



	I N D E X	
	WITNESSES - VOLUME 2	
3	NAME:	PAGE NO.
4	DAVID D. SCOLLARD	
5	Direct Examination by Mr. Goggin	182
	Prefiled Direct Testimony Inserted	185
6	Cross-Examination by Mr. Moyle	191
7	ELIZABETH R. A. SHIROISHI	
8	Direct Examination by Mr. Edenfield	196
	Prefiled Direct Testimony Inserted	203
9	Prefiled Rebuttal Testimony Inserted	228
	Cross-Examination by Mr. Moyle	239
10		
	ALBERT HALPRIN	
11	Direct Examination by Mr. Edenfield	249
12	Prefiled Direct Testimony Inserted	252
	Prefiled Rebuttal Testimony Inserted	291
13	Cross-Examination by Mr. Savage	318
	Redirect Examination by Mr. Edenfield	338
14	Recross Examination by Mr. Savage	339
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	2 EXHIBITS - VOLUME 2		
3	NUMBER:	ID	ADMTD
4	7 (Confidential) BellSouth Internal Billing Records	182	182
5	8 (Confidential) March 5, 1998 Memo	182	182
6	9 (Confidential) E-Mail Dated 10-24-97	182	182
7	10 (Confidential) Response to Inter- rogatory No. 3	182	182
8	11 (Confidential) Response to Inter- rogatory No. 4	182	182
9	12 Exhibit to Ms. Shiroishi Testimony	198	247
10	13 General Terms and Conditions, Page 19	248	248
11	14 Excerpt of PSC Order 98-0045-FOF-TP	248	248
12	15 Exhibits to Mr. Halprin's Direct Testimony	251	347
13	16 Exhibits to Mr. Halprin's Rebuttal Testimony	251	347
14			
15			
16			
17			
18	CERTIFICATE OF REPORTER		350
19			
20			
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 COMMISSIONER DEASON: BellSouth.

3 MR. SAVAGE: Just a note, Your Honor. We  
4 haven't yet worked out the details of these various  
5 confidential things, and I don't want to formally conclude  
6 our case without -- I would just like to reserve until  
7 after the next break to move in the various documents that  
8 we talked about this morning that BellSouth produced  
9 yesterday.

10 COMMISSIONER DEASON: You will be allowed to do  
11 so.

12 MR. MOYLE: If it is possible, we could do it  
13 now. We are prepared to do it now.

14 COMMISSIONER DEASON: You are prepared to do it?  
15 Well, we will go ahead and address it now.

16 MR. MOYLE: Great. Let me just describe what we  
17 are doing with respect to the documents provided to us  
18 yesterday by BellSouth which they are asserting  
19 confidential protection for.

20 Without waiving any right to subsequently  
21 contest their view that it is confidential, in order to  
22 move the process along today, we have agreed to treat  
23 these as confidential while reserving our right to  
24 subsequently object. We have folders that have been  
25 sealed that have five documents on the outside of the

1 folder. Each document is labeled in a way that doesn't  
2 describe it's contents. I will provide copies of this to  
3 opposing counsel and to the court reporter and they can be  
4 held under seal until -- if we feel a need to come back  
5 and address them later.

6 COMMISSIONER DEASON: Very well. Do you wish to  
7 have these identified in any way?

8 MR. MOYLE: Yes. I would like them identified  
9 as Confidential Exhibits 1 through 5, and I have marked  
10 them as such on the envelopes that I have handed out.

11 COMMISSIONER DEASON: Is it okay to identify  
12 them in a composite manner, or do you want them separately  
13 identified?

14 MR. MOYLE: I think it might help to separately  
15 identify them, because we are going to have subsequent  
16 discussions. And if we reach agreement that certain ones  
17 are not confidential, then we can go in and remove the  
18 confidential protection.

19 COMMISSIONER DEASON: Are they identified 1  
20 through 5, each separate exhibit is identified with a  
21 number, Confidential Exhibit 1, 2, 3, 4, 5?

22 MR. MOYLE: Correct. And if it would help, for  
23 the record I can read exactly what each one is termed and  
24 the confidential number assigned to it.

25 COMMISSIONER DEASON: Please do so.

1           MR. MOYLE: Okay. Confidential Exhibit 1 is a  
2 portion of BellSouth's internal billing records regarding  
3 Global NAPs.

4           Confidential Number 2 is a BellSouth memorandum  
5 of March 5th, 1998 from David Hollit (phonetic) to Allen  
6 Price and Bill Stacey (phonetic).

7           Confidential Exhibit Number 3 is an E-mail from  
8 BellSouth dated 10/24/97 regarding CABs.

9           Confidential Exhibit Number 4 is BellSouth's  
10 response to Global NAPs Interrogatory Number 3.

11           And Confidential Number 4 is a response to  
12 Interrogatory Number 23.

13           And BellSouth's response to Global NAPs  
14 Interrogatory Number 4 is identified as Confidential  
15 Exhibit Number 5.

16           COMMISSIONER DEASON: Okay. As you have  
17 described these exhibits, Confidential Exhibit 1 will be  
18 identified as Exhibit 7, Confidential Exhibit 2 will be  
19 identified as Exhibit 8, Confidential Exhibit 3 will be  
20 identified as Exhibit 9, Confidential Exhibit 4 will be  
21 identified as Exhibit 10, and Confidential Exhibit 5 will  
22 be identified as Exhibit 11.

23           MR. MOYLE: Thank you.

24           COMMISSIONER DEASON: Are you moving the  
25 adoption of these exhibits as part of the record at this

1 time, moving these into the record.

2 MR. MOYLE: Yes, under seal.

3 COMMISSIONER DEASON: Any objection?

4 MR. GOGGIN: No objection.

5 COMMISSIONER DEASON: Very well. Show then that  
6 Exhibits 7 through 11 are admitted.

7 (Exhibit Numbers 7 through 11 marked for  
8 identification and received into evidence.)

9 COMMISSIONER DEASON: Any further exhibits at  
10 this point from Global?

11 MR. SAVAGE: Let me confer briefly, but I think  
12 we are done. Your Honor, we are done.

13 COMMISSIONER DEASON: Very well. BellSouth.

14 MR. GOGGIN: Commissioners, BellSouth would like  
15 to call Mr. David Scollard as its first witness.

16 COMMISSIONER DEASON: We are deviating from the  
17 order in the prehearing order? I have no objection to  
18 that, I just need to know if we are and why.

19 MR. GOGGIN: I apologize, we are deviating from  
20 the prehearing order. At the prehearing conference I  
21 requested that the order of the witnesses be rearranged to  
22 have Mr. Halprin go first. We would now like to change  
23 our mind, if that is okay with the parties.

24 COMMISSIONER DEASON: Any objection?

25 MR. SAVAGE: No objection, Your Honor.

1           COMMISSIONER DEASON: Hearing no objection, then  
2 please proceed.

3           MR. EDENFIELD: Commissioner Deason, just for  
4 clarity purposes, our intention is to call Mr. Scollard  
5 first, Ms. Shiroishi second, and Mr. Halprin third.

6           COMMISSIONER DEASON: Any objection to that  
7 order?

8           MR. SAVAGE: No objection.

9           COMMISSIONER DEASON: Very well.  
10 Thereupon,

11                                   DAVID SCOLLARD  
12 was called as a witness on behalf of BellSouth  
13 Telecommunications, Inc., and having been duly sworn,  
14 testified as follows:

15                                   DIRECT EXAMINATION

16 BY MR. GOGGIN:

17           Q     Mr. Scollard, could you please state your full  
18 name and address for the record.

19           A     Yes. David Scollard, 600 North 19th Street,  
20 Birmingham, Alabama.

21           Q     Mr. Scollard, did you submit prefiled direct  
22 testimony totaling five pages in this matter?

23           A     Yes.

24           Q     If I were to ask you all the same questions that  
25 were posed to you in that prefiled testimony today, would



1 your answers be the same?

2 A Yes.

3 Q Do you adopt that prefiled testimony as your own  
4 today?

5 A Yes, I do.

6 MR. GOGGIN: I would like to ask that Mr.  
7 Scollard's testimony be admitted into the record in this  
8 matter.

9 COMMISSIONER DEASON: Without objection, it  
10 shall be so inserted into the record.

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1 BY MR. GOGGIN:

2 Q Mr. Scollard, do you wish to provide a summary  
3 of your testimony today?

4 A Yes, I do.

5 Q Please proceed.

6 A Good afternoon. My job at BellSouth is to  
7 manage certain changes being made to the systems used to  
8 support BellSouth's wholesale customers, including ALECs.  
9 For the most part, my work has been with CABS, or the  
10 Carrier Access Billing System. CABS is used to bill  
11 ALECs and other telecommunications providers for  
12 interconnection services ordered from BellSouth. Based on  
13 this work, I am sometimes asked to provide PSCs and other  
14 regulatory bodies with information on how CABS works.

15 My testimony in this proceeding provides some  
16 detail as to what actions BellSouth has taken in the past  
17 to avoid billing ALECs for traffic bound for ISP  
18 facilities. Simply put, BellSouth has never knowingly  
19 billed an ALEC for ISP traffic.

20 Let me summarize my testimony that supports that  
21 statement. In the very early stages of local competition,  
22 specifically in October of 1995, our CABS system was  
23 revised to avoid billing ALECs for any traffic. The  
24 intents of this was to take the time to work through the  
25 issues that were just then being identified prior to



1 respect to telephone numbers.

2           Is it true that every telephone number has ten  
3 digits?

4           A     For the purposes of our billing system, I know  
5 of no telephone number that doesn't have ten digits.

6           Q     So it would be accurate to say that for the  
7 purposes of your billing system every telephone number  
8 does have ten digits, correct?

