

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041269-TP

In the Matter of:

PETITION TO ESTABLISH GENERIC  
DOCKET TO CONSIDER AMENDMENTS TO  
INTERCONNECTION AGREEMENTS RESULTING  
FROM CHANGES IN LAW, BY BELLSOUTH  
TELECOMMUNICATIONS, INC.



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VOLUME 2

Pages 188 through 287

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER ISILIO ARRIAGA

DATE: Wednesday, November 2, 2005

TIME: Commenced at 9:40 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR  
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APPEARANCES: (As heretofore noted.)

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COMMISSIONER DEASON: Okay. I believe that -- staff, direct me to the prehearing order. There is, there is going to be opening statements; is that correct?

MR. TEITZMAN: Yes, Commissioner. BellSouth and CompSouth each requested 15 minutes.

COMMISSIONER DEASON: Okay. Are any of the other parties planning to present opening statements?

MR. McDONNELL: The SECCA is not intending to give an opening, nor cross-examine witnesses, Your Honor.

COMMISSIONER DEASON: Okay. Mr. Feil?

MR. FEIL: FDN does not plan on opening.

COMMISSIONER DEASON: Ms. Kaufman?

MS. KAUFMAN: Mr. Magness will be presenting CompSouth's opening statement.

COMMISSIONER DEASON: Okay. Mr. Guyton.

MR. GUYTON: GRUCom has about three minutes.

COMMISSIONER DEASON: Okay. All right. Just so that we can plan ahead, we're going to be breaking at some time before noon. Commissioners, do you wish to take a break at this point before we get in -- Commissioner, you're fine to go forward? Okay. We're going to be breaking at some time before noon and we'll be taking a full lunch hour, maybe a little longer than an hour. We probably will be breaking at a

1 convenient point before noon and we will probably be  
2 reconvening at 1:00, so you can plan accordingly.

3 Okay. Is there any desired order in the opening  
4 statements? Who should --

5 MS. MAYS: Commissioner Deason, we have been  
6 proceeding first, and we're happy to do so.

7 COMMISSIONER DEASON: Okay. All right. Staff, we  
8 are at the point of opening statements, are we not?

9 MR. TEITZMAN: Yes, Commissioner.

10 COMMISSIONER DEASON: Okay. Very well. Ms. Mays,  
11 the floor is yours.

12 MS. MAYS: Thank you, Commissioners. Let me start by  
13 trying to follow up on a couple of the statements that were  
14 debated on the summary final order, and in doing this I'm going  
15 to try to skip the issues we've already raised that you'll hear  
16 from the witnesses on. But let me address specifically the  
17 question of authority, why we're here and what we are asking  
18 you to do.

19 The reason, again, as to why we are here, the FCC  
20 issued two orders. It issued its Triennial Review Order. That  
21 order was appealed; some of it survived, some didn't. After  
22 that order came out, it issued its Triennial Review Remand  
23 Order, and that order has some very specific time frames. Most  
24 importantly, it says that that order says that certainly  
25 unbundling obligations went away, and that at the end of a

1 specified transition period, the contracts, the rights that  
2 CLECs have for those unbundled elements goes away. And that  
3 date is coming up; that date is March 10th, 2006. And in order  
4 to do what we need to do, we need to get our contracts amended  
5 with our CLEC customers. The disputes we have before you are  
6 what the amendments are, what should the contract language say,  
7 whose contract language should you adopt and, most importantly,  
8 there's a timing issue because we need to get a decision made  
9 so that we can move on. That's the, that's the basic dispute  
10 and that's why we're here. And no party is disputing that we  
11 need to have this global issue resolved; the global issue of  
12 what are the changes necessary in our contracts, what is the  
13 contract language going to be? That's the basic dispute.

14           Included within the subissues before the Commission,  
15 of which there are several, there is one overriding issue, the  
16 271 issue that we talked about, where we disagree with the  
17 changes that the CLECs propose to the contract language. Our  
18 view is essentially this: When an unbundling obligation is  
19 removed, the FCC's transition period needs to be put in the  
20 contract. And when the transition period is over, there is  
21 nothing else in the Section 252 contract that needs to be  
22 there. So that the contracts, our Section 252 contracts would  
23 not have Section 271 obligations, would not have Section  
24 271 rates. The contracts need to be changed. That is where we  
25 have this fundamental dispute with the CLECs because their

1 proposed contract language has Section 271 stuff in it. And so  
2 the debate we have over the authority pertains to particular  
3 subissues, and as to those particular subissues we do have a  
4 fundamental disagreement.

5 Now I'm not going to go over again those issues. Let  
6 me turn to some of the other issues you will hear from and some  
7 of the other issues that we have disputes on.

8 There are transition issues, and with transition  
9 issues the basic issue is where do we have to transition from?  
10 Switching is gone, so we know we have to transition away from  
11 switching, but we have a dispute as to where we have to  
12 transition away from unbundled loops and unbundled transport.  
13 And I will pass out for you our sort of view of the world on  
14 unbundled loops and transport.

15 What this has to do with is that the FCC has laid out  
16 tests, and they have said if you have a certain number of  
17 business lines, if you have a certain number of fiber-based  
18 collocators, you don't have to provide unbundled loops or  
19 unbundled transport out of certain offices. And some of those  
20 offices we agree with CompSouth about, that they meet the test,  
21 and some of them we don't.

22 The disputes that we have there are two. One has to  
23 do with what do you do with AT&T and SBC? We have counted, for  
24 the purposes of fiber-based collocation, we've counted AT&T and  
25 SBC separately because when the Triennial Review Remand Order

1 came out, they were not, they had not merged and to this day  
2 they have not merged, although, of course, we know the FCC has  
3 approved that the merger can happen. And we have a debate  
4 about how you count them. We think you count them separately.  
5 The CLECs disagree. If you follow our logic, then certain  
6 offices will fall in certain categories. If you follow the  
7 CLECs' logic, they will not. So that is one of the debates  
8 with respect to the high capacity loops and transport.

9           The second big debate we have on high capacity loops  
10 and transport is business lines. How many business lines are  
11 in these offices? We believe that the evidence and testimony  
12 before you will show you that we have properly effectuated the  
13 FCC's business line rule, and our witnesses will speak to that.  
14 You have before you in discovery the series of correspondence  
15 we went through with the FCC where it issued the Triennial  
16 Review Remand Order, and they said give us the data and we gave  
17 it to them. And so we believe when you look at all of that,  
18 that evidence will show that we have given you the amount of  
19 business lines.

20           There's another piece of evidence that you have  
21 uniquely to Florida that we will ask you to take administrative  
22 notice of, and that is your draft competition report. You have  
23 a draft competition report where you asked that the CLECs in  
24 Florida tell you how many lines they have. You asked that  
25 BellSouth give you data about its lines. And if you look at



1 that data and you compare it to the business lines that we have  
2 put forth in evidence here, we think that while it's not an  
3 apples-to-apples comparison, it shows you very clearly that the  
4 business lines before you are appropriate. And once you  
5 resolve these questions, we will end up with these are the  
6 offices that the CLECs need to transition away from and we will  
7 ask that you resolve those questions here. Those are the  
8 biggest issues with transition that we have with the CLECs in  
9 light of your other rulings, which we will brief for you.

10           There are some issues that have to do with service.  
11 And, again, one of the issues has to do with EELs or enhanced  
12 extended links, which is a loop and transport element together.  
13 And in the FCC's orders they said we have certain audit rights,  
14 and we have some disputes about what the contract needs to say  
15 about that. You've addressed this. You addressed it yesterday  
16 in Verizon. And we will ask that you hold that decision and  
17 apply it at the end of this case.

18           We will ask that when a Section 250 element is gone,  
19 that it takes, it is removed from our performance plan and that  
20 we don't have to pay penalties on it, because without  
21 impairment the marketplace and a commercial environment needs  
22 to govern and not a penalty plan that was put forth for Section  
23 251 obligations.

24           We have network issues, and the biggest issue of  
25 contention has to do with fiber relief. When the FCC said we

1 don't have to unbundle in certain cases where we lay fiber,  
2 what should the contract say? You also addressed this  
3 yesterday in Verizon, and we will ask you again to apply that  
4 ruling here. Those are the big categories of issues.

5 The witnesses you will hear from are Kathy Blake,  
6 Eric Fogle and Pamela Tipton. Ms. Blake will talk to you about  
7 some of the policy issues. She will also talk to you about the  
8 performance plan. Eric Fogle will talk to you about the  
9 network issues, some of the fiber orders, what the issues are  
10 there. He's a network technical witness. And then we will  
11 conclude with Witness Pamela Tipton, who has the bulk of our  
12 issues and has the contract language, and she will talk to you  
13 about the transition issues and why we are asking you to  
14 approve contract language here.

15 There's a debate that we have had over and over again  
16 in these cases, and that is we have provided you in these  
17 exhibits with an entire Attachment 2, and Attachment 2 is that  
18 piece of our contract that deals with unbundled network  
19 elements. Now when we did that, we thought it was really an  
20 efficient thing and it made a lot of sense. And, quite  
21 frankly, some of the debates we've had have been a little bit  
22 surprising to us because the CLEC community has expressed a  
23 concern that by presenting you with an entire attachment, some  
24 of which doesn't deal with all of these issues, that we may try  
25 to, if you approve it, try to change in our contracts issues

1 that weren't before you. And that is not what we are trying to  
2 do at all, and we have tried to make that very clear, but their  
3 concern has remained. What we are trying to do is that at the  
4 end of this, we're asking you to approve language, and we're  
5 asking you to approve language because the March 2006 date  
6 needs to, we need to have things implemented by then. And if  
7 at the end of the day you issue an order and we have CLEC  
8 customers who are unwilling or unable to come to the table and  
9 implement that order, that we need a default. We need  
10 something we can go to for somebody who for whatever reason  
11 won't show up at the negotiating table. The vast majority of  
12 the CompSouth members have negotiated with us, but there are  
13 some CLECs who have not. And we asked and we presented you  
14 with an entire attachment sort of as a last-ditch effort to get  
15 to the end of the day to get the transition done. But I repeat  
16 and stress to you that in doing that we know that there are  
17 only certain issues and not all of the issues that are before  
18 you in that Attachment 2, and we are only trying to implement  
19 and intend to implement the results of the Commission order as  
20 to the disputed issues.

21           That is my broad overview. I've tried to keep it  
22 short for you. Our witnesses will be happy to answer your  
23 questions. And if you have any questions at this time, I will  
24 take them as well. Thank you.

25           COMMISSIONER DEASON: Any questions for Ms. Mays?

1           Okay. Mr., Mr. Guyton, you're going to go next?

2           MR. GUYTON: Yes. Commissioner, my name is Charles  
3 Guyton. I'm with the law firm of Squires, Sanders & Dempsey.  
4 We represent GRUCom in this proceeding. GRUCom is the City of  
5 Gainesville's telecommunications provider, and it primarily  
6 uses its own facilities and unbundled DS1 loops to serve  
7 customers in Gainesville, Florida. GRUCom is here today  
8 because it's concerned about the future of telecommunications  
9 competition in Gainesville.

10           BellSouth initially informed GRUCom that in light of  
11 the FCC's Triennial Review Remand Order that GRUCom would have  
12 to transition most of its unbundled DS1 loops to higher cost  
13 DS1 services or terminate those services because the primary  
14 wire center serving Gainesville was not impaired under the  
15 FCC's criteria. Then BellSouth discovered a 27 percent  
16 overstatement in its business line count, and that changed the  
17 impairment criteria. That left the wire center impaired but  
18 near the threshold for being unimpaired at some point in the  
19 future.

20           Even though GRUCom doesn't find itself in a position  
21 where it has to transition unbundled DS1 loops at present, it's  
22 been presented with an interconnection agreement contract that  
23 essentially is a rerouted (phonetic) existing interconnection  
24 agreement. And the changes there seem to transcend those that  
25 are necessary to implement the change of law provisions

1 associated with the recent FCC decisions.

2           Quite frankly, my modest client finds itself somewhat  
3 overwhelmed by contradictory business line counts, extensive  
4 contract revision language and, in particular, one-sided  
5 provisions in the interconnection agreement that has terms  
6 addressing what happens in the future when the primary wire  
7 center in Gainesville becomes unimpaired.

8           My client's interests in this proceeding are simple.  
9 It needs interconnection agreement language that sets forth two  
10 procedures. The first procedure would be for an annual review  
11 and determination of whether wire centers have become  
12 unimpaired, and that needs to be a procedure in which GRUCom  
13 can review the data and, if necessary, contest the  
14 determination made by BellSouth.

15           The second process would be a process that provides  
16 for adequate actual notice, not website notice, and reasonable  
17 time frames to develop conversion orders or termination of  
18 service by BellSouth when the primary wire center in  
19 Gainesville actually does become unimpaired. The CLEC  
20 testimony before you in this proceeding addresses just such  
21 procedures. BellSouth's testimony does not.

22           Commissioners, it may sound trite, but we would  
23 suggest to you that you resolve the questions before you in a  
24 manner that fosters competition. Fostering competition is the  
25 mandate of Congress, the FCC and, indeed, the Legislature of

1 Florida. If you follow that mandate and the evidence before  
2 you, you will adequately, adequately protect the interest of  
3 GRU's customers. Thank you.

4 MR. MAGNESS: Good morning, Commissioner. As I noted  
5 earlier, I'm representing CompSouth in this proceeding.  
6 CompSouth is an association of a number of companies in the  
7 competitive industry that have attempted and are still working  
8 on providing competitive alternatives using just about every  
9 means they can figure out: Every entry strategy, including the  
10 use of unbundled network elements, use of their own facilities  
11 or combinations of all those things.

12 For the CompSouth members, what this case boils down  
13 to is about serving the small business and residential markets  
14 and what the future of that looks like. CompSouth companies  
15 have been serving those markets, and it is a very important  
16 target market for CLECs. Often it's the small business that  
17 may not be deserving of a national account rep with a big  
18 company, but the smaller competitive carrier can provide them  
19 something you really need, something useful, something unique.  
20 And also on the residential side, unbundled network element  
21 platform companies have been providing residential services for  
22 quite some time successfully in Florida, and as that platform  
23 phases out we have to look at what comes next and how it is  
24 that residential competition is going to be sustained.

25 We've discussed at some length already the issues

1 around Section 271 that have to do with what is it that we  
2 transition away from or what is it we transition to rather when  
3 we transition away from elements under Section 271 or rather  
4 under 251, and I won't repeat all that here. There is one  
5 thing I do want to emphasize here though that when we talk  
6 about these issues concerning Section 271, and this includes  
7 the commingling issue, I know it was addressed in a previous  
8 arbitration, we're talking about issues that affect  
9 facilities-based carriers as well as issues that affect UNE-P  
10 carriers.

11           For example, what facilities-based carriers primarily  
12 do and have done since the beginning of the Act is take an  
13 unbundled loop, that's the line from the customer to the  
14 central office that's available as an unbundled network element  
15 from BellSouth, they often combine that with transport, the  
16 lines that go between the BellSouth central offices that hook  
17 you into the network. That's called an enhanced extended link.  
18 That enhanced extended link is connected to CLEC switches that  
19 are owned by the CLEC that they provide service with.

20           The ability -- if a transport route, for example, is  
21 delisted under Section 251 but the loop is still available  
22 under Section 251, the issue of commingling is critical. And  
23 how it is that the CLEC can continue to provide that end-to-end  
24 circuit using those elements on a leased basis is very  
25 important. And whatever the Commission does on Section 271, we

1 think it's important that it understand that as though Section  
2 271 issues are considered, they have a big impact on the  
3 continuation of facilities-based competition in this state.

