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January 14, 2002

Mrs. Blanca S. Bayó
Director, Division of the Commission
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 990649A-TP (UNE Docket)

Dear Mrs. Bayó:

Enclosed for filing is an original and fifteen copies of Mr. Ruscilli's Surrebuttal Testimony along with Exhibit JAR-1. In Mr. Ruscilli's Surrebuttal Testimony dated December 26, 2001, he incorporated by reference into the above-referenced docket his testimony from Docket No. 010098-TP. BellSouth, however, inadvertently failed to attach Mr. Ruscilli's testimony from Docket No. 010098-TP as an exhibit to his testimony in this docket. BellSouth is making this filing to correct that administrative oversight.

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 by overnight delivery.

Thank you for your assistance, if you have any questions or need further information, please do not hesitate to contact me.

Sincerely,

Andrew D. Shore
Andrew D. Shore
(K#)

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. 990649A-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 14th day of January, 2002 to the following:

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(+) Signed Protective Agreement

1 BELL SOUTH 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 BELL SOUTH
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") 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. GALLAGER 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.

1

2

3

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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1 (#424682)

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1 BELL SOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF JOHN A. RUSCILLI
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 010098-TP
5 JUNE 8, 2001

6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") AND YOUR BUSINESS
9 ADDRESS.

10
11 A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director for
12 State Regulatory for the nine-state BellSouth region. My business address is 675
13 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.

17
18 A. I attended the University of Alabama in Birmingham where I earned a Bachelor
19 of Science Degree in 1979 and a Master of Business Administration in 1982.
20 After graduation I began employment with South Central Bell as an Account
21 Executive in Marketing, transferring to AT&T in 1983. I joined BellSouth in late
22 1984 as an analyst in Market Research, and in late 1985 moved into the Pricing
23 and Economics organization with various responsibilities for business case
24 analysis, tariffing, demand analysis and price regulation. I served as a subject
25 matter expert on ISDN tariffing in various commission and public service

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1 commission ("PSC") staff meetings in Tennessee, Florida, North Carolina and
2 Georgia. I later moved into the State Regulatory and External Affairs
3 organization with responsibility for implementing both state price regulation
4 requirements and the provisions of the Telecommunications Act of 1996, through
5 arbitration and 271 hearing support. In July 1997, I became Director of
6 Regulatory and Legislative Affairs for BellSouth Long Distance, Inc., with
7 responsibilities that included obtaining the necessary certificates of public
8 convenience and necessity, testifying, Federal Communications Commission
9 ("FCC") and PSC support, federal and state compliance reporting and tariffing for
10 all 50 states and the FCC. I assumed my current position in July 2000.

11

12 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

13

14 A. The purpose of my testimony is to present BellSouth's policy positions on two
15 issues raised by Florida Digital Network, Inc. ("FDN") in its Petition for
16 Arbitration ("Petition") filed with the Florida Public Service Commission
17 ("Commission") on January 23, 2001. Specifically, I respond to issues 4 and 8 as
18 contained in Appendix A of the Commission's Order Establishing Procedure,
19 dated June 7, 2001. In addition to my testimony, BellSouth is filing the testimony
20 of Mr. Tommy Williams who will address issue 1 and Mr. Jerry Kephart who will
21 address issues 3, and 10. The parties have reached agreement on Issues 2 and 9,
22 and FDN has withdrawn Issues 5, 6, and 7 from this arbitration.

23

1 *Issue 4A: Is the issue regarding due dates for move orders as stated in 4(B) below, a*
2 *performance measure issue? If so, is it appropriate to arbitrate the issue in this*
3 *proceeding?*

4
5 Q. WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?

6
7 A. In Issue 4(B) below, FDN is seeking a specific remedy that would apply if
8 BellSouth misses a due date for an FDN move order. What FDN is seeking,
9 therefore, is the establishment of a performance measurement and the imposition
10 of a penalty if BellSouth fails to meet that measurement.

11
12 The Commission has convened a generic docket in which it is considering the
13 establishment of permanent performance measurements and a penalty plan.
14 (Docket No. 000121-TP). All alternative local exchange carriers ("ALECs") that
15 may be affected by performance problems (including FDN) had the opportunity to
16 participate in that docket and offer input into the appropriate performance
17 measurements to be established and the appropriate penalties to impose when
18 these measurements are not met. The outcome of the generic performance
19 measurements docket will properly and adequately resolve this issue as raised by
20 FDN.

21
22 It would be an inefficient use of the Commission's resources to address the same
23 issues in a two-party arbitration decision that it currently is addressing in a
24 generic docket. Additionally, it would be inappropriate if one outcome is reached
25 on this issue in this two-party arbitration and another outcome is reached on this

1 issue in the generic docket. Finally, adopting FDN's position in this docket could
2 improperly result in a double-penalty for BellSouth. Assume, for example, that in
3 the generic docket the Commission adopts a performance measurement and
4 corresponding penalties that would apply to missed move orders. If BellSouth
5 subsequently misses an FDN move order, it could suffer two penalties – having to
6 provide free retail service to FDN's end user and having to comply with the
7 penalty established in the generic docket – for one incident. This is an improper
8 result that should be avoided.
9
10

11 Q. HOW DOES BELLSOUTH RECOMMEND THAT THE COMMISSION RULE
12 ON THIS ISSUE?

13
14 A. The Commission should rule that Issue 4(B) below is a performance measure
15 issue, and it should refer that issue to Docket No. 000121-TP.
16

17 ***Issue 4B: For purposes of the new BellSouth/FDN interconnection agreement, in the***
18 ***event BellSouth misses a due date for a customer move order, should BellSouth be***
19 ***required to provide retail phone service to FDN at the new address at no charge until***
20 ***the move order is completed?***

