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STATE OF GEORGIA

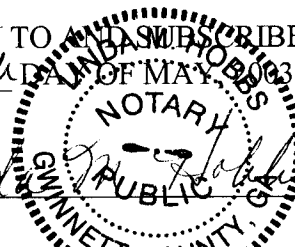
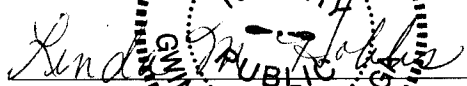
COUNTY OF FULTON

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 rebuttal testimony would be set forth in the annexed testimony consisting of 11 pages and 0 exhibits.

  
\_\_\_\_\_  
John A. Ruscilli

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 15th DAY OF MAY, 2003

  
  
\_\_\_\_\_  
Notary Public  
Notary Public, Winnett County, Georgia  
My Commission Expires March 17, 2007

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BELLSOUTH TELECOMMUNICATIONS, INC.  
REBUTTAL TESTIMONY OF JOHN A. RUSCILLI  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 2002-00456  
MAY 21, 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. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes, I filed direct testimony in this proceeding on April 30, 2003.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut portions of the direct testimony of Mr. Edward H. Hancock, representing Frankfort Plant Board.

1 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS REGARDING THE  
2 DIRECT TESTIMONY FILED IN THIS CASE?

3

4 A. Yes. BellSouth considers the Kentucky Public Service Commission's  
5 ("Commission's") inquiry into the use of Contract Service Arrangements  
6 ("CSAs") to be very important to all telecommunications carriers in Kentucky.  
7 Therefore, the noticeable lack of participation (in the form of pre-filed  
8 testimony and also in misplaced objections to discovery requests), particularly  
9 from the Competitive Local Exchange Carrier ("CLEC") community on the  
10 issues in this case is unfortunate. It should not be lost upon the Commission  
11 that the only substantial testimony or information presented in this case is by  
12 the incumbent local exchange carriers ("ILECs"). Only one CLEC has filed  
13 testimony and that CLEC, by its own admission, does not serve any customers  
14 other than itself. No doubt some parties may elect to try to rebut the ILECs'  
15 testimony, even though they did not speak to the issues through direct  
16 testimony filed on April 30, 2003.

17

18 Q. ON PAGE 2 OF HIS TESTIMONY, MR. HANCOCK STATES THAT, "AT  
19 THE PRESENT TIME, CONSUMERS HAVE NO COMPETITIVE  
20 ALTERNATIVE TO THE INCUMBENT LOCAL EXCHANGE  
21 COMPANIES (ILECS) FOR LOCAL SERVICE IN MOST AREAS OF THE  
22 STATE. EVEN IN LARGER METROPOLITAN AREAS OF THE STATE,  
23 ONLY LIMITED CHOICE IS AVAILABLE." DO YOU AGREE?

24

25

1 A. No, I do not agree with either statement. BellSouth's direct testimony is  
2 replete with evidence of the competition that exists in telecommunications  
3 markets in the state of Kentucky. In addition, Mr. Mowery of ALLTEL and  
4 Mr. Ringo of Cincinnati Bell describe the competition they are experiencing in  
5 their respective territories. There are nearly 90 operational CLECs in Kentucky  
6 most, if not all, of which are certified to provide telecommunications services  
7 throughout the state of Kentucky. If a particular carrier is not serving  
8 customers in a particular geographic area of the state, it is due solely to a  
9 business decision by that carrier. For example, Frankfort Plant Board, a  
10 certificated CLEC, only provides business services to itself for its own  
11 administrative purposes. Responding to the Kentucky Public Service  
12 Commission's ("Commission's") Data Request #s 1 & 2, Frankfort Plant  
13 Board admits that it is not providing service to the public at this time.  
14 However, there are no regulatory or other barriers that prevent Frankfort Plant  
15 Board, or any other CLEC, from serving any customer in their certificated  
16 area.

