approach is (at best) incomplete. However, the remedy described in the interrogatory response also fails: BST is forced to rely upon a single call characteristic, average call duration, and assumes that all traffic terminating to a given ALEC-served NPA-NXX is ISP-bound whenever the average duration exceeds 15 minutes. As I have already demonstrated in my direct testimony (at page 49), it is a logical error to infer that a group characteristic (such as average call duration) tells anything about a particular member of that group (such as that a particular call is necessarily ISP-bound), and in any event, long call durations do not uniquely identify ISP-bound calls. In the recent generic investigation of inter-carrier compensation mechanisms for ISP-bound traffic conducted by the California PUC, the Administrative Law Judge's draft decision reached a similar conclusion:

> Such a methodology based solely on call duration to determine the proportion of ISP-bound calls is inherently unreliable because it fails to exclude classes of long-duration calls other than ISP-bound calls (e.g., telecommuting and other calls to corporate LANs, business conference

calls, calls to airline reservations offices, etc.).[15]

Finally, Mr. Scollard states that billings for inter-carrier compensation specific to ISP-bound traffic could be verified by having the billing LEC "provide the billed LEC a list of the ISP numbers that was used in calculating the charges contained on the bill" (page 4, lines 23-24) and suggests that ALECs might "be required to provide BellSouth with the ISP numbers so that actual traffic records could be used" (page 5, lines 13-15). However, my understanding is that ALECs generally do not routinely track the uses to which their local exchange services are applied by their subscribers, and thus will not always know whether a given telephone number that they serve is used to access an ISP, or is used to access an ISP *all of the time*. Indeed, the fact that BellSouth finds it necessary to perform a "search of the Internet" to find ISP access numbers "for calls bound for ISPs served by BellSouth," as Mr. Scollard has described (page 3) suggests that BellSouth itself is not privy to which of its own subscribers are ISPs or which of the telephone numbers used by those subscribers are receiving ISP-bound calls. Thus, the Commission should recognize that this aspect of BellSouth's suggested ISP-bound traffic segregation procedures is also not feasible.

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15. California PUC Docket R.00-02-005, Proposed Decision of ALJ Pulsifer (Mailed 11/3/2000), at page 35.

Q. What is Verizon's position on the issue of segregation of ISP-bound traffic?

A. Verizon's witness Dr. Beauvais recommends that the Commission should not pursue an inter-carrier compensation regime that would require the segregation of ISP-bound traffic (Beauvais Direct Testimony, pages 10-11). Indeed, consistent with my Direct Testimony on this point (pages 48-50), Dr. Beauvais recognizes that such segregation methods will not produce precise results, and in particular admits that using call holding times for segregation purposes "does not identify calls or minutes on an individual basis," but can only provide estimated percentages for ISP-bound and non-ISP-bound traffic (*id.*, pages 10).

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?

A system of explicit, cost-based reciprocal compensation payments, based on the ILEC's forward-looking economic costs, should apply as the default mechanism whenever LECs fail to establish a mechanism via negotiation.

Q. What is BellSouth's position on the issue of a default compensation mechanism?

A. Ms. Shiroishi states (page 26) that BellSouth's position on this issue is that the Commission should not establish *any* compensation mechanism for ISP-bound traffic, but that if the Commission chooses to do so, it should adopt bill-and-keep as the default mechanism.

Q. Do you agree with this position?

A. No, certainly not. As my Direct Testimony should have made clear, there are compelling reasons why ISP-bound traffic should be subject to the same reciprocal compensation obligations as apply to all other forms of locally-rated traffic. While bill-and-keep can be appropriate for inter-carrier compensation when traffic in either direction is roughly balanced, for reasons that I have already explained (see pages 11-13 *infra*), it is not appropriate nor equitable to apply bill-and-keep when a significant traffic imbalance exists. Therefore, a system of explicit, cost-based reciprocal compensation payments (based on the ILEC's forward-looking economic costs) should apply as the default mechanism whenever LECs fail to establish a mechanism via negotiation.

Q. Does this conclude your rebuttal testimony at this time?

A. Yes.

CHAIRMAN JACOBS: That's it?

MR. EDENFIELD: Chairman Jacobs, if we're going to do that kind of housekeeping, would you like for me at this time to go ahead --

CHAIRMAN JACOBS: Mr. Scollard.

MR. EDENFIELD: -- and move Mr. Scollard's in?

CHAIRMAN JACOBS: Yes, let's do that.

MR. EDENFIELD: At this time, BellSouth would move in the prefiled direct testimony of David Scollard filed on December 1st, 2000. It consists of five pages. We would ask that that be inserted into the record as if read.

CHAIRMAN JACOBS: Without objection, show the testimony of Mr. Scollard entered into the record as though read.

MR. EDENFIELD: We also have the rebuttal testimony of David Scollard filed on January 10th, 2001, consisting of six pages of testimony. We would ask that Mr. Scollard's rebuttal testimony be put into the record as if read.

CHAIRMAN JACOBS: Without objection, show the rebuttal testimony of Mr. Scollard entered into the record as though read.

MR. EDENFIELD: And Mr. Scollard did not have any exhibits. So that will do it for BellSouth.

BELLSOUTH TELECOMMUNICATIONS, INC.

TESTIMONY OF DAVID P. SCOLLARD

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000075-TP

DECEMBER 1, 2000

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

A. I am David P. Scollard, Room 26D3, 600 N. 19th St., Birmingham, AL 35203. My current position is Manager, Wholesale Billing at BellSouth Billing, Inc., a wholly owned subsidiary of BellSouth Telecommunications, Inc. In that role, I am responsible for overseeing the implementation of various changes to BellSouth's Customer Records Information System ("CRIS") and Carrier Access Billing System ("CABS").

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Auburn University with a Bachelor of Science Degree in Mathematics in 1983. I began my career at BellSouth as a Systems Analyst within the Information Technology Department with responsibility for developing applications supporting the Finance organization. I have served in a number of billing system design and billing operations roles within the billing organization. Since I assumed my present responsibilities, I have overseen the progress of a number of billing system revision projects such as the

implementation of the 1997 Federal Communications Commission ("FCC") access reform provisions, billing of unbundled network elements ("UNEs"), as well as the development of billing solutions in support of new products offered to end user customers. I am familiar with the billing services provided by BellSouth Telecommunications to local competitors, interexchange carriers and retail end user customers.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

The purpose of my testimony is to provide the Commission with an understanding of how BellSouth's billing systems separate ISP-bound traffic from non-ISP bound traffic (Issue 8). Specifically, I will describe the processes used by the Carrier Access Billing System ("CABS") to process usage records for calls originating from an Alternative Local Exchange Carrier (ALEC) bound for Internet Service Providers (ISPs) served by BellSouth.

Q. WHAT IS CABS?

A. CABS is a system that BellSouth uses primarily for billing interexchange carriers for services ordered from the FCC and state Access Tariffs. BellSouth also uses CABS to bill ALECs for a number of services such as local interconnection trunking and usage charges, unbundled designed loops and unbundled dedicated interoffice transport. CABS is designed to maintain a record of the access, local interconnection and UNE services that have been

provided by BellSouth to IXCs, ALECs and other customers. In addition, CABS processes the massive numbers of call records that are produced in the BellSouth central offices associated with the services provided. For example, when an ALEC sends BellSouth a call across on one of its interconnection trunks, the BellSouth switch to which that trunk interconnects generates a usage record. CABS processes that record and bills the applicable rate elements to the ALEC or other interconnecting carrier based on whether the call is local, intra-LATA toll or inter-LATA. For local calls, reciprocal compensation should be billed and access charges should be billed when the call is a toll call.

Q. WERE THERE ANY CHANGES MADE TO CABS TO SEPARATELY METER OR OTHERWISE SPECIFICALLY HANDLE USAGE RECORDS FOR CALLS BOUND FOR ISPs SERVED BY BELLSOUTH?

A. Yes. In early January 1997 BellSouth began a project to identify methods to separate ISP traffic from non-ISP traffic. The method that was developed and implemented in September 1997 involves a number of steps. First, a search of the Internet is performed to create a list of all telephone numbers that potentially are being used by ISPs for dial up access to the ISP. These telephone numbers are then dialed to verify that the tones returned are consistent with those used for ISP access. The verified numbers are then input to a database accessed by CABS. Each day, as CABS is processing the switch recordings used to bill usage charges for calls originating form the ALEC's end users, the ISP numbers included in the data base are matched against the

telephone numbers in the switch recordings. If the matching process identifies a call which is bound for one of the identified numbers it is marked as an ISP call and is treated as such in the billing system.

Q. WERE ON-GOING PROCESSES DEVELOPED TO MAINTAIN THIS CABS CAPABILITY?

A. Yes. A process was put in place to maintain the database of telephone numbers identified as being used by an ISP. This process allowed for new numbers to be added and for numbers to be removed as the ISP's use of them ended. These updates were made on a periodic basis as new information became available.

Q. WHAT INFORMATION WOULD BE REQUIRED BY BELLSOUTH OR OTHER LEC TO VERIFY THAT USAGE CHARGES WERE BILLED CORRECTLY?

A. Each LEC receiving a bill containing usage charges for traffic exchanged with another local provider would need information sufficient to independently verify that the billing LEC applied the appropriate rate elements to the correct number of minutes. In the case of ISP traffic, the billed LEC would need to be able to determine that the billing LEC accurately identified the total ISP minutes from other minutes. BellSouth's position is that the most effective way to accomplish this is for the billing LEC to provide the billed LEC a list of the ISP numbers that was used in calculating the charges contained on the bill. In

that way, the billed company would be able to use its own switch records to verify that the appropriate charges have been calculated.

