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**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 TELECOMMUNI-  
CATIONS ACT OF 1996.**



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**VOLUME 5  
PAGES 580 THROUGH 760**

**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: Thursday, March 8, 2001**

**TIME: Commenced at 9:00 a.m.  
Concluded at 6:05 p.m.**

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

**REPORTED BY: JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief, Bureau of Reporting**

DOCUMENT NUMBER-DATE

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FPSC-RECORDS REPORTING

**I N D E X****WITNESSES**

<b>NAME:</b>	<b>PAGE NO.</b>
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**EXHIBITS**

**NUMBER:**

**ID. ADMTD.**

<b>23</b>	<b>ERAS-1 and ERAS-2</b>	<b>587</b>	<b>758</b>
<b>24</b>	<b>Bell Atlantic Decision</b>	<b>666</b>	<b>758</b>
<b>25</b>	<b>BellSouth's 1999 From 10K</b>	<b>679</b>	<b>758</b>

**CERTIFICATE OF REPORTER**

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**PROCEEDINGS**

(Transcript follows in sequence from Volume 4.)

**CHAIRMAN JACOBS: BellSouth, your witness.**

**MR. EDENFIELD: Thank you, Chairman Jacobs.**

**BellSouth calls Beth Shiroishi.**

-----

**ELIZABETH R.A. SHIROISHI**

**was called as a witness on behalf of BellSouth  
Telecommunications, Inc. and, having been duly sworn,  
testified as follows:**

**DIRECT EXAMINATION**

**BY MR. EDENFIELD:**

**Q Ms. Shiroishi, would you confirm that you were  
previously sworn?**

**A Yes, I was.**

**Q State your name and position with the company  
for the record, please?**

**A Elizabeth R. A. Shiroishi, I am a managing  
director of BellSouth.**

**Q Are you the same Elizabeth Shiroishi who caused  
to be filed in this proceeding 26 pages of direct  
testimony?**

**A Yes, I am.**

**Q Are you the same Elizabeth Shiroishi that caused  
15 pages of rebuttal testimony to be filed in this**

1 proceeding?

2 A Yes.

3 Q Do you have any changes to either your direct or  
4 rebuttal testimony?

5 A No, I do not.

6 Q Did you have any exhibits to your direct  
7 testimony?

8 A I did, two exhibits.

9 MR. EDENFIELD: Chairman Jacobs, we would ask  
10 that Ms. Shiroishi's direct and rebuttal be admitted into  
11 the record as if read.

12 CHAIRMAN JACOBS: Without objection shows  
13 Ms. Shiroishi's direct and rebuttal testimony entered into  
14 the record as though read.

15 MR. MOYLE: Mr. Chairman, we would like to  
16 register an objection on her testimony coming in as read.

17 CHAIRMAN JACOBS: On what grounds?

18 MR. MOYLE: I guess I'm unclear as to the basis  
19 upon which she is testifying. Is she a fact witness, is  
20 she an expert witness. If she is an expert witness, I  
21 think voir dire is recognized and given by the Florida  
22 Rules of Civil Procedure and we would like to conduct it.

23 MR. EDENFIELD: My response to that is Ms.  
24 Shiroishi is an employee of the company, she is well  
25 versed in these matters. This is the same stunt that

1 **Mr. Moyle pulled when we had the Global NAPS complaint**  
2 **proceeding. We have already been down this road. This**  
3 **Commission has recognized her as qualified to testify**  
4 **before. She has testified before the Florida Commission**  
5 **before, and this is just a repeat of what happened last**  
6 **time, which is nothing more than Global NAPS' counsel**  
7 **getting up trying to grandstand and smear Ms. Shiroishi's**  
8 **credentials.**

9 **CHAIRMAN JACOBS: Ms. Shiroishi was available**  
10 **for deposition, right?**

11 **MR. EDENFIELD: They could have taken her**  
12 **deposition. She was available for deposition. They**  
13 **didn't ask to take her deposition. Again, she has**  
14 **testified before this Commission before. This same**  
15 **objection by the same lawyer representing the same company**  
16 **was made and it was overruled by the Commission.**

17 **CHAIRMAN JACOBS: You failed to take a**  
18 **deposition, Mr. Moyle?**

19 **MR. MOYLE: We have taken her deposition in**  
20 **other cases. The purpose for which I want to conduct voir**  
21 **dire relates to if she is not going to be offered as an**  
22 **expert with respect to any kind of legal matters, then**  
23 **that's fine. But her testimony is replete with**  
24 **interpretations of law, opinions on jurisdiction, legal**  
25 **matters that with all due respect, she is not qualified to**

1 answer.

2 So what I want to do is register that objection  
3 on the basis of what she is testifying to. She is not an  
4 expert, she is not a lawyer, ask her those questions and  
5 move to strike those portions of the testimony that relate  
6 to legal opinion.

7 CHAIRMAN JACOBS: Any other discussion? I'm  
8 going to note the objection, but deny the request to  
9 strike her testimony. You can take care of cross in  
10 dealing with her qualifications to support her testimony,  
11 and we will go from there.

12 MR. EDENFIELD: We would ask that Ms.  
13 Shiroishi's Exhibits ERAS-1 and ERAS-2 attached to her  
14 direct testimony be marked for identification. I believe  
15 23, if I have kept count right, is the next --

16 CHAIRMAN JACOBS: That is correct. Show  
17 Exhibits ERAS-1 and 2 marked as Exhibit 23.

18 (Exhibit 23 marked for identification.)

19

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6 **NOTE: Page 587 was inadvertently omitted in numbering.**

7 **Transcript follows in sequence on Page 588.)**

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1 BELL SOUTH TELECOMMUNICATIONS, INC.  
2 DIRECT TESTIMONY OF BETH SHIROISHI  
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 000075-TP  
5 DECEMBER 1, 2000  
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH  
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") AND YOUR  
9 BUSINESS ADDRESS.

10

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

14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND  
16 AND EXPERIENCE.

17

18 A. I graduated from Agnes Scott College in Decatur, Georgia, in 1997, with a  
19 Bachelor of Arts Degree in Classical Languages and Literatures. I began  
20 employment with BellSouth in 1998 in the Interconnection Services Pricing  
21 Organization as a pricing analyst. I then moved to a position in product  
22 management, and now work as a Managing Director for Customer Markets –  
23 Wholesale Pricing Operations. In this position, I am responsible both for  
24 negotiating and for overseeing the negotiations of Interconnection Agreements,  
25 as well as Local Interconnection, Internet Service Provider ("ISP")/Enhanced

1 Service Provider (“ESP”), and Internet Protocol (“IP”) issues.

2

3 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

4

5 A. The purpose of my testimony is to present BellSouth’s position on the issues  
6 raised in this docket.

7

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

10

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

13

14 Q. DOES THE COMMISSION HAVE JURISDICTION OVER NON-LOCAL  
15 ISP-BOUND TRAFFIC?

16

17 A. No. Since ISP-bound traffic is an interstate access service and is  
18 predominately interstate in nature, such traffic is within the exclusive  
19 jurisdiction of the Federal Communications Commission (“FCC”). The  
20 determination of the appropriate intercarrier compensation for ISP-bound  
21 traffic is an issue to be decided (and will ultimately be decided by the FCC) as  
22 it is the subject of a pending rulemaking by the FCC

23

24 Q. HAVE THERE BEEN ANY COURT ORDERS WHICH AFFECT A STATE  
25 COMMISSION’S AUTHORITY TO ADDRESS AN INTER-CARRIER

1           COMPENSATION MECHANISM FOR ISP-BOUND TRAFFIC?

2

3 A.       The D.C. Circuit Court’s action had a substantial impact on whether states can  
4 address the issue of compensation for ISP-bound traffic in arbitration  
5 proceedings. The Declaratory Ruling (see *Declaratory Ruling, In the Matter*  
6 *of Implementation of the Local Competition Provisions in the*  
7 *Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound*  
8 *Traffic, CC Docket Nos. 96-98, 99-68* (“Declaratory Ruling”), released  
9 February 26, 1999) was the only order which purported to specifically  
10 authorize states to develop a compensation mechanism for ISP-bound traffic.  
11 Unlike the issue of the jurisdictional nature of the traffic, which is addressed in  
12 several other orders, no other order has conferred authority on the states to  
13 develop such a mechanism. Obviously, since the Declaratory Ruling is  
14 vacated, and it was the only order conferring authority to the state  
15 commissions, there now is no order conferring such authority. In fact, the  
16 Court pointed out that its having vacated the Commission’s ruling leaves the  
17 incumbents “free to seek relief from state-authorized compensation that they  
18 believe to be wrongfully imposed.” (D.C. Order at 9)

19

20           If the Commission determines that it has the authority to establish an  
21 intercarrier compensation mechanism for ISP-bound traffic (which it clearly  
22 does not), the Commission should exercise such jurisdiction through a generic  
23 proceeding so that all affected Parties can participate.

24

25 Q.       HOW HAS THE JURISDICTION OF ISP-BOUND TRAFFIC BEEN

1           ADDRESSED BY THE FCC?

2

3 A.       Throughout the evolution of the Internet, the FCC repeatedly has asserted that  
4       ISP-bound traffic is interstate. For instance, since 1983 the FCC has exempted  
5       ISPs from the payment of certain interstate access charges. The fact that the  
6       FCC created an exception to the application of usage sensitive interstate  
7       access charges to protect certain classes of customers, such as ISPs, makes it  
8       evident that the FCC considers such users as users of access services.  
9       Otherwise, such an exemption of access charges would not have been needed.  
10       See *MTS/WATS Market Structure Order*, 97 FCC 2d at 715.

11

12       Also, in the FCC's *Notice of Proposed Rulemaking, In the Matter of*  
13       *Amendments to Part 69 of the Commission's Rules Relating to Enhanced*  
14       *Service Providers*, CC Docket No. 87-215 ("1987 NPRM"), released July 17,  
15       1987, in which the FCC proposed to lift the ESP access charge exemption, is  
16       clearly in keeping with the FCC's position on the interstate nature of ESP/ISP  
17       traffic. Paragraph 7 reads:

18               *We are concerned that the charges currently paid by enhanced service*  
19               *providers do not contribute sufficiently to the costs of the exchange*  
20               *access facilities they use in offering their services to the public. As we*  
21               *have frequently emphasized in our various access charge orders, our*  
22               *ultimate objective is to establish a set of rules that provide for recovery*  
23               *of the costs of exchange access used in interstate service in a fair,*  
24               *reasonable, and efficient manner from all users of access service,*  
25               *regardless of their designation as carriers, enhanced service providers,*

1            *or private customers. Enhanced service providers, like facilities-based*  
2            *interexchange carriers and resellers, use the local network to provide*  
3            *interstate services. To the extent that they are exempt from access*  
4            *charges, the other users of exchange access pay a disproportionate*  
5            *share of the costs of the local exchange that access charges are*  
6            *designed to cover. (emphases added)*

7

8            The resulting order in Docket No. 87-215 (the “ESP Exemption Order”),  
9            released in 1988, is further evidence of the FCC’s continued pattern of  
10            considering ISP-bound traffic to be access traffic, as it referred to “certain  
11            classes of exchange access users, including enhanced service providers”  
12            (emphasis added).

13

14 Q.        HAS THE FCC REITERATED ITS POSITION REGARDING THE  
15            JURISDICTION OF ISP-BOUND TRAFFIC SINCE THE DECLARATORY  
16            RULING?

17

18 A.        Yes. In its December 23, 1999 Order on Remand, an order that was not  
19            appealed, (see *Order on Remand In re: Deployment of Wireline Services*  
20            *Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147,*  
21            (“Order on Remand”), the FCC stated at Paragraph 33:

22

23            *As we have previously found in the Reciprocal Compensation Order,*  
24            *xDSL-based advanced services that are used to connect ISPs with their*  
25            *subscribers to facilitate Internet bound traffic typically constitute*

1           *exchange access service because the call initiated by the subscriber*  
2           *terminates at Internet websites located in other exchanges, states, or*  
3           *foreign countries.*

4

5           Further, in the same Order on Remand, at Paragraph 35, the FCC states,

6

7           *The issue we address here is whether xDSL-based services may*  
8           *constitute exchange access under the Act. This question arises*  
9           *primarily in the context of services provided to ISPs to facilitate their*  
10          *provision of Internet access services. Applying the definitions*  
11          *contained in section 3 of the Act, we conclude that the service provided*  
12          *by the local exchange carrier to the ISP is ordinarily exchange access*  
13          *service because it enables the ISP to transport the communication*  
14          *initiated by the end-user subscriber located in one exchange to its*  
15          *ultimate destination in another exchange, using both the services of the*  
16          *local exchange carrier and in the typical case the telephone toll service*  
17          *of the telecommunications carrier responsible for the interexchange*  
18          *transport.*

19

20          Additionally, BellSouth's ADSL service offering was filed and approved, by  
21          the FCC, in BellSouth's Tariff FCC Number 1. This is further evidence that  
22          ISP-bound traffic is exchange access service.

23

24

25

1 Q. IS BELLSOUTH'S POSITION REGARDING JURISDICTION OF ISP-  
2 BOUND TRAFFIC CONSISTENT WITH THE FCC'S FINDINGS AND  
3 ORDERS?

4  
5 A. Absolutely. BellSouth's position is supported by, and is consistent with, the  
6 FCC's findings and orders which state that, for jurisdictional purposes, traffic  
7 must be judged by its end-to end nature, and must not be judged by looking at  
8 individual components of a call. BellSouth's position is also consistent with  
9 the FCC's historical treatment of ISP traffic. Therefore, for purposes of  
10 determining jurisdiction for ISP-bound traffic, the originating location and the  
11 final termination must be looked at from an end-to-end basis. BellSouth's  
12 position is consistent with long-standing FCC precedent has been reaffirmed  
13 numerous times. For example, in the December 23, 1999 Order on Remand,  
14 Footnote 73, the FCC lists its previous decisions in 1988, 1992, 1995 and 1997  
15 reaching the same conclusion about the end-to-end nature of ISP traffic.

16  
17 ***Issue 2: Is delivery of ISP-bound traffic subject to compensation under Section 251***  
18 ***of the Telecommunications Act of 1996?***

19  
20 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

21  
22 A. Reciprocal compensation is not applicable to ISP-bound traffic. Based on the  
23 Telecommunications Act of 1996 (the "Act") and the FCC's Local  
24 Competition First Report and Order issued August 8, 1996 ("Local  
25 Competition Order"), reciprocal compensation obligations under Section

1 251(b)(5) apply only to local traffic. ISP-bound traffic constitutes access  
2 service, which is clearly not local traffic. Payment of reciprocal compensation  
3 for ISP-bound traffic is inconsistent with the law and is not sound public  
4 policy.

5

6 Q. PLEASE EXPLAIN THE BASIS FOR RECIPROCAL COMPENSATION.

7

8 A. As I have previously stated, only local traffic is eligible for reciprocal  
9 compensation. Exhibit ERAS-1 to my testimony contains two diagrams. Both  
10 of these diagrams illustrate local calls between end users. Diagram A  
11 illustrates a typical local call where both ends of the call are handled by a  
12 single carrier's network which, in this example, is an ILEC's network. In this  
13 scenario, the ILEC receives a monthly fee from its end user to apply towards  
14 the cost of that local call. For that payment, the ILEC provides the end user  
15 with transport and termination of local calls throughout the local calling area.  
16 End users typically do not pay for calls terminated to them. Importantly, in  
17 this case, the end user is the ILEC's customer, which means that the end user  
18 pays the ILEC revenue for the service.

19

20 By comparison, Diagram B illustrates a typical local call that is handled by two  
21 carriers - one end of the call is handled by an ILEC, and an alternative local  
22 exchange carrier ("ALEC") handles the other end of the call. In this scenario,  
23 when the ILEC's end user makes a local call to the ALEC's end user, the  
24 ILEC's end user is paying the ILEC the same price for local exchange service  
25 as in Diagram A. The ILEC, however, is not the provider of the entire network



1 facilities used to transport and deliver the local call. The ALEC is providing  
2 part of the facilities and is incurring a cost. Since the end user is an ILEC  
3 customer, the ALEC has no one to charge for that cost. As previously noted,  
4 end users do not typically pay for local calls terminated to them, so the ALEC  
5 cannot be expected to charge its end user. While the ILEC is receiving the  
6 same revenues as shown in Diagram A, its costs are lower. Consequently,  
7 reciprocal compensation would be paid by the ILEC to compensate the ALEC  
8 for terminating that local call over its network. If the reciprocal compensation  
9 rate equals the ILEC's cost, the ILEC is indifferent to whether the ILEC or the  
10 ALEC completes the call.

11

12 Likewise, if an ALEC's end user completes a local call to an ILEC's end user,  
13 the ALEC receives the payment for local exchange service from the end user,  
14 and the ALEC pays the ILEC reciprocal compensation for the portion of the  
15 ILEC's facilities used to terminate the local call. In accordance with the Act,  
16 the purpose of reciprocal compensation is to ensure that each carrier involved  
17 in carrying a local call is compensated for its portion of that call.

18

19 Q. PLEASE EXPLAIN THE PROVISION OF SWITCHED ACCESS SERVICE.

20

21 A. Exhibit ERAS-2 attached to my testimony consists of two diagrams. Diagram  
22 C illustrates a typical access call originating on a LEC's network and delivered  
23 to an IXC's Point of Presence. As shown by this illustration, the LEC receives  
24 access charges from the IXC as compensation for use of the LEC's facilities to  
25 deliver the traffic to the IXC. The IXC bills the end user.

1

2 Diagram D is different from Diagram C in only one respect. The IXC has been  
3 replaced by an ISP. The network used to transport ISP-bound traffic is exactly  
4 the same network used to deliver traffic to IXCs. However, rather than through  
5 receipt of normal switched access charges, the LEC is compensated for the  
6 access service it provides to the ISP by the business rates it charges the ISP.  
7 The important point is that both IXCs and ISPs receive access service and,  
8 although they are charged different prices, the prices they pay are designed to  
9 cover the same costs. That cost is the full cost of providing service to them.

10

11 Q. DOES ISP TRAFFIC TERMINATE AT THE ISP?

12

13 A. Absolutely not. The call from an end user to the ISP only transits through the  
14 ISP's local point of presence; it does not terminate there. There is no  
15 interruption of the continuous transmission of signals between the end user and  
16 the host computers. This fact was confirmed by the FCC in the February 26,  
17 1999 Declaratory Ruling. Paragraph 12 states:

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

22

23 While the United States Court of Appeals for the District of Columbia Circuit  
24 vacated this order on March 24, 2000, the D.C. Circuit did not establish any  
25 principle of law, but rather -- as the Court itself said over and over -- simply

1 determined that the FCC had failed to provide a sufficient explanation for its  
2 conclusions. Furthermore, the Chief of the FCC's Common Carrier Bureau at  
3 the time the Declaratory Ruling was vacated stated publicly that he believed  
4 that the FCC can and will provide the requested clarification and reach the  
5 same conclusion that it has previously -- that is, that ISP-bound calls do not  
6 terminate locally. See TR Daily, Strickling Believes FCC Can Justify Recip.  
7 Comp. Ruling In Face Of Remand, March 24, 2000 (stating that the Chief of  
8 the FCC's Common Carrier Bureau "still believes calls to ISPs are interstate in  
9 nature and that some fine tuning and further explanation should satisfy the  
10 court that the agency's view is correct").

11

12 The FCC's Order on Remand , also emphasizes that ISP-bound traffic does not  
13 terminate at the ISP. In paragraph 16 the FCC states:

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

24

25

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

5

6 Q. HOW DOES THE TERMINATION OF AN ISP-BOUND CALL AFFECT  
7 WHETHER OR NOT RECIPROCAL COMPENSATION IS DUE FOR  
8 SUCH TRAFFIC?

9

10 A. Reciprocal compensation applies only when local traffic is originated on one  
11 party's network and terminated on another party's network. One of the Act's  
12 basic interconnection rules is contained in 47 U.S.C. § 251(b)(5). That  
13 provision requires all local exchange carriers "to establish reciprocal  
14 compensation arrangements for the transport and termination of  
15 telecommunications." Section 251(b)(5)'s reciprocal compensation duty  
16 arises, however, only in the case of local calls. In fact, in its August 1996  
17 Local Interconnection Order (CC Docket No. 96-98), paragraph 1034, the FCC  
18 made it perfectly clear that reciprocal compensation rules do not apply to  
19 interstate or interLATA traffic such as interexchange traffic:

20

21 *We conclude that Section 251(b)(5), reciprocal compensation*  
22 *obligation, should apply only to traffic that originates and terminates*  
23 *within a local area assigned in the following paragraph. We find that*  
24 *reciprocal compensation provisions of Section 251(b)(5) for transport*

25

1                    *and termination of traffic do not apply to the transport and termination*  
2                    *of interstate or intrastate interexchange traffic.*

3  
4                    The FCC's Order and the Act rely upon call termination in determining the  
5                    applicability of reciprocal compensation. Since the FCC has consistently held  
6                    that ISP-bound traffic does not terminate at the ISP server, reciprocal  
7                    compensation is not owed for ISP-bound traffic. If the Commission were to  
8                    determine that the call terminates at the ISP server, the Commission must  
9                    consider the issue of ISP servers located outside the local calling area but  
10                  served by a locally dialed number. Such an arrangement can be achieved by  
11                  assigning an NPA/NXX to location outside of the rate center to which that  
12                  NPA/NXX is assigned.

13

14 Q.            IS IT REASONABLE TO CONCLUDE THAT RECIPROCAL  
15                  COMPENSATION APPLIES TO ISP-BOUND TRAFFIC?

16

17 A.            No. There is no support for the position that Congress intended that the Act  
18                  create a revenue windfall for ALECs; receiving reciprocal compensation for  
19                  ISP-bound traffic cannot be viewed as anything but a revenue windfall. The  
20                  huge dollar amounts being billed by ALECs to ILECs do not represent  
21                  revenues that ALECs have earned as a result of providing competitive local  
22                  service to end users. Nor do these dollar amounts represent cost recovery for  
23                  completing local calls originated by BellSouth's end users. To the contrary,  
24                  these revenues represent new money for ALECs resulting from an  
25                  inappropriate application of reciprocal compensation to interstate traffic.

1           However, there are no new revenues or cost reductions for BellSouth to fund  
2           these excessive payments of reciprocal compensation that ALECs are claiming  
3           is owed.

4

5 Q.       SINCE ISP-BOUND TRAFFIC IS NOT LOCAL TRAFFIC SUBJECT TO  
6       251 OF THE ACT, WHAT IS IT?

7

8 A.       ISP-bound traffic is exchange access traffic (commonly referred to as long-  
9       distance traffic), which is illustrated in Exhibit ERAS-2. However, in an  
10       attempt to help this “fledgling” industry, the FCC created an exception to the  
11       application of usage sensitive interstate access charges. This exception is  
12       commonly referred to as the “access charge exemption.” In every order  
13       addressing this issue, the FCC has reached the same conclusion concerning the  
14       interstate nature of ISP-bound traffic.

15

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

19

20 Q.       WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

21

22 A.       It is not appropriate for the Commission to take any action on this issue  
23       because intercarrier compensation for ISP-bound traffic is not an obligation  
24       under Section 251 of the Act. At a minimum, the Commission should wait  
25       until the FCC issues an order before spending resources developing a plan that

1 may be rendered moot by ultimate FCC decision or which may overturned by a  
2 court or jurisdictional grounds. The Commission should determine that ISP-  
3 bound traffic is not local traffic, and therefore no reciprocal compensation is  
4 due.

5

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

8

9 Q. WHAT POLICY ISSUES SHOULD THE COMMISSION CONSIDER IN  
10 DETERMINING THE COMPENSATION MECHANISM FOR ISP-BOUND  
11 TRAFFIC?

12

13 A. In making a decision on the compensation mechanism for ISP-bound traffic,  
14 the Commission must consider the implications that this decision will have.  
15 Specifically, the Commission must consider how this decision will affect  
16 competitive entry decisions by ALECs, cost recovery and the economics of the  
17 cost causation, the impact on residential customers, and the continued  
18 development of competition.

19

20 Q. IF RECIPROCAL COMPENSATION IS AUTHORIZED FOR ISP-BOUND  
21 TRAFFIC, HOW WILL THIS AFFECT ALECS' COMPETITIVE ENTRY  
22 DECISIONS?

23

24 A. As I have stated previously, the payment of reciprocal compensation for ISP-  
25 bound traffic is nothing more than a revenue windfall for ALECs. If the

1 Commission finds that reciprocal compensation should be paid for ISP-bound  
2 traffic, ALECs have a major incentive to serve ISPs rather than true local  
3 customers. In fact, the payment of reciprocal compensation for ISP-bound  
4 traffic actually discourages an ALEC from serving the primary type of  
5 customer for which the Act intended to create competition – the residential  
6 customer. Assume that an ALEC is choosing markets to target and is looking  
7 at a residential apartment complex in Miami. In order to offer the resident a  
8 competitive local phone rate, the ALEC has decided to charge \$12 per month .  
9 per residential phone line for basic local calling, plus any additional calling  
10 features the resident orders. Further assume that the ALEC canvases residents  
11 of the complex and learns that the average resident spends approximately 2  
12 hours a day using a dial-up connection to the Internet. If the Commission or  
13 FCC rules that reciprocal compensation is due for ISP traffic, the ALEC would  
14 also need to consider that it will have to pay \$7.20 per month (30 days x 120  
15 minutes x \$.002/mou) of the \$12 in revenue it receives to the LEC serving the  
16 ISP the resident chooses to use. This cost of \$7.20 is incurred by the ALEC in  
17 addition to the cost of providing the service of the residential loop and port.  
18 Given these economics, the ALEC certainly has no incentive to serve the  
19 residential customer.

