

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
pricing of unbundled network
elements (BellSouth track).

DOCKET NO. 990649A-TP
ORDER NO. PSC-02-0117-PHO-TP
ISSUED: January 25, 2002

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on January 17, 2002, in Tallahassee, Florida, before Chairman Lila A. Jaber, as Prehearing Officer.

APPEARANCES:

Nancy B. White, Esquire, 150 South Monroe Street, #400, Tallahassee, Florida 32301, and E. Earl Edenfield, Jr., Esquire, and Andrew S. Shore, Esquire, 675 W. Peachtree Street, #4300, Atlanta, Georgia 30375.
On behalf of BellSouth Telecommunications, Inc.

Tracy W. Hatch, Esquire, and Floyd R. Self, Esquire, Messer, Caparello & Self, P.A., P.O. Box 1876, Tallahassee, Florida 32302.
On behalf of AT&T Communications of the Southern States, Inc.

Donna McNulty, Esquire, MCI WorldCom, Inc., The Atrium Building, Suite 105, 325 John Knox Road, Tallahassee, Florida 32303 and Richard D. Melson, Esquire, Hopping Green & Sams, P.A., Post Office Box 6526, Tallahassee, Florida 32314.
On behalf of MCI WorldCom, Inc.

John P. Fons, Esquire, Ausley and McMullen, P.O. 391, Tallahassee, Florida 32302, and Susan Masterton, Esquire, Sprint-Florida, Inc., P.O. Box 2214, Tallahassee, Florida 32316.
On behalf of Sprint Communications Company Limited Partnership.

Michael A. Gross, Esquire, 246 East 6th Avenue, Tallahassee, Florida 32303.
On behalf of Florida Cable Telecommunications Association.

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On behalf of Florida Digital Network, Inc.

Joseph A. McGlothlin, Esquire, McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman, Arnold & Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301.
On behalf of Z-Tel Communications, Inc.

Jeffrey Wahlen, Esquire, Ausley and McMullen, P.O. 391, Tallahassee, Florida 32302.
On behalf of ALLTEL Communications Services, Inc.

Wayne D. Knight, Esquire, and Beth Keating, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

This docket was opened to address the deaveraged pricing of UNES, as well as the pricing of UNE combinations and nonrecurring charges. An administrative hearing was held on July 17, 2000, on the Part One issues identified in Order No. PSC-00-2015-PCO-TP, issued June 8, 2000. Part Two issues, also identified in Order No. PSC-00-2015-PCO-TP, were heard in an administrative hearing on September 19-22, 2000.

On May 25, 2001, we issued our Final Order on Rates for Unbundled Network Elements Provided by BellSouth, Order No. PSC-01-

1181-FOF-TP. Within the Order, we addressed the appropriate methodology, assumptions, and inputs for establishing rates for unbundled network elements for BellSouth Telecommunications. We ordered that the identified elements and subloop elements be unbundled for the purpose of setting prices, and that access to those subloop elements shall be provided. We also determined that the inclusion of non-recurring costs in recurring rates should be considered where the resulting level of non-recurring charges would constitute a barrier to entry. In addition, we defined xDSL-capable loops, and found that a cost study addressing such loops may make distinctions based upon loop length. We then set forth the UNE rates, and held that they shall become effective when existing interconnection agreements are amended to incorporate the approved rates, and those agreements become effective. Furthermore, we ordered BellSouth to refile, within 120 days of the issuance of the Order, revisions to its cost study addressing xDSL-capable loops, network interface devices, and cable engineering and installation. The parties to the proceeding were also ordered to refile within 120 days of the issuance of the Order, proposals addressing network reliability and security concerns as they pertain to access to subloop elements.

On June 11, 2001, BellSouth filed its Motion for Reconsideration, requesting that we reconsider our decision in six respects. Also on June 11, 2001, MCI WorldCom, AT&T, Covad, and Z-Tel (Movants) filed a Motion for Reconsideration and Clarification of certain decisions in the Order. Thereafter, on June 26, 2001, BellSouth filed a Motion to Conform Staff Analysis and Cost Model Run to Order No. PSC-01-1181-FOF-TP. By Order No. PSC-01-2051-FOF-TP, issued October 18, 2001, we granted, in part, and denied, in part, BellSouth's Motion for Reconsideration. We also denied the Motion for Reconsideration and Clarification filed by MCI WorldCom, Inc., AT&T Communications of the Southern States, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, and Z-Tel Communications, Inc., as well as BellSouth's Motion to Conform the Staff's Analysis and Cost Model Runs to our decision. On our own motion, we conformed the Commission staff's analysis and cost model runs to our post-hearing decision in this matter.

