

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

REBUTTAL TESTIMONY OF

RICHARD T. GUEPE

ON BEHALF OF

**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.,
AT&T BROADBAND PHONE OF FLORIDA, LLC,
AND TCG SOUTH FLORIDA, INC.**

DOCKET NO. 960786-TL

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9 **I. INTRODUCTION AND QUALIFICATIONS**

10 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND**
11 **POSITION WITH AT&T COMMUNICATIONS OF THE SOUTH**
12 **CENTRAL STATES, INC., AT&T BROADBAND PHONE OF**
13 **FLORIDA, LLC, AND TCG MIDSOUTH, INC. ("AT&T").**

14 **A. My name is Richard T. Guepe and my business address is 1200 Peachtree**
15 **Street, N.E., Atlanta, Georgia 30309. I am employed by AT&T as a District**
16 **Manager in the Law & Government Affairs organization.**

17 **Q. PLEASE SUMMARIZE YOUR BACKGROUND AND**
18 **PROFESSIONAL EXPERIENCE IN THE TELECOMMUNICATIONS**
19 **INDUSTRY.**

1 A. I received a Bachelor of Science Degree in Metallurgical Engineering in 1968
2 from the University of Notre Dame in South Bend, Indiana. I received a
3 Masters of Business Administration Degree in 1973 from the University of
4 Tennessee in Knoxville, Tennessee. My telecommunications career began in
5 1973 with South Central Bell Telephone Company in Maryville, Tennessee,
6 as an outside plant engineer. During my tenure with South Central Bell, I
7 held various assignments in outside plant engineering, buildings and real
8 estate, investment separations and division of revenues. At divestiture
9 (January 1, 1984), I transferred to AT&T where I have held numerous
10 management positions in Atlanta, Georgia, and Basking Ridge, New Jersey,
11 with responsibilities for investment separations, analysis of access charges
12 and tariffs, training development, financial analysis and budgeting, strategic
13 planning, regulatory issues management, product implementation, strategic
14 pricing, and docket management.

15 **Q. HAVE YOU TESTIFIED IN OTHER REGULATORY PROCEEDINGS**
16 **IN THE PAST?**

17 A. Yes. I have testified on behalf of AT&T in Florida, Alabama, Georgia,
18 Mississippi, North Carolina, South Carolina, and Tennessee on product
19 implementation issues, pricing issues and policy issues.

1 **II. PURPOSE AND SUMMARY OF TESTIMONY**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
3 **PROCEEDING?**

4 A. I am submitting this testimony on behalf of AT&T to address Issue No. 3 -
5 does BellSouth currently provide non-discriminatory access to all required
6 network elements in accordance with Sections 251(c)(3) and 252(d)(1) of the
7 Telecommunications Act of 1996 (the “Act”) pursuant to Checklist Item No.
8 2, Section 271(c)(2)(B)(ii). My testimony addresses portions of the
9 testimony submitted on behalf of BellSouth Telecommunications, Inc.
10 (“BellSouth”) by Ms. Cynthia K. Cox (“Cox Direct Testimony) and
11 Mr. W. Keith Milner (“Milner Direct Testimony”) concerning BellSouth’s
12 provision of access and interconnection as required by the Act. Briefly,
13 BellSouth is noncompliant with Checklist Item No. 2,
14 Section 271(c)(2)(B)(ii), because it: (1) fails to provide combinations of
15 unbundled network elements (“UNEs”) at cost-based TELRIC rates in a
16 nondiscriminatory manner; and (2) fails to provide appropriate access to
17 UNEs for customers located in the Miami, Orlando and Ft. Lauderdale
18 metropolitan statistical areas (“MSAs”). Accordingly, the Commission
19 should not approve BellSouth’s application to provide interLATA services
20 under Section 271 of the Act.

1 **Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION (THE**
2 **“COMMISSION”) PREVIOUSLY ADDRESSED THE ISSUES**
3 **RAISED IN YOUR TESTIMONY?**

4 **A.** Yes. The Commission issued its Final Order on Arbitration, Order
5 No. PSC-01-1402-FOF-TP on June 28, 2001 that partially addressed the
6 issues discussed in my testimony below. The Commission, however,
7 addressed these issues in the context of an arbitration proceeding that did not
8 focus on BellSouth’s compliance with the nondiscriminatory access
9 requirements of Checklist Item No. 2 of the Act. BellSouth’s compliance
10 with Section 271, however, is paramount to it receiving approval from the
11 Federal Communications Commission (“FCC”) for its application to provide
12 interLATA service. My testimony, therefore, provides information from
13 which the Commission and the FCC may review BellSouth’s application
14 under Section 271 of the Act.

15 **III. BELLSOUTH FAILS TO PROVIDE UNE COMBINATIONS AT**
16 **COST-BASED RATES IN A NONDISCRIMINATORY MANNER**

17 **A. Description of the “UNE Combinations” Issue**

18 **Q. PLEASE DESCRIBE THE ISSUE CONCERNING BELLSOUTH’S**
19 **PROVISIONING OF UNE COMBINATIONS.**

20 **A.** On January 25, 1999, the U.S. Supreme Court, in *AT&T Corp. v. Iowa*
21 *Utilities Board, et al.*, 525 U.S. 366 (1999), upheld FCC Rule 315(b) (47

1 C.F.R. § 51.315(b)), which states: “[e]xcept upon request, an ILEC shall not
2 separate requested network elements that the ILEC currently combines” and
3 found that ILECs must provide such combinations of UNEs at cost-based
4 total element long run incremental cost (“TELRIC”) rates in accordance with
5 requirements of the Act and FCC rules.