20

21 Q. IF RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC IS NOT  
22 AUTHORIZED, WILL ALECS BE UNCOMPENSATED FOR THE COSTS  
23 THEY INCUR TO PROVIDE SERVICES TO ISPS?

24

25 A. No. The ALECS' ISP customers compensate the ALECs for services that are



1 provided just like an ILEC's ISP customer compensates the ILEC. The  
2 ALECs' request for reciprocal compensation on ISP-bound traffic simply  
3 provides ALECs with unearned windfall revenues and further increases the  
4 unreimbursed cost of the ILEC.

5

6 Q. WHY DOES IT NOT MAKE SENSE FOR AN ILEC TO COMPENSATE  
7 AN ALEC FOR ISP-BOUND TRAFFIC ORIGINATED BY AN ILEC'S  
8 LOCAL SERVICE CUSTOMER?

9

10 A. To understand why an ILEC should not be forced to compensate an ALEC for  
11 ISP-bound traffic delivered to an Internet website through an ALEC's ISP  
12 customer, one must consider which party causes the costs to be incurred. An  
13 end user accessing the Internet is a customer of the ISP for that service. The  
14 ISP bills the customer separately and when the customer has a problem they  
15 call the ISP. The fact that the end user is the ILEC's customer for local service  
16 does not change the fact that the same end user is the ISP's customer for access  
17 to the Internet. The end user is no more the ILEC's customer on Internet calls  
18 than it is the ILEC's customer for interLATA long distance calls.

19

20 Q. WERE LOCAL SERVICE RATES IN FLORIDA STRUCTURED TO  
21 COVER THE COSTS OF NON-LOCAL TRAFFIC?

22

23 A. No. The local exchange rates paid by end user customers were never intended  
24 to recover costs associated with providing access service and were established  
25 long before the Internet became popular. Local exchange rates do not take into

1 account and compensate for non-local traffic such as Internet-bound traffic.  
2 Internet-bound traffic characteristics were never considered when local rates  
3 were established.

4

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

7

8 Q. IS THE COMMISSION REQUIRED TO SET ANY COMPENSATION  
9 MECHANISM FOR THE DELIVERY OF ISP-BOUND TRAFFIC?

10

11 A. No. As I discussed under Issue Number 1, State Commissions are only  
12 required and authorized to establish a compensation mechanism for local  
13 traffic pursuant to Section 251 of the Act. The obligations of Section 251 of  
14 Act do not extend to non-local ISP-bound traffic.

15

16 Q. IF THE COMMISSION DECIDES TO SET A COMPENSATION  
17 MECHANISM FOR THE DELIVERY OF ISP-BOUND TRAFFIC, MUST  
18 THE MECHANISM BE COST-BASED?

19

20 A. The FCC has established no parameters or requirements for a compensation  
21 mechanism for the delivery of ISP-bound traffic. In fact, the exemption of  
22 access charges for ESPs and ISPs is the only established compensation scheme  
23 for such users of access service. As I discussed above, the 251 obligation for  
24 cost-based rates does not extend to ISP-bound traffic. However, for policy  
25 reasons discussed in Issue Number 4, it is BellSouth's position that if the

1 Commission were to establish a compensation mechanism for ISP-bound  
2 traffic other than bill and keep, it should be cost-based. Further, it should be  
3 based on the cost actually incurred for the delivery of ISP-bound traffic, NOT  
4 on the cost of terminating a local call. A discussion of these costs differences  
5 can be found in Issue Number 6.

6

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

9

10 Q. WHAT ARE THE FACTORS THE COMMISSION SHOULD CONSIDER  
11 IN SETTING THE COMPENSATION MECHANISM FOR DELIVERY OF  
12 ISP-BOUND TRAFFIC?

13

14 A. Although any action by this Commission to set a compensation mechanism for  
15 ISP-bound traffic is not appropriate for the reasons I discussed earlier in my  
16 testimony, if the Commission wishes to establish an interim intercarrier  
17 compensation mechanism for such traffic the Commission must consider, first  
18 and foremost, the regulatory history and rulings surrounding ISP-bound traffic.  
19 ISP-bound traffic is not local traffic, but instead is interstate access traffic that  
20 has been exempted from access charges for policy reasons. Given that the  
21 FCC, who has jurisdiction over this traffic, has set no other intercarrier  
22 compensation mechanism for ISP-bound traffic, the only option for a  
23 compensation mechanism is bill and keep. The Commission could direct the  
24 parties to implement a bill and keep arrangement as the intercarrier  
25 compensation mechanism for ISP-bound traffic until such time as the FCC's

1 rulemaking on intercarrier compensation is completed. By definition, a bill  
2 and keep arrangement is a mechanism in which neither of the two  
3 interconnecting carriers would charge the other for ISP-bound traffic that  
4 originates on the other carrier's network.

5

6 It is important to remember that the ALEC is being compensated by the ISP for  
7 the service it provides the ISP, and the ISP is being compensated by the end  
8 user for the service it provides the end user. Thus, bill and keep does not  
9 leave the ISP or the ALEC uncompensated for the services it provides.

10 Additionally, implementation of a bill and keep arrangement would remove  
11 any uncertainty surrounding application of the FCC's mechanism as a result of  
12 the current rulemaking proceeding.

13

14 Q CAN THE COMMISSION USE BILL AND KEEP AS AN INTERIM  
15 MECHANISM?

16

17 A. If the Commission can order any mechanism at all, it can be bill and keep. The  
18 FCC did not specify the type of interim mechanism a state could use. Of  
19 course, as I previously discussed, whether the FCC can authorize states to  
20 apply any mechanism is subject to court review.

21

22 Q. WHY MIGHT A BILL AND KEEP ARRANGEMENT BE AN  
23 APPROPRIATE COMPENSATION MECHANISM?

24

25

1 A. Under bill and keep, ALECs have no greater incentive to serve customers that  
2 terminate traffic than customers that originate traffic. The business decision of  
3 ALECs would be based on the dictates of the marketplace, as the Act intended,  
4 and not on potential windfall opportunities. The disincentive to serve  
5 residential customers caused by the risk of having to pay significant amounts  
6 of reciprocal compensation is eliminated.

7

8 Q HOW DOES A BILL AND KEEP ARRANGEMENT FOSTER EFFICIENT  
9 USE OF THE NETWORK AND DEPLOYMENT OF ADVANCED  
10 SERVICES?

11

12 A. Using the circuit-switched network is an inefficient method of carrying data.  
13 However, under a regime where reciprocal compensation is owed for circuit-  
14 switched ISP-bound traffic, the ALEC serving the ISP has an incentive to  
15 generate such circuit-switched, dial-up ISP minutes. In fact, the ALEC  
16 serving the ISP has a disincentive to provide Internet service in a more  
17 advanced and efficient manner. In fact, the payment of reciprocal  
18 compensation for ISP-bound traffic discourages the deployment of any  
19 technology that does not generate reciprocal compensation. Bill and keep  
20 eliminates this disincentive and replaces it with an incentive to utilize efficient,  
21 advanced technologies in order to compete for customers.

22

23 Q. IF THE COMMISSION SHOULD DECIDE TO SET A COMPENSATION  
24 MECHANISM OTHER THAN BILL AND KEEP FOR ISP-BOUND

25

1 TRAFFIC, WHAT FACTORS SHOULD BE CONSIDERED IN SETTING  
2 SUCH A MECHANISM?

3

4 A. As I have stated, BellSouth's position is that bill and keep is the appropriate  
5 compensation mechanism for ISP-bound traffic. If the Commission decides  
6 to look further into establishing a compensation mechanism, it must first  
7 explore what costs are left unrecovered in an ISP-bound call. As I have  
8 previously stated, the ALEC is compensated by the ISP and the ISP is  
9 compensated by the end-user customer. As such, there are no uncompensated  
10 costs to be recovered.

11

12 If this Commission considers a per minute of use ("MOU") compensation  
13 arrangement, at a minimum it should consider the characteristics of ISP-bound  
14 calls as distinguished from local calls. Some such characteristics include:

- 15       ▪ Call length
- 16       ▪ Cost of network equipment

17

18 Q. DO THE LOCAL INTERCONNECTION RATES BELLSOUTH PROPOSED  
19 IN THE GENERIC UNE DOCKET ACCURATELY REFLECT THE COST  
20 OF ISP-BOUND TRAFFIC?

21

22 A. No. The elements that are applicable to local interconnection when an ALEC  
23 orders an unbundled UNE port or the loop/port combination from BellSouth  
24 are end office switching, tandem switching and common transport. These  
25 same elements are applicable to reciprocal compensation for local traffic.

1 BellSouth has always maintained that the cost studies it provided the  
2 Commission for these elements could only be used to establish rates for  
3 interconnection and reciprocal compensation for local traffic within the local  
4 calling area. Therefore, when BellSouth conducted the cost studies for these  
5 elements, it did not consider a mix of local calls along with non-local, long-  
6 duration ISP-bound calls when arriving at the average length of a call. Let me  
7 explain why the average call length is important to the issue at hand.

8  
9 Switching costs have two major components – call set-up costs and call  
10 duration costs. Call set-up costs occur irrespective of how long the call  
11 actually lasts. Conversely, call duration costs are specifically related to how  
12 long the call actually lasts. On average, a local call is approximately three  
13 minutes long. Obviously, the call duration for an Internet call is substantially  
14 longer than for a local call.

15  
16 BellSouth provides this example simply to explain that, if reciprocal  
17 compensation is, as an interim measure, applied to ISP-bound traffic, the  
18 existing per minute rates for local switching, as well as the proposed rates  
19 recently filed with the Commission for local switching would greatly overstate  
20 the amount of compensation.

21

22 Q. HOW DOES CALL LENGTH FOR AN INTERNET CALL DIFFER FROM  
23 CALL LENGTH FOR A LOCAL CALL?

24

25 A. As discussed above, a local call typically lasts about three minutes. According

1 to Bellcore's 1996 report, "*Impacts of Internet Traffic on LEC Networks and*  
 2 *Switching Systems*," the typical call duration for an Internet-bound call is  
 3 approximately 20 minutes. In a more recent Nielson/NetRatings report, for  
 4 the month of October 2000, 91.1 million persons out of 150 million persons  
 5 who have access to the Internet from their homes actually surfed the Internet.<sup>1</sup>  
 6 The average time spent surfing the Net was almost 32 minutes per individual  
 7 session, with an average of 19 sessions per month.

8

9 Q. DO ALECS SERVING ISPS GENERALLY USE THE SAME TYPE OF  
 10 EQUIPMENT AS IS USED FOR TERMINATING LOCAL TRAFFIC?

11

12 A. No. The costs for traditional reciprocal compensation as discussed above take  
 13 into account conventional switching equipment used in an ILEC's network for  
 14 conventional voice traffic. With new technologies, a LEC can deploy scaled-  
 15 down switches, often referred to as "softswitches." These switches do not  
 16 have all the features and functionalities of a traditional switch, but are instead  
 17 designed exclusively to funnel dial-up traffic to ISPs. The cost of these  
 18 "softswitches" is dramatically less than conventional switches. Examples  
 19 include the Nortel CVX 1800 and Level 3's network. Level 3 boasts that by  
 20 using Cisco routers for data and Lucent softswitches for voice, it expects to  
 21 "reap capital savings between 40% and 60%, and operational savings that may  
 22 be even greater."<sup>2</sup> This is one example of a cost differential that must be taken

23

24 <sup>1</sup> Nielson/NetRatings, "Average Web Usage, Month of October, 2000, U.S.",  
<http://209.249.142.27/nnpm/owa/Nrpublicreports.usagemonthly>

25 <sup>2</sup> Peter Lambert and Paul Bernier, "Level 3 Goes Soft – Lucent softswitch Investment Expected to  
 Yield Huge Saving," *X-Change*, August, 1999 at Paragraph 8 (available at <http://www.x-changemag.com/articles/981spot.html>)



1 into account if the Commission were to find it necessary to establish a unique  
2 rate for intercarrier compensation for ISP-bound traffic.

3

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

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

8

9 A. Intercarrier compensation for delivery of ISP-bound traffic should be limited to  
10 carrier and ISP arrangements involving circuit-switched technologies (which I  
11 have also referred to as "dial-up" throughout this testimony). Non-circuit-  
12 switched connections are generally not disputed with respect to reciprocal  
13 compensation standpoint since no switching costs are incurred and, thus there  
14 is no switching compensation at issue.

15

16 ***Issue 8: Should ISP-bound traffic be separated from non-ISP bound traffic for the***  
17 ***purposes of assessing any reciprocal compensation payments? If so, how?***

18

19 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

20

21 A. To the extent the Commission establishes a compensation mechanism for the  
22 delivery of ISP-bound traffic, then ISP-bound traffic must be separated from  
23 non-ISP bound traffic. Since reciprocal compensation only applies to local  
24 traffic subject to 251 of the Act and not to ISP-bound traffic, such traffic must  
25 be separated. Mr. Scollard will address a process by which this can be done.

1

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

5

6 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

7

8 A. For the reasons discussed in my testimony, the Commission should not  
9 establish a compensation mechanism for ISP-bound traffic. Again, ISP-bound  
10 traffic is access service, and the determination of the appropriate intercarrier  
11 compensation for ISP-bound traffic is an issue to be decided by the FCC.  
12 However, if the Commission decides to establish a compensation mechanism  
13 for delivery of ISP-bound traffic, such mechanism should only be applicable in  
14 the absence of the parties reaching an agreement or negotiating a compensation  
15 arrangement mechanism. Further, as I discussed in issue number 6, the  
16 compensation arrangement should be a bill and keep mechanism.

17

18 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

19

20 A. Yes.

21

22

23

24

25

1 Bellsouth Telecommunications, Inc.  
2 REBUTTAL TESTIMONY OF BETH SHIROISHI  
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 000075-TP  
5 JANUARY 10, 2001  
6

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

10

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

14

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

17

18 A. Yes.

19

20 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

21

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

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

6

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

9

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

12

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

18

19 A. Both Mr. Hunsucker and Mr. Falvey rely on the Declaratory Ruling (see  
 20 *Declaratory Ruling, In the Matter of Implementation of the Local Competition*  
 21 *Provisions in the Telecommunications Act of 1996: Inter-Carrier*  
 22 *Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68*  
 23 (“Declaratory Ruling”), released February 26, 1999), as the authority by which  
 24 the Florida Commission has jurisdiction to establish inter-carrier compensation  
 25 for ISP-bound traffic. Obviously, since the Declaratory Ruling is vacated, and

1 it was the only order conferring authority to the state commissions to establish  
2 an inter-carrier compensation for ISP-bound traffic, there now is no order  
3 conferring such authority.

4  
5 ***Issue 2: Is delivery of ISP-bound traffic subject to compensation under Section 251***  
6 ***of the Telecommunications Act of 1996?***

7  
8 Q. PLEASE ADDRESS MR. FALVEY'S ASSERTION, ON PAGE 5 OF HIS  
9 TESTIMONY, THAT "A CALLER'S DIAL-UP CALL TO AN ISP IS  
10 'TELECOMMUNICATIONS' AS DEFINED IN THE ACT . . . AND IS  
11 THEREFORE SUBJECT TO RECIPROCAL COMPENSATION."

12  
13 A. 47 U.S.C. § 153(43) defines telecommunications as:

14 (43) TELECOMMUNICATIONS. – The term "telecommunications"  
15 means the transmission, between or among points specified by the user,  
16 of information of the user's choosing, without change in the form or  
17 content of the information as sent and received.

18 47 U.S.C. § 153(20) defines information service as:

19 (20) INFORMATION SERVICE. – The term "information service"  
20 means the offering of a capability for generating, acquiring, storing,  
21 transforming, processing, retrieving, utilizing, or making available  
22 information via telecommunications, and includes electronic  
23 publishing, but does not include any use of any such capability for the  
24 management, control, or operation of a telecommunications system or  
25 the management of a telecommunications service.

1

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

10

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

18

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

22

23 That issue aside, Mr. Falvey is incorrect in assuming is that ISP-bound traffic  
24 is not encompassed by the access charge regime. As I have stated previously,  
25 the FCC has expressed, time and time again, that ISP-bound traffic is access

1 traffic which has been exempted from access charges for policy reasons. Mr.  
2 Falvey seems to have taken a jump to conclude that all calls that are not  
3 compensated as access must be subject to reciprocal compensation. This is  
4 simply not the case.

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

12

13

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

17

18 A. Again, Mr. Falvey seemingly suggests that all calls that are not compensated as  
19 access must be subject to reciprocal compensation. And again, this is simply  
20 not the case. In his discussion, on pages 6 and 7 of his testimony, Mr. Falvey  
21 discusses how the "the functionality provided [in transport and termination]  
22 does not differ based on whether or not the end user of one LEC called by an  
23 end user of another LEC is a pizza parlor or an ISP." For the most part, this is  
24 true (though there are some potential differences in switching equipment used).  
25 However, that is not a fact that makes any difference in this case. To illustrate

1 that, I will take Mr. Falvey's argument one step further. Assume that instead  
2 of comparing an ISP to a pizza parlor, you compare a local call from a Miami  
3 end user to a pizza parlor in Miami with an interstate call from that same  
4 Miami end user to a pizza parlor in New York. Assuming the same potential  
5 differences in switching equipment used, Mr. Falvey's statement still holds  
6 true: the functionality provided does not differ based on whether or not the  
7 end user of one LEC called by an end user of another LEC is a pizza parlor in  
8 Miami or a pizza parlor in New York. However, no one would argue that a  
9 call from Florida to New York is local just because the functionality did not  
10 differ. The FCC has set forth rate structures based on a jurisdictional analysis  
11 that judges the end-to-end points of a call, not the functionality used.  
12 Paragraph 1033 of the August 1996 Local Interconnection Order (CC Docket  
13 No. 96-98) states:

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



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

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

7

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

13

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

22

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

1

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

6

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

15

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

18

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

21

22 A. First, let me point out that Mr. Fogleman makes the assumption that, under  
23 bill-and-keep and for ISP-bound calls, the originating carrier can bill the end  
24 user and recover the cost of providing the service. For an ILEC this is simply  
25 not the case. As I have discussed previously in this testimony, local exchange

1 rates do not take into account Internet-bound traffic, and this Commission has  
2 oversight authority over any changes to BellSouth's rates or rate structure. I  
3 make this point only to demonstrate that the originating carrier is not receiving  
4 any revenue for ISP-bound calls, and thus, has no revenue to share in the form  
5 of reciprocal compensation (this is the same as and holds true for the  
6 remittance theory discussed by Mr. Selwyn on page 29).

7  
8 While I agree with the benefits of bill-and-keep as described by Mr. Fogleman,  
9 I believe he drastically oversimplifies the issue. While the benefits he lists  
10 (eliminates the need for billing and the costs associated with monitoring traffic  
11 and reduces the ability of carriers to target customers solely for expected  
12 reciprocal compensation revenues) are true, he does not address one huge  
13 policy consideration – FCC rules and regulations. The FCC has exempted  
14 ISPs from access charges, thus confirming that ISP-bound traffic is not local  
15 traffic, but instead is interstate access traffic that has been exempted from  
16 access charges for policy reasons. Given that the FCC, who has jurisdiction  
17 over this traffic, has set no other intercarrier compensation mechanism for ISP-  
18 bound traffic, the only option for a compensation mechanism is bill-and-keep.

19

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

22

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

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

11

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

14

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

18

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

1 context of Issue Number 6, the rate previously established for local switching  
2 is not appropriate.

3

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

7

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

17

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

20

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

25

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

17

18 Additionally, it must be recognized that the rates currently established for end  
19 office or local switching that Mr. Hunsucker refers to were established for  
20 unbundled local switching, which contemplates the originating switch of a call.  
21 With ISP-bound traffic, the switch would never be the originating switch, but  
22 the switch that directly serves the ISP. The call set-up involved in the  
23 originating switch is more complex than the call set-up on subsequent end  
24 office switches. As such, this difference would need to be included in any cost  
25 study that would purport to represent the cost of switching for ISP-bound

1 traffic. In summary, contrary to Mr. Hunsucker's assertion that only call  
2 duration changes, at a minimum the following factors would need to be  
3 considered if this Commission were to determine that a rate should be  
4 established for ISP-bound traffic: cost of equipment, call duration, and call set-  
5 up cost differences for originating end office switching and subsequent end  
6 office switching. Dr. Taylor discusses other cost differences and factors in his  
7 testimony.

8

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

13

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

22

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

25

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

5

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

11

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

15

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

20

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

25



1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes.

4

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1 **BY MR. EDENFIELD:**

2 **Q Ms. Shiroishi, did you prepare a summary of your**  
3 **testimony?**

4 **A Yes, I did.**

5 **Q Would you give that now, please?**

6 **A Sure, thanks. Good morning. BellSouth has been**  
7 **before this Commission previously to discuss the intent**  
8 **and language of existing interconnection agreements, and**  
9 **BellSouth has been before this Commission previously in**  
10 **arbitrations to discuss how ISP-bound traffic should be**  
11 **handled between BellSouth and one other ALEC. But now we**  
12 **are here as a group to set policy on a generic basis**  
13 **across the State of Florida for the compensation of**  
14 **ISP-bound traffic. We are here to decide once and for all**  
15 **how ISP-bound traffic should be handled for ILECs and**  
16 **ALECs alike for the State of Florida.**

17 **You have heard the ALECs present their case on**  
18 **why reciprocal compensation is appropriate for ISP-bound**  
19 **traffic. But as we make this decision we must consider**  
20 **all the aspects and all consequences intended or**  
21 **unintended of the final outcome. We must make a decision**  
22 **that benefits consumers, creates competition, and**  
23 **encourages the development of advanced services. We must**  
24 **do what is right and what is consistent with FCC treatment**  
25 **of ISP-bound traffic.**

1           **The FCC has consistently held that ISPs are**  
2 **users of access service through the 1983 access charge**  
3 **exemption, the '87 NPRM, and in the context of access**  
4 **reform and universal service issues. Throughout those**  
5 **orders the FCC has consistently referred to ESPs and ISPs**  
6 **as users of access service or access providers who are**  
7 **exempt from the payment of access charges.**

8           **The main point of contention with this whole**  
9 **issue seems to arise from the fact that the FCC allowed**  
10 **ISPs to obtain services under intrastate tariffs. The**  
11 **pivotal point, however, is the only reason this is allowed**  
12 **is to accommodate the access charge exemption. In**  
13 **essence, the tariffed rates paid by the ISP are a**  
14 **surrogate for the access charges they are exempt from.**  
15 **The surrogate payment in no way alters the status of the**  
16 **service or the service provider, the ISP is still a user**  
17 **of access service, just one who pays lesser rates.**

18           **So where does that leave us today? Today we**  
19 **operate in a competitive marketplace in which there are**  
20 **often ILECs and ALECs jointly providing a service which**  
21 **was once provided solely by an ILEC. And so arises the**  
22 **issue of how these carriers should compensate each other.**

23           **In 1996, Congress prescribed that reciprocal**  
24 **compensation should apply when two carriers jointly**  
25 **provide a local call. Calls to ISPs are not local calls**

1 and are not subject to the reciprocal compensation  
2 requirements of Section 251(b)(5) of the Act.

3           **The first policy consideration that I think the**  
4 **Commission needs to ponder is where do you want to**  
5 **encourage competition to develop. Given current basic**  
6 **local exchange rates which are already priced below cost,**  
7 **the amount of reciprocal compensation that is going to be**  
8 **generated even using Mr. Selwyn's estimate of 1,500**  
9 **minutes per month at the tandem switching rate, BellSouth**  
10 **would have to pay out 45 to 65 percent of the revenues**  
11 **that BellSouth would receive from that residential**  
12 **customer.**

13           **Therefore, it is almost inconceivable that any**  
14 **other LEC would choose to serve a residential customer**  
15 **that has the potential of generating recip comp**  
16 **obligations that approach the total amount of revenue that**  
17 **that LEC would receive.**

18           **Take me, for example. In my household we**  
19 **generate approximately 60 to 80 hours of Internet dial-up**  
20 **usage a month. If I lived in Miami, I would pay 10.81 for**  
21 **my local exchange service. And contrary to Mr. Falvey's**  
22 **assertions yesterday, I only buy one vertical feature,**  
23 **call waiting. I would generate between \$11.70 a month to**  
24 **\$15.60 a month that my local exchange server, in this case**  
25 **BellSouth, would have to pay to an ALEC if that ISP I**

1 dialed into were served by that ALEC.

2 Do you think any ALEC is going to come target me  
3 as a customer knowing they would have to pay out more in  
4 recip comp per month than they would receive from me in  
5 revenue? You are never going to see widespread  
6 residential competition while requiring recip comp for  
7 ISP-bound traffic.

8 MR. HOFFMAN: Excuse me, Ms. Shiroishi. Mr.  
9 Chairman, I hate to interrupt at this point, but the last  
10 30 to -- 30 seconds to a minute, to the last minute of  
11 testimony in the summary is outside her prefiled direct  
12 and rebuttal testimony and we would move to strike it.

