BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF

STEVEN E. TURNER

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

July 20, 2001

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I. INTRODUCTION AND QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND EMPLOYER.

A. My name is Steven E. Turner. Currently, I head my own telecommunications and financial consulting firm, Kaleo Consulting.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. I hold a Bachelor of Science degree in Electrical Engineering from Auburn University in Auburn, Alabama. I also hold a Masters of Business Administration in Finance from Georgia State University in Atlanta, Georgia.

Q. PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.

A. From 1986 through 1987, I was employed by General Electric in their Advanced Technologies Department as a Research Engineer developing high-speed graphics simulators. I joined AT&T in 1987 and, during my career there, held a variety of engineering, operations, and management positions. These positions covered the switching, transport, and signaling disciplines within AT&T. From 1995 until 1997, I worked in the Local Infrastructure and Access Management organization

within AT&T. It was during this tenure that I became familiar with the many regulatory issues surrounding AT&T's local market entry, and specifically with the issues regarding the unbundling of incumbent local exchange company ("ILEC") networks. I formed Kaleo Consulting in January 1997. I consult primarily on regulatory issues related to facilities-based entry into local exchange service and, using financial models to advise companies on how and where to enter telecommunications markets.

Q. HAVE YOU TESTIFIED IN OTHER REGULATORY PROCEEDINGS?

A. Yes. I have filed testimony or appeared before commissions in the states of Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin. Additionally, I filed testimony with the Federal Communications Commission ("FCC") regarding Southwestern Bell Telephone Company's ("SWBT") compliance with Section 271 of the Telecommunications Act of 1996 (the "Act"). A copy of my resume is attached as Exhibit SET-1.

II. PURPOSE AND SUMMARY OF TESTIMONY

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

A. The purpose of my testimony is to highlight BellSouth's inadequate provision of interconnection and access, and to address certain aspects of the direct testimony of Ms. Cox, Mr. Latham, Mr. Milner, and Mr. Williams and the affidavit of Mr. Gray to assist this Commission in determining whether BellSouth fully

implements the Competitive checklist requirements of Section 271(c)(2)(B) for two specific areas: (1) digital subscriber line ("xDSL") (Checklist Item 4) (Commission Issue 5); and (2) collocation (Checklist Item 1) (Commission Issue 2).

Q. PLEASE SUMMARIZE THE RELEVANT FACTS AND YOUR CONCLUSIONS RELATING TO BELLSOUTH'S PROVIDING OF INTERCONNECTION AND ACCESS TO UNEs AS THEY RELATE TO xDSL SERVICES.

A. The current marketplace demands that Alternative Local Exchange Carriers ("ALECs") be able to offer customers advanced services, as well as a combination (bundle) of voice and advanced services. BellSouth is aggressively offering customers bundled voice and advanced services, while consistently precluding ALECs, such as AT&T, who use the unbundled network element platform ("UNE-P") from offering customers this same option. This has the effect of chilling local competition for advanced services.[1] It appears that BellSouth intends to extend that policy position to the broadband services it offers over the fiber-fed, next-generation digital loop carrier ("NGDLC") architecture. BellSouth's actions significantly hinder ALECs' ability to compete in the markets for voice, data, and bundled services.

[1] The FCC has recognized that UNE-P is the most effective broad-based strategy for serving most residential and small business customers. *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC No. 99-238, Rel. November 5, 1999 ("UNE Remand Order"), ¶ 273 and n. 543.

BellSouth's refusal to allow for effective interconnection and, therefore, competition regarding xDSL is occurring because BellSouth has not fully unbundled the "(l)ocal loop transmission from the central office to the customer's premises"[2] for the following reasons:

a. The FCC in its *Line Sharing Reconsideration Order*[3] reconfirmed that BellSouth must provide for "line splitting." Line splitting occurs when an ALEC provides a customer with both voice and advanced services over a single line. Despite its statements to the contrary, BellSouth refuses to implement line splitting requirements in Florida except in the narrowest of circumstances. As a result, AT&T and other ALECs who want to provide a customer with a complete package of voice services using UNE-P and advanced services cannot do so. In addition, BellSouth has failed to implement electronic ordering for line splitting in accordance with FCC direction, precluding AT&T from providing bundled offerings of voice and advanced services to customers at commercial volumes. Bundled services are important now and will be central to the competitive marketplace in the foreseeable future. Thus, BellSouth's refusal to comply with the FCC Orders on line splitting means BellSouth is not in

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2 Section 271(c)(2)(B)(iv) of the Act.

3 *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability* and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, FCC No. 01-26 (rel. Jan 19, 2001) ("*Line Sharing Reconsideration Order*").

compliance with the Section 271 checklist and continues to delay the development of a competitive market in the state of Florida.

b. BellSouth, like all ILECs, is aggressively deploying NGDLC.[4] BellSouth uses this technology to provide the "local loop transmission" between the customer's premises and the central office. BellSouth, however, does not provide ALECs, such as AT&T, with equivalent access to loops that use NGDLC technology despite BellSouth's statements to the contrary. As a result, ALECs seeking to provide bundled voice and advanced services in competition with BellSouth are faced with three choices: (1) employ traditional copper loops to deliver inferior service quality assuming such loops are available, (2) engage in cost prohibitive remote terminal collocation in an effort to replicate the loop architecture deployed by BellSouth assuming it is technically feasible, or (3) forego competition for the customer served by NGDLC loop technology. Of course all three choices, for all practical purposes, have the same result – BellSouth retains its monopoly control of the market BellSouth's restrictions in this area are inconsistent with the requirements of FCC rules and Sections 251 and 271

[4] NGDLC is a telecommunications component that allows carriers to use fiber from the central office out to a remote terminal. At the remote terminal, the NGDLC allows for the fiber to be connected with the copper that continues the loop out to the customer's premises. The "next generation" aspect of NGDLC is that by simply using different plug-in cards, the telecommunications carrier is able to provide voice service only, advanced service only, or combined voice and advanced services. Prior to the deployment of NGDLC, the data service was provided by a separate device known as an xDSL access multiplexer ("DSLAM"). The DSLAM capability now has been integrated onto a card within the NGDLC, permitting easier provisioning of advanced services.

of the Act, and allow BellSouth to remain a monopoly provider of combined voice and advanced services to Florida consumers.

Q. PLEASE SUMMARIZE THE RELEVANT FACTS AND YOUR CONCLUSIONS RELATING TO BELLSOUTH'S PROVIDING OF ACCESS TO UNEs THROUGH COLLOCATION.

A. For collocation, BellSouth has not demonstrated that it is in compliance with the requirements of Section 271(c)(2)(B) in that the terms and conditions BellSouth has implemented for collocation fail to comply with the requirements of FCC guidelines and, therefore, negatively impact ALECs' ability to efficiently obtain interconnection and access to unbundled elements consistent with the requirements of the Act. BellSouth's testimony discusses in great volume what collocation options BellSouth supposedly offers. BellSouth's testimony ignores, of course, what BellSouth does not offer and why the terms, conditions and prices it imposes on collocation arrangements are discriminatory. Specifically:

a. BellSouth may unilaterally modify critical terms and conditions related to collocation without approval by this Commission or negotiation with collocators.

b. BellSouth's recovery of "extraneous expenses" is neither consistent with TELRIC cost principles nor consistent with FCC rules.

c. BellSouth fails to provide for shared collocation in a form that is consistent with that required by the FCC's *Advanced Services Order*.[5]

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[5] *In The Matter Of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket, No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking,* FCC 99-48 (rel. Mar. 31, 1999) ("Advanced Services Order")

In summary, absent BellSouth bringing these activities into compliance with the Act and FCC guidelines, BellSouth has not met the requirements of the competitive checklist as it pertains to issues of collocation.

III. xDSL

Q. WHAT ARE xDSL SERVICES AND WHY IS IT IMPORTANT TO THE COMMISSION'S ASSESSMENT OF BELLSOUTH'S COMPLIANCE WITH SECTION 271 REQUIREMENTS RELATING TO INTERCONNECTION?

A. Consumers want both voice and data services. xDSL allows a customer to receive those services and in the future will also provide for the delivery of voice and video, in addition to high-speed data. "Line Splitting" or "Line Sharing" allows the customer to receive both voice and advanced services over a single phone line – often called "bundled services." ALECs must be able to provide those services in order to compete with BellSouth.

Because of the importance of advanced services in relation to competition, the FCC requires a Regional Bell Operating Company ("RBOC"), in connection with any Section 271 application, to demonstrate that it provides ALECs with the ability to offer bundled voice and data services using the local loop. The FCC's recent *Line Sharing Reconsideration Order*, states:

> We find that incumbent LECs have a *current obligation* to provide competing carriers with the ability to engage in line splitting arrangements . . . *incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop.*[6]

[6] *Line Sharing Reconsideration Order* at ¶ 18 (emphasis added).

> Moreover, we expect Bell Operating Companies to demonstrate, in the context of section 271 applications, that they permit line splitting, by providing access to network elements necessary for competing carriers to provide line split services.[7]

The FCC went on to find that:

> [T]he availability of line splitting will further speed the deployment of competition in the advanced services market by making it possible for competing carriers to provide voice and data offerings on the same line . . . these offerings are especially attractive to residential and small business customers.[8]

Q. WHAT ARE THE RELEVANT PORTIONS OF THE ACT RELATING TO xDSL SERVICES?

A. Section 251(c)(3) of the Act requires BellSouth, in part, to: "provide, to any requesting telecommunication carriers, for the provision of a telecommunications service, *nondiscriminatory access* to network elements . . . on rates, terms and conditions that are just, reasonable, and nondiscriminatory . . ." (emphasis added). An unbundled loop, including a loop used in combination with switching that provides xDSL and other advanced services, is a network element.[9] Nondiscriminatory access to network elements requires that there is access to all of the features, functions and capabilities that are provided by that element.[10] The high frequency portion of the loop ("HFPL") for advanced services is a loop

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7 *Id.* at fn. 36.

8 *Id.* at ¶ 23.

9 *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, ¶¶ 380 and 382; and UNE Remand Order at ¶¶ 166-167.

10 47 U.S.C. § 153(29) and FCC Rules 51.307(b) and 51.5.

capability.[11] The FCC also has determined that BellSouth has an obligation to provide a requesting carrier with access to all of the unbundled network element "features, functions and capabilities, in a manner that allows the requesting telecommunications carrier to provide *any telecommunications service that can be offered by means of that network element.*"[12] xDSL service is one of the telecommunications services that can be offered by means of the loop.[13] Thus, BellSouth is required to make available to ALECs the features, functions and capabilities necessary to provide xDSL service.

Q. WHAT HAS BEEN BELLSOUTH'S APPROACH TOWARDS xDSL SERVICES?

A. BellSouth forecloses meaningful competition through use of two strategies – refusal to provide operational processes for ALECs to engage in line splitting and refusal to unbundle loops based on NGDLC technology. The former policy effectively prevents using central-office based technology and the latter prevents the same type of competition from emerging when BellSouth uses remote terminal deployed electronics. Together they represent "business as usual" for BellSouth – continuation of its monopoly.

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[11] *In the Matters of Deployment of Wireline Services Offering Advanced telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (FCC Docket No. 99-355, Rel. December 9, 1999 ("Line Sharing Order") at ¶ 17.

[12] FCC Rule 51.307(b) (emphasis added).

[13] Line Sharing Order at ¶¶ 13, 17, and 25.

