

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by AT&T Communications of the )  
Southern States, Inc. for arbitration of ) Docket No. 000731-TP  
certain terms and conditions of a proposed )  
agreement with BellSouth ) Filed July 13, 2001  
Telecommunications, Inc. pursuant to )  
47 U.S.C. Section 252 )

AT&T'S MOTION FOR RECONSIDERATION

Pursuant to Rule 25-22.060, Florida Administrative Code, AT&T

Communications of the Southern States, Inc. ("AT&T") submits this Motion for Reconsideration of certain issues contained in the Florida Public Service Commission's ("Commission") June 28, 2001, final order in this proceeding. In support of its Motion, AT&T states as follows:

I. "Currently combines".

The Commission decided in its order in this docket to accept BellSouth's restrictive definition for "currently combines".

The Commission's order in this docket acknowledged that the Eighth Circuit Court did not specifically define "currently combines".<sup>1</sup> The Commission also acknowledged that the FCC originally concluded that "currently combines" in rule 51.315(b) means ordinarily or typically combined.<sup>2</sup> Indeed, the Commission is within its authority to adopt a definition of "currently combines" that requires BellSouth to provide network elements to AT&T that are ordinarily or typically combined in its network.<sup>3</sup>

<sup>1</sup> Order, p. 21, citing *Local Competition First Report and Order*, Para. 296, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC No. 96-325 Rel. August 8, 1996.

<sup>2</sup> Order, Page 21 citing to the Federal Communications Order in CC Docket No. 96-325, para. 296.

<sup>3</sup> On page 3 of its brief, AT&T cited to a decision of the Ninth Circuit Court of Appeals in *U.S. West Communications v MFS Intelenet*, 193 F.3d 1112, 1120 (9<sup>th</sup> Cir. 1999). In this case, the Ninth Circuit determined that a state commission can mandate combinations under the Act.

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The Georgia Public Service Commission (“GPSC”) requires BellSouth to provide network elements that are ordinarily or typically combined in its network. The GPSC found that:

Rule 315(b), by its own terms, applies to elements that the incumbent “currently combines”, not merely elements which are “currently combined”...*The Commission finds that “currently combines” means ordinarily combined within the BellSouth network, in the manner in which they are typically combined.* Thus, CLECs can order combinations of typically combined elements, even if the particular elements being ordered are not physically connected at the time the order is placed.<sup>4</sup>

BellSouth’s position that it is not required to provide combinations unless the elements are actually combined for a particular customer is anti-competitive and designed solely to prevent ALECs from using UNE-P to compete for customers. BellSouth’s position is not based on any valid legal authority. AT&T urges this Commission to reconsider its decision and to require BellSouth to provide network elements to ALECs that are ordinarily or typically combined in its network.

## II. “Glue Charge”.

The Commission’s order in this docket allows BellSouth to charge market based rates for “combining” elements, rather than requiring that any “glue charge” be cost-based.

The “glue charge” is BellSouth’s attempt to obtain an additional profit over and above the reasonable profit it recovers in the cost based rates for network element combinations. To support its position, BellSouth’s witness stated that other ALECs have

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<sup>4</sup> Order, *UNE Combinations, In re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements*, Docket No. 10692-U, Georgia Public Service Commission, February 1, 2000, p. 11.

agreed to pay a market based glue charge.<sup>5</sup> However, the fact that ALECs have had to agree to pay market based pricing in order to serve customers does not mean that market based pricing is appropriate.

The cost to provide combinations, including a reasonable profit, is already included in the rates AT&T pays BellSouth for combinations of network elements. The market based glue charge allows BellSouth to significantly increase ALECs' costs to serve customers and will harm the development of competition. AT&T respectfully requests that the Commission reconsider its decision on this issue and order that BellSouth's glue charge be cost based.

### III. Tandem Switching Element.

The FCC recently clarified that there is only one criteria that an ALEC must meet in order to be entitled to bill the tandem switching rate element. The FCC acknowledged that there has been a misunderstanding on the part of some in the industry concerning what criteria must be met in order for an ALEC to be entitled to collect the tandem switching rate element. On April 27, 2001, the FCC clarified this issue in its Notice of Proposed Rule Making ("NPRM") in CC Docket No. 01-92, para. 105, in which the FCC stated:

In addition, section 51.711(a)(3) of the Commission's rules requires only that the geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination. Although there has been some confusion stemming from additional language in the test of the *Local Competition Order* regarding functional equivalency, section 51.711(a)(3) is clear in requiring only a geographic area test. Therefore, we confirm that a carrier demonstrating that

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<sup>5</sup> Order at p. 25.

its switch serves “a geographic area comparable to that served by the incumbent LEC’s tandem switch” is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.

