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November 6, 2001

VIA HAND DELIVERY

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Re: Docket No.: 960786-A-TL

Dear Ms. Bayo:

On behalf of US LEC of Florida, Inc., NuVox Communications, XO Florida, Inc., Time Warner Telecom enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Post-Hearing Statement of Issues and Positions and Post-Hearing Brief of US LEC of Florida Inc., NuVox Communications, XO Florida, Inc., Time Warner Telecom.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth
Telecommunications, Inc.'s entry into
interLATA services pursuant to Section
271 of the Federal Telecommunications
Act of 1996.

Docket No. 960786-A-TL

Filed: November 6, 2001

POST-HEARING STATEMENT OF ISSUES AND POSITIONS

AND POST-HEARING BRIEF OF

**US LEC OF FLORIDA INC.
NUVOX COMMUNICATIONS
XO FLORIDA, INC.
TIME WARNER TELECOM**

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INTRODUCTION

Pursuant to rule 28-106.307, Florida Administrative Code, US LEC of Florida Inc., NuVox Communications, XO Florida, Inc., and Time Warner Telecom (collectively referred to herein as “the Competitive Coalition”), file their Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

Based on the observations and experiences of the Competitive Coalition and other ALECs in Florida, BellSouth has not satisfied the conditions necessary to receive authority to provide interLATA services. Until BellSouth remedies the issues raised by the Competitive Coalition, this Commission does not have grounds to recommend 271 approval for BellSouth in Florida.

ARGUMENT ISSUE A¹

IN RENDERING ITS RECOMMENDATION ON BELLSOUTH’S § 271 APPLICATION, WHAT IS THE NATURE OF THE COMMISSION’S CONSULTATIVE ROLE?

The Competitive Coalition’s Position:* The Commission must develop a complete record concerning the status of competition in Florida, and apprise the FCC of that status.*

The Florida Public Service Commission Has an Essential Role in Protecting Competition

This Commission plays an essential role in the 271 process. Section 271(d)(2)(B) provides that the FCC will consult with the State Commission before it makes any determination on a Regional Bell Operating Company’s (“RBOC”) application for in-region interLATA authority. In fact, the FCC relies heavily upon the record developed by the State Commission to determine whether the RBOC has met its burden of showing that local markets are “irreversibly open.”

¹At the conclusion of the hearing, parties were asked to brief this issue.

Commissioners Jaber and Palecki addressed the issue directly by asking what the Commission could do to ensure competition and parity of service in Florida. (Tr. 380-381, 585-588, 1855-1856). Because the FCC depends upon the record developed by the state, it is essential that all issues related to the competitive checklist are fully developed and adjudicated by the Florida Commission. The Commission has divided this proceeding into two “tracks”: Track A, the present evidentiary phase; and Track B, third party testing and comments. By bifurcating the proceeding in this manner, the Commission has yet to hear critical aspects of this case, including evidence critical to Track A of this proceeding. The Commission has not heard evidence on: Operational Support Systems (OSS) or performance measures. OSS are integral to almost all of the 14 points on the Competitive Checklist--how well OSS operates in the marketplace, whether it can operate at commercial volumes, and whether it operates at parity with the systems BellSouth uses itself, must be determined before any conclusion can be reached as to Checklist compliance. Performance measures demonstrate the ALECs’ real world experience with BellSouth in the marketplace.

The Competitive Coalition submitted evidence showing BellSouth’s failures in these areas. However, the Commission deferred that evidence until the comment stage of Track B. As the Commission considers this portion of the record related to BellSouth’s §271 application, it must remember that no actual determination of compliance or non-compliance can be made until the second phase of the docket is concluded. Both aspects of the case must be considered together.

Further, at a minimum, the Commission *must* require the following if local competition is ever going to thrive in Florida.

1. BellSouth Must Offer Access To All Combinations

BellSouth routinely combines network elements for itself and has configured its network to efficiently cross-connect facilities into standard arrangements. However, it refuses to do the same for ALECs. (Tr. 1453). For local competition to thrive in Florida, BellSouth *must* provide access to *all* UNE combinations it combines within its network. BellSouth seeks to limit access to only those combinations that it currently combines to a particular location. Several other states have already ordered BellSouth to provide access to UNEs it ordinarily combines in its network.²

By refusing access to these combinations BellSouth has disadvantaged competitors by putting competitive alternatives out of reach. (Tr. 1815).

