end users use to connect to ISPs.[26] These signals are not merely "noise" on the line (although they sound to the human ear like static). Neither are these signals some type of amorphous communications "overhead." To the contrary, these signals are carefully crafted by the modem equipment, and are critical to the integrity of the connection.[27] Moreover, these signals continue constantly, even when higher-level information (computer files, emails, etc.) are not being transmitted. For the vast majority of the duration of an average "on line" session with an ISP, these purely "local" signals are the only traffic being sent over the call.[28]

28. **Higher-Level Data Traffic.** By far the most common higher-level data transmitted between an ISP and end users relates to one or more of three information services: email, newsgroups and lists, and the World Wide Web. As described below, a substantial fraction, and possibly a majority, of this high-level

[26] Improved "intelligence" in modems, reflected in more complex encoding of information within the signals the modems send to each other, is what has allowed the rate of data transmission over an analog modem line to increase from 9600 bits per second in the early- to mid-1980s to nearly 30,000 bits per second today. This can be improved to a download rate of more than 50,000 bits per second if the ISP has a digital (as opposed to analog) link between its modems and the LEC switch providing the ISP's connections to the public switched network.

[27] Indeed, analog modems constitute a major cost item for ISPs, and one of the ways that retail ISPs compete with each other is in their ability to support the latest and most "intelligent" modem technology (which maximizes download speeds for end users). The signals that modems send to each other, therefore, are an integral part of the information services that ISPs offer.

[28] This occurs because end users typically take a certain amount of time to review the data they get before requesting more data. For example, the WordPerfect file representing this complaint comprises approximately 122,000 bytes, or about 976,000 bits, of information. At a download speed of 20,000 bits per second, downloading this Complaint would take less than a minute of "call time." (At higher download speeds available with the latest analog modem technology, it could take less than 20 seconds.) If it takes 30 minutes to read this Complaint, a minute of downloading would reflect a 30:1 ratio of "review time" to "download time." All of the end user's "review time" — in this example, roughly 97% of the total — is time during which all that is traversing the path from the end user to the ISP is the unequivocally, unambiguously *local* modem-to-modem communication.

information comes not from some unidentified distant location, but instead from computers located on the ISP's local premises.

a. **Email.** Essentially all ISPs (including ALEC's ISP customer) offer email service to their subscribers. Email is a "store and forward" service. When a customer receives email, the email message (including any attached files) is sent to the customer's ISP, who maintains a local "email server" — a computer on the ISP's premises that stores email messages. When a customer logs on to check his or her email, the messages the customer has received are downloaded ***from the ISP's local email server*** to the customer's computer. Emails from the customer to others are first uploaded to the email server, then sent out to the Internet (or stored for other local end users) as appropriate. These are entirely "local" data transmissions.[29]

b. **Newsgroups and lists.** In practical terms, newsgroups and lists are forms of group email. In a newsgroup or list, people with a common interest (*e.g.*, gardening, hockey, the stock market, WordPerfect software, Internet law) "post" notes and files to a list that all subscribers to the group may then read and respond to. The ISP receives newsgroup files once or twice per day from other computers attached to the Internet. These files are then downloaded to the end user ***from the ISP's local newsgroup server*** when end users log on and request those files. Messages posted by the ISP's users to the newsgroups are handled like email: locally stored on an ISP computer, then forwarded on to their destination.

c. **World Wide Web.** The World Wide Web is basically a system for identifying files of interest to end users and downloading them. When an end user clicks on the URL[30] of a Web page the end user wants to visit, what really happens is

[29] Note that during the time that a customer is reading email that has been received, or composing email to send out, the customer's modem and the ISP's modem are busily sending purely local signals to each other in order to remain synchronized. *See* ¶ 27, *supra.*

[30] A URL is a "uniform resource locator," in the general form of "http://www.name.com."

that a short message is sent to the end user's ISP that says, in effect, "get me a copy of the files that make up this Web page." In many cases the ISP will need to send this message to "the Internet" in order to get the files. Increasingly, however, ISPs are implementing "Web caching." With Web caching, the ISP maintains a computer (called a "cache server") that has current copies of the Web pages that the ISP (aided by software) believes that its customers are most likely to request. If the ISP correctly anticipates these requests, it will already have on hand, locally, at least some of the Web pages that its customers want to visit.[31] When this occurs, the customer receives the requested Web page in an entirely local communication.[32]

