

Before the
**STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

ORIGINAL

Global NAPs, Inc.,
Complainant,

versus

BellSouth Telecommunications, Inc.
Defendant

Docket No. 991267-TP

Direct Testimony

of

LEE L. SELWYN

on behalf of

Global NAPs, Inc.

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INTRODUCTION

Qualifications

Q. Please state your name, position and business address.

A. My name is Lee L. Selwyn; I am President of Economics and Technology, Inc. ("ETI"), One Washington Mall, Boston, Massachusetts 02108. Economics and Technology, Inc. is a research and consulting firm specializing in telecommunications economics, regulation, management and public policy.

Q. Please summarize your educational background and previous experience in the field of telecommunications regulation and policy.

A. I have prepared a Statement of Qualifications, which is attached hereto as Appendix 1.

Q. Have you previously testified before the Florida Public Service Commission (the "Commission")?

A. Yes. I have testified before this Commission on a number of occasions dating back to the mid-1970s, on the subjects of rate design and service cost analysis on behalf of business telecommunications users as well as the State of Florida

1 Department of General Services. These cases have included Dockets 74805-TP,
2 760842-TP, 810035-TP and 820294-TP involving Southern Bell, Docket 74792-TP
3 involving General Telephone Company of Florida, Docket 750320-TP involving
4 Central Telephone Company of Florida. I also testified in Docket 950696-TP on
5 the subject of Universal Service, on behalf of Time Warner AxS and Digital Media
6 Partners. My most recent appearance before this Commission was in Docket No.
7 960833-TP/960847-TP on behalf of AT&T.

8

9 **Assignment**

10

11 Q. On whose behalf is this testimony being submitted?

12

13 A. This testimony is being submitted on behalf of Global NAPs, Inc. ("Global
14 NAPs"). Global NAPs is a competitive local exchange carrier ("CLEC") with
15 operations in Florida (currently the Miami area), as well as in a number of other
16 states. Global NAPs provides many Internet Service Provider ("ISP") customers
17 with telephone service on the public switched network. Global NAPs' service
18 allows the ISPs' end users to reach them by means of a dial-in connection between
19 the end users' modem equipment and the modem equipment of Global NAPs' ISP
20 customers.

21

22 Q. What is the purpose of your testimony at this time?

23

1 A. The specific purpose of this testimony is to briefly describe (a) the economics of
2 processing ISP-bound traffic as a basis for reciprocal compensation, and (b) the
3 factors identified by the Federal Communications Commission (the “FCC”) to
4 determine whether any particular interconnection agreement should be viewed as
5 encompassing ISP-bound traffic within the rubric of “local calls.” Based upon that
6 description, I recommend that to the extent the Commission's decision in this
7 matter is affected by matters of economics and policy, the Commission should
8 conclude that ISP-bound calls should be viewed as falling squarely within the
9 scope of “local” calls under the parties' interconnection agreement.

10

11 **Summary of testimony**

12

13 Q. Please summarize the testimony you will be presenting before the Commission at
14 this time.

15

16 A. In economic and policy terms, ISP-bound calls have long been treated as a form of
17 “local” call. ISPs are expressly permitted to purchase local business lines, as
18 opposed to interstate access lines, to obtain their connections to the public switched
19 network. The FCC has specifically noted — and the courts have affirmed — that
20 the purpose and effect of this arrangement is to allow ISPs to connect to the
21 network as business customers, not as carriers, and to receive locally-dialed calls
22 from end users that are priced, to the end user, as local calls. While ISP-bound
23 calls may in a legalistic sense be jurisdictionally interstate, in *economic* terms they

1 are equivalent to traditional local calls, not unlike the types of local calls that end
2 users routinely make to their neighbors, their children's schools, local restaurants,
3 etc. Indeed, BellSouth's own ISP affiliate, *bellsouth.net*, offers local call dial-up
4 service to its end user customers in locations throughout BellSouth's Florida
5 service area.

6
7 In this regard, I have been active in matters relating to regulatory economics and
8 policy in the telecommunications field for more than thirty years, including
9 involvement in the FCC's First, Second and Third *Computer Inquiry* proceedings.
10 In the second of these, so-called *Computer II*, the FCC established the formal
11 regulatory distinction between "basic" services, such as those offered by carriers,
12 and "enhanced" services, such as those offered by ISPs. In the FCC's *MTS and*
13 *WATS Market Structure* proceeding (CC Docket 78-72, a matter in which I and my
14 firm were extensively involved) that created "access charges" for the first time, the
15 Commission *explicitly* exempted "enhanced service providers" from paying them
16 on the same basis as carriers. *See* MTS and WATS Market Structure,
17 *Memorandum Opinion and Order*, CC Docket No. 78-72, 97 FCC 2d 682, 711-12
18 (1983). That exemption was reiterated by the FCC in its 1988 decision in CC
19 Docket No. 87-215. *See* Amendment of Part 69 of the Commission' Rules
20 Relating to Enhanced Service Providers, *Order* CC Docket No. 87-215, 3 FCC Rcd
21 2631 (1988). The Commission affirmed that exemption yet again both in its
22 *Access Charge Reform Order* in CC Docket No. 96-262 (Access Charge Reform, CC
23 Docket No. 96-262, *First Report and Order*, 12 FCC Rcd 15982 (1997) at ¶ 342, *aff'd sub*

1 *nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998)) and most
2 recently in its February 26, 1999 *Declaratory Ruling* in that same proceeding.
3 Implementation of the Local Competition Provisions in the Telecommunications Act of
4 1996, Inter-Carrier Compensation for ISP-Bound Traffic, *Declaratory Ruling in CC Docket*
5 *No. 96-98 and Notice of Proposed Rulemaking in Docket No. 99-68*, CC Docket Nos. 96-
6 98 and 99-68 (released February 26, 1999) ("*Declaratory Ruling*"). It is absolutely
7 clear, as a result of the FCC's repeated affirmation of the unique regulatory status
8 of entities such as ISPs, that the general understanding in the telecommunications
9 industry during the 1996-1997 period was that ISP-bound calls were properly
10 treated as "local" calls.

