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November 24, 1999

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

Re: Docket No. 991267-TP (Global NAPS Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of Direct Testimonies of Beth Shiroishi, David P. Scollard, and Albert Halprin, which we ask that you file in the captioned docket.

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,

E. Earl Edenfield, Jr.
E. Earl Edenfield, Jr. (EEL)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

AFA _____
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CMU *March*
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CERTIFICATE OF SERVICE
Docket No. 991267-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 24th day of November, 1999 to the following:

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **DIRECT TESTIMONY OF BETH SHIROISHI ON BEHALF OF**
3 **BELLSOUTH TELECOMMUNICATIONS, INC.**

4 **DOCKET 991267-TP**
5 **NOVEMBER 24, 1999**

6
7 **Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND**
8 **ADDRESS.**

9
10 **A. My name is Elizabeth R. A. Shiroishi. I am employed by BellSouth**
11 **Telecommunications, Inc., ("BellSouth") as Manager - Interconnection**
12 **Services Pricing. My business address is 675 West Peachtree Street,**
13 **Atlanta, Georgia 30375.**

14
15 **Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.**

16
17 **A. I graduated from Agnes Scott College in Decatur, Georgia, in 1997,**
18 **with a Bachelor of Arts Degree. I began employment with BellSouth in**
19 **1998 in the Interconnection Services Pricing Organization as a pricing**
20 **analyst. I then moved to a position in product management, and now**
21 **work with Interconnection Agreements and Internet Service Provider**
22 **("ISP")/ Enhanced Service Provider ("ESP") issues.**

23
24 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

25

1 A. My testimony will discuss the negotiations between BellSouth and
2 Global NAPs, Inc. ("GNAPs") related to the Interconnection Adoption
3 Agreement dated January 18, 1999, whereby GNAPs opted into the
4 Interconnection Agreement between BellSouth and DeltaCom, Inc.,
5 dated July 1, 1997 ("the Agreement"). After a brief discussion of the
6 history of the BellSouth/GNAPs Agreement, I will establish the
7 following:

- 8 1) This complaint proceeding is materially different from previous
9 proceedings before the FPSC concerning the issue of reciprocal
10 compensation for ISP-bound traffic.
11 2) BellSouth does not owe GNAPs reciprocal compensation for traffic
12 bound for Internet Service Providers ("ISPs") because such traffic is
13 not "local traffic."

14 When considering the issues in this case, there are two primary points
15 to consider: first, ISP-bound traffic is, and always has been, interstate
16 traffic; and, second, the parties did not agree to consider ISP-bound
17 traffic to be local traffic under the terms of the Agreement. Therefore,
18 ISP-bound traffic should not be subject to reciprocal compensation
19 under the Agreement.

20

21 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE HISTORY OF
22 THE AGREEMENT BETWEEN BELLSOUTH AND GNAPs.

23

24 A. BellSouth and GNAPs entered into an Interconnection Agreement on
25 January 18, 1999. GNAPs, in lieu of negotiating with BellSouth,

1 adopted the July 1, 1997, Interconnection Agreement between
2 BellSouth and DeltaCom, Inc. By the terms of the Agreement, the
3 Interconnection Agreement between BellSouth and GNAPs expired on
4 July 1, 1999. The Agreement included the terms for exchanging local
5 traffic.

6

7 As I will demonstrate, the reciprocal compensation provisions of the
8 Agreement have always stated that reciprocal compensation is due
9 only for the termination of local traffic and thus compensation is not due
10 for ISP-bound traffic.

11

12 Q. HOW IS THIS PROCEEDING DIFFERENT FROM OTHER CASES
13 THAT HAVE BEEN CONSIDERED BY THE FPSC?

14

15 Many of the underlying issues, such as the nature of ISP-bound traffic,
16 are familiar to the FPSC. There are, however, distinguishing factual
17 and policy issues in this proceeding that the FPSC has not previously
18 considered. Prior FPSC decisions on entitlement to reciprocal
19 compensation for ISP-bound traffic turned significantly on the issue of
20 BellSouth's intent at the time the Interconnection Agreement was
21 negotiated and executed.

