

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to Establish Generic Docket to )  
Consider Amendments to Interconnection Agree- )  
ments Resulting from Changes of Law. )  
 )  
\_\_\_\_\_ )

Docket No. 041269-TP

Filed: August 16, 2005

**DIRECT TESTIMONY OF**

**WANDA G. MONTANO**

**ON BEHALF OF**

**US LEC OF FLORIDA INC. AND**

**SOUTHEASTERN COMPETITIVE CARRIER ASSOCIATION**

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1 **Q: PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR**  
2 **THE RECORD.**

3

4 **A:** My name is Wanda G. Montano. I am currently Vice President, Regulatory and  
5 Industry Affairs for US LEC Corp., the parent company of US LEC of Florida  
6 Inc. ("US LEC"), and its operating subsidiaries, including the Respondent in this  
7 proceeding. My business address is 6801 Morrison Boulevard, Charlotte, North  
8 Carolina 28211.

9

10 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR US LEC.**

11

12 **A:** I am responsible for the management of US LEC's relationships with state and  
13 federal agencies who oversee our business, as well as for US LEC's relationships  
14 with incumbent local exchange carriers ("ILECs"), competitive local exchange  
15 carriers ("CLECs"), independent telephone companies ("ICOs"), and wireless  
16 companies.

17

18 **Q: ARE YOU PROVIDING THIS DIRECT TESTIMONY ONLY ON**  
19 **BEHALF OF US LEC OF FLORIDA INC.?**

20

21 **A:** No, I am also testifying on behalf of the Southeastern Competitive Carrier  
22 Association, which is a party to the proceeding. I am currently the President of  
23 SECCA. SECCA is comprised of three member companies – US LEC, XO

1           Communications and Time Warner Telecommunications – although XO  
2           Communications is presenting its own witness to provide testimony on behalf of  
3           XO Communications.

4  
5   **Q:   PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
6   **PROFESSIONAL EXPERIENCE.**

7  
8   **A:**   I joined US LEC in January 2000. Prior to that, I was employed in various  
9           positions by Teleport Communications Groups (“TCG”) and then by AT&T  
10          following AT&T’s acquisition of TCG. In 1998-1999, I served as General  
11          Manager for North and South Carolina (Sales Executive) for AT&T (Charlotte,  
12          NC). During 1997 – 1998 I was Vice President & Managing Executive for North  
13          & South Carolina (Sales and Operation Executive) for TCG (Charlotte, NC).  
14          During 1995-1997, I was Director of Process Reengineering for TCG (Staten  
15          Island, NY). During 1992-1994, I was Director of Marketing for TCG (Staten  
16          Island, NY). During 1990-1992, I was Senior Product Manager for Graphnet  
17          (Teaneck, NJ). From 1982 – 1990, I was Regulatory Manager for Sprint  
18          Communications Corp. in Reston, Virginia and, from 1979 – 1982, I was a  
19          paralegal for GTE Service Corporation in Washington, D.C. I have a B.S. from  
20          East Carolina University in Greenville, NC (1974). I received my Paralegal  
21          Certificate from the University of Maryland in 1980 and I received my M.B.A. in  
22          Marketing & Government Affairs from Marymount University of Virginia in  
23          1988.

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**Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION?**

**A:** Yes. I also have testified before the New York Public Service Commission, the Georgia Public Service Commission, the Maryland Public Service Commission, the North Carolina Utilities Commission, and the Pennsylvania Public Utility Commission.

**Q: WHAT IS YOUR ROLE IN US LEC'S INTERCONNECTION NEGOTIATIONS WITH BELLSOUTH, INCLUDING THE NEGOTIATIONS TO IMPLEMENT THE PROVISIONS OF TRIENNIAL REVIEW ORDER, OR TRO, AND THE PROVISIONS OF THE TRIENNIAL REVIEW REMAND ORDER, OR TRRO?**

**A:** I have reviewed the proposed revised Attachment 2, which is the portion of the BellSouth interconnection agreement that governs US LEC's access to unbundled network elements, as well as have reviewed the points of contention raised during the negotiations to ensure their consistency with state and federal requirements and policy.