13 MR. EDENFIELD: Certainly the discussion of the  
14 effects of reciprocal compensation payments as opposed to  
15 or compared to basic local exchange rates is in her  
16 testimony. It has been testified through the entire  
17 proceeding, and if she gave a personal example, you know,  
18 I don't know how the Commission feels about the personal  
19 example part, but certainly the subject matter is in the  
20 record. That is, in fact, the crux of what you are here  
21 to decide is the effect on competition that this is going  
22 to have, and that is exactly what she is talking about.

23 MR. HOFFMAN: Well, Mr. Chairman, I agree with  
24 Mr. Edenfield that we are here to talk about ISP traffic.  
25 But I think Mr. Edenfield understands, and I think the

1 parties that practice before the Commission understand  
2 that a witness is supposed to get up and give a summary of  
3 his or her prefiled written testimony. And at this point  
4 she has strayed outside of it with numbers and examples  
5 that we are not prepared to cross examine her on and we  
6 would move to strike it.

7 MR. MOYLE: We would join in the motion.

8 CHAIRMAN JACOBS: Just a moment. Let me be very  
9 clear, Mr. Hoffman. You were speaking specifically about  
10 her -- not on her calculation, but her interpretation that  
11 that loss, if you will, would deter ALECs from pursuing  
12 traffic at the residential level?

13 MR. HOFFMAN: Right. I think that the witness  
14 was going into an example using numbers that are not in  
15 her prefiled written testimony.

16 CHAIRMAN JACOBS: I'm at the point -- I don't  
17 think it is egregious, I think her example is not so  
18 onerous as to taint her testimony. However, I can see  
19 that there is a lion in wait. So here is what I will do.  
20 The concept of her discussion, I think, is within the  
21 scope, but the numbers are not, I agree. So what I would  
22 ask is that we take out the representation of numbers.  
23 Particularly -- and I will tell you, particularly because  
24 they were represented to be reflective of what might occur  
25 in Florida. And so as the exact representation of

1 numbers, however, her summary and her interpretation of  
2 that calculation, I won't strike, okay. Do you  
3 understand?

4 MR. HOFFMAN: Thank you, Mr. Chairman.

5 CHAIRMAN JACOBS: Which I think is like the last  
6 ten seconds of her testimony.

7 MR. HOFFMAN: Thank you.

8 MR. EDENFIELD: Thank you, Chairman Jacobs. You  
9 may continue, again.

10 THE WITNESS: Now let's look at the other side  
11 of the coin. While discouraging competition in the  
12 residential market, the payment of reciprocal compensation  
13 encourages ALECs to compete only for customers that have  
14 high volumes of incoming calls, such as calls to Internet  
15 service providers. The reciprocal compensation revenue  
16 generated by providing these services for these high  
17 inbound users far exceeds the revenues generated from  
18 actually providing the service itself. Even in the  
19 example of a primary rate ISDN line, the potential revenue  
20 generated from reciprocal compensation can outweigh the  
21 revenue from the service itself by as much as double or  
22 even triple.

23 In short, requiring the payment of reciprocal  
24 compensation for ISP --

25 MR. HOFFMAN: Excuse me, Ms. Shiroishi. Again,

1 and I hate to do this, but that statement rang a bell  
2 because it was something that Mr. Edenfield said in his  
3 opening statement that I know is not in her testimony.

4 So I'm going to move to strike the statement  
5 about the primary rate ISDN line and the rest of the  
6 things that she had to say following that. I think she  
7 needs to stick with her prefiled testimony.

8 MR. EDENFIELD: First of all, I don't recall  
9 hearing the phrase primary rate ISDN service. All she  
10 said was that services can oftentimes exceed -- that  
11 reciprocal compensation payments can oftentimes exceed the  
12 cost of the service itself. I don't recall hearing ISDN.  
13 I think Mr. Hoffman may be assuming something that he is  
14 hearing when he is not actually hearing it. And all this  
15 is is just calculated to disrupt and try to harass Ms.  
16 Shiroishi anyway.

17 CHAIRMAN JACOBS: I think I did hear her use the  
18 comparison of ISDN and that there was a difference of  
19 perhaps double, that I will strike.

20 MR. HOFFMAN: Thank you, Mr. Chairman.

21 THE WITNESS: How should ILECs and ALECs  
22 compensate each other for ISP-bound calls, that is really  
23 what we are here about. The answer is simple, through a  
24 bill and keep mechanism. There has been some concern  
25 expressed about two issues related to bill and keep.



1 **Whether or not bill and keep can be ordered when traffic**  
2 **is not roughly balanced, and whether or not bill and keep**  
3 **allows the ALEC serving the ISP to recover its costs. Let**  
4 **me address these concerns head on.**

5 **First, the rough balance of traffic is only a**  
6 **requirement of bill and keep for local traffic subject to**  
7 **Section 251(b)(5) of the Act. ISP-bound traffic is**  
8 **clearly not subject to 251(b)(5). When looking at bill**  
9 **and keep in this context, ISP-bound traffic, not as an**  
10 **equalization of billing, meaning I have 50 minutes, you**  
11 **have 48 so let's just call it a wash, but rather as a**  
12 **default due to the access charge exemption. Although this**  
13 **is access, because of the exemption it falls into a bill**  
14 **and keep arrangement.**

15 **Second, to address the issue of cost recovery,**  
16 **it is important to look at what costs there are to**  
17 **recover. Imagine a scenario where a single LEC serves**  
18 **both the end user and the ISP. The ISP buys a service**  
19 **from the LEC. The rate paid by that ISP should cover the**  
20 **cost of the LEC for providing that dial-up service in its**  
21 **entirety. As such, when the ALEC serves the ISP, the rate**  
22 **the ISP pays to the ILEC should recover all costs the ALEC**  
23 **incurs. Keep in mind that local exchange service rates**  
24 **which we have heard sometimes seem to imply that we get**  
25 **compensated for that and, therefore, should pay out,**

1 Internet bound calls are not included in those cost  
2 studies and were never intended to be recovered through  
3 those rates.

4 And now to close. ISP-bound traffic is  
5 interstate traffic that has been exempted from access  
6 charges. The exemption doesn't change the jurisdiction of  
7 the traffic. The fact that the ISP pays intrastate  
8 tariffed rates doesn't change the exemption -- or the  
9 jurisdiction of the traffic, it is just a means to an end,  
10 the end being the access charge exemption. If this  
11 Commission finds it has jurisdiction to order a  
12 compensation mechanism for ISP-bound traffic, bill and  
13 keep is the appropriate mechanism. Thank you.

14 CHAIRMAN JACOBS: Thank you.

15 MR. EDENFIELD: Ms. Shiroishi is available for  
16 cross.

17 CHAIRMAN JACOBS: I guess we start.  
18 Ms. Caswell.

19 MS. CASWELL: No questions.

20 CHAIRMAN JACOBS: Ms. Masterton.

21 MS. MASTERTON: I have some questions.

22 CROSS EXAMINATION

23 BY MS. MASTERTON:

24 Q Good morning, Ms. Shiroishi.

25 A Good morning.

1           **Q**     **In your direct testimony on Page 8, Lines 2**  
2 **through 4, you state that reciprocal compensation for**  
3 **ISP-bound traffic is inconsistent with law and not sound**  
4 **public policy. Isn't it true, however, that BellSouth has**  
5 **voluntarily entered into interconnection agreements in**  
6 **Florida which provide for BellSouth to compensate CLECs in**  
7 **the nature of reciprocal compensation payments for the**  
8 **termination of ISP-bound traffic?**

9           **A**     **BellSouth has not entered into agreements that**  
10 **call for the payment of recip comp. We have entered into**  
11 **agreements which call for the payment of intercarrier**  
12 **compensation, which is not the same thing and is not**  
13 **subject to 251(b)(5).**

14          **Q**     **But isn't reciprocal comp just another method of**  
15 **intercarrier compensation?**

16          **A**     **I think that you could -- I mean, I think it is**  
17 **one of the things, you know, is a Volvo a car, and are all**  
18 **cars Volvos. Reciprocal compensation is one form of**  
19 **intercarrier compensation. However, intercarrier**  
20 **compensation does not carry with it the same burdens, the**  
21 **same requirements that are set forth in 251(b)(5).**

22          **Q**     **But aren't the charges that you have agreed to**  
23 **pay similar to the reciprocal compensation payments that**  
24 **you are making for local traffic?**

25          **A**     **Yes. In some instances we have agreed to pay**

1 the same structure to avoid the separation argument.

2 Q Okay, thanks. To move on to another subject, in  
3 your direct testimony on Page 25, Lines 21 through 25, you  
4 state that ISP-bound traffic -- I will give you a minute  
5 to --

6 A Page 25?

7 Q Yes. Page 25, Lines 21 through 25.

8 A Uh-huh.

9 Q You state that ISP-bound traffic must be  
10 separated from nonISP-bound traffic for the purpose of  
11 establishing a reciprocal compensation mechanism, correct?

12 A Uh-huh.

13 Q Were you present yesterday when Mr. Hunsucker  
14 compared the cost to develop a mechanism to separate such  
15 traffic to the cost of develop a mechanism to support the  
16 LNP process?

17 A I was here for portions of it. I was here for a  
18 portion of that. I don't know that I was here for the  
19 whole conversation.

20 Q But you remember him talking about that?

21 A Yes.

22 Q As I understand it, BellSouth as well as other  
23 ILECs have imposed end user surcharges to recover the cost  
24 of the LNP process. Does BellSouth anticipate recovering  
25 its costs relating to preparing mechanisms to separate

1 **ISP-bound traffic from nonISP-bound traffic in a similar**  
2 **manner?**

3 **A To be honest with you about that I haven't**  
4 **reached that point because we are in not any of our states**  
5 **in a position where we have an overriding industry**  
6 **decision on how to treat ISP-bound traffic.**

7 **I can say that BellSouth does separate out**  
8 **ISP-bound traffic from local traffic on our bills and when**  
9 **we verify bills from ALECs to BellSouth. Mr. Scollard's**  
10 **testimony goes into detail on that. It hasn't reached the**  
11 **level of an LNP type database. And I think that would be**  
12 **something that this Commission would have to actually look**  
13 **at as is this going to be an industry-wide solution. And**  
14 **if that were the case, we would have to talk as an**  
15 **industry about how to solve that problem. But BellSouth**  
16 **itself has taken on developing that, the database that we**  
17 **use and has not passed those costs on to end users.**

18 **Q But are you saying that it is possible that in**  
19 **the future you might seek to recover those costs in that**  
20 **manner?**

21 **A I really can't speak to that. We have not even**  
22 **discussed that issue at BellSouth.**

23 **Q Thank you. Ms. Shiroishi, in your direct**  
24 **testimony on Page 13, Lines 17 through 19, and actually,**  
25 **again, I was going to say on Page 17, Lines 3 to 4 you**

1 make a similar comment, but you refer to the ALECs  
2 receiving reciprocal compensation for ISP-bound traffic as  
3 a revenue windfall, correct?

4 A Yes.

5 Q Do you agree that -- first, I should ask are you  
6 familiar with Mr. Hunsucker's testimony recommending  
7 bifurcating the switching component of the compensation  
8 rate to account for varying call durations?

9 A Yes, I am.

10 Q Do you agree that such a mechanism would more  
11 appropriately reflect the cost of terminating traffic?

12 A I've got about a four-part answer for that. Let  
13 me start at the beginning. As you are aware, it is  
14 BellSouth's position that there really are no costs in  
15 ISP-bound traffic to recover, or for the ALEC to cover  
16 from the ILEC. That being said, you know, if this  
17 Commission were to find otherwise, you would have to  
18 definitely look at the different characteristics.

19 A bifurcated rate structure does take into  
20 account that there is only the one call set-up and the  
21 long duration. However, there were some issues such as  
22 the statement that all you would have to do is take  
23 existing current rates and bifurcate it. I don't think I  
24 can agree with that.

25 In the existing rate structure that we have in

1 place today, it basically contemplates unbundled local  
2 switching or the originating switch. It doesn't look at  
3 the termination or subsequent switches which there are  
4 cost differences. And I think Doctor Taylor had actually  
5 outlined quite a few of those in his testimony, and I have  
6 touched on it as well. Some of the differences include  
7 the cost set-up on the first switch as opposed to the  
8 subsequent switches, and dial pulsing patterns, and things  
9 to that nature.

10 Q So then do you agree that a rate that more  
11 appropriately reflects the costs incurred would eliminate  
12 any windfalls to the ALECs?

13 A Well, I think you are still -- I mean, are you  
14 addressing local traffic or ISP-bound traffic?

15 Q Both.

16 A Okay. On local traffic, I think that if you  
17 have an average call hold time that is accurately  
18 represented, you are probably about in the same boat,  
19 although if that call went to 20 minutes, yes, a  
20 bifurcated rate structure would more closely represent the  
21 cost. For ISP-bound calls, I would still assert that any  
22 revenue that an ILEC would -- or an originating carrier  
23 would pay to a subsequent LEC serving an ISP is still a  
24 windfall because there is no cost to be recovered.

25 COMMISSIONER JABER: Can you explain that to me.

1 You have said if again now that there are no costs to be  
2 recovered by the ALEC in transporting the ISP-bound call.  
3 But what about transport costs?

4 THE WITNESS: We have heard a lot today about,  
5 kind of talking about ALECs versus ILECs. And I think I  
6 want to take this opportunity to say that it is  
7 BellSouth's position that whatever we decide here is not  
8 ALEC versus ILEC, it is ISP versus non-ISP. And when you  
9 look at the structure for the -- let me back way up to  
10 local rates when they were taken into account, it  
11 basically built in the cost of providing the service.

12 So in the instance that we passed a local call  
13 off to an ALEC, yes, we are being paid for all portions of  
14 the switching and transport, and we should then compensate  
15 the terminating carrier likewise. If it goes the other  
16 way they should compensate us. But for ISP-bound calls  
17 the rate structures for local exchange service never  
18 included Internet-bound calls. So when BellSouth provides  
19 that, when a BellSouth end user or a LEC end user, it  
20 doesn't matter, dials into an Internet service provider,  
21 they are not paying that originating LEC or BellSouth  
22 anything for that service. They are paying a monthly fee  
23 for local exchange service, but they are not -- that cost  
24 doesn't include anything for Internet bound traffic.

25 COMMISSIONER JABER: You are talking to me about



1 rate structure and how, in your opinion, it was designed.  
2 I'm talking logistics. Aren't there costs incurred in  
3 transporting the ISP-bound traffic? And you're right, it  
4 doesn't matter if it is ALEC or ILEC to me, that is not my  
5 question. Aren't there costs incurred in transporting  
6 that ISP-bound call?

7 THE WITNESS: There are. And those costs are  
8 recovered through the service the ISP buys from the LEC  
9 that serves it. Generally it is a primary rate ISDN line,  
10 but there are other services. So when that ISP buys a  
11 service from the LEC, then they are paying for all  
12 portions of that. So when BellSouth no longer has that  
13 ISP, but an ALEC has the ISP and gets the revenue from the  
14 PRI, primary rate ISDN line, then, yes, they have got the  
15 cost, but they are now being compensated for those costs  
16 via the ISP, the rate the ISP pays.

17 COMMISSIONER JABER: And is that what BellSouth  
18 uses for its delivery of an ISP call, you recover your  
19 transport costs from your ISP end user?

20 THE WITNESS: Yes. I think it is important to  
21 point out that BellSouth today does not -- we do not  
22 demand nor do we collect reciprocal compensation or  
23 intercarrier compensation on ISP-bound calls. And we have  
24 a market that serves ISPs, a fairly large one. I can't  
25 speak to the other ILECs in the state, but we have a

1 business office that serves ISPs and they do that without  
2 relying on recip comp for ISP-bound traffic.

3 COMMISSIONER PALECKI: But do you agree with  
4 Witness Beauvais that ALECs disproportionately receive ISP  
5 calls? And I think what he said is that the ALECs are  
6 doing the rational thing, given the prices that you see in  
7 the marketplace?

8 THE WITNESS: I hesitate to answer  
9 across-the-board, so let me kind of segment it. I deal --  
10 part of my job is to negotiate agreements with local  
11 exchange carriers, ALECs mainly. And so I deal with a lot  
12 of carriers. And there are some that that is their sole  
13 business plan. And they tell us that.

14 There are others that really say, you know, I  
15 don't really care about targeting ISPs, I'm into this  
16 market or that market. So I think it varies  
17 across-the-board. I don't think you could say all ALECs  
18 are targeting ISPs. I think there are a majority of ALECs  
19 that are targeting that. And if you look at it, I mean,  
20 you can be an ALEC, get two or three ISPs behind you, and  
21 you're done. Because they are just generating that  
22 in-bound call. Now, obviously they want to continue to  
23 grow. But it might be a specialized market that fits  
24 well.

25 I don't think I would say that all are doing

1 that, or I would even hesitate to say the majority, but it  
2 is a lucrative market at this point, if you were to  
3 determine that recip comp is owed for ISP-bound traffic,  
4 that that ALEC would say, huh, if I go serve these seven  
5 ISPs, I can generate X thousands or even hundreds of  
6 thousands a month just in recip comp.

7           And also to add to that -- sorry, I might be  
8 going over the scope of what you want, but they can use  
9 those efficiencies. A neat thing about the ALEC market is  
10 they can say, all I want to do is target one type of end  
11 user and that way all I have to do deploy is one type of  
12 technology. And if they go into a market that is  
13 solely -- if they say, all I'm going to do is serve ISPs,  
14 they can invest in just one type of equipment. Mr. Jones  
15 talked earlier about that, you know, just a soft switch or  
16 just even a router. So they can take that and that might  
17 be their niche market plan.

18           **COMMISSIONER PALECKI:** If the Commission  
19 implemented a bill and keep system, plan, would those  
20 ALECs that have been targeting ISP calls be irrevocably  
21 harmed?

22           **THE WITNESS:** I think I might sound like a  
23 parrot here, but I very much agreed with -- I think it was  
24 Witness Beauvais earlier who said, you know, the signs  
25 have been coming for quite some while. In fact, we have a

1 document that we have used frequently and before this  
2 Commission, as well as others that was written in 1998  
3 called the gravy train is running out.

4           There was more recently an article put out by  
5 some analysts, you know, saying any CLEC today -- and this  
6 is not my opinion, I'm just telling you what the article  
7 said -- any CLEC or ALEC today who is relying on recip  
8 comp for ISP-bound traffic as their business plan has a  
9 faulty business plan. They have known for years now that  
10 this was basically a windfall that was coming to an end.  
11 And at this point that is a realization. This was  
12 attached in one of our discovery requests so it is in the  
13 record.

14           And I think that, you know, yes, perhaps there  
15 is a potential that one ALEC who has solely relied on that  
16 may have to rethink their business plan. I don't think  
17 that they can't jump into the market in another area.  
18 They have already got a network, hopefully, built, and  
19 they have the staff and support. So I don't think it is a  
20 jump that would overnight wipe out half the industry.

21           **COMMISSIONER PALECKI:** So they would need to  
22 pretty much completely change their business plan,  
23 completely change their marketing strategy. And you would  
24 agree that that is something that takes some time, it  
25 would require some sort of transition?

1           **THE WITNESS:** Yes. I want to correct one thing.  
2 I don't think I would say they would have to change their  
3 business plan. They might have to change their strategy.  
4 You know, if they are currently relying on reciprocal  
5 compensation, then they are probably not pricing the  
6 services to the ISPs. You know, they are probably  
7 undercutting the market in order to get those ISPs.

8           So instead of just saying you would wipe out  
9 their business, you might just bring to a more competitive  
10 level the pricing of certain services. But I think you  
11 could still have a very whole business serving ISPs, just  
12 you wouldn't be able to give those ISPs, you know, free  
13 service or a cutback or anything like that.

14           **COMMISSIONER PALECKI:** Well, I would have to say  
15 that I think bill and keep is very attractive to the  
16 Commission because of the administrative simplicity. But  
17 don't you think we have a real concern that if we take  
18 action that could cause injury to some of these ALECs that  
19 have focused on ISP calls, that we are actually reducing  
20 levels of competition rather than increasing competition?

21           **THE WITNESS:** Well, I don't know. I mean, maybe  
22 I'm seeing it a little further out than that immediate  
23 effect. But I think what you are going to do is shift  
24 competition from competition on ISPs to competition in the  
25 residential market, the small business market, and the

1 other areas that are not quite as competitive.

2 I mean, if I were an ISP, I bet I could go out  
3 tomorrow and have 12 people bidding for my service. If I  
4 were -- or I am a residential market, I've got nobody  
5 asking for my service. So I think, you know, I don't know  
6 that you are going to kill competition or even cut it  
7 down, I think you are going to shift it.

8 COMMISSIONER PALECKI: Thank you.

9 CHAIRMAN JACOBS: I have a question. How do I  
10 approach this now? If I'm coming at this business and I  
11 am designing my business plan, what I hear you saying is I  
12 ought to pursue a revenue stream other than ISPs. Or if I  
13 pursue ISPs, I ought not to pursue them through dial-up.

14 THE WITNESS: No, I think you can still have a  
15 solid business plan for dial-up. I don't think dial-up  
16 Internet traffic is going anywhere any time soon. I think  
17 what you would have to do is say I am going to serve ISPs,  
18 but I'm going to make sure I price my services to those  
19 ISPs in a manner that is consistent with the marketplace.  
20 I'm not going to undercut the cost.

21 CHAIRMAN JACOBS: But if I follow that and I  
22 make it consistent with what I understand the overall  
23 context of your proposal to be or the proposal of the  
24 ILECs is that would only apply to dial-up. Because you  
25 would concede that for packet switching that wouldn't

1 necessarily apply, correct?

2           **THE WITNESS:** Yes. And I was talking earlier  
3 about this. I think there has been some confusion that  
4 has been laid, and I hope we can get to this in a little  
5 bit more detail in some other questions, about what are we  
6 advocating in so much as noncircuit switched versus packet  
7 versus dedicated. And I have some questions about, you  
8 know, what exactly elements are the ALECs proposing we  
9 would compensate for in a noncircuit switched environment.

10           So let's take the example you just used of  
11 dial-up ISP and the equivalent of that which is noncircuit  
12 switch, which is DSL, or dedicated service. In a  
13 dedicated DSL type environment there is no -- I mean,  
14 there is really now the line is split into two sections.  
15 You still have got your voice section, but then you have a  
16 whole separate dedicated circuit. And if an ALEC is  
17 providing that separate dedicated service, BellSouth isn't  
18 even involved. So I think we are a little confused as to  
19 what are we being asked to pay for. We are not even  
20 involved in that.

21           **CHAIRMAN JACOBS:** Okay. Let me go back to my  
22 analysis. So if I'm an ALEC, and I follow your  
23 recommended course, I'm probably going to have a higher  
24 priced offering for dial-up to the ISPs, okay.

25           **THE WITNESS:** And, again, I am speculating, I

1 don't know how ALECs are pricing their services.

2           **CHAIRMAN JACOBS:** No, no, I am just going by the  
3 theory that you -- what you are saying is that there  
4 should not be any additional, any commensurate costs that  
5 would attach to an offering that comes over the DSL  
6 because it is nonswitched. And so if my business plan is  
7 to target ISPs, okay, I have a real important up front  
8 decision to make it. Do I want to go with a switch line  
9 or through DSL?

10           **THE WITNESS:** But the thing about it is,  
11 Chairman Jacobs, and I should know this and I don't, I'm  
12 not sure how much DSL is in the residential market going  
13 for in Florida, but let's say it is \$50 a month. Consider  
14 that to a dial-up service, which is about \$15 a month. So  
15 you have still got the revenue marketplace driving you  
16 there. So if you are looking at the decision of do I go  
17 to dial-up or DSL, which do I offer if you are going to  
18 choose one, well, what is the revenue for DSL versus what  
19 is the revenue for dial-up. And I know there is a capital  
20 investment decision as well on, well, if I go DSL, how am  
21 I going to get it? Am I going to resell, am I going to  
22 deploy new facilities.

23           **But I think you have got to look at the**  
24 **difference. And let's not assume that the revenue is the**  
25 **same for both. Because right now DSL is typically priced**



1 a little higher than dial-up. As well as, I mean, I know,  
2 it is in great demand, so there doesn't seem to be any  
3 consumer lack of interest.

4           **CHAIRMAN JACOBS:** Right. Rather than going too  
5 far afield, the point I wanted to make, and this drives  
6 off the answer to an earlier question. If I am going to  
7 pursue that as my business plan, there are -- first of  
8 all, just by virtue of the nature of DSL, let's use DSL  
9 and there is no technology out there other than that,  
10 let's look at that. We have already cut out -- I don't  
11 know, I don't know what potential of the market is beyond  
12 the distance limitation, but I understand it is in the 30  
13 percent range and above. So we have cut out 30 percent of  
14 the market that my business as an ESL could potentially  
15 reach if I were to go solely looking at the DSL  
16 arrangement versus dial-up.

17           Then if I -- let's say that still is a  
18 meaningful opportunity for me. Then what I then have to  
19 do is I have to recover my cost over now this reduced  
20 market opportunity in the DSL versus a broader dial-up.  
21 And that in my mind -- then let's put aside for the moment  
22 all the technical issues and provisioning issues that are  
23 there, because let's say those are a wash. That is real  
24 simplified discussion, but let's assume that.

