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J. Phillip Carver
General Attorney

BellSouth Telecommunications, Inc.
c/o Nancy H. Sims
Suite 400
150 So. Monroe Street
Tallahassee, Florida 32301
Telephone: 305 347-5558

January 29, 1996

ORIGINAL
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Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Rm. 110
Tallahassee, FL 32399-0850

Re: Docket No. 950984-TP

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,
J. Phillip Carver (SR)
J. Phillip Carver

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Enclosures
cc: All Parties of Record
A. M. Lombardo
R. G. Beatty
R. Douglas Lackey

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of petition(s)) Docket No. 950984-TP
to establish nondiscriminatory)
rates, terms, and conditions for)
resale involving local exchange)
companies and alternative local)
exchange companies pursuant to)
Section 364.161, Florida Statutes.)
_____) Filed: January 29, 1996

BELLSOUTH TELECOMMUNICATIONS, INC.'S

BRIEF OF THE EVIDENCE

Robert G. Beatty
J. Phillip Carver
Suite 1910
150 W. Flagler Street
Miami, Florida 33130

R. Douglas Lackey
Nancy B. White
Suite 4300
675 W. Peachtree St., NE
Atlanta, Georgia 30375

Of Counsel:

J. Roger Flynt Jr.
Vice President & General Counsel
Suite 4504
675 W. Peachtree St., NE
Atlanta, Georgia 30375

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STATEMENT OF THE CASE

Section 364.161(1), Florida Statutes, sets forth the process for the unbundling of local exchange company ("LEC") network elements for resale. Specifically, this Section states that "[u]pon request, each local exchange telecommunications company shall unbundle all of its network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities for resale to the extent technically and economically feasible." The statute further provides that the LEC and the requesting carrier shall negotiate the specific terms of the requested unbundling. If the parties cannot agree, then, upon the filing of a petition, the Florida Public Service Commission ("Commission") shall "arbitrate the dispute" and "make a determination within 120 days." (§ 364.161(1), F.S.)

On August 30, 1995, the Prehearing Officer issued the Order Establishing Procedure (Order No. PSC-95-1083-PCO-TP), which set forth the procedures that would apply to any future petitions filed to request the Commission to set the terms and conditions for unbundling and resale. Petitions were subsequently filed on November 13, 1995 by Metropolitan Fiber Systems of Florida Inc. ("MFS" or "MFS-FL") and on November 14, 1995 by MCI Metro Access

Transmission Systems, Inc. ("MCImetro" or "MCI") to request that the Commission establish "nondiscriminatory rates, terms, and conditions" for resale with BellSouth Telecommunications, Inc. ("BellSouth"), as required by Section 364.162(3). The hearing was subsequently set by the Order Regarding Further Proceedings issued November 22, 1995 (Order No. PSC-95-1422-PCO-TP).

The following parties intervened in the docket: AT&T Communications of the Southern States, Inc. ("AT&T"), Florida Cable Telecommunications Association, Inc. ("FCTA"), Intermedia Communications of Florida, Inc. ("Intermedia" or "ICI"), WorldCom, Inc. d/b/a LDDS WorldCom Communications ("LDDS"), Sprint Communications Company Limited Partnership ("Sprint"), and Time Warner AxS of Florida L.P. and Digital Media Partners ("TimeWarner"). On December 8, 1995, a comprehensive stipulation and agreement was filed in this docket. This agreement resolved the various issues between BellSouth and FCTA, Continental, TimeWarner. TCG South Florida ("TCG") and ICI subsequently entered into the agreement as well. The agreement was approved by this Commission by an Order entered January 17, 1996 (Order No. PSC-96-0082-AS-TP).

The hearing took place on January 11, 1996. During the hearing, direct and rebuttal testimony was presented on behalf of BellSouth by Robert Scheye, Senior Director in Strategic

Management and Dr. Aniruddha (Andy) Banerjee. Direct and rebuttal testimony was also presented by witnesses for MFS, MCImetro and AT&T. The hearing produced a transcript of 383 pages and 21 exhibits.

