RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

ORIGINAL

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL:
CHARLES F. DUDLEY

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

March 6, 1998

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 980184-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Teleport Communications Group Inc. and TCG South Florida ("TCG") are the original and fifteen copies of TCG's Notice of Supplemental Authority.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

John R Ellis

John R. Ellis

JRE/rl

Enclosures

cc: All Parties of Record

ACK ____
AFA ____
APP ____
CAF ____
CMU Norton
CTR ____
EAG ____
LEG 1
LIN ____
OPC ____
RCH ____
SEC 1
WAS Trib.3
OTH ____

DOCUMENT NUMBER-DATE
02945 MAR-6 98
FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Teleport Communications Group Inc./TCG South Florida for Enforcement of Section IV.C of its Interconnection Agreement with BellSouth Telecommunications, Inc., and Request for Relief.	))))))	Docket No. 980184-TP Filed: March 6, 1998

NOTICE OF SUPPLEMENTAL AUTHORITY

Petitioners, Teleport Communications Group Inc. and TCG South Florida ("TCG"), file this Notice of Supplemental Authority, and state:

1. TCG's Complaint filed on February 4, 1998 cites the decisions of nine states' commissions - Virginia, New York, Maryland, Connecticut, Arizona, Colorado, Minnesota, Oregon, and Washington - which support TCG's position that calls from an end-user to an ISP are local traffic subject to reciprocal compensation. See TCG Complaint, at pp. 14-16, ¶ 31.

2. On February 26, 1998, the North Carolina Utilities Commission issued its Order Concerning Reciprocal Compensation for ISP Traffic in its Docket No. P-55, SUB 1027, In the Matter of Interconnection Agreement Between BellSouth Telecommunications, Inc., and US LEC of North Carolina, LLC. A copy of the order is attached to this Notice.

3. The North Carolina Utilities Commission's order is but the latest in a series of

decisions of state commissions supporting TCG's position that BellSouth is required to pay reciprocal compensation to TCG for termination of local ISP traffic.

Respectfully submitted,

John R Ellis

KENNETH A. HOFFMAN, ESQ.
JOHN R. ELLIS, ESQ.
Rutledge, Ecenia, Underwood, Purnell &
Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788 (telephone)
(850) 681-6515 (telecopier)

and

MICHAEL MCRAE, ESQ.
MR. PAUL KOUROUPAS
Teleport Communications Group Inc.
2 Lafayette Centre
1133 Twenty-First Street, N.W.
Suite 400
Washington, DC 20036
(202) 739-0032 (telephone)
(202) 739-0044 (telecopier)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Notice of Supplemental Authority was furnished by U. S. Mail this 6th day of March, 1998 to the following:

Robert G. Beatty, Esq.
Nancy B. White, Esq.
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Martha C. Brown, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

William J. Ellenberg, II, Esq.
Bennett L. Ross, Esq.
Suite 4300
675 W. Peachtree Street, NE
Atlanta, GA 30375

ISP.sup

John R Ellis

JOHN R. ELLIS, ESQ.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-55, SUB 1027

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Interconnection Agreement Between) ORDER CONCERNING
BellSouth Telecommunications, Inc.,) RECIPROCAL COMPENSATION
and US LEC of North Carolina, LLC) FOR ISP TRAFFIC

HEARD: Wednesday, December 17, 1997, at 9:30 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Jo Anne Sanford, Chair, Presiding; Commissioners Ralph A. Hunt and William R. Pittman

APPEARANCES:

For BellSouth Telecommunications, Inc.:

A.S. Poval, Jr., General Counsel, BellSouth Telecommunications, Inc., Post Office Box 30188, Charlotte, North Carolina 28277

Edward L. Rankin, III, BellSouth Telecommunications, Inc., 675 W. Peachtree Street, NE, Atlanta, Georgia 30375

For US LEC of North Carolina, LLC:

Joseph W. Eason, Moore & Van Allen, PLLC, Post Office Box 26507, Raleigh, North Carolina 27611

Richard M. Rindler, Swidler & Berlin, 3000 K. Street N.W., Suite 300, Washington, D.C. 20007

For CaroNet, LLC, ICG Telecom Group, Inc., Intermedia Communications, Inc., KMC Telecom, Inc., and TCG of the Carolinas, Inc.:

Henry Campen, Parker, Poe, Adams & Bernstein, 150 Fayetteville Street Mall, Suite 1400, Raleigh, North Carolina 27601

For Teleport Communications Group:

Michael A. McRae, 1133 21st Street, NW, Suite 400, Washington, D.C. 20036

For Intermedia Communications, Inc.:

Jonathan E. Canis, Kelley, Drye & Warren, 1200 19th Street NW, Suite 500, Washington, D.C. 20036

For Time Warner Communications of North Carolina, L.P.:

Marcus W. Trathen, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, Post Office Box 1800, Raleigh, North Carolina 27602

BY THE COMMISSION: On October 24, 1997, US LEC of North Carolina, LLC (US LEC) filed a Petition with the Commission to enforce its Interconnection Agreement with BellSouth Telecommunications Inc. (BellSouth), which was approved by the Commission on January 29, 1997. US LEC contends that BellSouth has breached the contract by failing to pay reciprocal compensation for the transport and termination of local exchange traffic from BellSouth end users that is handed off by BellSouth to US LEC for termination to US LEC local exchange end users who are information service providers (ISPs).

The Commission held an oral argument on this dispute on December 17, 1997. The following companies intervened in the proceeding in support of US LEC — Time Warner Communications of North Carolina, L.P. (Time Warner), CaroNet, LLC (CaroNet), ICG Telecom Group, Inc. (ICG), KMC Telecom, Inc. (KMC), TCG of the Carolinas, Inc. (TCG), Teleport Communications Group (Teleport), and Intermedia Communications, Inc. (Intermedia) (collectively, intervenors).

I. Relevant Provisions of Interconnection Agreement

Section I.C. of the Interconnection Agreement defines "Local Traffic" as:

> any telephone call that originates in one exchange and terminates in either the same exchange, 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 Service Tariff.

The Reciprocal Compensation provision in Section IV.A. of the Interconnection Agreement states:

> The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges

within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

Section IV.B. of the Interconnection Agreement states:

Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to [be] billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made. Late payment fees, not to exceed 1% per month after the due date may be assessed, if interconnection charges are not paid within thirty (30) days of the due date.

II. Arguments of US LEC and Intervenors

US LEC and the intervenors argue that the Commission rather than the Federal Communications Commission (FCC) has jurisdiction since this is, according to US LEC, simply a contract enforcement action. All states that have had this issue presented to them have asserted jurisdiction.

US LEC and the intervenors contend that the calls at issue here are local, regardless of where and how the ISP provides the information service. US LEC cites the definition of "termination" in the Communications Standard Dictionary and that of the FCC in 47 CFR § 51.701(d).[1] Information services provided by an ISP are, moreover, wholly separate from the local exchange telecommunications service provided by US LEC. The FCC affirmed that enhanced service providers can continue to obtain services as end users under intrastate tariffs. The FCC in the Universal Service Order (USO) has also determined that Internet access consists of severable components. In sum, ISPs are not common carriers but end users who obtain requested information over a wholly separate packet-switched network.

US LEC and the intervenors note that BellSouth's position would lead to a class of calls for which no compensation would be provided. BellSouth itself charges its own ISP customers local business line rates and customers accessing ISPs within the local calling area are charged local rates. BellSouth treats the revenues as local for the purposes of separations and ARMIS reporting.

The Commission should require enforcement of negotiated contracts as a matter of sound public policy. BellSouth's position is highly anticompetitive. Considerable monies are being withheld by BellSouth. All states that have addressed this issue have rejected BellSouth's line of argument.