This proceeding is currently set for hearing on January 30-31, 2002, for us to consider BellSouth's revisions to its cost study submitted as part of its required 120-day filing, and related

matters. Order No. PSC-01-1904-PCO-TP, issued September 24, 2001, and Order No. PSC-01-2189-PCO-TP, issued November 8, 2001, and Order No. PSC-01-2399-PCO-TP, issued December 11, 2001, established the procedure for the hearing regarding BellSouth's 120-day filing.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing, if necessary.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference,

or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- b) Failure of any party to comply with 1) or 2)a) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 80 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 80 words, it must be reduced to no more than 80 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes

the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|--|---------------------|--|
| <u>Direct/Surrebuttal</u> | | |
| John A. Ruscilli (surrebuttal only) | BellSouth | 1(b), 2(a), 2(b) and 5(a) |
| Jerry Kephart | BellSouth | 1(a), 5(a) and 7 |
| James Stegman | BellSouth | 1(a), 1(b), 2(a), 2(b), 4(a), 4(b) and 7 |
| Daonne Caldwell | BellSouth | 1(a), 1(b), 2(a), 2(b), 3(a), 3(b), 4(a), 4(b), 5(a), 5(b), 5(c), 6 and 7 |
| Tommy Williams (surrebuttal only) | BellSouth | 5(a), 5(b) and 5(c) |
| <u>Rebuttal</u> | | |
| Greg Darnell | AT&T & MCI WorldCom | 1(a), 1(b), 2(a), 2(b), 5(a), 5(b) and 5(c) |
| Brian Pitkin | AT&T & MCI WorldCom | 1(a), 1(b), 2(a), 2(b), 4(a), 4(b), 5(a), 5(b), 5(c), 6 and 7 |
| John C. Donovan | AT&T & MCI WorldCom | 1(a), 1(b), 2(a), 2(b), 4(a), 4(b), 5(a), 5(b), 5(c), 6 and 7 |
| Joseph Gillan | AT&T & MCI WorldCom | 1(b) |
| Dr. George Ford | Z-Tel | 1(b) |

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|----------------------|----------------------------|---------------------------------|
| Michael P. Gallagher | Florida Digital Network | 1(a), 1(b), 5(a), 5(b), 5(c) |

VII. BASIC POSITIONS

BELLSOUTH:

BellSouth has filed cost studies in this docket that comply with Order No. PSC-01-1181-FOF-TP. Further, rates should not be changed to reflect the "bottoms-up" approach. The original ordered rates using in-plant factors and structure loading factors are reasonable and accurate.

AT&T & MCI:

UNE rate levels are critically important to local competition. BellSouth's Florida exchange network is fundamentally an inherited resource, which enjoys substantial economies of scale and scope and may still be a natural monopoly in many respects. One of the core reasons that the Telecommunications Act requires incumbents to offer UNEs is so that these inherited scale and scope economies can be *shared* by all providers. Without access to UNEs, BellSouth's exclusive network would provide it essentially an insurmountable advantage. Indeed, the future of local competition is directly related to UNE rates, for these rates will determine whether other entrants are provided access to this critical network resource equal to that which BellSouth provides itself.

Previously in this docket, the Commission ordered BellSouth to re-file its cost model using a "bottoms-up" approach including all assumptions because it was troubled by BellSouth's use of linear in-plant factors that distort UNE costs between rural and urban areas. Yet, BellSouth's new filing still fails to comply with the Commission's FL UNE Order in a number of significant ways. The Commission should require BellSouth to use forward-looking inputs and to run its model using the single most efficient network design, and should set TELRIC-compliant rates as proposed by the ALECs in Exhibit BFP-10. This includes setting the daily usage file rates at zero,

because BellSouth already is adequately compensated by the common cost factor to maintain its daily usage file systems.

The Commission should set TELRIC-compliant rates for BellSouth's technically feasible "hybrid copper/fiber xDSL-capable loop" offering. Finally, the Commission should ensure that inflation is set appropriately rather than rely upon BellSouth's high and unreliable rate.