25           But just as a pure matter of my decision to

1 pursue this marketplace, it sounds to me as if -- and  
2 let's assume also that the ILEC is going to pursue this  
3 marketplace, as well, okay, a ILEC affiliate, I'm sorry,  
4 is going to pursue this marketplace, as well, okay. And  
5 that the ILEC, as I understand you to say in the bill and  
6 keep arrangement, your affiliate would be in a bill and  
7 keep arrangement with you, as well?

8 THE WITNESS: Well, I think -- and maybe I am  
9 confused here. The affiliate you are talking about is an  
10 ISP, right?

11 CHAIRMAN JACOBS: No, no, it would be your  
12 affiliate that markets DSL.

13 THE WITNESS: Okay.

14 CHAIRMAN JACOBS: I'm sorry, would be a bundled  
15 ISP DSL arrangement, yes.

16 THE WITNESS: Okay. Yes, and that ISP would be,  
17 you know, have a relationship with BellSouth just like any  
18 other ISP would.

19 CHAIRMAN JACOBS: Right.

20 THE WITNESS: But not apples-to-apples  
21 comparison to an ALEC's relationship with BellSouth.

22 CHAIRMAN JACOBS: Right. And so they would be  
23 in a bill and keep arrangement with the incumbent LEC  
24 facility as well, correct?

25 THE WITNESS: There is no compensation

1 arrangement on like a per minute of use or anything. They  
2 would just buy the services from BellSouth, just like an  
3 ISP would buy services from BellSouth.

4 CHAIRMAN JACOBS: Okay. So I have to compete  
5 with that in the marketplace, as well. It seems to me  
6 that all -- if I'm reading the signal right, I'm not even  
7 going to try this dial-up arrangement if I am in bill and  
8 keep. First of all, because as I understand it, we would  
9 do this regardless of whether or not we make a  
10 determination that the flow is balanced or not. What you  
11 are saying is even if you determine that the flow is not  
12 balanced, you would do a bill and keep, is that correct?

13 THE WITNESS: Right. The rough balance is only  
14 required for local traffic.

15 CHAIRMAN JACOBS: So I know the likelihood is if  
16 I go after ISPs the balance in traffic would shift to  
17 where I am terminating more of your traffic and those  
18 costs will probably not be recovered because of the bill  
19 and keep arrangement?

20 THE WITNESS: Well, I mean, obviously I would  
21 disagree. I would say the costs are recovered through the  
22 price that you charge the ISP.

23 CHAIRMAN JACOBS: Right. So my competitive  
24 decision is to go back to the ISP and raise his bundled  
25 price, right? And now I can --

1           **THE WITNESS:** It depends on where you are priced  
2 currently. I mean, you could already be recovering that  
3 cost and you are just -- you know, under a reciprocal  
4 compensation scheme you are just getting extra what we  
5 call windfall.

6           **CHAIRMAN JACOBS:** I see. That is the piece --  
7 okay, that gets me to where I was. So what you are saying  
8 is that perhaps the existing agreement between the ALEC  
9 and ISP is recovering these costs and, therefore, all we  
10 are doing is reducing the profit margin within that  
11 existing agreement.

12           **THE WITNESS:** Right.

13           **COMMISSIONER JABER:** Have you seen any instances  
14 where that is happening or are you speculating?

15           **THE WITNESS:** We are at a little bit of a  
16 disadvantage on that because we don't have access to those  
17 type of records. I mean, I know how much the ALECs claim  
18 we owe them as compared to the price of, in some  
19 instances, their services where they have tariffs,  
20 although we have to take into account they could undercut  
21 that.

22           And, again, you know, I think it is telling to  
23 look at the price of a BellSouth PRI. If you were an ISP  
24 and came to BellSouth, and we have tariffs and we also  
25 have CSAs and things like that, but if you came to

1 **BellSouth you are probably going to pay -- it depends and,**  
2 **again, this is a very general figure because it depends on**  
3 **what you are buying and where, but somewhere from 700 to**  
4 **\$1,000 a month, perhaps a little less than that depending**  
5 **on the volume and term agreement.**

6 **And if you were to take one PRI, and if you were**  
7 **to keep that PRI up, which basically has 24 channels**  
8 **riding it, one of which has to be used for signaling, so**  
9 **23 open, and let's just say you kept it up 24 hours a day.**  
10 **I know that's an oversimplification. But let's say you**  
11 **had enough demand that those PRIs were being utilized 24**  
12 **hours a day. You would basically have to say 24 -- or 23,**  
13 **excuse me, channels times 24 hours a day times the rate**  
14 **that the ALECs are claiming that we owe, and I actually --**  
15 **let me do that math real quick.**

16 **COMMISSIONER JABER: So is your answer to me you**  
17 **don't have any evidence that indicates that the ALECs are**  
18 **attempting to recover additional reciprocal compensation**  
19 **for an amount that they are currently recovering from the**  
20 **ISP, is that your answer to me?**

21 **THE WITNESS: No. I mean, I think our evidence**  
22 **would be BellSouth is currently providing or works in both**  
23 **of those worlds. We know that our PRI is priced to**  
24 **recover that cost. We don't claim reciprocal compensation**  
25 **on that. An ALEC is offering the same service and is**

1 claiming they must have the reciprocal compensation. So  
2 to us, yes, anything above that rate that they charge the  
3 PRI is a windfall. I mean, we are not getting it to today  
4 and we are operating.

5 COMMISSIONER JABER: So your testimony is  
6 because BellSouth recovers that amount from the ISP, then  
7 surely the ALECs are doing the same thing.

8 THE WITNESS: Well, they could do the same  
9 thing.

10 CHAIRMAN JACOBS: Okay. Now, something we have  
11 touched on, we haven't really talked about specifically.  
12 If we implement a policy similar to bill and keep or any  
13 other policy that would require the ALECs or the ILECs, it  
14 doesn't matter, require a company to recover the costs  
15 associated with ISP-bound traffic from the ISP, what  
16 affect does that have on the deployment of Internet  
17 service in Florida?

18 THE WITNESS: Of like DSL dedicated Internet  
19 service?

20 COMMISSIONER JABER: Like dedicated service,  
21 like dial-up network ISP service.

22 THE WITNESS: I mean, I think what you are going  
23 to see is the competitive forces driving what the  
24 marketplace wants. And you are definitely still going to  
25 continue to see DSL be deployed because consumers want it.

1 You are also going to have ALECs who maybe previously were  
2 basing their business plan on recip comp, well, that is  
3 gone, let me go into a new market, DSL.

4 I don't think, like I said earlier, that dial-up  
5 is going away. Because, as Chairman Jacobs said, the 30  
6 percent of subscribers who are too far away, and that  
7 number is subject to check, I don't know what that number  
8 is. And also the way the marketplace is. I mean, you are  
9 going -- as you see DSL deployed you are going to also  
10 have new users who have never even dialed up dial-up into  
11 the Internet come on board. So I think that both of those  
12 markets are going to continue to grow for at least three  
13 to five years, DSL longer.

14 But, you know, I don't see that making a  
15 decision to go to bill and keep is going to do anything  
16 other than force some or have some ALECs relook at their  
17 business plan and say, well, maybe now do we want to focus  
18 on DSL versus dial-up. And then you are still going to  
19 have plenty of room for dial-up providers because of the  
20 demand.

21 CHAIRMAN JACOBS: I lost track, Ms. Masterton,  
22 were you done?

23 MS. MASTERTON: I'm done, yes.

24 CHAIRMAN JACOBS: Okay. Mr. Hoffman.

25 MR. HOFFMAN: Thank you, Mr. Chairman.

**CROSS EXAMINATION**

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**BY MR. HOFFMAN:**

**Q Good morning, Ms. Shiroishi. Did I pronounce that correctly?**

**A We were laughing earlier, it is Shiroishi.**

**Q Shiroishi.**

**A It is actually Shiroishi in Japanese, though.**

**There were a couple of people here who got it right both ways.**

**Q Okay. I'm Ken Hoffman. I do have some questions for you. And I would like to focus primarily on your direct testimony. Let me begin on Page 3. On Line 13 through 15 of your direct testimony, you take the position that the vacating of the FCC's declaratory ruling by the court in the Bell Atlantic case leaves this Commission without the authority to establish a reciprocal compensation mechanism for ISP traffic. That's what your testimony is, correct?**

**A Yes. And let me preface it with saying I'm not a lawyer. But, yes, it is my understanding of the ruling that it did confer the authority and it was vacated in its entirety.**

**Q Would you agree that this Commission has jurisdiction under the 1996 Federal Act and the FCC Rules to establish reciprocal compensation for the exchange of**



1 local traffic?

2 A Yes, I would.

3 Q And local traffic may include ISP-bound traffic  
4 if it is so determined by this Commission in this  
5 proceeding, correct?

6 A I think there you are walking a fine line. I  
7 mean, I think the ultimate jurisdiction will be what it  
8 is. And I know that is a frustrating thing given where we  
9 are at today. And I think this Commission clearly has  
10 jurisdiction to find that ISP-bound traffic is not subject  
11 to local traffic because it is not within their  
12 jurisdiction. I mean, I think that is one they definitely  
13 have.

14 As far as saying it is local traffic, obviously,  
15 you know, this Commission can make that decision  
16 themselves. And then subject to the frustration we all  
17 feel, perhaps the FCC might rule differently.

18 Q Well, absent some change in the roadway of this  
19 proceeding, the Commission is going to make a  
20 determination in this proceeding as to whether ISP-bound  
21 traffic is or is not local traffic, wouldn't you agree  
22 with that?

23 A Well, I mean, frankly I can't say what the  
24 Commission will or won't find. I know there are several  
25 issues in this proceeding, or eight or nine issues, and

1 several of those deal with purely the fact of does this  
2 Commission have jurisdiction.

3 So, I mean, I think you can't say one way or the  
4 other what the Commission will or won't find. I think  
5 they could obviously say we find we don't have  
6 jurisdiction, and it's done. Now, that may or may not  
7 happen, but I don't want to speculate on what this  
8 Commission will find.

9 Q Right. Certainly one of the possibilities or  
10 one of the outcomes of this case is that the Commission  
11 may determine that ISP-bound traffic is local traffic.

12 A That is a possible outcome.

13 Q Okay. Now, would you agree that this Commission  
14 has jurisdiction under state law to establish local  
15 interconnection charges under Section 364.162, Subsection  
16 3, of the Florida Statutes?

17 A I am not a lawyer and not familiar with Florida  
18 state law. So I would rather not answer questions on  
19 that.

20 Q Okay. Let me read you a passage then from that  
21 statute. Section 364.162(3), of the Florida Statutes  
22 states, "In setting the local interconnection charge, the  
23 Commission shall determine that the charge is sufficient  
24 to cover the cost of furnishing interconnection." So  
25 wouldn't you agree this Commission has jurisdiction under

1 **state law to establish local interconnection charges?**

2 **A Again, I'm not a lawyer and I'm not familiar**  
3 **with the Florida Statutes, so I would say it says what it**  
4 **says.**

5 **Q Okay. In rendering your opinions through your**  
6 **testimony as to what this Commissions jurisdiction is or**  
7 **is not, did you even review state law?**

8 **A I did not.**

9 **Q Okay. I also believe, and I'm talking, Ms.**  
10 **Shiroishi, on Page 3. Now I am turning to Lines 20**  
11 **through 23 on Page 3 of your direct. It is your position**  
12 **that if this Commission establishes an intercarrier**  
13 **compensation mechanism for ISP-bound traffic, it should be**  
14 **done so through a generic docket such as this one?**

15 **A I'm sorry, was that a question?**

16 **Q Yes. Would you agree with that statement?**

17 **A That is what my testimony says.**

18 **Q Okay. Now, let me follow up on that particular**  
19 **passage of your testimony on Page 3 of your direct, Lines**  
20 **20 through 23. Now, on Lines 21 and 22 you state in your**  
21 **testimony that the Commission clearly does not have**  
22 **authority to establish an intercarrier compensation**  
23 **mechanism for ISP-bound traffic, correct?**

24 **A Yes.**

25 **Q Now, you would agree, would you not, that the**

1 issue of the Commission's jurisdiction is a question of  
2 law, correct?

3 A Yes, it is a question of law. But obviously  
4 there is, you know, opinion associated with that, as well.  
5 And that is what my testimony is discussing.

6 Q You have already testified that you are not a  
7 lawyer, correct?

8 A That is correct.

9 Q And you don't have any legal background,  
10 correct?

11 A Well, I'm not sure how you define legal  
12 background.

13 Q You didn't go to law school?

14 A No, I did not.

15 Q Okay. And the issue of the Commission's  
16 jurisdiction is clearly a legal issue, is it not? That's  
17 why Commissioner Jaber asked for briefs from the parties,  
18 correct?

19 A It is a legal issue, yes.

20 Q All right. My question is in light of the fact  
21 that this issue is to be briefed, and that the lawyers for  
22 the parties take different positions on this, what are  
23 your credentials to file testimony and unequivocally state  
24 that this Commission clearly does not have jurisdiction to  
25 establish an intercarrier compensation mechanism for

1 **ISP-bound traffic?**

2 **A That is pulling straight from the FCC orders and**  
3 **the subsequent court rulings and different, like, rulings**  
4 **and orders that have been presented before all the telecom**  
5 **industry.**

6 **Q So this is not based on any background or**  
7 **expertise that you have. You are culling together FCC**  
8 **orders and rendering a nonlegal opinion, correct?**

9 **A Yes. Something you said in there kind of**  
10 **bothered me. I mean, I am pulling this opinion from the**  
11 **FCC orders that I have cited earlier, the different**  
12 **circuit court rulings, Commission rulings.**

13 **Q Okay. You are rendering an opinion, you are a**  
14 **non-lawyer and you are rendering a legal opinion on a**  
15 **legal issue basically is what you are doing.**

16 **A I am giving the opinion of a person who works in**  
17 **the policy side of the industry.**

18 **Q Who is that?**

19 **A Me.**

20 **Q Okay. I'm sorry, I thought you were referring**  
21 **to somebody else at BellSouth. Let me ask you to turn to**  
22 **Page 5 of your testimony at Lines 8 through 12. It**  
23 **appears that you take the position that the FCC considers**  
24 **ISPs to be exchange access users, is that a fair**  
25 **characterization?**

1           **A**    **This order did word it that way, yes.**

2           **Q**    **Okay. You are familiar with the Bell Atlantic**  
3 **decision that has been discussed over the course of the**  
4 **last day or so?**

5           **A**    **Yes, I am.**

6           **Q**    **Didn't the Bell Atlantic decision reverse and**  
7 **vacate the FCC's attempt to classify ISPs as exchange**  
8 **access users in the 1999 declaratory ruling?**

9           **A**    **I would have to actually ask you to point me to**  
10 **that portion of the order, or the vacation of the order.**  
11 **As I read it, it does discuss the issue. It talks about,**  
12 **you know, has the FCC adequately decided whether this is**  
13 **telephone exchange or exchange access. But these -- you**  
14 **know, that was the -- that circuit court ruling was on one**  
15 **order. There are several others previous to that, of**  
16 **which this is one, that were not vacated.**

17          **Q**    **Well, I'm only talking about this one because**  
18 **this is the only one you talked about in your testimony.**  
19 **Now, I thought your testimony in this case was that that**  
20 **order was vacated and should not be relied upon by the**  
21 **Commission. Is that your testimony?**

22          **A**    **Well, this is talking about the 1988 order. The**  
23 **order that I am testifying to as vacated is the**  
24 **declaratory ruling, 1999.**

25          **Q**    **Why don't we do this, why don't I hand you a**

1 copy of it, of the Bell Atlanta decision, and let's talk  
2 about that for just a moment.

3 MR. HOFFMAN: Mr. Chairman?

4 CHAIRMAN JACOBS: Yes.

5 MR. HOFFMAN: Just for purposes of  
6 identification at this point, may I have the copy that I  
7 have just distributed of the Bell Atlantic decision marked  
8 for identification?

9 CHAIRMAN JACOBS: Very well. This is part of  
10 the official recognition list, I believe.

11 MR. HOFFMAN: Yes, sir, it is.

12 CHAIRMAN JACOBS: We will mark it as Exhibit 24.

13 MR. HOFFMAN: Thank you.

14 (Exhibit 24 marked for identification.)

15 BY MR. HOFFMAN:

16 Q Now, Ms. Shiroishi, if you would turn to Page 9  
17 of the decision that I have just handed you, which has  
18 been marked as Exhibit 24, and look at the last paragraph  
19 that starts with the word because. You will see there  
20 that the court states that, and I will quote, "Because the  
21 Commission has not provided a satisfactory explanation why  
22 LECs that terminate calls to ISPs are not properly seen as  
23 terminating local telecommunications traffic, and why such  
24 traffic is exchange access rather than telephone exchange  
25 service, we vacate the ruling and remand the case to the

1 **Commission."**

2 **So let me return to my original question.**

3 **Didn't the Bell Atlantic court reverse and vacate the**  
4 **FCC's 1999 declaratory ruling that attempted to classify**  
5 **ISPs as exchange access users?**

6 **A Again, I'm not a lawyer, so I'm not sure if**  
7 **reverse and vacate are the same, have the same context**  
8 **here. I think what they did is remand it back to the FCC**  
9 **for more decision, reason-making, and explanation of what**  
10 **it thought. I don't think they overturned, they remanded**  
11 **back for further decision, or further explanation of what**  
12 **decision they had found. And if they couldn't do that,**  
13 **obviously the FCC themselves is going to have to come out**  
14 **with a different determination.**

15 **Q Do you know whether or not the Bell Atlantic**  
16 **case affirmed or reversed the FCC's 1999 declaratory**  
17 **ruling, is that what you are saying?**

18 **A It is my understanding that it vacated and**  
19 **remanded back.**

20 **Q Okay. And when it did that it vacated and**  
21 **remanded back the FCC's declaratory ruling determination**  
22 **that attempted to classify ISPs as exchange access users,**  
23 **didn't it?**

24 **A It did reverse, or it did vacate and remand back**  
25 **that one order. Now, there are several others that refer**



1 to ISPs as exchange access users, users of exchange  
2 access, or access providers that were not vacated.

3 Q Okay. Let me ask you to turn to Page 7 of your  
4 direct testimony, Lines 5 through 7. You state that  
5 BellSouth's position is supported by and consistent with  
6 the FCC's findings and orders which state that for  
7 jurisdiction purposes traffic must be judged by its  
8 end-to-end nature.

9 Let me ask you the same question. Didn't the  
10 Bell Atlantic court vacate and remand the end-to-end  
11 analysis of the FCC in the FCC's 1999 declaratory ruling?

12 A They vacated the whole order. The point that  
13 they, I think, found and I don't know that they made it  
14 all the way through all the point because they stopped at  
15 the first few big ones. But as I understand it what they  
16 found is that the FCC did not adequately explain why the  
17 end-to-end analysis traditionally used for jurisdictional  
18 purposes should hold in this case. There are other orders  
19 that have the same jurisdictional end-to-end analysis that  
20 have not been vacated.

21 Q So the answer to my question was yes?

22 A Well, with some caveats. If you would like to  
23 ask it again, I will try to specifically address those.

24 Q No, I understood your answer. I just wanted to  
25 clarify that your answer was yes with the explanation that

1 you gave.

2 A Yes.

3 Q Thank you. Now, if you would turn to Page 8 of  
4 your direct testimony, Lines 1 through 4. You state again  
5 that ISP-bound traffic constitutes access service, which  
6 is clearly not local traffic and that the payment of  
7 reciprocal compensation for ISP traffic is inconsistent  
8 with the law.

9 Now, wouldn't you agree that the law, and I  
10 understand you are not a lawyer, but wouldn't you agree  
11 that the law as articulated by numerous FCC orders is that  
12 ISP-bound traffic is exempt from access charges?

13 A Yes, it is access which is exempt from access  
14 charges.

15 Q Let me ask you to turn now to Page 10 of your  
16 testimony. You state that ISP traffic -- I'm sorry, I'm  
17 on Lines 11 through 13. You state that ISP traffic does  
18 not terminate at the ISP. Do you see the passage I am  
19 referring to?

20 A I believe. On Line 13?

21 Q I'm sorry, on Page 10.

22 A Right. Line 13?

23 Q Lines 11 and then 13. You say, does ISP traffic  
24 terminate at the ISP?

25 A Yes, I see where you are talking about.

1           **Q**     And your answer is absolutely not. And then you  
2 cite the FCC's 1999 declaratory ruling. And, again, would  
3 you agree that the Bell Atlantic court vacated and  
4 remanded the finding that ISP traffic does not terminate  
5 at the ISP?

6           **A**     Yes, and there is an explanation following that  
7 in my testimony about that.

8           **Q**     Okay. Now, let's talk about some of the  
9 subsequent explanation on that page, which is first your  
10 discussion of the FCC's declaratory ruling. And I'm  
11 talking about Page 10, Lines 16 through 21. Is it your  
12 position that this Commission should rely on the passages  
13 from the 1999 declaratory ruling that you cite?

14          **A**     My position is this Commission should look at  
15 everything that has been discussed, addressed, and brought  
16 before about this issue and that does not limit it to one  
17 paragraph of one order. I mean, there is numerous orders  
18 that have been put into the record that we have discussed.  
19 And I think you have to look from end-to-end at the whole  
20 treatment.

21          **Q**     So it is certainly not inappropriate to cite to  
22 and reference the FCC order in reliance on a position as  
23 you have done, correct?

24          **A**     Well, I think it depends on what you mean by  
25 cite to and refer for reference. I mean, obviously it

1 helps to understand the history. If I were making -- if I  
2 were in the position of having to make a decision, I would  
3 want to know everything that had been said, and if that  
4 was vacated, why it was vacated. So obviously we need to  
5 look at all portions of it. As to what is actually in  
6 effect at this point in time, I think you have to take  
7 that into consideration, as well.

8 Q Okay. Well, let me ask you to turn to your  
9 rebuttal testimony for a moment on Page 2, Line 25,  
10 through Page 3, Lines 1 through 3.

11 A I'm sorry, what page?

12 Q Starting on Page 2, Line 25, and then you go to  
13 Page 3 through Line 3. Now, there you criticize  
14 Mr. Hunsucker and Mr. Falvey for relying on the  
15 declaratory ruling in support of their position that this  
16 Commission has jurisdiction to establish intercarrier  
17 compensation arrangements for ISP-bound traffic. And you  
18 go on to state that since the declaratory ruling is  
19 vacated, there is now no order conferring such authority.

20 So on the one hand you cite it, and you feel  
21 like you are free to do so because that is part of the  
22 total picture. But when the witnesses for Sprint and  
23 e.spire cite it you criticize them saying that the order  
24 has been vacated.

25 A I don't think that is an accurate

1 characterization. When I stated and quoted from the  
2 declaratory ruling, I very clearly went on to explain that  
3 that has been vacated, and here is why I give you that  
4 reference, and here is what it means in the context of  
5 today. I didn't use that as the sole authority by which I  
6 was making my position or statement.

7           On the other hand, the only authority that I  
8 know of today under FCC rules to give state commissions  
9 the authority to establish an intercarrier compensation  
10 for ISP-bound traffic was that order which was vacated.  
11 There has been no other cite given as to how this  
12 Commission would have authority. So I don't -- I don't  
13 think that it was characterized quite accurately. I  
14 haven't relied on it in one instance and criticized the  
15 reliance on it in another.

16           Q     Well, let me read you a passage from  
17 Mr. Taylor's rebuttal testimony. And for the record, I am  
18 referring to Page 5, Lines 26 and 27 of Mr. Taylor's  
19 rebuttal.

20           A     Can I have a copy of that? I got laughed at for  
21 bringing up two binders, so I couldn't bring my third big  
22 one with all the intervenors' rebuttal.

23           Q     Okay. Let me just read the passage into the  
24 record, then I can give you my copy. He says in there,  
25 "First, as the FCC has already correctly determined, calls

1 made to Internet destinations are more likely to be  
2 jurisdictionally interstate than local." And he cites to  
3 the declaratory ruling. Do you have that in front of you?

4 A Yes. Which page are you on, 5?

5 Q I'm on the bottom of Page 5.

6 A Okay.

7 Q He makes the statement, he relies on the FCC's  
8 declaratory ruling, and he says nothing about the Bell  
9 Atlantic decision. Is Mr. Taylor as wrong as  
10 Mr. Hunsucker and Mr. Falvey in his approach to this case?

11 A I don't think that that is the only cite, and I  
12 would have to read through, and I don't want to waste your  
13 time to do that, that he is relying on to use that. I  
14 mean, you can certainly ask Doctor Taylor what authority  
15 are you relying on, are you using any other besides that  
16 one order.

17 Q Well, I thought your testimony a moment ago was  
18 that the problem you had with Mr. Hunsucker and Mr. Falvey  
19 was they allegedly referenced the FCC declaratory ruling  
20 without following it up with the recitation to the Bell  
21 Atlantic decision to give the whole picture. And that is  
22 exactly what Doctor Taylor did here, didn't he?

23 A No, I think that is a mischaracterization. The  
24 problem that I have with citing to one portion -- well,  
25 let me back up. There is two different issues. In one we

1 are talking about does this Commission have jurisdiction,  
2 in another we are talking about, I believe in this  
3 instance, end-to-end analysis.

4 As far as I have found in the testimony, there  
5 is no other cite or no other reliance on anything about  
6 whether or not this Commission has jurisdiction except to  
7 that one cite which has been vacated in the declaratory  
8 ruling. My criticism wasn't that it was followed up or  
9 not followed up with an explanation. It was just, you  
10 know, under my opinion that no longer holds.