1 **Q: HAS ATTACHMENT 2 OF THE INTERCONNECTION BETWEEN US**  
2 **LEC AND BELL SOUTH BEEN AMENDED TO IMPLEMENT THE**  
3 **PROVISIONS OF THE TRO?**

4  
5 **A:** Yes, US LEC and BellSouth, in June 2004, concluded our negotiations to  
6 implement the provisions of the TRO into Attachment 2 and the agreements have  
7 been executed, filed with the Commission, and approved. Consequently, I will  
8 not be testifying in regards to the Joint Issue Matrix Issues, as filed with the  
9 Commission, numbers 13 through 28 because these issues relate to  
10 implementation of the provisions of the TRO on which BellSouth and US LEC  
11 have an executed and approved agreement.

12  
13 **Q: WHAT IS THE STATUS OF ANY NEGOTIATIONS BETWEEN**  
14 **BELL SOUTH AND US LEC ON THE FCC'S REVISED RULE THAT**  
15 **ELIMINATED THE SO-CALLED "PICK AND CHOOSE" PREVIOUSLY**  
16 **PERMITTED PURSUANT TO SECTION 252(i) OF THE ACT?**

17  
18 **A:** US LEC and BellSouth have negotiated a mutually agreed upon amendment to the  
19 interconnection agreement to implement the provisions of the revised FCC rule,  
20 the amendment has been filed with the Commission, and has been approved. US  
21 LEC, therefore, also does not provide testimony or evidence in regard to Joint  
22 Issue Matrix Issue number 29.

23

1 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2

3 The purpose of my testimony is to explain what I understand to be the legal and  
4 competitive policy arguments in support of US LEC's position on the statutes,  
5 regulations or other laws that govern BellSouth's obligation to provide unbundled  
6 network elements as modified by the TRRO. Primarily the impasse in the  
7 negotiation between BellSouth and US LEC is the language that will identify the  
8 embedded base of high capacity loops and dedicated transport and govern the  
9 process for transitioning the embedded base to alternative services and then the  
10 same issues in the event subsequent wire centers meet the FCC's threshold criteria  
11 for non-impairment. US LEC has not provisioned unbundled local switching (or  
12 UNE-P) from BellSouth under the interconnection agreement, and, therefore, will  
13 not address those portions of the issues that pertain to access to "unbundled  
14 switching." My testimony will address: the appropriate language to implement  
15 the FCC's transition plan for (1) high capacity loops and (2) dedicated transport  
16 pursuant to the TRRO (Issue 1); the appropriate language to implement  
17 BellSouth's obligation to provide Section 251 unbundled access to high capacity  
18 loops and dedicated transport (Issue 3); the Commission's authority to resolve  
19 disputes as to whether BellSouth's application of the FCC's Section 251 criteria is  
20 appropriate, the procedures to identify those wire centers that satisfy the FCC's  
21 non-impairment criteria, and the language to implement the procedures (Issues 4  
22 (a) – (c)); what are the appropriate rates, terms and conditions should govern the  
23 transition of existing network elements that BellSouth is no longer obligated to

1 provide as Section 251 UNEs to non-Section 251 network elements and other  
2 services (Issue 9); what are the appropriate rates, terms and conditions that should  
3 apply to UNEs that are not converted on or before March 11, 2005, and should the  
4 conduct of the parties have any impact upon the determination of the applicable  
5 rates, terms and conditions that apply in such circumstances (Issue 10); and what  
6 language should be used to incorporate the FCC's *ISP Remand Core Forbearance*  
7 *Order* into interconnection agreements (Issue 30).

8  
9 **Q: CAN YOU PROVIDE A BRIEF SUMMARY OF THE DISPUTES**  
10 **THAT REMAIN BETWEEN US LEC AND BELLSOUTH IN**  
11 **REVISING THE LANGUAGE OF ATTACHMENT 2 TO**  
12 **IMPLEMENT THE PROVISIONS OF THE TRRO?**

13  
14 **A:** Yes. The main disputes between US LEC and BellSouth center around (1)  
15 BellSouth's desire to identify the current and subsequent wire centers that  
16 it believes are "non-impaired" as part of the agreement, and incorporate  
17 the lists into the interconnection agreement, without obtaining US LEC's  
18 agreement that the identified wire centers meet the FCC's threshold  
19 criteria for non-impairment; (2) BellSouth's proposed dates by which  
20 orders for transition of the "embedded base" of UNEs must be submitted  
21 in connection with the transition period; and, (3) the length of any  
22 subsequent transition periods. Additionally, because US LEC has not  
23 been able to negotiate a final resolution of these issues, US LEC also has

1 elected to withdraw its agreement to certain provisions of proposed  
2 Section 1.8 of Attachment 2 that govern the disputes over the wire centers  
3 that BellSouth claims meet the threshold requirements that I will address  
4 in my testimony addressing Issue 4.

