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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF ALPHONSO J. VARNER
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990691-TP

AUGUST 2, 1999

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1972 with a Bachelor of Engineering Science degree in systems design engineering. I immediately joined Southern Bell in the division of revenues organization with the responsibility for preparation of all Florida investment separations studies for division of revenues and for reviewing interstate settlements.

Subsequently, I accepted an assignment in the rates and tariffs organization with responsibilities for administering selected rates and tariffs including

1 preparation of tariff filings. In January 1994, I was appointed Senior Director
2 of Pricing for the nine-state region. I was named Senior Director for
3 Regulatory Policy and Planning in August 1994, and I accepted my current
4 position as Senior Director of Regulatory in April 1997.

5

6 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

7

8 A. My testimony provides BellSouth's policy position on numerous issues raised
9 by ICG Telecom Group, Inc. ("ICG") in its Petition for Arbitration filed with
10 the Florida Public Service Commission ("Commission") on May 27, 1999.
11 Specifically, I respond to the following issues raised by ICG: 1-11 and 19-26. I
12 will also address the ramifications of recent court decisions as they specifically
13 relate to ICG Issues 1, 3, 4, 6, 7 and 8.

14

15 Q. PLEASE SUMMARIZE HOW THE RECENT COURT DECISIONS
16 APPEAR TO AFFECT THIS PROCEEDING.

17

18 A. On June 10, 1999, the United States Court of Appeals for the Eighth Circuit
19 ("Eighth Circuit") issued an order in the *Iowa Utilities Board, et al.* case
20 reinstating many of the previously vacated Federal Communications
21 Commission's ("FCC") Rules. These Rules were originally issued in the
22 FCC's First Report and Order and Second Report and Order dated August 8,
23 1996 in CC Docket 96-98. In light of the Eighth Circuit's recent and past
24 decisions, along with the January 25, 1999 decision by the United States

25

1 Supreme Court, the status of the FCC's rules can be divided into several
2 categories as follows.

3
4 Even though the FCC's pricing Rules 51.501-51.515 (Pricing of Elements) and
5 51.701-51.717 (Reciprocal Compensation for Transport and Termination of
6 Local Telecommunications Traffic) have been reinstated, they must still be
7 reevaluated by the Eighth Circuit to consider the various challenges raised to
8 these rules on their merits since the Eighth Circuit's earlier ruling was based
9 solely upon jurisdictional arguments. While these rules are in effect as the
10 Eighth Circuit revisits them, the final pricing rules will not likely be known
11 until the Eighth Circuit acts, which could be several months in the future. In
12 the interim, BellSouth is proposing prices that are consistent with the FCC's
13 pricing methodology and with this Commission's decisions in its generic UNE
14 proceeding. BellSouth also proposes that those prices be modified
15 prospectively when the final rules are known.

16
17 The FCC's Unbundled Network Element ("UNE") Rule 51.319 (Specific
18 unbundling requirements) has been vacated and is being readdressed by the
19 FCC. Until that time, which will probably be several months, there is no
20 minimum list of UNEs that BellSouth is required to offer. There are numerous
21 capabilities that competitive local exchange carriers ("CLECs") have requested
22 from BellSouth. As an interim measure, BellSouth is proposing to provide
23 those capabilities although, technically, they are not UNEs, until the FCC's
24 new rules become final. Because the required list of UNEs is unknown, it
25 would not be appropriate to require application of FCC rules that apply to

1 UNEs to these capabilities during this interim period. When the FCC rules
2 become finalized, BellSouth should be permitted to modify the list of
3 capabilities that it will offer in the interim to conform to the FCC's rules.
4

5 Even though the FCC's Rule 51.315(b) (Pre-existing combinations) has been
6 reinstated by the Eighth Circuit, it cannot be effectively applied until the FCC
7 reestablishes the UNE list that was vacated by FCC Rule 51.319. The
8 minimum list of UNEs and criteria for establishing UNEs will not be known
9 until the FCC completes its proceeding on remand. Consequently, the UNEs
10 that must remain combined cannot be known until the FCC completes its
11 review of Rule 51.319.
12

13 Finally, the FCC's Rules 51.315(c) through 51.315(f) (ILEC combination of
14 UNEs) continue to be vacated. The Eighth Circuit, however, is seeking
15 comments on whether it should take further action with respect to these rules.
16 Since these rules are not in effect, any action by this Commission requiring
17 BellSouth to combine network elements would be in direct conflict with the
18 Telecommunications Act of 1996 ("Act").
19

20 After the FCC and the Eighth Circuit take further action in response to the
21 Supreme Court's decision, BellSouth's position on the issues raised in this
22 proceeding may be affected. As a result, BellSouth may need to modify some
23 of its positions in the months to come.
24

25

1 Q. WHAT IMPACT DOES THE EIGHTH CIRCUIT'S RULING HAVE ON
2 NETWORK ELEMENT COMBINATIONS?

3
4 A. With respect to network element combinations, the Supreme Court's vacating
5 of the FCC's Rule 51.319 and its reinstatement of other rules directly impacts
6 the network elements BellSouth is required to provide. In accordance with the
7 FCC's Rule 51.315(a), BellSouth is obligated to provide unbundled network
8 elements in a manner that allows requesting telecommunications carriers to
9 combine them in order to provide a telecommunications service. Though
10 requesting telecommunications carriers may combine unbundled elements in
11 any manner they choose, BellSouth is not required to combine unbundled
12 elements for those carriers. The Eighth Circuit vacated the FCC's rules that
13 purported to impose such a requirement (§§ 51.315(c)-(f)). The Eighth
14 Circuit's decision vacating these rules was not challenged by any party, and
15 because those rules are not in effect, BellSouth is not required to combine
16 network elements. However, BellSouth is willing to perform this function
17 upon execution of a commercial agreement that is not subject to the
18 requirements of the Act.

19
20 Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO
21 COMBINATIONS OF ELEMENTS THAT ALREADY EXIST IN
22 BELLSOUTH'S NETWORK?

23
24 A. Regarding the provision of combinations that already exist in the network,
25 there are no requirements that the Commission can implement until the FCC

1 establishes a list of UNEs, and the associated pricing rules, that incumbent
2 local exchange carriers (“ILECs”) must offer. As discussed previously, it is
3 impossible to determine which unbundled network elements BellSouth is
4 required to offer until the FCC reissues its UNE rules in accordance with the
5 Supreme Court decision. Consequently, the UNEs that must remain combined
6 cannot be determined at this time. Likewise, the pricing rules applicable to
7 such combinations will not be known until the Eighth Circuit completes its
8 evaluation. Therefore, with regard to this issue, a final determination of which
9 UNEs must remain connected and functional, as well as the prices for those
10 combinations, will depend upon the outcome of further proceedings before the
11 FCC and the Courts.

12
13 The Supreme Court specifically recognized the linkage between Rule
14 51.315(b) and the list of UNEs. In its discussion of the legality of Rule
15 51.315(b), the Court stated: “As was the case for the all-elements rule, our
16 remand of Rule 319 may render the incumbents’ concern on this score
17 academic.” (Sup. Ct. order, at pg. 26). This linkage should not be ignored by
18 requiring provision of services which are allegedly pre-existing combinations
19 of UNEs before the UNEs are defined.

20
21 BellSouth is cooperating during this interim period by making numerous
22 capabilities available to CLECs. To penalize BellSouth for its cooperative
23 efforts by invoking a combination requirement at this time would not be
24 reasonable. For the reasons outlined above, BellSouth proposes that all
25 requests for combinations be negotiated between the parties until the FCC’s

1 final and nonappealable pricing and UNE rules require different treatment.
2 Should the Commission decline to adopt BellSouth's proposal on the provision
3 of combinations while the final rules are still uncertain, the Commission
4 should allow BellSouth to assess combination charges in order to avoid
5 arbitrage of the tariffed service rates with UNE rates. Such charges are
6 permissible under the Act and are necessary to retain sound pricing.

7
8 Q. PLEASE FURTHER DESCRIBE WHY THE COMMISSION SHOULD
9 WAIT ON ACTION BY THE FCC BEFORE SPECIFYING WHICH UNE
10 COMBINATIONS MUST BE OFFERED.

11
12 A. The impact of the Supreme Court's decision is such that, for the moment, no
13 one knows for certain exactly *what* network elements must be made available
14 to competing carriers. Even though the Eighth Circuit has simply reinstated
15 the FCC's Rule 51.315(b) prohibiting ILECs from separating already-
16 combined network elements before leasing them to competitors, that rule has
17 no meaning without a determination of what elements meet the "necessary"
18 and "impair" standards under the Act. The Supreme Court's vacating of FCC
19 Rule 51.319 was based on the FCC's failure to apply those standards in
20 deciding which UNEs were required. In short, there is no reasonable way for
21 this Commission to mandate combinations of network elements unless and
22 until it is clear what those elements are.

23
24 Q. BRIEFLY DESCRIBE HOW THE SUPREME COURT ADDRESSED THE
25 FCC'S RULE 51.319 (SPECIFIC UNBUNDLING REQUIREMENTS).

1
2 A. In striking down Rule 51.319 and the FCC's underlying standard, the Supreme
3 Court categorically rejected the FCC's notion of when an incumbent must
4 provide unbundled network elements to CLECs under the FCC's "necessary"
5 and "impair" requirements. In interpreting those statutory terms, the Supreme
6 Court stated that the FCC's definition of an unbundled network element
7 "cannot, consistent with the statute, blind itself to the availability of elements
8 outside the incumbent's network." (Sup. Ct. Order, at pg. 22) The Supreme
9 Court also observed that the "assumption that *any* increase in cost (or decrease
10 in quality) imposed by denial of a network element renders access to that
11 element 'necessary' and causes the failure to provide that element to 'impair'
12 the entrant's ability to furnish its desired services is simply not in accord with
13 the ordinary and fair meaning of those terms." (Id.) (emphasis not in original)
14 In plainer terms, this language means that "elements" that are available from
15 other sources, including elements that competitors can (and often do) provide
16 for themselves, do not have to be provided by ILECs as unbundled network
17 elements under the Act.

18
19 Thus, there can be no requirement for BellSouth to provide any combinations
20 of a specific type or in a locality where there are ready alternatives to any of the
21 constituent network elements. This proscription applies even where those
22 alternatives may be somewhat more costly for the CLEC to obtain from
23 another supplier or by providing them for itself. The Supreme Court
24 anticipated precisely this kind of limitation on the availability of access to
25 network elements when it observed that "if Congress had wanted to give

1 blanket access to incumbents' networks on a basis as unrestricted as the
2 scheme the Federal Communications Commission has come up with, it would
3 not have included § 251(d)(2) in the statute at all." (Sup. Ct. Order, at pg. 23)
4 And in reacting to ILECs' concerns that the reinstatement of Rule 315(b) could
5 obliterate the distinction between unbundled network elements and resale, the
6 Supreme Court noted that "our remand of Rule 319 [*i.e.*, requiring application
7 of the "necessary" and "impair" standards] may render the incumbents'
8 concern on this score academic." (Sup. Ct. Order, at pg.26)

9
10 Q. WHAT PROCESS IS LIKELY TO BE FOLLOWED TO IMPLEMENT NEW
11 UNE RULES?

12
13 A. The FCC is holding further proceedings to determine what network elements
14 must be unbundled, in accordance with the Supreme Court's interpretation of
15 the necessary and impair test. In the interim, it would be inappropriate to
16 assume that the FCC will merely reissue the list of UNEs originally contained
17 in Rule 51.319. Determining what elements are essential will involve FCC
18 proceedings of some complexity. In fact, FCC Chairman William E. Kennard
19 acknowledged as much when he predicted: "We'll have to go back to the
20 drawing board." (New York Times, 1/26/99 at C4.)

21
22 This Commission presumably will have, and should have, a role in
23 implementing the "necessary" and "impair" standards. However, this
24 Commission's decisions should, as a practical matter, await the FCC's
25 definition of those standards. Furthermore, even if this Commission eventually

1 is empowered to decide which elements must remain combined, there has been
2 no determination by the FCC as to exactly which elements those are.

3

4 Q. IS BELLSOUTH WILLING TO OFFER ANY ELEMENTS OF ITS
5 NETWORK ON AN UNBUNDLED BASIS BEFORE THE FCC
6 READDRESSES RULE 51.319?

7

8 A. Yes. BellSouth still has obligations under the Act that BellSouth will continue
9 to meet. BellSouth will continue to offer any individual UNE currently offered
10 until Rule 51.319 is resolved. However, BellSouth will not offer combinations
11 that replicate retail or access services at the sum of the UNE prices. Such
12 action would cannibalize revenue streams for other services. BellSouth does
13 not believe such action was intended by the Act, and BellSouth would certainly
14 not voluntarily provide such combinations at UNE prices. However, as
15 explained earlier, BellSouth is willing to provide combinations upon execution
16 of a commercial agreement that is not subject to the requirements of the Act.

17

18 Q. PLEASE EXPLAIN BELLSOUTH'S PROPOSAL FOR SETTING RATES
19 FOR CAPABILITIES IN THIS PROCEEDING.

20

21 A. Where ICG is requesting capabilities for which no rates have been established,
22 BellSouth is filing cost studies that are consistent with the Commission-
23 approved methodology in support of the rates it proposes to charge for those
24 capabilities. BellSouth witness Ms. Daonne Caldwell presents and supports
25 those cost studies.

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Even though, during this interim period, BellSouth is proposing prices equal to incremental costs in accordance with FCC rules, BellSouth does not agree that prices should be required to be set equal to incremental costs. As I have testified on several occasions, there are a number of reasons why such a pricing rule should not be established. However, during this interim period, the FCC's rules are in effect and, as a result, prices equal to incremental costs are required.

Q. WHAT HAS THIS COMMISSION PREVIOUSLY DECIDED IN REGARD TO UNE PRICING?

A. Rates for numerous UNEs were ordered by the Commission in its December 31, 1996 Order No. PSC-96-1579-FOF-TP ("December 31, 1996 Order") and subsequently in its April 29, 1998 Order No. PSC-98-0604-FOF-TP ("April 29, 1998 Order"). In its December 31, 1996 Order, at page 22, this Commission determined "that the appropriate cost methodology to determine the prices for unbundled elements is an approximation of Total Service Long Run Incremental Cost (TSLRIC)." Further, on page 23, the Commission quoted ¶678 of the FCC Order 96-325 in which the FCC states that "while we are adopting a version of the methodology commonly referred to as the TSLRIC as the basis for pricing interconnection and unbundled elements, we are coining the term 'total element long run incremental cost' (TELRIC) to describe our version of this methodology."

1 At page 24, the Commission stated that “upon consideration, we do not believe
2 there is a substantial difference between the TSLRIC cost of a network element
3 and the TELRIC cost of a network element.” Then, on page 32, the
4 Commission found that “BellSouth’s cost studies are appropriate because they
5 approximate TSLRIC cost studies and reflect BellSouth’s efficient forward-
6 looking costs.” Finally, on page 33, the Commission stated that “we find it
7 appropriate to set permanent rates based on BellSouth’s TSLRIC cost studies.
8 The rates cover BellSouth’s TSLRIC costs and provide some contribution
9 toward joint and common costs.”

10

11 Q. ARE BELLSOUTH’S COST STUDIES GENERALLY CONSISTENT WITH
12 THE FCC’S PRICING METHODOLOGY?

13

14 A. Yes. FCC Rule 51.505 defines the FCC’s cost methodology for UNEs.
15 BellSouth’s Total Service Long Run Incremental Cost (TSLRIC) studies used
16 to support prices for capabilities in this proceeding are generally consistent
17 with those methods. Per the FCC’s rules, such costs must be developed using
18 an efficient network configuration which uses the existing location of the
19 incumbent LEC’s wire centers. Further, the costs should be developed using a
20 forward-looking cost of capital and economic depreciation rates, and a
21 reasonable allocation of forward-looking common costs is appropriate. The
22 forward-looking economic costs may not include embedded costs, retail costs,
23 opportunity costs or revenues to subsidize other services. Although the FCC
24 uses the term Total Element Long Run Incremental Cost (TELRIC) to describe
25 its method, Ms. Caldwell explains how TSLRIC, as adopted by this

1 Commission, is consistent with the FCC's TELRIC methodology.

2

3 In addition to Rule 51.505, there are several other rules that describe
4 the rate structure requirements that the FCC applies to UNEs. With
5 the exception of Rule 51.507(f), BellSouth has proposed prices for
6 these interim capabilities that are consistent with the FCC's rate
7 structure requirements.

8

9 Q. WHAT IS BELLSOUTH PROPOSING WITH REGARD TO GEOGRAPHIC
10 DEAVERAGING?

11

12 A. FCC Rule 51.507(f) requires that each state commission establish at least three
13 geographic rate zones for UNEs and interconnection that reflect cost
14 differences. On May 7, 1999 the FCC released an order in CC Docket No. 96-
15 98 issuing a stay of Rule 51.507(f). The stay will remain in effect until six
16 months after the FCC issues its order in CC Docket No. 96-45 finalizing and
17 ordering implementation of high-cost universal service support for non-rural
18 local exchange carriers. Therefore, Rule 51.507(f) should not be applied to the
19 unbundled network capabilities that BellSouth would offer at this time.