9           A     Yes.

10          Q     And in your deposition I asked you this  
11 question, but let me ask you, if you don't call the first  
12 three numbers of a ten-digit call, the call is local,  
13 correct?

14          A     I don't know if you can classify local versus  
15 non-local based always on how you dial the number, so I  
16 don't know how to answer that.

17          Q     Let me refer you to your deposition. For the  
18 record, on Page 7, Line 21. Do you have a copy?

19          A     Yes, I do.

20          Q     On Page 17, Line 18, I was asking you about the  
21 ten digits versus seven digits, and I asked you the  
22 question it can be seven digits --

23          A     I'm sorry, what page again?

24          Q     Page 7 of your deposition.

25          A     Okay, I'm there.

1 Q If you would read Lines 18 through 23 for me?

2 A Okay.

3 18 reads, "Question: It can be seven digits?"

4 Line 19, "Answer: Yes, but even when you dial  
5 a seven digit number there are ten digits associated with  
6 that line."

7 Q And then the question?

8 A The next question, also?

9 Q Line 21.

10 A I'm sorry. "Question: You just don't dial the  
11 first three if it is a local call?"

12 "A: That is my understanding."

13 Q So is it indeed your understanding that if you  
14 don't dial the first three it is a local call as you  
15 testified to in your deposition?

16 MR. GOGGIN: Objection. I don't think that is  
17 the question that he was asked in his deposition.

18 MR. MOYLE: I'm asking him that now.

19 COMMISSIONER DEASON: I understand that is not  
20 the question. I think that counsel is trying to get  
21 further clarification, I will allow the question.

22 THE WITNESS: Could you repeat the question,  
23 please.

24 BY MR. MOYLE:

25 Q Let me ask it this way. Was it your deposition

1 testimony if you don't dial the first three numbers of a  
2 ten-digit number that it is a local call, or it's your  
3 understanding that it is a local call?

4 A It is my understanding that if you dial just  
5 seven digits many times that is a local number. I don't  
6 know if that is every time you dial just seven digits or  
7 what. But it is my understanding that if you dial seven  
8 digits, many times that is a local call.

9 Q Okay. And the system you developed to segregate  
10 ISP traffic doesn't have any way to identify dialing  
11 patterns which have seven digit numbers, correct?

12 A The system we put in place contains all ten  
13 digits of each number that we identify as being used by an  
14 ISP. It doesn't matter if it is dialed seven digits to  
15 reach that ISP or dial ten digits to reach that ISP, we  
16 use all ten digits to identify that ISP facility.

17 Q But does the system have any way of identifying  
18 dialing patterns which have seven digits numbers?

19 A No. The system we put in place has nothing to  
20 do with dialing patterns. It only has to do with when we  
21 get a call record for a particular call in-bound to our  
22 switch, it looks at the number that is populated as the  
23 called number, takes all ten digits that get recorded in  
24 the switch, and compares that to the data base we have,  
25 which includes all ten digits of the number. So the

1 dialing pattern really does not play a part in what we  
2 were trying to do, nor does it really matter.

3 Q Do you know if you can gain access to the  
4 Internet through a seven-digit call?

5 A Yes, I believe you can.

6 Q Your testimony involves a lot of technical  
7 efforts BellSouth made to single out ISP-bound traffic,  
8 wouldn't that be a correct statement?

9 A Yes.

10 Q Are you aware if the contracts between the  
11 parties makes any effort to single out ISP-bound traffic  
12 in any way?

13 A No, I don't. I have never read the contract, so  
14 I don't know what is in there.

15 MR. MOYLE: Thank you. I have nothing further.

16 COMMISSIONER DEASON: Staff.

17 MS. KEATING: Staff has no questions.

18 COMMISSIONER DEASON: Commissioners. Redirect.

19 MR. GOGGIN: We have no questions, Commissioner.

20 COMMISSIONER DEASON: Okay. And there are no  
21 exhibits.

22 You may be excused.

23 You may call your next witness.

24 MR. EDENFIELD: Commissioner Deason, BellSouth  
25 calls Beth Shiroishi, also known as Elizabeth Shiroishi.

1 Thereupon,

2 ELIZABETH SHIROISHI

3 was called as a witness on behalf of BellSouth  
4 Telecommunications, Inc., and having been duly sworn,  
5 testified as follows:

6 BY MR. EDENFIELD:

7 Q State your name and business address for the  
8 record, please.

9 A Elizabeth R.A. Shiroishi. Business address is  
10 675 West Peachtree Street, Atlanta, Georgia.

11 Q Did you cause to be filed in this proceeding 25  
12 pages of direct testimony with one exhibit; and seven  
13 pages of rebuttal testimony with no exhibits?

14 A Yes, I did.

15 Q Do you have any corrections or modifications to  
16 either your direct or rebuttal testimony?

17 A Yes, I have a few minor changes.

18 Q Please give us those.

19 A On Page 11 of my direct testimony, Line 5 should  
20 read, "Local traffic means," and "any" should be inserted,  
21 so that it reads, "Local traffic means any telephone  
22 call," and then we need to delete the S from calls --  
23 "that originates," and add an S to originate. So, again,  
24 it should read, "Local traffic means any telephone call  
25 that originates."



1           Q     Do you have any other corrections or  
2 modifications?

3           A     Yes.  On Page 16, Line 3, the word assigned  
4 should be actually the two words as defined, so that it  
5 reads, "Terminates within a local area as defined in the  
6 following."

7           Q     Any others?

8           A     On the same page, Line 25, starting with the  
9 sentence, "However, it is," we need to delete is and it  
10 should read, "However, it appears."

11          Q     Any more?

12          A     One more.  In rebuttal testimony, on Page 6, it  
13 is actually the same corrections that were made to direct,  
14 "Local traffic means any telephone call that originates."

15          Q     Is that it for the corrections?

16          A     That is.

17          Q     If I asked you today the same questions that  
18 appear in your testimony, in your direct and rebuttal  
19 testimony, would your answers be the same?

20          A     Yes, they would.

21                 MR. EDENFIELD:  At this time BellSouth would ask  
22 that the direct and rebuttal testimony of Ms. Shiroishi be  
23 put into the record as if read.

24                 COMMISSIONER DEASON:  Without objection, it  
25 shall be so inserted.

1           MR. EDENFIELD: We also have one exhibit  
2 attached to the direct testimony of Ms. Shiroishi, and  
3 would ask that that be identified at this time.

4           COMMISSIONER DEASON: It will be identified as  
5 Exhibit 12.

6           (Exhibit Number 12 marked for identification.)

7           MR. SAVAGE: Your Honor, we do have an objection  
8 to portions of Ms. Shiroishi's testimony. I don't know  
9 whether to deal with that --

10          COMMISSIONER DEASON: Okay. Let's take that up  
11 at this time, then. I have already said it can be  
12 inserted into the record, but I did not know there were  
13 objections, so we will go back and address those  
14 objections.

15          MR. SAVAGE: The concern we have rises from  
16 Section 90.604 of the Florida Evidence Code relating to  
17 lack of personal knowledge. I think it is clear from the  
18 face of Ms. Shiroishi's testimony that she had nothing to  
19 do whatsoever with the negotiation of the original  
20 agreement between DeltaCom and BellSouth, nor with the  
21 proceedings that led to the adoption by Global NAPs of  
22 that agreement in the fall of '98 and early 1999.

23          Notwithstanding that, her testimony is replete  
24 with references to the intent of the parties and so on.  
25 And it seems to me that sort of as a matter of common

1 sense, if she had nothing to do with either of those -- I  
2 mean, we don't even concede that that is relevant, but  
3 granting that, it can't have any impact on what  
4 BellSouth's intent was either corporately or the form of  
5 the people who actually did it. So I think that it just  
6 isn't lawful testimony on the topic it purports to address  
7 under this portion of the evidence code.

8 COMMISSIONER DEASON: Do you have specific  
9 references, line and page?

10 MR. SAVAGE: I could prepare that. Frankly, we  
11 have, I believe, the same objection to the remainder of  
12 her testimony which relates to her discussion of ISPs and  
13 ISP-bound calling. There is nothing in her background or  
14 testimony that indicates any basis for expert knowledge as  
15 to how ISPs process calls or what they do with those  
16 calls. And so it is just a statement of someone about  
17 something.

18 In fact, it is her entire testimony that we  
19 think should be stricken, because it sort of states what I  
20 take to be BellSouth's corporate policy on these things,  
21 but there is no evidence that she actually has any  
22 personal knowledge of anything she is testifying to.

23 COMMISSIONER DEASON: Okay. There is an  
24 objection to the entire testimony. We are talking direct  
25 and rebuttal, is that correct?

1           MR. SAVAGE: Yes, that's correct. The rebuttal  
2 addresses this question of intent again.

3           MR. EDENFIELD: My response is this, first and  
4 foremost, no part of the objection raised by Global NAPs  
5 gives rise to the case where this testimony should be  
6 stricken. To the extent Mr. Savage would like to explore  
7 this witness' knowledge and her ability to have been  
8 there, her knowledge about ISP, those are all topics for  
9 cross examination. None of those are grounds to have this  
10 witness' testimony stricken.

11           There is no limitation against hearsay to my  
12 knowledge. He can certainly explore. The Commission will  
13 hear that she is intimately familiar with what happened  
14 based on her review of the records that exist,  
15 conversations with other people, and based on her review  
16 of the business records of BellSouth.

17           Certainly, again, nothing that has been stated  
18 by Mr. Savage gives rise to striking this witness'  
19 testimony, which is the extreme of all remedies.  
20 Certainly he can -- you know, if he has got some questions  
21 about whether she is qualified, he can address them on  
22 cross examination.

