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Subject: E-filing - Docket No. 041269-TP

Attachments: FPSC PHS FINAL 092905.pdf

CMP ___
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SGA ___
SEC 1
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Docket No and title: In Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law
Docket 041269-TP

Filed on behalf of: Competitive Carriers of the South, Inc., AT&T, Covad, ITC^Deltacom, MCI, NuVox, Xspedius, XO, USLEC and SECCA

Number of pages: 31

Document attached: Joint Prehearing Statement of CompSouth, AT&T, Covad, ITC^Deltacom, MCI, NuVox, Xspedius, XO, USLEC and SECCA

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immediately by telephone collect at 561-659-7500. Thank you.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law

Docket No. 041269-TP

Filed: September 29, 2005

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JOINT PREHEARING STATEMENT OF COMPSOUTH, AT&T, COVAD, ITC^DELTACOM, MCI, NUVOX, XSPEDIUS, XO, US LEC AND SECCA

The Competitive Carriers of the South, Inc. (CompSouth), AT&T Communications of the Southern States, LLC (AT&T), DIECA Communications, Inc. d/b/a Covad Communications Company (Covad), ITC^DeltaCom Communications, Inc. (ITC^DeltaCom), MCImetro Access Transmission Services, LLC (MCI)[1], NuVox Communications, Inc. (NuVox), Xspedius Communications, LLC (Xspedius), XO Communications, Inc. (XO), US LEC of Florida, Inc. (US LEC) and Southeastern Competitive Carrier Association (SECCA), [2] pursuant to Order No. PSC-05-0736-PCO-TP, file this Joint Prehearing Statement of Issues and Positions.

A. APPEARANCES:

BILL MAGNESS, Casey, Gentz & Magness, L.L.P., 98 San Jacinto Blvd., Ste. 1400, Austin, Texas 78701

On Behalf of The Competitive Carriers of the South, Inc. (CompSouth)

VICKI GORDON KAUFMAN, Moyle Flanigan Katz Raymond & Sheehan, PA, 118 North Gadsden Street, Tallahassee, Florida 32301

On Behalf of The Competitive Carriers of the South, Inc. (CompSouth) and DIECA Communications, Inc. d/b/a Covad Communications Company (Covad)

TRACY HATCH, AT&T Communications of the Southern States, LLC, 101 North Monroe Street, Suite 700, Tallahassee, Florida 32301

[1] MCI takes no position on any issue or sub issue related to switching.
[2] These parties are referred to as Joint CLECs.

On Behalf of AT&T Communications of the Southern States, LLC (AT&T)

CHARLES (GENE) E. WATKINS, Senior Counsel, Government & External Affairs, Covad Communications Company, 1230 Peachtree Street, NE, Suite 1900, Atlanta, Georgia 30309

On Behalf of DIECA Communications, Inc. d/b/a Covad Communications Company (Covad)

C. EVERETT BOYD, JR., Sutherland Asbill Law Firm, 3600 Maclay Blvd. S., Suite 202, Tallahassee, FL 32312-1267

On Behalf of ITC^DeltaCom Communications, Inc. (ITC^DeltaCom)

DONNA CANZANO McNULTY, MCI, Inc., 1203 Governors Square Boulevard, Suite 201, Tallahassee, Florida 32301

On Behalf of MCImetro Access Transmission Services, LLC (MCI)

NORMAN HORTON, JR., Messer, Caparello & Self, PA, 215 South Monroe Street, Suite 701, Tallahassee, Florida 32301

On Behalf of NuVox Communications, Inc. (NuVox) and Xspedius Communications, LLC (Xspedius)

DANA SHAFFER, Regulatory Counsel, XO Communications, Inc., 105 Molloy Street, Suite 300, Nashville, Tennessee 37201

On Behalf of XO Communications, Inc. (XO)

KENNETH HOFFMAN & MARTIN MCDONNELL, Rutledge, Ecenia, Purnell & Hoffman, PA, P.O. Box 551, Tallahassee, Florida 32301

On Behalf of US LEC of Florida, Inc. (US LEC) and Southeastern Competitive Carrier Association (SECCA)

B. WITNESSES:

Direct

Witness	Proferred by	Issues
On Behalf of US LEC and SECCA		
Wanda G. Montano	US LEC & SECCA	1, 3, 4 (a)-(c), 9, 10, 30

On Behalf of ITC^DeltaCom

Jerry Watts	ITC^DeltaCom	30

On Behalf of CompSouth

Joseph Gillan	CompSouth	All

Rebuttal

On Behalf of US LEC

Wanda G. Montano	US LEC	1, 3, 4 (b), 31

On Behalf of XO

Kristin Shulman	XO	1, 3, 4, 9, 10

On Behalf of CompSouth

Joseph Gillan	CompSouth	All

C. EXHIBITS:

Exhibits (Direct)	**Witness**	**Description**
Exhibit No. ___ (JW-1)	Watts	Proposed language
Exhibits (Rebuttal)		
Exhibit No. ___ (JPG-1, 1st Revised)[3]	Gillan	Proposed Contract Language
Exhibit No. __ (JPG-2)	Gillan	Significance of UNE-L Assumption on Business Line Count
Exhibit No. ___(JPG-3)	Gillan	Comparing BellSouth's Claims at the FCC to its Claims Here

[3] Mr. Gillan originally filed CompSouth's proposed contract provisions as an attachment (Exhibit JPG-1) to his Direct Testimony. After reviewing BellSouth's Direct Testimony, CompSouth revised its proposed contract language to reflect efforts to narrow differences with BellSouth on the disputed issues. The revised version was filed with Mr. Gillan's Rebuttal Testimony as "Exhibit JPG-1 (1st Revised)." It is only the revised proposal that CompSouth requests the Commission consider in this proceeding, and thus CompSouth will not offer the original exhibit into evidence.

Exhibit No. ___ (JPG-4)	Gillan	Correcting BellSouth's Business Line Count
Exhibit No. __ (JPG-5)	Gillan	Corrected Wire Center Classifications
Exhibit No. __ (JPG-6)	Gillan	Testimony of Robert McKnight in Docket No. 1997-239-C

Exhibits – Florida Discovery proposed for Stipulation

Exhibit Stip. No. __	All discovery served by BellSouth (in this proceeding or in similar proceedings before other state commissions) regarding fiber collocators and all responses received by BellSouth.

