HOPPING GREEN & SAMS

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET

POST OFFICE BOX 6526

TALLAHASSEE, FLORIDA 32314

(850) 222-7500

FAX (850) 224-8551

www.hgss.com

Writer's Direct Dial No.
(850) 425-2359

July 29, 2002

BY HAND DELIVERY

Blanca Bayó
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 020129-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI WorldCom, Inc. is the original and fifteen copies of the Rebuttal Testimony of Mark Argenbright. By copy of this letter copies have been furnished to the parties shown on the certificate of service list.

If you have any questions please feel free to call me at 425-2359.

Very truly yours,

Gary V. Perko

Gary V. Perko

GVP/jlm
Enclosures
cc: Certificate of Service

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF MARK ARGENBRIGHT

ON BEHALF OF MCI WORLDCOM

DOCKET NO. 020129-TP

JULY 29, 2002

Q. **PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Mark E. Argenbright. My business address is Six Concourse Parkway, Suite 3200, Atlanta, Georgia 30328.

Q. **HAVE YOU PREVIOUSLY FILED DIRECT TESTIMONY IN THIS DOCKET?**

A. Yes.

Q. **WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

A. I am going to review Mr. Ruscilli's and Mr. Milner's testimonies as they relate to Issue 3, concerning the lack of revenue neutrality associated with BellSouth's CCS7 tariff filing, Issue 4 concerning the violation of Section 364.163, Florida Statutes, and the harmful competitive implications of this tariff filing.

Q. **MR. RUSCILLI INDICATES THAT THE RATE REDUCTIONS PROPOSED BY BELLSOUTH TO ACCOMPLISH REVENUE NEUTRALITY INVOLVE RATES FOR INTRASTATE ACCESS SERVICES AND RATES FOR MOBILE SERVICE PROVIDERS. IS THIS APPROPRIATE?**

A. No. Allowing BellSouth to offset revenue increases it receives through increases in its intrastate switched access rates with reductions in rates for services BellSouth provides out of its retail tariff is bad policy. For example, BellSouth could leverage such a policy to its competitive advantage by offsetting increases in its intrastate switched access rates with reductions in its intrastate toll rates. This would allow BellSouth to lower its retail rates for intrastate toll and increase the costs its competitors would incur in providing service in competition with those reduced toll rates, all the while claiming that, at the end of the day, BellSouth is realizing no additional revenue.

This concern is applicable to this CCS7 tariff filing. The definition of "Telecommunications Company" as provided in Section 364.02, Florida Statutes specifically excludes Commercial Mobile Radio Service ("CMRS") providers. Therefore, BellSouth is actually attempting to increase rates for telecommunications companies and to characterize it as revenue neutral based on a reduction in revenues received from non-telecommunications companies. Or, put differently, BellSouth's ALEC and IXC competitors are being subjected to a substantial increase in rates for CCS7 messages which BellSouth believes should be accepted by the Commission as revenue neutral. The reduction in the local switching rate does not by itself offset the revenue increase. BellSouth must include the reduction in the rates for CMRS providers in order to claim revenue neutrality. It is understandable why ALECs and IXCs are less than thrilled with the alleged "neutrality" of this filing. Obviously, any such demonstration should be rejected in order to avoid the anti-competitive implications of such a policy.

Q. SHOULD THE GROWTH IN DEMAND BE CONSIDERED WHEN THE COMMISSION REVIEWS THIS REQUEST TO INCREASE RATES FOR THE CCS7 RATE ELEMENT?

A. Yes. While the simple math involved in multiplying a current (or estimated) level of demand by the amount of a proposed rate increase produces a revenue number for consideration, that number is simply a snapshot of the potential impact at the moment the demand was measured. When the proposed rate increase involves an element that has a substantial rate of growth, any claim of neutrality should be tested against the effect of that growth in demand. Without such an analysis, what may appear to be revenue neutral today may well represent a significant increase in revenue.

This is the case with BellSouth's CCS7 tariff filing. Unless the demand for local switching is exhibiting similar growth as the demand for CCS7 messages, which it is not, any revenue neutral status will quickly be overrun with a revenue increase.

