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BELLSOUTH TELECOMMUNICATIONS, INC.  
REBUTTAL TESTIMONY OF CYNTHIA K. COX  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 000121-TP  
MARCH 21, 2001

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony in this proceeding on March 1, 2001.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the direct testimony filed by several witnesses in this proceeding on March 1, 2001. Specifically, I will address portions of the testimony of Mr. John J. Rubino and Dr. George S. Ford filed on behalf of Z-Tel Communications, Inc. ("Z-Tel"); Ms. Cheryl Bursh and Ms. Karen Kinard filed on behalf of AT&T Communications of the Southern

1 States, Inc, WorldCom, Inc., Dieca Communications Company D/B/A Covad  
2 Communications Company, New South Communications Corp., Mpower  
3 Communications Corp., e.spire Communications, Inc., ITC^DeltaCom  
4 Communications, Inc., Rhythms Links Inc., and Z-Tel, (collectively referred to  
5 as “ALEC Coalition”); Mr. Thomas Allen, filed on behalf of Covad  
6 Communications Company (“Covad”); Mr. James Falvey, filed on behalf of  
7 e.spire Communications, Inc. (“e.spire”); Mr. Michael Iacino, filed on behalf of  
8 Mpower Communications Corp. (“Mpower”); and, Mr. William Gulas and Mr.  
9 Keith Kramer, filed on behalf of IDS Telecom, LCC (“IDS”).

10

11 Q. DO YOU HAVE ANY GENERAL COMMENTS ON THE ALECS’ DIRECT  
12 TESTIMONY, FILED ON MARCH 1, 2001?

13

14 A. Yes. BellSouth has spent an enormous amount of time and money over the past  
15 several years developing a performance measurement plan that will more than  
16 adequately measure the service that BellSouth provides to the alternative local  
17 exchange company (“ALEC”) community. The plan will allow both this  
18 Commission and the FCC to determine whether BellSouth is providing service  
19 to ALECs in “substantially the same time and manner” that it provides to itself,  
20 or that it allows the ALECs a “meaningful opportunity to compete”, as required  
21 by the FCC.

22

23 I would also like to briefly respond to the implications by Ms. Bursh (pages 4-5)  
24 that local competition will not be realized absent a performance measurement  
25 and enforcement plan. Local competition is here. According to a recent FCC

1 report, Florida is among the top four states in the nation in terms of end-user  
2 lines served by ALECs. The FCC's analysis reveals that, as of June 30, 2000,  
3 16 large ALECs alone served 983,047 access lines in Florida and that 8.1% of  
4 total Florida access lines had been won by ALECs. In December 2000, this  
5 Commission's Division of Competitive Services released a similar report that  
6 also found substantial competition in Florida. Specifically, the FPSC's  
7 "Competition in Telecommunications Markets in Florida" report states,

8 ALECs responding to this year's data request report serving 710,617  
9 access lines, more than 6 percent of the state's total and more than the  
10 nationwide average of 4 percent. In addition to those companies  
11 actively serving telephone customers in Florida, another 100 indicated  
12 they are poised to enter the state's markets either through resale, UNEs,  
13 facilities-based or a combination of these business strategies. Business  
14 customers can obtain services in nearly 70 percent of the state's  
15 exchanges at rates, terms, and conditions presumably comparable to  
16 those offered by incumbent LECs. (Competition Report at page 55)

17  
18 It is obvious that local competition in Florida is not being deterred by the  
19 absence to date of a Commission-approved performance measurement and  
20 enforcement plan.

21  
22 Q. PLEASE RESPOND TO DR. FORD'S CONTENTION (PAGE 6, LINES 20-  
23 21) THAT "THE FCC'S STANDARDS FOR A PERFORMANCE PLAN ARE  
24 VERY LOW."

