

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 SURREBUTTAL TESTIMONY OF JOHN A. RUSCILLI
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 990649A-TP
5 DECEMBER 26, 2001
6

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

10

11 A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director
12 for State Regulatory for the nine-state BellSouth region. My business address
13 is 675 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

16

17 A. No.

18

19 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS
20 PROCEEDING?

21

22 A. The purpose of my testimony is to respond to portions of the Rebuttal
23 Testimony filed with this Commission on December 10, 2001, by Joseph
24 Gillan and Greg Darnell on behalf of the AT&T Communications of the
25 Southern States, Inc. ("AT&T") and MCI WorldCom, Inc. ("WorldCom"), and

1 on December 7, 2001, by George S. Ford on behalf of Z-Tel Communications,
2 Inc. ("Z-Tel") and by Michael P. Gallagher on behalf of Florida Digital
3 Network, Inc. ("FDN").

4
5 Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING MR.
6 GILLAN'S TESTIMONY?

7
8 A. Yes. Mr. Gillan does not address any of the issues established for resolution
9 in this phase of the proceeding in the Commission's Order Approving Issues
10 and Creating Sub-Dockets, issued October 29, 2001 (Order No. PSC-01-2132-
11 PCO-TP). Mr. Gillan's testimony also does not make any reference to or even
12 purport to rebut any of the direct testimony filed by BellSouth's witnesses on
13 November 8, 2001.

14
15 Mr. Gillan characterizes his testimony's purpose as that of stepping back and
16 describing the "forest" in an effort to place the opposing recommendations of
17 the alternative local exchange carriers ("ALECs") and BellSouth into a context
18 that makes comparisons simpler (and more relevant). However, in reality, Mr.
19 Gillan's testimony is nothing more than a rehashing of the issues he addressed
20 in BellSouth's Section 271 proceeding (Docket No. 960786-TP). The status of
21 local competition in Florida and whether BellSouth provides efficient ALECs a
22 meaningful opportunity to compete are not issues in this proceeding. To the
23 extent the Commission determines that it is appropriate to consider Mr.
24 Gillan's testimony in deciding the issues in this docket, which I do not believe

25

1 it should for the reasons set forth above, I will respond to his “rebuttal”
2 testimony so that the record in this proceeding is complete.

3

4 Q. ON PAGE 3, MR. GILLAN CONTENDS THAT THE FUTURE OF LOCAL
5 COMPETITION IS DIRECTLY RELATED TO UNE RATES. DO YOU
6 AGREE?

7

8 A. No. As Mr. Gillan is well aware, the Telecommunications Act of 1996 (“Act”)
9 sets forth three competitive entry methods: Resale, unbundled network
10 elements (“UNEs”), and facilities-based. ALECs are currently providing
11 competitive local services in Florida through each of these entry methods. In
12 fact, as competition matures, there is an expected migration from resale and
13 UNE-based competition to facilities-based competition. All indicators point to
14 a broad-based growing level of competition in Florida. As described in
15 BellSouth’s Section 271 case before this Commission, where the status of local
16 competition was discussed extensively, ALECs were serving over 800,000
17 access lines in Florida as of February 2001. Through the end of October 2001,
18 the number of ALEC-provided access lines in Florida had risen to almost 1.1
19 million.

20

21 The Act requires UNE rates to be cost-based. That is the only relevant
22 standard and other considerations, such as those put forth by Mr. Gillan, are
23 not appropriate for consideration in setting UNE rates.

24

25

1 Q. ON PAGES 4-7 AND EXHIBIT JPG-1, MR. GILLAN CONTENDS THAT
2 BELLSOUTH'S SGAT RATES FOR UNES ARE SO UNFAVORABLE TO
3 ALECS THAT, IF BELLSOUTH WERE TO ATTEMPT SERVING THE
4 MARKET TODAY AS AN ALEC, IT WOULD FIND ITS PROFITS
5 SHRINKING DRAMATICALLY. DO YOU AGREE?