Q. HAS BELLSOUTH BEEN SUCCESSFUL IN ACQUIRING THE NEEDED DATA FROM ALECS WHICH CURRENTLY BILL FOR ISP TRAFFIC?

A. For the most part, BellSouth has not been able to obtain the ISP numbers used by ALECs in generating bills sent to BellSouth. Because of this, BellSouth uses a method by which the ISP traffic is estimated by studying the average duration of calls bound for an ALEC's end users and attempts to isolate the ISP traffic using the call characteristics of the studied calls. The estimate is used to compare to the bills sent by the ALECs to determine whether or not the bill is accurate. A more effective process would be for the ALECs to be required to provide BellSouth with the ISP numbers so that actual traffic records could be used.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF DAVID P. SCOLLARD

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000075-TP

JANUARY 10, 2001

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

A. I am David P. Scollard, Room 26D3, 600 N. 19th St., Birmingham, AL 35203. My current position is Manager, Wholesale Billing at BellSouth Billing, Inc., a wholly owned subsidiary of BellSouth Telecommunications, Inc. In that role, I am responsible for overseeing the implementation of various changes to BellSouth's Customer Records Information System ("CRIS") and Carrier Access Billing System ("CABS").

Q. ARE YOU THE SAME DAVID SCOLLARD WHO FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY BEING FILED TODAY?

A. The purpose of my testimony is to rebut testimony filed in this docket by Mr. Michael Hunsucker, witness for Sprint Corporation ("Sprint"), 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 8: Should ISP-bound traffic be separated from non-ISP bound traffic for the purposes of assessing any reciprocal compensation payments? If so, how?

Q. IN HIS TESTIMONY (AT PAGE 20) SPRINT WITNESS MR. HUNSUCKER STATES THAT A PROCESS OF SEPARATING ISP-BOUND TRAFFIC FROM OTHER TRAFFIC USING A MECHANISM BY WHICH THE LEC SERVING THE ISP REPORTS THE NUMBERS USED BY THE ISP IS NOT WORKABLE. DO YOU AGREE WITH THIS ASSERTION?

A. No, not at all. There are several examples in the industry today where LECs report line level information and make that information accessible to other local service providers. The database supporting third number and calling card calling is an example that has been in place for decades. Local service providers update the database with telephone numbers authorized to be billed for such calls. As calls are placed, the toll carrier accesses the database and verifies that the call can be completed and billed. In another example, the

establishment of processes to support Local Number Portability (LNP) provides for LECs serving a given ported number to report that number for inclusion in the regional LNP database. This process is an extremely important part of the overall LNP service. With the information stored in the database each LEC can then determine who is providing local service to the end user since the telephone number no longer provides enough information to make that determination. More recently, the Ordering and Billing Forum (OBF), the group consisting of ILECS, ALECs, IXCs and other participants responsible for developing solutions to billing issues in the telecommunications industry, has completed the requirements for a database which will house telephone numbers of end users being provided local service via an unbundled switch port. This information is needed by ILECs, ALECs and interexchange companies so that each will know who is to be billing whom for reciprocal compensation and access charges. A similar database (or possibly this same exact database) could be used to identify telephone numbers serving ISPs. Similar to how the process will work for UNE ports, a LEC would input the telephone numbers of the ISPs it serves. As with the UNE port database, other LECs can access the ISP numbers in the database and, using its own switch recordings, verify the amount of traffic that has been treated as ISP traffic on incoming invoices. Since the beginning of local competition there has been an ever-increasing need for each carrier to provide information about the customers it serves. The addition of a process for ISP numbers would be just another example of that need.

Q. IF A DATABASE OF ISP NUMBERS, ACCESSIBLE TO THE INDUSTRY WERE CREATED, HOW WOULD THESE NUMBERS BE IDENTIFIED?

A. Since the ISPs themselves are in the sole position to know how a particular service is being used, information would need to be passed from the ISP to the LEC at the time the service was ordered (and subsequently updated as changes occur) so that the LEC could then populate the number into the database.

Q. ON PAGE 20 OF HIS TESTIMONY MR. HUNSUCKER RAISES A CONCERN ABOUT PROPRIETARY RESTRICTIONS THAT WOULD PRECLUDE THE ESTABLISHMENT OF THE DATABASE YOU DESCRIBED ABOVE. WHAT IS YOUR REPLY?

A. First, the database described above would not contain any end user information at all. There would be no customer name or address or any other identifying information maintained in the database. Second, as is the case with the LNP database and the newly developed UNE line-level database, the industry participants could be required to agree to use the stored information only for the intended purpose. That is, those carriers with access to the data must only use it for the purpose of creating and verifying intercarrier bills.

Q. WOULD A PROCESS SIMILAR TO THE LNP AND UNBUNDLED SWITCHING SOLUTION MEET THE CRITERIA SET FORTH ON PAGE 48 OF MR. SELWYN'S TESTIMONY?

A. Yes it would. In fact, these are the very same types of requirements that were discussed at the Ordering and Billing Forum and other industry bodies when these solutions were created. The concept of using a database for the billing of ISP traffic is almost identical to the use of a database for the unbundled switch ports. That is, carriers billing each other have to know something about what type of service is being provided to the customers using a given telephone number. A database method would be verifiable since both the billing and billed carriers would have access to the same information. The solution would be repeatable since the data used to classify the calls as ISP would be controlled in a central database and therefore any query to that database would provide the same result regardless of which provider (billed carrier or billing carrier) was looking for the data. In addition, with the ISPs themselves identifying for the serving LEC those facilities being used to provide ISP service, the concerns of having false negatives or false positives would be minimized. This is precisely the type of solution that was developed to support intercarrier billing for unbundled switch ports and could readily be used for ISP traffic.

Q. WHAT PROCESS WOULD BE USED WHILE THIS SOLUTION WAS BEING DEVELOPED?

A. A solution that mirrors what BellSouth is already doing would be a good interim process. Each LEC would maintain its own database of the ISP numbers it serves. The LEC would then identify its own ISP traffic, input it to the billing systems to accurately bill the other carriers. Lacking any data from

the billing carrier as to the ISP numbers they serve, the billed carrier would estimate the amount of ISP traffic that is included on the invoice and remit payments accordingly after the invoices have been verified. One change that would be needed from what BellSouth has in place today is the requirement that the ISP would report those numbers which are being used to provide ISP service. Today, BellSouth makes its best efforts to find those numbers from sources independent of the ISP.

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Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

CHAIRMAN JACOBS: Very well. I'll ask all the witnesses to stand who will testify. Raise your right hand.

(Witnesses collectively sworn.)

CHAIRMAN JACOBS: Thank you. You may be seated. And I guess we'll start with Mr. Falvey, the first witness. Is that -- the order goes according to the prehearing --

MS. BANKS: Yes, Mr. Chairman.

MR. HOFFMAN: Mr. Chairman?

CHAIRMAN JACOBS: Yes.

MR. HOFFMAN: With your indulgence, at the prehearing conference, the parties had raised the prospect of making opening statements.

CHAIRMAN JACOBS: Yes, I saw that, and I'm glad you reminded me. And they were 30 minutes per side?

MR. HOFFMAN: Yes, sir.

CHAIRMAN JACOBS: Do we need that? I don't want to cut you off. I would not dare think of cutting off lawyers in their attempt to make their points.

MR. EDENFIELD: As lawyers, we would like to think that every word counts as meaningful.

CHAIRMAN JACOBS: Great.

MR. HOFFMAN: Mr. Chairman -- I'm sorry.

CHAIRMAN JACOBS: Go ahead.

MR. HOFFMAN: I was just going to say, particularly in light of some of the stipulations that we've reached, we think it might be educational for the Commissioners, although we know this is an issue that you've had a lot of cases on. It might be educational for the Commissioners to hear the opening remarks.

CHAIRMAN JACOBS: Very well. Who's first?

MR. HOFFMAN: We could go first, Mr. Chairman, the ALECs could go first. We have the first witness. It's up to you.

CHAIRMAN JACOBS: Yes, let's do that. ALECs first and then BellSouth. You may proceed.

MR. HOFFMAN: Thank you, Mr. Chairman. My name is Ken Hoffman. I will be presenting some remarks regarding the Commission's jurisdiction to establish an appropriate and lawful mechanism for reciprocal compensation for the delivery of ISP-bound traffic, as well as I will be addressing the local nature of ISP calls. That is primarily a legal issue.

Mr. McGlothlin will then follow me on behalf of the ALECs, who are intervenors in this proceeding, and he will give you an overview of some of the pertinent points that are set forth in Dr. Selwyn's testimony which illustrate the need for an intercarrier compensation mechanism, which illustrate the local nature of ISP calls,

and demonstrates why our proposal sets forth a reasonable proposal for an appropriate rate structure. I think Mr. Horton will then conclude with some remarks on behalf of e.spire.

With respect to jurisdiction, Commissioners, the Commission's authority to adopt an intercarrier compensation mechanism for the delivery of ISP-bound traffic, we believe, is derived under both Florida and federal law. Under Chapter 364, the Legislature has empowered this Commission with exclusive jurisdiction to promote competition by encouraging new entrants into the Florida local telecom market and by encouraging a wide availability of new and innovative services from local providers.

