Sprint

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October 9, 2001

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

Re: *Docket No. 00-00691; Sprint Communications Company L.P. Arbitration Petition with BellSouth Telecommunications, Inc.*
Sprint's Brief

Dear Mr. Waddell:

Pursuant to the September 14, 2001 Order issued in this case, enclosed for filing are the original and thirteen copies of the Brief of Sprint Communications Company, L.P. A copy is being served on parties of record.

Please contact me if you have any questions.

Sincerely,

James B Wright

James B. Wright

Enclosures
cc: Guy Hicks (w/encl)
E. Earl Edenfield, Jr. (w/encl)
William R. Atkinson (w/encl)

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In re:

Petition of Sprint Communications Company L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)))))	Docket No.: 00-00691

BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

In accordance with the decision of the Pre-Arbitration Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") as reflected in his Order Granting Joint Motion to Cancel hearing and Accept Testimony on Certain Issues ("Order"), issued on September 14, 2001, in the above-styled docket, Sprint Communications Company L.P. ("Sprint") now submits its Brief of the evidence regarding Issue 4 (Unbundled Network Element combinations, or UNE combinations) and Issue 6 (Enhanced Extended Links, or EELs). Sprint respectfully requests that the TRA follow its recent precedents and require BellSouth Telecommunications, Inc, ("BellSouth") to provide to Sprint at total element long run incremental cost ("TELRIC") rates combinations of UNEs, including EELs, that BellSouth ordinarily and typically combines in its network.

I. BACKGROUND

Sprint filed its Petition for arbitration with the Authority on August 7, 2000. Since that time, Sprint and BellSouth have worked diligently to resolve the remaining

unresolved issues between the parties. Efforts to resolve issues eventually progressed to a point where on September 12, 2001, the parties filed a Revised Joint Issues Matrix as directed by the Authority's August , 2001 procedural Order, wherein the parties indicated that all but ten issues had either been resolved or had been, with the TRA's consent, deferred to other proceedings. The following day, on September 13, 2001, the parties held a telephonic conference during which they resolved for purposes of the Sprint/BellSouth Tennessee arbitration eight of the ten remaining issues. The parties further agreed to stipulate the prefiled testimony on the two unresolved issues, Issue 4 (UNE combinations) and Issue 6 (EELs), into the record without objection and waiving cross examination, and to submit Briefs of the evidence regarding these two issues. Accordingly, the parties' further negotiations obviated the need for the hearing in this matter scheduled to be held before the TRA on September 18, 2001. Sprint and BellSouth memorialized their various agreements in the Joint Motion of Sprint Communications Company L.P. and BellSouth Telecommunications, Inc. to Cancel Hearing and Accept Testimony on Certain Issues, filed with the Authority on September 14, 2001. On that same day, the TRA Pre-Arbitration Officer issued the aforementioned Order granting the Joint Motion in its entirety. In accordance with the Order, Sprint now submits its Brief of the evidence and requests that the TRA follow its recent precedents[1] and require BellSouth to provide to Sprint at cost-based rates those UNE combinations, including EELs, that BellSouth ordinarily and typically combines in its network.

[1] See Docket No. 99-00948, Interim Order dated June 25, 2001 as confirmed in Final Order dated September 7, 2001 (Intermedia and BellSouth Arbitration); and Docket No. 00-00079, Transcript of TRA Directors Conference held September 25, 2001, Issue 2 (AT&T and BellSouth Arbitration).

II. THE TRA SHOULD REQUIRE BELLSOUTH TO PROVIDE TO SPRINT AT TELRIC RATES COMBINATIONS OF UNES THAT ARE ORDINARILY AND TYPICALLY COMBINED IN BELLSOUTH'S NETWORK

Issue 4 concerns BellSouth's provision of UNE combinations under the Act, and the definition of "currently combines". BellSouth's position is that the phrase "currently combines" in FCC Rule 51.315(b) means 'already combined', on a customer-specific basis, with the result that BellSouth must be providing existing service to the end-user customer in question before Sprint may request a UNE combination to provide service to that particular end-user. See BellSouth witness Ruscilli Direct Testimony, at 8-10. One of the practical effects of BellSouth's proposal would be that BellSouth would not have to compete for new customers (i.e., customers without existing BellSouth service) against Sprint or another competitive local exchange carrier ("CLEC") that enters the market using a UNE combination strategy. See Sprint witness Closz Direct Testimony, at 8.