Exhibits – Items from other States proposed for Stipulation

Georgia Docket No. 19341-U

Exhibit Stip. No. __ BellSouth's Reponses to ITC^DeltaCom, Inc.'s First Set of Data Requests (No. 1);[4]

Exhibit Stip. No. __ BellSouth's Responses to Covad's First Set of Data Requests (Nos. 1-15);

Exhibit Stip. No. __ BellSouth's Responses to CompSouth's First Set of Data Requests (Nos. 1-12);[5]

Exhibit Stip. No. __ Transcript of the Georgia Public Service Commission hearing held on August 30-September 1, 2005.

Alabama Docket No. 29543:

Exhibit Stip. No. __ Transcripts of deposition of BellSouth witnesses Eric Fogle, taken on August 16, 2005; Kathy Blake, taken on August 17, 2005; Pamela Tipton, taken on August 17, 2005.[6]

Tennessee Docket No. 04-00381:

[4] The proprietary response was filed under separate cover pursuant to the Commission's confidentiality procedures.

[5] The proprietary response was filed under separate cover pursuant to the Commission's confidentiality procedures.

[6] Though these depositions were also noticed in the Florida docket, CompSouth lists them here in an abundance of caution.

Exhibit Stip. No. __ Transcript of the Tennessee Regulatory Authority hearing held on September 13-14, 2005.

D. STATEMENT OF BASIC POSITION:

Although there are many issues in the proceeding, the docket fundamentally concerns the ability of small entrants to serve small businesses, particularly those small businesses seeking flexible high-speed digital services that provide voice and data in an integrated manner. The foundation for such products is the "DS1," a digital access facility that is central to competing for the small enterprise customer.

There is no dispute that in the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO"), the FCC adopted new rules that partially limit BellSouth's obligations to provide competitors access to DS1 facilities at TELRIC rates. BellSouth's testimony, however, goes much farther than the TRRO allows in foreclosing access to the small business market. Specifically:

* The FCC limited access to new broadband facilities (such as new fiber), but only when it is used to serve mass-market customers. The FCC could not have been clearer that its policy applied *only* to the mass market. Small businesses served by DS1 lines, however, are considered *enterprise* – not mass-market – customers, and BellSouth's obligation to provide UNE DS1 access is not compromised by the FCC's broadband policies.

* When BellSouth applies the appropriate test to determine whether DS1 access must be offered as a UNE – i.e., when it classifies its wire centers according to the number of business lines and fiber-based collocators – it improperly inflates the business line count by including lines used to provide data services and serve residential customers. Mr. Gillan's testimony corrects for BellSouth's inflated numbers and identifies those wire centers in Florida where BellSouth's unbundling obligations are legitimately reduced. See Exhibit No. JPG-5.

* In wire centers where BellSouth does not have a §251 obligation to provide access to DS1s at TELRIC-based rates, BellSouth remains obligated to charge just and reasonable rates under §271. BellSouth is ignoring this duty by forcing carriers to pay interstate special access rates. Interstate special access rates, however, have been established in reference to their use in the interstate *long distance* market, and the FCC has already determined that such price levels are not consistent with sustainable *local* competition. Interstate special access rates are not just and reasonable in the local market.

* BellSouth is refusing to "commingle" those network elements required under §251 of the Act with those elements required by §271, claiming that its §271 offerings are not "wholesale services."

* BellSouth is attempting to prevent competitors from creating their *own* DS1s to serve customers in wire centers where BellSouth is not required to provide a DS1 at TELRIC-based rates. The FCC recognized that competitors could use what is called an "HDSL-*capable*" loop to provide DS1-level services, even in those wire centers where BellSouth is not required to offer DS1s themselves. (An HDSL-capable loop is a type of "dry loop" that a competitor could use to offer DS1-level service by adding its own electronics). BellSouth is claiming that it is *also* not required to provide HDSL-capable loops wherever it no longer offers a DS1, even though the FCC specifically stated that CLECs *could* use HDSL loops to offer service is such circumstances.

In addition, BellSouth's proposed contract language short-changes CLECs regarding other provisions of the FCC's TRO and TRRO that are favorable to the competitive industry. BellSouth's proposals on routine network modifications, line conditioning, and EELs audits all attempt to unduly expand BellSouth's rights (and limit CLECs' opportunities) in ways not contemplated by the FCC in the TRO/TRRO.

Facilities-based competition for the small business customer desiring voice/data services on DS1 facilities – which is a core constituency for a competitive local provider – requires access to DS1 loop facilities to connect customers to competitive networks. BellSouth's overreaching interpretations of the TRO/TRRO block access to DS1s in circumstances where access should remain available to competitors. BellSouth's interpretations of the FCC's Orders should be rejected.

E. STATEMENT OF ISSUES AND POSITIONS:

ISSUE 1: **TRRO/FINAL RULES**: What is the appropriate language to implement the FCC's transition plan for (1) switching, (2) high capacity loops and (3) dedicated transport as detailed in the FCC's Triennial Review Remand Order ("TRRO"), issued February 4, 2005?

JOINT CLECS:

CompSouth's proposed contract language (provided in full as revised Exhibit JPG-1 to the rebuttal testimony of CompSouth witness Joseph Gillan) implements the changes in BellSouth's obligations to provide loops, transport, switching, and dark fiber UNEs pursuant to Section 251(c)(3) obligations. CompSouth's contract language proposals also provide for availability of Section 271 checklist elements that must remain available even where Section 251(c)(3) UNEs have been "de-listed" by the FCC. Existing ICAs should be amended to incorporate Section 271 checklist items that will, in many cases, provide the wholesale service that will replace Section 251(c)(3) network elements.

CompSouth's proposed contract language facilitates the completion of the transition plan as contemplated by the FCC in the TRRO. CLECs are entitled to transition rates for any UNEs that are "de-listed" until March 10, 2006. BellSouth's contract proposals would force CLECs off the transition pricing plan well before the end of the FCC-mandated transition period. CompSouth is willing to work cooperatively with BellSouth to ensure that circuits subject to the transition off Section 251(c)(3) UNEs are processed efficiently. In no circumstances should CLEC cooperation with BellSouth to ensure an orderly transition result in CLECs' being forced to pay higher rates than the FCC authorized during the transition period.

ISSUE 2: **TRRO/FINAL RULES:** a) How should existing ICAs be modified to address BellSouth's obligation to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?
b) What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth's obligations to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?

JOINT CLECS:

(a) The Commission's decisions in this proceeding should form the basis for interconnection agreement ("ICA") amendments implementing changes in BellSouth's unbundling obligations. Unless parties have specifically agreed otherwise, the ICA amendments should be completed in a timely manner after the conclusion of this proceeding. Existing ICAs should only be modified, however, regarding disputed issues that are within the scope of this proceeding. If an issue covered by an existing ICA is not in dispute in this proceeding (or was not even affected by the FCC's TRO or TRRO rulings), then the current contract language addressing that issue should not be affected by the decisions in this proceeding.

