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List of Exhibits

- 1 Initial BellSouth BSE/CNS Offerings in Georgia
- 2 Georgia Public Service Commission: Order of the Commission Regarding its Investigation into Southern Bell Telephone and Telegraph Company's Trial Provision of MemoryCall Service
- 3 Summary from: Audit Report, Southern Bell Telephone & Telegraph Company, Cost Allocations (Regulated/ NonRegulated) and Affiliated Transactions, September 1994. Conducted by the Utilities Division, Georgia Public Service Commission and Snavely, King & Associates, Inc.
- 4 Georgians FIRST: A Georgia Price Regulation Proposal by BellSouth Telecommunications, Inc., June 22, 1994

Initial BellSouth BSE/CNS Offerings in Georgia

This chart shows the initial BSE and CNS offerings proposed in BellSouth's initial Georgia intrastate ONA tariff. It is arranged according to the profit margin for each service, ranging from the lowest margin to the highest margin. The last two rows compare the average margins for services used by BellSouth to the average margins for services that BellSouth does not use.

Service	Used by BS?	Profit Margin
Simplified Message Desk Interface (SMDI)	Yes	4.848%
Faster Signalling on DID	No	4.896%
Uniform Access Number (UAN), Custom Service Area (CSA), Automatic Number Identification (ANI) and Call Detail Information (as a group)	Yes	21.30%
Message Waiting Indicator - Audible (MWI)	Yes	31.58%
Surrogate Client Number	Yes	32.45%
Multiline Hunt Queuing	No	33.07%
Hot Line/Warm Line	No	106.3%
ESSX ^R Service/Digital ESSX ^R Service - Caller ID	No	164.3%
BCLID/Call Tracking	No	244.9%
Caller ID - Multiline	No	398.0%
Services Used by BellSouth	N/A	22.23%
Services Not Used by BellSouth	N/A	162.1%

Source: BellSouth Georgia ONA filings, 1992.

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ORDER OF THE COMMISSION REGARDING ITS INVESTIGATION
INTO SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
TRIAL PROVISION OF MEMORYCALLSM SERVICE

Executive Secretary
Ga. Public Service Commission

IN RE: In the Matter of the Commission's Investigation
Into Southern Bell Telephone and Telegraph
Company's Provision of MemoryCallSM Service

Record submitted: April 24, 1991

Decided: May 21, 1991

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I.

INTRODUCTION: THE CENTRAL POLICY ISSUE

This case concerns whether and how Southern Bell Telephone and Telegraph Company ("SBT") shall be permitted to compete in the intrastate telecommunications market for voice messaging services ("VMS"). Inasmuch as VMS is but one segment of a broader set of services called enhanced services ("ES"), the case also presents the more general issue whether and how SBT shall be permitted to compete in the intrastate ES market.¹

The central policy issue to be decided and the general circumstances that frame it are succinctly stated as follows. SBT is the monopoly controller of the local telephone system. As such, it has both the opportunity and interest to behave anti-competitively if allowed uncontrolled presence in competitive markets. However, SBT's presence in those markets, under conditions where it does not abuse its monopoly position, may actually promote development of an efficient, competitive ES market. The central question before the Commission therefore is: What regulatory approach to SBT's entry into the ES market will best guard against monopoly abuse of that market, but foster its development to its efficient, competitive extremes to the benefit of consumers and the State?

¹Throughout this Order unless otherwise noted, the terms "VMS," "VMS market," "ES," or "ES market" refer to the intrastate telecommunications portion of the voice messaging service market or enhanced services market, which is the only portion of those respective markets regulated by this Commission. In addition, unless otherwise noted, reference to ES and/or ES market includes reference to VMS and/or VMS market.

The principal fact matters determined by the Commission in this case are whether, under current circumstances, SBT has the opportunity and incentive to abuse its monopoly control of the local telephone system to the detriment of fair competition in the VMS market and whether SBT has done so. The Commission finds that SBT does have that opportunity and incentive. The Commission also finds that the evidence in this case indicates that SBT has actually used its monopoly position to deter competition in the VMS market. See, Part III.

