ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 Telecommunications Act of 1996, and request for relief.	DOCKET NO. 971478-TL Filed: April 17, 1998
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 Telecommunications Act of 1996, and request for relief.	DOCKET NO. 980495-TP
Complaint by MCI Metro Access Transmission Services, Inc. against BellSouth Telecommunications, Inc. for breach of approved inter-connection agreement by failure to pay compensation for certain local traffic.	DOCKET NO. 980499-TP

INTERMEDIA COMMUNICATIONS INC.'S

DIRECT TESTIMONY OF MICHAEL A. VIREN

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

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

Q: What are your responsibilities in that position?

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

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

A: Prior to my present position, I was Senior Vice President, Engineering and Information Systems from January 1996 to October 1996 and was Vice President, Product Development from December 1992 through January 1996. I joined Intermedia in February 1991 as Director of Product Development. I worked for GTE from August 1986 to February 1991 as a specialist in subsequent amendment (collectively "Agreement") is attached as Exhibit A.

Q. Why did Intermedia file a complaint against BellSouth?

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

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

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

Q. What is the significance of this correspondence?

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

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

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

Specifically, Section 1(D) of the 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 traffic at issue originates and terminates in either the same exchange or a corresponding EAS exchange as defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff.

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

> The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement.

Moreover, Section IV(B) of the Agreement states in part that:

> Each party will pay the other party 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.

To reiterate, pursuant to the Agreement, parties owe each other reciprocal compensation for any "Local Traffic" terminated on the other's network.

Q. Why is the ISP traffic at issue here subject to reciprocal compensation?

A. Because, as noted above, this ISP traffic meets the definition of local traffic under Section 1(D). The ISP traffic at issue is originated by a BellSouth end-user, delivered to Intermedia, and terminated on Intermedia's network. This is the essence of a local call. Pursuant to the Agreement, calls from BellSouth's end-users to Intermedia's end-users that are ISPs are thus subject to reciprocal compensation.

<u>Nothing in the Agreement creates a distinction pertaining to calls placed to telephone exchange end-users that happen to be ISPs</u>. All calls that terminate within a local calling area, regardless of the identity of the end-user, are local calls under Section 1(D) of the Agreement, and reciprocal compensation is due for such calls. This includes telephone exchange service calls placed by BellSouth's customers to Intermedia's ISP customers.

Finally, there is nothing absolutely unique in the nature of a call to an ISP that could separate ISP traffic from other local traffic with long holding times (i.e. calls to a help desk, reservation centers, travel agencies, and customer service centers).

Q. Was there ever any question at Intermedia that the reciprocal compensation provision in the Agreement was applicable for the transport and termination of traffic to ISPs?

A. No. Intermedia has consistently viewed this traffic as local pursuant to the Agreement. Indeed, when we amended the contract to include the present language, our largest customer was an ISP, so obviously, reciprocal compensation requirements were significant to us and presumably BellSouth was aware of this.

Q. If the Commission determines that BellSouth should be required to compensate Intermedia for the transport and termination of traffic to ISPs, what should the Commission require of BellSouth?

A. BellSouth should be required to immediately compensate Intermedia for the total amount outstanding for the transport and termination of local traffic pursuant to the terms of the Agreement. Since BellSouth has failed to compensate Intermedia for the transport and termination of any local traffic, BellSouth should be assessed a late payment fee of 1% per month, pursuant to Section IV.(B) of the Interconnection Agreement, for all outstanding charges. Moreover, on a going-forward basis, BellSouth should be ordered to continue to compensate Intermedia for such traffic in accordance with the Agreement.

Q. Does this conclude your testimony?

A. Yes.

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and Intermedia Communications Inc., ("ICI"), a Delaware corporation and shall be deemed effective as of July 1, 1996. This agreement may refer to either BellSouth or ICI or both as a "party" or "parties."

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, ICI is an alternative local exchange telecommunications company ("ALEC" or "OLEC") authorized to provide or is intending to be authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the parties wish to interconnect their facilities, purchase unbundled elements, and exchange traffic for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996 and to replace any and all other prior agreements, both written and oral, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida;

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and ICI agree as follows:

I. Definitions

A. Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

B. **Commission** is defined as the appropriate regulatory agency in each of BellSouth's nine state region, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

C. **Intermediary function** is defined as the delivery of local traffic from a local exchange carrier other than BellSouth; an ALEC other than ICI; another telecommunications company such as a wireless telecommunications provider through the network of BellSouth or ICI to an end user of BellSouth or ICI.

