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January 23, 2001

By Hand

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Generic Docket to Establish UNE Prices for Line Sharing per FCC 99-355, and Riser Cable and Terminating Wire as ordered in TRA Docket 98-00123.
Docket No. 00-00544

Dear Mr. Waddell:

Enclosed for filing in the above-captioned proceeding are an original and thirteen copies of AT&T Communications of the South Central States, Inc.'s Post Hearing Brief in the above-referenced proceeding.

If you have questions, please call me.

Sincerely,

Jim Lamoureux

Encls.

cc: Counsel for all Parties of Record

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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	)	
	)	

AT&T'S POST-HEARING BRIEF

AT&T Communications of the South Central States, Inc. ("AT&T") hereby submits its Post-Hearing Brief in this proceeding. AT&T generally supports the positions of MCI and the Data Coalition, and, in the interest of brevity, offers the following additional comments with respect to selected issues.[1]

I. THE TRA SHOULD ORDER BELLSOUTH TO ALLOW CLECS TO INTERCONNECT DIRECTLY TO BELLSOUTH'S SUBLOOP TERMINALS IN ORDER TO GAIN ACCESS TO SUBLOOP ELEMENTS

This issue concerns the manner in which BellSouth will provision various subloop facilities to CLECs, as well as the prices BellSouth will be permitted to charge CLECs for those facilities. Resolution of this issue is critical to the continued development of facilities-based competition in Tennessee. Facilities-based carriers in Tennessee, including AT&T, seek to purchase subloop facilities from BellSouth in order to provide service to residential and business tenants in multi-dwelling units ("MDUs"), such as apartments and business offices. Tr. Vol. IIC at 153.

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[1] AT&T also does not address the issue of OS/DA. This issue concerns the removal of a UNE from BellSouth's obligation to provide UNEs, and does not in any way concern the price BellSouth may charge for any UNEs. Accordingly, it is not properly within the scope of this proceeding. Moreover, AT&T has raised in its arbitration with BellSouth the issue of whether BellSouth has provided sufficient customized routing to AT&T such that BellSouth need not provide OS/DA to AT&T as a UNE. The TRA should, therefore, address the OS/DA issue in the AT&T/BellSouth arbitration.

BellSouth proposes to offer CLECs different subloop elements, with different rates, depending on the nature of the property served. Milner Dir. at 18-19; Tr. Vol. IIA at 6, IIC at 152. For a campus property, such as a garden apartment property, BellSouth proposes the subloop element of Network Terminating Wire ("NTW"), Milner Dir. at 22; Tr. Vol. ID at 238, Vol. IIC at 156. For high-rise buildings, BellSouth proposes to offer a different element, which it refers to as Intrabuilding Network Cable ("INC").[2] Milner Dir. at 21-22; Tr. Vol. ID at 238.

BellSouth also offers two other subloop elements: subloop feeder and subloop distribution. These subloop elements represent the facilities from a BellSouth central office to a feeder distribution interface (subloop feeder) and from the feeder distribution interface to the customer premise (subloop distribution). Milner Dir. at 19-21; Tr. Vol. IIC at 154-55. A feeder distribution interface is generally a larger terminal, farther away from an MDU building (closer to the central office) than the garden terminals Tr. Vol. IIC at 154-55. Thus, to serve a campus property with several buildings and multiple garden terminals, a CLEC may purchase subloop distribution from the feeder distribution interface to each tenant premise, rather than NTW from each garden terminal to each customer premise.

AT&T generally does not challenge the nomenclature proposed by BellSouth for its various subloop element offerings. Rather, the core dispute on this issue is how BellSouth will require CLECs to access NTW, INC, subloop feeder and subloop distribution (collectively hereinafter "unbundled subloops"). Tr. Vol. IIC at 154, 159. In particular, BellSouth refuses to allow CLECs to interconnect directly to unbundled subloop facilities. Milner Dir. at 27. Instead,

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[2] In a high rise building, BellSouth usually has facilities that run vertically from an equipment closet in the basement of the building to a point on each floor of the building, and then laterally along the floor to each tenant space on the floor. Tr. Vol. IIC at 159-160. In its network, BellSouth refers to the vertical component of these facilities as riser cable or intra-building network cable. *Id.* BellSouth refers to the lateral component of these facilities as network terminating wire. For high rise buildings, BellSouth offers the combination of riser cable and network terminating wire as the subloop UNEs of 2-wire and 4-wire Intrabuilding Network Cable (collectively, "INC"). *Id.* at 160-61.

BellSouth requires that an intermediary access terminal be constructed "in between" the BellSouth subloop terminal and the CLEC terminal. Tr. Vol. IIA at 6-7, 156-57, 159, 161-162. Thus, BellSouth will retain its "own" terminals for its own access to subloop elements, but will create "separate" access terminals through which AT&T and other CLECs must interconnect (and for which BellSouth will charge us) in order to access those very same subloop elements. Milner Dir. at 25-26.