11

12 As noted, the FCC once again recognized this in its February 1999 *Declaratory*
13 *Ruling* addressing compensation for ISP-bound calls. Among the key factors it
14 suggests that state regulators consider in assessing whether existing interconnection
15 agreements contemplate treating ISP-bound calls as "local" is the FCC's own
16 actions in creating an industry regulatory "context" within which such calls were
17 treated as "local." As described below, the other factors that the FCC identifies as
18 relevant also will generally support a conclusion that any interconnection
19 agreement entered into during that time frame would generally treat ISP-bound
20 calls as "local."

21

22 For these reasons, I recommend that the Commission find the contract between
23 Global NAPs and BellSouth (which is the result of Global NAPs opting into an
24 agreement between BellSouth and DeltaCom) be interpreted as including ISP-

1 bound calls within the definition of “local” calls. In this regard, I note that the
2 Alabama PSC, interpreting what is apparently exactly the same contract between
3 BellSouth and DeltaCom, reached exactly this conclusion.

1 COMPENSATION TO CLECs FOR COMPLETING ISP-BOUND CALLS

2

3 **The Economics Of ISP-Bound Calls**

4

5 Q. Please describe the basic economic arrangements applicable to (a) local calls
6 involving two carriers and (b) interexchange calls involving one or two local
7 exchange carriers and an interexchange carrier.

8

9 A. The almost universal practice in Florida as well as generally throughout the United
10 States is for local calls to be provided on a "sent paid" basis by the local exchange
11 carrier on whose network the call originates. By that I mean that the customer
12 who originates the call pays his or her local carrier to get the local call all the way
13 to its intended destination. These payment arrangements can take many forms,
14 including flat-rated local calling over a wide area; "extended area service" or
15 "extended area calling" plans that have the same effect; flat-rated local calling over
16 a smaller area with some type of message unit or local measured charge for local
17 calls outside that area; flat-rated local calling for a certain number of calls per
18 month, with a per-message or other charge for usage above that level; and even
19 local service with no usage included in the base price at all, with each call subject
20 to a separate local message unit or measured service charge.

21

22 In Florida, BellSouth offers local usage services under a combination of flat,
23 message and measured rate elements, but in all cases the charges for these services

1 are paid by the customer who originates calls. The Basic flat-rate usage charge
2 provides for unlimited outward calling within a specific local calling area, which
3 consists of the customer's home and certain nearby "extended area service"
4 exchanges. In most areas, customers may alternatively choose "message rate" local
5 service where, for a lower monthly charge than that which applies for flat-rate
6 local service the customer receives a small "monthly calling allowance" and is then
7 charged for each originated call in excess of that allowance. In certain
8 communities, customers are offered the option of including one or more additional
9 exchanges in their flat-rate local calling area by paying a fixed monthly "Enhanced
10 Optional Extended Area Service" ("EOEAS") charge for each such exchange they
11 wish to reach on a flat-rate basis. The flat-rate EOEAS charge is based upon two
12 factors — the distance between the customer's home exchange and the EOEAS
13 exchange, and the number of exchange access lines in the EOEAS exchange. Calls
14 placed to other nearby exchanges, including exchanges for which EOEAS is
15 available but that are not selected by a customer for inclusion in his or her EOEAS
16 flat-rate calling area, are provided under so-called "Extended Calling Service"
17 ("ECS") and are charged at a fixed per-message (per-call) amount of \$0.25 for
18 residential subscribers or \$0.10 and \$0.06 for the initial and subsequent minutes of
19 each call, respectively, for calls originated by business customers. (Calls placed to
20 all other points within the same LATA are rated as intraLATA toll.) Whatever the
21 precise form of local service plan, and whether priced on a flat-rate or usage-
22 sensitive basis, what is common to all of them is that the *originating end user* pays

1 the *originating local carrier* an amount designed to cover the entire cost of getting
2 the call from the origin to its destination.

3

4 Q. Is this "sent paid" approach to local calling a recent development, or has it been in
5 place for some time?

6

7 A. This arrangement has been in place for decades, and has provided the framework
8 both for the interchange of traffic as well as for the allocation of usage revenues as
9 between two incumbent local exchange carriers (e.g., BellSouth and an
10 Independent Telephone Company). With the introduction of "CLECs" into the
11 local service market, this same longstanding framework has now been extended to
12 the new entrants as well.

13

14 Q. How are connecting carriers compensated, under the "sent paid" paradigm, for
15 terminating calls that are originated by customers of a different local carrier?

16

17 A. There are two basic revenue sharing models in common use — so called "bill-and-
18 keep" arrangements, and "reciprocal compensation." Under "bill-and-keep," each
19 carrier bills its own customers for the entire price of the call and retains all of the
20 revenue realized thereby, but completes calls handed off to it by another carrier
21 (which would have collected and retained revenue from its customer, the calling
22 party) without any explicit charge to the other (originating) carrier. The notion
23 here is that as a general matter the volume of calls flowing in each direction (i.e.,

1 from carrier A to carrier B and from carrier B to carrier A) will roughly balance
2 out, so the aggregate revenue share inuring to each carrier will compensate it both
3 for the "half-calls" it originates (for which it receives "full-call" revenues) and the
4 "half-calls" it terminates (for which it receives no revenues).

5

6 Where traffic is not, or is not expected to be, "in balance," carriers have typically
7 adopted a so-called "reciprocal compensation" model. Here, the originating carrier
8 receives "full-call" revenues from the customer who originates the call, but then
9 pays the terminating carrier for the "half-call" that the latter will provide in
10 completing the call from the hand-off point to the ultimate recipient. Reciprocal
11 compensation assures that both carriers are fairly compensated for the actual
12 volume of traffic they handle, whether it is in, or seriously out of, balance.

13

14 Q. Which of these two models — "bill-and-keep" or "reciprocal compensation" — is
15 used in the interconnection agreement between Global NAPs and BellSouth?

16

17 A. That agreement calls for the interchange of local traffic to be compensated under a
18 reciprocal compensation arrangement. In this regard, reciprocal compensation for
19 local traffic interchange is expressly contemplated and provided for in the federal
20 *Telecommunications Act of 1996* ("TA96" or "Act").

21

22 In fact, the "sent paid" nature of local calls underlies the TA96 requirement for
23 reciprocal compensation arrangements between connected local exchange carriers

1 (“LECs”). The whole idea of the originating LEC paying the terminating LEC is
2 based upon the understanding that the money to pay for all parts of the call, from
3 beginning to end, is received by the originating carrier. Reciprocal compensation
4 for local calls means that the terminating carrier — which does some of the work
5 in getting the call to its intended destination *and which enables the originating*
6 *carrier correspondingly to avoid the costs associated with call termination* — has
7 a right to get paid for it.