Joint CLECs are troubled that BellSouth has filed, along with its testimony in this proceeding, an entirely new ICA Attachment 2 regarding its unbundling obligations. BellSouth's proposed new Attachment 2 addresses issues related to the TRO and TRRO that are *not disputed* in this proceeding (e.g., EELs eligibility criteria). In addition, BellSouth's proposal includes contract language on many issues that were not affected in any way by the recent changes in law arising from the TRO and TRRO (e.g., white pages directory listings and intercarrier compensation). Joint CLECs urge the Commission not adopt the portions of BellSouth's proposed new Attachment 2 that are unrelated to the disputed issues in this case. Rather, BellSouth must specifically identify those portions of its Attachment 2 that apply directly to the issues in this proceeding, and, to the extent the Commission agrees with BellSouth's position, only the specified contract language should be included in ICA amendments.

(b) No position at this time.

ISSUE 3: **TRRO/FINAL RULES:** What is the appropriate language to implement BellSouth's obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport and how should the following terms be defined?

(i) Business Line
(ii) Fiber-Based Collocation
(iii) Building
(iv) Route

JOINT CLECS:

CompSouth has proposed contract language that faithfully implements the FCC's decisions regarding availability of high capacity loops and dedicated transport UNEs. Joint CLECs' differences with BellSouth are not focused so much on the appropriate definitions of the terms used in the TRRO, but on how those definitions are applied. In summary, Joint CLECs recommend that the FCC's definitions be read and applied in their entirety and that potentially contradictory parts of such definitions be applied in a way that harmonizes the various provisions that comprise the definition. BellSouth's positions, by contrast, pull out and highlight particular provisions of certain definitions in a way that distorts the overall meaning of the FCC's definition. BellSouth's approach consistently leads to more non-impairment in more locations than is justified by the plain terms of the TRRO.

For example, when BellSouth applies the appropriate test to determine whether DS1 access must be offered as a UNE under Section 251(c)(3) – i.e., when it classifies its wire centers according to the number of business lines and fiber-based collocators – it improperly inflates the business line count by including lines used to provide data services and serve residential customers. Similarly, BellSouth's original estimate of the number of fiber-based collocators has been revised downward after review of information from CLECs demonstrating they do not qualify as fiber-based collocators in certain central offices.

The FCC did not define what it meant by "building" when it limited the availability of loops to particular numbers of buildings. CompSouth proposes a reasonable definition that recognizes how telecommunications services are provided to various types of structures; the CompSouth definition, for example, notes the differences between "buildings" where a single versus multiple "minimum points of entry" ("MPOE") have been established by the building owners. These distinctions have an impact on the way telecommunications services are provided in office complexes, strip malls, and other settings often served by CLECs targeting the small business market.

ISSUE 4: **TRRO/FINAL RULES:** a) Does the Commission have the authority to determine whether or not BellSouth's application of the FCC's Section 251 non-impairment criteria for high-capacity loops and transport is appropriate?

b) What procedures should be used to identify those wire centers that satisfy the FCC's Section 251 non-impairment criteria for high-capacity loops and transport?
c) What language should be included in agreements to reflect the procedures identified in (b)?

JOINT CLECS:

(a) Yes, the Commission has authority to determine whether BellSouth's application of the FCC's Section 251 non-impairment criteria for high-capacity loops and transport is appropriate. Moreover, the Commission has authority to approve ICA amendments and, where appropriate in the alternative, new ICAs reflecting the appropriate terms for implementing the FCC's criteria.

(b) In this proceeding, CompSouth is challenging BellSouth's identification of wire centers allegedly meeting the FCC's Section 251 non-impairment criteria. CompSouth's challenge is based on: (a) BellSouth systematic over-counting of "business lines" based on a flawed view of the FCC's definition of that term; (b) problems with the accuracy of BellSouth method for identifying "fiber-based collocators"; (c) the question of whether the nearly-completed merger of SBC and AT&T should result in those two companies being treated as affiliates where both are fiber-based collocators in a single central office.

The mixed factual, policy, and legal questions that have arisen regarding BellSouth's identification of non-impaired wire centers should be resolved in this proceeding. The Commission's resolution of the disputed issues in this proceeding will have a significant impact on how BellSouth goes about identifying non-impaired wire centers in the future.

Future designations by BellSouth should also be subject to review by the Commission and interested parties. CompSouth witness Joseph Gillan's direct testimony describes a process BellSouth should be required to follow each year when it seeks to "de-list" additional wire centers for Section 251 impairment purposes. The process described in Mr. Gillan's testimony gives BellSouth ample opportunity to assert its view that Section 251 unbundling is not required in additional central offices, while requiring that BellSouth provide the Commission and interested parties the underlying data needed to validate BellSouth's claims regarding non-impairment in particular wire centers.

(c) CompSouth's contract language memorializing the process described in Mr. Gillan's testimony is included in the CompSouth proposed contract language provided in Exhibit JPG-1 to Mr. Gillan's rebuttal testimony.

ISSUE 5: **TRRO/FINAL RULES:** Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?

JOINT CLECS:

No. BellSouth is attempting to prevent competitors from creating their *own* DS1 loops to serve customers in wire centers where BellSouth is not required to provide a DS1 loop at TELRIC-based rates. The FCC did not equate DS1 loops and HDSL-capable cooper loops for purposes of determining what loops are available where there is non-impairment under Section 251. The FCC recognized that competitors could use what is called an "HDSL-*capable*" loop to provide DS1-level services, even in those wire centers where BellSouth is not required to offer DS1s themselves. (An HDSL-capable loop is a type of "dry loop" that a competitor could use to offer DS1-level service by adding its own electronics). BellSouth is claiming that it is *also* not required to provide HDSL-capable loops wherever it no longer offers a DS1, even though the FCC specifically stated that CLECs *could* use HDSL loops to offer service is such circumstances. BellSouth's position on this point would improperly deny CLECs the ability to add their own electronics to dry copper loops and create alternative voice/data services to small business customers in areas where Section 251 DS1 loops are no longer available.

In the count of "business lines" that is part of the FCC's methodology for determining impairment under Section 251, HDSL-capable copper loops should only be counted to the extent that each such loop meets the definition of "business line." BellSouth contends that it has the right to count each HDSL-capable copper loop as 24 business lines (by grossing up the potential DS1 capacity that could be added to such a loop to the maximum carrying capacity of a DS1 loop). BellSouth did not count HDSL-capable copper loops this way in the count of "business lines" now before the Commission, and Joint CLECs believe BellSouth got it right by *not* counting each HDSL-capable dry copper loops as 24 business lines. BellSouth should not be permitted to assert its overly expansive view of how to count HDSL-capable copper loops in future business line counts.

