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October 25, 1999

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: Petition of ICG Telecom Group, Inc. for Arbitration with Bellsouth Telecommunications, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996
Docket No. 99-00377 ✓ Both
and
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with Bellsouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996
Docket No. 99-00430 ✓

Dear David:

Please find enclosed an original and thirteen copies of a Motion to Strike and Memorandum in support filed on behalf of ICG Telecom, Inc. in the above-captioned proceeding.

Thank you for your assistance in this matter.

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker

Henry Walker, attorney for ICG

HW/nl
cc: Guy Hicks, attorney for BellSouth

0592463.01
046885-000 10/25/1999

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

IN RE: PETITION OF ICG TELECOM GROUP, INC. FOR ARBITRATION WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO SECTION 252 OF THE TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. 99-00377

and

IN RE: PETITION FOR ARBITRATION OF ITC^ DELTACOM COMMUNICATIONS, INC. WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. 99-00430

ICG TELECOM GROUP, INC.'S MOTION TO STRIKE

ICG Telecom Group, Inc. ("ICG") moves to strike portions of the testimony submitted by BellSouth witness Alphonso J. Varner on the grounds that the testimony (1) attempts to raise issues already decided by the Authority in this docket and (2) raises matters beyond the scope of the issue before the Authority.

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

1. Issues Already Decided. Mr. Varner testifies that Issue No. 1 in this proceeding -- the reciprocal compensation question -- is not subject to arbitration and that the Authority should not, and legally cannot, address it. See Varner Direct Testimony, page 3, line 12 - page 5, line 4. The Authority, however, has already rejected that argument.

In a brief filed on September 7, 1999, in this proceeding, BellSouth argued that the reciprocal compensation issue, as it relates to ISP-bound traffic, is not subject to

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arbitration. The Pre-Arbitration Officer, however, rejected BellSouth's argument. In a "Report and Initial Order" issued September 13, 1999, Mr. Gary Hotvedt held that "the following issues are arbitrable and are to be articulated as follows:

> Issue 1: For purposes of this agreement, until the FCC adopts a rule with prospective application, should dial-up calls to Internet service providers (ISPs) be treated as if they were local calls for purposes of reciprocal compensation?

Mr. Hotvedt also made this specific finding: "Relative to Issue 1, the Pre-Arbitration Officer finds that pursuant to 47 U.S.C. § 251(b)(5) matters related to reciprocal compensation are appropriate for arbitration."

On October 12, 1999, the Authority voted to affirm Mr. Hotvedt's Report and Initial Order. BellSouth did not even appeal Mr. Hotved's finding on the ISP issue.

Despite the Authority's ruling, BellSouth has pre-filed testimony by Mr. Varner again arguing that Issue 1 is not subject to arbitration in this proceeding. In fact, Mr. Varner's language basically paraphrases the argument made in BellSouth's earlier brief. Mr. Varner is apparently trying to re-open an issue that BellSouth's lawyers have already lost. That he cannot do. In light of the Authority's ruling, this portion of Mr. Varner's testimony is irrelevant to any issue before the Authority and therefore should be struck.

2. Beyond the Scope of the Issue. Mr. Varner also attempts to introduce testimony regarding the reciprocal compensation issue which extends beyond the scope of question before the Authority. See Varner Direct Testimony line 18 on page 6 through line 11 on page 20.

The Telecommunications Act of 1996 ("the Act") provides that parties involved in negotiating an interconnection agreement may petition the state commission to arbitrate disputed issues. Section 252(b)(4) of the Act states that during such an arbitration, "the State commission shall limit its consideration of any petition . . . to the issues set forth in the petition and in the response."

The first issue listed in ICG's petition is:

> Until the FCC adopts a rule with prospective application, should dial-up calls to Internet Service Providers (ISPs) be treated as if there were local calls for purposes of reciprocal compensation?

Here, in its entirety, is BellSouth's response to that issue:

> No. The FCC's recent Declaratory Ruling, FCC 99-38 in CC Docket Nos. 96-98 and 99-68, released February 26, 1999 ("Declaratory Ruling"), confirmed unequivocally that the FCC has, will retain, and will exercise jurisdiction over ISP traffic. In short, the FCC determined that ISP traffic is interstate traffic, not local traffic. Under the provisions of the 1996 Act and FCC rules, only local traffic is subject to reciprocal compensation obligations. Thus, reciprocal compensation is not applicable to ISP-bound traffic. Clearly, treating ISP calls as local calls for reciprocal compensation purposes is inconsistent with the law and is not sound, public policy.

