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February 18, 2000

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

Re: Docket No. 990874-TP (US LEC Complaint)

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Jerry Hendrix, which we ask that you file in the above-referenced matter.

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

Sincerely,

Bennett L. Ross
Bennett L. Ross (BLL)

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

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CERTIFICATE OF SERVICE
Docket No. 990874-TP (US LEC Complaint)

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

U.S. Mail this 18th day of February, 2000 to the following:

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Bennett L. Ross *(initials)*

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF JERRY HENDRIX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 990874-TP
FEBRUARY 18, 2000

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Senior Director - Interconnection Services Revenue Management, Network and Carrier Services. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME JERRY HENDRIX WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut several assertions in the testimony of US LEC's witness Gary D. Grefrath.

1 Q. PLEASE COMMENT ON MR. GREFRATH'S STATEMENT ON PAGE
2 8, LINES 4-6 THAT "THERE IS NOTHING IN ANY OF [THE]
3 AGREEMENTS WHICH COULD POSSIBLY JUSTIFY BELLSOUTH'S
4 POSITION THAT IT MAY UNILATERALLY DECIDE NOT TO PAY US
5 LEC FOR TRAFFIC SIMPLY BECAUSE THAT TRAFFIC IS
6 TERMINATED TO AN ISP."

7

8 A. I disagree wholeheartedly with Mr. Grefrath's statement on several
9 fronts. First, BellSouth did not unilaterally decide not to pay reciprocal
10 compensation for non-local, interstate ISP-bound traffic. As I
11 discussed in detail in my direct testimony, traffic directed toward an ISP
12 is not "local" traffic for which the parties had agreed to pay reciprocal
13 compensation under their three interconnection agreements. Second,
14 notwithstanding Mr. Grefrath's conclusions to the contrary, ISP-bound
15 traffic does not terminate at the ISP, but rather transits the ISP on its
16 way to one or several websites that could be located anywhere in the
17 world.

18

19 Q. DO YOU AGREE WITH MR. GREFRATH'S DISCUSSION OF THE
20 NEGOTIATIONS OF THE FIRST AGREEMENT?

21

22 A. Not entirely. On page 11, lines 10-13 Mr. Grefrath correctly points out
23 that US LEC wanted to retain a cap on reciprocal compensation. US
24 LEC wanted the cap because it expected more of its customers to be
25 calling BellSouth end users than the reverse, which would trigger an

1 imbalance of traffic in BellSouth's favor and require US LEC to pay
2 reciprocal compensation to BellSouth. A traffic imbalance in
3 BellSouth's favor, and thus the need for a cap on reciprocal
4 compensation, would never arise if, as US LEC contends, the parties
5 intended to pay reciprocal compensation for ISP-bound traffic. This is
6 because ISP-bound traffic is one-way traffic to the ISP from the ISP
7 subscriber, the vast majority of whom are provided local service by
8 BellSouth. If US LEC planned on providing service to ISPs in Florida
9 and expected to receive reciprocal compensation for calls to those
10 ISPs, a cap would have made no sense. The fact that US LEC wanted
11 a cap on reciprocal compensation belies Mr. Grefrath's view that ISP-
12 bound traffic is subject to the reciprocal compensation provisions of the
13 parties' interconnection agreement.

14

15 Q. PLEASE RESPOND TO MR. GREFRATH'S CLAIM ON PAGES 15-17
16 THAT, FOR PURPOSES OF RECIPROCAL COMPENSATION, ISP-
17 BOUND TRAFFIC TERMINATES AT THE ISP AND THEREFORE
18 CONSTITUTES LOCAL TRAFFIC FOR THE PURPOSES OF THE
19 AGREEMENTS.

20

21 A. I strongly disagree with Mr. Grefrath's position that there is one point of
22 termination of an ISP-bound call for reciprocal compensation purposes
23 and a different point of termination for jurisdictional purposes. Mr.
24 Grefrath cites no support for this position or his statement beginning on
25 page 15, line 24 that "a call to the ISP is considered to terminate at the

1 ISP" for reciprocal compensation purposes. The Federal
2 Communications Commission's ("FCC") February 26, 1999, decision
3 regarding ISP-bound traffic concludes that ISP-bound traffic is non-
4 local, interstate traffic and the FCC goes on in Footnote 87 to clearly
5 state that "...the *reciprocal compensation requirements* ...of the Act
6 and ...of the Commission's rules *do not govern inter-carrier*
7 *compensation for this traffic.*" (emphases added)

