BELLSOUTH TELECOMMUNICATIONS, INC

DIRECT TESTIMONY ALBERT HALPRIN

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991267-TP

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Albert Halprin, 555 12th Street, NW, Suite 950, Washington, D.C., 20004.

Q. WHAT ARE YOUR CURRENT AND PAST PROFESSIONAL EXPERIENCES THAT ARE RELEVANT TO THIS PROCEEDING?

A. I have nearly twenty years of experience in the telecommunications industry. From 1984 to 1987, I served as Chief of the Federal Communications Commission's ("FCC") Common Carrier Bureau, where I was responsible for the regulation of all interstate telecommunications services in the United States. Between 1980 and 1983, I was a Senior Attorney and Chief of the Bureau's Policy and Program Planning Division. I have lectured extensively and advised numerous clients on regulatory issues related to the Internet and Internet access services. For instance, at the International Telecommunication Union's "Inter@ctive '97" conference, the first global policy forum on Internet issues, I chaired the panel on Internet legal issues, and I participated on another panel on Internet regulation. In addition, I have testified as an expert witness in nearly a dozen state commission and commercial arbitration proceedings on matters related to those at issue in this proceeding. Attached as Exhibit A is a summary of my educational background and experience.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I will discuss the nature of calls routed through Internet service providers (ISPs) ("ISP Internet communications" or "ISP-bound traffic") and relate that to the definition of "local traffic" found in the interconnection agreement ("the Agreement") between Global NAPs, Inc. ("GNAPS") and BellSouth Telecommunications, Inc. ("BellSouth") in Florida. I will explain why ISP Internet communications that originate on one local exchange carrier's ("LEC's") network facilities and traverse the network facilities of another LEC within the same local exchange area do not "terminate" at the ISP's local server but rather continue on to Internet websites and other destinations around the U.S. and around the globe.

I will also show that Internet-bound traffic does not meet the criteria spelled out in the Agreement for calls that are subject to reciprocal compensation. Nor do Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act") or the FCC's rules implementing those provisions call for reciprocal compensation for ISP-bound calls. Thus, there is no statutory or regulatory basis for GNAPs to claim that BellSouth should pay compensation for calls GNAPs routed through to the Internet.

I will describe why, as a policy matter, this Commission should focus squarely on the intent of BellSouth and GNAPs regarding reciprocal compensation for ISP-bound traffic in January 1999, when the parties entered into this Agreement. GNAPs and other ALECs should not be permitted to bootstrap their arguments based on allegations of intent involving the negotiation of earlier contracts, even if they exercise their statutory ability to opt into such earlier contracts. Should the Commission decide it needs to look beyond the language of the Agreement itself, which clearly does not call for reciprocal compensation for Internet-bound traffic, the only relevant determination of intent is the intent of these two parties in entering into this Agreement in January 1999..

In viewing ISP-bound traffic as interstate, and therefore not subject to reciprocal compensation obligations, BellSouth could rely on a long legacy of FCC rulings establishing the interstate nature of enhanced services, including those offered by ISPs. As the FCC has explained in its recent declaratory ruling on the jurisdiction of ISP calls (the "*ISP Declaratory Ruling*"), "The communications at issue here do not terminate at the ISP's local server, as [ALECs (alternative local exchange carriers)] and ISPs contend, but continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state."[1] Further, as the FCC concluded, "ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate."

The FCC's conclusion is solidly based in the real world: Calls to the Internet do not terminate at the ISP's local facilities--and never have. If they did, end users would not be able to obtain the very information for which they were searching when they initiated their Internet calls. Rather, their calls are routed through local exchange carrier networks to the Internet, a worldwide network of networks with website destinations in various countries and states. Calls to the Internet are not "local" as defined in this agreement, which specifies that local traffic originates and terminates in the same local exchange area or LATA or a corresponding extended area service ("EAS") exchange. It is important to recognize that the term "local" can mean different things in different contexts. In this case, however, it is explicitly defined in this agreement for purposes of reciprocal compensation. In this testimony, therefore, I will use the term "local" as defined in the interconnection agreement.

Q. PLEASE DESCRIBE HOW THE INTERNET WORKS. HOW IS IT DIFFERENT FROM THE TRANSMISSION OF VOICE CALLS OVER

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[1] See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68 (rel. Feb. 26, 1999) ("*ISP Declaratory Ruling*") at para. 12.

THE PUBLIC SWITCHED TELEPHONE NETWORK (PSTN)?

A. Perhaps the best way to understand how the Internet works is to compare and contrast it with the traditional PSTN. In a circuit-switched environment such as the PSTN, each call originates in one location and terminates in another, and a single, circuit-switched connection is established between the point of origin and the point of termination for the duration of the call. The Internet, however, is a packet-switched environment. When an end user places a "call" to the Internet through a dial-up access service, the call is carried over the PSTN to the ISP's node, through which it is routed, in a continuous manner, to the Internet. Once the call is connected to the Internet, no more circuit switching is involved. The caller effectively becomes part of the Internet, a destination point that any other person connected to the Internet also can reach, from any point on the globe. In short, a call to the Internet that is placed through an ISP establishes a real-time communication between the end user and the destination point or points he or she is seeking to reach on--or even beyond--the Internet. The communication can take the form of voice, data, fax, audio, or video transmissions.

Furthermore, the packet-switched nature of the Internet allows an end user to communicate with multiple destinations sequentially or even simultaneously. So in a single call to the Internet, an end user may access websites that reside on servers located in various other states or in foreign countries--as the FCC clearly understood when it affirmed in the *ISP Declaratory Ruling* that Internet traffic is interstate. Standard Internet browsers allow users to access data on websites and to communicate with other Internet users around the country or around the world, either through electronic messaging or real-time "chat" or "instant messaging" functions--all on the same Internet call.

Q. **PLEASE DESCRIBE PRECISELY WHAT OCCURS WHEN AN END USER PLACES AN INTERNET-BOUND CALL THAT IS ROUTED THROUGH AN ISP.**

A. At issue in this proceeding are Internet-bound calls that originate at the customer premises of an end user served by one LEC--BellSouth, for example--and then are routed through that LEC's network and handed off to the network of another LEC--usually a ALEC--that serves an ISP. In such a situation, the call originates on the network facilities of BellSouth (to continue the example), traverses the ALEC's network and is routed through the ISP directly to the Internet. A direct, unbroken, end-to-end stream of communication is established between the end user and the destination point or points the user wishes to reach on the Internet. The ISP's network performs the same function as an intermediate switch, routing the end user's call to its destination on the Internet itself.

Q. IS THERE ANY DISPUTE ABOUT WHETHER INTERNET CALLS "TERMINATE" AT LOCAL FACILITIES OR CONTINUE ON IN AN UNBROKEN MANNER TO INTERNET DESTINATIONS BEYOND LOCAL EXCHANGE AND LATA BOUNDARIES?

A. No. It is a settled matter at this point in the public debate that ISP Internet communications do not terminate at the ISP's local server. Before the FCC issued its *ISP Declaratory Ruling*, ALECs such as GNAPs argued in various regulatory proceedings that the central question to be decided in determining if ISP-bound traffic is subject to reciprocal compensation under Section 251 of the Act and the Agreement was whether such traffic originates and terminates in the *same local exchange--and specifically whether it terminates* at the ISP location. In several proceedings, ALECs claimed they were entitled to compensation for ISP-bound traffic, based on their contention that such traffic terminates at the ISP's local server. They cited numerous FCC orders that they contended supported this claim. They also pointed to the various state commissions that had concluded that ISP Internet traffic terminates at the ISP, and that interpreted past FCC decisions as mandating or supporting this conclusion. They insisted that all of these other state commissions could not have been wrong.

In its *ISP Declaratory Ruling,*, however, the FCC stated definitively that ISP Internet traffic does not terminate at the ISP. The Commission clarified that Internet communications that take place through an ISP do not originate and terminate in the same local exchange, and never have. Rather, they are routed through the ISP in an unbroken and continuous manner to the global Internet. The FCC further clarified that it has consistently and uniformly treated this traffic as interstate in nature, and that its treatment of ISP Internet traffic as interstate is "fully consistent" with an unbroken chain of FCC decisions stretching over several decades. The *ISP Declaratory Ruling* completely vitiated the ALECs' core argument concerning ISP reciprocal compensation. There is simply nothing in the interconnection agreement, the Act, or the FCC's rules that authorizes or justifies the payment of reciprocal compensation for communications that are so unequivocally interstate--and, in fact, international.

