

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising
From Federal Communications Commission
Triennial UNE review: Local Circuit Switching
For Mass Market Customers

Docket No. 030851-TP

Filed: January 28, 2004

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SURREBUTTAL TESTIMONY AND EXHIBIT

OF

JOSEPH GILLAN

ON BEHALF OF

THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION

PUBLIC VERSION

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**SURREBUTTAL TESTIMONY AND EXHIBITS OF
JOSEPH GILLAN
ON BEHALF OF
THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION
(PUBLIC VERSION)**

1 **Q. Please state your name and the party sponsoring your surrebuttal testimony.**

2

3 **A. My name is Joseph Gillan. My surrebuttal testimony is being sponsored by the**
4 **Florida Competitive Carriers Association.**

5

6 **Q. What is the purpose of your surrebuttal testimony?**

7

8 **A. The purpose of my surrebuttal testimony is to address a number of**
9 **arguments raised by BellSouth in its rebuttal testimony, as well as to**
10 **respond to FDN's claim that it is a self-provisioning switch trigger in the**
11 **mass market.**

12

13 **Q. What issues does BellSouth raise in its rebuttal testimony?**

14

15 **A. BellSouth's rebuttal testimony generally raises two new issues:**

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
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1 * Although BellSouth acknowledges that state law requires that it offer
2 unbundled local switching in exchange for its profits being deregulated, it
3 implies that the FCC would preempt this aspect of Florida law if asked;
4 and,

5
6 * While recognizing that it has the obligation to offer unbundled local
7 switching under section 271 of the Act in exchange for the opportunity to
8 offer interLATA services, BellSouth suggests that it may unilaterally
9 impose rates on competitors without regulatory restraint.

10
11 However, perhaps the most important point made by BellSouth's rebuttal
12 testimony is what it doesn't say. BellSouth never disagrees that state law
13 requires that it offer unbundled local switching, nor does BellSouth disagree that
14 its rates for unbundled switching must be just, reasonable, non-discriminatory and
15 provide competitors meaningful access in order to comply with section 271 of the
16 Act. Perhaps most importantly, BellSouth never directly challenges the central
17 premise of my direct testimony -- that the TRO grants state commissions the
18 latitude to use judgment in how they apply the trigger analysis. As a result,
19 BellSouth effectively concedes that the Commission may take the actions my
20 testimony recommends, even if its recommendation would be that the
21 Commission not do so.

22

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 Q. Before you address BellSouth's rebuttal testimony in more detail, do you
2 have a preliminary comment?

3

4 A. Yes. It is important that the Commission keep this proceeding in perspective.
5 BellSouth has just been given the approval to raise end user rates by over \$125
6 million (\$1.75 per line, on average) to encourage competition for the mass market
7 residential and small business customer.¹ In this proceeding, however, BellSouth
8 is effectively seeking to raise rates to the CLECs serving that market by (on
9 average) more than \$9.60 per line.² What could possibly be the result except
10 higher rates for everybody? This docket is the "shoe that did not drop" when the
11 ILECs requested higher end-user rates, because the Commission's decision in this
12 proceeding will determine whether those increases become the additional spur to
13 competition that they were intended to be, or merely permanent increases in ILEC
14 prices.

15

16 BellSouth just this past week announced its earnings for the 4th quarter of last
17 year. Even with CLECs having access to unbundled local switching, BellSouth is
18 solidifying its dominance of the mass market throughout the Southeast. In just
19 over a year since it gained approval to offer long distance service, it has achieved
20 a 30% share of the mass market (compared to UNE-P's share, for all CLECs

¹ Source: Exhibit SB1, Docket No. 030869-TL.

² Calculated as the difference between the TELRIC port rate (\$2.41) and BellSouth's proposed section 271 rate (\$14.00), weighted by the 83% of the state where BellSouth has asked for a finding of non-impairment.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 combined, of 10%). UNE-P is the only viable wholesale offering in the mass
2 market and BellSouth understands that its ability to raise end-user rates in Florida
3 would be unchecked if UNE-P were eliminated.