8
9 Furthermore, the FCC's recent *Order On Remand In the Matter of*
10 *Deployment of Wireline Services Offering Advanced*
11 *Telecommunications Capability* ("Order on Remand") Released
12 December 23, 1999, emphasizes again that ISP-bound traffic does not
13 terminate at the ISP. Paragraph 15 states:

14
15 With respect to xDSL-based advanced services used to connect
16 Internet Service Providers (ISPs) with their dial-in subscribers,
17 the Commission has determined that such traffic does not
18 terminate at the ISP's local server, but instead terminates at
19 Internet websites that are often located in other exchanges,
20 states or even foreign countries. Consistent with this
21 determination, we conclude that typically ISP-bound traffic does
22 not originate and terminate within an exchange and, therefore,
23 does not constitute telephone exchange service within the
24 meaning of the Act. As explained more fully below, such traffic
25 is properly classified as "exchange access."

1 In the above quoted Order, there is nothing to support Mr. Grefrath's
2 conclusion that there is a different termination point for reciprocal
3 compensation purposes than there is for jurisdictional purposes. The
4 Order clearly states that the traffic does NOT terminate at the ISP, and
5 this is not qualified by the type of distinction Mr. Grefrath is attempting
6 to draw. In fact, the Order clearly goes on to say that ISP-bound traffic
7 is not telephone exchange traffic, but exchange access traffic.

8

9 Q. DO YOU AGREE WITH MR. GREFRATH'S ANALYSIS OF "CALL
10 TERMINATION"?

11

12 A. No. According to Mr. Grefrath, a call is "terminated" when a
13 connection is established with the dialed number and when answer
14 supervision occurs. However, answer supervision is not an indication
15 of a completed call. For example, answer supervision is retrieved on
16 Feature Group A ("FGA") access service, but the call is not completed
17 until the long distance called party, not just the inter-exchange carrier
18 ("IXC") with FGA, is connected. All answer supervision does is indicate
19 the completion of a connection to the dialed number. It may or may not
20 be a completed call. In the case of ISP, it is not a completed call. An
21 analogy can be made with the Feature Group A arrangement where
22 answer supervision is returned by the IXC once the call reaches its
23 POP; however, the call continues on to a distant location before a two-
24 way communication path is established. A completed call is one that
25 has been switched to its final destination and communication exchange

1 has begun. This is definitely not the case when the call is transiting
2 through the ISP's POP to its final destination. In the case of Internet
3 calls, this occurs upon connecting the web address of the "called"
4 party.

5
6 Mr. Grefrath's argument on page 20 illustrates the absurdity of
7 considering answer supervision to constitute call termination. He says,
8 "...given the general industry understanding of call termination, it would
9 be unreasonable to assume that the parties did *not* intend to include
10 calls to ESPs and ISPs within the definition of local traffic." (emphasis
11 in original) If one accepts Mr. Grefrath's definition of call termination,
12 then FGA traffic, which is definitely interstate traffic, would be
13 considered local under the terms of the agreements.

14
15 Q. MR. GREFRATH CLAIMS ON PAGE 15, LINES 4-6 THAT ISP-BOUND
16 CALLS HAD ALWAYS "BEEN TREATED AS LOCAL AND
17 THEREFORE WERE WITHIN THE DEFINITION OF LOCAL
18 TRAFFIC...." PLEASE COMMENT.

19
20 A. The definition of local traffic set forth in the agreements stated that two
21 specific actions must occur within the same local calling area for a local
22 call to have occurred: origination and termination. These terms are
23 technical terms that have been defined by the FCC. They either occur
24 or they do not occur. Despite Mr. Grefrath's claims to the contrary,

25

1 nowhere in any of the parties' three interconnection agreements is local
2 traffic defined as traffic that has generally "been treated as local."

3

4 Q. PLEASE RESPOND TO MR. GREFRATH'S STATEMENTS ON
5 PAGES 20-22 REGARDING THE TREATMENT AND HANDLING OF
6 ISP-BOUND TRAFFIC.

7

8 A. Mr. Grefrath states on page 22, lines 14-15 that BellSouth treats ISP-
9 bound traffic as local in "all other respects." As mandated by the FCC's
10 rules implementing the access charge exemption, BellSouth serves its
11 ISP customers out of its local tariffs, and reports revenue associated
12 with ISP-bound traffic as intrastate. BellSouth has no discretion in
13 these matters and could not charge its ISP customers access charges
14 or report revenues associated with ISP-traffic as interstate without
15 violating applicable FCC rulings. However, the Declaratory Ruling
16 clearly states that the access charge exemption is the driving force
17 behind these rules. Paragraph 23 refers to "the ESP exemption,
18 pursuant to which it treats ESPs as end users under the access charge
19 regime and permits them to purchase their links to the PSTN through
20 intrastate local business tariffs rather than through interstate access
21 tariffs." Paragraph 36 addresses the rules for accounting for the costs
22 and revenues as intrastate and states that the interstate nature of ISP-
23 bound traffic does not alter the rules implementing the access charge
24 exemption.

