

ORIGINAL

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **MARK G. FELTON**

5
6
7 **Q. Please state your name and business address.**

8 A. My name is Mark G. Felton. My business address is 7301 College Boulevard,
9 Overland Park, Kansas 66210.

10
11 **Q. By whom are you employed and in what capacity?**

12 A. I am employed by Sprint as Manager- Local Market Development.

13
14 **Q. Are you the same Mark G. Felton who filed Direct Testimony in this arbitration**
15 **proceeding?**

16 A. Yes, I am.

17
18 **Q. What is the purpose of your Rebuttal Testimony?**

19 A. The purpose of my testimony is to respond to the testimony of the BellSouth
20 Telecommunications, Inc. ("BellSouth") witness, Mr. John A. Ruscilli. Specifically, I
21 will address contentions made by Mr. Ruscilli in regards to Issue numbers 1, 3, 5, 7,
22 11, and 12.

23
24 **ISSUE NO. 1: Terms and Conditions, Section 19.7 – Resolution of conflicts between**
25 **Agreement and BellSouth tariff.**

1 **Q. What is the current status of this issue?**

2 A. Sprint’s understanding is that this issue has been resolved. The agreed upon language
3 is as follows:

4 “Nothing in this Agreement shall preclude Sprint from purchasing any
5 services or facilities under any applicable and effective BellSouth tariff.
6 Each party hereby incorporates by reference those provisions of its tariffs
7 that govern the provision of any of the services or facilities provided
8 hereunder. In the event of a conflict between a provision of the
9 Agreement and a provision of an applicable tariff, the parties agree to
10 negotiate in good faith to attempt to reconcile and resolve such conflict. If
11 any provision of the Agreement and an applicable tariff cannot be
12 reasonably construed or interpreted to avoid conflict, and the parties
13 cannot resolve such conflict through negotiation, such conflict shall be
14 resolved as follows:

15
16 Unless otherwise provided herein, if the service or facility
17 is ordered from the tariff, the terms and conditions of the
18 tariff shall prevail.

19
20 If the service is ordered from this Agreement (other than
21 resale), and the Agreement expressly references a term,
22 condition or rate of a tariff, such term, condition or rate of
23 the tariff shall prevail.

24

1 If the service is ordered from this Agreement, and the
2 Agreement references the tariff for purposes of the rate
3 only, then to the extent of a conflict as to the terms and
4 conditions in the tariff and any terms and conditions of this
5 Agreement, the terms and conditions of this Agreement
6 shall prevail.

7
8 If the service is a resale service, the terms and conditions of
9 the Agreement shall prevail.”

10 If this understanding proves to be incorrect, Sprint respectfully reserves the right to
11 file supplemental rebuttal testimony.

12
13 **ISSUE NO. 3: Attachment 1, Resale – Resale of stand-alone vertical features**

14
15 **Q. On page 8, lines 8-9 of his testimony, Mr. Ruscilli states that vertical services are**
16 **not retail services subject to the resale requirement because “BellSouth does not**
17 **offer custom calling services (vertical services) to end users on a stand-alone**
18 **basis”. Please comment.**

19 **A.** Vertical Services are retail services regardless of whether BellSouth has a restriction in
20 its tariffs that these services may only be purchased in conjunction with another retail
21 service. Clearly, the product is the vertical feature and the purchase of local dial tone
22 is the prerequisite condition which must be met before the customer can purchase the
23 vertical feature. BellSouth’s condition for the purchase of a product is distinct from
24 the product itself.

25

1 **Q. Are vertical features, in fact, retail services?**

2 A. Yes, as stated in my Direct Testimony, vertical features are optional retail services
3 which enhance the functionality of basic local dial tone. BellSouth markets these
4 features directly to end users. Webster defines retail as “the sale of commodities or
5 goods in small quantities to the ultimate consumers”. Vertical features certainly fit
6 this description. BellSouth’s contention that Sprint is requesting BellSouth to create a
7 new retail service is absolutely without merit. In support of BellSouth’s argument,
8 Mr. Ruscilli cites ¶877 of the First Report and Order, which states that an ILEC is not
9 obligated “to disaggregate a retail service into more discrete retail services” for the
10 purposes of resale. BellSouth’s argument breaks down, however, when the facts are
11 considered. Although local dial tone is required for a vertical feature to work
12 properly, vertical features are not a building block or component of some larger
13 service. Vertical features are not automatically included with the customer’s service
14 when they subscribe to BellSouth’s local dial tone. They are marketed, priced, and
15 billed separately from any other service and, therefore, meet the criteria of a retail
16 service.

