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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF ALPHONSO J. VARNER
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 990750-TP
AUGUST 16, 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 positions on numerous issues raised by
9 ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") in its Petition for
10 Arbitration filed with the Florida Public Service Commission ("Commission")
11 on June 11, 1999. Specifically, I respond to the following issues raised by
12 ITC^DeltaCom: 1, 2, 3(a), 3(b)(2), 3(b)(6), 3(b)(7), 3(b)(9), 6, 7, 8, 13, 14, 16,
13 18, 19, 20(b), 23, 24, 33, 35, 38-43, 45-50. I also address the ramifications of
14 recent court decisions as they specifically relate to ITC^DeltaCom Issues 7
15 [ITC^DeltaCom No.2(b)(ii)], 8 [ITC^DeltaCom No. 2(b)(iii)], and 23
16 [ITC^DeltaCom No. 3].

17

18 Q. PLEASE SUMMARIZE HOW THE RECENT COURT DECISIONS
19 AFFECT THIS PROCEEDING.

20

21 A. On June 10, 1999, the United States Court of Appeals for the Eighth Circuit
22 ("Eighth Circuit") issued an order in the *Iowa Utilities Board, et al.* case
23 reinstating many of the previously vacated Federal Communications
24 Commission's ("FCC") Rules. These Rules were originally issued in the
25 FCC's First Report and Order and Second Report and Order dated August 8,

1 1996 in CC Docket 96-98. In light of the Eighth Circuit's recent and past
2 decisions, along with the January 25, 1999 decision by the United States
3 Supreme Court, the status of the FCC's rules can be divided into several
4 categories as follows.

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

18
19 The FCC's Unbundled Network Element ("UNE") Rule 51.319 (Specific
20 unbundling requirements) has been vacated after the Supreme Court's decision
21 in *Iowa Utilities Bd.* and is currently being readdressed by the FCC. Until that
22 time, there is no minimum list of UNEs that BellSouth is required to offer.
23 However, BellSouth agreed to continue providing "UNEs" as listed in the now
24 vacated Rule 51.319, until the new rulemaking is complete. However, this is a
25 voluntary commitment and does not technically make these items UNEs, nor

1 does this commitment apply to any combination of UNEs. Actual UNEs will
2 not be known until 51.319 is resolved. Because the required list of UNEs is
3 unknown, it would not be appropriate to require application of FCC rules to
4 "UNEs" offered under the interim commitment. When the FCC rules become
5 finalized, BellSouth should be permitted to modify the interim list of
6 capabilities to conform to the FCC's rules.

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

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

23
24 After the FCC and the Eighth Circuit take further action in response to the
25 Supreme Court's decision, BellSouth's position on the issues raised in this

1 proceeding may be affected. As a result, BellSouth may need to modify some
2 of its positions in the months to come.

3

4 Q. BRIEFLY DESCRIBE HOW THE SUPREME COURT ADDRESSED THE
5 FCC'S RULE 51.319 (SPECIFIC UNBUNDLING REQUIREMENTS).

6

7 A. In striking down Rule 51.319 and the FCC's underlying standard, the Supreme
8 Court categorically rejected the FCC's notion of when an incumbent must
9 provide UNEs to ALECs under the FCC's "necessary" and "impair"
10 requirements. In interpreting those statutory terms, the Supreme Court stated
11 that the FCC's definition of an unbundled network element "cannot, consistent
12 with the statute, blind itself to the availability of elements outside the
13 incumbent's network." (525 U.S. ___, 142 L. Ed. 2d 834, 855). Sup. Ct. Order,
14 at pg. 22) The Supreme Court also observed that the "assumption that any
15 increase in cost (or decrease in quality) imposed by denial of a network
16 element renders access to that element 'necessary' and causes the failure to
17 provide that element to 'impair' the entrant's ability to furnish its desired
18 services is simply not in accord with the ordinary and fair meaning of those
19 terms." (Id.) In plainer terms, this language means that "elements" that are
20 available from other sources, including elements that competitors can (and
21 often do) provide for themselves, do not have to be provided by ILECs as
22 UNEs under the Act.

23

24 Thus, there can be no requirement for BellSouth to provide any combinations
25 of a specific type or in a locality where there are ready alternatives to any of

1 the constituent network elements. This proscription applies even where those
2 alternatives may be somewhat more costly for the ALEC to obtain from
3 another supplier or by providing them for itself. The Supreme Court
4 anticipated precisely this kind of limitation on the availability of access to
5 network elements when it observed that "if Congress had wanted to give
6 blanket access to incumbents' networks on a basis as unrestricted as the
7 scheme the Federal Communications Commission has come up with, it would
8 not have included § 251(d)(2) in the statute at all." (525 U.S. ___, 142 L. Ed. 2d
9 834, 856).

10
11 Q. WHAT PROCESS IS BEING FOLLOWED TO IMPLEMENT NEW UNE
12 RULES?

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

22
23 This Commission presumably will have, and should have, a role in
24 implementing the "necessary" and "impair" standards. However, this
25 Commission's decisions should, as a practical matter, await the FCC's further

1 definition of those standards. Furthermore, even if this Commission eventually
2 is empowered to decide which elements must remain combined, there has been
3 no determination by the FCC as to exactly which elements those are.

4

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

7

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

22

23 Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO
24 COMBINATIONS OF ELEMENTS THAT ALREADY EXIST IN
25 BELLSOUTH'S NETWORK?

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A. Regarding the provision of combinations that already exist in the network, there are no requirements that the Commission can implement until the FCC establishes a list of UNEs, and the associated pricing rules, that ILECs must offer. As discussed previously, it will not be established which UNEs BellSouth is required to offer until the FCC reissues its UNE rules in accordance with the Supreme Court's decision. Consequently, the UNEs that must remain combined cannot be determined at this time. Likewise, the pricing rules applicable to such combinations could be affected by the Eighth Circuit's evaluation. Therefore, with regard to this issue, a final determination of which UNEs must remain connected and functional, as well as the prices for those combinations, will depend upon the outcome of further proceedings before the FCC and the Courts.

The Supreme Court specifically recognized the linkage between Rule 51.315(b) and the list of UNEs. In its discussion of the legality of Rule 51.315(b), the Court stated: "As was the case for the all-elements rule, our remand of Rule 319 [i.e., requiring application of the "necessary" and "impair" standards] may render the incumbents' concern on this score academic." (525 U.S. ___, 142 L. Ed. 2d 834, 858). This linkage should not be ignored by requiring the provision of services which are allegedly pre-existing combinations of UNEs before the UNEs themselves are defined.

BellSouth is cooperating during this interim period by making numerous capabilities available to ALECs. It would be unreasonable to penalize

1 BellSouth for its cooperative efforts by invoking a combination requirement at
2 this time. For the reasons outlined above, BellSouth proposes that all requests
3 for combinations be negotiated between the parties until the FCC's final and
4 nonappealable pricing and UNE rules require different treatment. Should the
5 Commission decline to adopt BellSouth's proposal on the provision of
6 combinations while the final rules are still uncertain, the Commission should
7 allow BellSouth to assess combination charges in order to avoid arbitrage of
8 the tariffed service rates with the UNE rates. Such charges are permissible
9 under the Act and are necessary to retain sound pricing.

10

11 Q. PLEASE FURTHER DESCRIBE WHY THE COMMISSION SHOULD
12 WAIT ON ACTION BY THE FCC BEFORE SPECIFYING WHICH UNE
13 COMBINATIONS MUST BE OFFERED.

14

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

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Q. IS BELLSOUTH WILLING TO OFFER NETWORK ELEMENTS ON AN UNBUNDLED BASIS BEFORE THE FCC READDRESSES RULE 51.319?

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

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

A. Rates for numerous UNEs included in the vacated Rule 51.319 were ordered by this Commission in its December 31, 1996 Order No. PSC-96-1579-FOF-TP, Docket Nos. 960833-TP, 960846-TP, and 960916-TP (“December 31, 1996 Order”) and subsequently in its April 29, 1998 Order No. PSC-98-0604-FOF-TP, Docket Nos. 960757-TP, 960833-TP, and 960846-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

1 unbundled elements is an approximation of Total Service Long Run
2 Incremental Cost (TSLRIC).”

3
4 Then, on page 32, the Commission found that “BellSouth’s cost studies are
5 appropriate because they approximate TSLRIC cost studies and reflect
6 BellSouth’s efficient forward-looking costs.” Finally, on page 33, the
7 Commission stated that “we find it appropriate to set permanent rates based on
8 BellSouth’s TSLRIC cost studies. The rates cover BellSouth’s TSLRIC costs
9 and provide some contribution toward joint and common costs.”

10 Subsequently, in the April 29, 1998 Order, the Commission established
11 additional recurring and nonrecurring UNE rates, also covering BellSouth’s
12 TSLRIC costs plus some contribution toward joint and common costs.

13

14 Q. WHY DOES BELLSOUTH BELIEVE THAT THE RATES FOR UNES
15 PREVIOUSLY ORDERED BY THIS COMMISSION ARE APPROPRIATE?

16

17 A. BellSouth’s cost studies are generic in that they determine the costs to
18 BellSouth of providing UNES to any requesting carrier. These costs do not
19 vary, whether it is AT&T or ITC^DeltaCom which is requesting the element.
20 Therefore, the costs that this Commission has already used to establish rates
21 for AT&T, MCI, and other ALECs should be the same for ITC^DeltaCom or
22 for any other ALEC.

23

24 As previously discussed, the final requirements for pricing are unknown until
25 the Eighth Circuit makes its decision. For this interim period, the most

1 reasonable course is to continue to apply rates that this Commission has
2 already found to be just, reasonable, and cost-based as required by the Act.

3

4 Q. PLEASE EXPLAIN THE INFORMATION CONTAINED IN YOUR
5 EXHIBIT AJV-1.

6

7 A. Only the rates for those capabilities which ITC^DeltaCom expressly raised as
8 an issue in its Petition for Arbitration are included in Exhibit AJV-1 attached to
9 my testimony. The source of the rate is denoted by one of the following:

- 10 • the date of the Commission Order in the arbitration proceedings
11 (“12/31/96 Order” or “4/29/98 Order”); or
12 • the term “Cost Study” is used to denote that new cost studies have
13 been filed in this proceeding;
14 • the term “Interim” to denote interim rates that are subject to true up
15 when subsequently filed cost studies are approved, or
16 • the term “Tariff” to denote FCC tariffed rates.

17

18 ***Issue 1: [ITC^DeltaCom No. 1(a)] Should BellSouth be required to comply with***
19 ***the performance measures and guarantees for pre-ordering/ordering, resale, and***
20 ***unbundled network elements (“UNEs”), provisioning, maintenance, interim number***
21 ***portability and local number portability, collocation, coordinated conversions and***
22 ***the bona fide request processes as set forth fully in Attachment 10 of Exhibit A of***
23 ***this Petition?***

24

1 Q. WHAT IS BELLSOUTH'S POSITION REGARDING ATTACHMENT 10
2 OF EXHIBIT A OF ITC^DELTA COM'S PETITION?

3
4 A. The provisions set forth in ITC^DeltaCom's Attachment 10 should not be
5 required. BellSouth has taken very seriously the FCC's request for "clear and
6 precise" measurements by which ALECs and regulators can confirm
7 nondiscriminatory provisioning of network facilities and services. Ameritech-
8 Michigan Order, 12 FCC Rcd at 20655-56, ¶ 209. Working with the State
9 Commissions and ALECs, BellSouth has developed a comprehensive set of
10 Service Quality Measurements ("SQMs") covering nine separate categories:
11 (1) access to OSS for pre-ordering and ordering; (2) ordering; (3)
12 provisioning; (4) maintenance and repair; (5) billing; (6) operator services and
13 directory assistance; (7) E911; (8) local interconnection trunk group blockage;
14 and (9) collocation. Rather than attempting to negotiate different performance
15 measurements in the various individual interconnection agreements for each
16 ALEC doing business in BellSouth's region, BellSouth is committed to
17 delivering the BellSouth SQMs equally to all ALECs.