25

1 The Declaratory Ruling also recognizes, in paragraph 16, that the
2 access charge exemption would not have been necessary if this traffic
3 had not been interstate traffic. The rules facilitating the access charge
4 exemption do not change the jurisdictional nature of ISP-bound traffic,
5 and they do not extend to treating this traffic as local for any purpose
6 other than to ensure that the access charge exemption is effectuated.

7

8 On page 21, line 1, Mr. Grefrath contends that the FCC requires ISP-
9 bound traffic to be “treated as local for purposes of service to end
10 users.” At best, this is a misleading statement regarding the FCC’s
11 rules for implementing the access charge exemption. Because of this
12 exemption, the FCC has chosen to classify ISPs as end users.
13 According to the Declaratory Ruling, the ISPs are classified as end
14 users for purposes of assessing or applying access charges (paragraph
15 5), for purposes of the ESP exemption or access charge purposes
16 (paragraph 16), “for pricing purposes” (paragraph 17), and “for the
17 purposes of interstate access charges” (paragraph 26). No where does
18 this order, or any other order of which I am aware, state that ISPs are
19 to be treated as end users for any other purpose or that calls to the
20 Internet are to be treated as local for any purpose other than
21 implementing this exemption.

22

23 I also disagree with Mr. Grefrath’s claim that the industry considered
24 this traffic to be local because of the FCC’s rules enforcing the access
25 charge exemption. The FCC’s ruling in February 1999 that ISP-bound

1 traffic was non-local interstate traffic was based on prior decisions,
2 almost all of which predated the parties' interconnection agreements.
3 US LEC had the benefit of these decisions, just as BellSouth and the
4 rest of the industry did. BellSouth relied on these findings of the FCC
5 that ISP-bound traffic is interstate traffic under its jurisdiction, and
6 therefore, it would not be subject to reciprocal compensation. In light of
7 the FCC's repeated, public orders clarifying that ESP/ISP traffic is
8 interstate, I can see no logical reason for US LEC to have concluded
9 that the industry considered ISP-bound traffic to be local.

10

11 Mr. Grefrath tries to make the argument on page 21-22 that the same
12 facilities and equipment used to "transport and terminate a 'traditional'
13 local call [are] no different from those used to terminate an ESP or ISP
14 as it does calls to any other of its end users." He goes on to state that
15 "[t]he only difference is that the call is terminated to a modem bank
16 operated by the ESP or ISP provider." Even putting aside the fact that
17 the call does not terminate at the modem bank, Mr. Grefrath fails to
18 recognize that the traffic is significantly different. These same facilities
19 and equipment referenced by Mr. Grefrath also are used to deliver
20 access calls to a local exchange carrier ("LEC") from an IXC. The mere
21 fact that the traffic delivered from the IXC is access traffic subjects it to
22 a different compensation mechanism than local traffic, and we have
23 already established that ISP-bound traffic is also access traffic.
24 Moreover, as demonstrated in my direct testimony, the calling patterns
25 are different. Local rates did not take into account traffic other than

1 local traffic. ISP-bound traffic has merely been exempted from the
2 compensation mechanism in place for access traffic. The FCC has not
3 subjected it to another compensation mechanism by this exemption,
4 nor has it changed the nature of the traffic.

5

6 Q. IN LIGHT OF THE FACT THAT ISP-BOUND TRAFFIC IS NOT LOCAL
7 TRAFFIC, WOULD THERE HAVE BEEN ANY REASON FOR
8 BELL SOUTH TO HAVE SPECIFICALLY EXCLUDED IT FROM THE
9 RECIPROCAL COMPENSATION REQUIREMENTS OF THE
10 AGREEMENT AS MR. GREFRATH SUGGESTS ON PAGE 14, LINES
11 13-14?

12

13 A. No. As I explained in detail in my direct testimony, ISP-bound traffic, by
14 its very nature as interstate traffic, does not fall within the definition of
15 local traffic. US LEC had the benefit of the FCC's decisions that
16 addressed the jurisdictional nature of ISP-bound traffic, just as
17 BellSouth and the rest of the industry did. If US LEC wished to include
18 *ISP-bound traffic as traffic eligible for reciprocal compensation*, it
19 should have raised the issue with BellSouth during negotiations, which
20 US LEC did not do when the parties negotiated the November 1996
21 interconnection agreement.

