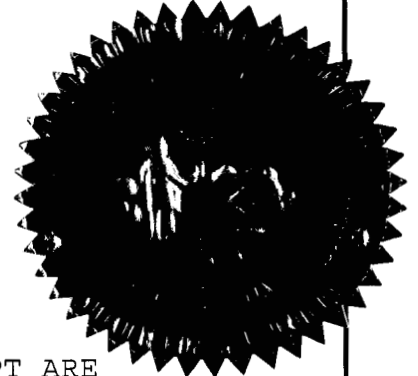


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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 3

Page 288 through 522

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.
Concluded at 4:00 p.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Hearings Reporter
(0850) 413-6732

APPEARANCES: (As heretofore noted.)

I N D E X

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NAME:

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 2.)

COMMISSIONER DEASON: Let's proceed to the next witness, please.

MS. MAYS: We would call Eric Fogle to the stand.

ERIC FOGLE

was called as a witness on behalf of BellSouth, and having been duly sworn, testified as follows:

D I R E C T E X A M I N A T I O N

BY MS. MAYS:

Q Mr. Fogle, could you please state your name and business address for the record?

A Yes. My name is Eric Fogle. My business address is 675 West Peachtree Street, Atlanta, Georgia.

Q And who do you work for and what do you do, Mr. Fogle?

A I work for BellSouth, and I'm a director in BellSouth's interconnection marketing organization.

Q Did you cause to be prefiled in this proceeding 28 pages of direct testimony?

A Yes, I did.

Q Do you have any changes to your direct testimony?

A Yes, I have two small changes to my direct testimony. The first change is on Page 3, Line Number 22. I would like to insert the acronym U-N-E, or UNE, between the words each and

1 HDSL.

2 The second change is on Page 17 of my direct
3 testimony. On Line Number 7, I would like to strike the word
4 fiber and insert the words brownfield fiber to the home.

5 COMMISSIONER ARRIAGA: Will you please repeat that?

6 THE WITNESS: Certainly. On Line 7 of Page 17,
7 strike the word fiber, and insert brownfield fiber to the home.

8 BY MS. MAYS:

9 Q With those corrections, Mr. Fogle, if I were to ask
10 you the questions contained in your direct testimony, would the
11 answers be the same?

12 A Yes, they would be.

13 Q Did you also cause to be prefiled 21 pages of
14 rebuttal testimony?

15 A Yes, I did.

16 Q Do you have any changes or corrections to your
17 rebuttal testimony?

18 A No, I do not.

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

21 A Yes, they would be.

22 MS. MAYS: Commissioners, I would like to have the
23 prefiled direct and rebuttal testimony of Mr. Fogle included in
24 the record as though read.

25 COMMISSIONER DEASON: Without objection, the prefiled

1 direct and rebuttal testimony shall be inserted into the
2 record.

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1 **BELLSOUTH TELECOMMUNICATIONS, INC.**
2 **DIRECT TESTIMONY OF ERIC FOGLE**
3 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
4 **DOCKET NO. 041269-TP**
5 **AUGUST 16, 2005**

6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS
9 ADDRESS.

10
11 A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., as a
12 Director in BellSouth's Interconnection Operations Organization. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.

17
18 A. I attended the University of Missouri in Columbia, where I earned a Master of
19 Science in Electrical Engineering Degree in 1993 and Emory University in
20 Atlanta, where I earned a Master of Business Administration degree in 1996.
21 After graduation from the University of Missouri in Columbia, I began
22 employment with AT&T as a Network Engineer, and joined BellSouth in early
23 1998 as a Business Development Analyst in the Product Commercialization Unit.
24 From July 2000 through May 2003, I led the Wholesale Broadband Marketing
25 group within BellSouth. I assumed my current position in June 2003. First, as a

1 Business Analyst, and then as the Director of the Wholesale Broadband
2 Marketing Group and continuing in my current position, I have been, and
3 continue to be, actively involved in the evolution and growth of BellSouth's
4 network including provisions for accommodating Digital Subscriber Line
5 ("DSL") based services as well as the underlying technology.

6
7 In addition to my involvement in broadband technology and product
8 development, I am also actively involved with BellSouth's wholesale business
9 and have participated in the development of BellSouth's position prior to
10 negotiations in interconnection agreements, including developing contract
11 language and negotiating change of law provisions.

12
13 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

14
15 A. The purpose of my testimony is to provide BellSouth's position on Issues 5, 16,
16 17, 18, 19, 22, 23, 24, 25, 26, and 27. These issues are summarized in the July 15,
17 2005, Joint Issues Matrix that is contained in the Florida Public Service
18 Commission ("Commission") Procedural Schedule..

19
20 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

21
22 A. Yes. There are numerous unresolved issues in this docket that have underlying
23 legal arguments. Because I am not an attorney, I am not offering a legal opinion
24 on these issues. I respond to these issues purely from a policy or technical
25 perspective. BellSouth's attorneys will address issues requiring legal argument.

1

2 *Issue 5: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose*
3 *of evaluating impairment?*

4

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

6

7 A. BellSouth has outlined its legal position on this issue in its July 15, 2005, Motion
8 for Summary Judgment filed with the Commission. As a practical matter,
9 however, this should not be a contentious issue between the parties because
10 BellSouth counted Unbundled Network Element ("UNE") High-bit rate Digital
11 Subscriber Loop ("HDSL") capable copper loops on a one-for-one basis, and did
12 not convert each HDSL capable loop to voice grade equivalents. Thus, the
13 Competitive Local Exchange Carriers' ("CLECs") concern that BellSouth will
14 have "converted nearly all of its copper loop plant" is simply misplaced. (See
15 July 22, 2005 CompSouth's Response to BellSouth's Motion for Summary
16 Judgment). BellSouth is not trying to interpret the Federal Communications
17 Commission ("FCC") ruling to literally mean that every loop that is capable of
18 being provisioned using HDSL is counted as 24 business lines for purposes of the
19 impairment test (regardless of a loop's current use). (See July 22, 2005,
20 CompSouth Response to BellSouth's Motion for Summary Judgment at page 6.)

21

22 I would note that although BellSouth has not counted each ^{UNE}HDSL line on a 24 line
23 equivalent basis, the FCC clearly contemplated that every currently deployed
24 HDSL loop would be counted as a 24 line equivalent, and that BellSouth has
25 opted to undercount business lines in various central offices. Specifically, the

1 FCC said in the Triennial Review Order (“TRO”) that, “Carriers frequently use a
2 form of DSL service, i.e., High-bit rate DSL (HDSL), both two-wire and four-
3 wire HDSL, as the means for delivering T1 services to customers. We will use
4 DS1 for consistency but note that a DS1 loop and a T1 are equivalent in speed and
5 capacity, both representing the North American standard for a symmetric digital
6 transmission link of 1.544 Mbps.”

7

8 Q. WHAT IS HDSL?

9

10 A. HDSL is fully standardized in T1.418-2002 by the Alliance for
11 Telecommunications Industry Solutions (“ATIS”). HDSL is the preferred
12 technology used to provision a symmetrical 1.544 mega-bits per second (“mbps”)
13 T1 on a normal, shielded, bridged (but not loaded) twisted pair ...¹ BellSouth
14 provisions multiple versions of HDSL technology, specifically, a standard two-
15 wire configuration (referred to as HDSL2), and a standard four-wire configuration
16 (referred to as HDSL4).

17

18 With the symmetrical bit-rate for HDSL established at 1.544Mbps (regardless of
19 which type of HDSL technology is being deployed), this loop has also become
20 known as a “T1.” The term T1 has been accepted by the FCC as an
21 interchangeable term with DS1. Therefore, an HDSL loop is equivalent to a DS1
22 loop, and, in most cases, HDSL is the technology used to provision the DS1
23 service to the customer.

24

¹ See Newton's Telecom Dictionary, 12th Edition, Page 310.

1 Since provisioned DS1s are counted as 24 64 kbps-equivalents for purposes of
2 establishing the number of business lines, then logically DS1 lines currently
3 deployed utilizing HDSL technology should be counted in the same manner.
4

5 ***Issue 16: Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and***
6 ***FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?***
7

8 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
9

10 A. The FCC has made clear in paragraphs 199, 260, 261, 262, 264, and 265 of the
11 *TRO* that BellSouth is not obligated to provide new line sharing arrangements
12 after October 1, 2004. BellSouth filed a Motion for Summary Judgment on July
13 15, 2005 that fully addresses the legal arguments associated with this issue.
14

15 Even though the legal issues have been addressed in BellSouth's Motion for
16 Summary Judgment, some factual background may be helpful to put this issue in
17 perspective. BellSouth currently has approximately three hundred
18 interconnection agreements that contain line sharing language; however, only nine
19 (9) CLECs have active line sharing arrangements being used to serve end-user
20 customers. Eight (8) of the nine (9) CLECs have placed new orders for new line
21 sharing arrangements after October 1, 2004, and are continuing to pay line sharing
22 rates that are significantly lower than paying for unbundled access to the entire
23 loop, even though the FCC has explained that "we find that allowing competitive
24 LECs unbundled access to the whole loop and to line splitting but not requiring
25 the HFPL [High Frequency Portion of the Loop] to be separately unbundled

1 creates better competitive incentives than the alternatives.” *TRO*, ¶ 260. These
2 CLECs should be ordered to pay the stand-alone loop rate for all line sharing
3 arrangements ordered since October 2004 consistent with the rules set forth by the
4 FCC.

5
6 Q. IS LINE SHARING A NECESSARY COMPONENT FOR CLECs TO
7 CONTINUE TO OFFER BROADBAND SERVICE?

8
9 A. No. As the FCC has recognized, CLECs have numerous options available for
10 serving the broadband needs of their respective end-user customers, when line
11 sharing is not available, that create better competitive incentives. Specifically,
12 CLECs can: (1) utilize line splitting, (2) purchase the entire loop facility, (3)
13 provision the end-user customer with Integrated Services Digital Network
14 (“ISDN”) Digital Subscriber Line (“DSL”) service, (4) partner with a cable
15 broadband provider to provide cable modem broadband service, (5) purchase
16 BellSouth’s tariff wholesale DSL offering, (6) provision the end-user with a
17 dedicated or shared T1, (7) deploy a fixed wireless broadband technology, (8)
18 partner with a satellite broadband provider and finally, (9) build their own loop
19 facilities or lease loop facilities from a third party. Evaluation of the relative
20 merits of each option will depend upon the type and speed of broadband service
21 purchased by the end-user customer, the location of the end-user customer, and
22 the relative costs associated with providing broadband service via each option.

23
24 Moreover, since the FCC’s order eliminating Line Sharing, one of the most active
25 line-sharing CLECs -- Covad -- has issued a series of press releases demonstrating

1 its ability to compete without line sharing. For example, Covad has actively been
2 signing line splitting agreements, utilizing the entire loop to offer both broadband
3 and voice, and is even deploying fixed wireless broadband technology; all since
4 the FCC rules eliminating line sharing were issued.

5
6 Exhibit EF-3 provides a sampling of Covad press releases, which are available as
7 a matter of public record on Covad's website
8 (www.covad.com/companyinfo/pressroom). These press releases highlight how
9 innovative Covad has continued to be both before and after line sharing has been
10 eliminated.

11
12 In addition to all of the press releases highlighted in Exhibit EF-3, Covad is
13 aggressively pursuing the deployment of a fixed wireless broadband solution. In
14 the October 1, 2004 issue of America's Network magazine, Covad clearly
15 articulated its plan to provide broadband capability via WiMax technology in
16 2005. Covad stated that it had successfully completed an initial trial in Louisville,
17 Kentucky, and is in the process of rolling out a commercial trial in the San
18 Francisco Bay Area in California. Covad hopes to have a commercially deployed
19 WiMax service offering (that is completely independent of any facilities from the
20 ILEC) by Spring or Summer of 2005. Even though WiMax is relatively new
21 technology, Covad is apparently bullish on wireless broadband, and stated,
22 "Should WiMAX not continue forward for whatever reason, Covad's strategies
23 would remain the same."

24
25 All of these examples clearly show that CLECs, and especially Covad, are not

1 impaired without line sharing.

2

3 ***Issue 17: If the answer to the foregoing issue is negative, what is the appropriate***
4 ***language for transitioning off a CLEC's existing line sharing arrangements?***

5

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

7

8 A. Exhibit EF-1, which is attached to my testimony, contains BellSouth's proposed
9 transition language for line sharing arrangements placed in service between
10 October 2, 2003 and October 1, 2004. There is no transition period for line
11 sharing arrangements placed in service after October 1, 2004; rather, as I
12 explained above, the Commission should order CLECs to pay the stand-alone
13 loop rate for such arrangements, and add no new line sharing arrangements going
14 forward. CLECs can serve new customers through a line splitting arrangement or
15 through the use of the stand-alone copper loop, or any of the other methods
16 mentioned above.

17

18 Since only nine (9) CLECs currently have active line sharing circuits, BellSouth's
19 proposed transition language is not included in BellSouth's standard
20 Interconnection Agreement ("ICA"). This language is consistent with the FCC's
21 transition plan established in Paragraph 265 of the *TRO* and in 47 C.F.R. §
22 51.319(a)(1)(i)(B), which details a three-year transition period for line sharing
23 arrangements placed in service between October 2, 2003 through October 1, 2004.
24 Features of the plan include recurring rates rising to 25 percent of the recurring
25 rates for stand-alone copper loops for a particular location during the first year;

1 the recurring charge increasing to 50 percent of the recurring rate for stand-alone
2 copper loop for a particular location during the second year; and, in the last year
3 of the transition period, the recurring charge increasing to 75 percent of recurring
4 rate for a stand-alone loop for a location. See Exhibit EF-2, which is attached to
5 my testimony, for Florida rates.

6
7 ***Issue 18: What is the appropriate ICA language to implement BellSouth's obligations***
8 ***with regard to line splitting?***

9
10 Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF BELLSOUTH'S
11 OBLIGATIONS TO PROVIDE LINE SPLITTING.

12
13 A. BellSouth's legal position -- that its line splitting obligations are limited to when a
14 CLEC purchases a stand-alone loop and the CLEC provides its own splitter -- is
15 detailed in BellSouth's Motion for Summary Judgment.

16
17 BellSouth's contract language (Section 3 in Attachment 2) provides for line
18 splitting over an Unbundled Network Element-Loop ("UNE-L"), and for a limited
19 time, with Unbundled Network Element-Platform ("UNE-P") arrangements.

20
21 With respect to line splitting with UNE-L, BellSouth offers the following
22 language:

23
24 3.1 Line Splitting – UNE-L. In the event <<customer_short_name>>
25 provides its own switching or obtains switching from a third party,
26 <<customer_short_name>> may engage in line splitting arrangements
27 with another CLEC using a splitter, provided by

1 <<customer_short_name>>, in a Collocation Space at the central office
2 where the loop terminates into a distribution frame or its equivalent.

3

4 BellSouth's language involves a CLEC purchasing a stand-alone loop (the whole
5 loop) and providing its own splitter in its central office leased collocation space,
6 and then sharing the portion of the loop frequency not in use with a second CLEC.

7

8 Q. ARE CLECS IMPAIRED WITHOUT ACCESS TO BELLSOUTH'S
9 SPLITTERS?

10

11 A. No. Splitter functionality can easily be provided by either an inexpensive stand-
12 alone splitter or by utilizing the integrated splitter built into all Asynchronous
13 Digital Subscriber Line ("ADSL") platforms.

14

15 Q. IS BELLSOUTH OBLIGATED TO PROVIDE THE SPLITTER FOR THE
16 CLEC?

17

18 A. No. A CLEC can provide the splitter in its leased collocation space in
19 BellSouth's central office. Using its own splitter, the CLEC is free to offer voice
20 service on the low frequency portion of the loop, and have another CLEC provide
21 broadband service, such as DSL, over the high frequency portion of the loop (or
22 vice versa).

23

24 ***Issue 19: SUB-LOOP CONCENTRATION: a) What is the appropriate ICA***
25 ***language, if any, to address sub loop feeder or sub loop concentration? b) Do the***
26 ***FCC's rules for sub loops for multi-unit premises limit CLEC access to copper***

1 *facilities only or do they also include access to fiber facilities? c) What are the suitable*
2 *points of access for sub-loops for multi-unit premises?*

3

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

5

6 A. First, with respect to part (a) of this issue, BellSouth is not required to unbundle
7 subloop feeder cable or subloop concentration functions, therefore, no ICA
8 language is necessary, or offered. The FCC was very clear in the *TRO* when it
9 stated, "We do not require incumbent LECs to provide access to their fiber feeder
10 loop plant on an unbundled basis as a subloop UNE."² The FCC also states that it
11 "do[es] not require incumbent LECs to provide unbundled access to their feeder
12 loop plant as stand-alone UNEs, thereby limiting incumbent LEC subloop
13 unbundling obligations to their distribution loop plant."³ The FCC maintained
14 access to the subloop distribution loop plant because it is the so-called "last mile"
15 where there is a unique copper distribution pair being used to provide service to
16 each customer connection.

17

18 Those sub-loop elements that BellSouth is obligated to provide are detailed in
19 section 2.8 of Attachment 2, which is attached to Ms. Pamela A. Tipton's Direct
20 Testimony as Exhibit PAT-1.

21

22 Q. PLEASE EXPLAIN THE DIFFERENT TERMS USED TO DISCUSS THE
23 FACILITIES AT ISSUE.

² TRO at Para. 253.

³ TRO at Para. 254.

1

2 A. As background, a local loop can be subdivided into its component "subloop"
3 parts: (1) loop feeder facilities; (2) loop concentrator/multiplexer facilities (which
4 BellSouth uses in some cases); and (3) loop distribution facilities. The feeder
5 facilities are usually larger copper or often fiber cables that serve many customers
6 in a particular area and connect to the central office. Loop
7 concentrator/multiplexer facilities translate electronic signals between multiple
8 individual loop distribution customers (where an individual copper pair is being
9 used to provide each customer's individual service) and aggregated loop feeder
10 facilities that carry the combined traffic back to the central office. Loop
11 distribution facilities are often referred to as the "last mile." Loop distribution
12 facilities are those that extend to the demarcation point at a customer's premises.
13 Loop feeder and loop distribution facilities can be connected at cross connection
14 boxes, commonly referred to as cross boxes, or by use of electronic loop
15 concentrator/multiplexer equipment, such as Digital Loop Carrier ("DLC").

16

17 Q. SUBPARTS B AND C OF THIS ISSUE RELATE TO THE POINTS AT
18 WHICH BELLSOUTH IS OBLIGATED TO PROVIDE ACCESS TO THE
19 CLEC. PLEASE COMMENT ON THIS.

20

21 A. The FCC stated clearly that BellSouth must provide access on an unbundled basis
22 to that portion of the copper loop necessary to access the end user's premises, that
23 is, loop distribution. See 47 C.F.R. 51.319(b). At a single family home or stand-
24 alone business location, loop distribution access is provided at the customer's
25 Network Interface Device ("NID").

1

2

In a multi-tenant or multi-unit building environment, loop distribution access is provided to either a NID or an access terminal. The access terminal or NID is the point at which the CLEC can access the unbundled portion of the subloop distribution cable which serves individual units of a multi-tenant building. In all cases, the distribution cable ends at the NID, or at an access terminal. The LEC, the CLEC, or the building owner can own the cable from the access point into the building.

9

10

The access terminal provides the CLEC with the ability to reach the end user without compromising the security or reliability of BellSouth's network. The access terminal can be located in close proximity to a garden terminal, a term used to define a point in BellSouth's network used to serve a multi-unit building.

14

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

21

Issue 23: What is the appropriate ICA language to implement BellSouth's obligation to provide unbundled access to hybrid loops?

24

Item 27: What is the appropriate language, if any, to address access to overbuild

1 *deployments of fiber to the home and fiber to the curb facilities?*

2

3 Q. WHY IS BELLSOUTH CHOOSING TO ADDRESS THESE THREE (3)
4 ISSUES TOGETHER?

5

6 A. The basis for the FCC requirements for access to loop types drives the FCC's
7 rules for access to MPOE, hybrid loops, and Fiber to the Home ("FTTH")/Fiber to
8 the Curb ("FTTC") loops. The Florida Commission also has rules relating to the
9 demarcation point and MPOE that are in addition to the FCC MPOE rules, as I
10 explain further below.

11

12 Q. WHAT IS THE BASIS FOR THE FCC REQUIREMENTS FOR ACCESS TO
13 LOOP TYPES?

14

15 A. The basis for the FCC requirements for access to loop types is to ensure that
16 CLECs continue to have access to currently existing last mile copper facilities, for
17 as long as those facilities continue to exist. The FCC's definitions and rules for
18 MPOE, hybrid loops, and FTTC/FTTH rules are consistent with this principle.
19 Before discussing the interplay between the various rules, it is critical that the
20 definitions of the terms be used consistently.

21

22 Q. HOW DOES THE FCC DEFINE MPOE?

23

24 A. The FCC has defined MPOE as "either the closest practicable point to where the
25 wiring crosses a property line or the closest practicable point to where the wiring

1 enters a multiunit building or buildings.” 47 C.F.R. § 68.105(b). Consequently,
2 in cases where the property owner has elected the use of MPOE, the MPOE is
3 effectively the demarcation point between the inside wiring facilities at the
4 multiple dwelling unit (“MDU”) and BellSouth’s loop facilities.⁴ The FCC
5 further states in the rules, “The reasonable and nondiscriminatory standard
6 operating practices of the provider of wireline telecommunications services shall
7 determine which shall apply. The provider of wireline telecommunications
8 services is not precluded from establishing reasonable classifications of multiunit
9 premises for purposes of determining which shall apply. Multiunit premises
10 include, but are not limited to, residential, commercial, shopping center and
11 campus situations.”