11 Q Let me ask you to turn to -- I'm back on your  
12 direct?

13 COMMISSIONER JABER: Excuse me, Mr. Hoffman.

14 MR. HOFFMAN: Yes.

15 COMMISSIONER JABER: So taking that a step  
16 further then, it would no longer hold in your testimony,  
17 either, would it?

18 THE WITNESS: The cite that I -- no. And I  
19 explained why we can't say that that is whatever today,  
20 the Carrier Common Bureau Chief at the time has stated  
21 this and we have got other orders that go along with it.

22 BY MR. HOFFMAN:

23 Q Let me ask you to please turn in your direct  
24 testimony to Page 13, Lines 22 through 23. You state that  
25 reciprocal compensation does not represent cost-recovery

1 for completing local calls originated by BellSouth end  
2 users. Do you have that before you?

3 A Yes.

4 Q Would you agree that an ALEC incurs costs to  
5 transport and terminate ISP-bound calls?

6 A Yes.

7 Q Let me ask you to turn to Page 16, starting on  
8 Line 25 going through Page 17, Line 4. There you state  
9 that the ALEC will not be uncompensated if it does not  
10 receive reciprocal compensation because it will receive  
11 compensation from the ISP through its retail rate. Is  
12 that your testimony?

13 A Yes.

14 Q Wouldn't you agree that under the theory that  
15 you are laying out here that BellSouth would not be  
16 entitled to reciprocal compensation for terminating any  
17 local calls from an ALEC because it receives retail rate  
18 compensation from BellSouth's end users?

19 A No, that analogy doesn't hold. I mean, you are  
20 looking at cost-recovery versus cost causation. And in  
21 one instance the ISP and the end user dialing into the  
22 ISP, the portion that the ISP pays is the surrogate for  
23 payment for the whole service. In the other instance of a  
24 local call, when an end user places that local call to  
25 another voice end user, wherever it may be, there is



1 actually compensation from the end user to the originating  
2 LEC that should be passed on to the terminating LEC, if  
3 there are two different parties involved.

4 Q Well, as I understand your testimony, and let's  
5 put aside, if we can, whether or not an ISP call is local,  
6 because that is the issue here. As I understand your  
7 testimony, you are saying that there should be no  
8 reciprocal compensation paid to an ALEC from BellSouth,  
9 because the ALEC gets paid a retail rate, a business line  
10 rate by the ISP, is that correct?

11 A No. My testimony is that there should no  
12 reciprocal compensation paid for ISP-bound calls  
13 regardless of whether that is an ALEC end user calling a  
14 BellSouth served ISP or a BellSouth end user calling an  
15 ALEC served ISP.

16 Q I thought that your testimony -- let me go back  
17 and double-check it.

18 A In the examples I may be talking only one way,  
19 and you can check to see. I don't want to preclude you  
20 from doing that.

21 Q Okay. Well, what it says is -- and I am on the  
22 bottom of Page 16. Well, the question that directly  
23 precedes it is if reciprocal compensation for ISP-bound  
24 traffic is not authorized, will ALECs be uncompensated for  
25 the costs they incur to provide services to ISPs.

1                   **Now, here is your answer. No, the ALECs' ISP**  
2 **customers compensate the ALECs for the services that they**  
3 **provided, just like an ILECs' ISP customer compensates the**  
4 **ILEC.**

5                   **Now, I thought what you are saying there is that**  
6 **the ALEC doesn't need to be paid by the ILEC because the**  
7 **ALEC recovers its costs in the retail rate it charges the**  
8 **ISP. Isn't that what you are saying?**

9                   **A     That is true on an ISP-bound call, yes.**

10                  **Q     Now, my question was under that theory, isn't it**  
11 **true that every call that is terminated by BellSouth to**  
12 **one of its end users should not be subject to reciprocal**  
13 **compensation because BellSouth likewise receives a retail**  
14 **rate from its end user?**

15                  **A     Maybe I misheard you, because in the scenario I**  
16 **heard there weren't two parties. It was BellSouth**  
17 **terminating a call.**

18                  **Q     Do you want me to ask the question again?**

19                  **A     Uh-huh.**

20                  **Q     All I'm asking you is likewise, shouldn't**  
21 **BellSouth under your theory not recover reciprocal**  
22 **compensation from an ALEC for every call that it catches,**  
23 **transports, and terminates to a BellSouth customer because**  
24 **BellSouth, like the ALEC in your example, receives a**  
25 **retail rate from its end user customer?**

1           **A**     **No. The reason that that scenario holds true**  
2 **for ISPs is because the charges that ISP pays to the LEC**  
3 **that serves it are a surrogate for access. In a local**  
4 **call, with local exchange carriers, you have got a**  
5 **prescribed method called reciprocal compensation. And**  
6 **that is the originating end user pays the originating LEC**  
7 **who passes the cost on -- or not cost, I'm sorry, passes**  
8 **the compensation on for the elements involved if it goes**  
9 **to a second LEC. That is under local traffic.**

10                   **In the instance of an ISP, you have got access**  
11 **traffic which is exempt and they are using the surrogate,**  
12 **which is that the ISP now pays instead of reciprocal**  
13 **compensation.**

14                   **COMMISSIONER JABER: Ms. Shiroishi, that sounds**  
15 **very inconsistent with what you told me earlier when I**  
16 **asked you for hard evidence with respect to whether the**  
17 **ALECs are collecting the costs through the ISP and then**  
18 **trying to collect it with reciprocal comp. You said to me**  
19 **something similar to they must be because BellSouth**  
20 **collects that cost through the ISP.**

21                   **THE WITNESS: Well, maybe I didn't make myself**  
22 **clear. In answer to his question, I am differentiating**  
23 **between a local call where you would have recip comp and**  
24 **an ISP call where you wouldn't.**

25                   **COMMISSIONER JABER: Well, we are not. We are**

1 talking about ISP calls. So for the record, let me ask  
2 you again. Do you have any evidence that the ALEC  
3 collects the costs associated with transporting the  
4 ISP-bound call from the ISP and then is trying to collect  
5 it again through reciprocal compensation?

6 THE WITNESS: And my answer is the same that I  
7 gave to you earlier. You know, BellSouth provides a  
8 service, talking about ISP-bound calls, where we recover  
9 the cost from the PRI, or whatever service the ISP buys  
10 from BellSouth. And we do not collect reciprocal  
11 compensation from the ALEC if it is an ALEC served end  
12 user.

13 COMMISSIONER JABER: Okay. You are telling me  
14 what BellSouth does. My question again is do you have any  
15 evidence that you can give us today about what the ALECs  
16 are recovering?

17 THE WITNESS: No, we could not. I mean, the  
18 ALECs, I think, would have to provide what rates they are  
19 charging and whether or not they are relying on that  
20 reciprocal compensation.

21 BY MR. HOFFMAN:

22 Q Ms. Shiroishi, there is no -- you have not  
23 presented any data in your testimony regarding whether or  
24 not the ALECs or the ILECs recover the costs of their  
25 calls, have you?

1           **A     No, I have not.**

2           **Q     I don't know if I ever had an answer to my**  
3 **question, my last question before Commissioner Jaber asked**  
4 **you a question, so let me just ask you one more time.**

5                   **Would you agree that under your theory in your**  
6 **testimony on Page 16, that the ALEC does not go**  
7 **uncompensated because it receives a retail rate, that**  
8 **likewise BellSouth under that theory should not be**  
9 **compensated on calls it terminates to its end users**  
10 **because it receives a retail rate from those customers?**

11           **A     And I think maybe the point that I'm trying to**  
12 **drive home, which perhaps I'm not doing successfully, is**  
13 **you are talking about two different types of calls. And**  
14 **in your question to me just now you said because it**  
15 **receives rates from its end users. So I am taking that to**  
16 **mean a local call.**

17           **Q     Yes.**

18           **A     Okay. And as I have stated before, for true**  
19 **local calls which is me picking up my phone and calling**  
20 **you at your house if we live in the same area, the same**  
21 **compensation scheme does not hold true as for ISP-bound**  
22 **calls. And so I want to make sure I am clear on that**  
23 **because I don't want it to sound like I'm talking about**  
24 **two different things.**

25           **Q     Could I ask you to answer the question with the**

1 clear assumption, an assumption that an ISP-bound call is  
2 treated as a local call. Would my analogy then hold true?

3 A Well, I don't like the word treated. If this  
4 Commission were to find that ISP-bound calls are local  
5 calls, then I think, you know, you would be in a situation  
6 where the Commission would then have to decide are they  
7 going to be treated exactly the same as local calls or are  
8 they not.

9 Q Would my analogy hold true?

10 A Well, if this Commission finds that an ISP-bound  
11 call is a local call, then you are away from the access  
12 charge surrogate example and you are into the example of  
13 reciprocal compensation.

14 Q Would my analogy –

15 A Then, no, your analogy would not hold true.

16 Q Would not hold true. And that is because why?

17 A Because if this Commission were to find that an  
18 ISP-bound call were a local call, then you wouldn't even  
19 have the other scenario where the LEC serving the ISP is  
20 recovering the cost from that ISP. Now you are moving  
21 into a reciprocal compensation scheme where the  
22 originating party pays the originating LEC, and if there  
23 are two LECs involved, passes on the compensation to the  
24 terminating LEC.

25 Q Well, if an ISP call is determined by this

1 **Commission to be local and therefore treated like any**  
2 **other local voice call, then any call originated by a**  
3 **customer of an ALEC, ISP or voice, is going to be caught**  
4 **by BellSouth, transport and terminated to BellSouth's end**  
5 **users and BellSouth will receive a retail rate from its**  
6 **end user, is that a fair accurate statement?**

7 **A Well, you have mixed two things. I mean, if you**  
8 **want to break them apart I will be glad to try to answer.**

9 **Q What did I confuse or mix?**

10 **A You are mixing if this Commission treats**  
11 **ISP-bound -- or says that ISP-bound calls are local with**  
12 **are the rates recovered by the end users. The rate being**  
13 **recovered by the end user as a surrogate is what holds**  
14 **true for access exemption. The FCC clearly said instead**  
15 **of access, we are going to let the ISP have a surrogate**  
16 **type service rate which is under the intrastate tariff.**  
17 **That is why we are in the scenario or why we are examining**  
18 **the scenario of that ISP recovering or paying for the**  
19 **cost.**

20 **If this Commission were to find that ISP-bound**  
21 **traffic were local, then they have essentially decided**  
22 **that that access charge exemption no longer holds, its**  
23 **local, and then you would move on to the compensation for**  
24 **local traffic, not an access charge exemption type**  
25 **scenario.**

1           **Q     Right. And wouldn't my example be correct?**

2           **A     No. Because I believe your example is trying to**  
3 **draw a parallel between the access charge exemption and**  
4 **applying that to local.**

5           **Q     It's not. I think I'm asking you a very simple**  
6 **question. If the Commission -- if this Commission**  
7 **determines that ISP calls are local traffic, a call**  
8 **originated by a customer of an ALEC, whether it is an ISP**  
9 **call or a traditional voice call that is sent to a**  
10 **BellSouth number will be caught by BellSouth, switched,**  
11 **transported, and terminated to a BellSouth end user. Is**  
12 **that correct?**

13          **A     Yes. I mean, I don't think that -- the**  
14 **technology network doesn't change just because of the**  
15 **jurisdictional findings. So, yes, that would be true.**

16          **Q     And if that is true, the second part of my**  
17 **question is BellSouth would be paid a retail rate by its**  
18 **end user, is that correct?**

19          **A     You're talking about the terminating end of the**  
20 **call?**

21          **Q     I'm talking about the bill that BellSouth sends**  
22 **to people's houses and to businesses to charge for their**  
23 **local phone service.**

24          **A     We would be receiving that revenue from that end**  
25 **user for originating. The ALEC would be receiving revenue**



1 from its end user for the originating end.

2 Q That's not what I'm asking.

3 A I'm trying. I really am. I think I'm just not  
4 understanding.

5 COMMISSIONER JABER: I think what he is asking  
6 is that call that the BellSouth switch gets to the  
7 BellSouth end user is terminated by BellSouth at that  
8 point.

9 THE WITNESS: Uh-huh.

10 COMMISSIONER JABER: Through retail rates there  
11 is a termination cost that you recover, is that correct?

12 THE WITNESS: Actually I'm not 100 percent  
13 familiar with all the cost studies, I don't know how the  
14 local rates take into consideration the termination.

15 COMMISSIONER JABER: Is that the question?

16 MR. HOFFMAN: It wasn't even that complex,  
17 Commissioner. I was just trying to find out if BellSouth  
18 still gets paid retail rates by their end users. I'm not  
19 sure anymore.

20 THE WITNESS: I can answer your question. We  
21 receive rates from our end user. I think the thing I'm  
22 stumping on is does that mean that the ALEC no longer  
23 compensates BellSouth. And I think that's where the  
24 question was going, maybe I --

25 BY MR. HOFFMAN:

1           **Q**     It is because your rationale on Page 16 of your  
2 testimony is there is no need --

3           **A**     But that is only because it is an access charge  
4 exemption.

5           **Q**     So that is the distinction you draw?

6           **A**     Right. Yes.

7           **CHAIRMAN JACOBS:** Can I ask a question real  
8 quick? And I know we have talked about your lack of legal  
9 preparation to interpret the Bell Atlantic order. Let me  
10 kind of in a general way address the discussion that the  
11 court gave to that whole analogy. Because if I understand  
12 your argument, your position begins with the idea that ISP  
13 traffic is indeed access, exchange access, and it simply  
14 has been historically exempted from being treated that  
15 way.

16           **THE WITNESS:** Right. And you get into a war of  
17 words about what it actually is. I mean, I think it is  
18 clearly interstate. There is orders that say it is  
19 interstate that haven't been vacated. And then you look  
20 at the '83 access charge exemption and other orders. I  
21 think it is important to look throughout so that we can  
22 get the context. There is orders where it refers to  
23 Internet service providers as access providers, users of  
24 exchange access.

25           **CHAIRMAN JACOBS:** Right.

1           **THE WITNESS:** And so when you look at all of  
2 those, I think, yes, it puts us in a scenario if you say  
3 it is access service, the definition is -- and I don't  
4 have it in front me, but basically that it is assessed to  
5 the public for a fee. So then you get into a problem  
6 with, well, does the definition really match up.

7           **CHAIRMAN JACOBS:** Now, you are getting exactly  
8 to my question, because that was a struggle that the court  
9 addressed.

10          **THE WITNESS:** Right, sure.

11          **CHAIRMAN JACOBS:** And it seemed to not give any  
12 clearance as to whether or not it -- the courts gave, in  
13 my mind, some indication that it is not absolutely settled  
14 that you would buy into the premise that drives your  
15 position, i.e., that ISP traffic is always exchange  
16 access.

17          **THE WITNESS:** Well, I think -- and I wouldn't,  
18 like I said, throughout the orders it has worded it  
19 different ways. It is access providers, users of exchange  
20 access, access exchange which is exempt from access. I  
21 think the court definitely, that was one of their problems  
22 with the order was you haven't clearly said is it a third  
23 bucket, is it the second bucket with no charge, and if so,  
24 then how does your definition hold true.

25          **CHAIRMAN JACOBS:** Okay.

1           **THE WITNESS:** I think that is a struggle that  
2 the court had and they basically said, "FCC, go back and  
3 come up with a better answer." Or a more thorough answer,  
4 perhaps. But I do think that if you look at all of those  
5 orders you will see the consistent theme that it is  
6 access, it is just how do we define that. Do we say, you  
7 know, that access that is exempt from access is access, or  
8 is it a third bucket.

9           **CHAIRMAN JACOBS:** Okay. Mr. Hoffman, since I  
10 have broken in, do you have much longer?

11           **MR. HOFFMAN:** Twenty minutes, 25 minutes.

12           **CHAIRMAN JACOBS:** I don't want to limit it, I  
13 just wanted -- because it is about time for us to take a  
14 break anyway. And we have the need to take an extended  
15 lunch break. A couple of issues have come up that we need  
16 to take care of. So this may be, if it is okay, a good  
17 break point. I don't want to cut you off, but if it is a  
18 good break point I would like for us to do that.

19           **MR. HOFFMAN:** That's fine.

20           **CHAIRMAN JACOBS:** And what I would like for us  
21 to do is come back at 2:00 from lunch.

22           **MR. HOFFMAN:** Okay.

23           **CHAIRMAN JACOBS:** Thank you.

24           (Lunch recess.)

25           **CHAIRMAN JACOBS:** Let's go back on the record.

1 I think we were still in your cross, Mr. Hoffman.

2 MR. HOFFMAN: Thank you, Mr. Chairman.

3 BY MR. HOFFMAN:

4 Q Ms. Shiroishi, let me ask you a few questions  
5 about the bill and keep mechanism that you discuss on  
6 Pages 19 through 22 of your direct testimony. I want you  
7 to assume hypothetically that the cost of BellSouth and  
8 the cost of an ALEC to transport and terminate a local  
9 call are substantially the same. Now, also assume that  
10 BellSouth is terminating 80 percent of the minutes from a  
11 specific ALEC and that the ALEC is terminating 20 percent  
12 of the minutes of use originated by BellSouth. Are you  
13 with me?

14 A I think I may have to jot this down.

15 Q What's that?

16 A I said I may have to jot this down.

17 Q Okay. All I'm saying is 80 percent of the  
18 minutes are going from the ALEC to BellSouth and 20  
19 percent of the minutes are going from BellSouth to the  
20 ALEC. Under that hypothetical, would BellSouth recover  
21 its costs to transport and terminate local calls under a  
22 bill and keep mechanism?

23 A And this is for what type of traffic?

24 Q Just forget ISP, just assume it is what you  
25 understand to be traditional voice traffic.

1           **A     Okay. Local or access, I guess.**

2           **Q     Local.**

3           **A     No, BellSouth would not.**

4           **Q     Okay. Are you aware that BellSouth has**  
5 **previously taken the position before this Commission that**  
6 **a bill and keep arrangement does not allow it to recover**  
7 **its costs of terminating traffic?**

8           **A     Are you referring to the early proceedings, the**  
9 **'96 time frame?**

10          **Q     Yes.**

11          **A     Yes, I am aware.**

12          **Q     Okay. So you are aware that BellSouth**  
13 **previously has taken the position that a bill and keep**  
14 **arrangement does not allow it to recover its costs of**  
15 **terminating local traffic?**

16          **A     For local traffic, that is correct.**

17          **Q     Now, the Florida legislature opened up the local**  
18 **market in 1995, is that correct?**

19          **A     I believe that is correct, yes.**

20          **Q     And at that time, at least with respect to**  
21 **BellSouth's territory, BellSouth had all or certainly**  
22 **virtually all of the local service customers, correct?**

23          **A     In our region, yes.**

24          **Q     So it would have been a fair assumption on the**  
25 **part of BellSouth at that time that by opening up the**

1 local market the great majority of the calls would be  
2 terminated to BellSouth customers, correct?

3 A I really can't speak to presumption behind it.  
4 I mean, I know the facts as they were stated. I don't  
5 know all the thinking behind everything.

6 Q Okay. You would agree with me, would you not,  
7 that when the local market was opened up BellSouth had all  
8 the customers or virtually all the customers in their  
9 territory?

10 A In our territory, yes.

11 Q Would you agree with me then because BellSouth  
12 understood at that time back in the '96 time frame that  
13 substantially all the traffic would be terminated to  
14 BellSouth, that it was for that reason that BellSouth  
15 opposed bill and keep before the Commission in 1996?

16 A Again, I'm not sure I can speak to all the  
17 reasons behind. I don't -- I haven't recently read all  
18 the proceedings and what was said. But I understand that  
19 we were not advocating bill and keep.

20 Q Is my statement unreasonable?

21 A No, I don't think it is unreasonable.

22 Q Okay. Now, after 1996 along comes the ISP  
23 market, and the ALECs essentially went out and competed  
24 for the ISP market and won a substantial portion of that  
25 market, correct?

1           **A**    **I don't know how you define substantial. There**  
2 **are many ISPs served by ALECs, yes.**

3           **Q**    **Okay. And the ISP market is predominately a**  
4 **call termination market, correct?**

5           **A**    **That is correct.**

6           **Q**    **And BellSouth is taking the position in this**  
7 **case that it wants to stop what you have characterized as**  
8 **the gravy train of reciprocal compensation payments to**  
9 **ALECs for ISP calls, correct?**

10          **A**    **Because those are not local calls, that is**  
11 **correct.**

12          **Q**    **So now that BellSouth is the payor of the**  
13 **majority of the calls, BellSouth has reversed its position**  
14 **before the Commission and now BellSouth supports bill and**  
15 **keep rather than opposing bill and keep as it did in 1996?**

16          **A**    **No. Today we are here talking about ISP-bound**  
17 **traffic, which is not local traffic. Previously we were**  
18 **talking about local traffic.**

19          **Q**    **BellSouth supports bill and keep, correct?**

20          **A**    **In what context?**

21          **Q**    **Did you file testimony in this case?**

22          **A**    **I did.**

23          **Q**    **Have you recommended that if the Commission**  
24 **establishes a compensation mechanism that it be bill and**  
25 **keep?**



1           **A**     **For ISP-bound traffic, yes. I have not**  
2 **addressed other types of traffic.**

3           **Q**     **Okay. And back in 1996, BellSouth opposed bill**  
4 **and keep, correct?**

5           **A**     **For local traffic, correct.**

6           **Q**     **Okay. If the Commission were to find that**  
7 **ISP-bound traffic is local traffic in this case, you would**  
8 **still advocate bill and keep, correct?**

9           **A**     **I'm struggling with -- you're saying that this**  
10 **Commission comes out with a ruling that strictly all**  
11 **ISP-bound traffic is local traffic?**

12          **Q**     **Right. That is the issue in this case, right.**

13          **A**     **Yes. Well, there is several issues in the case.**  
14 **That's one of them. I think that the Commission**  
15 **obviously -- there is, you know, nine issues open in this**  
16 **case -- would have to look at it across all of those**  
17 **issues. They would have to look at if it is subject to**  
18 **251(b)(5), do we treat it as bill and keep or do we not.**

19               **MR. HOFFMAN: Mr. Chairman, I can really move**  
20 **this along if I can get a direct answer to my question.**

21               **MR. EDENFIELD: With all due respect to Mr.**  
22 **Hoffman, I think he is getting direct answers to his**  
23 **questions. I mean, I don't -- the rule here is you answer**  
24 **the question then you get to explain your answer. I think**  
25 **that is exactly what she is doing. Mr. Hoffman may need**

1 to ask better questions if he wants to move along.

2           **CHAIRMAN JACOBS:** I'm going to -- I think she  
3 gives yes and no answers and explains those. If you think  
4 the answer is not responsive to your question or is  
5 evasive in some way, then we can address that. But for  
6 the moment, we will go ahead and proceed.

7           **MR. HOFFMAN:** Well, you know, I may or may not  
8 be able to ask better questions. But my question, as a  
9 number of my previous questions, was a very simple  
10 question, which was whether or not if the Commission  
11 determines that ISP-bound traffic is local traffic, would  
12 BellSouth advocate bill and keep. I think that is right  
13 in her testimony and we got a pretty long-winded answer.  
14 And I'm just trying to move things along, so I will keep  
15 going with that in mind.

16           **CHAIRMAN JACOBS:** Okay. Thank you.

17           **COMMISSIONER DEASON:** Mr. Hoffman, maybe now is  
18 a good time for me to ask a question, since we have kind  
19 of broken your chain.

20           I want you for a moment to assume that the  
21 Commission makes a decision that we are not going to  
22 separate ISP traffic from any other kind of traffic. If  
23 we determine that ISP traffic is local, well, then  
24 whatever compensation mechanism we come up with is going  
25 to be for all calls, including ISP calls. Do you follow

1 that assumption?

2 **THE WITNESS: I do.**

3 **COMMISSIONER DEASON: Okay. Under that**  
4 **assumption do you support bill and keep?**

5 **THE WITNESS: I think the answer is under the**  
6 **statute we have been talking about earlier, the 51-713,**  
7 **there is that rough imbalance of traffic problem that**  
8 **obviously if you factor in all ISP traffic there is not.**

9 **I think that a way to get to that is to look at**  
10 **it from if ISP-bound traffic is not local traffic, then it**  
11 **is not subject to that rough balance requirement. If you**  
12 **take out ISP-bound traffic from the pot of minutes, then**  
13 **the local traffic you are left with is probably going to**  
14 **be roughly balanced. So therefore you can get to a**  
15 **default where the treatment is the same, it is just under**  
16 **different regulations.**

17 **Because I have to tell you honestly in reading**  
18 **51-713, I don't know how you can get to a bill and keep**  
19 **when the traffic isn't roughly balanced if it is local.**

20 **But you can -- you know, I think, obviously our position**  
21 **is it is not local, so it is not subject to that. And**  
22 **then when you take out ISP-bound traffic, you are left**  
23 **with a pot of traffic that is roughly balanced.**

24 **COMMISSIONER DEASON: Okay. You have just**  
25 **described to me a way that that means can be achieved. Do**

1 you support it?

2 **THE WITNESS:** Yes, I do think that is an  
3 appropriate way to handle this. I mean, clearly our  
4 position is that ISP-bound traffic is not subject to  
5 251(b)(5). When you take that traffic out, the remainder  
6 of the traffic is roughly balanced. And I know that one  
7 of the struggles that I think everybody is facing is do we  
8 want to go down the road of separating this traffic. So,  
9 yes, I think BellSouth would support that.