6 BellSouth routinely combines network elements for itself and has configured
7 its network and central offices to efficiently cross-connect facilities into
8 standard arrangements. While BellSouth now agrees that it must provide
9 combinations of network elements in certain circumstances, it denies the
10 obligation in other circumstances. Moreover, where it denies the obligation
11 to provide combinations under the Act and FCC rules, it says it may charge
12 alternative local exchange carriers (“ALECs”) non-cost-based rates for access
13 to such combinations in cases where it decides to allow ALECs access at all.
14 In doing so, BellSouth improperly takes the narrowest view possible of its
15 obligations to provide UNEs in combined form to allow ALECs to serve
16 customers and, therefore, fails to comply with its obligations under the Act
17 and FCC Rule 315(b) (47 C.F.R. § 51.315(b)).

18 **Q. WHY IS THIS ISSUE IMPORTANT TO DETERMINING**
19 **BELLSOUTH’S COMPLIANCE WITH SECTION 271?**

20 **A.** BellSouth is stifling the development of competition by failing to provide
21 nondiscriminatory access to UNE combinations, an important requirement of
22 Section 271. BellSouth must provide new entrants with access to network

1 elements at any technically feasible point in BellSouth's network in a manner
2 that is "at least equal-in-quality to that which the [ILEC] provides to itself"
3 and that allows such new entrants the ability to provide a "finished
4 telecommunications service." Second Louisiana Order¹ ¶ 162. It does not.
5 Moreover, in its Second Louisiana Order, the FCC agreed with a Department
6 of Justice observation that the provision of nondiscriminatory access to UNE
7 combinations by BellSouth under Section 271 is "critical" to competitive
8 entry into the local exchange market. Second Louisiana Order ¶ 141.
9 BellSouth, therefore, cannot comply with Section 271 until it refrains from
10 impeding competition through prohibiting appropriate access to UNE
11 combinations.

12 **Q. PLEASE DESCRIBE BELLSOUTH'S POSITION REGARDING THE**
13 **PROVISION OF ACCESS TO UNE COMBINATIONS.**

14 A. From BellSouth's submissions to the Commission, it may not be obvious
15 what limitations it places on the use of UNE combinations. For example,
16 BellSouth claims in testimony provided by its witness, Ms. Cox, that
17 "BellSouth provides ALECs, at cost based rates, network elements that are,
18 in fact, combined in BellSouth's network to the particular location the ALEC
19 wishes to serve." Cox Testimony p. 42.

¹ Memorandum Opinion and Order, In the Matter of Application of BellSouth Corp., et al., for Provision of In-Region, Inter-LATA Services in Louisiana, CC Docket No. 98-121 (rel. Oct. 13, 1998) ("Second Louisiana Order").

1 In plain English, what I understand this to mean is that BellSouth will not
2 provide to an ALEC a particular UNE combination for a specific customer at
3 UNE cost-based TELRIC prices, unless the specific elements that comprise
4 that combination for that customer: (1) are physically combined at the time
5 requested by the ALEC (whether or not those elements have ever been
6 combined anywhere in BellSouth's network, including for that customer);
7 *and* (2) are being used by BellSouth to provide service to that specific
8 customer.

9 BellSouth, therefore, improperly limits ALECs from using UNEs in
10 combined form to serve any customer other than one who is currently
11 receiving service by means of the combined elements in BellSouth's network.
12 Thus, for example, BellSouth will not provide cost-based access to
13 combinations that allow ALECs to serve new customers² or to provide
14 additional lines for existing customers. When a combination is not available
15 under the limited circumstances just described, BellSouth, if it so chooses,
16 will provide a combination but not at cost-based rates. Instead, BellSouth
17 will assess a non-cost based "glue charge."

18 **Q. WHAT IS A "GLUE CHARGE"?**

² Under the specific circumstance where service to a location has been disconnected, but the facilities remain connected, BellSouth will allow UNE-P to be purchased at cost-based rates to serve a new customer at that location.

1 A. “Glue charges” are additional non-TELRIC, non-cost-based charges
2 BellSouth adds to the Commission-approved network element rates for
3 loop/switch port and loop/transport combinations that, essentially, result in
4 BellSouth charging whatever it wants for these UNE combinations.

5 **Q. HOW DOES BELLSOUTH JUSTIFY ITS IMPOSITION OF A “GLUE**
6 **CHARGE”?**

7 A. BellSouth justifies these additional “glue charges” based on its assertion that
8 it is not required to provide UNE combinations, such as loop/switch port or
9 loop/transport combinations, in all situations. The real issue, for purposes of
10 Section 271, however, is whether BellSouth is complying with its obligations
11 under the Act to provide access to network elements in a nondiscriminatory
12 manner, under terms, conditions and prices that will promote local
13 competition.

