


AFFIDAVIT

STATE OF MISSOURI

COUNTY OF BOONE

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

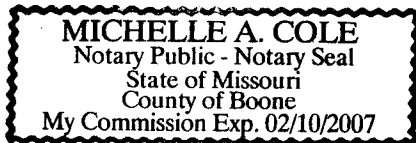
He is appearing as a witness before the Kentucky Public Service Commission in Case No. 2003-00379, Review of Federal Communications Commission's Triennial Review Order Regarding Unbundling Requirements for Individual Network Elements, and if present before the Commission and duly sworn, his surrebuttal testimony would be set forth in the annexed testimony consisting of 5 pages and 0 exhibits.



Eric Fogle

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 6th DAY OF APRIL, 2004

Michelle A. Cole Notary Public
Michelle A. Cole



1 BELL SOUTH TELECOMMUNICATIONS, INC.
2 SURREBUTTAL TESTIMONY OF ERIC FOGLE
3 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
4 DOCKET NO. 2003-00379
5 APRIL 13, 2004
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") AND YOUR BUSINESS
9 ADDRESS.

10
11 A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc. as a
12 Director in BellSouth's Interconnection Operations Organization. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. ARE YOU THE SAME ERIC FOGLE WHO FILED REBUTTAL TESTIMONY IN
16 THIS DOCKET?

17
18 A. Yes.

19
20 Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

21
22 A. My surrebuttal testimony responds to portions of the rebuttal testimony of Mark
23 David Van de Water of AT&T Communications of the Southern States, LLC
24 ("AT&T"), and Sherry Lichtenberg of MCI WorldCom Communications, Inc. and

1 MCIMetro Access Transmission Services, Inc. ("MCI").

2
3 Q. ALL PARTIES HAVE DIRECTED THIS COMMISSION TO VARIOUS
4 PORTIONS OF THE TRO AND THE RULES IN SUPPORT OF THEIR
5 POSITIONS IN THEIR DIRECT TESTIMONY. WHAT IS THE IMPACT OF THE
6 D.C. CIRCUIT COURT OF APPEALS ORDER ON THE TRIENNIAL REVIEW
7 ORDER ("TRO") IN THIS PROCEEDING?

8
9 A. Currently the impact of the DC Circuit Court's opinion is unclear. At the time of
10 filing this testimony, the DC Court had vacated large portions of the rules
11 promulgated as a result of the TRO, but stayed the effective date of the opinion
12 for at least sixty days. Therefore my understanding is that the TRO remains
13 intact for now, but its content, and the rules adopted thereto, must be suspect in
14 light of the court's harsh condemnation of large portions of the order.
15 Accordingly, I will reserve judgment, and the right to supplement my testimony as
16 circumstances dictate, with regard to the ultimate impact of the DC Court's order
17 on this case.

18
19 Q. ON PAGE 11 OF HER REBUTTAL TESTIMONY, MS. LICHTENBERG
20 CRITICIZES THE IMPACT OF THE BATCH ORDERING PROCESS ON LINE
21 SPLITTING AND OPINES THAT BELL SOUTH MUST CHANGE THE PROCESS
22 SO THAT THE CUSTOMER'S LINE SPLITTING ARRANGEMENT IS NOT
23 TAKEN DOWN. PLEASE COMMENT.

24
25 A. First, Ms. Lichtenberg's 'understanding' of when a "customer is served by a

1 Unbundled Network Element Platform (“UNE-P”) voice Competitive Local
2 Exchange Carrier (“CLEC”) and a data CLEC over a line splitting configuration” is
3 flawed. As I explained in my rebuttal testimony, line splitting service is not
4 compatible with a UNE-P arrangement, as a splitter has been inserted between
5 the UNE port and UNE loop that were previously combined and provided to the
6 CLEC as a UNE-P. Since CLECs that use line splitting do not, by definition, use
7 UNE-P, there is no process that converts UNE-P customers to UNE-Ls that will
8 affect the Digital Subscriber Line (“DSL”) service of the end-user customer.

9
10 Second, Ms. Lichtenberg continues by saying that “a process that does not allow
11 the customer to retain his or her data provider when he moves to UNE-L is not
12 acceptable...” As outlined in my rebuttal testimony, if a CLEC is concerned
13 about the impact a change in the switch provider for the voice service would have
14 on DSL service, then the CLEC can easily address this concern by installing and
15 maintaining its own splitters, and performing the change of the voice service
16 switch provider without any assistance from BellSouth and without any
17 interruption of the data service. By the CLEC installing its own splitter, the UNE-
18 Loop carrying the combined voice and data services is terminated on the CLECs
19 splitter, and all necessary wiring (including subsequent changes) for both the
20 voice service and the data service is within the complete control of the CLEC.
21 The simplest approach to resolving Ms. Lichtenberg’s concerns remains one in
22 which the CLECs maintain and manage their own splitters.

23
24 Since the TRO does not require BellSouth to provide a splitter, BellSouth has
25 met its obligations. Moreover, there is a process that the CLECs can follow,

1 even in the circumstances when BellSouth voluntarily provides a splitter, that
2 allows the end-user to retain his or her data provider after a momentary
3 disconnect (necessary when the CLEC moves the end-user's service from a
4 BellSouth splitter to a CLEC splitter), because the UNE Loop portion of the
5 service can be reused with the new service arrangement.

6
7 Q. ON PAGE 3 OF HIS REBUTTAL TESTIMONY, MR. VAN DE WATER STATES
8 THAT "BELLSOUTH IGNORES THE BASIC REALITY THAT ITS 'BATCH'
9 ORDERING PROCESS EXCLUDES CUSTOMERS WHO OBTAIN DIGITAL
10 SUBSCRIBER LINE ("DSL") SERVICES VIA A LINE-SPLITTING
11 ARRANGEMENT..." PLEASE COMMENT.

12
13 A. BellSouth does not ignore the fact that the batch ordering process excludes
14 customers that obtain their DSL service via a line splitting arrangement.
15 BellSouth's batch process is efficiently designed to move large numbers of CLEC
16 customers provisioned via UNE-P to UNE-L. The introduction of the splitter
17 between the UNE port and the UNE loop breaks up the UNE-P, and therefore
18 excludes line splitting lines from the batch ordering process. Additionally, and
19 perhaps more importantly, at the end of 2003 there was a total of 1,506 line
20 splitting lines provisioned at the request of CLECs region-wide. With fewer line
21 splitting lines in service than there are BellSouth central offices (that is, on
22 average there is less than one line splitting arrangement per BellSouth central
23 office), no batch migration process is necessary.

24
25 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

1 A. Yes.