

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by BellSouth Telecommunications
Inc. for approval of arbitration of an
Interconnection agreement with US LEC
Of Florida Inc. pursuant to the
Telecommunications Act of 1996.

Docket No. 000084-TP

DIRECT PREFILED TESTIMONY

OF

US LEC OF FLORIDA INC.

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October 13, 2000

13078-00
10-13-00

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE
2 RECORD.

3 A. My name is Timothy J Gates. My business address is as follows: 15712
4 W. 72nd Circle, Arvada, Colorado 80007.

5 Q. BY WHOM ARE YOU EMPLOYED?

6 A. I am employed by QSI Consulting, Inc., ("QSI")

7 Q. PLEASE DESCRIBE QSI AND IDENTIFY YOUR POSITION WITH
8 THE FIRM.

9 A. QSI is a consulting firm specializing in the areas of telecommunications
10 policy, econometric analysis and computer aided modeling. I currently
11 serve as Senior Vice President.

12 Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?

13 A. This testimony was prepared on behalf of US LEC of Florida Inc. ("US
14 LEC").

15 Q. PLEASE DESCRIBE YOUR EXPERIENCE WITH
16 TELECOMMUNICATIONS POLICY ISSUES AND YOUR
17 RELEVANT WORK HISTORY.

18 A. Prior to joining QSI I was a Senior Executive Staff Member at MCI
19 WorldCom, Inc. ("MWCOM"). I was employed by MWCOM for 15
20 years in various public policy positions. While at MWCOM I managed
21 various functions, including tariffing, economic and financial analysis,
22 competitive analysis, witness training and MWCOM's use of external
23 consultants. I testified on behalf of MWCOM more than 150 times in 32

1 states and before the FCC on various public policy issues ranging from
2 costing, pricing, local entry and universal service to strategic planning,
3 merger and network issues. Prior to joining MWCOT, I was employed
4 as a Telephone Rate Analyst in the Engineering Division at the Texas
5 Public Utility Commission and earlier as an Economic Analyst at the
6 Oregon Public Utility Commission. I also worked at the Bonneville
7 Power Administration as a Financial Analyst doing total electric use
8 forecasts and automating the Average System Cost methodology while I
9 attended graduate school. Prior to doing my graduate work, I worked for
10 ten years as a forester in the Pacific Northwest for multinational and
11 government organizations. Exhibit TJG 1 to this testimony is a summary
12 of my work experience and education.

13 Q. YOU HAVE TESTIFIED IN 34 STATES TO DATE. DID YOU EVER
14 TESTIFY IN FLORIDA?

15 A. Yes, I did. I filed testimony in the Commission's Investigation into
16 IntraLATA Presubscription (Docket No. 92-47). That testimony was
17 filed on behalf of MCI Telecommunications Corporation in 1994. Most
18 recently, I filed testimony on behalf of Level 3 Communications, LLC in
19 its arbitration with BellSouth (Docket No. 000907-TP).

20 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

21 A. The purpose of my testimony is to address certain issues identified in the
22 BellSouth Telecommunications, Inc. ("BellSouth") Petition for Approval
23 of Interconnection Agreement with US LEC ("Petition") that was filed on

1 January 25, 2000, and identified in the Commission's ORDER
2 ESTABLISHING PROCEDURE in this case issued on August 17, 2000.

3 Specifically, I will address the following issues:

4 Issue 3 - BellSouth's Ability to Designate a Point of Interface for
5 Its Originating Traffic to US LEC;

6 Issue 4 - Appropriate Definition of "Serving Wire Center for
7 Purposes of Defining Transport of the Parties' Respective Traffic;

8 Issue 5 - Obligations to Provide Facilities Necessary to Transport
9 Traffic from the POI to End Users;

10 Issue 6a - Rates to be Applied for Transport and Termination of
11 Local Traffic. Composite? Elemental?

12 Issue 6b - If Elemental Rates Apply, Should US LEC be
13 Compensated at the Tandem Rate?

14 Issue 7 - Definition of Local Traffic for Purposes of the Parties'
15 Reciprocal Compensation Obligations Under Section 251(b)(5) of
16 the Act;

17 Issue 8 - Assignment of NPA/NXXs and Impacts on Reciprocal
18 Compensation; and,

19 Issue 9 - Obligations of Parties to Exchange Data that Would
20 Enable Each Party to Properly Calculate a Percent Local Usage
21 Factor or PLU.

1 Issues 1, 2, 3 and 6a will be addressed by US LEC witness Wanda
2 Montano. Obviously there will be some overlap in our testimonies on
3 Issue 3.

4 Q. HOW IS YOUR TESTIMONY ORGANIZED?

5 A. My testimony is organized by issue. The various discussions of the issues
6 can be found on the following pages:

7	Summary of Conclusions	Page 5
8	Issue 3	Page 9
9	Issue 4	Page 15
10	Issue 5	Page 22
11	Issue 6a	Page 26
12	Issue 6b	Page 31
13	Issue 7	Page 35
14	Issue 8	Page 61
15	Issue 9	Page 81

16 Q. PLEASE SUMMARIZE THE CONCLUSIONS YOU REACH IN YOUR
17 TESTIMONY.

18 A. I will provide the summaries by Issue:

19 Issue 3 – BellSouth’s proposal to identify multiple points of
20 interconnection (“POIs”) and to require US LEC to provide transport of
21 traffic from those POIs to its network is an attempt to disadvantage US
22 LEC in the marketplace. Further, the proposal is inconsistent with the Act
23 and FCC orders implementing the Act. BellSouth’s proposal would

1 artificially increase the costs of its competitors to the detriment of
2 competition and consumers.

3 Issue 4 – BellSouth’s definition of serving wire center and the use of that
4 definition for determining compensation for leased facility interconnection
5 is inappropriate and results in an artificial increase in costs for alternative
6 local exchange carriers (“ALECs”). The cost differential is caused, in
7 part, when BellSouth unilaterally locates its “POIs” away from US LEC’s
8 switch. BellSouth’s proposed language causes US LEC to incur costs that
9 BellSouth does not incur given the same network configuration. US LEC
10 proposes to limit BellSouth’s POIs based on realistic engineering
11 parameters. Further, US LEC proposes language that would ensure that
12 symmetrical compensation is achieved.

13 Issue 5 – The parties are responsible, financially and operationally, to
14 provide network facilities on their side of the POI. BellSouth is wrong to
15 suggest that ALECs such as US LEC should be required to build or to
16 lease facilities to carry BellSouth traffic to the POI. Instead, the
17 Commission should require each carrier to provide interconnection trunks
18 and facilities on their side of the POI at no charge. The FCC’s rules
19 specifically prohibit LECs from charging for facilities used to deliver
20 LEC-originated traffic. The responsibility on each side of the POI extends
21 to the trunks and facilities, as well as the traffic that transits those trunks
22 and facilities.

1 Issue 6a – BellSouth is wrong to suggest that ALECs should pay elemental
2 rates for reciprocal compensation. The FCC very specifically noted that
3 reciprocal compensation must be symmetrical and equal to the rates the
4 incumbent LEC assesses on the other carrier. The Commission should
5 order a composite rate for transport and termination that reflects the long-
6 run incremental cost of providing those services. Pursuant to FCC rule
7 51.711, the State is not allowed to order reciprocal compensation rates that
8 are lower than BellSouth’s existing, tariffed rates.

9 Issue 6 b – US LEC must meet the geographic coverage criterion
10 established by the FCC in order to qualify for tandem rate compensation.
11 BellSouth is wrong to suggest that a functionality test is also required to
12 receive such compensation. FCC Rule 51.711(a)(3) is very specific as to
13 the requirement for tandem rate reciprocal compensation.

14 Issue 7 – ISP-bound calls are local calls and there is no reasonable
15 method or reason to distinguish those calls from other local calls. The
16 location of customers does not impact BellSouth’s cost and should not be
17 used to allow BellSouth to evade reciprocal compensation payments to
18 ALECs. Consistent with public policy and economic objectives and the
19 Commission’s decisions in other cases, BellSouth should pay US LEC
20 reciprocal compensation for calls to those customers who happen to be
21 ISPs. Finally, the FCC has enforced the ESP exemption, which this
22 Commission has recognized, such that enhanced service providers,
23 including ISPs, should not pay access charges.

1 Issue 8 -- The use of NXX codes in the manner currently employed by US
2 LEC, other ALECs, and even BellSouth itself, allows consumers efficient
3 access to ISPs that would otherwise be impossible if such calls were
4 treated as toll calls or anything other than local. Placing contractual
5 restrictions on calls to certain NXX codes would inappropriately allow
6 BellSouth to avoid payment of reciprocal compensation and give
7 BellSouth a competitive advantage over ALECs. BellSouth's proposal
8 would increase the cost of Internet access and reduce competition to the
9 detriment of consumers, even though its own costs do not differ in
10 handling these calls versus any other locally-dialed call. The Commission
11 should deny BellSouth's attempt to eliminate this type of local call from
12 reciprocal compensation, and to apply switched access charges to ISP-
13 bound and other kinds of virtual NXX calls.

14 Issue 9 -- BellSouth's position, and that of US LEC, are tied directly to
15 the positions on ISP-bound and virtual NXX traffic. Such calls are clearly
16 local and should be treated as local calls unless and until the FCC issues
17 an order finding that such calls are not to be treated as local. As such, the
18 ISP-bound traffic and virtual NXX calls should be included in the PLU
19 calculation.

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1 ISSUE 3 – SHOULD BELLSOUTH BE PERMITTED TO DESIGNATE
2 MORE THAN ONE POINT OF INTERFACE IN THE SAME LATA
3 FOR BELLSOUTH ORIGINATED TRAFFIC TO BE DELIVERED TO
4 US LEC? IF SO, UNDER WHAT CONDITIONS?

5

6 **Q. PLEASE SUMMARIZE THE DISPUTE BETWEEN THE PARTIES ON**
7 **THIS ISSUE.**

8 A. In its Arbitration Petition, BellSouth alleges that it should be permitted to
9 designate more than one Point of Interface so that it can “construct and
10 maintain its network in the most efficient manner possible.” See Petition at
11 8. US LEC argues that the flexibility that BellSouth seeks has no
12 foundation in the Telecommunications Act of 1996 (“Act”) or the FCC
13 orders implementing the Act. Further, such authority would enable
14 BellSouth to impose additional costs and network inefficiencies on US
15 LEC. Under its proposal, BellSouth could designate additional Points of
16 Interface, thereby imposing additional costs on US LEC, even when
17 network utilization levels do not justify the designation of additional
18 Points of Interface.

19 **Q. PLEASE DEFINE A POINT OF INTERFACE.**

20 A. The point of interface or point of interconnection (“POI”) is the physical
21 interconnection of the trunk groups provided by each party for the
22 transport and termination of local telephone calls between their respective
23 networks.

1 **Q. HOW DO NEW ENTRANTS SUCH AS US LEC, DEPLOY OR**
2 **ESTABLISH POIS?**

3 **A. The location and number of POIs is a financial issue, because each carrier**
4 **needs to install transmission facilities and equipment to deliver its**
5 **originating traffic to each POI, and to receive terminating traffic there. Of**
6 **course, BellSouth already has a ubiquitous network throughout many areas**
7 **of Florida and can use its existing facilities for these purposes. On the**
8 **other hand, US LEC as a new entrant must construct (or lease or acquire)**
9 **entirely new facilities for access to each POI. Therefore, this issue has**
10 **competitive implications as well.**

11 The incumbent LEC (“ILEC”) should not be permitted to impose
12 interconnection requirements on alternative LECs (“ALECs”) that require
13 ALECs to duplicate the ILEC’s legacy network architecture. Rather, new
14 entrants should be free to deploy least cost, forward-looking technology,
15 such as the combination of a single switching entity with a SONET ring to
16 serve an area that the ILEC may serve through a hub-and-spoke, switch-
17 intensive architecture. Initial interconnection at the tandem level and at a
18 single POI per LATA is crucial to providing new entrants this flexibility.
19 For a new entrant to begin service, it requires a single connection capable
20 of handling all of its calls, including local, toll, and access traffic. US LEC
21 agrees that sound engineering principles may eventually dictate that US
22 LEC add new POIs at other BellSouth switches.

1 Q. DO ALECS HAVE THE RIGHT TO DESIGNATE A SINGLE POI PER
2 LATA?

3 A. Yes. Section 251(c)(2) of the Act requires ILECs such as BellSouth
4 "...to provide, for the facilities and equipment of any requesting
5 telecommunications carrier, interconnection with the local exchange
6 network...(B) at any technically feasible point within the carrier's
7 network." This requirement of federal law has been recognized by this
8 Commission. See Order No. PSC-97-0122-FOF-TP issued February 3,
9 1997, at 11-13. Further, if any other support is required, one can look to
10 the recent FCC order approving Southwestern Bell's entry into the Texas
11 long distance market. In that order, the FCC stated, "Section 251, and our
12 implementing rules, require an incumbent LEC to allow a competitive
13 LEC to interconnect at any technically feasible point. This means that a
14 competitive LEC has the option to interconnect at only one technically
15 feasible point in each LATA." See FCC 271 Order in SBC Proceeding in
16 Texas – CC Docket No. 00-65; Released June 30, 2000 at paragraph 78.
17 Emphasis added.

18 Q. HAS THE FCC SUPPORTED US LEC'S POSITION THAT IT HAS
19 THE RIGHT TO CHOOSE POIS?

20 A. Yes. The FCC has found that Section 251(c) (2) grants competing
21 carriers such as US LEC the right to choose the POI. See FIRST
22 REPORT AND ORDER, CC Docket No. 96-98 and CC Docket No. 95-
23 185; Released August 8, 1996 (Hereinafter referred to as the "Local

1 Competition Order”. At paragraph 172 of the Local Competition Order
2 the FCC notes that the interconnection obligations of this section of the
3 Act, “...allows competing carriers to choose the most efficient points at
4 which to exchange traffic with incumbent LECs, thereby lowering the
5 competing carrier’s cost of, among other things, transport and termination
6 of traffic.” In that same order at paragraph 220 (note 464) the FCC states,
7 “Of course, requesting carriers have the right to select points of
8 interconnection at which to exchange traffic with an incumbent LEC under
9 Section 251(c)(2).”

10 The FCC submitted an amicus curiae brief on this very point in an
11 interconnection appeal before the United States District Court for the
12 District of Colorado. In AT&T Communications of the Mountain States,
13 Inc. v. Robert J. Hix, et al., Civil Action No. 97-D-152, the FCC stated:
14 “Neither the 1996 Act nor binding FCC regulations allow the incumbent
15 LEC or the PUC to impose interconnection at any particular point in the
16 LEC’s network. Provided that such interconnection is technically feasible,
17 only the new entrant has the right to designate where interconnection
18 should take place....” (Memorandum of the Federal Communications
19 Commission as Amicus Curiae, pp. 14-15, submitted March 3, 1998).

20 Q. DO ILECS SUCH AS BELLSOUTH HAVE THE RIGHT TO SELECT
21 POIS?

22 A. No. That right is limited to new entrants and does not extend to ILECs.
23 The FCC explained, in part, why this right is provided to the ALECs and

1 not to the ILECs at paragraph 218 of the Local Competition Order,
2 wherein it states, “Given that the incumbent LEC will be providing
3 interconnection to its competitors pursuant to the purpose of the 1996 Act,
4 the LEC has the incentive to discriminate against its competitors by
5 providing them less favorable terms and conditions of interconnection
6 than it provides itself.”

7 Q. MIGHT BELLSOUTH USE THE ABILITY TO ESTABLISH POIS TO
8 IMPEDE COMPETITION?

9 A. Yes, it might. The FCC recognized that one of the goals of competition
10 was to eliminate this ILEC ability. At paragraph four of the Local
11 Competition Order the FCC states, “Competition in local exchange and
12 exchange access markets is desirable, not only because of the social and
13 economic benefits competition will bring to consumers of local services,
14 but also because competition eventually will eliminate the ability of an
15 incumbent local exchange carrier to use its control of bottleneck local
16 facilities to impede free market competition. Under section 251,
17 incumbent local exchange carriers (LECs), including the Bell Operating
18 Companies (BOCs), are mandated to take several steps to open their
19 networks to competition, including providing interconnection, offering
20 access to unbundled elements of their networks, and making their retail
21 services available at wholesale rates so that they can be resold.”

