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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF BETH SHIROISHI
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 001810-TP
APRIL 26, 2001

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

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

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

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

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

2

3 A. The purpose of my testimony is to show that BellSouth does not owe Teleport
4 Communications South Florida ("TCG") reciprocal compensation for traffic
5 bound for Internet service providers ("ISPs") for three primary reasons: first,
6 ISP-bound traffic is, and always has been, interstate traffic; second, the parties
7 did not agree to pay reciprocal compensation for ISP-bound traffic under the
8 terms of the Agreement between the parties; and third, this Commission's
9 Order in Docket No. PSC-98-1216-FOF-TP applied only to the previous
10 contract under which TCG operated.

11

12 Q. WHAT IS THE COMMISSION'S JURISDICTION IN THIS MATTER?

13

14 A. Although I am not a lawyer, it is my understanding that this Commission has
15 jurisdiction to hear disputes arising from interconnection agreements
16 negotiated and filed pursuant to Section 251 and 252 of the
17 Telecommunications Act of 1996 ("the Act"). Although an Order has not yet
18 been issued, the FCC, in a press release, indicated that it has signed an Order
19 that confirms the interstate nature with ISP traffic. As such, ISP-bound traffic
20 is within the exclusive jurisdiction of the Federal Communications
21 Commission ("FCC"). Since this is a legal issue, BellSouth's position on this
22 issue will appropriately be addressed in its Post-Hearing Brief filed in this
23 proceeding.

24

25

1 Q. WAS TCG AWARE OF BELLSOUTH'S POSITION THAT ISP TRAFFIC IS
2 NOT SUBJECT TO RECIPROCAL COMPENSATION PRIOR TO THE
3 SECOND INTERCONNECTION AGREEMENT BEING EXECUTED?
4

5 A. Absolutely. By way of background, BellSouth and TCG entered into their first
6 interconnection agreement, which was a negotiated agreement, on July 15,
7 1996 ("First TCG Agreement"). On August 8, 1997, BellSouth posted a
8 notice on its Carrier Notification website advising all ALECs, including TCG,
9 of BellSouth's view that ISP traffic was interstate in nature and thus not subject
10 to the payment of reciprocal compensation. A copy of this notice is still on
11 BellSouth's website today. BellSouth also sent a letter dated August 12, 1997
12 to all ALECs confirming BellSouth's position on the ISP issue. On February
13 4, 1998, TCG filed a complaint against BellSouth alleging that BellSouth
14 breached the First TCG Agreement by failing to pay reciprocal compensation
15 on ISP-bound traffic. In the course of this proceeding, BellSouth's position
16 that ISP-bound traffic was not local traffic subject to the payment of reciprocal
17 compensation was made perfectly clear. On September 15, 1998, the Florida
18 Public Service Commission issued a ruling in that complaint case. As such, it
19 is clear that TCG was on notice before TCG and BellSouth executed the
20 second agreement on July 14, 1999 that BellSouth did not consider ISP traffic
21 to be "local" traffic subject to the payment of reciprocal compensation.
22

23 Clearly, BellSouth would never have executed an agreement intending to
24 include ISP-bound traffic under the reciprocal compensation provisions shortly
25 after stating publicly precisely the opposite position to TCG and other ALECs.

1 However, because the Act allows ALECs to opt in to current agreements,
2 BellSouth and TCG never negotiated their new agreement. On July 14, 1999,
3 the same day that the First TCG Agreement expired, TCG opted into the
4 AT&T agreement, dated June 10, 1997, (“Second TCG Agreement”), which is
5 silent on the ISP/ESP traffic.

6

7 Q. TCG REFERS TO THE COMMISSION’S ORDER NO. PSC-98-1216-FOF-
8 TP. DOES THIS RULING APPLY TO TCG’S CURRENT AGREEMENT?

9

10 A. No. In Order No. PSC-98-1216-FOF-TP, this Commission ruled only on the
11 intent of BellSouth and TCG regarding the payment of reciprocal
12 compensation for ISP-bound traffic under the First TCG Agreement. In lieu of
13 negotiating a new agreement when the First TCG Agreement expired, TCG
14 decided to adopt an earlier agreement that did not address the ISP issue.
15 Although BellSouth could not prohibit TCG from adopting another ALEC’s
16 agreement, BellSouth had already made known to TCG in writing that it was
17 BellSouth’s policy that ISP-bound traffic should not be treated as local traffic
18 for reciprocal compensation purposes.