20

21 ***Issue 4: Should BellSouth be required to provide as a UNE "Enhanced Extended***
22 ***Link", Loops ("EELs")?***

23

24 Q. WHAT IS BELLSOUTH'S POSITION ON THE PROVISION OF
25 "ENHANCED EXTENDED LINKS"?

1
2 A. ICG has requested what it terms as an “enhanced extended link” or a local loop
3 combined with dedicated transport. There is no question that these extended
4 links or extended loops would be a combination of loops and dedicated
5 transport. Such combinations would create opportunities for price arbitrage
6 because they replicate private line and/or special access services. ICG’s
7 request for an “enhanced extended link” would require BellSouth to combine
8 the loop and dedicated transport, a function that BellSouth is not required to
9 perform. However, as previously stated, BellSouth is willing to perform this
10 function upon execution of a voluntary commercial agreement that is not
11 subject to the requirements of the Act.

12

13 ***Issue 1 and Issue 8: Until the FCC adopts a rule with prospective application,***
14 ***should dial-up calls to Internet service providers (“ISPs”) be treated as if they were***
15 ***local calls for purposes of reciprocal compensation?***

16

17 Q. WHAT IS BELLSOUTH’S POSITION ON THE APPLICABILITY OF
18 RECIPROCAL COMPENSATION TO ISP-BOUND TRAFFIC?

19

20 A. Reciprocal compensation is not applicable to ISP-bound traffic. BellSouth’s
21 position is that payment of reciprocal compensation for ISP-bound traffic is
22 inconsistent with the law and is not sound public policy. Further, BellSouth
23 believes that carriers are entitled to be compensated appropriately based on the
24 use of their network to transport and deliver traffic.

25

1 Q. IS THERE ANY REASON FOR THIS COMMISSION TO ADDRESS THIS
2 ISSUE AT THIS TIME?

3

4 A. No. The FCC's recent Declaratory Ruling, FCC 99-38 in CC Docket Nos. 96-
5 98 and 99-68, released February 26, 1999, ("Declaratory Ruling"), clearly
6 established that the FCC has, will retain, and will exercise jurisdiction over this
7 traffic. As a practical matter, it appears fruitless for state commissions to deal
8 with this issue at this time. Although the FCC appears to give states authority
9 to create an interim compensation arrangement until the FCC establishes rules,
10 the FCC's authority to confer this ability on the states is being challenged in
11 court. Consequently, states could find that they do not have the authority to
12 create even an interim compensation arrangement. Even if the states do have
13 the authority, such authority is valid only until the FCC completes its
14 rulemaking on the subject. Therefore, any effort devoted by this Commission
15 to establishing an interim compensation arrangement for ISP-bound traffic
16 would likely be wasted effort.

17

18 Q. SHOULD THE COMMISSION ARBITRATE THIS ISSUE?

19

20 A. No. BellSouth recommends this Commission not address this issue. Any
21 arbitration of ISP compensation issues would necessarily be separate from
22 Section 252 arbitration, which is the subject of this proceeding. Since ISP-
23 bound traffic is not subject to reciprocal compensation, there is no basis for
24 including the compensation determination for such traffic as a subject of
25 arbitration under Section 252 of the Act. Although the FCC's Declaratory

1 Ruling attempts to authorize states to arbitrate the issue of inter-carrier
2 compensation for ISP-bound traffic, the FCC cannot simply expand the scope
3 of Section 252 to cover such arbitrations.

4
5 Q. PLEASE EXPLAIN YOUR STATEMENT THAT COMPENSATION FOR
6 TRAFFIC BETWEEN END USERS AND ISPs IS NOT SUBJECT TO
7 ARBITRATION UNDER SECTION 252.

8
9 A. Only local traffic is subject to reciprocal compensation obligations. As
10 previously confirmed by the FCC's Declaratory Ruling, ISP-bound traffic is
11 jurisdictionally interstate; therefore, reciprocal compensation for ISP-bound
12 traffic under Section 251 is not applicable. Consequently, compensation for
13 such traffic is not subject to arbitration under Section 252. Further, payment of
14 such compensation is not a requirement under Section 271.

15
16 Q. HOW IS THE ISSUE THAT ICG HAS RAISED DIFFERENT FROM THE
17 ISP ISSUES ALREADY ADDRESSED BY THIS COMMISSION IN
18 PREVIOUS PROCEEDINGS?

19
20 A. In previous proceedings, this Commission dealt with interpretation of language
21 in existing Interconnection Agreements. The issue at hand today deals with a
22 new Interconnection Agreement; therefore, any previous rulings on language
23 interpretation are irrelevant to this case. BellSouth notes, however, that its
24 position, which was confirmed by the FCC, has always been that calls to ISPs

25

1 were not local calls; thus, BellSouth never anticipated paying reciprocal
2 compensation on ISP-bound traffic.

3

4 Q. HOW DO THE ACT AND THE FCC'S FIRST REPORT AND ORDER IN
5 CC DOCKET 96-98 ADDRESS RECIPROCAL COMPENSATION?

6

7 A. Reciprocal compensation applies only when local traffic is terminated on either
8 party's network. One of the Act's basic interconnection rules is contained in
9 47 U.S.C. § 251(b)(5). That provision requires all local exchange carriers "to
10 establish reciprocal compensation arrangements for the transport and
11 termination of telecommunications." Section 251(b)(5)'s reciprocal
12 compensation duty arises, however, only in the case of local calls. In fact, in
13 its August 1996 Local Interconnection Order (CC Docket No. 96-98),
14 paragraph 1034, the FCC made it perfectly clear that reciprocal compensation
15 rules do not apply to interstate or interLATA traffic such as interexchange
16 traffic:

17 *We conclude that Section 251(b)(5), reciprocal compensation*
18 *obligation, should apply only to traffic that originates and*
19 *terminates within a local area assigned in the following paragraph.*

20 *We find that reciprocal compensation provisions of Section*
21 *251(b)(5) for transport and termination of traffic do not apply to the*
22 *transport and termination of interstate or intrastate interexchange*
23 *traffic.*

24 This interpretation is consistent with the Act, which establishes a reciprocal
25 compensation mechanism to encourage local competition.

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Further, in Paragraph 1037 of that same Order, the FCC stated:

We conclude that section 251(b)(5) obligations apply to all LECs in the same state-defined local exchange areas, including neighboring incumbent LECs that fit within this description.

Therefore, since ISP-bound traffic is not local traffic it is not subject to the reciprocal compensation obligations contained in Section 251 of the Act.

Q. PLEASE DISCUSS THE FCC’S RECENT DECLARATORY RULING.

A. The FCC has once again confirmed that ISP-bound traffic is subject to interstate jurisdiction and is not local traffic. In its Declaratory Ruling, the FCC concluded that “ISP-bound traffic is non-local interstate traffic.” (fn 87) The FCC noted in its decision that it traditionally has determined the jurisdiction of calls by the end-to-end nature of the call. In paragraph 12 of this same order, the FCC concluded “that the communications at issue here do not terminate at the ISP’s local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state.” Further, in paragraph 12 of its Declaratory Ruling, the FCC finds that “[a]s the Commission stated in *BellSouth MemoryCall*, this Commission has jurisdiction over, and regulates charges for, the local network when it is used in conjunction with the origination and termination of interstate calls.”

1 The FCC's decision makes plain that no part of an ISP-bound communication
2 terminates at the facilities of an ISP. Once it is understood that ISP-bound
3 traffic "terminates" only at distant websites, which are almost never in the
4 same exchange as the end-user, it is evident that these calls are not local.

5

6 Q. IS BELLSOUTH'S POSITION REGARDING JURISDICTION OF ISP
7 TRAFFIC CONSISTENT WITH THE FCC'S FINDINGS AND ORDERS?

8

9 A. Absolutely. BellSouth's position is supported by, and is consistent with, the
10 FCC's findings and Orders which state that for jurisdictional purposes, traffic
11 must be judged by its end-to-end nature, and must not be judged by looking at
12 individual components of a call. Therefore, for purposes of determining
13 jurisdiction for ISP-bound traffic, the originating location and the final
14 termination must be looked at on an end-to-end basis. BellSouth's position is
15 consistent with long-standing FCC precedent.

16

17 Q. PLEASE DESCRIBE IN MORE DETAIL THE TRAFFIC THAT IS
18 ELIGIBLE FOR RECIPROCAL COMPENSATION?

19

20 A. As I have previously stated, local traffic is eligible for reciprocal compensation.
21 Exhibit AJV-1 to my testimony contains two diagrams. Both of these diagrams
22 illustrate local calls between end users. Diagram A illustrates a typical local
23 call where both ends of the call are handled by a single carrier's network
24 which, in this example, is an ILEC's network. In this scenario, the ILEC
25 receives a monthly fee from its end user to apply towards the cost of that local

1 call. For that payment, the ILEC provides the end user with transport and
2 termination of local calls throughout the local calling area. End users typically
3 do not pay for calls terminated to them. Importantly, in this case, the end user
4 is the ILEC's customer, which means that the end user pays the ILEC revenue
5 for the service.

6
7 By comparison, Diagram B illustrates a typical local call that is handled by two
8 carriers - one end of the call is handled by an ILEC, and a CLEC handles the
9 other end of the call. In this scenario, when the ILEC's end user makes a local
10 call to the CLEC's end user, the ILEC's end user is paying the ILEC the same
11 price for local exchange service as in Diagram A. The ILEC, however, is not
12 the provider of the entire network facilities used to transport and deliver the
13 local call. The CLEC is providing part of the facilities and is incurring a cost.
14 Since the end user is an ILEC customer, the CLEC has no one to charge for
15 that cost. As previously noted, end users do not pay for local calls terminated
16 to them, so the CLEC cannot be expected to charge its end user. While the
17 ILEC is receiving the same revenues as shown in Diagram A, its costs are
18 lower. Consequently, reciprocal compensation would be paid by the ILEC to
19 compensate the CLEC for terminating that local call over its network. If the
20 reciprocal compensation rate equals the ILECs cost, the ILEC is indifferent to
21 whether the ILEC or the CLEC completes the call.

22
23 Likewise, if a CLEC's end user completes a local call to an ILEC's end user,
24 the CLEC receives the payment for local exchange service from the end user,
25 and the CLEC pays the ILEC reciprocal compensation for the portion of the

1 ILEC's facilities used to terminate the local call. In accordance with the Act,
 2 the purpose of reciprocal compensation is to ensure that each carrier involved
 3 in carrying a local call is compensated for its portion of that call. The
 4 following table contains a simple illustration of the application of reciprocal
 5 compensation.

DIAGRAM A:	ILEC	CLEC
END USER REVENUE	\$15	\$0
SERVICE COST	(\$35)	\$0
NET MARGIN	(\$20)	\$0
DIAGRAM B:	ILEC	CLEC
END USER REVENUE	\$15	\$0
RECIPROCAL COMPENSATION	(\$2)	\$2
SERVICE COST	(\$33)	(\$2)
NET MARGIN	(\$20)	\$0

17
 18 Q. ARE ISP's CARRIERS?

19
 20 A. Yes. The fact that ISPs are carriers and that the service provided to them is
 21 access service is very important. This simple fact eliminates any possible
 22 claim for reciprocal compensation. The FCC has been very clear in its rulings
 23 that reciprocal compensation does not apply on access service.
 24
 25

1 Treating ISPs as carriers is not a recent creation of the FCC. From its inception
2 over 30 years ago, the FCC has regulated data carriers as interstate carriers.
3 These carriers were allowed to collect traffic at business rates. When access
4 charges were established in the early eighties, the FCC reconfirmed that these
5 carriers, i.e., ESPs, were being provided access service, but ESPs received an
6 exemption from regular access charges and were allowed to continue collecting
7 traffic for the price of business service. Importantly, the FCC was clear that
8 the service being provided was access service, not local service. The business
9 rate was simply the price charged for the access service. This same
10 arrangement was undisturbed by the Act and was recently reconfirmed by the
11 FCC in its Declaratory Ruling.

12

13 Q. WHY IS THE FACT THAT ISPs ARE CARRIERS AND ARE
14 PURCHASING ACCESS SERVICE IMPORTANT?

15

16 A. The fact that ISPs are carriers is important because carriers must pay the full
17 cost of the service provided to them. When an interexchange carrier ("IXC")
18 or an ISP purchases access service, it is the IXC or the ISP, not the end user,
19 who is the customer of the local exchange carrier ("LEC") for that service. It is
20 the IXC or the ISP who must pay the full cost of the service. Since the IXC or
21 the ISP (and not the end user) pays the full cost of the service, the cost of the
22 local network used to provide access service is appropriately excluded from the
23 cost of universal service. This arrangement is based on the fact that the ISP or
24 IXC is the retail provider of service to the end user. The LEC provides an
25 input (access service) that the ISP or IXC uses to provide its retail service.

1 Consequently, the ISP or the IXC, not the end user, pays the full cost of the
2 access service provided to them.

3

4 Q. YOU STATE, AND THE FCC HAS CONFIRMED, THAT ISP-BOUND
5 TRAFFIC IS JURISDICTIONALLY INTERSTATE. DOES THIS AFFECT
6 THE ISP ACCESS CHARGE EXEMPTION?

7

8 A. No. The FCC concluded in its Declaratory Ruling that its determination that
9 ISP-bound traffic is interstate does not alter the current ISP exemption. ISPs
10 continue to be permitted to access the public switched telecommunications
11 network by paying basic business local exchange rates rather than by paying
12 interstate switched access tariff rates. The FCC's decision to exempt ISPs
13 from paying access charges for policy and political reasons in no way alters the
14 fact that ISP-bound traffic is access traffic, not local traffic. If the FCC had
15 indeed concluded that ISP-bound traffic was local, there would be no need for
16 the FCC to exempt that traffic from the access charge regime. Likewise, no
17 decision regarding reciprocal compensation would affect this exemption.

18

19 Exhibit AJV-2 attached to my testimony consists of two diagrams. Diagram C
20 illustrates a typical interstate call originating on a LEC's network and delivered
21 to an IXC's Point of Presence. As shown by this illustration, the LEC receives
22 access charges from the IXC as compensation for use of the LEC's facilities to
23 deliver the traffic to the IXC. The IXC bills the end user.

24

25

1 Diagram D is different from Diagram C in only one respect. The IXC has been
2 replaced by an ISP. The network used to transport ISP-bound traffic is exactly
3 the same network used to deliver traffic to IXCs. However, rather than through
4 receipt of normal switched access charges, the LEC is compensated for the
5 access service it provides to the ISP by the business rates it charges the ISP.
6 The important point is that both IXCs and ISPs receive the same service and,
7 although they are charged different prices, the prices they pay are designed to
8 cover the same costs. That cost is the full cost of providing service to them.

9
10 Q. WHAT DOES BELLSOUTH CONSIDER TO BE THE APPROPRIATE
11 COMPENSATION MECHANISM FOR ISP-BOUND TRAFFIC?

12
13 A. In its Comments and Reply Comments to the FCC's Notice of Proposed
14 Rulemaking in CC Docket No. 99-68, In the Matter of Inter-Carrier
15 Compensation for ISP-Bound Traffic ("Inter-Carrier Compensation NPRM"),
16 BellSouth puts forth its proposal for the appropriate inter-carrier compensation
17 mechanism. (See Exhibit AJV-3) BellSouth's proposal is guided by and is
18 consistent with FCC precedent regarding inter-carrier compensation for jointly
19 provided interstate services. BellSouth's proposal recognizes, as does the
20 FCC, that the revenue source for ISP-bound traffic is derived from the service
21 provided to the ISP. (See In the Matter of Access Charge Reform, Price Cap
22 Performance Review for Local Exchange Carriers, Transport Rate Structure
23 and Pricing and End User Common Line Charges, CC Docket Nos. 96-262,94-
24 1, 91-213 and 95-72, *First Report and Order*, 12 FCC Rcd 15982, 16133-16134
25 (1997)) Equally important, BellSouth's proposal ties the level of inter-carrier

1 compensation directly to the level of compensation that each carrier derives
2 from the jointly provided service.
3
4 Exhibit AJV-4 to my testimony consists of two diagrams illustrating the
5 consistency of compensating carriers for access traffic based on the revenue
6 that is derived from the jointly provided service. Diagram E illustrates a call
7 that originates on a LEC's network and is delivered to an IXC/ISP, and shows
8 that the IXC/ISP pays the LEC for access services to cover the cost of getting
9 the traffic to the IXC/ISP. Diagram F illustrates an IXC/ISP-bound call that
10 originates on a LEC's network and interconnects with another carrier's
11 network (ICO/CLEC) for routing of the call to the IXC/ISP. In this situation,
12 the IXC/ISP is the other carrier's customer. The revenue this other carrier
13 receives from the IXC/ISP for access services covers the cost of delivering the
14 traffic to the IXC/ISP.

15
16 Q. PLEASE DESCRIBE HOW ICG REQUESTS THAT IT BE
17 COMPENSATED FOR ISP-BOUND TRAFFIC.