22 It is clear that ALECs such as US LEC do not have the ability – by
23 virtue of existing bottleneck facilities – to impede free market

1 competition. Indeed, companies such as US LEC have no monopoly
2 markets or captive customers that would give them market power
3 sufficient to harm the public interest. It is for that reason, that ALECs
4 have the right to designate POIs, but ILECs such as BellSouth do not.

5 Q. ARE THERE PUBLIC POLICY REASONS TO DENY BELLSOUTH
6 THE ABILITY TO ESTABLISH POIs FOR TRAFFIC IT ORIGINATES
7 TO ALECs?

8 A. Yes. If BellSouth were allowed to identify POIs for originating traffic it
9 would be able to disadvantage ALECs and impose additional and
10 unwarranted costs on new entrants. Such a result is not in the public
11 interest and would severely impede the development of competition.
12 Indeed, if BellSouth were allowed such discretion, it may force ALECs to
13 essentially duplicate the incumbent's network. Such a result has been
14 regularly rejected by regulators as not in the public interest.

15 BellSouth's desire to identify POIs for its originating traffic is
16 understandable, especially given its incentives discussed above.
17 Nevertheless, such an ability would force US LEC to build facilities to
18 each BellSouth local calling area or to pay BellSouth for transport of the
19 traffic from the local calling areas to US LEC's POI. Such a result would
20 be inconsistent with the goals of the Local Competition Order and the Act.
21 US LEC is not required to extend its facilities to POIs unilaterally
22 identified by BellSouth; instead, BellSouth is obligated to provide
23 interconnection for US LEC facilities at POIs designated by US LEC.

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ISSUE FOUR – WHAT IS THE APPROPRIATE DEFINITION OF “SERVING WIRE CENTER” FOR PURPOSES OF DEFINING TRANSPORT OF THE PARTIES’ RESPECTIVE TRAFFIC?

Q. WHAT IS THE DISPUTE BETWEEN BELLSOUTH AND US LEC ON THIS ISSUE?

A. Under the terms of the Agreement (Section 1.8 of Attachment 3), the party originating local traffic has the option to interconnect by purchasing dedicated interoffice channel transport (“DICT”) from its “serving wire center” to the other party’s “first point of switching.” BellSouth has proposed a complicated rate structure for this form of transport that could, in some circumstances, result in BellSouth charging higher rates than US LEC for physically identical transport facilities, depending on which party’s traffic is being transported. US LEC has proposed to add a paragraph, Section 1.8.5, to ensure that US LEC may charge BellSouth for facilities in an amount equal to that which BellSouth may charge US LEC for traffic on the same route.

Q. PLEASE EXPLAIN HOW BELLSOUTH’S PROPOSAL CAN LEAD TO UNEQUAL TRANSPORT RATES.

A. BellSouth’s rate structure for leased facility interconnection includes two different components: the “Local Channel Facility” (“LCF”) and the DICT facility. The LCF extends from the IP of the carrier ordering the transport

1 service to the “serving wire center,” while the DICT extends from the
2 “serving wire center” to the first point of switching on the other party’s
3 network. The asymmetry arises from the proposed definition of “serving
4 wire center.”

5 **Q. PLEASE DEFINE A SERVING WIRE CENTER.**

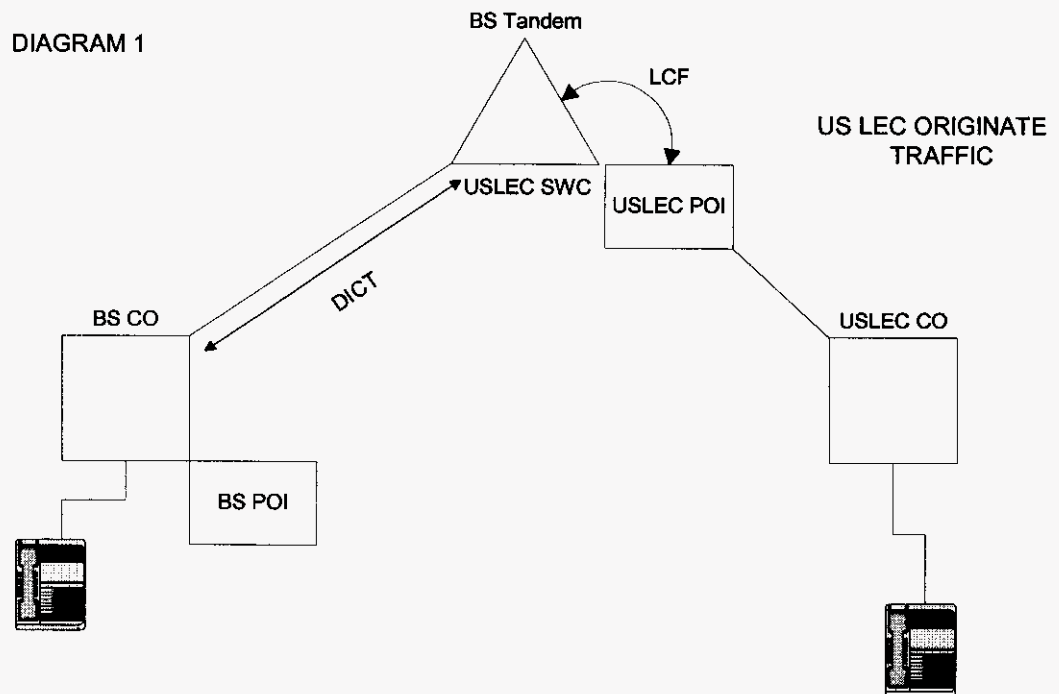
6 A. Generally speaking, a serving wire center is synonymous with a central
7 office. By central office, I am referring to a “class 5” central office where
8 the local exchange company terminates the subscriber outside plant.
9 Nevertheless, a carrier could designate a tandem switch location as its
10 serving wire center. Essentially, a serving wire center is the central office
11 with entrance facilities for the ALEC.

12 **Q. DOES THE DEFINITION OF SERVING WIRE CENTER VARY BY**
13 **CARRIER?**

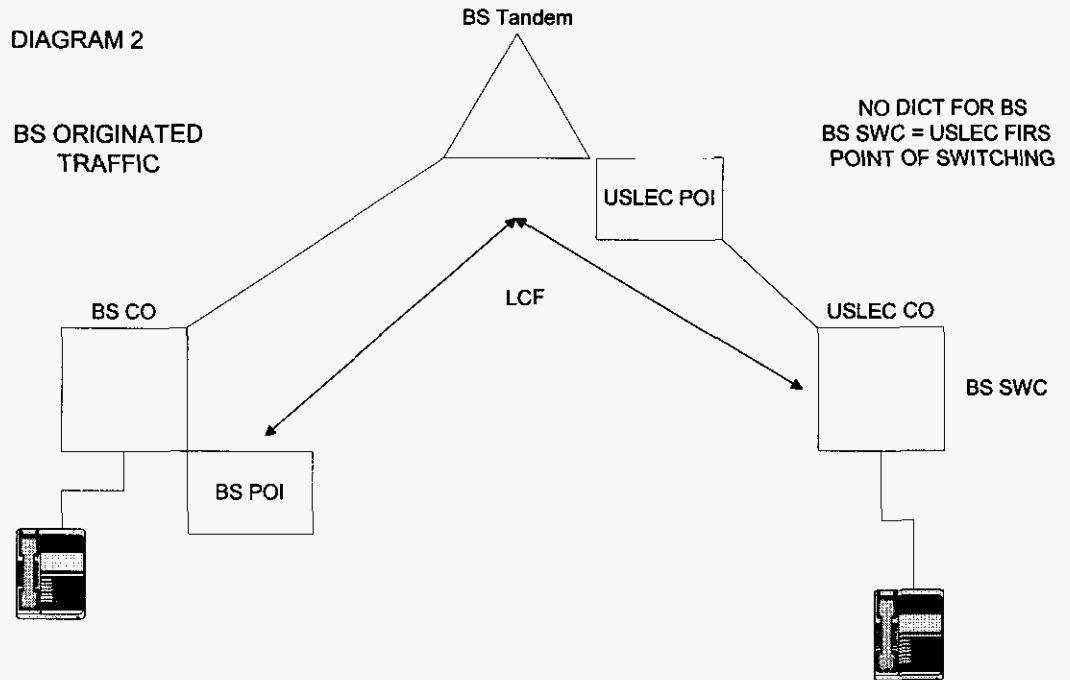
14 A. Yes, it may. As a new entrant into the local exchange telecommunications
15 market, US LEC utilizes state-of-the-art digital technology. When first
16 entering a market, US LEC typically installs only a single switch in a
17 single building that serves an entire LATA. This single switch would be
18 considered BellSouth’s serving wire center for purposes of terminating
19 traffic originated by BellSouth subscribers. (In the BellSouth contract, the
20 “BellSouth serving wire center” is the wire center on US LEC’s network
21 from which service is provided to BellSouth, and vice versa. This
22 terminology is confusing, but I use it to be consistent with the contract
23 language.) BellSouth, however, has multiple central offices and/or wire

1 centers per LATA. The BellSouth switch closest to the US LEC switch is
2 normally designated as US LEC's serving wire center.

3 Let's assume that US LEC customers are originating traffic that is
4 terminated on the BellSouth network. US LEC would purchase DICT
5 (which is charged on a per mile basis) between its serving wire center (the
6 BellSouth central office or tandem) and BellSouth's first point of
7 switching. The diagram below (Diagram 1) shows the DICT charged to
8 US LEC in this scenario.



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10 Now, assuming the same network configuration, let's see how these terms
11 and definitions impact the parties if BellSouth originates traffic that
12 terminates on the US LEC network. Diagram 2 below shows the same
13 network configuration as Diagram 1.



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10 **Q. PLEASE EXPLAIN THE LOCAL TRANSPORT FACILITY (“LCF”)**
 11 **AS INDICATED IN DIAGRAMS ONE AND TWO.**

12 **A. The LCF is a flat-rated, non-mileage sensitive switch transport facility**
 13 **between the POI and the originating party’s serving wire center. Although**

1 the LCF appears longer for BellSouth when it originates local traffic, that
2 rate element is flat-rated. As such, unlike the DICT, the mileage or
3 distance of the LCF does not impact the cost.

4 Q: BUT DOESN'T THIS DICT PROPOSAL REFLECT THE ADDITIONAL
5 COSTS THAT BELLSOUTH MUST INCUR TO PROVIDE
6 FACILITIES FROM US LEC'S SWITCH TO THE POI?

7 A. No. This example highlights the anticompetitive impact of BellSouth's
8 proposal to unilaterally designate POIs for BellSouth-originated traffic. If
9 BellSouth designates POIs at end offices some distance from US LEC's
10 POI, the intercarrier compensation will not be symmetrical. Indeed,
11 BellSouth's proposal confirms the FCC's conclusion that --

12 Because an incumbent LEC currently serves virtually all
13 subscribers in its local serving area, an incumbent LEC has
14 little economic incentive to assist new entrants in their
15 efforts to secure a greater share of that market. An
16 incumbent LEC also has the ability to act on its incentive to
17 discourage entry and robust competition by not
18 interconnecting its network with the new entrant's network
19 or by insisting on supracompetitive prices or other
20 unreasonable conditions for terminating calls from the
21 entrant's customers to the incumbent LEC's subscribers.
22 (First Report and Order at paragraph 10; footnote omitted)

23
24 BellSouth's proposal that would allow it to identify POI for its
25 originating traffic is unreasonable and will only serve to
26 disadvantage ALECs such as US LEC.

27 Q. IT IS US LEC'S CHOICE TO PLACE ONE POI PER LATA.
28 SHOULDN'T BELLSOUTH BE ALLOWED TO PLACE ITS POI AT
29 ITS DESIRED LOCATION?

1 A. No. The Act and FCC orders clearly allow new entrants to interconnect at
2 any technically feasible point. The single POI per LATA allows new
3 entrants to grow their business economically without having to duplicate
4 the ILECs existing network.

5 If Congress had wanted ILECs to have the ability to designate
6 POIs and ALECs to bear the same duty in establishing POIs as ILECs
7 bear, it would have specifically stated that outcome, rather than separating
8 out the interconnection obligations to apply only to ILECs under Section
9 251(c)(2).

10 **Q. HAS THE FCC INTERPRETED SECTION 251 IN A SIMILAR**
11 **MANNER?**

12 A. Yes, it has. In the FCC's First Report and Order at paragraph 220, it
13 addressed technically feasible points of interconnection as follows:

14 Section 251(c)(2) does not impose on non-incumbent LECs
15 the duty to provide interconnection. The obligations of
16 LECs that are not incumbent LECs are generally governed
17 by sections 251(a) and (b), not section 251(c). Also, the
18 statute itself imposes different obligations on incumbent
19 LECs and other LECs (i.e., section 251(b) imposes
20 obligations on all LECs while section 251(c) obligations
21 are imposed only on incumbent LECs).¹

22
23 As such, BellSouth does not have the same right as ALECs to
24 identify a technically feasible POI.

25 **Q. DOES THE FACT THAT THERE IS NO PROHIBITION AGAINST**
26 **ILECS DETERMINING TECHNICALLY FEASIBLE**
27 **INTERCONNECTION POINTS GIVE THEM THE RIGHT TO DO SO?**

¹ Id. at ¶220.

1 A. No. As noted above, the interconnection obligations of LECs and ILECs
2 are specifically identified in the Act. BellSouth may not assume some
3 authority that is not provided for in the Act. As such, BellSouth is wrong
4 to suggest that each party may determine the POI for its own originating
5 traffic.

6 **Q. WHAT IS THE SOLUTION TO THIS PROBLEM?**

7 A. The Commission should adopt US LEC's position. In the alternative, and
8 despite the obvious support for not allowing BellSouth to identify POIs
9 unilaterally, US LEC would propose a compromise. That compromise
10 would allow BellSouth to designate a POI in each BellSouth flat rated
11 local calling area so long as no more than one POI is identified per LATA.
12 More than one POI per LATA will be allowed if at least 75 percent of the
13 interconnection facility's capacity is being utilized. This traffic threshold
14 ensures that it will be economical to build or lease facilities to the
15 BellSouth POI.

16 **Q. DOES US LEC HAVE ANY OTHER REQUIREMENTS SHOULD
17 BELLSOUTH BE ALLOWED TO ESTABLISH MORE THAN ONE
18 POI PER LATA?**

19 A. Yes. If BellSouth designates more than one POI in a LATA, it shall
20 provide overflow trunking arrangements within its network to re-route
21 traffic to a different POI in the event of trunk blockage or facility outage.

22

1 ISSUE 5 – SHOULD PARTIES BE REQUIRED TO PROVIDE FACILITIES
2 FOR THE TRANSPORT OF TRAFFIC FROM A POINT OF
3 INTERCONNECTION TO THEIR OWN END USERS?

4

5 **Q. PLEASE SUMMARIZE THE DISPUTE ON THIS ISSUE.**

6 A. BellSouth wants US LEC either to build or to lease facilities to carry
7 BellSouth traffic to the US LEC network. US LEC takes the position that
8 each carrier is responsible, financially and operationally, to deliver traffic
9 to the POI.

10 **Q. SHOULD BELLSOUTH BE ABLE TO REQUIRE THAT US LEC
11 PROVISION FACILITIES TO LOCATIONS NOT ON ITS NETWORK
12 TO FACILITATE BELLSOUTH’S INTERCONNECTION?**

13 A. Absolutely not. Although BellSouth claims otherwise, US LEC cannot be
14 required to provision facilities to locations outside its network to facilitate
15 BellSouth’s interconnection. BellSouth has taken the untenable position
16 that it may designate a POI at a central office where US LEC has no
17 physical presence, and thus require that US LEC provision facilities to that
18 point for the sole purpose of accommodating BellSouth. US LEC simply
19 has no such obligation. It is notable that the Telecommunications Act
20 does not even mandate that BellSouth exert such extraordinary effort,
21 requiring only that it interconnect “at any technically feasible point within
22 [BellSouth’s] network.” If US LEC cannot require BellSouth to

1 interconnect at a point outside of BellSouth's network, the converse
2 should certainly be true.

