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May 9, 2000

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. 991267-TP (Global NAPS Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration, which we ask that you file in the captioned docket.

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.

Sincerely,


Michael P. Goggin

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

05762 MAY-98

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 991267-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 9th day of May, 2000 to the following:

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Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:)
) Docket No. 991267-TP
Complaint of Global NAPs, Inc., against)
BellSouth Telecommunications, Inc. for)
Enforcement of Section VI(B) of its)
Interconnection Agreement with BellSouth)
Telecommunications, Inc. and Request for Relief) Filed: May 9, 2000
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR RECONSIDERATION**

On April 24, 2000, the Florida Public Service Commission ("Commission") entered a Final Order on Complaint (Order No. PSC-00-0802-FOF-TP) ruling that, under the terms of the Interconnection Agreement between BellSouth and Global NAPs, Inc. ("GNAPS"), BellSouth owed GNAPS reciprocal compensation for traffic bound for the Internet through Internet Service Providers ("ISPs"). In rendering its ruling, the Commission failed to consider, or overlooked, salient points of fact and law. This failure resulted in the Commission rendering a decision that was: (1) based on facts outside the record that have yet to be, and may never be, established, thus rendering the decision inconsistent on its face; (2) contrary to the law of the case as established by the Pre-Hearing Officer; and (3) directly contrary to federal law. Therefore, in accordance with the provisions of Rule 25-22.060, *Florida Administrative Code*, BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Commission reconsider its decision in the April 24, 2000 Final Order on Complaint.

ARGUMENT

A. The Commission's Decision is Based on Facts Outside the Record, which have not been Established, Thus Rendering the Decision Inconsistent on its Face.

In interpreting the GNAPS/BellSouth Interconnection Agreement, the Commission determined that an opt-in agreement under §252(i) of the Telecommunications Act of 1996 cannot have a different interpretation than the original interconnection agreement. The Commission ruled:

... we do not believe that the intent of the parties at the time of the adoption is the relevant intent when interpreting an Agreement adopted pursuant to Section 252(i) of the Act. Rather, we believe the intent of the original parties is the determining factor when the Agreement language is not clear. Otherwise, original and adopting parties to an Agreement could receive differing interpretations of the same Agreement, which is not consistent with the purpose of Section 252(i) of the Act.

Final Order on Complaint, at 7-8. In this instance, the Commission's interpretation of Section 252(i) causes two fundamental inconsistencies within the Final Order on Complaint.

First, the GNAPS/BellSouth Interconnection Agreement is a Section 252(i) opt-in of the Interconnection Agreement between BellSouth and ITC^DeltaCom Communications, Inc. ("DeltaCom"). By the Commission's logic, the GNAPS/BellSouth Interconnection Agreement must be interpreted consistent with the original DeltaCom/BellSouth Interconnection Agreement. The reciprocal compensation provisions of the DeltaCom/BellSouth Interconnection Agreement, however, have never been interpreted by the Commission.¹ Thus, the Commission has either: (1) pre-

¹ The Commission will not have an opportunity to interpret the reciprocal compensation provisions of the DeltaCom/BellSouth Interconnection Agreement until the hearing, which is currently set for August 2000.

determined the outcome of the decision to be rendered in the DeltaCom complaint proceeding, which violates BellSouth's fundamental due process rights to present evidence/testimony in that proceeding; or (2) potentially violated its own interpretation of Section 252(i) by ordering BellSouth to pay reciprocal compensation under the GNAPS/BellSouth Interconnection Agreement when such a requirement has not been placed on BellSouth under the provisions of the DeltaCom/BellSouth Interconnection Agreement, and may never be placed depending on the Commission's ultimate decision in the DeltaCom complaint proceeding. At a minimum, even under the Commission's interpretation of Section 252(i), no final decision should be rendered in this proceeding until such time as the Commission has reached a decision in the DeltaCom complaint proceeding.

Second, as explained more fully below, this entire proceeding was conducted under the premise that the GNAPS/BellSouth Interconnection Agreement was to be interpreted separate and apart from the DeltaCom/BellSouth Interconnection Agreement. Thus, the Commission's interpretation of Section 252(i) is contrary to the law of the case as established by the Pre-Hearing Officer.