17  
18 As I stated in my direct testimony, approximately 13.5% of the access lines in  
19 Kentucky are served by CLECs and this number is steadily growing. In  
20 addition, the fact that CSAs are increasingly being used by BellSouth to  
21 compete with other carriers' offerings is further evidence of the growing  
22 competition in the state.

23  
24 In any event, Mr. Hancock's assessment of the extent of competition in  
25 Kentucky is not important for the issues before the Commission in this

1 proceeding, because CSAs are used only in competitive situations. If  
2 competition is as limited as Mr. Hancock believes, CSAs will only be used  
3 where there is competition. They are not relevant in other situations.

4

5 Q. MR. HANCOCK FURTHER STATES AT PAGE 2 THAT, "THE ILEC  
6 ENJOYS THE UNIQUE DUAL ROLE OF BOTH A COMPETITOR AND  
7 MONOPOLY PROVIDER OF ESSENTIAL SERVICES TO ITS  
8 COMPETITION."

9

10 A. While BellSouth disputes Mr. Hancock's characterization of BellSouth as a  
11 monopoly provider of essential services, these comments are also not relevant  
12 to the issues in this proceeding. Regardless of any power that BellSouth may  
13 have in the provision of UNEs to CLECs, BellSouth is certainly not in a  
14 position to lower its retail prices in CSAs to predatory levels because of the  
15 revenue it receives through the sale of UNEs. Because UNEs are priced at  
16 their total element long run incremental cost ("TELRIC"), as adopted by the  
17 Commission, BellSouth is only recovering that cost. Therefore, there is no  
18 additional UNE revenue available to BellSouth to use to its advantage in  
19 competitive situations, as Mr. Hancock appears to imply.

20

21 Q. ON PAGE 2, MR. HANCOCK APPEARS CONCERNED THAT "SOME  
22 ILECS COULD EFFECTIVELY UTILIZE CSAS TO SIGN NEARLY ALL  
23 LARGE BUSINESS USERS TO LONG TERM CONTRACTS IN THOSE  
24 AREAS WHERE COMPETITION IS EMERGING OR IS EXPECTED TO  
25 DEVELOP." IS THERE A CAUSE FOR CONCERN?

1

2 A. No. CSAs facilitate competition and their use should be encouraged by the  
3 Commission. CSAs are an important marketing tool that BellSouth and other  
4 carriers can use to compete for telecommunications customers' business.  
5 However, even with this marketing tool, as I stated in my direct testimony,  
6 BellSouth is only successful in 25% of the cases where it attempts to compete  
7 with a CSA offer. Stated another way, three out of four customers that  
8 BellSouth offers a CSA in response to a competitive offer do not accept  
9 BellSouth's offer. Further, this statistic doesn't take into account the  
10 customers that choose competitive alternatives without BellSouth ever having  
11 the opportunity to compete for their business.

12

13 In addition, there is no incentive for BellSouth or another ILEC to use the CSA  
14 process unnecessarily. As Mr. Ringo of Cincinnati Bell states at page 19 of his  
15 direct testimony, "when CBT lowers prices to meet a competitive threat, there  
16 is simply less revenue collected than if the company had been able to continue  
17 to sell the service at the higher, tariffed rate. CBT, therefore, has no incentive  
18 to use CSAs indiscriminately." As a result, neither Mr. Hancock nor this  
19 Commission should be concerned that BellSouth or another ILEC will use  
20 CSAs to "sign nearly all large business users to long term contracts".

21

22 Q. ON PAGE 2, MR. HANCOCK OUTLINES FIVE PARAMETERS THAT HE  
23 BELIEVES THE COMMISSION SHOULD CONSIDER IN A CARRIER'S  
24 ABILITY TO SET PRICES BASED ON COMPETITIVE OFFERS. PLEASE  
25 RESPOND.

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A. Allow me to address each of the five parameters outlined in Mr. Hancock’s testimony at pages 2-3. The five parameters are underlined and appear in quotation marks.

