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BELLSOUTH TELECOMMUNICATIONS, INC.
SURREBUTTAL TESTIMONY OF JOHN A. RUSCILLI
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 030851-TP
JANUARY 28, 2004

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

A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director – Policy Implementation and Regulatory Compliance for the nine-state BellSouth region. 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 and three exhibits on December 4, 2003 and rebuttal testimony and one exhibit on January 7, 2004.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY AND HOW HAVE YOU ORGANIZED IT?

A. My surrebuttal testimony addresses numerous comments contained in the rebuttal testimony filed by other witnesses in this proceeding on January 7, 2004.

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In the first section of my testimony, I make some general observations regarding the rebuttal testimony filed in this proceeding. I then walk through each step of the investigation that the Federal Communications Commission (“FCC”) asked the state commissions to undertake to determine whether CLECs are impaired without unbundled local switching – namely, in this proceeding established by the Florida Public Service Commission (“Commission”), to determine the definition of the geographical market and the mass market/enterprise crossover (Issues 1 and 2), the application of the triggers and potential deployment tests (Issues 4 and 5), and the approval of a batch cut process (Issue 3) – and discuss the remarks of other witnesses who have filed rebuttal testimony relevant to each issue. I highlight areas of agreement and summarize rationales for BellSouth’s positions where disagreement exists. More detailed arguments can be found in the testimonies of other BellSouth witnesses, who I will refer to as appropriate. As no one has presented meaningful rebuttal of my original discussion of Issue 6, the transitional use of unbundled switching, I do not discuss this topic further here.

GENERAL OBSERVATIONS

- Q. ARE YOU FAMILIAR WITH THE REMARKS OF OTHER WITNESSES WHO HAVE FILED REBUTTAL TO BELLSOUTH’S DIRECT TESTIMONY?
- A. Yes. I have studied the testimonies of the numerous witnesses who have filed rebuttal testimony in this proceeding, including that on behalf of AT&T, the FCCA, FDN, MCI, Sprint, Supra, and the Citizens of the State of Florida.

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Q. WHAT IS YOUR GENERAL IMPRESSION OF THE REBUTTAL TESTIMONY?

A. I would make three general observations. First, there seems to be a general tendency toward selective obfuscation. That is, although the FCC has left some issues to the interpretation of this Commission, there are other issues – such as the application of the triggers tests or the type of CLEC to be modeled in the potential deployment test – on which the *TRO* is crystal clear. Although one would expect there to be legitimate differences of opinion where interpretation is required, I find an unfortunate tendency to cloud issues where clarity has been provided by the FCC. As I will discuss below, Drs. Staihr, Johnson and Bryant and Messrs. Gillan and Bradbury are all particularly prone to this, creating unnecessary complication where none is required, presumably because they do not like the clear direction given by the *TRO*.

Second, there seems to be substantial disagreement amongst the parties attacking BellSouth’s positions: some find BellSouth’s suggested market definition too small, others find it too large; some find the BACE model too sensitive to inputs, others too insensitive; some claim that BellSouth has counted the wrong trigger candidates, but then admit in other forums (notably the current appeal from the FCC’s *TRO* order pending in the courts) that these companies (the cable companies) can be counted. To me, this lack of consensus supports my conviction that in areas where judgments need to be made, and where legitimate differences

1 of opinion are therefore to be expected, BellSouth has proposed reasonable
2 middle-ground positions that this Commission can feel comfortable adopting.

3
4 Finally, there are several witnesses (e.g., Messrs. Wood and Gillan) who seek to
5 downplay the responsibility that this Commission has to determine where
6 impairment exists and where it does not. They imply that the *TRO*'s presumption
7 of impairment for mass-market switching based on aggregate, nationwide data
8 shuts the door to a finding of non-impairment based on data reflecting local
9 market conditions. In fact, nothing could be farther from the truth. The whole
10 point of devolving responsibility to the states is so that commissions such as this
11 one can use their knowledge to conduct the granular decision making that an
12 important issue such as this deserves. Indeed, as the FCC itself explained in their
13 brief to the DC Circuit Court of Appeals: "In making certain national findings of
14 impairment, the Commission also recognized that the record before it was not
15 sufficiently detailed to support the nuanced decisionmaking that *USTA* required.
16 To address those situations – involving, for example, local circuit switching, high
17 capacity local loops, and dedicated transport – the Commission enlisted state
18 commissions to gather and evaluate information relevant to impairment in their
19 states. These very specific delegations were reasonably designed to ensure
20 accurate and nuanced analyses of impairment on a market-specific basis." (Brief
21 for Respondent at 21, *USTA v. FCC*, Case No. 00-1012 (DC Cir).) (Emphasis
22 added). Therefore, if one believes what the FCC has said, to suggest all this
23 Commission has to do is apply nationwide CLEC market share to local markets
24 (Gillan, pp.21-22) or that the potential deployment test is essentially irrelevant
25 (Wood, pp. 6-7) is clearly incorrect.