18
19 A. Exhibit AJV-5 to my testimony consists of a Diagram G which illustrates
20 ICG's request that BellSouth pay reciprocal compensation for ISP-bound
21 traffic where the ISP is ICG's customer. It is obvious from this diagram that
22 ICG is simply attempting to augment the revenues it receives from its ISP
23 customer at the expense of BellSouth's end user customers. In other words,
24 paying ICG reciprocal compensation for ISP-bound traffic would result in
25 BellSouth's end user customers subsidizing ICG's operations. Indeed, the

1 FCC has recognized that the source of revenue for transporting ISP-bound
2 traffic is the access service charges that ISPs pay. ICG receives this payment
3 from its ISP customers. There is no legal or policy basis for ISPs to be
4 subsidized simply because they choose a different carrier to provide their
5 access service.

6

7 Q. WHY IS AN INTER-CARRIER COMPENSATION ARRANGEMENT
8 APPROPRIATE FOR ISP TRAFFIC?

9

10 A. The interstate access connection that permits an ISP to communicate with its
11 subscribers falls within the scope of exchange access and, accordingly,
12 constitutes an access service as defined by the FCC:

13 *Access Service* includes services and facilities provided for the
14 origination or termination of any interstate or foreign
15 telecommunications. (Emphasis added)

16 The fact that the FCC has exempted enhanced service providers, including
17 ISPs, from paying interstate switched access charges does not alter the fact that
18 the connection an ISP obtains is an access connection. Instead, the exemption
19 limits the compensation that a LEC in providing such a connection can obtain
20 from an ISP. Further, under the access charge exemption, the compensation
21 derived by a LEC providing the service to an ISP has been limited to the rates
22 and charges associated with business exchange services. Nevertheless, the
23 ISP's service involves interstate communications. The ISP obtains a service
24 that enables a communications path to be established by its subscriber. The
25 ISP, in turn, recovers the cost of the telecommunications services it uses to

1 deliver its service through charges it assesses on the subscribers of the ISP's
2 service.

3

4 Where two or more carriers are involved in establishing the communications
5 path between the ISP and the ISP's subscriber, the access service to the ISP is
6 jointly provided. Such jointly provided access arrangements are not new or
7 unique nor are the associated mechanisms to handle inter-carrier compensation.
8 The services ISPs obtain for access to their subscribers are technically similar
9 to the line side connections available under Feature Group A. For such line
10 side arrangements, the FCC has relied on revenue sharing agreements for the
11 purpose of inter-carrier compensation. The long history and precedent
12 regarding inter-carrier compensation for interstate services are instructive and
13 relevant to the FCC's determinations in this proceeding.

14

15 Q. PLEASE EXPLAIN FURTHER WHY A SEPARATE SHARING PLAN IS
16 NEEDED FOR ACCESS SERVICE PROVIDED TO ISPs?

17

18 A. The need for a separate sharing plan is created by the FCC's decree that the
19 price charged for access service provided to ISPs is the business exchange rate.
20 Unlike other switched access services, which are billed on a usage-sensitive
21 basis, business exchange service prices are flat-rated.

22

23 Because non-ISP switched access service is billed on a usage-sensitive basis, it
24 is relatively easy for each carrier to be compensated for the portion of the
25 access service that it provides. Generally, there are two methods used for such

1 compensation. Under the first method, each carrier bills the IXC directly for
2 the portion of access service provided. For example, for originating access, the
3 originating LEC bills the IXC for the switching and for the portion of transport
4 that the originating LEC provides, and the terminating LEC bills the IXC for
5 the portion of transport that it provides. Under the second method, the
6 terminating LEC bills the IXC for all of the access service, and the originating
7 LEC bills the terminating LEC for the portion of access services that it
8 provides.

9
10 With ISP traffic, these methods are unworkable. Since the ISP is billed
11 business exchange service rates, only one LEC can bill the ISP. Also, since the
12 rate paid by the ISP is a flat rate charge designed for another service, i.e.,
13 business exchange service, there is no structural correlation between the cost
14 incurred by the LEC and the price paid by the ISP. However, the business
15 exchange rate paid by the ISP is the only source of revenue to cover any of the
16 costs incurred in provisioning access service to the ISP. Therefore, a plan to
17 share the access revenue paid by the ISP among all the carriers involved in
18 sending traffic to the ISP is needed.

19
20 Q. DOESN'T BELLSOUTH COVER THE COST OF ORIGINATING TRAFFIC
21 TO ISPs FROM ITS OWN END USERS?

22
23 A. No, nor would it be appropriate to do so. Again, ISPs purchase access services,
24 albeit at business exchange rates. The local exchange rates paid by end user
25 customers were never intended to recover costs associated with providing

1 access service and were established long before the Internet became popular.

2

3 Q. YOU HAVE STATED THAT IT IS NOT APPROPRIATE FOR THE
4 COMMISSION TO ADDRESS ISP-BOUND TRAFFIC IN THE CONTEXT
5 OF SECTION 251 OF THE ACT. SHOULD THE COMMISSION
6 ADDRESS ISP-BOUND TRAFFIC AS ACCESS TRAFFIC?

7

8 A. If the Commission wishes to address this issue at all in this arbitration, it
9 should be in the context of an interim compensation mechanism for ISP-bound
10 access traffic. As I have stated previously, only local traffic is governed by
11 Section 251 of the Act. ISP-bound traffic is not local traffic but is instead
12 access traffic under the jurisdiction of the FCC. Therefore, the Commission
13 could address ISP-bound traffic as access traffic by establishing an inter-carrier
14 compensation mechanism. Such a mechanism would be interim until such
15 time as the FCC completes its rulemaking proceeding on inter-carrier
16 compensation.

17

18 Q. SHOULD THIS COMMISSION ADOPT AN INTERIM INTER-CARRIER
19 COMPENSATION MECHANISM PRIOR TO THE FCC COMPLETING ITS
20 RULEMAKING PROCEEDING, WHAT DOES BELLSOUTH PROPOSE AS
21 AN APPROPRIATE INTERIM MECHANISM?

22

23 A. BellSouth proposes an interim flat-rated sharing mechanism that is based on
24 apportionment of revenues collected for the access service among the carriers
25 incurring costs to provide the service. The revenue to be apportioned among

1 carriers is the charge for the business exchange service that the ISP pays.
2 Typically, the ISP purchases Primary Rate ISDN ("PRI") service as the
3 business exchange product used to provide the access service. BellSouth
4 believes that, in the interim, a flat-rated compensation process is appropriate
5 since the revenues collected are based on flat-rated charges. Exhibit AJV-6
6 attached to this testimony is BellSouth's Proposed Interim ISP Inter-Carrier
7 Access Service Compensation Plan ("Interim Plan").
8

9 In describing BellSouth's Interim Plan, I use the term "Serving LEC" to refer
10 to a LEC that has an ISP as an end user customer and the term "Originating
11 LEC" to refer to a LEC whose end user customers originate traffic that is
12 delivered to the Serving LEC's network and is bound for an ISP. BellSouth's
13 Interim Plan takes into account the following facts:

- 14 1) Only the Serving LEC bills the ISP for access service. The ISP is billed
15 at rates established by the Serving LEC;
- 16 2) The FCC has limited the price for an ISP dial-up connection to the
17 equivalent business exchange service rate;
- 18 3) the Originating LEC incurs costs to carry ISP-bound traffic to the
19 Serving LEC;
- 20 4) the Originating LEC has no means to recover its costs directly from the
21 ISP (unless, of course, the Originating LEC and the Serving LEC are
22 one in the same); and
- 23 5) The Originating LEC must recover its costs, to the extent possible,
24 from the Serving LEC.
25

1 BellSouth's Interim Plan presumes that all LECs who serve ISPs will
2 participate in the plan. Otherwise, only those parties that will benefit will
3 participate – i.e., a LEC that originates more ISP-bound traffic than it
4 transports to an ISP will be a net receiver.

5

6 Q. PLEASE DESCRIBE THE SPECIFICS OF BELLSOUTH'S INTERIM
7 PLAN.

8

9 A. BellSouth's Interim Plan contains the following steps that are further described
10 in Exhibit AJV-6:

11 (1) Each Serving LEC will be responsible for identifying all minutes of use
12 ("MOUs") which are ISP-bound that each Originating LEC delivers to
13 the Serving LEC's network;

14 (2) each trunk (DS0-equivalent) will be assumed to carry 9,000 MOUs on
15 average per month (equates to 150 hours per trunk per month);

16 (3) based on ISP-bound MOUs identified by the Serving LEC and provided
17 to the Originating LEC, the Originating LEC will calculate the quantity
18 of DS1 facilities required to transport the Originating LEC's ISP-bound
19 traffic to the Serving LEC as follows:

20 **(ISP-bound MOUs / 9,000 MOUs per trunk / 24 trunks per DS1);**

21 (4) Serving LEC will advise Originating LECs of the average PRI rate
22 charged to ISPs. The Serving LEC can use either its tariffed rate or the
23 average rate actually charged to ISPs;

24 (5) Originating LEC calculates compensation due to it by the Serving LEC
25 as follows:

1 **(Quantity of DS1s x Serving LEC's PRI rate x sharing percentage);**
2 (6) Originating LEC bills the Serving LEC on a quarterly basis; and
3 (7) The ISP-bound MOUs and the PRI rates as reported by the Serving
4 LEC are subject to audit by the Originating LEC(s). The amount of
5 compensation could be affected by results of an audit.

6
7 To the extent two parties have additional issues, contract negotiations between
8 the parties can determine other terms and conditions. For example, due to
9 technical capabilities, the two LECs may agree that the Originating LEC will
10 identify the ISP-bound minutes of use.

11
12 Q. WHAT IS THE BASIS FOR USING 9,000 MOUs AS THE AVERAGE
13 MONTHLY USAGE PER TRUNK?

14
15 A. Nine thousand (9,000) MOUs is a proxy that was used by the FCC for FGA
16 access before actual usage could be measured. Further, this average level of
17 usage has been used in other situations as a proxy for IXC usage.

18
19 Q. WHAT SHARING PERCENTAGE DOES BELLSOUTH PROPOSE BE
20 APPLIED TO THE SERVING LEC'S REVENUES TO COMPENSATE
21 BELLSOUTH FOR ITS NETWORK USED TO CARRY ISP-BOUND
22 TRAFFIC?

23
24 A. BellSouth proposes a sharing percentage of 8.6% that will be applied to the
25 Serving LEC's ISP revenues to calculate the compensation due BellSouth

1 when BellSouth is an Originating LEC. Likewise, when BellSouth is the
2 Serving LEC, BellSouth proposes that a sharing percentage of 8.6% will be
3 applied by the Originating LEC(s) when calculating compensation BellSouth
4 owes.

5

6 Q. HOW DID BELLSOUTH DETERMINE THE SHARING PERCENTAGE IT
7 PROPOSES?

8

9 A. BellSouth's calculation of its sharing percentage is shown in Exhibit AJV-7
10 attached to this testimony. First, BellSouth considered that switching, transport
11 and loop costs are incurred to carry traffic from the Originating LEC's end
12 office to the ISP location. Since the Serving LEC incurs the loop cost between
13 its end office and the ISP location, the Serving LEC should retain revenues to
14 cover its loop cost. However, switching and transport costs are jointly incurred
15 by both the Originating LEC and the Serving LEC.

16

17 Therefore, BellSouth believes that an appropriate sharing percentage is
18 developed by determining the ratio of switching and transport costs to total
19 costs (switching, transport and loop), and then dividing that percentage by two
20 since each carrier bears a portion of the switching and transport cost. In order
21 to determine the ratio, BellSouth looked to the Benchmark Cost Proxy Model
22 ("BCPM") results filed in Florida in the Universal Service Fund proceedings.
23 The average, statewide voice grade loop, switching and transport capital costs
24 produced by BCPM are \$14.62, \$2.90 and \$.14, respectively. Therefore, the
25 loop capital cost represents 82.8% of the total average statewide capital cost,

1 which means that the switching and transport capital costs represent 17.2% of
2 the total capital cost. Again, dividing the 17.2% by two in order to account for
3 the fact that both carriers incur switching and transport costs results in a
4 sharing percentage of 8.6%.

5
6 BellSouth also reviewed ARMIS data and determined that the relationship
7 between loop, switching and transport investment as reported in ARMIS is
8 very similar to the relationship calculated from the BCPM results. The ARMIS
9 data shows that, for 1998, in Florida, total loop investment was
10 \$7,381,715,000, switching investment was \$989,297,000 and transport
11 investment was \$182,062,000 resulting in ratios of 86.30% for loop, 11.57%
12 for switching and 2.13% for transport which are close to the ratios that result
13 from the BCPM data.

14
15 Q. DOES BELLSOUTH'S PROPOSED SHARING PERCENTAGE ONLY
16 APPLY TO TRAFFIC IT ORIGINATES TO A SERVING LEC?

17
18 A. No. When BellSouth is the Serving LEC and a CLEC's end users call an ISP
19 served by BellSouth, BellSouth should compensate the CLEC. BellSouth
20 proposes to use the same method and sharing percentage (8.6%) to compensate
21 the CLEC as it proposes for billing the CLEC.

22
23 Q. WHAT IMPACT WOULD BELLSOUTH'S PROPOSAL HAVE ON A CLEC
24 SUCH AS ICG?

25

1 A. As an example, I will assume that ICG serves its ISP customers with PRI
2 service which is equivalent to a DS1 (24 DS0s). Further, I will assume that
3 ICG charges its ISP customers a market-based rate of \$850 per month per PRI.
4 If BellSouth as the Originating LEC generates 55 million ISP-bound MOUs per
5 month to ICG, then the amount of monthly compensation that BellSouth's
6 proposal would result in ICG owing to BellSouth is calculated as follows:

$$7 \quad 55,000,000 / 9000 / 24 = 254.63 \text{ DS1s}$$

$$8 \quad 254.63 \text{ DS1s} \times \$850.00 \times .086 = \$18,613.45$$

9 At a PRI rate of \$850, ICG will collect \$216,436 in revenue from its ISP
10 customer(s) just for the traffic originated by BellSouth. Total compensation
11 ICG owes to BellSouth for the 55,000,000 MOUs BellSouth originated to ICG
12 would be \$18,613.45.

13

14 Q. HOW DOES YOUR PROPOSAL AFFECT THE RELATIVE COST
15 RECOVERY OF THE LECs INVOLVED IN PROVIDING THE ACCESS
16 SERVICE?

17

18 A. Since the FCC has ordered that ISPs are to be provided service at business
19 exchange rates, the fact is that when the access service is provided by a single
20 LEC to the ISP, the rates it charges the ISP are typically not fully
21 compensatory. This situation arises because the ISP is being charged a flat rate
22 charge (which was intended for another service) for a high volume usage-
23 sensitive service. Under BellSouth's sharing proposal, each carrier should
24 recover roughly the same percentage of its costs. For example, if the carrier
25 would have recovered 50% of its costs if it served the ISP alone, the underlying

1 premise of this proposal is that each carrier should recover roughly 50% of its
2 costs.

3

4 Q. SHOULD THIS PLAN BE CONTINUED ONCE THE FCC ESTABLISHES
5 A USAGE-BASED COMPENSATION MECHANISM?

6

7 A. Probably not. The need for this plan was created by the fact that ISPs currently
8 pay business exchange rates for access service. Should the FCC change the
9 application of access charges to ISPs or establish a different compensation
10 mechanism, this plan should be re-evaluated.

11

12 Q. IN LIGHT OF YOUR COMMENTS WHAT ACTION ARE YOU
13 RECOMMENDING TO THE FLORIDA PSC?

14

15 A. The FCC has determined that ISP-bound traffic is interstate and has asserted
16 jurisdiction. This issue is not subject to arbitration under Section 252 of the
17 Act. Parties should be instructed to negotiate a revenue sharing arrangement
18 for this traffic just as has been done for jointly-provided access service since
19 divestiture. If those negotiations are not fruitful, however, they should be
20 referred to the FCC. Should, however, this Commission adopt an interim inter-
21 carrier compensation mechanism prior to the FCC completing its rulemaking
22 proceeding, BellSouth recommends the Commission adopt the Interim Plan
23 mechanism outlined above.

24

25

1 Q. IS BELLSOUTH ECONOMICALLY INDIFFERENT TO PAYING
2 RECIPROCAL COMPENSATION ON ISP-BOUND TRAFFIC?

3

4 A. No. The Diagrams F and G described above should make clear that BellSouth
5 is not economically indifferent to paying reciprocal compensation on ISP calls
6 for the following reasons:

- 7 1) BellSouth is still incurring the cost to transport the call to the point
8 of interconnection with the CLEC,
9 2) The CLEC wants BellSouth to pay reciprocal compensation to
10 cover the CLEC's cost from the point of interconnection to the
11 CLEC's switch, and
12 3) The ISP, which is the only source of revenue to cover the costs in 1)
13 and 2) above, only pays the CLEC for access.

