ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF US LEC OF FLORIDA INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. REGARDING BREACH OF TERMS OF INTERCONNECTION AGREEMENT AND REQUEST FOR RELIEF	DOCKET NO. 990874-TP

US LEC OF FLORIDA INC.'S REBUTTAL TESTIMONY OF GARY D. GREFRATH

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US LEC OF FLORIDA INC.

REBUTTAL TESTIMONY OF GARY D. GREFRATH

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990874-U

FEBRUARY 18, 2000

Q. ARE YOU THE SAME GARY D. GREFRATH WHO PROVIDED DIRECT TESTIMONY IN THIS CASE?

A. Yes, I am.

Q. HAVE YOU REVIEWED THE TESTIMONY FILED BY BELLSOUTH?

A. Yes, I have.

Q. DO YOU AGREE WITH THE TESTIMONY FILED?

A. I disagree with virtually everything in the testimony filed by Mr. Hendrix. As an initial point, much of his testimony appears to me to be the type of argument, opinion and legal discussion that I would expect BellSouth to make in its briefs. It was difficult to separate the "facts" from the "argument."

Q. PLEASE COMMENT ON MR. HENDRIX'S VIEW THAT A CALL TO AN ISP DOES NOT TERMINATE AT THE ISP.

A. Mr. Hendrix has made this argument before. Based on my years of experience in the industry, it was my understanding at the time the November 1996 Agreement was negotiated and executed that, at least for the purpose of reciprocal compensation, if not for other purposes as well, the call was considered to terminate at the dialed number. My recollection is that BellSouth made the same argument to the North Carolina Utilities

Commission when it was asked to interpret the November 1996 Agreement, and that Commission determined that US LEC and BellSouth had agreed to compensate each other for the exchange of traffic bound for ISPs.

Mr. Hendrix confuses the meaning of the word "terminate" in the context of jurisdiction with its meaning in the context of reciprocal compensation. In fact, Mr. Hendrix goes on at length to describe the FCC's treatment of ESP traffic as jurisdictionally interstate, but that is simply not determinative of whether this traffic is subject to reciprocal compensation under our interconnection agreement with BellSouth.

Q. DID THE PARTIES DISCUSS THE CONCEPT OF TERMINATION AS IT RELATES TO THE DEFINITION OF LOCAL TRAFFIC?

A. Yes. The parties specifically discussed how and where calls terminate and exchanged diagrams that show how the exchange of local traffic, as well as other traffic, would be billed. These negotiations were memorialized in an November 1996 Memorandum Agreement, a copy of which is attached hereto as GDG Exhibit 1. I understand that the diagram was prepared in connection with US LEC's operations in North Carolina, but I also understood that the principles governing where a call terminated would apply elsewhere, as well. Not once during the discussions of this diagram did BellSouth mention that if any of the end-users reflected on the diagrams was an ISP then the call did not terminate there. Nor did BellSouth ever say that if any of the end-users reflected on the diagrams was an ISP, then calls to that customer would not be eligible for reciprocal compensation.

Q. PLEASE COMMENT ON THE TESTIMONY OFFERED BY MR. HENDRIX ON THE NATURE OF ISP TRAFFIC.

A. It is not at all relevant to the issue of whether reciprocal compensation is owed for local exchange traffic originated by a BellSouth customer and delivered to US LEC's ISP customer. Once the call reaches the called party, in this case the ISP, it is treated as terminated for the purposes of this contract. For purposes of determining whether reciprocal compensation is owed for the call – the issue in dispute in this proceeding – the analysis ends here. The services the ISP provides and how it provides them are irrelevant to the issues in this case.

Q. WHAT IS RELEVANT TO THIS DISPUTE?

A. What is relevant is the service that US LEC provides for BellSouth and BellSouth's customers, and the obligation of BellSouth to pay US LEC for that service at the contractually agreed rates. Moreover, if there is no compensation under the Agreements, the only party who would not get paid for providing a valuable service is US LEC.

