BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF ARDELL BURGESS

ON BEHALF OF

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

AND TCG SOUTH FLORIDA, INC.

DOCKET NO. 000731-TP

JANUARY 3, 2001

Q. PLEASE STATE YOUR NAME, ADDRESS AND EMPLOYMENT.

A. My name is Ardell Burgess. I am employed by AT&T Corp. ("AT&T") as a District Manager in the Access Management organization which is part of AT&T Network Services. My business address is 900 Route 202/206 North, Rm 2A-124, Bedminster, New Jersey 07921.

Q. PLEASE DESCRIBE YOUR BACKGROUND AND PROFESSIONAL EXPERIENCE AS THEY RELATE TO THESE PROCEEDINGS

I graduated from California Polytechnic University at Pomona in 1975 where I earned a Bachelor of Science Degree in Communications. I started my telecommunications career in 1978 with Pacific Telephone as a Long Distance Operator. In 1979, I accepted a position in the local business office as a Service Representative and was subsequently promoted to a Market Administrator position in 1981, responsible for telecom sales and service to mid-size business

accounts. In 1983, I joined American Bell and accepted an administrative staff position at a Large Business Systems Branch Sales Office. I transferred to AT&T in 1984 and accepted a position as an Asset Manger for the Western Region. I was promoted in 1985 and transferred to New Jersey where I continued my responsibilities at a national level. In 1987, I accepted a position with the Business Systems Division as a Product Lifecycle Manager for 7000 Series Voice Terminals. I joined AT&T Consumer Direct, a venture business in 1990, as a Merchandising and Inventory Control Manager. In 1993, I accepted a position as a Business Planner in the Domestic Business and Consumer Card Business Unit. I joined Network Services and the Access Management organization in 1996 and continued business planning responsibilities. I assumed my current responsibilities and was promoted to District Manager in August, 1998.

Q. DID YOU PREFILE DIRECT TESTIMONY IN THIS PROCEEDING?

A. No, I did not. Mr. Follensbee filed direct testimony on the specific issue I will address in rebuttal. In addition, I am adopting the pre-filed testimony of Mr. Follensbee on this issue.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will be rebutting the testimony of Mr. Ruscilli on the specific issue of whether switched access charges should be applied to voice calls using IP telephony (Issue 16.)

ISSUE 16: WHAT IS THE APPROPRIATE TREATMENT OF OUTBOUND VOICE CALLS OVER INTERNET PROTOCOL ("IP") TELEPHONY, AS IT PERTAINS TO RECIPROCAL COMPENSATION?

Q. DO YOU AGREE WITH BELLSOUTH THAT ISSUE 16 RELATES ONLY TO PHONE-TO-PHONE IP TELEPHONY CALLS?

A. No. BellSouth has provided AT&T with two different sets of language to consider regarding treatment of IP Telephony calls. The first one is found in Attachment 3, section 6.19, as attached to BellSouth's reply to AT&T's petition for arbitration as follows:

> Neither Party shall represent access services traffic (e.g., Internet Protocol Telephony, FGA, FGB, etc.) as Local Traffic for purposes of payment of reciprocal compensation. "Internet Protocol Telephony" is defined as real-time voice conversations over the Internet by converting voices into data which is compressed and split into packets, which are sent over the Internet like any other packets and reassembled as audio output at the receiving end. (Attachment 3, section 6.19, as attached to BellSouth's reply to AT&T's petition for arbitration)

The second one was sent to AT&T by BellSouth via e-mail and is as follows:

> The origination and end point of the call shall determine the jurisdiction of the call. Unless expressly agreed to by the Parties in this Agreement, neither Party shall represent as local traffic any

traffic for which access charges may be lawfully assessed. The Parties have been unable to agree as to whether a call that travels over transport protocol methods other than those being utilized by the Parties on the effective date of this Agreement and crosses LATA boundaries constitutes switched access traffic. However, because the Parties are not currently utilizing alternative transport protocol methods on the effective date of this Agreement, the Parties will resume negotiations on this issue if and when either Parties adopts a new transport protocol method. If the parties are unable to resolve this issue, then the Parties will submit the dispute to the Florida Public Service Commission or the Federal Communications Commission, whichever is appropriate, for resolution. (Language sent to AT&T in E-mail for consideration to close issue.)

