

ORIGINAL

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February 20, 1998

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 (Recombination Docket)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of D. Daonne Caldwell, Jerry Hendrix, Eno Landry and Alphonso J. Varner, which we ask that you file in the 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.

Varner
DOCUMENT NUMBER-DATE
02463 FEB 20 88
FPSC-RECORDS/REPORTING

- ACK
- AFA
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- CMU *Stavris*
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- RCH
- SEC
- WAS
- OTH

Enclosures

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

Sincerely,

Nancy B. White
Nancy B. White (BW)

RECEIVED & FILED *Caldwell*
DOCUMENT NUMBER-DATE
Stavris
FPSC-BUREAU OF RECORDS
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FPSC-RECORDS/REPORTING

Hendrix
DOCUMENT NUMBER-DATE
Landry
02462 FEB 20 88
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CERTIFICATE OF SERVICE
DOCKET NO. 971140-TP (Recombination Issues)

I HEREBY CERTIFY that a true and correct copy of the foregoing was served
via Federal Express 20th day of February, 1998 to the following:

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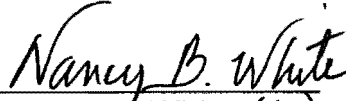
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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF JERRY HENDRIX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 971140-TP
FEBRUARY 20, 1998

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Director - Interconnection Services Pricing. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME JERRY HENDRIX WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut the testimony filed in this docket by MCI's witness, Chip Parker and AT&T's witness, David Eppsteiner, regarding the contractual obligations contained in the BellSouth-MCI and BellSouth-AT&T interconnection agreements.

1 **Rebuttal to Mr. Parker's Testimony**

2 Q. ON PAGE 3 OF MR. PARKER'S TESTIMONY, MR. PARKER STATES
3 THAT THE AGREEMENT ALLOWS FOR THE MIGRATION OF
4 EXISTING BELLSOUTH CUSTOMERS TO MCI_m SERVED THROUGH
5 UNBUNDLED NETWORK ELEMENTS BY REUSING EXISTING
6 BELLSOUTH FACILITIES. DO YOU AGREE?

7

8 A. BellSouth does not dispute that Attachment VIII, Section 2.2.15.3 of the
9 interconnection agreement allows MCI_m to purchase combinations of
10 unbundled network elements. This provision in the agreement however, does
11 not provide a price for such combinations. Section 2.2.15.3 merely states that
12 "...Network Elements or Combinations that are currently interconnected and
13 functional...shall remain connected and functional without any disconnection
14 or disruption of functionality."

15

16 Q. MR. PARKER STATES ON PAGE 3 OF HIS TESTIMONY THAT THE
17 EIGHTH CIRCUIT COURT'S DECISION "DOES NOT
18 AUTOMATICALLY INVALIDATE CONTRACTUAL PROVISIONS..."
19 WHAT IS BELLSOUTH'S OPINION?

20

21 A. Part A, Section 2.4 of the BST/MCI_m Agreement specifically states:

22 In the event that any final and nonappealable legislative, regulatory,
23 judicial or other legal action materially affects any material terms of
24 this Agreement, or the ability of MCI_m or BellSouth to perform any
25 material terms of this Agreement, or in the event a judicial or

1 administrative stay of such action is not sought or granted, MCI or
2 BellSouth may, on thirty (30) days written notice (delivered not later
3 than (30) days following the date on which such action has become
4 legally binding and has otherwise become final and nonappealable)
5 require that such terms be renegotiated, and the Parties shall renegotiate
6 in good faith such mutually acceptable new terms as may be required.
7 In the event that such new terms are not renegotiated within ninety (90)
8 days after such notice, the dispute shall be resolved in accordance with
9 Section 23 (Dispute Resolution Procedures) of this Agreement.

