BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030852-TP

In the Matter of

IMPLEMENTATION OF REQUIREMENTS ARISING FROM FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL UNE REVIEW: LOCATION-SPECIFIC REVIEW FOR DS1, DS3 AND DARK FIBER LOOPS, AND ROUTE-SPECIFIC REVIEW FOR DS1, DS3 AND DARK FIBER TRANSPORT.

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VOLUME 3

Pages 309 through 506

PROCEEDINGS:	HEARING
BEFORE:	CHAIRMAN BRAULIO L. BAEZ COMMISSIONER J. TERRY DEASON COMMISSIONER LILA A. JABER COMMISSIONER RUDOLPH "RUDY" BRADLEY COMMISSIONER CHARLES M. DAVIDSON
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PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	LINDA BOLES, RPR Official FPSC Reporter (850) 413-6734
APPEARANCES:	(As heretofore noted.)

I N D E X

WITNESSES

P R O C E E D I N G S

(Transcript follows in sequence from Volume 2.)

Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Gary J. Ball. I am an independent consultant providing analysis of regulatory issues and testimony for telecommunications companies. My business address is 47 Peaceable Street, Ridgefield, Connecticut 06877.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I graduated from the University of Michigan in 1986 with a Bachelor of Science degree in Electrical Engineering. I received a Masters in Business Administration from the University of North Carolina – Chapel Hill in 1991, with a concentration in economic and financial coursework. I have worked in the telecommunications industry for the past twelve years, and I have extensive experience in developing and analyzing financial and costing models associated with telecommunications networks and services, as well as the design, implementation, and operation of such networks and services.

From 1991 through 1993, I was employed by the Rochester Telephone Corporation (now part of Citizens Communications) where I served in various engineering, financial, and regulatory roles. From 1993 to 1994, I

was the manager of Regulatory Affairs for Teleport Communications Group.

Beginning in 1994, I served initially as the Regional Director of Regulatory Affairs for MFS Communications Company for the Northeast, and subsequently was promoted to Assistant Vice President of Regulatory Affairs. In 1996, WorldCom acquired MFS, after which I was promoted to Vice President of Regulatory Policy Development. In that capacity, I was responsible for coordinating and developing the Company's regulatory positions on issues such as access charges, interconnection, intercarrier compensation, unbundled network elements, and new service technologies. I remained at WorldCom until beginning my own consulting practice in 2002.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am testifying on behalf of the Florida Competitive Carriers Association ("FCCA"). The FCCA is a coalition of Florida competitors committed to the advancement of policies that encourage local and long distance competition in the state. The jobs, services and customer savings that these companies provide are a product of the competitive policies of both the federal Telecommunications Act of 1996 and Chapter 364, Florida Statutes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. In its Triennial Review Order ("TRO"), the FCC conducted a comprehensive analysis that resulted in the determination that CLECs are impaired without access to high capacity loops and dedicated transport at the national level. As a result, incumbent local exchange carriers ("ILECs") must continue to provide competitive carriers ("CLECs") with access to unbundled loops and dedicated transport at the DS1, DS3, and dark fiber capacity levels on a widespread basis. Recognizing that there may be individual customer locations or transport routes where competitively provisioned loops and transport have been deployed to such an extent that the national finding does not apply and CLECs may not be impaired, the FCC developed a procedure known as the trigger analysis ("triggers"). The triggers are designed to give ILECs an opportunity to rebut the national finding at specific customer locations or on specific transport routes where actual deployment demonstrates non-impairment at that location or route.

The purpose of my testimony is to provide to the Commission a workable framework for evaluating ILEC claims of non-impairment that is faithful to the principles and requirements set forth in the TRO. As I will demonstrate, the ILECs face a significant burden in satisfying the rigorous granular analysis of the triggers, and the Commission should cast a

suspicious view upon any ILEC claims that the triggers have been satisfied on a large scale.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony is divided into six parts. In part one, I will discuss the FCC's impairment analysis and how it relates to the unbundled loop and transport services necessary for a facilities-based CLEC to compete effectively with the ILECs. In part two, I will explain the self-provisioning triggers that the FCC devised for high capacity loops (issues 2 and 5) and dedicated transport (issues 9, 10, 14 and 15) at the DS3 and dark fiber capacity levels, and will provide the proper framework for interpreting an ILEC's claim that the triggers have been met. In part three, I will explain the wholesale triggers for high capacity loops (issues 1 and 3) and transport (issues 7, 8, 11, 12, 16, 17 and 18), and will discuss the additional requirements needed to define a carrier as a wholesale provider. In part four, I will discuss situations where competitive providers still may be impaired for a customer location or route even if the trigger has been met. In part five, I will discuss the concept of potential deployment claims, including the fact that DS1-level loops and transport are not eligible for potential deployment claims (issues 4, 13 and 19). Lastly, in part six, I will describe the transitional issues this Commission should consider in order to protect CLECs and their customers from unanticipated

disruption to their services and rates if the Commission delists any loops or transport routes (issue 20).

I. THE FCC'S IMPAIRMENT ANALYSIS

(Issues 1-19)

Q. PLEASE DESCRIBE THE FCC'S POLICY OBJECTIVES THAT PROVIDE THE FRAMEWORK FOR THE TRIENNIAL REVIEW IMPLEMENTATION.

A. When applying the rigorous standards for the granular analysis, it is imperative that the Commission keep the TRO's three policy objectives at the forefront. First, the TRO continues the Commission's implementation and enforcement of the federal Act's market-opening requirements. This objective is critical because it recognizes the importance of providing a regulatory environment that is conducive to competition. Second, the TRO applies unbundling as Congress intended: with a recognition of the market barriers faced by new entrants as well as the societal benefit of unbundling. This again is critical because it recognizes the balance that is required to ensure that consumers are able to realize the benefits of competition through better telecommunications options at lower costs. This objective further recognizes the consumer's investment in the ILEC's monopoly network and the objective of delivering better services and lower costs to consumers through competition. Finally, the TRO establishes a regulatory foundation that seeks to ensure that investment in

telecommunications infrastructure will generate substantial, long-term benefits for all consumers.

Q. PLEASE DESCRIBE THE FCC'S APPROACH TO DETERMINING IMPAIRMENT FOR UNBUNDLED NETWORK ELEMENTS.

A. The FCC based its impairment findings upon a determination that "[a] requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic." TRO ¶ 7. The FCC also found that "[a]ctual marketplace evidence is the most persuasive and useful evidence to determine whether impairment exists." The FCC elaborated that it is particularly "interested in the relevant market using non incumbent LEC facilities." *Id.*

Q. WHAT DID THE FCC CONCLUDE WITH REGARD TO HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. The FCC concluded that competing carriers are impaired on a national level without access to unbundled high capacity loops (DS1, DS3, and dark fiber) and transport (DS1, DS3, and dark fiber). *See TRO* ¶ 202 (stating that "requesting carriers are impaired on a location-by-location basis without access to incumbent LEC loops nationwide."); *see also TRO* ¶ 359 (stating that it finds "on a national level that requesting carriers are

impaired without access to unbundled dark fiber transport facilities … [DS3 transport and DS1 transport])." As a result, the FCC rules require that competing carriers have access to unbundled loops and transport everywhere unless a specific route has been found to lack impairment.

Q. DID THE FCC'S IMPAIRMENT ANALYSIS DISTINGUISH BETWEEN DIFFERENT TYPES OF UNBUNDLED LOOPS AND TRANSPORT?

A. Yes. The FCC defined two distinct loop types: Mass Market Loops, representing voice-grade DS0-level loops, and Enterprise Market Loops, representing higher capacity loops, which typically are used by business customers. The FCC defined Enterprise Market Loops as loops at a capacity level of DS1 or above; the FCC analyzed these loops separately at the following capacity levels: OC(n), dark fiber, DS3, and DS1. For the purposes of my testimony, Enterprise Market Loops are equivalent to high capacity loops.

The FCC segregated dedicated transport by capacity levels before performing its impairment analysis, stating that this would "be the most informative manner to review the economic barriers to entry that affect how a competing carrier is impaired without access to unbundled transport." *TRO* ¶ 380. The FCC performed separate impairment analyses

for OC(n) Transport, Dark Fiber Transport, DS3 Transport, and DS1 Transport.

(Issues 1-6)

Q. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING CARRIERS WERE IMPAIRED WITHOUT ACCESS TO HIGH CAPACITY LOOPS AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?

A. The FCC's impairment analysis places substantial emphasis on two factors: whether carriers can economically self-provision high capacity loops and if competitive alternatives exist. The FCC based its finding that competing carriers are impaired without Enterprise Market Loops at the dark fiber, DS3, and DS1 capacity levels in large part on the fact that the costs to construct loops and transport are fixed and sunk. The FCC stated that "[b]ecause the distribution portion of the loop serves a specific location, and installing and rewiring that loop is very expensive, most of the costs of constructing loops are sunk costs." *TRO* ¶ 205. The FCC concluded that it would be extremely difficult to recover these construction costs and be a viable competitor in the marketplace.

The FCC found that there are substantial economic and operational barriers to deploying loops. For example, the FCC found that "the cost to self-deploy local loops at any capacity is great . . . and that a competitive LEC that plans to self-deploy its facilities must target customer locations

where there is sufficient demand from a potential customer base, usually a multi-tenant premises location, to generate a revenue stream that could recover sunk construction costs of the underlying loop transmission facility ...." *TRO* ¶ 303. The FCC emphasized, however, that other obstacles to deploying high capacity loops exist even if the carrier can overcome the cost issues. For example, carriers encounter barriers in obtaining reasonable and timely access to the customer's premises and in "convincing customers to accept the delays and uncertainty associated with deployment of alternative loop facilities." *TRO* ¶ 303 (citations omitted).

(Issues 7-20)

Q. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING CARRIERS ARE IMPAIRED WITHOUT ACCESS TO UNBUNDLED DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?

A. The FCC stated that its impairment findings with respect to DS1, DS3, and dark fiber transport facilities "recognize that competing carriers face substantial sunk costs and other barriers to self-deploy facilities and that competitive facilities are not available in a majority of locations, especially non-urban areas." *TRO* ¶ 360 (citations omitted). The FCC concluded that it would be extremely difficult to recover these costs and to be a viable competitor in the marketplace. Indeed, the FCC concluded that "[d]eploying transport facilities is an expensive and time-consuming

process for competitors, requiring substantial fixed and sunk costs." *Id.* ¶ 371 (citations omitted). The FCC elaborated that the costs of self-deployment include collocation costs, fiber costs, costs to physically deploy the fiber, and costs to light the fiber. *Id.* CLECs also encounter delays in constructing dedicated transport due to having to obtain rights-of-way and other permits. *Id.*

(Issues 1-19)

Q. DID THE FCC FIND THAT THERE WAS ANY EVIDENCE OF NON-IMPAIRMENT FOR ENTERPRISE MARKET LOOPS AND DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 LEVELS?

A. In making a national finding of impairment for loops and transport, the FCC found that evidence of non-impairment was isolated and minimal. For example, the FCC found little evidence of self-deployment for DS1 loops, *TRO* ¶ 298, and found "scant evidence of wholesale alternatives" for DS1 loops. *TRO* ¶ 325.

For transport, the FCC found that "alternative facilities are not available to competing carriers in a majority of areas." *TRO* ¶ 387. Indeed, even relying on ILEC data, which was not subject to cross-examination in the FCC proceeding, at most 13% of BOC wire centers have even a single competing carrier collocated using non-ILEC transport facilities. *TRO* at note 1198. The triggers require the presence of two or three such

competitors (also satisfying additional criteria) on each route. Therefore, based on this analysis, one would expect that there will be only a small number of transport routes at issue in this proceeding.

Q. ARE THE FCC'S FINDINGS ON IMPAIRMENT CONSISTENT WITH THE TYPICAL FACILITIES-BASED CLEC'S NETWORK?

A. Yes. FCCA's members use a variety of entry strategies to provide services to their customers. The FCCA members that provide facilities-based local services rely on UNE loops to serve the majority of their customers. FCCA members also use loop and transport UNEs in a combination commonly referred to as an "enhanced extended link" or "EEL." EELs are a predominant reason facilities-based CLECs need access to unbundled dedicated transport, as they allow CLECs to access customers in central offices where they are not collocated, greatly expanding the scope of customers they can serve.

Although there is some variance among CLEC networks, competitors' network architectures ordinarily are composed of multiple fiber rings in a city or market, which have been completed at different stages due to construction funding limitations, growth in capacity requirements, or, in some cases, acquisitions. These CLECs serve customers using their fiber rings when possible, although in a majority of instances, they will need access to unbundled loops and loop/transport combinations (EELs) to

provide service to customers. This is the case because the fiber rings typically only connect aggregation points, such as collocation arrangements to a carrier's switching or hub site. A few major customer sites sometimes will be included on the ring, but most CLEC networks only reach a handful of such sites in any state.

These networks have been developed in this manner as a direct consequence of the fixed and sunk costs that the FCC found create impairment for CLECs. As the FCC found, there are few customer locations where there is sufficient demand from a potential customer base to justify the deployment of a DS3 loop to the location, with building access and construction delays compounding the entry barriers that CLECs face in deploying loop facilities. In addition, the fixed and sunk costs associated with deployment of transport facilities leads carriers to deploy facilities only where a sufficient aggregation of traffic between the two end points justifies the deployment.

Q. HOW DOES THIS NETWORK ARCHITECTURE IMPACT THE TRIGGERS ANALYSIS?

A. Fundamentally, one must recognize that CLEC networks do not replicate the ILEC network either in scale or in network architecture. The primary function of a CLEC fiber ring is to move traffic from an aggregation point to the CLEC's switching or hub site. This architecture allows the CLEC

to purchase unbundled local loops dedicated to specific customers, aggregate the traffic onto a large capacity facility, and carry the traffic to its switch for call processing purposes. In other words, CLEC networks typically are built to utilize unbundled network elements – principally loops and transport – not to substitute for them entirely.

As a result, the existence of fiber facilities does not by itself mean that the CLEC provides transport between ILEC wire centers. First, as I explain in Part Two of my testimony (22-23), although a typical CLEC network will have multiple "on-net" aggregation points, it would be a misinterpretation of the FCC's triggers to conclude that each pair of these aggregation points have CLEC owned transport facilities between them. Assume, for example, that a CLEC has an "on-net" presence at aggregation points A and B. The typical CLEC network will be configured to carry traffic from point A to the switch, and similarly, from point B to the switch. It does not carry traffic from point A to point B. (Most often, these two connections will travel on separate fiber strands within the ring.) The configuration is not unlike the design of some elevators in very tall buildings. One elevator may provide access to the 40th floor, while a separate elevator operating in a separate shaft accesses the 12th floor. Even though a person in the lobby can reach either floor, it is not the case that a person on the 40th floor can stop his elevator on the 12th floor.

Second, in many situations, a CLEC will serve two ILEC central offices that are not on the same fiber ring. Although it is theoretically possible to connect central offices on different fiber rings, transport routes linking the two central offices are not ordinarily provisioned in this manner. Applying an elevator analogy, this is like going from the 40th floor in one building to the 12th floor in another. Once in a while, one could get there by going down to the lobby, exiting the building, walking to the other building and using the elevator to reach the 12th floor in the second building. It is possible and maybe even tolerable if no other solution is available, but one would not want to do this every day.

II. SELF-PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT

(Issues 2, 5, 9, 10, 14, 15, 17)

Q. WHAT ARE THE PURPOSES OF THE FCC'S SELF-PROVISIONING TRIGGER FOR UNBUNDLED LOOPS AND TRANSPORT?

A. The Self-Provisioning Triggers are intended to identify those customer locations and transport routes where sufficient deployment of competitively owned facilities is present to demonstrate that *other competitors* are not impaired without access to unbundled loops or transport. The Self-Provisioning Trigger assumes a world where the competitors that own the existing facilities do not make them available to

other competitive providers. In order for the Self-Provisioning Trigger to be satisfied, the CLEC without any facilities has to be able to deploy duplicative facilities without experiencing impairment.

The Self-Provisioning Trigger relies on indirect evidence based on a proven past deployment in order to demonstrate non-impairment for other carriers. The FCC's theory is that actual deployment by similarly situated CLECs provides evidence that a CLEC without its own facilities does not face impairment. Indeed, the FCC specifically cautioned that the Self-Provisioning Trigger must exclude "unusual circumstances unique to [a] single provider that may not reflect the ability of other competitors to similarly deploy." *TRO* ¶ 329 at n.974. Thus, the purpose of the Self-Provisioning Trigger is to identify situations through actual deployment situations where the barriers created by fixed and sunk costs have been overcome with respect to all providers that may offer service to a particular location or on the given route.

Q WHAT CAPACITY LEVELS ARE SUBJECT TO THE SELF-PROVISIONING TRIGGERS?

A. The Self-Provisioning Triggers only apply to DS3 and Dark Fiber Loops and Transport. *TRO* ¶¶ 334, 409. DS1 Loops and Transport are not included under these triggers. In other words, regardless of how much

self-provisioned deployment may exist at a customer location or on a route, a DS1 UNE will continue to be available to a requesting CLEC.

Q. WHAT MUST AN ILEC DEMONSTRATE TO ITS STATE COMMISSION TO SATISFY THE SELF-PROVISIONING TRIGGERS AT THE RELEVANT CAPACITY LEVEL?

A. For loops, the ILEC must demonstrate that there are ***two or more*** competing providers that have deployed their own facilities at the specific capacity level (DS3 or dark fiber), and are serving customers using those facilities. For transport, the ILEC must demonstrate there are ***three or more*** competing providers that have deployed their own facilities at the specific capacity level (DS3 or dark fiber), and are offering service using those facilities.

Q. WHAT MUST AN ILEC DEMONSTRATE TO PROVE THAT THE SELF PROVISIONING TRIGGERS ARE SATISFIED FOR HIGH CAPACITY LOOPS AT A SPECIFIC CUSTOMER LOCATION?

A. As a preliminary matter, the ILEC must demonstrate that the two competitive providers:

- Are not affiliated with each other or the ILEC
- Use their own facilities and not facilities owned or controlled by the other competitive provider or the ILEC; and
- Are serving customers using their own facilities at that location over the relevant capacity level.

Q. WHAT MUST AN ILEC DEMONSTRATE TO PROVE THAT THE SELF-PROVISIONING TRIGGERS ARE SATISFIED FOR DEDICATED TRANSPORT BETWEEN TWO ILEC WIRE CENTERS?

A The ILEC must demonstrate for each of the three competitive providers, that:

- They not affiliated with each other or the ILEC
- Each qualifying self-provisioned facility along a route must be operationally ready to provide transport into or out of an incumbent LEC central office
- Each qualifying self-provisioned facility terminates in a collocation arrangement.

Q. FOR THE SELF-PROVISIONING TRIGGERS TO BE SATISFIED, MUST A CLEC SELF-PROVISION THE SPECIFIC CAPACITY LEVEL IN QUESTION?

A. Yes. The *Triennial Review Order* contemplates that the Self-Provisioning Triggers apply when a CLEC self-provisions the particular capacity level in question. For example, a CLEC that self-provisions at the OCn capacity level will not be capable of providing service at lower capacity levels in a given wire center if it has not deployed the appropriate electronics to demultiplex the traffic at that wire center.

Q. WHAT ARE THE KEY CRITERIA THAT A STATE COMMISSION MUST APPLY IN ORDER TO ENSURE THE ILECS ARE USING THE APPROPRIATE INTERPRETATION OF THE SELF-PROVISIONING TRIGGERS?

A. The first key issue is to ensure that the ILEC is defining loops and transport routes in a manner consistent with the FCC, and is applying those definitions appropriately. For loops, the FCC's definition is "the connection between the relevant service central office and the network interface device ("NID") or equivalent point of demarcation at a specific customer premises." In addition, the loop must permit the CLEC to access all units within a customer location, such as all tenants in a multi-tenant building or all buildings in a campus environment.

The FCC defined a transport route as "a connection between wire center or switch 'A' and wire center or switch 'Z'." The FCC elaborated that "even if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competing providers must *offer service* connecting wire centers 'A' and 'Z,' but do not have to mirror the network path of the incumbent LEC through wire center 'X'." Thus, the FCC requires that transport service must be offered between the two wire centers in question.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW THE DEFINITION OF A LOOP COULD BE MISINTERPRETED BY AN ILEC FOR THE PURPOSES OF THE SELF-PROVISIONING TRIGGER?

A. Yes. In a multi-tenant building, two CLECs may have provisioned fiber-optic facilities to serve one customer each, while the rest of the building is being served solely by the ILEC. Even though there are two competing loop facilities into the building, an ILEC request that the Trigger is satisfied for the entire building, or even the two customers served by the CLECs, would be incorrect, as no customer location within the building is being served by the facilities of two or more competing providers. The key distinction in this example is that the customer location, which is the endpoint of the loop per the FCC, is a subset of a building location in a multi-tenant environment.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW THE DEFINITION OF A TRANSPORT ROUTE COULD BE MISINTERPRETED BY AN ILEC FOR THE PURPOSES OF THE SELF-PROVISIONING TRIGGER?

A. Yes. An ILEC may have performed a primitive counting exercise, in which it simply identifies all of the collocation arrangements for a given CLEC, confirms that fiber optic facilities are present in the collocation arrangement, then declares that transport routes exist between each collocation arrangement. This approach would be deficient, in that it

presents no evidence that the CLEC in question is providing transport service between the two ILEC wire centers, which is the FCC requirement. The "evidence" does not identify the capacity levels at which the service is provided (in order to apply the trigger to each level of capacity), nor does it demonstrate that the CLEC is operationally ready to provide transport "into or out of" the two end points of the route. As I explained earlier in my testimony, CLECs generally use collocation arrangements to aggregate unbundled loops, so there is a high probability that the equipment and fiber optics installed in a collocation arrangement are not being used to provide transport between two ILEC wire centers. For example, a CLEC may have deployed equipment to concentrate voice-grade loops, such as a digital loop carrier system, or equipment to provide DSL service, such as a DSLAM, in a given central office. In these instances, the CLEC would have equipment installed in its collocation but would *not* be able to provide transport at either a DS3 or a Dark Fiber level between wire centers. To support a trigger claim, the ILEC must produce additional evidence that shows that the CLEC self-provisions transport service at the specific capacity level (DS3 or dark fiber) between the two wire centers and that each collocation arrangement in question is being used as an endpoint for a transport route at the specific capacity level between two wire centers.

Q. WHAT EVIDENCE MUST AN ILEC SUBMIT TO MEET THE FCC'S REQUIREMENT OF OPERATIONAL READINESS FOR THE SELF-PROVISIONING TRIGGER?

A. While the existence of CLEC facilities obviously is a prerequisite to the provision of service, that alone does not reflect whether the equipment can be used to provide the service to satisfy the trigger, whether the CLEC can provide service at the requisite capacity level, or whether CLEC has performed the necessary engineering, provisioning, and administrative tasks to ensure that service can be provided. The only reliable way of demonstrating that a CLEC is operationally ready under the Self-Provisioning Trigger is to produce evidence that the CLEC is actually providing service at the customer location or on the given transport route. If the CLEC facilities are in use providing the requisite capacity of service and if the CLEC is able to provision additional circuits using existing equipment and facilities, then it is operationally ready to provide the service. This is consistent with the FCC's requirement that evidence be provided that CLECs are *serving* customers using self-provisioned loop facilities, and that CLECs *offer service* between two wire centers on a given transport route. *See, e.g.*, 47 C.F.R. §§ 51.319(a)(5)(1)(A), 51.319(e)(2)(i)(A).

Q. FOR PURPOSES OF APPLYING THE TRIGGERS, WHICH FACILITIES COUNT AS "OWNED FACILITIES"?

A. In order for facilities to qualify for purposes of the triggers, the carrier must have deployed its "own facilities" on the entire loop. There are two ways that a carrier can have ownership over the facilities: the carrier can have legal title to the facilities or, the carrier can have a "long-term" (*i.e.*, 10 years or more) dark fiber IRU, if the fiber is lit by the qualifying carrier by attaching its own optronics to the facilities. If the carrier does not use its own facilities, then the carrier cannot count for purposes of the self-provisioning trigger.

Q. WHICH FACILITIES DO NOT COUNT AS "OWNED FACILITIES"?

A. Facilities obtained from other sources such as through special access arrangements, UNEs, capacity leases (unless they are long term IRUs), and all third-party provided facilities fail to qualify as "owned facilities." The FCC specifically emphasized that a CLEC "using the special access facilities of the incumbent LEC or the transmission facilities of the other competitive provider ... would *not* satisfy the definition of a self-provisioning competitor for purposes of the trigger." *TRO* ¶ 333.

In addition, the triggers are designed to prevent double counting of facilities. Therefore, for purposes of the self-provisioning test, a carrier

may not be using "facilities owned or controlled by one of the other two providers ...." *TRO* ¶ 333. For example, if Carrier A has deployed facilities to a building or on a transport route and Carrier B purchases service from Carrier A, only one self-provisioner is present on the route. Carrier B does not own the facilities it uses to provide service to its customers.

Q. IF A CARRIER SATISFIES THE SELF-PROVISIONING TRIGGER, WILL IT AUTOMATICALLY QUALIFY AS AN ELIGIBLE PROVIDER UNDER THE COMPETITIVE WHOLESALE FACILITIES TRIGGER OR VICE VERSA?

A. No. The FCC emphasized that the triggers are separate and distinct. The purpose of the self-provisioning trigger is to determine through actual experience whether similarly situated CLECs can deploy their own facilities in order to serve its own customers. In contrast, the wholesale facilities trigger examines whether the provider makes its facilities available to other carriers on a widely available basis. Self-provisioners that do not provide service to other carriers do not qualify under the Wholesale Trigger. *See TRO* ¶ 414 (wholesale test does not count facilities owned by a competitor unwilling to offer capacity on a whole basis). Similarly, although some wholesale carriers also may self-provide facilities to serve their own customers, others may not provide any end user service and thus cannot be self-provisioners under the triggers. *See*

TRO ¶ 406 & n.1256 (self-provisioner must be operationally ready to provide transport; carrier must "remain in operation" on the route). For example, an entity that operates only as a "carrier's carrier" does not qualify as a self-provisioner under the FCC's triggers.

III. WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT

(Issues 1, 3, 7, 8, 11, 12, 16, 17, 18)

Q. WHAT IS THE PURPOSE OF THE FCC'S WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. The Wholesale Triggers provide the ILECs an opportunity to demonstrate that there is no impairment for a specific customer location or route by identifying locations for which there are a sufficient number of alternative providers offering wholesale loop and transport services using their own facilities. The underlying premise of the Wholesale Triggers is that when a working wholesale market with multiple alternative sources of supply exists for loops or transport, then CLECs would not be reliant on receiving the element from the ILEC as a UNE.

Q. WOULD A WORKING WHOLESALE MARKET BE BENEFICIAL TO CLECS?

A. Yes, if the alternative facilities were available as more than a theoretical possibility. For a viable competitive wholesale market to exist, not only must competitive facilities be deployed, but also the requesting carrier must be able to use these facilities to replace ILEC UNEs in ordinary applications. It is for this reason that the FCC emphasized in the context of loops that alternative providers must "offer an equivalent wholesale loop product at a comparable level of capacity, quality and reliability." *TRO* ¶ 337. Equally important, the alternative facilities must work seamlessly with other components of a CLEC network, including ILEC-supplied UNEs. Because loops and transport must be examined separately, there will be many instances where a CLEC will purchase a UNE loop and competitive transport, or will purchase a competitively supplied loop in conjunction with UNE transport. Moreover, CLECs may even face situations where DS1 loops and transport are ordered as UNEs, but DS3 loops or transport to the same location or along the same route are ordered through competitive suppliers. These permutations make it imperative that all barriers to a competitive wholesale market be eliminated before any finding can be made that the Wholesale Trigger's requirements are satisfied. At a minimum, a working wholesale market requires reasonable and nondiscriminatory cross connects from the ILEC, UNE and special access ordering procedures that accommodate a multi-vendor environment, and billing processes for combinations of UNE and non-UNE arrangements.

Q. WHAT CAPACITY LEVELS ARE SUBJECT TO THE WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT?

A. Wholesale loops and transport at both the DS1 and DS3 level are subject to the Wholesale Triggers. Dark Fiber loops are not subject to the Trigger, Dark Fiber transport is subject to the Trigger.

Q. WHAT MUST AN ILEC DEMONSTRATE TO ITS STATE COMMISSION TO SATISFY THE WHOLESALE PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. The wholesale facilities trigger examines whether there are competing providers offering a bona fide product on the specific route. To satisfy the wholesale facilities trigger, the Commission must find that there are *two or more* competing providers that have deployed their own high capacity loop or dedicated transport facilities, that are operationally ready to use those transport facilities and are willing to provide transport over those facilities on a widely available wholesale basis to other carriers.