5  
6 **ISSUE 1: WHAT IS THE APPROPRIATE LANGUAGE TO**  
7 **IMPLEMENT THE FCC'S TRANSITION PLAN FOR (1) SWITCHING,**  
8 **(2) HIGH CAPACITY LOOPS, AND (3) DEDICATED TRANSPORT AS**  
9 **DETAILED IN THE FCC'S TRIENNIAL REVIEW REMAND ORDER**  
10 **("TRRO"), ISSUED FEBRUARY 4, 2005?**

11  
12 **Q: WHAT LANGUAGE DOES US LEC PROPOSE TO IMPLEMENT**  
13 **THE TRANSITION PERIOD (FOR HIGH CAPACITY LOOPS**  
14 **AND DEDICATED TRANSPORT), AND HOW DOES IT DIFFER**  
15 **FROM BELLSOUTH'S?**

16  
17 **A:** US LEC has offered language to implement the transition period for any  
18 "embedded base" high capacity loops and dedicated transport in  
19 conformance to the FCC's decision in the TRRO. The transition period  
20 would include any high capacity loops or dedicated transport that were in  
21 excess of the caps adopted by the FCC as of March 11, 2005 as well. US  
22 LEC is willing to agree to the BellSouth definition of "embedded base,"  
23 which includes high capacity loops and dedicated transport that were



1 installed in wire centers that met the non-impairment threshold as of  
2 March 11, 2005 or are in excess of the applicable caps. The disputes  
3 between the companies are (a) whether BellSouth can identify these wire  
4 centers as part of the agreement without US LEC concurrence that US  
5 LEC agrees with the list; and (b) what is the date by which US LEC must  
6 issue orders to transition the “embedded base” of UNEs.

7  
8 **ISSUE 3: WHAT IS THE APPROPRIATE LANGUAGE TO**  
9 **IMPLEMENT BELLSOUTH’S OBLIGATION TO PROVIDE SECTION**  
10 **251 UNBUNDLED ACCESS TO HIGH CAPACITY LOOPS AND**  
11 **DEDICATED TRANSPORT?**

12  
13 **Q: WHAT LANGUAGE HAS US LEC PROPOSED TO IMPLEMENT**  
14 **BELLSOUTH’S OBLIGATION TO PROVIDE SECTION 251**  
15 **UNBUNDLED ACCESS TO HIGH CAPACITY LOOPS AND**  
16 **DEDICATED TRANSPORT?**

17  
18 **A:** US LEC has offered language that comports with Sections 51.319 (a) (4)  
19 and (e) of the FCC’s rules and affirmatively states that BellSouth must  
20 provide access to these UNEs unless the threshold requirements for non-  
21 impairment have been met. BellSouth’s language focuses solely on the  
22 embedded base and the transition period and does not affirmatively state  
23 when it must provide access to the unbundled high capacity loops and

1 transport. US LEC has been willing to agree to the BellSouth language so  
2 long as BellSouth compromised on the language addressing the date on  
3 which orders for the “embedded base” transition was required to be  
4 submitted as well as the length of any subsequent transition periods and  
5 the process by which the parties would agree on the identification of non-  
6 impaired wire centers. To date, BellSouth has been unwilling to make  
7 those compromises, although US LEC has been advised that BellSouth is  
8 considering US LEC’s proposal on the order submission date and the  
9 length of subsequent transition periods. The parties have reached an  
10 impasse on the wire center identification issue, however.