22

23 GNAPs opted into this agreement on January 18, 1999, when
24 BellSouth's position on ISP traffic was clearly stated and publicly
25 known. Thus, there was no question, at the time the parties entered

1 into this Agreement, that BellSouth's position was clear and
2 unambiguous that reciprocal compensation, a mechanism of
3 compensation for local traffic, does not apply for interstate, ISP-bound
4 traffic. In fact, the FCC upheld its position in the Memorandum
5 Opinion and Order for GTE's ADSL Service that the jurisdiction of a call
6 must be judged by the end-to-end nature of the call just prior to GNAPs
7 adopting this agreement. In Paragraph 19 of that Order (CC Docket
8 98-79), the Commission concluded that the ISP internet
9 communications at issue in that proceeding do not terminate at the
10 ISP's local server, but continue to the ultimate destination, which is very
11 often a long distance internet website¹. In addition, as Mr. Halprin
12 testifies, GNAPs filed a tariff with the FCC on April 14, 1999,
13 acknowledging the interstate nature of ISP-bound traffic.

14
15 GNAPs adopted the DeltaCom Agreement, which, at the time of the
16 adoption, was only six months away from expiration. In a separate
17 proceeding before the FPSC (Docket No. 991220), GNAPs and
18 BellSouth are arbitrating the terms of a new Interconnection
19 Agreement. Thus, the amount of time for which GNAPs claims
20 entitlement to reciprocal compensation is limited to January 18, 1999,
21 to July 1, 1999. The terms decided in that arbitration proceeding,
22 including the inter-carrier compensation mechanism for ISP traffic, will

23

24

25 ¹ While BellSouth acknowledges that this FCC Order was not addressing reciprocal compensation under the provisions of Interconnection Agreements, the analysis utilized by the FCC is clearly applicable to ISP-bound traffic.

1 be retroactive to the date the Agreement at issue in this proceeding
2 expired (i.e., July 1, 1999).

3

4 Q. DESCRIBE THE NATURE OF ISP TRAFFIC.

5

6 A. To put the Agreement in context, I will describe how a call by an end
7 user is routed to the Internet. (Exhibit ERAS-1 provides an illustration.)
8 End users gain access to the Internet through an ISP. The ISP
9 location, generally referred to as an ISP Point of Presence ("POP"),
10 represents the edge of the Internet and usually consists of a bank of
11 modems. Due to the FCC's access charge exemption for ISPs, ISPs
12 can use the public switched network to collect their subscribers' calls to
13 the Internet. The ISP typically purchases business service lines from
14 various local exchange carrier ("LEC") end offices and physically
15 connects those lines to an ISP premise, which contains modem banks
16 that connect to the Internet. To access the Internet through an ISP,
17 subscribers dial a seven- or ten-digit telephone number via their
18 computer modem. The ISP converts the signal of the incoming call to a
19 digital signal and routes the call, through its modems, over its own
20 network to a backbone network provider, where it is ultimately routed to
21 an Internet-connected host computer. Internet backbone networks can
22 be regional or national in nature. These networks not only interconnect
23 ISP POPs but also interconnect ISPs with each other and with online
24 information content.

25

1 The essence of Internet service is the ease with which a user can
2 access and transport information from any host connected to the
3 Internet. The Internet enables information and Internet resources to be
4 widely distributed and eliminates the need for the user and the
5 information to be physically located in the same area. ISPs typically
6 provide, in addition to Internet access, Internet services such as e-mail,
7 Usenet news, and Web pages to their customers. ISPs that have
8 multiple seven- or ten-digit telephone numbers (as is the case for many
9 ISPs) would not have duplicate hosts for such services in each local
10 dial location. Indeed, such duplication would defeat a primary
11 advantage of the Internet. Thus, when a user retrieves e-mail or
12 accesses Usenet messages, for example, it is highly unlikely that the
13 user is communicating with a host that is located in the same local
14 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 call and, as part of the information service it
19 offers to the public, transmits that call to and from the communications
20 network of other telecommunications carriers (e.g., Internet backbone
21 providers such as MCI or Sprint) whereupon it is ultimately delivered to
22 Internet host computers, almost all of which are located outside of the
23 local serving area of the ISP.