A. Failure to Operationalize Line Splitting is a Clear Barrier to the Development of Competition

Q. IS BELLSOUTH REQUIRED TO PROVIDE LINE SPLITTING?

A. Yes. As previously indicated, because of consumer demand for advanced services and bundled voice and advanced services, the FCC requires that BellSouth permit line splitting. The FCC has repeatedly made clear that ILECs must make line splitting available to comply with the unbundling requirements of the Act.

Q. DOES BELLSOUTH OFFER LINE SPLITTING IN FLORIDA?

A. No, other than on a discriminatory basis. BellSouth will make Line Splitting available for a new customer *only* if an ALEC provides its own splitter.[14] However, this does not meet the requirements of offering line splitting on a nondiscriminatory basis. BellSouth provides xDSL services to new customers and allows ALECs to provide xDSL services to customers when BellSouth continues to provide the voice service ("line sharing"). BellSouth's refusal to permit ALECs to provide voice and advanced services to new customers through line splitting is plainly and unreasonably discriminatory. The *Line Sharing Order* does not authorize this discrimination. Indeed, the FCC explicitly recognized in the *Line Sharing Order* that competitive carriers are entitled to "obtain combination of network elements and use those elements to provide circuit switched voice service *as well as data services*."[15] Moreover, the impact of BellSouth denying AT&T and other ALECs with access to line splitting via

[14] Direct Testimony of Cynthia K. Cox on behalf of BellSouth Telecommunications, Inc., Docket No. 960786-TL, May 31, 2001, p. 55.

BellSouth splitters is that customer service and choice will be negatively impacted.

Q. COULD YOU EXPLAIN HOW CUSTOMER SERVICE AND CHOICE WILL BE NEGATIVELY IMPACTED?

A. Yes. One of the concerns consumers who choose a combination of voice and data services have is whether implementing this arrangement will negatively impact their voice service. Acquiring advanced data services can take some time. However, consumers cannot afford to have their voice service out of service other than for a brief period. In my opinion, this is precisely why BellSouth is so eager to offer ALECs access to a BellSouth owned splitter for line sharing; the disruption to BellSouth voice service is minimized. Similarly, if only one party is involved in the provision of the voice service through line splitting, including the insertion of the splitter to provide for access to the DSL services would minimize any outage for voice service. I would expect that the customer's service would be disrupted for no more than a couple of minutes. BellSouth is very willing to provide the splitter for line sharing primarily because it is still the voice provider and does not want a service outage for its voice customer as a result of a lengthy cutover process.

However, if the ALEC must insert its own splitter – as BellSouth requires for new customers in a line splitting arrangement – multiple jumpers or cross-connects must be run to extend the unbundled loop and unbundled switch port into the

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[15] *Line Sharing Order* at ¶ 47 (emphasis added).

collocation arrangement where they would have to be cross-connected through a splitter and establish a connection back to the switch again. Moreover, this cross-connect work must be coordinated between two companies – BellSouth and the ALEC. These additional cross-connects, additional cost, and additional delays in service are what clearly indicate that BellSouth is discriminating against ALECs that want to provide voice *and* data service (line splitting) as opposed to ALECs that are willing to only provide data service and allow BellSouth to retain the voice service monopoly (line sharing). This type of discrimination is precisely what the federal Act forecloses prior to Section 271 relief for the incumbent.

1. BellSouth Has Not And Will Not Provide Line Splitters

Q. WHAT IS THE FIRST REASON WHY YOU BELIEVE BELLSOUTH HAS FAILED TO MEET ITS OBLIGATIONS REGARDING LINE SPLITTING?

A. As briefly illustrated above, BellSouth refuses to provide line splitters in most circumstances, precluding line splitting on a nondiscriminatory basis.[16]

Q. WHAT IS A LINE SPLITTER?

A. Line splitting requires the use of a splitter. A splitter is a passive electronic filter that is attached to the loop that is used to split or separate signals on the basis of their transmission frequencies. The splitter enables the low-frequency voice signals on the loop to be directed to a voice circuit switch and the high-frequency data signals on that loop to be delivered to a packet switching network. There is no technical reason why BellSouth cannot add a splitter to a UNE-P loop that the

[16] Cox Direct at 55 and Williams Direct at 18-20.

ALEC is already using to provide a Florida consumer bundled voice and advanced services.

Q WHY DO YOU CONCLUDE THAT BELLSOUTH HAS NO TECHNICAL REASON NOT TO PROVIDE ALECS USING UNE-P WITH A SPLITTER?

A. BellSouth's technical capability to provide line splitters for ALEC use in the UNE-P environment is shown by the fact that although BellSouth claims it does not have a legal obligation to provide a line splitter when it engages in line sharing with another ALEC, it is willing to do so and, in fact, has done so. But when an ALEC wants to provide line splitting with UNE-P so that a customer could obtain voice and advanced services over the same line, BellSouth uses its "lack of legal obligation" to refuse to provide ALECs with the splitter to serve new customers. Thus, BellSouth is willing to provide the splitter to ALECs when BellSouth continues to provide the customer with voice service. However, for a new customer, if BellSouth is not providing the voice service, then BellSouth refuses to provide the splitter and requires the ALEC to provide one. This is, obviously, not an issue of technical capability. Rather it is blatant discrimination in direct violation of Section 251(c)(3) of the Act.

Q. WHAT IS THE IMPACT OF BELLSOUTH'S REFUSAL TO PROVIDE THE LINE SPLITTER TO ALECS?

A. Without BellSouth's insertion of the splitter, the ALEC is effectively precluded from competing for BellSouth customers who wish to obtain voice and advanced services over a single local loop. The FCC has found that the costs of collocation and the prospects of hot cuts, which would be necessary for the ALEC to provide

the splitter, represent a clear impairment to voice service competition because of the need to disrupt the customer's service. The FCC also found in the *Line Sharing Order* that competing via a second line stifles competition for advanced services. Most consumers want one phone line for voice and advanced services. The bottom line is that BellSouth's policy of refusing to provide the splitter, except in a few instances, results in the customer's service being disrupted for no justifiable reason other than to thwart the ability of an ALEC using UNE-P to compete in the advanced services market.

Q. WHAT RATIONALE DOES BELLSOUTH PROVIDE FOR NOT PROVIDING THE SPLITTER FUNCTIONALITY TO UNE-P ALECS?

A. As I stated earlier, BellSouth asserts that it has no legal obligation to provide the splitter for line splitting. BellSouth bases this position on its interpretation of paragraphs 325 and 327 of the FCC's Texas 271 Order dated June 30, 2000. This rationale is flawed. The FCC in evaluating SBC's application for 271 relief only evaluated whether or not SBC had a *current* obligation to provide the splitter for line sharing and line splitting. However, the FCC also noted that this issue had yet to be fully evaluated by the FCC and that it should be in short order (*see* paragraph 328 of the Texas 271 Order). Thus, no prohibition exists against ILECs providing splitters, and the issue in Florida remains one of discrimination.

Indeed, the Texas Public Utility Commission considered whether SBC should provide access to incumbent owned line splitters after SBC had already received its Section 271 authority to provide long distance in Texas. In this review, the

Texas Public Utility Commission concluded that SBC *did* have a responsibility to provide access to its splitters for both line sharing as well as line splitting.[17] The arbitrators in this proceeding specifically noted in their ruling:

> The Arbitrators find that based upon the evidence in this record there is no technical distinction between line sharing and line splitting, as the splitter provides access to the same functionality of the loop in both contexts. **The Arbitrators agree with AT&T that it is discriminatory for SWBT to provide the splitter in a line sharing context while not providing the splitter in a line splitting context.** The Arbitrators believe that SWBT's policy will have the effect of severely limiting the number of data CLECs with which a UNE-P provider can partner in order to offer advanced services. (Emphasis Added)[18]

BellSouth continues the same type of discrimination that the Texas Public Utilities Commission corrected in Texas – the very state that BellSouth points to for its support that providing the splitter for line splitting is not required. Again, BellSouth provides access to the splitter when BellSouth is the voice provider. But, BellSouth, in its continued effort to undermine the utility of the UNE-P, has determined that it will not provide the splitter when an ALEC wants to serve a new customer. It is in this regard that the Florida Public Service Commission should determine that BellSouth is not in compliance with the Act's requirement to provide nondiscriminatory access to unbundled loops, just as the Texas Public

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[17] *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996,* Docket No. 22315, Texas Public Utilities Commission Order, March 14, 2001.

[18] *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996,* Docket No. 22315, Texas Public Utilities Commission Arbitration Award, September 13, 2000.

Utilities Commission did, because it will not provide access to line splitters for new customers.

Q. IS IT TRUE THAT IN EACH OF THE STATES WHERE A REGIONAL BELL OPERATING COMPANY (RBOC) HAS BEEN GRANTED SECTION 271 RELIEF AN INCUMBENT HAS NOT BEEN REQUIRED TO PROVIDE A SPLITTER FOR LINE SPLITTING?

A. Yes, this is true. However, it is important to understand the circumstances surrounding each state. *First*, the Texas Section 271 Order was issued while the FCC requirements for line splitting were being developed. The FCC made clear that SBC had an obligation to provide line splitting, but many of the operational issues surrounding line splitting, such as splitter ownership, were simply too undeveloped for the FCC to rule against SBC's entry into long distance in Texas. However, as I pointed out earlier, shortly thereafter, the Texas Public Utilities Commission did, in fact, rule that SBC had to make SWBT-owned splitters available to ALECs engages in line splitting.

Second, the Kansas-Oklahoma Section 271 Order was issued on January 19, 2001 – precisely the same day that the *Line Sharing Reconsideration Order* was issued by the FCC. As such, the clear requirements for an ILEC to provide line splitting over UNE-P and whether SBC was providing discriminatory treatment to ALECs in Kansas and Oklahoma were not fully evaluated at the time the Kansas-Oklahoma Section 271 Order was issued. Moreover, the requirements of the *Line Sharing Reconsideration Order* were not in effect at the time of evaluation of the Kansas-Oklahoma application for Section 271 relief.

Third, the only remaining states that BellSouth can point to are Verizon states: New York (December 21, 1999) and Massachusetts (April. 16, 2001).

Importantly, Verizon did not provide access to splitters for line sharing. Thus, there was no issue of discrimination by Verizon only providing the splitter for line sharing and not for line splitting. In addition, there is a critical distinction between the standard that Verizon was evaluated against and the standard that BellSouth should be evaluated against: *discrimination.* In Massachusetts and New York, Verizon does not provide access to Verizon owned splitters for line sharing or line splitting. In other words, Verizon took the position early on that if ALECs wanted access to splitters, they would have to provide them on their own. Therefore, BellSouth, unlike Verizon, is discriminating against one group of ALECs (those that want to use line splitting) in favor of another group of ALECs (those that want to use line sharing). Such discrimination is contrary to Section 271. As such, any reliance on the Massachusetts and New York Section 271 Orders to support the position that BellSouth does not have to provide splitters for line splitting is misplaced. BellSouth is clearly providing discriminatory access to unbundled loops for different classes of ALECs based upon whether BellSouth continues to provide voice service or not.

Q. WHY SHOULD BELLSOUTH BE REQUIRED TO PROVIDE THE SPLITTER?

A. As the FCC's UNE Remand Order determined, "attached electronics", with the exception of DSLAMs are regarded as a part of the loop.[19] As indicated previously, a splitter is a passive electronic filter that is attached to the loop in order to split or separate the signals on the basis of their transmission frequencies. Thus, splitters are a part of the local loop, and ILECs are required to unbundle the local loop.

[19] UNE Remand Order at ¶175.

