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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF JERRY D. HENDRIX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991946-TP

JUNE 9, 2000

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH
BELLSOUTH TELECOMMUNICATIONS, INC.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc., ("BellSouth") as Senior Director – Customer Markets, Wholesale Pricing Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Morehouse College in Atlanta, Georgia, in 1975 with a Bachelor of Arts Degree. I began employment with Southern Bell in 1979 and have held various positions in the Network Distribution Department before joining the BellSouth Headquarters Regulatory organization in 1985. On January 1, 1996, my responsibilities moved to Interconnection Services Pricing in the Interconnection Customer Business Unit. In my current position as Senior Director, I oversee the negotiation of interconnection agreements between BellSouth and Alternate Local Exchange Carriers ("ALECs") in BellSouth's nine-state region.

1

2 Q. HAVE YOU TESTIFIED PREVIOUSLY?

3

4 A. Yes. I have testified in proceedings before the Alabama, Florida, Georgia,
5 Kentucky, Louisiana, Mississippi, South Carolina public service commissions,
6 the North Carolina Utilities Commission, and the Tennessee Regulatory
7 Authority.

8

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

10

11 A. The purpose of my testimony is to show that BellSouth does not owe
12 ITC^DeltaCom Communications, Inc. ("DeltaCom") reciprocal compensation
13 for traffic bound for Internet service providers ("ISPs") for two primary
14 reasons: first, ISP-bound traffic is, and always has been, interstate traffic; and,
15 second, the parties did not agree to pay reciprocal compensation for ISP-bound
16 traffic under the terms of the Agreement between the parties.

17

18 Q. WHAT IS RECIPROCAL COMPENSATION?

19

20 A. Section 251 (b)(5) of the Telecommunications Act of 1996 obligated all
21 telecommunications carriers to "establish reciprocal compensation
22 arrangements for the transport and termination of telecommunications." In
23 basic terms, reciprocal compensation is a two-way, or reciprocal, arrangement
24 requiring a local exchange carrier ("LEC") who originates a local call to
25 compensate the LEC who terminates the local call. By law, this obligation

1 applies only if the call is local, and if the call is originated and terminated by
2 different LECs. As the FCC has confirmed, this obligation does not extend to
3 ISP traffic. Footnote 87 of the February 26, 1999 Declaratory Ruling (see
4 Declaratory Ruling, In the Matter of Implementation of the Local Competition
5 Provisions in the Telecommunications Act of 1996: Inter-Carrier
6 Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68
7 (“Declaratory Ruling”), released February 26, 1999) states:

8 As noted, section 251(b)(5) of the Act and our rules
9 promulgated pursuant to that provision concern inter-carrier
10 compensation for interconnected *local* telecommunications
11 traffic. We conclude in this Declaratory Ruling, however, that
12 ISP-bound traffic is non-local interstate traffic. Thus, the
13 reciprocal compensation requirements of section 251(b)(5) of
14 the Act and Section 51, Subpart H (Reciprocal Compensation
15 for Transport and Termination of Local Telecommunications
16 Traffic) of the Commission’s rules do not govern inter-carrier
17 compensation for this traffic.

18
19 Q. DID DELTACOM AND BELLSOUTH INTEND TO ASSUME AN
20 OBLIGATION TO PAY RECIPROCAL COMPENSATION BEYOND
21 THAT REQUIRED BY THE TELECOMMUNICATIONS ACT OF 1996?
22

23 A. No. BellSouth and DeltaCom executed the agreement in order to fulfill their
24 duties under the Telecommunications Act of 1996 – nothing more, nothing
25 less. Nothing in the Agreement can reasonably be read to suggest that

1 BellSouth and DeltaCom agreed to go beyond their obligations under the
2 Telecommunications Act, including the scope of their duty to pay reciprocal
3 compensation.

4

5 Q. WHY IS ISP TRAFFIC NOT SUBJECT TO THE RECIPROCAL
6 COMPENSATION REQUIREMENTS UNDER THE
7 TELECOMMUNICATIONS ACT OF 1996?

