Exhibit No:
Issues: Policy
Witness: Albert P. Halprin
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone Company
Case No.: TC-2000-225, et al.

SOUTHWESTERN BELL TELEPHONE COMPANY

CASE NO. TC-2000-225, ET AL.

Rebuttal Testimony

of

Albert P. Halprin

Jefferson City, Missouri

July 2000

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

FILED[3]
MAY 31 2000
Missouri Public Service Commission

In the Matter of	)	
	)	
Compensation and Definition Provisions	)	TC-2000-225, *et al.*
Fom Interconnection Agreements Between	)	
SWBT and MFS, Brooks and Broadspan	)	
	)	

AFFIDAVIT OF ALBERT HALPRIN

DISTRICT OF COLUMBIA	)	
	)	SS
CITY OF WASHINGTON	)	

I, Albert Halprin, of lawful age, being duly sworn, depose and state:

1. My name is Albert Halprin. I am presently a Partner in the Law Firm of Halprin, Temple, Goodman & Maher.

2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Albert Halprin

Subscribed and sworn to before me this 9th day of May, 2000.

Notary Public

My Commission expires 2/14/04.

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. Albert P. Halprin, 555 12th Street, NW, Suite 950 North, Washington, D.C. 20004. I am a partner at the law firm of Halprin, Temple, Goodman & Maher and an adjunct professor of telecommunications law in the graduate law program at Georgetown University Law Center.

Q. WHAT ARE YOUR CURRENT AND PAST PROFESSIONAL EXPERIENCES THAT ARE RELEVANT TO THIS PROCEEDING?

A. I have 20 years of experience in the telecommunications industry. From 1984 to 1987, I served as Chief of the Federal Communications Commission's (the "FCC's") Common Carrier Bureau, where I was responsible for the regulation of all interstate telecommunications services in the United States. Between 1980 and 1983, I was a Senior Attorney and Chief of the Bureau's Policy and Program Planning Division. I have lectured extensively and advised numerous clients on regulatory issues related to the Internet and Internet access services. For instance, at the International Telecommunication Union's Inter@ctive '97 conference--the first global policy forum on Internet issues--I chaired the panel on Internet legal issues, and I participated on another panel on Internet regulation. In addition, I have testified as an expert witness in nearly a dozen state commission proceedings and commercial arbitrations on matters related to those at issue in this proceeding.

Q. HAVE YOU PREPARED A SCHEDULE WHICH SUMMARIZES YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE?

A. Yes. Schedule 1, which is attached to my testimony, summarizes my educational background and work experience.

Q. HAVE YOU EVER TESTIFIED BEFORE THIS COMMISSION ON ISSUES RELEVANT TO THIS PROCEEDING?

A. Yes. In 1998, I was an expert witness on behalf of Southwestern Bell Telephone Company ("SWBT") in Case No. TO-98-278, which involved reciprocal compensation for Internet traffic exchanged between SWBT and Birch Telecom of Missouri, Inc.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. To rebut direct testimony filed by in this case by Don Price on behalf of MCI WorldCom Communications, Inc. ("MCIWC") and Brooks Fiber Communications of Missouri, Inc. ("Brooks"), and to rebut the direct testimony filed by S. Blake Ashby on behalf of BroadSpan Communications, Inc. ("BroadSpan"). I will show that traffic routed through local exchange carrier networks to the Internet does not terminate at the ISP's local node in any actual, "regulatory," or legal sense. This traffic has been explicitly and authoritatively

classified as interstate exchange access traffic in numerous and binding FCC orders. Most recently, in its *Advanced Services Remand Order*, the FCC stated clearly that calls routed through ISPs to the Internet constitute exchange access services because of the use of underlying interstate toll services for the Internet portion of the communication.[1] This ruling, which is in force today, is in no way a limited "jurisdictional" ruling. In fact, competitive local exchange carriers ("CLECs") have endorsed it and will be able to benefit from this and similar FCC rulings to gain access to incumbent local exchange carriers' ("ILECs'") advanced facilities used for Internet access. CLECs appear eager to take advantage of an FCC ruling that Internet-bound traffic is interstate exchange access traffic when it gives them the right to obtain access to advanced facilities to be used to offer Internet access. Meanwhile, they still are insisting that the same traffic is somehow "local" for reciprocal compensation purposes. CLECs cannot have it both ways. They cannot expect to rely on the FCC's ruling that Internet-bound traffic is exchange access traffic only when it suits their interests, and then continue to maintain that the same traffic somehow terminates at the ISP's local node. The traffic cannot be both interstate exchange access traffic and intrastate "local" traffic at the same time.

The CLECs have erred in this case, as in others, by attempting to resuscitate the discredited "two-call" theory, which posits that ISP-bound calls somehow

[1] See *In the matter of Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, and 98-91, Order on Remand, released December 12, 1999 (the *"Advanced Services Remand Order"*).

terminate at the ISP's node. But as the FCC has firmly established in several recent orders, such communications generally do *not* terminate within the same local exchange areas where they originate. Rather, calls to the Internet continue on to websites around the country and around the globe, clearly disqualifying them for treatment as "local" traffic under the Act, the FCC's rules, and the interconnection agreements at issue here ("the Agreements").

Indeed, the only way that reciprocal compensation could be due for this traffic is if SWBT had voluntarily agreed to include it under reciprocal compensation obligations in the Agreements. But MCIWC, Brooks, and BroadSpan have utterly failed to produce any evidence --as in fact they cannot--that SWBT ever agreed to lump interstate Internet-bound traffic in with local traffic, which clearly is defined in the Agreements as both originating and terminating in the same local exchange or calling area. As I will show, the court decisions cited by the CLECs in their testimony provide no grounds for ruling that such intent was present.

In fact, the language in the Agreements is a direct reflection of the language in the Telecommunications Act that governs mandatory reciprocal compensation, and given the timing of these negotiations, it should not be taken to apply to any other kinds of traffic. This Commission should reject attempts to take language in the Agreements that reflects the mandatory reciprocal obligations outlined in Section 251(b)(5) of the Act and apply that language to an entirely different class of traffic. As the FCC has ruled, the reciprocal compensation requirements of

Section 251(b)(5) do not apply on a mandatory basis to ISP-bound traffic. Moreover, there is a long legacy of federal rulings, dating back to 1983, establishing that calls to ISPs are in fact interstate, exchange access traffic. It is a mistake then, to apply Section 251(b)(5) requirements to somehow determine the parties' intent regarding Internet-bound traffic in negotiating these Agreements.