14

15 The CLEC receives the revenues from its ISP customer, yet ICG apparently
16 believes it is appropriate for BellSouth to incur a portion of the costs for
17 providing the service without any reimbursement. This is exactly the opposite
18 of the situation depicted in Diagram B, which illustrates when reciprocal
19 compensation should apply. The CLEC should reimburse the originating
20 carrier (BellSouth) for its cost of transporting the ISP-bound call to the CLEC
21 point of interconnection. Instead, the CLEC wants the LEC to incur even more
22 of the costs without any compensation. This is a perversion of the entire access
23 charge system. There is no reason for this Commission to sanction this
24 economic legerdemain and reward CLECs by subsidizing ISPs at the expense
25 of the LEC's end users.

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Q. IF RECIPROCAL COMPENSATION IS NOT AUTHORIZED, WILL CLECs BE UNCOMPENSATED FOR THE COSTS THEY INCUR TO PROVIDE SERVICES TO ISPs?

A. No. The CLECs' ISP customers compensate the CLECs for services that are provided just like an ILEC's ISP customer compensates the ILEC. The CLECs' request for reciprocal compensation on ISP-bound traffic simply provides CLECs with unearned windfall revenues and further increases the unreimbursed cost of the ILEC.

Q. DOES LACK OF RECIPROCAL COMPENSATION ON ISP-BOUND TRAFFIC DISTORT THE ATTRACTIVENESS OF ISPs AS CLEC CUSTOMERS?

A. No. Payment of reciprocal compensation would create the distortion. The table below provides an illustrative example of this distortion.

	<i>SERVING AN ISP AND RECEIVING RECIPROCAL COMPENSATION</i>	<i>SERVING AN ISP WITHOUT RECEIVING RECIPROCAL COMPENSATION</i>
REVENUE FROM ISP FOR SERVICE	\$600	\$900
RECIPROCAL COMPENSATION REVENUE PAID	\$300	\$0
COST OF PROVIDING SERVICE TO ISP	(\$600)	(\$600)
NET MARGIN	\$300	\$300

1 What this illustration shows is that reciprocal compensation allows the CLEC
2 to offer lower prices to ISPs without reducing their net margins. Reciprocal
3 compensation subsidizes the prices the CLEC charges the ISP. When
4 reciprocal compensation is not paid on ISP-bound traffic, all parties are
5 competing on an equal footing for ISP customers. Hence, reciprocal
6 compensation should not be used to subsidize the service provided to the ISP.

7

8 Q. IS BELLSOUTH ATTEMPTING TO AVOID PAYING RECIPROCAL
9 COMPENSATION ON UNBALANCED TRAFFIC?

10

11 A. No. First, let me point out that BellSouth does not dispute payment of
12 reciprocal compensation on unbalanced traffic. Rather, BellSouth disputes
13 payment of reciprocal compensation on access traffic – i.e., ISP-bound traffic.
14 Second, I would point out that BellSouth has an obligation to serve any
15 customer, not simply to compete for the business of customers that generate
16 more inbound than outbound calling as ICG does.

17

18 ***Issue 2: Should BellSouth be required to offset the amount paid by ICG in the Bona***
19 ***Fide Request process for BellSouth's costs in developing a project plan whenever other***
20 ***parties subsequently request and receive the same service at a reduced rate (because***
21 ***BellSouth has already developed the necessary project plan)?***

22

23 Q. WHAT IS THE PURPOSE OF THE BONA FIDE REQUEST PROCESS WITH
24 CLECs?

25

1 A. Bona Fide Requests/New Business Requests (BFR/NBR) are used to allow
2 CLECs to request BellSouth to provide a new or modified network element,
3 interconnection option, or other service pursuant to the Act, or to provide a new or
4 a customized capability or function to meet a CLEC's business needs. The
5 BFR/NBR process is intended to facilitate the two way exchange of information
6 between the requesting party and BellSouth, which is necessary for accurate
7 processing of requests in a consistent and timely fashion.

8

9 Q. DO CLECs MAKE USE OF THE BFR/NBR PROCESS?

10

11 A. Yes. During a nine-month period in 1998, BellSouth received and processed
12 2,663 BFR/NBR requests. Of those requests, however, only 88 were accepted,
13 approved, developed, and implemented by CLECs.

14

15 Q. HOW IS THE COST OF A BFR/NBR DETERMINED?

16

17 A. A special team evaluates the CLEC's request for feasibility, consults with Product
18 Managers, Subject Matter Experts, and others, and develops an estimate of the
19 costs involved. Normally within 10 days after a BFR/NBR is received (maximum
20 of 25 days based on complexity), BellSouth notifies the CLEC, in writing, if the
21 request can be met and what the cost estimate is. If the CLEC accepts the offer,
22 then the CLEC must pay for the time and development of the service or UNE.

23

24

25

1 Q. SHOULD BELLSOUTH BE REQUIRED TO RECOVER PART OF A CLEC'S
2 BFR/NBR COST FROM SUBSEQUENT COMPANIES USING THE SERVICE
3 OR UNE?
4

5 A. No. To administer such a process for all BFR/NBRs would be extremely labor
6 intensive and expensive and such a process is not required by the Act.
7

8 Q. IS IT DISCRIMINATORY FOR BELLSOUTH TO RECOVER THE BFR/NBR
9 COST FROM THE FIRST CLEC TO REQUEST A NEW SERVICE OR UNE?
10

11 A. No. In most businesses, the first company to introduce or produce a new service
12 or product absorbs expenses for planning, developing and testing such a product
13 or service. Subsequently, other companies may make modifications or
14 improvements and produce the same thing at a lower price, for example,
15 computers or televisions. The benefit to the first requester is the ability to offer its
16 product in the marketplace before other providers can enter the market. This same
17 benefit applies on BFR/NBRs. BellSouth has no control over who submits a
18 BFR/NBR first or how many subsequent CLECs will request the same product or
19 service; therefore, BellSouth does not penalize or discriminate against the first
20 CLEC to submit a BFR/NBR.
21

22 Q. DID ICG PROPOSE A SPECIFIC PLAN TO RECOVER COSTS ASSOCIATED
23 WITH A BFR? IF SO, PLEASE DESCRIBE THE PLAN.
24
25

1 A. No. ICG did not propose a plan. Any such plan would involve keeping track of
2 all BFR/NBRs presented by all CLECs, as well as subsequent purchasers of a
3 BFR/NBR service or UNE in order to recover a portion of the developmental cost
4 from the succeeding CLECs. This process would increase the cost of BFR/NBRs
5 to all users. In one possible scenario, BellSouth would not know what portion of
6 the BFR/NBR cost each subsequent purchasing company would pay, because
7 BellSouth would not know how many, if any, other CLECs would want that
8 particular service or UNE. Another possible scenario would involve keeping
9 track of all CLECs buying a certain BFR/NBR service and reimbursing each one
10 equally every time another CLEC purchases the service. This process would be
11 even more administratively cumbersome and expensive than the first one. All of
12 this administrative effort is unnecessary. The first requester already receives the
13 same benefit that it would receive in any other marketplace.

14

15 Q. SHOULD BELLSOUTH PROPOSE AN ALTERNATIVE TO ALLOW A CLEC
16 TO RECOVER PART OF THE BFR/NBR COSTS?

17

18 A. No. This is a process for which the CLEC should be responsible. In some
19 cases, the CLEC requesting the BFR/NBR service or UNE may be the only
20 CLEC to ever purchase or use the service or UNE. Even if other CLECs do
21 purchase the new service or UNE at a later date, the initial CLEC has already
22 had the advantage of implementing the service before anyone else.

23

24 ***Issue 3: Should BellSouth be required to make available as UNEs packet-switching***
25 ***capabilities, including but not limited to: (a) user-to-network interface ("UNI") at***

1 56 kbps, 64 kbps, 128kbps, 256 kbps, 384 kbps, 1.544 Mbps, 44.736 Mbps; (b)
2 network-to-network interface (“NNI”) at 56 kbps, 64 kbps, 1.544 Mbps, 44.736
3 Mbps; and (c) data link control identifiers (“DLCIs”), at committed information
4 rates (“CIRs”) of 0 kbps, 8 kbps, 9.6 kbps, 16 kbps, 19.2 kbps, 28 kbps, 32 kbps, 56
5 kbps, 64 kbps, 128 kbps, 192 kbps, 256 kbps, 320 kbps, 320 kbps, 384 kbps, 448 kbps,
6 512 kbps, 640 kbps, 704 kbps, 768 kbps, 832 kbps, 896 kbps, 960 kbps, 1.024 Mbps,
7 1.088 Mbps, 1.152 Mbps, 1.216 Mbps, 1.280 Mbps, 1.344 Mbps, 1.408 Mbps, 1.472
8 Mbps, 1.536 Mbps, 1.544 Mbps, 3.088 Mbps, 4.632 Mbps, 6.176 Mbps, 7.720 Mbps,
9 9.264 Mbps, 10.808 Mbps, 12.350 Mbps, 13.896 Mbps, 15.440 Mbps, 16.984 Mbps,
10 18.528 Mbps, 20.072 Mbps?

11

12 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

13

14 A. It is BellSouth’s understanding that ICG is requesting that BellSouth unbundle
15 its existing tariffed Packet Switching Frame Relay Service. Subject to the
16 conditions stated in my testimony, BellSouth has agreed to do that. Ms.
17 Caldwell is sponsoring studies for the functions as they are found in
18 BellSouth’s tariff. One Frame Relay rate element, Data Link Connection
19 Identifier (“DLCI”) is offered in BellSouth’s tariff at varying Committed
20 Information Rates (“CIRs”). BellSouth studied this functionality in
21 “groupings” of CIRs that mirror its tariff offering. BellSouth’s costs and
22 proposed rates applicable during this interim period for unbundled packet
23 switching capabilities are found on Exhibit AJV-8 attached to my testimony.

24

25 *Issue 6: Should volume and term discounts be available for UNEs?*

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Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth should not be required to provide volume and term discounts for UNEs. Neither the Act nor any FCC order or rule requires volume and term discount pricing. The UNE recurring rates that ICG will pay are cost-based in accordance with the requirements of Section 252(d) and are derived using least-cost, forward looking technology consistent with the FCC's rules. Furthermore, BellSouth's nonrecurring rates already reflect any economies involved when multiple UNEs are ordered and provisioned at the same time.

Issue 7: For purposes of reciprocal compensation, should ICG be compensated for end office, tandem, and transport elements of termination where ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch?

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth's position is that if a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. BellSouth will pay the tandem interconnection rate only if ICG's switch is identified in the local exchange routing guide ("LERG") as a tandem. A tandem switch connects one trunk to another trunk and is an intermediate switch or connection between an originating telephone call location and the final destination of the call. An end office switch is connected

1 to a telephone subscriber and allows the call to be originated or terminated. If
2 ICG's switch is an end-office switch, then it is handling calls that originate
3 from or terminate to customers served by that local switch, and thus ICG's
4 switch is not providing a tandem function. ICG is seeking to be compensated
5 for the cost of equipment it does not own and for functionality it does not
6 provide. Therefore, this Commission should deny ICG's request for tandem
7 switching compensation when tandem switching is not performed.

8

9 Q. PLEASE RESPOND TO ICG'S CONTENTION THAT ICG'S SWITCH
10 SERVES A GEOGRAPHIC AREA COMPARABLE TO BELLSOUTH'S
11 TANDEM.

12

13 A. At the present time ICG is not collocated in any BellSouth central office in
14 Florida. Therefore, it is not possible to determine whether ICG's switch would
15 actually serve a geographic area comparable to BellSouth's tandem. If ICG
16 intends to provide service in Florida similar to how they are providing service
17 in Alabama then their switch would not serve an area comparable to
18 BellSouth's tandem. In Alabama, ICG has collocation arrangements in only
19 two of BellSouth's central offices. For ICG to imply that this equates to
20 serving a geographic area comparable to BellSouth's tandem switch is
21 inappropriate. ICG ignores the fact that BellSouth's Alabama tandem switch
22 serves six central offices in addition to the two central offices ICG has chosen
23 to serve. Obviously, the area served by BellSouth's tandem switch (eight
24 central offices) is not comparable to the area ICG has elected to serve (two
25 central offices). The clear intent of the FCC's order and rules is that if the

1 CLEC serves a geographic area comparable to the ILEC's tandem switch, the
2 CLEC would be incurring comparable costs as the ILEC. ICG's service
3 arrangement does not even approximate BellSouth's service scenario.
4

5 Q. PLEASE COMMENT ON ICG'S POSITION THAT ICG PROVIDES
6 TRANSPORT BETWEEN ITS SWITCH AND ITS COLLOCATIONS.
7

8 A. Without specific information from ICG to the contrary, the equipment in ICG's
9 collocation space is most likely nothing more than a Subscriber Loop Carrier
10 ("SLC"). An SLC is part of loop technology and provides no "switching"
11 functionality. Thus, ICG is only providing the termination function, which is
12 not the same as transport from the ILEC tandem to end offices as ICG
13 contends.
14

15 In paragraph 1039 of the FCC's First Report and Order, the FCC clearly
16 defines transport:

17 "We conclude that transport and termination should be treated as two
18 distinct functions. We define 'transport' for purposes of section
19 251(b)(5), as the transmission of terminating traffic that is subject to
20 section 251(b)(5) from the interconnection point between the two
21 carriers to the terminating carrier's end office switch that directly serves
22 the called party (or equivalent facility provided by the non-incumbent
23 carrier)."
24

25 Further, in paragraph 1040 of the FCC's First Report and Order,

1 “We define “termination” for purposes of section 251(b)(5), as the
2 switching of traffic that is subject to section 251(b)(5) at the
3 terminating carrier’s end office switch (or equivalent facility) and
4 delivery of that traffic from that switch to the called party’s premises.”

5

6 Additionally in that same paragraph, the FCC states:

7 “As such, we conclude that we need to treat transport and termination
8 as separate functions – each with its own cost.”

9

10 Clearly, the FCC recognized that transport and termination charges should
11 apply only if those functions are provided. Transport includes any flat rated
12 dedicated services, tandem switching function and “common” transport
13 between the tandem switch and end office switch necessary to transport the call
14 from the interconnection point to the end office. ICG’s switch is not providing
15 a common transport or tandem function, but is switching traffic through its end
16 office for delivery of that traffic from that switch to the called party’s premises.

17

18 Q. IS ICG’S POSITION CONSISTENT WITH WHAT THE FCC
19 DETERMINED TO BE THE “ADDITIONAL COST” OF TERMINATING A
20 CALL?

21

22 A. No. In paragraph 1057, the FCC clearly indicates what should be charged for
23 terminating a call:

24 “We find that, once a call has been delivered to the incumbent LEC end
25 office serving the called party, the ‘additional cost’ to the LEC of

1 terminating a call that originated on a competing carrier's network
2 primarily consists of the traffic-sensitive component of local switching.
3 The network elements involved with the termination of traffic include
4 the end-office switch and local loop. The costs of local loops and line
5 ports associated with local switches do not vary in proportion to the
6 number of calls terminated over these facilities. We conclude that such
7 non-traffic sensitive costs should not be considered 'additional costs'
8 when a LEC terminates a call that originated on the network of a
9 competing carrier."

10

11 Obviously, the FCC intends for the terminating LEC to recover its loop costs
12 from the end user customer, not the originating LEC. ICG is clearly attempting
13 to recover its loop costs from BellSouth by inappropriately classifying their end
14 office switch as a tandem switch.

15

16 ***ISSUE 9: In calculating PLU and PIU, should BellSouth be required to report the***
17 ***traffic on a monthly basis?***

18

19 Q. ICG HAS STATED THEIR POSITION THAT THE PERCENT LOCAL USAGE
20 (PLU) AND PERCENT INTERSTATE USAGE (PIU) SHOULD BE
21 REPORTED ON A MONTHLY BASIS. WHAT ARE THE PLU AND THE
22 PIU?

23

24 A. The PLU - Percent Local Usage - is a factor that determines the amount of local
25 terminating minutes for use in mutual compensation billing. The PLU is

1 calculated and reported quarterly as outlined in BellSouth's "Percent Local Use
2 (PLU) Reporting Guidebook", in the "CLEC Activation Requirements" posted on
3 the Internet, and in the interconnection agreement between BellSouth and ICG.

4
5 The PIU - Percent Interstate Usage - is a factor that is used to apportion charges
6 between interstate and intrastate jurisdictions. It is the ratio of all interstate
7 minutes of use to the total minutes of use. Once the PIU or interstate percentage
8 is known, the intrastate percentage is calculated as 100% minus the PIU. The PIU
9 is calculated and reported quarterly as outlined in BellSouth's effective Access
10 Service tariffs approved in Alabama, Florida, Georgia, Kentucky, Louisiana,
11 Mississippi, North Carolina, South Carolina, Tennessee and by the FCC.

12
13 Q. ARE THE QUARTERLY PIU AND PLU REPORTING PROCEDURES
14 REASONABLE AND EFFICIENT?

15
16 A. Yes. The quarterly PIU and PLU reporting requirements are both reasonable and
17 efficient. Quarterly reporting is a reasonable balance of (1) the effort required by
18 all companies (CLECs, IXC's and ILEC's) to gather the data to calculate the PIU
19 and PLU; (2) the effort required by companies to manually update their billing
20 systems to include those factors for all other companies; and (3) the degree of
21 variability of the factors within the reporting period, such as adds, disconnects,
22 seasonal peaks, etc.