22

23 Q. MR. GREFRATH SPENDS CONSIDERABLE TIME DISCUSSING THE
24 NOVEMBER 1996 AGREEMENT. TO YOUR KNOWLEDGE, DOES

25

1 THE NOVEMBER 1996 AGREEMENT HAVE MUCH TO DO WITH
2 THIS CASE?

3

4 A. No. While I do not agree with Mr. Grefrath's discussion of the
5 November 1996 Agreement, I do not believe that the November 1996
6 Agreement has much to do with this case. Based upon information
7 provided in Exhibit 6 of Mr. Grefrath's testimony, the amount of
8 reciprocal compensation in dispute for the period prior to November 1,
9 1998 appears to be no more than approximately \$15,000. US LEC's
10 and BellSouth's second interconnection agreement was executed on
11 June 26, 1998, and became effective November 1, 1998, so the vast
12 majority of minute of use at issue were generated at a time when the
13 November 1996 Agreement was not even in effect.

14

15

16 Q. DID BELL SOUTH EVER PROPOSE TO INSERT SPECIFIC
17 LANGUAGE IN THE INTERCONNECTION AGREEMENT WITH US
18 LEC THAT EXCLUDED ISP-BOUND TRAFFIC FROM THE
19 DEFINITION OF LOCAL TRAFFIC?

20

21 A. Yes. Although it was not necessary to include an express exception for
22 ISP-bound traffic, BellSouth sought to ensure that there was no
23 misunderstanding that ISP-bound traffic was not within the scope of the
24 reciprocal compensation obligation when BellSouth and US LEC began
25 negotiating a new interconnection agreement in the summer of 1997.

1 To that end, BellSouth proposed to US LEC language that expressly
2 excluded ISP-bound traffic from the definition of local traffic. This was
3 consistent with BellSouth's practice of inserting language into its
4 Standard Interconnection Agreement beginning in September of 1997
5 clarifying that ISP-bound traffic is not covered under the reciprocal
6 compensation arrangement of the interconnection agreement.

7

8 Q. DID US LEC AGREE TO BELLSOUTH'S PROPOSED LANGUAGE
9 THAT SPECIFICALLY EXCLUDED ISP-BOUND TRAFFIC FROM THE
10 DEFINITION OF LOCAL TRAFFIC?

11

12 A. No. During negotiations of the second interconnection agreement
13 throughout the end of 1997 and the first two quarters of 1998, US LEC
14 and BellSouth were unable to reach agreement on the treatment of
15 ISP-bound traffic (among other issues). BellSouth made clear its
16 position that ISP-bound traffic was not and should not be subject to the
17 payment of reciprocal compensation, and US LEC took a contrary
18 position. The negotiations came to an end when US LEC decided to
19 adopt BellSouth's existing agreement with ALEC, Inc., and the parties
20 executed their second interconnection agreement on June 26, 1998.

21

22 Q. MR. GREFRATH DISCUSSES HIS AND US LEC'S
23 "UNDERSTANDING" THAT ISP-BOUND TRAFFIC FIT WITHIN THE
24 DEFINITION OF LOCAL TRAFFIC UNDER THE PARTIES'

25

1 INTERCONNECTION AGREEMENT (PAGE 15). WHAT IS YOUR
2 RESPONSE?

3

4 A. When the parties negotiated their first interconnection agreement, Mr.
5 Grefrath never shared his "understanding" of ISP-bound traffic with
6 BellSouth. Had Mr. Grefrath done so, the parties would have
7 discussed the ISP issue at length. Mr. Grefrath's silence during
8 negotiations is ironic given his apparent criticism of BellSouth for not
9 expressing its views about the interstate nature of ISP-traffic. In any
10 event, by the summer of 1997, the parties clearly knew their differences
11 on the issue of ISP-bound traffic, as Mr. Grefrath acknowledges. As a
12 result, by the time BellSouth and US LEC executed their second and
13 third interconnection agreement, US LEC knew fully well that BellSouth
14 was not going to agree to pay reciprocal compensation for ISP-bound
15 traffic.

16

17 Q. ON PAGE 5-6 OF HIS TESTIMONY, MR. GREFRATH DISCUSSES
18 THE RULINGS IN SEVERAL OTHER CASES INVOLVING ISP-
19 BOUND TRAFFIC. PLEASE COMMENT.

20

21 A. Mr. Grefrath's comments are misleading. While it is true that this
22 Commission has ruled preciously on the applicability of reciprocal
23 compensation to ISP-bound traffic, Mr. Grefrath's claim that these
24 cases entitle US LEC to receive reciprocal compensation for all traffic is
25 ludicrous. US LEC was not a party in any of those cases, and this

1 Commission has not ruled on the agreements between BellSouth and
2 US LEC. Some of the other rulings mentioned by Mr. Grefrath from
3 other states were decided prior to the FCC's Declaratory Ruling and
4 were based upon the two-call theory that the FCC explicitly repudiated.

5

6 Q. ARE THERE OTHER RECENT COMMISSION RULINGS ON ISP-
7 BOUND TRAFFIC THAT MR. GREFRATH DID NOT MENTION?

8

9 A. Yes. If this Commission chooses to consider rulings involving other
10 parties and other agreements, it should consider those reached after
11 the issuance of the Declaratory Ruling. In October 1999, the Louisiana
12 Public Service Commission ("LPSC") decided in Dkt. No. U-23839 that
13 BellSouth does not owe reciprocal compensation for ISP-bound traffic.
14 In reaching this decision, the LPSC addressed arguments similar to
15 those proposed by US LEC in this case, including the argument that
16 ISP-bound traffic is "treated as terminating for purposes of reciprocal
17 compensation," much as Mr. Grefrath has argued in this proceeding.
18 The LPSC rejected this argument, holding that "[t]here is no prevailing
19 industry custom of treating ISP traffic as 'local' for reciprocal
20 compensation purposes." The LPSC also held that, "[t]he Declaratory
21 Ruling provides no support for KMC's claim...[i]t cannot be seriously
22 argued that ISP traffic has more than one point of termination or that it
23 actually does terminate locally at the ISP server, even though the FCC
24 has stated emphatically that it does not."

25

1 The LPSC's decision addressed three other areas that have been
2 discussed in this case. One, it found that the FCC's determination that
3 ISP-bound traffic does not terminate at the ISP was based "on a
4 consistent line of prior precedent dating back several decades." Two,
5 there was no need to specifically exclude ISP-bound traffic from the
6 reciprocal compensation obligations for local traffic because it was
7 already excluded by the "FCC precedent that has found consistently
8 that ISPs use switched exchange access services." Three, the LPSC
9 found that BellSouth had never intended to pay reciprocal
10 compensation for non-local, interstate ISP-bound traffic, citing
11 BellSouth's efforts to ensure that it did not bill any ALECs for this traffic
12 and the "certain" result of economic harm to BellSouth if it had agreed
13 to pay reciprocal compensation for this traffic.

14
15 The Public Service Commission of South Carolina ("SCPSC") has also
16 ruled on subjects addressed in this docket in a recent arbitration. The
17 SCPSC found that ISP-bound traffic does not terminate at the ISP, is
18 not local, and is not subject to reciprocal compensation. In its on
19 October 4, 1999, order in Dkt. No. 1999-259-C, the SCPSC stated,
20 "While it may be true that ISP-bound traffic travels similar paths across
21 the same facilities as local calls to residential customers as advanced
22 by ITC^DeltaCom, it is also clear that ISP-bound calls do not terminate
23 at the ISP ...As ISP-bound traffic does not terminate at the ISP's server
24 on the local network, this Commission finds that ISP-bound traffic is
25 non-local traffic. Further, since Section 251 of the 1996 Act requires

1 that reciprocal compensation be paid for local traffic, the Commission
2 further finds that the 1996 Act imposes no obligation on parties to pay
3 reciprocal compensation for ISP-bound traffic.”
4
5

6 Q. WITH RESPECT TO THE SECOND AND THIRD AGREEMENTS, MR.
7 GREFRATH ARGUES THAT US LEC ADOPTED THE INTENT OF
8 THE ORIGINAL PARTIES WHEN IT ADOPTED THESE
9 AGREEMENTS. DO YOU AGREE?
10

11 A. No. I am not sure how Mr. Grefrath can speak as to the intent of the
12 original contracting parties in the agreements US LEC adopted. I can
13 assure you that BellSouth did not intend ISP-bound traffic to be
14 interstate traffic when it executed the ALEC and Intermedia
15 agreements and did not agree to consider ISP-bound traffic to be local.
16 Moreover, as discussed in my direct testimony, there was no doubt
17 about BellSouth's position on this issue when it entered into these
18 agreements with US LEC. BellSouth had made its position that ISP-
19 bound traffic was not local traffic abundantly clear, both to the industry
20 in general and, as Mr. Grefrath admits, to US LEC specifically.
21

