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January 29, 1996

**ORIGINAL
FILE COPY**

Mrs. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 950984-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket
are an original and fifteen (15) copies of AT&T's
Post-Hearing Brief.

Copies of the foregoing are being served on all parties
of record in accordance with the attached Certificate of
Service.

Yours truly,

Michael W. Tye

Attachments

cc: J. P. Spooner, Jr.
Parties of Record

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU Chase
- CTR _____
- EAG _____
- LEG 1
- LIN 6
- OPC _____
- RCH _____
- SEC 1
- WAS _____
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of Petitions)
to Establish Nondiscriminatory)
Rates, Terms, and Conditions for) DOCKET NO. 950984-TP
Resale Involving Local Exchange)
Companies and Alternative Local) FILED: January 29, 1996
Exchange Companies Pursuant to)
Section 364.161, Florida)
Statutes.)
_____)

POST-HEARING BRIEF OF AT&T

Pursuant to the directive of the Florida Public Service Commission (hereinafter the "Commission") in the above-referenced case, AT&T Communications of the Southern States, Inc. (hereinafter "AT&T"), submits its post-hearing brief, and respectfully requests that the Commission order BellSouth Telecommunications, Inc. (hereinafter "BellSouth") to (1) unbundle its services into underlying Basic Network Functions (hereinafter "BNFs"), (2) offer such BNFs to new entrants into the local exchange market under the same basic arrangements and with the same technical capabilities as they are used by BellSouth in the provision of its services, and (3) price such unbundled elements (for purposes of resale) at the Total Service Long Run Incremental Cost (hereinafter "TSLRIC") incurred by BellSouth in providing each element.

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Background

This case arose as a result of recent revisions to Chapter 364, Florida Statutes, which were intended to introduce more competition into the intrastate telecommunications market in Florida. Specifically, in the 1995 legislative session, the Florida Legislature enacted sweeping revisions to Chapter 364. In the course of enacting those changes, the legislature found that:

...the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. ...¹

In implementing this policy, the Commission was directed to:

Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of telecommunications services.²

...

Promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which new entrants are subject to a lesser level of regulatory

¹ Section 364.01(3), Florida Statutes.

² Section 364.01(4)(b), Florida Statutes.

oversight than local exchange
companies.³

...

Encourage all providers of
telecommunications services to introduce
new and experimental telecommunications
services free of unnecessary regulatory
restraints.⁴

...

Eliminate any rules and/or
regulations which will delay or impair
the transition to competition.⁵

...

Ensure that all providers of
telecommunications services are treated
fairly, by preventing anticompetitive
behavior and eliminating unnecessary
regulatory restraint.⁶

In essence, the legislature envisioned a new
telecommunications environment in Florida, with consumers
enjoying a wide array of choices and the attendant benefits
of competition in the intrastate telecommunications markets.

As a part of the transition to competition, the
legislature recognized the fact that the incumbent local
exchange companies (hereinafter "LECs") possess ubiquitous
networks, which were built, in large part, with revenues
provided by monopoly ratepayers. In order to accommodate

³ Section 364.01(4)(d), Florida Statutes.

⁴ Section 364.01(4)(e), Florida Statutes.

⁵ Section 364.01(4)(f), Florida Statutes.

⁶ Section 364.01(4)(g), Florida Statutes.

emerging local exchange competition, the legislature enacted Section 364.161, Florida Statutes, which provides for the unbundling and resale of LEC services. Specifically, the LECs were directed, upon request, to unbundle all of their network features, functions, and capabilities (including access to signaling databases, systems, and routing processes) and to offer them to any other telecommunications provider requesting such features, functions, and capabilities for resale to the extent technically and economically feasible.⁷ This case was initiated by Metropolitan Fiber Systems of Florida, Inc. (hereinafter "MFS") and MCI Metro Access Transmission Services, Inc. (hereinafter "MCImetro") as a result of those carriers' inability to negotiate satisfactory terms and conditions for unbundling and resale of LEC facilities with BellSouth. Pursuant to the terms of the statute, the dispute is now properly before the Commission for resolution.

