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Guy M. Hicks
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May 18, 2000

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition of MCI WorldCom to Enforce Interconnection Agreement with BellSouth*
Docket No. 99-00662

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Rebuttal Testimony of Jerry Hendrix on behalf of BellSouth Telecommunications, Inc. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

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BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF JERRY D. HENDRIX

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 99-00662

MAY 18, 2000

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc., ("BellSouth") as Senior Director – Customer Markets, Wholesale Pricing Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Morehouse College in Atlanta, Georgia, in 1975 with a Bachelor of Arts Degree. I began employment with Southern Bell in 1979 and have held various positions in the Network Distribution Department before joining the BellSouth Headquarters Regulatory organization in 1985. On January 1, 1996, my responsibilities moved to Interconnection Services Pricing in the Interconnection Customer Business Unit. In my current position as

Senior Director, I oversee the negotiation of interconnection agreements between BellSouth and Competitive Local Exchange Carriers ("CLECs") in BellSouth's nine-state region.

Q. HAVE YOU TESTIFIED PREVIOUSLY?

A. Yes. I have testified in proceedings before the Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina public service commissions, the North Carolina Utilities Commission, and the Tennessee Regulatory Authority.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut the testimony of MCImetro Access Transmission Services, Inc ("MCI") witnesses Aronson and Martinez. I will show that BellSouth does not owe MCI reciprocal compensation for traffic bound for Internet service providers ("ISPs") for two primary reasons: first, ISP-bound traffic is, and always has been, interstate traffic; and, second, the parties did not agree to pay reciprocal compensation for ISP-bound traffic under the terms of the Agreement between the parties. I also will respond to Mr. Aronson's testimony concerning the appropriate reciprocal compensation

rate and demonstrate why MCI is not entitled to reciprocal compensation at the tandem interconnection rate.

Q. PLEASE ADDRESS MR. MARTINEZ'S EXPLANATION, ON PAGE 2, OF RECIPROCAL COMPENSATION.

A. Mr. Martinez gives a brief, yet accurate, explanation of reciprocal compensation, and he touches on two key points of why reciprocal compensation is not appropriate for ISP-bound traffic. Section 251 (b)(5) of the Telecommunications Act of 1996 obligates all telecommunications carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." In basic terms, reciprocal compensation is a two-way, or reciprocal, arrangement requiring a local exchange carrier ("LEC") who originates a local call to compensate the LEC who terminates the local call. By law, this obligation applies only 1) if the call is local, and 2) if the call is originated and terminated by different LECs.

Q. DID MCI AND BELLSOUTH INTEND TO ASSUME AN OBLIGATION TO PAY RECIPROCAL COMPENSATION BEYOND THAT REQUIRED BY THE TELECOMMUNICATIONS ACT OF 1996?

A. No. For example, the Agreement itself provides that the "parties intend the rates, terms and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), the applicable Rules and Regulations of the Federal Communications Commission ("FCC") in effect, and the orders, rules and regulations of the state regulatory body." Nothing in the Agreement can reasonably be read to suggest that BellSouth and MCI agreed to go beyond their reciprocal compensation obligations under the Telecommunications Act.

Q. IS ISP TRAFFIC SUBJECT TO THE RECIPROCAL COMPENSATION REQUIREMENTS UNDER THE TELECOMMUNICATIONS ACT OF 1996?

A. No. Notwithstanding any suggestion by Mr. Martinez to the contrary, Internet service is a subset of the services that the FCC has classified as enhanced services. The FCC, for a variety of public policy reasons, has exempted enhanced service providers ("ESPs"), of which ISPs are a subset, from paying interstate access charges since 1983. Hence, ISPs are permitted to use the networks of LECs to collect and transport their interstate traffic. However, as the FCC recently confirmed in its *Order On Remand In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications*

Capability ("Order on Remand") released December 23, 1999, that exemption does not alter the fact that the service provided by Local Exchange Carriers ("LECs") to ESPs, which includes ISPs, is "exchange access." FCC 99-413, ¶ 43 (Dec. 23, 1999).