23           COMMISSIONER DEASON: Mr. Savage.

24           MR. SAVAGE: Well, I mean, here is what 96.04  
25 says, "Except as otherwise provided in 90.702," which I

1 will get to in a minute," a witness may not testify to a  
2 matter unless evidence is introduced which is sufficient  
3 to support a finding that the witness has personal  
4 knowledge of the matter. Evidence to prove personal  
5 knowledge may be given by the witness' own testimony," but  
6 again there is no evidence in this testimony that she has  
7 that knowledge.

8           Now, 702 relates to experts, testimony by  
9 experts. If scientific, technical, or other specialized  
10 knowledge will assist the trier of fact in understanding  
11 the evidence or in determining a fact in issue, a witness  
12 qualified as an expert by knowledge, skill, experience,  
13 training, or education may testify about it in the form of  
14 an opinion. However, the opinion is admissible only if it  
15 can be applied to evidence at trial."

16           So, for example, we are not moving to strike  
17 Doctor Banerjee's testimony. Although we disagree with  
18 it, he is plainly an expert in the field of economics and  
19 is entitled to his opinions, just as ours are. But as to  
20 the fact question of the parties' intent, Ms. Shiroishi  
21 has no personal knowledge, again as evidenced by her own  
22 testimony.

23           As to that technical question of what ISPs do  
24 and how they do it, nothing in her testimony remotely  
25 suggests any expertise, as compared, for example, perhaps

1 to Mr. Milner, who has, you know, been in the business for  
2 30 years, or Mr. Goldstein, who has three patents and a  
3 book. I just don't think that this testimony, in fact,  
4 adds anything other than, you know, sort of BellSouth's  
5 generic positions. And I don't think it is lawful under  
6 these provisions of the evidence code.

7           COMMISSIONER DEASON: I'm going to deny the  
8 objection. It is duly noted. The testimony will stay in  
9 the record as was previously determined. You certainly  
10 may pursue any deficiencies in her credentials, or  
11 experience, or opinions on cross examination.

12           Does the witness have a summary?

13           MR. EDENFIELD: I think that is where we left  
14 off, Commissioner Deason.

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1 BY MR. EDENFIELD:

2 Q Ms. Shiroishi, did you prepare a summary of your  
3 testimony?

4 A Yes, I did.

5 Q Would you please give that summary now.

6 A Good afternoon. I am Beth Shiroishi, and I am  
7 responsible at BellSouth for the negotiation of  
8 interconnection agreement in ISP issues. The issue at  
9 hand in this proceeding is whether or not reciprocal  
10 compensation is due under the Global NAPs/BellSouth  
11 interconnection agreement for ISP-bound traffic.

12 Allow me to set the stage. On August 21st,  
13 1998, Global NAPs contacted BellSouth about negotiating an  
14 interconnection agreement. Following our normal  
15 procedures, BellSouth mailed to Global NAPs a copy of our  
16 standard interconnection agreement which contained  
17 language that clarifies that ISP-bound traffic is neither  
18 local nor subject to reciprocal compensation.

19 Shortly thereafter, Global NAPs advised  
20 BellSouth that it wished to adopt the terms and conditions  
21 of an agreement which BellSouth had with another carrier.  
22 As such, Global NAPs and BellSouth entered into an  
23 interconnection agreement on January 18, 1999. Due to the  
24 expiration date of the agreement adopted by Global NAPs,  
25 the term of this Global NAPs/BellSouth agreement is

1 limited to six months. The agreement expired on July 1st,  
2 1999.

3 The BellSouth/Global NAPs agreement clearly  
4 defines local traffic, and I quote here from Section 49 of  
5 Attachment B of the agreement, "As any telephone call that  
6 originates in one exchange or LATA and terminates in  
7 either the same exchange or LATA or a corresponding  
8 extended area service exchange."

9 Likewise, the agreement clearly describes the  
10 reciprocal compensation arrangement in Section 6B, as  
11 amended, which states, "Each party agrees to terminate  
12 local traffic originated and routed to it by the other  
13 party. Each party will pay the other for terminating its  
14 local traffic on the others network. The local  
15 interconnection rate of .009 cents per minute of use in  
16 all states.

17 As the FCC confirmed, ISP-bound traffic is not  
18 local and does not terminate at the ISP. Paragraph 12 of  
19 the February 26, 1999 declaratory ruling states, "We  
20 conclude, as explained further below, that the  
21 communication at issue," Referring, of course, to  
22 ISP-bound traffic, "here do not terminate at the ISP's  
23 local server, as CLECs and ISPs contend, but continue to  
24 the ultimate destination or destinations, specifically at  
25 an Internet website that is often located in another



1 state."

2           The language in the contract limits local  
3 traffic and the reciprocal compensation provision to  
4 traffic that terminates. Therefore, the language of the  
5 contract is clear that local traffic does not include  
6 non-local ISP-bound traffic and reciprocal compensation is  
7 not due for this non-local ISP-bound traffic.

8           At the time this agreement was entered into,  
9 BellSouth understood based on federal orders that  
10 ISP-bound traffic was subject to the jurisdiction of the  
11 FCC. As such, BellSouth knew that it would be totally  
12 inappropriate to include interstate traffic as local  
13 traffic subject to reciprocal compensation. In fact,  
14 BellSouth's position on this issue was public record at  
15 the time that BellSouth and Global NAPs entered into this  
16 agreement.

17           I think it would be safe to say that as of  
18 January 1999 most telecommunications players new and  
19 understood BellSouth's position that ISP-bound traffic is  
20 non-local traffic which is not entitled to reciprocal  
21 compensation. In fact, by Mr. Rooney own admission,  
22 Global NAPs was absolutely unquestionably aware of  
23 BellSouth's position and that BellSouth would not agree to  
24 define ISP-bound traffic as local traffic within the  
25 reciprocal compensation provisions of an interconnection

1 agreement.

2           As such, there is no way that BellSouth and  
3 Global NAPs could have mutually, voluntarily agreed to  
4 include ISP-bound traffic in the local traffic definition,  
5 or the reciprocal compensation provisions of their  
6 interconnection agreement.

7           The FCC's February 26, 1999 declaratory ruling  
8 states in Footnote 87 that the reciprocal compensation  
9 requirements of 251(b)(5) do not govern intercarrier  
10 compensation for ISP-bound traffic. Thus, if the parties  
11 had intended to include such traffic as subject to  
12 reciprocal compensation, they would have had to  
13 voluntarily created a distinct express inclusion in the  
14 contract language. Such a distinct express voluntary  
15 inclusion is absent from the agreement in question.

16           In conclusion, let me be perfectly clear.  
17 BellSouth did not intend to pay reciprocal compensation  
18 for ISP-bound traffic, the act does not mandate that we  
19 pay reciprocal compensation for this type of traffic, and  
20 the agreement does not require us to do so. Therefore,  
21 for these reasons, Global NAPs is not entitled to  
22 reciprocal compensation for ISP-bound traffic.

23           That concludes my summary. Thank you.

24           MR. EDENFIELD: Ms. Shiroishi is available for  
25 cross.

1 COMMISSIONER DEASON: Mr. Moyle.

2 MR. MOYLE: Thank you, Mr. Chairman.

3 CROSS EXAMINATION

4 BY MR. MOYLE:

5 Q Ms. Shiroishi, when was the DeltaCom agreement  
6 with BellSouth entered into that was subsequently adopted  
7 by Global NAPs?

8 A The DeltaCom/BellSouth interconnection agreement  
9 was signed and effective on July 1st, 1997.

10 Q July 1st, 1997?

11 A Yes.

12 Q And when did you begin working for BellSouth?

13 A In July of 1998.

14 Q What did you do prior to that?

15 A Prior to beginning employment at BellSouth, I  
16 worked as a public high school teacher.

17 Q What degree did you receive from college?

18 A I received a Bachelor's of Art in classical  
19 languages and literatures and a minor in music with  
20 certification to teach K through 12.

21 Q You don't have an engineering or scientific  
22 degree of any kind, do you?

23 A No.

24 Q And you have never worked for an Internet  
25 service provider, have you?

1           A     No.

2           Q     And in your deposition when I asked you whether  
3 you considered yourself an expert in ISP-bound traffic,  
4 you said you didn't, correct?

5           A     I stated that I felt I was well versed in the  
6 issues.

7           Q     But not an expert?

8           A     I don't remember how I answered that specific  
9 part.

10          Q     Do you have a copy of your deposition?

11          A     Yes, I do.

12          Q     On Page 28, Line 10, if you would read Lines 10  
13 through 14, please.

14          A     Line 10, is that where you want me to start?

15          Q     Correct.

16          A     It says, "Okay. Do you consider yourself an  
17 expert in the nature of ISP-bound traffic?" And the  
18 answer is, "I wouldn't want to consider myself -- I  
19 wouldn't say considered an expert. I am well-versed in  
20 these issues."

21          Q     Okay. The testimony that you have provided to  
22 this Commission, it refers to an interconnection agreement  
23 between BellSouth and DeltaCom dated July 1, 1997,  
24 correct?

25          A     Can you point me to that reference?

1 Q Just in general terms, I think the  
2 interconnection agreement that we are talking about is a  
3 DeltaCom/BellSouth agreement, correct?

4 A No, I think that the interconnection agreement  
5 we are talking about is the BellSouth/Global NAPs  
6 interconnection agreement.

7 Q Okay. And did Global NAPs opt into a particular  
8 contract?

9 A Global NAPs adopted the terms and conditions of  
10 an existing contract.

11 Q And which contract was that?

12 A The DeltaComm agreement.

13 Q And do you know who drafted the DeltaCom  
14 agreement?

15 A The standard interconnection agreements at  
16 BellSouth are drafted by many different people. There is  
17 not one single person that drafts them.

18 Q Are they all within the employ of BellSouth?

19 A Mostly. I would say I don't want to limit it  
20 without checking on that fact. But mostly they are by  
21 employees of BellSouth.