Q. WHAT IS THE SERVICE THAT US LEC PROVIDES FOR BELLSOUTH AND BELLSOUTH'S CUSTOMERS?

A. US LEC takes traffic *from* a BellSouth end user and transports and terminates that traffic, permitting the BellSouth end user to place a local call to its US LEC-served ISP. BellSouth, as the originating carrier, is using US LEC's facilities and US LEC is entitled to be compensated for providing those facilities to BellSouth and its customers.

Q. MR. HENDRIX WOULD APPARENTLY SET APART AN "INTERNET-BOUND CALL" FROM LOCAL EXCHANGE TRAFFIC ON THE BASIS OF CALL DURATION. IS THAT ANALYSIS USEFUL?

A. No, it is not. In the first place, an "Internet-bound call," is a local call terminating at the ISP for reciprocal compensation purposes. In the second place, while such calls may very well last 20 minutes, some are significantly shorter and some are significantly longer. On the basis of duration, ISP calls cannot be distinguished from many other common kinds of calls with long durations. The point that needs to be made, however, is that calls to ESPs or ISPs are local traffic under our interconnection agreement and there is no need to distinguish them for purposes of our complaint.

Q. MR. HENDRIX TESTIFIES REGARDING THE "OPT-IN" PROVISION OF THE NOVEMBER, 1996 AGREEMENT AND CLAIMS THAT IT ESTABLISHES AN AGREEMENT ABOUT THE BALANCE OF TRAFFIC AND A PROTECTION FOR US LEC. WHAT DID THE PARTIES AGREE TO INCLUDE AS THE FINAL LANGUAGE OF THE INTERCONNECTION AGREEMENT TO ADDRESS THE RISK TO US LEC OF AN UNBALANCED TRAFFIC FLOW?

A. US LEC and BellSouth agreed to language which provided US LEC with some hope of a limitation on the risk of an unfavorable traffic imbalance by use of an "opt in" clause. Due to BellSouth's policy decisions to reject US LEC's bill-and-keep proposal, and to reject US LEC's request to retain the mutual cap provision, the final agreement contained no corresponding language capping the risk of an unbalanced traffic flow for either US LEC or BellSouth. The final language provides as follows:

> C. US LEC and BellSouth enter into this Agreement with the understanding that the carriers would be interconnecting with each other for comparable types of calls and that the usage would likely be reasonably balanced, *i.e.*, US LEC would be terminating to BellSouth approximately the same level of usage that BellSouth would be terminating to US LEC. If at any time during the term of this Agreement traffic is imbalanced to the degree that US LEC feels a cap on amounts owing under this Agreement is required,

> US LEC has the option to adopt the comparable billing provisions contained in any agreement that BellSouth negotiates or has entered into with another ALEC which contains cap provisions, after August 8, 1996 provided that US LEC adopt the billing provisions of such other agreement that are comparable to those contained in this Section IV. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. For purposes of developing the PLU, each party shall consider every local call, including non-intermediary calls, and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

I have reviewed the testimony of Mr. Hendrix, including his emphasis on the language in the above provision that US LEC and BellSouth entered the Interconnection Agreement with the "understanding" that they would be interconnecting with each other for "comparable types of calls" and that usage "would *likely* be reasonably balanced." (Emphasis added). This introductory type of language, drafted by BellSouth, was never regarded as creating any contractual requirement about the nature or direction of traffic flow that would be exchanged in the future between US LEC and BellSouth, or to create any constraints on the future operations of US LEC. The fact is that both parties very clearly understood that the risk of a traffic imbalance would remain notwithstanding this language. If this language had been regarded as such a contractual limitation there would not have been a need to add the language of the "opt in" clause. US LEC negotiated the "opt in" provision to protect its interests when BellSouth refused to adopt a bill and keep proposal and refused to include the 105% cap provision. Other than I have testified, I have no explanation for BellSouth's decision not to retain the mutual cap language it originally proposed and which US LEC wanted to retain, or to include a provision which would adopt a bill and keep proposal and limit the risk of a traffic imbalance in favor of US LEC.

