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REBUTTAL TESTIMONY OF JOHN P. KERN

ON BEHALF OF

FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC.

DOCKET NO. 950985-TP

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. John P. Kern, Kern & Associates, Inc., 2300 N. Barrington Road, Suite 400, Hoffman Estates, IL 60195.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND AND WORK EXPERIENCE.

A. I am the President of Kern & Associates, Inc. I have previously held positions in the telecommunications industry as Director-Regulatory Affairs for Illinois Bell and Director-External Affairs for Ameritech Services. I also worked on the Staff of the Missouri Public Service Commission as Advisor and Research Economist. A copy of my resume is attached to my rebuttal testimony as JPK-1.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to comment upon points raised in the Direct Testimony of BellSouth Witnesses Scheye, Varner and Banjeree regarding their recommendations for mutual compensation.

Q. WHAT IS YOUR OPINION REGARDING BELL SOUTH'S RECOMMENDATIONS FOR MUTUAL COMPENSATION?

1 A. The requirements for local interconnection are addressed in Sections
2 364.162(2)-(4), Florida Statutes, which provide in relevant part:

3

4 (2) If a negotiated price is not established by
5 August 31, 1995, either party may petition the
6 commission to establish nondiscriminatory, rates,
7 terms and conditions of interconnection and for the
8 resale of services and facilities. . . .

9

10 (3) In the event that the Commission receives a
11 single petition relating to either interconnection or
12 resale of services and facilities, it shall vote, within
13 120 days following such filing, to set
14 nondiscriminatory rates, terms and conditions,
15 except that the rates shall not be below cost. . . .

16

17 (4) In setting the local interconnection charge, the
18 commission shall determine that the charge is
19 sufficient to cover the cost of furnishing
20 interconnection.

21

22 To summarize, the interconnection arrangement chosen should permit each
23 party to cover the cost of furnishing interconnection, should be
24 nondiscriminatory and it must not serve as a barrier to competition.
25 BellSouth's proposals do not meet these requirements because they are

1 discriminatory and will impede the development of competitive local
2 exchange markets.

3

4 **Q. HOW IS BELL SOUTH'S PROPOSAL DISCRIMINATORY?**

5 A. I have not yet had an opportunity to review the existing arrangements
6 between BellSouth and the Independent LECs as these will be requested
7 in discovery. Generally, when LECs enter into EAS arrangements the
8 costs of interconnection is shared between the LECs. Moreover, additional
9 charges for terminating traffic are not required. This last point is confirmed
10 by Witness Scheye when he states that BellSouth uses a Bill and Keep
11 approach with Independent LECs for the exchange of local traffic between
12 them. (Witness Scheye RCS-1, Page 2 of 2). In contrast, BellSouth
13 proposes to use its intrastate access charge as the model for the exchange
14 local traffic between BellSouth and ALECs. BellSouth does not provide
15 any explanation as to why this type of discrimination among facilities based
16 local service providers is appropriate.

17

18 **Q. WHAT IS THE APPROPRIATE INTERCONNECTION ARRANGEMENT?**

19 A. The Florida PSC should mirror the longstanding LEC to LEC
20 interconnection model and order BellSouth to interconnect ALECs under
21 the same terms and conditions (i.e. Bill and Keep). Existing LECs have
22 entered into various interconnection and compensation arrangements with
23 each other. The existing EAS model has proven efficient, workable and
24 reliable. This recommendation also ensures that ALECs are treated no

25

1 less favorably than other LECs consistent with the provisions of Florida law
2 which state:

3
4 Each local exchange telecommunications company
5 shall provide access to and interconnection with, its
6 telecommunications facilities to any other provider of
7 local exchange telecommunications services
8 requesting such access and interconnection at
9 nondiscriminatory prices, rates, terms and conditions
10 established by the procedures set forth in s.
11 364.162.

12
13 Section 364.16(3), Fla. Stat. Based upon my reading of the
14 Statute, it appears that any attempt to treat ALECs differently from
15 other LECs would violate this statutory provision.

