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June 18, 2001

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 010302-TP (ALLTEL)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Direct Testimony of Cynthia K. Cox, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*Andrew Shore*  
Andrew Shore (KAs)

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

DOCUMENT NUMBER-DATE

07556 JUN 18 2001

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**CERTIFICATE OF SERVICE  
Docket No. 010302-TP**


I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 18th day of June, 2001 to the following:

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Andrew Shore (LA)

1 Bellsouth Telecommunications, Inc.

2 Direct Testimony of Cynthia K. Cox

3 Before the Florida Public Service Commission

4 Docket No. 010302-TP

5 June 18, 2001

6

7 Q. Please state your name, your position with Bellsouth  
8 Telecommunications, Inc. ("Bellsouth") and your  
9 business address.

10

11 A. My name is Cynthia K. Cox. I am employed by Bellsouth as Senior Director  
12 for State Regulatory for the nine-state Bellsouth region. My business address  
13 is 675 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q. Please provide a brief description of your educational  
16 background and experience in the telecommunications  
17 industry.

18

19 A. I graduated from the University of Cincinnati in 1981, with a Bachelor of  
20 Business Administration degree in Finance. I obtained a Master of Science  
21 degree in Quantitative Economics from the Georgia Institute of Technology in  
22 1984. I then joined Southern Bell in the Rates and Tariffs organization with  
23 the responsibility for demand analysis. In 1985, my responsibilities expanded  
24 to include administration of selected rates and tariffs, including preparation of  
25 tariff filings. In 1989, I accepted an assignment in the North Carolina

1 regulatory office where I was BellSouth's primary liaison with the North  
2 Carolina Utilities Commission Staff and the Public Staff. In 1993, I moved to  
3 BellSouth's Governmental Affairs department in Washington D.C. While in  
4 this office, I worked with national organizations of state and local legislators,  
5 NARUC, the Federal Communications Commission ("FCC") and selected  
6 House delegations from the BellSouth region. In February 2000, I was  
7 appointed Senior Director for State Regulatory.

8

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

10

11 A. The purpose of my testimony is to present BellSouth's position on the  
12 remaining issues that ALLTEL Communications, Inc. ("ALLTEL") is  
13 requesting the Florida Public Service Commission ("Commission") to  
14 arbitrate.

15

16 Q. WHAT IS THE STATUS OF THE NEGOTIATIONS BETWEEN THE  
17 PARTIES?

18

19 A. BellSouth has negotiated in good faith with ALLTEL both before and after  
20 ALLTEL filed its Petition for Arbitration with this Commission on March 8,  
21 2001. ALLTEL's Petition included an Exhibit B that listed eighteen  
22 unresolved issues. The parties have resolved numerous issues since then, and  
23 Attachment A to this Commission's Procedural Order No. PSC-01-1127-PCO-  
24 TP issued May 16, 2001, listed six unresolved issues. The parties recently  
25 resolved Issue 1, which addressed waiving of nonrecurring charges in specific

1 situations. Therefore, only five issues remain to be arbitrated by this  
2 Commission. Attached to my testimony as Exhibit CKC-1 is an updated  
3 matrix that shows the remaining unresolved issues and summarizes  
4 BellSouth's position with respect to each issue. I have renumbered the issues  
5 to correspond to the aforementioned Attachment A.

6

7 Q. BEFORE YOU ADDRESS THE UNRESOLVED ISSUES, PLEASE  
8 EXPLAIN THE STATUS OF BELLSOUTH'S INTERCONNECTION  
9 AGREEMENT WITH ALLTEL IN FLORIDA.

10

11 A. The Florida agreement was executed in 1997, and expired over a year ago.  
12 ALLTEL has continued to operate under the terms of the expired agreement  
13 during negotiation of the new interconnection agreement. In addition,  
14 ALLTEL and BellSouth executed a stand-alone agreement that only dealt with  
15 the situation addressed by Issue 1 in this proceeding (originally shown as Issue  
16 17 on ALLTEL's Exhibit B). That agreement remains effective until the new  
17 interconnection agreement is finalized.

