

LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE (850) 222-0720
TELECOPIER (850) 224-4359
INTERNET www.lawfla.com

August 22, 2002

BY HAND DELIVERY

Ms. Blanca Bayó, Director
The Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 990649A-TP

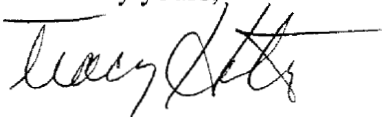
Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC, are an original and fifteen copies of AT&T's Petition for Interim Rates in the above-referenced docket.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,



Tracy W. Hatch

TWH/amb
Enclosures
cc: Ms. Virginia Tate
Parties of Record

DOCUMENT NUMBER-DATE
08886 AUG 22 8
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into) DOCKET NO. 990649A-TP
pricing of unbundled network) Filed August 22, 2002
elements (BellSouth track).)

PETITION FOR INTERIM RATES

AT&T Communications of the Southern States, LLC ("AT&T") hereby requests that the Florida Public Service Commission ("the Commission") establish UNE pricing that will foster competition in Florida. First, in the special agenda session scheduled for September 6, 2002, the Commission should take immediate steps to set interim rates at those recommended by AT&T and MCI WorldCom Communications, Inc. previously in this proceeding in an effort to initiate some competition in the local exchange market. This petition does not request any delay nor should the Commission delay taking an initial immediate step to begin to address UNE rates. Second, the Commission should take further necessary steps to promote competition as mandated by the Florida legislature.

Current UNE rates are too high, and high UNE rates combined with low retail rates are not producing a wholesale/retail margin that allows ALECs to provide local exchange service to Florida consumers, particularly residential consumers. As a result, BellSouth monopolizes the local exchange market, and most Florida consumers have no choice of local providers. The Florida legislature has charged this Commission with the responsibility of transitioning from the monopoly provision of local exchange service to the development of "fair and effective" competition. Fla. Stat. § 364.01(3). ALECs cannot fairly and effectively compete in the local exchange market with the current UNE prices. Accordingly, this Commission must take action to bring local exchange competition to Florida.

I. BACKGROUND

The Telecommunications Act of 1996 (the “Telecom Act”) and Federal Communications Commission (“FCC”) regulations require this Commission to establish rates for UNEs¹. The Florida legislature also has mandated that the rates must be set to promote competition for the benefit of Florida consumers. Consistent with the legislature’s mandate, in May 1999 the Commission opened a generic UNE pricing docket (Docket No. 990649-TP) and two years later (on May 25, 2001), issued a Final Order setting BellSouth’s UNE rates. After motions for reconsideration, the Commission ultimately decided in favor of BellSouth on inflation factors which resulted in a substantial increase over the rates set forth in the May 25th Order.

This petition does not contemplate the Commission holding a new extensive cost proceeding to address all possible UNEs, nor is this petition requesting the Commission to establish rates that are not cost based. As in the “*Sprint*” case described in footnote 1 below, even assuming for purposes of argument that the prices established in this docket are TELRIC compliant, a point AT&T contests, TELRIC prices can fall within a wide band of rates. But as the Court recognized in “*Sprint*”, if a Commission selects a point too high within that band, the prices may preclude profitable entry. To date, the rates established by this Commission have not encouraged and have precluded most ALECs from entering the local exchange market.

¹ The Telecom Act and FCC regulations require state commissions to set rates for UNEs using the TELRIC pricing methodology. However, even assuming for purposes of argument that the prices established by a state commission are TELRIC-compliant, TELRIC prices can fall within a wide band of rates. *Sprint Communications Co. v. FCC*, 274 *f. d* 549 (D.C. Cir. 2001) (“*Sprint*”). The *Sprint* Court noted that a pure TELRIC analysis will not necessarily result in rates that encourage competition. The Court thus recognized that TELRIC rates may exist in a range. If a Commission selects a point too high within that band, the prices may preclude profitable entry. The *Sprint* Court relied in part upon the Supreme Court’s decision in *FPC v. Conway Corp.*, 426 U.S. 271 (1976)(“*Conway*”). In *Conway*, the Court held that even if a utility’s wholesale rates are within the range of reasonable cost-based rates, the rates are nevertheless “discriminatory” and “anticompetitive” if they fall at the high end of that range and they preclude wholesale purchasers from economically competing with the utility’s retail services to any class of customers. 426 U.S. at 278-79.

The May 25th Order also requested BellSouth to file, within 120 days, certain revisions to its cost study on loops, network interface devices, and cable and structure engineering and installation based on a “bottoms up” approach. A separate hearing process was established for this phase of the cost docket and it became known as “BellSouth’s 120-day filing.” The staff issued its recommendation in BellSouth’s 120-day filing on June 3, 2002. In short, the staff noted that BellSouth failed to provide a “bottoms-up” study but recommended that the Commission not make any adjustments to the current rates.²

At the Agenda session on June 13, 2002, the Commission expressed its concerns over staff’s recommendation and proposed that rates be reduced in order to foster competition. Chairman Jaber noted that UNE pricing in Florida must go down and cannot be higher than BellSouth’s retail rates. The Chairman stated, “And I think philosophically if I ever expect to have competition in the local telecommunications market, then I’ve got to recognize that UNE prices cannot be higher in some areas than BellSouth’s retail offerings.” (Agenda transcript, p. 7) As shown below, this is precisely the situation that exists in Florida today.

The Commission concluded that the parties were best positioned to decide UNE rates and decided to hold the proceeding in abeyance for 60 days to give the parties the opportunity to negotiate rates.³ In its Order holding this proceeding in abeyance, the Commission firmly acknowledged its duty to promote competition in Florida:

Of greatest concern to us, however, is that the resulting recommended rates, even incorporating input changes suggested by our staff, still appear to be too high to provide a meaningful incentive for local telecommunications competition in Florida, which we have been

² Alternatively, the staff recommended that the Commission could make some adjustments based on a “bottoms up” approach but certain adjustments recommended by staff actually resulted in an increase to existing rates.

³ The Commission issued Order No. PSC-02-0841-PCO-TP on June 19, 2002. The Commission held the docket in abeyance until August 13, 2002, a period of 60 days from the June 13 Agenda Conference. During the 60-day period, the Commission ordered the parties to meet to negotiate UNE prices.

statutorily mandated by the Legislature to foster for the benefit of Florida consumers. See Section 364.01, Florida Statutes.⁴

Therefore, AT&T urges the Commission to establish rates that set competitive pricing in Florida for the benefit of Florida consumers.

II. UNLESS CURRENT UNE RATES ARE LOWERED SIGNIFICANTLY, RESIDENTIAL LOCAL EXCHANGE COMPETITION WILL NEVER FLOURISH IN FLORIDA, TO THE DETRIMENT OF CONSUMERS.

The fundamental fact is that Florida has yet to see local telephone competition flourish even though it has been *six years* since the enactment of the Federal Telecommunications Act of 1996 ("The Telecom Act") and *seven years* since the enactment of the Florida Telecommunications Act. Nor will there ever be competition in Florida's local exchange market in the current UNE environment.

Chairman Jaber was precisely right when she said that rates need to be reduced in Florida in order for competition to come. More importantly, she was right to recognize that UNE rates cannot be higher than retail rates. In Florida today, the retail rate that a residential consumer pays for basic local service in zone 2 areas is \$10.28. The UNE rate for the same service which ALECs pay is \$17.06.⁵ Obviously, an ALEC cannot compete with BellSouth to provide local service to residential consumers if it has to pay BellSouth nearly \$7 more for the same service than what BellSouth charges its residential customers. As discussed below, in addition to the cost of the UNEs ALECs also incur internal operating costs to provide the service. In the end, it is cost prohibitive for ALECs to compete in the residential market.

High UNE rates and low retail rates create an environment that discourages local competition. Unfortunately, the Florida consumer is the one who loses. Florida has not seen,

⁴ Order 02-0841, p. 3.

⁵ The \$17.06 represents the amount an ALEC would pay BellSouth for the loop and the port with no features.

and will not see, ALECs clamoring to enter the local market under the current conditions. It would not be a prudent business decision for a reasonable company to make. That said, if prices are set at a level to aid in the development of “fair & effective competition” as mandated by the Florida legislature, competition will come. In California where the Utilities Commission recently drastically reduced UNE rates, AT&T entered the local market quickly with a plan that was \$5 cheaper than the current LEC plan.⁶

Creating a truly competitive environment in Florida requires this Commission to take aggressive measures to fulfill the legislature’s mandate that local exchange competition flourish in Florida. Indeed, Stat. § 364.01(3) specifically provides “[t]he Legislature further finds *that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition...*”(emphasis supplied). Moreover, the Commission has been directed by the legislature to ensure that the rates it sets do not serve as a barrier to competition. Fla. Stat. § 364.162. Thus, this Commission has the mandate, the authority, and the responsibility to ensure that the pricing it sets for UNEs promotes competition.

Under the current pricing scheme, ALECs serve a paltry percentage of Florida consumers and that percentage is not increasing. More than six years after the Act's passage, BellSouth remains the largest local exchange carrier in Florida, and still controls well over 90% of the access lines in its service territory. According to one study, ALECs' total market share in Florida is a meager 3.7% to 5.5%.⁷ According to the FCC’s latest competition report, ALECs have 7%

⁶ AT&T’s offer in California includes unlimited local calling, caller ID, and two additional features.

⁷ *Rebuttal Testimony of Joseph Gillan on Behalf of Florida Competitive Carriers Ass'n*, at 17, Docket No. 960786-TL (July 20, 2001) (“Gillan”). By way of contrast, ALECs in New York had approximately 27% of the local

of the market in Florida.⁸ This percentage includes both business and residential, and the large majority of the lines are business.⁹ The unfortunate and most telling fact is that the percentage of ALEC share in Florida has flattened. There has been no increase in competition in Florida during 2001. In fact, based on the same FCC local competition reports, the level of competition has only increased 1% since 1999. By contrast, states that have taken action to promote competition have seen significant increases in the ALECs share of the market.¹⁰ For example, from 1999 to 2001, the ALEC share of the market increased in New York from 17% to 25%, in Illinois from 5% to 15%, and in Georgia from 5% to 11%.

BellSouth would have this Commission believe that Florida only falls several dollars below other states when comparing UNE rates. However, a review of UNE rates in any given state must be compiled with a review of retail rates in that state to get the full picture. Low retail rates coupled with high UNE rates translates into low revenue per line. Thus, the cost to the ALEC of leasing UNEs from BellSouth cannot be sufficiently covered by the revenue on that line. Simply put, **no** ALEC has entered-- or will enter-- the residential market in mass scale in Florida given these conditions.

exchange market as of January 1, 2002. (See Testimony filed by the staff of the New York Public Service Commission in Case 00-C-1945, *In the Matter of Verizon-New York*, February 2002, p. 14.) Even though the ALECs' market share in New York is much higher than many states, including Florida, Verizon and the New York Public Service Commission staff filed a Joint Settlement Proposal on February 8, 2002 which is intended to further promote long term competition in New York. The staff noted in its testimony supporting the Joint Proposal that despite the ALECs' market share, several factors were undercutting growth, such as the inability of many competitors to attract investors with many resulting in bankruptcies, adverse impact of UNE pricing, and barriers resulting from processes and procedures set by ILECs. (Staff testimony, p. 18) On pricing, the staff found that the margins for competitors entering the residential market would not sustain a reasonable business plan. (Staff testimony, p. 19) The staff noted that the New York Commission's Order issued on January 28, 2002 which significantly lowered UNE prices together with the Joint Proposal would provide competitors with an opportunity to do business successfully in New York. (*Id.*) Among other items, the New York Commission will require Verizon to reduce its UNE-P rates by more than \$8.00 per line.

⁸ Source: Federal Communications Commission "Local Telephone Competition: Status as of December 31, 2001," issued July 2002; Table 7, "Competitive Local Exchange Carrier Share of End-User Switched Access Lines"

⁹ See Table 6 of FCC Local Telephone Competition Reports.

¹⁰ See Exhibit 1.

Importantly, those states where competition has increased have UNE rates lower than those in Florida and retail rates that are higher than those in Florida. As a result, the profit margins are significantly higher for ALECs. (See Exhibit 2.) For example, the average wholesale/retail margin per line is \$16.73 in Michigan and \$16.10 in Illinois as compared to a mere \$2.55 per line in Florida. These margin amounts do not even take into account a company's internal costs of doing business. Those costs include marketing and advertising (significant expenses for start-up competitors such as ALECs), billing and collecting, allowances for uncollectables, and a wide array of other internal costs that are inherent in any business. When these not-inconsequential costs are added into the ALEC's business case the result is a significant negative profit margin for the residential services that it seeks to offer in Florida. ALECs simply cannot offer UNE-based competitive residential services in Florida without incurring substantial operating losses. Accordingly, increasing local competition exists in other states, but the prospect is dead on arrival in Florida.

Indeed, Florida has the lowest wholesale/retail margin in all of the nine states served by BellSouth. (See Exhibit 3) While Florida has a wholesale/retail margin of \$2.55, Georgia has a wholesale/retail margin of \$10.93 and Mississippi has a wholesale/retail margin of \$16.65. The only state close to Florida is North Carolina with a wholesale/retail margin of \$3.23. Significantly, the North Carolina Utilities Commission acknowledged that UNE rates needed to be revisited and opened a new UNE cost case – which is currently underway. Similarly, the Georgia Public Service Commission recently completed an additional UNE cost proceeding and an Order is expected in the next couple of months.

Given BellSouth's current pricing and the state of competition in Florida, it is evident that the current rates prohibit competitors from UNE entry into the local exchange market --

especially to serve residential customers. In short, under current UNE pricing and low retail rates, the ALECs' cost to provide service exceeds the available revenue from the provision of that service. Thus, BellSouth has an anticompetitive advantage that impacts not only ALECs but also -- and most importantly -- Florida consumers.

Moreover, BellSouth now seeks this Commission's approval to enter the interLATA long distance market at a time when residential ALEC competition is barred by the excessive prices which BellSouth would extract from its competitors for the network elements that are necessary to facilitate that competition. To allow BellSouth to enter the interLATA long distance market in Florida prior to the insuring that all the conditions necessary for effective competition in the local exchange market are present would be to stand the Telecom Act on its head, essentially guaranteeing that consumers in Florida never receive the benefits of local competition that Congress intended when the Telecom Act was enacted. Additionally, BellSouth's entry into the interLATA market prior to the opening of the local exchange market to full and fair competition, would give BellSouth an unfair advantage in the long distance business, effectively eroding the robust competition in the long distance market that this Commission has sought to foster for almost 20 years. In order to prevent this from happening, the Commission must fix the problems with UNE pricing in Florida before BellSouth enters the interLATA market. If the Commission fails to do so, Florida consumers will suffer.

III. THIS COMMISSION MUST TAKE ACTION TO PROMOTE LOCAL COMPETITION IN FLORIDA.

The Commission should move, without delay, to establish lower interim rates at a level that will promote competition. This will allow the Commission to consider further evidence in this proceeding to arrive at UNE rates that will comply with TELRIC requirements and will

allow for meaningful competition. This Commission has a legal obligation to foster local exchange competition, and to date, such competition has failed miserably in this state. Not only is the level of residential competition in Florida virtually nonexistent, the wholesale/retail margins needed to bring competition are lower in Florida than in any state in BellSouth's territory. This Commission must take immediate action to rectify this situation.

First, the Commission should establish UNE interim rates at the level recommended by AT&T and WorldCom in this docket.¹¹ These interim rates are necessary because BellSouth has yet to file a "bottoms-up" cost study consistent with the Commission's directives upon which permanent UNE rates may be determined.¹² Interim UNE rates are critical in order to initiate a minimal level of competition and to give BellSouth incentive to comply with the requests of this Commission to provide TELRIC compliant cost studies. Once interim rates are established, the Commission should:

- 1) Consider other factors affecting the current market place in Florida and/or other incentives for BellSouth to reduce wholesale rates.
- 2) Require BellSouth to file the data, assumptions, input values, and revisions to its cost study consistent with the "bottoms up" approach previously ordered by the Commission in Order No. PSC-01-1181-FOF-TP.

¹¹ See attached as Exhibit 4, a detailed legal memorandum on the authority of this Commission to establish interim rates.

¹² In its Order of June 19, 2002, the Commission states: "In Order No. PSC-01-1181-FOF-TP, we expressed concern with BellSouth's use of linear loading factors, and therefore, directed BellSouth's use of linear loading factors, and therefore, directed BellSouth not only to provide specific data and the assumptions that underlie the data, but to clearly identify its input values for the purposes of this proceeding. BellSouth, nevertheless, used some linear loading factors in its 120-day filing. Furthermore, the "bottoms-up" approach presented in this proceeding has produced results that, in many instances, appear counter-intuitive." (Order 02-0841, p. 3)

- 3) Consider additional evidence and/or re-examine evidence on rates for loops and the UNE-Platform.¹³

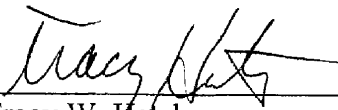
IV. CONCLUSION

Although the Legislature requires this Commission to transition Florida from the monopoly provision of local exchange service, the simple truth is that local exchange competition has failed. Residents in this state have virtually no choice of local providers. This failure to have competition is due in large part to high UNE rates. This Commission must take immediate action. The Commission needs to “jump start” competition by setting interim rates at the level proposed by AT&T and WorldCom. After interim rates have been set, the Commission should take additional steps to bring local exchange competition to Florida consumers.

BASED ON THE FOREGOING, AT&T respectfully requests that the Commission expeditiously consider this petition and grant the instant request to set interim rates for the UNEs identified herein as well as the other matters requested and grant any other and further relief to AT&T that the Commission may deem just and equitable.

Respectfully submitted this 22nd day of August, 2002.

AT&T COMMUNICATIONS OF THE
SOUTHERN STATES, LLC

By: 

Tracy W. Hatch
Messer, Caparello and Self
Tallahassee, Florida
(850) 222-0720

Attorneys for AT&T Communications Of
The Southern States, LLC

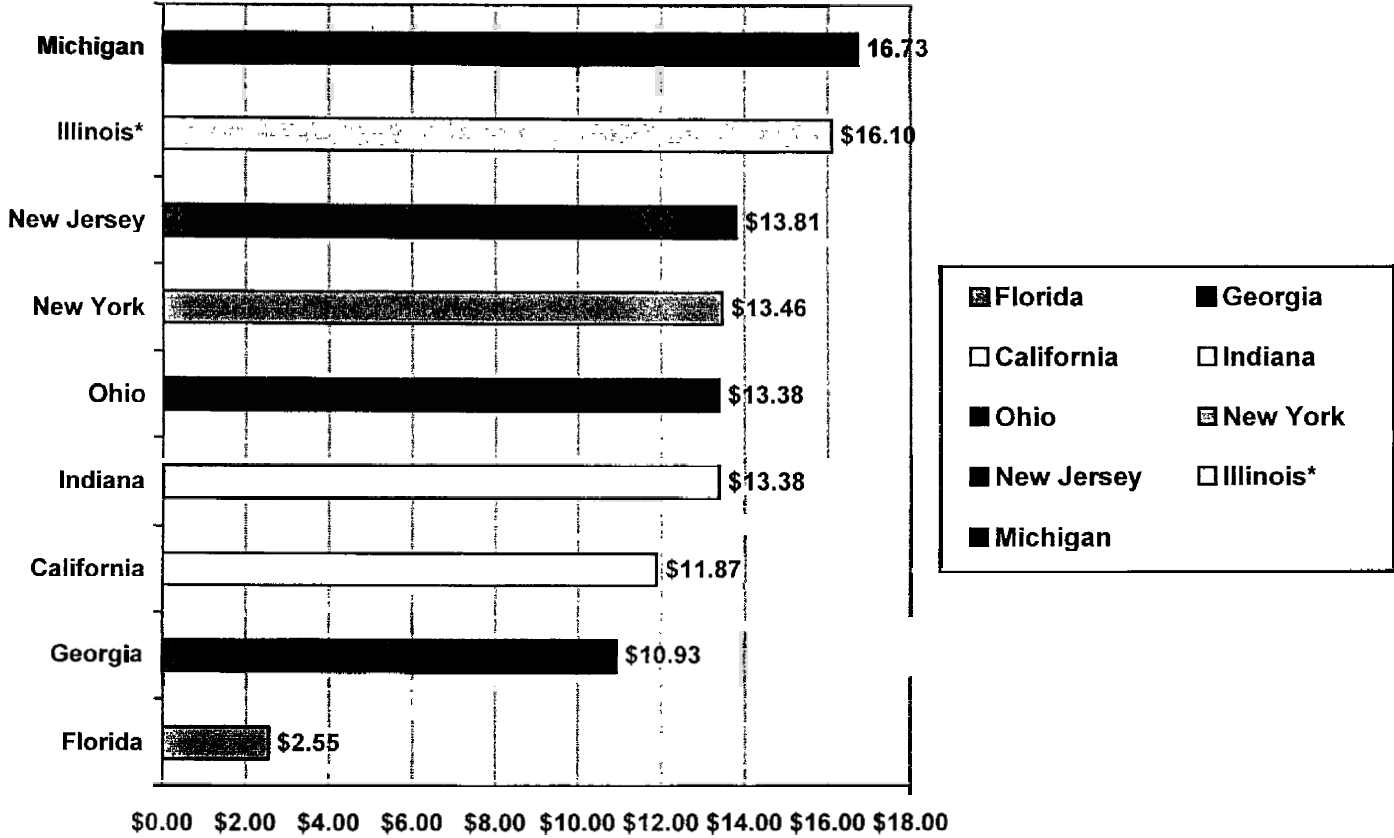
¹³ AT&T is not proposing that the Commission consider additional evidence on all of the rates in this docket. As a practical matter, the rates the Commission needs to focus on to bring residential competition to Florida consumers are the rates associated with the UNE loop and the UNE platform. See Exhibit 5 for a list of rate elements that the Commission should address.

Competing local phone service companies' market share since year-end 1999

	Dec. 1999	June 2000	Dec. 2000	June 2001	Dec. 2001
Florida	6%	6%	6%	7%	7%
Georgia	5%	6%	8%	10%	11%
Michigan	3%	5%	6%	9%	13%
Illinois	5%	7%	9%	13%	15%
New York	9%	16%	20%	23%	25%
Indiana	3%	4%	5%	5%	5%
Ohio	4%	4%	4%	4%	5%
California	4%	5%	6%	7%	8%
Texas	4%	7%	13%	14%	16%
U.S.	4%	6%	8%	9%	10%

Source: Federal Communications Commission "Local Telephone Competition: Status as of December 31, 2001," issued July 2002; Table 7, "Competitive Local Exchange Carrier Share of End-User Switched Access Lines"

UNE – PLATFORM MARGINS



also include a state SLC if one exists), access revenue - based on FCC ARMIS local "dial equipment minutes" information for business and residence and toll minutes from TNS Telecom's "Bill Harvest" research, and USF/Other - based on regulatory permission to collect either USF dollars or any other state surcharge as revenue.

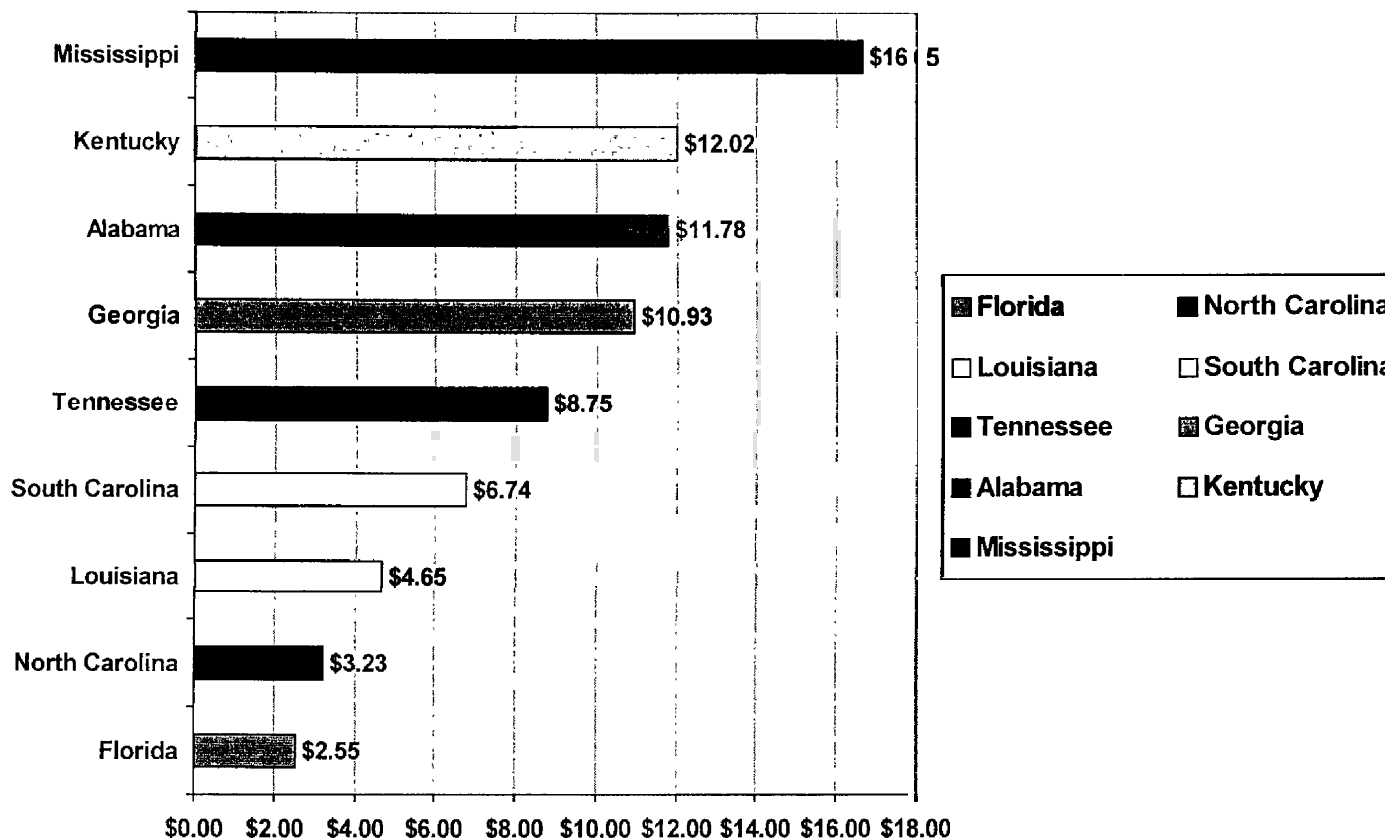
UNE - PLATFORM MARGINS

State	Average Total Revenue	Average Platform Cost w NRCs	Average Margin Per Line
California	\$ 25.17	\$ 13.30	\$ 11.87
Florida	\$ 27.07	\$ 24.52	\$ 2.55
Georgia	\$ 33.41	\$ 22.48	\$ 10.93
Illinois*	\$ 28.79	\$ 12.69	\$ 16.10
Indiana	\$ 25.74	\$ 12.36	\$ 13.38
Michigan	\$ 30.63	\$ 13.90	\$ 16.73
New Jersey	\$ 28.05	\$ 14.24	\$ 13.81
New York	\$ 31.58	\$ 18.12	\$ 13.46
Ohio	\$ 27.22	\$ 13.84	\$ 13.38

* Illinois UNE-P costs are based on an ICC Order in Docket 00-0700 dated July 10, 2002 (investigation into tariff providing unbundled local switching with shared transport). Estimated UNE-P costs resulting from this proceeding are subject to a yet to be completed compliance process.

Residence revenues include: Basic Local Service (based on ILEC state-specific information on effective rates), features (based on state-specific feature revenue information from a firm called TNS Market Research"), Subscriber Line Charge (SLC) - the effective FCC ILEC tariff rate (may also include a state SLC if one exists), access revenue - based on FCC ARMIS local "dial equipment minutes" information for business and residence and toll minutes from TNS Telecom's "Bill Harvest" research, and USF/Other - based on regulatory permission to collect either USF dollars or any other state surcharge as revenue.

UNE – PLATFORM MARGINS



Residence revenues include: Basic Local Service (based on ILEC state-specific information on effective rates), features (based on state-specific feature revenue information from a firm called "TNS Market Research"), Subscriber Line Charge (SLC) - the effective FCC ILEC tariff rate (may also include a state SLC if one exists), access revenue - based on FCC ARMIS local "dial equipment minutes" information for business and residence and toll minutes from TNS Telecom's "Bill Harvest" research, and USF/Other - based on regulatory permission to collect either USF dollars or any other state surcharge as revenue.

UNE - PLATFORM MARGINS

State	Average Total Revenue	Total Platform Cost w NRCs	Average Margin Per Line
Alabama	\$ 33.89	\$ 22.11	\$ 11.78
Florida	\$ 27.07	\$ 24.52	\$ 2.55
Georgia	\$ 33.41	\$ 22.48	\$ 10.93
Kentucky	\$ 31.21	\$ 19.19	\$ 12.02
Louisiana	\$ 29.33	\$ 24.68	\$ 4.65
Mississippi	\$ 42.34	\$ 25.69	\$ 16.65
North Carolina	\$ 25.31	\$ 22.08	\$ 3.23
South Carolina	\$ 31.64	\$ 24.89	\$ 6.74
Tennessee	\$ 29.00	\$ 20.26	\$ 8.75

Residence revenues include: Basic Local Service (based on ILEC state-specific information on effective rates), features (based on state-specific feature revenue information from a firm called TNS Market Research"), Subscriber Line Charge (SLC) - the effective FCC ILEC tariff rate (may also include a state SLC if one exists), access revenue - based on FCC ARMIS local "dial equipment minutes" information for business and residence and toll minutes from TNS Telecom's "Bill Harvest" research, and USF/Other - based on regulatory permission to collect either USF dollars or any other state surcharge as revenue.

AUTHORITY OF THE FLORIDA PUBLIC SERVICE COMMISSION TO ESTABLISH
INTERIM RATES FOR UNBUNDLED NETWORK ELEMENTS

The Florida Public Service Commission's authority to set rates for Unbundled Network Elements (UNEs) stems from its plenary authority to regulate telecommunications pursuant to Chapter 364, Florida Statutes, as well as the authority assigned to the Commission by Congress through the Telecom Act of 1996 to set rates for UNEs in accordance with the pricing rules promulgated by the Federal Communications Commission. Based on these statutory provisions, the Commission has the authority to establish interim rates for UNEs pending submission of information sufficient to allow the Commission to determine appropriate UNE rates consistent with the goals of Telecom Act and Chapter to foster competition in the local market.

I. Authority Under Chapter 364, Florida Statutes.

The Commission's basic statutory grant of authority is found in Section 364.01, Florida Statutes. This Section establishes the basic mission and goals of the Commission. Section 364.01(3), Florida Statutes, declares, *inter alia*, the express legislative finding that "competition in the provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service encourage technological innovation and encourage investment in telecommunications infrastructure." This section illustrates an overriding legislative mandate to the Commission to create and affirmatively foster competition in the local telecommunications market place. The Commission's duties to foster and encourage competition are further delineated by Section 364.04, Florida Statutes. Pursuant to Section 364.04, the Commission has a duty to:

1. Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services. Section 364.01(4)(b), Florida Statutes. (emphasis added)
2. Promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which new entrants are subject to a lesser level of regulatory oversight than local exchange telecommunications companies. Section 364.01(4)(d), Florida Statutes. (emphasis added)
3. Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint. Section 364.01(4)(g) Florida Statutes. (emphasis added)

These statutory provisions clearly mandate that the Commission affirmatively act to encourage the introduction and the spread of local telecommunications competition to ensure that the largest number of consumers has the widest array of services available.

II. Authority Under the Telecom Act of 1996

The Telecom Act of 1996 eliminated all legal monopolies in the provision of local exchange service. Similar to the legislative mandate in Chapter 364, Congress designed the Act to affirmatively encourage the introduction and spread of competition in the local exchange telecommunications market. As noted by the Supreme Court recently in upholding the Federal Communications Commission's UNE pricing rules, one of the Act's fundamental goals is to "jump-start" local competition. Verizon Communications, Inc. v. FCC, slip opinion p. 16; 535 U.S. ____ (2002). In creating the new impetus for the spread of local competition, Congress created a pricing mechanism for UNEs that is "designed to give aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbents property." Verizon, p. 17. In the furtherance of Congress goals under the Act, the FCC was given the task of delineating the specific rules pursuant to which the prices for

UNEs would be set and the public service commissions were given the task of determining the prices for UNEs consistent with the pricing rules. See 47 U.S.C, §§251(d) and 252(d)(1).

III. FCC's Pricing Rules for Interim Rates

The FCC, in accordance with §251(d), promulgated its rules to be used by state commissions in determining the rates for UNEs in their respective states. These rules are codified in 47 CFR §§51.501-51.515 (1997) and have been upheld by the Supreme Court in *Verizon*. *Verizon*, p. 25.

Under the pricing standards established by the FCC, the price of an UNE is its forward looking economic cost based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing ILEC wire centers. §51.505. This is the standard that the Florida Commission must apply in setting rates for UNEs provided by incumbent local exchange companies in Florida.

Recognizing that a state commission may find itself in a situation where the appropriate information necessary to determine UNE rates may be unavailable, the FCC also provided a mechanism to put interim UNE rates in place pending receipt and analysis of the appropriate information. Section 51.513(a) provides:

Where a state commission determines that the cost information available to it with respect to one or more elements does not support the adoption of a rate or rates that are consistent with the requirements set forth in §§ 51.505 and 51.511, the commission may establish a rate for an element that is consistent with the proxies specified in this section as long as the commission sets forth in writing a reasonable basis for its selection of a particular rate. (emphasis added)

The proxy rates for various UNEs are set forth in §51.513(c).

IV. Conclusion

Section 252(d) of the Act assigns responsibility for determining UNE rates to the Florida Public Service Commission. The pricing rule adopted by the FCC anticipated the need for setting interim UNE rates where adequate information is unavailable to the Commission. Section 51.513 of the FCC's pricing rules clearly provides authority for the Florida Public Service to establish interim UNE rates pending submission and evaluation of appropriate cost information necessary to determine UNE prices that are consistent with the procompetitive mandates of the Telecom Act and Chapter 364.

FLORIDA RATE ELEMENTS

Unbundled Loops (Standalone)

A.1.1	2-Wire Analog VG Loop – Service Level 1
A.1.2	2-Wire Analog Voice Grade Loop – Service Level 2
A.4.1	4-Wire Analog VG Loop
A.5.1	2-Wire ISDN Digital Grade Loop
A.6.1	2-Wire Asymmetrical Digital Subscriber Line (ADSL) Compatible Loop
A.7.1	2-Wire High Bit Rate Digital Subscriber Line (HDSL) Compatible Loop
A.8.1	4-Wire High Bit Rate Digital Subscriber Line (HDSL) Compatible Loop
A.9.1	4-Wire DS1 Digital Loop
A.10.1	4-Wire 19, 56 or 64 KBPS Digital Grade Loop
A.13.1	2-Wire Copper Loop – Short
A.13.7	2-Wire Copper Loop – Long
A.13.12	2-Wire Unbundled Copper Loop – Non Design
A.14.1	4-Wire Copper Loop – Short
A.14.7	4-Wire Copper Loop – Long
A.16	High Capacity Unbundled Local Loop
A.20	Hybrid Copper/Fiber xDSL Capable Loop

UNE Platform Loops

P.1.1	2-Wire Voice Grade Loop
P.4.1	2-Wire ISDN Digital Grade Loop

Interoffice Transport

D.4	DS1 interoffice facilities
D.6	DS3 interoffice facilities

Other Rate Elements

- 2-Wire Analog Port (Including End Office Switching Usage, Trunk Port and Features)
- Tandem Switching Usage and Trunk Port
- Common Transport
- Daily Usage Feed
- Nonrecurring Charges for Standalone Loops, Port and UNE-P
 - New Install
 - Migration
 - Service Order
 - Disconnect
 - Loop "Hot Cut"

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U. S. Mail this 22nd day of August, 2002.

Jason Fudge, Esq.*
Division of Legal Services, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

Claudia Davant-DeLoach, Esq.
AT&T
101 N. Monroe St., Suite 700
Tallahassee, FL 32301

Virginia Tate, Esq.
AT&T
1200 Peachtree St., Suite 8068
Atlanta, GA 30309

Jeffrey Whalen, Esq.
John Fons, Esq.
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecommunications Assoc., Inc.
246 E. 6th Avenue
Tallahassee, FL 32301

Kimberly Caswell
Verizon Select Services
P.O. Box 110 (FLTC0007)
Tampa, FL 33601-0110

Donna McNulty, Esq.
WorldCom
The Atrium Building, Suite 105
325 John Knox Road
Tallahassee, FL 32303

Mr. Brian Sulmonetti
WorldCom, Inc.
6 Concourse Parkway, Suite 3200
Atlanta, GA 30328

Marc W. Dunbar, Esq.
Pennington, Moore, Wilkinson, Bell &
Dunbar, P.A.
P.O. Box 10095
Tallahassee, FL 32302-2095

Charles J. Rehwinkel
Sprint-Florida, Incorporated
MC FLTHO0107
P.O. Box 2214
Tallahassee, FL 32399-2214

Mark Buechele
Supra Telecom
1311 Executive Center Drive, Suite 200
Tallahassee, FL 32301

Carolyn Marek
Vice President of Regulatory Affairs
Southeast Region
Time Warner Communications
233 Bramerton Court
Franklin, TN 37069

Ms. Wanda Montano
US LEC of Florida, Inc.
6801 Morrison Blvd
Charlotte, NC 28211-3599

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

Patrick Wiggins
Charles Pellegrini
Katz, Kutter Law Firm
106 East College Avenue, 12th Floor
Tallahassee, FL 32301

Richard D. Melson
Hopping Green Sams & Smith, P.A.
P.O. Box 6526
Tallahassee, FL 32314

BlueStar Networks, Inc.
Norton Cutler/Michael Bressman
5 Corporate Centre
801 Crescent Centre Drive, Suite 600
Franklin, TN 37067

Mr. John Spilman
Broadslate Networks of Florida, Inc.
585 Loblolly Lane
Charlottesville, VA 22903-7656

William H. Weber
Senior Counsel
Covad Communications Company
1230 Peachtree Street, NE, 19th Floor
Atlanta, GA 30309

Florida Digital Network, Inc.
390 North Orange Avenue, Suite 2000
Orlando, Florida 32801

Mr. Don Sussman
Network Access Solutions Corporation
Three Dulles Tech Center
13650 Dulles Technology Drive
Herndon, VA 20171-4602

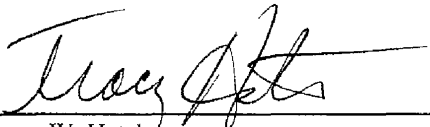
Rodney L. Joyce
Shook, Hardy & Bacon LLP
600 14th Street, NW, Suite 800
Washington, DC 20005-2004

Michael Sloan
Swidler & Berlin
3000 K Street, NW #300
Washington, DC 20007-5116

George S. Ford
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd.
Tampa, FL 33602-5706

Lisa Korner Butler
Vice President Regulatory & Industry Affairs
Network Plus, Inc.
41 Pacella Park Drive
Randolph, MA -2368

Andrew O. Isar
Miller Isar, Inc.
7901 Skansie Avenue, Suite 240
Gig Harbor, WA 98335



Tracy W. Hatch