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STATE OF GEORGIA

COUNTY OF FULTON

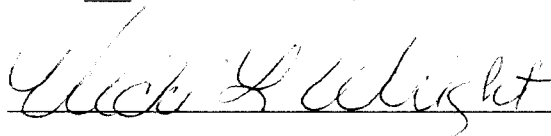
BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared John A. Ruscilli, who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Kentucky Public Service Commission in Case No. 2002-00456, Inquiry into the Use of Contract Service Arrangements by Telecommunications Carriers in Kentucky, on behalf of BellSouth Telecommunications, Inc., and if present before the Commission and duly sworn, his testimony would be set forth in the annexed testimony consisting of 16 pages and 0 exhibits.



John A. Ruscilli

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 28 DAY OF APRIL, 2003

 Notary Public

Notary Public, Cobb County, Georgia
My Commission Expires June 19, 2005

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF JOHN A. RUSCILLI
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 2002-00456
APRIL 30, 2003

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. (“BELLSOUTH”) AND YOUR BUSINESS ADDRESS.

A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director – Policy Implementation and Regulatory Compliance for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I attended the University of Alabama in Birmingham where I earned a Bachelor of Science Degree in 1979 and a Master of Business Administration in 1982. After graduation I began employment with South Central Bell as an Account Executive in Marketing, transferring to AT&T in 1983. I joined BellSouth in late 1984 as an analyst in Market Research, and in late 1985 moved into the Pricing and Economics organization with various responsibilities for business case analysis, tariffing, demand analysis and price

1 regulation. In July 1997, I became Director of Regulatory and Legislative
2 Affairs for BellSouth Long Distance, Inc., with responsibilities that included
3 obtaining the necessary certificates of public convenience and necessity,
4 testifying, Federal Communications Commission (“FCC”) and state regulatory
5 support, federal and state compliance reporting and tariffing for all 50 states
6 and the FCC. I assumed my current position in July 2000.

7

8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

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10 A. The purpose of my testimony is to present BellSouth’s position that the use of
11 Contract Service Arrangements (“CSAs”) is a necessary mechanism to
12 encourage a fully competitive environment for the provision of
13 telecommunications services to Kentucky customers. My testimony and the
14 testimony of BellSouth witness Jack Hullings demonstrate that BellSouth’s
15 pricing practices for CSAs are appropriate and should be allowed to continue.
16 Further, the Kentucky Public Service Commission (the “Commission”) made
17 the correct decision in Case No. 2001-00077 when it streamlined CSA filing
18 requirements, and the Commission’s decision did not and does not
19 disadvantage customers or Competitive Local Exchange Carriers (“CLECs”).
20 My testimony proposes that, to the extent the Commission establishes
21 requirements governing CSAs, all telecommunications carriers in Kentucky
22 should be subject to the same requirements.

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24 Q. PLEASE IDENTIFY THE OTHER BELLSOUTH WITNESSES IN THIS
25 PROCEEDING.

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A. In addition to my testimony, BellSouth also presents the testimony of Mr. Joseph J. Hullings, Mr. Michael S. Hayden and Mr. Samuel G. Massey. While my testimony addresses BellSouth’s policy regarding the use of CSAs, Mr. Hullings addresses why and how BellSouth offers CSAs in Kentucky. Mr. Hayden addresses the business market in Kentucky and why the use of CSAs is important to BellSouth’s ability to compete in Kentucky. Mr. Massey describes the access line and market share loss BellSouth is sustaining in the small business market in Kentucky.

Q. IS THE LOCAL TELECOMMUNICATIONS MARKET IN KENTUCKY OPEN TO COMPETITION?

A. Absolutely. As the Federal Communications Commission (“FCC”) stated in its September 18, 2002 Order in WC Docket No. 02-150 approving BellSouth’s application for in-region interLATA Services authority in Kentucky, “We conclude that approval of this application is consistent with the public interest. From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in each state today are open to competition.” (¶276) Whereas, BellSouth presented data demonstrating that as of March 2002, CLECs had 7.3% of total access lines in Kentucky, recent data indicates CLECs now have over 13% of total access lines in Kentucky.