With respect to federal law, we think that jurisdiction is clear under Section 251(b)(5) of the 1996 federal act, as well as the FCC's rules. Rule 51.711 specifically and expressly authorizes state commissions to establish rates for the transport and termination of local telecommunications traffic. Throughout the testimony in this case, there are repeated recitations to two federal rulings: The FCC's declaratory ruling, which was issued in February of 1999, and the Bell Atlantic decision, which vacated that ruling. It was a decision by the D.C. Circuit Court of Appeals in March 2000.

At the outset, however, before I get into those two decisions, I would like to talk to you a little bit about how this Commission has addressed the issue from a regulatory standpoint of how to treat ISP calls. And I will begin back in 1989 where at the urging of BellSouth, this Commission found that end user access to information service providers which includes ISPs is by local service.

In that case, BellSouth's own witness testified that connections to the local network for the purpose of providing an information service should be treated like any other local exchange service, and the Commission agreed. So starting back in September of 1989, this Commission first established a policy that the delivery of ISP traffic should be treated as local.

Fast-forward about ten years and we had the first of the interconnection agreement enforcement cases involving a number of ALECs and BellSouth. In that case, based on the 1989 order, as well as the intent and the actions of the parties, this Commission found that the definition of local traffic in those agreements included ISP calls. The Commission made similar conclusions in a number of other cases that involve contract enforcement issues and involved essentially the same issue, which was whether the definition of local traffic under those agreements included ISP calls.

In the meantime, the Commission has also presided over a number of arbitrations where the issue of whether ISP-bound traffic should be treated as local traffic was in dispute. The Commission consistently deferred a ruling on that issue in view of its understanding that the FCC would ultimately make a determination on the issue. The one exception was the most recent arbitration involving Global NAPS and BellSouth where the Commission determined that for purposes of a prospective arbitration agreement, ISP calls should be treated as local. And in that case, the Commission established reciprocal compensation rates for the payment of ISP-bound traffic.

So from our perspective, what we see is a consistent body of precedent from this Commission where the Commission has consistently found that ISP traffic should be treated as local traffic. But what else do we know? We know that the ILEC expenses and the revenues for ISP calls have traditionally been characterized as intrastate for separation purposes. We know that an ISP purchases its service, its phone service, as a business user under intrastate local exchange tariffs. We know that the incumbents charge their own ISP customers local business line rates, and that ISP calls are dialed, rated, and billed as local calls, not toll calls. We also know

that a call to an ISP cannot be a toll call. Why? Because ISPs have been determined by the FCC to be exempt from access charges and the Bell Atlantic Court found that ISPs are not telecommunications carriers. Without reciprocal compensation for these calls, there will be no compensation because these calls are exempt from access charges.

Let me go back to the FCC. The FCC has routinely and repeatedly treated ISP-bound traffic as local for economic pricing purposes. I mentioned the access charge exemption. That started back in 1983. In 1998, the FCC held that ISPs provide information services, not telecommunications services, and are, therefore, to be treated as end users for universal service purposes and have no universal service contribution obligations.

I mentioned the FCC's declaratory ruling. That was issued in February of 1999. The FCC said, despite the fact that it has required states to treat ISP-bound traffic as local at least a substantial portion of dial-up ISP traffic is interstate. So the FCC opened a new rulemaking in that order in which it intended to adopt a new prospective compensation mechanism for this type of traffic. But in March of 2000, that ruling was vacated by the D.C. Circuit Court of Appeals and Bell Atlantic. The Court remanded the case back to the FCC because the FCC

failed to provide any adequate basis for its jurisdictional determination that the ISP calls are largely interstate. But the Bell Atlantic Court, what they really did that's important for this Commission is, they framed the ultimate issue.

Now, what is the ultimate issue? The issue is, it's a legal question of whether ISP-bound calls constitute a local telecommunications service. Because if the answer to that question is yes, then reciprocal compensation is already mandated under the federal act and the FCC rules. In the Bell Atlantic case, the Court rejected the FCC's end-to-end or one-call analysis which the FCC had used to determine that these types of calls were not local. Remember, for the end-to-end analysis to be viable, you have to conclude two things: One, that an ISP is a telecom provider and, two, that ISP calls do not, do not terminate at the ISP. The Bell Atlantic Court disagreed on both points. The Court said an ISP call appears to terminate at the ISP, and that ISPs are not telecom providers like interexchange carriers.

The Court made some other significant findings. The Court found that calls to ISPs do not fall under the definition of exchange access. Why? Because exchange access is offered for the purpose of originating or terminating toll services, and this is not a toll service.

The Court emphasized that ISPs use telecommunications, they use telecommunications to provide information service. They are not telecommunications providers as are long-distance carriers.

The Court also found that the characteristics of calls to ISPs more closely resemble other local calls to end users who are telecommunications intensive end users. So in the opinion, for example, the Court compared ISPs to pizza delivery firms or credit card verification firms which use a variety of communication services to provide their goods or services to their customers.

Finally, the Court explicitly rejected the FCC's rationale and conclusion that an ISP call terminates -- does not terminate, excuse me, does not terminate at the ISP. The Court noted that the word "termination" has been defined by the FCC as the switching of traffic at the terminating carrier's end office switch, and then the delivery of that traffic from that switch to the called party. The Court found that calls to ISPs fit this definition. The traffic is switched by the receiving LEC whose customer is the ISP, and then delivered to the ISP who is the called party. We believe these holdings compel the conclusion that because ISP traffic terminates at the ISP, that the traffic terminates within a local service area and, therefore, constitutes local service.

To conclude, from the ALEC standpoint, Commissioners, we think that there is ample and consistent Florida PSC precedent supporting a determination that this Commission has jurisdiction and that this Commission should once again determine that ISP calls are local. The Bell Atlantic decision only lends further support to the prior rulings of the Commission and the ALEC position. And with that, I'll turn it over to Mr. McGlothlin.

COMMISSIONER JABER: Mr. Chairman, may I ask Mr. Hoffman two questions?

CHAIRMAN JACOBS: Sure, go ahead.

COMMISSIONER JABER: Mr. Hoffman, the two orders that you're referring to, one, the FCC declaratory ruling and, second, the Bell Atlantic decision, are they on someone's official recognition list?

MR. HOFFMAN: Yes, ma'am.

COMMISSIONER JABER: And then secondly, am I understanding you correctly to say that the law as it exists today, in your opinion, is the Bell Atlantic case?

MR. HOFFMAN: Absolutely.

COMMISSIONER JABER: There is nothing that overrules it, nothing that sets it aside?

MR. HOFFMAN: Absolutely correct. Yes, ma'am, that is our position.

COMMISSIONER JABER: Is there anything pending

that might have an impact on the Bell Atlantic case?

MR. HOFFMAN: I think in fairness, the answer to that question is yes.

COMMISSIONER JABER: Okay. What is pending?

MR. HOFFMAN: There is a rulemaking pending a remand and perhaps a rulemaking pending before the FCC as a result of the Bell Atlantic reversal of the FCC's declaratory ruling.

COMMISSIONER JABER: Okay. The Bell Atlantic Court remanded -- vacated the FCC's order and remanded back to the FCC for further action.

MR. HOFFMAN: Yes, ma'am.

COMMISSIONER JABER: And that action that will be taken by the FCC might impact this.

MR. HOFFMAN: It certainly could.

COMMISSIONER JABER: Do you have any idea when the FCC is expecting to rule on that?

MR. HOFFMAN: I don't. But I think perhaps when Mr. Falvey takes the stand, he might be able to elaborate on that.

COMMISSIONER JABER: Okay. Thank you.

CHAIRMAN JACOBS: Now, is it -- and in several other remands, there was an implication that the FCC could go back and build a record to support a decision. Now, to be fair, is that the option here? Is that an option for

the FCC in this instance?

MR. HOFFMAN: I believe it would be.

CHAIRMAN JACOBS: Okay. But clearly, the idea of disposing of the notion that -- of this one-call theory is very critical to the Court's holding.

MR. HOFFMAN: I think so, Mr. Chairman. And again, basically what's happened here is, the FCC laid out some essential conclusions, that these calls are largely interstate, that it's one-call. And those conclusions have essentially been rejected and sent back to the FCC. What the FCC does next remains to be seen.

CHAIRMAN JACOBS: Very well. Thank you. Mr. McGlothlin.

MR. McGLOTHLIN: I'm Joe McGlothlin. Before I start, one note, and I may be reading too much into this, but it's possible that the ILECs are starting to come around. I said good morning to Kip Edenfield this morning, and he reciprocated right away, so it looks like things are shaping up.

CHAIRMAN JACOBS: You-all didn't discuss rates, though, did you?

MR. McGLOTHLIN: No, we didn't.

MR. EDENFIELD: I'm just in a good mood, but the day is young.

MR. McGLOTHLIN: As Mr. Hoffman indicated, I'm

going to preview the testimony that Dr. Selwyn would give if he were able to get out of Boston, but it has been admitted into the record. And because Dr. Selwyn offers certain factual premises for some of the same conclusions that Mr. Hoffman discussed, there is a bit of overlap. We've tried to minimize that, but I hope you will understand if I touch on some of the same things that he mentioned.

One of the issues in the prehearing order asks what policy consideration should instruct and guide the Commissioners as they receive this evidence and enter their decision. And the FCCA and numerous other ALECs have taken a position that the appropriate policy considerations are those of equity, nondiscrimination, and the promotion of competition. And I'm going to demonstrate that Dr. Selwyn's testimony establishes that when you apply those policies to the evidence, you will conclude that an explicit compensation mechanism is needed that includes ISP-bound traffic.