17

18 **Q. Are vertical features, in fact, telecommunications services?**

19 A. Yes. BellSouth even acknowledges that the vertical features in question are, in fact,
20 telecommunications services by virtue of the fact that it agrees that Section 251(c)(4)
21 of the Act is the appropriate section with regard to this issue. Clearly, vertical features
22 are telecommunications services and vertical features are retail services. The only
23 question remaining to be answered is whether the end-user restriction on the purchase
24 of these retail services should apply to Sprint.

25

1 **Q. Should the tariff restriction that applies to end users also apply to Sprint?**

2 A. Contrary to Mr. Ruscilli's testimony on page 8, the issue *is* whether a resale restriction
3 should apply. As demonstrated previously, the retail telecommunications service
4 Sprint requests authority to resell *does* exist. As was stated in my Direct Testimony,
5 Congress and the FCC state without equivocation that "resale restrictions are
6 presumptively unreasonable" (See First Report and Order ¶ 939). The burden of proof
7 is on BellSouth to demonstrate that the restriction found in BellSouth's General
8 Subscriber Services Tariff, Section A13.9.2(B) is reasonable and should apply to
9 Sprint as an ALEC. Having no foundation to do so, BellSouth has instead chosen to
10 focus its arguments on whether the retail service actually exists. One can only assume
11 that BellSouth's motivation in doing so is, as the FCC noted, to preserve its market
12 power and prevent the development of any significant competition in the local services
13 market.

14

15 **Q. On page 9 of Mr. Ruscilli's testimony, he raises an objection based on a situation
16 where another ALEC requests to resell the basic local service. Please respond.**

17 A. Mr. Ruscilli raises a valid question. As I have stated previously, basic local service
18 and vertical features are two distinct retail services which BellSouth offers today. By
19 way of example, assume Sprint resells a vertical feature to an end-user for whom
20 BellSouth is the basic local service provider. If that customer then chose an ALEC,
21 other than Sprint, to provide their basic local service but did not wish to purchase the
22 vertical feature in question from the ALEC, then no problem arises since basic local
23 service and the vertical feature are two distinct retail services. Dial-tone is still being
24 provided, so there is no question that the feature would function properly. BellSouth
25 is fully compensated for the cost of the basic local service and the vertical feature less

1 its retail costs. If the customer in this example, however, chose to purchase the
2 vertical feature in question from the ALEC, then Sprint would be obligated to
3 relinquish that vertical feature to the ALEC. The hallmark of competition is for the
4 customer to have the ultimate choice of whom they purchase services from.

5

6 **Q. BellSouth also raises the question of what happens when an ALEC other than**
7 **Sprint purchases UNE switching for the customer to which Sprint resells a**
8 **vertical feature. How do you respond?**

9 A. If an ALEC purchased UNE switching for a customer to which Sprint is reselling a
10 vertical feature, Sprint would be required to terminate its delivery of the feature to that
11 customer. Mr. Ruscilli is correct in saying that a provider of service via UNEs has
12 exclusive rights to the vertical services of local switching but his extension of this
13 principle to resale is misguided. The purchaser of UNE switching effectively becomes
14 the “owner” of that network element and is, indeed, entitled to the exclusive use of all
15 of the features and functions associated with it. If the customer continued to desire
16 Sprint’s service involving the vertical feature in question, Sprint would be required to
17 negotiate with the switching “owner”, the purchasing ALEC, for this purchase.

18

19 **Q. On pages 9, lines 4-5, Mr. Ruscilli states that “whether BellSouth can technically**
20 **offer custom calling services to Sprint on a stand-alone basis is questionable”. Do**
21 **you agree?**

22 A. No, as I stated in my direct testimony, there is no technical reason that would prevent
23 BellSouth from offering Customer Calling Services to Sprint on a stand-alone basis.
24 In fact, BellSouth confirms this assertion in its response to Sprint’s First Set of
25 Interrogatories in this proceeding. See BellSouth’s Responses to Sprint’s First

1 Interrogatories, Docket No. 000828-TP (filed November 13, 2000), response to No. 6.
2 The bottom line for this issue is not the technical feasibility of offering vertical
3 features to Sprint on a stand-alone basis but whether any restrictions can rightfully be
4 placed on their purchase.

5 **Q. Please restate the action that Sprint requests the Commission to take.**

6 A. Sprint requests that the Commission order BellSouth to make Custom Calling services
7 available for resale by Sprint and adopt Sprint's proposed language as follows:

8

9 "Resale of Custom Calling Services. Except as expressly ordered
10 in a resale context by the relevant state Commission in the
11 jurisdiction in which the services are ordered, Custom Calling
12 Services shall be available for resale on a stand-alone basis."