8

9 A. Internet service is a subset of the services that the Federal Communications
10 Commission ("FCC") has classified as enhanced services. The FCC, for a
11 variety of public policy reasons, has exempted enhanced service providers
12 ("ESPs"), of which ISPs are a subset, from paying interstate access charges
13 since 1983. Hence, ISPs are permitted to use the networks of LECs to collect
14 and transport their interstate traffic. Moreover, ILECs, such as BellSouth, are
15 not permitted to charge ISPs access charges for the access services ISPs
16 receive. Instead, ISPs pay ILECs for the access services they use at rates
17 equal to local exchange rates. However, as the FCC recently confirmed in its
18 *Order On Remand In the Matter of Deployment of Wireline Services Offering*
19 *Advanced Telecommunications Capability* ("Order on Remand") released
20 December 23, 1999, the access charge exemption does not alter the fact that
21 the service provided by Local Exchange Carriers ("LECs") to ESPs, which
22 includes ISPs, is "exchange access." FCC 99-413, ¶ 43 (Dec. 23, 1999).
23 Exchange access traffic is, by definition, interstate in nature, not local.

24

25 Q. PLEASE DESCRIBE THE NATURE OF ISP TRAFFIC.

1

2 A. To put the Agreement in question in this docket in context, I will describe how
3 a traffic from an end user with dial-up Internet service is routed to the Internet.
4 End users gain access to the Internet through an ISP. The ISP location,
5 generally referred to as an ISP Point of Presence (“POP”), represents the edge
6 of the Internet and usually consists of a bank of modems. Due to the FCC’s
7 access charge exemption for ISPs, ISPs can use the public switched network to
8 collect their subscribers’ calls to the Internet. To access the Internet through
9 an ISP, subscribers dial a seven- or ten-digit telephone number via their
10 computer modem. To receive exchange access service, the ISP typically
11 purchases business service lines from various LEC end offices and physically
12 connects those lines to an ISP premise, which contains modem banks that
13 connect to the Internet. The ISP converts the signal of the incoming
14 communication to a digital signal and routes the traffic, through its modems,
15 over its own network to a backbone network provider, where it is ultimately
16 routed to an Internet-connected host computer. Internet backbone networks
17 can be regional or national in nature. These networks not only interconnect
18 ISP POPs but also interconnect ISPs with each other and with online
19 information content.

20

21 The essence of Internet service is the ease with which a user can access and
22 transport information from any server connected to the Internet. The Internet
23 enables information and Internet resources to be widely distributed and
24 eliminates the need for the user and the information to be physically located in
25 the same area. ISPs typically provide, in addition to Internet access, Internet

1 services such as e-mail, usenet news, and Web pages to their customers.
2 When a user retrieves e-mail or accesses usenet messages, for example, it is
3 highly unlikely that the user is communicating with a server that is located in
4 the same local calling area as the user. To the contrary, the concentration of
5 information is more likely to result in an interstate, or even international,
6 communication.

7
8 In short, an ISP takes a communication and, as part of the information service
9 it offers to the public, transmits that communication to and from the
10 communications network of other telecommunications carriers (e.g., Internet
11 backbone providers such as DeltaCom or Sprint) whereupon it is ultimately
12 delivered to Internet host computers, almost all of which are located outside of
13 the local serving area of the ISP.

14
15 As I stated earlier, the ISP generally purchases exchange access service by
16 leasing business service lines from various end offices. In the case of ILECs,
17 this methodology was prescribed (and in fact compelled) by the FCC in order
18 to ensure compliance with the access charge exemption extended to ESP/ISPs.
19 The fact that an ISP obtains local business service lines from an ALEC switch
20 in no way alters the continuous transmission of signals between an incumbent
21 local exchange carrier's ("ILEC") end user to a host computer. In other words,
22 if an ALEC puts itself in between a BellSouth end user and the Internet service
23 provider, it is acting like an intermediate transport carrier or conduit, using
24 exchange access service, not a local exchange provider entitled to reciprocal
25 compensation.

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Q. WHAT WERE THE ORIGINAL RECIPROCAL COMPENSATION REQUIREMENTS IN THE DELTACOM AGREEMENT AS EXECUTED ON MARCH 12, 1997 TO BE EFFECTIVE ON JULY 1, 1997?

A. The DeltaCom Agreement defines "local traffic" in Attachment B, Section 49 as follows:

"Local Traffic" means any telephone call that originates in one exchange or LATA and terminates in either the same exchange or LATA, or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Services Tariff.