B. The Commission's Decision is Contrary to the Law of the Case and the Analysis Employed in Prior Decisions of the Commission.

1. The Law of the Case.

On December 23, 1999, the Pre-Hearing Officer entered an Order Denying Intervention (Order No. PSC-99-2526-PCO-TP) in this proceeding directed to a Petition to Intervene filed by DeltaCom. The Pre-Hearing Officer considered, and then rejected,

DeltaCom's assertion that "it must be allowed to intervene because any decision in this proceeding will ultimately impact future interpretations of this same agreement." Order Denying Intervention, at 1. Likewise, the Pre-Hearing Officer rejected GNAPS argument that DeltaCom's "substantial interests will be affected because the terms of the agreement that [DeltaCom] negotiated with BellSouth are at issue in this case." *Id.*, at 2. Consequently, both parties prepared for and conducted this proceeding in accordance with the Pre-Hearing Officer's determination that:

Furthermore, even though GNAPs may have adopted the [DeltaCom]/BellSouth agreement, the agreement at issue is now the GNAPs/BellSouth agreement. ... Although many or all of the terms in the agreement may be the same as those found in the [DeltaCom]/BellSouth agreement, *our decision in this case will consider only the GNAPs/BellSouth agreement and evidence relevant to that agreement. Our final decision will apply only to GNAPs and BellSouth. Therefore, any decision in this case will be based on evidence presented by the parties to this case and as such, will have no precedential value for any other case involving the same terms and conditions of an agreement between different parties...*

Although the terms in the GNAPs/BellSouth agreement are identical to the terms in the [DeltaCom]/BellSouth agreement, the agreement at issue in this case is only the GNAPs/BellSouth agreement.

Id., at 5, 6. (Emphasis Added)

Clearly, the Commission's determination in the Final Order on Complaint that: (1) the GNAPS/BellSouth Interconnection Agreement and the DeltaCom/BellSouth Interconnection Agreement must be interpreted the same; and, (2) the ultimate conclusion that BellSouth owes reciprocal compensation under the terms of the GNAPS/BellSouth Interconnection Agreement, cannot be reconciled with the Pre-Hearing Officer's directive in the Order Denying Intervention. In effect, the Commission

changed the legal and evidentiary standard upon which this case was considered, without affording BellSouth fundamental due process rights to address the intent of the parties in negotiating and executing the DeltaCom/BellSouth Interconnection Agreement.²

If the Commission's policy is to interpret Section 252(i) opt-in agreements based on the original Interconnection Agreement without consideration of the intent of the parties at the time of the opt-in, then the Parties should have been advised of that standard from the outset. As the parties were not so advised, the Commission, at a minimum, should order a re-hearing at which BellSouth is afforded the opportunity to present witnesses and evidence concerning the DeltaCom/BellSouth Interconnection Agreement.

2. Prior ISP Decisions of the Commission.

In a departure from prior Commission decisions regarding reciprocal compensation for ISP traffic under the terms of interconnection agreements³, the Commission in this proceeding determined that evidence of the parties' intent was not needed to interpret the Interconnection Agreement. In previous ISP decisions, however, the Commission's analysis was focused significantly on evidence concerning whether the parties intended to treat ISP traffic as if it were local traffic:

Accordingly, in this decision we only address the issue of whether ISP traffic should be treated as local or interstate for purposes of reciprocal compensation as necessary to show what the parties might reasonably

² As demonstrated by the Affidavit of Jerry Hendrix, attached hereto as Exhibit A, BellSouth has evidence that is relevant to the negotiation and execution of the DeltaCom/BellSouth Interconnection Agreement.

³ See Order No. PSC-98-1216-FOF-TP issued September 15, 1998 in consolidated Docket Nos. 971478-TP, 980184-TP, 980495-TP and 980499-TP (hereinafter "WorldCom Order") and Order No. PSC-99-0658-FOF-TP issued April 6, 1999 in Docket No. 981008 (hereinafter "e.spire Order").

have intended at the time they entered into their contracts. Our decision does not address any generic questions about the ultimate nature of ISP traffic for reciprocal compensation purposes, or for any other purposes. (WorldCom Order, at 5.)