18

19 ***Issue 2: What terms and conditions should govern BellSouth's provisioning of***  
20 ***enhanced extended loops ("EELs") and other combinations of network elements to***  
21 ***ALLTEL?***

22

23 Q. WHAT IS AN ENHANCED EXTENDED LOOP ("EEL")?

24

25 A. An EEL is a specific combination of network elements - a loop combined with

1 dedicated interoffice transport. The FCC requires ILECs to allow ALECs to  
2 convert existing tariffed special access service to the combination commonly  
3 referred to as the EEL only if the ALEC certifies that it is providing a  
4 significant amount of local exchange service over the facilities it wishes to  
5 convert. In its Third Report and Order and Fourth Further Notice of Proposed  
6 Rulemaking, FCC 99-238, released November 5, 1999 (“UNE Remand  
7 Order”), the FCC specifically declined to identify the EEL as a UNE.  
8

9 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?  
10

11 A. This issue is whether BellSouth is obligated to combine unbundled network  
12 elements (“UNEs”) (including, but not limited to, the UNEs that comprise the  
13 EEL) for ALECs when the elements are not already combined in BellSouth’s  
14 network. BellSouth makes combinations of UNEs available to ALECs  
15 consistent with BellSouth’s obligations under the 1996 Act and applicable FCC  
16 rules. As the Eighth Circuit Court of Appeals confirmed in its July 18, 2000  
17 decision, BellSouth has no obligation to combine network elements for ALECs  
18 when those elements are not currently combined in BellSouth’s network.  
19 Therefore, BellSouth provides combinations to ALECs at cost-based prices if  
20 the elements are in fact physically combined in BellSouth’s network to the  
21 location the ALEC wishes to serve. ALLTEL contends that if BellSouth  
22 combines the requested UNEs anywhere in its network, BellSouth must  
23 produce the same combination of UNEs whenever and wherever ALLTEL  
24 demands, even if the elements are not physically combined in BellSouth’s  
25 network at the location where ALLTEL requests the combination.

1 Q. WHAT IS THE BASIS FOR BELL SOUTH'S POSITION?

2

3 A. In its UNE Remand Order, the FCC confirmed that ILECs have no obligation  
4 to combine network elements for ALECs when those elements are not  
5 currently combined in BellSouth's network. The FCC rules that purported to  
6 require incumbent LECs to combine unbundled network elements (51.315(c)-  
7 (f)) were vacated by the Eighth Circuit, and that decision was neither appealed  
8 to nor reinstated by the Supreme Court.

9

10 On July 18, 2000, the Eighth Circuit Court held that ILECs are not obligated to  
11 combine UNEs, and it reaffirmed that the FCC's Rules 51.315(c)-(f) remain  
12 vacated. Specifically, the court cited Section 251(c)(3) of the Act which states  
13 that "[a]n incumbent local exchange carrier shall provide such unbundled  
14 network elements in a manner that allows requesting carriers to combine such  
15 elements in order to provide such telecommunication service." The court then  
16 stated: "[h]ere, Congress has directly spoken on the issue of who shall combine  
17 previously uncombined network elements. It is the requesting carriers who  
18 shall 'combine such elements.'"

19

20 Q. HOW DID THE FCC ADDRESS THIS ISSUE IN ITS UNE REMAND  
21 ORDER?

22

23 A. The FCC concluded that ILECs have no obligation to combine UNEs. The  
24 FCC ruled that 51.315(b) applies to elements that are "in fact" combined,  
25 stating that "[t]o the extent an unbundled loop is in fact connected to

1 unbundled dedicated transport, the statute and our rule 51.315(b) require the  
2 incumbent to provide such elements to requesting carriers in combined form.”  
3 (§ 480, emphasis added). It is disingenuous to suggest that the FCC meant for  
4 its Rule 51.315(b) to cover anything other than specific pre-existing  
5 combinations of elements for a customer when the FCC’s orders specifically  
6 state that ILECs are not required to combine elements.

7

8 Q. HAS THIS COMMISSION PREVIOUSLY ADDRESSED THIS SAME  
9 ISSUE?

10

11 A. Yes, this Commission has addressed this issue in several recent arbitrations.  
12 In the BellSouth/AT&T arbitration (Docket No. 000731-TP), this Commission  
13 voted on May 29, 2001, to accept its Staff’s Recommendation, dated May 3,  
14 2001, on the exact issue that ALLTEL raises in this arbitration. The Staff  
15 concluded that:

16

17 Based on the foregoing, staff does not believe it is the duty of  
18 BellSouth to “perform the functions necessary to combine  
19 unbundled network elements in any manner.” Rule 51.315(b)  
20 only requires BellSouth to make available at TELRIC rates  
21 those combinations requested by an ALEC that are, in fact,  
22 already combined and physically connected in its network at the  
23 time a requesting carrier places an order. Accordingly, staff  
24 believes that the phrase “currently combines” pursuant to FCC  
25 Rule 51.315(b) is limited to combinations of unbundled network  
26 elements that are, in fact, already combined and physically  
27 connected in BellSouth’s network to serve a specific customer  
28 or location at the time a requesting carrier places an order. In  
29 other words, there is no physical work that BellSouth must  
30 complete in order to effect the combination that the requesting  
31 telecommunications carrier requests.