Several FCC rules and regulations address this issue. First, in its *UNE Remand Order*, the FCC adopted rules requiring BellSouth and other incumbents to "provide nondiscriminatory access, in accordance with [47 C.F.R.] § 51.311 and section 251(c)(3) of the Act, to the local loop and subloop, including inside wiring owned by the incumbent LEC, on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service." 47 C.F.R. § 51.319(a). Tr. Vol. ID at 238, Vol. IIC at 153. The FCC found that "lack of access to unbundled subloops materially diminishes a requesting carrier's ability to provide services that it seeks to offer." *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (November 5, 1999) ¶ 205 ("UNE Remand Order"). Moreover, the FCC determined that "access to subloop elements is likely to be the catalyst that will allow competitors, over time, to deploy their own complementary subloop facilities, and eventually to develop competitive loops." *UNE Remand Order* ¶ 205; *see also* ¶¶ 209, 219.

The FCC defines subloops as "portions of the loop that can be accessed at terminals in the incumbent's outside plant." *UNE Remand Order* ¶ 206; *see also*, 47 C.F.R. § 51.319(a)(2)(A) (the "subloop network element" is thus "any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside

wire.") An "access terminal" is "a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. These would include a technically feasible point near the customer premises, such as the pole or pedestal, the NID, or the minimum point of entry to the customer premises." *UNE Remand Order* ¶ 206 (footnotes and parenthetical omitted); *see also,* ¶ 210. The FCC specifically adopted a broad definition of "subloop" to allow CLECs "***maximum flexibility*** to interconnect their own facilities at these points where technically feasible." *UNE Remand Order* ¶ 207; *see also*, ¶ 223 ("In adopting a rule that requires incumbents to unbundle subloops at the points identified above, we seek to provide requesting carriers maximum flexibility to interconnect with the incumbent's network at technically feasible points in order to allow competitors to serve customers efficiently.")

With respect to the mechanism for accessing subloops, the FCC established a rebuttable presumption that "the subloop can be unbundled at any accessible terminal in the outside loop plant." *UNE Remand Order* ¶ 223. Moreover, the FCC placed upon BellSouth the burden of demonstrating that it is not technically feasible to unbundle subloops at a particular access terminal. *UNE Remand Order* ¶ 223; 47 C.F.R. § 51.319(a)(2)(B). The FCC determined that such questions of technical feasibility are fact specific and should be resolved by state commissions on a case-by-case basis.

Specifically for access to MDUs, the FCC adopted the proposal submitted by OpTel for a "single point of interconnection." The FCC encouraged parties to "cooperate in any reconfiguration of the network necessary to create" such a single point of interconnection, "to the extent there is not currently a single point interconnection that can be feasibly accessed by a requesting carrier." *UNE Remand Order* ¶ 226. In the event carriers are unable to negotiate a

reconfigured single point of interconnection, the FCC also required "the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers." *UNE Remand Order* ¶ 226. Tr. Vol. IIC at 153. In short, "[t]he incumbent LEC shall provide a single point of interconnection at multi-unit premises that is suitable for use by multiple carriers. This obligation is in addition to the incumbent LEC's obligation to provide nondiscriminatory access at any technically feasible point." 47 C.F.R. § 51.319(a)(2)(E).

Additionally, the FCC's collocation rules apply to this issue. In its *UNE Remand* Order, the FCC specifically incorporated the requirements set forth in its collocation rules as applicable to subloop unbundling. Indeed, the FCC issued a specific rule identifying access to the subloop as "subject to the Commission's collocation rules." 47 C.F.R. § 51.319(a)(2)(D). In particular, the FCC reiterated that its collocation rules "apply to collocation at any technically feasible point, from the largest central office to the most compact FDI." *UNE Remand Order* ¶ 221; *see also First Report and Order and Further Notice of Proposed Rulemaking,* Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (March 31, 1999) ¶ 103 ("Advanced Services Order"). "This is because [the FCC's] collocation rules concern methods and standards for obtaining interconnection and access to unbundled network elements under section 251 of the Act, and thus are not directed to any one type of facility." *UNE Remand Order* ¶ 221. Particularly important in this proceeding is that the FCC's collocation rules specifically prohibit BellSouth from requiring an "intermediate interconnection arrangement in lieu of a direct connection to [BellSouth's] network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without a concomitant benefit to incumbents." *Advanced Services Order* ¶ 42.

Finally, with respect to technical feasibility, the FCC held that "once one state has determined that it is technically feasible to unbundle subloops at a designated point, it will be presumed that it is technically feasible for any incumbent LEC, in any other state, to unbundle the loop at the same point everywhere." *UNE Remand Order* ¶ 227; 47 C.F.R. § 51.319(a)(2)(C), Tr. 938. The FCC adopted this "best practices" approach to ensure that "incumbent LECs do not limit access to subloops based on unforeseeable technological and infrastructure developments." *UNE Remand Order* ¶ 227.[3]

Based on the rules and regulations applicable to subloop unbundling, the TRA should reject the BellSouth intermediary access terminal proposal. BellSouth's proposal is inconsistent with each of the foregoing FCC rules and regulations and detrimental to the public interest.