21
22 Q. PLEASE RESPOND TO FDN'S REQUEST FOR "FREE RETAIL SERVICE"
23 WHEN BELLSOUTH CANNOT MEET THE REQUIRED DUE DATE ON
24 MOVE ORDERS FOR FDN'S END USERS.
25

1 A. BellSouth is not obligated by the Act, by the FCC's rules, or by this
2 Commission's rules to provide free service to an ALEC or to an ALEC's
3 customers. Moreover, FDN's proposal is impractical and unrealistic. If
4 BellSouth is unable to establish a new UNE loop at the customer's new location
5 by the due date, it is highly unlikely that BellSouth would be able to establish
6 retail service at the same new location any sooner because the same facilities
7 would most likely be used to provide either service. This is nothing more than an
8 attempt by FDN to obtain an unwarranted and, as noted above, possibly
9 duplicative penalty from BellSouth.

10

11 Q. PLEASE RESPOND TO FDN'S ALLEGATION IN ITS PETITION THAT "IN
12 MOST CASES" BELLSOUTH MISSES A DUE DATE FOR ESTABLISHING
13 A NEW UNE LOOP AT THE CUSTOMER'S NEW LOCATON.

14

15 A. BellSouth attempts to execute all orders in a timely fashion. While there are
16 occasions when it is unable to do so, BellSouth denies that "in most cases" it
17 misses a due date for an FDN move order. In fact, a review of BellSouth's
18 performance data from January through April 2001 indicates that BellSouth met
19 the installation appointment date on 87.5% of all of FDN's orders. Additionally,
20 the vast majority (77%) of the appointments that BellSouth did not meet were
21 missed due to a situation caused by FDN's end user, not by BellSouth.

22

23 Q. . HOW SHOULD THE COMMISSION DECIDE THIS ISSUE?

24

1 A. The Commission should not require BellSouth to provide free retail service when
2 it misses a due date for an FDN move order.

3

4 ***Issue 8A: Is the issue regarding due dates for move orders as stated in 8(B) below, a***
5 ***performance measure issue? If so, is it appropriate to arbitrate the issue in this***
6 ***proceeding?***

7

8 Q. WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?

9

10 A. In Issue 8(B) below, FDN is seeking a specific remedy for what it apparently
11 perceives to be a problem regarding the time it takes BellSouth to fill FDN's work
12 orders. For all of the reasons I mentioned in support of BellSouth's position on
13 Issue 4(A), the Commission should refer this issue to Docket No. 000121-TP.

14

15 ***Issue 8B: For the purposes of the new BellSouth/FDN interconnection agreement,***
16 ***should BellSouth be required to allow FDN the option of a BellSouth frame attendant***
17 ***who works exclusively on FDN orders, if FDN agrees to fully fund this frame***
18 ***attendant?***

19

20 Q. PLEASE RESPOND TO FDN'S REQUEST THAT THE COMMISSION
21 ORDER BELLSOUTH TO PROVIDE FDN THE OPTION OF HAVING A
22 BELLSOUTH FRAME ATTENDANT WHO WORKS EXCLUSIVELY ON
23 FDN ORDERS.

24

1 A. BellSouth is not required under the Act, the FCC's rules, or this Commission's
2 rules to provide such option to FDN. If FDN desires such an option, it should
3 submit a request through BellSouth's Bona Fide Request ("BFR") process.
4 Through the BFR process, BellSouth can properly evaluate the feasibility of
5 FDN's request. Handling such a request through the BFR process would afford
6 BellSouth the opportunity to evaluate the many factors likely to be associated
7 with such an option, such as supervision and control, liability, union issues, wages
8 and overtime policies, and various administrative issues.

9
10 Q. IF FDN IS WILLING TO "FULLY FUND" SUCH A FRAME ATTENDANT,
11 WHY IS BELLSOUTH NOT WILLING TO OFFER THIS OPTION TO FDN?

12
13 A. The issue is whether BellSouth should be required to include such an option in the
14 new BellSouth/FDN interconnection agreement. Frame attendants simply are not
15 "network elements" that BellSouth is required to unbundle, nor are they necessary
16 on a per ALEC basis for interconnection and resale. If Congress, the FCC, or the
17 Florida Legislature felt it necessary to obligate incumbent local exchange carriers
18 ("ILECs") to dedicate personnel to individual ALECs, they would have clearly
19 expressed such a requirement. They have not done so, and BellSouth simply is
20 not obligated to offer FDN "a BellSouth employed technician dedicated to FDN
21 cutovers."

22
23 Additionally, there are numerous practical ramifications that must be considered.
24 If BellSouth provided a technician dedicated to FDN cutovers, for example, it
25 would be obligated to offer a technician dedicated to cutovers for other ALECs.

1 This could lead to significant workforce administration issues. For instance, how
2 is BellSouth supposed to handle a situation in which ALEC 1, which has not paid
3 for or authorized overtime, has more work than its dedicated technician can
4 handle, while ALEC 2's dedicated technician does not have a full workload?
5 How is BellSouth supposed to handle the union issue that could arise if the
6 technician dedicated to ALEC 2 asks for the opportunity to work overtime like his
7 coworkers? Can BellSouth assign ALEC 2's dedicated technician overtime and
8 have the technician work on ALEC 1 orders or on BellSouth's own orders?
9

10 Furthermore, requiring BellSouth to provide frame attendants dedicated to
11 particular ALECs could result in the need for expanded parking spaces and work
12 areas. Who is going to fund those expansions? Moreover, ALEC 1's technician
13 may need a vehicle to travel from a frame in one central office to a frame in
14 another central office. This leaves fewer vehicles for ALEC 2's technician and
15 for BellSouth's general body of technicians to use, and this could lead to the need
16 for more vehicles. Who is going to pay for the additional vehicles? Additionally,
17 if the technician is "employed" by BellSouth but "funded by" and "dedicate to"
18 FDN, is BellSouth or FDN going to be liable if the employee runs a red light and
19 damages a third party's car?
20

21 Clearly, the remedy sought by FDN would be administratively and financially
22 burdensome. It is also unnecessary. As I noted above, BellSouth's performance
23 data from January through April 2001 indicates that BellSouth met the installation
24 appointment date on 87.5% of FDN's orders, and the vast majority (77%) of the
25 appointments that BellSouth did not meet were missed due to a situation caused

1 by FDN's end user, not by BellSouth. Finally, the performance measurements
2 and penalties the Commission adopts in Docket No. 000121-TP will provide FDN
3 an adequate remedy for missed due dates that may occur.