Q: ARE BELLSOUTH'S ARGUMENTS AGAINST PROVIDING THE SPLITTER EVEN CONSISTENT WITH BASIC ENGINEERING PRINCIPLES?

A. No. BellSouth's argument that the splitter is not part of the loop is inconsistent with principles of telephone engineering. It is undisputable that bridge taps are routinely installed in the ILEC's loop plant, and the FCC has expressly recognized the right of a purchaser of a loop element to insist that bridge taps be removed, even where the ILEC does not ordinarily perform such removals for itself because it is not providing advanced services to those customers. It is likewise indisputable that load coils – which in fact are nothing but low-pass filters – may be part of the loop, and the FCC has expressly recognized the right of a purchaser of a loop element to insist that load coils be removed.[20] Yet BellSouth denies its obligation to provide a splitter, claiming it cannot be part of a loop, even though insertion of a splitter is effectively nothing more than a bridge tap that separates a single copper facility into two paths and provides filtering and electrical protection for the transmission on for each path.

Q. SO IS IT FAIR TO SAY THAT IN YOUR OPINION THERE IS NO TECHNICAL REASON FOR BELLSOUTH TO REFUSE TO PROVIDE ALECS USING THE UNE-P WITH A SPLITTER?

A. That is correct. As I indicated previously, BellSouth's technical capability to provide line splitters for ALEC use in the UNE-P environment is shown by the fact that BellSouth provides a line splitter when it engages in *line sharing* with

[20] UNE Remand Order at ¶¶172-173.

another ALEC.[21] This is, obviously, not an issue of technical capability. Rather it is blatant discrimination in direct violation of Section 251(c)(3) of the Act.

Q. WHAT IS THE IMPACT OF THE DISCRIMINATION YOU JUST DESCRIBED?

A. The obvious impacts of BellSouth's discriminatory refusal to permit line splitting has been to permit BellSouth to "lock-up" the xDSL market before ALECs have a chance to provide bundled services.

Q. PLEASE EXPLAIN YOUR PRIOR ANSWER.

A. As I noted before, a carrier's ability to provide bundled voice and advanced services is becoming essential to the carrier's ability to compete. Critically, line splitting is especially attractive to residential and small commercial customers. But line splitting by other than BellSouth will *not* be attractive to consumers if their service must be disrupted when they switch their voice service from BellSouth to a UNE-P ALEC. Unless BellSouth provides the splitter, this is exactly what will happen.

Q. WHY WOULD SERVICE BE DISRUPTED WHEN CONSUMERS CHANGE PROVIDERS IF BELLSOUTH REFUSES TO PROVIDE THE SPLITTER?

A. When a customer changes voice providers only and a splitter is present, all that is required is an electronic change modification in the local switch when the splitter is not removed. No rewiring is necessary, no technicians need to be dispatched to the central office or the customer's premises and no disruption is required. Removal of the splitter, however, "means that the loop and the port have to be

[21] Cox Direct at 54-55.

disconnected from each other, and both the loop and the port then have to be run into the ALEC's collocation space where the loop can be hooked up to the ALEC's splitter."[22] The physical effort to disconnect the loop and port and connect the loop and port in collocation space will require significant time. During that time, the consumer will have no service. This is in contrast to a customer who will not lose service if the BellSouth splitter remains in place. That is because only electronic changes are required under this scenario. Thus, BellSouth should comply with the following FCC guidance:

> [B]ecause no central office wiring changes are necessary in a conversion from line sharing to line splitting, *we expect incumbent LECs to work with competing carriers to develop streamlined ordering processes. . .that avoid voice and data service disruption* and make use of the existing xDSL-capable loop.[23]

Q. GIVEN THAT BELLSOUTH CURRENTLY PROVIDES SPLITTERS AND REMOVAL OF THE SPLITTER WOULD CAUSE SERVICE DISRUPTIONS, SHOULD BELLSOUTH BE OBLIGATED TO PROVIDE SPLITTERS?

A. Yes. The only rationale for BellSouth's position to refuse to provide the splitter has been to reduce competition.

Q. DID THE FLORIDA PUBLIC SERVICE COMMISSION (PSC) RULE IN AT&T'S RECENT FLORIDA ARBITRATION WITH BELLSOUTH THAT BELLSOUTH DID NOT HAVE TO PROVIDE SPLITTERS FOR LINE SPLITTING?

A. Yes. The Florida Public Service Commission did rule that BellSouth did not have to provide access to the splitter. However, the standard that is required for section 271 relief for BellSouth was not at issue in that arbitration. Specifically, the Act,

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[22] Cox Direct at 55.

as I have indicated earlier, requires that BellSouth provide nondiscriminatory access to unbundled elements. There is no question in Florida that BellSouth is providing splitters attached to the unbundled loop for ALECs that employ "line sharing." As such, if BellSouth refuses to provide splitters for ALECs that employ "line splitting," this constitutes discrimination and prevents BellSouth from being permitted 271 relief in Florida.

2. BellSouth Continues to Impede Line Splitting by Refusing OSS Access

Q. WHAT IS THE SECOND REASON THAT YOU BELIEVE BELLSOUTH HAS FAILED TO MEET ITS OBLIGATIONS REGARDING LINE SPLITTING?

A. One of the crucial issues involved with line splitting is BellSouth's obligation under FCC orders to provide nondiscriminatory access to BellSouth's operational support systems ("OSS"). Today, when BellSouth provides bundled voice and advanced services to one of its customers, the pre-ordering, ordering, provisioning and maintenance is done electronically. Thus, BellSouth must provide electronic OSS for ALEC line sharing orders. As the FCC stated recently:

> [I]ncumbent LECs are required to make *all necessary network modifications to facilitate line splitting, including providing nondiscriminatory access to OSS* necessary for pre-ordering, ordering, provisioning and maintenance and repair, and billing for loops used in line splitting arrangements.[24]

Further:

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[23] Line Sharing Order at ¶ 22.

[24] *Line Sharing Reconsideration Order* at ¶ 30 (emphasis added).

> *[B]ecause line splitting is an existing legal obligation,* ILECs must allow competitors to order line splitting immediately, whether or not a fully electronic interface is in place.[25]

Q. DOES BELLSOUTH PROVIDE ELECTRONIC OSS FOR ALEC LINE SPLITTING ORDERS?

A. No, not at the present time.

Q. WHAT DO YOU BELIEVE IS THE IMPACT OF BELLSOUTH NOT PROVIDING ELECTRONIC OSS FOR LINE SPLITTING?

A. Until electronic OSS for ALEC line splitting are available, each and every ALEC customer order for bundled services must be handled manually. There is no indication how long it would take to process such an order or if the order would be processed correctly. In the meantime, BellSouth continues to obtain new xDSL customers while AT&T and other ALECs who want to engage in line splitting are forced to sit on the sidelines until BellSouth decides when electronic ordering for line splitting will be available.[26]

3. BellSouth Continues to Impede Line Splitting in Several Other Ways

Q. ARE THERE ANY ADDITIONAL REASONS WHY YOU BELIEVE BELLSOUTH HAS FAILED TO MEET ITS OBLIGATIONS REGARDING LINE SPLITTING?

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[25] *Id.* at fn. 36 (emphasis added).

[26] In fact, BellSouth has issued press releases indicating that in Georgia it had already captured 215,000 customers by the end of 2000 while it anticipates reaching 600,000 customers by the end of 2001. *In re: Investigation of BellSouth Telecommunications, Inc., Provision of Unbundled Network Elements for xDSL Service Providers*, Docket No. 11900-U; Georgia Public Service Commission Hearing Transcript at 80-1.

A. Yes. In addition to its failure to comply with express requirements of the FCC to provide splitters and electronic OSS, BellSouth continues to engage in other anti-competitive behavior relating to line splitting.

a. BellSouth does not deploy splitters a line at a time; and

b. BellSouth has indicated that it may not provide the same level of support for UNE-P line splitting as it does for UNE-P voice services;[27] and

c. BellSouth discontinues providing advanced services to a customer that elects to receive its voice service from an ALEC.

Q. WHY SHOULD BELLSOUTH DEPLOY SPLITTERS ON A LINE AT A TIME BASIS?

A. Commissions in Illinois, Michigan, and Texas have ordered splitters to be deployed on a line at a time basis.[28] BellSouth currently deploys the splitter in increments of 8, 24 and 96 ports (lines).[29] Cox Direct at 54. There is no technical reason, however, why the splitter cannot be provisioned a line at a time. Such an

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[27] This position is especially meritless because the combination of elements used is precisely the same with the only possible difference being that BellSouth requires that the loop-port combination pass through the ALEC's collocation.

[28] Please *see* Arbitration Order dated August 17, 2000 in ICC Docket Nos. 00-0312/0313 in the arbitration between Ameritech Illinois and Covad Communications Company and Rhythms Links, Inc., p. 18, for support that Ameritech must provide both line at a time and shelf at a time line splitting capability when Ameritech chooses to deploy line splitters. See also *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996,* Docket No. 22315, Texas Public Utilities Commission Order, March 14, 2001. See also *In the matter of the application of Ameritech Michigan for approval of cost studies and resolution of disputed issues related to certain UNE offerings*, Case No. U-12540, Michigan Public Service Commission Order, March 7, 2001.

[29] The problem here is that by requiring all particular splitters to be dedicated to particular carriers (whether in blocks of 8, 24 or 96), the customer is hardwired to a particular DSL provider. This means that whenever the retail customer seeks to change service providers, particularly the DSL provider, both the voice and the data service must be interrupted to permit retermination of the loop.

arrangement would prevent the ALEC from having to expend resources for capabilities it may not use and would allow BellSouth to more efficiently utilize the splitters that it deploys. By providing splitters a line at a time, BellSouth could deploy the splitter as the ALEC obtains the customer rather than providing an ALEC with an entire shelf of splitters that may remain unused.

Q. WHAT DO YOU MEAN THAT BELLSOUTH DOES NOT PROVIDE THE SAME LEVEL OF SUPPORT FOR UNE-P LINE SPLITTING AS IT DOES FOR UNE-P VOICE SERVICES?

A. BellSouth does not support UNE-P when it is part of a line splitting configuration. In its ex-parte to the FCC, BellSouth indicated: "if a splitter is on a loop or is to be attached to a loop, a loop and port will lose its status as a UNE-P." *See* Exhibit SET-2 (BellSouth Ex Parte filed with the FCC August 16, 2000, in CC Docket No. 96-98). It is unclear exactly what BellSouth means by this statement. As indicated previously, however, the splitter is nothing more than a passive electronic device that is part of the loop so that UNE-P with a splitter on the loop is no different than when UNE-P is used solely to provide voice service. The line sharing configuration employed by BellSouth is virtually indistinguishable from that employed when a UNE-P ALEC adds DSL to the loop. There is no basis, therefore, to claim that UNE-P cannot be supported in the same manner as traditional voice service provided by BellSouth. Indeed, if BellSouth were to operate in this manner, it would constitute unreasonable discrimination foreclosed by the Act and this Commission. Nevertheless, to remove all doubt, the Commission should direct that BellSouth provide the same support for the voice

portion of a UNE-P line splitting configuration that is provided when UNE-P is used only for voice services and vigorously enforce the requirement.