1 There are numerous CLECs in Kentucky offering substitute or functionally
2 equivalent telecommunications services to customers or groups of customers in
3 competition with BellSouth in practically every market. CLECs have acquired
4 over 175,000 access lines in Kentucky, approximately 85,000 of which are
5 business lines. It is the customers in this competitive business market that are
6 the recipients of CSAs and are the most vulnerable to competitive offers. The
7 number of CSAs that BellSouth has in place in Kentucky (as shown in
8 response to Item No. 1 to the Commission Staff's 1st Data Requests dated
9 12/19/02 and 1/28/03) indicates the number of times BellSouth has found it
10 necessary to lower its prices for a service in order to respond to a competitive
11 situation. There is no question that telecommunications markets are
12 irreversibly open in Kentucky and that competitors are successfully competing
13 for Kentucky customers.

14

15 Q. WHAT IS A CONTRACT SERVICE ARRANGEMENT OR CSA?

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17 A. As Mr. Hullings describes, a CSA is a regulated contract between BellSouth
18 and a business customer containing a service or group of services at rates,
19 terms and/or conditions that are different from those contained in the standard
20 tariffs. BellSouth uses the CSA as a marketing tool to respond to competitive
21 alternatives offered to its customers by competing carriers. BellSouth needs
22 this marketing tool because the rates contained in tariffs were developed based
23 on average costs (statewide average total service long run incremental cost, or
24 “TSLRIC”) and average pricing. However, tariff rates often render BellSouth
25 unable to compete in the highly competitive telecommunications market that

1 exists in Kentucky. This occurs because CLECs typically do not offer average
2 pricing in their CSAs. CLECs target customers that produce large revenues in
3 lower cost areas and, as would be expected, CLECs have different cost
4 structures from incumbent local exchange carriers (“ILECs”). None of these
5 reasons are necessarily good or bad, but rather the outcome you would expect
6 in a competitive market. Thus CSAs are an essential marketing tool in order
7 that Kentucky customers receive the full benefits of competition from all
8 telecommunications providers and for BellSouth to remain a viable competitor
9 in Kentucky.

10

11 Q. IS BELLSOUTH PROVIDING SERVICES VIA CSAs WHEN IT SHOULD
12 BE PROVIDING SERVICE AT TARIFFED RATES?

13

14 A. No. Tariffs define services and establish rates that are equally applicable over
15 the entire marketplace. As stated above, these rates are established based on
16 average costs and average pricing and reflect the value our services offer to
17 customers. ILECs, such as BellSouth are unique among competitors in that
18 ILECs have an obligation to provide services to all customers in their service
19 territory. CLECs, on the other hand, can target selected groups of customers in
20 selected geographic areas. Because CLECs can target the most profitable
21 customers, their pricing can be based on that select customer group. The rates
22 in BellSouth’s tariffs reflect the relative values assigned to those services by
23 the overall customer base. While BellSouth would prefer to charge all
24 customers its tariffed rates if it could, the existence of competition means
25 BellSouth cannot do so. As long as BellSouth can serve those customers for

1 whom we presently offer CSAs at prices that exceed our relevant costs, all
2 customers are better off. Requiring that BellSouth lower the tariffed rates for
3 services to all customers in order to address the situation where some
4 customers have specific competitive alternatives would simply mean that
5 BellSouth would be forced to forego trying to retain those customers. This in
6 turn would work to the detriment of BellSouth's other customers who would
7 then be responsible for covering the fixed costs of our operations to which the
8 lost customers had been contributing. CSAs allow BellSouth and other carriers
9 to compete more aggressively for customers to meet competition.

10

11 Q. DOES THE USE OF CSAs PROMOTE COMPETITION BY ALL
12 PROVIDERS OF A SERVICE?

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14 A. Yes. CSAs promote competition by making the lowest possible rates available
15 to a customer by competing providers. Tailoring the price of a service to a
16 specific customer or group of customers allows BellSouth to compete with
17 providers that target only select customers or groups of customers. As noted
18 above, CLECs can and do target specific classes of customers in specific
19 geographic areas where they believe BellSouth may be vulnerable. BellSouth
20 should be free to target a competitive response to the same customer or group
21 of customers. If BellSouth did not have the ability to reduce rates to attract
22 these customers, competing providers would simply target these customers at
23 rates lower than BellSouth's tariffed rates, but higher than they do under
24 today's regulatory regime that allows CSAs and higher than what BellSouth
25 likely would have been able to offer under a CSA. Thus, customers would not

1 receive the maximum benefit of competition, because a key player, BellSouth,
2 would be restricted from competing. CSAs benefit customers because of the
3 multiple provider options and resulting lower prices that are available to them.