2. BellSouth Must Revise its UNE Prices So That They Are Cost-Based

The Federal Act requires that unbundled network elements be priced in a nondiscriminatory manner and according to cost.³ Cost-based rates must be supported by cost studies that prove the rates are derived from the forward-looking cost of providing the elements, taking into account the circumstances in each state. (Tr. 1725). The rates proposed by BellSouth fail to meet this standard.⁴

² See, Georgia Public Service Commission *In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket Nos. 6863-U, 7253-U, 8354-U (October 19, 2001); See also, Kentucky PSC Case No. 2000-465, May 16, 2001; affirmed on reconsideration, June 22, 2001. In addition at its October 30, 2001 meeting, in its UNE docket, the South Carolina Commission also ordered BellSouth to provide combinations. *In the Matter of Generic Proceeding to Establish Prices for BellSouth's Interconnection Services, Unbundled Network Elements and Other Related Elements and Services*, Docket No. 2001-65-C.

³§252(d)(1). In addition, the FCC adopted pricing rules, which govern the implementation of this section of the Act. *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No.96-98, First Report and Order (rel. Aug. 8, 1996).

⁴There are a number of flaws inherent in BellSouth's rates; these are discussed in detail in the testimony of Mr. Darnell. For example, BellSouth uses three different network scenarios to develop UNE rates (Tr.1757); BellSouth fails to forecast total demand for UNEs (Tr. 1759); BellSouth uses incorrect loading factors, which account for approximately ½ of the loop rates (Tr. 1760-1761); inflation is not properly applied (Tr. 1761); and finally BellSouth has inappropriately tried to address these issues in a 271 review. (Tr. 1761-1762).

Many of the rates BellSouth submitted have yet to be approved.⁵ These rates, however, cannot be assumed to be cost-based until the Commission completes the next phase of the UNE pricing docket and orders BellSouth to make the changes necessary to make its rates cost-based.

For example, the UNE rates that BellSouth proposes in Florida are substantially higher than the Georgia UNE rates. The average UNE loop cost in Florida should be *lower* not higher than the Georgia cost because Florida is significantly more population dense than Georgia and population density is a major driver of loop cost. (Tr. 1745). Additionally, Georgia has just begun a proceeding to evaluate BellSouth UNE rates, which should result in a reduction of UNE rates.

The Commission has heard significant evidence in this case, which indicates that the rates, which BellSouth offers in Florida, are not cost-based. If Florida customers are ever to benefit from competition, the Commission should reduce BellSouth's UNE rates. In particular, the Commission should require BellSouth to reduce its rates for:

- UNE loops;
- EELs; and
- Loops used to provide advanced services.

Further, the Commission should lower the non-recurring charges for the ADSL loop and lower the recurring charge on the DS1 loop. This will result in cost-based rates as required by the Act.

3. BellSouth Must Provide OSS at Parity with Its Own Systems

If competitors cannot accurately place, process and provision orders, they will be unable to provide service to end-users. BellSouth's OSS has failed in many respects. At a minimum, the Commission must require BellSouth to:

- Provide an interactive agent to process orders;

⁵ See Florida Public Service Commission Docket No. 990649-TP. Further, other rates, such as those proposed for line sharing, are not in the cost case and are presented for the *first time* in the present proceeding.

- Provide telephone name and number migration;
- Provide fully parsed customer service records;⁶
- Provide more time to respond to rejected orders (30 days instead of the current 10 days);
- Provide an appropriate and balanced change control process, allowing for fair consideration of different issues affecting various market entrants;
- Provide a single process for disconnecting and moving a customer to a new provider;
- Provide electronic ordering capabilities (LENS, TAG, EDI) for the UDC/IDSL loop; line sharing and ADSL loops that require conditioning and line sharing orders; and non-designed UCL-ND loop product. (BellSouth's retail analogs for all of these loops can be ordered electronically);
- Adequately address all issues raised by ALECs in the Change Control Process.