Q. IS THERE AN ISSUE WITH THE RATES BELLSOUTH CHARGES ALECS FOR UNE-P THAT IS USED TO PROVIDE LINE SPLITTING?

A. Yes. BellSouth charges ALECs the recurring rates for an unbundled loop and unbundled port and the non-recurring rate for a loop-port "switch-with-change" combination for UNE-P that is part of a line splitting configuration.[30] However, because BellSouth must provide the ALEC with the same loop that was part of the existing UNE-P so that it can be used for line splitting, ALECs should only be required to pay the recurring rate for a loop-port "switch as is" combination.[31]

Q. WHAT DO YOU MEAN THAT BELLSOUTH SHOULD NOT BE PERMITTED TO DISCONTINUE PROVIDING ADVANCED SERVICES TO A CUSTOMER THAT ELECTS TO RECEIVE ITS VOICE SERVICE FROM AN ALEC?

A. BellSouth's current practice is to discontinue data service to a customer that changes voice service to an ALEC.[32] A retail customer placed in this untenable position would clearly decide not to change voice carriers. Otherwise, the customer faces the disruption of its data service until they are able to locate a new data provider. Thus, this practice is discriminatory and stifles competition.

B. <u>Failure To Facilitate Line Sharing Impedes The Development Of Competition</u>

Q. PLEASE DEFINE "LINE SHARING."

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30 Williams Direct at pp. 20-21.

31 *Line Sharing Reconsideration Order, ¶19*

32 Cox Direct at p. 55.

A. Line sharing exists where BellSouth continues to provide the voice portion of the service to the end user customer over the loop while the ALEC provides the data portion of the service using the HFPL. Remote site line sharing is the same according to the FCC except that the technology for permitting this form of line sharing is implemented at the remote terminal (normally via NGDLC as described in an earlier footnote) rather than at the central office.

Q. IS BELLSOUTH REQUIRED TO LINE SHARE WITH ALECS?

A. Yes, even when the customer is served by an NGDLC configuration. In the *Line Sharing Reconsideration Order* the FCC clarified that fiber-fed digital loop carrier ("DLC") must be unbundled for line sharing to encourage competitors to provide xDSL services. The requirement to provide line sharing, as established in the Line Sharing Order, "applies to the entire loop where the incumbent has deployed fiber in the loop (*e.g.* where the loop is served by a remote terminal ("RT")."[33] The FCC stated that it did not intend to prevent an ILEC from providing an ALEC with access to the fiber portion of a DLC loop for line sharing purposes just because the word "copper" was used in the rule implementing the *Line Sharing Order*, Rule § 51.319(h)(1).[34]

Instead, the FCC required the ILEC to unbundle "the high frequency portion of the local loop *even where the incumbent LEC's voice customer is served by DLC facilities*."[35] The *Line Sharing Reconsideration Order* also states that ALECs

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33 *Line Sharing Reconsideration Order* at ¶ 10.

34 *Id.*

35 *Id.* (emphasis added).

must have the option of access the high frequency portion of the loop at the remote terminal as well as at the central office.[36] The FCC concluded that it would be inconsistent with "the intent of the statutory goals behind sections 706 and 251 of the 1996 Act to allow incumbent LECs to limit a CLECs ability to provide xDSL services due to increasing deployment of fiber-based networks."[37]

Q. IS BELLSOUTH IN COMPLIANCE WITH YOUR UNDERSTANDING OF THE FCC'S *LINE SHARING RECONSIDERATION ORDER*?

A. No. For example, as recently as the May 3, 2001 BST-Line Splitting Collaborative Meeting, one of the critical questions that was discussed was whether BellSouth would consider permitting an ALEC to install integrated splitter/Digital Subscriber Line Access Multiplexer ("DSLAM") cards into DSLAM capable BellSouth remote terminals to facilitate remote site line sharing. BellSouth's response was that it would not consider this option. Instead, BellSouth would only consider permitting ALECs to install discrete splitters at a remote terminal to enable ALEC line sharing from a collocation arrangement at the remote terminal. In other words, BellSouth was maintaining its position that it would only permit ALECs to line share over copper facilities by requiring that ALECs collocate at the remote terminal site to access the copper portion of the loop. BellSouth was not offering any reasonable implementation of the requirements of the *Line Sharing Reconsideration Order* that incumbents offer unbundled access to the high frequency portion of the loop even on loops that are

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[36] *Id.* at ¶ 11.

[37] *Id.* at ¶ 13.

served via fiber-fed DLC. In short, BellSouth's position on line sharing for fiber-fed DLC loops is in express violation of the FCC's requirements in the *Line Sharing Reconsideration Order.*

Q. WHY HAS BELLSOUTH REFUSED TO ALLOW ALECS TO USE INTEGRATED SPLITTER/DSLAM CARDS AT REMOTE TERMINALS TO PROVIDE ADVANCED SERVICES?

A. BellSouth takes the position that the integrated splitter/ DSLAM card performs a packet switching function, which pursuant to the UNE Remand Order, BellSouth does not have an obligation to provide to ALECs. However, a DSLAM, particularly one with an integrated splitter, is not performing a "packet switching" function, but rather, is performing a transport function. The DSLAM is an integral part of the unbundled loop and is essential to deliver the voice portion of the loop back to the central office voice switch, and the data portion of the loop back to the central office data switch which is a packet switch. The DSLAM has the ability to receive a copper loop, split the low frequency voice signal from the high frequency data signal, and then transmit each of these two signals to their appropriate switch types: a circuit switch for the voice signal and a packet switch for the data signal. NGDLC, which was defined earlier, is now being deployed by BellSouth in such a manner that integrated splitter/DSLAM cards can be installed into the NGDLC in such a way that voice and data service combinations can easily be provisioned to end customers. Thus, contrary to BellSouth's conclusions, the integrated splitter/DSLAM card is not performing a packet switching function.

C. Access to Fiber-Fed Remote Terminals on an Unbundled Basis

Q. HOW SHOULD ACCESS TO FIBER-FED DIGITAL LOOP CARRIER LOOPS BE PROVIDED?

A. The traditional loop plant is clearly changing, as BellSouth and other ILECs are deploying new loop technologies that enable them to utilize more efficient loop architectures. To be found in compliance with checklist items 2, 3, and 4, BellSouth must provide unbundled access to its fiber-fed remote terminals, also known as Next Generation Digital Loop Carrier (NGDLC) architecture.

Q. PLEASE EXPLAIN WHY IT IS IMPORTANT TO PROVIDE UNBUNDLED ACCESS TO NGDLC.

A. This is a critical time in the deployment of competition for advanced services, especially as ILECs begin rapidly to deploy next-generation loop technology.[38] The addition of next-generation electronics in the ILEC's loop plant enables greater bandwidth to be transmitted between the customer's premises and the central office, but it does *not* change the loop's basic function of supplying transmission between the customer premises and the ILEC's central office. And the central office remains the place where ALECs can practically and economically obtain access to their customers' telecommunications transmissions so that they can provide the telecommunications services of their choosing.

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[38] *See* Morgan Stanley Dean Witter Industry Overview, *Telecom-Wireline: DSL ... It's Going Well* (Nov. 7, 2000) ("*Morgan Stanley DSL Report*") ("[w]e expect Q4 [2000] to show a dramatic acceleration in DSL deployment. We estimate 704,000 net adds by the big four, twice the installs of any previous quarter, and up 56% sequentially").

Next-generation loop electronics, such as line cards with DSLAM functionality and splitters, which enable an ALEC to provide advanced services even if NGDLC has been deployed in the network, are incorporated within the functionality of the unbundled loop network element itself.[39] Thus, the electronics, such as a line card with DSLAM functionality, that are used with the next-generation architecture "*simply provide a transmission channel* to facilitate delivery of specific services to the end user."

BellSouth's attempts to preclude ALECs from accessing the next-generation loop architecture are merely the latest step in its unceasing efforts to avoid its fundamental unbundling obligations. Adopting BellSouth's position would allow it and its affiliate to be the only entities able to offer advanced services in a cost-effective manner that does not compromise the quality of service the customer receives.[40]

Q. WHAT THEN SHOULD THIS COMMISSION REQUIRE TO ENSURE THAT BELLSOUTH IS IN COMPLIANCE WITH THE COMPETITIVE CHECKLIST WITH REGARDS TO NGDLC?

A. Prior to finding BellSouth to be in compliance with section 271, and in particular checklist item 4, this Commission should require BellSouth to provide unbundled access to its NGDLC assets. Without such a requirement, competition for all

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[39] *See UNE Remand Order* ¶ 175 ("[b]ecause excluding such equipment from the definition of the loop would limit the functionality of the loop, we include the attached electronics ... within the loop definition").

[40] This is hardly a new strategy. The FCC, in determining that the loop is a UNE, recognized that "[b]ecause of the size of their networks, incumbent LECs enjoy advantages of scope that competitors cannot replicate." *UNE Remand Order* ¶ 183; *see also id.* ¶ 209 (finding that "self-provisioning subloop elements, like the loop itself, would materially raise entry costs, delay broad-based entry, and limit the scope and quality of the competitive LEC's service offerings").

telecommunications services will be drastically reduced because of cost and service quality issues. Without access to the entire loop in a next-generation network – which consists of copper distribution, the fiber feeder facilities running from the remote terminal to the central office, and all associated loop electronics at the remote terminal and central office – competitors will not have meaningful access to the signals necessary to offer competitive services.

1. The Act and the FCC's Prior Decisions Require that BellSouth Provide Access to the Entire Unbundled Loop, Regardless of the Technology It Deploys.

Q. ON WHAT BASIS DO YOU BELIEVE THE ACT AND FCC MAKE IT CLEAR THAT NGDLC SERVED LOOPS MUST BE UNBUNDLED THE SAME AS ANY OTHER LOOP?

A. In the 1996 Act, Congress required ILECs to provide requesting carriers with nondiscriminatory access to "a facility or equipment used in the provision of a telecommunications service," including all "features, functions, and capabilities that are provided by means of such facility or equipment."[41] Guided by the 1996 Act, the FCC recognized that granting ALECs unbundled access to the local loop was paramount for the future of local competition, finding that "under any reasonable interpretation of the 'necessary' and 'impair' standards of section

[41] 47 U.S.C. § 151(29) (defining a "network element"); 47 U.S.C. § 251(c)(3) (discussing the duty of incumbent LECs to provide unbundled access to network elements); *see also Local Competition Order* ¶ 258 ("[w]e adopt the concept of unbundled elements as physical facilities of the network, together with the features, functions, and capabilities associated with those facilities"); *UNE Remand Order* ¶ 175("[t]he definition of a network element is not limited to facilities, but includes features, functions, and capabilities as well").

251(d)(2), loops would be subject to the section 251(c)(3) unbundling obligations."[42]

The FCC has repeatedly recognized that there are two essential principles that lie at the heart of the definition of the unbundled loop element:

- *First*, the essential function of the loop is to provide *transmission functionality* needed for a customer to send and receive information between his or her location and the network of the service provider.[43]

- *Second*, and equally important, in order to support full-fledged competition, the local loop, as a transmission path, must be both service and technology neutral and must "apply to *new as well as current technologies*."[44]

The 1996 Act, the FCC implementing rules and their governing principles on access to the local loop boils down to one simple statement:

> *CLECs are entitled to access an unbundled loop element that consists of all features, functions, and capabilities that provide transmission functionality between a customer's premises and the central office, regardless of the technologies used to provide, or the services offered over, such facilities.*

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42 *UNE Remand Order* ¶ 163; *Local Competition Order* ¶¶ 377-378 (providing access to unbundled local loops to alternative LECs is "critical to encouraging market entry," because "preventing access to unbundled loops would either discourage a potential competitor from entering the market, ... denying those consumers the benefits of competition, or cause the competitor to construct unnecessarily duplicative facilities, thereby misallocating societal resources").