4
5 Q. ARE THERE SERVICES FOR WHICH COMPETITIVE PRESSURES
6 REQUIRE A CSA RESPONSE FOR A SIGNIFICANT PERCENTAGE OF
7 THAT SERVICE'S SALES?

8
9 A. Yes. Some services that customers buy appear to be more subject to
10 competitive pressures than others. One example is BellSouth's Primary Rate
11 ISDN ("PRI") services. BellSouth responded to a data request in June 2001 in
12 Case No. 2001-077 indicating that approximately 60% of BellSouth's PRI
13 services were sold at tariffed rates, and approximately 40% were sold under
14 CSA. Since that time, CSAs for PRI services have increased significantly.
15 The implication is clear; BellSouth's PRI services product is subject to a high
16 level of competition. As has been shown in previous proceedings, there are
17 numerous carriers offering PRI services in competition with BellSouth,
18 including Adelphia, Cinergy and ICG. If it were not so, BellSouth would not
19 find it necessary to price its PRI services under CSA in 40% of its PRI services
20 sales.

21
22 Q. IS THERE AN ALTERNATIVE TO THE CSA PROCESS FOR SUCH
23 HIGHLY COMPETITIVE SERVICES AS PRI?

24
25

1 A. Yes. BellSouth believes that when a service becomes as competitive as
2 BellSouth's PRI services, it should be deemed fully competitive and either be
3 detariffed or removed from regulation altogether. Exemption of
4 telecommunications products or services from regulation as outlined in KRS
5 278.512 establishes the criteria under which a service can be removed from
6 regulation. This statute allows that, "the commission may, on its own motion
7 or upon motion of a telecommunications utility, after notice and opportunity
8 for comment, and hearing if requested, exempt to the extent it deems
9 reasonable, services or products related to telecommunications utilities or
10 persons who provide telecommunications services or products from any or all
11 of the provisions of this chapter, or may adopt alternative requirements for
12 establishing rates and charges for any service by a method other than that
13 which is specified in this chapter, if the commission finds by clear and
14 satisfactory evidence that it is in the public interest." In determining what is in
15 the public interest, the statute identifies eight specific considerations, five of
16 which relate directly to competition. Clearly, certain regulated
17 telecommunications offerings could be found by the Commission to meet the
18 criteria established under KRS 278.512 for exemption from regulation.

19

20 Q. WHAT CRITERIA SHOULD BE USED TO PRICE CSAs AS WELL AS
21 PRICE THEM DIFFERENTLY BETWEEN CUSTOMERS?

22

23 A. The criteria used to price CSAs should include the competitive offer being
24 considered, the volume of service and term of service, overall revenues

25

1 involved, and additional business opportunity. These criteria may also be used
2 to price CSAs differently between differently situated customers.

3

4 The competitive offer being considered could be either a written or oral
5 proposal to a specific customer by a competitor for a service or set of services
6 or it could be an available offer by a competitor targeting a specific segment of
7 customers or geographic area. In either instance, in order for BellSouth to
8 effectively compete for these customers, it must have the ability to price its
9 services differently from its tariffed service prices.

10

11 The volume of service and term of service associated with a specific customer
12 can certainly impact the pricing of the CSA. It is well accepted that the greater
13 the volume of a product or service a customer agrees to purchase over a longer
14 period of time, the lower the rate. When a customer agrees to maintain a
15 certain level of service over a specified period of time, BellSouth, like most
16 carriers, is able to adjust its pricing to that customer. Similarly, should another
17 customer agree to purchase the same level of service, and other circumstances
18 being similar, they may well qualify for the same rates provided to the original
19 CSA customer.

20

21 The customer's current or potential total billed revenue is another criteria for
22 pricing a CSA. The more revenue the customer brings to BellSouth, the more
23 likely BellSouth will be to lower the price of a particular CSA beyond what it
24 would likely have to do otherwise. The customer, therefore, is the true
25 beneficiary of competition.

