

HOPPING GREEN SAMS & SMITH

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET

POST OFFICE BOX 6526

TALLAHASSEE, FLORIDA 32314

(850) 222-7500

FAX (850) 224-8551

FAX (850) 425-3415

www.hgss.com

JAMES S. ALVES
BRIAN H. BIBEAU
RICHARD S. BRIGHTMAN
DIANE W. CARR
KEVIN B. COVINGTON
T. SPENCER CROWLEY, III
BRIAN A. CRUMBAKER
PETER C. CUNNINGHAM
RALPH A. DeMEO
WILLIAM H. GREEN
MATTHEW L. HICKS
WADE L. HOPPING
GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
FRANK E. MATTHEWS
RICHARD D. MELSON
KYLE V. MITCHELL

ANGELA R. MORRISON
ERIC T. OLSEN
GARY V. PERKO
MICHAEL P. PETROVICH
DAVID L. POWELL
CAROLYN S. RAEPPLE
DOUGLAS S. ROBERTS
D. KENT SAFRIET
GARY P. SAMS
TIMOTHY G. SCHOENWALDER
ROBERT P. SMITH
DAN R. STENGLE
CHERYL G. STUART
JENNIFER A. TSCHETTER
—
OF COUNSEL
ELIZABETH C. BOWMAN

Writer's Direct Dial No.
(850) 425-2313

November 6, 2001

BY HAND DELIVERY

Blanca Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 960786-A-TL

Dear Ms. Bayó:

Enclosed for filing on behalf of WorldCom, Inc. and its operating subsidiaries are the original and fifteen copies of its Post-Hearing Brief. A copy of the brief in Word 97 format is enclosed on diskette.

By copy of this letter, this document has been furnished to the parties on the attached service list. If you have any questions regarding this filing, please give me a call at 425-2313.

Very truly yours,



Richard D. Melson

RDM/mee
Enclosure
cc: Certificate of Service

DOCUMENT NUMBER-DATE

14065 NOV-60

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth)
Telecommunications, Inc.'s entry)
into interLATA services pursuant)
to Section 271 of the Federal)
Telecommunications Act of 1996.)
_____)

Docket No. 960786-A-TL

Filed: November 6, 2001

WORLDCOM'S POST-HEARING BRIEF

WorldCom, Inc. and its operating subsidiaries (WorldCom) hereby files its Post-Hearing Brief.

EXECUTIVE SUMMARY

Before BellSouth can obtain authority to enter the interLATA market in Florida, it must prove compliance with Track A of Section 271(c)(1) of the Telecommunications Act of 1996 (Act) and must prove compliance with the fourteen point checklist in Section 271(c)(2)(B). The purpose of these provisions is to require BellSouth to demonstrate that its local market is open to competition before it is granted interLATA authority. As detailed in the discussion of specific issues later in this brief, BellSouth has failed to submit the required proof in this proceeding. The Commission should therefore recommend to the Federal Communications Commission (FCC) that BellSouth's 271 application be denied.

One of the most important ways in which BellSouth fails the competitive checklist is its lack of TELRIC-based rates for unbundled network elements (UNEs). BellSouth to date has not provided this Commission with cost studies based on a single network design as required by the FCC's TELRIC-pricing rules. Coupled with other flaws in BellSouth's cost methodology, the result is that BellSouth charges UNE rates which make it impossible for competitors to enter the Florida local residential market on a widespread basis. In fact, BellSouth itself could not operate profitably in Florida if it were required to provide its services by purchasing UNEs at the prices it demands from competitors.

In making its recommendation to the FCC on Section 271 issues, the Commission should not limit itself to considering the minimum standards established by the FCC. The Commission instead should exercise its independent judgment about the existence and viability of competition in Florida, based on the record in this case. That record shows that many of BellSouth's policies and practices have the effect, if not the purpose, of impeding competition. For example, BellSouth's policy restricting the provision of UNE combinations and its policy of refusing to provide its DSL-based internet service over a competitor's UNE-based voice line have no apparent justification other than to make competitive entry more difficult. To the extent the Commission determines that any of BellSouth's policies and practices are not in the best interests of Florida consumers, the Commission should exercise its state law authority to impose additional pro-competitive requirements on BellSouth. Such requirements are permitted under federal law so long as they are not inconsistent with the Act.¹

The Commission has bifurcated this 271 proceeding, and is dealing with OSS issues through the independent third party test and an accompanying workshop process. Nevertheless, the provision of adequate OSS is a prerequisite to a determination of compliance with many checklist items, since most items require nondiscriminatory access to preordering, ordering, provisioning, maintenance and billing OSS for the related element or service. Based on commercial experience in Georgia, WorldCom will demonstrate in the OSS phase of this docket that BellSouth's OSS is not adequate to support competitive entry on a mass market basis. Until the Commission has heard this evidence, and the third party test and related proceedings are complete, the Commission cannot make a final determination that BellSouth has proved compliance with the checklist items that depend on adequate OSS. The order issued in this phase of the docket should therefore clearly state that any findings of checklist compliance are

¹ Section 261(c) of the Act provides:

(c) ADDITIONAL STATE REQUIREMENTS. --Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.

preliminary and conditional, and remain subject to modification based on the results of the OSS phase of the proceeding.

SPECIFIC ISSUES

ISSUE A: In rendering its recommendation on BellSouth's §271 application, what is the nature of the Commission's consultative role?

****WorldCom:** The Commission's role is to inform the FCC of the status of competition in Florida. The Commission should make findings regarding BellSouth's compliance with the FCC's minimum standards for checklist compliance and should note any additional steps that must be taken to ensure that Florida consumers will enjoy the benefits of competition.**

The Commission Should Take a Broad View of Its Role and Base its Consultation on What is Best for Florida Consumers

[I]f we're going to provide any meaningful input and if this hearing has any meaning or purpose, we're in the role of making our own independent determination and not just basically conducting a pre-test for the FCC to whether they have met what the FCC has already described to be their standard. If that were the case, just avoid us and go straight to the FCC.

(Commissioner Deason, T 726)

The fundamental purpose of Section 271 of the Act is to allow a Bell operating company, in this case BellSouth, to enter the interLATA long distance market in a state only after it has taken the steps necessary to open its local market to competition. In order to prove that its local market has been opened, BellSouth must demonstrate to the FCC that it has complied with either "Track A" or "Track B" of Section 271(c)(1), and that it is providing or generally offering access and interconnection in a manner that meets the requirements of the "14-point competitive checklist" in Section 271(c)(2).

In ruling on prior Section 271 applications, the FCC has provided guidance on the minimum standards that must be met before a Bell operating company (BOC) can be found to

comply with the requirements of Section 271(c). This has been an evolving, and increasingly detailed, set of standards. As the FCC's list of the unbundled network elements (UNEs) that an ILEC must offer has changed, for example, applicants for interLATA authority have been required to demonstrate that they are offering all currently required UNEs in order to meet the requirements of checklist item (ii). The minimum standards applied by the FCC in reviewing 271 applications will undoubtedly continue to evolve as new competitive issues are considered, or old issues are reconsidered, by the FCC, the state commissions, and the courts.

Under Section 271(d)(2) of the Act, the FCC must consult with the Florida Commission prior to making any determination regarding BellSouth's compliance with the requirements of Section 271(c) in Florida. In fulfilling this consultative role, the Commission should explicitly consider the minimum standards that the FCC has applied to other BOC 271 applications, and should advise the FCC of the Commission's determination with regard to each checklist item in light of those specific standards.

The Commission should not stop there, however. The Commission has an independent state law obligation, and independent state law authority, under Chapter 364, Florida Statutes, to promote competition in the way that is best for Florida consumers. If the Commission concludes, based on the record in this docket, that Florida consumers would best be served by requiring BellSouth to take additional steps to ensure that its local market is fully and irrevocably open to competition, the Commission should order BellSouth to take those steps and should advise the FCC that the Commission's recommendation on the grant of interLATA authority is conditioned on BellSouth's compliance with these additional Commission-imposed requirements. While the weight to be given to these additional recommendations is ultimately a matter for the FCC to determine, the FCC has recognized the important role that state commission

requirements have play in opening markets to competition. In Paragraph 3 of the recent Pennsylvania 271 order², the FCC stated:

As the [Federal Communications] Commission has recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purposes of the Act serve a vitally important role in the section 271 process.

As Mr. Gillan forcefully testified:

The FCC rules are a national minimum that basically have shown that if all you do is what the FCC says need to be done --first, I don't know why you have the jobs and want these jobs, if that's all you're here to do, is what the FCC tells you to do. And secondly, this is the outcome you're going to get.