Q. DID BELLSOUTH EVER CHANGE ITS POLICY AND ENTER INTO AN INTERCONNECTION AGREEMENT WITH A CAP TO WHICH US LEC COULD OPT-IN UNDER THE NOVEMBER 1996 AGREEMENT?

A. No. Mr. Hendrix previously testified in North Carolina that BellSouth never changed its policy during this time. It never agreed to a cap with any carrier. Therefore, at no time was there ever a cap that US LEC could opt in to, and, therefore, there was never a protection for US LEC from any imbalance of traffic favoring BellSouth. Mr. Hendrix's testimony that this provision in some way protected US LEC from a traffic imbalance in BellSouth's favor is simply untrue. BellSouth refused to give US LEC any such protection; refused to agree to any limit on any imbalance of traffic; and only gave US LEC an opt-in to a cap knowing that it would never enter into such a cap, because it's policy was to refuse to agree to any cap.

Q. PLEASE COMMENT ON MR. HENDRIX'S TESTIMONY THAT BELLSOUTH DID NOT CONSIDER ISP TRAFFIC TO BE LOCAL AT THE TIME IT ENTERED THE AGREEMENT WITH US LEC.

A. I believe that Mr. Hendrix's testimony is just BellSouth's way of trying to impose unilaterally, and retroactively, a different meaning than the one shared by the parties at the time the contract was signed just because it now does not like the deal that it struck. I also believe that his "testimony" as to what BellSouth "intended" is contradicted by every piece of credible, extrinsic, evidence.

First, US LEC and BellSouth both provide local exchange services to ISPs, as they do to all other businesses, out of their local, intrastate tariffs and BellSouth did so back in 1996, as well.

Second, when a BellSouth telephone exchange service customer places a call to an ISP within the caller's local calling area, it is my understanding that BellSouth, like all other local exchange carriers, rates and bills that customer for a local call pursuant to the terms of its local tariff.

Third, in its required filings with the FCC, BellSouth treats the calling traffic originating on its network and terminating at an ISP within the originating caller's local calling area, whether the ISP is on BellSouth's or on US LEC's network, as a local call for the purposes of jurisdictional separations and ARMIS reports.

Fourth, customers of BellSouth and US LEC generally reach their ISP by dialing a seven or ten digit local telephone number.

In the face of this evidence, Mr. Hendrix merely offers conclusory statements and provides no facts to support his claim concerning BellSouth's intent. I understand Mr. Hendrix to say that BellSouth treats ISPs and calls to ISPs as local because the FCC has told them to. That may be true, but it does not matter. It is precisely because ISP traffic had been consistently treated as local at the time US LEC's interconnection agreements with BellSouth were negotiated that this Commission should find that BellSouth and US LEC agreed to compensate each other for ISP bound traffic.

I believe that given the prevailingly local treatment given to ISP traffic by the entire industry at the time the November 1996, ALEC and Intermedia Agreements were signed, and BellSouth's knowledge of that industry custom and usage, it was essential for BellSouth specifically to exclude calls to ISPs from the definition of local traffic subject to the payment of reciprocal compensation or from the reciprocal compensation obligations themselves. It did not do so and I believe that is more indicative of BellSouth's "intent" at the time the parties entered into the Agreement than Mr. Hendrix's present rationalizations.

Q. MR. HENDRIX SUGGESTS THAT AN AUGUST 1997 MEMORANDUM SENT TO ALL COMPETING CARRIERS SOMEHOW EXCLUDES ISP-BOUND TRAFFIC FROM THE SCOPE OF THE RECIPROCAL COMPENSATION PROVISIONS OF THE JUNE 1998 OR SECOND AND JULY 1999 OR THIRD AGREEMENTS. DO YOU AGREE WITH HIS POSITION?