16
17 **Q. ARE THERE OTHER PROBLEMS ASSOCIATED WITH USING ACCESS**
18 **CHARGES FOR COMPENSATING CARRIERS FOR TERMINATION OF**
19 **TRAFFIC?**

20
21 A. Yes, such an approach will not support widespread local competition.
22 Witness Scheye mentions that compensation based on switched access
23 charges could result in ALECs targeting "niche markets, financed solely by
24 the payments it might receive from other carrier." (Witness Scheye, page
25 19). I agree completely with this assessment. In fact, I believe that

1 BellSouth's proposal will force such market conditions and will reduce
2 BellSouth competitors to nothing more than "Traffic Sucking Blobs."

3

4 Let me explain. If compensation rates are high, there will be a strong
5 financial incentive for ALECs to seek customers with large amounts of in-
6 bound traffic. For example, a company may decide to provide free Internet
7 access to all customers. In this case, the company would simply make a
8 profit from the termination charges that BellSouth would pay. Examples
9 are not limited to Internet access. Other examples include: free gab lines,
10 free dial-a-porn, etc. Clearly, this type of local competition is not what the
11 Florida Legislature had in mind when it adopted its new law empowering
12 the Commission to "exercise its exclusive jurisdiction" to "ensure the widest
13 possible range of consumer choice in the provision of all
14 telecommunications services." Section 364.02(4)(b), Florida Statutes.

15

16 **Q. DOES A BILL AND KEEP APPROACH RESOLVE THIS CONCERN?**

17 A. Yes. Under a Bill and Keep approach, ALECs are not incented to target
18 customers with only large amounts of in-bound traffic since separate,
19 usage-based charges are not extracted. In addition, separate usage-based
20 compensation rates will result in higher retail rates for ALEC customers.
21 If Bill and Keep is adopted, ALECs could divert this money to infrastructure
22 development.

23

24 **Q. DOES A BILL AND KEEP APPROACH RESOLVE THE PRICE SQUEEZE**
25 **CONCERN?**

1 A. Yes. The use of access charges for interconnection compensation is
2 incompatible with flat rate local exchange rate structures. Since there are
3 no explicit usage-based charges will Bill and Keep, price squeeze issues
4 are eliminated.

5

6 **Q. IF THE FLORIDA PSC ADOPTS BELLSOUTH'S RECOMMENDATION,**
7 **ARE YOU SUGGESTING THAT BELLSOUTH'S RECOMMENDATION**
8 **SHOULD ALSO APPLY TO INDEPENDENT LECs?**

9 A. Yes. There does not appear to be any basis for discriminating against
10 ALECs vis-a-vis Independent LECs. In fact, the Florida law prohibits
11 discrimination among local providers. (See page 4). If carriers are to
12 compensate each other based on access, then the law requires all carriers
13 to pay these rates.

14

15 **Q. BELLSOUTH DISCUSSES AT LENGTH THE PROBLEM OF**
16 **DETERMINING THE NATURE OF TRAFFIC AS BEING EITHER LOCAL**
17 **OR TOLL. DO YOU HAVE ANY COMMENT?**

18 A. Yes. I agree with BellSouth that determining which calls are toll for
19 purposes of applying access charges are important. However, this is not
20 a unique problem for the telecommunications industry. Previous solutions
21 have been used by the incumbent LECs. The point is that requirements
22 that would have the effect of unnecessarily increasing the ALECs' costs,
23 such as a requirement that separate trunk groups be used for local and toll,
24 must be avoided. As BellSouth is aware, the new law squarely addresses
25 this issue but places no burdensome requirements on any party. In fact,

1 my understanding is that Sections 364.163(a)-(b) were amended to prevent
2 just such a result. These subsections state:

3

4 (a) No local exchange telecommunications
5 company or alternative local exchange
6 telecommunications company shall knowingly deliver
7 traffic, for which terminating access service charges
8 would otherwise apply, through a local
9 interconnection arrangement without paying the
10 appropriate charges for such terminating access
11 charges.