ISSUE 6: **TRRO/FINAL RULES:** Once a determination is made that CLECs are not impaired without access to high capacity loops or dedicated transport pursuant to the FCC's rules, can changed circumstances reverse that conclusion, and if so, what process should be included in Interconnection Agreements to implement such changes?

JOINT CLECS:

The parties have agreed that this issue is no longer in dispute and may be removed from the proceeding.

ISSUE 7: **TRRO/FINAL RULES:** (a) Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?

(b) If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements?
(c) If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any, should be included in the ICA with regard to the terms and conditions for such elements?

JOINT CLECS:

(a) Yes, the Commission has authority to require BellSouth to include in its Section 252 ICAs the availability and price of network elements under Section 271. Joint CLECs also believe that the Commission has authority to include network elements in ICAs pursuant to state law authority, but is not requesting the Commission exercise such authority in this proceeding. Rather, Joint CLECs request that the Commission approve its proposed contract language that includes rates, terms, and conditions for Section 271 as well as Section 251 network elements.

Section 251 and Section 271 both point to the Section 252 state commission negotiation and arbitration process as the vehicle for establishing contract terms for ILEC unbundling obligations. Under Section 251, all ILECs must provide access to unbundled network elements at TELRIC rates unless there is a finding of non-impairment for a particular network element. Section 251 contemplates that the ICA terms for such network elements will be established pursuant to the Section 252 state commission approval process. Under Section 271, Bell Operating Companies ("BOCs") that want to establish or maintain the right to provide interLATA long distance services (a group that includes BellSouth) must provide access to unbundled network elements listed on the Section 271 checklist at just and reasonable rates. Section 271 contemplates that BOC compliance with the competitive checklist requires that the checklist items are included in ICAs established pursuant to the Section 252 state commission approval process. The federal statute itself points to the Section 252 process as the means to implement BellSouth's Section 271 unbundling obligations. In the TRO, the FCC emphasized that Section 271 unbundling obligations are independent of and in addition to Section 251 unbundling obligations. The forum for establishing the rates, terms, and conditions of BellSouth's independent Section 271 unbundling obligations is the state commission ICA arbitration and approval process established in Section 252.

(b) Yes, the Commission has authority to set rates for Section 271 network elements. The federal Act requires that Section 271 network elements be reflected in ICAs approved pursuant to Section 252. The Section 252 process includes state commission review and approval of ICAs. Just as state commissions arbitrate and approve TELRIC rates for Section 251 network element unbundling in the Section 252 process, state commissions have authority to arbitrate and approve just and reasonable rates for Section 271 checklist network elements unbundling. State commissions do not have authority to revoke BellSouth's Section 271 authority for failure to continue meeting the competitive checklist; that enforcement role is assigned to the FCC. State commissions do play a role

– as required by the terms of Section 271 itself – in ensuring the non-discriminatory availability of unbundled elements required by the Section 271 competitive checklist.

(c) The rates, terms, and conditions for Section 271 checklist unbundled network elements should be included in BellSouth ICAs along with the rates, terms, and conditions for Section 251 unbundled network elements. The rates for Section 271 elements must meet a "just and reasonable" standard rather than the TELRIC standard applicable to Section 252 unbundled network elements. The terms and conditions for both Section 251 and 271 unbundling must provide for meaningful access to network elements (e.g., ICA terms must prohibit unreasonable restrictions on the way network elements are made available) and must provide that both Section 251 and 271 network elements be available on a non-discriminatory basis.

The ICA terms and conditions regarding meaningful access and non-discrimination should be similar for Section 251 and Section 271 network elements, given that BellSouth's obligations related to non-discriminatory access are not substantially different for unbundling under Sections 251 and 271. Pricing terms are governed by different standards and would need to be separately provided for Section 251 and Section 271 unbundled network elements. CompSouth's proposed ICA language provides terms for Section 271 unbundling that ensure meaningful access and non-discrimination. In addition, CompSouth proposes interim rates for Section 271 checklist network elements that should be included in ICAs until the Commission establishes permanent rates for Section 271 elements under the "just and reasonable" standard. The interim rates proposed by CompSouth are above TELRIC, and track the "transition rates" for loops, transport, and switching network elements approved by the FCC in the TRRO.

ISSUE 8: **TRRO/FINAL RULES:** What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?

JOINT CLECS:

The TRRO included detailed provisions for identifying CLECs' embedded base of Section 251 unbundled switching, high-capacity loops and dedicated transport that is subject to the TRRO's transition provisions. In addition, the U.S. Court of Appeals for the Eleventh Circuit has recently spoken to the issue of the conditions under which CLECs may move, add, or change services to embedded base customers. The ICA language implementing the TRRO on this issue should carefully track the FCC's requirements, taking into account the interpretation of those requirements by the Eleventh Circuit.

ISSUE 9: **TRRO/FINAL RULES:** What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer obligated to provide as Section 251 UNEs to non-Section 251 network

elements and other services and (a) what is the proper treatment for such network elements at the end of the transition period, and what are the appropriate rates, terms and conditions during such transition period, for unbundled high capacity loops, high capacity transport, and dark fiber transport in and between wire centers that do not meet the FCC's non-impairment standards at this time, but that meet such standards in the future?

JOINT CLECS:

Transitional price increases were established by the FCC for network elements that are no longer available under Section 251 at the following levels: for loop and transport elements, the transitional increase is 15%, while local switching rates were increased by $1 per month. During the transition period, which runs from March 11, 2005 to March 10, 2006, transition pricing applies to Section 251 network elements. CLECs may still order allegedly de-listed UNEs in wire centers designated as non-impaired by BellSouth pursuant to the "self-certification" process described in TRRO para. 234. The TRRO contains provisions for true-ups back to the March 11, 2005 effective date of the TRRO in some limited circumstances. CompSouth's proposed contract language includes provisions for ordering different arrangements (including Section 271 checklist network elements) that will substitute for de-listed Section 251 UNEs. Joint CLECs are committed to an orderly transition of circuits to alternative arrangements, but are opposed to BellSouth's efforts to limit the application of the FCC-mandated transition rates by forcing CLECs onto higher-priced arrangements before the completion of the transition period.

For future designations of wire centers, CompSouth has proposed a process that BellSouth may utilize on an annual basis to identify additional wire centers it believes have satisfied the FCC's non-impairment standards. This process would require BellSouth to provide back-up data supporting its claims, and would permit review of such data by the Commission and interested parties. After such process is completed and final designations approved, CLECs should be provided a reasonable amount of time (for example, a minimum of 30 business days) to effect transitions off Section 251 UNEs no longer available in one of the designated wire centers.