14 **B. BellSouth Is Noncompliant With the Act**

15 **Q. DOES BELLSOUTH SATISFY ITS OBLIGATIONS UNDER THE**
16 **ACT WITH REGARDS TO UNE COMBINATIONS?**

17 A. No. BellSouth’s UNE combination offering does not satisfy its obligations
18 under the Act. BellSouth has narrowly and erroneously interpreted the Act
19 and the phrase “currently combines” in the FCC Rule 315(b) (47 C.F.R.
20 § 51.315(b)) in a manner that severely limits the number of customers that an
21 ALEC can serve using UNEs in combined form at cost-based rates.

1 **Q. HOW HAS THE FCC IMPLEMENTED THE ACT’S**
2 **REQUIREMENTS WITH REGARD TO AN ILEC’S OBLIGATION**
3 **TO PROVIDE COST-BASED ACCESS TO UNE COMBINATIONS?**

4 A. The FCC in its *Third Local Competition Order*³ reaffirmed the legal
5 obligation for BellSouth to provide UNEs in combined form at cost-based
6 TELRIC prices. In the *Third Local Competition Order*, the FCC rejected the
7 theory underlying BellSouth’s business practices; *i.e.*, UNEs should be priced
8 higher than TELRIC cost-based rates when provided in combination. In fact,
9 the FCC repeatedly refers to cost-based TELRIC pricing for all UNEs and
10 specifically refers to TELRIC pricing for UNEs in combined form. The FCC
11 places no restrictions on ALECs’ ability to purchase UNEs individually or in
12 combination, undermining BellSouth’s attempt to impose the anti-competitive
13 “glue charge” condition on the purchase of UNEs in combined form in many
14 circumstances. Finally, the FCC did not disturb its established position that
15 an ILEC, such as BellSouth, must provide combinations of elements if it
16 currently combines those elements anywhere in its network at cost. *Third*
17 *Local Competition Order* ¶ 479; *see First Local Competition Order*⁴ ¶ 296.

³ Third Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (rel. Nov. 5, 1999) (“Third Local Competition Order”).

⁴ First Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (rel. Aug. 1, 1996) (“First Local Competition Order”).

1 **Q. HAS THE FCC ISSUED ANY RULES IMPLEMENTING THE ACT**
2 **WHICH ADDRESS BELL SOUTH'S SPECIFIC OBLIGATION TO**
3 **PROVIDE COST-BASED ACCESS TO UNE COMBINATIONS?**

4 A. Yes. In fact, the FCC's rules expressly and specifically address the extent of
5 an ILEC's obligations to provide access to combinations of UNEs, dispelling
6 any uncertainty regarding the noncompliant nature of BellSouth's practices.
7 FCC Rule 315(b) (47 C.F.R. § 51.315(b)) was part of a "suite" of UNE
8 combination rules (FCC Rules 315 (a) through (f) (47 C.F.R. § 51.315(a)-
9 (f))) that the FCC had initially adopted to implement the Act. Two of these
10 rules, subparts (b) and (c), are important here because collectively they define
11 the ILECs complete obligation relating to network element combinations.

12 FCC Rule 315(b) - (c) (47 C.F.R. § 51.315(b) - (c)) states:

13 (b) Except upon request, an incumbent LEC shall not
14 separate requested network elements that the
15 incumbent LEC currently combines.

16 (c) Upon request, an incumbent LEC shall perform the
17 functions necessary to combine unbundled network
18 elements in any manner, even if those elements are not
19 ordinarily combined in the incumbent LEC's network,
20 provided such combination is:

21 (1) technically feasible; and

22 (2) would not impair the ability of other carriers to
23 obtain access to unbundled network elements or to
24 interconnect with the incumbent LEC's network.

25 **Q. WHAT IS THE CURRENT STATUS OF FCC RULES 315(b) – (c) AS**
26 **IT PERTAINS TO BELL SOUTH'S OBLIGATIONS?**

1 A. The first rule FCC Rule 315(b) (47 C.F.R. § 51.315(b)) has been reinstated
2 by the Supreme Court, while the later FCC Rule 315(c) (47 C.F.R. §
3 51.315(c)) remains vacated by the Eighth Circuit.

4 BellSouth's obligations under the Act, therefore, remain clear with respect to
5 network elements that it "currently combines" in its network, but which may
6 not yet be physically connected for a specific customer location: *i.e.*,
7 BellSouth must combine elements for entrants that it "currently" or ordinarily
8 combines for itself at cost-based TELRIC rates under Sections 251(c)(3) and
9 252(d)(1). BellSouth's obligations under the Act and noncompliance with
10 such obligations are clear for the two reasons: (1) FCC Rule 315(b) requires
11 BellSouth to offer network elements that it currently combines, and
12 (2) BellSouth must provide nondiscriminatory access to network elements in
13 accordance with the requirements of Sections 251(c)(3) and 252(d)(1).