10 **BY MR. HOFFMAN:**

11 **Q** And just to follow up, Ms. Shiroishi, if the  
12 Commission determines that ISP-bound traffic is local and  
13 subject to reciprocal compensation, BellSouth, as I  
14 understand it, is concerned that it will be a net payor of  
15 reciprocal compensation, is that correct?

16 **A** Assuming that the reciprocal compensation was a  
17 rate.

18 **Q** Yes.

19 **A** Then probably based on traffic today, yes,  
20 BellSouth would be a net payor.

21 **Q** That is the gravy train you were talking about,  
22 correct?

23 **A** Right.

24 **Q** So for that reason, BellSouth supports bill and  
25 keep, correct?

1           **A**     **No, I wouldn't say we support it because of us**  
2 **being the net payor. I mean, we support it from a policy**  
3 **perspective of it is the right thing to do. Keep in mind**  
4 **we serve ISPs, as well. You know, take a wild**  
5 **hypothetical, if the Commission were to find that we owed**  
6 **or reciprocal compensation was owed for ISP-bound traffic**  
7 **and BellSouth went out and blitzed the market and got all**  
8 **the ISPs, then we are in the position -- not that that**  
9 **might ever happen, but we would be in the position that**  
10 **the ALECs are in now of being the ones to be paid.**

11                   **So I don't think you can -- I mean, BellSouth is**  
12 **not making this decision based on who is paying and who is**  
13 **receiving, it is what is the right thing to do.**

14           **Q**     **And what is the relevance of the whole gravy**  
15 **train argument, what is that all about?**

16           **A**     **I think that just shows that these aren't**  
17 **revenues that are needed to provide the service.**

18           **Q**     **But, basically what you are saying is BellSouth**  
19 **supports bill and keep if ISP calls are determined to be**  
20 **local because it is the right thing to do policy-wise?**

21           **A**     **Well, I don't know that I have gone that far.**  
22 **And if I did, I didn't mean to. BellSouth is not**  
23 **advocating that ISP-bound traffic be lumped together with**  
24 **local. I think the hypotheticals you have given me are if**  
25 **this Commission finds that. And I think if this**

1 **Commission finds that ISP-bound traffic is local, then**  
2 **they are clearly subject to the rough balance requirement.**

3 **Q My question was, and if you would just answer it**  
4 **yes or no and give an explanation, your testimony is that**  
5 **it is not financial considerations that are driving**  
6 **BellSouth's position, it is that it is good policy to**  
7 **support bill and keep in the event this Commission**  
8 **determines that ISP traffic is local, is that your**  
9 **testimony?**

10 **A I don't think my testimony -- no, my testimony**  
11 **has not gone so far as to contemplate if this Commission**  
12 **finds that traffic is local.**

13 **Q So you are not offering any opinions as to what**  
14 **this Commission should do if the Commission determines**  
15 **that ISP calls are local?**

16 **A I haven't as of yet. I don't think so, no.**

17 **Q Could you please turn to your rebuttal testimony**  
18 **on Page 14. Now, in the passages on Lines 6 through 10,**  
19 **you criticize Mr. Hunsucker and Mr. Falvey for trying to**  
20 **extend this so-called gravy train for reciprocal**  
21 **compensation for ISP calls to noncircuit switched**  
22 **technologies. Are you with me there?**

23 **A Yes.**

24 **Q Okay. Then you go on to say that this gravy**  
25 **train must stop. Now, let me just ask you, the gravy**

1 train that you are referring to, are you talking about the  
2 reciprocal compensation bills that BellSouth receives or  
3 the reciprocal compensation bills that BellSouth actually  
4 pays?

5 A Well, I'm talking about any reciprocal  
6 compensation bills that BellSouth would pay or receive,  
7 although we don't receive any because we don't charge for  
8 ISP-bound traffic, that are related to ISP-bound traffic.

9 Q Let me hand you --

10 MR. HOFFMAN: Mr. Chairman, I apologize, I've  
11 only got a few copies of this. Let me hand you a copy of  
12 a document which is BellSouth's 1999 Form 10K filed with  
13 the Securities and Exchange Commission.

14 Mr. Chairman, for the time being could I ask  
15 that that document be marked for identification, and I may  
16 want to put it into the record and provide additional  
17 copies.

18 CHAIRMAN JACOBS: Okay. You don't have one for  
19 the court reporter?

20 MR. HOFFMAN: I don't. She can have mine as  
21 soon as I'm through.

22 CHAIRMAN JACOBS: All right. We will mark it as  
23 Exhibit 23, and it is BellSouth's 10K for which year?

24 MR. HOFFMAN: I think we are on 25.

25 MR. EDENFIELD: Chairman Jacobs, what number was

1 that? I'm showing 25 is the next.

2 CHAIRMAN JACOBS: Oh, that's right, the last one  
3 is marked -- the court case is 24. I'm getting old. It  
4 is 25.

5 (Exhibit 25 marked for identification.)

6 BY MR. HOFFMAN:

7 Q All right. To move this along if you could turn  
8 to Page 14, ma'am, and look at the words that I have  
9 highlighted in there under the words selected financial  
10 and operating data. It says there that the dollar figures  
11 shown in this report are in millions, correct?

12 A Yes, it does.

13 Q Now, if you could turn to Page 34. And look on  
14 the left-hand side of the page, and go to the second  
15 paragraph down. That paragraph starts with the words "in  
16 February." Are you with me?

17 A Yes.

18 Q Could you read the last two sentences in that  
19 paragraph into the record?

20 A "For those cases where we believe it is probable  
21 that we have incurred a liability, we have recorded an  
22 estimate of the amount owed. At December 31st, 1999, the  
23 exposure related to unrecorded amounts withheld from CLECs  
24 was approximately 300 million including accrued interest."

25 MR. HOFFMAN: Thank you.



1           **If I could just have a moment, Mr. Chairman.**

2           **CHAIRMAN JACOBS: Very well.**

3           **MR. HOFFMAN: No further questions. Thank you,**  
4 **ma'am.**

5           **CHAIRMAN JACOBS: Ms. Kaufman.**

6                           **CROSS EXAMINATION**

7           **BY MS. KAUFMAN:**

8           **Q     Good afternoon, Ms. Shiroishi. I am Vicki**  
9 **Kaufman. I am here on behalf of the Florida Competitive**  
10 **Carriers Association. I'm going to jump around a little**  
11 **bit in order not to prolong this, I know you have been on**  
12 **the witness stand a long time. And I'm going to ask you**  
13 **to think back to your summary.**

14                   **Do you recall that you made some comments about**  
15 **the cost of local service and some other comments in**  
16 **regard to the cost of terminating ISP traffic?**

17           **A     Yes. I don't recall talking about the cost of**  
18 **terminating ISP traffic except for the recip comp rate, if**  
19 **that were owed. Is that what you are referring to?**

20           **Q     Yes. And I'm also referring to your comments**  
21 **about what it costs BellSouth to provide local service.**  
22 **Do you recall that?**

23           **A     Uh-huh.**

24           **Q     Let me ask you this, Ms. Shiroishi, have you**  
25 **ever prepared a cost study?**

1           **A**     **No, I'm in a group in which we support input**  
2 **sometimes to cost studies. But I am not the person who**  
3 **prepares the cost study.**

4           **Q**     **And you have never testified or been proffered**  
5 **as a cost study witness before any commission, have you?**

6           **A**     **No.**

7           **Q**     **And would it be fair to say that you don't**  
8 **consider that to be within your area of expertise?**

9           **A**     **That is correct.**

10          **Q**     **Okay. And as I understand your job at**  
11 **BellSouth, according to your testimony, basically your**  
12 **primary area of responsibility is dealing with**  
13 **negotiations of interconnection agreements with ALECs?**

14          **A**     **Yes. I actually have quite a few more**  
15 **responsibilities, but that is the only one germane to this**  
16 **proceeding.**

17          **Q**     **Okay. And I'm sure it's clear we have already**  
18 **established that you are not a lawyer, but you have given**  
19 **us and we have had a lot of discussion today about legal**  
20 **principles and jurisdiction, et cetera, would you agree**  
21 **with that? You have given us your non-lawyer opinion in**  
22 **that regard?**

23          **A**     **My opinion.**

24          **Q**     **Now, when you decided what materials to review**  
25 **in order to give us your opinion, how did you decide what**

1 decisions, statutes, et cetera, you ought to look at  
2 before you gave us your layperson's opinion, for example,  
3 on the Commission's jurisdiction?

4 A I went back through basically the FCC orders  
5 from the '83 time frame forward, as well as court  
6 decisions related to those orders.

7 Q Okay. That's what you looked at, but how did  
8 you decide what the appropriate materials were to review  
9 before you gave us your opinion here?

10 A Basically, just input from obviously my lawyers,  
11 other people that I work with that work on these issues,  
12 and also what I thought would prepare me.

13 Q And would it be correct to assume that you did  
14 not think it was important or necessary to look at all at  
15 what the Florida law is on some of these areas?

16 A I did not prepare what Florida law is, no.

17 Q Is that because you didn't think that that was  
18 relevant or germane to our deliberations here?

19 A Honestly it didn't cross my mind to read that.  
20 I'm not a lawyer and I wasn't to be here to talk about  
21 Florida law.

22 Q Okay. We aren't here to talk about Florida law,  
23 but I think we will agree if we read your testimony you  
24 have given a lot of opinions about the federal law,  
25 correct?

1           **A     I have cited FCC orders.**

2           **Q     So let me just ask my question again. You**  
3 **didn't think it was germane or relevant to look at what**  
4 **state law might bring to this deliberation?**

5           **A     I didn't make a conscious decision not to look**  
6 **at it, I didn't think to look at it might be the best way**  
7 **to answer that.**

8           **Q     Okay. Do you think that it might be important**  
9 **for us to look at the state law as it might relate to the**  
10 **issues before the Commission?**

11          **A     Perhaps that is something that the lawyers**  
12 **should, yes, look at in briefs. But as a policy witness I**  
13 **don't think I am in an appropriate place to testify on**  
14 **Florida law.**

15          **Q     Well, if the lawyers for the Commission thought**  
16 **that reference to Florida law might inform their policy**  
17 **deliberations, wouldn't you agree that that would be an**  
18 **appropriate place to look for some guidance?**

19          **A     If they felt -- yes, if they felt that was**  
20 **appropriate.**

21          **Q     I think it was -- I'm sure it was before lunch,**  
22 **there was a lot of discussion about the fact that I guess**  
23 **it is your opinion that perhaps ALECs should refocus is my**  
24 **word, they should refocus their competitive efforts and**  
25 **turn their attention perhaps to serving the residential**

1 and small business market. And I think you talked about  
2 that some in your testimony, let's see, on Page 16  
3 beginning at about Line 3. And you're talking about the  
4 fact that --

5 A Is that direct or rebuttal?

6 Q I'm sorry, that is your direct. That you are  
7 talking about the fact that the payment of reciprocal  
8 compensation, and these are your words, actually  
9 discourages an ALEC from serving the primary type of  
10 customer for which the Act intended to create competition,  
11 the residential customer. Do you see that?

12 A Yes.

13 Q Okay. Can you give us a citation or a reference  
14 as to where the Act indicates that competition is more  
15 beneficial for one type of customer than it is for another  
16 type of customer?

17 A I don't have the whole Act front of me. I would  
18 say that in reading through it that is my interpretation  
19 of one of the goals of the Act.

20 Q But you can't give us any specific reference  
21 that singles out the residential customer as being the  
22 preference of legislators in terms of competition?

23 A Without looking through it I can't say  
24 definitively, no; but I can't cite you a reference right  
25 now.

1           **Q**     But would I be correct in paraphrasing you that  
2 you think that the ALECs need to turn their attention away  
3 from providing service to ISPs and focus on the  
4 residential and small business market?

5           **A**     I don't think that I am advocating they turn  
6 their focus away from ISPs. I think that I'm only  
7 advocating that I think everyone in this room would agree  
8 that competition in all markets is the intent. And in so  
9 much as there is no competition in the residential market,  
10 or if there is that that is an intent of the Act. I am  
11 definitely not advocating moving away from one market.

12           **Q**     Well, you are say is this passage that the  
13 reciprocal compensation arrangements discourage an ALEC  
14 from serving the residential customer, correct?

15           **A**     Yes, that what is my testimony says.

16           **Q**     Okay. So I guess I have implied from that what  
17 I said that you think they ought to shift their focus to  
18 the residential market perhaps. Or that if there were a  
19 change in the reciprocal compensation mechanism that the  
20 CLECs advocate they would turn their attention more to the  
21 residential market, is that fair?

22           **A**     I think obviously we have touched on a lot of  
23 issues of competition and where pricing drives behavior.  
24 Obviously, I believe that if you have reciprocal  
25 compensation owed for ISP-bound traffic, it is going to

1 discourage a LEC from serving a high Internet or even a  
2 moderate Internet dial-up user, which in today's  
3 environment is a lot of residential users.

4 Q Okay. Let's talk for a second about what an  
5 ALEC has to do in order to serve a typical residential  
6 customer like yourself. Would you agree with me that  
7 there are several entry strategies that an ALEC can pursue  
8 to serve residential customers or a small business  
9 customer for that matter?

10 A Yes, I would agree.

11 Q Would you agree that one of the strategies that  
12 an ALEC could pursue would be essentially to build  
13 facilities to serve those customers?

14 A Yes, I would agree.

15 Q Now, BellSouth you would agree has a very large  
16 presence in South Florida, correct?

17 A Yes.

18 Q Do you have any idea what kind of capital  
19 investment would be required for an ALEC to build  
20 facilities to serve the South Florida residential market?

21 A I am not a cost or capital investment witness,  
22 and, no, I don't have any idea of numbers.

23 Q Do you think you could agree with me that it  
24 would be a substantial capital investment?

25 A I'm really not in a position to agree or

1 disagree. I'm sure there is capital investment involved.

2 Q Well, in order for a facilities-based CLEC to  
3 serve South Florida, they would essentially have to  
4 duplicate BellSouth's network, correct?

5 A Are you assuming that they have a capital  
6 investment all the way to the home?

7 Q Yes, ma'am, for purposes of this question.

8 A As far as the -- I mean, they could devise any  
9 network they want. As far as getting a loop to each home,  
10 yes, you would have to do that.

11 Q And can you agree with me that that would  
12 require a substantial investment from these companies?

13 A Again, I'm really not in a position to give  
14 testimony on cost or capital investment.

15 Q So you don't have an opinion as to whether it  
16 would be a significant or insignificant amount to  
17 duplicate BellSouth's network?

18 A I can say that if you are coming in from the  
19 ground up, I'm sure there is a lot of money you would have  
20 to put in.

21 Q Okay. Now, let's say they didn't want to  
22 duplicate the entire network because that would be a  
23 substantial investment on their part. Another way they  
24 could do it would be to buy unbundled network elements  
25 from BellSouth, correct?



1           **A**     **Right. And there is also other means into a**  
2 **home. I mean, we are seeing today most homes have cable,**  
3 **other type media into the home. But, yes, that is one**  
4 **way.**

5           **Q**     **Okay. For what I'm trying to do, I was trying**  
6 **to focus on the different entry strategies. One is**  
7 **facility-based and another way is the purchase of UNEs,**  
8 **correct?**

9           **A**     **Correct.**

10          **Q**     **So for the moment we are not talking about cable**  
11 **modem. So they could purchase unbundled network elements**  
12 **from BellSouth in order to serve the residential market in**  
13 **South Florida?**

14          **A**     **Yes, that is an option.**

15          **Q**     **And one thing they would have to purchase would**  
16 **be a loop, correct?**

17          **A**     **Correct.**

18          **Q**     **Do you know what the price an ALEC would have to**  
19 **pay for one loop from -- to purchase a loop from BellSouth**  
20 **in order to serve a residential customer?**

21          **A**     **I don't have the rates in front of me. Are you**  
22 **talking about just a voice grade two-wire loop?**

23          **Q**     **We could start with that.**

24          **A**     **I don't know the exact rate in Florida,**  
25 **somewhere around 15 or \$20.**

1           **Q**    And they would have to purchase a port, too,  
2 correct?

3           **A**    Correct.

4           **Q**    And they would have to purchase transport,  
5 correct?

6           **A**    Assuming -- I mean, they could pick it up at the  
7 end of a loop and carry it themselves. Assuming they  
8 wanted to purchase that from BellSouth instead, yes.

9           **Q**    Okay. And would you accept, subject to check,  
10 number one, that there is significant disagreement, I  
11 think would be the polite way to put it, between BellSouth  
12 and its competitors in regard to the appropriateness of  
13 the prices it charges for unbundled network elements?

14          **A**    The rates are brought before, you know, both  
15 parties and the Commission, and the Commission generally  
16 makes a decision on what the rates are. To the extent  
17 that the ALECs disagree with the rate, I guess you are  
18 correct.

19          **Q**    And are you aware that there is currently a  
20 proceeding pending before this Commission to take a look  
21 at those rates?

22          **A**    Yes.

23          **Q**    And would you agree that the level of those  
24 rates can clearly impact whether or not it is financially  
25 feasible for an ALEC to enter into the South Florida

1 market using unbundled network elements?

2 A I'm sure that the financial aspect is a decision  
3 in the ALEC's market strategy.

4 Q And another entry strategy is to use the UNE  
5 platform, correct?

6 A Correct.

7 Q And I won't take you through the elements, but  
8 essentially would you agree with me, again, that the level  
9 of pricing is obviously a significant factor in whether an  
10 ALEC decides to pursue that entry strategy in the  
11 residential market?

12 A Pricing is going to be a factor in any business  
13 decision, hopefully.

14 Q Okay. So would you then agree with me that it  
15 is not quite so simple as suggesting that if the  
16 reciprocal compensation mechanism were changed or that the  
17 competitors recommendations in that regard were not  
18 followed, that that would therefore lead to more ALECs  
19 moving into the residential market?

20 A Well, this proceeding is about reciprocal  
21 compensation and that's why we focused on that. I mean,  
22 if you take all the costs you have just talked about and  
23 add to that a payout of however much per month, \$5, \$10,  
24 \$12 in recip comp, that is just another one of the  
25 financial decisions that you are talking about that would

1 have to be made. But, again, you know, this proceeding,  
2 as I understood it, was to talk about the reciprocal  
3 compensation issue.

4 Q Ms. Shiroishi, I'm just looking at your  
5 testimony. And I think on Page 16 you are the one that  
6 suggested that your bill and keep method would focus us,  
7 the competitors, on serving the residential customers.  
8 And all I'm trying to get to is isn't it correct that  
9 there are a lot more factors, including the pricing of,  
10 for example, unbundled network elements that are going to  
11 effect whether or not there is residential competition in  
12 South Florida?

13 A Sure. I will agree that there are other factors  
14 besides reciprocal compensation that come into play.

15 MS. KAUFMAN: Thank you. That's all I have.

16 COMMISSIONER PALECKI: I have a quick question.  
17 I hate to move backwards, but when Mr. Hoffman asked you  
18 the last question he asked you, he referred to a \$300  
19 million number on the exhibit that we don't have copies  
20 of, and I'm not clear what that \$300 million was. Could  
21 you please explain that to me, please.

22 THE WITNESS: Sure. Actually, that is -- let me  
23 preface it by we receive in bills from ALECs daily, and  
24 that is what they claim that we owe them. We have  
25 withheld from those bills in the instance where BellSouth

1 has not been ordered to pay for ISP-bound traffic or where  
2 the agreement calls that we are not to pay for ISP-bound  
3 traffic, BellSouth withholds payment of the portion of the  
4 bill that is ISP-bound traffic.

5 That \$300 million is what BellSouth has put in  
6 its 10K as what it sees as a potential liability. For  
7 example, claims that had been brought before a Commission  
8 over past interconnection agreements like this Commission  
9 has heard that haven't yet been decided on, or other type  
10 potential payouts. So that is a number that represents  
11 the ISP-bound traffic that ALECs have billed BellSouth for  
12 that is at this point undetermined as to whether or not we  
13 will or will not have to pay it.

14 COMMISSIONER PALECKI: And do you in any cases  
15 pay reciprocal compensation to any of the ALEC carriers?

16 THE WITNESS: Yes. Where we have been ordered  
17 to pay or have some type of court ordering to pay, we do  
18 pay.

19 COMMISSIONER PALECKI: And have you been ordered  
20 to pay or do you pay in any cases for ISP traffic?

21 THE WITNESS: Yes, sir. In any arbitration  
22 proceeding before this Commission or any other Commission  
23 or complaint proceeding where we have been ordered to pay  
24 reciprocal compensation for ISP-bound traffic, we pay  
25 that.

1           **COMMISSIONER PALECKI:** Thank you. I just wanted  
2 to clarify that because it wasn't clear to me when the  
3 exhibit was brought up.

4           **THE WITNESS:** Sure. Yes, the 300 million is the  
5 unpaid portion that we haven't been told in a court or in  
6 a Commission proceeding that we must pay.

7           **COMMISSIONER PALECKI:** Thank you.

8           **CHAIRMAN JACOBS:** Mr. Horton.

9           **MR. HORTON:** Just one clarification.

10   **CROSS EXAMINATION**

11 **BY MR. HORTON:**

12           **Q**     I'm Doc Horton, I represent e.spire. Let me  
13 just follow-up.

14                           **Once you have been ordered to pay compensation,**  
15 **do you then continue to pay?**

16           **A**     It really depends on how the arrangement is set  
17 up. In a complaint proceeding generally we are looking at  
18 a past interconnection agreement that spanned from one  
19 time frame to the other. And the Commission has ruled, or  
20 commercial arbitrators, or whomever has ruled on that one  
21 interconnection agreement and what the intent was. And in  
22 that instance we abide by however the order comes out. It  
23 generally says we hereby order you to pay under this  
24 interconnection agreement.

25                           **In an arbitration type proceeding where we are**

1 arbitrating the terms of a new agreement, then we are  
2 talking about going forward. So under that -- I don't  
3 want to be vague, but it depends on how the order and what  
4 the proceeding is as to what we pay.

5 Q Assume you have got an interconnection agreement  
6 and you have had the complaint and you have been ordered  
7 to pay, and then you then have a subsequent  
8 interconnection agreement that is exactly the same. Would  
9 you, in that instance, continue to pay or would that be a  
10 new round of complaints and discussions?

11 A I don't know that we have had any agreements  
12 that are exactly the same, so I don't know that I can  
13 answer what we have or haven't done. If the terms, the  
14 definitions, or whatever vary, then, yes, that is a  
15 separate agreement that we take before as a separate  
16 issue.

17 MR. HORTON: Thank you.

18 CHAIRMAN JACOBS: Ms. McNulty.

19 CROSS EXAMINATION

20 BY Ms. McNULTY:

21 Q Good afternoon, Ms. Shiroishi. I'm Donna  
22 McNulty with WorldCom. I have a few questions to ask. I  
23 want to follow up on some questions that were asked by Ms.  
24 Kaufman, in particular regarding your testimony on Page  
25 16, Lines 3 through 6, where you state that payment of

1 reciprocal compensation for ISP-bound traffic actually  
2 discourages an ALEC from serving the primary type of  
3 customer for which the Act intended to create competition,  
4 the residential customer.

5           You stated in response to Ms. Kaufman that there  
6 could be other factors that have an impact on an ALEC's  
7 decision to enter the residential market, is that correct?

8           A     That's correct.

9           Q     Are you aware that in December of 1998 the  
10 Competitive Carriers Association filed a petition  
11 requesting that this Commission take action on several  
12 items that they considered to be significant barriers to  
13 widespread local entry, such as cost-based pricing, OSS,  
14 collocation, and expedited resolution of disputes?

15          A     I am not familiar with that filing, no.

16          Q     Would you accept it subject to check?

17          A     Sure.

18          Q     Are you aware that some of these matters, such  
19 as cost-based pricing and OSS are still pending before  
20 this Commission?

21          A     Again, I'm not familiar with that proceeding,  
22 I'm sorry. I will accept it subject to check.

23          Q     Okay. I will move on. On Page 18, Lines 2 to  
24 3, you state that Internet-bound traffic characteristics  
25 were never considered when local rates were established,



1 do you recall that?

2 A Yes.

3 Q Do you know whether BellSouth has elected price  
4 cap regulation in Florida?

5 A I believe that we are under price cap  
6 regulation, yes.

7 Q And do you know that if BellSouth believes that  
8 circumstances have changed significantly to justify any  
9 increase in rates for basic local traffic -- excuse me,  
10 basic local telecommunications service, it may petition  
11 this Commission for an increase in basic local rates?

12 A Yes, I'm aware of that.

13 Q Thank you.

14 A I think what is interesting about that is, I  
15 mean, I don't think BellSouth thinks it would be  
16 appropriate to come forward and say here is our new cost  
17 study of providing local exchange service based on X  
18 average minutes of Internet-bound calls before this  
19 Commission decides whether or not Internet-bound calls are  
20 truly subject to the definition of local traffic.

21 Q Should this Commission decide that it is subject  
22 to local, that it is local traffic, are you suggesting  
23 that Bell may come in?

24 A I can't speak. I mean, that hasn't been  
25 discussed as of yet. I know that if this Commission were

1 to decide that ISP-bound traffic is local traffic, in the  
2 next round of cost studies we would have to take that in  
3 as a cost because it has been told to us that it is a  
4 cost.

5 Q Currently for the last couple of years the  
6 Commission has held that BellSouth should treat it as  
7 local, correct?