25

1 A. Dr. Ford seems to suggest that the FCC has set the standard for a performance  
2 plan too low when it approved Southwestern Bell's 271 applications for Texas,  
3 Oklahoma and Kansas. He also suggests that this Commission should require a  
4 more stringent performance plan than the FCC has determined is needed. It is  
5 not surprising that Dr. Ford takes issue with the FCC's 271 decisions since the  
6 FCC has expressly disagreed with basic assumptions contained in Dr. Ford's  
7 testimony in those cases. (*See* Memorandum Opinion and Order in CC Docket  
8 No. 99-295, released December 22, 1999, ¶ 435, fn 1330) However, to the  
9 extent Dr. Ford is arguing that the FCC's analysis for establishing its  
10 performance plan standards is flawed, he is simply wrong. Further, even if  
11 there were some basis for this Commission to conclude that the FCC has set the  
12 bar too low (and there is none), it would still not be appropriate to simply ignore  
13 the conclusions of the FCC and set different, higher standards.

14  
15 Q. PLEASE RESPOND TO MS. BURSH'S COMMENTS ON PAGE 5 THAT  
16 BELL SOUTH HAS NO INCENTIVE TO COMPLY WITH PERFORMANCE  
17 STANDARDS WITHOUT A PENALTY PLAN.

18  
19 A. BellSouth has a multitude of incentives to comply with the Act absent a penalty  
20 plan. First, BellSouth's compliance is not contingent upon enforcement  
21 mechanisms but is required by law. Second, ALECs have many options to  
22 pursue should they believe BellSouth is not in compliance with its obligations  
23 (i.e. FCC complaint process, Commission complaint process, or other legal  
24 action). Finally, BellSouth cannot gain the authority to provide long distance  
25 service in Florida unless it is determined by the FCC – with input from this

1 Commission – that BellSouth is providing nondiscriminatory access to all  
2 ALECs in Florida. These are powerful incentives for BellSouth to comply with  
3 its obligations under the Act, and these incentives have not been diminished by  
4 the lack (to date) of enforcement mechanisms.

5

6 Q. ON PAGE 37, MS. BURSH CONTENDS THAT THE PENALTY PLAN  
7 SHOULD GO INTO EFFECT IMMEDIATELY. DO YOU AGREE?

8

9 A. Absolutely not. As I stated in my direct testimony, it is not appropriate for  
10 BellSouth’s penalty plan to take effect until it is necessary to serve its purpose –  
11 i.e., until after BellSouth receives interLATA authority. Ms. Bursh’s contention  
12 (page 37, line 21) that penalties must be paid immediately “so that the benefits  
13 of its effect on the marketplace can be realized” is misplaced. As demonstrated  
14 by the FCC and Florida PSC reports cited above, the marketplace is developing  
15 quite well without the payment of penalties. Further, it is the performance  
16 measurements that are designed to demonstrate compliance, not the penalty  
17 plan. The penalty plan is designed to prevent backsliding after interLATA  
18 relief.

19

20 The FCC’s public interest analysis in the Bell Atlantic New York Order  
21 supports this conclusion by stating:

22

23

24

25

[o]ur examination of the New York monitoring and enforcement  
mechanisms is solely for the purpose of determining whether the risk of  
post-approval [271] (emphasis added) non-compliance is sufficiently  
great that approval of its section 271 application would not be in the

1 public interest. Our analysis has no bearing on the separate question of  
2 how the Commission would view and respond to any particular conduct  
3 by Bell Atlantic in the *federal* enforcement context. Id. fn. 1326.

4  
5 The FCC also says, in footnote 1323 of the same Order, (referring to Bell  
6 Atlantic's proposed performance plan),

7 [b]ecause this aspect of our public interest inquiry necessarily is  
8 forward-looking and requires a predictive judgment, this is a situation  
9 where it is appropriate to consider commitments made by the applicant  
10 to be subject to a framework in the future. (Emphasis added.)