4           The other issue of primary importance, aside from the  
5 Section 271 issues in the broad scope, is these broadband  
6 orders. And Ms. Mays touched on them and I'd like to reference  
7 them here. And they were dealt with in certain respects in the  
8 recent Verizon decision that the Commission approved the staff  
9 recommendation on just yesterday.

10           In the Triennial Review Order in 2003, the FCC  
11 determined that it wanted to encourage incumbent LECs to build  
12 fiber networks to serve primarily, well, to serve mass market  
13 triple play kind of opportunities. What I mean by that is, and  
14 these terms were used in the FCC's orders, to get in and serve  
15 video, voice and data over fiber to primarily residential  
16 customers. What they did in their order was say, even though  
17 there is impairment -- well, they didn't say even though  
18 there's impairment. They said, in the impairment analysis we  
19 are going to say that loops do not have to be provided in  
20 certain circumstances. And their idea was, the FCC's idea was  
21 if we say to the incumbents you don't have to unbundle that  
22 anymore, we hope that's going to encourage them to build out  
23 more fiber in the network.

24           What the FCC did explicitly in paragraph after  
25 paragraph, and this is all described in great detail in



1 Mr. Gillan's testimony, is say that that release from  
2 unbundling obligations was for mass market loops. It did not  
3 affect a company's, an incumbent's obligation to provide DS1 or  
4 DS3 loops. And these DS1 loops in particular are the bread and  
5 butter of CLECs providing service to small business. A DS1  
6 loop, simply stated, is a line that goes to a customer's  
7 premise from the central office of BellSouth that has enough  
8 capacity to support the equivalent of 24 phone lines. So if  
9 you've got a small business, I'm in a small law firm, dry  
10 cleaners, travel agents, other types of business that need more  
11 than just two or three phone lines, that DS1 allows them to mix  
12 voice and data and get the high-speed Internet they need plus a  
13 number of voice lines that can grow as their business grows.  
14 So getting that DS1 loop is critical to being able to serve  
15 those small businesses.

16           And in the FCC's orders and in pleadings they filed  
17 with the DC Circuit defending those orders, they made clear  
18 that their mass market broadband orders didn't affect the  
19 CLEC's ability to get a DS1 loop to those locations. The  
20 dispute we have is the way BellSouth is reading those orders,  
21 it reads that mass market limitation out. And the issue as  
22 addressed in the Verizon case, there were CLECs that raised  
23 issues about narrowband pipe to certain locations, and I think,  
24 I don't know that we would -- those are certainly not issues we  
25 would raise. I'd put it that way. And the staff

1 recommendation included language that said, no, that kind of  
2 unbundling is, is not allowed in these greenfield areas.

3           What was not addressed in the Verizon case is a  
4 specific issue that we've raised here concerning the continued  
5 availability of DS1 and DS3 loops. So we think the issue is  
6 fresh in front of the Commission for the first time. The  
7 reason we believe that issue is fresh is that BellSouth is just  
8 going a little bit far with what it's trying to do with the  
9 broadband orders. And what the FCC did in those orders was  
10 say, we're not saying -- I mean, they, they first took a cut at  
11 defining, you know, whether you get this by whether you're  
12 residential or business. They got away from that and they  
13 said, here's the thing: A mass market customer typically uses  
14 a DS0 loop. A mass market loop is a DS0 loop. A DS1 loop is  
15 typically used by an enterprise customer. Now it could be that  
16 you have a residential customer who wants a DS1. It's not very  
17 typical, it doesn't happen very often.

18           And the FCC understood that could create some  
19 confusion, so the lines they drew were in the enterprise  
20 market, the DS1, that's still available even under the  
21 broadband orders. If it's a mass market loop, the DS0 type  
22 loops, whether it's serving residential or business or  
23 whomever, that's not available, but they clearly preserved  
24 access to those DS1 loops. It's a critical issue for CLECs  
25 because if in areas of new construction, the areas of the state

1 where there's growth, where there's new business, where new  
2 networks are being put in, CLECs are not able to get those DS1  
3 loops, they're going to be shut out in large respect of serving  
4 those new areas using unbundled network elements. And those  
5 are areas where the FCC has found there is impairment for DS1  
6 loops. So it is rather an end-run around the FCC's finding  
7 that there still is impairment for DS1 loops by trying to apply  
8 these mass market greenfield rules to those areas.

9           So I emphasize this so much because it is an issue  
10 with unfortunate subtleties in all these FCC rules, but I think  
11 the clear point is made over and over and over again in the  
12 FCC's order that they are talking about mass market loops and  
13 not affecting availability of DS1 loops to CLECs.

14           On the business line question Ms. Mays referenced,  
15 it's a very important issue because it determines where and  
16 when BellSouth can take these unbundled network elements away  
17 for high capacity loops and transport. And, again, these are  
18 the bread and butter services used by companies who have gone  
19 out and bought switches and built some network but need those  
20 loops and need that transport to compete.

21           On the AT&T and SBC issue, there is nothing in the  
22 Triennial Review Remand Order that says the business line  
23 analysis to be done by a state commission or the fiber-based  
24 collocator analysis is frozen in time as of March 11th, 2005.  
25 There are provisions in that order that talk about certain

1 parts of it being self-effectuating. I think you've had to  
2 face those issues before; not one of these. And so we're left  
3 with a situation of when this Commission decides this issue  
4 today, in the future, do you reflect reality or not? Do you  
5 reflect the reality that the FCC and the Department of Justice  
6 have approved the SBC and AT&T merger and that those companies  
7 are for all intents and purposes one, and certainly going  
8 forward into the competitive future they reflect one company,  
9 or do you count them as two? Why does it matter? Because in  
10 some of these offices counting to three, counting to four  
11 matters a great deal as to whether UNEs are available. In some  
12 offices AT&T may be number four that causes that office to be  
13 delisted forever. The Commission can't come back and put it  
14 back on the list of available UNEs under the FCC's order. Once  
15 it's off, it's off.

16           And so we contend that you need to reflect the  
17 reality of the competitive situation in front of you, and that  
18 includes the, the fact that AT&T and SBC are merging into one  
19 company. And, moreover, that test was supposed to measure  
20 where it is that competitors are really thriving and going in  
21 and collocating and, you know, making a difference in the  
22 competitive market. Those kind of mergers shows that -- those  
23 don't show more competition, those show less. AT&T merging  
24 into a company that's already there doesn't show there's more  
25 competitive opportunities at all. So there's no reason to not

1 reflect reality in what the Commission decides.

2           Finally, on these transition and, and issues about  
3 how the agreement should be structured, we agree with what we  
4 understood the Commission's holding to be in the Verizon case,  
5 that the transition pricing available to CLECs under the  
6 Triennial Review Remand Order should extend to March 10th of  
7 2006; that whatever arrangements are made to facilitate the  
8 change from one service platform or one service or one UNE to  
9 another does not impact the fact that CLECs are entitled under  
10 that order to that pricing until March 10th. We think  
11 BellSouth's proposals do not provide for that and they should  
12 be rejected for that reason.

13           And finally, Ms. Mays mentioned BellSouth filing the  
14 entire Attachment 2. The concern that CLECs have about this,  
15 and we'll explore this with Ms. Blake, is that there are a  
16 number of issues, things like white pages directory listings,  
17 network interface devices, 911 service, that are in that  
18 contract that have nothing whatsoever to do with the issues  
19 before us.

20           CompSouth submitted contract language in this case as  
21 well. It's revised Exhibit JPG-1. It was attached to  
22 Mr. Gillan's testimony. It is organized by issue. We have  
23 disputed issues that have not been resolved and the language  
24 we're suggesting is organized by those issues.

25           What we see in BellSouth's proposed attachment is

1 language that we're not disputing anymore, but we don't know if  
2 the version they've included is the version everyone has agreed  
3 to, language that certainly is in dispute and then language  
4 that's not even on the table as a change of law. It has  
5 nothing to do with the issue here. The reason we're concerned  
6 is that in their testimony that's on the record they have  
7 suggested that the Commission adopt Attachment 2, and we just  
8 have to be sure on this record that the Commission understands  
9 and it is BellSouth's true commitment that this Commission not  
10 just take their Attachment 2, even if you agreed with all their  
11 positions in this case, you shouldn't take that Attachment  
12 2 and adopt it and give it the Commission's blessing. Because  
13 there may be language in there on issues that have nothing to  
14 do with this case that could conflict with what's in existing  
15 interconnection agreements that have either been negotiated or  
16 approved by the Commission.

17           Again, the issues that we have not been able to  
18 resolve have been ones where, frankly, we think -- we know  
19 BellSouth was given a lot of unbundling relief in the Triennial  
20 Review Order, the Triennial Review Remand Order, the broadband  
21 orders, but we think there are areas where they simply have  
22 gone a bit far, and those are the areas where we just can't  
23 agree to the language they've been proposing and think there's  
24 a better alternative. Thank you.

25           COMMISSIONER DEASON: Okay. Staff, I take it you

1 have no opening statement.

2 MR. TEITZMAN: Staff has no opening statement.

3 COMMISSIONER DEASON: Okay. Very well. Let's -- I  
4 think we have sufficient time that we can go ahead and do, get  
5 the preliminaries done for Witness Blake and go ahead -- let's  
6 do this. All the witnesses that are in the hearing room at  
7 this time please stand and raise your right hand.

8 (Witnesses collectively sworn.)

9 COMMISSIONER DEASON: Okay. Ms. Blake, if you could  
10 take the stand, we will go ahead and do your preliminaries and  
11 then we will probably break for lunch before we proceed with  
12 cross-examination.

13 MS. MAYS: Commissioner, may I proceed?

14 COMMISSIONER DEASON: Yes. Please proceed.

15 KATHY K. BLAKE

16 was called as a witness on behalf of BellSouth  
17 Telecommunications, Inc. and, having been duly sworn, testified  
18 as follows:

19 DIRECT EXAMINATION

20 BY MS. MAYS:

21 Q Ms. Blake, could you please state your full name and  
22 address for the record.

23 A Yes. My name is Kathy Blake. My address is 675 West  
24 Peachtree Street, Atlanta, Georgia.

25 Q And who do you work for and what do you do?

1           A     I'm employed by BellSouth. I'm a Director in  
2 Regulatory and External Affairs.

3           Q     Did you cause to be prefiled direct testimony  
4 consisting of 17 pages in this docket?

5           A     Yes, I did.

6           Q     And did you have one exhibit as well?

7           A     Yes.

8           Q     Do you have any changes or corrections to your direct  
9 testimony or exhibit?

10          A     No, I do not.

11          Q     If I were to ask you the questions contained in your  
12 direct testimony today, would the answers be the same?

13          A     Yes, they would.

14          Q     Did you also cause to be prefiled rebuttal testimony  
15 consisting of 14 pages?

16          A     Yes, I did.

17          Q     Do you have any changes to that testimony?

18          A     No, I do not.

19          Q     If I were to ask you the questions in your rebuttal  
20 testimony, would your answers be the same?

21          A     Yes.

22                MS. MAYS: Commissioner Deason, I would ask that  
23 Ms. Blake's prefiled direct and rebuttal be admitted as though  
24 read and her exhibit admitted subject to cross-examination.

25                COMMISSIONER DEASON: Okay. The prefiled direct and



1 rebuttal testimony of Witness Blake will be inserted into the  
2 record. And the prefiled exhibit has been identified as  
3 Exhibit 11, and we will address that exhibit at the conclusion  
4 of cross-examination.

5 (Exhibit 11 marked for identification.)  
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BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF KATHY K. BLAKE  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 041269-TP  
AUGUST 16, 2005

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, N.W., Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1981, with a Bachelor of Science degree in Business Management. After graduation, I began employment with Southern Bell as a Supervisor in the Customer Services Organization in Miami, Florida. In 1982, I moved to Atlanta where I held various positions involving Staff Support, Product Management, Negotiations, and Market Management within the BellSouth Customer Services and Interconnection Services Organizations. In 1997, I moved into the State Regulatory Organization with

1 various responsibilities for testimony preparation, witness support and issues  
2 management. I assumed my currently responsibilities in July 2003.

3  
4 Q. CAN YOU BRIEFLY EXPLAIN THE EVENTS THAT LED UP TO THIS  
5 PROCEEDING?

6  
7 A. On August 21, 2003, the Federal Communications Commission (“FCC”) released  
8 its *Triennial Review Order* or *TRO*,<sup>1</sup> in which it modified incumbent local  
9 exchange carriers’ (“ILECs”) unbundling obligations under Section 251 of the  
10 Act.<sup>2</sup> Subsequent orders further clarified the scope of ILECs’ section 251  
11 unbundling obligations. These orders culminated in the permanent unbundling  
12 rules released with the *Triennial Review Remand Order*, or *TRRO*, on February 4,  
13 2005.<sup>3</sup> The FCC’s new rules removed, in many instances, significant unbundling  
14 obligations formerly placed on ILECs, and set forth transition periods for carriers  
15 to move the embedded base of these former unbundled network elements  
16 (“UNEs”) to alternative serving arrangements. The *TRRO* explicitly requires

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<sup>1</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978 (2003), corrected by *Errata*, 18 FCC Rcd 19020 (2003), vacated and remanded in part, aff’d in part, *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”), *cert. denied*, 125 S. Ct. 313 (2004) (referred to, interchangeably, as the “*Triennial Review Order*” or the “*TRO*”).

<sup>2</sup> The *Telecommunications Act of 1996* amended the *Communications Act of 1934*, 47 U.S.C. § 151 et seq. References to “*the Act*” refer collectively to these Acts.

<sup>3</sup> *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338, *Order on Remand*, FCC 04-290 (released February 4, 2005) (referred to, interchangeably, as the “*Triennial Review Remand Order*” or the “*TRRO*”).

1 change of law processes and certain transition periods to be completed by March  
2 10, 2006.<sup>4</sup>

3  
4 While there are some competitive local exchange carriers (“CLECs”) with whom  
5 BellSouth has successfully negotiated the changes necessitated by the *TRO* and  
6 the *TRRO*, there are other CLECs with whom discussions continue and still other  
7 CLECs that have simply ignored BellSouth’s repeated efforts to modify  
8 interconnection agreements to reflect current regulatory policy.

9  
10 The Florida Public Service Commission (“Commission”) established this docket  
11 in response to BellSouth’s *Petition to Establish Generic Docket* to address any  
12 unresolved change-of-law issues resulting from the implementation of the *TRO*  
13 and *TRRO*.

14  
15 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

16  
17 A. My direct testimony provides BellSouth’s position on numerous policy issues that  
18 have been raised in this proceeding and that have been identified on the Joint  
19 Issues Matrix attached to the Commission’s July 11, 2005, *Order Establishing*  
20 *Procedure* as Attachment A.<sup>5</sup> I also provide supporting evidence that the  
21 interconnection agreement language proposed by BellSouth and that is attached to  
22 BellSouth Witness Ms. Pamela Tipton’s Direct Testimony is the appropriate  
23 language that should be adopted by this Commission.

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<sup>4</sup> See *TRRO*, ¶¶ 143, 144, 196, 197, and 227.

<sup>5</sup> *Order Establishing Procedure*, Docket No. 041269-TP, Order No. PSC-05-0736-PCO-TP, issued July 11, 2005.