Nevertheless, it is not necessary for us to determine the jurisdictional nature of this traffic in order to resolve this complaint. We only need to determine the intent of the parties regarding ISP traffic during the negotiation of their Agreement. Therefore, we have considered these arguments only to the extent that they relate to the parties' intent at the time they entered into the agreement. (e.spire Order, at 8-9.)

What is perplexing is the fact that, after ruling that the extrinsic evidence of the intent of the parties was unnecessary, the Commission based a significant portion of its analysis on assumptions gleaned from facts allegedly reflecting the intent of the parties. For example, the Commission criticized BellSouth for not refusing to permit GNAPs to adopt the agreement without modifying or amending it first.⁴ The Commission clearly interpreted BellSouth's failure to modify the GNAPS/BellSouth Interconnection Agreement as an acknowledgment that ISP traffic is local traffic. The Commission's interpretation is not only based on erroneous facts, it completely misconstrued BellSouth's obligations and responsibilities under Section 252(i), and imposed a burden on BellSouth to modify an agreement that BellSouth cannot modify under federal law.⁵

⁴ See, Final Order on Complaint, at 5 ("Witness Shiroishi agrees that the clarifying language was never incorporated as an amendment to the agreement adopted by GNAPs..."); Final Order on Complaint, at 7 ("BellSouth never modified the Agreement adopted by GNAPs to reflect its position ... even though BellSouth's witness Shiroishi indicated that BellSouth had developed such an amendment."); and, Final Order on Complaint, at 12 ("while a rate structure other than reciprocal compensation could have been used in the Agreement, it was not. The rate in the Agreement was set before GNAPs adopted it and was not modified by GNAPs and BellSouth.").

⁵ BellSouth believes that the Commission would be seriously concerned by a complaint proceeding brought by an ALEC alleging that BellSouth refused to allow that ALEC to exercise Section 252(i) adoption rights unless that ALEC acquiesced to BellSouth imposed amendments. However, by finding that BellSouth's failure to object to such an adoption in this case demonstrates an intent by BellSouth to acquiesce in GNAPs interpretation of "local traffic," the Commission appears to encourage BellSouth to insist on modification as a condition of adoption.

Further, it is indisputable that BellSouth would have prevailed in this proceeding if the Commission had applied the analysis from the WorldCom Order and e.spire Order, as BellSouth clearly did not intend to treat ISP traffic as if it were local traffic under the terms of the GNAPS/BellSouth Interconnection Agreement. Although not referenced in the Final Order on Complaint, GNAPS admitted that it was aware of BellSouth's intent not to treat ISP traffic as if it were local traffic under the terms of the GNAPS/BellSouth Interconnection Agreement. TR (Volume I), at 31. The Commission also seems to infer negative intent by BellSouth based on an erroneous assumption that BellSouth did not develop language clarifying BellSouth's position until after the GNAPS/BellSouth Interconnection Agreement was executed. Final Order on Complaint, at 5. The Commission's conclusion is inconsistent with the facts of the case. In her direct testimony, BellSouth witness Shiroishi testified that "GNAPs adopted the July 1, 1997, BellSouth/DeltaCom Interconnection Agreement to circumvent negotiating with BellSouth on the reciprocal compensation issue and to avoid the standard reciprocal compensation language proposed by BellSouth." TR (Volume II), at 219. Ms. Shiroishi explained further that "[f]ollowing our normal procedures, BellSouth mailed to Global NAPs a copy of our standard interconnection agreement which contained language that clarifies that ISP-bound traffic is neither local nor subject to reciprocal compensation." *Id.*, at 235. GNAPS acknowledged that it received the standard interconnection agreement prior to opting into the DeltaCom/BellSouth Interconnection Agreement. *Id.*, at 26.

3. Conclusion

The Commission's failure to consider the intent of the parties departed from the precedent established by the Commission in previous ISP proceedings and is counter to the reasoning of the Order Denying Intervention, which set forth the parameters under which the hearing was conducted. BellSouth was unfairly prejudiced by the Commission's departure from the law of the case as established by the Order Denying Intervention. In addition, the Commission's decision is based on erroneous facts and misapplication of federal law. Therefore, BellSouth respectfully requests that the Commission reconsider its Final Order on Complaint and render a decision in BellSouth's favor or, at a minimum, order a new hearing after the conclusion of the DeltaCom compliant proceeding.