13

14 **ISSUE NO. 5: Attachment 2, Network Elements and Other Services, Sections 4.2.6, 12 –**
15 **Access to DSLAM, unbundled packet switching**

16

17 **Q. What is the current status of this issue?**

18 A. Sprint's understanding is that this issue has been resolved. The agreed upon language
19 is as follows:

20 "BellSouth shall be required to provide nondiscriminatory access
21 to unbundled packet switching capability only where each of the
22 following conditions are satisfied:

23

24 BellSouth has deployed digital loop carrier systems, including but
25 not limited to, integrated digital loop carrier or universal digital

1 loop carrier systems; or has deployed any other system in which
2 fiber optic facilities replace copper facilities in the distribution
3 section (e.g., end office to remote terminal, pedestal or
4 environmentally controlled vault);

5

6 There are no spare copper loops capable of supporting the xDSL
7 services Sprint seeks to offer;

8

9 BellSouth has not permitted Sprint to deploy a Digital Subscriber
10 Line Access Multiplexer at the remote terminal, pedestal or
11 environmentally controlled vault or other interconnection point,
12 nor has Sprint been permitted to obtain a virtual collocation
13 arrangement at these subloop interconnection points as defined by
14 47 C.F.R. § 51.319 (b); and,

15 BellSouth has deployed packet switching capability for its own
16 use.

17 BellSouth will determine whether packet switching will be
18 available as a UNE on a remote terminal by remote terminal basis.”

19 If this understanding proves to be incorrect, Sprint respectfully reserves the right to
20 file supplemental rebuttal testimony.

21

22 **ISSUE NO. 7: Attachment 2, Network Elements and Other Services, Sections 8.4, 8.5 –**
23 **conversion of switching UNEs to market-based rate upon addition of fourth line.**

24

25 **Q. Has Sprint’s modified its position on this issue?**

1 A. Yes. In my Direct Testimony, page 18, lines 9-16, Sprints position was stated as
2 follows:

3 “...when a Sprint customer in density zone 1 in one of the top fifty
4 MSAs with three lines or less is served via UNE switching and the
5 customer adds a fourth or higher lines, the three existing lines
6 should be priced at cost-based rates. In fact, to more accurately
7 reflect the telecommunications needs and characteristics of
8 medium-sized businesses, Sprint believes that 40 lines is a more
9 appropriate threshold to delineate between a small and medium-
10 sized business. Therefore, only when a customer reaches the 40th
11 line should BellSouth be allowed to charge a market-based rate for
12 all of the lines exceeding 39.”

13

14 Upon further consideration, Sprint has modified its position such that upon the
15 addition of the fourth or higher line, BellSouth should charge cost based rates for the
16 first three lines and may charge a negotiated rate for all lines above three. Sprint has
17 profound disagreement with the notion that 4 lines is characteristic of a medium sized
18 business and has raised this concern with the FCC.

19

20 **Q. BellSouth claims on page 19, line 2 of Mr. Ruscilli’s testimony that “the FCC’s
21 position is quite clear” on this issue. Do you agree?**

22 A. Absolutely not. Quite the contrary, the FCC’s position on this matter could not be
23 more unclear. The simple fact is that the FCC did not address the pricing of existing
24 lines where an end-user has 3 or fewer lines and later adds lines that would take them
25 beyond the threshold of 4 used to delineate between small and medium-sized

1 businesses. BellSouth assumes, without any basis, that the FCC's intent was that all
2 lines would transition to a negotiated rate.

3

4 **Q. Mr. Ruscilli also suggests on page 22, line 1 of his testimony that lines for a single**
5 **customer should be aggregated across multiple locations to determine in the**
6 **threshold is met. Please comment.**

7 A. Once again, BellSouth makes an assumption that is without foundation in the FCC
8 rule or its attendant discussion. In fact, the discussion in ¶ 297 of the UNE Remand
9 Order states that "competitors are not impaired in their ability to serve certain high-
10 volume *in the densest areas*" (emphasis added) without access to unbundled local
11 switching. The FCC sought to relieve ILECs of their obligation to provide unbundled
12 local switching only in areas where competing carriers would have an incentive to
13 deploy their own switching equipment. Clearly, a competing carrier would have the
14 greatest incentive to deploy switching facilities in areas where it could serve the
15 largest number of lines with a single switch. Aggregating lines for a single customer
16 who has more than one location to determine if the threshold is met would defeat the
17 intent of the FCC's rule. With its proposal, BellSouth seeks to reduce the opportunity
18 of ALECs to utilize unbundled local switching, the result of which will be to thwart
19 competition and frustrate the goals of the Telecom Act.