1

2 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

3

4 A. Yes. I am not an attorney, and I am not offering legal opinions on the issues in  
5 this docket. Because the issues in this case result from FCC orders, however, my  
6 testimony refers to various FCC orders and rules. In doing so, my testimony  
7 addresses issues from a policy perspective.

8

9 Q. PLEASE IDENTIFY BELLSOUTH'S WITNESSES AND THE ISSUES THEY  
10 ADDRESS IN THEIR DIRECT TESTIMONY.

11

12 A. The chart below identifies the BellSouth witnesses and the issues they address in  
13 whole or in part in their Direct Testimony:

14

<b>Witness</b>	<b>Issue Nos.</b>
Kathy Blake	2, 8, 11, 12, 29 and 31
Pam Tipton	1, 3, 4, 7, 9, 10, 13, 14, 15, 21, 28 and 30
David Wallis	4(b)
Eric Fogle	5, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 27

15

16 BellSouth is not sponsoring witness testimony to address Issues 6 and 20 because  
17 the CLECs have acknowledged there is no dispute concerning these issues. *See*  
18 *July 22, 2005 CompSouth's Response to BellSouth's Motion for Summary*  
19 *Judgment*. If other parties file direct testimony concerning issues that were not  
20 included on the Joint Issues Matrix attached to the Commission's *Order*



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BellSouth and a few of its CLEC customers have been able to reach agreement on the contractual language that incorporates the results of the *TRO* and the *TRRO*. In Florida, as of August 1, 2005, BellSouth has executed 75 *TRRO* amendments to Interconnection Agreements with a revised Attachment 2, which is the portion of BellSouth’s ICA that sets forth the terms and conditions relating to UNEs. These amendments are not at issue in this proceeding because the parties have mutually agreed to contract language that addresses the *TRO* and the *TRRO*. However, there are numerous CLECs with whom BellSouth has not been able to reach agreement with respect to *TRO/TRRO* amendments. BellSouth is requesting that the Commission approve the contractual language attached to Ms. Tipton’s testimony. BellSouth is also requesting that for those CLECs with whom BellSouth has not previously been able to reach agreement, the Commission require such CLECs to execute a contractual amendment with the Commission-approved language promptly following the conclusion of this proceeding.

Q. WHAT IS BELLSOUTH’S POSITION REGARDING ISSUE 2(b)?

A. For interconnection agreements that are pending in arbitration, BellSouth has requested that issues that are similar to issues identified in this proceeding be addressed here. That way the Commission will only have to address the issue once.

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versions of Attachment 2. The first version “Network Elements and Other Services – For Renegotiation” is being used for CLECs who have an existing embedded customer base and need language addressing the transition period. The second version, “Network Elements and Other Services”, is being used for new CLECs and new interconnection agreements.

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This proceeding is also intended to address interconnection agreements that are in the process of being negotiated, such as, for example, where an agreement is due to expire and the parties are negotiating the terms of a replacement agreement, but arbitration has not yet been filed. If there are *TRO/TRRO* issues that the parties cannot mutually agree upon, BellSouth proposes that it be allowed to incorporate the Commission-approved language from this proceeding in the parties' new agreement.

With respect to Issue 2(b), there appears to be a dispute between BellSouth and certain CLECs about the timing of any Commission decision in this docket. For example, with CLECs Nuvox/Xspedius, BellSouth sought to defer and/or move certain arbitration issues to this docket. In doing so, BellSouth did not intend to delay implementation of the *TRRO*. Nuvox/Xspedius essentially claim that BellSouth has agreed to negotiate and arbitrate all changes of law into new agreements instead of separately signing amendments to existing agreements. See note 128 to the July 22, 2005 CompSouth's Response to BellSouth's Motion for Summary Judgment. BellSouth disagrees with NuVox/Xspedius' characterization of the parties' agreement. It may be necessary for parties to execute an amendment to an existing agreement that sets forth certain obligations concerning the transition away from UNEs. The parties may later include the same language in new interconnection agreements. The transition periods established by the FCC resulted from the *TRRO*, not the *TRO* or *USTA II*. This scenario would only occur if this Commission enters an order in this docket before it issues an arbitration order in Docket No. 040130-TP. However, if the foregoing scenario



1 occurs, all CLECs, including NuVox/Xspedius will need to comply with such an  
2 order to ensure that a smooth transition away from de-listed UNEs occurs. No  
3 CLEC can extend the FCC's transition periods, which periods have explicit  
4 ending dates. Doing so would not only violate the FCC's rules, but also would  
5 give certain CLECs an unfair competitive advantage over others.

6  
7 ***Issue 8: What conditions, if any, should be imposed on moving, adding, or***  
8 ***changing orders to a CLEC's respective embedded bases of switching,***  
9 ***high-capacity loops and dedicated transport, and what is the appropriate***  
10 ***language to implement such conditions, if any?***

11  
12 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

13  
14 A. CLECs should not be allowed to add new UNE arrangements that have been de-  
15 listed nor should they be allowed to move an existing customer's service to  
16 another location.

17  
18 With respect to local circuit switching, this Commission concluded that "the  
19 *TRRO* is quite specific, as is the revised FCC rule attached and incorporated in  
20 that Order, that the requesting carriers may not obtain new local switching as an  
21 unbundled element. ... Any other conclusion would render the *TRRO* language  
22 regarding 'no new adds' a nullity, which would, consequently, render the  
23 prescribed 12-month transition period a confusing morass ripe for further  
24 dispute."<sup>7</sup> Such a decision precludes any other conclusion other than that a

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<sup>7</sup> See *Order Denying Emergency Petitions*, Docket No. 041269-TP, Order No. PSC-05-0492-FOF-TP, issued May 5, 2005, p. 6.

1 request from a CLEC to add a new UNE-P arrangement for an existing customer  
2 must be denied.

3

4 Likewise, when a CLEC's customer moves their service, their old service is  
5 disconnected and their new service is considered a "new" order and therefore falls  
6 under the "no-new adds" policy in the *TRRO*.

7

8 In the situation where a CLEC's customer chooses simply to modify their existing  
9 service, i.e., change features, add features or suspend and restore, BellSouth will  
10 process this type of order during the transition period.

11

12 With respect to high-capacity loops and dedicated transport, the FCC allows  
13 CLECs who disagree with an incumbent LEC's classification of Tier 1 or Tier 2  
14 qualifying wire centers (as those terms are defined in the FCC Rules) and have  
15 performed their own due diligence to submit "self-certifying" orders which the  
16 incumbent LEC must provision. *TRRO*, ¶ 234. The *TRRO* further states that once  
17 the "self-certifying" order has been provisioned, incumbent LECs are entitled to  
18 challenge the validity of such order(s) pursuant to the dispute resolution provision  
19 in the parties' interconnection agreement. BellSouth has been accepting CLEC  
20 orders for new high-capacity loops and dedicated transport in Tier 1 and Tier 2  
21 wire centers since March 11, 2005. BellSouth is in the process of reviewing these  
22 "self-certifying" orders and will use the dispute resolution process as needed. Ms.  
23 Tipton discusses the actions BellSouth is taking more fully in her testimony in  
24 Issue 4.

25

1 **Issue 11: Should identifiable orders properly placed that should have been**  
2 **provisioned before March 11, 2005, but were not provisioned due to**  
3 **BellSouth errors in order processing or provisioning, be included in the**  
4 **“embedded base”?**

5

6 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

7

8 A. BellSouth does not object to including in the embedded base identifiable orders  
9 properly placed and scheduled to be completed by March 11, 2005 if errors or  
10 actions caused by BellSouth resulted in the orders not being provisioned by  
11 March 11, 2005.

12

13 **Issue 12: Should network elements de-listed under section 251(c)(3) be removed**  
14 **from the SQM/PMAP/SEEM?**

15

16 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

17

18 A. Elements that are no longer required to be unbundled pursuant to Section  
19 251(c)(3) (“de-listed elements”) should not be subject to the measurements of a  
20 SQM/PMAP/SEEM plan. The purpose of establishing and maintaining a  
21 SQM/PMAP/SEEM plan is to ensure that BellSouth provides nondiscriminatory  
22 access to elements required to be unbundled under section 251(c)(3), and if  
23 BellSouth fails to meet such measurements, it must pay the CLEC and/or the state  
24 a monetary penalty. Section 251(c)(3) elements are those elements which the  
25 FCC has determined are necessary for CLECs to provide service and without

1 access to the ILEC's network, the CLEC would be impaired in its ability to do so.  
2 When making the determination that an element is no longer "necessary" and that  
3 CLECs are not "impaired" without access to an ILEC's UNE, the FCC found that  
4 CLECs were able to purchase similar services from other providers. These other  
5 providers are not required to perform under a SQM/PMAP/SEEM plan. To  
6 continue to impose upon BellSouth a performance measurement, and possible  
7 penalty, on competitive, commercial offerings is discriminatory and  
8 anticompetitive. For commercial offerings, the marketplace, not a  
9 SQM/PMAP/SEEM plan, becomes BellSouth's penalty plan. If BellSouth fails to  
10 meet a CLEC's provisioning needs, such CLEC can avail itself of other providers  
11 of the service and BellSouth is penalized because it loses a customer and  
12 associated revenues.

13  
14 When a Section 251(c)(3) element is "de-listed," the incumbent LEC will most  
15 likely provide a wholesale service similar to such element pursuant to a  
16 commercially negotiated agreement or tariffed service with its own terms and  
17 conditions relating to the provision of such service. In fact, BellSouth's  
18 commercial agreements provide for consequences if BellSouth fails to perform in  
19 accordance with its contractual obligations. Such terms and conditions replace  
20 the need for SQM/PMAP/SEEM measurements and penalties. With over 150  
21 CLECs having already executed commercial agreements with such terms and  
22 conditions, it is clear that those CLECs are satisfied with the penalties in the  
23 commercial agreement and were willing to forego any SQM/PMAP/SEEM  
24 penalty payments should BellSouth not perform in accordance with the parties'

1 agreement. Again, the market, not regulation, is the appropriate dictator of the  
2 implications should BellSouth, or any provider, fail to meet its customer's needs.

3

4 In addition, in May 2005, BellSouth and several CLECs entered into a Stipulated  
5 Agreement relating to issues analogous to the issue presented here and filed such  
6 agreement with the Georgia Public Service Commission in response to a  
7 Commission proceeding relating to whether BellSouth had the right to discontinue  
8 reporting and making payments under Tier 2 for performance deficiencies relative  
9 to the industry as a whole. The Georgia Public Service Commission recently  
10 entered an *Order Adopting Hearing Officer's Recommended Order*, dated June  
11 23, 2005, in Docket No. 7892-U, which approved the Stipulation Agreement  
12 reached between BellSouth and several parties and included the following  
13 provisions:

14 1. All DS0 wholesale platform circuits provided by BellSouth  
15 to a CLEC pursuant to a commercial agreement to be removed from  
16 the SQM Reports; Tier 1 payments; and Tier 2 payments starting  
17 with May 2005 data.

18 2. The removal of DS0 wholesale platform circuits as  
19 specified above will occur region-wide.

20 3. All parties to this docket [the Performance Measurements'  
21 docket] reserve the right to make any arguments regarding the  
22 removal of any items other than the DS0 wholesale platform circuits  
23 from SQM/SEEMs in Docket No. 19341-U [the Generic Change of  
24 Law docket] to the extent specified in the approved issues list.

25

1 The parties reserved the rights to address this issue for any service other than the  
2 DS0 wholesale platform in each state generic change of law docket, and thus, the  
3 CLECs are free to do so.

4  
5 **Issue 29: What is the appropriate language to implement the FCC's "entire**  
6 **agreement" rule under Section 252(i)?**

7  
8 Q. WHAT DOES THIS ISSUE ADDRESS?

9  
10 A. On July 13, 2004, the FCC released its *Second Report and Order*<sup>8</sup> in which it  
11 adopted an "all or nothing" rule to replace the current "pick and choose" rule with  
12 respect to a CLEC's ability to adopt another CLEC's existing interconnection  
13 agreement. Under this new rule, CLECs who wish to adopt language from an  
14 effective interconnection agreement will have to adopt the entire agreement. The  
15 FCC found "the all-or-nothing approach to be a reasonable interpretation of  
16 section 252(i) that will 'restore incentives to engage in give-and-take negotiations  
17 while maintaining effective safeguards against discrimination.'" *Second Report*  
18 *and Order*, ¶ 11.

19  
20 Q. WHAT LANGUAGE DOES BELLSOUTH PROPOSE TO IMPLEMENT THE  
21 "ENTIRE AGREEMENT" RULE UNDER SECTION 252(i)?

22  
23 A. All CLEC interconnection agreements should be modified to incorporate the

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<sup>8</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Second Report and Order*, 19 FCC Rcd 13494 (FCC 04-164), released July 13, 2004 ("*Second Report and Order*").

1 FCC's "entire agreement" or "all or nothing" rule, so that all CLECs are bound by  
2 the FCC's requirement. BellSouth proposes the following language as the new  
3 Section 11 in the General Terms and Conditions section of all CLEC  
4 interconnection agreements:

5

6 **11 Adoption of Agreements**

7 Pursuant to 47 USC § 252(i) and 47 C.F.R. § 51.809, BellSouth shall  
8 make available to <<customer\_short\_name>> any entire interconnection  
9 agreement filed and approved pursuant to 47 USC § 252. The adopted  
10 agreement shall apply to the same states as the agreement that was  
11 adopted, and the term of the adopted agreement shall expire on the same  
12 date as set forth in the agreement that was adopted.

13

14 The Commission should affirm that such language is appropriate and necessary to  
15 implement the FCC's "all or nothing" requirement under Section 252(i) of the  
16 Act.

17

18 Q. IS BELLSOUTH ATTEMPTING TO "EXTEND THE 'ALL-OR-NOTHING'  
19 RULE BEYOND ITS INTENDED SCOPE" AS COMPSOUTH CLAIMS ON  
20 PAGE 48 OF ITS RESPONSE TO BELLSOUTH'S MOTION FOR SUMMARY  
21 JUDGMENT?

22

23 A. No. A CLEC has two options for entering into a new interconnection agreement  
24 with BellSouth: 1) it can adopt another CLEC's interconnection agreement in its  
25 entirety (as long as such agreement is in full compliance with the law and has at  
26 least six months remaining before expiration) or 2) it can enter into negotiations  
27 using BellSouth's Standard Interconnection Agreement. This approach is  
28 consistent with the statements made by the FCC in its Brief before the Ninth

1 Circuit hearing the appeal relating to the *Second Report and Order*. “A CLEC  
 2 always is free to negotiate with an ILEC to obtain the individual items of  
 3 interconnection it needs, without regard to their availability in another CLEC’s  
 4 existing negotiated agreements. The ILEC (as well as the CLEC) in such a case  
 5 has an obligation ‘to negotiate in good faith.’ This process is backed by the right  
 6 to arbitration. Indeed, it was in large part to ensure the usefulness and integrity of  
 7 this negotiation process – a central feature of the 1996 Act – that the FCC decided  
 8 to abandon its pick-and-choose rule, which it found to be a deterrent to effective  
 9 negotiation.” (Cites Omitted) (FCC Brief, p. 15).