In addition to evidence provided under the self-provisioning trigger, the ILECs also must demonstrate that the alternative provider is actually offering wholesale service for the specific route or location at the requisite

capacity level, has equipped its network to facilitate numerous wholesale customers, and has developed the appropriate systems and procedures to manage a wholesale business.

Q. WHAT MUST AN ILEC DEMONSTRATE TO SATISFY THE WHOLESALE PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS?

A. Specifically, under the FCC's rules, this trigger requires evidence that:

- Two or more competing providers not affiliated with each other or the ILEC are present at the customer location;
- Each provider has deployed its own facilities and is operationally ready to use those facilities to provide wholesale loops at that location;
- Each provider is willing to provide wholesale loops on a widely available basis at that location; and
- Each provider has access to the entire multiunit customer premises. *See* 47 C.F.R. § 51.319(a)(5)(i)(B).

Q. WHAT MUST AN ILEC DEMONSTRATE TO SATISFY THE WHOLESALE PROVISIONING TRIGGERS FOR DEDICATED TRANSPORT?

A. Specifically, the trigger requires evidence that:

- Two or more competing providers not affiliated with each other or with the ILEC are present on the route;
- Each provider has deployed its own transport facilities "and is operationally ready to use those facilities to provide dedicated ... transport along the particular route;"

- Each provider "is willing immediately to provide, on a widely available basis," dedicated transport to other carriers on that route;
- Each provider's facilities terminate in a collocation arrangement at each end of the transport route; and
- Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement." 47 C.F.R. § 51.319(e)(1)(ii).

Q. IN ADDITION TO THE ISSUES RAISED IN THE SELF-DEPLOYMENT ANALYSIS, ARE THERE AREAS THE ILECS NEED TO ADDRESS IN ORDER TO SATISFY THE WHOLESALE TRIGGERS?

A. Yes. A significant issue is to properly identify the relevant wholesale providers of loops and transport, and to ensure that the ILECs are not overly broad in their identification of wholesale providers. Many carriers may provide some wholesale services, but may not be in a position to offer the specific loop or transport services necessary to satisfy the trigger. For example, a carrier may offer wholesale long distance voice services, and also may have established collocation arrangements for the self-provision of a data service for a specific retail customer. The fact that the carrier is a wholesale provider of an unrelated service is not relevant to the trigger analysis if the carrier is not offering wholesale services specific to its collocation arrangements. The FCC also triggers require evidence of wholesale availability be presented for each level of capacity.

Q. HOW IS A ROUTE DEFINED FOR PURPOSES OF APPLYING THE WHOLESALE FACILITIES TRIGGER TO HIGH CAPACITY LOOPS?

A. First, as with the self-provisioning trigger, the "customer location" side of each wholesale loop must terminate at a location that affords alternative providers access to the entire customer premises, including in multi-tenant buildings, access to the same common space, house and riser and other intra-building wire as the ILEC. If a loop does not provide alternative providers with access to the entire customer premises, then the carrier providing the loop should not be counted for purposes of either the wholesale or the self-provisioning trigger. This requirement is particularly important in the context of the wholesale trigger because the CLEC most often would be seeking to buy a wholesale loop in order to serve tenants in the building that are not already served on a retail basis by the wholesale provider. If the wholesale provider is not able to offer service to reach customers other than its own, that carrier is not truly offering an alternative wholesale service.

Second, in the wholesale context, the "central office" side of the loop is equally important. As I explained previously, CLEC networks are designed to combine loops at certain aggregation points so that they may be multiplexed and carried on transport facilities back to the CLEC switch. In order to enable wholesale loops to be aggregated in this manner, the

wholesale loop must provide a connection into the ILEC serving central office, so that competitors are able to connect a wholesale loop with another carrier's transport with either their own collocated facilities, or with ILEC UNE transport.

Q. HOW DOES THE REQUIREMENT OF OPERATIONAL READINESS APPLY TO THE WHOLESALE TRIGGERS?

A. In addition to the requirements of the self-provisioning triggers, the ILECs must demonstrate that the wholesale provider is operationally ready and willing to provide transport to other carriers at each capacity level. At a minimum, the ILEC must show that each wholesale carrier:

- Has sufficient systems, methods and procedures for pre-ordering, ordering, provisioning, maintenance and repair, and billing;
- Possesses the ability immediately to provision wholesale high capacity loops to each specific customer location identified or dedicated transport along the identified route;
- For loops, has access to an entire multi-unit customer premises;
- Is capable of providing transport at a comparable level of capacity, quality, and reliability as that provided by the ILEC;
- For transport, is collocated in each central office at the end point of each transport route;
- Has the ability to provide wholesale high capacity loops and transport in reasonably foreseeable quantities, including having reasonable quantities of additional, currently installed capacity; and
- Reasonably can be expected to provide wholesale loop and transport capacity on a going-forward basis.

Q. WHAT DOES "WIDELY AVAILABLE" MEAN FOR THE WHOLESALE FACILITIES TRIGGER?

A. To be widely available, service must be made available on a common carrier basis, for example, through a tariff or standard contract. The fact that a carrier may have provided service to only one or a few other carriers on a route is not sufficient, unless the carrier also is willing to provide comparable service to other carriers. *See TRO* ¶ 414 (trigger does not count competing carriers that are not willing to offer capacity on their network on a wholesale basis). Moreover, an offer to negotiate an individualized private carriage contract does not constitute service being widely available. In addition, each carrier identified as a wholesale provider must be able "immediately to provide" wholesale service. 47 C.F.R. § 51.319(e). If the carrier is required to construct facilities in order for the service to be made available, then the service is not widely available. Similarly, a service is not widely available if the carrier is unable to interconnect with its wholesale customers because sufficient facilities have not been terminated in the relevant central office or if insufficient collocation space is present to accommodate new CLECs in the central office.

Q. WHAT DOES IT MEAN TO HAVE REASONABLE ACCESS TO THE WHOLESALE PROVIDER?

A. Requesting carriers must be able to access cross-connects at nondiscriminatory rates, terms, and conditions in accordance with FCC and state commission rules. In addition, ILECs must provide requesting carriers with adequate cross-connect terminations at cost-based rates, and must enable sufficient capacity expansion. If carriers are not able to cross connect at the ILEC central office, then they cannot obtain access to the wholesale providers' facilities.

As I stated above, for a competitive wholesale market to be in place, there must be proper systems and processes for ordering and provisioning. In addition, carriers must be able to obtain the service at nondiscriminatory rates and on nondiscriminatory intervals. Requesting carriers also must be able to order circuits to terminate in all qualified wholesale providers' collocation space. The Commission should inquire whether the ILEC's OSS is capable of handling LSRs that are provisioned to a wholesale provider's facilities.

Q. WHAT ARE THE REMAINING STEPS?

A. Once the Commission has determined the appropriate application of the triggers, then it must gather the evidence for each route. As I stated above, the ILEC is responsible for challenging the national finding of

impairment and must provide demonstrative evidence that the trigger is satisfied for each route for which it challenges the FCC's national finding. The ILEC then has the burden of proving that the competing carriers that it has identified indeed satisfy the trigger for the particular loop at issue. The ILEC's evidence must be differentiated among each capacity type and for each customer route.

Once the ILEC has put forth the routes that it intends to challenge and the supporting evidence, the Commission must evaluate whether the carriers that the ILEC has identified as satisfying the trigger for each route meet the qualifying criteria. The Commission then must classify the route as impaired or not impaired based on all of evidence that the parties have submitted.

IV. CONTINUED IMPAIRMENT AFTER TRIGGERS HAVE BEEN MET

(Issues 1-19)

Q. IF A STATE FINDS THAT A TRIGGER IS SATISFIED BUT NEVERTHELESS FINDS EVIDENCE THAT IMPAIRMENT REMAINS, IS IT REQUIRED TO "DE-LIST" A PARTICULAR LOOP OR TRANSPORT ROUTE?

A. No. If a state finds that a trigger is facially satisfied but believes that impairment still exists, then the state may petition the FCC for a waiver of

application of the trigger until the barrier to deployment identified by the state no longer exists. For example, in the *Triennial Review Order*, the FCC explained that a state might find impairment if "a municipality has imposed a long-term moratorium on obtaining the necessary rights-of-way such that a competing carrier can not deploy new facilities." *TRO* ¶ 411. As another example, ILECs have claimed collocation exhaust in many central offices throughout the state. If a CLEC cannot collocate in one or both of the central offices on the transport route, then CLECs remain impaired on that route, regardless of whether the trigger is facially satisfied.

Q. SHOULD THE COMMISSION ESTABLISH AN EXCEPTION PROCESS FOR LOCATIONS AND ROUTES WHERE THE TRIGGERS HAVE BEEN MET?

A. Yes. If a carrier demonstrates that it is attempting in good faith to construct facilities for a location or route for which UNEs are no longer available and that it is incurring a specific problem that makes construction within the applicable timeframe unachievable (*e.g.*, issues with rights-of-way or building access), then it should be permitted to seek a waiver from the Commission consistent with the problem it faces. The CLEC should be permitted to continue to purchase the identified facility as a UNE until the Commission acts on its request.

V. POTENTIAL DEPLOYMENT

(Issues 4, 6, 13 and 19)

Q. PLEASE DESCRIBE WHAT YOU MEAN BY POTENTIAL DEPLOYMENT.

A. A "potential deployment" analysis refers to the State Analytical Flexibility described in paragraphs 335 and 410 of the *TRO*. Under the Self-Provisioning Trigger, these paragraphs permit an ILEC to attempt to demonstrate that no impairment exists for customer locations or routes even though the Self-Provisioning Trigger has not been satisfied.

Q. ARE DS1-CAPACITY LEVEL LOOPS AND TRANSPORT ELIGIBLE FOR A POTENTIAL DEPLOYMENT CLAIM?

A. No. As this is an exception to the self-provisioning trigger, only DS3 and Dark Fiber Services are eligible for potential deployment claims. This is confirmed by the omission of potential deployment rules in the DS1 triggers in Appendix B of the TRO. *Compare* § 51.319(e)(1) (DS1 transport) *with* 51.319(e)(2) (DS3 transport). This point should not be controversial: in Illinois, SBC recently conceded in its testimony before the Illinois Commerce Commission that neither the Self-Provisioning Trigger nor the potential deployment analysis is applicable to DS1 loops and transport. *See* SBC Illinois Ex. 1.0 PUBLIC Smith Testimony at 21-22 (transport) and SBC Illinois Ex. 2.0 PUBLIC Smith Testimony at 12 (loops).

Q. CAN AN ILEC MAKE A GENERAL CLAIM FOR POTENTIAL DEPLOYMENT, SUCH AS A CLAIM THAT NO IMPAIRMENT EXISTS FOR ALL BUILDINGS SERVED OUT OF A WIRE CENTER?

A. No. The FCC's language is clear that potential deployment claims must be location or route specific. In paragraph 335, for example, the FCC states:

> *[W]hen conducting its customer location specific analysis*, a state must consider and may also find non impairment *at a particular customer location* … if the state commission finds that no material economic or operational barriers *at a customer location* preclude a competitive LEC from economically deploying loop transmission facilities *to that particular customer location* at the relevant loop capacity level.

TRO ¶ 335 (emphasis added).

Q. WHAT TYPE OF DEMONSTRATION WOULD THE ILECS NEED TO MAKE IN ORDER TO SUCCESSFULLY PROVE NO IMPAIRMENT EXISTS AT A LOCATION OR ROUTE EVEN THOUGH THE TRIGGERS HAVE NOT BEEN MET?

A. The potential deployment test posits a situation that is extremely unlikely to occur. By definition, in order for the potential deployment analysis to be relevant, the self-provisioning trigger must *not* be satisfied. This means that there will be fewer than two carriers that have deployed loop facilities

to a customer location or fewer than three carriers that have deployed transport facilities on a particular route. Importantly, since the FCC considered actual deployment to be the best evidence of impairment or non-impairment, *TRO* ¶¶ 335, 410, the failure to satisfy the trigger is strong evidence that CLECs are impaired.

If the self-provisioning trigger has not been satisfied, then absent other evidence to rebut the FCC's finding, the FCC's nationwide finding of impairment in the *TRO* would apply. Thus, the ILEC's task under a potential deployment analysis is to show that, despite the characteristics of loop or transport routes that were analyzed by the FCC, some other characteristic *on that route* overrides the barriers that created impairment in the first instance. In other words, the ILEC must demonstrate that something unique to this particular customer location or this transport route rebuts the national finding of impairment. The FCC offers no factual examples of what circumstances would satisfy this requirement, but this theoretical set of facts is extremely unlikely to exist if the FCC triggers are applied consistent with the impairment analysis.

VI. TRANSITIONAL ISSUES

(Issue 20)

Q. IF A STATE COMMISSION FINDS THAT A TRIGGER IS SATISFIED, WHAT HAPPENS NEXT?

A. If the Commission finds that requesting carriers are not impaired without access to unbundled transport and/or loops on any particular route or at any customer location, then the Commission must establish an "appropriate period for competitive LECs to transition from any unbundled [loops or transport] that the state finds should no longer be unbundled." *TRO* ¶¶ 339, 417.

Q. WHAT ISSUES ARE INVOLVED IN ESTABLISHING AN APPROPRIATE TRANSITION PERIOD?

A. A transition period is required for two reasons. First, CLECs made specific business decisions to serve or not serve customers in reliance on the availability of UNE loops or UNE transport to the customer location or on the relevant transport route. CLECs must be able to continue to offer service to these customers after a finding of non-impairment. This consideration is essential because services to enterprise customers are contract-based and generally do not allow the provider to terminate or modify the contract based upon sudden cost increases. Without a transition period, CLECs and their customers would face significant disruptions to their services if access to unbundled loops were disconnected or migrated to other services. A transition is needed, therefore, to prevent rate shock to customers receiving service using UNE arrangements.

Second, a CLEC cannot modify its network overnight. A litany of business arrangements will have to be negotiated, modified and implemented if a state commission determines that one of the triggers has been satisfied. For example, if a state commission determines that two or more wholesale providers make their facilities widely available to other CLECs, CLECs needing loops or transport (as the case may be) will need time to consider the alternative sources of supply that are available to them and to implement the solution that best fits each CLEC's needs. One cannot assume that a CLEC will desire to transition to an ILEC-provided non-UNE service. Indeed, if the wholesale trigger is satisfied, it is because other alternatives are equally viable and presumably equally attractive to the CLEC. A transition period must build in sufficient time to enable the CLEC to make use of the alternatives that underlie the finding of non-impairment.

Q. ARE THERE ADDITIONAL TRANSITION ISSUES THE COMMISSION SHOULD CONSIDER?

A. Yes. The Commission should ensure that ILECs maintain an adequate process for ordering combinations of loops and transport, in situations where one or both network elements of the combination have been delisted. In the *TRO,* over ILEC objections, the FCC specifically stated that competing carriers are permitted to continue to have access to combinations of loops and transport regardless of whether one of the items

has been delisted. *See TRO* ¶ 584. Similarly, the Commission should ensure that ILECs have adequate billing processes and procedures in place for CLECs to purchase delisted network elements, whether individually or in combination.

Q. HOW SHOULD TRANSITION ISSUES BE ADDRESSED?

A. Establishing an appropriate transition period is a complex task. Ideally, these issues should be addressed in a phase of this proceeding that immediately follows the finding of non-impairment. If the Commission follows such a procedure, ILECs should be prohibited from billing special access rates to CLECs while the Commission receives evidence on the elements necessary to protect customers from rate shock and to enable CLECs to build replacement facilities and/or to migrate to the network facilities of non-ILEC providers. In the event an interim transition is desired, I recommend the minimum components described below.

Q. WHAT IS YOUR RECOMMENDATION REGARDING THE MINIMUM COMPONENTS OF A TRANSITION PROCESS?

A. I recommend that the Commission develop a multi-tiered transition process such as the one applicable to mass-market switching. First, there should be a transition period during which CLECs may order new UNEs for locations and routes where the commission found a trigger is met. This period should be a minimum of nine months in order to enable a

CLEC to continue to offer competitive service to new customers while it explores alternatives available to it. Second, CLECs should have a transition period for existing customers similar to that applied to line sharing and mass-market switching. The three year transition process established for customers served by line sharing arrangements may provide a useful model, with one-third of the customers to be transitioned within 13 months, and another one-third transitioned within 20 months. All loop and transport UNEs made available during these transition periods should continue to be made available at TELRIC rates until migrated.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

INTRODUCTION OF WITNESS AND PURPOSE OF TESTIMONY.

Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Gary J. Ball. I am an independent consultant providing analysis of regulatory issues and testimony for telecommunications companies. My business address is 47 Peaceable Street, Ridgefield, Connecticut 06877.

Q. ARE YOU THE SAME GARY J. BALL THAT FILED DIRECT TESTIMONY IN THIS CASE?

A. Yes.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am testifying on behalf of the Florida Competitive Carriers Association ("FCAA").

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to analyze and rebut BellSouth's and Verizon's assertions that the self-provisioning and wholesale triggers have been satisfied for certain high-capacity loops and on particular dedicated transport routes, and to respond to BellSouth's claims that numerous customer locations and transport routes satisfy the FCC's rigorous potential deployment requirements.

As I explained in my direct testimony, in the *Triennial Review Order* ("*TRO*"), the FCC determined that incumbent local exchange carriers ("ILECs") must continue to provide CLECs with access to unbundled loops and dedicated

transport at the DS1, DS3, and dark fiber capacity levels ("high-capacity loops" and "dedicated transport"). In reaching this conclusion, the FCC made a national finding that CLECs are impaired without access to high-capacity loops and dedicated transport. Recognizing that there might be individual customer locations or transport routes where competitively provisioned loops and transport have been deployed such that CLECs are not impaired, the FCC developed a procedure known as the trigger analysis ("triggers"). The triggers are designed to give ILECs an opportunity to demonstrate to their respective state commissions that CLECs are not impaired without access to unbundled high-capacity loops or transport at *specific* customer locations or on *specific* dedicated transport routes for specific capacity levels.

A unique characteristic of the triggers is that they focus exclusively on consideration of what currently exists on the specific loop and transport routes at issue. Thus, a decision as to whether a trigger is satisfied may not be influenced by arguments that it may be possible for a carrier to provision a specific loop or provide a transport facility at some point in the future. Any such review of possible future activity is the exclusive province of a potential deployment analysis.

A potential deployment analysis attempts to determine if there are specific situations in which CLECs practically and efficiently could employ functional equivalents of a UNE but have not done so. In such an analysis, the incumbent bears the burden of proof to demonstrate that the national impairment identified by the FCC does not exist in particular circumstances. Specifically, the

incumbent is obligated to show – with business case detail and granularity specific to the particular customer location or transport route under consideration – that a CLEC could self-provide the UNE functionality at thresholds below the national criteria that the FCC established in the *TRO*. (Since the FCC already has established maximum thresholds for the purchase of high capacity loop and transport UNEs, a review of carriers' ability to provision higher levels of capacity is not relevant to the inquiry.) It is important that the Commission err to the side of caution when it considers potential deployment petitions submitted by the incumbent, because an erroneous judgment of what might be (rather than what already is) available to customers would deny those customers access to competitive alternatives.

In my testimony, I will show that BellSouth, through its witness Shelley Padgett, and Verizon, through witnesses Orville Fulp and John White, have grossly overstated the number of enterprise customer locations (*i.e.*, buildings) and transport routes that satisfy the self-provisioning and wholesale triggers. In doing so, I will explain that both BellSouth and Verizon have ignored the FCC's triggers, and have failed to produce evidence on a location- and route-specific basis as required by the *TRO* and the FCC's implementing rules.

Additionally, I will explain that BellSouth's potential deployment analysis is technically flawed, superficial, and based on unsupported or and unsupportable assumptions. BellSouth's potential deployment test also fails to incorporate the FCC's location – and route-specific analysis, and as a result produces completely unjustifiable quantities of both loops and transport routes for which BellSouth

erroneously contends that the Commission should make non-impairment findings and relieve BellSouth of its unbundling obligations.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony is divided into five sections. Section I discusses the FCC's impairment analysis and how it relates to the unbundled loop and transport services necessary for a facilities-based CLEC to effectively compete with the ILECs. In Section II, I explain the self-provisioning triggers that the FCC established for high capacity loops and dedicated transport at the DS3 and dark fiber capacity levels. In this section, I also critique both BellSouth's self-provisioning trigger analysis and Verizon's self-provisioning analysis. In Section III, I explain the wholesale triggers for high capacity loops and transport, and I discuss the requirements (which both BellSouth and Verizon have failed to address in their testimony) necessary to define a carrier as a wholesale provider. In this section, I also critique both BellSouth's wholesale trigger analysis and Verizon's wholesale trigger analysis. In Section IV, I discuss the concept of potential deployment claims for high capacity loops and transport. In this section, I also critique BellSouth's potential deployment analysis. Lastly, in Section V, I describe the transitional issues this Commission should consider if it delists any loops or transport routes in order to protect CLECs and their customers from unanticipated disruption to their services and rates.

Q. WHAT DOCUMENTS DID YOU REVIEW TO PREPARE THIS TESTIMONY?

A. In preparation for this testimony, I have tried to review all of the materials relating to this proceeding, but I have given particular emphasis to the *TRO*, the testimony that BellSouth and Verizon have submitted and accompanying attachments, the discovery requests and responses served by BellSouth, and the discovery requests and responses served by competing CLECs. I also have reviewed certain materials that were submitted to the FCC during its Triennial Review proceeding.

I. THE FCC'S IMPAIRMENT FINDINGS

Q. WHAT DID THE FCC CONCLUDE IN THE *TRO* WITH REGARD TO HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. In my direct testimony, I discussed the FCC's findings with regard to high-capacity loops and transport, and I will not reiterate my testimony at length. In sum, the FCC concluded that competing carriers are impaired on a national level without access to unbundled high capacity loops (DS1, DS3, and dark fiber) and transport (DS1, DS3, and dark fiber). *See TRO* ¶ 202; *see* Ball Direct at 7-8.

Q. ARE THE FCC'S FINDINGS ON IMPAIRMENT CONSISTENT WITH TYPICAL CLEC FACILITIES-BASED NETWORKS, INCLUDING THE NETWORKS OF THE CLECS ON WHOSE BEHALF YOU ARE TESTIFYING?

A. Yes, the FCC's findings on impairment are consistent with typical CLEC facilities-based networks. Although CLECs use a variety of entry strategies to provide services to their customers throughout Florida, the CLECs on whose behalf I am testifying use facilities-based networks or depend upon access to UNEs from the ILEC. Generally, these CLECs have constructed one or more fiber rings of varying scope, and connect customers to their network using those fiber rings whenever practical. In a majority of instances, however, the CLEC still will need access to unbundled unbundled loops and loop/transport combinations (*i.e.*, "enhanced extended links", or "EELS") to connect retail customers to its network. These fiber rings connect aggregation points, such as collocation arrangements, and major customer sites to the carrier's switching or hub site. Although a CLEC may possess a facility that passes by two collocations, it will only rarely connect those two collocations to create a service configuration that is functionally equivalent to the dedicated transport UNE.

Facilities-based CLEC networks typically rely on UNE loops to serve the majority of their customers, as the fixed and sunk costs associated with building out loop facilities, as well as the delays in constructing these facilities, would place the CLECs at such a disadvantage that they would not be able to compete with the ILEC's already deployed infrastructure. Regardless of how they are configured, loop facilities are the fundamental component to serving customers. From a CLEC perspective, a loop is the connection between the retail customer's premises and the CLEC's telecommunications network. The CLEC's loop may be a UNE loop that is cross-connected to a self-provided backhaul facility; a UNE-

loop that is obtained in combination with dedicated transport (*i.e.*, an EEL); a UNE-loop that is cross-connected (in a CLEC collocation) to leased transport, which in turn connects to a self-provided facility (a loop provided with hubbed/aggregated transport); or, in rare instances, a completely self-provided facility. The critical point, however, is that CLECs use both loop UNEs and dedicated transport UNEs to provide what is the functional equivalent of a loop in the incumbent's network. Thus, when the Commission considers incumbent LECs' requests to limit access to loop and transport UNEs, the Commission should recognize that the incumbent is seeking to limit the CLEC's ability and options to connect customers to its network, thereby limiting CLEC facilities-based competition.

Facilities-based CLEC networks for connecting customers often are composed of multiple fiber rings. Multiple fiber rings exist for a number of reasons, including the timing and availability of construction funding, unanticipated capacity requirements, and/or building issues (such as rights-of-way access or construction moratoriums) that may have precluded a comprehensive and cohesive build-out strategy. Furthermore, simply because a single fiber cable contains many individual fiber strands, it is not correct to conclude that two offices on a ring are necessarily connected in a manner that allows traffic to pass between them. In fact, it is just as likely that two offices are on different fibers in different sheathes within the cable. Even if the two ILEC offices were on the same strand, it is not generally the case that the CLEC's network is designed to pass traffic between the two offices. Rather, it is likely that the two offices are on

different OC12 sub-systems within the larger OC-48 system. Although it is theoretically possible to connect central offices on different fiber rings (indeed it is "theoretically possible" to connect any two points), transport routes linking the two central offices are not generally provisioned in such circumstances, because, as I stated earlier, the CLEC's primary interest is connecting the retail customer location to its network.

II. SELF-PROVISIONING TRIGGERS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT

Q. WHAT IS THE PURPOSE OF THE FCC'S SELF-PROVISIONING TRIGGER FOR UNBUNDLED LOOPS AND TRANSPORT?

A. The FCC allowed ILECs to challenge the FCC's impairment findings on a location- and route-specific basis before state commissions. One of the ways ILECs may demonstrate non-impairment is by showing that CLECs themselves provide, to a sufficient degree, high-capacity loops and dedicated transport on their own. These are known as the "Self-Provisioning Triggers." The Self-Provisioning Triggers are intended to identify those customer locations and transport routes where there exists sufficient deployment of competitively owned facilities to demonstrate that competitors are not impaired without access to unbundled loops and transport, even if the competitors that own those facilities do not make them available to other competitive providers.

Q. WHAT CAPACITY LEVELS ARE SUBJECT TO THE SELF-PROVISIONING TRIGGERS?

A. The Self-Provisioning Triggers only apply to DS3 and dark fiber loops and transport. DS1 loops and transport are not included under these triggers. Neither BellSouth nor Verizon dispute this point.

Q. WHAT MUST BELLSOUTH AND VERIZON DEMONSTRATE TO THE COMMISSION TO SHOW THAT A SELF-PROVISIONING TRIGGER IS SATISFIED?

A. Although I set forth the test in my direct testimony, it bears repeating so as to illustrate how BellSouth and Verizon have failed to satisfy the triggers. For loops, BellSouth and Verizon must demonstrate that there are ***two or more*** unaffiliated competitors (unaffiliated with each other and the ILEC) that have deployed their own facilities at the specific capacity level (DS3 or dark fiber), and that they are serving customers using those facilities. For transport, they must demonstrate there are ***three or more*** competing providers that have deployed their own facilities at the specific capacity level (DS3 or dark fiber), and that they are offering service using those facilities. The triggers must be applied on a location-specific basis and each capacity level must be evaluated separately. *See TRO* ¶ 329. For example, a CLEC that self-provisions at the OC(n) capacity level does not necessarily self-provision at the DS1 or DS3 capacity level. As I discuss below, among other deficiencies neither BellSouth nor Verizon conducted a capacity-specific analysis.

Q. WHAT MUST BELLSOUTH AND VERIZON DEMONSTRATE TO PROVE THAT THE SELF-PROVISIONING TRIGGER IS SATISFIED FOR HIGH-CAPACITY LOOPS AT A SPECIFIC CUSTOMER LOCATION?

A. The ILECs must demonstrate that the two competitive providers:

- Are not affiliated with each other or the ILEC;
- Use their own facilities and not facilities owned or controlled by the other competitive provider or the ILEC; and
- Are serving customers using their own facilities at that location over the relevant capacity level.

See Ball Direct at 22-23 (elaborating on these points).

Q. WHAT MUST BELLSOUTH AND VERIZON DEMONSTRATE TO PROVE THAT THE SELF-PROVISIONING TRIGGER IS SATISFIED FOR DEDICATED TRANSPORT BETWEEN TWO BELLSOUTH WIRE CENTERS?

A. For each of the three competitive providers, the ILECs must demonstrate that:

- They not affiliated with each other or the ILEC;
- Each counted self-provisioned facility along a route must be operationally ready to provide transport into or out of an ILEC central office; and
- Each counted self-provisioned facility terminates in a collocation arrangement.

Q. WHAT ARE THE KEY ISSUES UNDER THE SELF-PROVISIONING TRIGGERS FOR WHICH THE COMMISSION MUST ENSURE THAT BELLSOUTH IS USING THE APPROPRIATE INTERPRETATION?