This brief is submitted in accordance with the posthearing procedures of Rule 25-22.056, Florida Administrative Code. The statement of each issue identified in this matter is followed immediately by a summary of BellSouth's position on that issue and a discussion of the basis for that position. Each summary of BellSouth's position is labeled accordingly and marked by an asterisk. In any instance in which BellSouth's positions on several issues are identical or similar, the discussions of these issues have been combined or cross-referenced rather than repeated.

STATEMENT OF BASIC POSITION

BellSouth already offers, or plans to offer, many network features and elements on an unbundled basis under either tariff or contract. These include loops, interoffice transport, various forms of exchange access, ports, channel multiplexing and associated transport, and virtual collocation. BellSouth does not plan to offer sub-loop unbundling, loop concentration or connection of unbundled loops to unbundled ports.

The requests by MFS, MCImetro and AT&T for unbundling differ from BellSouth's proposal in several respects. First, some of the requests are for unbundling that is not feasible (e.g., sub-loop unbundling), or, given the vagueness of the request, cannot be determined to be feasible. Two, some of these requests do not represent true unbundling, but, instead, would require the provision of a network element, function or capability that is not part of the current BellSouth network (e.g., loop concentration). Third, some requests are clearly outside of the scope of this proceeding (e.g., MFS's request for interconnection of non-transmission facilities). For these reasons, the requests of MFS, MCImetro and AT&T should be rejected.

The offering of unbundled functions under current tariffs, as proposed by BellSouth, will allow an appropriate level of contribution under tariffs that have been previously approved. This approach will also avoid the problems of tariff shopping and arbitrage. The contrary proposal of the adverse parties that

BellSouth should be required to sell unbundled elements at their incremental costs should be rejected because it is economically unsound and manifestly unfair.

Finally, it would be premature for the Commission to address the many technical issues raised by MFS because the parties have not yet had an opportunity to resolve these issues. BellSouth does, however, advocate that the Commission utilize the open network architecture (ONA) criteria adopted by the FCC as a framework to assist in the determination of whether future unbundling requests are feasible.

Issue No. 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)?

***Position:** BellSouth plans to offer unbundled loops and associated transport, unbundled ports, channel multiplexing and associated transport, and virtual collocation. BellSouth does not plan to offer sub-loop unbundling, loop concentration, unbundling or connection of unbundled loops to unbundled ports.

Issue No. 2: What are the appropriate technical arrangements for the provision of such elements?

***Position:** BellSouth will make available voice and digital grade local loops, channel multiplexing and related transport, and interoffice transport facilities from the appropriate special access service tariff. For connection purposes, BellSouth will also provide unbundled voice exchange ports.

BellSouth's positions as to both unbundled network elements that should be offered (Issue 1) and the appropriate technical arrangements to provide these unbundled elements (Issue 2) were

set forth succinctly in the direct testimony of BellSouth's witness, Robert Scheye, as follows:

BellSouth plans to offer unbundled loops and associated transport, unbundled ports, channel multiplexing and associated transport, and virtual collocation. BellSouth does not plan to offer sub-loop unbundling, loop concentration or connection of unbundled loops to unbundled ports.

(Tr. 271-72) Mr. Scheye testified that both unbundled loop components and channel multiplexing (and associated transport) are already available for purchase from BellSouth's Special Access Service Tariffs. (Tr. 272-73) Mr. Scheye also testified that "BellSouth intends to file a new tariff offering that will provide an unbundled two-wire voice grade exchange port for connection of an ALEC's end user loop to BellSouth's public switched network." (Tr. 273) "Three types of exchange ports will be offered: a residence port, a business port and a PBX trunk port." (Tr. 273)

For the most part, the manner in which BellSouth proposes to unbundle its network meets the requests of the petitioners, although there are certainly limited areas of dispute. Of the two parties that filed petitions in this proceeding, MFS appears to have a greater number of unbundling demands that are at odds with BellSouth's proposed offering than does MCImetro. Specifically, MFS has requested sub-loop unbundling, loop concentration, the ability to connect unbundled loops to

unbundled ports, and the collocation of remote switching modules in BellSouth's central offices.¹

MFS has requested that unbundling be offered to the level of "sub-loop" elements. In other words, MFS has requested the sale of the component parts of the loop. This request should be rejected because, as stated previously, the pertinent statute contemplates only "feasible" unbundling requests. The uncontroverted testimony offered by BellSouth's witness, Mr. Scheye, establishes that sub-loop unbundling cannot be accomplished with the current operations and support systems of BellSouth. Further "the operations and support systems required to order and administer sub-loop unbundling would be extremely difficult to develop and maintain." (Tr. 284) Also, the local loop is engineered "as an end to end integral unit." (Tr. 285) Accordingly, "[f]ragmentation of this integral unit introduces additional points of potential network failure." (Tr. 285) Thus, the uncontroverted testimony of BellSouth's witness establishes that sub-loop unbundling is not feasible from either a technical or an administrative standpoint.