Q. DOES THE INTERCONNECTION AGREEMENT AT ISSUE HERE CALL FOR ISP-BOUND INTERNET CALLS TO BE SUBJECT TO RECIPROCAL COMPENSATION?

A. Absolutely not. Under the Agreement, the parties exchange reciprocal compensation for "local traffic," which is defined in the agreement as any call that "originates in one exchange or LATA and terminates in either the same exchange or LATA, or a corresponding Extended Area Service ("EAS") exchange."[2] As a factual matter, ISP-bound calls cannot qualify as local traffic because they do not terminate in the same local exchange area, LATA or corresponding EAS area where they

[2] See Agreement between BellSouth and GNAPs, Attachment B, No. 49 (definitions).

originate. An Internet session, as both a jurisdictional and technical matter, is simply not a local call that originates and terminates within a single local exchange area.

Q. WHAT DO THE RELEVANT PROVISIONS OF THE ACT AND THE FCC'S RULES SAY CONCERNING RECIPROCAL COMPENSATION? DO THEY CALL FOR THE INCLUSION OF ISP-BOUND CALLS AMONG THOSE SUBJECT TO RECIPROCAL COMPENSATION OBLIGATIONS?

A. No, they do not. Section 251(b)(5) of the Communications Act requires *all LECs "to establish reciprocal* compensation arrangements for the transport and termination of telecommunications."[3] Section 252(d)(2) specifies that such reciprocal compensation arrangements must "provide for the mutual and reciprocal recovery by each *carrier of costs* associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."

The FCC made clear, in its *Local Competition Order*, that these reciprocal compensation obligations should apply only to the transport and termination of "local telecommunications *traffic*," a category that excludes calls to the Internet, which are routed through to destinations

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[3] 47 U.S.C. Section 251(b)(5).

around the globe.[4] Clearly, the Act, as interpreted by the FCC, did not anticipate including ISP-bound calls, which are anything but local in nature, among those subject to reciprocal compensation provisions.

The FCC reaffirmed that in its *ISP Declaratory Ruling*, where it specifically stated that "Section 251(b)(5) of the Act and our rules promulgated pursuant to that provision concern inter-carrier compensation for interconnected *local* telecommunications traffic. We conclude in this Declaratory Ruling, however, that ISP-bound traffic is non-local interstate traffic. Thus, the reciprocal compensation requirements of Section 251(b)(5) of the Act and Section 51, Subpart H (Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic) of the Commission's rules do not govern inter-carrier compensation for this traffic."[5]

Q. IN GENERAL, ARE THERE ANY POSSIBLE SITUATIONS IN WHICH RECIPROCAL COMPENSATION MAY BE DUE FOR ISP-BOUND CALLS?

A. Having lost their basic argument, ALECs now claim that they are entitled to reciprocal compensation for ISP-bound traffic even though the traffic does not terminate at the ISP. They base this new claim on

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[4] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499, 16013 (1996).

[5] *ISP Declaratory Ruling* at footnote 87.

dicta from the FCC's *ISP Declaratory Ruling,* arguing, without basis, that somehow ISP-bound traffic terminates at the ISP node for "regulatory purposes"--a notion without foundation in FCC rulings or the Telecommunications Act. In fact, the statements they cite from the FCC's *ISP Declaratory Ruling* provide no support whatsoever for their claims. In that ruling, the FCC was compelled by the facts, the law, and its own precedents to find that Internet traffic does not terminate at the ISP, and is therefore not subject to reciprocal compensation under Section 251.

The FCC noted, however, that ILECs and ALECs have always been free to "voluntarily include this traffic within the scope of their interconnection agreements under Sections 251 and 252 of the Act, even if these statutory provisions do not apply as a matter of law." This is correct, of course. The FCC also was correct in stating that if a dispute arises about whether parties have agreed voluntarily to pay reciprocal compensation for ISP traffic or other non-local traffic, the state commissions have the authority to interpret and enforce any such provisions of the agreement. Accordingly, many ALECs now argue that BellSouth somehow voluntarily agreed to make Internet-bound calls subject to the reciprocal compensation provisions of its interconnection agreements with ALECs, staking their claim to the only argument left for them to cling to.

Q. **HOW SHOULD THIS COMMISSION DETERMINE THE INTENT OF THE PARTIES REGARDING RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC?**

A. As a threshold matter, the language of the Agreement is clear in calling for reciprocal compensation only for "local traffic," a category that excludes calls that are routed beyond the boundaries of the local exchange area or LATA where they originate. Thus, a straightforward reading of the Agreement should lead to a finding that the reciprocal compensation obligations of the Agreement do not apply in the case of Internet-bound traffic.

BellSouth witness Beth Shiroishi will testify that BellSouth never intended to pay reciprocal compensation for ISP-bound traffic at any point during the negotiations of this Agreement or any preceding interconnection agreement with ALECs in Florida or elsewhere in its region. As a policy matter, this Commission should focus its analysis squarely on the intent of the parties when they concluded this Agreement on Jan. 18, 1999. GNAPs may attempt to argue that this Commission should examine other, earlier interconnection agreements, including the agreement GNAPs opted into pursuant to its ability, under section 252(I), to adopt part or all of an incumbent carrier's earlier interconnection agreement with another carrier. This Commission should not be swayed by GNAPs' attempts to bootstrap its arguments based on allegations about BellSouth's supposed intent in earlier agreements. Rather, this Commission should firmly establish whether or not these two parties voluntarily agreed to pay reciprocal compensation as part of this Agreement, which was concluded in January 1999.

Extrapolating the intent of the parties from earlier agreements, involving different negotiations and different parties, could have negative effects on the industry from a public policy standpoint. In effect, parties could attempt to "lock in" their interpretations of their negotiating partners' intent, in perpetuity, ignoring the facts or conditions present in each succeeding, individual interconnection negotiation. This is especially true in the case of ALECs, which have the ability under Section 252(I) to continue opting into previous agreements with incumbents. If the parties have no ability to exercise their intent at each new juncture of negotiation, there can be no negotiations at all. Moreover, without having been present during the negotiations of the original interconnection agreement, successive ALECs cannot be in a position to know those parties' intent when the ALECs opt into those agreements under the "most-favored nation" (MFN) provision of Section 252(I). Clearly, the question of intent must be judged when each agreement is concluded between two parties.

The FCC touched on the pernicious effects of bootstrapping intent when it referred, in the rulemaking notice section of its *ISP Declaratory Ruling,* to an arbitrator's decision to allow an ALEC to opt into an existing interconnection agreement for a further three-year term. That decision raised the "possibility that the incumbent LEC might be subject to the obligations set forth in that agreement for an indeterminate length of time, without any opportunity for re-negotiation, as successive CLECs opt into the agreement," the FCC said. "We seek comment, *therefore, on whether and how section 252(I) and MFN rights affect* parties' ability to negotiate or renegotiate terms of their interconnection agreements."[6] Indeed, despite making every attempt in its ruling to bend over backward in crafting reasons (going beyond what is required, in my opinion, under the statute) for subsidizing the ALECs, even the FCC recognized that attempting to prolong an obligation by opting into a prior agreement, in which an incumbent's "intent" had been created or determined by a state's action, would be improper and contrary to good public policy.

It should be noted that by the time this Agreement was concluded in January of 1999, the positions of BellSouth and the vast majority of ALECs in its region had been publicly stated and argued in at least one federal proceeding and several state proceedings over the preceding months, including at least one complaint proceeding in Florida, before this Commission. For example, in reply comments filed at the FCC during the summer of 1997, BellSouth explained its position that reciprocal compensation is not warranted for ISP-bound calls because

[6] ISP Declaratory Ruling at para 35.

they do not terminate at the ISP node.[7] Moreover, on Nov. 5, 1998, just a little more than two months before this Agreement was concluded, BellSouth witness Jerry Hendrix testified before this Commission in a proceeding involving BellSouth's interconnection agreement with e.spire Communications, Inc., that BellSouth did not believe that ISP-bound traffic was local traffic subject to reciprocal compensation.[8] It appears that BellSouth's position on this issue--and therefore its intent--had been made public and should have been known to all ALECs attempting to interconnect with BellSouth during the months leading up to this Agreement.