12

13 Q. DOES BELLSOUTH AGREE WITH THE FCC’S DEFINITION OF MPOE?

14

15 A. Yes. Since these rules became effective on August 13, 1990, they have been the
16 guidelines behind BellSouth’s practices for these types of installations in Florida,
17 and BellSouth does not offer a different definition for MPOE.

18

19 Q. PLEASE EXPLAIN THE FLORIDA COMMISSION’S RULES THAT IMPACT
20 THIS ISSUE.

21

22 A. Florida PSC Rule 25-4.0345 contains a definition of demarcation point that
23 impacts this issue. The rule requires that the demarcation point be located at the
24 customer’s premise at a point easily accessed by the customer. Should the

⁴ In describing this section of the *MDU Order on Reconsideration*, the FCC referred to the section as the “*MDU Demarcation Point*.”
MDU Order on Reconsideration at 10.

1 property owner desire an MPOE arrangement, BellSouth must obtain PSC
2 approval before establishing the demarcation point at any location other than the
3 end user's premise.

4

5 Q. WHAT IS MEANT BY "GREENFIELD"?

6

7 A. The term "Greenfield" is used in telecommunications to describe an area of the
8 public switched telephone network outside plant infrastructure that is being built
9 to support new residential and commercial construction.

10

11 Q. WHAT IS A HYBRID LOOP?

12

13 A. A hybrid loop is a loop consisting of both copper cable and fiber cable. As is the
14 case with all loops, the definition includes any of the associated electronics, such
15 as DLC systems. This is how the FCC defined a hybrid loop in the *TRO* at
16 footnote 832, and it is the same definition provided in Section 2.1.3 of
17 BellSouth's Attachment 2:

18

19 2.1.3 A hybrid Loop is a local Loop, composed of both fiber
20 optic cable, usually in the feeder plant, and copper twisted
21 wire or cable, usually in the distribution plant.

22

23 Q. PLEASE DISCUSS LOOP FACILITIES THAT BELLSOUTH OWNS IN
24 MPOE SETTINGS.

25

26 A. BellSouth owns loop facilities to multi-tenant and multi-unit buildings. In these

1 cases, BellSouth follows the FCC's rules regarding establishment of MPOE. In
2 today's modern network where fiber optic cable can serve a multi-unit building,
3 BellSouth understands its obligation to provide access to the building even though
4 unbundling is not required in these "greenfield" areas (areas that never had
5 existing copper facilities). Consistent with the FCC's MPOE requirements,
6 BellSouth will make available access to a 64kbps-equivalent voice grade loop at a
7 premise that is only served by ^{brownfield fiber to the home} fiber facilities. This loop will be capable of
8 supporting services normally available on a voice-capable line.

9 However, the owner of the building can also install his own cable to and within
10 the building. In such a case, the building owner is in control of access,
11 maintenance, and any other issues associated with providing access to the
12 building, including individual units within the building. The building owner can
13 also contract with a preferred provider to serve the units of the building. In that
14 case, the provider is responsible for making access to the individual units
15 available to competing companies, including LECs, CLECs, cable companies, or
16 others.

17
18 Q. PLEASE DEFINE "GREENFIELD FIBER LOOPS" AS USED IN ISSUE 23,
19 SUBPART (B).

20
21 A. Consistent with the definition of "greenfield" above, "greenfield fiber loops" are
22 part of newly-constructed fiber optic cable facilities to residential or business
23 areas (areas that have never had existing copper facilities). BellSouth, per the
24 TRO Paragraph 273, is not obligated to "offer unbundled access to newly-
25 deployed or "greenfield" fiber loops." As a result, Section 2.1.2.1 of Attachment

1 2 states:

2

3 2.1.2.1 In new build (Greenfield) areas, where BellSouth has only
4 deployed FTTH/FTTC facilities, BellSouth is under no
5 obligation to provide Loops. FTTH facilities include fiber
6 loops deployed to the MPOE of a MDU that is predominantly
7 residential regardless of the ownership of the inside wiring
8 from the MPOE to each End User in the MDU.

9 For further explanation, see the discussion on Issue 28 below relating to
10 BellSouth's obligation with respect to FTTH and FTTC architectures. However,
11 BellSouth believes that the effects of the FCC's decision on "greenfield" areas are
12 two-fold.

13

14 First, it maintains the incentive for LECs to invest in network using the latest
15 technology to provision advanced services to businesses and residential
16 customers. Second, it paves the way for future services that will be deployed
17 using even greater bandwidth than is common in the local loop today.

18

19 Q. SHOULD BELLSOUTH BE REQUIRED TO PROVIDE ACCESS TO
20 UNBUNDLED HYBRID LOOPS?

21

22 A. No, with one limited exception. In the *TRO* at Paragraph 288, the FCC ruled that
23 hybrid loops should not be unbundled since they are part of the next-generation
24 network. The FCC was concerned that unbundling hybrid loops would stymie the
25 continued deployment of more advanced fiber-based networks. The FCC stated
26 that unbundled next-generation network elements "would blunt the deployment of
27 advanced telecommunications infrastructure by incumbent LECs and the

1 incentive for competitive LECs to invest in their own facilities”⁵ The sole
 2 exception is to provide access to the time division multiplexing features of a
 3 hybrid loop in an overbuild situation (where continued access to existing copper is
 4 required by the FCC). As a result, regarding overbuild situations, BellSouth
 5 offers the following language in Paragraph 2.1.3 of Attachment 2:

6
 7 BellSouth shall provide <<customer_short_name>> with
 8 nondiscriminatory access to the time division multiplexing features,
 9 functions and capabilities of such hybrid Loop, on an unbundled basis to
 10 establish a complete transmission path between BellSouth’s central office
 11 and an End User’s premises.

12
 13 Q. PLEASE SUMMARIZE BELLSOUTH’S POSITION ON ISSUE 27.

14
 15 A. BellSouth maintains that the FCC determined in the *TRO* that ILECs have no
 16 obligation to unbundle FTTH mass market loops⁶ serving greenfield areas or
 17 areas of new construction.⁷ *TRO*, at 275. The FCC expanded this ruling to
 18 include FTTC loops.⁸ A FTTC loop is a “fiber transmission facility connecting to
 19 copper distribution plant that is not more than 500 feet from the customer’s
 20 premises.”⁹ Thus, the same unbundling framework (including any unbundling
 21 relief) established by the FCC in the *TRO* for FTTH loops also applies to FTTC

⁵ *TRO* at Para. 288.

⁶ A FTTH loop is a “local loop consisting entirely of fiber optic cable (and the attached electronics), whether lit or dark fiber, that connects a customer’s premises with a wire center (*i.e.*, from the demarcation point at the customer’s premises to the central office).” *TRO* at ¶ 273, n. 802.

⁷ The FCC also determined in the *TRO* that ILECs do not have an obligation to unbundle FTTH loops in overbuild situations, except where the ILEC elects to retire existing copper loops in which case the ILEC has to provide unbundled access to a 64 kbps transmission path over the FTTH loop or provide unbundled access to a spare copper loop. *TRO* at ¶ 273, 277.

⁸ *Order on Reconsideration, In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 04-248 at ¶¶ 1, 9 (Oct. 18, 2004) (“*FTTC Reconsideration Order*”).

⁹ *FTTC Reconsideration Order* at ¶ 10.

1 loops. As a result, no language should be added to interconnection agreements,
2 and none is offered by BellSouth.

3
4 This issue is intertwined with Issue 22 (b) above when determining the
5 appropriate language as it applies to MPOE access requirements at MDUs. The
6 FCC determined that FTTH rules in the *TRO* apply to predominately residential
7 MDUs, such as apartment buildings, condominium buildings, cooperatives, and
8 planned unit developments. The FCC further stated that the existence of
9 businesses in MDUs does not exempt such buildings from the FTTH unbundling
10 framework established in the *TRO*. For instance, the FCC stated that a “multi-
11 level apartment that houses retail stores such as a dry cleaner and/or a mini-mart
12 on the ground floor is predominately residential, while an office building that
13 contains a floor of residential suites is not.”¹⁰

14
15 The FCC in the *MDU Reconsideration Order* established that FTTH loops
16 include any “fiber loops deployed to the minimum point of entry (‘MPOE’) of
17 predominantly residential MDUs, regardless of the ownership of the inside
18 wiring.” *MDU Order on Reconsideration* at ¶ 10. The FCC has defined MPOE
19 as “either the closest practicable point to where the wiring crosses a property line
20 or the closest practicable point to where the wiring enters a multiunit building or
21 buildings.” 47 C.F.R. § 68.105(b). Consequently, in cases where the MPOE is
22 established, the MPOE is effectively the demarcation point between the inside
23 wire facilities at the MDU and BellSouth’s loop facilities.¹¹ Regardless of

¹⁰ Order on Reconsideration, In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, FCC 04-191 at ¶ 1 (Aug. 9, 2004) (“MDU Reconsideration Order”).

¹¹ In describing this section of the *MDU Order on Reconsideration*, the FCC referred to the section as the “MDU Demarcation Point.” *MDU Order on Reconsideration* at 10.

1 whether the ILEC owns or controls the inside wire beyond the demarcation point
2 in an MDU, when the fiber portion of a loop extends to an MDU and that fiber
3 connects to in-building copper cable facilities owned or controlled by an ILEC,
4 the ILEC has no obligation to unbundle the fiber portion of the loop.¹² To avoid
5 any disparate treatment between FTTC loops and FTTH loops, the FCC has held
6 that its rules relating to MDUs applies to both FTTH and FTTC loops. *See FTTC*
7 *Reconsideration Order* at ¶ 14.

8
9 Based on these facts, it is clear that BellSouth has no obligation to unbundle or
10 provide access to FTTH or FTTC, other than as noted above.

11
12 As a result, BellSouth's language with respect to FTTC and MDU's in Overbuild
13 areas is clearly provided in Section 2.1.2.2:

14 FTTH/FTTC overbuild situations where BellSouth also has
15 copper Loops, BellSouth will make those copper Loops available
16 to <<customer_short_name>> on an unbundled basis, until such
17 time as BellSouth chooses to retire those copper Loops using the
18 FCC's network disclosure requirements. In these cases,
19 BellSouth will offer a 64 kilobits per second (kbps) second voice
20 grade channel over its FTTH/FTTC facilities.

21
22 ***Issue 24: Under the FCC's definition of a loop found in 47 C.F.R. §51.319(a), is a***
23 ***mobile switching center or cell site an "end user customer's premises"?***

24
25 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
26

¹² In reaching this decision, the FCC specifically addressed BellSouth request for clarification that "the fiber portion of a loop that extends to a multi-unit building and that connects to in-building copper cable owned or controlled by the LEC, is considered a [FTTH] loop." *MDU Order on Reconsideration* at ¶ 10.

1 A. The FCC ruled in both the *TRO* and Triennial Review Remand Order (“*TRRO*”)
2 that cell sites and mobile switching centers are not included in its definition of the
3 term “end user premises.” The FCC said in the *TRO* at Paragraph 366 that cell
4 sites or base stations should be considered part of the transmission facilities that
5 exist outside of the incumbent LEC’s local network. BellSouth does not believe
6 that an administrative line used by the site, or lines used by other customers who
7 happen to occupy the same building as the cell site, fall within the issue the FCC
8 was addressing in this instance, as CompSouth claims in its July 22, 2005,
9 Response to BellSouth’s Motion for Summary Judgment. In the case of the
10 administrative line, the site owner could be the actual consumer of the service.
11 The administrative line is not used as an intermediary point for facilities that
12 ultimately provide service to an end user (the end user being a customer of the site
13 owner). With respect to other customers located in the same building or site as
14 the cell tower, BellSouth is not attempting to reclassify its unbundling
15 requirements to those customers who are clearly consuming the services as end-
16 users.

17
18 Q. PLEASE EXPLAIN THE DEFINITION OF A LOOP AS REFERENCED IN 47
19 CFR 51.319(A).

20
21 A. In 47 CFR 51.319 (a), a loop is defined as “a transmission facility between a
22 distribution frame (or its equivalent) in an incumbent LEC central office and the
23 loop demarcation point at an end-user customer premises. This element includes
24 all features, functions, and capabilities of such transmission facility, including the
25 network interface device. It also includes all electronics, optronics, and

1 intermediate devices (including repeaters and load coils) used to establish the
2 transmission path to the end-user customer premises as well as any inside wire
3 owned or controlled by the incumbent LEC that is part of that transmission path.”

4
5 Recognizing the definition of a loop, BellSouth’s proposed contract language at
6 Section 2.1 provides that:

7
8 The local loop Network Element is defined as a transmission facility that
9 BellSouth provides pursuant to this Attachment between a distribution
10 frame (or its equivalent) in BellSouth’s central office and the loop
11 demarcation point at an End User premises (Loop). Facilities that do not
12 terminate at a demarcation point at an End User premises, including, by
13 way of example, but not limited to, facilities that terminate to another
14 carrier’s switch or premises, a cell site, Mobile Switching Center or base
15 station, do not constitute local Loops.

16
17 ***Issue 25: What is the appropriate ICA language to implement BellSouth’s obligation to***
18 ***provide routine network modifications?***

19
20 Q. WHAT IS BELLSOUTH’S DEFINITION OF ROUTINE NETWORK
21 MODIFICATION (“RNM”)?

22
23 A. BellSouth subscribes to the FCC’s definition of routine network modification and
24 specifically offers the following language for Routine Network Modifications in
25 Paragraph 1.10:

26
27 BellSouth will perform Routine Network Modifications (RNM) in
28 accordance with FCC 47 C.F.R. § 51.319 (a)(7) and (e)(4) for Loops and
29 Dedicated Transport provided under this Attachment.

1

2 The FCC clearly defines a “routine network modification” in Paragraph 632 of the
3 *TRO*. Specifically, the *TRO* states, “By ‘routine network modifications’ we mean
4 that incumbent LECs must perform those activities that incumbent LECs regularly
5 undertake for their own customers.”

6

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

8

9 A. BellSouth is not obligated to perform functions under the “routine network
10 modifications” umbrella that it does not normally perform for its own customers.
11 BellSouth will perform routine network modifications, such as line conditioning,
12 that BellSouth regularly undertakes for its own customers (including xDSL
13 customers). In limited situations, BellSouth will also perform additional line
14 conditioning functions, pursuant to agreements with CLECs in industry
15 collaboratives. However, functions performed under collaborative agreements are
16 not routine network modifications, and are, therefore, not required by the FCC.
17 Thus, BellSouth is operating according to the FCC’s ruling in the *TRO* on this
18 issue. In some situations, as discussed here, BellSouth exceeds the FCC’s
19 requirements.

20

21 Q. WHAT TECHNICAL OR OPERATIONAL PURPOSES DO ROUTINE
22 NETWORK MODIFICATIONS SERVE?

23

24 A. Routine network modifications are industry-recognized standard changes to
25 outside plant infrastructure in order to provide standard services. For example, in

1 order for BellSouth (or a CLEC) to offer DS1 service to a customer over 20,000
2 feet from a central office, the industry standard calls for signal repeaters to be
3 installed. BellSouth routinely places repeaters to provision DS1 service for its
4 customers, and also installs these same repeaters to provision the same DS1
5 service for CLEC customers on BellSouth loops.

6
7 Alternatively, non-standard changes to loops are not routine network
8 modifications. For example, industry standards require that load coils be placed
9 on copper loops over 18,000 feet long to provide sufficient quality voice service
10 in the low frequency portion of the loop. Removal of load coils would create a
11 non-standard loop and inhibit the ability to use the loop for voice services until
12 the load coils are replaced sometime in the future. Since load coil removal on a
13 loop over 18,000 feet long is a non-standard request, and extremely rare, it is not
14 routinely performed. In fact, BellSouth received only two (2) such requests from
15 all CLECs in 2004. Furthermore, BellSouth does not remove load coils on loops
16 over 18,000 feet long to serve its own customers. By definition, this line
17 conditioning procedure is not a routine network modification, and therefore, is not
18 required by the FCC.

19
20 Q. IS LINE CONDITIONING A ROUTINE NETWORK MODIFICATION?

21
22 A. Yes. The FCC repeatedly refers to the relationship between line conditioning and
23 routine network modifications in the *TRO*. In *TRO* Paragraph 250, the FCC
24 states, "Line conditioning constitutes a form of Routine Network Modification
25" Later, in Paragraph 643, the FCC states. "Line Conditioning is properly

1 seen as a Routine Network Modification” In both cases, the phrase
2 “constitutes a form” and the term “properly” are defined as a “subset.” In other
3 words, the FCC clearly identifies BellSouth’s line conditioning obligations as a
4 subset of BellSouth’s routine network modification obligations. As a result,
5 BellSouth offers the following language in paragraph 2.5.1:

6
7 Line Conditioning is defined as routine network modification that
8 BellSouth regularly undertakes to provide xDSL services to its own
9 customers.

10 Q. WHAT TYPES OF LINE CONDITIONING HAVE CLECS HISTORICALLY
11 REQUESTED THAT ARE NOT ROUTINE NETWORK MODIFICATIONS?

12

13 A. Prior to the FCC’s clarification of BellSouth’s line conditioning obligation as a
14 subset of BellSouth routine network modifications obligation, BellSouth had
15 removed load coils on loops greater than 18,000 feet long (albeit rare), and
16 removed bridged taps at the request of CLECs (also uncommon). Since
17 BellSouth does not perform either type of line conditioning while provisioning
18 xDSL service to its own customers, and they are not routine, BellSouth is not
19 obligated to perform this function for CLECs.

20

21 As further proof that removal of load coils and bridged taps are not routine,
22 BellSouth (in addition to only two (2) load coil removal requests on loops over
23 18,000 feet from CLECs in 2004) received only 55 requests from CLECs for
24 removal of bridged taps of any length in 2004.

25

26 *Item 26: What is the appropriate process for establishing a rate, if any, to allow for the*

1 *cost of routine network modification that is not already recovered in Commission -*
2 *approved recurring or non-recurring rates? What is the appropriate language, if any,*
3 *to incorporate into the ICAs?*

4
5 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

6
7 A. BellSouth believes that this issue encompasses a basic disagreement between the
8 parties on what functions constitute a routine network modification, since the
9 source of the obligation leads to the process for establishing a rate. If BellSouth is
10 obligated to perform a routine network modification, then the rate for that activity
11 should be based on Total Element Long Run Incremental Cost ("TELRIC"). If
12 BellSouth is not obligated to perform a particular function (such as removal of
13 load coils on loops longer than 18,000 feet or removal of bridged taps), then the
14 rate should be that contained in the applicable commercial agreement between
15 BellSouth and the CLEC, or applicable tariff where appropriate. BellSouth's
16 language with respect to rates for RNM's is as follows:

17

18 If BellSouth has anticipated such RNM and performs them during normal
19 operations and has recovered the costs for performing such modifications
20 through the rates set forth in Exhibit A, then BellSouth shall perform such
21 RNM at no additional charge. RNM shall be performed within the
22 intervals established for the Network Element and subject to the
23 performance measurements and associated remedies set forth in
24 Attachment 9 of this Agreement to the extent such RNM were anticipated
25 in the setting of such intervals. If BellSouth has not anticipated a
26 requested network modification as being a RNM and has not recovered the
27 costs of such RNM in the rates set forth in Exhibit A, then such request
28 will be handled as a project on an individual case basis. BellSouth will
29 provide a price quote for the request and, upon receipt of payment from
30 <<customer_short_name>>, BellSouth shall perform the RNM.

31

1 Q. WHAT IS THE REAL ISSUE HERE?

2

3 A. CLECs are contesting the requirement by the FCC that BellSouth perform routine
4 network modifications for the CLEC's customer only if BellSouth would
5 normally perform that activity in the course of providing the same service to a
6 BellSouth retail customer. The CLECs have, in other proceedings, pressured state
7 Commissions to order BellSouth to provide, for example, removal of load coils on
8 loops greater than 18,000 feet in length for xDSL customers. BellSouth does not
9 perform that non-standard, non-routine function for its own xDSL customers, and
10 therefore should not be obligated to perform that same function for CLECs' xDSL
11 customers.

12

13 BellSouth's response to the CLECs has been consistent with the FCC's language
14 provided in the *TRO*, and BellSouth has offered CLECs alternative solutions. For
15 example, a CLEC may request an activity be performed (such as line conditioning
16 on a loop longer than 18,000 feet) even though that activity is not required by the
17 FCC. As such, special construction is required to make that loop non-standard,
18 and convert it back to industry and BellSouth standards when the CLEC has no
19 further use for it. These costs are appropriately recovered under BellSouth's FCC
20 No. 1 tariff. No interconnection agreement language, or rate, would be
21 appropriate since there is no FCC requirement to provide that function.

22

23 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

24

25 A. Yes.

1 **BELLSOUTH TELECOMMUNICATIONS, INC.**
2 **REBUTTAL TESTIMONY OF ERIC FOGLE**
3 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
4 **DOCKET NO. 041269-TP**
5 **SEPTEMBER 22, 2005**
6

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

10
11 A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., as a
12 Director in BellSouth's Interconnection Marketing Organization. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. ARE YOU THE SAME ERIC FOGLE THAT FILED DIRECT TESTIMONY
16 IN THIS DOCKET?

17
18 A. Yes. I filed direct testimony on August 16, 2005.