In fact, there is no evidence that SWBT ever agreed to include ISP-bound traffic among the calls subject to reciprocal compensation. The parties simply reflected in the Agreements the language of the Act's mandatory requirement in Section 251(b)(5) and the FCC rules interpreting that section. The two opposing sides in this dispute clearly had vastly different ideas of what that mandatory requirement covered—with the CLECs having unilaterally and mistakenly asserted that it includes ISP-bound traffic. Both sides claimed here in Missouri, as elsewhere, that the FCC supported their interpretation of the language of the Act and the contracts. Only SBC, of course, was correct. The fact is that there is no legal requirement for SWBT or any other carrier to pay reciprocal compensation for such traffic, nor is there any indication SWBT ever intended or agreed to do so.

Despite repeated decisions dealing with this issue at the federal level, no order is apparently enough to prevent the CLECs from continuing to fashion new ways to repeat the same assertion: that SWBT somehow acquiesced in including ISP-bound traffic in the group of calls subject to reciprocal compensation, despite the fact that such inclusion would clearly not be in its best interests. It is ludicrous to

suggest that SWBT was complicit in any such agreement, which would have been sure to cost SWBT millions of dollars. There was no agreement, and there is no requirement, to lump interstate, exchange access Internet traffic in with traffic that originates and terminates in the same local exchange area.

While the facts speak clearly on this issue, the FCC, unfortunately, has not done so. While finding correctly that Internet-bound traffic is exchange access traffic that does not originate and terminate within the same local exchange area, the FCC has failed to provide clear guidance to carriers and the states based on those facts. Rather, the FCC appears more concerned with preserving its overall policy of extending a subsidy to foster the development of the ISP industry, at the expense of incumbents and their local service ratepayers. It has attempted to develop a set of internally inconsistent theories to justify a continuation of this revenue flow. Applying reciprocal compensation to Internet-bound traffic, however, actually distorts the markets for serving local service end users and ISPs, hindering competition instead of fostering it. Moreover, CLECs currently are overcompensated when they receive per-minute reciprocal compensation for ISP-bound traffic. This Commission should follow the facts where they lead and rule that reciprocal compensation is not warranted under the Act or the Agreements, nor is it advisable on public policy grounds.

Q. ON PAGE 7 OF HIS TESTIMONY, MR. PRICE DIFFERENTIATES BETWEEN "LOCAL" CALLS, WHICH ARE GOVERNED BY

RECIPROCAL COMPENSATION REQUIREMENTS, AND "EXCHANGE ACCESS" TRAFFIC. IN WHICH CATEGORY HAS THE FCC PLACED INTERNET-BOUND TRAFFIC?

A. The FCC has explicitly answered this question in its *Advanced Services Remand Order*, in which it ruled that dial-up Internet access services connecting ISPs with their subscribers generally do not constitute local "telephone exchange service" but rather are properly classified as "exchange access" services.[2] Specifically, the FCC stated that "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 of the Act. As explained more fully below, such traffic is properly classified as 'exchange access.'"[3]

There are two very important elements to this determination—which is binding and in force today. First, the FCC reinforced and affirmed its view of ISP-bound traffic as interstate traffic that does not terminate at the ISP node—a view which stems from a consistent legacy dating back to 1983 and which has been repeated by the FCC no less than three times in the past 18 months. Second, this

[2] *Advanced Services Remand Order* at para. 16

[3] Id.

determination was not made as part of any jurisdictional analysis, but rather as a binding determination of how this traffic will be regulated. This is not merely a ruling designed to assert the FCC's jurisdiction, as some CLECs have said of other recent FCC rulings. This order was, rather, an exercise of the FCC's jurisdiction to adopt binding *regulatory* measures affecting the relations between ILECs and new market entrants. In fact, the FCC was careful to note that its actions in the *Advanced Services Remand Order* were based on "the mechanics of the Internet-bound call,"[4] not simply on an abstraction of jurisdictional analysis.

Q. **HOW DID THE FCC EXPLAIN THE MECHANICS OF AN INTERNET-BOUND CALL IN DETERMINING THAT SUCH TRAFFIC IS EXCHANGE ACCESS TRAFFIC?**

A. It noted that ISPs typically own no telecommunications facilities needed to connect to the Internet, so they generally lease lines or otherwise acquire facilities from underlying telecommunications providers, including from interexchange carriers. "Thus, the information service is provisioned by the ISP `via telecommunications,' including interexchange telecommunications, although the Internet service itself is an `information service' under Section 3(2) of the Act."[5] Given that, the FCC added, "we conclude that the service provided by the local exchange carrier to the ISP is ordinarily exchange access because it enables the

[4] Id. at para. 33.

[5] Id. at para. 34.

ISP to transport the communication initiated by the end user subscriber located in one exchange to its ultimate destination in another exchange, using both the services of the local exchange carrier and in the typical case the telephone toll service of the telecommunications carrier responsible for the interexchange transport."[6] Clearly, this traffic could not be said to terminate at the ISP's local node if it is transmitted using both local exchange and interexchange toll facilities.

The FCC then methodically applied the definition of *exchange access* in Section 3(16) of the Act to Internet-bound traffic. It noted that *exchange access* consists of a carrier's offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll service. *Telephone toll service,* in turn, is defined in Section 3(48) of the Act as "telephone service between stations in different exchanges for which there is a separate charge."[7] The FCC concluded that Internet-bound traffic meets the definition of exchange access. First, the local exchange carrier or carriers (in the cases where a different LEC serves the end user and the ISP) provide access permitting the ISP to complete the transmission from its subscriber to the Internet. The ISP does this, typically, through a combination of local exchange facilities and underlying toll service facilities. Thus, the incorporation of toll services in the provision of the services constitutes exchange access. Second, because the ISP pays its underlying

[6] Id. at para. 35.

[7] See 47 U.S.C. Section 3(48).

interexchange carrier a charge that is separate from the charge paid to the LEC(s), the "separate charge" provision of the Section 3(48) definition is met.

So even though ISPs may be providing an information service, they are using underlying toll services to do it. Those toll services constitute an integral part of the communication, making ISP-bound calls exchange access calls—not "local" calls, as in the analysis provided by Mr. Price. As the FCC phrased it, "We. . .reject the argument of those commenters who suggest that the *only* service originated or terminated by the local exchange carrier, when it provides access to the ISP, is an information service."[8]

Q. ON PAGE 11 OF HIS TESTIMONY, MR. PRICE STATES THAT ISPS "DO NOT PROVIDE EITHER LOCAL OR LONG DISTANCE TOLL TELEPHONE SERVICES" AND IMPLIES THAT THIS SOMEHOW MEANS ISP-BOUND TRAFFIC CANNOT BE EXCHANGE ACCESS TRAFFIC? DO YOU AGREE WITH HIS ANALYSIS?