11  
12 The FCC reached similar conclusion in its orders approving Southwestern  
13 Bell's 271 applications in Texas, Kansas and Oklahoma. (*See* Southwestern  
14 Bell Texas Order, ¶ 423-424; Southwestern Bell Kansas/Oklahoma Order, ¶  
15 273)

16  
17 Performance remedies are not a requirement of Section 251 of the Act, nor are  
18 they necessary to ensure that BellSouth fulfills its responsibilities under this  
19 Section. The FCC, although strongly encouraging "state performance  
20 monitoring and post-entry level enforcement," has "never required BOC  
21 applicants to demonstrate that they are subject to such mechanisms as a  
22 condition of section 271 approval." (Bell Atlantic New York Order, ¶ 429)  
23 (emphasis added) Therefore, performance monitoring and remedies are not  
24 required by the Act, and are not necessary to enforce the Section 251 market  
25 opening provisions of the Act.

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Q. IN THE TWO QUESTIONS AND ANSWERS ON PAGES 8-9 OF HIS TESTIMONY, Z-TEL'S WITNESS MR. JOHN RUBINO RECOMMENDS THAT THE COMMISSION "EXAMINE THE DEVELOPMENT OF SOME TYPE OF PERFORMANCE ASSURANCE PLAN AS EARLY AS POSSIBLE IN THE EVOLUTION OF THEIR LOCAL SERVICE MARKET" (PAGE 8 LINES 17-19), AND "OBSERVE THE ACTUAL MARKET IN ACTION TO ENSURE THAT THE PERFORMANCE METRICS CAPTURE AND REPORT RESULTS ACCURATELY." (PAGE 9, LINES 3-4) PLEASE COMMENT.

A. BellSouth agrees with Mr. Rubino's suggestions. However, I find them odd since he apparently doesn't acknowledge that BellSouth, the FPSC, the FCC and the ALECs have been working together very closely to ensure just what Mr. Rubino suggests.

BellSouth's performance measurement and enforcement plan take into consideration all of the points that Mr. Rubino has made. In addition, BellSouth has submitted to an independent, extensive third-party testing process, conducted by KPMG, to determine, among other things, if BellSouth's reported measurements are accurate. It is the actual BellSouth systems and processes that have been tested. Yet, Mr. Rubino suggests that in addition to the testing, additional observations of the actual market in action should be made. BellSouth has had commercial use of its network and systems in Florida since 1996. This use has grown significantly since that time and the information that

1 BellSouth submits to the ALECs and to the Commission on a periodic basis is  
2 reflecting actual commercial usage.

3

4 Q. MS. KINARD SUGGESTS ON PAGE 40 THAT BELLSOUTH SHOULD BE  
5 REQUIRED TO REPORT AFFILIATE PERFORMANCE INFORMATION  
6 “SEPARATELY BY EACH AFFILIATE (DATA, WIRELESS, FUTURE  
7 LONG DISTANCE, OR OTHER) WITH ACTIVITY IN THE METRIC  
8 CATEGORY.” (LINES 23-24) DO YOU AGREE?

9

10 A. Yes and no. It appears we are in agreement with Ms. Kinard that a BellSouth  
11 affiliate that does not purchase wholesale services from BellSouth should not be  
12 subject to a reporting requirement. However, we disagree with Ms. Kinard  
13 since she appears to believe that data should be reported for any BellSouth  
14 affiliate that purchases wholesale services, even if that affiliate is not providing  
15 local services. In the context of performance measurements and enforcement  
16 mechanisms, the only current BellSouth affiliate that could potentially be  
17 relevant to the discussion is BellSouth’s ALEC, which is the only affiliate that  
18 could provide local exchange services.