19
20 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

21
22 A. The purpose of my rebuttal testimony is to provide BellSouth's response to the
23 testimony and proposed contract language contained in the direct testimony of
24 Joseph Gillan on behalf of The Competitive Carriers of the South, Inc.
25 ("CompSouth"), and James Maples on behalf of Sprint Communications

1 Company L.P. ("Sprint") for Issues 5, 16, 17, 18, 19, 22, 23, 24, 25, 26, and
2 27. I also address one issue that DeltaCom Witness Steve Brownworth raises
3 that is not part of this proceeding.

4
5 To the extent that the parties provided Interconnection Agreement ("ICA")
6 language supporting their positions on the issues, BellSouth has provided an
7 edited version of the parties' proposed ICA language, attached to Pam Tipton's
8 rebuttal testimony as PAT-5. This exhibit is provided to illustrate the ICA
9 language that is acceptable to BellSouth. BellSouth has also considered
10 additional modifications to some of the issues that I address, and my testimony
11 includes additional language that is acceptable to BellSouth that is not included
12 within exhibit PAT-5. I will explain BellSouth's redlines and the additional
13 language that I include for the issues I address in this rebuttal testimony.

14
15 *Issue 5: Are HDSL-capable copper loops the equivalent of DS1 loops for the*
16 *purpose of evaluating impairment?*

17
18 Q. WHAT ARE THE DISAGREEMENTS BETWEEN THE PARTIES
19 CONCERNING THIS ISSUE?

20
21 A. There are two (2) overall disagreements. First, the parties disagree about how
22 to count UNE High-bit Digital Subscriber Loop ("HDSL") lines for the
23 purpose of evaluating impairment. Second, the parties disagree as to whether
24 there should be continued access to UNE HDSL-capable loops in wire centers
25 in which CLECs are not impaired and are not entitled to obtain Unbundled

1 Network Element (“UNE”) DS1 loops.

2

3 Q. WITH RESPECT TO THE FIRST DISAGREEMENT, DID BELL SOUTH
4 COUNT UNE HDSL-CAPABLE LOOPS AS DS1 EQUIVALENTS FOR
5 THE PURPOSE OF EVALUATING IMPAIRMENT?

6

7 A. No. As I stated in my direct testimony, BellSouth counted UNE High-bit rate
8 Digital Subscriber Loop (“HDSL”) capable copper loops on a one-for-one
9 basis and did not convert each UNE HDSL-capable loop to voice grade
10 equivalents. If BellSouth had counted UNE HDSL-capable copper loops as
11 voice grade equivalents, it would have had no impact to the Florida wire center
12 list. BellSouth elected to conservatively calculate deployed UNE HDSL loops,
13 although it would have been appropriate to convert deployed UNE HDSL
14 capable loops to voice grade equivalents. While Mr. Gillan expressed
15 concerns about calculating UNE HDSL-capable loops, (Direct Testimony of
16 Joseph Gillan, pp. 24 – 27; Direct Testimony of James Maples, pp. 27 - 28)
17 these concerns appear to be overstated.

18

19 In any event, I understand the Federal Communications Commission (“FCC”)
20 to have contemplated that currently deployed UNE HDSL loops would be
21 counted as the equivalent of 24 business lines based upon statements made in
22 the Triennial Review Order (“TRO”) that, “Carriers frequently use a form of
23 DSL service, i.e., High-bit rate DSL (HDSL), both two-wire and four-wire
24 HDSL, as the means for delivering T1 services to customers. We will use DS1
25 for consistency but note that a DS1 loop and a T1 are equivalent in speed and

1 capacity, both representing the North American standard for a symmetric
2 digital transmission link of 1.544 Mbps.”

3
4 Because HDSL and DS1 loops are technically equivalent, which both
5 BellSouth and Sprint recognize (Maples, pp. 28 – 29) and because the FCC
6 clearly references the use of HDSL technology to deliver DS1 service, it is
7 clearly appropriate to count currently-deployed UNE HDSL loops delivering
8 DS1 level service as a 24-line equivalents. To avoid a dispute on this issue,
9 however, BellSouth counted UNE HDSL loops as one (line) instead of 24
10 business lines in its nonimpairment analysis.

11

12 Q. TURNING TO THE SECOND AREA OF DISAGREEMENT, WHY DOES
13 BELL SOUTH CONCLUDE THAT CLECS ARE NOT ENTITLED TO UNE
14 HDSL LOOPS IN OFFICES WHERE NO IMPAIRMENT FOR DS1 LOOPS
15 EXISTS?

16

17 A. The FCC has defined DS1 loops to include 2-wire and 4-wire copper loops
18 capable of providing DS1 service using HDSL technology in its definition of
19 DS1 loops. (47 C.F.R. § 51.319(a)(4). BellSouth has included the FCC’s
20 definition in its ICA language, which provides that “DS1 Loops include 2-wire
21 and 4-wire copper Loops capable of providing high-bit rate digital subscriber
22 line services, such as 2-wire and 4-wire HDSL Compatible Loops.” (See PAT-
23 1, Section 2.3.6.1) Based upon the FCC’s definition, DS1 loop relief includes
24 relief from the obligation to provide UNE HDSL loops.

25

1 It is also useful to keep in mind that BellSouth is not attempting to restrict
2 CLECs from using HDSL *technology*. In fact, the import of the FCC's Order
3 is to encourage CLECs to deploy this technology on their own. Indeed, Sprint
4 concedes that BellSouth has explained that Sprint can order Unbundled Copper
5 Loops ("UCLs") (Maples, p. 37) with loop make-up ("LMU") to determine if a
6 specific loop meets their criteria for deploying HDSL-based DS1 service and
7 continue to avail themselves of HDSL technology. However, without
8 impairment, there is no reason to compel BellSouth to continue to provide a
9 loop product that is simply an indicator of a pre-defined set of conditions
10 suitable for supporting HDSL technology, as the CLECs can provide this
11 capability on their own. In other words, in offices where there is impairment,
12 the UNE HDSL-capable loop that CLECs order today will remain unchanged.
13 In offices where there is no impairment, the UNE HDSL-capable loop
14 Universal Service Order Code ("USOC") that CLECs previously ordered
15 (albeit infrequently) will no longer be available, but the exact same copper
16 loop that could be ordered previously via the UNE HDSL-capable loop USOC
17 is still available, and can be ordered using the UCL USOC. CLECs would
18 need to check LMU to determine if the UCL being ordered meets the HDSL
19 criteria. If the only reasons that the UCL does not meet the criteria are the
20 presence of load coils or excessive bridged taps, then the CLEC can order
21 ULM to make the necessary changes.

22
23
24
25

1 Q: WHAT WOULD BE THE IMPACT TO CLECS IF BELL SOUTH IS NOT
2 REQUIRED TO PROVIDE UNE HDSL LOOPS IN CERTAIN OFFICES?

3
4 A. There would be minimal impact to CLECs. Despite Mr. Maple's concerns,
5 BellSouth's records indicated that in the entire state as of the end of July,
6 BellSouth provided 833 UNE HDSL loops to all CLECs, of which Sprint had
7 none. Although Sprint suggests that BellSouth is attempting to unnecessarily
8 complicate an ordering and provisioning process (Maples, p. 37) by allowing
9 CLECs to order UCLs instead of a UNE HDSL loop, the reality is that
10 BellSouth is simply trying to follow the FCC's rules, which also has the result
11 of simplifying BellSouth's ordering systems.

12

13 Q. WHAT ICA LANGUAGE DO THE CLECS PROPOSE WITH RESPECT TO
14 HDSL LOOPS?

15

16 A. The CLECs propose ICA language that states "HDSL-capable loops are not the
17 equivalent of DS1 loops for the purpose of counting Business Lines." (Gillan
18 Exhibit JPG-1, p. 19). This language improperly creates a distinction between
19 HDSL and DS1 loops, when such a distinction does not exist. BellSouth
20 recommends that the Commission reject CompSouth's proposed language
21 from any approved contract language that results from this proceeding.

22

23 *Issue 16: Is BellSouth obligated pursuant to the Telecommunications Act of 1996*
24 *and FCC Orders to provide line sharing to new CLEC customers after October 1,*
25 *2004?*

1 Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE
2 PARTIES.

3

4 A. Even though the FCC has made clear in paragraphs 199, 260, 261, 262, 264,
5 and 265 of the *TRO* that BellSouth is not obligated to provide new line sharing
6 arrangements after October 1, 2004, the CLECs propose ICA language (Gillan
7 Attachment JPG-1, Section 2.11) that would obligate BellSouth to continue to
8 provide access to line sharing as an unbundled network element. This
9 language should be rejected in its entirety.

10

11 Q. HAVE THE CLECS PROVIDED ANY EXPLANATION FOR THEIR LINE
12 SHARING CONTRACT LANGUAGE?

13

14 A. No. Although Mr. Gillan has included contract language, he failed to include
15 any discussion supporting that language, which is likely because this issue is
16 more of a legal dispute, which both parties have briefed. For more information
17 on this issue, I refer the Commission to BellSouth's summary judgment briefs.

18

19 *Issue 17: If the answer to the foregoing issue is negative, what is the appropriate*
20 *language for transitioning off a CLEC's existing line sharing arrangements?*

21

22 Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES
23 CONCERNING THIS ISSUE?

24

25 A. The CLECs' proposed contract language does not include the FCC's transition

1 plan. The CLECs' omission is clear when the language at my direct exhibit
2 EF-1 at 3.1.2 is compared with Mr. Gillan's proposed language at JPG-1,
3 Section 3.1.3. The Commission should simply reject the CompSouth language
4 and adopt BellSouth's transition language (provided in my direct testimony as
5 Exhibit EF-1), which includes the FCC's transition plan. BellSouth's proposed
6 language also requires CLECs that have ordered line sharing arrangements
7 after October 1, 2004 to pay the full loop rate for those arrangements.
8 CompSouth's proposed language omits such a requirement.

9
10 *Issue 18: What is the appropriate ICA language to implement BellSouth's*
11 *obligations with regard to line splitting?*

12
13 Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE
14 PARTIES.

15
16 A. Based on the ICA language proposed by Joseph Gillan (Exhibit JPG-1, Section
17 3), the parties' disagreement centers on the types of loops that should be
18 included with line splitting, and who should provide the splitter.

19
20 Q. DOES THE ADDITIONAL LOOP TYPE INTRODUCED BY COMPSOUTH
21 REQUIRE LINE SPLITTING?

22
23 A. No. BellSouth's contract language (Section 3 in Attachment 2) provides for
24 line splitting over Unbundled Network Element-Loop ("UNE-L"), and, for a
25 limited time, with Unbundled Network Element-Platform ("UNE-P")

1 arrangements. The proposed CompSouth ICA language attempts to require
2 line splitting on a commingled arrangement of a loop and unbundled local
3 switching pursuant to section 271. The loop described by CompSouth does
4 not exist, is not required by the FCC, and, therefore, should not be included in
5 the section of the ICA that addresses line splitting.

6

7 Q. WHAT DISAGREEMENT EXISTS CONCERNING SPLITTERS?

8

9 A. It appears that the CLECs propose that BellSouth be obligated to provide
10 splitters between the data and voice CLECs that are splitting a UNE-L. As I
11 stated in my direct testimony, splitter functionality can easily be provided by
12 either an inexpensive stand-alone splitter or by utilizing the integrated splitter
13 built into all Asynchronous Digital Subscriber Line (“ADSL”) platforms.
14 Clearly, BellSouth should not be obligated to provide the CLECs with splitters
15 when they are utilizing UNE-L and can readily provide this function for
16 themselves.

17

18 ***Issue 19: SUB-LOOP CONCENTRATION: a) What is the appropriate ICA***
19 ***language, if any, to address sub loop feeder or sub loop concentration? b) Do the***
20 ***FCC’s rules for sub loops for multi-unit premises limit CLEC access to copper***
21 ***facilities only or do they also include access to fiber facilities? c) What are the***
22 ***suitable points of access for sub-loops for multi-unit premises?***

23

24

25

1 Q. HAVE THE CLECS PROVIDED ANY DIRECT TESTIMONY ON THIS
2 ISSUE?

3

4 A. Not as to Issue 19(a). In Georgia, the parties agreed to remove Issue 20(a),
5 Issue 19(a) in Florida, as an active issue.

6

7 Q. SUBPARTS B AND C OF THIS ISSUE WERE RAISED SPECIFICALLY
8 BY SPRINT. PLEASE SUMMARIZE THEIR CONCERNS.

9

10 A. To the extent that Sprint wants to include specific portions of the FCC's
11 subloop rules verbatim in the parties' ICA, BellSouth has no objection to
12 discussing with Sprint how to include the rules as introductory language to
13 BellSouth's existing subloop language, modified if necessary to reflect any
14 specific operational limitations. Indeed, it is my understanding that BellSouth
15 and Sprint have resolved any differences they may have had regarding subparts
16 (b) and (c). If my understanding is incorrect, or the parties' agreement is not
17 finalized, I will outline the potential disagreement..

18

19 Q. PLEASE EXPLAIN THE POTENTIAL DISAGREEMENT.

20

21 A. Sprint apparently believes that BellSouth offers only two forms of sub-loops,
22 Unbundled Subloop Distribution ("USLD") and Unbundled Network
23 Terminating Wire ("UNTW"). BellSouth actually satisfies its subloop
24 obligations by offering four subloop elements: USLD-Voice Grade ("USLD-
25 VG"), Unbundled Cooper Subloop ("UCSL"), USLD-Intrabuilding Network

1 Cable ("USLD-INC" aka riser cable), and UNTW. BellSouth's offerings and
2 proposed contract language are not intended to restrict its obligations; instead,
3 a CLEC may desire some or all of BellSouth's subloop offerings depending on
4 its business needs. For example, although Sprint expresses a concern that
5 BellSouth cannot limit its access to fiber subloops, the UNTW in BellSouth's
6 network is composed entirely from copper. BellSouth has no fiber UNTW in
7 its network.

8

9 Q. CAN BELLSOUTH ADDRESS SPRINT'S CONCERN BY SIMPLY
10 MODIFYING ITS UNTW LANGUAGE?

11

12 A. That approach would not be workable from BellSouth's perspective, because it
13 would result in Sprint redefining BellSouth's products. BellSouth believes a
14 better resolution of this issue may be to include the FCC's rules in its
15 introductory subloop language, modified if necessary to reflect any specific
16 operational limitations. In the event that Sprint desires access to a subloop to
17 serve an multiple dwelling unit ("MDU"), and wishes to access the subloop at
18 some point other than a building entrance facility, then including the FCC's
19 rules should satisfy this concern.

20

21 *Issue 22: (a) What is the appropriate definition of minimum point of entry*
22 *("MPOE")? (b) What is the appropriate language to implement BellSouth's*
23 *obligation, if any, to offer unbundled access to newly-deployed or 'greenfield' fiber*
24 *loops, including fiber loops deployed to the MPOE of a multiple dwelling unit that is*

1 *predominantly residential, and what, if any, impact does the ownership of the inside*
2 *wiring from the MPOE to each end user have on this obligation?*

3

4 *Issue 23: What is the appropriate ICA language to implement BellSouth's*
5 *obligation to provide unbundled access to hybrid loops?*

6

7 *Issue 27: What is the appropriate language, if any, to address access to overbuild*
8 *deployments of fiber to the home and fiber to the curb facilities?*

9

10 Q. DID THE CLECS PROVIDE ANY DIRECT TESTIMONY ON THESE
11 ISSUES?

12

13 A. No.

14

15 Q. DOES BELLSOUTH AGREE WITH ANY OF THE CLECS' PROPOSED
16 ICA LANGUAGE?

17

18 A. Yes. BellSouth agrees with the CLECs' proposed language for access to Fiber
19 to the Home and Fiber to the Curb ("FTTH/FTTC"). (Gillan Exhibit JPG-1,
20 Paragraphs 2.1.2, 2.1.2.1, and 2.1.2.2, Issue 22). BellSouth does not agree
21 with CompSouth's proposed language at Paragraph 2.1.2.3.

22

23 Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES CONCERNING
24 COMPSOUTH'S PROPOSED PARAGRAPH 2.1.2.3?

25

1 A. CompSouth is asking BellSouth to agree to language that provides it with an
2 unlimited right to FTTH/FTTC DS1 loops in impaired wire centers based on
3 its reading of the FCC's *TRO* and subsequent reconsideration orders.
4 BellSouth is willing to replace CompSouth's proposed paragraph 2.1.2.3 with
5 the following language:

6 FTTH/FTTC loops do not include local loops to predominantly
7 business MDUs.

8 Also, because there are pending motions for reconsideration pending at the
9 FCC, subsequent FCC action that may clarify this issue would need to be
10 addressed through the change of law provisions of the interconnection
11 agreement between the parties, as applicable. Thus, if the FCC addresses
12 pending motions for reconsideration and sets forth that relief extends to all
13 fiber deployments, then BellSouth would expect to incorporate any such order
14 into its contracts.

15

16 Q. CAN YOU EXPLAIN MORE FULLY THE DISAGREEMENT BETWEEN
17 BELLSOUTH AND COMPSOUTH?

18

19 A. Yes. The disagreement stems from language within various FCC orders
20 concerning the scope of unbundling relief relating to new fiber deployment. In
21 the *TRO*, the FCC specifically found that "Incumbent LECs do not have to
22 offer unbundled access to newly deployed or "greenfield" fiber loops" (*TRO*, ¶
23 273) and also did not "require incumbent LECs to provide unbundled access to
24 new FTTH loops for either narrowband or broadband services." *TRO*, ¶ 276.
25 In the FCC's *MDU Reconsideration Order*, the FCC extended unbundling

1 relief to fiber loops that serve predominantly residential MDUs.¹ Likewise, in
2 the FCC's *FTTC Reconsideration Order*, the FCC found that, "as with FTTH
3 loops, we find that competitive carriers are not impaired without access to
4 FTTC loops in greenfield deployments."² Finally, in its *Section 271*
5 *Forbearance Order*, the FCC reiterated that it had previously "distinguished
6 new fiber networks used to provide broadband services for the purposes of its
7 unbundling analysis" and "determined, on a national basis, that incumbent
8 LECs do not have to unbundle certain broadband elements, including FTTH
9 loops in greenfield situations."³ CompSouth reads language within some of
10 these orders as limited unbundling relief to mass market customers.

11
12 In BellSouth's view the best reading of the *TRO*, the *MDU Reconsideration*
13 *Order*, the *FTTC Reconsideration Order*, the *271 Forbearance Order*, the
14 rules, and the FCC's goals of increasing broadband deployment is that the
15 FTTH/FTTC relief extends to all such deployments. For example, the FCC
16 stated in the *TRO* at ¶ 210 that while it adopted "loop unbundling rules specific
17 to each loop type, our obligations and limitations for such loops do not vary
18 based on the customer to be served." The FCC also recognized that CLECs
19 were leading the deployment of new fiber and that ILECs had no competitive
20 advantage in deploying fiber. Likewise, in the *TRO Errata* (issued September
21 2003), the FCC deleted the word "residential" from its rules defining FTTH
22 loops, so that a fiber-to-the-home loop is a local loop serving an end user's

¹ *MDU Reconsideration Order*, FCC Docket Nos. 01-338, 96-98, 98-147 (August 9, 2004), ¶ 4.

² *FTTC Reconsideration Order*, FCC Docket Nos. 01-338, 96-98, 98-147 (October 18, 2004), ¶ 12.

³ *Section 271 Forbearance Order*, FCC Docket Nos. 01-338, 03-235, 03-260, 04-48 (October 27, 2004) ¶ 6.

1 customer premises (TRO Errata, ¶37). Also, in the TRO Errata, the FCC
2 replaced the words “residential unit” with “end user’s customer premises” in
3 the rules defining new builds, so that an ILEC is not required to provide fiber-
4 to-the-home loop to an end user’s customer premises. (TRO Errata, ¶ 38).
5 Finally, in the Errata to the October 18, 2004 Order on Reconsideration, the
6 FCC replaced the words “a residential unit” in its rules addressing new builds,
7 so that an ILEC is not required to provide a FTTH or FTTC loop on an
8 unbundled basis when the ILEC deploys such a loop to an end user’s customer
9 premises that has not been served by any loop facility. CompSouth’s proposed
10 contract language is contrary to the FCC’s goals of encouraging the
11 deployment of new fiber networks by mandating access when CLECs are not
12 impaired without FTTH/FTTC loops.

13
14 Q. DOES BELLSOUTH HAVE CONCERNS WITH THE PROPOSED ICA
15 LANGUAGE PROVIDED BY COMPSOUTH REGARDING HYBRID
16 LOOPS (ISSUE 23)?

17
18 A. Yes. CompSouth omitted BellSouth’s paragraph 2.1.2.3 which addresses
19 availability to copper facilities in overbuild areas. With regard to hybrid loops,
20 BellSouth disagrees with the additional language provided by CompSouth that
21 attempts to create an obligation for access to hybrid loops, even if there is no
22 impairment. Specifically, in paragraph 2.1.3, CompSouth proposes, “Where
23 impairment does not exist, BellSouth shall provide such hybrid loop at just and
24 reasonable rates pursuant to Section 271...” This language is not appropriate
25 because, as set forth in its briefs, BellSouth has no obligation to include

1 Section 271 obligations in interconnection agreements entered into under
2 Section 251 and 252 of the Act.

3

4 ***Issue 24: Under the FCC's definition of a loop found in 47 C.F.R. §51.319(a), is a***
5 ***mobile switching center or cell site an "end user customer's premises"?***

6

7 Q. DID THE CLECS PROVIDE ANY DIRECT TESTIMONY ON THIS
8 ISSUE?

9

10 A. No.

11

12 Q. WHAT ICA LANGUAGE DO THE CLECS PROPOSE?

13

14 A. The CLECs have included language at JPG-1, page 52. BellSouth does not
15 object to the CLECs' proposed language and this issue was removed as an
16 active issue during the Georgia change of law docket.