Q. DO YOU AGREE WITH MR. RUSCILLI THAT, WITH RESPECT TO COMPLIANCE WITH SECTION 364.163, FLORIDA STATUTES, BELLSOUTH HAS MET THE PARITY REQUIREMENT?

A. No. While BellSouth achieved parity between its intrastate switched access rates and its 1994 interstate switched access rates in 1997, as Mr. Ruscilli acknowledges, the statute was amended in May of 1998 establishing new points in time for the rate cap references. The amendment, which established and extended the cap on rates for switched network access services, must be interpreted to have also reapplied the parity requirement found in Subsection (2). Under the amended statute, BellSouth must reach parity with its interstate rates subsequent to the amendment. Since BellSouth has not reached parity with its interstate rates since the amendment, this proposed tariff violates Section 364.163. This interpretation is far more consistent with the policy goals of the Legislature when the amendment was passed than that being advanced by Mr. Ruscilli.

Q. **HOW DID THE LEGISLATURE VIEW INTRASTATE SWITCHED ACCESS RATES WHEN CONSIDERING AND PASSING THE AMENDMENT OF FLORIDA STATUTE 364.163?**

A. The June 2, 1998 Final Bill Research & Economic Impact Statement for HB 4785 provides significant insight into the concerns the Legislature had with respect to intrastate switched network access charges. At page 2, under Substantive Research, the situation at that time was characterized in part as follows:

> It is generally agreed among industry analysts that charges for intrastate network access services (intrastate switched access charges) are priced far in excess of cost and, in many cases, substantially higher than comparable charges applicable to interstate calls (interstate switched access charges).

Continuing:

> Regulators traditionally have used revenues from the high intrastate switched access rates (and high rates for other services)

> to implicitly subsidize universal service and maintain basic residential local telecommunications rates at levels believed by many to be below the cost to provide local service. The implicit subsidy mechanism was left in place when chapter 364, Florida Statutes, was revised in 1995 to open Florida's local telecommunications markets to competition. <u>However, the pricing structure resulting from this historic regulatory policy appears to be a barrier to market entry for telecommunications provider wishing to compete in local residential markets. As such, the policy may have contributed to the stalled development of local competition despite the gradual reductions in intrastate switched access charges required by section 364.163(6), Florida Statutes (1995)</u>. (Emphasis added)

The Legislature, in revising Section 364.163, perceived significant problems with the then current level of intrastate access charges even in light of the reductions in such charges, including BellSouth's attainment of parity in 1997. Against this backdrop of concern for the level of intrastate access charges, the Legislature passed the bill amending Section 364.163 to establish new effective dates on which switched network access rates were to be capped and established new dates for such rate caps to expire.

Obviously, in amending Section 364.163 to establish rate caps and extend the expiration date two years beyond where the previous version of the statute placed them, the Legislature intended to prohibit any further increases in switched network access rates. This prohibition was made applicable to all companies subject to the section, which included BellSouth.

Simply, the Legislature recognized that even with the reductions in switched network access rates that had been achieved under the earlier version of the statute, rate levels remained too high and directed that those rates could go no higher than their January 1, 1999 levels until the caps expire and the company seeking to increase rates has reached parity with its interstate switched network access rates subsequent to the amendment of the statute.

Under the interpretation advanced in this proceeding by BellSouth, this filing should be accepted as complying with Section 364.163 because the caps established by the amended statute have expired and, BellSouth's intrastate switched network access had once been at parity some five years ago compared to interstate rate levels from eight years ago.

Mr. Ruscilli is correct, "parity between interstate and intrastate switched access charges is a moving target." (Ruscilli, Direct Testimony, page 12) The Legislature, in expressing their concern regarding the high level of intrastate switched network access rates, recognized this problem and that is exactly why the parity requirement contained in 364.163 (2) must be interpreted to be applicable in the context of BellSouth's rate levels since the amendment of the statute.