A. THE BELLSOUTH INTERMEDIARY ACCESS PROPOSAL IS DISCRIMINATORY

Requiring AT&T and other CLECs to access subloop elements by means of an intermediary access terminal is, on its face, discriminatory, and thus violates 47 C.F.R. § 319(a). In no case will BellSouth ever have to gain access to any tenants in a campus or high rise property by means of any intermediary access terminals. Tr. Vol. IID at 206-07. Rather, BellSouth will continue to gain access to its apartment and office customers through its garden terminals and access panels. It is thus clear that BellSouth will not provide CLECs access to subloops in substantially the same manner that BellSouth provides such access to itself. By definition, the BellSouth proposal is discriminatory.

Requiring intermediary access terminals also is discriminatory because it will require AT&T to incur substantially greater cost. The rates that BellSouth proposes for its various

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[3] This is consistent with the FCC collocation rules, in which "deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in favor of a competitive LEC seeking collocation in any incumbent LEC premises that such an arrangement is technically feasible." *Advanced Services Order* ¶ 45.

subloop elements reflect the assumption of BellSouth's restrictive and cumbersome form of access. Tr. Vol. ID at 241. For NTW, BellSouth proposes to charge a recurring rate of $0.39 and a non-recurring rate of $60 for each NTW pair ordered (BellSouth Rate Element A.15.1.). Tr. Vol. ID at 239, Vol. IIC at 176. The non-recurring charge for NTW includes a pro-rated amount associated with the intermediary access terminal proposed by BellSouth. Tr. Vol. ID at 241, Vol. IIC at 176.

For INC, BellSouth proposes to charge a recurring rate of $1.47 and a non-recurring rate of $108 for each INC pair ordered. Tr. Vol. ID at 240 (BellSouth Rate Element A.2.14). BellSouth also proposes to charge ***an additional*** $463 to install each 25 pair intermediary access terminal for INC (BellSouth Rate Elements A.2.19 + A.2.20). Tr. Vol. ID at 240, 241. BellSouth would require AT&T to pay this $463 ***each time*** AT&T ordered up to 25 INC pairs. Thus, for a 100 line business customer in a Nashville high rise, AT&T would have to pay BellSouth more than $1800 just for the access panels needed to gain access to INC.

For subloop distribution, BellSouth proposes to charge a recurring rate of $5.15, $6.74, and $8.81 in Zones 1, 2, and 3, respectively, and a non-recurring rate of $112 per pair ordered (BellSouth Rate Element A.2.40.) In addition, as with INC, BellSouth proposes to charge an additional $560 to install each 25 pair intermediary access terminal (BellSouth Rate Element A.2.18 + BellSouth Rate Element A.2.21). Tr. Vol. ID at 240-41. Similar to INC, BellSouth would require a CLEC to pay this $560 each time the CLEC ordered up to 25 subloop distribution pairs. Tr. Vol. IIC at 178-179.

These rates, particularly the non-recurring rates, would be substantially less if the assumption of intermediary access terminals was eliminated. Tr. Vol. ID at 241-42. In particular, direct access would substantially lower the non-recurring charge associated with

NTW, INC, subloop distribution and subloop feeder, Tr. Vol. IIC at 176- 178, and would ***eliminate entirely*** the additional charges associated with the intermediary access terminals for INC, subloop distribution and subloop feeder. *Id.*

Finally, in addition to being discriminatory and uneconomical, the access BellSouth intends to provide CLECs is substantially inferior to the access BellSouth enjoys and will continue to enjoy under its proposal. BellSouth substantially increases the risk of an accident as well as the number of potential points of failure, simply because of the magnitude of connections (each and every pair) which must be made. Tr. Vol. IIC at 191. Moreover, BellSouth ensures that customers in a high rise property will be out of service longer than if BellSouth allowed direct access.

BellSouth will not pre-wire the intermediary access terminals in high rises and will only provide "available" pairs to AT&T. Tr. Vol. IID at 223-225. This causes two significant problems. First, if BellSouth defines "available" as "not currently being used to provide service," then AT&T will not have access to the pairs BellSouth currently uses to provide service to any of the tenants in an MDU. The CLEC will thus have to use spare pairs, which may not be available. Moreover, even if they are available, those spares are not the pairs the customers currently use. Accordingly, CLECs will have to re-wire each and every jack providing service to a tenant before that tenant will be able to receive service over those spare pairs, thus causing substantial delay (as well as additional cost) before a customer can begin receiving service. Tr. Vol. IID at 226.

Second, service delays would arise in a high rise property even if BellSouth were to allow AT&T to disconnect the pairs currently providing service to the customers in the high rise. In those cases, BellSouth would have to dispatch a technician for every AT&T order for every

customer in that property, including each and every time a customer orders additional lines. The BellSouth and AT&T technicians would have to coordinate their schedules before they could even begin this process. They then would have to coordinate their efforts in establishing the connections on each side of the intermediary access terminals, in essence requiring a "subloop hot cut" process in the wiring closets of the basements of every high rise property AT&T serves. Tr. Vol. IID at 226-227. It requires very little foresight to see how difficult such coordination will be and how many customer service outages will be precipitated by requiring a "subloop hot cut" process in the wiring closets in the basements of every high rise building in Tennessee.