A. The first key issue is to ensure that the BellSouth and Verizon are defining loops and transport routes in a manner consistent with the FCC, and are applying those definitions appropriately. The FCC's definition is "the connection between the relevant service central office and the network interface device ("NID") or equivalent point of demarcation at a specific customer premises."

The FCC defined a transport route as "a connection between wire center or switch 'A' and wire center or switch 'Z'." The FCC elaborated that "even if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competing providers must *offer service* connecting wire centers 'A' and 'Z,' but do not have to mirror the network path of the incumbent LEC through wire center 'X'." Thus, the FCC requires that transport service must be offered between the two wire centers in question.

Q. WHAT IS THE APPROPRIATE EVIDENCE THAT BELLSOUTH AND VERIZON SHOULD PROVIDE TO MEET THE FCC'S REQUIREMENT OF OPERATIONAL READINESS FOR THE SELF-PROVISIONING TRIGGERS?

A. The only effective and practical way of demonstrating that a CLEC is operationally ready under the Self-Provisioning Triggers is to produce evidence that the CLEC is actually providing service at the customer location or on the given transport route. This is consistent with the FCC's requirement that evidence be provided that CLECs are *serving* customers using self-provisioned

loop services, and that CLECs *offer service* between two wire centers on a given transport route.

A. CRITIQUE OF BELLSOUTH'S FLORIDA SELF-PROVISIONING TRIGGER ANALYSIS

1. *HIGH CAPACITY LOOPS – ISSUES 1, 2, 3, 5*

Q. HAVE YOU REVIEWED BELLSOUTH'S TESTIMONY CONCERNING THE APPLICATION OF THE SELF-PROVISIONING TRIGGER TO HIGH CAPACITY LOOPS?

A. Yes, I have reviewed the testimony (both initial and supplemental) of Shelley Padgett and the supporting exhibits to the testimony.

Q. WHAT WERE THE CONCLUSIONS OF THE SELF-PROVISIONING TRIGGER ANALYSIS AS PROVIDED BY BELLSOUTH?

A. BellSouth has asserted that 94 customer loop locations satisfy both the self-provisioning and the wholesale facilities triggers. The specific customer locations are listed on Attachment SWP-3 to Ms. Padgett's testimony. In this section, I will focus on the self-provisioning trigger.

Q. PLEASE DESCRIBE YOUR UNDERSTANDING OF HOW BELLSOUTH IDENTIFIED LOCATIONS WHERE ACCESS TO HIGH CAPACITY UNBUNDLED LOOP LOCATIONS SHOULD BE LIMITED.

A. BellSouth developed a list of buildings/customer locations for which it claims competitive providers have deployed fiber optic facilities, using the following sources:

- discovery directly from the competitive providers; and
- and indirect information generated by GeoResults, which is a third-party market research firm.

For each building on the list so identified, Bellsouth asserts that two or more competitive providers are providing services and thus that the self-provisioning trigger has been met.

Q. DID BELLSOUTH APPROPRIATELY IMPLEMENT THE SELF-PROVISIONING TRIGGER FOR HIGH CAPACITY LOOPS?

A. No. Based on my review of the information in this case, BellSouth has grossly overstated the number of customer locations for which the self-provisioning loop trigger is met, due to BellSouth's unsupported assertion that numerous CLECs are serving building locations at the DS3 or dark fiber levels. Based upon my review of the information in this case, for at least the following reasons, BellSouth does not reliably identify locations where the self-provisioning trigger is met. First, BellSouth did not attempt to distinguish wholesale services from self-provisioned services in its analysis. Second, BellSouth chose not to use the data responses provided by the CLECs, and in many instances reported information contrary to that presented by the CLECs in discovery in an apparent attempt to inflate the number of buildings. Third, BellSouth appears to have used unverified, and in some cases, very questionable, data from GeoResults. BellSouth did not confirm

the GeoResults information with the CLECs identified therein, and generally ignored CLEC responses to BellSouth discovery asking whether those carriers had facilities in a building. Even if the GeoResults information turns out to be accurate based upon confirmation from the carrier, each building would need to be examined further to determine whether the carrier is providing service at the appropriate capacity levels, and that the buildings met the specific requirements the FCC rules establish for the self-provisioning triggers, such as operational readiness, ownership of facilities, and access to the entire building.

Fourth, BellSouth made the incorrect assumption that any location for which a CLEC has deployed fiber optic facilities is operationally ready to provide DS3 or dark fiber service. There are several issues that BellSouth would need to resolve before such a demonstration could be made, including verifying that the CLEC has access to all of the customers in a building, and that the CLEC is actually providing DS3 or dark fiber services in the building.

Q. PLEASE EXPLAIN YOUR POSITION THAT BELLSOUTH INAPPROPRIATELY MIXED THE RESULTS OF THE SELF-PROVISIONING TRIGGERS FOR LOOPS.

A. The FCC was very clear that the Self-Provisioning trigger is to be performed independent of wholesale at each specific capacity level. BellSouth did not follow this approach. Instead, BellSouth combined DS1, DS3 and dark fiber statements it gathered from the CLECs into one list, which allowed it to increase

the number of buildings for which it appears that two or more carriers are providing service.

Q. PLEASE EXPLAIN YOUR ASSERTION THAT BELLSOUTH MISREPRESENTED THE CLECS DATA RESPONSES IN AN EFFORT TO OVERSTATE THE NUMBER OF BUILDINGS?

A. I reviewed the data responses of AT&T, MCI, SBC, Time Warner Telecom, and Adelphia. For each carrier, BellSouth either overstated the number of buildings that the carriers were providing in total, or ignored specific information provided by the carrier as to specific capacity levels, and whether the services were provisioned as wholesale or self-provisioning only. *** [redacted] ***

Q. HAVE YOU BEEN ABLE TO NARROW THE NUMBER OF BUILDINGS THAT MAY BE ELIGIBLE FOR THE SELF-PROVISIONING TRIGGER?

A. Yes. In Exhibit (GJB-1), I show the results of correcting the errors for the 5 carriers listed in the previous question *** [redacted]

[redacted] *** as well as eliminating several small carriers that did not appear to be facilities-based CLECs *** [redacted] [redacted].*** This list is incomplete and will need further updates to the extent I can review the CLEC filings of other significant trigger CLECs, such as Progress Telecom and Epik.

Q. HOW MANY BUILDINGS FROM BELLSOUTH'S LIST ARE ACTUALLY ELIGIBLE FOR THE SELF-PROVISIONING TRIGGER AFTER CORRECTING BELLSOUTH'S INAPPROPRIATE AGGREGATION OF TRIGGERS AND MISREPRESENTATION OF DATA?

A. For the DS3 self-provisioning trigger, my analysis eliminates 27 buildings or nearly 30% from further consideration simply by correcting BellSouth's errors. I expect that further reductions will be warranted once the remaining 67 buildings are analyzed more closely. For dark fiber, I have eliminated the majority of the buildings from further consideration leaving only 22 that require more scrutiny.

Q. WHAT TYPE OF ADDITIONAL REVIEW NEEDS TO BE PERFORMED ON THESE REMAINING BUILDINGS?

A. First, the data filings of all of the CLECs need to be compared to BellSouth's filing to ensure that BellSouth did not misrepresent those carriers filings as well.

Second, the buildings need to be evaluated to ensure that they meet the standard of operational readiness at each relevant capacity level.

Q. WERE YOU ABLE TO DETERMINE WHICH DATA WAS PRODUCED BY GEORESULTS VS. CLEC DISCOVERY?

A. No. While Ms. Padgett indicated that she relied quite heavily upon GeoResults, BellSouth did not indicate for which buildings it was used.

Q. EVEN IF GEORESULTS COULD IDENTIFY CARRIERS WITH SOME PRESENCE IN A BUILDING, WHAT ADDITIONAL ANALYSIS WOULD BE NECESSARY TO DETERMINE WHETHER THE CARRIERS INCLUDED IN THAT REPORT COULD BE INCLUDED AS TRIGGER CANDIDATES AT A PARTICULAR LOCATION?

A. As I explained in my initial testimony, the FCC triggers require more than a simple "count the CLECs" approach. To be identified as trigger candidates, carriers must have access to all customers within the building. *See* Ball Direct at 19-20. Second, BellSouth must identify the specific capacity level(s) at which the CLEC is providing service to customers in the building. The Commission must analyze the triggers for DS3 and dark fiber services separately.

Q. DID BELLSOUTH CONDUCT THESE ADDITIONAL INQUIRIES?

A. No. In its analysis, BellSouth assumes that a carrier has access to the entire building. BellSouth also incorrectly assumes that the deployment of optical facilities at an OCn level of capacity qualifies as DS3 or dark fiber deployment.

Q. IS IT APPROPRIATE FOR BELLSOUTH TO INCLUDE BUILDINGS IDENTIFIED THROUGH GORESULTS, THE THIRD PARTY MARKETING FIRM?

A. Not unless they are validated by the carriers themselves. Based upon my experience with GeoResults, many of the buildings it identifies as being served by CLECs are different than those identified by the companies themselves.

Q. PLEASE DESCRIBE THE TYPE OF FURTHER ANALYSIS REQUIRED OF THE REMAINING BUILDINGS.

A. Two key issues that the buildings must be evaluated upon are whether the CLEC can provide service to the whole building (as opposed to a single customer) as well as ensuring that the specific capacity level (DS3 or Dark Fiber) are being provisioned at to customers in the buildings.

Q. BASED UPON YOUR EXPERIENCE, IS IT UNCOMMON FOR CLECS TO CONFIGURE THEIR SERVICES TO SERVE ONLY ONE CUSTOMER OR FLOOR OF A BUILDING?

A. No, it is fairly common for a CLEC to have facilities only to one customer or floor in a particular building. For a variety of reasons, a CLEC may have entered

a building to serve only a particular customer, and may have provisioned what is called "Fiber to the Floor." In this instance, the customer does not use the shared riser facilities of the building, but instead has fiber facilities dedicated to its use. The carrier does not deploy equipment to the "minimum point of entry" ("MPOE") in a fiber to the floor situation. Carrier equipment is installed at the customer premises, not at the MPOE.

Q. UNDER SUCH "FIBER TO THE FLOOR" ARRANGEMENTS, DOES CLEC HAVE THE IMMEDIATE ABILITY TO SERVE OTHER CUSTOMERS IN THE BUILDING?

A. No. The CLEC would have to establish new facilities in the building's common space area, and would most likely have to negotiate a new arrangement with the building owner.

Q. WOULD IT BE APPROPRIATE TO INCLUDE A BUILDING FOR THE SELF-PROVISIONING TRIGGER FOR SUCH A "FIBER TO THE FLOOR" ARRANGEMENT?

A. No. The FCC triggers require that the CLEC be able to serve all customers at a given location. Only the specific customer location would qualify as being served by a CLEC, not the entire building. The CLEC is clearly not operationally ready to provide service throughout the building if it does not have the ability to access customers in the building.

Q. BASED UPON YOUR REVIEW OF BELLSOUTH'S ANALYSIS, DID BELLSOUTH INCLUDE ANY BUILDINGS FOR WHICH A CLEC INDICATED A FIBER TO THE FLOOR OR SIMILAR ARRANGEMENT?

A. Yes. As one example, based upon my review of *** [redacted] *** had indicated that it does not have access to the entire building. Based upon the CLEC responses I reviewed, the CLECs did not consistently indicate whether they have access to the entire building. That issue that must be verified before a CLEC is deemed operationally ready to serve the building.

Q. SHOULD THERE BE A GENERAL PRESUMPTION THAT CLECS ARE PROVIDING OC(N) SERVICES IN A GIVEN BUILDING UNLESS A DEMONSTRATION CAN BE MADE OTHERWISE?

A. Yes. It is vital to ensure that buildings for which the FCC has already determined there is no impairment, *i.e.*, those with OC(n) facilities, are not double counted for the purpose of identifying DS3 and dark fiber loop services. It is important to the "granularity" of the analysis that BellSouth go beyond simply identifying buildings with fiber, and actually determine those buildings for which DS3 or dark fiber services are being provided.

Q. DO YOU AGREE WITH BELLSOUTH WITNESS GRAY'S ASSERTION THAT BUILDINGS CURRENTLY EQUIPPED TO PROVIDE ONLY

OC(N) LEVEL SERVICES ARE OPERATIONALLY READY TO PROVIDE DS3 OR DARK FIBER SERVICES?

A. No. To the extent the OC(n) equipment is equipped to provide OC(n) level services, additional capital and labor will be required to derive a DS3 circuit, the amount of which will vary greatly based upon the existing configuration of the optical equipment and the available capacity. As the FCC noted, CLECs generally deploy fiber optic facilities to buildings for which they plan to offer OC(n) level services, as it is not generally economic to extend facilities for the provision of one or two DS3s.

Q. IS THE CLEC DATA THAT YOU REVIEWED CONSISTENT WITH BELLSOUTH'S THEORY THAT ANY TYPE OF CAPACITY LEVEL CAN BE SERVED OVER FIBER FACILITIES?

A. No. The CLECs generally served a specific capacity level into a given building. *** [redacted] . ***

Q. HOW SHOULD THE REMAINING BUILDINGS BE ANALYZED RELATIVE TO CAPACITY LEVELS?

A. Each building must be analyzed separately for each capacity level. The mere existence of fiber cannot be used as a substitute for the actual provision of service at the DS1 or DS3 levels.

2. *DEDICATED TRANSPORT – ISSUES 9, 14*

Q. HAVE YOU REVIEWED BELLSOUTH'S TESTIMONY CONCERNING THE APPLICATION OF THE SELF-PROVISIONING TRIGGER TO DEDICATED TRANSPORT ROUTES?

A. Yes, I have reviewed the testimony of Shelley W. Padgett.

Q. WHAT WERE THE CONCLUSIONS OF THE SELF-PROVISIONING TRIGGER ANALYSIS AS PROVIDED BY BELLSOUTH?

A. BellSouth has asserted that 718 transport routes satisfy both the self-provisioning trigger and the wholesale trigger. The specific routes are listed in Attachment SWP-9 to Ms. Padgett's testimony.

Q. WHAT WAS THE PROCESS BELLSOUTH USED TO IDENTIFY DEDICATED TRANSPORT ROUTES THAT IT CLAIMS SATISFY THE SELF-PROVISIONING TRIGGER?

A. Similar to her process for loops, BellSouth witness Padgett developed a list of wire centers at which competitive providers have established collocation arrangements based upon information gathered in discovery and through examination of BellSouth's own collocation records. BellSouth then simply assumed that transport routes exist between each and every collocation arrangement within a given LATA for each individual carrier for both the DS3 and dark fiber capacity levels.

Q. DID BELLSOUTH PERFORM THE APPROPRIATE ANALYSIS TO DEMONSTRATE THAT THE SELF-PROVISIONING TRIGGERS WERE SATISFIED FOR DEDICATED TRANSPORT?

A. No. First, similar to loops, BellSouth completely misrepresents the CLEC data responses in an attempt to overstate the number of transport routes meeting the trigger. Second, instead of collecting and analyzing information on specific routes between wire centers "A" and "Z" for each competing provider as required by the FCC, BellSouth only gathered enough information to implement what I call its "connect the dots" methodology, in which it simply assumes that transport routes exist between each and every collocation arrangement for a given carrier, without regard for the carrier's actual use of the collocation arrangement. Additionally, in my review of the discovery, I saw no information from competitive providers that could be construed to mean that the provider is providing dedicated transport at the DS3 or dark fiber levels. This should not be surprising, as, consistent with the FCC's findings, carriers generally only can cost-justify constructing their own transport routes if they have enough traffic to warrant OC(n) level capacity levels.

Q. PLEASE EXPLAIN HOW BELLSOUTH MISREPRESENTED THE CLEC'S DATA RESPONSES.

A. Similar to loops, BellSouth misrepresented and in some case completely ignored the data provided by the CLECs. *** [redacted]

[redacted]. ***

Q. HAVE YOU BEEN ABLE TO NARROW THE NUMBER OF ROUTES THAT MAY BE ELIGIBLE FOR THE SELF-PROVISIONING TRIGGER?

A. Yes. Exhibit ___ (GJB-2) lists each route that BellSouth has identified as satisfying the self-provisioning trigger, and further indicates by capacity type which routes may be eligible for the self-provisioning trigger subject to further review and analysis.

Q. HOW MANY ROUTES MAY POTENTIALLY BEING ELIGIBLE FOR THE SELF-PROVISIONING TRIGGER?

A. Of the 718 routes presented in Ms. Padgett's testimony, I have been able to eliminate 521 routes (or 72%) by correcting for BellSouth's errors described herein. I expect that the remaining 197 routes for which additional scrutiny is necessary will be reduced further if I am able to incorporate responses from additional key trigger CLECs, including FPL Fibernet, XO, and Florida Digital Networks.

Q. COULD YOU VERIFY WHETHER ANY OF THE 197 ROUTES REQUIRING ADDITIONAL ANALYSIS ACTUALLY MET THE FCC'S DEFINITION OF A ROUTE FOR THE PURPOSES OF THE TRIGGER ANALYSIS?

A. No. BellSouth appears to have relied upon the mere existence of a collocation arrangement to determine the endpoint of a route, and did not collect or rely upon information that would enable it to determine whether a route actually exists between two wire centers.

Q. PLEASE EXPLAIN YOUR POSITION THAT BELLSOUTH HAS FAILED TO PRESENT THE INFORMATION NECESSARY TO IDENTIFY ROUTES SERVED BY COMPETITIVE PROVIDERS.

A. As I stated above, the FCC has defined dedicated transport as "a connection between wire center or switch 'A' and wire center or switch 'Z'." The FCC elaborated that "even if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competing providers must *offer service* connecting wire centers 'A' and 'Z,' but do not have to mirror the network path of the incumbent LEC through wire center 'X'." Without this information it is impossible to determine that any of the routes in question actually satisfy the triggers.

Q. COULD YOU VERIFY THAT TRANSPORT AT THE RELEVANT CAPACITY LEVELS IS BEING PROVIDED FOR ANY OF THE ROUTES ON BELLSOUTH'S LIST?

A. No. CLECs generally indicated that transport is being provided on an OC(n) basis. I saw no information that could be used to determine that DS3 or dark fiber transport was being provided by three or more carriers on any given route.

Q. ARE YOU ASSERTING THAT THERE ARE NO DEDICATED TRANSPORT ROUTES THAT MEET THE FCC'S SELF-PROVISIONING TRIGGER IN FLORIDA?

A. No. Based upon the amount of CLEC investment in Florida over the past ten years, there very well may be some routes for which the self-provisioning trigger has been met. I am merely explaining that BellSouth has not met its burden of proof as required by the FCC. BellSouth has requested that an extraordinarily high number of routes be removed as UNEs in this proceeding. CLECs will be irreparably harmed if they are denied UNEs on a given route where they actually are impaired, so it is important to take whatever time to collect the appropriate information to identify only those routes where no impairment exists.

Q. WHY IS IT NECESSARY FOR BELLSOUTH TO DEMONSTRATE THAT TRANSPORT SERVICE IS BEING PROVIDED ON EACH ROUTE?

A. As I stated earlier in my testimony, CLECs generally establish collocation arrangements for the purpose of aggregating unbundled loop facilities, and as a

result they will typically place loop aggregation equipment such as digital loop carrier systems (DLCs) or digital subscriber line access multiplexers (DSLAMs) in these collocations. As most transport out of a wire center collocation is routed to a CLEC node or interexchange carrier point of presence, it will be an unusual occurrence for a CLEC to have provisioned a connection between two ILEC wire centers, unless there are customer locations in each wire center that need to be connected. Because collocations are generally not used for transport between ILEC wire centers, Bellsouth's "connect the dots" approach drastically overstates the number of actual transport routes connecting wire centers and cannot be used for the trigger analysis.

Q. IF THE LOOP AGGREGATION EQUIPMENT YOU DESCRIBE IS PRESENT IN A WIRE CENTER COLLOCATION, WOULD THE TRANSPORT THEN BE CONNECTED TO A CLEC SWITCH?

A. Yes. BellSouth failed to distinguish switched transport from dedicated transport. BellSouth did not attempt to determine for any of the identified routes whether the routes pass through a CLEC switch, which in my experience is the most common use of transport out of CLEC collocations. By definition, transport that is switched cannot be dedicated, as the traffic can be routed by the switch to points other than the "A" or "Z" wire centers.

Q. WHY WAS IT NECESSARY FOR BELLSOUTH TO IDENTIFY THE SPECIFIC CAPACITY LEVELS IN SERVICE AT EACH LOCATION?

A. Similar to loops, it is essential that equipment being used for OC(n) level services be distinguished from equipment providing DS3 or dark fiber transport. As the FCC determined, carriers generally configure transport facilities at much higher capacity levels than a DS3, so a reasonable assumption is that, even if there really is a connection between two BellSouth wire centers, it is most likely at an OC(n) level of capacity, which would make it inapplicable for the self-provisioning trigger.

Q. BASED UPON THE INFORMATION PRESENTED BY BELLSOUTH, IS IT POSSIBLE TO DETERMINE WHETHER ANY TRANSPORT ROUTES IN FLORIDA MEET THE SELF-PROVISIONING TRIGGER?

A. No. Without the determination as to where actual dedicated connections exist between the "A" and "Z" wire centers and the appropriate capacity levels, it is not possible to make a determination as to whether any routes meet the self-provisioning test.

Q. HOW SHOULD THE COMMISSION PROCEED TO THE EXTENT THAT BELLSOUTH HAS NOT COLLECTED ALL OF THE DATA NECESSARY TO DEMONSTRATE THE TRIGGERS?

A. BellSouth has the burden of proof to rebut the FCC's national findings of impairment. The Commission must deny BellSouth's claims in this proceeding if BellSouth has not presented adequate proof to satisfy either trigger. In the *TRO*,

the FCC stated that it envisioned subsequent reviews of loop and transport UNEs. BellSouth can challenge loops and routes in such a subsequent proceeding.

B. CRITIQUE OF VERIZON'S SELF-PROVISIONING ANALYSIS – ISSUES 2, 5, 9, & 14

Q. HAVE YOU REVIEWED VERIZON'S SELF-PROVISIONING ANALYSIS?

A. Yes, I have reviewed the testimony of Orville D. Fulp and John White at pages 13-14.

Q. DID VERIZON PERFORM A SELF-PROVISIONING ANALYSIS FOR HIGH CAPACITY LOOPS?

A. No. Verizon only performed a Self-Provisioning analysis for dedicated transport.

Q. WHAT WERE THE CONCLUSIONS OF THE SELF-PROVISIONING TRIGGER ANALYSIS AS PROVIDED BY VERIZON?

A. Verizon has asserted that 29 transport routes satisfy the self-provisioning trigger. The specific routes are listed on Exhibit B to the Fulp and White dedicated transport testimony, as supplemented by Exhibit F.2.

Q. WHAT WAS THE PROCESS VERIZON USED TO IDENTIFY THE DEDICATED TRANSPORT ROUTES THAT IT CLAIMS SATISFY THE SELF-PROVISIONING TRIGGER?

A. Verizon relied primarily upon a visual inspection process to identify which wire center collocation arrangements it believed competitors were providing service out of. Similar to Bellsouth, Verizon then implemented the "connect the dots" approach, and made the assumption that transport routes exist between each of the wire centers without any evidence of actual routes or whether the carrier provides the capacity level.

Q. ARE THE CRITICISMS YOU MADE OF BELLSOUTH'S SELF-DEPLYOMENT TRANSPORT TRIGGERS ALSO APPLICABLE TO VERIZON?

A. Yes. Just like BellSouth, Verizon did not provide the necessary showing that routes exist between the two wire centers collocation arrangements listed as the "A" and "Z" routes. Verizon did not take the necessary steps to ensure, for example, that the transport out of each wire center does not actually terminate to a switch.

Q. DID VERIZON VERIFY THAT THE COLLOCATION ARRANGEMENTS THEY IDENTIFIED ARE OPERATIONALLY READY TO PROVIDE TRANSPORT AT THE DS3 OR DARK FIBER CAPACITY LEVELS?

A. No. Just like BellSouth, Verizon merely identified the existence of electronic equipment in each central office. It is not possible to determine what capacity level is being provided based upon the mere existence of equipment in the central

office. As noted above, CLECs typically equip their central offices to provided OC(n) level transport, so it is likely that, to the extent any direct transport is being provided, it is not at the DS3 or dark fiber capacity levels.

Q. HAVE YOU IDENTIFIED ANY VERIZON WIRE CENTER PAIRS FOR WHICH IT APPEARS THE SELF-PROVISIONING TRIGGER HAS BEEN MET?

A. No.

III. WHOLESALE TRIGGERS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT – ISSUES 1, 3, 7, 11, 16

Q. WHAT IS THE PURPOSE OF THE FCC'S WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. The FCC permits ILECs to challenge these impairment findings on a location- and route-specific basis before the state commissions. One of the ways Bellsouth or Verizon could demonstrate non-impairment is by showing that other carriers sufficiently offer high-capacity loops and dedicated transport on a wholesale basis. These are known as the "Wholesale Triggers."

The Wholesale Triggers provide BellSouth and Verizon an opportunity demonstrate that there is no impairment for a specific customer location or route by identifying locations for which there are alternative providers offering wholesale loop and transport services to CLECs. In addition to evidence provided under the self-provisioning trigger, BellSouth and Verizon are also obliged to demonstrate that the alternative provider: (1) is actually offering wholesale

service for the specific route or location at the requisite capacity level; (2) has equipped its network to facilitate numerous wholesale customers; and (3) has developed the appropriate systems and procedures to manage a wholesale business.

Q. WHAT CAPACITY LEVELS ARE SUBJECT TO THE WHOLESALE TRIGGERS FOR HIGH CAPACITY LOOPS AND TRANSPORT?

A. Wholesale loops and transport at both the DS1 and DS3 level are subject to the Wholesale Triggers. Dark fiber *loops* are not subject to the Wholesale Trigger, while dark fiber *transport* is subject to the Wholesale Trigger.

Q. WHAT MUST BELLSOUTH AND VERIZON DEMONSTRATE TO THIS COMMISSION TO SATISFY THE WHOLESALE TRIGGERS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. The Wholesale Triggers examine whether there are competing providers offering a bona fide product at the specific location or on the specific route. Accordingly, BellSouth and Verizon must demonstrate that a carrier offers loops and/or transport at a specific customer location or on a transport route, respectively, and at the specific capacity level in question.

Q. WHAT MUST BELLSOUTH AND VERIZON DEMONSTRATE TO SATISFY THE WHOLESALE PROVISIONING TRIGGER FOR HIGH-CAPACITY LOOPS?

A. Specifically, under the FCC's rules, this trigger requires evidence that:

- Two or more competing providers not affiliated with each other or the ILEC are present at the customer location;
- Each provider has deployed its own facilities and is operationally ready to use those facilities to provide wholesale loops at that location;
- Each provider is willing to provide wholesale loops on a widely available basis at that location; and
- Each provider has access to the entire multiunit customer premises. *See* 47 C.F.R. § 51.319(a)(5)(i)(B).

Q. WHAT MUST BELLSOUTH AND VERIZON DEMONSTRATE TO SATISFY THE WHOLESALE PROVISIONING TRIGGER FOR DEDICATED TRANSPORT?

A. The wholesale trigger for dedicated transport requires specific evidence that:

- Two or more competing providers not affiliated with each other or with the ILEC are present on the route;
- Each provider has deployed its own transport facilities "and is operationally ready to use those facilities to provide dedicated … transport along the particular route";
- Each provider "is willing immediately to provide, on a widely available basis," dedicated transport to other carriers on that route;
- Each provider's "facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises *and* in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises"; and
- Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement.

See 47 C.F.R. § 51.319(e)(1)(ii) [DS1 transport], 51.319(e)(2)(i)(B) [DS3 transport], 51.319(e)(3)(i)(B) [dark fiber transport].

Q. ARE THERE ADDITIONAL ISSUES RELATED TO HIGH-CAPACITY LOOPS THAT NEED TO BE ADDRESSED FOR THE WHOLESALE TRIGGER?

A. Yes. First, each loop must terminate at a location that affords alternative providers access to the entire customer premises – including, in multi-tenant buildings, access to the same common space, house, and riser, and other intra-building wire as Bellsouth and Verizon enjoys. If a loop does not provide alternative providers with access to the entire customer premises, then the carrier providing the loop should not be counted for purposes of either the wholesale or the self-provisioning trigger. With regard to the Wholesale Triggers, in particular, without access to the entire customer premises, that carrier is not truly offering an alternative wholesale service.

Second, the high-capacity loop in question must provide a connection into BellSouth's central office. Competitors must be able to connect a wholesale loop with another carrier's transport, with their own collocated facilities, or with BellSouth UNE transport.