19

20 Q. HAS THE COMMISSION MADE A DETERMINATION OF THE
21 APPLICABILITY OF RECIPROCAL COMPENSATION FOR ISP-BOUND
22 TRAFFIC UNDER THE TERMS OF THE BELLSOUTH AND AT&T
23 INTERCONNECTION AGREEMENT DATED JUNE 10, 1997?

24

25

1 A. No. A complaint on reciprocal compensation for ISP-bound traffic under this
2 Agreement has never been brought before this Commission. AT&T, who
3 negotiated this Agreement with BellSouth, has never filed a complaint against
4 BellSouth for payment of reciprocal compensation on ISP-bound traffic. In
5 fact, AT&T has stated publicly in comments to the FCC that AT&T believes
6 ISP-bound traffic to be interstate traffic. According to this Commission's
7 ruling in Global NAPS, a carrier opting into another Interconnection
8 Agreement cannot have more rights than the carrier to the original agreement.
9 Likewise, the subsequent agreement cannot have a different interpretation than
10 the original agreement. Thus, under the Commission's prior decision in
11 Global NAPS, because AT&T has made its position on this issue clear, TCG is
12 bound by that position. (BellSouth does not agree with the Commissions
13 interpretation, and has appealed the Global NAPs decision).

14

15 Q. WHAT IS RECIPROCAL COMPENSATION?

16

17 A. Section 251 (b)(5) of the Telecommunications Act of 1996 obligated all
18 telecommunications carriers to "establish reciprocal compensation
19 arrangements for the transport and termination of telecommunications." In
20 basic terms, reciprocal compensation is a two-way, or reciprocal, arrangement
21 requiring a local exchange carrier ("LEC") who originates a local call to
22 compensate the LEC who terminates the local call. By law, this obligation
23 applies only if the call is local, and if the call is originated and terminated by
24 different LECs. As the FCC has confirmed, this obligation does not extend to
25 ISP traffic.

1

2 Q. DID TCG AND BELLSOUTH INTEND TO ASSUME AN OBLIGATION
3 TO PAY RECIPROCAL COMPENSATION BEYOND THAT REQUIRED
4 BY THE TELECOMMUNICATIONS ACT OF 1996?

5

6 A. No. BellSouth and TCG executed the agreement in order to fulfill their duties
7 under the Telecommunications Act of 1996 -- nothing more, nothing less.
8 Nothing in the Second TCG Agreement can reasonably be read to suggest that
9 BellSouth and TCG agreed to go beyond their obligations under the
10 Telecommunications Act, including the scope of their duty to pay reciprocal
11 compensation.

12

13 Q. WHY IS ISP TRAFFIC NOT SUBJECT TO THE RECIPROCAL
14 COMPENSATION REQUIREMENTS UNDER THE
15 TELECOMMUNICATIONS ACT OF 1996?

16

17 A. Internet service is a subset of the services that the Federal Communications
18 Commission ("FCC") has classified as enhanced services. The FCC, for a
19 variety of public policy reasons, has exempted enhanced service providers
20 ("ESPs"), of which ISPs are a subset, from paying interstate access charges
21 since 1983. Hence, ISPs are permitted to use the networks of LECs to collect
22 and transport their interstate traffic. Moreover, ILECs, such as BellSouth, are
23 not permitted to charge ISPs access charges for the access services ISPs
24 receive. Instead, ISPs pay ILECs for the access services they use at rates equal
25 to local exchange rates. However, as the FCC confirmed in its *Order On*

1 *Remand In the Matter of Deployment of Wireline Services Offering Advanced*
2 *Telecommunications Capability* (“Order on Remand”) released December 23,
3 1999, the access charge exemption does not alter the fact that the service
4 provided by Local Exchange Carriers (“LECs”) to ESPs, which includes ISPs,
5 is “exchange access.” FCC 99-413, ¶ 43 (Dec. 23, 1999). Exchange access
6 traffic is, by definition, interstate in nature, not local. In its April 19, 2001
7 press release, the FCC again confirmed that ISP-bound traffic is not local
8 traffic because it appears to have stated that ISP traffic is “information access”
9 interstate traffic.

