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April 19, 2001

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Blanca S. Bayo, Director  
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Re: Docket No.: 000075-TP

Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association (FCCA), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Rebuttal Testimony of Joseph P. Gillan on behalf of Florida Competitive Carriers Association

Please acknowledge receipt of the above on the extra copy and return the stamped copies to me. Thank you for your assistance.

Sincerely,

*Joseph A. McGlothlin*  
Joseph A. McGlothlin

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**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into appropriate methods  
to compensate carriers for exchange of  
traffic subject to Section 251 of the  
Telecommunications Act of 1996.

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Docket No.: 000075-TP  
Filed: April 19, 2001

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OF  
JOSEPH P. GILLAN  
ON BEHALF OF  
FLORIDA COMPETITIVE CARRIERS ASSOCIATION**

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1       **Q.     Please state your name.**

2

3       A.     My name is Joseph Gillan. I previously filed direct testimony on behalf of the  
4             Florida Competitive Carriers Association ("FCCA") concerning Issue 16 (*i.e.*, what  
5             is the appropriate definition of Internet Protocol (IP) telephony).

6

7       **Q.     What is the purpose of your rebuttal testimony?**

8

9       A.     The purpose of my rebuttal testimony is to (1) support the general consensus that the  
10            Commission should *not* apply access charges to nascent "IP telephony" services in  
11            this proceeding, and (2) respond to BellSouth's singular exception to this consensus  
12            that it should. The technologies that support IP telephony are only just being  
13            introduced, and it is far too early to prejudge what services they will foster, much less  
14            their commercial significance. Even BellSouth's narrow formulation of the issue --  
15            *i.e.*, that access charges should apply to *any* long distance call -- begs the larger  
16            question of whether access charges should continue to apply *at all*. (I am not  
17            recommending that the Commission undertake a comprehensive review of  
18            intercarrier compensation in this proceeding. My larger point is simply that  
19            BellSouth's assertion that access charges should apply to IP telephony presupposes  
20            that access charges are a perpetual default entitlement, to which all future  
21            technologies must conform. Of course, such a presumption is absurd).

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23       **Q.     Is there even consensus as to what constitutes IP telephony?**

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A. No. In fact, the two very different perceptions of IP telephony offered by Verizon and BellSouth provide compelling evidence as to just how premature it would be for the Commission to try and address the IP telephony issue in this proceeding. As described by Verizon (Geddes, page 5):

IP Telephony encompasses a very diverse array of applications ranging from the somewhat crude conversation conducted between two users via their personal computers to the more innovative "click to talk" application in which a user, by selecting a hyperlink on a web page, is instantly connected to a live representative in a call center.

In contrast, BellSouth's testimony (Ruscilli, pages 45 and 46) redefines the issue as addressing a single, narrow service:

Phone-to-Phone IP Telephony is telecommunications service that is provided using Internet Protocol for one or more segments of the call.

\*\*\*

To explain it another way, Phone-to-Phone IP Telephony occurs when an end user customer uses a traditional telephone set to call another traditional telephone set using IP technology.

What is interesting about the above comparison is that Verizon does not even *mention* the *only* form of IP telephony that BellSouth describes. The most useful insight, however, can be drawn from the testimony of Verizon witness Dr. Beauvais (page 15):

... there is relatively little IP telephony today, especially for voice traffic. Thus there is no pressing need for the Commission to address this [IP telephony] compensation issue now ...

1       **Q. Verizon recommends that the Commission defer this issue to a future**  
2       **proceeding, or convene non-adversarial workshops (Beauvais, page 15). Do you**  
3       **agree?**

4  
5       A. Only partially. I do agree with Dr. Beauvais that the Commission should not --  
6       indeed, as Dr. Beauvais points out, given this record, could not -- attempt to address  
7       IP telephony in this proceeding. Where we (potentially) disagree, however, is  
8       whether the Commission should instead convene a separate proceeding, or initiate  
9       workshops, at this time.

10  
11       Additional hearings and, to the same or greater extent, "non-adversarial" workshops,  
12       consume resources -- resources that are exceedingly scarce in the competitive  
13       industry as well as at the Commission. In my view, the better course would be to  
14       provide the market time to "filter" this issue for the Commission. By this I mean that  
15       the Commission should allow the market (which is to say, consumers) time to  
16       determine which innovations (if any) have lasting significance. If the future reveals  
17       that there are some IP telephony services that succeed -- that is, they are not simply  
18       introduced, but actually take root and prosper -- then the Commission can determine  
19       then whether any "IP telephony" issue still remains. Thus far, however, there have  
20       been as many services withdrawn as introduced, with no real market experience  
21       justifying immediate regulatory reaction.