I'm only going to highlight certain of the points that I think are particularly worthy of your consideration. At the outset, borrowing from Dr. Selwyn, Dr. Selwyn provides several illustrations. And one of them more than the others was helpful to me as I attempted to visualize the concepts and relationships that are at

play here. And I thought I would begin with that.

Assume that you've decided to take a skiing trip to Colorado. It's my illustration, so I get to make a pleasant illustration if I want to. Assume that you're going to fly from Tallahassee to Denver by way of St. Louis. And you're going to buy a ticket on the airline that's going to take you the whole way. In that scenario, the airline is going to incur the costs for both legs of that trip. You will buy a ticket that represents the full cost of the entire trip. You pay the total cost to the airline.

Now, change the scenario just a little bit. You still decide to go skiing to Colorado, and you're traveling by airline by way of St. Louis, but this time you stop in St. Louis and you change airlines. So the first airline incurs the cost for the first leg. The second airline incurs the cost for the second leg. But in that scenario, you still buy the ticket from the first airline, you pay the full cost of the trip, and then that airline remits part of the payment to the second airline representing the costs that it did not occur and the cost that the second airline incurred for the second leg of the trip.

In his testimony, Dr. Selwyn establishes that the same paradigm has been used in the local exchange

scenario for something like a century now. Leaving aside the issue of ISP-bound traffic, consider this: A customer of an ILEC calls another customer of the ILEC. In that situation, the ILEC incurs a total cost of carrying and terminating the call. And the customer pays the total cost to the ILEC through the application of the local exchange tariff.

Alter that just a little bit as we did before. The customer of the ILEC calls a customer of the ALEC. That means that the ILEC hands off the call to the ALEC which terminates the call. In this situation, the ILEC does not incur the cost of termination; the ALEC does. Also, in this situation, the ILEC customer pays a total cost of the entire call through the application of the local exchange tariff. The ILEC then remits part of that payment to the ALEC through reciprocal compensation.

Now, the question before you is this: Enter the call to the ALEC's ISP, as an example. Does any difference arise by virtue of any different nature to the call? Dr. Selwyn in his testimony traces the progress of that call from the time it is originated by the ILEC's customer to the time it reaches the customer of the ALEC, which is the ISP, in meticulous fashion. I'm not going to take the time to duplicate what he does in his testimony, but once you consider that testimony, you realize that

there are no differences in the functionalities involved.

The caller uses the same components of the public switched network in exactly the same way. In this situation, the ISP is one of many business customers of the ALEC. It happens to fall within the category of business customers who are characterized by many incoming calls, but it is still nonetheless one of many business customers as it Papa John's pizza delivery, for example. And so our contention is that because there is no difference, the same result should apply with respect to ISP-bound traffic.

Now, the ILECs have mounted several arguments in an attempt to persuade you otherwise. They maintain that the ISP, for instance, should pay for the incoming calls, and they use there the model of the access charges that an IXC pays to the ILEC for completion of toll traffic. They also contend that the call to the ISP does not end at the ISP premises in the local exchange area but continues on into the Internet.

I'm going to short-circuit Dr. Selwyn's testimony, but I want you to -- of the several things he had to say, I want you to consider in particular the point that the ISP is not a provider of telecommunications service. For that reason, the model of the access charges does not apply to the ISP either directly or by analogy.

In that regard, Dr. Selwyn's testimony reenforces the two-call position that this Commission has taken before the FCC. Another consideration before you is that of recognizing the principle of cost causation. The paradigm that Dr. Selwyn describes recognizes that it's appropriate for the customer originating the call to pay for its complete costs because that customer causes all of this cost to be incurred. One of the ILEC witnesses claims that the ILEC customer calling the ALEC's ISP customer does not cause a cost to be incurred because the ISP is in some fashion an agent of the customer. And you will judge for yourself, but I suggest that strains credibility. The ISP in this situation is no more the customer's agent than the pizza parlor is the agent of the hungry caller, or going back to the airline example with the ski resort, caused the travel costs being incurred by inducing the person in Tallahassee to make that trip. Because Dr. Selwyn establishes that the nature of the call is as local as any other, we believe the policy considerations require an explicit compensation mechanism.

To address the contention that bill-and-keep is appropriate for just a minute. The premise of the bill-and-keep concept is not that one carrier does not incur costs for another, but the incurred costs somehow cancel each other out, so there's no need for reciprocal

compensation. This approach would be equitable only in a situation which the traffic flow in one direction is equal to the traffic flow in another direction. With respect to ISP-bound, as you're aware in many instances, the ALECs are terminating more of those calls than the ILEC is terminating for them. The imbalance can be severe, meaning that one carrier is incurring more costs than the other. Equity requires that the -- that in that situation an explicit compensation mechanism be implemented.

The promotion of competition also comes into play. If an ALEC is terminating more ISP-bound traffic than the ILEC, this means that it has succeeded in a portion of the market. Termination of calls is a subpart of the overall market, and it's one in which ALECs and ILECs compete. To deny reciprocal compensation in that situation is to somehow protect or insulate the ILEC from its relatively poor performance in that part of the market. At the same time, it sends a signal to the ALEC that its better performance is more efficient behavior in the market is due to lack of any compensation. So both equity and the desire to stimulate competition through proper signals reenforce the idea that a compensation mechanism is needed.

Let me just touch on nondiscrimination. Most of the evidence in this case is devoted to the question of

whether it's possible to somehow filter out and identify separately those calls that are ISP-bound. And the case is made for both propositions. The ALECs say it's possible; Dr. Selwyn says it's difficult. But the overriding consideration is this: Why would you want to do that? Again, the caller uses a network in the very same way. The network doesn't care if the call is in the nature of a voice traffic or data. It doesn't care if it's an ISP or another business customer. To break out that kind of traffic for the purpose of treating it differently in the compensation mechanism would be to discriminate on the basis of the content of the call rather than any difference in the nature of the call or the use of the network. We think that's precluded by the policy of nondiscrimination.

And my final topic, very briefly, would be the appropriate rate to apply to the compensation mechanism. Again, Dr. Selwyn offers several considerations. I'm just going to just touch on one. Dr. Selwyn testifies that the ILEC's TELRIC rate should be employed, and the reason that I think I find compelling and commend to you is this: The ILEC's TELRIC rate represents the ILEC's avoided cost of termination. So in addition to approximating the additional cost of termination that's required by law, this means that under this rate, the ILEC would be

economically indifferent as to who completes the call. If the ILEC completes the call, then the tariff provides payment to the ILEC commensurate with the costs incurred. If the ALEC terminates the call, then the portion of the payment remitted to the ALEC is all set by the correspondent reduction and the cost that the ALEC has not incurred.

I'll conclude with that, but in conclusion let me say that we believe that once you consider the evidence, you will conclude that the nature of the traffic is local, and that the policy considerations I've identified compel the result that you provide and implement an explicit compensation mechanism in which ISP traffic is included. Thank you.

CHAIRMAN JACOBS: Thank you. Any questions Commissioners? I'm sorry. Mr. Horton.

MR. HORTON: Mr. Chairman, I had a couple of brief comments on behalf of e.spire. First of all, Norman H. Horton, Jr., on behalf of e.spire. And let me say that we concur with the comments of Mr. McGlothlin and Mr. Hoffman. We are here today to support and present our view why the Commission should find that calls to ISPs should continue to be subject to reciprocal compensation. This is not something that's new. The treatment of ISP traffic as local for compensation purposes again is not a

new concept that we are urging, but it is a treatment that many jurisdictions, including Florida, have traditionally given to these calls. Now, questions of jurisdiction and that will be address in our briefs. And you will hear some testimony with respect to jurisdiction, but we believe you have the jurisdiction to act and that you should.

You'll also hear that reciprocal compensation creates a windfall for the ALECs. That overlooks the fact that we are performing work in this process. A windfall is when you do something -- or when you do nothing for something. And that's not the case in this instance. The ILECs don't want to make these payments, and in some instances they are not making these payments, but that's not sufficient reason to warrant changing the current treatment. So we would urge that you conclude that the traffic to ISPs should continue to be subject to reciprocal compensation. I think that's what you have been doing, and that's the decision that should be made. Thank you.

CHAIRMAN JACOBS: I had meant to ask this question earlier, and feel free, anyone that wants to respond. There has been the position stated that this traffic while legitimate and deserving of compensation is very different from the traffic that is generally subject

to reciprocal comp and, therefore, deserving of a different treatment. So even if we were to come up with a compensation scheme, it shouldn't fall into the reciprocal comp formula. There should be a different formula that applies to it. How do you respond to that? Anyone who would like --

MR. HOFFMAN: Just a couple of comments in response to that question, Mr. Chairman. The testimony provided by Dr. Selwyn confirms that the connection between the originating end user and the modem of the ISP is no different than any other local call. That's really a factual matter.

From a local standpoint, Mr. Chairman, if the Commission determines that this call to an ISP, to an Internet service provider, is local, then the FCC rules dictate that those calls be treated like any other local telecommunications traffic; that is, that they be subject to reciprocal compensation.

So if the Commission makes the determination, as it has in the past, that this traffic is local, then you turn to the federal act and the FCC rules, and reciprocal compensation is required.

COMMISSIONER DEASON: Mr. Hoffman, how much discretion does this Commission have in fashioning an equitable reciprocal compensation payment arrangement? Is

that dictated by the FCC, or do we have discretion to fashion one which we think is equitable?

