

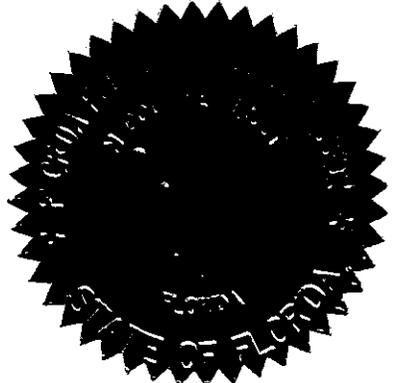
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of

Complaint of WorldCom
Technologies, Inc. Against
BellSouth Telecommunications,
Inc. for breach of terms of
Florida Partial Interconnection:
Agreement under Sections 251
and 252 of the Telecommuni-
cations Act of 1996 and
request for relief.

DOCKET NO. 971478-TP



Complaint of Teleport
Communications, Group Inc./TCG
South Florida against BellSouth:
Telecommunications, Inc. for
breach of terms of
interconnection agreement under:
Section 252 of the
Telecommunications Act of 1996
and request for relief.

DOCKET NO. 980184-TP

Complaint of Intermedia
Communications, Inc. against
BellSouth Telecommunications,
Inc. for breach of terms of
Florida Partial Interconnection:
Agreement under Sections 251
and 252 of the Telecommuni-
cations Act of 1996 and
request for relief.

DOCKET NO. 980495-TP

Complaint of MCI Metro Access
Transmission Services, Inc.
against BellSouth Telecommuni-
cations, Inc. for breach of
approved interconnection
agreement by failure to pay
compensation for certain local
traffic.

DOCKET NO. 980499-TP

VOLUME 1
Pages 1 through 189

DOCUMENT NUMBER - DATE
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FPSC RECORDS REPORTING

1 PROCEEDINGS: HEARING
2
3 BEFORE: CHAIRMAN JULIA L. JOHNSON
4 COMMISSIONER J. TERRY DEASON
5 COMMISSIONER SUSAN F. CLARK
6 COMMISSIONER JOE GARCIA,
7 (appearing telephonically)
8 COMMISSIONER E. LEON JACOBS, JR.
9
10 DATE: Thursday, June 11, 1998
11
12 TIME: Commenced at 9:30 a.m.
13
14 PLACE: Betty Easley Conference Center
15 Room 148
16 4075 Esplanade Way
17 Tallahassee, Florida
18
19 REPORTED BY: H. RUTHE POTAMI, CSR, RPR
20 Official Commission Reporter
21
22
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24
25

1 **APPEARANCES:**

2 **FLOYD R. SELF**, Messer, Caparello & Self,
3 P.A., South Monroe Street, Post Office Box 1876,
4 Tallahassee, Florida 32302-1876, appearing on behalf
5 of **WorldCom Technologies, Inc.**

6 **KENNETH A. HOFFMAN** and **JOHN R. ELLIS**,
7 Rutledge, Ecenia, Underwood, Purnell and Hoffman,
8 P.A., P.O. Box 551, Tallahassee, Florida 32302-0551,
9 appearing on behalf of **Teleport Communications Group,**
10 **Inc./TCG South Florida.**

11 **DONNA CANZANO** and **PATRICK KNIGHT WIGGINS**,
12 Wiggins & Villacorta, P. A., 2145 Delta Boulevard,
13 Suite 200, Tallahassee, Florida 32302, appearing on
14 behalf of **Intermedia Communications, Inc.**

15 **THOMAS K. BOND**, 780 Johnson Ferry Road,
16 Suite 700, Atlanta, Georgia 30342, appearing on behalf
17 of **MCI Telecommunications Corporation.**

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1 APPEARANCES CONTINUED:

2 **KIMBERLY CASWELL**, P.O. Box 110, MC7, One
3 Tampa City Center, Tampa, Florida 33601, appearing on
4 behalf of **GTE Florida**.

5 **ED RANKIN**, 675 West Peachtree Street,
6 Suite 4300, Atlanta, Georgia, appearing on behalf of
7 **BellSouth Telecommunications, Inc.**

8 **CHARLES J. PELLEGRINI**, Florida Public
9 Service Commission, Division of Legal Services, 2540
10 Shumard Oak Boulevard, Tallahassee, Florida
11 32399-0850, appearing on behalf of the **Commission**
12 **Staff**.

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

2 (Hearing commenced at (9:45 a.m.)

3 **COMMISSIONER DEASON:** Call the hearing to
4 order. Can we have the notice read, please?

5 **MR. PELLEGRINI:** Pursuant to notice dated
6 May 20, 1998, this time and place have been set for a
7 hearing in consolidated Dockets 971478-TP, 980184-TP,
8 980495-TP and 980499-TP, the complaints
9 respectively -- (technical difficulties) --

10 **COMMISSIONER DEASON:** We're going to take a
11 momentary recess and see if we can't get the noise off
12 of the line.

13 (Pause in proceedings.)

14 **COMMISSIONER DEASON:** We're going to give
15 this another try. Mr. Pellegrini, I'm going to ask
16 you to read the notice again, please.

17 **MR. PELLEGRINI:** Pursuant to notice dated
18 May 20, 1998, this time --

19 **COMMISSIONER DEASON:** Do you have your
20 microphone on, Mr. Pellegrini?

21 (Microphone adjusted.)

22 **MR. PELLEGRINI:** Pursuant to notice dated
23 May 20, 1998, this time and place have been set for
24 hearing in consolidated Dockets Nos. 971478-TP,
25 980184-TP, 980495-TP, and 980499-TP, the complaints

1 respectively of WorldCom, Teleport, Intermedia and
2 MCImetro against BellSouth concerning terms of their
3 respective interconnection agreements.

4 **COMMISSIONER DEASON:** Thank you. We'll take
5 appearances.

6 **MR. RANKIN:** Ed Rankin on behalf of
7 BellSouth Telecommunications, Inc., 675 West Peachtree
8 Street, Suite 4300, Atlanta, Georgia 30375.

9 **MR. SELF:** Floyd Self of the Messer,
10 Caparello & Self Law Firm, P.O. Box 1876, Tallahassee,
11 Florida appearing on behalf of WorldCom Technologies,
12 Inc. I'd also like to enter an appearance for Richard
13 Rindler and Michael Shor of the Swidler & Berlin Law
14 Firm in Washington, D.C., also on behalf of WorldCom
15 Technologies, Inc.

16 **MR. BOND:** Tom Bond on behalf of MCI Metro
17 Access Transmission Services, Inc. I'd also like to
18 enter an appearance on behalf of Rick Melson.

19 **MS. CANZANO:** Donna Canzano and Patrick
20 Wiggins. We're with the Wiggins & Villacorta Law Firm
21 at 2145 Delta Boulevard, appearing on behalf of
22 Intermedia Communications.

23 **MR. PELLEGRINI:** Charles Pellegrini
24 appearing on behalf of the Florida Public Service
25 Commission Staff, 2540 Shumard Oak Boulevard,

1 Tallahassee.

2 **MR. HOFFMAN:** Kenneth Hoffman and John
3 Ellis, Rutledge, Ecenia, Underwood, Purnell & Hoffman,
4 P.O. Box 551, Tallahassee, Florida 32302. I'll also
5 enter an appearance for Michael McRae, Teleport
6 Communications Group, Inc., 2 Lafayette Center 1133
7 21st Street Northwest, Suite 400, Washington, D.C.
8 20036, all on behalf of Teleport Communications Group,
9 Inc. and its Florida affiliate, TCG South Florida.

10 **COMMISSIONER DEASON:** Thank you. Do we have
11 any preliminary matters, Mr. Pellegrini?

12 **MR. PELLEGRINI:** Yes, Commissioner Deason.
13 As a first matter, the Commission should consider GTE
14 Florida Incorporated's petition for permission to
15 submit a brief which was filed on May 6th.

16 **COMMISSIONER DEASON:** Are the parties
17 prepared to address this at this time, I take it?

18 **MS. CASWELL:** Yes.

19 **COMMISSIONER DEASON:** Ms. Caswell, if you'll
20 make an appearance for the record for purposes that
21 you're about to address the Commission.

22 **MS. CASWELL:** Kim Caswell for GTE Florida,
23 One Tampa City Center, Tampa, Florida.

24 **COMMISSIONER DEASON:** Please proceed.

25 **MS. CASWELL:** Thank you. Commissioners, at

1 the Agenda where you denied GTE's intervention, at
2 least some of you expressed concerns of the
3 inevitability of addressing the generic issue of the
4 jurisdictional nature of ISP traffic in the context of
5 this complaint proceeding.

6 Even ICI in its opposition to GTE's briefing
7 request admitted that, quote, "It has been clear since
8 the March 10th, 1998 Agenda Conference that the
9 jurisdictional nature of the traffic to ISPs would be
10 a central focus of the complaint resolution," end
11 quote.

12 GTE submits that no matter how the issues in
13 this case are framed, you will need to address the
14 jurisdictional issue. GTE's briefing request is a
15 compromise between a generic proceeding, which GTE
16 would have preferred, and intervention, which you have
17 already denied.

18 GTE believes that a generic proceeding would
19 have been more appropriate, but at this point it's not
20 really practical because it's not likely to get a
21 decision in that proceeding before a decision is
22 rendered in this one.

23 So in the absence of at least a brief, GTE
24 will lose its opportunity for input on this matter
25 which will substantially and directly affect it.

1 I'd also remind the Commission that the
2 Staff several months ago had convened workshops to
3 establish procedures for complaints under
4 interconnection contracts.

5 During these workshops, the parties raised
6 the same situation that is now before the Commission,
7 complaints that raised policy matters that will affect
8 other parties to different contracts.

9 It's GTE's recollection that most of the
10 participants, particularly the ALECs, felt that
11 allowing some level of participation by third parties
12 might be appropriate in these kinds of instances.
13 Unfortunately, the workshops never concluded and rules
14 were never proposed with regard to third-party
15 participation and complaints.

16 However, these concerns remain very acute,
17 and GTE believes its briefing solution is a reasonable
18 response. GTE, as well as any other third parties who
19 would like to submit a brief, will take the record as
20 they find it.

21 While no one but the parties will be
22 officially bound by the decision, GTE believes its
23 briefing solution recognizes the practical reality of
24 the effect of the decision on these third parties.

25 Thank you, Commission.

1 **COMMISSIONER DEASON:** Mr. Rankin?

2 **MR. RANKIN:** BellSouth doesn't oppose the
3 motion by GTE.

4 **CHAIRMAN JOHNSON:** Mr. Self?

5 **MR. SELF:** Thank you, Commissioners.
6 WorldCom does oppose the motion, essentially for the
7 very basic reasons that GTE has acknowledged in their
8 own petition; and that is the fact that the Commission
9 has determined that this is not a generic proceeding,
10 but rather that it's a contract dispute, and the only
11 thing that's before the Commission is to resolve the
12 dispute; in the case of WorldCom's docket, the dispute
13 between WorldCom and BellSouth.

14 GTE acknowledges in its own filing that the
15 determination in these dockets will not affect future
16 proceedings. Ms. Caswell just stated that she
17 believes that a determination in this case will
18 substantially and directly affect GTE.

19 If that's true, then they should have been
20 granted intervention. However, the Commission has
21 already denied the intervention. Indeed, the
22 Commission in denying the intervention specifically
23 stated that it was denying the right to attempted
24 intervenors to participate in the proceeding.

25 I don't think GTE has raised anything new

1 that it hasn't already raised in its original request
2 for intervention and, therefore, the request should be
3 denied.

4 Thank you.

5 **COMMISSIONER DEASON:** Mr. Bond.

6 **MR. BOND:** MCI opposes the motion to submit
7 a brief. This is a contract enforcement case. The
8 issue for MCI is not a general one. It is not an
9 abstract question of the jurisdictional nature of the
10 ISP traffic.

11 The MCI interconnection agreement with
12 BellSouth has a very specific definition of local
13 traffic. That definition is defined not in terms of
14 the jurisdictional nature of a call, but in terms of
15 the place of origination and termination of a
16 telephone call.

17 And so the issue for the Commission is, are
18 ISP calls described by that definition in the MCI
19 interconnection agreement. And, therefore, MCI
20 believes that GTE's brief could add nothing to the
21 Commission's determination of this question.

22 Thank you.

23 **COMMISSIONER DEASON:** Ms. Canzano?

24 **MS. CANZANO:** Intermedia also objects to
25 GTE's motion to submit briefs. GTE is simply

1 attempting to circumvent the decision denying
2 intervention.

3 This Commission, as GTE pointed out, was
4 aware since the March 10th Agenda Conference that it
5 may be considering the jurisdictional nature of
6 traffic to ISPs in resolution of complaints against
7 BellSouth, and it was aware of this issue when it
8 denied GTE intervention.

9 The Commission has consistently held that
10 only parties to arbitration proceedings and contract
11 disputes arising from them may participate in the
12 proceedings.

13 Intermedia would not have objected to
14 intervention. In fact, Intermedia itself attempted to
15 intervene in the WorldCom docket but was denied.
16 Simply put, an intervenor would be bound by the
17 Commission's decision.

18 Here if GTE were allowed to file briefs, it
19 could have substantial impact and would not be bound
20 by the decision. In essence, GTE's motion should be
21 denied, so that it is not given two bites at the ISP
22 apple.

23 **COMMISSIONER DEASON:** Mr. Hoffman?

24 **MR. HOFFMAN:** Thank you, Commissioner
25 Deason. TCG also objects to GTE's motion. As you've

1 heard, GTE has previously sought intervention, and GTE
2 has sought intervention in both the WorldCom and in
3 the Teleport proceedings, and those requests have been
4 denied; and they were denied because you've already
5 concluded that this is not a generic policy making
6 proceeding, that these cases involve contract
7 disputes.

8 These cases involve complaints that arise
9 out of alleged breaches of interconnection agreements,
10 and they seek enforcement of the terms and conditions
11 of those agreements under the law applicable at the
12 time the parties executed the agreement.

13 So how do we resolve these disputes? Well,
14 you've already answered that, and I would cite you to
15 the order denying GTE's request to intervene in the
16 Teleport case, which was issued on April 2nd, 1998, in
17 this docket.

18 You've already held that these disputes
19 shall be resolved by determining the state of the law
20 concerning the jurisdictional nature of ISP traffic at
21 the time the parties executed their agreement and by
22 applying principles of contract construction.

23 Who participates? Not who intervenes, but
24 who participates in these cases, and you've answered
25 that, too, and I cite you to the same order. There

1 you said "We will limit participation to the parties
2 to the agreement."

3 In our response to GTE's request, we cite
4 you the law concerning participation by amicus. And
5 there courts have held that unless the amicus has a
6 special interest or unless the court feels that
7 existing counsel needs assistance, then amicus is not
8 to be allowed.

9 In this case there's obviously nothing that
10 GTE would have to say about TCG's negotiations with
11 BellSouth. Secondly, BellSouth obviously is more than
12 capable of briefing the legal issues.

13 So bottom line, there really is nothing for
14 GTE to add to this proceeding, and we would request
15 that GTE's request to file a brief as an amicus be
16 denied.

17 **COMMISSIONER DEASON:** Staff?

18 **MR. PELLEGRINI:** Commissioners, you have on
19 numerous occasions denied third-party petitions to
20 intervenor in the arbitration proceedings or in
21 proceedings brought seeking performance under
22 interconnection agreements arising from arbitration
23 proceedings.

24 And in denying intervention to Intermedia in
25 the present WorldCom complaint, you said that it --

1 you had announced at a very early point in the
2 arbitration proceedings that came before you that you
3 would limit participation in these kinds of
4 proceedings to the requesting carrier and the
5 incumbent local exchange company.

6 You've acknowledged that your resolution of
7 this dispute between WorldCom and BellSouth may have
8 an affect on Intermedia, but you stated that that was
9 not a sustainable grounds in this age of competition
10 to permit Intermedia to intervene in the proceeding.

11 You also stated that you recognized that
12 what was before you was a complaint, or as a result of
13 a consolidation, several complaints arising from a
14 disputed interpretation of a provision in the
15 interconnection agreement, and you would limit
16 participation in the hearing to WorldCom and
17 BellSouth.

18 And it was for those reasons that the
19 Commission denied intervention to GTE in the present
20 WorldCom/BellSouth proceeding and as well in the
21 present Teleport/BellSouth proceeding.

22 Staff believes that GTE's present petition
23 for permission to submit a brief in these proceedings
24 should be addressed in the same way as the petitions
25 to intervene have been addressed.

1 GTE is not a party to any of the
2 interconnection agreements that are in issue in these
3 proceedings and will not be bound by your decisions
4 with respect to the disputed reciprocal compensation
5 provisions. Staff believes that GTE's standing to
6 submit a brief in these proceedings has no more merit
7 than a standing -- (technical difficulties) --

8 **COMMISSIONER DEASON:** We're going to go off
9 the record again.

10 (Pause in proceedings.)

11 **COMMISSIONER DEASON:** We're going to go back
12 on the record. Mr. Pellegrini, you may proceed.

13 **MR. PELLEGRINI:** Thank you, Commissioner.
14 Staff believes that GTE's present petition for
15 permission to submit a brief in these proceedings
16 should be addressed in the same way as his petitions
17 to intervene have been addressed.

18 As I said, GTE is not a party to any of the
19 interconnection agreements which are in issue in these
20 proceedings, and they will not be bound by the
21 Commission's decisions with respect to the disputed
22 reciprocal compensation provisions.

23 Staff believes, therefore, that GTE's
24 standing to submit a brief in these proceedings has no
25 more merit than its standing to intervene.

1 GTE likens what it proposes here to an
2 amicus brief. Well, the privilege heard as an amicus
3 curiae, or as a friend of the court, lies within the
4 discretion of the court. The court will consider
5 whether the information proffered is useful to its
6 deliberations, and especially whether the
7 participation of the amicus is necessary or advisable
8 for the protection of the court in its consideration
9 of the case; for example, by bringing to the court's
10 attention -- or in this case, of course, to the
11 Commission's attention -- some point of law or fact
12 that the court or the Commission might otherwise
13 overlook.

14 In these proceedings there is no reason to
15 fear that the parties to each of the challenged
16 interconnection agreements will fail to fully develop
17 their respective cases without the assistance of GTE.

18 Thus, Staff believes that GTE has no
19 standing to participate in any way in these
20 proceedings, and recommends, therefore, that the
21 Commission deny GTE's petition for permission to
22 submit a brief.

23 Thank you.

24 **COMMISSIONER DEASON:** Commissioners,
25 questions, a motion?

1 **COMMISSIONER CLARK:** I just had a question
2 that -- was this a request to file an amicus?

3 **MR. PELLEGRINI:** Well, there was a request
4 to submit a brief in the nature of an amicus.

5 **COMMISSIONER CLARK:** And what is the
6 standard for an amicus?

7 **MR. PELLEGRINI:** The standard for an amicus
8 is that it -- an amicus stands as a friend of the
9 court, and its participation would need to be
10 determined to be necessary to avoid the court's
11 overlooking of a fact -- a point of fact or of law.

12 **COMMISSIONER CLARK:** Okay.

13 **MR. PELLEGRINI:** In other words, an amicus
14 participates in the interests of the court for the
15 protection of the court, or of the Commission in this
16 case.

17 **COMMISSIONER CLARK:** Okay.

18 **COMMISSIONER GARCIA:** I've got a question
19 and a motion.

20 **COMMISSIONER DEASON:** Please ask your
21 question.

22 **COMMISSIONER GARCIA:** Well, the question is,
23 is Commissioner Johnson there yet?

24 **COMMISSIONER DEASON:** No.

25 **COMMISSIONER GARCIA:** Well, then let me ask

1 a second question. Do you want to wait until
2 Commissioner Johnson returns to vote on this?

3 **COMMISSIONER DEASON:** No.

4 **COMMISSIONER GARCIA:** Okay. Well, then I'll
5 move Staff if we can.

6 **COMMISSIONER DEASON:** We have a motion to
7 approve Staff's recommendation to deny the petition.

8 **COMMISSIONER CLARK:** Second.

9 **COMMISSIONER DEASON:** It's been moved and
10 seconded. All in favor say aye. Aye.

11 **COMMISSIONER CLARK:** Aye.

12 **COMMISSIONER JACOBS:** Aye.

13 **COMMISSIONER GARCIA:** Aye.

14 **COMMISSIONER DEASON:** Opposed, nay. (No
15 response.) Show that the motion is approved
16 unanimously.

17 Any other preliminary matters?

18 **MR. PELLEGRINI:** There are no other
19 preliminary matters I'm aware of.

20 **COMMISSIONER DEASON:** Do the parties have
21 any preliminary matters? (No response.)

22 Very well. I'm going to ask, then, all
23 witnesses to please stand and raise your right hand.

24 (Witnesses collectively sworn.)

25 **COMMISSIONER DEASON:** Thank you. Please be

1 seated.

2 MR. PELLEGRINI: Commissioner Deason, before
3 the first witness takes the stand -- (technical
4 difficulties) --

5 (Pause in proceedings.)

6 COMMISSIONER DEASON: We're going to
7 proceed, and if it occurs again we may have to
8 reestablish a different connection.

9 MR. PELLEGRINI: Commissioner Deason, as I
10 was saying, at this point Staff would offer the list
11 of the documents for official recognition, which each
12 one of you has, and ask that it be marked and entered
13 as an exhibit.

14 COMMISSIONER DEASON: It will be identified
15 as Exhibit 1. Any objection to the official
16 recognition list being admitted into the record? (No
17 response.)

18 Hearing no objection, show, then, that
19 Exhibit 1 is admitted.

20 (Exhibit 1 marked for identification and
21 received in evidence.)

22 COMMISSIONER DEASON: I believe our first
23 scheduled witness is Mr. Ball.

24 MR. SELF: Yes, Commissioner. WorldCom
25 calls Gary Ball to the stand? Are you ready,

1 Mr. Ball?

2 COMMISSIONER GARCIA: May I ask a question?

3 Are we doing direct and rebuttal together or --

4 COMMISSIONER DEASON: It's my understanding
5 we're doing it together.

6 MR. PELLEGRINI: Yes, sir, that's correct.

7 COMMISSIONER GARCIA: We're doing it
8 together?

9 COMMISSIONER DEASON: Yes.

10 COMMISSIONER GARCIA: Okay.

11 - - - - -

12 GARY BALL

13 was called as a witness on behalf of WorldCom
14 Technologies, Inc. and, having been duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SELF:

18 Q Could you please state your name and
19 business address for the record, please?

20 A My name is Gary Ball. My business address
21 is 33 Whitehall Street, 15th Floor, New York, New
22 York.

23 Q And did you cause to be filed 15 pages of
24 direct testimony in this matter?

25 A Yes, I did.

1 Q And did you also cause to be filed eight
2 pages of rebuttal testimony?

3 A Yes.

4 Q If I asked you the -- excuse me. Do you
5 have any changes or corrections to that testimony?

6 A No, I do not.

7 Q If I were to ask you the same questions
8 today, would your answers be the same?

9 A Yes.

10 **MR. SELF:** Commissioner Deason, we would
11 request that Mr. Ball's direct and rebuttal testimony
12 be inserted in the record as though read.

13 **COMMISSIONER DEASON:** Without objection, it
14 shall be so inserted.

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1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 **A.** My name is Gary J. Ball. I am the Vice President for Regulatory Policy
3 Development of WorldCom, Inc. ("WorldCom"). My business address is 33
4 Whitehall Street, 15th Floor, New York, New York 10004.

5 **Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES FOR**
6 **WORLDCOM.**

7 **A.** I am responsible for the development of WorldCom's positions on regulatory
8 matters, and serve as WorldCom's representative with various members of
9 the telecommunications industry. I am also responsible for overseeing
10 resolution of disputes dealing with reciprocal compensation for traffic
11 terminated to Internet Service Providers ("ISPs").

12 **Q. PLEASE DESCRIBE YOUR PREVIOUS PROFESSIONAL**
13 **EXPERIENCE AND EDUCATIONAL BACKGROUND.**

14 **A.** I graduated from the University of Michigan in 1986 with a Bachelor of
15 Science degree in Electrical Engineering. After three years as a Radar
16 Systems Engineer, I enrolled in the University of North Carolina Business
17 School, from which I obtained a Masters of Business Administration in
18 1991. For the past seven years, I have worked in the telephone industry.
19 From June 1991 through February 1993, I worked for Rochester Telephone
20 Corporation, a local exchange carrier, beginning as a Network Planning
21 Analyst, responsible for financial and technical analysis of new services and
22 upgrades to its local exchange network. In February 1992, I was promoted

1 to Senior Regulatory Analyst, responsible for developing state tariff filings
2 and general regulatory support for dedicated and switched services. From
3 February 1993 through August 1994, I worked for Teleport Communications
4 Group, Inc., a competitive access provider, as Manager of Regulatory Affairs.
5 I was responsible for developing and implementing regulatory policies on
6 both state and federal levels, developing and filing all Company tariffs,
7 ensuring regulatory compliance with state and federal rules, and providing
8 support for business, marketing, and network plans. I joined MFS
9 Communications Company, Inc. ("MFS") in August 1994 as Director of
10 Regulatory Affairs for the Eastern Region. In December of 1996, I was
11 promoted to Assistant Vice President for Industry Relations responsible for
12 oversight of WorldCom's interconnection negotiations and agreements. I
13 recently was promoted to Vice President for Regulatory Policy Development.