29. The situation, in sum, is this: even if "the Internet" is somehow inherently interstate in nature, for all but a fraction of the time a typical end user is on line, the traffic between the end user and the ISP begins and ends within the local calling area. Even if BellSouth's legal theory is correct, therefore — and Section IV above shows that it is not — that theory applies, at most, to a tiny fraction of the minutes that its end users are on-line with ISPs. As a result, the most that BellSouth could claim in good faith is that it is entitled to some minor downward adjustment in its terminating compensation obligation to ALEC. Instead, while actually acknowledging that there is no contractual basis to exclude calls to ISPs from the

[31] Web caching allows retail ISPs to cut the costs of their telecommunications connections (typically T1 lines for ISPs of any size) to Internet access "wholesalers" such as DIGEX and UUNet. The idea is that the ISP will download popular Web sites during periods of slack usage so that peak usage demands on the ISP-to-wholesaler connections will be lower. As an added benefit, Web caching often allows end users to receive the cached sites much more quickly than if the files representing the Web site have to be obtained over the Internet at the moment the end user requests them.

[32] Yet again, once the customer has received the files representing the Web page, the customer will typically review that information on the screen. During this review, as long as the customer remains on-line, the only communication taking place between the ISP and the end user is the modem-to-modem communications described above. *See* ¶ 27, *supra*.

calculation of the "Percentage ***Local*** Usage" factor,[33] BellSouth nonetheless arbitrarily refuses to pay for 90% of such calls.[34]

VI. BellSouth's Refusal To Pay ALEC For Calls BellSouth Customers Make To ISPs Served By ALEC Is Anticompetitive And Abusive.

30. BellSouth is not just a telecommunications company. Through an affiliate, BellSouth is also a major and growing regional ISP — bellsouth.net. This fact has a critical bearing on the Commission's review of this complaint.

a. First, BellSouth plainly is, and from the beginning of this process has been, able to confer with bellsouth.net to determine the manner in which ISPs operate, what proportion of the time customers are on-line without exchanging higher-level data, and what proportion of the remaining time they are downloading from or uploading to local ISP devices such as email servers and Web cache servers. In asserting that all traffic its end users exchange with ISPs is jurisdictionally interstate, and refusing to pay for 90% of such calls, BellSouth is either wilfully ignoring readily available information, or putting its head in the sand and refusing to obtain that information. Neither course of action is fair or reasonable.

b. Second, the Commission should consider the economic impact of sustaining BellSouth's position (since BellSouth has undoubtedly done so). If calls to ISPs — alone among entities classified as end users — are not subject to terminating compensation payments, then CLECs will have powerful financial incentives to avoid serving ISPs, since they will not receive payment for the terminating switching functions that they perform. The CLECs will not get paid even though BellSouth will continue to receive local exchange second line revenues, increased federal subscriber line charge

[33] *See* Exhibit C hereto.

[34] *See* Exhibit D hereto.

("SLC") revenues, and any applicable usage charges when its customers call ISPs.[35] In practical terms, this means that the only LEC that will serve ISPs within BellSouth's Kentucky service territory will be BellSouth itself, because only BellSouth will receive any money for terminating calls to ISPs. It is unfair and anticompetitive to effectively deprive ISPs of the right to obtain service from CLECs on competitive terms. It is also unfair and anticompetitive to require ISPs to obtain their connections to the public switched network from an affiliate of a large competing ISP — bellsouth.net.

31. Moreover, there is nothing remotely unfair in requiring BellSouth to pay ALEC terminating compensation in accordance with the Agreement. BellSouth had a full and complete opportunity to try to protect itself against having to pay terminating compensation payments for calls to ISPs. All BellSouth needed to do was negotiate for bill-and-keep compensation for the exchange of traffic. BellSouth's decision to try to impose what amounts to bill-and-keep on ALEC now — only for the major class of end users that will cost BellSouth money — is nothing less than an attempt to renege on its bargain with ALEC. This is not good faith negotiation, or good faith contract administration. This is abuse of a small competitor by an entrenched monopolist who can afford to litigate endlessly while holding hostage payments to which ALEC is plainly entitled.[36]

---

[35] In this regard, the FCC increased the maximum SLC on second residential lines in part in order to provide additional compensation to ILECs whose customers use such lines to call ISPs. *See Access Charge Order, supra* at ¶ 50. It is totally unreasonable for BellSouth to be permitted to collect these revenues from its end users while refusing to pay terminating compensation to a CLEC such as ALEC for actually completing the calls.