And when you look at competition in Texas, it's the way it is because the Texas Commission said to SBC, "I don't care what the FCC tells me. That's the minimum. I'm going to sit here and make judgments as to what I think makes sense to make competition move forward, and I'm going to do it. So the conditions in Texas are very different. The same with New York, same with Illinois, same with Michigan.

(Gillan, T 1835)

BellSouth will undoubtedly contend that the purpose of this 271 docket is simply to measure its current performance against the FCC's minimum standards, and not to make new decisions or impose new requirements. That, unfortunately, has been BellSouth's mantra not only in this docket, but in the entire series of Section 252(d) arbitrations that this Commission has considered. Wherever the FCC has considered an issue, BellSouth wants this Commission to hold it only to the minimum requirements established by the FCC, and to refrain from exercising any independent judgment or authority to impose additional requirements that might be good for

² *In the Matter of Application of Verizon Pennsylvania, Inc.*, Memorandum Opinion and Order, FCC 01-269, CC Docket No. 01-138 (rel. September 19, 2001).

Florida consumers.³

Through its actions, if not its words, BellSouth has consistently sought to relegate the Commission to the role of "field office for the FCC." For example, BellSouth refuses as a matter of policy to make UNE loop-port combinations available to ALECs at UNE rates unless the wires are already connected and in place to serve the particular customer at issue. BellSouth's reason? That is the minimum required by the FCC's rules. (See Milner, T 1277, 1278-79) This is despite the fact that in other states such as Georgia and Tennessee, BellSouth complies with state commission orders to make such combinations available. (Milner, T 1277) Similarly, BellSouth refuses as matter of policy to provide (or continue providing) its DSL-based internet service when a competitive ALEC wins the customer's voice business and serves the customer via UNE-P. BellSouth's reason? The FCC does not require more. (See Cox, T 289-90)

This case may be the Commission's last real opportunity to consider whether BellSouth's policy of doing as little as the FCC will allow is in the best interests of Florida consumers. Once BellSouth gains interLATA authority, its incentive to do more (or to accept, without protracted appeals, a Commission directive to do more) will evaporate. It will have done the minimum necessary to get its carrot.

The Commission Should Impose Pro-Competitive Requirements on BellSouth

BellSouth and the ALECs will never agree on whether certain actions are or are not

³ It is important to note that BellSouth's reluctance for this docket to consider anything beyond its current compliance with the minimum checklist requirements has not prevented it from asking the Commission -- in this non-cost docket -- to set cost-based rates for a number of UNEs that have not been previously considered by the Commission, but which are required in order for BellSouth to gain 271 approval from the FCC. It is disingenuous for BellSouth to ask the Commission on the one hand to use this docket to take affirmative action to set prices while on the other hand telling the Commission it cannot use this docket to take affirmative action to impose pro-competitive requirements on BellSouth's provision of UNEs.

necessary to demonstrate checklist compliance. Likewise, BellSouth and the ALECs will never agree on whether -- if not required to demonstrate checklist compliance -- those actions should be mandated by the Commission in order to fully open the Florida market to competition.

The following are the specific items that WorldCom believes the Commission should address as part of its 271 recommendation. To the extent that the Commission finds that some of these items are not prerequisites to demonstrating checklist compliance, WorldCom nevertheless urges the Commission to consider and adopt them under its independent state law authority to promote competition.

- **Prices For UNEs Must Be Set At TELRIC-Based Rates**

The prices set for BellSouth in the UNE cost docket are not TELRIC-compliant, and are so high as to preclude the widespread offering of residential service via UNE-P. In fact, BellSouth could not operate profitably in Florida if it were required to provide service by purchasing UNEs at the prices it demands from competitors. BellSouth's UNE pricing must be made TELRIC-compliant, hopefully in the 120-day filing portion of the cost docket, before BellSouth is entitled to receive interLATA authority. (See Issue 3a)

- **BellSouth Must Provide Functional OSS That Is Capable Of Supporting Commercial Volumes Of Activity At Parity With Its Own Systems**

Appropriately functioning OSS, which is capable of supporting commercial volumes of activity, is vital to the development of local competition. This issue is the subject of the independent third party test. As requested by the joint motion filed by a number of ALECs in the track B portion of this docket, the Commission should establish a workshop process in which it can consider the experience of individual ALECs with BellSouth's OSS. The Commission must find that BellSouth's OSS is performing well in a commercial environment before BellSouth is entitled to receive interLATA authority.

- **BellSouth Must Provide UNE Combinations At TELRIC-Based Rates Wherever It Ordinarily Combines Such UNEs In The Provision Of Its Own Services**

In order to make the use of UNEs the viable entry strategy that Congress envisioned in the Act, BellSouth must make available, at TELRIC-based rates, the UNE combinations that it ordinarily uses in the provision of its own services. This includes loop-port combinations (UNE-P) (see issue 3b), loop-transport combinations (EELs), and transport combinations between various nodes on the networks of BellSouth and other carriers (see issue 6b). There is no separate docket considering these issues on a generic basis, and the Commission should use this docket to order BellSouth to provide these combinations.

- **BellSouth Must Interconnect With Other Carriers On A Non-Discriminatory Basis**

Non-discriminatory interconnection requires (a) parity in provisioning of interconnection trunking facilities, so that calls to or from ALEC customers do not experience greater trunk blockage than calls between BellSouth customers; (b) BellSouth to bear the cost of transporting its originating calls to an ALEC's point of interconnection located in the same LATA; (c) elimination of any restrictions on combining various types of traffic on a single trunk group; and (d) elimination of the requirement that an ALEC deliver all terminating access traffic to BellSouth only over access trunks to a BellSouth access tandem. (See Issue 2f) Many of these issues are being considered in Phase II of Docket No. 000075-TP. The Commission should resolve the issues in that docket in a way that promotes competition, even if it means going beyond the minimum requirements of the FCC's rules. To the extent these issues are not covered by Docket No. 000075-TP, the Commission should use this docket to impose pro-competitive requirements on BellSouth.

- **BellSouth Must Pay Reciprocal Compensation At The Applicable Rates for All Non-ISP Bound Local Traffic**

For non-ISP bound traffic, BellSouth must be required (a) to pay reciprocal compensation for an ALEC's FX-type traffic; and (b) to pay reciprocal compensation at the tandem interconnection rate whenever an ALEC's switch serves a geographic area comparable to that served by a BellSouth local tandem. (See Issue 14) These issues are also being considered in Phase II of Docket No. 000075-TP and the Commission should likewise resolve these issues in a way that promotes competition.

While WorldCom believes that BellSouth must be required to meet each of these requirements before it is granted interLATA authority, at a minimum the Commission should impose these requirements on BellSouth concurrently with any recommendation that it makes to the FCC on BellSouth's 271 application.

ISSUE 1: Has BellSouth met the requirements of Section 271(c)(1)(A) of the Telecommunications Act of 1996?

****WorldCom:** Adopt Joint ALECs' position.**

- (a) **Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?**

****WorldCom:** Adopt Joint ALECs' position.**

- (b) **Does BellSouth currently provide access and interconnection to its network facilities for the network facilities of competing providers?**

****WorldCom:** Adopt Joint ALECs' position.**

- (c) **Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own**

telephone exchange service facilities?

****WorldCom: Adopt Joint ALECs' position.****

ISSUE 2: Does BellSouth currently provide interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?

****WorldCom: No, for the reasons set forth in the subissues. In addition, the Commission cannot make a final determination regarding BellSouth's compliance with this checklist item until conclusion of the OSS phase of this proceeding.****

(a) Has BellSouth implemented physical collocation requests in Florida consistent with FCC rules and orders?

****WorldCom: Adopt Joint ALECs' position.****

(b) Does BellSouth have legally binding provisioning intervals for physical collocation?

****WorldCom: Adopt Joint ALECs' position.****

(c) Does BellSouth currently provide local tandem interconnection to ALECs?

****WorldCom: Adopt Joint ALECs' position.****

(d) Does BellSouth currently permit the use of a Percent Local Usage (PLU) factor in conjunction with trunking?

****WorldCom: Adopt Joint ALECs' position.****

(e) Does BellSouth currently provide ALECs with meet point billing data?

****WorldCom: Adopt Joint ALECs' position.****

(f) Has BellSouth satisfied other associated requirements, if any, for this item?