A. Not at all. In the first place, the memorandum from Mr. Bush refers to traffic to ISPs as "terminating" at the ISP. This confirms US LEC's view that BellSouth is simply trying to change the terms of its contracts with US LEC because it does not like the economic implications of the interconnection agreements it signed. Second, the Bush memorandum was sent after the ALEC/BellSouth and Intermedia/BellSouth interconnection agreements had been signed, so the Bush memorandum has no impact whatever on whether ISP traffic is within the reciprocal compensation provisions of those agreements. Third, as I understand it, the entire purpose of permitting competing carriers to opt in to an approved agreement is to prevent the very discrimination that BellSouth seeks to impose here. I do not pretend to be a lawyer or to understand all the nuances of the 1996 Telecom Act, but it seems perfectly clear to me that the very same agreement cannot mean different things when applied to different carriers.

Q. PLEASE COMMENT ON MR. HENDRIX'S "ECONOMIC SENSE" THEORY.

A. His argument makes no sense because it is predicated on several faulty assumptions.

Q. PLEASE EXPLAIN.

A. First, he says that traffic to ISPs "will always be one-way . . .." (Hendrix Testimony at 20). As I understand it, the notion of reciprocal compensation embodied in the Telecom Act does not require that there be a balance of incoming to outgoing calls for any one end-user. Rather, it only means that the carriers will pay each other for exchanging and terminating all types of traffic.

Second, his assumptions fail to take into account the additional revenue that BellSouth collects from its customers for their second and third lines (which many end-users often need if they access the Internet frequently), the costs that BellSouth "avoids" by using US LEC's network to complete calls, and the substantial revenue that is generated by many other enhanced services BellSouth provides – such as voice-mail, call waiting, call forwarding and caller ID – that are such ubiquitous aspects of communications life today and are extremely profitable services for BellSouth.

Similarly, his assumptions give the impression that the reciprocal compensation payments are completely one-way. This assumption ignores the fact that BellSouth also is collecting reciprocal compensation payments from US LEC for calls US LEC's customers make that BellSouth terminates to its customers. These payments are in addition to the revenues discussed above that BellSouth collects from its own customers, and, combined with those revenues, offset any reciprocal compensation payments BellSouth must pay to US LEC. If BellSouth chooses not to bill US LEC for calls made by US LEC's customers to ISPs served by BellSouth, then that is its choice, but as US LEC serves growing numbers of customers, then logically, the amount of reciprocal compensation that US LEC will pay to BellSouth also will grow.

Further, there is nothing in the Agreements, or elsewhere, that gives to US LEC any advantage over BellSouth in pursuing the business of ESPs or ISPs.

Mr. Hendrix skews his conclusion that the outflow to CLECs exceeds the inflow to BellSouth. He uses a rate of $0.01331 per MOU in his analysis, whereas the rate for reciprocal compensation in many BellSouth interconnection agreements is much lower (for example, $0.002 per MOU). Were he to use a normalized rate, the result would hardly be as dire for BellSouth as he suggests.

Much of Mr. Hendrix's economic sense argument seems to be predicated on usage and time projections based on 1999 statistics. Again, this may be interesting for developing future business plans, but I do not see how these projections have any relevance to what these parties intended in 1996 or 1997 when all of the agreements at issue here were signed. In fact, statistics in the material attached to Mr. Hendrix's testimony as Exhibit JDH-3 seem to belie his own argument. For example, on page 21 of 30 of that exhibit, there is a chart suggesting that in 1996 there were only 12.5 million Internet users in the United States. The fact that there might now be 39 million Internet users in the United States (page 22 of 30) is not something that either party predicted when they executed the November 1996 Agreement, yet Mr. Hendrix tries to use these meaningless statistics to escape from the contract that he signed.