23
24 Q. SHOULD BELLSOUTH BE REQUIRED TO REPORT THE PIU AND PLU ON
25 A MONTHLY BASIS?

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A. No. To calculate and report PIUs and PLUs more often than quarterly, as called for in the tariffs, would require additional manpower and expense, and would not improve the current methodology.

Issue 10: Should BellSouth be required to provide to ICG a breakdown of the intrastate and interstate traffic that it reports to ICG?

A. Although it is unclear what relief ICG is really seeking, to the extent that ICG is asking for the underlying data that is used to calculate the PIU, the Interconnection Agreement provides for either BellSouth or ICG to conduct an annual audit to ensure the proper billing and reporting of traffic.

Issue 11: Should BellSouth be required to commit to provisioning the requisite network buildout and necessary support when ICG agrees to enter into a binding forecast of its traffic requirements in a specified period?

Q. WHAT IS BELLSOUTH'S POSITION CONCERNING ENTERING INTO A BINDING FORECAST WITH ICG?

A. BellSouth is currently analyzing the possibility of providing a service whereby BellSouth commits to provisioning the necessary network buildout and support when a CLEC agrees to enter into a binding forecast of its traffic requirements. While BellSouth has not yet completed the analysis needed to determine if this is

1 a feasible offering, BellSouth is willing to discuss the specifics of such an
2 arrangement with ICG.

3

4 Q. SHOULD THIS COMMISSION ORDER BELL SOUTH TO COMPLY WITH
5 THIS ISSUE AS ICG HAS STATED IT?

6

7 A. No. Although BellSouth has been analyzing such an offering, BellSouth is not
8 required by the Act to commit to a binding forecast with CLECs. While the
9 specifics of such an arrangement have not been finalized, BellSouth is agreeable
10 to continue to negotiate with ICG to meet their forecasting needs.

11

12 ***Issue 5: Should BellSouth be subject to liquidated damages for failing to meet the***
13 ***time intervals for provisioning UNEs?***

14

15 ***Issue 19: Should BellSouth be required to pay liquidated damages when BellSouth***
16 ***fails to install, provision, or maintain any service in accordance with the due dates***
17 ***set forth in an interconnection agreement between the Parties?***

18

19 ***Issue 20: Should BellSouth continue to be responsible for any cumulative failure in***
20 ***a one-month period to install, provision, or maintain any service in accordance with***
21 ***the due dates specified in the interconnection agreement with ICG?***

22

23 ***Issue 21: Should BellSouth be required to pay liquidated damages when***
24 ***BellSouth's service fails to meet the requirements imposed by the interconnection***
25 ***agreement with ICG (or service is interrupted causing loss of continuity or***

1 *functionality)?*

2

3 *Issue 22: Should BellSouth continue to be responsible when the duration of*
4 *service's failure exceeds certain benchmarks?*

5

6 *Issue 23: Should BellSouth be required to pay liquidated damages when*
7 *BellSouth's service fails to meet the grade of service requirements imposed by the*
8 *interconnection agreement with ICG?*

9

10 *Issue 24: Should BellSouth continue to be responsible when the duration of*
11 *service's failure to meet the grade of service requirements exceeds certain*
12 *benchmarks?*

13

14 *Issue 25: Should BellSouth be required to pay liquidated damages when*
15 *BellSouth's fails to provide any data in accordance with the specifications of the*
16 *interconnection agreement with ICG?*

17

18 *Issue 26: Should BellSouth continue to be responsible when the duration of its*
19 *failure to provide the requisite data exceeds certain benchmarks?*

20

21 Q. HAS THIS COMMISSION PREVIOUSLY ADDRESSED THE ISSUE OF
22 LIQUIDATED DAMAGES?

23

24 A. Yes. This Commission has previously determined that the issue of "incentive
25 payments" and/or liquidated damages is not subject to arbitration under Section

1 251 of the Act. In the AT&T/MCI Arbitration proceeding, the Commission
2 concluded, "we should limit our consideration in this arbitration proceeding to
3 the items enumerated to be arbitrated in Sections 251 and 252 of the Act, and
4 matters necessary to implement those items. A liquidated damages provision
5 does not meet that standard." (Order No. PSC-96-1579-FOF-TP, dated
6 December 31, 1996, page 74). The Commission further concluded "it is not
7 appropriate for us to arbitrate a liquidated damages provision under state law."
8 (Id.)

9
10 Even if a penalty or liquidated damage award could be arbitrated, it is
11 completely unnecessary. Florida law and Commission procedures are
12 available, and perfectly adequate, to address any breach of contract situation
13 should it arise.

14
15 Q. WHAT IS BELLSOUTH'S POSITION REGARDING LIQUIDATED
16 DAMAGES?

17
18 A. Nothing has changed that makes the Commission's previous determination
19 invalid. The Commission should not arbitrate this issue.

20
21 Q. WHAT IS BELLSOUTH'S POSITION REGARDING ICG'S REQUEST FOR
22 BELLSOUTH TO BE RESPONSIBLE FOR SERVICE FAILURES THAT
23 EXCEED CERTAIN BENCHMARKS?

24
25 A. BellSouth believes that the only remedies appropriate for inclusion in an

1 interconnection agreement are those to which the parties mutually agree.
2 BellSouth is currently working with the FCC to finalize BellSouth's proposal
3 for self-effectuating enforcement measures. This is a voluntary proposal made
4 by BellSouth which would take effect on a state by state basis concurrent with
5 approval for BellSouth to enter into long distance in each state and subject to
6 acceptance by the FCC. This proposal should not, however, be interpreted in
7 any way as BellSouth's admission that the Commission or FCC have the
8 authority to impose self-executing penalties or liquidated damages without
9 BellSouth's agreement.

10

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12

13 A. Yes.

14 170194

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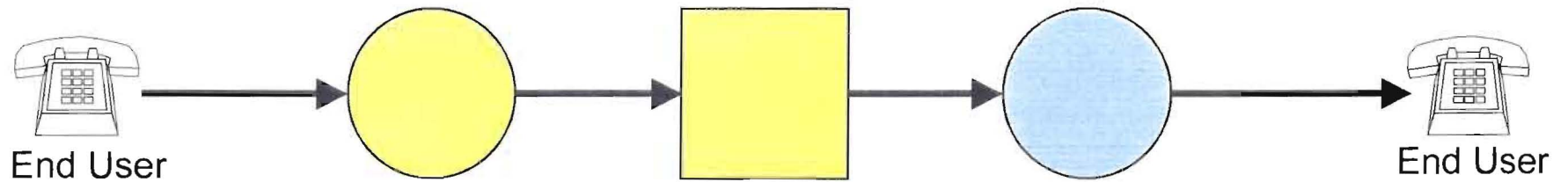
25

Reciprocal Compensation

- ILEC receives monthly fee from its end user to apply towards the cost of terminating local calls

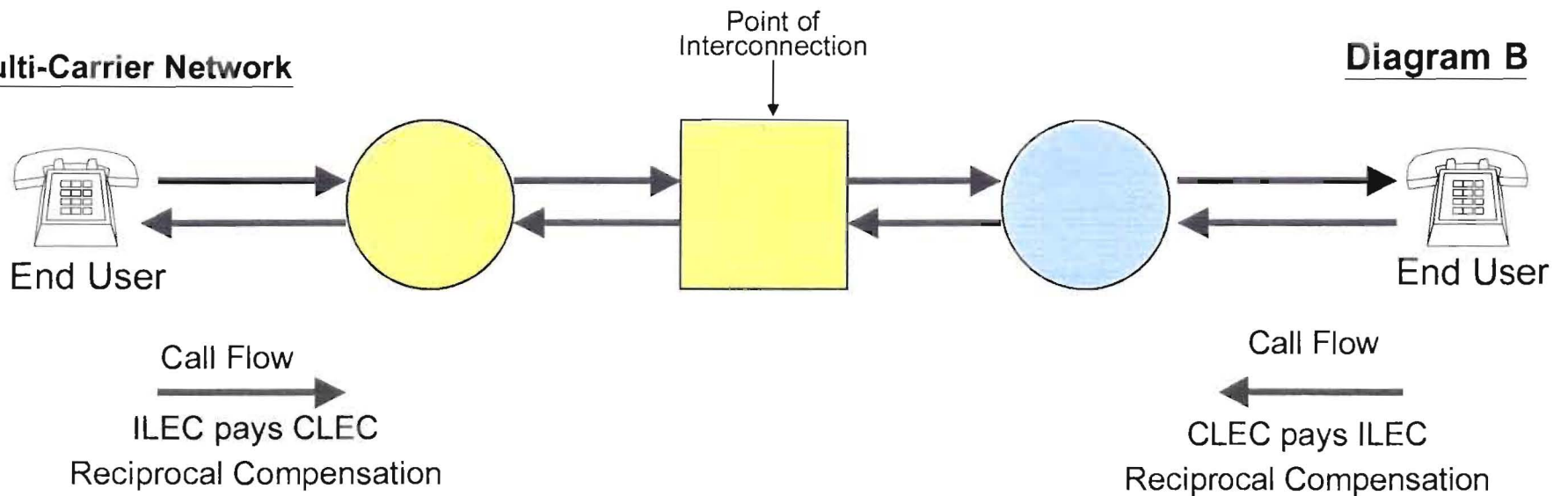
Single Carrier Network

Diagram A



Multi-Carrier Network

Diagram B



**Access Service for IXC-Bound and ISP-Bound
Traffic Involving Single Carrier Network**

Diagram C

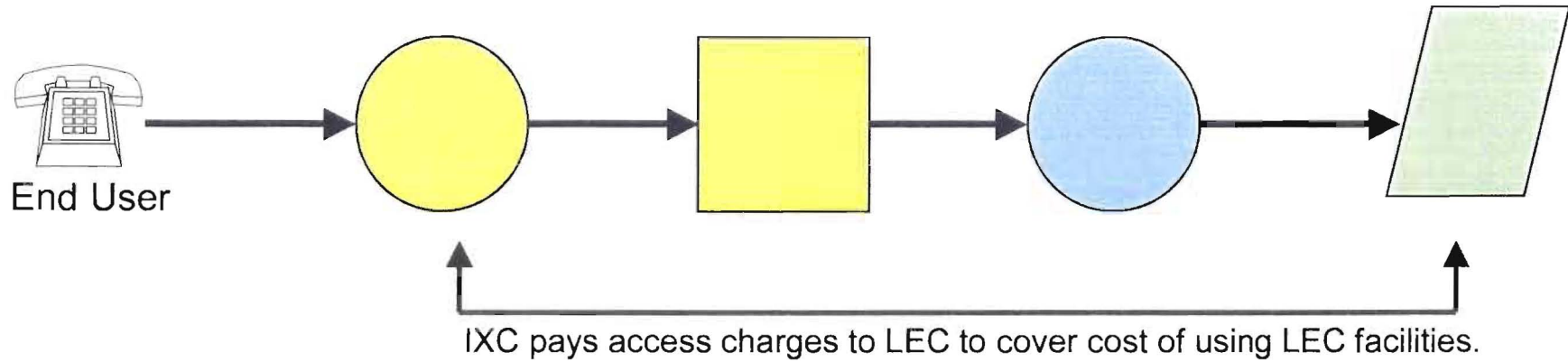
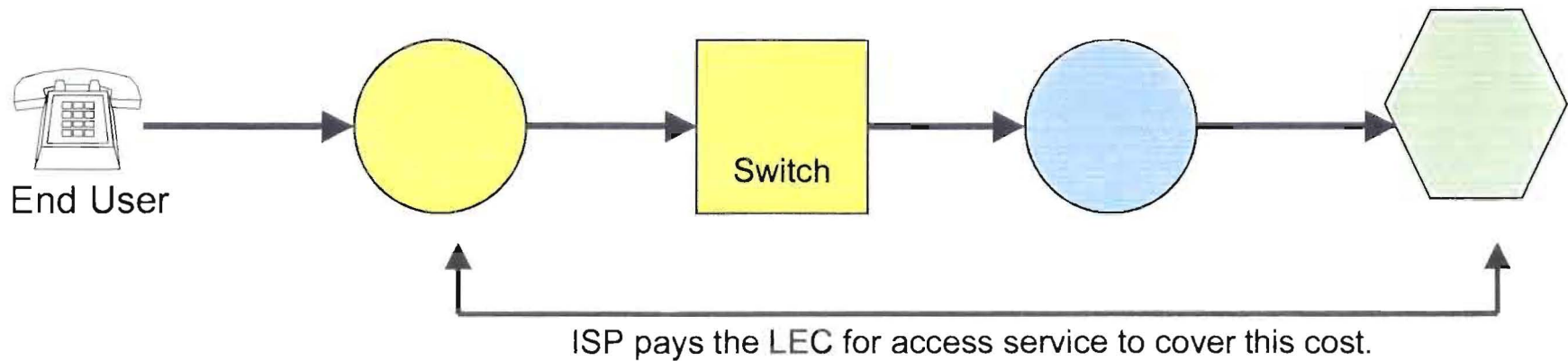


Diagram D



the 1990s, the number of people in the world who are under 15 years of age has increased from 1.1 billion to 1.3 billion. This increase is due to the fact that the number of children under 15 years of age has increased in every country in the world, and the rate of increase is particularly high in developing countries.

The increase in the number of children under 15 years of age has led to a corresponding increase in the number of children who are in need of education. In 1990, there were 1.1 billion children under 15 years of age in the world, and 1.1 billion children were in need of education. In 2000, there were 1.3 billion children under 15 years of age in the world, and 1.3 billion children were in need of education.

The increase in the number of children in need of education has led to a corresponding increase in the number of children who are out of school. In 1990, there were 1.1 billion children in need of education, and 1.1 billion children were out of school. In 2000, there were 1.3 billion children in need of education, and 1.3 billion children were out of school.

The increase in the number of children out of school has led to a corresponding increase in the number of children who are illiterate. In 1990, there were 1.1 billion children out of school, and 1.1 billion children were illiterate. In 2000, there were 1.3 billion children out of school, and 1.3 billion children were illiterate.

The increase in the number of children who are illiterate has led to a corresponding increase in the number of children who are unemployed. In 1990, there were 1.1 billion children who were illiterate, and 1.1 billion children were unemployed. In 2000, there were 1.3 billion children who were illiterate, and 1.3 billion children were unemployed.

The increase in the number of children who are unemployed has led to a corresponding increase in the number of children who are poor. In 1990, there were 1.1 billion children who were unemployed, and 1.1 billion children were poor. In 2000, there were 1.3 billion children who were unemployed, and 1.3 billion children were poor.

The increase in the number of children who are poor has led to a corresponding increase in the number of children who are hungry. In 1990, there were 1.1 billion children who were poor, and 1.1 billion children were hungry. In 2000, there were 1.3 billion children who were poor, and 1.3 billion children were hungry.

The increase in the number of children who are hungry has led to a corresponding increase in the number of children who are malnourished. In 1990, there were 1.1 billion children who were hungry, and 1.1 billion children were malnourished. In 2000, there were 1.3 billion children who were hungry, and 1.3 billion children were malnourished.

The increase in the number of children who are malnourished has led to a corresponding increase in the number of children who are dying. In 1990, there were 1.1 billion children who were malnourished, and 1.1 billion children were dying. In 2000, there were 1.3 billion children who were malnourished, and 1.3 billion children were dying.



BellSouth Telecommunications, Inc.
FPSC Docket No. 990691-TP
August 2, 1999
Exhibit AJV-3

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

In the Matter of)
)
Inter-Carrier Compensation) CC Docket No. 99-68
for ISP-Bound Traffic)

COMMENTS

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

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Date: April 12, 1999

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SUMMARY

The purpose of the *NPRM* is to consider the adoption of a rule “regarding the compensation for ISP-bound traffic.

BellSouth suggests that the Commission should adopt an inter-carrier compensation approach that: (1) recognizes that ISP traffic is interstate; (2) calls for negotiations between the carriers jointly providing the Internet access service; (3) is based on revenue sharing with the primary carrier sharing revenue with the secondary carrier; and (4) uses negotiation to determine the amount of inter-carrier compensation. Such an inter-carrier compensation approach promotes the Commission’s goals and objectives.

Further, the Commission should find that ISP-bound traffic cannot be separated into its interstate and intrastate components. Any single Internet session can result in an Internet user accessing information in his/her own state, another state, or another country. The same user could “chat” online with people across the street or on the other side of the world. The inability to distinguish the jurisdictional nature of each communication that travels across the Internet leads to the conclusion that Internet traffic is inserverable and must be considered jurisdictionally interstate.

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

In the Matter of)	
)	
Inter-Carrier Compensation)	CC Docket No. 99-68
for ISP-Bound Traffic)	

COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit the following comments on the *Notice of Proposed Rulemaking*, released on February 26, 1999,¹ regarding inter-carrier compensation for ISP-bound traffic.