¹ MFS has also requested that BellSouth offer two-wire ISDN as well as additional ports. (Tr. 29) These loops and ports are not part of basic local exchange service. Although BellSouth believes that it may be technically possible to accommodate these requests in the future, "BellSouth's initial focus has been to develop unbundled capabilities essential to offer basic exchange services." (Tr. 280)

MFS has also taken issue with the fact that BellSouth will not offer the connection of unbundled loops to unbundled ports. BellSouth has declined to allow this sort of ALEC purchase and rebundling of elements because the connection of an unbundled loop and an unbundled port results in a service that is functionally equivalent to local exchange service, a fact that Mr. Devine admitted at the hearing (albeit after extensive cross-examination). (Tr. 86-87)

Indeed, there are no additional capabilities offered through the rebundling that are not available through the resell of measured rate local services. Moreover, to the extent that a "rebundled" service would be sold by MFS at a flat rate, BellSouth has the express statutory right to refuse to sell these elements to MFS for this purpose. As stated in Section 364.161(2), "[t]he local exchange telecommunications company's currently tariffed, flat rated, switched residential and business services shall not be required to be resold until the local exchange telecommunications company is permitted to provide intraLATA services and video programming," Importantly, beyond this restriction, an ALEC is free to resell BellSouth's local exchange message and/or measured rate service. Because the service is available in this way, it would make no sense to require BellSouth to go through the unnecessary process and expense of unbundling local exchange service into ports and

loops, then to sell it to ALECs, so that the LECs could rebundle and resell the service.

Moreover, "the likely result of allowing the reconnection of unbundled loops to unbundled ports would be a higher price for the sum of the corresponding rate elements compared to the equivalent bundled counterpart." (Tr. 282) Again, there is no reason to order that this service be unbundled, only for the ALEC to rebundle and sell it in its original form.

As stated previously, § 364.161 requires the LEC to sell unbundled elements of its network. There is nothing in the statute, however, that would require BellSouth, under the rubric of "unbundling the network", to create new services for sale that are not currently part of its network. BellSouth does not intend to offer loop concentration for this reason. As Mr. Scheye stated:

... [L]oop concentration is not true unbundling, rather it is a new network capability. The provision of loop concentration would require the development of an entirely new service, i.e., it is not a capability that can be disaggregated from another functionality within the network.

(Tr. 283)

. . . .

Clearly, loop concentration does not meet the criteria for network unbundling contemplated under Chapter 364 of the Florida Statutes. Unbundling, by definition, requires that an existing capability or function in a LEC's network be broken out into individual piece parts. Loop concentration, on the other

hand, requires the creation of a new capability.

(Tr. 283)

Despite the request in its prefiled testimony for loop concentration, MFS' witness, Mr. Devine, stated during cross-examination that BellSouth should not be required to offer an unbundled element "if they [BellSouth] don't have that feature capability or if it were burdensome for them to do it ..." (Tr. 99) Immediately after the preceding statement by Mr. Devine, this exchange occurred:

Q. So it's your position that they [BellSouth] shouldn't be able to go out and buy things to put in the central office to resell to you if they don't already normally have them?

A. Yes. If it is not something they don't normally do in the normal course of business, they shouldn't have to get some unique whiz bang box to facilitate something. But if it's the normal course of business, yes, they should have to support it.

(Tr. 99-100) There was absolutely no testimony offered in this proceeding to support the conclusion that BellSouth is currently capable of providing loop concentration in all, or even most, central offices or that loop concentration is a component of a current feature that can be unbundled. Accordingly, the request for loop concentration is not a proper unbundling request.