10

11 Furthermore, Part A, Section 7 of the BST/MCI Interconnection Agreement
12 provides that:

13 [t]his Agreement shall be governed by and construed in accordance
14 with applicable federal law and the laws of the state of Florida, without
15 regard to its conflicts of law principles.

16

17 Therefore, once the Eighth Circuit's Order becomes final and non-appealable,
18 Section 2.4 of the General Terms and Conditions section of the BST/MCI
19 Interconnection Agreement requires that the parties re-negotiate the
20 combination provisions.

21

22 Q. MCI'S WITNESS MR. PARKER ALLEGES THAT SECTION 8 OF
23 ATTACHMENT 1 OF THE INTERCONNECTION AGREEMENT SETS
24 FORTH PRICES FOR UNE COMBINATIONS. DO YOU AGREE WITH
25 THIS INTERPRETATION OF THE AGREEMENT?

1

2 A. No. Section 8 of Attachment 1 specifies “[t]he recurring and nonrecurring
3 prices for unbundled Network Elements (UNEs) in Table 1 of this Attachment
4 are appropriate for UNEs on an individual, stand-alone basis.” This section
5 does not specify the rates for combinations. It does require however, the
6 parties to “work together to establish recurring and non-recurring charges in
7 situations where MCI is ordering multiple network elements.”

8

9 Q. MR. PARKER CLAIMS ON PAGE 4 OF HIS TESTIMONY THAT
10 BELL SOUTH IS NOT AUTHORIZED BY THE AGREEMENT TO
11 CHARGE A “GLUE” CHARGE TO MCI WHEN MCI ORDERS
12 ELEMENTS IN COMBINATION. DO YOU AGREE?

13

14 A. No. The agreement does not prohibit BellSouth from charging a “glue”
15 charge. Mr. Parker has based his assertion on Attachment III, Section 2.6 of the
16 interconnection agreement which states:

17 With respect to Network Elements and services in existence as of the
18 Effective Date of this Agreement, charges in Attachment 1 are inclusive
19 and no other charges apply, including but not limited to any other
20 consideration for connecting any Network Element(s) with other
21 Network Element(s). BellSouth and MCI agree to attempt in good
22 faith to resolve any alleged errors or omissions in Attachment 1.

23

24 As I explained in my Direct Testimony on page 6, lines 23-25 and page 7, lines
25 1-13, the language in this section was agreed to in conjunction with the pricing

1 language BellSouth proposed be incorporated in the agreement, but which was
2 rejected by this Commission. This section simply addresses combinations
3 which recreate existing retail service offerings. Such combinations are
4 considered resale and priced accordingly.

5

6 Q. MR. PARKER AGREES THAT "MIGRATION OF AN EXISTING"
7 CUSTOMER CAN APPLY TO A RESALE OR TO THE PROVISIONING
8 OF SERVICE THROUGH THE USE OF A LOOP/PORT COMBINATION
9 PURCHASED FROM BELLSOUTH. MR. PARKER FURTHER STATES
10 THAT NON-RECURRING CHARGES FOR SUCH MIGRATIONS
11 SHOULD NOT APPLY SINCE THERE IS NO CONNECTING OR
12 DISCONNECTING ACTIVITY. DOES BELLSOUTH AGREE THAT THE
13 NON-RECURRING CHARGES FOR "MIGRATION OF AN EXISITING"
14 CUSTOMER SHOULD NOT APPLY IN THESE SITUATIONS?

15

16 A. No. The "migration of an existing customer" is the same thing as resale and
17 therefore the appropriate non-recurring charge when MCI "migrates" an
18 existing customer is the non-recurring charge applicable to resale, which in
19 most cases would likely be the secondary service order charge less the
20 wholesale discount.

21

22 Q. ON PAGE 7, MR. PARKER ASSERTS THAT THE INTERCONNECTION
23 AGREEMENT DOES NOT AUTHORIZE BELLSOUTH TO TREAT
24 COMBINATIONS OF UNES AS RESALE. DOES BELLSOUTH AGREE
25 WITH MR. PARKER'S ASSERTION?