Moreover, while the rules of contractual interpretation in Florida are beyond the scope of this testimony, and beyond my expertise, I am competent to point out--based on my knowledge of the Internet, reciprocal compensation arrangements, and the Telecommunications Act of 1996--the patent absurdity of any suggestion that BellSouth would have agreed at any time to pay reciprocal compensation voluntarily for ISP Internet traffic when it was in no way required to do so under the Telecommunications Act. No company voluntarily would agree to subsidize its direct competitors. No company would agree to

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[7] See BellSouth reply comments in the matter of *Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, File No. CCB/CPD 97-30, filed July 31, 1997.

[8] See direct testimony by Jerry Hendrix on behalf of BellSouth Telecommunications, Inc., in the matter of *Request for Arbitration Concerning Complaint of American Communications Services of Jacksonville, Inc., d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, d/b/a e.spire Communications, Inc., regarding reciprocal compensation for traffic terminated to Internet service providers*, Docket No. 981008-TP, filed Nov. 5, 1998.

subject itself to a reciprocal compensation arrangement under which it would be certain to incur an obligation to pay tens of millions of dollars to such competitors. Yet that is precisely what GNAPs is asking this Commission to believe of BellSouth.

Q. WHY WOULD IT BE DETRIMENTAL FOR BELLSOUTH TO AGREE TO INCLUDE INTERNET-BOUND CALLS AMONG THOSE SUBJECT TO RECIPROCAL COMPENSATION?

A. ALECs -- and ALECs alone -- benefit from the application of reciprocal compensation to ISP Internet traffic. Incumbent LECs ("ILECs") are guaranteed to be harmed, because there is no possible way in which the application of reciprocal compensation to ISP Internet traffic could result in net reciprocal compensation payments from an ALEC to an ILEC such as BellSouth. As a practical matter, BellSouth and other ILECs serve the vast majority of residential customers and business customers who generate the large and growing volume of Internet-bound traffic. ALECs serve few if any of these customers, preferring instead to target their marketing to customers such as ISPs, which originate no Internet traffic.

The application of reciprocal compensation to such traffic is thus guaranteed to result in payments from BellSouth to the ALEC, including potentially very significant payments that can easily reach as much as tens of millions of dollars on an annual basis. It is simply ridiculous to suggest that BellSouth knowingly or intentionally entered into a voluntary business arrangement under which it was certain to lose large amounts of money.

Q. BELLSOUTH's INTERCONNECTION AGREEMENT WITH GNAPS IN FLORIDA MERELY STATES THAT RECIPROCAL COMPENSATION IS DUE FOR LOCAL TRAFFIC. DOES THAT INDICATE THAT BELLSOUTH AGREED TO INCLUDE ISP-BOUND CALLS IN THE GROUP OF LOCAL CALLS COVERED BY RECIPROCAL COMPENSATION?

A. In my judgment, it does not. The agreement unambiguously states that reciprocal compensation is due only for the exchange of *local* traffic. And as the FCC stated in the *ISP Declaratory Ruling*, Internet traffic is not, and has never been, local traffic, because it does not both originate *and* terminate in the same local exchange or LATA. Because ISP Internet traffic is interstate traffic--and has always been classified as such under an unbroken line of FCC and federal court precedents--there would be no reason for BellSouth to anticipate that GNAPs would later claim, incorrectly, that such traffic terminates at the ISP, much less that certain state commissions would adopt this incorrect reasoning. The *ISP Declaratory Ruling* proved that BellSouth was right.

Q. IN ITS ISP DECLARATORY RULING, THE FCC INCLUDED DICTA ABOUT FACTORS THAT CAN BE CONSIDERED IN DISPUTES

OVER ISP RECIPROCAL COMPENSATION. ARE THE FACTORS SUGGESTED BY THE FCC VALID OR USEFUL FOR RESOLVING SUCH DISPUTES?

A. In the *ISP Declaratory Ruling*, the FCC suggests that certain factors can be considered when "construing" interconnection agreements to determine whether the parties agreed voluntarily to pay reciprocal compensation for ISP traffic. However, the factors suggested by the FCC are completely irrelevant to such a determination. They involve historical regulatory mechanisms that the FCC constructed for a variety of policy reasons, none of which has anything to do with reciprocal compensation or the fact that Internet calls actually are bound for destinations beyond the local exchange and commonly traverse LATA, state and national boundaries. The ALECs can argue until they are blue in the face about the various factors suggested by the FCC, but all of those factors are immaterial, since the interconnection agreement at issue here calls for reciprocal compensation only for local traffic --and that clearly excludes ISP-bound traffic.

For instance, it is irrelevant whether LECs serving ISPs have done so out of intrastate or interstate tariffs. BellSouth and other LECs are required under FCC rules -- specifically, the access charge exemption for ESPs -- to serve ISPs out of intrastate tariffs. That BellSouth does so, therefore, says nothing about either the nature of Internet-bound traffic or BellSouth's intent regarding whether to pay reciprocal compensation for Internet traffic it exchanges with a ALEC that serves an ISP. The mere regulatory mechanism of serving ISPs through intrastate tariffs does nothing to change the true interstate nature of Internet calls routed through ISPs.

Similarly, the fact that the revenues BellSouth receives from serving ISPs may be "counted as intrastate revenues"--and the fact that the local exchange facilities used to serve ISPs are treated as intrastate for separations or other purposes-- proves nothing with respect to BellSouth's intent or the true nature of Internet calls. These facts flow directly from the FCC's decision to treat "ISP-bound traffic *as though it were* local" (emphasis added) for pricing (access charge) purposes. But treating traffic as though it were local for one narrow purpose does not mean, in fact, that the traffic *is* local or should be treated as such for any *other* purpose, including reciprocal compensation. In the *ISP Declaratory Ruling*, the FCC reaffirmed that it did not reclassify interstate ISP traffic as local or intrastate simply by treating it "as though it were local" for certain discrete purposes. In fact, ISP traffic remains classified by the Commission as interstate. BellSouth certainly cannot be found to have agreed voluntarily to pay reciprocal compensation for this traffic because it complied with the FCC's rules.

Q. AMONG THE DICTA IN THE ISP DECLARATORY RULING, THE FCC INCLUDED A REFERENCE TO BILLING ARRANGEMENTS. DOES THE FACT THAT THERE WAS NO EFFORT MADE TO

METER ISP-BOUND TRAFFIC INDICATE THAT BELLSOUTH ACQUIESCED TO THE DEFINITION OF SUCH TRAFFIC AS "LOCAL"?

A. Certainly not. Any effort which might have been made to meter outbound traffic from its subscribers or otherwise segregate it from local traffic was sure to fail. It is impossible for BellSouth to know or measure, with certainty, whether calls from its subscribers to any seven-digit telephone number served by a ALEC are intrastate or interstate in nature, short of physically intercepting and monitoring the communications. Measures can be taken, with some reasonable expectation of accuracy, to estimate the amount of traffic bound for ISPs, but the only practical way of establishing the exact amount is for the receiving LEC to identify calls routed through to ISPs. BellSouth would expect a ALEC to do no more--and no less--than BellSouth was able to do in this regard.

This situation arises with respect not only to ISP Internet communications, but also interstate foreign exchange (FX) calls and interstate enhanced service calls. Where the ISP, FX customer, or interstate ESP is served by a ALEC, there is no way for BellSouth, in the normal course of operations, to know or find out that a seven-digit number its local exchange customers dial is used to provide an interstate service. Only the ALEC knows – or can find out – that its customer is providing an interstate service. Thus, even where an interstate service unquestionably is being provided – such as in the case of interstate FX calls – BellSouth has no way of knowing unless the ALEC tells it.

As BellSouth witnesses will testify in this proceeding, BellSouth implemented changes to is CABS billing system to prevent the billing of any ALEC for Internet-bound traffic routed through BellSouth's network. Calls originating from any ALEC placed using specifically identified telephone numbers were segregated and their records sent to an "error" file to be held. Through such a process, BellSouth identified any ISP-bound traffic that originated on ALEC networks. It did this to ensure that such traffic was not included in calculations of reciprocal compensation bills presented to the ALECs. It was BellSouth's standard practice never to knowingly bill a ALEC for ISP-bound traffic. Unfortunately, ALECs did not grant BellSouth the same consideration.