Both sets of language would apply to all IP Telephony calls, not just phone-to-phone calls. Neither set makes a distinction between phone-to-phone, computer-to-phone, phone-to-computer, or computer-to-computer calls: the two sets of language would treat all forms of Voice-over Internet Protocol (VOIP) traffic as switched access traffic.

AT&T understood the use of the term "Internet" proposed by BellSouth in its reply to AT&T's petition to mean the World Wide Web. Thus, "over the Internet" referred to "over the World Wide Web". IP telephony and Internet Telephony utilize the same Internet protocol but are not the same.

Q. PLEASE EXPLAIN THE DIFFERENCE, IF ANY, BETWEEN IP TELEPHONY AND INTERNET TELEPHONY.

A. "IP Telephony" refers to traffic carried via Internet Protocol over the private network of a carrier, while "Internet Telephony" is limited to telephone calls carried over the Internet; that is, the World Wide Web. It is universally accepted that the term "Internet" references the World Wide Web, not the internal dedicated private networks of particular companies. The language proposed by BellSouth, however, shows that BellSouth intends to treat all types of calls as switched access traffic, "regardless of transport protocol" including Internet Telephony calls that travel over the World Wide Web.

The failure by BellSouth to make the distinction between IP Telephony and Internet Telephony calls is not an oversight: BellSouth indicated in negotiations with AT&T that it intends to treat both types of calls as switched access traffic. BellSouth now takes the position that computer-to-computer, computer-to-phone, phone-to-computer, and IP enabled phone-to-phone voice calls are no longer an issue to be addressed by this Commission. However, the language proposed by BellSouth does not eliminate these variations of calls from consideration.

Q. DO YOU AGREE WITH MR. RUSCILLI'S DEFINITION OF PHONE-TO-PHONE IP TELEPHONY?

A. No. Mr. Ruscilli concludes that phone-to-phone IP Telephony provided by a "local carrier" or "telephone carriers" is a basic telecommunications service rather than an "information service". He is incorrect. It is the nature of the service, not

the nature of the entity providing the service, that determines whether or not a local carrier or telephone carrier is eligible for the ISP exemption from payment of access charges. Although the FCC in its *Report to Congress (FCC 98-67, April 10, 1998)* recognized that IP Telephony bears the characteristics of a "telecommunications service" that provides pure transmission (rather than an "information service" that provides enhanced functionalities), today, the FCC treats IP Telephony as if it were an information service and thus exempts IP Telephony providers from paying traditional access charges. Therefore, to the extent that a local carrier or telephone carrier provides IP Telephony, it is eligible for the ISP exemption from payment of access charges, just like all other IP Telephony providers.

It's clear that Mr. Ruscilli advocates imposing access charges on all communications, both voice and data, transported via Internet Protocol regardless whether the service may be telecommunications or information services. However, the FCC has determined that telecommunications services and information services are mutually exclusive categories. A particular service can be one or the other, but it cannot be both.

The FCC developed the distinction between "basic services" and "enhanced services" in the Second Computer Inquiry (1980) (Computer II). "Basic services" were defined by the FCC as "the common carrier offering of transmission capacity for the movement of information". A basic service transmits information generated by a customer from one point to another, without changing the content of the transmission. The "basic" service classification defines the transport

transmission capacity that makes up traditional communications service which the FCC considers to be "wholly traditional common carrier activities" (Title II of the Act).