20

21 **Q. What action is Sprint requesting this Commission to take?**

22 A. Sprint requests that the Commission order BellSouth to provide the first three lines in
23 each customer location in the scenario described above at cost based rates and adopt
24 Sprint's proposed language as follows:

25

1 Notwithstanding BellSouth's general duty to unbundle local circuit
2 switching, BellSouth will provide unbundled local circuit
3 switching for Sprint when Sprint establishes service for end users
4 with three (3) or fewer voice-grade (DS-0) equivalents or lines in
5 locations where BellSouth has provided non-discriminatory cost-
6 based access to the Enhanced Extended Link (EEL) through-out a
7 Density Zone 1 MSA as determined by NECA Tariff No. 4 as in
8 effect on January 1, 1999.

9
10 When a Sprint customer with three (3) or fewer voice-grade (DS-0)
11 equivalents or lines (as defined above) at a particular location is
12 being served via unbundled local circuit switching and such
13 customer's requirements grow such that additional lines are
14 ordered, the fourth line and each additional line at such customer
15 location will be provided by BellSouth at a rate that is negotiated
16 by the Parties for use of local circuit switching for the affected
17 facilities.

18
19 BellSouth shall not be required to offer unbundled local circuit
20 switching for Sprint when Sprint establishes service for end users
21 with four (4) or more voice-grade (DS-0) equivalents or lines in
22 one location where BellSouth has provided non-discriminatory
23 cost-based access to the Enhanced Extended Link (EEL) through-
24 out a Density Zone 1 MSA as determined by NECA Tariff No. 4 as
25 in effect on January 1, 1999.

1 **ISSUE NO. 11: Attachment 3, Interconnection, Section 6.1.6 – Tandem charges for**
2 **comparable area.**

3
4 **Q. BellSouth sets up a two-part test to determine if Sprint is eligible to charge the**
5 **tandem interconnection rate for terminating traffic. Is this appropriate?**

6 A. No. FCC Rule 51.711(a)(3) clearly contemplates only one requirement necessary to
7 determine if the ALEC is entitled to charge the tandem interconnection rate. Since
8 ALEC's networks would consist of the latest technologies and architectures, the FCC,
9 in ¶1090 of the First Report and Order, explained that comparable geographic area is
10 to be used as a proxy for equivalent functionality. The North Carolina Utilities
11 Commission (NCUC) agrees with this assessment. The NCUC explained in its
12 Recommended Arbitration Order in the ITC^Deltacom / BellSouth arbitration (Docket
13 No P-500, Sub 10) that "the concept of equivalent functionality is included within the
14 requirement that the equipment utilized by both parties cover the same basic
15 geographic area". Based on this line of reasoning, it would be redundant to use both
16 equivalent functionality and comparable geographic area in deciding if the ALEC is
17 entitled to the tandem interconnection rate. Undoubtedly, a tandem switch performs a
18 different function than an end-office switch. In legacy network architectures, tandem
19 switches were a necessity. Technological advances, however, have allowed carriers to
20 accomplish the same functionalities using a different network architecture that does
21 not necessarily include the traditional tandem switch. The FCC recognized this fact
22 when promulgating Rule 51.711(a)(3).

23
24 **Q. BellSouth cites rulings from arbitration cases in Illinois federal district court and**
25 **the Ninth Circuit in support of its two-fold criteria to determine if a carrier other**

1 **than an ILEC is eligible to charge the ILEC's tandem interconnection rate. Are**
2 **those cases relevant to this issue?**

3 A. Although I am not a lawyer, my understanding of these two cases is that they do not
4 support BellSouth's position. In the Ninth Circuit decision, *US West Communications*
5 *v. MFS Intelenet*, 193 F.3d 1112 (9th Cir. 1999), the Court did not determine that
6 ALECs must pass the two-prong "functionality/comparable geographic area" test that
7 BellSouth is advocating in this proceeding, only that the Washington Commission's
8 decision that MFS was entitled to the tandem interconnection rate was not arbitrary
9 and capricious. In the Illinois federal district Court decision, *MCI*
10 *Telecommunications Corporation v. Illinois Bell Telephone Company (Case No. 97 C*
11 *2225, June 22, 1999)* the Court did not consider the issue of whether a two-prong test
12 complies with applicable federal law.

13

14 **Q. Does Sprint's switch serve a geographic area comparable to BellSouth's tandem?**

15 A. Mr. Ruscilli points out on page 55 of his testimony that Sprint has presented
16 insufficient evidence to determine if Sprint's switch serves a geographic area
17 comparable to BellSouth's tandem switch. At issue here is not whether a *currently*
18 *deployed* Sprint switch covers a comparable geographic area but rather whether Sprint
19 has the ability to self-certify at a future point in time that a specific switch covers a
20 comparable geographic area as a BellSouth tandem.