10

11 Q. PLEASE DESCRIBE THE NATURE OF ISP TRAFFIC.

12

13 A. To put the Agreement in question in this docket in context, I will describe how
14 traffic from an end user with dial-up Internet service is routed to the Internet.
15 End users gain access to the Internet through an ISP. The ISP location,
16 generally referred to as an ISP Point of Presence (“POP”), represents the edge
17 of the Internet and usually consists of a bank of modems. Due to the FCC’s
18 access charge exemption for ISPs, ISPs can use the public switched network to
19 collect their subscribers’ calls to the Internet. To access the Internet through an
20 ISP, subscribers dial a seven- or ten-digit telephone number via their computer
21 modem. To receive exchange access service, the ISP typically purchases
22 business service lines from various LEC end offices and physically connects
23 those lines to an ISP premise, which contains modem banks that connect to the
24 Internet. The ISP converts the signal of the incoming communication to a
25 digital signal and routes the traffic, through its modems, over its own network

1 to a backbone network provider, where it is ultimately routed to an Internet-
2 connected host computer. Internet backbone networks can be regional or
3 national in nature. These networks not only interconnect ISP POPs but also
4 interconnect ISPs with each other and with online information content.

5
6 The essence of Internet service is the ease with which a user can access and
7 transport information from any server connected to the Internet. The Internet
8 enables information and Internet resources to be widely distributed and
9 eliminates the need for the user and the information to be physically located in
10 the same area. ISPs typically provide, in addition to Internet access, Internet
11 services such as e-mail, usenet news, and Web pages to their customers.

12 When a user retrieves e-mail or accesses usenet messages, for example, it is
13 highly unlikely that the user is communicating with a server that is located in
14 the same local calling area as the user. To the contrary, the concentration of
15 information is more likely to result in an interstate, or even international,
16 communication.

17
18 In short, an ISP takes a communication and, as part of the information service
19 it offers to the public, transmits that communication to and from the
20 communications network of other telecommunications carriers (e.g., Internet
21 backbone providers such as MCI or Sprint) whereupon it is ultimately
22 delivered to Internet host computers, almost all of which are located outside of
23 the local serving area of the ISP.

24
25

1 As I stated earlier, the ISP generally purchases exchange access service by
2 leasing business service lines from various end offices. In the case of ILECs,
3 this methodology was prescribed (and in fact compelled) by the FCC in order
4 to ensure compliance with the access charge exemption extended to ESP/ISPs.
5 The fact that an ISP obtains local business service lines from an ALEC switch
6 in no way alters the continuous transmission of signals between an incumbent
7 local exchange carrier's ("ILEC") end user to a host computer. In other words,
8 if an ALEC puts itself in between a BellSouth end user and the Internet service
9 provider, it is acting like an intermediate transport carrier or conduit, using
10 exchange access service, not a local exchange provider entitled to reciprocal
11 compensation.

12

13

14 Q. IS ISP-BOUND TRAFFIC INTERSTATE OR LOCAL TRAFFIC?

15

16 A. ISP-bound traffic is interstate. Throughout the evolution of the Internet, the
17 FCC repeatedly has asserted that ISP-bound traffic is interstate. For instance,
18 the *Notice of Proposed Rulemaking, In the Matter of Amendments to Part 69 of*
19 *the Commission's Rules Relating to Enhanced Service Providers*, CC Docket
20 No. 87-215 ("1987 NPRM"), released July 17, 1987, in which the FCC
21 proposed to lift the ESP access charge exemption, is clearly in keeping with the
22 FCC's position on the interstate nature of ESP/ISP traffic. Paragraph 7 reads:

23

24

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We are concerned that the charges currently paid by enhanced service
providers do not contribute sufficiently to the costs of the exchange
access facilities they use in offering their services to the public. As we