The Commission has before it an opportunity and an obligation to set UNE rates at a level that is both consistent with TELRIC and allows competitive carriers a meaningful opportunity to compete in the local market. The future of local competition in Florida depends upon it.

SPRINT:

BellSouth should be required to file monthly recurring and non-recurring rates for unbundled network elements which are "cost-based" as required by Section 252(d)(1) of the 1996 Telecommunications Act and as defined and implemented by the FCC's Orders and Rules.

FCTA:

The FCTA intervened in this docket to represent the interests of its members who are certificated ALECs offering service in Florida. Although the FCTA offered testimony and participated more actively in the initial BellSouth phase of this proceeding, cable affiliated ALECs have over time tended to be more facilities-based carriers and rely less on UNEs than many other ALECs. Nevertheless, the FCTA has continued to monitor this docket closely in order to respond to potential issues which may impact its ALEC members. As of the filing date for prehearing statements up to today's prehearing conference, the FCTA does not intend to raise any new issues not raised by the other parties or the Commission. The FCTA seeks to continue to monitor this docket to its conclusion and to reserve its right to file a posthearing brief: (1) to respond to any new issues generated by the evidence at the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

FDN:

The Commission must weigh anticompetitive factors when setting UNE rates. The Commission did not properly or adequately consider the anticompetitive impacts of the UNE rates it approved previously. The current UNE rate levels preclude meaningful competition, especially in the residential market. The new rate structure further impedes competition because Zone 1 wire centers, where lower UNE rates are available, are extremely limited in number - there are 40 fewer Zone 1 wire centers than under interim rates -- and Zone 2 rates are too high to promote competition.

BellSouth's rate proposal for a "hybrid copper/fiber xDSL capable loop" should be rejected. It is improper and impractical to require ALECs to purchase their own dedicated DSLAMs and DS 1 feeders at every BellSouth remote. A modified offering for the subject loop should follow a shared-facilities model such that an ALEC may purchase on an unbundled basis an xDSL capable loop, whether copper or fiber fed, that includes packet switching. Such loops should be available and priced on a line-at-a-time basis.

Z-TEL:

Given the decrease in the number of viable ALECs across the country, and the limited access to capital markets, there is developing a kind of "competition" by states for the attention of remaining ALECs, which must focus on those markets that provide the best prospects for successful competitive entry. For a UNE-P provider, reasonably priced loop rates are a prerequisite. BellSouth's statewide average loop rate is facially suspect, given a comparison of the relationships between costs and rates in Florida and the analogous relationships in other BellSouth states that indicates the Florida loop rate to be excessive.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

- ISSUE 1: a) Are the loop cost studies submitted in BellSouth's 120-day filing compliant with Order No. PSC-01-1181-FOF-TP?
- b) Should BellSouth's loop rate or rate structure, previously approved in Order No. PSC-01-2051-FOF-TP, be modified? If so, to what extent, if any, should the rates or rate structure be modified?

POSITIONS

BELLSOUTH:

- a) Yes. BellSouth accurately reflected the Commission ordered modifications in the shared and common application, which developed the shared and common cost factors. Additionally, the deaveraging of loops was based on the methodology adopted by the Commission and the details provided in Appendix B of the Order.
- b) No. BellSouth believes that the use of implant factors and structure loading factors produces reasonably accurate results. Thus, the ordered rates should remain as is.

AT&T & MCI:

- a) No. In the FL UNE Order, the Commission ordered BellSouth to re-file its BSTLM and BSCC to explicitly model all cable and associated supporting structure engineering and installation placements, instead of using ratios to develop engineered, furnished and installed costs (EFI) as was done in the previous proceeding. The Commission ordered BellSouth to refile its model using a "bottoms-up" approach including all assumptions because it was troubled by BellSouth's use of linear in-plant factors that distort costs between rural and urban areas.

BellSouth's cost model fails to comply with the FL UNE Order in a number of significant ways (see Exhibit JCD-8):

- 1) BellSouth used a linear Engineering Factor;
 - 2) BellSouth's Structure Inputs fail to comply primarily because of its inappropriate treatment of "Miscellaneous Contractor Charges." BellSouth's Structure Inputs also contain a number of other errors; and
 - 3) BellSouth used non-compliant Copper Cable and Fiber Cable Costs.
- b) Yes, BellSouth's loop rate and rate structure should be modified. The Commission should require BellSouth to use forward-looking inputs and to run the model using the single most efficient network design.