Q. PLEASE DESCRIBE THE NATURE OF ISP TRAFFIC.

A. To put the Agreement in question in this docket in context, I will describe how a call by an end user is routed to the Internet. End users gain access to the Internet through an ISP. The ISP location, generally referred to as an ISP Point of Presence ("POP"), represents the edge of the Internet and usually consists of a bank of modems. Due to the FCC's access charge exemption for ISPs, ISPs can use the public switched network to collect their subscribers' calls to the Internet. To access the Internet through an ISP, subscribers dial a seven- or ten-digit telephone number via their computer modem. The ISP typically purchases business service lines from various LEC end offices and physically connects those lines to an ISP premise, which contains modem banks that connect to the Internet. The ISP converts the signal of the incoming call to a digital signal and routes the call, through its modems, over its own network to a backbone network provider, where it is ultimately routed to an Internet-connected host computer. Internet backbone networks can be regional or

national in nature. These networks not only interconnect ISP POPs but also interconnect ISPs with each other and with online information content.

The essence of Internet service is the ease with which a user can access and transport information from any server connected to the Internet. The Internet enables information and Internet resources to be widely distributed and eliminates the need for the user and the information to be physically located in the same area. ISPs typically provide, in addition to Internet access, Internet services such as e-mail, usenet news, and Web pages to their customers. When a user retrieves e-mail or accesses usenet messages, for example, it is highly unlikely that the user is communicating with a server that is located in the same local calling area as the user. To the contrary, the concentration of information is more likely to result in an interstate, or even international, communication.

In short, an ISP takes a call and, as part of the information service it offers to the public, transmits that call to and from the communications network of other telecommunications carriers (e.g., Internet backbone providers such as MCI or Sprint) whereupon it is ultimately delivered to Internet host computers, almost all of which are located outside of the local serving area of the ISP.

As I stated earlier, the ISP generally purchases business service lines from various end offices. This methodology was prescribed (and in fact compelled) by the FCC in order to ensure compliance with the access charge exemption extended to ESP/ISPs. The fact that an ISP obtains local business service lines from a CLEC switch in no way alters the continuous transmission of signals between an incumbent local exchange carrier's ("ILEC") end user to a host computer. In other words, if a CLEC puts itself in between a BellSouth end user and the Internet service provider, it is acting like an intermediate transport carrier or conduit, not a local exchange provider entitled to reciprocal compensation.

Q. WHAT IS THE PERTINENT LANGUAGE IN THE APRIL 4, 1997 INTERCONNECTION AGREEMENT BETWEEN BELLSOUTH AND MCI (THE "AGREEMENT") IN REGARDS TO RECIPROCAL COMPENSATION?

A. Section 2.2.1 of Attachment IV of the Agreement states:

> The Parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the TRA. Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area (EAS) exchange.

Q. MR. MARTINEZ STATES THAT A TELEPHONE CALL FROM AN END USER TO AN ISP "TERMINATES" AT THE ISP. DO YOU AGREE?

A. Absolutely not. The call from an end user to the ISP only transits through the ISP's local point of presence; it does not terminate there. There is no interruption of the continuous transmission of signals between the end user and the host computers. This fact was confirmed by the FCC in the February 26, 1999 Declaratory Ruling (see *Declaratory Ruling*, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68 ("Declaratory Ruling"), released February 26, 1999) Paragraph 12 states:

> *We conclude, as explained further below, that the communications at issue here do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state*

While the United States Court of Appeals for the District of Columbia Circuit vacated this order on March 24, 2000, the D.C. Circuit did not establish any principle of law, but rather -- as the Court itself said over and over -- simply determined that the FCC had failed to provide a sufficient explanation for its conclusions. Furthermore, the Chief of the FCC's Common Carrier Bureau

has stated publicly that he believes that the FCC can and will provide the requested clarification and reach the same conclusion that it has previously -- that is, that ISP-bound calls do not terminate locally. *See* TR Daily, Strickling Believes FCC Can Justify Recip. Comp. Ruling In Face Of Remand, March 24, 2000 (stating that the Chief of the FCC's Common Carrier Bureau "still believes calls to ISPs are interstate in nature and that some fine tuning and further explanation should satisfy the court that the agency's view is correct").

