BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against BellSouth Telecommunications, Inc., for alleged Overbilling and discontinuance of service and petition for emergency order restoring Service, by IDS Telcom LLC.	)	Docket No. 031125-TP Filed: August 12, 2004

REBUTTAL TESTIMONY AND EXHIBIT

OF

JOSEPH GILLAN

ON BEHALF OF

IDS TELCOM, LLC.

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August 12, 2004

Introduction

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

A. My name is Joseph Gillan. My business address is P. O. Box 541038, Orlando, Florida 32854. I am an economist with a consulting practice specializing in telecommunications.

Q. Please briefly outline your educational background and related experience.

A. I am a graduate of the University of Wyoming where I received B.A. and M.A. degrees in economics. From 1980 to 1985, I was on the staff of the Illinois Commerce Commission, where I had responsibility for the policy analysis of issues created by the emergence of competition in regulated markets, in particular the telecommunications industry. While at the Illinois Commission, I served on the staff subcommittee for the NARUC Communications Committee and was appointed to the Research Advisory Council overseeing the National Regulatory Research Institute.

In 1985, I left the Illinois Commission to join U.S. Switch, a venture firm organized to develop interexchange access networks in partnership with independent local telephone companies. At the end of 1986, I resigned my position of Vice President-Marketing/Strategic Planning to begin a consulting practice. Over the past twenty years, I have provided testimony before more than

35 state Commissions (including Florida), five state legislatures, the Commerce Committee of the United States Senate, and the Federal/State Joint Board on Separations Reform. I have also prepared reports submitted to the Canadian Radio and Telecommunications Commission and the Finance Ministry of the Cayman Islands. I currently serve on the Advisory Council to New Mexico State University's Center for Regulation and as an instructor at the NARUC Annual Regulatory Studies Program at Michigan State University.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of IDS TelCom, LLC.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to respond the testimony of BellSouth witness Kathy Blake concerning Issue No. 5(a).[1] The claim by Ms. Blake[2] that BellSouth may impose its so-called "market rates" on IDS Telcom is incorrect for two fundamental reasons.

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[1] Issue 5(a): **Did BellSouth correctly assess** market-based rates for services provided to IDS in Florida in the applicable MSAs?

[2] Blake Direct Testimony, pages 7-8.

The first is that BellSouth has failed to satisfy a basic qualifying criterion before it may charge *any* rate other than the Commission-approved TELRIC rate for local switching. Specifically, BellSouth must provide non-discriminatory cost-based access to the Enhanced Extended Link (EEL)[3] throughout Density Zone, as required by FCC rule and the parties' interconnection agreement.[4] This issue is addressed in the testimony of Jermaine Johnson who explains that BellSouth has never satisfied this threshold requirement and thus any other issue involving rate application or level should be moot.

Second – and the central topic of my testimony – is that even *had* BellSouth made EELs available, imposing its so-called "market rates" would violate its obligation to offer unbundled local switching at just and reasonable rates. The moment that BellSouth obtained the authority to offer interLATA service in Florida, it also voluntarily accepted the obligation to offer local switching at just and reasonable rates. So-called "market rates" can be expected to be just and reasonable only where a competitive market exists, which is clearly **not** the case for local switching in Florida today. Consequently, BellSouth has no right to impose its

[3] An EEL is a combination of a UNE loop and UNE transport that theoretically permits an entrant to extend the reach of its switch to serve customers at distant end-offices.

[4] *See* §4.2.2 of the parties' current interconnection agreement and §4.1.3.3 of the parties' prior interconnection agreement.

"market rates" for unbundled local switching, even had it satisfied the threshold requirement that provide nondiscriminatory access to EELs.[5]

In summary, in my rebuttal testimony below I explain:

1. BellSouth has a continuing obligation to provide IDS Telcom unbundled local switching to serve all customers under section 271 of the federal Telecommunications Act of 1996 ("Act"), whether or not it is also required to offer the network element under section 251.

2. Where BellSouth is obligated to offer switching under section 271 of the Act, it must charge rates that are "just and reasonable."

3. "Market rates" are just and reasonable only when the result of a competitive market. The 3-Line Rule, however, never defined the boundaries of *any* wholesale market, much less a competitive market that could be expected to yield reasonable prices through market interaction.

4. BellSouth's proposed rates for lines subject to the 3-Line Rule are unreasonable are their face, exceeding cost by 480% (recurring) and 2,000% (non-recurring). When asked (by another CLEC) to justify such absurd increases, BellSouth's response was that it cannot "locate anyone with knowledge" or "locate any workpapers or documents that may have existed or been used" to determine these prices.