32 (Recommendation at page 26.)



1 Earlier, in Order No. PSC-01-0824-FOF-TP, dated March 30, 2001, in the  
2 BellSouth/WorldCom arbitration, this Commission found that “BellSouth is  
3 not required to combine unbundled network elements that are ordinarily  
4 combined in its network for ALECs at TELRIC rates.” (Order at page 35). In  
5 support of its decision, this Commission cited the Eighth Circuit Court’s July  
6 18, 2000 ruling, wherein the Court reaffirmed its decision to vacate FCC Rules  
7 51.315(c)-(f), stating that “[i]t is not the duty of the ILECs to ‘perform the  
8 functions necessary to combine unbundled network elements in any  
9 manner’ . . . .” (*Id.* at page 35).

10  
11 This Commission reached this same conclusion in other arbitrations, such as  
12 BellSouth/ITC^DeltaCom and BellSouth/Intermedia. BellSouth requests that  
13 this Commission apply its decision in these previous arbitrations to this case.

14  
15 ***Issue 3: Can ALLTEL petition this Commission for a waiver when it seeks to***  
16 ***convert tariffed special access services to UNEs or UNE combinations that do not***  
17 ***qualify under any of the three safe harbor options set forth in the agreement?***

18  
19 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

20  
21 A. The FCC has made clear that these waiver petitions are to be filed with the  
22 FCC. In its Supplemental Order Clarification to its Third Report and Order in  
23 CC Docket No. 96-98 (June 2, 2000), the FCC clarified that a ALEC may  
24 convert special access services to combinations of loop and transport elements  
25 only if it is providing a “significant amount of local amount exchange service”

1 to a particular customer, and that threshold was met if it meets one of three  
2 local usage options. (Supplemental Order Clarification at ¶ 22). The FCC also  
3 stated that requesting carriers must self-certify that they are providing a  
4 significant amount of local exchange service over such combinations. *Id.* at  
5 ¶29. The FCC recognized that there might be extraordinary circumstances  
6 under which a requesting carrier is providing a significant amount of local  
7 exchange service but does not qualify under any of the three safe harbor  
8 options the FCC established in that order. Addressing this possibility, the FCC  
9 stated: “In such a case, the requesting carrier may always petition the  
10 Commission [FCC] for a waiver of the safe harbor requirements under our  
11 existing rules.” (Order at ¶23).

12  
13 In its decision on the “currently combines” issue in the BellSouth/MCI  
14 arbitration, this Commission cited these exact provisions, pointing out that the  
15 FCC established safe harbor requirements and directed ALECs to petition the  
16 FCC for a waiver of such requirements if the ALEC contends that it is  
17 providing a significant amount of local exchange service over combinations of  
18 unbundled network elements without meeting any of the FCC’s three stated  
19 requirements. (Order No. PSC-01-0824-FOF-TP at page 35, emphasis added).

20  
21 Q. WHY IS BELLSOUTH OPPOSED TO ALLTEL FILING SUCH WAIVERS  
22 WITH THIS STATE COMMISSION?

23  
24 A. The issue of converting existing tariffed special access services to UNE  
25 combinations has been addressed extensively by the FCC and is currently the

1 subject of further review by the FCC. Due to the uncertainty surrounding this  
2 issue, it is possible that a state Commission's granting of a waiver to a ALEC  
3 on this issue would conflict with the FCC's intentions. Indeed, BellSouth is  
4 unaware of any such waivers filed with the FCC by any ALECs. BellSouth  
5 requests this Commission determine that such waivers are appropriately filed  
6 with the FCC.

7

8 ***Issue 4: Should BellSouth's Products and Services Interval Guide be incorporated***  
9 ***into the interconnection agreement?***

10

11 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

12

13 A. It is neither necessary nor appropriate to incorporate (i.e., attach) the Products  
14 and Services Interval Guide ("Guide") to the Interconnection Agreement. This  
15 Guide contains target provisioning intervals for various products and services.  
16 BellSouth establishes these target intervals to provide ALECs with a  
17 reasonable expectation as to when a product or service can be provided,  
18 assuming normal conditions. Again, these are target provisioning intervals  
19 established by BellSouth. The Guide is posted to BellSouth's Interconnection  
20 Services website for access by all ALECs.