4
5 While there are number of complex issues being debated, the bottom line is that
6 BellSouth is asking this Commission to find, on the basis of the rapidly shrinking
7 analog loop activity of a handful of carriers that in total amounts to less than 1.3%
8 share of the mass market, that UNE-P is not needed in over 83% of the state – all
9 in an environment where BellSouth is raising local rates justified by the claim that
10 it is doing so to encourage competition. If Churchill were alive, one can imagine
11 him remarking that “never has so much been done to so many, based on the
12 evidence of so little.”

13
14 **Q. Does BellSouth’s rebuttal testimony recommend that the Florida**
15 **Commission ignore the fact that the policy of this state favors unbundled**
16 **access (and the competition that it brings)?**

17
18 **A.** No. BellSouth never quite reaches this recommendation. Rather, BellSouth
19 points to the fact that the state's actions must not be “inconsistent with” the
20 federal Act, and then suggests, through selective citation to the TRO, that *any*
21 unbundling action by a state commission would necessarily be in conflict with the
22 federal law:

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 We find nothing in the language of section 251(d)(3) to limit its
2 application to state rulemaking actions. Therefore, we find that the
3 most reasonable interpretation of Congress' intent in enacting
4 sections 251 and 252 to be that state action, whether taken in the
5 course of a rulemaking or during the review of an interconnection
6 agreement, must be consistent with section 251 and must not
7 "substantially prevent" its implementation.... If a decision
8 pursuant to state law were to require the unbundling of a network
9 element for which the Commission has either found no impairment
10 – and thus has found that unbundling that element would conflict
11 with the limits in section 251(d)(2) – or otherwise declined to
12 require unbundling on a national basis, we believe it unlikely that
13 such decision would fail to conflict with and "substantially
14 prevent" implementation of the federal regime, in violation of
15 section 251(d)(3)(C). Similarly, we recognize that in at least some
16 instances existing state requirements will not be consistent with
17 our new framework and may frustrate its implementation. It will
18 be necessary in those instances for the subject states to amend their
19 rules and to alter their decisions to conform to our rules.³
20

21 **Q. Has BellSouth cited the TRO correctly?**

22
23 **A. No, not entirely. BellSouth left out the important third sentence in the cited**
24 **passage that reads:**

25 Parties that believe that a particular state unbundling obligation is
26 inconsistent with the limits of section 251(d)(3)(B) and (C) may
27 seek a declaratory ruling from this Commission.⁴
28

29 The omitted sentence that BellSouth did not want the Commission to consider is
30 the one which establishes the process by which a claim of preemption should be
31 tested. Significantly, the process does not direct state commissions generally

³ Ruscilli Rebuttal Testimony, page 3 (partially citing TRO ¶¶ 194-195).

⁴ TRO ¶ 195.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 (much less the Florida Commission specifically) to ignore state law or the policy
2 choices made by the legislative branch. Rather, it sets forth a defined process
3 whereby a specific state unbundling obligation may be challenged through a
4 request for a declaratory ruling. Importantly, BellSouth has never asked that the
5 unbundling obligations set out in Chapter 364, Florida Statutes, be preempted by
6 the FCC, although it has certainly shown itself to be familiar with the process.⁵

7
8 **Q. Do you believe that BellSouth's unbundling obligations under Chapter 364**
9 **are "inconsistent with" or "would substantially prevent implementation of"**
10 **the federal regime?**

11
12 A. No, not at all. Chapter 364 may require *more* of BellSouth than the federal Act;
13 but that is, in part, because Chapter 364 grants BellSouth *additional* freedoms (the
14 deregulation of its profits) that are not addressed by the federal Act. The
15 relationship between the unbundling obligations of Chapter 364 and the federal
16 Act cannot be evaluated in isolation; these unbundling provisions are part of a
17 package of reforms that included the reduced regulation of BellSouth. There is
18 simply no basis to conclude that the FCC would (or could) find that the balance of
19 unbundling/deregulation in Chapter 364 is inconsistent with the federal Act,

⁵ See BellSouth Emergency Request for Declaratory Ruling, File No. 03-251, December 9, 2003.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 which may explain why BellSouth would rather suggest a federal preemption than
2 request one.