24
25 As stated earlier, the ISP generally purchases business service lines

1 from various LEC end offices. This methodology was mandated by the
2 FCC in order to ensure compliance with the access charge exemption
3 extended to ESP/ISPs. The fact that an ISP obtains local business
4 service lines from an ALEC switch in no way alters the continuous
5 transmission of signals between an incumbent local exchange
6 company's ("ILEC") end user to a host computer. In other words, if an
7 ALEC puts itself in between a BellSouth end user and the Internet
8 service provider, as in part B of Exhibit ERAS-1, the ALEC is acting like
9 an intermediate transport carrier or conduit, not a local exchange
10 provider entitled to reciprocal compensation. The ALEC is adding no
11 value to either the ISP service nor to the end user. The ALEC is
12 merely providing a local telephone number which the end user dials to
13 access the ISP.

14
15 Q. DOES ISP TRAFFIC TERMINATE AT THE ISP?

16
17 A. No. The call from an end user to the ISP only transits through the
18 ISP's local point of presence; it does not terminate there. There is no
19 interruption of the continuous transmission of signals between the end
20 user and the host computers. This fact was confirmed by the FCC in
21 its *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed*
22 *Rulemaking in CC Docket 99-68* ("Declaratory Ruling") released
23 February 25, 1999. Paragraph 12 of the *Declaratory Ruling* states:
24 We conclude, as explained further below, that the
25 communications at issue here do not terminate at the ISP's local

1 server, as CLECs and ISPs contend, but continue to the ultimate
2 destination or destinations, specifically at a Internet website that
3 is often located in another state.

4
5 Q. IS ISP-BOUND TRAFFIC INTERSTATE OR LOCAL TRAFFIC?

6
7 A. ISP-bound traffic is interstate. The FCC, in its recent *Declaratory*
8 *Ruling*, clearly stated it had always considered ISP-bound traffic to be
9 interstate. Footnote 87, attached to paragraph 26, of the *Declaratory*
10 *Ruling* defines ISP-bound traffic as non-local, interstate traffic.
11 Paragraph 16 of the *Declaratory Ruling* points out that the FCC
12 considered this traffic to be interstate as early as 1983 (in *MTSWATS*)
13 and, therefore, saw the need to affirmatively exempt it from access
14 charges. Paragraph 16 reads, in part:

15 The Commission traditionally has characterized the link from an
16 end user to an ESP as an interstate access service. In the
17 *MTSWATS Market Structure Order*, for instance, the
18 Commission concluded the ESPs are "among a variety of users
19 of access service" in that they "obtain local exchange services or
20 facilities which are used, in part or in whole, for the purpose of
21 completing interstate calls which transit its location and,
22 commonly, another location in the exchange area." The fact that
23 ESPs are exempt from access charges and purchase their
24 PSTN links through local tariffs does not transform the nature of
25 traffic routed to ESPs. That the Commission exempted ESPs

1 from access charges indicates its understanding that ESPs in
2 fact use interstate access service; otherwise, the exemption
3 would not be necessary.

4
5 Throughout the evolution of the Internet, the FCC repeatedly has
6 asserted that ISP-bound traffic is interstate. For instance, the 1987
7 Notice of Proposed Rulemaking in CC Docket No. 87-215, in which the
8 FCC proposed to lift the ESP access charge exemption, is clearly in
9 keeping with the FCC's position on the interstate nature of ESP/ISP
10 traffic. Paragraph 7 reads:

11 We are concerned that the charges currently paid by enhanced
12 service providers do not contribute sufficiently to the costs of the
13 exchange access facilities they use in offering their services to
14 the public. As we have frequently emphasized in our various
15 access charge orders, our ultimate objective is to establish a set
16 of rules that provide for recovery of the costs of exchange
17 access used in interstate service in a fair, reasonable, and
18 efficient manner from all users of access service, regardless of
19 their designation as carriers, enhanced service providers, or
20 private customers. Enhanced service providers, like facilities-
21 based interexchange carriers and resellers, use the local
22 network to provide interstate services. To the extent that they
23 are exempt from access charges, the other users of exchange
24 access pay a disproportionate share of the costs of the local
25 exchange that access charges are designed to cover.