[36] In this regard, ALEC plainly incurs substantial costs — including, most notably, the cost of acquiring, maintaining, and operating its switch — to enable it to complete the calls that BellSouth's end users dial to reach ALEC's ISP customer. BellSouth's position, however, seems to be that it can force ALEC to complete these calls for BellSouth's customers without paying ALEC the contract price for these services. There is no possible public policy rationale for such a position.

32. In sum, BellSouth's competitive interests are served by its unfair and unreasonable refusal to pay for calls to ISPs. BellSouth's failure to pay inflicts harm on smaller competitors such as ALEC, who have undertaken the effort needed to install switches and other facilities to serve ISPs. Moreover, if BellSouth can force CLECs to view ISPs as unprofitable customers (because they receive a lot of calls for which compensation will not be paid) BellSouth can isolate ISPs from competition and force them to obtain network connections from BellSouth itself — even though, as noted above, BellSouth has its own large and growing ISP operation.

33. Considerations such as these have led regulators to conclude that it constitutes anticompetitive and abusive behavior for ILECs to fail to pay for calls to ISPs. For example, the Illinois Commerce Commission found, in the case of Ameritech's refusal to pay terminating compensation for calls to ISPs, that:

> Ameritech Illinois' unilateral "remedy" is so ill-suited to its perceived problem ***that it lends substantial credence to the complainants' allegations that Ameritech Illinois' conduct is intentionally anticompetitive.*** Ameritech Illinois' local exchange competitors are obligated by law to terminate calls made by Ameritech Illinois' customers, they incur costs to do so, and they are entitled to be compensated for the use of their equipment and facilities. ...
>
> [CLECs] are highly dependent upon reciprocal compensation payments to finance their operations. ... ***The withholding of the payments caused and continues to cause complainants serious harm and has resulted in an anticompetitive impact which is contrary to the public interest.***

Teleport Communications Group, Inc. vs. Illinois Bell Telephone Company, Ameritech Illinois: Complaint as to dispute over a contract definition, Opinion and Order, Docket No. 97-0404 (Ill. Comm. Com'n March 11, 1998), 1998 Ill. PUC LEXIS 161 at **31-32 (emphasis added).

VII. Conclusion And Prayer For Relief.

34. BellSouth has breached the Agreement by refusing to pay terminating compensation for all but a small fraction of the calls its end users make to ALEC's ISP customer. Its stated reason for this refusal is totally unsupported by either the law (including both state and FCC decisions) or the facts. The only logical conclusion is that BellSouth wishes to achieve the anticompetitive and abusive results that naturally flow from its actions.

35. For the reasons described above, therefore, it is now necessary for this Commission to join with NARUC and all other state commissions that have addressed this issue and (a) declare that BellSouth's failure to pay terminating compensation for calls to ISPs is unlawful, unreasonable, anticompetitive, and constitutes a breach of the Agreement; and (b) direct BellSouth to immediately pay all past due amounts owed to ALEC, and to make timely payments in the future.

WHEREFORE, ALEC asks that the Commission promptly issue an order declaring:

1. That calls BellSouth end users make to ISPs served by ALEC within the same local calling area as the dialed number are local calls subject to terminating compensation under the terms of the Agreement.

2. That calls BellSouth end users make to ISPs served by ALEC within the same local calling area as the dialed number are local calls subject to terminating compensation under the terms of Section 251(b)(5) and Section 252(d)(2) of the federal Communications Act.

3. That BellSouth's past failures to pay these amounts in full and when due, and any future such failures to pay, are unreasonable and anticompetitive acts designed to injure BellSouth's competitors in both the local exchange and ISP markets.

4. That BellSouth is directed to immediately pay ALEC any and all amounts billed by ALEC (including any applicable interest) that BellSouth has withheld, disputed, or placed in escrow on the basis of claims that calls BellSouth end users make to ISPs served by ALEC are not subject to terminating compensation under the agreement.

5. That BellSouth is directed to pay in full and when due all future terminating compensation amounts owed to ALEC for calls BellSouth's end users make to ISPs served by ALEC.

