ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:

INVESTIGATION INTO PRICING OF UNBUNDLED NETWORK ELEMENTS.	**§ §**	**DOCKET NO. 990649-TP**

REBUTTAL TESTIMONY OF JULIA O. STROW

ON BEHALF OF

INTERMEDIA COMMUNICATIONS INC.

September 10, 1999

Q: Please state your name, employer, position and business address.

A: My name is Julia Strow. I am employed by Intermedia Communications Inc. ("Intermedia") as Assistant Vice President, Regulatory Policy. My business address is 3625 Queen Palm Drive, Tampa, Florida 33619.

Q: What are your responsibilities in that position?

A: I am a primary interface between Intermedia and the incumbent local exchange carriers ("ILECs"). In that capacity, I am involved in interconnection negotiations with – and arbitrations against ILECs, and in rulemaking proceedings addressing unbundled network elements, interconnection, collocation, resale, and related matters. I am also responsible for strategic planning and the setting of Intermedia's state and federal regulatory policy. In addition, I testify on behalf of Intermedia in federal and state proceedings dealing with local competition issues.

Q: Have you previously filed testimony in this docket?

A: Yes. I filed direct testimony on August 11, 1999.

Q: What is the purpose of your testimony?

A: The purpose of my testimony is to rebut several items in the direct testimony of BellSouth Telecommunications, Inc. ("BellSouth") witnesses Varner and Hendrix and GTE Florida Incorporated ("GTEFL") witness Trimble.

Q: Does the Commission need to debate what the FCC might or might not do in its Rule 51.319 Proceeding?

A: No. Under Section 251(c) of the Federal Communications Act ("the Act"), the Florida Public Service Commission ("Commission") has authority to establish new unbundled network elements and combinations of networks elements. While it is true that the Federal Communications Commission ("FCC") will use its pending proceeding to establish a *minimum* list of nationally-available UNEs, this Commission is fully empowered to establish UNEs and UNE combinations in addition to those established by the FCC.

Further, it is true that the FCC has not reached a decision in the proceeding on remand of its Rule 51.319 Proceeding, however, the FCC is expected to adopt its final order on September 15, 1999. We believe that the FCC's order will vindicate our interpretation of UNEs and UNE combinations and will decisively reject the incumbent local exchange carrier's ("ILEC's") interpretations. By no means is this Commission powerless to act until the FCC has reached a final decision. BellSouth and GTEFL would have the Commission believe that it can not make a decision on unbundled network elements ("UNE") and UNE combination pricing, as well as deaveraging until the FCC reaches a decision. GTEFL and BellSouth seem to believe that the FCC is going to limit the availability of certain UNEs and UNE combinations.

I fundamentally disagree with these assumptions. The FCC has given no indication that it will pursue the course of action assumed by BellSouth and GTEFL. To date, it has

done exactly the opposite. The reason the Supreme Court remanded rule 51.319 was that the FCC had purposely not placed restrictions on UNEs and UNE combinations in any fashion, and had failed to consider that there might be some narrow circumstances where restrictions might be warranted. Although it seems likely that the FCC will consider restrictions in some circumstances, it is most likely that the FCC will offer a list of *minimum* UNEs and UNE combinations, and will not seek to avoid limiting a state's ability to require additional UNEs and UNE combinations.' This policy will be consistent with the FCC's approach to date. The FCC would have to turn on its face 180 degrees and completely reverse its previous policies to pursue the course of action assumed by Mr. Varner. Therefore, I believe that this Commission should pursue its UNE and UNE combination policies without the encumbrance of possible future FCC decisions, as it is likely that the FCC will seek to avoid interfering with state decisions on these matters.

Q: Has Intermedia joined several parties in a Motion to Strike portions of the ILECs' testimony regarding the Rule 51.319 Proceeding?

A: Yes.

Q: Do you believe that it is necessary to present testimony in this docket regarding the Rule 51.319 Proceeding?

A: No. However, in order to protect Intermedia's position on this issue should the motion not be granted, I will briefly respond to some of BellSouth witness Varner's direct testimony regarding the Rule 51.319 Proceeding.

