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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF KATHY K. BLAKE
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 030300-TP
DECEMBER 19, 2003

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

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony on November 17, 2003, including two exhibits.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to certain policy aspects of the testimonies of Don Wood and Bruce Renard put forth by the Florida Public Telecommunications Association ("FPTA") on November 17, 2003.

1 Q. MR. WOOD (ON PAGE 6, AND PAGES 32-38) AND MR. RENARD
2 (PAGE 8) STATE THAT BELLSOUTH HAS NOT REDUCED ITS
3 INTRASTATE PAYPHONE LINE RATES BY THE AMOUNT OF THE
4 INTERSTATE EUCL. ARE THEY CORRECT?

5
6 A. No. As explained in my direct testimony, BellSouth filed revised intrastate
7 tariffed rates for payphone access line service (GSST Section A7.4), reducing
8 the rate for each of the twelve rate groups by the Interstate End User Common
9 Line (“EUCL”) charge of \$7.13. This revised tariff was filed October 27,
10 2003, and became effective November 10, 2003. As such, Mr. Wood’s and
11 Mr. Renard’s testimony on this point is moot.

12
13 Q. MR. WOOD EMPHASIZES THE FCC’S RULING THAT COST STUDY
14 INPUTS AND ASSUMPTIONS SHOULD BE CONSISTENT WITH COST
15 INPUTS “USED IN COMPUTING RATES FOR COMPARABLE
16 SERVICES TO COMPETITORS.” (PAGE 18) DO BELLSOUTH’S COST
17 STUDIES COMPORT WITH THIS RULING?

18
19 A. Yes. I am having a little difficulty, however, in understanding the FCC’s use
20 of the phrase “to competitors” since BellSouth is exiting the payphone market
21 by the end of this year. In fact, in reviewing the FCC’s *Wisconsin Order*,¹ it

22
23 ¹ See Memorandum Opinion and Order, *In the Matter of Wisconsin Public Service Commission*,
24 Bureau/CPD No. 00-01, Order No. FCC 02-25, 17 FCC Rcd. 2051 (rel. January 31, 2002) (“*Wisconsin*
Order”).

25

1 appears that the foundation for invoking the “new services test” for payphone
2 services offered by the incumbents was because “incumbent LECs may have
3 an incentive to charge their competitors unreasonably high prices for these
4 services.” (*Wisconsin Order*, ¶47) Since BellSouth is no longer a “competitor”
5 for this service, it makes little sense to adhere to this requirement; however, the
6 FCC has not released the incumbents from the process. (See Rebuttal
7 Testimony of Daonne Caldwell for additional discussion of the FCC’s
8 requirements for PTAS rates to be cost-based.)

9

10 Q. ON PAGES 7-8 OF HIS TESTIMONY, MR. WOOD ASSERTS THAT THIS
11 COMMISSION SHOULD ORDER BELLSOUTH TO REFUND AMOUNTS
12 PAID TO BELLSOUTH FOR EUCL SINCE APRIL 15, 1997. DO YOU
13 AGREE?

14

15 A. No. BellSouth complied with the FCC’s Payphone Orders when issued, and
16 complied with this Commission’s order issued on August 11, 1998, setting
17 rates in accordance with the FCC’s New Services Test (“NST”). In the
18 *Wisconsin Order*, the FCC provided additional details related to application of
19 the NST in determining payphone access line rates. The fact that the FCC
20 issued additional clarification in its *Wisconsin Order* did not require Bell
21 Operating Companies (“BOCs”) to automatically change their payphone rates.
22 The telecommunications industry has been in a constant state of change since
23 the 1996 Act. To follow the FPTA’s logic, any time costs change, a BOC
24 should immediately revise its tariff rates. This would lead to an absurd

25

1 situation. For example, any time a state commission issues an order in a
2 generic cost docket, under the FPTA's reasoning, such an order would be
3 obsolete the very next day if any of the BOC's cost study inputs had changed.
4 A BOC is not obligated to voluntarily change rates; such a review of rates must
5 be initiated by the affected party or by the Commission itself. Thus, rates are
6 changed only upon a proper review of all necessary evidence and
7 documentation by the Commission.

8
9 Q. WOULD REQUIRING ANY REFUND CONTRADICT YOUR
10 UNDERSTANDING OF THIS COMMISSION'S POLICY OF NOT
11 PRACTICING RETROACTIVE RATEMAKING?

12
13 A. Yes. As discussed in BellSouth's Motion to Dismiss in this docket (see
14 Exhibit KKB-2 attached to my Direct Testimony), the Commission's authority
15 in setting rates is prospective only. This ruling was established by the Florida
16 Supreme Court in 1968² and was later discussed in detail in Docket No.
17 971663-WS.³ This Commission has consistently recognized that ratemaking is
18 prospective and that retroactive ratemaking is prohibited. Both the
19 Commission's pay telephone access services ("PTAS") Order issued August
20 11, 1998⁴ and its Final PTAS Order issued March 9, 1999⁵ direct the manner in

21 _____
22 ² *City of Miami v. Florida Public Service commission*, 208 So.2d 249, 259 (Fla. 1968).