Both parties, in other words, have framed the issue very simply: Should ISP traffic be treated as "local" for reciprocal compensation purposes? That requires only a "yes" or "no" answer. It is a question of law and agency policy.

In his prefiled, direct testimony, however, Mr. Varner goes well beyond the scope of the issue as framed by the parties. For fourteen pages, he discusses three alternative methods of compensation for handling ISP-bound traffic. One novel proposal even involves ICG paying BellSouth. None of this was mentioned in ICG's petition or BellSouth's response.

Therefore, under the plain wording of the Telecommunications Act, this Authority must "limit its consideration . . . to the issues set forth in the petition and the response." TheAuthority cannot legally consider Mr. Varner's alternative proposals in this arbitration proceeding. That portion of his testimony must also be struck.[1]

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker

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Counsel for ICG Telecom Group, Inc.

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[1] ICG made a similar motion to strike portions of Mr.Varner's testimony submitted in the recent ICG/BellSouth arbitration proceeding in Florida. Holding that Mr. Varner's compensation proposals went beyond the scope of Issue 1 (which is identical in wording to Issue 1 in Tennessee), the Florida Commission granted ICG's motion to strike. A copy of the portion of the Florida transcript containing the Commission's ruling on the motion to strike is attached to this memorandum. Also attached is that portion of Mr. Varner's testimony that was stricken in the Florida proceeding. Mr. Varner's stricken Florida testimony is identical in many respects to his testimony in Tennessee on his "second option" (inter-carrier revenue sharing compensation plan). Mr. Varner did not propose his third option (bill and keep) in Florida, but if he had, his testimony on that point would also have been subject to ICG's Florida motion to strike.

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

[✓] Hand [ ] Mail [ ] Facsimile [ ] Overnight		Richard Collier, Esq. Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37243-0500
[✓] Hand [ ] Mail [ ] Facsimile [ ] Overnight		Guy Hicks, Esq. BellSouth Telecommunications, Inc. 333 Commerce St., Suite 2101 Nashville, TN 37201-3300
[ ] Hand [✓] Mail [ ] Facsimile [ ] Overnight		R. Douglas Lackey, Lisa Foshee, and A. Langley Kitchens Suite 4300, BellSouth Center 675 West Peachtree St., NE Atlanta, GA 30375-0001

Henry Walker

0600319.01
046885-000 10/22/1999

EXCERPT FROM TRANSCRIPT OF HEARING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :	DOCKET NO. 990691-TP
Petition of ICG Telecom : Group, Inc. for arbitration : of unresolved issues in : interconnection negotiations: with BellSouth : Telecommunications, Inc. :	

VOLUME 1
Pages 1 through 116

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS

DATE: October 7, 1999

TIME: Commenced at 9:30 a.m.
Concluded at 6:30 p.m.

LOCATION: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
NOTARY PUBLIC IN AND FOR

front of me. Mr. McGlothlin, can you give me the page numbers of the direct testimony that you are asking to be stricken?

MR. McGLOTHLIN: If I may have a moment, please. The testimony beginning on Line 10, Page 24, continuing to Line 25, Page 35, inclusive. Some 12 pages.

COMMISSIONER DEASON: I have looked through those sections of the testimony, and it appears what we have here is the specifics of the proposal that go beyond what I consider to be responsive to Issue 1. And BellSouth chose to file their testimony in that way, and I think they subjected theirself to this motion. I think to the extent that they needed to present argument or to present evidence as to why this traffic should not be considered local, it would be entirely appropriate. But to go forward at this point, at this late stage and to come up with an entirely new mechanism which has not been contemplated, it seems to me that to be appropriate there should be a separately identified issue before this Commission presenting this particular mechanism before the Commission for us to consider it. That is the trouble that I have. And I'm inclined to grant the motion to strike, but I'm certainly willing to have additional input from fellow

Commissioners.

COMMISSIONER CLARK: I don't have any problem with that motion, with that decision.

COMMISSIONER JACOBS: I agree, as well.

COMMISSIONER DEASON: The motion to strike is granted. Any other preliminary matters?

MR. EDENFIELD: I would like a point of clarification, Commissioner Deason. The intercarrier plan to which Mr. McGlothlin referred actually begins on Page 29, Line 18.

COMMISSIONER DEASON: We are at the point now of trying to determine what portions of Mr. Varner's testimony actually fall within the subject matter of the motion to strike, and it is your position that it really doesn't begin until Line 18 of Page 29, is that correct?