Q. DOES THE REQUIREMENT OF OPERATIONAL READINESS NEED TO BE EXAMINED FOR THE WHOLESALE TRIGGERS?

A. Yes. In addition to the requirements of the self-provisioning triggers, BellSouth and Verizon must demonstrate that the wholesale provider is operationally ready and willing to provide transport to other carriers at each capacity level. At a minimum, BellSouth and Verizon must show that each wholesale provider:

- Has sufficient systems, methods and procedures for pre-ordering, ordering, provisioning, maintenance and repair, and billing;
- Possesses the ability to actually provision wholesale high-capacity loops to each specific customer location identified or to provide dedicated transport along the identified route;
- For loops, has access to an entire multi-unit customer premises;
- Is capable of providing transport at a comparable level of capacity, quality, and reliability as that provided by the ILEC;
- For transport, is collocated in each central office at the end point of each transport route;
- Has the ability to provide wholesale high capacity loops and transport in reasonably foreseeable quantities, including having reasonable quantities of additional, currently installed capacity;
- Reasonably can be expected to provide wholesale loop and transport capacity on a going-forward basis; and
- Can provide service in a commercially reasonable timeframe, because if it takes to long to receive service customers will not sign up with CLECs.

I discuss this criteria in greater detail in my direct testimony. *See* Ball Direct at 27-34.

A. CRITIQUE OF BELLSOUTH FLORIDA WHOLESALE TRIGGER ANALYSES

1. *HIGH CAPACITY LOOPS*

Q. HAVE YOU REVIEWED BELLSOUTH'S TESTIMONY CONCERNING THE APPLICATION OF THE WHOLESALE TRIGGER TO HIGH CAPACITY LOOPS?

A. Yes, I have reviewed the testimony of Shelley W. Padgett.

Q. WHAT WERE THE CONCLUSIONS OF THE WHOLESALE TRIGGER ANALYSIS AS PROVIDED BY BELLSOUTH?

A. BellSouth has asserted that the same 94 buildings that it claimed for the self-provisioning trigger also satisfy the wholesale facilities trigger. The specific customer locations are listed in Attachment SWP-3 to Ms. Padgett's testimony.

Q. WHAT WAS THE PROCESS BELLSOUTH USED TO IDENTIFY THE 94 BUILDINGS THAT IT CLAIMS SATISFY THE WHOLESALE TRIGGER?

A. On page 9 of Ms. Padgett's testimony, Ms. Padgett lists the broad range of sources that she used to identify carriers as wholesalers, including discovery responses, BellSouth's "experience" in losing wholesale contracts, carriers' advertisements, carriers' public statements, and analyst and industry reports. Ms Padgett then continues with a creative assertion that the carrier does not even have to be currently selling wholesale service to qualify for the wholesale trigger, but instead just express some sort of "willingness" to provide wholesale services.

Clearly, under BellSouth's view, everyone is a wholesaler, whether they realize it or not.

Q. WHY IS IT IMPORTANT THAT THE WHOLESALE TRIGGER BE TREATED SEPARATELY FROM THE SELF-PROVISIONING TRIGGER, AND THAT CARE BE TAKEN TO AVOID INCORRECTLY LABELING A CARRIER AS A WHOLESALER?

A. Unlike the self-provisioning trigger, the wholesale trigger includes access to loops at the DS1 capacity level, meaning that CLECs could potentially be denied access to loops. DS1-loops are the primary means of provisioning service to medium-size enterprise customers for CLECs, and denial of DS1-loops would be a severe impediment to the CLECs' ability to provide competitive services.

Q. IN YOUR OPINION, IS BELLSOUTH ATTEMPTING TO MANIPULATE THIS DIFFERENCE BETWEEN THE TRIGGERS IN ORDER TO JUSTIFY THE REMOVAL OF DS1 LOOPS?

A. Yes. As described above, BellSouth has identified practically every carrier as a wholesaler without any meaningful supporting evidence in most cases. Additionally, BellSouth has declared that every one of the buildings on its list qualifies for the wholesale trigger at the DS1 level, meaning that, if approved, DS1-level loops will be unavailable to CLECs in any of those buildings.

Q. IS BELLSOUTH'S APPROACH TO IMPLEMENTING THE WHOLESALE TRIGGER FOR HIGH CAPACITY LOOPS CORRECT?

A. No. As described in Section IV above, BellSouth grossly overstated the number of buildings satisfying the self-provisioning trigger. To the extent that BellSouth is attempting to use the same list for the wholesale triggers, the list suffers from the same defects. BellSouth has compounded the problem by overstating the extent to which carriers provide wholesale services.

Q. DID BELLSOUTH ACCURATELY REPRESENT THE CLEC DATA RESPONSES IN TERMS OF WHETHER THEY ARE WHOLESALERS OR NOT?

A. No. Of the CLEC data responses I reviewed, almost all denied providing wholesale service. BellSouth included carriers as wholesalers despite their declaration to the contrary.

Q. HAVE YOU BEEN ABLE TO NARROW THE NUMBER OF BUILDINGS THAT POTENTIALLY COULD MEET THE WHOLESALE TRIGGER?

A. Yes. Exhibit ___ (GJB-1) provides that 27 buildings could meet the DS1 wholesale trigger, and 28 buildings that could potentially meet the DS3 wholesale trigger.

Q. WHAT STEPS NEED TO BE TAKEN TO ENSURE THAT THESE BUILDINGS ACTUALLY WOULD MEET THE WHOLESALE TRIGGER.

A. Similar to the Self-Provisioning Trigger, the CLEC must be able to serve all customers in the building, and must be providing loops at the relevant capacity level. Additionally, it must be validated that the CLEC's wholesale offering is widely available to competitors on a nondiscriminatory basis.

Q. DID BELLSOUTH PROPERLY VERIFY THE AVAILABILITY OF DS1 LOOP SERVICES ON A WHOLESALE BASIS FOR THE BUILDINGS IT LISTED?

A. No. According to BellSouth witness Padgett, BellSouth simply made an assumption that any existing fiber facility can provide DS1-level service. This assumption is incorrect. DS1-level service only can be provided when a fiber facility has been equipped with the appropriate electronics, including an optical multiplexer with the capability of provisioning DS1 channels. The FCC was very clear in its requirement that wholesale service must be available at the specific capacity level in order for the trigger to be satisfied.

Q. DID THE FCC ANTICIPATE THAT A VERY SMALL NUMBER OF BUILDINGS WOULD SATISFY THE WHOLESALE TRIGGERS?

A. Yes. In paragraph 338 of the TRO, the FCC stated that "We recognize that, while the record indicates that there are presently a limited number of alternative

wholesale loop providers serving multiunit premises, we anticipate that a competitive market will continue to *develop*." (emphasis added).

2. *DEDICATED TRANSPORT – ISSUES 7, 11, 16*

Q. HAVE YOU REVIEWED BELLSOUTH'S TESTIMONY CONCERNING THE APPLICATION OF THE WHOLESALE TRIGGER TO DEDICATED TRANSPORT ROUTES?

A. Yes, I have reviewed the testimony of Shelley W. Padgett.

Q. WHAT WERE THE CONCLUSIONS OF THE WHOLESALE TRIGGER ANALYSIS AS PROVIDED BY BELLSOUTH.

A. BellSouth has asserted that 718 routes meet the wholesale triggers. The specific transport routes are listed on Attachment SWP-3 to Ms. Padgett's loop testimony.

Q. PLEASE DESCRIBE THE PROCESS BELLSOUTH USED TO IDENTIFY DEDICATED TRANSPORT ROUTES THAT IT CONTENDS SATISFY THE WHOLESALE PROVISIONING TRIGGER.

A. BellSouth used the same "connect the dots" approach to collecting data that I described above in my critique of the self-provisioning trigger, and used the same broad-brush approach to identify wholesale service providers as it used for loops, essentially assuming without supporting evidence that every competitive provider of transport is providing wholesale on each and every route.

Q. DOES BELLSOUTH HAVE AN INCENTIVE TO BE OVERLY BROAD IN ITS IDENTIFICATION OF WHOLESALE TRANSPORT ROUTES?

A. Yes. First, similar to the wholesale trigger for loops, routes that meet the wholesale trigger also are eligible to have DS1-level transport delisted, which is not possible under the self-provisioning trigger. Additionally, since the wholesale trigger for dedicated transport only requires evidence of two competing providers, as opposed to the three for the self-provisioning trigger, BellSouth can increase the total number of routes to be delisted if it can certify that the providers are wholesalers instead of self-provisioners.

Q. DOES BELLSOUTH'S ANALYSIS OF THE WHOLESALE TRIGGERS FOR TRANSPORT SATISFY THE FCC REQUIREMENTS?

A. No. BellSouth's analysis of the wholesale trigger for transport incorporates all of the flaws of the self-provisioning analysis mentioned in Section IV. Additionally similar to the wholesale loop triggers, BellSouth declared several key CLECs as wholesalers even when they specifically denied providing wholesale services.

Q. HOW MANY ROUTES MAY BE ELIGIBLE FOR THE WHOLESALE TRIGGER AFTER CORRECTING BELLSOUTH'S ERRONEOUS APPROACH TO DETERMINING WHOLESALE ROUTES?

A. Of the 718 routes requested by BellSouth, 408 may be eligible. This is still an unreasonably high number of routes as compared to what ILECs have requested

in other states, and it would be my expectation that this number would be reduced dramatically after reviewing the full CLEC data responses.

Q. WHAT SHOULD THE NEXT STEPS BE IN ANALYZING THE ROUTES THAT MAY BE ELIGIBLE FOR THE WHOLESALE TRIGGERS?

A. Similar to the Self-provisioning trigger, it must be determined that a dedicated route actually exists between the two wire centers, and that the relevant capacity level is being provisioned. Additionally, it must be demonstrated that the wholesale service is being provided in a non-discriminatory and widely available manner.

Q. PLEASE EXPLAIN HOW BELLSOUTH ERRONEOUSLY LABELED COMPETITIVE PROVIDERS AS WHOLESALE PROVIDERS OF TRANSPORT BETWEEN BELLSOUTH WIRE CENTERS?

A. In their discovery responses, several competitive carriers specifically stated that they do not provide wholesale transport between ILEC wire centers. Therefore, these carriers should not have been included on BellSouth's list of wholesale transport providers.

Q. IS IT POSSIBLE FOR A CARRIER TO BE PROVIDING SERVICE TO ANOTHER CARRIER ON A GIVEN TRANSPORT ROUTE, BUT NOT BE CONSIDERED A WHOLESALE PROVIDER UNDER THE FCC TRIGGERS?

A. Yes. A key requirement under the FCC triggers is that the wholesale service be widely and generally available. Carriers occasionally will provide service to other carriers on an individual case basis or based on unique circumstances. These types of individual contract-type arrangements cannot qualify for the wholesale trigger unless it can be demonstrated that the service at the specific location meets the FCC requirements that the service be widely available, and that requesting carriers have nondiscriminatory access to such arrangements.

Q. BASED UPON YOUR REVIEW OF THE INFORMATION COLLECTED AND PROVIDED BY BELLSOUTH, IS IT POSSIBLE TO DETERMINE WHETHER ANY BUILDINGS OR TRANSPORT ROUTES SATISFY THE WHOLESALE TRIGGERS?

A. No. BellSouth has not made the showing necessary for a conclusion that the wholesale triggers have been met for any of the locations it has identified. As such, none of the buildings or transport routes qualify for the wholesale triggers.

B. VERIZON'S WHOLESALE TRIGGER ANALYSIS

Q. DID VERIZON PERFORM A WHOLESALE TRIGGER ANALYSIS FOR HIGH CAPACITY LOOPS?

A. No. Verizon only performed the analysis for dedicated transport

Q. HAVE YOU REVIEWED VERIZON'S TESTIMONY CONCERNING THE APPLICATION OF THE WHOLESALE TRIGGER TO DEDICATED TRANSPORT ROUTES?

A. Yes, I have reviewed the testimony of Fulp and White and corresponding exhibits.

Q. WHAT WERE THE CONCLUSIONS OF THE WHOLESALE TRIGGER ANALYSIS AS PROVIDED BY BELLSOUTH.

A. Verizon has asserted that 67 routes meet the wholesale trigger for DS1, DS3 and dark fiber transport, including the 25 routes that it proposed for the Self-Provisioning Trigger. The specific transport routes are listed on Exhibit C to the Fulp and White initial testimony, and Exhibits F.3 and F.4 of their supplemental testimony.

Q. PLEASE DESCRIBE THE PROCESS VERIZON USED TO IDENTIFY DEDICATED TRANSPORT ROUTES THAT IT CONTENDS SATISFY THE WHOLESALE PROVISIONING TRIGGER.

A. Verizon used the same "connect the dots" approach to collecting data that I described above in my critique of the self-provisioning trigger, and used the same broad-brush approach to identify wholesale service providers as it used for loops, essentially assuming without supporting evidence that every competitive provider of transport is providing wholesale on each and every route.

IV. POTENTIAL DEPLOYMENT ANALYSIS FOR HIGH-CAPACITY LOOPS AND DEDICATED TRANSPORT – ISSUE 20

Q. PLEASE DESCRIBE WHAT IS MEANT BY POTENTIAL DEPLOYMENT.

A. The potential deployment analysis essentially provides that BellSouth and Verizon may attempt to demonstrate that no impairment exists for loop locations or transport routes even though the self-provisioning trigger has not been satisfied.

Q. ARE DS1-CAPACITY LEVEL LOOPS AND TRANSPORT ELIGIBLE FOR A POTENTIAL DEPLOYMENT CLAIM?

A. No. The FCC defined potential deployment as a theoretical substitute for the self-provisioning trigger. As such, only those capacity levels eligible for the self-provisioning trigger (DS3 and Dark Fiber) are eligible for potential deployment claims.

Q. CAN AN ILEC MAKE A GENERAL CLAIM FOR POTENTIAL DEPLOYMENT, SUCH AS A CLAIM THAT NO IMPAIRMENT EXISTS FOR ALL BUILDINGS SERVED OUT OF A WIRE CENTER?

A. No. The FCC's language is clear that potential deployment claims must be location- or route-specific.

Q. WHAT TYPE OF DEMONSTRATION MUST BELLSOUTH AND VERIZON MAKE IN ORDER TO SUCCESSFULLY PROVE NO IMPAIRMENT EXISTS AT A LOCATION OR ROUTE EVEN THOUGH THE TRIGGERS HAVE NOT BEEN MET?

A. BellSouth and Verizon must demonstrate *for each specific customer location and route* that, contrary to the FCC's impairment determination, multiple competitive providers would be able to overcome the significant operational and economic barriers identified by the FCC and still be able to compete successfully. BellSouth therefore must demonstrate that the competitive providers would earn sufficient revenues relative to their significant fixed and sunk costs of providing dark fiber loops or transport, and fewer than two DS3s of traffic for loops or 12 DS3s of traffic for transport (the maximum amount of capacity that CLECs may purchase as UNEs) or dark fiber loops and dedicated transport to cover the costs. Again, this demonstration must be location-specific.

Q. WHAT ARE THE FACTORS THAT BELLSOUTH MUST DEMONSTRATE TO THE COMMISSION TO SATISFY THE POTENTIAL DEPLOYMENT TEST FOR HIGH CAPACITY LOOPS TO A SPECIFIC CUSTOMER LOCATION?

A. In paragraph 335 of the *TRO*, the FCC requires that "when conducting its customer location specific analyses, a state must consider and may also find no impairment at a particular customer location even when this trigger has not been facially met *if* the state commission finds that no material economic or operational barriers at a customer location preclude competitive LECs from economically deploying loop transmission facilities to that particular customer location at the relevant loop capacity level. In making a determination that competitive LECs *could* economically deploy loop transmission facilities at that location at the

relevant capacity level, the state commission must consider numerous factors affecting multiple CLECs' ability to economically deploy facilities at that particular customer location." In the *TRO*, the FCC then lists the following factors:

- Evidence of alternative loop deployment at that particular customer location;
- Local engineering costs of building and utilizing transmission facilities;
- The cost of underground or aerial laying of fiber or copper;
- The cost of equipment needed for transmission;
- Installation and other necessary costs involved in setting up service;
- Local topography such as hills and rivers;
- Availability of reasonable access to rights-of-way;
- Building access restrictions/costs; and
- Availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.

TRO ¶ 335.

Q. WHAT ARE THE FACTORS THAT BELLSOUTH MUST DEMONSTRATE TO THE COMMISSION TO SATISFY THE POTENTIAL DEPLOYMENT TEST FOR DEDICATED TRANSPORT ROUTES?

A. For transport, the FCC also found that actual deployment is the best indicator of impairment, but noted that a state commission must also consider potential deployment for a particular route "that it finds is suitable for 'multiple, competitive supply,' but along which [the actual deployment] trigger is not

facially satisfied." *Id.* ¶ 410. The factors that the Commission must evaluate for transport are similar to those for loops and include the following characteristics:

- Local engineering costs of buildings and utilizing transmission facilities;
- The cost of underground or aerial laying of fiber;
- The cost of equipment needed for transmission;
- Installation and other necessary costs involved in setting up service;
- Local topography such as hills and rivers;
- Availability of reasonable access to rights-of-way;
- The availability or feasibility of alternative transmission technologies with similar quality and reliability;
- Customer density or addressable market; and
- Existing facilities-based competition.

TRO ¶ 410.

Each of these characteristics must be evaluated in the potential deployment analysis. For that reason, an ILEC that claims CLECs are not impaired without access to UNEs in serving a specific route will need to introduce evidence with respect to each factor that demonstrates that the factor alone, or in combination with others, does not operate as a barrier to CLECs' ability to deploy the facilities in question.

Q. WITH RESPECT TO BOTH HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT, WHAT SORT OF EVIDENCE MUST BELLSOUTH OFFER WITH RESPECT TO CAPACITY LEVELS?

A. Any evidence an ILEC presents on potential deployment will necessarily have to address the limitations on the availability of UNEs that are *already built in* to the FCC's new unbundling rules. Thus, with respect to loops, BellSouth's factual showing and analysis concerning potential deployment needs to explain how CLECs are not impaired in their ability to deploy dark fiber loops or up to two DS3 loops at a specific customer location. *TRO* ¶ 324. Similarly, with respect to transport, BellSouth's analysis must reflect the FCC's decision that CLECs are impaired without unbundled access to dark fiber transport and twelve or fewer DS3s of transport along any given transport route. *TRO* ¶ 388.

Q. DO YOU THINK IT IS LIKELY THAT MOST ILECS WOULD BE ABLE TO MAKE THIS SORT OF SHOWING?

A. It is difficult to see how an ILEC would make such a detailed and site-specific showing. The FCC already has restricted the availability of loop and transport UNEs by placing strict limits on the capacity levels (2 DS3s for loops, 12 DS3s for transport) that any individual CLEC may obtain at a given location. The record before the FCC contained overwhelming evidence, summarized in the *TRO*, that CLECs remain impaired without the limited access granted by the *TRO* to UNEs at these lower-capacity levels, because "the potential revenue stream associated" with lower-capacity facilities "is many times smaller than that" of a higher-capacity facility. *TRO* ¶ 320 n.945. These lower revenues are highly unlikely to cover the high fixed and sunk costs of facilities deployment, *id.*, and compound the "other economic and operational barriers" that CLECs face in

deploying their own facilities. TRO ¶ 320 & n. 946; *see, e.g.*, TRO ¶¶ 205-07, 298-99 & n.860, 302-06, 324-27 & n.954, 360, 370-71, 376, 381-93, 399. Moreover, loop economics depend upon certain best-case assumptions – such as the existence of a fiber transport ring with an access point (that is, a point where a lateral line may be attached to an add/drop multiplexer to allow interconnection between the loop facility and the fiber ring) close to the building in question – that may not be satisfied at any given location. Finally, no one seriously contests that "build it and they will come" is anything but a failed entry strategy, and that CLECs therefore need access to UNEs or wholesale capacity at some minimum threshold level in order to obtain a customer base sufficient to support the building of their own facilities.

Therefore, to demonstrate potential deployment in accordance with the *Triennial Review Order*, the ILEC would have to show – for each particular building or transport route – that the revenues available to a CLEC at that location would be sufficient to overcome the fixed and sunk costs of constructing a facility at that location (taking into account all the location-specific variables listed by the FCC) that affect those costs and revenues. In addition, the ILEC's evidence also would need to show that no other economic and operational barriers exist for the particular location or route in question. The inherent limitations of fixed, low-capacity facilities to generate adequate revenues to cover the high costs of loop deployment make it highly unlikely that any ILEC could make the requisite showing for any individual location or route. And the universal nature of entry barriers such as gaining necessary rights of way, gaining adequate building

access, deploying the facilities, and convincing customers to accept the delays inherent in service provided over new facilities, make it even more doubtful that ILECs could provide evidence for *specific* locations that would overcome the FCC's findings of impairment and demonstrate instead that there could be "multiple competitive supply" so that competition can be effectively served by denying CLECs access to unbundled facilities at locations where CLECs have not found it economical or desirable to deploy their own facilities.

A. CRITIQUE OF BELLSOUTH FLORIDA POTENTIAL DEPLOYMENT ANALYSIS

1. *HIGH CAPACITY LOOPS*

Q. HAVE YOU REVIEWED BELLSOUTH'S TESTIMONY CONCERNING THE APPLICATION OF THE POTENTIAL DEPLOYMENT ANALYSIS TO HIGH CAPACITY LOOPS?

A. Yes, I have reviewed the testimony of Aniruddha (Andy) Banerjee.

Q. WHAT WERE THE CONCLUSIONS OF THE POTENTIAL DEPLOYMENT ANALYSIS AS PROVIDED BY BELLSOUTH?

A. BellSouth, through Dr. Banerjee's testimony, has asserted that 387 customer loop locations satisfy the potential deployment analysis for high capacity loops.

Q. DO YOU BELIEVE IT IS CREDIBLE THAT THERE ARE THREE TIMES MORE BUILDINGS THAT BELLSOUTH CLAIMS QUALIFY FOR POTENTIAL DEPLOYMENT THAN BELLSOUTH IDENTIFIED FOR SELF-PROVISIONING?

A. No. The current scope of CLEC networks represents more than 10 years of laborious efforts by individual companies, who have pieced together their networks building by building, working through the myriad issues facing companies that perform construction tasks in major city areas. At most of those buildings for which some form of service is being provided, installation of CLEC facilities were most likely economically justified based upon the provision of OC(n) level services. Also, it is likely that the remaining buildings (the ones not

served by CLEC facilities) are either not as attractive due to the type of customers in the building, or the competitive providers have been dissuaded from entry due to other barriers such as building access or other building-specific issues. Finally, the current financial environment is such that competitive carriers do not have the same level of available financing as they did in the previous years to justify new construction. It defies the realities of today's telecommunications marketplace – as well as basic common sense – to believe that, with all of these considerations, CLECs would be able to economically build out to even a small percentage of the buildings listed by BellSouth for the sole purpose of provisioning only one or two DS3s of capacity or providing dark fiber, let alone six times that number of buildings.

Q. PLEASE DESCRIBE, BASED UPON WITNESS BANERJEE'S TESTIMONY, THE PROCESS BELLSOUTH USED TO DETERMINE THAT 387 BUILDINGS SATISFIED THE POTENTIAL DEPLOYMENT ANALYSIS FOR HIGH CAPACITY LOOPS

A. Mr. Banerjee developed a list of buildings that had a monthly "telecommunications spend" of $5,000 or more, or $60,000 annually. To obtain an estimate of building spending levels, Mr. Banerjee used data it obtained from TNS Telecoms, a third-party market research firms. For each building, Mr. Banerjee then performed what he described as a net present value analysis on each building based upon hypothetical cost assumptions. Buildings that had a

positive net present value based upon his assumptions were then presumed to pass the potential deployment analysis.

Q. APART FROM THE LACK OF GRANULARITY IN BELLSOUTH'S ANALYSIS, WHAT ARE SOME OF THE SPECIFIC CRITICISMS YOU HAVE OF BELLSOUTH'S APPROACH ON LOOP POTENTIAL DEPLOYMENT?

A. I have several specific criticisms. First, BellSouth does not analyze any of the building-specific factors specified in the *TRO* for any of the buildings it has identified. Second, BellSouth's use of a building's "total telecom spend" is an inappropriate means of identifying potential buildings, and it is also inappropriate to assume the "total telecom spend" of a building as potential revenue a CLEC could expect to receive. Third, the cost figures BellSouth relies upon are flawed, in that they assume practically no cost of fiber construction. Finally, several key assumptions used in Mr. Banerjee's Net Present Value analysis, notably the project life and discount rates, are inappropriate and have the result of inflating the resulting net present value of each building location.

Q. DO YOU BELIEVE THAT THE PROCESS BELLSOUTH USED COMPLIES WITH THE GUIDANCE THE FCC PROVIDED IN THE *TRO*?

A. No. BellSouth's process is the exact opposite of what the FCC specified in the *TRO*. The FCC made clear that, with respect to both the triggers and to potential

deployment analysis, "a more granular analysis should be applied on a *customer-by-customer location basis*." *TRO* ¶ 328 (emphasis added). It bears repeating that this granular analysis was to be conducted on a building-by-building basis in order to identify those limited instances in which multiple alternative loop deployment was possible even though it had not yet taken place. BellSouth, however, has attempted to "de-granularize" this analysis by instead developing a list of generic criteria that it then applied equally to hundreds of customer locations. But these generic criteria do not address or even take into account, the specific factors identified in the *TRO*. For example, two factors that the *TRO* requires to be evaluated for each building are (1) availability of rights-of-way and (2) building access restrictions; BellSouth's testimony does not evaluate these factors for even a single building on its potential deployment list.

Q. IS BELLSOUTH'S USE OF A BUILDING'S ESTIMATED TOTAL ANNUAL TELECOMMUNICATIONS SPENDING, IN THIS INSTANCE $60,000, AN APPROPRIATE WAY OF IDENTIFYING BUILDINGS FOR THE POTENTIAL DEPLOYMENT ANALYSIS?

A. No. The appropriate approach should be to determine whether a building has sufficient demand for DS3 or Dark Fiber loops to allow for multiple, competitive supply into the building. A large building (or even a single customer in that building) easily could surpass the $60,000 threshold without having any demand whatsoever for DS3 or Dark Fiber loops. BellSouth should have the capability based upon its own customer records to determine which buildings actually have a

demand for the specific capacity levels, the number of which should be significantly less than the quantity meeting the $60,000 threshold.

Q. IS IT APPROPRIATE TO USE THE $60,000 ESTIMATED TOTAL BUILDING TELECOMMUNICATIONS SPENDING AMOUNT AS A POTENTIAL REVENUE STREAM CLECS COULD EXPECT TO RECEIVE TO OFFSET THEIR COST OF LOOP CONSTRUCTION?

A. No. Consistent with the capacity-specific nature of the analysis, the only revenues that should be considered are those specific to the building of individual DS3s or dark fiber loops. This is consistent with the FCC's determination as mentioned above that "the potential revenue stream associated" with lower-capacity facilities "is many times smaller than that" of a higher-capacity facility. *TRO* ¶ 320 n.945. And notably, the view here must be of a carrier that has the opportunity to obtain access to UNEs (otherwise an impairment review is unnecessary). Thus, since a requesting carrier may only obtain up to 2 DS3s at UNE rates per customer location, the question is whether that carrier – not a carrier seeking to serve a larger demand – could afford to self-deploy its own facilities to serve at that level. Accordingly, any reference to a "total building revenue" is inappropriate. That figure certainly would contain revenues other than those for the specific one or two DS3s that a requesting carrier could obtain as a UNE, and can be expected to include potential OC(n) circuits, long distance service, and data services, and, as a result, improperly skews such analysis. If the total revenues for such services were to be included in an potential deployment

analysis, without access to specific revenues available from specific uncommitted customers in a location, the Commission only could anticipate that they would generate average revenues for services provided over such facilities. BellSouth does not offer proof of either. Moreover, if total revenues from the use of a loop are to be considered, then the analysis must consider all of the costs of providing all services over such facilities. BellSouth also fails to produce this evidence. Moreover, this revenue figure does not consider that enterprise customers in commercial buildings are generally tied up in long-term contracts that make them economically unavailable for a competitive provider.

Since loops are used as an input to other services and represent only a small portion of the facilities needed to provide entire high capacity services to enterprise customers, it would be both reasonable and consistent to measure the costs of provisioning such facilities against the revenues that a CLEC could earn by providing DC3s or dark fiber as a wholesale offering. It is also consistent with CLEC "build or buy" analyses for an individual building. For example, a CLEC's decision to replace an existing special access line into a building with the CLEC's own DS3 loop is driven solely by whether the cost to provision its own loop is less than the cost of purchasing the special access line.