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2

ISSUES 1 AND 2: MARKET DEFINITION

3

4 Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO THE DEFINITION
5 OF THE GEOGRAPHICAL MARKET THAT SHOULD BE USED TO
6 EVALUATE IMPAIRMENT?

7

8 A. BellSouth has proposed the use of UNE rate zones that this Commission has
9 defined previously, subdivided into component economic areas ("CEAs") as
10 defined by the Bureau of Economic Analysis, U.S. Department of Commerce. As
11 described in the direct, rebuttal, and surrebuttal testimonies of Dr. Christopher
12 Pleatsikas, this definition satisfies the multiple criteria laid out in the *TRO* and
13 results in economically meaningful "markets" in which to consider impairment.

14

15 Q. WHAT HAVE OTHER WITNESSES SUGGESTED IN THEIR REBUTTAL
16 TESTIMONY FOR THE GEOGRAPHICAL MARKET DEFINITION?

17

18 A. Mr. Gillan on behalf of the FCCA recommends that the entire service footprint, or
19 else the LATA, should be considered a market. Notwithstanding his client's
20 membership in the FCCA, on whose behalf Mr. Gillan testifies, Dr. Bryant, on
21 behalf of MCI, suggests that each individual customer represents the appropriate
22 economic market, although he concedes that a wire-center definition would be
23 administratively simpler. Dr. Staihr suggests MSAs combined with RSAs, Mr.
24 Nilson mentions retail rate centers, although he finally recommends wire centers,
25 and Dr. Johnson, on behalf of the Citizens of the State of Florida, recommends *ad*

1 *hoc* aggregations of wire centers that have “reasonably homogeneous [demand]
2 characteristics”. Although Mr. Bradbury is keen to defend wire centers as the
3 geographical unit of competition (pp. 22-23), another witness for AT&T has
4 suggested LATAs as the appropriate market definition in discovery. (AT&T
5 Response to Interrogatory No. 156.)

6
7 Q. HOW WOULD YOU CHARACTERIZE THESE ALTERNATIVE POSITIONS?

8
9 A. Geographical market definition is one of those issues that supports my general
10 observation above: while Mr. Gillan and AT&T find BellSouth’s market
11 definition is too small, Messrs. Bryant, Staihr, and Nilson find it is too large, and
12 as Dr. Pleatsikas describes, Dr Johnson’s suggestion is logically impossible to
13 implement, which to me suggests BellSouth’s proposal may actually be just right.

14
15 Furthermore, it is interesting that the parties not only contradict each other, but
16 also appear to be contradicting themselves: MCI is arguing for a larger market
17 definition through the FCCA’s witness Mr. Gillan and a smaller definition
18 through its own witness, Dr. Bryant; AT&T is suggesting a LATA in discovery
19 (AT&T Response to Interrogatory No. 156), while its witness, Mr. Bradbury,
20 emphasizes that this Commission “must assure itself that UNE-L competition will
21 exist in every wirecenter.” Both MCI and AT&T have previously argued against
22 too small a geographical market definition because their switches can provide
23 service to a comparable area as BellSouth’s tandem switches (see Ruscilli
24 Rebuttal, p. 15), even though both are now defending individual wire centers as
25 the unit of meaningful competition (Bradbury, pp. 22-23, Bryant p. 43-51).

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Q. WHAT SHOULD THE COMMISSION DECIDE IN THE FACE OF THESE
COMPETING ALTERNATIVES?

A. It is hardly surprising that many alternative definitions of the geographical market have been propounded – this is an issue that has been left up to this Commission’s judgment, and where, although I believe that UNE Zones cut by CEAs is the most logical definition, there is likely no “right answer.” As Dr. Pleatsikas explains, however, there are two definite “wrong answers,” both of which should obviously be avoided. The first would be to define the whole State of Florida as a market; the second would be to define every wire center within Florida as a market. Either of these approaches would run afoul of *TRO* ¶ 495 (the former is too big, the latter is too small). As long as the Commission steers between these two “icebergs,” however, I believe its analysis will be reasonable.