C. **The Commission's Finding that ISP Traffic is Local Traffic Violates Federal Law.**

BellSouth agrees with the Commission's finding that "the language in the Agreement adopted by GNAPs is clear and only calls for reciprocal compensation for local traffic." Final Order on Complaint, at 6. That finding alone should have resulted in a decision in BellSouth's favor based on a plethora of FCC Orders confirming that ISP traffic is, in fact, interstate exchange access traffic.⁶

⁶ BellSouth will not recite the litany of FCC cases confirming that ISP traffic is interstate exchange access service, most of which were discussed at the hearing, but instead adopts and incorporates by reference BellSouth's Brief of Law and the Evidence, filed February 15, 2000, and the hearing record to the extent those FCC cases were discussed. BellSouth notes, however, that the vacatur of the FCC's February 26, 1999 Declaratory Order by the Court of Appeals does not disturb the many decisions prior to and after that order in which the FCC found that ISP bound traffic is interstate access traffic. See, e.g. *MTS and WATS Market Structure*, CC Dkt. No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983); *Deployment of Wireline Services Offering Advance Telecommunications Capability*, CC Dkt. Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, Order on Remand, FCC Order 99-413 (Dec. 23, 1999) at 16-24.

In yet another critical deviation from its prior ISP decisions, however, the Commission made a legal determination in this proceeding that ISP traffic is, in fact, local traffic. As noted above, the Commission, in previous decisions, was careful to avoid the jurisdictional issue by concluding in those decisions that the parties *intended* to treat ISP traffic as *if* it were local traffic under the agreement. In the Final Order on Complaint, however, the Commission noted that, “[w]e emphasize, however, that the Agreement does not segregate traffic to ISPs *from the rest of local traffic.*” and that, “the plain language of the Agreement shows that the parties intended the payment of reciprocal compensation *for all local traffic, including traffic bound for ISPs.*” Final Order on Complaint, at 6 and 7. (Emphasis Added.) *See also, id.* at 12 (“we find that reciprocal compensation is due under the Agreement adopted by GNAPs for all local traffic, including traffic to ISPs, at the rate set forth in the Agreement.”).

Although BellSouth recognizes that a finding that ISP traffic is local traffic was necessary for the Commission to avoid the issue of the parties’ intent, such a finding is clearly contrary to FCC precedent. Thus, BellSouth respectfully contends that this erroneous legal conclusion compels the Commission reconsider its decision in the Final Order on Complaint.

D. The Commission’s Decision Would Have Far-reaching, Negative Consequences.

The Commission’s determination is also discriminatory from a regulatory policy perspective. There is no doubt that the Commission’s ruling in this matter on the interpretation of Section 252(i) interconnection agreements would result in those

agreements always being interpreted consistent with the original interconnection agreements. There are a number of ramifications that would result from such a policy that the Commission failed to consider. First, every dispute over the interpretation of a Section 252(i) opt-in interconnection agreement would require the Commission to interpret, by necessity, the original interconnection agreement, including evidence of the parties intent as to the specific provision in dispute. However, as noted by the Pre-Hearing Officer in the Order Denying Intervention:

Early in the arbitration proceedings brought before the Commission under the Act, it was determined that, pursuant to the Act, only the party requesting interconnection and the incumbent local exchange company may be parties to the arbitration proceeding.

...

That conclusion is also applicable to complaints arising from agreements approved by the Commission under the Act, whether they are entered into through negotiation of the parties or through the adoption process set forth in Section 252(i) of the Act. This same rationale has been employed by this Commission on numerous occasions in denying third party petitions to intervene in arbitration proceedings or in proceedings brought seeking performance under interconnection agreements. (citations omitted) The agreement, and thus, the dispute, is limited to two parties.