1

2 A. No. Mr. Parker has based his assertion on Section 8 of Attachment 1 which
3 simply states that when MCI orders two or more UNEs combined, "BellSouth
4 shall provide recurring and non-recurring charges that do not duplicate charges
5 for functions or activities that MCI does not need when two or more network
6 elements are combined in a single order." What Mr. Parker fails to recognize
7 is that this section of the agreement requires the parties to work together to
8 establish a recurring and non-recurring charge in these situations. Nowhere in
9 the agreement does it state how those combinations are to be priced.

10

11 Q. ON PAGE 7 OF MR. PARKER'S TESTIMONY, HE STATES THAT
12 BELLSOUTH HAS NOT BEEN PROVIDING INFORMATION ON
13 SWITCHED ACCESS USAGE AS REQUIRED BY THE AGREEMENT. IS
14 THIS TRUE?

15

16 A. No. As I stated in my direct testimony, interstate access records are available
17 to MCI via the Access Daily Usage File (ADUF).

18

19 **Rebuttal to David Eppsteiner**

20

21 Q. DOES BELLSOUTH CONTEND THAT IT HAS NO OBLIGATION TO
22 PROVIDE COMBINATIONS OF UNES TO AT&T?

23

24 A. No. While BellSouth believes that as a result of the Eighth Circuit's decision,
25 BellSouth has no legal obligation to provide combinations of UNEs, BellSouth

1 has continuously stated that it intends to abide by its contractual obligation to
2 provide unbundled network element combinations to those ALECs who have
3 such language in their agreements. The agreement between BellSouth and
4 AT&T was executed when the laws governing such an agreement required
5 BellSouth to provide AT&T with combinations of network elements and to
6 deliver unseparated elements previously combined. It is for this reason, and
7 this reason only, that BellSouth agreed to provide combinations to AT&T.
8 However, once the Eighth Circuit's decision becomes final and non-
9 appealable, BellSouth will have no legal obligation to continue to do so and at
10 that time will expect to renegotiate the pertinent provisions pursuant to
11 Section 9.3 of the General Terms and Conditions section of the agreement
12 which states:

13 In the event that any final and nonappealable legislative, regulatory,
14 judicial or other legal action materially affects any material terms of
15 this Agreement, or the ability of AT&T or BellSouth to perform any
16 material terms of this Agreement, AT&T or BellSouth may, on thirty
17 (30) days' written notice (delivered not later than thirty (30) days
18 following the date on which such action has become legally binding
19 and has otherwise become final and nonappealable) require that such
20 terms be renegotiated, and the Parties shall renegotiate in good faith
21 such mutually acceptable new terms as may be required. In the event
22 that such new terms are not renegotiated within ninety (90) days after
23 such notice, the Dispute shall be referred to the Alternative Dispute
24 Resolution procedures set forth in Attachment 1.

25

1 Q. DOES BELLSOUTH AGREE THAT SECTION 36.1 OF THE
2 INTERCONNECTION AGREEMENT CONTAINS A SPECIAL
3 PROVISION RELATING TO CHARGES FOR MULTIPLE NETWORK
4 ELEMENTS AS STATED BY MR. EPPSTEINER ON PAGE 7 OF HIS
5 TESTIMONY?

6
7 A. No. The "special provision" referred to by Mr. Eppsteiner pertains to the
8 language which states that, "Any BellSouth non-recurring and recurring
9 charges shall not include duplicate charges or charges for functions or activities
10 that AT&T does not need when two or more Network Elements are combined
11 in a single order." This section also requires, per the Commission's order, the
12 parties to negotiate non-recurring and recurring charges to be paid by AT&T
13 when AT&T orders multiple Network Elements. The Commission clearly
14 states in its March 19, 1997 Order (PSC-97-0298-FOF-TP) and again in its
15 May 27, 1997 Order (PSC-97-0602-FOF-TP) that it did not set prices for
16 combinations. It is hard to understand how AT&T can assert otherwise.