AT&T's Position

AT&T is not a petitioner in this docket. However, as an interexchange carrier (hereinafter "IXC"), AT&T does have a substantial interest in the issues before the Commission because AT&T must use the services of LECs and Alternative Local Exchange Companies (hereinafter "ALECs") in order to originate and terminate interexchange calls. Because of

⁷ Section 364.161(1), Florida Statutes.

this substantial interest, AT&T has intervened on behalf of MFS and MCImetro and supports those companies' requests for unbundling and resale of BellSouth services.

AT&T submits that fair, just, and reasonable unbundling and resale standards are crucial to the development of local exchange competition in Florida. While competition has developed with respect to interexchange services and some enhanced telecommunications services over the past 15 years, final access to the customer effectively remains the province of the incumbent LECs. Under the protection of the local franchise, the LECs have spent hundreds of millions of dollars over the years constructing networks to reach every potential local exchange customer.⁸

The BellSouth local exchange network is vast, connecting over 3 million residential housing units and essentially every commercial premise in its region. Its network consists of nearly 5 million active local loops (switched access lines), providing both local and long distance service, plus additional loop capacity that today lies dormant. Measuring the local network solely in terms of loops, however, understates its significance and misrepresents the enormous investment that would be necessary for even a single provider (much less the multiple providers necessary for the development of a fully robust competitive environment) to duplicate. BellSouth's network

⁸ Tr. Vol. 2, Guedel, p. 210.

also includes a switching matrix of 144 local switches and 70 remote switches, all interconnected by a web of interoffice fiber facilities.⁹

It is unlikely that any potential LEC competitor will be willing or able to invest the capital required to duplicate the existing LEC network simply on the chance that it might attract some local service customers. And, even if the financial resources were available, significant time would be required to obtain necessary right-of-way authorizations and to construct a duplicate network. Without reasonable resale provisions for LEC services, local exchange competition, if it develops at all, will develop slowly and will likely benefit only a limited number of subscribers.¹⁰ Indeed, because of the size and geographic reach of the BellSouth network, local competition will proceed at a snail's pace unless BellSouth's network can be used by other carriers to provide local exchange and exchange access services.¹¹

Unbundling and resale of LEC services will allow potential competitors to begin providing limited local service arrangements without the expense of duplicating BellSouth's ubiquitous network. A new entrant, for example,

⁹ Tr. Vol. 2, Gillan, p. 236.

¹⁰ Tr. Vol. 2, Guedel, pp. 210-211.

¹¹ Tr. Vol. 2, Gillan, p. 236.

could begin providing service within a geographic area by installing local switching capability and purchasing unbundled loops (or links) from BellSouth. This arrangement provides the advantages of being less capital intensive, allowing competition to develop faster, and bringing the benefits of competition to a much larger group of customers than the alternative of requiring each ALEC to construct a complete network of its own facilities.¹² These are the primary reasons that the legislature enacted the unbundling and resale provisions of Section 364.161, Florida Statutes.

While this case involves principally the question of unbundled loops and switching functions, AT&T submits that, in the long term, the full development of local exchange competition requires two basic wholesale configurations: (1) an unbundled loop model, and (2) the wholesale network option.

The "unbundled loop" configuration combines a resold loop with a local switch provided by the new entrant. The "wholesale service" option, on the other hand, is a more complete network platform that includes a loop, a port, and seamless termination of non-presubscribed traffic. Under the wholesale configuration, BellSouth's exchange network could be used by the entrant to provide underlying dial tone, call completions, and various optional capabilities

¹² Tr. Vol. 2, Guedel, p. 211.