The requirement of intermediary access terminals also imposes substantial delay simply to install the intermediary access terminal. The process that BellSouth would require CLECs to follow just to order and install an intermediary access terminal for NTW is described in a "CLEC Information Package" publicly available at http://www.interconnection.bellsouth.com/products/UNE/unb_netw_term_wire.pdf. Tr. Vol. IIC at 195, Ex. 11. That document describes the process that each CLEC must follow to order a single intermediary access terminal, before the CLEC may even begin to order a single NTW pair from BellSouth. Tr. Vol. IIC at 195-96. This cumbersome, complicated process has no time limit as to how long it will take. Tr. Vol. IIC at 196-97. Multiply this process by every garden terminal on every MDU property in Tennessee, and it becomes clear that BellSouth's proposal to require intermediary access terminals will be a major impediment to the development of facilities-based competition for MDU customers in Tennessee.

Clearly, access to subloop elements by means of intermediary access terminals is uneconomical, inefficient, and discriminatory compared to direct access. Requiring intermediary access terminals:

- increases the potential points of failure,
- increases the delay in gaining access to subloops, and
- increases the cost of gaining access to subloops.

It simply strains credibility to suggest that imposing an intermediary access terminal requirement on CLECs is non-discriminatory. By definition, requiring CLECs to gain access to subloop facilities in a manner that is substantially different than the manner in which BellSouth gains access to those same facilities is discriminatory and thus prohibited by the FCC.

The fact that such a requirement also provides substantially inferior access (in terms of service and cost) only reinforces that conclusion. At a minimum, the requirement that CLECs must gain access to subloop elements contravenes the intent of the FCC to provide CLECs with ***maximum flexibility*** with respect to access to subloop elements. *UNE Remand Order* ¶ 207; *see also*, ¶ 223. BellSouth should not be permitted to impose upon CLECs the burden of gaining access to subloop elements through intermediary access terminals.

B. THE BELLSOUTH INTERMEDIARY ACCESS PROPOSAL VIOLATES THE REQUIREMENT OF A SINGLE POINT OF INTERCONNECTION

BellSouth's requirement of an intermediary access terminal also violates the FCC requirement of a ***single*** point of interconnection for access to subloop facilities. Surely, when the FCC imposed on BellSouth the obligation to provide "a single point of interconnection at multi-unit premises that is suitable for use by multiple carriers," 47 C.F.R. § 51.319(a)(2)(E), the FCC did not intend to suggest that BellSouth should construct a single point of interconnection for all carriers ***but*** BellSouth, *see* Tr. Vol. IID at 207. That would be inconsistent with the entire philosophy underlying the concept of non-discriminatory access in general and a single point of access in particular.

It also is inconsistent with the requirement that BellSouth must create a single point of interconnection if one is not available. *UNE Remand Order* ¶ 226. Neither BellSouth nor any other ILEC has deployed any intermediary access terminals in their networks today. A more reasonable interpretation of the FCC requirement is that if there are any subloop terminals (garden terminals, wiring closets, feeder distribution interfaces) that may not be technically capable of allowing direct access, then BellSouth is required to deploy terminals which are capable of allowing direct access. This is the only construction of the *UNE Remand Order* which is consistent with the philosophy of non-discriminatory access and which comports with the current status of ILEC networks.

C. THE BELLSOUTH INTERMEDIARY ACCESS PROPOSAL VIOLATES THE FCC'S COLLOCATION RULES

Similarly, the BellSouth requirement of an intermediary access terminal violates the prohibition against an "intermediate interconnection arrangement in lieu of a direct connection to [BellSouth's] network if technically feasible," as set forth in the FCC's collocation rules. *Advanced Services Order* ¶ 42. The FCC has made clear that this and all its collocation rules apply not only to central offices, but also to all technical technically feasible points in the BellSouth network, including subloop terminals. *UNE Remand Order* ¶ 221. Just as BellSouth may not require an intermediate interconnection arrangement in order to interconnect through collocation in its central offices, BellSouth may not require any such intermediate interconnection arrangements in its subloop terminals.

D. DIRECT ACCESS TO BELLSOUTH'S SUBLOOP TERMINAL WILL NOT COMPROMISE NETWORK SECURITY

In this proceeding, BellSouth has not raised any general issue of technical infeasibility. The only technical feasibility issue it has raised is one of network security. *See, e.g.*, Milner Dir.

at 27-28, Tr. Vol. IIC at 173-74, 197. To succeed on such a claim of network security, BellSouth must demonstrate "specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at a particular point." *First Report and Order*, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (August 8, 1996) ¶ 198 ("First Report and Order"); Tr. Vol. IID at 208.

BellSouth has not met its burden of proving that network security concerns should allow it to escape its obligation to provide direct access to its subloop terminals. BellSouth admits that its network security assertion is the only technical feasibility objection it has to direct access. Moreover, BellSouth has raised only two issues with respect to network security issues: the need to avoid service disruptions and the need to maintain accurate inventory record keeping. Milner Dir. at 27-28; Tr. Vol. IIA at 7, Vol. IIC at 197. For neither issue, however, has BellSouth met its burden of proving specific, significant, and demonstrable network reliability concerns.