4

5 Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

6

7 A. The Commission should not require BellSouth to provide a BellSouth employed
8 technician dedicated to FDN cutovers.

9

10 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

11

12 A. Yes.

13

14 (#390942)

1 BELL SOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF JOHN A. RUSCILLI
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 010098-TP
5 JULY 18, 2001
6

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

10
11 A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director for
12 State Regulatory for the nine-state BellSouth region. My business address is 675
13 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. ARE YOU THE SAME JOHN A. RUSCILLI THAT FILED TESTIMONY IN
16 THIS DOCKET ON JUNE 8, 2001?

17
18 A. Yes.

19
20 Q. WHAT IS THE PURPOSE OF THE TESTIMONY THAT YOU ARE FILING
21 TODAY?

22
23 A. The purpose of my testimony is to rebut portions of the direct testimony filed on
24 June 8, 2001 by Michael P. Gallagher on behalf of Florida Digital Network, Inc.
25 ("FDN"). Specifically, I will rebut Mr. Gallagher's testimony addressing a

1 portion of Issue 1. In addition to my testimony, BellSouth is filing the rebuttal
2 testimony of Mr. Tommy Williams, who will rebut Mr. Gallagher's testimony
3 addressing a portion of Issue 1, and of Mr. Jerry Kephart who will rebut Mr.
4 Gallagher's testimony addressing Issue 3 and Issue 10. It is my understanding that
5 Issues 4(a), 4(b) and 8(a) and 8(b) have been withdrawn, and therefore, BellSouth
6 will not address Mr. Gallagher's testimony on those issues.

7
8 ***Issue 1: For purposes of the new interconnection agreement, should BellSouth be***
9 ***required to provide xDSL service over UNE loops when FDN is providing voice service***
10 ***over that loop?***

11
12 **Q. DOES MR. GALLAGHER'S TESTIMONY RELATE TO ISSUE 1?**

13
14 **A. No. As Mr. Williams notes in his rebuttal testimony, Mr. Gallagher's discussion**
15 **of Issue 1 goes well beyond even a liberal interpretation of the issue. FDN**
16 **appears to be using Mr. Gallagher's testimony as a "launching pad" for a litany of**
17 **issues that are not set forth in FDN's Petition. BellSouth has filed an Objection**
18 **and Motion to Strike the portion of Mr. Gallagher's testimony addressing Issue 1,**
19 **and my testimony is being filed subject to, and without waiver of, that Objection**
20 **and Motion.**

21
22 **Q. WHAT IS FDN ASKING THE COMMISSION TO DO WITH RESPECT TO**
23 **THIS ISSUE?**

24
25 **A. FDN's primary focus is to require BellSouth to unbundle its packet switching**

1 network throughout the state of Florida. As explained below, this request is
2 contrary to orders of both the FCC and this Commission.
3

4 Q. ARE THE POTENTIAL UNBUNDLING OF PACKET SWITCHING AND THE
5 POTENTIAL CREATION OF AN UNBUNDLED DATA PLATFORM
6 CURRENTLY BEING ADDRESSED BY THE FCC?
7

8 A. Yes. In the *Third Further Notice of Proposed Rulemaking* in CC Docket No. 98-
9 147 and *Sixth Further Notice of Proposed Rulemaking* in CC Docket No. 96-98
10 (“FNPRM”), the FCC has asked for and received comments on its decision not to
11 order the unbundling of packet switching. In the same proceeding, the FCC has
12 asked for and received comments on whether to require ILECs to unbundle the
13 equipment used in the provision of advanced services. In light of this pending
14 proceeding before the FCC, there is no reason for this Commission to either create
15 a new UNE (one that the FCC did not create in the *UNE Remand Order* and that
16 this Commission did not create in the generic cost docket¹) or to order the
17 unbundling of packet switching (which the FCC declined to do in its *UNE*
18 *Remand Order* and which this Commission declined to do in its orders in the
19 *Intermedia* and *ICG Telecom* arbitrations).
20

21 Q. IS BELLSOUTH CURRENTLY REQUIRED TO UNBUNDLE ITS PACKET
22 SWITCHING NETWORK?
23

¹ *In re: Investigation into Pricing of Unbundled Network Elements*, Docket No. 990649-TP.

