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BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF CYNTHIA K. COX  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 000121-TP  
MARCH 1, 2001

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from the University of Cincinnati in 1981 with a Bachelor of Business Administration degree in Finance. I graduated from the Georgia Institute of Technology in 1984 with a Master of Science degree in Quantitative Economics. I immediately joined Southern Bell in the Rates and Tariffs organization with the responsibility for demand analysis. In 1985 my responsibilities expanded to include administration of selected rates and tariffs including preparation of tariff filings. In 1989, I accepted an assignment in the North Carolina regulatory office where I was BellSouth's primary liaison with

1 the North Carolina Utilities Commission Staff and the Public Staff. In 1993, I  
2 accepted an assignment in the Governmental Affairs department in Washington  
3 D.C. While in this office, I worked with national organizations of state and local  
4 legislators, NARUC, the Federal Communications Commission (“FCC”) and  
5 selected House delegations from the BellSouth region. In February 2000, I was  
6 appointed Senior Director of State Regulatory.

7

8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9

10 A. The purpose of my testimony is to provide BellSouth’s position on four of the  
11 issues (4, 8, 29, and 30) contained in the Florida Public Service Commission’s  
12 (“Commission”) Order Establishing Procedure (Order No. PSC-01-242-PCO-  
13 TP), issued January 26, 2001. The Commission has opened this docket to  
14 develop permanent performance metrics for the ongoing evaluation of operations  
15 support systems (“OSS”) provided by incumbent local exchange carriers  
16 (“ILECs”). The purpose of the performance metrics and associated monitoring  
17 and enforcement program is to ensure that alternative local exchange companies  
18 (“ALECs”) receive nondiscriminatory access to the ILEC’s OSS. Through my  
19 testimony and the testimony of the other BellSouth witnesses, BellSouth  
20 presents its comprehensive proposal that includes appropriate performance  
21 metrics and enforcement mechanisms that will ensure that ALECs receive  
22 nondiscriminatory access to BellSouth’s OSS.

23

24 My testimony addresses the general policy matters raised by this docket. In  
25 addition to my testimony, we will present the testimony of David Coon, who is

1 responsible for detailing and describing the performance metrics that BellSouth  
2 supports, as well as describing the voluntary enforcement plan that BellSouth is  
3 proposing. In addition, we present the testimony of Dr. Ed Mulrow, who is a  
4 statistician and who will provide information regarding the proper statistical  
5 analysis that should be followed to determine whether ALECs are receiving  
6 nondiscriminatory treatment where retail analogues for the services provided by  
7 BellSouth to ALECs are available.

8  
9 ***Issue 4a: Does the Commission have the legal authority to order implementation of a***  
10 ***self-executing remedy plan?***

11 ***4b: With BellSouth's consent?***

12 ***4c: Without BellSouth's consent?***

13  
14 Q. WHAT IS BELLSOUTH'S POSITION REGARDING ISSUE 4(a), (b), and  
15 (c)?

16  
17 A. Although I am not a lawyer, and this issue will ultimately have to be addressed  
18 by lawyers who can explain the legal reasoning behind it, my understanding is  
19 that the Commission does not have the legal authority to order the  
20 implementation of a self-effectuating penalty plan. This understanding is  
21 consistent with the position contained in the direct testimony of the Commission  
22 Staff's witness Mr. Paul Stallcup filed on February 7, 2001. On page 5, line 6 of  
23 his direct testimony, Mr. Stallcup reiterates his understanding "that the  
24 Commission does not have the authority to order any payments that could be  
25 considered monetary damages." He further concludes, and I agree, that the

1 “adoption of any Tier 1 enforcement mechanism would require that the parties  
2 enter into a voluntary agreement that these payments be made before the  
3 Commission could approve a Tier 1 enforcement mechanism.” The same is true  
4 regarding payment of Tier 2 penalties. Again, I agree with Mr. Stallcup’s  
5 understanding that “the Commission does not have the authority to receive  
6 penalty payments absent a finding of a willful violation of a Commission order,  
7 rule or statute.” Nevertheless, and irrespective of whether BellSouth can be  
8 legally compelled to adhere to such an enforcement plan, BellSouth is willing to  
9 voluntarily submit to the self-effectuating enforcement mechanism described in  
10 Mr. Coon’s testimony, provided the metrics are appropriate.

11

12 ***Issue 8: When should the Performance Assessment Plan become effective?***

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14 Q. WHEN SHOULD BELLSOUTH’S PROPOSAL TAKE EFFECT?