A. No, and neither does the FCC. As described above, the services provided by ISPs integrally involve toll services and thus have been defined by the FCC as exchange access when they cross exchange boundaries, as Internet-bound calls almost universally do. The FCC has clarified that telecommunications does not end where information services begin. Rather, the information services "ride" on

[8] Advanced Services Remand Order at para. 37 (emphasis added).

top of the underlying telecommunications. And when that information service involves the connection of an end user to the Internet, this constitutes a single, interexchange and predominantly interstate communication involving the use of underlying toll services as well as local exchange access services.

Q. ON PAGE 12, MR. PRICE ARGUES THAT ISP-BOUND TRAFFIC SHOULD BE TREATED "LIKE ANY OTHER LOCAL CALL" UNDER THE AGREEMENTS. IS THAT TRUE?

A. No, for the simple reason that Internet-bound calls are not "local" calls under the terms of the Act or of the Agreements. Contrary to Mr. Price's assertion, Internet-bound calls do not terminate at the ISP. Indeed, no end user would ever initiate such a call if they did. Callers are not originating communications that are destined to terminate at their ISPs—they are originating calls to the Internet or, more specifically, calls to the variety of websites and other applications that they can access sequentially or even simultaneously, as part of the same call. Those websites are located around the country and around the globe. If Internet-bound calls terminated at the ISP, they would provide very little value indeed to the consumer. But that clearly is not the case. The ISP's node is not the termination point of an Internet-bound call—the Internet is. The ISP serves merely as an intermediate point for messages to and from the end user and points on the worldwide Internet.[9]

[9] Indeed, through dial-up interconnections, callers can access points even beyond the Internet, reaching a variety of users and services providers that also are connected to the Internet.

Events in the marketplace are completely overwhelming the CLECs' "two-call" theory. A good example of that can be found in moves by existing long distance providers to invest in the nascent market for services that use the Internet for some or all of their transmission pathways. AT&T Corp. is investing $725 million in one such company, Net2Phone, Inc.[10] AT&T plans to work with Net2Phone and other partners to develop Internet voice applications, allowing it to provide long distance services via the Internet. It appears that AT&T does not believe Internet-bound calls terminate at the ISP's node, or it would not be considering them as the core of a long distance voice offering. It stretches the bounds of logic to argue that when AT&T delivers a circuit-switched call from St. Louis to San Antonio, it is part of a long distance toll service, but if AT&T delivers the same call through the packet switched environment of the Internet, that call somehow will be "local." Either way, the call will transcend the boundaries of local exchanges, local calling areas, LATAs, and states.

Q. DOES THE ACT REQUIRE CARRIERS TO PAY RECIPROCAL COMPENSATION FOR INTERNET-BOUND TRAFFIC?

A. No, it does not. Section 251(b)(5) of the Act requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of

[10] See "AT&T Places $725 Million Bet on Internet Telephony," *Telecommunications Reports Daily*, March 31, 2000..

telecommunications." The FCC made clear, in its *Local Competition Order,* that these reciprocal compensation obligations apply only to the transport and termination of "local telecommunications traffic," a category that excludes calls to the Internet, which are routed through to destinations around the globe.[11] So at all times, it should have been clear that the Act, as interpreted by the FCC, has not required ISP-bound calls to be subject to reciprocal compensation.

Moreover, even prior to the *Local Competition Order*, a series of FCC orders and rulings dating back to 1983 stated clearly that calls to enhanced service providers ("ESPs")--including ISPs--were viewed by the FCC as interstate.[12] In fact, the FCC has never considered calls to interstate ESPs as anything *other* than interstate traffic, based on the nature of those communications and based on an analysis of them from the point of inception to the point of completion. The only basis, then, for this Commission to find that carriers should pay reciprocal compensation for Internet-bound traffic is if it determines that the carriers mutually agreed to do so through their interconnection agreements.

Q. DO THE AGREEMENTS AT ISSUE IN THIS CASE CALL FOR THE PAYMENT OF RECIPROCAL COMPENSATION FOR CALLS ROUTED THROUGH THE LECS' NETWORKS TO THE INTERNET?

[11] See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16013 (1996).

[12] See e.g. *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983) (*MTS/WATS Market Structure Order*); see also *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd 2631 (1988) (*ESP Exemption Order*).

A. No. the Agreements clearly call for the exchange of reciprocal compensation only for "local" traffic—indeed, they mirror the language of the Act and the FCC rules defining when such compensation *must* be paid as a matter of law--and their definitions of such traffic do not encompass Internet-bound calls. For example, the agreement between SWBT and Brooks states the following: "Calls originated by one Party's end users and terminated to the other Party's end users shall be classified as `Local Traffic' under this Agreement if the call: (I) originates and terminates in the same SWBT exchange area; or (ii) originates and terminates within different SWBT exchanges which share a common mandatory local calling area."[13] The agreement with MFS Communications Co., Inc. (predecessor of MCIWC) contains similar language.

The Internet-bound calls at issue here do not both originate and terminate in the same exchange or local calling area but rather continue on to websites around the globe. A clear reading of the language in the Agreements indicates that the reciprocal compensation obligations do not apply to such calls. MCIWC, Brooks, and BroadSpan should not be allowed to hijack language that applies to calls that originate and terminate in the same local exchange—which must be covered under the FCC's interpretation of Section 251(b)(5)—and then stretch that language in an attempt to cover traffic that can be subject to reciprocal compensation *only* if both sides have agreed to do so voluntarily. The language

[13] See Missouri Interconnection Agreement by and between Southwestern Bell Telephone Co. and Brooks Fiber Communications of Missouri, Inc., Section III (Compensation for Delivery of Traffic), p. 4.

of the Agreements provides no evidence that there ever was any such voluntary agreement.

Q. MR. PRICE NOTES, AT PAGE 12, THAT LOCAL EXCHANGE CARRIERS DO NOT RECEIVE ACCESS CHARGES FROM ISPS FOR CONNECTING END USERS TO THE INTERNET. DOES THAT MEAN SUCH CALLS ARE "LOCAL" OR THAT THEY TERMINATE AT THE ISP'S LOCAL NODE?

A. Definitely not. ISPs would, in fact, be paying access charges today if not for the FCC's decision, since 1983, to specifically exempt all enhanced service providers ("ESPs") from paying access charges. That decision by the FCC was, however, a narrow policy decision made primarily to shelter start-up ESPs from the effects of having to compensate LECs for the access services they received. The FCC stated as much in its May 1997 *Access Charge Reform Order*, in which it said clearly that a primary reason for the ESP exemption was to avoid disrupting the evolving information service industry and to give ESPs the benefit of paying lower business line rates to foster their growth.[14] In other words, the FCC's chief rationale was based on a desire to help the ESPs, not on any analysis of the nature of the actual traffic. In fact, the FCC has never altered its classification of ESP traffic (including Internet-bound traffic) as interstate, and in fact, it could only act to adopt the exemption *because* such traffic is interstate and does not terminate

[14] See in the matter of *Access Charge Reform*, CC Docket 96-262, First Report and Order, rel. May 16, 1997, at para. 344.

within the local exchange. Moreover, the FCC has never held that its exemption of ISP-bound traffic from interstate access charges rendered that traffic "local" or made it subject to reciprocal compensation obligations.