****WorldCom:** No. BellSouth discriminates against ALECs in the provision of local interconnection by seeking to require ALECs to pay for delivery of BellSouth's originating traffic to a single point of interconnection in a LATA and by requiring ALECs to use for inefficient trunking arrangements to exchange various types of traffic.**

BellSouth does not currently provide interconnection in accordance with the requirements of the Act for the reasons set forth below.

1) BellSouth Improperly Seeks To Require ALECs To Assume Financial Responsibility For Delivering BellSouth's Originating Traffic To A Single Point Of Interconnection Per LATA

While BellSouth has been ordered to permit interconnection at a single point of interconnection (POI) in each LATA, BellSouth still seeks to impose on ALECs the financial responsibility for transporting traffic that originates from other BellSouth local calling areas within the LATA to the POI. (Argenbright, T 1879-80) This attempt to place financial responsibility on the ALECs for BellSouth's originating traffic violates FCC Rule 51.703(b) which provides that:

[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

In its decision earlier this year in the Kansas/Oklahoma 271 proceeding, the FCC confirmed that its decision in the Texas 271 Order to allow a single point of interconnection per LATA did not "change an incumbent LEC's reciprocal compensation obligations under our current rules."⁴ The FCC noted, for example, that "these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network." *Id.* Thus, not only may an ALEC establish a single POI in each LATA, it may do so without being required to

⁴ *In the Matter of Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, *Memorandum Opinion and Order* at ¶235 (rel. January 22, 2001) ("Kansas/Oklahoma 271 Order").

build, lease, or otherwise pay for facilities on BellSouth's side of the POI. (Argenbright, T 1883-84)

The FCC has subsequently initiated a rulemaking proceeding to reexamine all forms on intercarrier compensation.⁵ While the FCC seeks comments on whether the single POI per LATA rule and the current division of financial responsibility should continue to apply under a future bill-and-keep regime, the FCC actually reaffirms BellSouth's obligation, under current rules, to deliver traffic to the POI at its own cost, in stating as follows:

Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network.

Inter-carrier Compensation NPRM, ¶ 112 and footnote 180. (Argenbright, T 1885-1886)

BellSouth's obligation under federal law to deliver originating traffic, at its own cost, to the ALEC-designated POI is clear. The Commission should therefore rule in favor of the ALECs on this financial responsibility issue, which is currently before it in Phase II of Docket No. 000075-TP.

Regardless of the Commission's ruling in that docket, however, BellSouth cannot satisfy the requirements of checklist item (i) unless and until it accepts its obligation to deliver traffic to the POI at its own expense and incorporates that obligation into its Interconnection Agreements and Statement of Generally Available Terms and Conditions (SGAT). (Argenbright, T 1887)

2) BellSouth Requires Use Of Inefficient Trunking Arrangements

While BellSouth will interconnect with ALECs for the exchange of traffic, BellSouth seeks to require ALECs to establish unnecessary and inefficient interconnection trunking

⁵ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking* at ¶ 1 (rel. April 27, 2001) ("Inter-carrier Compensation NPRM").

arrangements in order to separate local, intraLATA toll and transit traffic onto separate trunk groups. (Argenbright, T 1880) The most efficient way to exchange traffic is to aggregate as many types of traffic as possible on the same trunk group, thereby gaining the inherent efficiencies of packing different types of traffic onto a larger trunk group. (Argenbright, T 1888)

BellSouth tries to downplay the importance of this issue by stating that its "supergroup" option should resolve WorldCom's concerns by allowing "the exchange of local and intraLATA toll traffic. . .over a single trunk group as well as the exchange of local, intraLATA, or interLATA transit traffic over a single trunk group." (Milner, T 1200) During his deposition, Mr. Milner clarified that BellSouth still does not intend to permit all traffic to use a single supergroup trunk, but would require two supergroup trunks, one for BellSouth-ALEC traffic and another for transit traffic. (Ex. 7, Milner Depo. at 57-58) This arrangement therefore does not meet the needs of ALECs for an efficient, single trunk group to carry both local, toll and transit traffic.

Checklist item (i) requires BellSouth to provide interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1). Under Section 251(c)(2)(D), interconnection must be provided "on rates, terms and conditions that are just, reasonable and nondiscriminatory." When BellSouth has supergroup trunks available that are capable of carrying local, intraLATA toll and transit traffic on the same trunk group, it is unjust and unreasonable for BellSouth to insist on using a less efficient form of interconnection that fragments such traffic. That inefficiency translates into unnecessary, increased costs for the ALEC who interconnects with BellSouth. Unless and until BellSouth agrees to exchange local, intraLATA toll and transit traffic with an ALEC over a single trunk group, and incorporates that requirement into its Interconnection Agreements and SGAT, BellSouth will not have satisfied its

obligations under checklist item (i). (Argenbright, T 1889-90)

3) BellSouth's Requirements For Trunking Of Terminating Access Traffic Preserve Its Monopoly Over Terminating Access Service

While BellSouth will interconnect with ALECs for the exchange of traffic, BellSouth refuses to allow ALECs who desire to serve as providers of terminating access service to route access traffic to BellSouth end offices over the same trunk groups used to terminate local traffic. (Argenbright, T 1880) This means that all terminating access traffic must be routed solely to BellSouth's tandem switch over switched access trunk groups. Although BellSouth attempts to characterize this issue as one of traffic routing and billing, it in fact has much more important competitive implications, since BellSouth's position serves to maintain its monopoly over the provision of terminating access service to interexchange carriers.

Assume that an ALEC (such as WorldCom) wants to compete with BellSouth for providing terminating access service to interexchange carriers (IXCs). In this situation, an IXC could route its terminating traffic to a WorldCom tandem switch, from which WorldCom could terminate the call directly (if the called party were a WorldCom local customer) or could deliver the call to BellSouth's end office switch for termination (if the called party were a BellSouth local customer). In the case of a call to a BellSouth customer, BellSouth would be entitled to bill the IXC for the end office switching component of access charges, and WorldCom would be entitled to bill the IXC for the tandem switching and transport components. (Argenbright, T 1890)

If, however, WorldCom is not permitted to route terminating access traffic directly to BellSouth's end offices, but instead must send such traffic to BellSouth's access tandem via switched access trunks, then WorldCom is foreclosed from providing a competitive access service -- since BellSouth will always perform the tandem switching and transport functions, and

will be entitled to bill the IXC for those services. (Argenbright, T 1891)

BellSouth's stated basis for requiring such traffic to be delivered to its access tandem is so that it will have the information necessary to identify and bill the appropriate IXC for its end office switching services. WorldCom agrees that BellSouth must get the information necessary to bill the IXC for BellSouth's portion of access charges. This concern can be addressed by requiring the ALEC to provide the necessary billing information to BellSouth in the industry-standard EMI format -- the same format BellSouth uses to provide such information to ALECs. If the ALEC can provide such billing information then there is no basis -- other than BellSouth's desire to maintain a monopoly over the provision of terminating access service -- for its refusal to permit such traffic to be delivered over local interconnection trunks. (Argenbright, T 1891)

BellSouth is required under Section 251(c)(2)(D) to provide interconnection "on rates, terms and conditions that are just, reasonable and nondiscriminatory." When BellSouth is technically capable of accepting access traffic at its end office switches over local interconnection trunks, and an ALEC is technically capable of providing BellSouth, in industry standard format, with the information necessary to properly bill for such calls, it is discriminatory for BellSouth to require that such traffic be delivered instead via access trunks to its access tandem. This is particularly true when the result of such a requirement is that BellSouth retains a monopoly over the provision of terminating switched access service. Unless and until BellSouth agrees to allow ALECs to deliver such traffic directly to its end offices via local interconnection trunks, and incorporates that requirement into its Interconnection Agreements and SGAT, BellSouth will not have satisfied its obligations under checklist item (i). (Argenbright, T 1892)

ISSUE 3: Does BellSouth currently provide nondiscriminatory access to all required network elements, with the exception of OSS which will be handled in the third party OSS test, in accordance with Sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

****WorldCom:** No, for the reasons set forth in the subissues. In addition, the Commission cannot make a final determination regarding BellSouth's compliance with this checklist item until conclusion of the OSS phase of this proceeding.**

(a) Does BellSouth currently provide all required unbundled network elements at TELRIC-based prices?

****WorldCom:** No. BellSouth does not provide unbundled network elements at TELRIC-based rates in compliance with applicable FCC rules. BellSouth's UNE rates make it impossible for competitors to enter the Florida local residential market on a widespread basis. In fact, BellSouth could not operate profitably at the rates it charges ALECs for UNEs.**

BellSouth's UNE Rates Fail to Meet TELRIC Standards Required By the Act and Applicable FCC Rules

I mean, Dr. Taylor's testimony was quite clear. He said, "Boy, if that analysis is right, then these rates can't be TELRIC."

