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February 25, 1998

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

Re: Docket No. 980184-TP Teleport's Complaint

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer and Response to Complaint of Teleport Communications Group, Inc. and TCG South Florida, which we ask that you file in the above-captioned matter.

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

ACK

AFA _____

APP _____

CAF _____
CMU *Norton*

CTR _____

EAG _____

LEG 1 NBW/vf

LIN 5 cc: All parties of record

OPC _____ A. M. Lombardo

RCH _____ R. G. Beatty

SEC 1 William J. Ellenberg II

WAS _____

OTH _____

Sincerely,

Nancy B. White

Nancy B. White (pm)

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

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02630 FEB 25 88

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 980184-TP

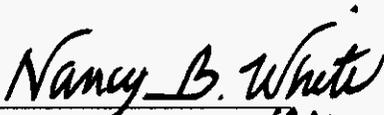
I HEREBY CERTIFY that a true and correct copy of the foregoing was served
by U.S. Mail this 25th day of February, 1998 to the following:

Charles Pellegrini
Legal Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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Nancy B. White (PW)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Teleport Communications) Docket No.: 980184-TP
 Group, Inc./TCG South Florida for Enforcement)
 of Section IV.C of its Interconnection Agreement)
 with BellSouth Telecommunications, Inc. and)
 Request for Relief.)
 _____) Filed: February 25, 1998

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
 ANSWER AND RESPONSE TO COMPLAINT OF
 TELEPORT COMMUNICATIONS GROUP, INC. AND
 TCG SOUTH FLORIDA**

BellSouth Telecommunications, Inc., ("BellSouth"), hereby files its Answer and Response, pursuant to Rule 1.110, Florida Rules of Civil Procedure and Rules 25-22.037 and 25-22.0375, Florida Administrative Code, to the Complaint of Teleport Communications Group, Inc. and TCG South Florida ("TCG") which seeks a ruling that calls to information service providers ("ISPs") should qualify for reciprocal compensation under the terms of the BellSouth - TCG Interconnection Agreement when such traffic is exchanged between BellSouth and TCG. There is no factual, legal or policy basis for such a ruling since calls to the Internet through ISPs that originate on one carrier's network do not "terminate" on the other's network, as would be required for reciprocal compensation to apply. To the contrary, a single such call may communicate with interstate, foreign, and local destinations simultaneously; thus, as a jurisdictional matter such traffic cannot be considered "local." Indeed, jurisdiction over ISP traffic is clearly vested with the Federal Communications Commission ("FCC"), which is presently considering the issues raised in TCG's Complaint. Furthermore, reciprocal compensation means that compensation flows in both directions; there is nothing "reciprocal" about ISP traffic, since such traffic all flows in one direction. Accordingly,

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TCG is not entitled to the relief it seeks in this proceeding, and the Commission should dismiss TCG's Complaint.

For Answer to the specific allegations in the Complaint, BellSouth states the following:

1. BellSouth is without sufficient information or knowledge of the allegations in Paragraph 1 of the Complaint, and, therefore, these allegations are deemed to be denied.

2. BellSouth is without sufficient information or knowledge of the allegations in Paragraph 2 of the Complaint, and, therefore, these allegations are deemed to be denied.

3. BellSouth admits the allegations in Paragraph 3 of the Complaint.

4. BellSouth admits the allegations in Paragraph 4 of the Complaint.

5. BellSouth denies that it has failed to comply with specific provisions in its interconnection agreement with TCG. BellSouth admits the remaining allegations in Paragraph 5 of the Complaint.

6. BellSouth admits that the Commission has jurisdiction over Complaints under the statutory provisions cited in Paragraph 6 of the Complaint. BellSouth, however, denies that the Commission has jurisdiction over ISP traffic because such traffic is interstate in nature, the jurisdiction over which is vested with the FCC.

7. BellSouth denies the allegations in Paragraph 7 of the Complaint and affirmatively asserts that individuals accessing the Internet through an ISP do not seek to communicate with the ISP, which generally merely serves as an intermediate switch or facility for Internet access. BellSouth further avers that, if BellSouth included ISP traffic in reciprocal compensation bills submitted to TCG, BellSouth did so inadvertently and unknowingly.