The FCC's Part 69 rules governing interstate access charges established only two classes of entities for access charge purposes: (1) interstate carriers and (2) end users. While the FCC periodically has examined the possibility of establishing other categories under Part 69, it has never done so. ESPs remain designated as end users for access charge purposes.

In its *Advanced Services Remand Order*, however, the FCC made clear that its rules do not limit the definition of who can purchase and receive access services just to carriers.[15] Rather, entities viewed as "end users" may also be purchasers of access services—as ISPs are when they use LEC networks for a portion of the overall Internet-bound communication that they carry.

It is then extremely misleading and a mischaracterization of binding FCC rulings to imply that ISP-bound traffic is "local" or that it terminates at the ISP's node, merely because the FCC has exempted it for access charge purposes. The FCC has clearly rejected that argument as part of the now discredited "two-call"

[15] See *Advanced Services Remand Order* at para. 43. The FCC specifically "corrected" its interpretation in an earlier order (the Non-Accounting Safeguards Order) that non-carriers did not use exchange access services.

theory. The truth is that despite the exemption, Internet-bound traffic has never been anything other than interstate exchange access traffic.

Q. ON PAGE 12, MR. PRICE ARGUES THAT BECAUSE LECs BILL ISPS OUT OF LOCAL TARIFFS, THIS INDICATES THAT SUCH CALLS ARE LOCAL IN NATURE. DO YOU AGREE?

A. No. As part of the ESP exemption, the FCC has specifically directed incumbent carriers to undertake certain treatment of their interstate ISP traffic, including reporting it as intrastate for ARMIS purposes and offering it out of local, intrastate tariffs. These steps, which were ordered by the FCC, do not make ISP-bound calls intrastate or "local." The very fact that the FCC has directed LECs to handle the traffic in this manner proves that the traffic is, in fact, interstate interexchange traffic. Otherwise, the FCC would have had no authority to issue those orders. Those orders are not subject to modification or revocation by state commissions—once again, because this traffic is not, in fact or in law, "local" traffic.

Q. ON PAGES 12-13 MR. PRICE IMPLIES THAT BECAUSE LECS WERE DIRECTED TO TREAT ISP-BOUND TRAFFIC IN A SIMILAR MANNER TO LOCAL TRAFFIC FOR SOME PURPOSES, THAT PROVES THAT SWBT KNEW OR INTENDED THAT ISP-BOUND TRAFFIC BE

COVERED BY RECIPROCAL COMPENSATION. DO YOU AGREE WITH THIS INTERPRETATION?

A. This is a convenient interpretation for CLECs such as MCIWC, Brooks, and BroadSpan. But there is entirely no basis for it. Remember, the FCC directly ordered the ILECs, including SWBT, to report this traffic as intrastate and to offer it out of intrastate tariffs, even though both the ILECs and the FCC knew that the traffic was interstate. In fact, the only parties who are professing that they did not know it was interstate are the CLECs—despite a written record of categorizing ESP traffic as interstate, dating back to 1983. Why did the CLECs not know, since the record was clear, and clearly in front of them?

It is ludicrous to suggest that SWBT went along with the view that Internet-bound traffic was intrastate, merely because it followed direct orders from the FCC to, in effect, treat the traffic as the exact opposite of what it really is. It was not the idea or desire of SWBT or any other ILEC to refrain from charging access charges, to report the traffic as intrastate when it clearly was not, or to offer an interstate access service out of its intrastate tariff. The FCC directed it to do those things. Inferring intent here is like suggesting that a man wanted to go skydiving because his general ordered him to jump off a cliff.

Q. DOES THE FACT THAT END USERS COMMONLY DIAL INTO THE INTERNET BY USING A SEVEN-DIGIT (OR IN SOME

JURISDICTIONS, A TEN-DIGIT) "LOCAL" NUMBER REVEAL ANYTHING ABOUT THE NATURE OF THAT TRAFFIC?

A. No. This issue s a red herring, raised repeatedly by CLECs after it was mentioned by the FCC in its *ISP Declaratory Ruling*, which was vacated by the U.S. Circuit Court of Appeals for the D.C. Circuit.[16] The fact that end users typically access dial-up Internet access services through a seven-digit call proves nothing regarding the nature of that traffic, including where the calls terminate. Several classes of indisputably interstate traffic have been initiated, both in the past and in the present, by dialing a seven-digit number. Indeed, the interstate long distance industry was, for many years, entirely based on dialing seven-digit "local" numbers to initiate interstate calls.

Another example is foreign exchange (FX) service, which involves the end user dialing a seven-digit or ten-digit "local" number. Nevertheless, FX service is not treated as terminating in the local exchange. The jurisdictional and regulatory treatment of FX calls is determined based on the point of "completion" of the calls. Where FX is used on an interstate basis, it is regulated by the FCC and treated as an interstate, interexchange service. Interstate FX calls are not subject

[16] See *Bell Atlantic Telephone Companies v. Federal Communications Commission and United States of America*, consolidated cases beginning at No. 99-1094, Opinion of the U.S. Court of the Appeals for the District of Columbia Circuit, rel. March 24, 2000, 2000 U.S. App. LEXIS 4685, remanding the FCC's *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68 (rel. Feb. 26, 1999) ("ISP Declaratory Ruling").

to reciprocal compensation under local interconnection agreements, even though the telephone number the end user dials may be a seven-digit number.

Another example of the use of seven-digit numbers for interstate services involves Common Control Switching Arrangement ("CCSA") offerings, which are private network services that use parts of the public switched network and are offered to large users. CCSA service permits a large business customer, such as a corporation with offices in various locations around the country, to communicate over its internal private network among those offices. But it also allows the company's employees to communicate with individuals off that private network in any location where the company has an office. For example, a food distribution company may have offices in St. Louis, Memphis, Little Rock, and Nashville. An employee in St. Louis could use the CCSA network to contact a customer in Nashville, simply by dialing a seven-digit number to access the network, punching in a PIN code, then dialing the off-network number of the customer in Nashville. Once again, this involves the use of seven-digit numbers to make interstate, interexchange calls.