17

18 ***Issue 25: What is the appropriate ICA language to implement BellSouth's***
19 ***obligation to provide routine network modifications?***

20

21 Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE
22 PARTIES.

23

24 A. The parties view Routine Network Modifications and line conditioning
25 differently. BellSouth's position is that line conditioning is a subset of the

1 Routine Network Modifications defined by the FCC in paragraphs 250 and 643
2 of the *TRO*. The CLECs' position is that the obligations for Routine Network
3 Modifications and line conditioning are separate and independent.

4

5 Q. WHY DOES COMPSOUTH CLAIM THAT LINE CONDITIONING IS NOT
6 A SUBSET OF ROUTINE NETWORK MODIFICATIONS?

7

8 A. On Page 57 of his direct testimony, Gillan states that "BellSouth is obligated to
9 condition facilities '... whether or not the incumbent LEC offers advanced
10 services to the end user customer on that copper loop or copper subloop.'" Then, he erroneously concludes that "BellSouth need not routinely condition
11 loop facilities for its own services for it to be obligated to condition facilities
12 for other CLECs." It is the latter conclusion with which BellSouth disagrees.
13 BellSouth is not asserting that it needs to offer advanced services to a specific
14 customer to have a routine network modification obligation. It is necessary,
15 however, for BellSouth to routinely perform network modifications for its own
16 services to have an obligation to perform similar modifications for CLECs.

17

18
19 In addition, Mr. Gillan points out that the rules for Routine Network
20 Modifications are in a different section of the rules from the line conditioning
21 rules. BellSouth does not disagree that there are separately numbered subparts
22 (or subsections) contained within the federal rules, but both subparts are
23 included within the overall rubric of the FCC's "Specific Unbundling
24 Requirements" at 47 C.F.R. § 51.319. The *TRO* at paragraphs 250 and 643
25 explains the relationship between Routine Network Modifications and line

1 conditioning unbundling requirements. Specifically, in Paragraph 250, the
2 FCC states, "Line conditioning constitutes a form of Routine Network
3 Modification ..." Later, in Paragraph 643, the FCC states, "Line Conditioning
4 is properly seen as a Routine Network Modification ..." In both cases, the
5 phrase "constitutes a form" and the term "properly" are defined as a "subset."
6 Stated simply, the FCC clearly identifies BellSouth's line conditioning
7 obligation as a subset of BellSouth's routine network modification obligations.

8
9 Q. PLEASE RESPOND TO MR. GILLAN'S EXAMPLE ON PAGE 58 THAT
10 PURPORTS TO ILLUSTRATE THE DIFFERENCE BETWEEN LINE
11 CONDITIONING AND ROUTINE NETWORK MODIFICATIONS.

12
13 A. Mr. Gillan states that "to a large extent, BellSouth's DSL offerings are housed
14 in remote terminals, located closer to customers." He continues, "CLECs, on
15 the other hand, collocate their equipment at the central office and, therefore,
16 must frequently use longer loops." Both claims are inaccurate. Like CLECs,
17 BellSouth started its DSL deployment in central offices, and prefers deploying
18 in central offices where possible. Within BellSouth's service territory, there
19 are a large number of customers that cannot be reached with DSL service from
20 the central office (by either CLECs or BellSouth). In these situations, it is
21 necessary for both BellSouth and the CLECs (which some have chosen to do)
22 to deploy Digital Subscriber Line Access Multiplexers ("DSLAMs") in remote
23 terminals to reach customers. In either case, the CLEC and BellSouth are in
24 the same situation, and must deploy the same equipment to reach the same
25 customers. As a result, there is no distinction between the DSL service offered

1 by BellSouth and the DSL service offered by CLECs that would create a
2 situation where the line conditioning that BellSouth performs for itself would
3 not also be sufficient for CLECs.

4

5 Mr. Gillan on Page 58 continues, stating that line conditioning is an "...
6 obligation that BellSouth must honor *whether or not it would do so for its own*
7 *customers ...*" without any supporting justification for this position.

8

9 Clearly, CompSouth's position attempts to read away the FCC's plain
10 language that specifies that line conditioning is a subset of Routine Network
11 Modifications, and that as a result, BellSouth's line conditioning obligation is
12 based entirely on what it would do for its own customers. In an effort to
13 narrow the dispute between the parties, however, BellSouth can agree to some
14 of CompSouth's proposed contract language as reflected in BellSouth witness
15 Pam Tipton's Exhibit PAT-5.

16

17 *Item 26: What is the appropriate process for establishing a rate, if any, to allow for*
18 *the cost of routine network modification that is not already recovered in*
19 *Commission-approved recurring or non-recurring rates? What is the appropriate*
20 *language, if any, to incorporate into the ICAs?*

21

22 Q. DID COMPSOUTH PROVIDE ANY DIRECT TESTIMONY OR
23 PROPOSED ICA LANGUAGE ON THIS ISSUE?

24

1 A. No. CompSouth did not provide any direct testimony on this issue, but Mr.
2 Gillan did propose ICA language that only allows BellSouth to recover costs
3 for Routine Network Modifications based on the Total Element Long Run
4 Incremental Cost ("TELRIC") rates already approved by the Commission,
5 even if the Routine Network Modification being requested was not included in
6 the calculation of that rate. Page 58.

7
8 In contrast, BellSouth's position is that for Routine Network Modifications
9 that have established TELRIC rates approved by this Commission, that the
10 Commission-approved rates would be used. For Routine Network
11 Modifications that have not been included in Commission-approved TELRIC
12 rates, BellSouth proposes that each such situation be handled on an individual
13 case basis, until such time that the Commission approves a rate for the
14 previously unspecified Routine Network Modification.

15
16 Q. PLEASE EXPLAIN THE ISSUE THAT YOU NOTED IN YOUR OPENING
17 REMARKS THAT HAS BEEN INJECTED BY DELTACOM WITNESS
18 STEVE BROWNORTH.

19
20 A. Mr. Brownworth, on Page 11 of his direct testimony, raises an issue of
21 providing narrowband services on Integrated Digital Loop Carrier ("IDLC")
22 and analog-to-digital conversions. That issue is not a part of this proceeding.
23 In fact, that issue is part of Issue 8 in Docket No. 030137-TP, which is
24 DeltaCom's Petition for Arbitration of its Interconnection Agreement with
25 BellSouth. Mr. Brownworth filed Direct Testimony about this same issue on

1 May 19, 2003, and BellSouth has provided its response to Issue 8 in the
2 appropriate proceeding. BellSouth reserves the right to supplement its direct
3 and rebuttal testimony if the Commission opts to properly move this issue into
4 this proceeding.

5

6 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

7

8 A. Yes.

9 601027

1 BY MS. MAYS:

2 Q Mr. Fogle, you caused to be prefiled with your direct
3 testimony three exhibits which have been identified as Exhibits
4 12, 13, and 14, is that right?

5 A That is correct.

6 Q Do you have any changes or corrections to your
7 exhibits?

8 A No, I do not.

9 Q Mr. Fogle, could you give a summary of your
10 testimony, please?

11 A I will be happy to. Good afternoon. My direct and
12 rebuttal testimony address 12 issues on the joint issues matrix
13 and why this Commission should adopt BellSouth's position on
14 each of those issues. Happily, two of those issues are now
15 resolved. Some of the remaining issues, such as line
16 conditioning, were raised in the Joint Petitioners'
17 arbitration.

18 Let me overview each of these issues briefly. Issues
19 17, 18, and 19 address line sharing and line splitting. With
20 respect to line sharing, the FCC has ruled that BellSouth is
21 not obligated to provide new line sharing arrangements and no
22 CLEC witness has filed testimony to the contrary. BellSouth
23 agrees to abide by the FCC's rules establishing a transition
24 plan for line sharing.

25 With respect to line splitting, the CLECs can enter

1 into line splitting agreements without any additional
2 assistance required from BellSouth. In fact, this market-based
3 solution is already working, as one CLEC has been quite
4 successful in signing line splitting agreements according to
5 their news releases referenced in my testimony.

6 The dispute between BellSouth and the CLECs
7 concerning line splitting boils down to who provides the
8 splitter. BellSouth believes CLECs can provide their own
9 splitter and BellSouth should not be required to provide
10 splitters because CLECs can either provide an inexpensive
11 stand-alone splitter or utilize the integrated splitter built
12 into all ADSL platforms.

13 Issues 23, 24, and 28 address access to loops. These
14 issues are about the FCC's decision on how best to incent new
15 network investment in areas where new construction exists. The
16 FCC recognized that CLECs were leading the deployment of fiber
17 and to encourage more fiber deployment and investment made
18 clear that BellSouth was not obligated to provide CLECs with
19 access to its fiber. BellSouth is not obligated to provide
20 access to fiber facilities known as fiber to the home and fiber
21 to the curb with one limited exception, which is captured in
22 BellSouth's proposed contract language. That exception is in
23 so-called brownfield areas where BellSouth puts in new fiber to
24 places that were previously served by copper.

25 In those over-build situations, BellSouth must only

1 provide access to a single voice channel over its fiber loops.
2 BellSouth's contract language mirrors the FCC's rules, whereas
3 CompSouth's would inappropriately require BellSouth to provide
4 CLECs with DS-1 circuits over fiber to the home and fiber to
5 the curb loops. CompSouth's language is not consistent with
6 the FCC rules and the Commission should reject it.

7 With respect to hybrid loops, which are loops made of
8 fiber and copper, BellSouth is only obligated to provide access
9 to what is known as the TDM functionality on hybrid loops, and
10 the Commission should adopt BellSouth's contract language
11 there, too. BellSouth's position embraces the FCC's national
12 policy regarding new network deployment in these areas.

13 Issues 26 and 27 concern the relationship between
14 routine network modifications and line conditioning. This same
15 issue was raised in the Joint Petitioners arbitration.
16 BellSouth's position is that BellSouth will provide routine
17 network modifications, including line conditioning as required
18 by the FCC at parity with what BellSouth does for its own
19 customers.

20 The disagreement here focuses on two issues. The
21 first, should BellSouth condition loops longer than 18,000 feet
22 by removing load coils or by removing bridged taps for CLECs
23 even though BellSouth does not do these functions for its own
24 customers. And, second, what should be the basis for rates to
25 perform work not considered a routine network modification.

1 BellSouth believes that the FCC meant what it said
2 about routine network modifications being the same for CLECs as
3 BellSouth does for its own customers. For routine network
4 modifications that were included in the cost studies, a CLEC
5 can pay the TELRIC rate. For modifications that are not
6 routine, however, BellSouth will perform such work at tariffed
7 rates appropriate for the work involved or as otherwise agreed
8 to in industry collaboratives. The real dispute here is that
9 the CLECs don't agree with the FCC's decision that BellSouth
10 should not be required to perform work for CLECs that it does
11 not perform for itself in the course of providing services to
12 its own customers.

13 Finally, I would like to step back to Issue 6. Issue
14 6 relates to high bit rate digital subscriber lines, also known
15 as HDSL. HDSL is an underlying technology that is used to
16 provide the high capacity pipes often used by large business
17 customers. These loops are commonly referred to as T-1s, and
18 the FCC has said that a T-1 and a DS-1 are equivalent.
19 BellSouth's position is that when it is no longer required to
20 provide a DS-1 loop, it is also not required to provide a UNE
21 HDSL loop.

22 In terms of its business line count, BellSouth used a
23 conservative approach with respect to UNE HDSL lines and only
24 counted each UNE HDSL Line as one business line each in data
25 that was filed with the FCC. BellSouth believes, however, that

1 it would have been appropriate to have counted each UNE HDSL
2 line as 24 business lines and may do so in the future.

3 This concludes my summary. Thank you.

4 MS. MAYS: The witness is available for
5 cross-examination.

6 COMMISSIONER DEASON: Cross from left to right.
7 Anyone? Going once, going twice. Okay.

8 MR. MAGNESS: Thank you, Commissioners. We have, as
9 with Ms. Blake, a couple of documents we expect to use, and Ms.
10 Kaufman is distributing those. I guess it is three, actually.

11 COMMISSIONER DEASON: Do you wish to have these
12 identified?

13 MR. MAGNESS: Yes, sir, I do.

14 COMMISSIONER DEASON: Okay. Let's work through that,
15 then. I believe the next available exhibit number is 37, I
16 believe.

17 MR. MAGNESS: The first document, as you can see, a
18 couple of these are marked from prior versions of the hearing.
19 The first one is a brief filed in the United States District
20 Court of Appeals for the District of Columbia Circuit in
21 Allegiance Telecom versus Federal Communications Commission.
22 At the back it is dated October 21st, 2003, and we would offer
23 that as Exhibit 37.

24 COMMISSIONER DEASON: That will be so identified.

25 MR. MAGNESS: I'm sorry, marked as Exhibit 37, not

1 offered yet. The second document is the table of contents of
2 the triennial review order. We ask that it be marked as
3 Exhibit 38.

4 COMMISSIONER DEASON: It will be so identified.

5 MR. MAGNESS: And, finally, as with Ms. Blake, there
6 are excerpts from the Georgia Public Service Commission and
7 Tennessee Regulatory Authority hearing transcripts in the
8 change of law proceedings. We would ask that it be marked as
9 Exhibit 39.

10 COMMISSIONER DEASON: It will be so identified.

11 MR. MAGNESS: Thank you, Commissioner.

12 (Exhibits 37, 38, and 39 marked for identification.)

13 CROSS EXAMINATION

14 BY MR. MAGNESS:

15 Q Good afternoon, Mr. Fogle.

16 A Good afternoon.

17 Q I want to talk to you a bit about DS-1 loops in
18 particular as you mentioned in your summary. First to get the
19 basic terms down. You would agree with me that a loop is a
20 transmission facility from an end user to a central office?

21 A Yes.

22 Q And transport, or dedicated transport, or interoffice
23 transport as it is sometimes called is a transmission facility
24 from one central office to another central office, correct?

25 A Yes.

1 Q And when we talk about a DS-1 loop, that loop has a
2 capacity, the equivalent of 24 voice grade equivalents, is that
3 correct?

4 A That is correct.

5 Q And then if you go up to a DS-3 level, that has the
6 equivalent of 672 voice grade lines?

7 A That is also correct.

8 Q And in ordering DS-1 loops currently in areas where
9 there is impairment, DS-1 loops can be ordered from BellSouth
10 as an unbundled network element under Section 251, is that
11 right?

12 A That's my understanding, yes.

13 Q And, in addition, the same -- well, I will just ask
14 you. When a CLEC orders the equivalent of a DS-1 loop, that
15 can also be ordered under the interstate special access tariff,
16 is that correct?

17 A There is a technical equivalent service. You can get
18 a 1.54 megabit service or what we call 24 voice line equivalent
19 out of either the special access or the UNE tariffs, UNE
20 interconnection agreements.

21 Q And to make a DS-1 service, is it correct that there
22 needs to be certainly a copper or fiber loop with electronics
23 on either end of that transmission facility?

24 A DS-1 is collectively the technology or the term that
25 is used for any 1.54 megabit per second symmetrical loop, and

1 in order to do that you need a transmission facility which
2 could be copper or fiber, and then associated electronics on
3 either end to talk over that transmission facility.

4 Q And the DS-1 loop, that is the transmission facility
5 and the electronics, is there any technical or network
6 difference that you are aware of between what is offered as a
7 UNE under Section 251 and what is offered under the special
8 access tariff?

9 A Not from a network perspective, no.

10 Q So the differences are more as Ms. Blake, I think,
11 described in service guarantees, warranties, service related
12 issues, is that your understanding?

13 A There were obviously terms and conditions in the
14 interconnection agreements that would apply to UNEs and then
15 terms and conditions in the special access tariffs that would
16 apply to special access services.

17 Q So when a CLEC converts a loop, let's say, from a UNE
18 to special access, or vice versa, is there any underlying
19 facility change that needs to be made in the normal case?

20 A In the outside plant network, I believe the answer
21 there is no. I don't know all the details of those transitions
22 to know whether there might be some inside central office
23 wiring changes or other types of record changes that would be
24 required. My expectation would be that it would be no or
25 minimal.

1 Q Well, would it be fair to say, then, that essentially
2 what happens is there is a records change because you are
3 changing it from one type of service that is billed a certain
4 way to another type of service that is billed another way,
5 right?

6 A That is correct.

7 Q So when you talk about a records change, is that more
8 of a software change to go from one billing system to another?

9 A I believe that is required, yes.

10 Q Can you think of a situation where you might, in your
11 experience, have to do a rearrangement of the underlying
12 facilities in order to change something that was sold as a UNE
13 into the same thing sold as special access?

14 A Some customers when they want to make those types of
15 changes, they also want to change where they terminate that UNE
16 from one collocation cage to another, they may require other
17 types of facility changes. Specifically just to make the
18 records change, though, I don't believe any rewiring would be
19 required.

20 Q And you reference in your summary that your testimony
21 concerns the -- I think we have been calling them already in
22 the hearing the broadband orders of the FCC concerning loop
23 unbundling?

24 A Yes.

25 Q And I would ask you to look in your direct testimony

1 at Page 19 at Line 15, I believe your summarizing your position
2 as follows, "BellSouth maintains that the FCC determined in the
3 TRO that ILECs have no obligation to unbundle FTTH." Would you
4 agree with me that stands for fiber to the home?

5 A Yes.

6 Q "FTTH mass market loops serving greenfield areas or
7 areas of new construction," citing to the TRO. The FCC
8 expanded this ruling to include FTTC loops, and would you agree
9 that is fiber to the curb loops?

10 A Yes.

11 Q And those orders from the FCC were included in the
12 triennial review order, correct?

13 A Yes.

14 Q And, in addition, there was an order called the
15 multiple dwelling unit reconsideration order on these issues,
16 right?

17 A Yes, there was.

18 Q And what is known as the fiber to the curb
19 reconsideration order, correct?

20 A That's correct.

21 Q So these issues that you are talking about here are
22 not issues that were addressed in the triennial review remand
23 order?

24 A I don't believe they were readdressed in the remand
25 order, no.

1 Q Now, you testify in this summary I just read on Page
2 19 that ILECs have no obligation to unbundle FTTH mass market
3 loops serving greenfield areas. Now, the greenfield area,
4 isn't it correct, is an area where there has been no
5 telecommunications network prior to the building of whatever
6 network we are talking about?

7 A Yes. I mean, essentially it is the term for new.
8 Greenfield is whenever they are building new construction, new
9 businesses, new homes, new high-rises. There is no
10 telecommunication facilities because previously nothing
11 existed. I would refer to it as a green field. It was empty,
12 and now there is something there and they have to build
13 telecommunications services. So the act of putting those
14 facilities in place is deploying in a greenfield situation.

15 Q And then, by contrast, brownfield, as it is used in
16 those terms, is when there already is network in place and
17 there is a replacement of the network going on, is that a fair
18 summary?

19 A Yes. The counter is brownfield where existing
20 building was in place that was served typically by copper or
21 existing BellSouth or any other type of telecommunications
22 facilities, and then for a variety of reasons, BellSouth or the
23 ILEC is choosing to go in and overbuild with fiber. That
24 overbuild means that you have fiber and copper both. The
25 construction of the fiber is considered a brownfield

1 application, as that kind of constitutes the entire universe.
2 Either it is new or it was existing. If it was existing we
3 call it brownfield; if it is new we call it greenfield.

4 Q And your testimony here notes that ILECs have no
5 obligation to unbundle FTTH mass market loops. Is it correct,
6 though, that it is BellSouth's position that it has no
7 obligation to unbundle any loops in a greenfield situation?

8 A It's BellSouth's position that it does not have to
9 unbundle fiber in a greenfield situation. If we were to choose
10 to go in with copper facilities, then I believe the unbundling
11 requirements would still exist.

12 Q So any fiber loop that is put in in a greenfield
13 situation, it is BellSouth's position there is no unbundling
14 obligation whatsoever?

15 A It is not only BellSouth's position, but we believe
16 the FCC has stated clearly that is the case and that there is
17 no impairment requirement because CLECs are equally situated
18 and have the same capability to deploy fiber as the incumbents
19 do. Since there is no impairment, there is no need to unbundle
20 the fiber once it is deployed in a new location.

21 Q In your testimony you did note FTTH mass market
22 loops, and there is a fair amount of discussion in the FCC
23 order concerning those rules applying to mass market loops,
24 isn't there?

25 A Yes. The term fiber to the home and fiber to the

1 curb are typically used in mass market applications. It is a
2 distinction that the FCC, I think, tried to make and they even
3 state in other places that it is the helpful analytical tool to
4 try to draw information from the orders. But they
5 interexchange fiber to the home and fiber frequently in their
6 order, and also state that the unbundling exemptions do not
7 vary based on the type of customer to be served. So that would
8 mean whether it is mass market or enterprise customer, the
9 unbundling exemptions would still apply. So, again, even
10 though fiber to the home is referenced typically in the mass
11 market loops portion of the TRO, the rules do not limit
12 themselves to mass market loops.

13 Q But the text of the order in several instances, I
14 think as you referenced, speaks of it in terms of rules that
15 apply to mass market loops, doesn't it?