18
19 *These measurements, along with the raw data provided to ITC^DeltaCom,*
20 *would allow ITC^DeltaCom to monitor BellSouth's performance and to verify*
21 *that services are being provided at parity with BellSouth and with other*
22 *ALECs. BellSouth's SQMs are summarized in the following table:*

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TABLE A

BELLSOUTH
SERVICE QUALITY MEASUREMENTS

CATEGORY	MEASUREMENTS
Pre-Ordering and Ordering OSS	<ol style="list-style-type: none"> 1. Average OSS Response Interval 2. OSS Interface Availability
Ordering	<ol style="list-style-type: none"> 1. Percent Flow-through Service Requests 2. Percent Rejected Service Requests 3. Reject Interval 4. Firm Order Confirmation Timeliness 5. Speed of Answer in Ordering Center
Provisioning	<ol style="list-style-type: none"> 1. Average Completion Interval 2. Order Completion Interval Distribution 3. Held Order Interval Distribution and Mean Interval 4. Percent Missed Installation Appointments 5. Percent Provisioning Troubles w/in 30 days 6. Coordinated Customer Conversions 7. Average Completion Notice Interval
Maintenance & Repair	<ol style="list-style-type: none"> 1. OSS Interface Availability 2. Average OSS Response Interval 3. Average Answer Time – Repair 4. Missed Repair Appointments 5. Customer Trouble Report Rate 6. Maintenance Average Duration 7. Percent Repeat Troubles w/in 30 days 8. Out of Service >24 Hours
Billing	<ol style="list-style-type: none"> 1. Invoice Accuracy 2. Invoice Timeliness 3. Usage Data Delivery Accuracy 4. Usage Data Delivery Timeliness and Completeness
Operator Services & Directory Assistance	<ol style="list-style-type: none"> 1. Average Time to Answer 2. Percent Answered within "X" Seconds
E911	<ol style="list-style-type: none"> 1. Timeliness 2. Accuracy
Trunk Group Performance	<ol style="list-style-type: none"> 1. Comparative Trunk Group Service Summary 2. Trunk Group Service Report 3. Trunk Group Service Detail
Collocation	<ol style="list-style-type: none"> 1. Average Response Time 2. Average Arrangement Time 3. Percentage of Due Dates Missed

1 Q. SHOULD BELLSOUTH BE REQUIRED TO PAY PENALTIES FOR
2 FAILURE TO MEET SERVICE QUALITY MEASUREMENTS?

3

4 A. No. ITC^DeltaCom apparently believes that performance measurements can
5 only be enforced through penalties. However, penalties are never appropriate
6 as a contractual remedy and should not be imposed by this Commission. The
7 issue of so called "guarantees", a.k.a. penalties or liquidated damages, is not an
8 appropriate issue for arbitration. Although I am not a lawyer, it is my
9 understanding that State Commissions lack the statutory authority to award or
10 order penalties or liquidated damages. Thus, this Commission has no authority
11 to award the relief ITC^DeltaCom seeks. Furthermore, this Commission has
12 already addressed this issue in its December 31, 1996 Order at pages 74-75,
13 where it stated as follows: "We conclude that we should limit our
14 consideration in this arbitration proceeding to the items enumerated to be
15 arbitrated in Sections 251 and 252 of the Act, and matters necessary to
16 implement those items. A liquidated damages provision does not meet that
17 standard. The Act does not require parties to include in their agreements any
18 particular method to resolve disputes. Further, it is not appropriate for us to
19 arbitrate a liquidated damages provision under state law. If we did, we would
20 be, in effect, awarding damages to one party for a breach of contract. We lack
21 the authority to award money damages. ... If we cannot award money
22 damages directly, we cannot do so indirectly by imposing a liquidated damages
23 arrangement on the parties."

24

1 Even if a guarantee, penalty or liquidated damage award could be arbitrated,
2 such award is completely unnecessary. State law and State and Federal
3 Commission procedures are available, and perfectly adequate, to address any
4 breach of contract situation should it arise. The SQMs that BellSouth has
5 proposed are fully enforceable through Commission complaints in the event of
6 BellSouth's failure to meet such measurements.

7
8 BellSouth is currently working with the FCC to finalize a BellSouth proposal
9 for self-effectuating enforcement measures. This is a voluntary proposal made
10 by BellSouth which would take effect on a state-by-state basis concurrent with
11 approval for BellSouth to enter into long distance in each state and subject to
12 acceptance by the FCC. This proposal should not, however, be interpreted in
13 any way as BellSouth's admission that either this Commission or the FCC has
14 the authority to impose self-executing penalties or liquidated damages without
15 BellSouth's voluntary agreement.

16
17 ***Issue 2: [ITC^DeltaCom No. 1(b)] Should BellSouth be required to waive any***
18 ***nonrecurring charges when it misses a due date?***

19
20 **Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?**

21
22 **A.** A requirement obligating BellSouth to waive nonrecurring charges when it
23 misses a due date would be a penalty or liquidated damages provision. As
24 already discussed in 1(a) above, BellSouth cannot be required to commit to
25 such penalties or liquidated damages. Furthermore, from time to time, both

1 parties may have reasonable circumstances which might cause a delay in the
2 schedule. There is no mechanism in place to track all delays, and who is
3 responsible. Therefore, a provision for a waiver in any instance is not
4 appropriate to be included in the interconnection agreement.

5

6 ***Issue 3(a): [ITC^DeltaCom No. 2] What is the definition of parity?***

7

8 Q. WHAT IS BELLSOUTH'S RESPONSE TO THIS ISSUE?

9

10 A. The FCC has defined parity to mean that UNEs are provided in a manner that
11 gives an efficient ALEC a meaningful opportunity to compete. BellSouth
12 believes that no further definition of "parity" is necessary.

13

14 ***Issue 3(b): Pursuant to this definition, should BellSouth be required to provide the***
15 ***following: (1) Operational Support Systems ("OSS"), (2) UNEs, (3) White Page***
16 ***Listing, (4) Access to Numbering Resources, (5) [ITC^DeltaCom No. 2(a)(iv)] An***
17 ***unbundled loop using Integrated Digital Loop Carrier (IDLC) technology, (6)***
18 ***[ITC^DeltaCom No. 2(a)(v)] Interconnection, (7) [ITC^DeltaCom No. 2(a)(vii)]***
19 ***Service intervals on winbacks, (8) [ITC^DeltaCom No. 2(b)(i)] Priority guidelines***
20 ***for repair and maintenance and UNE provisioning; and (9) [ITC^DeltaCom No.***
21 ***2(d)] White Page Listings to independent third party publishers?***

22

23 Q. WHICH PARTS OF THE ABOVE ISSUE ARE YOU ADDRESSING?

24

1 A. My testimony addresses sub-parts (2), (6), (7) and (9). Sub-parts (1) and (3)
2 are addressed in the testimony of Ron Pate; sub-parts (4), (5), and (8) are
3 addressed in the testimony of Keith Milner. It is BellSouth's understanding
4 that sub-parts (6), (7) and (9) have been resolved by the parties; however,
5 BellSouth reserves the right to file testimony on these issues, should they be
6 further disputed.

7

8 ***Issue 3(b)(2): [ITC^DeltaCom No. 2] Pursuant to the definition of parity, should***
9 ***BellSouth be required to provide UNEs?***

10

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

12

13 A. BellSouth is obligated, by the Act, to provide ITC^DeltaCom and any other
14 ALEC with nondiscriminatory access to unbundled network elements.
15 BellSouth complies with its obligations under the Act and FCC orders to
16 provide services to ALECs in a non-discriminatory manner. The Commission
17 should reject ITC^DeltaCom's apparent request to somehow have this
18 Commission impose an additional requirement, albeit totally unnecessary, on
19 BellSouth different than the express language of the Act or the FCC's rules.

20

21 Q. WHAT IS YOUR UNDERSTANDING OF ITC^DELTACom'S CLAIM
22 THAT BELLSOUTH IS NOT OFFERING SERVICES AT PARITY?

23

24 A. ITC^DeltaCom is requesting implementation of an impossible circumstance,
25 not parity. ITC^DeltaCom wants to require BellSouth to provide UNEs to

1 ITC^DeltaCom on the same terms that BellSouth provides services to its retail
2 customers. This is impossible, because the provision of UNEs is not the same
3 as the provision of retail service. BellSouth does not provide UNEs to itself or
4 to its retail customers. Under these circumstances, the FCC has defined parity
5 to mean that UNEs are provided in a manner that gives an efficient ALEC a
6 meaningful opportunity to compete. This is the standard that should be
7 adopted, and the previously discussed SQM will document whether BellSouth
8 is meeting this standard.

9

10 ***Issue 3(b)(6): [ITC^DeltaCom No. 2(a)(v)] Pursuant to the definition of parity,***
11 ***should BellSouth be required to provide Interconnection?***

12

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

14

15 A. It is BellSouth's understanding that this issue has been resolved by the parties.
16 However, BellSouth reserves the right to file testimony on this issue, should it
17 be further disputed.

18

19 ***Issue 3(b)(7): [ITC^DeltaCom No. 2(a)(vii)] Pursuant to the definition of parity,***
20 ***should BellSouth be required to provide service levels on winbacks?***

21

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

23

1 A. It is BellSouth's understanding that this issue has been resolved by the parties.
2 However, BellSouth reserves the right to file testimony on this issue, should it
3 be further disputed.

4
5 ***Issue 3(b)(9): [ITC^DeltaCom No. 2(d)] Pursuant to the definition of parity, should***
6 ***BellSouth be required to provide White Page Listings to independent third party***
7 ***publishers?***

8
9 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

10
11 A. Under Section 222(e) of the Act, BellSouth (as well as all other carriers) is
12 required to provide White pages directory listings for customers of the other
13 carrier's telephone exchange service, and BellSouth does so. There is no
14 requirement that BellSouth provide ITC^DeltaCom's White Page Listings to
15 independent third party publishers. ITC^DeltaCom should provide its own
16 listings to third parties if it desires third parties to have them.

17
18 It is BellSouth's understanding that this issue has been resolved by the parties.
19 However, BellSouth reserves the right to file testimony on this issue, should it
20 be further disputed.

21
22 ***Issue 6: [ITC^DeltaCom No. 2(a)(ii)] Should BellSouth be required to provide***
23 ***changes to its business rules and guidelines regarding resale and UNEs at least 45***
24 ***days in advance of such changes being implemented? If so, how?***

25

1 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

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3 A. BellSouth should provide advance notice of changes in its business rules and
4 guidelines, but there is, and should be, no requirement that such notice be
5 given a specified number of days in advance. However, as a matter of
6 courtesy, BellSouth already posts changes to its business rules and guidelines
7 regarding resale and UNEs on an easily accessible web page. As a general
8 policy, BellSouth makes a good faith effort to post all OSS-related
9 notifications thirty (30) days prior to the implementation of the change or rule;
10 however, there may be circumstances in which the 30-day timeframe is not
11 met. BellSouth has no legal or mandated obligation to provide this notification
12 30 days in advance (or 45 days in advance). The current process is appropriate
13 because it strikes the balance between BellSouth's need for flexibility to
14 modify its processes and the ALEC's need to have advance notice of such
15 modification. A forty-five day advance notice requirement would
16 unnecessarily burden BellSouth's ability to change and improve its processes.
17 This requirement would prevent any changes from being implemented on less
18 than 45 day notice, even if it were practical and desirable to do so.

19

20 ITC^DeltaCom further requested that BellSouth provide two free seats in
21 training classes and a seat for each new hire. This request is entirely
22 unreasonable. Currently, BellSouth voluntarily offers one free seat for each
23 ALEC in OSS-related courses and will be implementing a web based training
24 system for certain courses in the fall. There is no obligation to do this. If an
25 ALEC determines that it needs additional "seats" in training classes, it is able

1 to register its employees in that class for a fee. Requiring BellSouth to provide
2 service at no charge is inappropriate.

3

4 ***Issue 7: [ITC^DeltaCom No. 2(b)(ii)] Until the Commission makes a decision***
5 ***regarding UNEs and UNE combinations, should BellSouth be required to continue***
6 ***providing those UNEs and combinations that it is currently providing to***
7 ***ITC^DeltaCom under the interconnection agreement previously approved by this***
8 ***Commission?***

9

10 Q. IS BELLSOUTH OBLIGATED TO CONTINUE PROVIDING
11 INDIVIDUAL UNEs THAT IT IS CURRENTLY PROVIDING TO
12 ITC^DELTACOM?

13

14 A. BellSouth still has obligations under the Act to offer access to its network on
15 an unbundled basis. BellSouth's voluntary commitment to the FCC that, until
16 Rule 51.319 is resolved, BellSouth will continue to offer as a UNE any
17 individual network element currently offered as a UNE exceeds its obligations
18 under the Act. ITC^DeltaCom has asked for continued access to those UNEs
19 which it is using to provide service to customers today. BellSouth has agreed
20 to continue to provide any individual UNE currently offered, but under the
21 condition that the network elements offered may change once the FCC
22 completes its current proceeding and resolves Rule 51.319.

23

24 Q. IS BELLSOUTH OBLIGATED TO COMBINE UNEs FOR ALECs?

25

1 A. No. It is BellSouth's understanding that ITC^DeltaCom wants BellSouth to
2 provide UNE combinations at the sum of the individual elements. BellSouth's
3 commitment to provide individual UNEs did not extend generally to UNE
4 combinations. As previously discussed, in October, 1997, the Eighth Circuit
5 court vacated the FCC's rules (§§51.315(c)-(f)) that attempted to impose a
6 requirement to combine UNEs. The Eighth Circuit's decision vacating these
7 rules was not challenged by any party before the Supreme Court. Because
8 those rules are not in effect, BellSouth is not required to combine network
9 elements on behalf of ALECs.

10

11 Q. NOTWITHSTANDING ITS LACK OF OBLIGATION, HAS BELL SOUTH
12 OFFERED TO PROVIDE CERTAIN COMBINATIONS OF NETWORK
13 ELEMENTS?