6. That ALEC receive such additional relief as may be just and reasonable, including reasonable attorneys' fees to the extent permitted by law.

Respectfully submitted,

ALEC, Inc.

By: Christopher W. Savage

Christopher W. Savage
Adam S. Caldwell
COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006
202-659-9750
www.crblaw.com

Its Attorneys

Dated: May 5, 1998

Index to Exhibits

EXHIBIT A
EXCERPTS FROM BELLSOUTH/ALEC INTERCONNECTION AGREEMENT

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc.. ("BellSouth"), a Georgia corporation, and ALEC, Inc., a Kentucky corporation and shall be deemed effective as of June 15, 1997. This agreement may refer to either BellSouth or ALEC, Inc. or both as a "party" or "parties. "

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, ALEC, Inc. is an alternative local exchange telecommunications company ("ALEC") authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the parties wish to interconnect their facilities, purchase unbundled elements, and exchange traffic specifically for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996; and

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and ALEC, Inc. agree as follows:

I. Definitions

A. Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

B. **Commission** is defined as the appropriate regulatory agency in each of BellSouth's nine state region, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

C. **Intermediary function** is defined as the delivery of local traffic from a local exchange carrier other than BellSouth; an ALEC other than ALEC, Inc.; another telecommunications company such as a wireless telecommunications provider through the network of BellSouth or ALEC, Inc. to an end user of BellSouth or ALEC, Inc..

D. **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 Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff.

E. **Local Interconnection** is defined as 1) the delivery of local traffic to be terminated on each party's local network so that end users of either party have the ability to reach end users of the other party without the use of any access code or substantial delay in the processing of the call; 2) the LEC unbundled network features, functions, and capabilities set forth in this Agreement; and 3) Service Provider Number Portability sometimes referred to as temporary telephone number portability to be implemented pursuant to the terms of this Agreement.

F. **Percent of Interstate Usage (PIU)** is defined as a factor to be applied to terminating access services minutes of use to obtain those minutes that should be rated as interstate access services minutes of use. The numerator includes all interstate "nonintermediary" minutes of use, including interstate minutes of use that are forwarded due to service provider number portability less any interstate minutes of use for Terminating Party Pays services, such as 800 Services. The denominator includes all "nonintermediary", local , interstate, intrastate, toll and access minutes of use adjusted for service provider number portability less all minutes attributable to terminating party pays services.

G. **Percent Local Usage (PLU)** is defined as a factor to be applied to intrastate terminating minutes of use. The numerator shall include all "nonintermediary" local minutes of use adjusted for those minutes of use that only apply local due to Service Provider Number Portability. The denominator is the total intrastate minutes of use including local, intrastate toll, and access, adjusted for Service Provider Number Portability less intrastate terminating party pays minutes of use.

H. **Telecommunications Act of 1996 ("Act')** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

I. **Multiple Exchange Carrier Access Billing ("MECAB")** means the document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF:), which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions ("ATIS") and by BellCore as Special Report SR-BDS-000983, Containing the recommended guidelines for the billing of Exchange Service access provided by two or more LECs and/or ALECs or by one LEC in two or more states within a single LATA.

II. Purpose

The parties agree that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform with each parties' obligations under sections 251, 252 and 271 of the Act. The access and interconnection obligations contained herein enable ALEC, Inc. to provide competing telephone exchange service to residential and business subscribers within the territory of BellSouth. The parties agree that ALEC, Inc. will not be considered to have any state within BellSouth's region until such time as it has ordered interconnection facilities for the purposes of providing business and/or residential local exchange service to customers. At that time, this Agreement may be amended to include the other state or states. The term of this Agreement shall remain as set forth in Section III(A) even for any such additional states. To the extent the items in 47 U.S.C. § 271(c)(2)(B) are contained within this Agreement, the parties agree that with the execution of this Agreement, BellSouth has met the requirements of 47 U.S.C. § 271(c)(2)(B).

III. Term of the Agreement

A. The term of this Agreement shall be two years, beginning June 15, 1997.

B. The parties agree that by no later than June 15, 1998, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginning June 15, 1999.