Order Denying Intervention, at 4 and 5. Based on the Commission's long-standing policy that prohibits intervention, the Commission will be making a substantive determination of the rights of the parties to the original interconnection agreement, (as well as any other ALEC that opted into that agreement) without providing any of those ALECs the opportunity to present evidence on their own behalf. At that point, the Commission must decide whether to: (1) violate the ALECs' due process rights; (2) reconsider the long-standing policy against intervention, which will certainly result in the ALEC that is the party to the original interconnection agreement and every ALEC that

has opted into the original interconnection agreement becoming parties to every complaint proceeding filed in the future; or (3) never enter a final order on a complaint proceeding until such time as the Commission interprets the original interconnection agreement, assuming a complaint is ever filed by that ALEC. Clearly, the Commission's newly announced policy on the interpretation of Section 252(i) opt-in agreements is replete with unpalatable consequences.

Further, the Commission's policy is clearly discriminatory against BellSouth. In those instances where BellSouth may have agreed to an interconnection agreement provision that is detrimental to BellSouth, BellSouth will be unable to rectify that mistake until such time as the original interconnection agreement expires. Every ALEC certificated in Florida will be able to take advantage of the mistake, irrespective of BellSouth's desire to rectify the situation. On the other hand, a comparable mistake by the original ALEC to the interconnection agreement will not be perpetuated as subsequent ALECs can take the original interconnection agreement without the undesirable provision, or simply replace the undesirable provision at their leisure from any other interconnection agreement approved by the Commission.

Finally, the Commission appears to have been greatly influenced by the Commission Staff's assurances that the GNAPS/BellSouth Interconnection Agreement has expired and, therefore, cannot be perpetuated. In fact, the Commission found that, "adopting an Agreement under Section 252(i) cannot perpetuate the terms of an agreement beyond the life of the original agreement." Final Order on Complaint, at 8. While in theory this may be true, in reality the Commission has been perpetuating the

reciprocal compensation provisions of interconnection agreements beyond the original term.

For example, in addressing the ISP traffic issue in BellSouth's arbitrations with MediaOne (Docket No. 990149-TP), ICG Telecom (Docket No. 990691-TP) and DeltaCom Communications (Docket No. 990750-TP) the Commission basically ordered the parties to "handle the issue consistent with the prior agreement." The ramifications of a similar Commission ruling in the upcoming GNAPS arbitration (Docket No. 991220-TP) are obvious and disastrous. The Commission will revitalize and perpetuate provisions of an expired interconnection agreement through the arbitration process. If that happens, a new GNAPS/ BellSouth Interconnection Agreement, together with a Commission determination that any party to that agreement is entitled to reciprocal compensation for ISP traffic, will be available for adoption by every ALEC operating in Florida. The Commission will have created this result irrespective of the fact that the Commission, BellSouth, and every ALEC in Florida are well aware of BellSouth's intention not to pay reciprocal compensation for ISP traffic.

Therefore, BellSouth respectfully requests the Commission to reconsider its Final Order on Complaint, enter an Order in BellSouth's favor, and modify its policy of interpreting Section 252(i) opt-in agreements.

Respectfully submitted this 9th day of May 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

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210217

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re:)
) Docket No. 991267-TP
Complaint of Global NAPs, Inc., against)
BellSouth Telecommunications, Inc. for)
Enforcement of Section VI(B) of its)
Interconnection Agreement with BellSouth)
Telecommunications, Inc. and Request for Relief) Filed: May 9, 2000
_____)

AFFIDAVIT OF JERRY HENDRIX

Comes the affiant, Jerry Hendrix, and being duly sworn, deposes and says:

1. I am Senior Director, Interconnection Services, at BellSouth Telecommunications, Inc. ("BellSouth"). I have been employed by BellSouth since 1979. I am responsible for overseeing the negotiation of Interconnection Agreements between BellSouth and Alternative Local Exchange Companies ("ALEC"s), such as ITC^DeltaCom Communications, Inc. ("DeltaCom") and have been directly involved in the negotiation process since May 1996. I submit this affidavit in support of BellSouth's Motion for Reconsideration.
2. In March 1997, BellSouth and DeltaCom executed an Interconnection Agreement (the "Agreement") to govern the terms, conditions and rates pursuant to which the parties would interconnect their networks. The Agreement defines "Local Traffic" as traffic originating and terminating in the local calling area. Under the terms of this Agreement, the parties agreed to a "bill and keep" arrangement, at least on an interim basis, which meant that DeltaCom and BellSouth would not pay reciprocal compensation to one another for the transport and termination of local traffic.