16 A I think in setting up the mass market and the
17 enterprise sections of the TRO, the FCC was attempting to try
18 to kind of group customer types together to help illustrate
19 what the unbundling exemptions were. I think in this
20 particular case they created more confusion than help in that
21 new fiber being built into new construction, they state that
22 there is no unbundling obligation and that does not vary based
23 on the type of customer to be served, which means that it
24 should be consistent whether you are talking about mass market
25 or enterprise customers.

1 Q But the FCC doesn't say you can or can't serve a
2 particular customer type, but they do make the distinction
3 between mass market and enterprise loops, don't they?

4 A I think they make the distinction between mass market
5 customer types and enterprise customers and try to categorize
6 the types of loops that are generally used to serve mass market
7 customers and generally to serve enterprise customers.

8 Q But is there anything in the FCC's orders themselves
9 as you read them that says that if a CLEC orders a DS-1 loop
10 into one of those -- into a greenfield or brownfield situation
11 that that DS-1 loop can't be provided to an enterprise customer
12 or to any customer?

13 A Could you repeat your question? I think I got lost
14 about halfway through that.

15 Q Sure. Okay. Well, let's just use an example. Let's
16 say we have an office building in an area where there has been
17 network and it is one of these brownfield situations?

18 A Yes.

19 Q The CLEC has a customer in that building that it
20 serves with a DS-1 loop.

21 A That is correct.

22 Q And let us assume that this area is still impaired
23 for purposes of DS-1 loops, okay?

24 A Certainly.

25 Q It doesn't pass the test Ms. Tipton talks about in

1 the TRRO, okay?

2 A Yes.

3 Q Will BellSouth continue to provision the DS-1 loop to
4 the CLECs who can serve that existing customer in the
5 brownfield situation?

6 A In the scenario that you gave, and I'll try to
7 rephrase, it depends. And I will rephrase the scenario and
8 make sure I show you clearly the distinction. In a brownfield
9 situation where BellSouth has chosen to build fiber over
10 copper, as long as the existing copper is still in place, then
11 BellSouth has an obligation to make that copper available to
12 serve the DS-1 needs, the unbundling needs of the CLEC in that
13 location. If, for whatever reason, BellSouth were to need to
14 retire that copper or choose to retire that copper, then the
15 FCC rules require it only to provide a 64 kilobit or a voice
16 grade equivalent capability at that location after the fiber
17 has been -- becomes the only facility serving once the copper
18 has been retired. So, depending on if it starts as a
19 brownfield situation, there is a FCC requirement to provide a
20 voice grade equivalent, but as long as the copper facilities
21 are still available, then BellSouth is still required to
22 provide those copper facilities for the purposes of providing
23 the DS-1s.

24 Q so the short answer, if the fiber goes into the
25 network and the CLEC want to continue using that DS-1, you are

1 saying that a DS-1 would no longer be available, they could
2 only get a 64 kilobit or DS-0 line?

3 A If only the fiber was remaining. If the copper had
4 been retired, then the only obligation that BellSouth has is to
5 provide the voice grade equivalent, which is the 64 kilobit
6 voice channels over the fiber.

7 Q And let us say that building is in a new area, in a
8 greenfield area, it is your position that if the CLEC has a
9 customer that it has had for sometime that sets up its location
10 at that new building and wants to be served by -- the CLEC
11 wants to serve it using a DS-1 loop, BellSouth will not
12 provision a UNE DS-1 loop in that situation?

13 A No. BellSouth is very clear and the FCC is very
14 clear that there is no obligation to provide access to fiber in
15 a greenfield scenario. So, what would have to happen is if a
16 new building is going into place, the CLEC would have to do
17 what BellSouth is doing, which is to build its own fiber to
18 reach that customer. We are sitting -- there is no building
19 there today. There is going to be a new building. We both sit
20 in the same situation. We spend the same dollars deploying the
21 same fiber capabilities to serve the same customers.

22 Q What does new mean in this context? What is a new
23 building under the contract language?

24 A I think the contract talks about greenfield and
25 brownfield, so I don't know if it would necessarily talk about

1 it being new. I just use that as a synonomous term with
2 greenfield.

3 Q Well, what does that mean? I mean, you are asking
4 the Commission to adopt contract language, my clients would
5 like to understand what it means. The example we just gave,
6 the building was new in September of 2004. Does that qualify
7 as greenfield?

8 A It would qualify as greenfield if when it is
9 constructed the first telecommunications facilities provided by
10 BellSouth were fiber, entirely fiber. In terms of looking at
11 how that relates to these orders, if it is a greenfield
12 application, there is no existing telecommunication facilities
13 to that location and BellSouth deploys all fiber, then that
14 qualifies as greenfield or what we used, kind of, as called
15 new. It is a new building and it is a greenfield application,
16 therefore, there would be no requirement to unbundle.

17 Q So BellSouth could go back and examine every building
18 in the state and see if that was the case and determine that
19 those were all new and that there is no DS-1 loops to them?

20 A Well, I mean, a new building doesn't really matter
21 necessarily, but if it is a greenfield application it means
22 that the only facilities that have ever served that building
23 were new fiber facilities. In other words, when it was
24 constructed whenever that was, it was constructed and all fiber
25 was used to serve it, and there has never been copper

1 facilities, then it would qualify as a greenfield building.

2 Q And if copper facilities were retired in a brownfield
3 situation, how far back can BellSouth reach to deny access to
4 UNEs in that situation?

5 A I mean, I don't know if we are necessarily denying
6 access to UNEs. The FCC said there is only one requirement for
7 brownfield fiber deployments and that is to provide access to
8 the 64 kilobit channels, so we are providing what the FCC
9 requires in that situation. But, again, the FCC didn't specify
10 any particular date or time as to when that would be. So if it
11 is all fiber serving a building that used to have at some time
12 in its history copper facilities, then it is, by definition, a
13 brownfield and we are required to provide the 64 kilobit
14 channel and that is all.

15 Q Okay. I mean, you have given us your understanding
16 of what the FCC rules mean, but the BellSouth contract language
17 you are supporting, what is BellSouth's position as to how far
18 back BellSouth would reach in saying, CLEC, because of the FCC
19 rules that are embodied in this new contract, you don't have a
20 right to a DS-1 UNE loop at that location anymore because it
21 qualifies as brownfield. How far back?

22 MS. MAYS: Excuse me, Commissioner Deason. I'm going
23 to lodge an objection here, and the objection relates
24 specifically to the contract language at issue in this case.
25 The lawyer is asking the witness a series of questions about

1 defining this and defining that, and I think this Commission
2 could look at Mr. Gillan's proposed contract language and look
3 at BellSouth's proposed contract language, there is nothing in
4 there that talks about timing, defining greenfield, or any of
5 this. The only disputed contract language we have relates to
6 this DS-1 issue. So he is asking the witness this line of
7 questions and saying his clients want to know something that is
8 not at all in evidence. So my objection is based on that,
9 facts not in evidence.

10 MR. MAGNESS: Commissioner, number one, Mr. Fogle is
11 advocating that BellSouth's contract language be approved.
12 Number two, CompSouth's primary objection to the BellSouth
13 contract language -- and we will go into this in more detail --
14 is that it does not provide access to DS-1 and DS-3 loops as we
15 believe the evidence shows, the law shows is required under the
16 applicable FCC orders. We have included contract language that
17 would ensure that while the greenfield and brownfield and
18 hybrid loop rules the FCC has put in place all go into effect,
19 that we also effectuate the part of the FCC orders that says
20 that it is limited to the mass market so that DS-1 and DS-3
21 loops are still available.

22 If that language is in the contract as we advocate it
23 should be, this issue isn't an issue for CLECs serving the
24 enterprise market and wanting DS-1s and DS-3s. It makes it
25 clearer. If that language is not in the contract, which is

1 what Mr. Fogle and BellSouth are advocating, we run into a lot
2 of questions about what exactly did they mean. What are they
3 going to say to CLECs if that contract language is adopted.
4 What is their position on how far back they can go in
5 implementing these orders. So I think it goes directly to his
6 views stated in his testimony about the orders, it goes
7 directly to the contract language he is advocating, and the
8 central dispute we have on the contract language.

9 COMMISSIONER DEASON: Objection overruled. You may
10 proceed.

11 BY MR. MAGNESS:

12 Q So if the BellSouth contract language is adopted,
13 what is BellSouth's position on how far back in time one could
14 look to determine if something qualifies as brownfield?

15 A I don't believe the FCC provided a limit as to how
16 far back in time BellSouth can go, but as a practical matter
17 all fiber deployment to buildings is a relatively new
18 phenomenon. I mean, we have been deploying copper for well
19 over one hundred years. The number of brownfield situations
20 are going to far, far exceed -- the still existing copper are
21 going to far, far exceed those where the copper has been
22 retired.

23 Q Well, just as an example, the triennial review order
24 was adopted in August of 2003. Would you go back that far?

25 A Again, I don't believe there is any limit to how far

1 back we would go. Brownfield, by definition, is a building
2 served by fiber where the copper has been retired. It doesn't
3 specify when it was served by fiber or when the copper was
4 retired, it just simply says that that is the definition of
5 brownfield.

6 Q So anywhere that BellSouth has retired copper and
7 replaced it with fiber, locations where today BellSouth may be
8 providing these DS-1 loops, it is your position that -- or
9 BellSouth's position that if your contract language is adopted
10 BellSouth could immediately refuse to provision those same DS-1
11 loops under your provisions of the contract?

12 A If the locations were truly brownfield locations
13 where the copper has been retired, then, yes, I believe the
14 BellSouth position is consistent with the FCC position, which
15 is our only requirement is to provide access to a 64 kilobit
16 channel. So if the CLECs are receiving a service that is
17 higher than that, DS-1 or DS-3, then that would not be TRO
18 compliant and therefore would have to cease.

19 Q Well, let's look at what is marked as --

20 COMMISSIONER DEASON: Let me ask a question. You
21 would have to cease or you would provide the service at a
22 different rate?

23 THE WITNESS: There is no requirement to unbundle the
24 UNE, but I believe we would be happy to do so under special
25 access.

1 BY MR. MAGNESS:

2 Q I would like to draw your attention to Exhibit 37,
3 which is this. Mr. Fogle, you have seen this document before,
4 haven't you?

5 A Which one are you referring to?

6 Q I'm sorry, the FCC filing at the D.C. Circuit?

7 A Yes.

8 Q You have read the document, right?

9 A I have actually, yes.

10 Q And, Mr. Fogle, would you agree that this is a
11 pleading filed by the Federal Communications Commission in a
12 case where a CLEC, that is Allegiance, was challenging certain
13 provisions of the triennial review order?

14 A Yes.

15 Q And, in fact, they were challenging the fiber to the
16 home broadband orders, right?

17 A Yes.

18 Q And I ask you to draw your attention to the second
19 paragraph. Just read this and then talk to you a little bit
20 about it. The motion concerns telecommunications loops, the
21 wires that go to an end user's premises made of optic fiber.
22 In the residential and very small business context known as the
23 mass market, such loops are known as fiber to the home, or FTTH
24 loops. Larger businesses tend to use higher capacity loops
25 made of either fiber or copper, typically called DS-1 or DS-3

1 loops. In the order on review, the FCC excused incumbent
2 telephone companies from having to provide FTTH loops as
3 unbundled network elements to competing telephone companies at
4 forward look TELRIC rates, but it required incumbents to
5 continue to make DS-1 and DS-3 loops available to competitors
6 at such rates.

7 Now, doesn't it seem from the FCC's summary of its
8 own order here when it was being challenged that the FCC said
9 despite the FTTH rules, we still preserved access to DS-1 and
10 DS-3 loops?

11 A As we have discussed this numerous times, BellSouth's
12 reading and my reading of this is different than yours in that
13 the FCC is clearly saying that there is an impairment standard
14 which applies to DS-1s and DS-3s, and then there is also the
15 unbundling exemptions that apply to fiber, fiber to the home
16 and fiber to the curb. And what they are trying to say is that
17 the two are not related. In our entire conversation here, we
18 are not referring to the impairment standard, we are talking
19 about access to unbundling requirements over new facilities
20 over hybrid loops and fiber to the home loops, those types of
21 things. And that they are trying to simply say that there is
22 not a relationship there with the impairment standards as they
23 are saying here.

24 Q Would you agree with me that part of what is at issue
25 in this case where they filed this brief was a challenge to the

1 broadband orders, not the impairment standard, right?

2 A Yes. I mean, Allegiance was concerned that the
3 broadband order would take away access to DS-1s and DS-3s. And
4 I think the FCC provided several pages of explanation here that
5 that was not the case.

6 Q And, I think you testified a few minutes ago that you
7 think -- you said, I think, unfortunately it may be that the
8 FCC left this unclear in the way they worded the orders. Do
9 you think that is true?

10 A I think -- I mean, they even state in this document
11 that -- on Page 13, in particular, they say the distinction
12 between mass market and enterprise customers as a helpful
13 analytical tool of the unbundling of a particular customer's
14 loop would not be determined by that customer's market
15 category, and they refer to Paragraph 210 of the TRO. So
16 essentially what they are saying here is that the mass market
17 and enterprise definitions or sections is an analytical tool,
18 not necessarily a set of rules that apply to one customer
19 versus the other.

20 And further up on Page 13 they also say that nothing
21 in the Commission's discussion of fiber to the home loops
22 indicate that the fiber to the home nonimpairment finding was
23 limited to residential end users. If you look through this,
24 they have had errata where they struck residential and changed
25 it to end user customer. They have this analytical tool which

1 I think creates confusion. So I think, in essence, it would
2 have been simple if they had just simply said here are the
3 rules for access to greenfield fiber, here is the rules for
4 access to brownfield fiber, and make that independent of the
5 discussions of mass market enterprise loops.

6 Q Okay. Well, let's go back to Page 2. In the first
7 full paragraph towards the middle the FCC asserts petitioners
8 are wrong that the resulting rules are vague with respect to
9 their treatment of DS-1 and above loops. In fact, the
10 Commission expressly preserves CLEC access to DS-1 and DS-3
11 loops at TELRIC rates. I mean, the FCC certainly doesn't seem
12 to think its intentions were unclear, does it?

13 A No, they believe their description is very clear. We
14 can continue citing. If you go back to Page 6, they come back
15 with there is no hard and fast definition of whether a
16 particular customer is a mass market or an enterprise customer.
17 And those categories are based on general characteristics of
18 the types of communications services customers typically demand
19 and were used as descriptive tools to guide the analysis. So,
20 I mean, they say they are not vague.

21 I think the best reading that BellSouth's provides is
22 that they are very clear about the unbundling exemptions
23 required of fiber, and that is both fiber to the home and
24 hybrid loops, but that it gets muddied when they start talking
25 about mass market and enterprise loops. And clearly that is

1 because of the distinctions and disagreements we are having
2 with CLECs as to how the rules apply for those two customer
3 segments. Because our view of the reading of the FCC rules is
4 that it does not differentiate based on the customer type, that
5 the unbundling exemptions are the same.

6 Q No, it doesn't make a distinction based on customer
7 type, but didn't they do an analysis based on loop type,
8 enterprise market loops versus mass market loops?

9 A I think they put them in various categories just to,
10 again, try to be a helpful analytical tool. But when they set
11 up those two discussions in Paragraph 210 they say that their
12 rules do not vary based on the type of customer to be served.

13 Q Well, doesn't that just mean that -- I mean, if I, as
14 a residential customer, decide I want a DS-1, there is nothing
15 in the rules that prevents me from getting a DS-1 because I'm
16 not typically associated with the enterprise market, right?
17 Isn't that what 210 says?

18 A I don't believe that is what it says at all. I
19 believe they are simply saying that for facilities, new
20 facilities in particular, they are saying the rules for
21 unbundling do not vary based on the types of customers that are
22 served by those facilities.

23 Q So it is your testimony that the analysis of
24 different loop types, then, just is not something we need to
25 pay attention to?

1 A I think the FCC characterizes it as a helpful
2 analytical tool. To the degree the Commission or other people
3 find it helpful, they are welcome to use that. I don't believe
4 that it is that helpful. So I think it is clear that
5 greenfield fiber, whether it is called fiber to the home or
6 just fiber, the rules are the same.

7 COMMISSIONER DEASON: Let me ask a question at this
8 point. Why did the FCC go to the trouble of trying to
9 differentiate between mass market services and enterprise
10 services? What is the reason for that and what is your
11 understanding of the FCC's meaning of those different markets?

12 THE WITNESS: Well, I think -- I can't speak to why
13 they broke those apart. I think in general they were trying to
14 provide some categories to make a very large document, I guess,
15 more user friendly. That's what they say in other places like
16 this Allegiance brief that we have been walking through. But I
17 think they are generally saying that an enterprise customer is
18 a customer that typically would order DS-1s or above and a mass
19 market customer is a person who would order services that are
20 slower or --

21 COMMISSIONER DEASON: So why didn't they just make a
22 distinction based upon the service as opposed to putting out
23 labels mass market and enterprise?

24 THE WITNESS: I wish we had them here to ask them
25 that question. I mean, I think we are left with deciding kind

1 of what the rules are that apply. But if you look at what they
2 are trying to do in terms of incenting new fiber deployments
3 and that they recognize and state in several cases that CLECs
4 are either ahead on fiber to the home deployment or doing more
5 to fiber to the home deployment than the incumbents, and that,
6 you know, they are trying to incent that, providing the
7 unbundling exemption for new fiber deployment is one way to
8 incent that. In other words, if we build it, we don't have to
9 share it. That creates an economic incentive for us to build
10 it as quickly as possible.

11 COMMISSIONER DEASON: To the mass market.

12 THE WITNESS: To the mass market.

13 COMMISSIONER DEASON: Is there no incentive needed to
14 build it to the enterprise market?

15 THE WITNESS: I could just say that the revenue
16 opportunities for enterprise customers are larger than they are
17 for mass market customers, but at the same time, again, there
18 is no impairment because the revenue opportunity for the CLEC
19 is the same. And so if you come back to we are sitting here
20 looking at a building that is being constructed that is going
21 to have all business tenants in it, us and the CLECs are
22 sitting from the same place. Neither of us have the facilities
23 to the building, so we both could build those facilities, you
24 know, to that new building. So if there is no impairment
25 requirement, there is no requirement to unbundle.

1 So I think that the essentially the incentive they
2 are trying to work towards. If you build new fiber you don't
3 have to unbundle it. If you build fiber over existing copper
4 and you retire that copper, then they want to preserve access
5 to the voice frequency, and that is where the requirement for
6 brownfield, which is to provide the 64 kilobit voice channel,
7 comes from.

8 BY MR. MAGNESS:

9 Q Just to follow up on that idea. If you could look at
10 what has been marked as Exhibit 38, it's the table of contents
11 of the triennial review order. Under Roman Numeral VI,
12 unbundling requirements for individual network elements, Part
13 A, loops, look down at Section 4. Doesn't the FCC do its
14 entire analysis separately for mass market loops? Not
15 customers, but loops, and for enterprise market loops as
16 Section 6, Roman VI(a)(4), loop impairment by customer market,
17 then mass market loops is A. All of the FTTH and hybrid loop
18 issues are discussed there. Then they go on to separately
19 discuss enterprise market, don't they?

20 A Yes, they do discuss them in separate sections. They
21 try to provide headers to differentiate.

22 Q And just one last thing on this Allegiance pleading.
23 On Page 12, the first full paragraph, Allegiance also claims it
24 will lose access to DS-1 loops because of the fiber to the home
25 orders. The FCC says the text makes clear that the FTTH rule

1 applies to customers who in the absence of fiber would be
2 served by a low capacity loop. The text as well as the rules
3 themselves make it clear that DS-1 and DS-3 loops remain
4 available as UNEs at TELRIC prices.

5 How could the FCC have said this to the D.C. circuit
6 if actually it was unclear and it wasn't certain that they were
7 maintaining access to DS-1 and DS-3 loops?

8 A I think there's a couple of -- I mean, the reason the
9 FCC says it will maintain access to DS-1 and DS-3 loops is
10 because the existence of all fiber deployments is relatively
11 small. In other words, all fiber deployment is in its infancy.
12 And so in the grand majority of locations and situations the
13 impairment standard applies because there's hybrid loops or
14 copper loops that are providing those DS-1s and DS-3s.

15 So, again, you know, even earlier on that same page
16 the Commission found that CLECs such as Allegiance are able to
17 build their own fiber loops as readily and economically as
18 ILECs can build them. There's no impairment issue, but, again,
19 I think the reason that they felt like there is a distinction
20 that they wouldn't lose access is because the existence of all
21 fiber is in its infancy, and so there are very few locations
22 that would qualify as greenfield where access to DS-1s and
23 DS-3s would be denied.

24 Q Mr. Fogle, wouldn't it be a much more straightforward
25 reading of, as you started your answer, the FCC saying we are

1 maintaining access to DS-1 and DS-3 loops to say that when they
2 said we are maintaining access to DS-1 and DS-3 loops they
3 meant we are maintaining access to DS-1 and DS-3 loops?

4 A I think a clearer reading, or what maybe I would have
5 put in there was that the impairment standards for DS-1s and
6 DS-3s are not impacted by the unbundling exemptions that are
7 provided in fiber because the existence or the number of
8 locations that have all fiber deployment are very small,
9 therefore there is not a large overlap between those two rules.

10 Q Is there any such thing as a DS-3 copper loop?

11 A I'm sure that you can get DS-3 speeds across copper,
12 but I'm fairly confident almost everybody uses fiber to deploy
13 DS-3s.