D. **Local Traffic** is defined 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.

E. **Local Interconnection** is defined as 1) the delivery of local traffic to be terminated on each party's local network so that end users of either party have the ability to reach end users of the other party without the use of any access code or substantial delay in the processing of the call; 2) the LEC unbundled network features, functions, and capabilities set forth in this Agreement; and 3) Service Provider Number Portability sometimes referred to as temporary telephone number portability to be implemented pursuant to the terms of this Agreement.

F. **Percent of Interstate Usage (PIU)** is defined as a factor to be applied to terminating access services minutes of use to obtain those minutes that should be rated as interstate access services minutes of use. The numerator includes all interstate "nonintermediary" minutes of use, including interstate minutes of use that are forwarded due to service provider number portability less any interstate minutes of use for Terminating Party Pays services, such as 800 Services. The denominator includes all "nonintermediary", local , interstate, intrastate, toll and access minutes of use adjusted for service provider number portability less all minutes attributable to terminating party pays services.

G. **Percent Local Usage (PLU)** is defined as a factor to be applied to intrastate terminating minutes of use. The numerator shall include all "nonintermediary" local minutes of use adjusted for those minutes of use that only apply local due to Service Provider Number Portability. The denominator is the total intrastate minutes of use including local, intrastate toll, and access, adjusted for Service Provider Number Portability less intrastate terminating party pays minutes of use.

H. **Telecommunications Act of 1996 ("Act')** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

I. **Multiple Exchange Carrier Access Billing ("MECAB")** means the document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF:), which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions ("ATIS") and by Bellcore as Special Report SR-BDS-000983, Containing the recommended guidelines for the billing of Exchange

Service access provided by two or more LECs and/or ALECs or by one LEC in two or more states within a single LATA.

II. Purpose

ok

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution including, without limitation, the Act at Sections 251, 252 and 271 and to replace any and all other prior agreements, both written and oral, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida concerning the terms and conditions of interconnection. The access and interconnection obligations contained herein enable ICI to provide competing telephone exchange service and private line service within the nine state region of BellSouth.

III. Term of the Agreement

A. The term of this Agreement shall be two years, beginning July 1,, 1996.

B. The parties agree that by no later than July 1, 1997, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginningJuly 1, 1998.

C. If, within 135 days of commencing the negotiation referred to in Section II (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the commissions to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the commissions to issue its order regarding the appropriate local interconnection arrangements no later thanMarch 11997. The parties further agree that in the event the Commission does not issue its order prior to July 1,1998 or if the parties continue beyondJuly 1, 1998 to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the parties, will be effective retroactive to July 1, 1998. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

IV. Local Interconnection

A. 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.

B. 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 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 of the quarterly bill.

C. The first six month period after the execution of this Agreement is a testing period in which the parties agree to exchange data and render billing. However, no compensation during this period will be exchanged. If, during the second six month period, the monthly net amount to be billed prior to the cap being applied pursuant to subsection (D) of this section is less than $40,000.00 on a state by state basis, the parties agree that no payment is due. This cap shall be reduced for each of the subsequent six month periods as follows: 2nd period--$40,000.00; 3rd period--$30,000.00; and 4th period--$20,000.00. The cap shall be $0.00 for any period after the expiration of this Agreement but prior to the execution of a new agreement.

D. The parties agree that neither party shall be required to compensate the other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month on a statewide basis. This cap shall apply to the total billed local interconnection minutes of use measured by the local switching element calculated for each party and any affiliate of the party providing local exchange telecommunications services under the party's certificate of necessity issued by the Commission. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available or at the expiration of the first year after the execution of this Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. The calculations , including examples of the calculation of the cap between the parties will be pursuant to the procedures set out in Attachment A, incorporated herein by this reference. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

E. The parties agree that there are three appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7) chooses to adopt another agreement in its entirety, the parties agree that the effective day shall be the date the agreement is approved by the Commission.

C. In the event BellSouth files and receives approval for a tariff offering to provide any substantive service of this Agreement in a way different than that provided for herein, the parties agree that ICI shall be eligible for subscription to said service at the rates, terms and conditions contained in the tariff. The parties agree that such eligibility shall be as of the effective date of the tariff.

D. The Parties acknowledge that BellSouth will guarantee the provision of universal service as the carrier-of-last-resort throughout its territory in Florida until January 1, 1998 without contribution from ICI.

XXII. Treatment of Proprietary and Confidential Information

A. Both parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Information"). Both parties agree that all Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. Both parties agree that the Information shall not be copied or reproduced in any form. Both parties agree to receive such Information and not disclose such Information. Both parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees of the parties with a need to know such Information and which employees agree to be bound by the terms of this Section. Both parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

B. Notwithstanding the foregoing, both parties agree that there will be no obligation to protect any portion of the Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; or 3) previously known to the receiving party without an obligation to keep it confidential.