1 (emphases added)

2

3 The resulting order in Docket No. 87-215 ("ESP Exemption Order"),
4 released in 1988, is further evidence of the FCC's continued pattern of
5 considering ISP-bound traffic to be access traffic. It referred to "certain
6 classes of exchange access users, including enhanced service
7 providers" (emphasis added).

8

9 Q. WHAT ARE THE LOCAL TRAFFIC EXCHANGE PROVISIONS IN THE
10 AGREEMENT?

11

12 A. Section VI. A of the Agreement provides:

13 The Parties agree for the purpose of this Agreement only that
14 local interconnection is defined as the delivery of local traffic to
15 be terminated on each party's local network so that customers of
16 either party have the ability to reach customers of the other
17 party, without the use of any access code or delay in the
18 processing of the call. Local traffic for these purposes shall
19 include any telephone call that originates and terminates in the
20 same LATA and is billed by the originating exchange outside of
21 BellSouth's service area with respect to which BellSouth has a
22 local interconnection arrangement with an independent LEC,
23 with which DeltaCom is not directly connected. The Parties
24 further agree that the exchange of traffic on BellSouth's
25 Extended Area Service (EAS) shall be considered local traffic

1 and compensation for the termination of such traffic shall be
2 pursuant to the terms of this section. (emphases added)

3

4 Section 49 of Attachment B of the Agreement states:

5 **“Local Traffic” means telephone calls that originate in one**
6 **exchange or LATA and terminates in either the same exchange or**
7 **LATA, or a corresponding Extended Area Service (“EAS”)**
8 **exchange. The terms Exchange, and EAS exchanges are defined**
9 **and specified in Section A.3 of BellSouth’s General Subscriber**
10 **Service Tariff.**

11

12 In order for the parties to have “local interconnection”, the Agreement
13 requires the termination of traffic on either BellSouth’s or GNP’s
14 network, in either the same exchange or LATA, or a corresponding
15 EAS exchange. Additionally, the definition of “local traffic” requires the
16 origination and termination of telephone calls to be in the same
17 exchange or LATA and EAS exchanges as defined and specified in
18 Section A.3 of BellSouth’s General Subscriber Service Tariff (“GSST”).
19 Local traffic, as defined in Section A.3 of BellSouth’s GSST, in no way
20 implies ISP-bound traffic. In fact, the FCC concluded that enhanced
21 service providers (“ESPs”), of which ISPs are a subset, use the local
22 network to provide interstate services.

23

24 Q. WHAT IS RECIPROCAL COMPENSATION?

25

1 A. Section 251 (b)(5) of the Telecommunications Act of 1996 ("the Act")
2 obligated all telecommunications carrier to "establish reciprocal
3 compensation arrangements for the transport and termination of
4 Telecommunications." In basic terms, reciprocal compensation is a
5 two-way, or reciprocal, arrangement requiring a local exchange carrier
6 ("LEC") who originates a call to compensate the LEC who terminates
7 the call. By law, this obligation applies only if the call is local, and if
8 the call is originated and terminated by different LECs. In its recent
9 Declaratory Ruling, the FCC confirmed that the obligation imposed
10 under § 251(b)(5) applies only to the transport and termination of local
11 traffic.

12
13 Q. WHAT WAS THE PURPOSE OF RECIPROCAL COMPENSATION AT
14 ITS ONSET?

15
16 A. Reciprocal compensation was established in order to ensure that each
17 carrier involved in carrying a local call is compensated for its portion of
18 that call. Reciprocal compensation does not apply for resold lines.
19 For example, if a BellSouth end user places a local call to an ALEC end
20 user, the call originates over the network of BellSouth and terminates
21 over the network of the ALEC. BellSouth receives a monthly fee from
22 its end user to apply towards the cost of that call. BellSouth would then
23 pay the ALEC a per minute of use rate to compensate the ALEC for
24 terminating that local call over its network. Payment of reciprocal
25 compensation for local traffic is not in dispute here. The issue raised

1 by GNAPs is whether BellSouth is required to pay reciprocal
2 compensation for a type of traffic that is clearly interstate in nature.