14

15 A. Yes. BellSouth is willing to combine certain elements upon execution of a
16 voluntary commercial agreement that is not subject to the Act. Although
17 BellSouth does not generally offer to combine network elements without a
18 voluntary commercial agreement, there are certain combinations that BellSouth
19 will provide without a commercial agreement. BellSouth provides the
20 following combinations of network elements at the sum of the UNE prices:

21

- Loop and cross connect

22

- Port and cross connect

23

- Port and common transport

24

- Port and cross connect and common transport

25

- Loop with loop channelization (inside central office)

- 1 ● Loop and loop channelization (inside central office) and Cross
2 Connect

3
4 Although BellSouth is not required to combine UNEs, BellSouth has
5 voluntarily offered to provide the above specified combinations at the sum of
6 the UNE prices. Until Rule 51.319 is finalized, the list of UNEs that will be
7 required is still unknown. Requiring BellSouth to combine UNEs was not
8 intended by the Act, and BellSouth would certainly not voluntarily provide all
9 combinations at UNE prices. However, as explained earlier, BellSouth is
10 willing to provide combinations of certain functions upon execution of a
11 voluntary commercial agreement that is not subject to the requirements of the
12 Act.

13
14 Q. HOW HAS THIS COMMISSION ADDRESSED PRICING FOR
15 COMBINATIONS OF UNES?

16
17 A. This Commission has stated in its December 31, 1996 Order, at page 37: "We
18 note that we are concerned with the FCC's interpretation of Section 251(c)(3)
19 of the Act. Specifically, we are concerned that the FCC's interpretation could
20 result in the resale rates we set being circumvented if the price of the same
21 service created by combining unbundled elements is lower." Further, this
22 Commission stated in its Order No. PSC-97-0298-FOF-TP, Final Order on
23 Motions for Reconsideration and Amending Order No. PSC-96-1579-FOF-TP,
24 dated March 19, 1997, page 8: "Nevertheless, we note that we would be very
25 concerned if recombining network elements to recreate a service could be used

1 to undercut the resale price of the service.” This Commission has the same
2 concerns as BellSouth. Combinations of UNEs should not be permitted to
3 simply undercut resale rates.

4
5 ***Issue 8: [ITC^DeltaCom No. 2(b)(iii)] a) Should BellSouth be required to provide***
6 ***to ITC^DeltaCom extended loops or the loop/port combination? b) If so, what***
7 ***would the rates be?***

8
9 Q. WHAT IS BELLSOUTH'S POSITION ON PROVISION OF EXTENDED
10 LOOPS?

11
12 A. ITC^DeltaCom has requested what it terms an “extended loop” or a local loop
13 combined with dedicated transport. There is no question that an extended loop
14 would constitute a combination of a local loop and dedicated transport. Except
15 through voluntary agreements, BellSouth is not required to combine individual
16 UNEs such as the loop and dedicated transport. Such arrangements are not
17 subject to the Telecommunications Act. In addition, as stated earlier, there is
18 no reasonable way for this Commission to mandate provision of currently
19 combined network elements unless and until it is clear what those elements are.
20 This identification will not be known until the FCC reissues its UNE rules in
21 accordance with the Supreme Court's decision. Thus, this Commission should
22 not order that such an obligation be imposed in the interconnection agreement.

23
24 Moreover, pricing such combinations at UNE prices would be poor public
25 policy, as this Commission has already agreed. End user customers would be

1 required to subsidize these opportunities for price arbitrage when UNE
2 combinations replicate private line and/or special access services. However, as
3 previously stated, BellSouth is willing to combine certain network elements
4 upon execution of a voluntary commercial agreement that is not subject to the
5 requirements of the Act.

6
7 Q. WHAT IS BELLSOUTH'S POSITION REGARDING PROVISION OF
8 LOOP/PORT COMBINATIONS?

9
10 A. As previously discussed, BellSouth is not required to provide loop/port
11 combinations to ITC^DeltaCom, and such a requirement would be poor public
12 policy. Likewise, the combination of the local loop and the switch port as
13 requested by ITC^DeltaCom would replicate local exchange service and create
14 an opportunity for price arbitrage. However, as previously stated, BellSouth is
15 willing to perform certain functions upon execution of a voluntary commercial
16 agreement that is not subject to the requirements of the Act.

17
18 *Issue 13: [ITC^DeltaCom No. 2(c)(iii)] Should SL1 orders without order*
19 *coordination be specified by BellSouth with an a.m. or p.m. designation?*

20
21 Q. IS BELLSOUTH WILLING TO SPECIFY AN A.M. OR P.M.
22 DESIGNATION ON SL1 ORDERS WITHOUT ORDER COORDINATION?

23
24 A. Not in every case. If access to the customer's premises is not required, or if
25 access is required but the customer is indifferent as to time of day, BellSouth

1 should not be required to designate A.M. or P.M. installation. From a business
2 management standpoint, BellSouth should not be required to tie up resources,
3 and incur additional costs, necessary to meet scheduling restrictions when the
4 customer is indifferent as to timing. However, if access to the customer's
5 premises is required, and the customer requests an A.M. or P.M. designation,
6 BellSouth is willing to comply. This treatment is comparable to the scheduling
7 that BellSouth offers its retail customers. BellSouth is willing to discuss
8 language which would distinguish requirements under the different situations
9 as explained above.

10

11 ***Issue 14: [ITC^DeltaCom No. 2(c)(iv)] Should the party responsible for delaying a***
12 ***cutover also be responsible for the other party's reasonable labor costs?***

13

14 Q. DOES BELLSOUTH AGREE WITH ITC^DELTACOM ON THIS ISSUE?

15

16 A. No. When problems in loop cutovers arise, either party may have
17 circumstances, not necessarily within their control, that cause the cutover to be
18 delayed. To track costs and blame for each instance would be a burdensome
19 and unnecessary business practice. BellSouth has found, after investigating
20 such circumstances, that it is frequently unclear who is at fault; and, in many
21 cases, both parties contributed to the delay. A provision for payment of labor
22 costs by the party allegedly causing the delay should not be included in the
23 interconnection agreement.

24

1 ***Issue 16: [ITC^DeltaCom No. 2(c)(vi)] Should each party be responsible for the***
2 ***repair charges for troubles caused or originated outside of its network? If so,***
3 ***should each party reimburse the other for any additional costs incurred for isolating***
4 ***the trouble to the other's network?***

5

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

7

8 A. BellSouth has always maintained that the party responsible for repairs should
9 bear the costs associated with those repairs. In essence, when ITC^DeltaCom
10 purchases an unbundled loop from BellSouth, it is leasing "exclusive access"
11 to that element for a specified period of time, and the price ITC^DeltaCom
12 pays for the loop includes the cost of maintenance and repair. FCC First
13 Report and Order ¶ 258, CC Docket No. 96-98. To the extent the loop requires
14 maintenance or repair by BellSouth, there is no additional charge to
15 ITC^DeltaCom. However, ITC^DeltaCom should bear the responsibility for
16 repairs on its own facilities, whether owned or leased.

17

18 Further, ITC^DeltaCom asserts that "to the extent such trouble was caused by
19 a third party, BellSouth should seek reimbursement from such third party".

20 BellSouth's position is that if ITC^DeltaCom utilizes a portion of a third
21 party's network, then ITC^DeltaCom should bear the costs associated with
22 isolating any trouble with that third party. BellSouth should not incur the costs
23 associated with the repairs to a third party's network, particularly one engaged
24 by ITC^DeltaCom.

25

1 Q. SHOULD ITC^DELTACOM BE RESPONSIBLE FOR LOCATING
2 TROUBLES WITHIN ITS FACILITIES, INCLUDING LOOPS LEASED
3 FROM BELLSOUTH?

4
5 A. Yes. ITC^DeltaCom should be responsible for the initial trouble report
6 isolation and testing. When determined by ITC^DeltaCom that the trouble
7 resides in BellSouth's network, BellSouth will assume repair responsibilities
8 via a trouble report. BellSouth will perform necessary isolation/testing
9 functions, process, and resolve the maintenance condition.

10
11 If ITC^Deltacom reports a trouble on an SL1 loop and no trouble is found,
12 BellSouth will charge ITC^DeltaCom for any dispatching and testing (both
13 inside and outside the central office) required by BellSouth in order to confirm
14 the loop's working status. If a trouble is reported on an SL1 loop and it is
15 proven to be a BellSouth trouble, then BellSouth absorbs the costs associated
16 with the repair. For SL2 loops, if no trouble is found, BellSouth will charge
17 ITC^DeltaCom for any dispatching and testing performed outside the central
18 office. The rates charged for SL2 loops cover the costs of dispatching and
19 testing of troubles inside the central office.

20
21 Q. SHOULD BELLSOUTH REIMBURSE ITC^DELTACOM FOR ANY
22 ADDITIONAL COSTS ITC^DELTACOM INCURS IN ISOLATING THE
23 TROUBLE TO BELLSOUTH'S NETWORK?

24

1 A. No. Each party should be responsible for its own costs incurred in determining
2 the cause of trouble with respect to its own network. BellSouth should not
3 reimburse ITC^DeltaCom for any additional costs ITC^DeltaCom incurs in
4 isolating the trouble to BellSouth's network. Likewise, if a Bellsouth end user
5 experiences trouble calling an ITC^DeltaCom customer, BellSouth does not
6 bill ITC^DeltaCom for costs incurred to isolate a trouble to ITC^DeltaCom's
7 network.

8
9 *Issue 18: [ITC^DeltaCom No. 2(c)(ix)] If a customer orders a loop which requires*
10 *special construction charges be paid for by ITC^DeltaCom, and BellSouth reuses*
11 *the same facilities to provide service to the customer for itself or on behalf of*
12 *another CLEC, should BellSouth be required to refund to ITC^DeltaCom the*
13 *amount ITC^DeltaCom paid to BellSouth for Special Construction for that*
14 *customer?*

15
16 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

17
18 A. It is BellSouth's understanding that this issue has been resolved; however,
19 BellSouth reserves the right to file testimony on this issue, should it be further
20 disputed.

21
22 *Issue 19: [ITC^DeltaCom No. 2(c)(x)] Under what conditions, if any, should*
23 *BellSouth be required to reimburse any costs incurred by ITC^DeltaCom to*
24 *accommodate modifications made by BellSouth to an order after sending a firm*
25 *order confirmation ("FOC")?*

1

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

3

4 A. BellSouth would have no reason to initiate an order modification after an FOC
5 has been sent. Therefore, ITC^DeltaCom's proposal should not be included in
6 the interconnection agreement.

7

8 *Issue 20: [ITC^Deltacom No. 2(c)(xiv)] (a) Should BellSouth be required to*
9 *coordinate with ITC^DeltaCom 48 hours prior to the due date of a UNE*
10 *conversion? (b) If BellSouth delays the scheduled cutover date, should BellSouth*
11 *be required to waive the applicable non-recurring charges? (c) Should BellSouth*
12 *be required to perform dial tone tests at least 48 hours prior to the scheduled cutover*
13 *date?*

14

15 Q. WHICH PARTS OF THIS ISSUE ARE YOU ADDRESSING?

16

17 A. My testimony addresses part (b) of this issue. Please see the testimony of Mr.
18 Keith Milner for responses to (a) and (c).

19

20 Q. (b) WHAT IS BELLSOUTH'S POSITION REGARDING WAIVER OF THE
21 APPLICABLE NON-RECURRING CHARGES IF BELLSOUTH DELAYS
22 THE SCHEDULED CUTOVER DATE?

23

24 A. BellSouth is not required under the Act or the FCC rules to waive non-
25 recurring charges in such a situation. Both parties may have reasonable

1 circumstances which might cause a delay in the schedule. There is no
2 mechanism in place to track all delays, and who is responsible. Therefore, a
3 provision for a waiver in any instance is not appropriate to be included in the
4 interconnection agreement. As referenced in BellSouth's response to Issue 1,
5 this Commission stated in its December 31, 1996 Order, "The Act does not
6 require parties to include in their agreements any particular method to resolve
7 disputes. Further, it is not appropriate for us to arbitrate a liquidated damages
8 provision under state law." (page 74)

9
10 ***Issue 23: [ITC^Deltacom No. 3] Should BellSouth be required to pay reciprocal***
11 ***compensation to ITC^DeltaCom for all calls that are properly routed over local***
12 ***trunks, including calls to Internet Service Providers (ISPs)?***

13
14 Q. WHAT IS BELLSOUTH'S POSITION REGARDING APPLICABILITY OF
15 RECIPROCAL COMPENSATION TO "ALL CALLS THAT ARE
16 PROPERLY ROUTED OVER LOCAL TRUNKS"?

17
18 A. Reciprocal compensation is applicable to local traffic, not necessarily to all
19 traffic routed over "local" trunks. Specifically, FCC Rule 51.701 defines local
20 traffic to which reciprocal compensation is applicable as "telecommunications
21 traffic between a LEC and a telecommunications carrier other than a CMRS
22 provider that originates and terminates within a local service area established
23 by the state commission". "Local" trunks may actually carry access, or toll,
24 traffic in addition to local traffic.

1 Q. WHAT IS BELLSOUTH'S POSITION ON THE APPLICABILITY OF
2 RECIPROCAL COMPENSATION TO ISP-BOUND TRAFFIC?

3

4 A. Reciprocal compensation is not applicable to ISP-bound traffic. BellSouth's
5 position is that payment of reciprocal compensation for ISP-bound traffic is
6 inconsistent with the law and is not sound public policy. Further, BellSouth
7 believes that carriers are entitled to be compensated appropriately based on the
8 use of their network to transport and deliver traffic.