In comparison, the FCC defined unregulated "enhanced service" as "services offered over common carrier transmission facilities...which [1] employ computer processing applications that act on the format, content, code, protocol...[2] provide the subscriber additional, different or restructured information; or [3] involve subscriber interaction with stored information." A service is generally enhanced if it meets one of the three criteria. The FCC has determined that protocol processing services that qualified as enhanced should be treated as information services under the Act (1996)(Non-Accounting Safeguards Order). Clearly IP Telephony qualifies as an information service under the Act because the provider transforms a communication from circuit-switched transport to Internet Protocol transport and vice versa.

Q. MR. RUSCILLI QUOTES FROM THE APRIL 10, 1998 FCC REPORT TO CONGRESS. DO YOU AGREE WITH MR. RUSCILLI'S CHARACTERIZATION OF THAT REPORT?

A. Not entirely. While Mr. Ruscilli does provide accurate quotes from that report, the quotes do not answer the question. The question in his testimony was whether or not the FCC viewed calls to ISPs differently than phone-to-phone IP telephony as it relates to the applicable charges. The FCC did not address "applicable charges" for IP telephony in the Report to Congress. In fact, the FCC deferred the

issue of determining the regulatory status of IP telephony, including payment of access charges:

> We do not believe, however, that is appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings. ...We defer a more definitive resolution of these issues pending the development of a more fully-developed record because we recognize the need, when dealing with emerging services and technologies in environments as dynamic as today's Internet and telecommunications markets, to have as complete information and input as possible.[1]

Thus, contrary to BellSouth's statement, the FCC has not determined that IP Telephony is a telecommunications service subject to access charges.

Q. HAS THE FCC RECENTLY VOICED ITS POSITION ON THE ISSUE OF INTERNET TELEPHONY?

A. Yes. In a recent May 25th interview with Warren's Washington Internet Daily, Chairman Kennard stated he will not regulate Internet telephony. He stated that "it is important to recognize that legacy regulation is not necessarily appropriate to emerging network technologies, so when people start asking when are you to

going to regulate IP telephony, my answer is always the same - never." Chairman Kennard said it is preferable to seek a more appropriate method of universal service funding than to apply outdated regulation to new technology. While Mr. Ruscilli mentions an FCC report dated April 10, 1998 as a basis for asserting that the FCC would find in BellSouth's favor, the May 25th statements by Chairman Kennard clearly indicate that the FCC no longer is pursuing a course of applying traditional regulatory solutions and rules to IP telephony calls. Chairman Kennard again reiterated this position in a speech in Atlanta on September 12, 2000 when he stated: " ...regulation is too often used as a shield, to protect the status quo from new competition—often in the form of smaller, hungrier competitors—and too infrequently as a sword—to cut a pathway for new competitors to compete by creating new networks and new services."

Q. HAS THE FCC GIVEN ANY OTHER INDICATION THAT IT WILL NOT AT THIS TIME APPLY TRADITIONAL ACCESS CHARGES TO IP TELEPHONY CALLS?

A. Yes. In April 1999, the FCC declined to act on a Petition U.S. West filed seeking an expedited declaratory ruling. U.S. West requested that the FCC determine that phone-to-phone IP Telephony is a telecommunications service subject to a carrier's carrier charges (access) when the ILEC provides originating and terminating access.

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[1] In the Matter of Federal-State Joint Board on Universal Service, FCC Report to Congress, CC Docket No.

Q. WHAT DOES AT&T RECOMMEND THIS COMMISSION DO WITH THIS ISSUE AS NOW CLARIFIED BY BELLSOUTH?

A. AT&T recommends that this Commission not adopt the language proposed by BellSouth, but should instead find that IP telephony calls are not subject to access charges.

Under the FCC's longstanding ESP exemption, AT&T suggests that the Commission rule that all forms of ISP Traffic, including IP telephony, should be treated as local and subject to cost based reciprocal compensation on a uniform basis with "local" voice and data traffic. Such a ruling would further federal and state comity and facilitate the development of a uniform, nationwide, pro-competitive regulatory policy with regard to the treatment of IP telephony services.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

96-45, (April 10, 1998) at ¶ 90.