1) “CSAs should only be offered in response to actual competitive situations, and not be offered in anticipation of a competitive situation or to preclude competitive situations from developing.” 2) “The competitive situation should be defined by an actual written competitive offer or customer initiated request for proposal (RFP) to which the carrier is responding before pricing below tariff rates is allowed.” It is not apparent from Mr. Hancock’s testimony if he intends that these parameters apply only to ILECs or to all carriers. In any event, both proposals are inappropriate and would be extremely difficult to monitor. As to parameter # 1, there may be some confusion about the definition of “actual competitive situations”. BellSouth only uses CSAs in actual competitive situations. BellSouth interprets this phrase to include both situations in which BellSouth has a reasonable basis for concluding that a potential customer has received an offer from another carrier as well as situations in which BellSouth has a reasonable basis for anticipating that a customer will receive an offer from a competitor.

With respect to parameter # 2, first, for situations in which competition is a factor, there are many situations in which there is no written competitive offer available. It might be a verbal transaction or simply an advertised competitive offer via radio, television, or other media. It might be a small aircraft circling Churchill Downs trailing a banner that offers 20% off any BellSouth advertised

1 offer. As mentioned in the direct testimony of Mr. Ringo of Cincinnati Bell  
2 (“CBT”), a competitive offer may even be the result of “unique circumstances”  
3 as provided for in CBT’s General Exchange Tariff PSCK No. 3, Section 2.1.  
4 Second, once a customer receives a written offer, it is often too late to compete  
5 for the customer’s business. Establishing such a parameter may simply  
6 foreclose the possibility that another carrier could compete for that business  
7 using a CSA (which might have afforded that customer a better competitive  
8 offer). The real loser in this situation is the customer. Third, if a written offer  
9 becomes a requirement, carriers could simply change their marketing practices  
10 and refrain from providing written offers in most circumstances. Again, such a  
11 requirement ultimately disadvantages the customer that will lose the benefit of  
12 an alternative competitive offer. Finally, I believe the last thing the  
13 Commission would want to occur as a result of its actions in this proceeding is  
14 to encourage negative behavior in the marketplace. For example, requiring a  
15 written offer before any carrier could use a CSA could lead to competitors  
16 harassing customers unnecessarily to turn over the written offer.

17  
18 3) “For ILECs, pricing of any service offered in response to a competitive offer  
19 or RFP should not be lower than the rate for an equivalent service offered  
20 under an unbundled network element platform, resale of services discount, or  
21 access tariff approved by the Commission.” Mr. Hancock is mixing apples  
22 with oranges and then with lemons. Unbundled network element (“UNE”)  
23 pricing, resale discount pricing and access tariff pricing have no relationship to  
24 the price floor established by the Commission for CSA and other services  
25 pricing. As set forth in the Transition Regulation Plan (“TRP”) in BellSouth’s



1 GSST, Section A36.1.3.B.2, “All services must cover long run incremental  
2 costs except as noted in A36.1.3.B.3.” Section A36.1.3.B.3 allows BellSouth  
3 to price below long run incremental cost (“LRIC”) “to meet the equally low  
4 price of a competitor”, but only upon filing evidence of the competitor’s offer  
5 of below LRIC pricing. BellSouth agrees that LRIC is an appropriate price  
6 floor for services, including CSAs, except as noted in A36.1.3.B.3. On the  
7 other hand, the pricing standard set forth by the Federal Communications  
8 Commission (“FCC”) for UNEs is TELRIC. TELRIC is used to price network  
9 elements, not services. Also, TELRIC is a price ceiling for network elements,  
10 not a price floor for retail services. Further, associating the pricing of CSAs  
11 with the resale discount is also inappropriate. The resale of services discount  
12 is simply the retail price discounted for marketing, billing, collection, and other  
13 costs that will be avoided by the ILEC. The resale discount has nothing  
14 whatsoever to do with the long run incremental cost of the retail service.  
15 Similarly, prices in the access services tariffs do not reflect the long run  
16 incremental cost of those services and it is therefore equally inappropriate to  
17 tie access prices to CSA pricing.