Furthermore, the FCC's recent Order on Remand released December 23, 1999, emphasizes again that ISP-bound traffic does not terminate at the ISP. Paragraph 15 states:

> With respect to xDSL-based advanced services used to connect Internet Service Providers (ISPs) with their dial-in subscribers, the Commission has determined that such traffic does not terminate at the ISP's local server, but instead terminates at Internet websites that are often located in other exchanges, states or even foreign countries. Consistent with this determination, we conclude that typically ISP-bound traffic does not originate and terminate within an exchange and, therefore, does not constitute telephone exchange service within the meaning o f the Act. As explained more fully below, such traffic is properly classified as "exchange access."

This Order clearly states that the traffic does NOT terminate at the ISP, and this is not qualified by any type distinction which would limit the meaning of that conclusion. In fact, the Order clearly goes on to say that ISP-bound traffic is not telephone exchange traffic, but exchange access traffic.

Q. DID THE PARTIES' INTEND THE "TERMINATION" OF A CALL TO MEAN ANYTHING OTHER THAN THE ULTIMATE END OF THE COMMUNICATION?

A. No. As reflected in Section 6 of the Agreement, the parties intended to implement the Agreement "consistent with the applicable rules and regulations of the FCC ...." The FCC has repeatedly made clear that the "termination" of a call is the ultimate end of the communication. Nothing in the Agreement remotely suggests that the parties agreed to a different definition of call "termination" for reciprocal compensation. The parties certainly did not agree that a call is "terminated" when it is delivered to the telephone exchange service premise bearing the called telephone number, as Mr. Martinez suggests. There would be no logical reason to use such a vague concept without some indication as to why.

Indeed, Mr. Martinez's theory of call "termination" just does not make "walking around" sense. Under Mr. Martinez's theory, if a BellSouth customer

wants to access the Tennessee Regulatory Authority's website, the communication would be "terminated" as soon as the end user "completes" the call to the ISP, whether or not the customer ever reaches the TRA's website. In addition, under his reasoning, long distance voice services over the Internet – services indistinguishable from those provided by AT&T or MCI – also would be local, since such a call would be "terminated" once the end user reaches his or her ISP.

Q. WHAT IS THE BASIS FOR YOUR TESTIMONY THAT THE FCC CONSIDERS A CALL TO "TERMINATE" AT THE END POINT OF THE COMMUNICATION?

A. The FCC has long held that jurisdiction of traffic is determined by the end-to-end nature of a call. It is, therefore, irrelevant that the originating end user and the ISP's POP are in the same local calling area, because the ISP's POP is not the terminating point of this ISP traffic. The FCC stated in Paragraph 12 in an order dated February 14, 1992, in FCC Order Number 92-18, that:

> Our jurisdiction does not end at the local switch, but continues to the ultimate termination of the call. The key to jurisdiction is the nature of the communication itself, rather than the physical location of the technology.

As the FCC has made clear, the ending point of a call to the Internet is not the ISP's POP, but rather the computer database or information source to which the ISP provides access. Calls that merely transit a CLEC's network without terminating on it cannot be eligible for reciprocal compensation.

Q. IS ISP-BOUND TRAFFIC INTERSTATE OR LOCAL TRAFFIC?

A. ISP-bound traffic is interstate. The FCC, in the Declaratory Ruling, clearly stated it had always considered ISP-bound traffic to be interstate. Footnote 87, attached to paragraph 26, of the Declaratory Ruling defines ISP-bound traffic as non-local, interstate traffic. Paragraph 16 of the Declaratory Ruling points out that the FCC considered this traffic to be interstate as early as 1983 (See *Memorandum Opinion and Order*, In the Matter of MTS and WATS Market Structure, CC Docket No. 78-72 ("MTS/WATS Market Structure Order"), released August 22, 1983) and, therefore, saw the need to affirmatively exempt it from access charges. Paragraph 16 of the Declaratory Ruling reads, in part:

> *The Commission traditionally has characterized the link from an end user to an ESP as an interstate access service. In the* MTS/WATS Market Structure Order, *for instance, the Commission concluded the ESPs are "among a variety of users of access service" in that they "obtain local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit its*

location and, commonly, another location in the exchange area." The fact that ESPs are exempt from access charges and purchase their PSTN links through local tariffs does not transform the nature of traffic routed to ESPs. That the Commission exempted ESPs from access charges indicates its understanding that ESPs in fact use interstate access service; otherwise, the exemption would not be necessary.