First, with respect to the possibility of service disruptions, BellSouth admits that there is no evidence that CLECs are any more likely to cause service disruptions than BellSouth. Tr. Vol. IID at 208-09. Indeed, BellSouth technicians also cause service disruptions. Tr. Vol. IID at 209. CLEC technicians follow the same safety standards, such as the National Electric Code and Network Equipment and Building Equipment Specifications Level 1, as BellSouth technicians.[4]

[4] AT&T has no objection to a Commission requirement that it adhere to the same safety standards that BellSouth can demonstrate that its own technicians follow, *i.e.*, non-discriminatory application of the same safety standards.

Thus, from a purely technical perspective, there is no reason that allowing direct access is any more likely to cause service disruptions than requiring access through intermediary access terminals. Indeed, as discussed below, requiring access through intermediary access terminals is ***just as likely*** to cause service disruptions. Moreover, requiring intermediary access terminals increases the number of potential points of failure in the network and is likely to increase the length of such service disruptions for high rises.

With respect to the second security concern (inventory control), BellSouth appears to admit that its concern is limited to INC, because NTW pairs are color coded with paper tags, which alleviates any inventory control concern. Tr. Vol. IID at 209-210. Moreover, even with respect to INC, the concern is overblown. No CLEC proposes to simply walk into the basement of a high rise and begin appropriating INC pairs, as BellSouth suggests. Tr. Vol. IIA at 7-8. Moreover, BellSouth technicians clearly have some automated process to gain access to information about INC pairs in a building and to update information in BellSouth databases. Tr. Vol. IID at 211-12. There is no reason CLEC technicians cannot use that same information (simply by calling BellSouth or by accessing BellSouth inventory systems just as BellSouth technicians do).

Further, even with direct access to the BellSouth subloop terminals, CLECs must still order INC pairs from BellSouth, just as CLECs orders loops from BellSouth today. Tr. Vol. IIC at 189-90. And just as that ordering process for loops includes in it procedures to ensure accurate inventory control, there is no reason a similar process could not be developed to address the same concern for direct access to subloops. Of course, no process has yet been developed, because BellSouth will not even consider the prospect of direct access. BellSouth, however, should not be permitted to use this Catch-22 to prevent direct access to its subloop terminals.

Finally, even assuming BellSouth is correct about either of the "horrors" of direct access (service disruptions or inventory control), requiring access through intermediary access terminals provides ***no greater protection whatsoever*** against the prospect of such horrors. By constructing an intermediary access terminal, BellSouth simply redirects its network through that intermediary access terminal. Tr. Vol. IIC at 167. Thus, while BellSouth may not have to gain access to its customers through the intermediary access terminals, its network will be routed through the intermediary access terminals. Tr. Vol. IID at 206.

CLECs will have the same access to the BellSouth network in the intermediary access terminal as they would through direct access to the BellSouth subloop terminal, *see, e.g.*, Tr. Vol. IIC at 157-158, but with the additional delay and cost associated with the intermediary access terminal. The intermediary access terminals will be accessible by CLECs and other CLEC technicians (as well as BellSouth technicians), any of which could still snip the wrong wires, could still make the wrong connections, could still cause service disruptions to BellSouth and other CLECs, and could still forget to record the pairs they had accessed. Tr. Vol. IIC at 171-72, 190.

Thus, the only additional "security" concern the BellSouth proposal provides is the security to the BellSouth subloop terminal itself. Tr. Vol. IIC at 172. There is no greater security afforded the network, and no greater protection of consumers by requiring intermediary access terminals. The real issue for BellSouth is that it does not want CLECs in its subloop terminals. This is not a valid technical feasibility argument, and it certainly is not sufficient for the TRA to impose on CLECs the burdens of accessing subloop elements through intermediary access terminals rather than directly through the BellSouth subloop terminals as required by law.

E. THE TRA SHOULD FOLLOW THE DECISION OF THE GEORGIA PUBLIC SERVICE COMMISSION IN THE MEDIAONE ARBITRATION ON THIS ISSUE

The Georgia Public Service Commission has addressed this issue in its MediaOne/BellSouth arbitration. Phase I Milner Dir. at 13, Tr. Vol. 3 at 140; Milner Reb. at 10-12, Tr. Vol. 3 at 170-72.[5] Consistent with the decision of the Georgia Commission in that arbitration, AT&T proposes to interconnect its terminals directly to the BellSouth subloop terminals on an MDU property. *In re: Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.*, at 4, Docket Nos. 10418 & 10135 (Dec. 21, 1999)("*MediaOne Order*"). In an effort to re-write the *MediaOne Order*, BellSouth now asserts that the Georgia Commission actually adopted the BellSouth intermediary access terminal requirement. Milner Dir. at 30-31.

It is clear from the face of the *MediaOne Order*, however, that the Georgia Commission adopted the MediaOne proposal for a single point of interconnection at the minimum point of entry. That single point of interconnect is a direct connection to the BellSouth subloop terminal. The Georgia Commission specifically agreed that the MediaOne proposal was technically feasible. *MediaOne Order* at 5, 6. Moreover, the *MediaOne Order* is clear that the proposal adopted by the Georgia Commission called for ***each LEC*** to provide its own cross connect facility in the wiring closet to connect from the building back to its network, and that ***each LEC*** would connect its customers within the MDU by means of a cross connect, not each CLEC, as proposed by BellSouth and its intermediary access terminal proposal. *MediaOne Order* at 4.