As explained more fully in the prefiled testimony of witnesses Pitkin and Donovan, the Commission should:

- 1) Require BellSouth to correct the algorithm errors in the BSTLM;
- 2) Reject BellSouth's loading factors and rely on the corrections developed by witnesses Pitkin and Donovan;
- 3) Reject BellSouth's installation and engineering factors for DLC equipment and rely on the more appropriate factors previously sponsored by witnesses Pitkin and Donovan;
- 4) Reject BellSouth's inputs and rely on witness Donovan's inputs.

The Commission should require these corrections so that the BSTLM would produce results that are consistent with TELRIC and satisfy the FL UNE Order. The appropriate rates are set forth in Exhibit BFP-10, attached to witness Pitkin's prefiled testimony.

SPRINT:

- a) In compliance with the Commission's Order No. PSC-01-1181, FOF-TP, BellSouth was required to provide "bottoms-up," non-linear, Florida-specific input values for its cost study. Using these input values, BellSouth's revised cost study should have eliminated the distortion in the costs of wire centers in urban and rural areas. (See Order, page 294). Unlike its use of system-wide "in-plant" and "loading" factors, such study should comply with the requirements of Section 252(d)(1) of the 1996 Telecommunications Act. Despite BellSouth's desire to continue using "in-plant" and "loading" factors, the Commission should require BellSouth to use the "bottoms-up" approach.
- b) See Sprint's position on Issue 1(a).

FCTA:

- a) No position. Nevertheless, the FCTA seeks to continue to monitor this docket to its conclusion and to reserve its right to file a posthearing brief: (1) to respond to any new issues generated by the evidence at the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.
- b) See position on Issue 1(a).

FDN:

- a) Agree with AT&T, MCI and other ALECs.
- b) BellSouth's loop rates should be reduced to permit meaningful competition in both business and residential markets throughout Florida consistent with the legislative purpose of the Act. Further, a new rate structure should be devised where lower UNE rates are available in more than just a minimal number of BellSouth Zone 1 wire centers. (Gallagher.) Also, agree with AT&T, MCI and other ALECs.

Z-TEL:

BellSouth's statewide average loop rate fails a "sanity test" derived by Z-Tel's Dr. George Ford from the screening tool that the FCC employs to assess whether rates meet the TELRIC standard when reviewing Section 271 applications. The conspicuous departure of BellSouth's Florida UNE loop rate from the pattern of relationships between costs (as measured by HCPM) and rates among states signals a compelling need to critically review the models and inputs to models that led to the establishment of the suspect rate.

STAFF:

Staff has no position at this time.

- ISSUE 2:**
- a) Are the ADUF and ODUF cost studies submitted in BellSouth's 120-day compliance filing appropriate?
 - b) Should BellSouth's ADUF and ODUF rates or rate structure, previously approved in Order No. PSC-01-2051-FOF-TP, be modified? If so, to what extent, if any, should the rates or rate structure be modified?

POSITIONS

BELLSOUTH:

- a) Yes. Even though the Commission's Order did not specifically include these elements in the 120-day requirement, substantial modifications made by the Commission required that these costs for these elements be revised to reflect these modifications.
- b) Yes. The Commission should adopt the rates for DUF costs submitted by BellSouth in its October 8, 2001 cost study. Because the modified rates set forth in that cost study are less than the original rates, the intervening parties would not be adversely affected by a decision to consider the revised cost study.

AT&T & MCI:

- a) No. BellSouth is adequately compensated for its cost to maintain daily usage file systems by the common cost

factor. The creation of a separate DUF charge allows BellSouth to double recover costs and creates an additional barrier to entry.

- b) Yes. Because ADUF and ODUF costs are already being recovered through the common cost factor, the ADUF and ODUF rates previously approved by the Commission should be modified and set at zero.

SPRINT:

- a) No position.
- b) No position.

FCTA:

- a) No position. Nevertheless, the FCTA seeks to continue to monitor this docket to its conclusion and to reserve its right to file a posthearing brief: (1) to respond to any new issues generated by the evidence at the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.
- b) See position on Issue 2(a).