14 **Q. PLEASE DESCRIBE THE OPERATIONS OF WORLDCOM, INC.**
15 **AND ITS SUBSIDIARIES.**

16 **A.** WorldCom, Inc. is a diversified telecommunications company with
17 operations throughout the world. WorldCom, Inc. and its subsidiaries,
18 including MFS, provide a full range of telecommunication services, including
19 local, intrastate, interstate and international services. WorldCom, Inc. is
20 currently the fourth largest long distance carrier in the United States and is
21 one of the largest competitive local exchange carriers. We currently operate
22 in Florida under the name WorldCom Technologies, Inc.

1 **PURPOSE AND SCOPE**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?**

3 **A.** I am responding to the issues identified in the Issues Identification Hearing.
4 In addressing these issues, I will focus on the Partial Interconnection
5 Agreement by and between WorldCom and BellSouth, dated August 26,
6 1996, and approved by this Commission in Order No. PSC-96-1508-FOF-TP.

7 **STAFF ISSUE 1:**

8 **Q. IS THE FLORIDA PARTIAL INTERCONNECTION AGREEMENT**
9 **BETWEEN WORLDCOM TECHNOLOGIES, INC./MFS**
10 **COMMUNICATIONS COMPANY, INC., AND BELL SOUTH**
11 **TELECOMMUNICATIONS, INC., AMBIGUOUS WITH RESPECT**
12 **TO THE TREATMENT OF ISP TRAFFIC AS LOCAL TRAFFIC FOR**
13 **PURPOSES OF RECIPROCAL COMPENSATION?**

14 **A.** No, the Partial Interconnection Agreement (the "Agreement") is clear and
15 unambiguous on its face, as is apparent from the following provisions:
16 Section 1.40 of the Agreement defines "Local Traffic" as:

17 calls between two or more Telephone Exchange
18 service users where both Telephone Exchange
19 Services bear NPA-NXX designations associated with
20 the same local calling area of the incumbent LEC or
21 other authorized area (e.g., Extended Area Service
22 Zones in adjacent local calling areas). Local Traffic
23 includes traffic types that have been traditionally
24 referred to as "local calling" and as "extended area
25 service (EAS.))" All other traffic that originates and
26 terminates between end users within the LATA is toll
27 traffic. In no event shall the Local Traffic area for

1 purposes of local call termination billing between the
2 parties be decreased.

3 Section 1.58 defines "Reciprocal Compensation" as follows:

4 is As Described in the Act, and refers to the payment
5 arrangements that recover costs incurred for the
6 transport and termination of Telecommunications
7 originating on one Party's network and terminating on
8 the other Party's network.

9 The Reciprocal Compensation provision in Section 5.8.1 of the Agreement
10 states:

11 Reciprocal Compensation applies for transport and
12 termination of Local Traffic (including EAS and
13 EAS-like traffic) billable by BST or MFS which a
14 Telephone Exchange Service Customer originates on
15 BST's or MFS' network for termination on the other
16 Party's network.

17 Section 5.8.2 of the Agreement states:

18 The Parties shall compensate each other for such
19 transport and termination of Local Traffic (local call
20 termination) at a single identical, reciprocal, and equal
21 rate provided in Exhibit 7.0.

22 Thus, from the language of the Agreement itself, it is clear that the parties
23 owe each other reciprocal compensation for all "Local Traffic" terminated on
24 the other's network.

25 **Q. CAN YOU BE MORE SPECIFIC?**

26 **A.** Yes, the calls to ISPs in dispute are calls from one NPA-NXX to another
27 within the same local calling area. The calls in dispute are not toll traffic.

1 Moreover, the calls are billable and are billed as local calls by BellSouth and
2 WorldCom originating on one party's network and terminating on the other.

3 **Q. WHEN DOES A CALL TERMINATE?**

4 **A.** A call placed over the public switched telecommunications network
5 ("PSTN") is considered to be "terminated" when it is delivered to the
6 telephone exchange service bearing the called telephone number. Nothing
7 in the Agreement or applicable law or regulations create a distinction
8 pertaining to calls placed to telephone exchange service end users which
9 happen to be ISPs. All calls that terminate within a local calling area,
10 regardless of the identity of the end user, are local calls under Section 1.40
11 of the Agreement, and reciprocal compensation is due for such calls. This
12 includes telephone exchange service calls placed by BellSouth's customers
13 to WorldCom's ISP customers.

14 **Q. ARE THERE OTHER PROVISIONS OF THE AGREEMENT THAT**
15 **SUPPORT THE VIEW THAT THE CALLS ARE LOCAL CALLS?**

16 **A.** Yes, There is no exception in the definitions of "Local Traffic" or
17 "Reciprocal Compensation" for calls which happen to terminate at an ISP
18 and, plainly, the parties knew how to create exceptions when they wanted to.
19 For example, Section 5.8.3 of the Agreement states as follows:

20 The Reciprocal Compensation arrangements set forth
21 in this Agreement are not applicable to Switched
22 Exchange Access Service. All Switched Exchange
23 Access Service and all IntraLATA Toll Traffic shall

1 continue to be governed by the terms and conditions
2 of the applicable federal and state tariffs.

3 For these purposes, Switched Exchange Access Service is defined in section
4 1.62 of the Agreement as:

5 mean[ing] the following types of Exchange Access
6 Services: Feature Group A, Feature Group B, Feature
7 Group D, 800/888 access, and 900 access and their
8 successors or similar Switched Exchange Access
9 services.

10 The calls at issue do not fit into any of the categories of “Switched Exchange
11 Access Service” defined above and, consequently are not excluded from the
12 reciprocal compensation provisions of the Agreement.

13 **Q. IF THE PARTIAL INTERCONNECTION AGREEMENT IS DEEMED**
14 **TO BE AMBIGUOUS ON THE ISSUE OF THE TREATMENT OF ISP**
15 **TRAFFIC AS LOCAL TRAFFIC FOR PURPOSES OF RECIPROCAL**
16 **COMPENSATION, THEN HOW SHOULD THE COMMISSION**
17 **RESOLVE THE AMBIGUITY?**

18 **A.** As I have testified, WorldCom believes that the Agreement is entirely clear
19 and unambiguous on this question. However, should the Commission find
20 an ambiguity, then WorldCom submits that the ambiguity can be resolved by
21 examining, in addition to the language of the Agreement: (1) the express
22 language of the Telecommunications Act of 1996, (2) relevant rulings,
23 decisions and orders of this Commission, (3) relevant rulings, decisions and
24 orders of the FCC interpreting the Act, (4) rulings, decisions and orders from

1 other, similarly situated state regulatory agencies, and (5) the custom and
2 usage in the industry.

3 **Q. DESCRIBE CALL ORIGINATION AND CALL TERMINATION**
4 **WITHIN THE PSTN?**

5 **A.** As I previously testified, call origination within the PSTN occurs when a
6 caller dials, or causes to be dialed, a working PSTN telephone number. Call
7 termination within the PSTN occurs when a connection is established
8 between the caller and the telephone exchange service to which the dialed
9 telephone number is assigned, and answer supervision is returned.

10 **Q. DOES "CALL TERMINATION" IN THIS CONTEXT MEAN THE**
11 **CALL ENDS?**

12 **A.** Certainly not. It merely means that the call has been received by the
13 telephone exchange service to which the call was addressed (by means of the
14 called telephone number), that a call record has been generated, and answer
15 supervision has been returned. The call ends when one party to the call
16 disconnects by hanging up.

17 **Q. UNDER WHAT TARIFF DO ISPs SERVED BY WORLDCOM**
18 **OBTAIN SERVICE?**

19 **A.** WorldCom's local exchange services tariff.

20 **Q. UNDER WHAT TARIFF DO ISPs SERVED BY BELLSOUTH**
21 **OBTAIN SERVICE FROM BELLSOUTH?**

22 **A.** BellSouth's local exchange services tariff.

1 Q. IS THAT THE SAME TARIFF FROM WHICH OTHER BUSINESSES
2 OBTAIN LOCAL EXCHANGE SERVICE FROM BELLSOUTH?

3 A. Yes.

4 Q. IS THAT THE CASE WITH WORLDCOM AS WELL?

5 A. Yes.

6 Q. HOW DOES BELLSOUTH RATE AND BILL A CALL FROM A
7 BELLSOUTH LOCAL EXCHANGE END USER TO AN ISP SERVED
8 BY BELLSOUTH IN THE SAME LOCAL EXCHANGE AREA?

9 A. For example, when an BellSouth telephone exchange service customer places
10 a call to an ISP within the caller's local calling area, BellSouth rates and bills
11 such customer for a local call pursuant to the terms of BellSouth's local tariff.

12 Q. WHAT RATES DOES BELLSOUTH CHARGE TO ISPs THAT IT
13 SERVES?

14 A. BellSouth sells services to ISPs out of BellSouth's local exchange services
15 tariff, pursuant to those rates, terms and conditions.

16 Q. HOW DOES BELLSOUTH TREAT THIS TRAFFIC FOR
17 SEPARATIONS AND REPORTING PURPOSES?

18 A. In its required filings with the FCC, BellSouth treats the calling traffic
19 originating on BellSouth's network and terminating at an ISP within the
20 originating caller's local calling area, whether the ISP is on BellSouth's or on
21 an ALEC's network, as a local call for the purposes of jurisdictional
22 separations and ARMIS reports. BellSouth treats the revenues associated

1 with the calling traffic as local for the purposes of separations and ARMIS
2 reporting.

3 **Q. ARE THERE ANY REGULATIONS OR TARIFFS APPLICABLE TO**
4 **BELLSOUTH THAT PROVIDE FOR THE SERVICES BEING**
5 **TREATED AS ANYTHING BUT LOCAL?**

6 **A.** No.

7 **Q. HAS THIS COMMISSION CONSIDERED THE QUESTION OF THE**
8 **NATURE OF CALLS TO ISPS?**

9 **A.** Yes.

10 **Q. WHAT DID THE COMMISSION FIND?**

11 **A.** The Commission found that end user access to an ISP is by local service.

12 **Q. WHAT WAS THE CONTEXT OF THE COMMISSION'S RULING?**

13 **A.** In Order No. 21815, issued September 5, 1989 in Docket No. 880423-TP this
14 Commission completed an investigation into access to the local network for
15 providing information services. The finding that end user access to the ISP
16 is by local service was reached after hearing testimony and argument from a
17 variety of parties, including BellSouth (then Southern Bell). In fact, in
18 reaching its conclusion that access is local, the Commission relied in part on
19 testimony from BellSouth's witnesses. In its order, the Commission cited
20 BellSouth testimony that "calls to a VAN (value added network) which use
21 the local exchange lines for access are considered local even though
22 communications take place with data bases or terminals in other states" and

1 “such calls should continue to be viewed as local exchange traffic.” (Order
2 No. 21815, p. 24 (emphasis added).) Further, the Commission in rejecting
3 an argument regarding the definition of intrastate access advanced by United
4 Telephone (now Sprint) again quoted the BellSouth witness who testified that
5 connections to the local exchange network for the
6 purpose of providing an information service should be
7 treated like any other local exchange service.

8 (Order 21815, p. 25.)

9 **Q. DID THE COMMISSION MAKE ANY OTHER FINDINGS**
10 **RELEVANT TO THE PRESENT DISPUTE?**

11 **A.** Yes. Based on the testimony in the docket, the Commission’s 1989 order
12 further defined intrastate access as

13 switched or dedicated connectivity which originates
14 from within the state to an information service
15 provider’s point of presence (ISP’s POP) within the
16 same state.

17 (Order No. 21815, p. 25.) This definition is virtually identical to the one
18 urged by BellSouth in that case. Although two other local carriers sought to
19 have this definition clarified on reconsideration, BellSouth did not and the
20 Commission declined to revise its definition on reconsideration. (Order No.
21 23183, issued July 13, 1990.) Thus, with the support of testimony from
22 BellSouth, this Commission has a longstanding order predating the
23 WorldCom-BellSouth Agreement wherein local dialed access to ISPs has
24 been determined to be local calling.

1 **Q. HOW DOES THE FCC VIEW SUCH CALLS?**

2 **A.** The FCC treats traffic to ISPs as local traffic. The FCC has repeatedly
3 affirmed the rights of ISPs to employ local exchange services, under
4 *intrastate* tariffs, to connect to the public switched telecommunications
5 network. The mere fact that an ISP may enable a caller to access the Internet
6 does not alter the legal status of the connection between the customer and the
7 ISP as being a local call. The local call to the Telephone Exchange Service
8 of an ISP is a separate and distinguishable transmission from any subsequent
9 Internet connection enabled by the ISP.

10 The FCC's recent *Report and Order on Universal Service and First*
11 *Report and Order on Access Charge Reform* affirm this fact. In the
12 *Universal Service Order*, the FCC determined that Internet access consists of
13 severable components: the connection to the Internet service provider via
14 voice grade access to the public switched network, and the information
15 service subsequently provided by the ISP. In other words, the first com-
16 ponent is a simple local exchange telephone call. Such a call is eligible for
17 reciprocal compensation under the Agreement. In addition, while all
18 providers of interstate telecommunications services must contribute to the
19 Universal Service Fund, the FCC explicitly excludes ISPs from the
20 obligation.

21 In the *Access Charge Reform Order*, the FCC declined to allow LECs
22 to assess interstate access charges on ISPs. Indeed, the FCC unambiguously

1 characterized the connection from the end user to the ISP as local traffic: “To
2 maximize the number of subscribers that can reach them *through a local call*,
3 most ISPs have deployed points of presence.”

4 In the FCC’s *Non-Accounting Safeguards Order*, the Commission
5 determined that the local call placed to an Information Service Provider was
6 separate from the subsequent information service provided. The severability
7 of these components was key to the Commission’s conclusion that if each
8 was provided, purchased, or priced separately, the combined transmissions
9 did not constitute a single interLATA transmission. There can be no doubt
10 that at this time the FCC does not consider the local exchange call to an ISP
11 to be an interstate or international communication.

12 **Q. HAVE OTHER STATE REGULATORY AGENCIES CONSIDERED**
13 **THE TREATMENT TO BE GIVEN TO SUCH CALLS?**

14 **A.** Yes, to date the position argued by BellSouth here has been soundly and
15 repeatedly rejected by at least fifteen other state regulatory agencies. These
16 decisions generally have come in two distinct contexts: First, in situations
17 where commissions were asked to arbitrate the terms of interconnection
18 agreements and, second, in actions brought by ALEC’s to enforce the terms
19 of approved agreements. In both contexts the results have been the same:
20 commission after commission has ruled that traffic terminated to an ISP was
21 local in nature and was subject to the reciprocal compensation provisions of
22 the Act.

1 Thus, when other Regional Bell Operating Companies, in the course
2 of arbitrations with CLECs, asserted similar arguments that traffic terminated
3 to enhanced service providers should be exempted from reciprocal
4 compensation arrangements under interconnection agreements, regulatory
5 agencies in Arizona, Colorado, Minnesota, Oregon, Washington and West
6 Virginia all declined to treat traffic to enhanced service providers, including
7 ISPs, any differently than other local traffic. These cases show the
8 Commission that six state commissions, in exercising their duty to arbitrate
9 and review interconnection agreements under the standards and terms
10 enunciated in the Act, with the authority in their states equivalent to the
11 Commission's powers in Florida, have decided that nothing in the Act
12 provides for disparate treatment of traffic delivered to ISP customers.

13 Other state commissions faced with virtually the same arguments as
14 BellSouth makes here have reached similar conclusions in the context of
15 petitions to enforce or modify the terms of previously approved
16 interconnection agreements. For example, the New York Public Service
17 Commission ordered New York Telephone to continue to pay reciprocal
18 compensation for local exchange traffic delivered to ISPs served by MFS
19 Intelenet of New York, Inc. The Maryland Public Service Commission also
20 ruled that local exchange traffic to ISPs is eligible for reciprocal
21 compensation, as did the Connecticut Department of Public Utility Control,

1 the Public Utility Commission of Texas, the Corporation Commission of the
2 State of Oklahoma, and the Michigan Public Service Commission.

3 The Virginia State Corporation Commission also reached the same
4 conclusion, recognizing that there is a distinct difference between the local
5 call at issue which terminates at the ISP and the service that the ISP, itself,
6 provides. Just recently the North Carolina Utilities Commission ruled on a
7 petition filed by US LEC to enforce its interconnection agreement with
8 BellSouth that involved virtually the same circumstances to those presented
9 here and considered virtually the same arguments BellSouth has asserted in
10 this case. The North Carolina Commission interpreted the interconnection
11 agreement at issue and directed BellSouth to pay reciprocal compensation for
12 local calls to ISPs, finding, as WorldCom argues here, that there is no
13 exception from reciprocal compensation under the interconnection agreement
14 for local traffic to an end user who happens to be an ISP.

15 These decisions, reaching from one end of the country to the other,
16 should be considered by the Commission as persuasive evidence that
17 BellSouth's position is totally without merit. Indeed, the Illinois Commerce
18 Commission, in the latest of these decisions, noted how rare it was for there
19 to be such unanimity among the state commissions.

20 **Q. WHAT ACTION SHOULD THE COMMISSION TAKE?**

21 **A.** The Commission should enter an order: (1) enforcing the Interconnection
22 Agreement as written, (2) directing the release of escrowed funds to

1 WorldCom, and (3) directing the parties, WorldCom and BellSouth, to
2 compensate each other for transport and termination of **all** local traffic,
3 including local traffic that terminates at end-users who happen to be ISPs,
4 whether previously billed and unpaid or to be incurred and invoiced in the
5 future.

6 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

7 **A.** Yes.

1 **Q. ARE YOU THE SAME GARY J. BALL WHO FILED DIRECT**
2 **TESTIMONY ON BEHALF OF WORLDCOM TECHNOLOGIES,**
3 **INC. IN THIS CASE?**

4 **A. Yes, I am.**

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 **A. The purpose of my testimony is to respond to the direct testimony filed on**
7 **behalf of BellSouth in this docket.**

8 **Q. HAVE YOU REVIEWED THE TESTIMONY FILED BY MCIMETRO**
9 **ACCESS TRANSMISSION SERVICES, INC. (“MCIMETRO”),**
10 **TELEPORT COMMUNICATIONS GROUP INC. AND TCG SOUTH**
11 **FLORIDA (“TCG”), INTERMEDIA COMMUNICATIONS, INC.**
12 **(“INTERMEDIA”) AND BELLSOUTH TELECOMMUNICATIONS,**
13 **INC. (“BELLSOUTH”) IN THIS PROCEEDING?**

14 **A. Yes, I have.**

15 **Q. DO YOU AGREE WITH THE TESTIMONY FILED BY THESE**
16 **PARTIES?**

17 **A. I have no issue with the testimony filed by TCG, MCIMetro or Intermedia.**
18 **All detail how and why calls placed between Telephone Exchange Service**
19 **customers within the same local calling area are local calls for all purposes,**
20 **including reciprocal compensation. Their testimony makes clear that this is**
21 **the case regardless of whether one of those customers happens to be an**
22 **Internet Service Provider (“ISP”). They further demonstrate that such calls**

1 are local regardless of the identity of the local exchange carrier (“LEC”) from
2 which such customers purchase such Telephone Exchange Services. Finally,
3 their testimony also underscores the complete lack of substance of
4 BellSouth’s contorted, and tortured reasoning evident in the testimony filed
5 by Mr. Hendrix.

6 **Q. DO YOU AGREE WITH MR. HENDRIX’S TESTIMONY**
7 **ADDRESSING THE PARTIES’ OBLIGATIONS UNDER THE**
8 **BELLSOUTH/WORLDCOM INTERCONNECTION AGREEMENT?**

9 **A.** Absolutely not. Mr. Hendrix refers to the agreement, and quotes some of the
10 relevant provisions, but instead of acknowledging, as he rightly should, that
11 there is *no* express exclusion of calls terminating at Internet Service
12 Providers (“ISPs”) from the definition of “Local Traffic” in the Agreement,
13 he selectively addresses some concepts in the definition and draws
14 conclusions as to the legal implications of those terms that more properly
15 should be drawn by this Commission. This is not surprising since there is
16 no way to read the actual language of the Agreement and still make the
17 argument BellSouth seeks to make here.

18 Mr. Hendrix refers, repeatedly, to BellSouth’s “intent” when it comes
19 to the payment of reciprocal compensation for local calls terminating at ISPs,
20 concluding that BellSouth never intended to include such calls in the
21 calculation of reciprocal compensation. It is my understanding that, if an
22 agreement or contract is clear and unambiguous, as is the interconnection

1 agreement here, then the parties "intent" is irrelevant. As I stated in my
2 direct testimony, I believe that the interconnection agreement between
3 WorldCom and BellSouth is unambiguous, so BellSouth's after-the-fact
4 rendition of its "intent" is meaningless.

5 **Q. DO YOU AGREE WITH MR. HENDRIX'S ANALYSIS OF "THE**
6 **TYPE OF TRAFFIC IN DISPUTE?"**

7 **A.** No, I believe that he totally mis-characterizes the nature of a local telephone
8 call to an ISP and intentionally confuses the call to an ISP--plainly a
9 "telecommunications service" as that term is defined by the
10 Telecommunications Act of 1996 (the "1996 Act") and by regulations and
11 rules promulgated by the FCC implementing the 1996 Act--with the
12 "information service" offered by the ISP. The two are completely different
13 and severable components and are treated differently for regulatory purposes.

14 **Q. DOES THE AGREEMENT AT ANY POINT DISCUSS THE**
15 **"JURISDICTIONAL" NATURE OF THE TRAFFIC AT ISSUE?**

16 **A.** No, that was never at issue, and there's no reason why it should. Local traffic
17 is specifically defined for purposes of this Agreement and it does not rely in
18 any way on what BellSouth now claims is the "jurisdictional" nature of the
19 traffic at issue in this case. Even so, BellSouth continues to obfuscate a fairly
20 simple issue. Unquestionably, what transpires on the internet itself may
21 involve, at any given time, a combination of intrastate, interstate and
22 international transmissions. But what takes place on the internet is not the

1 issue before the Commission here. The only issue in this dispute is the
2 telephone call that is initiated by a BellSouth customer and is terminated by
3 a CLEC at the premises of a CLEC customer who happens to be an ISP. That
4 telephone call originates and terminates at numbers bearing "NPA-NXX
5 designations associated with the same local calling area of the incumbent
6 LEC or other authorized area (e.g., Extended Area Service Zones in adjacent
7 local calling areas)." As such, they fall within the definition of "Local
8 Traffic" in the interconnection agreement between BellSouth and WorldCom
9 and, therefore, are subject to the reciprocal compensation provisions of that
10 agreement.

11 **Q. DO YOU AGREE WITH MR. HENDRIX'S ANALYSIS OF FCC**
12 **DECISIONS RELATING TO THE JURISDICTIONAL STATUS OF**
13 **CALLS TERMINATED TO ISPs IN THE SAME LOCAL EXCHANGE**
14 **AREA?**

15 **A.** I disagree with Mr. Hendrix's view of the FCC's decisions on the
16 jurisdictional nature of the calls. Mr. Hendrix uses the terms "exemption"
17 and "waiver," terms that are much favored by BellSouth and other ILECs in
18 their endless lobbying and rhetoric on this subject, but those terms are not
19 accurate to describe the actions taken by the FCC in regard to the
20 jurisdictional nature of local calls to ISPs. Rather, the FCC continually has
21 affirmed the rights of ISPs to employ Telephone Exchange Services under the
22 same exact rates, terms and conditions as all other end users. This

1 demonstrates that traffic to and from ISPs is for all purposes exactly like
2 traffic to and from all other Telephone Exchange Service users.

3 If, as Mr. Hendrix's testimony implies, the FCC had merely waived
4 application of access rates to ISPs, then BellSouth and other ILECs would
5 merely have added provisions to their Feature Group A ("FGA") tariffs
6 waiving access element charges when such services were purchased by ISPs,
7 and would have required ISPs to purchase from such FGA tariffs. Neither
8 BellSouth nor any other ILEC did so. Instead, BellSouth and every other
9 ILEC provided Telephone Exchange Services to ISPs on a totally
10 undifferentiated basis. That they have done so, without exception,
11 demonstrates BellSouth's and the other ILECs' own conclusions that the
12 FCC's actions in this regard do not in fact constitute an exemption, but rather
13 an affirmation of ISPs' rights to employ Telephone Exchange Services
14 without distinction.

15 Moreover, as I read Mr. Hendrix's assessment of the FCC's alleged
16 "policy," Mr. Hendrix conveniently and totally ignores the post-1996 Act
17 pronouncements that confirmed the separable nature of internet connections
18 and affirmed the local nature of the call from the BellSouth customer to the
19 ISP. Specifically, in its recent *Report and Order on Universal Service and*
20 *First Report and Order on Access Charge Reform*, the FCC confirmed that
21 Internet access consists of severable components: the connection to the
22 Internet service provider via voice grade access to the public switched

1 **MR. SELF:** And, Mr. Ball, you did not have
2 any exhibits; is that correct?

3 **A** That's correct.

4 **Q** Do you have a brief summary of your direct
5 and rebuttal testimony?

6 **A** Yes, I do.

7 **Q** Basically what we have here is a dispute
8 between BellSouth and WorldCom over whether a local
9 call from a BellSouth local customer and a WorldCom
10 local customer, who happens to be an Internet service
11 provider, is eligible for reciprocal compensation
12 under our interconnection agreement.

13 I'd like to briefly just walk through the
14 critical elements of the agreement that define when
15 reciprocal compensation will be paid between the
16 parties. And what I believe this will show is that
17 there's really nothing ambiguous or disputable about
18 the language in the agreement, and that it's clear
19 that under the agreement, a local call from a
20 BellSouth local exchange customer to a WorldCom local
21 exchange customer, who happens to be an Internet
22 service provider, that traffic is eligible for
23 reciprocal compensation.