14 **Q. PLEASE EXPLAIN THE FIRST REASON BELLSOUTH'S**
15 **OBLIGATIONS UNDER THE ACT AND NONCOMPLIANCE WITH**
16 **SUCH OBLIGATIONS ARE CLEAR?**

17 A. FCC Rule 315(b) (47 C.F.R. § 51.315(b)) requires that BellSouth offer
18 network elements that it *currently combines*, including combining elements
19 that it ordinarily combines, even if the particular elements have not yet been
20 connected for a specific customer. This is the path chosen by the Georgia
21 Public Service Commission which ruled:

1 [T]hat ‘currently combines’ means ordinarily
2 combined within the BellSouth network, in the manner
3 in which they are typically combined. Thus, CLECs
4 can order combinations of typically combined
5 elements, even if the particular elements being ordered
6 are not actually physically connected at the time the
7 order is placed.⁵

8 It also is the path chosen by the Tennessee Regulatory Authority, which held:

9 Consistent with the Supreme Court’s reinstatement of
10 FCC Rule 351(b) and the standing definition of
11 “currently combines” in the FCC’s first report and
12 order, I move to define the term “currently combines”
13 to include any and all combinations that BellSouth
14 currently provides to itself anywhere in its network
15 thereby rejecting BellSouth’s position that the term
16 means already combined for a particular customer at a
17 particular location. This definition is consistent with
18 our decisions on EELs, enhanced extended links, in
19 Docket No. 99-00377, which was the BellSouth/ICG
20 Arbitration. (Intermedia/BellSouth Arbitration
21 Hearing Transcript at 7-8)

22 The Tennessee Regulatory Authority recently reaffirmed its position on
23 May 25, 2001, stating:

24 During the proceedings in this docket, the Authority
25 addressed an issue regarding the application of FCC
26 Rule 51.315(b), which prevents [BellSouth] from
27 separating elements it “currently combines.” As to that
28 issue, the Authority determined that BellSouth must
29 provide combinations to [ALECs] as long as BellSouth
30 provides the combinations to itself anywhere in its
31 network.

32 The purpose of this Notice is to notify CLECs that
33 BellSouth has a duty to comply with FCC Rule

⁵ Order, Georgia Public Service Commission, Docket No. 10692-U, February 1, 2000, at 11.

1 51.315(b) as construed by this agency. (Notice of
2 Available Terms and Conditions, Docket No. 97-
3 01262)

4 The Kentucky Public Service Commission also has determined that
5 BellSouth must offer network elements that it *currently combines* – including
6 combining elements that it ordinarily combines anywhere in its network, even
7 if the particular elements have not yet been connected for a specific customer.

8 BellSouth next asserts that it will combine UNEs only
9 when the requested network elements (i.e. the loop and
10 the port) have been previously combined in its own
11 network. AT&T argues that BellSouth should combine
12 network elements for AT&T if BellSouth ordinarily, or
13 typically, combines such elements for itself. The
14 Commission agrees.⁶

15

16 In response to a motion for reconsideration by BellSouth of its decision, the
17 Kentucky Commission affirmed its decision stating⁷:

18 BellSouth claims that it cannot lawfully be required to combine
19 elements for a specific customer, if those elements are not already
20 combined, and reminds this Commission that the Eighth Circuit Court
21 of Appeals, on remand from the United States Supreme Court in *Iowa*
22 *Utilities Board v. Federal Communications Commission*, 525 U.S.
23 366 (1999), determined that the incumbent carrier is not, pursuant to a
24 literal reading of the Telecommunications Act of 1996 (the “Act”),
25 required to combine network elements “in any manner” requested
26 by another carrier. We see no conflict between our Order and the
27 Eighth Circuit’s opinion; we have not required BellSouth to combine
28 elements in “any manner.” We have required only the combining of
29 elements when such combinations *currently exist in BellSouth’s*
30 *network. (footnote omitted)*
31

⁶ Order, KY PSC Case No. 2000-465, May 16, 2001.

1 BellSouth's obligation under the Act to provide ALECs access to UNE
2 combinations that it currently combines as required by FCC Rule 315(b) (47
3 C.F.R. § 51.315(b)), therefore, is well established. Moreover, because
4 BellSouth is obligated to combine UNEs, it must provide access to such
5 combinations at cost-based TELRIC rates pursuant to Section 252(d)(1) of
6 the Act and the FCC rules. BellSouth, therefore, fails to comply with the Act
7 as implemented in FCC Rule 315(b) (47 C.F.R. § 51.315(b)).

8 **Q. BELLSOUTH ASSERTS THAT CERTAIN ISOLATED FCC**
9 **STATEMENTS IN THE FCC'S THIRD LOCAL COMPETITION**
10 **ORDER DEFINITELY REDEFINE THE MEANING OF THE**
11 **TERM "CURRENTLY COMBINES." COX DIRECT TESTIMONY,**
12 **PP. 42-43. DO YOU AGREE?**

13 A. No. An examination of the Third Local Competition Order shows that the
14 FCC did nothing to disturb the standing definition of the term "currently
15 combines" as meaning ordinarily combines anywhere in BellSouth's
16 network. Third Local Competitive Order ¶ 479; First Local Competitive
17 Order ¶ 296. The plain fact is that the FCC has never retracted the position
18 set forth in its *First Local Competition* Order that "currently combines"
19 means ordinarily combined in BellSouth's network. Moreover, as discussed
20 above, BellSouth cannot reconcile its position with FCC rules that prohibit

⁷ Order, KY PSC Case No. 2000-465, June 22, 2001

1 restricting access to ALECs of network elements. For instance, FCC Rule
2 309(a) (47 C.F.R. § 51.309(a)) specifically provides:

3 An incumbent LEC shall not impose limitations,
4 restrictions or requirements on requests for, or the use
5 of unbundled network elements that would impair the
6 ability of a requesting telecommunications carrier to
7 offer a telecommunications service in the manner the
8 requesting telecommunication carrier intends.