(such as call waiting, call forwarding, etc.) that are associated with the exchange switch.¹³

The primary difference between the wholesale and unbundled loop configurations is that the unbundled loop configuration requires the new entrant to establish a collocated interconnection with BellSouth at each central office where it intends to purchase loops, and install local switching capacity necessary to support the line. While both configurations are resale configurations, the real distinction is that the wholesale configuration is useful throughout a region, while unbundled loops limit a carrier to particular end-offices.¹⁴

If a fully competitive local exchange market is to develop in Florida, the two alternative configurations must not be mutually exclusive. It is likely that some new entrants will need to employ both configurations, serving some customers through their own switches and serving others through the wholesale service offered by the LEC. Assuming cost-based and non-discriminatory pricing of the LEC's wholesale products, the market should decide which configuration is most efficient in a given case.¹⁵

¹³ Tr. Vol. 2, Gillan, pp. 237-238.

¹⁴ Tr. Vol. 2, Gillan, pp. 238-239.

¹⁵ Tr. Vol. 2, Gillan, p. 239.

The Commission should note that the unbundled loop option alone will not prove sufficient to promote local competition. While that configuration may prove effective to serve customers in a specific geographic region (i.e., customers served by a particular geographic market), the unbundled loop configuration suffers from three deficiencies. First, that configuration is viable only after a collocated interoffice network exists. Second, that configuration is not supported by the administrative and operational systems necessary to allow large numbers of subscribers to change local service providers. Third, the unbundled loop configuration demands extensive investment in local switching and interoffice investment which will require time to accomplish, even where it is cost-effective.¹⁶ Consequently, the unbundled loop option suffers from a number of deficiencies that limit its usefulness outside of particular metropolitan areas.¹⁷

AT&T understands that, in this docket, the Commission is limited to deciding the issues that have been raised by the petitioners. AT&T has not raised the forgoing concerns in an attempt to expand this proceeding beyond those issues, nor does AT&T believe that the process of network unbundling should be delayed or perceived with diminished significance as a result of these concerns. Indeed, unbundling the

¹⁶ Tr. Vol. 2, Gillan, pp. 240-241.

¹⁷ Tr. Vol. 2, Gillan, pp. 239.

network is a vital element of a strategy enabling rational facilities deployment, permitting entrants to enter the market with limited networks, expanding their facilities as cost conditions permit.¹⁸

AT&T's purpose in raising the above-stated concerns in this case is two-fold. First, inasmuch as this is the initial unbundling and resale case to be filed under the new provisions of Chapter 364, AT&T believes that the Commission should be made aware of what types of resale will be essential to ensure the development of an effectively competitive local exchange market. Second, AT&T has raised these concerns to emphasize the significance of BellSouth's unwillingness to allow the connection of unbundled loop and port facilities which new entrants may wish to purchase from BellSouth (as has been the case with MFS in this docket.)

The Commission is well aware of the early development of competition in the interexchange market. In those early days of interexchange competition, few, if any, new entrants possessed extensive networks or facilities. However, because of the liberal resale policies imposed by this Commission and by the Federal Communications Commission, new entrants were able to enter the market and gain market share through the extensive resale of AT&T's interexchange services. As time passed, many of those new entrants were able to build their own networks and become completely

¹⁸ Tr. Vol. 2, Gillan, pp. 239-240.

facilities-based in their provision of interexchange services. Other new entrants were able to find groups of consumers who benefited from using services provided on a strict resale basis. In any event, the process resulted in robust competition for users of interexchange services, leading to the effectively competitive interexchange market that exists today. The benefits to consumers have been enormous. The competitive interexchange market has resulted in an array of consumer choice, expanded service options, and lower prices that was unheard of a mere 12 years ago.

With a proper mix of reasonable unbundling and resale policies, the local exchange market may also become effectively competitive. However, unreasonable restrictions on unbundling and resale will invariably lead to a stagnant local exchange market, with consumers enjoying few, if any, choices. Coupled with the price regulation provisions of Section 364.051, Florida Statutes, the results could be disastrous for consumers. The local exchange market could become, at best, a tight oligopoly, with the dominant LEC having virtually unfettered ability to exercise monopoly power by raising prices for "non-basic" services as much as 20% per year. Consequently, the Commission must exercise its full statutory authority to remove whatever barriers to entry may be presented by the dominant LECs who have every incentive to delay effective competition as long as possible. The protection of the consuming public in the new

local exchange environment demands that such action be taken.

