

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)
Second Application by BellSouth)
Corporation, BellSouth Telecommunications,)
Inc., and BellSouth Long Distance, Inc., for)
Provision of In-Region, InterLATA Services)
in Louisiana)
_____)

CC Docket No. 98-121

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OFFICE OF THE SECRETARY

**APPENDIX TO COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELLSOUTH'S SECOND
SECTION 271 APPLICATION FOR LOUISIANA**

VOLUME I

Filed August 4, 1998

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TAB	AFFIANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
A	Michelle Augier	AT&T Market Entry	§ 271(c)(1)(A), (c)(2)(B), (d)(3)
B	*William J. Baumol	Public Interest	§ 271(d)(3)(C)
C	*Robert H. Bork	Public Interest	§ 271(d)(3)(C)
D	Jay M. Bradbury	Operations Support Systems, Directory Listing, Number Portability, Resale	§ 271(c)(2)(B)(ii), (vi), (viii), (xi), and (xiv)
E	Robert V. Falcone	Unbundled Network Elements: Combinations	§ 271(c)(2)(B)(i), (ii), (v) and (vi)
F	Gregory R. Follensbee	Unbundled Network Elements: Pricing	§ 271(c)(2)(B)(i), (ii)
G	John M. Hamman	Unbundled Switching, Intellectual Property, Reciprocal Compensation	§ 271(c)(2)(B)(ii), (vi) and (xiii)
H	Donna Hassebrock	ADL, Interconnection, Operations Support Systems, Directory Listings, Number Portability	§ 271(c)(2)(B)(i), (ii), (viii) and (xi)
I	R. Glenn Hubbard and William H. Lehr	Public Interest	§ 271(d)(3)(C)
J	Patricia A. McFarland	Section 272 Compliance	§ 271(d)(3)(B)
K	Philip I. Miller and Dean A. Gropper	Public Interest - ILEC Ability to Harm Competition	§ 271(d)(3)(C)
L	Sharon Norris	Louisiana Public Service Commission Proceedings on Operations Support Systems	§ 271(c)(2)(B)(ii)

TAB	AFFIANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
M	C. Michael Pfau and Katherine M. Dailey	Performance Measurements	§ 271(c)(2)(B)(i), (ii) and (xiv)
N	Jordan Roderick	PCS	§ 271(c)(1)(A), (d)(3)

* Affidavits marked with this are as originally filed in CC Docket No. 97-231

MISCELLANEOUS APPENDIX

TAB	DESCRIPTION
O	Order, <u>AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc.</u> , No. 5:97-CV-405-BR (Eastern District of North Carolina, Western Division May 22, 1998)
P	Recommended Decision, Pennsylvania Public Utility Commission, <u>Petition of Bell Atlantic - Pennsylvania, Inc. For a Determination of Whether the Provision of Business Telecommunications Services is Competitive Under Chapter 30 of the Public Utility Code</u> , Docket No. P-00971307 (July 24, 1998)

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AFFIDAVIT

OF

MICHELLE AUGIER

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT A

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AFFIDAVIT OF MICHELLE AUGIER
ON BEHALF OF AT&T CORP.

INTRODUCTION AND SUMMARY

1. My name is Michelle L. Augier and my business address is 1200 Peachtree Street, Atlanta, Georgia, 30309.
2. I am AT&T's Director, Local Services Organization, for the Southern States. My responsibilities include developing and implementing local services for AT&T customers in nine southern states. I have been involved in AT&T's efforts to enter the local market in Louisiana and other states served by BellSouth. As part of those efforts, I was aware of

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executive level negotiations, and I participated in the setting of strategy and goals for the interconnection agreement negotiations with BellSouth.

3. I have been working at AT&T since 1983, when I served as a summer intern in network planning. Since then, I have been involved in operations, marketing, sales and external affairs at AT&T, serving among other things as: Operations Manager for the public switched network and facilities in Southern California; National Sales Manager; and Manager-Access and LEC relations. From 1994 through 1996, I served as a Division Manager for Regulatory and Product Implementation and then for IntraLATA/Local markets. In 1996 I became Director, Consumer Markets, and led AT&T efforts to introduce local service in the nine southern states.