Q. TURNING FROM THE GEOGRAPHICAL MARKET TO THE DEFINITION
OF “MASS MARKET,” WHAT IS THIS COMMISSION’S TASK?

A. The *TRO* (¶ 497) is quite clear on this point: “Some mass market customers (i.e., very small businesses) purchase multiple DS0s at a single location... Therefore as part of the economic and operational analysis discussed below, a state must determine the appropriate cut-off for multiline DS0 customers as part of its more granular review.” The Commission’s task is no more and no less than to set a number of DS0s below which a customer is classified as “mass market” and

1 above which it is classified as “enterprise” (and therefore no longer eligible for
2 unbundled switching, per *TRO* ¶ 419).

3

4 Q. WHAT IS BELLSOUTH’S POSITION REGARDING THE APPROPRIATE
5 CUTOFF?

6

7 A. As described in my direct Testimony (p.8), BellSouth has accepted the FCC
8 default delineation that customers with three or fewer CLEC DS0 lines serving
9 them should be deemed “mass market.” This position has also been tentatively
10 adopted by the Ohio PUC. (See *In the Matter of the Implementation of the*
11 *Federal Communications Commission’s Triennial Review Regarding Local*
12 *Circuit Switching in the Mass Market*, Case No. 03-2040-TP-COI, *Entry*, dated
13 October 2, 2003, p.5.)

14

15 Q. WHAT HAVE OTHER WITNESSES SUGGESTED IN THEIR REBUTTAL
16 TESTIMONY FOR THE CUTOFF?

17

18 A. On this issue, there is a lot of smoke, but not much in the way of concrete
19 suggestions. Mr. Gillan proposes a 12-line cutoff for BellSouth’s territory, and an
20 *ad hoc* definition for Verizon’s territory (although why the crossover should vary
21 by ILEC is not explained). Mr. Nilson variously suggests 6-8 lines (footnote 10,
22 p. 14), 5-6 lines (p. 52) and 10-12 lines (p. 53). Mr. Johnson agrees that “the FCC
23 adopted a cut-over of four lines” (p. 36) (contrary to Mr. Gillan, who claims that
24 they didn’t (p.17)) and correctly points out that the higher the cut-over is set, the
25 more customers are included in the “mass market” category, and so the more

1 likely it is that no mass-market impairment will be found. However, he then goes
2 on a somewhat bizarre tangent (pp. 38-47) in which – directly contradicting the
3 *TRO* as quoted above – he suggests that the “mass market” should be further
4 subdivided into “residential” and “small business” segments to which the triggers
5 tests should be applied independently (p. 46), or as an alternative, the cutoff
6 should be performed “on the basis of revenue per customer, or on the basis of
7 gross profit margin per customer (revenues minus direct costs), rather than purely
8 on the basis of the number of DS0 lines.”

9
10 Q. WHAT SHOULD THE COMMISSION DECIDE IN THE FACE OF THESE
11 COMPETING ALTERNATIVES?

12
13 A. Again, there is likely no “right” answer. Obviously, BellSouth believes its
14 position is a reasonable one and comes closest to assuaging Mr. Johnson’s
15 concern that “no other party in this proceeding has recognized the importance of
16 studying residential and small business customers separately,” (p.38) by staying
17 within the *TRO*’s mandate to include multiline DS0 customers while establishing
18 an explicit cutoff. On the other hand, raising the cutoff, as Mr. Gillan suggests,
19 only improves the chances of finding mass-market non-impairment, and so is not
20 unappealing to BellSouth. The only thing that I would propose this Commission
21 avoid is not following the clear guidance of the *TRO* and the FCC rule by failing
22 to come up with a single, clear cutoff point between “mass market” and
23 “enterprise” customer segments.

24

1 mostly fictitious, “interpretations” of the trigger test presented by Drs. Staihr,
2 Johnson and Bryant and Messrs. Gillan, Nilson and Bradbury in their rebuttal
3 testimonies, let me quote *in its entirety* the FCC’s rule describing this test: “Local
4 switching self-provisioning trigger. To satisfy this trigger, a state commission
5 must find that three or more competing providers not affiliated with each other or
6 the incumbent LEC, including intermodal providers of service comparable in
7 quality to that of the incumbent LEC, each are serving mass market customers in
8 the particular market with the use of their own local switches.” (47 C.F.R. §
9 51.319 (d)(2)(iii)(A).)

10
11 Although BellSouth would prefer the trigger to be met with the presence of one or
12 two competing providers, the text is quite clear that three is the threshold.
13 Similarly, although many witnesses would prefer the trigger to be met only if
14 additional criteria – such as a *de minimis* threshold, or a requirement that every
15 customer in the market be served, or that trigger candidates have to use ILEC
16 loops and “mass market switches” (whatever those may be) are satisfied – the text
17 is quite clear that none of these additional standards have been imposed.

