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January 23, 2001

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

**In Re: Generic Docket to Establish UNE Prices for Lines Sharing Per FCC 99-355, and Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123 Docket No. 00-00544**

Dear David:

Enclosed please find an original and thirteen (13) copies of the Post Hearing Brief of WorldCom, Inc. in the above-referenced docket. Copies have been served on all parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Jon E. Hastings

JEH/sja
Enclosures

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## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been hand delivered or mailed to the following persons on the 23rd day of January, 2001.

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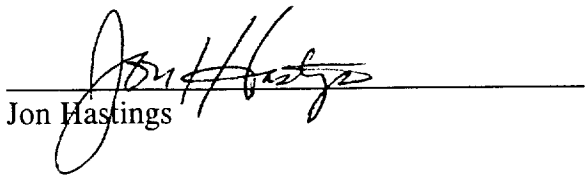

Jon Hastings

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**
**NASHVILLE, TENNESSEE**



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|---|---|---|
| In re: | ) | |
| | ) | |
| Generic Docket To Establish UNE Prices | ) | |
| for Line Sharing Per FCC 99-355, and | ) | Docket No. 00-00544 |
| Riser Cable and Terminating Wire as | ) | |
| Ordered in Authority Docket 98-00123 | ) | |

# POST-HEARING BRIEF OF MCI WORLDCOM

## I. INTRODUCTION

Comes now WorldCom, Inc. ("WorldCom"), by and through its subsidiaries certificated in Tennessee, including MCImetro Access Transmission Services, LLC ("MCIm"), and Brooks Fiber Communications of Tennessee, Inc. and submits its post-hearing brief in this matter to the Tennessee Regulatory Authority ("the Authority"). WorldCom generally supports and defers to the positions expressed by the Data Coalition in this case, and respectfully requests that the Authority take time to consider the issues on which WorldCom focused in its rebuttal case and in this brief: line splitting, methodology for deaveraging UNEs, and TELRIC methodology.

## II. LINE SPLITTING[1]

The primary issues surrounding line splitting are:

a. whether the Authority should require ILECs to make line splitting available;
b. whether the Authority should require ILECs to provide ILEC-owned splitters;
c. whether an ILEC should be permitted to require CLECs offering UNE-P voice service to collocate in order to accomplish line splitting; and
d. whether an ILEC should be permitted to disconnect a splitter when its end user chooses a CLEC for voice service.

### a. Whether the Authority should require ILECs to make line splitting available

As defined by the FCC, "line splitting" is when "both the voice and data service will be provided by competing carrier(s) over a single loop." *Application by SBC Communications Inc. et. al Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, CC Docket No. 00-65 at ¶ 324 (released June 30, 2000) (*"Texas 271 Order"*). To clarify, line splitting refers to a situation in which voice service is provided by a UNE-P provider and data service is provided on the same line by a data CLEC (which could also be the ILEC's data affiliate or the ILEC itself). Darnell Rebuttal at 10. As noted by BellSouth[2], in the FCC's first order on line sharing, the FCC itself did not require ILECs to provide

[1] The January 22, 2001 edition of "TR Daily" has reported that the FCC has just issued an order and further notice of proposed rulemaking in Common Carrier Dockets 96-98 and 98-147 addressing petitions for reconsideration and/or clarification of a previous order on line sharing. According to "TR Daily," the FCC has decided that ILECs must allow competitors that offer voice services using UNE-P to provide data service on those same lines. The undersigned counsel have been unable to procure a copy of this order before filing this brief. A copy will be filed with the Authority as soon as counsel is able to procure one. From "TR Daily's" brief summary of the decision, it appears the FCC has adopted requirements that support many of the positions set forth herein.

[2] See however, Footnote 1, *supra*.

line sharing in situations where the ILEC is no longer the provider of the customer's voice service. *Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98* ("*Line Sharing Order*"), CC Docket 98-147, released December 9, 1999, ¶¶ 72-73; Ruscilli Direct at 32-33. The FCC currently has before it several motions for reconsideration on this point and has not conclusively resolved issues relating to line sharing or splitting in the UNE-P context. [3]

The FCC's position on line splitting has not, however, been consistent.[4] In its *Texas 271 Order*, the FCC noted that ILECs are required to provide CLECs access to an unbundled network element in a manner that allows the CLEC to provide "any telecommunications service that can be offered by means of that network element." *Texas 271 Order,* ¶325. The FCC further explained that "(a)s a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter." *Id.*