In this case, AT&T submits that the Commission should grant the requests of MFS and MCImetro. However, at the same time, the Commission should realize that granting those requests is only the first step on the road to an effectively competitive local exchange market. Hopefully, other new entrants will be filing petitions in the future, and many of those petitions are likely to go beyond the relief requested in this case. In judging those future petitions, AT&T hopes that the Commission will understand the need to grant relief beyond that which has been requested in this case and will act accordingly.

Discussion of Issues

ISSUE 1: What elements should be made available by BellSouth to MCImetro and MFS on an unbundled basis (e.g. link elements, port elements, loop concentration, loop transport)?

Summary of AT&T's Position: *BellSouth should be required to unbundle local loops and switching ports as requested by MFS and MCImetro.*****

Discussion: Several criteria can be used in defining BNFs. First, the unbundled element must represent a discrete, stand-alone logical component. Second, the unbundled element must be separately measurable and billable. Third,

the unbundled elements must be associated with clearly identifiable interface standards.¹⁹

Using the criteria stated above, AT&T has identified 11 components or BNFs associated with local exchange service which may be effectively and usefully unbundled. These include: loop distribution, loop concentration, loop feeder, switching, operator systems, dedicated transport links, common transport links, tandem switching, signaling links, signal transfer points, and signal control points. This list should not be considered static or necessarily complete. Additional functional elements may continue to be identified as telecommunications technology evolves.²⁰

This docket has been established to consider the unbundling of local loops (or links), and the unbundling of local switching functions including associated cross connect functions.²¹ AT&T supports the requests made by MFS and MCImetro in their respective petitions and testimony.

BellSouth, on the other hand, has failed to meet any reasonable criteria for unbundling of its services for resale. In essence, BellSouth's proposal for wholesale offerings to support local competition addresses none of the concerns which have been set forth earlier in this brief.

¹⁹ Tr. Vol. 2, Guedel, p. 209.

²⁰ Tr. Vol. 2, Guedel, pp. 208-209.

²¹ Tr. Vol. 2, Guedel, p. 212.

BellSouth's proposed "unbundled loop" (i.e., a voice grade private line) is neither priced nor provisioned as a local loop. Even more disturbing, however, is BellSouth's proposal to provide "wholesale" dial tone. BellSouth has announced that it intends to only offer usage-rated ports at retail STS prices, and has further indicated that it will refuse to connect wholesale loops to wholesale ports so that carriers may fashion full-service platforms.²²

BellSouth's rationale for refusing to connect wholesale loops to wholesale ports is faulty for two reasons. First, it argues that it would be easier to fashion a wholesale service that includes basic network elements of local exchange and exchange access service than it would be to require carriers to recombine unbundled elements. Assuming that BellSouth's contention is correct (which may or may not be true), its rationale simply supports the introduction of a wholesale platform, not the adoption of a restriction that prohibits others from achieving the same result.²³

Second, BellSouth argues that the reconnection of wholesale loops to wholesale ports, as requested by MFS, would violate the intent of Section 364.161(2), Florida Statutes.²⁴ This argument misses the mark. Section 364.161(2) merely states that the LEC will not be required

²² Tr. Vol. 2, Gillan, p. 244.

²³ Tr. Vol. 2, Gillan, p. 244.

²⁴ Tr. Vol. 2, Scheye, pp. 286-287.

to offer its "currently tariffed, flat rated, switched residential and business services" for resale at this time. What MFS has requested is that unbundled elements, separately ordered and separately rated, be connected so that competitive services can be provided. In fact, the proposal neither requires the LEC to resell its currently tariffed flat rated local service nor results in the provision of a resold end-to-end local service offering as contended by BellSouth.

