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July 18, 2001

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

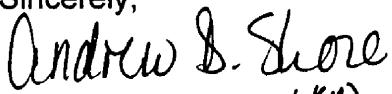
Re: Docket No. 010302-TP (ALLTEL)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Cynthia K. Cox, which we ask that you file in the captioned docket.

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,


Andrew D. Shore (KA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER · DATE

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CERTIFICATE OF SERVICE
Docket No. 010302-TP

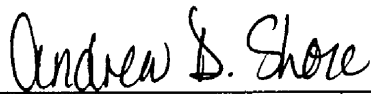
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 18th day of July, 2001 to the following:

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF CYNTHIA K. COX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 010302-TP
JULY 18, 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. ARE YOU THE SAME CINDY COX WHO FILED TESTIMONY IN THIS CASE ON JUNE 18, 2001?

A. Yes. I filed direct testimony, including one exhibit.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to Jayne Eve's direct testimony filed on behalf of ALLTEL Communications, Inc. ("ALLTEL") on June 18, 2001.

1 Q. PLEASE ADDRESS MS. EVE'S STATEMENT IN HER TESTIMONY
2 THAT ONLY THREE UNRESOLVED ISSUES REMAIN FOR THIS
3 COMMISSION TO ADDRESS.

4
5 A. In my direct testimony, I indicated that five unresolved issues remained for this
6 Commission to address (Issues 2-6). Ms. Eve's direct testimony indicates that
7 Issues 2 and 6 have been resolved, and that only Issues 3, 4 and 5 are
8 unresolved. Earlier this week, ALLTEL notified BellSouth that it agrees with
9 BellSouth's position and proposed contract language with respect to Issues 2
10 and 6, and I have revised my Exhibit CKC-1 to reflect that Issues 2 and 6 are
11 resolved. Accordingly, the remainder of my rebuttal testimony addresses only
12 the three remaining unresolved issues -- 3, 4 and 5.

13
14 ***Issue 3: Can ALLTEL petition this Commission for a waiver when it seeks to***
15 ***convert tariffed special access services to UNEs or UNE combinations that do not***
16 ***qualify under any of the three safe harbor options set forth in the agreement?***

17
18 Q. HAS MS. EVE PROVIDED ANY VALID RATIONALE FOR ALLTEL'S
19 POSITION THAT IT SHOULD BE ALLOWED TO PETITION THIS
20 COMMISSION FOR A WAIVER OF THE FCC'S "SAFE HARBOR"
21 OPTIONS?

22
23 A. No. Ms. Eve's sole argument in support of ALLTEL's position is that the
24 traffic at issue is local exchange traffic and that this Commission has
25 jurisdiction over local exchange traffic. That argument misses the point.

1 There is no dispute that local exchange traffic generally falls within this
2 Commission's jurisdiction. The issue, however, is whether facilities that have
3 historically transported exchange access traffic now qualify to be obtained by
4 an ALEC as UNEs at cost-based rates.

5
6 As I explained in my direct testimony, the FCC established three safe harbor
7 options under which an ALEC can qualify to convert a tariffed special access
8 service to UNEs. Further, the FCC indicated that, if there were extraordinary
9 circumstances under which a requesting carrier is providing a significant
10 amount of local exchange service but does not qualify under any of the three
11 safe harbor options, the ALEC can petition the FCC for a waiver of the safe
12 harbor requirements.

13
14 I agree with Ms. Eve that nothing in the FCC's orders expressly prohibit this
15 Commission from considering and granting such a waiver. The FCC, however,
16 was clear in its Supplemental Order Clarification issued June 2, 2000, that
17 waivers to convert tariffed special access services to UNEs when those services
18 do not qualify under the FCC's three safe harbor options would be filed with
19 the FCC.

20
21 Indeed, as I stated in my direct testimony, the issue of converting tariffed
22 special access services to UNE combinations is currently the subject of further
23 review by the FCC. ALLTEL has not presented this Commission with any
24 reason why it is necessary to include language in the interconnection agreement
25 that would allow ALLTEL to petition this Commission for a waiver on this

1 issue.