3 **Q. IS IT APPROPRIATE TO IMPOSE ANY CHARGES FOR LOCAL**
4 **INTERCONNECTION TRUNKS?**

5 **A. No.** It is inappropriate to impose any charges for local interconnection
6 trunks (and the facilities upon which those trunks ride), as these are co-
7 carrier facilities and trunks provided for the mutual benefit of the parties in
8 exchanging customer traffic, and both parties must deploy matching
9 capacity on their side of the POI.

10 **Q. WHAT DO YOU MEAN WHEN YOU SAY THE TRUNKS AND**
11 **FACILITIES ARE FOR THE "MUTUAL BENEFIT" OF THE**
12 **PARTIES?**

13 **A.** The interconnection trunks and facilities are as valuable to BellSouth as
14 they are to US LEC or any ALEC. They are used by BellSouth to ensure
15 that calls between its customers and US LEC customers are completed.
16 Without such trunks, BellSouth would not be able to provide the level of
17 services demanded by its own customers. By level of service, I am
18 referring to the customers' perception of blocking.

19 **Q. DOES US LEC HAVE TO PROVIDE INTERCONNECTION TRUNKS**
20 **AND FACILITIES AS WELL?**

21 **A. Yes.** For every trunk that BellSouth sets up to handle US LEC traffic, US
22 LEC must ensure that the appropriate level of capacity is available on its
23 own side of the POI so that calls coming over the BellSouth trunks can

1 then flow over the US LEC network to their intended destination (and vice
2 versa). Thus, it should be in both carriers' interest (or at least in both
3 carriers' customers' interest) to have an adequate amount of co-carrier
4 trunks and underlying facilities in place. Requiring each carrier to pay the
5 other for co-carrier trunks and the underlying facilities on the other party's
6 network is therefore inappropriate and contrary to the principles
7 underlying cooperative reciprocal interconnection.

8 Q. ON THIS PARTICULAR ISSUE, WE ARE TALKING ABOUT
9 TRUNKS AND FACILITIES USED TO INTERCONNECT THE TWO
10 NETWORKS. HAS THE FCC ISSUED ANY RECENT OPINIONS ON
11 THE RESPONSIBILITIES OF THE CARRIERS IN THIS REGARD?

12 A. Yes, it has. There has been some debate about FCC Rule 51.703(b),
13 which states, "A LEC may not assess charges on any other
14 telecommunications carrier for local telecommunications traffic that
15 originates on the LEC's network." In a recent case before the FCC,
16 several ILECs argued that this rule would apply only to "traffic," and
17 would not prevent a carrier from charging an interconnecting carrier for
18 the cost of "facilities" used in originating traffic. The FCC flatly rejected
19 that argument::

20 Defendants argue that section 51.703(b) governs only the
21 charges for "traffic" between carriers and does not prevent
22 LECs from charging for the "facilities" used to transport
23 that traffic. We find that argument unpersuasive given the
24 clear mandate of the Local Competition Order. The
25 Metzger Letter correctly stated that the Commission's rules
26 prohibit LECs from charging for facilities used to deliver
27 LEC-originated traffic, in addition to prohibiting charges

1 for the traffic itself. Since the traffic must be delivered
2 over facilities, charging carriers for facilities used to deliver
3 traffic results in those carriers paying for LEC-originated
4 traffic and would be inconsistent with the rules. Moreover,
5 the Order requires a carrier to pay for dedicated facilities
6 only to the extent it uses those facilities to deliver traffic
7 that it originates. Indeed, the distinction urged by
8 Defendants is nonsensical, because LECs could continue to
9 charge carriers for the delivery of originating traffic by
10 merely re-designating the “traffic” charges as “facilities”
11 charges. Such a result would be inconsistent with the
12 language and intent of the Order and the Commission’s
13 rules. (In the Matters of TSR WIRELESS, LLC, et al,
14 Complainants, v. US WEST COMMUNICATIONS, INC.
15 et al, Defendants; MEMORANDUM OPINION AND
16 ORDER; File Nos. E-98-13, E-98-15, E-98-16, E-98-17,
17 E-98-18; Released June 21, 2000; ¶25; (TSR Order)
18 (footnotes omitted; emphasis in original)

19
20 It is clear that the each LEC bears the responsibility of operating and
21 maintaining the facilities used to transport and deliver traffic on its side of
22 the POI. This responsibility extends to both the trunks and facilities as
23 well as the traffic that transits those trunks and facilities. Likewise, an
24 interconnecting terminating LEC will bear responsibility for the facilities
25 on its side of the POI, but then recover the costs of transporting and
26 terminating traffic over those facilities from the originating LEC, in the
27 form of reciprocal compensation.

28 **Q. DID THE FCC FURTHER EXPLAIN ITS LOGIC FOR REQUIRING**
29 **THE ORIGINATING CARRIER TO BEAR THE COSTS OF**
30 **DELIVERING ORIGINATING TRAFFIC TO THE TERMINATING**
31 **CARRIER?**

32 **A. Yes. In the TSR Order the FCC further clarified its logic as follows:**

1 According to Defendants, the Local Competition Order's
2 regulatory regime, which requires carriers to pay for
3 facilities used to deliver their originating traffic to their co-
4 carriers, represents a physical occupation of Defendants
5 property without just compensation, in violation of the
6 Takings Clause of the Constitution. We disagree. The
7 Local Competition Order requires a carrier to pay the cost
8 of facilities used to deliver traffic originated by that carrier
9 to the network of its co-carrier, who then terminates that
10 traffic and bills the originating carrier for termination
11 compensation. In essence, the originating carrier holds
12 itself out as being capable of transmitting a telephone call
13 to any end user, and is responsible for paying the cost of
14 delivering the call to the network of the co-carrier who will
15 then terminate the call. Under the Commission's
16 regulations, the cost of the facilities used to deliver this
17 traffic is the originating carrier's responsibility, because
18 these facilities are part of the originating carrier's network.
19 The originating carrier recovers the costs of these facilities
20 through the rates it charges its own customers for making
21 calls. This regime represents "rules of the road" under
22 which all carriers operate, and which make it possible for
23 one company's customer to call any other customer even if
24 that customer is served by another telephone company.
25 (TSR Order at paragraph 34) (emphasis added) (footnotes
26 omitted)

27
28 By this reasoning, US LEC should not have to pay BellSouth for the
29 interconnection trunks and facilities that transport BellSouth-originated
30 traffic to US LEC for termination.

31
32 ISSUE 6a – WHICH RATES SHOULD APPLY FOR THE TRANSPORT
33 AND TERMINATION OF LOCAL TRAFFIC: COMPOSITE OR
34 ELEMENTAL?

35

36 Q. PLEASE DESCRIBE THE DISPUTE ON THIS ISSUE.

1 A. BellSouth asks this Commission to order “elemental” rates for end office
2 switching, tandem switching and common transport. BellSouth attempts
3 to show that US LEC’s processing of local calls is different from that of
4 BellSouth in order to restrict reciprocal compensation payments. US LEC
5 relies upon the FCC rules that mandate “reciprocal” compensation that are
6 to be symmetrical and “...equal to those that the incumbent LEC assesses
7 upon the other carrier for the same services.” As such, US LEC seeks a
8 composite rate, while BellSouth seeks an elemental rate.

9 Q. WHAT METHOD SHOULD BE USED TO DETERMINE INTER-
10 CARRIER COMPENSATION?

11 A. Inter-carrier compensation should follow the principle of cost-causation.
12 If the end user customer (calling party) of a local exchange company
13 causes a second carrier to incur -- by receiving and delivering the call to
14 the destination of the calling party’s choosing -- a cost, then compensation
15 is due to the second carrier.

16 Q. WHAT IS THE APPROPRIATE COST STANDARD FOR SETTING
17 RATES FOR RECIPROCAL COMPENSATION?

18 A. Inter-carrier compensation should be mutual and reciprocal and based on
19 forward-looking, long-run economic cost. The FCC has found that
20 Section 252(d) of the Act, which addresses local interconnection pricing,
21 requires that “prices for interconnection and unbundled elements . . .
22 should be set at forward-looking long-run economic cost.” See Local
23 Competition Order at paragraph 672.

1 Q. WHAT RATE ELEMENTS ARE INCLUDED FOR RECIPROCAL
2 COMPENSATION?

3 A. The FCC's rules at §51.701 describe "transport and termination" as the
4 functions for which reciprocal compensation is to be paid. The FCC in
5 this section of its rules clearly differentiates between costs incurred for
6 "transport and termination" (i.e. costs which are to be recovered via
7 reciprocal compensation) and costs incurred in provisioning a local loop
8 (costs which are appropriately recovered from end users). The FCC
9 defines transport as follows:

10 (c) Transport. For purposes of this subpart, transport is the
11 transmission and any necessary tandem switching of local
12 telecommunications traffic subject to section 251(b)(5) of the Act
13 from the interconnection point between the two carriers to the
14 terminating carrier's end office switch that directly serves the
15 called party, or equivalent facility provided by a carrier other than
16 an incumbent LEC.

17 Likewise, the FCC defines termination as follows:

18 (d) Termination. For purposes of this subpart, termination is the
19 switching of local telecommunications traffic at the terminating
20 carrier's end office switch, or equivalent facility, and delivery of
21 such traffic to the called party's premises.

22 Q. CAN THE COMMISSION ORDER RATES THAT ARE NOT
23 SYMMETRICAL?

1 A. No. The FCC's rules regarding reciprocal compensation are
2 unambiguous and do not allow a state Commission to adopt a
3 lower than symmetrical rate of compensation to be paid to an
4 ALEC based upon the ALEC's own costs:

5 §51.711 Symmetrical reciprocal compensation
6

7 (a) Rates for transport and termination of local
8 telecommunications traffic shall be symmetrical, except as
9 provided in paragraphs (b) and (c).

10 (1) For purposes of this subpart,
11 symmetrical rates are rates that a carrier other than
12 an incumbent LEC assesses upon an incumbent
13 LEC for transport and termination of local
14 telecommunications traffic equal to those that the
15 incumbent LEC assesses upon the other carrier for
16 the same services.

17 (2) In cases where both parties are
18 incumbent LECs, or neither party is an incumbent
19 LEC, a state commission shall establish the
20 symmetrical rates for transport and termination
21 based on the larger carrier's forward-looking costs.

22 (3) Where the switch of a carrier other than
23 an incumbent LEC serves a geographic area
24 comparable to the area served by the incumbent
25 LEC's tandem switch, the appropriate rate for the
26 carrier other than an incumbent LEC is the
27 incumbent LEC's tandem interconnection rate.

28 The FCC makes clear in its rule above that reciprocal compensation rates
29 are to be symmetrical (§51.711(a)). The FCC defines symmetrical rates
30 charged by a CLEC as "...equal to those that the incumbent LEC assesses
31 upon the other carrier for the same services." While the FCC does deviate
32 from this strict finding in two specific circumstances, neither circumstance
33 is at issue in this proceeding. For example, within §51.711(a) the FCC

1 highlights the fact that paragraphs (b) and (c) include exceptions wherein a
2 symmetrical rate of reciprocal compensation is not required. Paragraph
3 (b) reads as follows:

4 (b) A state commission may establish asymmetrical rates
5 for transport and termination of local telecommunications
6 traffic only if the carrier other than the incumbent LEC (or
7 the smaller of two incumbent LECs) proves to the state
8 commission on the basis of a cost study using the forward-
9 looking economic cost based pricing methodology
10 described in §§ 51.505 and 51.511 of this part, that the
11 forward-looking costs for a network efficiently configured
12 and operated by the carrier other than the incumbent LEC
13 (or the smaller of two incumbent LECs), exceed the costs
14 incurred by the incumbent LEC (or the larger incumbent
15 LEC), and, consequently, that such that a higher rate is
16 justified.

17
18
19 The exception to symmetrical reciprocal compensation rates identified in
20 paragraph (b) above is relevant only if a competitive carrier attempts to
21 prove to a state Commission that its costs of transporting and terminating
22 local traffic are higher than those incurred by the incumbent, and,
23 “consequently, ...that a higher rate is justified.”

24 Q. IS US LEC SEEKING A RECIPROCAL COMPENSATION RATE
25 THAT IS HIGHER THAN THAT IMPOSED ON US LEC BY
26 BELLSOUTH?

27 A. No. US LEC is not attempting to prove that it should receive a non-
28 symmetrical rate of compensation higher than that it pays to BellSouth to
29 terminate traffic. Hence, FCC rule 51.711(b) is not germane to this
30 proceeding. The same is true of the FCC’s only other exception to
31 symmetrical reciprocal compensation rates found at paragraph 51.711 (c).

1 Paragraph 51.711(c) is aimed directly at reciprocal compensation rates to
2 be applied to paging and radiotelephone service, narrowband personal
3 communications services, and paging operations. Obviously, US LEC is
4 not a radiotelephone or paging operation and hence, rule 51.711(c) is not
5 applicable. This leaves only Rule 51.711 (a) and its requirement that
6 reciprocal compensation rates be symmetrical based upon the rate
7 BellSouth charges US LEC to terminate traffic on its network.

8 Q. PLEASE SUMMARIZE US LEC'S POSITION ON WHICH RATES
9 SHOULD APPLY FOR PURPOSES OF RECIPROCAL
10 COMPENSATION.

11 A. US LEC's position in this proceeding is taken directly from Rule
12 51.711(a) in that US LEC asks only that the Commission follow the
13 FCC's rules and require that it be allowed to charge BellSouth a
14 symmetrical rate of compensation based upon the rate that BellSouth
15 charges US LEC for terminating traffic on the BellSouth network.

16 Q. CAN YOU IDENTIFY THE SPECIFIC RATES THAT SHOULD
17 APPLY FOR RECIPROCAL COMPENSATION?

18 A. Yes. The Commission should order a tandem termination rate equal to
19 BellSouth's tariffed rates for tandem switching, one tandem transport
20 termination, tandem transport mileage and end office switching.

21 Q. IS THE SUM OF THESE RATE ELEMENTS THE COMPOSITE
22 RECIPROCAL COMPENSATION RATE THAT US LEC IS
23 PROPOSING IN THIS PROCEEDING?

1 A. Yes, it is.

2

3 ISSUE 6b – IF ELEMENTAL RATES APPLY, SHOULD US LEC BE
4 COMPENSATED FOR THE TANDEM SWITCHING ELEMENTAL
5 RATES FOR PURPOSES OF RECIPROCAL COMPENSATION?

6 Q. WHAT IS THE PROPER STANDARD TO WHICH US LEC SHOULD
7 BE HELD FOR PURPOSES OF ASSESSING A RATE EQUAL TO
8 BELLSOUTH'S TANDEM TERMINATION RATE?

9 A. FCC Rule 51.711(a)(3) establishes the proper standard to which US LEC
10 or any other ALEC should be held for purposes of assessing a tandem
11 termination rate. Rule 51.711(a)(3) states as follows:

12 §51.711 Symmetrical reciprocal compensation.

13 (a) Rates for transport and termination of local
14 telecommunications traffic shall be symmetrical, except as
15 provided in paragraphs (b) and (c).

16 (1) For purposes of this subpart, symmetrical rates
17 are rates that a carrier other than an incumbent LEC
18 assesses upon an incumbent LEC for transport and
19 termination of local telecommunications traffic
20 equal to those that the incumbent LEC assesses
21 upon the other carrier for the same services.

22 (2) In cases where both parties are incumbent
23 LECs, or neither party is an incumbent LEC, a state

1 commission shall establish the symmetrical rates for
2 transport and termination based on the larger
3 carrier's forward-looking costs.

4 (3) Where the switch of a carrier other than an
5 incumbent LEC serves a geographic area
6 comparable to the area served by the incumbent
7 LEC's tandem switch, the appropriate rate for the
8 carrier other than an incumbent LEC is the
9 incumbent LEC's tandem interconnection rate.

10 Q. PLEASE ELABORATE ON THE SINGLE CRITERION THAT MUST
11 BE MET BEFORE AN ALEC CAN CHARGE A TANDEM
12 TERMINATION RATE.

13 A. It is obvious from rule 51.711(a) that the FCC has established a single
14 criterion that if met, would allow an ALEC to charge the tandem
15 termination rate. That is, "where the switch of a carrier other than an
16 incumbent LEC serves a geographic area comparable to the area served by
17 the incumbent LEC's tandem switch." Therefore, pursuant to rule
18 51.711(a), if US LEC or another ALEC's switch serves a geographic area
19 "comparable" to the area served by the incumbent LEC's tandem switch,
20 then the appropriate rate of compensation to be charged by the ALEC is
21 the ILEC's tandem inter-connection rate.