Additionally, Mr. Hendrix's projection of the total reciprocal compensation payments incumbent carriers will pay to competing carriers misses the mark entirely. First, what carriers might pay each other in 2002 for reciprocal compensation has no bearing at all on what these parties – or ALEC and Intermedia – discussed or intended in 1996 (Hendrix Testimony at 25). Second, it fails to take into account the payments that competing carriers will make to incumbents for reciprocal compensation. Third, it addresses payments on a nationwide scale with no reference at all to the sums that might be paid to BellSouth. Fourth, it utterly fails to take into account that, during the same period, BellSouth will have earned hundreds of billions so that any amounts it might pay to competing carriers would be an extraordinarily small percentage of its annual net profits. Finally, Mr. Hendrix appears to assume that all of the traffic reflected in the exhibit he relies on is dial-up traffic eligible for reciprocal compensation. It is my understanding that many users, particularly high-volume users, are migrating to other forms of access that do not implicate reciprocal compensation.

Q. **DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

A. Yes.

BELLSOUTH

BellSouth Interconnection Services

Memorandum

File Code	120.2600
Date	November 6, 1996
To	Gary Grefrath
Telephone number	704-335-3924
Fax number	
From	Ida Levine Bourne
Telephone number	404-529-6306
Fax number	404-529-7839
Subject	Interconnection Agreement

Enclosed is the proposed Agreement between US LEC and BellSouth for the provision of local interconnection, unbundled services and resale, including all attachments. Please note, Attachment B-1 which was revised to remove the footnote about the 105% compensation cap which was originally included in the Agreement. This language should have been removed at the time the "cap" provisions were removed from the Agreement in September.

Also enclosed is a copy of the memo originally sent to you on September 19, 1996, in response to your interconnection diagrams. The memo has been revised to reflect the effective date of the Agreement.

Please do not hesitate to call me with any additional questions and/or concerns relative to this Agreement.

Attachments (3)

Memorandum

Date: November 6, 1996
To: Gary Grefrath, U. S. LEC
From: Ida Levine Bourne, BellSouth Telecommunications, Inc.
Re: Interconnect Rates

We are in receipt of your revised Interconnect Rate list dated 9/16/96. The following information is being provided to clarify the issues that we discussed earlier today.

All of the examples provided with your diagrams assume that U.S. LEC will provide its own entrance facility. With that scenario, U.S. LEC would have to be collocated (either Physically or Virtually). In either instance, the rates for collocation would apply in addition to the appropriate interconnection rates. Rates for Virtual Collocation are set forth in Section 20 of BellSouth's Interstate Access Service Tariff, F.C.C. No. 1. A copy of the applicable tariff pages are attached. For Physical Collocation, BellSouth will negotiate on a first come, first serve basis, dependent on space availability.

If U.S. LEC is not collocated, entrance into BellSouth end offices/serving wire centers can be accomplished with the purchase of BellSouth Switched Access Local Channels. Applicable charges for interoffice transport, switching, etc. would still apply.

In connection with our discussions about BellSouth's Intermediary role between ALECs and Independent Companies, BellSouth will perform that intermediary function. However, if an Independent requests that BellSouth "block" traffic originating from an ALEC with whom they do not have a negotiated interconnection agreement, BellSouth will comply. Any such agreements required between ALECs and Independents should be negotiated separately between the two parties.