23 ³ *In re Petition of Florida Cities Water Company*, Order No. PSC-98-1583-FOF-SC, November 25,
1998.

24 ⁴ PAA Order No. PSC-98-1088-FOF-TL in Docket No. 97-281-TL ("*PAA Order*").

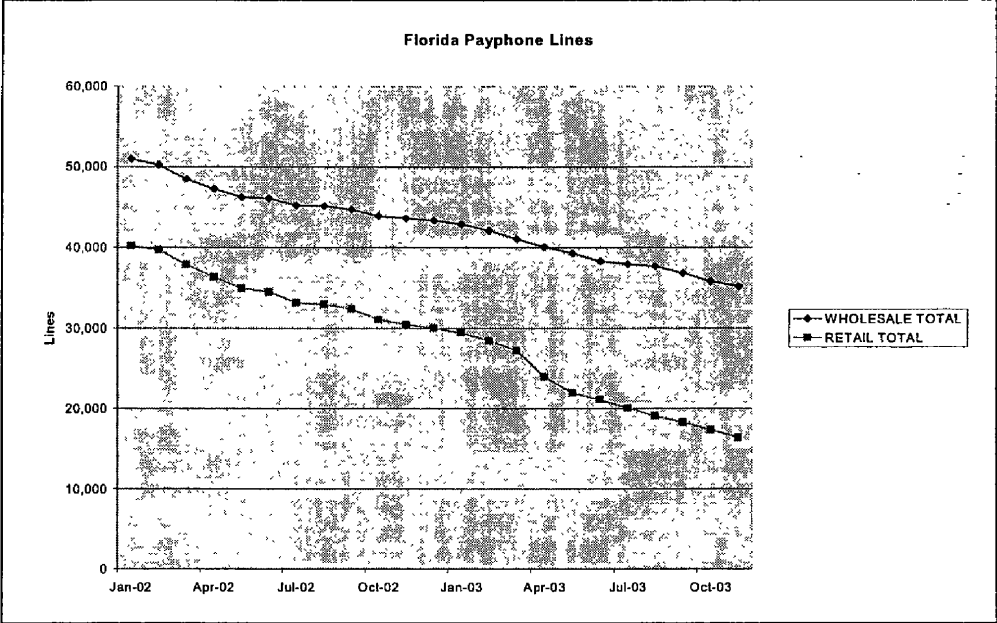
25 ⁵ Order approving the PAA Order, Order No. PSC-99-0493-FOF-TL ("*Final PTAS Order*").

1 which BellSouth is to charge for payphone access lines in Florida. Those
2 orders have not been appealed, revoked, or modified by the Commission.
3 BellSouth should not be required to issue refunds for charging rates that
4 comply with valid and effective Orders of the Commission. Any such refunds
5 would violate the prohibition against retroactive ratemaking.
6

7 Q. ON PAGE 23, MR. WOOD ASSERTS THAT GRANTING THE FPTA'S
8 REQUEST TO LOWER PAYPHONE ACCESS LINE RATES IS IN THE
9 PUBLIC INTEREST. DO YOU AGREE?
10

11 A. No. Mr. Wood asserts that widespread deployment of payphones depends on
12 the ability of payphone providers to obtain PTAS service at cost-based rates.
13 However, data for the last two years for Florida (see chart below) shows that
14 the wholesale payphone market (payphone providers who provide service by
15 purchasing coin UNE-P or resale PTAS service from CLECs – both of which
16 are cost-based rates) as well as the retail market has declined. Therefore, it is
17 not just the level of retail rates that has caused the decline in payphone services
18 – it is a decline in demand. BellSouth should not be required to reduce its
19 tariffed rates simply in an effort to keep more payphone providers in business.
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As evidenced by the above statistics, and by Mr. Wood's lack of support for his allegation, the level of payphone access line rates is not contrary to the public interest.

Q. MR. WOOD (ON PAGES 24-25) AND MR. RENARD (PAGES 9-10) STATE THAT REDUCING PAYPHONE ACCESS LINE RATES IS NECESSARY TO INSURE THE CONTINUED PROVISION OF PAYPHONE SERVICE. ARE THEY CORRECT?