MFS' also requested that it be allowed to collocate remote switching modules in BellSouth's central offices. (Tr. 34-35) BellSouth opposes this request because the proper "objective of collocation is to facilitate the interconnection of transmission facilities between a LEC and a interconnector. It has nothing to do with the placement of switching equipment in LEC central offices." (Tr. 287)

Moreover, Mr. Devine's testimony on this point is clearly beyond the proper scope of these proceedings. MFS is not requesting a form of unbundling, but rather a new type of interconnection. Interconnection has, of course, been the subject of many proceedings at both the state and federal levels. None of these proceedings has produced a ruling that would require a local exchange company to allow collocation of non-transmission facilities in its central offices. MFS should not be allowed to obtain in this docket an unprecedented expansion of the interconnection requirements that have been set in other appropriate, proceedings after full consideration of the issues that relate to interconnection.

MCImetro's objections to the elements of BellSouth's offering appear to be more limited than those of MFS. Specifically, MCI has emphasized in its testimony the contention that BellSouth should be required to sell to it loop concentration. In fact, MCImetro's witness, Don Price, appears to take an even more strident view of loop concentration resale

then did MFS' witness in one regard: Mr. Price believes that BellSouth must purchase the equipment necessary to provide this service if it does not currently own it.²

The fact remains, however, that BellSouth should not be required to provide as an unbundled network component anything that is not currently within its network. For the reasons stated previously, loop concentration is not part of the current network, and, therefore, cannot be sold as a result of unbundling that network. This fact is clear on the face of the testimony prefiled by MCImetro. Specifically, MCImetro's witness, Mr. Price, defined the term "unbundled loop" as follows:

An unbundled loop involves those basic network elements which provide a connection between the end user's premises and the LEC's central office switch.

(Tr. 114) Further, he stated that purchasing the "unbundled loop" entails "the ability to obtain loop facilities and other

² Q. Do you know whether they [BellSouth] have equipment or facilities that would allow them to do this type of concentration?

A. No.

Q. Assuming they don't, do you believe that they should be require[d] to go out and purchase this equipment in order to provide loop concentration to MCI Metro?

A. Yes.

(Tr. 139)

related network elements (such as loop transport and loop concentration)." (Tr. 114) (Emphasis added)³ Despite this direct testimony, it was only after extensive cross-examination that Mr. Price was willing to identify loop concentration and loop transport as an "extension" of the existing network.⁴

Again, the simple answer to MCImetro's request is that the purpose of this docket is for this Commission to rule upon feasible requests for "unbundling." The definition of unbundling simply cannot be stretched to require BellSouth to purchase equipment to provide a service that is not currently part of the network.

In addition to MFS and MCImetro, AT&T also filed testimony in which it set forth its proposal for unbundling. Specifically, AT&T has filed testimony in which it advocates that the local exchange network be unbundled for resale into eleven discrete components. (Tr. 208) In substance, AT&T's proposal is not very

³ Likewise, Dr. Cornell testified as follows:

- Q. What other functions should BellSouth be required to provide along with unbundled loops?
- A. BellSouth should also be required to provide loop concentration and loop transport.

(Tr. 154)

⁴ "What we are talking about in the form of concentration and loop transport is merely an extension of that which is already in many instances in your existing loop network".

different from those of MFS or MCImetro. There is, however, a fundamental difference in the position of AT&T in this proceeding. Both AT&T's procedural stance and the action it advocates are clearly at odds with the statutory scheme regarding unbundling.

As stated previously, Section 364.161 sets forth the process whereby a party wishing to purchase unbundled portions of a LEC's network can make a request. If the requesting carrier and the LEC cannot negotiate an agreement, the Commission will rule on the unbundling request. To state the obvious, ruling on the petitions that have been filed by MCImetro and MFS is the purpose of this proceeding. AT&T, however, is not certificated as an ALEC in Florida, and AT&T's witness, Mike Guedel, readily admitted that AT&T has made no unbundling request on BellSouth. (Tr. 222) Instead, Mr. Guedel testified on behalf of AT&T that the Commission should simply order the unbundling and offering of network elements in the manner he advocates, even though there is no request for all of these elements, and he has no basis to believe that any provider in Florida has a current need for these elements. (Tr. 222) In fact, Mr. Guedel went even further and stated upon cross-examination that he believes that this sort of prospective unbundling should be ordered even if there is absolutely no demonstration that there is a demand for the element. (Tr. 223)