11  
12 **ISSUE 4: A) DOES THE COMMISSION HAVE AUTHORITY TO DETERMINE**  
13 **WHETHER OR NOT BELLSOUTH’S APPLICATION OF THE FCC’S SECTION**  
14 **251 NON-IMPAIRMENT CRITERIA FOR HIGH-CAPACITY LOOPS AND**  
15 **TRANSPORT IS APPROPRIATE? B) WHAT PROCEDURES SHOULD BE**  
16 **USED TO IDENTIFY THOSE WIRE CENTERS THAT THE FCC’S SECTION**  
17 **251 NON-IMPAIRMENT CRITERIA FOR HIGH-CAPACITY LOOPS AND**  
18 **TRANSPORT? C) WHAT LANGUAGE SHOULD BE INCLUDED IN THE**  
19 **AGREEMENTS TO REFLECT THE PROCEDURES IDENTIFIED IN (B)?**

20  
21 **Q: CAN YOU EXPLAIN THE IMPASSE ON THE WIRE CENTER**  
22 **IDENTIFICATION?**

1    **A:**    Yes. BellSouth proposes language that states:

2  
3            For purposes of this [applicable section in the Attachment 2], a list  
4            of wire centers meeting the criteria set forth in [applicable section  
5            set forth the threshold criteria] as of March 10, 2005 (Initial Wire  
6            Center List) is available on BellSouth’s Interconnection Services  
7            Web site [www.interconnection.bellsouth.com](http://www.interconnection.bellsouth.com).

8  
9  
10           US LEC revised the language by adding between “ a list of wire centers” and  
11           “meeting” the words “the Parties agree” and revised “meeting” to “meet.”  
12           BellSouth has proposed that it may add wire centers to this Non-impaired Wire  
13           Center List that become non-impaired subsequent to March 11, 2005 merely by  
14           posting a carrier notification on its website, and without further notification to US  
15           LEC. The posting of the carrier notification would trigger certain obligations of  
16           US LEC to transition the applicable UNE loops or dedicated transport in the  
17           newly-identified wire center within 90 days to an alternative service or dispute the  
18           validity of the list.

19  
20           US LEC disagrees that BellSouth may unilaterally include a list of wire centers as  
21           meeting the “non impairment threshold” into the agreement, unless and until the  
22           parties agree to the list. US LEC strongly objects to BellSouth’s to attempt to add  
23           wire centers to a list that binds US LEC to certain provisions in the  
24           Interconnection Agreement without actual notice, as provided by the notice  
25           provision contained in the General Terms and Conditions Attachment of the  
26           Interconnection Agreement.

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US LEC firmly believes that BellSouth must provide US LEC the opportunity to review the data on which BellSouth determined that each wire center met the threshold requirement, such as the specific fiber-based collocators at each specified wire center and the number of business lines, including the basis on how the number was derived (e.g., the number of T1s and HDSL lines used to determine the number and how the lines were identified as business lines as opposed to residential lines.). In light of BellSouth's acknowledged error on its initial wire center list, US LEC believes that, before BellSouth may be exempted from its 251 unbundling obligations for high capacity loops and transports, US LEC should be able to check the facts and figures before having to subject itself to a lengthy and costly dispute resolution process.

US LEC's objection to the language is directed not to the ordering of new high capacity loops to buildings located within the Initial Wire Centers, or new dedicated transport between the Initial Wire Centers, as the proposed Section 1.8 of Attachment 2, incorporates the right of US LEC, pursuant to paragraph 234 of the TRRO to order these UNEs as long as US LEC certifies that it has conducted a reasonably diligent inquiry and determines that the applicable UNEs are available. The FCC held, in paragraph 234 of the TRRO, that

To submit an order to obtain high-capacity loop or transport UNE, a requesting carrier must undertake a reasonably diligent inquiry and, based on the inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements

1 discussed [in the applicable sections of the TRRO] and that  
2 therefore entitled to unbundled access to the particular network  
3 elements sought pursuant to section 251(c)(3). (footnote omitted)  
4 Upon receiving a request for access to a dedicated transport or  
5 high-capacity loop UNE that indicates that the UNE meets the  
6 relevant factual criteria discussed in [the applicable portion of the  
7 TRRO], the incumbent LEC must immediately process the request.  
8 To the extent that an incumbent LEC seeks to challenge any such  
9 UNEs, it subsequently can raise that issue through the dispute  
10 resolution procedures provided for in its interconnection  
11 agreements.

12  
13 The proposed section 1.8 of Attachment 2 states that by submitting an order for a  
14 high capacity loop or dedicated transport, US LEC is certifying that it has  
15 conducted reasonable due diligence of its own as to the status of the wire center  
16 and has determined that the 251 UNE ordered is still available in the wire center  
17 to US LEC. The section further requires BellSouth to provision these orders and  
18 then dispute if BellSouth objects to US LEC's assessment of the impairment  
19 status of that wire center.