22 Q The DeltaCom agreement, you weren't involved in  
23 any way in negotiating that agreement, were you?

24 A The original DeltaCom agreement?

25 Q Correct.

1 A No.

2 Q And you weren't involved with Global NAPs in  
3 negotiating that adoption agreement in any way, were you?

4 A I was involved with the interconnection  
5 agreements and with the standard ISP issues.

6 Q But specifically with respect to Global NAPs,  
7 isn't it true that you first became involved with Global  
8 NAPs after a complaint was filed in this case?

9 A In response to the specific complaint, yes.

10 Q Isn't it true that a Ms. Susan Arrington  
11 (phonetic) of BellSouth dealt directly with Global NAPs on  
12 the parties' agreement?

13 A She was their lead negotiator, yes.

14 Q The parties' agreement doesn't in any way call  
15 for ISP-bound traffic to be treated in any special way,  
16 does it?

17 A Are you asking me if the agreement speaks  
18 specifically to ISP-bound traffic?

19 Q Correct.

20 A With the words in the contract?

21 Q Correct.

22 A No, it does not.

23 Q And after the DeltaCom agreement was signed,  
24 didn't BellSouth develop some clarifying language that  
25 specifically dealt with ISP-bound traffic?

1           A     Subsequent to the signing, yes, BellSouth  
2 developed clarifying language.

3           Q     If I showed you a copy of some clarifying  
4 language, could you identify it for us, please?

5           A     Yes.

6           Q     I have handed you a copy of a one-page document  
7 which is from Part B of the general terms and conditions,  
8 Page 19, and it was produced to Global NAPs/BellSouth. Is  
9 this -- up on the top where it has local traffic, is this  
10 the type of clarifying language that was developed that  
11 you referenced?

12          A     This is one type. There have been different  
13 versions, but this is one, yes.

14          Q     Do you know if this clarifying language or some  
15 type of this was ever amended into the DeltaCom agreement?

16          A     Amended into?

17          Q     Correct.

18          A     Is that specifically your question?

19          Q     Correct.

20          A     No, it was not. There would be no amendment  
21 necessary due to the fact that the language in the  
22 DeltaCom agreement is clear.

23          Q     Do you know if this clarifying language was ever  
24 amended into Global NAPs agreement with BellSouth?

25          A     It was not. There was no amendment in relation

1 to that.

2 Q And when parties amend a contract, how do they  
3 usually do that? Don't they sign a document that both  
4 sides have reviewed and put their signatures on?

5 A Generally, yes, that is the way an amendment is  
6 done.

7 Q And that was never done in this case, correct?

8 A Yes. There would not be an amendment necessary  
9 due to the fact that the language is clear in the  
10 agreement.

11 Q You are aware that this reciprocal compensation  
12 issue has come before this Commission on a couple of other  
13 occasions, correct?

14 A Yes.

15 Q And how did the Commission conclude in those  
16 other occasions with respect to the reciprocal  
17 compensation issue?

18 A Well, it has been handled in different  
19 proceedings. Do you want me to --

20 Q The Florida Commission.

21 A Right. And it has been handled before the  
22 Florida Commission more than one time.

23 Q What did they conclude in the e.Spire case?

24 A In the e.Spire case, this Commission found that  
25 the parties had intended to include -- on a large part, it



1 was more than one factor. But a large part of that  
2 decision was that the parties had intended to include  
3 local traffic -- excuse me, intended to include ISP-bound  
4 traffic as local traffic under the agreement.

5 Q And they ordered that reciprocal compensation be  
6 paid by BellSouth for that, correct?

7 A In that order, yes.

8 Q And I just want to show you a copy of the  
9 e.Spire language and the language that is in dispute in  
10 this case, and ask you if you would review the language  
11 for me. I have shown you what has been marked as Beth  
12 Shiroishi Number 2, which is a copy of the language that  
13 is in dispute in the Global NAPs/DeltaComm case and a copy  
14 of the language in the e.Spire case. You will recall we  
15 did this during your deposition.

16 Is there any difference in the two contract  
17 sections regarding how ISP-bound traffic should be  
18 treated?

19 A Can you rephrase that question, please.

20 Q Yes. The issue in this case is how ISP-bound  
21 traffic should be treated. In the documents that I have  
22 shown you, is there any difference in these two  
23 contractual provisions that are highlighted with respect  
24 as to how ISP-bound traffic should be treated?

25 A The words around local traffic and termination

1 are the same, yes.

2 Q Are they -- they are the same, is that right?

3 A Yes.

4 MR. MOYLE: Thank you. I have nothing further.

5 COMMISSIONER DEASON: Staff.

6 MS. KEATING: Staff has no questions.

7 COMMISSIONER DEASON: Commissioners.

8 MR. MOYLE: I would like to move these into the  
9 record, if I could.

10 COMMISSIONER DEASON: Just one second.

11 Redirect.

12 MR. EDENFIELD: None from BellSouth.

13 COMMISSIONER DEASON: Exhibits. Exhibit 12 is  
14 prefiled exhibits? A motion for Exhibit 12. Without  
15 objection --

16 MR. EDENFIELD: I had a little mental episode  
17 there, I'm sorry. Yes, I would like to move --

18 COMMISSIONER DEASON: Okay, you are moving them.  
19 Mr. Savage.

20 MR. SAVAGE: Notwithstanding the overruling of  
21 the objection to striking the testimony, I would  
22 specifically object to the inclusion, if we have gotten  
23 there yet, of the attachment to Ms. Shiroishi's testimony,  
24 which is the diagram supposedly showing how all of this  
25 works.

1           Again, without belaboring it, there is no  
2 evidence that this witness is competent to testify about  
3 how the network is organized and certainly not competent  
4 to testify about what happens within an ISP. And our  
5 position is that the chart attached to her testimony is  
6 actually affirmatively misleading. And in the absence of  
7 any qualification to sponsor it, we would move that that  
8 not be admitted.

9           COMMISSIONER DEASON: Your objection is noted  
10 and it is likewise overruled. The exhibit is admitted.

11           (Exhibit Number 12 admitted into evidence.)

12           COMMISSIONER DEASON: Further exhibits? None  
13 have been identified, Mr. Moyle.

14           MR. MOYLE: The document I handed out to the  
15 parties and to staff, which I have identified as Beth  
16 Shiroishi Number 1, general terms and conditions, that she  
17 affirmed is the type of clarifying language that BellSouth  
18 provided, I would like to have that marked and entered  
19 into the record as --

20           COMMISSIONER DEASON: As soon as I can get a  
21 copy of it, I will identify it.

22           The exhibit which is identified as general terms  
23 and conditions, Part B, Page 19, will be identified as  
24 Exhibit 13. And the three-page exhibit which is taken  
25 from PSC Order Number 98-0045-FOF-TP in Docket 971238-TP

1 will be identified as Exhibit 14. And, Mr. Moyle, you are  
2 moving the admission of Exhibits 13 and 14?

3 MR. MOYLE: Correct.

4 COMMISSIONER DEASON: Any objection?

5 MR. EDENFIELD: I don't really have an  
6 objection, Commissioner Deason. However I would point out  
7 that these are just one part of a very large exhibit, and  
8 would request the same latitude to the extent BellSouth  
9 feels like it needs to supplement with additional portions  
10 of this that it be allowed to do that.

11 COMMISSIONER DEASON: You will be allowed that  
12 opportunity.

13 MR. EDENFIELD: With that, I have no objection  
14 to the documents.

15 COMMISSIONER DEASON: Very well. Exhibits 13  
16 and 14 are admitted with that understanding.

17 (Exhibit Numbers 13 and 14 marked for  
18 identification and admitted into evidence.)

19 COMMISSIONER DEASON: Ms. Shiroishi, you may be  
20 excused.

21 We are going to take a 15-minute recess at this  
22 time.

23 (Brief recess.)

24 COMMISSIONER DEASON: Call the hearing back to  
25 order. BellSouth.

1                   MR. EDENFIELD: BellSouth calls as its next  
2 witness Albert Halprin.

3 Thereupon,

4                                   ALBERT HALPRIN  
5 was called as a witness on the behalf of BellSouth  
6 Telecommunications, Inc., having been duly sworn,  
7 testified as follows:

8                                   DIRECT EXAMINATION

9 BY MR. EDENFIELD:

10           Q     State your name and business address.

11           A     My name is Albert Halprin, my business address  
12 is 555 12th Street Northwest, Washington, D.C.

13           Q     Did you cause to be filed in this proceeding 40  
14 pages of direct testimony with two exhibits, and 24 pages  
15 of rebuttal testimony with one exhibit?

16           A     I did.

17           Q     Do you have any corrections or additions to your  
18 testimony?

19           A     No, except that in my rebuttal testimony I was  
20 accidentally identified as being a junior, which I am not.

21           Q     Okay. If I asked you today the same questions  
22 that appear in your testimony, would your answers be the  
23 same?

24           A     They would.

25                   MR. EDENFIELD: At this point I would ask that

1 Mr. Halprin's direct and rebuttal testimony be admitted  
2 into the record as if read.

3 COMMISSIONER DEASON: Any objection?

4 MR. SAVAGE: No objection.

5 COMMISSIONER DEASON: Very well. The direct and  
6 rebuttal shall be inserted into the record.

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1           MR. EDENFIELD: We would also ask that the two  
2 exhibits to Mr. Halprin's direct be identified and the one  
3 exhibit to his rebuttal be identified. And we are happy  
4 to do that as a composite, if it is easier.

5           COMMISSIONER DEASON: The direct exhibits will  
6 be identified as Composite 15 and the rebuttal exhibit  
7 will be Exhibit 16.

8           (Composite Exhibit Number 15 and Exhibit Number  
9 16 marked for identification.)