43 *See* 47 C.F.R. § 51.319(a) ("[t]he local loop network element is defined as a *transmission facility* between a distribution frame (or its equivalent) in an incumbent LEC central office and an end-user customer premises") (emphasis added); *Local Competition Order* ¶ 380 ("[t]he local loop element should be defined as a *transmission facility*") (emphasis added); *see also Line Sharing Order* ¶ 18 (alternative carriers "may access unbundled loop functionalities, such as non-voiceband transmission frequencies").

44 *See UNE Remand Order* ¶ 167 (emphasis added); *Local Competition Order* ¶ 292 ("section 251(c)(3) requires incumbent LECs to provide requesting carriers with all of the functionalities of a particular element, so that requesting carriers can provide *any telecommunications services* that can be offered by means of the element") (emphasis added).

This straightforward FCC analysis clearly means that next-generation loop technologies architecture does not alter an ALEC's right (or its compelling need) to access the entire loop as an unbundled element at the central office. Nothing about next-generation loop architecture changes the basic characteristics or functionality of the loop element. As the FCC has properly held: "[u]sing the loop to get to the customer is fundamental to competition."[45]

Q. DO YOU ALSO BELIEVE THAT THE ELECTRONICS ASSOCIATED WITH THE NGDLC MUST ALSO BE UNBUNDLED?

A. Yes. Line cards are needed to provide customers with Plain Old Telephone Services ("POTS") and DSL service. Specifically, line cards with DSLAM functionality and Optical Concentration Devices (OCDs) allow transmission of communications when placed in next-generation loop architectures. The electronics associated with the next-generation loop architecture, such as line cards, should – indeed must – be considered part of the loop.

Q. DO YOU HAVE ANY SUPPORT FOR THIS CONCLUSION?

A. Yes. The FCC, in the recent *Line Sharing Reconsideration Order,* noted that ILECs are required to unbundle the high frequency portion *of the local loop*, and that the definition of the local loop as a "transmission facility between a

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[45] *Line Sharing Order* ¶ 30; *see also UNE Remand Order* ¶ 171 (defining the unbundled loop element in such a way as to "ensure that the competitor will be able to gain access to the entire loop"); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, FCC 98-188, ¶ 54 (rel. Aug. 7, 1998) ("*Advanced Services Order*") ("[t]he incumbent LECs' obligation to provide requesting carriers with fully functional conditioned loops extends to loops provisioned through remote concentration devices such as digital loop carriers (DLC)").

distribution frame ... and the loop demarcation point at an end user customer premises," was intended to ensure that the definition was technology neutral.[46]

Congress had good reason to subject ILEC advanced services facilities to unbundling requirements of Section 251(c). Consumers are increasingly demanding voice and high-speed data services over a single line. ILECs are already satisfying that demand today and have made it clear that the ability to offer bundled voice and data services a significant competitive advantage. If UNE-based ALECs are denied access to local loops for advanced services simply because they are served by NGDLC, they would be unable to compete for consumers that increasingly demand a single voice/data offering. Thus, the Commission should reject BellSouth's efforts to avoid that mandate.

2. BellSouth does not Provide Equivalent Access to Loops Served by NGDLC.

a. Physical Collocation Is Generally Unavailable and Uneconomic.

Q. IS COLLOCATION AT THE REMOTE TERMINAL AN OPTION FOR ACCESSING CUSTOMERS WHO ARE SERVED BY NGDLC AS PROPOSED BY BELLSOUTH?

A. It is true that collocation is an option for accessing serving to customers behind NGDLC, but as will be discussed below, it is a hollow offer. Even if physical, adjacent, and virtual collocation may be useful to some competitors in limited circumstances (and thus should remain a supplemental unbundling obligation that is available as an option), remote terminal collocation is *not* a practical mass-

[46] *Id.*

market solution and cannot provide a substitute for access to an entire loop. An ALEC wishing to serve a customer served by NGDLC at a remote terminal would have to collocate at EVERY remote terminal rather than at the central office. Yet a remote terminal may only serve several hundred customers while a central office can serve 10,000 customers. Because one central office can serve several remote terminals, the expense of collocation at each and every remote terminal to reach customers would be cost-prohibitive. The FCC itself recently recognized this fact in the *Line Sharing Reconsideration Order*, stating that as fiber deployment by ILECs is increasing, "collocation by competitive LECs at remote terminals is likely to be costly, time consuming, and often unavailable."[47] At present, according to the May 3, 2001 BST-Line Splitting Collaborative Meeting, collocation is the *only* option that BellSouth is offering to ALECs that want access to unbundled loops served by fiber-fed remote terminals.

Q. WHAT ABOUT ADJACENT COLLOCATION AS A SOLUTION FOR ACCESSING THESE LOOPS?

A. As I indicated above, due the costs for collocation at remote terminals, this is not an option for mass-market competition. Adjacent collocation amounts to essentially an overbuild of the incumbent's network. In this arrangement, the ALEC would construct its own remote terminal adjacent to BellSouth's remote terminal and supply cable copper sub-loops from the Bellsouth remote terminal over to the ALEC remote terminal. Although this is most likely the manner in

[47] *Line Sharing Reconsideration Order* at ¶ 13.

which BellSouth would implement the collocation provision for access to copper at the remote terminal because "internal" collocation space at remote terminals is seldom available, the prospects for adjacent collocation are no better than physical internal collocation at the remote terminal[48]. In fact, they are worse.

But adjacent collocation would force competitors to rebuild the incumbent LECs' network to achieve ubiquity, which is prohibitively expensive and has already been rejected by the FCC.[49] Adjacent collocation not only requires significant expense for the more complicated collocation itself, but may (and often will) also require ALECs to go through the time-consuming and costly process of obtaining rights of way and permits to construct adjacent facilities. Moreover, competitors must also deal with obstacles such as neighborhood aesthetics and possible zoning restrictions. And even though the costs of adjacent collocation are *greater* than the costs of physical collocation, there is no corresponding increase in the number of potential customers an ALEC can serve. Thus, adjacent collocation is not a mass-market substitute for access to an entire unbundled loop.

b. Spare Copper Is Not a Substitute for an Entire Next-Generation DLC Loop.

Q. CAN BELLSOUTH PROVIDE THE ALECS WITH ACCESS TO SPARE COPPER LOOPS RUNNING IN PARALLEL WITH LOOPS SERVED BY THE NGDLC AS AN OPTION TO PROVIDE XDSL SERVICE?

[48] Pursuant to BellSouth's proposal, "adjacent" collocation would be the only legitimate method or access loops served by fiber-fed next-generation DLC because internal space at the remote terminal would be unavailable.

[49] *UNE Remand Order* ¶ 6.

A. No. Spare copper does not provide ALECs with a viable alternative to the entire unbundled loop. Spare copper loop capabilities do not match those offered by the fiber-fed remote terminal loops. Fiber-fed loops provide a far superior service quality for transmitting voice and data compared to copper. This is precisely one of the reasons BellSouth is replacing copper loops with fiber-fed NGDLC. Yet, BellSouth is only agreeing to let ALECs use loops that even BellSouth will not use. Furthermore, DSL technologies are distance-sensitive. That means that the DSL service quality can change based on the length of copper between the customer's modem and the DSLAM. The longer the copper segment of the loop, the slower the speeds the customer can attain with DSL. If a remote terminal with NGDLC is placed 12,000 feet from a central office serving a customer an additional 12,000 feet from the remote terminal, a parallel copper loop from the central office that is serving such a customer would need to be 24,0000 feet long. A 24,000 foot copper loop is not equal in quality to the fiber-fed next-generation DSL copper sub-loop that is 12,000 feet. In fact, in this example line sharing normally would not be possible on the 24,000-foot loop based on existing engineering standards.

In sum, there are no viable alternatives to the unbundling of the entire loop. Thus, this Commission cannot, consistent with the Act's pro-competition and nondiscrimination requirements, allow BellSouth and its unregulated data affiliate to be the only entities that can effectively use the incumbent LEC's new loop architecture. Doing so would merely allow BellSouth to increase the scope of its current monopoly. Clearly, the Act bars such behavior.

Q. ARE THERE OTHER BENEFITS TO THE USE OF NGDLC LOOPS?

A. Yes. The use of fiber-fed next-generation DLC eliminates the need for loop qualification and loop conditioning. In contrast, the spare copper loops available to competitors may contain load coils or other DSL inhibitors that would either prevent DSL deployment or require conditioning for which BellSouth has sought to impose large non-recurring charges. Thus, long copper loops that require conditioning are not "equal in quality" to fiber-fed next-generation DLC loops that do not require such conditioning.

Q. PLEASE SUMMARIZE YOUR DISCUSSION REGARDING UNBUNDLED ACCESS TO NGDLC LOOPS?

A. It has become increasingly apparent that competitors in the local telephone business must be able to offer customers both voice and data services together as a package in order to be able to compete effectively with ILECs and their affiliates. BellSouth, however, has consistently precluded ALECs, such as AT&T, from effectively offering such a competitive package using the UNE-platform, chilling local competition in the process. It appears that BellSouth intends to extend that policy position to the broadband services it offers over the fiber-fed next-generation DLC architecture. BellSouth's refusal to effectively provide for the addition of xDSL capabilities to UNE-P voice service prevents ALECs' from competing in the markets for voice services, data services, and bundles of services. BellSouth is also currently resisting providing UNE Loop-Switch Port combinations through loops that are served via a remote terminal configuration *and* used in an integrated voice/data offering. BellSouth insists that the voice portion of the loop behind the remote terminals in the combined voice/data offer

come to an ALEC collocation arrangement. This is simply nothing more than another attempt for BellSouth to thwart UNE Loop-Switch Port combinations.

Clearly, such a practice essentially precludes UNE-P providers from reaching any customer who obtains data services over the fiber-fed next-generation DLC architecture. Absent regulatory action, the use of next-generation loop plant by incumbent LECs will allow them to thwart competition for customers who want voice and data services over a single loop as swiftly, seamlessly, reliably, and economically as when an ILEC and its affiliate provide voice and data services.

Q. PLEASE SUMMARIZE YOUR TESTIMONY ON xDSL.

A. Each and every BellSouth restriction or refusal to comply with the applicable FCC rulings, discussed above, serves no purpose other than to either increase AT&T's costs to provide xDSL service or prevent AT&T from providing xDSL service altogether. AT&T wants to reach all Florida telecommunications customers, including those who want bundled services. But BellSouth has done all that it can do to prevent this from occurring. By limiting access to splitters, refusing to modify its OSS for electronic processing of line splitting orders, as well as imposing upon AT&T additional restrictions for access to xDSL customers, BellSouth has accomplished its objective: If these conditions are not changed, BellSouth is and will remain the monopoly provider of advanced services in Florida.

IV. COLLOCATION

Q. PLEASE DESCRIBE BELLSOUTH'S OBLIGATIONS UNDER THE ACT TO PROVIDE COLLOCATION TO ALECs.

A. Section 271(c)(2)(B)(i) and (ii) of the Act, respectively, require ILECs to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)," and "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."

Section 251(c)(2) of the Act provides that BellSouth must make available:

> "[I]nterconnection with the local exchange carrier's network ... at any technically feasible point within the carrier's network; that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and on rates, terms and conditions that are just, reasonable, and nondiscriminatory."

ALECs use collocation as one of the primary methods of interconnection. Thus, Section 251(c)(2) of the Act compels BellSouth to provide for collocation (or more appropriately central office space) to achieve interconnection at any technically feasible point within BellSouth's network at the same level of quality that it provides central office space to itself.