Based on these findings, the Commission articulates the overall regulatory policy that will govern SBT's presence in the ES market, plus fashions the specific regulatory framework pursuant to which SBT shall be permitted to compete in the VMS market. See, Part IV. The Commission determines that the best policy is to promote competition in the ES market so that it will develop to its efficient, competitive extreme. Achievement of this policy means that SBT's presence in the ES market must be regulated until that market develops to a stage of complete competition. Once that stage is reached, the competitive balance of the market should eliminate the need for regulation to prevent the type of abuse of monopoly control of the local telephone network by SBT that deters or defeats competition.

SBT's current presence in the VMS market is basically uncontrolled. The Commission has determined that SBT has the opportunity and incentive to behave anticompetitively in that market in order to favor its MemoryCallSM service over other

competitive VMS options. The Commission has further determined that SBT has in fact behaved anticompetitively with respect to its trial offer of MemoryCallSM service, with inevitable and likely irreparable damage to the VMS marketplace. The full scope and extent of this damage and of SBT's anticompetitive behavior cannot presently be determined by the Commission, given SBT's failure to comply with the Commission's earlier directive that SBT file with the Commission sufficient cost data to allow a determination as to whether MemoryCallSM service is being predatorily priced. The Commission therefore determines that SBT's current provision of MemoryCallSM service must be frozen in order to halt SBT's anticompetitive behavior pending filing by Southern Bell of a complete cost of service study for MemoryCallSM service, including all workpapers thereto, and pending Commission design and implementation of appropriate regulatory controls to prevent and/or deter monopoly abuse. The Commission therefore undertakes certain analyses and actions to develop the appropriate set of regulatory controls. See, Part V.

II.

JURISDICTION AND AUTHORITY TO REGULATE SBT'S PROVISION OF MEMORYCALLSM SERVICE

Several statutes confer jurisdiction and authority upon the Commission to regulate SBT's provision of MemoryCallSM service under the conditions presented by this case. The Commission's general jurisdiction and authority is contained in O.C.G.A. § 46-2-20, which provides, in pertinent part, as follows:

- (a) Except as otherwise provided by law, the commission shall have the general supervision of all . . . telephone and telegraph companies . . . within this state;
- (b) The commission may hear complaints; in addition, it is also authorized to perform the duties imposed upon it of its own initiative.
- (c) The commission may . . . by special orders in particular cases, require all companies under its supervision to establish and maintain such public services and facilities as may be reasonable and just.
- (e) The commission shall have authority to examine the affairs of all companies under its supervision and to keep informed as to . . . the manner in which the lines owned, leased, or controlled by them are managed, conducted, and operated . . . with reference to their compliance with all laws [and] orders of the commission

The Commission has also received specific statutory jurisdiction and authority with regard to telephone companies and their services. O.C.G.A. § 46-2-21(b)(4) provides, in pertinent part, as follows:

- (b) The powers and duties conferred . . . upon the commission and its authority and control shall also extend to:
 - (4) Telegraph or telephone companies, or persons owning, leasing, or operating a public telephone service or telephone lines in this state.

The Commission has exercised jurisdiction and authority over SBT for many years. No serious suggestion is made that SBT is outside the reach of the Commission's jurisdiction and authority. However, it appears that SBT obliquely contends that the Commission

nevertheless does not have jurisdiction and authority to regulate SBT's provision of MemoryCall[®] service.² It appears that SBT may contend that while SBT is a telephone company subject to the Commission's regulatory jurisdiction and authority under § 46-2-21(b)(4), MemoryCall[®] is not a telephone service subject to the Commission's jurisdiction within the meaning of § 46-2-21(b)(4) and therefore the Commission may not regulate SBT's provision of MemoryCall[®]. If SBT's Motion raises this contention, it is wholly without merit.

At bottom, the contention fails because MemoryCall[®] is a telephone service. Indeed, any service provided by SBT that is integrally connected to its ownership, control and operation of its monopoly local service telephone system is a telephone service within the meaning of O.C.G.A. § 46-2-21(b)(4). It is indisputable that SBT's provision of MemoryCall[®] service is integrally connected to SBT's ownership, control and operation of its monopoly local service telephone system. For this reason alone, the Commission has jurisdiction to regulate SBT's provision of MemoryCall[®] service.

III.

