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REBUTTAL TESTIMONY OF
JOSEPH GILLAN
ON BEHALF OF AT&T COMMUNICATIONS OF
THE SOUTHERN STATES, INC.
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 960656-TP

Filed: August 30, 1996

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to BellSouth's characterization that the comprehensive arbitration now before the Commission is intended to:

- Confuse the Commission (Varner Direct, page 18),
- Delay BellSouth's interLATA entry (Varner Direct, page 12),
- Provide AT&T with a cost-advantage over its rivals (Varner Direct, page 18).

These themes, if not addressed, could distract the debate from the factual and practical issues that must be resolved before local competition becomes a reality.

Q. WHAT IS THE FUNDAMENTAL OBJECTIVE OF THIS ARBITRATION?

A. The fundamental objective of this arbitration *should be* the establishment of prices, terms, and conditions by which AT&T—and, importantly, any other entrant—will

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1 use BellSouth's network to provide local exchange and exchange access services.
2 The purpose of my rebuttal is to keep the focus of this proceeding on this fundamental
3 question. As I indicated in my earlier direct testimony, the important dimension of
4 this arbitration is not that it involves AT&T (and now MCI), but rather that the
5 *comprehensive* nature of the arbitration will yield a result with an industry-wide
6 application.

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8 The tone of BellSouth's testimony is that the relevant question is who is to "blame"
9 for the parties' not voluntarily settling these questions. The fact that there is a need
10 for Commission arbitration is not the *fault* of either side. BellSouth cannot be faulted
11 for having a network monopoly, or for wanting to narrow its use by others. Nor can
12 AT&T be faulted for needing comprehensive tools to provide local exchange services.

13

14 Importantly, the Telecommunications Act of 1996 and the FCC's implementing
15 regulations address this tension by fundamentally altering the relationship between
16 BellSouth and other carriers. The new relationship is founded on the entry tools and
17 prices required under Sections 251 and 252 of the Act and the associated federal
18 rules. The task before the Commission is to translate this framework into a viable set
19 of arrangements that AT&T and other carriers may use to provide local exchange and
20 exchange access services, and thus offer Florida consumers a choice of local service
21 provider.

22

23

THE CONFUSION IS CLEARING

24

25 Q. DO AT&T AND OTHER ENTRANTS STAND TO GAIN FROM CREATING

1 **CONFUSION?**

2 A. No. Local entrants need complex regulatory actions to make network elements and
3 wholesale services available to them so that they may enter the local exchange market.

4 As such, entrants require an educated, informed regulator to resolve these
5 complicated questions. Confusion does not assist the entrant, it can only delay the
6 availability of the tools that an entrant needs to provide service.

7

8 In contrast, BellSouth has but a single regulatory objective: its interLATA entry.

9 Once granted, BellSouth need not worry about operational and pricing concerns
10 because BellSouth has competitive choices for the network components and services
11 that it will purchase in order to provide long distance service. Local entrants do not
12 have a "choice of incumbent monopolies" to negotiate with; these entrants have only
13 the requirements and pricing rules of the FCC and the Act -- and, most importantly,
14 *this* Commission's decisions -- to be able to obtain the elements and services they will
15 need to compete.

16

17 **Q. IS THIS DISPARITY REFLECTED IN THE POSITIONS OF THE**
18 **PARTIES?**

19 A. Yes. The disparity between local and long distance entry barriers explains one of the
20 core disagreements between BellSouth and AT&T. BellSouth's principal motivation
21 is the promise of interLATA relief achievable after certain conditions are satisfied.
22 Significantly, BellSouth's objective is a binary result: they either obtain, or fail to
23 obtain, interLATA authority. Although interLATA authority is an extremely
24 valuable goal for BellSouth, it is a yes/no proposition. Whatever threshold is
25 established, BellSouth's incentive is to do no more than is absolutely required.

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Local entrants, in contrast, do not face a binary problem. A *complete* menu of entry tools is necessary to provide local services across the full range of market and geographic conditions. BellSouth continues to characterize this proceeding as being between AT&T and itself. In a very narrow sense, it is partially correct: the *direct* participants in these proceedings are AT&T and now MCI. But the results of this proceeding will define for an entire industry the terms under which they may provide local exchange services in competition with BellSouth. And, while the Act can *define* the basic tools of entry, it cannot implement them or establish their price.