Q: BellSouth witness Varner states, p. 16 lines 13-14, "an essential component of the necessary and impair test is market data concerning the availability of UNEs in various areas of the state." Do you agree?

A: No. Market data as proposed by Mr. Varner is only necessary if you agree with BellSouth's interpretation of the "necessary" and "impair" standards, which I do not. I agree with the proposal set forth by ALTS in its comments to the FCC in the 319 proceeding. As ALTS and others indicated in initial comments, section 251(d)(2) contemplates two types of UNEs – proprietary and non-proprietary. For proprietary UNEs, the Commission must determine whether alternative local exchange company ("ALEC") access to the UNE is "necessary" in that there are no real competitive alternatives, and for nonproprietary UNEs, the Commission must determine whether failure to obtain access would "impair" the ability of a ALEC to provide telecommunications services. Thus, the difference between "necessary" and "impair" appears fundamentally to be one of degree, with "necessary" presenting a slightly higher hurdle for unbundling "proprietary" elements.

This distinction recognizes that in some very narrow instances, an ILEC may not have to offer a "proprietary" telecommunications application as a UNE if an ALEC could reproduce the ILEC application relatively easily. However, if failure to gain access to a "proprietary" UNE would result in a material loss of functionality to ALECs (*e.g.*, access to information needed to electronically bond OSS systems), then it would be "necessary" for the ALECs to have access to the item as a UNE. For non-proprietary network

elements, the "impair" standard is invoked. Under the "impair" standard, ALTS and others agreed that non-proprietary network elements must be made available to ALECs unless a ubiquitous, interchangeable substitute for the ILEC UNE is readily available at a reasonable price.

Q: Mr. Varner further states, p. 16 lines 23-24, that ALECs should also provide "cost data concerning the ability of ALECs to utilize UNEs and to utilize alternatives to UNEs." How do you respond?

A: Again, you must agree with BellSouth's and other ILECs' interpretation of the necessary and impair standards to consider this proposal, even then, I fail to see the relevance of including ALEC cost data. The objective of this proceeding is not to assess ALEC cost data, but rather ILEC pricing policies and rates for UNEs and UNE combinations. And as explained in my answer to the previous question, I completely disagree with BellSouth's position on this issue.

Q. BellSouth witness Varner seeks to limit UNE combinations to solely those that are "currently combined." Do you agree with this position?

A: No. The Commission should allow any reasonable UNE combination, whether they are currently combined or not. BellSouth's position underscores how ILECs view ALECs – not as large customers in a competitive market, but solely as competitors. When ILECs view ALECs as solely competitors, there is resistance to virtually any new arrangement that might be more convenient or cost-effective for the ALEC. However, if ALECs were simply large customers of ILECs, and not also competitors, this docket would not be

necessary. ILECs would be more than happy to combine UNEs for their largest customers in any reasonable manner, and charge a reasonable fee based on incremental costs, as ILECs do for large customers today throughout their territories, for the preponderance of their services.

Eliminating this distinction – this discrimination – is crucial to the development of local competition. I believe that state commissions and the FCC are the only bodies that can create an atmosphere where ILECs treat ALECs as their largest and best customers – which, by the way, they are – and not solely as competitors to be thwarted.

Q: Does the Commission have the authority to require ILECs to provide UNE combinations such as enhanced extended link (EEL) by defining new combined UNEs?

A: Yes. The Commission has authority under 251(c) of the Communications Act to define UNEs to include the combination of already existing separate UNEs. In fact, the Commission already does this. For example, the Commission has defined NIDs, feeder and distribution plant as separate UNEs, yet these can all be obtained in a combined form simply by ordering a loop. This Commission is similarly impowered to define other combinations as new UNEs. In fact, the Supreme Court, in reversing the 8th Circuit decision, expressly found that § 251(c)(3) of the Act "does not say, or even remotely imply, that elements must be provided only in this fashion [*i.e.*, discrete pieces] and never in combined form." 119 S. Ct. at 737.