MR. EDENFIELD: That is correct, Commissioner Deason.

COMMISSIONER DEASON: Mr. McGlothlin, do you want to respond to that?

MR. McGLOTHLIN: I disagree. Look at Page 27, Line 15. Please explain further why a separate

EXCERPT FROM VARNER DIRECT TESTIMONY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Diagram D is different from Diagram C in only one respect. The IXC has been replaced by an ISP. The network used to transport ISP-bound traffic is exactly the same network used to deliver traffic to IXCs. However, rather than through receipt of normal switched access charges, the LEC is compensated for the access service it provides to the ISP by the business rates it charges the ISP. The important point is that both IXCs and ISPs receive the same service and, although they are charged different prices, the prices they pay are designed to cover the same costs. That cost is the full cost of providing service to them.

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

A. In its Comments and Reply Comments to the FCC's Notice of Proposed Rulemaking in CC Docket No. 99-68, In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic ("Inter-Carrier Compensation NPRM"), BellSouth puts forth its proposal for the appropriate inter-carrier compensation mechanism. (See Exhibit AJV-3) BellSouth's proposal is guided by and is consistent with FCC precedent regarding inter-carrier compensation for jointly provided interstate services. BellSouth's proposal recognizes, as does the FCC, that the revenue source for ISP-bound traffic is derived from the service provided to the ISP. (*See* In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing and End User Common Line Charges, CC Docket Nos. 96-262,94-1, 91-213 and 95-72, *First Report and Order,* 12 FCC Rcd 15982, 16133-16134 (1997)) Equally important, BellSouth's proposal ties the level of inter-carrier

EXHIBIT 1
(Excerpt from Varner Direct Testimony)

compensation directly to the level of compensation that each carrier derives from the jointly provided service.

Exhibit AJV-4 to my testimony consists of two diagrams illustrating the consistency of compensating carriers for access traffic based on the revenue that is derived from the jointly provided service. Diagram E illustrates a call that originates on a LEC's network and is delivered to an IXC/ISP, and shows that the IXC/ISP pays the LEC for access services to cover the cost of getting the traffic to the IXC/ISP. Diagram F illustrates an IXC/ISP-bound call that originates on a LEC's network and interconnects with another carrier's network (ICO/CLEC) for routing of the call to the IXC/ISP. In this situation, the IXC/ISP is the other carrier's customer. The revenue this other carrier receives from the IXC/ISP for access services covers the cost of delivering the traffic to the IXC/ISP.

Q. PLEASE DESCRIBE HOW ICG REQUESTS THAT IT BE COMPENSATED FOR ISP-BOUND TRAFFIC.

A. Exhibit AJV-5 to my testimony consists of a Diagram G which illustrates ICG's request that BellSouth pay reciprocal compensation for ISP-bound traffic where the ISP is ICG's customer. It is obvious from this diagram that ICG is simply attempting to augment the revenues it receives from its ISP customer at the expense of BellSouth's end user customers. In other words, paying ICG reciprocal compensation for ISP-bound traffic would result in BellSouth's end user customers subsidizing ICG's operations. Indeed, the

FCC has recognized that the source of revenue for transporting ISP-bound traffic is the access service charges that ISPs pay. ICG receives this payment from its ISP customers. There is no legal or policy basis for ISPs to be subsidized simply because they choose a different carrier to provide their access service.

Q. WHY IS AN INTER-CARRIER COMPENSATION ARRANGEMENT APPROPRIATE FOR ISP TRAFFIC?

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

> *Access Service* includes services and facilities provided for the origination or termination of <u>any</u> interstate or foreign telecommunications. (Emphasis added)

The fact that the FCC has exempted enhanced service providers, including ISPs, from paying interstate switched access charges does not alter the fact that the connection an ISP obtains is an access connection. Instead, the exemption limits the compensation that a LEC in providing such a connection can obtain from an ISP. Further, under the access charge exemption, the compensation derived by a LEC providing the service to an ISP has been limited to the rates and charges associated with business exchange services. Nevertheless, the ISP's service involves interstate communications. The ISP obtains a service that enables a communications path to be established by its subscriber. The ISP, in turn, recovers the cost of the telecommunications services it uses to deliver its service through charges it assesses on the subscribers of the ISP's service.

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

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

A. The need for a separate sharing plan is created by the FCC's decree that the price charged for access service provided to ISPs is the business exchange rate. Unlike other switched access services, which are billed on a usage-sensitive basis, business exchange service prices are flat-rated.