10

11 ***Issue 31: How should the determinations made in this proceeding be incorporated***  
 12 ***into existing § 252 interconnection agreements?***

13

14 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

15

16 A. On June 14, 2005, the Commission issued its *Order Establishing Scope of*  
 17 *Proceeding*,<sup>9</sup> in which it stated that all certificated CLECs operating in  
 18 BellSouth’s Florida territory would be bound by the ultimate findings in this  
 19 proceeding and that each CLEC “has an equal opportunity to participate in the  
 20 litigation of this matter.” By including Issue 31 as a question for resolution,  
 21 BellSouth is seeking to ensure that one only proceeding will be conducted to  
 22 decide all outstanding questions, with that proceeding to derive language with  
 23 which to amend the interconnection agreements in lieu of expensive and time-  
 24 consuming individual negotiation and, possibly, arbitrations. Consequently, the

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<sup>9</sup> *Order Establishing Scope of Proceeding*, Docket No. 041269-TP, Order No. PSC-05-0639-TP, issued June 14, 2005, p. 1.



1 outcome of this docket should be binding upon both active parties and upon those  
2 CLECs that have elected not to actively participate. Therefore, when issuing its  
3 final decision in this proceeding, the Commission should affirm that the  
4 conclusions reached by the Commission and the language approved by the  
5 Commission in this proceeding are binding upon all certificated CLECs in  
6 Florida.

7  
8 Through this proceeding, BellSouth seeks to resolve common *TRO/TRRO* issues,  
9 thus avoiding multiple proceedings. Just as it would in any generic proceeding,  
10 the Commission should determine that its decisions are binding on all CLECs in  
11 Florida.

12  
13 It is important that, at the end of this proceeding, the Commission approves  
14 specific contractual language that can be promptly executed by the parties, unless  
15 otherwise agreed to, so that the FCC's transitional deadlines are met. For  
16 example, to ensure that a smooth transition occurs, the Commission could order  
17 that within 45 days of its written order setting forth contract language that parties  
18 must execute compliant amendments (*i.e.*, those that track the Commission  
19 language, unless otherwise mutually agreed to) to their agreements. The  
20 Commission could also clarify that if an amendment is not executed within the  
21 allotted timeframe, the Commission's approved language will go into effect for all  
22 CLECs in the state of Florida, regardless of whether an amendment is signed.

23  
24 It is important for the Commission to be clear in its order that the transition period  
25 established by the FCC in the *TRRO* for transitioning CLEC's embedded base,

1 both on UNE-P and those on high-cap loops and transport, must be completed by  
2 March 10, 2006, without exception. The CLECs will have had one year's notice  
3 of the need to move their customer base, and no legitimate argument for  
4 additional time exists. BellSouth is currently making every effort to ensure  
5 CLECs have a smooth transition for their embedded base,<sup>10</sup> and if CLECs do not  
6 avail themselves of BellSouth's notices and offers for planning such a smooth  
7 transition, they should not be permitted to seek an extension from this  
8 Commission. This is particularly important given that the CLECs apparently  
9 believe that they are only required to submit orders before March 10, 2006 (*See* p.  
10 53-54, July 22, 2005, CompSouth's Response to BellSouth's Motion for  
11 Summary Judgment), and not complete other steps necessary to effectuate a  
12 smooth transition, notwithstanding the FCC's pronouncements that the reason for  
13 a twelve month transition period was to "provide[] adequate time for both  
14 competitive LECs and incumbent LECs to perform the tasks necessary to an  
15 orderly transition, which could include deploying competitive infrastructure,  
16 negotiating alternative access arrangements, and performing loop cut overs or  
17 other conversions." *TRRO*, ¶ 227.

18

19 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

20

21 A. Yes.

22

23 596989

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<sup>10</sup> Attached as Exhibit KKB-1 is a redacted copy of a certified letter BellSouth sent to several CLECs requesting information relating to their transition plans for delisted elements.

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BELLSOUTH TELECOMMUNICATIONS, INC.  
REBUTTAL TESTIMONY OF KATHY K. BLAKE  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 041269-TP  
SEPTEMBER 22, 2005

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed Direct Testimony on August 16, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to portions of the Direct Testimony filed by Joseph Gillan, on behalf of the Competitive Carriers of the South, Inc. ("CompSouth"), the Direct Testimonies filed by Jerry Watts and Mary Conquest, on behalf of ITC^DeltaCom Communications, Inc. ("DeltaCom"), and Wanda G. Montano, on behalf of US LEC of Florida, Inc. and

1 Southeastern Competitive Carrier Association (“SECCA”) on August 16,  
2 2005.

3  
4 Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING THE  
5 TESTIMONY FILED IN THIS PROCEEDING?

6  
7 A. Yes. Portions of DeltaCom’s witnesses’ testimony relate to specific issues  
8 between BellSouth and DeltaCom that are outside the scope of the issues  
9 relevant to this proceeding. These issues, while important to both BellSouth  
10 and DeltaCom, are not appropriate to be considered by the Florida Public  
11 Service Commission (“Commission”) in a generic proceeding, such as this.

12  
13 Q. CAN YOU PROVIDE SOME EXAMPLES?

14  
15 A. Yes. Mr. Watts provides several pages of testimony relating to issues that are  
16 part of DeltaCom’s Petition for Mediation and Dispute Resolution, filed by  
17 DeltaCom before this Commission on June 30, 2005 (“DeltaCom’s Petition”),  
18 but that are not issues identified in this proceeding. The two issues that Mr.  
19 Watts specifically refers to and even admits are outside the scope of the  
20 proceeding are Issues 20 and 27 (as identified on the Issues List attached to  
21 DeltaCom’s Petition).

22  
23 Similarly, Ms. Conquest discusses in detail BellSouth’s Bulk Migration  
24 process. While she tries to address DeltaCom’s concern relating to the Bulk  
25 Migration process under Issue 1 of the Joint Issues Matrix issued by this

1 Commission in this proceeding on July 11, 2005, Issue 1 actually has to do  
2 with the appropriate language to implement the Federal Communications  
3 Commission's ("FCC's") transition plan. Issue 1 does not speak to the actual  
4 processes and procedures used to effectuate such transition. The processes and  
5 procedures related to BellSouth's Bulk Migration process are not an issue in  
6 this proceeding. As a key member of CompSouth,<sup>1</sup> DeltaCom had the  
7 opportunity during issue identification between BellSouth and CompSouth to  
8 request and include an issue relating to BellSouth's hot cut process on the Joint  
9 Issues Matrix. It did not do so. As such, Ms. Conquests' testimony is outside  
10 the scope of this proceeding and should not be considered in the Commission's  
11 determinations.

12

13 Q. ON PAGE 4 OF HIS DIRECT TESTIMONY, MR. GILLAN SUGGESTS  
14 THAT THIS PROCEEDING IS "ABOUT MAKING *DIFFERENT*  
15 OFFERINGS AVAILABLE" IN PLACE OF THOSE ELEMENTS THAT  
16 ARE NO LONGER REQUIRED TO BE OFFERED PURSUANT TO  
17 SECTION 251(C)(3) OF THE TELECOMMUNICATIONS ACT OF 1996  
18 (THE "ACT"). DOES THE COMMISSION HAVE JURISDICTION OVER  
19 SECTION 271 OFFERINGS?

20

21 A. Although I am not a lawyer, I understand the answer to that question to be  
22 "No". What Mr. Gillan advocates is for this Commission to require that  
23 BellSouth "offer through approved interconnection agreements each of the

---

<sup>1</sup> Jerry Watts, one of DeltaCom's witnesses in this proceeding, is the current President of CompSouth.

1 network elements listed in the competitive checklist of § 271, albeit at a  
 2 (potentially) different price.” As BellSouth described at length in its summary  
 3 judgment briefs, this Commission does not have jurisdiction over section 271  
 4 elements, nor are section 271 elements to be included in section 252  
 5 interconnection agreements. Thus, Mr. Gillan’s entire premise that “this  
 6 proceeding is not simply about making less available to the competitive local  
 7 exchange carriers (“CLECs”), it is also about making different offerings  
 8 available in their place” is incorrect.

9

10 Q. THAT BEING SAID, DOES BELL SOUTH CURRENTLY OFFER ANY  
 11 SERVICES THAT ARE “DIFFERENT” FROM, AND TAKE THE PLACE  
 12 OF, THOSE ELEMENTS THAT ARE NO LONGER REQUIRED TO BE  
 13 UNBUNDLED?

14

15 A. Yes. Almost a year and half ago, in response to the D.C. Circuit Court of  
 16 Appeals’ vacatur of the FCC’s rules associated with mass-market switching,  
 17 BellSouth developed and began offering CLECs a commercial wholesale  
 18 service which included stand-alone switching and DS0 loop/switching  
 19 combinations (including what was known as UNE-P) at commercially  
 20 reasonable and competitive rates. To date, over 150 CLECs have executed  
 21 commercial agreements containing negotiated terms and conditions relating to  
 22 the provision of BellSouth’s Wholesale DS0 Platform.

23

24 With respect to high capacity loops and dedicated transport, BellSouth  
 25 currently offers, pursuant to its special access and private line tariffs, services

1 that are comparable to these loop and transport elements that are no longer  
2 required to be unbundled pursuant to Section 251.

3

4 Q. ON PAGES 3-4, MR. GILLAN ADVOCATES THE INTERCONNECTION  
5 AGREEMENT LANGUAGE HE BELIEVES IS "NEEDED TO  
6 EFFECTUATE THE *TRRO*, AS WELL AS CERTAIN REMAINING  
7 CHANGES FROM THE FCC'S EARLIER *TRIENNIAL REVIEW ORDER*  
8 (*TRO*)." HAS BELLSOUTH BEEN ABLE TO NEGOTIATE  
9 INTERCONNECTION AGREEMENTS WITH CLECS THAT DO IN FACT  
10 EFFECTUATE THE *TRRO*?

11

12 A. Yes. As I stated in my direct testimony, 75 CLECs have executed *TRRO*  
13 amendments, bringing their interconnection agreements into compliance with  
14 current law. In addition to the 75 *TRRO* amendments, BellSouth has entered  
15 into 36 new interconnection agreements with *TRRO*-compliant language for a  
16 total of 111 *TRRO*-compliant agreements in the state of Florida pursuant to  
17 which CLECs are purchasing Unbundled Network Elements ("UNEs")s. Thus,  
18 given the number of CLECs that have been able to reach agreement with  
19 BellSouth as to how to effectuate the *TRRO*, it is clear that Mr. Gillan's  
20 proposed language is not in fact "needed" to effectuate the *TRRO*. What is  
21 required is the parties' willingness to actually create an agreement that  
22 comports with what the FCC has required. BellSouth's proposed language  
23 does that. As is discussed in Ms. Tipton's testimony, Mr. Gillan's often does  
24 not.

25

1 Issue 2 – Amending Interconnection Agreements

2

3 Q. ON PAGES 9-10, MR. WATTS DISCUSSES THE FACT THAT THE  
4 ATTACHMENT 2 THAT WAS SENT TO DELTACOM CONTAINS  
5 REVISED LANGUAGE THAT IS UNRELATED TO CHANGE OF LAW  
6 ISSUES. WHY DID BELLSOUTH SEND A PROPOSED ATTACHMENT 2  
7 WITH LANGUAGE REVISED OUTSIDE THE SCOPE OF THE GENERIC  
8 CHANGE OF LAW PROCEEDING?

9

10 A. BellSouth and DeltaCom have been in the midst of negotiating and arbitrating  
11 a new interconnection agreement since 2002. In the beginning of the recent  
12 negotiations to incorporate the changes resulting from the *TRO* and *TRRO*,  
13 BellSouth and DeltaCom agreed to use the Attachment 2 to the approved  
14 Georgia Interconnection Agreement executed pursuant to the Georgia Public  
15 Service Commission’s *Arbitration Order*, in Docket No. 16583-U, dated  
16 January 16, 2004. For all other states, however, the language of Attachment 2  
17 has not been agreed upon and, contrary to Mr. Watts’ testimony, it has not  
18 been “approved”. Since DeltaCom’s Georgia interconnection agreement was  
19 based upon BellSouth’s standard agreement from several years ago when the  
20 initial negotiations began in 2002, BellSouth proposed revisions to DeltaCom  
21 to incorporate language resulting from the *TRO* and *TRRO*, as well as language  
22 reflecting changes incorporated into BellSouth’s current standard  
23 interconnection agreement.

24



1 Q. WAS IT APPROPRIATE FOR BELL SOUTH TO INCLUDE LANGUAGE  
2 IN THE PROPOSED ATTACHMENT 2 THAT WAS OUTSIDE THE  
3 SCOPE OF CHANGE OF LAW?

4  
5 A. Yes. Given the extent of the negotiations between BellSouth and DeltaCom,  
6 BellSouth believed that if the two parties were to ever get resolution and reach  
7 agreement on a new interconnection agreement, it would be more efficient and  
8 a better use of both companies' resources to use an Attachment 2 that contains  
9 both generic change of law language as well as specific language relating to  
10 BellSouth and DeltaCom's separate on-going negotiations for a new  
11 agreement. It was not BellSouth's intent for the disputes relating to the non-  
12 *TRO/TRRO* language in Attachment 2 to be included in this generic  
13 proceeding. Such disputes are more appropriately addressed pursuant to the  
14 dispute resolution process provided for in their current interconnection  
15 agreement.

16  
17 Issue 1 and Issue 8 – Definition of DS1 and DS3 Loops and Transport and UNE-P  
18 Embedded Base during the Transition Period

19  
20 Q. DO YOU AGREE WITH COMPSOUTH'S PROPOSED DEFINITION OF  
21 "EMBEDDED CUSTOMER BASE" USED IN EXHIBIT JPG-1?

22  
23 A. No. Throughout Exhibit JPG-1, Mr. Gillan defines the "embedded base" as a  
24 CLEC's customers and the services subscribed to by such customers instead of  
25 the actual UNE service arrangement that has been provisioned. His customer-

1 based definition, however, conflicts with the FCC's rules which use a service-  
 2 based definition. For example, for DS1 and DS3 loops and transport, the FCC  
 3 defines the embedded base by the actual loop or transport facility that is  
 4 provided to the CLEC and states that only those facilities that have been  
 5 provisioned as of the effective date of the *TRRO* should be included in the  
 6 embedded base. 47 C.F.R. § 51.319.<sup>2</sup> For local switching, the FCC's rules  
 7 state that "[r]equesting carriers may not obtain new local switching as an  
 8 unbundled network element." 47 C.F.R. §51.319(d)(2)(iii).

9  
 10 BellSouth's proposed language in Attachment 2 follows the FCC's definition  
 11 more closely by defining the embedded base as the actual individual UNE  
 12 service arrangement, i.e., the actual loop, local switching element, or dedicated  
 13 transport element.

14  
 15 The difference between CompSouth's proposed definition and the FCC's rules  
 16 is that CompSouth is defining the embedded base to mean the CLEC's  
 17 customers versus the FCC's definition that is based on the actual UNE service  
 18 arrangement or a carrier requesting (or not requesting) service. This difference  
 19 is important because it impacts whether a CLEC can order new UNE service  
 20 arrangements for its existing customer (whether at the same or a new location)  
 21 during the transition period. It also raises issues relating to the actual  
 22 transition and any true-ups associated for such time period.

---

<sup>2</sup> See 47 C.F.R. §51.319(a)(4)(iii) for the definition of the embedded base for DS1 loops. See also 47 C.F.R. §51.319(a)(5)(iii) for the definition of the embedded base for DS3 loops; 47 C.F.R. §51.319(e)(2)(ii)(C) for the definition of the embedded base for DS1 dedicated transport; and 47 C.F.R. §51.319(e)(2)(iii)(C) for the definition of the embedded base for DS3 dedicated transport.