24 On Page 4 of my direct testimony, Line 11,
25 provides the language from Section 5.8.1 of our

1 interconnection agreement. What this section says is
2 that reciprocal compensation applies for transport and
3 termination of local traffic, including EAS and
4 EAS-like traffic billable by BST, or BellSouth, or
5 MFS, which is now WorldCom, which a telephone exchange
6 service customer originates on BellSouth's network or
7 MFS's network for termination on the other party's
8 network.

9 So under this provision we need to know what
10 is -- what does the agreement say local traffic is.
11 Is the traffic billable by BellSouth or MFS? Does the
12 telephone exchange service customer originate on
13 either party's network, and does it get terminated on
14 the other carrier's network?

15 Local traffic, if you turn to Page 3 of my
16 testimony, Line 17 defines -- local traffic is defined
17 as calls between two or more telephone exchange
18 service users where both telephone exchange services
19 bear NPA-NXX designations associated with the same
20 local calling area of the incumbent LEC or other
21 authorized area.

22 Essentially what this means is if a
23 BellSouth customer utilizes a BellSouth telephone
24 exchange service that has a local NPA-NXX and they
25 call a WorldCom customer that buys a WorldCom

1 telephone exchange service that has a WorldCom
2 NPA-NXX, that's local traffic.

3 That's exactly what's going on when a
4 BellSouth local customer calls a WorldCom local
5 customer that happens to be an ISP. There's no
6 exclusion here for any type of local customer on
7 either end based on what that customer is, whether
8 they're an ISP, whether they're an alarm service,
9 whether they're a bank or an airline or a residential
10 user. There are no exclusions or exceptions in this
11 section.

12 The rest of this provision, "Is this traffic
13 billable by BellSouth or MFS," the answer is
14 definitely yes. When a BellSouth customer makes that
15 local call, they are billed from BellSouth as if that
16 call was local.

17 It's accounted for by BellSouth as if it's
18 local. It's reported to the FCC through their ARMIS
19 reporting as if it's local, and it's routed through
20 their network as if it's local.

21 "Does the call originate on a telephone
22 exchange service of BellSouth?" Clearly, yes.

23 And, finally, "Is the call terminated on the
24 other party's network?" Standard industry practice is
25 that a call is terminated essentially when it's

1 answered; when the customer that is buying the
2 telephone exchange service that has the NPA-NXX
3 answers the call by -- whether it's a voice grade
4 phone, if it's a fax machine, an answering machine or,
5 in the case of an ISP, a modem.

6 So based on this provision, it's clear under
7 the contract that a local call from a BellSouth
8 customer to a WorldCom local exchange customer that is
9 an ISP is eligible for reciprocal compensation.

10 BellSouth, from what I've seen, has raised a
11 lot of noise, a lot of issues saying these customers
12 are somehow different; they should be excluded based
13 on the fact that the FCC's exerted some jurisdiction
14 over the information service provided by the Internet
15 provider and, therefore, it's interstate and,
16 therefore, clearly there's no reciprocal compensation.

17 Their analysis is completely wrong and
18 distorted, and I'll give a few -- a few legal
19 underpinnings. First, the Florida Commission's 1989
20 order dealing with specifically this type of traffic,
21 and I'll read a quote from the BellSouth witness in
22 that case. "The witness Payne concludes that such
23 calls should continue to be viewed as local exchange
24 traffic terminating at the ESP's location.
25 Connectivity to a point out of state through an ESP

1 should not contaminate the local exchange connection."

2 And the Commission agreed with the BellSouth
3 witness, and we agree with the BellSouth witness. The
4 only person who seems not to agree with the BellSouth
5 witness is the BellSouth witness in this case.

6 Additionally, the Telecommunications Act and
7 the FCC's subsequent interpretation of the Act clearly
8 distinguishes information services which the ISP is
9 providing from telecommunications services.

10 What the FCC has said is that there's two
11 severable components to a customer that accesses an
12 Internet service provider service. There's local
13 telecommunications service to the ISP, and then
14 there's the information service that the ISP is
15 providing. And what the FCC has done is completely
16 consistent with the Act, and it's completely
17 consistent with the Commission's 1989 order, and it's
18 also completely consistent with our agreement.

19 Based on all of this, there's no other
20 conclusion that can be made except that the agreement
21 requires that reciprocal compensation be paid for this
22 traffic, and there's no legal basis for making any
23 other type of determination.

24 Thank you.

25 **MR. SELF:** The witness is available for

1 cross-examination.

2 COMMISSIONER DEASON: Mr. Bond?

3 MR. BOND: MCI has no cross. Thank you.

4 MS. CANZANO: Intermedia has no questions.

5 MR. HOFFMAN: No questions.

6 COMMISSIONER DEASON: Mr. Rankin?

7 CROSS EXAMINATION

8 BY MR. RANKIN:

9 Q A few questions for you. Good morning
10 Mr. Ball. Ed Rankin on behalf of BellSouth.

11 A Good morning.

12 Q Mr. Ball, is an Internet service provider a
13 category of an enhanced service provider? Is it a
14 type of enhanced service provider?

15 A Yes.

16 Q Is an Internet service provider also, in
17 your view, a category or subset of an information
18 service provider?

19 A Yes, and -- yes.

20 Q Okay. Now, do you agree that enhanced
21 service providers use the local exchange network to
22 provide interstate services?

23 A They use local exchange services to provide
24 what may be interstate information services. They do
25 not provide telecommunications services.

1 Q Are you aware of whether the FCC, prior to
2 BellSouth's negotiation with WorldCom in execution of
3 an interconnection agreement with WorldCom, ever made
4 a statement that ESPs, or enhanced service providers,
5 do use the local exchange network to provide
6 interstate services?

7 A Like I said, they may provide interstate
8 information services, but they do not provide
9 telecommunications services.

10 Q Do you know whether or not the FCC made a
11 distinction in its finding that the interstate
12 services it was talking about was an enhanced service
13 or a telecommunications service?

14 A Can you repeat the question?

15 Q Sure. At the time that the FCC made its --
16 well, I'll tell you what; let me just show you a quote
17 that Mr. -- that is in Mr. Hendrix's testimony. I
18 think that will get us there a little bit quicker.

19 Do you have Mr. Hendrix's direct testimony
20 available?

21 A No, I don't have it with me.

22 MR. SELF: Sure. What page?

23 MR. RANKIN: It starts on Page 15 and goes
24 to Page 16.

25 MR. SELF: Is this in his direct or

1 rebuttal?

2 MR. RANKIN: This would be of his direct
3 testimony.

4 MR. SELF: Page 15 of his direct?

5 MR. RANKIN: And 16.

6 Q (By Mr. Rankin) Are you with me? I'm on
7 the page.

8 A I'm on the page. What am I looking --

9 Q I'll start on Page 15, just to direct your
10 attention toward the bottom where he's getting ready
11 to quote from a 1987 notice of proposed rulemaking.
12 Do you see that reference?

13 A Yes.

14 Q Okay. And continuing on to Page 16, this is
15 the actual quotation that he's taken from that notice.
16 And the statement that I want to direct your attention
17 to is found beginning on Line 9, and it's underlined.
18 Could you read that for us? It starts "Enhanced
19 service providers."

20 A "Enhanced service providers, like
21 facilities-based interexchange carriers and resellers
22 use the local network to provide interstate services.

23 Q Is it your testimony today that what the FCC
24 was referring to there was interstate information
25 services or enhanced services and not

1 telecommunications services?

2 A Yes.

3 Q And that, in your mind, is somehow
4 significant and should be significant to this
5 Commission when it's making its decision about whether
6 or not reciprocal compensation should be paid on a
7 call from an end user customer to the ISP?

8 A Yeah. That's the whole underpinning of
9 every statement the FCC has made on this issue is that
10 there's two components. There's the local call to the
11 ISP, and then there's the information service that's
12 behind it.

13 Q So you think that will be a critical
14 distinction that the FCC will use when it ultimately
15 decides this issue that's presently before it?

16 A I don't know if the FCC will ever decide
17 this issue. It's being decided by -- appropriately,
18 by state regulatory commissions under the
19 interconnection agreements.

20 Q That's fine. I understand that. Isn't it
21 also true that the FCC currently has before it a
22 docket in which a CLEC trade organization known as
23 ALTS has filed a complaint asking the FCC to make a
24 decision on this exact issue that the parties here are
25 asking this Commission to make?

1 A Yes, ALTS did file a petition with the FCC,
2 and the FCC has taken no action.

3 Q Okay. As of yet; that's correct. Okay.
4 Thank you.

5 COMMISSIONER CLARK: Mr. Ball, will you
6 agree that is still pending before the FCC?

7 WITNESS BALL: Do I agree --

8 COMMISSIONER CLARK: The ALTS.

9 WITNESS BALL: Oh, yes, it's pending; but,
10 you know, in the meantime almost 20 states have made
11 decisions on the issue.

12 Q (By Mr. Rankin) Okay. Mr. Ball, turn with
13 me to your rebuttal testimony, please, and turn to
14 Page 3 of your rebuttal testimony. Are you with me?

15 Look down to Line 20, and I want to direct
16 your attention to your sentence there that says,
17 "Unquestionably what transpires on the Internet itself
18 may involve at any given time a combination of
19 intrastate, interstate and international
20 transmissions." Do you see that statement?

21 A Yes.

22 Q What transmissions are you referring to
23 there?

24 A These are the -- in the process of providing
25 the information service to the end user, the ISP over

1 the Internet will access information that may be
2 stored in databases anywhere around the world.

3 Q Okay. Is it logical for this Commission to
4 conclude that when an Internet user, say, here in the
5 Tallahassee local calling area, logs on to the
6 Internet through his Internet service provider, that
7 the majority of the transmissions that follow from
8 that are nonlocal in nature?

9 A No.

10 Q It's not? So would you agree or -- well,
11 would you agree that the majority of transmissions,
12 then, that one accesses or performs when they log on
13 to the Internet here in the Tallahassee local calling
14 area are within the local calling area in Tallahassee?

15 A Yeah. There's one telecommunications call.
16 It's a local call.

17 Q I'm not referring to the telecommunications
18 call right now. What I'm trying to focus your
19 attention on is -- are the transmissions that you say
20 occur after the user, end user here in Tallahassee,
21 logs on to Internet and starts surfing the web or
22 accessing Internet sites. That's really the part of
23 your statement that I'm focusing on now.

24 Do you understand that distinction? You're
25 saying, acknowledging here in your rebuttal that what

1 happens after that end user logs on to the Internet
2 can involve a combination of intrastate, interstate
3 and, in fact, international transmissions; right?

4 A Yes.

5 Q So what I want to ask you is, assume that
6 the end user has dialed his Internet service provider
7 and is, in fact, now part of the Internet. They've
8 put their password in and they're ready to go.

9 Now, the databases that that user is seeking
10 to access could be anywhere around the world; isn't
11 that right?

12 A Yes.

13 Q Okay. And is it logical for this Commission
14 to conclude that the majority of sites, host computer
15 sites or databases that the end user is accessing
16 while they're on the Internet, lie in fact outside the
17 local calling area?

18 A The databases can be anywhere.

19 Q Okay. And you don't know whether or not the
20 majority of them would be inside the local calling
21 area here in Tallahassee or outside the local calling
22 area?

23 A I have no way of knowing.

24 MR. RANKIN: I believe that's all. Thank
25 you, Mr. Ball.

1 **COMMISSIONER DEASON:** Staff?

2 **CROSS EXAMINATION**

3 **BY MR. PELLEGRINI:**

4 **Q** Mr. Ball, it's your view, as I understand it
5 from your testimony this morning, that a call to the
6 Internet consists of two components; is that correct?

7 **A** Yes.

8 **Q** And the first of these components is the
9 call that an end user would place to an ISP provider;
10 is that correct?

11 **A** Yes.

12 **Q** Would you classify that as a
13 telecommunications services as defined by the
14 Telecommunications Act?

15 **A** Yes. Yes, that's telephone exchange
16 service.

17 **Q** And the second component is the information
18 service which is provided by the ISP; is that correct?

19 **A** Yes.

20 **Q** Would you classify that as
21 telecommunications service as so defined?

22 **A** No. That is information service as defined
23 under the Act. And the FCC has in its subsequent
24 orders since the Act was passed very strongly
25 clarified the distinction between information services

1 and telecommunications services both on the basis of
2 access charges and universal service.

3 Q Then would it be your testimony that the
4 definition of local traffic in Section 1.40 of the MFS
5 agreement does not apply to the second component?

6 A Correct.

7 Q And can you explain why, why not?

8 A Well, the way the contract is set up,
9 it's -- the ISP is a local exchange customer of
10 WorldCom. They purchase telephone exchange services
11 from WorldCom that have an NPA-NXX within the local
12 calling area.

13 So under the contract if a BellSouth
14 telephone exchange service customer calls a WorldCom
15 telephone exchange service customer, that's a local
16 call per the contract. You don't have to really do
17 any legal research or analysis on that. It's
18 straightforward under the contract.

19 Q Mr. Ball, were you involved in the
20 interconnection agreement negotiations?

21 A I was not involved in the negotiations that
22 transpired after the Telecommunications Act for
23 BellSouth. I was the negotiator for Bell Atlantic,
24 NYNEX and SNET. I was involved in negotiations with
25 BellSouth before the Telecommunications Act

1 transpired.

2 We were a very small group, and we had very
3 frequent meetings to discuss the status of all of our
4 negotiations, so I was very well aware of what was
5 going on with BellSouth.

6 Q You are aware of the negotiations between
7 MFS and BellSouth?

8 A Yes. We had very frequent meetings of all
9 the negotiating teams to talk about the status of the
10 negotiations, but I was not personally at the table
11 with BellSouth.

12 Q Well, then let me ask you this: To the best
13 of your knowledge, did BellSouth ever give MFS or
14 WorldCom any indication during the course of the
15 negotiations on the interconnection agreement that it
16 had a specific and different view of ISP traffic
17 treatment for compensation purposes?

18 A No.

19 Q To the best of your knowledge, during the
20 course of these negotiations was ISP traffic ever
21 discussed in any way at all?

22 A No.

23 Q Why not?

24 A Well, from our perspective it's local
25 traffic, and these -- the negotiations were generally,

1 what are the terms for us interconnecting and
2 compensating each other for local traffic.

3 To the extent that BellSouth has some
4 thoughts that they did not want some of the end users
5 on our network to be considered as end users for
6 reciprocal compensation purposes, it was really, I
7 think, up to them to make any exceptions they wanted
8 in the agreement clear. You know, just as we didn't
9 negotiate --

10 **COMMISSIONER GARCIA:** Could you give me an
11 example of some exceptions?

12 **WITNESS BALL:** Well, there are exceptions in
13 the agreement, such as any kind of nonlocal service.
14 There's provisions --

15 **COMMISSIONER GARCIA:** But are there local
16 exceptions?

17 **WITNESS BALL:** No.

18 **COMMISSIONER GARCIA:** Thank you. I'm sorry,
19 Charlie.

20 **WITNESS BALL:** And just as we didn't talk
21 about whether reciprocal compensation should apply for
22 a bank or -- and a company that provides, you know,
23 voice messaging services or a fax store and forward
24 company, you know, we -- none of these negotiations --
25 if a carrier had a concern about a specific class of

1 end user, it was really up to them to raise the issue
2 and try to negotiate it.

3 You know, we're -- from our view, it's all
4 local traffic, and that's been our view consistently.

5 Q (By Mr. Pellegrini) Did MFS have
6 significant service relationships with ISPs at that
7 time; that is, at the time of the negotiations?

8 A We did have some.

9 Q Do you know whether BellSouth would have had
10 any reason to be aware of that?

11 A Well, we have -- before these agreements
12 commenced we acquired UUNET, which is the largest
13 Internet service provider.

14 Q Do you recall when the MFS agreement was
15 signed?

16 A August 26, 1996.

17 Q And when did WorldCom first become aware of
18 BellSouth's position regarding ISP traffic?

19 A I believe the first letter came August 12th,
20 1997.

21 Q In that period of time, that is, between the
22 time that the agreement with BellSouth was signed and
23 the August 1997 letter, was there any communication
24 between the two companies concerning ISP traffic
25 treatment?

1 A No. The first we heard of it was we
2 received a form letter from a gentleman named Ernest
3 Bush basically saying, we're unilaterally cutting you
4 off.

5 **COMMISSIONER CLARK:** Before then they were
6 paying for the traffic? The compensation included
7 counting that traffic?

8 **WITNESS BALL:** Well, I don't think we -- at
9 least in Florida, we're at the stage where we were
10 billing for significant amounts of traffic at the
11 time.

12 So it was a little -- usually when we begin
13 these kind of relationships there's always -- the
14 first three to six months things kind of are getting
15 sorted out still. So it's not really clear until a
16 letter comes out like this whether there's a real
17 dispute over the traffic or not.

18 **COMMISSIONER CLARK:** Let me back up. You
19 entered into an agreement with them August 26th, 1996,
20 and what was the agreement with respect to
21 compensation?

22 **WITNESS BALL:** Yes.

23 **COMMISSIONER CLARK:** Reciprocal
24 compensation?

25 **WITNESS BALL:** Yes.

1 **COMMISSIONER CLARK:** And how did you
2 accomplish that? You gave them traffic data and they
3 gave you traffic data? I mean, how did you figure it
4 out?

5 **WITNESS BALL:** Well, we weren't actually
6 operational when we signed the agreement. The general
7 way that we do these things, there's a standard
8 industry process where -- called the CABS billing
9 process that carriers -- that's the basis on which
10 carriers bill each other, and we record the minutes
11 coming into the interconnection trunks. A bill is
12 generated based on the number of minutes and the rate,
13 and we send them a bill.

14 **COMMISSIONER CLARK:** Okay. When did the
15 first billing occur?

16 **WITNESS BALL:** I would have to come back,
17 but it's sometime in 1997. It was not 1996.

18 **COMMISSIONER CLARK:** Would you let me know,
19 please? I'd like to know when you first started
20 billing.

21 **WITNESS BALL:** Oh, sure.

22 **MR. SELF:** Would you like a late-filed,
23 Commissioner Clark?

24 **COMMISSIONER CLARK:** I was hoping you'd get
25 it after he gets off the stand and let me know.

1 MR. SELF: Okay. We'll do that.

2 COMMISSIONER DEASON: Once he leaves the
3 stand, how are we going to get there? Who is going to
4 sponsor it?

5 MR. SELF: Well, we can -- hopefully, he can
6 make a phone call, and we'll just bring him back to
7 give the answer.

8 Q (By Mr. Pellegrini) Mr. Ball, are you
9 familiar with negotiations with other RBOCs throughout
10 the country?

11 A Yes.

12 Q Do you know whether in the course of any of
13 those negotiations the subject of the treatment of ISP
14 traffic was brought up?

15 A Yes. With our negotiations with U.S. West,
16 U.S. West raised the issue, said "We do not want
17 reciprocal compensation to apply under our
18 interconnection agreements during the course of our
19 negotiations." That issue went to arbitration.

20 Also -- and somebody -- negotiations with
21 Bell Atlantic and NYNEX, the issue was discussed,
22 although there -- I really can't get into the details
23 because of the proprietary nature. But it was -- in
24 all of my personal dealings it was a very high profile
25 issue with the other carriers.

1 Q I'm sorry. In all --

2 A In my personal dealings it was, yes.

3 Q What do you mean by your personal dealings?

4 A As a negotiator with Bell Atlantic and NYNEX
5 and SNET.

6 Q Now, Mr. Ball, if I place a call to my
7 doctor's office, for example, and a call to my ISP in
8 the same local calling area, how can those two calls
9 be distinguished?

10 A Well, they really can't be, from my
11 perspective.

12 Q There is no way to distinguish those two
13 calls? There is no existing automatic system, for
14 example, that would -- with the capability to
15 distinguish those two calls?

16 A Well, I think if you know the phone number
17 of a specific customer and you wanted to separately
18 track that customer's usage, the information is
19 available in the switch. You'd have to build an
20 interface to your billing system to separately track
21 and record that. I mean, it's technically feasible,
22 but it's not in place.

23 COMMISSIONER JACOBS: You don't track the
24 length of time that individual customers are connected
25 to the Internet, do you?

1 **WITNESS BALL:** Not for inbound purposes, no.
2 You know, for outbound purposes, that's part of their
3 service; you know, you're recording their usage.

4 **COMMISSIONER CLARK:** What do you mean,
5 inbound? What's inbound?

6 **WITNESS BALL:** It's basically -- there's a
7 service that local carriers provide called direct
8 inward dial service, and it's a service that's
9 designed to receive --

10 **COMMISSIONER CLARK:** Let me put it this way.
11 Why don't you explain to me, if I were a customer, I
12 mean, how that -- who calls up -- when is it
13 considered inbound when --

14 **WITNESS BALL:** Oh. When someone calls you,
15 that's an inbound call.

16 **COMMISSIONER CLARK:** An inbound to the
17 Internet provider?

18 **WITNESS BALL:** Well, it's just as if someone
19 calls you at your phone, and you answer the phone,
20 someone calls the Internet provider, and the modem
21 answers the phone.

22 **COMMISSIONER CLARK:** Which are you tracking
23 then?

24 **WITNESS BALL:** We don't track any of those
25 today.

1 **COMMISSIONER CLARK:** What outbound do you
2 track?

3 **WITNESS BALL:** Well, if a customer buys an
4 outbound service, if they buy a local service and
5 they're -- it's a measured service, then you're
6 recording their local minutes and their long distance
7 minutes.

8 **COMMISSIONER CLARK:** So if they buy a
9 measured local service, you would count it?

10 **WITNESS BALL:** Yes.

11 **COMMISSIONER CLARK:** And to whom do you
12 offer measured local service?

13 **WITNESS BALL:** Well, it depends on which
14 state you're in. In some states such -- in the
15 northeast there is measured local service, and some
16 states there isn't.

17 **COMMISSIONER CLARK:** Do you offer measured
18 local service here?

19 **WITNESS BALL:** I don't believe so.

20 **COMMISSIONER CLARK:** So do you measure
21 either traffic, inbound or outbound?

22 **WITNESS BALL:** Well, I think what I'm saying
23 is the capability is there if -- to measure outbound
24 service. It's built in.

25 You know, if the product we're offering

1 isn't a measured product, clearly we wouldn't be
2 utilizing that.

3 COMMISSIONER CLARK: So the Internet
4 provider is your customer.

5 WITNESS BALL: Yes.

6 COMMISSIONER CLARK: And you're not
7 measuring the length of the calls in to that provider.

8 WITNESS BALL: Right. He's buying -- we're
9 not recording how many times he answers the phone. We
10 record how many minutes BellSouth sends us in
11 aggregate.

12 COMMISSIONER CLARK: And you get compensated
13 for that, or are you arguing you should be compensated
14 for that?

15 WITNESS BALL: Yes.

16 COMMISSIONER CLARK: Okay. But you rely on
17 them -- no. You're recording those --

18 WITNESS BALL: We record the minutes coming
19 in from BellSouth. We rely on them to appropriately
20 route the traffic, the local traffic to us.

21 COMMISSIONER CLARK: Okay.

22 Q (By Mr. Pellegrini) I really have no more
23 questions, Mr. Ball, but I want to return to your
24 response in relationship to your dealings with
25 Bell Atlantic/NYNEX.

1 I want to be certain. Those dealings which
2 you described as personal dealings involved reciprocal
3 compensation provisions?

4 A Yes.

5 Q But did they specifically involve such
6 provisions related to ISP traffic?

7 A Yes.

8 Q They did.

9 MR. PELLEGRINI: Thank you, Mr. Ball.

10 COMMISSIONER JACOBS: One additional
11 question. When that traffic reaches you, is it your
12 contention that it goes off the public switch network
13 and goes onto a packaged switch network; is that
14 correct?

15 WITNESS BALL: Well, once -- basically we're
16 providing a local phone line to the ISP. Once the ISP
17 answers the phone, he's providing an information
18 service behind that, and it's not telecommunications
19 anymore. You know, what he does behind there is not
20 telecommunications.

21 COMMISSIONER JACOBS: And I believe it is
22 your contention that it was all -- it was never
23 intended by the FCC that that portion of the call be
24 subject to the toll or access provisions.

25 WITNESS BALL: Correct.

1 **COMMISSIONER JACOBS:** If the ISP provider --
2 if you weren't in the picture, could the ISP provider
3 gain -- I assume there are instances, there are
4 configurations where the ISP would deal directly with
5 a LEC?

6 **WITNESS BALL:** Oh, yeah. Before the CLECs
7 entered the market, that's the only way the ISPs
8 provide their service is they would buy local lines to
9 BellSouth.

10 **COMMISSIONER JACOBS:** And what would they
11 have purchased from the LEC?

12 **WITNESS BALL:** A local phone line.

13 **COMMISSIONER JACOBS:** Okay.

14 **WITNESS BALL:** And that's just what we're
15 providing them, a local phone line.

16 **COMMISSIONER DEASON:** I have a question.
17 I'm not seeking any proprietary information, so if it
18 is, just so indicate. But do you pay a commission to
19 the ISP for the amount of traffic that they create?

20 **WITNESS BALL:** No. They purchase retail
21 service from us.

22 **COMMISSIONER DEASON:** I understand they
23 purchase retail service from you, but part of that
24 agreement could be that you provide them some type of
25 a commission --

1 **WITNESS BALL:** Absolutely not.

2 **COMMISSIONER DEASON:** Is there any revenue
3 sharing of any sort?

4 **WITNESS BALL:** No.

5 **COMMISSIONER DEASON:** Redirect?

6 **COMMISSIONER CLARK:** I have questions.

7 Would you look at Page 9 of Ms. Strow's rebuttal?

8 **WITNESS BALL:** I don't have it, but I --

9 **COMMISSIONER CLARK:** It's quoted on -- I
10 guess it's something under Title II of the Act.