- 1 A. No. In its *UNE Remand Order*,² the FCC stated that “[t]he packet switching
2 network element includes the necessary electronics (e.g. routers and DSLAMS).”
3 *Id.* at ¶304 (emphasis added). The FCC then expressly stated “we decline at this
4 time to unbundle the packet switching functionality, except in limited
5 circumstances.” *Id.* at ¶306 (emphasis added). These limited circumstances are
6 set forth in Rule 51.319(c)(5), which states that an ILEC must provide unbundled
7 packet switching only where all of the following conditions are satisfied:
- 8 (i) The incumbent LEC has deployed digital loop carrier systems, including
9 but not limited to, integrated digital loop carrier or universal digital loop
10 carrier systems; or has deployed any other system in which fiber optic
11 facilities replace copper facilities in the distribution section (e.g., end
12 office to remote terminal, pedestal or environmentally controlled vault);
 - 13 (ii) There are no spare copper loops capable of supporting the xDSL services
14 the requesting carrier seeks to offer;
 - 15 (iii) The incumbent LEC has not permitted a requesting carrier to deploy a
16 Digital Subscriber Line Access Multiplexer at the remote terminal,
17 pedestal or environmentally controlled vault or other interconnection
18 point, nor has the requesting carrier obtained a virtual collocation
19 arrangement at these subloop interconnection points as defined under §
20 51.319(b); and
- 21 Q. The incumbent LEC has deployed packet switching capability for its own
22 use.
23

² See *Implementation of the Local Competition Provisions in the Telecommunication Act of 1996*, CC Docket No. 96-98, *Third Report and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3690 (1999) (“*UNE Remand Order*”).

1 Q. WHEN THE FCC DECIDED NOT TO ORDER INCUMBENTS TO
2 UNBUNDLE PACKET SWITCHING FUNCTIONALITY, DID IT CONSIDER
3 THE EFFECTS THAT DECISION MAY HAVE ON COMPETITION IN THE
4 ADVANCED SERVICES MARKET?

5
6 A. Yes. Throughout the *UNE Remand Order*, the FCC demonstrated an acute
7 awareness of and concern for advanced services. The FCC supported its decision
8 to unbundle dark fiber, for instance, by noting, “unbundling of dark fiber is
9 essential for competition in the provision of advanced services.” *Id.* at ¶196. The
10 FCC also noted that “access to the subloop will facilitate rapid development of
11 competition, encourage facilities-based competition, and promote the deployment
12 of advanced services,” *Id.* at ¶207, and it clarified that incumbents are required to
13 “provide loops with all their capabilities intact, that is, to provide conditioned
14 loops, wherever a competitor requests, even if the incumbent is not itself offering
15 xDSL to the end-user customer on that loop.” *Id.* at ¶191. It is clear, therefore,
16 that the FCC was interested in establishing UNEs in a manner that allows CLECs
17 to offer advanced services.

18
19 It is equally clear, however, that the FCC recognized that ALECs can provide their
20 own xDSL services without having unbundled access to BellSouth’s packet
21 switching functionality. In Paragraph 190, for instance, the FCC states that:

22 *Unbundling basic loops, with their full capacity preserved, allows*
23 *competitors to provide xDSL services.*

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25 • • *

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Without access to these loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of the deployment of advanced services.

The FCC further stated that “[a]ccess to unbundled loops will also encourage competition to provide broadband services.” *Id.* at ¶200. Thus with one exception, the FCC determined that “the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity.” *Id.* at ¶175. Significantly, the one exception to this rule is that the loop does not include the DSLAM. *Id.* The FCC stated, “we include the attached electronics (with the exception of DSLAMs) within the loop definition. By contrast, as we discuss below, we find that the DSLAM is a component of the packet switch network element.” *Id.* As I noted above, the FCC then declined to require incumbents to unbundle the packet switch network element, which includes the DSLAM.

Q. WHEN THE FCC ENTERED ITS *UNE REMAND ORDER*, WAS IT AWARE OF THE USE OF IDLC BY INCUMBENTS?

A. Yes. The FCC noted “carriers need unbundled subloops to serve subscribers currently served by IDLC loops.” *Id.* at ¶217. More specifically, the FCC explained,

In order to reach subscribers served by the incumbent’s IDLC loops, a requesting carrier usually must have access to those loops before the point where the traffic is multiplexed. That is where the end-user’s distribution

1 *subloop can be diverted to the competitive LEC's feeder, before the signal*
2 *is mixed with the traffic from the incumbent LEC's other distribution*
3 *subloops for transport through the incumbent's IDLC feeder.*
4 *Accordingly, we find that denying access at this point may preclude a*
5 *requesting carrier from competing to provide service to customers served*
6 *by the incumbent's IDLC facilities. This would particularly affect*
7 *consumers in rural areas, where incumbent LECs use the greatest*
8 *proportion of DLC loops.*

9 *Id.*

10
11 Q. AT PAGE 12 OF HIS DIRECT TESTIMONY, MR. GALLAGHER CLAIMS
12 "BELLSOUTH'S EXISTING NETWORK IN FLORIDA IS VERY DIFFERENT
13 FROM THE FCC'S CONCEIVED MODEL, WITH MORE FAR MORE (SIC)
14 FIBER AND DLCs." WHEN THE FCC RELEASED ITS *UNE REMAND*
15 *ORDER*, WAS IT AWARE OF THE ROLE THAT DSLAMS COLLOCATED IN
16 REMOTE TERMINALS PLAY IN THE PROVISION OF XDSL SERVICE?

17
18 A. Yes. Despite Mr. Gallagher's assertions, the following language from the *UNE*
19 *Remand Order* clearly establishes that the FCC was well aware that an ALEC
20 would quite often have to collocate a DSLAM at a remote terminal in order to
21 provide xDSL service over a UNE loop:

22 *competitors seeking to offer services using xDSL technology need to*
23 *access the copper wire portion of the loop. In cases where the incumbent*
24 *multiplexes its copper loops at a remote terminal to transport the traffic to*
25 *the central office over fiber DLC facilities, a requesting carrier's ability to*

1 offer xDSL service to customers served over those facilities will be
2 precluded, unless the competitor can gain access to the customer's
3 copper loop before the traffic on that loop is multiplexed. Thus, we note
4 that the remote terminal has, to a substantial degree, assumed the role and
5 significance traditionally associated with the central office. In addition, in
6 order to use its own facilities to provide xDSL service to a customer, a
7 carrier must locate its DSLAM within a reasonable distance of the
8 customer's premises, usually less than 18,000 feet. In both of these
9 situations, a requesting carrier needs access to copper wire relatively
10 close to the subscriber in order to serve the incumbent's customer.