47 U.S.C. § 251(c)(3) requires that BellSouth provide ALECs access to UNEs. This access must be provided in a "nondiscriminatory" manner at "any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Collocation is key for ALECs to have the ability to access UNEs.

Q. DOES THE FCC REGARD COLLOCATION AS A REQUIREMENT FOR § 271 APPROVAL?

A. Yes. The FCC has recognized the importance of collocation to interconnection and UNE access. The FCC stated in its Texas 271 Order,[50] "[t]he provision of collocation is an essential prerequisite to demonstrating compliance with checklist item (i) of the competitive checklist." The FCC stated further that to allow compliance with item (i), "a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are '*just, reasonable, and nondiscriminatory*' in accordance with section 251(c)(6) and our implementing rules."[51]

Q. DO YOU AGREE WITH MR. MILNER'S ASSERTION (DIRECT, P. 26, LINES 18-19) THAT BELLSOUTH PROVIDES COLLOCATION TO ALECS ON TERMS AND CONDITIONS THAT ARE JUST, REASONABLE, AND NON-DISCRIMINATORY?

A. No. BellSouth fails to provide for nondiscriminatory terms and conditions for collocation consistent with the Act and the FCC's rules. BellSouth has failed to provide the basic essentials of just, reasonable, and nondiscriminatory interconnection and access to UNEs that are required by the competitive checklist items listed in Section 271 of the Act for the following reasons:

a. BellSouth has the ability to unilaterally modify critical terms and conditions related to collocation without approval by this Commission or negotiation with collocators.

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[50] *See Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶ 64 (Texas 271 Order).

[51] Texas 271 Order at ¶ 64 (emphasis added).

b. BellSouth's recovery of "extraneous expenses" is neither consistent with TELRIC cost principles nor consistent with FCC rules.

c. BellSouth fails to provide for shared collocation in a form that is consistent with that required by the FCC's *Advanced Services Order.*[52]

d. BellSouth fails to provide for adjacent off-site collocation even though this arrangement is provided by similarly situated ILECs and permitted within the definition of the FCC's *Advanced Services Order.*

A. Unilateral Control Of Collocation Process.

Q. MR. GRAY STATES (P. 6) THAT BELLSOUTH WILL "NOT CHANGE ANY EXISTING COLLOCATION ARRANGEMENTS OR PROCEDURES FOR PROCESSING REQUESTS UNDER ANY EXISTING COLLOCATION CONTRACTS DURING THE LIFE OF SUCH CONTRACTS UNLESS THE FCC, OR A STATE COMMISSION, ISSUES NEW RULES REGARDING COLLOCATION." DO YOU AGREE?

A. No. BellSouth provides a detailed description of the rates, terms and conditions for collocation in the Collocation Handbook. However, BellSouth believes that it has the unilateral right to change its Collocation Handbook in any manner and at any time it chooses. In addition, because the BellSouth Collocation Handbook and Tariff[53] are more detailed than the interconnection agreements and contain the generally available terms and conditions that are more up to date with the FCC *Advanced Services Order* requirements various state commissions' orders

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[52] *In The Matter Of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket, No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking,* FCC 99-48 (rel. Mar. 31, 1999) ("*Advanced Services Order*").

[53] *See* Affidavit of Wayne Gray, Exhibit AWG-1 (Florida Access Services Tariff; Effective: July 15, 1996 with subsequent amendments; hereinafter "Access Services Tariff").

regarding collocation, ALECs must often rely upon the handbook and tariff for the terms and conditions that control collocation.

The problem, therefore, is that the BellSouth Collocation Handbook permits BellSouth to determine the terms and conditions for collocation without any Commission approval or ALEC input. In fact, BellSouth has and will continue to use its handbook to implement its unilateral interpretation on Commission orders relating to collocation. The end result is that BellSouth has and will continue to use its Collocation Handbook to *unilaterally* control collocation, and, therefore, interconnection and access to UNEs in Florida.

Q. CAN YOU PROVIDE AN EXAMPLE OF BELLSOUTH'S UNILATERAL CHANGES TO ITS COLLOCATION TERMS AND CONDITIONS?

A. Yes. For example, BellSouth states at the beginning of Version 9.2 (the most recent version at the time of this filing) of its Collocation Handbook that:

> This handbook is updated with version 9.2 effective November 1, 2000 in order to make the following changes to the Central Office Physical Collocation Contract: Inclusion of PSC rules from all states in order to consolidate all states into one contract. Deletion of a separate Florida Central Office Physical Collocation Contract. This update also makes the following corrections to the Remote Site Collocation Contract: Inclusion of PSC rules from all states in order to consolidate all states into one contract; addition of a rate element chart per state.

Importantly, BellSouth believes that it may change its handbook not only to reflect new Commission orders, but for whatever reason BellSouth deems appropriate regardless of its impact on ALECs.

Q. DO YOU HAVE AN EXAMPLE OF BELLSOUTH'S UNILATERAL CONTROL OF THE COLLOCATION PROCESS THAT IS SPECIFIC TO AT&T?

A. Yes. One of the best examples is BellSouth's insistence on where the Point of Termination ("POT") frame is placed relative to the collocation cage. It is AT&T's preference to place the POT frame inside its own collocation cage. However, because AT&T's interconnection agreement language is silent on the specifics of this situation, BellSouth places the frame outside of he cage approximately 50 feet from the collocation arrangement[54]. AT&T has experienced situations in Florida where if AT&T does not agree with BellSouth on the placement of this frame – a frame that AT&T is responsible for purchasing – BellSouth will halt the collocation construction. The bottom line is that without negotiation, arbitration, or Commission review, BellSouth unilaterally changes its practices and imposes its own interpretation of interconnection agreement language on ALECs without recourse for the ALEC. BellSouth does the same thing with its unilateral interpretation of FCC rules.

Q. IS THERE ANOTHER OPTION FOR ORDERING COLLOCATION IN FLORIDA?

A. Yes. In Florida, BellSouth offers another option for ordering collocation – BellSouth's Access Services Tariff for Expanded Interconnection Service (EIS).[55] The Access Services Tariff provides for many of the same terms and conditions for collocation that are found in BellSouth's Collocation Handbook. However, BellSouth can discriminate against CLECs by forcing them to rely upon the terms

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[54] In earlier collocation arrangements, BellSouth was more than willing to allow AT&T to place the POT frame within its collocation cage.

[55] *See* Affidavit of Wayne Gray, Exhibit AWG-1 (Florida Access Services Tariff; Effective: July 15, 1996 with subsequent amendments; hereinafter "Access Services Tariff").

and conditions in the Collocation Handbook, which are different than those contained in the tariff, if their interconnection agreement has not been updated to reflect new Commission orders, court decisions and FCC decisions. CLECs should be allowed to access all available options for collocation in a nondiscriminatory manner without having to take on the risk on BellSouth changing those terms and conditions at its own discretion.

Q. HOW DOES BELLSOUTH'S UNILATERAL CONTROL OVER COLLOCATION TERMS AND CONDITIONS RELATE TO THIS PROCEEDING?

A. As I stated previously, collocation that permits appropriate interconnection and access to UNEs on appropriate and nondiscriminatory terms and conditions is a key component to Section 271 checklist compliance. Because BellSouth has unilateral control over collocation terms and conditions, BellSouth cannot meet the Section 271 checklist items for interconnection and access to UNEs.

B. "Extraneous Expenses"

Q. IS BELLSOUTH'S RECOVERY OF "EXTRANEOUS EXPENSES" CONSISTENT WITH TELRIC COST PRINCIPLES AND FCC RULES?

A. No. In Version 8 of BellSouth's Collocation Handbook, BellSouth incorporated the following provision:

> Should BellSouth discover that unexpected major renovation or upgrade will be required in order to facilitate physical collocation, BST will share the costs of these expenses among collocators benefiting from such work based on the number of square feet being requested. Major renovation may include, but not be limited to, ground plane

addition, asbestos abatement, mechanical upgrade, major HVAC upgrade, separate egress, ADA compliance.[56]

It is important to note that this same exact provision is not found in the BellSouth Collocation Handbook Version 9.2. Based on other provisions contained in Version 9.2 of the handbook, and AT&T's actual experiences, however, BellSouth is continuing to require collocators to pay for costs similar to these in nature.

Payment of these types of costs is not appropriate because it is inconsistent with TELRIC principles. TELRIC requires that the costs for UNEs or interconnection (of which collocation is a part) be based on the long-run incremental cost based on total demand. Thus, heating, ventilating and air conditioning ("HVAC") cost, for example, should be based on the cost of providing HVAC systems to the entire central office and prorated to the users of the central office either on the amount of space occupied or by another mechanism tied directly to the heating or air conditioning required in the space. Requiring the collocator to pay for the upgrade of the HVAC system simply because the collocator had the most recent need for HVAC does not reflect the TELRIC approach. This charge is also discriminatory towards the collocator because the collocator is not receiving the same cost efficiency benefits that BellSouth is enjoying. The same could be said for many of the other areas that are included in the list of items for which BellSouth may charge for "extraneous expenses."

[56] BellSouth Collocation Handbook, Version 8, June 17, 1999, Effective July 17, 1999, § 3.21.

Q. WHAT IS THE MOST COMMON "EXTRANEOUS EXPENSES" ISSUE FACED BY ALECS?

A. The most common issue that AT&T and all other ALECs are experiencing with this discriminatory approach to cost recovery is with BellSouth's DC power augments and charges. BellSouth's Collocation Handbook and BellSouth's practices require charging the collocator, on an "individual case basis," for the cost of the DC power augment when BellSouth does not have sufficient capacity in its DC power plant to provide DC power to the collocation arrangement.[57]

Q. IS BELLSOUTH INVOKING A DOUBLE RECOVERY FOR ITS OWN COST?

A. Yes. Not only does BellSouth charge an ALEC on nonrecurring charge for the augment to the DC power plant, but BellSouth also charges collocators generally for the recurring costs to recover BellSouth's initial investment in the DC power plant.[58] Double recovery (recovering the nonrecurring purchase of the augmented DC power plant and recovering BellSouth's general investment in the entire DC power plant through non-recurring charges) is plainly inconsistent with TELRIC and is not permitted according to Section 252(d)(2) of the Act.

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[57] BellSouth Collocation Handbook, Version 9.2, Section 6.7, subsection 7.8.2 notes: "If BellSouth has not previously invested in power plant capacity for collocation at a specific site, CLEC-1 has the option to add its own dedicated power plant; provided, however, that such work shall be performed by a BellSouth Certified Supplier who shall comply with BellSouth's guidelines and specifications. Where the addition of CLEC-1's dedicated power plant results in construction of a new power plant room, upon termination of CLEC-1's right to occupy collocation space at such site, CLEC-1 shall have the right to remove its equipment from the power plant room, but shall otherwise leave the room intact." There is no place that I could locate in the Collocation Handbook that handled the flip side of this provision: when BellSouth has not previously invested in power plant capacity for collocation and the ALEC does not want to avail itself of the option of building its own power plant.

[58] BellSouth Collocation Handbook, Version 9.2, § 6.7, subsection 7.8.1.