11 **WITNESS BALL:** This is Page 9 --

12 **COMMISSIONER CLARK:** I'm sorry; Page 5 of
13 her testimony, rebuttal testimony. Let me just tell
14 you my question.

15 What does it mean when it says "Enhanced
16 services are not regulated under Title II of the Act"?
17 Does that mean the FCC has no jurisdiction, or they're
18 regulated differently?

19 **WITNESS BALL:** The FCC has declined to exert
20 jurisdiction. So they're not regulating enhanced
21 service providers as telecommunications carriers.

22 **COMMISSIONER CLARK:** Let me ask it
23 differently. Does the Act say they can't be regulated
24 because they're not under Title II, or is that
25 something that the FCC has decided not to regulate?

1 Do you know?

2 **WITNESS BALL:** I'm probably getting a little
3 over my head on the legal analysis, but my general
4 view is that the Telecommunications Act of '96 has two
5 things. They have information services and
6 telecommunications services.

7 The FCC would have to make a finding that
8 the ISP is providing telecommunications services and
9 not information services, which they've strongly
10 declined to do; you know, like I said, but I don't
11 want to get too much -- be too much of a lawyer.

12 **COMMISSIONER CLARK:** So if it is information
13 service, then they are not a telecommunications
14 provider under the Act.

15 **WITNESS BALL:** Correct.

16 **COMMISSIONER CLARK:** Okay. One of the
17 things I understand BellSouth to hang its hat on in
18 their argument that this is not local is the notion
19 that this traffic, or this connection, is like a
20 Feature Group A.

21 I think somewhere in Mr. Hendrix's testimony
22 he says that there's a listing of those services for
23 which access applies, those access charges apply, and
24 then it says "other like services," at the end, I
25 think.

1 **WITNESS BALL:** Yes.

2 **COMMISSIONER CLARK:** And I think he hangs
3 his hat on the notion that these services are like
4 Feature Group A services. What are Feature Group A
5 services? I know you do some explanation on 5, but
6 I'm not sure if I understand it.

7 **WITNESS BALL:** Feature Group A, it's
8 basically an antiquated form of switched access which
9 enabled a long distance carrier to buy a local phone
10 line essentially to provide his long distance service.

11 So really what BellSouth is saying is that
12 they found an old, antiquated access service that
13 looks like local phone service. How that would work
14 is similar to what any other local customer would do.
15 The long distance carrier would buy a local phone
16 connection and the customers would dial seven digits
17 to reach the long distance carrier, and then they
18 would make their long distance call.

19 So technically, you know, it looks like a --
20 I would argue Feature Group A looks a lot like a local
21 call, and that's why they're similar; but the
22 difference, of course, is there's telecommunications
23 carriers that buy Feature Group A, not information
24 service.

25 **COMMISSIONER CLARK:** And your argument is,

1 to be a telecommunications carrier, that second part,
2 after they've done the 7-digit dialing, the second
3 part would have to do no manipulation of what comes in
4 and repack it and send it out; it would just be a
5 straight-through transmission?

6 **WITNESS BALL:** Yes. There'd be no -- you
7 know, under the definition of telecommunications
8 service in the Act, there would be no, you know,
9 change in the form of the information. There would be
10 no storage or retrieval of information as an
11 information service provider would provide.

12 **COMMISSIONER CLARK:** Would you clarify for
13 me further your statement on Page 5 that begins on
14 Line 3? I don't understand the point you're making.

15 **WITNESS BALL:** In my direct testimony?

16 **COMMISSIONER CLARK:** Rebuttal.

17 **COMMISSIONER GARCIA:** Susan, could you
18 repeat that page?

19 **COMMISSIONER CLARK:** Page 5 of Mr. Ball's
20 rebuttal testimony.

21 **COMMISSIONER GARCIA:** Thank you.

22 **WITNESS BALL:** I'm on Page 5.

23 **COMMISSIONER CLARK:** All right. It starts
24 on Line 3. I don't understand what you're trying to
25 say. How is that a response to Mr. Hendrix's

1 testimony? If it was an exemption, they would have
2 put that in their Feature Group A, waiving the
3 charges?

4 **WITNESS BALL:** Yes. The point is if, you
5 know, BellSouth all along had believed that this is
6 actually some form of, you know, suppressed access
7 service and not local service --

8 **COMMISSIONER CLARK:** You mean if they had
9 thought all along it was a Feature Group --

10 **WITNESS BALL:** It's a Feature Group A, and
11 they were just not charging for it because the FCC
12 said they couldn't, it would have made sense that they
13 would have sold the service out of their Feature
14 Group A service tariff, and they'd have some provision
15 relative to Internet providers. But what in actuality
16 they've done is they sold the service out of their
17 retail local exchange service all along and accounted
18 and billed for it under those means.

19 **COMMISSIONER CLARK:** I see. If we are to
20 buy into their argument that it's like Feature Group A
21 service, it would have made sense for them to sell it
22 under either that tariff, the Feature Group A, or they
23 could have done another tariff.

24 **WITNESS BALL:** Yes.

25 **COMMISSIONER CLARK:** And it would have been

1 in a sense -- I guess it could have been labeled
2 "services purchased by IXCs for access to their
3 information service"?

4 **WITNESS BALL:** It would have been "services
5 available to enhanced service providers."

6 **COMMISSIONER CLARK:** Okay. And then they
7 would have included a waiver of the access charge
8 pursuant to what the FCC has done.

9 **WITNESS BALL:** Yes.

10 **COMMISSIONER CLARK:** Okay. Would you
11 explain to me how you believe -- I'm on Page 8 of your
12 rebuttal -- that a decision by the FCC on the ALTS
13 position may not affect this at all?

14 Is it that it may not affect it if it leaves
15 the status quo?

16 **WITNESS BALL:** Yes. It's very conceivable
17 that the FCC could do a variety of things. First of
18 all, they could just not act on the petition at all.
19 They could just say, "We defer to the states on this
20 issue," or they could come out and say, "Well, we do
21 think this traffic is eligible for reciprocal
22 compensation, but again we'll defer it to the states
23 to resolve that."

24 **COMMISSIONER CLARK:** Well, how about if they
25 decide it is, in fact, interstate service for which

1 access is applicable. How would that ruling affect
2 your assertions in this case?

3 **WITNESS BALL:** Well, I think it would create
4 some issues we'd have to work through. It would still
5 be our contention that, you know, we have a
6 voluntarily agreement with BellSouth that clearly laid
7 out how we're going to compensate each other, and that
8 should be the guiding principle here.

9 And if you look at what the 8th Circuit
10 said, they deferred to the states to resolve disputes
11 under the interconnection agreement, and that's why we
12 filed our complaint here in Florida, and we didn't
13 file a complaint at the FCC.

14 **COMMISSIONER CLARK:** Okay. And as I
15 understand it, what ALTS is just saying is nothing
16 you've done subsequent to the other decision has
17 changed your classifying this as local.

18 **WITNESS BALL:** Right.

19 **COMMISSIONER CLARK:** Okay. Thank you.

20 **COMMISSIONER DEASON:** Redirect?

21 **MR. SELF:** I have no questions on redirect.
22 I also have no exhibits. And I guess in view of
23 Commissioner's Clark's request, we would ask that the
24 witness be temporarily excused and perhaps we can
25 bring him back after the next witness, assuming he can

1 get an answer.

2 COMMISSIONER DEASON: Very well.

3 MR. SELF: Thank you.

4 COMMISSIONER DEASON: We'll take a 10-minute
5 recess.

6 (Brief recess.)

7 - - - - -

8 COMMISSIONER DEASON: We're going back on
9 the record. Mr. Hoffman?

10 MR. HOFFMAN: Thank you, Commissioner
11 Deason.

12 - - - - -

13 PAUL KOUROUPAS

14 was called as a witness on behalf of Teleport
15 Communications Group, Inc./TCG South Florida and,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HOFFMAN:

19 Q Good morning, Mr. Kouroupas.

20 A Good morning.

21 Q Would you please state your name and
22 business address for the record?

23 A My name is Paul Kouroupas. My business
24 address is 1133 21st street N.W., Suite 400,
25 Washington, D.C. 20036.

1 Q And by whom are you employed and what is
2 your position?

3 A I'm vice-president of regulatory and
4 external affairs.

5 Q Mr. Kouroupas, have you prepared and caused
6 to be filed 17 pages of prefiled direct testimony in
7 this proceeding?

8 A I have.

9 Q Do you have any changes or revisions to your
10 direct testimony?

11 A No, I do not.

12 Q So that if I asked you the questions
13 contained in your prefiled direct testimony today,
14 would your answers be the same?

15 A Yes, they would.

16 **MR. HOFFMAN:** Commissioner Deason, I would
17 ask that Mr. Kouroupas' prefiled direct testimony be
18 inserted into the record as though read.

19 **COMMISSIONER DEASON:** Without objection, it
20 shall be so inserted.

21 **MR. HOFFMAN:** Thank you.

22 Q **(By Mr. Hoffman)** Mr. Kouroupas, have you
23 also attached two exhibits to your direct testimony,
24 which have been prefiled as PK-1 and PK-2?

25 A Yes, that's correct.

1 Q And what are those two exhibits?

2 A I may not have the order correct, but one of
3 them is the letter from BellSouth informing us of
4 their position regarding reciprocal compensation
5 payments for traffic to Internet service providers,
6 and the other exhibit is TCG's interconnection
7 agreement.

8 MR. HOFFMAN: Thank you. Commissioner
9 Deason, I would ask that Mr. Kouroupas' prefiled
10 Exhibits PK-1 and PK-2 be marked for identification.

11 COMMISSIONER DEASON: They will be
12 identified as Exhibit 2.

13 (Exhibit 2 marked for identification.)

14 Q (By Mr. Hoffman) Mr. Kouroupas, have you
15 also prepared and caused to be filed 11 pages of
16 prefiled rebuttal testimony in this proceeding?

17 A I have.

18 Q Do you have any changes or revisions to your
19 prefiled rebuttal testimony?

20 A No.

21 Q If I asked you the questions contained in
22 your prefiled rebuttal testimony today, would your
23 answers be the same?

24 A Yes, they would.

25 MR. HOFFMAN: Commissioner Deason, I would

1 ask that Mr. Kouroupas' prefiled rebuttal testimony be
2 inserted into the record as though read.

3 **COMMISSIONER DEASON:** Without objection, it
4 shall be so inserted.

5 **Q** **(By Mr. Hoffman)** Mr. Kouroupas, have you
6 prepared a summary of your prefiled direct and
7 rebuttal testimony?

8 **A** I have.

9 **Q** Would you please provide your summary at
10 this time?

11 **MR. PELLEGRINI:** Before Mr. Kouroupas begins
12 his summary, Staff would offer the exhibit identified
13 as PK-3 and ask that it be marked for identification.
14 It consists of Mr. Kouroupas' deposition transcript as
15 well as Late-filed Deposition Exhibit
16 Nos. 1 through 5.

17 **COMMISSIONER DEASON:** It will be identified
18 as Exhibit 3.

19 (Exhibit 3 marked for identification.)

20 **MR. PELLEGRINI:** Thank you.

21

22

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25

1 **Q. Please state your name, address and business affiliation.**

2 A. My name is Paul Kouroupas. I am Vice President, Regulatory and External
3 Affairs for Teleport Communications Group Inc.. My business address is
4 2 Lafayette Center, 1133 21st Street, N.W., Suite 400, Washington, D.C.
5 20036.

6 **Q. On whose behalf are you testifying?**

7 A. I am testifying on behalf of Teleport Communications Group Inc., and its
8 Florida affiliate, TCG South Florida.

9 **Q. Please summarize your background and experience.**

10 A. I have worked for TCG for over five years, representing TCG before state
11 public utility commissions throughout the country. For the past three years,
12 I have been responsible for negotiating and overseeing the implementation
13 of interconnection agreements with incumbent local exchange carriers
14 ("ILECs"), including BellSouth Telecommunications, Inc. ("BellSouth"),
15 both prior and subsequent to the passage of the federal Telecommunications
16 Act of 1996 ("Act").

17 I graduated from Temple University in Philadelphia, Pennsylvania
18 with a Bachelor's degree in Communications. I also graduated from the
19 Catholic University of America's Columbus School of Law with a Juris
20 Doctorate degree and a specialty in Communications Law.

21 **Q. What is the purpose of your testimony?**

22 A. The purpose of my testimony is to discuss BellSouth's unilateral declaration
23 that calls placed by BellSouth end users to Internet Service Providers
24 ("ISPs") served by TCG's Florida affiliate, TCG South Florida, are not
25 subject to the reciprocal compensation arrangements established in TCG's

1 Interconnection Agreement with BellSouth.¹ I also explain why BellSouth's
2 belief that traffic to ISPs is somehow "exempt" from compensation of any
3 kind is erroneous.

4 **Q. What are your conclusions?**

5 A. BellSouth's action is so fundamentally unjustified and arbitrary that any
6 state regulator might correctly dismiss its position summarily. I note that
7 TCG's complaint discusses a number of state cases where regulators did
8 just that. At least fourteen states have required incumbent local exchange
9 carriers to pay reciprocal compensation for traffic terminated to ISPs, and
10 no state has upheld the ILEC position that BellSouth has embraced in this
11 case. In fact, BellSouth's position suffers from three flaws, any of which
12 could constitute a basis for the Commission to uphold TCG's complaint.
13 First, the plain language of TCG's Interconnection Agreement makes clear
14 that traffic destined for ISP end users is subject to reciprocal compensation
15 arrangements. Second, at the time TCG and BellSouth entered into the
16 Interconnection Agreement, this Commission had previously concluded in
17 a written order that end-user access to an ISP is local exchange traffic.²
18 Third, BellSouth's attempt to camouflage its behavior by referencing
19 Federal Communications Commission ("FCC") policies is entirely
20 groundless.

21 I believe it is important for the Commission to act as expediently as
22 possible to grant the relief sought in TCG's complaint. Otherwise,

¹Throughout the remainder of my testimony, whenever I refer to TCG I am also referring, where appropriate, to TCG South Florida.

²Order No. 21815 issued September 5, 1989 in Docket No. 880423-TP; see 89 F.P.S.C. 9:7 at 30 (1989).

1 BellSouth will continue to have the incentive to adopt post-agreement
2 unilateral actions with respect to future interconnection issues that could
3 financially harm TCG, or another alternative local exchange company
4 ("ALEC").

5 **Q. Can you summarize the nature of the dispute between TCG and**
6 **BellSouth?**

7 A. Yes. The dispute originates from the Interconnection Agreement between
8 TCG and BellSouth. Under the Telecommunications Act of 1996, the
9 Florida Commission has the primary jurisdiction to approve and administer
10 this Interconnection Agreement. This Commission has done so by
11 approving the BellSouth-TCG agreement in Docket No. 960862-TP, a copy
12 of which is attached to my testimony as Exhibit __ (PK-1).

13 Section IV.C of the Interconnection Agreement provides that "[e]ach
14 party will pay the other for terminating its local traffic on the other's
15 network at the local interconnection rates," as set forth in the Agreement.

16 Local traffic is defined in Section 1.D. of the Agreement as:

17 any telephone call that originates and terminates in the same
18 LATA and is billed by the originating party as a local call,
19 including any call terminating in an exchange outside of
20 BellSouth's service area with respect to which BellSouth has
21 a local interconnection arrangement with an independent
22 LEC, with which TCG is not directly interconnected.
23

1 Approximately ten months after the Interconnection Agreement was
2 approved by the Commission, BellSouth apparently decided unilaterally
3 (*i.e.*, without negotiating the issue with TCG or requesting guidance from
4 this Commission) that local exchange calls from BellSouth's customers to
5 customers of TCG who offer enhanced, information service access to the
6 Internet should no longer be deemed "local traffic" but should instead be
7 classified as "interstate access service." Internet Service Providers are
8 perhaps the largest subset of entities that are also referred to as "information
9 service providers," and "enhanced service providers." The three terms are
10 largely synonymous.³ Since well before the AT&T divestiture or the
11 creation of long distance access charges such information services have
12 been differentiated from the end-to-end telecommunications services that
13 may be subject to interstate access service charges.

14 **Q. Is TCG's local exchange service offering designed according to industry**
15 **standards and practices?**

16 **A.** Yes. TCG offers local service to its ISP customers per its price list for
17 business customers consistent with established practice and Florida Public
18 Service Commission ("FPSC") statutes and rules. In this respect, TCG's
19 practice is identical to BellSouth's. BellSouth bills customers who call
20 TCG's ISP customer for a local call. BellSouth bills its own customers who
21 call any ISPs who are also BellSouth customers as if this is purely a local
22 exchange call. After the Commission approved their Interconnection
23 Agreement, TCG included ISP traffic in the total terminating minutes that

³Some "information services" do not involve computer processing; however, this distinction is not relevant to the matter at hand.

1 forms the basis for billed minutes, and BellSouth paid those bills; BellSouth
2 likewise billed TCG on the basis of total terminating minutes that included
3 ISP traffic, and TCG duly paid BellSouth's bills under the terms of the
4 Agreement. This exchange of traffic data simply extended the negotiated
5 agreement under which TCG and BellSouth conducted business prior to the
6 Commission's approval of TCG's Interconnection Agreement with
7 BellSouth.

8 **Q. What changed the relationship that TCG and BellSouth had under their**
9 **Interconnection Agreement approved by the Commission?**

10 A. Nothing — other than BellSouth's unilateral action that created this dispute.
11 On or about August 12, 1997, BellSouth notified TCG and other ALECs
12 that it would "neither pay, nor bill, local interconnection charges for traffic
13 terminated to an [enhanced service provider]," which "includes a variety of
14 service providers such as information service providers...and internet
15 service providers, among others." A copy of the August 12, 1997 letter
16 from BellSouth is attached to my testimony as Exhibit __ (PK-2).

17 **Q. Is there any valid justification for BellSouth's action of August 12th?**

18 A. None whatsoever. BellSouth chose to withhold reciprocal compensation
19 payments unilaterally, *i.e.*, without seeking guidance from any regulatory
20 authority and without regard to the terms of its Interconnection Agreement
21 with TCG. There are three blatant flaws in BellSouth's rationale for its
22 unilateral action.

23 First, the plain language of TCG's interconnection agreement makes
24 clear that traffic destined for ISP end users is subject to reciprocal
25 compensation arrangements. Although the Internet is now the predominant

1 form of information service in use in the U.S., many other such services
2 have long existed.⁴ In all instances, the information or enhanced service
3 has been treated as a separate transaction from the local call used to access
4 the ISP. Thus, BellSouth's own long standing billing and tariff
5 development processes have consistently treated calls to ISPs as local calls
6 subject to reciprocal compensation arrangements.

7 Second, at the time BellSouth and TCG entered into their
8 Interconnection Agreement and at the time the Agreement was approved by
9 the Commission, the FPSC had held, consistent with the testimony of a
10 BellSouth witness, that calls terminated to ISPs are to be treated as local
11 exchange traffic.

12 Third, BellSouth's attempt to camouflage its behavior by referencing
13 FCC policies is entirely groundless. BellSouth states that ISPs are "exempt"
14 from interstate access charges but that traffic to ISPs is "interstate access
15 traffic."⁵ This is not correct. Although the treatment of ISPs has been
16 popularly referred to as an "exemption," this shorthand expression does not
17 accurately reflect interstate access charge rules.

18 **Q. Can this dispute be resolved solely by referencing the TCG-BellSouth**
19 **Interconnection Agreement?**

⁴Providers like CompuServe and Prodigy were in this business for many years prior to the current period of rapid growth in Internet and Information Service usage (like America Online). Many other specialized providers of the same services, such as General Electric Information Services Company (GEISCO), operations by Rockwell, Tymnet and many other have all operated information services that could be accessed on a local dial up basis, among other means.

⁵BellSouth Telecommunications, Inc.'s Answer and response to TCG Complaint, p.6, par. 25.

1 A. Yes. The fact that these calls have been treated as local traffic billable by
2 BellSouth and TCG is not contested. I explain below why these same calls
3 are not interstate access service. Therefore, TCG's position can be upheld
4 simply from the literal words in the Interconnection Agreement. TCG's
5 position also is sustained by the context in which the Interconnection
6 Agreement was developed and approved by the Commission. Prior to the
7 Commission's approval of the Interconnection Agreement at issue, TCG
8 and BellSouth were operating under a prior negotiated agreement approved
9 by the FPSC under state law. Thus, during negotiations with TCG, and
10 prior to approval of the Interconnection Agreement by the Commission,
11 BellSouth had available to it the facts which would have indicated that some
12 portion of TCG's and BellSouth's local traffic involved calls to ISPs.
13 Nevertheless, BellSouth never raised any issue concerning local calls to
14 ISPs in its negotiations with TCG or in the proceeding conducted by this
15 Commission to approve the interconnection agreement.

16 **Q. Are local calls placed to ISPs actually "interstate access service" as**
17 **BellSouth contends?**

18 A. No. BellSouth's claim is based upon its notion that there is an interstate
19 access charge "exemption" for ISPs, thus indicating (to BellSouth) that ISPs
20 are otherwise the same as the interexchange carriers that do pay interstate
21 access charges. It is true that the FCC has referred to an "exemption"
22 several times since the creation of access charge tariffs in 1984; although
23 recently the FCC has used more precise language.⁶ The FCC's previous

⁶For example, in its Access Charge Reform order issued in May, 1997, the FCC refrained from describing the current treatment as an "exemption," stating instead that it had determined earlier that ISPs "should not be required to pay

1 shorthand references were not correct. No such exemption is codified in
 2 the interstate Access Charge Rules.⁷ In fact, until the FCC recently added
 3 "information service providers" to an advisory panel on universal service,
 4 neither the term "information service provider," nor "enhanced service
 5 provider" appeared in the Part 69 rules.

6 Those rules specify three types of interstate access charges: End
 7 user charges, carrier's carrier charges paid by IXC's (which includes
 8 switched and special access) and special access surcharges.⁸ ISPs pay end
 9 user charges; hence they are not "exempt" from access charges.

10 **Q. Is there any type of FCC exemption for ISPs regarding the "interstate
 11 access service" under which BellSouth attempts to classify calls to ISPs?**

12 **A.** No, any rudimentary understanding of FCC rules proves that ISP traffic is
 13 not interstate access service as identified in the TCG-BellSouth Agreement.
 14 The most fundamental component of interstate access service is the
 15 switching function itself. Under the FCC rules, these switching charges are

interstate access charges." It concluded that "ISPs should remain classified as end users for purposes of the access charge system" and carefully did not compare ISPs to interexchange carriers. Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges; First Report and Order; CC Dockets No. 96-262, 94-1, 91-213, and 95-72; (FCC 97-158) May 16, 1997, at paras. 341-348.

⁷47 Code of Federal Regulations, Part 69.

⁸47 CFR 69.5 (c). Section 69.115 reflects the same language about the special access surcharge. The special access surcharge applies to equipment connected to interstate common carrier private line services that allows the equipment user to access local public switched network lines. The special access surcharge provisions are interesting in this case because they do contain several true "exemptions." Section 69.115(e). An ISP arrangement does not fit within any of these exemptions; therefore ISPs are exclusively considered "end users" for purposes of collecting the interstate subscriber line charges.

1 payable only by "interexchange carriers."⁹ However, ISPs are not carriers
2 subject to the access charge rules. ISPs, defined as enhanced service
3 providers under the FCC rules, are excluded from any interstate regulation.

4 Section 64.702 of the FCC rules provides:

5 [T]he term *enhanced service* shall refer to services offered
6 over common carrier transmission facilities used in interstate
7 communications which employ computer processing
8 applications that act on the format, content, code, protocol
9 or similar aspects of the subscriber's transmitted
10 information; provide the subscriber additional, different or
11 restructured information, or involve subscriber interaction
12 with stored information. Enhanced services are not
13 regulated under Title II of the Act (emphasis added).¹⁰
14

15 In order for ISPs to be liable for interstate carrier's carrier charges, the
16 FCC would first have to assert jurisdiction over ISPs, and, in effect,
17 designate these entities to be the equivalent of interexchange carriers.

18 Because the FCC has not done so, ISPs can only be treated strictly as end

⁹47 CFR 69.106 (a) "Except as provided in § 69.118, charges that are expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services." (Emphasis added). The FCC Access Charge Reform Order (above) made certain changes to this section of the rules but did not change their exclusive application to interexchange carriers. Entities other than common carriers can acquire switched access services from ILECs, but they must take several affirmative steps in order to do so, including obtaining a Carrier Identification Code (CIC) and ordering the service under the ILECs Access Service Request procedure, a process separate from ordering local exchange services.

¹⁰The remainder of section 64.7 concerns requirements for regulated common carriers to provide enhanced services outside of Title II regulation. Certain protocol conversions necessary for the operation of telecommunications carrier networks are not enhanced services. Neither of these circumstances has any bearing on the current complaint proceeding.

1 users.¹¹ As end users, these entities are, at the present time,
2 indistinguishable from other residence or business users in Florida. A call
3 from an BellSouth customer to a business customer of TCG's entitles TCG
4 to the reciprocal compensation payment.

5 **Q. Is there any basis that would preclude the Florida Commission from**
6 **treating calls to ISPs as calls to any other Florida business?**

7 A. No. Because the FCC has not defined ISPs as interexchange carriers and
8 has treated these entities strictly as end users, this Commission maintains
9 its jurisdiction to ensure that they are treated as end users for purposes of
10 the TCG-BellSouth Interconnection Agreement. I understand state
11 regulatory jurisdiction over telecommunications to be "residual."¹² If the
12 FCC has not asserted jurisdiction nor preempted state oversight, this
13 Commission can act as long as there is no state restriction on its powers to
14 do so. The Commission should ensure competitive neutrality by treating
15 all local calls in the same manner.