15

16 A. The FCC has identified the implementation of enforcement mechanisms to be a  
17 condition of 271 relief. The FCC believes such a plan would be an additional  
18 incentive to ensure that BellSouth continues to comply with the competitive  
19 checklist after interLATA relief is granted. (See Bell Atlantic New York, ¶ 429-  
20 430; Southwestern Bell Texas Order, ¶ 420-421; Southwestern Bell  
21 Kansas/Oklahoma Order, ¶ 269) Enforcement mechanisms and penalties,  
22 however, are neither necessary nor required to ensure that BellSouth meets its  
23 obligations under Section 251 of the Act, and the FCC has never indicated  
24 otherwise.

25

1 In fact, the desire for long distance relief, which is an immediate goal of  
2 BellSouth's, has to be viewed as a powerful incentive for a Bell Operating  
3 Company ("BOC") to meet its obligations under Section 251 of the Act,  
4 including providing nondiscriminatory access to its OSS. The concept of  
5 performance penalties, on the other hand, has been developed as the incentive  
6 for continued compliance after long distance authority is granted. Therefore, it  
7 is appropriate that no part of the enforcement mechanism proposal take effect  
8 until the plan is necessary to serve its purpose – i.e., until after BellSouth  
9 receives interLATA authority. Under BellSouth's proposal, any necessary  
10 payment of penalties for Florida ALECs that have incorporated the plan into  
11 their interconnection agreements will commence at such time as BellSouth  
12 obtains interLATA relief in Florida.

13

14 ***Issue 29: What is the appropriate definition of "affiliate" for the purposes of the***  
15 ***Performance Assessment Plan?***

16 ***Issue 30a: Should BellSouth be required to provide "affiliate" data as it relates to***  
17 ***the Performance Assessment Plan?***

18 ***Issue 30b: If so, how should data related to BellSouth affiliates be handled for***  
19 ***purposes of:***

20 ***1. Measurement reporting?***

21 ***2. Tier 1 compliance?***

22 ***3. Tier 2 compliance?***

23

24 Q. WHAT IS BELLSOUTH'S POSITION ON ISSUES 29 AND 30?

25

1 A. The term "Affiliate" is defined in the Act as follows:

2 AFFILIATE - The term "affiliate" means a person that (directly or  
3 indirectly) owns or controls, is owned or controlled by, or is under  
4 common ownership or control with, another person. For purposes of  
5 this paragraph, the term "own" means to own an equity interest (or the  
6 equivalent thereof) of more than 10 percent. (47 U.S.C. 153(1))

7

8 The statutory definition of the term "affiliate" is clear and unambiguous. The  
9 real issue, however, is not how the term "affiliate" should be defined, but  
10 whether there are circumstances in which BellSouth's performance related to its  
11 transactions with its affiliates should be considered in the context of the  
12 Performance Assessment Plan.

13

14 Q. WHAT IS BELL SOUTH'S POSITION ON THE ISSUE AS YOU'VE  
15 DESCRIBED IT ABOVE?

16

17 A. The only possible BellSouth affiliate data that might be appropriately considered  
18 is that which is necessary to make a meaningful, "apples-to-apples" comparison  
19 between ALECs and any BellSouth affiliate that is in a position comparable to  
20 that of the ALECs. It makes no sense to scrutinize data that relates to BellSouth  
21 affiliates whose business is not comparable to ALEC business, for example,  
22 BellSouth International's provision of service in Venezuela. Thus, the only  
23 affiliate data that might properly be considered is that which relates to a  
24 BellSouth-affiliated ALEC.

25

1 For example, if a BellSouth affiliated ALEC, which was certified to provide local  
2 service, was operating in a state within BellSouth's service territory, it could be  
3 appropriate to consider the performance that BellSouth provides to this ALEC.  
4 A separate question is how this data should be collected and used in the context  
5 of the Performance Assessment Plan.

6  
7 Q. HOW HAS THE FCC USED AFFILIATE DATA?

8  
9 A. In the Bell Atlantic New York Order, the FCC discusses basing the retail analog  
10 on the performance that the BOC provides to "itself, its customers or its  
11 affiliates." At the same time, the FCC held that nondiscriminatory access had  
12 been demonstrated because there was "no statistically significant difference  
13 between Bell Atlantic's provision of service to competitive LECs and its own  
14 retail customers...." (emphasis added) (See Bell Atlantic New York Order, ¶ 58;  
15 see also Southwestern Bell Kansas/Oklahoma Order, ¶ 58) In other words,  
16 performance to affiliates did not play any specific role in the FCC's comparative  
17 analysis.