A comprehensive arbitration necessarily raises a far longer listing of questions than a more narrow application. But for local competition to proceed broadly throughout Florida, a comprehensive set of tools must be provided. The Act recognized that comprehensive tools were needed, and it provided entrants a clear entitlement to each of the possible entry options so that competition could develop.

Q. DO THE FCC'S IMPLEMENTING REGULATIONS HELP ELIMINATE SOME OF THE ISSUES RAISED BY THE BELL SOUTH TESTIMONY?

A. Yes. In many areas the FCC's rules provide implementing guidance to resolve some of the issues raised in BellSouth's testimony. By removing the alleged "confusion" regarding the requirements of the Act, the scope of the issues before the Commission is narrowed. But the FCC's rules in no way diminish the importance of the Commission's decisions here. While the FCC's rules provide guidance as to the requirements of the Act, the Florida Commission is provided the latitude -- and here rests the responsibility -- to resolve the issues most central to whether Florida

1 consumers will have a choice of local provider, when, and at what price.

2

3 **Q. DO YOU HAVE EXAMPLES WHERE THE FCC'S IMPLEMENTING**
4 **RULES NARROW THE ISSUES HERE?**

5 A. Yes. One issue that arises in several contexts is how to provide access to operator
6 and directory services. This is an important example because of its implications for
7 consumers. These services are typically used by consumers when they need
8 assistance: assistance finding a number, correctly dialing a call, or establishing some
9 form of alternative billing. Obviously, services intended to provide assistance must
10 be simple and easy to use in order for consumers to derive the intended benefit.

11

12 AT&T has requested the ability to provide its own operator and directory services,
13 both when it is using BellSouth's unbundled local switching element to provide
14 service and when it is reselling BellSouth's local exchange service. Although these
15 are separate and distinct questions, the technical solution to *implement* the requested
16 relief is the same: BellSouth's switches (where feasible) must provide an entrant the
17 ability to "customize" the routing of operator and directory traffic. That is, as
18 customers dial the familiar "0" and "411" dialing patterns, the calls must route to the
19 correct provider of operator and directory services.

20

21 **Q. HOW DO THE FCC'S RULES ADDRESS THE ROUTING OF OPERATOR**
22 **AND DIRECTORY SERVICES?**

23 A. The FCC's rules are structured to facilitate competition and preserve for consumers
24 the familiarity of the existing operator and directory assistance dialing patterns. The
25 FCC's orders require that BellSouth's unbundled local switch provide (where

1 technically feasible) for the routing of operator and directory traffic to another
2 provider (see paragraph 418 of the First Report and Order, Docket 96-98), and also
3 require non-discriminatory dialing parity to these important services (see Second
4 Report and Order, CC Docket 96-98). These policies enable entrants to offer better
5 (or less expensive) operator and directory services without causing consumers to lose
6 the benefits of a familiar dialing pattern.

7

8 **Q. HOW DOES BELL SOUTH PROPOSE TO PROVIDE CONSUMERS WITH**
9 **THE ABILITY TO REACH OPERATOR AND DIRECTORY SERVICES?**

10 A. To quote Yogi Berra, the BellSouth solution is "deja vu all over again." With a
11 suggestion reminiscent (if not repetitive) of the equal access debates which preceded
12 the Bell System divestiture, BellSouth suggests that entrants use a different dialing
13 pattern for their operator and directory services (Scheye Direct Testimony, page 27):

14

15 BellSouth believes our customers are more adept than AT&T
16 implies. . . . Given the number of carriers and calling arrangements
17 provided, it is doubtful that customers would be particularly
18 confused by dialing "00" to reach an operator or a different seven
19 digit number to reach a repair center. *The issue is even further*
20 *simplified by the propensity of inexpensive handsets with speed*
21 *dialing capabilities which can be programmed with "1" for*
22 *operator, "2" for telephone repair, and "3" for directory*
23 *assistance. (Italics added.)*

24

25 At least BellSouth didn't suggest "4" for the Commission's Consumer Complaint

1 Division. Consider the irony of BellSouth's proposed solution: a customer seeking a
2 phone number must first consult the directory to obtain the number for directory
3 assistance; a consumer needing help placing a call must first obtain help reaching an
4 operator. The goal here is a better, less expensive, more responsive, local exchange
5 market for consumers, not customer confusion and a repeat of the "dialing pattern"
6 nightmares of the 70's and 80's.