ALEC's will never be able to compete on a level playing field without nondiscriminatory access to BellSouth's OSS.

4. The Commission Should Not Allow BellSouth's Anticompetitive Win Back Activity

BellSouth has a policy of calling CLEC customers to attempt to get them to switch back to BellSouth. The Commission should put strict controls on this process to ensure BellSouth cannot use its position as a wholesale provider to its competitor's disadvantage. The Commission should require BellSouth to institute a Code of Conduct, which prohibits BellSouth from:

- disparaging the services or products of others;
- providing false information about competitors;
- from engaging in any win back activities for at least 10 business days from the day the customer's service is activated by the ALEC;

⁶The Georgia Public Service Commission has imposed this requirement on BellSouth as well as requiring telephone name and number migration, 30 days to respond to rejected orders, a single order process for disconnecting and moving a customer, and a single LSR to migrate a UNE-P customer to line splitting. *In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket Nos. 6863-U, 7253-U, 8354-U (October 19, 2001).

- marketing to the customer in the final bill;
- pricing its promotions below UNE rates;
- holding customers liable for migrate costs;
- sharing information between its wholesale and retail divisions;
- offering non-tariffed winback programs;
- combining non-regulated services with regulated services as an enticement, and failing to tariff these offerings.

The Louisiana Public Service Commission⁷ recently placed similar restrictions on BellSouth's ability to engage in win back activities.

ISSUE 1

HAS BELLSOUTH MET THE REQUIREMENTS OF SECTION 271(C)(1)(A) OF THE TELECOMMUNICATIONS ACT OF 1996?

(A) HAS BELLSOUTH ENTERED INTO ONE OR MORE BINDING AGREEMENTS APPROVED UNDER SECTION 252 WITH UNAFFILIATED COMPETING PROVIDERS OF TELEPHONE EXCHANGE SERVICE?

(B) DOES BELLSOUTH CURRENTLY PROVIDE ACCESS AND INTERCONNECTION TO ITS NETWORK FACILITIES FOR THE NETWORK FACILITIES OF COMPETING PROVIDERS?

(C) ARE SUCH COMPETING PROVIDERS PROVIDING TELEPHONE EXCHANGE SERVICE TO RESIDENTIAL AND BUSINESS CUSTOMERS EITHER EXCLUSIVELY OVER THEIR OWN TELEPHONE EXCHANGE SERVICE FACILITIES OR PREDOMINANTLY OVER THEIR OWN TELEPHONE EXCHANGE SERVICE FACILITIES?

⁷*In re: Consideration and review of BellSouth Telecommunications, Inc. 's preapplication compliance with Section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc. 's application to provide interLATA services originating in-region, Docket No. U-22252 (Sept. 18, 2001).*

The Competitive Coalition Position: *BellSouth has failed to meet the requirements of Section 271(c)(1)(A).*

(a) *No. On paper, BellSouth has entered into interconnection agreements with ALECs. However, BellSouth has refused to include language in such agreements, that it will act in “good faith” when dealing with ALECs.⁸

(b) *No. Due to BellSouth’s restriction of access and interconnection to its network facilities, 5 ½ years after passage of the Federal Act, there is only nascent local competition in Florida. *

(c) *No. Due to BellSouth’s restriction of access and interconnection to its network facilities, 5 ½ years after passage of the Federal Act, there is only nascent local competition in Florida.*

ISSUE 2

DOES BELLSOUTH CURRENTLY PROVIDE INTERCONNECTION IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 251(C)(2) AND 252(D)(1) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(C)(2)(B)(I) AND APPLICABLE RULES PROMULGATED BY THE FCC?

(A) HAS BELLSOUTH IMPLEMENTED PHYSICAL COLLOCATION REQUESTS IN FLORIDA CONSISTENT WITH FCC RULES AND ORDERS?

(B) DOES BELLSOUTH HAVE LEGALLY BINDING PROVISIONING INTERVALS FOR PHYSICAL COLLOCATION?

(C) DOES BELLSOUTH CURRENTLY PROVIDE LOCAL TANDEM INTERCONNECTION TO ALECS?

