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01 MAY 23 PM 4:33

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RECORDS AND
REPORTING

May 23, 2001

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. 001797-TP (Covad Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Cynthia K. Cox, Clyde L. Greene, Jerry Kephart, Wiley G. (Jerry) Latham, W. Bernard Shell, Thomas G. Williams and Jerry L. Wilson, which we ask that you file in the captioned docket.

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,

James Meza III
James Meza III (KA)

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cc: All Parties of Record
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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF CYNTHIA K. COX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 001797 - TP
MAY 23, 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. ARE YOU THE SAME CYNTHIA K. COX THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING ON APRIL 23, 2001?

A. Yes.

Q. WHAT IS THE PURPOSE OF THE TESTIMONY YOU ARE FILING TODAY?

A. My testimony rebuts the testimony filed by Covad witnesses Tom Allen, Thomas M. Koutsky and William Seeger. Specifically, I will address the testimony filed by these witnesses on issues 1, 2, 3, 6, 8, 11 (a) and (b), 12, 25,

1 and 32 (a). I will address only the policy related portion of issue 32 (a).
2 BellSouth witness Clyde Greene will address the portion of issue 32 (a) related
3 specifically to the functions of the billing system.

4

5 Q. HAVE ANY ADDITIONAL ISSUES BEEN RESOLVED BETWEEN
6 COVAD AND BELLSOUTH SINCE THE TIME THE COMPANIES FILED
7 DIRECT TESTIMONY IN THIS PROCEEDING?

8

9 A. It is my understanding that Issue No. 13, regarding Covad's access to
10 BellSouth's loop makeup information, has been resolved.

11

12 Q. IN HIS GENERAL COMMENTS ON PAGES 6 AND 7 REGARDING
13 NEGOTIATING, MR. KOUTSKY MAKES THE FOLLOWING
14 ALLEGATION: "IT IS AN ECONOMIC FACT THAT POSSESSING A
15 MONOPOLY IS MORE PROFITABLE TO A COMPANY LIKE
16 BELLSOUTH THAN ENTERING AN AGREEMENT THAT WILL
17 FACILITATE THE DEVELOPMENT OF A COMPETITIVE MARKET. AS
18 A RESULT, BELLSOUTH ESSENTIALLY HAS 'NOTHING TO GAIN
19 AND EVERYTHING TO LOSE' BY COOPERATING IN
20 INTERCONNECTION NEGOTIATIONS." DO YOU AGREE?

21

22 A. Absolutely not. In fact, and contrary to Mr. Koutsky's allegation, BellSouth
23 has much to gain by cooperating in interconnection negotiations, as well as
24 much at stake if it does not cooperate. On page 7 of his testimony, Mr.
25 Koutsky actually makes reference to two specific loss situations if BellSouth

1 fails to cooperate in interconnection negotiations – arbitration proceedings and
2 regulatory penalties. Both of these situations can be a drain on many of
3 BellSouth’s resources, not only financial. In addition, the FCC has the ability
4 to substantially fine an ILEC for its non-cooperation.

5
6 In addition, BellSouth’s entry into the interLATA long distance market is
7 dependent upon meeting its legal and regulatory obligations, which include the
8 negotiation process for interconnection agreements. This Commission, in
9 Docket No. 000121-TP, is developing a comprehensive plan of performance
10 measurements and remedies that, by its very nature, should facilitate an
11 evaluation of BellSouth’s cooperation in the local competition process. The
12 process will also have an affect on BellSouth obtaining regulatory relief.

13
14 ***Issue 1: What limitations of liability, if any, should be included in the Parties’***
15 ***Interconnection Agreement?***

16
17 Q. PLEASE COMMENT ON MR. KOUTSKY’S CONCERN, EXPRESSED ON
18 PAGE 9, ABOUT BELLSOUTH BEING “PROTECTED BY A
19 LIMITATION OF LIABILITY CLAUSE IF COVAD WERE DAMAGED
20 ‘FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF
21 BELLSOUTH.’”

22
23 A. Mr. Koutsky is incorrect. As I stated on page 4 of my direct testimony:

24
25 BellSouth has proposed that each parties’ liability to the other arising
out of any negligent act or omission should be limited to a credit for the

1 actual cost of the services or functions not performed or improperly
2 performed. BellSouth is willing to exclude from this limitation losses
3 resulting from gross negligence or intentional misconduct, and indeed
4 such language is found in Section 8.3.4 of the General Terms and
5 Conditions of the Interconnection Agreement. (Emphasis added here.)

6 Q. WHAT IS THE DISAGREEMENT BETWEEN BELLSOUTH AND COVAD
7 ON THE ISSUE OF LIMITATIONS OF LIABILITY?

8 A. I am not quite sure. The quote above from my direct testimony, should leave
9 no doubt that BellSouth is not limiting its liability resulting from gross
10 negligence or intentional misconduct, which appears to be Covad's main
11 concern. In fact, Section 8.3.4 of the General Terms and Conditions of the
12 Interconnection Agreement states, in part:

13 Neither Party shall be responsible or liable for indirect, incidental, or
14 consequential damages, including, but not limited to, economic loss or
15 lost business or profits, damages arising from the use of performance of
16 equipment or software, or the loss of use of software or equipment, or
17 accessories attached thereto, delay, error, or loss of data, unless such
18 loss results from gross negligence or intentional misconduct...
19 (Emphasis added.)

20 Q. ON PAGES 9 - 10, MR. KOUTSKY SUGGESTS THAT BELLSOUTH'S
21 PROPOSAL FOR LIMITATION OF LIABILITY "WOULD GUT THE
22 OTHER SUBSTANTIVE PROVISIONS OF THE AGREEMENT" AND
23 THAT "EVEN IF THE COMMISSION IMPLEMENTED PRO-
24 COMPETITIVE RULES RELATED TO LOOP INSTALLATION
25 INTERVALS, OSS, ETC., BELLSOUTH WOULD NOT BE LIABLE TO

1 COVAD FOR ITS FAILURE TO IMPLEMENT THOSE POLICIES.” DO
2 YOU AGREE?

3

4 A. No. First, although I am not a lawyer, I am certain that if this Commission
5 implements rules related to loop installation intervals, OSS, or any other
6 element deemed necessary for opening the local telecommunications market to
7 competition, that BellSouth would be required to comply with these rules.
8 BellSouth’s proposed language certainly would not exempt BellSouth from
9 adverse ramifications should we be found not in compliance. Apparently, Mr.
10 Koutsky underestimates the jurisdiction of this Commission.

11

12 Second, Section 8.3.5 of the General Terms and Conditions section of the
13 Interconnection Agreement ensures that what Mr. Koutsky suggests, does not
14 happen:

15

16 To the extent any specific provision of this Agreement purports to
17 impose liability, or limitation of liability, on either Party different from
18 or in conflict with the liability or limitation of liability set forth in this
19 Section, then with respect to any facts or circumstances covered by
20 such specific provisions, the liability or limitation of liability contained
21 in such specific provision shall apply.

22

23 Other than simply doing away with any limitation of liability, which BellSouth
24 is neither willing, nor statutorily obligated to do, BellSouth is at a loss as to
25 what else can be done to assuage Covad’s concerns.

26

27

28

1 Q. PLEASE DISCUSS COVAD’S HYPOTHETICAL SITUATION WHERE
2 “BELLSOUTH HABITUALLY FAILS TO PROVIDE LOOPS TO COVAD”,
3 AS PRESENTED ON PAGE 11 OF MR. KOUTSKY’S TESTIMONY.

4
5 A. First, let me say that this obviously is an extreme and most definitely
6 hypothetical situation that Covad suggests. BellSouth does not and will not
7 habitually, or as Covad insinuates, intentionally, fail to provide loops to Covad
8 or any other ALEC. And BellSouth is not seeking to “eschew itself of
9 responsibility for this behavior” as is evidenced by the proposed
10 Interconnection Agreement sections referred to above.

11
12 That being said, however, the example being discussed here is one that would
13 more appropriately be addressed in the context of performance measures, such
14 as those being addressed by this Commission in Docket 000121-TP, *In re:*
15 *Investigation into the Establishment of Operations Support Systems Permanent*
16 *Performance Measures for Incumbent Local Exchange Telecommunications*
17 *Companies*, rather than in the context of limitation of liability. For example, in
18 that docket BellSouth proposed 15 provisioning measurements, disaggregated
19 into 12 levels of loop sub-metrics that will allow this Commission to determine
20 whether BellSouth is providing non-discriminatory access to loops.