14 Q Everybody including BellSouth?

15 A Yes.

16 Q So if the FCC said we are preserving access to DS-3
17 loops and DS-1 loops, if it was all about you don't have access
18 if it's fiber, how could that make any sense given that a DS-3
19 loop, as a practical matter, is always going to be fiber?

20 A Again, the impairment hinges on whether it is a
21 greenfield or a brownfield location. It is not based on the
22 speed of services. So if it is a greenfield building, then the
23 FCC specified what our obligations are. If it is a brownfield
24 location then they specified what our obligations are.

25 Q Mr. Fogle, I would like to ask you to look at Exhibit

1 39 now. And that is from your first two pages or from your
2 testimony before the Georgia Public Service Commission. You
3 were a witness in the case, the change of law case, Docket
4 Number 19341U, correct?

5 A Yes, I was.

6 Q And draw your attention to Page 353, and there you
7 testified at Line 15 -- well, I'll start at 14. An HDSL, lower
8 case, capable loop could be doing any number of other
9 functions. I mean, an HDSL capable loop is any loop that is
10 less than 12,000 feet long, has no load coils, and has a
11 limited amount of bridged taps, so it is just a physical
12 configuration in our network.

13 Just as to that statement, do you have any reason to
14 testify anything differently here?

15 A No.

16 Q If you could look at the following pages from the
17 Tennessee Regulatory Authority transcript. Did you testify in
18 that proceeding?

19 A Yes, I did.

20 Q And I would ask you to look at Page 119, and here
21 there is a discussion of BellSouth deploying a technology
22 called ADSL-2. Do you see that?

23 A I do.

24 Q And if I could just ask you to look at the questions
25 and answers at Line 6 to actually Line 6 of the next page --

1 I'm sorry, just Line 6 to Line 23 of this page, if there is
2 anything that you would disagree with from your testimony in
3 Tennessee?

4 A No, I wouldn't change anything.

5 Q And on Page 120 to the following page, Lines 4
6 through 12. Again, if you could just review that testimony and
7 if there is anything that you would disagree with in your
8 testimony?

9 A Lines 4 through where?

10 Q Four through 12.

11 A No, I wouldn't make any changes.

12 MR. MAGNESS: Mr. Fogle, if you could give me just a
13 moment, I think that may be -- yes, that is all I have for this
14 witness.

15 COMMISSIONER DEASON: Staff.

16 MS. SCOTT: Yes, Chairman, staff has some questions
17 for this witness.

18 CROSS EXAMINATION

19 BY MS. SCOTT:

20 Q Good afternoon, Mr. Fogle.

21 A Good afternoon.

22 Q My name is Kira Scott. I'll be asking you some
23 questions on behalf of Commission staff. Do you happen to have
24 a copy of CompSouth witness Gillan's rebuttal testimony in
25 front of you? If not, we can provide that for you.

1 A I don't believe that I do.

2 MS. SCOTT: Commissioner, could staff please approach
3 the witness with a copy of Mr. Gillan's rebuttal testimony?

4 COMMISSIONER DEASON: Yes.

5 MR. MAGNESS: I have a copy if you need it, Kira.

6 BY MS. SCOTT:

7 Q Mr. Fogle, could you please turn to Page 6, 7, and 8
8 as a reference point for Mr. Gillan's rebuttal testimony. Let
9 me know when you are there.

10 A I'm there, yes.

11 Q Mr. Gillan identifies multiple instances where the
12 TRO appears to limit the unbundling obligation to mass market
13 customers. Can you explain how these citations or instances
14 are consistent with your interpretation that there is no
15 unbundling obligation for enterprise market customers?

16 A I mean, we don't disagree that the fiber to the curb,
17 fiber to the home discussion happens in the mass market
18 section. So there are numerous references when they talk about
19 fiber to the home, fiber to the curb in mass market scenarios.
20 Again, in the paragraphs that we cited where the unbundling
21 exemptions do not change depending on the customer to be
22 served, we believe that that unbundling exemption, the FCC is
23 stating that it applies to mass market and to enterprise
24 customers when it comes to fiber to the curb or fiber to the
25 home deployments.

1 So, in essence, all of these are perfectly consistent
2 in that this is a subset of what is the unbundling exemptions
3 that the FCC has provided. In mass market situations as well
4 as enterprise situations where there is greenfield fiber to the
5 home or fiber to the curb deployments, the unbundling
6 exemptions apply.

7 Q Thank you. If you could now please refer to your
8 rebuttal testimony at Page 15. Just let me know when you are
9 there.

10 A Yes, I'm there.

11 Q There on Page 15 you note that the TRO errata
12 corrected the rules by replacing the words residential unit
13 with end users customer premises, is that correct?

14 A Yes.

15 Q Do you also agree that the FCC further corrected its
16 fiber to the curb order, that is the order on reconsideration
17 released October 18, 2004, to replace those same words, a
18 residential unit with an end user's customer premises?

19 A Yes. And that is part of the reason why BellSouth
20 believes the FCC was attempting to clean up some of the
21 language around fiber to the curb, fiber to the home, and make
22 it clear that it applies to more than just residential
23 customers.

24 Q Okay. With the exception of multiple dwelling units,
25 is it your position that these changes clarify that no

1 unbundling is necessary for either mass or enterprise markets?

2 A I think they are a step in the right direction in
3 terms of clarifying that language. Again, there are other
4 places in the TRO where they, again, specifically state that
5 the unbundling exemptions do not vary based on the customer to
6 be served. But clearly by removing the discussion of
7 residential and now changing it to end user customer definitely
8 broadens the wording of the TRO to include all customer types.

9 Q Okay. Did the TRO errata change any references noted
10 by Mr. Gillan?

11 A I don't know necessarily whether it does or not. I
12 would have to go through and try to figure out in the errata.
13 There are numerous errata and numerous references, so I would
14 have to cross reference, and it might take awhile.

15 Q Okay. Did the errata move to move the fiber to the
16 home discussion outside the mass market section?

17 A No, it did not.

18 Q Are you familiar with the order I discussed before,
19 the fiber to the curb -- I'm assuming you are since you
20 answered the question before -- the fiber to the curb order
21 released October 18th?

22 A Yes.

23 MS. SCOTT: If staff could approach the witness with
24 an excerpt from that order.

25 COMMISSIONER DEASON: Yes. Staff, do you wish to

1 have this identified?

2 MS. SCOTT: No, sir.

3 COMMISSIONER DEASON: Very well.

4 BY MS. SCOTT:

5 Q If you could, Mr. Fogle, refer to Page 2, the second
6 paragraph of that order?

7 A Yes.

8 Q Does the FCC describe their decision to limit the
9 unbundling obligation of an ILEC to those serving the mass
10 market from that excerpt, particular excerpt that you find that
11 to be true?

12 A Which paragraph are you referring to?

13 Q The second paragraph, Paragraph 2 on the second page
14 of the order.

15 A I don't read this language as limiting the unbundling
16 exemption to mass market. They do discuss mass market fiber to
17 the home loops. But as I have discussed, when you are doing
18 all fiber deployment, in the industry all fiber to a
19 residential or small business area is referred to as fiber to
20 the home or fiber to the curb versus just calling it fiber. So
21 the term mass market fiber to the home is, I guess, slightly
22 redundant in that fiber to the home is what we deploy in a mass
23 market area, a residential area. But I don't read this to
24 limit the unbundling exemption to just mass market, it just
25 simply references that no impairment with respect to mass

1 market fiber to the home loops.

2 Q Okay. Thank you. If you could now please turn to
3 Item 27 of staff's first set of interrogatories.

4 A Yes, I'm there.

5 Q Staff had asked if BellSouth objected to specific
6 proposed language that stated that fiber to the home or fiber
7 to the curb loops do not include local loops to enterprise
8 customers or predominately business multiple dwelling units in
9 greenfield areas. In your response you only indicate that you
10 had reached an agreement with Sprint. Does BellSouth object to
11 this specific language?

12 A The answer is really no, and it is a definitional
13 issue. Because, again, fiber to the hurb -- excuse me, I like
14 to say fiber to the hurb, which is a mix between fiber to the
15 home and fiber to the curb. But fiber to the home and fiber to
16 curb, again, is what you would call a loop, an all-fiber loop
17 to a mass market type customer, a small business or residential
18 customer, whereas it is just simply called fiber if it is sent
19 to a building or if it is used to provide high or low
20 facilities.

21 So, in essence, calling it fiber to the home or fiber
22 to the curb for purposes of this contract and excluding
23 enterprise customers would unfortunately limit our
24 requirements. But it is true to the definition in terms of how
25 the words are used in the industry today. And so what we would

1 hope to have is not only -- if you up want to put this language
2 in, then you would have to add additional language to discuss
3 the rest of the fiber unbundling exemption for the enterprise
4 customers, since the rules apply to both.

5 So, in essence, it's kind of an issue where there is
6 definitions of terms. And how those terms are defined has a
7 bearing. And if the terms are defined narrowly and the
8 unbundling exemptions are broader than that, then we would need
9 to have additional language to cover the unbundling exemptions
10 that are broader. If the terms are defined broadly to match
11 with the unbundling exemptions then we would have no objections
12 to them.

13 So, in essence, you know, reading this as an engineer
14 who works in the network and others, this reads true to me, but
15 it is not true to the spirit of the FCC orders which allows
16 unbundling exemptions broader than just to the mass market.

17 MS. SCOTT: Thank you, Mr. Fogle.

18 Staff has no further questions.

19 COMMISSIONER DEASON: Commissioners, questions?

20 Redirect.

21 MS. MAYS: Thank you, Commissioner.

22 REDIRECT EXAMINATION

23 BY MS. MAYS:

24 Q Mr. Fogle, staff was just asking you about
25 BellSouth's Response to Interrogatory Number 27, and they were

1 specifically referring to some testimony of Sprint. Do you
2 recall those line of questions?

3 A Yes, I do.

4 Q Could I ask you to look at your rebuttal testimony at
5 Page 13? Are you there?

6 A I'm there.

7 Q If you look at Line 6, there is some contract
8 language there, FTTH/FTTC loops do not include local loops to
9 predominately business MDUs. Do you see that?

10 A Yes.

11 Q Is that the language that, to your knowledge,
12 BellSouth and Sprint have reached to resolve their differences
13 on this issue?

14 A Yes.

15 Q Thank you.

16 MS. MAYS: That's all I have.

17 We would ask, Commissioner Deason, if Mr. Fogle's
18 prefiled exhibits could be moved into the record at this time
19 and have Mr. Fogle excused.

20 COMMISSIONER DEASON: Okay. That would be Exhibits
21 12, 13, and 14. Without objection, they are admitted.

22 Mr. Fogle, you are excused.

23 (Exhibits 12, 13, and 14 admitted into the record.)

24 COMMISSIONER DEASON: Other exhibits?

25 MR. MAGNESS: Commissioner, CompSouth requests that

1 Exhibits 37, 38, and 39 be entered into the record.

2 COMMISSIONER DEASON: Without objection, Exhibits 37,
3 38, and 39 are admitted.

4 (Exhibits 37, 38, and 39 admitted into the record.)

5 COMMISSIONER DEASON: Okay. We will take a
6 ten-minute recess at this time.

7 (Recess.)

8 COMMISSIONER DEASON: Go back on the record.

9 Mr. Magness, I believe that we are going to take Mr.
10 Gillan at this time. I know it is out of order, but I think it
11 is with the acknowledgment and agreement of all the parties.

12 You may proceed.

13 MR. MAGNESS: Thank you, Commissioner, we appreciate
14 it.

15 JOSEPH GILLAN

16 was called as a witness on behalf of CompSouth, and having been
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MAGNESS:

20 Q Would you please state your name and business address
21 for the record?

22 A Joseph Gillan, P.O. Box 32854, Orlando, Florida.

23 Q And, Mr. Gillan, did you cause to be filed direct
24 testimony in this proceeding?

25 A Yes.

1 Q And did your direct testimony include an Exhibit
2 JPG-1?

3 A Yes.

4 Q And, in addition, did you cause to be filed rebuttal
5 testimony in this proceeding?

6 A Yes.

7 Q And in your rebuttal testimony did you include a
8 revised Exhibit JPG-1, or rather First Revised Exhibit JPG-1?

9 A Yes, I did.

10 Q And is JPG-1 the proposed contract language that has
11 been filed on behalf of CompSouth?

12 A Yes.

13 Q And could you explain the reason for the revision?

14 A Yes. In the time since the direct was filed to
15 rebuttal, we got BellSouth's direct testimony. There were some
16 areas where we were able to move our contract language closer
17 to that of BellSouth, or at least address issues that BellSouth
18 had identified. And so in the spirit of narrowing the
19 differences, we revised our proposed contract language and that
20 is what was filed with the rebuttal as Revised Exhibit JPG-1.

21 Q In addition, did you file rebuttal testimony in this
22 proceeding?

23 A Yes.

24 Q And did it include Exhibits JPG-2 through JPG-6?

25 A Yes.

1 Q And, Mr. Gillan, is it your understanding that a
2 revised version of your Exhibit JPG-5 has been filed in this
3 proceeding?

4 A Yes.

5 Q If I asked you the same questions that are asked in
6 your direct and rebuttal testimony today, would your answers be
7 the same?

8 A Yes.

9 Q Mr. Gillan, have you prepared a summary of your
10 testimony?

11 A Yes.

12 Q And would you please deliver it now?

13 COMMISSIONER DEASON: Let's do this. Before I
14 forget, let's go ahead and insert the direct and rebuttal
15 testimony. Without objection, show that that testimony is
16 inserted into the record.

17 MR. MAGNESS: Thank you, Commissioner.
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I. Introduction and Witness Qualifications

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Q. Please state your name, business address and occupation.

A. My name is Joseph Gillan. My business address is P. O. Box 541038, Orlando, Florida 32854. I am an economist with a consulting practice specializing in telecommunications.

Q. Please briefly outline your educational background and related experience.

A. I am a graduate of the University of Wyoming where I received B.A. and M.A. degrees in economics. From 1980 to 1985, I was on the staff of the Illinois Commerce Commission where I had responsibility for the policy analysis of issues created by the emergence of competition in regulated markets, in particular the telecommunications industry. While at the Commission, I served on the staff subcommittee for the NARUC Communications Committee and was appointed to the Research Advisory Council overseeing the National Regulatory Research Institute.

In 1985, I left the Commission to join U.S. Switch, a venture firm organized to develop interexchange access networks in partnership with independent local telephone companies. At the end of 1986, I resigned my position of Vice President-Marketing/Strategic Planning to begin a consulting practice.

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2

Over the past twenty-five years, I have provided testimony before more than 35 state commissions, six state legislatures, the Commerce Committee of the United States Senate, and the Federal/State Joint Board on Separations Reform. I have also been called to provide expert testimony before federal and state civil courts by clients as diverse as the trustees of a small competitive carrier in the Southeast to Qwest Communications. In addition, I have filed expert analysis with the Finance Ministry of the Cayman Islands and before the Canadian Radio-Telecommunications Commission.

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Q. On whose behalf are you testifying?

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A. I am testifying on behalf of Competitive Carriers of the South, Inc.

21

("CompSouth"). Although the members of CompSouth have worked jointly to

22

develop consolidated positions (thereby simplifying the issues and options for the

23

Commission), there are differences between individual carriers and their specific

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1 business plans in terms of emphasis. Consequently, the Commission should
2 understand that my recommendations represent the consensus views of the group
3 and not necessarily the individual priorities of any particular member.
4

5 **Q. What is the purpose of your testimony?**

6
7 A. The *Triennial Review Remand Order (TRRO)*¹ eliminates a number of
8 BellSouth's unbundling obligations under §251 of the federal
9 Telecommunications Act of 1996. This is no small change in market dynamics.
10 UNE-based competition is responsible for nearly 50% of *all* the competition in
11 Florida,² with local switching alone accounting for more than 80% of all UNE-
12 based competition in the state.³

13
14 The *TRRO* raises very practical issues as to how a §251 UNE is withdrawn from
15 the market, including *what* is withdrawn, *when* it is withdrawn, *where* it is
16 withdrawn and *how* it is withdrawn. The principal purpose of my testimony is to
17 explain the changes to the parties' interconnection agreements needed to

¹ In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313, Review of 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order on Remand (rel. Feb. 4, 2005) ("*TRRO*").

² Source: FCC Local Competition Report and BellSouth Form 477 Filing, data as of December 31, 2004 (most recent UNE data publicly released by FCC).

³ Source: BellSouth Form 477 Filing.

1 effectuate the *TRRO*, as well as certain remaining changes from the FCC's earlier
2 *Triennial Review Order (TRO)*.⁴

3
4 **Q. In addition to addressing issues associated with the *withdrawal* of a network**
5 **element under §251 of the federal Act, does your testimony also address**
6 ***replacement* offerings that BellSouth must make available?**

7
8 A. Yes. It is important to understand that this proceeding is not simply about making
9 *less* available to CLECs, it is also about making *different* offerings available in
10 their place. It is certainly true that the *TRRO* removes certain of BellSouth's
11 unbundling obligations under §251 of the federal Act. Significantly, however,
12 §251 does not define the *limits* of BellSouth's unbundling obligations. Except for
13 certain specific broadband network elements that the FCC has expressly excluded
14 (through forbearance), BellSouth remains obligated to offer through approved
15 interconnection agreements each of the network elements listed in the competitive
16 checklist of §271, albeit at a (potentially) different price.⁵

17

⁴ In the Matter of Review of §251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (rel. August 21, 2003) ("*TRO*").

⁵ Whereas elements offered under §251 must be priced in accordance with the FCC's Total Element Long Run Incremental Cost (TELRIC) rules, elements offered in compliance with §271 are judged in accordance with the potentially more liberal "just and reasonable" standard.

1 Where UNEs are no longer required by §251 of the Act, the *TRRO* adopts
2 “transition plans” to alternative arrangements. Significantly, one set of
3 alternatives are the comparable obligations that BellSouth voluntarily accepted
4 under §271 of the federal Act so that it could provide long distance services in
5 Florida. As the Commission is well aware, that choice has proven to be quite
6 profitable for BellSouth – it currently provides long distance service to nearly
7 50% of the Florida consumer market and nearly 60% of the Florida business
8 market,⁶ while competitors serve none using §271 compliant offerings.⁷

9
10 This proceeding will define the future of local competition in Florida in a post-
11 *TRRO* environment. That future will be based, in part, on §271-compliant
12 offerings, in much the same way that the Commission’s arbitrations implementing
13 §251 provided the foundation for initial entry. In order for competitors to make
14 informed choices and so that BellSouth may remain in compliance with §271,
15 §271-compliant offerings must be fully defined *contemporaneously* with the
16 withdrawal of any UNE as outlined in the *TRRO*.⁸

⁶ Source: BellSouth Earnings Release, 2nd Quarter 2005, July 25, 2005, page 7. BellSouth reports consolidated penetration rates for Florida combined with Tennessee, which received long distance authority concurrently.

⁷ Prior to the *TRRO*, BellSouth’s §271 obligations largely duplicated the mandatory unbundling obligations of §251 of the federal Act. Consequently, there has not previously been a need to establish commercially meaningful §271 offerings, most specifically by assuring just and reasonable rates, terms and conditions for such offerings.

⁸ It is useful to recognize that §252 of the federal Act is common to implementing both the *TRRO* and §271. As I explain later in my testimony, BellSouth can only comply with §271 by offering those items required by the competitive checklist through interconnection agreements approved pursuant to §252. Moreover, the *TRRO* explicitly requires (as it must) that its terms be incorporated into new interconnection agreements similarly adopted according to §252.

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Q. Does your testimony also recommend specific contract language?

A. Yes. Attached to my testimony is Exhibit JPG-1 recommending specific contract language that the Commission should order the parties to include in interconnection agreements. Because discovery remains outstanding, however, there are some issues that are not yet fully developed – for instance, recommendations concerning rates for specific §271 elements – while other issues will not be fully joined until after BellSouth has filed its direct testimony. As such, the specific proposed language in Exhibit JPG-1 may be updated as the proceeding progresses.

The contract language included in Exhibit JPG-1 is organized to match the organization of issues on the Joint Issues List submitted by BellSouth and CompSouth. In my testimony, I have identified Joint Issues List numbers that correspond to the issues discussed in the testimony. Some specific issues on the Joint Issues List that are not explicitly addressed in my testimony may be discussed in rebuttal in response to proposed contract language or testimony sponsored by BellSouth.

Consequently, it follows that this proceeding should conclude not only with contract terms implementing the declassification of certain network elements as UNEs under §251, but should also establish the terms of replacement offerings that satisfy the requirements of §271.

1 In addition, the Commission should understand that the contract language
2 attached to my testimony represents a consensus effort by CompSouth to provide
3 a *single* document to the Commission for its consideration. Individual companies,
4 however, with their own business plans and priorities are continuing to negotiate
5 with BellSouth. Because not all companies share the same level of concern on all
6 issues, there may be instances during the proceeding where individual members
7 negotiate individual contract language that differs from the consensus
8 recommendations. Such diversity should be expected in a multi-company
9 environment and the results of individual negotiations should not be interpreted as
10 contrary to these consensus recommendations.