It is interesting to note that Section 364.161(2), on which BellSouth relies, does not prohibit BellSouth from offering its "currently tariffed, flat rated, switched residential and business services" for resale. It merely provides that BellSouth will not be required to do so. If BellSouth is, indeed, concerned about the purported "inefficiencies" of reconnecting unbundled loops and ports (as evidenced by its testimony)²⁵, it has the option of coming forward with a wholesale bundled offering that will minimize those purported inefficiencies. Instead, BellSouth apparently contends that its "local exchange message and measured rate services" are an acceptable substitute.²⁶ Even a cursory review of BellSouth's tariffed rates for such services²⁷ indicates that the resale of such services at the

²⁵ Tr. Vol. 2, Scheye, p. 282.

²⁶ Tr. Vol. 2, Scheye, pp. 281-282.

²⁷ Tr. Vol. 2, Scheye, pp. 314-317; Ex. 17.

rates currently in effect would be cost prohibitive for any new entrant attempting to compete with BellSouth's existing flat rate local service. In essence, BellSouth is attempting to squeeze potential resellers (and other emerging competitors who need to use some resale as a market entry vehicle) out of the local exchange market. The Commission should not allow this to happen.

ISSUE 2: What are the appropriate technical arrangements for the provision of unbundled elements?

Summary of AT&T's Position: ***Technical arrangements used to connect the unbundled elements to a new entrant's network should be equal to those currently used to connect the elements within the LEC's own network.***

Discussion: The principal guideline adopted by the Commission should be to require the provision of unbundled elements in such a manner as to not inhibit the new entrant from providing the same quality of service as the incumbent LEC. That means that the technical arrangements used to connect unbundled elements to a new entrant's network should be equal to those currently used to connect elements within the LEC's own network. New entrants should have cooperatively engineered interconnection arrangements, equal service quality or performance parity, and the opportunity

to interconnect at the same points or virtually the same points (where practicable) as the incumbent LEC.²⁸

ISSUE 3: What are the appropriate financial arrangements for each such unbundled element?

Summary of AT&T's Position: ***The target price for the unbundled elements should be the Total Service Long Run Incremental Cost (hereinafter "TSLRIC") that the LEC incurs in providing them.***

Discussion: In setting the price for the LEC unbundled service elements, the Commission should remain mindful of the legislative goal of promoting local exchange competition. With this goal in mind, the target price for the unbundled elements should be the TSLRIC that the LEC incurs in providing those elements. Pricing at TSLRIC will simultaneously ensure that the incumbent LEC recovers all of the costs that it incurs in providing the various unbundled elements (including its cost of capital), while encouraging the development of competition by offering the various unbundled elements (at least from a price perspective) in a competitively neutral manner.²⁹

The TSLRIC is the actual cost that the LEC incurs in providing the unbundled element, either to itself or to a new entrant. The actual cost that a new entrant incurs is

²⁸ Tr. Vol. 2, Guedel, pp. 214-215.

²⁹ Tr. Vol. 2, Guedel, pp. 215-216.

the price that it has to pay to the LEC. Therefore, if the incumbent LEC offers the various unbundled elements at TSLRIC, then both the incumbent LEC and the new entrant will incur the same cost with respect to the unbundled elements. Consequently, with prices set at TSLRIC, the price is competitively neutral and neither the LEC nor the new entrant is disadvantaged.³⁰

On the other hand, if the LEC's price is set above its TSLRIC, then the new entrant's cost (i.e., the price charged by the LEC) becomes higher than the LEC's own cost. And, because the retail (i.e., end user) prices of both the LEC and the new entrant must cover all of the costs incurred in providing the respective services, pricing unbundled elements in excess of TSLRIC would provide the LEC with a competitive advantage in the retail market.³¹ In short, the LEC would be able to impede the development of emerging local exchange competition, contrary to the goals set in Chapter 364.

Contrary to the pricing guidelines proposed by the petitioners and by AT&T, the BellSouth proposal in this case offers a mixture of pricing philosophies. For instance, BellSouth's witness Scheye proposes establishing wholesale network prices by historical coincidence, by adopting prices of preexisting services that share superficial similarities

³⁰ Tr. Vol. 2, Guedel, p. 216.