18
19 Ms. Pam Tipton further elaborates on these fictional criteria in her testimony, and
20 describes how, in contrast, BellSouth has simply applied the FCC’s
21 straightforward test to the markets that have been proposed. That is, in each
22 market BellSouth has counted how many competing providers – through their
23 own admission in discovery and BellSouth’s internal data – are serving mass-
24 market customers. In the markets where there are three or more competing
25 providers, the trigger has been met, and this Commission should immediately find

1 non-impairment. In the markets where there are fewer than three competing
2 providers, the trigger has not been met, and therefore, the Commission should
3 continue their examination to see if the markets pass the potential deployment
4 test.

5

6 Q. HOW HAS BELLSOUTH DEFINED “COMPETING PROVIDERS”?

7

8 A. BellSouth has been rather conservative in defining “competing providers.” For
9 example, despite the evidence in the *TRO* itself that “local services are widely
10 available through CMRS providers” (§ 230), that CMRS providers are sufficiently
11 competitive with the incumbent LEC that they should qualify for UNEs (§ 140),
12 and that CMRS is “growing as a...replacement for *primary* fixed voice wireline
13 service” (§ 230), BellSouth chose not to challenge the FCC’s statement that “at
14 this time we do not expect state commissions to consider CMRS providers in their
15 application of the triggers” (fn. 1549). Similarly, BellSouth did not include
16 internet-based telephone providers, such as Vonage, as trigger candidates,
17 although internet-based telephone providers and CMRS providers are clearly a
18 growing presence and a direct and ubiquitous substitute for the incumbent LEC’s
19 voice service in Florida. (See Exhibit JAR-5.)

20

21 Eliminating these two categories of trigger candidates leaves only wireline
22 CLECs as included as “competing providers.” I should mention in passing that
23 BellSouth has of course included cable companies as trigger candidates – this is
24 contrary to the assertions of Mr. Nilson (pp. 36-38) and Mr. Bryant (pp.10-12),
25 but more importantly is consistent with the *TRO* and with the CLECs own

1 position in their DC Circuit brief where they state that “the FCC acknowledged
2 that its triggers may ‘count’ carriers like cable companies”. (Brief of CLEC
3 Petitioners and Intervenors, *USTA v. FCC*, Case No. 00-1012 (DC Cir), p. 37.)
4

5 Q. ON PAGE 39 OF HIS TESTIMONY, MR. NILSON SUGGESTS THAT
6 FUTURE MERGER ACTIVITY THAT RESULTS IN A REDUCTION IN THE
7 NUMBER OF LOCAL EXCHANGE CARRIERS IN A GIVEN MARKET
8 WOULD REQUIRE THE COMMISSION TO REVISIT WHETHER THE
9 TRIGGER HAD BEEN MET FOR THAT MARKET. DO YOU AGREE?
10

11 A. No. First, this point is well beyond the scope of this proceeding and outside of the
12 issues presented. This point anticipates what will happen in the future, after the
13 Commission has made a finding of “no impairment” in a market. However, even
14 with this said, Mr. Nilson’s point is simply wrong. The FCC has established the
15 triggers as the proof that CLECs can serve mass market customers without
16 unbundled switching. Once that proposition has been established by applying the
17 triggers, it is established regardless of whether three CLECs continue indefinitely
18 to provide service in that particular market. Subsequent merger activity has
19 absolutely no impact on this finding once it has been made.
20

21 Q. WITH RESPECT TO THE “POTENTIAL DEPLOYMENT” TEST, HOW
22 SHOULD THIS TEST BE APPLIED?
23

24 A. Although it is not quite as straightforward as the “bright-line” self-provisioning
25 trigger test, the potential deployment test is also well described in the *TRO*. In

1 markets where neither of the triggers tests has been met, this Commission needs
2 to examine three criteria: evidence of actual switching deployment, operational
3 barriers (such as the availability of collocation space and cross-connects), and
4 economic barriers. (47 C.F.R. § 51.319 (d)(2)(iii)(B)(1)-(3).) If, having weighed
5 these criteria, the Commission decides that self-provisioning of local switching
6 could be economic, then it should make a finding of non-impairment.

7
8 Q. HOW HAS BELLSOUTH APPLIED THIS TEST?

9
10 A. BellSouth has presented details regarding each of these three criteria: evidence of
11 actual switching deployment is described in the direct testimony of Ms. Tipton;
12 the lack of operational barriers is described in my direct testimony, pp.19-23, and
13 the assessment of economic barriers is discussed in the direct testimony of Dr.
14 Aron.