9 There can be little doubt that the imposition of a “glue charge” by BellSouth
10 for access to UNE combinations violates the intent of FCC Rule 309(a) by
11 “impairing” the abilities of an ALEC to offer services in the manner that the
12 ALEC may intend by making the use of UNE combinations cost prohibitive.

13 **Q. PLEASE EXPLAIN THE SECOND REASON THAT BELLSOUTH’S**
14 **OBLIGATIONS UNDER THE ACT AND ITS NONCOMPLIANCE**
15 **WITH SUCH OBLIGATIONS ARE CLEAR?**

16 **A.** Even if FCC Rule 315(b) (47 C.F.R. § 315(b)) could be construed more
17 narrowly than how the Georgia and Kentucky Commissions and the TRA
18 have interpreted the rule, it is undisputed that BellSouth is obligated pursuant
19 to Section 271(c)(2)(B)(ii) of the Act to provide “nondiscriminatory access to
20 network elements in accordance with the requirements of [S]ections
21 251(c)(3) and 252(d)(1).”

22 In its Third Local Competition Order, the FCC observed that the
23 “nondiscriminatory access” requirement of Section 251(c)(3) “means that
24 access provided by the [ILEC] must be at least equal in quality to that which
25 the [ILEC] provides to itself.” Third Local Competitive Order ¶ 481; *see*

1 also First Local Competitive Order ¶ 312; FCC Rule 311(b) (47 C.F.R.
2 § 51.311(b)). The imposition of a “glue charge” in addition to the cost-based
3 TELRIC rate as a condition for combining network elements denies ALECs
4 such “equal” access. Concerning the issue of “glue charges”, the FCC stated
5 in its New York 271 Order⁸: “As a general rule, we are skeptical of glue
6 charges, and note with approval that these glue charges were removed from
7 Bell Atlantic’s tariff before Bell Atlantic filed its section 271 application.”

8

9 “Glue charges,” in fact, are discriminatory by their very nature because such
10 charges simply serve to hinder an ALEC’s ability to enter into competition
11 with the ILEC (and other ALECs) and unnecessarily inflate the retail prices
12 paid by consumers. For example, BellSouth’s “glue charges” inflate its
13 charges for combining elements and distort competition because it is less
14 costly for a second ALEC to serve the customer than the ALEC that won the
15 customer’s business in the first instance. Oddly, if BellSouth first wins the
16 customer, once elements are combined, even BellSouth agrees that under the
17 Act’s requirements, it is unlawful to separate the elements and such elements
18 would have to be made available at cost to other competitors without
19 disruption.

⁸ Memorandum Opinion and Order, *In the Matter of Application By Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, Inter-LATA Service in the State of New York*, CC Docket No. 99-295 (rel. December 22, 1999) ¶ 262.

1 Most importantly, the greatest discriminatory distortion created by
2 BellSouth's imposition of a "glue charge" under its current business practices
3 – and the likely motivation behind such practices – is that it will *always* be
4 less costly for the customer to use BellSouth than a competitive entrant.

5 **Q. IS THERE ANY REASON TO TREAT SOME UNE COMBINATIONS**
6 **UNDER THE ACT AND OTHERS AS OUTSIDE OF THE ACT?**

7 A. No, not at all. Notably, a combination of UNEs is not some separate
8 construct outside the Act, with its own characteristics and rules and
9 regulations. Rather, a combination of UNEs is just that: a combination of
10 two or more UNEs. None of the FCC's rules and regulations concerning
11 loops, switching, or transport permit ILECs to not provision those UNEs to
12 ALECs except when the ILEC is already providing service to customers
13 currently receiving retail service by means of those UNEs. Indeed, FCC
14 rules specifically prevent ILECs from imposing restrictions on the manner in
15 which ALECs may use UNEs to provide service. *See, e.g.,* FCC Rules 307
16 and 309 (47 C.F.R. §§ 51.307, 51.309).

17 In particular, there is no requirement that a customer be receiving retail
18 service from the ILEC before an ALEC may purchase the loop to that
19 customer's premise. The FCC's definition of "loop" does not require that a
20 customer must be receiving retail services by means of a loop before an
21 ALEC may purchase it to serve the customer. Third Local Competition
22 Order ¶ 167.

1 Similarly, there is no requirement that a customer be receiving retail service
2 from the ILEC before an ALEC may purchase switching to serve that
3 customer. The FCC's definition of switching, as with its definition of loops,
4 dispels any such suggestion. *Id.* ¶ 244. A loop/switching combination is no
5 more than a loop and switching, and if BellSouth may not require customers
6 to be receiving service before an ALEC purchases loops or switches, then it
7 also may not require customers to be receiving service before an ALEC
8 purchases loops and switches in combination.

9 **Q. HOW DOES BELLSOUTH'S NONCOMPLIANCE WITH THE ACT'S**
10 **OBLIGATION TO PROVIDE COST-BASED ACCESS TO UNE**
11 **COMBINATIONS AFFECT BELLSOUTH'S SECTION 271**
12 **APPLICATION?**

13 A. BellSouth fails to provide access to UNEs in combined form that BellSouth
14 routinely combines for itself at cost-based TELRIC rates pursuant to the
15 nondiscriminatory access requirements of Sections 251(c)(3) and 252(d)(1)
16 of the Act and FCC Rule 315(b) (47 C.F.R. § 51.315(b)). Thus, BellSouth is
17 noncompliant with Section 271(c)(2)(B)(ii).