Q. **END USERS COMMONLY DIAL INTO THE INTERNET BY USING A SEVEN-DIGIT (OR IN SOME JURISDICTIONS, A TEN-DIGIT) "LOCAL" PHONE NUMBER. DOES THIS INDICATE THAT INTERNET-BOUND CALLS ARE "LOCAL" CALLS?**

A. No, it does not. The fact that end users typically access dial-up Internet services by dialing a seven-digit or ten-digit "local" telephone number proves nothing with respect to where the communication "terminates," the jurisdictional nature of the communication, or whether it is subject to reciprocal compensation. As I stated above, foreign exchange (FX) service involves the end user dialing a seven-digit or ten-digit telephone number. Nonetheless, FX service is not, and has never been, treated as terminating at the "called telephone number." The jurisdictional classification and regulatory treatment of FX calls are determined based on the point of "completion" of the call. Where FX service is used on an interstate basis, it is regulated by the FCC and treated as an interstate interexchange service. Interstate FX calls are not subject to reciprocal compensation under local interconnection agreements, even though the telephone number the end user calls to reach the FX service customer may be a seven-digit number.

Another example of the use of seven-digit numbers for interstate services involves CCSA offerings. CCSA service permits a large business customer, such as a corporation with offices in various locations around the country, to communicate over its internal private network among those offices. But it also allows the company's employees to communicate with individuals off that private network in any location where the company has an office. For example, a food distribution company may have offices in Houston, New Orleans, Mobile, Ala., and Pensacola, Fla. An employee in New Orleans could use the CCSA network to contact a customer in Pensacola, simply by dialing a seven-digit number to access the network, punching in a PIN code, then dialing the off-network number of the customer in Pensacola. Once again, this involves the use of a seven-digit number to make an interstate, interLATA call.

Even beyond such examples, it's an indisputable fact that the use of seven-digit dialing was an integral part of the development of long distance service competition in the U.S. MCI used FX arrangements in September 1974 to begin offering its "Execunet" service, the first competitive public switched long distance service in the country.[9] To make a long distance call using Execunet, customers initially had to dial a seven-digit telephone number to reach the MCI network, but the call then would be routed to the destination point nationally. Such calls were not "local," nor was the Execunet service a local offering. Rather, it was a long distance service, and the FCC properly asserted jurisdiction over it as such. So the insistence by ALECs that the use of seven-digit dialing automatically denotes local traffic is nothing but a red herring.

Q. ISPs ARE TREATED AS "END USERS," NOT CARRIERS, FOR PURPOSES OF DETERMINING WHETHER THEY SHOULD PAY INTERSTATE ACCESS CHARGES. DOES THIS INDICATE ANY INTENTION BY THE FCC TO DEFINE CALLS TO ISPS AS "LOCAL?"

A. No. The fact that the FCC treats information service providers as "end

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[9] Microwave Communications, Inc., FCC Tariff No. 1 (1974). (MCI's national services were based in part on resale and in part on the use of MCI's own facilities. All of MCI's facilities-based national services were FX/CCSA-based services.

users" rather than "carriers" for interstate access charge purposes does not mean that calls made to ISPs are "local" and therefore subject to reciprocal compensation. The FCC's Part 69 rules governing interstate access charges established only two classes of entities for interstate access charge purposes: (1) interstate carriers and (2) end users. While the FCC periodically has examined the possibility of establishing other categories under Part 69, it has never done so. Given this dichotomy, the FCC in 1983 determined that interstate ESPs, including ISPs, should be treated as end users rather than as interexchange carriers for interstate access charge purposes. In a recent Notice of Inquiry on the Internet, the FCC tentatively concluded that those interstate ESPs should continue to be exempted from interstate carrier access charges, as such charges currently are structured.[10]

The critical point here is that the FCC has never held that by virtue of the ESP exemption, interstate ESPs or ISPs are "local carriers" subject to state jurisdiction for any other purpose, including reciprocal compensation. Accordingly, there is no basis to conclude that the FCC's classification of ESPs as end users under the Part 69 regime in any way requires that calls to ISPs be subject to reciprocal compensation.

Again, the FCC's *ISP Declaratory Ruling* resolves any doubt about the

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[10] *Access Charge Reform*, Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry, 11 FCC Rcd 21354 (1996).

meaning and implications of the ESP exemption. The FCC categorically rejected ALEC arguments that "because the Commission has treated ISPs as end users for purposes of the ESP exemption, an Internet call must terminate at the ISP's point of presence."[11] The FCC added that "the fact that ESPs are exempt from access charges and purchase their PSTN links through local tariffs does not transform the nature of traffic routed to ESPs. . .We emphasize that the Commission's decision to treat ISPs as end users for access charge purposes. . .does not affect the Commission's ability to exercise jurisdiction over such traffic."[12] It should be noted that it is because ISP-bound traffic is interstate that the FCC has the jurisdiction to exempt such traffic from interstate access charges, in the first place. "That the FCC exempted ESPs from access charges indicates its understanding that they in fact use interstate access service; otherwise, the exemption would not be necessary."[13]

Q. DESPITE THE DICTA MENTIONED BY THE FCC IN ITS ISP DECLARATORY RULING, THE FCC DETERMINED CONCLUSIVELY THAT INTERNET TRAFFIC IS JURISDICTIONALLY INTERSTATE. PLEASE EXPLAIN THE RATIONALE THE FCC USED TO MAKE THAT DETERMINATION.

A. In general, the Communications Act grants the FCC jurisdiction over

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[11] *ISP Declaratory Ruling* at para. 16.
[12] *Id.*
[13] *Id.*

"interstate and foreign communication by wire and radio," while assigning to the states jurisdiction over intrastate communications. The well-established standard for determining the jurisdictional classification of a type of communication is to analyze the actual communication on an end-to-end basis. In the *ISP Declaratory Ruling*, the FCC explained that it "traditionally has determined the jurisdictional nature of the communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers."[14]

The FCC also has held that "the jurisdictional nature of a call is determined by its ultimate origination and termination, and not... its intermediate routing.[15]

The federal courts have confirmed that the jurisdictional classification of a communication depends on the "nature" of the communication and is to be analyzed from the point of inception to the point of completion. That the Communications Act contemplates the regulation of interstate wire communication from its inception to its completion is confirmed by the language of the statute and by judicial decisions.[16] The FCC also made clear that this approach has been followed uniformly in federal

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[14] *ISP Declaratory Ruling*, at para. 10.
[15] *Southwestern Bell Tel. Co. Transmittal Nos. 1537 and 1560, Revisions to Tariff F.C.C. No. 68*, Order Designating Issues for Investigation, 3 FCC Rcd. 2339, 2341, (1988). See also, *AT&T; Applicability of the ENFIA Tariff to Certain OCC Services*, 91 F.C.C. 2d 568, 576 (1982).
[16] *See United States v. AT&T*, 57 F. Supp. 451, 454 (S.D.N.Y.), *aff'd sub nom. Hotel Astor v. United States*, 325 U.S. 837 (1945) (*per curiam*).

decisions for many years.

Moreover, to the extent that the local network facilities of one or more LECs are used to originate an interstate communication, such facilities are in interstate use and are subject to the FCC's exclusive jurisdiction. "This Commission has jurisdiction over, and regulates charges for the local network when it is used in conjunction with origination and termination of interstate calls."[17] Where an end user initiates an Internet communication by dialing into an ISP over the network facilities of one or more LECs, these network facilities are in interstate use. Nothing in the Telecommunications Act of 1996 altered the basis for determining the jurisdictional nature of traffic.

Curiously, GNAPs itself appeared to expressly acknowledge the interstate nature of ISP-bound traffic when it filed a tariff with the FCC on April 14, 1999, seeking to recover for "ISP *Traffic Delivery Service*." The tariff language applies to "all ISP-bound traffic that is subject to the jurisdiction of the Federal Communications Commission"--a category that includes all Internet-bound traffic, in fact, as the FCC had ruled in its *ISP Declaratory Ruling*. GNAPs apparently filed the tariff to recover for any ISP-bound traffic that a "delivering LEC" did not include under the reciprocal compensation provisions of an interconnection agreement (see exhibit B).

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[17] *MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, 4 FCC Rcd 5660 (1989).