As noted above, the use of seven-digit dialing was an integral part of the development of long distance service competition in the U.S. MCI used FX arrangements itself in 1974 to begin offering its "Execunet" service, the first competitive public switched long distance service in the country.[17] To make a

long distance call using Execunet, customers initially had to dial a seven-digit telephone number to reach the MCI network, but the call then would be routed to the destination point nationally. Such calls were not "local," nor was the Execunet service a local offering. Rather, it was a long distance toll service, and the FCC properly asserted jurisdiction and regulatory authority over it as such. So the insistence by MCIWC that the use of seven-digit dialing indicates any "local" characteristics of ISP-bound traffic is particularly puzzling. If one had assumed in 1974, based on "industry custom and practice," that Execunet calls were "local" because they were dialed using seven digits, one would have been decidedly wrong.

Q. ON PAGE 13, MR. PRICE SUGGESTS THAT SWBT "ADMITS" TO TREATING CALLS AS "LOCAL" IN ITS RESPONSES TO INTERROGATORIES (NOS. 9, 12, 13) IN THIS CASE? DO YOU AGREE WITH HIS INTERPRETATION?

A. No. I see no such admission in SWBT's responses to those interrogatories. As the responses convey, SWBT could not meter outbound ISP traffic from its subscribers or otherwise unilaterally segregate it from local traffic. It is impossible for SWBT to know for certain whether calls from its subscribers to *any* seven-digit telephone number served by a CLEC are intrastate or interstate in nature, short of physically intercepting and monitoring the communications. This

[17] Microwave Communications, Inc., FCC Tariff No. 1 (1974). (MCI's national services were based in part on resale and in part on the use of MCI's own facilities. All of MCI's facilities-based national services

is true for Internet, FX, dial-around long distance carriers, other ESPs and any other users, whatsoever. Measures can be taken, with some reasonable expectation of accuracy, to determine the amount of traffic bound for ISPs, but the best way of establishing the exact amount is for the receiving CLEC to identify calls routed through to ISPs and to provide data to SWBT accordingly.

This situation arises, by the way, with respect to interstate FX calls and interstate enhanced service calls. Where the ISP, FX customer, or interstate ESP is served by a CLEC, there is no way for SWBT, in the normal course of operations, to know with certainty that a seven-digit number its local exchange customers dial is used to provide an interstate service. Such calls must be treated separately by ILECs as interstate calls, pursuant to FCC rules and company tariffs, but the best way to identify those calls is through an accurate and reliable report from the CLEC to which the call is handed after the incumbent LEC originates it. Only the CLEC knows—or can find out—that its customer is providing an interstate service. This is true even when an interstate service unquestionably is being provided—such as in the case of interstate FX calls. SWBT can determine that the call *likely* is interstate and can try to measure it, but the CLEC is in the best position to identify the traffic as interstate.

None of these factors cited by Mr. Price, separately or in the aggregate, amount to any "industry custom and practice" dictating that Internet-bound traffic be classified as "local," particularly when set against the prevailing and binding

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were FX/CCSA-based services).

federal rulings, which pointed to the fact that such traffic was interstate. Subsequent federal rulings such as the *Advanced Services Remand Order*, have shown that SWBT was, in fact, correct in viewing ISP-bound traffic as non-local traffic that does not originate and terminate within the same local exchange—and never has. Indeed, if there is any prevailing industry custom and practice, then and now, it is to monitor and follow binding FCC rulings, which in this case consistently have pointed this industry toward the true picture of these calls as interstate exchange access traffic.

Q. IF THE FACTORS CITED BY MR. PRICE DO NOT INDICATE THAT ISP-BOUND CALLS ARE "LOCAL," WHY HAVE CLECS CONSTANTLY ATTEMPTED TO EMPLOY THEM, AND WHY DID THE FCC REFER TO THEM AS DICTA IN ITS *ISP DECLARATORY RULING*?

A. CLECs have consistently misused the FCC's dicta, which were included in the *ISP Declaratory Ruling*, to somehow indicate intent or acquiescence on the part of ILECs to voluntarily include ISP-bound calls among those that are subject to reciprocal compensation. They have been allowed to do this, in my view, because of a lack of clarity in the FCC's own rulings on this issue. In short, the FCC has been right on the facts—it has ruled correctly that ISP-bound calls do not terminate at the ISP node and cannot be considered among the "local" calls that are subject to reciprocal compensation on a mandatory basis under Section 251.

But in its effort to preserve a compensation mechanism that subsidizes ISPs (which the FCC wants to see flourish for overall policy and political purposes), the FCC could not resist offering some suggestions--on a non-binding basis, of course—ostensibly to help ascertain, after the fact, what the parties to an interconnection agreement had intended. The dicta indicated that these factors were only to be used where the parties voluntarily went beyond the traffic for which reciprocal compensation was mandated by statute—i.e., traffic originated on the network of an interconnecting LEC and terminated on the network of the other. In effect, the FCC sought to help divine "intent" by rearranging the tea leaves. But as I have explained, none of the factors it threw out as suggestions—and which have been taken as gospel by the CLECs—offer any real indication of the parties' intent regarding ISP traffic.

In my view, the FCC has muddied the waters in an effort to preserve its policy of subsidizing the ISP industry. As stated above, the FCC has acknowledged that it created and preserved the ESP exemption in part to shield ISPs from the rate shock of having to pay access charges, which they otherwise would have owed. Through their hijacking of the reciprocal compensation system, the CLECs have shown themselves to be very adept at hiding underneath that very same shield.

In his recently published memoirs, Reed E. Hundt, who was the FCC's Chairman during much of the period when the issue of ISP reciprocal compensation came to the fore, took credit not only for promoting the growth of the Internet, but for

favoring CLECs. Speaking about the FCC's efforts to implement the Telecommunications Act of 1996, he wrote, "Our rules would encourage the development of new companies called CLECs (competitive local exchange carriers). Many of the CLECs, as it turned out, were builders of new data networks."[18] Meanwhile, at the same time, according to Mr. Hundt, his office "decided that our fundamental goal was to encourage any business to attack monopoly incumbents."[19]

Among the ways this apparent bias in favor of CLECs manifested itself was in a tacit signal to America Online Chairman Steve Case to initiate a lobbying campaign in Congress against any move to require that ISPs pay access charges.[20] Leaving aside any debate about the wisdom of applying access charges in those circumstances, Mr. Hundt's revelation indicates that at least by early 1997, all parties—including the largest ISP—were tacitly acknowledging that this traffic was interexchange, interstate traffic that could well be made subject to access charges.

To the extent that the overall policy of favoring CLECs and promoting the Internet industry became entrenched at the FCC—as in my view, it did—this policy may well have colored the FCC's rulings on this issue. That is, the FCC,

[18] See Reed E. Hundt, *You Say You Want a Revolution: A Story of Information Age Politics*, New Haven, Conn.: Yale University Press, 2000, at pages 156-157.

[19] Id. at page 155.