I. INTRODUCTION

In its *Declaratory Ruling*, the Commission found that Internet-bound communications do not terminate at an Internet Service Provider's ("ISP") local server but "continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state."² The Commission also concluded that a substantial portion of Internet traffic involves accessing interstate or foreign websites and hence is jurisdictionally interstate.³ The purpose of

¹ *In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *Notice of Proposed Rulemaking*, FCC 99-38, released February 26, 1999 ("NPRM").

² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Declaratory Ruling*, FCC 99-38, released February 26, 1999 at ¶ 12 ("*Declaratory Ruling*").

³ *Id.* at ¶¶ 18 and 20.

the *NPRM* is to consider the adoption of a rule governing inter-carrier compensation for ISP-bound traffic.⁴

As a preliminary matter, it is necessary to establish the framework within which the issue of inter-carrier compensation should be considered. The interstate connection that permits an ISP to communicate with its subscribers falls within the scope of exchange access and, accordingly, constitutes an access service as defined by the Commission:

Access Service includes services and facilities provided for the origination or termination of any interstate or foreign telecommunication.⁵ (emphasis added)

The fact that the Commission has exempted enhanced service providers, including ISPs, from paying interstate access charges does not alter the fact that the connection an ISP obtains is an access connection. Instead, the exemption limits the compensation that a local exchange carrier (“LEC”) in providing such a connection can obtain from an ISP.⁶ Further, under the access charge exemption, the compensation derived by a LEC providing the service to an ISP has been limited to the rates and charges associated with business exchange services. Nevertheless, the ISP’s service involves interstate communications. The ISP obtains a service that enables a communications path to be established by its subscriber. The ISP, in turn, recovers the cost of the telecommunications services it uses to deliver its service through charges it assesses on the subscribers of the ISP’s service.

⁴ *NPRM* at ¶ 28.

⁵ 47 C.F.R. § 69.2(b).

⁶ The access charge exemption only applies to LECs that are subject to the Commission’s access charge rules (47 C.F.R. § 69.1 *et. seq.*).

Where two or more carriers are involved in establishing the communications path between the ISP and the ISP's subscriber, the access service to the ISP is jointly provided. Such jointly provided access arrangements are not new or unique nor are the associated mechanisms to handle inter-carrier compensation. The services ISPs obtain for access to their subscribers are technically similar to the line side connections available under Feature Group A. For such line side arrangements, the Commission has relied on revenue sharing agreements for the purpose of inter-carrier compensation. The long history and precedent regarding inter-carrier compensation for interstate services are instructive and relevant to the Commission's determinations in this proceeding.

II. INTER-CARRIER COMPENSATION FOR ISP-BOUND INTERSTATE TRAFFIC

The *NPRM* expresses the Commission's preference that any rule pertaining to inter-carrier compensation be based upon negotiations entered into by the respective carriers.⁷ BellSouth supports a federal rule that calls for negotiation between the carriers to determine inter-carrier compensation for jointly provided interstate-services. Negotiation has long been a mechanism employed by the Commission with regard to other jointly provided access arrangements that involved potential revenue sharing. Relying on the negotiation process enables agreements to reflect the differing circumstances that arise and permits carriers to craft agreements that are particular to those circumstances.

⁷ *NPRM* at ¶ 28.

The *NPRM* presents an approach to inter-carrier compensation based on the negotiation process established in Sections 251 and 252 of the Communications Act.⁸ As explained more fully below, such an approach is not acceptable because the Commission does not have the statutory authority to adopt it. In response to the *NPRM*'s invitation, BellSouth submits an alternative approach that is consistent with the revenue sharing approaches followed by the Commission in connection with jointly provided access service.

A. The Commission Should Not Adopt The Alternative Set Forth In The *NPRM*

The approach for interstate inter-carrier compensation set forth in the *NPRM* would make the negotiations for such compensation subject to the negotiation process established by Sections 251 and 252 of the Communications Act. The proposal contemplates that a failure on the part of the parties to reach an agreement would be subject to the arbitration procedures set forth in Section 252 of the Communications Act, wherein state commissions would have the responsibility of arbitrating any unresolved issues. Under this proposal, the Commission would have no oversight role unless the state commission failed to act in accordance with the provisions of Section 252. This proposal is fundamentally flawed.

Neither Section 251 nor Section 252 governs interstate inter-carrier compensation arrangements. The duty to negotiate under Section 251 pertains only to fulfilling the duties set forth in subsections (b) and (c) of Section 251. Section 251(b) relates to local exchange carriers' obligations regarding resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. Inter-carrier compensation for jointly provided interstate services is

⁸ 47 U.S.C. §§ 251 and 252.

unrelated to any of these Section 251(b) obligations.⁹ Likewise, there is no nexus between Section 251(c) and interstate inter-carrier compensation. The duty to negotiate under Section 251(c) pertains to the terms and conditions that relate to interconnection, access to unbundled network elements, resale, and collocation. There is nothing in Section 251(c) that would govern interstate inter-carrier compensation.

A state commission's arbitration authority under Section 252 extends only to agreements negotiated pursuant to the requirements of Section 251. Because inter-carrier compensation for interstate services is not governed by Section 251, state commissions are without the statutory authority to arbitrate disputes over such matters. Further, the Commission does not have the authority to rewrite the Communications Act and vest the state commissions with the power to regulate matters relating to interstate communications that, under the Act, are specifically reserved to the Commission.¹⁰

⁹ Indeed, of the five obligations enumerated in Section 251(b), only reciprocal compensation could be remotely relevant. The Commission's *Declaratory Ruling*, however, is dispositive:

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

Declaratory Ruling at n. 87.

¹⁰ See 47 U.S.C. §§ 151 and 152(a). Similarly, the Commission does not have the statutory authority to vest federal district courts with the authority to review decisions regarding inter-carrier compensation for interstate communications. Under Section 252, federal district courts only have jurisdiction to review state commission actions "to determine whether the agreement

As an alternative to relying on Sections 251 and 252, the *NPRM* proposes that the Commission adopt “a set of federal rules governing inter-carrier compensation for ISP-bound traffic pursuant to which parties would engage in negotiations concerning rates, terms and conditions applicable to delivery of interstate ISP-bound traffic.”¹¹ Without question, the only type of mechanism that can govern inter-carrier compensation for interstate services must be one over which the Commission has oversight. Federal rules that bind interstate inter-carrier compensation obligations would be appropriate.

The *NPRM*, however, assumes that for federal rules to operate properly, an arbitration-like process needs to be in-place. Arbitration is not an essential element for effective negotiation of interstate inter-carrier compensation agreements. Further, while the Commission has considerable latitude in managing its proceedings, it must be mindful that in conducting its affairs, it must do so in a manner that is consistent with the Administrative Procedures Act and the Communications Act. Thus, the Commission cannot divest the courts of appeal of jurisdiction to review final Commission orders or to force carriers to engage in binding arbitration. To the extent disputes arise during the inter-carrier compensation negotiations, the statutory complaint process and the Commission’s implementing rules already provide an effective dispute resolution mechanism.

or statement meets the requirements of section 251 and this section.” 47 U.S.C. § 252(e)(6). Inter-carrier compensation for interstate services is unrelated to the requirements of Sections 251 or 252.

¹¹ *NPRM* at ¶ 31.

B. The Parameters Of A Properly Crafted Inter-Carrier Compensation Mechanism

At the outset, the Commission must recognize that any interstate inter-carrier compensation mechanism adopted in this proceeding gives rise to interstate costs that must be recovered through interstate rates. As obvious as this principle is, nothing in the *NPRM* indicates that the Commission has given any consideration to this basic concept. Yet, Commission precedent regarding inter-carrier compensation, *i.e.*, primary/secondary carrier agreements, revenue sharing agreements and meet point billing, firmly establishes that compensation between one carrier and another is for the purpose of recovering costs of jointly provided services and the cost of such compensation is borne by the subscriber of the jointly provided service.

For ISP-bound traffic, the ISP is purchasing an access service to receive communications from its subscribers. It uses the telecommunications service to provide its enhanced services and recovers its costs through fees charged to its subscribers. For dial-up connections, the ISP is obtaining a service that is analogous to a Feature Group A access service in that it obtains a dial tone service that has a 7/10 digit local number associated with it. The primary difference between Feature Group A and the ISP dial-up connection is that Feature Group A is based on two-way usage sensitive prices, whereas the Commission has limited the price for an ISP dial-up connection to the equivalent business exchange service rate.¹² Notwithstanding the pricing differences, the Feature Group A and the ISP dial-up services provide the customers of these services with the ability to communicate with their subscribers, and the fees paid by these

¹² For BellSouth, exchange rates are generally flat-rated.

customers (e.g., Interexchange carriers or ISPs) are supposed to compensate the LEC(s) for providing this service.¹³

Further, the Commission has correctly found that the preponderance of ISP communications is jurisdictionally interstate. As discussed below, there is no practical means of distinguishing intrastate and interstate components of ISP communications. For this reason the dial-up connection obtained by the ISP should be considered jurisdictionally interstate.¹⁴ Such jurisdictional assignment does not implicate the access charge exemption for enhanced service providers. An interstate dial-up access connection for ISPs can be provided by simply adding a regulation for ISP dial-up connections to the interstate access tariff that cross-references the applicable business exchange rates that ISPs obtain from intrastate tariffs. Thus, ISPs would retain the current rate treatment of paying a rate that is no higher than a business exchange rate, but the service revenues and costs would properly be assigned to the interstate jurisdiction. Use of a cross-reference would have the further beneficial effect of making the jurisdictional alignment of service, revenues and costs transparent to the ISPs.

With regard to inter-carrier compensation for jointly-provided Internet access service, the LEC providing dial-tone to the ISP is the primary LEC and receives the interstate equivalent of a business exchange rate. The non-dial-tone LEC, or secondary LEC, receives no interstate revenues other than the subscriber line charge. Nevertheless, the secondary LEC incurs

¹³ The interstate cost components of the service include the subscriber's common line, the subscriber's switch, interoffice transport, the customer's dial-tone switch and the transport to the customer's location.

¹⁴ At a minimum, a substantial portion of the dial-up connection must be considered jurisdictionally interstate in light of the Commission's finding in the *Declaratory Ruling*.

switching and trunking costs associated with the provision of this interstate service. Consistent with Commission precedent, the primary LEC, which has the relationship with the ISP, should compensate or share revenues with the secondary LEC.¹⁵

The Commission, accordingly, should adopt an inter-carrier compensation approach that: (1) recognizes that ISP traffic is interstate; (2) calls for negotiations between the carriers jointly providing the Internet access service; (3) is based on revenue sharing with the primary carrier sharing revenue with the secondary carrier; and (4) uses negotiation to determine the amount of inter-carrier compensation. Such an inter-carrier compensation approach promotes Commission goals and objectives. First and foremost, the approach does not disrupt the enhanced service providers access charge exemption. Next, while the enhanced service provider exemption remains intact, the mechanism crafted by BellSouth follows the same path that the Commission has unwaveringly pursued over the last fifteen years when it addressed LEC inter-carrier compensation matters. Finally, but equally important, the approach is procompetitive. It avoids creating regulatory incentives that artificially reward carriers that only serve selected customers. It promotes efficient networks and encourages carriers to compete across a broad range of services and customers because it ensures that carriers are compensated fairly.¹⁶

¹⁵ Prior to revenue sharing for Feature Group A, the Commission had established guidelines applicable to primary carrier/secondary carrier agreements.

¹⁶ For example, the mechanism proposed by BellSouth would share the revenues derived from the services provided to ISPs. If such services are flat-rated, then the inter-carrier compensation would not be usage based.

C. ISP-Bound Traffic Cannot Practically Be Separated Into Its Interstate and Intrastate Components

In the *Declaratory Ruling*, the Commission determined that ISP-bound traffic was substantially interstate in nature. The Commission, however, reserved until this proceeding any determination regarding the severability of such traffic into intrastate and interstate components. It is beyond dispute that no carrier involved in delivering ISP-bound traffic has any way of determining how an ISP's subscriber is using the connection established between himself and the ISP. The only party that could theoretically track the jurisdictional use of the connection is the ISP itself. In BellSouth's opinion the tools to transform a theoretical possibility into a practical reality do not exist.

Hosts that are connected to the Internet can be located anywhere. Indeed, the fact that they are not tied to a particular geographic location represents one of the fundamental values of the Internet. Neither the IP address of the host nor its domain name links the host to a specific geographical location. Hence, there is no practical means to identify where the host is physically located. Neither the ISP's subscriber nor the ISP has any technical or operational tools that would enable them to determine which communications initiated by the subscriber or received by the subscriber are related to hosts that are located within the same local area as the ISP's local server or in another state or in another country. The dispersion of servers world-wide and the lack of duplication attests to the fact that use of the Internet will invariably involve substantial interstate communications.¹⁷

¹⁷ The WWW Consortium has compiled an extensive list of servers by geographic locations. The list is available at <http://vlib.stanford.edu/Servers.html>.

In addition, an ISP's subscriber typically communicates with more than one destination point on (or beyond) the Internet during a single Internet session and may do so either sequentially or simultaneously. For example, an ISP's subscriber in a single Internet session may access websites that reside on servers located in various states or in foreign countries; communicate directly with another Internet user; and "chat" online, in real time, with a group of Internet users located around the corner or around the world. Standard Internet "browsers" enable an ISP's subscriber to do all of these things simultaneously. In another example, an ISP's subscriber may download incoming e-mail from the ISP's server (which may or may not be located in the same state as the user), while accessing his stockbroker's website in another state, and listen to an audio feed that originates from a radio station in another country.¹⁸ The dynamic capabilities of the Internet render it impossible to segregate intrastate from interstate communications.¹⁹

¹⁸ Indeed, one website, www.broadcast.com, offers an Internet user access to 984 different radio and television stations. With real-time audio and video streaming capabilities, which are available for most web browsers, Internet users can listen to radio stations and watch TV broadcasts from around the world.

¹⁹ In a working paper, the FCC Office of Plans and Policy explained that:

[B]ecause the Internet is a dynamically routed, packet-switched network, only the origination point of an Internet connection can be identified with clarity. Users generally do not open Internet connections to "call" a discreet recipient, but access various Internet sites during the course of a single conversation.... One Internet "call" may connect the user to information both across the street and on the other side of the world.

The paper concludes that Internet traffic "has no built-in jurisdictional divisions." Kevin Werbach, *Digital Tornado: The Internet and Telecommunications Policy*, FCC, OPP Working Paper No. 29 (March 1997) at 45.

The inability to distinguish the jurisdictional nature of each communication that traverses an Internet connection coupled with the predominant interstate nature of Internet communications lead to the inescapable conclusion that Internet traffic is inseverable and must be considered jurisdictionally interstate.

III. CONCLUSION

ISP-bound traffic is inherently and inseverably interstate traffic. As such, it requires an interstate inter-carrier compensation mechanism over which the Commission maintains oversight authority. BellSouth has provided an approach to address inter-carrier compensation for ISP-

CERTIFICATE OF SERVICE

I do hereby certify that I have this 12th day of April 1999 served the following parties to this action with a copy of the foregoing COMMENTS by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

*Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S. W.
Room TW-A325
Washington, DC 20554

*ITS
1231 20th Street, N. W.
Washington, DC 20036

/s/

Juanita H. Lee

*** VIA HAND DELIVERY**

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

In the Matter of)	
)	
Inter-Carrier Compensation)	CC Docket No. 99-68
For ISP-Bound Traffic)	

REPLY COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit their Reply Comments in the above referenced proceeding.

I. INTRODUCTION

In this proceeding the Commission is considering adopting rules to govern inter-carrier compensation for interstate ISP-bound traffic. For some commenters, this proceeding is an opportunity for the Commission to "show me the money" and make inter-carrier compensation a euphemism for corporate welfare. Inter-carrier compensation becomes an excuse for transfer payments from ILECs to CLECs.

Inter-carrier compensation is more complex. The underlying concept is one in which all carriers participating in the provision of a jointly provided service are compensated for the jointly provided service. Thus, inter-carrier compensation necessarily involves consideration of the revenues associated with the jointly provided service because it is from such revenues that inter-carrier compensation is derived. In the case of ISP-bound traffic, the issue is more difficult because the Commission's access charge exemption policy constrains the prices that can be charged for ISP-bound traffic.

Calls for the Commission to emulate local reciprocal compensation schemes simply ignore the realities surrounding ISP-bound traffic. The decision the Commission must make in

this proceeding requires a more thoughtful and analytical approach if the Commission is going to foster fair competition and encourage the development of advanced services and technologies.

II. THE PARADIGM FOR INTER-CARRIER COMPENSATION

The CLECs and some enhanced service providers portray the Commission's decision here to be one of simply adopting an approach that mirrors the reciprocal compensation mechanisms reflected in local interconnection agreements.¹ All of these comments share the same fundamental shortcoming. These parties apparently believe that the only task before the Commission is simply to establish an interstate payment mechanism between carriers. None of these parties consider the interstate revenue sources from which such payments must come. It is the height of folly to suggest, as these parties do, that a usage-based compensation scheme that is not accompanied by a usage sensitive charge that would be assessed on either the ISP or the ISP's subscriber could be imposed by the Commission.