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2 BY MR. EDENFIELD:

3 Q Did you prepare a summary of your testimony, Mr.  
4 Halprin?

5 A Yes, sir, I did.

6 Q Would you give that, please.

7 A Yes, sir. I appreciate the opportunity to  
8 testify today before this Commission with respect to  
9 certain matters involved, involving traffic to Internet  
10 service providers. The relevant question that I attempt  
11 to address in my direct testimony and my rebuttal  
12 testimony as well, is whether or not traffic to an  
13 Internet service provider which is dialed using seven  
14 digits originates and terminates in the same local  
15 exchange.

16 As a matter of technical fact and as a matter of  
17 law, the Federal Communications Commission has explicitly  
18 and authoritatively found that this traffic does not  
19 originate and terminate within the same local exchange.  
20 The FCC has explicitly categorized this traffic as  
21 exchange access traffic specifically because it is the  
22 local portion of a call which terminates outside the same  
23 local exchange.

24 At the same time, the FCC has, stretching back  
25 17 years now, exempted incumbent local exchange carriers



1 from the requirement that is contained in Part 69 of the  
2 Commission's rules to charge interstate access charges for  
3 this traffic. And, in fact, they have ordered incumbent  
4 local exchange carriers and only incumbent local exchange  
5 carriers to charge local exchange business rates for this  
6 traffic.

7           As a result of this, and the fact that this  
8 traffic is dialed using seven digits, there has obviously  
9 been a great deal of controversy and confusion about  
10 whether or not this traffic is local. The FCC itself held  
11 in its declaratory ruling that it is possible that some  
12 agreements might have been reached covering local traffic  
13 which could have included this traffic.

14           The FCC additionally said that even in those  
15 cases in which this traffic was defined as traffic which  
16 originates and terminates within the same local exchange,  
17 that a state commission might have authority, and they  
18 have identified a couple of potential grounds to arbitrate  
19 reciprocal compensation. Nevertheless, the FCC has held,  
20 once again, authoritatively and explicitly that traffic  
21 dialed to an Internet service provider does not originate  
22 and terminate inside the same local exchange and is not  
23 within the mandatory reciprocal compensation provisions of  
24 Section 251 and 252 of the Act.

25           Consequently, because the specific document at

1 issue here doesn't just refer to local traffic, but  
2 defines such local traffic as only that traffic which  
3 originates and terminates within the same local exchange  
4 or an associated extended area service, it is quite clear  
5 that regardless of whether or not this Commission could in  
6 an arbitration using the open provisions section or some  
7 other section identified by the FCC impose reciprocal  
8 compensation terms, that the agreement that was reached  
9 here does not include any voluntary promise on the part of  
10 BellSouth to pay reciprocal compensation for traffic to  
11 ISPs.

12           The one other point I cover in my testimony is  
13 that the entire history of the development of competition  
14 is the history of seven digit calls, which look in some  
15 sense as if they are local, but which are not, in fact,  
16 local. This is not confined to Internet service calls,  
17 but, in fact, includes interstate FX calls, interstate  
18 CCSA calls, and indeed the whole development of  
19 competition was based on what was called execunet calls,  
20 which were nothing but calls dialed using seven digits  
21 that the FCC over the objections of then every state  
22 asserted jurisdiction over. And even though for many  
23 years required be charged at local rates, ultimately  
24 determined were not local but interstate calls.

25           That concludes my summary.

1           MR. EDENFIELD: Mr. Halprin is available for  
2 cross examination.

3           MR. SAVAGE: Just very brief.

4                           CROSS EXAMINATION

5 BY MR. SAVAGE:

6           Q     Mr. Halprin, you mentioned what I know as the  
7 ESP exemption pursuant to which ISPs may not be charged  
8 access at least by incumbent LECs. And instead purchase  
9 or are permitted to purchase their connections to the  
10 network out of the local exchange tariff?

11          A     That is true with respect to interstate access.  
12 The FCC's authority was clarified to only give them the  
13 authority to grant that exemption with respect to  
14 interstate access.

15          Q     Right. Now, in your mind does the existence of  
16 the ESP exemption suggest anything about whether  
17 compensation for ISP-bound traffic should be paid?

18          A     I'm sorry, sir, when you say "should be paid,"  
19 do you mean as a policy matter?

20          Q     Sure.

21          A     No, it suggests to me that the desirability of  
22 coming up with a new compensation mechanism that would be  
23 more socially and economically appropriate, one that the  
24 FCC has promised to develop for the past 17 years and has  
25 not quite gotten around to yet.

1           Q     Focusing on the February 1999 declaratory ruling  
2     that the FCC issued, as of that time in your mind did the  
3     FCC have a policy of treating ISP-bound calls as local?

4           A     For some purposes ISP-bound calls, as with any  
5     interstate access call to an enhanced service provider was  
6     required to be charged as local by incumbent local  
7     exchange carriers. So that is a treatment as local, yes,  
8     sir.

9           Q     Now, I take it your view is that ISP-bound  
10    traffic is largely interstate?

11          A     Yes. ISP-bound traffic is largely designed to  
12    move on an interstate basis. But because it cannot be  
13    segregated into interstate and intrastate components, it  
14    must of necessity be treated as being entirely interstate,  
15    as with any other nonmeasurable, nonsegregable traffic.

16          Q     And in your view, is the largely interstate  
17    nature of this traffic, is that dispositive of the dispute  
18    between the parties in this case?

19          A     I think by itself it would be. There is more.  
20    But the fact -- in order to be largely interstate, it  
21    cannot originate and terminate in the same local exchange.  
22    If it originated and terminated in the same local  
23    exchange, it could not be interstate. And so the  
24    statement that it is interstate takes it outside the  
25    definition of local in this agreement, yes, sir.

1           Q     So in your view its status as largely interstate  
2 is dispositive of this dispute?

3           A     Would be dispositive, as I said. There are  
4 other factors, as well, but it would be sufficient.

5           COMMISSIONER CLARK: Mr. Halprin, I have a  
6 question. Did you read Mr. Goldstein's testimony?

7           THE WITNESS: Yes, sir. Yes, ma'am. Excuse me.  
8 I did that once when I was staffer, as well, and it came  
9 back to haunt me for years. So I'm very sorry.

10          COMMISSIONER CLARK: That's okay. Do you  
11 disagree with his analysis of how the calls to Internet  
12 service providers actually work?

13          THE WITNESS: Yes, totally. I mean, apart from  
14 the fact that it is largely based on nothing other than  
15 the fact that most of the call is dead time, it makes no  
16 reference to multiple sessions, which almost everybody  
17 does today where you are bringing down data from multiple  
18 locations at the same point. It doesn't deal with  
19 Internet telephony at all, it doesn't deal with the more  
20 than 3,000 radio stations. I mean, this morning, not in  
21 preparation for this, ma'am, I got on the Internet in my  
22 hotel room, made an alternative reservation on U.S. Air,  
23 saw realtime stock market quotes. None of these were or  
24 could be cached. Yesterday I placed orders, all of which  
25 are interstate. So I believe the FCC's analysis here,

1 which is that this traffic is largely interstate, is  
2 correct.

3 COMMISSIONER DEASON: Did you change your  
4 airline reservation to earlier or later?

5 THE WITNESS: Actually to go south rather than  
6 north as a backup, since Washington D.C. airports are  
7 closed. And I am a part-time Florida resident who wants  
8 to be full-time, so I made an alternative reservation back  
9 to my local home.

10 COMMISSIONER CLARK: You know, maybe you went  
11 too fast for me. Tell me again precisely what you  
12 disagree with in Mr. Goldstein's testimony.

13 THE WITNESS: Okay. I believe that most uses of  
14 the Internet are interstate in nature. Indeed --

15 COMMISSIONER CLARK: Wait a minute, back up.  
16 When you say interstate in nature, to me that is sort of a  
17 characterization of a jurisdiction as opposed to what  
18 actually happens.

19 THE WITNESS: Okay. Most uses of the Internet  
20 either involve the direct transmission of information  
21 across exchange lines or --

22 COMMISSIONER CLARK: Wait a minute. Across the  
23 Internet backbone?

24 THE WITNESS: Yes, across the Internet backbone,  
25 or a regional facility that also crosses local exchange

1 boundaries.

2 COMMISSIONER CLARK: Okay. But not actually on  
3 the switch network?

4 THE WITNESS: No, none of them are on the switch  
5 network.

6 COMMISSIONER CLARK: Okay.

7 THE WITNESS: Or even in cases -- in many cases  
8 in which information is temporarily cached, the FCC has  
9 held explicitly that where caching takes place solely to  
10 facilitate delivery of the information, that is not  
11 treated as an enhanced service, but is treated as part of  
12 an end-to-end interstate communications. And, in fact, to  
13 avoid facing copyright liability for capturing somebody  
14 else's information and storing it there, many if not most  
15 instances of caching have been described as solely to  
16 facilitate smoother transmission across the Internet.

17 But strictly as a technical matter, because the  
18 traffic is nonsegregable, in other words, because at the  
19 same time I can be getting bits of data that come from the  
20 FCC meeting room where I'm listening to a live meeting, as  
21 well as a radio station, as well as e-mail, it can all be  
22 coming in simultaneously. Because it is not segregable,  
23 the rule is that if only 10 percent of that is interstate  
24 in nature, that it is all treated as being interstate  
25 because it can't be separated.

1           COMMISSIONER CLARK: So that is the key. If you  
2 can reach that 10 percent threshold of it being  
3 interstate, then the whole thing is interstate if you  
4 cannot separate it.

5           THE WITNESS: Yes, ma'am. That is the  
6 contamination theory which the FCC has adopted for  
7 nonsegregable private line facilities. And the Internet  
8 itself is essentially a shared private line network, there  
9 is no measurement, no traffic measurement taking place.