Q. DO YOU HAVE AN EXAMPLE OF BELLSOUTH CHARGING AT&T FOR DC POWER AUGMENTS?

A. Yes. BellSouth routinely charges AT&T large nonrecurring charges related to cabling and DC power augments *in addition* to the recurring DC Power Consumption rate, which is the only charge BellSouth should be allowed to charge for recovering its investment in the DC power plant. Specifically, in Florida, BellSouth imposed an average nonrecurring charge of almost $97,000 on AT&T to extend DC power into AT&T's collocation cage. (See Exhibit SET-3 for a list of the central offices where AT&T has paid these nonrecurring charges.) AT&T does not know, however, how much of that is for cabling versus the quantity that is for upgrading the power plant. However, based on my experience in these types of costs, it appears the majority of the $97,000 is likely going towards upgrading the power plant, which leads to the double-recovery discussed above. In short, BellSouth's rates for DC power are inconsistent with the Act and FCC guidelines as BellSouth's DC power cost recovery via individual case basis augment charges are not reviewed by this Commission and are inconsistent with TELRIC principles.

Q. HOW HAVE OTHER COMMISSIONS DEALT WITH THE RECOVERY OF THESE COSTS?

A. In Texas, SWBT is not permitted to charge collocators for DC power augments in any form. SWBT must recover the investment in the DC power plant on a nondiscriminatory basis and recover the cost for the total demand placed on the power plant (SWBT's and collocators' demand). In Texas, however, SWBT is

prohibited from charging for DC power augments – the only rate that SWBT can and does charge is the recurring DC Power Consumption rate.

C. Shared Collocation.

Q. DO YOU AGREE THAT BELLSOUTH PROVIDES FOR SHARED COLLOCATION IN A FORM THAT IS CONSISTENT WITH THAT REQUIRED BY THE FCC'S *ADVANCED SERVICES ORDER*?

A. No. BellSouth is not providing shared collocation in a manner consistent with the *Advanced Services Order*. BellSouth's witness, Mr. Gray, claims that ALECs may choose shared collocation. The type of collocation Mr. Gray describes, however, does not meet the requirements of the *Advanced Services Order*. Indeed, Mr. Gray's affidavit and BellSouth's Collocation Handbook describe "Shared (Subleased) Caged Collocation"[59] in the same way that the FCC describes it in the *Advanced Services Order* as subleased collocation and not shared collocation.

Q. HOW DOES THE FCC DESCRIBE SHARED COLLOCATION?

A. The FCC defines "shared collocation" as:

> [A] caged collocation space shared by two or more competitive LECs pursuant to terms and conditions agreed to by the competitive LECs. In making shared cage arrangements available, incumbent LECs may not increase the cost of site preparation or nonrecurring charges above the cost for provisioning such a cage of similar dimensions and material to a single collocating party. In addition, the incumbent must prorate the charge for site conditioning and preparation undertaken by the incumbent to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually

[59] BellSouth Collocation Handbook, Customer Guide, CG-COLH-001, Issue 9.2, November, 2000, § 6.3, subsection 3.4.

> collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating carrier based on the percentage of the total space utilized by that carrier. In other words, a carrier should be charged only for those costs directly attributable to that carrier.[60]

The FCC briefly references "subleased" collocation and states that the incumbent LEC cannot prevent a caged collocation user from allocating a portion of its cage to another collocator. However, the emphasis of this paragraph is that incumbent LECs must make shared collocation arrangements available, must construct the collocation cage, and must not increase the cost of site preparation or nonrecurring charges above the cost for provisioning such a cage of similar dimensions and material to a single collocating party. The Shared (Subleased) Caged Collocation section of BellSouth's Collocation Handbook, however, does not contain provisions covering shared cage collocation.[61]

In addition, FCC rules also require that the ILEC prorate the charge for site conditioning and preparation undertaken by the ILEC to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage. This result is determined by the total charge for site preparation and allocates that charge to a collocating carrier based on the percentage of the total space utilized by that carrier.[62] The FCC's purpose

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60 FCC *Advanced Services Order* ¶ 41.

61 BellSouth Collocation Handbook, Customer Guide, CG-COLH-001, Issue 9.2, November, 2000, § 6.3, subsection 3.4.

62 FCC *Advanced Services Order* ¶ 41.

for this requirement is to permit a collocator to occupy space within a cage that had been constructed generally for multiple collocators.

It is important for this Commission to recognize that several ILECs already have tariff language implementing the shared collocation (or common collocation as it is sometimes defined) definition outlined by the FCC in the *Advanced Services Order*. Specifically, SWBT in Texas, Missouri, Kansas, and Oklahoma provides for shared collocation in tariffs for these states. Pacific Bell provides for shared collocation in California. Ameritech provides for shared collocation in at least Michigan. Further, Verizon provides for shared collocation (referred to as SCOPE in its tariffs) throughout its former NYNEX and Bell Atlantic territories. There is absolutely no reason for BellSouth not to make this form of collocation available in Florida as well.

Q. HAS THE FLORIDA COMMISSION CONSIDERED THIS ISSUE?

A. Yes. The Florida Commission ruled on this issue in Docket Nos. 981834-TP and 990321-TP.

Q. WHAT DID THE FLORIDA PSC DECIDE IN RELATION TO SHARED COLLOCATION?

A. Consistent with the FCC's guidance on this same issue, the Florida PSC concluded that:

> (W)e acknowledge that FCC Order 99-48 clearly states that the ILEC must permit each ALEC to order UNEs to and provision service from the shared collocation space, regardless of who the original collocator is and state our disagreement with BellSouth witness Hendrix's assertion that the host ALEC should be the responsible party to submit applications for initial and additional equipment

placements of its guests because the ILEC may not impose unnecessary requirements on how or what the ALECs might need for their own network infrastructure according to the FCC's Order.[63]

Consistent with this acknowledgement, the Florida PSC concluded: "ALECs shall not be required to designate a host ALEC and shall be able to order directly from the ILEC any addition to its network."[64]

Q. IS BELLSOUTH COMPLYING WITH THIS REQUIREMENT IN FLORIDA?

A. No. Section E 20.2.3(C) of the Access Services Tariff (as amended and effective on November 14, 2000) makes clear that BellSouth requires that a CLEC be designated as a "host" and that the "host" CLEC must notify BellSouth of any "guests" that intend to occupy space within the "host" collocation arrangement. In short, BellSouth is directly in conflict not only with the FCC's requirements for shared collocation, but also the requirements of the Florida PSC in regards to shared collocation.

D. Impact of Recent FCC Order on Collocation

Q. DOES THE RECENT FCC ORDER ON COLLOCATION RESPONDING TO THE DC CIRCUIT COURT'S REMAND IMPACT ANY FLORIDA DECISIONS?

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63 *In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.* Docket No. 981834-TP; *In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.* Docket No. 990321-TP, Order No. PSC-00-0941-FOF-TP (May 11, 2000) at 38-39.

64 *Id.* at 39

A. Yes. On November 17, 2000, this Commission issued a reconsideration of some of its decisions relating to collocation – reconsiderations that reversed some positions that were important to collocators.[65] The standard that the Commission used to make these reconsiderations was "whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order."[66] Interestingly, in many instances the DC Circuit Court merely remanded issues to the FCC, but nonetheless, this Commission its position on these issues. Specifically, there is at least one issue that this Commission made reconsideration for which the FCC has now responded to the DC Circuit Court's remand that I would like to point out: Cross-Connects between Collocators.[67]

Q. HOW HAS THE FCC ORDER AFFECTED THIS COMMISSION'S DECISION ON CROSS-CONNECTS BETWEEN COLLOCATORS?

A. Based on the DC Circuit Order, this Commission made the following reconsideration:

> Therefore, we reconsider our decision to rely upon the FCC's rules regarding cross-connects, because the basis for that decision has now been vacated. Furthermore, we acknowledge the clear ruling of the DC Circuit and refrain from determining that cross-connects between ALECs are required. In conformance with the DC Circuit's ruling, we determine that the ILECs are not required to allow collocators to cross-connect. We note, however, that there

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65 *Order Granting in Part and Denying in Part Motion for Reconsideration*, Florida Public Service Commission , Re: Docket Nos. 981834-TP, 990321-TP, Order No. PSC-00-2190-PCO-TP, Issued: November 17, 2000 (hereafter "Florida Collocation Reconsideration Order").

66 *Id.* at p. 4.

67 *Id.* at p. 13.

is significant testimony in the record regarding the efficiency of allowing cross-connects.[68]

However, the FCC has now made it clear that incumbents must make collocator-to-collocator cross-connects available to ALECs.[69] Specifically, the FCC notes: "The Commission, however, finds that an incumbent carrier must provision cross-connects between collocated carriers, and requires an incumbent carrier to provide such cross-connects upon reasonable request."[70] Given that the basis for the Florida Commission's reconsideration (the DC Circuit Court Remand) has now been addressed by the FCC, and that the Florida PSC already believed "that there is significant testimony in the record regarding the efficiency of allowing cross-connects," it would be appropriate for the Florida Commission to revert to its original position that ALECs should be permitted to utilize and that BellSouth provide collocation-to-collocation cross-connects.

V. CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. My testimony establishes that BellSouth fails to comply with the Section 271 checklist because of its practices relating to xDSL and collocation. These issues are very important to competition, and BellSouth's failure to meet its legal obligation has adversely impacted ALEC entry and ability to compete. For these

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[68] *Id.* at p. 16.

[69] Press Release Re: *FCC Approves Rules Designed to Give New Entrants Access to Incumbent Local Phone Companies' Networks*, July 12, 2001.

[70] *Id.* at p. 2.

reasons, the Commission should find that BellSouth does not yet comply with Section 271 checklist requirements (i) and (iv).

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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Canton, Georgia 30114

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678-493-9701 (FAX)

KALEO CONSULTING EMPLOYMENT EXPERIENCE:

TELECOMMUNICATIONS AND FINANCIAL CONSULTANT (Jan 1997-Present)

- Provide expert testimony on technical issues surrounding the unbundling and interconnection to incumbent Local Exchange Company (ILEC) networks. The testimony includes analysis of ILEC unbundling and interconnection per the Telecommunications Act of 1996 (Section 271) as well as other technical issues of local market entry. Further, the testimony includes evaluating and conducting unbundled element and interconnection cost studies.
- Provide expert testimony on the level and extent of facilities-based competition in the local market place. This testimony which quantitatively and economically evaluates the extent of competition results in an assessment of ILEC compliance with Section 271 proceedings.
- Develop models to aid companies in developing market entry plans for the local telecommunications market. This assistance includes evaluating what market entry alternatives as well as which geographies provide the best profit opportunities for the new entrant.

AT&T EMPLOYMENT EXPERIENCE:

DISTRICT MANAGER - CONNECTIVITY NETWORK PLANNING - LI&AM (Feb 1996-Dec 1996)

- Managed the development of AT&T's Infrastructure Plans of Record for the Southwest region. These plans entailed defining the right mix of built and leased infrastructure to meet AT&T's local offer needs at the least cost.
- Managed AT&T's dedicated access inventory in the Southwest region. This effort involved identifying the optimum supplier(s) in each market for AT&T's access needs to meet both financial and strategic objectives.

MANAGER - STRATEGIC ACCESS PLANNING - Access Strategic Planning (Nov 1994-Feb 1996)

- Managed the development of strategic models to analyze alternatives for entering the local market. These models considered various technologies for entering local that would optimize the contribution to AT&T from a revenue, expense, and capital perspective.

RE-ENGINEERING MANAGER - Network Operations (Jul 1994-Oct 1994)

- Directed a CCS-NSD management-union team in re-engineering the engineering, provisioning, and maintaining of the Operator Services network. Delivered a re-engineered process that reduced operational expense significantly while mitigating the impacts on customers and employees.