(D) DOES BELLSOUTH CURRENTLY PERMIT THE USE OF A PERCENT LOCAL USAGE (PLU) FACTOR IN CONJUNCTION WITH TRUNKING?

(E) DOES BELLSOUTH CURRENTLY PROVIDE ALECS WITH MEET POINT BILLING DATA?

(F) HAS BELLSOUTH SATISFIED OTHER ASSOCIATED

⁸ See Issue 10, Florida Public Service Commission Docket No. 011119-TP. *See also* Issue No. 11. (BellSouth will not agree to the same credit and deposit requirements it imposes on ALECs)

REQUIREMENTS, IF ANY, FOR THIS ITEM?

The Competitive Coalition: *No. BellSouth fails to provide appropriate trunk augmentation. The percentage of calls blocked on ALEC trunk groups is substantially greater than the percentage of blocked calls on BellSouth's retail trunk groups.*

(a) *No position*

(b) *No position.*

(c) *No. BellSouth will not agree to provide ALECs the tandem switched rate for the exchange of local traffic.⁹

(d) *No. BellSouth has been unwilling to negotiate terms for the appropriate use of PLU factors.¹⁰

(e) *No position.*

(f) *BellSouth improperly imposes financial responsibility for transporting traffic within a LATA, requires ALECs to establish inefficient interconnection trunking arrangements and prohibits ALECs from providing competing access service.^{11*}

Trunk Blockage

BellSouth's self-reported data demonstrates that BellSouth does not provide nondiscriminatory access to interconnection. In its Trunk Group Service (Summary) report, BellSouth reports data on observed blocking on interconnection trunk groups for ALECs in the aggregate and on BellSouth's local network trunk groups¹². BellSouth's self-reported data for North Florida for May 2001 shows that BellSouth experienced no blocking greater than 3% on

⁹ *See* Issue 7, Florida Public Service Commission Docket No. 011119-TP.

¹⁰ *See* Issue 9 Florida Public Service Commission Docket No. 011119-TP.

¹¹The Competitive Coalition adopts WorldCom's argument on this sub issue.

¹² The Trunk Group Service (Summary) is included in BellSouth's Service Quality Measurements ("SQM") data posted to BellSouth's Performance Measurements Analysis Platform website.

its retail trunk groups.¹³ By contrast, for the same period, on ALEC trunk groups administered by BellSouth, ALECs experienced blocking greater than 3% on nearly 4% of ALEC trunk groups for the same period. Similarly dramatic disparities were recorded in North and South Florida for May, June and July 2001.

The Federal Communications Commission (“FCC”) relied on BellSouth’s trunk blockage data to conclude that BellSouth was not providing nondiscriminatory access to interconnection in BellSouth’s second application for interLATA relief in Louisiana.¹⁴ However, the disparity in blocking between ALEC trunk groups and BellSouth trunk groups is much higher today than it was when the FCC denied BellSouth’s second Louisiana application. The trunk blockage percentage differences for the three-month period in 1998 examined by the FCC ranged from 38.8% to 69.2%.¹⁵ By comparison, the blocking experienced by ALECs over BellSouth administered trunk groups in its region ranged from 492% to 890% greater than BellSouth experienced on its local network for the May to July 2001 period.¹⁶

In subsequent section 271 decisions, the FCC has used the same method of analyzing trunk blockage used in the *Louisiana II Order*.¹⁷ In both the Bell Atlantic New York Order and the Verizon Massachusetts Order, the disparities between ALEC blockage and ILEC blockage were far less substantial than in Florida.¹⁸ While it is not clear from the *Bell Atlantic New York*

¹³ See Exhibit 36.

¹⁴ Memorandum Opinion and Order, *In the Matter of Application of BellSouth Corp. et. al, for Provision of In-Region InterLata Services in Louisiana*, CC Docket No, 98-121 (October 13, 1998) (“*Louisiana II Order*”), ¶ 77.

¹⁵ *Id.*, fn. 218.

¹⁶ See Exhibit 36.