22 Although I am not a lawyer, I do not share Mr. Grefrath's view that an
23 adopting party adopts the intent of the original parties. BellSouth and
24 US LEC entered into independent contracts, separate and apart from
25 any contract between BellSouth and another ALEC. While BellSouth

1 and US LEC may have adopted contract language from prior
2 agreements, the discussions between BellSouth and US LEC, their
3 intent, and their meeting of the minds (to the extent one existed), were
4 unique to BellSouth and US LEC. Taken to its logical conclusion, US
5 LEC's theory would mean that the intent of the BellSouth and the
6 original contracting ALEC would bind forever any future ALEC that
7 subsequently adopted that agreement, which makes no sense.

8
9 I also would note that the Florida Public Service Commission
10 apparently does not share Mr. Grefrath's view on adopted
11 interconnection agreements, as reflected in a recent decision denying
12 DeltaCom's request to intervene in a dispute between BellSouth and
13 Global NAPs over the interpretation of the parties' interconnection
14 agreement. Even though Global NAPs had adopted DeltaCom's
15 interconnection agreement with BellSouth, this Commission determined
16 that the issue only concerned the interpretation of Global NAPs'
17 agreement with BellSouth, and not the DeltaCom agreement. Page 5
18 of Order No. PSC-99-2526-PCO-TP states:

19
20 Furthermore, even though GNAPs may have adopted the
21 ITC/BellSouth agreement, the agreement at issue is now the
22 GNAPs/BellSouth agreement. Nothing in the Act indicates an intent to
23 treat complaints regarding agreements adopted pursuant to Section
24 252(I) any differently than other complaint cases. In many aspects,
25 adoption of an agreement pursuant to Section 252 (I) is simply a

1 shortening of the negotiation process. There are still ultimately, only
2 two parties to the agreement. Although many or all of the terms in the
3 agreement may be the same as those found in the ITC/BellSouth
4 agreement, our decision in this case will consider only the
5 GNAPs/BellSouth agreement and evidence relevant to that agreement.

6
7 The Florida Commission's position on this issue is consistent with the
8 decision of the Louisiana Public Service Commission in the KMC case I
9 referenced earlier. The interconnection agreement at issue in that case
10 was an adopted agreement. One of the deciding factors in that case
11 was that the parties lacked a common understanding of the treatment
12 of ISP-bound traffic. The LPSC found that BellSouth and KMC had
13 different intentions when they entered into their agreement and had no
14 meeting of the minds on the issue of reciprocal compensation for ISP-
15 bound traffic, regardless of what the original contracting parties may
16 have intended. Nothing in its written decision suggests that the LPSC
17 considered an adopting party to have adopted the intent of the
18 agreement.

19
20 Q. ON PAGE 20 OF HIS TESTIMONY, MR. GREFRATH POINTS TO
21 THIS COMMISSION'S RULING IN DOCKET NO. 980495-TP, WHICH
22 HELD THAT INTERMEDIA IS ENTITLED TO RECIPROCAL
23 COMPENSATION FOR ISP-BOUND TRAFFIC UNDER ITS
24 AGREEMENT WITH BELLSOUTH. ACCORDING TO MR.
25 GREFRATH, US LEC IS ENTITLED TO THE SAME RESULT BY

1 VIRTUE OF US LEC ADOPTING THE INTERMEDIA AGREEMENT.

2 DO YOU AGREE?

3

4 A. No. As I mentioned previously, in determining whether BellSouth and
5 US LEC mutually agreed to pay reciprocal compensation under their
6 third interconnection agreement, what BellSouth and Intermedia may
7 have intended when they executed their interconnection agreement
8 several years earlier is irrelevant. In fact, as the Commission noted in
9 its September 15, 1998 Order in Docket 980495-TP: "In determining
10 what was the parties' intent when they executed their contract, we must
11 consider circumstances that existed at the time the contract was
12 entered into, and the subsequent actions of the parties." When
13 BellSouth and US LEC entered into their third interconnection
14 agreement in June 1999, the FCC had made clear that ISP-bound
15 traffic was non-local, interstate in nature and BellSouth had made clear
16 its position that it was not agreeing to pay reciprocal compensation for
17 such traffic. For US LEC to claim that it should receive reciprocal
18 compensation for ISP-bound traffic under such circumstances is difficult
19 to understand.