A July 3, 2001 decision by the Ninth Circuit Court of Appeals also affirms that an ALEC is entitled to collect the tandem switching charge based on a geographic test.<sup>6</sup> The Ninth Circuit Court of Appeals relied on two FCC directives in determining that ALECs are entitled to collect the tandem switching rate element when the ALECs meet a geographic test. Importantly, the Ninth Circuit based its analysis on the premise that ALECs should not be discouraged from implementing efficient network architecture designs by using traditional and restrictive interpretations based on the monopolies’ network functionality:

...“AT&T’s ability to efficiently interconnect with U.S. West affects the costs that U.S. West incurs; it does not affect the costs AT&T incurs terminating U.S. West’s traffic and should not affect AT&T’s recovery under Section 252(d)(2)(A). AT&T should be paid according to the costs it incurs, not according to the costs it avoids imposing on U.S. West. Penalizing AT&T for its efficiently configured network architecture defeats the letter of Section 252(d)(2)(A) and the spirit of the Act by eliminating any incentive to make economically efficient interconnection decisions. Therefore, according to the statute, the arbitrator’s analysis of the switches’ functions and his determination that AT&T’s MSC<sup>7</sup> can deliver its traffic in a financially efficient way are not relevant to whether AT&T is entitled to the tandem rate for the traffic it terminates.<sup>8</sup>

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<sup>6</sup> *U.S. West Communications, Inc. v. Washington Utilities and Transportation Commission*, et al CV-97-05686-BJR, 2001 WL 740573 (9th Cir.(Wash.)) No. 98-36013 (July 3, 2001).

<sup>7</sup> An “MSC” is a Mobile Switching Center.

<sup>8</sup> *Id.* at p. 8313.

The Ninth Circuit also found irrelevant the arbitrator's analysis of the functionality of AT&T's switches.<sup>9</sup> The Ninth Circuit determined that:

Therefore, U.S. West's argument that AT&T is not entitled to the tandem rate because AT&T's MSCs do not provide the same services within the meaning of Section 51.711(a)(1) is beside the point. The regulations require U.S. West to pay AT&T the tandem rate because AT&T's MSC's serve a geographic area comparable to the area served by U.S. West's tandem switches. 47 C.F.R. Section 51.711(a)(3)(Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.)(emphasis added)

Next, the Ninth Circuit relied on the FCC's First Report and Order, Para. 1090 in support of the single prong geographic test:

...Therefore, under the FCC's regulations, AT&T is entitled to the tandem rate because its MSCs serve a comparable geographic area to U.S. West's tandem switches.<sup>10</sup>

In addition, the Ninth Circuit relied on and cited to a recent FCC letter dated May 9, 2001 which makes clear that ALECs are entitled to collect the tandem rate element based on the geographic test:

With respect to when a carrier is entitled to the tandem interconnection rate, the Commission stated that section 51.711 (a)(3) of its rules requires only that the comparable geographic area test be met before a carrier is entitled to the tandem interconnection rate for local call termination. It noted that although there has been some confusion stemming from

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<sup>9</sup> Id. at p. 8315.

<sup>10</sup> *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 111 F.C.C.R. 15,499, CC Docket No. 96-98, Para. 1090, Rel. August 8, 1996.

additional language in the text of the Local Competition order regarding functional equivalency, section 51.711 (a)(3) requires only a geographic area test. Therefore, a carrier demonstrating that its switch serves “a geographic area comparable to that served by the incumbent LEC’s tandem switch” is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.<sup>11</sup>

The language from this May 9, 2001 letter is the same language the FCC used in its NPRM of April 27, 2001, Para. 105 cited earlier, in which it clarifies for the industry that the geographic test—not a functionality test—is appropriate for determining whether an ALEC is entitled to collect the tandem switching rate element.

The Commission acknowledged that the most persuasive argument on this issue was presented by AT&T’s witness Follensbee, who stated that:<sup>12</sup>

...[T]o reach Mr. Ruscilli’s interpretation of Rule 51.711(a)(3), the FCC actually intended to make it more difficult for an ALEC to qualify for the tandem interconnection rate than an ILEC. Under Mr. Ruscilli’s interpretation, BellSouth must merely provide tandem switching, but an ALEC must pass a two part test: first, it must actually provide the identical tandem switching functionality provided by the ILEC and the ALEC switch must also serve a geographic area comparable to the area served by the incumbent LEC’s tandem switch. This is illogical as well as anticompetitive.