6
7 A. No. This contention by Mr. Gillan is based on the same analysis he raised in
8 the 271 proceeding and BellSouth's response is the same as it was in that
9 proceeding. The bulk of Mr. Gillan's case in this regard is made in his Exhibit
10 JPG-1, which purports to be a hypothetical income statement for a BellSouth
11 that operates in Florida solely by leasing UNEs from some other source. To
12 this end, Mr. Gillan replaces BellSouth's own embedded costs of operating its
13 network with the payments Mr. Gillan estimates BellSouth would make for
14 leased UNEs sufficient to serve the current level of demand.

15
16 Mr. Gillan does not provide any basis to calculate or verify the claimed level of
17 UNE lease payments of over \$2 billion [Exhibit JPG-1]. These omissions
18 make it impossible to determine whether Mr. Gillan's calculations are even
19 remotely correct. Further, I find it inconceivable that any local exchange
20 carrier would attempt to serve BellSouth's current level of demand in Florida
21 by using UNEs alone, i.e., with no facilities of its own. Mr. Gillan makes no
22 recognition of the fact that ALECs:

23 1) have no obligation to serve the entire service territory of BellSouth
24 in Florida and can therefore choose to serve only the lower cost,
25 more profitable areas and customers.

1 2) have the option to make use of resale or their own facilities if those
2 options are more economically viable.

3
4 Finally, this Commission is charged under federal law with establishing UNE
5 rates that are cost-based. Mr. Gillan's unsupported analysis is irrelevant in that
6 regard.

7
8 Q. HAVE DR. FORD AND MR. DARNELL CORRECTLY DESCRIBED THE
9 "TELRIC TEST" AS THE MECHANISM FOR ASSESSING THE
10 APPROPRIATENESS OF THE UNE RATES IN FLORIDA?

11
12 A. No. Mr. Darnell contends that the relationship of TELRIC costs to embedded
13 costs and the population density of a state should form the basis for
14 determining whether UNE rates are reasonable. Dr. Ford focuses almost his
15 entire testimony on the use of the "TELRIC Test," which also considers the
16 relationships of UNE rates and HCPM-generated costs across states. Both of
17 these witnesses seem to ignore the fact that the Commission has conducted
18 extensive cost proceedings that resulted in the establishment of UNE rates
19 based on the FCC's TELRIC principles. As such, there is no need to conduct
20 this "TELRIC Test" for Florida UNE rates. In the SWBT Arkansas/Missouri
21 Order¹, the FCC reaffirmed that the comparison of one state's rates to another
22 state's rates is only needed "when a state commission does not apply TELRIC

23

24

25 ¹ *Joint Application by SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket 01-194, Memorandum Opinion and Order, FCC 01-338, para. 56 (2001) (SWBT Arkansas/Missouri Order)

1 or does so improperly.” The TELRIC test is a secondary way to show
2 compliance with the TELRIC principles. It is not the only way, and definitely
3 not the primary way.

4
5 Q. ON PAGE 4, MR. GALLAGER CLAIMS THAT BELLSOUTH’S DLCS
6 PRECLUDE ALECS FROM OFFERING DSL SERVICES. DOES
7 BELLSOUTH OFFER UNES THAT ALLOW AN ALEC TO PROVIDE ITS
8 OWN XDSL SERVICE IN FLORIDA?

9
10 A. Yes. As Mr. Williams explains in his rebuttal testimony, BellSouth offers
11 UNEs that allows an ALEC to transport data from its packet switch to a
12 DSLAM it collocates at a remote terminal, and BellSouth provides UNEs that
13 allow an ALEC to transport data from a DSLAM it collocates at a remote
14 terminal to its end user’s premises. BellSouth, therefore, offers ALECs all the
15 UNEs it needs to provide its own xDSL service in Florida. Additionally, as Mr.
16 Williams further explains in his rebuttal testimony, BellSouth will permit a
17 requesting carrier to deploy a Digital Subscriber Line Access Multiplexer
18 (DSLAM) at the remote terminal, pedestal or environmentally controlled vault
19 or other interconnection point. In the unlikely event that BellSouth cannot
20 accommodate such collocation of a DSLAM at a given location (and that
21 BellSouth is unable to provide a virtual collocation arrangement at these
22 subloop interconnection points), BellSouth will provide unbundled packet
23 switching to that particular location, as required by the FCC’s UNE Remand
24 Order.