4. The purpose of my affidavit is to discuss how BellSouth's actions consistently have impeded AT&T's plans for entry in Louisiana's local exchange markets. In its application, BellSouth claims to have opened Louisiana's local exchange markets. BellSouth further asserts that AT&T has intentionally withheld service to consumers in Louisiana. The picture painted by BellSouth is false and misleading. Although BellSouth has executed interconnection agreements with competitors to create the appearance of cooperation to open its local markets to others, BellSouth consistently has implemented policies to ensure that the entry vehicles upon which AT&T and others must rely are either completely unavailable or economically infeasible. In so doing, BellSouth has failed to meet its obligations under the

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Telecommunications Act of 1996 ("the Act") and the Commission's rules. Remarkably, the Louisiana Public Service Commission ("La. PSC") generally has approved BellSouth's policies, even when such policies directly and clearly conflict with orders of this Commission -- and even when the La. PSC's own administrative law judge ("ALJ") made detailed findings demonstrating that BellSouth's proposals were unlawful. Indeed, most recently, on July 15, 1998, the La. PSC voted summarily to endorse BellSouth's 271 application at the FCC without any procedure to review BellSouth's application or any consideration of evidence. The La. PSC vote also came prior to a workshop and hearing on BellSouth's proposed performance measurements, an issue critical to determining whether BellSouth is providing CLECs nondiscriminatory treatment. In sum, both BellSouth's anticompetitive and unlawful policies and a state regulatory environment that does not support the Congressional policies embodied in Section 271 operate today to preserve BellSouth's monopoly position in Louisiana's local exchange markets.

5. My affidavit is organized as follows. Section I provides an overview of AT&T's extensive efforts to enter local markets in Louisiana. AT&T has sought to offer to provide residential and business customers in Louisiana with high-quality, cost-efficient, and competitive alternatives to BellSouth's local services. AT&T has spent, and will continue to spend, millions of dollars to develop its local services in Louisiana and the other states in the BellSouth region. Indeed, AT&T is currently offering limited local calling services to medium and large business customers in Louisiana through AT&T Digital Link, a facilities-based local calling service. AT&T Digital Link Service is only available to business customers. Beyond AT&T

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Digital Link, AT&T's plans for broader-based entry into Louisiana local markets have called for use of combinations of unbundled network elements ("UNEs") and resale of BellSouth services. Although AT&T is no longer pursuing resale as its primary local market entry strategy because of the inability to differentiate service offerings, the high costs of such an entry strategy, and a regulatory environment that resulted in unprofitable resale discounts, AT&T remains committed to market entry through the use of unbundled network elements or through its own facilities. Surprisingly, BellSouth claims in its application that "AT&T currently provides... a small number of lines on a resold basis" in Louisiana. BellSouth Wright Aff. ¶ 123. In fact, AT&T currently provides no services in Louisiana on a resold basis and does not even have a tariff in place that would allow it to do so.

6. Moreover, although AT&T has merged with Teleport Communications Group (TCG), and has announced plans to merge with Tele-Communications, Inc. (TCI), AT&T will continue to need access to BellSouth UNEs to be able to provide local service to all residential and business customers. AT&T requires access to UNEs to provide local service where no AT&T facilities exist and to connect customers to existing facilities. Moreover, although the mergers with TCG and TCI will give AT&T access to certain facilities that eventually may be used to provide local service, the merger with TCI will not be complete for several months and TCG's and TCI's facilities do not reach most potential local customers in the Southern region. Indeed, it is my understanding that currently TCI facilities pass less than two percent of the households in the nine state BellSouth region. Further, even if TCI's facilities are

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available, additional time will be needed to upgrade them to enable AT&T to use them to provide local telephone service. AT&T requires access to UNEs and UNE combinations to be able to provide local service now. There is no reason why AT&T should have to wait for its own facilities to be in place to provide local service. Moreover, AT&T requires the ability to switch customers to its local service upon request, using the most appropriate means (UNEs, UNE combinations, or its own facilities) and the flexibility to switch that customer to other means if appropriate. Additionally, AT&T requires access to UNEs to differentiate its service offerings in the local market from other carriers. BellSouth, however, has caused delay of competition in Louisiana by foreclosing entry through UNEs. Only after UNEs (including UNE combinations) are truly available on a reasonable basis will local competition have an opportunity to develop in Louisiana for residential and business customers.