21

22 **Q. Has Congress or the FCC specifically stated that individual switches must be**
23 **certified by a state commission as meeting the geographic compatibility standard**
24 **as set forth in FCC Rule 51.711(a)(3)?**

1 A. No. Congress and the FCC did not establish a specific process for determining when a
2 requesting carrier's switch meets the criteria necessary for charging the tandem
3 interconnection rate for terminating traffic. BellSouth assumes in Mr. Ruscilli's
4 testimony that the correct method is for this Commission to examine the facts for
5 every switch for every ALEC in the state of Florida. Presumably, under BellSouth's
6 proposal, each time that Sprint deploys a new switch, Sprint and BellSouth would
7 need to request that the Commission establish a fact-based proceeding to determine if
8 the new switch serves a comparable geographic area as BellSouth's tandem. Such a
9 process would be unwieldy, would take up the Commission's time for a process that
10 was never intended, and would unnecessarily delay competition

11

12 **Q. What process should be used to determine if a Sprint switch is capable of serving**
13 **a geographic area comparable to a BellSouth tandem?**

14 A. Sprint should be permitted to self-certify that its switch is capable of serving an area
15 comparable to a BellSouth tandem switch. Under Sprint's proposal, if BellSouth
16 wished to dispute Sprint's self-certification that its switch was capable of serving an
17 area of comparable size, it could file a complaint before this Commission. The
18 complaint process would be used on an exception basis.

19

20 **Q. What action does Sprint request the Commission to take on this issue?**

21 A. Sprint requests that the Commission adopt Sprint's language as follows:

22

23 The Parties shall provide for the mutual and reciprocal recovery of
24 the costs for transporting and terminating Local Traffic on each
25 other's network pursuant to 47 CFR § 51.711 (a). Charges for

1 transport and termination of calls on the Parties' respective
2 networks are as set forth in Exhibit A to this Attachment.

3
4 Where Sprint's switch serves a geographic area comparable to the
5 area served by BellSouth's tandem switch, the appropriate rate for
6 Sprint is BellSouth's tandem interconnection rate.

7
8 Comparable geographic area shall be determined by the capability
9 of Sprint's switch to serve an area of approximately equal size as
10 the relevant BellSouth tandem switch. As clarification, Sprint's
11 switch will be deemed to serve a comparable geographic area if it
12 is capable of serving the same number of local calling areas as the
13 BellSouth tandem switch.

14
15 Sprint shall certify that its switches satisfy the above criteria. If
16 BellSouth wishes to challenge such certification, it shall utilize the
17 dispute resolution procedures set forth in this Agreement.

18

19 **ISSUE NO. 12: Attachment 3, Interconnection, Sections 6.1.7, 6.7.1, 7.7.9 – inclusion of**
20 **IP telephony in definition of "Switched Access Traffic"**

21

22 **Q. What is the current status of this issue?**

23 A. BellSouth has proposed alternative language that is currently being considered by
24 Sprint. The language correctly makes a distinction among the different types of IP
25 telephony. However, the language refers to the jurisdiction of computer-to-phone and

1 phone-to-computer telecommunications traffic as being determined by the end points
2 of the call. The FCC simply has not made such a determination.

3

4 **Q. Does Sprint agree with BellSouth that the jurisdiction of phone-to-phone**
5 **telecommunications traffic should be determined by its end points regardless of**
6 **transport protocol used?**

7 A. Yes, Sprint has made it clear to BellSouth that, for purposes of compensation, phone-
8 to-phone telephony using internet protocol should be treated the same as traditional
9 circuit switched telephony. Sprint is in no way attempting to subvert the current
10 access charge system.

11

12 **Q. Please restate the action that Sprint requests the Commission to take.**

13 A. Sprint requests that the Commission order that the Sprint / BellSouth interconnection
14 agreement remain silent on the issue of IP Telephony pending the outcome of any
15 FCC proceeding on the issue. Sprint also asks the Commission to adopt its definition
16 of switched access as follows:

17

18 Switched Access Traffic. Switched Access Traffic means the
19 offering of transmission or switching services to
20 Telecommunications Carriers for the purpose of the origination or
21 termination of telephone toll service. Switched Exchange Access
22 Services include but are not limited to: Feature Group A, Feature
23 Group B, Feature Group D, 800/888 access and 900 access.

24

25 **Q. Does this conclude your Rebuttal Testimony?**

1 A. Yes.

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