This Commission further acknowledged that it is difficult to believe that the FCC intended to require new entrants to meet a higher standard than ILECs.<sup>13</sup>

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<sup>11</sup> Letter from Thomas J. Sugrue, Chief—Wireless Telecommunications Bureau of the FCC and Dorothy T. Attwood, Chief—Common Carrier Bureau of the FCC to Charles McKee, Senior Attorney, Sprint PCS, May 9, 2001.

<sup>12</sup> Order at p. 78

This Commission held that...[t]o date no specific standard or test has been established by this Commission for determining if the geographic coverage criterion is met.<sup>14</sup> The fact that AT&T does not serve as many customers as BellSouth, or serve customers in every location in Florida, does not mean that AT&T is not entitled to collect the tandem switching rate element. Indeed, the Commission found that AT&T's maps submitted in this proceeding appear to offer compelling evidence that AT&T's switches cover geographic areas comparable to those served by BellSouth's tandem switches.<sup>15</sup>

AT&T requests review of an inconsistency in the Commission's order. In one paragraph of the order, the Commission states that it will defer the policy decision regarding the nature of the test ALECs must meet to the Commission's generic docket on this issue.<sup>16</sup> However, in the very next paragraph, the Commission applies an "actually serves" geographic test to AT&T in *this* proceeding.<sup>17</sup> If the Commission is in fact deferring its policy decision on the test to the generic proceeding, the most the Commission should do in this proceeding is to reserve deciding whether or not AT&T meets "the test" until it determines the nature of the test in the generic docket. Once that policy decision is made, the Commission could request that AT&T supplement this record with a late-filed exhibit so that AT&T may show whether or not it meets the test the Commission will adopt in the generic proceeding.

AT&T does not concede that it fails the geographic test. AT&T meets the geographic test and is entitled under 47 C.F.R. 51.711(a)(3) to collect the tandem

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<sup>13</sup> Order at p. 78.

<sup>14</sup> Order at p. 79.

<sup>15</sup> Order at p. 79.

<sup>16</sup> Florida Public Service Commission, *In re: Investigation into Appropriate Methods to Compensate Carrier for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP.

<sup>17</sup> Order at p. 80.

switching rate element. (Tr. at 118) The North Carolina Utilities Commission, the Georgia Public Service Commission, and the Kentucky Public Service Commission each have determined that AT&T is entitled to collect the tandem switching rate element.<sup>18</sup>

AT&T respectfully requests that the Commission reconsider its decision and find that AT&T's switches meet the geographic test and, as a result, AT&T is entitled to collect the tandem switching rate element. In the alternative, AT&T requests that the Commission defer its decision on this issue until it adopts the appropriate test in its generic proceeding.

#### IV. OSS issues

##### a. Electronic Ordering.

BellSouth cannot meet its obligation to provide nondiscriminatory access to its OSS unless AT&T can order electronically everything that BellSouth itself orders electronically. This Commission acknowledged that:

... "AT&T is asking for the ability to electronically order all services and elements. Specifically, this request relates to the electronic ordering of complex residential services and elements, and business services

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<sup>18</sup> Georgia Public Service Commission, Petition of AT&T Communications of the Southern States, Inc. and Teleport Communications Atlanta, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996, Docket No. 11853-U, April 24, 2001 p. 9; North Carolina Utilities Commission, In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc, Pursuant to the Telecommunications Act of 1996, March 9, 2001, p. 20, aff'd, Order on Motion for Reconsideration, June 19, 2001, p. 7; Kentucky Public Service Commission, Case No. 2000-465, Petition by AT&T Communications of the South Central States, Inc. and TCG Ohio for Arbitration of Certain Terms and Conditions of a Proposed Agreement With BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252, p. 8, aff'd, Order on Motion for Reconsideration, June 22, 2001, p. 6. Contrary to these decisions, the South Carolina Public Service Commission decided that AT&T is not entitled to collect the tandem rate element but it erroneously used a functionality test. However, the South Carolina Public Service Commission's decision was entered before the FCC clarified in its NPRM released in Docket No. 01-92 on April 27, 2001 that only a geographic test is required under rule 51.711(a)(3), The Public Service Commission of South Carolina, Docket No. 2000-527-C, Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252, p 34.



and elements which currently require manual submission via facsimile followed by electronic entry by BellSouth representatives.<sup>19</sup>

In 1997, this Commission made its own independent investigation into the OSS BellSouth was offering to the ALEC community. This Commission found that BellSouth's OSS was lacking. This Commission established the criteria BellSouth must meet in order to demonstrate that its OSS were providing nondiscriminatory access and has determined that BellSouth must provide electronic interfaces with no human or manual intervention:

Upon consideration, we believe that BellSouth is required to demonstrate to this Commission and to the FCC, that its interfaces provide nondiscriminatory access to OSS functions. Although AT&T witness Bradbury stated that there are five characteristics of a non-discriminatory interface, we find it appropriate to recognize four of those characteristics. We find that each interface must exhibit the following characteristics to be in compliance with the nondiscriminatory standards of the Act. They are: *1) the interface must be electronic.* The interface must require no more human or manual intervention than is necessarily involved for BellSouth to perform a similar transaction itself..<sup>20</sup> (emphasis added)

The Commission's order in this proceeding acknowledges that BellSouth currently has the ability to electronically input its complex residential and business orders but that AT&T cannot do so.<sup>21</sup> BellSouth admitted that BellSouth service representatives can order each and every retail service offered by BellSouth electronically. (Tr. 1421-1424) BellSouth cannot meet its obligation to provide equivalent functionality unless and until it provides fully electronic ordering interfaces for all ordering that it processes electronically for itself. The Commission's direction to AT&T to submit its electronic

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<sup>19</sup> Order at p. 126.

<sup>20</sup> Order No. PSC-97-1459-FOF-TL, pp. 97, 174, emphasis added.

<sup>21</sup> Order at p. 126.

ordering capability request to the Change Control Process will not cause this capability to be delivered. AT&T requests that this Commission require BellSouth to implement electronic interfaces for ordering.

b. Electronic Processing after Electronic Ordering.

In connection with BellSouth's obligation to provide nondiscriminatory access to its OSS, BellSouth also must provide electronic flow-through of orders so as to prevent delays and errors. This Commission agrees with AT&T on this point.<sup>22</sup> However, the Commission directed AT&T to refer this issue to the Change Control Process. The Change Control Process will not bring resolution to this issue because BellSouth has veto power in the CCP. BellSouth, whenever it chooses, unilaterally exercises its power to decide which issues will be addressed in the CCP or whether they are addressed at all.<sup>23</sup> AT&T respectfully requests that the Commission reconsider its decision on this issue and require BellSouth to modify its systems so that AT&T's orders electronically flow-through the systems, just as BellSouth's orders flow-through.

V. MTU/MDU Access Terminals.

AT&T requests clarification that BellSouth is required to connect all pairs in a high-rise multi-tenant unit to the access panel at the time it is installed pursuant to an ALEC's initial request for the terminal.

BellSouth requested the access terminal.<sup>24</sup> BellSouth should not be allowed to further delay ALECs' ability to serve customers in a timely way by refusing to pull all pairs in a multi-tenant building to the access terminal when it is first installed. AT&T

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<sup>22</sup> Order at p. 139.

<sup>23</sup> Tr. at 343, 423-446.

<sup>24</sup> BellSouth argued for the use of the access terminals in the MediaOne arbitration case and now in this one. BellSouth's witness argued that..."access terminals as ordered by this Commission (in the MediaOne case) gives ALECs the requested access to unbundled sub-loop elements..." Order at p. 47.

requests that the Commission clarify its order by affirming that just as ALECs would have had access to all pairs (in use and spare) in a multi-tenant building if AT&T's request for direct access to the unbundled sub-loop elements had been granted, ALECs must have access to all pairs in a multi-tenant building at the access terminal. ALECs' customers should not experience delays in getting an ALEC's service because the ALEC is required to issue more orders or service inquiries to BellSouth, or otherwise coordinate or wait for BellSouth to pull additional pairs to the access terminal when an ALEC is ready to serve a customer.

#### VI. Unbundled Local Switching.

There is an inconsistency in the Commission's order on this issue which requires clarification. The Commission stated in its order that FCC Rule 51.319(c)(2) "is silent on answering this specific concern in a direct fashion."<sup>25</sup> The Commission further stated that "the FCC's intent was to have the rule apply on the 'per-location-within the MSA' basis that AT&T supported."<sup>26</sup> However, the concluding paragraph of the Commission's finding on this issue contradicts this statement. In the concluding paragraph, the Commission found that "BellSouth will be allowed to aggregate lines provided to multiple locations of a single customer, within the same MSA."<sup>27</sup> AT&T requests that the Commission clarify its decision in this respect and not allow BellSouth to aggregate lines for customers that have multiple locations as the Commission has stated it believes was the intent of the FCC.

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<sup>25</sup> Order at p. 63.

<sup>26</sup> Order at p. 63.

<sup>27</sup> Order at p. 64.

WHEREFORE, AT&T moves for reconsideration of these issues as set forth  
above.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jim Lamoureux" followed by a circled "e" symbol.

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July 13, 2001