22 Q. BELLSOUTH ARGUES THAT IF US LEC'S SWITCH IS NOT
23 UTILIZED IN PRECISELY THE SAME MANNER AS BELLSOUTH'S

1 TANDEM, THEN US LEC SHOULD NOT BE COMPENSATED AT
2 THE TANDEM RATE. PLEASE COMMENT.

3 A. BellSouth appears to rely upon a paragraph in the FCC's Local
4 Competition Order to support its flawed position. Paragraph 1090 of that
5 order states as follows:

6 1090. We find that the "additional costs" incurred
7 by a LEC when transporting and terminating a call that
8 originated on a competing carrier's network are likely to
9 vary depending upon whether tandem switching is
10 involved. We, therefore, conclude that states may establish
11 transport and termination rates in the arbitration process
12 that vary according to whether the traffic is routed through
13 a tandem switch or directly to an end-office switch. In such
14 event, states shall also consider whether new technologies
15 (e.g. fiber ring or wireless networks) perform functions
16 similar to those performed by an incumbent LEC's tandem
17 switch and thus, whether some or all calls terminating on
18 the new entrant's network should be priced the same as the
19 sum of transport and termination via the incumbent LEC's
20 tandem switch. Where the interconnecting carrier's switch
21 serves a geographic area comparable to that served by the
22 incumbent LEC's tandem switch, the appropriate proxy for
23 the interconnecting carrier's additional costs is the LEC
24 tandem interconnection rate. [emphasis added]
25

26 Q. IN YOUR OPINION DOES THIS PARAGRAPH REQUIRE CARRIERS
27 LIKE US LEC TO PROVE THAT THEIR SWITCHES SERVE
28 SIMILAR FUNCTIONS TO THOSE PERFORMED BY AN
29 INCUMBENT'S TANDEM SWITCH?

30 A. No, it does not. The last sentence of this paragraph couldn't be clearer,
31 especially when read in combination with the language the FCC ultimately
32 decided upon for purposes of codifying this section of its order in its rules
33 (the language as shown above in Rule 51.711). That is, it is clear that

1 “where the interconnecting carrier’s switch serves a geographic area
2 comparable to that served by the incumbent LEC’s tandem switch, the
3 appropriate proxy for the interconnecting carrier’s additional costs is the
4 LEC tandem interconnection rate” (i.e. comparable geographic coverage).

5 Q. ARE YOU EXPRESSING AN OPINION AS TO WHETHER US LEC’S
6 SWITCH SERVES A GEOGRAPHIC AREA COMPARABLE TO
7 THAT OF BELLSOUTH’S TANDEM?

8 A. No. Ms. Montano will provide evidence of US LEC’s compliance with
9 this requirement.

10

11 ISSUE 7 – SHOULD ISP-BOUND TRAFFIC BE TREATED AS LOCAL
12 TRAFFIC FOR THE PURPOSES OF RECIPROCAL COMPENSATION,
13 OR SHOULD IT BE OTHERWISE COMPENSATED?

14

15 Q. PLEASE DESCRIBE THE DISPUTE ON THIS ISSUE.

16 A. US LEC argues that parties should compensate one another at the
17 reciprocal compensation rate for ISP-bound traffic, just like any other
18 local call. BellSouth argues that traffic originating from or terminating to
19 an enhanced service provider, including an ISP, is not local traffic and
20 should not be subject to reciprocal compensation. Indeed, BellSouth
21 recommends in Attachment 3 that ALECs be required to identify all ISP-
22 bound traffic and submit the results to BellSouth so that BellSouth can
23 charge ALECs switched access charges for such calls.

1 **Q. IS IT IN THE PUBLIC INTEREST TO BREAK-OUT SUCH ISP-**
2 **BOUND CALLS FROM THE UNIVERSE OF LOCAL CALLS?**

3 A. No. There are several reasons why the Commission should not establish a
4 separate class of service for ISP-bound traffic. First, the Commission has
5 determined repeatedly that ISP-bound calls are to be treated as local.
6 Dial-up Internet traffic uses the same public switched network facilities
7 used by other local calls. Likewise, the costs to carry this traffic are
8 largely identical to other local calls exhibiting similar calling
9 characteristics (i.e., time of day, duration, etc.). Hence, to segregate ISP-
10 bound traffic from the larger population of local-billed calls (thereby
11 separating it from some group of calls that largely match its calling
12 characteristics, and costs) provides an artificial distinction between two
13 types of traffic that are actually very similar.

14 **Q. HAS THE FCC SAID ANYTHING ABOUT RATE SETTING BASED**
15 **ON CLASSES OF CUSTOMERS?**

16 A. Yes. FCC Rule 51.503 (c) states: "The rates that an incumbent LEC
17 assesses for elements shall not vary on the basis of the class of customers
18 served by the requesting carrier, or on the type of services that the
19 requesting carrier purchasing such elements uses them to provide." To do
20 so would be to discriminate against a particular class of customers or type
21 of service being provided, based on something other than cost. Such
22 discrimination is not in the public interest.

1 Q. WILL CREATION OF THIS ARTIFICIAL DISTINCTION HARM THE
2 PUBLIC INTEREST?

3 A. Yes. Artificially distinguishing between these two types of calls (i.e., ISP-
4 bound calls and other local calls) skews the resource allocation decisions
5 of the consumer, residential and business alike. Specifically, it skews the
6 consumer's economic decision-making as to what level of each type of
7 call to consume (i.e., if prices for Internet-bound calling are higher than
8 for other types of local calling, the consumer will undoubtedly suppress
9 his/her demand for Internet calling in comparison to the level demanded
10 absent such a price differentiation). For example, under BellSouth's
11 proposal, a customer who makes a large number of local voice calls (or
12 calls of longer than average length) will pay less than a customer who uses
13 the same level of local usage for accessing the Internet. Obviously, under
14 a situation like that described above, even though both customers consume
15 the same level of local calling resources and generate equal costs on the
16 network, the Internet subscriber will be required to pay more. This is
17 problematic in that it provides consumption incentives that do not match
18 the economically efficient incentives that would result from pricing
19 identical or similar services at the same rate.

20 Q. CAN YOU EXPLAIN IN GREATER DETAIL YOUR CONCERN
21 REGARDING A SEPARATE CLASS OF SERVICE FOR ISP-BOUND
22 TRAFFIC?

1 A. My primary concern in this area is that this approach doesn't encourage
2 efficient decision-making on the part of local callers. This results from the
3 fact that even though both voice-grade local calling and calls to the
4 Internet use the same network in almost exactly the same way (thereby
5 generating largely identical costs), local callers would be faced with two
6 different pricing structures for these two identical or similar types of
7 calling. If the Commission were to introduce such a pricing structure, it
8 would arbitrarily distinguish between two types of traffic that are largely
9 identical. For example, one hour of local calling from your computer to
10 the Internet generates exactly the same level of cost on the network as
11 does one hour of calling from your home to your best friend who may live
12 across town. Efficient economic results are generated when consumers
13 are faced with the marginal costs of their decisions. Only when
14 consumers are faced with a situation where the more local calling
15 resources they use the more they pay (whether those be for local voice
16 calls or Internet calling), will they ever be encouraged to make sound
17 economic decisions with respect to how much local calling to use.

18 Separating ISP-bound traffic from all other types of local-billed
19 traffic and subjecting only ISP traffic to this system will serve only to
20 depress demand for Internet usage. At the same time, allowing voice
21 grade traffic to remain under the same pricing structure it currently enjoys
22 will result in an incentive to "over-use" voice grade local calling. In
23 essence, the Commission would be using its regulatory authority to favor

1 one type of local-billed traffic (voice traffic) over another type of local-
2 billed traffic (ISP-bound traffic). This would undoubtedly cause market
3 distortions that could have long-term effects on the growth of Internet
4 traffic and the efficient allocation of resources to Florida's
5 telecommunications infrastructure. One such unfortunate result could be
6 an increase in the gap between those consumers who can afford to use the
7 Internet at these artificially higher rates, and those that cannot (the so
8 called "digital divide").

9 Q. WOULD IT BE POSSIBLE TO SEPARATE THE ISP-BOUND CALLS
10 FROM OTHER LOCAL CALLS?

11 A. It would be very difficult, imprecise and expensive to break-out ISP-
12 bound calls from other local calls. Two separate, and equally ineffective,
13 methods of segregating ISP-bound traffic from other local calls have
14 emerged to this point. First, ILECs such as BellSouth have asked that
15 interconnecting carriers identify the specific NXX-XXXX telephone
16 numbers that are assigned to ISP providers as dial-up access numbers.
17 Then, the traffic that is terminated to these specified dial-in numbers
18 would be measured and identified as ISP-bound traffic (and BellSouth
19 would impose switched access charges on the traffic and refuse to make
20 reciprocal compensation payments to the ALECs for carrying this traffic).
21 Second, ILECs have argued that by measuring the average call duration
22 (holding time) for traffic passed between two carriers, it is possible to
23 estimate the percentage of that traffic that is bound for an ISP (ILECs

1 generally have argued that calls longer than 15 – 20 minutes exhibit
2 characteristics similar to ISP-bound traffic and should therefore be
3 removed from reciprocal compensation obligations).

4 Q. DO YOU BELIEVE THAT EITHER OF THESE OPTIONS IS AN
5 EFFECTIVE MECHANISM FOR “DISTINGUISHING INTERNET
6 TRAFFIC” FROM OTHER TYPES OF LOCAL TRAFFIC?

7 A. No. First, there is no technical or economic distinction between ISP-
8 bound traffic and other types of local traffic, other than the fact that ISP-
9 bound calls generally tend to have longer holding times than do average
10 local calls (and, dial-up ISP-bound calls typically take place in the evening
11 whereas the majority of voice calls occur during the business day). To
12 isolate traffic that originates to a given customer group and contend that
13 the network costs associated with switching traffic to that customer group
14 differ substantially from all other traffic on the network is nonsensical.
15 All of the traffic passed between BellSouth and US LEC shares the same
16 network, uses the same trunk groups and the same switch. Likewise, a
17 minute of use accommodated by that singular network requires the same
18 network capacity (both switching capacity and trunking capacity) as any
19 other minute, regardless of where either minute of use is ultimately
20 destined (i.e., whichever customer or customer group it ultimately
21 terminates to, or originates from). There is no sound economic basis upon
22 which to suggest that a minute of use destined for a barber shop versus a
23 minute of use destined for an ISP generates any difference in network

1 costs. Indeed, the network is oblivious and unconcerned with the
2 subscriber type to which telephone call is terminated. Hence,
3 distinguishing between these two types of calls is an artificial distinction
4 that can lead to poor rate design and consumption decisions.

5 Further, both methods described above for purposes of
6 distinguishing between ISP-bound calls and other types of local traffic
7 have major shortcomings. The first method (i.e., identifying ISP dial-in
8 numbers) requires a carrier to maintain separate records of the telephone
9 numbers used by its ISP customers for dial-up capability. Developing and
10 managing these new systems, if possible, would be time consuming and
11 expensive. Further, this ILEC attempt to identify the phone numbers of
12 ALECs' ISP customers is potentially anti-competitive. Forcing ALECs to
13 provide customer information to the ILEC, gives the ILECs key
14 information about competitors and their customers. Taken to its logical
15 conclusion, then, the ILEC position is to strip away ALEC compensation
16 for the cost of serving ISP customers, while at the same time using the
17 identification of ISP telephone numbers as a tool to market ILEC services
18 to these same customers.

19 To the extent an ISP customer regularly expands or changes the
20 dial-up numbers it uses for this purpose (many ISPs may have hundreds of
21 dial-up numbers), it becomes difficult – not to mention the ongoing
22 expense -- to ensure that all such numbers are captured effectively and/or

1 that only dial-in numbers are identified (as opposed to numbers used by
2 the ISP for its own business uses).

3 The shortcomings of the second alternative described above are
4 even worse. Simply assuming that calls of greater than 15-20 minutes (or
5 even 25-30 minutes) are dial-up calls to the Internet is, by definition,
6 going to provide inaccurate results. (Going beyond voice calls, think for
7 example of the corporate LAN, where a customer dials in but does not go
8 to the Internet. The telecommuter could be dialed in all day to her office,
9 but never reach the Internet. In that case, such a call would show up as
10 ISP-bound notwithstanding the actual destination.) Obviously, a good
11 number of local voice calls (and other non-Internet calls) last longer than
12 15-30 minutes. Under the second approach above, however, any call with
13 duration greater than 15-30 minutes is generally considered to be an ISP-
14 bound call. Using the second method generally tends to overestimate the
15 volume of ISP-bound calls and underestimate the volume of other local
16 calling on the network.

17 **Q. PLEASE SUMMARIZE YOUR POSITION ON BREAKING OUT ISP-
18 BOUND CALLS AND APPLYING SWITCHED ACCESS CHARGES
19 TO SUCH TRAFFIC.**

20 **A.** As shown above, it is not technically feasible to identify "ISP-bound"
21 traffic. Nor is it necessary, since such calls impose absolutely no
22 additional costs on BellSouth. ISP-bound calls have been treated as local
23 calls by this Commission and they should continue to be treated as such.

1 Applying access charges to local calls is completely inconsistent with the
2 reciprocal compensation requirements I described earlier in this testimony.
3 Further, the FCC has rejected arguments by the ILECs to impose access
4 charges on ISPs. Specifically, in its First Report and Order in CC Docket
5 No. 96-262 (Access Charge Reform), released May 16, 1997, the FCC
6 stated as follows when rejecting ILEC attempts to remove the highly
7 touted "ESP Exemption" currently in place for ISP end users:

8 346. We also are not convinced that the nonassessment of
9 access charges results in ISP's imposing uncompensated
10 costs on incumbent LECs. ISPs do pay for their
11 connections to incumbent LEC networks by purchasing
12 services under state tariffs. Incumbent LECs also receive
13 incremental revenue from Internet usage through higher
14 demand for second lines by consumers, usage of dedicated
15 data lines by ISPs, and subscriptions to incumbent LEC
16 Internet access services. To the extent that some intrastate
17 rate structures fail to compensate incumbent LECs
18 adequately for providing service to consumers with high
19 volumes of incoming calls, incumbent LECs may address
20 their concerns to state regulators. [emphasis added]

21
22 As such, it is not in the public interest to impose access charges on ISPs.
23 Access rates do not reflect the costs imposed on the network by ISPs, and
24 the ESP exemption -- which has been in effect for almost 17 years --
25 specifically prohibits imposing such charges on ISPs.

26 **Q. HOW DOES BELLSOUTH'S REFUSAL TO PAY RECIPROCAL**
27 **COMPENSATION IMPACT US LEC AND OTHER ALECS?**

28 **A. US LEC has been successful in attracting ISP providers and other**
29 **customers requiring advanced telecommunications services to its network.**
30 **BellSouth's attempt to exclude these types of local customers from**

1 reciprocal compensation obligations unfairly targets US LEC's customer
2 base and threatens to leave US LEC in the untenable position of delivering
3 a large number of calls, originated by BellSouth customers, without any
4 payment from BellSouth. In essence, US LEC is being asked to carry
5 large volumes of BellSouth traffic without any ability to charge BellSouth
6 for its carriage.

7 Q. DO YOU HAVE ANY IDEA WHY US LEC AND BELLSOUTH HAVE
8 NOT BEEN ABLE TO REACH CONSENSUS ON THIS ISSUE?

9 A. While I would never suggest to speak for BellSouth as to why it finds this
10 issue to be of such importance, I think it is safe to say that BellSouth is
11 oftentimes a "net payor" of reciprocal compensation. This is due
12 primarily to the fact that ALECs appear to be more successful in attracting
13 ISP providers to their local service offerings than BellSouth has been in
14 retaining them. Consider that although the vast majority of services and
15 prices included in an interconnection agreement between BellSouth and a
16 ALEC govern the rates, terms and conditions by which the ALEC will pay
17 BellSouth for service, this is one area where BellSouth may actually, in
18 some circumstances, be required to pay the ALEC for services the ALEC
19 provides to BellSouth. It is likely for that reason that BellSouth is acutely
20 interested in the rates that will be paid for reciprocal compensation and the
21 terms and conditions under which they will be assessed.