Throughout the evolution of the Internet, the FCC repeatedly has asserted that ISP-bound traffic is interstate. For instance, the *Notice of Proposed Rulemaking*, In the Matter of Amendments to Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215 ("1987 NPRM"), released July 17, 1987, in which the FCC proposed to lift the ESP access charge exemption, is clearly in keeping with the FCC's position on the interstate nature of ESP/ISP traffic. Paragraph 7 reads:

We are concerned that the charges currently paid by enhanced service providers do not contribute sufficiently to the costs of the exchange access facilities they use in offering their services to the public. As we have frequently emphasized in our various access charge orders, our ultimate objective is to establish a set of rules that provide for recovery of the costs of exchange access used in interstate service in a fair, reasonable, and efficient manner from all users of access service, regardless of their designation as carriers, enhanced service providers,

or private customers. Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services. To the extent that they are exempt from access charges, the other users of exchange access pay a disproportionate share of the costs of the local exchange that access charges are designed to cover. (emphases added)

The resulting order in Docket No. 87-215 (the "ESP Exemption Order"), released in 1988, is further evidence of the FCC's continued pattern of considering ISP-bound traffic to be access traffic. It referred to "certain classes of exchange access users, including enhanced service providers" (emphasis added).

Q. YOU HAVE SHOWN THAT THE FCC CONSIDERS ISP-BOUND TRAFFIC TO BE INTERSTATE TRAFFIC. WERE LOCAL CALLING RATES IN TENNESSEE STRUCTURED TO COVER THE COSTS OF NON-LOCAL TRAFFIC?

A. No. Local exchange rates do not take into account and compensate for non-local traffic such as Internet-bound traffic. Internet-bound traffic characteristics were never considered when local rates were established. For BellSouth the typical call duration for a local call is between three and four

minutes. On the other hand, an Internet session generally lasts much longer than three to four minutes. According to BellCore's 1996 report, *"Impacts of Internet Traffic on LEC Networks and Switching Systems,"* the typical call duration for an Internet-bound call is approximately 20 minutes (3-4). There is little similarity between local exchange traffic and Internet-bound traffic.

Q. DID BELLSOUTH CONSIDER ISP-BOUND TRAFFIC AS LOCAL TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION AT THE TIME IT ENTERED INTO THE AGREEMENT?

A. Absolutely not. In fact, BellSouth filed comments with the FCC in April, 1997, (the very month this agreement was signed) making clear BellSouth's view that reciprocal compensation only applies to the transport and termination of local traffic, which does not extend to ISP traffic. A copy of BellSouth's comments filed April 23, 1997 in CC Docket 96-263 is attached as Exhibit JDH-1.

Considering the FCC rules in effect at the time of the negotiation and execution of the Agreement dating back to 1983, BellSouth would have had no reason to consider ISP-bound traffic to be anything other than jurisdictionally interstate traffic. Further, had BellSouth understood that MCI considered ISP-

bound traffic to be local traffic under the Agreement, the issue would have been discussed at length.

I am the person responsible for all negotiations with CLECs. I specifically was involved with the negotiation of this agreement. This Agreement intends for reciprocal compensation to apply, if at all, only when local traffic is terminated on either party's network in a local calling area or LATA, as evidenced by the language in the Agreement. BellSouth's interpretation is consistent with the Telecommunications Act of 1996, which established a reciprocal compensation mechanism to encourage local competition. The payment of reciprocal compensation for ISP-bound traffic impedes local competition. The FCC, in its August 1996, Local Interconnection Order (CC Docket No. 96-98), Paragraph 1034, made it perfectly clear that reciprocal compensation rules did not apply to interstate or interLATA traffic such as interexchange traffic:

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

Q. PLEASE COMMENT ON MR. MARTINEZ'S STATEMENT AT PAGE 4 THAT THE DEFINITION OF LOCAL TRAFFIC IN THE AGREEMENT MAKES NO EXCEPTION FOR TELEPHONE CALLS TERMINATED TO ISPS."

A. Mr. Martinez states that "had such an exemption [i.e., an exemption for ISP-bound traffic] been intended, it would have been expressly included by the parties." This might be true if the definition had, in fact, included ISP-bound traffic by its nature. However, the definition of Local Traffic in this agreement by no means could be construed to include ISP-bound traffic. The agreement clearly states, in Section 2.2.1 of Attachment IV:

> Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area (EAS) exchange.