10           COMMISSIONER CLARK: Okay.

11           MR. SAVAGE: If it is my turn, I have a couple  
12 of questions.

13 BY MR. SAVAGE:

14           Q     Just so the record is clear, you say the FCC has  
15 ruled that intermediate storage incidental to transport is  
16 part of an overall end-to-end communication. Could you  
17 state for the record what FCC ruling you are talking about  
18 when you say that?

19           A     Yes. It is what is referred to as the  
20 asynchronous/X.25 decision.

21           Q     And do you recall whether in the  
22 asynchronous/X.25 decision the FCC said anything about the  
23 relationship between packetized data and traditional  
24 calls?

25           A     They did not. It did not address that at all in



1 that decision.

2 MR. SAVAGE: Okay. Just to make a note of this,  
3 I think it would be useful if we could add that decision,  
4 the site of which I don't recall, but I'm fairly confident  
5 I know which one he is talking about, to the official  
6 notice list. I think we may need to talk about that, if  
7 there is no objection.

8 COMMISSIONER DEASON: Any objection to adding  
9 that to the recognition list?

10 MR. EDENFIELD: None from BellSouth.

11 COMMISSIONER DEASON: Staff.

12 MS. KEATING: (Indicating no).

13 COMMISSIONER DEASON: Very well.

14 BY MR. SAVAGE:

15 Q Now, you said that the traffic is nonsegregable.  
16 Is it your testimony that the FCC has found that this  
17 traffic is nonsegregable in the context of dial-up access  
18 to the Internet?

19 A They have referred to it, but they have not  
20 found it as a finding.

21 Q And, in fact, isn't it the case that one of the  
22 subjects in the on-going rulemaking that they have not yet  
23 decided is the degree to which one can segregate this  
24 traffic?

25 A Yes, that is correct. They have referred

1 repeatedly to the, quote, difficulty in separating it  
2 precisely because of the fact, referring to this multiple  
3 session phenomena. And all that means is that you can be  
4 seeking information from three or four separate points  
5 simultaneously and they are all coming in, the little  
6 packets are mixing at the same time. But they have not --  
7 that is an open decision and the FCC has not yet issued a  
8 finding.

9 Q Now, let's assume for the moment that our  
10 hypothetical Internet user logs on from Florida, from  
11 Tallahassee and has three on-going sessions. They have  
12 got -- they are downloading FCC.gov to see if there is  
13 anything new on the website about the new recip comp  
14 rules, they are checking the Miami Herald to see what is  
15 happening down in the south part of the state, and they  
16 are checking out a Microsoft site from Redmond to see  
17 whether they are going to issue a Lennox- based version of  
18 Word.

19 Now, you would agree with me that if this user  
20 is in Tallahassee that the packets coming from the Miami  
21 Herald in Miami would be an intrastate communications,  
22 correct?

23 A Yes.

24 Q And the packets coming from FCC.gov down on  
25 wherever they are, 12th Street now, would be interstate as

1 respects Tallahassee?

2 A Insofar as they were coming from there, yes,  
3 sir.

4 Q Right. And then similarly, assuming Microsoft  
5 doesn't have a mirror site somewhere, it comes all the way  
6 from Redmond, that is also interstate?

7 A Yes, sir.

8 Q So I have done all of that and I'm still  
9 on-line, and I then take 20 minutes to read the FCC's  
10 headlines without clicking for a new site and then open my  
11 Miami Herald and read all the headlines there, and then  
12 click over to the Microsoft site.

13 Do you in any respect disagree with  
14 Mr. Goldstein's discussion of what is happening between  
15 the customer's modem and the ISP's modem during the time  
16 that all the customer is doing is reading what he has  
17 already been downloaded?

18 MR. GOGGIN: Commissioner Deason, I'm sorry to  
19 interject. If we could get a reference to the portion of  
20 Mr. Goldstein's testimony, that would be helpful.

21 MR. SAVAGE: Sure.

22 COMMISSIONER DEASON: We are searching for that  
23 as we speak.

24 BY MR. SAVAGE:

25 Q Could you take a look -- and I want to make sure

1 the pagination is right -- at the top of Page 13 of the  
2 version I've got, the first question is what happens next  
3 in an on-line session?

4 A Of the rebuttal testimony?

5 Q Of the rebuttal testimony, that's correct. Do  
6 you see the question beginning what happens next in an  
7 on-line session?

8 A Yes, sir.

9 Q Okay. What I'm referring to is that question  
10 and the answer, and then the next question and the answer  
11 to that. Two questions, two answers. And the question is  
12 if you could read that and then tell me if you disagree  
13 with any of it?

14 A Yes, I do, with substantial portions of it.  
15 Among other things, with respect to the 15 million people  
16 who have ICQ, the 7 million people who have AOL Instant  
17 Messenger, the 3 million people who have MSN Messenger,  
18 their computer, without any intervention on their part, is  
19 regularly reporting their presence on the Internet and  
20 searching for any other friend of theirs. You know the  
21 AOL friends lists or the ICQ friends list, the notion that  
22 nothing has happened there is not accurate with respect to  
23 millions of customers.

24 Q And do you have any idea how many -- how long it  
25 takes measured in, I guess the appropriate measure would

1 be milliseconds for the I'm still here message to go from  
2 the computer to AOL?

3 A The answer is not precisely how many  
4 milliseconds, no, I do not. But it is a brief message  
5 which takes place.

6 Q Right. And do you have any knowledge sitting  
7 here today of how frequently that message is sent from the  
8 computer out to the --

9 A It varies by service. In most -- in some of  
10 them it is user configurable. In most it is every five  
11 minutes, every three minutes, every one minute.

12 Q So that that you have spoken of takes a couple  
13 of -- you know, less than a second out of every three to  
14 five minutes, is that correct? That's what that "I'm  
15 here" message refers to?

16 A Yes.

17 Q Other than that, do you have any disagreement  
18 with what Mr. Goldstein has said?

19 A Yes, I do. Once again, to the extent -- if I  
20 make a call from Tallahassee to Redmond, Washington --

21 Q Yes.

22 A -- a traditional circuit switch voice call.

23 Q Yes.

24 A And I say, excuse me, there is somebody at the  
25 door, and I put down the phone, there is no information

1 being transmitted during that period of time, but that is  
2 treated as an entirely interstate communications.

3           What the FCC has found here is it has rejected  
4 the notion that one measures dead time as local dial-up  
5 time. And that to the extent to which I am part of the  
6 Internet with an IP, and I am available to be called or  
7 instant messaged by anybody else on the Internet without  
8 any additional dialing taking place or any additional  
9 connections taking place, I am deemed to be in interstate  
10 communication at that time by the FCC.

11           So the reason I disagree with this is that I  
12 believe while they are far from perfect, that the FCC is  
13 legally qualified to determine whether or not calls from a  
14 local customer to an ISP are deemed to originate and  
15 terminate within the same local exchange based upon the  
16 contamination rule, and I think that they have done so.

17           Q     Just so the record is clear, you say the FCC has  
18 rejected a particular treatment of the time when the  
19 modems are speaking to each other but there isn't higher  
20 level data, where have they done that, in your judgment?

21           A     In the declaratory ruling, that precise argument  
22 was made by a number of parties before them as the basis  
23 to determine that this was not interstate in nature. And  
24 in the declaratory ruling, and most recently where this  
25 issue was discussed at greatest length, which is the

1 document referred to earlier, the so-called order on  
2 remand where they explicitly -- I mean, it cannot be more  
3 explicit -- say this does not originate and terminate  
4 within the same local exchange. Parties have made that  
5 precise argument to the FCC.

6 Q Now, the order from -- anticipating my brief  
7 here -- the order from December 23rd, in fact, relates to  
8 xDSL type service, isn't that correct?

9 A XDSL are covered, but specific discussion of  
10 dial-up access to ISPs is included in that order.

11 Q The contamination rule you referred to, the 10  
12 percent rule, does the FCC -- if I'm not mistaken that is  
13 embodied in the separations rules, isn't that right, the  
14 10 percent rule is embodied in the FCC's separations  
15 regulations?

16 A It wasn't developed there, it was developed in a  
17 declaratory ruling. It is contained, among other places,  
18 in those rules, yes, sir.

19 Q Okay. Do you understand that rule to apply to  
20 switched facilities or only to dedicated facilities?

21 A The rule applies to dedicated facilities and to  
22 switched facilities used to access private line networks,  
23 such as dial-up to CCSA facilities. The key about when  
24 the rule applies is where the traffic is not measurable  
25 and it has to be assigned to one jurisdiction or the other

1 because there is no way to say 36 percent of it is  
2 intrastate and 64 percent of it is interstate.

3 Q And if, in fact, there were a way to do that,  
4 then we wouldn't need to apply this presumption, isn't  
5 that correct?

6 A Yes. If, in fact, there were some of this  
7 traffic that were local, the communications act itself  
8 would require that it be covered by reciprocal  
9 compensation, a fact explicitly rejected by the FCC, which  
10 has authority to interpret the act, and nobody would be  
11 concerned about what intent was.

12 Q And, in fact, the FCC has the authority, don't  
13 you think, to require that this traffic be covered under  
14 reciprocal compensation whether it is interstate or not?  
15 They may not have done it yet, but wouldn't you agree they  
16 have that authority under the Supreme Court's decision in  
17 Iowa Utilities Board?

18 A No. If by covered you mean within Section 251  
19 and 252 of the act, the FCC clearly can't force things in  
20 there that Congress didn't intend. If this is interstate,  
21 the FCC has its own authority to conduct a proper  
22 rulemaking, and as it is now doing and has promised to do  
23 for 17 years, come up with a compensation mechanism that  
24 could involve reciprocal compensation.

25 Q Does anything in Section 251(b)(5) on the face



1 of the statute limit the application of reciprocal  
2 compensation to local calls?