A. Not necessarily. In a market with increasing (or even stable) demand, lowering rates will normally increase the number of providers and/or the volume of services provided. The payphone market, however, is one in which the product is becoming more and more obsolete, and one for which demand is

1 decreasing. Contrary to Mr. Wood's assertions, the facts show that even
2 reducing PTAS rates has not stimulated end-user demand. For example, for
3 South Carolina and Tennessee, two states cited on pages 21-22 of Mr. Wood's
4 testimony as having Commission ordered rates that he indicates are in line with
5 the FCC's four part test,⁶ reduced rates have not stimulated payphone growth.
6 The following chart shows the decline of payphone lines in South Carolina,
7 Tennessee and Louisiana since the PTAS rates in those states were reduced.

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⁶ *Id.*, at ¶¶49-64.

PTAS Retail Line Trends - post NST Rate changes

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<u>SOUTH CAROLINA</u>					
NST Rate effective July 1999					
	Jul-99	Jan-00	Jul-00	Jan-01	Nov-03
All Other PSPs (1)	6,249	7,411	7,412	7,274	3,879
All Other PSPs % Change at 1 YR:			18.6%		
All Other PSPs % Change From NST to Current:					-37.9%

<u>TENNESSEE</u>					
NST Rate effective February 2001					
	Feb-01	Aug-01	Feb-02	Aug-02	Nov-03
All Other PSPs:	11,385	10,560	10,375	9,675	6,652
All Other PSPs % Change at 1 YR:			-8.9%		
All Other PSPs % Change From NST to Current:					-41.6%

<u>LOUISIANA</u>					
NST Rate effective Aug 2001 via Settlement Agreement with LPPA					
	Aug-01	Feb-02	Aug-02	Feb-03	Nov-03
All Other PSPs:	10,123	9,926	8,318	7,621	5,190
All Other PSPs % Change at 1 YR:			-17.8%		
All Other PSPs % Change From NST to Current:					-48.7%

(1) All Other PSPs denotes all Payphone Service Providers other than BellSouth Public Communications

Q. ON P. 7, MR. WOOD REFERS TO AN APRIL 10, 1997 LETTER FROM THE RBOC PAYPHONE COALITION PROMISING TO ISSUE A REFUND BACK TO APRIL 15, 1997 IN THE EVENT ITS PTAS RATES DID NOT

1 CONFORM TO THE NEW SERVICES TEST. HAS BELLSOUTH
2 COMPLIED WITH THAT PROMISE?
3
4 A. Yes. The letter in question is a letter dated April 10, 1997 from Michael
5 Kellogg, counsel for the RBOC Payphone Coalition, of which BellSouth was,
6 and is, a member. As discussed in my direct testimony at page 15, that letter
7 promised that RBOC Payphone Coalition members would provide a credit
8 back to April 15, 1997 in situations where the newly tariffed rates pursuant to
9 the FCC's *Second Waiver Order*,⁷ when effective, were lower than the
10 previous tariffed rates. Because BellSouth's tariffed PTAS rates, which were
11 cost-based and in compliance with the NST and were effective January 19,
12 1999, were not lower than the previously existing PTAS rates, refunds to April
13 15, 1997 were not required. BellSouth has fully complied with the promise we
14 made in April 1997. To imply that the April 15, 1997 letter obligated
15 BellSouth and other BOCs to make retroactive refunds if, at any time in the
16 future, the definition of the NST were to be changed, is completely unfounded.
17 The FCC has, on numerous occasions, issued subsequent guidance on setting
18 rates. For example, the FCC issued its Triennial Review Order,⁸ changing the
19 rules for determining elements that must be sold as Unbundled Network
20 Elements ("UNEs"), and determining rates to be charged for UNEs. However,

21 _____
22 ⁷ See Order, *In the Matter of Implementation of the Pay Telephone reclassification and Compensation*
23 *Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 97-805, ¶13 (rel. April
24 15, 1997)(*"Second Waiver Order"*).

25 ⁸ *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket
Nos. 01-338, 96-98 and 98-147, Order No. FCC 03-36, Rel. August 21, 2003 (*"Triennial Review*
Order" or *"TRO"*).

1 the fact that the rules have changed does not mean that the FCC meant for
2 differences in rates under the new rules and the UNE rates previously charged
3 to be retroactively refunded.
4

5 Q. HAVE OTHER STATE COMMISSIONS HAD SIMILAR REFUND
6 REQUESTS?

7
8 A. Yes. In cases analogous to the FPTA's Complaint, payphone associations in
9 both Ohio and Kansas have initiated regulatory actions before their respective
10 state commissions seeking refunds. Both state commissions denied the refund
11 claims. The Kansas Commission stated:

12 [a]ll Kansas local exchange companies have approved
13 payphone line tariffs in place and there is no evidence they
14 have not been billing payphone providers in accordance
15 with those tariffs. Telephone companies are required to
16 charge the rates set out in their approved tariffs. There is
no basis for retroactive implementation of new tariffs, if we
find the current tariffs must be revised.⁹

17 Likewise, the Ohio Commission "rejects the PAO's request for
18 refunds. Such refunds would constitute unlawful, retroactive
19 ratemaking."¹⁰
20

21 ⁹ Order, *In Re: Matter of the Application of the Kansas Payphone Association Requesting the*
22 *Commission Investigate and Revise the Dockets Concerning the Resale of Local Telephone Service by*
23 *Independent Payphone Operators and Tariffs Pursuant to the FCC's "New services Test"*, Decision
Issued January 31, 2002, Docket No. 02-KAPT-651-GIT (December 10, 2002) (p. 11).