Regardless of what the FCC ultimately orders with respect to line splitting, the FCC has been clear that its requirements are the minimum necessary to implement line sharing, and that state commissions are free to establish additional requirements beyond those established by the FCC. *In re: Implementation of the Local Competition Provisions of the Telecommunications*

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[3] These appear, at least in part, to have been resolved. *See* Footnote 1, *supra.*

[4] This inconsistency has, perhaps, been rectified in the most recent FCC Order. *See* Footnote 1, *supra.*

*Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (released November 5, 1999) ¶¶154-60 ("*UNE Remand Order*"); *Line Sharing Order*, ¶¶ 223-25. The FCC has explicitly invited states to add to its line sharing requirements. *Line Sharing Order*, ¶¶ 223-25.

The Authority should require ILECs in Tennessee to provision UNE-P to CLECs in a manner that permits line splitting between a CLEC voice provider and a data CLEC. (Darnell Rebuttal at 9 –10) Line splitting in the UNE-P context is no different than an incumbent LEC "splitting" the line for itself. *Id.* Line splitting is unquestionably technically feasible. (Tr. Vol. IA at 34-35.)

Policy considerations weigh heavily in favor of requiring ILECs to make line splitting available. At present, UNE-P is the best-positioned vehicle available with the potential to enable CLECs to offer voice services to residential and small business customers on a scale that can provide meaningful competition to the ILECs. Darnell Rebuttal at 11. If CLEC voice customers are ineligible for xDSL provided by line splitting, those customers likely will have to migrate their voice service back to the ILEC (to the detriment of the customer, the CLEC and residential local exchange competition.)

In order to provide its customer with xDSL service in the absence of line splitting, a UNE-P provider would be forced to order a second loop, intraoffice cabling, and potentially collocation space in order to support the request for data service. Darnell at 12. This would inflate the UNE-P provider's cost unnecessarily and render its service arrangement far less efficient than the ILEC's. *Id.* The need for a second phone line also unnecessarily strains

numbering resources. This result, as recognized by the New York Public Service Commission, would obviously advantage the incumbent LEC, because it alone will be able to provide a full range of desirable associated services. *Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities*, Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services, Case 00-C-0127, p. 13.

To a greater and greater extent, customers are demanding packages of services that include both voice and high speed data. Darnell Rebuttal at 14. If BellSouth and Sprint do not provide line splitting, WorldCom will be unable economically to provide advanced services to its customers served via UNE-P. Darnell Rebuttal at 11. This would greatly impair one of the primary benefits of UNE-P – widespread local market entry. The very purpose of UNE-P would be largely defeated – together with the benefits to Tennessee consumers – if ILECs were permitted to limit the product offerings of UNE-P providers in this way. *Id.*

b. Whether the Authority should require ILECs to provide ILEC-owned splitters

"Network element" is defined as including the "features, functions and capabilities that are provided by means of such facility or equipment" 47 U.S.C. §153 (29). One of the features of a loop is its high frequency spectrum. *Line Sharing Order,* ¶¶ 13, 17, 25. The loop also should be determined by the Authority to include "attached electronics," when these are necessary to fully access the loop's features, functions and capabilities in order to provide service. This was the conclusion of the Texas Public Utilities Commission in its *Arbitration*

*Award* ("*Texas Arbitration Award*"), Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252 (B) (1) of the Federal Communications Act of 1996, Docket No. 22315, Texas Public Utilities Commission, pp. 16-17, citing *UNE Remand Order*, ¶175. In order to provision voice and data service over one loop, the addition of passive electronic equipment referred to as a "splitter" is necessary. Darnell Rebuttal at 19.

Incumbent LECs have maintained that because the FCC has not (yet) ordered them to provide splitters to accommodate line splitting, they will not do so. Ruscilli Direct at p. 33, Gordon Direct at pp. 12-14, (Tr. Vol. IID, p. 246). This Authority clearly can, however, require BellSouth and Sprint to provide a splitter. There certainly is no *technical* reason that an ILEC cannot install (or, as discussed below in d, leave in place) a splitter to allow a UNE-P provider to share spectrum with a data CLEC. Darnell Rebuttal at p. 20, (Tr. Vol. IID, p. 247). Payment for the splitter is not the issue because UNE-P providers such as WorldCom have advocated that the ILECs should receive appropriate compensation for this. Darnell Rebuttal at p. 23. Moreover, BellSouth has agreed with the data CLECs, such as COVAD, to provide splitters for them. (Tr. Vol. IIIC at pp. 211-212.)