Since ISP-bound calls do not terminate at the ISP's POP, the call would not terminate in either the same exchange, or a corresponding EAS exchange. Therefore, a specific exclusion would not be needed for something that was not included to begin with.

Q. PLEASE COMMENT ON MR. ARONSON'S STATEMENT AT PAGE 3 THAT MCI HAS BILLED BELLSOUTH AT THE RATE OF $.005 BECAUSE BELLSOUTH HAS BILLED MCI AT THE RATE OF $.005.

A. As the rate table attached to Mr. Martinez's testimony illustrates, the reciprocal compensation rates in the Agreement in Tennessee are elemental rates. The purpose of elemental rates is for each party to compensate the other at the agreed upon rate for the rate elements corresponding to the functions each carrier actually performs. Unlike BellSouth, MCI does not perform a tandem switching function and does not provide common transport, and thus MCI would only be entitled to reciprocal compensation at the end office switching rate.

Q. WHY ISN'T MCI ENTITLED TO RECIPROCAL COMPENSATION AT THE SAME RATES BILLED BY BELLSOUTH?

A. MCI is not entitled to the same reciprocal compensation rate as BellSouth because MCI has not satisfied and cannot satisfy applicable FCC requirements. Specifically, the FCC's rules state that: "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the LEC carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 CFR § 51.711(a)(3). However, in addition to serving

the same geographic area, MCI's network must "perform functions similar to those performed by an ILEC's tandem switch *First Report and Order*, CC Docket 96-98, ¶ 1090 (Aug. 6, 1996). As the FCC noted in adopting Rule 51.711:

> We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) *perform functions similar to those performed by an incumbent LEC's tandem switch* and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch.

Id. Thus, MCI must meet two requirements in order to be compensated at the same tandem interconnection rate as BellSouth: (1) MCI's network must perform functions similar to those performed by BellSouth's tandem switch; and (2) MCI's switch must serve a geographic area comparable to BellSouth's. MCI cannot meet either of these requirements.

Q. DOES MCI'S NETWORK PERFORM FUNCTIONS SIMILAR TO THOSE PERFORMED BY BELLSOUTH'S TANDEM SWITCH?

A. No. MCI's network does not perform functions similar to those performed by BellSouth's tandem switch. The FCC has defined "local tandem switching capability" as:

> (A) Trunk-connect facilities, which include, but are not limited to, the connection between trunk termination at a cross connect panel and switch trunk card;
>
> (B) The basic switch trunk function of connecting trunks to trunks; and
>
> (C) The functions that are centralized in tandem switches (as distinguished from separate end office switches), including but not limited, to call recording, the routing of calls to operator services, and signaling conversion features.

Third Report and Order, Section 51.319(c)(2). While MCI's local switch may be *capable* of performing tandem switching functions when connected to end office switches, MCI has presented no evidence that its switches actually perform such functions. For example, there is nothing in either Mr. Martinez's or Mr. Aronson's testimony that: (1) MCI interconnects end offices or performs trunk-to-trunk switching; (2) MCI switches BellSouth's traffic to another MCI switch; or (3) MCI's switch provides other centralization functions, namely call recording, routing of calls to operator services and signaling conversion for other switches, as BellSouth's tandems do and as required by the FCC's rules.

Q. DOES MCI'S SWITCH SERVE A COMPARABLE GEOGRAPHIC AREA TO BELLSOUTH'S TANDEM SWITCH?

A. No. Even assuming MCI's switch performed the same functions as BellSouth's tandem switch (which is not the case), neither Mr. Martinez nor Mr. Aronson presents any evidence that MCI's switch serves a geographic area comparable to BellSouth's. MCI has not identified the location of the customers it serves in Tennessee – information that would be essential for the any finding of geographic comparability. For example, assume that MCI serves fifty business customers in Nashville, all of which are located in a single office complex located next door to MCI's switch. Under no set of circumstances could MCI seriously argue in such a case that its switch serves a comparable geographic area to BellSouth.

Q. HAVE OTHER STATE COMMISSIONS CONSIDERED THE EXTENT TO WHICH MCI (OR ITS AFFILIATED COMPANIES) IS ENTITLED TO RECEIVE RECIPROCAL COMPENSATION AT THE TANDEM INTERCONNECTION RATE?

