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December 10, 2003

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EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th St. SW
Washington, D.C. 20554

Re: CC Docket 02-361

Dear Ms. Dortch:

This is to notify you that on December 9, 2003, BellSouth met with Jeff Dygert, Debra Weiner, Christopher Killion and Paula Silberthau of the Office of General Counsel to discuss issues raised in the proceeding identified above. Representing BellSouth at this meeting were Fred McCallum, Mike Harper, Jon Banks and the undersigned.

At this meeting, Bellsouth urged that the Commission should respond quickly to the AT&T Petition by concluding that the service described by AT&T is a telecommunications service subject to payment of access charges. The attached presentation was handed out at this meeting and formed the basis for discussion.

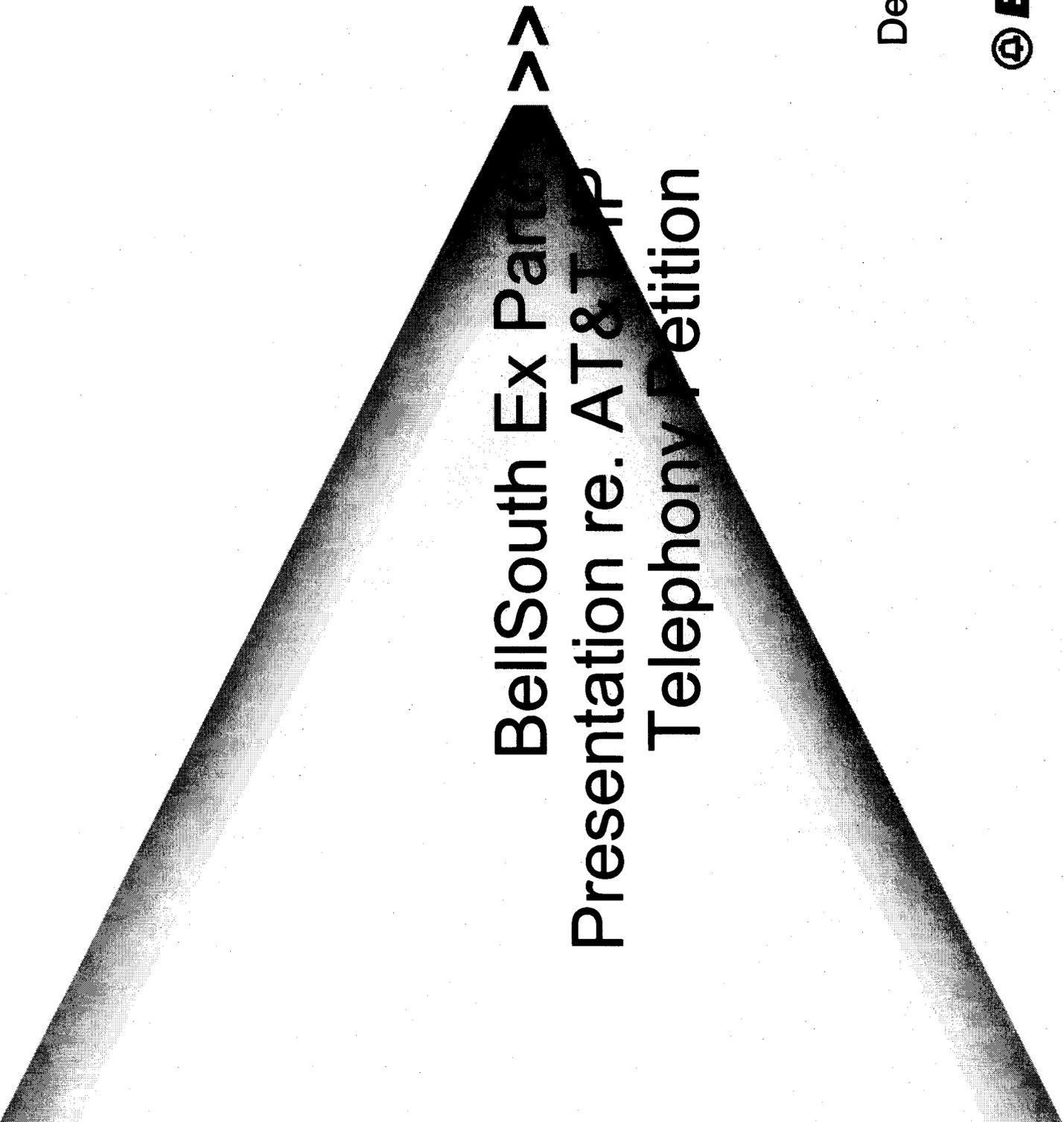
Pursuant to Commission rules, please include this notice and attachment in the docket of the proceeding referenced above.

