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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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**FILED**

**MAY 20 1998**

**MISSOURI  
PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of Birch Telecom of )  
Missouri, Inc. for Arbitration of the Rates, Terms, ) **Case No. TO-98-278**  
Conditions and Related Arrangements for Interconnection )  
With Southwestern Bell Telephone Company. )

**DISSENTING OPINION OF COMMISSIONER HAROLD CRUMPTON**

I respectfully disagree with the majority in Case No. TO-98-278. The majority should base its decision on the evidence in this case and not depend on the Federal Communications Commission (FCC) to decide the issue. If the FCC reaches a conclusion other than the fact that Internet Service Provider (ISP) traffic is a hybrid of voice, data, and video telecommunications services, and contains elements of intra- and interexchange traffic, the FCC will be wrong.

The majority is correct in concluding that this record is insufficient, but not for the reason given. This record makes clear that some calls to the ISP are local, e.g., when the ISP's server providing the information requested by the caller is located in the local exchange of the caller. This record also makes clear that some calls to the ISP are long distance in nature.

It seems to me this record is insufficient in this matter because the witnesses provided insufficient information on the design and operation of the Internet which could lead to a reasonable solution. Apparently, the witnesses had difficulty describing the design and operation of the local switched voice network as well. Therefore, I agree with that part of the holding of the majority which states "the Commission finds that it would not be appropriate to determine whether the traffic to ISPs constitutes local traffic." My reasons are indicated above and are not the reason stated by the majority.

The majority believes the inexperienced witnesses when it found that calls to ISPs should be treated and compensated as local because "neither SWBT nor Birch can accurately distinguish calls to ISPs from calls to other end users at this time." I find this testimony incredible. First, the

public switched telephone network is intelligent enough to identify an ISP's telephone number when that number is stored in memory. In addition, carriers know whether or not their circuits are sold to an ISP. Secondly, the ISP's router has the address and a route for every request of an ISP customer and can therefore provide information as to whether or not a call is using a path outside the originating exchange. Routers by definition send streams of data along "routes." In order to identify the portion remaining local from the portion going interexchange, one would only need to study the records of the routers involved.

This is an issue that comes under the jurisdiction of the states. The record is clear that a request to a server in Missouri may be considered interexchange, while the same request made in Virginia might be local, depending on the location of the server.

In my opinion, the Commission should have approved the contract as agreed to with other CLECs, and ordered the parties to perform traffic studies at ISP routers in order to determine to what extent the traffic is local or long distance. Having completed such studies, the parties could then provide the Commission with the record necessary to decide this issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Harold Crumpton", with a long horizontal flourish extending to the right.

Harold Crumpton, Commissioner

Dated at Jefferson City, Missouri  
on this 21st day of May, 1998.

**RECEIVED**

MAY 22 1998

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION