

ORIGINAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BELLSOUTH TELECOMMUNICATIONS, INC.

TESTIMONY OF JERRY HENDRIX

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 971140-TP

JANUARY 29, 1998

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Director - Interconnection Services Pricing. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Morehouse College in Atlanta, Georgia in 1975 with a Bachelor of Arts Degree. I began employment with Southern Bell in 1979 and have held various positions in the Network Distribution Department before joining the BellSouth Headquarters Regulatory organization in 1985. On January 1, 1996 my responsibilities moved to Interconnection Services Pricing in the Interconnection Customer Business Unit.

Q. HAVE YOU TESTIFIED PREVIOUSLY?

1 A. Yes. I have testified in proceedings before the Alabama, Florida, Georgia,  
2 Kentucky, Louisiana, Mississippi, South Carolina, and Tennessee Public  
3 Service Commissions and the North Carolina Utilities Commission.

4

5 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

6

7 A. The purpose of my testimony is to discuss the issues identified in this docket  
8 relative to the contractual obligations contained in the BellSouth-MCI and  
9 BellSouth-AT&T interconnection agreements.

10

11 Q. IN YOUR OPINION, IS BELL SOUTH OBLIGATED TO COMBINE  
12 UNBUNDLED NETWORK ELEMENTS?

13

14 A. Based on the Eighth Circuit Court's decision, BellSouth is not obligated to  
15 recombine unbundled network elements (UNEs). However, the Eighth Circuit  
16 Court affirmed the right of ALECs to combine unbundled elements themselves  
17 and BellSouth will provide such elements as delineated in executed  
18 interconnection agreements, at the individual rates established by the various  
19 state commissions.

20

21 Furthermore, until such time as the Eight Circuit's opinion becomes final and  
22 non-appealable, BellSouth intends to honor its contractual obligation to  
23 provision UNE combinations in those executed agreements which include  
24 language regarding the provisioning of combinations.

25

1 BellSouth has consistently taken the position that ALECs are free to use  
2 unbundled network elements recombined by BellSouth in any manner it  
3 chooses. However, in Florida, when an ALEC orders a combination of  
4 network elements or orders individual network elements that, when combined,  
5 duplicate a retail service provided by BellSouth, for purposes of billing and  
6 provisioning, such orders should be treated as resale. Consequently, requests  
7 for a migration or a "switch-as-is", should be treated as resale, with the pricing  
8 rules applicable thereto, and not as the sale of unbundled network elements.

9

10 Q. MCI ALLEGES THAT THE BST-MCI INTERCONNECTION  
11 AGREEMENT SETS FORTH PRICES FOR COMBINING UNBUNDLED  
12 NETWORK ELEMENTS. DOES BELLSOUTH AGREE?

13

14 A. No.

15

16 Q. WHAT IS THE HISTORY BEHIND THE LANGUAGE CONTAINED IN  
17 THE BST-MCI INTERCONNECTION AGREEMENT THAT ADDRESSES  
18 THE COMBINATION ISSUE?

19

20 A. The Commission allowed MCI to combine unbundled network elements in any  
21 manner they choose, including recreating a BellSouth service, but the  
22 Commission did not rule on the pricing of recombined elements. (Order No.  
23 PSC-96-1579-FOF-TP, pages 37-38).

24

25

1 Negotiations with MCI revolved around trying to encompass the  
2 Commission's orders, however, there was no direction from the Commission  
3 as to how the purchase of combinations should be priced.

4  
5 Furthermore, in its March 19, 1997 Final Order on Motions for  
6 Reconsideration regarding the consolidated dockets, the Commission stated:

7 "In our original arbitration proceeding in this docket, we were not  
8 presented with the specific issue of the pricing of recombined elements  
9 when recreating the same service offered for resale....

10  
11 Furthermore, we set rates only for specific elements that the parties  
12 requested. Therefore, it is not clear from the record in this proceeding  
13 that our decision included rates for all elements necessary to recreate a  
14 complete retail service. Thus, it is inappropriate for us to make a  
15 determination on this issue at this time. (Order No. PSC-97-0298-FOF-  
16 TP, page 7).

17  
18 In BellSouth's version of the Agreement filed on April 4, 1997, BellSouth  
19 proposed language to address the issue of how UNE combinations should be  
20 priced. BellSouth's proposed language stated that:

21  
22 "negotiations between the parties should address the price of a retail  
23 service that is recreated by combining UNEs. Recombining UNEs  
24 shall not be used to undercut the resale price of the service recreated."  
25

1 In the Commission's May 27, 1997 Order (Order No. PSC-97-0602-FOF-TP)  
2 the Commission required the parties to sign an agreement that included exactly  
3 the language prescribed in the Commission's previous Final Order Approving  
4 Arbitration Agreement and threatened to fine any non-signing party  
5 \$25,000.00 a day for each day after the June 10 filing date that the agreement  
6 remained unsigned. In that same order, the Commission stated:

7 "We expressed concerns with the potential pricing of UNEs to  
8 duplicate a resold service at our Agenda Conference, and we expressed  
9 our concerns in the Order in dicta; however, we stated that the pricing  
10 issues associated with the rebundling of UNEs to duplicate a resold  
11 service was not arbitrated.... Accordingly, BellSouth's proposed  
12 language shall not be included in the agreement." (Order page 5).

13  
14 BellSouth's proposed language mirrored the Commission's language in its  
15 March 19, 1997 Order, PSC-97-0298-TP in FPSC Dockets 960846-TP and  
16 960916-TP, wherein the Commission itself stated that it "would be very  
17 concerned if recombining network elements to recreate a service could be used  
18 to undercut the resale price of the service."

19  
20 As you see, BellSouth attempted to address the pricing issue in the agreement  
21 and the Commission determined that since this issue was not arbitrated it was  
22 not appropriate for the Commission to rule upon the pricing issue. BellSouth  
23 was forced to include contract language it did not negotiate.

24  
25 ISSUE #1

1 Q. DOES THE BELLSOUTH-MCI<sub>m</sub> INTERCONNECTION AGREEMENT  
2 SPECIFY HOW PRICES WILL BE DETERMINED FOR COMBINATIONS  
3 OF UNBUNDLED NETWORK ELEMENTS THAT DO NOT RECREATE  
4 AN EXISTING BELLSOUTH RETAIL TELECOMMUNICATIONS  
5 SERVICE?

6

7 A. No, the BellSouth-MCI<sub>m</sub> Interconnection Agreement specifies prices for  
8 individual network elements.

9

10 Q. DOES THE BELLSOUTH-MCI<sub>m</sub> INTERCONNECTION AGREEMENT  
11 SPECIFY HOW PRICES WILL BE DETERMINED FOR COMBINATIONS  
12 OF UNBUNDLED NETWORK ELEMENTS THAT DO RECREATE AN  
13 EXISTING BELLSOUTH RETAIL TELECOMMUNICATIONS SERVICE? ••

14

15 A. No, the BellSouth-MCI<sub>m</sub> Interconnection Agreement does not specify how  
16 combinations of unbundled network elements should be priced.

17

18 Q. MCI<sub>m</sub> ALLEGES THAT ATTACHMENT III, SECTION 2.6 OF THE  
19 BELLSOUTH-MCI<sub>m</sub> AGREEMENT ADDRESSES THE PRICING ISSUE  
20 OF COMBINING UNBUNDLED NETWORK ELEMENTS. DO YOU  
21 AGREE?

22

23 A. No. Section 2.6 states:

24 "With respect to Network Elements and services in existence as of the  
25 Effective Date of this Agreement, charges in Attachment I are inclusive

1 and no other charges apply, including but not limited to any other  
2 consideration for connecting Network Element(s) with other Network  
3 Element(s). BellSouth and MCIIm agree to attempt in good faith to  
4 resolve any alleged errors or omissions in Attachment I.”

5  
6 This section of the agreement does not set prices for combinations. This  
7 language was agreed to in conjunction with the pricing language BellSouth  
8 tried to incorporate into the agreement, but which was rejected by this  
9 Commission. BellSouth has consistently maintained its position that  
10 unbundled network elements combined to recreate an existing retail service  
11 offering is considered resale. BellSouth would never have voluntarily agreed  
12 to a provision in the agreement that would undercut its position on  
13 combinations.

14  
15 Q. ISSUE #2 - IF THE ANSWER TO EITHER PART OR BOTH PARTS OF  
16 ISSUE 1 IS YES, HOW IS THE PRICE(S) DETERMINED?

17  
18 A. Please see response to Issue #1. The prices for unbundled network element  
19 combinations are not contained in the BellSouth-MCIIm Interconnection  
20 Agreement.

21  
22 Q. ISSUE #3 - IF THE ANSWER TO EITHER PART OR BOTH PARTS OF  
23 ISSUE #1 IS NO, HOW SHOULD THE PRICE(S) BE DETERMINED?

24  
25

1 A. Mr. Varner will address the issue of how prices should be determined for  
2 combining unbundled network elements in his testimony.

3

4 ISSUE 4

5 Q. DOES THE BELLSOUTH-AT&T INTERCONNECTION AGREEMENT  
6 SPECIFY HOW PRICES WILL BE DETERMINED FOR COMBINATIONS  
7 OF UNBUNDLED NETWORK ELEMENTS THAT DO NOT RECREATE  
8 AN EXISTING BELLSOUTH RETAIL TELECOMMUNICATIONS  
9 SERVICE?

10

11 A. No, the BellSouth-AT&T Interconnection Agreement does not specify how  
12 combinations of unbundled network elements should be priced.

13

14 Q. DOES THE BELLSOUTH-AT&T INTERCONNECTION AGREEMENT  
15 SPECIFY HOW PRICES WILL BE DETERMINED FOR COMBINATIONS  
16 OF UNBUNDLED NETWORK ELEMENTS THAT DO CREATE AN  
17 EXISTING BELLSOUTH RETAIL TELECOMMUNICATIONS SERVICE?

18

19 A. No, the BellSouth-AT&T Interconnection Agreement does not specify how  
20 combinations for unbundled network elements should be priced.

21

22 Q. ISSUE 5 - IF THE ANSWER TO EITHER PART OR BOTH PARTS OF  
23 ISSUE #4 IS YES, HOW IS THE PRICE(S) DETERMINED?

24

25

1 A. Please see response to Issue #4. The prices for unbundled network element  
2 combinations are not contained in the BellSouth-AT&T Interconnection  
3 Agreement.

4

5 Q. ISSUE 6 - IF THE ANSWER TO EITHER PART OR BOTH PARTS OF  
6 ISSUE #4 IS NO, HOW SHOULD THE PRICE(S) BE DETERMINED?

7

8 A. Mr. Varner will address the issue of how prices should be determined for  
9 combining unbundled network elements in his testimony.

10

11 Q. ISSUE 7 - WHAT STANDARD SHOULD BE USED TO IDENTIFY WHAT  
12 COMBINATIONS OF UNBUNDLED NETWORK ELEMENTS RECREATE  
13 EXISTING BELL SOUTH RETAIL TELECOMMUNICATIONS  
14 SERVICES?

15

16 A. There are several different factors that should be considered by this  
17 commission in determining whether or not a requested combination of UNEs is  
18 recreating an existing retail telecommunications service offering. The "switch  
19 as is" request is a clear example of an existing retail service offering.

20

21 A second consideration is the "switch with change". This is when an ALEC  
22 makes changes to an existing retail service offering, such as the elimination or  
23 addition of a feature, in an attempt to disguise the existing retail service  
24 offering.

25

1 A more difficult situation is to distinguish combinations which perform  
2 functions similar to the functions of an existing service offering. These  
3 combinations are distinguishable from the existing service offering in some  
4 manner, but the functions are identical.

5  
6 The real test for this Commission will be to look at the core functions of the  
7 requested combination to see if those functions mirror the functions of an  
8 existing retail service offering.

9  
10 Bottom line, the Commission must use its best judgment to identify UNE  
11 combinations which recreate an existing retail service offering. If the  
12 recombined unbundled elements creates a service identical to an existing retail  
13 service offering and such recombination contains the same functions, features  
14 and attributes of that existing retail offering, the combination should be  
15 considered resale and priced accordingly.

16  
17 The Georgia Commission in its Order in Docket No. 6801-U, stated  
18 “..when AT&T recombines unbundled elements to create services  
19 identical to BellSouth’s retail offerings, the prices charged to AT&T for  
20 the rebundled services shall be computed as BellSouth’s retail  
21 offerings, the prices charged to AT&T for the rebundled services shall  
22 be computed as BellSouth’s retail price less the wholesale discount and  
23 offered under the same terms and conditions, including the same  
24 application of access charges an the imposition of joint marketing  
25 restrictions. In this situation, “identical” means that AT&T is not using

1                   its own switching or other functionality or capability together with  
2                   unbundled elements in order to produce its service.”

3

4                   The Louisiana Public Service Commission issued similar language in its  
5                   January 15, 1997 Order U-22145.

6                   “...AT&T may purchase unbundled elements from BellSouth and  
7                   rebundle those elements in any manner that is technically feasible. This  
8                   fact is undisputed by either party. The real issue is not whether AT&T  
9                   may purchase and rebundle elements in any manner they choose, but  
10                  the rate of compensation for the purchase of such ‘elements.’

11

12                  To the extent AT&T purchases unbundled network elements and then  
13                  recombines them to replicate BellSouth services, it is reselling  
14                  BellSouth’s services. As Shakespeare pointed out, a rose by any other  
15                  name is still a rose, and so it is with resale, even when AT&T chooses  
16                  to call it a combination of unbundled elements. Both the FCC and this  
17                  Commission have issued Orders strongly supporting an aggressive  
18                  resale market. This commitment to resale would be rendered  
19                  meaningless if AT&T were allowed to bypass resale through the fiction  
20                  of “rebundling.” Unrestricted pricing on the recombination of  
21                  unbundled elements would allow AT&T to purchase unbundled  
22                  elements from BellSouth and then rebundle those elements without  
23                  adding any additional capability, in order to create a service which is  
24                  identical to a retail offering already being provided by BellSouth and  
25                  therefore subject to mandatory resale. Such an arrangement would

1 allow AT&T to avoid both the Act's and this Commission's pricing  
2 standards for resale, avoid the Act's restrictions regarding joint  
3 marketing and avoid access charge requirements. Such an arrangement  
4 would also serve as a disincentive to the ILECs to construct their own  
5 facilities."(pg. 38-39).

6  
7 The Georgia and Louisiana Commission language is consistent with the  
8 concerns expressed by this Commission in its March 19, 1997 Order, PSC-97-  
9 0298-TP in FPSC Dockets 9660846-TP and 960916-TP in which the  
10 Commission stated that it "would be very concerned if recombining network  
11 elements to recreate a service could be used to undercut the resale price of the  
12 service."

13  
14 Q. ISSUE #8 - WHAT IS THE APPROPRIATE NON-RECURRING CHARGE  
15 FOR EACH OF THE FOLLOWING COMBINATIONS OF NETWORK  
16 ELEMENTS FOR MIGRATION OF AN EXISTING BELLSOUTH  
17 CUSTOMER;

- 18 (A) 2-WIRE ANALOG LOOP AND PORT; -  
19 (B) 2-WIRE ISDN LOOP AND PORT;  
20 (C) 4-WIRE ANALOG LOOP AND PORT; AND  
21 (D) 4-WIRE DS1 AND PORT?

22  
23 A. Mr. Varner will discuss the appropriate non-recurring charge while the  
24 associated cost issues will be addressed by Ms. Caldwell and Mr. Landry.

25

1 Q. ISSUE #9 - DOES THE BELLSOUTH-MCI<sub>m</sub> INTERCONNECTION  
2 AGREEMENT REQUIRE BST TO RECORD AND PROVIDE MCI<sub>m</sub> WITH  
3 THE SWITCHED ACCESS USAGE DATA NECESSARY TO BILL  
4 INTEREXCHANGE CARRIERS WHEN MCI PROVIDES SERVICES  
5 USING UNBUNDLED LOCAL SWITCHING PURCHASED FROM  
6 BELLSOUTH EITHER ON A STAND ALONE BASIS OR IN  
7 COMBINATION WITH OTHER UNBUNDLED NETWORK ELEMENTS?  
8

9 A. Section 7.2.1.9 of Attachment III of the BellSouth-MCI<sub>m</sub> Interconnection  
10 Agreement requires BellSouth to "record all billable events involving usage of  
11 the element, and send the appropriate recording data to MCI<sub>m</sub> as outlined in  
12 Attachment VIII" of the agreement when MCI orders unbundled network  
13 elements. Interstate access records will be transmitted to MCI via the Access  
14 Daily Usage File (ADUF). ADUF is transmitted via that same transmission  
15 media used for ODUF. These files can be received over a Connect:Direct feed  
16 or on a mag tape. Whether it is appropriate to provide ADUF to MCI when  
17 MCI orders a combination of elements will be discussed by Mr. Varner.  
18

19 Q. ISSUE 10 - DOES THE AT&T-BELLSOUTH INTERCONNECTION  
20 AGREEMENT REQUIRE BELLSOUTH TO RECORD AND PROVIDE  
21 AT&T WITH DETAIL USAGE DATA FOR SWITCHED ACCESS  
22 SERVICE, LOCAL EXCHANGE SERVICE AND LONG DISTANCE  
23 SERVICE NECESSARY FOR AT&T TO BILL CUSTOMERS WHEN  
24 AT&T PROVIDES SERVICE USING UNBUNDLED NETWORK  
25 ELEMENTS EITHER ALONE OR IN COMBINATION?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. Interstate access records are available to AT&T via the Access Daily Usage File (ADUF). ADUF is transmitted via that same transmission media used for ODUF. These files can be received over a Connect:Direct feed or on a mag tape. Again, the question of whether it is appropriate to provide ADUF to AT&T when AT&T orders a combination of elements will be discussed by Mr. Varner.

Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

A. Based on the Eighth Circuit's opinion which states that the Act intends that requesting carriers are to combine the UNEs themselves, BellSouth has no legal obligation to provide combined UNEs. In accordance with this opinion, BellSouth will provide the individual UNEs delineated in its executed interconnection agreements at the rates established by the various commissions. Until such time as the Eighth Circuit's opinion becomes final and non-appealable, BellSouth will accept and provision UNE combination orders from ALECs which have combination language in their interconnection agreement.

BellSouth believes that MCI is free to use UNEs recombined by BellSouth in any manner it so chooses. In Florida, when MCI orders a combination of UNES or orders individual UNES, which when combined duplicate an existing retail service, BellSouth will treat such orders as resale.

1           Furthermore, neither the MCI nor the AT&T interconnection agreements  
2           specify how combinations of unbundled network elements should be priced.

3

4 Q.       DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A.       Yes.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25