21

22 Q. ARE THE TARGET INTERVALS IN THE GUIDE THE SAME  
23 INTERVALS THAT ARE PART OF A PERFORMANCE  
24 MEASUREMENTS PLAN?

25

1 A. No. The primary intent of a performance measurements plan is to assist in  
2 determining that BellSouth is providing nondiscriminatory access to ALECs as  
3 required by the Act and FCC rules. Again, the Guide only provides target  
4 provisioning intervals which would not enable such a determination.

5  
6 Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION ON THIS  
7 ISSUE?

8  
9 A. BellSouth requests this Commission determine that it is neither necessary nor  
10 appropriate to incorporate the Product and Services Interval Guide into the  
11 Interconnection Agreement.

12  
13 ***Issue 5: When should enforcement mechanisms for service quality measurements***  
14 ***become effective?***

15  
16 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

17  
18 A. Because this issue affects all ALECs operating in Florida, BellSouth  
19 recommends that this Commission not rule on this issue in a two-party  
20 arbitration. Indeed, the Commission has recently completed the hearing in its  
21 Generic Performance Measurements Docket No. 000121-TP, and this issue  
22 was appropriately addressed in that proceeding.

23  
24 BellSouth's position is that there are at least two reasons why it would be  
25 inappropriate for enforcement mechanisms to become effective for ALECs

1 operating in Florida any time prior to BellSouth obtaining permission to enter  
2 the interLATA market in Florida. First, enforcement mechanisms are neither  
3 necessary nor required to ensure that BellSouth meets its obligations under  
4 Section 251 of the 1996 Act. Second, the FCC has identified the  
5 implementation of enforcement mechanisms to be a condition of 271 relief. In  
6 recent orders, the FCC has indicated that enforcement mechanisms are an  
7 additional incentive to ensure that BellSouth continues to comply with the  
8 competitive checklist after interLATA relief is granted. (See Bell Atlantic New  
9 York, ¶ 429-430; Southwestern Bell Texas Order, ¶ 420-421; Southwestern  
10 Bell Kansas/Oklahoma Order, ¶ 269). Enforcement mechanisms and penalties,  
11 however, are neither necessary nor required to ensure that BellSouth meets its  
12 obligations under Section 251 of the Act, and the FCC has never indicated  
13 otherwise.

14  
15 The desire for long distance relief, which is an immediate goal of BellSouth's,  
16 is itself a powerful incentive for a Bell Operating Company to meet its  
17 obligations under Section 251 of the Act. Enforcement mechanisms, on the  
18 other hand, serve as an incentive for continued compliance after long distance  
19 authority is granted. Therefore, it is appropriate that enforcement mechanisms  
20 not take effect until such a mechanism is necessary to serve its purpose – i.e.,  
21 until after BellSouth receives interLATA authority.

22  
23 Q. IN THE INTERIM UNTIL THIS COMMISSION ESTABLISHES  
24 PERMANENT PERFORMANCE MEASUREMENTS FOR ALL ALECS IN  
25 FLORIDA, WHAT HAS BELL SOUTH PROPOSED TO ALLTEL?

1 A. On an interim basis, the parties have agreed to include Service Quality  
2 Measurements in the interconnection agreement until this Commission  
3 establishes permanent performance measurements. For the reasons discussed  
4 above, BellSouth's proposal does not include enforcement mechanisms. Any  
5 ALEC that has incorporated these measurements into its interconnection  
6 agreement will become eligible for penalty payments (pursuant to the plan  
7 established by this Commission in its generic proceeding) at such time as  
8 BellSouth obtains interLATA relief in Florida.

9  
10 ***Issue 6: What is the relevant period for determining whether penalties for failure to***  
11 ***meet service quality measurements should be assessed?***

12  
13 Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF ALLTEL'S CONCERN?

14  
15 A. Looking at Page 9 of Exhibit C to ALLTEL's Petition for Arbitration, it  
16 appears that the only disagreement between the parties on this issue is the  
17 phrase "in a given calendar quarter" within the language for Section 4.5.3. At  
18 one point in time, it was BellSouth's position that, once BellSouth receives  
19 interLATA authority in a state, and enforcement mechanisms became effective,  
20 penalties would be determined based on BellSouth's performance for a  
21 particular calendar quarter. That, however, is no longer BellSouth's position.  
22 BellSouth recently advised ALLTEL that BellSouth agrees that, when  
23 enforcement mechanisms become effective, penalties would be assessed on the  
24 basis of three consecutive months. ALLTEL, however, has not advised  
25 BellSouth that this issue is resolved. BellSouth, therefore, assumes that

1 ALLTEL sees this issue as a part of the larger disagreement addressed in Issue

2 5.