Q. DOES DR. BANERJEE'S ANALYSIS USE ANY BUILDING SPECIFIC COSTS FOR HIS POTENTIAL DEPLOYMENT ANALYSIS?

A. No. Dr. Banerjee's analysis uses two primary cost sources for his analysis: hypothetical network cost information provided by BellSouth witness Wayne

Gray, and hypothetical expense information based upon a proprietary BellSouth marketing model called the BellSouth Analysis of Competitive Entry ("BACE").

Q. IS THE COST INFORMATION PROVIDED BY BELLSOUTH WITNESS GRAY MEANINGFUL IN THE CONTEXT OF THE FCC'S POTENTIAL DEPLOYMENT REQUIREMENTS?

A. No. Mr. Gray provided cost information that was used in developing TELRIC rates in Florida. It is important to remember that, unlike typical costing proceedings used to establish UNE rates, the potential deployment analysis requires an evaluation of costs specific to CLECs, who do not have BellSouth's scale, access to buildings, and access to rights-of-way.

Q. WHAT ARE THE KEY ELEMENTS OF THE NETWORK COST INFORMATION AS PRESENTED BY BELLSOUTH WITNESS GRAY?

A. Mr. Gray provides hypothetical network cost information for the optical electronics used to derive a DS3 loop, and a hypothetical per-foot cost estimate of fiber extension.

Q. PLEASE EXPLAIN WHY YOU DO NOT BELIEVE IT IS REASONABLE TO DETERMINE POTENTIAL DEPLOYMENT BASED UPON A HYPOTHETICAL COST FACTOR BASED UPON DISTANCE BETWEEN CLEC FACILITIES AND SPECIFIC BUILDINGS.

A. The use of a hypothetical per-foot cost factor as proposed by BellSouth is flawed because does not take into consideration the location-specific obstacles that might be located between the CLEC's facilities and the building, especially in large city areas. Numerous obstacles and delays almost always occur for projects that involve digging up city streets, and the costs of such endeavors often accumulate to levels much higher than originally expected. Probably the most famous recent example of this is the "Big Dig", a highway renovation project that was recently completed in Boston. That project, which replaced only 7.5 miles of highway, ended up taking 15 years and costing in excess of $14 billion, $10 billion more than originally expected. While this is obviously an extreme example, it demonstrates that construction and installation of facilities over even short distances in city areas can present much greater economic barriers than will constructing facilities over longer distances in rural areas.

Q. FROM A PRACTICAL PERSPECTIVE, DOES THE COST INFORMATION THAT MR. GRAY PROVIDES MAKE SENSE IN THE CONTEXT OF POTENTIAL DEPLOYMENT?

A. No. Mr. Gray's analysis assumes a total installed investment of $4.92 per foot for a 100 strand fiber. This means that, for a 1,000 foot build, BellSouth is assuming less than $5,000 of construction costs, which reflects practically no construction at all, as construction projects of this type can often run into the hundreds of thousands of dollars depending upon the circumstances.

Q. PLEASE COMMENT ON THE NET PRESENT VALUE ANALYSIS PERFORMED BY DR. BANERJEE.

A. Although Dr. Banerjee appropriately uses a net present value analysis to evaluate the economic viability, the assumptions he uses in the analysis are not reflective of the requirements of the FCC's potential deployment analysis. First, as mentioned above, all of the inputs, both revenue and cost, are hypothetical. Outside of the estimated distance between a CLEC and the building, there is not one building-specific analysis for any of the nine criteria outlined by the FCC. Second, Dr. Banerjee chooses two unrealistic assumptions for the net present value analysis, both of which increase the resulting net present value for each building

Q. PLEASE DESCRIBE THE FIRST UNREALISTIC ASSUMPTIONS DR. BANERJEE USES IN HIS ANALYSIS.

A. Dr. Banerjee choose a 10 year project life for his analysis, meaning that he is assuming that the CLEC will have 10 years of revenue from customers in the building to recover the up front capital costs and ongoing expenses related to the loop. Obviously, the longer the project life, the more revenue there is available to offset the costs.

Q. BASED UPON YOUR EXPERIENCE, IS 10 YEARS AN APPROPRIATE PERIOD TO ASSUME A CLEC WILL BE ABLE TO RETAIN A CUSTOMER?

A. No. Typically, customers are unwilling to commit to contracts greater than 5 years, especially as prices of telecommunications services tend to decline over time due to competition and technological innovation. In my experience, it would be unlikely for CLEC to allocate capital to a project that did not produce a positive net present value until the 9^{th} or 10^{th} year.

Q. WHAT IS THE SECOND UNREALISTING ASSUMPTION USED IN DR. BANERJEE'S NPV ANALYSIS?

A Dr. Banerjee uses a discount rate of only 10.8%. The discount rate is supposed to reflect the risk-adjusted cost-of-capital of the company making the investment, and is used to reduce the weighting of cash flows farther out into the future for companies with higher risk. The practical effect of a lower discount rate is that cash flows in later years will have more bearing than they would if a higher discount rate were used, and thus provides for a higher net present value.

Q. WHY DO BELIEVE THAT A DISCOUNT RATE OF 10.9% IS UNREASONABLE FOR A CLEC?

A. This discount rate is approximately the same as that ordered of BellSouth in the most recent Florida UNE proceeding, and actually significantly lower than that proposed by BellSouth for itself in those proceedings. As BellSouth is an incumbent local exchange carrier, it's investments are perceived to be less risky relative to CLECs, especially after the numerous CLEC bankruptcies over the past several year.

Q. HOW DID BELLSOUTH REPRESENT ITS OWN COST OF CAPITAL IN THE PREVIOUS UNE PROCEEDING?

A. In Docket No. 990649-TP, BellSouth witness Billingsley testified that the 11.25% cost of capital is BellSouth had proposed is reasonable and conservative given his estimate that BellSouth's actual cost of capital ranges from 14.61% to 14.91%.

Q. ARE YOU AWARE OF ANY OTHER ANALYSES THAT PRESENT A MORE REALISTIC DEPICTION OF THE COSTS AND NECESSARY REVENUES FOR A CLEC TO EXTEND ITS NETWORK INTO A NEW BUILDING?

A. Yes. On November 25, 2002, AT&T filed a study with the FCC, in conjunction with the FCC's Triennial Review proceedings, which analyzes the costs and required revenues necessary to justify extending a typical CLEC's network to a new building. The study is included as Exhibit ___ (GJB-3) to my testimony. I have reviewed the AT&T study and, based on my experience, I find it presents a more thorough and realistic analysis of the costs that would be encountered and the revenues that would be considered by a CLEC in determining whether to extend a typical CLEC network into a new building than the analysis used by BellSouth in this case.

Q. WHAT WERE THE CONCLUSIONS OF THE AT&T STUDY AS IT PERTAINS TO UNBUNDLED LOOPS?

A. The study concluded that CLECs generally need to be able to provision at least 3 DS3s into a given building before the cost of constructing the loops can be recovered. This is consistent with the FCC's conclusion that no impairment exists for OC(3) and above loops.

Q. HOW DO YOU PROPOSE THAT THE AT&T STUDY BE USED BY THE COMMISSION IN EVALUATING BELLSOUTH'S POTENTIAL ANALYSIS?

A. The AT&T study supports the position that it is generally not economic for CLECs to build for the provision of a single DS3 or dark fiber loop to a building, and that any building for which BellSouth claims potential deployment must be treated as a unique exception, which must be supported by a full, building specific analysis.

Q. DID BELLSOUTH PROVIDE EVIDENCE OF ALTERNATIVE LOOP DEPLOYMENT FOR THE 387 BUILDINGS ON ITS LIST?

A. Dr. Banerjee did not indicate which of the buildings on the list had any loop deployment, and if so, how much.

Q. SHOULD ANY OF THE BUILDINGS LISTED BY BELLSOUTH QUALIFY FOR POTENTIAL DEPLOYMENT BASED UPON BELLSOUTH'S SHOWING IN THIS CASE?

A. No. BellSouth's analysis does not meet any of the FCC's criteria for items the Commission must evaluate, and therefore this Commission should find that BellSouth has not satisfied the potential deployment analysis for any of the buildings listed in the attachments to the Banerjee testimony.

Q. HOW SHOULD BELLSOUTH HAVE DONE ITS POTENTIAL DEPLOYMENT ANALYSIS FOR HIGH CAPACITY LOOPS?

A. BellSouth should have performed an individual discounted cash flow analysis using specific cost and potential revenue information for each building instead of hypothetical values. The analysis would provide evidence of alternate loop deployment for each building, and would specifically address each of the FCC's points. The discounted cash flow analysis would use project lives and depreciation rates that a CLEC actually would use for itself if it were really analyzing whether to extend its network out to a new building.

2. *DEDICATED TRANSPORT*

Q. HAVE YOU REVIEWED BELLSOUTH'S TESTIMONY CONCERNING THE APPLICATION OF THE POTENTIAL DEPLOYMENT ANALYSIS TO DEDICATED TRANSPORT?

A. Yes, I have reviewed the testimony of Dr. Banerjee on this matter.

Q. WHAT WERE THE CONCLUSIONS OF THE POTENTIAL DEPLOYMENT ANALYSIS AS PROVIDED BY BELLSOUTH?

A. BellSouth has asserted that 91 transport routes satisfy the potential deployment trigger, in addition to the 718 routes that it claimed satisfied the self-provisioning and wholesale triggers.

Q. PLEASE DESCRIBE THE PROCESS BELLSOUTH USED TO DETERMINE THAT THESE 91 TRANSPORT ROUTES SATISFY THE POTENTIAL DEPLOYMENT ANALYSIS FOR DEDICATED TRANSPORT?

A. Similar to the analysis used for loops, Dr. Banerjee performed a net present value analysis to compare the potential revenues or cost savings achieved by CLECs to their cost of building out to a new wire center and establishing a collocation arrangement.

Q. DO YOU BELIEVE THAT BELLSOUTH'S POTENTIAL DEPLOYMENT ANALYSIS FOR DEDICATED TRANSPORT IS PROPER?

A. No. Similar to the analysis for loops, Dr. Banerjee did not perform a route-specific analysis for each route that he claims satisfies the FCC's potential deployment criteria. Dr. Banerjee's analysis also is failed because it overstates the revenue associated with the buildout, and relies upon hypothetical cost assumptions that ignore the factors laid out by the FCC. Finally, Dr. Banerjee uses the same flawed assumptions for his net present value analysis as used for loops as well.

Q. HOW DOES BELLSOUTH OVERSTATE THE REVENUE ASSOCIATED WITH A BUILDOUT?

A. On page 18 of his testimony, Dr. Banerjee describes his approach to estimating the potential revenue a CLEC could receive from extending its network. Instead of determining the potential revenue for a specific route between two wire centers, Dr. Banerjee assumes that the revenue for his analysis is equal to the total spending of the CLEC for all transport, including special access, from the new wire center to all other wire centers, not just a single wire center. If Dr. Banerjee is including revenue between more than two wire centers in his analysis, then he is overstating the potential revenue associated with an individual route.

Q. HOW DOES DR. BANERJEE'S POTENTIAL DEPLOYMENT ANALYSIS FOR DEDICATED TRANSPORT INAPPROPRIATELY RELY UPON HYPOTHETICAL COST INFORMATION?

A. Similar to loops, Dr. Banerjee's analysis relies upon hypothetical cost information provided by BellSouth witness Wayne Gray.

Q. DOES MR. GRAY'S TESTIMONY PROVIDE REALISTIC CONSTRUCTION COST ESTIMATES?

A. No. Mr. Gray assumes a per-foot cost of $7.41 to extend fiber to a new wire center, which, like loops, basically assumes no real construction whatsoever. Using Mr. Gray's numbers, a 1,000 foot extension would cost the CLEC only $7,410. This dollar amount is not representative of costs that would be associated

with a real construction project, which often can run into the hundreds of thousands of dollars.

Q. DOES DR. BANERJEE USE THE SAME FLAWED ASSUMPTIONS IN HIS NET PRESENT VALUE ANALYSIS THAT HE USED IN HIS LOOP ANALYSIS?

A. Yes. Dr. Banerjee uses the same 10 year project life and 10.8% discount rate that I criticized in the loop section above.

Q. WHAT DO YOU CONCLUDE ABOUT BELLSOUTH'S POTENTIAL DEPLOYMENT ANALYSIS FOR DEDICATED TRANSPORT?

A. I have concluded that BellSouth has not satisfied its burden of proving potential deployment at any capacity level for any of the 91 routes for which it seeks such a finding. Similar to my recommendation for loops, BellSouth must provide a net-present value analysis that reflects the route-specific analysis required by the FCC. BellSouth only must consider the incremental revenues associated with a given route, and also must use more reasonable assumptions related to project life and discount rates in performing its net present value analysis.

V. THE COMMISSION SHOULD CONSIDER CERTAIN TRANSITION ISSUES IF THE COMMISSION MAKES FINDINGS OF NON-IMPAIRMENT – ISSUE 20

Q. ARE THERE TRANSITION ISSUES THAT THE COMMISSION MUST ADDRESS IF IT MAKES ANY FINDINGS OF NON-IMPAIRMENT IN THIS CASE?

A. Yes. If the Commission finds that requesting carriers are not impaired without access to unbundled transport and/or loops on any particular route or at any customer location, then the Commission must address various transition issues. Specifically, in the *Triennial Review Order*, the FCC required state commissions to establish an "appropriate period for competitive LECs to transition from any unbundled [loops or transport] that the state finds should no longer be unbundled." *TRO* ¶¶ 339, 417.

Q. WHAT PRINCIPLES SHOULD GUIDE THE SETTING OF AN APPROPRIATE TRANSITION PERIOD?

A. At a minimum, the Commission should set a transition period that provides competing carriers a reasonable period of time to self-provision the loops or transport in question and continue to offer service using UNEs pursuant to existing contracts. The latter is essential because services to enterprise customers are contract-based and generally do not allow the provider to terminate or modify the contract based upon sudden cost increases. Without a transition period, CLECs and their customers would face significant disruptions to their services if access to unbundled loops were disconnected or migrated to other services.

Q. WHAT IS YOUR RECOMMENDATION REGARDING THE SETTING OF A TRANSITION PROCESS?

A. I recommend that the Commission develop a multi-tiered transition process such as the one applicable to mass-market switching. First, there should be a transition

period of nine months in which CLECs may order new UNEs for locations and routes where the Commission found a trigger is met. Second, CLECs should have a transition period equal to that applied to line sharing and mass-market switching, which provides a 3-year transition process, with one-third transitioned within 13 months, and another one-third transitioned within 20 months. Third, all loop and transport UNEs should continue to be made available at TELRIC/TSLRIC rates until migrated.

Q. SHOULD THE COMMISSION ESTABLISH AN EXCEPTION PROCESS FOR LOCATIONS AND ROUTES WHERE THE TRIGGERS HAVE BEEN MET?

A. Yes. If a carrier demonstrates that it is attempting in good faith to construct facilities for a location or route for which UNEs are no longer available and that it is incurring a specific problem that makes construction within the applicable timeframe unachievable (e.g., issues with rights-of-way or building access), it should be permitted to seek an exception from the Commission consistent with the problem it faces. The CLEC should be permitted to continue to purchase the identified facility as a UNE until the Commission acts on its request.

Q. ARE THERE ADDITIONAL TRANSITION ISSUES THE COMMISSION SHOULD CONSIDER?

A. Yes. The Commission should ensure that both BellSouth and Verizon maintain adequate processes for ordering and provisioning combinations of loops and

transport, in situations where one or both network elements of the combination are no longer available as unbundled network elements. In the *Triennial Review Order*, over ILEC objections, the FCC specifically stated that competing carriers are permitted to continue to have access to combinations of loops and transport regardless of whether one of the network elements are no longer available on an unbundled basis. *See TRO* ¶ 584. Similarly, the Commission should ensure that BellSouth and Verizon have adequate billing processes and procedures in place for CLECs to purchase delisted network elements, whether individually or in combination.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Gary J. Ball. I am an independent consultant providing analysis of regulatory issues and testimony for telecommunications companies. My business address is 47 Peaceable Street, Ridgefield, Connecticut 06877.

Q. ARE YOU THE SAME GARY BALL WHO SUBMITTED DIRECT TESTIMONY IN THIS PROCEEDING ON DECEMBER 22, 2003, AND REBUTTAL TESTIMONY ON JANUARY 21, 2004?

A. Yes.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am testifying on behalf of the Florida Competitive Carriers Association (FCCA).

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut issues raised by BellSouth witness Shelley Padgett in her rebuttal testimony.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony is divided into five sections. In Section I, I respond to Ms. Padgett's claim, which relates to all issues identified by the Commission, that BellSouth does not have the burden of proof in this proceeding. In doing so, I explain the importance of ensuring that BellSouth meets its burden of demonstrating with specific, granular evidence that both the self-provisioning and wholesale triggers are satisfied. In Section II, I respond to Ms. Padgett's testimony regarding the appropriate definition of a transport route (Issues 7-19). In this section, I explain that switched transport routes are separate and distinct from dedicated transport, and that switched transport should not be included in evaluating the triggers. In Section III, I respond to Ms. Padgett's assumptions regarding operational readiness, and demonstrate that, under the Triennial Review Order ("TRO"), Ms. Padgett's analysis is incorrect. (Issues 1-19). In Section IV, I respond to Ms. Padgett's testimony regarding the definition of a customer location; in this section, I demonstrate that, under the TRO, CLECs must have access to an entire building before the self-provisioning trigger can be met. (Issues 1-6). Finally, in Section V, I respond to Ms. Padgett's testimony pertaining to transitional issues, and demonstrate that Ms. Padgett's proposed 90-day transition period is inadequate. (Issue 20).

I.
BELLSOUTH HAS NOT MET ITS BURDEN OF DEMONSTRATING THAT CLECS ARE NOT IMPAIRED

Q. ON PAGE 2 OF HER REBUTTAL TESTIMONY, MS. PADGETT CLAIMS THAT BELLSOUTH DOES NOT HAVE THE BURDEN OF PROOF IN THIS CASE. DO YOU AGREE?

A. No. BellSouth has the burden of proof in this proceeding. Ms. Padgett quotes the TRO out of context. In making a national finding of impairment, the FCC did not require either the ILECs or the CLECs "to prove or disprove the need for unbundling." TRO ¶ 92. That statement, however, applied only to the FCC's initial analysis of impairment. The FCC requires a different approach to rebut the national finding under the triggers. ILECs are permitted to challenge the FCC's national finding of impairment by raising evidence that the triggers have been satisfied at particular locations or on certain routes. States, however, are only required to "address routes for which there is relevant evidence in the proceeding that the route satisfies one of the triggers...." TRO ¶ 417. Since it is the ILECs that are challenging the FCC's finding of impairment, then it is the ILECs that bear the burden of proving that the triggers have been satisfied. Ms. Padgett's testimony inappropriately offers a variety of assumptions to replace the facts necessary to rebut the FCC's national finding, and shifts to the CLECs the burden of re-proving the FCC's finding of impairment. Nothing in the TRO permits this approach.

Q. PLEASE DESCRIBE WHY BELLSOUTH BEARS THE BURDEN OF DEMONSTRATING THAT THE TRIGGERS HAVE BEEN MET.

A. The starting point for this proceeding is the FCC's national finding of impairment for loops and transport at the DS3, DS1, and dark fiber capacity levels. The FCC has given BellSouth the opportunity to propose specific locations and routes for which it believes that CLECs (or other carriers) provide sufficient services such that CLECs are not impaired at the requisite capacity levels if the ILEC does not offer loops or transport as a UNE at those locations or on those routes. BellSouth has taken this opportunity, claiming that a large number of buildings and routes in Florida meet either the triggers or the potential deployment criteria. As the entity seeking to obtain findings of non-impairment for specific transport routes and building locations to override the FCC's national finding of impairment, BellSouth is the entity that is required to provide sufficient evidence consistent with the FCC's requirements to support a finding of non-impairment by the Commission with respect to each building location or transport route for which BellSouth asserts that the triggers or the potential deployment criteria are met.

Q. HAS BELLSOUTH MET ITS BURDEN IN THIS PROCEEDING?

A. No. Under the TRO, the FCC requires that the carrier challenging the national finding of impairment provide route-specific and location-specific

evidence for each capacity level for which it challenges the FCC's national finding of impairment. BellSouth has not provided this information. Instead, BellSouth relies on sweeping unsupported assertions to support its claim that the triggers have been satisfied at certain customer locations and on various routes. As a result, BellSouth has identified a larger list of buildings and routes than could satisfy the FCC's triggers.

Q. PLEASE DESCRIBE WHAT YOU MEAN WHEN YOU STATE THAT BELLSOUTH BASED ITS FILING UPON ASSUMPTIONS ABOUT THE POTENTIAL CAPABILITIES OF CLECS.

A. As I describe in Sections III and IV, BellSouth made several broad assumptions about the capabilities of CLEC networks, and used those assumptions as its primary evidence to support the triggers. I describe this approach as an "assumption-based trigger" approach. The "assumption-based" trigger approach is not sanctioned by the FCC and should be rejected. Indeed, the Commission should distinguish and reject BellSouth's "assumption-based trigger" approach not only from the self-provisioning and competitive wholesale triggers, but also from the potential deployment analysis set forth in the TRO. In Section III, I discuss BellSouth's assumption that a transport route that traverses a CLEC switch (i.e., switched transport) can be counted as dedicated transport. This approach is a subset of what I referred to in my rebuttal testimony as the "connect the dots" approach, in which BellSouth assumes

any two CLEC wire center collocations to be end points of a transport route.

Q. DID THE FCC PROVIDE THE ILECS WITH THE ABILITY TO PROPOSE LACK OF IMPAIRMENT BASED UPON "ASSUMPTION-BASED TRIGGERS"?

A. No. The TRO provides only two options for demonstrating lack of impairment: the self-provisioning and wholesale triggers, and the potential deployment analysis. If BellSouth cannot demonstrate with respect to a particular route between ILEC wire centers, or with respect to an enterprise customer location, that the necessary numbers of CLECs or other carriers are providing the service at the requisite capacity levels, then the only other recourse for BellSouth is to attempt to prove that the location or route meets the potential deployment test. The FCC's potential deployment test provides a more rigorous set of requirements than the triggers, because it requires both a validation that the location or route can accommodate multiple competitors, as well as an economic analysis to compare the potential revenues and costs of each individual building or route.

II.
BELLSOUTH'S ATTEMPT TO REDEFINE DEDICATED TRANSPORT TO INCLUDE ALL TRANSPORT, INCLUDING SWITCHED TRANSPORT, CANNOT BE INCLUDED IN THE DEDICATED TRANSPORT TRIGGERS

Q. ON PAGE 3 OR HER REBUTTAL TESTIMONY, MS. PADGETT DEFENDS THE INCLUSION OF CLEC-PROVIDED SWITCHED TRANSPORT IN THE DEFINITION OF DEDICATED TRANSPORT. IS MS. PADGETT'S DEFINITION OF A TRANSPORT ROUTE CORRECT?

A. No. Ms. Padgett includes switched transport in the definition of dedicated transport. The FCC provided a very specific and narrow definition of the type of CLEC transport to be included in this test: dedicated transport between two ILEC wire centers. Contrary to Ms. Padgett's broad interpretation, the FCC does not even include all CLEC-provided dedicated transport, excluding any and all CLEC transport that does not provide a connection between ILEC wire centers.

Q IS IT POSSIBLE FOR ANY TYPE OF SWITCHED TRANSPORT ARRANGEMENT TO MEET THE DEFINITION OF DEDICATED TRANSPORT?

A. No. Dedicated transport, by definition, provides a fixed path between two points, in this case BellSouth wire centers. In the TRO, the FCC defines dedicated transport as "facilities dedicated to a particular customer or

competitive carrier that it uses for transmission among incumbent LEC central offices and tandem offices." TRO ¶ 360. Attached to my testimony as Exhibit No. __ (GJB-6) is a diagram which describes a theoretical CLEC network configured to enable dedicated transport to be provided (subject to the constraints described in my testimony previously submitted in this proceeding).

If a switch is present along the transport route, then the fixed path no longer exists, as traffic can be routed to and from points outside of the fixed path by the switch, and traffic from other customers and carriers will "share" the transport route. In Exhibit No. __ (GJB-7) I have prepared a diagram which describes a CLEC network configured to aggregate ILEC loops back to a CLEC switch.

Q. IS SWITCHED TRANSPORT THE SAME AS SHARED OR COMMON TRANSPORT?

A. Yes. These terms all have the same meaning, and are used interchangeably when describing the functionality in ILEC and CLEC networks of providing the capability routing traffic between multiple points via a switch. In every instance, switched or shared transport is treated as a completely separate service from dedicated transport. For example, in BellSouth's access tariffs, switched transport and dedicated transport have different sections and applications.

Q. IN THE TRO, DOES THE FCC EVALUATE SWITCHED OR SHARED TRANSPORT SEPARATELY FROM DEDICATED TRANSPORT?

A. Yes. In footnote 1100 of the TRO, the FCC states that "[w]e refer generically to "transport" in this Part as meaning dedicated transport. We address shared transport in Part VI.E. of this Order." If the FCC created a separate section to evaluate shared transport, it could not have intended to have it included as dedicated transport as well.

Q. BASED UPON YOUR EXPERIENCE, IS IT LIKELY THAT MOST OF THE CLEC COLLOCATIONS THAT BELLSOUTH IDENTIFIES ARE USED TO PROVIDE SWITCHED OR SHARED TRANSPORT, AS OPPOSED TO DEDICATED TRANSPORT AS DEFINED IN THIS SECTION?

A. Yes. As I described in my direct testimony, the typical business plan for a CLEC that has entered the switched voice market is to establish collocation arrangements for the primary purpose of aggregating unbundled loops, and using transport facilities to connect the loop aggregation equipment to a switch that is located at another location. If the switch were located at the central office, as it is for BellSouth, the CLEC would not need any transport facilities back to the switch. This is why it is critical that information be collected from the CLECs that would exclude switched transport in its entirety from the trigger analysis.

Q. DOES THE DEFINITION OF A TRANSPORT ROUTE IN THE TRO ALLOW FOR INSTANCES FOR WHICH SERVICE IS NOT CURRENTLY BEING PROVIDED, SUCH AS THAT PROPOSED UNDER THE "CONNECT THE DOTS" OR "ASSUMPTION-BASED TRIGGER?"

A. No. In the TRO, the FCC states: "Both triggers we adopt today evaluate transport on a route-specific basis. We define a route, for purposes of these tests, as a connection between wire center or switch 'A' and wire center or switch 'Z.' Even if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the *competitive providers must offer service connecting wire centers 'A' and 'Z,'* but do not have to mirror the network path of the incumbent LEC through wire center 'X.'" TRO ¶ 401 (emphasis added). The FCC went on to state that "A route-specific test is sufficiently granular to avoid falsely identify as competitive a route between two offices."

Q. DOES THE FACT THAT THE FCC PROVIDED THAT THE ROUTE CAN GO THROUGH AN INTERMEDIATE POINT MEAN THAT SWITCHING CAN BE INVOLVED IN THE ROUTE?

A. No. The FCC merely acknowledged that CLEC networks do not mirror ILEC networks, and that there may be an intermediate point where multiplexing or a cross-connection occurs. Nothing in the TRO states that

a dedicated transport route can include switching functionality. If switching occurs at the intermediate point, then the route cannot be classified as dedicated transport under the FCC definitions.

Q. IS IT REASONABLE TO ASSUME THAT A CLEC THAT HAS PROVISIONED TRANSPORT BACK TO ITS SWITCH FROM TWO WIRE CENTERS IS OPERATIONALLY READY TO PROVISION A DEDICATED TRANSPORT ROUTE BETWEEN THE TWO WIRE CENTERS?

A. No. In her rebuttal testimony, Ms. Padgett makes an incorrect assumption, and even refers to her statement as an assumption, that all CLECs can provide transport between their collocations. *See* Padgett Rebuttal at 4-5. Ms. Padgett selectively cites to three carriers that claim that their network can connect points between ILEC central offices. BellSouth, however, ignores the testimony and discovery responses of numerous other CLECs that state that their networks are not constructed in this manner and that they do not provide dedicated transport between ILEC central offices. In my direct and rebuttal testimony, I stated that the Commission should rely on the CLEC-provided discovery responses to generate lists of routes and customer locations that could satisfy the FCC triggers. This is precisely what commissions have done in other states.

Q. PLEASE PROVIDE AN EXAMPLE OF STATES THAT HAVE USED AN APPROACH DIFFERENT THAN THAT USED BY BELLSOUTH IN FLORIDA TO COLLECTING DATA FROM CLECS.

A. Ohio and Wisconsin both implemented a process in which SBC was required to rely upon the results of questions sent by the commission staffs of those states. For these locations and routes, the CLECs were able to provide specific responses, and the result is a much more accurate and manageable record. As a result of this Commission-driven discovery approach, SBC identified a significantly lower number of buildings and routes for Wisconsin and Ohio as satisfying the triggers than Bellsouth did for Florida.