5. There is already only one Commission-approved, just and reasonable rate for local switching in Florida – the current rate of $2.41 per port. This rate is already substantially above the TELRIC rate for local switching established by the FCC in the Virginia arbitration. Consequently, the rates in Florida are already at the higher end of just and reasonable levels and no further increase is warranted.

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[5] My testimony does not address a third switch-related issue – that is, assuming BellSouth had satisfied the threshold criterion to charge a different rate for local switching to "3-line customers", and assuming a different, yet still just and reasonable rate was established, then which lines should the new rate apply to. This issue is discussed in the direct testimony of Mr. Liero.

Because BellSouth never satisfied the threshold requirement to charge any rate above TELRIC (i.e., it does not offer access to a non-discriminatory cost-based DS0 EEL), the Commission need not establish a "just and reasonable" rate for local switching here. The existing UNE rates established by the Commission are the only rates that the Commission has determined are just and reasonable to date.[6] To the extent that BellSouth seeks to impose *different* just and reasonable rates on local switching in the future, however, it should be required to propose such rates in a separate proceeding (open to all CLECs), fully supported by cost and market analysis demonstrating that its proposal is just and reasonable.

BellSouth is Obligated to Offer Local Switching under Section 271

Q. Please explain how the "3-Line" dispute arose.

A. In response to a remand by the United States Supreme Court of its initial interconnection rules,[7] the FCC issued a modified list of network elements that, under certain circumstances, did not include unbundled local switching as a network element under section 251 of the Act. Without debating all the details of

[6] Section 252(d)(1) of the Telecommunications Act of 1996 requires state commissions to establish rates for unbundled network elements that are "just and reasonable." Therefore, the cost-based UNE rates are defined as just and reasonable rates by the statute.

[7] *See* Third Report and Order and Fourth Further Notice Of Proposed Rulemaking, In the Matter of Implementation of the Local Competition Provision of the Telecommunications Act of 1996, CC Docket No. 96-98, Adopted September 15, 1999, Released November 5, 1999 ("*UNE Remand Order*").

the FCC's rule,[8] the resulting "3-Line Rule" meant that BellSouth was not required to provide local switching to CLECs serving customers with more than 3 lines in the certain end offices in Miami and Orlando -- at least under section 251 of the Act, subject to the threshold EEL requirement referenced earlier.

Q. Did the "3-Line Rule" excuse BellSouth from its obligation to sell unbundled local switching to serve these customers?

A. No, at least not after BellSouth was granted interLATA authority. In addition to section 251's *general* obligation on all ILECs to offer network elements satisfying the "impairment" test, Congress imposed very *specific* obligations on the Bell Operating Companies through the competitive checklist in section 271. As part of section 271's competitive checklist, Congress mandated that BellSouth offer: "Local switching unbundled from transport, local loop transmission, or other services,"[9] in any state where it sought (and received) long distance authority.

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8 Specifically, 47 C.F.R. § 51.319(c)(2), states: Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, provided that the incumbent LEC provides nondiscriminatory access to combinations of unbundled loops and transport (also known as the ``Enhanced Extended Link'') throughout Density Zone 1, and the incumbent LEC's local circuit switches are located in:

(i) The top 50 Metropolitan Statistical Areas as set forth in Appendix B of the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, and

(ii) In Density Zone 1, as defined in Sec. 69.123 of this chapter on January 1, 1999.

9 Section 271(c)(2)(B)(vi).

As a mandatory network element under the competitive checklist, BellSouth is obligated to offer unbundled local switching to serve *any* customer, irrespective of the number of lines (or other factors). The provision of unbundled local switching to IDS Telcom – including unbundled local switching used to serve customers with more than 3 lines – is not some favor that BellSouth is granting; at the moment BellSouth was granted interLATA authority, it became a binding legal obligation that it must continue to satisfy for it to provide interLATA long distance service in this state.

BellSouth Must Charge Just and Reasonable Rates For Switching Subject to the "3-Line Rule"

Q. What pricing standard applies to local switching used to serve lines subject to the 3-Line Rule?

A. The FCC interprets the Act such that the cost-based requirement in section 252 of the 1996 Act does not presumptively apply to section 271 network elements, unless they are also required by section 251 of the Act (i.e., they satisfy the impair test). Accepting for the moment that the 3-line rule is operative,[10] then the

[10] As noted repeatedly earlier in this testimony, BellSouth does not satisfy the requisite criterion – the offering of a nondiscriminatory EEL – needed to even contemplate charging a different just and reasonable rate than the just and reasonable rate (TELRIC-based rate) established by the Commission.

standard that the FCC adopted is one which requires that the rate be "just and reasonable."