FDN:

- a) Agree with AT&T, MCI and other ALECs.
- b) Agree with AT&T, MCI and other ALECs.

Z-TEL:

For its statement of position on this issue, Z-Tel hereby adopts the position taken by AT&T and WorldCom.

STAFF:

Staff has no position at this time.

- ISSUE 3:**
- a) Is the UCL-ND loop cost study submitted in BellSouth's 120-day filing compliant with Order No. PSC-01-1181-FOF-TP?

- b) What modifications, if any, are appropriate, and what should the rates be?

POSITIONS

BELLSOUTH:

- a) Yes. The UCL-ND fulfills the Commission's requirement that BellSouth determine xDSL nonrecurring costs that exclude Design Layout Record, test point, and order coordination. In addition, the UCL-ND satisfies the Commission's requirements that BellSouth provision SLI loops and guarantee not to roll them onto another facility or convert them to another technology.
- b) The Commission should not use the cost-study filed in this docket to set rates for the UCL-ND element. The Commission should establish rates for the UCL-ND element in Docket No. 960786-TL once inflation is considered.

AT&T & MCI:

- a) No.
- b) As stated in Issue 1(b), the Commission should require BellSouth to rerun its cost model using forward looking inputs and the single most efficient network design. The results of this additional modeling should be used to set rates for the UCL-ND rate element.

SPRINT:

- a) No position.
- b) No position.

FCTA:

- a) No position. Nevertheless, the FCTA seeks to continue to monitor this docket to its conclusion and to reserve its right to file a posthearing brief: (1) to respond to any new issues generated by the evidence at the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

- b) See position on Issue 3(a).

FDN:

- a) Agree with AT&T, MCI and other ALECs.
- b) Agree with AT&T, MCI and other ALECs.

Z-TEL:

No position.

STAFF:

Staff has no position at this time.

- ISSUE 4:**
- a) What revisions, if any, should be made to NIDs in both the BSTLM and the stand-alone NID cost study?
 - b) To what extent, if any, should the rates or rate structure be modified?

POSITIONS

BELLSOUTH:

- a) Adjustments are not required for either the NID cost considered in the BSTLM and to the stand-alone NID cost. However, the stand-alone NID costs should be revised to include exempt material in the stand-alone NID study.
- b) As set forth in Issue 4(a) above, the stand-alone NID cost should be revised to include exempt material. The Commission should adopt the revised rates set forth in BellSouth's modified cost study for NID costs.

AT&T & MCI:

- a) No position. However, because the BSTLM explicitly models the costs of NIDs and drops, BellSouth should be required to exclude those items from the exempt material loading factor. Otherwise, BellSouth double counts these investments.
- b) No position.

SPRINT:

- a) No position.
- b) No position.

FCTA:

- a) No position. Nevertheless, the FCTA seeks to continue to monitor this docket to its conclusion and to reserve its right to file a posthearing brief: (1) to respond to any new issues generated by the evidence at the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.
- b) See position on Issue 4(a).

FDN:

- a) Agree with AT&T, MCI and other ALECs.
- b) Agree with AT&T, MCI and other ALECs.

Z-TEL:

For its statement of position on this issue, Z-Tel hereby adopts the position taken by AT&T and WorldCom.

STAFF:

Staff has no position at this time.

- ISSUE 5:**
- a) What is a "hybrid copper/fiber xDSL-capable loop" offering, and is it technically feasible for BellSouth to provide it?
 - b) Is BellSouth's cost study contained in the 120-day compliance filing for the "hybrid copper/fiber xDSL-capable loop offering appropriate?
 - c) What should the rate structure and rates be?

POSITIONS

BELLSOUTH:

- a) The Hybrid copper/fiber xDSL-capable loop is a UNE that enables ALECs to provide DSL capability to its customers over a facility that is comprised of fiber optic cable in the portion of the loop referred to as loop feeder and copper cable in the portion of the loop referred to as loop distribution. While it is technically feasible for BellSouth to provide a Hybrid copper/fiber xDSL capable loop, the loop requires the installation of a DSLAM in a remote terminal in order to be feasible. The FCC has exempted a DLSAM as a UNE, except where (1) BellSouth has deployed DLCs; (2) has no spare copper loops available to ALECs to support XDSL services; (3) has deployed packet switching capability for its own use; and (4) and does not permit ALECs to deploy DSLAMs at the remote terminal sites. There are currently no situations in Florida where these circumstances exist. Nonetheless, an ALEC can always provide its own DSLAM in a remote terminal.
- b) Yes. BellSouth developed a cost for the "hybrid copper/fiber xDSL capable loop" consistent with the Commission Order.
- c) The Commission should adopt the rates set forth in BellSouth's cost studies.

