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January 10, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 990874-TP (US LEC Complaint)

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer and Response to US LEC of Florida Inc.'s Second Amended Complaint, which we ask that you file in the above-referenced matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Michael P. Goggin
Michael P. Goggin

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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CERTIFICATE OF SERVICE
Docket No. 990874-TP (US LEC Complaint)

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 10 day of January, 2000 to the following:

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Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of US LEC of Florida, Inc. against)
BellSouth Telecommunications, Inc. for)
Breach of Terms of Florida Interconnection)
Agreement under Sections 251 and 252 of the)
Telecommunications Act of 1996, and Request)
For Relief)
_____)

Docket No. 990874-TP

Filed: January 10, 2000

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
ANSWER AND RESPONSE TO US LEC OF FLORIDA INC.'S
SECOND AMENDED COMPLAINT**

BellSouth Telecommunications, Inc., ("BellSouth"), hereby files its Answer and Response, pursuant to Rule 1.110, Florida Rules of Civil Procedure and Rules 25-22.037 and 25-22.0375, Florida Administrative Code, to the US LEC of Florida Inc.'s ("US LEC's") Second Amended Complaint (the "Complaint"). The Complaint seeks a ruling that dial-up access to the internet through an Internet Service Provider ("ISP") should qualify for reciprocal compensation under the terms of BellSouth's Interconnection Agreements with US LEC when an ISP customer, who is also a BellSouth end user, accesses the internet through an ISP served by US LEC. There is no legal, factual or policy basis for such a ruling because, as the Federal Communications Commission ("FCC") has confirmed, such traffic does not "terminate" on US LEC's network.¹ Indeed, the FCC found that such traffic is "largely interstate," not local.² As a result, it is clear that dial-up access to the internet through an ISP is not

¹ See Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 96-68, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, FCC Order No. 99-38 (Feb. 25, 1999) ("FCC Declaratory Ruling").

² *Id.* See also, *Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, Order, Massachusetts D.T.E. 97-116-C

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subject to the reciprocal compensation requirements of the Interconnection Agreement between BellSouth and US LEC. Accordingly, US LEC is not entitled to the relief it seeks in this proceeding, and the Commission should dismiss its Complaint.

FIRST DEFENSE

The Complaint fails to state a cause of action for which relief can be granted.

SECOND DEFENSE

In response to the specific allegations of the Complaint, BellSouth states the following:

1. BellSouth admits that US LEC filed a complaint with this Commission against BellSouth on July 2, 1999. BellSouth denies the remaining allegations in Paragraph 1 of the Complaint.
2. BellSouth admits that US LEC and BellSouth entered into a new Interconnection, Unbundling and Resale Agreement on June 30, 1999 (the "Adoption Agreement"). The terms of the Adoption Agreement speak for themselves.
3. The Commission Order to which US LEC refers in Paragraph 3 of the Complaint speaks for itself.

(May 19, 1999) (Reversing an earlier order requiring payment of reciprocal compensation on dial-up internet access through an ISP); *In the Matter of the Petition of Global NAPS, Inc. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements With Bell Atlantic-New Jersey, Inc. Pursuant to Section 256(b) of the Telecommunications Act of 1996*, Decision and Order, N.J.B.P.U. (July 12, 1999) (ISP-bound traffic is interstate and not subject to reciprocal compensation obligations); Order, *BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services Inc.* (W.D.N.C. May 20, 1999)(remanding order of NCUC which had required payment of reciprocal compensation for dial-up internet traffic in wake of FCC's determination that such traffic is not local).

4. BellSouth admits that ISP-bound traffic is non-local traffic and has never been included in the definition of "local traffic" for which reciprocal compensation must be exchanged under the Telecommunications Act of 1996 or under the terms of any agreement in effect at any time between US LEC and BellSouth. Accordingly, BellSouth has never knowingly paid or charged US LEC reciprocal compensation for ISP-bound traffic. BellSouth denies the remaining allegations of Paragraph 4 of the Complaint.

5. BellSouth is without sufficient knowledge to admit or deny, and therefore denies the allegations of Paragraph 5 of the Complaint.

6. BellSouth is without sufficient knowledge to admit or deny, and therefore denies the allegations of Paragraph 6 of the Complaint.

7. BellSouth admits the allegations of Paragraph 7 of the Complaint.

8. BellSouth admits that it is authorized to provide and provides local exchange services in the State of Florida. BellSouth is without sufficient knowledge to admit or deny, and therefore denies, the remaining allegations of Paragraph 8 of the Complaint.