(Gillan, T 1846)⁶

BellSouth does not currently provide nondiscriminatory access to all required network elements in accordance with the requirements of Section 271(c)(2)(B)(ii) of the Act because its UNE rates fail to meet TELRIC standards required by the Act and applicable FCC rules. Specifically "checklist item 2" states that BellSouth must provide nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(2) and 252(d)(1). The FCC's pricing rules require that states interpret Section 252(d)(1) of the Act to require that the rates for UNEs to be set at the sum of the Total Element Long Run Incremental Cost (TELRIC),

⁶ Witness Gillan referring to Dr. Taylor's testimony regarding witness Gillan's analysis of the financial impact on BellSouth if it were required to provide service using its own UNE rates.

plus a reasonable allocation of forward-looking common costs. 47 C.F.R. §51.505(a).

The Commission should require BellSouth to revise its UNE rates to be TELRIC compliant *before* its gets 271 approval. BellSouth's current rates are so high as to be a barrier to entry.

(Darnell, T 1734)

...[H]ow much competition do I have for regular Florida consumers? You can add up 2-1/2, 2.1, and 0.6 and come up with about 5.7%. And my main point of my testimony is to tell you, after five year and a half years, if that's all you've got, you've got problems that you need to solve before you take the one thing, the one reason BellSouth has to listen to what you want them to do. (Gillan, 1827)

At the same time the promise of a competitive local market in Florida remains an elusive goal, for the year 2000, BellSouth's intrastate rate of return for Florida was approximately 19.46%, which suggests that the current intrastate telecommunications market is not as competitive as it needs to be. (See Gillan, T 1798 and Darnell, T 1750)

BellSouth's UNE rates preclude UNE-based competition in Florida. In fact, not even BellSouth could profitably offer local service if required to lease UNEs at the rates that it charges competitors. (Gillan, T 1796) It is axiomatic that if BellSouth could not operate profitably at its own UNE prices, yet it is in fact operating profitably, then the UNE prices it charges are too high and are not compliant with even BellSouth's "actual forward looking" cost interpretation of the FCC's UNE pricing rules.

Currently, the average UNE-P loop cost is about \$15.14.⁷ (Darnell, T 1744) In contrast, a TELRIC compliant statewide average UNE-P loop cost for BellSouth Florida should be less than \$7.00. (Darnell, T 1746) The changes described below should bring BellSouth's UNE rates closer to cost, and increase the likelihood of broad scale competitive local entry.

⁷ According to a post-hearing e-mail from the Commission's technical staff, the UNE-P loop rate includes the cost of an analog switch port.

1) **BellSouth's Cost Studies Are Improperly Based on a Multiple Network Design**

(T)he big picture why you don't have residential competition in Florida is because the UNE rates for voice grade loops are way too high.

(Darnell, T 1756)

In its cost study in the generic UNE docket, BellSouth submitted three distinct loop cost scenarios: 1) the BST 2000 Scenario used to determine the cost of stand-alone loops; 2) the Combo Scenario used to determine the cost of voice grade loops combined with a switch port; and 3) the Copper Only Scenario used to derive the cost of copper-based xDSL loops. (Tr. 1729) This Commission even stated "(i)n principle, it appears to us that a single unified network design is most appropriate. However, we believe this goal is not attainable on this record." (UNE Order at 154). Nevertheless, the Commission set UNE loop rates based on BellSouth's three-scenario approach and upheld its decision on reconsideration. (UNE Reconsideration Order at 23-24).

Under FCC Rule 51.505(b), however, the use of a single, unified network design is not only the most appropriate in principle, but it is in fact required. This requirement is in place so that UNE rates can reflect the economies of scope and scale enjoyed by the incumbent and as such provide ALECs with a realistic opportunity to compete against the incumbent's services using UNEs. (Darnell, T 1729)

FCC Rule 51.505(b) states:

(b) Total element long-run incremental cost. The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, *calculated taking as a given the incumbent LEC's provision of other elements.*

(1) Efficient network configuration. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the *lowest cost network configuration*, given the existing location of the incumbent LEC's wire centers. (Emphasis added).

Under this rule, UNE rates must be set based on "the lowest cost network configuration," not on several different network configurations. That single network configuration must take into account "the incumbent LEC's provision of other elements." That is, the single network must be designed taking into account the demand for all elements, not just the element for which costs are determined. This is necessary to capture the economies of scale and scope that the LEC achieves as the result of offering its whole panoply of elements and services. (Darnell, T 1730-31)

BellSouth's use of the three-scenario approach violates Rule 51.505(b) in three ways.

a) Multiple Engineering Assumptions

First, BellSouth used different engineering assumptions for the entire network based on the type of UNE being costed. For loop/port combinations, BellSouth assumed an engineering design in the Combo Scenario based on the use of integrated digital loop carrier (IDLC) technology. For stand-alone loops, BellSouth assumed an engineering design in the BST 2000 Scenario based on the use of older, universal digital loop carrier (UDLC) technology. And for xDSL loops, BellSouth assumed an engineering design in the Copper Only Scenario based on the use of all copper loops. This violates the requirement in Rule 51.505(b) to use "the" lowest cost network configuration. The lowest cost network configuration for serving demand that includes stand-alone loops, loop/port combinations, and xDSL loops would be a single network that includes the appropriate mix of IDLC, UDLC and all copper loops. Yet despite the fact that the FCC's rules require the use of a single, most efficient network, BellSouth failed to provide cost studies that comply with those rules. (Darnell, T 1731)

b) Rule Requires Most Efficient Technologies Available

Second, by modeling an “all copper” network and an “all UDLC network” for pricing some loops, BellSouth did not model the use of the “most efficient” technology available.

(Darnell, T 1732)

c) Demand Projections Ignore Economies of Scale and Scope

Third, BellSouth’s use of three different scenarios also violates the requirement in Rule 51.505(b) to calculate costs for UNEs taking into account as a given the “incumbent LEC’s provision of other elements.” The purpose of this requirement is to ensure that UNE cost studies take into account the efficiencies that the incumbent LEC achieves from deploying a network to meet all demand for all elements, thereby achieving economies of scale and scope.

In order to properly reflect the requirements of this rule, BellSouth must model a single network which takes into account the expected demand for loop/port combinations, stand-alone loops, and xDSL loops. That forecast must include demand both for UNE loops and for loops to meet BellSouth’s own retail demand. The mix of IDLC, UDLC and copper loops in the resulting single network thus would be optimized to meet the demand for the various types of facilities, and that network would include the efficiencies resulting from economies of scale and scope.

Instead, BellSouth elected to model three separate networks, assuming alternatively that every customer location would require service via IDLC loops (Combo), that every customer location would require service via UDLC loops (BST 2000), and that every customer location would require service via copper loops (Copper Only). That assumption is clearly flawed. Some percentage of customer locations will require IDLC, some percentage will require UDLC, and some percentage will require Copper. Only by projecting actual demand for each type of facility will the resulting network include the appropriate economies of scale and scope.

(Darnell, T 1732-1733)

The FCC requires that the total anticipated demand for a network element be used in the development of UNE rates. 47 C.F.R. 51.511(a). Amazingly, in the development of certain UNE rates, BellSouth did not estimate, forecast, or in any way determine the total demand for the network element. (Tr. 1759) Instead, BellSouth uses what it calls an “Rservice” technique costing UNEs to all customers that could ever *potentially* want the UNE. For a typical residential customer, BellSouth’s methodology assumes that this customer will want BellSouth’s retail voice service, an ALEC’s UNE-P voice service, service provided by an ALEC using a stand alone voice loop, DSL service provided by BellSouth, and DSL serviced provided by a data-ALEC using a DSL loop. BellSouth’s UNE ignores certain economies of scale and scope enjoyed by BellSouth. (Darnell, T 1733-1734) While BellSouth’s technique covers BellSouth in terms of creating rates high enough to cover its cost should all these customers actually want all these types of loops, this technique also creates a total cost that exceeds the total cost BellSouth will incur to serve the actual demand. (Darnell, T 1759)

2) BellSouth’s Cost Studies Must Implement a Bottoms-Up Approach Before They are TELRIC Compliant