8

9 Q. How does this treatment of local calls handled by more than a single carrier
10 compare with the treatment of toll calls that are handled by two local carriers and
11 an interexchange carrier ("IXC")?

12

13 A. At least since the break-up of the former Bell System and the adoption in 1984 of
14 Part 69 of the FCC's Rules governing "Access Charges," interexchange calls have
15 been handled differently from local calls. For an interexchange call, the
16 originating LEC delivers the call from the end user to the IXC, but does not charge
17 the end user for that activity. (Technically, the interstate subscriber line charge
18 (SLC) reflects a charge by the originating LEC to the end user for the general use
19 of the local loop to originate and terminate interstate calls. But there is no *usage*
20 component to the SLC: it is simply a flat charge designed to recover a portion of
21 the loop costs for loops that are used for both intrastate and interstate
22 telecommunications. By contrast, loop costs are not involved in inter-carrier
23 compensation for local calls at all.) Instead, the *IXC* bills the end user for the full

1 cost of the call, and then pays both the originating LEC and the terminating LEC
2 for their respective roles in delivering the call from the originating subscriber to
3 the IXC and from the IXC to the call recipient. These payments, of course, are the
4 originating and terminating access charges.

5
6 So, to summarize, local calls are sent paid, which means that the originating carrier
7 charges the end user to get the call all the way to its destination; reciprocal
8 compensation is designed to reflect that economic fact by requiring the originating
9 carrier to pay the terminating carrier for doing some of the work of carrying the
10 call, when two carriers are involved. By contrast, interexchange calls are not “sent
11 paid” by the originating carrier in this sense. The originating carrier does not
12 charge the end user anything for such calls; instead, the IXC bills the end user and
13 pays both the originating and terminating LECs for their work in originating and
14 terminating the call. (There are a few exceptions, of course. An intraLATA toll
15 call handled end-to-end by a single carrier does not fit this model exactly — such
16 a situation is more like the pre-divestiture Bell System where (in effect) a single
17 entity handled the call end-to-end. On the other hand, when an interexchange call
18 is “sent paid” — as when two adjacent LECs carry an intraLATA toll call — the
19 most common arrangement under “originating responsibility plans” of various sorts
20 is for the originating LEC to collect from the customer for the end-to-end call, and
21 then to pay the terminating LEC for its services in delivering the call to its
22 destination. These exceptions, of course, prove the general rules discussed above.)

23

1 Q. Does either the local call model or the interexchange call model depend upon the
2 carrier who collects the money actually collecting enough on any particular call to
3 cover the payments made to other carriers?
4

5 A. No, not at all. On the toll side, it is quite common (indeed, under Section 254(g)
6 of the federal law, it is in many cases *mandatory*) for long distance carriers to
7 charge an *averaged* rate for their toll services (say, \$0.10 per minute) even in
8 situations where the access charges that must be paid on either end (or considered
9 together) exceed that amount, as is sometimes the case. While long distance
10 carriers obviously “lose money” on any individual call where their access charge
11 obligations exceed their retail price, that does not mean that they lose money on
12 their retail offerings in the aggregate. The same is true for local calling plans.
13 Typically, the incremental cost to an ILEC of local usage is well below any per-
14 minute or per-message local calling rates the ILEC may have established — and
15 that is true whether local calls are charged on a flat-rated or on a per-message or
16 per-minute basis. Moreover, the usage “allowance” included in flat-rated local
17 calling plans also is quite often much, much higher than the average usage-related
18 costs imposed by customers who subscribe to such plans. But on calls that are
19 charged on an untimed per-message basis (e.g., BellSouth’s Extended Calling
20 Service, at 25 cents per call for residence customers), it is actually quite common
21 for there to be some set of calls (a typical example is calls made by teenagers) on
22 which the ILEC “loses money” due to above-average call length. But at the same
23 time, there are also many, many calls (such as brief calls that end up being

1 connected to an answering machine) where the ILEC “makes money” because of
2 below-average call duration.

3
4 The same is true for flat-rated calling plans. On average, such plans make money
5 for ILECs, even though there are some customers whose calling volumes are so
6 high that for those customers, considered individually, the plan does not cover cost.
7 In this regard, ILECs often point out that they may receive no incremental revenue
8 at all when a customer on a flat-rated plan makes a call. But the fact that many
9 customers make local calls at a *per-call* incremental revenue to the ILEC of zero
10 does not mean that the ILEC is providing “free” service, nor does it somehow
11 relieve the ILEC of its obligation to pay a terminating CLEC for the work the
12 CLEC does in delivering such local calls to their destination.

13
14 Q. Into which of these economic models does ISP-bound calling fall?

15
16 A. ISP-bound calling unquestionably falls into the “local” call model. In the typical
17 situation prior to competition, an ISP-bound call was handled end-to-end by a
18 single ILEC, just like other local calls and unlike a typical interexchange call. As
19 noted above, ISPs are expressly permitted by FCC rulings to purchase local
20 business lines from LECs in order to receive local calls from their own subscribers,
21 and are expressly *not* required to pay access charges for calls directed to them by
22 end users.

23

1 Q. Have there been efforts in the industry to change the treatment of ISP-bound calls?

2

3 A. Indeed there have been, but the FCC has repeatedly rejected each and every one of
4 them. At the very inception of access charges back in 1984, the ILEC industry
5 argued that “enhanced service providers” (forerunners of today's ISPs) used the
6 local network for originating and terminating jurisdictionally interstate traffic and
7 should therefore pay access charges just like IXCs. The FCC said no. (CC
8 Docket 78-72 *Memorandum Opinion and Order*, 97 FCC 2d at 711-12.) The FCC
9 conducted a further proposed rulemaking on this issue in 1987 and 1988. It again
10 concluded that IXCs were different from ISPs, and that ISPs should not pay access
11 charges. (CC Docket 87-215, *Order*, 3 FCC Rcd at 2632-33.) The issue arose
12 again following passage of TA96; in proposing to reform access charges in
13 December 1996, the FCC asked again whether ISPs should pay access charges like
14 IXCs do. Again — and over vigorous opposition from the ILECs — the FCC
15 affirmed in May 1997 that ISPs are properly viewed as end users with regard to
16 their connections to the local network, and so would not pay access charges.
17 (*Access Reform Order, supra*, 12 FCC Rcd 15982, at ¶¶ 341-48.) The ILECs took
18 the FCC to court on this issue, and the 8th Circuit ruled in August 1998 that ISPs
19 were different from IXCs, and that the FCC's ban on ISPs paying access charges
20 was lawful. And in issuing its February 1999 *Declaratory Ruling* on compensation
21 for ISP-bound calls, the FCC took pains to repeat that nothing in its order affected
22 the fact that ISPs do not pay access charges. The fact that ISP-bound calls “look

1 like” local calls is not the result of accident or oversight. It is the result of
2 conscious and consistent policy decisions by the FCC.