2

3 ***Issue 4: Should BellSouth's Products and Services Interval Guide be incorporated***
4 ***into the interconnection agreement?***

5

6 Q. PLEASE RESPOND TO MS. EVE'S CONTENTION THAT LANGUAGE
7 MEMORIALIZING PROVISIONING INTERVALS SHOULD BE
8 INCORPORATED INTO THE INTERCONNECTION AGREEMENT.

9

10 A. As I explained in my direct testimony, BellSouth's Products and Services
11 Interval Guide ("Guide"), which is available to ALECs via BellSouth's
12 Interconnection Services website, contains target provisioning intervals for
13 various products and services. BellSouth establishes these target intervals to
14 provide ALECs with a reasonable expectation as to when a product or service
15 can be provided, assuming normal conditions of workload and the availability
16 of facilities.

17

18 BellSouth is required to provision UNEs and interconnection to ALLTEL in a
19 nondiscriminatory manner. These target intervals are not the standard of
20 comparison for determining whether BellSouth is providing nondiscriminatory
21 service to the ALECs. The definition of parity requires that service to the
22 ALECs should be provided in substantially the same time and manner as is
23 provided to BellSouth's retail customers. This means that provisioning
24 intervals for BellSouth's retail customers and for all ALECs should be
25 comparable.

1 A determination of parity is made by comparing BellSouth's performance for
2 all ALECs to BellSouth's performance to its retail customers or to a
3 benchmark, depending on the particular item or process being measured.
4 Again, target intervals do not play a role in such a determination. Indeed, such
5 a determination can only be made after the fact. That is, a determination of
6 parity is made by comparing BellSouth's service provisioning results for its
7 retail end users to BellSouth's service provisioning results to the ALECs after
8 the work is performed. While BellSouth makes every attempt to provide
9 service to ALECs within the published target intervals, parity can be achieved
10 even if these target intervals are not always met.

11
12 BellSouth should not be prohibited from revising these target provisioning
13 intervals as may be necessary to manage provisioning of all products and
14 services to all of its customers. As Ms. Eve points out, ALLTEL is not
15 opposed to BellSouth's shortening any intervals. ALLTEL is, however,
16 opposed to BellSouth lengthening any intervals without ALLTEL's
17 concurrence. BellSouth does not revise these target intervals on a whim. An
18 interval would be lengthened only if BellSouth determined that the target was
19 generally not attainable.

20
21 Ms. Eve erroneously contends that BellSouth might change these target
22 intervals with no prior notice to ALLTEL. To the contrary, if BellSouth plans
23 to make a change to the Guide, BellSouth posts a Carrier Notification letter to
24 the Interconnection website explaining the change 30 days prior to posting the
25 new Guide. In fact, Section 36.3 of the General Terms and Conditions (which

1 has been agreed to by the parties) in the proposed Interconnection Agreement
2 includes the following language:

3
4 BellSouth will post changes to business processes and policies,
5 and any other information of general applicability to CLECs 30
6 calendar days prior to the effective date thereof. When an
7 internet posting is made pursuant to this section or as described
8 elsewhere in this Agreement, BellSouth shall send ALLTEL
9 notification of such posting to any electronic mail address
10 provided by ALLTEL for this purpose.

11
12 Again, these target intervals are intended to enable an ALEC to establish a due
13 date for its customer that BellSouth expects to be able to meet. For these
14 reasons, BellSouth requests this Commission determine that it is neither
15 necessary nor appropriate to incorporate the Product and Services Interval
16 Guide into the Interconnection Agreement.

17
18 ***Issue 5: When should enforcement mechanisms for service quality measurements***
19 ***become effective?***

20
21 Q. PLEASE ADDRESS MS. EVE'S SUGGESTION THAT THIS
22 COMMISSION SHOULD ADOPT, AS AN INTERIM MEASURE, THE
23 PERFORMANCE MEASUREMENTS AND PENALTY PLAN ADOPTED
24 BY THE GEORGIA COMMISSION IN ITS DOCKET NO. 7892-U.