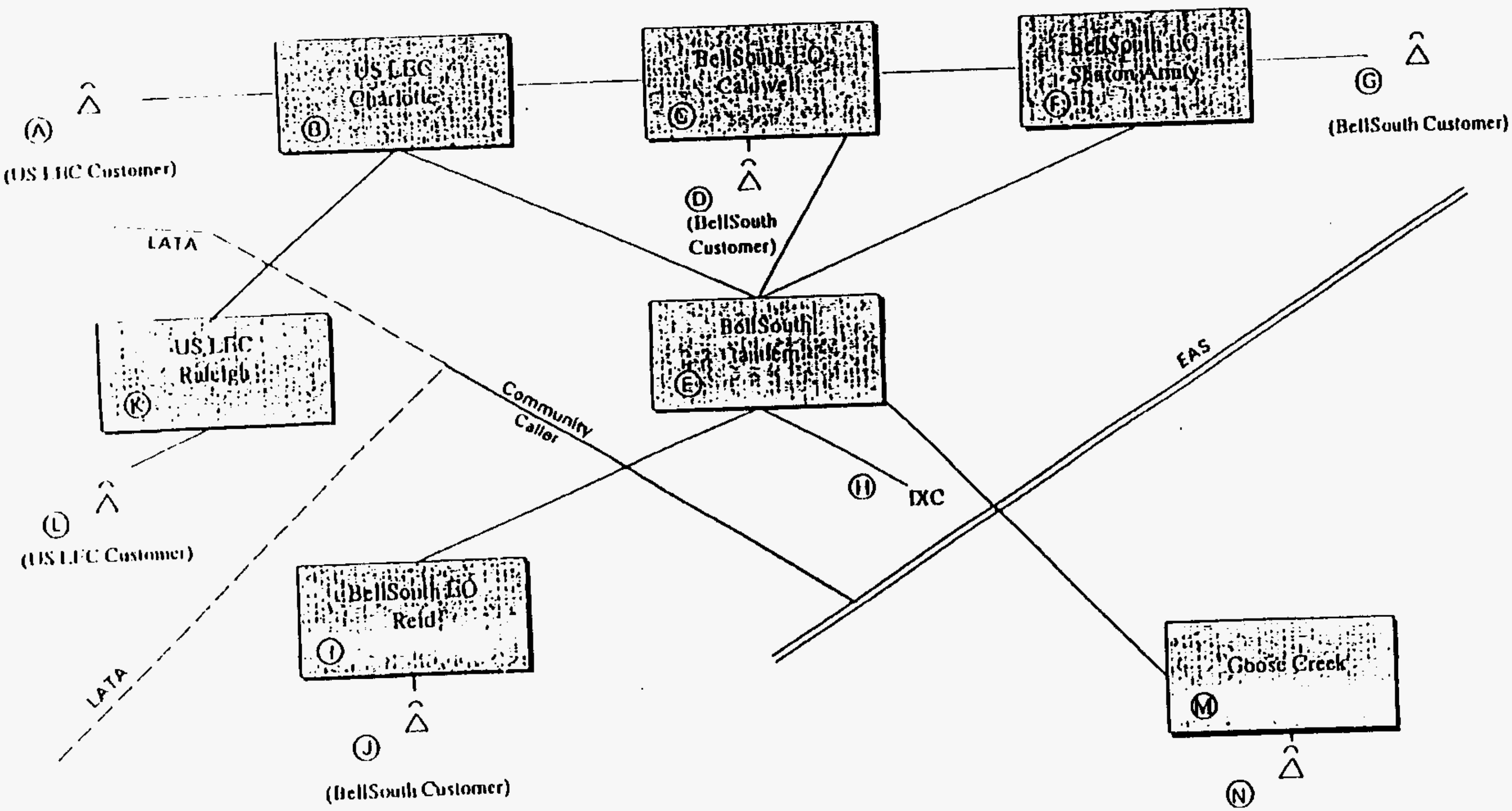
Additionally, Mary Jo Peed, our attorney on interconnection matters, is reviewing Aaron Cowell's proposed changes to the Agreement. She will contact him directly on Monday to discuss those issues as well as the proposed "CAP" language that was discussed this morning.

Please call me on 404-529-6306 or Jerry Hendrix, 404-529-8210 if you have questions or wish to discuss these issues further.