MR. HOFFMAN: Commissioner Deason, I think that the FCC rules lay out the options that are available to the Commission. And the FCC rules, for example, state that, consistent with Dr. Selwyn's testimony, the reciprocal compensation rates should be based on the forward-looking costs of the incumbent local exchange company, but there are other options available under the rules.

So, for example, if an ALEC were to come in and attempt to demonstrate to this Commission that its costs of transport and termination are higher than the ILEC's, which no ALEC has done in this record, but if that were to happen, that again would be another option for this Commission to establish an asymmetric intercarrier compensation mechanism.

In addition, the FCC rules talk about bill-and-keep. Bill-and-keep is a proposal that has been advocated by some of the ILECs. So there are a number of options available at least under the FCC rules for this Commission to implement an intercarrier compensation mechanism.

COMMISSIONER DEASON: So a bill-and-keep arrangement would comply with FCC rules as they currently

exist?

MR. HOFFMAN: A bill-and-keep arrangement would comply with the FCC rules if this Commission determines that the traffic is roughly in balance. I'm paraphrasing the language in the FCC rule. But that is a condition laid out in the FCC rule with respect to the implementation of the bill-and-keep mechanism.

COMMISSIONER DEASON: So we're restricted to using bill-and-keep only if we make a finding that traffic is in balance?

MR. HOFFMAN: Yes, sir. Under the FCC rules, that's correct. And I believe that is one of the reasons why this Commission rejected a bill-and-keep approach in the Global NAPS and BellSouth arbitration.

CHAIRMAN JACOBS: Thank you. You were done, Mr. Horton?

MR. HORTON: Mr. Chairman, I was just going to add to that, that Mr. Falvey could also address that when he gets on the stand if you care to raise that question again.

CHAIRMAN JACOBS: Very well.

MR. HOFFMAN: Mr. Chairman, I believe also that the Staff witness Mr. Fogleman addresses that issue in detail.

CHAIRMAN JACOBS: Great. Thank you. BellSouth.

MR. EDENFIELD: Good morning, Commissioners.

CHAIRMAN JACOBS: I guess I said "BellSouth," and I should have said "ILECs."

MS. CASWELL: No, actually --

MR. EDENFIELD: It doesn't matter, Kim. You can --

MS. CASWELL: Well, no, I don't want to go first, but I will point out that at the prehearing conference we indicated that BellSouth's position is somewhat different from Verizon's in this providing so that we had reserved separate time to make our prehearing statements. That said, I believe that we will have some of the same points, and Mr. Edenfield is probably going to make a much longer statement than I will. I only have about five minutes. So I think that we'll be well within the 30 minute time limit.

CHAIRMAN JACOBS: Very well.

MS. CASWELL: Thank you.

MR. EDENFIELD: Thank you. Good morning. I appreciate the opportunity to give you guys an overview of what BellSouth's position is on this. I think it's going to be, not surprisingly, startling different from what you've just heard from the ALECs. There are a number of legal issues that the Commission has teed up for consideration here. I'm going to do something out of

character for a lawyer. I'm going to dispense with talking about the legal issues for most part, and I'm going to jump into policy considerations as to why you should not set a reciprocal compensation mechanism for this traffic.

In fact, I think the most critical issue in this proceeding is how this Commission's decision today will impact competition going forward in the state of Florida. I don't have any cute little analogies about ski trips, but instead I think what I'm going to do is present some facts and data taken mostly from Dr. Selwyn's testimony, as a matter of fact, and I'm going to show the Commission how the payment of reciprocal compensation will restrict the development of competition in the residential market and at the same time is going to send a signal to the ALEC community that the place where they're going to compete is going to be in the limited business community where you have high volume inward-bound traffic.

Before I get into that, I think it's important to -- let's just take a look at the network, so we understand exactly what we're talking about when we're talking about reciprocal compensation. And I'm doing something that's brand new for me. I have never done a PowerPoint presentation, so I'm sure this is going to be botched up to a -- fairly well, but I'm going to give it a

go anyway.

If you take a look at the diagram that you see coming up on your computer, here, you've got an ISP customer. He's sitting down at his computer, and he's going to access the Internet by dialing the number of his Internet service provider. And it's important to note that the end user is paying the ISP provider for the ability to access the Internet. As this end user also happens to be a BellSouth customer for the purposes of providing local service, the call is routed through the BellSouth end office switch. It then goes through the BellSouth tandem switch. It then goes on to the ISP who then directs the call to the Internet destination chosen by the ISP's customer back there on the left-hand side of the screen.

In order for the ISP customer to be able to access the Internet through the ISP, the ISP has purchased from BellSouth some type of service; generally that's in the form of a primary rate ISDN service. You also see the initials "PRI" from time to time. When the ISP's customer uses that service to dial the Internet, the ISP pays BellSouth. The amount paid by the ISP to BellSouth covers all the costs that BellSouth incurs from taking that call from BellSouth's end office switch all the way to the ISP's routers, and then, obviously, it goes on from there,

but that's the part that the ISP is reimbursing BellSouth for in the form of -- in the example I'm using -- primary rate ISDN service.

Now, let's take a look at what happens when the ALEC enters the picture. Now, what you've got is an ALEC serving the ISP by providing the PRI lines that I was talking about in my example to the ISP. Now, both BST and the ALEC are using their facilities to allow the ISP's customer to gain access to the Internet through the ISP. As you can see, BellSouth is still providing transport end office switching and in some cases tandem switching necessary to get the call to the ALEC's point of presence, or point of interconnection, and the ALEC simply takes the call from that point and routes it to the ISP.

However, while the ALEC is only providing the last piece of the network, the ALEC receives all of the revenue from the ISP, and that is in the form of the PRI service that the ALEC is now providing. This is the same revenue that was sufficient to recover BellSouth's costs from the end office switch all the way to the ISP, and now it's used just to cover the ALEC's portion of its transport and switching.

We're now in the circumstance where BellSouth is not generating -- or is not receiving any revenue from the ISP, which, as I said earlier, was previously reimbursing

us for the entire cost of handling the call from the end user to the ISP. In addition to BellSouth no longer receiving any revenue whatsoever for its portion of that call, the ALECs now want BellSouth to pay reciprocal compensation.

COMMISSIONER DEASON: Mr. Edenfield, let me ask -- when you say there is no compensation, what about the monthly charge that the end use customer pays you to complete a call when they use your network?

MR. EDENFIELD: I will get to that in just a second.

COMMISSIONER DEASON: Oh, okay.

MR. EDENFIELD: And I have a couple of slides on that. I'll give you a little precursor. And in fact, that was the next point I was going to make, is that the ALECs attempt to justify this inequity by saying that the basic local exchange rates, the 1-FR rates, covers the cost of the reciprocal compensation obligation. And as I'll demonstrate now unless Chairman Jacobs has a question --

CHAIRMAN JACOBS: Yes. What about any revenues that you are going to get through your interconnection agreement with the ALEC? Are you getting --

MR. EDENFIELD: Well, in this instance, you've got a facilities-based provider. I mean, we're not

getting --

CHAIRMAN JACOBS: Aren't you getting -- are you getting no revenue through your interconnection agreement with the ALEC, the serving ALEC, here?

MR. EDENFIELD: Only if the ALEC would be purchasing or reselling from BellSouth or if the ALEC is purchasing facilities from BellSouth. But in this instance, the ALEC is providing its own switching, and it's going from its interconnection point, which is normally at the tandem, all the way to the ISP. So in this instance, the ALEC would be providing its own facilities. This would be facilities-based service.

CHAIRMAN JACOBS: Okay.

COMMISSIONER JABER: Mr. Edenfield, I greatly appreciate this, but it would be good also if there was a witness that sponsored this. Do you-all put on witnesses to sponsor --

MR. EDENFIELD: Ms. Shiroishi is going to describe the network configuration and how that works.

COMMISSIONER JABER: Okay. Because I have questions on this too, but I don't think that a lawyer should be testifying on policy.

MR. EDENFIELD: I'll remind Mr. Falvey of that when he gets up. Let me move on and talk about this point about the -- whether the 1-FR rate covers the cost. And

I'm taking this from Dr. Selwyn's testimony. This is coming directly from his chart. Dr. Selwyn estimates that on average a customer that accesses the Internet spends about 1,500 minutes a month on the Internet. Dr. Selwyn also contends that the ALEC should be reimbursed for that usage at the rate of .00325, which is the tandem switching rate set forth by this Commission in previous orders.

When you multiply out the minutes of use Dr. Selwyn estimates by the rate Dr. Selwyn says should apply, you come up with $4.87, and that is BellSouth's reciprocal compensation obligation per subscriber per month. Now, you compare that with the rate groups, or as the Commission is well aware, you've got 12 rate groups in Florida, the lowest being $7.41 in Rate Group 1 and $10.81 in Rate Group 12. And as you can see the percentages there, what they're suggesting, the ALECs are suggesting, is that BellSouth needs to give up in Rate Group 1, 65 percent of its revenue for basic local exchange service and 45 percent in Rate Group 12 just to pay a reciprocal compensation obligation. And again, this is discussed in the testimony, but the Commission is also well aware that the $7.41 and the $10.81 come nowhere close to covering BellSouth's actual cost of providing the service.

The best example I can give you of that is in the recent -- I guess the most recent UNE order. The loop

cost itself that this Commission has set a TELRIC-based rate for, the loop cost itself is $17, and that's just one part of providing basic local exchange service. So as you can see, BellSouth is already providing service at well under its cost, and now on top of that, the ALECs are coming in and asking us to give up anywhere from 45 percent to 65 percent of that revenue for reciprocal compensation payments.