3
4 **Q. Does the federal Act similarly scale unbundling obligations to the grant of**
5 **additional freedoms?**

6
7 A. Yes. Even under the federal Act, BellSouth is subject to varying layers of
8 unbundling obligations, recognizing that where additional benefits (to BellSouth)
9 or harms (to consumers) are possible, that additional unbundling obligations are
10 appropriate. For instance, as an incumbent local exchange carrier, BellSouth is
11 obligated to unbundle wherever an entrant would be “impaired” without access to
12 a network element (section 251). Moreover, BellSouth is subject to additional
13 unbundling obligations under section 271 of the Act in recognition of the special
14 threat that its interLATA entry holds:

15
16 These additional requirements [the unbundling obligations in the
17 competitive checklist] reflect Congress’ concern, repeatedly
18 recognized by the Commission and courts, with balancing the
19 BOCs’ entry into the long distance market with increased presence
20 of competitors in the local market.... The protection of the
21 interexchange market is reflected in the fact that section 271
22 primarily places in each BOC's hands the ability to determine if
23 and when it will enter the long distance market. If the BOC is
24 unwilling to open its local telecommunications markets to
25 competition or apply for relief, the interexchange market remains
26 protected because the BOC will not receive section 271
27 authorization.⁶

⁶ TRO ¶ 655.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

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2

Chapter 364 is structured in much the same way that section 271 is structured – in exchange for additional freedoms, BellSouth must comply with additional obligations. What is remarkable about section 271 and Chapter 364 is that BellSouth has managed to arrange for unbundling to be part of two *quid quo pros* – BellSouth agreed to unbundle its network in exchange for deregulated profits (Chapter 364), and it agreed to unbundling once again in order to offer interLATA long distance service (section 271). Having traded the same obligation twice, BellSouth has the audacity to now suggest that its *quid* should be preempted, while its *quo* should remain intact.

10

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Q. Has BellSouth's view of federal preemption recently been addressed by a court?

22

23

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 A. Yes. BellSouth appealed a decision by the Kentucky Public Service Commission
2 that (similar to the decision of this Commission) prohibited BellSouth from
3 refusing to provide DSL service to customers obtaining voice service from a
4 CLEC. (This is the same issue that BellSouth has asked the FCC to address
5 through a declaratory ruling). Certainly, the federal district court did not agree
6 with BellSouth's views on federal preemption:

7
8 It [the Kentucky Commission's requirement] establishes a
9 relatively modest interconnection-related condition for a local
10 exchange carrier so as to ameliorate a chilling effect on
11 competition for local telecommunications regulated by the
12 [Kentucky] Commission. The PSC order does not substantially
13 prevent implementation of federal statutory requirements and thus,
14 it is the Court's determination that there is no federal preemption.⁷
15

16 **Q. Mr. Ruscilli opposed your recommendation that the Commission establish a**
17 **proceeding to address any section 271 pricing disputes.⁸ Do you agree with**
18 **his analysis?**

19
20 A. No. BellSouth's is essentially attempting to obtain through state inaction the
21 equivalent of federal forbearance of its section 271 obligations. As noted earlier,
22 the TRO recognizes that Congress intended that the requirements of section 271
23 would provide additional protections needed when an RBOC is able to offer

⁷ Memorandum Opinion and Order, Civil Action No. 03-23-JMH, BellSouth
Telecommunications v. Cinergy Communications Company, United States District Court, Eastern
District of Kentucky, December 29, 2003.