> If a checklist network element does not satisfy the unbundling standards in section 251(d)(2), the applicable prices, terms and conditions for that element are determined in accordance with sections 201(b) and 202(a).[11]
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> ***
>
> Section 201(b) states that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication services, shall be *just and reasonable*, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared unlawful." Section 202(a) mandates that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service."[12]

Q. Did the FCC reaffirm that section 271 network elements are held to a "just and reasonable" pricing standard in the TRO Order?

A. Yes. The FCC was quite clear that network elements offered to comply with section 271 obligations must be just, reasonable, nondiscriminatory and provide meaningful access:

> Thus, the pricing of checklist network elements that do not satisfy the unbundling standards in section 251(d)(2) are reviewed utilizing the basic just, reasonable, and nondiscriminatory rate standard of sections 201 and 202 that is fundamental to common

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11 *UNE Remand Order*, ¶470.
12 *UNE Remand Order*, ¶470.

> carrier regulation that has historically been applied under most federal and state statutes, including (for interstate services) the Communications Act. Application of the just and reasonable and nondiscriminatory pricing standard of sections 201 and 202 advances Congress's intent that Bell companies provide meaningful access to network elements.[13]

It also is important to understand that the FCC did not conclude in the above paragraph that section 271 network elements were directly subject to sections 201 and 202 of the Act (which applies, as the FCC notes, to *interstate* services).[14] Rather, the FCC adopted the just and reasonable rate standard that "has historically been applied under most federal and state statutes," and noted that sections 201 and 202 are an embodiment of that traditional standard.

There is no ambiguity is these directives – BellSouth must continue to charge just and reasonable rates for any network element required by section 271, even if that network element is not required to be offered by section 251 of the Act.

"Market Rates" Would Be Just and Reasonable Only If There Were a Competitive Wholesale Market

Q. Why does BellSouth claim that it may charge "market rates"?

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[13] *Triennial Review Order*, ¶ 663, footnotes omitted.

[14] As a practical matter, network elements are predominately used to provide intrastate services (intrastate usage is commonly more than 90%) and, as a result, sections 201 and 202 would almost never govern rates if the traditional separation of regulatory jurisdiction applied.

A. BellSouth's claim (see Ms. Blake's direct testimony at page 7) reflects an exaggerated reading of the last few sentences of the FCC's UNE Remand decision where, after several paragraphs first explaining that such rates must be "just and reasonable", the FCC posited that, in *some circumstances*, market forces could produce just and reasonable rates. The relevant circumstances, however, would be where:

> ... competitors can acquire switching in the marketplace at a price set by the marketplace. Under these [competitive] circumstances, it would be counterproductive to mandate that the incumbent offers the element at forward-looking prices. Rather, the market price should prevail, as opposed to a regulated rate which, at best, is designed to reflect the pricing of a competitive market.[15]

The above paragraph, however, merely points out that *where* competitive markets exist there should be little difference between the "market rate" and the cost-based rate "designed to reflect the pricing of a competitive market." It is because a competitive market would be expected to produce a cost-based rate that a "market rate" could satisfy a "just and reasonable" standard.

The competitive path to reasonable UNE rates, however, is the special case, requiring a wholesale market. As I explain below, there is no evidence to suggest the presence of a competitive wholesale market for switching in Florida.

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[15] *UNE Remand Order*, ¶473. Footnotes omitted.

BellSouth is not free to establish any price that it wants, unchecked by neither competitive choice nor regulatory review.[16]

The 3-Line Rule Does Not Suggest a Competitive Wholesale Market

Q. Does the FCC's 3-Line Rule define a competitive switching market?

A. No. As I explain below, in the proceeding leading to its *UNE Remand Order*, the FCC lacked a record basis to define relevant markets. What little data the FCC did use to develop the 3-Line Rule was not specific to Florida, and had *nothing* to do with whether wholesale alternatives were present.

For instance, while the FCC concluded that CLECs required local switching to serve the "mass market," the FCC acknowledged that it lacked the record to define the relevant boundary of the market:

> We conclude that without access to unbundled local circuit switching, requesting carriers are impaired in their ability to serve the mass market.... No party in this proceeding, however, identifies the characteristics that distinguish medium and large business customers from the mass market.[17]

[16] Indeed, in a competitive market, BellSouth would be a "price taker," forced to accept prices determined through market forces.