[20] Id. at page 207.

faced with unavoidable facts and its own precedents, ruled that ISP-bound traffic does not terminate in the same local exchange where it originates and thus is generally interstate, interexchange traffic. But out of fear of ending a subsidy to CLECs and ISPs—which was valued for policy and political reasons—the FCC never followed through with logical guidance to the industry based on those facts. The result has been a mixed message that has given rise to serious misinterpretations and abuses by the CLECs. This Commission now has the chance to clarify the picture and to finish the job—to follow where the facts lead by ruling that reciprocal compensation does not apply to Internet-bound calls under the terms of the Act or the Agreements.

Q. ON PAGE 18, MR. PRICE CITES A RECENT DECISION BY THE FIFTH CIRCUIT COURT OF APPEALS IN AN ATTEMPT TO SHED LIGHT ON SWBT'S ALLEGED INTENT TO PAY RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC. DO YOU AGREE WITH HIS INTERPRETATION? WHAT ARE THE IMPLICATIONS OF THIS DECISION FOR THIS CASE?

A. This interpretation relies on a clear misunderstanding of where Internet-bound calls terminate. As I have described above, the FCC has (1) clearly rejected the idea that telecommunications ends where an information service begins, (2) specifically stated in several rulings that Internet-bound traffic does not terminate

at the ISP's node, and (3) affirmed in unambiguous terms that calls to ISPs generally are exchange access traffic that involve underlying toll services.

The analysis of the Fifth Circuit, cited by Mr. Price, clearly errs in taking the standard applied to local calls, which do terminate in the same local exchange where they originate, and applying that standard to ISP-bound calls, which do not. The former are required to be subject to reciprocal compensation under Section 251(b)(5) of the Act, while ISP-bound calls are not. Indeed, the court appears to acknowledge the difference when it notes that the FCC has ruled that parties may voluntarily include ISP-bound traffic within the scope of their interconnection agreements, even if Sections 251 and 252 do not apply to such traffic as a matter of law.[21]

The court, however, then completely blurs the distinction between calls that must be subject to reciprocal compensation under Section 251(b)(5) and those calls that merely *may* be included, voluntarily. Specifically, the court notes that the agreements at issue in that case did not define "terminate" or specifically mention ISP-bound traffic. Nevertheless, it proceeds to use the FCC's definition of termination--which applies only "for purposes of Section 251(b)(5)"--that is, only to local traffic, which the FCC has said does *not* include ISP-bound traffic. The court's reasoning starts from the wrong assumption: that ISP-bound traffic is "local" under the terms of Section 251(b)(5). It then proceeds to its tautological

[21] See *Southwestern Bell Telephone Co. v. Public Utility Commission of Texas*, Case No. 98-50787, et al., United States Court of Appeals, Fifth Circuit (March 30, 2000), page 13.

result, merely proving that if you begin with the wrong assumption, you will end up with a predictably inaccurate result.

To the extent that the parties included language in their Agreements reflecting the mandatory reciprocal compensation obligations in Section 251(b)(5), one cannot make the argument that this language applies to ISP-bound traffic. Given the longstanding and historical classification of calls to enhanced service providers as interstate, plus the fact that the FCC never acknowledged that Internet-bound calls were "local" under Section 251(b)(5), it is difficult to see any basis for assuming that ISP-bound calls should be treated as such, absent a specific voluntary agreement by both parties. The CLECs cannot point to any evidence that SWBT made any such agreement.

Unless or until overturned, this Fifth Circuit decision is the law of that circuit, but it is not, of course, binding here. In any case, it is important to recognize what it does and does not do. It does not require or endorse the payment of reciprocal compensation, nor does it mandate or suggest that any contract—much less the contracts at issue in this case—requires reciprocal compensation to be paid for ISP-bound traffic. It only finds that a state order requiring that may legally be within the broad discretion of a state agency and that it *may* continue to be lawful even after the FCC completes further action on this issue. As the Fifth Circuit stated, "We hold that the PUC acted within its jurisdiction in addressing the questions pertaining to interpretation and enforcement of the previously approved

interconnection agreements at issue here." [22] Moreover, the court's review of the PUC's state law determinations was undertaken under "the more deferential arbitrary-and-capricious standard. "[23] Under this standard, the court ruled that a state could issue a ruling on whether parties had agreed voluntarily to pay reciprocal compensation. It then stated that if the FCC prevailed on remand in explaining why calls did not terminate locally, that would not *necessarily* require that state decision to be reversed. That is a long way from ruling that ISP-bound traffic is "local" traffic that should be subject to reciprocal compensation under these or any other Agreements.

Q. THE FIFTH CIRCUIT NOTED IN ITS ORDER THAT THE D.C. CIRCUIT COURT OF APPEALS HAS VACATED THE FCC'S *ISP DECLARATORY RULING* AND REMANDED IT BACK TO THE FCC FOR FURTHER EXPLANATION OF ITS APPLICATION OF THE "END-TO-END" ANALYSIS TO INTERNET-BOUND CALLS. WHAT EFFECT COULD THIS REMAND HAVE ON STATE DECISIONS RELATED TO THIS ISSUE?

A. The Fifth Circuit suggests that "even if the FCC should continue to deem such calls to be interstate and should satisfy the D.C. Circuit following remand, we do not view the court's remand as *necessarily* forecasting a different result on the question of PUC jurisdiction over such calls in the context of interpreting and

[22] Id. page 6

enforcing existing reciprocal compensation agreements [emphasis added]. This would be doubly so if the remand eventually results in the FCC's concluding that local calls to ISPs are intrastate."[24] The court seems to be trying to have it both ways here. But the use of the word "necessarily" is revealing. The court is acknowledging that the ultimate result of the remand could, in fact, yield a different result than the one the Fifth Circuit upheld, even based on the deferential, "arbitrary and capricious" standard of review of the state and District Court decisions. The court cannot preclude the possibility that the remand could yield a result that would render the state PUC's ruling in that case outside this broad scope of discretion.

In fact, there is every possibility that the FCC will explain and support its *ISP Declaratory Ruling* applying the end-to-end analysis to Internet-bound calls. It already has substantially affirmed and explained, in the subsequent *Advanced Services Remand Order*, why ISP-bound calls do not terminate at the ISP's node and should therefore be viewed as exchange access traffic that is largely interstate. If, as should be the case, the FCC satisfactorily explains its analysis on remand, the result can only reinforce what the FCC has ruled in other orders, which remain binding and are in force today.

Q. IF INTERNET-BOUND TRAFFIC REALLY WERE "LOCAL," WOULD THERE BE ANY REASON TO FOCUS ON THE INTENT OF THE

[23] Id., page 10
[24] Southwestern Bell Telephone Co. v. PUC of Texas, footnote no. 2.

PARTIES? WOULDN'T THEY *HAVE* TO PAY RECIPROCAL COMPENSATION UNDER THE TERMS OF THE COMMUNICATIONS ACT?