Sincerely,



Glenn Reynolds

cc: Jeff Dygert
Debra Weiner
Christopher Killion
Paula Silberthau



**BellSouth Ex Parte >>
Presentation re. AT&T
Telephony Petition**

December 9, 2003

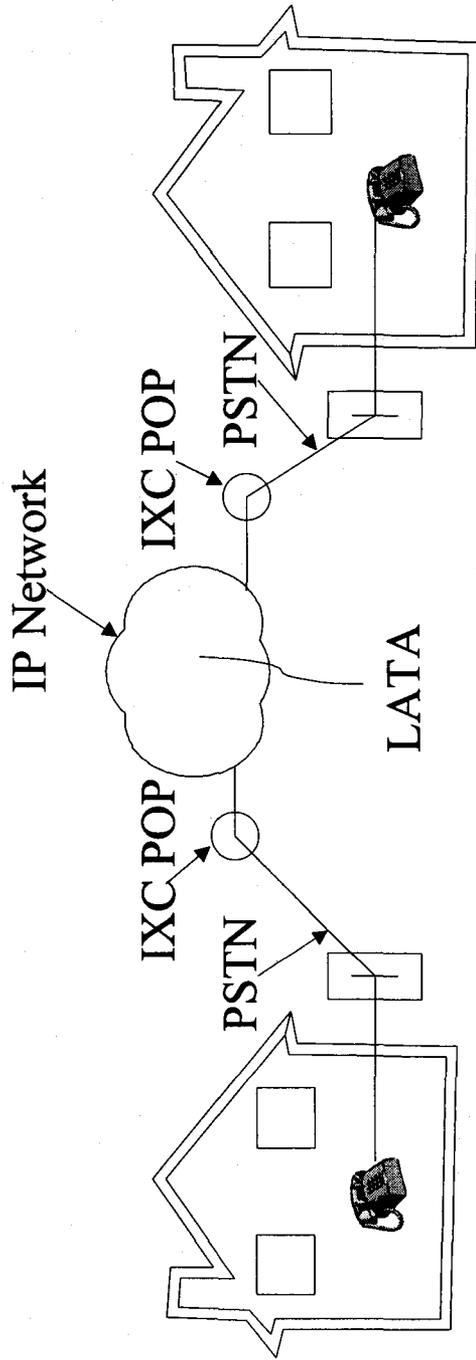
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What is AT&T's "IP Telephony" Service?

- A telecom service where an end user customer uses their traditional telephone set to call another traditional telephone set and the telecom provider uses Internet protocol (IP) technology to transport one or more segments of the call
- The service does not change the form or content of the conversation as sent and received; the type of network the call is transmitted over is transparent (i.e., does not change service functionality received by customer) to the parties on the call
- Is identical, by all relevant regulatory and legal measures, to any other basic telecom service
- Should not be confused with access to the Internet through an ISP; for AT&T's IP telephony service: (1) end user gets dial tone, not modem buzz; (2) uses traditional telephone sets, not computer or computer IP phones, and no special CPE is needed; (3) calls route using telephone numbers, not IP addresses; and (4) telecommunications, not information or enhanced --- the end user is receiving plain old telephone service

>> Diagram of AT&T IP Telephony Service



Call Direction →



Report to Congress re. Universal Service

- FCC's 4/10/98 Report to Congress states: "The record...suggests... 'phone-to-phone IP telephony' services lack the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunications services.'" [para. 101]
- FCC stated that phone-to-phone IP telephony "most closely resemble[s] traditional basic transmission offerings." [para. 83]
- FCC also stated that the provision of phone-to-phone IP telephony "results in no net protocol conversion to the end user." [para. 52]
- FCC tentatively defined calls as telecommunications if:
 - (1) Provider holds itself out as providing telecommunications;
 - (2) Customer can use ordinary CPE;
 - (3) Customers can call using NANP; and
 - (4) Information is transmitted without net change [para. 88]
- By contrast, FCC concluded that with respect to "computer-to-computer IP telephony, the [ISP] does not appear to be 'provid[ing]' telecommunications to its subscribers." [para. 87]