1 Q. IS A CLEC ALLOWED TO CONTINUE ORDERING UNE-P FOR ITS  
2 EMBEDDED BASE DURING THE TRANSITION PERIOD?

3  
4 A. No. CompSouth's position that CLECs can order new UNE-P service  
5 arrangements for its embedded base during the transition period violates the  
6 Commission's May 5, 2005 *Order Denying Emergency Petitions*, in which the  
7 Commission concluded that "the *TRRO* is quite specific, as is the revised FCC  
8 rule attached and incorporated in that Order, that the requesting carriers may  
9 not obtain new local switching as an unbundled element. ... Any other  
10 conclusion would render the *TRRO* language regarding 'no new adds' a nullity,  
11 which would, consequently, render the prescribed 12-month transition period a  
12 confusing morass ripe for further dispute."<sup>3</sup> Such a decision precludes any  
13 other conclusion other than that a request from a CLEC to add a new UNE-P  
14 arrangement for an existing customer must be denied.

15  
16 Q. MR. WATTS (PAGES 11-12) ALLEGES THAT, BASED ON  
17 BELLSOUTH'S INTERPRETATION OF THE *TRRO*, A CLEC CAN NOT  
18 MERGE ANOTHER CLEC'S EMBEDDED BASE INTO ITS EMBEDDED  
19 BASE "WITHOUT LOSING THE TRANSITIONAL PRICING FOR THE  
20 EMBEDDED BASE CUSTOMERS." IS THAT BELLSOUTH'S  
21 POSITION?

22  
23 A. No. This is one of many issues which would be handled as part of negotiation

---

<sup>3</sup> *Order Denying Emergency Petitions*, Docket No. 041269-TP, Order No. PSC-05-04920-FOF-TP, issued May 5, 2005, p. 6.

1 of a transfer agreement pursuant to a merger of two CLECs. The mergers and  
2 acquisitions process developed by BellSouth is outlined in BellSouth's Carrier  
3 Notification SN91083998, dated March 10, 2004.

4  
5 **Issue 6 – Non-Impaired Wire Centers**

6  
7 Q. DOES ANY CLEC WITNESS PROVIDE TESTIMONY WITH RESPECT  
8 TO THIS ISSUE?

9  
10 A. No. However, in Exhibit JPG-1 under Issue 6 (page 20), CompSouth states  
11 that it accepts that "changed circumstances" will not alter a wire center's  
12 designation as non-impaired pursuant to the *TRRO*. Alternatively, CompSouth  
13 does propose language to address situations in which BellSouth "mistakenly"  
14 lists a wire center as non-impaired and a CLEC relies upon such designation to  
15 its detriment.

16  
17 Q. DOES BELLSOUTH AGREE WITH COMPSOUTH'S PROPOSED  
18 LANGUAGE?

19  
20 A. Not in its entirety. BellSouth does agree with CompSouth that, if BellSouth  
21 were to designate a wire center as non-impaired and a determination was later  
22 made that the wire center should not have been on the non-impaired wire  
23 center list, then BellSouth should refund any amounts due to a CLEC that,  
24 under certain circumstances, had obtained tariffed high capacity loops and  
25 dedicated transport in that wire center. BellSouth, however, does not agree to

1 the language in its entirety as proposed by CompSouth and has provided a  
 2 redline of such language attached to Ms. Tipton’s rebuttal testimony as Exhibit  
 3 PAT-5. BellSouth’s proposed contract language is more reasonable because it  
 4 makes clear precisely the circumstances in which a refund would be made and  
 5 delineates also the amount of any such refund. In contrast, CompSouth uses  
 6 language that is less precise. CompSouth also uses terms that are somewhat  
 7 inflammatory, such as “mistakenly” and “relies to its detriment”. This type of  
 8 language reflects CLEC rhetoric and not commercially reasonable terms.

9

10 **Issue 12 – Removal of De-listed Elements from BellSouth’s SQM/SEEM Plan**

11

12 Q. MR. GILLAN (PAGES 52-53), SUPPORTED BY MS. CONQUEST (PAGE  
 13 6), ARGUES THAT ELEMENTS PROVIDED UNDER SECTION 271  
 14 MUST BE INCLUDED IN STATE PERFORMANCE PLANS. DO YOU  
 15 AGREE?

16

17 A. No. The purpose of establishing the SQM/SEEM Plan was to ensure that  
 18 BellSouth met and continues to meet its parity obligations under Section 251  
 19 of the Act. The requirement to provide nondiscriminatory access to its  
 20 network is a Section 251(c)(3) obligation. The FCC, in granting BellSouth  
 21 authority to provide long distance services in Florida, stated “it is not a  
 22 requirement for section 271 authority that a BOC be subject to such  
 23 performance assurance mechanisms.”<sup>4</sup> In fact, the FCC recognized that

---

<sup>4</sup> *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Florida and Tennessee, CC Docket No. 02-307,*

1 Section 271(d)(6) provides the FCC with enforcement powers outside of any  
2 performance penalty plan to act “quickly and decisively to ensure that the local  
3 market remains open.”<sup>5</sup>

4  
5 Indeed, the structure of the SQM/SEEM Plan demonstrates that it should not  
6 include Section 271 elements. As this Commission is aware, the SQM/SEEM  
7 Plan establishes a retail analogue or benchmark for each Section 251 element  
8 BellSouth provides. This mechanism allows the Commission to compare  
9 BellSouth’s performance for its retail customers to BellSouth’s performance  
10 for CLECs and to determine if BellSouth is providing service at parity.

11  
12 There is no parity obligation for Section 271 elements. Consequently, it is  
13 neither necessary nor appropriate to compare BellSouth’s performance for such  
14 Section 271 elements provided to CLECs to BellSouth’s retail performance,  
15 and it certainly is not appropriate for BellSouth to be subject to any  
16 SQM/SEEM penalties for Section 271 elements.

17  
18 Importantly, and as I discussed in my direct testimony, the removal of de-listed  
19 elements from the performance measurement plan does not mean that  
20 BellSouth will no longer meet its provisioning commitments. Indeed, the fact  
21 that the elements are no longer required under Section 251 means that there are  
22 competitive alternatives available, and if BellSouth were to fail to meet its

---

*Memorandum Opinion and Order*, FCC 02-331, issued December 19, 2002, ¶ 167 (“*Florida 271 Approval Order*”).

<sup>5</sup> *Florida 271 Approval Order*, ¶ 171.

1 commitments, CLECs have other options for serving their end user customers.  
 2 Many of BellSouth's tariffs contain provisioning commitments that, if missed,  
 3 carry substantial penalties payable to the customer, as well as out-of-service  
 4 refund commitments. Thus, the removal of de-listed elements from  
 5 BellSouth's performance plan does not mean that BellSouth will be able to  
 6 ignore its commitments. It simply means that there are market forces that  
 7 penalize BellSouth in the event that BellSouth fails to meet its commitments.

8

9 Q. IS THE SECTION ENTITLED "HOT CUT PERFORMANCE" IN  
 10 COMPSOUTH'S PROPOSED LANGUAGE UNDER ISSUE 9 (PAGE 25-26  
 11 OF EXHIBIT JPG-1) NECESSARY?

12

13 A. No. The language proposed by CompSouth with respect to hot cut  
 14 performance should not be included because hot cut performance  
 15 measurements are already included in the current SQM/SEEM Plan. The  
 16 Commission should not accept CompSouth's language, because any reference  
 17 or additional language in Attachment 2 would be duplicative and potentially  
 18 contradictory to the SQM/SEEM Plan already agreed to by CompSouth and  
 19 approved by this Commission.

20

21

22 **Issue 29 – Implementation of FCC "All-or-nothing" Order**

23

24 Q. DID ANY CLEC WITNESS ADDRESS THIS ISSUE?

25

1 A. Before I respond, it is BellSouth's understanding that this issue has been  
2 settled. However, in an effort to provide complete testimony, I will respond  
3 with the following: Yes, US LEC's witness, Ms. Wanda Montano, is the only  
4 witness who addressed Issue 29. Ms. Montano simply stated that US LEC and  
5 BellSouth have entered into an amendment implementing the "all-or-nothing"  
6 rule as revised by the FCC's *Second Report and Order*.

7  
8 Q. DOES THE FACT THAT NO OTHER CLEC WITNESS ADDRESSED  
9 ISSUE 29 OR PROVIDED EVIDENCE WITH RESPECT TO ISSUE 29  
10 HAVE AN IMPACT ON HOW THIS COMMISSION SHOULD  
11 DETERMINE THIS ISSUE?

12  
13 A. Yes. BellSouth provided direct testimony proposing language for this  
14 Commission to adopt and also provided BellSouth's rationale for such  
15 language. The fact that the one witness who did address this issue has already  
16 reached agreement with BellSouth demonstrates BellSouth's willingness to  
17 negotiate acceptable language if presented the opportunity. No other witness  
18 has proposed alternative language for BellSouth to consider and either support  
19 or rebut. The Commission should, therefore, approve BellSouth's proposed  
20 language.

21  
22 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

23  
24 A. Yes.

25 #602126



1 MS. MAYS: Thank you, Commissioner. Would you like  
2 Ms. Blake to proceed with her summary?

3 COMMISSIONER DEASON: Yes. I understand it's going  
4 to be five minutes or less.

5 THE WITNESS: Yes, sir.

6 COMMISSIONER DEASON: Yes.

7 THE WITNESS: Good morning. As you've heard this  
8 morning, the TRO and the TRRO modified and removed significant  
9 and many unbundling obligations previously placed upon the  
10 ILECs. In my testimony I identified 111 interconnection  
11 agreements in Florida that have been amended to be compliant  
12 with the new unbundling rules. Since that time that number has  
13 increased to over 130.

14 We're here because we haven't been able to reach  
15 agreements with all CLECs here in Florida. And as you just  
16 heard discussions, we have proposed an interconnection  
17 agreement with contract language for the removal of elements  
18 and other TRO, TRRO changes. What we're asking the Commission  
19 to approve is the proposed language for the issues that are  
20 before you in this proceeding. For those CLECs that have not  
21 responded or negotiated with BellSouth, we order that -- we  
22 request that your order contain provisions that those CLECs  
23 negotiate and execute amendments to include that entire  
24 Attachment 2. For those CLECs that are actively negotiating  
25 with BellSouth, including some of the members of CompSouth that

1 are here, we order that you execute the amendment to include  
2 Commission-approved language for those issues that are before  
3 you.

4           BellSouth is not asking you to require the  
5 incorporation of the entire proposed Attachment 2, only the  
6 language for those issues that are before you for those CLECs  
7 that are negotiating.

8           So that there is no impediment to meet the  
9 transitional deadlines established by the FCC in its orders,  
10 it's important that the Commission approve specific contract  
11 language that can be promptly executed. And if not executed  
12 within an ordered time frame, the approved language should go  
13 into effect regardless if an amendment is signed. We've got to  
14 meet that deadline in March.

15           Another item I discuss in my testimony is regarding  
16 the impact on our performance measurements plans known as the  
17 SQM and the SEEMs plan. Delisted elements, those that have  
18 been found to be no impairment by the FCC, should not be  
19 subject to such a performance penalty plan. Such a plan's  
20 purpose is to ensure nondiscriminatory access to 251 elements  
21 and obligations. Delisting recognizes that CLECs have  
22 alternatives, they can self-provide, obtain them from another  
23 provider or obtain them from BellSouth through a commercial  
24 agreement or through a tariffed offering. Providers of these  
25 alternatives are not under such a plan, and it would be

1 discriminatory and anticompetitive to require BellSouth to  
2 continue to perform delisted elements -- provide delisted  
3 elements under such performance plan. The risk of BellSouth  
4 not performing when it has a commercial agreement or a tariffed  
5 offering is that we could possibly lose that customer to those  
6 other alternatives.

7 Thank you. That concludes my summary.

8 COMMISSIONER DEASON: The witness is tendered; is  
9 that correct?

10 MS. MAYS: Yes, Commissioner. Thank you.

11 COMMISSIONER DEASON: Before we proceed with  
12 cross-examination we're going to recess for lunch, and we will  
13 reconvene at 1:00.

14 (Recess taken.)

15 COMMISSIONER DEASON: We'll call the hearing back to  
16 order. I believe Witness Blake has been tendered for  
17 cross-examination. And I'll just proceed left to right, or  
18 is -- no cross? Okay. Please proceed.

19 MR. MAGNESS: Okay. Commissioners, we've  
20 distributed, I believe, right, have distributed a set of the  
21 documents that we anticipate talking to Ms. Blake about during  
22 cross-examination ahead of time. I think all the parties have  
23 those, as well as staff and the Commissioners.

24 CROSS EXAMINATION

25 BY MR. MAGNESS:

1 Q So good afternoon, Ms. Blake.

2 A Good afternoon.

3 Q In your summary, you referenced that BellSouth filed  
4 proposed contract language in this proceeding that's included  
5 at Exhibits PAT-1 and PAT-2 to Ms. Tipton's testimony; is that  
6 right?

7 A Yes, that's correct.

8 Q And you referenced that there is language in that  
9 proposed attachment that addresses issues that are not on the  
10 issues list in this case; correct?

11 A Yes, that is correct.

12 Q And is it testimony -- and I'd ask you to look at  
13 your direct testimony at Page 3. Just let me know when you're  
14 there.

15 A Yes, I'm there.

16 Q I understood your direct testimony to be that  
17 BellSouth was proposing that the contract language attached to  
18 Ms. Tipton's testimony be adopted by the Commission; is that  
19 right?

20 A Yes. Predominantly for those issues that are before  
21 the Commission that are tied up in this proceeding.

22 Q Okay. But let me ask you to look at what's -- and  
23 perhaps we could get a composite exhibit number for the  
24 documents that we've distributed and we can refer to them that  
25 way.

1           COMMISSIONER DEASON: You wish to have a composite or  
2 you wish to have each individual one numbered?

3           MR. MAGNESS: Whatever your preference is, Your  
4 Honor.

5           COMMISSIONER DEASON: Let's just give a number to  
6 each one. It may be a little more clear for the record. You  
7 want to go ahead and identify them each at this time beginning  
8 with -- well, let me ask this, the one that is entitled  
9 "Exhibit PAT-1, Attachment to Page 1," is that in the record or  
10 going to be in the record in this proceeding anywhere else?

11           MR. MAGNESS: It is in the record. But there is, as  
12 I'm going to discuss with Ms. Blake, some provisions are  
13 highlighted for a purpose that we would like to have in the  
14 record.

15           COMMISSIONER DEASON: Very well. We will identify it  
16 as Exhibit Number 30, I believe, is the next number.

17           MR. MAGNESS: Okay.

18           COMMISSIONER DEASON: And if I'm incorrect, someone  
19 correct me.

20           (Exhibit 30 marked for identification.)

21           MR. MAGNESS: Commissioner, the next document is from  
22 an FCC docket, an excerpt from FCC Docket 02-331, which is the  
23 BellSouth Florida 271 order. We'd ask it be marked as Exhibit  
24 31.

25           COMMISSIONER DEASON: Okay. That will be identified

1 as Exhibit Number 31.

2 (Exhibit 31 marked for identification.)

3 MR. MAGNESS: The next is, again it is an excerpt, a  
4 one-page excerpt of the BellSouth brief in support of  
5 application by BellSouth for provision of in region interLATA  
6 services in Florida and Tennessee filed at the FCC.

7 COMMISSIONER DEASON: Exhibit Number 32.

8 (Exhibit 32 marked for identification.)