16 In addition, BellSouth's current position would have the effect of
17 creating a class of inter-carrier traffic that would not be compensable as
18 either local calls or exchange access service. State regulators also have
19 jurisdiction concerning the recovery of costs of such calls in order to
20 prevent such costs from being unrecoverable by carriers, a situation which
21 might create a taking of a local carrier's property without compensation.

22 **Q. How does an ISP's offering of an enhanced service affect this dispute?**

¹¹Of course, an ISP may purchase interexchange services from a provider that is itself subject to carrier's carrier charges.

¹²*Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir.1997).

1 A. By definition, enhanced services involve electronic transactions that are not
2 found in telecommunications transmission services. ISPs connect the trunks
3 acquired from a local service provider (including BellSouth) to computer
4 data routers or servers. The router hardware and software convert the
5 traffic to data packets using the Transmission Control Protocol/Internet
6 Protocol (TCP/IP), the underlying data format for the Internet. The ISP
7 subscribers' traffic is never again recognizable as an ordinary analog or
8 digital circuit switched message. In other words, the traffic remains under
9 the TCP/IP packet system from the point where it is converted by the
10 routers. Traditional voice traffic, or, for that matter, "data" traffic between
11 two computers with modems does not involve this type of permanent
12 conversion of transmission signals into packets.

13 **Q. You noted that the FCC has recently tried to be more precise by**
14 **avoiding references to an ISP "exemption." Has the FCC characterized**
15 **the information service (*i.e.*, the TCP/IP protocol conversion) as being**
16 **distinct from a local call?**

17 A. Yes. In its Order adopting the new universal service provisions of the
18 Telecommunications Act, the FCC stated:

19 We agree with the Joint Board's determination that Internet
20 access consists of more than one component. (Footnote:
21 [Joint Board] Recommended Decision, 12 FCC Rcd at 323.
22 Internet access consists of both a network transmission
23 component and an information service component.)
24 Specifically, we recognize that Internet access includes a
25 network transmission component, which is the connection
26 over a LEC network from a subscriber to an Internet Service

1 Provider, in addition to the underlying information service.¹³

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This interpretation reflects the fact that a true information service permanently changes the character of the incoming local call to TCP/IP or other protocol and provides additional, different or restructured information and involves subscriber interaction with stored information.

Q. Has the FCC endorsed the characterization that the information service is separate from the local call?

A. Yes, it has. Several of the Regional Bell Operating Companies ("RBOCs") argued to the FCC that certain services it offered did not require the fully separated subsidiary specified in Section 272 of the Telecommunications Act for interLATA services, embracing the notion that the information service was separate from the call made to access the service. For example, Ameritech argued:

If the mere possibility of access from a distant LATA transforms a[n]... information service into an interLATA information service, virtually all information services would become interLATA.

* * * *

'InterLATA Information Service' is a term of art. It applies to the situation where the BOC provides transport across LATA boundaries bundled with its information service. If an entity other than the BOC provides end users with the interLATA transport, there is no interLATA information service. Rather..there are two services being provided to the end user -- interLATA service and information service.¹⁴

¹³Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, (FCC 97-157), May 8, 1997 at para. 83.

¹⁴Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149 (First Report and Order and Further Notice of Proposed Rulemaking, issued December 24, 1996), Ameritech Reply Comments dated August 30, 1996 at page

1 BellSouth apparently concurred with the "dual transaction" characterization
2 of the telecommunications transmission (*i.e.*, local service) and information
3 service component that the RBOCs advocated and the FCC adopted,
4 arguing that "...for an information service to be considered an interLATA
5 information service, the BOC must provide as a necessary component
6 thereof telecommunications between a point located in one LATA and a
7 point outside that LATA."¹⁵

8 Competitive neutrality commands the same result irrespective of
9 what type of entity provides the information service: a BOC, another LEC
10 or an unaffiliated ISP, or what entity provides the ISP's transport service.
11 TCG's service to ISPs are the same as the "BOC" service to ISPs referenced
12 above. TCG's local service offerings to ISPs are in no way "bundled" with
13 any interLATA or interstate transport service, and TCG's ISP customers
14 take interLATA transport from a variety of long distance carriers that are
15 not affiliated either with the ISP or with TCG.

16 **Q. Has BellSouth's past behavior and positions contradicted its current**
17 **assertion?**

18 **A.** Yes. The way in which BellSouth now wishes to interpret its
19 interconnection agreements, local calls to ISPs would be, in effect, zero-
20 rated feature group switched access calls. It would have been simple for
21 BellSouth to have placed references in its interstate and intrastate tariffs
22 noting this treatment. It has never done so. If the calls to ISPs were
23 interstate access traffic, BellSouth was required by FCC rules in effect since

34.

¹⁵First Report and Order, *Id.*, para. 110.

1 1984 to (a) count these minutes for purposes of determining its local
2 switching element per minute revenue requirement under Section 69.106 of
3 the rules; (b) deduct these minutes for purposes of computing the required
4 message unit credit for interexchange carriers under the same rule; and (c)
5 account for these minutes in its jurisdictional separations studies. It never
6 did these things. To the extent these requirements have been modified by
7 price cap regulation, BellSouth's previous access charge calculations would
8 still be incorrect.

9 **Q. Is it possible for BellSouth (or TCG) to begin counting ISP calls**
10 **separately from other local calls?**

11 **A.** No, it is unlikely that such data collection would be feasible absent a major
12 change in the status of ISPs. As I stated, treating calls to ISPs as interstate
13 access service would involve a major revision in the current application of
14 access charges and the current status of ISPs. It would also create an
15 enormous logistical problem for any local carrier, because there is no direct
16 way to identify ISP calls accurately, *i.e.*, without possibly under-counting
17 or over-counting the traffic. For example, one local carrier may not be able
18 to review the individual billing records of a competing carrier's customers
19 without first seeking each individual customer's express consent. The
20 Telecommunications Act of 1996 significantly increased restrictions of the
21 use of Customer Proprietary Network Information or CPNI, and may well
22 limit this use of data for customers of a competing carrier.¹⁶ Thus, the
23 Commission should properly conclude that BellSouth's past practices,

¹⁶The new requirements are contained in Section 222 of the Communications Act, as amended.

1 tariffs and operating procedures all contradict its current assertion that calls
2 to ISPs are "interstate access service."

3 **Q. Should the Commission be concerned with the "self-help" manner in**
4 **which BellSouth withheld payments from TCG for traffic terminated**
5 **to ISPs and its impact on TCG?**

6 A. Yes. As I have demonstrated, BellSouth's position concerning reciprocal
7 compensation for local calls to ISPs is entirely unfounded. Equally
8 disturbing, however, is the manner in which BellSouth made its decision to
9 stop including local calls to TCG's ISP customers in the calculation of the
10 total number of minutes terminated on TCG's network. Rather than
11 seeking regulatory guidance (from either this Commission or the FCC)
12 prior to withholding payments, BellSouth implemented its erroneous
13 interpretation of the Interconnection Agreement unilaterally. Even if
14 BellSouth had a colorable basis to believe that calls to ISPs were not subject
15 to any intrastate or interstate compensation for TCG — which it did not
16 have — sound business practices on BellSouth's part should have been to
17 seek regulatory guidance. It did not do so. Instead, it implemented a tactic
18 that has impaired TCG's cash flow until the matter is resolved. With its
19 cash flow limited by BellSouth's unilateral action, TCG is less able than it
20 otherwise would be to expand its network, market its services and offer
21 more effective competition to BellSouth.

22 **Q. Are there issues besides reciprocal compensation for local calls to ISPs**
23 **that BellSouth may attempt to game in this way in the future?**

24 A. Unfortunately, yes. BellSouth's tactics at issue here could be repeated in
25 other areas so as to damage the financial viability of local competition by

1 TCG and other ALECs. ALECs began offering competitive switched
2 services in the 1994-95 time frame because technological developments had
3 reduced the economic entry barriers that had previously precluded such
4 competition. The costs of entry were (and are still) significant. However,
5 these entry costs were moderated by new regulatory policy, such as
6 requiring ILECs to offer certain network elements on an unbundled basis.
7 In addition, ALECs themselves had to work to ensure that the entry costs
8 did not render their businesses financially untenable. They did this by
9 being committed to highly focused customer marketing strategies, and
10 maintaining maximum flexibility to adapt to changing market conditions.

11 In this instance, ALECs' competitive responses involved increased
12 marketing to ISPs. ILECs also developed new Internet access services
13 themselves and began to market to independent ISPs. But the ALECs had
14 begun to address this segment earlier and with greater vigor than the
15 ILECs. Now, BellSouth, having been bested in the market segment for
16 serving ISPs has responded by making ill-founded arguments that seek the
17 ability to deny ALECs compensation for the local traffic they have won.

18 As competition grows, the smaller, leaner ALECs may well win
19 other market segments from ILECs. If each time this occurs the ILEC,
20 with its greater resources overall, is able to fabricate a dispute with ALECs
21 out of whole cloth and thus invoke costly regulatory processes, local
22 competition could be stymied for many years.

23 **Q. Is there anything the Florida Commission can do to discourage future**
24 **behavior of this sort by any local carrier within its jurisdiction?**

1 A. Yes. The Commission can grant TCG's requests that all funds withheld by
2 BellSouth for termination of traffic be immediately remitted to TCG, and
3 that it receive interest payments on the withheld payments. Interest
4 payments represent only compensation for the time value of the monies
5 seized by BellSouth; this value may well be far less than the economic
6 opportunity costs that TCG has experienced because of BellSouth's action.
7 At the least, interest payments by BellSouth are a proper remedy for the
8 Commission to apply in order to try and minimize future predatory
9 behavior by BellSouth.

10 **Q. Do you have any additional testimony at this time?**

11 A. No.

12

13 ISP.tes

1 **Q. What is your name, address, and business affiliation?**

2 A. My name is Paul Kouroupas. I am Vice President, Regulatory and External
3 Affairs for Teleport Communications Group Inc.. My business address is 2
4 Lafayette Center, 1133 21st Street, N.W., Suite 400, Washington, D.C.
5 20036.

6 **Q. Are you the same Paul Kouroupas who filed direct testimony in this**
7 **proceeding?**

8 A. Yes.

9 **Q. What is the purpose of your rebuttal testimony?**

10 A. The purpose of my rebuttal testimony is to respond to the prefiled direct
11 testimony of BellSouth witness Jerry Hendrix. The testimony submitted by
12 Mr. Hendrix introduces extraneous and sometimes incorrect concepts to try
13 to disguise the core issues. The dispute at issue in this proceeding can be
14 resolved within the four corners of TCG's Interconnection Agreement with
15 BellSouth ("Interconnection Agreement"). Fundamentally, this is not the
16 forum to debate future issues concerning access charges. Such a debate is not
17 necessary to resolve this important contractual issue currently before the
18 Commission. The Commission clearly has the authority under the
19 Telecommunications Act of 1996 ("the Act") to interpret and enforce
20 interconnection agreements between local carriers subject to its jurisdiction.

21 **Q. Does the language in the Interconnection Agreement provide a basis or**
22 **bases for the resolution of this dispute?**

23 A. Yes. The language of the Interconnection Agreement supports granting
24 TCG's complaint in at least four ways. First, both the Interconnection
25 Agreement and the Act limit "exchange access service" to telephone toll

1 services. The Act defines "exchange access" as "the offering of access to
2 telephone exchange services or facilities for the purpose of the origination or
3 termination of telephone toll services." 47 U.S.C. §153(16). (emphasis
4 added). The 1934 Communications Act defines "Telephone toll service" as
5 "telephone service between stations in different exchange areas for which
6 there is made a separate charge not included in contracts with subscribers for
7 exchange service." 47 U.S.C. §153(48). Internet Service Provider ("ISP")
8 offerings are not telephone toll services by any stretch of the imagination.
9 They are not telecommunications services under current rules, therefore they
10 can hardly be "telephone toll services."

11 Second, calls to ISPs cannot be governed by the terms and conditions
12 of applicable federal and state tariffs for switched exchange access service,
13 referenced in Section V.B of the Interconnection Agreement, because there
14 are no such terms and conditions regarding ISP calls. There are no "terms
15 and conditions" in either state or federal tariffs that specifically apply to ISPs,
16 or that treat ISPs as anything other than end users. BellSouth would have the
17 Commission believe that the parties to the Interconnection Agreement
18 referenced tariff terms and conditions that do not exist.

19 Third, as I explained in my direct testimony, calls to ISPs are not
20 "interstate service" because the tariffed switched access services apply on a
21 mandatory basis only to interexchange carriers ("IXC") under current rules,
22 and ISPs are not IXCs.

23 Finally, when a BellSouth customer places a call to an ISP, BellSouth
24 rates that call as local.

- 1 **Q. Please identify the operative provisions in the Interconnection**
2 **Agreement which support TCG's position this case.**
- 3 A. TCG's position relies on Section IV.C of the Interconnection Agreement
4 which states that "Each party will pay the other for terminating its local
5 traffic on the other's network at the local interconnection rates," as set forth
6 in the Interconnection Agreement. Local traffic is defined in Section I.D of
7 the Interconnection Agreement as "any telephone call that originates and
8 terminates in the same LATA and is billed by the originating party as a local
9 call, including any call terminating in an exchange outside of BellSouth's
10 service area with respect to which BellSouth has a local interconnection
11 arrangement with an independent LEC, with which TCG is not directly
12 interconnected."
- 13 **Q. Does Mr. Hendrix assert that BellSouth has not billed or paid reciprocal**
14 **compensation to ALECs for traffic destined for ISPs?**
- 15 A. No. Mr. Hendrix claims that "BellSouth has not *knowingly* paid reciprocal
16 compensation to ALECs who have transported traffic to their ISP customers,
17 nor has BellSouth *knowingly* billed ALECs for performing that same service
18 (emphasis added)." (Hendrix at 7.) BellSouth does not deny paying, or
19 billing, reciprocal compensation for traffic destined to ISPs, but rather, denies
20 only knowing of such transactions. This distinction is important because it
21 illustrates that BellSouth cannot distinguish between traffic destined to ISP
22 providers and any other local traffic destined to end users within a local
23 calling area. The inescapable conclusion is that BellSouth is unaware of how
24 much of the local traffic being counted in its total minutes terminating to
25 ALECs is actually traffic destined for ISPs.

- 1 **Q. How does BellSouth's inability to distinguish traffic destined for ISPs**
2 **from other local traffic affect its decision to withhold reciprocal**
3 **compensation from TCG?**
- 4 A. The practical result is that in the absence of the ability to measure this traffic,
5 BellSouth has completely fabricated an estimate of the amount of traffic
6 destined for ISPs on TCG's network. BellSouth has unilaterally subtracted
7 the fabricated number of minutes from the total minutes bound for
8 termination on TCG's network, and has applied its declared Percent Local
9 Usage (PLU) to the remaining minutes. BellSouth has then withheld
10 reciprocal compensation payment for a portion of the amount billed by TCG
11 for termination of local traffic. The sum withheld by BellSouth is arbitrarily
12 and unilaterally determined, and clearly violates the terms of the
13 Interconnection Agreement.
- 14 **Q. Is BellSouth imprecise about the process it allegedly uses to identify calls**
15 **to ISPs?**
- 16 A. Yes. If BellSouth were to concede that accurate identification of ISP traffic
17 is not feasible (for any carrier, not just BellSouth), it would invalidate its
18 estimates of ISP traffic volumes for TCG and other ALECs. BellSouth's
19 testimony on this point is simply not credible. BellSouth witness Mr.
20 Hendrix apparently claims that, as the person responsible for all negotiations
21 with ALEC, he was oblivious during the course of the negotiation of the
22 Interconnection Agreement to the existence or treatment of calls to ISPs. In
23 the unlikely event that BellSouth was unaware of the existence of ISP traffic,
24 and therefore, of any need to make special provisions for the termination of
25 ISP traffic at the time the Agreement was entered, such an omission on

1 BellSouth's part cannot justify BellSouth's blatant violation of the
2 Interconnection Agreement.

3 **Q. What explanation do you find credible for the parties' decision to not**
4 **provide separate treatment for the termination of ISP traffic in the**
5 **Interconnection Agreement?**

6 A. Mr. Hendrix claims that BellSouth's main concern at the time of negotiation
7 was the balance of traffic between the parties, which led to BellSouth's
8 willingness to include the cap provision in the Interconnection Agreement.
9 (Hendrix at 7.) Clearly, BellSouth insisted upon the cap provision in the
10 Interconnection Agreement because it projected that traffic balance between
11 itself and TCG would be such that more traffic would be in-bound traffic
12 from BellSouth terminated on TCG's network than the reverse, and that in
13 the absence of a cap, BellSouth could potentially owe TCG large sums for
14 reciprocal compensation. This conclusion was easily arrived at during the
15 period in which the Interconnection Agreement was negotiated, because TCG
16 was in operation, and had ISP providers as customers at the time. Mr.
17 Hendrix's assertion that the cap provision in the Interconnection Agreement
18 was BellSouth's main concern is undoubtedly true *because* BellSouth was
19 keenly aware of the possibility that it would terminate substantial amounts of
20 in-bound traffic on TCG's network.

21 **Q. Why did BellSouth suddenly begin withholding payment from TCG**
22 **after both paying and billing reciprocal compensation for ISP traffic for**
23 **some time?**

24 A. The Commission has grounds to question the legitimacy of BellSouth's
25 unilateral decision to begin withholding disputed payments to TCG and other

1 ALECs. A likely motivating factor for BellSouth's action, and the similar
2 actions of other Regional Bell Operating Companies ("RBOCs") regarding
3 calls to ISPs, was the FCC's refusal in its Access Reform Order to agree to
4 incumbent carrier requests that ISPs should pay access charges. (In the
5 Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-
6 262 (FCC 97-158), May 16, 1997, at para. 348.) The FCC Order was issued
7 May 16, 1997 and the RBOCs' disputes with ALECs regarding reciprocal
8 compensation for ISP traffic began soon after. The true motivation for
9 BellSouth, and the other RBOCs, is a condition that runs entirely counter to
10 BellSouth's stated rationale for withholding payments.

11 **Q. How does Mr. Hendrix attempt to justify the fact that BellSouth cannot**
12 **distinguish traffic destined for ISPs from other local traffic?**

13 A. Mr. Hendrix asserts that "It should be noted that this exchange access
14 arrangement parallels the Feature Group A arrangement, where interstate
15 access charges are applicable. On Feature Group A calls, as with ISP calls,
16 end users dial local numbers to make non-local calls. (Hendrix at 17). This
17 characterization of local traffic destined for ISPs as Feature Group A traffic
18 is an attempt to explain how traffic that meets every criteria of local traffic
19 can somehow be access traffic.

20 **Q. Is Mr. Hendrix's characterization of local traffic as Feature Group A**
21 **traffic reasonable?**

22 A. No. Mr. Hendrix incorrectly compares circuit switched feature group access
23 charges with packet switched, protocol-enhanced information calls. A call
24 to an ISP consists of one circuit switched call, the local call to the ISP's
25 telephone number, and one to perhaps dozens of packet switched connections

1 on the Internet. This is precisely the reason why the FCC, and BellSouth
2 itself, have referred to ISP traffic as involving two calls or two services. Mr.
3 Hendrix extends his inapt analogy by stating that "There is no interruption of
4 the continuous transmission of signals between the end user and the host
5 computers." (Hendrix at 13.) This statement overlooks the fact that in the
6 process of transmission from the end user to the host computer, the "signal"
7 is transferred from a voice telephony network to a data network, and
8 therefore, involves two services, neither of which is access service.

9 **Q. What criteria have to be met to characterize this traffic as local traffic?**

10 A. Local traffic is defined as "any telephone call that originates and terminates
11 in the same LATA and is billed by the originating party as a local call..."
12 (Interconnection Agreement at 2; Sec. 1.D.) Traffic destined for TCG's ISP
13 customers meets both criteria; it is originated and terminated within the
14 LATA, and is billed by the originating party as local.

15 **Q. How does BellSouth address the issue of whether traffic destined for
16 TCG's ISP customers meets both criteria to be classified as local traffic?**

17 A. First, there does not seem to be any disagreement that BellSouth bills traffic
18 destined for ISP providers as local traffic. BellSouth admits this fact in
19 paragraph 15 of its Answer to TCG's Complaint. Second, BellSouth
20 provides several conflicting and confused statements about where traffic
21 destined for ISPs terminates. The August 12, 1997 letter from Ernest Bush
22 of BellSouth to TCG and others stated that "BellSouth will neither pay, nor
23 bill, local interconnection charges for traffic terminated to an [enhanced
24 service provider.]" (Kouroupas Direct, Exhibit ___ (PK-2)). This statement
25 suggests that BellSouth recognizes that local traffic to ISPs terminates at the

1 ISP. However, Mr. Hendrix's direct testimony begins with the assertion that
2 "call termination does not occur when an ALEC serving as a conduit, places
3 itself between BellSouth and an ISP." (Hendrix at 3). Mr. Hendrix next states
4 that "...ISPs are permitted to obtain and use local exchange services to collect
5 and terminate their traffic (Hendrix at 12)," suggesting that the traffic to the
6 ISP is both local and terminated at the ISP's equipment. Continuing, Mr.
7 Hendrix asserts that "The ISP will have purchased flat-rated business service
8 lines from various local exchange company end offices and physically
9 terminated those lines at an ISP premises consisting of modem banks."
10 (Hendrix at 12). This is precisely the position TCG has advocated; that the
11 traffic to an ISP terminates at the ISP's routing equipment. Mr. Hendrix then
12 contradicts himself by saying that "...the call from an end user to the ISP only
13 transits through the ISP's local point of presence; it does not terminate there;
14 (Hendrix at 13), and "...if an ALEC puts itself in between BellSouth's end
15 office and the internet service provider, it is acting like an intermediate
16 transport carrier or conduit, not a local exchange provider." (Hendrix at 14).
17 Thus, BellSouth's position is, at best, contradictory.

18 **Q. What definition for "termination" do you recommend?**

19 A. A standard industry definition of "service termination point" is "Proceeding
20 from a network toward a user terminal, the last point of service rendered by
21 a commercial carrier under applicable tariffs.... In a switched
22 communications system, the point at which common carrier service ends and
23 user-provided service begins, *i.e.* the interface point between the
24 communications systems equipment and the user terminal equipment, under
25 applicable tariffs." (TCG's Complaint, at par. 18 and fn. 5). According to

1 this definition, traffic destined for ISPs is terminated within the LATA, as
2 both Mr. Bush and Mr. Hendrix recognize, and is local traffic.

3 **Q. Can you summarize BellSouth's attempt to recharacterize calls to ISPs**
4 **as long distance voice traffic?**

5 A. BellSouth's argument begins with inaccurate and contradictory statements
6 about the jurisdictional nature of ISP traffic. First, Mr. Hendrix asserts that
7 "the traffic is clearly interstate traffic..." (Hendrix at 9). He then asserts that
8 "the fact that a single internet call may simultaneously be interstate,
9 international and intrastate makes it inseverable for jurisdictional purposes."
10 (Hendrix at 14). Mr. Hendrix then draws an invalid and self-serving
11 conclusion from these contradictory premises by stating that "This inability
12 to distinguish the jurisdictional nature of each communication that traverses
13 an internet connection, coupled with the predominant interstate nature of
14 internet communications leads to the inescapable conclusion that all internet
15 traffic must be considered interstate." (Hendrix at 14).

16 **Q. Does Mr. Hendrix's misunderstanding of Internet or other information**
17 **service technology affect his analysis of the jurisdictional nature of ISP**
18 **traffic?**

19 A. Yes. By confusing telephone calls that involve only circuit switched
20 connections with data switched information services, Mr. Hendrix draws
21 incorrect and irrelevant conclusions about the jurisdictional nature of ISP
22 traffic.

23 As I stated in my direct testimony at pages 13-14, the standard
24 articulated by BellSouth in its comments in FCC Docket 96-149 was that
25 there are two calls involved in ISP situations. The same standard means that

1 the local call is not interstate. BellSouth's chosen characterization of ISP
2 calls as "two services" must also apply to determining the jurisdictional
3 character of the local call to the ISP. The transactions cannot be "two
4 services" for one purpose, but not for the other. In other words, BellSouth
5 accurately described the ISP calls in its comments using the same rationale
6 that the FCC later adopted in its Universal Service Order.

7 **Q. Have any state regulators considered abrogating a provision for**
8 **reciprocal compensation of local traffic as BellSouth suggests?**

9 A. Not to my knowledge. To adopt any such mechanism, even if there were no
10 Interconnection Agreement, this Commission would have to create a
11 disparate treatment for ISPs applicable only in Florida. ISPs would still be
12 treated as end users for interstate purposes and would still pay only the end
13 user charges. The Commission would, in effect, have to abandon its
14 jurisdictional authority to define ISPs as end users. Such an action would
15 clearly be at odds with every other state commission that has ruled on the ISP
16 issue. For example, the Virginia State Corporation Commission issued a
17 two-paragraph Order finding against Bell Atlantic on the same issue asserted
18 here by BellSouth.

