

NANCY B. WHITE
Assistant General Counsel-Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
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September 17, 1997

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 971140-TP

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunication, Inc.'s Answer and Response to Petition of MCImetro Access Transmission Services, Inc., which we ask that you file in the above-captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White
Nancy B. White (NW)

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 1 _____
- LIN 5 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

Enclosures

cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

09494 SEP 17 97

FPSC-RECORDS/REPORTS

**CERTIFICATE OF SERVICE
DOCKET NO. 971140-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served
via U. S. Mail 17th day of September, 1997 to the following:

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs,
Odom & Ervin
305 South Gadsden Street
Post Office Drawer 1170
Tallahassee, FL 32302

Richard Melson
Hopping Law Firm
Post Office Box 6526
Tallahassee, FL 32314

Mr. Thomas K. Bond
MCI Metro Access Transmission
Services, Inc.
780 Johnson Ferry Road
Suite 700
Atlanta, GA 30342

Nancy B. White
Nancy B. White

(30)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCI Metro)	
Access Transmission Services,)	DOCKET NO. 971140-TP
Inc., to Set Non-Recurring Charges)	
for Combinations of Network)	Filed: September 17, 1997
Elements with BellSouth)	
Telecommunications, Inc.)	
)	

**BELLSOUTH TELECOMMUNICATION, INC.'S
ANSWER AND RESPONSE TO
PETITION OF MCImetro ACCESS TRANSMISSION SERVICES, INC.**

BellSouth Telecommunications, Inc., ("BellSouth"), hereby files its Answer and Response, pursuant to Rule 1.110, Florida Rules of Civil Procedure and Rules 25-22.037 and 25-22.0375, Florida Administrative Code, to the Petition filed by MCImetro Access Transmission Services, Inc., ("MCI") to set non-recurring charges for combinations of network elements and states the following:

1. As to the allegations of the first two unnumbered paragraphs of the Petition, BellSouth denies these allegations.
2. As to the allegations of Paragraph 1 of the Petition, BellSouth is without sufficient information or knowledge of these allegations and, therefore, these allegations are deemed to be denied.
3. As to the allegations of Paragraph 2 of the Petition, BellSouth is without sufficient information or knowledge of these allegations and, therefore, these allegations are deemed to be denied.

4. As to the allegations of Paragraph 3 of the Petition, BellSouth is without sufficient information or knowledge of these allegations and, therefore, these allegations are deemed to be denied.

5. As to the allegations of Paragraph 4 of the Petition, BellSouth admits these allegations.

6. As to the allegations of Paragraph 5 of the Petition, BellSouth admits these allegations.

7. As to the allegations of Paragraph 6 of the Petition, BellSouth denies these allegations and states that BellSouth did not refuse to negotiate with MCI, but rather that BellSouth required additional time in which to formulate its position in light of the Eighth Circuit's decision of July 18, 1997 in the case of Iowa Utilities Board vs. Federal Communications Commission, US App. LEIXS 18183. See Attachment "A", August 25, 1997, letter from Jerry Hendrix to Marcel Henry.

8. As to the allegations of Paragraph 7 of the Petition, BellSouth admits these allegations.

9. As to the allegations of Paragraph 8 of the Petition, BellSouth admits these allegations.

10. As to the allegations of Paragraph 9 of the Petition, BellSouth admits these allegations.

11. As to the allegations of Paragraph 10 of the Petition, BellSouth admits these allegations.

12. As to the allegations of Paragraph 11 of the Petition, BellSouth admits to the accuracy of the quote from the Commission's Order on Reconsideration (No. PSC-97-0298-FOF-TP in Docket No. 960846-TP), but is without sufficient information or knowledge of the remaining allegations and, therefore, the remaining allegations are deemed to be denied.

13. As to the allegations of Paragraph 12 of the Petition, BellSouth admits these allegations.

14. As to the allegations of Paragraph 13 of the Petition, BellSouth admits these allegations and states that BellSouth required additional time in which to formulate its position in light of the Eighth Circuit's decision. See Attachment "A".

15. As to the allegations of Paragraph 14, BellSouth denies these allegations and states that, it is BellSouth's understanding that MCI intends to provide its own Directory Assistance and operator services. Moreover, vertical services are included in BellSouth's port. Therefore, a loop and a port combination alone is enough to provide retail service.