EXHIBIT A

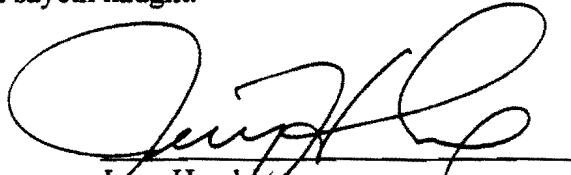
3. The “bill and keep” arrangement to which DeltaCom and BellSouth agreed was similar to provisions that had been inserted at the request of ALECs concerned about paying reciprocal compensation to BellSouth. These ALECs generally thought that any imbalance of traffic between an ALEC and BellSouth would be in BellSouth’s favor, if for no other reason than BellSouth had more customers, and it was more likely that an ALEC’s customers would call BellSouth’s customers, thereby triggering an obligation on the ALEC’s part to pay reciprocal compensation. To avoid the possibility of having to pay large sums of reciprocal compensation to BellSouth, many ALECs asked for a “bill and keep” arrangement such as that which appears in the DeltaCom Agreement.
4. There should have been no concern by an ALEC about an imbalance of traffic in BellSouth’s favor if ISP traffic were included within the definition of “local traffic.” Because ISPs receive a large volume of calls and do not generally generate them and because most residential customers who calls ISPs are served by BellSouth, an ALEC serving several ISPs would experience an imbalance of traffic in its favor, not the other way around. An ALEC who truly believed that ISP traffic constituted “local traffic” would never have agreed to a bill and keep arrangement because it would have made no economic sense to do so. Consequently, that fact that DeltaCom initially agreed to “bill and keep” as the compensation mechanism for the transport and termination of local traffic is compelling evidence that neither party considered ISP traffic to constitute “Local Traffic” as defined under the Agreement.
5. Before DeltaCom and BellSouth executed the Agreement, BellSouth had begun efforts in January 1997 to segregate ISP traffic from local traffic to ensure that no ALEC was billed reciprocal compensation for ISP traffic. Although this was not an issue with DeltaCom by

virtue of the bill and keep language in the Agreement, such efforts by BellSouth were consistent with BellSouth's view that ISP traffic was interstate in nature and not subject to the payment of reciprocal compensation.

6. In August 1997, the parties executed an amendment to the Agreement, (the "Amendment"), which replaced the "bill and keep" provision in the Agreement with a provision requiring the payment of reciprocal compensation for the transport and termination of "Local Traffic." At no time did BellSouth and DeltaCom mutually agree that this Amendment would result in the payment of reciprocal compensation for ISP traffic. On the contrary, BellSouth understood that ISP traffic was interstate in nature and not subject to the payment of reciprocal compensation, and DeltaCom never indicated a different understanding during the negotiations of the original Agreement or the Amendment.
7. In fact, there is compelling evidence to suggest that DeltaCom either knew or should have known BellSouth's position on the ISP issue before executing the Amendment. First, the individual representing DeltaCom in negotiating the Amendment was a former BellSouth employee, named James Wilkerson. Mr. Wilkerson previously worked as a regulatory manager for BellSouth in the State of Alabama, who has acknowledged knowing BellSouth's view on the interstate nature of ISP traffic. Second, prior to DeltaCom executing the Amendment on August 13, 1997, BellSouth had posted a written notice on its web site five days earlier and had sent a letter on August 12, 1997 to all ALECs, including DeltaCom, reiterating BellSouth's position that ISP traffic was interstate in nature and not subject to the payment of reciprocal compensation. The Amendment was not effective until August 22, 1997, when it was executed by BellSouth, which was two weeks after DeltaCom was on notice of BellSouth's position on ISP traffic.

8. As the foregoing facts make clear, BellSouth and DeltaCom did not mutually agree to pay reciprocal compensation for ISP traffic. In fact, when the parties executed the Agreement, they specifically agreed not to pay reciprocal compensation for any traffic, let alone for ISP traffic.

Further, affiant sayeth naught.


Jerry Hendrix

Subscribed and sworn to before me this 8th
day of May 2000


Notary Public

My commission expires: 07/03/01
211826