9 MR. MAGNESS: And the next document is testimony  
10 of -- I'm sorry. BellSouth Telecommunications, Inc., testimony  
11 of Kathy K. Blake before the Public Service Commission of South  
12 Carolina, Docket Number 97-239-C dated December 31st, 2003.

13 COMMISSIONER DEASON: Okay. Exhibit Number 33.

14 (Exhibit 33 marked for identification.)

15 MR. MAGNESS: And finally there is a, they're all  
16 stapled together, a composite of transcript references or pages  
17 from the Georgia Public Service Commission and Tennessee  
18 Regulatory Authority proceedings in the change of law dockets.

19 COMMISSIONER DEASON: Exhibit Number 34.

20 (Exhibit 34 marked for identification.)

21 MR. MAGNESS: Thank you.

22 BY MR. MAGNESS:

23 Q And on Exhibit 30, Ms. Blake, the Exhibit PAT-1, I  
24 think, as you can see, CompSouth has highlighted by bolding  
25 certain provisions of this document. Do you see that?

1 A Yes, I do.

2 Q Okay. And if I could ask you to turn to, towards the  
3 end of the document, Page 69.

4 A I'm there.

5 Q From Page 69 to the conclusion of the document, would  
6 you agree with me there's language concerning 911 and  
7 E911 databases?

8 A Yes. That's what those provisions set forth.

9 Q Okay. So as I understand it from your summary, you  
10 would not actually be asking the Commission to adopt this  
11 language because it is not related to the issues in this case;  
12 is that correct?

13 A Yes, that is correct. I think Ms. Mays discussed in  
14 her opening, it's BellSouth's intent, as we discussed or has  
15 been discussed in some of the discovery responses, we have  
16 notified our CLEC customers when each of the different TRO  
17 interim rules order, TRRO orders came out that we need to amend  
18 their contracts, we need to negotiate language to bring their  
19 agreement into compliance with the current rules and law. Some  
20 CLECs we are actively negotiating with and we continue to  
21 negotiate. There are, however, CLECs that have ignored our  
22 request to negotiate, repeated requests. And the reason we  
23 submitted the entire PAT-1 was a number of reasons. One is to  
24 have the entire language in its complete context. The other is  
25 at the end of the day when we get an order from the Commission,

1 we anticipate we would still send out letters to the CLECs, all  
2 CLECs that still do not have compliant agreements, and say  
3 we've gotten the Commission's order, here's the language  
4 they've approved, we still need to amend your contract to work  
5 this in there, and hopefully that will proceed and we'll  
6 negotiate amendments and get that worked in. There's still the  
7 opportunity that a CLEC could still ignore such a request. And  
8 by the time we get to the March 10th deadline, we need a  
9 vehicle, and this was our suggested vehicle, to put forth and  
10 say this agreement in its entirety incorporating the approved  
11 language would now replace your previous Attachment 2 so that  
12 it would be compliant with the law. If we don't ever have to  
13 get there, that's the best of both worlds.

14 Q Well, for those CLECs who, that you identify who have  
15 not negotiated, as you put it, just assuming there is one out  
16 there, is it BellSouth's position that this Commission has the  
17 authority to approve interconnection agreement language that  
18 can then be forced upon that CLEC outside the negotiation and  
19 arbitration process?

20 A Well, I'm not an attorney. I'm not sure I can speak  
21 to the authority this Commission may have. I think that's a  
22 matter for the attorneys to resolve.

23 I mean, again, the intent of BellSouth's language is  
24 to have a vehicle that we could use in those situations where  
25 CLECs have not responded, continue to ignore our request. Our



1 desire is to send the amendment or send an amendment reflective  
2 of the Commission's language to the CLECs and say this is what  
3 they've ordered. We need to amend your contract to be  
4 compliant with this new language. Please, you know, either  
5 sign on the dotted line or call us if we need to, you know,  
6 discuss anything further.

7           But at the end of the day, at the end of March 10th  
8 we need to have the ability to have an agreement in place that  
9 brings their agreement into compliance. We're not attempting  
10 to have any ability in the future to say, well, the Commission  
11 approved this 911 listing so it must be blessed and, therefore,  
12 everybody has got to take it. That's not the intent. If the  
13 language in their agreement not related to the TRO or the TRRO  
14 relative to the issues in this docket are not, is not impacted,  
15 we're not attempting to change that.

16           Q       But aren't you asking the Commission for an order  
17 that as to those companies you can provide them this entire  
18 document with all of its language including 911 language and  
19 they're going to be compelled to sign that agreement?

20           A       I have full confidence in the Commission's order that  
21 it could clearly delineate the different scenarios that could  
22 justify such a self-effectuating, if you will, amendment going  
23 into place. I believe we, we will -- have all anticipation of  
24 notifying the CLECs once the order comes out, here's the  
25 language the Commission has approved for the TRO, TRRO impacted

1 issues. We seek an amendment. I would think the Commission's  
2 order could very clearly say, you know, if the CLECs don't  
3 respond, then this language is, is implemented. And whether we  
4 could just take that language and cut and paste it into their  
5 current agreement and leave it like it is, that's an option we  
6 can take too. But, again, we introduced this entire PAT-2 --  
7 PAT attachments for ease of administration.

8 Q Doesn't BellSouth have a vehicle called a statement  
9 of generally available terms that it can submit to the  
10 Commission for approval if it wants something that's available  
11 for everyone with or without negotiation?

12 A No, BellSouth does not have an SGAT as it's called,  
13 statement of generally available terms and conditions, in  
14 Florida.

15 Q Okay. In other states you have had them in the past  
16 though; right?

17 A In the past we have. I believe they've all either  
18 expired or been withdrawn.

19 Q Okay. And did BellSouth withdraw them?

20 A Like I say, they've either expired and not been  
21 resubmitted or they've been withdrawn. I don't know the status  
22 for each state.

23 Q No. I'm just asking you, you said they were  
24 withdrawn, passive voice, and active voice, did BellSouth  
25 withdraw them?

1           A     We may have withdrawn them in some states where they  
2 had not expired because of the changes in the law that we did  
3 not feel were necessary to be implemented or effectuated in  
4 those SGATs.

5           Q     So in an SGAT situation don't you submit basically a,  
6 something you say off the shelf would be generally available  
7 and the Commission can review it, the parties can come in and  
8 they know that all the issues are up for grabs and the  
9 Commission approves it or it doesn't? Do you understand that  
10 to be the process?

11          A     Yes, I believe that is an option BellSouth has.  
12 However, we have chosen not to have an SGAT, nor do we have the  
13 requirement to have an SGAT.

14          Q     But in the SGAT situation the party who may end up  
15 taking agreement is on notice that things like 911 are being  
16 arbitrated; right?

17          A     If we so chose to file an SGAT. However, we have  
18 interconnection agreements with our CLEC customers in Florida.  
19 They have the language that's in there. We've notified them in  
20 an effort to modify that language to bring it into compliance.  
21 We're here in this proceeding, and I believe the Commission's  
22 order establishing procedure sets forth that the outcome of  
23 this proceeding will be binding on all CLECs in Florida. So I  
24 think all CLECs are on notice that whatever comes out of this  
25 proceeding will be effectuated to them as well.

1           Q     But how would anybody know that 911 database issues  
2 are affected by this proceeding, given this is a change of law  
3 proceeding and given that that's an issue that you've  
4 acknowledged isn't affected by the change of law?

5           A     Well, I think you just answered that question. We've  
6 acknowledged that that language is not effectuated by this  
7 change of law. I believe that the Commission is very capable  
8 of delineating in its order how it would like us to handle  
9 those situations when a CLEC does not respond. We've put forth  
10 how we have suggested how it's appropriate to handle it. I'm  
11 sure they have full discretion to order us to do something  
12 differently or not implement the entire Attachment 2. It's a  
13 recommendation we made in our testimony and the evidence we put  
14 forth here.

15          Q     Okay. Could you turn to Page 54, please. I want to  
16 talk to you about what it is that you're asking to be approved  
17 and what you're not asking to be approved. And I think you  
18 agreed that the 911 provisions aren't related to the changes of  
19 law. I'd ask you to look at the bolded section, 6.7, which is  
20 about unbundled elements and involves technical specifications  
21 for those unbundled elements. Is that when you want something  
22 you want approved or something you don't need approved?

23          A     Well, I'm not sure I can sit here today and go  
24 through each of the bolding that Mr. Magness has indicated in  
25 this exhibit. I believe through the testimony of Ms. Tipton

1 and Mr. Fogle and through our posthearing briefs we will  
2 identify or have identified even to the staff in some of the  
3 discovery responses what particular language in these exhibits  
4 are we sponsoring or putting forth for approval of the  
5 Commission relative to each of the issues that are before this  
6 Commission.

7 Q So it's your position, BellSouth's testimony that if  
8 a provision is not identified, that is, a provision in your  
9 proposed Attachment 2 is not identified in those discovery  
10 responses or in testimony, you are not requesting that the  
11 Commission adopt that language as it appears in this Attachment  
12 2.

13 A In the context of the issues that are before this  
14 Commission, yes. But in response to the earlier discussion we  
15 had in those cases where a CLEC does not respond and for ease  
16 of administration, you know, the Commission could easily direct  
17 us to replace the language relative to the sections we've  
18 identified or impacted or associated with the issues in this  
19 proceeding, incorporate them in this entire PA-2 and have that  
20 as a vehicle to use for those CLECs that ignore us. I mean,  
21 there's several options and scenarios that could be presented  
22 and included in the Commission's order to address those  
23 situations.

24 Q I guess just to wrap it up, I'm just trying to  
25 understand what BellSouth's position though is on that. I

1 mean, if you are not asking that the Commission adopt the  
2 language that's not related to anything that parties have been  
3 noticed is an issue in this case, then I think that's a fairly  
4 clear thing. You're not asking the Commission to adopt that  
5 language. Is that your position? It doesn't sound like you're  
6 quite willing to say that. I agree we're not asking the  
7 Commission to adopt language in this proceeding for issues that  
8 are not in this proceeding. We've got a set issues list we've  
9 identified in our testimony and, like I said, in our  
10 posthearing brief what issues or what language is associated  
11 with each issue. However, I believe it is appropriate for the  
12 Commission to give us direction and guidance of how we can  
13 expediently meet the deadlines to effectuate the change of law  
14 in those CLECs for those agreements with those CLECs that  
15 continue to ignore our request to amend their agreement.

16 COMMISSIONER DEASON: Let me ask a question at this  
17 point. For those CLECs who, in your terminology, do not  
18 negotiate or are not willing to negotiate, do you want all of  
19 Attachment 2 to be applied to them or just the sections which  
20 are applicable to the issues in this proceeding?

21 THE WITNESS: Ideally it would hopefully just be  
22 those that apply to the issues in this proceeding. However,  
23 when we, as I mentioned a minute ago, when we get an order from  
24 the Commission, we will still notify all our CLECs that don't  
25 have a compliant agreement and advise them we've got this

1 order, this is the language the Commission approved, we need to  
2 incorporate this or amend your agreement to include this  
3 language. If they don't respond, ignore us, don't answer back  
4 or have no communication with us, we want the ability through  
5 your Commission order to take the approved language for those  
6 issues, stick it into -- basically this is our standard  
7 agreement that we start with CLECs to negotiate with -- and say  
8 this is now the Attachment 2. You could just as easily say  
9 take the approved language and stick it in the existing, the  
10 CLEC's existing Attachment 2, and we could work to do that as  
11 well. I mean, there's different options. The one we presented  
12 was for ease of administration to have an entire Attachment  
13 2 that would say we haven't heard from you, March 10th is  
14 approaching, effective March 10th or 11th this Attachment 2 is  
15 now effective for your agreement in its entirety for ease of  
16 administration.

17 COMMISSIONER DEASON: Can you provide an exhibit  
18 which details what provisions within Attachment 2 are  
19 applicable to the issues in this proceeding?

20 THE WITNESS: Yes, sir. Certainly. I'm pretty  
21 certain we had identified that in our posthearing brief we  
22 filed in other states, but we can do that ahead of time. And  
23 there may be a --

24 COMMISSIONER DEASON: Is there anything in this  
25 record that you know of that details what provisions apply?

1 THE WITNESS: By issue number?

2 COMMISSIONER DEASON: Yes.

3 THE WITNESS: Not that I'm aware of. But we can  
4 certainly do that. I know through some of the discovery that  
5 staff has served on us, we did identify for certain issues what  
6 language we had proposed or were sponsoring. But we'll be glad  
7 to do whatever to help.

8 COMMISSIONER DEASON: Staff, are you going to be --  
9 is there anything that you're going to be presenting that's  
10 going to have that detailed out or is that an exhibit you can  
11 utilize?

12 MR. TEITZMAN: I think that that would be an exhibit  
13 that would be helpful to staff in preparing its recommendation.

14 COMMISSIONER DEASON: Okay. We'll identify that as  
15 late-filed Exhibit Number 35. And I will just entitle it  
16 Applicable Provisions of Attachment 2.

17 THE WITNESS: Okay. Certainly.

18 (Late-Filed Exhibit 35 identified.)

19 BY MR. MAGNESS:

20 Q Just one final thing, Ms. Blake. Based on your  
21 extensive weeks of experience having this document placed in  
22 front of you, do you have any quarrel with the highlighting  
23 that CompSouth has done on the document to show issues that are  
24 not subject to this case?

25 A I agree with you, I've had it in cross-examination



1 for several weeks now. I have not had the ability or the  
2 opportunity to fully digest every highlighted paragraph to see  
3 if it is correctly impacted by the issues. I think, I think we  
4 had this discussion in another state. I think probably  
5 Paragraph 1.1 references that it's only applicable for  
6 251 elements and we would agree with that, but I think the  
7 CompSouth members and the other parties seem to want this  
8 attachment to apply to 271 elements as well, so.

9 Q Well, I guess one of the things that troubles us is  
10 Section 1.1 because at the end of Section 1.1 it says, "In the  
11 event of a conflict between this attachment and any other  
12 section or provision of this agreement, the provisions of this  
13 attachment shall control."

14 So, for example, if there was a CLEC that had an  
15 existing interconnection agreement and BellSouth's  
16 recommendation was accepted, this document was, this document  
17 became their UNE attachment, it would not only control UNES,  
18 but it could trump anything else in their current  
19 interconnection agreement; right?

20 A Again, not knowing rules of construction for  
21 contracts and stuff, it may or may not. Again, I think that's  
22 an option the Commission has to instruct us to just work in the  
23 language that's approved from this proceeding into the existing  
24 contracts and say that's effectuated even if we don't hear from  
25 them, or the alternative that we suggested is just have an

1 entire Attachment 2.

2 Q Okay. So, for example, do you have any view of  
3 whether, like, on Page 47 the intercarrier compensation  
4 language you include here for a few pages would trump  
5 intercarrier compensation provisions in other parts of the  
6 CLEC's agreement based on Section 1.1?

7 A Again, I can't sit here today and digest that entire  
8 language. I think the request by Commissioner Deason, I think,  
9 will, will resolve this issue and get the language teed up for  
10 each issue that we are supporting for each of the issues before  
11 the Commission.