15
16 Q. WHAT HAVE OTHER WITNESSES SUGGESTED IN THEIR REBUTTAL
17 TESTIMONY REGARDING THE POTENTIAL DEPLOYMENT TEST?

18
19 A. The focus of other witness's rebuttal testimony has been on BellSouth's
20 assessment of the economic barriers. This assessment was based on the BACE
21 model, a detailed business case for a UNE-L CLEC entering the Florida market.
22 In sponsoring the BACE model, BellSouth has made an effort unparalleled by any
23 other carrier in the country to provide the Commission with a tool to assess
24 economic impairment in a way that meets the criteria laid out in the *TRO* (see for
25 example *TRO* ¶ 485 and the direct testimony of Mr. James Stegeman, pp. 6-18).

1 Indeed, no other party has even attempted to claim that the models they originally
2 presented in direct testimony are better suited to the task at hand. Unfortunately,
3 instead of engaging in a constructive debate about the BACE model, the rebuttal
4 testimonies of Drs. Staihr and Bryant and Messrs. Dickerson, Nilson, Webber,
5 Bradbury and Wood by and large satisfy themselves with making unfounded
6 attacks on the input parameters or superficial complaints about the structure of the
7 model. The former group of complaints is comprehensively dealt with in the
8 surrebuttal testimonies of Drs. Aron and Billingsley, who show that most of the
9 issues are the results of definitional misunderstandings or attempts to substitute
10 the months of documented research that the BellSouth witnesses have performed
11 regarding variables such as churn, cost of capital, and selling, general and
12 administrative (“SG&A”) costs, with offhand assumptions. The latter group of
13 complaints is handled in the surrebuttal testimonies of Messrs. Stegeman, Milner
14 and Gray, who demonstrate that none of the witnesses appear to have made a
15 good faith attempt to understand the model, with the result that many of their
16 alleged critiques are inaccurate and mutually contradictory.

17

18 I would urge this Commission to make use of the powerful tool that is the BACE
19 model. Contrary to the assertion of Mr. Wood that the potential deployment test
20 is essentially irrelevant because the absence of self-deployment “should eliminate
21 any question regarding the ability of CLECs to enter a market and successfully
22 compete for mass market customers is impaired without access to UNE local
23 circuit switching [sic]” (pp.6-7), the *TRO* lays out a detailed and thoughtful test
24 for state commissions to apply where the triggers are not met. So long as UNE-P
25 promotes artificial competition by distorting market prices and subsidizing

1 arbitrage players with no interest in making real investments in the state of
2 Florida, this test may be consumers' only hope of benefiting from real, facilities-
3 based competition and therefore deserves to be taken seriously.

4

5

ISSUE 3: BATCH CUTS

6

7 Q. ON PAGES 5-6 OF HIS TESTIMONY, MR. VAN DE WATER CLAIMS THAT
8 THIS COMMISSION CAN NOT RELY ON ITS 271 FINDINGS WITH
9 RESPECT TO THE HOT CUT PROCESS. HOW DO YOU RESPOND?

10

11 A. The FCC's decision not to rely on the objective hot cut performance data on
12 which it relied in at least forty-nine 271 cases to find that ILECs provide
13 nondiscriminatory access to loops is erroneous. This Commission should not
14 make the same error. It would make no sense for this Commission to ignore its
15 finding from a year ago that BellSouth has a 251/271-compliant hot cut process,
16 and then today, find that the process is unacceptable.

17

18 Moreover, even if this Commission does not rely solely on its 271 holding,
19 BellSouth's objective performance data should inform this Commission's
20 decision far more than the CLEC's uncorroborated and anecdotal evidence that
21 BellSouth's process "might not work." BellSouth's witnesses have presented a
22 seamless and efficient batch hot cut process, and have presented performance data
23 and a third party test that demonstrates its effectiveness. When weighed against
24 the CLECs' speculative musings, BellSouth's case is far more compelling. There
25 is no doubt that the Commission's findings in the 271 case should inform its

1 decision, but the Commission can, and should, adopt BellSouth's batch hot cut
2 process based on the evidentiary record in this case.

3

4 Q. MR. VAN DE WATER (PAGES 27-28) AND MR. GALLAGHER (PAGE 14)
5 CRITICIZE BELLSOUTH FOR NOT FILING THE COST STUDY YOU
6 MENTION IN YOUR TESTIMONY (RUSCILLI DIRECT, P. 18). IS A COST
7 STUDY RELEVANT TO THIS PROCEEDING?