1 have frequently emphasized in our various access charge orders, our
2 ultimate objective is to establish a set of rules that provide for recovery
3 of the costs of exchange access used in interstate service in a fair,
4 reasonable, and efficient manner from all users of access service,
5 regardless of their designation as carriers, enhanced service providers,
6 or private customers. Enhanced service providers, like facilities-based
7 interexchange carriers and resellers, use the local network to provide
8 interstate services. To the extent that they are exempt from access
9 charges, the other users of exchange access pay a disproportionate share
10 of the costs of the local exchange that access charges are designed to
11 cover. (emphases added)

12

13 The resulting order in Docket No. 87-215 (the “ESP Exemption Order”),
14 released in 1988, is further evidence of the FCC’s continued pattern of
15 considering ISP-bound traffic to be access traffic. It referred to “certain classes
16 of exchange access users, including enhanced service providers”(emphasis
17 added).

18

19 These orders all predate execution of the Agreement and the August 1997
20 Amendment. In December 1999, the FCC only confirmed its longstanding
21 view that ISP traffic is considered exchange access traffic. Again, Paragraph
22 16 of the Order on Remand states, in part:

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 With respect to xDSL-based advanced services used to connect Internet
 Service Providers (ISPs) with their dial-in subscribers, the Commission
 has determined that such traffic does not terminate at the ISP’s local

1 server, but instead terminates at Internet websites that are often located
2 in other exchanges, states or even foreign countries. Consistent with
3 this determination, we conclude that typically ISP-bound traffic does
4 not originate and terminate within an exchange and, therefore, does not
5 constitute telephone exchange service within the meaning of the Act.
6 As explained more fully below, such traffic is properly classified as
7 “exchange access.”
8

9 On April 19, 2001, the FCC has once and for all confirmed the fact that ISP
10 traffic is “information access” interstate traffic.
11

12 Q. WHAT IS THE BASIS FOR YOUR TESTIMONY THAT THE FCC
13 CONSIDERS A CALL TO “TERMINATE” AT THE END POINT OF THE
14 COMMUNICATION?
15

16 A. The FCC has long held that jurisdiction of traffic is determined by the end-to-
17 end nature of a call. It is, therefore, irrelevant that the originating end user and
18 the ISP’s POP are in the same local calling area, because the ISP’s POP is not
19 the terminating point of this ISP traffic. The FCC stated in Paragraph 12 in an
20 order dated February 14, 1992, in FCC Order Number 92-18, that:

21 Our jurisdiction does not end at the local switch, but continues to the
22 ultimate termination of the call. The key to jurisdiction is the nature of
23 the communication itself, rather than the physical location of the
24 technology.
25

1 As the FCC has made clear, the ending point of a call to the Internet is not the
2 ISP's POP, but rather the computer database or information source to which
3 the ISP provides access. Calls that merely transit an ALEC's network without
4 terminating on it, cannot be eligible for reciprocal compensation.

5

6 Q. DOES ISP TRAFFIC TERMINATE AT THE ISP?

7

8 A. Absolutely not. The call from an end user to the ISP only transits through the
9 ISP's local point of presence; it does not terminate there. There is no
10 interruption of the continuous transmission of signals between the end user and
11 the host computers. The FCC's recent Order on Remand released December
12 23, 1999, emphasizes again that ISP-bound traffic does not terminate at the
13 ISP. Paragraph 16 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. IF TCG AND BELLSOUTH DID NOT MUTUALLY AGREE TO PAY
7 RECIPROCAL COMPENSATION FOR ISP TRAFFIC, CAN EITHER
8 PARTY BE REQUIRED TO PAY RECIPROCAL COMPENSATION FOR
9 THAT TRAFFIC?

10

11 A. No. If both of the parties did not mutually agree to pay reciprocal
12 compensation for ISP traffic, then there is no contractual obligation to pay
13 reciprocal compensation for such traffic. When TCG adopted the AT&T
14 agreement on July 14, 1999, TCG was well aware of BellSouth's position on
15 ISP-bound traffic as well as BellSouth's intent that the Parties would not
16 compensate each other for ISP-bound traffic the payment of reciprocal
17 compensation. As noted above, AT&T concurs that ISP traffic is interstate.
18 Thus, TCG is seeking rights under the Agreement beyond those of the original
19 parties to the Agreement.