9. 47 U.S.C. § 251(a), referred to in Paragraph 9 of the Complaint, speaks for itself.

10. BellSouth admits the allegations of Paragraph 10 of the Complaint.

11. 47 U.S.C § 251(b)(5), referred to in Paragraph 8 of the Complaint, speaks for itself.

12. BellSouth is without knowledge to admit or deny, and therefore denies, the allegations in Paragraph 12 of the Complaint that relate to the reasons why US LEC entered into the Adoption Agreement. BellSouth admits that the Adoption Agreement was filed with the Commission for approval and was approved. The Commission Order to which US LEC refers in Paragraph 12 speaks for itself. The terms of the Adoption Agreement speak for themselves.

13. The terms of the Adoption Agreement speak for themselves.

14. BellSouth admits that the Commission has jurisdiction to hear this matter, but denies that Section 364.285, Florida Statutes, is a basis for such jurisdiction. The statutes cited in Paragraph 14 of the Complaint speak for themselves.

15. BellSouth admits that the Commission has jurisdiction to hear this matter. The Telecommunications Act and the opinion in the case cited in Paragraph 15 speak for themselves.

16. The FCC Order to which US LEC refers in Paragraph 16 of the Complaint speaks for itself.

17. In response to Paragraph 17 of the Complaint, BellSouth incorporates its Answer and Response filed in this docket on July 22, 1999.

18. The terms of the Adoption Agreement to which US LEC refers in Paragraph 18 of the Complaint speak for themselves.

19. The terms of the Adoption Agreement to which US LEC refers in Paragraph 19 of the Complaint speak for themselves.

20. The terms of the Adoption Agreement to which US LEC refers in Paragraph 20 of the Complaint speak for themselves.

21. The terms of the Adoption Agreement to which US LEC refers in Paragraph 21 of the Complaint speak for themselves. The remainder of Paragraph 21 constitutes legal conclusions to which no response is necessary.

22. Paragraph 22 constitutes legal conclusions to which no response is necessary.

23. The statute to which US LEC refers in Paragraph 23 of the Complaint speaks for itself. The remainder of Paragraph 23 constitutes legal conclusions to which no response is necessary.

24. BellSouth admits that it provides local exchange services, and, upon information and belief that US LEC provides local exchange service. BellSouth also admits that its ISP customers use access service, that ISPs are enhanced service providers or "ESPs," and that ESPs may provide information obtained from numerous sources. BellSouth admits that an ISP customer may receive access to the internet through dial-up access, among other methods, such as cable modems or DSL service.

BellSouth denies that an ISP customer's connection to the internet through its ISP may be defined as a "local call" or that the ISP or its customer uses local exchange service to make such a connection. BellSouth admits that, through the use of access service, an ISP's customers may obtain access to the internet through the ISP whether the ISP is served by US LEC and the ISP customer is also a BellSouth local exchange customer or vice versa.

25. The Commission Order and the agreements to which US LEC refers in Paragraph 25 of the Complaint speak for themselves. The remainder of Paragraph 25 constitutes legal conclusions to which no response is necessary.

26. BellSouth admits that it has received a number of invoices from US LEC that purport to be charges for reciprocal compensation. BellSouth denies the remaining allegations in Paragraph 26 of the Complaint.

27. BellSouth admits that it has paid US LEC reciprocal compensation pursuant to its agreements with US LEC, and that it has informed US LEC that reciprocal compensation may not be charged for non-local ISP-bound traffic. BellSouth denies the remaining allegations in Paragraph 27 of the Complaint.

28. BellSouth denies the allegations in Paragraph 28 of the Complaint.

29. The decisions of the Commission, the FCC, other state commissions and the courts to which US LEC refers in Paragraph 29 of the Complaint speak for


themselves. The remainder of Paragraph 29 constitutes conclusions to which no response is required.

30. The ad damnum clause following Paragraph 29 of the Complaint includes conclusions to which no response is required. BellSouth denies that US LEC is entitled to any of the relief it demands in this clause. To the extent that this clause, or any of the preceding paragraphs of the Complaint includes factual allegations to which BellSouth does not specifically respond above, they are denied.

WHEREFORE, having fully answered the allegations raised in the Complaint, BellSouth respectfully requests that the Complaint of US LEC of Florida, Inc. be dismissed as US LEC is not entitled to the relief sought.


Respectfully submitted this 10th day of January, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



(Sul)

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