AT&T & MCI:

- a) BellSouth admits that it is technically feasible for BellSouth to provide its "hybrid copper/fiber xDSL-capable loop" offering. (Kephart Direct, page 3).
- b) No. BellSouth's offering is inappropriate for several reasons.

First, BellSouth's proposal is too rigid because (i) BellSouth only offers to provide this product using a 16-port DSLAM, even though there are many other sizes of DSLAMs, (ii) BellSouth arbitrarily decided that each ALEC must have a dedicated DSLAM, and (iii) BellSouth arbitrarily decided that the offering is only provided

with between 1 and 4 DSLs between the DSLAM and the Central Office and those facilities are dedicated to the ALEC that purchased the DSLAM. Second, ALECs must be able to purchase packet transport at a rate that reflects the economies of scale enjoyed by BellSouth. Third, this offering would cost ALECs about \$150 per month per ADSL. This seriously impedes an ALEC's ability to compete against BellSouth's Fast Access DSL service, which is offered for just under \$50.00 per month. Fourth, the only new rate that should apply to this offering is the DSLAM, which does not comply with TELRIC as proposed.

- c) The only rate that needs to be determined is for the shared use of the DSLAM. The Commission previously has determined all other rate elements necessary to provide this offering.

SPRINT:

- a) No position.
- b) No position.
- c) No position.

FCTA:

- a) No position. Nevertheless, the FCTA seeks to continue to monitor this docket to its conclusion and to reserve its right to file a posthearing brief: (1) to respond to any new issues generated by the evidence at the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.
- b) See position on Issue 5(a).
- c) See position on Issue 5(a).

FDN:

- a) The loop offering BellSouth should be required to provide is an unbundled xDSL capable loop, whether copper or fiber fed, that includes packet switching. It is technically feasible for BellSouth to offer such loops.

- b) No, BellSouth's filing must be rejected. It is improper and impractical to require ALECs to purchase their own dedicated DSLAMs and DS1 feeders at BellSouth remotes, as BellSouth's filing proposes.
- c) BellSouth should be required to resubmit its cost study consistent with a shared-facilities, TELRIC-based methodology, rather than a dedicated facilities network segment basis.

Z-TEL:

No position.

STAFF:

Staff has no position at this time.

ISSUE 6: In the 120-day filing, has BellSouth accounted for the impact of inflation consistent with Order No. PSC-01-2051-FOF-TP?

POSITIONS

BELLSOUTH:

Yes. The cost study filed on October 8, 2001, reflects the impact of inflation based on factors originally filed in this docket.

AT&T & MCI:

No. BellSouth uses inflation rates that are too high as well as unreliable. Moreover, BellSouth's proposed inflation rates use unsupported historical data from 1997, rather than using more recent supportable data, to estimate future inflation.

SPRINT:

No position.

FCTA:

No position. Nevertheless, the FCTA seeks to continue to monitor this docket to its conclusion and to reserve its right to file a posthearing brief: (1) to respond to any new issues generated by the evidence at the hearing and/or properly

raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

FDN:

Agree with AT&T, MCI and other ALECs.

Z-TEL:

For its statement of position on this issue, Z-Tel hereby adopts the position taken by AT&T and WorldCom.

STAFF:

Staff has no position at this time.

ISSUE 7: Apart from Issues 1-6, is BellSouth's 120-day filing consistent with the Orders in this docket?

POSITIONS

BELLSOUTH:

Yes. The cost studies filed by BellSouth incorporate all of the adjustments ordered by the Commission.

AT&T & MCI:

No position.

SPRINT:

No position.

FCTA:

No position. Nevertheless, the FCTA seeks to continue to monitor this docket to its conclusion and to reserve its right to file a posthearing brief: (1) to respond to any new issues generated by the evidence at the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

FDN:

Agree with AT&T, MCI and other ALECs.

Z-TEL:

No position.

STAFF:

Staff has no position at this time.