Interstate compensation and interstate revenue sources are two sides of the same coin. The revenue sources for interstate ISP-bound traffic are two: (1) the subscriber line charge assessed to the ISP's subscriber and (2) the service charge assessed to the ISP.² The subscriber line charge, however, does not even cover of the full interstate nontraffic sensitive costs associated with facilities between the subscriber's premises and the serving central office of that subscriber. The remaining interstate nontraffic sensitive costs, as well as the switching and

¹ See e.g., RCN at 6; CompTel at 2-5; Choice Communications 2-3; Focal at 14; AOL at 10; AT&T at 8.

² As further discussed below, the comments in this proceeding make clear that all ISP traffic should be treated as interstate. Even if there is some jurisdictionally intrastate components of ISP traffic, such components cannot be severed from interstate communications that predominate ISP traffic. Accordingly, the services used by ISPs should be treated as interstate with the revenues associated with such services considered interstate revenues.

trunking costs associated with the communications path to the ISP, in the interstate jurisdiction, would typically be recovered from the ISP. Indeed, the Commission has recognized that the main source of revenue for LECs transporting ISP-bound traffic are from the service charges that ISPs pay to use local exchange facilities.³

In light of these facts, it is remarkable that CLECs that serve ISPs contend that the Commission should implement an inter-carrier compensation scheme that would result in usage-based payments being made to the carrier that provides service to the ISP. In an arrangement where two carriers are providing service to establish the connection between the ISP and its subscriber, the carrier serving the ISP's subscriber currently receives no interstate revenue for its switching and trunking facilities that are used in making the connection to the ISP. It is patently absurd to impose a compensation obligation on the carrier that serves the ISP's subscriber unless the Commission concomitantly creates a new mechanism for that carrier to recover these additional costs.

In stark contrast to the proposals that call for the Commission to mimic local reciprocal compensation is BellSouth's revenue sharing approach. BellSouth's proposal is guided by and consistent with Commission precedent regarding inter-carrier compensation for jointly provided interstate services.⁴ It recognizes, as the Commission does, that the primary revenue source for ISP-bound traffic is derived from the service provided to the ISP. Equally important, BellSouth's proposal ties the level of inter-carrier compensation directly to the level of

³ See In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing and End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213 and 95-72, *First Report and Order*, 12 FCC Rcd 15982, 16133-16134 (1997).

⁴ Numerous commenters urge the Commission to use the compensation mechanisms established for jointly provided access services.

compensation that carriers derive from the jointly provided service. The link between revenue and compensation has always been fundamental to the Commission's determinations regarding inter-carrier compensation for jointly provided access. This link is of no less importance to the ultimate resolution of the issue of inter-carrier compensation for ISP-bound traffic. Indeed, given the Commission's policies that surround enhanced services, the revenue/compensation link is a paramount consideration that cannot be ignored by the Commission.

A. The Commission Should Establish Guidelines Regarding Inter-Carrier Compensation

The comments reveal a consensus across a broad spectrum of parties participating in this proceeding that it is the Commission's responsibility to oversee inter-carrier compensation for interstate traffic and to adopt rules governing such compensation.⁵ While there is a diversity of opinion regarding the specific content of the Commission's rules, most parties agree that the rules should provide guidelines including general principles governing such inter-carrier compensation and the procedures to be followed to establish compensation agreements.

Among the general principles to which most parties agree is that inter-carrier compensation agreements for ISP-bound traffic should be a product of negotiations. Negotiations have the benefit of enabling parties to recognize differing circumstances. With properly structured guidelines promulgated by the Commission, the concerns of some parties that negotiations would not be effective or fair are removed.⁶ In its comments, BellSouth's proposed

⁵ See e.g., Focal at 8; RCN at 5; GSA at 12; CIX at 4; GST Telecom at 13.

⁶ See e.g., Cox at 3; CT Cube and Leaco at 2; GST Telecom at 11-13.

a revenue sharing plan. The revenue sharing plan provides the foundation for the Commission to use in promulgating inter-carrier compensation guidelines. It would provide the parameters to be considered in the negotiation process, and, thus, provide a structured base upon which negotiations could take place.

B. Sections 251 And 252 Have No Applicability

One of the most significant differences among the parties arises in the context of the applicability of the negotiation and arbitration process set forth in Sections 251 and 252 of the Communications Act. Many CLECs argue that inter-carrier compensation agreements regarding interstate ISP-bound traffic should be governed by the same process as local interconnection agreements.⁷ Most just assert that the local interconnection agreements form the appropriate foundation for interstate ISP-bound traffic, and, thus, believe that the same process, including state commission arbitration of disputes, should apply.⁸ A few attempt to rationalize having the state commissions oversee the negotiation and arbitration of inter-carrier compensation agreements because of a perceived inability of the Commission to fulfill its statutory obligations.⁹ None of these parties, however, provide any legal basis that would support the application of Sections 251 and 252 to interstate ISP-bound traffic.

⁷ There are some parties, such as MCIWorldCom, that dispute the Commission's jurisdictional determination regarding the interstate nature of ISP-bound traffic. They presume the traffic to be local and view the process regarding inter-carrier compensation to be no different than that for reciprocal compensation.

⁸ See e.g., KMC Telecom at 2-5; CTSI at 11-13.

⁹ See e.g., Focal at 7-8; ALTS at 8.

In its Comments, BellSouth demonstrated that neither Section 251 nor Section 252 govern interstate inter-carrier compensation.¹⁰ The Act simply does not provide state commissions with any authority regarding interstate inter-carrier compensation. Nor can the Commission rewrite the Communications Act and vest state commissions with the power to regulate matters relating to interstate communications that, under the Act, are specifically reserved to the Commission.

The Commission has the responsibility to regulate interstate communications. It cannot delegate that responsibility to state commissions. Even if the Commission had the statutory authority to do so, which it does not, delegation to the state commissions would constitute poor public policy. ISP-bound traffic falls within the Commission's access charge exemption, a federal policy. The access charge exemption creates an interstate subsidy that clearly can be impacted by inter-carrier compensation. Accordingly, these matters require a cohesive, singular administration of policy. Such administration can and should only take place at the federal level.

C. Interstate Inter-carrier Compensation Should Not Mirror Local Reciprocal Compensation

Many of the CLECs urge the Commission to follow the local reciprocal compensation model, claiming that there is no difference between the transport and termination of local calls and jointly providing interstate service for ISP-bound traffic.¹¹ In these parties' view, a minute is a minute and there should be symmetry between these types of calls.

¹⁰ BellSouth at 4-5. Many parties share BellSouth's view. *See e.g.*, Frontier at 5-6; ICG at 3-5; SBC at 4-7.

¹¹ *See e.g.*, ALTS at 12-18; AT&T at 8; AOL at 10; CTSI at 5-7; Time Warner at 3-8; CompTel at 2.

These arguments are makeweight. There are minutes associated with local traffic, with access traffic and with toll traffic. These minutes are treated differently by regulators for policy reasons and more importantly, they are treated differently in interconnection agreements. To suggest that ISP-bound traffic should be treated as local traffic amounts to little more than an argument of convenience for the CLECs.

It would be the epitome of absurdity to contend that local exchange rates take into account and fully compensate the originating LEC for ISP-bound traffic. Despite the arguments by some that ISP-bound traffic has always been considered local, the fact remains that ISP-bound traffic characteristics were never considered when local rates were established. Further, the comments show that ISP-bound traffic bears little resemblance to local traffic.¹² Indeed, for BellSouth the typical call duration for a local call is between 3 and 4 minutes. On the other hand, an Internet session, on average, is between 20 and 25 minutes. There is simply no similarity between local exchange traffic and ISP-bound traffic.

A companion argument asserted by CLECs is that, like local exchange traffic, CLECs save incumbent LECs the costs for the portion of ISP-bound communication that they handle.¹³ The fallacy in this argument is two-fold. First, the CLECs ignore the fact that they displace the primary revenue source for ISP-bound traffic. Next, they omit any mention of the additional costs that originating LECs have been incurring as a result of ISP-bound traffic. TANE, for example, pointed out the additional trunking costs the LECs are incurring because of the increase in ISP-bound traffic.¹⁴ This proceeding is not the first time that the Commission was made

¹² See e.g., NTCA at 3; TANE at 2.

¹³ See e.g., RCN at 11.

¹⁴ TANE at 2.

aware that ISP-bound traffic was increasing public switched network costs and increasing network congestion. Three years ago the Commission was advised during its review of the access charge exemption that ISP-bound traffic was causing network congestion and that the exemption would continue to cause ISP use of the public switched network to grow and would require additional network investment if network quality was to be maintained.¹⁵ The comments in this proceeding confirm prior LEC predictions. There is nothing that CLECs have done to lessen the additional cost burden associated with ISP-bound traffic. There is no substance to claims that incumbent LECs have experienced cost savings because CLECs serve ISPs. To the contrary their network costs are increasing because of the exponential growth of ISP-bound traffic with its peculiar traffic characteristics and these too are costs to be considered for compensation purposes.

The symmetry that CLECs want the Commission to establish is achieved, not by treating ISP-bound traffic like local, but rather by recognizing that interstate ISP-bound traffic is no different than any other interstate traffic that uses local exchange facilities. When ISP-bound traffic is considered in its proper context, it becomes evident that compensation is not an issue that is reserved to the carrier serving the ISP. It pertains to the entire connection between the ISP subscriber and the ISP. An inter-carrier compensation mechanism must consider not only costs but also the revenue sources for such compensation. This is precisely how BellSouth's revenue sharing proposal operates.

¹⁵ See Comments and Reply Comments filed in connection with the Commission's proceeding, In the Matter of Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263, *Notice of Inquiry*, 11 FCC Rcd 21354 (1996).

D. ISP-Bound Traffic Is Jurisdictionally Inseverable

Some commenters use this proceeding to indirectly question the Commission's declaratory ruling that ISP-bound traffic is primarily interstate. Thus, often in arguing in favor of replicating the local reciprocal compensation model for ISP-bound traffic, some commenters describe the traffic as terminating at an ISP location. Others contend that an end-to-end analysis does not fit with Internet communications.

The Commission's declaratory ruling is not at issue here. Parties have adequate remedies, reconsideration or judicial review, to challenge the Commission's ruling. Nevertheless, it is clear that the Commission's jurisdictional determination is unassailable. The Commission's ruling reflects a consistent application of past Commission and judicial precedent. No party has shown otherwise.

What is clear from the comments, however, is that interstate and intrastate components of an Internet communication are inseverable.¹⁶ No party's comments contradict the fact the ISP's do not track the jurisdictional nature of Internet traffic. Further, no commenter has shown that a practical mechanism with widespread availability exists for tracking the jurisdiction of Internet traffic. The inability to distinguish the jurisdictional nature of the communications that traverse Internet connections and the predominate interstate nature of Internet communications lead to the inescapable conclusion that Internet traffic is inseverable and must be considered jurisdictionally interstate.

¹⁶ ISP-bound traffic can be identified. Where two LECs jointly provide the ISP connection, the two LECs would have to cooperate and exchange information in order to identify ISP-bound traffic. For example, the LEC serving the ISP would have to provide the originating LEC with the ISP dial-up numbers. The Commission, in its order here, should unequivocally make clear that LECs jointly providing services must work cooperatively and share information that is necessary or required to properly identify ISP-bound traffic.

IV. CONCLUSION

The Commission must reject the call for inter-carrier compensation for interstate ISP-bound traffic to emulate local reciprocal compensation. Such an approach would be inconsistent with existing Commission policies such as the access charge exemption for enhanced services. To reconcile its access charge exemption and inter-carrier compensation for ISP-bound traffic, the Commission will have to consider not only the costs of providing interstate services, but also the revenues derived from providing such services. The revenue sharing approach presented by BellSouth in its comments takes these factors into account and, accordingly, should be adopted by the Commission.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

By: /s/ Richard M. Sbaratta
M. Robert Sutherland
Richard M. Sbaratta

Their Attorneys

BellSouth Corporation
Suite 1700
155 Peachtree Street, N. E.
Atlanta, Georgia 30306
(404) 249-3386

Date: April 27, 1999

CERTIFICATE OF SERVICE

I do hereby certify that I have this 27th day of April 1999 served the following parties to this action with a copy of the foregoing REPLY COMMENTS by hand delivery or 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.

/s/ Juanita H. Lee

Juanita H. Lee

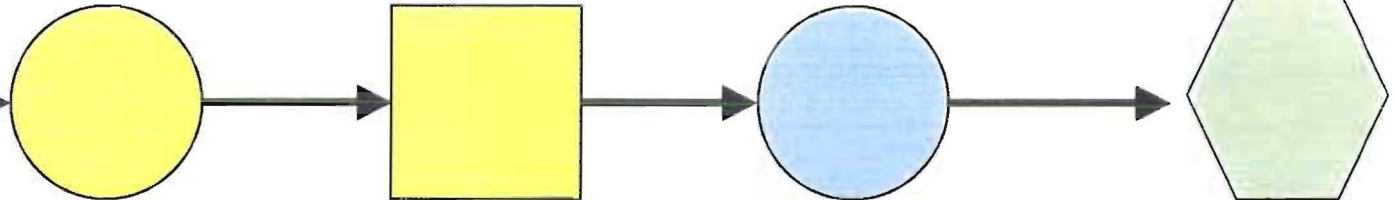
Single Network and Multi-Network Provision of Access Service

Diagram E

Single Carrier Network



End User



ISP pays the LEC for access service to cover this cost.

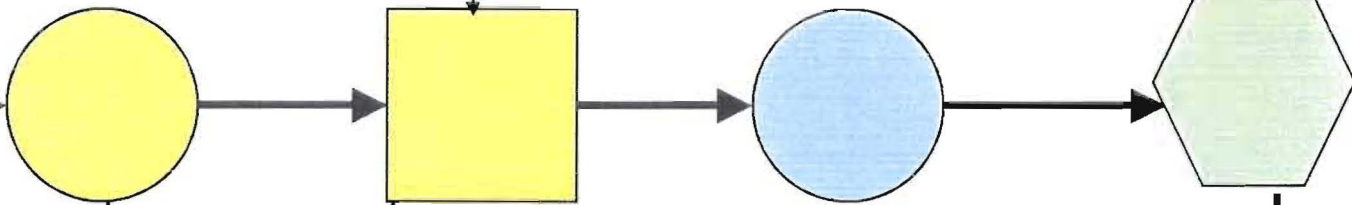
Diagram F

Multi-Carrier Network



End User

Point of
Interconnection



*CLEC/ICO should reimburse
LEC for this cost.*

ISP pays the CLEC/ICO, for access service to cover this cost

the 1990s, the number of people with a disability in the United States has increased by 25% (U.S. Census Bureau 1997).

As a result of the increase in the number of people with disabilities, the need for accessible information has become more acute. The National Center for Accessible Information (NCAI) has estimated that the number of people with disabilities who are unable to access information is 100 million (NCAI 1997).

One of the most important areas of accessible information is the area of accessible electronic information.

Electronic information is information that is stored in a digital format and can be accessed through a computer. Electronic information can be accessed through a variety of devices, including computers, mobile devices, and assistive technologies.

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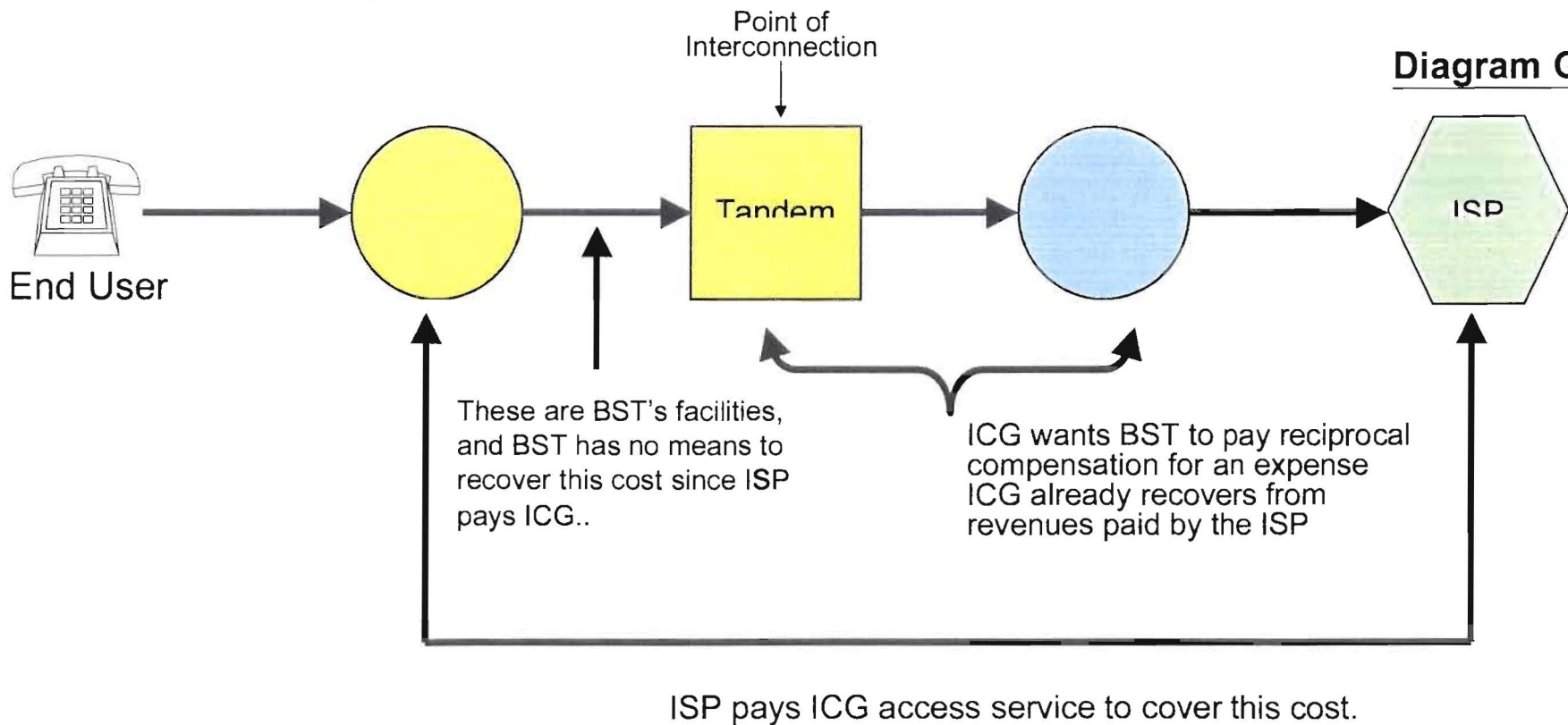
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ICG's Position

- ICG's position ignores the fact that ISP's purchase access service
- Paying ICG reciprocal compensation for ISP-bound traffic would result in ILEC end users subsidizing ICG's operations.