8. BellSouth admits that Ernest L. Bush of BellSouth sent a letter to all competitive local exchange carriers dated August 12, 1997, the terms of which speak for themselves. BellSouth also admits that a copy of this letter is attached as Exhibit A to the Complaint. BellSouth denies the remaining allegations in Paragraph 8.

9. BellSouth denies the allegations of Paragraph 9 of the Complaint and avers that, if BellSouth made any payments to TCG with regard to ISP traffic, BellSouth did so inadvertently and unknowingly.

10. BellSouth admits that Section 1.D of the BellSouth-TCG Argument reads as quoted in Paragraph 10 of the Complaint. BellSouth denies the remaining allegations in Paragraph 10 of the Complaint and affirmatively asserts that calls to the Internet through ISPs that originate on BellSouth's network do not "terminate" on TCG's network, as would be required for reciprocal compensation under BellSouth's interconnection agreement with TCG. Such calls traverse TCG's facilities to the ISP and the Internet and communicate with multiple destinations, often simultaneously, that

may cross state and national boundaries; thus ISP traffic cannot be considered “local” as a legal matter.

11. BellSouth admits that the Sections of the BellSouth TCG Agreement read as quoted in Paragraph 11 of the Complaint. BellSouth denies the remaining allegations in Paragraph 11 of the Complaint.

12. BellSouth denies the allegations of Paragraph 12 of the Complaint and avers that calls to the Internet through ISPs do not terminate on the network as required for reciprocal compensation.

13. BellSouth denies the allegations of Paragraph 13.

14. BellSouth denies the allegations of Paragraph 14.

15. As to the allegations in Paragraph 15 of the Complaint, BellSouth admits that it charges its ISP customers local business rates and that BellSouth customers as well as customers of BellSouth’s ISP customers can access their ISP by making a local phone call. However, BellSouth affirmatively asserts that this arrangement exists only by virtue of the FCC’s continued decision to exempt ISPs from paying access charges and to allow ISPs to pay only local business rates and subscriber lines charges for their switched access connection to local exchange company central offices. Importantly, the FCC’s exemption for ISPs only extends to incumbent local exchange carriers. Thus, TCG, as a competitive local exchange carrier, is free to charge appropriate access rates in order to compensate it fully for the cost of any services it provides to

ISPs. BellSouth admits that, as a result of the FCC's continued decision to exempt ISPs from paying access charges and to allow ISPs to pay only local business rates and subscriber lines charges for their switched access connection to local exchange company central offices, BellSouth treats revenues associated with local exchange traffic to its ISP customers as local for purposes of separations and ARMIS reporting. Separations and ARMIS reporting are controlled by the FCC. BellSouth denies the remaining allegations of Paragraph 15 of the Complaint.

16. BellSouth denies the allegations of Paragraph 16 of the Complaint.

17. BellSouth denies the allegations of Paragraph 17 of the Complaint and avers that the jurisdiction of a call is based on the end-to-end nature of the call, not the piece parts.

18. BellSouth denies the allegations of Paragraph 18 of the Complaint and avers that the jurisdiction of a call is based on the end-to-end nature of the call, not the piece parts.

19. BellSouth denies the allegations of Paragraph 19 of the Complaint and avers that the jurisdiction of a call is based on the end-to-end nature of the call, not the piece parts.

20. BellSouth denies the allegations of Paragraph 20 of the Complaint.

21. BellSouth denies the allegations of Paragraph 21 of the Complaint.

22. BellSouth denies the allegations of Paragraph 22 of the Complaint.

23. BellSouth denies the allegations of Paragraph 23 of the Complaint.

24. As to the allegations of Paragraph 24 of the Complaint, BellSouth admits that this Commission issued Order No. 21815, the terms of which speak for themselves. Moreover, inasmuch as ISP traffic is interstate, the FCC has jurisdiction in this matter, not this Commission. BellSouth denies the remaining allegations of Paragraph 24.

