

ORIGINAL

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

DIRECT TESTIMONY OF

JOSEPH P. GILLAN

ON BEHALF OF

**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
AND TCG SOUTH FLORIDA, INC.**

DOCKET NO. 000731-TP

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8
9 **Q. Please state your name and business address.**

10 A. My name is Joseph Gillan. My business address is P.O. Box 541038,
11 Orlando, Florida 32854. I am an economist with a consulting practice
12 specializing in telecommunications.

13
14 **Q. Please briefly outline your educational background and related**
15 **experience.**

16 A. I am a graduate of the University of Wyoming where I received B.A. and
17 M.A. degrees in economics. From 1980 to 1985, I was on the staff of the
18 Illinois Commerce Commission where I had responsibility for the policy
19 analysis of issues created by the emergence of competition in regulated
20 markets, in particular the telecommunications industry. While at the
21 Commission, I served on the staff subcommittee for the NARUC
22 Communications Committee and was appointed to the Research Advisory

1 Council overseeing NARUC's research arm, the National Regulatory
2 Research Institute.

3
4 In 1985, I left the Commission to join U.S. Switch, a venture firm organized to
5 develop interexchange access networks in partnership with independent local
6 telephone companies. At the end of 1986, I resigned my position of Vice
7 President-Marketing/Strategic Planning to begin a consulting practice. Over
8 the past decade, I have provided testimony before more than 25 state
9 commissions, four state legislatures, the Commerce Committee of the United
10 States Senate, and the Federal/State Joint Board on Separations Reform. I
11 currently serve on the Advisory Council to New Mexico State University's
12 Center for Regulation.

13

14 **Q. On whose behalf are you testifying?**

15 A. I am testifying on behalf of AT&T Communications of the Southern States,
16 Inc. and TCG South Florida, collectively referred to as AT&T in my
17 testimony. Although sponsored by AT&T in this arbitration, I have
18 approached my testimony from the perspective of competition more
19 broadly. Interconnection agreements arbitrated between AT&T and
20 incumbent local exchange carriers frequently provide basis for other
21 entrants to the local market and the Commission should properly view such
22 arbitrations as laying the foundation for local competition more generally.

23

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to address two interrelated issues:

3 Issue 4: What does “currently combines” mean as that
4 phrase is used in 57 C.F.R. §51.315(b)?

5 Issue 5: Should BellSouth be permitted to charge AT&T a
6 “glue charge” when BellSouth combines network
7 elements?

8 Together, these issues will decide whether BellSouth will be obligated to
9 provide network elements in a non-discriminatory manner, under terms,
10 conditions and prices that will promote local competition. While access to
11 individual network elements is important to several business strategies –
12 most notably those that involve the provision of higher-speed digital
13 services to larger business locations – access to logical combinations of
14 network elements is what is needed for broad local competition to develop
15 for residential consumers and small businesses. BellSouth routinely
16 combines network elements for itself and has configured its network and
17 central offices to efficiently cross-connect facilities into standard
18 arrangements. Performing routine cross-connections for competitors is an
19 important dimension of its obligation to provide network elements in a
20 nondiscriminatory manner.

21
22 **Q. What exactly is the federal rule relating to network element**
23 **combinations and how does this rule apply to the issue at hand?**

1 A. The specific federal rule is 57 C.F.R. §51.315(b) that states:

2 Except upon request, an incumbent LEC shall not separate
3 requested network elements that the ILEC currently
4 combines.

5 The above rule was part of a “suite” of combination rules -- §51.315 (a)
6 through (f) -- that the FCC had initially adopted to implement the
7 Telecommunications Act of 1996. Two of these rules – subpart (b) and (c) -
8 - are important here because collectively they defined the ILECs complete
9 obligation relating to network element combinations. Viewed together
10 these rules stated:

11 §51.315(b) -- Except upon request, an incumbent LEC shall
12 not separate requested network elements that the ILEC
13 currently combines.

14 § 51.315(c) --Upon request, an incumbent LEC shall perform the
15 functions necessary to combine unbundled network elements in
16 any manner, even if those elements are not ordinarily combined in
17 the incumbent LEC’s network, provided such combination is:

- 18 (1) technically feasible; and
19 (2) would not impair the ability of other carriers to
20 obtain access to unbundled network elements or to
21 interconnect with the incumbent LEC’s network.