Q. CAN BELLSOUTH DEMONSTRATE THAT ITS INTRASTATE SWITCHED NETWORK ACCESS RATES ARE CURRENTLY AT

PARITY WITH ITS INTERSTATE SWITCHED NETWORK ACCESS RATES?

A. Of course not. What is of equal interest is the current disparity between BellSouth's intrastate and interstate rates for switched network access services as well as the rather miniscule reduction in intrastate rates since 1998. BellSouth's 1998 rate for originating and terminating an intrastate telephone call was $0.0489 (the 1994 interstate rate with which BellSouth achieved parity was $0.0583). (House of Representatives Committee on Utilities and Communications Final Bill Research and Economic Impact Statement, Bill CS/HB 831, May 12, 1998)

As of February 2002 BellSouth's intrastate rate was $0.0455 (a mere 7% reduction from the 1998 level) and its interstate rate was $0.0098 (a reduction of 83% from the 1994 level). (House of Representatives Committee on Utilities and Communications Analysis, Bill PCB UTCO 02-01, February 5, 2002) As Mr. Milner suggests, this filing is increasing rates for BellSouth's intrastate CCS7 service. "To date, the per message charge for the service has been zero." (Milner, Direct Testimony, page 5) Such an increase in rates for its intrastate switched network access service must comply with Section 364.163 (2) which requires that the rate cap must expire ***and*** there must be parity between BellSouth's intrastate and interstate switched network access rates. This requirement has not been met and such a finding is consistent with the policy goals of the Legislature as well as with the existence of such a disparity between BellSouth's intrastate and interstate rates.

Q ARE COMPETITIVE ALTERNATIVES TO THE CCS7 SERVICE FOR WHICH BELLSOUTH SEEKS TO INCREASE RATES AVAILABLE, AS SUGGESTED BY MR. RUSCILLI?

A. No. Mr. Ruscilli attempts to portray the CCS7 service being provided by BellSouth as a service that a carrier could choose to get from an alternative provider. (Ruscilli, Direct Testimony, page 3) This is not the case. One supposed option is for a carrier to provide its own SS7 network. WorldCom has its own SS7 network and has received bills from BellSouth for CCS7 messages. Obviously, a carrier having its own SS7 network cannot avoid ISUP and TCAP messages being sent to and received from the BellSouth SS7 network. The other alternative offered by Mr. Ruscilli is for a carrier to acquire SS7 services from a hub provider. However, Mr. Ruscilli makes clear later in his testimony that BellSouth will be billing hub providers for the CCS7 messages as well. (Ruscilli, Direct Testimony, page 6, footnote 1) If the hub providers are to be billed by BellSouth, they really do not represent an alternative to BellSouth's CCS7 service.

There simply are no competitive alternatives to the CCS7 service for which BellSouth seeks this rate increase. If a carrier's end users make calls to or receive calls from BellSouth end users, then messages are going to be sent to and received from the BellSouth SS7 network. BellSouth is a monopoly provider and receiver of CCS7 messages with respect to calls to and from its end users. Accordingly, any increases in the rates for this service must be borne by carriers, most of which compete with BellSouth in offering services which rely on CCS7 messages. Allowing BellSouth to increase rates for this monopoly service, particularly to levels well in excess of cost, is a detriment to the competitive market in Florida.

Q. WHAT ARE THE COMPETITIVE IMPLICATIONS OF BELLSOUTH'S STATED INTENTION TO BILL FOR CCS7 MESSAGES REGARDLESS OF THE DIRECTION OF THE CALL?

A. While the increases in the rate as well as the level of the rate have their own competitive concerns, the proposed application of the rates by BellSouth is also anticompetitive. Mr. Milner indicates that BellSouth intends to bill for CCS7 messages regardless of whether the calls originate on the BellSouth network or the network of an ALEC. (Milner, Direct Testimony, page 7)

As has been described in the testimony of other parties, a call in a <u>single</u> direction between end users on two different networks involves the sending and receiving of CCS7 messages in <u>both</u> directions. For a simple example, a BellSouth end user originating a call to be terminated to a WorldCom end user would cause the BellSouth SS7 network to send an initial CCS7 message to the WorldCom SS7 network to determining whether or not the line serving the WorldCom end user being called is available. Assuming the line was idle, the WorldCom SS7 network would send a message to be received by the BellSouth SS7 network indicating a call could be established. A similar two-way transmission of messages would occur when the call was terminated.