MR. HOFFMAN: Mr. Chairman, pardon me, and pardon me, excuse me, Mr. Edenfield. But at this point, I'm going to object because if Ms. Shiroishi is the actual witness on these issues, I don't see those numbers in her testimony.

MR. EDENFIELD: This is coming -- I'm sorry.

MR. HOFFMAN: If it is Dr. Selwyn that he's referring to, the only number that I see in his testimony that's on that screen is 1,500 minutes per month. I don't see Rate Group 1, the dollar figures, the percentage figures, Rate Group -- the remainder. And so I'm concerned that we're straying afar from the prefiled direct testimony.

CHAIRMAN JACOBS: Mr. Edenfield.

MR. EDENFIELD: Let me suggest that we are exactly in par with the prefiled testimony. The number 1,500 comes directly from Dr. Selwyn's testimony on

Page 23, I believe. The .00325 tandem switching rate is exactly -- while he might not use the number, Dr. Selwyn does testify that they should be entitled to be compensated at the tandem switching rate. The Rate Group 1 and Rate Group 12 numbers come directly from BellSouth's tariffs which have been admitted into evidence by this Commission as part of the composite exhibit. The rest of it is just math.

CHAIRMAN JACOBS: The rate that is not in testimony that you've indicated here you say is from -- not the rate group but the other amount that you spoke.

MR. EDENFIELD: The tandem switching rate?

CHAIRMAN JACOBS: Yes, the tandem switching rate.

MR. EDENFIELD: That's what Dr. Selwyn testifies that the ALECs would be entitled to recover.

CHAIRMAN JACOBS: But he doesn't give the exact tandem switching rate in his testimony.

MR. EDENFIELD: Well, I mean, that is the tandem switching rate for Florida, and that's also part of the official recognition list which the Commission has already put into evidence in this proceeding.

CHAIRMAN JACOBS: Well, that would seem to come within the objection. If it's not being presented by a witness, your example would be subject to that objection

on that point.

MR. EDENFIELD: Okay. Well, I mean, I'm not sure there's any disagreement as to what the tandem switching rate is in Florida, although somebody may not have specifically put .00325 by it. Certainly the ALECs' position is, they are entitled to be compensated at the tandem switching rate in Florida. I mean, that is the tandem switching rate in Florida. I'm not sure how that goes beyond the scope of the testimony.

CHAIRMAN JACOBS: Well, it goes -- I think I'll grant the objection as to the calculation using that particular rate. I don't think there's any dispute that you can use a generic assessment of a tandem switching rate. And it may be the exact rate, but I think it's been objected to, and because we don't have it in the record, I'm going to allow that objection. As to the other matters, you indicate they are in testimony?

MR. EDENFIELD: Well, let me suggest to you, it is in the record. It's in the form of an order that the Commission -- it's on the official recognition list that the Commission has just admitted into evidence. The tandem switching rate is part of one of those orders that was admitted.

COMMISSIONER JABER: I thought it was made clear that in my allowing opening statements, I thought you were

going to talk about jurisdiction and the law and what the state commission could or couldn't do in light of the FCC. This is why I said something earlier, Mr. Chairman. And furthermore, witnesses will be allowed to summarize their testimony. I thought we made that clear too.

MR. EDENFIELD: I understand all of that. I mean, the ALECs were given the opportunity to talk about policy considerations that Dr. Selwyn is raising, and I thought I was just doing the same. If I've gone beyond what you think is appropriate, certainly I will --

COMMISSIONER JABER: Well, my concern is, this is very good information, but I'd want to make sure it was in the record. And what I hear you saying is that it may not be.

MR. EDENFIELD: No. What I'm saying is, it is in the record, every bit of it.

MR. MOYLE: Global NAPS would join in the objection. And to the extent this relies on evidence of Ms. Shiroishi, you know, her testimony is not in the record. It hasn't been admitted. It's subject to objection. So we would join in the objection. We would also like to ask that we be provided a copy of this PowerPoint presentation.

CHAIRMAN JACOBS: Here's what I'm going to do. I'm going to grant the objection as to this slide in the

PowerPoint presentation and any further mention of the calculation that uses those rates -- that rate. What I hear you say, however, is that the rate group is in the record and the other information is in the record, so I don't think that poses a problem. Because of the total calculation on this one, I will grant that objection.

Now, I want you guys to think about how we deal with that in the record, and then we'll come back later and figure out how to clean the mess up. But as to this particular slide and the calculation it derives, I'll grant the objection.

MR. HOFFMAN: Thank you, Mr. Chairman.

COMMISSIONER DEASON: Let me get some clarification. I didn't think any of this was in the record in the sense that this is evidence. This is Mr. Edenfield explaining -- he's saying these numbers are in the record, and that will or will not be in the record eventually.

But none of what -- in all due respect, none of what you're saying is going to be a basis for us to make any kind of a fact or determination. You're just laying the groundwork, educating the Commissioners of what we can expect when we see the person take the stand, and we can look for that. That's all I think we're trying to do here. I don't think you're trying to put evidence in the

record right now, are you?

MR. EDENFIELD: I'm not, no. No, sir.

CHAIRMAN JACOBS: Well, it was my understanding that this was a summary which was -- the summary was -- the scope of which was to be the testimony that is in or will be admitted into the record. I would think it would be disingenuous to --

MR. McGLOTHLIN: That's correct, Mr. Chairman. And on behalf of my clients, I'd like to join in the objection and clarify that our objection is based on the fact that the purpose of opening statements should be to predict and preview what the witnesses are going to say and what the impact of that should be. Now, it's possible that each of these numbers are somewhere in evidence, but our point is that as far as we can tell, no witness pulled these things together and drew inferences and conclusions and made arguments on them as the way counsel is doing now. So the fact that you might find a number here and another number over there does not justify the use of it in the way he's doing.

CHAIRMAN JACOBS: And understand, what I'm ruling here is that in the context of an opening preview, if you will, I think that's what the objection went to, and that's what I'm granting. If this were a court of law and this were closing, I think you might have wider

latitude, perhaps. In your briefing probably you have wider latitude on this point, but in this context, I think that the objection is appropriate, and I'll grant that. And you may proceed.

MR. EDENFIELD: I'll accommodate Commissioner Jaber's request that we move along to jurisdictional issues.

COMMISSIONER JABER: Let me clarify that. I agree with Commissioner Deason. My statement goes to, in deciding to grant the opening statements, I thought you were going to focus on jurisdiction. It's not to say I don't agree that the purpose of the opening statements is to lay the groundwork. I'm just saying that what was represented to me was that you-all wanted to focus on the law and the jurisdiction.

MR. EDENFIELD: Commissioner Jaber, I'm sorry if there's some confusion. I mean, frankly, BellSouth took the position at the prehearing that I didn't really care one way or the other whether we had an opening statement or not, but I'm sorry if I've gone beyond what you thought we were going to do.

CHAIRMAN JACOBS: I think we're perfectly prepared to move forward. I don't think we're that far off course, and I think we can move forward with your presentation. And I only granted it as to this particular

discussion here, so I think the rest of it is fine. And we can move forward with that.

MR. EDENFIELD: I think the evidence will also show -- and I'll move along to the last couple of topics here -- that when you look at the potential amount of reciprocal compensation that can be generated through the purchase of services, the evidence is going to show and you are going to find that the reciprocal compensation potentially due from, say, for instance, the provision of PRIs can sometimes exceed the cost of the PRI by three times.

In other words, for $1,000 PRI you can end up with a recip comp obligation on behalf the ILEC in the nature of $3,000. And I think that is the windfall that BellSouth has been objecting to and continues to object to and will present the testimony on.

What BellSouth feels is the adequate solution to stop this windfall is that the Commission institute a bill-and-keep type arrangement, assuming the Commission has jurisdictional at all, which certainly I think the D.C. Circuit, with all due respect to Mr. Hoffman, did not necessarily tell the FCC it was wrong. What it told the FCC was, it did not establish an adequate basis to justify its conclusions, and it sent the case back to the FCC for that justification. And in fact, any day now, you're

probably going to see that justification manifest itself in the form of an order. In fact, we were expecting one yesterday, but you know how that works.

This Commission -- to the extent this Commission does feel like it has jurisdiction to go about setting forth an intercarrier compensation mechanism, Mr. Hoffman is correct in that if this Commission determines this to be local traffic, that a bill-and-keep arrangement is appropriate only when the traffic is relatively balanced, and I guess the Commission can define "relatively" any way it would like.

To the extent the Commission is trying to develop an intercarrier compensation mechanism for ISP-bound traffic that it does feel is local, then certainly the limitations on having a bill-and-keep arrangement would not be applicable as that is only applicable to local traffic.

COMMISSIONER DEASON: Mr. Edenfield, if we think it's not local traffic, what business do we have in setting any rate?

MR. EDENFIELD: Well, this gets back to the original declaratory ruling where the FCC had -- at least in our mind in dicta had indicated that the Commission -- while this is not traffic subject to 251(b)(5) of the Act, the Commission could establish intercarrier compensation

mechanisms for ISP traffic. Now, to the extent the Commission wishes to -- to the extent that's even still available because of the case being remanded, to the extent the Commission would like to avail itself of that opportunity, then I think that's the route you would have to go. And in that instance, you are not dealing with local traffic which would have the --

COMMISSIONER DEASON: Let me just interrupt. Are you saying that the FCC has granted this Commission the ability to set a compensation rate for traffic that we do not consider to be local?