A. If this traffic terminated on the network of the CLEC, payment of reciprocal compensation would be required by law. The question of intent can only arise in this instance because ISP-bound traffic is not "local" in nature--i.e., it does not both originate and terminate within the same local exchange (or common mandatory calling area). If this traffic did, in fact, originate and terminate within the same local exchange, then Section 251(b)(5) of the Act, as interpreted by the FCC, would plainly require SWBT to pay reciprocal compensation for it. In such a case, the question of whether or not SWBT had intended to pay reciprocal compensation would have been irrelevant--SWBT would have been forced to pay it under Section 251. But the FCC has in fact ruled that ISP-bound traffic is not "local" under the terms of Section 251, and thus state commissions are now obliged to determine, retrospectively, the "intent" of parties regarding traffic that clearly would not otherwise be considered "local" on its own merits.

Q. IN YOUR VIEW, WOULD IT MAKE SENSE FOR SWBT TO AGREE TO INCLUDE INTERSTATE, ISP-BOUND TRAFFIC AMONG THE CALLS SUBJECT TO RECIPROCAL COMPENSATION UNDER THE AGREEMENTS?

A. No. In fact, it is patently absurd to suggest that SWBT or any other company would have agreed at any time to pay reciprocal compensation voluntarily for ISP-bound traffic when it was in no way required to do so under the Act. No company voluntarily would agree to subsidize its direct competitors. No company would agree to subject itself to a reciprocal compensation arrangement under which it would be certain to incur an obligation to pay tens of millions of dollars to those competitors. Yet that is precisely what the CLECs are asking this Commission to believe of SWBT.

Q. WHY WOULD IT BE DETRIMENTAL FOR SWBT TO AGREE TO INCLUDE INTERNET-BOUND CALLS AMONG THOSE SUBJECT TO RECIPROCAL COMPENSATION?

A. CLECs, and CLECs alone, benefit from the application of reciprocal compensation to ISP-Internet traffic. Incumbent LECs are guaranteed to be harmed, because there is no possible way in which the application of reciprocal compensation to ISP traffic could result in net reciprocal compensation payments from a CLEC to an incumbent such as SWBT. Put simply, CLECs do not--and likely will not, as long this market distortion continues--serve the vast majority of residential and business ratepayers that originate dial-up Internet traffic. As carriers of last resort, in fact, SWBT and other incumbents must serve the huge mass of residential customers in their service areas. CLECs, meanwhile, are free

to target their marketing to customers such as ISPs, then sit back and watch the "reciprocal" compensation payments flood in.

The truth is that Internet-bound traffic is in no sense "reciprocal." CLECs, since they serve few residential customers who generate dial-up traffic, need only target their marketing to ISPs to gain what amounts to a windfall subsidy from the misapplication of reciprocal compensation to such traffic. Incumbents, on the other hand, are guaranteed to have enormous net out-payments as they continue to provide service under their carrier-of-last-resort obligations to the vast majority of consumers. Such a market distortion in effect turns standard residential and business ratepayers (other than ISPs) into liabilities. CLECs have a perverse incentive not to gain them as customers--because to do so would only reduce the net inflow of reciprocal compensation payments they receive as gatekeepers to a select group of ISPs. It is simply ludicrous to suggest that SWBT would have voluntarily or knowingly agreed to an arrangement that effectively binds it to transfer huge amounts of money to its direct competitors.

Q. ARE THERE PUBLIC POLICY REASONS FOR FINDING THAT RECIPROCAL COMPENSATION SHOULD NOT APPLY TO ISP-BOUND CALLS?

A. Yes. Requiring the payment of reciprocal compensation for Internet-bound traffic is unsound public policy because it hinders the development of competition in at

least two markets that are crucial to the expansion of choices and lower prices for consumers. First, as I have stated already in this testimony, the application of reciprocal compensation actually amounts to a perverse incentive for CLECs *not* to compete with incumbents for the vast majority of standard residential and small business customers that generate the bulk of dial-up internet-bound calls. Any customer a CLEC signed up who began to generate Internet calls would actually be subtracting from the net reciprocal compensation payments the CLEC received from serving ISPs. SWBT, of course, must serve these residential customers, at flat, per-month rates. Under these conditions, no competitive market can possibly develop to serve residential subscribers who access the Internet over the public switched network. In any rational policy framework, such high-volume users should be prime targets for competing LECs. Instead, they are left out in the cold, bystanders to any development of competition.

Second, the application of reciprocal compensation in this situation also skews the market for serving ISPs. So great is the benefit of serving a select number of ISPs that CLECs have a perverse incentive to offer their services at uneconomic rates. Instead of competing on the basis of service quality, technological improvements, or other sound bases, CLECs have every reason to simply discount their services or in fact offer ISPs a share of their reciprocal compensation windfall. Indeed, CLECs have a great incentive to establish or acquire their own ISP operations--as in fact, they have done--simply to benefit from reciprocal compensation inflows.[25]

The true purpose of reciprocal compensation for local traffic is to ensure that a LEC is able to recover its actual costs for terminating local traffic that originates on another LEC's network--not to serve as a source of capital infusion, not to say windfall profits, for new market entrants. The application--or rather, misapplication--of reciprocal compensation to ISP-bound traffic amounts to nothing more or less than a massive subsidy to those entrants. But it is not creating competition, it is merely transferring wealth from one industry segment to another.

This is all the more true because per-minute compensation rates designed for local voice traffic result in over-compensation when applied to Internet calls. The costs incurred in carrying the two different kinds of traffic are, in fact, very different.

Q. HOW DO THE COSTS FOR INTERNET TRAFFIC DIFFER FROM THOSE INCURRED IN CARRYING A VOICE CALL?

A. Call set-up represents a significant portion of the total costs a LEC incurs to terminate a call that originates on another LEC's network. However, the per-

[25] To name a few examples, RCN has acquired Erols (Telecommunications Reports, Jan. 26, 1998), Intermedia has acquired Digex (Telecommunications Reports, June 9, 1997), and e.spire has announced aggressive plans to develop its own ISP unit (Telecommunications Reports, Jan. 11, 1999). The Massachusetts Department of Telecommunications and Energy was sufficiently concerned about this trend to investigate in the fall of 1998 whether "ISPs in Massachusetts may be identifying or nominally establishing themselves as CLECs solely to receive reciprocal compensation. . ." (see Complaint of WorldCom Technologies, Inc. (successor-in-interest to MFS Intelenet Service of Massachusetts, Inc.) against New England Telephone and Telegraph Co., d/b/a Bell Atlantic-Massachusets, order in D.T.E. 97-116, rel. Oct. 26, 1998.

minute reciprocal compensation rate is the same for each minute of a call. The rate represents the average of the call set-up and other costs over the duration of a call and is based on the average duration of a call. Thus, the LEC recovers its actual costs, on average. But because the typical Internet communication lasts far longer than the average voice call, application of the reciprocal compensation rate--which was designed to compensate for local voice calls--to each minute of an ISP-bound call results in a significant over-recovery of CLECs' costs.