22 Q. HASN'T THE FCC ALREADY ADDRESSED THIS ISSUE AND
23 FOUND THAT CALLS TO ISPS ARE INTERSTATE CALLS?

1 A. Yes. The FCC issued the ISP Order in CC Docket No. 96-98 on February
2 26, 1999, but two aspects of that decision must be noted. First, that
3 decision no longer stands. On March 24, 2000, the United States Court of
4 Appeals for the District of Columbia Circuit vacated the FCC's
5 Declaratory Ruling in CC Docket No. 96-98. *Bell Atlantic v. FCC*, Case
6 No. 99-1094 (D.C. Cir.). Second, while the FCC had stated at paragraph
7 18 of its ISP Order that "a substantial portion of Internet traffic involves
8 accessing interstate or foreign websites," the FCC clarified its position
9 with respect to the intercarrier compensation of ISP calls at paragraph 25:

10 Even where parties to interconnection agreements do not
11 voluntarily agree on an inter-carrier compensation
12 mechanism for ISP-bound traffic, state commissions
13 nonetheless may determine in their arbitration proceedings
14 at this point that reciprocal compensation should be paid
15 for this traffic. The passage of the 1996 Act raised the
16 novel issue of the applicability of its local competition
17 provisions to the issue of inter-carrier compensation for
18 ISP-bound traffic. Section 252 imposes upon state
19 commissions the statutory duty to approve voluntarily-
20 negotiated interconnection agreements and to arbitrate
21 interconnection disputes. As we observed in the Local
22 Competition Order, state commission authority over
23 interconnection agreements pursuant to section 252
24 "extends to both interstate and intrastate matters." Thus the
25 mere fact that ISP-bound traffic is largely interstate does
26 not necessarily remove it from the section 251/252
27 negotiation and arbitration process. However, any such
28 arbitration must be consistent with governing federal law.
29 While to date the Commission has not adopted a specific
30 rule governing the matter, we do note that our policy of
31 treating ISP-bound traffic as local for purposes of interstate
32 access charges would, if applied in the separate context of
33 reciprocal compensation, suggest that such compensation is
34 due for that traffic. [emphasis added, footnotes removed]
35

1 Thus, even if one overlooks the fact that the FCC's ISP Order has been
2 vacated, the text of that order would have supported a decision that
3 reciprocal compensation is owed for ISP-bound traffic.

4 Q. HOW WOULD YOU SUGGEST THE QUESTION OF
5 COMPENSATION FOR ISP-BOUND TRAFFIC BE CONSIDERED
6 SINCE THE ISP ORDER HAS BEEN VACATED?

7 A. I would suggest that the Commission look to its own prior decisions in this
8 area as well as to public policy and economic considerations in
9 determining how to address the present dispute.

10 Q. PLEASE EXPLAIN WHY SOUND PUBLIC POLICY AND
11 ECONOMIC REASONING SUPPORT RECIPROCAL
12 COMPENSATION PAYMENTS FOR ISP-BOUND TRAFFIC.

13 A. The Commission's decisions in this regard will have a substantial impact
14 on the Internet marketplace and the investment required to realize the
15 potential of electronic communication and e-commerce as a whole. The
16 list below provides an overview of the public policy and economic
17 rationales that support requiring payments for ISP-bound traffic via the
18 application of transport and termination charges (i.e. reciprocal
19 compensation):

20 (a) ISP providers are an important market segment for all carriers –
21 both ALECs and ILECs – and making it more costly to serve them
22 is likely to distort one of the only local exchange market segments
23 that appears to be well on its way toward effective competition.
24 ISPs have been drawn to ALECs like US LEC in large part
25 because these ALECs have been more willing, and often-times,
26 more able, to meet their unique service needs such as collocation
27 of facilities and short provisioning intervals. Allowing ILECs to

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direct calls to the ISPs by using the ALEC network without paying anything for its use penalizes the ALEC for attracting customers via innovative and customer service focused products.

(b) Despite complex legal arguments and historical definitions, the simple fact remains that calls directed to ISPs are functionally identical to local voice calls for which BellSouth agrees to pay termination charges. Applying different termination rates or, even worse, compensating a carrier for one type of call and not for the other, will generate inaccurate economic signals in the marketplace, the result of which will drive firms away from serving ISPs. This result could have a dire impact on the growing electronic communication and e-commerce markets.

(c) Requiring carriers to pay reciprocal compensation rates for the termination of ISP-bound traffic is economically efficient. Indeed, because termination rates must be based upon the incumbent's underlying costs, BellSouth should be economically indifferent as to whether it incurs the cost to terminate the call on its own network or whether it incurs that cost through a reciprocal compensation rate paid to US LEC. The fact that BellSouth is not economically indifferent stems from its incentive to impede US LEC's entry into the marketplace instead of an incentive to be as efficient as possible in terminating its traffic.

(d) Because BellSouth is required to pay, as well as receive, symmetrical compensation for local exchange traffic based upon its own reported costs, its payments to other carriers in this regard are an important check on BellSouth's cost studies used to establish rates for the termination of traffic. Unless BellSouth is required to pay the costs that it has established via its own cost studies, it has every incentive to over-estimate those costs for purposes of raising barriers to competitive entry. By removing large traffic volume categories such as ISP-bound traffic from BellSouth's obligation to pay terminating costs, the Commission would be removing an important disciplining factor associated with ensuring that BellSouth's reported termination costs are reasonable.

Q. PLEASE EXPLAIN IN GREATER DETAIL YOUR CONTENTION
THAT BECAUSE ISP PROVIDERS ARE AN IMPORTANT MARKET
SEGMENT FOR ALECS, ELIMINATING AN ALEC'S ABILITY TO

1 RECOVER COSTS ASSOCIATED WITH SERVING THEM IS
2 LIKELY TO DISTORT THE MARKET.

3 A. Transitionally competitive markets, like the local exchange market, have
4 shown that new entrants are usually most successful in attracting
5 customers that (1) are unsatisfied with the services or quality offered by
6 the incumbent, (2) have technological, capacity or other specific
7 requirements that are not easily met by the incumbent's oftentimes
8 inflexible service offerings, and/or (3) don't have a long history of taking
9 service from the incumbent. ISP providers fall directly into all three of
10 these categories as many of them have been unable to reach agreement
11 with ILECs in areas such as pricing for high capacity lines, provisioning
12 intervals, collocation of their equipment in ILEC central offices or even in
13 some circumstances, the ability to purchase service in sufficient quantity
14 to meet their own end-user customer demands. Likewise, most ISP
15 organizations are fairly new and have begun their enterprise at a time
16 when competitive alternatives for local exchange services are available.
17 Hence, it is reasonable to expect that these types of businesses are less
18 restricted by long term or volume agreements, a long business relationship
19 or other circumstances that often breed loyalty to the incumbent. The fact
20 that these customers are far more likely to explore competitive
21 opportunities than more traditional residential and/or business customers
22 has made them an extremely important customer base for ALECs.

1 Likewise, ALECs, like US LEC, because of their new track record
2 and non-existent customer base in new markets, are naturally more likely
3 to serve customers that require services specifically tailored to their
4 strengths (i.e. customer service, new technology deployment and
5 substantial spare capacity). Given these characteristics, ISP providers and
6 ALECs are effectively “made for one another” and ISPs have flocked to
7 new entrant ALECs in increasing numbers. Likewise, ALECs have
8 worked with ISPs to design new and innovative services and have
9 provided ISPs the capacity they need to meet their customers’ increasing
10 demands.

11 Q. IS THE LIKELIHOOD THAT ALECS SERVE ISPS IN GREATER
12 PROPORTION THAN A MATURE INCUMBENT LIKE BELLSOUTH
13 THE RESULT OF A MARKET FAILURE?

14 A. Not at all. The relationships between ALECs and ISPs, as described
15 above, are the direct result of how a competitive market is meant to work.
16 Carriers who are unwilling to meet the demands of their customers, lose
17 those customers to carriers who are more accommodating. Carriers who
18 are attempting to build market share tend to be more accommodating than
19 carriers who are attempting to merely keep market share. Likewise,
20 carriers who provide customer focused services and supply the capacity
21 required to meet their customers’ demands are rewarded. The fact that
22 relatively new customers who require specific technological support have
23 embraced new ALECs is one of the most promising outcomes of the local

1 exchange market's transition to competition. Indeed, ISPs and other
2 technologically reliant customer groups are, in many cases, providing the
3 revenue and growth potential that will fund further ALEC expansion into
4 other more traditional residential and business markets.

5 Q. IF THE COMPETITIVE MARKETPLACE FOR ISP CUSTOMERS
6 APPEARS TO BE WORKING WELL, WHY IS US LEC ASKING THE
7 COMMISSION FOR ITS ASSISTANCE IN THIS ARBITRATION?

8 A. Within the interconnection agreement at issue in this proceeding,
9 BellSouth is refusing to pay going forward, under the new contract, for
10 traffic that originates on its network and is directed to a local ISP customer
11 served by US LEC. Simply put, BellSouth is asking through its proposed
12 contract language that US LEC provide its facilities for the use of
13 BellSouth's customers without compensation. Traffic originated on the
14 BellSouth network and directed to US LEC's local ISP customers is no
15 different than other types of traffic for which BellSouth has agreed to
16 provide reciprocal compensation. Given this, and the fact that US LEC
17 has agreed to pay BellSouth for traffic originating on the US LEC network
18 and directed to a BellSouth local ISP, the Commission should require
19 BellSouth to compensate US LEC for transporting and terminating such
20 calls.

21 Q. EARLIER YOU MENTIONED THAT ALLOWING BELLSOUTH TO
22 ABBROGATE ITS OBLIGATION TO COMPENSATE US LEC FOR
23 TRAFFIC DIRECTED TO ITS LOCAL ISP CUSTOMERS WOULD

1 DISTORT ONE OF THE ONLY LOCAL EXCHANGE MARKET
2 SEGMENTS THAT APPEARS TO BE WELL ON ITS WAY TOWARD
3 EFFECTIVE COMPETITION. CAN YOU EXPLAIN THIS CONCEPT
4 IN GREATER DETAIL?

5 A. Yes. As I described above, ALECs have been more successful in
6 attracting a number of ISP customers because they have offered those
7 customers innovations and reasonably priced advanced services at a level
8 of customer care that BellSouth was unable or unwilling to provide. As
9 such, BellSouth has lost a number of these customers to US LEC and other
10 ALECs, resulting in this particular market segment exhibiting some of the
11 most competitive characteristics of any segment in the local market.

12 It is no coincidence that BellSouth wishes to avoid paying
13 reciprocal compensation going forward for calls directed to this particular
14 customer group. If BellSouth can successfully remove itself from an
15 obligation to compensate ALECs for calls directed to their ISP customers,
16 it will have accomplished two tasks inimical to the competitive
17 marketplace.

18 First, BellSouth will have succeeded in branding ISP customers as
19 “unattractive” customers from a local provider’s standpoint because ISP
20 customers will generate costs for their local service provider without
21 providing any reciprocal compensation revenues. By branding ISP
22 customers as unattractive customers, BellSouth will have significantly
23 diminished the hard-earned victories made by its competitor ALECs.

1 Second, a failure to provide any reciprocal compensation revenues
2 associated with the function of transporting and terminating traffic to ISPs
3 could disrupt the ISP marketplace. If ALECs need to raise prices to ISPs
4 because BellSouth does not pay for call termination, this is likely to send
5 many ISPs back to BellSouth where its vastly larger customer base can be
6 used to offset the costs of terminating the ISPs' traffic without raising ISP
7 local rates. Further, if their local exchange rates are increasing, ISPs who
8 do not return to BellSouth would have little choice but to raise the rates
9 charged to their individual end users. This will in turn make BellSouth's
10 ISP retail service more attractive to individual end users, further stifling
11 competition in the ISP market.

12 All of these circumstances are disruptions to a competitive
13 segment of the local exchange marketplace that seems to be operating
14 more effectively than most other more traditional segments. The fact that
15 each of these disruptions happens to benefit BellSouth should not be lost
16 on the Commission when it considers BellSouth's rationale for refusing to
17 pay reciprocal compensation for ISP bound traffic.

18 Q. WOULD THERE BE ANY NEGATIVE ECONOMIC
19 CONSEQUENCES FROM ALLOWING BELLSOUTH TO PAY
20 NOTHING FOR CALLS DIRECTED TO ISPS YET PAY A HIGHER
21 RATE FOR ALL OTHER CALLS?

22 A. Of course. Given the option of receiving an amount greater than zero for
23 carrying a non-ISP call and nothing for carrying an ISP call, any

1 reasonable carrier would fill its switch with non-ISP calls to the extent
2 possible. Likewise, any carrier that currently served a larger proportion of
3 ISP customers would be a less profitable network than a network that
4 served a smaller proportion of ISP customers. In effect, allowing
5 BellSouth to skirt its obligation to pay for the use of an interconnecting
6 carrier's network to terminate its local customers' calls to ISP providers
7 will skew the supply substitutability of ISP services versus other local
8 services, thereby making other local exchange services relatively more
9 attractive production alternatives. This may in turn raise ISP prices in
10 relation to other local exchange services thereby impairing an ISP's ability
11 to receive services at rates comparable to other local end users. Not only
12 is this in direct conflict with the FCC's intentions with respect to offering
13 ISPs an access charge exemption so as to place them on a level playing
14 field with other local customers, it also is likely, all else being equal, to
15 suppress ISP communication demand versus other types of non-ISP
16 communication. See ISP Order at paragraph 20. This price discrimination
17 effect will mean electronic communication and e-commerce demand will
18 undoubtedly grow at a slower pace than if there were no discrimination.
19 Any difference between the unrestricted growth of electronic
20 communication and the suppressed growth caused by the uneconomic
21 price discrimination described above would result in a net welfare loss due
22 to the inefficient market consequences of BellSouth's failure to pay
23 reciprocal compensation rates.

1 Q. PLEASE EXPLAIN IN MORE DETAIL YOUR CONTENTION THAT
2 BECAUSE TERMINATION RATES MUST BE BASED UPON THEIR
3 UNDERLYING COSTS, BELLSOUTH SHOULD BE
4 ECONOMICALLY INDIFFERENT AS TO WHETHER IT INCURS
5 THE COST TO TERMINATE THE CALL ON ITS OWN NETWORK
6 OR WHETHER IT INCURS THAT COST THROUGH A RECIPROCAL
7 COMPENSATION RATE PAID TO US LEC.

8 A. Assume that a BellSouth customer calls another BellSouth customer
9 within the same local calling area, as described in Diagram 5 infra. The
10 call will travel a similar path to the case described above in which a
11 BellSouth customer is dialing a customer served by US LEC or another
12 ALEC, except that both end offices will now be owned by BellSouth.

13 In such a circumstance, BellSouth incurs costs associated with
14 originating, transporting and terminating the call for which it is paid, by its
15 originating customer, a local usage fee (either a flat fee per month or a per
16 message or per minute charge, or both).

17 When compared to the scenario discussed above, in which the
18 terminating customer is served by US LEC or another ALEC, it is easy to
19 see that the only difference between a call made between two BellSouth
20 local customers and the call made from a BellSouth customer to a US LEC
21 customer is that the US LEC network provides the terminating transport
22 and switching function that was originally performed by the BellSouth
23 network. In this way, BellSouth avoids those costs of terminating the call.

1 Hence, if BellSouth has accurately established its terminating reciprocal
2 compensation rate based upon its own costs of terminating a call, it should
3 be economically indifferent with respect to whether a call both originates
4 or terminates on its own network or whether a call terminates on the US
5 LEC network. BellSouth will either incur the terminating cost via its own
6 switch or it will incur that cost via a cost-based rate paid to US LEC for
7 performing the termination function. Either way, the extent to which a
8 particular call is directed to a particular kind of customer is irrelevant to
9 the economics and engineering of the call.

10 Q. WHY IS THIS POINT CRITICAL TO UNDERSTANDING THE
11 DISPUTE REGARDING PAYMENT FOR ISP-BOUND TRAFFIC AT
12 ISSUE IN THIS PROCEEDING?