12 Q Ms. Blake, I'd like to turn now to Page 10 of your  
13 direct testimony. This is in reference to Issue 12 on the  
14 issues list. "Should network elements delisted under Section  
15 251(c)(3) be removed from the SQM/PMAP/SEEM?" And you testify  
16 here at Line 20, "The purpose of establishing and maintaining a  
17 SQM/PMAP/SEEM plan," that is performance measurement plan, "is  
18 to ensure that BellSouth provides nondiscriminatory access to  
19 elements required to be unbundled under Section 251(c)(3), and  
20 if BellSouth fails to meet such requirements, it must pay the  
21 CLEC and/or the state a monetary penalty." Is that still your  
22 testimony?

23 A Yes.

24 Q Okay. And I'd ask you to look at what's been marked  
25 as Exhibit 31, which is an excerpt from the FCC's order in the

1 BellSouth Florida 271 proceeding, here in Paragraph 167 of the  
2 document.

3 A Okay.

4 Q Under "Assurance of Future Compliance" it references,  
5 as you can see, the SEEM plan.

6 A Yes.

7 Q The last sentence carrying over to the next page  
8 provides, "In prior orders the Commission," that is the FCC,  
9 "has explained that one factor it may consider as part of its  
10 public interest analysis is whether a BOC would have adequate  
11 incentives to continue to satisfy the requirements of Section  
12 271 after entering the long distance market. Although it is  
13 not a requirement for Section 271 authority that a BOC be  
14 subject to such performance assurance mechanisms, the  
15 Commission has previously found that the existence of a  
16 satisfactory performance monitoring and enforcement mechanism  
17 is probative evidence that the BOC will continue to meet its  
18 Section 271 obligations after a grant of such authority." Is  
19 that a correct reading of that?

20 A Yes.

21 Q Okay. You acknowledge that Section 271 provides  
22 obligations that are independent of those required by Section  
23 251; right?

24 A Yes, that is correct.

25 Q So when the FCC speaks of assuring continued

1 compliance with Section 271 obligations, it is nevertheless  
2 your testimony that the purpose of the performance measurement  
3 plans is to assure compliance with Section 251?

4 A Yes, that is correct. It's BellSouth's position that  
5 the need to ensure compliance with 251 was necessary in order  
6 to obtain 271 authority. Once we demonstrated that we have  
7 opened up the market, it's irrevocably opened, and the other  
8 items required for 271 authority, long distance authority was  
9 granted. The issue of enforcement and prevention of  
10 backsliding relative to our 271 obligations is, in BellSouth's  
11 position, a matter for the FCC to assess and determine and  
12 monitor through an enforcement bureau.

13 Q I'd like to ask you to look at Exhibit 32, which is  
14 the BellSouth brief to the FCC in support of its Section  
15 271 authority in Florida and Tennessee. In the excerpt we  
16 provided, the paragraph there right in the middle provides, "In  
17 sum, the SEEM plans in Florida and Tennessee provide BellSouth  
18 with adequate incentives to continue to satisfy the  
19 requirements of Section 271 after entering the long distance  
20 market." Continues, "Like other BellSouth SEEM plans that this  
21 Commission recently reviewed and approved, the plans in Florida  
22 and Tennessee constitute probative evidence that BellSouth will  
23 continue to meet its Section 271 obligations after a grant of  
24 such authority."

25 Now when you were telling the FCC about these, the

1 usefulness of these performance plans, weren't you telling the  
2 FCC that they would ensure that there would be continued  
3 compliance with Section 271 obligations?

4 A No, not at all. We were advising the FCC in order to  
5 obtain 271 authority, we had to demonstrate that we were  
6 satisfying our 251 obligations. In order to monitor that we  
7 are continuing to satisfy those 251 obligations, the  
8 performance measurements plan was put in place. I think it's  
9 very clear back to the actual order that it states, although  
10 not a requirement for Section 271 authority, we're not required  
11 to have a performance plan. I think it goes back to the whole  
12 thing -- if an element has been delisted, that means there's  
13 competitive alternatives available and, therefore, CLECs can  
14 obtain other, that service or that former UNE through other  
15 means. Those other providers are not subject to a penalty  
16 plan. The market, the competitive market dictates who gets the  
17 customer, and it is competitive and it should not be based on  
18 regulatory mandate.

19 Q Those other providers are also not subject to Section  
20 271 obligations, are they?

21 A I wouldn't believe they would be, no. That's an RBOC  
22 obligation.

23 Q And do you understand that under the competitive  
24 checklist one of the checklist items is compliance with Section  
25 251 obligations?

1           A     Yes.  That's what we had to demonstrate, satisfy the  
2 checklist items in order to obtain long distance authority.

3           Q     And you understand as well that there are additional  
4 checklist items that are independent of Section 251 involving  
5 unbundled switching transport and provision of loops; correct?

6           A     Yes.  Obligation to provide unbundled access to those  
7 elements unbundled from other services.

8           Q     So when you told the FCC you would -- that this would  
9 assure BellSouth would continue to meet its Section  
10 271 obligations after a grant of such long distance authority,  
11 are you saying what you meant is it would continue to meet its  
12 251 obligations?

13          A     I think we told the FCC exactly what we meant, that  
14 we were demonstrating through the performance plan that we  
15 would continue to meet our 251 obligations that we relied upon  
16 in order to obtain 271 authority.

17          Q     And did you cite to anything in your testimony from  
18 the FCC's orders or from BellSouth's advocacy before the FCC  
19 that indicated that your performance measurement plans were  
20 limited to compliance with Section 251 and not 271?

21          A     I believe in my -- in my rebuttal testimony I pretty  
22 much cited to the same order you brought forward here, the 157.

23          Q     Where's that, ma'am?

24          A     In my rebuttal, Page 11, that it is not a requirement  
25 for Section 271 authority that a BOC be subject to such

1 performance assurance mechanisms, starting at Line 21.

2 Q Okay. But it's not a requirement, but BellSouth did  
3 step forward and say we will undertake this performance  
4 measurement plan in order to get Section 271 authority; right?

5 A We voluntarily agreed to a measurement plan  
6 associated with our 251 obligations alone (phonetic).

7 Q But I'm trying, I'm asking if there's anywhere in  
8 these orders that you cite where you could show us where  
9 BellSouth told the FCC or the FCC approved a performance plan  
10 that was related only to Section 251 obligations.

11 A Well, again, we've got one excerpt of the Tennessee  
12 application, the brief filed there. I can't speak to all the  
13 affidavits and documents that were filed in support of our  
14 application in Florida and Tennessee at that time.

15 Q I understand you can't speak to all of them. Can you  
16 speak to any of them that identify that BellSouth was really  
17 talking about Section 251 instead of Section 271?

18 A Well, I think it's, it's indicative of this excerpt  
19 you've even given that the information is to show the  
20 Commission or the FCC that we will continue to meet our  
21 251 obligations that enabled us to get 271 authority.

22 Q Okay. Ms. Blake, we'll go to another topic in your  
23 rebuttal testimony at Page 4. And here your reference -- I'm  
24 sorry. Let me know when you're there.

25 A I'm there.

1           Q     Here referencing the BellSouth's, just to quote from  
2 Line 17, "Commercial wholesale service which included  
3 stand-alone switching and DS0 loop/switching combinations,  
4 including what was known as UNE-P, at commercially reasonable  
5 and competitive rates." Excuse me. This offering you're  
6 describing, and correct me if I'm wrong, is the, what BellSouth  
7 would contend satisfies its Section 271 obligation for  
8 unbundled local switching?

9           A     Yes. The reference there to the "including  
10 stand-alone switching" is the obligation we have pursuant to  
11 our 271 obligations.

12          Q     Okay. So you're going to offer a product regardless  
13 of the outcome of this proceeding that is the functional  
14 equivalent of UNE-P; right?

15          A     That is, has really -- the equivalent of UNE-P is our  
16 total service offering that we offer to CLECs. The obligation  
17 under 271 is to provide unbundled local switching. It's not in  
18 combination with anything else. And we do offer through our  
19 market-based agreements, commercial agreements the ability to  
20 just order switching by itself, which we do make available to  
21 CLECs. We also in that same agreement offer a total service  
22 which we can say, for ease of discussion, it's formally like  
23 UNE-P, it includes the loop, the transport, common transport  
24 and the switching. It's the whole service. But that is not in  
25 any way associated with our obligations under 271. Our



1 271 obligation is limited to the stand-alone switching element.

2 Q Okay. On the stand-alone switching, you, you note  
3 here that it's your testimony that the stand-alone switching  
4 rate is provided or, rather, the stand-alone switching is  
5 provided at commercially reasonable and competitive rates;  
6 right?

7 A Yes.

8 Q Is it your view that the rate BellSouth offers that  
9 stand-alone switching at is a just and reasonable rate?

10 A I believe it's a -- the stand-alone switching rate  
11 satisfies the FCC's just and reasonable standard in BellSouth's  
12 opinion. When you look at Paragraph 664 of the TRO, it clearly  
13 identifies that arm's length agreements with carriers providing  
14 this service, if they've entered into that, which we have CLECs  
15 entering into those agreements, would satisfy that just and  
16 reasonable, along with tariffed rates for analog type services  
17 which we do make available through special access for our high  
18 capacity loops and transport 271 obligation.

19 Q What is the stand-alone switching rate that you argue  
20 is commercially reasonable and competitive?

21 A We have different terms and conditions available to  
22 CLECs. We've offered that for over a year now and different  
23 plans are available. Just for discussion, I believe \$7 comes  
24 to mind. Again, it depends on the term of the agreement at the  
25 time it was entered into. Different factors come into play of

1 what rate would be available to the CLEC.

2 Q \$7 per what?

3 A That would be for the switch port above the TELRIC  
4 rate.

5 Q So it's \$7 above the current TELRIC rate?

6 A Yes. I believe that is the case. Yeah.

7 Q Okay. And do you know what the current TELRIC rate  
8 is?

9 A No, I don't in Florida. Our -- we do have -- our  
10 standard market-based rate agreement standard template is out  
11 on our website for CLECs to review.

12 Q And are there other usage components or other  
13 components associated with that switching rate?

14 A I believe there's different makeups. It could be a  
15 rate that possibly would include the features as well. On top  
16 of that there could be some local usage minutes of use  
17 associated with that. Again, all of that would be delineated  
18 in the market-based agreement that is out there available for  
19 discussion, negotiations, inspection by our customers.

20 Q I'd like to ask you to look at what's been marked as  
21 Exhibit 33. Have you seen this document before?

22 A Yes, I have.

23 Q And would you agree with me this was some testimony  
24 that you sponsored before the South Carolina Commission?

25 A Yes.

1 Q Okay. And just to provide some context, and correct  
2 me if I misstate it, that this was a case in which BellSouth  
3 was asking for a lower switched access, intrastate switched  
4 access rate and to offset that with funding from the state  
5 Universal Service Fund; is that a fair characterization?

6 A Yes. We were basically proposing rate reductions to  
7 our intrastate switched access rates and seeking offsets of  
8 that for revenue neutral through the USF fund. Again, this  
9 docket never went to hearing. This testimony was actually  
10 withdrawn because it was settled.

11 Q On Page 2 of the testimony --

12 A Yes.

13 Q -- you note, at Line 18, that the tariff, that  
14 intrastate switched access tariff, as you noted, reduces the  
15 local switching rate; is that correct?

16 A Yes. There's a multitude of elements involved in  
17 intrastate switched access that were impacted by this rate  
18 filing.

19 Q Okay. And those elements would include, as it says  
20 here, local switching and interoffice transport, interoffice  
21 channel mileage?

22 A Yes, they're listed. Facility termination charges.  
23 Yes.

24 Q On Page 3, the question is asked whether these  
25 proposed rates contain implicit support for universal service.

1 Do you see that question?

2 A Yes.

3 Q And is it your understanding that in this case the  
4 concern about rates was that they not go below cost as you  
5 reduced them, they couldn't go below a price floor; right?

6 A Yes. In this case, you're talking about the South  
7 Carolina case that this testimony is involved in.

8 Q Yes, ma'am.

9 A Yes. There's, I believe, a statutory requirement  
10 that we can't price our service below its cost. So this was an  
11 effort to demonstrate that the reductions we were making would  
12 still have the service priced above its cost.

13 Q Okay. And here on Page 3 the testimony at Line 13,  
14 both the existing rates for this service and the proposed rates  
15 in BellSouth's tariff are above the UNE rates for the network  
16 components of the service as set forth in the prefiled direct  
17 testimony of your witness Mr. McKnight. As Mr. McKnight  
18 explains in his testimony, this means that the rates also  
19 exceed the total service long-run incremental costs of the  
20 service.

21 So it was your testimony there that the rates were,  
22 the rates you were proposing were higher than the UNE rates;  
23 therefore, it was clear that they recovered their costs.

24 A Yes. Just kind of to clarify that a little bit, the  
25 UNE rates that we used were the rates that the South Carolina

1 Commission had established, and they were based on the TELRIC  
2 principle, but some adjustments and other things were done  
3 during that hearing. We, we chose not to file a separate cost  
4 study for the switched access rate elements that we were  
5 seeking reduction because we were demonstrating that the rate  
6 reductions that we were seeking were still above the TELRIC  
7 rates or the UNE rates that were established. And typically in  
8 a costing, the requirements in a state proceeding is that the  
9 TSLRIC for the total service long-run incremental cost is what  
10 you have to make sure you're above. And TELRIC is above -- the  
11 TELRIC rates in South Carolina were above the TSLRIC. So if we  
12 demonstrated that we reduced them, the rate reductions didn't  
13 bring them down to TELRIC, so, therefore, they couldn't be down  
14 below the TSLRIC. So we were TSLRIC, TELRIC, and then our rate  
15 reduction. So we were still demonstrating -- it was all a  
16 demonstration that we were not reducing those intrastate  
17 switched access rates below their cost.

18 Q So in your view TELRIC isn't going to be below  
19 TSLRIC?

20 A TELRIC would not be below TSLRIC. I'm not sure if  
21 that was your question.

22 Q Okay. And I'd ask you to turn back at the end of the  
23 testimony -- the testimony concludes on Page 17 and there's an  
24 attachment, Exhibit KKB-1.

25 A I'm there.

1 Q And it includes a September 2nd, 2003, letter that  
2 essentially transmits the tariff filing to the South Carolina  
3 Commission. Is that your understanding?

4 A Yes.

5 Q And then what follows is that tariff filing. And if  
6 you would turn to Page 4, I think as you've just described in  
7 your testimony here, if you look down at the bottom paragraph  
8 on Page 4, the rate filing package says, "BellSouth believes  
9 that the switching and interoffice transport rates set in the  
10 most recent generic cost docket for unbundled network elements  
11 are appropriate cost surrogates for evaluating the price floors  
12 for the rate elements of switched access that BellSouth is  
13 proposing to reduce in this proceeding." Is that correct?

14 A Yes, that's what that says.

15 Q And so if you're going to use the UNE rate as a cost  
16 surrogate, then the UNE rate, I mean, for a surrogate for this  
17 other rate, the contention is the UNE rate is above cost;  
18 right?

19 A Well, I wouldn't agree with your, your representation  
20 that that's the purpose of this docket or the association to  
21 the current docket that we're in here, this proceeding. The  
22 South Carolina proceeding was to use that surrogate, as it  
23 states there, for evaluating the price floor of rate elements  
24 where we were seeking reductions. It just is a demonstration  
25 that we're not going below our cost to try and associate that

1 with this proceeding to somehow say that TELRIC is an  
2 appropriate just -- or is a just and reasonable rate for a  
3 delisted element. I don't think that you can get there. I  
4 think it's very clear in the FCC's order that the just and  
5 reasonable standard is one for the FCC to determine through  
6 Section 201 and 202 of the Act. I think in Paragraph 664, as  
7 we discussed, it is very clear the evidence --

8 MR. MAGNESS: Mr. Chairman, I'm sorry. I think Ms.  
9 Blake has gone very far afield of the question. I didn't ask  
10 her anything about just and reasonable rates under Section 271.  
11 I'd like to just continue to move through the document, if we  
12 could.