3

4 Q. WHAT ARE THE PROVISIONS IN THE AGREEMENT THAT RELATE
5 TO RECIPROCAL COMPENSATION?

6

7 A. Section VI. B of the Agreement states:

8 ...each party agrees to terminate local traffic originated and
9 routed to it by the other party. Each Party will pay the other for
10 terminating its local traffic on the other's network the local
11 interconnection rate of \$.009 per minute of use in all states.
12 Each Party will report to the other a Percent Local Usage
13 ("PLU") and the application of the PLU will determine the amount
14 of local minutes to be billed to the other party. Until such a time
15 as actual usage data is available, the parties agree to utilize a
16 mutually acceptable surrogate for the PLU factor. For purposes
17 of developing the PLU, each party shall consider every local call
18 and every long distance call. Effective on the first of January,
19 April, July and October of each year, the parties shall update
20 their PLU.

21

22 Q. IS BELLSOUTH OBLIGATED TO PAY RECIPROCAL COMENSATION
23 TO GNAPs FOR TERMINATING BELLSOUTH'S LOCAL TRAFFIC?

24

25 A. Yes. Pursuant to the Agreement, BellSouth agreed to pay GNAPs

1 reciprocal compensation at a specified rate for terminating BellSouth's
2 local traffic, and vice versa. The parties did not agree, however, to pay
3 reciprocal compensation for interstate, ISP-bound traffic at any time.

4

5 As I discussed earlier, ISP-bound traffic is interstate traffic and both the
6 Agreement and the Act, as interpreted by the FCC, clearly state that
7 only local traffic is subject to reciprocal compensation. In fact, footnote
8 87 of the *Declaratory Ruling*, directly addresses the applicability of
9 reciprocal compensation to ISP-bound traffic. It says:

10 We conclude in this Declaratory Ruling, however, that ISP-
11 bound traffic is non-local interstate traffic. Thus, the reciprocal
12 compensation requirements of section 251(b)(5) of the Act and
13 Section 51, Subpart H...of the Commission's rules do not govern
14 inter-carrier compensation for this traffic.

15

16 **Q. DID BELLSOUTH CONSIDER ISP-BOUND TRAFFIC AS LOCAL**
17 **TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION AT THE**
18 **TIME IT ENTERED INTO THE AGREEMENT?**

19

20 **A. Absolutely not. Considering the FCC rules, dating back to 1983, in**
21 **effect at the time of the negotiation and execution of the Agreement,**
22 **BellSouth had no reason to consider ISP-bound traffic to be anything**
23 **other than interstate traffic. In fact, at the time of the execution of the**
24 **Adoption Agreement on January 18, 1999, BellSouth had stated**
25 **publicly and repeatedly that ISP traffic was not covered under the**

1 reciprocal compensation provisions of the adopted Interconnection
2 Agreement. As GNAPs understood BellSouth's position on reciprocal
3 compensation for ISP-bound traffic, GNAPs chose to opt into an
4 existing Interconnection Agreement rather than negotiate a new one.

5
6 BellSouth has entered into hundreds of agreements with ALECs across
7 its region and has included in those agreements language discussing
8 payment of reciprocal compensation. Nowhere in those agreements
9 has BellSouth acknowledged or agreed to define ISP-bound traffic as
10 local traffic for reciprocal compensation purposes. Further, outside of
11 Commission Orders, BellSouth has not knowingly paid reciprocal
12 compensation to ALECs for transporting traffic to their ISP customers,
13 nor has BellSouth knowingly billed ALECs for performing that same
14 service.

15
16 As evidenced by the language in the Agreement, BellSouth intended
17 for reciprocal compensation to apply only when local traffic is
18 terminated on either party's network in a local calling area or LATA.
19 BellSouth's intention is consistent with the Act, which established a
20 reciprocal compensation mechanism to encourage local competition.
21 The payment of reciprocal compensation for ISP-bound traffic impedes
22 local competition. The FCC in its August 1996 Local Interconnection
23 Order (CC Docket No. 96-98), Paragraph 1034, made it perfectly clear
24 that reciprocal compensation rules did not apply to interstate or
25 interLATA traffic such as interexchange traffic:

1 We conclude that Section 251(b)(5), reciprocal compensation
2 obligation, should apply only to traffic that originates and
3 terminates within a local area assigned in the following
4 paragraph... We find that reciprocal compensation provisions of
5 Section 251(b)(5) for transport and termination of traffic do not
6 apply to the transport and termination of interstate or intrastate
7 interexchange traffic.