In the *Texas Arbitration Award* proceedings, SBC's local subsidiary (Southwestern Bell of Texas or "SWBT") argued (as BellSouth does here – *see* Ruscilli Direct at p. 33) that it is impossible to offer both voice and data services over UNE-P, inasmuch as the switch and loop must be disconnected, and then

reconnected through a splitter. SBC, however, admitted (as BellSouth does here – *see* Tr. Vol. IID, p. 247) that it is technically feasible to condition UNE-P loops by adding a splitter. SBC argued that if it provided the splitter it would incur significant additional obligations, including requiring it to coordinate the activities of AT&T and a data CLEC. SBC proposed (as BellSouth does here – *see* Tr. Vol IID, p. 245) that AT&T could arrange for collocation space for a splitter and a DSLAM, connect this equipment to collocation cabling arrangements, access loop makeup information, order an unbundled xDSL-capable loop and any necessary unbundled switching and shared transport, and then combine the xDSL-capable loop with the splitter and DSLAM. *Texas Arbitration Award* at p. 12.

In that proceeding, AT&T replied (as WorldCom does here – *see* Darnell Rebuttal at pp. 15, 16.) that it is discriminatory for the ILEC to provide a splitter to data CLECs, while refusing to provide a splitter to UNE-P providers that seek to retain the voice customer. *Id.* at pp. 13-14. AT&T pointed out (as WorldCom does here – *see* Darnell Rebuttal at pp. 11-12, 14) that SBC's position, if adopted, would seriously constrain competition for both voice and data services, since SBC is the dominant provider of voice and DSL services, and UNE-P is the only vehicle that CLECs have to provide voice services for residential customers on a scale that could provide meaningful competition. *Id.*

The arbitrators agreed with AT&T that a CLEC purchases all capabilities of the loop when it purchases the UNE-P. Sound public policy requires an ILEC to provide CLECs with a loop that is fully capable of supporting xDSL service. Adding a splitter to the loop, the Texas arbitrators correctly reasoned, is no

different than adding a circuit-enhancing device to the loop at the central office. A splitter is required to gain access to the high frequency portion of the loop, in order to take advantage of the full functions, features and capabilities of the loop. There is no technical difference between line sharing and line splitting, since the splitter provides access to the same functionality of the loop in both contexts. Indeed, *excluding* the splitter from the definition of the loop would limit its functionality.[5] The arbitrators decided that it is discriminatory to provide the splitter in a line sharing context while not providing it in a line splitting context.

If the Authority determines that ILECs in Tennessee should be required to make line splitting available in a UNE-P context, it should find that line splitting is necessary to provide access to the full features, functions and capabilities of the loop. Accordingly, it should require that ILECs include an ILEC-owned splitter among the options to be provided to all CLECs. – data CLECs and UNE-P voice providers alike.

c. whether an ILEC should be permitted to require CLECs offering UNE-P voice service to collocate in order to accomplish line splitting

The Authority should not permit ILECs in Tennessee to require CLECs to collocate (as BellSouth proposes) in order to achieve line splitting over UNE-P. Forcing a UNE-P provider to collocate would eviscerate the very advantage of UNE-P (potential rapid, widespread deployment of competitive service to

[5] Like BellSouth agrees to here, SBC had "voluntarily" agreed to provide data CLECs with a splitter when SBC is the voice provider. A data CLEC is therefore not required to collocate to access a splitter (although a DSLAM would have to be collocated somewhere on the incumbent's premises). *Id.* at 18.

residential and small business customers.) Darnell Rebuttal at pp. 11, 16. Requiring a UNE-P provider to collocate in order to offer line splitting would make it too costly to serve residential and small business customers on a competitive basis. *Id.* at p. 16.

In the *Texas Arbitration Award*, the Texas Public Service Commission agreed that UNE-P providers should not be required to collocate in order to achieve line splitting. *Texas Arbitration Award* at p. 19. The Texas Commission found that:

> The evidence in this case shows that SWBT's proposal requiring UNE-P CLECs to collocate in order to gain access to the high frequency portion of the loop, (1) unnecessarily increases the degree of coordination and manual work and accordingly increases both the likelihood and duration of service interruptions; (2) introduces unnecessary delays for space application, collocation construction, and splitter installation; and (3) unnecessarily wastes central office and frame space. Thus, the Arbitrators believe that SWBT's proposal significantly prohibits UNE-P providers from achieving commercial volume, not only because collocation is required but also because SWBT does not propose to prewire, or allow the CLEC to prewire, from the intermediate distribution frame (IDF) to the CLEC's splitter.