PROJECT MANAGER/SYSTEM ENGINEER - CCS Centralized Test Center (Jan 1992-Jun 1994)

- Coordinated implementation plans and system development for new services and network elements in the Common Channel Signaling (CCS) Network. The planning scope included provisioning, monitoring, and maintaining the T1.5 facilities for the CCS signaling circuits.
- Acquired funding (development, capital, and head count) through writing and defending business cases in support of projects for new services or network elements in the CCS Network. Upon approval, coordinated the implementation of system development and capital projects affecting the CCS Centralized Test Center.

AT&T EMPLOYMENT EXPERIENCE (cont.):

DEPARTMENTAL QUALITY MANAGER - Network Operations (Jan 1990-Jan 1992)

- Developed the Network Operations Quality Management System and implemented it into an organization of 5000 people. Implementation required gaining organizational support for staffing and training 40 Quality Specialists and managing their efforts in transferring the quality technology into Network Operations.

OPERATIONS SUPERVISOR - Regional Network Service Center (Nov 1988-Dec 1989)

- Managed the Regional Network Service Center serving AT&T customers in the Southeastern United States through correcting their service troubles. Responsibilities included leading a team of 20 associates who responded to over 2000 customer troubles per month and escalating with Local Exchange Companies to remove barriers to trouble resolution.

4ESS SWITCH ENGINEER - Network Engineering Services (Dec 1987-Nov 1988)

- Identified current levels of asset utilization, analyzed future needs, and developed a capital budget to purchase and provision the necessary equipment to efficiently meet customer needs. Managed the implementation of over $10M in capital projects.

GENERAL ELECTRIC EMPLOYMENT EXPERIENCE:

RESEARCH AND DESIGN ENGINEER - Simulation and Control Systems (Jun 1986-Dec 1987)

- Designed and developed a major sub-system for a high-speed graphics simulator supporting both defense and commercial customers.
- Designed and developed a Very Large-Scale Integrated (VLSI) Chip with over 80,000 transistors used in the video display sub-system for the high-speed graphics simulator.

ACHIEVEMENTS:

- Developed the strategic planning system used throughout AT&T Connectivity Planning that identifies the mix of connectivity options (Wireless, CATV, LEC) that AT&T should implement within a market. This model is being used to determine AT&T's local market entry strategy for the entire country.
- Re-engineered the Operator Services operations processes through a collaborative effort of management and union employees yielding $19.9 million in operational expense savings annually while making the new organization more customer responsive.
- Planned and implemented a modification to the CCS Network data collection architecture resulting in operational expense savings of $7.3 million per year.
- Significantly advanced the implementation of Total Quality Management in Network Operations through the Quality Specialist strategy initiative begun in 1990.
- Completed development of a Win Back Program for non-AT&T customers who called the Regional Network Service Center in error. This program generated over $1.6 million in new revenue for AT&T in 1989.
- Designed and developed a Management Information System enabling the measurement of asset utilization in switching equipment at any point in time. The use of the information provided with this system and the resulting changes in engineering practices reduced Network Operations under-utilized switching assets by approximately $250 million.
- Re-engineered the installation process for switching equipment resulting in a 70% reduction in the installation interval.

- Designed and developed the largest VLSI chip with General Electric at that time in only five months.

EDUCATION:

August 1990: **Masters of Business Administration Degree - Finance**
Georgia State University
Atlanta, Georgia

December 1986: **Bachelor of Science Degree - Electrical Engineering**
Auburn University
Auburn, Alabama

BELLSOUTH

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August 16, 2000

EX PARTE

STAMP and RETURN

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th St. SW
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Ms. Salas:

This is to inform you that on August 15, 2000 Steve Klimacek, Tommy Williams, Randy Sanders, Jonathan Banks, and I, representing BellSouth, met with Commission staff to discuss BellSouth's policies on line-splitting. The Commission staff participating in the discussion included Jake Jennings, Kathy Farroba, John Stanley, Jon Reel, and Jessica Rosenworcel of the Common Carrier Bureau's Policy and Program Planning Division and Andrea Kearney and Jim Carr of the Office of General Counsel. The attached document formed the basis for our discussion.

We are filing notice of this ex parte meeting in the docket identified above, as required by Section 1.1206(b)(2) of the Commission's rules. Please associate this notice with the record of that proceeding.

Sincerely,

Kathleen B. Levitz

Kathleen B. Levitz

Attachment
cc: Jake Jennings (w/o attachment)
Kathy Farroba (w/o attachment)
John Stanley (w/o attachment)
Jessica Rosenworcel (w/o attachment)
Jon Reel (w/o attachment)
Andrea Kearney (w/o attachment)
Jim Carr (w/o attachment)

BellSouth Ex Parte

Line Splitting and UNE-P

August 15, 2000

Line Splitting and UNE-P

1. Line Splitting

- Paragraph 324 of the FCC's Order authorizing SBC to provide in-region InterLATA service defines line splitting as a situation where the voice and data service are being provided by competing carrier(s) -- other than the incumbent LEC -- over a single loop.

- In paragraph 325 of that Order the FCC further stated that incumbent LECs have an obligation to permit line splitting where the competing carrier purchases the entire loop and provides its own splitter. In paragraph 327 the FCC further stated that the incumbent LEC is not required to furnish the splitter.

- BellSouth is prepared to permit CLECs to do line splitting as long as competitive carriers provide their own splitter.

- Line splitting operational procedures must be developed.

2. UNE-P

- ❖ UNE-P is a combination of a loop and a port.

- ❖ To access the high frequency spectrum on a loop, a data provider must use a splitter. A splitter, however, is not part of a loop. Consequently, if a splitter is on a loop or is to be attached to a loop, a loop and port will lose its status as a UNE-P.

- ❖ Line Splitting on UNE-P is thus a misnomer.

- ❖ BellSouth will accommodate line splitting with a loop and port that is delivered to a collocation space.

3. Steps Necessary to Implement Line Splitting

A. Interconnection Agreements

- The voice provider will need an interconnection agreement that authorizes it to buy loops and ports.

- The voice provider, the data provider, or both the voice and data providers will need a collocation agreement and will also need authorization to order cross-connects.

B. Splitter Ownership

- BellSouth's proposed architecture is for the CLEC to own the splitter.

C. OSS Ordering and Provisioning Systems

- BellSouth envisions that in the near future a minimum of two service requests will be required. Modifications of BellSouth's OSS's will be necessary.

D. Agency Issues

- BellSouth proposes a single customer of record for line splitting.

- BellSouth does not wish to be in the middle of disputes between a competing voice and data provider.

4. Collocation Issues

- BellSouth allows CLECs to sublease collocation space without any additional charges, unless the guest CLEC requires additional power or floor space.

- The guest CLEC's use of subleased collocation space must be consistent with the contractual obligations that exist between BellSouth and the host CLEC.

- BellSouth will permit CLECs to sublease a virtual collocation space. BellSouth proposes to have the host CLEC as its only point of contact.

- BellSouth currently provides in-office wiring between a shared collocation space and BellSouth-provided network elements.

5. Pricing

	Monthly	Non-recurring
❖ Georgia, Zone 1		
❖ UNE-P (Conversion as-is only)	$12.59	$ 2.01
❖ Loop (No IDLC)	$14.21	$42.54
❖ Port	$ 1.85	$17.16
❖ Total loop and port	$16.06	$59.70

❖ Collocation must be purchased in addition

BellSouth Cost Analysis for Power Augment Collocation Cost for Florida

CLLI and BST Project Number	Collo-Type	Address	50 Percent Payment Fees Paid	Single Power Augment Cost	Balance-Subject to True-Up	Comments
WPBHFLRB-ATX-01	Caged	3640 Avenue East	$71,262.50	$99,332.00	$61,597.50	
PRRNFLMA-ATX-01	Caged	16645 S. Federal Hwy.	$110,452.50	$86,000.00	$67,166.50	
PMBHFLMA-ATX-02	Caged	1180 Banks Road	$65,898.50	$44,000.00	$45,398.00	
PMBHFLFE-ATX-02	Caged	1230 N.Federal Hwy.	$68,464.50	$44,000.00	$47,964.50	
PMBHFLCS-ATX-01	Cageless	9420 Royal Palm Blvd.	$95,649.26	$158,992.00	$95,649.26	
ORLDFLPH-ATX-01	Caged	5120 Silver Starr Road	$48,245.00	$37,000.00	$39,885.00	
ORLDFLMA-ATX-01	Caged	45 N. Magnolia Avenue	$60,948.00	$37,000.00	$33,770.00	
ORLDFLCL-ATX-01	Caged	2315 E. Central Ave.	$59,664.83	$81,727.00	$59,664.83	
ORLDFLAP-ATX-01	Caged	7320 Lkunderhill Road	$92,295.50	$116,000.00	$83,045.50	
NDADFLBR-ATX-01	Caged	18560 N.W. 27th Avenue	$136,934.45	$191,434.00	$133,184.45	
NDADFLAC-ATX-01	Caged	2100 N.E. 164th Street	$66,385.50	$73,371.00	$62,635.50	
MIAMFLWM-ATX-01	Caged	1155 S.W. 67th Avenue	$84,909.00	$97,000.00	$75,659.00	
MIAMFLSO-ATX-01	Caged	10701 S.W. 88 Street	$104,240.50	$158,280.00	$100,490.50	
MIAMFLRR-ATX-01	Caged	6100 S.W. 57th Avenue	$92,766.00	$71,000.00	$72,265.50	
MIAMFLAP-ATX-02	Caged	5275 N.W. 36th Street	$91,270.50	$76,000.00	$70,770.50	
JCVLFLSM-ATX-01	Caged	2048 Hendrick Avenue	$86,433.56	$105,430.00	$82,683.56	
JCVLFLSJ-ATX-01	Caged	6234 St.Augustine Road	$99,124.50	$27,000.00	$78,624.50	
JCVLFLCL-ATX-01	Caged	424 N. Pearl Street	$62,955.50	$37,000.00	$42,455.50	
JCVLFLBW-ATX-01	Caged	11317 Beach Blvd.	$103,359.00	$130,862.24	$99,609.00	
HLWDFLWH-ATX-01	Caged	250 S.W. 62nd Avenue	$65,735.50	$43,000.00	$45,235.50	
HLWDFLPE-ATX-01	Caged	61 W. 98th Avenue	$165,189.00	$107,000.00	$111,341.00	
FTLDFLSU-ATX-01	Caged	8750 W. Oakland Blvd.	$71,064.00	$121,630.00	$71,064.00	
FTLDFLPL-ATX-01	Caged	4036 Bryan Blvd.	$79,419.50	$109,936.00	$70,169.50	
FTLDFLJA-ATX-01	Caged	10141 W. Broward Blvd.	$93,305.00	$109,000.00	$72,805.00	
FTLDFLCY-ATX-01	Caged	5395 14th Avenue	$80,360.50	$119,886.00	$71,110.50	
FTLDFLCR-ATX-01	Caged	2530 E. Oakland Park Blvd.	$80,092.00	$110,371.00	$76,341.50	
DLBHFLMA-ATX-01	Caged	321 S.E. 2nd Street	$107,007.00	$161,299.00	$103,256.00	
BYBHFLMA-ATX-01	Caged	221 S.E. Fourth Street	$80,352.00	$115,496.00	$76,602.00	
BCRTFLBT-ATX-01	Caged	5140 Congress Street	$93,526.50	$134,936.00	$93,526.50	
TOTALS:			$2,517,310.10	$2,803,982.24	$2,143,970.60	