18 **C. Public Policy Concerns**

19 **Q. IF THE COMMISSION WERE TO FIND BELLSOUTH IN**
20 **NONCOMPLIANCE WITH THE ACT, WOULD THE**

1 **COMMISSION’S FINDING BE CONSISTENT WITH SOUND**
2 **PUBLIC POLICY?**

3 A. Yes. A finding by the Commission of noncompliance is consistent with
4 sound public policy. In contrast, there is no rational public policy
5 justification to support BellSouth’s position because such practices merely
6 make local competition harder and more costly, than it already is.
7 BellSouth’s position, therefore, should be rejected.

8 **Q. WHAT IS THE PUBLIC POLICY ISSUE AT STAKE?**

9 A. The public policy issue here is simple. Should BellSouth provision network
10 element combinations in the most efficient manner (*i.e.*, combining those
11 elements for entrants that it routinely combines today) at cost-based TELRIC
12 prices, or should it be allowed to require additional and unnecessary work at
13 a higher price (for both itself, the entrant and consumers) to get to the same
14 result? There is one appropriate outcome (*i.e.*, that elements be combined in
15 the most efficient manner at cost-based TELRIC prices to allow for robust
16 and widespread local competition). That outcome can be achieved only if the
17 Commission rejects BellSouth’s position as noncompliant under the Act.

18 This core “UNE combinations” public policy issue is far-reaching. Indeed,
19 mass-market competition depends upon *efficient* provisioning systems
20 structured to minimize cost and accommodate volume. This same basic
21 conclusion applies with equal force to *new* combinations as it does to *existing*
22 arrangements. Accordingly, consumers are unlikely to accept entrants that

1 can serve an existing line, but cannot provision additional lines or serve the
2 customer at a new location.

3 **Q. HOW DOES THE FCC VIEW THIS PUBLIC POLICY ISSUE WITH**
4 **REGARDS TO THE IMPORTANCE OF UNE COMBINATIONS TO**
5 **WIDESPREAD COMPETITION?**

6 A. The FCC acknowledges that efficient provisioning of UNE combinations is
7 vital to ensuring widespread local competition. In the Third Local
8 Competition Order, the FCC reiterated that the purpose of Section 251 of the
9 Act is “to reduce the inherent economic and operational advantages
10 possessed by local exchange carriers.” Third Local Competition Order ¶ 3.
11 Further, based in part on its observation of rapid growth of competition in
12 markets where the loop/switching combinations, or “UNE platform”
13 (“UNE-P”), were made available to ALECs (*see, e.g., id.* ¶ 12), the FCC
14 continues to affirm the principles of cost-based TELRIC pricing and
15 unrestricted access to UNEs individually and in combined form to promote
16 robust competition in the local marketplace. The FCC, therefore, stresses the
17 critical importance of the availability of combinations of UNEs to the
18 development of local competition:

19 We continue to believe that the ability of requesting
20 carriers to use unbundled network elements, including
21 various combinations of unbundled network elements
22 is integral to achieving Congress’ objective of
23 promoting rapid competition to all consumers in the
24 local telecommunications market. Moreover, in some
25 areas, we believe that the greatest benefits may be

1 achieved through facilities-based competition, and that
2 the ability of requesting carriers to use unbundled
3 network elements, including various combinations of
4 unbundled network elements, is a necessary
5 precondition to the subsequent deployment of
6 self-provisioned network facilities.

7 *Id.* ¶ 5.

8 **Q. HOW DOES THE ILEC INDUSTRY VIEW THE IMPORTANCE OF**
9 **UNE COMBINATIONS TO WIDESPREAD COMPETITION?**

10 A. In accordance with the FCC observations, widespread competition for
11 average consumers requires that competitors be able to access and use
12 network elements in a simple and cost-effective manner. This means, as a
13 practical matter, that entrants must have access to logical combinations of
14 network elements to provide service at cost-based TELRIC prices.

15 Although it is possible to “piece together” serving arrangements using
16 individual UNEs, the past five years of experience demonstrates that these
17 “hand crafted” arrangements are primarily useful only to serve larger
18 business customers desiring more specialized services. Even the ILEC
19 industry, therefore, recognizes the importance of network element
20 combinations to local competition. An ILEC-oriented publication, the United
21 States Telephone Association’s magazine, observed that individual network
22 elements are difficult to use at volume:

23 Because of their fragmentary nature, UNEs will be
24 operationally difficult to order and to provision on both
25 sides. Product packages that comprise appropriate and

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pre-set UNE combinations could reduce some of the difficulties.⁹

Furthermore, whenever an ILEC confronts the same economic problem as an ALEC (*i.e.*, how to offer *competitive* local exchange service on a broad scale) the ILEC's answer is inevitably the same: use of UNE-P (most commonly, the loop-switching combination). For instance, SBC revealed during the review of its merger with Ameritech that its out-of-region entry strategy was premised on the use of network element combinations to serve the residential and small business market. (*See* Deposition and Testimony of James Kahan on behalf of SBC, Public Utilities Commission of Ohio, Case No. 98-1082-TP-AMT).

Q. DO YOU AGREE WITH MR. MILNER'S POSITION (MILNER DIRECT TESTIMONY, P. 47-48) THAT COMBINING UNES IN COLLOCATION IS THE SAME THING BELLSOUTH DOES WHEN IT SERVES A NEW CUSTOMER?