While BellSouth obviously does not agree with the substance of the unbundling requests of MFS and MCImetro, it can at least be said that these two parties are advocating their respective positions in a way that is procedurally appropriate. Unfortunately, the same cannot be said for AT&T. Again, the statute contemplates individual negotiations between parties. It further contemplates that the Commission will resolve only those requests that cannot be negotiated between the parties. There is absolutely nothing in the statute to authorize AT&T's proposal to Order unbundling in the absence of a request on the theory that, at some future point, someone might have a need for the unbundled elements.

In sum, BellSouth has offered the sale of unbundled elements in a reasonable manner that is both technically feasible and practical from an administrative standpoint. The various contrary requests of other parties for unbundling all either lack feasibility, are outside the scope of this proceeding, or entail the provision of a new service (as opposed to the unbundling of one that currently exists). All of these requests should be rejected.

Issue No. 3: What are the appropriate financial arrangements for each such unbundled element?

***Position:** For the unbundled network elements that BellSouth has already tariffed, the current tariff rate is appropriate. Unbundled ports should be sold on a measured basis consisting of a monthly rate and a usage rate equal to the rate for shared tenant service.

Much of the dispute between the parties in this docket comes down to the issue of the price to be charged for the unbundled elements. BellSouth has proposed that the various unbundled network elements be sold at the prices at which they are currently offered in the applicable tariffs and contracts. BellSouth also plans to file a tariff for "an unbundled two-wire voice grade exchange port for connection of an ALEC's end user loop to BellSouth's public switched network." (Tr. 273) BellSouth plans to price this port so that there is a monthly rate and a usage rate. (Tr. 276) The usage rate will be the same as the usage rate for shared tenant service (Tr. 276-77) In other words, this service will be priced the same as a comparable form of resale that currently exists in the tariff.

In contrast, witnesses for MCImetro, MFS and AT&T all contend that the unbundled elements should be priced at their total service long run incremental costs ("TSLRIC"). As Mr. Devine defines this type of incremental cost pricing, it amounts to pricing the service so that it would recover only the cost that would be avoided if the service were not offered. (Tr. 39) This approach would not allow for any recovery of BellSouth's

joint or common costs in the prices charged for the unbundled elements. For a variety of reasons, this approach is both economically unsupportable and extremely unfair to BellSouth.

It is indisputable that all firms, including BellSouth, have common costs; the only relevant issue is whether BellSouth should be allowed to recover any of these costs in the sale of unbundled network elements. In addressing this issue on behalf of BellSouth, Dr. Aniruddha Banerjee stated that, although TSLRIC is appropriate to set a price floor for services, "services priced exactly at [long run incremental cost] will fail to recover all of the costs of the firm." (Tr. 355) Consequently, a firm must be able to raise prices above this level on at least some of its services. Dr. Banerjee further testified that a requirement to price at incremental cost would be an economically improper restraint to place upon a local exchange company. Specifically, he stated:

BellSouth should have the latitude to add contribution to its service LRICS in order to recover its shared and common costs. Otherwise, BellSouth cannot remain a viable firm.

(Tr. 357)

To the extent that these common costs cannot be recovered from wholesale services such as unbundled loops or ports, they must be recovered from other services, e.g., retail services. As Dr. Banerjee testified, it is improper from an economic standpoint to require a local exchange company to recover all of

its shared and common costs from a restricted category of services, such as those provided to end users:

The LEC should have the opportunity and the flexibility to raise the requisite contributions from any and all of its services. Faced with varying degrees of competition for its different services, it should not be compelled or locked into restricted formulas or means for raising the contribution.