20  
21 US LEC's objection for either the initial or subsequent wire center lists lies in the  
22 applicability of the lists to high capacity loops and dedicated transport that then  
23 become "embedded base," subject to a transition to alternative service within the  
24 appropriate transition period – either adopted by the FCC in the TRRO or as  
25 negotiated by the parties for the subsequently non-impaired wire centers.

26

1 BellSouth has represented to US LEC that, because the Wireline Competition  
2 Bureau of the FCC requested a list of the wire centers that BellSouth (and other  
3 RBOCs) believed were non-impaired (this was by a letter from the Chief of the  
4 Wireline Competition Bureau dated February 4, 2005), that BellSouth has the  
5 right to create the list and BellSouth needs no agreement from US LEC or any  
6 other CLEC as to the accuracy of the list before incorporating such list by  
7 reference into the interconnection agreement. BellSouth has not provided, nor  
8 have I found, any text within the TRRO that supports BellSouth's notion.  
9 Moreover, the request for the wire center lists was directed only to the RBOCs  
10 and not to all ILECs, and there was never any explicit or implicit "approval" of  
11 the lists submitted nor even a suggestion by the Bureau that these lists were  
12 "approved" as having met the FCC's threshold criteria for non-impairment.

13  
14 The Bureau's request was to assist the CLECs in gathering the factual information  
15 from the RBOCs, and to ensure that an expeditious implementation of the "fact-  
16 dependent rules" into a revised interconnection agreements was completed. In  
17 other words, the Bureau was attempting to provide sufficient information to  
18 enable the CLECs to negotiate changes to the interconnection agreement, and be  
19 able to conclude and agree to which of the RBOCs wire centers met the threshold  
20 criteria of the FCC's rules.

21  
22 US LEC supports its position that any determinations that a wire center meets the  
23 threshold criteria must be mutual, pursuant to the negotiation process in amending

1 the interconnection agreement by reference to paragraphs 233 and 234 of the  
2 TRRO.

3 233. We [the FCC] expect that incumbent LECs and competing  
4 carriers will implement the Commission's finding as directed by  
5 section 252 of the Act. (footnote omitted). Thus, carriers must  
6 implement changes to their interconnection agreements consistent  
7 with our conclusions in this Order. (footnote omitted)... Thus, the  
8 incumbent LEC and competitive LEC must negotiate in good faith  
9 regarding any rates, terms and conditions necessary to implement  
10 our rule changes. (footnote omitted)....

11  
12 234. We recognize that our rules governing access to dedicated  
13 transport and high-capacity loops evaluate impairment based upon  
14 objective and readily obtainable facts, such as the number of  
15 business lines or the number of facilities-based competitors in a  
16 particular market. (footnote omitted)....

17  
18 The FCC rules (Sections 51.319(a)(4)(i), (a)(5)(i), (e)(2)(ii)(A), (e)(2)(iii)(A),  
19 (e)(2)(iv)(A), and (e)(3)) define the criteria that must be met. Consequently, if the  
20 ILECs and CLECs are to implement the rules adopted by the TRRO pursuant to  
21 the requirements of section 252, then both parties, subject either by (a) mutual  
22 agreement through the negotiation process must apply the objective and readily  
23 obtainable facts to identify the wire centers that meet the threshold criteria  
24 established by the FCC as of March 11, 2005 and subsequent to that date, or (b)  
25 the Commission, through the arbitration process, must determine whether the list  
26 provided by BellSouth meets the threshold criteria.

27

1 BellSouth has also taken the position that the Commission has no authority to  
2 determine whether BellSouth's wire center list meets the FCC's fact-dependent  
3 rules or not. BellSouth's position is that only the FCC has the authority to review  
4 the data and make the determination. Of course, if that is the case, then US LEC  
5 would suggest that even the incorporation by reference of the wire center list in  
6 the interconnection agreement also is inappropriate as the Commission would  
7 address the legitimacy of the list during its approval process under Section 252 of  
8 the Act.