A. No, I do not. BellSouth's position merely results in *more* work and *increased* costs for *both* itself and new entrants. Rather than simply combine elements for entrants at those points in the network (such as existing cross-connect frames) that BellSouth has established for precisely this purpose, BellSouth requires the creation of *new* environments where entrants do the same work.

⁹ *Wholesale Marketing Strategy*, Salvador Arias, *Teletimes*, United States Telephone Association, Volume 12, No. 3, 1998.

1 BellSouth requires that ALECs combine elements in collocation space, or use
2 assembly “rooms” or “points” specially constructed for this purpose. These
3 additional steps (creating the assembly room/point, and then extending
4 requested elements via new facilities and additional cross-connections) do
5 nothing but create increased cost and points of potential failure.

6 With respect to UNE-P, the inconsistency of BellSouth’s position with the
7 public policy concerns represented in the intent of the Act is highlighted by
8 its admission of its obligation to provide loops to ALECs at cost-based
9 TELRIC prices to serve customers where no loops are currently provisioned.
10 BellSouth has admitted that for such customers in its serving area (*e.g.*,
11 customers in new subdivisions), BellSouth must sell ALECs a loop at cost-
12 based TELRIC prices even though no such loop is in place today (and thus no
13 BellSouth service). Yet, even though BellSouth will sell ALECs that loop at
14 cost-based TELRIC prices, BellSouth will not sell ALECs that very same
15 loop connected to the BellSouth switch as a loop-switching UNE
16 combination (UNE-P).

17 Instead, BellSouth requires “more combining” by cross-connecting the
18 requested elements to the facilities necessary to extend the elements to the
19 ALEC, not to mention the cost (in time, money and space) to create the
20 associated “assembly areas.” Expending resources for the sole purpose of
21 achieving a less reliable and more costly environment is a wasteful exercise
22 that can find no support in the intent of the Act, economics, common sense or
23 sound public policy.

1 **Q. IN LIGHT OF THE PUBLIC POLICY CONCERNS, WHY WOULD**
2 **BELLSOUTH ADOPT SUCH AN ANTI-COMPETITIVE AND**
3 **EXPENSIVE BUSINESS PRACTICE?**

4 A. The only discernable “benefit” produced by BellSouth’s business practices is
5 that the survival of BellSouth’s monopoly is assured through the imposition
6 of an onerous “glue charge,” restricting an entrant’s ability to realistically and
7 economically compete for local business. Such a result, however, is wholly
8 inconsistent with sound public policy and the intent of the Act and should be
9 rejected.

10 **IV. BELLSOUTH FAILS TO PROVIDE APPROPRIATE ACCESS TO**
11 **UNEs FOR CUSTOMERS LOCATED WITHIN DENSITY ZONE 1 IN**
12 **THE TOP 50 MSAS**

13 **Q. PLEASE DESCRIBE THE ISSUE REGARDING BELLSOUTH’S**
14 **PROVISIONING OF UNEs FOR CUSTOMERS IN THE MIAMI,**
15 **ORLANDO AND FT. LAUDERDALE MSAs.**

16 A. As a result of the Supreme Court’s decision in *AT&T Corp. v. Iowa Board of*
17 *Utilities*, 525 U.S. 366 (1999), the issue of network elements was remanded
18 to the FCC with instructions to review its decision on what network elements
19 must be provided by ILECs. As part of this remand, the FCC issued FCC
20 Rule 319(c) (47 C.F.R. § 51.319(c)) in its Third Local Competition Order
21 stating that ILECs need not provide ALECs with local circuit switching
22 capability where the ALEC intends to serve customers who have four or

1 more voice grade (DS0) equivalents or lines and, (1) the affected local circuit
2 switches are located in one of the top 50 MSAs in density zone 1, and (2) the
3 ILEC provides nondiscriminatory, cost-based access to combinations of
4 unbundled loops and transport throughout density zone 1, as defined as of
5 January 1, 1999. A local circuit switch is the type of switch deployed by
6 telecommunications carriers to provide dial tone to a customer so the
7 customer can receive local service. A MSA is a geographic area within a
8 state as defined by the United States Government Office of Management and
9 Budget.¹⁰ Presently, there are 258 MSAs in the United States. In Florida, the
10 only MSAs affected by FCC Rule 319(c) (47 C.F.R. § 51.319(c)) are the
11 Miami, Orlando and Ft. Lauderdale MSAs. Unfortunately, BellSouth
12 interprets Rule 319(c) in a manner that does not provide appropriate access to
13 UNEs in these Florida MSAs.

14 **Q. HOW DOES BELLSOUTH INTERPRET RULE 319(c)?**

15 A. BellSouth broadly interprets the limited exception to an ILECs' obligation to
16 provide for ALECs' use of loop/switch combinations in applicable density
17 zone 1 MSAs found in FCC Rule 319(c) (47 C.F.R. § 51.319(c)).
18 Specifically, if a customer has multiple locations throughout the MSA,
19 receives one bill from BellSouth for all lines, and the total of these lines is
20 more than three, then BellSouth asserts that none of the lines at any location
21 may be served by a ALEC using the loop/switch combination.

¹⁰ MSAs are often used to administer federal programs.