ISSUE 10: **TRRO/FINAL RULES:** What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms and conditions that apply in such circumstances?

JOINT CLECS:

The TRRO provides that until March 11, 2006, CLECs have a right to pay no more than the FCC's transition rates for Section 251 network elements subject to non-

impairment findings. BellSouth may not force CLECs into paying higher rates prior to the end of the transition period. Both Joint CLECs and BellSouth desire an orderly process for those Section 251 network elements making a transition to a new service arrangement (including transitions to Section 271 network elements, tariffed special access services, or non-BellSouth facilities). The process for making such transitions should not, however, result in CLECs being denied transition pricing during the FCC's mandated transition period.

The identification of network elements subject to the transition is complicated by the ongoing disputes between the parties regarding the proper designation of wire centers where the FCC has authorized non-impairment findings. In those wire centers that are in dispute between CompSouth and BellSouth, the Commission's resolution of the dispute will determine whether the high capacity loop and dedicated transport Section 251 UNEs in those wire centers are subject to a transition at all. CLECs should not be forced off Section 251 UNE arrangements in such situations prior to the Commission's resolution of the issues in this proceeding, or, if such transitions do occur they should be subject to correction at no additional cost to the CLEC.

ISSUE 11: **TRRO/FINAL RULES:** Should identifiable orders properly placed that should have been provisioned before March 11, 2005, but were not provisioned due to BellSouth errors in order processing or provisioning, be included in the "embedded base?"

JOINT CLECS:

BellSouth has agreed that identifiable orders properly placed that should have been provisioned before March 11, 2005, but were not provisioned due to BellSouth errors in order processing or provisioning, will be included in the "embedded base." The parties have stipulated that Issue No. 11 is resolved based on BellSouth's commitment to correct such errors in identifying CLECs' "embedded base."

ISSUE 12: **TRRO/FINAL RULES:** Should network elements de-listed under Section 251(c)(3) be removed from the SQM/PMAP/SEEM?

JOINT CLECS:

No, to the extent such network elements are still required pursuant to Section 271. The SQM/PMAP/SEEM performance measurements were instituted to confirm BellSouth's compliance with its Section 271 obligations. When switching, loop, and transport network elements are no longer available under Section 251, BellSouth still must provide meaningful, non-discriminatory access to such network elements pursuant to the Section 271 competitive checklist. It is not compliance with Section 251 obligations that SQM/PMAP/SEEM are designed to measure; it is compliance with Section 271 obligations – including the provision of unbundled elements required even after a finding of no impairment under Section 251. The justification for performance

measurement plans in Section 271 proceedings was to ensure there was no "backsliding" by BOCs on their promises to maintain open local telecommunications markets. The need for preventing backsliding does not change simply because the section of the federal Act under which unbundling occurs changes. The Section 271 checklist items that must be unbundled should remain subject to SQM/PMAP/SEEM.

ISSUE 13: **TRO – COMMINGLING**: What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?

JOINT CLECS:

Commingling is one of the most important issues in this proceeding to CLECs operating in the small business market in Florida. The mixed voice/data services offered by CLECs using unbundled DS1 loops often rely on the connecting of loop and dedicated transport Section 251 UNEs. When both network elements are provided under Section 251, the FCC's "combinations" rules apply. When one of the connected network elements is no longer available under Section 251 (e.g., a de-listed dedicated transport route in a wire center qualifying as non-impaired), the connecting of the network elements is known as "commingling." As more network elements become unavailable under Section 251, commingling rights become extremely important to CLECs in the small business market.

The FCC authorized commingling in the TRO in 2003. In the final version of the TRO (after conflicting provisions on this topic had been eliminated by the FCC's Errata filing), the FCC required that ILECs "permit commingling of UNEs and UNE combinations with other wholesale facilities and services." TRO para. 584. As written, the FCC's ruling permits Section 251 UNEs to be commingled with any "wholesale facilities and services," which includes elements unbundled pursuant to Section 271, tariffed services offered by BellSouth, and resold services. BellSouth contends that the term "other wholesale facilities and services" does not include network elements unbundled pursuant to the Section 271 competitive checklist. BellSouth's argument is contrary to the language in the TRO, and relies only on language that the FCC *removed* in its Errata to the TRO. Joint CLECs urge the Commission to review the FCC's orders as they are written and affirm that commingling does not exclude "wholesale facilities and services" offered pursuant to the Section 271 competitive checklist.

ISSUE 14: **TRO – CONVERSIONS**: Is BellSouth required to provide conversion of special access circuits to UNE pricing, and, if so, at what rates, terms and conditions and during what timeframe should such new requests for such conversions be effectuated?

JOINT CLECS:

Yes, BellSouth is required to provide conversion of special access circuits to UNE pricing. In the TRO, the FCC required that ILECs provide straightforward procedures for conversion of various wholesale services (including tariffed special access service) to the equivalent unbundled network element or combination of network elements. CompSouth's proposed contract language provides that BellSouth will charge the applicable nonrecurring "switch-as-is" rates for conversions. Any rate change resulting from the conversion would be effective as of the next billing cycle following BellSouth's receipt of a conversion request from CLEC. CompSouth's proposal also provides that a conversion shall be considered termination for purposes of any volume and/or term commitments and/or grandfathered status between a CLEC and BellSouth, and that any change from a wholesale service to a network element that requires a physical rearrangement will not be considered to be a conversion for purposes of the ICA.

ISSUE 15: **TRO – CONVERSIONS:** What are the appropriate rates, terms, conditions and effective dates, if any, for conversion requests that were pending on the effective date of the TRO?

JOINT CLECS:

The FCC provided rules for conversions in the TRO in 2003. Conversions pending on the effective date of the TRO should be handled using conversion provisions set forth in the amended ICAs. (CompSouth's proposed conversion provisions are described above regarding Issue 14.) This approach gives CLECs the benefit of conversion policies adopted by the FCC long ago but not implemented by BellSouth until the newly amended ICAs are effective.

ISSUE 16: **TRO – LINE SHARING**: Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?