XXIII. Resolution of Disputes

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the individuals in each company that negotiated the Agreement. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute.

However, each party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

XXIV. Limitation of Use

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

XXV. Waivers

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

XXVI. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

XXVII. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

XXVIII. Notices

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person orgiven by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.	ICI
____________________	____________________
____________________	____________________
____________________	____________________

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

AMENDMENT

TO

INTERCONNECTION AGREEMENT BETWEEN
INTERMEDIA COMMUNICATIONS, INC. AND
BELLSOUTH TELECOMMUNICATIONS, INC. DATED JULY 1, 1996

Pursuant to this Agreement (the "Amendment"), Intermedia Communications, Inc., ("ICI") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Interconnection Agreement between the Parties dated July 1, 1996 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ICI and BellSouth hereby covenant and agree as follows:

Eliminations and Insertions

1. The Parties agree to eliminate and strike out of the Interconnection Agreement all of paragraphs IV(C) and IV(D) on page 4, and inserting in place thereof the following paragraphs:

C. Left Blank Intentionally

D. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as the actual usage data is available or at the expiration of the first year after the execution of this Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

2. The Parties further agree to eliminate and strike out of the Interconnection Agreement all of the language of Attachment A, leaving Attachment A blank intentionally.

3. The Parties agree that all of the other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.

4. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the appropriate state public service commission or other regulatory body having jurisdiction over the subject matter of this Amendment, for approval subject to Section 252(e) of the federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

INTERMEDIA COMMUNICATIONS, INC.	BELLSOUTH TELECOMMUNICATIONS, INC.
By:	By:
DATE: 2-24-97	DATE: 2/24/97

MAV-EXH. B

BELLSOUTH

BellSouth Telecommunications, Inc.
Room 4428
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

404 927-7150
Fax 404 420-8291
Internet: Ernest.L.Bush
@bridge.bellsouth.com

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.

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, traffic originated to and terminated by information service providers and internet access providers is exempt from access charges. This fact, however, does not make this interstate traffic "local", or subject it to reciprocal compensation agreements.

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 Ethylyn Pugh at 205-977-1124.

Sincerely,

E. L. Bush

08/28/97 THU 10:10 FAX

MAV-EXH. C

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, N.Y.
LOS ANGELES, CA.
MIAMI, FL.
CHICAGO, IL.
STAMFORD, CT.
PARSIPPANY, N.J.

BRUSSELS, BELGIUM
HONG KONG

AFFILIATED OFFICES
NEW DELHI, INDIA
TOKYO, JAPAN

FACSIMILE
(202) 955-9792

WRITER'S DIRECT LINE
(202) 955-9664

September 2, 1997

VIA FACSIMILE
AND U.S. MAIL

Jere A. Drummond, President
BellSouth Telecommunications, Inc.
45th Floor
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Re: BellSouth Letter Contemplating Nonpayment of Mutual Compensation for ISP Traffic

Dear Mr. Drummond:

On behalf of my client, Intermedia Communications Inc. ("Intermedia"), I am responding to a letter dated August 12, 1997, sent under the name of Ernest Bush and directed to "All Competitive Local Exchange Carriers." That letter states that BellSouth considers local calls made to Internet service providers ("ISPs") to be jurisdictionally interstate, and that BellSouth will not submit payment for the termination of local calls made to Internet service providers on Intermedia's network. As discussed below, we reject BellSouth's position in the strongest terms, and urge BellSouth to issue a prompt retraction of the August 12 letter.

As you no doubt know from the comments recently filed by Intermedia and every other competitive carrier participating in the FCC's Docket CCB/CPD 97-30 proceeding, the argument against mutual compensation for the termination of local calls made to ISPs is rejected by the entire competitive carrier community and is embraced only by some incumbent local exchange carriers ("ILECs"). I will not restate the arguments made by Intermedia and others before the FCC, but will observe that the weight of evidence in that proceeding makes clear that the Communications Act, FCC rules and policies, recent action by the New York Public Service Commission, existing interconnection agreements (including that between BellSouth and Intermedia), and the consistent practices of BellSouth and other ILECs compel the conclusion that ILECs are obligated to pay mutual compensation for such traffic. The action threatened by BellSouth may also run afoul of the Customer Proprietary Network Information provisions of Section 222 of the Communications Act. Finally, if BellSouth's argument were to be accepted, and a regulator found that all Internet traffic is inherently jurisdictionally interstate, such a decision would compel a finding that BellSouth is currently providing interLATA services through its separate subsidiary, BellSouth.net. Of course, such an interpretation would place BellSouth directly in violation of Section 271 of the Communications Act.