Consistent with the FCC's rule, however, BellSouth is required to provide to Sprint and other CLECs the UNEs that BellSouth ordinarily combines in its network. In other words, Sprint believes that the FCC's rule provides that if BellSouth normally combines the requested elements in the provision of a retail service to any customer, then BellSouth should be required to provision the requested UNE combination to Sprint, subject only to technical feasibility. Any other reading of the FCC's rule would impose wasteful costs on both Sprint and BellSouth, with the same end result (i.e., that Sprint ultimately obtains the UNE combinations it desires).

In August 1996, the FCC in its Local Competition Order addressed the provisioning of UNE combinations through several rules in Section 51.315. Rule 51. 315(b) states that "[e]xcept upon request, an incumbent LEC shall not separate requested

network elements that the incumbent LEC currently combines." Subsequently, upon appeal of the FCC Order, the Eighth Circuit Court of Appeals vacated FCC Rules 51.315(b-f) on the grounds that the rules were inconsistent with Section 251(c)(3) of the Act. On January 25, 1999, the United States Supreme Court issued an Order that reversed the Eighth Circuit's vacatur of 51.315(b). In its Order, the Supreme Court stated in part that, "[I]n the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice."

As observed by Sprint witness Closz in her prefiled testimony in this proceeding, UNE combinations can occur in several different forms. Some carriers may want to combine loop and transport, or enhanced extended loops ("EELs"), other carriers may wish to combine loop and port while providing their own transport, while other carriers may want to combine loop, port and transport. Closz Direct Testimony, at 6. An important factor that the Authority should consider in conjunction with the "currently combines" language of Rule 51, 315(b) should be the *comparability* between an ILEC retail product and the UNE combination requested by a particular carrier. Ms. Closz stated in her testimony that since ILECs utilize the loop, port and transport when provisioning basic local service to end user customers, an ILEC should be required to provide UNE combinations of loop, port and transport on a wholesale basis to requesting carriers, subject only to technical feasibility.

As discussed in Sprint's testimony, the TRA's adoption of BellSouth's "actually combined" definition would impose wasteful costs on both BellSouth and Sprint.

Sprint's witness Ms. Closz provided a brief illustration in her prefiled testimony of the practical impact of the Authority's adoption of BellSouth's definition. In Ms. Closz's example, the CLEC initially offers service to the end-user customer in question via resale and is assessed the associated non-recurring charges. This same CLEC, however, could place a UNE combination order the next day in order to convert the customer's resale service to a UNE combination. When it places the UNE combination order, the CLEC would incur additional non-recurring charges and BellSouth will incur wasteful costs in order to convert the service from resale to UNE combinations. Closz Direct Testimony, at 8-9. Sprint asserts that these additional costs are wasteful and serve absolutely no purpose other than to make it more difficult for Sprint to compete.

Sprint's position is consistent with the Authority's decisions in a number of proceedings, including its arbitration order issued June 25, 2001 in the Intermedia and BellSouth case wherein the Authority stated:

> "Given the plain language of Section 51.315(b), federal decisions related to the validity of Section 51.315(b), the FCC's interpretation of Section 51.315(b), the Authority's decision in the Permanent Prices Docket, and the Arbitrators' decision in ICG Telecom, the Arbitrators voted unanimously to define "currently combines" as any and all combinations that BellSouth currently provides to itself anywhere in its network."

Order at page 28.

The TRA recently confirmed again this decision in the AT&T - BellSouth arbitration by unanimous vote at the September 25 Director's Conference in Docket No. 00-00079.