(Tr. 359)

Further, if pricing at incremental cost were required, this approach would be patently unfair to BellSouth in at least two other ways. One, it would require BellSouth, in at least some instances, to offer services that are available from other sources at prices that are below the market for these services (e.g., operator services). (Tr. 299) Also, Dr. Cornell acknowledges the fact that entrants are capable of providing their own switching. (Tr. 155) Thus, in her view, the only essential facility is the loop. (Tr. 154) As Mr. Scheye testified, however, alternatives to the purchase of loop elements from BellSouth exist now and will, in the future, increase:

Further, to show you the diversity of capability, today we talk about wire line loops provided by BellSouth, and they can provide dial tone and local service. In the future, we've talked earlier today, that capable companies may be able to use their facilities to provide dial tone capability. And thirdly, and most interesting possibly, is MCI Metro has indicated publicly that they have signed a deal with Windstar, PCS, a wireless provider, and they will use wireless capability to provide switched local exchange

service to both residence and business service, initially in the city of Atlanta, but then nationally. So I think that indicates to you, sir, that ... a loop provided by BellSouth is not the only source
....

(Tr. 328)

Two, it would make "no sense for a LEC to invest capital to offer unbundled network capabilities to ALECs at cost when it could utilize the same capital from the same network components to offer bundled and/or retail services at a price that would cover costs and realize a contribution to the LEC's common and shared costs. (Tr. 300) It, likewise, makes no sense to require BellSouth to unbundle its network and discount the piece parts according to price constraints that, applied uniformly to all parts of the network, would make its survival difficult.

The tariffed (or contract) rates for the various network elements BellSouth proposes contain a level of contribution that, in their current applications, have all been approved by this Commission. There is no valid rationale to support the position of the adverse parties that unbundling network elements should require discounting these elements to the disadvantage of BellSouth and its other customers (who would be burdened with supporting all of the companies' common costs in the prices they pay for service).

Both MCImetro and MFS contend that if BellSouth is allowed to include any contribution to the price of the unbundled

elements, then they will be caught in a "price squeeze" that will render them incapable of competing. (Tr. 43, 158) Dr. Banerjee testified that the way to ensure that this does not happen is to test the competitive LEC services to ensure that they are priced to include an imputation of the contribution from the sale of the unbundled elements. (Tr. 358) In other words, the LEC's prices (for services that the ALECs could also provide) would equal the LECs' costs plus the contribution derived from the sale to the ALECs of the unbundled elements utilized in their competitive services. Applying this test would ensure that there would be no price squeeze, and would also take into account any differences in efficiencies between the LEC and the ALEC. "This would ensure that retail competition can go forward on the basis of the relative efficiencies of the competing firms" (Tr. 359) Put differently, the LECs' prices would be lower than the ALECs' only if the LECs' costs were also lower.

Dr. Cornell, who testified on behalf of MCI, did not dispute that an imputation test would be an effective means to avoid a price squeeze. Instead, she merely countered by arguing that the "correct" imputation test was one in which the LECs' price would have to pass a test that involves the imputation of the price charged to ALECs for the unbundled loop element in question. (Tr. 158) Put differently, the cost of providing the element to the ALEC would be imputed into the LEC's price even if the LEC's cost to utilize the element itself is lower.

As demonstrated during the redirect examination of Dr. Banerjee at the hearing, using Dr. Cornell's imputation method would, in many cases, result in a higher price to the customers of the LEC than would the imputation method of Dr. Banerjee. (Tr. 377-79) Utilizing hypothetical figures supplied to him previously in a question by counsel for MCImetro, Dr. Banerjee stated the following:

Under the alternative imputation procedure that Dr. Cornell has proposed, the price floor would be 24. Under the imputation procedure that I have proposed, it would be 23. ... It is the same \$1 difference between the cost of providing the loop to the competitor, which is 17, and the cost of using it internally, which is 16. That's where the difference comes from. If that difference did not exist, then the two procedures would result in the same price floor.

(Tr. 379)

Further, the theoretical objections of the adverse parties to paying the current tariff or contract rates give the incorrect impression that BellSouth is requesting an unreasonable level of contribution from these services. To the contrary, the evidence shows that BellSouth's current loop costs are in excess of \$16.00 per month,⁵ while the cost that BellSouth proposes to charge for an unbundled loop (in the form of a two-wire voice grade local channel purchased from the access service tariff) is \$21.15. (Tr.

⁵ Two loop costs were identified from studies performed in 1994, \$15.53 and \$15.97. (Tr. 307) The current cost, the exact amount of which is proprietary, is higher. (Tr. 311-12, 346)

305) Thus, the total mark-up to recover BellSouth's joint and common costs is only approximately \$5.00.