SBT'S OPPORTUNITY AND INCENTIVE TO ABUSE AND ITS ACTUAL ABUSE OF ITS MONOPOLY POSITION

This case does not arise in a vacuum apart from the significant events of the last decade that have reshaped the

²See, SBT's "Motion to Expand the Scope of the Docket and Reschedule the Hearings," filed April 15, 1991, p. 2.

telecommunications industry. Rather, it fits in the stream of events stemming from federal court divestiture of the Bell System in 1982 and the FCC's subsequent efforts to regulate interstate enhanced services provided by the BOCs. Those bodies have found that the BOCs' monopoly control of the local network bottleneck gives the BOCs the opportunity and incentive to discriminate against competitors regarding access to the local network and to cross-subsidize competitive businesses by shifting costs to the regulated side and/or by using profits from the regulated side to underwrite competitive ventures.

In addition to the findings and conclusion of the federal courts and the FCC, the evidence presented in this docket also shows the opportunity and incentive of SBT to behave anticompetitively with respect to the VMS market. Indeed, beyond the mere opportunity and incentive to behave anticompetitively, the evidence demonstrates actual anticompetitive behavior by SBT with respect to network access and marketing through control of the local network, plus the possible but as yet undetermined cross-subsidy of MemoryCallSM through predatory pricing.

A. Federal Antitrust Litigation Findings

In 1982, American Telephone & Telegraph Company ("AT&T") was divested of 22 of its operating companies (the Bell Operating Companies, or "BOCs") by a federal court pursuant to a consent decree entered in a federal government antitrust case. In that case the federal court determined that monopoly control of the local telephone system by AT&T through its ownership of the BOCs

was used to defeat competition in several broad telecommunications markets. In order to avoid subsequent similar anticompetitive behavior by the BOCs, who after divestiture would continue their monopoly control of the local telephone system, the antitrust court imposed severe line of business restrictions upon the divested BOCs. One restriction concerned information services, a category that includes ES and VMS. Various orders of the federal court imposing the information services line of business restriction establish that BOC monopoly control of the local telephone system provides the opportunity and incentive to behave anticompetitively in the information services market. The relevant portion of these decisions are briefly discussed herein as a partial basis for the Commission's finding that SBT has the opportunity and incentive to behave anticompetitively in the ES market if its presence in that market is uncontrolled.³

³The Commission takes notice of the following decisions rendered by the federal court in the antitrust case.

1. United States v. American Telephone and Telegraph Company, 552 F.Supp. 131 (D.D.C. 1982). Hereafter, this opinion is referred to as the "Modification of Final Judgment" or "MFJ." The final decree implementing the antitrust settlement, entered in 1983, is referred to as the "MFJ Decree." The District Court for the District of Columbia that issued the MFJ and MFJ Decree is referred to as the "antitrust court."
2. United States v. Western Electric Company, Inc., 592 F.Supp. 846 (D.D.C. 1984). Hereafter, this antitrust court opinion is referred to as "Western Electric (1984)."
3. United States v. Western Electric Company, Inc., 673 F.Supp. 525 (D.D.C. 1987). Hereafter, this antitrust court opinion is referred to as "Western Electric (1987)."

1. The Modification of Final Judgment

The MFJ determined that AT&T behaved anticompetitively by using its monopoly control of the local telephone system to defeat competition. It further determined that divestiture is the necessary remedy to curb that abuse. The antitrust court also noted, however, that after divestiture the BOCs would retain monopoly control of the local telephone system and therefore the risk of anticompetitive behavior would continue, this time through the BOCs.

The key to the Bell System's power to impede competition has been its control of local telephone service. The local telephone network functions as the gateway to individual telephone subscribers. . . . The enormous cost of the wires, cables, switches, and other transmission facilities which comprise that network has completely insulated it from competition. Thus, access to [the] local network is crucial if [there] are to be viable competitors.