13 A. This point is critical for two reasons. First, assume that neither US LEC
14 nor any other ALEC existed and that BellSouth provides local services to
15 100 percent of the customer base. Assume further that ISP traffic is
16 occurring at today's levels with future growth expected to be even greater.
17 In such a circumstance, BellSouth would be responsible not only for
18 originating every call but also for terminating every call, including calls
19 made to ISP providers. BellSouth would undoubtedly need to reinforce its
20 network to accommodate the additional capacity requirements associated
21 with this increase in traffic. It is highly unlikely under such a
22 circumstance that BellSouth would be arguing that terminating traffic to

1 an ISP provider should be done for free. However, that is exactly what
2 BellSouth is asking this Commission to do in this case.

3 The arbitration issue before the Commission differs from our
4 hypothetical above in that instead of only BellSouth investing in its
5 network to meet the capacity requirements of the traffic volume increases
6 that have occurred over the past few years, new entrants like US LEC have
7 also invested capital and have deployed their own switching capacity to
8 accommodate this growth. Likewise, as BellSouth would have
9 undoubtedly argued in our hypothetical above that it should be
10 compensated for its additional investment to meet this growth, ALECs
11 should also be compensated for terminating that traffic such that their
12 investments can be recovered.

13 The second reason is of paramount importance because it is at the
14 heart of the dispute between the parties in this case. As I have shown
15 above, BellSouth should be indifferent as to whether it terminates the
16 traffic or it avoids the costs of termination and pays someone else, namely
17 an ALEC, to do so. Yet we know that BellSouth is not indifferent because
18 it has refused to agree to such a compensation framework as part of the
19 new interconnection agreement. The question is: Why? The answer lies
20 in one of two reasons. Either (1) BellSouth's current rate for call
21 termination is not representative of its actual underlying costs and it
22 realizes that paying an ALEC for terminating traffic actually makes it
23 economically "worse off" than terminating the traffic itself, or (2) it has a

1 competitive interest in not providing a cost recovery mechanism for its
2 competitors regardless of the extent to which it is economically indifferent
3 on any given call.

4 Q. DO YOU BELIEVE THAT EITHER OF YOUR SCENARIOS ABOVE
5 IS LIKELY TO BE AT THE ROOT OF BELL SOUTH'S REFUSAL TO
6 PAY COMPENSATION FOR CALLS DIRECTED TO ISP PROVIDERS
7 SERVED BY AN ALEC?

8 A. Obviously, I can't speak to what motivates BellSouth's position in this
9 respect. However, I can speak to the economic incentives that are at work
10 in the local exchange marketplace and how participants within that
11 marketplace react to them. And, in this case, it would make sense that any
12 ILEC has an incentive (though an incentive steeped in self-interest) to
13 avoid payment for traffic directed to an ISP served by an ALEC for both
14 of the reasons described above.

15 Q. IN COMMENTS TO THE FCC, AND IN A NUMBER OF OTHER
16 DOCUMENTS, ILECS HAVE ARGUED THAT IT IS UNFAIR TO
17 FORCE THEM TO PAY ALECS FOR TERMINATING TRAFFIC TO
18 ISPS WHEN THEY ARE UNABLE TO RECOVER THOSE
19 RECIPROCAL COMPENSATION PAYMENTS EITHER THROUGH
20 ACCESS CHARGES ASSESSED ON THE ISP OR FOR USAGE
21 CHARGES ASSESSED TO THEIR OWN LOCAL CUSTOMERS. DO
22 YOU HAVE ANY COMMENTS REGARDING THIS ISSUE?

1 A. Yes, I do. First, I've already discussed the fact that calls to ISPs are really
2 indistinguishable from calls to any other local customer. Hence, the fact
3 that a call is directed to an ISP or to any other kind of customer is
4 irrelevant to this argument. This argument does not support BellSouth's
5 position that it will pay termination charges for calls made to certain
6 customers yet not for calls directed to a business customer who happens to
7 be an ISP provider.

8 Second, however, there seems to be some indication in this
9 argument that ALECs are to blame for the increased costs the ILECs
10 contend they are facing in meeting calling volume requirements associated
11 with electronic communication and e-commerce. This simply isn't
12 accurate. It is the public's seemingly unquenchable thirst for Internet
13 access and other electronic communications media that have caused the
14 increased calling volumes that generate costs associated with carrying
15 local traffic to the Internet. And, it is important to note that companies
16 like BellSouth are on the front lines marketing these services to feed the
17 public's demand.

18 Q. PLEASE SUMMARIZE US LEC'S POSITION ON RECIPROCAL
19 COMPENSATION FOR ISP-BOUND CALLS.

20 A. Reciprocal compensation is required under the 1996 Act and the FCC
21 rules. BellSouth's proposal would result in US LEC carrying large
22 volumes of BellSouth traffic without any compensation. This position is
23 inconsistent and anticompetitive.

1 BellSouth has agreed to pay reciprocal compensation for local calls
2 dialed to an ALEC residential or business customer. Consistent with
3 public policy and economic objectives and the Commission's decision in
4 other arbitration cases, BellSouth should also pay US LEC reciprocal
5 compensation for calls to those customers who happen to be ISPs.
6 Charging different rates for what are identical types of calls would result
7 in significant negative impacts in the market place and to BellSouth's
8 competitors. Finally, the FCC has enforced the ESP exemption, which
9 this Commission has recognized, such that enhanced service providers,
10 including ISPs, should not pay access charges. At paragraph 20 of the ISP
11 Order, the FCC states as follows:

12 Our determination that at least a substantial portion of dial-
13 up ISP-bound traffic is interstate does not, however, alter
14 the current ESP exemption. ESPs, including ISPs, continue
15 to be entitled to purchase their PSTN links through
16 intrastate (local) tariffs rather than through interstate access
17 tariffs. Nor, as we discuss below, is it dispositive of
18 interconnection disputes currently before state
19 commissions.

20
21 Q. HAS THIS COMMISSION RULED ON THE JURISDICTIONALITY
22 OF ISP-BOUND TRAFFIC?

23 A. Yes. To the best of my knowledge, this Commission has addressed the
24 reciprocal compensation issue for ISP-bound traffic in at least three
25 proceedings in the last year. The proceedings were arbitrations between
26 BellSouth and ITC^DeltaCom Communications, Intermedia
27 Communications, and Global NAPS.

28 Q. WERE THE RULINGS IN THOSE PROCEEDINGS SIMILAR?

1 A. Yes, they were. The Commission recognized that the FCC's ISP
2 Order does not have a final rule governing inter-carrier
3 compensation for ISP-bound traffic and that states are allowed to
4 determine whether reciprocal compensation is due for the traffic.
5 Indeed, at page 33 of the Delta^Com Order the Commission stated,

6 We agree with ITC^DeltaCom witness
7 Rozycki that state commissions may determine that
8 reciprocal compensation is due for ISP-bound
9 traffic.

10 Consistent with that ruling, the Commission has ordered the
11 continuation of inter-carrier agreements pending the FCC's final
12 rule on the treatment of ISP-bound traffic. In the order cited
13 above, at page 34, the Commission stated:

14 Upon consideration, we find it reasonable
15 that the parties shall continue to operate under the
16 terms of their current interconnection agreement
17 regarding reciprocal compensation until the FCC
18 issues its final ruling on whether ISP-bound traffic
19 should be defined as local or whether reciprocal
20 compensation is otherwise due for this traffic.
21

22
23 **Q. PLEASE SUMMARIZE YOUR POSITION ON ISSUE 7.**

24 A. Calls to ISPs are handled and processed in the same manner as any
25 other local call and reciprocal compensation should be paid on
26 those calls. BellSouth should not be allowed to avoid reciprocal
27 compensation for these calls as it would result in ALECs carrying
28 calls originated by BellSouth customers without any compensation.
29 Further, BellSouth has failed to show why calls to ISPs should be
30 treated any differently from other local calls. Finally, this

1 Commission has determined in other proceedings that its decision
2 on the jurisdictionality of ISP-bound calls may be impacted by the
3 FCC's final rule. As such, the status quo should be maintained
4 unless and until the FCC issues a decision that definitively
5 addresses this issue.

6

7 ISSUE 8 – SHOULD US LEC BE ALLOWED TO ESTABLISH ITS OWN
8 LOCAL CALLING AREAS AND ASSIGN ITS NPA/NXX FOR LOCAL
9 USE ANYWHERE WITHIN SUCH AREAS, CONSISTENT WITH
10 APPLICABLE LAW, SO LONG AS IT CAN PROVIDE INFORMATION
11 PERMITTING BELLSOUTH AS THE ORIGINATING CARRIER TO
12 DETERMINE WHETHER RECIPROCAL COMPENSATION OR ACCESS
13 CHARGES ARE DUE FOR A PARTICULAR CALL?

14

15 **Q. PLEASE BRIEFLY DESCRIBE THE DISPUTE ON THIS POINT.**

16 A. BellSouth argues that it should not be required to pay reciprocal
17 compensation for any call terminating to a customer who is physically
18 located outside of the local calling area where the call originates. Further,
19 BellSouth argues that it should be able to charge originating access
20 charges for all calls to customers physically located outside the local
21 calling area. BellSouth provides no evidence that such calls increase its
22 costs as compared to other local calls in any way such that additional cost
23 recovery is justified.

1 US LEC argues that BellSouth does not incur any additional costs
2 in delivering traffic to US LEC's switch based on the location of US
3 LEC's customers. Further, it would be inconsistent and anticompetitive to
4 allow BellSouth to evade reciprocal compensation and then to charge US
5 LEC originating switched access charges for calls going to a particular
6 NXX code. Finally, the FCC's ESP Exemption specifically prohibits the
7 imposition of access charges on enhanced service providers, including
8 ISPs.

9 Q. WHAT ARE NXX CODES?

10 A. NXX codes are the fourth through sixth digits of a ten-digit telephone
11 number. These codes are used as rate center identifiers, but it is not
12 uncommon for NXX codes to be assigned to customers who are not
13 physically located in that rate center. This type of arrangement has at
14 times been referred to as "Virtual NXX" because the customer assigned to
15 the telephone number has a "virtual" presence in the associated local
16 calling area. This flexible use of NXX codes allows carriers to offer
17 valuable services to their customers. For instance, so-called virtual NXX
18 arrangements enable ISPs to offer low cost dial-up numbers throughout
19 Florida, including the more isolated areas of the State. Access to the
20 Internet is affordable and readily available in all areas of the state because
21 virtual NXX arrangements allow ISPs to establish a small number of
22 points of presence (POP) that can be reached by dialing a local number

1 regardless of the physical location of the Internet subscriber (within the
2 LATA).

3 **Q. IS IT UNLAWFUL OR AGAINST ANY RULES FOR ALECS TO**
4 **PROVIDE VIRTUAL NXXS TO THEIR CUSTOMERS?**

5 A. No. The use of virtual NXX codes is not unlawful or in any other way
6 improper. BellSouth provides a virtual NXX service to ISPs called
7 foreign exchange service. Indeed, nobody complained about such uses of
8 NXX codes until ALECs had some success in attracting ISP customers
9 and the ILECs began looking for any means possible to avoid paying
10 ALECs for terminating calls to ISPs.

11 **Q. CAN YOU DESCRIBE THE IMPACT OF BELLSOUTH'S PROPOSED**
12 **LANGUAGE WITH RESPECT TO THE CUSTOMER'S PHYSICAL**
13 **LOCATION, IN MORE DETAIL?**

14 A. Yes, as noted above, the language proposed by BellSouth would have at
15 least three significant negative impacts in Florida. First, if the
16 Commission adopted BellSouth's proposed language, BellSouth would be
17 able to evade its reciprocal compensation obligations under the 1996 Act.
18 Second, and also contrary to one of the fundamental goals of the 1996 Act,
19 BellSouth's proposed language would have a negative impact on the
20 competitive deployment of affordable dial-up Internet services in Florida.
21 Finally, BellSouth's proposed language would give BellSouth a
22 competitive advantage over US LEC in the ISP market.

1 Q. HOW WOULD BELLSOUTH EVADE ITS RECIPROCAL
2 COMPENSATION OBLIGATIONS TO US LEC BY LIMITING
3 RECIPROCAL COMPENSATION TO CALLS ORIGINATING AND
4 TERMINATING IN THE SAME LOCAL CALLING AREA?

5 A. Placing limitations on reciprocal compensation by referring to a
6 customer's physical location would give BellSouth the ability to re-
7 classify local calls as toll calls. This is because according to BellSouth's
8 proposed language, it would be nearly impossible and much more
9 economically burdensome for US LEC (or any other ALEC in a similar
10 situation) to utilize virtual NXXs in the provision of service to its
11 customers. Virtual NXXs are often used by carriers to provide a local
12 number to customers in local calling areas in which the customer is not
13 physically located. Customers who are physically located (both ILEC and
14 ALEC customers) in that area are then able to place calls to the virtual
15 NXX customer without incurring toll charges. If BellSouth precludes US
16 LEC or any other ALEC from using virtual NXXs for local calls to ISPs,
17 not only would BellSouth customers no longer be able to reach many of
18 their ISPs by dialing a local number, but because calls to the ISP have
19 been re-classified as toll calls, BellSouth would no longer be obligated to
20 pay the reciprocal compensation associated with local calls. One must
21 consider the implications in both the competitive telecommunications
22 market and the Internet access market – if a carrier cannot use virtual
23 NXXs to serve ISPs without paying BellSouth a high per-minute charge

1 for originating each call and then also loses the ability to collect any
2 compensation from BellSouth in terminating the call, what incentive will
3 any carrier have to serve ISPs? And to whom will the ISPs turn in order to
4 ensure that their own customers in Florida don't have to dial a toll call to
5 reach the Internet? I will discuss later in this testimony how these
6 considerations could affect the Florida telecommunications and Internet
7 access markets.

8 Q. DO THE COSTS INCURRED BY BELLSOUTH DIFFER WHEN ONE
9 OF ITS CUSTOMERS DIALS A VIRTUAL NXX NUMBER AS
10 OPPOSED TO A PHYSICAL NXX, THEREBY PROVIDING
11 JUSTIFICATION FOR BELLSOUTH TO AVOID PAYING
12 RECIPROCAL COMPENSATION AND BEGIN IMPOSING
13 SWITCHED ACCESS CHARGES?

14 A. No. There is no additional cost incurred by BellSouth when a virtual
15 NXX is provided to an ALEC customer, because BellSouth carries the call
16 the same distance and incurs the same costs regardless of whether the call
17 is terminated to an ALEC customer with a physical location in the NXX
18 rate center, or an ALEC customer with a virtual presence. BellSouth's
19 obligations and costs are therefore the same in delivering a call originated
20 by one of its customers, regardless of whether the call terminates at a so-
21 called "virtual" or "physical" NXX behind the ALEC switch.

22 At a time when regulators and the industry are looking to move to
23 more competitive market models by eliminating implicit subsidies in

1 telecommunications rates and inter-carrier payments, it would seem
2 contrary to reason to suddenly now foist switched originating access
3 charges on a certain type of customer traffic when the costs of originating
4 that traffic do not differ from any other local call.