IX. EXHIBIT LIST

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|-----------------|---------------------|------------------|---|
| Jerry Kephart | BellSouth | _____ (JK-1) | Diagram showing the layout of the Hybrid Copper/Fiber xDSL Capable Loop |
| James Stegman | BellSouth | _____ (JWS-1) | Methodology that instructs the user to refer to the "Media" field when the "SpliceRequired" field contains a "B" |
| Daonne Caldwell | BellSouth | _____ (DDC-1) | Comparison of BellSouth's "bottoms-up" cost study to the revised Commission-ordered rates contained in Appendix A of Order No. PSC-01-2051-FOF-TP |

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|--------------------|---------------------|-----------------|--------------------|
| Daonne Caldwell | BellSouth | _____ | D i a g r a m |
| | | (DDC-2) | depicting the |
| | | | components of |
| | | | the Hybrid |
| | | _____ | Copper/Fiber |
| | | (DDC-3) | Loop |
| | | | Unbundled |
| | | | Network |
| | | | Elements Cost |
| | | | Study |
| | | _____ | BellSouth's |
| | | (DDC-4) | Forecast |
| | | | Telephone |
| | | | Plant Indexes |
| | | | Accounts on |
| | | | Part 32 USOA |
| | | | Basis |
| | | _____ | FL In-Plant |
| | | (DDC-5) | Factor based |
| | | | on Vendor |
| | | | Installation |
| Thomas G. Williams | BellSouth | _____ | D i r e c t |
| | | (TGW-1) | Testimony by |
| | | | Thomas G. |
| | | | Williams filed |
| | | | in Docket No. |
| | | | 010098-TP and |
| | | | dated June 8, |
| | | | 2001 |

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|--------------------|------------------------|-----------------|---|
| Thomas G. Williams | BellSouth | _____ | R e b u t t a l |
| | | (TGW-2) | Testimony by Thomas G. Williams filed in Docket No. 010098-TP and dated July 18, 2001 |
| Gregory J. Darnell | AT&T & MCI WorldCom | _____ | Late - Filed |
| | | (TGW-3) | Exhibit No. 12 for Thomas G. Williams filed in Docket No. 010098-TP and dated August 22, 2001 |
| Gregory J. Darnell | AT&T & MCI WorldCom | _____ | Professional |
| | | (GJD-1) | Experience |
| Brian F. Pitkin | AT&T & MCI WorldCom | _____ | BellSouth |
| | | (GJD-2) | Embedded Cost |
| Brian F. Pitkin | AT&T & MCI WorldCom | _____ | Curriculum |
| | | (BFP-1) | Vitae of Brian F. Pitkin |
| | | _____ | Fiber EF&I |
| | | (BFP-2) | E r r o r |
| | | Confidential | Correction for Underground Fiber Cable |
| | | _____ | Stub Cable |
| | | (BFP-3) | Correction for Underground |
| | | Confidential | Cooper Cable |

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|-----------------|------------------------|-----------------|--------------------|
| Brian F. Pitkin | AT&T & MCI WorldCom | _____ | M a t e r i a l |
| | | (BFP-4) | L o a d i n g |
| | | Confidential | Development |
| | | | Comparison for |
| | | | Underground |
| | | | Metallic Cable |
| | | _____ | Comparison of |
| | | (BFP-5) | Bell South |
| Confidential | Inflation | | |
| | Loading to | | |
| | AT&T-WorldCom | | |
| _____ | DLC-In-Plant | | |
| (BFP-6) | F a c t o r | | |
| Confidential | Development | | |
| _____ | Comparison of | | |
| (BFP-7) | Bell South | | |
| Confidential | Inputs to | | |
| | AT&T-WorldCom | | |
| | Inputs | | |
| _____ | Cooper Labor & | | |
| (BFP-8A) | EF&I Costing- | | |
| Confidential | Underground 25 | | |
| | Gauge | | |
| _____ | Fiber Labor & | | |
| (BFP-8B) | EF&I Costing- | | |
| Confidential | Underground | | |
| Brian F. Pitkin | AT&T & MCI WorldCom | _____ | Pole Costing |
| | | (BFP-8C) | Comparison |
| | | Confidential | |
| | | _____ | Buried EF&I |
| | | (BFP-8D) | C o s t i n g |
| Confidential | Comparison | | |
| _____ | C o n d u i t | | |
| (BFP-8E) | C o s t i n g | | |
| Confidential | Comparison | | |