*See* Darnell Rebuttal at pp. 16-17.

WorldCom believes the Authority should find, as the Texas Commission did, that ILECs may not require collocation of UNE-P voice CLECs in order to accomplish line splitting over the UNE-P.

d. whether an ILEC should be permitted to disconnect a splitter when its end user chooses a CLEC for voice service

This issue arises with respect to a customer that already enjoys line sharing between an ILEC and an xDSL provider, such as the ILEC's affiliate or a

company like COVAD. Under BellSouth's and Sprint's position, if a UNE-P provider were to win a customer's voice business, each would remove the line-sharing splitter, thereby disconnecting the customer's data service (Tr. Vol. IIIC at pp. 205-206), Gordon Direct at pp. 13-14. Despite what the ILECs have advocated, policy considerations weigh in favor of prohibiting an ILEC from disconnecting the splitter that is already in place.

If implemented, BellSouth's and Sprint's position would be unnecessarily disruptive to the customer. Darnell Rebuttal at p. 20. Moreover, it would also be anti-competitive, since the ILEC, as a practical matter, would retain a monopoly over providing voice service to customers who want to use line sharing to meet their data needs. *Id.* at p. 16. Under the ILECs' proposals, for a customer choosing voice service from a UNE-P provider, with continued advanced service by a data CLEC – the UNE-P provider would have to collocate to obtain access to a splitter (with the attendant delays of application or augmentation, provisioning, loop makeup, conditioning, UNE provisioning, etc.) Gordon Direct at pp. 14-16.

In situations in which the end-user is already receiving voice and data service from the ILEC (or voice service from the ILEC and data service from a data CLEC) over the same line, the absence of line splitting would, upon the end user's transfer to a UNE-P provider, result in the end user unnecessarily losing the data service. Darnell Rebuttal at p. 12. The customer's first experience with the UNE-P provider would be loss of his or her data service – certainly a poor first impression and not the way to stimulate competition. *Id.*

The ILECs' proposals, if accepted by the Authority, would seriously and adversely affect the development of competition, as well as service to end users Darnell Rebuttal at pp. 16, 20. ILECs should not, therefore, be allowed to disconnect splitters that are currently in place merely because the end user wishes to choose a UNE-P provider for voice service.

## III. METHODOLOGY FOR DEAVERAGING UNES

Geographic deaveraging is the process of establishing UNE rates based on the variation in costs of provisioning network elements across distinct geographic areas. The purpose of geographic deaveraging is to more closely match rates charged for a UNE with the underlying costs incurred in making that element available. All UNE rates, averaged and deaveraged, must adhere to the General Pricing Standards covered in 47 C.F.R. §51.503[6] and the forward-looking economic

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[6] Rule 503 states:

> (a) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.
> (b) An incumbent LEC's rates for each element it offers shall comply with the rate structure rules set forth in Secs. 51.507 and 51.509, and shall be established, at the election of the state commission--
> (1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in Secs. 51.505 and 51.511; or
> (2) Consistent with the proxy ceilings and ranges set forth in Sec. 51.513.
> (c) The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide. (Emphasis added)

cost ("FLEC") standards covered in 47 C.F.R. §51.505.[7] Rule 505 prohibits consideration of embedded costs, retail costs or revenues in the calculation of the FLEC of an element. By its terms, then, Rule 505 applies to deaveraged, as well as averaged, UNE costs. Because BellSouth's local retail rates inherently contain

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[7] Rule 505 states:

> (a) In general. The forward-looking economic cost of an element equals the sum of:
>
> (1) The total element long-run incremental cost of the element, as described in paragraph (b); and
>
> (2) A reasonable allocation of forward-looking common costs, as described in paragraph (c).
>
> (b) Total element long-run incremental cost. The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.
>
> (1) Efficient network configuration. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers. . .
>
> (d) Factors that may not be considered. The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:
>
> (1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts;
>
> (2) Retail costs. Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in Sec. 51.609;
>
> (3) Opportunity costs. Opportunity costs include the revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase elements; and
>
> (4) Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.
>
> (Emphasis added)

some consideration of embedded retail costs, as well as revenues associated with elements other than loops, they cannot be considered in establishing the FLEC, averaged or deaveraged, of loops. The same analysis would apply to the FLEC of any other element.