25. BellSouth denies the allegations in Paragraph 25 of the Complaint. BellSouth affirmatively asserts that the FCC has reiterated on numerous occasions that it has jurisdiction over traffic that is jurisdictionally interstate, including ISP traffic. See *MTS and WATS Market Structure*, 97 FCC 2d 682, 711-12 (1983); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 2 FCC RCD 4305, 4306 (1987); *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, 4 FCC RCD 3983, 3987 (1989). The fact that the FCC has granted ISPs an exemption from interstate access charges for policy reasons does not change the jurisdictional nature of ISP traffic from interstate access traffic to local. See *Access Charge Reform, Notice of Proposed Rulemaking Third Report and Order and Notice of Inquiry*, CC Docket No. 96-262, at 284-84 (Dec. 24, 1996). Indeed, by definition, ISP traffic would have to be an interstate access arrangement to which access charges would otherwise apply in order for the FCC to have jurisdiction to grant the exemption. BellSouth also denies that the portion of the call that occurs within the local exchange "is a separate and

distinguishable transmission from any subsequent Internet connection enabled by the ISP.” The FCC has repeatedly rejected such “two call” jurisdictional theories, employing instead an “end-to-end” analysis in determining the jurisdictional nature of the call. See, e.g., Petition for Emergency Relief and Declaratory Ruling filed by BellSouth Corporation , 7 FCC Rcd 1619 (1992), *aff’d Georgia Public Service Comm’n v. FCC*, 5 F.3d 1499 (11th Cir. 1993).

26. BellSouth admits that in *In re: Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 (May 8, 1997) (“Universal Service Order”), the FCC exempted ISPs from universal service contributions. BellSouth denies the remaining allegations in Paragraph 26 and affirmatively asserts that nothing in the FCC’s Universal Service Order lends credence to a finding that ISP calls originate on the network facilities of one local exchange carrier and terminate on the facilities of another for purposes of reciprocal compensation. Although TCG cites to provisions of the Universal Service Order which discuss the “components” of Internet access and which suggest that a connection to an ISP via the public switched network is “distinguishable” from the ISP’s service offering , the FCC was not discussing reciprocal compensation in these provisions. Rather, the FCC was attempting to justify its decision that Internet access should not be eligible for universal service support and to exempt ISPs from universal service contributions.

27. BellSouth admits that in *In re: Access Charge Reform*, First Report and Order, CC Docket No. 96-262 (May 16, 1997) ("Access Charge Order"), the FCC continued its long-standing policy that ISPs should not be required to pay interstate access charges. BellSouth denies the remaining allegations in Paragraph 27 and affirmatively asserts that the FCC's Access Charge Order only treats ISPs as "end users" -- a term defined in the FCC's access charge rules -- "for purposes of the access charge system." Nothing in the FCC's Access Charge Order indicates an intent by the FCC to forsake or limit its authority over interstate ISP traffic, either in the context of access charges or for purposes of reciprocal compensation. To the contrary, the FCC's most recent decision that ISPs should not be subject to interstate access charges is a demonstration of the FCC's continued jurisdiction over ISP traffic, which belies TCG's contention that such traffic is "local."

28. BellSouth admits that in *In re: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking. CC Docket No. 96-149 (Dec. 24, 1996) ("Non Accounting Safeguards Order"), the FCC concluded that when an interLATA telecommunications service from a Bell Operating Company ("BOC") Section 272 affiliate and an intraLATA information service provided by that affiliate or by the BOC itself are provided, purchased, and priced separately, "they do not collectively constitute an interLATA information service offering by the BOC"; rather

the BOC provides interstate interexchange access in that circumstance. BellSouth denies the remaining allegations in Paragraph 28 and affirmatively asserts that nothing in the provision of the FCC's Non-Accounting Safeguards Order cited by TCG applies to the facts of this case or supports a finding that ISP calls originate on the network facilities of one local exchange carrier and terminate on the facilities of another for purposes of reciprocal compensation.

29. As to the allegations in Paragraph 29 of the Complaint, BellSouth admits that the FCC presently is conducting two proceedings to consider use of the public switched network by ISPs and that the FCC has continued to exercise its jurisdiction over ISP traffic. It is the jurisdictional nature of ISP traffic as interstate access traffic that permits the FCC to do so. It is precisely the same jurisdictional nature of ISP traffic that takes it outside the scope of reciprocal compensation. BellSouth denies the remaining allegations of Paragraph 29.

30. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint.

31. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations as to Virginia in Paragraph 31 of the Complaint. It is BellSouth's understanding that the New York Public Service Commission did not resolve the issue of whether calls to the Internet through ISPs that originate on one local carrier's network "terminate" on another local carrier's network for purposes of

reciprocal compensation or whether ISP traffic is truly "reciprocal" for purposes of reciprocal compensation. If further appears that the Maryland Public Service Commission misconstrued the FCC's Access Charge Order, particularly since it recognized the possibility that ISP traffic is "jurisdictionally interstate" and that the "issue is currently being considered by the FCC and may ultimately be resolved by it." Moreover, it appears that the Connecticut Department of Utility Control misconstrued the FCC's Access Charge Order and disregarded the well-established principle that the end-to-end configuration of a call determines its jurisdictional nature, not any intermediate switching or transport. Based upon information and belief, BellSouth asserts that the issue raised by US West in the arbitration proceedings referenced in Paragraph 31 was whether ISP traffic should be "exempted" from reciprocal compensation arrangements until the FCC issued its decision on access reform. To BellSouth's knowledge, the issue of whether calls to the Internet through ISPs that originate on one local carrier's network "terminate" on another local carrier's network was not considered, nor was the issue of whether ISP traffic is truly "reciprocal" for purposes of reciprocal compensation.

32. BellSouth denies the allegations of Paragraph 32 of the Complaint.

33. BellSouth denies the allegations in Paragraph 33 of the Complaint.

BellSouth affirmatively asserts, that, when a BellSouth customer connects to BellSouth's own Internet service, it is providing an interstate access service, which is

not prohibited under Section 271 of the Telecommunications Act of 1996. At present, Section 271 only prohibits BellSouth from providing interstate transport; BellSouth does not provide interstate transport when a BellSouth customer connects to BellSouth's own Internet Service.

34. BellSouth denies the allegations in Paragraph 34 of the Complaint. BellSouth affirmatively asserts that no anticompetitive harm results from ALECs not receiving "reciprocal" compensation for ISP traffic. To the contrary, such an arrangement is the only way to ensure that ALECs and incumbent local exchange carriers receive absolutely equal, and competitively neutral treatment. BellSouth also asserts that it is illogical and unreasonable to even label as "reciprocal" the compensation scheme proposed by TCG since there is no "reciprocal" traffic associated with calls to ISPs. Rather than providing subsidies to ALECs through a regulatory compensation scheme that reflects imaginary "reciprocal" traffic, it is both reasonable and fair for TCG to recover the costs of providing service to ISPs directly, as BellSouth attempts to do. Furthermore, unlike BellSouth, TCG is free to charge appropriate access rates in order to compensate it fully for the cost of any services it provides to ISPs because TCG is not constrained by the FCC's access charge exemption.

35. BellSouth admits that certain ISPs have submitted written comments to the FCC requesting that the FCC find that ISP traffic is "local" in nature, although

BellSouth is without knowledge or information concerning what "ISPs believe."
BellSouth denies the remaining allegations in Paragraph 35 of the Complaint.

36. BellSouth admits that it offers an Internet access service to consumers. BellSouth denies the remaining allegations in Paragraph 36 of the Complaint and affirmatively asserts that TCG's claim that BellSouth is seeking a "monopoly over access to the Internet" is ludicrous.

37. BellSouth admits that the FCC issued a decision rejecting Ameritech's application to provide interLATA service in Michigan, the terms of which speak for themselves. BellSouth also admits that it has complied in good faith with its obligations under Section 271 and that it is committed to the development of competition in the local exchange market. BellSouth denies the remaining allegations in Paragraph 37 of the Complaint.

38. BellSouth admits that the FCC issued a decision rejecting Ameritech's application to provide interLATA service in Michigan, the terms of which speak for themselves. BellSouth also admits that it has complied in good faith with its obligations under Section 271 and that it is committed to the development of competition in the local exchange market. BellSouth denies the remaining allegations in Paragraph 38 of the Complaint.

Respectfully submitted this 25th day of February, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

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