17
18 Q. MR.EPPSTEINER ON PAGE 9 OF HIS TESTIMONY STATES THAT THE
19 LANGUAGE IN SECTION 36.1 STATES THAT THE PRICES FOR
20 UNBUNDLED NETWORK ELEMENTS ARE SET FORTH IN PART IV,
21 TABLE 1. DOES BELLSOUTH AGREE THAT SPECIFIC PRICES FOR
22 UNBUNDLED NETWORK ELEMENT COMBINATIONS ARE
23 CONTAINED IN THE AGREEMENT?

24
25 A. No. The prices set forth in Part IV, Table 1 are the prices for individual

1 unbundled network elements and do not pertain to unbundled network element
2 combinations.

3
4 Section 36.1 of the General Terms and Conditions section of the agreement
5 states that "BellSouth and AT&T shall work together to mutually agree upon
6 the total non-recurring and recurring charge(s) to be paid by AT&T when
7 ordering multiple Network Elements." Neither of these sections specifies the
8 prices for combinations.

9
10 Q. DOES BELLSOUTH AGREE WITH MR. EPPSTEINER'S CLAIM ON
11 PAGE 9 OF HIS TESTIMONY THAT ATTACHMENT 4, SECTION 4.5
12 SETS THE PRICES FOR ELEMENTS THAT ARE CURRENTLY
13 COMBINED?

14
15 A. No. BellSouth agrees that Attachment 4, Section 4.5 prohibits BellSouth from
16 disconnecting combined elements. However, BellSouth disagrees with Mr.
17 Eppsteiner's assertion that the price for such combinations is the sum of the
18 individual elements as set forth in Part IV, Table 1 of the General Terms and
19 Conditions. This section of the agreement does not address the price of such
20 combinations, but merely states that "[e]lements or combinations that are
21 currently interconnected and functional....will remain interconnected and
22 functional without any disconnection or disruption of functionality."

23
24 Q. DOES BELLSOUTH AGREE THAT PART IV, TABLE 1 OF THE
25 INTERCONNECTION AGREEMENT SETS FORTH PRICES FOR

1 COMBINATIONS AS STATED BY MR. EPPSTEINER ON PAGE 10 OF
2 HIS TESTIMONY?

3

4 A. No. As I stated in my Direct Testimony on page 8, lines 11-12 and 19-20, the
5 BellSouth-AT&T Interconnection Agreement does not specify how
6 combinations should be priced. Part IV, Table 1 of the agreement sets forth the
7 prices for individual unbundled network elements.

8

9 Q. HOW DOES BELL SOUTH RESPOND TO MR. EPPSTEINER'S
10 ASSERTION ON PAGE 10 OF HIS TESTIMONY THAT COMBINATIONS
11 SHOULD NOT BE PRICED AT THE WHOLESALE DISCOUNT?

12

13 A. In Mr. Eppsteiner's testimony, at page 10, he refers to the language proposed
14 by BellSouth to address the combination issue. Such language was in fact
15 rejected by this Commission, although the Commission did not reject the
16 concept upon which such language was predicated. In fact, as I stated in my
17 Direct Testimony on page 5, lines 14-18, BellSouth's proposed language
18 mirrors the concern expressed by the Commission itself in its March 19, 1997
19 Order in FPSC Docket 960846-TP. Furthermore, Mr. Eppsteiner continues to
20 incorrectly point to Part IV and Table 1 of the Interconnection Agreement to be
21 the sections which govern the pricing of combinations. "Part IV: Pricing" is
22 the general pricing section of the agreement and Table 1 lists the prices for
23 individual unbundled network elements. The interconnection agreement
24 entered into between BellSouth and AT&T does not specify how combinations
25 of unbundled network elements should be priced.

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2 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

3

4 A. Yes.

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