21
22 Q. DOES BELLSOUTH AGREE WITH COVAD THAT THE COMMISSION
23 HAS THE LEGAL AUTHORITY AND OBLIGATION TO ARBITRATE
24 THIS ISSUE?

25

1 A. Yes. Based on this Commission’s Order No. PSC-01-0824-FOF-TP in Docket
2 No. 000649-TP, *In re: Petition of MCImetro Access Transmission Services*
3 *LLC and MCI WorldCom Communications, Inc. for arbitration of certain*
4 *terms and conditions of a proposed agreement with BellSouth*
5 *Telecommunications, Inc. concerning interconnection and resale under the*
6 *Telecommunications Act of 1996 (“MCI Arbitration”)*, BellSouth agrees that
7 the Commission must arbitrate this issue. We also agree, as the Commission
8 found in that same order, that it is only appropriate for the Commission to
9 impose obligations consistent with the requirements of Section 251.

10
11 Q. HAVE OTHER STATES IN BELLSOUTH’S REGION RULED ON THIS
12 ISSUE?

13
14 A. Yes. The Georgia Public Service Commission, in Docket No. 11901-U (*In Re:*
15 *Petition of MCImetro Access Transmission Services, LLC and MCI WorldCom*
16 *Communications, Inc. for Arbitration of Certain Terms and Conditions of*
17 *Proposed Agreement with BellSouth Telecommunications, Inc. Concerning*
18 *Interconnection and Resale Under the Telecommunications Act of 1996*), on
19 March 7, 2001 ordered, “The Commission finds that the parties are not
20 required to adopt language regarding a liability cap beyond what they are
21 willing to agree upon through negotiations.” Since the time of that Order,
22 BellSouth has reached agreement with MCI on this issue, and has offered the
23 terms of that agreement to Covad.

24
25

1 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO FIND WITH
2 REGARD TO ISSUE 1?

3

4 A. BellSouth requests that the Commission find as it did in the MCI Arbitration,
5 that it is only appropriate to “impose a condition or term required to ensure that
6 such resolutions and conditions meet the requirements of Section 251.” And to
7 further find that “liquidated damages is not an enumerated item under Sections
8 251 and 252 of the Act.” And finally, to find “it appropriate not to impose
9 adoption of any disputed terms contained in the limited liability provision
10 whereby the parties would be liable in damages, without a liability cap, to one
11 another for their failure to honor in one or more material respects any one or
12 more of the material provisions of the Agreement.”

13

14 *Issue 2: What should BellSouth’s obligations be under this Interconnection*
15 *Agreement in the event that BellSouth’s workforce, or the workforce of its*
16 *suppliers and vendors, engage in a work stoppage?*

17

18 Q. EXACTLY WHAT IS COVAD ASKING FOR IN THIS ISSUE?

19

20 A. Although Covad states that its “proposal would only require that BellSouth
21 engage in” consultations, meetings and communications with Covad in the
22 event a work stoppage is eminent, what it really is asking is a good deal more.
23 Covad’s proposed contract language would require:

24

25 14.1.1 BellSouth and DIECA should begin contingency planning activities
no more than 60 days prior to the expiration of a contract. Planning

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should include methodology to be employed to track potential missed orders as well as new orders that come in during a work stoppage.

14.2.2 BellSouth must designate single point of contact (SPOC) for notification in the event of a work stoppage. This SPOC should provide all “official” company notifications leading up to the work stoppage and proactively provide updates as to negotiation progress. DIECA to be notified within 3 hours of the declaration of a work stoppage.

14.2.3 BellSouth must clearly define what labor unions represent employees. Specific geographies, type of employees (technicians, service representatives, etc.) as well. All contract expiration dates (day, month, time of day) must be provided to DIECA.

14.2.4 BellSouth to provide detailed strike recovery plan within 3 business days following the conclusion of a work stoppage. Plan should include: total number of orders missed during work stoppage, total number of new orders received during the work stoppage, planned completion date of recovery, format and time frames for interim status updates of recovery effort.

14.2.5 BellSouth should identify single point of contact in the operations area for DIECA to deal with on recovery related benchmarks and issues.

14.2.6 BellSouth needs to clearly define what the business rules will be in the event of a work stoppage and the time frames around which they apply. For example, if the BellSouth position is to only work maintenance issues initially: after how many days will provisioning be resumed. Once work stoppage concludes, DIECA and BellSouth orders must be worked in a non discriminatory fashion.

14.2.7 BellSouth and DIECA shall agree on a mechanism to escalate extremely sensitive installations that may be affected by a work stoppage so that they can be worked. Such request would be at the discretion of the BellSouth Account Team Vice President or the Regional Operations Vice President.

1 Although BellSouth agrees with some of the issues raised by Covad, with
2 regard to a possible work stoppage, BellSouth will not, and indeed legally
3 cannot, provide the individual meetings and consultations that Covad is
4 requesting. What BellSouth provides to Covad, BellSouth must also be willing
5 to provide to other ALECs. Under Covad's proposal, BellSouth could
6 conceivably have to spend time meeting, consulting and communicating with
7 each ALEC, since needs vary from ALEC to ALEC, rather than providing
8 service. In addition, much of the information being requested by Covad is not
9 necessary for contingency planning, whether or not included in an
10 Interconnection Agreement. Further, until such time as an actual work
11 stoppage occurs, BellSouth will be unable to provide much information that
12 will answer Covad's question of what orders will be worked. If, in fact, a
13 work stoppage occurs, BellSouth will provide specific information upon
14 request, and work with customers to address any specific problems that may
15 arise.

16
17 Also, let me point out that the language being requested by Covad in this
18 proceeding is unnecessary, making the issue moot. The language proposed by
19 Covad will apply only to the new Interconnection Agreement between the
20 parties. Under the procedural schedule in effect in this docket, the
21 Commission will not issue a final order resolving the arbitration issues until
22 September 24, 2001 (nearly 2 months after the expiration of BellSouth's
23 contract with the Communications Workers of America ("CWA")), therefore,
24 making language unnecessary for the current contract period. In addition, the
25 term of the new Interconnection Agreement will be 2 years. The term of the

1 new CWA contract will be 3 years, to August 2004, again making Covad's
2 proposed language unnecessary.

3

4 Q. PLEASE COMMENT ON MR. KOUTSKY'S ALLEGATION IN HIS
5 GENERAL DISCUSSION, THAT "BELLSOUTH'S REFUSAL TO EVEN
6 CONSIDER OR DISCUSS COVAD'S SUGGESTION ABOUT HOW TO
7 MANAGE A POTENTIAL STRIKE MEANS THAT ABSENT
8 REGULATORY INTERVENTION, COVAD HAS NO ADEQUATE
9 ASSURANCE THAT IT WILL BE TREATED IN A
10 NONDISCRIMINATORY MANNER, AS REQUIRED BY LAW."

11

12 A. Covad can be assured that it will be treated in a nondiscriminatory manner
13 during any potential work stoppage, just as it is during any other time. That is
14 what is legally required of BellSouth. BellSouth is currently reviewing and
15 developing a plan to carry out its obligations to both its retail and wholesale
16 customers should a work stoppage occur. Such a plan will allocate BellSouth's
17 resources, however scarce, in a manner that will enable BellSouth to fulfill its
18 obligations in a nondiscriminatory manner.

19

20 Q. DOES BELLSOUTH AGREE WITH COVAD'S DEPENDENCY ON FCC
21 RULE 51.303(c)(7) FOR ITS POSITION ON ISSUE 2?

22

23 A. No. First, I believe the rule being referred to by Mr. Koutsky is actually
24 51.301(c)(7). Rule 51.301 addresses the ILEC's duty to negotiate. Rule
25 51.301(a) requires that "[a]n incumbent LEC shall negotiate in good faith the

1 terms and conditions of agreements to fulfill the duties established by sections
2 251(b) and (c) of the Act.” (Emphasis added.) Rule 51.301(b) requires that
3 “[a] requesting telecommunications carrier shall negotiate in good faith the
4 terms and conditions of agreements described in paragraph (a) of this section.”
5 Rule 51.301(c) describes violations of an ILEC’s duty to negotiate in good
6 faith.

7
8 Therefore, BellSouth’s obligation to “designate a representative with authority
9 to make binding representations” (Rule 51.301(c)(7)) only applies to
10 requirements of the Act. BellSouth has designated representatives with the
11 necessary authority to make any binding decisions necessary for negotiating an
12 Interconnection Agreement. BellSouth’s representative has made the “binding
13 representation” that what Covad is asking should not be included in the
14 Interconnection Agreement between the parties. What Covad is proposing, a
15 work stoppage contingency planning process, is not a requirement of the Act;
16 our duty to negotiate this issue is not subject to Rule 51.301; and therefore,
17 BellSouth is not obligated to include such in its Interconnection Agreements.