In this example the WorldCom SS7 network received messages from and sent messages to the BellSouth SS7 network. BellSouth's method of applying its proposed CCS7 message charges would result in WorldCom being billed for all of these messages. However, all of these CCS7 messages were in support of a call originated by a BellSouth end user. Were it not for the actions of a BellSouth customer utilizing services purchased from BellSouth, WorldCom would not have incurred any charges for CCS7 messages. Contrary to Mr. Ruscilli's suggestion, this is hardly an instance of the cost causer being made responsible. Instead, BellSouth's proposal penalizes carriers that have built their own networks and happened to acquire customers in competition with BellSouth. The Commission should not accept this faulty assertion as a reason for approving BellSouth's tariff.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. As a threshold matter, BellSouth's tariff filing is not in compliance with Section 364.163, Florida Statutes, and should be rejected by the Commission. Such a result not only makes sense from a "compliance" perspective but is good policy as well. The Florida Legislature has recognized that the presence of implicit subsidies within intrastate switched network access rates inhibits competition. This filing perpetuates the existence of such anti-competitive subsidies. As I demonstrated in my direct testimony, the proposed rates are well above the TELRIC based rates this Commission established for CCS7 messages in Docket No. 990649-TP. (Orders No. PSC-01-1181-FOF-TP, issued May 25, 2001, and PSC-01-2051-FOF-TP, issued October 18, 2001)

Additionally, the existence of revenue neutrality, which this filing does not achieve, is not a substitute for the requirements of the statute. Only parity between BellSouth's interstate and intrastate switched network access rates would allow BellSouth to seek an increase in its intrastate switched network access rates.

This filing initiates additional competitive harm because there are no competitive alternatives to BellSouth's CCS7 service and BellSouth, in this monopoly position, intends to apply the proposed rates to messages associated with calls that are initiated by its own customers on its own network.

Q. WHAT ACTION SHOULD THE COMMISSION TAKE WITH REGARD TO BELLSOUTH'S CCS7 TARIFF FILING?

A. For the reasons discussed above, the Commission should reject BellSouth's tariff filing and return the monies billed to date under this tariff be returned to the carriers that were charged.

In the alternative, if the Commission does not reject this tariff filing, which WorldCom believes it should, the Commission should reduce BellSouth's proposed rates to match those TELRIC rates established in Docket No. 990649-TP. As has been discussed, there is only one CCS7 network and it operates in support of local, intraLATA and interLATA calls. There is no difference in cost between an ISUP message sent in support of a local call and the same message sent in support of an intraLATA call. Simply, a message is a message. This alternative would still result in an increase in intrastate switched network access rates, which WorldCom believes is inconsistent with the requirements of Section 364.163, but the considerable implicit subsidies would be reduced.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail and/or hand deliver (*) to all known parties of record in Docket No. 020129-TP this 29th day of July, 2002.

Jason Fudge*
FL Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

BellSouth Telecommunications, Inc.
Ms. Nancy B. White/Jame Meza III
c/o Ms. Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

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

ITC^DeltaCom
Ms. Nanette S. Edwards
4092 South Memorial Parkway
Huntsville, AL 35802-4343

Pennington Law Firm
Karen Camechis
P.O. Box 10095
Tallahassee, FL 32302-2095

Rutledge Law Firm
Ken Hoffman/J. Ellis/Martin McDonnell
P.O. Box 551
Tallahassee, FL 32302

Time Warner Telecom of Florida, L.P.
Ms. Carolyn Marek
Time Warner Telecom
233 Bramerton Court
Franklin, TN 37069-4002

US LEC of Florida Inc.
Mr. Greg Lunsford
6801 Morrison Blvd.
Charlotte, NC 28211-3599

Attorney