⁸ Ruscilli Rebuttal, page 6.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 interLATA service. These protections would be meaningless if BellSouth could
2 unilaterally establish prices for section 271 network elements. Yet, this is what
3 BellSouth seems to be suggesting, by claiming that it has the right to set the rates:

4
5 As such, it is appropriate for BellSouth to set its rate according to
6 those market conditions through negotiation with the CLEC.⁹
7
8

9 Exactly what negotiations is BellSouth referring to here? Under the federal Act,
10 CLECs have the right to have disputes arbitrated before state commissions where
11 negotiations fail. Yet here, BellSouth is opposing the Commission's involvement,
12 suggesting that BellSouth should "set the rate." The issue has never been whether
13 BellSouth and the CLECs should try and negotiate (a triumph of hope over
14 experience); the relevant issue is only how should any dispute be resolved.
15

16 **Q. Is there any basis to expect the negotiations for section 271 rates to be non-**
17 **controversial?**

18
19 **A.** No. Consider the prices that BellSouth is attempting to impose on CLECs even
20 today in areas where the FCC's legacy "3-line rule" applies:
21

⁹ Ruscilli Rebuttal, page 6.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1

Table 1: BellSouth's Claimed "Market" Rate

Rate Element	TELRIC	Proposed 271 Rate ¹⁰	Increase
Recurring Port Rate	\$2.41	\$14.00	481%
NRC	\$0.10	\$41.50	40,586%

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14

If there were actually a competitive wholesale market, then this docket would not have occurred. Given the financial repercussions of losing the revenue from more than 600,000 UNE-P lines if the lines could *actually* move elsewhere, BellSouth would clearly have tried to retain these lines as wholesale services. As I show below, the TELRIC rates paid by CLECs for unbundled local switching (and thus the additional revenues that BellSouth earns from UNE-P in contrast to UNE-L) should make the offering highly desirable if the alternative were more empty switch ports and less revenue.¹¹ The problem is that BellSouth understands that there *are* no wholesale alternatives and that the result of its efforts to eliminate UNE-P would be for most (if not all) of these lines to return to BellSouth as retail customers.

¹⁰ BellSouth SGAT Attachment A (Price List) filed with Florida PSC on September 11, 2002.

¹¹ It is important to understand that the issues that surround TELRIC pricing are loop-related, and do not apply to switching. For instance, a heavy reliance on "actual network topology" is already a feature of the TELRIC process for local switching because the number of wire centers (and, therefore, the number and location of switches) is fixed in the TELRIC model. Consequently, the "actual topology of the ILEC network" is already considered in determining TELRIC switching costs and the side-debate about the appropriateness of this aspect of TELRIC plays no role in evaluating whether switching prices are reasonable.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 **Q. Do you believe that BellSouth’s proposed section 271 rates comply with the**
2 **pricing standard adopted by the FCC?**

3
4 A. No. The FCC has determined that the appropriate pricing standard that should be
5 applied to judge 271 rates should be that the rates be “just and reasonable” and
6 “provide meaningful access.”¹² Although a different pricing standard may apply
7 to 271 network elements (than applies to elements unbundled under section 251),
8 a different process to adjudicate the rate should not. As with its other rate-setting
9 duties (TELRIC), the most efficient approach is an open proceeding in which
10 multiple parties may participate. The Commission should have no expectation
11 that BellSouth will voluntarily offer rates that enable its competitors to win (what
12 would otherwise be) its retail customers. As such, the wisest course is to open a
13 proceeding to address the disputed rates.

14
15 **Q. BellSouth claims that its unbundled local switching rate is subsidized.¹³ Is**
16 **there any evidence that this is the case?**

17
18 A. None. First, as BellSouth argued as recently as last year, TELRIC-based rates are
19 above forward-looking incremental cost and, as such, are not subsidized:
20

¹² TRO ¶ 663.