JOINT CLECS:

Yes. Line Sharing is the process by which a CLEC provides digital subscriber line "xDSL" service over the same copper loop that BellSouth uses to provide retail voice service, with BellSouth using the low frequency portion of the loop and CLEC using the high frequency spectrum of the loop. BellSouth is required to provide line sharing pursuant to Section 271 of the federal Act. Line sharing is a loop transmission facility that must be provided by BellSouth pursuant to the Section 271 competitive checklist (checklist item 4). BellSouth acknowledges that if line sharing constitutes a Section 271 checklist loop facility, that BellSouth has an obligation to provide line sharing under Section 271 even if it has no further obligations under Section 251. BellSouth disputes, however, that line sharing is required by the Section 271 checklist. This assertion by BellSouth lacks credibility: when it was seeking long distance authority under Section

271, BellSouth asserted that the availability of line sharing provided important evidence that BellSouth was meeting its checklist item 4 obligations. Now that it wants to be rid of line sharing obligations, BellSouth reverses course and attempts to delete line sharing from the competitive checklist.

ISSUE 17: **TRO – LINE SHARING – TRANSITION**: If the answer to the foregoing issue is negative, what is the appropriate language for transitioning off a CLEC's existing line sharing arrangements?

JOINT CLECS:

If BellSouth is not obligated to provide line sharing arrangements to new CLEC customers after October 1, 2004 (*i.e.,* if line sharing is not required under checklist item 4 of the Section 271 competitive checklist), the amended ICA should include provisions for transitioning customers off Section 251 line sharing arrangements as contemplated by the TRO. CompSouth's proposed contract language provides that line sharing arrangements in service as of October 1, 2003, under prior ICAs between BellSouth and CLECs, will be grandfathered until the earlier of the date the end user customer discontinues or moves xDSL service with a CLEC. Any line sharing arrangements placed in service between October 2, 2003 and October 1, 2004, and not otherwise terminated, would terminate on October 2, 2006 under CompSouth's proposed contract language.

ISSUE 18: **TRO – LINE SPLITTING**: What is the appropriate ICA language to implement BellSouth's obligations with regard to line splitting?

JOINT CLECS:

There are three issues in dispute in the competing contract language on line splitting: (1) the availability of line splitting to the UNE-P "embedded base;" (2) BellSouth's obligations when BellSouth chooses to control the splitter; and (3) BellSouth's obligations to "make all necessary network modifications" to its OSS to facilitate line splitting. BellSouth's requests that the Commission find that BellSouth's line splitting obligations are limited to when a CLEC purchases a stand-alone loop and provides its own splitter and that BellSouth has no obligation to provide line splitting under any other service arrangement. BellSouth's position is inconsistent with its legal obligations under the FCC's TRO and TRRO, which are reflected in the FCC's rules. BellSouth's legal obligations include the provision of line splitting to the UNE-P "embedded base"; compatible splitter functionality (when BellSouth retains control of a splitter); and an obligation make OSS modifications to facilitate line splitting.

ISSUE 19: **TRO – SUB-LOOP CONCENTRATION**: a) What is the appropriate ICA language, if any, to address sub loop feeder or sub loop

concentration? b) Do the FCC's rules for sub loops for multi-unit premises limit CLEC access to copper facilities only or do they also include access to fiber facilities? c) What are the suitable points of access for sub-loops for multi-unit premises?

JOINT CLECS:

The parties have agreed that subpart (a) of this issue is no longer in dispute and may be removed from the proceeding. Joint CLECs take no position at this time regarding subparts (b) and (c) of Issue 19.

ISSUE 20: **TRO – PACKET SWITCHING**: What is the appropriate ICA language, if any, to address packet switching?

JOINT CLECS:

The parties have agreed that this issue is no longer in dispute and may be removed from the proceeding.

ISSUE 21: **TRO – CALL-RELATED DATABASES**: What is the appropriate ICA language, if any, to address access to call related databases?

JOINT CLECS:

Call-related databases are included in the Section 271 competitive checklist. Checklist item 10 requires BellSouth to provide "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion." 47 U.S.C. Section 271(c)(2)(B)(x). BellSouth therefore must continue to make these databases available at just and reasonable rates, terms, and conditions, for all the reasons discussed above in relation to Issue 7 (regarding Section 271 obligations that continue after Section 251 obligations cease).

BellSouth rests its contention that call-related databases should be excluded from ICAs on its general position that Section 271 checklist items should not be included in ICAs. BellSouth contends that because CLECs no longer have access to unbundled switching under Section 251, CLECs have no unbundled access to call-related databases. BellSouth is wrong on both counts: both unbundled switching and call-related databases must continue to be provided to CLECs at just and reasonable rates, terms, and conditions as part of BellSouth's compliance with the Section 271 competitive checklist. CompSouth's proposed contract language provides for call-related databases to be provided as part of the TRRO transition, and then be made available after the transition period in conjunction with Section 271 unbundled switching offerings.

ISSUE 22: **TRO – GREENFIELD AREAS**: a) What is the appropriate definition of minimum point of entry ("MPOE")? b) What is the appropriate language to implement BellSouth's obligation, if any, to offer unbundled access to newly-deployed or "Greenfield" fiber loops, including fiber loops deployed to the minimum point of entry ("MPOE") of a multiple dwelling unit that is predominantly residential and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?

JOINT CLECS:

In the TRO (and subsequent Orders), the FCC adopted reduced unbundling obligations for a variety of "broadband facilities," specifically "fiber to the home" (FTTH), "fiber to the curb" (FTTC) and "fiber to the predominantly residential multi-dwelling unit" (MDU). Joint CLECs recognize the exclusions from unbundling granted by the FCC in its Orders, and do not have disputes related to the MPOE definition or the ownership of inside wiring from the MPOE to end users.

The central point of contention between BellSouth and Joint CLECs on this issue involves BellSouth's attempt to extend the application of these reduced "greenfield" unbundling obligations beyond what the FCC intended. There is a critical *limiting* factor in the FCC's broadband exclusions from loop unbundling. That is, the predicate to BellSouth's reduced unbundling obligations for these network architectures is that the loops are used to serve *mass market customers*. BellSouth was not granted a total exception to its loop unbundling obligations for all fiber and hybrid loops; rather, the FCC's broadband exclusions were specifically limited to circumstances where these loops are used to serve mass market customers.

BellSouth remains obligated to provide access to carriers serving enterprise customers, even where the CLEC could not gain access to the loop facility to serve a mass market customer. When a CLEC requests a DS1 loop, by definition the customer it is seeking to serve is considered an enterprise (and not mass market) customer. For instance, in the *TRO*, the FCC distinguished enterprise business customers from the mass market, noting:

> All other business customers – whom we characterize as the enterprise market – typically purchase high-capacity loops, such as DS1, DS3, and OCn capacity loops. We address high-capacity loops provisioned to these customers as part of our enterprise market analysis. (TRO para. 209)

Thus, whenever a CLEC requests a DS1 loop to serve a customer, that request itself means that the customer is (or is becoming) a member of the enterprise market and BellSouth must comply with loop unbundling requirements as defined for that market.

