

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
REBUTTAL TESTIMONY OF RONALD MARTINEZ
ON BEHALF OF MCIMETRO ACCESS TRANSMISSION SERVICES, INC.
DOCKET NO. 980499-TP

MAY 1, 1998

Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION.

A. My name is Ronald Martinez. My business address is 780 Johnson Ferry Road, Atlanta Georgia 30342. I am employed by MCI Telecommunications Corporation in the Law and Public Policy Group as an Executive Staff Member II. My responsibilities in my current position include working with the MCI business units to ensure timely introduction of products and services.

Q. ARE YOU THE SAME RON MARTINEZ THAT FILED DIRECT TESTIMONY IN THIS MATTER?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to rebut the testimony filed by BellSouth Witness Jerry Hendrix. In particular, I explain that BellSouth agreed to the definition of Local Traffic contained in the MCI metro/BellSouth Interconnection Agreement ("Agreement"). Indeed, BellSouth proposed the language. BellSouth agreed that it would pay reciprocal compensation for telephone calls which fall under that

DOCUMENT NUMBER-DATE

04947 MAY-1 8

FPSC-RECORDS/REPORTING

1 definition. ISP traffic falls under that definition; therefore, BellSouth must pay
2 reciprocal compensation to MCImetro for ISP traffic.

3

4 **Q. ON PAGE 2, LINE 23, TO PAGE 3, LINE 1, MR. HENDRIX CLAIMS**
5 **THAT CALL TERMINATION DOES NOT OCCUR AT THE ISP**
6 **PREMISES. DO YOU AGREE?**

7 **A.** No. As I explained in my direct testimony, a “telephone call” placed over the
8 public switched telephone network is “terminated” when it is delivered to the
9 telephone exchange service premise bearing the called telephone number. As a
10 telecommunications service, a call is completed at that point, regardless of the
11 identity or status of the called party. An internet service provider (“ISP”) that
12 purchases local service from MCImetro is assigned a telephone number by
13 MCImetro for local service at the ISP’s premises. When a BellSouth customer
14 originates a telephone call by dialing that number, the telephone call terminates at
15 the ISP premises, just as any other telephone call terminates when it reaches the
16 premises with the phone number that the end user dialed. A connection that an
17 ISP may subsequently enable over the internet is between the ISP and its other
18 providers and does nothing to change the inherent local nature of the telephone
19 call to the ISP.

20

21 **Q. HOW DOES THE MCIMETRO AGREEMENT APPLY TO LOCAL**
22 **TELEPHONE CALLS MADE FROM BELLSOUTH’S NETWORK TO**
23 **ISPs SERVED BY MCIMETRO’S NETWORK?**

1 A. The Agreement defines local traffic “as any telephone call that originates in one
2 exchange and terminates in either the same exchange, or a corresponding Extended
3 Area (EAS) exchange.” Attachment IV, Sec. 2.2.1. As already explained,
4 MCImetro terminates these telephone calls at the ISP’s premises. Since telephone
5 calls to ISPs meet the definition of Local Traffic contained in the Agreement,
6 BellSouth must pay reciprocal compensation for the termination of such telephone
7 calls.

8
9 **Q. ON PAGE 3, LINES 1 TO 6, MR. HENDRIX STATES THAT “A SECOND
10 BASIC REQUIREMENT [OF THE AGREEMENTS] IS THAT TRAFFIC
11 BE JURISDICTIONALLY LOCAL AS DEFINED BY THE
12 AGREEMENTS.” HOW DO YOU RESPOND?**

13 A. The Agreement itself defines “Local Traffic.” While Mr. Hendrix pays lip service
14 to the Agreement by stating that the traffic must be “jurisdictionally local as
15 defined by the Agreements,” he proceeds to ignore the definition in the Agreement.
16 Instead, Mr. Hendrix wants the Commission to make a generic determination as to
17 whether ISP traffic is local in nature. If the MCImetro Agreement did not define
18 Local Traffic, such a determination might be necessary. Since the Agreement does
19 define Local Traffic the only relevant question is whether ISP traffic meets that
20 definition. In any event, even if the generic question was relevant, ISP traffic, as
21 this Commission has previously found and as BellSouth witnesses have previously
22 testified, is jurisdictionally local in nature. See Docket No. 880423-TP, Order No.
23 21815, p. 25.

1 **Q. HOW DOES ISP TRAFFIC DIFFER FROM LONG DISTANCE**
2 **TRAFFIC?**

3 **A.** Long distance or interstate phone voice traffic is easily distinguishable from ISP
4 traffic because, in order to make an interstate telephone call, the end user must dial
5 the phone number of the party in the other state. That call terminates at the other
6 party's premises in the other state, and is thus interstate in nature. However, when
7 an end user makes a telephone call to his or her ISP, the end user simply dials a
8 local number. Accordingly, the call terminates at the ISP premises, which is in the
9 end user's local area.