¹³ Ruscilli Rebuttal, page 11.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 Cross-subsidization is measured using forward-looking
2 incremental costs, not historical accounting costs.... Even
3 reasonable allocations of fixed costs or common overhead costs to
4 a service have no role in a subsidy test...¹⁴
5

6 ***

7 The fact that TELRIC includes an allocation of shared fixed and
8 common costs means that the TELRIC-based UNE price would be
9 too high for a price floor.¹⁵
10

11 Thus, even BellSouth agrees that TELRIC-based UNE rates for local switching
12 are not being subsidized. Moreover, there is ample evidence that BellSouth's
13 UNE switching rates are substantially above its embedded costs, as reflected in its
14 ARMIS filings:
15

Table 2: BellSouth's Average Embedded Switching Cost

Cost Category	2002 ARMIS	Per Line
Central Office Switching Expense	\$75,463	\$1.06
Switching Share of Depreciation/Amortization ¹⁶	\$160,708	\$2.25
Average Embedded Cost	\$236,171	\$3.31
Average SGAT Rate (including usage) ¹⁷		\$7.62
Contribution from SGAT Based Price		130%

16
¹⁴ Rebuttal Testimony of William Taylor on behalf of BellSouth, Docket Nos. 02-0119-TP and 020578-TP, filed November 25, 2002 ("Taylor Rebuttal"), page 18.

¹⁵ Taylor Rebuttal, Page 6.

¹⁶ ARMIS does not separately assign depreciation cost to switching. However, Telephone Plant in Service (TPIS) is separately reported for central office switching and the ratio of Switching TPIS to Total TPIS was used to estimate that portion of BellSouth's 2002 depreciation that can be allocated to switching.

¹⁷ Average TELRIC rate is calculated based on BellSouth's average usage per line (as reported in ARMIS 43-04, Dial Equipment Minutes of Use) of 3,238 minutes per line.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 As Table 2 above shows, the TELRIC-based SGAT rates for unbundled local
2 switching already cover embedded costs and provide a contribution to BellSouth's
3 joint and common costs (and provide a return) of more than 130%.¹⁸ Moreover,
4 BellSouth's SGAT rates include a voluntary reduction from its Commission-
5 approved UNE-rates (which produce an average revenue of \$8.54 per switch port
6 and a contribution of nearly 160%). There is no basis for BellSouth's claim that
7 it is not being adequately compensated for unbundled local switching in Florida –
8 if anything, its rates exceed just and reasonable levels when judged by its
9 embedded cost.

10
11 **Q. Has BellSouth revealed how much revenue it gets from the switch-related**
12 **charges that it imposes on CLECs in Florida?**

13
14 A. Yes. The Commission should appreciate that when a carrier leases UNE-P, in
15 addition to paying for the loop, the CLEC also pays BellSouth for local switching,
16 shared transport and the billing records it needs to offer service. According to
17 Exhibit No. ___ JPG-11 (attached),¹⁹ BellSouth collects (on average) Begin
18 Confidential *** [REDACTED] *** End Confidential per month per UNE-P line.²⁰

19

¹⁸ Contribution is calculated as (Revenues-Expenses)/Expenses.

¹⁹ BellSouth Response to FCCA 2nd Set of Interrogatories, Item No. 24.

²⁰ Although Exhibit No. _____ JPG-11 asked BellSouth to provide only its switch-related revenues, the magnitude of the answer suggests that it also included loop charges.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 **Q. Should/ the Commission expect a wholesale market for unbundled local**
2 **switching to serve mass market customers?**

3
4 A. No, certainly not in the near term. The fundamental predicate to a competitive
5 wholesale market is the ability for CLEC-switches to access loops in a manner
6 that is economically equivalent to the manner available to BellSouth. BellSouth's
7 switching is collocated with loop facilities and generally pre-wired to the outside
8 plant. As such, customers can be electronically migrated between BellSouth and
9 the CLEC (and back to BellSouth or to another CLEC) when wholesale switching
10 is leased from BellSouth. No external switch (that is, a CLEC-owned switch) has
11 this access to BellSouth's loop facilities. These problems are systemic and, as a
12 practical matter, can only be corrected through a redesign of the local network
13 that may not be warranted for analog POTS service in an era where most new
14 investment is likely to be packet-oriented.²⁰

15
16 **Q. BellSouth also opposes your proposal for a two-year quiet period, arguing**
17 **that you are attempting to extend UNE-P as long as possible.²¹ How do you**
18 **respond?**

²⁰ This would suggest that it may be wiser to *prevent* the same type of discriminatory access arrangements from emerging for packet-based services, than it is to devote resources to *fixing* those problems for analog-based services (which are largely fixed already through access to unbundled local switching). The task of creating an open packet-access network, however, is made more complicated by the FCC's decision to limit unbundling obligations for packet loops.