19

20 Even if the Commission determines that affiliate reporting is appropriate, it  
21 makes no sense to attempt to use the provision of wholesale service to a  
22 BellSouth affiliate as a surrogate for a retail analog unless the affiliate buys the  
23 same wholesale services that ALECs buy to provide local services. Obviously,  
24 the services that a wireless BellSouth affiliate purchases or that a long distance  
25 affiliate purchases to provide their services are different than the services that



1 ALECs purchase from BellSouth to provide local service. For this reason, the  
2 wholesale services these non-local affiliates would purchase really cannot be  
3 used as an analog to make parity judgments. Given this, there is simply no  
4 reason to require that this information about fundamentally different types of  
5 transactions be reported.

6  
7 Q. THE TESTIMONY OF MESSRS. JAMES FALVEY (E.SPIRE), THOMAS  
8 ALLEN (COVAD), AND MICHAEL IACINO (MPOWER) RAISES  
9 SEVERAL ISSUES AND AREAS WHERE THEY BELIEVE THIS  
10 COMMISSION SHOULD ESTABLISH PERFORMANCE  
11 MEASUREMENTS. PLEASE COMMENT.

12  
13 A. The testimony of these witnesses addresses several issues, most of an  
14 operational nature. In order to introduce or discuss gratuitous complaints, Mr.  
15 Falvey, Mr. Iacino and Mr. Allen loosely tie operational issues to the subject of  
16 performance measurements. This docket is not a complaint proceeding; its  
17 purpose is to determine the appropriateness of BellSouth's performance  
18 measurement and enforcement plan. These anecdotal complaints do not provide  
19 any meaningful input for the Commission in its deliberation on appropriate  
20 performance measurements and enforcement mechanisms. Beyond the  
21 irrelevance of these claims to this proceeding, it is also inappropriate to  
22 introduce these anecdotal complaints in this docket. The Commission does not  
23 have sufficient information, or time, to review data that would be necessary to  
24 make a judgment as to the validity of these ALEC's allegations. If any of these  
25 ALECs actually have legitimate complaints, they would be best handled

1 through the filing of a complaint under the well-established Commission  
2 procedure, not in a generic performance measurements docket. Having said  
3 this, BellSouth denies that it has intentionally done any of the things that these  
4 witnesses claim.

5  
6 It should be noted that even if e.spire, Covad, or Mpower had raised problems  
7 with enough specificity for them to be addressed, it has not been the intention of  
8 the FCC, nor should it be of this Commission, to craft a performance  
9 measurement for every single item or service that BellSouth provides to the  
10 ALEC community. The FCC, in ¶440 of its Bell Atlantic New York Order,  
11 noted,

12 [c]ommenters have set forth a long list of specific criticisms, arguing  
13 that the Plan: unduly forgives discriminatory conduct; fails to deter  
14 targeted discrimination directed against individual competing carriers;  
15 excessively aggregates performance data and combines metrics, thereby  
16 masking unsatisfactory results; and does not include penalties that  
17 escalate with the severity of the performance shortfall. These criticisms,  
18 however, do not undermine our overall confidence that the Plan will  
19 detect and sanction poor performance when it occurs.

20 BellSouth's plan will "detect and sanction poor performance when it occurs."  
21

22 Q. DO YOU HAVE ANY GENERAL COMMENTS ON THE TESTIMONY OF  
23 MESSRS. WILLIAM GULAS OR KEITH KRAMER (IDS)?

24  
25 A. Yes. The testimony of these two witnesses is very much like the testimony

1 offered by e.spire, Covad, and Mpower. Generally, all of these companies are  
2 attempting to use this docket as an opportunity to improperly put complaints  
3 about BellSouth's alleged performance in front of the Commission, albeit in an  
4 improper forum and in a cursory fashion that does not allow these complaints to  
5 be investigated to determine if they are valid. However, the brevity of Mr.  
6 Gulas' and Mr. Kramer's testimony, along with the fact that they both filed  
7 exactly the same testimony, supports the conclusion that these claims are  
8 spurious. The Commission should ignore such unsupported assertions in this  
9 case.

10

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12

13 A. Yes.

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