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|-----------------|------------------------|-----------------|---------------------------|
| Brian F. Pitkin | AT&T & MCI WorldCom | _____ | M a n h o l e |
| | | (BFP-8F) | C o s t i n g |
| | | Confidential | Comparison |
| John C. Donovan | AT&T & MCI WorldCom | _____ | S h a r i n g |
| | | (BFP-9) | Correction for |
| | | Confidential | b u r i e d |
| | | | Structure An |
| | | | Example of |
| | | Rural Zone, | |
| | | N o r m a l | |
| | | T e r r a i n , | |
| | | Backhoe Trench | |
| | | _____ | U n b u n d l e d |
| | | (BFP-10) | N e t w o r k |
| | | | e l e m e n t s |
| | | | Recurring Cost |
| | | | Summary |
| | | _____ | C u r r i c u l u m |
| | | (JCD-1) | Vitae of John |
| | | | C. Donovan |
| | | _____ | A n a l y s i s |
| | | (JCD-2) | o f |
| | | Confidential | B e l l S o u t h |
| | | | A t t a c h m e n t 3 |
| | | | C o n t r a c t o r |
| | | | D a t a |
| | | _____ | P i c t u r e |
| | | (JCD-3) | o f |
| | | | A b o v e G r o u n d |
| | | | C l o s u r e |
| | | _____ | U n d e r g r o u n d |
| | | (JCD-4) | C o n t r a c t L a b o r |
| | | Confidential | |
| | | _____ | A n a l y s i s |
| | | (JCD-5) | o f |
| | | Confidential | B e l l S o u t h |
| | | | C o p p e r C a b l e |
| | | | S p l i c i n g R a t e s |

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|-------------------------|-------------------------------|-------------------------|---|
| John C. Donovan | AT&T & MCI WorldCom | _____ | Splicing Rate |
| | | (JCD-6) | Letter from A M P Corporation |
| | | _____ | Proper Use of Outside Plant Copper Cable Stubs |
| Joseph Gillan | AT&T & MCI WorldCom | _____ | Summary of I s s u e s , R e c o m m e n d a - t i o n s a n d I m p a c t s |
| | | (JCD-8) Confidential | |
| | | _____ | Claimed UNE Costs and R e p o r t e d E x p e n s e s |
| Dr. George S. Ford | Z-Tel | _____ | Relative UNE Penetration as of December 2001 |
| | | (JPG-2) | |
| Michael P. Gallagher | Florida Digital Network | _____ | Relationships of costs and rates |
| | | (MPG-1) | P r e f i l e d D i r e c t T e s t i m o n y i n D o c k e t N o . 010098-TP |

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PENDING DECISIONS BY THE FCC OR COURT THAT MAY HAVE AN IMPACT ON THIS PROCEEDING

The parties have identified no pending decisions by either the Federal Communications Commission or any Court that may have an direct impact on this proceeding.

XI. RULINGS

A. FDN's Motion to Accept Prehearing Statement

On January 4, 2002, Florida Digital Network, Inc. filed a Motion to Accept Prehearing Statement. Therein, Florida Digital Network asks that the Commission accept its prehearing statement one day late. Florida Digital Network indicates that it was unable to timely file its prehearing statement, because its counsel inadvertently failed to calendar the event and as a result, did not realize that the required filing coincided with counsel's vacation. No responses to the motion have been filed.

Upon consideration, FDN's Motion is granted.

B. Network Plus, Inc.

On January 15, 2002, Network Plus, Inc. filed a Motion to Intervene asking to intervene in these proceedings for the specific purpose of monitoring the docket and submitting a post-hearing brief. Hearing no objection from the parties at the prehearing conference, the Motion to Intervene is granted. Pursuant to Rule 25-22.039, Florida Administrative Code, Network Plus, Inc. takes the case as it finds it.

C. ALLTEL'S REQUEST TO BE EXCUSED

Upon request, ALLTEL has been excused from the hearing in this matter.

D. OPENING STATEMENTS

The parties have waived opening statements.

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It is therefore,

ORDERED by Chairman Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Lila A. Jaber, as Prehearing Officer, this 25th Day of January, 2002.



LILA A. JABER
Chairman and Prehearing Officer

(S E A L)

WDK/BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1)

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reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.