18

19 Q. WHY IS BELLSOUTH OPPOSED TO IMPLEMENTING A WORK
20 STOPPAGE CONTINGENCY PLANNING PROCESS?

21

22 A. BellSouth has not said that it is unwilling to do contingency planning with
23 regard to a possible work stoppage, at the expiration of BellSouth’s CWA
24 contract in the summer of 2001 (rather than 2002 as suggested by Mr.

25

1 Koutsky). What BellSouth has said is that it is not required, and is not willing,
2 to put a specific process in an Interconnection Agreement.

3

4 Q. PLEASE COMMENT ON MR. KOUTSKY'S STATEMENTS, ON PAGE 14,
5 "IN EVERY AREA WE ENTER, COVAD IS AMONG THE LARGEST
6 CONSUMERS OF UNBUNDLED LOOP AND TRANSPORT PROVIDED
7 BY THE ILEC. AS A RESULT, COVAD BELIEVES THAT IT SHOULD
8 BE AFFORDED CONTINGENCY PLANNING THAT OTHER LARGE
9 COMMERCIAL CUSTOMERS MAY OBTAIN."

10

11 A. First, the size of the ALEC does not dictate whether BellSouth provides service
12 in a nondiscriminatory manner. BellSouth finds this request by Covad to be a
13 good example of Covad wanting preferential treatment, rather than the
14 nondiscriminatory treatment required by the Act and the FCC's rules.
15 BellSouth will commit to afford Covad the level of contingency planning that
16 BellSouth affords any other ALEC, or any of BellSouth's retail customers, as
17 is required by the Act. I would note again here, however, that if BellSouth
18 were required to participate in the type of planning process being requested by
19 Covad with even each of what Covad refers to as "large commercial
20 customers", BellSouth would very possibly be more involved in the business
21 of planning and meetings, than it would be in the performing of actual work
22 functions necessary to provide service.

23

24 Q. WHAT IS BELL SOUTH REQUESTING OF THE COMMISSION WITH
25 REGARD TO ISSUE 2?

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A. Again, based on this Commission’s findings in the MCI Arbitration, that it is only appropriate to “impose a condition or term required to ensure that such resolutions and conditions meet the requirements of Section 251”, BellSouth requests that the Commission find that what Covad is proposing does not satisfy any requirement of the Act, and, therefore, to deny Covad’s request to impose specific language for a work stoppage contingency planning process in the parties’ Interconnection Agreement.

Issue 3: Should there be limitation on an ALEC’s right to opt-in to an existing interconnection agreement that has only six months remaining before it expires?

Q. PLEASE COMMENT MR. KOUTSKY’S DEPENDENCE ON FCC RULE 51.809 (a) AND (b) FOR SUPPORT OF COVAD’S POSITION ON THIS ISSUE.

A. Although Mr. Koutsky begins with the appropriate FCC Rule, he fails to look at the entire rule. Rule 51.809(c) continues the obligations of the ILEC for providing agreements to other telecommunication carriers under section 252(i) of the Act. Specifically, Rule 51.809(c) states:

Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the Act. (Emphasis added.)

1 This section negates Covad's conclusion that "[u]nder Rule 51.809, the *only*
2 restrictions upon this option are those set forth in 51.809(b)."

3

4 Also, while Mr. Koutsky cites to a Supreme Court ruling in this area, he fails
5 to point out that the Supreme Court specifically stated that an ALEC must take
6 all legitimately related provisions. Clearly, both conditions proposed by
7 BellSouth are consistent with federal rulings.

8

9 Q. PLEASE COMMENT ON MR. KOUTSKY'S DISCUSSION, ON PAGES 16
10 AND 17, CONCERNING WHY AN ALEC WOULD SEEK TO OPT-IN TO
11 AN ARRANGEMENT THAT MAY EXPIRE WITHIN LESS THAN SIX
12 MONTHS.

13

14 A. BellSouth generally agrees with Mr. Koutsky's discussion regarding why a
15 new competitor would be interested in opting-in to an existing arrangement-to
16 enable a new ALEC to get into business prior to completing the negotiation
17 process for its own agreement (which is certainly not Covad's circumstances).
18 I would note that BellSouth also provides a standard Interconnection
19 Agreement that ALECs may adopt for this same purpose. In fact, the vast
20 majority of ALECs operating in Florida execute a version of BellSouth's
21 Standard Interconnection Agreement.

22

23 Mr. Koutsky suggests that Covad may want to opt-in to an agreement that
24 BellSouth enters into with another ALEC that has a better provision than what
25 Covad has, but not as good as Covad thinks it will get from an arbitration

1 proceeding. First, if BellSouth enters into an agreement with another ALEC
2 during this timeframe, the agreement would certainly have longer than a six-
3 month timeframe, and Covad would be allowed to opt-in to that agreement for
4 the duration of that agreement, if it desired. However, when an ALEC opts-in
5 to an agreement that has longer than six months left in its duration, the ALEC
6 is not prohibited from amending that agreement, or changing its agreement to
7 be consistent with the results of continuing negotiations or its arbitration
8 proceeding, should they be more favorable to the ALEC.

9
10 Further, if the arrangement that the ALEC is interested in, although being
11 “sub-optimal”, is better than the arrangement in the ALEC’s own contract, why
12 would the ALEC wait until it begins negotiations, or until there is less than six-
13 months left until expiration, to adopt such arrangement? ALECs have the
14 ability to opt-in to provisions of another ALEC’s Interconnection Agreement,
15 but that ability is not completely unconstrained. In fact, in its April 2001
16 Order dealing with Intercarrier Compensation for ISP-bound traffic, the FCC
17 itself noted that its Rule 51.809(c) restricts the time period in which an ALEC
18 may opt-in to an approved agreement. In footnote 155 of the Order, the FCC
19 specifically draws attention to, and quotes, the 252(i) requirements that LECs
20 are required “to make available ‘[i]ndividual interconnection, service, or
21 network element arrangements’ to requesting telecommunications carriers only
22 ‘for a reasonable period of time.’”

23
24
25

1 Q. PLEASE COMMENT ON MR. KOUTSKY'S VIEW OF "BELLSOUTH'S
2 'LEGITIMATELY RELATED OR NEGOTIATED IN EXCHANGE FOR'
3 PROPOSAL" FOUND ON PAGE 18.

4

5 A. I am not a lawyer, and therefore cannot comment on several of the statements
6 made by Mr. Koutsky. I will say, however, that BellSouth's position on this
7 issue is in compliance with the FCC's Rule 51.809. BellSouth's position is
8 discussed in detail on pages 13 and 14 of my direct testimony. Both the FCC
9 and the Supreme Court have indicated that an ALEC must take all provisions
10 that are legitimately related. In fact, the FCC's First Report and Order cites an
11 example of how an ALEC must accept legitimately related provisions.

12

13 Q. WHAT IS BELLSOUTH ASKING OF THE COMMISSION WITH
14 REGARD TO ISSUE 3?

15

16 A. As referenced in my direct testimony, the Circuit Court in Maryland found it
17 unreasonable to allow an ALEC to opt into a three-year interconnection
18 agreement approximately two and one-half years after its approval. In
19 addition, as discussed above, as well as in my direct testimony, the FCC has
20 allowed for opting-in for a "reasonable period of time". BellSouth believes
21 that allowing an ALEC to opt-in to a contract provision up until the time when
22 there is only six months remaining in the term of the contract is reasonable.
23 Any thing after that would be inefficient and administratively burdensome.
24 Under Covad's proposal, BellSouth would be forced to expend additional
25 effort and resources to continually negotiate with an ALEC; input and track

1 additional rate differences in various rate bases; and re-educate customer
2 services organizations when agreements continually change. In addition,
3 ordering problems may occur because something available in the current
4 agreement could be missing in the agreement adopted, causing features to drop
5 out of the system when ordered, possibly increasing provisioning times. For
6 these reasons and reasons discussed above and in my direct testimony,
7 BellSouth would ask that the Commission deny Covad's request related to this
8 portion of the issue.

9
10 BellSouth also asks the Commission to find that specific rates, terms and
11 conditions included in a settlement package are part of a total arrangement and
12 that if Covad wants to opt-in to a portion of a total settlement arrangement, that
13 it must be willing to adopt the entire arrangement. This is consistent with FCC
14 51.809 and with the Supreme Court's view on this issue.