In its cost study filing in the UNE cost docket, BellSouth calculated cable and structure costs by applying loading factors to material prices instead of explicitly modeling the cost of engineering, installation, and associated structures. The TELRIC compliant UNE-P loop rate for Florida should be about \$7.00, which is the output when using forward-looking inputs into the cost model rather than BellSouth’s embedded inputs. (Darnell, T 1776, 1777) The Commission found that BellSouth’s use of linear loading factors distorts cost relationships between rural and urban areas, which is a particular problem in a case in which loop rates are being deaveraged. These loading factors account for approximately one-half of BellSouth’s loop rate and were

never addressed by anyone. (Darnell, T 1760, 1761) Because the Commission was unable to correct this flaw based on the record before it, the Commission is requiring BellSouth to refile its loop model to replace these loading factors with an explicit “bottoms up” modeling of these engineering and placement costs. (UNE Cost Order, at 283-284, 305-306). Given the vast importance of this item, until the Commission sets new, compliant rates, hopefully in the “120-day proceeding,” BellSouth will not have “cost-based” loop rates and fails to meet the requirements of checklist item two. (Darnell, T 1728-1729)

3) Improperly Set Inflation Factors Cause Investment to be Double Counted

On reconsideration of its UNE Order, the Commission re-instated previously disallowed inflation factors from BellSouth’s UNE rate development. (UNE Reconsideration Order) The overall impact is that BellSouth’s UNE rates now take into account the impact of specific inflation twice. The bottom line effect of this action was to substantially raise UNE rates by approximately 8.5%. (Darnell, T 1744, 1761)

For example, the average UNE-P loop cost increased by approximately \$1.23. (Darnell, T 1771) Population density is a primary driver of loop cost. Because BellSouth’s Florida territory is significantly more densely populated than BellSouth’s Georgia territory, the average UNE-P loop cost should be less in Florida than Georgia. (Darnell, T 1745, 1774) Incredibly, the average UNE-P loop cost in Florida is about 21% higher than that determined by the Georgia PSC.⁸ (Darnell, T 1744) The average UNE-P loop cost in Georgia exceeds TELRIC – and in Florida, it exceeds TELRIC by even a greater amount. (Darnell, T 1745)

⁸ Based on the statement in the technical staff’s post-hearing e-mail that the UNE-P loop rate includes the cost of an analog port, the UNE-P loop rate in Florida would be approximately 11.4% higher than in Georgia.

The reinstatement of inflation factors causes the effects of inflation to be double counted. The BellSouth approach relies on the fundamentally flawed premise of applying Telephone Plant Indices (TPI) inflation factors to investment amounts that already include the effects of industry inflation. (Darnell, T 1746) A nominal cost of capital was applied to investment and used to develop UNE rates, that is, the cost of capital took into account the effects of national and industry wide inflation on BellSouth's cost of debt and equity. The fundamental flaw in BellSouth's position is that debt and equity holders take into account *all* inflation, direct and indirect, that may affect BellSouth. BellSouth's application of TPIS to specific investment amounts that already include the effects of inflation, double counts the effects of inflation on costs. (Darnell, T 1747) By doing it both ways, either the nominal cost of capital is wrong and a new TPI is needed or there is double-counting. (Darnell, T 1782)

4) BellSouth Overstates Drop Lengths which Causes Loop Costs to Be Overstated

To be TELRIC compliant, BellSouth needs to change its cost model so that drop lengths are recalculated assuming routing from the corner of lots. FCC Rule 51.5005(b)(1) requires the use of the "lowest cost network configuration." The use of angular drop placement necessarily produces shorter drop distances than the rectilinear drop placement method used by BellSouth, and thereby produces the lowest cost configuration. (Darnell, T 1734) Until BellSouth's models reflect the "lowest cost configuration," the costs produced by those models cannot be deemed TELRIC-compliant.

5) BellSouth Improperly Allocates Shared Costs

It is necessary to allocate shared investments to individual serves when using the BellSouth loop cost model (BSTLM). In the UNE cost docket and upheld on reconsideration, the Commission approved BellSouth's method of allocating shared investment in loop plant

based on DS0 equivalents. Under this “per-DS0” methodology, a 2-wire facility used to provide high-capacity T-1 service, which carries 24 voice channel equivalents, is allocated 24 times as much shared cost as a 2-wire voice grade loop. WorldCom and AT&T advocated allocating shared investments based on the number of copper pair equivalents used to provide the service. This “per-pair” methodology means that a copper pair equivalent used to provide voice service bears the same allocation of shared costs as the same facility used to provide T-1 service. Such an allocation avoids the anti-competitive impact of placing high levels of shared costs on high-capacity services whose demand is fairly inelastic. (Darnell, T 1735)

The FCC stated in Local Competition Order at paragraph 696:

We conclude that forward-looking common costs shall be allocated among elements and services in a reasonable manner, *consistent with the pro-competitive goals of the 1996 Act*. . . [A]n allocation methodology that relies exclusively on allocating common costs in inverse proportion to the sensitivity of demand for various network elements and services [i.e. Ramsey pricing] may not be used. (Emphasis added)

When applied to the allocation of shared costs that by definition are not causally related to a single service or facility, these pro-competitive requirements of the FCC’s rule require shared costs to be allocated in a way that minimizes any adverse impact on competition. (Darnell, T 1736) To ensure those resulting rates TELRIC-compliant, those costs have to be allocated on a per-pair basis.

6) BellSouth’s DUF Charges Violate TELRIC Principles

...[W]hy is there even a charge? They [BellSouth] knew how many calls your customer made because they billed the ALEC for the usage of the switch. Now they’re going to charge you again to get the records so that you know how many calls your customer made?

(Gillan, T 1844)

There should be no separately delineated charge for daily usage information. (Darnell, T 1748) BellSouth has established its shared and common cost factors using its embedded systems costs and embedded expense to investment ratios. BellSouth then develops its Daily Usage File charges by contending that it has and will incur incremental costs due to the creation of “systems” to provide daily usage file information to ALECs.

BellSouth’s cost study development for DUF information is founded on the flawed premise that TELRIC equals embedded cost minus nothing plus incremental cost. The foundation of this argument assumes that BellSouth is right now the least-cost most efficient carrier – that nothing in BellSouth’s embedded systems cost is inefficient and the future system development will not bring any reduction to cost. (Darnell, T 1749) BellSouth’s future systems will bring certain reductions in cost and efficiency. As such, BellSouth’s cost development for DUF violates FCC TELRIC principles.

**The Commission Should Set Rates For Physical Collocation,
Line Sharing, And Non-Designed Copper Loops In Generic Dockets --
It Is Inappropriate To Set Rates For Those UNEs On A Generic
Basis For The First Time In This Proceeding**

BellSouth is for the first time in this proceeding proposing what it contends are cost-based rates for a number of UNEs, including physical collocation, line sharing, and non-designed copper loops. The purpose of a 271 proceeding is not to set UNE rates for the first time – the purpose is to review BellSouth’s information that it filed on day one to determine whether the local market is open to competition. (Darnell, T 1785-1786) The Commission needs to use the BellSouth rates that are in effect at the time it makes its 271 application before this Commission, not rates that will become effective at some time in the future.

**BellSouth's SGAT As Filed Currently Does Not Comply With TELRIC
Or With The Rates Set By This Commission**

The rates for which BellSouth has submitted for most UNEs are included as Attachment A to BellSouth's SGAT. (Ex. 13, CKC-5) Those rates are not the rates the Commission ordered in its generic cost docket, Docket No. 990649-TP, rather, those rates are those BellSouth *proposed* in that docket. (Cox, T 75) Although conceivable that BellSouth had been waiting for the Commission's reconsideration order, BellSouth has not filed in this proceeding even the Commission-approved rates. As discussed above, even the Commission-approved rates will not be cost-based unless the Commission completes the next phase of the cost docket and orders BellSouth to make other changes that are necessary to make BellSouth's rates TELRIC-compliant. (Darnell, T 1727)

(b) Has BellSouth satisfied other associated requirements, if any, for this item?

****WorldCom:** No. BellSouth does not provide non-discriminatory access to UNE combinations, particularly loop-port combinations (UNE-P).**

**BellSouth Fails To Provide Nondiscriminatory
Access To UNE Combinations**

All of BellSouth's games on new combinations must end. . .