Section VI.B of the Agreement states:

B. Compensation

With the exception of the local traffic specifically identified in subsection (C) hereafter, each party agrees to terminate local traffic originated and routed to it by the other party. The Parties agree that BellSouth will track the usage for both companies for the period of the Agreement. BellSouth will provide copies of such usage reports to DeltaCom on a monthly basis. For purposes of this Agreement, the Parties agree that there will be no cash compensation exchanged by the parties during the term of this Agreement unless the difference in minutes of use for terminating local traffic exceeds 2 million minutes per state on a monthly basis. In such an event, the Parties will

1 thereafter negotiate the specifics of a traffic exchange agreement which
2 will apply on a going-forward basis.

3
4 This language puts into effect a “bill and keep” arrangement for local traffic at
5 least on an interim basis. This arrangement was put into several of BellSouth’s
6 interconnection agreements at the request of ALECs, who feared that the
7 traffic would be imbalanced in BellSouth’s favor, if for no other reason than
8 BellSouth had more customers. That is, ALECs believe that their customers
9 were more likely to call BellSouth’s customers, thereby creating a traffic
10 imbalance in favor of BellSouth. Such an imbalance would result in ALECs
11 paying reciprocal compensation to BellSouth. To avoid this possibility,
12 ALECs, like DeltaCom, wanted bill and keep.

13

14 Q. WOULD IT HAVE MADE SENSE FOR DELTACOM TO HAVE AGREED
15 TO BILL AND KEEP IF ISP TRAFFIC WERE CONSIDERED “LOCAL”?

16

17 A. No. If DeltaCom had considered ISP traffic as local, it would not have made
18 sense for DeltaCom to ask for bill and keep due to the fact that DeltaCom
19 almost certainly would be on the receiving end of the ISP traffic rather than the
20 originating end. Because ISP traffic is always one-way, as opposed to two-
21 way, reciprocal compensation would have meant one-way compensation to
22 those ALECs (in this case, DeltaCom) specifically targeting ISPs. If
23 DeltaCom had believed ISP traffic to be “local” at the time it entered into this
24 agreement, and had DeltaCom intended to serve ISPs , there would have been

25

1 no chance of a traffic imbalance in BellSouth's favor, and no need for a bill
2 and keep arrangement.

3

4 Q. DID THE PARTIES SUBSEQUENTLY AMEND THEIR AGREEMENT TO
5 PROVIDE FOR THE PAYMENT OF RECIPROCAL COMPENSATION
6 RATHER THAN BILL AND KEEP?

7

8 A. Yes. Effective August 22, 1997, BellSouth and DeltaCom amended Section
9 VI.B of the Agreement ("the August 1997 Amendment") to read as follows:

10

11 With the exception of the local traffic specifically identified in
12 subsection (C) hereafter, each party agrees to terminate local traffic
13 originated and routed to it by the other party. Each Party will pay the
14 other for terminating its local traffic on the other's network the local
15 interconnection rate of \$.009 per minute of use in all states. Each Party
16 will report to the other a Percent Local Usage ("PLU") and the
17 application of the PLU will determine the amount of local minutes to
18 be billed to the other party. Until such time as actual usage data is
19 available, the parties agree to utilize a mutually acceptable surrogate for
20 the PLU factor. For purposes of developing the PLU, each party shall
21 consider every local call and every long distance call. Effective on the
22 first of January, April, July and October of each year, the parties shall
23 update their PLU.

24

25

1 Q. DID BELLSOUTH CONSIDER ISP TRAFFIC TO BE LOCAL TRAFFIC
2 SUBJECT TO THE PAYMENT OF RECIPROCAL COMPENSATION AT
3 THE TIME THE AUGUST 1997 AMENDMENT TOOK EFFECT?

4
5 A. No. It has always been BellSouth's view that ISP traffic is interstate in nature
6 and should be subject to the payment of access charges. BellSouth has
7 expressed this view both publicly and internally for years. As far back as
8 1987, BellSouth urged that the FCC eliminate the access charge exemption for
9 ESPs. In fact, BellSouth filed comments with the FCC in April 1997 making
10 clear BellSouth's view that reciprocal compensation only applies to the
11 transport and termination of local traffic, which does not extend to ISP traffic.
12 A copy of BellSouth's comments filed April 23, 1997 in CC Docket 96-263 is
13 attached as Exhibit JDH-1.