MR. EDENFIELD: I always took -- BellSouth always took the position that that was dicta and did not confer on this Commission any authority whatsoever; that this authority to deal with this entire issue is exclusively within the jurisdiction of the FCC. However, there were those, including the ALECs, who took the comment by the FCC in that declaratory ruling that said the commissions could consider an intercarrier compensation mechanism to be just that.

And the only way to square the Commission's ruling -- the FCC's ruling that this traffic is not 251(b)(5) local traffic and they're at least in dicta appearing to grant the Commission the authority to consider an intercarrier compensation mechanism, the only

way that I can see to square that is to say that intercarrier compensation is not local, but to the extent the Commission wants to do something with it, it can, and it wouldn't be bound by 251 of the Act, which would set forth a limitation of bill-and-keep.

COMMISSIONER DEASON: Well, let me ask you this question. If it's not local and it's not toll, what is it?

MR. EDENFIELD: Something unto itself is all I can tell you. I mean, historically, you've had two buckets. You've had -- it's either been local, or it's been toll. But the question is, is the FCC going to create now a third bucket to throw the ISP traffic in? Because nobody can quite figure out exactly what it is. And I don't know if that's where the FCC is going to leave us or not, but that's the only way I can see this Commission moving forward.

I mean, the FCC is going to tell the Commission one way or the other. Either this Commission is going to be expressly given grant of authority to deal with this, or the FCC is going to say, it's ours.

COMMISSIONER DEASON: What do we do in the meantime?

MR. EDENFIELD: Well, with all due respect, BellSouth had asked to postpone the proceeding until after

the FCC gave us some guidance. There were those who wanted to push forward, so here we are. I don't know that I can give you a warm feeling about, you know, the effort you're about to put into this and whether it's going to come to fruition or whether it's going to be a complete waste of time. I don't know. Only the --

COMMISSIONER DEASON: Well, it wouldn't be the first time that something we have done had been a waste of time.

MR. EDENFIELD: It would definitely not be the first time. That seems to be, unfortunately, a common thing with some of these proceedings, is the Commission moves forward to try to, you know, do its job and only to find out in the end that the FCC has pulled the rug out from under you. And again, I can't offer you any warm, fuzzy feeling about it, but the FCC is going to do what it's going to do, and it's probably going to do it fairly quickly.

COMMISSIONER JABER: Has the FCC pulled the rug out from any state commission that's ruled on a reciprocal compensation issue as it relates to ISP?

MR. EDENFIELD: Not yet. But this order supposedly will either say the states can do it or they can't definitively.

COMMISSIONER JABER: How do you reconcile

Section 251 of the Act that requires the Commission I think it uses the word "shall" arbitrate any issue that comes before it in an arbitration with -- and of course, some of -- that's where the ISP recip comp issue comes in.

MR. EDENFIELD: Here's the only thing I can tell you on that, and I know that in a number of arbitrations we now have a jurisdictional kind of a Q and A that we put in there. This Commission has the obligation to arbitrate any issue that's brought in front of it; however, the Commission's arbitrations and decisions are limited to being in compliance with FCC rules and regulations. So while the ALECs and ILECs can continue to bring the reciprocal compensation issue to the Commission, ultimately you are going to be bound and have to -- whatever decision you make, it's going to have to be within the guidelines of the FCC.

It's kind of like, you know, you can pick any color you want as long as it's blue. I mean, I think that's where this is going to be heading. And it may just be an effort in futility to a certain point because we're going to continue to bring issues to the Commission, and the FCC is going to already have given guidance on how that issue has to be ruled upon. And this Commission's responsibility is going to be, do what the FCC has said to do.

COMMISSIONER JABER: Do you have anything -- can you cite to anything that would lead you to believe that the FCC's ruling would be applied retroactively to what a state commission does?

MR. EDENFIELD: I don't know. I mean, I think that would be up to the FCC. I don't know, you know, whether -- you know, you can have rulings that interfere with prior contracts, and I really just don't know how the FCC is planning on doing it. I would anticipate it would be going forward.

The problem is, if the FCC says that the traffic all along was interstate traffic subject to Section 201 of the Act, not 251, then anything this Commission has done up until now is going to be suspect because you will never have had the jurisdiction to do it in the first place. You know, in effect, they may end up ruling retroactively by saying it's always been 201 interstate traffic, but I don't -- I have no way of knowing if they are going to come out and definitively say, this ruling applies back to such and such.

COMMISSIONER JABER: How can you say we don't have jurisdiction when you just acknowledged that 251 requires us to make a ruling with -- in arbitrations when the issue of ISP recip comp comes up?

MR. EDENFIELD: Well, I mean, I'm not sure how

to answer that other than this. Certainly this Commission is vested with the responsibility of arbitrating issues that come up before it, but at the same time, you have to arbitrate it consistent without the FCC telling you to do it. Now, I don't know. It's just kind of a weird conundrum there.

While this Commission certainly would have to consider any issue that came before it, if the FCC says that is interstate traffic, then I don't know where that leaves the Commission. I mean, it would be the equivalent of the ILECs and ALECs coming in the course of an interconnection arbitration saying, we want a provision in the interconnection agreement that says we want to have access rates put in the agreement. I mean, obviously, the Commission would have to deal with it, but I don't think the Commission would consider itself as having jurisdiction over access rates.

I mean, that's the same kind of quandary that you're going to be in if the FCC takes jurisdiction. I mean, again, you know, the parties can bring anything they want, and unfortunately, the Commission is bound to consider it. And your consideration may end up being along the lines of, we don't have jurisdiction to do this, so therefore, you know, that's our ruling. But I don't know how to -- I mean, you can't have jurisdiction where

you don't have jurisdiction. I mean, one or the other.

COMMISSIONER DEASON: Did I understand you earlier to say that it was your preference, your client's preference that this Commission do nothing at this point, we keep the status quo until the FCC makes a definitive decision?

MR. EDENFIELD: That was certainly our initial position and I guess remains our position, that the Commission, you know, hold this in abeyance until such time as the FCC rules and tells us what we need to do. I mean, if the FCC -- well, I mean, obviously, you know, we'll follow the FCC directives, you know, the ILECs, the Commission and everyone else, to the extent the FCC tells us what to do.

Now, obviously, with the FCC there's a fear that the order may come out and be clear as mud, and we may be in the same situation not knowing what to do. But given the history and the challenge of the D.C. Circuit to the FCC's jurisdiction, I have a feeling the FCC is going to definitively say one way other whether it's got jurisdiction.

COMMISSIONER DEASON: Okay. Well, I understand that. I guess what I don't understand then is why you're content with leaving the status quo if you're complaining that the reciprocal compensation you're having to pay is

taking an unwarranted percentage of the local revenue you get from customers who use the Internet.

MR. EDENFIELD: Well, I'm not sure that BellSouth's position would be that the status quo is to pay. I mean, obviously, this Commission has ordered us in a couple of complaint proceedings and in a couple of --

COMMISSIONER DEASON: Well, are you paying now, or are you not paying?

MR. EDENFIELD: To the extent the Commission has ordered us to pay, we're paying. To the extent the Commission has not ordered us to pay, we're not paying. Because it's still our position that until you tell us otherwise in interpreting a contract or in an arbitration to do something different, that BellSouth does not owe this money and is not responsible for paying it.

COMMISSIONER DEASON: This Commission has been fairly consistent, has it not, in requiring you to pay?

MR. EDENFIELD: On the previous contracts, to my knowledge, all of the complaint proceedings have resulted in the Commission making a determination that BellSouth was obligated -- that we had agreed to pay recip comp in that instance.

COMMISSIONER DEASON: Do you have new agreements that that issue has not been before the Commission, and is that the reason you are content to just keep the status

quo?

MR. EDENFIELD: I mean, we have new agreements. I'm not sure I understand exactly what you are asking me.

COMMISSIONER DEASON: Well, my concern -- you're the one that made the presentation that is not evidenced in the record that you're having to pay an unwarranted percentage of your local revenue to ALECs who have ISP customers. And if that is a big problem, it looks to me like you'd want that problem fixed.

MR. EDENFIELD: I would love to have it fixed, but what I don't want to do --

COMMISSIONER DEASON: But you just don't want this Commission to fix it, you want the FCC to eventually make a decision.

MR. EDENFIELD: I would love for this Commission to fix it, but at the same time, I'm a realist. And I know that when the FCC rules, whatever it rules is probably going to be different than whatever we've done. That just seems to be the history of it. And, you know, if the FCC comes out and says the State has authority to do this, but all means, let's move at breakneck speed. Let's just go, and let's put something in place, and let's get it done.

But if the FCC says, we have jurisdiction; the state commissions -- this is not 251 traffic; state

commissions, you have nothing to say about this; we're going to put in place our own payment schedule, our own mechanism, then, frankly, we have wasted a bunch of time. And it was that fear of waste of time that led us early on to say, why don't we wait until the FCC comes out and does something before we move forward? But, I mean, we're here now, so I don't know what time savings and --

CHAIRMAN JACOBS: Didn't the Court -- let me make sure I understand it this. The Court essentially ruled that the logic that these calls are absolutely interstate in nature is suspect at least. You could argue that they overturned them, but at least that is suspect; isn't that correct?

MR. EDENFIELD: Generally, what they said was that the FCC did not provide I think the exact term was "reasoned" -- it was "reasoned" something. It did not provide a reasoned -- I don't remember what it was. Anyway, it was something about, it did not provide a reasoned rationalization, or whatever, for the conclusions that it had reached.