20

21

22 Q. IF ISP-BOUND TRAFFIC IS NOT SUBJECT TO RECIPROCAL
23 COMPENSATION, WILL BELLSOUTH AND TCG BE TRANSPORTING
24 ISP-BOUND TRAFFIC WITHOUT COMPENSATION?

25

1 A. No. Both BellSouth and TCG are compensated for handling ISP traffic from
2 the revenues received by each from their respective ISP customers for services
3 provided to the ISP. It may be that certain ALECs have contracted to provide
4 services to ISPs at greatly reduced rates in an effort to lure them away from
5 other carriers, anticipating that the enormous revenues generated through
6 reciprocal compensation would more than offset any loss on provisioning the
7 service. Some ALECs are attempting to turn reciprocal compensation, a
8 mechanism for recovering the cost of transporting and terminating local traffic,
9 into a separate, wildly profitable, line of business. When a BellSouth end user
10 dials into the Internet through an ISP served by an ALEC, the ALEC is
11 compensated by the ISP. The ISP is compensated by the end user. BellSouth
12 is the only party involved in this traffic that is not receiving revenue for these
13 calls, and yet BellSouth is being asked to pay the ALEC for the use of a portion
14 of the ALEC's network for which it is already receiving compensation.

15

16 Q. WHAT IS THE ESTIMATED FINANCIAL IMPACT TO INCUMBENT
17 LOCAL EXCHANGE CARRIERS IF ISP TRAFFIC WERE SUBJECT TO
18 THE PAYMENT OF RECIPROCAL COMPENSATION?

19

20 A. If Internet traffic were subject to the payment of reciprocal compensation for
21 such traffic, BellSouth conservatively estimates that the annual reciprocal
22 compensation payments by incumbent local exchange carriers in the United
23 States for ISP traffic could easily reach \$2.6 billion by the year 2002. This
24 estimate is based on 64 million Internet users in the United States, an average
25 Internet usage of 6.5 hours per week, and a low reciprocal compensation rate of

1 \$.002/minute. This is a totally unreasonable and unacceptable financial
2 liability on the local exchange companies choosing to serve residential and
3 small business users which access ISPs that are customers of other LECs.
4 ALECs targeting large ISPs for this one-way traffic will benefit at the expense
5 of those carriers pursuing true residential and business local competition
6 throughout the country.

7

8 Q. IF THIS COMMISSION FINDS THAT RECIPROCAL COMPENSATION IS
9 DUE FOR ISP-BOUND TRAFFIC UNDER THIS AGREEMENT, WHAT
10 ARE THE APPROPRIATE RATES?

11

12 A. The appropriate rate would be the "Direct End Office Interconnection" rate of
13 \$.002 per minute of use. In order for an ALEC to appropriately charge for
14 tandem switching, the ALEC must demonstrate to the Commission that: 1) its
15 switches serve a comparable geographic area to that served by BellSouth's
16 tandem switches and that 2) its switches actually perform local tandem
17 functions. An ALEC should only be compensated for the functions that it
18 actually provides. TCG has provided no evidence that its switch(es) qualify
19 for either of the two criteria above. As such, TCG is only entitled to the direct
20 end office interconnection rate.

21

22

23 Q. HAS BELLSOUTH FAILED TO PAY TCG SWITCHED ACCESS
24 CHARGES FOR TELEPHONE EXCHANGE SERVICE PROVIDED BY
25 TCG TO BELLSOUTH?

1

2 A. BellSouth is unaware of any failure to pay switched access charges for
3 telephone exchange service provided by TCG to BellSouth. Due to the
4 elemental nature of switched access rates and without further information
5 about this allegation, BellSouth does not have enough information to respond
6 as to the appropriate rates.

7

8

9 Q. WHAT DO YOU BELIEVE THE FLORIDA PUBLIC SERVICE
10 COMMISSION SHOULD DO?

11

12 A. This Commission should deny TCG's request for relief. ISP-bound traffic is
13 not now, nor has it ever been, local traffic, and the parties never mutually
14 agreed to pay reciprocal compensation for such traffic.

15

16 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

17

18 A. Yes.

19

20

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