Q. SEVERAL OTHER STATES ALREADY HAVE RULED THAT ISP CALLS SHOULD BE SUBJECT TO RECIPROCAL COMPENSATION AGREEMENTS. DO THOSE STATE DECISIONS SET VIABLE PRECEDENTS TO BE FOLLOWED IN OTHER STATES?

A. No. Many of those decisions were adopted before the FCC released its *ISP Declaratory Ruling*. Most of these state commission decisions were premised in whole or in part on interpretations of past FCC orders--interpretations the FCC expressly rejected as incorrect in the *ISP Declaratory Ruling*. Those decisions have been completely undercut by the federal ruling, which obliterated any argument that Internet-bound traffic could be considered "local." In the wake of the FCC's ruling, we are now seeing the former unanimity of state decisions based on the two-call theory replaced by a new wave of mixed and varied decisions as regulators and arbitrators examine the interconnection agreements and intent of the parties in each case.

Q. FOLLOWING THE FCC's DECLARATORY RULING, HAVE ANY STATE REGULATORY AGENCIES RULED THAT ISP-BOUND CALLS ARE NOT LOCAL BUT IN FACT INTERSTATE IN NATURE AND THUS NOT SUBJECT TO RECIPROCAL COMPENSATION OBLIGATIONS?

A. Pending the adoption of a federal rule on reciprocal compensation for

ISP-bound traffic, many of the states have allowed their previous rulings on this issue to stand. But there have been several significant state rulings affirming that ISP-bound traffic is interstate and thus should not be subject to reciprocal compensation obligations. One such ruling was the Oct. 28, 1999, order by the Louisiana Public Service Commission in a dispute concerning the interconnection agreement between BellSouth and KMC Telecom, Inc.[18] The Louisiana PSC, which had not ruled on the ISP issue previously, denied KMC's request for payment of reciprocal compensation for ISP-bound traffic, finding that "ISP traffic does not terminate locally at an ISP server but rather transits through the ISP server for termination at a distant website, somewhere outside of the local calling area."[19] The PSC also found that there is "no prevailing industry custom of treating ISP traffic as 'local' for reciprocal compensation purposes" and that "ISPs are a subset of Enhanced Service Providers ('ESPs') that utilize interstate switched access services to connect to local exchange company central offices."[20]

The Louisiana commission noted that the FCC had affirmed in the *ISP Declaratory Ruling* that the reciprocal compensation provisions of the Telecommunications Act apply only to local traffic and thus do not extend to ISP-bound traffic. Citing the FCC's end-to-end analysis of communications, the Louisiana PSC also stated that "the initiating caller

[18] Louisiana Public Service Commission, *Petition of KMC Telecom, Inc., against BST to Enforce Reciprocal Compensation Provisions of the Parties' Interconnection Agreement*, Docket No. U-23839, order released Oct. 29, 1999 ("*Louisiana PSC Order*").
[19] Id. at page 14.
[20] Id.

or customer is one `end' of the communication, and the terminating `end' is the web or other Internet site called by the customer." In the PSC's view, KMC's initial, "two-call" argument in that proceeding--that Internet-bound traffic terminates at the ISP--was "expressly considered and rejected" by the FCC.[21]

KMC then had attempted to argue that for "regulatory purposes" ISP traffic is "treated" as terminating locally. But the Louisiana PSC found that the *ISP Declaratory Ruling* "provides no support for KMC's claim; the FCC stated expressly that `the communications at issue here do not terminate at the ISP's local server, as [ALECs] and ISPs contend, but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state.'"[22] The PSC concluded that "it cannot be seriously argued that ISP traffic has more than one point of termination or that it actually does terminate locally at the ISP server, even though the FCC has stated emphatically that it does not." And finally, the PSC stated that the word "termination" has only one technical meaning--"and that is the ultimate end point of the communication."[23]

In another significant ruling, the Massachusetts Department of Telecommunications and Energy ("DTE") also ruled, in May 1999, that the clear reasoning in the FCC's *ISP Declaratory Ruling* concerning the

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[21] Id. at page 16.
[22] Id. at page 17.
[23] Id. at page 18.

interstate nature of ISP-bound calls completely invalidated the basis for the department's earlier ruling that had sanctioned reciprocal compensation.[24] The department overturned that earlier ruling, in a case that involved MCI WorldCom and Bell Atlantic Corp., saying that the FCC's establishment of a standard based on the end-to-end nature of Internet calls removed any basis for maintaining that ISP-bound calls were composed of two severable components.

The DTE added, "The FCC's `one-call' ruling effectively undercut the jurisdictional claim of any state regulatory agency over ISP-bound traffic, insofar as an agency asserted that calls to Internet web sites were severable into two components: (1) one call terminating at the ISP, and (2) a subsequent call connecting the ISP and the target Internet website." The department added that its earlier decision had been based on "a mistake of law; i.e., on an erroneous characterization of ISP-bound traffic and on a consequently false predicate for concluding that exchange jurisdiction was intrastate."[25] Upon overturning that earlier, errant decision, it directed Bell Atlantic and MCI WorldCom to renegotiate their agreement.

It should also be noted that the Public Service Commission in South Carolina, another state in BellSouth's region, issued an order on October 4, 1999 in its arbitration of an interconnection agreement

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[24] See Complaint of MCI WorldCom, Inc., against New England Telephone and Telegraph Co. d/b/a Bell Atlantic-Massachusets, order in Case No. D.T.E. 97-116-C.
[25] Id. at p.11

between ITC^DeltaCom and BellSouth. The South Carolina commission found that ISP-bound traffic is non-local interstate traffic and ruled that on a going-forward basis ISP-bound traffic exchanged under that interconnection agreement would not be subject to reciprocal compensation.[26]

Q. HAS ANY STATE AGENCY FOUND THAT RECIPROCAL COMPENSATION WAS NOT DUE FOR ISP-BOUND TRAFFIC IN A SITUATION INVOLVING AN ALEC'S OPT-IN TO AN EXISTING CONTRACT?

A. Yes. The New Jersey Board of Public Utilities in July 1999 ruled in a case involving GNAPs that Internet-bound traffic is interstate and is not subject to reciprocal compensation obligations. The Board's ruling involved GNAPs' interconnection agreement with Bell Atlantic, which GNAPs had chosen through opting into an earlier agreement between Bell Atlantic and MFS Intelenet. The board concurred with its staff's recommendation that the interconnection agreement at issue covered only "local" traffic and did not apply to interstate traffic. And since the FCC has clearly defined ISP-bound traffic as interstate, the staff concluded that such traffic should be excluded from reciprocal compensation obligations under that interconnection agreement.[27]

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[26] See In re: Petition of ITC^DeltaCom Communications, Inc. for Arbitration with BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, Docket No. 1999-259-C, Order No. 1999-690, Public Service Commission of South Carolina, rel. Oct. 4, 1999.

[27] See In the Matter of the Petition of Global Naps, Inc., for Arbitration of Interconnection

The Board's decision is significant because of GNAPs' election to sign the existing MFS agreement under the "MFN" provisions of the Telecommunications Act. In its decision, the board was clear in stating its judgment that the terms of the MFS agreement--and therefore those of the GNAPs agreement based on it--did not call for reciprocal compensation. "Because of [GNAPs'] right to MFN an existing agreement, we find that it is appropriate to apply to [GNAPs] and [Bell Atlantic] the rates and terms in the existing MFS agreement, which [GNAPs] desires to MFN with respect to reciprocal compensation obligations for traffic which is truly local," the Board said. "ISP-bound traffic, as determined by the FCC, is interstate in character and, therefore, in the Board's view is not subject to reciprocal compensation."[28]

Moreover, like the FCC, the Board registered its concern about the "procedural and substantive rights" of both ILECs and ALECs involved in situations in which the ALEC takes advantage of its MFN option to incorporate or substitute an earlier agreement for one derived from fresh negotiations. The Board noted its "preliminary belief that interconnection agreements should not exist into perpetuity without a right to have such agreements reviewed and renegotiated." In

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Rates, Terms, Conditions, and Related Arrangements with Bell Atlantic-New Jersey Pursuant to Section 252(b) of the Telecommunications Act of 1996, order rel. July 7, 1999, in Docket No. TO98070426.

[28] Id. at page 11.

response to those concerns, the Board instructed its staff to prepare a "pre-proposal" for a rulemaking on the issue.[29]

Q ARE THERE PUBLIC POLICY REASONS FOR FINDING THAT RECIPROCAL COMPENSATION SHOULD NOT APPLY TO ISP-BOUND CALLS?