9

10 Q. IS THERE ANY REASON FOR THIS COMMISSION TO ADDRESS THIS
11 ISSUE AT THIS TIME?

12

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

1

2 Q. SHOULD THE COMMISSION ARBITRATE THIS ISSUE?

3

4 A. No. BellSouth recommends this Commission not address this issue.

5 Compensation for ISP traffic is not subject to a Section 252 arbitration.

6 Reciprocal compensation in the Act is limited to "local traffic". As the FCC's

7 Declaratory Ruling makes clear, traffic to ISPs is interstate in nature. Thus, it

8 is not subsumed in the Act's reciprocal compensation obligations and should

9 not be arbitrated. Although the FCC's Declaratory Ruling attempts to

10 authorize states to arbitrate the issue of inter-carrier compensation for ISP-

11 bound traffic, the FCC cannot simply expand the scope of Section 252 to cover

12 such arbitrations. Consequently, compensation for such traffic is not subject to

13 arbitration under Section 252. Further, payment of such compensation is not a

14 requirement under Section 271.

15

16 Q. PLEASE EXPLAIN YOUR STATEMENT THAT COMPENSATION FOR
17 TRAFFIC BETWEEN END USERS AND ISPS IS NOT SUBJECT TO
18 ARBITRATION UNDER SECTION 252.

19

20 A. Only local traffic is subject to reciprocal compensation obligations. As
21 previously confirmed by the FCC's Declaratory Ruling, ISP-bound traffic is
22 jurisdictionally interstate; therefore, reciprocal compensation for ISP-bound
23 traffic under Section 251 is not applicable. Consequently, compensation for
24 such traffic is not subject to arbitration under Section 252. Further, payment of
25 such compensation is not a requirement under Section 271.

1

2 Q. WHAT DOES BELLSOUTH RECOMMEND THIS COMMISSION DO
3 WITH RESPECT TO THE ISSUE OF RECIPROCAL COMPENSATION
4 FOR ISP-BOUND TRAFFIC?

5

6 A. In the absence of a final ruling by the FCC, BellSouth proposes that the
7 Commission direct the parties to create a mechanism to track ISP-bound calls
8 originating on each parties' respective network on a going-forward basis.
9 Further, each party should agree to abide by the FCC's final and nonappealable
10 ruling on the issue of inter-carrier compensation for ISP calls. BellSouth
11 agrees to apply the intercarrier compensation mechanism established by a final
12 nonappealable order of the FCC retroactively from the date of the
13 Interconnection Agreement approved by this Commission, and the parties
14 would "true-up" any compensation that may be due for ISP-bound calls.

15

16 Q. HOW IS THE ISSUE THAT ITC^DELTACOM HAS RAISED DIFFERENT
17 FROM THE ISP ISSUES ALREADY ADDRESSED BY THIS
18 COMMISSION IN 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

1 were not local calls; thus, BellSouth never anticipated paying reciprocal
2 compensation on calls to ISPs.

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

18 *We conclude that Section 251(b)(5), reciprocal compensation*
19 *obligation, should apply only to traffic that originates and terminates*
20 *within a local area assigned in the following paragraph. We find that*
21 *reciprocal compensation provisions of Section 251(b)(5) for transport*
22 *and termination of traffic do not apply to the transport and termination*
23 *of interstate or intrastate interexchange traffic.*

24

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

3

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

5

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

9

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

12

13 Q. PLEASE FURTHER DISCUSS THE FCC'S RECENT (February 26, 1999)
14 DECLARATORY RULING.

15

16 A. The FCC has once again confirmed that ISP-bound traffic is access service
17 subject to interstate jurisdiction and is not local traffic. In its Declaratory
18 Ruling, the FCC concluded that "ISP-bound traffic is non-local interstate
19 traffic." (fn 87) The FCC noted in its decision that it traditionally has
20 determined the jurisdiction of calls by the end-to-end nature of the call. In
21 paragraph 12 of this same order, the FCC concluded "that the communications
22 at issue here do not terminate at the ISP's local server, as ALECs and ISPs
23 contend, but continue to the ultimate destination or destinations, specifically at
24 an Internet website that is often located in another state." Further, in paragraph
25 12 of its Declaratory Ruling, the FCC finds that "[a]s the Commission stated in

1 BellSouth MemoryCall, this Commission has jurisdiction over, and regulates
2 charges for, the local network when it is used in conjunction with the
3 origination and termination of interstate calls.”

4
5 The FCC’s decision makes plain that no part of an ISP-bound communication
6 terminates at the facilities of an ISP. Once it is understood that ISP-bound
7 traffic “terminates” only at distant websites, which are almost never in the
8 same exchange as the end-user, it is evident that these calls are not local.

9
10 Q. **IS BELLSOUTH’S POSITION REGARDING JURISDICTION OF ISP**
11 **TRAFFIC CONSISTENT WITH THE FCC’S FINDINGS AND ORDERS?**

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

20
21 Q. **PLEASE DESCRIBE IN MORE DETAIL THE TRAFFIC THAT IS**
22 **ELIGIBLE FOR RECIPROCAL COMPENSATION.**

23
24 A. As I have previously stated, only local traffic is eligible for reciprocal
25 compensation. Exhibit AJV-2 to my testimony contains two diagrams. Both

1 of these diagrams illustrate local calls between end users. Diagram A
2 illustrates a typical local call where both ends of the call are handled by a
3 single carrier's network which, in this example, is an ILEC's network. In this
4 scenario, the ILEC receives a monthly fee from its end user to apply towards
5 the cost of that local call. For that payment, the ILEC provides the end user
6 with transport and termination of local calls throughout the local calling area.
7 End users typically do not pay for calls terminated to them. Importantly, in
8 this case, the end user is the ILEC's customer, which means that the end user
9 pays the ILEC revenue for the service.

10

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

1
2
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10

Likewise, if an ALEC's end user completes a local call to an ILEC's end user, the ALEC receives the payment for local exchange service from the end user, and the ALEC pays the ILEC reciprocal compensation for the portion of the ILEC's facilities used to terminate the local call. In accordance with the Act, the purpose of reciprocal compensation is to ensure that each carrier involved in carrying a local call is compensated for its portion of that call. The following table contains a simple illustration of the application of reciprocal compensation:

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

11
12
13
14
15

Q. ARE ISP's CARRIERS?

A. Yes. ISPs are carriers; hence, service provided to them is access service. This simple fact eliminates any possible claim for reciprocal compensation. The

1 FCC has been very clear in its rulings that reciprocal compensation does not
2 apply on access service. Some cites from the FCC Declaratory Ruling clearly
3 establish this fact:

- 4 • Paragraph 5: “Although the Commission has recognized that enhanced
5 service providers (ESPs), including ISPs, use interstate access services...”
- 6 • Paragraph 5: “Thus, ESPs generally pay local business rates and
7 interstate subscriber line charges for their switched access connections...”
- 8 • Paragraph 16: “The Commission traditionally has characterized the
9 link from an end user to an ESP as an interstate access service.”
- 10 • Paragraph 16: “That the Commission exempted ESPs from access
11 charges indicates its understanding that ESPs in fact use interstate access
12 service; otherwise, the exemption would not be necessary.”
- 13 • Paragraph 17: “The commission consistently has characterized ESPs as
14 ‘users of access service’ but has treated them as end users for pricing
15 purposes.”

16 (Emphasis added.)

17
18 Treating ISPs as carriers is not a recent creation of the FCC. From its
19 inception over 30 years ago, the FCC has regulated data carriers as interstate
20 carriers. These carriers were allowed to collect traffic at business rates. When
21 access charges were established in the early eighties, the FCC reconfirmed that
22 these carriers, i.e., ESPs/ISPs, were being provided access service, but
23 ESPs/ISPs received an exemption from regular access charges and were
24 allowed to continue collecting traffic for the price of business service.
25 Importantly, the FCC was clear that the service being provided was access

1 service, not local service. The business rate was simply the price charged for
2 the access service. This same arrangement was undisturbed by the Act and
3 was recently reconfirmed by the FCC in its Declaratory Ruling.

4
5 Q. WHY IS THE FACT THAT ISPs ARE CARRIERS AND ARE
6 PURCHASING ACCESS SERVICE IMPORTANT?

7
8 A. The fact that ISPs are carriers is important because carriers must pay the full
9 cost of the access service provided to them. The carrier, not the end user that
10 calls them, is the customer for access service. When an interexchange carrier
11 ("IXC") or an ISP purchases access service, it is the IXC or the ISP, not the
12 end user, who is the customer of the local exchange carrier ("LEC") for that
13 service. It is the IXC or the ISP who must pay the cost of the access service
14 provided to them. Since the IXC or the ISP (and not the end user) pays for
15 access service, the cost of the local network used to provide access service is
16 appropriately excluded from the cost of universal service. This arrangement is
17 based on the fact that the ISP or IXC is the retail provider of service to the end
18 user. The LEC provides an input (access service) that the ISP or IXC uses to
19 provide its retail service, e.g., internet or long distance service. Consequently,
20 the LEC's customer is the ISP or the IXC, not the end user; and the ISP or IXC
21 must pay the cost of the access service provided to them. The end user is a
22 customer of the ISP or IXC for calls directed to these carriers.

23

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

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

18 Exhibit AJV-3 attached to my testimony consists of two diagrams. Diagram C
19 illustrates a typical interstate call originating on a LEC's network and delivered
20 to an IXC's Point of Presence. As shown by this illustration, the LEC receives
21 access charges from the IXC as compensation for use of the LEC's facilities to
22 deliver the traffic to the IXC. The IXC bills the end user.
23

24 Diagram D is different from Diagram C in only one respect. The IXC has been
25 replaced by an ISP. The network used to transport ISP-bound traffic is exactly

1 the same network used to deliver traffic to IXCs. However, rather than
2 through receipt of normal switched access charges, the LEC is compensated
3 for the access service it provides to the ISP by the business rates it charges the
4 ISP. The important point is that both IXCs and ISPs receive the same service
5 and, although they are charged different prices, the prices they pay are
6 designed to cover the same costs. That cost is the full cost of providing service
7 to them.

8

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

11

12 A. In its Comments and Reply Comments to the FCC's Notice of Proposed
13 Rulemaking in CC Docket No. 99-68, In the Matter of Inter-Carrier
14 Compensation for ISP-Bound Traffic ("Inter-Carrier Compensation NPRM"),
15 BellSouth puts forth its proposal for the appropriate inter-carrier compensation
16 mechanism. (See Exhibit AJV-4) BellSouth's proposal is guided by and is
17 consistent with FCC precedent regarding inter-carrier compensation for jointly
18 provided interstate services. BellSouth's proposal recognizes, as does the
19 FCC, that the revenue source for ISP-bound traffic is derived from the service
20 provided to the ISP. (See In the Matter of Access Charge Reform, Price Cap
21 Performance Review for Local Exchange Carriers, Transport Rate Structure
22 and Pricing and End User Common Line Charges, CC Docket Nos. 96-262,94-
23 1, 91-213 and 95-72, First Report and Order, 12 FCC Rcd 15982, 16133-16134
24 (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-5 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/ALEC) 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 ITC^DELTACOM REQUESTS THAT IT BE**
17 **COMPENSATED FOR ISP-BOUND TRAFFIC.**

18

19 A. *Exhibit AJV-6 to my testimony consists of a Diagram G which illustrates*
20 *ITC^DeltaCom's request that BellSouth pay reciprocal compensation for ISP-*
21 *bound traffic where the ISP is ITC^DeltaCom's customer. It is obvious from*
22 *this diagram that ITC^DeltaCom is simply attempting to augment the revenues*
23 *it receives from its ISP customer at the expense of BellSouth's end user*
24 *customers. In other words, paying ITC^DeltaCom reciprocal compensation for*
25 *ISP-bound traffic would result in BellSouth's end user customers subsidizing*

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

6
7 Q. WHY IS AN INTER-CARRIER COMPENSATION ARRANGEMENT
8 APPROPRIATE FOR THE ACCESS SERVICE USED IN PROVISION OF
9 SERVICE OF AN ISP?

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

14 *Access Service* includes services and facilities provided for the
15 origination or termination of any interstate or foreign
16 telecommunications. (47 CFR Ch. 1 §69.2(b)) (emphasis added)

17 The fact that the FCC has exempted enhanced service providers, including
18 ISPs, from paying interstate switched access charges does not alter the fact that
19 the connection an ISP obtains is an access connection. The FCC confirmed
20 this fact in its Declaratory Ruling, at paragraph 16: "The fact that ESPs are
21 exempt from access charges and purchase their PSTN links through local
22 tariffs, does not transform the nature of traffic routed to ESPs." Instead, the
23 exemption limits the compensation that a LEC in providing such a connection
24 can obtain from an ISP. Further, under the access charge exemption, the
25 compensation derived by a LEC providing the service to an ISP has been

1 limited to the rates and charges associated with business exchange services.
2 Nevertheless, the ISP's service involves interstate communications. The ISP
3 obtains access service that enables a communications path to be established by
4 its subscriber. The ISP, in turn, recovers the cost of the telecommunications
5 services it uses to deliver its service through charges it assesses on the
6 subscribers of the ISP's service.