3

4 Q. What is the economic significance of the fact that ISPs do not pay access charges?

5

6 A. It means that in economic terms, ISP-bound calls are “local” in nature. From the
7 consumer's perspective, an ISP-bound call is dialed just like any other local call.

8 Also from the consumer's perspective, an ISP-bound call is covered under whatever

9 local calling plan the consumer has chosen from his or her LEC. If the ISP's

10 phone number is outside the consumer's local calling area, then toll charges apply.

11 If it is within the consumer's local calling area but the consumer has elected to

12 take measured local service, then measured local service rates apply. From the

13 consumer's perspective, *there is no distinction between a local call placed to an*

14 *ISP and a local call placed to a neighbor*; both are dialed in the same manner,

15 priced in the same manner, and are included or not included in the consumer's

16 local calling area on exactly the same basis.

17

18 From the ISP's perspective, these calls are delivered over local exchange lines

19 (typically ISDN PRI circuits) obtained from a LEC. Also from the ISP's

20 perspective, because it is extremely rare for a local exchange customer to be

21 charged for *incoming* local calls, the ISP is not charged for the calls that it

22 receives from its own users.

23

1 By contrast, if ISPs *did* pay per-minute access charges just like IXC's do, the entire
2 controversy over compensation for ISP-bound calling would not exist. The LEC
3 serving the ISP would charge per-minute access charges. Under well-established
4 "meet point billing" rules, either the LEC serving the ISP would charge full-bore
5 access rates, including switching, transport and carrier common line — and share
6 those with the originating LEC — or the terminating LEC would charge the ISP
7 for its own activities and allow the originating LEC to separately bill the ISP for
8 *its* activities. While requiring ISPs to pay access charges would probably be
9 devastating to the ISP industry and to the growth and usefulness of the Internet, it
10 would completely solve the problem of inter-carrier compensation for these calls.

11

12 The only reason that problem exists, in fact, is that — as noted above — ISP-
13 bound calls are "local" calls from a practical and economic perspective, yet
14 apparently are "interstate" calls from a legal, jurisdictional perspective. From my
15 perspective as an economist, ILEC resistance to paying reciprocal compensation for
16 these calls amounts to an effort to exploit a legalistic loophole to reach an
17 economically nonsensical result.

18

19 Q. Does the FCC agree with you?

20

21 A. Yes, I believe that it does, as I will discuss more fully in the next section of my
22 testimony.

23

1 **The FCC's Approach To Compensation For ISP-Bound Calls**

2

3 Q. Please summarize your understanding of the FCC's approach to compensation for
4 ISP-bound calls.

5

6 A. The FCC has held since 1983 that calls placed to “enhanced service providers” —
7 the predecessors to today's ISPs — were jurisdictionally interstate. It has held in a
8 number of contexts, however, that ISPs should be treated as ordinary business end
9 users and that ISP-bound calls should be treated as local.

10

11 When the FCC was confronted with implementing the *Telecommunications Act of*
12 *1996*, it concluded (in August 1996) that the reciprocal compensation provisions of
13 the Act were intended to cover local calls. I would note that nothing in Section
14 251(b)(5) actually *says* that compensation is limited to local calls. At the time,
15 however, there was a major controversy (that continues in various ways today)
16 about whether and to what extent the general requirements in Sections 251 and 252
17 of the Act to establish cost-based rates apply to the obviously non-cost-based
18 access charges that ILECs have established for both interstate and intrastate toll
19 traffic. I believe that this is what the FCC probably had in mind when it held that
20 only “local” traffic (that is, traffic to which access charges do not apply) was
21 subject to reciprocal compensation obligations.

22

1 But the FCC said what it said. And by mid-1997, the controversy over
2 compensation for ISP-bound calls had reached the FCC for resolution. ILECs
3 argued that the fact that ISP-bound calls were “really” interstate meant that
4 reciprocal compensation could not apply. Many CLECs argued that ISP-bound
5 calls were *not* “really” interstate at all; others argued that, interstate or not, the
6 FCC could still apply the reciprocal compensation requirement to these calls.

7

8 The FCC's consideration of this issue was greatly complicated by the fact that it
9 took place mainly during the time that the 8th Circuit's ruling limiting FCC
10 involvement in local interconnection matters was in place. Under that ruling
11 (which was subsequently overturned by the US Supreme Court) and generally
12 speaking, the FCC had only limited authority to establish binding rules for how
13 states have to handle particular interconnection questions. So while the
14 controversy started with both sides basically assuming that whatever the answer
15 was, the FCC was the body to give the answer, the FCC's actual decision (so far)
16 in the *Declaratory Ruling* could not be that direct. (Of course, now that the
17 Supreme Court has reaffirmed the FCC's authority to set rules under the 1996 Act,
18 it is widely expected that the FCC will issue rules that will determine how this
19 issue is to be handled in the future.)

20

21 Q. What did the February 1999 *Declaratory Ruling* say?

22

1 A. Basically, the FCC did four things. First, it reaffirmed its view that ISP-bound
2 calling, in the main, was indeed jurisdictionally interstate. Second, it determined
3 that ISP-bound calling was unique: there was “no rule” then in place that applied
4 to it. Third, based upon that conclusion, the FCC initiated a rulemaking
5 proceeding to establish a rule. Fourth, the FCC provided some guidance to state
6 commissions facing the questions of interpreting existing interconnection
7 agreements and/or establishing rules to apply in the absence of those agreements.

8
9 The dispute in which this testimony is being filed involves interpretation of an
10 existing agreement.

11
12 Q. What did the FCC say about that question?