In Ohio, for example, SBC claimed that 18 routes meet the self-provisioning trigger, and that 28 routes meet the wholesale trigger, in contrast with BellSouth's Florida claim that over 700 routes satisfy one of the triggers. In Wisconsin, SBC claimed that 19 routes meet the self-provisioning trigger, and that 22 routes meet the wholesale trigger. Although Florida has had more CLEC network deployment than these two states, a significant reason SBC provided a lower list in those states is that it was forced to rely upon the responses to the commission data requests, which limited SBC's ability to create "assumption-based triggers."

Q. IS SIMILAR CLEC-PROVIDED INFORMATION AVAILABLE TO THE FLORIDA COMMISSION?

A. Yes. The data requests that this Commission sent to carriers are similar to that requested in Wisconsin and Ohio. It appears that many, but not all, of the CLECs responded to these, but BellSouth chose not to rely upon the information that the CLECs provided to these requests as its primary source of trigger information.

To illustrate the discrepancy in using BellSouth's overbroad and incorrect definitions of routes and loops and the correct CLEC responses, I attached to my rebuttal testimony a preliminary analysis of BellSouth's list of transport routes and customer locations claimed to satisfy the FCC's triggers. BellSouth has now cited to selected discovery responses from CLECs as support for its "assumption based" approach, but it inexplicably has failed to use all of those discovery responses, instead choosing to accept responses that are beneficial to its position while wholly ignoring factual assertions that are adverse to its position. It is obvious why Ms. Padgett chose to rely only on the responses of three carriers in her rebuttal testimony. If she had used *all* of the CLEC responses to create a list of routes and loops from the ground up, it would be apparent that, while there is significant competitive deployment within the state, very few routes or loop locations could satisfy the FCC triggers.

To illustrate this point, I have compiled an exhibit to my surrebuttal testimony that identifies a loop and route list based solely on CLEC data responses. *See* Exhibit ___ (GJB-4) (loops); Exhibit ___ (GJB-5) (transport). The source materials for these compilation are the responses to the PSC's TRO data requests, where those responses were available to me. For those CLECs for whom such responses were not available, I have reviewed the CLEC responses to BellSouth's first set of data requests in this proceeding.

As illustrated in GJB-4 (see GJB-4B and 4F), based on CLEC discovery responses, although at least one competitive provider is present in over 700 buildings, there are only twenty-three (23) buildings (excluding duplicates) that potentially satisfy one of the triggers. (In some situations, the same carrier listed a building two times in its discovery responses, so that building may appear on the list even though it does not qualify for purposes of the triggers).

With regard to dedicated transport, although it appears that CLECs are present in a large number of routes (almost 700), only nine (9) routes potentially satisfy one of the dedicated transport triggers. When breaking these down these routes, only 9 routes potentially satisfy the DS3 wholesale provisioning trigger, and there are no routes that satisfy the

either the remaining wholesale provisioning triggers (DS1 and dark fiber) or any of the self-provisioning triggers.

This is another example why BellSouth's "assumption-based triggers", in which the potential capabilities of the CLEC's network are inappropriately used in place of evidence of actual CLEC services, cannot be relied upon in this proceeding.

III.
BELLSOUTH'S INTERPRETATION OF OPERATIONAL READINESS IS WRONG

Q. ON PAGE 5 OF HER TESTIMONY, MS. PADGETT CLAIMS THAT YOUR DEFINITION OF OPERATIONAL READINESS IS INCORRECT BECAUSE YOU STATE THAT A DEMONSTRATION BE MADE THAT SERVICE IS BEING PROVIDED AT THE RELEVANT CAPACITY LEVEL. IS MS. PADGETT CORRECT?

A. No. Contrary to Ms. Padgett's statement, the FCC's rules do require CLECs to currently provide service between the two ILEC central offices at each end of the dedicated transport route. To satisfy the triggers, the FCC requires that CLECs currently must provide service at the relevant capacity level. In the TRO, the FCC states, that it is establishing "two different types of triggers to identify the specific customer locations where

there may be no impairment for the high-capacity loops we identify below and the incumbent LEC unbundling obligation can be eliminated at that customer location: 1) where a specific customer location is identified as *being currently served* by two or more unaffiliated competitive LECs with their own loop transmission facilities *at the relevant loop capacity level* (Self Provisioning Trigger); or 2) where two or more unaffiliated competitive providers have deployed transmission facilities to the location and are offering alternative loop facilities to competitive LECs on a wholesale bases *at the same capacity level* (Competitive Wholesale Facilities Trigger.)" TRO ¶ 329 (emphasis added).

Likewise, in introducing the wholesale transport trigger, the FCC states, "we find that competing carriers are not impaired where competing carriers have available two or more alternative transport providers, not affiliated with each other or the incumbent LEC, *immediately capable and willing to provide transport at a specific capacity* along a given route between incumbent LEC switches or wire centers. If a state commission finds no impairment for a specific capacity level of transport on a route, the incumbent LEC will no longer be required to unbundled that transport along that route, according to the transition schedule adopted by the state commission." TRO ¶ 400 (emphasis added).

Q. IN THE TRO, DOES THE FCC ANTICIPATE A RESULT WHERE IMPAIRMENT MAY BE ROUND FOR SOME CAPACITY LEVELS BUT NOT OTHERS?

A. Yes. In the TRO, in describing the self-provisioning trigger, the FCC states:

> Furthermore, we note that where, through application of this trigger, impairment for unbundled transport *at a particular capacity* is no longer found, substantial competitive facilities, and perhaps *other capacities of UNE transport will be available*. Therefore, it this trigger removes unbundled transport *at a particular capacity level*, carriers will remain capable of serving end-user customers in all areas. This will provide certainty for new market entrants.

TRO ¶ 407 (emphasis added).

IV.
BUILDING ACCESS ISSUES

Q. MS. PADGETT ASSERTS THAT SELF-PROVISIONERS NEED NOT HAVE ACCESS TO THE ENTIRE BUILDING IN ORDER FOR THAT BUILDING TO COUNT TOWARDS THE TRIGGERS. DO YOU AGREE?

A. No. In her rebuttal testimony, Ms. Padgett incorrectly challenges my definition of a customer location. *See* Padgett Rebuttal at 6. Although BellSouth has used the terms "building" and "customer location" somewhat interchangeably in the discussion of the triggers, the clear intent of the impairment standard is to identify locations where customers

actually have the ability to be served by multiple providers. If a CLEC can reach only a single customer in a multi-tenant building, then the other customers in that building are unable to be served by that CLEC unless the CLEC is able to reconfigure its network, and to gain access to the common house and riser cables into the building. The individual customer location within the building may be used for the triggers in that instance, but not the entire building. Again, this type of issue is a "assumption-based trigger", not evidence of actual deployment.

V.
TRANSITIONAL ISSUES

Q. MS. PADGETT STATES THAT IT IS UNREASONABLE FOR CLECS TO REQUEST A THREE YEAR TRANSITION PERIOD, AND INSTEAD SHOULD ONLY HAVE NINETY DAYS. IS THIS REASONABLE?

A. No. If anything, Ms. Padgett's proposal is the unreasonable one. First, if CLECs were forced to disconnect their existing UNEs on a broad scale and convert them to some other type of service, it would take BellSouth much longer than 90 days just to develop a cutover plan for transitioning the circuits to another CLEC's network. A "special project" such as this would have to be coordinated with the day-to-day operational activities of BellSouth as well as the numerous other carriers involved. Second, the Commission must ensure that CLECs can transition their services to another CLEC before such a transition could occur, which as I stated in

my direct testimony, is not a simple conversion process. Sufficient time must be allowed for this conversion to occur in an orderly manner, without threatening customer disruption.

Q. WHY WOULD CLECS NOT CONVERT THEIR UNES TO BELLSOUTH'S SPECIAL ACCESS SERVICES?

A. CLECs would face a significant increase in their underlying costs if they were forced to purchase special access instead of unbundled network elements. If the triggers are truly implemented properly, then the CLECs will have non-ILEC alternatives available to them. A transition plan should permit the CLECs to take advantage of those alternatives.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Q. Please state your name and address.

A. My name is Ryan Hand. My business address is 2301 Lucien Way, Suite 200, Maitland, Florida, 32751.

Q. Who do you work for?

A. I am Vice-President of Operations and Engineering of FDN Communications ("FDN").

Q. What are your responsibilities as VP of Operations and Engineering for FDN?

A. As VP of Operations and Engineering, I am responsible the design and quality of FDN's network.

Q. Please describe your education and your work experience in the telecommunications sector.

A. I received a Bachelors Degree in Management from LeTourneau University.

Prior to co-founding FDN in 1998, I served as Vice- President of Operations for Brooks Fiber Communications, Inc., where I was responsible for all operations, engineering and service delivery for all special access and CLEC products. I personally oversaw the installation and turn-up of the Houston network and operations. Prior to my tenure at Brooks, I worked for Teleport Communications for two years and have held various positions within Nortel over an eleven-year period.

Q. Have you previously testified in a regulatory proceeding before a state utility commission, the FCC or a hearing officer?

A. No.

Q. What is the purpose of your rebuttal testimony in this proceeding?

A. The purpose of my testimony is to rebut BellSouth's claims that FDN has self-provisioned certain transport facilities such that it rises to the level of a "trigger" company on those routes. Verizon correctly did not identify FDN as a self-provider or a wholesale provider of transport. I will describe FDN's network architecture and explain that, although on a limited number of routes FDN may be a trigger company for the purposes of self-provisioned dedicated transport, the number of routes that meet the criteria set out by the TRO is far fewer than BellSouth would have the Commission believe. I will also briefly address wholesale transport and transition issues.

Q. Please briefly describe FDN's Florida operations.

A. FDN is a facilities-based/UNE-L CLEC. FDN is also an IXC, a data services provider (both dial-up and dedicated), and FDN offers ISP and other Internet services. FDN was founded in 1998 with the mission of offering packaged services (local, long distance and Internet) to small- and medium-sized businesses. FDN launched operations in Orlando in April 1999 and expanded to Fort Lauderdale in May 1999 and to Jacksonville in June 1999.

A second round of expansion in West Palm Beach, Miami and the Tampa Bay area was completed in the first quarter of 2000.

FDN owns and operates Class 5 Nortel DMS-500 central office switches in Orlando, Tampa, Jacksonville, and Ft. Lauderdale. FDN's switches are connected by fiber optic cable owned or leased by FDN to nearby incumbent local exchange carrier (or "ILEC") tandem switches. FDN leases collocation space in more than 100 ILEC wire centers throughout the state. Remote DLC/DSLAM equipment is installed at these collocation sites, and from these sites FDN accesses ILEC UNE loops. Connectivity from the collocation sites to the ILECs' tandem switches is via FDN's own fiber or leased DS-1 or DS-3 circuits. FDN relies upon its rights under the Act to obtain access to Florida consumers through the purchase of UNE loops from the ILEC.

Q. Please describe FDN's network architecture in BellSouth's territory.

A. FDN operates within BellSouth's region from three major "hubs" -- Orlando, Jacksonville, and Ft. Lauderdale -- where it has deployed switches capable of serving a wide geographic area. Of FDN's 100 plus collocations, 95 are located within BellSouth's footprint, many of which are within BellSouth tandem offices. FDN has self-provisioned more of its own fiber in BellSouth territory than it has in the Sprint or Verizon regions, but FDN's fiber does not connect its three BellSouth markets (Orlando, Jacksonville and South Florida). Unlike other CLECs, FDN has **not** deployed a "hub and

spoke" architecture. FDN's fiber routes generally run between BellSouth offices where FDN has collocated in a "daisy chain" or "direct linked" fashion. FDN chose to deploy its network in this manner to more efficiently hand-off traffic to BellSouth for termination.

Q. Have you reviewed BellSouth's testimony concerning the application of the self-provisioning trigger to dedicated transport routes?

A. Yes. I reviewed the direct testimony of BellSouth witness Gray and the direct and supplemental direct testimony of BellSouth witness Padgett.

Q. What were the conclusions of BellSouth's dedicated transport self-provisioning trigger analysis as it relates to FDN?

A. BellSouth has asserted that FDN has self-provisioned dedicated transport that meets the criteria set out by the TRO on 189 of the 718 routes listed in Ms. Padgett's supplemental direct testimony (Exhibit SWP-8).

Q. Of the 718 routes listed in BellSouth's Exhibit SWP-8, on how many routes has FDN actually self-provisioned dedicated transport meeting the criteria set out by the FCC in the TRO?

A. FDN maintains that it has deployed dedicated transport meeting the criteria of the self-provisioning trigger on only 3 of the routes listed in BellSouth Exhibit SWP-8.

Q. How did you arrive at that conclusion?

A. I examined BellSouth's exhibit and consistent with the TRO's criteria, I simply counted the pairs of BellSouth wire centers where FDN has operational collocations and has self- deployed fiber (and the optronics

necessary to "channelize" that fiber) connecting the pairs of wire centers. BellSouth ignored evidence of self-provisioned routes which FDN provided to the Commission in response to the Commission's data request and provided to BellSouth in discovery. Instead, BellSouth arrived at a wholly inaccurate conclusion because it based its analysis on a "connect the dots" approach in which it simply *assumes* that a transport route exists between each and every FDN collocation.

This assumptions are laid bare in BellSouth's direct testimony. As stated in BellSouth witness Gray's direct testimony (p. 8 at line 5), "[i]t is logical and reasonable to *assume* that a carrier can route traffic between any pair of wire centers within a LATA where it has operational collocation arrangements, i.e., that a carrier's network is fully interconnected." (Emphasis added). Moreover, Mr. Gray states, '....it is unlikely that a CLEC would have a *direct* link between every ILEC wire center where it is collocated (e.g., it may instead have a "hub and spoke" layout)....' Further, Ms. Padgett states (p. 18 at line 9), "Unfortunately, to date, BellSouth has received far fewer responses than expected, so we have been forced to rely heavily on our own billing and operations data regarding collocations and fiber entrance facilities. Using discovery and these internal data, a list of fiber-based collocations for each competitive carrier as created and used to generate all the ***potential*** transport routes for a given carrier *using the assumption that competitive carriers can route traffic between any pair of fiber-based collocation arrangements in a LATA*" (Emphasis added).

Mr. Gray and Ms. Padgett could not be more wrong with regard to FDN's network. As I stated previously, FDN does not utilize a "hub and spoke" architecture but rather uses a "daisy chain" or "direct linked" architecture. In reality, FDN self-provides transport on a mere fraction of the routes BellSouth assumes FDN does. BellSouth should not and cannot assume CLEC self-provisioned routes where there are none, but that is precisely what BellSouth has done.

Q. Has BellSouth or Verizon identified FDN as a provider of either loops or transport for purposes of the TRO wholesale triggers?

A. No, neither has claimed that FDN provides loop or transport facilities to other carriers. In fact, FDN neither provides nor is willing to provide wholesale loop or transport facilities to other carriers on a widely available basis.

Q. Have you reviewed BellSouth's testimony concerning the application of the wholesale trigger to dedicated transport routes?

A. I've reviewed Confidential Supplemental Direct Exhibits SWP-7, SWP-8, SWP-9, and SWP-10 to specifically analyze those instances where BellSouth identified carriers as providing wholesale transport services and attempted to verify wholesale availability. FDN is attempting to verify wholesale availability with some of the carriers identified, but has been told by a representative of one of those carriers that FDN could not purchase transport at any capacity level from that provider. Additional verification of wholesale availability is required, and completing that verification process

could not be achieved at the time this testimony was filed. FDN will therefore supplement this rebuttal as necessary if wholesale availability is not confirmed.

Q. What issues should the Commission address as part of its transition analysis?

A. The ILECs' direct testimony is lacking with regard to transition issues. The Commission needs to address several issues, including but not limited to the ability to order co-carrier cross connects to access alternative transport providers; the ability to migrate from UNEs to other facilities, where available; the ability of carriers to *easily* order loops, transport and loop/transport combinations, where available.

Concerning ordering of loops and transport where UNEs are no longer available, the Commission should specifically address the type of order, i.e., what "form" the order will take, as well as what the conversion process will entail. The current process for converting special access circuits to EELs may be particularly instructive as to what the Commission should not require, as converting special access circuits to EELs has proven to be more difficult than was originally imagined. FDN contends that any UNE to wholesale or retail conversion is no more than a simple billing change that should require little, if any, work for CLECs.

Q. Does that conclude your rebuttal testimony?

A. Yes.

Q: PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS?

A: My name is Steve Brownworth. I am an employee of ITC^DeltaCom Communications, Inc., ("ITC^DeltaCom"), and my business address is 1791 O.G. Skinner Drive, West Point, Georgia 31833

Q: PLEASE DESCRIBE YOUR BACKGROUND AND EMPLOYMENT-RELATED DUTIES:

A: My education and relevant work experience are as follows: I received a bachelor's degree with a major in Quantitative Methods from the University of Illinois – Chicago in 1982. I have over 20 years of telecommunications experience. My experience primarily lies in the design and deployment of IXC and CLEC architecture. Currently I'm the Director of Systems Planning for ITC^DeltaCom. I am responsible for the network architecture of the local and long-distance voice network, data network (ATM/Frame/IP) and our fiber optic transport network. I've been in this position for the last eight years. In my role at ITC^DeltaCom, I've assisted other companies in their initial network design and configurations including SoLinc, PowerTel and Mindspring. These responsibilities include off-net vendor management, the negotiation of contracts with ITC^DeltaCom's IXC and CAP providers and determining how to best utilize the facilities offered in the interconnection agreement in the ITC^DeltaCom network.

Prior to joining ITC^DeltaCom, I spent five years, 1989-1994, with MCI as Sr. Manager, Network Design, managing strategic designs of their SONET

transmission deployment, real-time restoration and reliability plans, dynamic switch routing and capital cost justifications. Prior to MCI, from 1982 to 1989, I held management positions with Telecom*USA, SouthernNet and Telesphere, in switch network design, traffic engineering, line cost, and provisioning.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to respond to the testimony of Ms. Padgett with BellSouth Telecommunications, Inc.

Q: DO YOU AGREE WITH MS. PADGETT's TESTIMONY THAT ITC^DELTACOM IS NOT A TRIGGER FOR DS1/DS3 or FIBER OPTIC LOOPs?

A: Yes, ITC^DeltaCom utilizes the facilities of other Provider Carriers, including the vast majority of end-user loop services with BellSouth Telecommunications.

Q: DOES ITC^DELTACOM USE ITS FIBER OPTIC TRANSPORT NETWORK TO PROVIDE DS3 TRANSPORT, ON A WHOLESALE BASIS, BETWEEN BELLSOUTH END OFFICES WITHIN THE SAME LATA?

A: No, ITC^DeltaCom's fiber optic network is primarily an IXC based network. The majority of our facilities are Inter-LATA or between ITC^DeltaCom designated POPs in the same LATA. In a few cases we do terminate to an ILEC serving wire center to an ITC^DeltaCom POP for entrance facilities, which is not related to

loop or transport triggers. Because ITC^DeltaCom does not have its own network for wholesale services, ITC^DeltaCom also does not self-provision its ILEC transport requirements.

Q: DID ITC^DELTACOM RESPOND TO BELLSOUTH's DISCOVERY QUESTIONS AND REQUESTS FROM THE PSC STAFF? IF YES, CAN YOU SUMMARIZE WHY THIS INFORMATION SHOWS ITC^DELTACOM IS NOT A TRIGGER FOR END OFFICE TRANSPORT?

A: Yes, ITC^DeltaCom responded to both BellSouth and Staff discovery requests.

In our responses, where ITC^DeltaCom was wholesaling transport we identified the underlying Providing Carrier for loops and transport. Since we provide this service through lease or resell agreements and not fiber (owned, IRU or leased) we do not see ourselves as a trigger for transport. We do not have the fiber facilities and the equipment to use the fiber (optronics) to be a Providing Carrier. To the extent the Commission found a transport route that met the trigger, the Commission could be double-counting ITC^DeltaCom with the carriers that actually own these fiber facilities. As ITC^DeltaCom leases or resells local transport capacity of other carriers and we do not have an owned local network, we should not be included as a trigger.

Q: DOES YOUR TESTIMONY COVER THE POSITIONS OR THE TRIGGER CRITERIA OF OTHER CARRIERS?

A: No, my testimony covers only ITC^DeltaCom and does not draw any conclusions as to whether other carriers or routes fall under loop or transport trigger criteria.

Q: IN EXHIBIT SWP-6 and SWP-8, OF MS. PADGETT's TESTIMONY, SHOWS ITC^DELTACOM AS A TRIGGER FOR DARK FIBER, DS3 and DS1 TRANSPORT. DO YOU BELIEVE THIS IS AN ACCURATE ASSESMENT OF THE ITC^DELTACOM NETWORK?

A: No, ITC^DeltaCom has not deployed, constructed, nor has ITC^DeltaCom entered into any IRUs for fiber between ILEC central offices. The DS3 or DS1 transport ITC^DeltaCom sells to carriers or leases for internal needs is through other carriers, including ILECs, via DS1 and DS3 capacity resell or lease agreements. ITC^DeltaCom does not utilize dark fiber leases, IRUs or have ownership for this transport. Therefore, the wholesale or self-provisioning triggers should not apply to ITC^DeltaCom.

Q: ON PAGE 18, MS. PADGETT STATES THAT BELLSOUTH METHODOLGY INCLUDED BILLING AND OPERATIONAL DATA WITH RESPECT TO COLLOCATIONS. HOW MIGHT THAT DATA BE INACCURATE IN LOOKING AT ITC^DELTACOM's NETWORK?

A: ITC^DeltaCom in its collocation requests asks for Fiber and DS3 connections from BellSouth and other ILECs, however we do not own or deploy transport equipment for wholesale or self-provisioning of interoffice transport. The fiber

and DS3 cross-connects are used for multiplexing equipment or to combine loop and transport UNE facilities. For this reason and others stated previously, ITC^DeltaCom feels that the Commission should base its decision on the information received directly from the carriers who own the facilities and not utilize information provided by BellSouth where BellSouth is simply guessing as to whether the capability for wholesale local transport exists for a given company such as ITC^DeltaCom.

Q: ON ISSUE 17, PAGE 26; MS. PADGETT STATES THAT BELLSOUTH METHODOLGY ASSUMES THAT THE FACILITIES TERMINATE TO A COLLOCATION? DO YOU AGREE?

A: Yes. However, ITC^DeltaCom's concern is - "Will BellSouth provide reasonable and non-discriminatory access for cross-connects between a requesting carrier, in this case ITC^DeltaCom and a Providing Carrier?"

Ms Padgett only addressed the simple fact that transport facilities terminate in BellSouth Central Offices at collocations. We would like the Commission to clearly address the importance and necessity for carriers like ITC^DeltaCom to have access to the Providing Carriers' collocations for purposes of provisioning network elements, in a manner that will not delay in providing service to the customer.

Additionally, it is important for requesting carriers be able to order UNE or access loops into a Providing Carriers' collocation for transport purposes, where the requesting carrier has an agreement and the proper assignments for ordering. Otherwise carriers, like ITC^DeltaCom, would have to establish collocations containing only cross-connect panels. ITC^DeltaCom would be forced to bring a DS1 loop from a customer into the ITC^DeltaCom collocation, only to cross-connect the DS1 loop to the Providing Carriers' transport network. This redundant, unnecessary step only utilizes limited central office space, substantially increases costs, and complicates what should be a very simple ordering process.

Q: ON ISSUE 20, MS. PADGETT STATES THAT A TRANSITION PERIOD IS UNNECESSARY FOR ROUTES IN WHICH NO IMPAIRMENT IS FOUND, DO YOU AGREE?

A: No. Ms. Padgett seems to make the assumption that carriers will continue to use BellSouth, at market based rates. With a potentially dramatic increase in our costs from BellSouth, the most likely course for ITC^DeltaCom will be to move DS1s and DS3s loop and transport to other facility-based providers identified by the Commission. For this reason, we seek the Commission's assistance to ensure that BellSouth and other ILECs work with the CLECs on a smooth transfer of customer's facilities to other Providing Carriers.

Issue 20 when tied to Issue 17, reasonable and non-discriminatory access to cross-connects, is extremely important for ITC^DeltaCom to be able to transition off the BellSouth network onto other providers without impacting customer service. ITC^DeltaCom should not have to order new loops to customer premises when changing transport providers. Transfers between carriers should be coordinated between carriers and occur with minimal impact to the end user customer.

Q: WHAT WOULD BE THE APPROPRATE TIME INTERVAL FOR A TRANSITION OF SERVICES?

A: Given that the transition would involve hundred of facilities from just ITC^DeltaCom's network and the coordination needed from other service providers, we would request that the transition happen within a 12 month period.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes.

Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Marva Brown Johnson. I am employed by KMC Telecom Holdings, Inc. ("KMC Holdings"), parent company of KMC Telecom III, LLC as Senior Regulatory Counsel. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING ?

A. I am testifying on behalf of KMC Telecom III, LLC ("KMC").

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I hold a Bachelors of Science in Business Administration (BSBA), with a concentration in Accounting, from Georgetown University; a Masters in Business Administration from Emory University's Goizuetta School of Business; and a Juris Doctor from Georgia State University. I admitted to practice law in the State of Georgia.

I have been employed with KMC since September 2000. I joined KMC as the Director of ILEC Compliance, I was later promoted to Senior Counsel and this is the position that I hold today. I am also an officer of the company and I currently serve in the capacity of Assistant Secretary. I manage the organization that is responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, and local rights-of-way issues.

Prior to joining KMC as the Director of ILEC Compliance, I had over eight years of telecommunications-related experience in various areas including, consulting, accounting, and marketing. From 1990 through 1993, I worked as an auditor for Arthur Andersen & Company. My assignments at Arthur Andersen spanned a wide range of industries, including telecommunications. From 1994 through 1995, I was an internal auditor for BellSouth. In that capacity, I conducted both financial and operations audits. The purpose of those audits was to ensure compliance with regulatory laws as well as internal business objectives and policies. From 1995 through September 2000, I served in various capacities in MCI Communications's product development and marketing organizations, including as Product Development – Project Manager, Manager - Local Services Product Development, and Acting Executive Manager for Product Integration. At MCI, I assisted in establishing the company's local product offering for business customers, oversaw the development and implementation of billing software initiatives, and helped integrate various regulatory requirements into MCI's products, business processes, and systems.

Q. HAVE YOU TESTIFIED BEFORE THE FLORIDA OR OTHER STATE PUBLIC SERVICE COMMISSIONS?

A. Yes. I have testified before the North Carolina Utilities Commission on various local interconnection and competition issues, including reciprocal compensation. I also have testified in a AAA arbitration hearing.

Q. PLEASE DESCRIBE THE TYPE OF SERVICE KMC PROVIDES IN FLORIDA.

A. KMC is a facilities-based telecommunications service provider that also provides service to customers through unbundled network elements leased from ILECs. KMC operates in BellSouth's (Daytona Beach, Pensacola, and Melbourne), Verizon's (Greater Pinellas and Sarasota), and Sprint's (Tallahassee and Fort Meyers) territories in Florida. KMC provides a wide variety of integrated voice, data and internet services to enterprises in the state of Florida.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. In its *Triennial Review Order* ("*TRO*"),[1] the FCC determined that incumbent local exchange carriers ("ILECs") must provide competitive carriers with unbundled access to high-capacity loops and dedicated transport. Specifically, the FCC made a national finding that CLECs are impaired in their ability to offer service without access to DS-1 loops, DS-3 loops (up to two DS3s per location) and dark fiber loops (collectively, "high capacity loops"). ¶ 202.[2] The FCC also found that CLECs are impaired on a national basis without access to DS-1, DS-3 and dark fiber dedicated transport. ¶ 359. Although the FCC found impairment, it has

[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98); Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147)*, FCC No. 03-36 (rel. Aug. 21, 2003).

[2] All "¶" citations in my testimony are to the TRO, unless otherwise noted.

authorized state commissions to evaluate specific claims that an ILEC might advance, on the basis of specific criteria to be assessed at a particular location (for loops) or on a particular route (for transport), which show competing carriers are not impaired without unbundled access to those elements.

The purpose of my testimony is to respond to BellSouth's and Verizon's claims that KMC is a trigger candidate at certain customer locations and on particular dedicated transport routes. My testimony is divided into two parts. First, I will discuss BellSouth's claim that dedicated transport should be "de-listed" on certain routes in Florida. In this part, I explain that *none* of KMC's transport facilities in Florida are eligible to be counted toward satisfaction of the triggers. In the second part of my testimony, I will discuss BellSouth's claims that enterprise loops should be de-listed at certain locations in Florida. I will explain that only a handful of KMC's loop facilities in Florida can be counted toward satisfaction of one of the triggers (the "self-provisioning" trigger), and that none of KMC's loop facilities in Florida can be counted toward satisfaction of the other trigger, the "wholesale facilities" trigger.