ISSUE 23: **TRO – HYBRID LOOPS**: What is the appropriate ICA language to implement BellSouth's obligation to provide unbundled access to hybrid loops?

JOINT CLECS:

The only "limitation" on BellSouth's unbundling obligations with respect to fiber/copper hybrid loops is that BellSouth need not provide access to the packet-based capability in the loop. This limitation, however, should not affect CLECs' ability to obtain access to DS1 (and DS3) loops. The FCC made clear that BellSouth must still provide DS1 and DS3 loops on such facilities. In the hybrid loop unbundling portion of the TRO, the FCC emphasized that the unbundling limitations on hybrid loops do "not eliminate the existing rights competitive LECs have to obtain unbundled access to hybrid loops capable of providing DS1 and DS3 service to customers." (TRO para. 294) In addition, the FCC's policies are premised on the understanding that, to the extent that an ILEC deploys a packet-based architecture, the packet-architecture parallels its TDM-network, and would not isolate customers from access to CLEC DS1-based services. As with the "greenfield" provisions discussed regarding Issue 22, the limitations on unbundling of hybrid loops should not be used to deny CLECs access to the DS1 facilities necessary to serve small business customers.

ISSUE 24: **TRO – END USER PREMISES**: Under the FCC's definition of a loop found in 47 C.F.R. §51.319(a), is a mobile switching center or cell site an "end users customer's premises"?

JOINT CLECS:

The parties have agreed that this issue is no longer in dispute and may be removed from the proceeding.

ISSUE 25: **TRO – ROUTINE NETWORK MODIFICATION**: What is the appropriate ICA language to implement BellSouth's obligation to provide routine network modifications?

JOINT CLECS:

The FCC defines routine network modifications as follows: "A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers." 47 C.F.R. § 51.319(a)(8)(ii)(local loops); § 51.319(E)(5)(ii)(dedicated transport). Under FCC rules, BellSouth is obligated to make routine network modifications ("RNMs") for CLECs where the UNE loop or transport routes have already been constructed. BellSouth acknowledges its obligation to provide RNMs, but opposes language offered by CompSouth that would ensure the new ICA is completely consistent with the FCC's Orders and Rules on RNMs. For example, in BellSouth's "mark-up" of CompSouth's contract language proposal (filed as Exhibit PAT-5 to Ms. Tipton's rebuttal

testimony), BellSouth objects to language ensuring RNMs are conducted in a "non-discriminatory" fashion. CompSouth's contract language more faithfully tracks the FCC's RNM rulings, and provides the better alternative on this issue.

In addition, there is an issue regarding whether "line conditioning" – which is subject to a separate set of FCC rules – should nevertheless be treated as an RNM. CompSouth's contract language recognizes that line conditioning requirements subject BellSouth to different obligations than RNM requirements. Line conditioning rules were in effect before RNM rules and were specifically re-adopted by the FCC in the TRO. BellSouth attempts to stretch two sentences in the TRO well beyond their context in order to limit line conditioning in ways not contemplated by the FCC. CompSouth's proposed contract language properly treats RNMs as RNMs, but does not attempt to inappropriately subject line conditioning to RNM rules.

ISSUE 26: **TRO – ROUTINE NETWORK MODIFICATION:** What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already covered in Commission-approved recurring or non-recurring rates? What is the appropriate language, if any, to incorporate into the ICA?

JOINT CLECS:

The FCC's TRO requires BellSouth perform routine network modifications ("RNMs") as part of the provisioning of unbundled high capacity loops and dedicated transport. BellSouth does not get to add a charge for a modification that is, by definition, "routine" and accounted for in the rates BellSouth charges for unbundled loops and transport. If BellSouth can show that the RNM is not one for which BellSouth is compensated through its UNE rates, BellSouth may assess a Commission-approved charge for such RNM. CompSouth's proposed contract language provides that RNMs will be performed as contemplated by the FCC (*i.e.,* for no charge above the UNE rates), but if BellSouth can demonstrate that its costs are not being recovered, it may ask the Commission to institute a rate for such activity. BellSouth's proposal goes the opposite direction: it gives BellSouth the discretion to assert that it did not "anticipate" the requested RNM, and allows BellSouth to slow the process for completing RNMs while pricing controversies are addressed. Moreover, BellSouth's proposal deletes provisions proposed by CompSouth that would prohibit double-recovery of RNM costs by BellSouth. The CompSouth language is more faithful to the letter and intent of the FCC's RNM rulings, and should be adopted.

ISSUE 27: **TRO – FIBER TO THE HOME**: What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?

JOINT CLECS

The disputes over "fiber to the home" and "fiber to the curb" unbundling issues are addressed above regarding Issue 22. As discussed above, the central point of contention between BellSouth and CompSouth on this issue involves BellSouth's attempt to extend the application of these reduced "greenfield" unbundling obligations beyond what the FCC intended. The predicate to BellSouth's reduced unbundling obligations for these network architectures is that the loops are used to serve *mass market customers.* BellSouth was not granted a total exception to its loop unbundling obligations for all fiber and hybrid loops; rather, the FCC's broadband exclusions were specifically limited to circumstances where these loops are used to serve mass market customers. BellSouth remains obligated to provide access to carriers serving enterprise customers, even where the CLEC could not gain access to the loop facility to serve a mass market customer. BellSouth's position is that it can deny unbundling much more extensively that the FCC authorized in the TRO and subsequent Orders. For all reasons stated in CompSouth's statement on Issue 22, CompSouth's contract language should be adopted.

ISSUE 28: **TRO – EEL AUDITS**: What is the appropriate ICA language to implement BellSouth's EEL audit rights, if any, under the TRO?

JOINT CLECS:

The FCC granted BellSouth a "limited right to audit" CLEC compliance with EELs eligibility criteria. This "limited right" is not an open invitation; in addition, the FCC's intention was to grant CLECs "... unimpeded UNE access based upon self-certification, subject to later verification *based upon cause*." (TRO para. 622, emphasis supplied) Before it can initiate any audit under the FCC's guidelines, BellSouth must have some basis that an audit is appropriate. CompSouth's proposed contract language reflects this "for-cause" standard, as well as the FCC's other rulings on how EELs audits are to be conducted.