16. As to the allegations of Paragraph 15, BellSouth admits these allegations as to the rate for the loop and port and denies the remaining allegations. Moreover, BellSouth avers that more than a "computer entry

that should take BellSouth less than two minutes to perform is required."

Field work and manual interventions to coordinate cutovers and connections are required as well.

17. As to the allegations of Paragraph 16, BellSouth admits these allegations as to the rate for the loop and port and denies the remaining, allegations. Moreover, BellSouth avers that more than a "computer entry taking two minutes to perform is required." Field work and manual intervention to coordinate cutovers and connections are required as well.

18. As to the allegations of Paragraph 17, BellSouth admits these allegations as to the rate for the loop and port and denies the remaining allegations. Moreover, BellSouth avers that more than a "computer entry taking two minutes to perform is required." Field work and manual intervention to coordinate cutovers and connections are required as well.

19. As to the allegations of Paragraph 18, BellSouth admits these allegations as to the rate for the loop and port and denies the remaining allegations. Moreover, BellSouth avers that more than a "computer entry taking two minutes to perform is required." Field work and manual intervention to coordinate cutovers and connections are required as well.

20. As to the allegations of Paragraph 19 of the Petition, BellSouth denies these allegations.

21. As to the allegations of Paragraph 20 of the Petition, BellSouth denies these allegations.

22. As to the allegations of Paragraph 21 of the Petition, BellSouth denies these allegations and states that the existence vel non of mechanized processes has nothing to do with the need for manual labor and field work.

23. As to the allegations of Paragraph 22 of the Petition, BellSouth denies these allegations.

24. As to the allegations of Paragraph 23 of the Petition, BellSouth denies these allegations.

25. As to the allegations of Paragraph 24 of the Petition, BellSouth denies these allegations.

26. As to the allegations of Paragraph 25 of the Petition, BellSouth denies these allegations.

27. As to the allegations of Paragraph 26 of the Petition, BellSouth denies these allegations.

28. As to the allegations of Paragraph 27 of the Petition, BellSouth denies these allegations.

29. As to the allegations of Paragraph 28 of the Petition, BellSouth denies the allegation that it has refused to negotiate and avers that the existing NRCs are appropriate.

30. As to the allegations of Paragraph 29 of the Petition, BellSouth denies the allegation that it has refused to investigate and avers that the existing NRCs are appropriate.

31. As to the allegations of the Wherefore Clause of the Petition, these allegations are requests for relief rather than facts and, therefore, do not require a response.

AFFIRMATIVE DEFENSE

32. In its Petition, MCI implies that the recurring rate for rebundled network elements has been set by this Commission's Final Order on Motions for Reconsideration (Order No. PSC-97-0298-FOF-TP, issued March 19, 1997). To the contrary, the Commission's Order contained the following language on this point:

In our original arbitration proceeding in this docket, we were not presented with the specific issue of pricing of recombined elements when recreating the same service offered for resale.....

Furthermore, we set rates only for the specific unbundled elements that the parties requested. Therefore, it is not clear from the record in this proceeding that our decision included rates for all elements necessary to recreate a complete retail service. Thus, it is inappropriate for us to make a determination on this issue at this time.

(Order, p.7).

The Commission, however, further stated that it "would be very concerned if recombining network elements to recreate a service could be used to undercut the resale price of the service." (Order, p.8).

33. Thus, the Commission first noted expressly that it had not ruled upon the pricing of recombined UNEs. Then the Commission stated that the record was unclear on the issue of whether recombination to recreate an existing service from the elements priced to date is possible. Finally, the Commission expressed its concern at the prospect of "...recombining network elements to recreate a service could be used to under cut the resale price of the service." (Order, p. 8).

34. The Eighth Circuit Court of Appeals affirmed the FCC rule that allowed ALECs to use network elements in any combination they want (including to replicate a finished telecommunications service) but vacated the FCC's rule that required ILECs to recombine those unbundled network elements for the ALEC. The Court affirmed that state commissions are vested with exclusive pricing authority over unbundled network elements. Although the Act does not require BellSouth to recombine network elements for a ALEC, BellSouth is free to agree to do so. Indeed, the 8th Circuit recognized that purchasing unbundled network elements might require a significant up front investment.