25
26 A. This Commission should reject ALLTEL's request to adopt in this proceeding
27 the enforcement mechanisms ordered by the Georgia Commission. First, as
28 Ms. Eve notes, the Georgia Commission's decision regarding performance
29 measurements and enforcement mechanisms came at the conclusion of its

1 generic proceeding, not as an interim measure pending resolution of the docket.
2 Second, this Commission has its own generic proceeding underway in which
3 this Commission will address the very issue that ALLTEL raises in this
4 arbitration – the effective date of enforcement mechanisms. Third, this
5 Commission is scheduled to release its order in Docket No. 000121-TP on
6 September 4, 2001, which is prior to the date of the hearing in the ALLTEL
7 arbitration.

8
9 As Ms. Eve testified, BellSouth has agreed to incorporate performance
10 measurements into the parties' interconnection agreement. It is not appropriate
11 to implement enforcement mechanisms prior to BellSouth receiving permission
12 to provide interLATA long distance service in Florida. As I explained in my
13 direct testimony, the FCC has made clear that the primary - if not the sole -
14 purpose of a self-effectuating enforcement mechanism is to guard against a
15 Bell Operating Company ("BOC") backsliding after the BOC begins to provide
16 interLATA services. In its Bell Atlantic New York Order¹, the FCC stated:

17
18 Although the Commission strongly encourages state
19 performance monitoring and post-entry enforcement, we
20 have never required BOC applicants to demonstrate that
21 they are subject to such mechanisms as a condition of
22 section 271 approval. The Commission has, however,
23 stated that the fact that a BOC will be subject to
24 performance monitoring and enforcement mechanisms
25 would constitute probative evidence that the BOC will
26 continue to meet its section 271 obligations and that its
27 entry would be consistent with the public interest.

28

¹ *Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York*, CC Docket No. 99-295, *Memorandum Opinion and Order* (Released December 22, 1999) ("Bell Atlantic New York Order").

1 (Bell Atlantic New York Order, ¶ 429, emphasis added). Indeed, the FCC
2 further noted that “[t]he New York Commission also has required Bell Atlantic
3 to submit to a comprehensive performance enforcement mechanism upon
4 receiving authorization to provide interLATA services under section 271.”
5 (Bell Atlantic New York Order at ¶ 432, emphasis added). Most recently, in its
6 Verizon Massachusetts Order, the FCC stated that “in all the applications that
7 have been granted to date, each contained an enforcement plan to protect
8 against backsliding after entry into the long-distance market.” (¶ 236,
9 emphasis added).

10

11 The FCC appears to consider the fact that a BOC will be subject to an
12 enforcement mechanism as an important factor when granting 271 relief.
13 Clearly, however, the FCC’s opinion is that such a mechanism is not required
14 prior to 271 relief.

15

16 Q. PLEASE COMMENT ON MS. EVE’S SUGGESTION THAT, IN THE
17 ABSENCE OF ENFORCEMENT MECHANISMS, BELL SOUTH HAS NO
18 INCENTIVE TO PROVIDE ALECs WITH NONDISCRIMINATORY
19 ACCESS PRIOR TO BELL SOUTH’S GAINING INTERLATA RELIEF IN
20 FLORIDA.

21

22 A. Ms. Eve is incorrect. First, BellSouth has numerous obligations under the Act
23 with which it must comply. Second, BellSouth’s compliance is not contingent
24 upon enforcement mechanisms, but rather, is required by law. Third, ALECs
25 have many options to pursue should they believe that BellSouth is not in

1 compliance with its obligations (i.e., FCC complaint process, Commission
2 complaint process, or other legal action). Finally, as I am sure ALLTEL is
3 aware, BellSouth cannot gain the authority to provide long distance service in
4 Florida unless it is determined by the FCC – with input from this Commission
5 – that BellSouth is providing nondiscriminatory access to ALECs in Florida.
6 These are powerful incentives for BellSouth to comply with its obligations
7 under the Act, and these incentives are certainly not diminished by the lack of
8 enforcement mechanisms.