14
15 Q. DID BELLSOUTH ADVISE DELTACOM OF ITS VIEW THAT ISP
16 TRAFFIC IS NOT SUBJECT TO RECIPROCAL COMPENSATION PRIOR
17 TO THE AUGUST 1997 AMENDMENT TAKING EFFECT?

18
19 A. Yes. On August 8, 1997, BellSouth posted a notice on its Carrier Notification
20 website advising all ALECs, including DeltaCom, of BellSouth's view that ISP
21 traffic was interstate in nature and not subject to the payment of reciprocal
22 compensation. A copy of this notice, which is still on BellSouth website, is
23 attached as Exhibit JDH-2. BellSouth also sent a letter dated August 12, 1997
24 to all ALECs confirming BellSouth's position on the ISP issue. This letter was
25 sent to a number of DeltaCom employees, including Tom Mullis, the

1 DeltaCom representative who executed the Fourth Amendment on August 13,
2 1997. A copy of this August 12, 1997 letter is attached as Exhibit JDH-3. As
3 a result, DeltaCom was on notice before DeltaCom and BellSouth executed the
4 Fourth Amendment that BellSouth did not consider ISP traffic to be "local"
5 traffic subject to the payment of reciprocal compensation.

6
7 Clearly, BellSouth would never have executed an amendment intending to
8 include ISP-bound traffic under the reciprocal compensation provisions shortly
9 after stating publicly precisely the opposite position to DeltaCom and other
10 ALECs.

11
12 Q. IS RECIPROCAL COMEPNSATION DUE FOR ISP TRAFFIC UNDER
13 THE AUGUST 1997 AMENDMENT?

14
15 A. No. First, nothing in the August 1997 Amendment alters the definition of
16 "local traffic" to which the parties had originally agreed. Second, a minimum,
17 the Amendment requires the termination of traffic on either BellSouth's or
18 DeltaCom's network for reciprocal compensation to apply. As I explain below
19 in more detail, when an end user accesses the Internet via an ISP server, that
20 call does not terminate at the ISP server, regardless of whether the ISP is
21 served by BellSouth or an ALEC. Further, the definition of local traffic
22 requires the origination and termination of telephone calls to be in the same
23 exchange and EAS exchanges as defined and specified in Section A.3 of
24 BellSouth's General Subscriber Service Tariff ("GSST"). Local traffic as
25 defined in Section A.3 in no way includes ISP traffic. The FCC has concluded

1 that enhanced service providers (“ESPs”), of which ISPs are a subset, use the
2 local network to provide interstate services.

3
4 The reciprocal compensation obligations in the Amendment outlined above
5 address the statutory mandate of the Telecommunications Act to provide
6 reciprocal compensation for the transport and termination of local traffic.
7 Traffic bound for the Internet through ISPs is outside the scope of this
8 obligation, and the scope of this obligation was never intended to be artificially
9 stretched to include anything other than what federal law required.

10
11 Q. DOES ISP TRAFFIC TERMINATE AT THE ISP?

12
13 A. Absolutely not. The call from an end user to the ISP only transits through the
14 ISP’s local point of presence; it does not terminate there. There is no
15 interruption of the continuous transmission of signals between the end user and
16 the host computers. This fact was confirmed by the FCC in the February 26,
17 1999 Declaratory Ruling (see *Declaratory Ruling, In the Matter of*
18 Implementation of the Local Competition Provisions in the
19 Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound
20 Traffic, CC Docket Nos. 96-98, 99-68 (“Declaratory Ruling”), released
21 February 26, 1999) Paragraph 12 states:

22 We conclude, as explained further below, that the communications at
23 issue here do not terminate at the ISP’s local server, as ALECs and
24 ISPs contend, but continue to the ultimate destination or destinations,
25 specifically at a Internet website that is often located in another state.