8

9 A. No. The cost study BellSouth conducted of the batch hot cut process was done
10 using BellSouth's cost model with the inputs BellSouth contends are correct. The
11 estimated costs for the batch hot cut process were less than the original filed costs
12 for the standalone loop; however, they were still higher than the ordered loop
13 rates set by this Commission because of the adjustments made by the Commission
14 to the inputs. To account for the Commission's Order, BellSouth applied the
15 same adjustments and discounts that the Commission applied to BellSouth's filed
16 costs for the loop that established the individual hot cut rate to the estimated batch
17 hot cut rates. This resulted in the proposed batch hot cut rate being approximately
18 10% below the ordered loop rate. The rate is driven, therefore, not by BellSouth's
19 cost study so much as by the Commission's UNE Cost Order.

20

21 Q. MR. VAN DE WATER AND MR. NEPTUNE ARGUE THAT THE RATE
22 BELLSOUTH IS PROPOSING IS TOO HIGH. PLEASE COMMENT.

23

24 A. As I discussed in my rebuttal testimony, the rate BellSouth is proposing for the
25 batch hot cut process is a discount off the Commission-approved TELRIC-based

1 rates set forth by this Commission in the UNE Cost Proceeding, Docket No.
2 990649-TP, Order No. PSC-01-2051-FOF-TP. During the UNE Cost Proceeding,
3 this Commission engaged in a thorough, detailed analysis of the evidence (from
4 BellSouth and CLECs) regarding the proposed hot cut rates. At the conclusion of
5 the proceeding, this Commission ordered the nonrecurring rates for hot cuts with
6 modifications of certain inputs, as well as reductions to certain work times. As a
7 result, the Commission's established rate was substantially lower than what
8 BellSouth had proposed. Taking into consideration the already reduced hot cut
9 rates, BellSouth's additional 10% discount for the batch hot cut process is a true
10 cost-savings for CLECs.

11

12 Q. DID AT&T OR SUPRA PARTICIPATE IN THE UNE COST PROCEEDING?

13

14 A. AT&T did, Supra did not. However, AT&T never raised a concern about the
15 proposed hot cut costs. Even after the UNE Cost Order had been issued, AT&T
16 did not request the Commission to reconsider the rates established for hot cuts.
17 Now, some 2 ½ years after the fact, AT&T is attempting to request a modification
18 of the UNE Cost Order.

19

20 Q. MR. VAN DE WATER AND MR. NEPTUNE CONTINUE TO TRY AND
21 COMPARE A RETAIL TO UNE-P MIGRATION TO A RETAIL TO UNE-L
22 MIGRATION. IS SUCH A COMPARISON APPROPRIATE?

23

24 A. Absolutely not. As I explained in detail in my rebuttal testimony, the work
25 required to migrate a CLEC's service from UNE-P to UNE-L is much more

1 involved than converting retail service to UNE-P. The Commission has
2 recognized this fact in at least two ways. First, it established higher rates for hot
3 cuts than for conversions to UNE-P, recognizing the different work effort in each.
4 Second, it established different benchmarks and retail analogues for UNE-L
5 performance measures than for UNE-P performance measures. The fact that
6 UNE-L and UNE-P are different is no surprise to this Commission. Congress also
7 recognized the difference between UNE-L and UNE-P – it is simply the
8 difference between true facilities-based competition with the UNE-L and
9 synthetic competition with the UNE-P. The question for the Commission is not
10 whether UNE-P is the same as UNE-L, but rather whether an efficient CLEC can
11 economically enter the market without access to unbundled switching. Because
12 the answer to the second question, the correct question, is unequivocally “yes”,
13 the CLECs are trying to change the question.

14

15 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

16

17 A. Yes.

18

19 [#522525]

20

21

A Debate on Web Phone Service

By MATT RICHTEL
2,236 words
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1
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Charles Davidson, a self-proclaimed gadget freak in Tallahassee, Fla., began using Internet-based telephone service last week. He can call anyone -- not just the other 100,000 pioneers around the nation using such service, but any of the millions of people who use conventional telephones, like his parents in Elizabethton, Tenn.

But Mr. Davidson is more than an adventuresome consumer. As a member of the Florida Public Service Commission, he is a regulator who is eager to see Internet telephone service spread because he predicts it can make the nation's phone services less expensive and richer in features.

That is why Mr. Davidson wants the federal and state governments to let Internet-based phone service blossom, free from regulation, taxes and surcharges. Like a growing number of officials who advocate minimal oversight of the service -- including Michael K. Powell, the chairman of the Federal Communications Commission -- Mr. Davidson says Internet telephone service should be treated just like other unregulated Internet services, including e-mail messaging and Web surfing.