19 [T]he companies are entitled to reciprocal
20 compensation for this type of call. Calls that are
21 placed to a local ISP are dialed using the traditional
22 local-service, seven digit dialing sequence. Local
23 service provides the termination of such calls at the
24 ISP, and any transmission beyond that point presents
25 a new consideration of service(s) involved. The
26 presence of CLECs does not alter the nature of this
27 traffic. (Petition of Cox Virginia Telecom, Inc. for
28 enforcement of interconnection agreement with Bell
29 Atlantic - Virginia, Inc., and arbitration award for
30 reciprocal compensation for the termination of local

1 calls to Internet service providers, Case No.
2 PUC970069, Final Order, October 24, 1997.)
3

4 **Q. Will you summarize your rebuttal testimony?**

5 A. Yes. TCG's complaint can be granted based solely upon the express terms
6 of the TCG-BellSouth Interconnection Agreement. BellSouth's past and
7 present treatment of calls to ISPs as local calls provides an independent basis
8 for granting the complaint. Another separate and independent basis rests on
9 the correct understanding of how ISP traffic has been characterized by both
10 the FCC and by BellSouth itself. Possible future issues involving Internet
11 voice traffic have no bearing upon TCG's clear right to receive all of the
12 reciprocal compensation for all types of local calls under the existing
13 Interconnection Agreement.

14 **Q. Does that conclude your rebuttal testimony?**

15 A. Yes.

1 **WITNESS KOUROUPAS:** Good morning. This
2 dispute arises from BellSouth's unilateral decision to
3 withhold reciprocal compensation payments for traffic
4 destined to Internet service providers -- or ISPs, as
5 I will refer to them -- in what TCG believes to be
6 violation of TCG's interconnection agreement with
7 BellSouth.

8 In 1995, pursuant to the recently enacted
9 Florida law opening the local exchange market to
10 competition, and again in 1996 pursuant to the
11 Telecommunications Act of 1996, TCG negotiated an
12 interconnection agreement with BellSouth.

13 Throughout the negotiations for both of
14 those agreements, there were no discussions concerning
15 the separate treatment of traffic destined to Internet
16 service providers, and, indeed, for the duration of
17 the 1995 agreement and the first year of the 1996
18 agreement, both TCG and BellSouth exchanged all forms
19 of traffic, including traffic destined to ISPs,
20 without dispute or discussion.

21 Then in August of 1997 without discussion
22 BellSouth unilaterally determined that it would no
23 longer pay reciprocal compensation for traffic
24 destined to ISPs.

25 BellSouth's actions are without

1 justification, are contrary to policy and, most
2 important, in direct violation of TCG's
3 interconnection agreement. From our perspective, this
4 matter should be resolved as a straight contract
5 dispute.

6 Both parties to the contract, BellSouth and
7 TCG, negotiated, implemented, and managed a contract
8 governing, among other things, traffic exchange and
9 reciprocal compensation after coming to a meeting of
10 the minds. This meeting of the minds included the
11 treatment of traffic destined to ISPs.

12 The plain language of the interconnection
13 agreement dictates that traffic destined to ISPs is to
14 be treated as, quote, "local" because pursuant to the
15 agreement, such traffic is, quote, "billed by the
16 originating party as a local call," and, quote,
17 "originates and terminates in the same LATA." And
18 that is language straight from our interconnection
19 agreement.

20 Further evidence supporting the notion that
21 the parties had a meeting of the minds on this issue
22 pertains to the fact that the agreement is utterly
23 devoid of any mechanism which would account for
24 traffic destined to ISPs.

25 If it was BellSouth's intention to treat

1 calls to ISPs as other than local calls, then
2 BellSouth would have included within the agreement a
3 mechanism for separately accounting for these calls
4 like they did for calls to interexchange carriers,
5 calls to 800 numbers, collect calls, operator assisted
6 calls, any number of different calls that they singled
7 out in the agreement for special treatment.

8 The agreement has no provisions for traffic
9 destined to Internet service providers. This leads me
10 to conclude that BellSouth and TCG understood at the
11 time they entered the agreement that calls placed to
12 ISPs would be treated as local calls subject to
13 reciprocal compensation. Therefore, TCG requests that
14 this Commission require BellSouth to honor their
15 agreement and pay reciprocal compensation for calls to
16 ISPs.

17 If BellSouth is dissatisfied or unhappy with
18 the terms of the agreement with TCG, and particularly
19 the treatment of traffic to Internet service
20 providers, then BellSouth can address this in the next
21 round of negotiations, which are set to commence in
22 September of 1998, just two months from now.

23 Our agreement was negotiated in July of '96
24 and expires in July of '99, and under the construct of
25 the Telecommunications Act, negotiations should begin

1 nine months prior to the expiration, and that date is
2 September of '98, so we can attempt to negotiate more
3 satisfactory treatment of ISP calls, if that is
4 BellSouth's desire.

5 Of course if we're unable to agree on the
6 treatment of calls to ISPs, then the matter can be
7 brought again to this Commission for arbitration and
8 resolution in that fashion.

9 COMMISSIONER JACOBS: Mr. Kouroupas, did I
10 understand you to say that there was a period of time
11 during which you did exchange traffic and the
12 provisions of the reciprocal compensation were indeed
13 implemented?

14 WITNESS KOUROUPAS: Yes, that's correct.

15 COMMISSIONER JACOBS: How long? Do you
16 know?

17 WITNESS KOUROUPAS: TCG originally
18 negotiated an agreement with BellSouth that was signed
19 in December of '95, and we operated throughout
20 calendar year '96 -- well, I'm sorry. We operated in
21 the beginning of calendar year '96 under that
22 agreement, and then in July of '96 we signed the
23 agreement pursuant to the Telecommunications Act.

24 I checked, to be responsive to Commissioner
25 Clark's earlier question to the witness, Gary Ball.

1 We had been billing BellSouth as of January of '97 for
2 usage under the interconnection agreement. So we
3 essentially operated calendar year '96 and calendar
4 year '97 and exchanged bills as of January of '97 and
5 was not informed of BellSouth's position on this
6 matter until August of '97.

7 **COMMISSIONER JACOBS:** Thank you.

8 **Q** (By Mr. Hoffman) Mr. Kouroupas, I want to
9 make sure the record is clear, so let me just ask you.
10 During your summary you made one statement where you
11 said the contract has no provisions for ISPs. And I
12 want to make sure that the record is clear.

13 By that statement, did you mean that the
14 BellSouth/Teleport interconnection agreement does not
15 delineate a separate tracking and treatment of ISP
16 traffic?

17 **A** Yes. I'm sorry. That is what I meant to
18 say.

19 **MR. HOFFMAN:** TCG would tender Mr. Kouroupas
20 for cross-examination, Madam Chairman.

21 **MR. SELF:** No questions.

22 **MR. BOND:** No questions.

23 **MS. CANZANO:** No questions.

24

25

CROSS EXAMINATION

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BY MR. RANKIN:

Q Good morning, Mr. Kouroupas. Ed Rankin on behalf of BellSouth.

A Good morning.

Q Mr. Kouroupas, turn with me to Page 11 of your prefiled direct testimony.

A Page 11 of my direct?

Q Yes. There you talk about this issue of, I guess, protocol conversion. Could you tell us in plain English what that means in the context of this dispute?

A Well, I believe similar to the discussion that Mr. Ball was describing; the call to the Internet service provider from a BellSouth customer to an Internet service provider that is served by TCG is a local call telecommunication service.

What takes place after that call is answered by the ISP is an information service and is handled on a TCP/IP protocol, and that's what I was getting at.

Q Is the TCP/IP protocol the packet switching?

A It involves packet switching, yes.

Q And the first call, the call from the end user to the Internet service provider, would you characterize that as circuit switching?

1 A Yes, that's correct.

2 Q Now, does the conversion from circuit
3 switching to packet switching necessarily mark the
4 beginning of a jurisdictionally separate
5 communication?

6 A I'm not sure that's a critical
7 characteristic, no.

8 Q So it's not your testimony that in all
9 instances of the delivery of telephony, say, within
10 the local exchange, that in the instances where a
11 circuit switch message gets changed into a packet
12 switch message, that that somehow changes the
13 jurisdictional nature of that call?

14 A No, I would not issue that as a blanket
15 statement.

16 Q Has the FCC found that protocol conversion
17 we're discussing here in and of itself has any
18 jurisdictional significance that you know of?

19 A No. As I said, I don't believe that is the
20 critical distinction.

21 Q Okay. Are you familiar with the technology
22 known as asynchronous transfer mode technology, or ATM
23 technology?

24 A Not in any great sense; just generically.

25 Q Would you know whether ATM technology uses

1 the same conversion from circuit switching to packet
2 switching as is used in calls to an Internet service
3 provider?

4 A I believe it does, but you're testing the
5 limits of my knowledge.

6 Q Okay. That's fair enough. On Line 7 on
7 Page 11 -- actually, I guess it begins on Line 6 --
8 the sentence that states "The ISP subscribers' traffic
9 is never again recognizable as an ordinary analog or
10 digital circuit switch message." Do you see that
11 sentence?

12 A Yes.

13 Q And are you referring to there in the
14 instance where the end user has called the Internet
15 service provider as a circuit switch message, it's
16 converted into a packet switch message, and your
17 testimony is after that it doesn't change again?

18 A That's correct.

19 Q Are you familiar with a technology known
20 as -- or a service known as Internet telephony?

21 A I have heard of -- yes, I'm familiar with --

22 Q Can you tell the Commission what you know
23 about Internet telephony? What is it?

24 A As I understand it, it's an attempt to
25 transmit telephonic communications over the Internet.

1 Q Okay. That would be voice traffic over the
2 Internet?

3 A The voice traffic over the Internet, yes.

4 Q Now, in the case of Internet telephony, is
5 the voice traffic permanently converted from a circuit
6 switched message to data switched -- or a packet
7 switched message?

8 A To be honest, I'm not familiar with how
9 various companies are attempting to test Internet
10 telephony, as it's called. I believe there's any
11 number of ways of doing it.

12 But in any event, you know, the matter
13 before us today does not involve Internet telephony.
14 We're not talking about that subject matter. We're
15 talking about consumers simply dialing up an Internet
16 provider.

17 Q Well, I understand your prefiled direct may
18 not have discussed Internet telephony, but I would beg
19 to differ with you on whether or not that's an issue
20 in this case.

21 So let me just ask you one further question,
22 then. You don't know whether or not in the case of
23 Internet telephony whether the packet switched message
24 at some point gets converted back into a circuit
25 switched message in order to be heard by the person on

1 the other end? You just don't know?

2 A I just don't know.

3 MR. RANKIN: All right. Thank you,

4 Mr. Kouroupas.

5 (Witness Kouroupas excused.)

6

- - - - -

7 CHAIRMAN JOHNSON: Staff?

8 CROSS EXAMINATION

9 BY MR. PELLEGRINI:

10 Q Good morning, Mr. Kouroupas.

11 A Good morning.

12 Q What was your role in the interconnection
13 agreement negotiations between Teleport and BellSouth?

14 A I was one of three principal negotiators on
15 behalf of TCG negotiating with BellSouth.

16 Q Were you particularly involved with the
17 negotiation of the reciprocal compensation provisions
18 in that agreement?

19 A Yes, I was.

20 Q In your deposition at Page 17 you stated
21 that calls to -- placed to Internet service providers
22 are indistinguishable from the calls placed to
23 hospitals, doctors, pharmacies, pizza parlors. Do you
24 recall that?

25 A Yes.

1 Q Why is that? Why are such calls
2 indistinguishable one from the other?

3 A Because each of those end users are
4 purchasing end user services from TCG, and we have no
5 way of knowing if a local business line purchased from
6 us -- I mean, we have a way of knowing, I guess, if we
7 research our records, but we generally -- it's
8 indistinguishable between a bank, a pharmacy, a pizza
9 parlor and an ISP. They're all end users purchasing
10 essentially the same end user type services.

11 Q Is the dial-up number similar in all of
12 those cases?

13 A In a local environment, you know, customers
14 dial seven digits to reach those, you know, the bank,
15 the pharmacy, the ISP. It's all dialed the same,
16 answered the same and so forth.

17 Q The point about the indistinguishability,
18 what is the significance of that as it relates to the
19 present dispute?

20 A Well, because -- and ISPs purchase end user
21 services just like all of our other end users. If it
22 was BellSouth's intention to treat calls placed to
23 Internet service providers different from calls placed
24 to banks or pharmacies or pizza parlors, it would have
25 been prudent to put in the interconnection agreement a

1 mechanism for tracking calls to Internet service
2 providers particularly. And, of course, there is no
3 mechanism in our interconnection agreement to do that
4 nor was there ever a discussion of it.

5 Q Well, how does the fact that the calls are
6 not distinguishable relate to the absence of a
7 tracking mechanism in the interconnection agreement?

8 A Well, because they are indistinguishable
9 there is no ready mechanism for tracking them. So if
10 it was BellSouth's intention to treat them separately,
11 we would have had to devise a method for tracking
12 calls specifically to ISPs so that we could treat them
13 separately.

14 Because they're indistinguishable from any
15 other call, you know, we're all working in the dark
16 here and would need some sort of tracking mechanism to
17 track calls specifically to ISPs.

18 Just as if BellSouth said, we're not going
19 to pay you for calls to pizza parlors; okay. Well, we
20 would know then that within our network we would
21 somehow have to flag all the pizza parlors that are
22 our customers and track the traffic to them so that we
23 could separately treat them with BellSouth.

24 We didn't have that discussion with regard
25 to ISPs because there was never -- neither party

1 believed that you needed to do that.

2 Q On Page 14 of your direct testimony, Line
3 11, the area of your testimony is that it is unlikely
4 that such data collection would be feasible absent a
5 major change in the status of ISPs. Do you see that?

6 A Yes.

7 Q Can you explain to the Commission what you
8 mean by a major change in the status of ISPs?

9 A If, for instance, we placed ISPs on access
10 arrangements, then you can readily track their traffic
11 because you've just separated them out from the rest
12 of the end users and put them on a different
13 arrangement and required them to purchase different
14 services. But, of course, if you put them on an
15 access arrangement, you would be classifying them as
16 carriers and not as end users as they currently are.

17 Q And that would not be a permissible change
18 under the FCC's --

19 A That's correct. Currently they're entitled
20 to purchase end user services just as any other end
21 user.

22 Q In your deposition you mention that some
23 sort of separate arrangement would be necessary to
24 track them. That was on Page 34 of your deposition
25 transcript. What did you mean by separate

1 arrangement?

2 A Well, again, because they are an end user
3 indistinguishable from any other end user, the easiest
4 way of tracking traffic to them would be to put them
5 on some separate arrangement; for instance, an access
6 arrangement or some other type of arrangement that we
7 could make up, I guess, to make it easier to track
8 that traffic.

9 Q All right. I believe you testified a moment
10 or so ago that the subject of ISP traffic simply did
11 not come up in the course of negotiations.

12 A That's correct.

13 Q And it was not a subject that at least
14 Teleport anticipated should have come up in those
15 negotiations.

16 A No. There was no reason to discuss it,
17 because as an end user, their traffic is local.

18 Q Was Teleport providing services to ISPs at
19 that time; that is, during the course of the
20 negotiations?

21 A I believe in calendar year '96, prior to the
22 signing of our interconnection agreement in July, we
23 did have some Internet service providers as customers.

24 Q Do you know whether BellSouth would have had
25 any reason to be aware of that?

1 A Yes. I mean, I would suspect BellSouth
2 would have reason to be aware of that. There were --
3 the growth of the Internet service providers was
4 obviously well documented in the press. BellSouth had
5 its own Internet service.

6 BellSouth may have even experienced -- you
7 know, I'm not familiar with the exact details of any
8 customer that we had at that time, but, you know,
9 there is a chance of a couple things occurring.

10 One, the customer that we were serving may
11 have, in fact, disconnected from BellSouth to take
12 service from us.

13 Also, we may have -- you know, we must have
14 ordered interconnection trunking to accommodate the
15 volume of traffic associated with the Internet
16 provider, which would have been -- so we would have
17 had to notify BellSouth that -- to expect traffic
18 coming from them to us and to augment the existing
19 interconnection arrangements. So I'm sure they had
20 ways of knowing.

21 Q I gather that you don't find it remarkable
22 that BellSouth did not raise this issue in the
23 negotiations?

24 A No, not at all.

25 Q How ISP traffic should be treated.

1 **A** No, because I believe we had a meeting of
2 the minds that traffic to Internet providers was local
3 traffic.

4 **COMMISSIONER GARCIA:** When you say a meeting
5 of the minds, is this subconscious minds, or was this
6 discussed?

7 **WITNESS KOUROUPAS:** There was no discussion
8 concerning ISPs in particular, and from that I
9 conclude that that is because both parties understood
10 the traffic to ISPs was local.

11 **COMMISSIONER GARCIA:** So it was a silent
12 meeting of the minds? Silence meant that there was a
13 meeting of the minds?

14 **WITNESS KOUROUPAS:** Yes. And as I said, if
15 either party believed differently, then they would
16 have raised the mechanism by which we would have
17 tracked the traffic separately to Internet service
18 providers.

19 And because that discussion did not take
20 place, again I think it's reasonable to conclude that
21 both parties intended to just lump the traffic to ISPs
22 into the larger basket of local traffic.

23 **COMMISSIONER GARCIA:** I'm sorry. Thank you,
24 Charlie.

25 **MR. PELLEGRINI:** That's all the questions we

1 have, Mr. Kouroupas. Thank you.

2 **WITNESS KOUROUPAS:** Thank you.

3 **CHAIRMAN JOHNSON:** Commissioners, any other
4 questions?

5 **COMMISSIONER DEASON:** I have one. I don't
6 want any confidential information, but I'll ask you
7 the same question. Do you pay any of your ISP
8 customers a Commission on the traffic that they
9 generate from the network?

10 **WITNESS KOUROUPAS:** No, not that I'm aware
11 of.

12 **CHAIRMAN JOHNSON:** Any other questions?
13 Redirect?

14 **MR. HOFFMAN:** Thank you, Madam Chairman.

15 **REDIRECT EXAMINATION**

16 **BY MR. HOFFMAN:**

17 **Q** Just one question. Mr. Kouroupas, in
18 response to Staff's questions, you stated a number of
19 times that BellSouth did not raise an issue of
20 separate treatment for ISP traffic during the
21 negotiations which led to the July 1996
22 interconnection agreement at issue in this case,
23 correct?

24 **A** Correct.

25 **Q** Now, before the July 1996 interconnection

1 agreement, TCG had entered into an initial
2 interconnection agreement with BellSouth under Florida
3 law; is that correct?

4 A That's correct.

5 Q Were you involved in the negotiations of
6 that agreement with BellSouth representatives?

7 A Yes, I was.

8 Q During those negotiations, did BellSouth
9 raise any issues concerning some sort of separate
10 treatment for ISP traffic?

11 A No, they did not.

12 MR. HOFFMAN: Thank you. That's all I have.

13 CHAIRMAN JOHNSON: Exhibits?

14 MR. HOFFMAN: Madam Chairman, I would move
15 Exhibit 2.

16 CHAIRMAN JOHNSON: Show that approved
17 without objection.

18 (Exhibit 2 received in evidence.)

19 MR. PELLEGRINI: And Staff would move
20 Exhibit No. 3.

21 CHAIRMAN JOHNSON: Show that approved
22 without objection.

23 (Exhibit 3 received in evidence.)

24 COMMISSIONER CLARK: Wait. I have another
25 question I didn't ask.

1 Is it your position that in order for us to
2 agree with BellSouth that this is, in fact, not local
3 traffic, that we have to conclude the service provided
4 by the ISP, that is that next link which may go to
5 terminate someplace outside the local exchange area,
6 we have to conclude that what they are providing is
7 telecommunications service and not information
8 service?

9 Is that a necessary part of that argument,
10 or can we say even though it's information service,
11 it's still an interstate service?

12 **WITNESS KOUROUPAS:** I think you would have
13 to conclude that it's a telecommunication service,
14 because if you conclude that it is an interstate
15 information service, then you still have to reconcile
16 that with the phone call placed by the BellSouth
17 customer to the TCG ISP.

18 You know, how do you determine -- by what
19 means do you determine that that's not a local call?
20 You know, what is your justification for saying that's
21 not a local call? I mean, that's really where the
22 focus has to be.

23 What takes place behind the ISP, so to say,
24 I don't believe really has much relevance. The focus
25 really is when a BellSouth customer places a 7-digit

1 dialed call to an ISP, what is it that makes that not
2 local and, therefore, not subject to reciprocal
3 compensation?

4 **COMMISSIONER CLARK:** Okay. Let me ask it a
5 little differently. In order to conclude that that is
6 not local, must we also conclude that what happens
7 behind that ISP is telecommunications service and not
8 information service?

9 **WITNESS KOUROUPAS:** In order to conclude
10 that that is not a local call, I believe you would
11 have to say that what takes place behind the ISP is,
12 in fact, an interstate telecommunications service.

13 **COMMISSIONER CLARK:** And has the FCC
14 conclusively stated that an information service is not
15 telecommunication, or is that part of the Act?

16 **WITNESS KOUROUPAS:** I believe it was the FCC
17 has repeatedly said that that is an information
18 service that is taking place and not a
19 telecommunications service.

20 **COMMISSIONER CLARK:** Well, if you define it
21 as an information service, are there provisions in the
22 Act that provide for treating it differently from a
23 telecommunications service? And I guess I'm getting
24 to Ms. Strow's point that it says enhanced services
25 are not covered under Title II of 47.

1 **WITNESS KOUROUPAS:** As I think I would agree
2 with her analysis of that. You just caught me
3 flatfooted, I guess, in the sense that I'm not
4 familiar -- I don't have the Act, and I haven't looked
5 at the Act specifically for how it treats information
6 services and whether there's something specifically in
7 the Act that you can point to. Certainly the series
8 of FCC orders supports that.

9 **COMMISSIONER CLARK:** Okay.

10 **CHAIRMAN JOHNSON:** Any other questions,
11 Mr. Hoffman, to follow up?

12 **COMMISSIONER JACOBS:** I'm sorry. I have one
13 question that kind of got triggered by Commissioner
14 Clark's question.

15 I believe you stated, and I believe it was
16 stated in Mr. Ball's testimony, that when that call
17 goes to -- that call from the Internet customer -- to
18 your company, that the technical things that happen
19 there actually constitute the determination of the
20 call; i.e., the answer supervision and those sorts of
21 things. Is that true?

22 **WITNESS KOUROUPAS:** That is correct. That's
23 what I stated in, I believe, it was the deposition and
24 maybe the testimony as well.

25 **COMMISSIONER JACOBS:** And does your

1 agreement speak to -- your agreement with BellSouth
2 speak to that actual termination as the invocation of
3 the reciprocal compensation provision?

4 **WITNESS KOUROUPAS:** No. There's nothing
5 specific in our agreement in, for instance, defining
6 the term "termination," because I think there's a
7 widely accepted view of what that is.

8 **COMMISSIONER JACOBS:** Okay. So that's like
9 an industry standard.

10 **WITNESS KOUROUPAS:** Yes.

11 **COMMISSIONER JACOBS:** Okay.

12 **CHAIRMAN JOHNSON:** Thank you.

13 **MR. HOFFMAN:** Madam Chairman, may the
14 witness be excused?

15 **CHAIRMAN JOHNSON:** You're excused.

16 (Witness Kouroupas excused.)

17 - - - - -

18 **MR. SELF:** Madam Chairman, Mr. Ball is ready
19 to respond to Commissioner Clark's question that was
20 left hanging at the end of his examination. So we
21 would recall Gary Ball.

22 **CHAIRMAN JOHNSON:** Okay.

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GARY BALL

was recalled as a witness on behalf of WorldCom Technologies, Inc. and, having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SELF:

Q Mr. Ball, you're still sworn. Do you have the response to Commissioner Clark's question?

A Yes, I do. WorldCom and BellSouth began exchanging traffic in October of 1997, and we sent our first bill to BellSouth for Florida in November of 1997.

COMMISSIONER CLARK: Thank you.

Q (By Mr. Self) And that's for Florida, Mr. Ball?

A Yes.

MR. SELF: Thank you.

CHAIRMAN JOHNSON: Thank you, Mr. Ball.

MR. SELF: May the witness be excused?

CHAIRMAN JOHNSON: Uh-huh.

MR. SELF: Thank you.

(Witness Ball excused.)

- - - - -

MR. HOFFMAN: Madam Chairman, were Exhibits 2 and 3 admitted?

1 **CHAIRMAN JOHNSON:** Uh-huh.

2 **MR. HOFFMAN:** Thank you.

3 **CHAIRMAN JOHNSON:** We're prepared for Ms. --
4 is it Strow?

5 **MR. WIGGINS:** Strow.

6 - - - - -

7 **JULIA STROW**

8 was called as a witness on behalf of Intermedia
9 Communications, Inc. and, having been duly sworn,
10 testified as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. WIGGINS:**

13 **Q** Please state your name and position.

14 **A** My name is Julia Strow. I am employed by
15 Intermedia Communications in the capacity of assistant
16 vice-president, industry policy.

17 **Q** Are you adopting the prefiled direct
18 testimony of Michael Viren?

19 **A** Yes, I am.

20 **Q** And that consists of eight pages of
21 testimony?

22 **A** Yes, that is correct.

23 **MR. WIGGINS:** Madam Chairman, we need to
24 strike Pages 1, and Page 2, Lines 1 through 13 to
25 exclude the biographical information of Mr. Viren.

1 **CHAIRMAN JOHNSON:** Page 1?

2 **MR. WIGGINS:** Yes, ma'am, in its entirety.

3 **CHAIRMAN JOHNSON:** Through page --

4 **MR. WIGGINS:** Page 2, Lines 1 through 13.

5 **CHAIRMAN JOHNSON:** Okay.

6 **Q** **(By Mr. Wiggins)** Ms. Strow, with the
7 striking of those lines, do you have any changes to
8 make to Mr. Viren's testimony?

9 **A** No, I do not.

10 **Q** So if I were to ask you the questions
11 contained in that written testimony, your answers
12 would be the same as provided?

13 **A** Yes, it would.

14 **MR. WIGGINS:** Madam Chairman, I move that
15 the prefiled testimony as modified be inserted in the
16 record as though read.