AT&T has allegedly used its control of this local monopoly to disadvantage these competitors in two principal ways. First, it has attempted to prevent [competitors] from gaining access to the local network, or to delay that access, thus placing them in an inferior position vis-a-vis AT&T's own services. Second, it has supposedly used profits earned from the monopoly local telephone operations to subsidize its [competitive] businesses

After the divestiture, the Operating Companies will possess a monopoly over local telephone

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4. United States v. Western Electric Company, Inc., 714 F.Supp. 1, (D.D.C. 1988) affirmed in part and overturned in part in United States v. Western Electric Company, Inc., 900 F.2d 283 (D.C. Cir. 1990). Hereafter, this antitrust court opinion is referred to as the "VMS Waiver Order."

service. . . . Restrictions [will be imposed on the BOCs] based on an assessment of the realistic circumstances of the relevant markets, including the Operating Companies' ability to engage in anticompetitive behavior, their potential contribution to the market as an added competitor for AT&T, as well as upon the effects of the restrictions on the rates for local telephone service.

This standard requires that the Operating Companies be prohibited from providing long distance services and information services, and from manufacturing equipment used in the telecommunications industry. Participation in these fields carries with it a substantial risk that the Operating Companies will use the same anticompetitive techniques used by AT&T in order to thwart the growth of their own competitors. Moreover, contrary to the assumptions made by some, Operating Company involvement in these areas could not legitimately generate subsidies for local rates. Such involvement could produce substantial profits only if the local companies used their monopoly position to dislodge competitors or to provide subsidy for their competitive services or products--the very behavior the decree seeks to prevent.

MFJ, pp. 223-224 (bracketed material supplied, some material omitted).

The antitrust court recognized the possibility that over time the BOCs may "lose the ability to leverage their monopoly power into the competitive markets from which they now must be barred." MFJ, p. 194. Consequently, the antitrust court created a means whereby the BOCs could petition to have the restrictions modified or removed where conditions warrant. Under Section VIII(C) of the MFJ Decree, the antitrust court provided that a restriction would "be removed upon a showing that there is no substantial possibility that an Operating Company could use its monopoly power to impede

competition in the relevant market." MFJ, p. 195, footnote omitted.

2. Subsequent Decisions in Waiver Request Cases

a. Western Electric (1984)

The BOCs immediately began petitioning the antitrust court for waivers of the line of business restrictions. In Western Electric (1984), the antitrust court soundly rejected the requests, reaffirming its recognition of the underlying reason for the line of business restrictions, namely, continued BOC opportunity and incentive to abuse its monopoly control of the local telephone service to defeat competition. The specific analyses of the antitrust court are relevant to this proceeding. Reviewing the underlying basis for the line of business restrictions and the concrete problems of BOC anticompetitive behavior, the antitrust court imposed a separate subsidiary requirement as a condition for waivers.

(1) The Underlying Basis for
Line of Business Restrictions

The antitrust court reaffirmed the underlying basis for the line of business restrictions.⁴ It concluded that requests for waiver must be evaluated in that context.

Contrary to the claims of some of the Regional Holding Companies, the inclusion of Section VIII(C) in the decree [allowing waivers] is not evidence of a general policy in favor of their diversification. That provision was included so that these companies could, at some later time, engage in nonregulated activities on a carefully controlled basis.

⁴See, Western Electric (1984), pp. 851-52.

Western Electric (1984), p. 858 (bracketed material and underlining added).

(2) The Concrete Problems of Anticompetitive Behavior

The antitrust court carefully noted three prime areas of actual or potential abuse by the BOCs: (1) Discrimination in access to bottleneck facilities; (2) cross-subsidization; and (3) exploitation of marketing advantages stemming from their local exchange monopoly.

(a) Access Discrimination

With respect to access discrimination, the antitrust court noted that the risk of use of monopoly power for anticompetitive purposes lessens as the connection between the competitive market sought to be entered and local exchange service becomes more attenuated. In the antitrust court's view, this

is so because products or services in unrelated fields are not dependent upon interconnection to the [BOCs'] monopoly bottleneck facilities, and discriminatory access therefore cannot injure [those who] compete with them.

Western Electric (1984), p. 853, (bracketed material supplied).⁵

(b) Cross-Subsidization

The antitrust court also recognized that competition is readily impeded by cross-subsidization, defined as "a subsidy to a new, competitive line of business with profits earned from or

⁵It is obvious, however, that the inverse of this observation holds where, as in this case, the ability of Georgia VMS competitors to compete with MemoryCallSM service depends upon their non-discriminatory access to the local bottleneck.