¹⁷ See Memorandum Opinion and Order, *In the Matter of Application by 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*, 15 FCC Rod. 3953, ¶ 69 (F.C.C. Dec. 22, 1999) (No. CC 99-295, FCC 99-404) (“*Bell Atlantic New York Order*”); *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communication, Inc. (d/b/a) Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region InterLATA Services in Massachusetts* (F.C.C. April 16, 2001)(No. CC 01-9, FCC 01-130) ¶ 185 (“*Verizon Massachusetts Order*”).

¹⁸ *Id.*

Order what blocking threshold Bell Atlantic New York used to measure blocking, Verizon Massachusetts used a .5% blocking threshold. This threshold is six times less than the 3% threshold BellSouth employs. Even with the more liberal blocking threshold used by BellSouth, its trunk blockage data demonstrate that BellSouth is not providing nondiscriminatory access to interconnection.

Understandably, BellSouth is no longer relying on the Trunk Group Service (Summary) report. Instead, BellSouth cites the new Trunk Group Performance-Aggregate (TGP-1) report as evidence of compliance with checklist item 1. The TGP-1 report clouds the picture of trunk group blockage so as to present a more favorable image of BellSouth's performance. First, BellSouth excludes from its calculation data on much of the blockage ALECs experience.¹⁹ This, of course, leads to a more favorable comparison with the low blockage levels BellSouth experiences on its local network. Second, BellSouth's TGP-1 report sets up an "apples to oranges" comparison of trunk groups. BellSouth compares blockage on trunk groups between its end offices with blockage on every other category of trunk group in the network including trunk groups, which carry more BellSouth traffic than ALEC traffic. Not surprisingly, the TGP-1 report paints a much rosier comparison of trunk group blockage experienced by ALECs and BellSouth. However, Competitive Coalition submits that this picture is an illusion. The facts of interconnection trunk group blockage are more accurately portrayed in the Trunk Group Service (Summary) reports. Applying the FCC's analysis of the data in these reports demonstrates that BellSouth has not met this checklist item. Indeed, its performance has deteriorated over the past three years.

¹⁹ See BellSouth's South SQM, Section 9, description of the Trunk Group Performance-Aggregate Report (TGP-1), exclusions.

BellSouth's self-reported data on trunk group blockage show that ALECs experience a dramatically higher level of trunk group blockage on BellSouth administered trunk groups than BellSouth does on its local network trunk groups. This discrimination demonstrates BellSouth's present inability to comply with Checklist Item 1.

ISSUE 3²⁰

DOES BELLSOUTH CURRENTLY PROVIDE NONDISCRIMINATORY ACCESS TO ALL REQUIRED NETWORK ELEMENTS, WITH THE EXCEPTION OF OSS WHICH WILL BE HANDLED IN THE THIRD PARTY OSS TEST, IN ACCORDANCE WITH SECTIONS 251(C)(3) AND 252(D)(1) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(C)(2)(B)(II) AND APPLICABLE RULES PROMULGATED BY THE FCC?

(A) DOES BELLSOUTH CURRENTLY PROVIDE ALL REQUIRED UNBUNDLED NETWORK ELEMENTS AT TELRIC-BASED PRICES?

(B) HAS BELLSOUTH SATISFIED OTHER ASSOCIATED REQUIREMENTS, IF ANY, FOR THIS ITEM?

The Competitive Coalition: *No. BellSouth fails to provide nondiscriminatory access to network elements at cost-based prices.*

(a) *No. BellSouth does not provide unbundled network elements at TELRIC-based prices in compliance with the Act and applicable FCC rules.

(b) *No. BellSouth has been very slow to provide access to network combinations, thus delaying UNE based competition. BellSouth also continues to oppose access to new combinations of network elements for no reason other than to disrupt ALEC operations and increase ALEC costs.*

The best evidence of nondiscriminatory access to network elements at cost-based prices would be vibrant competition in the local market. There is no evidence in this proceeding of such competition.

See discussion under Issue A regarding TELRIC pricing, and the provision of

²⁰These issues are addressed under Issue A above.

combinations. In addition, The Competitive Coalition adopt the argument of WorldCom on the issue of BellSouth's failure to comply with TELRIC pricing rules and offer prices that are cost-based.