But unlike some proponents of deregulation, Mr. Davidson also has a nagging concern. Because Internet-based phone service rides over traditional telephone or cable lines, it will not work unless the conventional phone network is intact. The government has long regarded that network as a national asset akin to roads and highways, and it is a communications system whose reliability and virtual ubiquity make it the envy of most of the rest of the world. In fact, if users of Internet phones were not able to communicate with all the millions of people still plugged into the conventional telephone network, Internet telephone service would be little more than a hobbyist's experiment.

So Internet telephone service raises a public policy question: If the government does not continue to play a role in ensuring that the telephone network is reliable and universally available, does the nation risk losing a vital asset?

"It's a great question," Mr. Davidson said. "Do we, as a society, want to maintain a policy of 'always on'?"

Mr. Davidson, a former antitrust lawyer appointed to the Florida commission by the governor, Jeb Bush, a Republican, is still weighing his answer. But he says he tends to think that markets are more efficient than regulators -- in other words, that laissez-faire can walk hand in hand with "always on."

Some of Mr. Davidson's counterparts in other states sound just as certain that only government referees can preserve the decades-old tradition of universal, reliable telephone service.

"If somebody doesn't regulate this, it's buyer beware," said Loretta Lynch, a member of the California Public Utilities Commission, who was appointed by the former governor, Gray Davis, a Democrat. Ms. Lynch, a lawyer, said the role of the telephone was too important to leave in the hands of market forces. "Telecommunications is essential to our democracy," she said. "It's essential, in fact, to keeping an informed populace."

If the issue were limited to the 100,000 or so customers currently using Internet-based telephones, the debate might remain largely theoretical. But the service seems on the verge of a takeoff.

The field's current leader is the Vonage Holdings Corporation, an Edison, N.J., company with about 80 percent of the market so far. Mr. Davidson is among its customers. Vonage estimates that it will have 250,000 customers by the end of 2004 and one million by 2006. Time Warner Cable, a unit of Time Warner Inc., and the AT&T Corporation have both announced major initiatives to roll out Internet-based phone service. The regional Bell company Qwest Communications International Inc. plans to offer Internet telephone service in its 14-state Rocky Mountain region as an alternative to conventional phone service. And every other major

telecommunications provider has plans to introduce Internet-based service to take advantage of the technology's lower costs and the lack of regulation.

The F.C.C. has embarked on a series of public hearings around the country on whether and how to regulate Internet telephony. The agency's chairman, Mr. Powell, has said that his instinct is to subject telephone calls made using Internet technology to only minimal regulation in order to avoid costs and bureaucracy that he says would slow innovation and competition.

The public policy questions go to the heart of a social compact born in the 1930's. Then, the government granted regulated monopolies in individual markets to AT&T and other, smaller companies. In exchange, policy makers exacted a price: the telephone monopolies had to meet service quality standards and collect taxes and surcharges to support affordable, universal access even in rural or remote areas where free-market economics would not have made it cost effective to string telephone wires.

Although AT&T's Bell System was split up in 1984, the existing four major telephone companies descending from it -- Verizon Communications, the BellSouth Corporation, Qwest and SBC Communications Inc. -- still face substantial regulation from the federal and state governments. Now, though, with the advent of Internet-based telephone service, as well as competition from wireless providers, there is growing momentum to rewrite 70 years of rules.

"The economic regulation was quid pro quo for giving it a monopoly," said Mr. Davidson of the rules governing the Bell companies. Now, he said, "there is no monopoly."

Mr. Davidson said he thought that competition from cable and wireless companies provided consumers an array of new choices. But among the various state and federal regulators who will weigh in on the Internet-phone issue, there are many nuanced notions about how to proceed. Some want to see state regulation eliminated; others want to see regulation streamlined but kept intact. Many want to retain guarantees of 911 service and universal service for low-income and rural residents, but they differ considerably on how to achieve those goals. Even within the National Association of Utility Regulators, an influential lobbying group of state regulators, some top officials have greatly divergent views about how to regulate telecommunications in the 21st century.

Not all industry executives agree, either, although most companies favor a significant rollback of regulations. One of the most unabashed supporters of Internet-based telephone service is Richard C. Notebaert, the chief executive of Qwest. Mr. Notebaert said Qwest, besides introducing Internet-based calling across its region, might even offer it nationwide.

Mr. Notebaert said that with Internet telephone service, he could save his customers 25 percent to 30 percent on their bills because they would not be required to pay the taxes and surcharges assessed to conventional phone service to support such things as phone service for low-income and rural residents. He said Internet-based service would enable his company to save "hundreds of millions" of dollars a year in costs associated with following regulatory requirements like tracking and reporting Qwest's customer service performance by various measures.