22 Unfortunately, through an appellate process that I will not try to summarize
23 here, the first rule -- § 51.315(b) -- has been reinstated by the Supreme
24 Court, while the later -- § 51.315(c) -- remains vacated by the Eighth

1 Circuit. Consequently, Issue 4 of this arbitration is needed to clarify
2 BellSouth's obligation with respect to network elements that it "currently
3 combines," but which may not yet be physically connected for a specific
4 customer location.

5
6 **Q. Why is this issue so important?**

7 A. Widespread competition for average consumers requires that competitors be
8 able to access and use network elements in a simple and cost-effective
9 manner. This means, as a practical matter, that entrants must have access to
10 logical combinations of network elements to provide service. Although it is
11 possible to "piece together" serving arrangements using individual UNEs,
12 the past 5 years of experience demonstrates that these "hand crafted"
13 arrangements are primarily useful to serve larger business customers
14 desiring more specialized services.

15
16 **Q. Do you have any data that demonstrates the importance of network
17 element combinations to local competition?**

18 A. Yes. Actual market experience validates the fundamental lesson that
19 network element combinations are necessary for widespread competition.
20 Where network element combinations have been made available – most
21 particularly, the network element combination known as UNE-Platform (a
22 loop and port combination) ("UNE-P") – competition has developed far
23 more rapidly than it in its absence. Exhibit JPG-1 summarizes the impact of

1 UNE-P on competition in New York and Texas, clearly demonstrating the
2 importance of UNE-P to widespread competition. The rapid growth of
3 UNE-P documented by the Exhibit is even more dramatic when one
4 considers that its introduction was hampered by a number of operational
5 problems in both states. Further, unbundled loops had been available in
6 New York prior to the passage of the federal Act. Consequently, Table 1 in
7 Exhibit JPG-1 (comparing competitive activity using UNE-P to that using
8 unbundled loops by themselves) actually compares the progress made by
9 UNE-P in the *first* year to the cumulative penetration of unbundled loops
10 after approximately *five* years.

11

12 **Q. Do the ILECs themselves understand the importance of UNE-P to local**
13 **competition?**

14 A. Yes, the importance of network element combinations to local competition
15 is well understood as well by the incumbent local telephone industry. No
16 less ILEC-oriented publication than the United States Telephone
17 Association's own magazine observed that individual network elements are
18 difficult to use at volume:

19 Because of their fragmentary nature, UNEs will be
20 operationally difficult to order and to provision on both
21 sides. Product packages that comprise appropriate and

1 pre-set UNE combinations could reduce some of the
2 difficulties.¹
3 Furthermore, whenever an ILEC confronts the same economic problem as
4 an ALEC – i.e., how to offer competitive local exchange service on a broad
5 scale – the answer is no different than what I have discussed here: UNE-P.
6 For instance, SBC revealed during the review of its merger with Ameritech
7 that its out-of-region entry strategy was premised on the use of network
8 element combinations to serve the residential and small business market.
9 (See Deposition and Testimony of James Kahan on behalf of SBC, Public
10 Utilities Commission of Ohio, Case No. 98-1082-TP-AMT). Further, in
11 Pennsylvania, Bell Atlantic was ordered to file a plan to separate its
12 operation into wholesale and retail affiliates. As part of that filing, Bell
13 Atlantic (now Verizon) proposed to use UNE-P as its principal entry
14 strategy. (See Re Structural Separation of Verizon Pennsylvania Inc. Retail
15 and Wholesale Operations, Pennsylvania Public Utility Commission,
16 Docket No. M-00001353). When incumbents confront the same conditions
17 as entrants, they reach the same conclusion: Network element combinations
18 are the only practical means of offering mass-market services.

- 19
- 20 **Q. What must be done to effect broad local competition in Florida?**
- 21 A. For UNE-P (and other combinations) to be practically useful, they must be
22 combined to offer service. For instance, to serve a residential customer or

¹ *Wholesale Marketing Strategy*, Salvador Arias, Teletimes, United States Telephone Association, Volume 12, No. 3, 1998.