I. DEDICATED TRANSPORT – ISSUES 7, 9, 11, 14, AND 16

Q. HOW IS THIS SECTION OF YOUR TESTIMONY ORGANIZED?

A. As explained in the Direct Testimony of Gary Ball, BellSouth argues that the triggers for de-listing DS1, DS3 and dark fiber transport have been satisfied on hundreds of routes in Florida, and that unbundled access to

dedicated transport should therefore be eliminated on those routes. In this rebuttal testimony, I will not elaborate on the appropriate interpretation of the triggers, which is addressed in the Direct Testimony of Gary Ball. This testimony will explain how the triggers were applied in conducting KMC's analysis as to whether specific KMC routes and customer locations satisfied the triggers. Then I will explain the analysis that this Commission should undertake to determine if the dedicated transport "triggers" have been met by KMC – *i.e.*, that certain conditions exist on a specific transport route that appear to indicate that a CLEC is not impaired without access to UNE dedicated transport at that route. The Commission may lift the unbundling obligation for dedicated transport between specific wire centers, at that specific transport capacity if -- and only if -- the triggers are met. Finally, I will specifically address BellSouth's claims with respect to the extent to which BellSouth alleges that KMC is a trigger candidate for routes in Florida. In fact, none of *KMC's* transport facilities in Florida can be counted toward satisfaction of any of the FCC's triggers, because KMC's network is not configured or designed to carry traffic between BellSouth central offices.

Q. WHAT IS THE FCC'S DEFINITION OF "DEDICATED TRANSPORT" AS THE TERM WAS USED IN THE *TRO* AND AS IT IS PERTINENT TO THE COMMISSION'S DELIBERATIONS IN THIS IMPAIRMENT PROCEEDING?

A. For purposes of this impairment proceeding, "dedicated transport" has a narrower meaning than industry usage. In the *TRO*, the FCC redefined dedicated transport as "transmission facilities connecting incumbent LEC

switches and wire centers within a LATA." ¶ 365 (footnote omitted). This new definition explicitly excludes "backhaul" facilities between an ILEC wire center and a CLEC location, such as the CLEC switch, which CLECs use to aggregate and "backhaul" their traffic to their switch. Backhaul facilities had been included in the FCC's definition of dedicated transport prior to the *TRO*. This definitional change means that "only those transmission facilities *within* an incumbent LEC's transport network, that is, the transmission facilities between incumbent LEC switches," fall within the incumbent LEC's unbundling obligation. ¶ 366 (emphasis in original).

Q. WHAT WAS THE FCC'S FINDING WITH RESPECT TO DEDICATED TRANSPORT?

A. After extended proceedings and after considering an enormous factual record, the FCC determined that competitive carriers are impaired nationwide in their ability to provide local telecommunications services without access to dedicated transport, assessed on a route-specific, capacity–specific basis and subject to defined limits. ¶¶ 359, 381-93. The FCC assessed impairment on a capacity basis "[b]ecause a carrier using higher capacity levels of transport has a greater incentive and broader revenue base to support the self-provisioning of transport facilities." ¶ 377 (footnote omitted).

It is useful to summarize these impairment characteristics at the outset, because these are the factors that the trigger analysis must show have been overcome.

Q. WHY DID THE FCC DELEGATE TO STATE COMMISSIONS THE TASK OF ADDUCING EVIDENCE OF A LACK OF IMPAIRMENT WITH RESPECT TO DEDICATED TRANSPORT ON A GRANULAR ROUTE AND CAPACITY-SPECIFIC BASIS?

A. The purpose of this proceeding is to focus on the services where the FCC has already made a finding of impairment, as addressed in the Direct Testimony of Gary Ball, and to identify those relatively rare instances in which, because of special circumstances, competitive carriers would not be impaired notwithstanding the relative lack of traffic on such routes. The FCC concluded that the record before it did not permit it to determine where, if anywhere, such routes might exist. The FCC thus delegated to the states the task of determining, upon a petition from an ILEC, whether that ILEC could be relieved of its obligation to provide unbundled access to its facilities for a given route.

Q. WHO HAS THE BURDEN OF PERSUASION WITH EVIDENCE OF LACK OF IMPAIRMENT?

A. Under the *TRO*, BellSouth bears the burden of introducing evidence into the record showing lack of impairment. The Commission is required to make a determination only for those routes for which BellSouth has presented "relevant evidence" that competing carriers would not be impaired if access to UNE dedicated transport were eliminated. In other words, the FCC's impairment findings for dedicated transport are controlling unless BellSouth has introduced evidence that meets the requirements set forth in the *TRO* for demonstrating non-impairment on a route-specific basis. BellSouth's petition must be denied unless it meets the heavy burden of providing evidence sufficient to overcome the

affirmative findings by the FCC of impairment and to enable the Commission to make an affirmative finding of non-impairment.

A. Self-Provisioned Transport Trigger – Issues 9 and 14

Q. WHAT TRIGGERS FOR DEDICATED TRANSPORT DID THE FCC ADOPT?

A. The FCC adopted two triggers – a "Self-Provisioning Trigger," and a "Wholesale Trigger."

Q. WHAT IS THE DIFFERENCE BETWEEN THE SELF-PROVISIONING TRIGGER AND THE WHOLESALE TRIGGER?

A. The Self-Provisioning Trigger measures the extent to which competitive carriers have deployed transport facilities along a given route for their own use. To satisfy the Self-Provisioning Trigger, BellSouth must demonstrate that three or more unaffiliated and competing carriers have each deployed transport facilities on that route. ¶ 405. To qualify as "trigger-eligible," each self-provisioned facility on the route must be operationally ready to provide transport between specific ILEC central office pairs. ¶ 406.

The Wholesale Trigger, by contrast, measures the extent to which competing carriers have deployed transport facilities along a given route that are available to other competing carriers at wholesale. To satisfy the Wholesale Trigger, BellSouth must show that "two or more competing carriers, not affiliated with each other or the ILEC, offer wholesale transport service completing that route." ¶ 412.

Q. WHAT KEY CRITERIA DID KMC ANALYZE IN DETERMINING WHETHER KMC SATISFIED THE SELF-PROVISIONING TRIGGER?

A. The FCC has identified at least five key criteria for determining whether the Self-Provisioning Trigger has been satisfied. As explained in the Direct Testimony of Gary Ball, BellSouth and Verizon must satisfy *each* of these criteria in order to satisfy the trigger.

(1) Route-Specific Review - The FCC requires that the transport trigger analysis must be performed on a route-specific basis. ¶ 401. It defines a transport route as a complete "connection between [ILEC] wire center or switch 'A' and [ILEC] wire center or switch 'Z.'" ¶ 401. The FCC has explained that "if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competitive providers *must offer service connecting wire centers 'A' and 'Z,'* but do not have to mirror the network path" through X. ¶ 401 (emphasis added). Although the FCC placed no defined limitation on the number of hops (i.e. passes through an office and/or intermediate electronics) a transport circuit might make between end points and still be considered a route between 'A' and 'Z', transport circuits offered by a CLEC that make many hops may not offer the same quality of service as ILEC transport with fewer (or no) hops. The introduction of every intermediate office or additional electronic device between points 'A' and 'Z' adds more potential points of failure and potential degradation of service. The question, then, is whether the CLEC identified as a trigger candidate self-provides dedicated transport between the two central offices

at issue (regardless of whether the CLEC's transport circuit follows the same path as the ILEC's circuit). *See* ¶ 365.

The FCC has emphasized, however, that a carrier does not qualify under the triggers unless it provides transport for the *entire* route between A and Z. The FCC specifically rejected ILEC claims that competitors could be forced to use a "daisy chain" of individual links, managed by multiple providers, between intervening wire centers. ¶ 402. Thus, any evaluation of impairment with respect to transport has to focus, first and foremost, on whether three other providers are each providing transport services that provide a complete connection between the two ILEC wire centers at issue.

Accordingly, it should be self-evident that a SONET ring that passes by wire center "A", but is not *connected* to ILEC wire center "A", cannot count as a trigger for transport routes including ILEC wire center "A." Likewise, a "hub-and-spoke" arrangement including a SONET ring that collects traffic from ILEC wire centers "A" and "Z," but carries that traffic solely to a CLEC point of presence and not to the other ILEC wire center, would not qualify as a trigger. It should also be self-evident that an alleged transport route between two ILEC wire centers that passes through a CLEC's switch does not qualify as a dedicated transport route, because the traffic on that route is being switched by equipment that is part of the CLEC's network.

(2) *Operational Readiness* - To be counted as trigger-eligible, a self-provisioned facility "must be operationally ready to provide transport into or out of an incumbent LEC central office." ¶ 406.

(3) *Capacity Levels* – The trigger analysis must be performed for each particular capacity of transport (*i.e.*, DS-3 or dark fiber).

(4) *Providers Must Own the Facilities*. The unaffiliated carriers must own the transport facilities.

(5) *Providers Must be Unaffiliated* – Alternative self-providers of transport must be unaffiliated.

B. Wholesale Transport Facilities Trigger: Key Criteria – Issues 7, 8, 11, 12, 16, and 17

Q. WHAT ELEMENTS OF THE KEY CRITERIA FOR THE WHOLESALE TRIGGER WERE MOST CRITICAL TO KMC'S TRIGGER ANALYSIS?

A. As explained in the Direct Testimony of Gary Ball, the carrier must be operationally ready and willing to sell the particular capacity of transport wholesale along the route in question. In other words, a carrier's wholesale transport facilities do not count toward satisfaction of the trigger (1) if the transport facility is not operationally ready and immediately available, or (2) if the carrier does not generally offer access to other carriers. ¶ 414.

Operational Readiness. With respect to operational readiness, the FCC emphasized the need for "safeguards against counting alternative fiber providers that may offer service, but do not yet have their facilities terminated or collocated in the incumbent LEC central office, or are

otherwise unable to immediately provision service along the route." *Id.* (emphasis added). If the purported wholesaler cannot connect with CLEC customers, for example, through CLEC-to-CLEC cross-connects at the relevant central offices, then the wholesaler would not be operationally ready to provide services to all CLECs. Similarly, if CLECs cannot terminate their UNE loops directly with the wholesaler, then the wholesaler is not operationally ready to provide a real alternative to ILEC transport.

The FCC has also made clear that a wholesale provider would not qualify under the trigger if the wholesale provider's facilities terminate only in a collocation arrangement located at an incumbent LEC's premises. Rather, in addition to such collocation in an ILEC's premises, the wholesale provider's facilities must also terminate "in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises." 47 C.F.R. 51.319(e)(1)(ii)(C) (FCC rules for DS-1 transport); see also § 51.319(e)(2)(B)(3) (same for DS-3 transport); § 51.319(e)(3)(B)(3) (same for dark fiber transport). The requirement of additional points of termination at each end of the route helps to ensure that the ostensible wholesaler's facilities are accessible to those CLECs that are not collocated at the ILEC premises.

Lastly, in setting the trigger at three competitive facilities, the FCC specifically acknowledged the need to allow for the possibility that some network owners may not be interested in providing wholesale services in

contrast with the wholesale availability trigger which counts only *actual* wholesalers. ¶ 407 (emphasis added). In doing so, the FCC specifically acknowledged KMC's lack of interest in providing wholesale transport services on its network. ¶ 407 n. 1260

Broadly Offered. The carrier must also offer its wholesale services broadly. Thus, for example, a carrier that sells transport to only one other company and does not make its services widely available would not qualify as a wholesaler for purposes of the trigger. ¶ 414.

Likewise, a wholesaler's dedicated transport is not operationally ready or widely available if the wholesaler either lacks the operations support systems needed to support CLEC use, or lacks the collocation arrangements necessary to ensure that CLECs can readily cross-connect their facilities in the applicable ILEC end-offices that define the transport route. *See., e.g.*, ¶¶ 373, 414. In other words, for a wholesale carrier to qualify for purposes of the Wholesale Trigger, other CLECs must be able to access the alternative facilities by cross-connecting their collocations to the wholesaler's collocation (or to a fiber termination panel) "in a reasonable and non-discriminatory manner." *See* ¶ 414 n.1279. In particular, the ostensible offer of wholesale transport must satisfy the FCC's collocation rules, which clarify "nondiscriminatory principles including the right to interconnect with other collocated competing carriers by cross-connection." *Id.* A carrier that does not offer cross-connection that satisfies these requirements does not qualify as a

wholesaler for purposes of the trigger, because "the wholesale trigger counts only wholesale offerings that are readily available." *Id.*.

C. KMC's Transport Does Not Count Toward the Self-Provisioning or the Wholesale Trigger – Issues 7, 9, 11, 14, and 16

Q. HAS BELLSOUTH OR VERIZON IDENTIFIED KMC AS A TRANSPORT PROVIDER FOR PURPOSES OF EITHER THE SELF-PROVISIONING TRIGGER OR THE WHOLESALE TRIGGER IN FLORIDA?

A. Yes. BellSouth identified KMC as a either a wholesale provider or a self-provisioner on six routes in Florida. Verizon also identified KMC as a wholesale transport provider on certain routes. *See* Exhibit ___ (MBJ-1).

Q. DOES ANY OF KMC'S TRANSPORT COUNT TOWARD SATISFACTION OF THE SELF-PROVISIONING OR WHOLESALE TRIGGERS?

A. No. BellSouth has claimed that KMC has transport facilities that count toward both the Self-Provisioning Trigger and the Wholesale Trigger, but those claims are incorrect. BellSouth's methodology apparently is simply to assume that whenever a competitive carrier is collocated in two of its central offices within a local access transport area (LATA), that carrier has the capability to self-provide transport between the specified BellSouth wire centers. In reality, however, KMC does not self-provide transport between any two BellSouth central offices in Florida, nor does it offer such transport to others on a wholesale basis. KMC's transport facilities are designed and used only to carry traffic between a single BellSouth central office and the KMC node.

Q: DESCRIBE KMC'S TRANSPORT ARCHITECTURE.

A The KMC network is a SONET ring backbone architecture. KMC has deployed its own transport facilities and established collocation in certain BellSouth central offices, typically three, but each collocation is on a separate pair of fibers and configured as a two node ring, with one node at the KMC switch and the other at the interconnection point. This architecture is designed and engineered to: (1) access unbundled network elements to extend KMC services to KMC's customers; (2) interconnect KMC and the ILEC's networks for the reciprocal exchange of traffic between the ILEC and KMC for termination of traffic the PSTN; and (3) transport traffic from the KMC switch to various PSTN, IXC, and customer interconnections. It was not designed or intended to transport traffic *between ILEC collocations*. This architecture is essentially a hub-and-spoke arrangement; traffic is carried to and from individual collocations and the KMC node; but not from collocation to collocation. As such it was engineered and sized based on the KMC business model, which did not contemplate a wholesale loop provisioning service offering. If KMC needs to carry traffic between two collocations, it purchases that interoffice transport from BellSouth. A diagram illustrating KMC's network architecture is attached as Exhibit ___ (MJB-2).

Q: HOW WOULD KMC HAVE TO CHANGE ITS NETWORK IN ORDER TO PROVIDE TRANSPORT FROM ONE BELLSOUTH CENTRAL OFFICE TO ANOTHER?

A. KMC would have to undertake extensive changes to its network including the redesign and upgrade of the existing transport network including

increasing capacity requirements at both nodes on each ring. The electronics in each collocation are sized only to support KMC's current business model, which is limited to carrying traffic from an ILEC collocation to KMC's node. If KMC wanted to provide transport between ILEC collocations, it would need to perform substantial upgrades to the electronics (to increase bandwidth) at all ILEC collocations and at the KMC node. In addition, there would be an impact on the Digital Access Cross-connect System ("DACS") to distribute DS1 level traffic to ILEC end office destinations. The DACS is a high-speed data channel switch. Separate and specific instructions provide connectivity between circuits and end point destinations. In KMC's network, the DACS directs traffic that does not require switching between end point destinations using various transport equipment and sonet rings and traffic that does require switching to KMC's switch. For example, under KMC's current network configuration, in order to provide transport between two ILEC wire centers, the following would have to occur: (1) transport from the A location, the ILEC wire center, would interconnect at the B location, KMC's node (specifically, the DACS); (2) KMC's DACS would then re-direct the transport to a separate sonet ring at KMC's node, location C, for termination at location Z, the destination ILEC wire center; and (3) the reverse would apply for traffic originating at ILEC wire center Z. The additional network functions required of the DACS and sonet rings is required because KMC does not have a direct path between ILEC wire

center A and ILEC wire center Z. Because KMC's network deployment was not engineered to specifically provide for transport between ILEC wire center A and ILEC wire center Z KMC would be required to access additional capital to support reconfiguring the network, including any upgrading the DACS.

Finally, upgrading for wholesale transport services would drive the costly expansion of space and power at the interconnection node to accommodate additional electronics in the ILEC or IXC central office collocation or at a customer building. To support these upgrades, KMC would also be required to expand its collocation spaces, which would also be very costly and would take a minimum of 90 to 120 days to deploy and an additional 60 to 90 days to complete the network cutover. First, KMC would have complete initiate collocation augmentation applications with the relevant ILECs. The collocation application process is expensive and subject to lengthy timelines. In addition to the subsequent application fees, the ILEC would levy substantial charges for engineering, space, power, and circuit facility assignments ("CFA"). KMC would also have to incur increased costs for network monitoring and surveillance demands. Although KMC could perhaps re-architect the network to place all the ILEC nodes onto one ring in an effort to minimize the electronics required at the KMC node, this too would require extensive work including a cutover of all existing ILEC rings onto the new facility, which would require extensive re-splicing in our backbone and a large cutover project.

BellSouth, on the other hand, designed and deployed its network with inter-office transport as an integral part of the plan. Its offices subtend a tandem which requires inter-office connectivity, while KMC's tandem functionality is achieved by the geographical deployment of its fiber. In BellSouth's network, inter-office transport is part of the design to provide alternate paths between offices and avoid tandem overload and growth. KMC would have to incur punitive costs to reconfigure its network to provide such functionality. Indeed, KMC would literally have to change its entire business plan before it undertook such changes, because the cost of these upgrades would be prohibitive unless the proposal was supported by a *commitment* to the transport business that justified the change in business strategy and design.

Q: DO KMC'S TRANSPORT FACILITIES COUNT TOWARD SATISFACTION OF THE WHOLESALE TRIGGER?

A. No. For the reasons I just explained, KMC does not even provide transport between ILEC central offices to itself; it certainly does not offer such transport at wholesale to other providers. BellSouth's methodology for determining whether carriers satisfy the Wholesale Trigger is simply to *assume* that if a carrier offers any wholesale services at all, it must be at least willing to offer interoffice transport at wholesale. See Padgett Testimony at 9-10, 19-20. Indeed, BellSouth *assumes* that simply because a CLEC generally provides information on a website or in advertising material about DS1 and DS3 services it offers (subject to various

conditions and limitations) at retail or wholesale, that this is granular evidence that the CLEC is operationally ready to provide dedicated transport on each of specific routes, at each of the specific capacities, and that the transport is operationally ready on a widely available basis, as the *TRO* rules require. *Id.* BellSouth cannot escape its obligation to demonstrate non-impairment on specific routes at specific capacities by simply making generalized assumptions, and then attempt to shift the burden onto the CLECs to respond on a route and capacity-specific basis.

With respect to KMC (and likely many other carriers), BellSouth's assumptions are incorrect. While KMC may sell some capacity on its network at wholesale to providers who want their traffic carried from an ILEC central office to the KMC node or to an IXC point of presence, KMC does not offer any provider transport *between* ILEC central offices at wholesale. Indeed, KMC generally operates its transport facilities near capacity and generally does not offer transport to competitive LECs at wholesale.

II. ENTERPRISE LOOPS – ISSUES 1, 2, 3, AND 5

Q. HOW IS THIS SECTION OF YOUR TESTIMONY ORGANIZED?

A. BellSouth argues that the triggers for de-listing DS1, DS3 and dark fiber enterprise loops have been satisfied at hundreds of customer locations in Florida, and that unbundled access to enterprise loops should therefore be eliminated on those routes. In this section, I will first identify the specific criteria that KMC used in analyzing whether KMC's loops satisfied the

trigger requirements. I will then address BellSouth's claims with respect to the extent to which BellSouth alleges that KMC is a trigger candidate for customer locations in Florida. Although KMC has a handful of enterprise loops that would count toward satisfaction of the Self-Provisioning Trigger, KMC has no loops that would count toward satisfaction of the Wholesale Trigger.

A. Overview of the Loop Triggers

Q. WHAT TRIGGERS DID THE FCC ESTABLISH FOR ENTERPRISE LOOPS?

A. As explained in the Direct Testimony of Gary Ball, the FCC established two triggers applicable to high capacity loops: a Self-Provisioning Trigger and a Wholesale Trigger. The Self-Provisioning Trigger requires BellSouth to identify customer locations where two independent CLECs have already demonstrated, through their own self-provisioning of loops to that location, that it is feasible to self-provision the high capacity facilities that would otherwise be available as UNEs. The self-provisioning loop trigger applies to DS3 and dark fiber loops, but not to DS1 loops, because the FCC found "little record evidence demonstrating that carriers construct facilities to serve customers *exclusively* at the DS1 level, as well as the lack of economic evidence showing that such self-deployment is possible." ¶ 334 (emphasis in original).

As also explained in the Testimony of Gary Ball, the Wholesale Trigger requires BellSouth to identify customer locations where competing carriers can offer service using loops obtained from wholesale

suppliers, and thus do not need to depend either on obtaining UNEs from the incumbent LEC or on their own construction. The wholesale facilities trigger applies to DS1 and DS3 loops. *See* ¶¶ 328, 329, 334, 337, 338.

B. Self-Provisioned Loops Trigger: Key Criteria – Issues 2 and 5

Q: WHAT KEY CRITERIA DID KMC ANALYZE IN DETERMINING WHETHER KMC SATISFIED THE SELF-PROVISIONING TRIGGER FOR ENTERPRISE LOOPS?

A. As addressed in the Direct Testimony of Gary Ball, in addition to the fact that a competitive provider must be unaffiliated and must own the facilities at issue the Self-Provisioning Trigger for loops also has three other important criteria:

Location Specific Review: The trigger analysis must be performed separately for each different customer location. Specifically, the FCC requires that state commissions apply the triggers "on a customer-by-customer location basis." ¶ 328.

Operational Readiness and Access to Customers: The FCC's rule makes clear that the qualifying carrier must be "serving customers via the facilities." 47 C.F.R. § 51.319(a)(5)(A)(1); ¶ 332 (qualifying self-provisioner must have "existing facilities in place serving customers at that location"). For that reason, the FCC's self-provisioning trigger emphasizes the importance of ensuring that any proposed self-provisioner is operationally ready; otherwise, it could not be actually "serving customers" at the customer location under review. *Id.*

Capacity Levels: The self-provisioning trigger for high capacity loops also requires evidence that the two carriers upon which the ILEC

relies have deployed "the specific type of high-capacity loop" for which the ILEC seeks a finding of non-impairment. ¶ 328; *see also id.* at 329 (trigger satisfied only by "facilities at the relevant loop capacity level"); *id.* at 332 (trigger requires evidence of "facilities in place serving customers at that location over the relevant loop capacity level.").

C. Wholesale Facilities Trigger: Key Criteria – Issues 1 and 3

Q. WHAT ARE KEY CRITERIA KMC ANALYZED IN DETERMINING WHETHER KMC SATISFIED THE WHOLESALE TRIGGER FOR ENTERPRISE LOOPS?

A. As explained in the Direct Testimony of Gary Ball, the test for the Wholesale Trigger is whether there are two or more wholesale alternatives to the ILEC's UNE loops. The FCC found that "[w]here competitive LECs have two alternative choices (apart from the incumbent LEC's network) to purchase wholesale high-capacity loops, including intermodal alternatives, at a particular premises, we conclude the impairment does not exist at that location for that type of high-capacity loop." ¶ 337. The wholesale trigger places no importance on *retail services* provided by other carriers, only on competitors' ability to obtain *wholesale elements* from an alternative supplier. To be counted for the wholesale trigger, a wholesaler (like a self-provisioner) must be unaffiliated with either the ILEC or another purported trigger company, and it must offer the "specific type of high capacity loop" in question over its "own facilities." *See* ¶¶ 337-38. The FCC noted that a wholesaler (unlike a self-provisioner) is deemed to satisfy the "own facilities" requirement for dark fiber not only if that carrier has obtained it from the incumbent LEC through an IRU, but

also if that carrier has obtained "on any other lease/purchase basis," including as a UNE. ¶ 337. Thus, the key criteria set forth above for the self-provisioning trigger also apply to the wholesale trigger. This is appropriate, because in some circumstances a wholesaler will also count as a self-provider under the FCC's rules. For example, a carrier unaffiliated with the ILEC that offers CLECs access to loops over its own facilities will qualify as both a self-provider and a wholesaler. In contrast, a carrier that obtains unbundled dark fiber from the ILEC, attaches its own optronics, and then offers wholesale "lit" loop capacity may satisfy the wholesale trigger, but will not satisfy the self-provisioning trigger. ¶ 329 & n. 973. There are also several additional criteria applicable to wholesalers that any wholesaler proposed by the incumbent LEC must satisfy. As detailed in the Direct Testimony of Gary Ball, the following additional criteria apply:

(1) *Equivalent Product Terminating at the ILEC Central Office.* The wholesaler must "offer an equivalent wholesale loop product at a comparable level of capacity, quality, and reliability" as the ILEC. ¶ 337. The FCC also observes that "either intermodal or intramodal facilities" may qualify as owned facilities. ¶ 332. Today, however, only fiber facilities provide carriers with a level of quality comparable to unbundled DS3 and dark fiber loops. Fiber is the only transmission medium that is generally available, reliable and deployed to provide a complete range of telecommunications services to enterprise customers. If the wholesale

facilities that the ILEC proposes to rely upon are of lesser quality than the ILEC's own facilities, or if they are less reliable than, or lack the capacity of, the ILEC's facilities, then any CLEC forced to rely upon them would be impaired in attempting to provide services in competition with the ILEC. Such lesser facilities do not count for purposes of the wholesale trigger.

An "equivalent wholesale loop product" is also one that terminates in the same central office where the ILEC loop serving the same customer premise is available. If it does not – if, for example, the loop terminates at the wholesaler's point of presence – then the CLEC will not have the equivalent ability to access the loop as the ILEC (or as the CLEC would if the UNE is available).

(2) *Access to Entire Building.* The wholesaler must also have "access to the entire multiunit customer premises." ¶337.

(3) *Widely Available.* The wholesaler must offer its loops on "[A] widely available wholesale basis." ¶ 337 The FCC recognized that some carriers may have (or be thought to have) spare capacity at a particular location, and may have even entered into an arrangement to provide some of that spare capacity to another carrier, but may have no intention of making its spare capacity "widely available." *Id.*; *cf.* ¶ 407 n.1260 (giving example). In those circumstances, other competitors cannot, as a practical matter, gain access on a wholesale basis to that alleged wholesaler's loop capacity. Such a wholesaler plainly should not and would not count for

purposes of the trigger. Rather, for a wholesale service to be "widely available," its facilities should be immediately available through contract, tariff, or other standard common carrier arrangement. Mere offers to negotiate or to provide individual rate quotes are insufficient to demonstrate that a wholesale service is widely available.

Finally, a "widely available" service is one that offers other carriers ready operational access. Thus, a wholesaler must have reasonable operations support systems that are ready to provide the pre-ordering, ordering, provisioning, maintenance and repair, and billing support that are vital to the provision of a wholesale service. The wholesaler must be able to provide those operations support services with respect to each of the potential customers at the location in question, and the capacity to serve reasonably foreseeable customer demand. Further, competing providers must be able to cross-connect to the wholesaler's loops at the wholesaler's collocation space in the ILEC central office that is the traditional serving wire center of that customer's premises. Such cross-connections must be available at cost-based rates, and on reasonable terms and conditions. Wholesale facilities that are not readily available for cross-connection in this manner are neither "widely available" nor "an equivalent wholesale loop product at a comparable level of . . . quality" to what the ILEC offers. ¶ 337.

(4) Financial Viability. Finally, the wholesaler must be operationally capable of providing the service for which it is nominated as

a trigger candidate. The incumbent LEC must provide evidence sufficient to demonstrate a "reasonable expectation" that the wholesaler will "continu[e] to provide wholesale loop capacity to that customer location."

(4) *Dark Fiber – Ability to Attach Electronics.* For dark fiber, qualifying facilities must provide each competitor with the ability to attach electronics that permit it to provide service at the level of its choosing. *See* 47 C.F.R. § 51.319(a)(4)(ii)(A).