5 Q. DOES THE USE OF VIRTUAL NXX CODES IMPACT THE
6 HANDLING OR PROCESSING OF A CALL TO A US LEC
7 CUSTOMER?

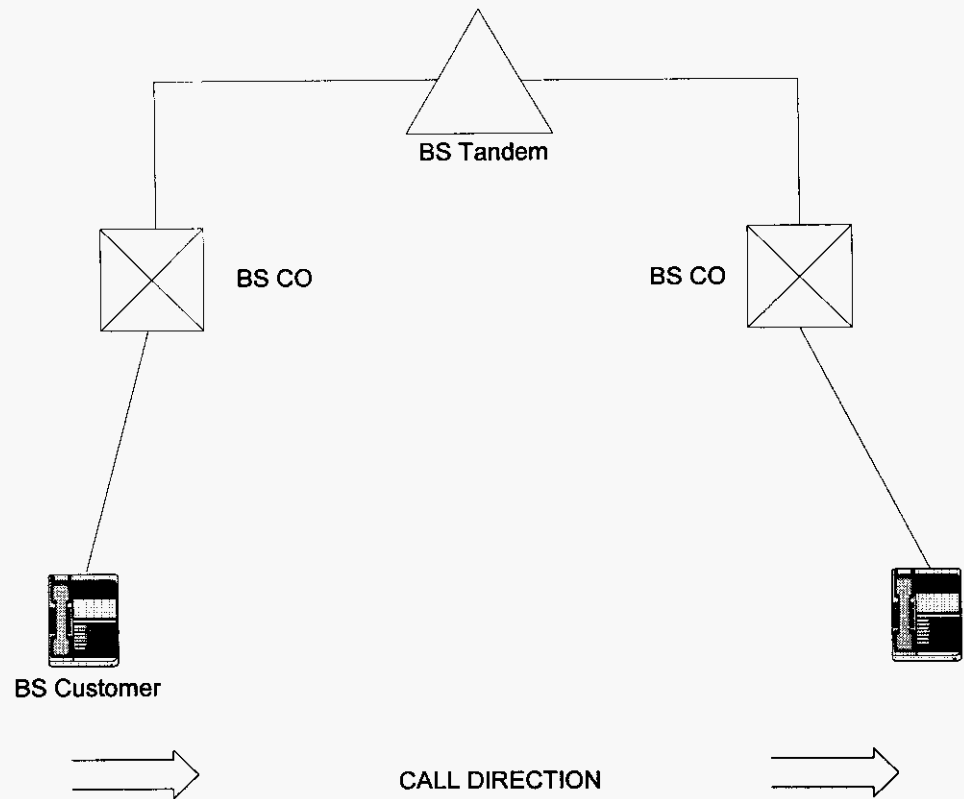
8 A. No. BellSouth would always be responsible for carrying the call to the
9 POI on its own network and then paying for delivery of the call over the
10 same distance (from the POI to the ALEC switch). The use of a virtual
11 NXX does not impact BellSouth's financial and/or operational
12 responsibilities such that it should be eligible to avoid paying any
13 compensation to the terminating LEC or collecting additional
14 compensation itself.

15 Q. PLEASE EXPLAIN IN GREATER DETAIL YOUR CONTENTION
16 THAT CALLS DIRECTED TO ISPS ARE FUNCTIONALLY
17 IDENTICAL TO LOCAL VOICE CALLS FOR WHICH BELL SOUTH
18 HAS AGREED TO PAY TERMINATION CHARGES.

19 A. Let's begin with a quick review of the technical requirements of reciprocal
20 compensation. This drawing (Diagram 3) depicts one way that BellSouth
21 may route and terminate local calls on its own network, to and from its
22 own customers.

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DIAGRAM 3



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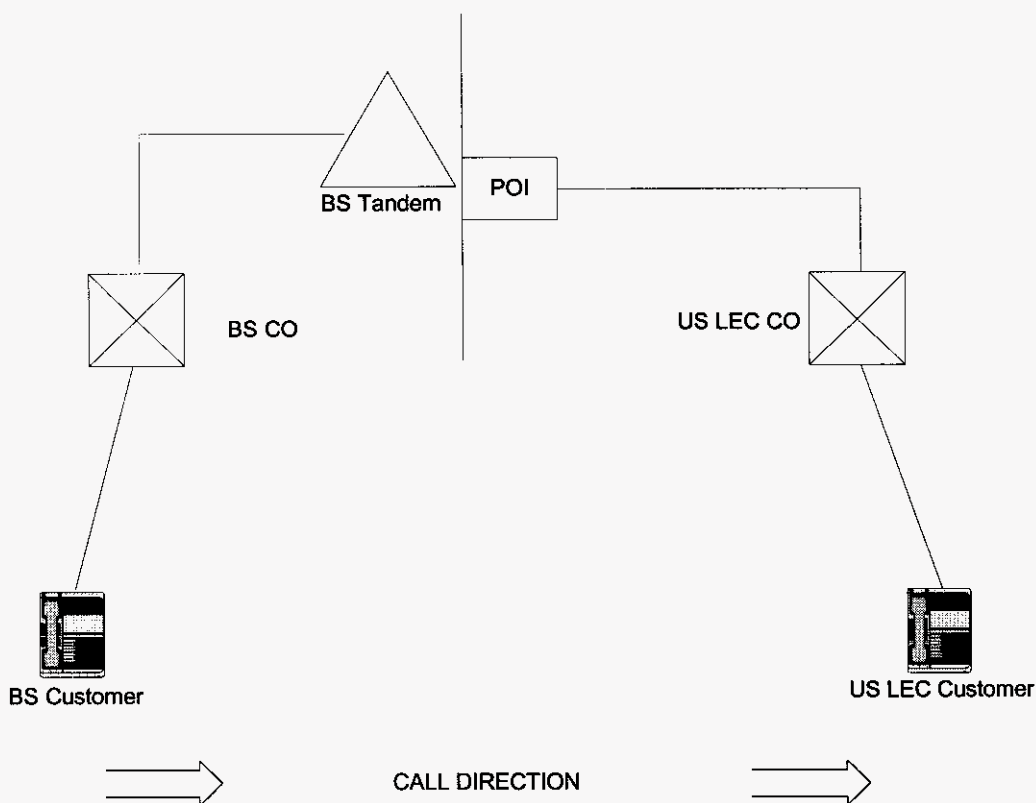
11

The customer on the left calls the customer on the right. The call is switched at the central office to the tandem where it is routed to the terminating central office and finally to the called party. In this scenario, BellSouth is financially and operationally responsible for both originating and terminating the call. (This is just one example of how a call might be routed. There are other possible routes a call could take that would not include the tandem. Direct trunking between central offices is possible and so is an intra-office call. These different scenarios do not impact the point of this discussion.)

1 Q. HOW DOES THE FINANCIAL AND OPERATIONAL
2 RESPONSIBILITY CHANGE IN A MULTIPLE PROVIDER
3 ENVIRONMENT?

4 A. In an environment with multiple providers, the parties share the
5 responsibility for carrying this call. Interconnection and reciprocal
6 compensation agreements define carrier responsibilities in a multiple
7 provider environment.

8 DIAGRAM 4



9
10 In comparing Diagram 3 and this diagram (Diagram 4), there is a point of
11 interconnection or "POI" in a multiple provider situation. As discussed
12 previously in this testimony, the POI is the physical interconnection
13 between the two networks and represents the point where financial and

1 operational responsibility for handling local calls changes. The vertical
2 line between the BS tandem and the POI represents the point at which the
3 carrier responsibility changes.

4 Q. PLEASE EXPLAIN HOW A CALL IS ROUTED IN THIS MULTIPLE
5 CARRIER ENVIRONMENT.

6 A. Assuming a BellSouth customer originates a call to the US LEC customer,
7 BellSouth is responsible for getting the call to US LEC's POI. BellSouth
8 switches and transports the call to the POI. From the POI, US LEC is
9 responsible for terminating the call for BellSouth – again, switching and
10 transporting the call to the called party. In return, BellSouth pays US LEC
11 for terminating the call. The originating carrier is compensated for its
12 portion of the call through local rates, vertical features (i.e., call waiting,
13 call forwarding, star codes), EAS arrangements and other subsidies, such
14 as access charges, that support local rates. The routing and compensation
15 responsibilities are reversed if a US LEC customer calls a BellSouth
16 customer. Hence the term “reciprocal.”

17 Q. DO YOU AGREE WITH BELLSOUTH'S ATTEMPT TO LIMIT ITS
18 OBLIGATION TO PAY RECIPROCAL COMPENSATION?

19 A. No. BellSouth insists on language that would limit the reciprocal
20 compensation obligations by defining local calls as only those calls
21 originating and terminating to customers located physically within the
22 same local calling area. BellSouth also excludes traffic destined for
23 Internet Service Providers, or ISPs, from the reciprocal compensation

1 obligation. These positions are anticompetitive and should be rejected by
2 this Commission.

3 Q. PLEASE PROVIDE SOME EXAMPLES THAT SHOW THE FLAWS
4 IN BELLSOUTHS'S POSITION.

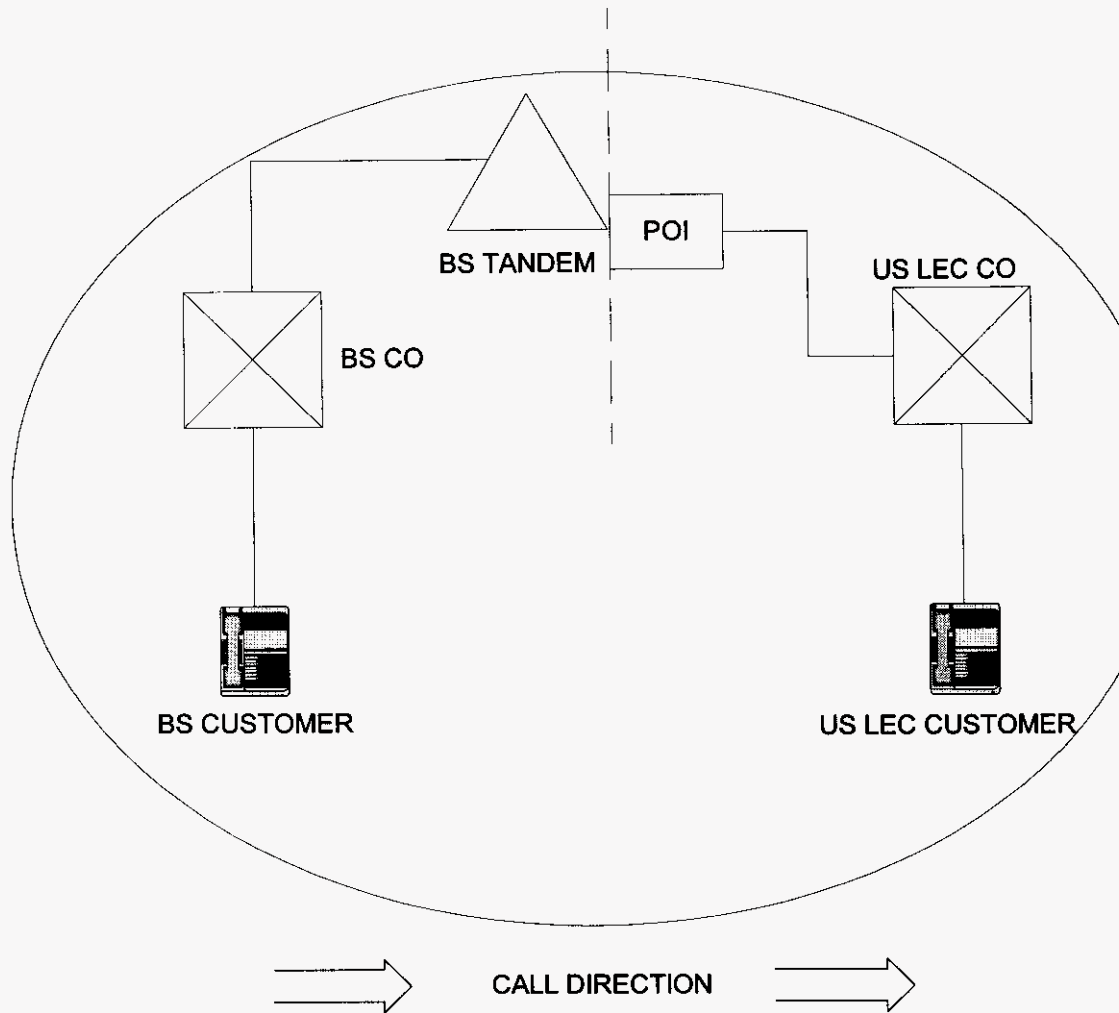
5 A. BellSouth's definition of local calls subject to reciprocal compensation
6 would eliminate reciprocal compensation for terminating BellSouth
7 customer calls to an entire class of customers who purchase local
8 exchange service. A few diagrams will show that ISP-bound calls served
9 through a virtual NXX arrangement are no different than other local calls
10 and they will show the inconsistency of BellSouth's arguments.

11 In the diagram below (Diagram 5) I show a call that both originates
12 and terminates within the same local calling area.

13

1

DIAGRAM 5



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BellSouth is responsible for carrying the call from its customer to the POI.

6

US LEC is responsible for terminating the call to the US LEC customer

7

for BellSouth.

8

Q. DOES THE PHYSICAL LOCATION OF THE CUSTOMER IMPACT

9

BELLSOUTH'S COSTS AND/OR RESPONSIBILITIES?

10

A. No. The importance of this comparison rests in the fact that BellSouth's

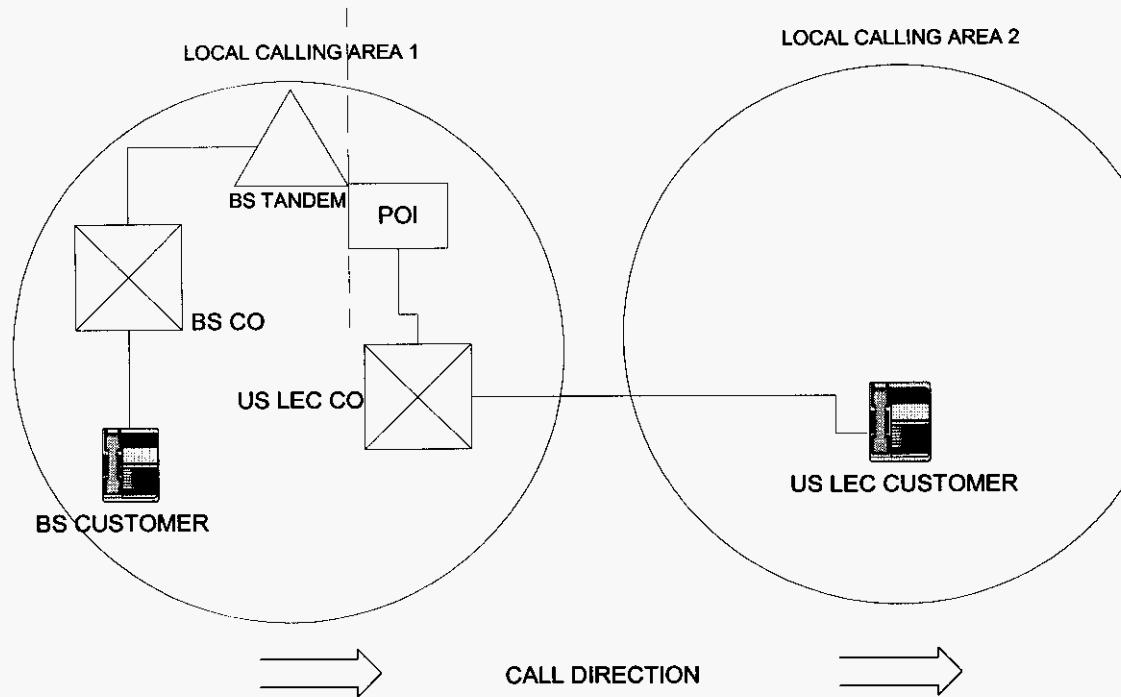
11

costs of transporting and terminating traffic are not impacted by the

1 location of the customer to whom the call terminates and/or the extent to
2 which the terminating customer is either a residential, business or Internet
3 Service Provider.

4 **DIAGRAM 6**

5



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8 In the diagram above (Diagram 6), the called party (US LEC customer) is
9 physically located in another local calling area. For purposes of
10 discussion, let's assume it's not an EAS area, or an adjacent exchange toll-
11 calling plan.

12

13

14

15

US LEC's customer has an NXX associated with Calling Area 1 –
a service option I have described above as a virtual NXX. In short, this
service allows the customer to have a local telephone number in calling
area 1.

1 BellSouth's customer calls the US LEC customer in local calling
2 area 2 using a virtual NXX number. As in our prior example, BellSouth
3 is still responsible for getting the call to the POI. Again, US LEC is
4 responsible for terminating the call. The location of the called party does
5 not change the handling of the call by BellSouth or US LEC, nor does it
6 change BellSouth's costs of handling the call.