7

8 **Q. ARE THERE OTHER EXAMPLES OF A BELL SOUTH STATUTORY**
9 **INTERPRETATION THAT THE FCC'S RULES CLARIFY?**

10 **A. Yes. BellSouth takes the position that entrants may not use combinations of network**
11 **elements to provide service. Remarkably, BellSouth takes the position that (Scheye**
12 **Direct Testimony, page 57):**

13

14 **Nowhere in the Act does it anticipate the recreation of an existing**
15 **service by the simple reassembling of the LEC's unbundled elements.**

16

17 **Perhaps Mr. Scheye overlooked the final sentence in Section 251(c)(3) which clearly**
18 **establishes the entrant's right to combine elements to provide any service they desire,**
19 **including, if they choose, a service identical to BellSouth's:**

20

21 **An incumbent local exchange carrier shall provide such unbundled**
22 **network elements in a manner that allows requesting carriers to**
23 **combine such elements in order to provide such telecommunications**
24 **services.**

25

1 The FCC (who did not overlook this provision of the Act) expressly permits carriers
2 to combine elements to provide any service (paragraph 292, First Order and Report,
3 Docket 96-98):

4
5 We agree with the Illinois Commission, the Texas Public Utility
6 Counsel, and others that this language [Section 251(c)(3)] bars
7 incumbent LECs from imposing limitations, restrictions, or
8 requirements on requests for, or the sale or use of, unbundled
9 elements that would impair the ability of requesting carriers to offer
10 telecommunications services in the manner they intend.

11
12 Indeed, the FCC specifically rejected BellSouth's view that unbundled elements may
13 only be purchased by so-called facilities-based carriers (paragraph 328, First Order
14 and Report, Docket 96-98):

15
16 We [the FCC] conclude, therefore, that Congress did not intend
17 section 251(c)(3) to be read to contain any requirement that carriers
18 must own or control some of their own local exchange facilities
19 before they can purchase and use unbundled elements

20
21 The FCC reached these conclusions for good reason: The Act intended to provide
22 entrants with a broad ability to offer consumers a choice in provider. There are no
23 litmus tests or hoops that entrants must satisfy in order to obtain network elements in
24 any combination they desire to offer consumers new (or even the same) services.

25

1 Q. DO THE FCC'S RULES CLARIFY THE ACT IN OTHER WAYS?

2 A. Yes. The FCC's rules also narrow the scope of AT&T's request. AT&T had
3 requested that the wholesale discount applicable to resold local exchange services be
4 increased to adjust for inferior operating systems and to provide an additional impetus
5 for local entry and competition. The FCC's Order, however, precludes the
6 Commission from directly considering these factors (see paragraph 914, First Report
7 and Order, Docket 96-98). Thus, the FCC's rules reduce the issues on both sides of
8 the arbitration, eliminating positions of both BellSouth and AT&T.

9

10 **LOCAL COMPETITION REQUIRES A COMPREHENSIVE ARBITRATION**

11

12 Q. ARE BELLSOUTH'S AGREEMENTS TO DATE SUFFICIENT FOR
13 LOCAL COMPETITION?

14 A. No. BellSouth witness Scheye places great emphasis on its 15 agreements (Scheye
15 Direct Testimony, page 5), implying that these agreements are sufficient for local
16 competition and alleging that AT&T's comprehensive request is intended to delay
17 BellSouth's interLATA entry.

18

19 First, the facts do not support the claim that these "voluntary" agreements have laid
20 the foundation for broad-based local competition. Despite BellSouth's claim that
21 these agreements have allowed "*local competition to move forward in this state*"
22 (Scheye Direct Testimony, page 4), local competition has not moved forward very
23 far. The following table summarizes the quantities of unbundled loops, ports and
24 interconnection trunks provided to entrants in Florida:

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**Table 1: The Status of Local Competition
Network Components Obtained by Competitors**

<u>Network Unit</u>	<u>BellSouth Quantity</u>	<u>Unbundled Quantity</u>
Loops	5,484,755	1
Switch Ports	7,667,002	0
Interconnection Trunks	5,338,776	1,000

Data Sources: Loops are from Items 7, 8 and 9, FIXCA's First Set, 960786-TL.
Ports are from Items 12 and 13, FIXCA's First Set, 960786-TL.
Interconnection Trunks from BellSouth Witness Calhoun, page 7.
* Statistic may be regionwide, not Florida-specific.
BellSouth interconnection trunk quantity uses interoffice carrier links as a proxy. ARMIS 43-07, 1994.