9  
10 In proposed section 1.8 of Attachment 2, BellSouth proposed language that all  
11 disputes as to the validity of the wire center lists would be submitted to the FCC  
12 for resolution. US LEC initially agreed to this language optimistically hoping that  
13 BellSouth would then agree to US LEC's language requiring the parties to agree  
14 to the list. Again, US LEC believes that if BellSouth determined that certain wire  
15 centers are non-impaired according to the FCC's rules, the data and calculations  
16 should be fairly straightforward. Little, if any, dispute should arise if BellSouth  
17 has abided by the requirements of the FCC's rules.

18  
19 US LEC has elected to withdraw its agreement to the proposed language that  
20 would provide the FCC jurisdiction over disputes on the determination of non-  
21 impairment of a wire center because of BellSouth's refusal to compromise on US  
22 LEC's request to have the parties agree on the wire center list. Contrary to  
23 BellSouth's argument that more disputes may arise through the process, US LEC



1 believes that less disputes will arise and that requiring agreement from US LEC  
2 and/or other CLECs will be a check on BellSouth's "math" which has proven to  
3 be inaccurate in the past.

4  
5 Section 252(c)(1) of the Act specifically provides authority to the Commission, in  
6 resolving arbitrations, to ensure that the resolutions and conditions meet the  
7 requirements of section 251, including the regulations prescribed by the FCC  
8 pursuant to section 251. The non-impairment threshold rules are regulations that  
9 are prescribed by the FCC pursuant to section 251(c)(3) of the Act. The FCC in  
10 the TRRO, unlike its decision in the TRO, made a specific finding as to which  
11 UNEs would be found non-impaired. The state commissions are not required to  
12 subjectively make a determination of non-impairment, but have been armed with  
13 specific requirements that must be met by the ILEC's, before the unbundling  
14 obligations are eliminated. Consequently, if BellSouth wishes to place a list of  
15 the wire centers into the interconnection agreement whether as an attachment or  
16 by incorporating by reference a list, and US LEC disputes the list on the basis that  
17 it does not comply with the FCC's rules, then the Commission has the authority to  
18 resolve the dispute by determining whether the wire centers listed meet the  
19 requirements of the FCC rules.

20  
21 **ISSUE 9: WHAT RATES, TERMS, AND CONDITIONS SHOULD GOVERN**  
22 **THE TRANSITION OF EXISTING NETWORK ELEMENTS THAT**

1 **BELLSOUTH IS NO LONGER OBLIGATED TO PROVIDE AS SECTION 251**  
2 **UNEs TO NON-251 NETWORK ELEMENTS AND OTHER SERVICES?**

3  
4 **Q: WHAT IS THE DISPUTE BETWEEN US LEC AND BELLSOUTH IN**  
5 **CONNECTION WITH THE TRANSITION OF THE INITIAL SO-**  
6 **CALLED “EMBEDDED BASE” UNES TO ALTERNATIVE SERVICES?**

7  
8 **A:** Once a resolution is made as to which wire centers meet the non-impairment  
9 threshold criteria, as discussed in my testimony on Issue 5, then US LEC agrees  
10 that the “embedded base” of UNEs are to be transitioned to alternative services  
11 pursuant to the FCC’s rules.

12  
13 US LEC agrees that the transition period for UNE loops and dedicated transport  
14 that were installed in wire centers that are considered non-impaired as of March  
15 11, 2005 (again recognizing that US LEC must either agree to BellSouth’s  
16 identification of the wire center as being non-impaired or a Commission  
17 resolution of the dispute made) ends as of March 10, 2006. BellSouth has  
18 proposed language that requires US LEC to submit all its order to transition the  
19 “embedded base” of UNEs by December 9, 2005, or BellSouth will do the  
20 conversions and charge US LEC for BellSouth’s conversion efforts. Further,  
21 once the conversions have been completed to the alternative services, the new  
22 rates for the alternative services would begin to be billed to US LEC, or, if the  
23 conversion had not been completed by March 10, 2006, then on March 10, 2006.

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US LEC's initial proposal was that it would create the spreadsheet orders as early as possible and submit them to BellSouth, if BellSouth would agree that the conversions would not be deemed to occur until March 10, 2006, and the new rates would not be billed until that date. BellSouth rejected the proposal. US LEC then proposed that rather than the December 9, 2005 date for submission of orders, a date of December 31, 2005 for submission of orders should be used. The December 31 date is only to set the date by which the orders would be submitted by US LEC. US LEC did not propose, and is not proposing, that the submission of the order date is the date on which the conversion has been deemed to occur or the date on which BellSouth may bill US LEC the new rates for the alternative service.