18  
19 For example, the FCC found that Bell Atlantic provided nondiscriminatory  
20 access to interconnection trunking because the trunking that it provides to  
21 ALECs "is equal in quality to the interconnection that Bell Atlantic provides to  
22 its own retail operations...." (See Bell Atlantic New York Order, ¶ 68; see also  
23 Southwestern Bell Texas Order, ¶ 67; Southwestern Bell Kansas/Oklahoma  
24 Order, ¶ 223) Likewise, the FCC found that Bell Atlantic was compliant with  
25 Checklist Item 6 (unbundled local switching) based upon a finding that "the

1 features, functions and capabilities of the switch [provided to the ALEC] include  
2 the basic switching function as well as the same basic capabilities that are  
3 available to the incumbent LEC's customers." (See Bell Atlantic New York  
4 Order, ¶ 343; see also Southwestern Bell Texas Order, ¶ 339; Southwestern Bell  
5 Kansas/Oklahoma Order, ¶ 242) In a third example, the FCC found that Bell  
6 Atlantic was compliant with Checklist Item 7 (911 and E911) based on the  
7 conclusion that Bell Atlantic had satisfied the requirement to "maintain the 911  
8 database entries for competing LECs with the same accuracy and reliability that  
9 it maintains the database entries for its own customers." (See Bell Atlantic New  
10 York Order, ¶ 349; see also Southwestern Bell Texas Order, ¶ 344;  
11 Southwestern Bell Kansas/Oklahoma Order, ¶ 255)

12  
13 Thus, a review of these orders makes it clear that the analysis that was  
14 performed to determine whether a retail analog has been met was simply to  
15 compare, in a statistically valid manner, the performance provided to the ALEC  
16 to the performance that the BOC provides to its retail customers. Performance  
17 related to affiliates played no role in this analysis.

18  
19 **Q. HAVE OTHER STATE COMMISSIONS IN BELL SOUTH'S TERRITORY**  
20 **ADDRESSED THE ISSUE OF AFFILIATE PERFORMANCE DATA?**

21  
22 **A. Yes.** In its January 12, 2001 ruling in Docket No. 7892-U, the Georgia PSC  
23 refused to adopt the ALEC's proposal for comparisons between the performance  
24 for ALECs and the performance for the BellSouth affiliate, concluding that if an  
25 ALEC believes that BellSouth is showing preference to its affiliate, the ALEC



1 may file a complaint with the Commission. (GPSC Order at p. 13)

2

3 On February 12, 2001, the Louisiana PSC approved, in Docket No. U-22252,  
4 Subdocket C, the Staff Recommendation that included a proposal for the review  
5 of affiliate data. The Staff recommended that if the activity in Louisiana of  
6 BellSouth's affiliated ALEC reaches a certain threshold, then it should be  
7 reviewed in the context of future audits to determine whether there is any  
8 statistically significant indication of discriminatory treatment. The Louisiana  
9 PSC Staff, however, recommended no other action at this time.

10

11 Q. IN LIGHT OF THE ABOVE, WHAT DO YOU PROPOSE?

12

13 A. As with all other ALECs, BellSouth will produce measurements for its ALEC,  
14 both individually and in the aggregate. In fact, BellSouth's ALEC will receive  
15 the same treatment, use the same systems, receive the same measurements and  
16 be entitled to the same remedies as any other ALEC operating in BellSouth's  
17 service territory. In addition, the performance of the BellSouth affiliated ALEC  
18 will be included to develop the aggregate ALEC data used to determine  
19 performance for purposes of the enforcement mechanism. Further, BellSouth  
20 will provide to the Commission periodic performance results for its affiliated  
21 ALEC just as it does for any other ALEC operating in its territory.

22

23 Thus, the Commission will have the information to allow it to evaluate  
24 BellSouth's performance to its ALEC relative to all other ALECs. As to the  
25 question of what to do with this information, the Commission could reasonably

1           adopt either the Georgia approach (i.e., no action) or the Louisiana approach  
2           (i.e., using the data to monitor only, at least for the time being). The  
3           Commission should not, however, unnecessarily complicate the plan by  
4           attempting prematurely to tie BellSouth-affiliate performance to the Performance  
5           Assessment Plan based on concerns about the hypothetical occurrence of future  
6           discrimination.

7

8    Q.     DOES THIS CONCLUDE YOUR TESTIMONY?

9

10   A.    Yes.

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