²¹ Ruscilli Rebuttal, page 6.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 A. As my direct, rebuttal and surrebuttal testimony (above) makes clear, BellSouth is
2 obligated to provide UNE-P under section 271 of the Act indefinitely (or at least
3 until the FCC decides to forebear from holding BellSouth to its terms), and is
4 obligated to offer it under state law until Chapter 364 is revised. The rationale for
5 the recommendation is not so much to extend the availability of UNE-P (which
6 must be offered in any event, at least for the foreseeable future), as much as it is
7 to reduce BellSouth's advantage from perpetual litigation. The FCC clearly gave
8 the states the latitude to establish filing windows to manage their resources – and
9 the resources of the industry – more effectively, and the Commission should do so
10 here.

11
12 **Q. Mr. Ruscilli claims that you are recommending a statewide market.²² Is this**
13 **true?**

14
15 A. No. In fact, as I make clear in my rebuttal testimony, I recommend that the
16 Commission use the LATAs as the area for its impairment inquiry. What I was
17 emphasizing in my direct testimony, however, was that the mass market
18 competition that is possible with UNE-P is statewide, and that what the
19 Commission is jeopardizing through an incorrect decision is that statewide choice.

20

²² Ruscilli Rebuttal, page 8.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 Mr. Ruscilli goes on to suggest that the Commission need not worry about
2 removing local switching in some exchanges, because “UNE-P itself will remain
3 in place in those markets where relief is not granted.” This might be true in a
4 “regulatory sense,” but it is not likely to be true in a real sense. The statewide
5 competition that the Commission sees today is the product of statewide UNE-P
6 availability – in urban areas, in suburban areas and in rural areas. This
7 competition is linked – that is, the ability of carriers to serve high cost rural areas
8 is tied to their ability to compete in less costly urban and suburban areas as well.

9
10 If the Commission makes the mistake of redlining any part of the state, the impact
11 of that decision is likely to extend beyond the redlined area to other parts of the
12 state as well. It is a mistake to think that the Commission can punch “holes” in
13 the mass market and expect it to operate efficiently.

14
15 **Q. Dr. Aron claims that you are recommending that the Commission “ignore**
16 **the plain language” of the FCC’s rules in your comments regarding the**
17 **potential deployment analysis.²³ How do you respond?**

18
19 **A. Dr. Aron’s exaggerates my testimony. The point that I was making is that the**
20 **Commission should approach with skepticism testimony (such as BellSouth’s**
21 **testimony here) that claims that actual investors “got it wrong,” while an**

²³ Aron Rebuttal, page 38.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 incumbent-sponsored model here about CLEC profitability will “get it right.” If
2 BellSouth used the BACE model to plan its entry out-of-region, then (at least in
3 *those* states) it may be a useful tool. But there is no reason to think it makes sense
4 here.

5
6 I note, moreover, that Dr. Aron has not demonstrated any particular skill at
7 predicting, in real time, which CLEC models would be most successful. In an
8 affidavit she filed in the Michigan 271 proceeding, Dr. Aron provided her
9 prediction of the market:

10
11 While some business models proved to be flawed and
12 unsustainable, a surprising variety are demonstrating to investors
13 their possibility for success, at least as an entry strategy. The
14 chronicles of the (so-far) successful CLECs prove interesting case
15 studies about the possibility of a variety of approaches to
16 competitive entry. Earlier I mentioned that four such CLECs are
17 McLeodUSA, Time Warner Telecom, Allegiance Telecom, Inc.,
18 and possibly XO Communications. Remarkably enough, each of
19 these CLECs exhibits a distinctly different entry strategy. One
20 firm, McLeodUSA, used and continues to use resale as an initial
21 entry method. Time Warner Telecom and XO Communications
22 use substantially their own self-provisioned networks, with Time
23 Warner focusing on larger business in the US, and XO on smaller
24 and medium-sized businesses in both domestic and Western
25 European markets. The success of these firms, which have been
26 called the “four horsemen” of the CLEC world, demonstrates that
27 each of the entry paths provided for by TA96 can be used
28 successfully by efficient firms.²⁴
29