3 A It doesn't use the phrase local. It is nothing  
4 but a requirement that reciprocal compensation be paid for  
5 calls which originate on the network of one carrier and  
6 terminate on the network of the other. And the FCC, in  
7 fact, used the precise language which is part of this  
8 agreement in the rule that it developed interpreting that  
9 section.

10 Q And, in fact, how to apply that rule to this  
11 traffic is the issue that is before the FCC now in the  
12 rulemaking?

13 A I don't believe so. The FCC itself has said  
14 that that rule which is part of the local competition  
15 order, does not cover this traffic. It has told the  
16 Florida Commission that it has other authorities and may  
17 have other powers either to find that even though that  
18 rule doesn't cover this traffic, that the parties went  
19 beyond the rule and promised to include it, and that they  
20 may have other power to arbitrate such a result under the  
21 open provision section. But they have -- there is no  
22 question that it is not covered within that rule. The FCC  
23 has said explicitly it is not, this does not originate and  
24 terminate in the same local exchange.

25 Q I understand what they said in the declaratory

1 ruling. I guess I was assuming too much. Have you  
2 reviewed the submissions of the various parties in that  
3 rulemaking? Have you read the record before the FCC in  
4 that rulemaking?

5 A In the local competition rulemaking?

6 Q The one following the local competition order.  
7 Let me back up. In February of 1999 -- I'm sorry, they  
8 issued a declaratory ruling about ISP-bound calling in  
9 February of '99?

10 A Yes, sir, but the rule here is a 1996 rule.

11 Q I understand. Now, in that same February of '99  
12 order they initiated a notice of proposed rulemaking, you  
13 are familiar with that?

14 A Yes, sir.

15 Q Are you familiar with the record before the FCC  
16 in that rulemaking, in the rulemaking that they initiated  
17 in February?

18 A I have read some of it, sir. I don't believe --  
19 I may have read all of it, but I wouldn't testify that I  
20 have. I have looked at some of it.

21 MR. SAVAGE: Let me check something, I may be  
22 done in just a moment. Okay. I think we have nothing  
23 more. Thank you.

24 COMMISSIONER DEASON: Staff.

25 MS. KEATING: Staff has no questions.

1           COMMISSIONER JACOBS: I have a question. Mr.  
2 Halprin, you state in your testimony that to pay -- for  
3 the ILEC to pay for this traffic amounts to -- causes  
4 problems competitively. Doesn't that cut both ways, i.e.,  
5 for there not to be payment for this traffic, doesn't that  
6 raise competitive concerns, as well?

7           THE WITNESS: Well, sir, I think it is fair to  
8 say that if compensation was not paid for this traffic  
9 there would be a lot less competition for ISP business and  
10 a lot more competition for residential business. Now, as  
11 everybody knows, everybody wants to serve ISPs if they can  
12 make \$200 per line from it, and that's why they buy ISPs  
13 and found them. So I don't want to be disingenuous here.

14           What makes that so attractive to competitors  
15 and the reason there are dozens of competitors trying to  
16 serve ISPs is reciprocal compensation. And if that went  
17 away there would be one heck of a lot less competition for  
18 those few ISPs' business.

19           COMMISSIONER JACOBS: That is a very good point.  
20 And so in approaching this whole question, I thought it  
21 was very instructive that in your public policy analysis  
22 you saw a balancing as opposed to purely just leaving this  
23 alone. As you balance public policy on this issue, you  
24 would want to ensure that the community of competitors can  
25 exist and perhaps even thrive in the marketplace, wouldn't

1 you?

2 THE WITNESS: Yes, sir. I am very, very  
3 pro-competitive.

4 COMMISSIONER JACOBS: And I understand your  
5 caveat that you wouldn't want them to isolate just on one  
6 type of customer or one form of business. And I, quite  
7 frankly, don't disagree with that. My concern here is  
8 that in an evolving marketplace, especially when the  
9 alternative would be you would want them to go for local  
10 residential customers, and I'm not trying to get you to  
11 give me an answer back, I guess I'm really agreeing with  
12 your analysis. And that being you want to take very  
13 careful steps in how you transition from one to the other.

14 THE WITNESS: Yes, sir. I mean, I actually -- I  
15 am here testifying for BellSouth, but I have spent a lot  
16 of my time, you know, personally wondering about what  
17 types of forward-looking approaches, and I know the  
18 Florida Commission is concerned about this, cannot just  
19 isolate competition, you know, hypercompetition where you  
20 make all of your money by getting reciprocal compensation,  
21 which is what we have today.

22 I mean, the FCC statistics that have been  
23 published that look at the balance of originating and  
24 terminating show that the lowest in any state they found  
25 was 80 percent terminating and the highest was 96 percent

1 terminating. That is not real competition. So I think  
2 you are absolutely right. I don't know how relevant it is  
3 to determining a past contract, but on a forward-looking  
4 basis, I absolutely applaud you and the Florida  
5 Commission.

6           And there are few things more important than  
7 looking at how to transition to a world in which people  
8 like me, who are very heavy Internet users, can see  
9 competitors wanting to serve me, as well, which they will  
10 not do since I generate, you know, a couple hundreds of  
11 bucks of reciprocal compensation obligation at .9 cents.  
12 It's great to have competition for the ISPs. I think it  
13 would be nice if residential customers, particularly the  
14 heavy users who should be the ones drawing competitors  
15 into the residential market could see a little more  
16 competition, as well. I applaud you, I really do.

17           COMMISSIONER JACOBS: Mr. Chairman, I don't know  
18 if I caused concerns around the table again, but --

19           COMMISSIONER CLARK: I'd like to ask some  
20 questions, too. I don't know if it -- what witness it  
21 was, perhaps it was you with respect to the fact that  
22 BellSouth would be losing money with these heavy Internet  
23 users that are their customers that call the Internet  
24 service providers, and that seemed to be based on the  
25 assumption that they have the one line that they are using

1 to make those calls as opposed to having two lines.

2 Do you have any imperical data to show what the  
3 characteristics are of a customer that is a heavy Internet  
4 user and, in fact, if they are losing money on them if  
5 they are predominately having second lines and those sorts  
6 of things?

7 THE WITNESS: No, ma'am. I have no imperical  
8 study of how many people. I mean, I have my personal  
9 experience and that of friends. The best imperical  
10 evidence I have is where the competitors are going. And  
11 the derth of competitors out there serving dial-up heavy  
12 user customers, one of the things I learned stretching way  
13 back to my early days in competition is that if you look  
14 at the behavior of competitors, it tells you a lot more  
15 about economics than some of the cost studies.

16 The fact is I don't have anybody competing for  
17 my business at home. And I think the situation is pretty  
18 similar here in Florida, in that even heavy residential  
19 users are seeing almost no facilities-based competition.  
20 If it is resale, the competitor doesn't take on the  
21 reciprocal compensation obligation themselves. You know,  
22 but I have not done, and I am not aware of any study of  
23 what percentage of residential customers actually generate  
24 a higher reciprocal compensation obligation than the total  
25 of revenues they provide to the ILEC.

1 COMMISSIONER CLARK: Has anyone done that?

2 THE WITNESS: I'm not aware of any. It might be  
3 a hint to -- you know, usually if a Commissioner suggests  
4 that that might be something helpful, somebody goes out  
5 and does it, but I'm not aware of any.

6 COMMISSIONER CLARK: I think its helpfulness  
7 would probably just be an interim helpfulness, given the  
8 fact that the FCC is poised to do something else.

9 THE WITNESS: Ma'am, if I could, even though  
10 that wasn't a direct question, it has been 17 years, and  
11 given the politics of ISPs, you know, I tried once when I  
12 was there, it was a long time ago, and I don't think that  
13 a responsible commissioner that is concerned about  
14 developing real competition can automatically assume that  
15 somebody else is going to solve this problem for them.

16 Even though it is clearly, the FCC has said, an  
17 interstate part, if this Commission is willing to think  
18 about these issues because of its great concern for  
19 developing competition, I don't think it is going to be --  
20 the need for that is going to be obviated by a detailed  
21 decision from the FCC soon, but that is just a guess.

22 COMMISSIONER DEASON: Redirect.

23 MR. EDENFIELD: I just have a couple real quick.

24 REDIRECT EXAMINATION

25 BY MR. EDENFIELD:

1 Q You used the term caching earlier --

2 COMMISSIONER DEASON: Excuse me --

3 MR. SAVAGE: I have some questions arising from  
4 questions from the Commission. Would it be better to take  
5 that up now or to wait until he done with redirect?

6 COMMISSIONER DEASON: You probably should do  
7 that now.

8 MR. SAVAGE: If that is appropriate.

9 COMMISSIONER DEASON: It is going to be limited  
10 to matters raised by the Commissioners' questions.

11 MR. SAVAGE: Absolutely.

12 RECROSS EXAMINATION

13 BY MR. SAVAGE:

14 Q You describe yourself as a heavy Internet user,  
15 and I don't mean you personally, but approximately how  
16 many hours a day would you say a heavy Internet user is on  
17 the Internet? When you use the term heavy Internet user,  
18 how many hours a day is that?

19 A I'm probably on the Internet -- I probably have  
20 a connection to the Internet 16 hours a day.

21 Q Wow. And you don't have an xDSL line yet?

22 A As you know, I have been trying without success.  
23 But one of the phenomena is --

24 Q Here or in Virginia?

25 A No, no. One of the phenomena --



1           COMMISSIONER DEASON: Hold on a second. You all  
2 are carrying on a conversation that you think is not being  
3 transcribed, please think about the court reporter.  
4 Question, answer, and pauses in between. Thank you.