The Eighth Circuit, in upholding shared transport as a UNE, held that the Act "expressly includes both individual network facilities and the functions which those facilities provide, either individually or in consort." *SBC v. FCC*, 153 F.3d 597 (8th Cir. 1997), *remanded sub nom., Ameritech Corp. v. FCC*, 119 S. Ct. 2016 (1999).

Q: Does the Commission have the authority to require ILECs to provide UNE combinations under the FCC's rules?

A: Yes. Section 315(b) of the FCC's rules states that ILECs are prohibited from breaking apart any network functions that they currently provide in a combined form. For example, a special access circuit that currently is, or that may be, provisioned between an end user and a competitive carrier is comprised of network functions in a combined form. Therefore, FCC rule 315(b) requires that ILECs offer these combined functions as an EEL. Further, this FCC rule was recently upheld by the Supreme Court.

Q: BellSouth Witness Hendrix proposes only two geographic zones based on current retail rate groups. Is this approach rationale?

A: No. As I stated in my direct testimony, BellSouth currently provides a number of its interstate special access services deaveraged into three separate zones, which are based on population density. These zones correspond to urban, suburban and rural areas. This deaveraged rate structure is effectively an admission by BellSouth that its costs – for at least some retail rate elements – do vary by geographic location, and should create a presumption on the part of the Commission that BellSouth's UNE costs are similarly

affected by geography. These special access zones are in no way based on rate group designations for residential and business local service.

Q: Has the FCC recently reached a decision regarding density zones and pricing flexibility?

A: Yes. As noted in my direct testimony, the FCC announced that it has adopted these new rules that will allow ILECs to deaverage rates for trunking services into as many zones as they want. In its August 27, 1999 Order in Docket 99-206, the FCC granted price cap ILECs immediate pricing flexibility. Price cap ILECs are now allowed to deaverage rates for the trunking baskets, eliminating the limitation's inherent in the FCC's current density zone pricing plan. These ILECs can define the scope and number of zones within a study area, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of the ILEC's trunking basket revenues in the study area and that price increases within a zone do not exceed 15 percent. Price cap ILECs no longer have to file zone pricing plans prior to filing tariffs.

If ILECs adopt more zones for any of their tariffed retail or wholesale services as would be permitted under the FCC's new rules– either intrastate or interstate – the Commission should require that UNE rates be further deaveraged into a similar number of zones.

Q: If BellSouth's two geographic zones are not adequate, what level of deaveraging should the Commission establish for local loops?

A: The level of deaveraging for loops depends on the results of the cost studies that will be filed in Phase 2 of this proceeding. GTEFL has proposed that the Commission should examine deaveraging down to the wire center level or possibly even lower. Sprint also suggests producing cost studies at the wire center level and then grouping the wire center in zones based on the results of the cost studies. Ultimately, the Commission must wait for the results of the cost studies as well as weigh the administrative costs of supporting a certain level of deaveraging before making a decision. This is because the more deaveraged zones, the higher the administrative costs.

Q: BellSouth witness Varner, p. 25 lines 22-23, states that a consequence of setting prices that don't cover total costs is, "such pricing invites inefficient entry of ALECs by placing all of the risks of building and maintaining a network on the ILEC." Is this the case?

A: Absolutely not. Section 252 (d)(1) of the Communictions Act, as interpreted by the FCC's rules, requires that UNEs be priced on an incremental cost bases. This by definition means that UNEs and UNEs combinations may not be priced to cover total costs. Therefore, Mr. Varner's proposal is in direct violation of the Act and FCC's rules.

Mr. Varner's position is a typical "red herring" submitted by ILECs to try to scare regulators into restricting access and/or prices to ILEC facilities. Although there may be, and should be, a niche market for pure resellers, it will at best only be that: a niche. True

competitors, ones that intend to pursue direct, large scale competition with incumbents, realize that such competition can only exist if they provide services largely over their own facilities.

MCI and Sprint realized this decades ago when they decided to compete with AT&T for long distance service. Although it would have been far easier, and probably more efficient, to provide service via resale of AT&T's existing network, MCI and Sprint chose to deploy their own facilities *nationwide* while accruing massive amounts of debt to construct them.