11 *Id.* at 218 (emphasis added).

12
13 Q. AFTER MAKING THESE STATEMENTS, HOW DID THE FCC ADDRESS
14 THE PROPOSED UNBUNDLING OF PACKET SWITCHING
15 FUNCTIONALITY?

16
17 A. The FCC expressly declined to unbundle the packet switching functionality
18 (which it defined to include DSLAMs) except in very limited circumstances. The
19 FCC came to this conclusion after carefully considering the manner in which
20 proposed unbundled elements would affect an ALEC's ability to provide
21 advanced services such as xDSL, recognizing how the existence of IDLC would
22 impact the provisioning of advanced services such as xDSL, and noting that "the
23 remote terminal has, to a substantial degree, assumed the role and significance
24 traditionally associated with the central office." *Id.* at ¶304, ¶306. In support of
25 this decision, the FCC stated,

1 *Both the record in this proceeding, and our findings in the '706*
2 *Report' establish that advanced service providers are actively*
3 *deploying facilities to offer advanced services such as xDSL across*
4 *the country. Competitive LECs and cable companies appear to be*
5 *leading the incumbent LECs in their deployment of advanced*
6 *services.*

7 *Id.* at ¶307 (emphasis added). The FCC then described the xDSL offerings of
8 several ALECs, and concluded,

9 *Marketplace developments like the ones described above suggest that*
10 *requesting carriers have been able to secure the necessary inputs to*
11 *provide advanced services to end users in accordance with their business*
12 *plans. This evidence indicates that carriers are deploying advanced*
13 *services to the business market initially as well as the residential and*
14 *small business markets.*

15 *Id.*

16
17 **Q. DID THE FCC EXPRESS ANY CONCERNS REGARDING THE IMPACT**
18 **THAT A REQUIREMENT TO UNBUNDLE PACKET SWITCHING**
19 **FUNCTIONALITY MAY HAVE ON THE DEVELOPMENT OF**
20 **COMPETITION IN THE ADVANCED SERVICES MARKET?**

21
22 **A. Yes. In deciding not to require incumbents to unbundle packet switching**
23 **functionality, the FCC acknowledged that the advanced services market is highly**
24 **competitive, and it recognized that forcing ILECs to unbundle equipment used to**
25 **provide competitive advanced services would only impede the further**

1 development of competition:

2 *[W]e are mindful that regulatory action should not alter the*
3 *successful deployment of advanced services that has occurred to*
4 *date. Our decision to decline to unbundle packet switching*
5 *therefore reflects our concern that we not stifle burgeoning*
6 *competition in the advanced service market. We are mindful*
7 *that, in such a dynamic and evolving market, regulatory restraint*
8 *on our part may be the most prudent course of action in order to*
9 *further the Act's goal of encouraging facilities-based investment*
10 *and innovation.*

11 *(Id. ¶316.) (emphasis added.)*

12
13 Q. DOES BELLSOUTH OFFER UNES THAT ALLOW FDN TO PROVIDE ITS
14 OWN XDSL SERVICE IN FLORIDA?

15
16 A. Yes. As Mr. Williams explains in his rebuttal testimony, BellSouth offers UNEs
17 that allow FDN to transport data from its packet switch to a DSLAM it collocates
18 at a remote terminal, and BellSouth provides UNEs that allow FDN to transport
19 data from a DSLAM it collocates at a remote terminal to its end user's premises.
20 BellSouth, therefore, offers FDN all the UNEs it needs to provide its own xDSL
21 service in Florida. Additionally, as Mr. Williams further explains in his rebuttal
22 testimony, BellSouth will permit a requesting carrier to deploy a Digital
23 Subscriber Line Access Multiplexer (DSLAM) at the remote terminal, pedestal or
24 environmentally controlled vault or other interconnection point. In the unlikely
25 event that BellSouth cannot accommodate such collocation of a DSLAM at a

1 given location (and that BellSouth is unable to provide a virtual collocation
2 arrangement at these subloop interconnection points), BellSouth will provide
3 unbundled packet switching to that particular location, as required by the FCC's
4 UNE Remand Order.

5

6 Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION PREVIOUSLY
7 ADDRESSED WHETHER BELL SOUTH MUST UNBUNDLE PACKET
8 SWITCHING FUNCTIONALITY?

9

10 A. Yes. The Commission declined to require BellSouth to provide unbundled packet
11 switching in two arbitration proceedings. In Order No. PSC-00-1519-FOF-TP in
12 Docket No. 99-1854-TP (BellSouth –Intermedia Arbitration) at page 34, for
13 instance, the Commission found “that BellSouth shall only be required to
14 unbundled its packet switching capabilities under the limited circumstances
15 identified in FCC Rule 51.319(c)(5).” Similarly, in Order No. PSC-00-0128-
16 FOF-TP in Docket No. 99-0691-TP (BellSouth –ICG Telecom Arbitration) at
17 page 7, the Commission found that “packet-switching capabilities are not UNEs”.

18

19 Additionally, in Docket No. 990649-TP (the generic cost docket), the
20 Commission found that “there are no other elements or combinations of elements
21 that we shall require BellSouth to unbundle at this time.” See Order No. 990649-
22 TP at page 368.