Diagram G



the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million, and the number of people aged 75 and over has increased from 4.5 million to 6.5 million (Office for National Statistics 2000).

There is a growing awareness of the need to address the needs of older people in the UK. The Department of Health (2000) has published a strategy for older people, which sets out a vision for the future of older people's health and care. The strategy is based on the following principles: older people should be able to live independently, safely and with dignity; older people should be able to participate in society; and older people should be able to access the services and support they need.

The strategy also sets out a number of key objectives, including: to reduce the number of older people who are in care; to improve the quality of care for older people; to ensure that older people have access to the services and support they need; and to ensure that older people are able to live independently, safely and with dignity. The strategy is a key document for the UK government and is being implemented through a number of different initiatives.

One of the key initiatives is the Older People's Survey, which is a national survey of older people's health and care. The survey is being conducted by the Department of Health and is the first time that a national survey of older people's health and care has been conducted in the UK. The survey will provide valuable information on the health and care needs of older people in the UK and will be used to inform the development of policies and services for older people.

Another key initiative is the Older People's Health and Care Review, which is a review of the health and care services for older people in the UK. The review is being conducted by the Department of Health and is the first time that a review of the health and care services for older people has been conducted in the UK. The review will provide valuable information on the health and care services for older people in the UK and will be used to inform the development of policies and services for older people.

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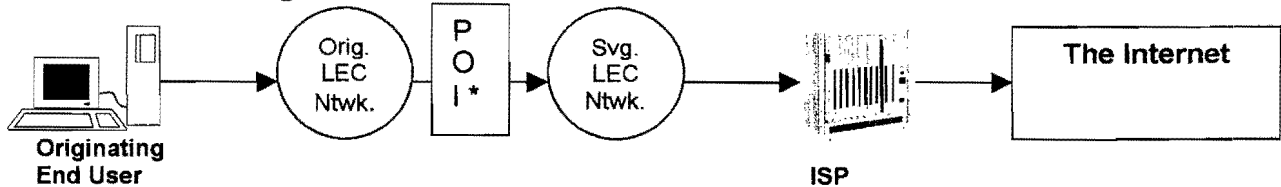
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BellSouth's Proposed Interim ISP Inter-carrier Access Service Compensation Plan

Plan Objective is to compensate the Originating LEC(s) for portion of cost incurred in transporting ISP-bound traffic to the Serving LEC. This plan would be in effect until the FCC establishes a usage-based compensation mechanism, at which time this plan would be re-evaluated and most likely terminated.

ISP Access Configuration:



* Point Of Interface may be at the tandem or at the Serving LEC's premises

Summary of Proposed Interim Revenue Sharing Arrangement:

- 1) Each LEC that serves ISPs will be required to participate in this plan. Otherwise, only those parties that will benefit will participate – i.e., a LEC that originates more traffic to an ISP than it terminates to its own ISP will be a net receiver.
- 2) ISP pays Serving LEC the Serving LEC's business exchange service rate.
- 3) Each LEC that serves ISPs in a given LATA will be responsible for compensating LEC(s) that originate ISP traffic to the Serving LEC.
- 4) Facilities involved in carrying ISP-bound traffic to the ISP are as follows:
Switching and Transport facilities are provided by both Originating LEC and Serving LEC and Loop facilities are provided by Serving LEC.
- 5) Serving LEC's PRI revenues will be shared by applying a "sharing percentage."
Sharing percentage represents estimation of the proportion of its facilities that the Originating LEC uses to transport the ISP-bound MOUs to the Serving LEC. See Exhibit AJV-7 for BellSouth's calculation of its sharing percentage. BellSouth will apply the same sharing percentage to calculate the compensation due it when BellSouth is an Originating LEC as will be applied by the Originating LEC(s) when calculating compensation BellSouth owes when BellSouth is the Serving LEC.
- 6) Serving LEC shares its ISP revenues with Originating LECs as follows:
 - a) Each Serving LEC will be responsible for identifying all minutes of use ("MOUs") which are ISP-bound that each Originating LEC delivers to the Serving LEC's network.
 - b) Assume that, on average, each trunk (DS0-equivalent) carries 9000 MOUs per month (equates to 150 hours per trunk per month).

- c) Based on ISP-bound MOUs identified by the Serving LEC and provided to the Originating LEC, the Originating LEC will calculate the quantity of DS1 facilities required to transport the Originating LEC's ISP-bound traffic to the Serving LEC as follows:
ISP-bound MOUs / 9000 avg MOUs per trunk / 24 trunks per DS1
 - d) Serving LEC will advise Originating LECs as to average PRI rate charged to ISPs.
 - e) Originating LEC calculates compensation due to it by the Serving LEC as follows:
Quantity of DS1s x Serving LEC's PRI rate x sharing percentage
 - f) Originating LEC bills Serving LEC on a quarterly basis.
 - g) The ISP-bound MOUs and the PRI rate as reported by the Serving LEC are subject to audit by the Originating LEC(s). The amount of compensation could be affected by results of an audit.
- 7) To the extent two parties have additional issues, contract negotiations between the parties can determine other terms and conditions. For example, due to technical capabilities, the two LECs may agree that the Originating LEC will identify the ISP-bound minutes of use.

The Serving LEC shares its revenues with the Originating LEC(s) via transport compensation

Illustrative Calculation with BellSouth as the Originating LEC and a CLEC as the Serving LEC

Assumptions:

Average MOUs per Trunk (DS0): 9,000
 Serving LEC's PRI Rate: \$850

COL. A	COL. B	COL.C	COL. D	COL. E	COL. F
Originating LEC	Number of originating ISP minutes delivered to Serving LEC	Number of Equivalent Transport DS1s	Serving LEC's PRI Rate	Sharing %	Compensation due from Serving LEC to Originating LEC
	NOTE (1)	NOTE (2)	NOTE (3)	NOTE (4)	NOTE (5)
BellSouth	55,000,000	254.63	\$850.00	8.6%	\$18,613.45

NOTES:

- (1) ISP-bound MOUs identified/provided by Serving LEC & provided to Originating LEC
- (2) Col. C calculated as follows: Col. B / 9000 MOUs per trunk / 24 trunks per DS1
- (3) Col. D is the Serving LEC's PRI Rate
- (4) Col. E is BellSouth's calculated sharing percentage from Exhibit AJV-7
- (5) Col. F calculated as follows: Col. C * Col. D * Col. E

the study. The authors would like to thank the staff of the National Institute for Occupational Safety and Health for their assistance in the data collection.

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Calculation of Sharing Percentage

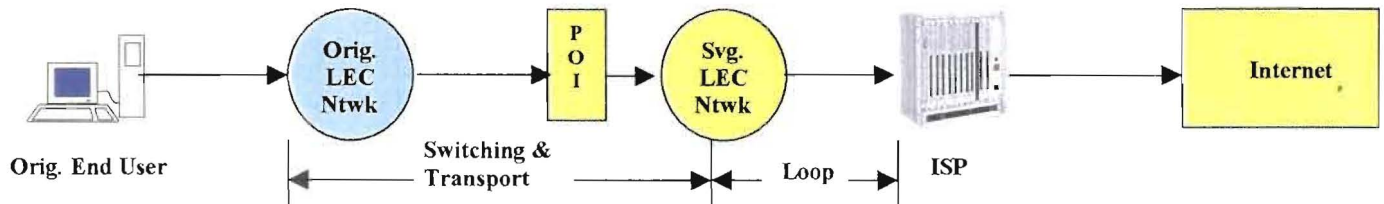
Sharing percentage is calculated by determining ratio of loop-related switching and transport facilities cost to total loop cost, then dividing by two since both Originating LEC and Serving LEC provide switching and transport facilities. BellSouth's sharing percentage is calculated as follows:

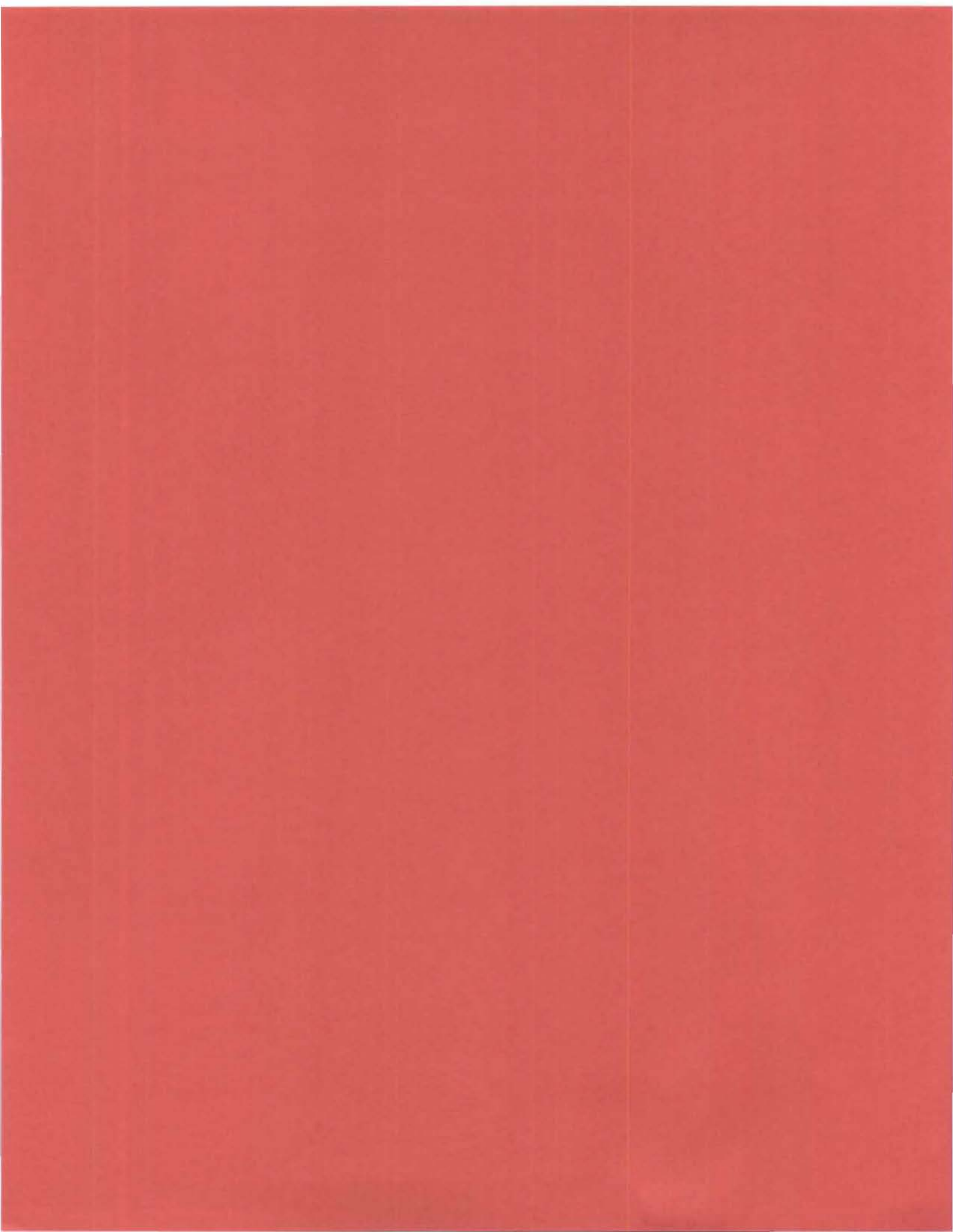
Loop Cost	= \$14.62
Associated Loop Switching Cost	= \$2.90
Associated Loop Transport Cost	= \$0.14

Total Cost	= \$17.66

$$((\$2.90 + \$0.14) / \$17.66) / 2 = .086$$

Therefore, BellSouth will apply a sharing percentage of 8.6% to calculate the compensation due it when BellSouth is an Originating LEC. Likewise, when BellSouth is the Serving LEC, BellSouth expects that the Originating LEC(s) will apply a sharing percentage of 8.6% when calculating compensation BellSouth owes.





Florida Rate and Cost Analysis

Cost Ref. #	Rate Element	Cost		Rate		Source
		Recurring	Non-Recurring	Recurring	Non-recurring	
N.0	Unbundled Packet Switching Frame Relay Service					
N.1	Unbundled Packet Switching Frame Relay Service					
N.1.1	UPS – UNI/NNI FRS 56 KBPS	23.33	120.10	23.33	120.10	Cost Study
N.1.199	UPS – UNI/NNI FRS 56 KBPS – Disconnect		48.46		48.46	Cost Study
N.1.2	UPS – UNI/NNI FRS 64 KBPS	23.33	120.10	23.33	120.10	Cost Study
N.1.299	UPS – UNI/NNI FRS 64 KBPS – Disconnect		48.46		48.46	Cost Study
N.1.3	UPS – UNI/NNI FRS 1.536 MBPS	70.49	140.52	70.49	140.52	Cost Study
N.1.399	UPS – UNI/NNI FRS 1.536 MBPS – Disconnect		40.24		40.24	Cost Study
N.1.4	UPS – UNI/NNI FRS 44.210 MBPS	547.37	160.93	547.37	160.93	Cost Study
N.1.499	UPS – UNI/NNI FRS 44.210 MBPS – Disconnect		51.66		51.66	Cost Study
N.1.5	UPS – UNI/NNI FRS – DLCI Additional		32.32		32.32	Cost Study
N.1.599	UPS – UNI/NNI FRS – DLCI Additional - Disconnect		26.64		26.64	Cost Study
N.1.6	UPS – UNI/NNI FRS CIR – 0 BPS	.0878		.0878		Cost Study
N.1.7	UPS – UNI/NNI FRS CIR – 1-32 KBPS	.4392		.4392		Cost Study
N.1.8	UPS – UNI/NNI FRS CIR – 32-56 KBPS	.7686		.7686		Cost Study
N.1.9	UPS – UNI/NNI FRS CIR – 56-64 KBPS	.8784		.8784		Cost Study
N.1.10	UPS – UNI/NNI FRS CIR – 64-128 KBPS	1.76		1.76		Cost Study
N.1.11	UPS – UNI/NNI FRS CIR – 128-256 KBPS	3.51		3.51		Cost Study
N.1.12	UPS – UNI/NNI FRS CIR – 256-384 KBPS	5.27		5.27		Cost Study
N.1.13	UPS – UNI/NNI FRS CIR – 384-512 KBPS	7.03		7.03		Cost Study
N.1.14	UPS – UNI/NNI FRS CIR – 512-768 KBPS	10.54		10.54		Cost Study
N.1.15	UPS – UNI/NNI FRS CIR – 768-1.536 MBPS	21.08		21.08		Cost Study
N.1.16	UPS – UNI/NNI FRS CIR – 1.536-4 MBPS	52.70		52.70		Cost Study
N.1.17	UPS – UNI/NNI FRS CIR – 4-10 MBPS	133.51		133.51		Cost Study
N.1.18	UPS – UNI/NNI FRS CIR – 10-16 MBPS	213.44		213.44		Cost Study
N.1.19	UPS – UNI/NNI FRS CIR – 16-34 MBPS	453.94		453.94		Cost Study
N.1.20	UPS – UNI/NNI FRS CIR – 34-44.210 MBPS	590.26		590.26		Cost Study
N.1.21	UPS – UNI/NNI FRS – Feature Change		13.61		13.61	Cost Study