7. Section II describes some ways in which BellSouth has thwarted AT&T's efforts to enter Louisiana local markets through the use of UNEs. As Robert Falcone explains in his separate affidavit, UNEs and in particular UNE combinations, offer the only real opportunity for meaningful, broad-based and effective competitive entry, in contrast to resale. Nevertheless, BellSouth has consistently taken steps to prevent AT&T and others from using combinations of UNEs. From early 1996 to the present, BellSouth, as a matter of policy, has maintained that the right to purchase at cost-based rates and provide service using UNEs is limited to competitors who will use their own facilities. BellSouth maintains this position today -- with the endorsement of the La. PSC, despite the fact that it was clearly rejected by the Commission almost two years

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ago, and by the Eighth Circuit one year ago. As a result, combinations of UNEs currently are not available to competitors in Louisiana, foreclosing to AT&T and all other competitors this critical entry vehicle.

8. On July 18, 1997, the Eighth Circuit rejected the claim by BellSouth and other RBOCs that the Act did not permit CLECs to provide service using combinations of UNEs obtained from incumbent LECs. On October 14, 1997, the Eighth Circuit issued its opinion on rehearing vacating 47 C.F.R. § 51.315(b), which had not been stayed, and which had prohibited incumbent LECs from separating network elements that already were combined in their networks. Since then, BellSouth has taken the position that the only method by which CLECs may offer service using a combination of the unbundled loop and switch elements is to obtain collocated space from BellSouth. As explained in detail in the affidavit of Robert Falcone, such a requirement not only is unnecessary from an engineering perspective, but also would increase the barriers to entry and degrade the quality of service that CLECs would be able to offer customers so significantly as to make use of combinations largely, if not entirely, unworkable. By insisting on such a requirement, BellSouth thus continues to obstruct the ability of potential competitors to use combinations of elements, and effectively forecloses use of UNEs by CLECs who do not have their own facilities.

9. Indeed, as Mr. Falcone's affidavit further explains, AT&T has shown considerable interest in attempting to develop a competitively workable means of combining these

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elements, in the aftermath of the Eighth Circuit's rehearing decision. BellSouth's refusal to take comparable steps has served only to delay the progress that might otherwise have been made -- continuing a policy of delay with respect to UNE combinations that BellSouth has followed since the passage of the Act.

10. Moreover, as Gregory Follensbee describes in his affidavit, BellSouth does not offer UNEs at cost-based rates. BellSouth's own evidence made clear that its cost proposals were designed to recover BellSouth's "embedded costs." For this and other reasons, the La. PSC's ALJ issued a 66-page analysis rejecting BellSouth's position on virtually every cost issue. Five days later, without analysis or explanation, the La. PSC dismissed the ALJ's recommendations, leaving the rates for UNEs at levels too high to permit competitive entry.

11. Section III discusses the steps BellSouth has taken (again, often with the approval of the La. PSC) to block AT&T's entry into Louisiana via resale, steps that continue to impede AT&T's ability to enter the Louisiana market through the use of UNEs. AT&T began initial marketing of local services in Georgia through resale of BellSouth services in June 1997. This followed almost two years of negotiations between AT&T and BellSouth after state legislators and regulators in Georgia in 1995 had commenced efforts to open Georgia local exchange markets to competition, well before passage of the Act. However, BellSouth delayed AT&T's efforts to introduce competitive local exchange services based upon resale. First, BellSouth restricted the use of resale in Louisiana (as well as other states) in connection with

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services for large business customers. Second, BellSouth's inability to offer nondiscriminatory access to Operations Support Systems ("OSS") also delayed entry by resale. The La. PSC's ALJ issued a recommendation making detailed findings concerning the numerous ways in which BellSouth failed to offer nondiscriminatory access to its OSS. Once again, the La. PSC rejected the ALJ's recommendation without analysis or explanation

I. AT&T'S MARKET ENTRY STRATEGY IN LOUISIANA

12. Louisiana is an attractive market for potential providers of local telephone services. With over 4.2 million residents, Louisiana ranks 21st among states in population. New Orleans, Louisiana's largest city, has over 1.3 million residents in the metropolitan area and is the nation's 24th largest city. Louisiana also has numerous mid-sized cities, including Baton Rouge and Shreveport, which have attracted potential CLECs.