23

24 Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION PREVIOUSLY
25 ADDRESSED WHETHER BELL SOUTH MUST PROVIDE ITS ADSL

1 SERVICE OVER A UNE LOOP THAT AN ALEC IS USING TO PROVIDE
2 VOICE SERVICE TO THE ALEC'S CUSTOMER?

- 3
4 A. Yes. In Order No. PSC-01-0824-FOF-TP that was entered in the in MCI
5 WorldCom Arbitration (Docket No. 000649-TP), the Commission found at
6 section XIII, page 51,

7 *While we acknowledge WorldCom's concern regarding the status of the*
8 *DSL service over a shared loop when WorldCom wins the voice service*
9 *from BellSouth, we believe the FCC addressed this situation in its Line*
10 *Sharing Order. The FCC states that "We note that in the event that the*
11 *customer terminates its incumbent LEC provided voice service, for*
12 *whatever reason, the competitive data LEC is required to purchase the full*
13 *stand-alone loop network element if it wishes to continue providing xDSL*
14 *service. FCC 99-355, ¶72.*

15
16 * * *

17
18 *We believe the FCC requires BellSouth to provide line sharing only over*
19 *loops where BellSouth is the voice provider. If WorldCom purchases the*
20 *UNE-P, WorldCom becomes the voice provider over that loop/port*
21 *combination. Therefore, BellSouth is no longer required to provide line*
22 *sharing over that loop/port combination.*

1 Q. DOES THIS COMMISSION HAVE THE AUTHORITY TO ORDER A NEW
2 UNE OR TO ORDER THE UNBUNDLING OF THE PACKET SWITCHING
3 FUNCTIONALITY?
4

5 A. Yes. The Supreme Court's *Iowa Utilities Board* decision and the FCC's *UNE*
6 *Remand Order*, however, are absolutely clear that a pre-condition to compelled
7 unbundling is a finding of impairment for the services at issue based on a careful
8 analysis of available alternatives. This Commission, therefore, may establish a
9 new UNE only if the carrier seeking the new UNE carries the burden of proving
10 the impairment test set forth in the FCC's *UNE Remand Order*.
11

12 Q. DOES FDN'S REQUEST COMPLY WITH THE IMPAIRMENT STANDARD?
13

14 A. No. The statutory impair standard requires consideration of whether a carrier's
15 ability to "provide the services it seeks to offer" would be impaired without access
16 to a particular unbundled element. As Mr. Williams explains in his rebuttal
17 testimony, BellSouth offers UNEs to ALECs like FDN that allow ALECs to
18 transport their data signals from their packet switches to the remote terminal and
19 from the remote terminal to the customer premises.
20

21 Q. IS FDN NONETHELESS IMPAIRED IN ITS ABILITY TO OFFER ITS OWN
22 XDSL SERVICE IF BELL SOUTH DOES NOT UNBUNDLE ITS PACKET
23 SWITCHING FUNCTIONALITY AND ITS DSLAMS IN ADDITION TO
24 UNBUNDLING ITS LOOPS?
25

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

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

20 *Id.* at ¶308. (Emphasis added.).

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

25

1 Additionally, the FCC has acknowledged that there is “burgeoning competition”
2 to provide advanced services, *Id.* at ¶316, and this “burgeoning competition”
3 exists without unbundled access to ILEC advanced services equipment.

4 The existence of this competition alone precludes a finding of impairment. As the
5 FCC said in the *UNE Remand Order*, “we find the marketplace to be the most
6 persuasive evidence of the actual ability of alternatives as a practical, economic,
7 and operational matter.” *Id.* at ¶66. This competition, however, is not all that
8 supports the decision not to unbundle packet switching functionality. This
9 decision also is supported by a number of other FCC findings, including that the
10 advanced services business is “nascent,” that the pre-conditions of natural
11 monopoly are absent, that several technologies are well positioned to provide
12 advanced services to the end-user customer, and that ILECs, if anything, trail in
13 the deployment race.³

14
15 Clearly, FDN is not impaired by the fact that neither packet switching
16 functionality nor the DSLAM is available as a UNE because FDN can purchase,
17 install, and utilize these elements just as easily and just as cost-effectively as
18 BellSouth. It can then use this equipment in combination with either its own
19 facilities, facilities it obtains from a third party, or UNEs it obtains from
20 BellSouth to provide its own xDSL service to its customers.

21

³ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications 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.

1 Q. ARE THERE OTHER FACTORS THAT THE COMMISSION NEEDS TO
2 CONSIDER IN DETERMINING WHETHER FDN'S REQUEST MEETS THE
3 IMPAIR STANDARD?
4

5 A. Yes. The Commission must analyze the effects unbundling will have on
6 investment and innovation in advanced services.⁴ There are important differences
7 between the effects of unbundling elements used to provide traditional
8 telecommunications services and the effects of unbundling new investment used
9 to provide advanced services. As the FCC has noted, "[i]nvestments in facilities
10 used to provide service to nascent markets are inherently more risky than
11 investments in well established markets. Customer demand for advanced services
12 is also more difficult to predict accurately than is the demand for well established
13 services."⁵ An important part of the FCC's reasoning to not unbundle advanced
14 services equipment, even though traditional services equipment had been
15 unbundled, was to avoid stifling competition and to encourage innovation.⁶ This
16 fact remains all the more relevant today.
17

18 Further, the Commission's analysis of whether newly deployed advanced services
19 facilities can properly be unbundled also must take into the account the fact that
20 ALECs and other entities can also choose to invest in deploying similar facilities.

⁴ Even a conclusion that carriers would be impaired in their ability to offer advanced services without unbundling would not be sufficient to lead to UNE treatment of facilities used for advanced services. The FCC's multi-part "impairment" test requires consideration of the effect of unbundling on investment and innovation, and the results of that analysis may determine the outcome. Thus, the Commission has determined that packet switching should not be unbundled due to the negative effects unbundling would have on ILEC investment in packet technologies.