Moreover, if the loop price were reduced to some level between \$16.00 and \$21.00 (i.e., closer to incremental cost) this would likely create a serious arbitrage and tariff shopping problem.

For instance, existing customers of two-wire dedicated facilities may request a change to ... [their] ... service if unbundled local loops were to be priced at rates lower than the current Special Access rates, thus putting at risk the Company's current Special Access revenues.

(Tr. 276)

Finally, MFS' witness, Mr. Devine, also testified that the price for unbundled loop elements should be no greater than the price BellSouth charges its customers for the retail service that would result from the rebundling of the elements. (Tr. 40) As Dr. Banerjee testified, this proposal, too, is economically unsound. Dr. Banerjee testified that, in some instances, a multi-product firm (such as BellSouth) "can produce two products cheaper when their production is combined than when it is separated." (Tr. 360-61) In this case, products can be offered to the end user at prices that are less than if the various products were produced on a stand-alone basis. (Tr. 361) Mr. Devine's proposal would obviously prevent these economies from being passed on to consumers in the form of lower retail prices.

from BellSouth. For this reason, "... Mr. Devine's prescription -- cloaked in the language of non-discrimination and fairness -- should be seen as no more than what it is: an effort to secure a competitive advantage for the ALEC at the expense of the customer or ratepayer." (Tr. 361)

Moreover, Mr. Devine's proposal is not legally proper. Section 364.161(2), Florida Statutes, states specifically that services shall not be made available for resale at a price that is below their cost. Thus, Mr. Devine's proposal would only be consistent with the statute if there were evidence to establish that the price for the unbundled elements could be set at the levels he advocates and still cover their costs. There is simply no record evidence that would establish this, and this reason alone is enough to mandate the rejection of this portion of his proposal.

There is also a second legal reason to reject Mr. Devine's position. As stated previously, MFS asserts that ALECs should be allowed to recombine unbundled loops and ports. (Tr. 286) This position, combined with his above-described position regarding price would, in Mr. Scheye's words, "have the effect of allowing ALEC's to purchase the equivalent of flat-rated residence and business lines at currently tariffed flat rates." (Tr. 286) As set forth previously (page 8, supra.) Section 364.161(2) allows LECs to refuse to sell "currently tariffed, flat-rated, switched residential and business services." Mr. Devine's proposal is

nothing more than a transparent attempt to avoid this statutory provision.

For all of the reasons set forth above, BellSouth should be allowed to recover a reasonable contribution toward its joint and common costs by pricing unbundled network elements at their tariffed or equivalent contract rates. Any danger of a price squeeze that may exist can be remedied by the imputation test advocated by Dr. Banerjee.

Issue No. 4: What arrangements, if any, are necessary to address other operational issues?

***Position:** It is premature for the Commission to address operational issues. These issues can likely be negotiated to the mutual satisfaction of all parties. If negotiations fail, MFS-FL and MCImetro have the right to file a complaint with the Commission in order to resolve any outstanding issues.

Again, the procedure for unbundling set forth in Section 364.161, Florida Statutes, provides that in, the absence of an agreement between the requesting carrier and the LEC, the Commission must set the "terms, conditions, and prices" of the unbundled elements. There is no statutory requirement, however, that the Commission decide any of the variety of technical issues that may arise in the process of implementing unbundling and resale. In this particular case, the parties -- having not even reached an agreement on unbundling -- have not undertaken any specific negotiations as to how unbundling would be implemented from a technical standpoint. Accordingly, BellSouth's witness,

Mr. Scheye testified that it would be premature for the Commission to issue an order on operational issues before the parties have had an opportunity to attempt to agree on these issues. (Tr. 277) He further stated his belief that "these issues can be negotiated to the mutual satisfaction of all parties." (Tr. 277) Finally, he noted that, if negotiations fail, MFS and/or MCImetro will have the opportunity to file a complaint with the Commission to request a ruling on any unresolved issues. (Tr. 277)

In contrast, the only other witness to address this issue⁶, Mr. Devine, has requested that this Commission issue an extremely broad set of directives to control all issues that might pertain to whatever form of unbundling and resale is ordered in this docket.⁷ Again, BellSouth submits that it would be contrary to

⁶ AT&T took no position on this issue. (Prehearing Order, p. 17) While MCImetro took a position in its Prehearing Statement, and Mr. Price of MCImetro is listed in the Prehearing Order as addressing this issue, (Prehearing Order, pp. 5, 17) it is not covered in his testimony.