1
2 While the United States Court of Appeals for the District of Columbia Circuit
3 vacated this order on March 24, 2000, the D.C. Circuit did not establish any
4 principle of law, but rather -- as the Court itself said over and over -- simply
5 determined that the FCC had failed to provide a sufficient explanation for its
6 conclusions. Furthermore, the Chief of the FCC's Common Carrier Bureau
7 has stated publicly that he believes that the FCC can and will provide the
8 requested clarification and reach the same conclusion that it has previously --
9 that is, that ISP-bound calls do not terminate locally. *See* TR Daily, Strickling
10 Believes FCC Can Justify Recip. Comp. Ruling In Face Of Remand, March
11 24, 2000 (stating that the Chief of the FCC's Common Carrier Bureau "still
12 believes calls to ISPs are interstate in nature and that some fine tuning and
13 further explanation should satisfy the court that the agency's view is correct").

14
15 Furthermore, the FCC's recent Order on Remand released December 23, 1999,
16 emphasizes again that ISP-bound traffic does not terminate at the ISP.

17 Paragraph 16 states:

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

1 As explained more fully below, such traffic is properly classified as
2 “exchange access.”

3
4 This Order clearly states that the traffic does NOT terminate at the ISP, and
5 this is not qualified by any type distinction which would limit the meaning of
6 that conclusion. In fact, the Order clearly goes on to say that ISP-bound
7 traffic is not telephone exchange traffic, but exchange access traffic.

8
9 Q. WHAT IS THE BASIS FOR YOUR TESTIMONY THAT THE FCC
10 CONSIDERS A CALL TO “TERMINATE” AT THE END POINT OF THE
11 COMMUNICATION?

12
13 A. The FCC has long held that jurisdiction of traffic is determined by the end-to-
14 end nature of a call. It is, therefore, irrelevant that the originating end user and
15 the ISP’s POP are in the same local calling area, because the ISP’s POP is not
16 the terminating point of this ISP traffic. The FCC stated in Paragraph 12 in an
17 order dated February 14, 1992, in FCC Order Number 92-18, that:

18 Our jurisdiction does not end at the local switch, but continues to the
19 ultimate termination of the call. The key to jurisdiction is the nature of
20 the communication itself, rather than the physical location of the
21 technology.

22
23 As the FCC has made clear, the ending point of a call to the Internet is not the
24 ISP’s POP, but rather the computer database or information source to which
25

1 the ISP provides access. Calls that merely transit an ALEC's network without
2 terminating on it, cannot be eligible for reciprocal compensation.

3

4 Q. IS ISP-BOUND TRAFFIC INTERSTATE OR LOCAL TRAFFIC?

5

6 A. ISP-bound traffic is interstate. The FCC, in the Declaratory Ruling, clearly
7 stated it had always considered ISP-bound traffic to be interstate. Footnote 87,
8 attached to paragraph 26, of the Declaratory Ruling defines ISP-bound traffic
9 as non-local, interstate traffic. Paragraph 16 of the Declaratory Ruling points
10 out that the FCC considered this traffic to be interstate as early as 1983 (See
11 *Memorandum Opinion and Order, In the Matter of MTS and WATS Market*
12 *Structure*, CC Docket No. 78-72 ("MTS/WATS Market Structure Order"),
13 released August 22, 1983) and, therefore, saw the need to affirmatively exempt
14 it from access charges. Paragraph 16 of the Declaratory Ruling reads, in part:

15 The Commission traditionally has characterized the link from an end
16 user to an ESP as an interstate access service. In the MTS/WATS
17 Market Structure Order, for instance, the Commission concluded the
18 ESPs are "among a variety of users of access service" in that they
19 "obtain local exchange services or facilities which are used, in part or
20 in whole, for the purpose of completing interstate calls which transit its
21 location and, commonly, another location in the exchange area." The
22 fact that ESPs are exempt from access charges and purchase their
23 PSTN links through local tariffs does not transform the nature of traffic
24 routed to ESPs. That the Commission exempted ESPs from access

25

1 charges indicates its understanding that ESPs in fact use interstate
2 access service; otherwise, the exemption would not be necessary.