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

18
19 **Q. PLEASE EXPLAIN FURTHER WHY A SEPARATE SHARING PLAN IS**
20 **NEEDED FOR ACCESS SERVICE PROVIDED TO ISPs?**

21
22 **A.** The need for a separate sharing plan is created by the FCC's decree that the
23 price charged for access service provided to ISPs is the business exchange rate.
24 Unlike other switched access services, which are billed on a usage-sensitive
25 basis, ISPs typically purchase from the flat rate business exchange tariff.

1
2 **Because non-ISP switched access service is billed on a usage-sensitive basis, it**
3 **is relatively easy for each carrier to be compensated for the portion of the**
4 **access service that it provides. Generally, there are two methods used for such**
5 **compensation. Under the first method, each carrier bills the IXC directly for**
6 **the portion of access service provided. For example, for originating access, the**
7 **originating LEC bills the IXC for the switching and for the portion of transport**
8 **that the originating LEC provides, and the terminating LEC bills the IXC for**
9 **the portion of transport that it provides. Under the second method, the**
10 **terminating LEC bills the IXC for all of the access service, and the originating**
11 **LEC bills the terminating LEC for the portion of access services that it**
12 **provides.**

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

23
24 **Q. DOESN'T BELL SOUTH COVER THE COST OF ORIGINATING TRAFFIC**
25 **TO ISPs FROM ITS OWN END USERS?**

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A. No, nor would it be appropriate to do so. Again, ISPs purchase access services, albeit at local business exchange rates. The local exchange rates paid by end user customers were never intended to recover costs associated with providing access service and were established long before the Internet became popular.

Q. YOU HAVE STATED THAT IT IS NOT APPROPRIATE FOR THE COMMISSION TO ADDRESS ISP-BOUND TRAFFIC IN THE CONTEXT OF SECTION 251 OF THE ACT. HOW SHOULD THE COMMISSION ADDRESS ISP-BOUND TRAFFIC?

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

Q. SHOULD THIS COMMISSION ADOPT AN INTERIM INTER-CARRIER COMPENSATION MECHANISM PRIOR TO THE FCC COMPLETING ITS RULEMAKING PROCEEDING, WHAT DOES BELLSOUTH PROPOSE

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AS AN APPROPRIATE INTERIM MECHANISM?

A. BellSouth proposes an interim flat-rated sharing mechanism that is based on apportionment of revenues collected for the access service among the carriers incurring costs to provide the service. The revenue to be apportioned among carriers is the charge for the business exchange service that the ISP pays. Typically, the ISP purchases Primary Rate ISDN ("PRI") service as the business exchange product used to provide the access service. BellSouth believes that, in the interim, a flat-rated compensation process is appropriate since the revenues collected are based on flat-rated charges. Exhibit AJV-6 attached to this testimony is BellSouth's Proposed Interim ISP Inter-Carrier Access Service Compensation Plan ("Interim Plan").

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

- 1) Only the Serving LEC bills the ISP for access service. The ISP is billed at rates established by the Serving LEC;
- 2) The FCC has limited the price for an ISP dial-up connection to the equivalent business exchange service rate;
- 3) the Originating LEC incurs costs to carry ISP-bound traffic to the Serving LEC;
- 4) the Originating LEC has no means to recover its costs directly from the

1 ISP (unless, of course, the Originating LEC and the Serving LEC are
2 one in the same); and

3 5) The Originating LEC must recover its costs, to the extent possible,
4 from the Serving LEC.

5

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

10

11 Q. PLEASE DESCRIBE THE SPECIFICS OF BELLSOUTH'S INTERIM
12 PLAN.

13

14 A. BellSouth's Interim Plan contains the following steps that are further described
15 in Exhibit AJV-7:

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

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

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

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

- 1 (4) Serving LEC will advise Originating LECs of the average PRI rate
2 charged to ISPs. The Serving LEC can use either its tariffed rate or the
3 average rate actually charged to ISPs;
- 4 (5) Originating LEC calculates compensation due to it by the Serving LEC
5 as follows:
6 (Quantity of DSIs x Serving LEC's PRI rate x sharing percentage);
- 7 (6) Originating LEC bills the Serving LEC on a quarterly basis; and
8 (7) The ISP-bound MOUs and the PRI rates as reported by the Serving
9 LEC are subject to audit by the Originating LEC(s). The amount of
10 compensation could be affected by results of an audit.

11

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

16

17 Q. WHAT IS THE BASIS FOR USING 9,000 MOUs AS THE AVERAGE
18 MONTHLY USAGE PER TRUNK?

19

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

23

24 Q. WHAT SHARING PERCENTAGE DOES BELLSOUTH PROPOSE BE
25 APPLIED TO THE SERVING LEC'S REVENUES TO COMPENSATE

1 **BELLSOUTH FOR ITS NETWORK USED TO CARRY ISP-BOUND**
2 **TRAFFIC?**

3

4 A. BellSouth proposes a sharing percentage of 8.6% that will be applied to the
5 Serving LEC's ISP revenues to calculate the compensation due BellSouth
6 when BellSouth is an Originating LEC. Likewise, when BellSouth is the
7 Serving LEC, BellSouth proposes that a sharing percentage of 8.6% will be
8 applied by the Originating LEC(s) when calculating compensation BellSouth
9 owes.

10

11 Q. **HOW DID BELLSOUTH DETERMINE THE SHARING PERCENTAGE IT**
12 **PROPOSES?**

13

14 A. BellSouth's calculation of its sharing percentage is shown in Exhibit AJV-8
15 attached to this testimony. First, BellSouth considered that switching,
16 transport and loop costs are incurred to carry traffic from the Originating
17 LEC's end office to the ISP location. Since the Serving LEC incurs the loop
18 cost between its end office and the ISP location, the Serving LEC should retain
19 revenues to cover its loop cost. However, switching and transport costs are
20 jointly incurred by both the Originating LEC and the Serving LEC.

21

22 Therefore, BellSouth believes that an appropriate sharing percentage is
23 developed by determining the ratio of switching and transport costs to total
24 costs (switching, transport and loop), and then dividing that percentage by two
25 since each carrier bears a portion of the switching and transport cost. In order

1 to determine the ratio, BellSouth looked to the Benchmark Cost Proxy Model
2 ("BCPM") results filed in Florida in the Universal Service Fund proceedings.
3 The average, statewide voice grade loop, switching and transport capital costs
4 produced by BCPM are \$14.62, \$2.90 and \$.14, respectively. Therefore, the
5 loop capital cost represents 82.8% of the total average statewide capital cost,
6 which means that the switching and transport capital costs represent 17.2% of
7 the total capital cost. Again, dividing the 17.2% by two in order to account for
8 the fact that both carriers incur switching and transport costs results in a
9 sharing percentage of 8.6%.

10
11 BellSouth also reviewed ARMIS data and determined that the relationship
12 between loop, switching and transport investment as reported in ARMIS is
13 very similar to the relationship calculated from the BCPM results. The
14 ARMIS data shows that, for 1998, in Florida, total loop investment was
15 \$7,381,715,000, switching investment was \$989,297,000 and transport
16 investment was \$182,062,000 resulting in ratios of 86.30% for loop, 11.57%
17 for switching and 2.13% for transport which are close to the ratios that result
18 from the BCPM data.

19
20 Q. DOES BELLSOUTH'S PROPOSED SHARING PERCENTAGE ONLY
21 APPLY TO TRAFFIC IT ORIGINATES TO A SERVING LEC?

22
23 A. No. When BellSouth is the serving LEC and an ALEC's end users call an ISP
24 served by BellSouth, BellSouth should compensate the ALEC. BellSouth
25 proposes to use the same method and sharing percentage (8.6%) to compensate

1 the ALEC as it proposes for billing the ALEC.

2

3 Q. WHAT IMPACT WOULD BELLSOUTH'S PROPOSAL HAVE ON AN
4 ALEC SUCH AS ITC^DELTACOM?

5

6 A. BellSouth's proposal would have a very small impact. As an example, I will
7 assume that ITC^DeltaCom serves its ISP customers with PRI service which is
8 equivalent to a DS1 (24 DS0s). Further, I will assume that ITC^DeltaCom
9 charges its ISP customers a market-based rate of \$850 per month per PRI. If
10 BellSouth as the Originating LEC generates 55 million ISP-bound MOUs per
11 month to ITC^DeltaCom, then the amount of monthly compensation that
12 BellSouth's proposal would result in ITC^DeltaCom owing to BellSouth is
13 calculated as follows:

14 $55,000,000 / 9000 / 24 = 254.63 \text{ DS1s}$

15 $254.63 \text{ DS1s} \times \$850.00 \times .086 = \$18,613.45$

16 At a PRI rate of \$850, ITC^DeltaCom will collect \$216,436 in revenue from
17 its ISP customer(s) just for the traffic originated by BellSouth. Total
18 compensation ITC^DeltaCom owes to BellSouth for the 55,000,000 MOUs
19 BellSouth originated to ITC^DeltaCom would be only \$18,613.45.

20

21 Q. HOW DOES YOUR PROPOSAL AFFECT THE RELATIVE COST
22 RECOVERY OF THE LECs INVOLVED IN PROVIDING THE ACCESS
23 SERVICE?

24

25 A. Since the FCC has ordered that ISPs are to be provided service at business

1 exchange rates, the fact is that when the access service is provided by a single
2 LEC to the ISP, the rates it charges the ISP are typically not fully
3 compensatory. This situation arises because the ISP is being charged a flat rate
4 charge (which was intended for another service) for a high volume usage-
5 sensitive service. Under BellSouth's sharing proposal, each carrier should
6 recover roughly the same percentage of its costs. For example, if the carrier
7 would have recovered 50% of its costs if it served the ISP alone, the
8 underlying premise of this proposal is that each carrier should recover roughly
9 50% of its costs.

10

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

13

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

18

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

21

22 A. The FCC has determined that ISP-bound traffic is interstate and has asserted
23 jurisdiction. This issue is not subject to arbitration under Section 252 of the
24 Act. Parties should be instructed to negotiate a revenue sharing arrangement
25 for this traffic just as has been done for jointly-provided access service since

1 divestiture. If those negotiations are not fruitful, however, they should be
2 referred to the FCC. Should, however, this Commission adopt an interim
3 inter-carrier compensation mechanism prior to the FCC completing its
4 rulemaking proceeding, BellSouth recommends the Commission adopt the
5 Interim Plan mechanism outlined above.

6

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

9

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

13

- 14 1) BellSouth is still incurring the cost to transport the call to the point
15 of interconnection with the ALEC,
- 16 2) The ALEC wants BellSouth to pay reciprocal compensation to
17 cover the ALEC's cost from the point of interconnection to the
18 ALEC's switch, and
- 19 3) the ISP, which is the only source of revenue to cover the costs in 1)
20 and 2) above, only pays the ALEC for access.

21

22 The ALEC receives the revenues from its ISP customer, yet ITC^DeltaCom
23 apparently believes it is appropriate for BellSouth to incur a portion of the
24 costs for providing the service without any reimbursement. This is exactly the
25 opposite of the situation depicted in Diagram B, which illustrates when

1 reciprocal compensation should apply. The ALEC should reimburse the
2 originating carrier (BellSouth) for its cost of transporting the ISP-bound call to
3 the ALEC point of interconnection. Instead, the ALEC wants the LEC to incur
4 even more of the costs without any compensation. This is a perversion of the
5 entire access charge system. There is no reason for this Commission to
6 sanction this economic legerdemain and reward ALECs by subsidizing ISPs at
7 the expense of the LEC's end users.

8

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

12

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

18

19 Q. DOES LACK OF RECIPROCAL COMPENSATION ON ISP-BOUND
20 TRAFFIC DISTORT THE ATTRACTIVENESS OF ISPs AS ALEC
21 CUSTOMERS?

22

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

25

1

	<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

2

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

9

10 Q. IS BELLSOUTH ATTEMPTING TO AVOID PAYING RECIPROCAL
11 COMPENSATION ON UNBALANCED TRAFFIC?

12

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

1

2 ***Issue 24: [ITC^DeltaCom No. 3] What should be the rate for reciprocal***
3 ***compensation?***

4

5 Q. WHAT IS BELLSOUTH'S POSITION ON THE APPROPRIATE RATES
6 FOR RECIPROCAL COMPENSATION?

7

8 A. As stated earlier, reciprocal compensation only applies to local traffic. This
9 Commission, in its April 29, 1998 Order, approved blended rates for reciprocal
10 compensation for end office switching and tandem switching. BellSouth's
11 position is that the appropriate rates for reciprocal compensation are the
12 elemental rates for end office switching, tandem switching, and common
13 transport that are used to transport and terminate the traffic. Elemental prices
14 are the appropriate rates to use because they will more closely match the costs
15 incurred to transport and terminate the traffic. Average rates would mean that
16 ALECs with longer than average transport pay less than cost, whereas others
17 pay more. This arrangement provides an incentive for an ALEC to maximize
18 BellSouth transport and minimize their own. Elemental prices are already in
19 place for the comparable UNEs, so there would be little, if any, additional
20 administrative costs to apply the elemental rates to reciprocal compensation
21 and ensure a closer match between rates and costs. These elemental rates are
22 included in Exhibit AJV-1, attached to my testimony.