⁷ Specifically, Mr. Devine requested that the Commission order the following:

BellSouth should be required to apply all transport-based features, functions, service attributes, grades-of-service, and install, maintenance and repair intervals which apply to bundled service to unbundled links. Likewise, BellSouth should be required to apply all switch-based features, functions, service attributes, grades-of-service, and install, maintenance and repair intervals which apply to bundled service to unbundled ports.

the intent of the revised Chapter 364 for the Commission to dictate any technical arrangements for unbundling and resale before the parties have negotiated. It would constitute an egregious disregard of the statutory scheme not only to impose requirements, but to impose the long and byzantine list of requirements proposed by MFS, especially when there has been no showing that these requirements are needed.⁸

At the same time, BellSouth has proposed in the testimony of Mr. Scheye that it would be useful for the Commission to adopt a conceptual framework to consider the feasibility of future unbundling requests. Specifically, Mr. Scheye proposed that this Commission utilize the open network architecture (ONA) model

BellSouth should permit any customer to convert its bundled service to unbundled service and assign such service to MFS-FL, with no penalties, rollover, termination or conversion charges to MFS-FL or the customer. BellSouth should also bill all unbundled facilities purchased by MFS-FL (either directly or by previous assignment by a customer) on a single consolidated statement per wire center. Finally, BellSouth should provide MFS-FL with an appropriate on-line electronic file transfer arrangement by which MFS-FL may place, verify and receive confirmation on orders for unbundled elements, and issue and track trouble-ticket and repair requests associated with unbundled elements.

(Tr. 35-36)

⁸ In his rebuttal testimony, Mr. Devine contends that an agreement on these issues is unlikely, but he does not deny the fact that no attempts have been made to negotiate these issues in Florida. (Tr. 55-56)

adopted by the FCC. (Tr. 278) Under these criteria, each unbundling request would be scrutinized to determine whether it is technically feasible, feasible from the standpoint of cost methodology, whether there is a market demand, and whether the unbundled component will, in fact, be used. (Tr. 278-79) In their respective rebuttal testimonies, witnesses for MFS and MCImetro both objected to this proposal for various reason (Tr. 63-64, 166) Their objections notwithstanding, BellSouth believes that the adoption of the ONA process is useful in this context. For example, some aspects of the unbundling requests at issue are of, at best, questionable feasibility. The adoption of a framework to consider unbundling requests, such as ONA, would likely result in more focused requests that would make more sense from a practical standpoint and, therefore, yield more successful negotiations between the parties.

The fact remains, however, that it is not necessary at this juncture for the Commission to adopt any additional standards to address technical issues related to the subject unbundling requests. Further, BellSouth submits that it would be contrary to the intent of the statute to impose upon it specific requirements as to technical issues when there has been no attempt to negotiate these issues between the parties.

CONCLUSION

For the reasons set forth above, BellSouth's proposal to offer for resale unbundled loops and ports at the appropriate tariffed rates should be adopted. The opposing proposals of MFS, MCImetro and AT&T are, in many instances, administratively and/or technically unfeasible, and, in some instances, simply improper. It would likewise be improper to require BellSouth to sell unbundled network elements at a price that deprives it of the opportunity to obtain any contribution to its joint and common costs. Instead, the better alternative is to approve the sale of unbundled network elements as proposed by BellSouth herein.

Respectfully submitted this 29th day of January, 1996.

BELLSOUTH TELECOMMUNICATIONS, INC.

Robert G. Beatty (BL)
ROBERT G. BEATTY
J. PHILLIP CARVER
c/o Nancy H. Sims
150 So. Monroe Street, Rm. 400
Tallahassee, FL 32301
(305) 347-5555

R. Douglas Lackey (BL)
R. DOUGLAS LACKEY
NANCY B. WHITE
c/o Nancy H. Sims
150 So. Monroe Street, Rm. 400
Tallahassee, FL 32301
(404) 335-0710