11
12 **II. Issues Concerning the Application of Transitional Pricing**
13 **(Issues List No. 1-2, 9-11)**

14
15 **Q. What are the primary issues relating to exactly *how* the market changes**
16 **called for by the *TRRO* should be implemented?**

17
18 **A.** The primary changes caused by the *TRRO* result from the reduction in
19 BellSouth's unbundling obligations under §251 of the federal Act. As discussed
20 above, these changes, however, cannot be implemented in a vacuum. The
21 withdrawal of §251 network elements must be accompanied by the introduction
22 of replacement offerings (for instance, the §271 alternatives described more fully
23 later in my testimony), and with new contract provisions that permit carriers to

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1 “commingle” the remaining §251 network elements with other wholesale
2 offerings. The *TRRO* represents a package of changes (some dating back to the
3 *TRO*), not just the introduction of higher rates by BellSouth.

4
5 **Q. What are the primary transition issues introduced by the *TRRO*?**

6
7 A. In simple terms, the primary transition issues involve:

- 8
9 1. When do the higher transitional prices begin;
10
11 2. When do the transitional prices end; and,
12
13 3. What other changes must accompany the end of the
14 transitional prices to assure an orderly change to new
15 arrangements.
16

17 The *TRRO* is not about *less* – it is about *change*. The §251 regime may be
18 shrinking, but the fact that BellSouth still is required to provide meaningful
19 wholesale options to carriers means that establishing an orderly process to a new
20 market dynamic is as critical as the change itself.

21
22 **Q. What is the basic framework to effect this “orderly change”?**

23
24 A. The basic framework has two components. First, as always, carriers must
25 establish new interconnection agreements that implement the *full package* of

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1 changes needed for carriers to transition away from their traditional reliance on
2 network elements required under §251 to alternative arrangements. Because there
3 is not agreement between BellSouth and the CLECs as to all of the components of
4 this new environment, state commissions must arbitrate these differences in
5 proceedings such as this. Most of the testimony below addresses the key issues
6 raised in establishing the new regime.

7
8 Secondly, the FCC itself adopted some transitional pricing protections to provide
9 the necessary time to move between the old §251-based regime and a new
10 environment that is only partially based on §251 offerings. In this section of my
11 testimony I focus on when these transitional prices begin, when they end, and
12 identify (in a broad sense) the additional changes that must be introduced
13 simultaneously with the introduction of post-transition prices.

14
15 **Q. How are the transitional prices⁹ to be implemented?**

16
17 A. As with other pricing changes, new rates become effective as they are introduced
18 into carrier interconnection agreements. The FCC was quite clear that the
19 changes called for by the *TRRO* are to take effect through contract changes, not
20 unilateral action:
21

⁹ Transitional price increases were established by the FCC for network elements that are no longer available under §251 at the following levels: for loop and transport elements, the transitional increase is 15%, while local switching rates were increased by \$1 per month.

1 We expect that incumbent LECs and competing carriers will
2 implement the Commission's findings as directed by section 252
3 of the Act. Thus, carriers must implement changes to their
4 interconnection agreements consistent with our conclusions in this
5 Order.¹⁰
6

7 The transitional rates adopted by the FCC are to be introduced into
8 interconnection agreements, alongside other changes (such as commingling,
9 discussed below) that enable carriers to adjust to these higher prices.¹¹ These
10 higher rates do not introduce themselves, and BellSouth may not unilaterally
11 impose them on carriers.
12

13 **Q. If the transitional rate increases go into effect when they are introduced into**
14 **carrier interconnection agreements, when do they end?**
15

16 A. The general expectation of the *TRRO* is that carriers will have a year to determine
17 alternative arrangements for network elements that will no longer be available
18 under §251. One issue, however, concerns what price should apply when a CLEC
19 has placed an order to move a particular UNE to an alternative arrangement, but
20 BellSouth has not yet implemented that order. In such instances, a question arises
21 as to whether the transition rate should apply. The *TRRO* is somewhat ambiguous

¹⁰ *TRRO* ¶ 233.

¹¹ The term "commingling" refers to a carrier mixing and matching §251 elements with other wholesale offerings. Because one important wholesale offering will be the new wholesale services that BellSouth must introduce to remain in compliance with §271, I discuss commingling in that part of my testimony (IV) that address §271 issues. The need to incorporate commingling language into interconnection agreements, however, is not limited to the need to access §271 elements, it is needed to provide carriers that ability to connect the remaining §251 elements to any wholesale service.

1 on this point, at times indicating that the CLEC's obligation is to place the order,
2 and at times suggesting that the lines must be moved to alternative arrangements:

3
4 We require competitive LECs to submit the necessary orders to
5 convert their mass market customers to an alternative service
6 arrangement within twelve months of the effective date of this
7 Order.¹²
8

9 ***

10 Consequently, carriers have twelve months from the effective date
11 of this Order to modify their interconnection agreements, including
12 completing any change of law processes. At the end of the
13 twelve-month period, requesting carriers must transition all of their
14 affected high-capacity loops to alternative facilities or
15 arrangements.¹³
16

17 **Q. What do you recommend?**

18
19 A. For a number of reasons, I believe the Commission should require only that
20 CLECs place an order with BellSouth in order to qualify for transitional rates.

21
22 First, I think it is important to recognize that most of the affected UNEs are
23 unlikely to be moved to different network arrangements as opposed to a different
24 pricing schedule.¹⁴ Consequently, any lag in processing CLEC orders should be
25 minimal.

¹² *TRRO*, ¶227. Emphasis added.

¹³ *TRRO*, ¶196. Emphasis added.

¹⁴ Indeed, it would seem that BellSouth shares this view. Last year I appeared on a NARUC panel with Bennett Ross of BellSouth, who discouraged state commission staffs from

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Second, and most importantly, the most important “alternative arrangement” that CLECs must consider will be BellSouth’s §271 offering that parallels the §251 offering being withdrawn. As I explain in detail later in my testimony, whether BellSouth’s §271 offerings are commercially viable is an issue that will be decided in this proceeding. Consequently, CLECs do not yet have even basic information concerning one of the most important options they must consider.

Third, with respect to loop and transport arrangements, CLECs do not yet know even *where* they must analyze alternative arrangements. It is clear that BellSouth has taken considerable license with its interpretation of where the *TRRO* permits it to limit CLEC access to §251 offerings. For instance, BellSouth claims that CLECs are limited to 10 DS1 transport facilities between every end office, even though the *TRRO* is clear that this limitation applies only where BellSouth need not unbundle DS3 transport.¹⁵ Until CLECs have a final listing of exactly where

developing batch hot-cut systems because of the expectation that most UNE-P lines would remain on the BellSouth network paying higher rates.

¹⁵ See *TRRO*, §128 (emphasis added):

On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits.... When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply.

I describe this particular issue in more detail in section III.C of my testimony. Clearly, if BellSouth is willing to ignore this clear statement by the FCC – insisting, instead, that it can limit carriers to 10 DS1s everywhere – there is no reason to believe that its wire center listings that are used more generally to limit its unbundling obligations are any more reasonable.

1 BellSouth is no longer required to unbundle certain high-capacity loop and
2 transport offerings – a list that will be established in this proceeding – specific
3 plans to transition facilities cannot be developed.

4
5 Finally, I note that once a CLEC has placed an order with BellSouth to migrate an
6 arrangement to an alternative – whether the alternative is a network facility or an
7 alternative pricing schedule – control passes to BellSouth. CLECs should not be
8 penalized by paying higher prices for orders that BellSouth has not filled.

9
10 **Q. Do you believe that this issue may become less critical as the docket**
11 **proceeds?**

12
13 A. Yes. As I indicated earlier, the most likely alternative arrangement for a post-
14 §251 offering is the parallel offering that BellSouth must make available to
15 remain in compliance with §271. Because the prices for §271 offerings must
16 remain just and reasonable – a standard that §251 prices must also satisfy – there
17 is every reason to expect that the §271 price will be “just and reasonably” close to
18 the rates paid today. In fact, the Missouri Commission recently established
19 interim §271 prices *equal* to the higher transition rates established by the FCC.
20 Obviously, if this Commission were to follow the Missouri approach and establish
21 interim §271 rates based on the existing transition rates (which is one of the
22 options I present below), then the commercial significance of “when the order is
23 placed compared to when it is implemented” issue becomes moot.

1

2 **Q. Are there any other issues relating to the application of transitional pricing?**

3

4 A. Yes. The transitional increase of \$1 for local switching applies to lines used to
5 serve "mass market" customers, a term that has not been clearly defined in the
6 past. The *TRRO* makes clear that however the term "mass market" may have
7 been used in previous orders, the term (as it relates to BellSouth's pricing
8 obligations for unbundled local switching) includes all lines used to serve
9 customers that use less than a DS1 capacity and that the transitional rules for
10 pricing unbundled local switching apply:

11

12 The *Triennial Review Order* left unresolved the issue of the
13 appropriate number of DS0 lines that distinguishes mass market
14 customers from enterprise market customers for unbundled local
15 circuit switching.... The transition period we adopt here thus
16 applies to all unbundled local circuit switching arrangements used
17 to serve customers at less than the DS1 capacity level as of the
18 effective date of this Order.¹⁶

19

20 Thus, the *TRRO* makes clear that CLECs are entitled to pay TELRIC rates (plus
21 \$1) for all analog customers, including any customers that BellSouth may have
22 previously claimed were "enterprise customers" because they had four or more
23 lines.

24

25 **Q. Are there other changes that must be introduced before the transition ends?**

¹⁶ *TRRO*, footnote 625 (¶226).

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A. Yes. Higher prices are not the only consequence of the *TRRO*. In addition to withdrawing §251 access, the FCC has also adopted new requirements that allow CLECs to more easily qualify to use UNEs, as well as important commingling rules that permit CLECs to use the remaining §251 elements in combination with other wholesale services that will take the place of those §251 UNEs being eliminated. These counterbalancing components of the FCC's decision must become effective at the same time that BellSouth is permitted to withdraw a UNE so that CLECs have a meaningful opportunity to adapt to the new environment.

**III. Issues Relating to Loop/Transport Delisting
(Issues List Nos. 2-7, 25)**

Q. Please provide an overview of the principal issues the Commission must address to implement the *TRRO* with respect to the delisting of certain high capacity loop and transport UNEs.

A. With respect to high capacity loop and transport UNEs (DS1, DS3 and Dark Fiber), the FCC determined that BellSouth would not be required to offer these UNEs at TELRIC rates under §251 of the federal Act between (or, in the case of loops, from) certain wire centers meeting established criteria. There are two basic issues:

- 1 1. Identifying the specific wire centers in Florida that
2 *currently* satisfy the criteria adopted by the FCC; and
3
4 2. Adopting a process to determine whether additional wire
5 centers meet the criteria in the *future*.

6
7 In addition to these basic issues, BellSouth is attempting to further limit its
8 unbundling obligations by applying a “cap” on DS1 transport beyond the wire
9 centers permitted under federal rules (which I discuss in more detail in part C of
10 this section).

11
12 *A. The Appropriate Categorization of Wire Centers*

13
14 **Q. Please summarize BellSouth’s unbundling obligations with respect to**
15 **high capacity loops and transport.**

16
17 A. The *TRRO* defines BellSouth’s unbundling obligations according to
18 different categories of wire centers determined by the number of business
19 lines and fiber-based collocators in the wire center.

1

Wire Center Categorization Criteria for Dedicated Transport

Category	Wire Center Must Meet <i>Either</i> Criterion		BellSouth Need Not Unbundle
	Business Lines	Fiber-Based Collocators	
Tier 1	> 38,000	4 or more	DS1 ¹⁷ or DS3
Tier 2	> 24,000	3 or more	DS3 ¹⁸

2

3

4

5

Similarly, the *TRRO* limited BellSouth's §251 unbundling obligations for local loops based on a wire center classification scheme, albeit applying different thresholds.

Wire Center Categorization Criteria for High Capacity Loops

BellSouth Need Not Unbundle	Wire Center Must Meet <i>Both</i> Criterion	
	Business Lines	Fiber-Based Collocators
DS1 Loops	> 60,000	4 or more
DS3 Loops	> 38,000	3 or more

6

7

8

9

Q, Why is it important for the Commission to review the categorization of wire centers?

10

11

12

13

14

A. The principal reason that Commission review is critical is that only BellSouth has access to the information used to categorize wire centers and yet, it is BellSouth that would gain by incorrectly assigning wire centers so as to curtail its unbundling obligations under §251. As a result, the Commission must review

¹⁷ BellSouth must offer DS1 dedicated transport as a §251 network element unless both ends of the transport route are Tier 1 wire centers.

¹⁸ BellSouth's unbundling obligations for dark fiber parallel those for DS3 dedicated transport.

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1 BellSouth's claims to ensure that the interconnection agreements properly reflect
2 those wire centers where a reduced level of unbundling is required.¹⁹

3
4 **Q. "Business lines" are one half of the FCC's categorization criteria. How are**
5 **"business lines" counted under the TRRO?**

6
7 A. The TRRO is quite specific as to what lines should be counted in determining the
8 total number of business lines. The basic definition of a business line is as
9 follows:

10
11 Business line. A business line is an incumbent LEC-owned
12 switched access line used to serve a business customer, whether by
13 the incumbent LEC itself or by a competitive LEC that leases the
14 line from the incumbent LEC. The number of business lines in a
15 wire center shall equal the sum of all incumbent LEC business
16 switched access lines, plus the sum of all UNE loops connected to
17 that wire center, including UNE loops provisioned in combination
18 with other unbundled elements²⁰
19

20 Thus, to arrive at the number of business lines in a particular wire center
21 requires the summation of three values:

22
23 (1) The number of BellSouth's business switched access lines,

¹⁹ Indeed, the FCC recognized that CLECs would not have the information needed (absent proceedings such as this) to validate BellSouth's claims. See TRRO footnote 659, ¶234.

²⁰ 47 CFR § 51.5.

- 1 (2) The number of UNE loops (including, where appropriate,
2 loops used with transport), and
3 (3) The number of business UNE-P.
4

5 As I explain below, while there are certain additional directives as to the source
6 of, and qualifying requirements for, particular lines, the basic calculation involves
7 these three categories.
8

9 **Q. What additional qualifying requirements did the FCC adopt?**

10
11 A. The definition for a business line (partially cited above) includes the following
12 additional directions. The business line tally:

- 13
14 (1) Shall include only those access lines connecting end-user
15 customers with incumbent LEC end-offices for switched
16 services,
17
18 (2) Shall not include non-switched special access lines,
19
20 (3) Shall account for ISDN and other digital access lines by
21 counting each 64 kbps-equivalent as one line. For

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example, a DS1 line corresponds to 24 64 kbps-equivalents,
and therefore to 24 “business lines.”²¹

Importantly, these requirements are not “choose one of three” – for a line to be counted, the line must be for switched services before it becomes relevant as to how multi-channel switched lines should be counted. Furthermore, these additional requirements are only relevant for determining how to count UNE lines, for the FCC provides specific direction as to what *source* should be used to count BellSouth’s switched business lines – ARMIS 43-08 – whose instructions effectively ensure that these additional requirements are satisfied.

Q. Is there *any* question that BellSouth is to use the ARMIS 43-08 business switched line count that it routinely files with the FCC in determining its own line count?

A. No, there is no question that the *TRRO* methodology is grounded in the ARMIS 43-08 data:

Moreover, as we define them, business line counts are an objective set of data that incumbent LECs already have created for other regulatory purposes. The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops. [B]y basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which must also be reported, we can be confident in the accuracy

²¹ 47 CFR § 51.5, emphasis added.

1 of the thresholds, and a simplified ability to obtain the necessary
2 information.²²

3
4 As the FCC explained above, it was deliberately adopting simple measures that
5 were already required (particularly the ARMIS data) that would, therefore, be less
6 susceptible to gaming.

7
8 **Q. Does the ARMIS 43-08 data already conform to the specific requirements**
9 **included by the FCC in the *TRRO*?**

10
11 A. Yes. The additional direction provided by the FCC in the definition of “business
12 lines” boils down to two requirements. The first is that only switched lines are to
13 be counted, while the second directs that multi-channel digital lines be converted
14 to a voice grade equivalent. With respect to the Business Switched Access Lines
15 (to which are added UNE lines), the FCC’s directive that ARMIS 43-08 Business
16 Switched Access Lines be used already conform to these requirements. Business
17 Switched Access Lines are defined according to ARMIS as:²³

18
19 Business Switched Access Lines - Total voice-grade equivalent
20 analog or digital switched access lines to business customers.
21

²² *TRRO*, ¶ 105. Emphasis added. Footnotes omitted.

²³ I note that not only did the text of the *TRRO* direct that ARMIS 43-08 be used for Switched Business Access Lines, but the footnote in the *TRRO* specifically references the 2004 instructions in which the term is defined. See *TRRO* footnote 303 (¶ 105), specifically referencing <http://www.fcc.gov/wcb/armis/documents/2004PDFs/4308c04.pdf> (see page 21).

1 (fc) Single Line Business Switched Access Lines - Includes
2 single line business access lines subject to the single line
3 business interstate end user common line charge, pursuant to
4 § 69.104(h), excluding company official, mobile
5 telephone/pagers and payphone lines.
6

7 (fd) Multiline Business Switched Access Lines - Include the total
8 of analog and digital multiline business access lines subject
9 to the multiline business interstate end user common line
10 charge including PBX trunks, Centrex-CU trunks,
11 hotel/motel LD trunks and Centrex-CO lines.
12

13 (fe) Payphone Lines - Lines that provide payphone service, i.e.,
14 total coin (public and semi-public) lines, including
15 customer owned pay telephones.²⁴
16

17 As the above ARMIS definition makes clear, Business Switched Access Lines
18 only include (as one would expect) lines configured for switched service and the
19 lines are already computed on a voice-equivalent basis. Thus, there is no
20 justification for BellSouth modifying, in any way, the number of Business
21 Switched Access Lines filed under ARMIS 43-08. To this value it would add
22 UNE-L and business UNE-P lines to arrive at the total Business Line count used
23 to categorize wire centers as required by the *TRRO*.
24

25 **Q. How should BellSouth count UNE-L lines to ensure that the lines satisfy the**
26 **specific requirement in the *TRRO* that the business line count “shall include**

²⁴ *Ibid*, page 21. (Note: The rule sections cited above have been shortened to remove unnecessary references to other ARMIS filings).

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1 **only those access lines connecting end-user customers with incumbent LEC**
2 **end-offices for switched services?”²⁵**

3
4 A. Although FCC rules are explicit that only lines used for switched services are to
5 be counted, the FCC provided no guidance as to how that determination should be
6 made for UNE-L lines. As explained above, the requirement that ARMIS 43-08
7 data be used resolves any issue with respect to BellSouth’s Business Switched
8 Lines and, by definition, UNE-P is a switched service. Moreover, BellSouth
9 routinely counts (and reports to Wall Street) the number of UNE-P lines used to
10 serve business customers. What BellSouth cannot measure directly is the number
11 of UNE-L voice equivalent lines used to provide switched services.

12
13 **Q. What do you recommend?**

14
15 A. In other states, BellSouth’s direct case (and supporting discovery workpapers) has
16 provided the information needed to develop a far better estimate of that portion of
17 digital UNE-L capacity that is actually used to provide switched services to
18 business customers. I expect to be able to use similar information in my rebuttal
19 testimony to develop an unbiased estimate of UNE-L business lines that may be
20 used to correctly classify the wire centers in Florida.

21

²⁵ See 47 CFR § 51.5, emphasis added.

1 Q. Are you aware of any other issues concerning BellSouth's conversion of
2 UNE-L lines to voice-grade equivalents?
3

4 A. Yes. It is my understanding that BellSouth claims that HDSL-capable loops
5 should be counted as though they are DS1 loops (and then converted to 24
6 business lines).²⁶ There is nothing in the *TRRO*, however, that justifies this
7 adjustment.
8

9 First, the *TRRO* is specific that the only lines that are to be converted to voice-
10 grade equivalent services are digital access lines, noting the business line count:
11

12 ... shall account for ISDN and other digital access lines by
13 counting each 64 kbps-equivalent as one line. For example, a DS1
14 line corresponds to 24 64 kbps-equivalents, and therefore to 24
15 "business lines."²⁷
16

17 An HDSL-capable loop is exactly that – a dry copper line that is not a digital
18 facility without the addition of CLEC equipment.
19

²⁶ Based on a review of BellSouth's testimony in Georgia, the BellSouth position is slightly more subtle. As I understand BellSouth's Georgia testimony, BellSouth states that it has *not* counted HDSL loops as 24 business lines, but that it would be *appropriate* to do so. Because BellSouth apparently reserves the right to do so in the future, the Commission must resolve the issue here, even though it may not affect wire centers in this proceedings.

²⁷ 47 CFR § 51.5, emphasis added.

1 Second, the FCC was clear that its business line tally is not intended to identify
2 CLEC loops. The FCC specifically rejected suggestions that it should expand the
3 analysis to include CLEC loops:

4
5 Although it may provide a more complete picture to measure the
6 number of business lines served by competing carriers entirely
7 over competitive loop facilities in particular wire centers, such
8 information is extremely difficult to obtain and verify.²⁸
9

10 The additional capacity of an HDSL-capable loop – to the extent it is activated at
11 all – are essentially CLEC-created loops. Not only did the FCC *not* indicate that
12 HDSL-capable loops should be included in the business line count, to include any
13 additional capacity created on those loops by the CLEC would be the equivalent
14 of counting CLEC capacity – an approach the FCC explicitly rejected.

15

16 **Q. Is there anything in the *TRRO* that even hints at treating a HDSL-capable**
17 **loop as a DS1?**

18

19 **A.** No, I do not believe that the *TRRO* can be legitimately read to suggest that HDSL-
20 capable loops should be assumed equal to 24 switched business lines. It is true
21 that the FCC recognized that HDSL *technology* may be one of the means used to

²⁸ *TRRO*, ¶105.