D. BellSouth's and Verizon's Showings Are Deficient – Issues 1, 2, 3 and 5

Q. DO ANY OF KMC'S ENTERPRISE LOOPS COUNT TOWARD SATISFACTION OF THE SELF-PROVISIONING TRIGGER?

A. KMC recently submitted answers to discovery requests in which it identified the customer locations in Florida in which it has deployed facilities that it is using to serve customers. These KMC customer locations would count toward satisfaction of the self-provisioning trigger.

To the extent that BellSouth is claiming that KMC has operationally ready loop facilities serving customers at any other location in Florida, it is wrong. BellSouth has indicated that, for companies that did not provide discovery responses, it has used data from a company called GeoResults, Inc. to determine customer locations that satisfy the trigger. Padgett Testimony at 6-8. BellSouth has not produced the GeoResults report upon which it relies, does not explain in any detail the methodology used by GeoResults, and has not independently verified the information contained within the GeoResults report. In all events, now

that KMC has provided discovery responses, there is no ground for BellSouth to resort to these alternative measures.

Q. DO ANY OF KMC'S ENTERPRISE LOOPS COUNT TOWARD SATISFACTION OF THE WHOLESALE TRIGGER?

A. No. All of KMC's "loops" terminate at the KMC node – not at the ILEC central office. Accordingly, none of KMC's wholesale facilities meet the definition of a "loop" for purposes of the FCC's rule, because a "loop" by definition must terminate at the ILEC central office. *See* 47 C.F.R. § 51.319(4)(ii) and (5)(1)(B). If this Commission were to "de-list" loops at one of these customer locations, competitive carriers that are collocated in BellSouth's central office and that purchase unbundled loops today could not turn to KMC as a wholesale alternative, because KMC's loop facilities do not terminate in the central office and are not accessible to other carriers as a substitute to BellSouth's unbundled loops. For these reasons, no KMC loops satisfy the Wholesale Trigger.

Even if, as BellSouth and Verizon propose, KMC were to offer wholesale loops to other carriers, deployment of this wholesale offering would require the redesign and upgrade of the fiber network. As with the operational requirements necessary to upgrade KMC's network to a wholesale interoffice transport network, deployment of a wholesale loop offering would also require increased capacity requirements at both nodes on each ring and expansion of space and power at the interconnection node to accommodate additional electronics in the ILEC or IXC central office collocation or at a customer building. At the KMC central office

site KMC would encounter space and support systems constraints. KMC central office facilities were engineered utilizing a modular "switch in a box" concept. These modular buildings were sized for the KMC business model and will not accommodate new business platforms without significant expansion. In some cases the building growth may be subject to property sizes that preclude expansion.

In addition, because KMC's loop facilities are deployed from the customer location to the KMC switch, rather than from the customer location to an ILEC collocation, KMC would also have to provide wholesale transport in order to support deployment of a competitive wholesale loop offering and provide the space requirements of wholesale customers. KMC space and support system designs did not contemplate customer collocations at the wholesale level.

In either case KMC manages its facilities to ensure that capacity levels are optimized to serve the existing and forecasted KMC demand. In the best of cases it would take KMC at least a month to construct outside plant fiber extensions to deliver wholesale services to other carriers. Though KMC customers may accept these intervals to provision their own telecommunications applications, such an interval would not be operationally acceptable to a wholesale customer.

As with any network expansion or new product introduction, the support systems would have to grow. Network element management systems and hardware costs would increase. Network monitoring and

KMC Network Operations Center ("NOC") costs would also increase. Provisioning and billing systems would require growth to support wholesale billing, subscriber usage record exchange and provisioning, and other operational requirements necessary to ensure a seamless service offering.

Finally, the FCC recognized that, as with transport, "the ability to recover the high fixed and sunk costs [of loop construction] is the key factor to considering impairment." ¶ 303, n.884. Unlike BellSouth and Verizon, who as legally protected monopolists, are guaranteed a return on their investments and a captive market share, a wholesale offering by KMC would have to subject to a strict business case analysis which included contractual commitments to ensure reasonable recovery of sunk costs.

E. CLECS MAY BE IMPAIRED EVEN IF A TRIGGER IS SATISFIED

Q. ARE THERE INSTANCES IN WHICH A UNE SHOULD REMAIN AVAILABLE EVEN WHERE THE TRIGGERS ARE SATISFIED?

A. Yes. The *TRO* recognizes that there may be situations where the FCC triggers may be satisfied but a particular CLEC may still be impaired without access to ILEC transport due to factors unique to a carrier's ability to serve a transport route or to changed factual circumstances. For example, a barrier to entry (such as a moratorium on obtaining new rights-of-way) imposed on a particular location by a local government would prevent a CLEC from entering that particular market. *See, e.g.*, ¶¶ 336, 411.

The FCC also acknowledged CLECs face still other special impairments when deploying loops. ¶ 303. These include "the inability to obtain reasonable and timely access to the customer's premises both in laying the fiber to the location and getting it into the building thereafter, as well as convincing customers to accept the delays and uncertainty associated with the deployment of alternative loop facilities." *Id.* Thus, even when it may be "economically feasible" to build a loop to a given customer, these "other barriers" may preclude a carrier from practically using its own facilities to compete with the incumbent. The FCC expressly recognized that incumbents do not face the same disadvantages as competitors. ¶ 306. As legally protected monopolists guaranteed a return on their investments and a captive market share, the ILECs were expected – and affirmatively enabled by local governments and property owners – to build facilities to serve all current (and virtually all future) demand for telecommunications services for every customer within their respective service areas. This allowed them to spread the high fixed costs of loop deployment over both large and small customers, which lowered their per-unit costs. As a result, the ILECs not only have built, but they also are able to maintain and expand, ubiquitous local networks without facing the barriers that new entrants now confront.

The Commission should establish a certification process to enable CLECs to demonstrate that a significant impediment to facilities deployment or use remains even if a trigger were found to be satisfied. In

addition, in cases where the impediment affects a more substantial number of CLECs, the Commission should utilize the waiver process specified in paragraphs 336 and 411 of the *TRO*.

III. TRANSITION ISSUES – ISSUE 20

Q. WHAT TRANSITION MECHANISM SHOULD THE COMMISSION ADOPT IF IT FINDS THAT A DEDICATED TRANSPORT TRIGGER IS SATISFIED?

A. The principal focus of this testimony, at this stage of the impairment proceedings, has been on the criteria relevant to an evaluation of any incumbent LEC claim that competing LECs are not impaired with respect to a particular transport route. Nevertheless, the *TRO* assigns one further role to the state commission that merits mention here. The FCC "expect[s] that states will require an appropriate period for competitive LECs to transition from any unbundled transport that the state finds should no longer be unbundled." *TRO* ¶ 417. The FCC left it to the states to determine the parameters of an "appropriate" transition.

Q. WHAT PRINCIPLES SHOULD GOVERN A TRANSITION?

A. The principles that should guide the setting of an appropriate transition period are straightforward. At a minimum, the Commission should set a transition period that provides competing carriers a reasonable period of time to (1) self-provision the transport in question and (2) continue to offer service using UNEs pursuant to existing contracts. The latter is essential because services to enterprise customers are contract-based and not terminable by a carrier that might face a sudden increase in costs. Because

this is the first time that CLECs face the loss of loops and transport as a UNE, they may face transition situations in multiple jurisdictions where they must migrate customers off such arrangements. Adjusting to such multiple changes will require some time, as well as substantial capital.

Q. WHAT ARE YOUR RECOMMENDATIONS CONCERNING A TRANSITION?

A. We recommend that the Commission develop a multi-tiered transition process such as the one applicable to mass market switching. First, there should be a transition period of nine months in which CLECs may order "new" UNEs on routes where the Commission finds a trigger is met. The FCC noted that "the statutory maximum transition period of nine months will ensure an orderly transition to the new rules" and "is reasonably consistent with the transition period sought by the parties." TRO ¶ 703. Second, CLECs should have a transition period equal to that applied to line sharing and mass market switching, with reasonable partial milestones for intermediate periods. Thus, for example, assuming that the Commission issues its decision in July of this year, except for grandfathered contracts, all loops and transport UNEs should be migrated from the specified routes by October 2006, with one-third of UNE facilities transitioned within 13 months of a finding of no impairment, one-third within 20 months and the remainder within 27 months. Compare ¶ 532 (timeline for mass-market switching). Third, and in all events, a CLEC should not be required to migrate any customer to non-UNE facilities until the end of an existing service contract term. Fourth,

until migrated, all dedicated transport UNEs should remain available at the state-defined TELRIC rate. Finally, the Commission should also adopt an exception process that accounts for the multitude of potential operational problems that may occur when CLECs attempt to construct facilities. If a carrier demonstrates that it is attempting in good faith to construct facilities on a route for which UNE facilities have been eliminated and that it is incurring a specific problem that makes construction within the applicable timeframe unachievable (for example, issues with rights of way), it should be permitted to seek an exception from the Commission consistent with the problem it faces. The CLEC should be permitted to continue to purchase the identified facility as a UNE until the Commission acts on its request.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

Q. PLEASE STATE YOUR NAME, EMPLOYER, TITLE AND BUSINESS ADDRESS.

A. My name is Lonnie Hardin. I am currently employed by MCI as Manager, Access Management, 6929 North Lakewood, Tulsa, Oklahoma 74117.

Q: PLEASE DESCRIBE YOUR BACKGROUND AND EMPLOYMENT-RELATED DUTIES:

A. I graduated with honors with a degree in Business and Public Administration in 1977 from Oklahoma State University. I had a minor in Economics. I was awarded a Juris Doctorate, with honors, from the University of Tulsa in 1980. From 1980 until 1992, I practiced law in Tulsa, Oklahoma. My practice was a general business practice, with representation of clients in Oklahoma courts and administrative agencies. From 1992 until 1997 I was Director of Economic Development for the City of Owasso, Oklahoma. My duties there included drafting contracts and franchise agreements with cable and telecom providers.

In 1997, I joined WorldCom (now MCI) as a Contract Administrator for the Network Planning organization. I negotiated and drafted contracts for the construction of fiber routes, capacity leases, right of way agreements, collocation agreements, master telecommunications agreements, long distance capacity leases and interconnection agreements.

In my current position as Manager of Access Planning Southeast, which I have held since 2000, I manage capacity for termination of telecommunications service with the ILEC and CLECs, as well as our use of tariffs and interconnection agreements. I continually optimize the MCI networks through

network grooms (i.e., moving traffic from non-owned facility to MCI-owned facility), vendor agreements and tariffs. In my capacity as a manager in local access planning with MCI, I have made public declarations to the Federal Communications Commission ("FCC") and have provided testimony to the Maine Public Utilities Commission on various subjects, primarily concerning network economics and competition issues.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to rebut the Joint Direct Testimony and Joint Supplemental Direct Testimony of Verizon witnesses Orville D. Fulp and John White, the Direct Testimony and Supplemental Direct Testimony of BellSouth witness Shelley W. Padgett, and the Direct Testimony of BellSouth witness A. Wayne Gray, particularly with respect to Issues 7, 9, 11, 14 and 16. As such, I focus on the "trigger" analyses set forth by the Triennial Review Order and by Verizon and BellSouth, and address allegations by those ILECs as to whether MCI provisions transport on particular "routes" identified by those carriers.

Q. IN PRESENTING YOUR TESTIMONY, WHAT DID YOU REVIEW?

A. I reviewed the Triennial Review Order, as well as testimony, exhibits, and discovery filed in this case. I also reviewed MCI's network in Florida and relevant company databases. I conducted a route-by-route analysis of the routes identified in the exhibits provided by Ms. Padgett and Messrs. Fulp and White.

Q: BASED ON YOUR REVIEW, WHAT ARE YOUR CONCLUSIONS?

A: MCI does not deploy dedicated transport on routes between ILEC wire centers in the BellSouth or Verizon service territories in Florida. Consequently, MCI cannot constitute a "self-provisioning" or a "wholesale" transport trigger with regard to either ILEC.

BellSouth presents no evidence as to transport routes between ILEC wire centers actually provisioned by MCI. The evidence presented by BellSouth as to impairment appears to be based upon a cursory review of sites where MCI has a collocation in the ILEC facilities at each end of what BellSouth deems to be a "route." This is a deficient analysis and misses the point of the Triennial Review Order. Moreover, my review of the actual MCI network topology and architecture reveals that on none of the routes listed by BellSouth does MCI actually provide transport.

The evidence presented by Verizon is likewise deficient, and MCI has no transport routes between ILEC wire centers within the Verizon territory.

Q: WHAT ARE SIGNIFICANT PARTS OF THE TRIENNIAL REVIEW ORDER THAT YOU REVIEWED?

A; The Triennial Review Order defines a "route" as "a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches." 47 C.F.R. §51.319(e). As I will discuss below, this definition is key to the determination whether transport on specific routes should no longer be available on an unbundled basis.

Dedicated DS3 transport consists of ILEC interoffice transmission facilities that have a total digital signal speed of 44.736 megabytes per second and

are dedicated to a particular customer or carrier. §51.319(e)(2). An ILEC shall provide a requesting carrier with nondiscriminatory access to dedicated DS3 transport on an unbundled basis except where the Florida Public Service Commission ("Commission") finds that one of the triggers for dedicated DS3 transport exists, or as a result of a "potential deployment analysis." §51.319(e)(2). The triggers consist of a "self-provisioning" trigger and a "competitive wholesale facilities" trigger. §51.319(e)(2)(1). To satisfy the self-provisioning trigger for DS3 transport, the Commission must find, among other requirements, that each of three or more competing providers (unaffiliated with each other or with the ILEC) has "deployed its own transport facilities and is operationally ready to use those transport facilities to provide dedicated DS3 transport along the particular route." §51.319(e)(2)(i)(A)(1). To satisfy the wholesale trigger for DS3 transport, the Commission must find, among other things, that each of two or more competing providers (unaffiliated with each other or with the ILEC) has "deployed its own transport facilities," is "operationally ready to use those facilities to provide dedicated DS3 transport along the particular route" and is "willing immediately to provide, on a widely available basis, dedicated DS3 transport along the particular route." §51.319(e)(2)(i)(B)(1) & (2).

Similarly, an ILEC shall provide a requesting carrier with nondiscriminatory access to dark fiber transport on an unbundled basis except where the Commission finds that one of the triggers for dark fiber transport exists, or as a result of a "potential deployment analysis." §51.319(e)(3). Dark fiber

consists of unactivated optical interoffice transmission facilities. *Id.* Like DS3 transport, the dark fiber triggers consist of a "self-provisioning" trigger and a "competitive wholesale facilities" trigger. To satisfy the self-provisioning trigger for dark fiber transport, the Commission must find, among other requirements, that each of three or more competing providers (unaffiliated with each other or with the ILEC) has "deployed its own dark fiber facilities, which may include dark fiber facilities that it has obtained on a long-term, indefeasible-right of use basis." §51.319(e)(3)(i)(A)(1). To satisfy the wholesale trigger for dark fiber transport, the Commission must find, among other things, that each of two or more competing providers (unaffiliated with each other or with the ILEC) has "deployed its own dark fiber, including dark fiber that it has obtained from an entity other than the incumbent LEC, and is operationally ready to lease or sell those facilities for the provision of fiber-based transport along the particular route," and that the competing provider is "willing immediately to provide, on a widely available basis, dark fiber along the particular route." §51.319(e)(3)(i)(B) (1) & (2).

Q: YOU HAVE DESCRIBED THE TRIGGERS FOR DS3 TRANSPORT AND DARK FIBER TRANSPORT. WHAT ABOUT DS1 TRANSPORT?

A. The self-provisioning triggers of the Triennial Review Order do not apply to DS1 transport. To satisfy the wholesale trigger for DS1 transport, the Commission must find, among other requirements, that each of two or more competing providers (unaffiliated with each other or with the ILEC) has "deployed its own transport facilities and is operationally ready to use those facilities to provide

dedicated DS1 transport along the particular route," and the competing provider is "willing immediately to provide, on a widely available basis, dedicated DS1 transport along the particular route." §51.319(e)(1)(ii)(A) & (B).

Q: WHAT IS SIGNIFICANT ABOUT THE LANGUAGE OF THE TRIENNIAL REVIEW ORDER THAT YOU HAVE CITED?

A. Although all parts of this language must be given effect, the FCC clearly evinced the intent, with regard to application of the triggers for transport, that there be a "route" between ILEC wire centers that is actually deployed by the CLEC and is operationally ready for transport, and that there be specific evidence that each route alleged as such by an ILEC in fact be deployed and operationally ready for transport, on a capacity-specific basis (DS3, DS1 and dark fiber, respectively). As such, neither the "backhaul" of traffic from an MCI collocation to an MCI switch, which I discuss below, nor a "route" consisting of a path between an MCI collocation in wire center A and MCI's switch or node, and a path between an MCI collocation in wire center B and that switch, constitutes "dedicated transport." *See* Triennial Review Order, ¶¶ 365-67. This makes sense because I assume that the trigger rules were set up to help determine if alternative facilities exist that would make the purchase of ILEC facilities unnecessary.

Q: PLEASE DESCRIBE MCI'S NETWORK DESIGN.

A. As described in Gary Ball's Direct Testimony, competitors' network architectures ordinarily are composed of several fiber rings in a city. These rings connect points where traffic from customers is aggregated. This description applies to MCI's network architecture. "On-net" collocation arrangements, which I define

below, aggregate the traffic, which is then transmitted to MCI's switch. MCI's network is designed and built to carry (i.e., "backhaul") traffic from each of these aggregation points to MCI's switch. There is typically not more than one ILEC wire center on a ring, and I confirmed that not more than one ILEC wire center is in fact on an MCI ring in BellSouth's or Verizon's service territory in Florida. Therefore, it is axiomatic that MCI does not have transport between collocations in two ILEC wire centers in BellSouth's or Verizon's Florida territory.

Most competitors' network architectures, MCI's included, are ordinarily composed of a series of rings emanating from a central node and connecting to a single Bell central office or switch. In contrast, an ILEC network normally consists of a series of interlocking and parallel SONET rings within a given service area. The CLEC network architecture is more appropriately described as a star or hub and spoke arrangement rather than the concentric and interlocking ring arrangement found with the ILEC.

Q: WHAT DO YOU MEAN BY "ON NET" COLLOCATION?

A: An "on-net" collocation is a collocation that is physically connected to MCI's global network by MCI owned facilities. In contrast, "off-net" collocation means that non-owned facilities are being used to connect collocation location to MCI's global network. The difference is significant, because only "on-net" collocations, given the Triennial Review Order's definitions, can be considered for determination of whether MCI deploys dedicated transport on particular routes.

Q: DO ILECS ASSUME THE TYPICAL CLEC NETWORK DESIGN FOR PURPOSES OF THE TRIENNIAL REVIEW?

A. No, as one may discern from the schematic drawings submitted by BellSouth. Moreover, ILECs typically assume that if a CLEC has collocations in ILEC wire center "A" and a collocation in ILEC wire center "B," a "transport route" must exist between those points. For the reasons stated above, this is an incorrect assumption.

In addition, there typically is no granular analysis by ILECs of actual deployed capacity levels. The FCC did not determine that there is no impairment for any capacity level wherever OCn level deployment is evident. The ILECs' premise instead appears to be that if any kind of fiber facilities have been deployed to a given collocation, then MCI (or another CLEC) is "operationally ready" to deploy any level of capacity, including DS 1 or DS 3, even if there is no evidence that a transport route exists or if the carrier is actually providing service at those capacity levels.

On a technical level, it is not the case that every piece of fiber-optic equipment is automatically capable of providing a DS 1 or a DS 3. Even the fiber-optic equipment that is capable of providing such services must be equipped with the appropriate line cards and multiplexing equipment before it may be deemed "operationally ready." Although it may not be unreasonable to conclude a carrier may be *capable* of channelizing OCn level deployment to a DS1 or DS3 under certain conditions, the triggers require actual deployment, not potential deployment, of the necessary equipment. Moreover, such CLEC transport

facilities must exist before it is even necessary to worry about whether or not they can be channelized.

Q: WHAT IS SIGNIFICANT ABOUT THE DESIGN OF MCI'S NETWORK FOR PURPOSES OF THIS PROCEEDING?

A. From a customer perspective, an ILEC interoffice transport route has a built-in advantage versus any transport that could be offered by a CLEC, because the ILEC route remains on the ILEC network and directly connects the two points. For MCI to connect the two points, it must take the traffic back to a central node, change to another ring and carry the traffic back out to the terminating point, and hand the traffic to the ILEC. This introduces at least four additional points of failure. Customers are concerned about failure points within carriers' networks, particularly since September 11, 2001.

Q: WHY WOULD A CUSTOMER WANT MCI TO ENGINEER A TRANSPORT ROUTE BETWEEN TWO ILEC WIRE CENTERS?

A: The only reason I can think why a customer would ask MCI to transport traffic between two ILEC wire centers would be if the customer wanted a physically and operationally redundant (i.e., redundant to the ILEC's network) local area network (LAN). I underscore "and operationally" because it is likely that the ILEC can already offer customers physically redundant transport through the use of its interoffice SONET facilities. As such, from a customer's perspective, a primary benefit of bringing a CLEC into its LAN design would be operational redundancy. Of course, the customer must be willing to pay for this service.

Such might be the case if the customer is a large corporation (e.g. banking) or government agency. (e.g. FAA, NASA).

Q: HOW WOULD YOU CHARACTERIZE THIS KIND OF SERVICE?

A. It would be a point-to-point MCI private line route between our collocations in two ILEC wire centers.

Q: DOES MCI OFFER SUCH A SERVICE?

A. MCI offers private line service. The issue here, however, is whether MCI provides such service on a point-to-point route between MCI's collocations in ILEC wire centers. MCI does not provide such point-to-point service to end users or carriers in BellSouth's or Verizon's service territory in Florida. Consequently, as stated at the beginning of my testimony MCI does not provide dedicated transport in these areas.

Issue 9: Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and are operationally ready to use those transport facilities?

Issue 14: Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities?

Q: DID VERIZON LIST MCI AS SELF-PROVIDING TRANSPORT ON ROUTES IN FLORIDA?

A: Yes. Verizon listed MCI as self-providing transport on 19 dark fiber transport routes (exhibit F.1) and 19 DS3 transport routes. (Exhibit F.2.)

Q: WHAT IS THE BASIS FOR VERIZON'S CONCLUSION THAT MCI IS SELF-PROVIDING TRANSPORT, AND VERIZON'S IDENTIFICATION OF ROUTES FOR WHICH SUCH TRANSPORT IS BEING PROVIDED?

A. Verizon first assumes that facilities collocated by MCI in Verizon's wire center "A" and Verizon's wire center "B" establishes a "route." (Fulp and White Direct, p. 17.) As discussed above, the existence of collocation facilities alone do not establish a transport route. Verizon then makes another "key assumption" - that OCn-level "transport facilities" deployed by CLECs entering those collocations are capable of channelizing to DS1 or DS3 capacity services. Verizon apparently then further assumes that DS1s and DS3s have been actually deployed and are operationally ready. (Fulp and White Direct, pp. 18-21; exhibit E.9; Fulp and White Supplemental Direct, p. 4.) This is not a capacity-specific, route-by-route analysis. In fact, this process does not analyze any "route." Finally, Verizon also assumes that self-provisioned fiber facilities have self-provisioned dark fiber. (Fulp and White Direct, pp. 21-22.)

Q: WHAT WAS THE RESULT OF YOUR ANALYSIS OF VERIZON'S EVIDENCE AND MCI'S DATA?

A. In sum, Verizon does not engage in a granular, route-specific and capacity-specific analysis. As stated above, since MCI has no transport routes between ILEC wire centers within the Verizon territory, Verizon cannot present any evidence to support a claim of no impairment.

Issue 7: Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-1 level dedicated transport facilities (including leased, purchase

or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and are willing to provide DS-1 level transport immediately over their own facilities on a widely available basis to other carriers?

Issue 11: Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 level dedicated transport facilities (including lease, purchase or UNE dark fiber with the carrier's own optronics attached to activate the fiber), are operationally ready to use those transport facilities, and are willing to provide DS-3 level dedicated transport immediately over their facilities on a widely available wholesale basis to other carriers?

Issue 16: Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities (including dark fiber obtained from an entity other than the ILEC), are operationally ready to lease or sell those transport facilities to provide transport along the route, and are willing to provide dark fiber immediately over their facilities on a widely available wholesale basis to other carriers?

Q: DID YOU ALSO REVIEW VERIZON'S LIST OF WHOLESALE ROUTES?

A. Yes. Verizon lists MCI as providing wholesale service on 26 DS1 and DS3 transport routes and on 26 dark fiber transport routes. (Exhibit F.3.)

Q: WHAT DO YOU CONCLUDE AS A RESULT OF THIS REVIEW?

A. Again, Verizon's testimony does not state on a route-by-route basis the evidence for this identification. In any event, since MCI has no transport routes between ILEC wire centers within the Verizon territory, Verizon cannot present any evidence to support a claim of no impairment.

Issue 7: Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-1 level dedicated transport facilities (including leased, purchase or UNE dark fiber with the carrier's own optronics attached to activate the

fiber) and are willing to provide DS-1 level transport immediately over their own facilities on a widely available basis to other carriers?

Issue 9: Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and are operationally ready to use those transport facilities?

Issue 11: Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 level dedicated transport facilities (including lease, purchase or UNE dark fiber with the carrier's own optronics attached to activate the fiber), are operationally ready to use those transport facilities, and are willing to provide DS-3 level dedicated transport immediately over their facilities on a widely available wholesale basis to other carriers?

Issue 14: Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities?

Issue 16: Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities (including dark fiber obtained from an entity other than the ILEC), are operationally ready to lease or sell those transport facilities to provide transport along the route, and are willing to provide dark fiber immediately over their facilities on a widely available wholesale basis to other carriers?

Q: DID BELLSOUTH LIST MCI AS PROVIDING TRANSPORT ON ROUTES IN FLORIDA?

A. Yes. BellSouth listed MCI as providing transport on 27 routes. In each instance, MCI is listed as providing dark fiber transport routes, DS1 transport routes and DS3 transport routes. (Exhibit SWP-8.)

Q: WHAT IS THE BASIS FOR BELLSOUTH'S CONCLUSION THAT MCI IS PROVIDING TRANSPORT, AND BELLSOUTH'S IDENTIFICATION OF ROUTES FOR WHICH TRANSPORT IS BEING PROVIDED?

A. Like Verizon, BellSouth first assumes that facilities collocated by MCI in BellSouth's wire center "A" and BellSouth's wire center "B" establishes a "route." (Padgett Direct, pp. 15-16, 18; Gray Direct, pp. 8, 10.) BellSouth assumes that since it is possible (as MCI admits) to connect points on their networks, this capability establishes an actually deployed, operationally ready transport facility. As such, BellSouth appears to be melding a potential deployment analysis with an actual deployment analysis. As discussed above, these facts alone do not establish a transport route.

BellSouth then, like Verizon, bootstraps the assumption of "routes" to the assumption that OCn-level "transport facilities" deployed by CLECs entering those collocations are capable of channelization to DS1 or DS3 capacity services. (Padgett Direct, pp. 16-17; Gray Direct, pp. 8-9.) Again, as discussed above, this melds potential deployment with actual deployment analysis, and is not a capacity-specific, route-by-route analysis. Finally, BellSouth, like Verizon, also assumes that self-provisioning CLECs necessarily provision both lit and unlit facilities. (Padgett Direct, pp. 18-19.)

Q: WHAT WAS THE RESULT OF YOUR ANALYSIS OF BELLSOUTH'S EVIDENCE AND MCI'S DATA?

A. As is the case with Verizon, BellSouth does not engage in a granular, route-specific and capacity-specific analysis. As stated above, MCI has no transport routes between ILEC wire centers within the BellSouth territory.

Q: DOES BELLSOUTH IDENTIFY MCI AS A WHOLESALE PROVIDER?

A. Yes. BellSouth describes MCI as providing wholesale service generally. (Exhibit SWP-6.) BellSouth states that "(a)ny route that qualifies for the self-provisioning trigger could meet the wholesale facilities trigger also – the only question is whether the competitive carrier chooses to offer transport on it to other carriers." (Padgett Direct, p. 19.)

Q: DOES BELLSOUTH'S ANALYSIS COMPORT WITH THE TRIENNIAL REVIEW ORDER?

A. No. BellSouth's testimony does not state on a route-by-route basis the evidence for this identification. This not only fails to present a granular, route-by-route analysis, once again it melds the potential deployment analysis with the actual deployment analysis. In any event, since MCI has no transport routes between ILEC wire centers within the BellSouth territory, BellSouth cannot present any evidence to support a claim of no impairment.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.

(Transcript continues in sequence with Volume 4.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 5TH DAY OF MARCH, 2004.

Linda Boles

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