17 **CHAIRMAN JOHNSON:** It will be so inserted.

18 **Q** **(By Mr. Wiggins)** And did that testimony
19 include four exhibits marked MAV-A, B, C and D?

20 **A** Yes, it did.

21 **Q** And those are identified on Page 16 and 17
22 of the prehearing order?

23 **A** Yes.

24 **MR. WIGGINS:** Could I have those marked,
25 please, Madam Chair?

1 **CHAIRMAN JOHNSON:** It will be marked as
2 Composite Exhibit 4.

3 (Exhibit 4 marked for identification.)

4 **Q** **(By Mr. Wiggins)** Ms. Strow, did you
5 also -- did you submit 10 pages of prefiled rebuttal
6 testimony?

7 **A** Yes, I did.

8 **Q** Do you have any changes to make to that
9 testimony?

10 **A** No, I do not.

11 **Q** So if I were to ask you the questions
12 contained in that this morning, your answers would be
13 the same as provided?

14 **A** Yes, they would.

15 **MR. WIGGINS:** Madam Chair, I move that the
16 rebuttal testimony be inserted in the record as though
17 read.

18 **CHAIRMAN JOHNSON:** It will be so inserted.

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1 **Q: Please state your name, employer, position, and**
2 **business address.**

3 **A:** My name is Michael A. Viren. I am employed by
4 Intermedia Communications Inc. (Intermedia) as Senior
5 Vice President, Strategic Planning and Regulatory. My
6 business address is 3625 Queen Palm Drive, Tampa,
7 Florida 33619.

8 **Q: What are your responsibilities in that position?**

9 **A:** I am responsible for Intermedia's strategic direction.
10 This is accomplished through evaluation and analysis
11 of the external factors influencing the Company from
12 new technologies, opportunities for industry
13 consolidations, new markets, and regulatory
14 opportunities and constraints. In this position, I
15 have responsibility for Intermedia's regulatory and
16 industry policies.

17 **Q: Please briefly describe your educational background**
18 **and professional experience.**

19 **A:** Prior to my present position, I was Senior Vice
20 President, Engineering and Information Systems from
21 January 1996 to October 1996 and was Vice President,
22 Product Development from December 1992 through January
23 1996. I joined Intermedia in February 1991 as
24 Director of Product Development. I worked for GTE
25 from August 1986 to February 1991 as a specialist in

1 wide and local area networking. Prior to that I
2 operated my own consulting firm concentrating in WAN
3 and LAN design; was Senior Vice President of
4 Criterion, Inc., an Economic Consulting Firm in
5 Dallas, Texas; and served as the Director of the
6 Utility Division of the Missouri Public Service
7 Commission. I taught economics for 10 years, most
8 recently as an Associate Professor of Economics at the
9 University of Missouri-Columbia and prior to that at
10 the University of Kansas. I received my Ph.D. in
11 economics from the University of California-Santa
12 Barbara and a B.S. in mechanical engineering from the
13 California State University at Long Beach.

14 **Q. Do Intermedia and BellSouth have an interconnection**
15 **agreement under Section 252 of the Telecommunications**
16 **Act of 1996?**

17 **A.** Yes. Pursuant to Section 252 of the
18 Telecommunications Act of 1996 (Act), Intermedia and
19 BellSouth negotiated an interconnection agreement and
20 filed it with the Florida Public Service Commission
21 (Commission), on June 25, 1996. In accordance with
22 Section 252(e) of the Act, the Commission approved the
23 interconnection agreement by Order No. PSC-96-1236-
24 FOF-TP, issued on October 7, 1996. A copy of the
25 relevant portions of the interconnection agreement and

1 subsequent amendment (collectively "Agreement") is
2 attached as Exhibit A.

3 **Q. Why did Intermedia file a complaint against BellSouth?**

4 **A.** BellSouth sent a letter, dated August 12, 1997,
5 from Mr. Ernest L. Bush to "All Competitive Local
6 Exchange Carriers" stating that BellSouth considers
7 local calls made to ISPs to be jurisdictionally
8 interstate, and that it would not submit payment for
9 the termination of local calls made to Internet
10 Service Providers (ISPs) on the networks of
11 Competitive Local Exchange Carriers (CLECs).
12 Intermedia received a copy of this letter, which is
13 attached as Exhibit B. In accordance with this
14 letter, BellSouth now refuses to pay reciprocal
15 compensation for these BellSouth end-user calls
16 terminated by Intermedia as required by the Agreement.

17 Intermedia responded to BellSouth by letter dated
18 September 2, 1997, rejecting BellSouth's position and
19 urging BellSouth to issue a prompt retraction of the
20 August 12, 1997 letter, and that Intermedia would
21 aggressively pursue every legal avenue available to it
22 should BellSouth implement its decision to withhold
23 mutual compensation for ISP traffic. A copy of the
24 September 2, 1997 letter from Intermedia to BellSouth
25 is attached as Exhibit C.

1 By letter dated September 11, 1997, BellSouth
2 responded to Intermedia's letter. BellSouth
3 reiterated its position that traffic being delivered
4 to ISPs is not eligible for reciprocal compensation.
5 A copy of the BellSouth September 11, 1997 letter is
6 attached as Exhibit D.

7 **Q. What is the significance of this correspondence?**

8 **A.** BellSouth's refusal to provide reciprocal compensation
9 for local ISP traffic originated by its end-users that
10 terminates on Intermedia's network constitutes a
11 material and willful breach of the terms of the
12 interconnection Agreement. BellSouth's action also
13 violates Section 251(b) (5) of the Act which sets forth
14 the obligation of all local exchange companies (LECs)
15 to provide reciprocal compensation.

16 **Q. Why does BellSouth's refusal to provide compensation**
17 **for the transport and termination of traffic to**
18 **Internet Service Providers constitute a material and**
19 **willful breach of the Agreement?**

20 **A.** Because under the Agreement, the parties owe each
21 other reciprocal compensation for any "Local Traffic"
22 terminated on the other's network. Traffic to ISPs
23 meets that definition of "Local Traffic."

24 Specifically, Section 1(D) of the Agreement
25 defines "Local Traffic" as:

1 any telephone call that originates in
2 one exchange and terminates in either
3 the same exchange, or a corresponding
4 Extended Area Service (EAS) exchange.
5 The terms Exchange, and EAS exchanges
6 are defined and specified in Section
7 A3. of BellSouth's General Subscriber
8 Service Tariff.

9 The traffic at issue originates and terminates in
10 either the same exchange or a corresponding EAS
11 exchange as defined and specified in Section A3. of
12 BellSouth's General Subscriber Service Tariff.

13 Section IV(A) of the Agreement regarding
14 reciprocal compensation states in part:

15 The delivery of local traffic between
16 the parties shall be reciprocal and
17 compensation will be mutual according
18 to the provisions of this Agreement.

19 Moreover, Section IV(B) of the Agreement states
20 in part that:

21 Each party will pay the other party
22 for terminating its local traffic on
23 the other's network the local
24 interconnection rates as set forth in
25 Attachment B-1, by this reference

1 incorporated herein.

2 To reiterate, pursuant to the Agreement, parties
3 owe each other reciprocal compensation for any "Local
4 Traffic" terminated on the other's network.

5 **Q. Why is the ISP traffic at issue here subject to**
6 **reciprocal compensation?**

7 **A.** Because, as noted above, this ISP traffic meets
8 the definition of local traffic under Section 1(D).
9 The ISP traffic at issue is originated by a BellSouth
10 end-user, delivered to Intermedia, and terminated on
11 Intermedia's network. This is the essence of a local
12 call. Pursuant to the Agreement, calls from
13 BellSouth's end-users to Intermedia's end-users that
14 are ISPs are thus subject to reciprocal compensation.

15 Nothing in the Agreement creates a distinction
16 pertaining to calls placed to telephone exchange end-
17 users that happen to be ISPs. All calls that
18 terminate within a local calling area, regardless of
19 the identity of the end-user, are local calls under
20 Section 1(D) of the Agreement, and reciprocal
21 compensation is due for such calls. This includes
22 telephone exchange service calls placed by BellSouth's
23 customers to Intermedia's ISP customers.

24 Finally, there is nothing absolutely unique in
25 the nature of a call to an ISP that could separate ISP

1 traffic from other local traffic with long holding
2 times (i.e. calls to a help desk, reservation centers,
3 travel agencies, and customer service centers).

4 **Q. Was there ever any question at Intermedia that the**
5 **reciprocal compensation provision in the Agreement was**
6 **applicable for the transport and termination of**
7 **traffic to ISPs?**

8 **A.** No. Intermedia has consistently viewed this traffic
9 as local pursuant to the Agreement. Indeed, when we
10 amended the contract to include the present language,
11 our largest customer was an ISP, so obviously,
12 reciprocal compensation requirements were significant
13 to us and presumably BellSouth was aware of this.

14 **Q. If the Commission determines that BellSouth should be**
15 **required to compensate Intermedia for the transport**
16 **and termination of traffic to ISPs, what should the**
17 **Commission require of BellSouth?**

18 **A.** BellSouth should be required to immediately compensate
19 Intermedia for the total amount outstanding for the
20 transport and termination of local traffic pursuant to
21 the terms of the Agreement. Since BellSouth has
22 failed to compensate Intermedia for the transport and
23 termination of any local traffic, BellSouth should be
24 assessed a late payment fee of 1% per month, pursuant
25 to Section IV.(B) of the Interconnection Agreement,

1 for all outstanding charges. Moreover, on a going-
2 forward basis, BellSouth should be ordered to continue
3 to compensate Intermedia for such traffic in
4 accordance with the Agreement.

5 **Q. Does this conclude your testimony?**

6 **A. Yes.**

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1 **Q: Please state your name, employer, position, and**
2 **business address.**

3 **A:** My name is Julia Strow. I am employed by Intermedia
4 Communications Inc. (Intermedia) as Assistant Vice
5 President, Strategic Planning and Industry Policy. My
6 business address is 3625 Queen Palm Drive, Tampa,
7 Florida 33619.

8 **Q: What are your responsibilities in that position?**

9 **A:** I am the primary interface between Intermedia and the
10 incumbent local exchange carriers (ILECs). In that
11 capacity, I am involved in interconnection
12 negotiations and arbitrations between Intermedia and
13 the ILECs. I am also primarily responsible for
14 strategic planning and the setting of Intermedia's
15 regulatory policy.

16 **Q: Please briefly describe your educational background**
17 **and professional experience.**

18 **A:** I graduated from University of Texas in 1981 with a
19 B.S. in Communications. I joined AT&T in 1983 as a
20 Sales Account Executive responsible for major market
21 accounts. I subsequently held several positions with
22 BellSouth's Marketing Department, with
23 responsibilities for Billing and Collection and Toll
24 Fraud Services. In 1987, I was promoted to Product
25 Manager for Billing Analysis Services, with

1 responsibility for the development and management of
2 BellSouth's toll fraud detection and deterrence
3 products. In 1988, I was promoted into the BellSouth
4 Federal Regulatory organization. During my tenure
5 there, I had responsibility for regulatory policy
6 development for various issues associated with Billing
7 and Collection Services, Access Services, and
8 Interconnection. In 1991, due to a restructuring of
9 the Federal Regulatory organization, my role was
10 expanded to include the development of state and
11 federal policy for the issues I mentioned above.
12 During my last two years in that organization, I
13 supported regulatory policy development for local
14 competition, interconnection, unbundling, and resale
15 issues for BellSouth. I joined Intermedia in April
16 1996 as Director of Strategic Planning and Regulatory
17 Policy. In April, 1998, I became Vice President,
18 Strategic Planning and Industry Policy.

19 **Q: Did you previously file direct testimony in this**
20 **proceeding?**

21 **A:** No, but I am adopting the direct testimony previously
22 filed by Michael A. Viren on April 17, 1998, and will
23 appear in his stead at hearing.

24 **Q: What is the purpose of your rebuttal testimony?**

25 **A:** The purpose of my rebuttal testimony is to respond to

1 the testimony of BellSouth's witness Jerry Hendrix.
2 Although he admits that all agreements in dispute in
3 this proceeding require reciprocal compensation for
4 the termination of calls on either party's network, he
5 contends that when an end-user calls an Internet
6 service provider (ISP), reciprocal compensation is not
7 due. According to Mr. Hendrix, call termination does
8 not occur at that point because the Federal
9 Communications Commission (FCC) has allegedly
10 concluded that enhanced service providers, of which
11 ISPs are a subset, use the local network to provide
12 interstate services. (Hendrix Dir., pages 2-3)

13 **Q. How do you respond to these assertions?**

14 **A.** Mr. Hendrix is wrong for two straightforward and
15 unavoidable reasons. First, the BellSouth-Intermedia
16 interconnection agreement and its subsequent
17 reciprocal compensation amendment (collectively
18 "Agreement") are clear as written and require such
19 compensation. The essence of the Agreement requires
20 that parties owe each other reciprocal compensation
21 for any "Local Traffic" terminated on the other's
22 network and that a local telephone call from an end-
23 user to an ISP qualifies as Local Traffic under the
24 terms of the agreement.

25 The second reason Mr. Hendrix is wrong is that he

1 attempts to ignore the reality that within the context
2 of the Agreement an Internet communication consists of
3 two segments: (1) a local telephone call from an end-
4 user to an ISP; and (2) an enhanced transmission from
5 the ISP over the Internet.

6 Third, BellSouth has raised these same arguments
7 in North Carolina and Tennessee that were summarily
8 rejected by those Commissions.

9 Thus, Mr. Hendrix ignores that under this
10 scenario the ISP does not serve as a
11 telecommunications carrier. The call ends when it is
12 delivered to the ISP. The information service
13 provided by the ISP is not a call, because it is not
14 a telecommunications service.

15 It is only by ignoring the clear meaning of the
16 Agreement and the clear distinction between
17 telecommunications and information service that
18 BellSouth can attempt to avoid its contractual
19 obligation.

20 **Q. Under the scenario you just described, why isn't the**
21 **ISP classified as a telecommunications carrier?**

22 **A.** First, the Act defines "telecommunications" as
23 the "transmission, between or among points specified
24 by the user, of information of the user's choosing,
25 without change in the form or content of the

1 information as sent and received." (47 U.S.C.
2 153(43)) The local telephone call from an end-user to
3 an ISP clearly meets the definition of
4 telecommunications.

5 The second segment, however, does not meet the
6 definition of telecommunications under the Act.
7 Moreover, the enhanced transmission from the ISP over
8 the Internet is not regulated under title II of the
9 Act. BellSouth acknowledges that ISPs are a subset of
10 enhanced service providers. Specifically, "enhanced
11 service" refers to

12 services, offered over common carrier
13 transmission facilities, which employ
14 computer processing applications that
15 act of the format, content, code,
16 protocol or similar aspects of the
17 subscriber's transmitted information;
18 provide the subscriber additional,
19 different, or restructured
20 information; or involve subscriber
21 interaction with stored information.
22 Enhanced services are not regulated
23 under title II of the Act. (47 CFR
24 64.702(a), emphasis added)

25 Once a call is sent to an ISP, the ISP performs

1 Internet protocol conversion and also directly
2 involves the subscriber direct access to stored
3 information. Therefore, the ISP segment of call meets
4 the enhanced services definition.

5 In conclusion, an ISP, whether served by
6 BellSouth or Intermedia, is not a carrier: an ISP is
7 an end-user that buys local service from a
8 telecommunications carrier.

9 **Q. If ISPs are classified as end-users and not**
10 **telecommunications carriers, why in your opinion**
11 **doesn't BellSouth recognize that calls to ISPs qualify**
12 **as local calls?**

13 **A.** Because BellSouth rejects the Act's fundamental
14 distinction between electronic transmissions that are
15 telecommunications services and those that are
16 enhanced services. It is only by treating the second
17 segment, enhanced service, as a continuation of a
18 telecommunications service that BellSouth can confuse
19 the otherwise clear application of the Agreement, the
20 tariff, the FCC orders, and the Commission orders
21 pursuant to the Act.

22 **Q. Mr. Hendrix also remarks that if Intermedia's intent**
23 **was to assume that the traditional local calling area**
24 **definition in Section A3 were to include ISP traffic,**
25 **Intermedia should have made it clear. How do you**

1 **respond?**

2 **A.** Intermedia was not assuming anything; it was relying
3 on the clear language of the Agreement and the clear
4 distinction between telecommunications and enhanced
5 services. Moreover, the Agreement and BellSouth's
6 various tariff provisions, such as Section A3,
7 dovetail nicely until BellSouth begins ignoring the
8 distinction between telecommunications and enhanced
9 services. For example, Section I(D) of the Agreement
10 defines "Local Traffic" as "any telephone call that
11 originates in one exchange and terminates in either
12 the same exchange, or a corresponding Extended Area
13 Service exchange," which are also defined and
14 specified in Section A3 of the GSST. Thus calls to
15 ISPs bearing the same central office designation as
16 the end-user meet the definition of local calls under
17 the Agreement. This simple and straightforward
18 application of the Agreement requires no
19 clarification.

20 **Q.** On page 11, lines 4-7, Mr. Hendrix states that it was
21 not BellSouth's intent for ISP traffic to be subject
22 to reciprocal compensation and that the main concern
23 was the balance of traffic which led to the cap
24 provision being included in the Agreement. How do you
25 respond?

1 **A.** In February, 1997, we renegotiated that provision to
2 a pure usage-based reciprocal compensation
3 arrangement. Even as late as February, 1997,
4 BellSouth agreed to usage-based reciprocal
5 compensation and made no mention of any exclusions
6 whatsoever. Even at this late date, during these
7 negotiations, BellSouth had every opportunity to
8 negotiate a means of identifying and separating ISP
9 traffic and did not do so. Had BellSouth's intent
10 been to exclude ISP traffic, a system to identify and
11 measure ISP traffic would have had to been discussed
12 by the parties. To date, no such discussions have
13 taken place. Thus, the entire record of this
14 proceeding and the history of discussions demonstrate
15 that there have never been any intention by either
16 party to exclude ISP traffic.

17 **Q.** To your knowledge, does BellSouth's system distinguish
18 between a local call placed to an ISP from any other
19 local call?

20 **A.** No. Without a system in place, neither company
21 can distinguish these types of calls. If BellSouth
22 intended to exclude traffic terminated to ISPs from
23 other local traffic, BellSouth would have needed to
24 develop a way to measure traffic that distinguishes
25 such calls from all other types of local calls with

1 long-holding traffic, such as calls to airline and
2 hotel reservations.

3 BellSouth is a sophisticated company. BellSouth
4 knew or should have known that its customers could
5 dial a 7-digit number (as well as other locally dialed
6 calls) to call an ISP. Given BellSouth's current
7 position that it never intended to include traffic to
8 ISPs for purposes of reciprocal compensation, it is
9 inconceivable that BellSouth would not have made
10 arrangements to distinguish that type of traffic from
11 other local calls at the time of the Agreement,
12 knowing that the parties must pay for the termination
13 of local traffic on the other party's network.

14 **Q. Mr. Hendrix speaks at length to characterize calls**
15 **from an end-user to an ISP as only transiting through**
16 **the ISP's local point of presence and not terminating**
17 **there. (Hendrix, pages 11-17) Do you agree with Mr.**
18 **Hendrix's characterization?**

19 **A.** No. To reiterate, an Internet communication consists
20 of two segments: (1) a local telephone call from an
21 end-user to an ISP; and (2) an enhanced transmission
22 from the ISP over the Internet. The ISP does not
23 serve as a telecommunications carrier. The call ends
24 when it is delivered to the ISP. The information
25 service provided by the ISP is not a call, because it

1 is not a telecommunications service.

2 This is consistent with numerous FCC orders, the
3 Florida Public Service Commission's decisions in
4 Docket No. 880423-TP, Orders Nos. 21815, issued
5 September 5, 1989, and 23183, issued July 13, 1990,
6 and all of the state decisions decided to date.

7 **Q. Why isn't the word "terminate" specifically defined in**
8 **the Agreement?**

9 **A.** It is my understanding that the word "terminate" is
10 not defined for the same reason that the word
11 "originate" is not defined: both are commonly
12 understood and are used consistently by carriers and
13 regulators alike. To "terminate" means to deliver the
14 call to the user associated with the dialed number.

15 **Q. Please summarize your testimony.**

16 **A.** The language of the Agreement is clear and the
17 distinction between telecommunications and enhanced
18 services is clear, thus so is BellSouth's obligation.
19 The Commission should enforce the Agreement as written
20 to require BellSouth to compensate for local traffic
21 terminated to ISPs served by Intermedia.

22 **Q. Does this complete your testimony?**

23 **A.** Yes.

24

25

1 Q (By Mr. Wiggins) Do you have a summary
2 this morning, Ms. Strow?

3 A Yes, I do.

4 Q Would you please give it.

5 A Certainly. Good morning.

6 This is a simple case of breach of contract.
7 Under our interconnection agreement, BellSouth and
8 Intermedia are obligated to pay each other reciprocal
9 compensation for any local traffic terminated on the
10 other's network, but BellSouth refuses to pay
11 Intermedia the required compensation when the local
12 traffic originates with one of its end users and
13 terminates with one of our customers if our customer
14 is an ISP.

15 Commissioners, there is simply no basis
16 under the language of the contract to carve out a
17 compensation exception for local calls to ISPs.

18 The controlling provision of the agreement
19 is the definition of local traffic which is contained
20 in Section 1.D of the agreement. Under that
21 definition, local traffic is defined as any telephone
22 call that originates in one exchange and terminates in
23 either the same exchange or a corresponding extended
24 area service or, EAS, change.

25 There can be no doubt that local calls to

1 the ISP terminate in the local exchange and thus meet
2 this straightforward definition of local traffic. For
3 example, Internet communication is commonly understood
4 to consist of two segments; one, a local telephone
5 call from an end user to an ISP; and, two, an enhanced
6 transmission from the ISP over the Internet.

7 The ISP does not serve as a
8 telecommunications carrier. The call ends when it is
9 delivered to the ISP. The information service
10 provided by the ISP is not a call because it is not a
11 telecommunications service.

12 Thus, the common understanding was and is
13 that when BellSouth's end user places a call to our
14 ISP customer, it places a local call. This is so
15 fundamental that not one state regulatory agency that
16 has looked at this issue has agreed with BellSouth's
17 arguments.

18 In February of 1997 Intermedia renegotiated
19 our first interconnection agreement to provide for a
20 pure usage based reciprocal compensation arrangement
21 based on this definition of local traffic.

22 During these negotiations, BellSouth never
23 once mentioned excluding compensation for local
24 traffic to ISP customers. This is perplexing in light
25 of BellSouth's arguments in this docket. These

1 negotiations gave BellSouth a perfect opportunity to
2 propose a system to identify, separate and measure ISP
3 traffic for the purpose of excluding it from
4 reciprocal compensation obligation, but BellSouth made
5 no such proposal.

6 BellSouth is a sophisticated company and
7 knew, or at least should have known, that calls to
8 ISPs were part of the local exchange traffic volume.
9 It is inconceivable that BellSouth would not have made
10 arrangements to distinguish this type of traffic from
11 other local calls during negotiations if they had
12 intended it not to be eligible for reciprocal
13 compensation. They did not.

14 Consequently, nothing in the record of this
15 proceeding or the past conduct of the parties provide
16 any basis to conclude that either party intended to
17 exclude ISP traffic from reciprocal compensation when
18 the interconnection agreement was renegotiated in
19 February of 1997.

20 BellSouth has suggested that Intermedia is
21 merely acting as a conduit for BellSouth traffic to
22 our ISP customer and that we do this to benefit
23 unfairly from an asymmetrical traffic termination.

24 In considering these arguments, I ask this
25 Commission in keep in mind three simple points. One;

1 cross-examination.

2 MR. SELF: No questions.

3 MR. BOND: No questions.

4 MR. ELLIS: No questions.

5 CHAIRMAN JOHNSON: BellSouth?

6 MR. RANKIN: Thank you, Madam Chair.

7 CROSS EXAMINATION

8 BY MR. RANKIN:

9 Q Good morning, Ms. Strow. Ed Rankin on
10 behalf of BellSouth.

11 A Good morning.

12 Q Does Intermedia own an Internet service
13 provider company?

14 A Yes, we do.

15 Q And how long have you owned that company?

16 A I think for about a period of a year. I
17 don't know the exact dates, offhand.

18 Q What is its name?

19 A Digex.

20 Q And is it doing business in Florida now, the
21 Internet service company?

22 A It may be. I know they're based out of the
23 Virginia area.

24 Q Do you know how large a company that is
25 relative to other Internet service provider companies

1 in the country? Top 10? Top 20? Anything like that?

2 A I have absolutely no idea. I should have a
3 better understanding of our business, I guess.

4 Q Okay. That's quite all right. I believe
5 your position -- and it's consistent with other
6 witnesses we've heard this morning -- is that the
7 Internet service provider in your view does not serve
8 as a telecommunications carrier; is that right?

9 A That is correct.

10 Q And it's your position that the ISP is
11 providing an information service, not a
12 telecommunications service; is that right?

13 A On the second segment of the calls at issue.

14 Q That's what I'm referring to.

15 A Yes.

16 Q Now, it's further your testimony that the
17 fact that the ISP is operating on not as a
18 telecommunications carrier, but rather as an
19 information service provider has an impact on whether
20 or not reciprocal compensation is due on calls made
21 from an end user to the ISP; is that right?

22 A Could you repeat that?

23 Q Sure. It's your understanding that that
24 distinction has an impact whether or not the ISP is a
25 telecommunications carrier or an information service

1 provider, in fact, has an impact on whether or not
2 reciprocal compensation should be paid for a call from
3 an end user to the ISP?