[17] *See UNE Remand Order* ¶291, emphasis added.

Consequently, even the FCC recognized (at the time it adopted the "3 Line Rule") that it could not design a rule that reflected any reasoned market boundary, much less identify the bounds of a competitive wholesale market for local switching.

Q. Did the FCC determine that CLECs had wholesale alternatives to the incumbent's switches to serve customers with more than 3 lines?

A. No. Very much to the contrary, the FCC determined on a national basis that CLECs generally did not have an ability to get local switching from other wholesale providers:

> As discussed in detail below, our unbundling analysis focuses upon the ability of a requesting carrier to self-supply switching because the record does not support a finding that requesting carriers, as a general matter, can obtain switching from carriers other than the incumbent LEC.[18]

The 3-Line Rule cannot be read to imply that CLECs enjoy wholesale alternatives to local switching, when the FCC itself determined that the record supported the opposite conclusion.

Q. During the intensive fact finding related to the more recent Triennial Review process, did the FCC (or BellSouth for that matter) find any evidence of a competitive market for local switching?

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[18] *See UNE Remand Order* ¶253.

A. No. For its part, the FCC once again found no evidence of wholesale switching alternatives on a national scale:

> …no party offers evidence to show that third parties are currently offering switching on a wholesale basis – that is, selling switching capacity to third-party carriers to use in their offerings – we find that no significant third-party alternatives to unbundling local switching exist.[19]

However, the FCC did permit BellSouth to demonstrate on a state-specific basis that wholesale alternatives were available, basing one of its "switch triggers" on the existence of such a market. Notably, BellSouth failed to name a single wholesale provider of local switching in Florida – indeed, it could not find a single provider anywhere in the Southeast.

Q. If there was no evidence of a competitive market, what was the basis for the 3-Line Rule?

A. The underlying logic (if that is the correct term) of the 3-Line Rule had two parts. First, the FCC observed that CLECs were self-provisioning switches, generally to serve large business customers. Second, the FCC theorized that if CLECs had access to an Enhanced Extended Loop ("EEL"), then self-provided switching

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19 *TRO* ¶ 442.

could be used to serve customers in the densest urban markets (such as the top 50 MSAs).

As to the viability of self-provided switching, the FCC noted that most carriers self-providing switching were unprofitable, but *assumed* that because such carriers were able to raise capital, the entry strategy must be sound.[20] Capital markets today remain essentially closed to CLECs pursuing this strategy, thoroughly undercutting this assumption underlying the 3-Line Rule.

Second, it is clear that local switches are used nearly exclusively to serve high-speed digital customers – a fact amply demonstrated in this Commission's *TRO* proceeding. To the extent that EELs are available at all, they are for DS-1 (not analog) customers, with 99.8% of the EELs provided by BellSouth used to serve higher-speed digital customers.[21]

The bottom line is that "rationale" used by the FCC when crafting the 3-Line Rule provides *no* support for the proposition that CLECs have wholesale alternatives to

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[20] *See, UNE Remand Order* ¶ 256 (footnotes omitted):
Indeed, based on financial analysts' reports of competitive LECs' operations, a significant number of requesting carriers currently self-provisioning switches are not generating net income (*i.e.,* profits). Thus, it is too early to know whether self-provisioning is economically viable in the long run, although capital markets appear to be supplying requesting carriers with access to capital in the absence of demonstrated profitability.

[21] Source: BellSouth Response to AT&T/WCOM 1st Interrogatories, Supplemental Item 2, North Carolina Docket P-100, Sub 133d.R

BellSouth switching in Florida.[22] In fact, to the extent the FCC's analysis is useful at all, it supports the finding that there is *no* competitive wholesale market and, therefore, no basis to expect "market forces" to produce a just and reasonable rate.

BellSouth's Proposed Rates are Patently Unreasonable and Without Support

Q. Are BellSouth's proposed "market rates" just and reasonable?

A. No. As noted above, a competitive wholesale market should produce rates for unbundled local switching similar (if not equal) to a cost-based rate. Thus, an important criterion in judging the reasonableness of BellSouth's proposed rates is to compare these rates to their underlying cost:

Table 1: Comparing BellSouth Proposal to Cost-Based UNE Rates

Rate Element	Cost-Based Rate	BellSouth Proposal	Mark Up
Recurring Port Rate	$2.41	$14.00	481%
NRC (Existing UNE-P)[23]	$1.91	$41.50	2,073%

[22] The "empirical basis" of the 3-Line Rule is equally suspect, based on a single ex-parte filed by Ameritech on the final day before the record closed (thereby shielding the filing from analysis and response). Notably, during its investigation as to whether the 3-Line Rule should limit competition in Texas, the Texas Commission expressed concerned as to the evidentiary validity of the Ameritech submission (Arbitration Award, Docket 24542, April 29, 2002).