Moreover, UNE rates must be deaveraged in accordance with the Deaveraging Rule, which states in its entirety:

> State commissions shall establish different rates for Elements in at least three defined geographic areas within the state to reflect geographic cost differences.
> (1) To establish geographically-deaveraged rates, state commissions may use existing density-related zone pricing plans described in Sec. 69.123 of this chapter, or other such cost-related zone plans established pursuant to state law.
> (2) In states not using such existing plans, state commissions must create a minimum of three cost-related rate zones. 47 C.F.R. §51.507(f ) -

Clearly deaveraged UNE rates must be based on the relative FLEC differences of UNEs between geographic areas.

The expressed aim of BellSouth, however, is to group end users together based on similarities in what they *pay* currently in local retail rates. Ruscilli Direct at 13, (Tr. Vol. IIIC at pp. 227-231.) Consequently, BellSouth uses existing retail rate groups as the basis for all deaveraging (Tr. Vol. IIIC at p. 232.) Retail rate groups contain exchanges, which in turn contain wire centers. Rate groups reflect the relative numbers of local lines within a given area, i.e., the higher the rate group number, the more lines it has. Ruscilli Direct at 11, (Tr. Vol. IIIC at pp. 231-232.) Thus BellSouth takes all the wire centers that serve their highest retail groups in Tennessee, and lumps them together in one "basket." Darnell Rebuttal at p. 28,

(Tr. Vol. IIIC at pp. 224-225.) Following this method does not lead to geographic deaveraging on the basis of cost.

Exchanges within a rate group, as well as wire centers within an exchange, do not necessarily share the same cost characteristics. Darnell Rebuttal at pp. 28-29. (Tr. Vol. IIIC at pp. 231-234.) BellSouth admits that the geographic cost differences between wire centers do not determine the zone in which wire centers are placed by its proposal, since its proposal is based on using existing geographic boundaries according to retail rate groups (Tr. Vol. IIIC at pp. 225-227.) Therefore, the facilities costs of facilities within wire centers are irrelevant to BellSouth's decisions on which zone to place a given exchange. (Tr. Vol. IIIC at p. 232.). BellSouth's proposal, in effect, is to deaverage UNE rates through the use of the average cost of wire centers that have the same retail *cost* or *revenue*, which Rule 505 does not permit. Darnell Rebuttal at p. 29.

Because retail rates are not based on cost, the various rate group areas that end up in each of BellSouth's baskets do not all share similar cost characteristics. Darnell Rebuttal at pp. 28-29, (Tr. Vol IIIC at p. 232.) Some of the areas in, for example, Zone 1, are very low cost and some of the areas are very high cost. Darnell Rebuttal at p. 29. BellSouth's proposal fails (utterly) to comply with 47 C.F.R. 51.503 which requires BellSouth's UNE rates to be based on forward looking economic cost. BellSouth's proposal also fails the Deaveraging Rule, for the same reason.

The worst part of BellSouth's proposal is not that it fails to follow the letter of the UNE costing and deaveraging requirements set forth by the FCC. The worst

thing about BellSouth's proposal is that it violates the very spirit of those requirements. By using rate groups to lump together low and high cost wire centers in the same zone, BellSouth raises the average cost of that zone, which *inflates the price of deaveraged UNEs* in certain zones. Darnell Rebuttal at p. 29. The consequence is that the zones proposed by BellSouth are aligned with the retail rates against which the CLECs rates would compete. Ruscilli Direct at pp. 11-13. The resulting UNE rates, which are higher than cost-based deaveraged UNE rates, insulate BellSouth's high retail rates in low cost areas from cost-based, UNE-based local competition. Darnell Rebuttal at p. 29.