---

[1]The FCC, for purposes of implementing the reciprocal compensation provisions of the 1996 Act, defined "termination" as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises."

III. Arguments of BellSouth

BellSouth maintains that calls made by end users to ISPs do not constitute local traffic but rather are exchange access traffic that is jurisdictionally interstate. BellSouth's reasoning is that, for instance, a single Internet call may sprawl across interstate, intrastate, and even international jurisdictions, and is unseverable. The termination point, according to BellSouth, is not the ISP switch but the database or information to which the ISP provides access. Thus, ISP traffic is jurisdictionally interstate and ineligible for reciprocal compensation.

BellSouth contends that the FCC has consistently rejected attempts to partition interstate calls into jurisdictionally intrastate segments. Moreover, the FCC has not held that ISP traffic is local for the purposes of reciprocal compensation. The ISP exemption from access charges is not dispositive. It is only treatment of ISPs as end users for the purposes of the access charge system.

BellSouth further contends that sound public policy requires that ISP traffic not be subject to reciprocal compensation because the traffic is not balanced. ISPs generate large volumes of inbound calls that are much longer in duration than typical calls.

IV. Other States

A number of other states have addressed the same issue either separately or in the context of arbitration proceedings. All have ruled that such traffic is local. The states that have ruled include: Arizona, Colorado, Minnesota, Oregon, Washington, West Virginia, New York, Maryland, Connecticut, Virginia, Michigan, and Texas.

An arbitrator in Texas ruled that the traffic was interstate, but was recently reversed by the Texas Commission.

FINDINGS OF FACT

1. BellSouth Telecommunications, Inc., a corporation a duly organized and existing under the laws of the State of Georgia, is a "public utility" within the meaning of the North Carolina Public Utilities Act. BellSouth is engaged in the provision of interstate and intrastate telecommunications service, including local exchange service, under the laws of the State of North Carolina and the United States, and as such is subject to the jurisdiction of this Commission.

2. US LEC, a limi`ed liability company organized under the laws of North Carolina, is a "competing local provider" (CLP), as defined in G.S. 62-3(7a), of local exchange and exchange access services in the State of North Carolina pursuant to a certificate issued by this Commission, and as such is subject to the jurisdiction of this Commission.

3. US LEC and BellSouth negotiated the Interconnection Agreement filed with the Commission pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the

Act). The Commission approved the Interconnection Agreement by Order dated January 29, 1997, under authority granted by Section 252(e) of the Act.

4. Section 251 of the Act obligates all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers . . ." and "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Pursuant to the Act and the terms of their Interconnection Agreement, US LEC and BellSouth have interconnected their networks to enable an end user subscribing to US LEC's local exchange service to place calls to end users subscribing to BellSouth's local exchange service, and vice versa. Pursuant to the Act and Sections IV.A. and IV.B. of the Interconnection Agreement, BellSouth and US LEC agreed to pay reciprocal compensation to each other for telephone exchange traffic that originates on one company's network and terminates on the other's network.

5. BellSouth provides local exchange services to end-user customers, including certain business customers operating as ISPs. US LEC likewise provides local exchange services through its facilities to end-user customers, including certain business customers operating as ISPs.

6. Section I.C. of the Interconnection Agreement defines "Local Traffic" as:

> any telephone call that originates in one exchange and terminates in either the same exchange, 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 Service Tariff.

7. Typically, a customer of an ISP connects to an ISP by means of a local phone call, using telephone exchange service. A call placed over the public switched telecommunications network is considered to be "terminated" when it is delivered to the telephone exchange service bearing the called telephone number.

8. BellSouth treats calls to ISPs interconnected to its network as local traffic and charges its own ISP customers local business line rates for local telephone exchange service, thereby enabling customers of BellSouth's ISP customers to connect to their ISP by making a local phone call. When a BellSouth telephone exchange service customer places a call to an ISP within the caller's local calling area, BellSouth treats this as a local call pursuant to the terms of its local tariffs.