8

9 In Paragraph 1035 of that same Order, the FCC stated:

10 State Commissions have the authority to determine what
11 geographic areas should be considered "local areas" for the
12 purpose of applying reciprocal compensation obligations under
13 section 251 (b)(5), consistent with the state commissions'
14 historical practice of defining local service areas for wireline
15 LECs. Traffic originating or terminating outside of the applicable
16 local area would be subject to interstate and intrastate access
17 charges.

18

19 **Q. DID GNAPs INDICATE DURING THE NEGOTIATIONS OF THE**
20 **AGREEMENT THAT IT CONSIDERED ISP TRAFFIC TO BE LOCAL**
21 **TRAFFIC?**

22

23 **A. Absolutely not. No indication was given that GNAPs considered ISP-**
24 **bound traffic to be anything other than jurisdictionally interstate, as the**
25 **law held and still holds that it is. However, it appears to BellSouth**

1 that GNAPs adopted the July 1, 1997, BellSouth/DeltaCom
2 Interconnection Agreement to circumvent negotiating with BellSouth on
3 the reciprocal compensation issue and to avoid the standard reciprocal
4 compensation language proposed by BellSouth. As GNAPs is aware,
5 the FCC has recognized that "negotiation is not required to implement
6 a section 252(l) opt-in arrangement; indeed, neither party may alter the
7 terms of the underlying agreement." Memorandum Opinion and Order,
8 *Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the*
9 *Virginia State Corporation Commission Regarding Interconnection*
10 *Dispute with Bell Atlantic-Virginia, Inc.*, CC Docket No. 99-198, 1999
11 FCC LEXIS 3729 (released August 5, 1999), at ¶ 4. Thus, BellSouth
12 was legally obligated to allow GNAPs to adopt the terms and conditions
13 of the BellSouth/DeltaCom Interconnection Agreement as the terms
14 and conditions for the BellSouth/GNAPs Interconnection Agreement.

15

16 **Q. WAS THERE ANY INTENT ON THE PART OF BELLSOUTH TO**
17 **TREAT ISP-BOUND TRAFFIC AS LOCAL TRAFFIC FOR THE**
18 **PURPOSE OF THIS AGREEMENT?**

19

20 **A. Definitely not. As there was no negotiation between BellSouth and**
21 **GNAPs, the parties could have formed no intent that the reciprocal**
22 **compensation provisions would apply to ISP-bound traffic. Moreover,**
23 **by the time that GNAPs elected to adopt the Agreement of DeltaCom,**
24 **rather than negotiate, BellSouth had stated publicly and repeatedly that**
25 **it did not intend for ISP-bound traffic to be included in the local traffic**

1 that qualifies for reciprocal compensation.

2
3 Furthermore, in a similar complaint, the Louisiana Public Service
4 Commission in its Docket No. U-23839 (KMC Telecom, Inc. v.
5 BellSouth Telecommunications, Inc.) determined that a central issue in
6 the complaint was whether the parties shared a common or mutually
7 agreed intent to pay reciprocal compensation for ISP-bound traffic.
8 The LPSC ruled that no reciprocal compensation was due under the
9 Interconnection Agreement for ISP-bound traffic because of the
10 absence of a "common intent" by the parties and a failure of KMC, the
11 party demanding performance and asserting an obligation, to "prove
12 the existence of the obligation."

13
14 At no time during the course of GNAPs adoption of DeltaCom's
15 Agreement was there a common or mutual agreement between
16 BellSouth and GNAPs to consider ISP-bound traffic as local traffic for
17 the purpose of this Agreement.