12

13 (b) Any party with a substantial interest may
14 petition the commission for an investigation of any
15 suspected violation of paragraph(a). In the event
16 any certificated local exchange service provider
17 knowingly violates paragraph(a), the commission
18 shall have jurisdiction to arbitrate bona fide
19 complaints rising from the requirements of this
20 subsection and shall, upon such complaint, have
21 access to all relevant customer records and
22 accounts of any telecommunications company.

23

24 Rather than a separate trunk group requirement, the parties may wish to
25 work together on the development of a Percent Local Use (PLU) factor that

1 would also assist the Commission in the event that a bona fide complaint
2 is one day considered.

3

4 **Q. BELLSOUTH'S WITNESS ALPHONSO J. VARNER BELIEVES THAT**
5 **RESOLUTION OF TCG'S PETITION WITH THE FLORIDA PUBLIC**
6 **SERVICE COMMISSION REQUIRES THE RESOLUTION OF ALL**
7 **ISSUES--LOCAL INTERCONNECTION, UNBUNDLING, UNIVERSAL**
8 **SERVICE AND RESALE--AT ONE TIME (P.7). WHAT DO YOU THINK**
9 **ABOUT THIS?**

10 A. It appears to be an approach that was considered and rejected by the
11 Legislature. On April 12, 1995 an amendment was passed to Bill No. PCB
12 UT 95-O1D that effectively "de-linked" these two issues. This indicates
13 that the Legislature want these issues to be resolved separately. It
14 appears that the Florida Public Service Commission understands this
15 intent, as it has set up separate proceedings for universal service (Docket
16 No. 950696-TP) and resolution of interconnection disputes (Docket No.
17 950985-TP). BellSouth's proposal inappropriately "re-links" these issues.

18

19 **Q. WITNESS SCHEYE STATES THAT REQUESTS FOR ACCESS AND USE**
20 **OF POLES, DUCTS, AND CONDUITS ON PUBLIC RIGHTS OF WAY**
21 **SHOULD BE ACCOMMODATED SUBJECT TO AVAILABILITY ON A**
22 **CASE-BY-CASE BASIS WHERE PERMITTED. (PAGE 17). FURTHER,**
23 **WITNESS VARNER HAS SUGGESTED THAT AN APPROACH FOR THE**
24 **COMMISSION TO TAKE IN ADDRESSING UNBUNDLING REQUESTS.**

1 **(PAGE 21). SHOULD THE COMMISSION ADDRESS THESE ISSUES AT**
2 **THIS TIME?**

3 A. I am not a lawyer, but my understanding with respect to interconnection is
4 that parties are supposed to negotiate before petitioning the Commission
5 to resolve interconnection issues: "If the parties are unable to negotiate
6 the mutually acceptable prices, terms, and conditions within 60 days, either
7 party may petition the commission and the commission shall have 120
8 days to make a determination." Section 364.16, Florida Statutes. The
9 Commission has appropriately limited the issues in this proceeding to only
10 those issues for which Teleport has requested resolution. The additional
11 issues raised by Witnesses Scheye and Varner as well as issues beyond
12 the scope of the Teleport - BellSouth dispute should not be resolved in this
13 proceeding.

14
15 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

16 A. Yes, it does.

17
18
19

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PROFESSIONAL EXPERIENCE:

Kern & Assoc. Inc., President

3/94-present

Develop regulatory and legislative strategies for telecommunications and cable clients. Represent and advise clients during negotiations with incumbent local exchange carriers. Represent and manage clients' participation before regulatory agencies, with concentration in state matters. Advise clients regarding business development plans including local exchange competition, interconnection, and unbundling. Clients include LECs, DXCs, CAPs, cable companies, and electric companies.

Illinois Bell, Director - Regulatory Affairs

12/92-3/94

Managed the Rates and Tariffs organization responsible for filing tariffs and competitive contracts before the Illinois Commerce Commission (ICC). Successfully presented and defended filings before the ICC staff and intervenor groups. During 1993, 100% of all tariff filings were approved without suspension and hearing. Successful filings assured profitability and competitiveness while complying with ICC policies. Filed the Ameritech Customers First Plan that proposed unbundling of the local exchange network in 1994.