ALECs, including Sprint, MCI/WorldCom, Intermedia, and even AT&T now, are mirroring that philosophy in the local market. Intermedia is deploying its own facilities as fast as its resources will allow it to construct them, also amassing significant debt in the process. Although our construction plans will continue at full speed through the foreseeable future, there are limits to Intermedia's ability to finance and construct new facilities. These limits are why the availability of UNEs and UNE combinations is so crucial. While our long-term business plan is to serve all of our customers through our own network (a business plan shared by the other ALECs just mentioned, as well), it will be some time, perhaps decades, before that is accomplished. If ILEC facilities and combinations are not readily available at reasonable prices, I fear that none of the ALECs will be around long enough to see their long-term plans bear fruit.

Q: In BellSouth witness Varner's testimony regarding the FCC's Rule 51.319 Remand Proceeding, he states that the state-wide availability of UNEs and UNE combinations at cost-based rates encourage ALECs to buy UNEs from ILECs instead of investing and installing its own facilities. Do you agree?

A: Not at all. BellSouth continually states that if it were forced to offer UNEs in all areas it would discourage ALEC investment in facilities, while also arguing that ALECs have invested so much in their own facilities that certain UNEs or UNE combinations should not be available. Intermedia submits that BellSouth proves too much, and indeed, that the FCC's uniform national unbundling rules have spurred and not dampened investment in facilities. One of the driving forces of the FCC's initial decision to establish uniform national unbundling rules was a desire to "provide financial markets with greater certainty in assessing new entrants' business plans, thus enhancing the ability of new entrants, including small entities, to raise capital." (*Local Competition First Report and Order* at ¶ 242.) This strategy has worked – ALECs have raised capital, and as noted by the BellSouth, ALECs have used this capital to deploy their own facilities when it makes economic sense to do so. For example, the availability of the unbundled switching UNE has by no means discouraged ALECs, such as Intermedia, from deploying their own switching facilities. As BellSouth witness Varner notes on page 11 of his testimony, ALECs have already deployed at least 41 switches in Florida and 140 switches in the entire BellSouth region.

Interestingly, BellSouth seems to assume that ALECs would prefer to use ILECs' facilities than to self-provision or purchase wholesale facilities from non-ILEC suppliers.

As the record indicates, and as I have previously testified, the exact opposite is true. ALECs do want to operate and control their own networks. Unfortunately, wholesale alternatives to the ILECs' embedded loop and transport networks simply do not exist in any meaningful way. Thus ALECs must rely on access to the ILECs' networks, if ALECs are to have any meaningful opportunity to develop widespread product offerings and compete in the local market.

Q: Do you agree with most of the parties in the proceeding that the Commission should only address the deaveraging of the local loop at this time?

A: Yes. Most parties agree that the Commission should only address deaveraging of the local loop UNE. However, as I stated in my direct testimony, this docket should only require deaveraging for loops and transport at this time. These UNEs should include all forms of loops and transport, including sub-loop elements and UNE combinations. Sprint is the only other party that believes that transport should be deaveraged at this time, but this is not based on cost studies. However, until cost studies are filed and reviewed it is impossible to determine if significant cost differences exist. These UNEs should also include in-building wiring, to the extent that the FCC or this Commission later defines these facilities as separate UNEs. These are the unbundled elements that should have the most cost differences based on geographic deaveraging. Deaveraging of further unbundled elements can be accomplished in later phases of this proceeding.

Q: On page 10, lines 19-20, BellSouth witness Emmerson states, "there are other costs that a firm must also recover including shared and common costs, as well as any shortfall in recovering its full historical costs." Do you agree with this statement?

A: Not at all. This position only further enforces the notion that BellSouth only looks at ALECs as a competitor-competitor relationship, and not as a customer-provider relationship. If BellSouth were arguing the provision of exactly the same facilities as a service to its customers, particularly one that might be subject to even minimal competition, it would argue vehemently that only long-run incremental costs - - or even short-run incremental costs -- should be used to set a price floor for the service. BellSouth has used this argument countless times in each state when introducing new services over the past ten years. Yet, if it provisions essentially the same facilities to a competing CLEC, then all of a sudden a reasonable allocation of the kitchen sink must be included in any prices charged to the CLEC.