Under the CompSouth proposal, BellSouth would provide the CLECs with proper notification and the basis to BellSouth's assertion that it has good cause to conduct an audit. This would assist CLECs in responding to audit requests, and permit CLECs to review the documentation that forms the basis for the cause alleged. This approach is necessary to implement the FCC's for-cause audit standard, given that undocumented "cause" is no cause at all. Moreover, because it makes relevant documentation available early in the process, the approach proposed by CompSouth would identify potential issues quickly, thus avoiding unnecessary disputes over whether BellSouth may or may not proceed with an audit. By requiring BellSouth to establish the scope and the basis for its claimed right to audit up front, it is more likely that BellSouth and the target CLEC will be able to narrow and/or more quickly resolve disputes over whether or not BellSouth has the right to proceed with an EEL audit. Although the *TRO* did not include a specific notice requirement, this Commission may order such a requirement.

ISSUE 29: **252(i):** What is the appropriate language to implement the FCC's "entire agreement" rule under Section 252(i)?

JOINT CLECS:

The parties have agreed that this issue is no longer in dispute and may be removed from the proceeding.

ISSUE 30: **ISP Remand Core Forbearance Order**: What language should be used to incorporate the FCC's *ISP Remand Core Forbearance Order* into interconnection agreements?

JOINT CLECS:

In its 2004 *ISP Remand Core Forbearance Order*, the FCC removed certain restrictions on CLECs' right to receive reciprocal compensation. The FCC granted forbearance regarding the "new markets" and "growth cap" restrictions imposed by the 2001 *ISP Remand Order*. The contractual changes to implement this forbearance order may differ slightly among various CLECs' ICAs, but the guiding principle is a simple one: all references to the "new markets" and "growth cap" restrictions should be deleted. Those restrictions may no longer be used to limit CLECs' reciprocal compensation rights, as those rights are provided for under the Act and the portions of the *ISP Remand Order* that remain in effect.

ISSUE 31: **General Issue**: How should the determinations made in this proceeding be incorporated into existing Section 252 interconnection agreements?

JOINT CLECS:

Unless parties have specifically agreed otherwise, determinations made in this proceeding should be incorporated into amendments to BellSouth-CLEC ICAs. Such amendments should be completed and approved by the Commission on a timely basis, subject to any specific agreements or pending proceedings between BellSouth and a particular CLEC.

F. STIPULATED ISSUES:

CompSouth and BellSouth have stipulated that the following issues identified on the Issues List no longer require a decision from the Commission: Issue Nos. 6, 11, 19(a), 20, 24, 29.

The parties have stipulated a portion of Issue Nos. 2 and 10 related to caps on the number of DS1 transport circuits CLECs may obtain in certain circumstances. The stipulated contract language is as follows:

CLEC shall be entitled to obtain up to (10) DS1 UNE Dedicated Transport circuits on each Route where there is no unbundling obligation for DS3 UNE Dedicated Transport. Where DS3 Dedicated Transport is available as UNE under Section 251(c)(3), no cap applies to the number of DS1 UNE Dedicated Transport circuits CLEC can obtain on each Route.

Regarding Issue No. 4, BellSouth and CompSouth have agreed to a post-hearing process to address the identification of "fiber-based collocators" (to the extent any disputes remain after verification by an also agreed-upon process). See attached stipulation regarding the process for identifying "fiber-based collocators."

BellSouth has agreed to stipulate into the record the prefiled direct and rebuttal testimony of Wanda G. Montano and the prefiled rebuttal testimony of Kristin Shulman. It is requested that those witnesses and counsel for XO (Ms. Shaffer) be excused from attendance at the hearing.

G. PENDING MOTIONS:

CompSouth's Cross motion for final summary order. The Commission is scheduled to consider this motion at the October 4, 2005 Agenda Conference.

CompSouth's Request for official recognition of order on motions for summary judgment or declaratory ruling, issued by Georgia PSC in No. 19341-U on 8/23/05.

CompSouth's Request for official recognition of order denying summary judgment motions, issued by North Carolina Utilities Commission in No. P-55, SUB 1549, in matter of: proceeding to consider amendment to interconnection agreements between BellSouth Telecommunications, Inc. and competing local providers due to change of law, on 8/15/05

Covad's Request for official recognition of attached excerpt from order of Maine PSC in Verizon-Maine; and attached FCC order in matter of SBC Communications Inc.'s petition for forbearance to which Maine order refers.

H. PENDING CONFIDENTIALITY REQUESTS:

CompSouth's Notice of Intent, filed September 27, 2006, regarding documents provided to it from BellSouth.

I. REQUIREMENTS THAT CANNOT BE COMPLIED WITH:

CompSouth is unaware of any requirements with which it cannot comply at this time.

J. DECISIONS WHICH MAY IMPACT THIS CASE:

CompSouth is not aware of pending decisions which may impact this case.

K. OBJECTIONS TO WITNESS QUALIFICATIONS:

BellSouth has not designated any of its witnesses as experts.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing CompSouth's Prehearing Statement was served on the following by electronic mail and U.S. Mail this 29th day of September 2005:

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PROCESS FOR FINALIZING FIBER-BASED COLLOCATOR DESIGNATIONS IN CHANGE OF LAW PROCEEDINGS

Problem: There are a substantial number of wire center classifications "on the bubble" based on BellSouth's claims regarding Fiber-Based Collocators (FBC). BellSouth's "Request for Admissions" are resulting in some denials, and it is our understanding that BellSouth is still following up with identified CLECs to assess the accuracy of BellSouth's FBC designations. The current wire center list is therefore uncertain, and will continue to change as the state commission hearings progress. Currently, the CLEC parties have no process to incorporate late-filed information into the record. (The number of "business lines" is being fully litigated under the standard hearing schedule, and does not need to be addressed through this additional process).

The CLEC parties propose a process to address the FBC identification situation, as outlined below.

Process:

1. BellSouth will provide CLEC counsel the complete set of responses to BellSouth's various FBC discovery requests. A full set of all responses received by September 30, 2005 will be provided to CLEC counsel no later than 10:00 am (EST) on October 3, 2005.

2. CLECs and BellSouth will exchange wire center classification lists (Exhibit PAT-4 and JPG-5) by noon, October 6, 2005.

3. CLECs and BellSouth will meet by telephone on Friday, October 7, 2005 to identify a list of disputed wire centers by state based on differences in the number of fiber-based collocators.

4. CLECs and BellSouth will file jointly with each state commission the list of disputed wire centers on Monday, October 17, 2005 with a statement explaining each dispute.

5. State Commissions will decide whether to hold a mini-hearing and/or delegate to staff mediation the resolution of each wire center dispute. Where necessary, BellSouth will permit visual inspection by one CLEC representative and one staff member.

6. For purposes of resolving FBC-related issues in the pending generic Change of Law dockets, CLECs will, upon request from BellSouth, provide accurate information to BellSouth to verify the accuracy of BellSouth's listed wire centers, including identifying those wire centers in which the CLEC qualifies as a FBC that BellSouth has not identified.