A. Yes. As a matter of public policy, ISP Internet traffic should not be subject to reciprocal compensation under local interconnection agreements. Requiring the payment of reciprocal compensation for ISP Internet traffic is unsound public policy because it hinders the development of competition in local exchange services markets. It also causes significant economic distortions in the still-evolving information services industry and creates disincentives for investment and innovation in the underlying networks that support the Internet. Such negative consequences are already apparent in those markets where reciprocal compensation currently is being paid by incumbent LECs for such traffic.

Q. WHAT NEGATIVE EFFECTS CAN BE SEEN IN LOCAL EXCHANGE SERVICE MARKETS WHERE ISP-BOUND CALLS ARE FOUND TO BE SUBJECT TO RECIPROCAL COMPENSATION OBLIGATIONS?

A. First, where reciprocal compensation applies to Internet

[29] Id. at page 7.

communications, competition among LECs to serve a large class of local residential customers--heavy Internet users who access the Internet through an ISP--has been reduced or eliminated. BellSouth is required to provide local exchange service to such subscribers, who generate a vast amount of dial-up Internet traffic but, of course, receive no Internet calls themselves.[30] That essentially turns residential customers into liabilities for any carrier subject to reciprocal compensation obligations for ISP-bound traffic.

ALECs may be required to respond to residential customers who seek their services, pursuant to state commissions' rules and their tariffs. But as a practical matter, they are free to pursue a marketing strategy of aggressively seeking customers almost exclusively from among the ranks of the ISPs. They certainly have no market incentive to seek out residential customers. ALECs are free to concentrate on providing low-cost service to ISPs. Then they can rake in huge profits through the collection of reciprocal compensation payments, which flow entirely in the direction of the ISPs for Internet traffic.

If BellSouth, as the LEC that serves the vast majority of residential subscribers, is required to pay reciprocal compensation to GNAPs and other ALECs, it will face a situation in which it would be hemorrhaging money to its direct competitors. GNAPs, which has no "carrier of last resort" obligations, may simply choose not to market its services to

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[30] See Section364.025(l), Florida Statutes 1999.

subscribers who generate large reciprocal compensation outflows by remaining connected to the Internet for extended periods of time. As a result, only BellSouth serves such customers, as a practical matter. In this environment, BellSouth has no market-based opportunity to generate inbound reciprocal compensation payments that would offset the payments it must make to the ALECs.

Under these conditions, no competitive market can possibly develop to serve residential subscribers who access the Internet over the public switched network. In any economically rational policy framework, such high-volume users should be prime targets for competing LECs, not left out of competitive developments. But in their "gaming" of the reciprocal compensation system, ALECs would rather serve the ISPs and collect *reciprocal compensation* fees than compete with BellSouth to serve residential Internet subscribers.

Second, if reciprocal compensation is applied to ISP Internet calls, competition among LECs to provide local exchange service to ISPs will continue to be distorted. Instead of competing on the basis of service quality, technological improvements, or other sound bases, GNAPs and other ALECs will continue to benefit from artificial incentives to serve as local exchange carriers for ISPs at uneconomic rates. Indeed, they have every incentive to establish or acquire their own ISP operations -- as, indeed, they have done -- simply to benefit from reciprocal compensation inflows.

The purpose of reciprocal compensation for local traffic is to ensure that a LEC is able to recover its actual costs for terminating local traffic that originates on another LEC's network--not to serve as a source of capital infusion, not to say windfall profits, for new market entrants. Reciprocal compensation pursuant to local interconnection agreements is, as a matter of public policy, a totally inappropriate way to compensate a ALEC for carrying Internet communications.

Q. HOW SHOULD ALECS RECOVER THEIR TRUE COSTS FOR CARRYING INTERNET TRAFFIC IF THEY SERVE ISPS?

A. To the extent that any carrier, including GNAPs, incurs costs in carrying ISP-bound Internet traffic, it should be allowed to recover the reasonable costs involved in carrying such traffic. Such costs should be recovered either from the ISP or, indirectly, from the Internet access end user, not from other users who do not make calls to ISPs--namely, a large number of PSTN ratepayers. The FCC has now undertaken a proceeding to establish a compensation mechanism for ISP traffic.

Under FCC rules, ALECs are not subject to the same access charge rules that constrain BellSouth. The ALECs are free – and have always been free – to recover from their ISP customers the costs they incur to provide service to these ISPs, under any rate plan the ALECs choose to adopt. It is a flat-out falsehood for any ALEC to state that it cannot recover the costs of carrying traffic to ISPs if it does not receive reciprocal compensation from the ILEC.

Reciprocal compensation is neither a lawful nor an appropriate means for compensating ALECs for the cost of carrying ISP Internet traffic. Reciprocal compensation for ISP Internet traffic leads to the recovery of many times the actual costs ALECs incur to carry ISP Internet traffic that originates on BellSouth's network. In fact, reciprocal compensation for such traffic will produce an undue windfall gain for GNAPs and other ALECs. Because of the major differences between Internet usage and usage of the public switched telephone network, a per-minute charge is not appropriate if it is developed on the basis of the characteristics of local voice calling patterns.

Q. HOW DO THE COSTS FOR INTERNET TRAFFIC DIFFER FROM THOSE INCURRED IN CARRYING A VOICE CALL?

A. Call set-up represents a significant portion of the total costs a LEC incurs to terminate a call that originates on another LEC's network. However, the per-minute reciprocal compensation rate is the same for each minute of a call. The rate represents the average of the call set-up and other costs over the duration of a call and is set on the basis of the average duration of a call. Thus, on average, the terminating LEC recovers its actual costs. But because the average Internet communication lasts far longer than the average voice call, application of the reciprocal compensation rate to such ISP-bound traffic will result in a significant over-recovery of the ALEC's costs.

Section 252(d)(2)(A)(i) states that a state commission shall not consider the terms and conditions for reciprocal compensation just and reasonable unless they provide for the "recovery by each carrier of costs associated with transport and termination" of calls that originate on another carrier's network.[31] The application of reciprocal compensation to ISP traffic is unjust and unreasonable because it leads to the massive over-recovery of the costs the ALEC incurs when such traffic traverses its network.

Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

A. This complaint should not result in a requirement for the payment of reciprocal compensation for ISP Internet traffic, because such payments are not called for in either the interconnection agreement between BellSouth and GNAPs or the Telecommunications Act of 1996. All Internet communications are jurisdictionally interstate in nature, making them subject to the exclusive jurisdiction of the FCC, which has stated unequivocally that Internet-bound traffic does not terminate at the ISP's local server. Such interstate communication is not subject to reciprocal compensation under Section 251(b)(5) of the Communications Act--a fact reflected in the BellSouth-GNAPs

[31] 47 U.S.C. Section 252(d)(2)(A)(I).

interconnection agreement.

Even if there were a sound basis to require reciprocal compensation for ISP Internet traffic, doing so would be disastrous for public policy reasons. The market distortions and inefficiencies resulting from such a requirement are fundamentally inconsistent with sound public policymaking.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

EXHIBIT A

ALBERT HALPRIN

EDUCATIONAL BACKGROUND AND WORK EXPERIENCE

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I earned a law degree from The Harvard Law School in 1974. Prior to that, I graduated from Western Washington State College with a Bachelor of Arts degree in 1971.

Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.

A. I am a partner at the law firm of Halprin, Temple, Goodman & Maher, located in Washington, D.C., and an adjunct professor of telecommunications law in the graduate law program at Georgetown University Law Center.

Since 1987, I have been engaged in the practice of law and consulting in the telecommunications field. From 1984 to 1987, I served as Chief of the Federal Communications Commission's Common Carrier Bureau, where I was responsible for the regulation of all interstate telecommunications services in the United States. Between 1980 and 1983, I was a Senior Attorney and Chief of the Bureau's Policy and Program Planning Division.

I have lectured extensively and advised numerous clients on regulatory issues related to the Internet and Internet access services. For instance, at the International Telecommunication Union's recent "Inter@ctive '97" conference, the first global policy forum on Internet issues, I chaired the panel on Internet legal issues, and I participated on another panel on Internet regulation.[1]

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY AND/OR APPEARED AS A WITNESS BEFORE THIS COMMISSION?