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Finally, CSA pricing as well as price differentiation among customers may also be based upon the potential that a particular customer will generate additional revenue by purchasing integrated service packages or bundles. The fact that a customer purchases other products or services not covered by the CSA adds to the overall importance of retaining the customer for all of its service choices.

Q. IS THE EXISTENCE OF COMPETITION A FACTOR USED TO DETERMINE WHETHER TWO CUSTOMERS ARE SIMILARLY SITUATED?

A. Yes. It is BellSouth’s position that the existence of a competitive offer to one customer but not another creates a situation in which two customers are not similarly situated. There is no unreasonable discrimination when two customers are offered different prices when one has been approached with a competitive offer and the other has not, or one has been approached with a different competitive offer than the other. The entire basis upon which CSAs were first developed was the need to be able to respond to a competitive offer. As stated in Kentucky Statutes: “No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.” (KRS 278.170) Conditions are not the same or even

1 substantially the same between two customers where one is presented a
2 competitive offer and the other is not or where two customers have been made
3 a different competitive offer. Different offers are made to customers to meet
4 the competitive situation associated with each customer.

5

6 Q. IS IT APPROPRIATE TO TARIFF A SERVICE FOR WHICH ONLY ONE
7 CUSTOMER MAY QUALIFY UNDER THE TARIFF'S TERMS AND
8 CONDITIONS?

9

10 A. Yes. Although a tariff may be designed to meet a specific set of
11 circumstances, there is no prohibition against any qualifying customer availing
12 themselves of the tariff's rates, terms and conditions.

13

14 The Commission appears to have included this issue in this proceeding as a
15 result of a BellSouth tariff for switched access service that became effective on
16 June 28, 2002. It is important to note that, although the tariff was developed
17 based primarily on negotiations with a particular customer, the tariff was not
18 limited to that one, unnamed, customer. Other qualifying customers had a
19 period of time in which they could purchase from the tariff. This service was
20 filed in an intrastate tariff in order to mirror an interstate tariff filed with the
21 Federal Communications Commission ("FCC"). Due to FCC requirements
22 governing the use of individual contracts, the service was filed as a tariff with
23 the FCC and subsequently, mirrored as a tariff in the intrastate jurisdiction. In
24 this instance, filing an intrastate equivalent tariff was determined to be the
25 most efficient way to provide the service to electing customers. Although this

1 situation is expected to occur infrequently, carriers should not be prohibited
2 from using the tariff process for offers that may have limited application.

3

4 Q. IS THE COMMISSION'S CURRENT PROCEDURE ALLOWING
5 BELLSOUTH TO FILE ONLY AN END OF MONTH SUMMARY OF CSA
6 INFORMATION APPROPRIATE?

7

8 A. Yes. After due consideration, the Commission determined in its Order dated
9 September 28, 2001 in Docket No. 2001-007 that, "Within 10 days following
10 the end of each month, BellSouth shall file a report of all CSAs and SACs
11 including summary cost information, for Commission review." Under the
12 summary filing process, BellSouth provides the contract number, customer
13 name, type of service and total cost and revenue for each CSA. The
14 Commission ordered a monthly report rather than a quarterly report, which
15 BellSouth had recommended, and concluded that the filing of individual CSAs
16 was no longer necessary. The Commission's decision streamlined the
17 requirements for filing CSAs, but did not, in any way, disadvantage customers
18 or CLECs. Although the Commission has determined that individual CSAs do
19 not need to be filed, BellSouth must, nonetheless, strictly adhere to the
20 Commission's cost requirements for CSAs. Nothing in the Order changes the
21 manner in which BellSouth prices its CSA offerings. Further, the Commission
22 retains the ability to, upon review, accept or reject the CSAs by the last day of
23 the month in which the report is filed. The Commission also has the ability to
24 request BellSouth's cost support data on a given CSA if it believes there is a
25 need to review such detailed information.

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2 Q. DOES BELLSOUTH BELIEVE THAT IT IS INAPPROPRIATE TO
3 DISCLOSE THE CUSTOMER'S NAME ON THE CSA REPORT?