From US LEC's perspective, submitting the orders by December 31, 2005 would provide US LEC ample time to review the circuits needed to be transitioned and submit them to BellSouth, without adversely affecting US LEC's day-to-day operations. Additionally, it should provide sufficient time for BellSouth to complete the conversions by March 10, 2006, and even if BellSouth were unable to complete the conversions by March 10, 2006, US LEC is willing to agree that the new rates would be effective as of March 10, 2006. BellSouth is considering this offer, but has not provided a response as of July 28, 2005.

1 US LEC is concerned about the date by which the transition orders must be  
2 submitted, but more importantly, US LEC believes that regardless of when the  
3 conversion spreadsheets are submitted and processed, BellSouth must continue to  
4 lease the “embedded base” circuits to US LEC, until March 10, 2006, at the  
5 transition rates adopted by the FCC. The transition period rules, as adopted by the  
6 FCC, state that the embedded base of UNEs that are subject to the transition  
7 period ending March 10, 2006 “shall be available for lease from the ILEC at a  
8 rate equal to the higher of either 115 percent of the rate the requesting carrier paid  
9 for the dedicated element on June 15, 2004, or 115 percent of the rate the state  
10 commission has established or establishes, if any, between June 16, 2004 and  
11 [March 11, 2005].” This language is found in Sections 51.319(a)(4)(iii) (DS1  
12 Loops); 51.319(a)(5)(iii) (DS3 Loops); 51.319(e)(2)(ii)(C) (dedicated DS1  
13 transport); and, 51.319(e)(2)(iii) (dedicated DS3 transport).

14  
15 **Q: WHAT IS THE DISPUTE BETWEEN US LEC AND BELLSOUTH ON**  
16 **THE TRANSITION PERIOD FOR UNES IN WIRE CENTERS THAT ARE**  
17 **SUBSEQUENTLY IDENTIFIED?**

18  
19 **A:** Reiterating once again that US LEC disagrees with BellSouth’s process for  
20 identifying a subsequent non-impaired wire center, US LEC has an issue with  
21 BellSouth’s proposal that the transition period for these UNEs would be a mere  
22 90 days, and that the orders for the conversions would be required with 40 days of  
23 the date the carrier notification was placed on the BellSouth website. If US LEC

1 failed to submit the conversion orders by the 40<sup>th</sup> day, BellSouth would issue the  
2 conversion orders and charge US LEC for BellSouth's labor in identifying the  
3 affected circuits and preparing the paperwork for the conversions as well a charge  
4 to complete the conversion from UNE to the alternative service. Under  
5 BellSouth's proposal the new rates would apply once the circuit was converted or  
6 on the first date after the end of the subsequent transition period.

7  
8 US LEC is concerned about the short transition period proposed by BellSouth.  
9 US LEC believes that a 90-day period, especially if US LEC is required to submit  
10 orders 40 days after a carrier notification letter is posted on the BellSouth website  
11 – not even 40 days after actual notice, but merely constructive notice – is not an  
12 appropriate time period. Operationally, US LEC does not have the resources to  
13 continue its ordinary course of business provisioning and also provision  
14 “surprise” transition orders in such a compressed timeframe. Plus US LEC would  
15 be subjected to an unknown penalty amount for its failure to meet the short-fuse  
16 deadline.

17  
18 US LEC has proposed a 180-day transition period, which is a substantially shorter  
19 time period than the transition period adopted by the FCC for the initial transition  
20 period. US LEC's proposal is a compromise position between the 12-month  
21 transition period adopted by the FCC and BellSouth's 90-day proposal. US LEC  
22 would be unable to ensure an orderly transition of any affected circuits in less  
23 than this 180-day period. During the transition period, US LEC must have the

1 opportunity to review the wire center information; conduct its reasonable due  
2 diligence and come to an informed determination as to whether the wire center is  
3 non-impaired or not; and, if US LEC agrees, inventory the circuits required to be  
4 transitioned and determine the appropriate alternative services to transition the  
5 circuits.