Again, the principle that should guide the Commission in determining whether this is a reasonable approach is whether it would reasonably occur in a customer-provider relationship. It is obvious that BellSouth would *never* espouse this position if providing a service to a large customer in even a minimally competitive market, and therefore such a position should be flatly rejected here.

Additionally, the Communications Act contains specific pricing provisions. Section 252(d)(1) establishes the pricing standards for unbundled network elements. In particular, Section 252(d)(1) states that the just and reasonable rate for network elements

must be "based on the cost (determined without reference to rate-of-return or other rate-based proceeding) of providing the interconnection or network element," "nondiscriminatory," and "may include a reasonable profit." The FCC, in adopting rules implementing Section 252(d)(1), found that this section requires incremental costing. As a result, inclusion of historical or embedded costs would be in direct violation of the Act and the FCC rules. To the best of my knowledge, every state and federal regulatory body that has addressed this issue has interpreted the Communications Act ("the Act") to require some type of long-run incremental costing as it relates to ILEC prices for UNEs—which does not include historic or embedded costs.

Q: BellSouth witness Varner, p. 21, lines 21-22, states, "prices for preexisting combinations of UNEs be set at full market value. Do you agree?

A: No. Neither the Act nor the FCC's pricing rules distinguish between discrete network elements and elements in combination. Therefore, UNE combinations are subject to the same pricing standards as individual UNEs. Mr. Varner market pricing proposal therefore directly violates section 252(d)(1) of the Act and the FCC's rules.

Q: Must the Commission defer action on the deaveraging of UNEs and UNE combinations, as argued by BellSouth and GTEFL, until it addresses universal service and/or retail rate rebalancing in Florida?

A: No. Deaveraging, universal service, and rate rebalancing do not have to be addressed at the same time because they are not necessarily related. The ILECs argue that requiring deaveraged UNEs and UNE combination pricing will erode the implicit subsidies in the

ILEC rates. This argument, however, assumes that there is currently vibrant competition in the local market. This is simply not the case. Allowing the ILECs to rebalance rates or creating an intrastate universal service fund before deaveraging UNEs and UNE combinations will only thwart competition. The ILECs have this backwards. In order to stimulate competition in the local market, UNEs and UNE combinations *must* be deaveraged. Once competition develops to a significant level, then an intrastate universal service fund or rate rebalancing might be necessary. In fact, in its most recent report to the Legislature, the Commission recommended that no universal service fund was necessary because of the *lack* of competition.

Q: Does this conclude your testimony?

A: Yes.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail and/or facsimile this 10th day of September, 1999 to the following:

Richard D. Melson
Hopping Green Sams & Smith, P.A.
Post Office Box 6526
Tallahassee, FL 32314
Phone: (850) 222-7500
Fax: (850) 224-8551

AT&T Comm. Of the Southern States, Inc.
Ms. Rhonda P. Merritt
101 North Monroe St., Suite 700
Tallahassee, FL 32301-1549
Phone: (850) 425-6342
Fax: (850) 425-6361

BellSouth Telecommunications, Inc.
Nancy B. White
C/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301-1556
Phone: (850) 224-7798
Fax: (850) 222-8640

Brian Sulmonetti
MCI WorldCom, Inc.
Concourse Corporate Center Six
Six Concourse Parkway, Suite 3200
Atlanta, GA 30328
Phone: (770) 284-5498
Fax: (770) 284-5488

Florida Public Telecom Assoc.
Angela Green, General Counsel
125 South Gadsden Street
#200
Tallahassee, FL 32301-1525
Phone: (850) 222-5050
Fax: (850) 222-1355

Kimberly Caswell
GTE Service Corporation
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110
Phone: (813) 483-2606
Fax: (813) 204-8870

Norman H. Horton, Jr.
Messer, Caparello & Self
P.O. Box 1876
Tallahassee, FL 32301-1876
Phone: (850) 222-0720
Fax: (850) 224-4359

