

ORIGINAL

Legal Department

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April 8, 1998

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket Nos. 971478-TL (WorldCom), 980184-TP (TCG),
980495-TP (Intermedia) and 980499-TP (MCI)**

Dear Ms. Bayó:

On April 13, 1998, an issues identification workshop was held on the above captioned matters. The parties were unable to reach agreement on the issues, the need for an evidentiary hearing, and the conduct of that hearing. Pursuant to Staff's request, the following is BellSouth's position on these matters.

First, the Staff and the other parties have determined that one broad issue is sufficient to deal with these cases and that issue is a legal one. Therefore, Staff and other parties believe these cases should be briefed and that there is no need for an evidentiary hearing. BellSouth disagrees.

Although BellSouth has no objection to the Staff's broad issue, BellSouth believes it is imperative that, in order for the Commission to reach a decision on this matter, the Commission should have a complete record. Under the Staff's single issue, this will not be accomplished. This is an extremely important matter, important enough that this Commission voted unanimously on March 10, 1998 that it should go to hearing. The Commission did not vote to accept briefs; they voted for a hearing.

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Moreover, there are important factual issues that Staff and the other parties have rejected. Attached hereto, are the issues proposed by Staff and all the parties. As noted above, BellSouth has no objection to Staff's issues. For that matter, BellSouth has no objection to the issues proposed by Intermedia. BellSouth could also agree to TCG's issue if it was worded as "How have other state Commissions resolved this issue?" The way the issue is currently worded assumes that all interconnection agreements nationwide are identical.

BellSouth believes that the issues it has suggested are vital in assisting the Commission to reach a decision in this matter. BellSouth does not believe these issues can be accommodated by Staff's issues. In addition, BellSouth believes the Commission should address BellSouth's issues individually. Use of one general issue will not accomplish this.

BellSouth's proposed Issues 1 and 1(A) are essential. There is no way this Commission can reach a determination in this matter without a thorough explanation of the traffic involved and the treatment of that traffic, from a state, as well as an FCC, standpoint. Issue 1 is a pure factual issue. Issue 2 has factual, as well as legal connotations. Testimony will be required on the origination and termination of ISP traffic.

While BellSouth is aware that Issue 1(A) is a more generic type of issue, the parties to a contract enter that contract under the law existing at that time. The Commission cannot possibly make a decision without determining what that existing law stated. The parties must be heard on this issue. The Commission must reach a definitive interpretation of what the law is in order to apply it to the various interconnection agreements.

BellSouth's proposed Issues 2-5(A) are essential to a determination of this matter. Even staff admitted on March 10, 1998 that one of the issues was "[H]ow did the parties act at the time" the agreements were reached. Agenda transcript, pp. 47-48. In order to determine what the parties intended at the time the agreements were entered into, one must have factual evidence.

BellSouth's proposed Issue 6 is also necessary in order to decide this issue. As Commissioner Clark posited on March 10, 1998, "should the traffic be considered local." Agenda transcript, p. 54. This issue is also a factual issue.

BellSouth believes that the Commission cannot decide this case in a vacuum. All of the facts must be presented. To look at this case as one of a strictly legal issue will deprive BellSouth of the opportunity to fully present its position and will deprive the Commission of information necessary to reach a fully informed decision. The way the Staff and the other parties have framed their broad issue has already decided the matters against BellSouth. The individual contracts must be viewed in the context in which they were formulated.

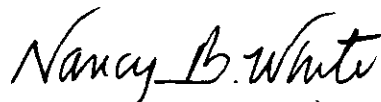
That involves individual factual and legal issues separate and apart from Staff's one broad issue.

BellSouth has no objection to consolidating the various complaints, if and when some are filed, for hearing. BellSouth further believes that an evidentiary hearing is required. BellSouth is, however, concerned about the conduct of that hearing. BellSouth believes that guidelines should be established to govern the proceeding. For example, parties should not be allowed to cross-examine each other as to the contents of interconnection agreements to which they were not a signatory. Parties should not be allowed to cross-examine each other as to the intent of another party when entering into their respective interconnection agreements. Allowing such cross-examination would undermine the Commission's position on intervention. These guidelines are similar to those adopted by the Commission in Order No. PSC-96-1039-PCO-TP, allowing consolidation of the AT&T and MCI arbitration cases for hearing.