⁵ *UNE Remand Order*, ¶ 316.

⁶ *Id.*

1 Thus, ALECs can choose to install ATM switches and DSLAMs, just as
2 BellSouth has done, and will continue to do. ALECs are not impaired by
3 implementing this strategy. BellSouth invests significant resources in deploying
4 equipment necessary to provide advanced services. It would be inherently unfair
5 to allow ALECs to simply use the ILEC's equipment as unbundled network
6 elements where the ALEC is not impeded in deploying its own equipment.
7 Indeed, where an ALEC can deploy its own equipment, parity demands that the
8 ALEC should deploy such equipment and not ride the investment and risk of the
9 ILEC.

10

11 Based on these factors, the Commission cannot require the unbundling of network
12 elements used to provide advanced services. To do so would read the "necessary
13 and impair" standard completely out of the 1996 Act. Moreover, it would have a
14 chilling effect on BellSouth's incentives to invest in the technologies upon which
15 advanced services depend. ALECs will not have any incentive to invest in
16 equipment to provide advanced services if they can ride the backs of, and shift
17 investment risks to, the ILECs. Conversely, an ILEC's incentive to invest in new
18 and innovative equipment will be stifled if its competitors, who can just as easily
19 invest in the equipment, can take advantage of the equipment's use without
20 incurring any of the risk. C. Michael Armstrong of AT&T made exactly this
21 point in a speech, entitled *Telecom and Cable TV: Shared Prospects of the*
22 *Communications Future*, which he delivered to the Washington Metropolitan
23 Cable Club in November of 1998:

24 *No company would invest billions of dollars . . . if competitors which have*
25 *not invested a penny of capital nor taken an ounce of risk can come along*

1 §313 (emphasis added). As Mr. Williams explains in his rebuttal testimony,
2 BellSouth will permit FDN to collocate its DSLAM in BellSouth's remote
3 terminal on the same terms and conditions that apply to BellSouth's own
4 DSLAM. If BellSouth is not able to accommodate such collocation at a given
5 remote terminal, BellSouth will unbundle packet switching functionality at that
6 terminal.

7
8 On page 29 of his testimony, Mr. Gallagher seems to suggest that if each of these
9 conditions discussed above exist anywhere in the State of Florida, BellSouth
10 is somehow required to provide unbundled packet switching everywhere in the
11 State of Florida. That simply is not the case. As the FCC stated in its *UNE*

12 *Remand Order:*

13 *When an incumbent has deployed DLC systems, requesting*
14 *carriers must install DSLAMs at the remote terminal instead of at*
15 *the central office in order to provide advanced services. We agree*
16 *that, if a requesting carrier is unable to install its DSLAM at the*
17 *remote terminal or obtain spare copper loops necessary to offer*
18 *the same level of quality for advanced services, the incumbent LEC*
19 *can effectively deny competitors entry into the packet switching*
20 *market. We find that in this limited situation, requesting carriers*
21 *are impaired without access to unbundled packet switching.*

22 *Id.* at §313 (emphasis added). Clearly, the FCC intended for this exception to the
23 rule to apply only in *limited situations*. Requiring the statewide unbundling of
24 packet switching if an ALEC can find one remote terminal to which this exception
25 applies would impermissibly ignore the FCC's intent by allowing the limited

1 exception to swallow the general rule.

2

3 Moreover, FDN's allegation, on page 30, that "CLECs are denied collocation of
4 DSLAM functionality" is wrong. As Mr. Williams explains in his rebuttal
5 testimony, BellSouth has not denied FDN, or any other ALEC, the ability to
6 collocate a DSLAM in a remote terminal in Florida.

7

8 Q. IN SECTION III OF HIS TESTIMONY, WHICH BEGINS ON PAGE 32, MR.
9 GALLAGHER ARGUES THAT "BELLSOUTH IS REQUIRED BY SECTION
10 251(c)(4) OF THE FEDERAL ACT TO OFFER ITS HIGH-SPEED DATA
11 SERVICE FOR RESALE." PLEASE COMMENT.

12

13 A. Again, Mr. Gallagher is mistaken. In fact, the United States Court of Appeals for
14 the District of Columbia Circuit issued a decision in a case right on point.⁷ The
15 Court states in its Background discussion:

16

17 *At issue in this case is that part of the 'Second Report and Order' in which*
18 *the Commission addressed the question whether the resale requirement of*
19 *§251(c)(4)(A) applies to an ILEC's offering of advanced services. As the*
20 *Commission acknowledged, it had previously determined that advanced*
21 *services constitute 'telecommunications service' and that the end-users and*
22 *ISPs to which the ILECs offer such services are 'subscribers who are not*
23 *telecommunications carriers' within the meaning of §251(c)(4)(A). The*

⁷ *Association of Communications Enterprises, Petitioner v. Federal Communications Commission and United States of America, Respondents, On Petition for review of an Order of the Federal Communications Commission, Case No. 00-1144; decided June 26, 2001.*

1 remaining issue, therefore, was whether an ILEC's offering of certain
2 advanced services, including DSL, is made 'at retail' so as to trigger the
3 discount requirement. The Commission ultimately concluded that while an
4 incumbent LEC DSL offering to residential and business end-users is
5 clearly a retail offering designed for and sold to the ultimate end-user, an
6 incumbent LEC offering of DSL services to Internet Service Providers as
7 an input component to the Internet Service Provider's high-speed Internet
8 service offering is not a retail offering. Accordingly, . . . DSL services
9 designed for and sold to residential and business end-users are subject to
10 the discounted resale obligations of section 251(c)(4) . . . [H]owever, . .
11 .section 251(c)(4) does not apply where the incumbent LEC offers DSL
12 services as an input component to Internet Service Providers who combine
13 the DSL service with their own Internet Service. (Emphasis added.)