ACI Corp.
7337 S. Revere Parkway
Englewood, CO 80112
Phone: (303) 476-4200
Fax: (303): 476-4201

James C. Falvey, Esq.
e.spire Communications, Inc.
133 National Business Parkway
Suite 200
Annapolis Junction, Maryland 20701
Phone: (301) 361-4298
Fax: (301) 361-4277

David Dimlich, Legal Counsel
Supra Telecommunications &
Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, FL 33133
Phone: (305) 476-4236
Fax: (305) 443-6638

Blumenfeld & Cohen
Jerry Blumenfeld
Elise Kiley
1615 M Street, N.W., Suite 700
Washington, D.C. 20036

Donna Canzano McNulty, Esq.
MCI WorldCom
325 John Knox Road
Suite 105
Tallahassee, FL 32303
Phone: (850) 422-1254
Fax: (850) 422-2586

Michael A. Gross
VP Reg. Affairs & Reg. Counsel
Florida Cable Telecomm. Assoc.
310 North Monroe Street
Tallahassee, FL 32301
Phone: (850) 681-1990
Fax: (850) 681-9676

Peter M. Dunbar, Esq.
Marc W. Dunbar, Esq.
Pennington, Moore, Wilkinson &
Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302
Phone: (850) 222-3533
Fax: (850) 222-2126
Attys for Time Warner AxS of Florida, LP

Covad Communications Company
Christopher V. Goodpaster
C/o Covad Communications Company
2330 Central Expressway
Santa Clara, CA 95050
Phone: (408) 844-7500
Fax: (408) 844-7501

Florida Competitive Carriers Assoc.
P.O. Box 1096
Tallahassee, FL 32302

Florida Digital Network, Inc.
390 North Orange Ave., Suite 2000
Orlando, FL 32801
Phone: (407) 835-8240
Fax: (407) 835-0309

Holland Law Firm
Bruce May
P.O. Drawer 810
Tallahassee, FL 32302
Phone: (850) 224-7000
Fax: (850) 222-8185

Laura L. Gallagher, PA
204 Monroe St., Suite 201
Tallahassee, FL 32301
Phone: (850) 422-1254
Fax: (850) 577-0385

McWhiter Law Firm
Joseph McGlothlin/Vicki Kaufman
117 S. Gadsden St.
Tallahassee, FL 32301
Phone: (850) 222-2525
Fax: (850) 222-5606

MediaOne Florida Telecomm., Inc.
c/o Laura Gallagher
Laura Gallagher, PA
204 S. Monroe St., Suite 201
Tallahassee, FL 32301
Phone: (850) 224-2211
Fax: (850) 557-0385

NorthPoint communications, Inc.
Glenn Harris, Esq.
222 Sutter St., 7th Floor
San Francisco, CA 94108
Phone: (415) 365-6095
Fax: (415) 403-4003

Office of Public Counsel
Stephen C. Reilly
C/o The Florida Legislative
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330

Sprint Comm. Co. Limited Partnership
Monica Barone
3100 cumbrland Circle
Mailstop GAATLN0802
Atlanta, GA 30339
Phone: (404) 649-6225
Fax: (404) 649-5174

Sprint-Florida, Inc.
Charles J. Rehwinkel
P.O. Box 2214
Tallahassee, FL 32316-2214
Phone: (850) 847-0244
Fax: (850) 599-1458

Swidler & Berlin Law Firm
Eric J. Branfman/Morton Posner
3000 K St., NW, #300
Washington, DC 20007-5116
Phone: (202) 424-7500
Fax: (202) 424-7645

KMC Yelecom, Inc.
John McLaughlin
Suite 170
3025 Breckinridge Blvd.
Duluth, GA 30096
Phone: (770) 931-5260
Fax: (770) 638-6796

Time Warner AxS of Florida, L.P.
Carolyn Marek
233 Bramerton Court
Franklin, TN 37069
Phone: (615) 376-6404
Fax: (615) 376-6405

Scott Sapperstein