CHAIRMAN JACOBS: Okay.

MR. EDENFIELD: And what the D.C. Circuit did was send it back to the FCC saying, you need to justify your conclusion that this is interstate traffic and reissue an order or whatever you're going to do.

CHAIRMAN JACOBS: Okay.

MR. EDENFIELD: And that's the task that the FCC is undergoing now, is giving the reason to rulemaking as to why this is interstate traffic or if they are just going to change their minds altogether.

CHAIRMAN JACOBS: Okay. So ultimately, if this plays out -- and let's say that we're on the first round, that the FCC does come back and attempts to build support for the idea that this is an interstate transaction, isn't that the only way that they can proclaim jurisdiction here?

MR. EDENFIELD: I think that's probably correct.

CHAIRMAN JACOBS: Okay. So if that gets challenged and/or if the FCC chooses not to try and support the idea that this is an interstate call, they can't proclaim jurisdiction over this, can they?

MR. EDENFIELD: I'm sorry, Chairman Jacobs. Say that one more time.

COMMISSIONER JABER: If the FCC elects not to pursue the theory that this is a one-call interstate transaction and elects to come back and buy into the two-call theory, they can't proclaim jurisdiction over this traffic anymore, can they?

MR. EDENFIELD: Well, they would only proclaim jurisdiction over the part that traverses the --

CHAIRMAN JACOBS: Right.

MR. EDENFIELD: -- crosses LATA boundaries. I mean, if the FCC came back and said, yeah, we've changed, you know, since 1980-- whatever it was when they first came out with this end-to-end jurisdiction analysis -- I mean, some 20 years, if they come back and say, we're no longer going to do an end-to-end analysis; we're going to let you break up a call among mid points; and to the extent that the ISP would be located within a LATA boundary with the end user, then it is local traffic. And you have all the jurisdiction in the world over it, and they don't; you do. You know, if they were to do that.

CHAIRMAN JACOBS: And I agree with you that that is an unlikely prospect. But I think we do have some guidance as to what is a more likely prospect, and that's what's already stated, that contrary to them simply exceeding jurisdiction on this point, they would exceed state authority to act in this area.

MR. EDENFIELD: With all due, I disagree. I think what the FCC is going to do now that -- I don't think the FCC is going to allow the regulation of the Internet to get away from them. I just don't see it happening. And I think what they are going to do -- now that their jurisdiction has been challenged by the District Court -- by the D.C. Circuit Court, I think what

you're going to find is an order that definitively says, we have jurisdiction, and here's the mechanism we're going to have to compensate for this ISP traffic.

CHAIRMAN JACOBS: And that's exactly my point. Based on this Court's order, I don't see how they can come back and simply proclaim that. They have to come back with solid legal support and factual support for the idea of this one-call theory, which still could be challenged.

MR. EDENFIELD: No doubt about it. But I think that's precisely what they're doing now, is they're gathering the record; they're putting together the arguments; they're doing all the analysis to justify what they concluded the first time.

CHAIRMAN JACOBS: Okay.

MR. EDENFIELD: I mean, ultimately, if you think about it, all they got really challenged on and reversed on was, they didn't have enough record evidence to support their conclusions. So, you know, as with any body, I'm sure now what they are doing is, they are gathering the regulatory support to justify the position, which is, you know, in my mind, going to be the same as this was before.

CHAIRMAN JACOBS: Thank you. Commissioners?

COMMISSIONER JABER: Just one final question, something we haven't talked about with respect to jurisdiction. To the degree that the FCC rules are in

flux or pending or we really don't know what the federal law is on this issue, what obligation do we have to defer and implement state law as it relates to competition?

MR. EDENFIELD: You're almost taking me back to constitutional law 101. To the extent the FCC has not indicated that it's going to or has regulated a particular area, I think the State is it free to regulate in that area. But again, the FCC -- the federal jurisdiction will take precedence over state jurisdiction.

COMMISSIONER JABER: Right. But if there is no federal law to preempt state law, what do you do?

MR. EDENFIELD: Then you can move forward under state law. I don't see any reason --

COMMISSIONER JABER: And isn't that where we are right now?

MR. EDENFIELD: I don't know that. I could see the argument the other way, but my position would be this. The FCC has already indicated it's going to rule in this area. The FCC, in fact, already ruled in this area, although it got reversed to justify its conclusions. To say that the FCC has not taken jurisdiction of, you know, Internet traffic I think would be a stretch. I think, in fact, they have, and they are in the process now of justifying their conclusions.

And, you know, ultimately, it may be -- you

know, it may be that the FCC can never justify its conclusions to the Court's satisfaction, but I personally find that hard to believe. I think they will be able to set the record, and they're going to set a mechanism, and it's going to be over. And I don't know where that leaves Florida other than having spent a lot time with a valiant effort for nothing, potentially.

COMMISSIONER DEASON: Mr. Edenfield, let me ask you another question. I'm having difficulty meshing your two arguments. One, I've heard you earlier say, and whatever the numbers are in the record will reflect that, the bottom line is, I heard you saying that to some extent you're bleeding. Okay. But then I also hear you saying is, is that while you're bleeding and you're in the emergency room, you don't want the FPSC to be your doctor. You want to wait, and hopefully the FCC is going to fix your bleeding.

Now, if I were bleeding, I'd want somebody regardless of the doctor to sew me up. Maybe you're afraid that we're going to amputate your leg or something, I'm not sure. I'm just trying to mesh these two arguments. And one conclusion is, maybe you're not bleeding that badly if you can wait around.

MR. EDENFIELD: Well, we are bleeding. And I can tell you, if we didn't think the orthopedic surgeon or

the vascular surgeon was sitting in the waiting room about to walk in the door, we would be taking a little bit different tact on this. But from all indications we're getting, you know, from our folks, the FCC is about to issue a ruling. If it hadn't been for the change of parties and the change of chairman, an order already would have come out.

So it's almost like -- I understand what you're saying, and I don't disagree with what you're saying to a certain extent, but we feel like the surgeon is there. He's fixing to walk in the door to fix this mess, and it would fix it not only -- you know, it would fix a number of appeals in a number of states. I mean, hopefully, when the FCC issue its order, it's going to solve this problem for us regionally one way or another.

To the extent maybe our positions are a little inconsistent, I see what you're saying, but I can tell you if it looked like an FCC order was not imminent, we would be begging you to just move forward and let's do something in the interim because, frankly, we are bleeding.

COMMISSIONER JABER: The surgeon has gone to the wrong rooms and got lost along the way.

MR. EDENFIELD: Is there a doctor in the house?

CHAIRMAN JACOBS: Now, on that point, heretofore --

COMMISSIONER DEASON: What would be nice, if the surgeon could just do his job, and then we wouldn't have to worry about the litigation in the courts. It's always going to result no matter what the doctor does.

CHAIRMAN JACOBS: The triage.

MR. EDENFIELD: Out of prudence, I'm not even going to comment.

CHAIRMAN JACOBS: I don't know if this is pertinent to this docket or not, but I'll just ask it. In many instances, we -- in other interconnections agreements while this issue had been there, I was under the impression that revenue was not flowing yet. So I take it that revenue is flowing in the agreements that have addressed this issue thus far?

MR. EDENFIELD: Are you talking specifically to reciprocal compensation?

CHAIRMAN JACOBS: Right, reciprocal comp.

MR. EDENFIELD: Well, I mean, keep in mind, you have got reciprocal compensation for what everybody agrees is local traffic. I mean, that's flowing -- you know, it's flowing like a river. It's only to the extent it's ISP traffic that it's not flowing. And then it's only flowing -- you know, it's flowing to the extent you've ordered us to let it go. I mean, you know, we're complying with the orders, but that's the only part of

reciprocal compensation that's not flowing. I don't want you left with the impression that we're not paying any reciprocal compensation. I mean, the parties are letting it fly for everything else.

CHAIRMAN JACOBS: Any other questions, Commissioners?

MR. HOFFMAN: Mr. Chairman, I mean, if I may. My understanding of that particular situation is different than that of Mr. Edenfield's, okay, in terms of the --

CHAIRMAN JACOBS: Okay.

MR. HOFFMAN: But I can tell you this: There's no evidence in the prefiled testimony specifically addressing that point.

CHAIRMAN JACOBS: Right. And I understood that. And that's why I was -- realized I wanted to touch ground, but we'll take your responses as that. Commissioners, I think we might -- are there any questions? And, Mr. Edenfield, we cut you short.

MR. EDENFIELD: No. But I would just say one more time, I apologize if I kind of got off track on where we thought this was going. I'm terribly sorry. I didn't mean to go down a road that nobody wanted to go down, and I do apologize.

COMMISSIONER JABER: This is all very helpful. I'm just trying to get my hands around the jurisdictional

issues because I think that's the foundation, so it's helpful. Thank you.

MR. EDENFIELD: Good luck. Thank you very much.

CHAIRMAN JACOBS: That concludes -- great. Thank you. Staff, did you have any opening statements?

COMMISSIONER JABER: Ms. Caswell --

CHAIRMAN JACOBS: I'm sorry.

MS. BANKS: Staff has nothing.

(Transcript continues in sequence in Volume 2.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, TRICIA DeMARTE, Official Commission Reporter, do hereby certify that the Hearing in Docket No. 000075-TP was heard by the Florida Public Service Commission at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 198 pages, Volume 1 constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 21st DAY OF MARCH, 2001.

Tricia DeMarte

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