Mr. Notebaert acknowledged that moving to Internet telephone service would mean tradeoffs. "You're going to have to give things up to get 25 to 30 percent savings," Mr. Notebaert said. As to regulation, including universal service, he said, "I do not think it should be retained at all." Some of the lower costs of Internet telephone service are a result of the underlying architecture. In the conventional telephone network, voice calls travel over a line that stretches from the home to a piece of phone company equipment called a circuit switch. The switch, and many others like it along the way, routes the call to its destination over local or long-distance networks. The switches can be expensive, as much as \$10 million each, said John Hodulik, a telecommunications analyst with UBS Securities.

And adding to the costs is the fact that with conventional telephone service the line that carries the voice signal to and from homes is dedicated exclusively to one call at a time. With Internet-based calls, the information is broken down into small packets, so that the lines that carry the voice conversations can simultaneously transport many other packets of Internet traffic, like e-mail messages and World Wide Web pages. And Internet calls do not require lots of expensive circuit switches, because each packet of data carries an address that helps it find its own way across the network.

Were telephone companies to build a network from scratch today, they likely would do so using the less expensive Internet architecture that has enabled start-up companies like Vonage to enter the market.

Vonage has invested a mere \$12 million in technology, the company's chief executive, Jeffrey A. Citron, said. That, he said, is a far cry from the \$75 million to \$100 million that some companies must spend to begin offering conventional telephone service. And Vonage spends only about

\$200 to set up each new customer, while a service provider selling conventional phone service might need to spend as much as \$600 a customer, Mr. Citron said.

But some critics say a big reason Vonage and other Internet-based phone providers can cut costs is because they do not have to adhere to the same rules and regulations as the conventional telephone companies on whose local and national networks the Internet providers depend. Even an Internet telephony fan like Jeff Pulver, who was formerly on the Vonage board, acknowledged that a substantial amount of cost savings comes from avoiding the taxes, surcharges and access fees used to support the traditional phone network.

"Vonage benefits by not having to comply with those rules," he said. Mr. Pulver acknowledges that the Internet upstarts are practicing regulatory "arbitrage." But in his view the public policy response should be to deregulate all phone companies.

The fact that Vonage is not regulated and did not pay to build the national network may obscure the real cost of providing Internet-based phone service. Likewise, the cost to customers is not as low as it may seem. While consumers may pay less each month for Internet telephone service than for regular phone service, they cannot obtain the service unless they first have high-speed Internet access -- on which they are likely to spend \$40 to \$70 a month. So the ability to use Internet phone service may actually require a total monthly outlay of \$100 or more.

Those are table stakes far higher than the bare-bones "lifeline" conventional telephone service subsidized by the regulated industry's universal service fund, which can make basic dial tone and 911 service available to the poor or elderly for less than \$10 a month in some states.

That is why policy makers like Ms. Lynch of the California resist the idea that Internet telephone service will lead to a telecommunications market so competitive that government regulation becomes unnecessary. She said that if conventional telephone companies like Qwest were allowed to avoid regulation by moving their business to Internet-based service, it would drain money from the universal service funds that have enabled low-income residents, as well as schools and libraries, to afford basic phone service.

"The pot of money used to make sure people can communicate will shrink," Ms. Lynch said. "It's a death spiral."

She also questions the premise that a competitive marketplace will satisfy consumer demands for reliable, affordable telecommunications. There are six major mobile phone companies, Ms. Lynch said, and despite vibrant competition, wireless service is still highly unreliable.

"Economic theory is not today's reality," Ms. Lynch said. "My job is not to hypothesize about Nirvana. My job is to deal with the realities today."

Mr. Davidson, in Florida, says he agrees that universal service is an important goal. But, he says he thinks the Internet phone technology should be allowed to mature before it is subjected to taxes and surcharges.

He also says he thinks that Internet-based telephone service providers should eventually be required to provide 911 service. But there, too, he would rather not force the issue just yet -- in part because 911 service is difficult for Internet-based telephone services to accomplish.

Compared with traditional telephone calls, it is complicated to determine the precise location from which an Internet-based call has been placed, meaning that 911 operators would need to ask the caller to provide that information -- even as the house is burning or the child is choking.

Mr. Davidson said companies should have to disclose that shortcoming.

"The industry has a very clear obligation," Mr. Davidson said, "to let folks know that this isn't your father's 911."

But when asked when the industry would be mature enough to make 911 service mandatory, he showed his laissez-faire side. "I don't know," he said. "We should allow companies some time to get there."