C. If, within 135 days of commencing the negotiation referred to in Section II (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the Commission to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the Commission to issue its order regarding the appropriate local interconnection arrangements no later than March 15, 1997. The parties further agree that in the event the Commission does not issue its order prior to June 15, 1999or if the parties continue beyond Juned 15, 1999 to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the parties, will be effective retroactive to June 15, 1999. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

IV. Local Interconnection (47 U.S.C. §251(c)(2), §252(d)(1),(2), §271(c)(2)(B)(i))

A. The parties intend that the interconnection of their equipment, facilities and networks pursuant to this section complies with the requirements of sections 251, 252 and 271 of the Act.

B. The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

C. Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made.

D. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available or at the expiration of the first year after the execution of this Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

E. The parties agree that there are three appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7) services tariff or as contained in Attachment B-1 for local interconnection, incorporated herein by this reference.

F. The parties agree to accept and provide any of the preceding methods of interconnection. Reciprocal connectivity shall be established at each and every BellSouth access tandem within the local calling area ALEC, Inc. desires to serve for interconnection to those end offices that subtend the access tandem. In addition, ALEC, Inc. may elect to interconnect directly at the end offices for interconnection to end users served by that end office. BellSouth will connect at each end office or tandem inside the local calling area. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to BellCore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. The parties agree that their facilities shall provide the necessary on-hook, off-hook answer and

7. Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

E. Mutual Cooperation

1. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

XXIV. Resolution of Disputes

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the Commission for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

XXV. Limitation of Use

The parties agree that this Agreement shall not be offered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

XXVI. Waivers

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

XXVII. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

XXVIII. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

XXVIV. Notices

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.
ALEC Account Team
3535 Colonnade Parkway
Birmingham, Alabama

ALEC, Inc.
Jay Campbell
1158 Jefferson St.
Paducah, KY 42001

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

B. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

XXVIII. Entire Agreement

This Agreement and its Attachments, incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

BellSouth Telecommunications, Inc.

Signature

DIRECTOR
Title

ALEC, Inc.

Signature

President
Title

5/1/97

Date

4.28.1997

Date

EXHIBIT B
LETTER FROM E. BUSH (BELLSOUTH) TO ALL CLECs (AUGUST 12, 1997)

BELLSOUTH

BellSouth Telecommunications, Inc.
Room 4428
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

404 927-7150
Fax 404 420-8291
Internet: Ernest.L.Bush
@bridge.bellsouth.com

Ernest L. Bush
Assistant Vice President –
Regulatory Policy & Planning

SN91081223

August 12, 1997

To: All Competitive Local Exchange Carriers

Subject: Enhanced Service Providers (ESPs) Traffic

The purpose of this letter is to call to your attention that our interconnection agreement applies only to local traffic. Although enhanced service providers (ESPs) have been exempted from paying interstate access charges, the traffic to and from ESPs remains jurisdictionally interstate. As a result, BellSouth will neither pay, nor bill, local interconnection charges for traffic terminated to an ESP. Every reasonable effort will be made to insure that ESP traffic does not appear on our bills and such traffic should not appear on your bills to us. We will work with you on a going forward basis to improve the accuracy of our reciprocal billing processes. The ESP category includes a variety of service providers such as information service providers (ISPs) and internet service providers, among others.

On December 24, 1996, the Federal Communications Commission (FCC) released a Notice of Proposed Rule Making (NPRM) on interstate access charge reform and a Notice of Inquiry (NOI) on the treatment of interstate information service providers and the Internet, Docket Nos. 96-262 and 96-263. Among other matters, the NPRM and NOI addressed the information service provider's exemption from paying access charges and the usage of the public switched network by information service providers and internet access providers.

Traffic originated by and terminated to information service providers and internet access providers enjoys a unique status, especially call termination. Information service providers and internet access providers have historically been subject to an access charge exemption by the FCC which permits the use of basic local exchange telecommunications services as a substitute for switched access service. The FCC will address this exemption in the above-captioned proceedings. Until any such reform affecting information service providers and internet access providers is accomplished, traffic originated to and terminated by information service providers and internet access providers is exempt from access charges. This fact, however, does not make this interstate traffic "local", or subject it to reciprocal compensation agreements.

Please contact your Account Manager or Marc Cathey (205-977-3311) should you wish to discuss this issue further. For a name or address change to the distribution of this letter, contact Ethylyn Pugh at 205-977-1124.