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

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

Q. DOESN'T BELLSOUTH COVER THE COST OF ORIGINATING TRAFFIC TO ISPs FROM ITS OWN END USERS?

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

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

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

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

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

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

1) Only the Serving LEC bills the ISP for access service. The ISP is billed at rates established by the Serving LEC;
2) The FCC has limited the price for an ISP dial-up connection to the equivalent business exchange service rate;
3) the Originating LEC incurs costs to carry ISP-bound traffic to the Serving LEC;
4) the Originating LEC has no means to recover its costs directly from the ISP (unless, of course, the Originating LEC and the Serving LEC are one in the same); and
5) The Originating LEC must recover its costs, to the extent possible, from the Serving LEC.

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

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

A. BellSouth's Interim Plan contains the following steps that are further described in Exhibit AJV-6:

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

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

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

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

(4) Serving LEC will advise Originating LECs of the average PRI rate charged to ISPs. The Serving LEC can use either its tariffed rate or the average rate actually charged to ISPs;

(5) Originating LEC calculates compensation due to it by the Serving LEC as follows:

(Quantity of DS1s x Serving LEC's PRI rate x sharing percentage);

(6) Originating LEC bills the Serving LEC on a quarterly basis; and

(7) The ISP-bound MOUs and the PRI rates as reported by the Serving LEC are subject to audit by the Originating LEC(s). The amount of compensation could be affected by results of an audit.

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

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

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

Q. WHAT SHARING PERCENTAGE DOES BELLSOUTH PROPOSE BE APPLIED TO THE SERVING LEC'S REVENUES TO COMPENSATE BELLSOUTH FOR ITS NETWORK USED TO CARRY ISP-BOUND TRAFFIC?

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

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

A. BellSouth's calculation of its sharing percentage is shown in Exhibit AJV-7 attached to this testimony. First, BellSouth considered that switching, transport and loop costs are incurred to carry traffic from the Originating LEC's end office to the ISP location. Since the Serving LEC incurs the loop cost between its end office and the ISP location, the Serving LEC should retain revenues to cover its loop cost. However, switching and transport costs are jointly incurred by both the Originating LEC and the Serving LEC.

Therefore, BellSouth believes that an appropriate sharing percentage is developed by determining the ratio of switching and transport costs to total costs (switching, transport and loop), and then dividing that percentage by two since each carrier bears a portion of the switching and transport cost. In order to determine the ratio, BellSouth looked to the Benchmark Cost Proxy Model ("BCPM") results filed in Florida in the Universal Service Fund proceedings. The average, statewide voice grade loop, switching and transport capital costs produced by BCPM are $14.62, $2.90 and $.14, respectively. Therefore, the loop capital cost represents 82.8% of the total average statewide capital cost, which means that the switching and transport capital costs represent 17.2% of the total capital cost. Again, dividing the 17.2% by two in order to account for the fact that both carriers incur switching and transport costs results in a sharing percentage of 8.6%.

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

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

A. No. When BellSouth is the Serving LEC and a CLEC's end users call an ISP served by BellSouth, BellSouth should compensate the CLEC. BellSouth proposes to use the same method and sharing percentage (8.6%) to compensate the CLEC as it proposes for billing the CLEC.

Q. WHAT IMPACT WOULD BELLSOUTH'S PROPOSAL HAVE ON A CLEC SUCH AS ICG?

A. As an example, I will assume that ICG serves its ISP customers with PRI service which is equivalent to a DS1 (24 DS0s). Further, I will assume that ICG charges its ISP customers a market-based rate of $850 per month per PRI. If BellSouth as the Originating LEC generates 55 million ISP-bound MOUs per month to ICG, then the amount of monthly compensation that BellSouth's proposal would result in ICG owing to BellSouth is calculated as follows:

55,000,000 / 9000 / 24 = 254.63 DS1s

254.63 DS1s x $850.00 x .086 = $18,613.45

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

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

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

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

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

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

A. The FCC has determined that ISP-bound traffic is interstate and has asserted jurisdiction. This issue is not subject to arbitration under Section 252 of the Act. Parties should be instructed to negotiate a revenue sharing arrangement for this traffic just as has been done for jointly-provided access service since divestiture. If those negotiations are not fruitful, however, they should be referred to the FCC. Should, however, this Commission adopt an interim inter-carrier compensation mechanism prior to the FCC completing its rulemaking proceeding, BellSouth recommends the Commission adopt the Interim Plan mechanism outlined above.