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23       **Q. How should the Commission address BellSouth's testimony that action is**  
24       **needed now?**

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A. To begin, BellSouth's recommendation that IP telephony should be assessed access charges raises more questions than it would resolve. BellSouth never fully discloses exactly what it means when it says that the Commission should find that access charges should "... apply to long distance calls, regardless of the technology used to transport them." To the extent that IP telephony is provided using a gateway architecture, it is not clear that BellSouth even has an access tariff that would apply, should the Commission act as it has requested. In effect, BellSouth is asking that the Commission preauthorize some Feature Group-Internet Protocol (FG-IP) arrangement, without explaining what that would entail. If BellSouth wants to "apply access charges" to IP telephony, a first step should be a clear description of *exactly* what it means by the statement -- in other words, exactly what is the "access service" it would provide, and what "charges" would it propose?

Moreover, BellSouth implies that this issue is settled at the FCC and that the Florida Commission need simply decide that "intrastate access" should also apply. This is not fully (or even partially) accurate -- the FCC has never concluded that access charges should apply to "interstate" IP telephony, nor has it even decided what the term means. The FCC did *tentatively* adopt a definition of the "phone-to-phone IP telephony" similar to that emphasized by BellSouth, but then deliberately *declined* to reach the conclusion that BellSouth seeks here. Consequently, taking the path recommended by BellSouth could even create a jurisdictional dispute with the FCC. All for what end?

1       **Q.     Does BellSouth ever explain *why* the Commission should take the dramatic –**  
2       **indeed, unprecedented – action it seeks?**

3  
4       A.     No. BellSouth is asking that this Commission blindly adopt a finding that the FCC  
5       has deliberately (and cautiously) avoided for several years. The stated reason  
6       (Ruscelli, page 9):

7  
8               All other long-distance carriers currently pay these same access  
9               charges, and there is no authority to exempt them, regardless of the  
10              protocol used to transport such calls. To do otherwise would  
11              unreasonably discriminate between long-distance carriers utilizing IP  
12              telephony and those who do not.  
13

14             To begin, it is useful to note that no long-distance carrier has registered this concern,  
15             only BellSouth. If BellSouth is so concerned about access discrimination, however,  
16             then it should reduce its access charges to cost, thereby avoiding the discrimination  
17             that favors it. After all, if there is a discrimination issue involving access that is  
18             commercially significant, it is the inflated access rates charged by ILECs offering  
19             long distance service, not nascent IP telephony.  
20

21       **Q.     Has the FCC agreed that access charges should apply to phone-to-phone IP**  
22       **telephony as BellSouth implies?**

23  
24       A.     No. Although the FCC did list a number of characteristics that *could* be used to  
25       describe IP telephony services that *might* be considered telecommunication services  
26       (See Report to Congress, In the Matter of Federal-State Joint Board on Universal  
27       Service, ("*Report to Congress*"), CC Docket 96-45, FCC 98-67, Adopted April 10,



1 1998), the FCC never *adopted* the list nor determined that services that exhibited  
2 these characteristics should be assessed access charges. Specifically, the FCC found  
3 (at ¶83, emphasis supplied):

4  
5 The record currently before us suggests that certain "phone-to-phone  
6 IP telephony" services lack the characteristics that would render them  
7 "information services" within the meaning of the statute, and instead  
8 bear the characteristics of "telecommunications services." We do not  
9 believe, however, that it is appropriate to make any definitive  
10 pronouncements in the absence of a more complete record focused on  
11 individual service offerings.  
12

13 The FCC understood that technology and market conditions are in flux, and that  
14 providing the market more time to evolve was the best policy. Indications are that  
15 the FCC remains committed to this overall approach. As former Chairman Kennard  
16 explained (Washington Internet Daily, May 25, 2000, page 2):

17  
18 ... imposing access charges on IP telephony, is not the direction we  
19 should be heading. It seeks to impose a legacy system on what is a  
20 new and emerging technology ... Internet telephony is still technically  
21 challenged. It's still in the development stage. The last thing we  
22 want to do is start inventing some regulatory paradigm or imposing  
23 an old regulatory paradigm on this service before it's even gotten out  
24 of the box.  
25

26 While Mr. Kennard is no longer FCC Chairman, there is no indication that the FCC  
27 under Chairman Powell would likely adopt a framework for IP telephony that would  
28 be more regulatory than his predecessor recommended.