23

24 ***Issue 33: [ITC^Deltacom No. 3(l)] Should the parties establish escalation***
25 ***procedures for ordering/provisioning problems?***

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A. It is BellSouth's understanding that this issue has been resolved by the parties. However, BellSouth reserves the right to file testimony on this issue, should it be further disputed.

Issue 35: [ITC^Deltacom No. 3(o)] Should both parties be required to train their technicians on the procedures contained in the interconnection agreement which sets forth the manner in which each party must treat the other's customers?

A. It is BellSouth's understanding that this issue has been resolved by the parties. However, BellSouth reserves the right to file testimony on this issue, should it be further disputed.

Issue 38: [ITC^DeltaCom No. 6(a)] What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for OSS?

Q. WHAT IS THE BASIS FOR BELLSOUTH'S CHARGING ITC^DELTACOM FOR BELLSOUTH'S OPERATIONAL SUPPORT SYSTEMS ("OSS")?

A. BellSouth is entitled under the Act and the FCC's orders and rules to recover its costs in providing access to OSS to ALECs. This issue has been addressed in numerous forums. For example, in AT&T's appeal of the Kentucky Commission's decisions on UNE cost rates (C.A. No. 97-79, 9/9/98), from AT&T's arbitration proceeding, the U.S.D.C. for the Eastern District of

1 **Kentucky expressly confirmed that BellSouth is entitled to recover its costs for**
2 **developing operations support systems. The Order at p. 16 states: "Because**
3 **the electronic interfaces will only benefit the ALECs, the ILECs, like**
4 **BellSouth, should not have to subsidize them. BellSouth has satisfied the**
5 **nondiscrimination prong by providing access to network elements that is**
6 **substantially equivalent to the access provided for itself. AT&T is the cost**
7 **causer, and it should be the one bearing all the costs; there is absolutely**
8 **nothing discriminatory about this concept."**

9
10 **This Commission declined to approve rates for OSS costs in its April 29, 1998**
11 **Order. Specifically, the Order states at p. 165: "We recognize that OSS costs,**
12 **manual and electronic, may be recoverable costs incurred by BellSouth. We**
13 **did not, however, contemplate in Order PSC-96-1579-FOF-TP that BellSouth**
14 **would file cost studies including OSS costs in these proceedings other than for**
15 **its legacy systems." The Commission, however, went on to say, at p. 165,**
16 **"We are cognizant that if ordering costs are excluded from the UNE rates set in**
17 **these proceedings, a CLEC may be stymied in placing UNE orders. Thus, we**
18 **strongly encourage the parties to negotiate in good faith to establish rates for**
19 **OSS functions." Consistent with this Commission's order, BellSouth is**
20 **requesting rates to be established for access to OSS.**

21

22 **Q. WHAT IS THE APPROPRIATE RATE FOR OSS?**

23

1 A. The appropriate rate(s) are based on BellSouth's cost study filed with the
2 testimony of Daonne Caldwell. These rates are included in Exhibit AJV-1,
3 attached to my testimony.

4
5 *Issue 39: [ITC^Deltacom No. 6(b)] What are the appropriate recurring and non-*
6 *recurring rates and charges for: (a) two-wire ADSL/HDSL compatible loops, (b)*
7 *four wire ADSL/HDSL compatible loops, or (c) two-wire SL1 loops?*

8
9 Q (a) WHAT DOES BELLSOUTH ASSERT ARE THE APPROPRIATE
10 RATES FOR TWO-WIRE ADSL COMPATIBLE AND TWO-WIRE HDSL
11 COMPATIBLE LOOPS?

12
13 A. This Commission in its April 29, 1998 Order approved rates for two-wire
14 ADSL compatible loops and two-wire HDSL compatible loops. The approved
15 rates are the appropriate rates for these elements and are included in Exhibit
16 AJV-1, attached to my testimony.

17
18 Q (b) WHAT DOES BELLSOUTH ASSERT ARE THE APPROPRIATE
19 RATES FOR FOUR-WIRE ADSL/HDSL COMPATIBLE LOOPS?

20
21 A. This Commission in its April 29, 1998 Order approved rates for four-wire
22 HDSL compatible loops. ADSL functionality is not applicable to four-wire
23 loops. The approved rates are the appropriate rates for these elements and are
24 included in Exhibit AJV-1, attached to my testimony.

25

1 Q. (c) WHAT ARE THE APPROPRIATE CHARGES FOR TWO-WIRE SL1
2 LOOPS?

3

4 A. This Commission ordered a rate for a two-wire analog voice grade loop prior
5 to establishment of a distinction between Service Level 1 (SL1) and Service
6 Level 2 (SL2). The rate that this Commission previously approved is
7 equivalent to the SL2 service. BellSouth is willing to offer an SL1 loop for a
8 separate rate in Florida, as it does in its other eight states. BellSouth is
9 proposing new rates for both SL1 and SL2 loops. The appropriate rates are
10 shown in Exhibit AJV-1, attached to my testimony, and are supported by cost
11 studies filed with the testimony of Daonne Caldwell.

12

13 Q. PLEASE DISCUSS THE DIFFERENCE BETWEEN AN SL1 LOOP AND
14 AN SL2 LOOP.

15

16 A. While both service level loops can be used for the provision of local exchange
17 service, SL1 would equate more to plain old telephone service ("POTS") and
18 SL2 would equate more to the unbundled loop currently approved and offered
19 to ALECs in Florida. An SL2 loop provides a Design Layout Record (DLR),
20 test access points (referred to as Switched Maintenance Access System
21 ["SMAS"]), ground start facilities, manual order coordination and/or repair of
22 loops provisioned with test points. An SL1 loop simply provides a
23 nondesigned loop suitable for POTS service. By offering a choice of these two
24 service levels, BellSouth believes it meets the provisioning requirements
25 desired by requesting carriers for two-wire analog unbundled loops.

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Issue 40: ITC^Deltacom No. 6(b)] a) Should BellSouth be required to provide: (1) two-wire SL2 loops or (2) two-wire SL2 loop Order Coordination for Specified Conversion Time? b) If so, what are the appropriate recurring and non-recurring rates and charges?

Q. (a)(1) WHAT IS BELLSOUTH'S POSITION REGARDING PROVISION OF TWO-WIRE SL2 LOOPS?

A. BellSouth is willing to provide two-wire SL2 loops.

Q. (a)(2) WHAT IS BELLSOUTH'S POSITION REGARDING PROVISION OF TWO-WIRE SL2 LOOP ORDER COORDINATION FOR SPECIFIED CONVERSION TIME?

A. The option of order coordination for specified conversion time is offered on SL2 loops. This option allows an ITC^DeltaCom to request a specific conversion time and BellSouth will make every effort to accommodate the request. Such a charge would be appropriate in a situation where the requested time was during a period when the serving central office involved was not manned. The charge covers the cost to provide coverage at that office to complete the cutover work. If the ITC^DeltaCom desires a cutover time outside of normal working hours, then overtime rates may also apply. A specified order conversion charge would only apply to the first loop on the order. Therefore, whether there is one loop or 10 loops on the order, a single

1 charge for specified conversion time would be applied.

2

3 Following is a chart that demonstrates the options available to an ALEC for a
4 2-wire unbundled loop provisioned as SL1 or SL2:

5

UNBUNDLED 2-WIRE LOOPS		
Characteristic	SL1	SL2
Basic loop capable of local service	Yes	Yes
Order coordination (with other orders)		
- Mechanized (potential for .25 to 1 hour outage)	Yes	No
- Mechanized plus manual (potential outage less than .25 hour)	Optional	Yes
- Specified Conversion Time	No	Optional
Test Points (SMAS)	No	Yes
Design Layout Record	No	Yes

6

7 Q. (b) WHAT ARE THE APPROPRIATE RECURRING AND NON-
8 RECURRING RATES AND CHARGES FOR TWO-WIRE SL2 LOOPS
9 AND TWO-WIRE SL2 LOOP ORDER COORDINATION FOR SPECIFIED
10 CONVERSION TIME?

11

12 A. As stated above, this Commission ordered a rate for a two-wire analog voice
13 grade loop prior to establishment of a distinction between SL1 and SL2. The
14 rate approved by this Commission in its December 31, 1996 Order is really the
15 SL2 rate. To reflect the differences between two-wire SL1 and SL2 loops,
16 BellSouth is proposing here the recurring and nonrecurring rates for each type
17 of loop as shown on Exhibit AJV-1, attached to my testimony. These rates are
18 supported by cost studies filed with the testimony of Daonne Caldwell.

19

1 The rate for two-wire SL2 loop order coordination for specified conversion
2 time is also included in Exhibit AJV-1 attached to my testimony, and is
3 supported by a cost study filed with the testimony of Daonne Caldwell. In
4 addition, Exhibit AJV-1 includes appropriate disconnect rates for two-wire
5 SL1 loops and for two-wire SL2 loops, as supported by cost studies filed by
6 Ms. Caldwell.

7
8 ***Issue 41: [ITC^DeltaCom No. 6(c)] Should BellSouth be permitted to charge***
9 ***ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs***
10 ***associated with such disconnection?***

11
12 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

13
14 A. If there are any instances when BellSouth does not incur any costs associated
15 with a disconnection, BellSouth should not charge ITC^DeltaCom for the
16 disconnection. However, BellSouth is entitled to recover its costs incurred to
17 disconnect the service.

18
19 ***Issue 42: [ITC^DeltaCom No. 6(d)] What should be the appropriate recurring and***
20 ***non-recurring charges for cageless and shared collocation in light of the recent***
21 ***FCC Advanced Services Order No. FCC 99-48, issued March 31, 1999, in Docket***
22 ***No. CC 98-147?***

23
24 Q. HAS BELLSOUTH PROPOSED RATES FOR COLLOCATION THAT ARE
25 IN COMPLIANCE WITH THE FCC'S ADVANCED SERVICES ORDER?

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A. Rates for many of the collocation elements were approved in this Commission's April 29, 1998 Order. The approved rates are contained in Exhibit AJV-1 attached to my testimony. No additional rates are necessary in order for BellSouth to meet the requirements of the FCC's recent Advanced Services Order with respect to cageless and shared collocation. To order cageless and shared collocation, ITC^DeltaCom would simply order the amount of floor space necessary for their collocation arrangement. Whether they then elect to enclose or share the arrangement is up to them. The floor space rate has already been approved by this Commission and is still appropriate for caged, cageless or shared collocation.

In order for BellSouth to meet the requirements of the FCC's recent Advanced Services Order, it is necessary for BellSouth to utilize interim or tariffed rates for several UNEs associated with the new security and space availability reporting rules. Of course, these cost studies will be consistent with the cost methodology accepted by this Commission in its April 29, 1998 Order.

Issue 43: [ITC^DeltaCom No. 6(e)] Should BellSouth be permitted to charge for ITC^DeltaCom for conversions of customers from resale to unbundled network elements? If so, what is the appropriate charge?

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

1 A. An ALEC cannot convert resale service to unbundled network elements;
2 resale would have to be converted to a combination of UNEs. By definition,
3 this combination of UNEs replicates a retail service, since the service was
4 previously resold. As previously discussed, BellSouth is not obligated to
5 combine UNEs and will not be obligated to offer UNE combinations until Rule
6 319 is complete. As this Commission has already recognized, UNE
7 combinations that replicate resale should be priced at resale rates. This
8 practice is currently permitted and should continue.

9
10 ***Issue 45: [ITC^DeltaCom No. 7(b)(iv)] Which party should be required to pay for***
11 ***the Percent Local Usage (PLU) and Percent Interstate Usage (PIU) audit, in the***
12 ***event such audit reveals that either party was found to have overstated the PLU or***
13 ***PIU by 20 percentage points or more?***

14
15 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

16
17 A. Generally, BellSouth's position is that the party requesting an audit pays for it
18 if no substantial irregularities are identified. If the audit reveals that the ALEC
19 has accurately reflected PLU/PIU percentages, BellSouth will pay for the
20 audit. However, if an audit reveals that an ALEC has overstated PLU/PIU
21 percentages by 20 percentage points or more, that ALEC should pay for the
22 audit. BellSouth's position on this issue is backed by BellSouth's standard
23 agreement and industry practice and custom.

24

1 ***Issue 46: [ITC^DeltaCom No. 8(b)] Should the losing party to an enforcement***
2 ***proceeding or proceeding for breach of the interconnection agreement be required***
3 ***to pay the costs of such litigation?***

4

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

6

7 A. BellSouth's position is that the inclusion of a "loser pays" provision would
8 have a chilling effect on both parties to the extent that even meritorious claims
9 would not be filed. The Act is not yet four years old and clearly represents an
10 evolving area of rulings, and complaints to regulatory commissions will be
11 brought by various parties seeking clarification as issues emerge. Often there
12 is no clear "winner" or "loser", thus further complicating the use of a "loser
13 pays" clause. A negative provision like "loser pays" should not be included in
14 the Agreement. BellSouth will agree to appropriate language regarding
15 jurisdictional issues that would allow the parties to seek damages under the
16 Agreement from the courts since that would be a matter outside the
17 Commission's jurisdiction. As stated above in Issue 8(a), the parties should
18 determine at the time they enter the interconnection agreement where disputes
19 will be resolved. This is standard contract language and for good reason. It
20 gives certainty as to how and where disputes will be resolved and it helps
21 prevent the potential for "forum shopping" as well as the potential for
22 inconsistent decisions under the agreement.