[23] The most relevant NRC comparison is the NRC for unbundled local switching used as part of a combination with the local loop (i.e., UNE-P).

The rates proposed by BellSouth essentially confirm that there is no market alternative to BellSouth-provided switching. If there actually were effective market alternatives, BellSouth would not benefit from proposing such massive increases. BellSouth's rates are not "market-based," they are "price them out of the market" based rates.

Q. Does BellSouth offer any justification for these prices?

A. No. In other arbitrations, ITC^DeltaCom specifically asked BellSouth to explain how it developed its proposed rates. In response, BellSouth claims that it has no information as to how the rates were developed (actual discovery and response attached as Exhibit No. ____ (JPG-1)):

> BellSouth has been unable to locate anyone with knowledge or information of the process used to arrive at the "market rate" of $14.00.
>
> BellSouth has been unable to locate any workpapers or documents that may have existed or been used by the individuals who developed the $14.00 market rate.[24]

Without passing judgment on the plausibility of BellSouth's response, there can be no question that the rates themselves are unreasonable, and that BellSouth is unable (or unwilling) to offer any support in their defense.

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[24] BellSouth Response to ITC^DeltaCom's 1st Interrogatories, Items 47 and 48, attached as Exhibit No. ____ (JPG-1), emphasis added.

Q. Has the Tennessee Commission recently concluded that the BellSouth's rates are not just and reasonable?

A. Yes. The Tennessee Regulatory Authority recently completed its arbitration between BellSouth and ITC^DeltaCom in which one of the issues concerned the just and reasonableness of BellSouth's proposed "market rates." The Tennessee Commission concluded that BellSouth's rates are not just and reasonable and established an interim just and reasonable rate of $5.08 per line.[25]

A Just and Reasonable Local Switching Rate Has Already Been Established by This Commission

Q. Has the Commission already established a just and reasonable rate for unbundled local switching in Florida?

A. Yes. The existing UNE rates for local switching have already been found by the Commission to be "just and reasonable." The Commission has determined that these rates comply with section 252(d) of the Act, and that section requires that the rates for network elements be "just and reasonable." Consequently, the existing UNE rates already satisfy the fundamental requirement that they be just and reasonable.

[25] The Tennessee Interim Rate adopted a flat (no usage) rate structure, comparable to the rate structure adopted by the FCC in the Virginia Arbitration.

Q. Is there any reason to believe that TELRIC-based rates for local switching would be unreasonably low?

A. No. It is important to appreciate that most contentious issues surrounding TELRIC pricing are loop-related, and do not apply to switching. Thus, while the Commission can be certain that TELRIC-based switching rates are just and reasonable, there is no basis to conclude that they are not already at the higher end of that range. For instance, one of the principal areas being reviewed by the FCC is whether TELRIC rules should incorporate the incumbent's "actual network topology" (i.e., how its network is actually laid-out) into the cost model. However, the "actual network topology" is already a feature of the TELRIC process for local switching because the number of wire centers (and, therefore, the number and location of switches) is fixed. Consequently, the "actual topology of the ILEC network" is already considered in determining TELRIC switching costs and the side-debate about the appropriateness of this aspect of TELRIC plays no role in evaluating whether switching prices are reasonable.

Importantly, BellSouth has effectively conceded this point, testifying in South Carolina:

> It is important to note that even though the fundamental cost methodologies (i.e., TSLRIC and TELRIC methodologies are similar … it is the additional constraints currently mandated by the FCC that the incumbent local exchange carriers (ILECs) object to with respect to TELRIC-based rates. The use of a hypothetical

> network and most efficient, least-cost provider requirements have distorted the TELRIC results and normally understate the true forward-looking costs of the ILEC.
>
> These distortions, however, are most evident in the calculation of unbundled loop elements, and they are less evident in the switching and transport network elements that make up switched access.
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> ***
>
> ...I emphasize that the main cost drivers for end office switching are the fundamental unit investments, which are identical in switching TSLRIC and TELRIC studies.[26]

BellSouth has acknowledged that its objections to TELRIC do not apply to switching,[27] that TELRIC and TSLRIC for switching are essentially the same, and that for the main cost drivers, they are identical. Consequently, there is no reason to conclude that different just and reasonable rates are appropriate for section 271 switching network elements than for section 251 switching network elements.