Section 252(d)(2)(A)(I) states that a state commission shall not consider the terms and conditions for reciprocal compensation just and reasonable unless they provide for the "recovery by each carrier of costs associated with the transport and termination" of calls that originate on another carrier's network. The application of reciprocal compensation to ISP-bound traffic is unjust and unreasonable because it leads to massive over-recovery of the costs a CLEC incurs when such traffic traverses its network.

Q. ON PAGE 23 OF HIS TESTIMONY, MR. PRICE SUGGESTS THAT SWBT HAS EXHIBITED A "TREND" IN ITS CONDUCT AWAY FROM AGREEING TO PAY RECIPROCAL COMPENSATION TO RESISTING SUCH PAYMENTS. DO YOU AGREE?

A. No. In fact, nothing could be further from the truth. SWBT has been consistent in its position that Internet-bound calls are not "local" traffic because they do not

both originate and terminate within the same local exchange (or mandatory local calling area)--and never have. SWBT has never agreed to lump Internet-bound traffic in with local traffic, and as soon as it became aware of the CLECs' unilateral and misguided efforts to do so, SWBT made clear its refusal to acquiesce. Moreover, SWBT's consistent message reflects a long-standing and unbroken legacy of federal decisions classifying calls to ISPs (and before them, ESPs) as interstate, exchange access traffic that is not subject to mandatory reciprocal compensation obligations under Section 251(b)(5). This legacy of rulings stretches back at least to 1983, when the FCC first exercised its jurisdiction over such calls by applying its access charge rules to them. SWBT would have had no reason to assume that CLECs would mistakenly confuse interstate, Internet-bound traffic with local traffic that *must* be subject to reciprocal compensation under the Act. The FCC's recent rulings, including the *Advanced Services Remand Order*, show that SWBT was right.

This Commission should not reward the attempts by MCIWC, Brooks, and BroadSpan to hijack the reciprocal compensation regime in order to obtain and preserve a windfall subsidy they have not earned and do not deserve. For the Telecommunications Act of 1996 to be successfully implemented, public policy must favor true competition--not favor the competitors at the expense of other companies and, ultimately, the local exchange ratepayers of Missouri and other states.

ALBERT HALPRIN

EDUCATIONAL BACKGROUND AND WORK EXPERIENCE

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I earned a law degree from The Harvard Law School in 1974. Prior to that, I graduated from Western Washington State College with a Bachelor of Arts degree in 1971.

Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.

A. I am a partner at the law firm of Halprin, Temple, Goodman & Maher, located in Washington, D.C., and an adjunct professor of telecommunications law in the graduate law program at Georgetown University Law Center.

Since 1987, I have been engaged in the practice of law and consulting in the telecommunications field. From 1984 to 1987, I served as Chief of the Federal Communications Commission's Common Carrier Bureau, where I was responsible for the regulation of all interstate telecommunications services in the United States. Between 1980 and 1983, I was a Senior Attorney and Chief of

the Bureau's Policy and Program Planning Division.

I have lectured extensively and advised numerous clients on regulatory issues related to the Internet and Internet access services. For instance, at the International Telecommunication Union's recent "Inter@ctive '97" conference, the first global policy forum on Internet issues, I chaired the panel on Internet legal issues, and I participated on another panel on Internet regulation.[1]/

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY AND/OR APPEARED AS A WITNESS BEFORE THIS COMMISSION?

A: Yes. In 1998, I was an expert witness on behalf of Southwestern Bell Telephone Company ("SWBT") in Case No. TO-98-278, which involved reciprocal compensation for Internet traffic exchanged between SWBT and Birch Telecom of Missouri, Inc.

Q. **HAVE YOU TESTIFIED BEFORE OTHER PANELS ON ISSUES SIMILAR TO THOSE IN THIS PROCEEDING, OR ON OTHER**

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[1]/ The International Telecommunication Union is a United Nations agency charged with the regulation and coordination of international communications services.

TELECOMMUNICATIONS POLICY ISSUES?

A. Yes. I have testified before the U.S. Congress, the Federal Communications Commission, Canadian Radio-television and Telecommunications Commission (CRTC), and numerous courts and panels.

Among other cases, I have testified in nine state commission proceedings regarding reciprocal compensation for ISP Internet traffic: Complaint of ITC^DeltaCom Communications, Inc., Against BellSouth Telecommunications, Inc., for Breach of Interconnection Terms, and Request for Immediate Relief, Docket No. 1999-033-C (South Carolina); Petition of KMC Telecom, Inc., against BellSouth Telecommunications, Inc., To Enforce Reciprocal Compensation Provisions of the Parties' Interconnection Agreement, Docket No. U-23839 (Louisiana); Complaint of AVR of Tennessee L.P. d/b/a Hyperion of Tennessee L.P. against BellSouth Telecommunications, Inc., To Enforce Reciprocal Compensation and "Most-favored Nation" Provision of the Parties' Interconnection Agreement, Docket No. 98-00530 (Tennessee); Complaint of MFS Intelenet of Georgia, Inc., Against BellSouth Telecommunications, Inc. and Request for Immediate Relief, Docket No. 8196-U (Georgia); Emergency Petitions of ICG Telecom Group Inc., and ITC

DeltaCom Communications, Inc., for a Declaratory Ruling, Docket No. 26619 (Alabama); Connect Communications Corp. v. Southwestern Bell Telephone Co., Docket No. 98-167-C (Arkansas); Application of Brooks Fiber for an Order Concerning Internet Traffic, Cause No. PUD 970000548 (Oklahoma); Complaint and Request for Expedited Ruling of Time Warner, Docket No. 18082 (Texas); and 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, Docket No. 991267-TP (Florida).

In addition, I have been deposed as an expert witness in the following: Public Hearing: CCB 80-286(Amendment to Part 36 of the Commission's Rules), FCC (9/8/97); Clifford S. Heinz v. Catherine E. Havelock, *et al.*, O.C.S.C. Case X635521: Teleconnect Company v. U S West Communication, Inc. *et al.*, LA 16330 (Iowa Dist. Ct.); Interferometrics, Inc. v. Mobile Communications Holdings, Inc., *et al.*, C.A. No. 92-1211-A; Public Hearing: TPN CRTC 92-78, APT CRTC 92-78, Review of Regulatory Framework, CRTC (11/18/93); and Linda Davis et al. v. Southern Bell Telephone & Telegraph Company, Case No. 89-2839-CIV-NESBITT (S.D. Fl.).