Moreover, the action contemplated by BellSouth would violate the dispute resolution provision of the interconnection agreement between BellSouth and Intermedia. That agreement commits both parties to resolve disputes relating to the agreement through recourse to the appropriate state regulatory body, and does not countenance the unilateral action that BellSouth has proposed.

The arbitrary and unilateral action contemplated in the August 12 letter would, if implemented, demonstrate bad faith on BellSouth's part and would constitute patently anticompetitive conduct. Be advised that such action would impose considerable -- and perhaps irreparable -- damage on Intermedia and would expose BellSouth to substantial liability. Of equal significance, be advised that a unilateral refusal to pay mutual compensation to Intermedia will be relevant to the public interest determinations that are part of the interLATA relief proceedings under Section 271 of the Communications Act that are now being conducted in Florida, Alabama, Georgia and North Carolina, and that are anticipated in other states within the BellSouth service area; the 271 review of BellSouth currently being conducted by the U.S. Department of Justice; and the 271 analysis that ultimately will be conducted by the FCC.

This issue is of critical importance to Intermedia, and I have been instructed to advise you that Intermedia will aggressively pursue every legal avenue available to it should BellSouth make good on its threat to withhold mutual compensation for ISP traffic. We therefore request a response to this letter from BellSouth by noon on Thursday, September 4, 1997. If Intermedia has not received written assurance that BellSouth will remit payment for terminating ISP traffic that is owed to Intermedia, we will immediately initiate the

KELLEY DRYE & WARREN LLP

appropriate legal and regulatory action. Please direct your response to me at the facsimile number listed above.

Sincerely,

JECanis /ccs
Jonathan E. Canis

cc: Whit Jordan
Ernest L. Bush
Mark L. Fielder

MAV-EXH. D

Harris R. Anthony
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375-0001
Telephone: 404-335-0789
Facsimile: 404-614-4054

September 11, 1997

Jonathan E. Canis
Kelley Drye & Warren
1200 19th Street, N.W.
Suite 1500
Washington, D.C. 20036

Re: Reciprocal Compensation For ISP Traffic

Dear Mr. Canis:

This is in response to your September 2, 1997 letter to Mr. Jere A. Drummond. In your letter, you express your disagreement with Mr. Bush's letter of August 12, 1997 wherein he brought to the attention of local carriers that the reciprocal compensation provisions of BellSouth's interconnection agreements apply only to local traffic. Accordingly, traffic being delivered to internet service providers (ISPs), which is jurisdictionally interstate, is not eligible for reciprocal compensation.

Your letter contains several observations which you believe create an obligation on the part of BellSouth to pay mutual compensation for ISP traffic. As discussed below, Intermedia is mistaken as to the jurisdictional nature of the ISP traffic. Likewise, your statements that BellSouth may be violating certain provisions of the Communications Act are unfounded.

Contrary to your apparent belief, there is no basis in fact or law that would support your position that ISP traffic is intrastate, let alone "local" for reciprocal compensation purposes. It is well established that whether a communication is interstate and, thus, within the exclusive jurisdiction of the FCC depends on the end-to-end nature of the communication itself. ISP traffic does not terminate on Intermedia's local facilities. Rather, the traffic traverses these facilities as well as those of the ISP and the internet transport provider(s) to establish a communications path to distant internet destination(s). The communication terminates at the distant internet site. Internet end-to-end communication paths are typically interstate in nature because they not only cross state boundaries but often national boundaries as well. Even in the instances where the distant internet site is within the same state as the originating end of the communication, the dynamic aspects of internet communications make such communications inseverable from the interstate traffic. Under existing case law, such traffic must also be considered interstate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery(*) or U.S. Mail this 17th day of April, 1998 to the following:

Charlie Pellegrini*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy White*
c/o Nancy Sims
BellSouth Telecommunications
150 South Monroe St., Ste. 400
Tallahassee, FL 32301

Richard D. Melson*
Hopping Green Sams & Smith
P.O. Box 6526
Tallahassee, FL 32314

Floyd Self*
Messer, Caparello & Self
215 S. Monroe Street
Tallahassee, FL 32399

Kenneth A. Hoffman*
Rutledge, Ecenia, Underwood,
Purness & Hoffman
215 South Monroe Street
Suite 420
Tallahassee, FL 32301-1841

Donna L. Canzano

Donna L. Canzano