20

21 Furthermore, in its Order in Docket 980495-TP, the Florida Commission
22 pointed to the fact that BellSouth had made "no exceptions to the
23 definition of local traffic to exclude ISP traffic in the Intermedia-
24 BellSouth Agreement." However, before executing either the second or
25 third interconnection agreements with US LEC, BellSouth proposed

1 such an exception specifically to exclude ISP-bound traffic from the
2 definition of local traffic. US LEC was able to avoid BellSouth's
3 proposal by opting into an existing interconnection agreement. While
4 US LEC has the legal right to opt into existing agreements, BellSouth
5 tried in its negotiations with US LEC to do precisely what this
6 Commission held BellSouth should have done to avoid paying
7 Intermedia reciprocal compensation for ISP-bound traffic – exclude
8 such traffic from the definition of local traffic.

9

10 Q. IS THIS DISPUTE LIMITED TO WHETHER OR NOT RECIPROCAL
11 COMPENSATION APPLIES TO ISP-BOUND TRAFFIC?

12

13 A. No. Mr. Grefrath erroneously attributes the differences between what
14 US LEC has invoiced for reciprocal compensation and what BellSouth
15 has paid to the parties' disagreement as to the applicability of
16 reciprocal compensation to ISP-bound traffic. The fact of the matter is
17 that in addition to ISP-bound traffic dispute, the parties disagree about
18 the appropriate rates for reciprocal compensation for local traffic. US
19 LEC has not billed BellSouth the correct reciprocal compensation rate
20 since June of 1999. Mr. Grefrath's testimony makes it seem as if
21 BellSouth is randomly refusing to pay US LEC for legitimate local
22 traffic, which is not the case. BellSouth has paid and will continue to
23 pay US LEC for the minutes of use attributable to local traffic as
24 defined in the parties' interconnection agreements at the appropriate
25 rates set forth in those agreements.

1

2 Q. PLEASE DESCRIBE THE DISPUTE YOU MENTIONED
3 CONCERNING THE APPROPRIATE RATE FOR RECIPROCAL
4 COMPENSATION FROM JUNE 1999 TO THE PRESENT.

5

6 A. This rate dispute arose out of the proper interpretation of the parties'
7 third interconnection agreement, which was entered into by US LEC
8 and BellSouth effective June 22, 1999. As Mr. Grefrath correctly notes
9 on page 4 of his testimony, US LEC adopted an existing agreement
10 between BellSouth and Intermedia, which included a June 3, 1998
11 amendment.

12

13 Q. WHAT WAS THE PURPOSE OF THE JUNE 3, 1998, AMENDMENT?

14

15 A. The purpose of the June 3, 1998, amendment was twofold. First, it
16 allowed Intermedia (as well as US LEC) to request Multiple Tandem
17 Access ("MTA"), which allows an ALEC to interconnect at a single
18 access tandem, or, at a minimum, less than all access tandems within
19 the LATA for certain terminating and transit traffic. Second, the
20 amendment was designed to incorporate the commission-approved
21 reciprocal compensation rates into the parties' interconnection
22 agreement, which the parties agreed to charge and to pay for the
23 transport and termination of local traffic. For example, in Florida, the
24 commission-approved reciprocal compensation rate was the \$0.002 per

25

1 minute of use, with an additional charge for tandem switching, if
2 appropriate.

3

4 Q. DOES THE JUNE 3, 1998, AMENDMENT CONTAIN A MISTAKE ?

5

6 A. Yes. Shortly after executing the June 3, 1998 Amendment with
7 Intermedia, BellSouth realized that the reciprocal compensation rate for
8 Florida (as well as two other states) had been entered incorrectly. For
9 example, the Florida reciprocal compensation rate had erroneously
10 been entered as \$.0175 for the first minute of use for end office
11 switching, and \$.005 for each additional minute of use for end office
12 switching. The correct reciprocal compensation rate is the end office
13 switching rate of \$.002, as ordered by this Commission. When US
14 LEC sought to adopt the Intermedia agreement, BellSouth notified US
15 LEC of this mistake. US LEC acknowledged this and stated that they
16 would amend the agreement once Intermedia amended its agreement
17 (see letter attached as Exhibit JDH-1). Intermedia has to date refused
18 to amend its agreement, and this issue is currently pending before this
19 Commission in Docket No. 991534-TP.

20

21 Q. HAS US LEC INVOICED BELLSOUTH THE RECIPROCAL
22 COMPENSATION RATES SET FORTH IN THE JUNE 3, 1998,
23 AMENDMENT?

24

25

1 A. No. Rather than billing BellSouth the commission-approved reciprocal
2 compensation rates, US LEC has been billing BellSouth for reciprocal
3 compensation at the old tandem-switched composite rate of \$0.01056
4 per minute of use. Apparently, US LEC believes that the June 3, 1998,
5 amendment only governs reciprocal compensation under an MTA
6 arrangement, which is not the case.