13
14 A. Basically, the FCC identified a number of factors that state commissions should
15 consider in trying to ascertain whether an existing interconnection agreement
16 should reasonably be interpreted as encompassing ISP-bound calls within the scope
17 of “local” traffic as to which compensation is due under the agreement. The
18 reasonableness of this approach can be seen by considering the seven factors that
19 the FCC identified as relevant to the interpretation of interconnection agreements
20 in paragraph 24 of the *Declaratory Ruling*. Those factors are:

21
22 (1) the negotiation of the agreements in the context of this Commission’s
23 longstanding policy of treating this traffic as local;

- 1 (2) the conduct of the parties pursuant to those agreements;
2
- 3 (3) whether incumbent LECs serving ESPs (including ISPs) have done so out
4 of intrastate or interstate tariffs;
5
- 6 (4) whether revenues associated with those services were counted as intrastate
7 or interstate revenues;
8
- 9 (5) whether there is evidence that incumbent LECs or CLECs made any effort
10 to meter this traffic or otherwise segregate it from local traffic,
11 particularly for the purpose of billing one another for reciprocal
12 compensation;
13
- 14 (6) whether, in jurisdictions where incumbent LECs bill their end users by
15 message units, incumbent LECs have included calls to ISPs in local
16 telephone charges; and
17
- 18 (7) whether, if ISP traffic is not treated as local and subject to reciprocal
19 compensation, incumbent LECs and CLECs would be compensated for
20 this traffic.
21

22 In the remainder of my testimony, I provide evidence relevant to applying certain
23 of these factors to this case.

1 **Application of the FCC's factors in determining the nature of ISP-bound traffic**

2

3 Q. Before discussing any particular factor, do you have any general observations
4 about the FCC's seven factors?

5

6 A. Yes. As will be seen below, the FCC plainly understood that it had, itself, created
7 a long-standing regulatory context in which the “default” condition was to treat
8 ISP-bound calls as local. The FCC recognized, of course, that individual
9 contracting ILECs and CLECs could have agreed to treat ISP-bound calls
10 differently. But its discussion of the factors relevant to interpreting interconnection
11 agreements clearly shows that the FCC understood that *not* treating these calls as
12 “local” would have been a peculiar and unusual result.

13

14 Q. Please address the first factor identified by the FCC — the negotiation of the
15 agreements in the context of the FCC’s longstanding policy of treating this traffic
16 as local.

17

18 A. The FCC first directs states’ attention to the FCC's own regulatory policies
19 regarding ISPs and ISP-bound calls. As discussed above, those policies are quite
20 clear, and uniformly treat ISP-bound calls as local. The FCC clearly expects that
21 this factor will influence state commissions in interpreting particular inter-
22 connection agreements, and this factor clearly supports a conclusion that ISP-bound
23 calls should be treated as local.

1 Q. Please now address factor number five — whether there is evidence that incumbent
2 LECs or CLECs made any effort to meter the ISP-bound traffic or otherwise
3 segregate it from local traffic, particularly for the purpose of billing one another
4 for reciprocal compensation.

5

6 A. I am taking this one out of order because it is directly related to the overall
7 regulatory context of treating ISP-bound calls as local that the FCC had, itself,
8 established. In light of that regulatory context, while it is permissible for parties to
9 treat such calls in some other manner, the FCC understood that one would
10 logically expect some evidence on the face of the agreement itself demonstrating
11 that the parties had reached some different understanding regarding ISP-bound
12 calls. Factor number five suggests that state commissions should look to see if the
13 parties provided for some special, differential treatment for ISP-bound calls. While
14 I am not testifying here as to the precise language of the contract that Global
15 NAPs opted into with BellSouth, I am informed that nothing in that contract
16 separately identifies ISP-bound calls for separate treatment for purposes of
17 reciprocal compensation. The Commission, of course, has access to the agreement
18 itself and can confirm that fact in considering how to resolve this case. But from
19 my perspective, this factor, too, clearly supports treating ISP-bound calls as local.

20

21 Q. Please address factor number three — whether incumbent LECs serving ESPs
22 (including ISPs) have done so out of intrastate or interstate tariffs.

23

1 A. Factor number three asks whether the ILEC (here BellSouth) has served ISPs out
2 of interstate tariffs (indicating, presumably, a conscious effort to treat ISP-bound
3 traffic as interstate) or out of intrastate tariffs. Of course, the flip side of the
4 FCC's longstanding policies exempting ISPs from paying per-minute access
5 charges is an express federal obligation on ILECs to allow ISPs to purchase
6 intrastate-tariffed local business lines to receive intrastate-tariffed local calls from
7 their subscribers. While I have not conducted an exhaustive survey of how
8 BellSouth has served ISPs in Florida, it would appear that BellSouth serves its own
9 ISP affiliate, **bellsouth.net**, in precisely this manner — i.e., it treats calls placed
10 by its (telephone) subscribers to its ISP as local calls. BellSouth.net's web site
11 identifies local call availability in a number of Florida cities (see Attachment 2).
12 Where the ISP affiliate does not have a local dial-in number, the customer is
13 instructed as to how the service can nevertheless be reached on a local call basis.
14 For example, a customer in St. Augustine, upon entering his telephone number into
15 "availability" page on the BellSouth.net web site, is advised that the St. Augustine
16 telephone number "is not local to any dial-in site, but there may be an optional
17 plan that can be purchased to make it local to Jacksonville, FL at (904) 350-1090
18 ... Please contact your local telephone company's business office for further
19 information." See Attachment 3. In fact, a residence customer in St. Augustine
20 may purchase Enhanced Optional Extended Area Service providing flat-rate local
21 calling to Jacksonville for an additional \$10.85 per month. BellSouth Florida
22 General Subscriber Tariff, Original Page 40, Issued July 1, 1996, Effective July 15,
23 1996. Based upon this specific example as well as my general and substantial

1 experience in the industry, I can state that ISPs almost without exception exercise
2 their right to purchase intrastate-tariffed local business lines, precisely in order to
3 be able to receive local calls from their subscribers. This factor clearly supports
4 treating these calls as local.

5
6 Q. Please address factor number four — whether revenues associated with those
7 services were counted as intrastate or interstate revenues.