4 A Yes. I would have to concur also with the
5 other two witnesses that the first part of the call is
6 local, the second part is an information service and,
7 therefore, not a telecommunications service.

8 Q Now, do you know whether or not the FCC has
9 stated that any future reciprocal compensation
10 decision by it regarding ISP traffic will depend on
11 whether or not ISPs are viewed as telecommunications
12 carriers or as information service providers?

13 A I don't recall anything offhand.

14 Q Let me ask you to take a look at a document.

15 MR. RANKIN: For the record, as she's
16 handing this document out, it's on the list of
17 documents for official recognition. Would there be
18 any need to attach that or mark it as an exhibit or
19 just --

20 CHAIRMAN JOHNSON: We don't have to unless
21 you just --

22 MR. RANKIN: Okay. That's fine. I don't
23 have any need to.

24 Q (By Mr. Rankin) Ms. Strow, I haven't
25 reproduced the entire 100-page order in the interest

1 of not killing a lot of trees.

2 I have an excerpt, though, from this order,
3 which is the April 10, 1998 report to Congress by the
4 FCC. I have excerpted certain pages, and they have to
5 do -- if you'll turn to Page 2 of the excerpt, it's
6 labeled as Page 36 of the actual order.

7 I've taken out the part that discusses
8 Internet access services and Commission -- the FCC's
9 discussion of that issue.

10 Let me ask you, have you seen this order
11 before or ever had an opportunity to read it?

12 A I have not read this order. I was -- first
13 of all, I don't know that we can characterize it as an
14 order. I think it's a report.

15 Q I'm sorry. You're right; it's a report.

16 A It's not a binding order of any type. So
17 when you asked me if I was aware of orders, I was
18 answering in that context.

19 Q Okay; reports or orders. I'll ask you now
20 if that changed your answer, if you were aware of a
21 report issued by the FCC where they said that there is
22 an important -- there will be an important thing for
23 them to consider whether or not an ISP is a
24 telecommunications carrier or an information service
25 provider?

1 A I'm aware to the extent Mr. Hendrix in one
2 of his, I believe, late-filed exhibits on behalf of
3 BellSouth referenced this report. I have not read
4 this report thoroughly.

5 Q Well, just to focus in on the issue that I
6 asked you about, the previous question was this
7 distinction between -- whether the ISP is viewed as a
8 telecom carrier or as an information service provider
9 and the impact that either one of those findings would
10 have on whether reciprocal compensation is due on the
11 call from the end user to the ISP.

12 Focusing back in on that, turn to Page 52 of
13 this excerpt. If you will, please, look at the
14 footnote 220, the bottom of the page, and if you will
15 read for us beginning with the second full paragraph,
16 the first two sentences of that paragraph, please.
17 Would you read that?

18 A Certainly. "We make no determination here
19 on the question of whether competitive LECs that serve
20 Internet service providers (or Internet service
21 providers that voluntarily become LECs) are entitled
22 to reciprocal compensation for terminating Internet
23 traffic."

24 "This issue -- excuse me. "That issue,
25 which is now before the Commission, does not turn on

1 the status of the Internet service provider as a
2 telecommunications carrier or information service
3 provider."

4 Q Now, based on that statement, Ms. Strow, it
5 appears that the FCC will examine whether reciprocal
6 compensation is owed for calls made to an ISP without
7 regard to whether the ISP is a telecommunications
8 carrier or information service provider. Wouldn't you
9 agree?

10 A Not necessarily, no. I don't know that I
11 can say what the FCC will or won't do or will -- or
12 may do under a footnote in a report to Congress.

13 What I can say is while this may not look
14 consistent with other FCC orders issued since the
15 Telecom Act that I reference in my testimony, you
16 know, I agree that this says what it says, but I don't
17 know that we can take that to mean anything. The
18 current orders also say what they say.

19 Q Okay. That's fair enough. We'll just leave
20 it as it is.

21 Ms. Strow, help the Commission clearly under
22 the practical effect of your testimony on this ISP
23 issue. I want to describe a few hypotheticals with
24 you, hypothetical calling situations, if you may, and
25 ask you to comment on them. Okay. I'll have a few

1 questions for you after I describe the calling
2 scenario as we go along.

3 For the first call scenario, I want you to
4 assume that we have a BellSouth customer in Miami, and
5 he desires to place a long distance call to his best
6 friend in Charlotte North Carolina. Okay. He also
7 uses an interexchange carrier that subscribes to that
8 antiquated Feature Group A service that we heard about
9 today. BellSouth is the provider of the Feature Group
10 A service.

11 Now, to call his friend he would need to
12 make a 7-digit local call to reach the interexchange
13 carrier; is that right?

14 A That is correct.

15 Q And that 7-digit local call is routed to the
16 BellSouth central office to which that number is
17 assigned; is that accurate?

18 A It's my understanding, yes.

19 Q And do you know whether or not answer
20 supervision is returned at that point?

21 A No, I don't.

22 Q The call is recognized by BellSouth as
23 needing to be routed to the IXC's point of presence.
24 Wouldn't that be true?

25 A Yes.

1 Q Now at the IXC's point of presence, the
2 caller receives a second dial tone. Is that your
3 understanding?

4 A That's my understanding how Feature Group A
5 works, yes.

6 Q And then the caller would dial in an access
7 code and his friend's number in Charlotte, and the
8 call would be hauled to Charlotte and answered by his
9 friend; isn't that right?

10 A That sounds correct, yes.

11 Q Under that hypothetical. Now I have three
12 questions for you. Have I just described a scenario
13 involving an interstate communication, in your view?

14 A You have described an interstate
15 telecommunications service.

16 Q Okay. Have I just described a scenario
17 where the call from the Miami customer terminated at
18 the IXC's point of presence?

19 A I think I would argue that you described a
20 call that originated in Miami and ultimately
21 terminated as a telecommunications service, a long
22 distance service, in -- I think it was Charlotte. Was
23 it --

24 Q Charlotte. So it did not terminate at the
25 IXC's point of presence. Is that your view? It

1 terminated in Charlotte?

2 A For purposes of billing the call, yes, as a
3 long distance call.

4 Q Well, I'm asking you for purposes of whether
5 or not it terminated in any respect, did it terminate
6 at the IXC's point of presence or not?

7 A I don't know.

8 Q Have I just described a situation where
9 reciprocal compensation would be paid?

10 A You've described a situation where, to the
11 best of my understanding, toll charges would apply to
12 the end user, and access charges would apply to the
13 carrier ordering the Feature Group A service.

14 Q So is the answer to my question, no,
15 reciprocal comp would not be paid on that call?

16 A Local reciprocal comp would not be due on
17 that call.

18 Q Okay. Thank you. Now, this is the second
19 scenario.

20 The very next week our Miami customer buys
21 himself a fancy computer. He's also heard of
22 something called Internet telephony. Now, do you know
23 what Internet telephony is?

24 A I have a general understanding.

25 Q And what is that? What is your

1 understanding of what it is?

2 A My understanding of what Internet telephony
3 is?

4 Q Yes.

5 A I guess I could concur with what I heard
6 Mr. Kouroupas describe.

7 Q Is that using the --

8 A The Internet to access information, yes.

9 Q Well, how about to complete a voice call
10 over the Internet?

11 A I understand that that can be done now
12 and -- but it's not very prevalent and will become
13 much more prevalent in the not too distant future.

14 Q So that would involve -- well, let me just
15 complete -- let me go on with the scenario, and it
16 will become more clear, I think.

17 So let's assume at the same time he's become
18 a customer of your Internet service company in Miami.
19 Is it Digex? Let's just assume that that's the
20 company, and that company happens to be a local
21 exchange customer of Intermedia.

22 Are you with me so far?

23 A Yes.

24 Q So now using his computer, our Miami
25 customer dials a 7-digit call to access his ISP. And

1 that's over local facilities of BellSouth, correct?

2 A Yes.

3 Q Or rather of --

4 A Intermedia.

5 Q -- of BellSouth. And it's connected to the

6 Internet service provider over facilities provided by

7 Intermedia.

8 A Correct.

9 Q And then through the wonders of Internet
10 telephony or through the Internet in general, he's
11 able to actually talk to his friend in Charlotte over
12 his computer; is that correct?

13 A Yes, that can happen.

14 Q Okay. Now, have the same -- and they have
15 the same conversation they had the week before.

16 Now, I have the same three questions for you
17 that I had early earlier. Has the situation I just
18 described involve an interstate communication?

19 A No, it has not.

20 Q Have I just described a scenario where the
21 call from the Miami customer terminated at the ISP's
22 switch?

23 A To Intermedia that was a local call, because
24 that's all we saw. Once it terminated there, the
25 Internet service provider does something to it and

1 sends it to Charlotte, and --

2 Q So it --

3 A -- that's the information service that's
4 being provided that's not a telecommunications --

5 Q So your answer is yes, the call terminated
6 at the ISP's point of presence in Miami?

7 A Yes. For purposes of reciprocal comp, yes.

8 Q For purposes of reciprocal comp. Have I
9 described a situation where reciprocal comp then is,
10 in fact, due under your interpretation of this?

11 A Yes.

12 Q Let me describe one more scenario for you.

13 **CHAIRMAN JOHNSON:** Before you go to the next
14 scenario, could you explain -- go back over the last
15 scenario?

16 **MR. RANKIN:** Okay. Under the last scenario,
17 the customer in Miami has purchased a computer and is
18 dialing his friend in Charlotte over the computer and
19 is using the connections provided through the Internet
20 to engage in a voice conversation with his friend in
21 Charlotte, the same type of voice call you'd have if
22 you picked up the phone and used the public switched
23 network, only it's going over the Internet, or the
24 packet switched network.

25 **CHAIRMAN JOHNSON:** And it was a BellSouth --

1 **MR. RANKIN:** Uh-huh; BellSouth customer in
2 Miami in both cases calling his friend in Charlotte.

3 **CHAIRMAN JOHNSON:** And what was the
4 relationship with Intermedia? Who was the --

5 **MR. RANKIN:** Intermedia served the ISP
6 provider in Miami.

7 **CHAIRMAN JOHNSON:** Okay. I'm following you.

8 **Q** **(By Mr. Rankin)** Okay. The third scenario
9 is this: Let's assume our Miami customer was born and
10 raised in North Carolina and is an avid fan of
11 University of North Carolina athletics. Okay.

12 Now, in the past, before the advent of the
13 Internet, he was known to have called his friend in
14 Charlotte on the night of a big game, which he knew
15 was going to be carried on the radio in Charlotte,
16 have his friend put the phone down next to the radio
17 while the game was being broadcast, and listen to that
18 game over the telephone. Okay? I just want you to
19 assume that for this hypothetical.

20 Now, his wife threatened to divorce him over
21 this expensive habit that he had developed, so he
22 stopped doing that. But now he's an Internet
23 subscriber in 1998, and he's discovered that for a
24 fairly modest sum he can listen to radio broadcasts
25 through his computer.

1 Are you aware that that's a capability now;
2 subscribers to the Internet, that they can, in fact,
3 listen to a radio broadcast from a distant state?

4 A No, I was not aware of that, because I've
5 never taken advantage of that.

6 Q Would you accept subject to check, whatever
7 check you'd like to make, that that, in fact, is
8 something that an Internet user can do today through
9 the Internet is to access a radio broadcast, a live
10 radio broadcast, from another state?

11 A I'll accept that, subject to check, yes.

12 Q Okay. Thank you. Now, in this instance he
13 logs on to the Internet. This is the same scenario as
14 number two in that the call is going to the Internet
15 service provider there in Miami, the point of
16 presence, and again the Internet service provider is
17 your customer, Intermedia's customer. Once he gets
18 logged on to the Internet, he finds the web site that
19 he needs to click on to access that radio broadcast
20 and listens to an entire three-hour game that is being
21 broadcast live from North Carolina.

22 Now, in that situation I have the same three
23 questions. Is that an interstate communication?

24 A Which scenario? The first one when they put
25 it by the radio, or the second one over the --

1 Q The second one. I'm sorry. The second one,
2 when --

3 A Because I'd have to say the first one was
4 clearly --

5 Q Absolutely --

6 A -- a telecommunications --

7 Q Under the old scenario when he was racking
8 up his long distance charges on the toll network, that
9 was correct.

10 Now I'm asking you about the Internet
11 service example. Does that describe in your mind an
12 interstate communication?

13 A It describes a telecommunications service
14 when the customer dialed the Internet service provider
15 on our network, Intermedia's network; and the second
16 segment of the call where he monitored the game, if in
17 fact that is available, describes an enhanced service
18 or an information service under the definitions
19 provided in the Act.

20 Q Okay. Have I just described a situation
21 where the call from the Miami customer terminated at
22 the ISP's point of presence there in Miami?

23 A If that's in fact where it terminated, and
24 if it was an Intermedia customer and it was a Miami
25 call, it would have terminated as a local exchange

1 call to that ISP.

2 Q And would reciprocal comp be due for the
3 entire three hours that he listens to that football
4 game over the Internet?

5 A Yes, it would.

6 Q Okay. I believe that's --

7 A Just as if that was a BellSouth Internet
8 service provider and an Intermedia customer called
9 your Internet service provider, we would pay
10 reciprocal comp to BellSouth for that very same
11 scenario.

12 Q Are you serving resident customers in Miami
13 right now, Ms. Strow?

14 A Not to my knowledge.

15 Q Do you know the -- you do not? Okay.

16 MR. RANKIN: Thank you very much.

17 CHAIRMAN JOHNSON: Staff?

18 CROSS EXAMINATION

19 BY MR. PELLEGRINI:

20 Q Good morning, Ms. Strow.

21 A Good morning.

22 COMMISSIONER GARCIA: Charlie, before you
23 get started, I'd like to ask the witness if that were
24 going on anyway today, would anybody outside the
25 Internet service provider be compensated for that

1 call?

2 Let me put the example this way: If that
3 gentleman -- and I forget the scenario of the North
4 Carolina guy. But let's say that someone was simply
5 avoiding an AT&T -- it's a long distance -- has long
6 distance service by AT&T or MCI and uses the Internet
7 to place a long distance call. Does he pay that long
8 distance carrier for that call?

9 **WITNESS STROW:** In the Internet situation I
10 do not believe so.

11 **COMMISSIONER GARCIA:** Okay. That's exactly
12 the situation I was -- so in that scenario, AT&T would
13 not recover for that long distance call?

14 **WITNESS STROW:** I didn't know AT&T was
15 involved -- AT&T --

16 **COMMISSIONER GARCIA:** Well, no. I'm just
17 saying as an example. Or MCI; let's say MCI was his
18 long distance service, and he used to listen to the
19 ball games, or the basketball games, by putting the
20 phone down next to the radio.

21 Now he does the exact same thing, but he
22 uses the Internet, and his friend just puts the phone
23 next to the -- I mean, the computer next to the radio
24 and plays it. He doesn't pay now MCI, for example,
25 for that long distance call?

1 **WITNESS STROW:** That would be correct. He's
2 paying for a service provided by the Internet service
3 provider instead, to the best of my knowledge.

4 **COMMISSIONER GARCIA:** Okay.

5 **WITNESS STROW:** I may not have understood
6 your example clearly. I think you're making a
7 distinction between the first scenario where the long
8 distance carrier received the compensation for the
9 long distance call from the end user versus the end
10 user paying the Internet service provider for an
11 enhanced service on the second scenario where he was
12 able to monitor the game via the Internet.

13 **COMMISSIONER GARCIA:** Correct.

14 **WITNESS STROW:** And in that case there would
15 be, to my knowledge, no compensation due to an
16 interexchange carrier, it would be only to the ISP.

17 **COMMISSIONER GARCIA:** Thank you.

18 **WITNESS STROW:** For whatever the monthly
19 charge may or may not be.

20 **COMMISSIONER GARCIA:** Thank you, Charlie.

21 **Q** **(By Mr. Pellegrini)** Ms. Strow, what was
22 your role in the negotiation of the
23 Intermedia/BellSouth interconnection agreement?

24 **A** I was involved in the initial contract
25 negotiations that resulted -- post the Act, the

1 initial contract negotiations that resulted in the
2 interconnection agreement that was executed in June of
3 1996 and subsequently approved by this Commission.
4 And then I was also peripherally involved in the
5 second negotiation, if you will, of where we changed
6 the reciprocal compensation provisions in February of
7 1997.

8 In neither case was I the lead negotiator,
9 but I was involved in the discussions that took place
10 between the companies.

11 Q When you say you were peripherally involved
12 in the negotiations concerning reciprocal
13 compensation, can you be more clear about the level of
14 your activity?

15 A Are you referencing the February 1997?

16 Q Yes.

17 A Basically the way that whole -- my
18 recollection of how that transpired was we made a
19 formal request to Mr. Hendrix that Intermedia -- via
20 an employee of Intermedia who is not longer with the
21 company, we made a request to change our reciprocal
22 compensation provisions to mirror I believe it may
23 have been MFS, as it was a carrier that had already
24 been previously approved by the Commission.

25 That contract language was submitted to us

1 and the amendment signed. There was not what -- a
2 classical negotiation in that we basically under our
3 most favored nation provision asked for that language
4 and got it. It was not contentious. It was not a
5 long drawn out process.

6 I was in the room during at least one
7 telephone conversation between Mr. Hendrix and the
8 Intermedia lead negotiator at that time and was aware
9 when that contract was physically signed.

10 Q Was there a, to use your term, a classic
11 negotiation in the first instance regarding reciprocal
12 compensation?

13 A We went through, you know, the typical
14 negotiation process where we were negotiating many
15 items. So, therefore, it was a little longer periods
16 of times, multiple meetings.

17 For the second scenario it was fairly
18 streamlined in that we were asking for something very
19 specific that had already been, you know, agreed to
20 with other carriers.

21 We had provisions in the existing contract
22 to do that, so it was not contentious in any sense, or
23 there was no dispute or disagreement. It was kind of
24 a straightforward thing.

25 Q All right. On Page 6 of Mr. Viren's direct

1 testimony, at Line 15, there you testify that -- or
2 Mr. Viren testified that nothing in the agreement
3 creates a distinction pertaining to calls placed to
4 telephone exchange end users that happen to be ISPs.
5 Do you see that?

6 A Yes, I do.

7 Q How is local traffic defined in the
8 Intermedia agreement?

9 A I believe that is on -- I referenced it in
10 my summary, and it's -- I think, on Page 5 we cite
11 what's in the disagreement.

12 Q Could you read that definition, please?

13 A I think it starts on Page 4. I'm sorry.
14 Local traffic is defined -- begins on the bottom of
15 Page 4 at line 24, and then the actual definition is
16 at the top of Page 5 on Line 1.

17 "Any telephone call that originates in one
18 exchange and terminates in either the same exchange or
19 a corresponding extended area, or EAS, exchange, the
20 terms 'exchange' and 'EAS exchanges' are defined and
21 specified in Section A3 of BellSouth's general
22 subscriber tariff." And then I think --

23 Q That's fine.

24 A That would be what's in the testimony.

25 Q How would you apply that definition to

1 exclude what you've described as the second segment of
2 an Internet call?

3 A To exclude the second segment?

4 Q The second segment, the information services
5 segment, how would you apply this definition to
6 exclude that segment of the call from this definition
7 of local traffic?

8 A The second segment as an information or
9 enhanced service?

10 Q Yes.

11 A This is referring to telecommunications
12 services or local exchange specifically, and this -- I
13 think that suffices. And that's how I differentiate
14 between the two.

15 Q All right.

16 A We see the -- get the usage on the -- we see
17 the local part of that call once it goes to the ISP.
18 After that it's an enhanced service and we don't have
19 any information on what happens after that point.

20 Q Well, the point that I was driving at is
21 that I believe it's your testimony that the first
22 segment of that call is local traffic --

23 A That's correct.

24 Q -- as defined in Section 1.D --

25 A That is correct.

1 Q -- and that the second segment of that call
2 is not local traffic. And I was simply asking you to
3 apply this definition to support that conclusion or
4 that reasoning.

5 A The second segment of the call would not fit
6 this definition because I would not know where that
7 call -- what actually happened to that transaction, or
8 segment, if you will. I have no knowledge of that.
9 And that's off on something else and not on the -- our
10 local network.

11 Q On Page 7 again of Mr. Viren's direct
12 testimony --

13 A Yes.

14 Q I'm sorry. You've addressed those
15 questions.

16 Let me ask you this: In your knowledge, is
17 there some way to distinguish ISP traffic from other
18 local traffic?

19 A Not without doing something affirmatively to
20 distinguish a telephone number that is assigned to an
21 ISP customer from that that's assigned to any other
22 business type customer we have.

23 I mean, we would have had to proactively do
24 something to be able to tell that that call was
25 going -- to segregate that traffic from the other;

1 otherwise, it appears as just minutes of use for
2 purposes of reciprocal compensation.

3 Q Is there an existing system with the present
4 capacity to make this distinction?

5 A No. And I think that's the basis of our
6 point. I mean, the crux of BellSouth's argument is
7 that they had always intended that this type of
8 traffic was interstate in jurisdiction and, therefore,
9 excluded from the reciprocal compensation provisions.

10 If that were the case, something would have
11 had to have been done at the time that we negotiated
12 even the first agreement, even though it had a cap in
13 it, and specifically would have had to have been done,
14 or they had a second opportunity to do that in
15 February of '97 when we renegotiated and put the usage
16 based provisions.

17 Nothing was ever done, and both sides would
18 had to have done things and put measurement mechanisms
19 in place to distinguish a call that would go to an
20 Internet service provider versus a call that would go
21 to Banc One. We would never know the difference
22 otherwise.

23 So I don't know how they can say that, that
24 there was a thought when there was nothing proactively
25 put in place or discussed to do that and obviously

1 nothing in the contract that even suggests such a
2 position.

3 Q Is it your testimony that the subject of ISP
4 traffic treatment never arose in these negotiations?

5 A To the best of my knowledge, it never came
6 up.

7 Q In any aspect --

8 A No, it did not, because had it, we would
9 have -- it would have become a contentious issue. We
10 would have argued that it was local traffic.

11 MR. PELLEGRINI: Thank you, Ms. Strow.
12 That's all.

13 COMMISSIONER DEASON: Let me ask you the
14 same question. Do you pay a commission to your ISP
15 customers for the amount of traffic they generate on
16 the local network?

17 WITNESS STROW: No, we do not. Or to the
18 best of my knowledge, we do not.

19 CHAIRMAN JOHNSON: Redirect?

20 MR. WIGGINS: Yes, ma'am. Just a couple.

21 REDIRECT EXAMINATION

22 BY MR. WIGGINS:

23 Q Ms. Strow, do you recall a series of
24 questions from Mr. Rankin essentially comparing
25 Feature Group A access to a long distance POP with

1 your situation when a Bell customer calls Intermedia
2 to be terminated on an ISP's location?

3 A Yes, I do.

4 Q Let me ask you this: Are ISP locations
5 always -- can we call those ISP POPs?

6 A I'm a policy person, not a engineer.

7 Q Okay. Let's call them ISP locations. Are
8 ISP locations always located in the local area,
9 calling area?

10 A Yes. In Intermedia's circumstances, yes.

11 Q Is it possible for an Internet provider, for
12 example, to actually have the ISP location in
13 Charlotte as opposed to Miami?

14 A Not and be an Intermedia customer --

15 Q I'm going to --

16 A -- no --

17 Q Right. I'm going to get to that. But
18 technically --

19 A Oh, sure; I guess they could.

20 Q Right. And in that situation if -- not
21 speaking about Intermedia, but generically -- if the
22 Bell customer went on line, called the CLEC, and the
23 CLEC took that call and terminated it in Charlotte,
24 would that be a local call?

25 A The first part of the call?

1 Q No. No, the --

2 A End user is calling the ISP --

3 Q And the ISP --

4 A Miami to Charlotte.

5 Q To Charlotte and --

6 A To make the original --

7 Q Yes, ma'am.

8 A That would not be a local call.

9 Q That would be a long distance call?

10 A Yes. And the dialing pattern would show
11 that, and that's how it would be recorded.

12 Q Does Intermedia do any of that?

13 A No, we do not.

14 Q All your ISPs are in a local calling area?

15 A That is a requirement of taking service with
16 us.

17 MR. WIGGINS: Okay. I have no further
18 questions.

19 CHAIRMAN JOHNSON: Exhibits?

20 MR. WIGGINS: Oh. Yes, ma'am. We do move
21 Exhibit -- I guess it's 4.

22 CHAIRMAN JOHNSON: Show Exhibit 4 admitted
23 without objection.

24 (Exhibit 4 received in evidence.)

25 CHAIRMAN JOHNSON: Thank you, ma'am.

1 MR. WIGGINS: May Ms. Strow be excused?

2 CHAIRMAN JOHNSON: Uh-huh.

3 MR. WIGGINS: Thank you.

4 (Witness Strow excused.)

5 - - - - -

6 CHAIRMAN JOHNSON: Before we decide on a
7 lunch break, let me try to gauge how much -- how long
8 it will take in the questioning of Martinez and
9 Hendrix. For Witness Martinez, will there be any
10 questions on this side?

11 BellSouth, any estimate of time?

12 MR. RANKIN: I don't have any cross planned
13 for Mr. Martinez.

14 CHAIRMAN JOHNSON: None?

15 MR. RANKIN: None.

16 CHAIRMAN JOHNSON: Okay. Staff?

17 MR. PELLEGRINI: Less than 10 minutes with
18 Mr. Martinez.

19 CHAIRMAN JOHNSON: Okay. What about for
20 Mr. Hendrix? This side of the room? Mr. Self?

21 MR. SELF: Little to none.

22 CHAIRMAN JOHNSON: Okay.

23 MR. BOND: The same.

24 CHAIRMAN JOHNSON: Okay.

25 MR. WIGGINS: The same.