3
4 Throughout the evolution of the Internet, the FCC repeatedly has asserted that
5 ISP-bound traffic is interstate. For instance, the *Notice of Proposed*
6 *Rulemaking, In the Matter of Amendments to Part 69 of the Commission's*
7 *Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215 ("1987
8 NPRM"), released July 17, 1987, in which the FCC proposed to lift the ESP
9 access charge exemption, is clearly in keeping with the FCC's position on the
10 interstate nature of ESP/ISP traffic. Paragraph 7 reads:

11 We are concerned that the charges currently paid by enhanced service
12 providers do not contribute sufficiently to the costs of the exchange
13 access facilities they use in offering their services to the public. As we
14 have frequently emphasized in our various access charge orders, our
15 ultimate objective is to establish a set of rules that provide for recovery
16 of the costs of exchange access used in interstate service in a fair,
17 reasonable, and efficient manner from all users of access service,
18 regardless of their designation as carriers, enhanced service providers,
19 or private customers. Enhanced service providers, like facilities-based
20 interexchange carriers and resellers, use the local network to provide
21 interstate services. To the extent that they are exempt from access
22 charges, the other users of exchange access pay a disproportionate
23 share of the costs of the local exchange that access charges are
24 designed to cover. (emphases added)

25

1 The resulting order in Docket No. 87-215 (the “ESP Exemption Order”),
2 released in 1988, is further evidence of the FCC’s continued pattern of
3 considering ISP-bound traffic to be access traffic. It referred to “certain
4 classes of exchange access users, including enhanced service
5 providers”(emphasis added).

6
7 These orders all predate execution of the Agreement and the August 1997
8 Amendment. In December 1999, the FCC only confirmed its longstanding
9 view that ISP traffic is considered exchange access traffic. Again, Paragraph
10 16 of the Order on Remand states, in part:

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

20

21 Q. DID DELTACOM AND BELLSOUTH MUTUALLY AGREE TO PAY
22 RECIPROCAL COMPENSATION FOR EXCHANGE ACCESS TRAFFIC
23 LIKE ISP TRAFFIC?

24

25

- 1 A. No. The Amendment only obligates the parties to pay reciprocal compensation
2 for "terminating local traffic." Exchange access traffic such as ISP traffic
3 does not fit within the definition of local traffic. Indeed, the Agreement draws
4 a distinction between "exchange access" and "local traffic." Nothing in the
5 Agreement obligates BellSouth to pay reciprocal compensation for exchange
6 access traffic.
7
- 8 Q. IF DELTACOM AND BELLSOUTH DID NOT MUTUALLY AGREE TO
9 PAY RECIPROCAL COMPENSATION FOR ISP TRAFFIC, CAN EITHER
10 PARTY BE REQUIRED TO PAY RECIPROCAL COMPENSATION FOR
11 THAT TRAFFIC?
12
- 13 A. No. If both of the parties did not mutually agree to pay reciprocal
14 compensation for ISP traffic, then BellSouth is under no contractual obligation
15 to pay reciprocal compensation for such traffic. I was present and a part of the
16 negotiations leading up to the execution of the DeltaCom Agreement, and I can
17 unequivocally state that it was not BellSouth's intent, nor was it discussed
18 during negotiations, that ISP traffic would be subject to reciprocal
19 compensation.
20
21
- 22 Q. IF ISP-BOUND TRAFFIC IS NOT SUBJECT TO RECIPROCAL
23 COMPENSATION, WILL BELLSOUTH AND DELTACOM BE
24 TRANSPORTING ISP-BOUND TRAFFIC WITHOUT COMPENSATION?
25

1 A. No. Both BellSouth and DeltaCom are compensated for handling ISP traffic
2 from the revenues received by each from their respective ISP customers for
3 services provided to the ISP. It may be that certain ALECs have contracted to
4 provide services to ISPs at greatly reduced rates in an effort to lure them away
5 from other carriers, anticipating that the enormous revenues generated through
6 reciprocal compensation would more than offset any loss on provisioning the
7 service. Some ALECs are attempting to turn reciprocal compensation, a
8 mechanism for recovering the cost of transporting and terminating local traffic,
9 into a separate, wildly profitable, line of business. When a BellSouth end user
10 dials into the Internet through an ISP served by an ALEC, the ALEC is
11 compensated by the ISP. The ISP is compensated by the end user. BellSouth
12 is the only party involved in this traffic that is not receiving revenue for these
13 calls, and yet BellSouth is being asked to pay the ALEC for the use of a
14 portion of the ALEC's network for which it is already receiving compensation.