Report to Congress re. Universal Service

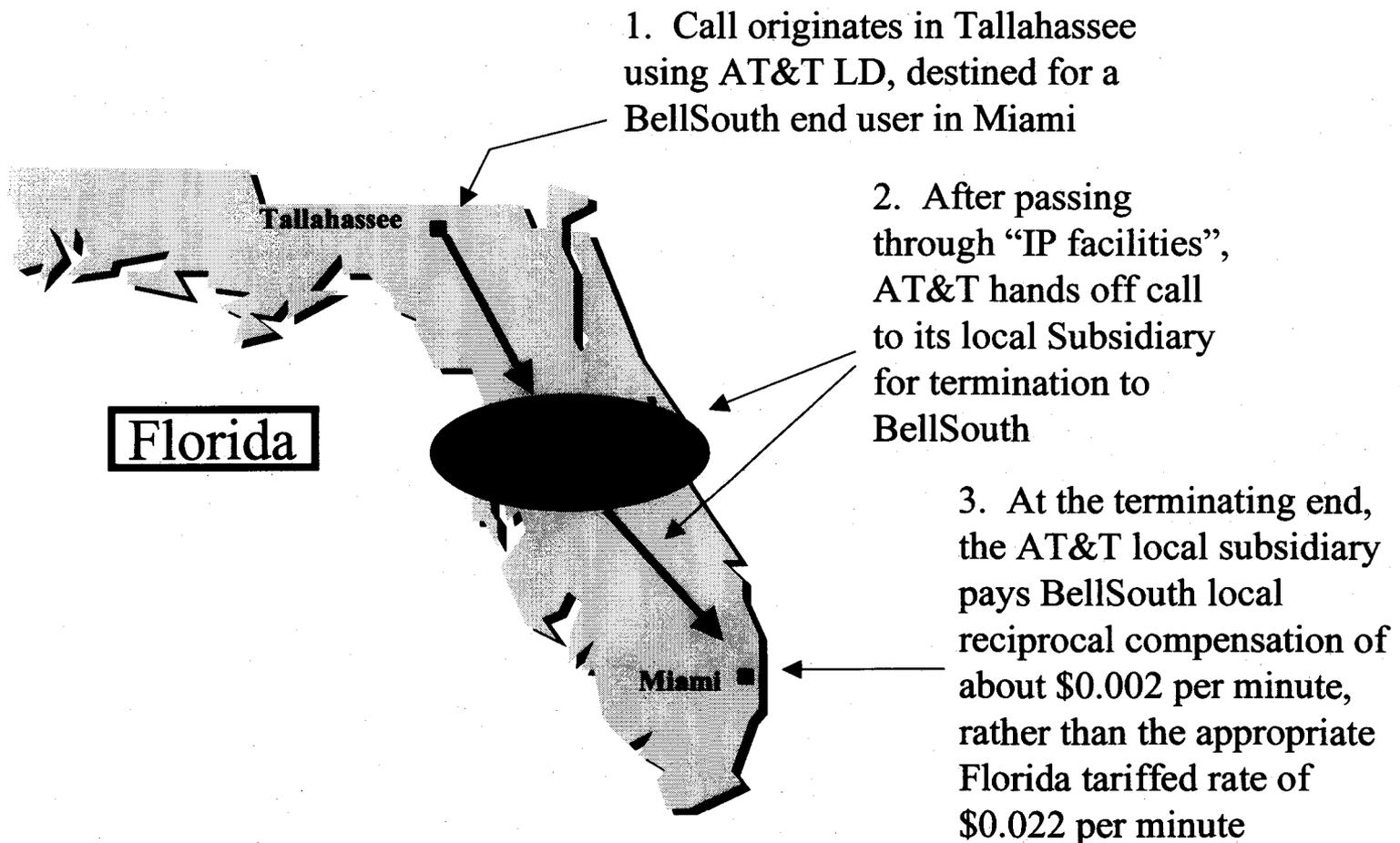
- Specifically addressing access charges the Report states:

“We note that, to the extent we conclude that certain forms of phone-to-phone IP telephony service are ‘telecommunications services’, and to the extent the providers of those services obtain the same circuit-switched access as obtained by other [IXCs], and therefore impose the same burdens on the local exchange as do other [IXCs], we may find it reasonable that they pay similar access charges.” [para. 91]

- The service identified in AT&T’s petition is clearly a telecom service; therefore, the ESP access exemption cannot apply.
- FCC rules(47 C.F.R. 69.5(b)) require access charges where telecom services use local exchange switching facilities. The Report did not create a new access charge exemption specifically for phone-to-phone IP telephony; moreover, the FCC did not classify phone-to-phone IP telephony as an information/ enhanced service making it eligible for the exemption.