A. Yes. Other State commissions have rejected arguments that MCI is entitled to reciprocal compensation at the tandem interconnection rate. For example, the

Florida Public Service Commission has held: "We find that the Act does not intend for carriers such as MCI to be compensated for a function they do not perform. Even though MCI argues that its network performs 'equivalent functionalities' as Sprint in terminating a call, MCI has not proven that it actually deploys both tandem and end office switches in its network. If these functions are not actually performed, then there cannot be a cost and a charge associated with them. Upon consideration, we therefore conclude that MCI is not entitled to compensation for transport and tandem switching unless it actually performs each function." Order No. PSC-97-0297-FOF-TP, Docket 962120-TP, at 10-11 (March 14, 1997). *See also* Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP, at 4 (Dec. 16, 1996) ("The evidence in the record does not support MFS' position that its switch provides the transport element; and the Act does not contemplate that the compensation for transporting and terminating local traffic should be symmetrical when one party does not actually use the network facility for which it seeks compensation").

Likewise, both the California and Illinois Commissions have rejected MCI's claims that it should be entitled to reciprocal compensation at the tandem interconnection rate. *See* Decision 99-09-069, *In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom*, Application 99-03-047, at 15-16 (Sept. 16, 1999) (finding "unpersuasive"

MFS's showing that its switch served a comparable geographic area when many of MFS's ISP customers were actually collocated with MFS's switch); *MCI Telecommunications Corp. v. Illinois Bell* (June 22, 1999) (affirming Illinois Commission's finding that MCI had failed to provide sufficient evidence to support a conclusion that it was entitled to the tandem interconnection rate). This Authority should do likewise.

Q. IF ISP-BOUND TRAFFIC IS NOT SUBJECT TO RECIPROCAL COMPENSATION, WILL BELLSOUTH AND MCI BE TRANSPORTING ISP-BOUND TRAFFIC WITHOUT COMPENSATION?

A. No. Both BellSouth and MCI are compensated for handling ISP traffic from the revenues for services provided to the ISP. It may be that certain CLECs have contracted to provide services to ISPs at greatly reduced rates in an effort to lure them away from other carriers, anticipating that the enormous revenues generated through reciprocal compensation would more than offset any loss on provisioning the service. Some CLECs are attempting to turn reciprocal compensation, a mechanism for recovering the cost of transporting and terminating local traffic, into a separate, wildly profitable, line of business. When a BellSouth end user dials into the Internet through an ISP served by a CLEC, the CLEC is compensated by the ISP. The ISP is compensated by the

end user. BellSouth is the only party involved in this traffic that is not receiving revenue for these calls, and yet BellSouth is being asked to pay the CLEC for the use of a portion of the CLEC's network for which it is already receiving compensation.

Q. WHAT IS THE ESTIMATED FINANCIAL IMPACT TO INCUMBENT LOCAL EXCHANGE CARRIERS IF ISP TRAFFIC WERE SUBJECT TO THE PAYMENT OF RECIPROCAL COMPENSATION?

A. If Internet traffic were subject to the payment of reciprocal compensation for such traffic, BellSouth conservatively estimates that the annual reciprocal compensation payments by incumbent local exchange carriers in the United States for ISP traffic could easily reach $2.6 billion by the year 2002. This estimate is based on 64 million Internet users in the United States, an average Internet usage of 6.5 hours per week, and a low reciprocal compensation rate of $.002/minute. This is a totally unreasonable and unacceptable financial liability on the local exchange companies choosing to serve residential and small business users which access ISPs that are customers of other LECs. CLECs targeting large ISPs for this one-way traffic will benefit at the expense of those carriers pursuing true residential and business local competition throughout the country.

Q. WHAT DO YOU BELIEVE THE TRA SHOULD DO?

A. This Authority should deny MCI's request for relief. ISP-bound traffic is not now, nor has it ever been, local traffic, and the parties never mutually agreed to pay reciprocal compensation for such traffic.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

BellSouth

BellSouth Telecommunications, Inc.
TN Docket 99-00662
Exhibit JDH Rebuttal - 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 23 1997

In the Matter of	)	
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	
	)	

REPLY COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit their Reply Comments to the comments filed in response to the Commission's Notice of Inquiry ("NOI") concerning the actions the Commission should take regarding information services and Internet providers interstate use of the public switched network.[1]

The core issue confronted in the Commission's NOI is the identification of the steps the Commission should take that would encourage and facilitate the development of high speed voice and data telecommunications networks. A fundamental concern expressed by the Commission and echoed by many parties in their comments is that the actions ultimately taken must be constructed so as not to chill the development of Internet and other information services that use the telecommunications network.