Attachment

cc: Aaron Cowell
Jerry Hendrix

US LEC - BellSouth
Example Interconnection Calculations



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BellSouth
North Carolina
Interconnect Rates

	Monthly	Non-Recurring
1. Dedicated DS-1 Local Channel	$133 81	$866 97 First $486 83 Add'l
Transport	$23.50 per mile	
Facility Termination	$90.00	$100.49
2. Common Transport	$0.00004 per Mile/MOU 0.00036 per MOU	
3. Local Switching LS2 (FGD)	$0.01140 per MOU	
Tandem	0.00074 per MOU	
Total	$0.01214 per MOU	
Tandem Intermediate (Applies when only BellSouth service is Tandem switching)	$0.002 per MOU	

Interconnection Charges

Assumptions:

- A - B is provided by US LEC (CAP, BS unbundled loop, BS Dedicated, etc.)
- B - C is provided by US LEC for traffic terminating on the BellSouth network (CAP, BS Dedicated, etc.).
- B - E is provided by US LEC for traffic terminating on the BellSouth network (CAP, BS Dedicated, etc.)
- C - B is provided by BellSouth for traffic terminating on US LEC network.
- E - B is provided by BellSouth for traffic terminating on US LEC network.

Examples:

A1. Due BellSouth for call from A to G

E-F Common Transport
$0.00004/MOU/Mile E-F
$0.00036/MOU

F Local Switching
LS2 (FGD) $0.01140/MOU
Tandem $0.00074/MOU

A2. Due BellSouth for call from A to G, where A is an ALEC (not US LEC)

E-F Common Transport
$0.00004/MOU/Mile E-F
$0.00036/MOU

F-G Local Switching
LS2 (FGD) $0.01140/MOU
Tandem $0.00074/MOU

A3. Due BellSouth for call from A to H (IXC)

B-E Transport provided by BellSouth and billed to IXC
OR
Transport provided by US LEC and billed to IXC

A-B CCL & LS provided by US LEC and billed to IXC

A4. Due BellSouth for call from L to G

L-B Provided by US LEC

E-F Common Transport
$0.00004/MOU/Mile E-F
$0.00036/MOU

F-G Local Switching
LS2 (FGD) $0.01140/MOU
Tandem $0.00074/MOU

A5. Due BellSouth for call from A to J

E-I Common Transport

$0.00004/MOU/Mile E-I
$0.00036/MOU

I-J Local Switching
LS2 (FGD) $0.01140/MOU
Tandem $0.00074/MOU

A6. Due BellSouth for call from A to D
I-J Local Switching
LS2 (FGD) $0.01140/MOU

A7. Due BellSouth for call from A to N (intraLATA Toll)
E-M Common Transport
$0.00004/MOU/Mile E-M
$0.00036/MOU

M-N Local Switching
LS2 (FGD) $0.01140/MOU
Tandem $0.0074/MOU
CCL $?????
RIC $0.007763/MOU

B1. Due US LEC for call from G to A
B Local Switching
LS2 (FGD) $0.01140/MOU
Tandem $0.00074/MOU

B2. Due US LEC for call from H to A

E-B Transport provided by BellSouth and billed to IXC
OR
Transport provided by US LEC and billed to IXC

B-A CCL & LS provided by US LEC and billed to IXC

B3. Due US LEC for call from J to A
B Local Switching
LS2 (FGD) $0.01140/MOU
Tandem $0.00074/MOU

B4. Due US LEC for call from D to A
B Local Switching
LS2 (FGD) $0.01140/MOU
Tandem $0.00074/MOU

B5. Due US LEC for call from N to A (intraLATA toll)
B Local Switching
LS2 (FGD) $0.01140/MOU
Tandem $0.0074/MOU
CCL $?????
RIC $0.007763/MOU

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by Hand Delivery this 18th day of February, 2000, to the following:

Donna Clemmons
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Mary Rose Siriani
Michael Goggin
BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301

Charles J Pellegrini

CHARLES J. PELLEGRINI