8 A We have only had very specific proceedings with  
9 this Commission. Either one carrier and BellSouth under a  
10 new agreement, arbitration, or an interconnection dispute  
11 past agreement. So on a generic basis we don't have any  
12 rulings.

13 Q But not under a generic basis necessarily,  
14 however, there are significant contracts out there that  
15 many carriers have adopted where the Commission has  
16 established that reciprocal compensation for ISP-bound  
17 traffic be treated as local, is that true?

18 A There are some contracts out there, yes.

19 Q And a number of carriers have adopted those,  
20 right?

21 A Some of those are older, it really depends.  
22 But, yes, there are some out there.

23 Q And BellSouth just got finished filing cost  
24 studies with this Commission, right?

25 A I believe those were UNE cost studies.

1           **Q**     And reciprocal compensation is part of that, is  
2 that correct?

3           **A**     Unbundled local switching, which is sometimes  
4 used as a mirror, yes.

5                   **Ms. McNULTY:** Thank you. I have no further  
6 questions.

7                   **CHAIRMAN JACOBS:** Mr. Moyle.

8                   **MR. HOFFMAN:** Mr. Chairman, before you move to  
9 Mr. Moyle, may I ask a follow-up question or two based on  
10 Commissioner Palecki's questions regarding the 300 million  
11 figure? I think the record is unclear at this point, and  
12 I would just like to make sure the Commissioners  
13 understand what this document says, because I do not have  
14 extra copies of it and I just want the record to be clear.

15                   **MR. EDENFIELD:** Well, I would pose an objection.  
16 I mean, Mr. Hoffman has had his chance and we have already  
17 talked about this. If the Commission feels like there is  
18 some confusion, then certainly I would be okay with  
19 Mr. Hoffman asking a follow-up question. But unless the  
20 Commission is confused about the document, I see no reason  
21 for Mr. Hoffman to get a second bite at the apple asking  
22 questions.

23                   **MR. HOFFMAN:** Let me be clear. This witness  
24 read into the record two sentences from this report which  
25 I thought made things crystal clear. One of the sentences

1 said for those cases where we believe it is probable --

2 CHAIRMAN JACOBS: Mr. Hoffman, before you go too  
3 far --

4 COMMISSIONER JABER: Mr. Chairman, I was just  
5 going to suggest to you that I would like to see the  
6 document. So maybe --

7 CHAIRMAN JACOBS: Why don't we do that.

8 COMMISSIONER JABER: -- we could revisit this  
9 after we can make copies of it.

10 CHAIRMAN JACOBS: Yes. Why don't we do that.  
11 We will get copies of the document, and we will take a  
12 look at it and we will decide whether or not we need  
13 clarification on it.

14 MR. HOFFMAN: Thank you, sir.

15 CHAIRMAN JACOBS: Mr. Moyle.

16 COMMISSIONER DEASON: Mr. Moyle, before you  
17 begin, let me ask a question. If I understand your  
18 testimony correctly, you believe that ISP-bound traffic is  
19 interstate traffic?

20 THE WITNESS: That is correct.

21 COMMISSIONER DEASON: And that makes it subject  
22 to the jurisdiction of the FCC?

23 THE WITNESS: Well, obviously the jurisdictional  
24 issue is a big question. From an opinion standpoint, I  
25 mean, not a legal standpoint, yes. But from a legal

1 standpoint, I think --

2 **COMMISSIONER DEASON:** And it is also your  
3 position that due to the advent of the Internet and the  
4 tremendous growth in Internet traffic that your current  
5 rates are not designed to recover those costs, is that  
6 correct?

7 **THE WITNESS:** You are referring to like our 1-FR  
8 rate, local end user rate?

9 **CHAIRMAN DEASON:** Whatever rates that you charge  
10 to recover those costs.

11 **THE WITNESS:** To an end user, though, a  
12 residential type end user, not an ALEC?

13 **COMMISSIONER DEASON:** Yes.

14 **THE WITNESS:** Well, yes, what we are saying is  
15 that reciprocal compensation for ISP-bound traffic, the  
16 costs for ISP-bound traffic were not included in those  
17 cost studies and rates.

18 **COMMISSIONER DEASON:** For reciprocal  
19 compensation.

20 **THE WITNESS:** And for the actual cost, yes. If  
21 it's a BellSouth end user calling a BellSouth served ISP,  
22 the cost for the network element functions.

23 **COMMISSIONER DEASON:** So it is your testimony  
24 there are additional costs being placed upon BellSouth  
25 which were not anticipated because of the advent of

1 Internet? Am I oversimplifying, or is that correct?

2 THE WITNESS: No, I think you're right. I'm  
3 thinking about the way you said that. I mean, obviously,  
4 yes, I think to the extent when the rates were created  
5 they looked at a certain type of call holding time, a  
6 certain type of equipment, and the rates were formulated  
7 around that. And that was all based around traditional  
8 type voice traffic.

9 The network elements used to support Internet  
10 type functions or to pay out reciprocal compensation to  
11 another carrier who may complete the call were not  
12 considered in there. But the functions of BellSouth's  
13 network that are used to transport that Internet service  
14 bound call, even if it goes to a BellSouth ISP, are not  
15 included in there as well.

16 COMMISSIONER DEASON: I guess that leads me then  
17 to this question. If there are costs that you are  
18 incurring that you are not being -- that you are not  
19 recovering, you are incurring the costs and not recovering  
20 them, and it is due to traffic which is interstate in  
21 nature, why haven't you petitioned the FCC to increase  
22 your rates?

23 THE WITNESS: Our local rates or the --

24 COMMISSIONER DEASON: Well, you are the one that  
25 said these are costs that are being imposed upon your

1 system because of Internet traffic and that your rates are  
2 not designed to recover those costs. So for the  
3 interstate costs why don't you go to the interstate  
4 regulator and ask to have your rates increased?

5 **THE WITNESS:** And we have petitioned in the form  
6 of comments to that exact tune of we have to look at this  
7 from a standpoint of the costs that the originating LEC is  
8 incurring on its network. We are hopeful that the FCC  
9 will address that issue when it comes out with it. If it  
10 doesn't, obviously BellSouth may choose to petition in the  
11 form of some type of rate or in the comment cycling.

12 **COMMISSIONER DEASON:** So you are saying -- well,  
13 I'm trying to understand. Either this is really something  
14 that is negatively effecting your earnings or it's not.  
15 And it seems to me that if it is, you would petition the  
16 FCC, the regulator in your own testimony which has the  
17 jurisdiction over these costs to have those costs  
18 recovered by some mechanism, whether it is increasing your  
19 rates to business and residential customers or whether it  
20 is some type of an access mechanism or whatever it is.  
21 I'm sure that BellSouth is very ingenious in devising ways  
22 to recover costs, why haven't you gone to that regulator  
23 and said, look, we're bleeding; give us some help?

24 **THE WITNESS:** And we have, Chairman Deason. All  
25 of our comments in all of the cycles on this issue say

1 exactly that, we are bleeding, we need help, this is not  
2 the intent behind, this whole thing has now spun out of  
3 control and we need you to do something, to act.

4 We are in the same position that everyone else  
5 is in in that they haven't done anything yet. But we have  
6 petitioned in comment cycling and in other type ex parte  
7 presentations as well as other filings. In fact, our  
8 first comment cycle on this whole issue basically proposed  
9 a revenue sharing plan where we would receive money back  
10 from the ALEC that served the ISP.

11 CHAIRMAN DEASON: And the FCC has not acted on  
12 any of this?

13 THE WITNESS: No. We are sitting in the same  
14 position as everyone else, with no answer yet.

15 COMMISSIONER PALECKI: I have a historic  
16 question. When did BellSouth start to distinguish between  
17 ISP-bound traffic and local traffic? I mean, when people  
18 just first started using the Internet you probably didn't  
19 even notice it. When did this historic distinction start  
20 being made by the company?

21 THE WITNESS: Well, when we realized that this  
22 was a big usage problem, the policy had always been that  
23 this is interstate traffic. In mid-1997, we actually  
24 identified this is a big problem, and this is going to get  
25 bigger. We took several steps at that point, one of which



1 was to send out a policy type letter to the ALEC. Another  
2 of which was to start a process by which our billing  
3 system would make sure that any calls that went from ALECs  
4 to BellSouth served ISPs would not be assessed reciprocal  
5 compensation. So the process started in mid-1997.

6 COMMISSIONER PALECKI: So that's when this \$300  
7 million started to accrue.

8 THE WITNESS: Yes. Our first bill from an ALEC  
9 to BellSouth for ISP-bound traffic -- for reciprocal  
10 compensation for ISP-bound traffic came in 1997.

11 COMMISSIONER PALECKI: Now, the 300 million is  
12 what you have not paid out to the ALECs. How much have  
13 you will paid out that has been either ordered by this  
14 Commission or by an arbitrator?

15 THE WITNESS: I would have to check on the exact  
16 number for you. In some instances we have been ordered to  
17 pay but into a court registry type situation. To get the  
18 exact number I would have to check, but it's in the high  
19 millions, 100 million, 150 million range.

20 COMMISSIONER PALECKI: So you -- it's going to  
21 be lower than the 300. You have not paid a much higher,  
22 greater amount than what you actually have paid out to the  
23 ALECs?

24 THE WITNESS: I would say at this point that is  
25 true, yes.

1           **COMMISSIONER PALECKI:** Now, is the 300 million  
2 figure much greater today than it was at the time that  
3 report was actually issued and put together?

4           **THE WITNESS:** Yes, unfortunately it is much  
5 higher. And I would also like to point out that the 300  
6 million is again only where we feel there is a potential  
7 liability. There are agreements out there that ALECs are  
8 billing us under, but which we feel very strongly preclude  
9 the payment of that, or even the billing of that. So we  
10 have excluded -- this is not what ALECs have invoiced  
11 BellSouth, this is what our group has sat down and said,  
12 here is what we think is a possible liability that we  
13 would actually be ordered to pay.

14           Because there are agreements out there that very  
15 specifically, even some older ones say as soon as we  
16 realized it, you know, that ISP-bound traffic is not  
17 covered under this agreement. But some carriers have  
18 still chosen to invoice for that. So we feel very  
19 strongly under those type agreements that we wouldn't be  
20 ordered to pay. So this is what we feel is a potential  
21 liability only through 1999. And that continued to grow,  
22 given the exponential growth of the Internet, through the  
23 year 2000 and to date.

24           **COMMISSIONER PALECKI:** So what is it today?

25           **THE WITNESS:** I would have to go pull the exact

1 numbers. I don't know what the potential liability is. I  
2 know that -- I hate to speculate. I know that it is  
3 greater than the 300 million, probably around 400.

4 **COMMISSIONER PALECKI:** But this was pretty much  
5 a nonissue until 1997 when you decided that you were going  
6 to start distinguishing between ISP-bound and local  
7 traffic. It just wasn't even considered by anybody,  
8 because no one realized that the Internet was going to  
9 become so popular.

10 **THE WITNESS:** Right.

11 **COMMISSIONER PALECKI:** And prior to that you  
12 would have paid the reciprocal compensation on all  
13 requests from ALECs, whether or not it its ISP or local  
14 traffic?

15 **THE WITNESS:** You know, we have never knowingly  
16 paid for ISP-bound traffic, reciprocal compensation for  
17 ISP-bound traffic. But to the extent that someone had  
18 invoiced us for that prior to, it is potentially likely  
19 that we paid it, yes.

20 **COMMISSIONER PALECKI:** You just wouldn't have  
21 known?

22 **THE WITNESS:** We would not have known, right.

23 **COMMISSIONER PALECKI:** Thank you.

24 **COMMISSIONER JABER:** Ms. Shiroishi, when you  
25 talk about the company bleeding, are you looking at total

1 company revenues?

2 **THE WITNESS:** Well, I mean, obviously BellSouth  
3 is in the same position as every other company in the  
4 market in that things are hard and times are -- we are  
5 fighting an economy potentially. And so, no, I mean, I'm  
6 working in the side of the business that focuses on the  
7 reciprocal compensation, the ISP-bound industry, those  
8 types of things. And the numbers that we have discussed  
9 today, the 300 or 400 million, the ones that have been  
10 paid out obviously amount to a significant amount of  
11 money.

12 **COMMISSIONER JABER:** Your company is not  
13 structured such that every function or service that  
14 BellSouth provides is recorded separately, correct?

15 **THE WITNESS:** I honestly don't know a lot about  
16 reporting and financial statements. I couldn't answer  
17 that.

18 **COMMISSIONER JABER:** Is BellSouth separated in  
19 terms of wholesale versus retail?

20 **THE WITNESS:** On a standpoint of  
21 organizationally, yes. I don't know on a standpoint of  
22 financially.

23 **COMMISSIONER JABER:** Organizationally they are?

24 **THE WITNESS:** Well, I mean, I don't know how you  
25 mean. We don't have a separately owned subsidiary. But

1 within BellSouth we are in different organizations, yes.

2 COMMISSIONER JABER: Okay. Do you know if those  
3 earnings are recorded separately, wholesale versus retail?

4 THE WITNESS: Earnings, I don't know.

5 COMMISSIONER JABER: Do you know what the total  
6 company revenues were year-end 2000?

7 THE WITNESS: I'm sure it's probably in the 10K,  
8 but I don't know it without searching through.

9 COMMISSIONER JABER: It's in this 10K?

10 THE WITNESS: I don't know. It may be, I'm not  
11 sure.

12 COMMISSIONER JABER: When you talk about \$300  
13 million being a potential liability and reported on the  
14 10K as such, what affect does that have on earnings, what  
15 effect does that have on earnings?

16 THE WITNESS: Let me just tell you from my  
17 understanding, because, again, I'm not an accountant, but  
18 I know that once money is identified as a potential  
19 liability it does what in my layman's terms I call hit the  
20 books. So at that point we do have to acknowledge that  
21 this is a potential payout. Now, from an accounting  
22 standpoint and where it goes in what accounts, I can't  
23 really speak.

24 COMMISSIONER JABER: Thank you.

25 COMMISSIONER PALECKI: When those amounts are

1 billed to BellSouth by the ALEC, it under what rate is  
2 that being billed?

3 THE WITNESS: It would be -- the ALEC sends us  
4 the invoice, so they put whatever rate they feel is  
5 appropriate on that.

6 COMMISSIONER PALECKI: Is it different in each  
7 agreement?

8 THE WITNESS: Yes. Hopefully it's what is in  
9 their interconnection agreement. Sometimes we get bizarre  
10 bills with rates that we have to call and say where did  
11 this come from. But it should what is in their  
12 interconnection agreement which is different for not every  
13 carrier, but there are different rates depending on at  
14 what time they entered into the agreement.

15 COMMISSIONER PALECKI: Thank you.

16 CHAIRMAN JACOBS: Now, we were going to make a  
17 determination as to whether or not we needed  
18 clarification. Mr. Hoffman, point us again to the  
19 particular section.

20 MR. HOFFMAN: Well, on Page 34 on the left-hand  
21 side of the page, the middle paragraph. The one thing I  
22 wanted the record to be clear on is that --

23 CHAIRMAN JACOBS: I know you are a good lawyer.  
24 I don't want to you go too far, just point us to that.

25 MR. HOFFMAN: There is conflicting testimony on

1 the record as to the characterization of that 300 million,  
2 and that's why I wanted to clarify the record.

3 CHAIRMAN JACOBS: Okay.

4 COMMISSIONER JABER: What page were you asking  
5 questions from?

6 MR. HOFFMAN: Page 34. My question, ma'am, is  
7 that --

8 MR. EDENFIELD: I'm not sure Chairman Jacobs has  
9 ruled yet, unless I have just misunderstood.

10 CHAIRMAN JACOBS: Give us a moment.

11 COMMISSIONER PALECKI: Perhaps we could hear the  
12 question and that would help us determine whether we need  
13 the clarification or not. I think it would be helpful to  
14 me, Mr. Chairman, just to hear what the question would be.

15 CHAIRMAN JACOBS: You can give us the question,  
16 Mr. Hoffman.

17 MR. HOFFMAN: Ma'am, you characterized the \$300  
18 million liability as a potential liability or a possible  
19 liability. Isn't it true that the characterization used  
20 by BellSouth in this report is that BellSouth uses the  
21 words it is probable that we have incurred a liability?

22 CHAIRMAN JACOBS: You wanted to hear that  
23 question and determine whether or not it was going to be  
24 useful to you, is that correct, Commissioner Palecki.

25 COMMISSIONER PALECKI: Yes. And it may be after

1 hearing the question BellSouth no longer has any objection  
2 to it.

3 MR. EDENFIELD: That's fine. If it will speed  
4 things along, that's fine. I don't think the record is  
5 unclear, but if --

6 CHAIRMAN JACOBS: Do you want him to repeat the  
7 question for you, Ms. Shiroishi?

8 THE WITNESS: Yes. And I apologize, I didn't  
9 mean to change the words. Probable is the word. And if  
10 we can go back and change my testimony to be probable, I  
11 thought I was using like words, but I guess I wasn't.

12 MR. HOFFMAN: Thank you, ma'am. That is the  
13 only point I was trying to clarify.

14 CHAIRMAN JACOBS: Good. We can all get along  
15 here.

16 THE WITNESS: Do I get a point for that one, Mr.  
17 Hoffman?

18 MR. HOFFMAN: Bonus points.

19 CHAIRMAN JACOBS: You were done. Mr. Moyle.

20 MR. MOYLE: Thanks.

21 CROSS EXAMINATION

22 BY MR. MOYLE:

23 Q I have a number of questions for you that I have  
24 prepared for voir dire. Most of those have been asked  
25 about your background and whatnot, so I will try to edit



1 and make my cross briefer.

2 Let me start with sort of where we ended about  
3 this 10K form. You have that in front of you, correct?

4 A Yes, I do.

5 Q And is that a true and accurate document of the  
6 10K form filed by BellSouth to the best of your knowledge?

7 A I would assume so.

8 Q All right. And the representation of the \$300  
9 million which you all are booking as a contingent  
10 liability, that is probably a liability, that is true and  
11 accurate to the best of your knowledge?

12 A As of the time frame stated here, yes. Assuming  
13 this is the document.

14 MR. MOYLE: Mr. Hoffman may move this into  
15 evidence at some point. If he is, and he will be given an  
16 opportunity to do that, I would not move it. But, you  
17 know, there has been a lot of questions asked about it, I  
18 think it is something that ought to go into evidence.

19 CHAIRMAN JACOBS: This is the 10K, Exhibit 25?

20 MR. MOYLE: Yes.

21 MR. HOFFMAN: Yes, sir, I was going to move it  
22 at the appropriate time.

23 CHAIRMAN JACOBS: We, at the appropriate time,  
24 will entertain that.

25 BY MR. MOYLE:

1           **Q**    You were asked a lot of questions and I heard  
2 you indicate that you were not testifying as an expert in  
3 legal matters, is that correct?

4           **A**    That is correct.

5           **Q**    And you also indicated you are not testifying as  
6 an expert in capital investment matters, is that correct?

7           **A**    That is correct.

8           **Q**    And I think you said you weren't testifying as  
9 an expert in cost matters, is that correct?

10          **A**    That is correct.

11          **Q**    Are you testifying today as an expert?

12          **A**    No, I'm testifying as a policy witness for  
13 BellSouth.

14          **Q**    Okay. And then with respect to the policy, the  
15 policy, I guess, relates to the Internet and how  
16 compensation ought to be provided for these ISP-bound  
17 calls, is that accurate?

18          **A**    Well, yes. The policy issues around the  
19 compensation of ISP-bound traffic.

20          **Q**    Okay. In some of the questions that you were  
21 asked about jurisdiction, and whatnot, I think you had  
22 said you had looked to the federal findings of the FERC,  
23 is that right?

24          **A**    Yes, that is correct.

25          **Q**    I'm sorry, the FCC. And you didn't look to any

1 state law issues?

2 A That is correct.

3 Q Okay. In formulating your policy testimony, did  
4 you look at the previous decisions of this Florida Public  
5 Service Commission with respect to how ISP-bound traffic  
6 should be treated for reciprocal compensation purposes?

7 A I did look at -- I don't know that I looked at  
8 every one. But I have over the course of my career at  
9 BellSouth looked at every one, yes.

10 Q In looking at those, did you find that this  
11 Commission has consistently found that ISP-bound traffic  
12 should be treated as local traffic for reciprocal  
13 compensation purposes?

14 A Well, I kind of hesitate with that one, and I  
15 know that was brought up earlier. I mean, they have  
16 consistently ruled on the issue as to how we should treat  
17 it. There have been some different outcomes of that. As  
18 you know, the Global NAPS outcome came out with a  
19 different rate. So I wouldn't say the treatment every  
20 time has been pay at the rate previously established, but  
21 they have ruled on the issue.

22 Q Again, my question was with respect not to the  
23 rate but with respect to have they viewed it as local  
24 traffic.

25 A I would actually have to go back and look at all

1 the orders. I don't know that they used those terms. I  
2 know that, I think that someone read from the Global NAPS  
3 order earlier where they said we don't reach a decision on  
4 jurisdiction. But, again, I would have to go back through  
5 all of those orders to make sure they said treat it as  
6 local. I know that compensation was ordered in every one,  
7 if that will get to your question.

8 Q I was intrigued by some of your testimony with  
9 respect to you opining on BellSouth's position being  
10 consistent with FCC findings in orders. Is that -- do you  
11 as part of your normal job functions, do you advise the  
12 company with respect to company positions and whether  
13 those positions are consistent with FCC orders and  
14 findings?

15 A The way you said that, can I -- yes, I am  
16 involved in a position where I work with others to discuss  
17 policy, develop positions. And obviously we always hold  
18 that those are consistent with FCC orders and we use  
19 those, and we use those orders to rely on, and to also  
20 decide what our policy and position should be.

21 Q Okay. I guess my question is, your testimony  
22 says you are telling this Commission that BellSouth's  
23 position is consistent with FCC findings and orders, and  
24 that is your testimony, yours alone, correct?

25 A Well, it's BellSouth's.

1           **Q     Offered by you alone?**

2           **A     Yes. Well, I don't know what you are driving**  
3 **at, so I hate to agree to alone. It is BellSouth's**  
4 **policy, and I am the witness offering that, yes.**

5           **Q     Okay. Is it your testimony that in your**  
6 **position that you do customarily participate in making**  
7 **decisions as to whether BellSouth's operations are**  
8 **consistent with FCC findings and orders, is that correct?**

9           **A     Yes.**

10          **Q     You had talked a little bit about, and I think**  
11 **your lawyer had mentioned it, and you had talked about**  
12 **this gravy train and whatnot. You had said that it is the**  
13 **position, I believe, of BellSouth that when the Commission**  
14 **has ruled on reciprocal compensation and ordered BellSouth**  
15 **to pay that you all paid, is that correct?**

16          **A     I believe what I said is, yes, when a Commission**  
17 **orders us to pay, obviously we appeal that, but when we**  
18 **get to the point where there is a final order saying pay,**  
19 **we pay.**

20          **Q     Do you know how much money BellSouth has paid my**  
21 **client, Global NAPS, based on reciprocal compensation for**  
22 **ISP-bound traffic today?**

23          **A     To date, I do not know.**

24          **Q     Would it surprise you if I told you that they**  
25 **haven't been paid?**

1           **A**    They haven't been paid anything, or they haven't  
2 been paid for ISP-bound traffic?

3           **Q**    For ISP-bound traffic.

4           **A**    No, that wouldn't surprise me.

5           **Q**    Why wouldn't it surprise you?

6           **A**    Because you brought it to my attention earlier  
7 and we were discussing it. I don't mean to be smart about  
8 that, but that's why I know.

9                   **MR. EDENFIELD:** But that will teach you to help.

10                   **THE WITNESS:** Yes.

11                   **MR. MOYLE:** All right. And there has been -- I  
12 guess that's one way I could testify.

13                   **MR. EDENFIELD:** We're happy to swear you in,  
14 John.

15                   **THE WITNESS:** I wouldn't have known if you  
16 hadn't told me earlier, how about that?

17 **BY MR. MOYLE:**

18           **Q**    And there has been a lot of reference to this  
19 windfall, I think you called it a gravy train, is that  
20 correct?

21           **A**    That was in an analyst article that came out in  
22 '98.

23           **Q**    Okay. And the idea about BellSouth bleeding,  
24 with respect to Global NAPS, obviously the blood hasn't  
25 left the body yet, correct?

1           **A**     I guess you could say that, yes, the blood  
2 transfusion hasn't occurred.

3           **Q**     And do you think it would be fair to  
4 characterize the severity of the injury as a nick as  
5 compared to some kind of a mortal wound? If I were to  
6 have told you your 10K statements reflected revenues of --  
7 on Page 23. I'm a history major, it's hard for me to  
8 understand these numbers. But they are reported in  
9 millions, and your operating revenues for local service  
10 appear to reflect a \$10.8 billion number.

11          **A**     Well, I think when you were comparing you have  
12 got to compare apples-to-apples, and you have to compare  
13 expense-to-expense. I mean, obviously that revenue less  
14 expense is what gets you to the bottom line. No, I  
15 wouldn't characterize it as a nick. I mean, I think you  
16 have got to look at it in the context of what it is. And  
17 all things aside, it is a lot of --

18          **Q**     So you are saying you shouldn't look at  
19 operating revenues, you should look at net income?