13 COMMISSIONER DEASON: Well, Ms. Blake has the ability  
14 to answer yes or no and expand her answer. But, Ms. Blake, I  
15 would recognize that your argument is very similar to the  
16 argument that we just heard this morning several times over, so  
17 we, we have heard that. So don't feel obligated to educate us  
18 again.

19 THE WITNESS: Okay.

20 COMMISSIONER DEASON: Thank you.

21 BY MR. MAGNESS:

22 Q Ms. Blake, just to finish up with this document, on  
23 Page 5, BellSouth notes these TELRIC cost surrogates reflect  
24 TELRIC economic costs and drops a footnote. It says,  
25 "BellSouth does not support the TELRIC pricing methodology in

1 part due to its hypothetical nature. The distortion in cost  
2 caused by the TELRIC hypothetical approach is most evident in  
3 the development of loop rates, rather, loop costs; however,  
4 with respect to switching and interoffice transport, which have  
5 the greatest degree converted to the newer currently available  
6 technologies, i.e., digital switches and fiber, the cost  
7 studies BellSouth filed to support the switching and transport  
8 UNEs are less impacted by the TELRIC methodology."

9 I mean, is it -- well, let me ask you first, has  
10 BellSouth converted to digital switching in Florida?

11 A I can't speak to 100 percent certainty to the degree  
12 we have them. I'm sure we have quite a few digital switches.  
13 It's not my area of expertise.

14 Q Okay. So to the extent that BellSouth has converted  
15 to digital switches then, if a TELRIC study looks at a network  
16 that assumes digital switching, it's no longer hypothetical;  
17 right?

18 A Well, again, I'm not a cost witness. This testimony,  
19 the Attachment 2 I think clearly speaks that BellSouth does not  
20 support the TELRIC pricing methodology. Due to its  
21 hypothetical nature I think there's other impacts associated  
22 with here.

23 Q But what's wrong with the --

24 A Less impacted --

25 Q I'm sorry.



1           A     No. I was going to say down at the bottom --  
2 BellSouth filed to support switching and transport UNEs are  
3 less impacted by the TELRIC methodology, but they're still  
4 impacted and that's a methodology BellSouth does not support.

5           Q     But I'm just trying to understand how they're  
6 impacted. I mean, if digital switches have been installed,  
7 then, as you say here, there's not a problem with it being  
8 hypothetical that digital switches are in the networks. If you  
9 do a cost study that assumes that, what's the problem?

10          A     Again, I'm not a cost witness and I can't  
11 speak to all the concerns BellSouth may have with the  
12 hypothetical/not hypothetical digital switches issues relative  
13 to this testimony and the issue before us here.

14          Q     Okay. Now if you're not a cost witness, what's the  
15 basis for your testimony that your stand-alone switching rate  
16 is commercially reasonable and competitive?

17          A     I think it circles back to Paragraph 664 that we've  
18 got CLECs that are buying it.

19          Q     So it's a legal argument really more than a cost  
20 argument; right?

21          A     I mean, I think the whole 271 issues discussed this  
22 morning has been teed up as a legal argument, yes.

23          Q     Okay. Finally, I'd ask you to look at what's been  
24 marked as Exhibit 34.

25          A     Okay.

1 Q And the first page in -- I'd just note this is from  
2 the transcript in the Georgia change of law proceeding, Docket  
3 19341. You were a witness in that proceeding, were you not?

4 A Yes.

5 Q Okay. And I'd ask you to look at Page 99, and I'll  
6 just, I'll just ask you without even looking at the transcript,  
7 is it your testimony that interstate special access tariff is  
8 considered a premium service by BellSouth?

9 A I'm not sure -- when I said premium in this regard, I  
10 don't -- I mean, I guess premium could have a lot of  
11 connotations or premium may be in the eye of the beholder, if  
12 you will. I think from the context somewhat compared to the  
13 basic UNE facility, that could be a part of that special access  
14 service or comparable to that special access service. A  
15 special access tariff service could have differing maintenance  
16 plans that may make it, in the eye of the beholder, more  
17 premium than a basic UNE rate. So that's in the context in  
18 which I was discussing it.

19 Q So you don't have any quarrel with your testimony  
20 that special access is considered a premium service, a UNE is  
21 just a basic facility?

22 A No. I mean, I agree that's what I said. It probably  
23 would have been better to better clarify it like I just did.

24 Q And on Page 114 there's a question concerning this,  
25 the performance measurement plans we were discussing before.

1 And you were asked the question, "I believe I asked you in your  
2 direct and your rebuttal you didn't reference any TRO or TRRO  
3 language that resolves this question for the Commission;  
4 right?" Your answer, "Not directly. But I think through  
5 presentation in my testimony and identifying that elements that  
6 are not offered pursuant to 251 should not be bound by a  
7 251 performance or rather measurement plan." Is that still  
8 your testimony?

9 A Give me one second. I guess I'm -- without seeing  
10 the page before this, I'm not sure -- in the question you  
11 didn't reference any TRO or TRRO language that resolved this  
12 question. I'm not sure what this question is referring to.

13 Q Ms. Blake, could you look on to Page 115 and 116. I  
14 think you'll see it's a discussion in the context of the  
15 performance measurement issue we've discussed here today.  
16 Well, let me just ask, I mean, do you have any quarrel with  
17 that answer that -- I mean, have you referenced anything in the  
18 Triennial Review Order, the Triennial Review Remand Order that  
19 resolves the question of whether the 271 element should be a  
20 part of a performance measurement plan?

21 A Well, I think the language, the language around or  
22 the, excuse me, in the TRO in Paragraph 661, it's very clear  
23 that elements that are in 662, that elements that are delisted,  
24 that don't satisfy the unbundling standards of 251, the  
25 applicable prices, terms and conditions for that element are

1 determined in accordance with 201 and 202. And I think it goes  
2 further back even on the previous 661, it's talking about back  
3 in the UNE Remand Order where they delisted, if you will, like  
4 they've done here, they delisted directory assistance and  
5 operator services. At that time we didn't have, we don't have  
6 a 251 obligation for those. We still have a 271 obligation.  
7 But those -- that sentence in that paragraph, accordingly, as  
8 we explained in subsequent Section 271 orders, access to  
9 directory assistance and operator services remains a condition  
10 of long distance entry. But the standard applicable to rates  
11 and conditions is not derived from Sections 251 and 252. So I  
12 think that's a direct link to delisted elements that are no  
13 longer required to be provided under 251, should not be subject  
14 to a measurement plan that is part of a 251.

15 Q Do those paragraphs say anything about measurement  
16 plans?

17 A I'm sorry?

18 Q Do those paragraphs actually explicitly say anything  
19 about measurement plans?

20 A No. But a measurement plan is required or indicative  
21 to prevent backsliding of your 251 obligations. That's how we  
22 measure that we're continuing to satisfy our 251 obligation.  
23 If a delisted element is not a 251 obligation, it shouldn't be  
24 part of the measurement plan.

25 Q Okay. And we've addressed that already.

1           Finally, I want to ask, draw your attention to the  
2 Tennessee transcript from the Tennessee Regulatory Authority  
3 Docket Number 04-00381. If you'd turn to Page 58. And again  
4 we --

5           COMMISSIONER ARRIAGA: Excuse me. Chairman, what  
6 exhibit is this?

7           MR. MAGNESS: I'm sorry. It's on Exhibit Number 34.

8           COMMISSIONER ARRIAGA: Thank you.

9 BY MR. MAGNESS:

10          Q       And that includes some sort of scattered page number  
11 references that are in these transcripts in the prior states.

12                 This one on Page 58, Line 17, this goes to the  
13 question we discussed earlier about the language BellSouth is  
14 proposing here. And you testified that it is not BellSouth's  
15 intention at Line 17 and 18 to impose upon them language that  
16 is not TRO or TRRO compliant. Now is that still your  
17 testimony, that is to impose on CLECs?

18          A       Yes. But I think the next sentence goes on to  
19 clarify that or further explain it. We're seeking for the  
20 approved language that is relative to the issues in this  
21 proceeding, that is what the parties would incorporate into  
22 their existing agreement or into a new agreement.

23          Q       Okay. And I don't have any quarrel with that. I'm  
24 just asking you that Line 17 and 18, your testimony here is not  
25 different than what it was in Tennessee?

1 A No. I don't believe I've --

2 MR. MAGNESS: Okay. Thank you. That's all I have.

3 COMMISSIONER DEASON: Staff.

4 MR. TEITZMAN: Staff has no questions for this  
5 witness.

6 COMMISSIONER DEASON: Okay. Commissioners, any  
7 questions?

8 Okay. Redirect.

9 MS. MAYS: Commissioner Deason, rather than redirect,  
10 what I would ask -- normally I would ask Ms. Blake a couple of  
11 questions about the FCC's brief. It relates to the questions  
12 they asked about the TELRIC methodology. What I would ask  
13 instead is whether the Commission can either -- we can have  
14 that marked as an exhibit and introduced or take administrative  
15 notice of the FCC's appellate brief of the TRRO and that would  
16 save me from going through that, or I can go through that.  
17 It's up to the Commission. But there's some discussion in the  
18 FCC's appellate brief and we have copies of that.

19 COMMISSIONER DEASON: I have no preference. You  
20 proceed how you want and, if there's no objection, it's okay  
21 with me.

22 REDIRECT EXAMINATION

23 BY MS. MAYS:

24 Q Okay. Ms. Blake, I would just ask to follow up,  
25 Mr. Magness asked you some questions about your South Carolina

1 testimony and the testimony concerning the TELRIC methodology.

2 Do you recall those questions?

3 A Yes.

4 Q Can you address what the FCC has said as it relates  
5 to TELRIC and the just and reasonable standard, please?

6 A Yes. In the FCC's brief on appeal that was filed in  
7 early September, they reference some claims that CLECs were  
8 making that TELRIC was at the high end of the just and  
9 reasonable standard. That contention is somewhat belied by  
10 their actions in that, and this is what the FCC was saying in  
11 their brief, that if that was the case, all the switches that  
12 CLECs are using for their business customers, which are quite a  
13 few, they would have decided, well, let's just use those same  
14 switches for our mass market customers and not pay the high end  
15 of the just and reasonable rate, TELRIC, as they were  
16 categorizing it, for UNE, UNE-P, if you will, and they'd use  
17 their switches. So the FCC concluded that their actions,  
18 because of the comments they made, does not support their  
19 contention that TELRIC is at the high end of the just and  
20 reasonable standard. And obviously another material thing I  
21 reference in the staff's draft competition report, it appears a  
22 lot of the CLEC switching, local competition report, a lot of  
23 the CLEC switching for the business customers is using their  
24 own switch. But when you look at the residential side, it's  
25 apparent they were using UNE-P at that time. And I think that

1 speaks and supports what the FCC was contending as well.

2 MS. MAYS: Thank you, Ms. Blake.

3 Commissioner Deason, we will just mark that at a  
4 later time.

5 COMMISSIONER DEASON: Very well. Exhibit 11, is it  
6 moved at this point?

7 MS. MAYS: Yes, Commissioner Deason, if we could have  
8 that included in the record, please.

9 COMMISSIONER DEASON: Without objection, show then  
10 that Exhibit --

11 MR. MAGNESS: I think we'd request that the brief, if  
12 it's been subject to the discussion, go ahead and the  
13 Commission take official recognition of it or make it an  
14 exhibit --

15 MS. MAYS: We'll be happy to --

16 MR. MAGNESS: -- so we can discuss it in the brief  
17 with a reference to the exhibit.

18 COMMISSIONER DEASON: Well, let's just deal with  
19 Exhibit 11 right now. Is there any objection to Exhibit 11?  
20 Hearing none, show that Exhibit 11 is admitted.

21 (Exhibit 11 admitted into the record.)

22 COMMISSIONER DEASON: We have a number of other  
23 exhibits which were identified during the cross-examination.  
24 Are any of these exhibits being moved into the record?

25 MR. MAGNESS: Yes. We'd offer Exhibits 30 through



1 34.

2 COMMISSIONER DEASON: 30 through 34 have been moved.

3 MS. MAYS: Commissioner Deason, just one comment. On  
4 both Exhibit 31 and I believe 32, those are excerpts. And as  
5 we have done in the past, we would just note that if we need to  
6 refer to anything else in these, these documents, that we can.  
7 We don't need to include the entire documents, but just to have  
8 those noted as excerpts with the ability to refer to the entire  
9 documents as needed.

10 COMMISSIONER DEASON: Is that understood? Any  
11 objection to that?

12 MR. MAGNESS: No.

13 COMMISSIONER DEASON: Very well. With that  
14 understanding then, show that Exhibits 30 through 34 are  
15 admitted.

16 (Exhibits 30, 31, 32, 33 and 34 admitted into the  
17 record.)

18 COMMISSIONER DEASON: And then Exhibit 35 is a  
19 late-filed exhibit. And, staff, remind -- well, maybe we can  
20 go ahead and set a time now to have that exhibit filed.

21 Ms. Blake, what's a reasonable time to have that  
22 exhibit prepared and filed?

23 MS. MAYS: I guess, Commissioner Deason, if we could  
24 have a couple of weeks, two weeks from this Friday, this coming  
25 Friday, whatever that date would be. I think it would still be

1 in advance of briefs.

2 MR. TEITZMAN: That would be November 18th.

3 COMMISSIONER DEASON: Staff, does that give you  
4 sufficient time to incorporate that into your recommendation  
5 and review?

6 MR. TEITZMAN: Oh, certainly, Commissioner. Briefs  
7 aren't due until December 2nd, so that would give us plenty of  
8 time.

9 COMMISSIONER DEASON: Okay. All right. November the  
10 18th it is.

11 MS. MAYS: Commissioner Deason, we would ask that the  
12 witness be excused at this point.

13 COMMISSIONER DEASON: Okay. Ms. Blake, you may be  
14 excused. Thank you.

15 Okay. Now we were talking about, what was it, an FCC  
16 brief?

17 MS. MAYS: Yes. And we have those, Commissioner. If  
18 it would be appropriate, we can mark as the next exhibit, I  
19 believe it would be 36, it would be the FCC's brief to the DC  
20 Circuit. We do have copies to distribute.

21 COMMISSIONER DEASON: Well, if you have copies,  
22 please distribute them.

23 MS. MAYS: Oh, I think we gave it to them. I'm being  
24 told we passed them out. I apologize. We just passed them  
25 out.

1           COMMISSIONER DEASON: They have been passed out. All  
2 right. How long ago was that?

3           This will be identified as Exhibit 36.

4           (Exhibit 36 marked for identification.)

5           MS. MAYS: And BellSouth would move the admission of  
6 Exhibit 36.

7           COMMISSIONER DEASON: Any objection, objection to  
8 Exhibit 36?

9           MR. MAGNESS: No.

10          COMMISSIONER DEASON: Hearing no objection, show then  
11 that Exhibit Number 36 is admitted.

12          (Exhibit 36 admitted into the record.)

13          (Transcript continues in sequence with Volume 3.)

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STATE OF FLORIDA     )  
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COUNTY OF LEON     )


CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 14TH DAY OF NOVEMBER, 2005.

  
\_\_\_\_\_  
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