29  
30 **Q. Has BellSouth provided any detail concerning the "access charges" it would**  
31 **even propose to apply?**

1 A. No. BellSouth's testimony is as silent as to *what* it would do with the Commission  
2 finding as it is as to *why* the Commission should grant it. The phone-to-phone IP  
3 services that I am aware of were introduced (and generally discontinued) using IP  
4 gateways that required the subscriber to first access the gateway through a local  
5 number, before dialing additional digits to reach the calling party. BellSouth's  
6 testimony makes reference to such "gateways" (Ruscilli, page 45), but ignores their  
7 implication.

8  
9 For instance, IP-Gateway architectures typically interconnect using ISDN-PRI  
10 connections. These connections are high-speed digital connections that support 23  
11 voice-grade channels and a 24<sup>th</sup> channel for signaling. To my knowledge, BellSouth  
12 has never tariffed a similar ISDN-PRI "access service" that would support IP  
13 gateway-based services.

14  
15 Consequently, even if BellSouth had demonstrated that "access charges" should  
16 apply to IP telephony -- a showing that BellSouth has not made -- a number of  
17 practical questions would remain. What exactly would BellSouth's proposed FG-IP  
18 look like? What would be its rate elements? To what services would it apply? How  
19 would charges be calculated? What would be the underlying cost justification?  
20 *None* of these questions can be answered by looking at BellSouth's testimony here.  
21 In effect, BellSouth is asking the Commission to accept a "pig in a poke" by agreeing  
22 to a new FG-IP without having any idea as to what it would actually look like.  
23

1       **Q.    Is it likely that pure phone-to-phone IP services via a gateway-architecture will**  
2       **become commercially significant?**

3  
4       A.    No. Although it is impossible to discern from BellSouth's testimony how it expects  
5       such gateways to be used, the services that I have seen typically require that the  
6       customer dial a local number to access the gateway, then dial additional digits to  
7       identify the called party (as well as identify the calling party). From the consumer's  
8       perspective, such services are reminiscent of the old arrangements used by early long  
9       distance competitors (Feature Group A) before equal access was introduced (Feature  
10      Group D).

11  
12      Even at the *height* of its popularity (1985), however, Feature Group A-based  
13      services never acquired more than 7% of the market, despite the fact that they then  
14      existed in an environment of very high toll rates and significant access savings  
15      (Source: Memorandum Opinion and Order, In the Matter of NECA Revisions to  
16      Tariff FCC No 1, Application No. 14, Transmittal No. 23, January 14, 1985, Table  
17      1, Appendix B). How pure phone-to-phone IP telephony - which exhibits the  
18      drawbacks of F.A. without its attractive economics - would materially impact  
19      markets to a level justifying the precipitous action BellSouth recommends is, to say  
20      the least, unclear. The telecommunications industry is far different today than in the  
21      late 1970s, and appealing to compensation models in the "2000s" that did not survive  
22      the "1980s" would be to repeat past mistakes, not learn from them.

1       **Q.    Do you support Level 3's suggestion that the Commission review this issue on**  
2       **a "case by case" basis (Hunt, page 29)?**

3  
4       **A.    No, even this would seem to be a "solution" out of scale with the "problem." The**  
5       **FCC has announced that it intends to initiate a general review of intercarrier**  
6       **compensation shortly. As I noted above, BellSouth's entire claim that IP telephony**  
7       **should be assessed access charges presupposes (without acknowledging this core**  
8       **assumption) that access charges are themselves appropriate. I would recommend that**  
9       **the Commission monitor the FCC's proceeding addressing intercarrier compensation,**  
10       **as well as continue to observe developments in the marketplace. Although BellSouth**  
11       **encourages immediate action, it has offered no compelling evidence that there is a**  
12       **problem that needs to be fixed. Carriers offering IP telephony services are ordering**  
13       **the local connections they require, while BellSouth (and the long distance**  
14       **competitors for which it professes concern) do not seem to be affected (at least by**  
15       **this development). There are far larger issues confronting the Commission -- for**  
16       **instance, the absence of local competition and the very real discrimination concern**  
17       **that results from BellSouth's access rates -- that would present a better use of its**  
18       **limited resources.**

19  
20       **Q.    Does this conclude your rebuttal testimony?**

21  
22       **A.    Yes.**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the Rebuttal Testimony of Joseph P. Gillan on behalf of the Florida Competitive Carriers Association has been furnished by hand delivery (\*) or U.S. Mail this 19<sup>th</sup> day of April, 2001 to the following:

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