15
16 Q. WHAT IS THE ESTIMATED FINANCIAL IMPACT TO INCUMBENT
17 LOCAL EXCHANGE CARRIERS IF ISP TRAFFIC WERE SUBJECT TO
18 THE PAYMENT OF RECIPROCAL COMPENSATION?

19
20 A. If Internet traffic were subject to the payment of reciprocal compensation for
21 such traffic, BellSouth conservatively estimates that the annual reciprocal
22 compensation payments by incumbent local exchange carriers in the United
23 States for ISP traffic could easily reach \$2.6 billion by the year 2002. This
24 estimate is based on 64 million Internet users in the United States, an average
25 Internet usage of 6.5 hours per week, and a low reciprocal compensation rate

1 of \$.002/minute. This is a totally unreasonable and unacceptable financial
2 liability on the local exchange companies choosing to serve residential and
3 small business users which access ISPs that are customers of other LECs.
4 ALECs targeting large ISPs for this one-way traffic will benefit at the expense
5 of those carriers pursuing true residential and business local competition
6 throughout the country.

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Q. WHAT DO YOU BELIEVE THE FLORIDA PUBLIC SERVICE
COMMISSION SHOULD DO?

A. This Commission should deny DeltaCom's request for relief. ISP-bound
traffic is not now, nor has it ever been, local traffic, and the parties never
mutually agreed to pay reciprocal compensation for such traffic.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

BellSouth

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April 23, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 23 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Usage of the Public Switched)
Network by Information Service and Internet)
Access Providers)

CC Docket No. 96-263

REPLY COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit their Reply Comments to the comments filed in response to the Commission's Notice of Inquiry ("NOI") concerning the actions the Commission should take regarding information services and Internet providers interstate use of the public switched network.¹

The core issue confronted in the Commission's NOI is the identification of the steps the Commission should take that would encourage and facilitate the development of high speed voice and data telecommunications networks. A fundamental concern expressed by the Commission and echoed by many parties in their comments is that the actions ultimately taken must be constructed so as not to chill the development of Internet and other information services that use the telecommunications network.

¹ *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 91-213, CC Docket No. 96-263, FCC 94-488, Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry, released December 24, 1996 (hereinafter "NOI").*

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BellSouth shares the Commission's objective and vision of a state of the art, high speed voice and data telecommunications network that can support and foster the growth of new and innovative information applications. To achieve the objective, however, will require a commitment to a new regulatory framework that will create an environment which will encourage investment and innovation.

As BellSouth pointed out in its Comments, the question is not merely whether or not access charges, as presently constructed, should apply. A far greater range of policies are implicated. In its Comments, BellSouth has presented an approach that, if implemented, would alleviate the congestion on the public switched voice network through the creation of a high speed switched data transport service based on a network access server. This network-based solution would provide Internet and other information service providers a means of access to their subscribers that would have the same ubiquity they currently obtain from the public switched voice network.

There are, nevertheless, regulatory hurdles to be overcome before such a network-based solution can be implemented. The network architecture would involve protocol conversion. The Commission's current rules regarding the manner in which local exchange carriers such as BellSouth may provide protocol conversion effectively insure that the arrangement would be unacceptable in the marketplace because the complexity and cost of the arrangement would be increased. Thus, the Commission should address eliminating the regulatory barriers that inhibit the successful introduction of arrangements such as that suggested by BellSouth.

Regardless of whether one supports BellSouth's proposal, it is readily apparent that the time has come for the Commission to act and establish an interstate solution to an interstate

problem. Under the current rules, enhanced service providers ("ESPs") are exempt from paying interstate access charges for the use that they make of exchange access facilities to originate and terminate interstate traffic. While the exemption allows ESPs to use local exchange services to originate and terminate interstate traffic, the exemption is a "rate" exemption; the exemption does not, nor could it change the underlying jurisdiction of the traffic.²

Nevertheless, it now appears that the interstate access charge exemption is being misconstrued. In their joint comments, Bell Atlantic and NYNEX state that some competitive local exchange carriers claim that traffic terminating at an ESP location is subject to reciprocal compensation. Bell Atlantic and NYNEX correctly point out that reciprocal compensation only applies to the transport and termination of local traffic, not interstate interexchange traffic such as the originating and terminating traffic that is subject to the Commission's interstate access charge exemption. This confusion can and should be corrected by the Commission. A rulemaking proceeding that would establish an interstate access solution would assure similar problems do not arise in the future.