3

4 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A. Yes.

7 #394474

BELLSOUTH'S ISSUES MATRIX  
ALLTEL-BELLSOUTH ARBITRATION  
Docket No. 010302-TP

ISSUE	BELLSOUTH POSITION	ALLTEL POSITION (as stated in Exhibit B to ALLTEL's Petition for Arbitration filed with this Commission on 3/8/01)
Issue 1: Settled on June 8, 2001.		
Issue 2 [Att. 2 §§ 5.3.3, 5.3.8.1, 5.3.8.2, 5.3.8.3 and 5.4]: What terms and conditions should govern BellSouth's provisioning of enhanced extended loops (EELs) and other combinations of network elements to ALLTEL?	BellSouth makes available to ALLTEL EELs and other combinations of network elements that are currently combined in BellSouth's network. BellSouth is not, however, required to combine network elements for ALECs when those elements are not, in fact, combined in BellSouth's network to the location the ALEC wishes to serve.	Proposes to utilize the GA PSC-ordered language that allows EEL combinations to be offered regardless of whether such EELs are currently combined for a particular customer at a particular location.
Issue 3 [Att. 2 § 5.3.7.2]: Can ALLTEL petition this Commission for a waiver when it seeks to convert tariffed special access services to UNEs or UNE combinations that do not qualify under any of the three safe harbor options set forth in the agreement?	No. ALLTEL must petition the FCC for such a waiver. The FCC has expressly acknowledged that there may be extraordinary circumstances under which a requesting carrier is providing a significant amount of local exchange service but does not qualify under any of the three safe harbor options established by the FCC and which are set forth in the agreement. It stated: "In such a case, the requesting carrier may always petition the Commission for a waiver of the safe harbor requirements under our existing rules." The FCC thus made clear that waiver petitions are to be filed with the FCC.	Proposes that ALLTEL may petition either the FCC or the state commission for a waiver of the designated options.
Issue 4 [Att. 6 § 3.9]: Should BellSouth's Products and Services Interval Guide be incorporated into the interconnection agreement?	No. It is neither necessary nor appropriate to attach BellSouth's Products and Services Interval Guide to the Agreement. The Guide provides ALECs with BellSouth's <u>target</u> intervals for provisioning. These target intervals may change, and do change over time, for several reasons, including process improvements and customer (ALEC)	ALLTEL proposes to insert into the Interconnection Agreement the BST provisioning intervals for resale and unbundled network elements currently found in BellSouth's Products and Services Guide, Issue 3, July 2000.



BELLSOUTH'S ISSUES MATRIX  
ALLTEL-BELLSOUTH ARBITRATION  
Docket No. 010302-TP

	input. These target provisioning intervals do not assist in determining whether BellSouth provides nondiscriminatory access to ALECs.	
Issue 5 [Att. 9 § 4.2]: When should enforcement mechanisms for service quality measurements become effective?	<p>Because this issue affects all ALECs operating in Florida, BellSouth recommends that this Commission not rule on this issue in a two-party arbitration. This issue has appropriately been addressed in Generic Performance Measurements Docket No. 000121-TP.</p> <p>It would be inappropriate for enforcement mechanisms to become effective any time prior to BellSouth obtaining permission to enter the interLATA market in Florida. The FCC has identified the implementation of enforcement mechanisms and penalties to be a condition of 271 relief. The FCC's view of enforcement mechanisms and penalties is that they are an appropriate incentive to ensure that an ILEC continues to comply with the competitive checklist set forth in Section 271 of the 1996 Act after it obtains interLATA relief. The FCC has never indicated that enforcement mechanisms and penalties are either necessary or required to ensure that BellSouth meets its obligations under Section 251 of the 1996 Act.</p>	Proposes that the Effective Date of Att. 9 Performance Measures and Enforcement Mechanism should become effective concurrently with the Interconnection Agreement.
Issue 6 [Att. 9, § 4.5.3]: What is the relevant period for determining whether penalties for failure to meet service quality measurements should be assessed?	BellSouth agrees that consecutive months of noncompliance will not be required to be within a given quarter. BellSouth, however, incorporates herein its response to Issue 5 regarding when enforcement mechanisms should become effective.	All references to the term "quarter" should be deleted. Consecutive months of noncompliance are not required to be within a given quarter.