7

8 Q. WERE THE RECIPROCAL COMPENSATION RATES SET FORTH IN
9 THE JUNE 3, 1998, AMENDMENT INTENDED TO BE LIMITED TO
10 CIRCUMSTANCES WHEN US LEC ELECTS MTA
11 INTERCONNECTION?

12

13 A. No. Paragraph 3 of the amendment states as follows: " The Parties
14 agree to bill Local Traffic at the elemental rates specified in Attachment
15 A." Likewise,
16 Paragraph 4 of the amendment states as follows: "This amendment will
17 result in reciprocal compensation being paid between the Parties based
18 on the elemental rates specified in Attachment A." Attachment A
19 contains or should contain commission-approved reciprocal
20 compensation rates, and makes no reference to a composite rate of
21 \$0.01056 per minute of use, which is the rate US LEC has been
22 erroneously billing BellSouth. Nothing in the June 3, 1998,
23 amendment indicates that the elemental reciprocal compensation rates
24 set forth in Attachment A are solely limited to circumstances when US

25

1 LEC elects MTA interconnection. Indeed, the plain language of the
2 amendment indicates otherwise.

3

4 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A. Yes, it does. Thank you.

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BellSouth Interconnection Services

675 West Peachtree Street
Room 34591
Atlanta, Georgia 30375

Ida M. Bourne
(404) 927-7511
Fax: (404) 529-7839

June 30, 1999

VIA FACSIMILE AND FEDERAL EXPRESS

Gary D. Grefrath
Executive Vice President
US LEC Corp.
Transamerica Square
401 North Tryon Street
Suite 1000
Charlotte, NC 28202

Dear Mr. Grefrath:

This letter is in response to US LEC's refusal to sign an amendment to its adoption of the Intermedia Communications, Inc. ("ICI") Interconnection Agreement, dated July 1, 1996, to correct erroneous rates inserted into the ICI Agreement via the Amendment dated June 3, 1998, until such time as ICI amends the Agreement to correct the error. BellSouth and ICI are working on an Amendment at this time. BellSouth requests that US LEC agree, in writing, to sign an amendment to correct this error upon execution of the Amendment by ICI.

The rates in the June 3, 1998, amendment, were intended by both parties to the Agreement to reflect PSC-ordered rates for all elements (where applicable). However, incorrect rates for End Office Interconnection/Switching, per minute of use, were included for the states of Florida, Louisiana, and Mississippi. The relevant portions of the orders by the Florida Public Service Commission in Dkt. Nos. 960833-TP, 960846-TP, and 960916-TP, by the Louisiana Public Service Commission in Dkt. Nos. U-22022/22093, and by the Mississippi Public Service Commission in Dkt. No. 96-AD-0559 are attached.

The inclusion of rates other than commission approved rates was an error and does not reflect the intentions of either BellSouth or ICI. Therefore, BellSouth requests that US LEC formally state its intention to sign an amendment to correct these rates after ICI does so. Please sign this letter and return it to me via fax and overnight mail.

Mr. Gary D. Grafrath
US LEC Corp.
June 30, 1999

If you have any questions or concerns regarding this issue, please call me.

Sincerely,

Ida M. Bourne

Ida M. Bourne
Manager, Interconnection Services

cc: Aaron D. Cowell, Jr., EVP and General Counsel, US LEC
Richard A. Dender, Director of Industry Relations, US LEC
Jerry Hendrix, Senior Director, BellSouth
Mary Jo Peed, Esq., BellSouth
Parkey Jordan, Esq., BellSouth

Attachments:

- Excerpts from the FPSC Order No. PSC-96-1579-FOF-TP (2 pages)
- Excerpts from the LPSC Order No. U-22022/22093-A (3 pages)
- Excerpts from the MPSC Order Dated May 8, 1997, in Dkt.No.96-AD-0559 (3 pages)

By signature on this letter, US LEC agrees to sign an amendment to correct the End Office Interconnection/Switching, per minute of use, rate element for the states of Florida, Mississippi and Louisiana, contained within the June 3, 1998, amendment to the ICI Agreement within 5 business days of notification by BellSouth of the execution by both ICI and BellSouth of an amendment to correct this rate element.

AGREED:
US LEC Corp.

By: *Gary Grafrath*

Title: *EVP. Admin*

Date: *6-30-99*