As the above table shows, any "claim" that the voluntary agreements are sufficient to enable local competition is not supported by the quantitative evidence. The Act's success cannot be measured by how many voluntary agreements exist; it can only be measured by the prices and choices that Florida consumers experience as a result. AT&T (and the entire industry) is entitled under the Act to a full range of options at cost-based rates. This policy was adopted so that consumers could have the greatest range of choices at the lowest possible price. The fact that some carriers have voluntarily agreed to less (for whatever reason) does not diminish the right of other entrants -- or the intended beneficiary of that right, the ultimate consumer -- to the full implementation of the tools Congress created.

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**Q. DOES BELLSOUTH'S TESTIMONY ILLUSTRATE WHY A
"VOLUNTARY" AGREEMENT IS UNLIKELY?**

A. Yes. BellSouth's own explanation of its position illustrates why this Commission must implement Sections 251 and 252 and not wait for "voluntary agreements" to establish these conditions. Consider the interaction of the following statements by BellSouth's two principal witnesses (emphasis added):

Mr. Scheye states:

BellSouth has approached the AT&T negotiations with the same sincere desire to negotiate a reasonable, *mutually beneficial* agreement

Direct Testimony, Page 7.

Mr. Varner provides more detail as to what BellSouth considers "mutually beneficial":

If the resale discount and the pricing of unbundled network elements is done correctly, there would be *no negative financial impact* to BellSouth.

Direct Testimony, Page 20.

In other words, BellSouth will voluntarily agree to the pricing of an entry option so long as it is indifferent between retaining a customer or losing it to a rival. Sections 251 and 252 are not intended to leave BellSouth indifferent. They are intended to provide rivals with the same cost structure for the use of BellSouth's network as

1 BellSouth's own retail services. In this way, competition will drive all other costs
2 (and, where possible, facilities-costs as well) to their lowest possible level.

3

4 **Q. WILL AT&T'S COMPREHENSIVE ARBITRATION REQUEST DELAY**
5 **BELLSOUTH'S INTERLATA AUTHORITY?**

6 A. No, this characterization lacks any logical foundation. BellSouth's interLATA entry
7 is dependent upon BellSouth's satisfying the requirements of Section 271. AT&T's
8 comprehensive arbitration request (when fully implemented) will promote the entry
9 and competition contemplated by the Act. Although BellSouth's interLATA entry
10 raises issues not addressed in this arbitration (and is the subject of a separate
11 proceeding), if anything, a comprehensive proceeding of this nature should assist
12 BellSouth's compliance with Section 271, albeit under conditions where others will be
13 able to compete effectively. I see no rational linkage between comprehensively
14 enabling local competition and delaying BellSouth's ability to demonstrate its
15 compliance with the requirements of Section 271.

16

17 **THIS ARBITRATION WILL GIVE NO**
18 **ARTIFICIAL ADVANTAGE TO AT&T**

19

20 **Q. CAN THIS ARBITRATION PROVIDE AT&T A PREFERENTIAL RATE**
21 **FOR NETWORK ELEMENTS AND WHOLESALE SERVICES?**

22 A. No. BellSouth's allegation that this arbitration will singularly benefit AT&T is false.
23 This arbitration will result in a comprehensive set of tools to support local entry that
24 satisfies the cost-standards of the Act and the FCC's implementing rules. The Act
25 guarantees -- and the FCC's rules (47 C.F.R. §51.809) are explicit on this point --

1 that *any entrant* may avail itself of *any component* of an interconnection agreement.

2

3 AT&T cannot obtain a cost-structure advantage over its rivals through this
4 arbitration, because each of its elements would be available to all other competitors.
5 The only price differential that would be justified between AT&T and other entrants
6 would have to be a difference based in cost.

7

8 In fact, this Commission should strive to prevent any agreement which would favor a
9 particular competitor over another. Competition is the process by which the cost-
10 based pricing of network elements flow through to consumers. Except where a
11 particular arrangement has unique cost characteristics, the Commission should
12 diligently evaluate agreements to prevent any unjustified price differentials.

13

14 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

15 **A. Yes.**