15

16 ***Issue 6: Where a due date for the provisioning of a facility is changed by BellSouth***
17 ***after a Firm Order Confirmation has been returned on an order, should***
18 ***BellSouth reimburse Covad for any costs incurred as a direct result of the***
19 ***rescheduling?***

20

21 Q. ON PAGE 12 OF MR. ALLEN'S TESTIMONY, COVAD ALLEGES THAT
22 BELL SOUTH "HAS REPEATEDLY AND UNILATERALLY CANCELLED
23 COVAD UNBUNDLED LOOP ORDERS. . ." PLEASE COMMENT.

24

25

1 A. Unfortunately, Mr. Allen provides no specific references or occurrences that
2 allow me to respond to his allegation. If Covad provides specific instances to
3 BellSouth, those instances are investigated and findings provided to Covad.

4

5 I can, however, respond in general to Mr. Allen's allegations. It is not
6 BellSouth's policy to unilaterally cancel loop orders of Covad, or any other
7 ALEC. As I explained in my direct testimony, page 21, there is a process in
8 place that could cause Covad loop orders to be cancelled. It is not, as I
9 explained, a unilateral cancellation. Covad has a responsibility in the process
10 that, if it does not fulfill, can result in an order being cancelled.

11

12 In addition, also as explained in my direct testimony on pages 18-20, the Firm
13 Order Confirmation ("FOC") due date is not a commitment. Due to the
14 circumstances discussed in my direct testimony, BellSouth could be forced to
15 postpone installation. This is not a cancellation, but a postponement due to
16 problems with facilities. These problems are not specific to Covad, but would
17 also affect any BellSouth orders.

18

19 Q. MR. ALLEN CONTINUES HIS REASONING FOR COVAD'S POSITION
20 ON PAGES 12-13 OF HIS TESTIMONY. PLEASE COMMENT.

21

22 A. Mr. Allen states, "In complex business relationships, parties do not generally
23 attempt to impose penalties on every possible failure point."

24

25

1 In a non-regulated, or “normal” business relationship, I would tend to agree
2 with Mr. Allen. Penalties, as Mr. Allen refers to would normally be built in to
3 the cost of doing business, and therefore reflected in the prices being charged
4 to all customers. As Mr. Allen is aware, however, BellSouth does not have
5 that flexibility with its rates. BellSouth, therefore, in order to recover its costs,
6 must charge the cost causer for the work that is done.

7
8 It also should be noted, however, that what Mr. Allen refers to as a “penalty”,
9 is not a penalty at all. Covad is charged when it cancels or changes a loop
10 order to compensate BellSouth for the costs that BellSouth has incurred on
11 behalf of Covad.

12
13 Q. PLEASE COMMENT ON MR. ALLEN’S DISCUSSION, BEGINNING ON
14 PAGE 13, OF COVAD’S ALLEGED RECEIPT OF MULTIPLE FOCs ON
15 SINGLE ORDERS.

16
17 A. Out of context, which is what Mr. Allen’s presentation is, the statistics
18 presented appear to be significant. What Mr. Allen’s discussion fails to
19 present is the reasoning behind why BellSouth had to issue more than one FOC
20 on so many of Covad’s orders. Although I cannot address the specifics of Mr.
21 Allen’s allegations, I can say that there are numerous reasons why multiple
22 FOCs may be necessary, and that many of those reasons are as a result of
23 ALEC performance. Mr. Latham discusses FOCs in more detail in his rebuttal
24 testimony.

25

1 Q. WHY IS IT NOT APPROPRIATE FOR COVAD TO CHARGE
2 BELL SOUTH FOR MODIFYING OR CANCELLING AN ORDER?

3

4 A. Due to various circumstances, orders placed by Covad must be modified after
5 BellSouth issues the initial FOC. Due to other circumstances, in which Covad
6 is a participant, orders may be cancelled. What Covad is requesting to be
7 allowed to charge BellSouth for is part and parcel of the entire ordering and
8 provisioning process for the facilities that BellSouth provides to Covad.

9

10 Q. WHAT IS BELL SOUTH ASKING THIS COMMISSION TO FIND WITH
11 REGARD TO ISSUE 6?

12

13 A. BellSouth requests the Commission to find that what Covad is asking is
14 inappropriate and, therefore, BellSouth is not obligated to reimburse Covad
15 when an order is modified or cancelled.

16

17 *Issue 8: When Covad reports a trouble on a loop where, after BellSouth dispatches*
18 *a technician to fix the trouble, no trouble is found but later trouble is*
19 *identified on that loop that should have been addressed during BellSouth's*
20 *first dispatch, should Covad pay for BellSouth's cost of the dispatch and*
21 *testing before the trouble is identified?*

22

23 Q. DO YOU AGREE WITH COVAD THAT BELL SOUTH SHOULD NOT
24 CHARGE FOR DISPATCH AND TESTING ON A LOOP IF BELL SOUTH
25 IS NOT ABLE TO IDENTIFY A TROUBLE ON THAT LOOP?

1

2 A. No. If Covad requests BellSouth to dispatch a technician to test a loop, Covad
3 should pay for that dispatch. Obviously, the result of BellSouth's test can
4 either be that a trouble is found on the loop, or that no trouble is found on the
5 loop. In either case, BellSouth has incurred a cost on behalf of Covad; Covad
6 has learned whether there is trouble on the loop, and obviously, Covad should
7 pay BellSouth.

8

9 Under the very specific and narrow circumstances defined in the wording of
10 this issue, i.e., BellSouth reports "no trouble found" and trouble is later found
11 on the loop that should have been found on the original dispatch, BellSouth
12 will either not bill Covad for the dispatch, or will credit Covad for the dispatch
13 charge.

14

15 Q. MR. ALLEN'S TESTIMONY, AT PAGE 19, STATES "COVAD SHOULD
16 CERTAINLY NOT BE CHARGED FOR TROUBLE TICKETS THAT ARE
17 PREMATURELY CLOSED." DO YOU AGREE?

18

19 A. In general, I would agree with Mr. Allen's statement. Mr. Allen, however,
20 alleges that BellSouth consistently prematurely closes trouble tickets. With
21 this, I adamantly disagree. As noted in my direct testimony, closing trouble
22 tickets is a two-party process. If, after BellSouth checks for trouble on a loop
23 and no trouble is found, yet Covad is still experiencing problems, Covad is not
24 obligated to close the trouble ticket. In fact, BellSouth keeps a trouble ticket
25 open automatically for 24 hours to allow Covad to continue testing. .

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Mr. Allen goes further, however, than what has supposedly been identified as Issue 8. On page 19, Mr. Allen proposes that “BellSouth not be allowed to charge when no trouble is found on the loop” regardless of whether trouble is found later. This would also be the result of Covad’s proposed language, or lack of language. Covad’s proposal would strike the following portion of Attachment 2, Section 2.1 (Unbundled Loops) language in its entirety:

If DIECA reports a trouble on SL1 loops and no trouble actually exists, BellSouth will charge DIECA for any dispatching and testing (both inside and outside the CO) required by BellSouth in order to confirm the loop’s working status.

Q. ARE THERE OTHER PORTIONS OF COVAD’S PROPOSED INTERCONNECTION AGREEMENT THAT WOULD SUPPORT BELL SOUTH’S POSITION ON THIS ISSUE?

A. Yes. I believe there is at least one other section of the proposed agreement that supports BellSouth’s position. Attachment 2, Section 2.11.3.4.2 (Maintenance and Repair of the High Frequency Spectrum Network Element) requires:

If a trouble is reported on either Party’s portion of the loop and no trouble actually exists, the Repairing Party may charge the Reporting Party for any dispatching and testing (both inside and outside the central office) required by the Repairing Party in order to confirm the loop’s working status.

It appears that the only difference between this section and the section under dispute (quoted above) is that in the section quoted above Covad is entitled to

1 bill BellSouth if Covad is required to dispatch and no trouble is found on the
2 loop.

3

4 Q. DOES BELLSOUTH'S PERFORMANCE MEASUREMENT PLAN
5 INCLUDE A MEASUREMENT THAT ADDRESSES COVAD'S
6 CONCERN ON THIS ISSUE?

7

8 A. Yes, BellSouth has a performance measurement that should generally address
9 Covad's concern of repeat dispatches. As part of its plan, BellSouth has
10 included Percent Repeat Troubles within 30 Days.

11

12 Q. WHAT DOES BELLSOUTH ASK THIS COMMISSION TO DO?

13

14 A. BellSouth requests that the Commission allow BellSouth to continue charging
15 for costs that it incurs as a result of work done on Covad's behalf. This is the
16 fair solution.