It is clear that the Georgia Commission rejected the BellSouth proposal to install an access terminal "in between" the garden terminal and the CLEC terminal. *Media One Order* at

4. The Commission clearly contemplated that MediaOne would gain access to NTW by means of a single point of interconnection, without the need for a BellSouth technician to be present. The BellSouth requirement of an intermediary access terminal was and is inconsistent with that requirement.

Moreover, the Georgia Commission required the development of procedures to provide notice to a carrier regarding any change by any LEC or CLEC, which would only be necessary in the situation where ***both*** BellSouth and the CLEC have direct access to the same subloop terminals. In short, the MediaOne proposal adopted by the Georgia Commission called for direct access to the BellSouth garden terminals, not access by means of intermediary access terminals as BellSouth now asserts. *MediaOne Order* at 6. The TRA also should order BellSouth to allow AT&T and other CLECs the ability to access subloop facilities by directly connecting to the BellSouth subloop terminals.

II. THE TRA SHOULD ORDER BELLSOUTH TO ALLOW LINE SPLITTING, INCLUDING THE OPTION OF PURCHASING SPLITTERS FROM BELLSOUTH

There is no dispute that BellSouth has a legal obligation to provide access to all of the features, functions and capabilities of every UNE "in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element." 47 C.F.R. §51.307 (c). This duty applies to access to unbundled loops, including loops used in combination with switching, to provide DSL and other data services. *First Report and Order* ¶¶ 380, 382; *UNE Remand Order* ¶¶ 166-67.

One of the features, functions, and capabilities of a loop is the use of its high frequency spectrum to provide data services. *Third Report and Order in CC Docket No. 98-147 and Fourth*

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[5] The Florida Public Service Commission also has addressed this issue in a BellSouth/MediaOne arbitration. Phase I Milner Dir. at 28-30. However, the Florida order was issued before the FCC issued its *UNE Remand Order*

Report and Order in CC Docket No. 96-98 FCC 99-355, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147 (December 9, 1999) ¶¶ 13, 17, 25 ("Line Sharing Order"). Moreover, the loop itself includes all "attached electronics," if such are necessary, to fully access all features, functions and capabilities in order to provide service. *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, at 6-17, *citing UNE Remand Order* ¶175 ("Texas Arbitration Award").

The arrangement whereby CLECs provide both voice and data on the same line using combinations of loops and switching (*i.e.,* UNE-P) is referred to as "line splitting." *Memorandum Opinion and Order,* 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, CC Docket No. 00-65 (June 30, 2000) ¶ 323 ("Texas 271 Order"). Line splitting does not involve the provision of any new elements or new combinations of elements. Rather, it simply requires that the necessary electronics be included in the provisioning of the loop in order to allow a CLEC to access its full functionality, consistent with the Act, the *First Report and Order* and the *UNE Remand Order*.

Line splitting for a CLEC is no different than BellSouth "splitting" a line for itself. When a CLEC obtains a loop in combination with switching, it acquires rights to the entire loop, including the portions of the loop used to provide voice service and the high frequency portions capable of providing advanced services. Since the purchase of a loop includes "all of the [loop's] features, functions, and capabilities," 47 C.F.R. § 51.307 (c), it follows that BellSouth has "an obligation to permit competing carriers to engage in line splitting over the UNE-P where

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addressing subloop unbundling. Phase I Tr. Vol. IIC at 153.

the competing carrier purchases the entire loop." *Texas 271 Order* ¶ 325. Thus, the purchase of UNE-P implies purchase of the full capabilities of the loop, which should include its capacity to be split to accommodate the provision of data services.

If CLEC voice customers are ineligible for DSL provisioned through line splitting, those customers will migrate their voice service back to BellSouth, or never even consider purchasing service from the CLEC in the first place. This result would obviously advantage BellSouth, because it alone would be able to provide a full range of services. *Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities*, New York Public Service Commission, Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services, Case 00-C-0127 at 13. Thus, a continued lack of practicable access to line splitting would impair the ability to provide customers with advanced services.[6] The alternative - offering DSL on a dedicated line basis – is more costly, technically cumbersome and time-consuming. *Id.* at 16.

The FCC recently addressed the issue of line splitting. On January 19, 2001, the FCC held that BellSouth is required to provision UNE-P in a manner that permits line splitting. *Third Report and Order on Reconsideration in CC Docket No. 98-147, et. al.*, Deployment of Wireline Services Offering Advanced Telecommunications Capability & Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147, 96-96 (January 19, 2001) ¶¶ 16, 18 ("Line Splitting Order"). The FCC found that under its current rules, BellSouth and other incumbents "have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements." *Id.* ¶ 18. Thus, independent of line sharing obligations, BellSouth "must allow competing carriers to offer both voice and data

service over a single unbundled loop." *Id.* More specifically, the FCC ruled that BellSouth and other incumbents must allow CLECs to "engage in line splitting use the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter." *Id.* ¶ 19.