²⁴ Reply Affidavit of Dr. Debra Aron, on behalf of Ameritech Michigan, Case No. U-12320, July 30, 2001, page 12.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 The CLECs that Dr. Aron pointed to as the “model CLECs” just a few short years
2 ago, however, have been far less successful than Dr. Aron expected, with three of
3 the CLECs – XO, McLeod and Allegiance – all declaring bankruptcy. The only
4 CLEC to not declare bankruptcy – Time Warner Telecom – does not compete in
5 the mass market, as even BellSouth agrees.²⁵

6
7 **Q. Have you also reviewed FDN’s rebuttal testimony where Mr. Gallagher**
8 **claims that FDN is a self-provisioning switch trigger in the mass market?**

9
10 **A.** Yes. To begin, the FCCA has only recently served discovery on FDN to gather
11 additional information to test Mr. Gallagher’s claims. As I indicated in my
12 rebuttal testimony, when determining whether a carrier should be considered a
13 switch trigger, “the key consideration to be examined by state commissions is
14 whether the providers are currently offering and able to provide service, and are
15 likely to continue to do so.”²⁶ I also explained, however, that while this is the
16 “key consideration,” it should also be the last consideration that the Commission
17 should examine. After all, looking inside a CLEC to determine whether it is
18 likely to continue in operation is both time consuming and potentially intrusive,
19 and should only be done if necessary.

20

²⁵ BellSouth withdrew its claim that Time Warner was a self-provisioning mass market switch trigger.

²⁶ TRO ¶ 500.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 **Q. Should the Commission investigate FDN to determine whether it is likely to**
2 **continue to offer mass market services?**

3
4 A. No, not at this time. First, it has not yet been determined that FDN is, in fact,
5 offering mass market services. Mass market services are commonly sold on a
6 month-to-month basis, and it may be that FDN's services are contract based and
7 do not qualify.

8
9 In addition, it takes three self-provisioning switch trigger companies to remove
10 unbundled switching in a market, and FDN (even if it were found to meet all the
11 criteria) would not, by itself, cause there to be any change in UNE availability.
12 Because there would be no effect (at this time) of the Commission rendering a
13 final judgment on FDN, it is not necessary to fully determine whether it is a self-
14 provisioning switch trigger.

15
16 If the time comes where there are two other providers, however, then it will be
17 necessary for the Commission to determine whether FDN is "likely to continue"
18 and it can conduct the appropriate investigation then.

19
20 **Q. Based on your review thus far, would a Commission review of whether FDN**
21 **can satisfy the "likely to continue" standard be necessary (if there were two**
22 **other valid switch triggers and thus FDN's status would be determinative)?**

23

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

1 A. Yes. As the Commission may recall, FDN had asked the Commission for an
2 order prohibiting BellSouth from reducing its rates by more than 10%.²⁷ This
3 fact, while not probative, does suggest that FDN's financial security is tenuous.
4 In addition, my review of BellSouth's response to AT&T's Interrogatory 125
5 (which was the subject of my supplemental rebuttal testimony) indicated that
6 many CLECs are seeing declining mass market volumes. The effect of this trend
7 must be considered before the Commission could determine whether FDN should
8 be certified as a self-provisioning switch trigger.

9

10 **Q. What do you recommend?**

11

12 A. At this point, I believe the Commission should reach a "no finding" concerning
13 FDN's status as a self-provisioning switch trigger. Before the Commission can
14 certify that FDN qualifies, it must satisfy the "key consideration" that FDN is, in
15 fact, likely to continue operations. There is no reason to undertake this
16 examination at this time (and FDN may be disqualified on other grounds thereby
17 rendering it unnecessary).