(Gillan, T 1857)

One of the most important things this Commission could do to promote the development of residential competition in the state is to require BellSouth to provide UNE combinations whenever the UNEs are of the type typically combined in BellSouth's network. (Gillan, T 1814-17, 1857)

BellSouth acknowledges that it is required to offer UNE combinations to ALECs at UNE rates when those elements are in fact combined today to serve a particular customer. However,

BellSouth continues to maintain that it is not required under the FCC rules or any orders of this Commission to offer such combinations when the UNEs are not today physically combined to serve the particular customer that the ALEC wishes to serve, even if the elements involved are "typically" combined in BellSouth's network. In the perceived absence of a regulatory mandate to offer UNE combinations in all situations, BellSouth has made the business decision to require ALECs to do the combining themselves, either by leasing a physical collocation space, or by leasing an assembly point arrangement.⁹ (See Caldwell, T 504-05; Milner, T 1279-1279, 1280-1281)

In states where the state commission has mandated BellSouth to provide UNE combinations in all circumstances BellSouth complies with that requirement. (See Milner, T 1277) BellSouth's refusal to do more in Florida is therefore not the result of any technical limitations, it stems solely from a desire to obstruct the development of competition and to place as many financial and practical roadblocks as possible in the way of UNE-P competition.

Take, for example, an ALEC whose business plan is to serve the residential market via UNE-P and which has no need to collocate any equipment in BellSouth central offices. There is no problem if the ALEC wins a customer who is currently receiving service from BellSouth, the

⁹ An assembly point arrangement is an arrangement devised by BellSouth under which an ALEC can dispatch a technician to a BellSouth central office to perform a cross-connect without the ALEC first having to establish a physical collocation arrangement. Even this simplified arrangement, however, is much more complex and much less efficient than BellSouth simply running a jumper to make the connection itself. The assembly point arrangement requires BellSouth to install an assembly point frame in the central office, and run cables and cable racking from the main distribution frame to the assembly point frame. (Caldwell, T 501-504; Milner, T 1275-76) All of this is work which is not required when BellSouth completes the combination itself. It not only requires more work by BellSouth (for which the ALEC must pay), it also takes up valuable space on BellSouth's main distribution frame and introduces more potential points of failure. (Milner, T 1284-85) This entire process is so costly and cumbersome that no ALEC is using it anywhere in the nine-state BellSouth region, despite BellSouth claims that it has been available for over a year. (Milner, T 1273)

ALEC simply orders UNE-P and begins to provide service. But if the customer wants to add a second line, or a customer moving into a new residence wants to order service from the ALEC, BellSouth says UNE-P is not available. Instead the ALEC must either go through the expensive and time-consuming process of establishing a physical collocation arrangement, must order an assembly point arrangement and dispatch a technician to the BellSouth central office to run a single jumper, or must tell the customer it is unable to provide service.

WorldCom believes BellSouth's position is wrong both as a matter of law and as a matter of policy. With regard to federal law, FCC Rule 51.315(b) requires that “[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently *combines*.” (Emphasis added) There can be no dispute that BellSouth currently *combines* UNEs such as local loops and switch ports (creating a loop-port switch combination). Because BellSouth currently combines those elements of its network, pursuant to Rule 51.315(b), it must make those elements available to ALECs on a combined basis and at prices that reflect the cost that would be incurred to provide these network elements in combination.

In its UNE Remand Order issued on November 5, 1999, the FCC cited back to its intentions when drafting Rule 315(b), stating that in the First Report and Order, “the Commission [FCC] concluded that the proper reading of ‘currently combines’ in Rule 51.315(b) means ‘ordinarily combined within their network, in the manner in which they are typically combined.’” Third Report and UNE Remand Order ¶ 479. Thus, WorldCom believes that federal law requires to provide UNEs to ALECs in combined form when those UNEs are ordinarily combined within BellSouth’s network and that BellSouth does not meet the requirements of Section 271 until it makes such combinations available.

Even if BellSouth's interpretation of its obligations under federal law were correct, and

the provision of UNE combinations that are ordinarily combined were not a precondition to 271 relief, it is not "inconsistent" with federal law for the Commission to impose additional obligations on BellSouth utilizing its state law authority.¹⁰ Under Section 364.161(1), Florida Statutes, the Commission has the authority to establish rates, terms and conditions for the offering of unbundled elements. As a matter of public policy for Florida, the Commission should establish terms and conditions that require BellSouth to offer combinations of UNEs that are "typically combined" in its network. A number of other states in the southeast have imposed such a requirement on BellSouth, whether through arbitrations, UNE cost dockets, or Section 271 proceedings:

Georgia. In an order dated February 1, 2000 in a UNE cost docket (Docket No. 10692-U), the Georgia Public Service Commission held that:

"currently combines" means ordinarily combined within the BellSouth network, in the manner in which they are typically combined. Thus, CLECs can order combinations of typically combined elements, even if the particular elements being ordered are not actually physically connected at the time the order is placed. (Order at 11)

Louisiana. In its recommendation on BellSouth's 271 application in Docket Number U-22252 (E), the Louisiana Public Service Commission adopted the same requirement as Georgia, namely that "currently combines" means ordinarily combined within the BellSouth network.

Kentucky. In its May 16, 2001 order in the AT&T/BellSouth arbitration (Case No. 2000-465), the Kentucky Public Service Commission held that "BellSouth shall combine for AT&T any UNEs that it typically combines for its own customers, but BellSouth may charge AT&T a TELRIC-based combining fee." (Order at 15)

Tennessee. In the Intermedia/BellSouth arbitration, the Tennessee Regulatory Authority

¹⁰ See Section 261(c), quoted in footnote 1, above.

held that the term "currently combines" includes any and all combinations that BellSouth currently provides to itself anywhere in its network. It thereby rejected BellSouth's position that the term means already combined for a particular customer at a particular location.

Mississippi. In separate orders issued on October 12, 2001 in both its UNE cost docket (Docket No. 00-UA-999) and in its 271 docket (Docket 97-AD-321), the Mississippi Public Service Commission:

orders BellSouth to provide combinations of ordinarily combined elements in a manner consistent with the Order issued by the Georgia Public Service Commission in Docket No. 10692-U, dated February 1, 2000. Pursuant to the Georgia Commission Order, CLECs can order combinations of ordinarily combined elements, even if the particular elements being ordered are not actually physically connected at the time the order is placed. (UNE Order at 48)

South Carolina. Although a written order has not yet been entered, on October 30, 2001, the South Carolina Public Service Commission voted in its UNE cost docket (Docket No. 2001-65-C) to order BellSouth to provide combinations of ordinarily combined elements even if they are not physically connected at the time the order is placed.

The policy of requiring BellSouth to provide combinations of ordinarily combined elements has several things to commend it to this Commission. First, it ensures that when an ALEC enters the Florida market using the UNE platform, its service will be available to new customers and new lines as well as to old customers and existing lines. This will hasten the spread of local competition. Second, it avoids the need for an ALEC to establish collocation or use an inefficient and costly assembly point arrangement in order to "combine" elements that can quickly and easily be combined by BellSouth. By requiring BellSouth to provide UNE combinations in all circumstances -- as many of its fellow state commissions have done -- the Commission will take a major step to promote the introduction of competition for Florida

consumers.

ISSUE 4: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 224 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(iii). Does BellSouth currently provide nondiscriminatory access to the poles, ducts, and conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC?

****WorldCom:** No position.**

ISSUE 5: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996. Does BellSouth currently provide unbundled local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to Section 271(c)(2)(B)(iv) and applicable rules and orders promulgated by the FCC?

****WorldCom:** Adopt Joint ALECs' position. In addition, the Commission cannot make a final determination regarding BellSouth's compliance with this checklist item until conclusion of the OSS phase of this proceeding.**

(a) Does BellSouth currently provide all currently required forms of unbundled loops?

****WorldCom:** Adopt Joint ALECs' position.**

(b) Has BellSouth satisfied other associated requirements, if any, for this item?

****WorldCom:** Adopt Joint ALECs' position. **

ISSUE 6: Does BellSouth currently provide unbundled local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to Section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC?

****WorldCom:** No, for the reasons set forth in the subissues. In addition, the Commission cannot make a final determination regarding BellSouth's compliance with this checklist

item until conclusion of the OSS phase of this proceeding.**

(a) Does BellSouth currently provide billing for usage-sensitive UNEs?

****WorldCom:** Adopt Joint ALECs' position.**

(b) Has BellSouth satisfied all other associated requirements, if any, for this item?