The only remaining issue is whether BellSouth must provide a splitter as one option for line splitting. Adding a splitter is necessary to provide voice service when a customer also requests advanced data service over the same line. Tr. Vol. IID at 245. There is no technical reason that BellSouth LEC cannot install a splitter to allow a provider of voice service over UNE-P to self-provision or partner with another CLP to provide advanced services. Tr. Vol. IA at 34-35; Vol. IID at 247.[7] Indeed, BellSouth has agreed that it will offer splitters for line sharing (*i.e.* when it remains the voice provider). Tr. Vol. IID at 244-45, Vol. IIIC at 209, Ex. 20. It is discriminatory to provide splitters for line sharing but not for line splitting, given that the two are technically identical.

The only reason BellSouth refuses to provide splitters is its belief it has no legal obligation to do so. *See* Tr. Vol. IIIC at 208-09. However, 47 U.S.C. §153 (29) defines "network element" to include all of the "features, functions and capabilities that are provided by means of such facility or equipment," which would include a splitter. The bottom line remains the same: unless BellSouth provides the splitter, it cannot meet its obligation to provide the full features, functions and capabilities of the UNE-P loop -- including its high frequency spectrum -- to CLECs in order to provide all services the loop is capable of providing, including xDSL service.

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[6] The New York commission ruled that there is no dispute that the engineering processes in splitting a line for a UNE-P voice customer and sharing a line for an ILEC voice customer are identical and consistent with federal law. *Id.* at 11, 15, *citing* 47 U.S.C. §251 (d) (3), *UNE Remand Order*, ¶ 154, *Line Sharing Order*, ¶¶ 221-25.

[7] Moreover, the cost and price of a splitter for line splitting purposes would be the same as the price for a splitter for line sharing purposes. Tr. Vol. VA at 32-34. Thus, assuming the TRA imposes on BellSouth an obligation to provide splitters, the TRA also could set the rate for such splitters equal to the rate for splitters provided for line sharing.

More fundamentally, BellSouth apparently failed to consider Tennessee law when it determined it has no legal obligation to provide splitters. Tr. Vol. IIIC at 209. Tennessee law requires that telecommunications service providers "shall provide non-discriminatory interconnection to their public networks ***under reasonable terms and conditions"*** and shall provide "desired features, functions, and services promptly." T.C.A. § 65-4-124(a).[8] This provision, as with the federal Act, imposes on BellSouth an obligation to provide splitters, as requested by AT&T and other CLECs. In addition, T.C.A. § 65-4-124(b) requires the TRA to issue orders as necessary to implement the requirements of T.C.A. § 65-4-124(a), *i.e.*, to issue orders to ensure that telecommunications providers furnish desired features, functions, and services promptly. In accordance with its obligation, the TRA should order BellSouth to provide line splitters in conjunction with its obligation to allow line splitting.

Several other state commissions have already ordered ILECs to provide line splitting. Both the Texas and the Wisconsin commissions have required SBC and Ameritech, respectively, to provide line splitting, including the provision of splitters. The Texas Commission determined that the splitter is part of the loop and is necessary to provide the full features and functions of the loop, that there is no technical distinction between line sharing and line splitting, that failure to provide line splitting could harm competition generally as well as the development of UNE-P competition, and is discriminatory.

In the *Texas Arbitration Award* proceedings, SBC's telephone subsidiary argued 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 that it is technically feasible to condition UNE-P loops by adding a splitter. SBC argued that if it

[8] The statute also provides a "technical and financial feasibility" restriction on this obligation; however, BellSouth has raised no objection that the provision of splitters is either technically of financially infeasible.

provided the splitter it would incur significant additional obligations, including requiring it to coordinate the activities of AT&T and a data CLEC. Hence SBC proposed 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; then AT&T would disconnect its UNE-P. *Texas Arbitration Award* at 12.

AT&T replied that it is discriminatory for SBC to provide a splitter to data CLECs, which do not intend to provide voice service, while SBC does not provide a splitter to UNE-P providers that seek to retain the voice customer. AT&T pointed out that SBC's position, if adopted by a state commission, 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.* at 3-14.

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 incumbent LEC to provide AT&T with a loop that is fully capable of supporting xDSL service. Adding a splitter to the loop, the 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.[9] Hence 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. Moreover, if an incumbent LEC were not to provide a splitter, the number of data CLECs with which a UNE-P provider can partner would be severely limited. *Id.* at 17-18. Those CLECs would have to collocate equipment, which would unnecessarily increase the degree of coordination and manual work and, concomitantly, increase both the likelihood and duration of service interruptions, introduce unnecessary delays (resulting from applications for space, construction intervals and splitter installation) and unnecessarily waste central office and frame space. *Id.* at 19.