18  
19 4) “For ILECs and their affiliates, pricing for long distance service offered in  
20 response to a competitive offer or RFP should not be lower than the average  
21 cost of ILEC switched access for originating and terminating a call within the  
22 state of Kentucky.” BellSouth Long Distance (“BSLD”), BellSouth’s long  
23 distance affiliate, is responsible for setting its long distance prices based on  
24 specific rules established both by the FCC and the states and should not be  
25 restricted from competing with the larger and more established carriers. It is

1 neither necessary nor appropriate for this Commission to overlay new or  
2 different pricing rules for BSLD. In addition, BSLD is certainly not the  
3 dominant long distance provider in the state of Kentucky. For that reason  
4 alone, BSLD should not be singled out for more restrictive treatment than any  
5 other long distance carrier.

6  
7 5) “Any CSAs that provide Kentucky intrastate services at below tariff rates  
8 should be filed under a proprietary arrangement with the Commission. The  
9 same CSAs, with customer name and address removed, should be available to  
10 the public.” Although BellSouth agrees that the CSA customer’s name and  
11 address should not be made public, BellSouth does not agree that CSAs should  
12 be filed with the Commission. As noted in my direct testimony, the  
13 Commission determined in its Order dated September 28, 2001 in Docket No.  
14 2001-007 that BellSouth need only file a monthly report of all CSAs and SACs  
15 including summary cost information. The Commission’s decision streamlined  
16 the requirements for filing CSAs but did not, in any way, disadvantage  
17 customers or CLECs or remove the Commission’s ability to review CSAs and  
18 accept or reject them. Other State Commissions in BellSouth’s region, such as  
19 Florida and Louisiana, have significantly reduced CSA requirements without  
20 negative impact to customers or other carriers. Not only is BellSouth not  
21 required to file individual CSAs in Florida and Louisiana; BellSouth is also not  
22 required to file periodic reports. Very recently, the Tennessee General  
23 Assembly passed a new law clearly stating that special rates and terms  
24 negotiated between telecommunications providers and business customers do  
25 not constitute price discrimination. The law further provides that special rates

1 and terms are presumed valid. The trend in many states is clearly toward more  
2 streamlining of the CSA process.

3

4 Q. MR. HANCOCK, AT PAGE 3, STATES THAT A TARIFF APPLICABLE  
5 TO ONLY ONE CUSTOMER SHOULD NOT BE ALLOWED, BUT  
6 SHOULD BE HANDLED AS A CSA. PLEASE COMMENT.

7

8 A. As I addressed in my direct testimony, although a limited application tariff is  
9 expected to occur infrequently, carriers should not be precluded from using the  
10 tariff process for offers that may only have limited application. Even when a  
11 tariff is designed to meet a specific set of circumstances, there is no prohibition  
12 against all qualifying customers availing themselves of the tariff's rates, terms  
13 and conditions. Mr. Hancock does not demonstrate that such tariffs are not in  
14 the public interest.

15

16 Q. ON PAGE 3 OF HIS TESTIMONY, MR. HANCOCK ATTEMPTS TO  
17 EXPAND THIS PROCEEDING TO ADDRESS PROMOTIONS,  
18 SPECIFICALLY REQUIREMENTS FOR ILEC PROMOTIONS. PLEASE  
19 COMMENT.

20

21 A. Promotions are not at issue in this proceeding, nor are they "related" as Mr.  
22 Hancock seems to imply. The Commission specifically established this  
23 proceeding as an "Inquiry into the Use of Contract Service Arrangements by  
24 Telecommunications Carriers in Kentucky". In any event, BellSouth follows  
25 all Commission requirements regarding the use of promotions, therefore, not

1           only are promotions outside the scope of this proceeding, there is no evidence  
2           to indicate that an inquiry is necessary.

3

4 Q.     DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A.     Yes.

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8     DOCs # 490352

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