****WorldCom:** No. Among other things, BellSouth does not provide unbundled local transport that connects two points on an ALEC's network or that connects a point on an ALEC's network to a point on the network of a different ALEC, even where the facilities to provide such UNEs are currently in place.**

FCC Rule 51.319(d) requires BellSouth to provide nondiscriminatory access to interoffice transmission facilities on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. Dedicated transport is defined as

incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

47 C.F.R. § 51.319(d)(1)(A).

BellSouth does not currently provide unbundled local transport in accordance with the requirements of this rule and therefore does not meet the requirements of checklist item (v). Specifically, BellSouth does not provide, as an unbundled network element (UNE), dedicated transport that (i) connects two points on an ALECs network (such as two switches, a network node and a switch, or two network nodes), or (ii) connects a point on an ALEC's network to a point on the network of a different ALEC, even where the facilities to provide such UNEs are currently in place. Instead, BellSouth will provide dedicated transport only between a BellSouth switch or wire center on one end and an ALEC switch or wire center on the other end.

(Argenbright, T 1893-96)

The effect of BellSouth's refusal is to severely limit the usefulness of dedicated transport to ALECs like WorldCom, which do not use a traditional “hub and spoke” architecture that connects all the loops (or “spokes”) at various wire centers. Rather, WorldCom’s “local loops” ride fiber optic SONET rings and can be routed through several transport nodes within WorldCom’s network to connect the customer to the switch. The SONET rings that connect the switching node to the transport node act in a similar way to BellSouth’s common transport. In other words, because of the way WorldCom’s network is configured, it will often be most efficient to link transport nodes, which are WorldCom’s traffic aggregation points, to BellSouth dedicated transport, rather than making the link at the WorldCom switch. BellSouth's transmission facilities currently run to many nodes (traffic aggregation points) on WorldCom’s network. There is no legitimate reason for BellSouth’s refusal to provide transport to locations that are currently part of its existing transport network. (Argenbright, T 1896)

The requirement to provide dedicated transport that has an end point at a place other than the ALEC's switch is supported by the FCC's UNE Remand Order. (Argenbright, T 1897) In rejecting ILEC claims that unbundled transport should not be made available because competitive alternatives are available, the FCC noted that

[t]he competitive alternatives that are available along limited point-to-point routes do not necessarily allow competitive LECs to connect their collocation arrangements or switching nodes according to the needs of their individual network designs. These carriers also require dedicated transport to deliver traffic *from their own traffic aggregation points* to the incumbent LECs network for purposes of interconnection.

UNE Remand Order, ¶ 346 (emphasis added)

In addition to purchasing transport to connect two nodes on its network, an ALEC is also

entitled to purchase transport to connect its network to the network of another ALEC. Again, BellSouth typically will have transport facilities connecting its switches both to WorldCom locations and to locations of third party carriers with whom WorldCom needs to interconnect. In such cases, it frequently will be more efficient for WorldCom to obtain dedicated transport from BellSouth than to construct its own new transport facilities. (Argenbright, T. 1897-99)

Part of BellSouth's rationale for not providing such dedicated transport to connect the networks of two different ALECs is that in order to be a dedicated transport UNE, one end of the transport facility must terminate at a BellSouth wire center. By taking this position -- and coupling it with the position that BellSouth is not required to combine UNEs that are not currently physically combined in its network -- BellSouth can claim that it is not required to "combine" the dedicated transport UNE running to one ALEC with the separate dedicated transport UNE running to another ALEC. Even if the Commission were to accept BellSouth's position that two separate UNEs are involved in this situation, it could address the underlying problem by requiring BellSouth to combine any UNEs that are ordinarily combined in its network. This would solve the anti-competitive issues raised by BellSouth's "gamesmanship" both with respect to loop-port combinations and with respect to dedicated transport combinations. (See Issue 3b for a more complete discussion of the UNE combination issue.)

ISSUE 7: Does BellSouth currently provide unbundled local switching from transport, local loop transmission, or other services, pursuant to Section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC?

****WorldCom:** Adopt Joint ALECs' position. In addition, the Commission cannot make a final determination regarding BellSouth's compliance with this checklist item until conclusion of the OSS phase of this proceeding.**

(a) Does BellSouth bill for unbundled local switching on a usage-sensitive basis?

****WorldCom:** No position.**

- (b) **Does BellSouth currently provide unbundled local switching on both the line-side and the trunk-side of the switch?**

****WorldCom:** No position.**

- (c) **Has BellSouth satisfied other associated requirements, if any, for this item?**

****WorldCom:** Adopt Joint ALECs' position.**

ISSUE 8: Does BellSouth currently provide nondiscriminatory access to the following, pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC:

- (i) **911 and E911 services;**
- (ii) **directory assistance services to allow other telecommunications carrier's customers to obtain telephone numbers; and**

***WorldCom:** The Commission cannot make a final determination regarding BellSouth's compliance with this checklist item until conclusion of the OSS phase of this proceeding.**

- (iii) **operator call completion services?**

****WorldCom:** The Commission cannot make a final determination regarding BellSouth's compliance with this checklist item until conclusion of the OSS phase of this proceeding.**

- (a) **Does BellSouth currently provide ALECs access to all information contained in BellSouth's directory listing database?**

****WorldCom:** No position.**

- (b) **Does BellSouth currently provide selective routing in Florida?**

****WorldCom:** Adopt Joint ALECs' position.**

- (c) **Has BellSouth satisfied other associated requirements, if any, for this item?**

****WorldCom: No position.****

ISSUE 9: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(viii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to Section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC?

****WorldCom: No position.****

ISSUE 10: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(ix) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to Section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?

****WorldCom: Adopt Joint ALECs' position.****

ISSUE 11: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(x) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to Section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC?

****WorldCom: No position.****

ISSUE 12: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(xi) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide number portability, pursuant to Section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC?

****WorldCom:** Adopt Joint ALECs' position. In addition, the Commission cannot make a final determination regarding BellSouth's compliance with this checklist item until conclusion of the OSS phase of this proceeding.**

ISSUE 13: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(xii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?

****WorldCom:** No position.**

ISSUE 14: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(xiii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?

****WorldCom:** No. BellSouth has not paid compensation at the tandem interconnection rate when required by the FCC's geographic comparability rule. BellSouth also has not agreed to pay reciprocal compensation when an ALEC provides competitive FX service by assigning NXXs to a customer with a physical location in a different rate center.**

Section 271(c)(2)(B)(xiii) requires BellSouth demonstrate that it is providing reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the Act. That section, as implemented by FCC rules, requires BellSouth to pay symmetrical reciprocal compensation for the termination of local traffic. As described in more detail below, BellSouth currently fails to provide reciprocal compensation in accordance with the requirements of the Act and the FCC rules.

1) BellSouth Is Not Actually Paying Reciprocal Compensation At The Tandem Interconnection Rate

BellSouth does not pay reciprocal compensation at the tandem interconnection rate to ALECs that do not operate a traditional tandem switch, but who nevertheless utilize a switch that serves a geographic area comparable to that served by a BellSouth tandem switch. (Argenbright, T 1900)

BellSouth now appears to concede that the FCC's rules on reciprocal compensation establish an "either/or" test for determining when compensation must be paid at the tandem interconnection rate. (Argenbright, T 1906) Thus, after fighting the issue for several years, BellSouth now agrees that it must pay compensation at the tandem interconnection rate when an ALEC terminates calls through a switch which serves the same geographic area as a BellSouth tandem.

BellSouth, however, has made no showing that it is actually paying compensation at the tandem interconnection rate to any ALEC in Florida. While BellSouth claims that its obligation to pay reciprocal compensation is spelled out in its SGAT, the applicable section of that document makes absolutely no reference to the FCC's geographic comparability test. (Cox, T 164, 309-310; Ex. 13, CKC-5)

Based on this record, the Commission might be able to conclude that BellSouth now understands the scope of its obligation to pay reciprocal compensation. There is no record basis, however, to conclude that BellSouth is actually paying such compensation or is generally offering to pay such compensation under any legally enforceable interconnection agreement or SGAT. As such, BellSouth has not yet met the requirements of checklist item (xiii). (Argenbright, T 1906)

2) BellSouth Denies Its Obligation To Pay Reciprocal Compensation For FX Traffic

In addition, BellSouth has not agreed to pay reciprocal compensation in situations in

which an ALEC provides a competitive foreign exchange (FX) service by assigning NXXs to a customer with a physical location outside the rate center in which the NXX is homed. Instead, BellSouth reiterates the position it took in Phase II of Docket No. 000075-TP that it is entitled to charge access charges, not obligated to pay reciprocal compensation, in such circumstances. (Argenbright, T 1900, 1908-09; Cox, T 218)

If BellSouth were permitted to apply switched access charges to an ALEC's FX traffic, such above cost pricing would ultimately make the offering of competitive alternatives by ALECs infeasible. (Argenbright, T 1914) As the California Commission recognized:

The rating of a call, therefore, should be consistently determined based upon the designated NXX prefix. Abandoning the linkage between NXX prefix and rate center designation could undermine the ability of customers to discern whether a given NXX prefix will result in toll charges or not.