13. Louisiana would be an attractive market to AT&T if the terms and conditions available for AT&T's entry were reasonable, or at the very least, in compliance with the Act and this Commission's rules, which were designed to open local markets to viable competition. However, as I describe in greater detail below, BellSouth has adopted policies with respect to UNEs and resale that are not only unreasonable, but also clearly contrary to the Act and the Commission's rules. The current market conditions in Louisiana are so hostile to local

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competition, and the prospects for a change in that environment are so uncertain, that AT&T has been unable to meet its goals there for local entry.

14. AT&T's success in the market depends on its ability to provide local services that are comparable in quality to BellSouth's local service and the long-distance services that AT&T currently provides its customers. Put simply, in order to attract large volumes of customers away from BellSouth, which clearly enjoys a reputation for high quality services, AT&T also must provide first-rate services. Moreover, it is equally important that AT&T establish quality services at the outset of its entry into the local market. For example, failure of an interface that results in delays in obtaining service or even service outages would be devastating to AT&T, because its new local customers would necessarily hold AT&T accountable for such problems, even if BellSouth is the responsible party. Accordingly, before AT&T can consider entering the local market through resale or UNEs, it is essential that interconnection arrangements, and particularly the OSS, all are able to function in a nondiscriminatory manner and can handle competitively significant volumes and complex transactions that reflect the demand of existing BellSouth customers.

15. AT&T has sought from the outset of its negotiations with BellSouth to obtain the ability to serve business and residential customers with a combination of BellSouth's network elements. If unbundled network elements were truly provided on nondiscriminatory terms and conditions, and at prices based on efficient forward-looking costs as the Act requires,

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AT&T would rely on UNEs and its own facilities to serve the majority of its residential and business customers.

16. Almost immediately after the Act was passed, AT&T began negotiating on a region-wide basis with BellSouth to facilitate AT&T's entry into local markets, including entry through resale and the use of UNEs. On March 11, 1996, AT&T conducted an initial negotiating session with BellSouth, during which AT&T stated its intention to purchase specific UNEs from BellSouth. See Letter of W. J. Carroll, AT&T to C.B. Coe, BellSouth, at 2 (June 6, 1996) (Attachment 1).

17. Shortly thereafter, AT&T followed up on the initial meeting by presenting BellSouth with a requirements document that "provide[d] an overview, including definitions, of the unbundled network elements AT&T wishes to purchase either individually or in combinations." See AT&T Communications, Inc., Local Network Elements, Local Platform, Version 1, March 27, 1996 (excerpted at Attachment 2). AT&T reaffirmed to BellSouth that it intended to use UNEs, including combinations of UNEs, to provide: "all the network capabilities and functions needed to offer residential and business customers a wide array of basic exchange services."¹ Thus, from the very outset of negotiations under the Act, AT&T made it unmistakably

¹ AT&T Communications, Inc., Unbundled Loop Combination and Interconnection Planning Document for Network Product and Services, Network Interconnection, Network Operations, Access, Account Maintenance and Billing, Security and Pricing and Compensation in the Local
(continued...)

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clear that it intended to enter the local market using UNEs, individually and in combinations, to serve business and residential customers.

18. On April 15, 1996, AT&T formally requested access and interconnection from BellSouth in Louisiana pursuant to the Act.² This state-specific request followed over a month of earlier region-wide negotiations with BellSouth. This request to BellSouth for access and interconnection also was comprehensive, mirroring the region-wide negotiations already underway. It "include[d] all interconnection issues" contemplated by the Act: "prices and terms for interexchange access, the resale of services, and the network elements used for the origination and completion of local exchange and interexchange services traffic." See Letter of W.J. Carroll, AT&T, to D. Ackerman, BellSouth, at 1, Apr. 15, 1996 (emphasis added) (Attachment 5).