BellSouth urges the Prehearing Officer to include BellSouth's proposed issues, allow an evidentiary hearing to be conducted, and adopt the guidelines proposed by BellSouth for that hearing.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Nancy B. White (BW)

Enclosure

cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

CERTIFICATE OF SERVICE

Docket Nos. 971478-TP, 980184-TP, 980495-TP and 980499-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 8th day of April, 1998 to the following:

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Nancy B. White
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Consolidated Docket Nos. 971478-TL (WorldCom/MFS), 980184-TP (TCO),
98xxxx-TP(MCI), 98xxxx-TP (Internodia)

Staff Issues (as modified 4/3/98)

ISSUE 1: Under their Florida Partial Interconnection Agreement, are WorldCom Technologies, Inc./MFS Communications Company, Inc., and BellSouth Telecommunications, Inc., required to compensate each other for transport and termination of traffic to Internet Service Providers? If so, what action, if any, should be taken?

ISSUE 2: Under their Interconnection Agreement, are Teleport Communications Group, Inc./TCG South Florida and BellSouth Telecommunications, Inc., required to compensate each other for transport and termination of traffic to Internet Service Providers? If so, what action, if any, should be taken?

ISSUE 3: Under their Interconnection Agreement, are MCI Metro Access Transmission Services, Inc., and BellSouth Telecommunications, Inc., required to compensate each other for transport and termination of traffic to Internet Service Providers? If so, what action, if any, should be taken?

ISSUE 4: Under their Interconnection Agreement, are Internedia Communications, Inc., and BellSouth Telecommunications, Inc., required to compensate each other for transport and termination of traffic to Internet Service Providers? If so, what action, if any, should be taken?

BellSouth Issues (as modified 4/3/98)

ISSUE 1: Describe the type of traffic in dispute.

ISSUE 1(A): What is the jurisdictional nature of such traffic?

ISSUE 2: In their interconnection agreement, did WorldCom Technologies, Inc./MFS Communications Company, Inc., and BellSouth Telecommunications, Inc., mutually intend to

treat this type of traffic¹ as local traffic for purposes of reciprocal compensation?

ISSUE 2(A): If WorldCom Technologies, Inc./MFS Communications Company, Inc., and BellSouth Telecommunications, Inc., did not mutually intend to treat this type of traffic as local traffic for purposes of reciprocal compensation, can BellSouth Telecommunications, Inc., be required to pay reciprocal compensation for that traffic?

ISSUE 3: In their interconnection agreement, did Teleport Communications Group, Inc./TCG South Florida and BellSouth Telecommunications, Inc., mutually intend to treat this type of traffic as local traffic for purposes of reciprocal compensation?

ISSUE 3(A): If Teleport Communications Group, Inc./TCG South Florida and BellSouth Telecommunications, Inc., did not mutually intend to treat this type of traffic as local traffic for purposes of reciprocal compensation, can BellSouth Telecommunications, Inc., be required to pay reciprocal compensation for that traffic?

ISSUE 4: In their interconnection agreement, did MCImetro Access Transmission Services, Inc., and BellSouth Telecommunications, Inc., mutually intend to treat this type of traffic as local traffic for purposes of reciprocal compensation?

ISSUE 4(A): If MCImetro Access Transmission Services, Inc., and BellSouth Telecommunications, Inc., did not mutually intend to treat this type of traffic as local traffic for purposes of reciprocal compensation, can BellSouth Telecommunications, Inc., be required to pay reciprocal compensation for that traffic?

ISSUE 5: In their interconnection agreement, did Intermedia Communications, Inc., and BellSouth Telecommunications, Inc., mutually intend to treat this type of traffic as local traffic for purposes of reciprocal compensation?

¹This type of traffic¹ presumably is "the type of traffic in dispute" addressed in BellSouth Issue 1.

ISSUE 5(A): If Intermedia Communications, Inc., and BellSouth Telecommunications, Inc., did not mutually intend to treat this type of traffic as local traffic for purposes of reciprocal compensation, can BellSouth Telecommunications, Inc., be required to pay reciprocal compensation for that traffic?

ISSUE 6: Is the payment of reciprocal compensation for this type of traffic in the public interest?

TCG Issue

ISSUE 1: How have other state commissions resolved the issue of whether reciprocal compensation terms in interconnection agreements require the parties to such agreements to pay each other reciprocal compensation for the transport and termination of local traffic that terminates to each other's end users that are Internet Service Providers or Enhanced Service Providers?

Intermedia Issues

ISSUE 1: By what process is traffic transported and terminated to ISPs identified and measured?

ISSUE 2: Was such process in place at the time Intermedia Communications, Inc., and BellSouth Telecommunications, Inc., executed their interconnection agreement?