ISSUE 4

IN ORDER PSC-97-1459-FOF-TL, ISSUED NOVEMBER 19, 1997, THE COMMISSION FOUND THAT BELLSOUTH MET THE REQUIREMENTS OF SECTION 224 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(C)(2)(B)(III). DOES BELLSOUTH CURRENTLY PROVIDE NONDISCRIMINATORY ACCESS TO THE POLES, DUCTS, AND CONDUITS, AND RIGHTS-OF-WAY OWNED OR CONTROLLED BY BELLSOUTH AT JUST AND REASONABLE RATES IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 224 OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(C)(2)(B)(III) AND APPLICABLE RULES PROMULGATED BY THE FCC?

The Competitive Coalition Position: *No position.*

ISSUE 5

IN ORDER PSC-97-1459-FOF-TL, ISSUED NOVEMBER 19, 1997, THE COMMISSION FOUND THAT BELLSOUTH MET THE REQUIREMENTS OF SECTION 271(C)(2)(B)(IV) OF THE TELECOMMUNICATIONS ACT OF 1996. DOES BELLSOUTH CURRENTLY PROVIDE UNBUNDLED LOCAL LOOP TRANSMISSION BETWEEN THE CENTRAL OFFICE AND THE CUSTOMER'S PREMISES FROM LOCAL SWITCHING OR OTHER SERVICES, PURSUANT TO SECTION 271(C)(2)(B)(IV) AND APPLICABLE RULES AND ORDERS PROMULGATED BY THE FCC?

(A) DOES BELLSOUTH CURRENTLY PROVIDE ALL CURRENTLY REQUIRED FORMS OF UNBUNDLED LOOPS?

(B) HAS BELLSOUTH SATISFIED OTHER ASSOCIATED REQUIREMENTS, IF ANY, FOR THIS ITEM?

The Competitive Coalition Position: *No. ALEC customers are frequently out of service for extended periods of time due to problems with BellSouth loop facilities.*

As evidenced by the testimony and exhibits of James Hvidas of US LEC, BellSouth is not providing nondiscriminatory access to loops. US LEC purchases fiber rings from BellSouth that interconnect its switch with each BellSouth central office. To connect customers to this network, US LEC buys special access circuits from BellSouth. These are loop facilities from the end office to the customer. (Tr. 1437).

However, frequent and lengthy outages in BellSouth's loop facilities adversely affect US LEC's ability to compete in Florida. From September 2000 through May 2001, US LEC experienced 136 outages on loops facilities in Florida. (Tr. 1436; Exhibit 43). The average length of time required by BellSouth to resolve these troubles was approximately two days - as such, in each instance US LEC customers were completely without service for an average of two days. (Tr. 1436).

BellSouth does not dispute that these outages were caused by problems with its circuits. (Tr. 1436-37). BellSouth also does not challenge the length of such outages. BellSouth only questions the manner in which these services are ordered. (Tr. 1437-38). However, US LEC is ordering the facility from the end office to the customer. This is the exact same facility as the local loop (Tr. 1437). It is the same copper pair as the local loop. BellSouth handles repair functions exactly the same as they do for any other local loop. It does not make a difference how the facility is ordered. (Tr. 1438).

US LEC's customers are out of service for extended periods of time due to failures with the BellSouth loop facility. Further, BellSouth does not follow any standard in responding to such outages. The data presented by Mr. Hvidas demonstrates that BellSouth is not providing

reliable facilities to ALECs and is not maintaining these facilities in a nondiscriminatory manner. See Exhibit 43. Therefore, the Commission should require BellSouth to meet the same service quality measurements for special access circuits, as they require for other local loops. Further, the BellSouth should be required to pay substantial penalties when it fails in its performance obligations.

ISSUE 6

DOES BELLSOUTH CURRENTLY PROVIDE UNBUNDLED LOCAL TRANSPORT ON THE TRUNK SIDE OF A WIRELINE LOCAL EXCHANGE CARRIER SWITCH FROM SWITCHING OR OTHER SERVICES, PURSUANT TO SECTION 271(C)(2)(B)(V) AND APPLICABLE RULES PROMULGATED BY THE FCC?