19. Throughout the ensuing months of negotiations under the Act, AT&T devoted significant efforts to reaching an interconnection agreement with BellSouth. To that end, AT&T submitted to BellSouth its first proposed interconnection agreement on June 28, 1996. See Draft Interconnection Agreement between BellSouth and AT&T Corp., June 28, 1996. The

(...continued)

Exchange Service Marketplace, at 6 (March 28, 1996) (excerpted at Attachment 3).

² On February 29, 1996, AT&T requested the La. PSC to amend its certificate of public convenience and necessity to permit AT&T to offer "local exchange services throughout Louisiana." Application of AT&T Communications of the Southern States, Inc. at 3 (Attachment 4).

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proposed agreement included terms and conditions for resale of local services and UNEs. Id. at 21-42 (resale); id. at 43-50, Attachment 2 (UNEs).

20. In negotiations concerning the proposed interconnection agreement, AT&T continued to emphasize that it needed to be able to order various UNEs, as well as combinations of UNEs, including the combination of all twelve UNEs requested by AT&T. In a negotiating meeting of June 20, 1996, AT&T provided BellSouth with a chart of twelve different types of UNE combinations, and stressed that "AT&T needed the ability to order eight by November, 1996." See Meeting Minutes of June 20, 1996, at 5 & Att. 4 (excerpted at Attachment 6). Thus, just a few months into the negotiating process, AT&T had clearly stated its desire to use resale and UNEs, including UNE combinations, to enter the market, had submitted a detailed interconnection agreement containing provisions pertaining to UNEs, including proposed prices, and had requested that BellSouth be prepared to provision at least eight UNE combinations by November 1996. As described in sections II and III below, BellSouth responded to AT&T's proposed terms with a long series of unreasonable policies with respect to both resale and UNEs -- policies that directly conflict with the Act and the Commission's orders.

21. Because of BellSouth's adherence to policies contrary to the terms of the Act and this Commission's rules, AT&T was forced to arbitrate with BellSouth before the La. PSC. See In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., of the

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Unresolved Issues Regarding Cost-Based Rates for Unbundled Network Elements, Pursuant to the Telecommunications Act Number 47 U.S.C. 252 of 1996, La. PSC Docket No. U-22145 (Jan. 15, 1997) ("La. PSC Arbitration Order"). Following the issuance of the La. PSC Arbitration Order, AT&T attempted to finalize an interconnection agreement with BellSouth. However, AT&T and BellSouth again failed to reach a final agreement on several issues, and sought additional rulings from the La. PSC.³ After the Second Order, AT&T and Bell South reached a final interconnection agreement. See Agreement between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc., eff. date July 21, 1997.

22. Although the Agreement should have been an important step in facilitating AT&T's entry into Louisiana, it contained unlawful provisions (many of which are discussed in sections II and III below) that BellSouth insisted upon, the La. PSC approved, and which to this day thwart AT&T's ability to enter into Louisiana local markets. AT&T has appealed to federal court the La. PSC Arbitration Order approving these unlawful provisions. Similarly, AT&T also has appealed to federal court another La. PSC order approving BellSouth's SGAT, which contains provisions substantially identical to those contained in the BellSouth/AT&T Agreement.

Consideration and Review of BellSouth Telecommunications, Inc., Preapplication Compliance

³ In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., of the Unresolved Issues Regarding Cost-Based Rates for Unbundled Network Elements, Pursuant to the Telecommunications Act Number 47 U.S.C. 252 of 1996, La. PSC Docket No. U-22145 (June 10, 1997) ("La. PSC Arbitration Second Order").

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with Section 271 of the Telecommunications Act of 1996, La. PSC Docket No. U-22252 (Aug. 20, 1997) ("La. PSC SGAT Order").