5           MR. SAVAGE: I apologize.

6 BY MR. SAVAGE:

7           Q     You don't have an xDSL line yet?

8           A     No.

9           Q     And you said you had some trouble getting one?

10          A     In Virginia, I have been trying.

11          Q     Have you tried yet in Florida?

12                MR. EDENFIELD: Commissioner Deason, I have to  
13 object. This is beyond anything that was raised by the  
14 Commissioners, whether Mr. Halprin can get an xDSL line.

15                COMMISSIONER DEASON: I think it is remotely  
16 responsive to some matters which were raised. I'm going  
17 to allow the questions, but you need to bring it to a  
18 point quickly, please.

19          A     (Continuing) In Florida, sir, actually I have  
20 what is asynchronous cable modem service. And when I am  
21 at my Florida home, I am on a dial-up connection 24 hours  
22 a day.

23          Q     And do you believe that is common behavior for  
24 users of the Internet?

25          A     Yes, with a second line, because I'm not charged

1 for that. The way it works is because of flat rate  
2 residential calls, anybody who has a second line, as  
3 Commissioner Clark mentioned, dedicated to the Internet,  
4 there is no reason for them ever to hang up. I mean, they  
5 get much better service by leaving it connected.

6 And ISPs sometimes, ISPs who are not affiliated  
7 with a CLEC have all these strategies to force you to  
8 disconnect. And there are dozens of programs that heavy  
9 users download every day from the Internet which are  
10 specifically designed to trick the ISP into thinking you  
11 are there when you are not so you can stay connected all  
12 the time.

13 Q The link I was trying to draw, Your Honor, is  
14 would you agree with me that the FCC is pursuing policies  
15 designed to encourage the rapid deployment both of two-way  
16 cable modem service and xDSL service?

17 A I think they are trying to, yes, sir,  
18 particularly within the last few months.

19 Q For example, their order with regard to line  
20 sharing?

21 A I think that was an explicit basis for that  
22 order which is currently on appeal was trying to promote a  
23 more rapid deployment of DSL service.

24 Q And, in fact, with regard to cable modem  
25 service, isn't it a fact that the FCC has routinely

1 refused, and repeatedly refused to exercise whatever  
2 regulatory authority it may have preferring to let the  
3 market allow that market to grow as quickly as possible?

4 A Absolutely.

5 Q And would you not agree with me that overtime  
6 the heaviest Internet users will migrate either to an xDSL  
7 service or to a cable modem-based service?

8 A I think, once again, that many of them will do  
9 so unless there is this artificial incentive to make  
10 millions of dollars which exists today. One of the  
11 reasons that the FCC is moving in that direction is that  
12 even though they have been strongly encouraging of trying  
13 to develop innovative ways to pay subsidy here, people are  
14 very, very concerned about precisely the type of  
15 deployment and horrible network usage which is driven by  
16 these reciprocal compensation terms. I mean, it has been  
17 a true blight on the development of competition.

18 Q But you would agree with me, would you not, that  
19 to the extent heavy Internet users migrate either to an  
20 xDSL service or to a cable modem service that the issues  
21 surrounding, let's say, excessive compensation for calls  
22 to ISPs would be mitigated to that extent?

23 A Absolutely. And, once again, to the extent to  
24 which somebody, for example, tries to compete with \$40  
25 xDSL service by offering me free dial-up service so that

1 they can get the reciprocal compensation, it is very,  
2 very, very negative. But xDSL service when it is fully  
3 deployed in part because the FCC has made clear that it is  
4 interstate and is able for cable modems because it doesn't  
5 originate and terminate, that is their approach is to take  
6 jurisdiction over this and to try and promote  
7 alternatives. And, you know, at the same time that they  
8 have expressed considerable concern about opt-in  
9 provisions extending the life of reciprocal compensation.

10 MR. SAVAGE: We have nothing further.

11 COMMISSIONER DEASON: Redirect.

12 MR. EDENFIELD: Just a couple of questions,  
13 Commissioner Deason.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. EDENFIELD:

16 Q Mr. Halprin, earlier you mentioned the term  
17 caching, what is that?

18 A I hate to sound like a geek, but I do  
19 periodically. Caching refers to taking information which  
20 a site on the Internet has, for example, in Redmond,  
21 Washington, and actually storing it at a lot of different  
22 servers around the country. So if I'm in Tallahassee and  
23 there is a page of Microsoft's information that hundreds  
24 of people an hour try to access, the local ISP here may  
25 well store it at his site. So instead of clogging up the

1 Internet with all of those calls to Redmond, he may  
2 refresh it every five minutes or something. And so I may  
3 think that I am actually talking or receiving information  
4 from Washington when I'm getting it locally. That's what  
5 caching is.

6 Q Does caching in any way affect the interstate  
7 nature of ISP traffic?

8 A Once again, in my opinion, it does not because  
9 caching is a technique which is adopted explicitly to  
10 improve network performance.

11 Q Was caching addressed by the FCC in its  
12 February 26, 1999 declaratory ruling?

13 A Yes, it did discuss that, and took cognizance of  
14 it and indicated that recognizing caching, it found that  
15 this was interstate in nature, access to the Internet.

16 Q Just to follow up on something, I believe,  
17 Commissioner Clark had asked you, is it your opinion that  
18 more than 10 percent of ISP traffic is interstate in  
19 nature?

20 A It is my opinion and has been so found by the  
21 FCC. But it is my opinion, yes, sir.

22 Q And just one little follow-up question. I think  
23 in response to a question from Mr. Savage, you had made  
24 mention of the December 23, 1999 order on remand. What is  
25 the significance of that decision to ISP traffic?

1           A       Well, this is the most recent pronouncement by  
2 the FCC here, and it is probably even more explicit than  
3 the previous orders in saying, A, this traffic does not  
4 originate and terminate in the same local exchange; B,  
5 this is not local traffic and is not exchange traffic, but  
6 is exchange access traffic; and, C, it does this analysis  
7 in an order in which jurisdiction is totally irrelevant.

8                   It does this analysis of both Internet access  
9 services as well as what it calls local at work DSL  
10 services to decide on the applicability of 251. And it  
11 does it for some services which are jurisdictionally  
12 interstate, some services which are jurisdictionally  
13 intrastate. It does this analysis without using the word  
14 jurisdiction at all and without jurisdiction being  
15 relevant to it. So insofar as the theory has now arisen  
16 after the death of the two-call theory that there is  
17 jurisdictionally interstate and then regulatorily  
18 interstate, I think this order is an excellent refutation  
19 of that theory. I assume we will see another one, but --

20                   COMMISSIONER CLARK: I just want to be clear.  
21 When you answered Mr. Edenfield that more than 10 percent  
22 is interstate, I take it from your explanation of caching  
23 that when that cache was accessed, as opposed to going out  
24 on the backbone, that would count within whatever  
25 percentage you would consider interstate?

1           THE WITNESS: The answer, ma'am, is I'm not  
2 sure. But I think that the only relevant way with respect  
3 to access to a packet switched network to determine  
4 relative use is to count packets. And I think even if  
5 caching were not counted, dramatically more than 10  
6 percent of the total number of packets which are received  
7 are interstate in nature.

8           COMMISSIONER CLARK: How does -- if you look at  
9 the -- let me just -- if you look at just the packets that  
10 are being sent, the time that you are not getting  
11 information down from that backbone, are there still  
12 packets being sent?

13          A     No, there are not. And, once again, some of the  
14 time that you are on there are multiple packets being  
15 sent. In a packet switched environment, the FCC has  
16 never -- in making its declaratory ruling where it found  
17 as a matter of law that this was more than 10 percent  
18 interstate, it didn't say what measure it was using. But,  
19 once again, I would suggest that in a packet environment,  
20 particularly where the same second can include different  
21 packets, that time measures should not be the appropriate  
22 measure for this purpose, but packet measures should be.  
23 The same way in my judgment -- I will take one second and  
24 give a pitch -- packet and not time should be the  
25 appropriate charging mechanism in any future-looking

1 mechanism to address this.

2 COMMISSIONER CLARK: Okay. Thanks.

3 MR. EDENFIELD: Nothing else on behalf of  
4 BellSouth.

5 COMMISSIONER DEASON: Exhibits.

6 MR. EDENFIELD: I would move the exhibits  
7 attached to Mr. Halprin's testimony.

8 COMMISSIONER DEASON: That would be Exhibits 15  
9 and 16.

10 MR. EDENFIELD: Yes, Commissioner Deason. I  
11 would move Exhibits 15 and 16 into evidence at this time.

12 COMMISSIONER DEASON: Without objection,  
13 Exhibits 15 and 16 are admitted.

14 (Exhibit Numbers 15 and 16 marked for  
15 identification and admitted into evidence.)

16 MR. EDENFIELD: With that, that concludes  
17 BellSouth's case.

18 COMMISSIONER DEASON: Well, don't you want to --  
19 there are some stipulated witnesses, are there not? Or do  
20 you want to forego that?

21 MR. SAVAGE: It's okay with us if he doesn't  
22 want to --

23 MR. EDENFIELD: I have gotten the cart before  
24 the horse as usual.

25 COMMISSIONER DEASON: Mr. Halprin, you may be



1 excused.

2 (Transcript continues in sequence with Volume 3.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER  
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, FPSC Bureau of,  
Reporting, Official Commission Reporter,

DO HEREBY CERTIFY that the Prehearing  
Conference in Docket No. 991267-WS was heard by the  
Florida Public Service Commission at the time and  
place herein stated; it is further

CERTIFIED that I stenographically reported  
the said proceedings; that the same has been  
transcribed by me; and that this transcript, Volume 2  
consisting of 175 pages, constitutes a true  
transcription of my notes of said proceedings  
and the insertion of the prescribed prefiled  
testimony of the witness.

DATED this 1ST DAY OF FEBRUARY, 2000.



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JANE FAUROT, RPR  
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