1 small business customer desiring a second line, or to serve a new premise,
2 elements that BellSouth combines every day in its network must be
3 combined. The most efficient solution is for BellSouth to combine these
4 elements -- using the systems and processes that it has already established
5 to efficiently and routinely combine these same facilities -- and then provide
6 the entrant with the requested combination. Elements combined in this
7 fashion would be then also be available for migration to other competitors,
8 thereby enabling the customer to easily change carriers in the future as well.

9

10 **Q. How can the Commission order BellSouth to combine elements for**
11 **entrants that it ordinarily combines for itself?**

12 A. There are two ways for the Commission to make sure that BellSouth
13 combines elements for entrants that it ordinarily combines for itself. The
14 first is to simply determine that rule §51.315(b) – which requires that
15 BellSouth offer network elements that it currently combines – includes
16 combining elements that it ordinarily combines, even if the particular
17 elements have not yet been connected for a specific customer. This is the
18 path chosen by the Georgia Public Service Commission that ruled:

19 that ‘currently combines’ means ordinarily combined within
20 the BellSouth network, in the manner in which they are
21 typically combined. Thus, CLECs can order combinations
22 of typically combined elements, even if the particular

1 elements being ordered are not actually physically connected
2 at the time the order is placed.²

3 Alternatively, the Commission can order that BellSouth combine these
4 elements under its own authority, as the Michigan Commission has done:

5 The Commission also rejects the argument that Iowa Utilities
6 preempts state law, even if Ameritech Michigan's
7 interpretation of the court decision were valid. The decision
8 reflected the court's conclusion of law that the FCC
9 overstepped its statutory authority in requiring incumbents to
10 combine multiple network elements. As argued by AT&T
11 and MCI, this holding does not inhibit a state commission
12 from mandating various elements or combinations of
13 elements under state law. The federal Tele-communications
14 Act of 1996 explicitly preserves states' authority to impose
15 requirements that accelerate competition in the local
16 exchange market beyond what federal law would otherwise
17 mandate.³

18

19 **Q. Should BellSouth be permitted to charge AT&T a "glue charge"**
20 **when BellSouth combines network elements (Issue 5)?**

² *Order*, Georgia Public Service Commission, Docket No. 10692-U, February 1, 2000, at 11.

³ January 28, 1998 Order, Case No. U-12280, pp. 21-22. (Footnote deleted.) cited again by the Commission in its Order in Cases Nos. U-11104 and U-12143, February 9, 2000.

1 A. No. BellSouth should only charge a cost-based rate for combining network
2 elements. To do otherwise would be discriminatory and would simply
3 inflate the retail prices paid by consumers. Moreover, once elements are
4 combined, even under BellSouth's narrow reading of § 315(b), it would be
5 unlawful to separate the elements and they would have to be made available
6 to other competitors without disruption. If BellSouth were permitted to
7 inflate its charges for combining elements, then it would distort competition
8 because it would be less costly for a second ALEC to serve the customer
9 than the ALEC that won the customer's business in the first instance. Of
10 course, the greater distortion – and the likely motivation behind BellSouth's
11 position – would be that it would always be less costly for the customer to
12 use BellSouth than a competitive entrant.

13

14 **Q. Does this conclude your direct testimony?**

15 A. Yes.

Effect of UNE Combinations on Competition

Table 1: New York

Entry Strategy	01/01/99	6/30/99	12/31/99 ¹
Individual Loops ²	49,442	62,817	80,000
UNE-Platform	0	75,000	400,000

Table 2: Texas

Measure	Monthly Activity
Individual Loops	2,124 ³
UNE-P	22,925 ⁴
Incumbent Growth	13,000 ⁵

¹ Conservatively estimated based on public announcements of UNE volumes by major entrants.

² Developed from Bell Atlantic-New York's Responses to the FCC's Local Competition Surveys.

³ Letter from Gary Phillips to Magalie Roman Sales, Secretary, Federal Communications Commission, CC Docket No. 96-98, June 13, 2000, Attachment C (average volumes for December 1999 through May 2000). The highest volume month (May 2000) was 2,629 lines.

⁴ Supplemental Joint Affidavit of Candy R. Conway and William R. Dysart, CC Docket No. 00-4, page 16. UNE-P volumes are averaged for December 1999 and January 2000 (the two months of current data provided in the Affidavit).

⁵ Source: SBC's Response to the FCC's Local Competition Survey. Average monthly growth in lines between December 31, 1998 and June 30, 1999 (the most recent months available).