17

18 *Issue 11: What rate, if any, should Covad pay BellSouth if there is no electronic*
19 *ordering interface available, when it places a manual LSR for:*

20 *(a) an xDSL loop?*

21 *(b) line sharing*

22

23 Q. PLEASE COMMENT ON MR. ALLEN'S DISCUSSION, ON PAGES 19-21
24 OF HIS TESTIMONY, OF ISSUE 11.

25

1 A. BellSouth's electronic ordering systems, like any other electronic systems, are
2 going to be down from time to time. When problems with the electronic
3 ordering systems prevent Covad from placing electronic orders that BellSouth
4 normally accepts, Covad may order the services it desires manually and pay
5 only the electronic ordering rates. This is a fair and reasonable approach to
6 addressing occasional system problems.

7
8 Q. WHY IS ISSUE 11 STILL AN ISSUE BETWEEN THE PARTIES?

9
10 A. I am not sure. BellSouth offers electronic ordering interfaces for xDSL loops
11 and line sharing. BellSouth agrees with Covad that if, due to system failures,
12 Covad must place a manual order for something that could normally be
13 ordered electronically, Covad will only pay the electronic ordering rates.

14
15 Although the above is true, what Covad's suggested contract language appears
16 to propose is that a manual ordering charge is never appropriate. The
17 following is Covad's proposal for Attachment 2, Section 2.9.1 (Operational
18 Support Systems):

19
20 An individual LSR will be identified for billing purposes by its
21 Purchase Order Number (PON). LSRs submitted by means other than
22 one of these interactive interfaces (mail, fax, courier, etc.) will incur a
23 manual order charge as specified in the table below:
24
25

	AL, GA, LA, MS, NC, SC	FL, KY, TN
1 <i>OPERATIONAL SUPPORT SYSTEMS</i>		
2 OSS LSR charge, per LSR received from the 3 CLEC by one of the OSS interactive 4 interfaces	\$.10 SOME C	\$3.50 SOME C
5 Incremental charge per LSR received from 6 the CLEC by means other than one of the 7 OSS interactive interfaces	See applicable rate 8 element*	\$00.00 9 SOMAN

*Until 90 days after the xDSL ordering EDI interface is commercially available, BellSouth will permit DIECA to place orders manually without charging DIECA the manual service order fee.

8 Q. WHAT IS BELLSOUTH ASKING OF THIS COMMISSION?

9
10 A. BellSouth asks the Commission to find that if the ordering process for the
11 service that Covad wants is a manual process, that payment for such manual
12 service order processing is appropriate.
13

14 *Issue 12: Should Covad have to pay for a submitted LSR when it cancels an order*
15 *because BellSouth has not delivered the loop in less than five business days?*
16

17 Q. WHY IS IT APPROPRIATE FOR BELLSOUTH TO CHARGE AN LSR OSS
18 CHARGE EVEN IF IT IS UNABLE TO DELIVER A LOOP TO COVAD IN
19 LESS THAN FIVE BUSINESS DAYS?
20

21 A. Once Covad submits an order for a loop, BellSouth begins processing that
22 request, doing work on Covad's request. BellSouth is entitled to compensation
23 for such work, and the LSR OSS charge accomplishes just that.
24
25

1 Q. HAS BELLSOUTH PROPOSED A MEASUREMENT IN DOCKET NO.
2 000121-TP, FLORIDA'S GENERIC PERFORMANCE MEASURES
3 DOCKET, WHICH WILL ADDRESS COVAD'S CONCERN?
4

5 A. Yes. BellSouth has proposed two provisioning measurements, Order
6 Completion Interval and Percent Missed Installation Appointments –
7 disaggregated by 12 levels of loop sub-metrics, which clearly demonstrate
8 BellSouth's performance for delivering loops. Covad's allegation that
9 BellSouth has a perverse incentive to delay Covad loop deliveries cannot be
10 true. BellSouth has an obligation to provide nondiscriminatory access to
11 Covad. BellSouth must demonstrate, to this Commission and the FCC, that it
12 is providing such access, prior to receiving 271 relief in Florida. Depending on
13 the loop type, BellSouth, therefore, must demonstrate that it provides loops to
14 all ALECs in the same time and manner as to its retail customers. Absent such
15 an analogue, BellSouth must demonstrate it is meeting a defined benchmark.
16

17 Q. WHAT IS BELLSOUTH ASKING OF THIS COMMISSION?
18

19 A. BellSouth is requesting that the Commission find that Covad must pay
20 appropriate LSR OSS charges, even if Covad cancels an order because
21 BellSouth is unable to provision the order within five days. If this is a
22 continual problem, as Covad seems to suggest, there are other, more
23 appropriate venues for Covad to pursue.
24
25

1 *Issue 25: In the event Covad desires to terminate its occupation of a collocation*
2 *space, and if there is a waiting list for space in that central office, should*
3 *BellSouth notify the next ALEC on the waiting list to give that ALEC the*
4 *opportunity to take that space as configured by Covad (such as racks,*
5 *conduits, etc.), thereby relieving Covad of its obligation to completely vacate*
6 *the space?*

7

8 Q. DO YOU HAVE ANY GENERAL COMMENTS ON COVAD'S POSITION
9 ON ISSUE 25, AS DISCUSSED IN THE TESTIMONY OF MR. WILLIAM
10 SEEGER (PAGES 8 – 10)?

11

12 A. Yes. As stated in my direct testimony, BellSouth does not oppose Covad
13 selling its equipment to another ALEC should Covad choose to vacate a
14 collocation space. The arguments, however, that Mr. Seeger makes in his
15 testimony, with regard to why BellSouth should be involved in the process, are
16 less than compelling. There is nothing in the Act or the FCC Rules to require
17 BellSouth to provide the service that Covad is seeking and, therefore,
18 BellSouth asks the Commission to deny Covad's request.

19

20 In addition, what is defined above as the issue is not what Covad's proposed
21 language or continued negotiations between the parties seem to indicate.

22 Covad's proposed language, Section 4.3.2 of Attachment 4, requires that:

23

24 When CLEC-1 gives notice of termination of a collocation
25 arrangement, BellSouth shall alert all CLECs on the waiting list for
collocation space, if any, that prepared space is becoming available. If
BellSouth is able to place another CLEC in the vacated CLEC-1 space,

1 CLEC-1 shall not be required to return the space to its original
2 condition. CLEC-1 shall be responsible for the cost of removing any
3 enclosure, together with all support structures (e.g., racking, conduits),
4 at the termination of occupancy and restoring the grounds to their
5 original condition. If BellSouth is able to rent the vacated collocation
6 space within six months, CLEC-1 shall be reimbursed for the pro rata
7 share of the collocation space preparation it paid. (Emphasis added.)

8 Covad's proposed contract language goes far and above what is defined in this
9 issue. In addition, through further examination of this issue in the negotiation
10 process, it appears that the more the parties discuss the issue, the more
11 involved Covad's request becomes. Contrary to the issue which states that
12 Covad wants BellSouth to notify the next ALEC on the list, not only does
13 Covad want BellSouth to notify all of the ALECs on the list, but Covad also
14 has suggested that if the first ALEC is not interested, it would be appropriate to
15 allow the second ALEC to use Covad's space.

16 Q. WHAT ARE THE IMPLICATIONS OF COVAD'S POSITION?

17 A. It is my understanding that Covad has even suggested that when Covad
18 submits its notice that it intends to vacate space, BellSouth could relook at the
19 entire central office collocation plan. Under Covad's proposal, if BellSouth is
20 aware that space, in addition to Covad's, is to become available shortly, and
21 the second ALEC on the waiting list is interested in Covad's space, BellSouth
22 could make the first ALEC on the list wait for the additional space to become
23 available, and let the second ALEC take Covad's space immediately.

24
25

1 Covad’s proposal does several things, all of which BellSouth opposes. First, it
2 interferes with the FCC’s and this Commission’s “first-come, first-served”
3 requirement. Second, as discussed in my direct testimony, page 33, the
4 process would have to lengthen the intervals required for collocation. Any
5 time lost as a result of the negotiating process among, or between, the parties
6 should not be counted as part of BellSouth’s time to provide the collocation
7 space. Finally, and regardless of what Covad may assert to the contrary, this
8 proposal does put BellSouth right in the middle of a brokering transaction.

9

10 Q. PLEASE COMMENT ON THE SPECIFIC ARGUMENTS, PAGES 8-10 OF
11 HIS TESTIMONY, THAT MR. SEEGER MAKES ON THIS ISSUE.

12

13 A. Mr. Seeger addresses two main ideas in his testimony. First, he suggests that
14 BellSouth should “act as a reasonable landlord”. Second, he touches briefly on
15 the actual equipment removal process necessary for Covad to vacate a
16 collocation arrangement.