A: Yes. I have filed testimony with and appeared as a witness in the matter of Request for Arbitration concerning Complaint of American Communications Services of Jacksonville, Inc., d/b/a e.spire Communications, Inc., and ACSI Local Switched Services, d/b/a e.spire Communications, Inc., against BellSouth Telecommunications, Inc., regarding reciprocal compensation for traffic terminated to Internet service providers (Docket No. 981008-TP).

1/ The International Telecommunication Union is a United Nations agency charged with the regulation and coordination of international communications services.

Q. HAVE YOU TESTIFIED BEFORE OTHER PANELS ON ISSUES SIMILAR TO THOSE IN THIS PROCEEDING, OR ON OTHER TELECOMMUNICATIONS POLICY ISSUES?

A. Yes. I have testified before the U.S. Congress, the Federal Communications Commission, Canadian Radio-television and Telecommunications Commission (CRTC), and numerous courts and panels.

Among other cases, I have testified in nine state commission proceedings regarding reciprocal compensation for ISP Internet traffic: Complaint of ITC^DeltaCom Communications, Inc., Against BellSouth Telecommunications, Inc., for Breach of Interconnection Terms, and Request for Immediate Relief, Docket No. 1999-033-C (South Carolina); Petition of KMC Telecom, Inc., against BellSouth Telecommunications, Inc., To Enforce Reciprocal Compensation Provisions of the Parties' Interconnection Agreement, Docket No. U-23839 (Louisiana); Complaint of AVR of Tennessee L.P. d/b/a Hyperion of Tennessee L.P. against BellSouth Telecommunications, Inc., To Enforce Reciprocal Compensation and "Most-favored Nation" Provision of the Parties' Interconnection Agreement, Docket No. 98-00530 (Tennessee); Complaint of MFS Intelenet of Georgia, Inc., Against BellSouth

Telecommunications, Inc. and Request for Immediate Relief, Docket No. 8196-U (Georgia); Emergency Petitions of ICG Telecom Group Inc., and ITC DeltaCom Communications, Inc., for a Declaratory Ruling, Docket No. 26619 (Alabama); Connect Communications Corp. v. Southwestern Bell Telephone Co., Docket No. 98-167-C (Arkansas); Application of Brooks Fiber for an Order Concerning Internet Traffic, Cause No. PUD 970000548 (Oklahoma); Complaint and Request for Expedited Ruling of Time Warner, Docket No. 18082 (Texas); and Petition of Birch Telecom for Arbitration of the Rates, Terms, Conditions and Related Arrangements for Interconnection With Southwestern Bell Telephone Company, Case No. TO-98-278 (Missouri).

In addition, I have been deposed as an expert witness in the following: Public Hearing: CCB 80-286(Amendment to Part 36 of the Commission's Rules), FCC (9/8/97); Clifford S. Heinz v. Catherine E. Havelock, *et al.*, O.C.S.C. Case X635521: Teleconnect Company v. U S West Communication, Inc. *et al.*, LA 16330 (Iowa Dist. Ct.); Interferometrics, Inc. v. Mobile Communications Holdings, Inc., *et al.*, C.A. No. 92-1211-A; Public Hearing: TPN CRTC 92-78, APT CRTC 92-78, Review of Regulatory Framework, CRTC (11/18/93); and Linda Davis et al. v. Southern Bell Telephone & Telegraph Company, Case No. 89-2839-CIV-NESBITT (S.D. Fl.).

SECTION A - PAYER INFORMATION

(2) PAYER NAME: TECHNOLOGIES MANAGEMENT, INC.	(3) TOTAL AMOUNT PAID: $630.00
(4) STREET ADDRESS LINE NO. 1: 210 PARK AVENUE, NORTH	
(5) STREET ADDRESS LINE NO. 2:	
(6) CITY: WINTER PARK	(7) STATE: FLORIDA / (8) ZIP CODE: 32789
(9) DAYTIME TELEPHONE NUMBER (include area code): (407) 740-8576	(10) COUNTRY CODE (if not in U.S.A.)

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B

SECTION B - APPLICANT INFORMATION

(11) APPLICANT NAME: GLOBAL NAPs, INC.	
(12) STREET ADDRESS LINE NO. 1: 10 MERRYMOUNT ROAD	
(13) STREET ADDRESS LINE NO. 2:	
(14) CITY: QUINCY	(15) STATE: MASSACHUSETTS / (16) ZIP CODE: 02169
(17) DAYTIME TELEPHONE NUMBER (include area code): 617-507-5100	(18) COUNTRY CODE (if not in U.S.A.)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)

SECTION C - PAYMENT INFORMATION

(19A) FCC CALL SIGN/OTHER ID	(20A) PAYMENT TYPE CODE (PTC)	(21A) QUANTITY	(22A) FEE DUE FOR (PTC) IN BLOCK	FCC USE
	C Q K	1	$630.00	
(23A) FCC CODE 1	(24A) FCC CODE 2			
(19B) FCC CALL SIGN/OTHER ID	(20B) PAYMENT TYPE CODE (PTC)	(21B) QUANTITY	(22B) FEE DUE FOR (PTC) IN BLOCK	FCC USE
(23B) FCC CODE 1	(24B) FCC CODE 2			
(19C) FCC CALL SIGN/OTHER ID	(20C) PAYMENT TYPE CODE (PTC)	(21C) QUANTITY	(22C) FEE DUE FOR (PTC) IN BLOCK	FCC USE
(23C) FCC CODE 1	(24C) FCC CODE 2			
(19D) FCC CALL SIGN/OTHER ID	(20D) PAYMENT TYPE CODE (PTC)	(21D) QUANTITY	(22D) FEE DUE FOR (PTC) IN BLOCK	FCC USE
(23D) FCC CODE 1	(24D) FCC CODE 2			

SECTION D - TAXPAYER INFORMATION (REQUIRED)

04-15-99 0358150 8150110 1 003 18

Mellon Bank

TECHNOLOGIES MANAGEMENT, INC.
P.O. BOX 369
210 N. PARK AVE.
WINTER PARK, FL 32790-0369
(407) 740-8576

Winter Park, FL 32789

22808

Original

4/13/1999

PAY TO THE ORDER OF Federal Communications Commission $ **630.00

Six Hundred Thirty and 00/100**********************************

Federal Communications Commission
The Portals
445 Twelfth Street S.W.
Washington, DC 20554

TECHNOLOGIES MANAGEMENT, INC.

MEMO Filing fee for Global Naps

C.M.Wright

[redacted] /0000063000/

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OFFICIAL

Global NAPs, Inc.
10 Merrymount Road
Quincy, MA 02169
Telephone: (617) 507-5100
Facsimile: (617) 507-5200

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FCC MAIL ROOM

TECHNOLOGIES MANAGEMENT INC.
210 N. Park Ave.
Winter Park, FL
32789

P.O. Drawer 200
Winter Park, FL
32790-0200

Tel: 407-740-8575
Fax: 407-740-0613
tmi@tminc.com

VIA OVERNIGHT DELIVERY
April 13, 1999

Transmittal No. 1

4/15/99
L 10

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
12 Street Lobby, TW-A325
Washington, D.C. 20554
Attention Common Carrier Bureau

Disk Filed

Dear Ms. Salas:

The accompanying tariff material is sent to you for filing on behalf of Global NAPs, Inc. In compliance with the Commission's requirements, this filing is being made on 3.5" diskette in WordPerfect 5.1 format. This material consists of tariff pages as indicated on the following check sheets:

Tariff FCC No. 1 - Original Page 1 (Access)
Tariff FCC No. 2 - Original Page 1 (Interstate)

Global NAPs respectfully requests this revision to become effective April 15, 1999.

This filing introduces Global NAPs' Access and Interstate tariffs.

In accordance with Section 61.20(b) of the Commission's Rules, this original letter, FCC Remittance Form and the appropriate fee were sent via overnight delivery on this date to the FCC in care of the Mellon Bank of Pittsburgh, PA. And in accordance with Section 61.20(c) of the Commission's Rules, copies of this letter and the underlying tariff pages on disk were also sent this date via overnight delivery to the Chief-Tariff Review Branch and the FCC Contractor.

Please acknowledge receipt of this application and filing fee by returning a date-stamped copy of the enclosed cover letter duplicate in the return envelope provided for that purpose.