Similarly, the Arbitration Panel in the AT&T/Ameritech Wisconsin arbitration recently determined that the splitter is a part of the loop and required Ameritech Wisconsin to provide line splitting to AT&T:

> The Panel finds that the [High Frequency Portion of the Loop ("HFPL")] is a loop functionality. The high frequency capacity is clearly a capability of the loop. The splitter can therefore be considered ancillary equipment that allows access to that functionality, in much the same way that a multiplexer allows access to the multiple voice grade circuits on a channelized T1 line. Ameritech has not shown that requiring such ancillary equipment would cause harm to its network or operations. The Panel, therefore, finds that a splitter must be provided as ancillary equipment, when requested, to allow AT&T access to the HFPL on unbundled loops.
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> The Panel notes that AT&T has stated it will adopt a UNE-P entry strategy in many areas. One advantage of a UNE-P strategy is that AT&T will not need to collocate in many central offices, since it can utilize shared transport to route calls to customers to and from many Ameritech wire centers. However, Ameritech's refusal to offer line splitting, or other

[9] 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.

> methods of accessing the HFPL, as UNEs means that AT&T must collocate in order to provide high-speed services that utilize the HFPL. The Panel, therefore, finds that AT&T will be impaired if line splitting is not available, and if the splitter is not available as a UNE.

Public Service Commission of Wisconsin Arbitration Award, Docket 05-MA-120, October 12, 2000, at 79-80. The Wisconsin Arbitration Panel also determined that, because it ordered Ameritech to provide line splitting in order to provide the functionalities inherent in unbundled loops, it must also provide the OSS systems that support such requests. *Id.* at 84.

In fact, not only is Ameritech Wisconsin required to provide line splitting to AT&T in Wisconsin consistent with the above conclusions, but Ameritech Wisconsin recently *voluntarily agreed to provide line splitting* generally consistent with the Arbitration Award in the AT&T/Ameritech Wisconsin arbitration. On November 30, 2000, Ameritech Wisconsin signed a Stipulation in Public Service Commission of Wisconsin Docket 6720-TI-160, *Investigation Into Ameritech Wisconsin Operational Support Systems*, agreeing to provide line splitting to numerous other CLECs as part of its Resolution of Specified OSS Enhancements and Process Improvement Issues. ("Stipulation.") Specifically, Ameritech Wisconsin agreed to "provide line splitters for both line splitting and line sharing, as determined in the interconnection agreement approved by the Commission in the pending AT&T/Ameritech arbitration, Docket 05-MA-120 (Arbitration Award at 73-83), subject to its rights to seek appropriate review of the Commission's final determination." Stipulation at 8.

Moreover, the Indiana Commission on November 20, 2000, also issued an order requiring Ameritech to provide line splitting. In concluding that the splitter is ancillary equipment necessary to access the high frequency capacity of the loop and that line splitting will further competition by allowing data CLECs to compete for the high frequency portion of the loop, Indiana Commission stated:

> [T]he Act provides for dual oversight of telecommunications providers through both federal and state regulatory agencies. Specifically, the Act endowed the FCC with specific authority and grants the state regulatory agencies additional authority to impose requirements on ILECs that are consistent with the requirements of the Act. Accordingly, in viewing the relevant FCC orders with respect to this issue, we do so with the knowledge that the order of this Commission is not limited by the action of the FCC, so long as our action is consistent with the Act of Congress, 47 U.S.C. ¶¶ 251(d) and 261. On this issue, we exercise our authority to order action consistent with the intent of the Act, and recognize the high frequency and low frequency aspects of a copper line as separate UNEs which Ameritech must provide without respect to whether it is providing high or low frequency service directly to the end user.
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> We find that line splitting encourages entrants into the local exchange market, furthers competition within the local market and is consistent with the provisions of the Act. Line splitting will allow data LECs to compete for the HFPL of all capable lines, rather than only those lines in which voice service is provided by Ameritech.
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> * * * * *
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> The Commission therefore finds that the HFPL is a loop functionality and that the high frequency capacity is a capability of the loop. We further find that a splitter is considered ancillary equipment that allows access to that functionality. A splitter shall be provided as ancillary equipment when requested to allow AT&T access to HFPLs.

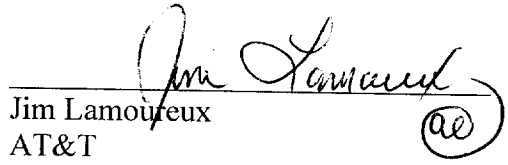
Indiana Utility Regulatory Commission Order, Cause No. 40571-INT-03 , November 20, 2000, at 67-68.

The decisions of these state commissions is consistent with the underlying obligations set forth in the Act and in T.C.A. § 65-4-124(a). In order to promote the development of UNE-P competition in Tennessee for both voice and data, the TRA also should order BellSouth to provide line splitting in general, and should specifically order BellSouth to offer BellSouth-provisioned splitters as a means of facilitating line splitting.

CONCLUSION

Five years after the passage of the Act, there remains limited competition for local telephone service. Although some impediments to competition have been removed since then, many more remain. Moreover, while the TRA has resolved various issues through arbitrations and proceedings such as this one, other issues continue to develop, and the issues have become more subtle and involve new technologies. The positions advanced by AT&T and the other CLECs in this proceeding represent reasonable efforts for creating sustainable competitive local telephone service in Tennessee. In order to further promote the development of local telephone competition, the TRA should adopt the approach advanced by the CLECs and should reject the proposals put forth by BellSouth.

Respectfully submitted,



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Dated: January 23, 2001

CERTIFICATE OF SERVICE
Line Sharing LINE (Docket No. 00-00544)

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