17

18 Mr. Seeger refers to a normal landlord being interested in filling empty
19 apartments. Mr. Seeger’s comparison is wrong. The relationship between
20 BellSouth and Covad more closely resembles an occupied apartment that the
21 renter desires to sublet. In this case, the landlord is not responsible for finding
22 the new tenant. It is the renter’s responsibility to find someone to sublet the
23 space, and that is what BellSouth is asking the Commission to require here.

24

25

1 With regard to equipment removal, Mr. Seeger's discussion is not relevant.
2 Addressing Covad's specific example, that of BellSouth putting "Covad in the
3 very end of a huge unprepared space", two things come to mind. First, it
4 would seem that if there is a huge unprepared space there would be space
5 available in the central office for other collocators, therefore, there would be
6 no waiting list, and Covad's argument is unpersuasive. Second, although I am
7 not a collocation expert, it is my understanding that, unless there is a caged
8 arrangement, the cable racking that Mr. Seeger refers to on page 9, belongs to
9 BellSouth, and would not be removed by Covad.

10

11 Q. PLEASE COMMENT ON MR. SEEGER'S STATEMENT THAT "COVAD
12 MERELY WANTS TO RETAIN THE RIGHT TO FIND ANOTHER ALEC
13 INTERESTED IN ACQUIRING THE SPACE FROM COVAD."

14

15 A. Covad has the right it is requesting today. Until Covad sends an application to
16 terminate its collocation arrangement, Covad retains the right to share the
17 collocation space with another ALEC or, alternatively, transfer its space to
18 another ALEC provided that the premises is not in a space exhaust situation.
19 Other ALECs have exercised that right. Although I cannot say how those
20 companies have made their arrangements with other ALECs, I do know that
21 BellSouth has assigned collocation space from one ALEC to another and
22 would be willing to permit this to be done in conjunction with Covad selling its
23 in-place equipment to the same ALEC. Covad, however, should be
24 responsible for brokering its own space reassignment or sale of equipment, just
25 as these other ALECs have done.

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Q. WHAT PROBLEMS DO YOU FORESEE WITH COVAD’S “SIMPLE EMAIL” PROPOSAL?

A. First, despite what Covad may assert, Covad’s proposal does put BellSouth in the middle of the transaction. Covad proposes that “BellSouth send a simple email to ALECs on the waiting list, asking them to contact Covad about acquiring Covad’s space.” This would be just one more administrative step in BellSouth’s collocation process that is unnecessary and not required to meet BellSouth’s collocation obligations.

Second, if BellSouth is required to send an email to all of the ALECs, the first-come, first-served requirement associated with the waiting list is jeopardized. An additional specific concern that arises should Covad’s proposal be implemented is if an ALEC, other than the first ALEC on the waiting list, is allowed to take Covad’s space because there is also additional space becoming available, and, for some reason, the additional space does not become available. BellSouth foresees Covad’s proposal leading to more problems than it solves.

Q. WILL THE STANDARDIZED RATES FOR COLLOCATION BEING IMPLEMENTED IN FLORIDA RESOLVE COVAD’S CONCERNS EXPRESSED IN THIS ISSUE?

1 A. The standardized rates for collocation being implemented in Florida should
2 resolve Covad's concerns with regard to large upfront space preparation
3 charges on a going-forward basis. In response to numerous ALEC requests,
4 BellSouth is implementing standardized collocation rates. BellSouth has
5 provided to this Commission a cost study that moves Space Preparation
6 charges from all non-recurring rates to the recurring rates for the Central
7 Office Modifications and Common Systems Modifications rate elements. This
8 will allow the space preparation charges, rather than being paid as a lump sum
9 upfront, to be paid over the life of the collocation space.

10

11 Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

12

13 A. BellSouth requests that the Commission deny Covad's request.

14

15 *Issue 32(a): Should Covad be required to pay amounts in dispute as well as late*
16 *charge as late charges on such amounts?*

17

18 Q. WHY IS THIS AN ISSUE BETWEEN COVAD AND BELLSOUTH?

19

20 A. I am not quite certain. BellSouth has agreed that Covad should not have to pay
21 portions of bills that Covad legitimately disputes until such time as the billing
22 dispute is settled. BellSouth has agreed that late charges are only due if the
23 dispute is resolved in BellSouth's favor. Moreover, BellSouth also agrees that
24 Covad should not be subject to suspension or termination of service for
25 "nonpayment" due to a legitimate billing dispute.

1

2 Q. DOES BELLSOUTH HAVE AN ESTABLISHED BILLING DISPUTE
3 PROCESS?

4

5 A. Yes. BellSouth's proposed language with regard to the Billing Dispute
6 Process is included in Attachment 7 of the parties' Interconnection Agreement.
7 The language is consistent with the process that I have just described.

8

9 Q. ON PAGE 25, MR. KOUTSKY SUGGESTS THAT, "UNDER
10 BELLSOUTH'S PROPOSAL, BELLSOUTH WOULD BE ABLE TO
11 COLLECT INTEREST ON THE DISPUTED AMOUNT PENDING
12 RESOLUTION." IS THIS TRUE?

13

14 A. No. Nothing is paid on disputed amounts until the dispute is resolved. If it is
15 determined that Covad is correct, then the disputed amount is not due. If it is
16 determined that BellSouth is correct, only then does Covad pay the disputed
17 amount plus interest.

18

19 Q. FINALLY, MR. KOUTSKY ALLEGES THAT BELLSOUTH TREATS ITS
20 RETAIL CUSTOMERS DIFFERENTLY, WITH RESPECT TO BILLING,
21 THAN IT DOES ITS ALEC CUSTOMERS. PLEASE COMMENT.

22

23 A. Mr. Koutsky is absolutely wrong. Section A2.4 of BellSouth's Florida General
24 Subscriber Services Tariff ("GSST"), and Section E2.4 of the Florida Access
25 Service Tariff address "Payment Arrangements and Credit Allowances." The

1 appropriate portions of these sections are attached to my rebuttal testimony as
2 Exhibit CKC – R1. As shown in both the GSST and the Access Service Tariff
3 sections, BellSouth has the same type of payment requirements for both its
4 retail service and access service customers as BellSouth proposes for its ALEC
5 customers. These sections also show that late payment and interest charges
6 apply when BellSouth does not receive payments in a timely manner. Also
7 included in these sections are the BellSouth processes for handling disputes.

8

9 BellSouth presents these tariff sections to ensure Covad, and this Commission
10 that BellSouth treats Covad, and all ALECs, in a nondiscriminatory manner
11 with relation to its billing practices.

12

13 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

14

15 A. Yes.

16 PC DOCS #264753

17

18

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF CYNTHIA K. COX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 001797-TP
MAY 23, 2001

EXHIBIT CKC-R1

General Subscriber Service Tariff, Sec. A2.4, Pages 18 through 20
Access Service Tariff, Sec. E2.4, Pages 19 through 22

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 18
Cancels Original Page 18

ISSUED: January 30, 1998
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: February 14, 1998

A2. GENERAL REGULATIONS

(T)

A2.4 Payment Arrangements and Credit Allowances (Cont'd)**A2.4.2 Credit and Deposits for Applicants (Cont'd)****F. (DELETED)**

(D)

G. Responsibility For Payment

The fact that a deposit has been made in no way relieves the applicant or subscriber from complying with the Company's regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of the Company providing for the discontinuance of service for nonpayment of any sums due for service rendered.