14
15 *The Association of Communication Enterprises (ASCENT) petitioned for*
16 *review of this determination, and various telecommunications and DSL*
17 *providers intervened on behalf of the Commission.*

18
19 In conclusion, the Court states:

20 *In sum, having considered ASCENT's objections, we find the Commission's*
21 *Order in all respects reasonable.*

22
23 Q. ON PAGE 34, MR. GALLAGHER STATES, "FDN SEEKS TO BE ABLE TO
24 RESELL THE TELECOMMUNICATIONS PORTION OF THIS SERVICE
25 [BELLSOUTH FAST ACCESS INTERNET SERVICE]. . ." IS FDN

1 ENTITLED TO WHAT IT IS REQUESTING?

2
3 A. No. BellSouth Fast Access Internet Service is not a telecommunications service.
4 It is an enhanced, non-regulated, non-telecommunications Internet Access Service
5 that uses BellSouth's wholesale DSL telecommunications service. Mr.
6 Gallagher's reference to this service as "BellSouth's retail DSL service" should
7 not be allowed to confuse the issue. Regardless of how FDN refers to the service,
8 BellSouth does not offer a tariffed retail DSL service, and based on the FCC's
9 *Second and Report and Order* (CC Docket No. 98-147, *Deployment of Wireline*
10 *Services Offering Advanced Telecommunications Capability* (1999)) referred to
11 above, as well as the Court's Decision, BellSouth has no obligation to make
12 available its wholesale telecommunications DSL service at the resale discount,
13 pursuant to section 251(c)(4). BellSouth also has no obligation to make its
14 Internet Access offering available at the resale discount because it is not a retail
15 service.

16
17 Q. IS THE ASCENT V. FCC COURT DECISION, MENTIONED ON PAGE 35 OF
18 MR. GALLAGHER'S TESTIMONY, RELEVANT TO THIS ISSUE?

19
20 A. No. The January 9, 2001 ruling ("Ascent Decision") by the United States Court of
21 Appeals for the District of Columbia Circuit is inapplicable to this issue, and does
22 not support the position put forth by Mr. Gallagher. FDN's strained reading of the
23 January decision, in my opinion, is misguided. FDN has taken a statement out of
24 context, and using it inappropriately for its advantage, concludes that the Court's
25 ruling supports its position that BellSouth should be required to offer BellSouth

1 advanced data services for resale. Mr. Gallagher's conclusion based on the
2 "Ascent Decision" is wrong. The decision being referred to by Mr. Gallagher
3 deals with regulatory relief granted by the FCC regarding resale of advanced
4 services if conducted through the separate affiliate established in the Ameritech
5 and SBC merger. The Court ruled that an ILEC may not "sideslip §251(c)'s
6 requirements by simply offering telecommunications services through a wholly
7 owned affiliate." This is not what is at issue here, nor does the ruling require
8 BellSouth to offer its advanced data services for resale at a wholesale discount, as
9 Mr. Gallagher would have this Commission believe. Further, BellSouth has no
10 separate affiliate for the sale of advanced services, and therefore, this decision
11 does not apply to BellSouth.

12
13 Q. PLEASE COMMENT ON MR. GALLAGHER'S DISCUSSION ON PAGES 38
14 AND 39 THAT "THE *LINE SHARING RECONSIDERATION ORDER* DID NOT
15 ENDORSE THE ILECs' REFUSAL TO SELL DSL SERVICES."

16
17 A. Again, I disagree with Mr. Gallagher's conclusion that BellSouth is required to
18 provide ADSL service when it is no longer the voice provider. Paragraph 26 of
19 the *Line Sharing Reconsideration Order* states, in part:

20 *we deny AT&T's request for clarification that under the 'Line Sharing*
21 *Order', incumbent LECs are not permitted to deny their xDSL services to*
22 *customers who obtain voice service from a competing carrier where the*
23 *competing carrier agrees to the use of its loop for that purpose. Although*
24 *the 'Line Sharing Order' obligates incumbent LECs to make the high*
25 *frequency portion of the loop separately available to competing carriers*

1 *on loops where incumbent LECs provide voice service, it does not require*
2 *that they provide xDSL service when they are no[t] longer the voice*
3 *provider. We do not, however, consider in this Order whether, as AT&T*
4 *alleges, this situation is a violation of sections 201 and/or 202 of the Act.*

5
6 As is apparent from the above, and contrary to Mr. Gallagher's allegation, the
7 FCC did rule -- it denied AT&T's request, and it clearly stated that its orders do
8 "not require that [incumbents] provide xDSL service when they are no longer the
9 voice provider." *Id.*

10

11 Q. **WHAT IS BELL SOUTH ASKING THIS COMMISSION TO CONCLUDE ON**
12 **THIS ISSUE?**

13

14 A. **The clear intent of the FCC was that the packet switching functionality should not**
15 **be unbundled (except in limited circumstances) and that all providers have the**
16 **same opportunity to place whatever equipment they need to provide high speed**
17 **data. If FDN chooses not to submit collocation requests, BellSouth cannot be**
18 **held to blame for FDN's business decision not to collocate. The FCC rules state**
19 **that packet switching does not need to be unbundled unless specific conditions are**
20 **met, and the FCC goes on to specifically state that if collocation is available,**
21 **packet switching does not have to be unbundled. As explained in detail in the**
22 **testimony of Mr. Williams, BellSouth has collocation and UNE offerings that**
23 **meet these guidelines.**

24

25 **BellSouth requests that the Commission reach the same conclusion that both the**

1 FCC and this Commission have reached in the past and deny FDN's request on
2 this issue.

3

4 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

5

6 A. Yes.

7

8 (#397189)

9

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