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[1] *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 91-213, CC Docket No. 96-263, FCC 94-488, Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry, released December 24, 1996 (hereinafter "NOI").

File: 96-263 Filings
Logged:
Completed: 8-16
File: 8 Feb 16

BellSouth shares the Commission's objective and vision of a state of the art, high speed voice and data telecommunications network that can support and foster the growth of new and innovative information applications. To achieve the objective, however, will require a commitment to a new regulatory framework that will create an environment which will encourage investment and innovation.

As BellSouth pointed out in its Comments, the question is not merely whether or not access charges, as presently constructed, should apply. A far greater range of policies are implicated. In its Comments, BellSouth has presented an approach that, if implemented, would alleviate the congestion on the public switched voice network through the creation of a high speed switched data transport service based on a network access server. This network-based solution would provide Internet and other information service providers a means of access to their subscribers that would have the same ubiquity they currently obtain from the public switched voice network.

There are, nevertheless, regulatory hurdles to be overcome before such a network-based solution can be implemented. The network architecture would involve protocol conversion. The Commission's current rules regarding the manner in which local exchange carriers such as BellSouth may provide protocol conversion effectively insure that the arrangement would be unacceptable in the marketplace because the complexity and cost of the arrangement would be increased. Thus, the Commission should address eliminating the regulatory barriers that inhibit the successful introduction of arrangements such as that suggested by BellSouth.

Regardless of whether one supports BellSouth's proposal, it is readily apparent that the time has come for the Commission to act and establish an interstate solution to an interstate

problem. Under the current rules, enhanced service providers ("ESPs") are exempt from paying interstate access charges for the use that they make of exchange access facilities to originate and terminate interstate traffic. While the exemption allows ESPs to use local exchange services to originate and terminate interstate traffic, the exemption is a "rate" exemption; the exemption does not, nor could it change the underlying jurisdiction of the traffic.[2]

Nevertheless, it now appears that the interstate access charge exemption is being misconstrued. In their joint comments, Bell Atlantic and NYNEX state that some competitive local exchange carriers claim that traffic terminating at an ESP location is subject to reciprocal compensation. Bell Atlantic and NYNEX correctly point out that reciprocal compensation only applies to the transport and termination of local traffic, not interstate interexchange traffic such as the originating and terminating traffic that is subject to the Commission's interstate access charge exemption. This confusion can and should be corrected by the Commission. A rulemaking proceeding that would establish an interstate access solution would assure similar problems do not arise in the future.

CONCLUSION

Thus, it is clear that the status quo is no longer acceptable. The status quo does not form a solid foundation for the development of innovative advanced information services. The status quo

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[2] The jurisdiction of telecommunications traffic is determined by the nature of the traffic on an end-to-end basis, not the physical location of the facilities used to carry the traffic. *See e.g., National Ass'n of Regulatory Utility Commissioners v. FCC*, 746 F. 2d 1492 (D.C. Cir. 1984). There can be little dispute that the majority of Internet traffic, for example, is jurisdictionally interstate.

will not achieve a quality, high speed data and voice network. Public policy demands clear and decisive leadership by the Commission and the first step is for the Commission to begin a rulemaking proceeding.

Respectfully submitted,

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Date: April 23, 1997

April 23, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of April, 1997 served the following parties to this action with a copy of the foregoing **REPLY COMMENTS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

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AFFIDAVIT

STATE OF: Georgia
COUNTY OF: Fulton

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Jerry D. Hendrix-Senior Director-Customer Markets Wholesale Pricing Operations, BellSouth Telecommunications, Inc., who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 99-00662 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 25 pages and 1 exhibit(s).

Jerry D. Hendrix

Sworn to and subscribed
before me this 16th
day of May, 2000

NOTARY PUBLIC

MICHEALE F. HOLCOMB
Notary Public, Douglas County, Georgia
My Commission Expires November 3, 2001

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

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[ ] Facsimile
[ ] Overnight

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