8
9 A. Factor number four is also not subject to any particular debate. The existing FCC
10 rule is that ILEC costs associated with handling ISP-bound calls are to be
11 separated to the intrastate jurisdiction. Indeed, at least two ILECs (Bell Atlantic
12 and Southwestern Bell) have asked for a waiver of the normal separations rules to
13 allow them to allocate such costs to the interstate jurisdiction, and both requests
14 have been denied by the FCC's Common Carrier Bureau. *See* Letter to Don
15 Evans, Vice President — Regulatory Advocacy, Bell Atlantic from Lawrence E.
16 Strickling, Chief, Common Carrier Bureau, Re: Separations Treatment of
17 Internet-Related Reciprocal Compensation (July, 29, 1999); Letter to Dale
18 Robertson, Sr. Vice President, SBC Communications, Inc. from Lawrence E.
19 Strickling, Chief, Common Carrier Bureau, Re: Separations Treatment of
20 ISP-Bound Traffic (May, 18, 1999). (In this regard, the FCC made a point of
21 stating the existing rule in the “proposed rulemaking” portion of the *Declaratory*
22 *Ruling*.) This factor clearly supports treating ISP-bound calls as local.

23

1 Q. Please address factor number six — whether, in jurisdictions where incumbent
2 LECs bill their end users by message units, incumbent LECs have included calls to
3 ISPs in local telephone charges.

4

5 A. Factor number six asks whether customers on message unit plans are charged
6 (local) message units when they call ISPs. From my examination of the BellSouth
7 Florida local service Tariff together with the local call availability information
8 contained on the bellsouth.net web site, it appears that in fact such message unit
9 charges would apply for local calling area calls to ISPs placed from message-rate
10 telephones, except of course if the call fell within the customer's monthly call
11 allowance, in which case it would be charged against that allowance. It is thus
12 clear that factor number six also supports the conclusion that ISP-bound calls
13 should be treated as "local."

14

15 Q. Please address factor number seven — whether, if ISP traffic is not treated as local
16 and subject to reciprocal compensation, incumbent LECs and CLECs would be
17 compensated for this traffic.

18

19 A. The concern being expressed by the FCC here is that if ISP-bound calls are *not*
20 subject to reciprocal compensation, they would then go entirely uncompensated
21 under the agreement. The basic economic point is that it is unlikely that rational
22 contracting parties would have left a significant category of traffic unaccounted for
23 (factor 5) and uncompensated (factor 7) in an agreement that otherwise

1 comprehensively covers compensation arrangements for traffic to be exchanged
2 between the parties. As with factor 5, whether or not there is any other
3 arrangement for compensating either party for handling ISP-bound calls if they are
4 not treated as local is apparent from the face of the agreement, which is before the
5 Commission. Subject of course to the Commission's own review, however, I am
6 informed and understand that the agreement contains no alternative means for
7 compensating either party for ISP-bound calls, if such calls are not treated as local.
8 This factor, too, therefore, supports a conclusion that ISP-bound calls are to be
9 treated as "local."

10

11 Q. What does your review of the factors identified by the FCC suggest about the
12 proper interpretation of the BellSouth/Global NAPs interconnection agreement?

13

14 A. Clearly, those factors overwhelmingly support the conclusion that ISP-bound calls
15 should be treated as local under that agreement.

16

17 Q. You said earlier that the FCC clearly thought that an arrangement under which
18 ISP-bound calls would *not* be treated as local would be unusual. Aside from the
19 factors that the FCC has itself identified as relevant to interpreting interconnection
20 agreements and which you have just discussed, is there any other basis for that
21 conclusion?

22

1 A. Yes. One of the key points that the FCC made in the *Declaratory Ruling* was that
2 nothing in that ruling was intended to set aside or upset the results reached by any
3 state commission that had considered the question of ISP-bound calling prior to the
4 time of that decision. It could not have been lost on the FCC that as of that time,
5 of the more than two dozen states that had addressed the question, *every one* had
6 concluded that ISP-bound calls should be treated as local and be subject to
7 reciprocal compensation. If the FCC had any substantive difficulty with this
8 treatment of what it itself pointedly classified as interstate traffic, it seems quite
9 likely to me that it would have indicated its displeasure with that substantive
10 result. And, of course, not only did the FCC not do that, it affirmatively invited
11 state regulators to continue to address that question — and to reach the same
12 answer — as long as the state-level reasoning did not conflict with the FCC's own
13 views of its own regulatory authority over ISP-bound calls.

14
15 Q. How have state regulators addressed this question since the time the *Declaratory*
16 *Ruling* was issued?

17
18 A. The vast majority of states to address the question since that time have concluded
19 (typically in the context of interpreting individual contracts) that compensation for
20 ISP-bound calls is required. A handful of states have (erroneously, in my view)
21 indicated that such calls are not necessarily subject to compensation, at least until
22 the FCC takes further action in the ongoing rulemaking proceeding.

23

1 Q. Are any of the various decisions from other states relevant here?

2

3 A. One must always be careful in uncritically importing the results of one state's
4 regulatory proceedings into another state's regulatory system: at a minimum, the
5 policies underlying the other states' decisions should be considered. But in this
6 case there is a particularly relevant ruling from another state, Alabama. In
7 Alabama, BellSouth and DeltaCom (the original party to the contract that Global
8 NAPs "opted into" in this case) litigated the precise question of whether the
9 language of what I understand to be the very same contract at issue here
10 encompassed ISP-bound calling within the scope of local traffic subject to
11 reciprocal compensation. The Alabama PSC — acting *after* the FCC's *Declaratory*
12 *Ruling* was issued — concluded that this very same contract did, indeed,
13 contemplate treating ISP-bound calls as "local" for compensation purposes.

14

15 I am not an attorney, and so I have no view on whether the Alabama PSC's
16 decision is in any formal way "binding" on this Commission. But in practical
17 terms, it would seem to me that the Alabama decision would be highly instructive
18 here.

19

20 Q. Does this conclude your direct testimony at this time?

21

22 A. Yes, it does.

EXHIBIT LLS-1
Dr. Lee L. Selwyn
Docket No. 991267-TP

Attachment 1

Statement of Qualifications

DR. LEE L. SELWYN

Attachment 1**Statement of Qualifications****DR. LEE L. SELWYN**

Dr. Lee L. Selwyn has been actively involved in the telecommunications field for more than twenty-five years, and is an internationally recognized authority on telecommunications regulation, economics and public policy. Dr. Selwyn founded the firm of Economics and Technology, Inc. in 1972, and has served as its President since that date. He received his Ph.D. degree from the Alfred P. Sloan School of Management at the Massachusetts Institute of Technology. He also holds a Master of Science degree in Industrial Management from MIT and a Bachelor of Arts degree with honors in Economics from Queens College of the City University of New York.