23

24 ***Issue 47: [ITC^DeltaCom No. 8(c)] What should be the appropriate standard for***
25 ***limitation of liability under the Interconnection agreement?***

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

A. BellSouth understands that this issue has been resolved. However, BellSouth reserves its right to provide testimony on this issue should further dispute arise.

Issue 48: [ITC^DeltaCom No. 8(e)] Should language covering tax liability should be included in the interconnection agreement, and if so, whether that language should simply state that each Party is responsible for its tax liability.

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

A. BellSouth asserts that this issue is not appropriate for arbitration proceedings. BellSouth has proposed language for the interconnection agreement based upon BellSouth's experiences with tax matters and liability issues in connection with the parties' obligations under interconnection agreements. A variety of taxes are imposed upon telecommunications carriers, both directly and indirectly (collect from end-users and other carriers). As would be expected, problems and disputes over the application and validity of these taxes will and do occur. The interconnection agreement should clearly define the respective rights and duties for each party in the handling of such tax issues so that they can be resolved fairly and quickly.

Issue 49: [ITC^DeltaCom No. 8(f)] Should BellSouth be required to compensate ITC^DeltaCom for breach of material terms of the contract?

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Q. WHAT IS BELLSOUTH'S POSITION REGARDING COMPENSATION FOR BREACH OF MATERIAL TERMS OF THE CONTRACT?

A. The issue of compensation for breach of contract, penalties or liquidated damages is not appropriate for arbitration. This Commission has already stated that it lacks the statutory authority to award or order monetary damages or financial penalties. Even if a penalty or liquidated damage award could be arbitrated, it is completely unnecessary. Florida law and Federal and State Commission procedures are available, and perfectly adequate, to address any breach of contract situation should it arise.

Issue 50: [ITC^DeltaCom No. 5] Should the parties continue operating under existing local interconnection arrangements?

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

A. Negotiations take place in order to incorporate new language and terms into an interconnection agreement based on new situations, governing law, processes, and technologies. Furthermore, this is not an arbitratable issue due to the fact that there is no contract language attached to this issue. As stated in ITC^DeltaCom's position on this issue, the current arrangement has "worked well" for the past two years. However, ITC^DeltaCom's petition seems to infer otherwise. In order to ensure that ITC^DeltaCom and BellSouth have the most beneficial agreement for both parties, a new agreement needs to be

1 **effected. To the extent that ITC^DeltaCom has concerns with “existing local**
2 **interconnection arrangements”, it is required to clearly state any areas of**
3 **dispute in its petition so that BellSouth can reasonably respond.**

4

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

6

7 **A. Yes.**

8

Florida Rate and Cost Analysis

Cost Ref. #	Rate Element	Cost			Rate			Source
		Recurring	Non-recurring Electronic	Non-recurring Manual	Recurring	Non-recurring Electronic	Non-recurring Manual	
A.0	Unbundled Local Loop							
A.1	<i>2-Wire Analog Voice Grade Loop</i>							
A.1.1	2-wire analog voice grade loop – service level 1	17.12	34.04 31.12		17.12	34.04 31.12		Cost Study
A.1.2	2-wire analog voice grade loop – service level 2	20.52	84.40 81.56		20.52	84.40 81.56		Cost Study
A.1.5	2-wire analog voice grade loop – service level 2 – order coordination for specified conversion time		36.85			36.85		Cost Study
A.1.199	2-wire analog voice grade loop – service level 1 – disconnect		1.70 1.70			1.70 1.70		Cost Study
A.1.299	2-wire analog voice grade loop – service level 2 – disconnect		20.99 20.99			20.99 20.99		Cost Study
A.6	<i>2-Wire Asymmetrical Digital Subscriber Line (ADSL) Loop</i>							
A.6.1	2-wire asymmetrical digital subscriber line (ADSL) loop				15.81	113.85 99.61		4/29/98 Order
A.7	<i>2-Wire High Bit Rate Digital Subscriber Line (HDSL) Loop</i>							
A.7.1	2-wire high bit rate digital subscriber line (HDSL) loop				12.12	113.85 99.61		4/29/98 Order
A.8	<i>4-Wire High Bit Rate Digital Subscriber Line (HDSL) Loop</i>							
A.8.1	4-wire high bit rate digital subscriber line (HDSL) loop				18.24	116.91 101.71		4/29/98 Order
F.0	Operations Support Systems (OSS)							
F.1	<i>Operational Support Systems (OSS)</i>							
F.1.1	Recovery of incremental OSS costs, per ASR order		6.78	20.08		6.78	20.08	Cost Study

Shaded entries indicate rates approved by the Florida Public Service Commission in its April 29, 1998 Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP.

Under the non-recurring column, where there are two entries, the first entry is for the first unit installed, and the second entry is for each additional unit installed.
 174372

Florida Rate and Cost Analysis

Cost Ref. #	Rate Element	Cost			Rate			Source
		Recurring	Non-recurring Electronic	Non-recurring Manual	Recurring	Non-recurring Electronic	Non-recurring Manual	
	connects DS-1/OC3							
H.0	Collocation							
H.1	Physical Collocation				15.53		3,248.00	4/29/98 Order
H.1.1	Physical Collocation – application cost						1600.00 min.	Interim
	Physical Collocation – subsequent application fee							
H.1.2	Physical Collocation – space preparation fee:						2400.00	Interim
	Mechanical/HVAC, Per ton (one ton minimum)						720.00	Interim
	Ground Bar, Per Connection						1675.00	Interim
	Project Management, Per arrangement							4/29/98 Order
	Physical Collocation – cage construction cost per first 100 square feet				41.99			4/29/98 Order
	Wire cage				84.10			
	Gypsum cage				99.73			
	Fire rated cage							
	Physical Collocation – cage construction cost per first additional 50 square feet				4.14			4/29/98 Order
	Wire cage				9.35			
	Gypsum cage				11.30			
	Fire rated cage							
H.1.5	Physical Collocation – cable installation cost per cable				2.77		1,056.00	4/29/98 Order
	Physical Collocation – cable installation cable rack				22.94			4/29/98 Order
H.1.6	Physical Collocation – floor space, per square foot – Zone A				4.25			4/29/98 Order
H.1.8	Physical Collocation – power, per ampere (48V DC)				6.95			4/29/98 Order
	Physical Collocation – 120V AC Power single phase, per breaker amp				5.50		ICB	Interim
	Physical Collocation – 240V AC Power single phase, per breaker amp				11.00		ICB	Interim
	Physical Collocation – 120V AC Power three phase, per breaker amp				16.50		ICB	Interim

-2-

Shaded entries indicate rates approved by the Florida Public Service Commission in its April 29, 1998 Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP.

Under the non-recurring column, where there are two entries, the first entry is for the first unit installed, and the second entry is for each additional unit installed.

Florida Rate and Cost Analysis

Cost Ref. #	Rate Element	Cost			Rate			Source
		Recurring	Non-recurring Electronic	Non-recurring Manual	Recurring	Non-recurring Electronic	Non-recurring Manual	
	Physical Collocation – 277V AC Power three phase, per breaker amp				38.20		ICB	Interim
H.1.12	Physical collocation – connects				5.24	1157.00		4/29/98 Order
	Cross connects 2-wire, per 100 circuits				5.24	1157.00		4/29/98 Order
	Cross connects 4-wire, per 100 circuits				226.39	1950.00		4/29/98 Order
	Cross connects DS-1/DCS, per 28 circuits				11.51	1950.00		4/29/98 Order
	Cross connects DS-1/DSX, per 28 circuits				56.97	528.00		4/29/98 Order
	Cross connects DS-3/DCS, per circuit				10.06	528.00		4/29/98 Order
	Cross connects DS-3/DSX, per circuit				6.46	2431.00		4/29/98 Order
	Cross connects – Optical circuits, per connection							
	Co-Carrier Cross-Connects							
TBD	Fiber Cable Support Structure, existing, per linear foot				.06			Interim
TBD	Copper or Coaxial Cable Support Structure, existing, per linear foot				.03			Interim
TBD	Cable Support Structure Construction, new						ICB	Interim
TBD	Physical Collocation – Security Access System – Security System, Per Central Office				95.00			Interim
	Physical Collocation – Security Access System – New Access Card Activation, per request 5 cards							4/29/98 Order
TBD	Physical Collocation – Security Access System – Administrative change, existing card, per Card						35.00	Interim
TBD	Physical Collocation – Security Access System – Replace lost or stolen card, per Card						250.00	Interim
TBD	Physical Collocation – Security Access System – Replace lost or stolen card, per Card						550.00	Interim
TBD	Physical Collocation – Space Availability Report, per Central Office Requested						31.00	FCC #1 Tariff, Sect. 13.1 & 13.2
TBD	Physical Collocation – Additional Engineering Fee – Basic Per request, First half hour/ add'l half hour						22.00	

Shaded entries indicate rates approved by the Florida Public Service Commission in its April 29, 1998 Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP.

Under the non-recurring column, where there are two entries, the first entry is for the first unit installed, and the second entry is for each additional unit installed.

Florida Rate and Cost Analysis

Cost Ref. #	Rate Element	Cost			Rate			Source
		Recurring	Non-recurring Electronic	Non-recurring Manual	Recurring	Non-recurring Electronic	Non-recurring Manual	
TBD	Physical Collocation – Additional Engineering Fee – Overtime, per half hour						37.00 26.00	FCC #1 Tariff, Sect. 13.1 & 13.2
	Physical collocation – security escort – basic, per quarter hour						10.89	4/29/98 Order
H.1.18	Physical collocation – security escort – overtime, per quarter hour						13.64	4/29/98 Order
H.1.19	Physical collocation – security escort – premium, per quarter hour						16.40	4/29/98 Order

Shaded entries indicate rates approved by the Florida Public Service Commission in its April 29, 1998 Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP.

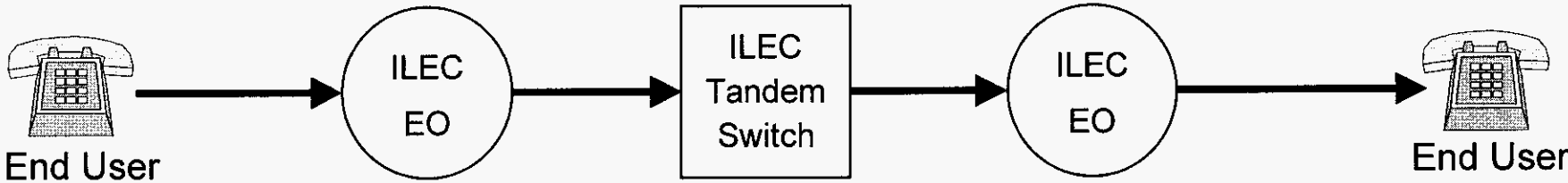
Under the non-recurring column, where there are two entries, the first entry is for the first unit installed, and the second entry is for each additional unit installed.