A2.4.3 Payment for Service

- A.** The subscriber is responsible for payment of all appropriate charges for completed calls, services, and equipment. All charges due by the subscriber are payable at the Company's Business Office or at any agency duly authorized to receive such payments. Any objection to billed charges should be promptly reported to the Company. Adjustments to customers bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate. Where any undercharge in billing of the subscriber is the result of a Company mistake, the Company may not backbill in excess of twelve months. Where overbilling of a subscriber occurs, due either to Company or subscriber error, no liability exists which will require the Company to pay any interest, dividend or other compensation on the amount overbilled.
- B.** The subscriber shall pay monthly in advance or on demand all charges for service and equipment and shall pay on demand all charges for long distance service. The subscriber is responsible for payment of all charges for services furnished the subscriber, including charges for services originated or charges accepted at the subscriber's station.
1. Effective April 1, 1996, a charge of \$20.00 or 5 percent of the face value of the check, whichever is greater, will apply whenever a check or draft presented for payment for service is not accepted by the institution on which it is written. For a check or draft written prior to this date, a charge of \$15.00 will apply.¹

Note 1: Nonpayment of the charge in 1. above will not constitute sufficient cause for interruption or cancellation of service.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Fourth Revised Page 19
Cancels Third Revised Page 19

ISSUED: June 19, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: July 5, 2000

A2. GENERAL REGULATIONS

A2.4 Payment Arrangements and Credit Allowances (Cont'd)

A2.4.3 Payment for Service (Cont'd)

C. Effective August 28, 1999, a Late Payment Charge of \$1.50 plus an interest charge of 1.5 percent on the unpaid balance exceeding \$6.00 for residence subscribers and a Late Payment Charge of \$9.00 plus an interest charge of 1.5 percent on the unpaid balance exceeding \$6.00 for business subscribers will be applied to each subscriber's bill, (including amounts billed in accordance with the Company's Billing and Collections Services Tariff) when the previous month's bill has not been paid in full prior to the next billing date. The 1.5 percent interest charge is applied to the total unpaid amount carried forward and is included in the total amount due on the current bill. This Tariff shall apply to federal and state government pursuant to existing statutes applicable to those governmental entities. Effective January 1, 1992, county and municipal governments will be assessed a 1.0 percent Late Payment Charge in accordance with the provisions of the Florida Prompt Payment Act, Section 218.70-218.79, Florida Statutes.

D. Should service be suspended for nonpayment of charges, it will be restored *upon payment of the Line Change Charge applicable for restoration of service as provided in* Section A4. of this Tariff. (T)

E. When the service has been disconnected for nonpayment, the service agreement is considered to have been terminated. Reestablishment of service may be made only upon the execution of a new service agreement which is subject to the provisions of this Tariff.

F. In its discretion, the Company may restore or reestablish service which has been suspended or disconnected for nonpayment of charges, prior to payment of all charges due. Such restoration or reestablishment shall not be construed as a waiver of any rights to suspend or disconnect service for nonpayment of any such or other charges due and unpaid or for the violation of the provisions of this Tariff; nor shall the failure to suspend or disconnect service for nonpayment of any past due account or accounts operate as a waiver or estoppel to suspend or disconnect service for nonpayment of such account or of any other past due account.

G. Bills for service shall not be considered delinquent prior to the expiration of fifteen days from the date of mailing or delivery by the company. However, the company may demand immediate payment under the following circumstances:

1. Where service is terminated or abandoned.
2. Where toll service is two times greater than the subscriber's average usage as reflected on the monthly bills for the three months prior to the current bill or, in the case of a new customer who has been receiving service for less than four months, where the toll service is twice the estimated monthly toll service.
3. Where the Company has reason to believe that a business subscriber is about to go out of business or that bankruptcy is imminent for that subscriber.

H. Toll Credit Limit (TCL)

Toll Credit Limit (TCL) is an interim phase of toll denial in lieu of local service denial. It offers subscribers the option of toll restriction while paying a deposit or an overdue bill balance on an installment basis.

1. The Toll Credit Limit process shall apply for subscribers requesting new service with no outstanding bill balance, subscribers requesting new service with unpaid balances from previous service, and for existing subscribers with overdue outstanding charges.

a. New Service With No Outstanding Charges For Previous Service

When the Company deems it necessary for a subscriber requesting new service to pay a deposit and the subscriber is unable to pay the deposit in full, the subscriber may be allowed to pay the deposit in up to four (4) installments if the subscriber agrees to a full toll restriction of the service, at no charge, until the deposit is paid in full.

An arrangement may be made to waive the deposit if the subscriber chooses to have a full toll restriction on the requested service until satisfactory credit has been established.

b. New Service With Outstanding Charges For Previous Service

Residence subscribers requesting new service who have outstanding charges from previous service with the Company, which have not yet been referred to an outside collection agency, will be allowed to select full toll restriction of the service until the charges are paid in full. These subscribers can make arrangements to pay the charges in up to four installments.

BELLSOUTH
TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

Fourth Revised Page 20
Cancels Third Revised Page 20

FLORIDA

ISSUED: February 28, 2001

EFFECTIVE: March 15, 2001

BY: Joseph P. Lacher, President -FL
Miami, Florida

A2. GENERAL REGULATIONS

A2.4 Payment Arrangements and Credit Allowances (Cont'd)

A2.4.3 Payment for Service (Cont'd)

II. Toll Credit Limit (TCL) (Cont'd)

1. (Cont'd)

c. Existing Service

Residence subscribers with overdue bill balances who are unable to pay the charges in full may be allowed to retain their local service if they elect to have a full toll restriction placed on their existing service, at no charge, until the charges are paid. These subscribers may arrange to pay the outstanding balance in up to four installment payments.

- I. Residence subscribers with overdue bill balances for their existing service, which has been temporarily suspended for nonpayment, who are unable to pay the overdue charges in full may be allowed to retain their local service if they elect to have a full toll restriction placed on their existing service, at no charge, until the overdue charges are paid. These subscribers may arrange to pay the outstanding balance in up to twelve (12) monthly installment payments. *An Installment Billing Service Fee may apply as specified in Section A4. of this Tariff.* (C)

A2.4.4 Allowance for Service Outages

When the use of service or facilities furnished by the Company becomes unavailable due to any cause other than the negligence or willful act of the subscriber or the failure of the facilities provided by the subscriber, a pro rata adjustment of the fixed monthly charges involved will be allowed, for the service and facilities rendered useless and inoperative by reason of the service outage during the time the outage continues in excess of twenty-four hours from the time it is reported to or detected by the Company, except as otherwise specified in this tariff. The adjustment shall not be applicable for the time that the Company stands ready to repair the service and the subscriber does not provide access to the Company for such restoration work. For the purpose of administering this regulation, every month is considered to have thirty days.

A2.4.5 Provision for Certain Local Taxes and Fees

When a municipality or political subdivision of the state charges the Company any license, occupational, franchise, inspection or other similar tax or fee, whether in a lump sum, or at a flat rate, or based on receipts, or based on poles, wires, conduits or other facilities, the aggregate amount of such taxes and fees will be billed, insofar as practical, pro rata to exchange subscribers receiving service in the municipality or political subdivision.

A2.4.6 Provision for Certain Local Ordinance Costs

When the Company by virtue of its compliance with a municipal or county ordinance, incurs significant costs that would not otherwise normally be incurred, all such costs shall be billed, insofar as practical, pro rata, per exchange access line, to those subscribers receiving exchange service within the municipality or county as part of the price for exchange service.

An estimated monthly amount of such costs shall be billed to the affected subscribers each month and an adjustment to reconcile these estimates to the actual costs incurred for the six month periods ending June 30 and December 31 of each year shall be applied.

Charges for permits, licenses or fees required by governing authorities for installing any telephone wire in a building will be billed by the Company to the requesting party.

A2.4.7 Reserved for Future Use

A2.4.8 Variable Term Payment

- A. In the event that all or any part of the service is disconnected at the customer's request prior to the expiration of any selected payment period of greater than one month's duration, the customer will be required to pay the applicable termination charge as stated in the Access Service Tariff, the Private Line Service Tariff and this Tariff. The tariff provisions concerning termination liability shall be inapplicable to any state, county, or municipal governmental entity when there is in effect, as a result of action by such entity and through a duly constituted legislative, administrative, or executive body:

1. a statute;
2. an ordinance;
3. a policy directive; or
4. a constitutional provision

which restricts or prohibits an additional contractual payment for early termination of a contract by any such entity, or agency thereof, due to an unavailability of funding. When service is being provided and funding to the governmental entity for such service becomes unavailable, the governmental entity may cancel the service without additional payment obligation.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: July 1, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

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E2. GENERAL REGULATIONS¹

(N)

E2.4 Payment Arrangements and Credit Allowances (Cont'd)

E2.4.1 Payment of Rates, Charges and Deposits (Cont'd)

- A. The Company will, in order to safeguard its interests, only require an IC which has a proven history of late payments to the Company or does not have established credit to make a deposit prior to or at any time after the provision of a service to the IC to be held by the Company as a guarantee of the payment of rates and charges. No such deposit will be required of an IC which is a successor of a company which has established credit and has no history of late payments to the Company. Such deposit may not exceed the actual or estimated rates and charges for the service for a two month period. The fact that a deposit has been made in no way relieves the IC from complying with the Company's regulations as to the prompt payment of bills. At such time as the provision of the service to the IC is terminated, the amount of the deposit will be credited to the IC's account and any credit balance which may remain will be refunded.