24 ¹⁰ Order, *In Re: the Commission's Investigation into the Implementation of Section 276 of the*
25 *Telecommunications Act of 1996 Regarding Pay Telephone Services*, Case No. 96-1310-TP-COI
(November 26, 2002)

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Q. ON PAGES 44-45 AND IN EXHIBIT DJW-2, MR. WOOD PROVIDES HIS ANALYSIS OF BELLSOUTH'S CURRENT PAYPHONE RATES. WHAT COMMENTS DO YOU HAVE REGARDING THIS ANALYSIS?

A. First, and most importantly, in his "analysis", he did not take into account the fact that BellSouth has already reduced its tariffed PTAS rates by the EUCL. Second, he uses a EUCL of \$7.84, whereas the current EUCL is \$7.13. Attached to my rebuttal testimony is Exhibit KKB-3, which shows the new monthly base rates (reduced by the EUCL) plus the EUCL charged separately. Mr. Wood uses his chart to demonstrate that BellSouth's tariffed rates are "well in excess of cost" for almost all rate groups and zones. However, both BellSouth and the FPTA (Wood, p. 45) agree that a statewide rate is preferable to multiple zone rates. In my direct testimony at page 13, I explained that, based on BellSouth's cost study filed with the testimony of Daonne Caldwell, the new statewide average monthly base rate would be \$17.23. Taking the statewide average UNE-P rate of \$15.12, plus local usage of \$1.93 as used by Mr. Wood, results in a \$17.05 rate. Although BellSouth disagrees that UNE rates and costs are an appropriate benchmark (see rebuttal testimony of Daonne Caldwell at pages 4-5), BellSouth's proposed new monthly base rate is comparable to the rate computed using Mr. Wood's analysis. Also, as stated in my direct testimony, the \$17.23 rate is not out of line with the PTAS rates in the other BellSouth states.

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes.

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Analysis of Current BellSouth Rates for Payphone Access Lines

Current Rates

Rate Group	1	2	3	4	5	6	7	8	9	10	11	12
<u>Current Payphone Charges</u>												
Monthly Base Rate	\$ 12.67	\$ 13.67	\$ 14.77	\$ 15.77	\$ 16.72	\$ 17.77	\$ 18.62	\$ 19.47	\$ 20.27	\$ 20.87	\$ 21.47	\$ 21.97
EUCL	\$ 7.13	\$ 7.13	\$ 7.13	\$ 7.13	\$ 7.13	\$ 7.13	\$ 7.13	\$ 7.13	\$ 7.13	\$ 7.13	\$ 7.13	\$ 7.13
Total Current Monthly Charges	\$ 19.80	\$ 20.80	\$ 21.90	\$ 22.90	\$ 23.85	\$ 24.90	\$ 25.75	\$ 26.60	\$ 27.40	\$ 28.00	\$ 28.60	\$ 29.10
Zone 1												
UNE Rate	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87	\$ 12.87
Quantification of Excess Rate	\$ 6.93	\$ 7.93	\$ 9.03	\$ 10.03	\$ 10.98	\$ 12.03	\$ 12.88	\$ 13.73	\$ 14.53	\$ 15.13	\$ 15.73	\$ 16.23
Zone 2												
UNE Rate	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98	\$ 16.98
Quantification of Excess Rate	\$ 2.82	\$ 3.82	\$ 4.92	\$ 5.92	\$ 6.87	\$ 7.92	\$ 8.77	\$ 9.62	\$ 10.42	\$ 11.02	\$ 11.62	\$ 12.12
Zone 3												
UNE Rate	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73	\$ 27.73
Quantification of Excess Rate	\$ (7.93)	\$ (6.93)	\$ (5.83)	\$ (4.83)	\$ (3.88)	\$ (2.83)	\$ (1.98)	\$ (1.13)	\$ (0.33)	\$ 0.27	\$ 0.87	\$ 1.37

Statewide Average - BellSouth Cost Study	\$ 24.36	Statewise average UNE-P Loop rate	\$ 13.95
Less EUCL	\$ 7.13	Statewise average UNE-P port rate	\$ 1.17
Monthly Intrastate Base Rate	\$ 17.23	Statewise average UNE-P Usage (Per Exhibit DJW-2)	\$ 1.93
			\$ 17.05