In striking contrast, Sprint's UNE deaveraging proposal is that a network element's rate should be geographically deaveraged when the TELRIC plus forward-looking common costs of providing the element anywhere within a defined geographic area deviates significantly from the averaged price for the element across the defined area. Darnell Rebuttal at pp. 30-31. While it is impossible to quantify with absolute precision what a "significant" deviation is, Sprint properly believes that differences in excess of 20% are of sufficient magnitude to potentially distort competitors' investment decisions. *Id.* Using this criteria, the cost of providing a network element anywhere within a geographically defined area should be no greater than 20% (plus or minus) of the network element's weighted averaged price of the zone in which it is a member. *Id.*

There can be very little debate as to which proposal results in UNE rates most closely matching their underlying costs. Sprint's UNE deaveraging methodology is based solely on the objective criterion of relating the costs of

facility to its UNE rates. Gordon Rebuttal at p. 27, Darnell Rebuttal at pp. 30-31. Sprint's methodology is endorsed by WorldCom[8] and is superior to any deaveraging proposal filed thus far, including the deaveraging proposal WorldCom previously made in interim UNE deaveraging negotiations. Darnell Rebuttal at 30. Sprint's methodology sets a sure and concrete standard (+ or – 20%), which avoids significant cost disparities between UNE costs and rates, and can be objectively and equally applied to all incumbent LECs. *Id.* at p. 31. This would provide the carriers, incumbent LECs and CLECs alike, as well as the Authority, with a means (i.e., by a price list for UNEs) to quickly make rate determinations. *Id.* Further, the proposal would establish criteria by which fixed cost deviations could be determined for placing wire centers with similar cost characteristics within the same zone. *Id.*

As discussed above, BellSouth and Sprint have presented two fundamentally different approaches to deaveraging UNE rates. Sprint's methodology groups wire centers by UNE costs, then develops an average rate for each of these cost-based groups. Gordon Rebuttal at pp. 26-26. This approach complies with the Deaveraging Rule, which requires that the zones used for deaveraging be "cost-related." It also complies with the broader pricing standards in the Telecommunications Act of 1996 ("Act"), which require that rates for all UNEs be based on cost. 47 U.S.C. §252(d)(1).

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[8] Sprint's methodology was similarly endorsed by the "New Entrant" group in North Carolina's proceeding to consider deaveraging of UNEs: Before the North Carolina Utilities Commission, *In the Matter of General Proceeding to Determine Permanent Pricing for Unbundled Network Elements*, Docket No. P-100, SUB 133d).

In contrast, BellSouth proposes a deaveraging methodology that groups wire centers by the retail rate group to which they belong. Ruscilli Direct at pp. 13-14. Wire center costs, however, bear no relationship to the rate group to which the wire center belongs. BellSouth's approach thus violates the requirement of the Deaveraging Rule to use "cost-related" zones, as well as the underlying pricing principles of the Act, which require that all UNE rates be based on cost. Under Section 252(d) of the Act, rates for UNEs must be based on forward looking economic cost. It makes sense that only forward-looking cost differences relating to different geographic areas may properly be considered in determining geographically deaveraged UNE rates. If any non-cost-based factor is used to deaverage the overall average rate, then the resulting deaveraged rates will no longer be cost-based (and, therefore, not compliant with the requirements of the Act).

WorldCom would urge the Authority to adopt the deaveraging methodology proposed by Sprint for application to both Sprint and BellSouth. Because UNEs are inputs that competitors will use to determine whether and where to enter the local telecommunications market, it is essential that the rates for these inputs be cost-based, so that the correct "build, buy or not enter" signals can be sent to potential market entrants. Darnell Rebuttal at pp. 24-25. Sprint's proposal, better than the other proposals in this proceeding, achieves the only legitimate deaveraging goal, which is to group areas with similar cost characteristics into the same UNE rate zones. *Id* at p. 30. Sprint's deaveraging methodology can and should be objectively and equally imposed on all

Tennessee ILECs. *Id* at pp. 31-32. For these reasons, WorldCom recommends that Sprint's methodology be applied to deaverage loop (including subloop) rates, for BellSouth well as for Sprint. *Id.*

## IV. TELRIC METHODOLOGY

Mr. Ruscilli's testimony in this case makes clear that BellSouth does not believe that basing UNE prices on TELRIC (Total Element Long Run Incremental Cost) leads to full compensation for BellSouth. *See* Ruscilli Direct at pp. 4, 9. Appropriately, the Authority has shown no indication that it will consider adopting UNE rates in this matter that are *not* calculated according to the TELRIC methodology. WorldCom strongly supports the Authority's efforts in this regard and continues to believe that TELRIC is the appropriate methodology for costing UNEs to be purchased by competitors for competitive purposes.