9

10 Q. MS. EVE APPEARS TO SUGGEST THAT, ABSENT INTERIM
11 PERFORMANCE PENALTIES, ALECS CANNOT COMPETE IN
12 FLORIDA. PLEASE RESPOND.

13

14 A. Contrary to Ms. Eve's suggestion, the level of local competition in Florida
15 exceeds many other states in the nation and is equal to the national average.²
16 According to the Common Carrier Bureau, as of December 2000, ALECs in
17 Florida were serving 8% of the total end user lines. Obviously, many ALECs
18 have been successful in entering the local exchange market in Florida.

19

20 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

21

22 A. Yes.

23 #399136

² Local Telephone Competition: Status as of December 31, 2000, Industry Analysis Division of the Common Carrier Bureau, May 2001, Table 6.

BELLSOUTH'S ISSUES MATRIX
ALLTEL-BELLSOUTH ARBITRATION
Docket No. 010302-TP

ISSUE	BELLSOUTH POSITION	ALLTEL POSITION (as stated in Exhibit B to ALLTEL's Petition for Arbitration filed with this Commission on 3/8/01)
Issue 1: Settled on June 8, 2001.		
Issue 2: Settled on July 17, 2001.		
Issue 3 [Att. 2 § 5.3.7.2]: Can ALLTEL petition this Commission for a waiver when it seeks to convert tariffed special access services to UNEs or UNE combinations that do not qualify under any of the three safe harbor options set forth in the agreement?	No. ALLTEL must petition the FCC for such a waiver. The FCC has expressly acknowledged that there may be extraordinary circumstances under which a requesting carrier is providing a significant amount of local exchange service but does not qualify under any of the three safe harbor options established by the FCC and which are set forth in the agreement. It stated: "In such a case, the requesting carrier may always petition the Commission for a waiver of the safe harbor requirements under our existing rules." The FCC thus made clear that waiver petitions are to be filed with the FCC.	Proposes that ALLTEL may petition either the FCC or the state commission for a waiver of the designated options.
Issue 4 [Att. 6 § 3.9]: Should BellSouth's Products and Services Interval Guide be incorporated into the interconnection agreement?	No. It is neither necessary nor appropriate to attach BellSouth's Products and Services Interval Guide to the Agreement. The Guide provides ALECs with BellSouth's <u>target</u> intervals for provisioning. These target intervals may change, and do change over time, for several reasons, including process improvements and customer (ALEC) input. These target provisioning intervals do not assist in determining whether BellSouth provides nondiscriminatory access to ALECs.	ALLTEL proposes to insert into the Interconnection Agreement the BST provisioning intervals for resale and unbundled network elements currently found in BellSouth's Products and Services Guide, Issue 3, July 2000.

BELLSOUTH'S ISSUES MATRIX
 ALLTEL-BELLSOUTH ARBITRATION
 Docket No. 010302-TP

<p>Issue 5 [Att. 9 § 4.2]: When should enforcement mechanisms for service quality measurements become effective?</p>	<p>Because this issue affects all ALECs operating in Florida, BellSouth recommends that this Commission not rule on this issue in a two-party arbitration. This issue has appropriately been addressed in Generic Performance Measurements Docket No. 000121-TP.</p> <p>It would be inappropriate for enforcement mechanisms to become effective any time prior to BellSouth obtaining permission to enter the interLATA market in Florida. The FCC has identified the implementation of enforcement mechanisms and penalties to be a condition of 271 relief. The FCC's view of enforcement mechanisms and penalties is that they are an appropriate incentive to ensure that an ILEC continues to comply with the competitive checklist set forth in Section 271 of the 1996 Act after it obtains interLATA relief. The FCC has never indicated that enforcement mechanisms and penalties are either necessary or required to ensure that BellSouth meets its obligations under Section 251 of the 1996 Act.</p>	<p>Proposes that the Effective Date of Att. 9 Performance Measures and Enforcement Mechanism should become effective concurrently with the Interconnection Agreement.</p>
<p>Issue 6: Settled on July 17, 2001.</p>		