Dr. Selwyn has testified as an expert on rate design, service cost analysis, form of regulation, and other telecommunications policy issues in telecommunications regulatory proceedings before some forty state commissions, the Federal Communications Commission and the Canadian Radio-television and Telecommunications Commission, among others. He has appeared as a witness on behalf of commercial organizations, non-profit institutions, as well as local, state and federal government authorities responsible for telecommunications regulation and consumer advocacy.

He has served or is now serving as a consultant to numerous state utilities commissions including those in Arizona, Minnesota, Kansas, Kentucky, the District of Columbia, Connecticut, California, Delaware, Maine, Massachusetts, New Hampshire, Vermont, New Mexico, Wisconsin and Washington State, the Office of Telecommunications Policy (Executive Office of the President), the National Telecommunications and Information Administration, the Federal Communications Commission, the Canadian Radio-television and Telecommunications Commission, the United Kingdom Office of Telecommunications, and the Secretaria de Comunicaciones y Transportes of the Republic of Mexico. He has also served as an advisor on telecommunications regulatory matters to the International Communications Association and the Ad Hoc Telecommunications Users Committee, as well as to a number of major corporate telecommunications users, information services providers, paging and cellular carriers, and specialized access services carriers.

Dr. Selwyn has presented testimony as an invited witness before the U.S. House of Representatives Subcommittee on Telecommunications, Consumer Protection and Finance and before the U.S. Senate Judiciary Committee, on subjects dealing with restructuring and deregulation of portions of the telecommunications industry.

In 1970, he was awarded a Post-Doctoral Research Grant in Public Utility Economics under a program sponsored by the American Telephone and Telegraph Company, to conduct research on the economic effects of telephone rate structures upon the computer time sharing industry. This work was conducted at Harvard University's Program on Technology and Society, where he was appointed as a Research Associate. Dr. Selwyn was also a member of the faculty at the College of Business Administration at Boston University from 1968 until 1973, where he taught courses in economics, finance and management information systems.

Dr. Selwyn has published numerous papers and articles in professional and trade journals on the subject of telecommunications service regulation, cost methodology, rate design and pricing policy. These have included:

"Taxes, Corporate Financial Policy and Return to Investors"
National Tax Journal, Vol. XX, No.4, December 1967.

"Pricing Telephone Terminal Equipment Under Competition"
Public Utilities Fortnightly, December 8, 1977.

"Deregulation, Competition, and Regulatory Responsibility in the Telecommunications Industry"
Presented at the 1979 Rate Symposium on Problems of Regulated Industries — Sponsored by: The American University, Foster Associates, Inc., Missouri Public Service Commission, University of Missouri-Columbia, Kansas City, MO, February 11 — 14, 1979.

"Sifting Out the Economic Costs of Terminal Equipment Services"
Telephone Engineer and Management, October 15, 1979.

"Usage-Sensitive Pricing" (with G. F. Borton)
(a three part series)
Telephony, January 7, 28, February 11, 1980.

"Perspectives on Usage-Sensitive Pricing"
Public Utilities Fortnightly, May 7, 1981.

"Diversification, Deregulation, and Increased Uncertainty in the Public Utility Industries"

Comments Presented at the Thirteenth Annual Conference of the Institute of Public Utilities, Williamsburg, VA — December 14 — 16, 1981.

"Local Telephone Pricing: Is There a Better Way?; The Costs of LMS Exceed its Benefits: a Report on Recent U.S. Experience."

Proceedings of a conference held at Montreal, Quebec — Sponsored by Canadian Radio-Television and Telecommunications Commission and The Centre for the Study of Regulated Industries, McGill University, May 2 — 4, 1984.

"Long-Run Regulation of AT&T: A Key Element of A Competitive Telecommunications Policy"

Telematics, August 1984.

"Is Equal Access an Adequate Justification for Removing Restrictions on BOC Diversification?"

Presented at the Institute of Public Utilities Eighteenth Annual Conference, Williamsburg, VA — December 8 — 10, 1986.

"Market Power and Competition Under an Equal Access Environment"

Presented at the Sixteenth Annual Conference, "Impact of Deregulation and Market Forces on Public Utilities: The Future Role of Regulation" Institute of Public Utilities, Michigan State University, Williamsburg, VA — December 3 — 5, 1987.

"Contestable Markets: Theory vs. Fact"

Presented at the Conference on Current Issues in Telephone Regulations: Dominance and Cost Allocation in Interexchange Markets — Center for Legal and Regulatory Studies Department of Management Science and Information Systems — Graduate School of Business, University of Texas at Austin, October 5, 1987.

"The Sources and Exercise of Market Power in the Market for Interexchange Telecommunications Services"

Presented at the Nineteenth Annual Conference — "Alternatives to Traditional Regulation: Options for Reform" — Institute of Public Utilities, Michigan State University, Williamsburg, VA, December, 1987.

"Assessing Market Power and Competition in The Telecommunications Industry: Toward an Empirical Foundation for Regulatory Reform"

Federal Communications Law Journal, Vol. 40 Num. 2, April 1988.

"A Perspective on Price Caps as a Substitute for Traditional Revenue Requirements Regulation"

Presented at the Twentieth Annual Conference — "New Regulatory Concepts, Issues and Controversies" — Institute of Public Utilities, Michigan State University, Williamsburg, VA, December, 1988.

"The Sustainability of Competition in Light of New Technologies" (with D. N. Townsend and P. D. Kravtin)

Presented at the Twentieth Annual Conference — Institute of Public Utilities Michigan State University, Williamsburg, VA, December, 1988.

"Adapting Telecom Regulation to Industry Change: Promoting Development Without Compromising Ratepayer Protection" (with S. C. Lundquist)
IEEE Communications Magazine, January, 1989.

"The Role of Cost Based Pricing of Telecommunications Services in the Age of Technology and Competition"

Presented at National Regulatory Research Institute Conference, Seattle, July 20, 1990.

"A Public Good/Private Good Framework for Identifying POTS Objectives for the Public Switched Network" (with Patricia D. Kravtin and Paul S. Keller)
Columbus, Ohio: *National Regulatory Research Institute*, September 1991.

