

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida Competitive
Carriers Association Against BellSouth
Telecommunications, Inc. Regarding BellSouth's
Practice of Refusing to Provide FastAccess
Internet Service to Customers who Receive
Voice Service from a Competitive Voice
Provider, and Request for Expedited Relief

Docket No. 020507-TP

Filed: December 23, 2002

REBUTTAL TESTIMONY AND EXHIBITS

OF

JOSEPH GILLAN

ON BEHALF OF

THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION

DOCUMENT NUMBER-DATE

13979 DEC 23 02

FPSC-COMMISSION CLERK

THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION
REBUTTAL TESTIMONY OF JOSEPH GILLAN
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020507-TL

December 23, 2002

1

Introduction

2

3

Q. Please state your name, address and business affiliation.

4

5

A. My name is Joseph Gillan. My business address is P. O. Box 541038, Orlando, Florida 32854. I am filing rebuttal testimony on behalf of the Florida Competitive Carriers Association (FCCA). I previously filed direct testimony in this proceeding on behalf of the FCCA.

6

7

8

9

10

Q. What is the purpose of your rebuttal testimony?

11

12

A. The purpose of my rebuttal testimony is to respond to BellSouth's "policy reasons" that it claims justify its refusal to provide FastAccess DSL service to any customer that has moved its voice service to an Alternative Local Exchange Company (ALEC) using UNE-P or UNE-L leased from BellSouth. In addition to my testimony, the FCCA is sponsoring the testimony of Mr. Jay Bradbury and Ms. Sherry Lichtenberg who address the operational issues raised by BellSouth.

13

14

15

16

17

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 **Q. Please summarize your rebuttal testimony.**

2

3 A. BellSouth offers three reasons why the Florida Commission should sanction its
4 refusal to provide DSL data service to those customers that choose an ALEC for
5 voice service:

6

7 * The FCC has not ordered BellSouth to cease the practice;

8

9 * BellSouth's federal tariff -- or, at least, BellSouth's
10 *interpretation* of that tariff -- requires that it refuse service;
11 and,

12

13 * Competition -- and, even more remarkably, consumers --
14 *benefit* from BellSouth's refusal to provide service to
15 customers that have chosen an ALEC for voice service.

16

17 As I explain below, however, none of these explanations has merit. Although it is
18 true that FCC rules do not *prohibit* BellSouth's practice of restricting FastAccess
19 to its own voice customers, neither do they *sanction* this extreme behavior.
20 Moreover, the FCC is not the sole (nor necessarily, even the best) judge of
21 discrimination under the Telecommunications Act of 1996 ("Federal Act" or

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 “Telecom Act”), nor has it addressed whether such conduct is appropriate under
2 Florida law.

3
4 The issue in this proceeding fundamentally is “when is it reasonable – if ever –
5 for BellSouth to refuse service to a customer?” BellSouth characterizes FCCA’s
6 Complaint as forcing BellSouth to serve the “ALEC’s customers” (Fogle, page 5),
7 but that characterization is misleading – these are *BellSouth’s* customers (or, with
8 respect to new requests for FastAccess, potential customers). FCCA’s Complaint
9 is that it is discriminatory and unlawful for BellSouth to refuse service to one of
10 BellSouth’s data customers as punishment for the customer choosing an ALEC
11 for voice service. It is against this remarkable action that the merit of BellSouth’s
12 claimed justifications – in a nutshell, “the FCC lets me do it,” “my tariff makes
13 me do it,” and “consumers benefit by my doing it” – must be balanced.

14
15 **Q. Before you address BellSouth’s policy arguments in detail, do you have any**
16 **preliminary comments?**

17
18 **A.** Yes. One of the issues in this proceeding concerns the Commission’s authority to
19 order the relief requested by the FCCA (Issue 1). It is frequently difficult in
20 regulatory proceedings to separate economic and policy testimony from legal
21 arguments. Although my rebuttal testimony does discuss a number of FCC
22 decisions and BellSouth’s interstate tariff (these discussions are necessitated by

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 BellSouth's effort to hide behind these documents), the testimony does not
2 directly address the Commission's legal jurisdiction, which is an issue that will be
3 addressed in post-hearing brief. Let me just note that the issue of this
4 Commission's authority to take action in this case is one that has already been
5 decided multiple times by the Commission.

6
7 **The FCC Has Not Sanctioned BellSouth's Policy Restricting FastAccess**

8
9 **Q. BellSouth attempts to justify its FastAccess policy by claiming that the FCC
10 approves of it. (Ruscilli, page 3). Is this interpretation accurate?**

11
12 **A.** No. A cornerstone of BellSouth's claim that its FastAccess policy is lawful is its
13 assertion that the policy has been "sanctioned" by the FCC. BellSouth is so
14 convinced of this view, that not only does it claim that the FCC has sanctioned the
15 behavior, BellSouth claims that the FCC has preempted any other conclusion.
16 (Ruscilli, page 3).

17
18 **Q. Has the FCC been as "definitive" as on these issues as BellSouth claims?**

19
20 **A.** No. A complete review of FCC decisions regarding FastAccess (and other
21 FastAccess-like arrangements) reveals an FCC that is far more ambiguous than
22 the characterization BellSouth implies. BellSouth portrays the FCC as reaching

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 definitive findings that its behavior is not discriminatory. However, a fair reading
2 of relevant FCC Orders shows that the FCC has generally deferred substantive
3 consideration of the discrimination question by finding only that its rules as
4 written do not require that BellSouth continue to offer DSL service to customers
5 served via UNEs (and UNE-P in particular).

6
7 Finding that a rule does not compel certain behavior is far different than finding
8 the behavior is lawful. The FCC itself made this distinction clear when it first
9 concluded that its rules were not written to require an ILEC to provide DSL
10 service to customers choosing voice service from another carrier (FCC Order 01-
11 26, CC Dockets No. 98-147 and CC Docket No. 96-98, January 16, 2001, ¶ 26):

12
13 As described above, we deny AT&T's request for clarification that
14 under the *Line Sharing Order*, incumbent LECs are not permitted
15 to deny their xDSL services to customers who obtain voice service
16 from a competing carrier where the competing carrier agrees to the
17 use of its loop for that purpose. Although the *Line Sharing Order*
18 obligates incumbent LECs to make the high frequency portion of
19 the loop separately available to competing carriers on loops where
20 incumbent LECs provide voice service, it does not require that
21 they provide xDSL service when they are not longer the voice
22 provider. We do not, however, consider in this Order whether, as

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 AT&T alleges, this situation is a violation of sections 201 and/or
2 202 of the Act.

3
4 In effect, the FCC decided not to decide – acknowledging that existing rules did
5 not require an ILEC to offer its xDSL services to customers served via network
6 elements, while leaving for another day whether such action would be
7 unreasonable. This approach was carried forward to a series of Section 271
8 proceedings that judged compliance with existing rules. BellSouth relies heavily
9 on such Section 271 decisions, but without ever acknowledging the critical
10 context provided by the decision’s reference to existing rules (FCC Order No. 02-
11 147, CC Docket No. 02-35, May 15, 2002, ¶157 (Georgia/Louisiana 271 Order),
12 emphasis added):

13
14 We reject these claims [regarding FastAccess] because, under our
15 rules, the incumbent LEC has no obligation to provide DSL service
16 over the competitive LEC’s leased facilities.

17
18 This theme continued into the FCC’s review of BellSouth’s “5 State Application”
19 (FCC Order No. 02-260, WC Docket No. 02-150, September 18, 2002, ¶164,
20 emphasis added):

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 As we stated in the Georgia/Louisiana Order, an incumbent LEC
2 has no obligation, under our rules, to provide DSL service over the
3 competitive LEC's lease facilities.
4

5 There is no question that the FCC's existing rules do not require the relief sought
6 by the FCCA – obviously, if the existing rules did so, then this proceeding would
7 be unnecessary. This “admission” does not, however, change the question before
8 the Florida Commission: What resolution is appropriate for Florida consumers,
9 given the Federal Act's prohibition on discrimination and the provisions in
10 Florida law concerning anticompetitive conduct?
11

12 **Q. Has the FCC previously indicated that it expected the states to investigate**
13 **(and prevent) discrimination problems, such as those presented here?**
14

15 A. Yes. Although federal rules define a national framework and establish minimum
16 requirements, the FCC clearly expected that the states would “drill down” to
17 adopt more detailed discrimination protections and address other issues as they
18 arose (FCC Order 96-235, CC Docket No. 96-98, August 8, 1996, ¶ 310,
19 emphasis added):
20

21 We [the FCC] expect that the states will implement the general
22 nondiscrimination rules set forth herein by adopting, *inter alia*,

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 specific rules determining the timing in which incumbent LECs
2 must provision certain elements, and any other specific conditions
3 they deem necessary to provide new entrants, including small
4 competitors, with a meaningful opportunity to compete in local
5 exchange markets.

6
7 The FCC thus recognized that the states would be addressing specific problems as
8 they arose.

9
10 **Q. Is it appropriate for the Florida Commission to exercise its authority to**
11 **prevent discrimination in this case?**

12
13 A. Yes. Although the detailed discussion of the Commission's legal authority is best
14 left to the post-hearing brief, the focus of this case is the discriminatory impact of
15 BellSouth's policy on the Florida voice market, over which the Commission
16 unquestionably has jurisdiction.

17
18 **Q. Does BellSouth acknowledge the interrelationship between its FastAccess**
19 **service and its unique position as the incumbent voice provider?**

20
21 A. Yes. Even BellSouth acknowledges that its FastAccess position is a direct result
22 of its inherited voice monopoly (Smith, page 5, emphasis added):

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

By only investing in areas where BellSouth believed that it could successfully market DSL service as a compliment to its existing voice service and thereby realize a favorable return on its investment, BellSouth was able to increase deployment and investment in later years as its DSL offerings became more popular.

BellSouth used its voice monopoly to create its DSL service and is now using its DSL service to further entrench its voice monopoly. This cycle must be broken.

BellSouth’s Federal Tariff Does Not Excuse its Behavior

Q. BellSouth claims that continuing to offer xDSL services to customers that obtain voice service from another carrier using UNEs would “violate” its federal tariff. (Ruscilli, page 11). Assuming the statement is true, should the Commission defer to BellSouth’s federal tariff?

A. No. Assuming that BellSouth’s interpretation of its federal tariff is plausible -- an issue I will return to in a moment – tariffs are intended to reflect policy, not create it. BellSouth’s tariff (at least with respect to the issue here) was drafted and filed by BellSouth and thus is entirely within BellSouth’s discretion. Using the tariff as

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 an excuse for its behavior is no different than simply saying that BellSouth
2 refuses service “because it wants to.” The Commission should decide what is
3 appropriate for Florida and if that requires that BellSouth modify its tariff to
4 comply with Florida law, then BellSouth is free to do so.

5
6 **Q. Is BellSouth’s interpretation of its federal tariff reasonable?**

7
8 A. No. First, the most important point is the one above – BellSouth should not be
9 able to “justify” anticompetitive and discriminatory conduct by claiming that its
10 federal tariff permits or requires it. But even if it were reasonable to use a tariff in
11 such a manner, there is nothing in BellSouth’s federal tariff that could reasonably
12 be read as compelling its behavior.

13
14 BellSouth claims that FCC Tariff No. 1, Section 7.2.17(A) requires that it refuse
15 service to any customer served by a UNE arrangement because that section of the
16 tariff indicates that DSL service will be provided to an “in-service, Telephone
17 Company provided exchange line facility.” (Ruscilli, page 11). But the tariff goes
18 on to define an “in-service exchange line facility” in the following manner (FCC
19 Tariff No. 1, 6th Revised Page 7-58.12, Section 7.2.17(A)):

20
21 An in-service exchange line facility, as referred to in association
22 with BellSouth ADSL service, is the serving Central Office line

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 equipment and all the plant facilities up to and including the
2 Telephone Company-provided Network Interface Device.

3
4 Although BellSouth continuously *states* that UNEs are not an “in-service
5 exchange line facility” (see Ruscilli, page 11), there is nothing in the above
6 definition that *supports* the claim – UNE loops include the Central Office line
7 equipment and all the plant facilities “up to and including” a BellSouth-provided
8 Network Interface Device. These conditions are satisfied as much by UNEs as by
9 a resold line, or line used to support a BellSouth retail service.

10
11 **The Effect of BellSouth’s Policy on Local Competition**
12 **and Florida Consumers**

13
14 **Q. In addition to its “legal” (i.e., jurisdictional and tariff-based) arguments,**
15 **does BellSouth offer any other explanations for its behavior?**

16
17 A. Yes. BellSouth also argues that it should be allowed to refuse service to
18 customers. BellSouth claims that this policy does not adversely affect customers
19 because:

20
21 (a) The policy can be rectified by ALECs reselling BellSouth voice
22 service or building their own DSL network (Ruscilli, page 13);

23

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 (b) The Florida market is already competitive (Ruscilli, page 15); and

2

3 (c) Broadband competition is promoted by BellSouth's refusal to serve
4 some customers (Ruscilli, page 19).

5

6 **Q. Can ALECs "simply" resell BellSouth's voice service or establish their own**
7 **DSL networks?**

8

9 A. No. Before addressing what options are plausibly available to an ALEC,
10 however, it is useful to again point out that the fundamental issue here is whether
11 it is reasonable for BellSouth to refuse to provide service to its own customers,
12 not whether ALECs have other options. Even if ALECs had other options (a
13 claim I dispute below), that would not justify BellSouth's actions, it would only
14 lessen the potential impact of those actions on the ALEC.

15

16 As to the ALEC's ability to "resell" BellSouth's services, that proposition ignores
17 one of the first lessons of the post-Telecom Act environment – resale is not
18 viable. Among other failings, resale does not enable competitors to introduce
19 innovative new services such as MCI's Neighborhood offering, which require that
20 MCI become the access provider to its customers in order to offer unlimited toll
21 services. BellSouth's Form 477 local competition reports to the FCC show that

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 resale lines in Florida declined by more than 50% in just the first six months of
2 2002, hardly evidence that the option is viable.

3
4 Equally problematic is the idea that any company is in a position to duplicate
5 BellSouth's DSL footprint. As I noted earlier, BellSouth admits that its DSL
6 footprint is the result of its starting position as the incumbent voice provider.
7 (Smith, page 5). That advantage is not available to any other provider. Moreover,
8 even if an ALEC could establish a DSL footprint equal to that of BellSouth, that
9 would not justify forcing customers to change DSL service so as to change their
10 voice provider. Difficulties in establishing a working DSL arrangement are
11 legendary. Why should a customer be forced to risk a problem with its DSL
12 service just because it wants to subscribe to a better voice product?

13
14 **Q. Is there *any* useful conclusion that can be drawn from BellSouth's testimony**
15 **that it is willing to offer FastAccess on a resold line?**

16
17 A. Yes. The testimony directly contradicts BellSouth's assertion that it is costly and
18 difficult to arrange for FastAccess provision on UNEs because BellSouth would
19 need to "negotiate" rates, terms and conditions for provisioning with each ALEC.
20 There is no reason that the "UNE-negotiations" needed to implement a
21 Commission order would be any more difficult than the "resale-negotiations" that
22 its current policy accommodates.

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Q. BellSouth points to penetration statistics for Florida to support its claim that competition in the local market is flourishing. (Ruscilli, page 16). Does this respond to the argument that its policy is anticompetitive?

A. No. Overall penetration statistics say nothing about discrimination in particular market segments, nor about BellSouth's attempt to retain voice customers by threatening to disconnect DSL service.

Q. Why is it so important that BellSouth be prohibited from discriminating against UNEs (and UNE-P in particular) by refusing to provide FastAccess to customers being served under such arrangements?

A. Evidence continues to demonstrate that the only practical hope for mass market competition for residential and smaller business customers is UNE-P. The following table (based on BellSouth's Form 477 Local Competition Reports filed with the FCC) demonstrates the importance of UNE-P to local competition.

Table 1: Local Market Conditions in Florida

| Entry Strategy | December 2001 | June 2002 | Change |
|---------------------------------|----------------------|------------------|---------------|
| Resale | 277,335 | 132,630 | (144,705) |
| UNE-P (loops with switching) | 135,719 | 428,326 | 292,607 |
| UNE-L (loops without switching) | 167,048 | 167,027 | (21) |
| | 580,102 | 727,983 | |

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 Contrary to BellSouth's theory, the growth in UNE-P does not mean that voice
2 competition is unharmed by its discriminatory refusal to provide FastAccess on
3 such lines – it is only evidence that voice competition cannot be precluded by the
4 policy (which, given the relatively low penetration rates of DSL service should
5 not be a surprise). The relative growth of UNE-P and resale does demonstrate,
6 however, why BellSouth insists on punishing customers migrating to a successful
7 entry strategy, while “offering” to provide FastAccess to customers migrating to a
8 strategy in total decay.

9
10 **Q. BellSouth (for reasons that are, quite frankly, not clear) also claims that a**
11 **favorable ruling on the FCCA Complaint would not promote local voice**
12 **competition in rural Florida. (Ruscilli, page 18). Do you agree?**

13
14 A. No. Although I do not understand how it would make discriminating against
15 urban and suburban customers acceptable *assuming* ALECs were not serving rural
16 areas, the data supplied by BellSouth demonstrates that ALECs are using UNE-P
17 to compete for rural customers. BellSouth's testimony indicates that “only” 2%
18 of the UNE-P lines are in (the presumably rural) Zone 3. However, only 3.5% of
19 the switched lines are in Zone 3. Although these statistics suggest that
20 competition is proportionally higher in the non-rural areas, the difference would
21 not seem to warrant the point that BellSouth is attempting to make (whatever it
22 is). Perhaps even more telling, on December 18 2002, BellSouth filed

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 information with the FCC's Wireline Competition Bureau indicating that it had
2 discovered an error in a comparable federal filing and provided updated (and
3 corrected) information to the FCC (BellSouth's Ex Parte Letter is attached as
4 Exhibit No. ___, JPG-1). This corrected data reveals a UNE-P distribution for
5 Florida quite different than that claimed by Mr. Ruscilli.

6
7 **Table 2: BellSouth's Corrected UNE-P Data**
8 (UNE-P Lines as of September 30, 2002)

| | Corrected BellSouth Data | | Ruscilli |
|--------|--------------------------|---------|-----------|
| | UNE-P Lines | Percent | Testimony |
| Zone 1 | 136,004 | 29% | 64% |
| Zone 2 | 304,545 | 64% | 34% |
| Zone 3 | 34,955 | 7% | 2% |
| | 475,504 | | |

9
10 I would note that the above statistics continue to demonstrate the power of UNE-P
11 to bring competitive choice to residential and smaller business customers
12 throughout Florida, with nearly 50,000 new UNE-P lines being added in the third
13 quarter of 2002 (comparing Table 2 to Table 1).

14
15 **Q. Do you believe that prohibiting BellSouth from refusing to offer FastAccess**
16 **service will promote broadband competition?**

17
18 **A.** Yes. The policy enhances customer choice and, therefore, enhances competition.
19 BellSouth adopts the counter-intuitive position that allowing it to refuse service

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 promotes competition. Moreover, BellSouth argues that requiring it to cease the
2 practice would harm broadband competition in three ways (Ruscilli, page 19):
3

4 i) By “saddling economic burdens” on BellSouth that could
5 adversely impact BellSouth’s DSL deployment;
6

7 ii) By discouraging ALECs to deploy DSL networks of their
8 own; and
9

10 iii) By discouraging ALECs to offer competing DSL services
11 through line splitting.
12

13 None are these claims are true. First, as discussed by Mr. Bradbury and Ms.
14 Lichtenberg, BellSouth’s claimed “economic burdens” are never quantified, much
15 less shown to be significant. In fact, BellSouth has “mistakenly” provided DSL
16 service on UNE-P lines in the past, a circumstance that directly challenges the
17 claim that it is difficult or costly to accommodate. (A copy of BellSouth’s letter
18 to ALECs demanding that the lines be shifted to resale or the service will be
19 disconnected is attached as Exhibit No. ____, JPG-2).
20

21 Second, ALECs would have the same incentive to offer DSL in the future as they
22 have today – to be able to win the customer as a DSL customer. The FCCA is not

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 asking that ALECs replace BellSouth as the DSL provider using BellSouth
2 equipment – BellSouth would continue to serve its customers as before (albeit
3 without retaining the customer’s voice service). ALECs would still have an
4 incentive to become a DSL provider in order to win DSL customers.

5
6 Finally, ALECs would still have an opportunity to partner with competing DSL
7 providers where that strategy made sense. The only difference is that in the
8 meantime, for those customers that want the ALEC’s voice service, BellSouth
9 would not be permitted to refuse to provide it merely because the customer no
10 longer wanted BellSouth’s voice service as well.

11
12 **Q. BellSouth also claims that the relief FCCA seeks would harm its competitive**
13 **position. Does this make sense?**

14
15 A. No. BellSouth’s testimony on “competitive harm” borders on the bizarre. For
16 instance, BellSouth implies that the FCCA is weakening its ability to offer
17 packages (Smith, page 5):

18
19 The ability to offer such a package (mixing voice and DSL) is
20 essential for BellSouth to competitive successfully against those,
21 such as cable providers, that also offer a full suite of

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 telecommunications products and services, including local service,
2 long distance and Internet access.

3
4 Leaving aside the fact that there are precious few cable providers offering full
5 suites of local, long distance and Internet access in Florida, there is nothing about
6 the FCCA Complaint that would stop BellSouth from continuing to offer DSL
7 services alongside its local (and long distance, now that it has approval) services.
8 The FCCA Complaint addresses BellSouth's refusal to sell FastAccess when
9 customers decide to obtain voice service elsewhere, the Complaint does not
10 prevent BellSouth from continuing to offer FastAccess to customers that it retains.
11 It is simply implausible that BellSouth's *DSL* competitive position is harmed
12 because it would no longer be permitted to refuse to sell the service, although
13 such an order would (as it should) diminish its *voice* dominance.

14
15 **Q. Finally, BellSouth claims that it cannot offer FastAccess on a “stand alone”**
16 **basis. (Smith, page 6). Is this accurate?**

17
18 A. No. BellSouth points to other DSL efforts (such as Covad and Rhythms),
19 claiming that these companies prove that DSL service cannot be offered on a
20 “stand alone” basis. Importantly, BellSouth would never be providing DSL on a
21 stand-alone basis in the manner these companies attempted. First, BellSouth
22 would only be required to sell DSL service in situations where it is also providing

**Rebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association
Docket No. 020507-TL**

1 UNEs. Consequently, the DSL service would never be provided on a stand-alone
2 basis from a technology point-of-view. In addition, the service would remain a
3 part of the overall family of BellSouth services that collectively produced \$ 4.7
4 billion in revenue in Florida last year (ARMIS 43-01 2001 – Total Florida
5 Operating Revenues). Any comparison of this type of “joint-provisioning” to the
6 “stand-alone” efforts of other providers is simply misleading.

7
8 **Q. Does this conclude your rebuttal testimony?**

9
10 **A. Yes.**

BELLSOUTH

BellSouth
Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351

whit.jordan@bellsouth.com

W. W. (Whit) Jordan
Vice President-Federal Regulatory

202 463-4114
Fax 202 463-4198

December 18, 2002

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
44512th St. S.W.
Washington, D.C. 20554

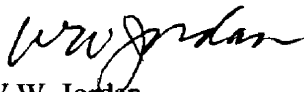
Re: CC Docket No. 01-338

Dear Ms. Dortch:

On November 19, 2002, BellSouth, in response to a request from the Competition Policy Division of the Wireline Competition Bureau, submitted its residential and business UNE-P demand by state and by zone within a state, as of September 30, 2002 (see November 19, 2002 letter from W.W. (Whit) Jordan to Ms. Marlene H. Dortch, Re: CC Docket No. 01-338). Subsequent to the filing of that letter, an error in the mapping of BellSouth wire centers to UNE zones used to develop the UNE-P demand report was discovered. BellSouth now files a corrected report. While the aggregate state-specific and regional quantities of business, residence and total in-service UNE-P remain unchanged, most of the zone-specific quantities have changed.

This letter and attachment are being electronically filed. Please call me if you have any questions.

Yours truly,



W.W. Jordan

cc: Michelle Carey
Rob Tanner
Tom Navin
Jeremy Miller

| UNE-P September 30, 2002 (12/05/02 Corrected Report) | | | | |
|--|----------|-----------------------------|-----------------------------|----------------------|
| State | UNE Zone | UNE-P Bus In- Svc Qty | UNE-P Res In- Svc Qty | Total In- Svc Qty |
| AL | Unknown | 253 | 33 | 286 |
| AL | 1 | 42,408 | 22,255 | 64,658 |
| AL | 2 | 16,222 | 4,446 | 20,668 |
| AL | 3 | 4,772 | 886 | 5,658 |
| AL | Total | 63,650 | 27,620 | 91,270 |
| FL | Unknown | 579 | 80 | 659 |
| FL | 1 | 42,769 | 93,235 | 136,004 |
| FL | 2 | 86,053 | 218,492 | 304,545 |
| FL | 3 | 16,408 | 18,547 | 34,955 |
| FL | Total | 145,809 | 330,354 | 476,163 |
| GA | Unknown | 979 | 174 | 1,153 |
| GA | 1 | 57,251 | 205,086 | 262,337 |
| GA | 2 | 21,601 | 33,376 | 54,977 |
| GA | 3 | 25,766 | 7,074 | 32,840 |
| GA | Total | 105,597 | 245,710 | 351,307 |
| KY | Unknown | 97 | 4 | 101 |
| KY | 1 | 9,321 | 7,314 | 16,635 |
| KY | 2 | 10,901 | 8,731 | 19,632 |
| KY | 3 | 4,876 | 2,602 | 7,478 |
| KY | Total | 25,195 | 18,651 | 43,846 |
| LA | Unknown | 214 | 176 | 390 |
| LA | 1 | 29,107 | 41,036 | 70,143 |
| LA | 2 | 6,923 | 2,213 | 9,136 |
| LA | 3 | 839 | 409 | 1,248 |
| LA | Total | 37,083 | 43,834 | 80,917 |
| MS | Unknown | 100 | 180 | 280 |
| MS | 1 | 10,811 | 11,950 | 22,761 |
| MS | 2 | 8,653 | 10,292 | 18,945 |
| MS | 3 | 8,544 | 6,436 | 14,980 |
| MS | 4 | 3,500 | 4,398 | 7,898 |
| MS | Total | 31,608 | 33,256 | 64,864 |
| NC | Unknown | 310 | 24 | 334 |
| NC | 1 | 38,235 | 25,785 | 64,020 |
| NC | 2 | 10,698 | 2,319 | 13,017 |
| NC | 3 | 3,337 | 1,934 | 5,271 |
| NC | Total | 52,580 | 30,062 | 82,642 |
| SC | Unknown | 107 | 11 | 118 |
| SC | 1 | 28,397 | 7,967 | 36,364 |
| SC | 2 | 5,956 | 932 | 6,888 |
| SC | 3 | 3,376 | 783 | 4,159 |
| SC | Total | 37,836 | 9,693 | 47,529 |
| TN | Unknown | 233 | 14 | 247 |
| TN | 1 | 42,365 | 20,726 | 63,091 |
| TN | 2 | 21,729 | 7,141 | 28,870 |
| TN | 3 | 6,244 | 2,529 | 8,773 |
| TN | Total | 70,571 | 30,410 | 100,981 |
| BST | Unknown | 2,872 | 696 | 3,568 |
| BST | 1 | 300,659 | 435,354 | 736,013 |
| BST | 2 | 188,736 | 287,942 | 476,678 |
| BST | 3 | 74,162 | 41,200 | 115,362 |
| BST | 4 | 3,500 | 4,398 | 7,898 |
| BST | Total | 569,929 | 769,590 | 1,339,519 |

RE: BellSouth Tariffed Digital Subscriber Line ("DSL") Service on Unbundled Network Element – Platform ("UNE-P") Loops

Dear

BellSouth has recently discovered that, as a result of a recent failure of a systems edit, BellSouth is currently providing its tariffed Asymmetrical Digital Subscriber Line ("ADSL") service to certain Internet Service Provider ("ISP") customers on one or more UNE-P loops purchased by your company. (A list of the affected telephone numbers is attached hereto.)

Since your company owns all features and functionalities of unbundled loops purchased from BellSouth, BellSouth does not have access to the high frequency spectrum on those loops for purposes of providing tariffed ADSL to its ISP customers. BellSouth thus intends to notify the affected ISPs, within twenty (20) days of the date of this letter, that it will be discontinuing tariffed DSL service on the affected lines. (The affected ISPs include BellSouth@ Internet Services.)

To the extent your company desires to have ISPs continue to provide tariffed DSL on the affected lines, those lines could be converted to resold lines. On a resold line, BellSouth would continue to have access to the high frequency spectrum, as your company is only purchasing the low frequency spectrum in a resold situation. Unless we hear to the contrary within twenty (20) days of the date of this letter, the DSL will be disconnected.

Very truly yours,

Gregory R. Follensbee

Attachment

CERTIFICATE OF SERVICE

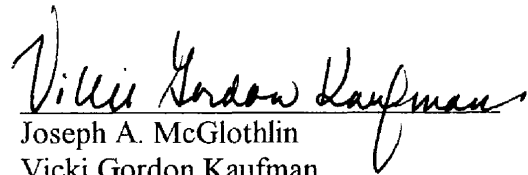
I HEREBY CERTIFY that a true and correct copy of the foregoing Rebuttal Testimony and Exhibits of Joseph Gillan on behalf of the Florida Competitive Carriers Association has been furnished by (*) hand delivery, (**) electronic mail or by U. S. Mail this 23rd day of December, 2002, to the following:

(*) (**) Patricia Christensen
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

(*) (**) Nancy White
(**) Meredith Mays
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301-1556

(**) Floyd R. Self
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301

(**) Nanette Edwards
Director-Regulatory
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, AL 35802



Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman & Arnold, PA
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 Telephone
(850) 222-5606 Telefax

Attorneys for Florida Competitive
Carriers Association