6  
7 BellSouth takes for granted that US LEC will convert the UNE circuits to special  
8 access services provided by BellSouth as the alternative service. If the wire  
9 center is identified as non-impaired, it would seem that competitive services are  
10 available from other providers than BellSouth. If so, it may well be that the  
11 competitive providers may have services that may be at rates higher than the UNE  
12 rates, but lower than BellSouth's special access rate. If such competition is  
13 available, it is highly unlikely that US LEC would be able to transition its circuits  
14 to another provider in 90 days. Consequently, BellSouth's proposal appears to  
15 lock US LEC into continuing to obtain services from BellSouth at the higher  
16 rates, and increase BellSouth's revenue stream, rather than allowing competition  
17 to flourish for these wholesale services.

18  
19 US LEC's proposal is more appropriate as it permits US LEC the time necessary  
20 to coordinate the conversions of the UNEs to alternative services, and allows US  
21 LEC to use competitive providers rather than be locked into BellSouth's special  
22 access pricing.

23

1 **ISSUE 10: WHAT RATES, TERMS AND CONDITIONS, IF ANY, SHOULD**  
2 **APPLY TO UNES THAT ARE NOT CONVERTED ON OR BEFORE MARCH 11,**  
3 **2006, AND WHAT IMPACT, IF ANY SHOULD THE CONDUCT OF THE**  
4 **PARTIES HAVE UPON DETERMINATIONS OF THE APPLICABLE RATES,**  
5 **TERMS AND CONDITIONS THAT APPLY IN SUCH CIRCUMSTANCES?**

6  
7 **Q: WHAT IS US LEC'S POSITION ON THE UNES THAT HAVE NOT BEEN**  
8 **CONVERTED AS OF MARCH 10, 2006?**

9  
10 **A:** US LEC's major concern is that no UNE be disconnected as of March 10, 2006,  
11 without an affirmative acknowledgment by US LEC that the circuit is either  
12 pending conversion (and the rate for the analogous service should be charged as  
13 of March 10, 2006 until such time as the conversion is completed) or that the  
14 circuit may be disconnected. Despite best efforts, there is some likelihood that a  
15 circuit may have been inadvertently omitted from a conversion order or a  
16 conversion order may be in a clarification stage and not final by March 10, 2006.  
17 Under no circumstances should the US LEC customer be taken out of service due  
18 to the FCC's rules changes.

19  
20 **Q: DOES YOUR ANSWER CHANGE BASED ON THE CONDUCT OF THE**  
21 **PARTIES?**

1    **A:**    The question presumes that either US LEC or BellSouth may have acted in bad  
2            faith in either failing to submit the order timely or properly or failing to process  
3            the order timely or properly.  US LEC does not believe that either party will  
4            intentionally engage in such conduct.  If either party should engage in such  
5            conduct, then the other party has recourse other than impairing the service to US  
6            LEC's customer.  The customer should not suffer due to a dispute between the  
7            parties.

8

9    **ISSUE 30: WHAT LANGUAGE SHOULD BE USED TO INCORPORATE THE**  
10 **FCC'S ISP REMAND CORE FORBEARANCE INTO INTERCONNECTION**  
11 **AGREEMENTS?**

12

13 **Q:    DOES US LEC BELIEVE THAT THERE IS ANY ADDITIONAL**  
14 **LANGUAGE NECESSARY TO INCORPORATE THE FCC'S *ISP***  
15 ***REMAND CORE FORBEARANCE ORDER* INTO THEIR**  
16 **INTERCONNECTION AGREEMENT?**

17

18 **A:**    No.  Language contained in the interconnection agreement approved by the  
19            Commission on July 9, 2004 (specifically section 7.1.4.1.2 of Attachment 3),  
20            provides that

21

22

23

24

          The Parties agree to apply the 3:1 methodology set forth in the  
          FCC's April 2001 ISP Remand Order, and the 10% growth factor  
          set forth therein, and agree to continue to apply that methodology  
          until such time as the FCC, or any other governmental agency of



1                   competent jurisdiction, issues new rule and regulations to apply  
2                   this methodology.

3  
4           US LEC believes that this language permits the parties to eliminate the  
5           application of the growth caps in billing for traffic over the 3:1 ratio, and that  
6           there is no need for additional language in the interconnection agreement to  
7           incorporate the *Core* decision.

8  
9   **Q:    DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

10  
11 **A:    Yes.**