(A) DOES BELLSOUTH CURRENTLY PROVIDE BILLING FOR USAGE-SENSITIVE UNES?

(B) HAS BELLSOUTH SATISFIED ALL OTHER ASSOCIATED REQUIREMENTS, IF ANY, FOR THIS ITEM?

The Competitive Coalition Position: *No. BellSouth does not provide unbundled local transport that connects two points on an ALEC's network or that connects a point on an ALEC's network to a point on the network of a different ALEC, even where the facilities to provide such UNEs are currently in place.*

(a) *No position.*

(b) *No.*

The Competitive Coalition adopts the argument of WorldCom on this issue.

ISSUE 12

IN ORDER PSC-97-1459-FOF-TL, ISSUED NOVEMBER 19, 1997, THE COMMISSION FOUND THAT BELLSOUTH MET THE REQUIREMENTS OF SECTION 271(C)(2)(B)(XI) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996. DOES BELLSOUTH CURRENTLY PROVIDE NUMBER PORTABILITY, PURSUANT TO

SECTION 271(C)(2)(B)(XI) AND APPLICABLE RULES PROMULGATED BY THE FCC?

The Competitive Coalition Position: *No. BellSouth fails to adequately provision number portability.*

The Competitive Coalition adopts AT&T's argument on this issue.

ISSUE 14

IN ORDER PSC-97-1459-FOF-TL, ISSUED NOVEMBER 19, 1997, THE COMMISSION FOUND THAT BELLSOUTH MET THE REQUIREMENTS OF SECTION 271(C)(2)(B)(XIII) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996. DOES BELLSOUTH CURRENTLY PROVIDE RECIPROCAL COMPENSATION ARRANGEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 252(D)(2) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(C)(2)(B)(XIII) AND APPLICABLE RULES PROMULGATED BY THE FCC?

The Competitive Coalition Position: *No. BellSouth refuses to pay, and refuses to agree to pay, ALECs compensation at the tandem interconnection rate.*

The Competitive Coalition adopts WorldCom's argument on this issue.²¹

ISSUE 17

IF THE ANSWERS TO ISSUES 2 THROUGH 15 ARE "YES," HAVE THOSE REQUIREMENTS BEEN MET IN A SINGLE AGREEMENT OR THROUGH A COMBINATION OF AGREEMENTS?

The Competitive Coalition Position: *The answers to Issues 2 through 15 are not yes; BellSouth has failed to meet all items on the Competitive Checklist. Therefore, its application for interLATA authority should be denied.*

²¹ *See* Issue 7, Florida Public Service Commission Docket No. 011119; *See also*, Docket No. 000075-TP.

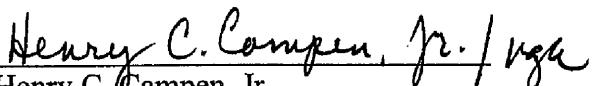
ISSUE 18

SHOULD THIS DOCKET BE CLOSED?

The Competitive Coalition Position: * Yes; BellSouth's application should be denied and this docket should be closed.*

CONCLUSION

While the Competitive Coalition did not specifically comment on all of the issues in this proceeding, BellSouth cannot show that it complies with any of the competitive checklist items until it demonstrates that it provides non-discriminatory access to OSS and provisioning processes that flow from such systems. As such, BellSouth has failed to demonstrate that it has opened its markets to competition, or that it complies with the competitive checklist. As such, the Commission should reject their application.


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Attorney for US LEC of Florida, Inc.
NuVox Communications, XO Florida, Inc.
and Time Warner Telecom

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing the Post-Hearing Statement of Issues and Positions and Post-Hearing Brief of US LEC of Florida, Inc., NuVox Communications, XO Florida, Inc., Time Warner Telecom has been furnished by (*) hand delivery or by U. S. Mail on this 6th day of November, 2001, to the following:

(*) Beth Keating
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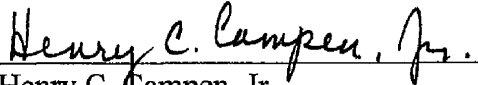
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