Such a deposit will be refunded or credited to the IC's account when the IC has established credit or, in any event, after the IC has established a one-year prompt payment record at any time prior to the termination of the provision of the service to the IC. In case of a cash deposit, for the period the deposit is held by the Company, the IC will receive interest at the same percentage rate as that set forth in B.3.a. or in B.3.b following whichever is lower. The rate will be compounded daily for the number of days from the date the IC's deposit is received by the Company to and including the date such deposit is credited to the IC's account or the date the deposit is refunded by the Company. Should a deposit be credited to the IC's account, as indicated above, no interest will accrue on the deposit from the date such deposit is credited to the IC's account.

- B. The Company shall bill on a current basis all charges incurred by and credits due to the IC under this Tariff attributable to services, including, but not limited to the Trouble Location Charge as set forth in E13.3.1 following, established or discontinued during the preceding billing period. In addition, the Company shall bill in advance charges for all services to be provided during the ensuing billing period except for charges associated with service usage, and for the Federal Government which will be billed in arrears. The bill day (i.e., the billing date of a bill for an End User or IC for Access Service under this Tariff), the period of service each bill covers and the payment date will be as follows:
1. For services provided under this Tariff that are billed directly to the End User, the Company will establish a bill day each month for each end user account. The bill will cover charges applicable to the End User for the ensuing billing period, except for the Federal Government which will be billed in arrears. Any known unbilled charges for prior periods and any known unbilled adjustments for prior periods for the charges applicable to the End User will be applied to this bill. Such bills are due when rendered.
 2. For services provided under this Tariff that are billed directly to the IC the Company will establish a bill day each month for each IC account. The bill will cover nonusage sensitive service charges for the ensuing billing period for which the bill is rendered, any known unbilled nonusage sensitive charges for prior periods and unbilled usage charges for the period after the last bill day thru the current bill day. Any known unbilled usage charges for prior periods and any known unbilled adjustments will be applied to this bill. Payment for such bills is due as set forth in 3. following. If payment is not received by the payment due date, as set forth in 3. following in immediately available funds, a late payment penalty will apply as set forth in 3. following.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

BELLSOUTH
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FLORIDA
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E2. GENERAL REGULATIONS¹

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E2.4 Payment Arrangements and Credit Allowances (Cont'd)**E2.4.1 Payment of Rates, Charges and Deposits (Cont'd)****B. (Cont'd)**

3. All bills dated as set forth in 2. preceding for services provided to the IC and/or End User by the Company are due on the payment due date. The payment due date is the date which is 31 days after the bill day or by the next bill date (i.e., same date in the following month as the bill date) whichever is the shortest interval, except as provided herein, and are payable in immediately available funds. If such payment due date would cause payment to be due on a Saturday, Sunday or Holiday (i.e., New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and a day when Washington's Birthday, Memorial Day or Columbus Day is legally observed), payment for such bills will be due from the IC and/or End User as follows:

If such payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If such payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday.

Further, if any portion of the payment is received by the Company after the payment due date as set forth preceding, or if any portion of the payment is received by the Company in funds which are not immediately available to the Company, then a late payment penalty may be due to the Company. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be the lessor of:

- a. The highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment due date to and including the date that the IC and/or End User actually makes the payment to the Company, or
 - b. 0.000590 per day, compounded daily for the number of days from the payment due date to and including the date that the IC and/or End User actually makes the payment to the Company.
4. In the event of a billing dispute, the IC or End User must submit a documented claim for the disputed amount. If the dispute is submitted on or before the payment due date or within 90 days after the payment due date and the disputed amount is paid prior to resolution of the dispute, any interest credits due the IC or End User upon resolution of the dispute shall be calculated from the date of the overpayment to the resolution date. If the dispute is submitted more than 90 days after the payment due date and the disputed amount is paid prior to resolution of the dispute, any interest credits due the IC or End User upon resolution of the dispute shall be calculated from the dispute date or the date the payment is made, whichever occurs later, to the resolution date. The Company will resolve the dispute and assess interest credits or late payment penalties to the IC or End User as follows:
- If the dispute is resolved in favor of the Company and the IC or End User has paid the disputed amount on or before the payment due date, no credits or late payment penalties will apply to the disputed amount.
 - If the dispute is resolved in favor of the Company and the IC or End User has withheld the disputed amount, any payments withheld pending settlement of the dispute shall be subject to the late payment penalty.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

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FLORIDA
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E2. GENERAL REGULATIONS¹

(N)

E2.4 Payment Arrangements and Credit Allowances (Cont'd)**E2.4.1 Payment of Rates, Charges and Deposits (Cont'd)****B. (Cont'd)****4. (Cont'd)**

- If the dispute is resolved in favor of the IC or End User and the IC or End User has withheld the disputed amount, no credits or late payment penalties will apply to the disputed amount.
- If the dispute is resolved in favor of the IC or End User and the IC or End User has paid the disputed amount, the IC or End User will receive a credit from the Company for the disputed amount times a penalty factor as set forth preceding. The penalty factor shall be the lesser of:
 - a. The highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment due date to and including the date that the IC and/or End User actually makes the payment to the Company, or
 - b. 0.000590 per day, compounded daily for the number of days from the payment due date to and including the date that the IC and/or End User actually makes the payment to the Company.

If an IC's traffic terminates to an end office via an alternative Tandem Service Provider (TSP), any terminating usage dispute for that end office must identify the quantity of MOUs the IC's records indicate to be terminated via an alternative TSP.

Upon receipt of the dispute involving usage terminated via an alternative TSP, the Company will verify that the disputed bill accurately represents the information provided to the Company pursuant to E6.6.5 following, within five days of receipt of a dispute notification.

If the billing agrees with the billing data received pursuant to E6.6.5 following, the Company will refer the dispute to the entity providing the billing data information within sixteen days from the date the dispute was received.

The provider of the billing data information will investigate the claim and reply to the Company within fifteen days of the referral.

The provider of the billing data information, the IC and the Company will work cooperatively to resolve any remaining discrepancies.

If the entity providing the billing data information fails to cooperate with the Company to resolve billing disputes involving usage billed based on the billing data information received, the Company may refuse to accept future billing data information and bill the full terminating charges for all usage to the alternative TSP.

The terms and conditions in E2.4.1.B.3. preceding still apply except for the following:

- If the Company accurately billed the usage as contained in the billing data information provided to it, the Company will not be liable for any interest due the IC for overpayment if the dispute is resolved in the IC's favor.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

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E2. GENERAL REGULATIONS

(T)

E2.4 Payment Arrangements and Credit Allowances (Cont'd)**E2.4.1 Payment of Rates, Charges and Deposits (Cont'd)**

- C. Adjustments for the quantities of services established or discontinued in any billing period beyond the minimum period set forth for services in other sections of this Tariff will be prorated based on the number of days the IC or End User had service during the billing period times one-thirtieth (1/30th) the monthly rate. Billing for service begins on the day following the date of installation and shall accrue through and include the day service is discontinued. The Company will, upon request and if available, furnish such detailed information as may reasonably be required for verification of any bill.
- D. When a rate as set forth in this Tariff is shown to more than two decimal places, the charges will be determined using the rate shown. The resulting amount will then be rounded to the nearest penny (i.e., rounded to two decimal places).
- E. When more than one copy of an IC bill for services provided under the provisions of this Tariff is furnished to the IC an additional charge applies for each additional copy of the bill as set forth in E13.3.6 following.
- F. The dispute date is the date the IC or End User presents sufficient documentation to support the claim. Sufficient documentation consists of the following information, where such information is relevant to the dispute and reasonably available to the IC or End User:
1. **Dedicated Access**
 - a. The nature of the dispute (i.e., incorrect rate, incorrect circuit type etc.), including the basis for the IC's or End User's belief that the bill is incorrect.
 - b. The billing account number(s) assigned by the Company.
 - c. The amount of money in dispute.
 - d. The date of the bill in dispute.
 2. **BellSouth SWA (Non-Usage)** (T)
 - a. The nature of the dispute (i.e., incorrect rate etc.), including the basis for the IC's belief that the bill is incorrect.
 - b. The billing account number(s) assigned by the Company.
 - c. The amount of money in dispute.
 - d. The date of the bill in dispute.
 3. **BellSouth SWA (Usage)** (T)
 - a. The nature of the dispute (i.e., incorrect rate, incorrect minutes of use, etc.), including the basis for the IC's belief that the bill is incorrect.
 - b. The type of usage (i.e., originating or terminating).
 - c. The Company end office where the minutes of use originated or terminated (if applicable).
 - d. The number of minutes in dispute.
 - e. The billing account number(s) assigned by the Company.
 - f. The amount of money in dispute.
 - g. The date of the bill. (M)

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