1 **Q. DOES BELLSOUTH'S INTERPRETATION OF RULE 319(c)**
2 **ALLOWING AGGREGATION OF LINES ACROSS DISPARATE**
3 **CUSTOMER LOCATIONS PROMOTE COMPETITION AS**
4 **ENVISIONED BY THE ACT?**

5 A. No. Rather than being compatible with the purposes of the Act, BellSouth's
6 interpretation of FCC Rule 319(c) creates an obstacle to competition. FCC
7 Rule 319(c) (47 C.F.R. § 51.319(c)) does not authorize BellSouth to
8 aggregate lines across disparate customer locations and it cannot be
9 reasonably interpreted to allow for such "aggregation." It just makes no
10 sense.

11 **Q. CAN YOU PROVIDE AN EXAMPLE OF WHY BELLSOUTH'S**
12 **INTERPRETATION OF RULE 319(c) MAKES NO SENSE?**

13 A. Yes. Suppose that a customer that has a chain of stores in Miami and only
14 has two lines at each store. Further, suppose there are 20 such stores and no
15 two stores are served from the same BellSouth local switch. For purposes of
16 managing his or her telecommunications bill, however, the customer
17 currently has billing for all 20 stores going to one location where his or her
18 main business office is located. BellSouth's position is that since the total
19 number of lines is more than 3 (actually in this case it would be 40), then
20 AT&T would have to provide service to each of the 20 locations using
21 something other than UNE-P.

1 **Q. IS BELLSOUTH'S POSITION CONSISTENT WITH THE FCC'S**
2 **INTENT IN ISSUING RULE 319(c)?**

3 A. No. Clearly, the above example demonstrates that BellSouth's position is not
4 what the FCC had in mind when it reached its decision, in its Third Local
5 Competition Order, to issue FCC Rule 319(c) (47 C.F.R. § 51.319(c)). In
6 fact, at the time of issuance of FCC Rule 319(c) (47 C.F.R. § 51.319(c)), the
7 rationale employed by the FCC, for the rule's "four or more lines" exception
8 to an ILEC's obligation to provide unbundled local switching, was that a
9 ALEC could economically serve end users with four or more lines using its
10 own switch and either stand-alone loops or a loop/transport combination.
11 Third Local Competition Order, ¶¶ 258-298. FCC Rule 319(c) (47 C.F.R.
12 § 51.319(c)), therefore, was intended to apply only when more than three
13 lines were being served from the same local switch, not when disparate
14 locations of a customer happen to have four or more lines included on a
15 billing statement. *Id.* Yet BellSouth will not provide UNE-P - a loop/switch
16 port combination - to serve any customer as long as the total number of lines
17 the customer is purchasing from BellSouth exceeds three, no matter where
18 any of those lines are actually located. BellSouth's interpretation of FCC
19 Rule 319(c) (47 C.F.R. § 51.319(c)), therefore, is unreasonable and
20 completely undermines the FCC's intent in issuing the rule in the first place.

21 **Q. IS BELLSOUTH'S POSITION CONSISTENT WITH THE BEST**
22 **INTERESTS OF FLORIDA CUSTOMERS?**

1 A. No. BellSouth's interpretation of FCC Rule 319(c) (47 C.F.R. § 51.319(c))
2 impedes competition and is not in the best interests of customers. Indeed,
3 BellSouth prevents customers from changing carriers simply because they
4 have lines at multiple locations and want only one bill for all lines.
5 Furthermore, some customers may actually want to have some lines served
6 by one carrier and some lines served by another. This option of choice of
7 carriers, effectively denied by BellSouth, allows the customer to take
8 advantage of service offerings from various companies at each of the
9 customer's different locations

10 **V. SUMMARY OF TESTIMONY AND RECOMMENDATION**

11 **Q. PLEASE SUMMARIZE YOUR TESTIMONY AND PROVIDE A**
12 **RECOMMENDATION TO THE COMMISSION REGARDING**
13 **BELLSOUTH'S PROVISION OF NONDISCRIMINATORY ACCESS**
14 **TO NETWORK ELEMENTS.**

15 A. BellSouth denies access to UNE combinations at cost-based TELRIC prices
16 in contravention of FCC Rule 315(b) (47 C.F.R. §51.315(b)), the Act's
17 nondiscriminatory access requirements and sound public policy. Thus,
18 BellSouth fails to comply with Section 271(c)(2)(B)(ii) of the Act.

19 BellSouth's interpretation of FCC Rule 319(c) (47 C.F.R. § 51.319(c)) serves
20 only to limit competition. The only reasonable interpretation of the "4 or
21 more lines" exception of FCC Rule 319(c) (47 C.F.R. § 51.319(c)) is that it

1 only applies to each separate customer location, and not when a customer
2 receives aggregate billing on his or her multiple locations. Thus, BellSouth is
3 noncompliant with Section 271(c)(2)(B)(ii) of the Act because its practices in
4 this area are anti-competitive, adverse to important customer interests and
5 deny ALECs appropriate access to network combinations in contravention of
6 the Act as implemented by FCC Rule 319(c) (47 C.F.R. § 51.319(c)).

7 Unless and until BellSouth provides nondiscriminatory access to UNE
8 combinations in accordance with applicable law and regulation, this
9 Commission cannot find that BellSouth meets the requirements of Checklist
10 Item No. 2 of Section 271. Thus, I recommend that the Commission deny
11 BellSouth's application to provide interLATA services under Section 271 of
12 the Act.

13 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

14 **A. Yes, it does.**