Petitions pertaining to this filing may be served by facsimile to:

Regulatory Contact:
William J. Rooney, General Counsel
Telephone: (617) 507-5100
Facsimile: (617) 507-5200

Please address any other inquiries or further correspondence regarding this filing to my attention.

Sincerely,

C.M. Wightman

Connie Wightman
Consultant to
Global NAPs, Inc.

CW/ig.

cc: Mellon Bank
ITS, Inc. (disk)
Chief, Tariff Review Branch, FCC (disk)
William J. Rooney, Global NAPs
File: Global NAPs - FCC 1 - Access
Global NAPs - FCC 2 - Interstate
TMS: FCC9901

READ INSTRUCTIONS CAREFULLY BEFORE PROCESSING

FEDERAL COMMUNICATIONS COMMISSION

APPROVED BY OMB 3060-0589

REMITTANCE ADVICE

PAGE NO. 1 OF 1

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)
TECHNOLOGIES MANAGEMENT, INC.

(3) TOTAL AMOUNT paid (dollars and cents)
$630.00

(4) STREET ADDRESS LINE NO. 1
210 PARK AVENUE, NORTH

(5) STREET ADDRESS LINE NO. 2

(6) CITY
WINTER PARK

(7) STATE
FLORIDA

(8) ZIP CODE
32789

(9) DAYTIME TELEPHONE NUMBER (Include area code)
(407) 740-8575

(10) COUNTRY CODE (If not in U.S.A.)

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B

SECTION B - APPLICANT INFORMATION

(11) APPLICATION NAME (if paying by credit card enter name exactly as it appears on your card)
GLOBAL NAPs, INC.

RECEIVED

(12) STREET ADDRESS LINE NO. 1
10 MERRYMOUNT ROAD

APR 14 1999

(13) STREET ADDRESS LINE NO. 2

(14) CITY
QUINCY

(15) STATE
MASSACHUSETTS

(16) ZIP CODE
02169

FCC MAIL ROOM

(17) DAYTIME TELEPHONE NUMBER (Include area code) 617-507-5100

(18) COUNTRY CODE (If not in U.S.A.)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)

SECTION C - PAYMENT INFORMATION

(19A) FCC CALL SIGN/OTHER ID	(20A) PAYMENT TYPE CODE (PTC)	(21A) QUANTITY	(22A) FEE DUE FOR (PTC) IN BLOCK	FCC USE
	C Q K	1	$630.00	
(23A) FCC CODE		(24A) FCC CODE 2		
(19B) FCC CALL SIGN/OTHER ID	(20B) PAYMENT TYPE CODE (PTC)	(21B) QUANTITY	(22B) FEE DUE FOR (PTC) IN BLOCK	FCC USE
(23B) FCC CODE		(24B) FCC CODE 2		
(19C) FCC CALL SIGN/OTHER ID	(20C) PAYMENT TYPE CODE (PTC)	(21C) QUANTITY	(22C) FEE DUE FOR (PTC) IN BLOCK	FCC USE
(23C) FCC CODE 1		(24C) FCC CODE 2		
(19D) FCC CALL SIGN/OTHER ID	(20D) PAYMENT TYPE CODE (PTC)	(21D) QUANTITY	(22D) FEE DUE FOR (PTC) IN BLOCK	FCC USE
(23D) FCC CODE 1		(24D) FCC CODE 2		

SECTION D - TAXPAYER INFORMATION (REQUIRED)

(25) PAYER TIN 6 6 - 2 7 1 7 5 0 8

(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IN B-AA IS DIFFERENT FROM PAYER NAME IN A-2
APPLICANT TIN 5 1 - 0 3 7 7 7 1 5

SECTION E - CERTIFICATION

(27) CERTIFICATION STATEMENT
I, Connie Wightman, Consultant to Global NAPs, certify under penalty of perjury that the foregoing and supporting information (print name) are true and correct to the best of my knowledge, information and belief.
SIGNATURE ____________

SECTION F- CREDIT CARD PAYMENT INFORMATION

(28) MASTERCARD/VISA ACCOUNT NUMBER: MASTERCARD

EXPIRATION DATE: Month Year

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s) / authorization(s) herein described.

AUTHORIZED SIGNATURE ____________ DATE ____

TECHNOLOGIES MANAGEMENT, INC.
P.O. BOX 200
210 N. PARK AVE.
WINTER PARK, FL 32789-0200
(407) 740-8575

NATIONSBANK
WINTER PARK, FL 32789
63-27/631

22806

4/13/1999

PAY TO THE ORDER OF Federal Communications Commission $ **630.00

Six Hundred Thirty and 00/100*** DOLLARS

Federal Communications Commission
The Portals
445 Twelfth Street S.W.
Washington, DC 20554

TECHNOLOGIES MANAGEMENT, INC.

MEMO Filing fee for Global Naps

[redacted]

TECHNOLOGIES MANAGEMENT, INC. 22806

Federal Communications Commission 4/13/1999
04/13/1999 Bill #Global Naps 630.00

REDACTED

Cash operating Filing fee for Global Naps 630.00

SECTION 7A - *ISP TRAFFIC DELIVERY SERVICE*

7A.1 Scope Of Tariff.

This Tariff applies to telecommunications delivered to the Company by a local exchange carrier (the "Delivering LEC") for further delivery to an Internet Service Provider ("ISP") which obtains connections to the public switched network from the Company. This tariff applies to all ISP-bound traffic for which the Company does not receive compensation from the Delivering LEC under the terms of an interconnection agreement entered into pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (an "Interconnection Agreement").

7A.2 Delivering LEC Election To Obtain Service Pursuant To This Tariff.

A Delivering LEC with which Company has an Interconnection Agreement may avoid charges under this Tariff by agreeing to treat ISP-bound calls delivered to Company as "local traffic" subject to reciprocal compensation under Section 251(b)(5) and applicable terms of the Interconnection Agreement. Failure by a such a carrier to actually compensate Company for ISP-bound traffic as local traffic under the terms of an Interconnection Agreement shall constitute an election to compensate Company under the terms of this Tariff.

7A.3 Application Of Tariff.

This Tariff applies to all ISP-bound traffic that is subject to the jurisdiction of the Federal Communications Commission. To the extent that a Delivering LEC asserts that the terms of an Interconnection Agreement do not apply to some or all ISP-bound traffic due to the jurisdictionally interstate nature of such traffic, that assertion shall constitute a binding election to treat all ISP-bound traffic not subject to an Interconnection Agreement as jurisdictionally interstate and subject to this Tariff.

Exhibit "A"

SECTION 7A - ISP TRAFFIC DELIVERY SERVICE, (cont'd.)

7A.4 Rates

This Tariff establishes a switching rate which relates to the function Company undertakes in directing a call dialed by a Delivering LEC's end user to the ISP (served by the Company) that the end user wants to reach. This rate applies per minute of use.

Rate: $0.008/minute

7A.5 Billing

Billing for charges under this tariff shall normally be monthly in arrears. Failure to render a bill shall not constitute a waiver of Company's right to payment for any services provided, as long as the bill for any such period is rendered no later than two years following the expiration of that period.

Payment shall be due in immediately available funds no later than 30 days after the date of the bill.

William J. Rooney, Secretary and General Counsel
10 Merrymount Road
Quincy, Massachusetts 02169

Exhibit 'A'

SECTION 8 - PROMOTIONS

8.1 Promotions - General

From time to time the Company shall, at its option, promote subscription or stimulate network usage by offering to waive some or all of the nonrecurring or recurring charges for the Customer (if eligible) of target services for a limited duration. Such promotions shall be made available to all similarly situated Customers in the target market area.

8.2 Demonstration of Service

From time to time the Company shall demonstrate service by providing free channels for a limited period of time.

William J. Rooney, Secretary and General Counsel
10 Merrymount Road
Quincy, Massachusetts 02169

Exhibit "A"

SECTION 9 - CUSTOMER SPECIFIC CONTRACTS

9.1 General

The Company may provide any of the services offered under this tariff, or combinations of services, to Customers on a contractual basis. The terms and conditions of each contract offering are subject to the agreement of both the Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. Rates in other sections of this tariff do not apply to Customers who agree to contract arrangements, with respect to services within the scope of the contract.

Services provided under this tariff are not eligible for any promotional offerings which may be offered by the Company from time to time.

Contracts in this section are available to any similarly situated Customer that places and order within 90 days of their effective date.

Exhibit "A"