25

1 Q. ON PAGES 11-16 OF HIS TESTIMONY MR. GALLAGHER COMPARES
2 THE RETAIL CHARGES FOR BELLSOUTH'S XDSL-BASED SERVICES
3 WITH THE PROPOSED MONTHLY RATE FOR BELLSOUTH'S HYBRID
4 LOOP OFFERING. IS AN ALEC'S ABILITY TO PROFITABLY PROVIDE
5 XDSL SERVICE RELEVANT IN THE ESTABLISHMENT OF COST-
6 BASED RATES?

7
8 A. No. The pricing standard is not whether UNE-based entry is profitable at these
9 cost-based rates, but are the UNE rates cost-based. The FCC stated, in its
10 *Massachusetts Order*, "[i]n the *SWBT Kansas/Oklahoma Order*, the
11 Commission held that this profitability argument is not part of the section 271
12 evaluation of whether an applicant's rates are TELRIC-based. The Act
13 requires that we review whether the rates are cost-based, not whether a
14 competitor can make a profit by entering the market. Conducting a
15 profitability analysis would require us to consider the level of a state's retail
16 rates, because such an analysis requires a comparison between the UNE rates
17 and the state's rates. Retail rate levels, however, are within the state's
18 jurisdictional authority, not the Commission's." *Massachusetts Order* ¶ 41
19 (footnote omitted).

20
21 Q. ON PAGE 24, MR. GALLAGHER ENCOURAGES THE COMMISSION TO
22 REQUIRE BELLSOUTH TO PROVIDE PACKET SWITCHING ON AN
23 UNBUNDLED BASIS. HAS THE FLORIDA PUBLIC SERVICE
24 COMMISSION PREVIOUSLY ADDRESSED WHETHER BELLSOUTH
25 MUST UNBUNDLE PACKET SWITCHING FUNCTIONALITY?

1

2 A. Yes. The Commission declined to require BellSouth to provide unbundled
3 packet switching in two arbitration proceedings. In Order No. PSC-00-1519-
4 FOF-TP in Docket No. 991854-TP (BellSouth –Intermedia Arbitration) at page
5 34, for instance, the Commission found “that BellSouth shall only be required
6 to unbundled its packet switching capabilities under the limited circumstances
7 identified in FCC Rule 51.319(c)(5).” Similarly in Order No. PSC-00-0128-
8 FOF-TP in Docket No. 990691-TP (BellSouth –ICG Telecom Arbitration) at
9 page 7, the Commission found that “packet-switching capabilities are not
10 UNEs”.

11

12 Additionally, in Docket No. 990649-TP (the generic cost docket), the
13 Commission found that “there are no other elements or combinations of
14 elements that we shall require BellSouth to unbundle at this time.” *See* Order
15 No. PSC-01-1181-FOF-TP at page 370.

16

17 Q. ON PAGE 21 OF HIS TESTIMONY MR. GALLAGER CONTENDS THAT
18 ALECS ARE IMPAIRED IN THEIR ABILITY TO OFFER THEIR OWN
19 XDSL SERVICE IF BELLSOUTH DOES NOT UNBUNDLE ITS PACKET
20 SWITCHING FUNCTIONALITY AND ITS DSLAMS IN ADDITION TO
21 UNBUNDLING ITS LOOPS. DO YOU AGREE?

22

23 A. No. The FCC squarely addressed this question in its *UNE Remand Order*,
24 explaining:

25

1 *We recognize that equipment needed to provide advanced services,*
2 *such as DSLAMs and packet switches are available on the open market*
3 *at comparable prices to incumbents and requesting carriers alike.*
4 *Incumbent LECs and their competitors are both in the early stages of*
5 *packet switch deployment, and thus face relatively similar utilization*
6 *rates of their packet switching capacity. Packet switching utilization*
7 *rates will differ from circuit switching utilization rates because of the*
8 *incumbent LEC's monopoly position as a carrier of last resort.*
9 *Incumbent LEC switches, because they serve upwards of 90 percent of*
10 *the circuit switched market, may achieve higher utilization rates than*
11 *the circuit switched market, may achieve higher utilization rates than*
12 *the circuit switches of requesting carriers. Because the incumbent LEC*
13 *does not retain a monopoly position in the advanced services market,*
14 *packet switch utilization rates are likely to be more equal as between*
15 *requesting carriers and incumbent LECs. It therefore does not appear*
16 *that incumbent LECs possess significant economies of scale in their*
17 *packet switches compared to the requesting carriers.*

18 *Id.* at ¶308. (Emphasis added.).