10
11 **Q. MR. HENDRIX CLAIMS ON PAGE 13, LINES 22 TO 25, THAT THE**
12 **TELEPHONE CALL DOES NOT TERMINATE IN THE LOCAL AREA**
13 **BECAUSE "THERE IS NO INTERRUPTION OF THE CONTINUOUS**
14 **TRANSMISSION OF SIGNALS BETWEEN THE END USER AND THE**
15 **HOST COMPUTERS." DO YOU AGREE?**

16 **A.** No. Mr. Hendrix' suggestion that a telephone call to an ISP does not terminate at
17 the ISP local telephone number, but instead terminates on the Internet at some
18 distant website, completely misunderstands the nature of an Internet call. An
19 Internet call is a two step process consisting of: (1) a local telephone call from the
20 end user to the ISP that both originates and terminates in the local calling area;
21 and, (2) a subsequent connection between the ISP and the Internet. BellSouth's
22 position that a single, long distance telephone call occurs when a user connects to
23 the Internet would hardly explain the ability of an end user to undertake a World

1 Wide Web search and visit multiple websites at many different ultimate
2 destinations. This subsequent connection made by the ISP that provides access to
3 the Internet is an “enhanced service” that is not a telecommunications service. The
4 provision of this enhanced service, after the local telephone call to the ISP has
5 been made, does not change the inherent local nature of that initial telephone call
6 made to the ISP. As the FCC has stated:

7

8 ISPs alter the format of the information through computer processing
9 applications such as protocol conversion and interaction with stored data,
10 while the statutory definition of telecommunications only includes
11 transmissions that do not alter the form of the content of the information
12 sent. (footnote omitted) When a subscriber obtains a connection to an
13 Internet service provider via voice grade access to the public switched
14 network, that connection is a telecommunications service and is
15 distinguishable from the Internet service provider’s offering.

16

17 In the Matter of Federal-State Joint Board on Universal Service, Report and
18 Order, FCC 97-157, CC Docket No. 96-45, rel. May 8, 1997, Para. 789. As with
19 the definition under federal law, the definition of “telecommunications” under the
20 Agreement only includes transmissions that do not alter the form or content of the
21 information sent. Agreement, Part B, page 11.

22

1 **Q. ON PAGE 9, LINES 23 TO 25, MR. HENDRIX STATES THAT**
2 **BELLSOUTH AND MCIMETRO DID NOT "MUTUALLY AGREE" TO**
3 **TREAT ISP TRAFFIC AS LOCAL TRAFFIC FOR PURPOSES OF**
4 **RECIPROCAL COMPENSATION. HOW DO YOU RESPOND?**

5 **A.** MCImetro and BellSouth certainly mutually agreed to the definition of "Local
6 Traffic" contained in the Agreement. In fact, it was BellSouth which proposed the
7 definition. MCImetro and BellSouth further mutually agreed to pay reciprocal
8 compensation for telephone calls which met that definition of local traffic. As
9 already explained, telephone calls to an ISP meet that definition. Had an exception
10 been intended for ISP traffic (or for any other subset of local traffic), it would have
11 been expressly included by the parties. No such exception is contained in the
12 Agreement and no such exception was ever suggested by BellSouth.

13
14 **Q. WHAT IS THE EFFECT OF MR. HENDRIX' RECOLLECTION OF THE**
15 **PARTIES' INTENT?**

16 **A.** Under Mr. Hendrix view of the parties' intent, telephone calls to ISPs would be the
17 **ONLY** type of traffic between MCImetro and BellSouth that is **NOT** covered by
18 the Agreement. I believe that the parties intended for the Agreement to be a
19 comprehensive one which would cover all types of traffic. Section 7 of Attachment
20 I covers local traffic (Section 7.1), toll traffic (Section 7.3), 800/888 traffic
21 (Section 7.3), traffic completed via an interim local number portability arrangement
22 (Section 7.4) and "transit" traffic (Section 7.5). Contrary to Mr. Hendrix, I don't

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

believe that either party intended for the agreement to be silent about any type of traffic that might pass over their interconnection facilities.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

CERTIFICATE OF SERVICE

R. Martinez
REBUTTAL

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by Hand Delivery this 1st day of May, 1998.

Charles J. Pellegrini
FL Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Suite 370
Tallahassee, FL 32399-0850

Patrick K. Wiggins
Wiggins & Villacorta
2145 Delta Boulevard
Suite 200
Tallahassee, Florida 32303

Nancy White
c/o Nancy Sims
BellSouth Telecommunications
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Kenneth A. Hoffman
William B. Willingham
Rutledge, Ecenia, Underwood
Purnell & Hoffman
215 South Monroe Street
Suite 420
Tallahassee, FL 32302

Floyd R. Self
Messer Caparello & Self, P.A.
215 South Monroe Street
Suite 701
Tallahassee, FL 32301

Fred D. Me

ATTORNEY

04947-98
5/1/98