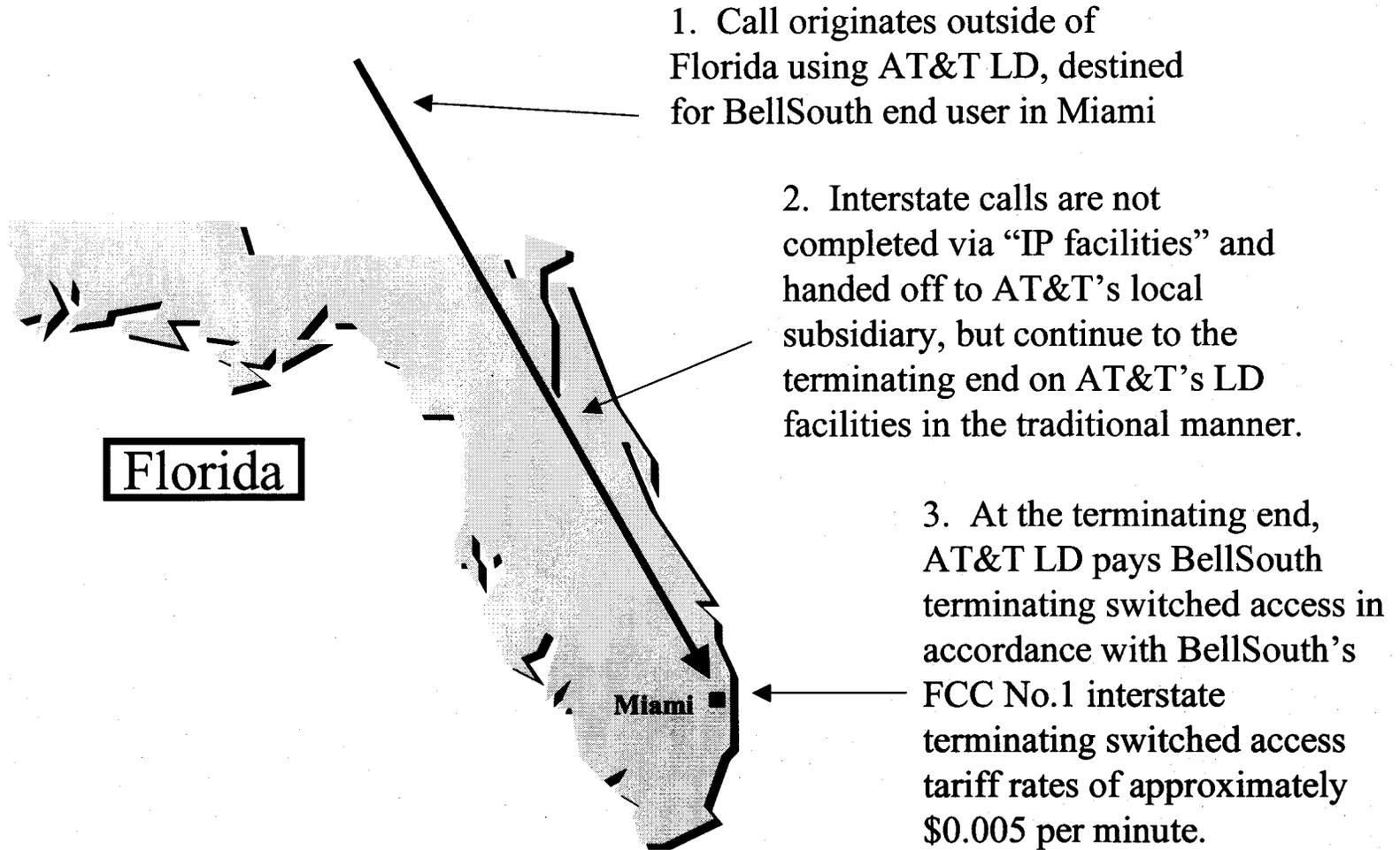


How AT&T routes intrastate, phone-to-phone calls in Florida





How AT&T routes interstate, phone-to-phone calls entering Florida





FCC Needs to Act Quickly

- MCI's CEO has reported that "[h]e aims to push Net traffic to 50% of all MCI calls next year and to almost a full 100% in 2005." [10/23/03 Forbes article]
- AT&T announced it is moving to a single IP network and would move at least 25% of its voice traffic over its IP core by year-end 2004. [9/15/03 Network World article]
- AT&T's petition needs to be resolved ASAP.



Conclusion

- The type of service described in AT&T's petition is not a service even contemplated in the Report to Congress.
- AT&T's IP telephony service is plain old telephone service, not an enhanced or information service, and therefore is not subject to the ESP access charge exemption.
- The FCC has not created an access charge exemption for the IP telephony service described in AT&T's petition.
- AT&T's petition does not support an exemption from access charges for its IP telephony service.
- The FCC has all of the facts it needs to issue an order denying AT&T's petition and need not await its planned VoIP rulemaking, and it should affirmatively state that the services described therein are telecom services and access charges apply.
- The FCC needs to act quickly to remove the growing uncertainty in the industry.