20                   **MR. EDENFIELD:** Wait a minute. Ms. Shiroishi  
21 was in the middle of answering a question. I would  
22 appreciate it if she could be given be the opportunity to  
23 complete her answer before we move to the next question.

24                   **CHAIRMAN JACOBS:** I assume you were continuing  
25 your answer?

1           **THE WITNESS: Sure, yes. I don't think you can**  
2 **characterize it as a nick. I mean, I don't think in any**  
3 **market, you know, in the upper millions to almost a**  
4 **billion range is a nick. And I think you also have to**  
5 **look at the growth of the Internet.**

6           **There have been several studies done that show,**  
7 **you know, Internet dial-up usage continues to grow. If**  
8 **this continues the 300 million is going to compile to 600,**  
9 **to 900, on up into the billions.**

10 **BY MR. MOYLE:**

11           **Q Ms. Shiroishi, what was the net income for**  
12 **BellSouth as reflected in this 10K for the year 1999 on**  
13 **Page 23?**

14           **A Page what?**

15           **Q 23.**

16           **A Are you talking about the retained earnings or**  
17 **the net income?**

18           **Q Net income.**

19           **A It looks as though it is 2.7.**

20           **Q Is that 2.7 billion?**

21           **A I'm not sure. I would have to -- yes.**

22 **Honestly, it makes me very nervous to testify to numbers**  
23 **that I have never seen before and don't know. I mean, I**  
24 **think the document speaks for itself. And subject to**  
25 **check, obviously we would be willing to say that it says**



1 what it says.

2 **COMMISSIONER JABER: What does the document say**  
3 **on the top of Page 23?**

4 **THE WITNESS: BellSouth Telecommunications, Inc.**  
5 **consolidated statements of income and retained earnings.**  
6 **And then, you're right, it does say in millions right**  
7 **under that.**

8 **BY MR. MOYLE:**

9 **Q I had a question about your testimony on Page 11**  
10 **of your direct testimony. You reference some comment made**  
11 **by the chief of the FCC's Common Carrier Bureau starting**  
12 **at Line 22. The chief of the Common Carrier Bureau, he is**  
13 **not in a position to set policy for the FCC, is he?**

14 **A Obviously he contributes, but, I mean, he**  
15 **isn't -- this is not an FCC order that you are speaking**  
16 **to.**

17 **Q And do you know whether this chief is still**  
18 **there or has this chief been moved out in the transition**  
19 **with the change up there?**

20 **A No, it says that -- I believe it says the chief**  
21 **of the FCC's Common Carrier Bureau at the time the**  
22 **declaratory ruling was vacated, which is not the same as**  
23 **it is today.**

24 **Q So this person who made this statement today, as**  
25 **far as you know, may not even work at the FCC currently?**

1           **A**     **Yes. I'm not sure where they work now. I know**  
2 **they are not in the same position.**

3           **MR. MOYLE: Okay. Thank you. I have nothing**  
4 **further.**

5           **CHAIRMAN JACOBS: Staff.**

6   **CROSS EXAMINATION**

7 **BY MS. KEATING:**

8           **Q**     **Good afternoon, Ms. Shiroishi. As you can**  
9 **probably tell, my voice hasn't improved from this morning,**  
10 **so I apologize and I hope you will bear with me.**

11                           **Now, it's your belief that ISP-bound traffic is**  
12 **not subject to 251(b)(5), because you don't believe it**  
13 **terminates at the ISP, is that correct?**

14           **A**     **Well, there is a couple of reasons behind the**  
15 **belief. That is one of them. Also because of the FCC's**  
16 **orders declaring it to be interstate and access are the**  
17 **other.**

18           **Q**     **Okay. And you have prepared a couple of**  
19 **exhibits, I believe, to show termination of traffic in**  
20 **different situations?**

21           **A**     **Let me look to make sure I understand. Yes, I**  
22 **don't know that we were setting out solely to show**  
23 **termination. It was to show kind of multi-carrier, single**  
24 **carrier, intercarrier compensation arrangements.**

25           **Q**     **Okay. Thanks for that clarification. I would**

1 like to take a look at your first exhibit, ERAS-1. Now,  
2 in this exhibit you are just talking about voice traffic,  
3 right, just regular?

4 A Well, it's just local traffic, right.

5 Q Could you explain a little bit about what the  
6 diagrams show, and what type of traffic is being carried,  
7 and how it goes through the switch?

8 A Sure. And, again, I want to clarify that. I  
9 mean, this could be data, it doesn't have to be voice.  
10 It's just anything that originates and terminates within a  
11 local calling area.

12 Q Okay.

13 A Under the single carrier network, let's just use  
14 BellSouth for ease. You know, both end users are going to  
15 be BellSouth end users. It's going to go to an end  
16 office. There is going to be transport to the tandem.  
17 More transport to another end office and to that end user.  
18 There is going to be in that instance basically three  
19 switching elements and some transport. Under a  
20 multi-carrier network, you have got one end user who  
21 perhaps is the end user of BellSouth, and another end user  
22 who perhaps is the end user of Global NAPS. Again, this  
23 is still a local call.

24 The BellSouth end user picks up the phone to  
25 call, it's going to go through the BellSouth end office.

1 It's going to go to wherever the point of interconnection  
2 is. Now, in this diagram we have put it up the tandem, it  
3 doesn't have to be there. We are then going to hand it  
4 off to the CLEC or Global NAPS, and they are going to take  
5 it to their end office to their end user. And then going  
6 the other way would just be the opposite of that.

7 Q Okay. And just to be clear, in both scenarios  
8 the calls are transported and terminated to an end user,  
9 right?

10 A Yes, to an end user.

11 Q And in the multi-carrier situation, I would  
12 assume reciprocal compensation would be paid?

13 A Yes. I mean, it would be governed by the  
14 parties' interconnection agreement. But, yes, either a  
15 bill and keep arrangement, if that is what they had agreed  
16 to, or reciprocal compensation.

17 Q Okay. If we could look at your second exhibit,  
18 ERAS-2. What are you comparing here in this exhibit?

19 A What this is showing is in the top part  
20 basically how IXCs work with incumbent LECs or LECs to  
21 provide services. And that is that when the LEC passes it  
22 off to the interexchange carrier, the interexchange  
23 carrier then pays the LEC, if it is the originating LEC,  
24 originating switched access, and if it is the terminating  
25 LEC, terminating switched access for use of their network.

1 So basically the interexchange carrier is reimbursing both  
2 ends of that call. In my mind, I'm visual, I like to put  
3 them in the middle and then they pay out to each end of  
4 the call.

5 In the bottom part, it's just showing how that  
6 relates to an ISP. In the FCC's original it is access,  
7 but it is exempt type arrangement where we hand it off to  
8 the ISP. If there were no exemption of access charges,  
9 let's just pretend for a minute that ISPs were not exempt  
10 and they were exchange access users. In that instance  
11 they would then pay the originating switched access  
12 charges. Obviously there is no traditional end user on  
13 the other end to pay terminating to, but they would pay  
14 the originating switched access.

15 The FCC ruled that there is an access charges  
16 exemption and they don't have to pay those charges. So  
17 instead they are going to pay whatever the flat rate -- it  
18 may not be flat rate, but the intrastate tariffed rate for  
19 the service, like a primary rate ISDN line. And that is  
20 the surrogate for those access charges.

21 Q Okay. Now, the difference -- there is a little  
22 bit of a difference, I think, between the ERAS-2 and your  
23 first exhibit?

24 A Right. The first exhibit is truly local  
25 traffic, only local traffic. Exhibit 2 shows at the top

1 IXC traffic which could be interstate or intrastate, and  
2 then at the bottom ISP traffic.

3 Q But it is different in another way it looks  
4 like. In your second exhibit you are really only showing  
5 the originating end of the call?

6 A That's true, yes. It only shows one end of the  
7 call.

8 Q Okay. Looking first at Diagram C, which is  
9 traffic going to the IXC. Now, if you were to show the  
10 terminating portion of that call, it would be pretty much  
11 the reverse of what you have shown here, wouldn't it? It  
12 would go back through another LEC end office to a tandem  
13 switch, to a LEC end office, to either the same -- well,  
14 another LEC's end user somewhere, is that correct?

15 A That is correct.

16 Q Okay. So when an IXC uses the network, a call  
17 may be carried through BellSouth's end office and tandem  
18 switches for the originating side of the call, and then it  
19 may go back through the same process to another LEC's end  
20 user, correct?

21 A Yes, that is correct.

22 Q And if the call was terminated in a different  
23 state, that would be an interstate long distance call?

24 A That is correct.

25 Q Okay. And at each end the call is either

1 originated or terminated to an end user, correct?

2 A Uh-huh.

3 Q Okay. Looking at it in the same vein with  
4 Diagram D, if you were to show the terminating side of  
5 that call, what would it look like?

6 A Well, you would have pass the ISP wherever the  
7 end user went on the Internet, basically, just an Internet  
8 website is what you would have.

9 Q So it would not mirror LEC end office tandem  
10 switch, LEC end office end user?

11 A No. I mean, it's going to an Internet service  
12 provider onto the Internet, or worldwide web, or whatever  
13 you want to use it for.

14 Q So it is your position that a call from an end  
15 user to an ISP really only transits through the ISP's  
16 local point of presence, correct?

17 A I'm not sure I understand, I'm sorry.

18 Q It doesn't actually terminate at the ISP?

19 A No, it doesn't terminate at the ISP. It goes on  
20 to the ultimate end point of the call, which is whatever  
21 website you go to or whatever home page you go to.

22 Q So you would view the website or the host  
23 computer as the end user, essentially, if you had to  
24 compare it to the diagram?

25 A Yes. I mean, it's not an end user, it is the

1 ultimate destination, the ultimate point.

2 Q Okay. So you would not categorize a host  
3 computer as an end user?

4 A No.

5 Q What about a website?

6 A No, it's the ultimate point, but it is not an  
7 end user.

8 Q If I could get you look at Page 10 of your  
9 rebuttal testimony.

10 COMMISSIONER DEASON: I'm sorry, could you  
11 clarify that last answer.

12 THE WITNESS: I said it is the ultimate point of  
13 the call, but it's not -- I mean, there is a definition of  
14 end user in -- I believe it's in the act, but -- so it  
15 doesn't qualify as a true end user, but it is the ultimate  
16 point of the call.

17 COMMISSIONER DEASON: Okay. So it goes to that  
18 ultimate website or whatever, and that is the ultimate  
19 termination of the call, but that is not the end user.  
20 Who is the end user?

21 THE WITNESS: Well, in an ISP-bound call you  
22 only have one end user, you have got the person that has  
23 dialed into the Internet.

24 COMMISSIONER BAEZ: But if the ultimate  
25 destination, as you call it, is within the state, I mean,



1 it would remain -- you could call it intrastate?

2 **THE WITNESS:** Yes. That is an issue that  
3 actually the FCC brought up, is there are some dial-in  
4 Internet calls that may go from my house to two houses  
5 down. What they found is there is absolutely no way that  
6 they could think of or that they found was workable to  
7 separate that. And so that's why their rulings say it is  
8 basically largely interstate.

9 **COMMISSIONER BAEZ:** If you called that -- I  
10 mean, you are suggesting a number of discreet destinations  
11 on what, you know, during what we would understand as a  
12 call?

13 **THE WITNESS:** I'm sorry.

14 **COMMISSIONER BAEZ:** All right. If you say a  
15 website, and for lack of a better term you called it a  
16 ultimate destination. So, on the termination end of that  
17 call there are multiple ultimate destinations. Are each  
18 of those a discreet call?

19 **THE WITNESS:** No, I mean, it's one call. Are  
20 you saying like if you go to different websites?

21 **COMMISSIONER BAEZ:** Right.

22 **THE WITNESS:** Yes. I mean, it's obviously one  
23 continuous transmission path, you have just gone to  
24 different points of it.

25 **COMMISSIONER BAEZ:** How would you rate that?

1           **THE WITNESS: Rate as --**

2           **COMMISSIONER BAEZ: Well, if you are saying it**  
3 **is interstate, you are suggesting somehow there is some**  
4 **usage or some long distance kind of situation, from the**  
5 **consumer side how do you rate -- you know, and I'm**  
6 **assuming you are saying, well, it is outside the state,**  
7 **this ultimate destination. What if the ultimate**  
8 **destination is not just in Georgia, but there is an**  
9 **ultimate destination in New Zealand. How do you -- I**  
10 **mean, and maybe I'm taking you far afield, but how would**  
11 **you rate that, how would you say, hey, you have called New**  
12 **Zealand?**

13           **THE WITNESS: Well, I mean, we don't rate it,**  
14 **that's the thing. I mean, we don't charge the -- if that**  
15 **end user is a BellSouth end user --**

16           **COMMISSIONER BAEZ: I know you don't, how would**  
17 **AT&T rate that?**

18           **THE WITNESS: I guess maybe --**

19           **COMMISSIONER BAEZ: Or how would anyone else**  
20 **rate that?**

21           **THE WITNESS: Are you assuming they are using**  
22 **like a dial-in voice type?**

23           **COMMISSIONER BAEZ: No. I'm just saying if you**  
24 **are giving a call the attribute of interstate, if you are**  
25 **maintaining that a call to an ISP runs through the ISP and**

1 then out into the universe, all right, where it finds some  
2 ultimate destination. You are saying that it is somehow a  
3 long distance call, right?

4 THE WITNESS: Well, it is exempt from those  
5 charges, but, yes.

6 COMMISSIONER BAEZ: Let's say it wasn't. You  
7 know, there would have to be on the termination side or  
8 from the customer, the end user side, or the ultimate  
9 destination side some way of recovering -- like if I  
10 called Costa Rica, I would get 35 cents a minute, right?

11 THE WITNESS: Well, I think that would be -- I  
12 mean, I think what I'm understanding you to say is pretend  
13 like the access charge exemption went away, and so now you  
14 can charge for this. And, I mean, BellSouth would then be  
15 in the position of charging the ISP, not really the end  
16 user, and then the ISP would determine how it was going to  
17 allot those costs to the end user. But BellSouth would be  
18 still -- I mean, in that instance the ISP is truly acting  
19 as an interexchange type carrier and we would assess those  
20 access charges on the ISP, which is generally a per minute  
21 of use basis.

22 COMMISSIONER BAEZ: Uh-huh.

23 BY MS. KEATING:

24 Q Well, Ms. Shiroishi, I think Commissioner Baez  
25 just covered a great number of questions, so we can move

1 on from that point, other than I do want to clarify one  
2 thing.

3 With an IXC call you have got a single point of  
4 origination, and a single point of termination, isn't that  
5 correct?

6 A Yes, that is correct.

7 Q And you don't have that same situation with an  
8 ISP-bound call, correct?

9 A Well, you have a single point of origination,  
10 and then the termination would be the ultimate destination  
11 or the ultimate website, so --

12 Q But it could be multiple destinations?

13 A Yes, you're right. You could go to multiple  
14 destinations.

15 Q Then how many terminations would you think take  
16 place within a call like that?

17 A I really -- I haven't thought of it in that  
18 context. I would have to really think about that.

19 Q I would like to talk to you a little bit about  
20 noncircuit switched technology. And I'm looking in your  
21 direct testimony on Page 25 beginning at Line 11, where  
22 you state that noncircuit switched connections are  
23 generally not disputed with respect to reciprocal  
24 compensation since no switching costs are incurred. Is  
25 that correct?

1           **A     Yes, that is correct.**

2           **Q     Now, does BellSouth presently pay reciprocal**  
3 **compensation for local traffic that is carried over a**  
4 **noncircuit switched network?**

5           **A     And I have to admit here I'm going to need some**  
6 **clarification, and I don't know the appropriate way to do**  
7 **this. I stated this earlier in response to one of the**  
8 **Commissioner's questions. I think BellSouth is a little**  
9 **confused as to what we are talking about when we say**  
10 **noncircuit switched. I mean, you have got a flavor of**  
11 **noncircuit switched which is dedicated, and in that point,**  
12 **you know, BellSouth doesn't have the customer. I would**  
13 **need somebody to say exactly what they are contemplating**  
14 **to pay.**

15                   **You know, if you are talking about a type of**  
16 **network that is like a packet switched network or**  
17 **something like that, you are still going to have, as**  
18 **someone earlier testified, you are still going to hand it**  
19 **off, or we are going to hand it off as circuit switched**  
20 **and then the ALEC is going to pick it up and take that and**  
21 **turn it into whatever it becomes.**

22                   **So there could be a portion of that call that is**  
23 **still circuit switched. And I think that may be what is**  
24 **throwing people off is, you know, we may be calling that**  
25 **noncircuit switched when it is really circuit switched.**

1           **Q     Okay.**

2           **A     And then if you move into a purely packet type**  
3 **network, that is an issue that has actually been before**  
4 **this Commission before in the context of, I think it was**  
5 **frame relay, when I think the Intermedia arbitration is**  
6 **where it came up. You know, should we pay reciprocal**  
7 **compensation on packet switched frame relay type networks.**

8                   **And in that determination I know there was**  
9 **some -- you know, the Commission order basically, I think,**  
10 **said we haven't heard enough evidence on either side to**  
11 **say that we could make a definitive ruling. But for the**  
12 **time, you know, there is no way that we know of to measure**  
13 **it, there is no way that we know of to separate it or**  
14 **segregate it. And so at the time being we will say that**  
15 **frame relay is or in this order we are saying that frame**  
16 **relay is local for purposes of interconnection, but not**  
17 **for reciprocal compensation. I hope I characterized that**  
18 **consistently with the Commission's interpretation.**

19                   **But that issue has come up. So as far as the**  
20 **noncircuit switched piece of it, I don't know that maybe**  
21 **we are as far apart as we feel like we are. If it is a**  
22 **dedicated circuit obviously, and I haven't been able to**  
23 **get that honestly from the ALECs. I don't know their**  
24 **position on that. Whether they are talking about**  
25 **dedicated end-to-end circuits as well as a circuit**

1 switched that migrates over to a noncircuit switched. I  
2 probably gave you way more than you wanted there.

3 Q Well, just to get back to my original question,  
4 I was referring more toward packet switching technology as  
5 opposed to dedicated.

6 A Right.

7 Q But now for the portion over the ALEC's network  
8 that is a packet switching type technology, do you pay  
9 reciprocal compensation for local traffic?

10 A Well, I don't know that we have been billed,  
11 that and I don't know that we would know, I mean, packet  
12 switching doesn't work like traditional circuit switching.  
13 And so there is no per minute of use type clicker, I will  
14 call it, that goes off to say, well, there is so many --  
15 you are now talking in a packet world. So I think this  
16 was the issue that came up with Intermedia is what do we  
17 do, do we count packets, do we compensate per packet.  
18 And, you know, nobody knows how to do that. So to my  
19 knowledge, no, we are not paying it because I don't think  
20 we have the technology to be able to meter that.

21 Q But you don't know for sure?

22 A No, I don't know for sure.

23 Q Okay. Does BellSouth have any packet switching  
24 technology in place?

25 A I don't know that for sure. I know that we are

1 looking at networks, and I would think that we probably do  
2 have some frame relay type, ATM type networks in place.

3 Q Do you now if BellSouth is charging reciprocal  
4 compensation for any traffic carried over --

5 A As far as I know in your network those aren't  
6 replacing your traditional end office switch/tandem switch  
7 functions. So there would be nothing. That is what we  
8 charge reciprocal compensation on are the tandem  
9 switching/end switching functions. And I don't think we  
10 have replaced that in our network with a packet type  
11 environment. I'm fairly certain we have not.

12 Q So as far as you know BellSouth hasn't tried to  
13 identify whether traffic is being sent or received over --

14 A I feel fairly certain we are not using that  
15 technology. If we are using it, it is more for a backbone  
16 type technology, not for an interconnection type  
17 technology.

18 Q Are you familiar with BellSouth's arbitration  
19 with Intermedia in Docket 991854?

20 A Is that the same one that I was just referred  
21 to?

22 Q Yes, uh-huh.

23 A I am. I have read the orders. I'm not -- I was  
24 not involved in that arbitration, but I have read the  
25 orders.



1 Q You are somewhat familiar with that?

2 A Yes, uh-huh.

3 Q Well, in that case didn't BellSouth ask this  
4 Commission to require payment of access charges for IP  
5 traffic?

6 A For IP Telephony, yes.

7 Q And didn't this Commission approve that request?

8 A I believe so, yes.

9 Q And can you explain for me why that is different  
10 from including noncircuit switched technologies for  
11 purposes of reciprocal compensation?

12 A Well, in the context of that discussion what we  
13 are talking about is basically an IP Telephony which still  
14 uses the BellSouth network for either the originating  
15 portion or the terminating portion. We are not that using  
16 the IP technology, it would be the interexchange carrier  
17 or whomever. But they are still utilizing our network in  
18 the same manner they always have to provide that  
19 interexchange service.

20 When we hand it -- you know, basically let's  
21 pretend like I'm calling a long distance call and I pick  
22 up the phone and dial the number. BellSouth carries that  
23 to the interexchange carrier's point of presence, then the  
24 interexchange carrier takes it and they can basically do  
25 with it what they want, carry it however they want. IP is

1 just a transport protocol methodology. It's not -- I  
2 mean, basically to use an old analogy, I mean, you could  
3 have two cans and a piece of wire.

4 But then what we are looking at in the access  
5 charge world is what do they pay BellSouth. And I think  
6 Intermedia's argument was -- well, actually I shouldn't  
7 speak to Intermedia specifically. I know a lot of ALECs'  
8 arguments are that since it is a more advanced technology  
9 they shouldn't pay us access charges. Well, that might  
10 seem appealing when you are thinking of it in terms of  
11 this is something new and great, but it is really not. I  
12 mean, for their portion of the technology it is new and  
13 great, but they are still using our network in the exact  
14 same manner they were before, which is it is circuit  
15 switched, pick it up, we pass it off to them. So, you  
16 know, it is no different. IP Telephony on that middle  
17 portion of the call, as I talked about before, is no  
18 different than using microwave or using, you know, special  
19 access versus switched access.

20 MS. KEATING: Thank you, Ms. Shiroishi. That's  
21 all we have.

22 MR. EDENFIELD: Very, very quickly.

23 REDIRECT EXAMINATION

24 BY MR. EDENFIELD:

25 Q Ms. Shiroishi, are you aware of whether any of

1 the ALECs have put in evidence in this proceeding as to  
2 their costs incurred in sending the traffic to ISPs?

3 A I am not. I believe BellSouth asked for that in  
4 interrogatories, but I believe that all the ALECs objected  
5 and did not provide that.

6 Q Are you aware of whether of the ALECs have put  
7 into evidence in this proceeding the rates that they are  
8 charging the ISPs to provide service to them?

9 A I do not believe that any evidence has been  
10 submitted on that.

11 MR. EDENFIELD: That's all I've got. Thank you.  
12 Chairman Jacobs, may Ms. Shiroishi be excused?

13 CHAIRMAN JACOBS: Yes. Exhibits first.

14 MR. EDENFIELD: Oh, I'm sorry. BellSouth would  
15 move Exhibit 23, Ms. Shiroishi's exhibits.

16 CHAIRMAN JACOBS: Show Exhibit 23 admitted.

17 MR. HOFFMAN: Mr. Chairman, I would move  
18 Exhibits 24 and 25.

19 CHAIRMAN JACOBS: Show Exhibits 24 and 25  
20 admitted. You are excused, Ms. Shiroishi.

21 (Exhibits 23, 24, and 25 admitted into the  
22 record.)

23 CHAIRMAN JACOBS: And the next witness is Mr.  
24 Taylor.

25 MR. EDENFIELD: BellSouth would call Doctor

1 Taylor.

2 CHAIRMAN JACOBS: Why don't we take a break for  
3 ten minutes. And what I would like, when we come back if  
4 the parties can kind of give us an idea if we are on track  
5 to complete by the end of the day.

6 MR. EDENFIELD: I'm not sure anybody has even  
7 got any cross for Doctor Taylor, but we will find out. I  
8 will find out at the break.

9 CHAIRMAN JACOBS: We weren't sure if he had been  
10 stipulated. I didn't think it was.

11 MR. EDENFIELD: They had offered, but I just  
12 wasn't sure whether the staff or the Commission might have  
13 questions for him. They had offered, but -- in fact,  
14 Mr. Moyle may have been -- did you have a few questions?  
15 I really don't know if the ALECs and Sprint have any  
16 questions or not.

17 CHAIRMAN JACOBS: Let's get it cleared up over  
18 the break and then we will come back. If not, then it  
19 will be a quick pause and then we can go to the last  
20 witness. So we will come back in ten minutes.

21 (Recess.)

22 (Transcript continues in sequence with  
23 Volume 6.)

24

25

1 **STATE OF FLORIDA )**

2 **: CERTIFICATE OF REPORTER**

3 **COUNTY OF LEON )**

4

5 **I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting**  
6 **FPSC Commission Reporter, do hereby certify that the**  
7 **Hearing in Docket No. 000075-TP was heard by the Florida Public**  
8 **Service Commission at the time and place herein stated.**

7

8 **IT IS FURTHER CERTIFIED that I stenographically**  
9 **reported the said proceedings; that the same has been transcribed**  
10 **under my direct supervision; and that this transcript, consisting**  
11 **of 181 pages, Volume 5 constitutes a true transcription of my**  
12 **notes of said proceedings and the insertion of the prescribed**  
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14 **the action, nor am I financially interested in the action.**

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14 **DATED THIS 22ND DAY OF MARCH, 2001.**

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