Other state regulatory Commissions have ruled that BellSouth must provide UNE combinations at TELRIC rates that BellSouth ordinarily and typically combines in its network. Most recently, the Louisiana Public Service Commission ("LPSC") during its

September 19, 2001 Business and Executive Session adopted Staff's recommendation that "the Commission adopt the conclusion in the Order issued by the Georgia Public Service Commission in Docket No. 10692-U, dated February 1, 2000, that "currently combines" means ordinarily combined within the BellSouth network, in the manner in which they are typically combined" and that "BellSouth must provide combinations of typically combined elements, even if the particular elements being ordered are not actually connected at the time the order is placed."[2]

In its testimony, BellSouth attempts to make an issue of the FCC's decision in its UNE Remand Order to defer a ruling on the meaning of "currently combines" pending a ruling by the Eighth Circuit on issues related to UNEs remanded from the U.S. Supreme Court.[3] Ruscilli Direct Testimony, at 9; UNE Remand Order, at paragraph 479. Contrary to BellSouth's claims, the FCC's decision to defer ruling was not a rejection of Sprint's position regarding the appropriate meaning of the phrase "currently combines". Instead, the FCC recognized that imminent pending legal action could impact the FCC's decision in this regard. On July 18, 2000, the Eighth Circuit issued its decision on remand.[4] The Eighth Circuit did not address, however, the meaning of "currently combines" in rule 51.315(b). Accordingly, "currently combines" remains undefined on the federal level.[5]

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[2] LPSC Docket No. U-22252 (E), *In Re Consideration and Review of BellSouth Telecommunications, Inc.'s preapplication compliance with section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region,* staff's Final Recommendation (filed September , 2001), at 112.

[3] CC Docket No. 96-98, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (issued November 5, 1999) ("UNE Remand Order").

[4] Iowa Utilities Bd. v. FCC, 219 F.2d 744 (8th Cir. 2000).

[5] While it is true that the Supreme Court will ultimately address the issue of "previously uncombined" network elements on certiorari from the Eighth Circuit (see General Communications, Inc. v. Iowa Utilities Board, 121 S.Ct. 879, 148 L.Ed.2d 788 (cert. granted January 22, 2001)), the timeframes for

Sprint asks the TRA to reaffirm its previous rulings and decide in favor of increasing competition for local service in Tennessee by interpreting "currently combines" to mean 'ordinarily and typically combined' in BellSouth's network. Such a public policy decision will ensure that it will be unnecessary for Sprint to pass the uneconomic costs it would incur under BellSouth's proposal onto Sprint's end users, thereby reducing Sprint's ability to compete effectively with BellSouth. Sprint requests that the TRA order BellSouth to provide UNE combinations to Sprint that are ordinarily combined in BellSouth's network for the provision of a retail service to any customer, subject only to technical feasibility limitations. Sprint's proposed contract language is as follows:

> 1.4 Except upon request by Sprint, BellSouth shall not separate, disconnect, or disrupt the functionality of requested network elements that BellSouth currently combines. For purposes of this Agreement, the term "Currently combines" means that the elements are normally and customarily combined for BellSouth's retail operation, but do not have to be combined and functioning for the specific customer in question.

III. BELLSOUTH SHOULD BE REQUIRED TO UNIVERSALLY PROVIDE ACCESS TO EELS THAT BELLSOUTH ORDINARILY AND TYPICALLY COMBINES IN ITS NETWORK AT UNE RATES

Issue 6 concerns whether the Authority should require BellSouth to universally provide Sprint with access to enhanced extended loops, or "EELs", that BellSouth ordinarily and typically combines in its network. This issue is substantially related to the issue of UNE combinations and the definition of "currently combines" (Issue 4) discussed in detail above, since it addresses the circumstances under which a particular type of UNE

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a Supreme Court decision in the matter are somewhat unclear. Thus, Sprint urges this Commission to reaffirm its previous rulings in order to facilitate local competition in Tennessee.

combination known as an EEL must be provided by BellSouth to Sprint and other CLECs.

An EEL is the combining of loop and transport. EELs permit CLECs to order loops from multiple ILEC wire centers and combine loops with transport in order that CLECs may provide loops from multiple wire centers to a single collocation site. EELs thus potentially eliminate the need for multiple collocations with an ILEC. Closz Direct Testimony, at 9. The FCC addressed this issue in paragraph 480 of its UNE Remand Order, which states that ILECs such as BellSouth currently have the obligation, under specific circumstances, to provision EELs to Sprint and other CLECs. For the reasons discussed in connection with Issue 4, above, the most relevant legal authority on this issue is FCC Rule 51.315(b), which states that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." Therefore, Sprint believes that the TRA should reaffirm its previous rulings on this subject and order BellSouth to universally provide access at UNE rates to the form of UNE combinations known as EELs that BellSouth ordinarily and typically combines in its network. As the TRA is aware, the Authority in its previous Order in the ICG/BellSouth arbitration proceeding[6] stated the following:

> Finally, it is appropriate public policy to order BellSouth to provide EELs to ICG based on BellSouth's prevailing experience in the telecommunications market. If ICG is unable to receive EELs from BellSouth, it must either install its own switches, trunks, and loops or collocate in BellSouth owned and operated central offices. Either of these options demands ICG to expend a substantial amount of money in the form of fixed or sunk costs. As a result,

[6] TRA Docket No. 99-00377, *In Re Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 252(b) of the telecommunications Act of 1996*, Final Order of Arbitration (issued August 4, 2000) ("ICG Order").

> ICG will be forced to incur a significantly higher per-customer cost of providing services than BellSouth, which has a larger customer base over which to spread its fixed or sunk costs. This result will necessarily impair ICG's ability to expand its interconnection services throughout Tennessee. Moreover, telephone customers of Tennessee, both business and residential, will greatly benefit if ICG is allowed to obtain combinations of loop and transport in BellSouth's network. Evidence suggests that the availability of EELs to CLECs is the key factor in opening the residential market to competition. According to the FCC, "[s]ince these combinations of [UNEs] have become available in certain areas, [CLECs] have started offering service in the residential mass market in those areas." (citation omitted) . . . .Given the above, the Arbitrators have determined that it is reasonable to require BellSouth to offer ICG extended loop links consisting of combinations of unbundled local loops that are cross-connected to interoffice transport pursuant to applicable FCC orders and federal rulings. Furthermore, BellSouth should not charge a monopoly price to combine these elements, but should charge the sum of their prices at TELRIC rates.

ICG Order, at 6-7.

Other regulatory Commissions have required BellSouth to provide EELs at UNE rates, including the Kentucky Public Service Commission ("KPSC") in connection with the recently concluded Sprint/BellSouth arbitration.[7] In its Order in that proceeding, the KPSC stated that "[t]his Commission has recently ruled that BellSouth must combine network elements for Sprint or any CLEC if BellSouth ordinarily or typically combines such elements for itself" and that "[t]his same outcome is applicable to Sprint's request for EELs." KPSC Sprint arbitration Order, at 5.

While it is true that FCC rules permit BellSouth to provide EELs in a certain geographic area to obtain the FCC's exemption from providing access to unbundled local

[7] KPSC Docket No. 2000-480, *In the Matter of* Petition *of Sprint Communications Company L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Order (issued June 13, 2001) ("KPSC Sprint arbitration Order").

switching,[8] that determination does not remove BellSouth's general obligation under Rule 51.315(b) to provide UNE combinations to Sprint that are ordinarily and typically combined in BellSouth's network. Although it may suit BellSouth for the exception to swallow the general rule, Sprint respectfully submits that the general rule still stands.

Sprint requests that the TRA order BellSouth to universally provide access to EELs that it ordinarily and typically combines in its network at UNE rates. Sprint's proposed contract language is as follows:

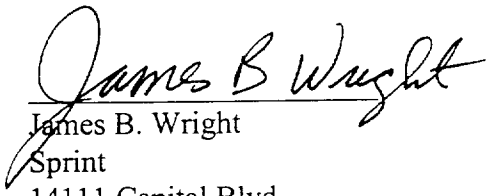
> 13.2.1 For purposes of this Agreement, the term "Currently Combines" means that the elements are normally and customarily combined for BellSouth's retail operation, but do not have to be combined and functioning for the specific customer in question.
>
> 13.2.3 BellSouth shall provide combinations of loops and transport to Sprint as described in Section 13.3 below and in accordance with the definition of Currently Combined in Section 13.2.1 of this Attachment.

IV. CONCLUSION

In recognition of the foregoing, Sprint respectfully requests that the TRA follow its recent precedents and require BellSouth to provide to Sprint at TELRIC rates combinations of UNEs, including EELs, that BellSouth ordinarily and typically combines in its network.

[8] FCC Rule 51.319(c)(2).

Respectfully submitted this 9th day of October, 2001.



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