CONCLUSION

Thus, it is clear that the status quo is no longer acceptable. The status quo does not form a solid foundation for the development of innovative advanced information services. The status quo

² The jurisdiction of telecommunications traffic is determined by the nature of the traffic on an end-to-end basis, not the physical location of the facilities used to carry the traffic. *See e.g., National Ass'n of Regulatory Utility Commissioners v. FCC*, 746 F. 2d 1492 (D.C. Cir. 1984). There can be little dispute that the majority of Internet traffic, for example, is jurisdictionally interstate.

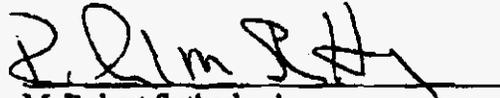
April 23, 1997

will not achieve a quality, high speed data and voice network. Public policy demands clear and decisive leadership by the Commission and the first step is for the Commission to begin a rulemaking proceeding.

Respectfully submitted,

**BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.**

By:



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Date: April 23, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of April, 1997 served the following parties to this action with a copy of the foregoing **REPLY COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.



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SN91081223

August 8, 1997

To: All Competitive Local Exchange Carriers

Subject: Enhanced Service Providers (ESPs) Traffic

The purpose of this letter is to call to your attention that our interconnection agreement applies only to local traffic. Although enhanced service providers (ESPs) have been exempted from paying interstate access charges, the traffic to and from ESPs remains jurisdictionally interstate. As a result, BellSouth will neither pay, nor bill, local interconnection charges for traffic terminated to an ESP. Every reasonable effort will be made to insure that ESP traffic does not appear on our bills and such traffic should not appear on your bills to us. We will work with you on a going forward basis to improve the accuracy of our reciprocal billing processes. The ESP category includes a variety of service providers such as information service providers (ISPs) and internet service providers, among others.

On December 24, 1996, the Federal Communications Commission (FCC) released a Notice of Proposed Rule Making (NPRM) on interstate access charge reform and a Notice of Inquiry (NOI) on the treatment of interstate information service providers and the Internet, Docket Nos. 96-262 and 96-263. Among other matters, the NPRM and NOI addressed the information service provider's exemption from paying access charges and the usage of the public switched network by information service providers and internet access providers.

Traffic originated by and terminated to information service providers and internet access providers enjoys a unique status, especially call termination.

Information service providers and internet access providers have historically been subject to an access charge exemption by the FCC which permits the use of basic local exchange telecommunications services as a substitute for switched access service. The FCC will address this exemption in the above-captioned proceedings. Until any such reform affecting information service providers and internet access providers is

accomplished, it is appropriate to exempt traffic originated to and terminated by information service providers and internet access providers from access charges and reciprocal compensation agreements.

Please contact your Account Manager should you wish to discuss this issue further. For a name or address change to the distribution of this letter, contact Ethylyn Pugh at 205-977-1124.

Sincerely,

ORIGINAL SIGNED BY E. L. BUSH

E. L. Bush
Assistant Vice President
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Ernest L. Bush
Assistant Vice President -
Regulatory Policy & Planning

SN91081223

August 12, 1997

To: All Competitive Local Exchange Carriers
Subject: Enhanced Service Providers (ESPs) Traffic

The purpose of this letter is to call to your attention that our interconnection agreement applies only to local traffic. Although enhanced service providers (ESPs) have been exempted from paying interstate access charges, the traffic to and from ESPs remains jurisdictionally interstate. As a result, BellSouth will neither pay, nor bill, local interconnection charges for traffic terminated to an ESP. Every reasonable effort will be made to insure that ESP traffic does not appear on our bills and such traffic should not appear on your bills to us. We will work with you on a going forward basis to improve the accuracy of our reciprocal billing processes. The ESP category includes a variety of service providers such as information service providers (ISPs) and internet service providers, among others.

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Please contact your Account Manager or Marc Cathey (205-977-3311) should you wish to discuss this issue further. For a name or address change to the distribution of this letter, contact Ethelyn Pugh at 205-977-1124.

Sincerely,

A handwritten signature in cursive script that reads 'E. L. Bush'.