7 **Q. HOW WOULD BELLSOUTH BE IMPACTED IF THE CALLING AND**
8 **CALLED PARTIES WERE IN THE SAME LOCAL CALLING AREA,**
9 **BUT THE POI WAS IN A DIFFERENT LOCAL CALLING AREA?**

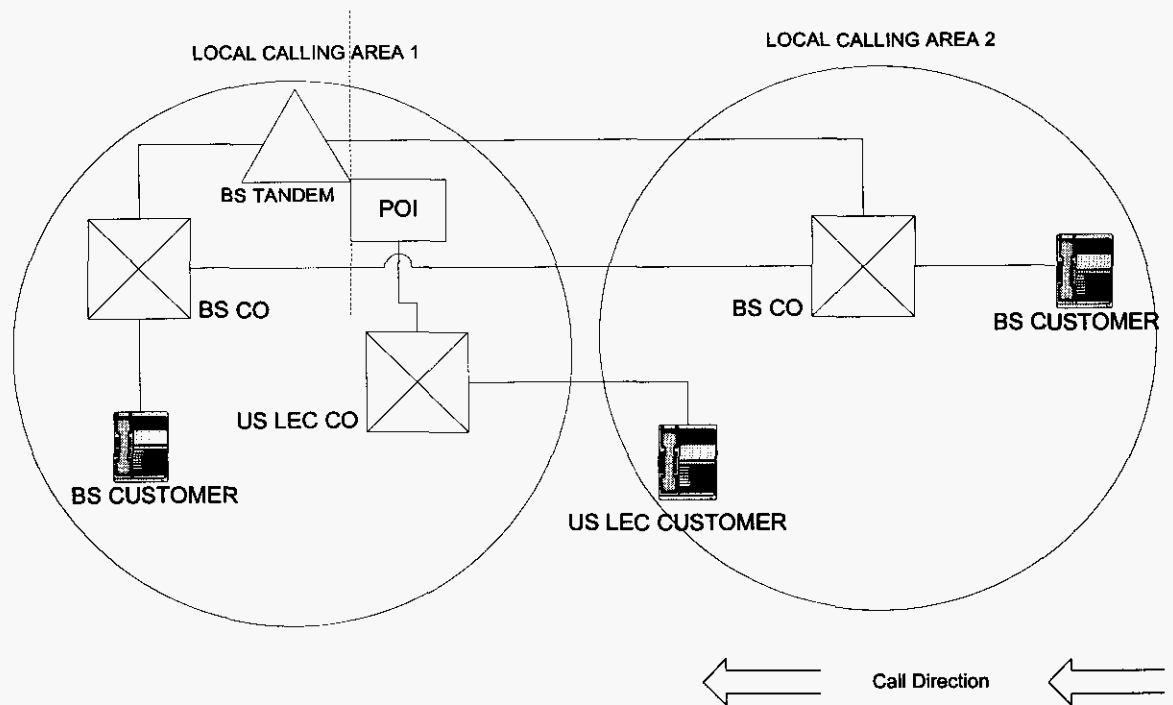
10 A. BellSouth's position is that "The term "local traffic" should be defined in
11 the Interconnection Agreement to apply to traffic that originates and
12 terminates within a local calling area." See Petition at 10. You will see in
13 the next diagram that simply because a local call originates and terminates
14 in the same local calling area, BellSouth's responsibilities do not change.

15 In Diagram 7 below, a BellSouth customer in local calling area 2
16 calls the US LEC customer in local calling area 2. The call both originates
17 and terminates in the same local calling area – BellSouth's criteria for a
18 local call.

19

1 **DIAGRAM 7**

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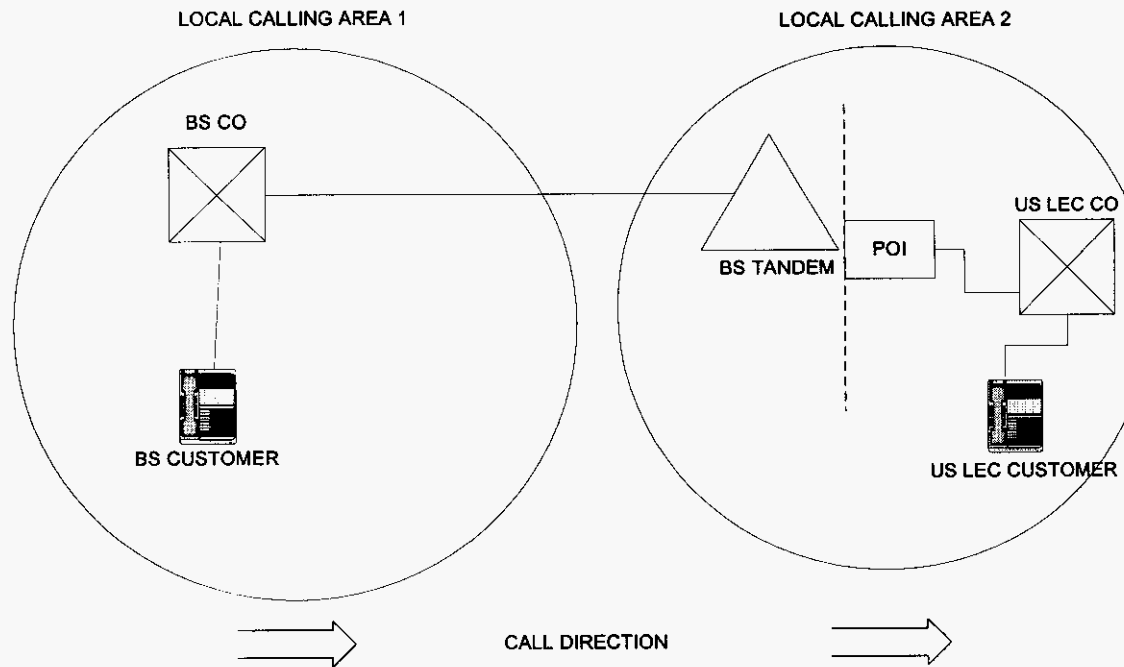
When the BellSouth customer in local calling area 2 calls the US LEC customer in the same local calling area, the call is routed from the BellSouth Central Office in local calling area 2 to either the BellSouth Central Office in local calling area 1 and then to the BellSouth Tandem, or it is routed directly to the BellSouth Tandem. From the Tandem the call is routed to the POI where US LEC takes responsibility for terminating the call for BellSouth. US LEC then routes the call to the US LEC customer in local calling area 2.

The point of this example is to show that the physical location of the parties makes no difference to BellSouth's responsibilities. Further, as

1 shown above, BellSouth's responsibilities and costs do not change for
2 calls directed to physical or virtual NXXs.

3 Now, let's look at a situation where the POI and the called party
4 are in another local calling area.

5 **DIAGRAM 8**
6



7
8
9 In this situation (Diagram 8), BellSouth is still responsible for getting the
10 call to the POI. The fact that the called party is in a different local calling
11 area does not impact BellSouth's responsibility or costs. There is
12 therefore no rational cost basis for allowing BellSouth to assess
13 originating access charges on this call or to avoid paying terminating
14 compensation on this call.

15 Q. PLEASE SUMMARIZE YOUR POSITION ON THIS POINT.

1 A. A call originated on the BellSouth network using a physical or virtual
2 NXX and directed to any ALEC's network travels exactly the same path
3 and requires the use of exactly the same facilities as would any other local
4 call. Calls to physical or virtual NXX numbers use the same path and the
5 same equipment to reach the POI and the terminating carrier's switch. To
6 single out the virtual NXX calls to ISPs and suggest that no compensation
7 should be paid for purposes of carrying that particular call ignores the
8 simple economic reality that both kinds of calls are functionally identical
9 and should be subject to reciprocal compensation.

10 Q. PLEASE EXPLAIN WHY IMPOSITION OF ORIGINATING ACCESS
11 CHARGES ON US LEC FOR VIRTUAL NXX CALLS IS
12 INAPPROPRIATE.

13 A. BellSouth's proposal to limit its reciprocal compensation obligations and
14 to collect originating access from US LEC based upon customers' physical
15 location has no basis in law or fact. Indeed, the TSR Order at paragraph
16 34 specifically notes that "The Local Competition Order requires a carrier
17 to pay the cost of facilities used to deliver traffic originated by that carrier
18 to the network of its co-carrier, who then terminates that traffic and bills
19 the originating carrier for termination compensation." In that same
20 paragraph, the FCC states, "This regime represents 'rules of the road'
21 under which all carriers operate, and which make it possible for one
22 company's customer to call any other customer even if that customer is
23 served by another telephone company." (emphasis added)

1 As I have shown, ISP-bound calls are handled and processed in
2 exactly the same manner as any other local call. Further, this Commission
3 has found repeatedly that, at least on an interim basis, ISP-bound calls
4 shall be treated as local calls for purposes of reciprocal compensation.
5 Deciding now that virtual NXX calls should somehow be treated
6 differently would effectively render meaningless any decision that
7 reciprocal compensation is due for ISP-bound traffic, since ISPs are often
8 served through such arrangements.

9 BellSouth's proposal is especially egregious given that BellSouth's
10 costs do not change depending upon the location of the called party.
11 Regardless of the customer's location, BellSouth's responsibility for
12 carrying originating locally-dialed traffic on its own network will always
13 end at the IP, where its network ends and US LEC's network begins. Its
14 responsibility for paying reciprocal compensation to US LEC will always
15 end at the POI, regardless of where the customer is served beyond that
16 point. Thus, BellSouth's costs and obligations in originating a locally-
17 dialed call from a particular BellSouth customer cannot differ because of
18 where US LEC's customer is located. Given that there is no cost
19 difference, it would seem arbitrary to then impose a different rate structure
20 on these virtual NXX calls.

21 **Q. HAS THIS COMMISSION FOUND THAT APPLYING ACCESS**
22 **CHARGES TO ISP-BOUND TRAFFIC IS INAPPROPRIATE?**

1 A. Yes, it has. In the Global NAPS arbitration proceeding, at page 13 of the
2 Order, the Commission stated,

3 In considering other possible compensation options for
4 ISP-bound traffic, we find GNAPS witness Selwyn's
5 argument compelling, wherein he states:
6

7 [w]hile one could make a case in the abstract
8 for the notion that ISPs should pay access
9 charges, as opposed to being allowed to
10 connect to the public switched network just
11 like other end users, not only is such an
12 arrangement not in place today, it is
13 affirmatively banned today by the operation
14 of the [FCC's] ESP exemption.
15

16 Increasing the cost of Internet access through the introduction of access
17 charges and the denial of reciprocal compensation would be inconsistent
18 with the Act's mandate for Internet services . More specifically, Section
19 230(b)(2) (47 U.S.C. 230) of the Act states "It is the policy of the United
20 States to preserve the vibrant and competitive free market that presently
21 exists for the Internet and other interactive computer services, unfettered
22 by Federal or state regulation." To the extent BellSouth's proposal to
23 distinguish Internet usage from other local usage increases the cost and
24 depresses demand for Internet usage, it is not in the public interest.

25 Q. WHY IS IT IMPORTANT FOR US LEC TO PROVIDE ITS
26 CUSTOMERS WITH VIRTUAL NXXS?

27 A. US LEC and other ALECs provide (and, as discussed below, seemingly
28 BellSouth itself provides) a valuable service to customers by providing
29 them with virtual NXXs. For example, US LEC may attract ISP
30 customers by providing virtual NXXs. The virtual NXX allows the ISP's

1 subscribers to access the Internet by calling a local number, even though
2 the ISP's POP may be further away.

3 A key competitive advantage – indeed, a practical business
4 necessity – for any ISP is having a local dial-up for a prospective
5 customer. Because Internet-bound calls are often longer in duration than
6 other calls, avoiding toll charges associated with accessing an ISP's POP
7 that is not located in the user's rate center dramatically reduces the user's
8 Internet costs. Therefore, ISPs will often choose their carrier based on the
9 carrier's ability to provide local dial-up capability via the virtual NXX.

10 Q. HOW WOULD THE COMPETITIVE DEPLOYMENT OF
11 AFFORDABLE INTERNET SERVICES BE IMPACTED IF
12 BELLSOUTH RESTRICTS ALECS USE OF NXX CODES?

13 A. By contractually inhibiting the use of NXXs in such a manner that US
14 LEC and other ALECs cannot offer virtual NXXs without facing
15 additional charges, the costs associated with accessing the Internet would
16 increase. By using virtual NXX assignments, US LEC and other ALECs
17 have been able to provide services that allow ISPs to provide low cost
18 Internet services throughout Florida, by allowing ISP customers to access
19 the Internet by dialing a local number. Eliminating the ability to provide
20 virtual NXX codes – or refusing to pay reciprocal compensation for these
21 local calls -- would be a step in the wrong direction in the deployment of
22 affordable Internet services in Florida, as the end result would be a

1 decrease in usage of Internet services by Florida citizens facing the
2 prospect of toll charges or other increased costs to access their ISPs.

3 This would be in direct conflict with the 1996 Act, which calls for
4 consumers in all regions of the Nation, including those in rural, insular,
5 and high cost areas, to have access to telecommunications and information
6 services at just, reasonable, and comparable rates. (Sec. 254(b)) 47
7 U.S.C. § 254(b)

8 Q. WOULD BELLSOUTH'S PROPOSED LANGUAGE GIVE
9 BELLSOUTH A COMPETITIVE ADVANTAGE IN THE ISP
10 MARKET?

11 A. Yes. BellSouth markets certain products to ISPs. These service offerings
12 appear to be no different from what ALECs such as US LEC offer their
13 own ISP customers using a virtual NXX arrangement. If ALECs are
14 prohibited from receiving reciprocal compensation for virtual NXX calls
15 to prospective and current ISP customers through BellSouth's proposed
16 contract restrictions, ISPs would either have to establish multiple POPs in
17 order to allow their subscribers to access the Internet via a local number or
18 to contract with BellSouth and subscribe to BellSouth's ISP products.
19 Because each POP requires a significant investment in hardware, non-
20 recurring charges and leased line connections, and because provisioning
21 services in new areas may cause delays in ISP service offerings, the ability
22 to offer ISP customers local dial-up and single POP capability is a critical
23 competitive consideration. More importantly, forcing ISPs and CLECs to

1 deploy these facilities – when, as described above, such deployment is not
2 at all necessary – would encourage inefficiency and a wasteful allocation
3 of limited ALEC resources. Only BellSouth, with its ubiquitous network
4 developed with the support of decades of subsidies, could likely offer ISPs
5 the kind of presence required in each local calling area to avoid a virtual
6 NXX situation. Moreover, by precluding US LEC from receiving
7 reciprocal compensation for these services, and then threatening to impose
8 higher access charges on each call, BellSouth is creating an economic
9 barrier to any other carriers providing service to ISPs, and is giving itself a
10 significant competitive advantage. This clear advantage for BellSouth
11 would not only stifle the ability of ALECs such as US LEC to provide
12 service to ISPs in Florida, but would essentially eliminate the prospect for
13 competition in this market.

14 Q. PLEASE SUMMARIZE YOUR POSITION ON WHETHER
15 ORIGINATING ACCESS CHARGES SHOULD BE APPLIED TO
16 CALLS UTILIZING VIRTUAL NXX CODES.

17 A. The use of virtual NXX codes allows consumers efficient access to ISPs
18 and Internet services that would otherwise be impossible if such calls were
19 treated as toll calls. Further, treating calls to virtual NXX numbers as
20 something other than local would inappropriately allow BellSouth to avoid
21 payment of reciprocal compensation and give BellSouth a competitive
22 advantage over ALECs in the ISP market. For all these reasons, the
23 Commission should adopt US LEC's position and delete BellSouth's

1 proposed language that would impose originating access charges and
2 eliminate reciprocal compensation for local calls based on the physical
3 location of the ISPs, and the Commission should specifically find that
4 calls to ISPs should be treated as local calls since there are no additional
5 costs or responsibilities borne by BellSouth.

6 ISSUE 9 – SHOULD ISP-BOUND TRAFFIC BE CONSIDERED LOCAL
7 TRAFFIC FOR THE PURPOSES OF CALCULATING PERCENT LOCAL
8 USAGE?

9 **Q. PLEASE SUMMARIZE THE DISPUTE ON THIS ISSUE.**

10 A. BellSouth's position on this issue is tied directly to its position on ISP-
11 bound and virtual NXX traffic. BellSouth asks this Commission to find
12 that such calls are not local, and, as such, should not be considered in
13 calculating the PLU. US LEC maintains its position that such calls are
14 clearly local and should be treated as local calls until the FCC issues an
15 order finding that such calls are not to be treated as local. As such, the
16 ISP-bound and virtual NXX calls should be included in the PLU
17 calculation.

18 **Q. IS ANY ADDITIONAL DISCUSSION REQUIRED FOR THIS ISSUE?**

19 A. No. The positions of the parties are fully developed in response to Issue 7.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A. Yes, it does.