18
19 **Q. IF GNAPs AND BELLSOUTH DID NOT MUTUALLY INTEND TO**
20 **TREAT THIS TYPE OF TRAFFIC AS LOCAL TRAFFIC UNDER THE**
21 **AGREEMENT, CAN EITHER PARTY BE REQUIRED TO PAY**
22 **RECIPROCAL COMPENSATION FOR THAT TRAFFIC?**

23
24 **A. No. If both of the parties did not mutually intend to treat this traffic as**
25 **local for purposes of reciprocal compensation, then BellSouth is under**

1 no contractual obligation to pay reciprocal compensation for such
2 traffic. Moreover, considering current FCC rules regarding ISP traffic,
3 this traffic is clearly interstate, not local traffic. It was not BellSouth's
4 intent, nor was it discussed during negotiations, that ISP traffic would
5 be subject to reciprocal compensation. Further, in compliance with the
6 scope of the federal obligation and BellSouth's intent, BellSouth does
7 not bill ALECs reciprocal compensation for ISP traffic. As Mr. Scollard
8 discusses more thoroughly, BellSouth began work in January 1997 to
9 separate out ISP-bound traffic from local traffic in order to avoid billing
10 ALECs reciprocal compensation for that traffic. GNAPs did not begin
11 placing orders until after signing the Agreement on January 18, 1999.

12

13 Q. WOULD IT HAVE MADE ECONOMIC SENSE FOR BELLSOUTH TO
14 HAVE AGREED TO CLASSIFY ISP TRAFFIC AS LOCAL TRAFFIC
15 UNDER ANY AGREEMENT?

16

17 A. Absolutely not, and this reality is further proof that BellSouth never
18 intended for ISP traffic to be considered local traffic under the terms of
19 any agreement. A simple example will illustrate that point. First, it
20 should be realized that traffic collected by non-voice ISPs will always
21 be one-way, not two-way, as intended by the Act. That is, the traffic
22 will originate from an end user and transit through the ISP's server to a
23 host computer on the Internet. Reciprocal compensation becomes
24 one-way compensation to those ALECs specifically targeting ISPs.
25 Thus, if ISP traffic were subject to payment of reciprocal compensation,

1 the originating carrier in most instances would be forced to pay the
2 interconnecting carrier more than the originating carrier receives from
3 an end user to provide local telephone service. BellSouth would have
4 never agreed to such an absurd result.

5
6 For example, assume a BellSouth residential customer in Miami
7 subscribes to an ISP and that ISP is served by an ALEC. Assume that
8 customer uses the Internet a mere 6.5 hours per week, i.e., a little
9 under 56 minutes per day. This usage would generate a reciprocal
10 compensation payment by BellSouth to the ALEC of \$15.04 per month,
11 assuming a contractual rate of \$.009 cents per minute for reciprocal
12 compensation [$$.009 * 55.7 \text{ minutes/day} * 30 \text{ days}$]. BellSouth currently
13 serves residence customers in Miami for \$10.65 per month (flat-rate
14 local rate). Therefore, in this example, BellSouth will be forced to turn
15 over to the ALEC more than the local service revenue it receives from
16 its end users. Further, a significant portion of additional residential
17 lines are bought primarily to access the Internet and would not require
18 more than a simple flat-rate line with no additional features. This
19 situation makes no economic sense and would place an unfair burden
20 on BellSouth and its customers. It is incomprehensible that BellSouth
21 would have willingly agreed to pay any ALEC most, if not all, of what it
22 receives per month per customer for providing local service.

23
24 Q. HOW HAS THE FCC DIRECTED BELLSOUTH TO TREAT ISP-
25 BOUND TRAFFIC? WHY?

1

2 A. BellSouth and other carriers have been directed by the FCC to allow
3 ISPs to purchase services through local tariffs and to characterize
4 expenses and revenues from ISP traffic as intrastate for separations
5 and reporting purposes. Paragraph 5 of the *Declaratory Ruling* clearly
6 expresses the reasoning behind this:

7 "Although the Commission has recognized that enhanced
8 service providers (ESPs), including ISPs, use interstate access
9 services, since 1983 it has exempted ESPs from the payment of
10 certain interstate access charges. Pursuant to this exemption,
11 ESPs are treated as end users for purposes of assessing access
12 charges, and the Commission permits ESPs to purchase their
13 links to the public switched telephone network (PSTN) through
14 intrastate business tariffs rather than through interstate access
15 tariffs." (emphasis added)

16

17 These rules are simply a matter of implementing the access charge
18 exemption for ESPs/ISPs. These rules do not, however, change the
19 FCC's jurisdiction over ISP-bound traffic nor do they imply that the FCC
20 has extended this characterization to ISP-bound traffic for any purpose
21 other than for the access charge exemption.