Reciprocal Compensation

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

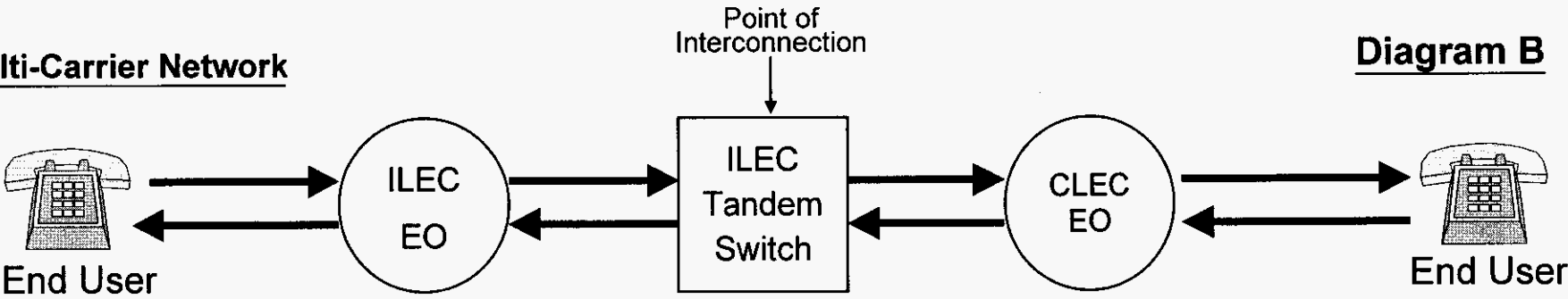
Single Carrier Network

Diagram A



Multi-Carrier Network

Diagram B



Call Flow
→
ILEC pays CLEC
Reciprocal Compensation

Call Flow
←
CLEC pays ILEC
Reciprocal Compensation

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

Diagram C

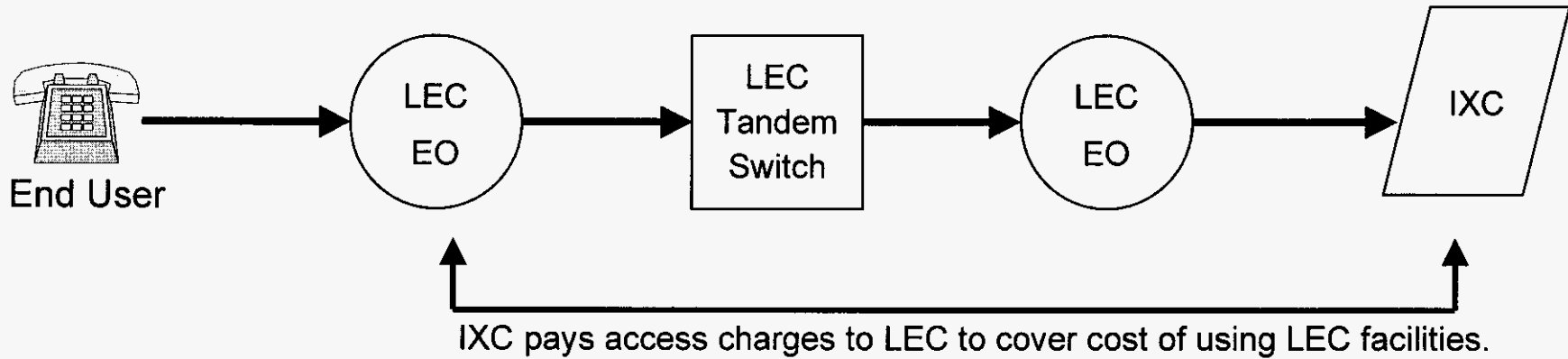
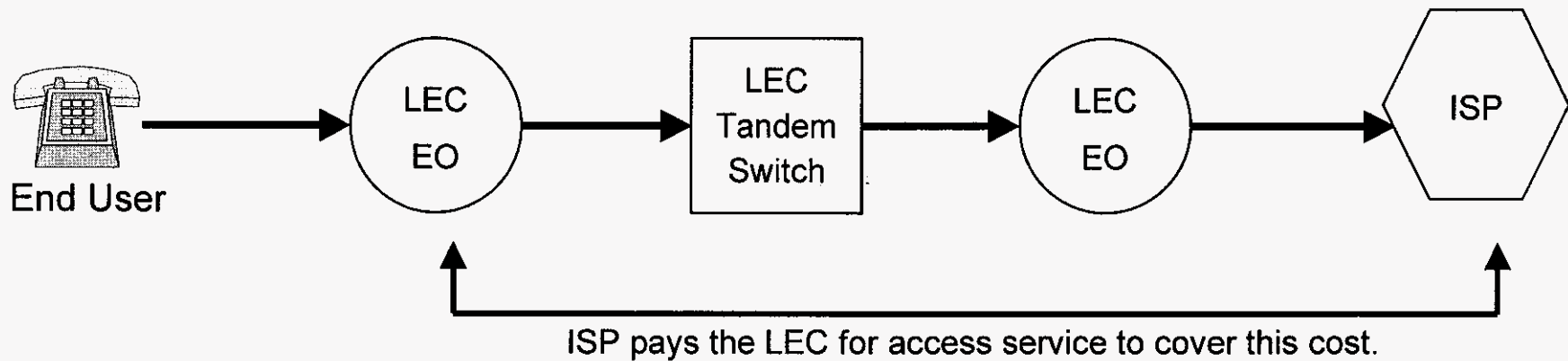


Diagram D





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BellSouth Telecommunications, Inc.
FPSC Docket No. 990750-TP
Exhibit AJV-4
Page 1 of 28

**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.**

M. Robert Sutherland
Richard M. Sbaratta

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Date: April 12, 1999

TABLE OF CONTENTS

Summary	i
I. Introduction.....	1
II. Inter-Carrier Compensation for ISP-Bound Interstate Traffic.....	3
A. The Commission Should Not Adopt The Alternative Set Forth In The <i>NPRM</i>	4
B. The Parameters Of A Properly Crafted Inter-Carrier Compensation Mechanism.....	7
C. ISP-Bound Traffic Cannot Practically Be Separated Into Its Interstate and Intrastate Components.....	10
III. Conclusion	12

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

BellSouth Reply Comments
April 27, 1999

CC Docket No. 99-68

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.

BellSouth Reply Comments
April 27, 1999

CC Docket No. 99-68

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.

BellSouth Reply Comments
April 27, 1999

CC Docket No. 99-68

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.

BellSouth Reply Comments
April 27, 1999

CC Docket No. 99-68

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.

BellSouth Reply Comments
April 27, 1999

CC Docket No. 99-68

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.

BellSouth Reply Comments
April 27, 1999

CC Docket No. 99-68

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.

BellSouth Reply Comments
April 27, 1999

CC Docket No. 99-68

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).

BellSouth Reply Comments
April 27, 1999

CC Docket No. 99-68

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.

BellSouth Reply Comments
April 27, 1999

CC Docket No. 99-68

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
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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.

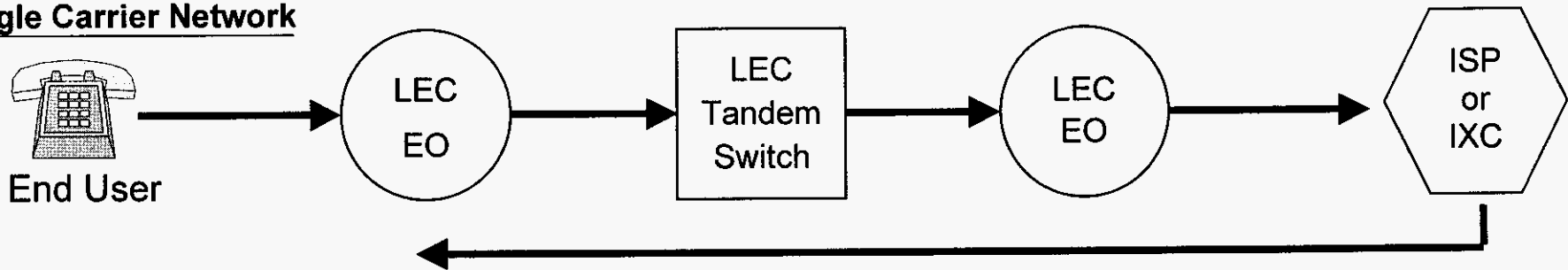
/s/ Juanita H. Lee

Juanita H. Lee

Single Network and Multi-Network Provision of Access Service

Diagram E

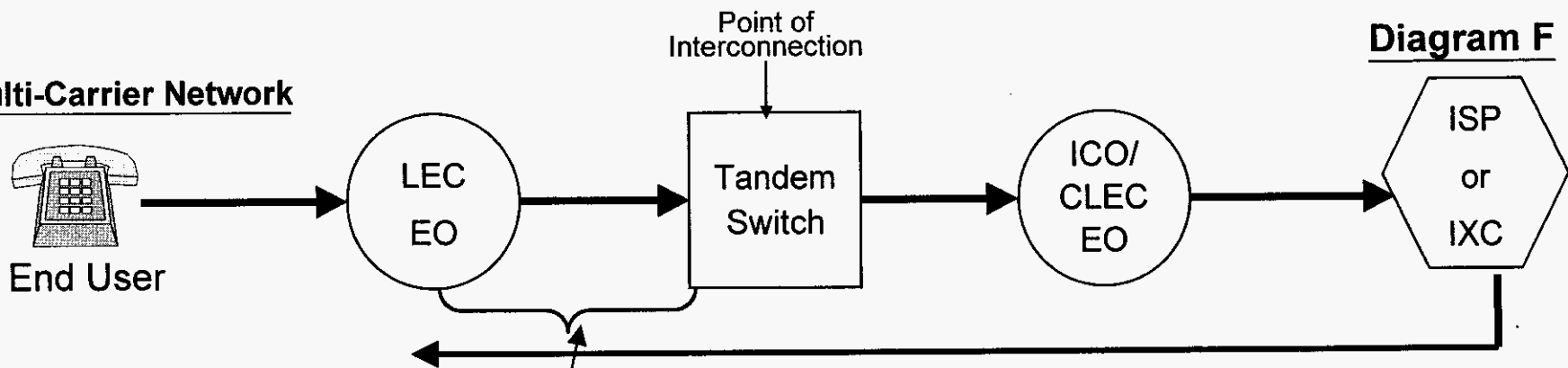
Single Carrier Network



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

Diagram F

Multi-Carrier Network

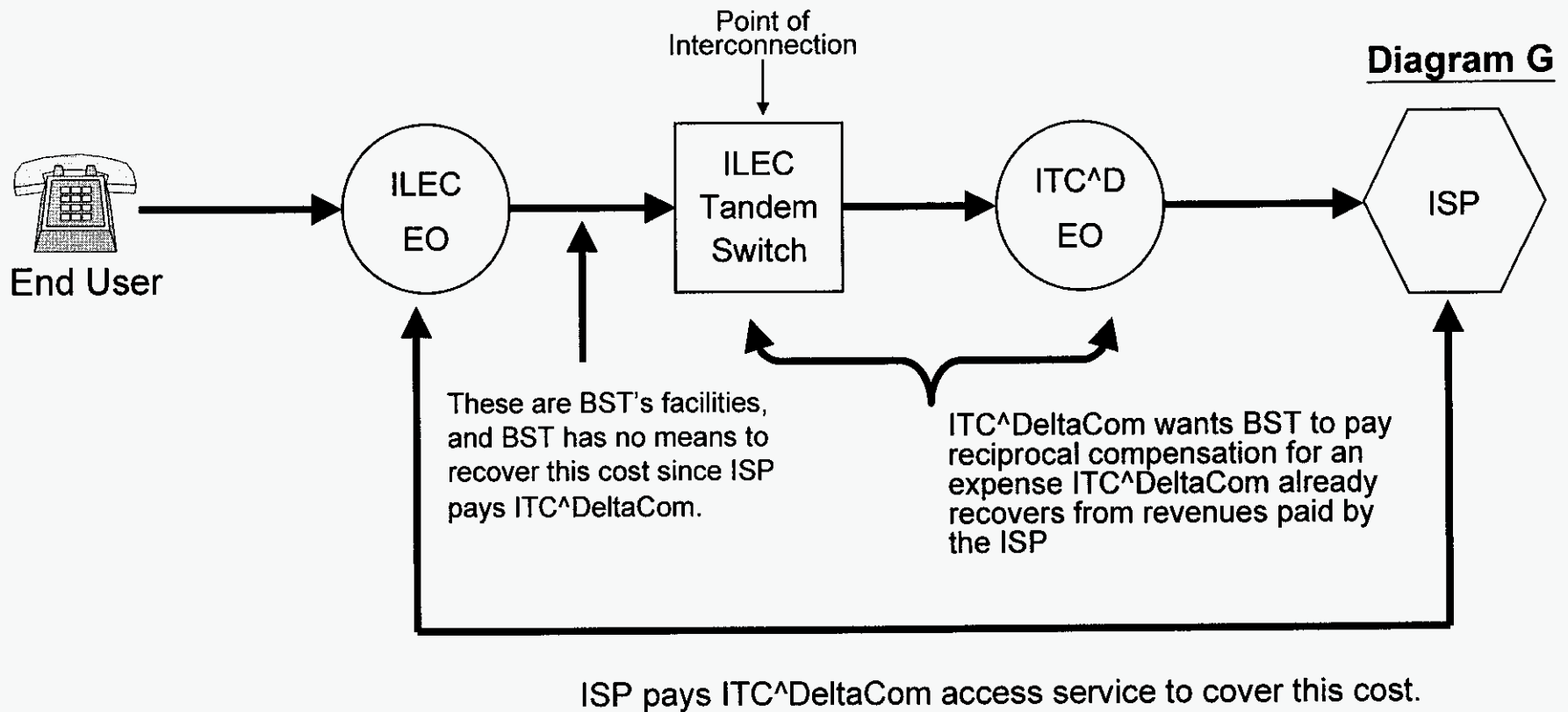


*CLEC/ICO should reimburse
LEC for this cost.*

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

ITC^DeltaCom's Position

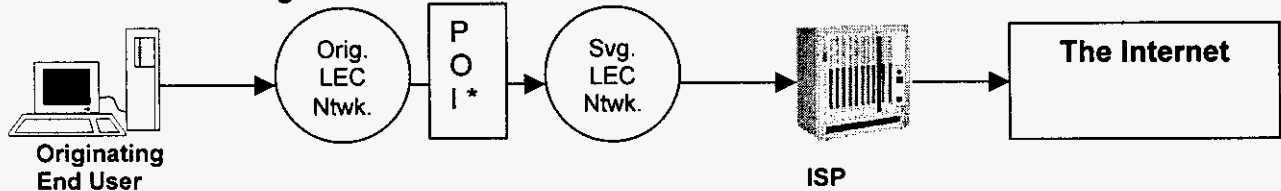
- ITC^DeltaCom's position ignores the fact that ISP's purchase access service
- Paying ITC^DeltaCom reciprocal compensation for ISP-bound traffic would result in ILEC end users subsidizing ITC^DeltaCom's operations.



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

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.