9. The Commission has jurisdiction to interpret and enforce the provisions of interconnection agreements between telecommunication carriers and authority to hear and determine controversies concerning the interpretation and performance of such interconnection agreements under state and federal law and the terms thereof.

10. Calls that terminate within a local calling area, regardless of the identity of the end user, are local calls under Section I.C. of the Interconnection Agreement and Commission Rule R17-1, and nothing in the Interconnection Agreement or applicable law

or regulations creates a distinction pertaining to calls placed to telephone exchange service end users which happen to be ISPs.

11. BellSouth's refusal to pay reciprocal compensation for calls made by BellSouth customers to ISPs served by US LEC is inconsistent with the reciprocal compensation terms of the Interconnection Agreement and BellSouth's obligation to provide reciprocal compensation under Section 251 of the Act.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The decision-making in this case is not an easy one. Forceful arguments have been made on both sides. The central issue involves whether traffic to an ISP from a caller within a local calling area is local. US LEC and the intervenors contend that it is; BellSouth contends that it is not.

A threshold question is whether the Commission has jurisdiction to hear and determine this controversy or to grant the relief requested by US LEC. After careful consideration, the Commission concludes that it has jurisdiction to rule and finds that the ISP traffic under dispute is local and that US LEC is entitled to reciprocal compensation in accordance with the contract terms.

There are several reasons for this decision:

1. The Interconnection Agreement speaks of reciprocal compensation for local traffic. There is no exception for local traffic to an end user who happens to be an ISP. For the purposes of reciprocal compensation, the Commission concludes that the call terminates when it is delivered to the called local exchange telephone number of the end-user ISP. Even if it is conceded, for instance, that much Internet traffic travels onward into cyberspace, it cannot be argued that all such traffic is non-local. For example, a resident of Wake County might access the Commission's web page, an undoubtedly local transaction. Neither BellSouth nor anyone else knows with precision where these calls go. It would therefore be wrong a priori to identify all ISP calls as interstate.

2. BellSouth treats calls from its own end-user customers to ISPs it serves with telephone numbers in the same local calling area as local traffic. BellSouth charges its own ISP customers local business line rates for local telephone exchange service. When a BellSouth telephone exchange service customer places a call to an ISP within that caller's local calling area, BellSouth treats this as a local call pursuant to the terms of its local tariffs. BellSouth also treats the revenues associated with the local exchange traffic to its ISP customers as local for purposes of separations and ARMIS reporting.

In addition, BellSouth's position would also appear to be inconsistent with this Commission's decision entered on December 23, 1997, in Docket No. P-55, Sub 1083, which BellSouth supported, concerning national directory assistance. In that docket, BellSouth conceded that the call bounced across state lines but should nevertheless be considered not an interexchange service but an adjunct to local service.

3. The FCC has not squarely addressed this issue, although it may do so in the future. While both sides presented extensive exegeses on the obscurities of FCC rulings bearing on ISPs, there is nothing dispositive in the FCC rulings thus far.

4. Every state that has ruled on this matter to date has ruled that such ISP traffic is local.

IT IS, THEREFORE, ORDERED as follows:

1. That the reciprocal compensation provision contained in the Interconnection Agreement between BellSouth and US LEC is fully applicable to telephone exchange service calls that terminate to ISP customers when the originating caller and the called number are associated with the same local calling area, and BellSouth shall bill and pay reciprocal compensation for all such calls.

2. That BellSouth is directed to immediately forward to US LEC all sums currently due together with the required late payment charges, pursuant to the terms of the Interconnection Agreement as interpreted herein, and is further directed to pay all sums coming due in the future for such traffic pursuant to the terms of the Interconnection Agreement as interpreted herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of February, 1998.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

mz022598.01