22

23 Q. PLEASE ADDRESS, IN THE CONTEXT OF THE GNAPs
24 INTERCONNECTION AGREEMENT, THE CRITERIA FOR STATE
25 COMMISSIONS TO USE, AS SUGGESTED BY THE FCC, IN

1 DETERMINING THE APPLICABILITY OF RECIPROCAL
2 COMPENSATION FOR INTERNET-BOUND TRAFFIC.

3

4 A. Paragraph 22 of the *Declaratory Ruling* provides:

5 Currently, the Commission has no rule governing inter-carrier
6 compensation for ISP-bound traffic. In the absence of such a
7 rule, parties may voluntarily include this traffic within the scope
8 of their interconnection agreements under sections 251 and 252
9 of the Act, even if these statutory provisions do not apply as a
10 matter of law. Where parties have agreed to include this traffic
11 within their section 251 and 252 interconnection agreements,
12 they are bound by those agreements, as interpreted and
13 enforced by the state commissions.

14

15 BellSouth has never voluntarily included this traffic in the scope of any
16 interconnection agreement, nor did BellSouth agree to include this
17 traffic within the Agreement with GNAPs.

18

19 Q. IF ISP-BOUND TRAFFIC IS NOT SUBJECT TO RECIPROCAL
20 COMPENSATION, WILL BELLSOUTH AND GNAPs BE
21 TRANSPORTING ISP-BOUND TRAFFIC WITHOUT
22 COMPENSATION?

23

24 A. No. Both BellSouth and GNAPs are compensated for handling ISP
25 traffic from the revenues for services provided to the ISP. It may be

1 that certain ALECs have contracted to provide services to ISPs at
2 greatly reduced rates in an effort to lure them away from other carriers,
3 anticipating that the enormous revenues generated through reciprocal
4 compensation would more than offset any loss on provisioning the
5 service. Some ALECs are attempting to turn reciprocal compensation,
6 a mechanism for recovering the cost of transporting and terminating
7 local traffic, into a separate, wildly profitable, line of business. When a
8 BellSouth end user dials into the Internet through an ISP served by a
9 ALEC, the ALEC is compensated by the ISP. The ISP is compensated
10 by the end user. BellSouth is the only party involved in this traffic that
11 is not receiving revenue for these calls, and yet BellSouth is being
12 asked to pay the ALEC for the use of a portion of the ALEC's network
13 for which it is already receiving compensation.

14

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

18

19 **A. If Internet traffic were subject to the payment of reciprocal compensation**
20 **for such traffic, BellSouth conservatively estimates that the annual**
21 **reciprocal compensation payments by incumbent local exchange**
22 **carriers in the United States for ISP traffic could easily reach \$2.6 billion**
23 **by the year 2002. This estimate is based on 64 million Internet users in**
24 **the United States, an average Internet usage of 6.5 hours per week,**
25 **and a low reciprocal compensation rate of \$.002/minute. This is a totally**

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

7

8 Q. DOES BELLSOUTH AGREE THAT THE PREVAILING PARTY IS
9 ENTITLED TO ATTORNEYS' FEES UNDER SECTION XXV.A OF THE
10 AGREEMENT?

11

12 A. Yes.

13

14 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

15

16 A. BellSouth does not have any obligation to pay GNAPs reciprocal
17 compensation for ISP-bound traffic. ISP-bound traffic is interstate
18 traffic and is not subject to reciprocal compensation under either the
19 law or the provisions of the Agreement. BellSouth did not intend to
20 include this interstate traffic as local traffic under the Agreement.
21 Furthermore, because GNAPs circumvented negotiating with BellSouth
22 on the reciprocal compensation issue by adopting the
23 BellSouth/DeltaCom Interconnection Agreement, there could have
24 been no meeting of the minds on the subject of reciprocal
25 compensation or common intent to treat ISP-bound traffic as local in

1 nature.

2

3 BellSouth does not owe GNAPs reciprocal compensation for ISP-

4 bound traffic.

5

6 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

7

8 A. Yes.

9

10

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