³¹ Tr. Vol. 2, Guedel, p. 217.

to the wholesale arrangements requested by the new entrants. At the same time, BellSouth's witness Banerjee argues that wholesale network prices should be established in accordance with the inverse elasticity principle, which would increase the price of network services above cost in proportion to the dependency of BellSouth's rival on its network. Neither of these strategies is consistent with fostering a competitive local exchange network as envisioned by the legislature in Section 364.01(3), Florida Statutes.³²

The historical coincidence approach advocated by witness Scheye leads to the BellSouth proposal that new entrants be required to purchase BellSouth's local measured and message rate services for resale. This approach is further evidenced by BellSouth's argument that new entrants should be required to purchase special access lines (at currently tariffed rates) in lieu of unbundled local loops. However, the prices that BellSouth proposes to use were never established as wholesale components. Nor were those prices established with the intent (or even in consideration of) promoting local competition. Nor have those prices ever been scrutinized for the purposes of judging their reasonableness as wholesale prices in furtherance of local competition.³³ In short, BellSouth has simply proposed to use retail rates established in a monopoly service provider

³² Tr. Vol. 2, Gillan, pp. 245-246.

³³ Tr. Vol. 2, Gillan, pp. 248-249.

environment without regard to the devastating effect such pricing would have on the goals set by the legislature.

By the same token, witness Banerjee's inverse elasticity principle would work to thwart the goal of furthering local competition. Distilled to its essence, the inverse elasticity rule increases the price of a product (in this case the price of the underlying network that BellSouth's competitor must buy in order to provide exchange service to a subscriber) until it effects the quantity demanded. In this instance, however, the effect on demand from an excessive wholesale price is that BellSouth's rival is unable to compete with BellSouth.³⁴

The inverse elasticity rule is intended to work on a system of incentives and penalties. Strict scrutiny of the rule, however, indicates that the rule should not be applied to wholesale service. For instance, if "correctly" applied, BellSouth could use the rule to "justify" increasing its prices to rivals to exactly the point at which the rival might offer service, but that BellSouth receives most of the rival's profit. And the "penalty" for increasing the price beyond this point is not a loss in demand, but the assurance that no rival could compete with BellSouth for the customer's service.³⁵ Consequently, the approach advocated by witness Banerjee is nothing more than a prescription for

³⁴ Tr. Vol. 2, Gillan, p. 249.

³⁵ Tr. Vol. 2, Gillan, p. 249.

keeping new entrants out of the market to the detriment of consumers.

On consideration of all of the evidence presented, the only reasonable approach open to the Commission is to order BellSouth to offer its various unbundled elements to competitors at TSLRIC. Such a decision would allow BellSouth to recover its actual cost of providing the service, including a reasonable return on its invested capital, while furthering emerging local exchange competition and ensuring that Florida consumers receive the maximum benefits of BellSouth's ubiquitous network.

ISSUE 4: What arrangements, if any, are necessary to address other operational issues?

Summary of AT&T's Position: *AT&T supports the positions of MFS and MCImetro (as set forth in the Prehearing Order) on this issue.*****

Conclusion

In deciding this case, the Commission should remain mindful of the legislative goal of promoting local exchange competition. That goal can only be met through reasonable and cost-effective unbundling and resale of the LEC networks. This case is the first step on the road to that result. In this case, the Commission should grant the requests of MFS and MCImetro, should require BellSouth to

honor those requests, and should order BellSouth to price such services at TSLRIC.

Respectfully submitted this 29th day of January, 1996.



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CERTIFICATE OF SERVICE**DOCKET NO. 950984-TP**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties of record this 29th day of January, 1996:

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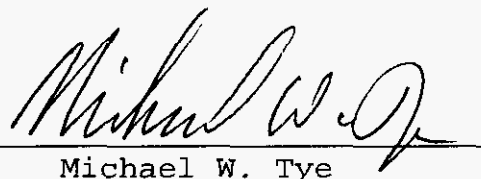
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