This point is consistent with the testimony of BellSouth's economist, who argued before this very Commission just 2 years ago that TELRIC-based rates are above forward-looking incremental cost and, as such, should not be used to establish the lower bound of its retail rates:

> Cross-subsidization is measured using forward-looking incremental costs, not historical accounting costs.... Even

[26] Direct Testimony of Robert McKnight on behalf of BellSouth, Public Service Commission of South Carolina (McKnight Direct), Docket No. 1977-239-C, filed December 31, 2003, pages 7 and 9.

[27] This is not to say that BellSouth will not complain that the Florida Commission has set switching rates incorrectly.

> reasonable allocations of fixed costs or common overhead costs to a service have no role in a subsidy test…[28]
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> ***
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> The fact that TELRIC includes an allocation of shared fixed and common costs means that the TELRIC-based UNE price would be too high for a price floor.[29]

Even BellSouth agrees that its TELRIC-based UNE rates for local switching are too high for its retail pricing decisions, which would suggest that TELRIC rates are (from BellSouth's perspective) above the lower end of the just and reasonable range already.[30]

Q. Is there evidence to suggest that the existing rates for local switching in Florida are themselves above TELRIC?

A. Yes. The FCC recently concluded its investigation into the cost of local switching in the context of the "Virginia Arbitration."[31] In that proceeding, the FCC adopted a flat-rate per port charge (no rate for usage) of $2.83 per line. I estimate that the average local switching charge in Florida (which imposes a usage charge

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[28] Rebuttal Testimony of William Taylor on behalf of BellSouth, Docket Nos. 020119-TP and 020578-TP, filed November 25, 2002 ("Taylor Rebuttal"), page 18.

[29] Taylor Rebuttal, Page 6.

[30] Although IDS Telcom would agree that TELRIC rates are above the lower end of the range of just and reasonable rates, we would not agree that BellSouth should be permitted to price its retail services below TELRIC levels.

[31] *Memorandum Opinion and Order*, CC Dockets 00-218 & 00-251, August 29, 2003.

in addition to the $2.41 flat rate) is $4.65[32] -- an amount roughly 65% higher than TELRIC (as determined by the FCC). Not only are the existing UNE rates the only rates found by the Florida Commission to be just and reasonable, evidence suggests that these rates are already at the upper end of the just and reasonable range.

Recommendation

Q. What do you recommend?

A. As an initial matter, BellSouth has not satisfied the threshold requirement to charge any rate other than its TELRIC-based rate because it does not offer non-discriminatory access to a voice-grade EEL.

Even if BellSouth had met this criterion, however, it is not permitted to charge just *any* rate for local switching because it has accepted the obligation to offer local switching at "just and reasonable rates" when it began to offer interLATA long distance service in Florida.

BellSouth's so-called market rates are unambiguously not "just and reasonable." Thus, even had BellSouth satisfied the *threshold* requirement for non-TELRIC

[32] Assumes average usage based on BellSouth's reported Dial Equipment Minutes, ARMIS 43-04, for 2003.

rates, its obligation to offer switching at just and reasonable rates would preclude the application of its so-called "market rates" here.

Q. Does this conclude your rebuttal testimony?

A. Yes.

REQUEST: Describe the process used by BellSouth to arrive at the "market rate" of $14.00 (the recurring charge for a port labeled as "market rate").

RESPONSE: BellSouth has been unable to locate anyone with knowledge or information of the process used to arrive at the "market rate" of $14.00. The individuals that were involved in the process are no longer employees of the company.

REQUEST: Identify the business analysis or cost studies undertaken by BellSouth perform to develop its proposed market rates.

RESPONSE: See BellSouth's response to Item No. 47. BellSouth has been unable to locate any workpapers or documents that may have existed or been used by the individuals who developed the $14.00 market rate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Rebuttal Testimony and Exhibit of Joseph Gillan on behalf of IDS Telcom, LLC. has been provided by (*) hand delivery and U.S. Mail this 12th day of August, 2004, to the following:

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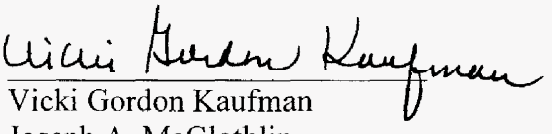

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