35. Moreover, BellSouth recognizes that the interconnection agreements that have been executed thus far, obligate BellSouth to accept and provision UNE combination orders. Thus, until the Eighth Circuit's opinion becomes final and non-appealable, BellSouth will abide by the terms of those interconnection agreements, as BellSouth expects MCI to do.

36. BellSouth has consistently taken the position that ALECs are free to use unbundled network elements recombined by the ILEC in any manner that they choose; however, when they use recombined elements to duplicate an ILEC retail service, the Commission can exercise its exclusive authority to price that recombination at the resale discount rate.

37. Therefore, BellSouth is not required to offer combinations of unbundled network elements except as negotiated between BellSouth and MCI. Moreover, switch "as is" situations should be treated like resale situations, with the pricing rules applicable thereto, not as the sale of unbundled network elements. MCI's petition should, therefore, be denied.

WHEREFORE, BellSouth requests this Commission deny MCI's petition.

Respectfully submitted this 17th day of September, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.


ROBERT G. BEATTY

NANCY B. WHITE

c/o Nancy Sims

150 South Monroe Street, Suite 400

Tallahassee, FL 32301

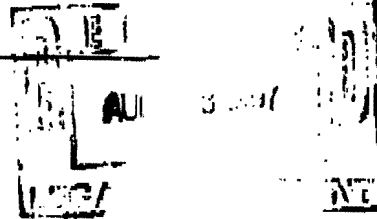
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ATTACHMENT "A"



August 25, 1997

Marcel Henry
Regional Vice President
MCI Access Transmission
Three Ravinia Dr.
Atlanta, Georgia 30346

Re: Non-recurring Charges for UNE Combinations in Florida

Dear Mr. Henry:

This is BellSouth's formal response to your letter of August 8, 1997. I appreciate your patience in allowing BellSouth the opportunity to give full consideration to the issues raised in that letter in light of the changes countenanced by the Eighth Circuit's decision of July 18, 1997.

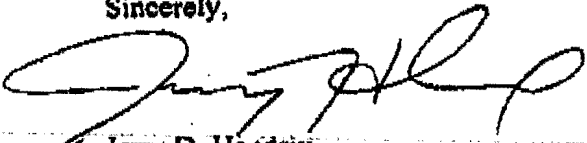
As you are undoubtedly aware, the Eighth Circuit vacated the FCC's rule requiring incumbent LECs to combine unbundled network elements for requesting carriers. The Court found that the plain language of the Act cannot be read to levy a duty on the incumbent LECs to do the actual combining of elements, but that a competing carrier may obtain the ability to provide telecommunications services entirely through an incumbent LEC's unbundled network elements. In light of these decisions of the 8th Circuit, BellSouth is currently reviewing the state commission decisions regarding access to unbundled network elements and the recombination of unbundled network elements to determine whether BellSouth's current policies should change, and if so, how.

While BellSouth has no legal duty to provide combinations of unbundled network elements to requesting carriers such as MCI, BellSouth is examining, from a business perspective, the viability of such an offer. This offer will likely take the form of combining unbundled network elements for customers that reflect the increased risk and the risk sharing concepts put forth by the Eighth Circuit. BellSouth will continue the dialogue begun with MCI on August 4, 1997, at Villa Christina Restaurant regarding a potential offer of this sort.

One of the issues raised in our meeting of August 7, as well as in Jeremy Marcus's letter of July 25 to Susan Arrington, is recombination in the context of the migration of an existing customer. Specifically, MCI desires to negotiate the non-recurring charges associated with recombining unbundled network elements to form an already existing service. Although not required to allow recombinations on a "switch as is" basis, BellSouth is receptive to evaluating the possibility of other offerings that would satisfy the issues with MCI relative to recombining of unbundled network elements and non-recurring charges in connection with "switch as is" changes.

In closing, BellSouth would like to reaffirm its commitment to continue efforts to quantify what form the aforementioned offerings may take, and its receptiveness to consider any new proposals that might incent MCI to maintain optimum utilization of BellSouth's network.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry D. Hendrix", written in a cursive style.

Jerry D. Hendrix