23. While entry into Louisiana via UNEs and resale is effectively foreclosed, AT&T has undertaken to provide at least some local services over its own facilities to medium and large business customers in Louisiana. AT&T Digital Link service is provided using existing AT&T 4ESS (toll) switches, connected to BellSouth's local network. Local calls are routed over dedicated facilities (e.g., T1.5) between the customer's PBX and AT&T's 4ESS switch, and over AT&T's trunks between its 4ESS and a BellSouth tandem or end office. Thus, AT&T Digital Link allows a PBX customer to use its dedicated access facilities more efficiently for local, intraLATA toll, interLATA toll, and international service, reducing the number of lines needed from the local carrier. As the separate affidavit of Donna Hassebrock explains, however, BellSouth's ad hoc approach to the introduction of new interfaces, its failure to follow industry standards and practices, and its lack of adequate documentation and change control processes have created numerous and unnecessary obstacles to AT&T's ability to introduce AT&T Digital Link Service. For example, as Ms. Hassebrock explains at length, BellSouth is, among other things, unable to: (i) transfer all of an AT&T's customer's telephone numbers when that customer transfers service to AT&T in stages; (ii) process directory listing orders for telephone numbers that AT&T assigns to AT&T's own customers, even when AT&T utilizes BellSouth's cumbersome miscellaneous account numbers to facilitate processing of the orders; (iii) disconnect AT&T customer's numbers; and (iv) provide necessary interconnection trunks when needed and

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without unwarranted service disruptions. These examples illustrate the continuing roadblocks BellSouth has placed in the way of AT&T's Digital Link market entry.

II. BELL SOUTH HAS PREVENTED AT&T FROM ENTERING THE LOCAL MARKET IN LOUISIANA THROUGH UNES AND, IN PARTICULAR, UNE COMBINATIONS.

24. At present, it is not possible for AT&T to enter the Louisiana local market using UNEs because BellSouth consistently has refused to make combinations available on the terms and conditions required by the Act. As described above, from the start of AT&T negotiations with BellSouth in the spring of 1996, AT&T made it clear to BellSouth that AT&T planned to use combinations of UNEs to provide competitive local services. BellSouth consistently refused even to acknowledge its obligation to provide AT&T access to certain UNEs and UNE combinations under the terms required by the Act, and BellSouth has clung to this position even after the Commission rejected BellSouth's position. While additional details of BellSouth's refusal to provide UNEs and UNE combinations under the terms required by the Act are provided in the affidavits of John Hamman, Robert Falcone and Gregory Follensbee, I would like to highlight several examples of BellSouth's conduct which shed revealing light on BellSouth's claims concerning its efforts to facilitate local competition in compliance with the Act and the Commission rules.

25. One example relates to the unbundling of the local switch. In its Local Competition Order issued nearly two years ago, the Commission made clear that "vertical

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switching features are part of the unbundled local switching element." Local Competition Order, ¶ 413. Defining the local switching element "to encompass . . . the features, functions, and capabilities of the switch," the Commission also stated that these "features" and "functions" include "all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex, as well as any technically feasible customized routing features." Id., at ¶¶ 412-413. The Commission also explicitly rejected the argument made by BellSouth (and other BOCs) that vertical switching features should be classified exclusively as retail services. Id., at ¶ 413.

26. Despite the Commission's decision, when AT&T requested that BellSouth unbundle the local switch, BellSouth, under its purported "narrow interpretation" of the Act, asserted that switching features, such as vertical services, were not available as part of unbundled local switching. Later, in contravention of the Commission's explicit ruling, BellSouth argued that, even if available, such features were not to be offered at cost-based prices. Because this Commission had squarely rejected that position, AT&T included this issue in the second arbitration proceeding with BellSouth in Louisiana. The La. PSC, however, refused to follow this Commission's holding, instead determining that "the price of unbundled local switching does not include the features, functions, and capabilities used to provide vertical services like Caller ID, Call Waiting, and Call Return." La. PSC Second Arbitration Second Order at 6.

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27. With the blessing of the La. PSC in August 1997, BellSouth's SGAT in Louisiana, in clear violation of the Commission's rulings that vertical features were part of the features, functions, and capabilities inherent in the unbundled local switch, provided that its price for unbundled switching "does not include retail services," which included all vertical features and which were "available at wholesale rates." BellSouth SGAT, Price List, Attachment A (May 19, 1997). BellSouth did not remove the offending language from its SGAT until September 9, 1997, and even then only after the La. PSC ordered BellSouth to make a "mandatory modification" to its SGAT. La. PSC SGAT Order at 5, 8. By asserting for over a year -- with the approval of the La. PSC -- that vertical switch features were available only at wholesale rates, BellSouth effectively denied AT&T access to unbundled local switching as this Commission has defined it.