Co-managed internal regulatory policy and strategy development to be presented before the ICC. Analyzed potential ICC and competitors' responses to Ameritech's actions, identified roadblocks and proposed appropriate solutions. Represented Ameritech in negotiations with the ICC and competitors. Key issues included imputation, local transport restructure, interconnection and usage subscription. Effective regulatory planning promoted informed ICC decisions that were favorable to the company and consistent with strategic initiatives.

Ameritech Services, Director - External Affairs

11/91-12/92

Successfully directed Ameritech's participation before the state regulatory organizations in Illinois, Indiana, Michigan, Ohio, and Wisconsin on regional and federal telecommunications issues. Analyzed potential responses by the five state commissions to Ameritech's actions, identified roadblocks and proposed appropriate solutions. Activities resulted in defusing opposition or gaining public support from state agencies before the FCC, Congress and the Courts for Ameritech positions. Key issues included PCS, interconnection, transport restructure, Modified Final Judgment (MFJ), cable cross ownership (i.e. Video Dial Tone), and numbering issues.

Successfully directed Ameritech's participation before the NARUC and the Open Network Architecture (ONA) 410(b) Joint Conference. Activities resulted in defusing opposition or gaining public support from state agencies for Ameritech's position on ONA and other federal issues. Advised state regulatory agencies regarding regional and state implications.

from various regulatory and public policy issues associated with federal issues, NARUC positions, and 410(b) positions.

Member of the Illinois Blue Ribbon Telecommunications Task Force, an advisory board initiated by the ICC to conduct an independent analysis of the state of telecommunications in Illinois, and recommend changes to the state telecommunications laws that were set to sunset in 1993.

Ameritech Services, Manager - Federal Regulatory

9/87-11/91

Developed and advocated Ameritech positions before the FCC, state commissions, Federal-State Joint Board, and NARUC in areas related to ONA, Joint Board issues and price caps. Represented Ameritech and the United States Telephone Association (USTA) before the FCC, Joint Board, ONA 410(b) Joint Conference and NARUC. Developed and negotiated Ameritech positions on federal issues before the USTA.

Missouri Public Service Commission, Advisor (8/86-8/87), Research Economist (10/83-8/86)

Advised the Commission on long term strategic policy and planning for telecommunications. Directed and developed strategies and Commission positions on issues pending before the FCC, Congress and the Courts. Advised the Commission during negotiations with industry and government officials involving revising the state telecommunications laws that were adopted by the Missouri legislature. Assisted in technical issues pending before the Commission.

Performed economic analysis on federal and state telecommunications issues on behalf of the staff. Developed and defended Commission policies before the FCC involving separations issues, Part 64 issues, access charges, and federal pre-emption issues. Prepared Commission testimony before the Missouri legislature and the US. Congress and prepared an oral argument before the US. District Court regarding the MFJ. Filed testimony and was cross-examined on telecommunications issues.

Member, Federal-State Joint Board Staff -- represented state public service commissions during negotiations with the FCC regarding Joint Board issues. Presented Joint Board staff recommendations to the Joint Board.

EDUCATION:

MA., Economics, University of Missouri-Columbia, May 1983

BS., Economics, University of Wyoming, May 1981

ORGANIZATIONS:

Member, Illinois Blue Ribbon Telecommunications Task Force, 1990

Member, Federal-State Joint Board Staff, 1985-1987

Member, National Association of Regulatory Utility Commissioners (NARUC) Staff Subcommittee Cost Allocations, 1984-1987

CERTIFICATE OF SERVICE
DOCKET NO 950985-TP

I **HEREBY CERTIFY** that a true and correct copy of the foregoing been furnished by Hand Delivery(*) and/or Overnight Mail on this 29th day of September, 1995 to the following parties of record:

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