19
20 The FCC went on to state: “We further decline to unbundle specific packet
21 switching technologies incumbent LECs may have deployed in their
22 networks.” *Id.* at ¶311.

23
24 Additionally, the FCC has acknowledged that there is “burgeoning
25 competition” to provide advanced services, *Id.* at ¶316, and this “burgeoning

1 competition” exists without unbundled access to ILEC advanced services
2 equipment. The existence of this competition alone precludes a finding of
3 impairment. As the FCC said in the *UNE Remand Order*, “we find the
4 marketplace to be the most persuasive evidence of the actual ability of
5 alternatives as a practical, economic, and operational matter.” *Id.* at ¶66. This
6 competition, however, is not all that supports the decision not to unbundle
7 packet switching functionality. This decision also is supported by a number of
8 other FCC findings, including that the advanced services business is “nascent,”
9 that the pre-conditions of natural monopoly are absent, that several
10 technologies are well positioned to provide advanced services to the end-user
11 customer, and that ILECs, if anything, trail in the deployment race.¹

12
13 Clearly, ALECs are not impaired by the fact that neither packet switching
14 functionality nor the DSLAM is available as a UNE because ALECs can
15 purchase, install, and utilize these elements just as easily and just as cost-
16 effectively as BellSouth. It can then use this equipment in combination with
17 either its own facilities, facilities it obtains from a third party, or UNEs it
18 obtains from BellSouth to provide its own xDSL service to its customers. I
19 discuss the impairment standard further in the testimony I filed in BellSouth’s
20 arbitration with FDN, Docket No. 010098-TP. Because Mr. Gallagher
21 incorporates his testimony from that docket into this one, I hereby incorporate
22 my testimony herein by reference so that the record is complete.

23
24 ¹ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications*
25 *Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate*
Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-
146, *Second Report*, FCC 00-290, released August 21, 2000, at ¶¶ 70, 94-111.

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4 Q. ON PAGE 13, MR. DARNELL CLAIMS THAT BELLSOUTH HAS BILL
5 AND KEEP ARRANGEMENTS WITH SOME INDEPENDENT
6 TELEPHONE COMPANIES (“ICOS”) FOR DAILY USAGE FILE (“DUF”)
7 INFORMATION. IS THIS TRUE?

8

9 A. No. As described further below, BellSouth does not provide DUF information
10 to ICOs.

11

12 Q. DOES BELLSOUTH PROVIDE DIFFERENT TYPES OF USAGE
13 INFORMATION TO CARRIERS?

14

15 A. Yes. BellSouth provides different usage information to carriers that have their
16 own switches, which include ICOs and ALECs, than to carriers that make use
17 of BellSouth’s local switching UNE, which only includes ALECs. BellSouth
18 also provides multiple types of usage information to specific carriers. One type
19 of usage information allows carriers to bill its end users; the second type allows
20 carriers to bill other carriers. This latter distinction is relevant for the usage
21 information that BellSouth provides both to ICOs and to ALECs.

22

23 Q. WHAT USAGE INFORMATION DOES BELLSOUTH PROVIDE TO
24 CARRIERS WHO OWN THEIR OWN SWITCHES?

25

1 A. BellSouth provides two types of usage records to these carriers, which could be
2 ICOs or ALECs. Both types of records are provided via an industry standard
3 usage exchange mechanism called the Centralized Message Distribution
4 System ("CMDS"). The first type of usage records that BellSouth provides to
5 the carrier is usage records for third-number billed or collect calls that are
6 placed by the carrier's end users while in BellSouth territory and that are to be
7 billed by the carrier to its end user. The carrier, whether it is an ICO or an
8 ALEC, pays BellSouth for these records.