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5 A. Yes. BellSouth acknowledges that the Commission rejected its proposal to file
6 CSA customer names on a confidential basis. BellSouth, however, requests
7 the Commission review that portion of its September 28, 2001 decision and
8 determine in this proceeding that it is not necessary to include CSA customer
9 names on the report. BellSouth is unsure how disclosing these customers'
10 names assists the Commission in its review of the CSAs, but including them
11 does provide BellSouth's competitors with a monthly "hit list" of customers it
12 wishes to target for resale. Although a competitor can resell a CSA, BellSouth
13 or any carrier should not be required to hand over a pre-qualified list of sales
14 candidates to its competitors.

15

16 Q. DO OTHER STATE COMMISSIONS IN BELLSOUTH'S REGION MAKE
17 CSA CUSTOMER NAMES SUBJECT TO PUBLIC DISCLOSURE?

18

19 A. None of the other State Commissions in BellSouth's region discloses the CSA
20 customer's name to the public. In those states where information is required to
21 be filed, the customer is either identified by a CSA case number, or the
22 customer name is held confidential. In Tennessee, although an unredacted
23 copy of the CSA is filed with the Tennessee Regulatory Authority, each CSA
24 contained in BellSouth's tariff in Tennessee is identified only by CSA case
25 number.

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Additionally, although the state of Ohio is not in BellSouth's region, Cincinnati Bell, in its response to the Commission Staff's Information Requests, notes that the Public Utilities Commission of Ohio ("PUCO") retains the confidentiality of customer specific CSA information. As Cincinnati Bell explains in its response to Request # 2, dated March 21, 2003 in this proceeding, "The PUCO has determined that it is not necessary to disclose such customer identifying information to the public because it is the services and prices contained in the contract that are of regulatory importance. The PUCO has also found that revealing customer identifying information to the public may be contrary to the privacy expectations of the customer and may also adversely affect the customer's competitive position within its own business market." [footnote deleted]

Q. HAVE OTHER BELLSOUTH STATES GRANTED ADDITIONAL FLEXIBILITY TO BELLSOUTH FOR THE PROVISION OF CSAs?

A. Yes. In August 2001, the Florida Public Service Commission ("FPSC") eliminated its requirement for a quarterly CSA report. BellSouth no longer provides information to the FPSC on individual CSAs. BellSouth retains cost support for CSAs and makes it available to the FPSC upon request. The Louisiana Public Service Commission ("LPSC") administers CSAs in a similar manner. BellSouth must maintain Commission established cost support data and make it available to the LPSC upon request. In addition, as of June 2001, the Public Service Commission of South Carolina allowed BellSouth to simply

1 file a monthly list of CSA case numbers and contract dates. From that list the
2 South Carolina Commission Staff selects three cases to review. BellSouth
3 provides a copy of the contracts and cost support for the three selected CSAs.
4 In each of these states, the process appears to be working to the satisfaction of
5 the State Commission.

6

7 Q. SHOULD DECISIONS RESULTING FROM THIS PROCEEDING BE
8 APPLICABLE TO ALL TELECOMMUNICATIONS CARRIERS
9 OPERATING IN THE STATE OF KENTUCKY?

10

11 A. Yes. Because all telecommunications markets are open to competition in
12 Kentucky, it is not appropriate to establish a set of rules for ILECs and a
13 separate set of rules for other carriers for retail operations. All carriers must be
14 allowed to compete for customers under the same terms and conditions. This
15 is particularly true for ILECs that are burdened with the responsibility to
16 respond to all reasonable requests for service within their operating territory
17 while CLECs have no such responsibility. BellSouth believes it is the
18 Commission's intent to apply any rules equally to carriers based upon the
19 wording of its January 28, 2003 Order in this case. When AT&T indicated its
20 belief that the focus of the investigation was for local exchange carriers, the
21 Commission clarified its Order establishing this proceeding and stated, "The
22 purpose of this proceeding is to investigate all service arrangements provided
23 by Kentucky carriers at other than tariffed rates." (Order at page 2) Therefore,
24 in the interest of fairness to all carriers, BellSouth requests the Commission

25

1 apply any and all decisions to all carriers whether they are local or long
2 distance carriers, ILECs or CLECs.

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4 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

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6 A. Yes.

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13 DOCs # 487682

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