"Telecommunications Regulation and Infrastructure Development: Alternative Models for the Public/Private Partnership"

Prepared for the Economic Symposium of the International Telecommunications Union Europe Telecom '92 Conference, Budapest, Hungary, October 15, 1992.

"Efficient Infrastructure Development and the Local Telephone Company's Role in Competitive Industry Environment" *Presented at the Twenty-Fourth Annual Conference, Institute of Public Utilities, Graduate School of Business, Michigan State University, "Shifting Boundaries between Regulation and Competition in Telecommunications and Energy", Williamsburg, VA, December 1992.*

"Measurement of Telecommunications Productivity: Methods, Applications and Limitations" (with Françoise M. Clottes)

Presented at Organisation for Economic Cooperation and Development, Working Party on Telecommunication and Information Services Policies, '93 Conference "Defining Performance Indicators for Competitive Telecommunications Markets", Paris, France, February 8-9, 1993.

"Telecommunications Investment and Economic Development: Achieving efficiency and balance among competing public policy and stakeholder interests"

Presented at the 105th Annual Convention and Regulatory Symposium, National Association of Regulatory Utility Commissioners, New York, November 18, 1993.

"The Potential for Competition in the Market for Local Telephone Services" (with David N. Townsend and Paul S. Keller), presented at *Organization for Economic Cooperation and Development Workshop on Telecommunication Infrastructure Competition, December 6-7, 1993.*

"Market Failure in Open Telecommunications Networks: Defining the new natural monopoly," *Utilities Policy*, Vol. 4, No. 1, January 1994.

"The Enduring Local Bottleneck: Monopoly Power and the Local Exchange Carriers," (with Susan M. Gately, et al) report prepared by ETI and Hatfield Associates, Inc. for AT&T, MCI and CompTel, February 1994.

"Commercially Feasible Resale of Local Telecommunications Services: An Essential Step in the Transition to Effective Local Competition," (Susan M. Gately, et al) a report prepared by ETI for AT&T, July 1995.

"Efficient Public Investment in Telecommunications Infrastructure" *Land Economics*, Vol 71, No.3, August 1995.

"Market Failure in Open Telecommunications Networks: Defining the new natural monopoly," in *Networks, Infrastructure, and the New Task for Regulation*, by Werner Sichel and Donal L. Alexander, eds., University of Michigan Press, 1996.

Dr. Selwyn has been an invited speaker at numerous seminars and conferences on telecommunications regulation and policy, including meetings and workshops sponsored by the National Telecommunications and Information Administration, the National Association of Regulatory Utility Commissioners, the U.S. General Services Administration, the Institute of Public Utilities at Michigan State University, the National Regulatory Research Institute at Ohio State University, the Harvard University Program

on Information Resources Policy, the Columbia University Institute for Tele-Information, the International Communications Association, the Tele-Communications Association, the Western Conference of Public Service Commissioners, at the New England, Mid-America, Southern and Western regional PUC/PSC conferences, as well as at numerous conferences and workshops sponsored by individual regulatory agencies.

EXHIBIT LLS-2
Dr. Lee L. Selwyn
Docket No. 991267-TP

Attachment 2

**bellsouth.net dial-in access numbers
for Florida**



BellSouth Products | Become A Member!

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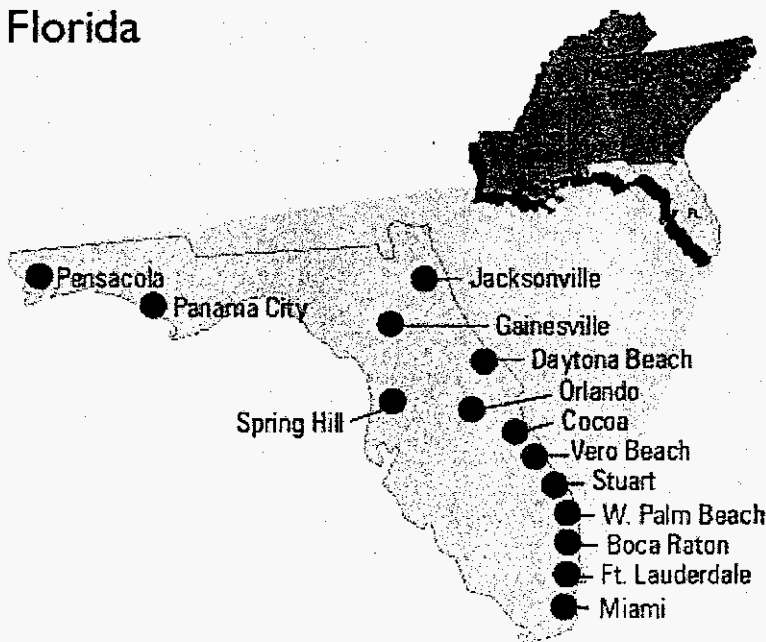
BELLSOUTH.net®

City Availability

BellSouth.net Dial-in Access Numbers

Click on your local area to get the local dial-in number
The number to dial in to will be displayed on another page so you can easily print it out.

Florida



Before dialing any number, check with your phone company to find out if you will incur any toll charges. BellSouth will not reimburse customers for any long distance toll charges associated with connecting to BellSouth.net service.

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EXHIBIT LLS-3
Dr. Lee L. Selwyn
Docket No. 991267-TP

Attachment 3

**bellsouth.net dial-in instructions
for a hypothetical customer in St. Augustine**

| [BellSouth Products](#) | [Become A Member!](#) |[Home](#)**BELLSOUTH**.net **City Availability****BellSouth.net Dial-in Numbers for Your Neighborhood**

The dial-in numbers provided are for BellSouth.net members only. If you are not a BellSouth.net member, but would like to become one, you can sign up now.

Results:

(904) 829- is not local to any dial-in site, but there may be an optional plan that can be purchased to make it local to Jacksonville, FL at (904) 350-1090 (ISDN dailup available at (904) 353-1333). Please contact your local telephone company's business office for further information.

Before dialing any number, check with your phone company to find out if you will incur any toll charges. BellSouth will not reimburse customers for any long distance toll charges associated with connecting to BellSouth.net service.

Find out how to Change Your Dialer

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Note: Only members with ISDN equipment installed at their location will be able to use the ISDN dial-in numbers.

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ECONOMICS AND
TECHNOLOGY, INC.

ONE WASHINGTON MALL
BOSTON, MASSACHUSETTS 02108-2617