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043 at 26 (California PUC, Sept. 2, 1999). As the California Commission recognized, the retail offering of FX service and its associated rating (as a local call) based on the rate centers associated with the assigned NXXs must be applied to FX offerings from ALECs. Failure to do so distorts the way in which a ALEC can make a competitive FX offering available and, as described above, would in fact eliminate competition for this increasingly important service. (Argenbright, T 1914-1915)

The Kentucky Commission has concluded that "foreign exchange service and virtual NXX services should be considered local traffic when the customer is physically located within the same LATA as the calling area with which the telephone number is associated." (*In re: Level 3 Communications LLC Arbitration With BellSouth*, Kentucky Public Service Commission Case No. 2000-404, Order dated March 14, 2001). Similarly, the Michigan Public Service

Commission has said:

The Commission rejects the proposal to reclassify FX calls as non-local for reciprocal compensation purposes. Ameritech Michigan has not explained whether, or how, the means of routing a call placed by one LEC's customer to another LEC's point of interconnection affects the costs that the second LEC necessarily incurs to terminate the call.

In the matter of application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure, Case No. U-12696, Opinion and Order dated January 23, 2001.

Unless and until BellSouth accepts its obligation to pay reciprocal compensation on these types of FX calls, and incorporates that obligation into its Interconnection Agreements and its SGAT, it will not satisfy the requirements of checklist item (xiii).

ISSUE 15: Does BellSouth currently provide telecommunications services available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?

****WorldCom:** Adopt Joint ALECs' position. In addition, the Commission cannot make a final determination regarding BellSouth's compliance with this checklist item until conclusion of the OSS phase of this proceeding.**

ISSUE 16: By what date does BellSouth propose to provide intraLATA toll dialing parity throughout Florida pursuant to Section 271(e)(2)(A) of the Telecommunications Act of 1996?

****WorldCom:** No position.**

ISSUE 17: If the answers to issues 2 through 15 are "yes," have those requirements been met in a single agreement or through a combination of agreements?

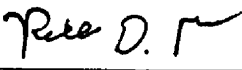
****WorldCom:** The answers to Issues 2 through 15 are not "yes," therefore this issue does not need to be addressed.**

ISSUE 18: Should this docket be closed?

****WorldCom:** Yes. The Commission should recommend that BellSouth does not yet qualify for interLATA authority and this docket should be closed.**

RESPECTFULLY SUBMITTED this 6th day of November, 2001.

HOPPING GREEN & SAMS, P.A.

By: 

Richard D. Melson
P.O. Box 6526
Tallahassee, FL 32314

DONNA CANZANO MCNULTY
WorldCom, Inc.
325 John Knox Road
The Atrium, Suite 105
Tallahassee, FL 32303

DULANEY L. O'ROARK, III
WorldCom, Inc.
Concourse Corporate Center Six
Six Concourse Parkway, Suite 3200
Atlanta, GA 30328

ATTORNEYS FOR WORLDCOM, INC.
AND ITS OPERATING SUBSIDIARIES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery (*) or by U.S. Mail to the following parties this 6th day of November, 2001.

Beth Keating*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Nancy White *
c/o Nancy Sims
BellSouth Telecommunications
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301

Lisa Foshee
BellSouth Telecommunications
675 W. Peachtree St., # 4300
Atlanta, GA 30375

John R. Marks, III
Knowles, Marks & Randolph
215 S. Monroe Street
Tallahassee, FL 32301

Floyd R. Self
Messer, Caparello & Self
P.O. Box 1876
Tallahassee, FL 32302-1876

Vicki Kaufman/Joseph McGlothlin
McWhirter, Reeves, McGlothlin
Davidson, Rief & Bakas, P.A.
117 S. Gadsden Street
Tallahassee, FL 32301

Patrick K. Wiggins
Charles Pellegrini
Katz, Kutter Law Firm
12th Floor
106 E. College Ave.
Tallahassee, FL 32301

Scott Sapperstein
Intermedia Communications, Inc.
One Intermedia Way (MC FLT-HQ3)
Tampa, FL 33647

Rhonda Merritt
AT&T
101 N. Monroe St., Ste. 700
Tallahassee, FL 32301

Susan Masterton
Sprint
P.O. Box 2214
Tallahassee, FL 32316

Peter M. Dunbar
Karen Camechis
Pennington, Culpepper, Moore
Wilkinson, Dunbar & Dunlap
Post Office Box 10095
Tallahassee, FL 32302

James C. Falvey
American Communications Services
Suite 100
131 National Business Parkway
Annapolis Junction, MD 20701

Marilyn H. Ash
Associate Legal Counsel
MGC Communications, Inc.
3301 N. Buffalo Drive
Las Vegas, NV 89129

Rodney L. Joyce
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W. Suite 800
Washington, DC 20005-2004

Matthew Feil
Florida Digital Network, Inc.
390 North Orange Ave.
Suite 2000
Orlando, FL 32801

Michael Sloan
Eric Branfman
Swindler Berlin Shereff Friedmann
3000 K Street, NW
Suite 300
Washington, DC 20007

Nanette Edwards
Director of Regulatory Advocacy
ITC^Delta Com
4092 S. Memorial Parkway
Huntsville, AL 35802

Kenneth Ruth
CWA
2180 West State Road 434
Longwood, FL 32779

Michael Gross
Florida Cable Telecommunications
Assoc., Inc.
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303

Donna McNulty
MCI WorldCom, Inc.
325 John Knox Road, Suite 105
Tallahassee, FL 32303

Brian Sulmonetti
MCI WorldCom, Inc.
Concourse Corporate Center Six
Six Concourse Parkway
Suite 3200
Atlanta, GA 30328

Network Access Solutions Corp.
100 Carpenter Drive, Suite 206
Sterling, VA 20164

Carolyn Marek
Time Warner Telecom
233 Bramerton Court
Franklin, TN 37069

Lori Reese
Vice Pres. of Governmental
Affairs
NewSouth Communications
Two Main Street
Greenville, SC 29609

Suzanne F. Summerlin, Esq.
1311-B Paul Russell Road
Suite 201
Tallahassee, FL 32301

Henry C. Campen, Jr. Esq,
Parker, Poe, Adams & Bernstein, LLP
P.O. Box 389
First Union Capital Center
150 Fayetteville Street Mall
Suite 1400
Raleigh, NC 27602-0389

Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
Rutledge, Ecenia, Purnell &
Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302

Genevieve Morelli
Andrew M. Klein
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

John D. McLaughlin, Jr.
KMC Telecom
1755 North Brown Road
Lawrenceville, GA 30043

IDS Telcom L.L.C.
1525 Northwest 167th Street
Second Floor
Miami, FL 33169

Catherine F. Boone
Covad Communications Company
10 Glenlake Parkway, Suite 650
Atlanta, GA 30328-3495

Jim Lamoureux
AT&T
1200 Peachtree St., Suite 8017
Atlanta, GA 30309

Dana Shaffer
XO Communications, Inc.
105 Molloy Street, Suite 300
Nashville, TN 37201-2315

Mark D. Baxter
Stone & Baxter, LLP
557 Mulberry Street, Suite 1111
Macon, GA 31201-8256

John Kerkorian
Mpower Communications
Two Premier Plaza
5607 Glenridge Drive, N.E.
Suite 310
Atlanta, Ga 30342

Rie D. M

Attorney

Terry Monroe
Vice President, State Affairs
Competitive Telecomm. Assoc.
1900 M Street, N.W.
Suite 800
Washington, DC 20036

Kimberly Caswell
Verison Select Services
One Tampa City Center
201 North Franklin Street
Tampa, FL 33602

John P. Fons
J. Jeffry Wahlen
Ausley & McMullen
227 South Calhoun Street
Tallahassee, FL 32301

Charles J. Beck
Deputy Public Counsel
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Bettye Willis
Alltell Comm. Services. Inc.
One Allied Drive
Little Rock, AR 72203-2188

Jonathan E. Canis
Michael B. Hazzard
Kelley Drye & Warren, LLP
1200 19th Street, NW
Fifth Floor
Washington, DC 20036

Peggy Rubino
Z-Tel Communications, Inc.
601 South Harbor Island Blvd.
Suite 220
Tampa, FL 33602