28. Moreover, even today, BellSouth continues to limit AT&T's ability to obtain the full functionality of the switch. As the affidavit of Mr. Hamman explains, BellSouth continues to refuse to provide to AT&T any switch feature that BellSouth does not provide to its own retail customers individually or on a bundled basis. For example, when AT&T placed test UNE orders in Kentucky with Call Hold or 900 Number Blocking features, BellSouth refused to process the orders. BellSouth claimed that these features were only available on a bundled basis with other features, not on a stand alone basis. BellSouth's refusal also extends to those features which are currently loaded in the switch but which BellSouth does not offer as a retail offering.

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29. BellSouth's policies with respect to the pricing of UNE combinations provide a second striking example of BellSouth's refusal to comply with the Act and the Commission's rules, as well as the La. PSC's refusal to enforce those rules. Specifically, BellSouth continues to argue that combinations of UNEs -- even when the UNEs are combined by AT&T -- must be priced at the wholesale rates applicable to resold services, despite the fact that this Commission unequivocally rejected this argument. Indeed, BellSouth's interconnection agreement with AT&T in Louisiana today still contains the following language:

AT&T may purchase unbundled Network Elements for the purpose of combining Network Elements in any manner that is technically feasible, including recreating existing BellSouth services. When AT&T recombines unbundled Network Elements to create service identical to BellSouth's retail offering, the prices charged to AT&T for the rebundled services shall be computed at BellSouth's retail price less the wholesale discount established by the Louisiana Public Service Commission

BellSouth/AT&T Interconnection Agreement, General Terms and Conditions § 1A (effective July 21, 1997). Despite the fact that this provision clearly conflicts with the Commission's rules, the La. PSC, over AT&T's objections during the approval process for the interconnection agreement, approved § 1A of the Agreement as requested by BellSouth. La. PSC Arbitration Order at 39.

30. BellSouth's August 1997 SGAT in Louisiana contained the following language:

Network elements may be combined in any manner. If network elements are used to create services identical to BellSouth's retail offerings, the prices charged for the rebundled services shall be computed as BellSouth's retail prices less the applicable wholesale discount and offered under the same terms and conditions as apply to the BellSouth retail service involved. Identical services are services provided by

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the CLEC that do not use its own switching or other substantive functionality or capability together with BellSouth unbundled elements in order to produce the CLEC service. Provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in conjunction with unbundled elements does not constitute a substantive functionality or capability.

BellSouth SGAT, § II.F (Aug. 1997). Although BellSouth has since deleted this language from the SGAT, its position on the availability of UNE combinations at cost-based rates remains discriminatory. According to BellSouth's witness A. Varner, the SGAT's UNE prices apply "except when a CLEC asks BellSouth for a pre-assembled combination of UNEs that replicates a retail service.... This request constitutes a request for resale of the existing retail service. In such instances, the service is priced and provisioned the same as any other resold service" Varner Aff. ¶ 74. Similarly, BellSouth witness W. Stacy states that "in every state except Kentucky, UNE combination orders replicating a retail service will be treated as resale or as an access service (including provisioning, maintenance, and billing)...." Affidavit of BellSouth witness William N. Stacy, ¶ 101 (1998). BellSouth's position is contrary to the Eighth Circuit's holding that CLECs may provide "finished services" exclusively through the use of UNEs obtained pursuant to Sections 251(c)(3) and 252(d)(1). Moreover, although BellSouth claims that its SGAT allows CLECs to obtain the loop and port at the UNE prices and combine them via collocation, BellSouth has stated in state proceedings that if AT&T were to utilize collocation and combine the loop and port, despite the SGAT provisions, BellSouth would charge AT&T the resale rate.⁴

⁴ Mr. Varner testified before the Tennessee Regulatory Authority as follows:

(continued...)