One of the underlying assumptions of the Act is that competition is more efficient than government at regulating a market. In the transition to a competitive local telecommunications market, all regulatory initiatives should strive to mimic the results of a competitive marketplace so as to not undermine or distort the market's development. Therefore, the Act's pro-competitive purpose, and ultimately its de-regulatory purpose, will be best served if the wholesale rates, terms and conditions for the current monopoly provided UNEs are set at levels that mimic the levels that would result from an effectively competitive marketplace. Darnell Rebuttal at p. 5.

TELRIC as a tool for unbundling and interconnection purposes has been upheld by the Supreme Court in *AT&T, et al. v. Iowa Utilities Board, et al.*[9] The Supreme Court's decision reversed substantial portions of the previous decision of the Eighth Circuit Court of Appeals[10] as regards the *Local Competition Order*, and thus reinstated key provisions of that order, including the FCC's TELRIC pricing rules.[11] Those pricing rules – including Rule 505 (b) (1) – govern this proceeding, and remain fully in effect.

## V. MISCELLANEOUS

a. Availability of OS/DA as a UNE

In its pending arbitration with BellSouth in Tennessee, WorldCom has the issue of whether BellSouth must continue to make Operator Services and Directory Assistance ("OS/DA") available as a UNE to MCImetro and Brooks Fiber. WorldCom has proceeded under the assumption that this issue would be addressed in the arbitration, rather than in the instant docket. Indeed, WorldCom participated in a mediation conducted by staff of the Authority at which this issue was raised and discussed (though not settled). At no point in the mediation or after it did Staff or BellSouth suggest that this issue should not continue to be

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9 525 U.S. 366 (1999)

10 Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997).

11 First, the Supreme Court resolved the issue whether the FCC has jurisdiction under sections 251 and 252 of the Act regarding pricing and other local competition provisions. As stated above, all of the FCC's pricing rules vacated by the Eighth Circuit were reinstated. The Supreme Court, moreover, acknowledged that the FCC has explicit authority to "design a pricing methodology," including requiring geographic deaveraging of UNE prices. In particular, the Supreme Court held that the FCC has jurisdiction to promulgate rules to guide States regarding UNE pricing.

part of the arbitration. Out of an abundance of caution and to respond to an unexpected inclusion of this issue by BellSouth in its testimony, WorldCom included a few paragraphs in its rebuttal testimony on this issue. WorldCom did not, however, present its primary case on this matter in this docket.

For these reasons, Worldcom respectfully requests that the Authority consider the issue of OS/DA as a UNE in WorldCom's arbitration with BellSouth (Docket No. 00-00309) rather than in this case.

b. Inclusion of "Unbundled Copper Loops," High Capacity Loops (DS3, OC3), additional UNE combinations and dark fiber loops

On August 10, 2000 the Hearing Officer ruled that:

> the oral motion of BellSouth Telecommunications, Inc. to expand the Docket to include setting rates for elements listed in the FCC's *UNE Remand Order* is granted in part such that those specific elements related to cost and rates that are the subject of dispute in an on-going arbitration shall be addressed in this Docket.

The Hearing Officer's ruling appeared designed to accomplish the goals of maintaining an expedited schedule while resolving those pricing issues that were already outstanding in another docket. BellSouth apparently interpreted this ruling very differently than did WorldCom because BellSouth filed rates for a number of additional items, including unbundled copper loops, High Capacity Loops (DS3 and OC3), additional UNE combinations and dark fiber loops. To WorldCom's knowledge, these items were and are not pending in arbitration cases.

In other states in this region in which these elements have been part of the costing case, (e.g. Florida, North Carolina), significant additional time was needed to examine these proposed rates. In Florida and North Carolina, for example, a three month discovery period (including data requests, interrogatories, depositions, cost model filing, testimony rounds) was necessary to thoroughly evaluate these items. (Indeed, the CLECs participating in those dockets believed the three month period to be an aggressive time constraint.) CLEC analysis in the other states led to advocacy of rates for these elements far lower that what BellSouth proposed (and far lower than what BellSouth has proposed here).

CLECs in Tennessee have not had time to adequately analyze the data put forth by BellSouth in support of its proposed UNE rates for these additional elements. WorldCom would therefore urge the Authority to permit BellSouth's proposed rates to go into effect on an interim basis and subject to true up until such time as a proceeding can be established to more fully address these rates.

## VI. CONCLUSION

This Docket presents the Authority with myriad issues, most of which provide a choice between competitive policies and policies that can impede competition. WorldCom appreciates the Authority's consideration of the arguments it has set forth in this brief.

Respectfully submitted this 23rd day of January, 2001.

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