18

19 **Q. Does this conclude your surrebuttal testimony?**

20

21 A. Yes.

²⁷ Docket Nos. 020119-TP, 020578-TP, Gallagher prefiled direct testimony at page 15.

BellSouth Telecommunications, Inc.
Florida Public Service Commission
Docket No. 030851-TP
FCCA's 2nd Interrogatories
November 10, 2003
Item No. 24
Page 1 of 1

REQUEST: For the most recent quarter for which the information is available, provide the:

- a. Total number of UNE-P lines in Florida;
- b. Total billed revenues for unbundled local switching, shared transport and any charges for call detail records/access records billed UNE-P carriers in Florida.

RESPONSE: a. As of September 30, 2003, there were 617,494 UNE-P lines in Florida.

- b. This information is proprietary and is being provided subject to the terms of the non-disclosure agreement in this proceeding.

Total billed revenue for unbundled local switching and shared transport:

Jul 2003
Aug 20003
Sept 2003

[REDACTED]
[REDACTED]
[REDACTED]

BellSouth does not have its revenue information broken down to the detail needed to exclude call detail records/access records from other revenues.

RESPONSE PROVIDED BY: Craig Williard
David H. Wood

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PUBLIC Surrebuttal Testimony and Exhibit of Joseph Gillan on behalf of the Florida Competitive Carriers Association has been provided by (*) hand delivery, (**) email and U.S. Mail this 28th day of January 2004, to the following:

(*) (**) Jeremy Susac, Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

(**) Susan Masterton
Sprint Communications Company
1313 Blairstone Road
Post Office Box 2214
MC: FLTLHO0107
Tallahassee, Florida 32301

(**) Donna Canzano McNulty
MCI WorldCom
1203 Governors Square Boulevard
Suite 201
Tallahassee, Florida 32301

(**) Norman H. Horton, Jr.
215 South Monroe Street
Tallahassee, Florida 32302-1876

(**) Tracy Hatch
AT&T Communications of the
Southern States, LLC
101 North Monroe Street
Suite 700
Tallahassee, Florida 32301

(**) Michael Gross
Florida Cable Telecommunications
246 East 6th Avenue
Tallahassee, Florida 32302

(**) Matthew Feil
Florida Digital Network, Inc.
390 North Orange Avenue, Suite 2000
Orlando, Florida 32801

(**) Jeffrey J. Binder
Allegiance Telecom, Inc.
1919 M Street, NW
Washington, DC 20037

(**) Floyd R. Self
Messer, Caparello & Self
215 South Monroe Street, Suite 701
Tallahassee, FL 32301

(**) Nanette Edwards
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, Alabama 35802

(**) Jake E. Jennings
Senior Vice-President
Regulatory Affairs & Carrier Relations
NewSouth Communications Corp.
NewSouth Center
Two N. Main Center
Greenville, SC 29601

(**) Jon C. Moyle, Jr.
Moyle, Flanigan, Katz, Raymond
& Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

(**) Rand Currier
Geoff Cookman
Granite Telecommunications, LLC
234 Copeland Street
Quincy, MA

(**) Andrew O. Isar
Miller Isar, Inc.
2901 Skansie Avenue, Suite 240
Gig Harbor, WA 98335

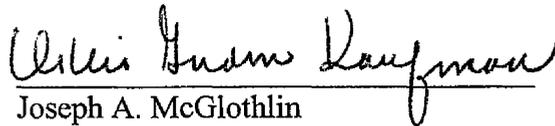
(**) Scott A. Kassman
FDN Communications
390 North Orange Avenue
Suite 2000
Orlando, FL 32801

(**) Thomas M. Koutsky
Vice president, Law and Policy
Z-Tel Communications, Inc.
1200 19th Street, NW Suite 500
Washington, DC 20036

(**) Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256

(**) Rabinai Carson
Xspedius Communications
5555 Wingham Blvd., Suite 3000
O'Fallon, MO 63366-3868

(**) Charles J. Beck
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400



Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525
(850) 222-5606 (fax)
jmcglothlin@mac-law.com
vkaufman@mac-law.com

Attorneys for Florida Competitive
Carriers Association