Sincerely,

E. L. Bush

EXHIBIT C
LETTER FROM R. MCINTIRE (BELLSOUTH) TO J. CAMPBELL (ALEC) (APRIL 13, 1998)

BELLSOUTH

BellSouth Telecommunications, Inc.
600 North 19th Street
Birmingham, Alabama 35203

Interconnection Purchasing Center

April 13, 1998

To: Alec, Inc./WTF
Jay Campbell
1158 Jefferson Street
Paducah, KY 42001

From: Richard McIntire
Operations Director - IPC
13A1
600 N. 19th Street
Birmingham, Al 35203

Subject: Second Quarter 1998 Percent Local Usage (PLU) Notification Letter

This letter is notification, as required by our existing contract, that the second quarter 1998 PLU for BellSouth reciprocal facilities for those states where you are currently operating is listed below. This PLU is to be used for reciprocal compensation starting with April 1, 1998 usage invoices. The submission of this letter in no way represents a waiver of BellSouth's position regarding the inclusion or exclusion of information service/enhanced service provider traffic from any and all calculations associated with development of the PLU or BellSouth's position regarding the calculation of payment for the termination of local traffic on the network of a telecommunications carrier.

State	PLU%
Kentucky	99.9

If you have any questions concerning this letter, I can be reached at 205-714-0246.

Richard McIntire

EXHIBIT D
LETTER FROM J. CAMPBELL (ALEC) TO R. MCINTIRE (BELLSOUTH) (APRIL 30, 1998)

April 30, 1998

To: Richard McIntire
Operations Director – IPC
600 N. 19th Street, 13A1
Birmingham, AL 35203

From: Jay Campbell
ALEC, Inc.
1158 Jefferson St.
Paducah, KY 42001

Dear Mr. McIntire:

As you know, ALEC and BellSouth have been having discussions in an effort to resolve the problem of BellSouth's failure to pay ALEC's bills to BellSouth for terminating compensation under our interconnection agreement.

The heart of the dispute is that -- even though there is no basis in our contract for BellSouth's position -- BellSouth claims that when its end users make 7-digit local calls to an Internet Service Provider (ISP) served by ALEC, those local calls are really "interstate" in nature, and this "fact," in BellSouth's view, supposedly exempts BellSouth from having to pay ALEC for terminating the calls that BellSouth's end users make.

When I received your letter of April 13, 1998, I had hoped that BellSouth had chosen either to rethink its position or at least to defer the dispute for another day. I reached that conclusion because your letter stated that it would apply a 99.9% "Percent Local Usage" factor to ALEC's bills. Your letter also stated that BellSouth was not waiving its views on calls to ISPs, but it seemed sensible to conclude that a 99.9% "local" factor indicated that BellSouth would actually treat essentially all of the calls its end users make to ALEC's customers as "local," perhaps subject to further disputes later.

In order to confirm this understanding, I called you, and we spoke earlier today by telephone. I was disappointed to learn that your letter did not accurately set out BellSouth's intended practice on this issue. Despite the 99.9% "PLU" factor, and despite the fact that BellSouth's actual intended practice is not mentioned anywhere in the letter, you told me that instead of paying its bills to ALEC as they become due, BellSouth would treat 90% of the minutes that BellSouth's customers generate for ALEC to terminate as "disputed" and "in escrow."

In practical economic terms, this is the same as BellSouth declaring that the terminating compensation rate that BellSouth agreed to pay ALEC in our contract is unilaterally reduced by 90%. BellSouth has no contractual right to make such an adjustment. Nothing in our contract suggests that local calls to ISPs are to be treated any differently than local calls to any other business customers. In this regard, I am sure you are aware that every time any incumbent LEC anywhere in the country has tried to sustain the claim that it does not have to pay for local calls to ISPs, the incumbent LEC has lost -- including BellSouth itself in North Carolina.

In this regard, I am particularly concerned that BellSouth has appeared to be reluctant to put its actual practice into writing. It seems peculiar that your letter would suggest that all of our bills would actually be paid when in fact BellSouth's intention is to pay only a small fraction of the amounts due.

Be that as it may, our conversation left no room for doubt that BellSouth will indeed refuse to pay 90% of ALEC's legitimate bills. ALEC considers this behavior by BellSouth to be a totally unjustified breach of our agreement, and expects to pursue all available remedies for that breach.

Please feel free to call me if you would like to discuss this matter further. I can be reached on 502-442-5363.

Very truly yours,

Jay Campbell
ALEC, Inc.

EXHIBIT E