9
10 The second type of usage records that BellSouth provides to carriers that have
11 their own switch are usage records used in a Meet-Point Billing ("MPB")
12 scenario. These records enable inter-carrier billing. On occasion, BellSouth
13 will jointly provide a telecommunications service to an Interexchange Carrier
14 ("IXC") or to an ALEC with another carrier. For example, suppose an IXC
15 and an ICO are both interconnected with BellSouth at BellSouth's access
16 tandem in Jacksonville. If the ICO's end user places a call that transits
17 BellSouth's access tandem and is to be billed by the IXC, then BellSouth and
18 the ICO have jointly provided originating access to the IXC. In this example,
19 BellSouth is providing the tandem and perhaps some portion of interoffice
20 transport, and the ICO is providing the end office switching and perhaps some
21 portion of the transport. BellSouth, as the tandem provider, will make the
22 recording for the call and send the ICO a usage record. The ICO will take all
23 of these usage records for a given period of time, summarize them, bill the IXC
24 for its portion of the traffic, and then send to BellSouth summary usage records
25 for BellSouth to bill its portion of the originating access to the IXC. This

1 process ensures that both the ICO and BellSouth bill the IXC for exactly the
2 same amount of traffic. Because both the ICO and BellSouth are providing
3 each other with usage records, the exchange is done at no charge to either
4 party. The scenario I have just described could also occur between BellSouth
5 and an ALEC that has its own switch. In that case, BellSouth and the ALEC
6 would also exchange these usage records at no charge to either party.

7

8 Q. WHAT USAGE INFORMATION DOES BELLSOUTH PROVIDE TO
9 CARRIERS WHO USE BELLSOUTH'S LOCAL SWITCHING UNE?

10

11 A. As I mentioned earlier, this category of carriers will only include ALECs,
12 because ICOs always have their own switches. BellSouth provides ALECs
13 with usage records via the access daily usage file ("ADUF") that provides the
14 necessary information for ALECs to bill other carriers. ADUF includes the
15 detail for calls originating from or terminating to unbundled switch ports
16 (whether a standalone switch port or one provided in combination with a loop)
17 so that the ALEC can bill access to an IXC or bill reciprocal compensation to
18 another local provider. BellSouth also provides ALECs with the Optional
19 Daily Usage File ("ODUF"). In contrast to ADUF, ODUF provides records for
20 non-access calls such as third-number billed, collect calls and local calls
21 originated by the ALEC's end user. Thus, ODUF provides the necessary
22 information for ALECs to bill their end users. ADUF and ODUF are UNEs,
23 and ALECs pay BellSouth a cost-based rate for these records. In the case of
24 an ALEC using BellSouth's local switching UNE, all of the usage records are
25 provided in one direction. That is, BellSouth provides the ALECs with usage

1 records but the ALECs provide no usage records to BellSouth (indeed, the
2 ALEC has no information that BellSouth needs).

3

4 Q. IS IT DISCRIMINATORY FOR BELL SOUTH TO CHARGE ALECS FOR
5 ADUF RECORDS WHEN IT PROVIDES ACCESS RECORDS TO ICOS AT
6 NO CHARGE?

7

8 A. No. First, as I described above, in the case of the usage records that BellSouth
9 provides to ICOs or to ALECs who have their own switches, BellSouth treats
10 both sets of carriers the same. That is, for usage records that facilitate the
11 carrier's end user billing, BellSouth charges ICOs and ALECs for this
12 information. In the case of usage records to facilitate intercarrier billing,
13 BellSouth also needs certain usage records from the other carrier; therefore,
14 BellSouth exchanges these usage records with both ICOs and ALECs at no
15 charge. On the other hand, when BellSouth provides daily usage file records
16 to ALECs who are using BellSouth's local switching UNE, the ALECs do not
17 provide BellSouth with any usage information (again, the ALEC has no
18 information that BellSouth needs). Therefore, it is appropriate and
19 nondiscriminatory that BellSouth recover the costs of providing the daily usage
20 file records to ALECs.

21

22 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

23

24 A. Yes.

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