1 provide a DS1 loop (by BellSouth).²⁹ In defining BellSouth's unbundling
2 obligations, the FCC stated:

3
4 A DS1 loop is a digital local loop having a total digital signal
5 speed of 1.544 megabytes per second. DS1 loops include, but are
6 not limited to, two-wire and four-wire copper loops capable of
7 providing high-bit rate digital subscriber line services, including
8 T1 services.³⁰

9
10 Taken out of context, the second sentence of the above cite might be misread in
11 isolation as implying that BellSouth's unbundling obligations for HDSL-capable
12 loops were equivalent to its unbundling obligations for DS1 loops. (Of course,
13 even this reading nowhere suggests that HDSL-capable loops are to be *counted* as
14 though they are 24 switched business lines for purposes of categorizing wire
15 centers). When both sentences are read together (as they must be), however, it is
16 clear that the FCC was defining a DS1 loop as a facility that is a 1.544 mbps
17 channel, not anything that could someday become one, with the second sentence
18 merely recognizing that a variety of facilities could be used to actually support the
19 service.

20

²⁹ It is useful to note that the FCC only referenced HDSL-capable loops as having some relation to a DS1 loop in that section of its rules addressing BellSouth's unbundling obligations. BellSouth's contribution to the total business line count used to categorize wire centers, however, is determined by its ARMIS 43-08 filing. There is no basis to confuse the FCC's discussion of the technologies used by BellSouth to provision a DS1 with how the Commission should count such loops for purposes of arriving at the business line count.

³⁰ 47 C.F.R. §51.319(a)(4).

1 Q. Does the *TRRO* contain language that indicates the FCC intended that
2 BellSouth's obligation to provide HDSL-capable loops would continue, even
3 where it was not required to unbundle a DS1 loop?

4
5 A. Yes. As part of its rationale that CLECs would be able to serve customers even
6 where DS1 loops would no longer be unbundled, the FCC reasoned that CLECs
7 would be able to use HDSL-capable loops (ironically citing to BellSouth for
8 record support):

9
10 The record also suggests that in some cases, competitive LECs
11 might be able to serve customers' needs by combining other
12 elements that remain available as UNEs. See BellSouth Dec. 8,
13 2004 DS1 *Ex Parte* Letter at 2 (stating that competitive LECs can
14 use the following types of copper loops to provide DS1 service to
15 customers: (1) 2-wire or 4-wire High Bit Rate Digital Subscriber
16 Line (HDSL) Compatible Loops; (2) Asymmetrical Digital
17 Subscriber Line Compatible Loops; (3) 2-wire Unbundled Copper
18 Loops-Designed; or (4) Unbundled Copper Loop Non-Designed).³¹
19

20 Obviously, the FCC could not have tied BellSouth's unbundling obligations for
21 HDSL-capable loops to its DS1 unbundling obligations because it concluded (as
22 encouraged to do so by BellSouth) that CLECs would still be able to use HDSL
23 capable loops as UNEs to serve customers where DS1 loops were no longer
24 unbundled.

25

³¹ *TRRO*, footnote 454 to ¶163, emphasis added.

1 Q. In addition to the number of business lines, the other variable used to
2 categorize wire centers for purposes of determining §251 UNE availability is
3 the number of “fiber-based collocators.” How does the FCC define a fiber-
4 based collocator?

5
6 A. The complete definition of a fiber-based collocator is as follows:

7
8 Fiber-based collocator. A fiber-based collocator is any carrier,
9 unaffiliated with the incumbent LEC, that maintains a collocation
10 arrangement in an incumbent LEC wire center, with active
11 electrical power supply, and operates a fiber-optic cable or
12 comparable transmission facility that

- 13
14 (1) terminates at a collocation arrangement within the
15 wire center;
16
17 (2) leaves the incumbent LEC wire center premises;
18 and
19
20 (3) is owned by a party other than the incumbent LEC
21 or any affiliate of the incumbent LEC, except as set
22 forth in this paragraph.

23
24 Dark fiber obtained from an incumbent LEC on an indefeasible
25 right of use basis shall be treated as non-incumbent LEC fiber-
26 optic cable. Two or more affiliated fiber-based collocators in a
27 single wire center shall collectively be counted as a single fiber-
28 based collocator. For purposes of this paragraph, the term affiliate
29 is defined by 47 U.S.C. § 153(1) and any relevant interpretation in
30 this Title.³²
31

32 In practical terms, before BellSouth may restrict §251 access to high-capacity
33 transport in a wire center that qualifies on the basis of the number of fiber-based

³² 47 C.F.R. §51.5

1 collocators, there must be at least 4 independent fiber networks (or their
2 equivalent) for DS-1 transport in both wire centers (or at least 3 such networks to
3 eliminate §251 access to DS-3 transport).

4
5 **Q. How should the Commission proceed to evaluate BellSouth's claims**
6 **regarding the number of business lines and fiber-based collocators so as to**
7 **correctly categorize each wire center as required by the TRRO?**

8
9 A. As I noted earlier, nearly all of the information used to categorize wire centers is
10 in BellSouth's control. Consequently, the first step in any validation process is to
11 obtain all the requisite information to determine its accuracy.³³ CompSouth has
12 initiated this process, serving discovery on BellSouth that will enable it the ability
13 to thoroughly analyze the wire center categorizations proposed by BellSouth in its
14 direct testimony. Thus, while the testimony above has explained the appropriate
15 methodology to employ, until discovery is complete it is not possible to
16 recommend specific categories for individual wire centers.

17
18 **Q. What should the Commission do once it fully reviews the underlying wire**
19 **center data (and the recommendations of your rebuttal testimony)?**
20

³³ I note that this reason alone requires state commission oversight in which meaningful discovery is a standard procedure.

1 A. I recommend that the Commission adopt an order establishing the appropriate
2 wire center designations for the BellSouth's operating territory in Florida, subject
3 to the annual-update process described in the following section. This list should
4 be incorporated by reference in the interconnection agreements adopted to
5 implement the *TRRO*.

6

7

B. The Recommended Process for Future Changes

8

9 **Q. Should the Commission also establish a formal process to review proposed**
10 **changes to the wire center list?**

11

12 A. Yes. The fundamental problem complicating the creation of this initial wire
13 center list – i.e., that BellSouth has exclusive access to the requisite information
14 while having a incentive to distort the analysis – will be as true in the future as it
15 is now. Thus, the Commission should establish a set procedure that will enable
16 entrants to challenge/validate future changes.

17

18 **Q. What process do you recommend the Commission adopt?**

19

20 A. I recommend that an annual filing procedure be established that is keyed to
21 BellSouth's annual filing of ARMIS business line data. Because the ARMIS 43-
22 08 data provides a foundation to the analysis, I recommend that BellSouth's

1 requested changes (if any) be proposed simultaneously with its ARMIS filing.

2 Specifically:

3
4 * BellSouth would file a proposed list of any new wire
5 centers on April 1 of each year (coincident with its filing of
6 ARMIS 43-08 with the FCC), reflecting the number of
7 business lines and fiber-based collocators in each wire
8 center as of December 31st of the year just ending.

9
10 * Included with the April filing, BellSouth would file all
11 supporting documentation that each new wire center meets
12 *TRRO* criteria, including the following information. Such
13 documentation would be available to CLECs under terms
14 of a standing proprietary agreement.

- 15
16 a. The CLLI of the wire center.
17 b. The number of switched business lines served by
18 RBOC in that wire center as reported in ARMIS 43-
19 08 for the year just ending.
20 c. The number of UNE-P lines used to serve business
21 customers.
22 d. The number of analog UNE-L lines in service.
23 e. The number of DS-1 UNE-L lines in service.
24 f. The number of DS-3 UNE-L lines in service.
25 g. A completed worksheet that shows, in detail, any
26 conversion of access lines to voice grade
27 equivalents.
28 h. The names of claimed independent fiber-optic
29 networks (or comparable transmission facilities)
30 terminating in a collocation arrangement in that
31 wire center.

32
33 * CLECs would have until May 1 to file a challenge to any
34 new wire center named by BellSouth.

35
36 * The Commission should have a standing hearing date
37 reserved (by June 1) to take evidence on any disputed wire
38 center, and issue a decision by June 15th.

39
40 * Any changes to the wire center list would become effective
41 on July 1 of that year.
42

1 Under the schedule above, any dispute concerning the appropriate wire center
2 designation would be resolved within 90 days of BellSouth's initial filing with a
3 revised wire center list becoming effective July 1. By having a standard
4 procedure, the Commission can provide BellSouth a reasonable opportunity to
5 update wire center lists as often as a critical piece of new information is collected
6 (i.e., the ARMIS 43-08), while still ensuring CLEC rights are protected and its
7 own time is used efficiently.

8
9 C. The DS1 Transport Cap

10
11 **Q. Please explain the issue concerning the cap on DS1 transport.**

12
13 A. As I explained earlier, the FCC adopted different wire center standards to
14 determine where DS1 and DS3 transport must be offered as §251 network
15 elements. As a general rule, the FCC concluded that DS1 transport must be
16 offered as a §251 element everywhere except between Tier 1 wire centers, while
17 DS-3 transport would be available along a more limited set of routes (i.e., DS3
18 transport would not be available as a §251 element along routes connecting Tier 1
19 and 2 wire centers).

20
21 In reaching this determination, however, the FCC recognized that a DS3 is simply
22 a larger unit of digital capacity that is equal to 28 DS1s. As a result, a carrier
23 ordering multiple DS1s could, at some point, have sufficient transport

1 requirements to justify a DS3. In such circumstances, the FCC needed to
2 reconcile having *different* unbundling obligations for DS1 transport, even where a
3 CLEC had (at least in theory) sufficient transport demand to have ordered a DS3
4 (at which point the FCC had concluded the CLEC was no longer impaired).

5
6 **Q. How did the FCC reconcile these conclusions?**

7
8 A. The FCC reconciled its impairment determinations by placing a cap on the
9 number of DS1s a carrier may order on any route where DS3s are not available,
10 under § 251 applying the theory that if the carrier had a sufficient number of DS1s
11 that it *could* have ordered a DS3, then the non-impairment finding for DS3
12 transport on that route should apply.³⁴

13
14 On routes for which we determine that there is no unbundling
15 obligation for DS3 transport, but for which impairment exists for
16 DS1 transport, we limit the number of DS1 transport circuits that
17 each carrier may obtain on that route to 10 circuits. This is
18 consistent with the pricing efficiencies of aggregating traffic.
19 While a DS3 circuit is capable of carrying 28 uncompressed DS1
20 channels, the record reveals that it is efficient for a carrier to
21 aggregate traffic at approximately 10 DS1s. When a carrier
22 aggregates sufficient traffic on DS1 facilities such that it
23 effectively could use a DS3 facility, we find that our DS3
24 impairment conclusions should apply.³⁵
25

³⁴ The FCC adopted a similar limitation with respect to DS3 transport, reasoning that if a carrier leased 12 DS3s along an individual route that it would have achieved the scale needed to justify deployment (*TRRO*, ¶131).

³⁵ *TRRO*, ¶128. Footnotes omitted.

1 As the above discussion makes clear, the FCC adopted its cap on DS1 transport
2 only “on routes for which we [the FCC] determine that there is no unbundling
3 obligation for DS3 transport,” not along routes where DS3s themselves would be
4 available.

5
6 **Q. Is BellSouth attempting to game the FCC’s findings by restricting access to**
7 **DS1 transport along all routes?**

8
9 A. Yes. As the above makes clear, the sole purpose for the FCC’s cap on DS1
10 transport was to reconcile its impairment findings for DS1 transport with its
11 broader limitation on DS3 transport. The limitation on DS1 transport is not a
12 *general* limitation, it is specific to only those routes where there is no §251
13 unbundling obligation for DS3 transport.

14
15 Unfortunately, BellSouth is attempting to game the FCC’s rules, claiming that the
16 DS1 cap applies on all routes, even those routes where the FCC has determined
17 CLECs would be impaired even if they had sufficient needs to justify a DS3.
18 BellSouth takes this position (presumably) because the specific rule implementing
19 the cap on DS1 transport is not as clear as the *TRRO* itself.³⁶

20

³⁶ Specifically, 47 C.F.R. §51.319(a) (e)(2)(ii)(B) states:

Cap on unbundled DS1 transport circuits. A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

1 Q. Is it responsible to read individual rules in isolation, without the
2 accompanying text?

3
4 A. No. The cap on DS1 transport was adopted for a very specific purpose – to
5 prevent CLECs with enough individual DS1s that they were purchasing the
6 equivalent of a DS3 from avoiding the FCC’s finding that the a DS3 need not be
7 offered on that particular route (at least under §251). The TRRO is absolutely
8 clear on this. I repeat:

9
10 On routes for which we determine that there is no unbundling
11 obligation for DS3 transport, but for which impairment exists for
12 DS1 transport, we limit the number of DS1 transport circuits that
13 each carrier may obtain on that route to 10 circuits.... When a
14 carrier aggregates sufficient traffic on DS1 facilities such that it
15 effectively could use a DS3 facility, we find that our DS3
16 impairment conclusions should apply.³⁷
17

18
19 BellSouth’s claim that it need not offer more than 10 DS1s on routes where DS3s
20 would also be available under §251 is fundamentally inconsistent with the FCC’s
21 findings – on routes which include a Tier 3 wire center on either end, CLECs are
22 just as impaired with respect to the 11th DS1 (or 12th or 13th) as they are with the
23 10th. Indeed, the FCC has concluded that on those routes the CLEC would be
24 impaired even if it required a DS3 (or multiple DS3s). BellSouth has no

³⁷ TRRO, ¶128. Footnotes omitted, emphasis added.

1 justification for refusing to provide additional DS1s on routes where both the DS1
2 and the DS3 (if the CLEC chooses to request one) are available as §251 elements.

3
4 **Q. What do you recommend?**

5
6 A. The Commission should require that interconnection agreements conform to the
7 finding in the *TRRO* that the 10 DS1 limitation on dedicated transport applies
8 solely on routes where DS3 transport is not required to be unbundled under §251.

9
10 **IV. Establishing §271 Alternatives**
11 **(Issues List No. 7)**

12
13 **Q. Why is it important for the Commission to establish §271 compliant offerings**
14 **in this proceeding?**

15
16 A. As I explain in more detail below, BellSouth is subject to two, independent,
17 unbundling obligations under the federal Act. First, there are the unbundling
18 obligations under §251 of the Act that generally apply to incumbent LECs
19 wherever the FCC has determined impairment. In addition, however, BellSouth
20 voluntarily embraced a broader unbundling obligation under §271 of the Act in
21 exchange for the Commission to provide long distance services in Florida.

1 Significantly, until this proceeding concludes with interconnection agreements
2 reflecting the reduced unbundling obligations established by the *TRRO*,
3 BellSouth's §271 obligations will have been satisfied by §251 offerings that
4 duplicated the specific requirements of §271. As §251 offerings are removed
5 (either in whole or in part), however, CLECs must make informed choices as to
6 alternatives to the §251 offerings they have used in the past. Because BellSouth's
7 §271 offerings represent an important option to CLECs, the Commission must
8 give practical effect to this option so that an orderly transition from §251
9 offerings to §271 offerings (or other choices) may occur. This includes (as I
10 describe below) establishing "just and reasonable" prices for §271 elements, as
11 well as adopting appropriate terms and conditions of service.

12
13 **A. BellSouth's Unbundling Obligations are Defined by Both §251 and §271**

14
15 **Q. Does the federal Act include two separate and independent requirements**
16 **concerning the unbundling of BellSouth's network?**

17
18 **A.** Yes. Section 251 of the Act (which applies to all ILECs) calls for the unbundling
19 of network elements upon a finding of impairment. Network elements unbundled
20 in accordance with §251 of the Act must be priced at TELRIC in accordance with
21 FCC rules. Bell Operating Companies (including BellSouth), however, are also
22 subject to §271 of the Act that imposes *additional* unbundling obligations as a
23 condition to their offering in-region, interLATA services.

1

2

Q. What network elements are specifically required to be offered by BellSouth in order to comply with §271 of the federal Act?

3

4

5

A. The specific obligations are spelled out in the “competitive checklist.”³⁸ The FCC determined in the *TRO* that the competitive checklist imposed distinct obligations requiring the offering of local switching, local loops, transport, as well as databases and signaling. As the FCC summarized its decision:

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Specifically, the Commission considered the relationship between checklist item two (which references section 251) and checklist items four through six and ten (which do not). The Commission concluded that checklist items four through six and ten constitute a distinct statutory basis for the requirement that BOCs provide competitors with access to certain network elements that does not necessarily hinge on whether those elements are included among those subject to section 251(c)(3)’s unbundling requirements. Accordingly, the Commission stated that even if it concluded that requesting telecommunications carriers are not “impaired” without access to one of those elements under section 251, section 271 would still require the BOC to provide access.³⁹

23

The FCC’s conclusions regarding the additional obligations of §271 were

24

affirmed by the D.C. Circuit in *USTA II*.⁴⁰ As such, BellSouth’s obligations under

³⁸ 47 U.S.C. § 271(d)(3).

³⁹ In the Matter of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), WC Docket 01-338 et al., Memorandum Opinion and Order at ¶ 7 (rel. Oct. 27, 2004) (“Broadband Forbearance Order”) (footnotes omitted).

⁴⁰ *USTA v. FCC*, 359 F.3d 554, 588-590 (D.C. Cir. 2004) (“*USTA I*”).

1 Section 271 continue, unless and until the FCC “forebears” from the requirements
2 of the competitive checklist.⁴¹

3
4 **Q. Why would Congress establish additional unbundling obligations in §271 of**
5 **the federal Act?**

6
7 A. Congress well understood that permitting the RBOCs to offer in-region long
8 distance services carried great risk. As everyone knew when the Act passed, the
9 RBOCs’ ability to bundle local and long distance would be the most powerful
10 force in post-divestiture telecommunications. As noted earlier, BellSouth has
11 achieved nearly a 50% penetration rate for mass market long distance services in
12 Florida,⁴² a level of success more than twice that achieved by MCI over twenty
13 years.

14
15 Precisely because of this expected advantage, Congress was clear that interLATA
16 Commission would only be permitted where an RBOC had *fully* opened its
17 network to competitors. Specifically, §271 of the Act required that each of the
18 core elements of the local network – loops, transport, switching and signaling –
19 would be available to competitive entrants in any state where the RBOC sought to

⁴¹ The FCC has chosen to forebear from requiring continued unbundling of certain “broadband” network elements. (*See generally Broadband Forbearance Order.*) This decision, however, does not curtail BellSouth’s obligations with respect to other affected elements, such as switching or high capacity loops or transport offered over conventional technologies.

⁴² BellSouth Investor Briefing, 2nd Quarter 2005, July 25, 2005, page 7. Market penetration is for Florida and Tennessee, which obtained long distance authority at the same time.

1 offer long distance service, without the need for any additional findings by the
2 FCC as to whether an entrant would be "impaired." As the FCC recognized:

3
4 These additional requirements [the unbundling obligations in the
5 competitive checklist] reflect Congress' concern, repeatedly
6 recognized by the Commission and courts, with balancing the
7 BOCs' entry into the long distance market with increased presence
8 of competitors in the local market The protection of the
9 interexchange market is reflected in the fact that section 271
10 primarily places in each BOC's hands the ability to determine if
11 and when it will enter the long distance market. If the BOC is
12 unwilling to open its local telecommunications markets to
13 competition or apply for relief, the interexchange market remains
14 protected because the BOC will not receive section 271
15 authorization.⁴³
16

17 **Q. What issues must be resolved in order to establish a §271-compliant**
18 **offering?**

19
20 A. The principal issue that must be resolved in order to establish a 271-compliant
21 offering is price. The FCC has determined that §271 elements are subject to a
22 *potentially* more liberal pricing standard than the standard that applies to elements
23 offered under §251 of the Act. Specifically, network elements offered solely in
24 order to comply with §271 must be just, reasonable, nondiscriminatory and
25 provide meaningful access:
26

27 Thus, the pricing of checklist network elements that do not satisfy
28 the unbundling standards in section 251(d)(2) are reviewed
29 utilizing the basic just, reasonable, and nondiscriminatory rate

⁴³ TRO ¶ 655.

1 standard of sections 201 and 202 that is fundamental to common
2 carrier regulation that has historically been applied under most
3 federal and state statutes, including (for interstate services) the
4 Communications Act. Application of the just and reasonable and
5 nondiscriminatory pricing standard of sections 201 and 202
6 advances Congress's intent that Bell companies provide
7 meaningful access to network elements.⁴⁴
8

9 In addition, state commissions must arbitrate appropriate terms and conditions of
10 service, most specifically whether BellSouth is required to connect network
11 elements obtained under §251 to elements obtained under §271 (or other
12 wholesale offerings). As I explain below, when BellSouth “connects” §251
13 elements with non-§251 offerings, the act is referred to as “commingling.”
14

15 **B. §271 Elements Must be Offered in Interconnection Agreements**
16

17 **Q. Does §252 govern the establishment of §271-compliant offerings, including**
18 **the establishment of just and reasonable rates, terms and conditions?**
19

20 **A.** Yes. Each §271 network element must be offered through interconnection
21 agreements that are subject to the §252 state commission review and approval
22 process. Section 271(c)(2)(A) of the Act clearly links a BOC’s duty to satisfy its
23 obligations under the competitive checklist to the BOC providing that access
24 through an interconnection agreement (or a statement of generally available terms
25 (“SGAT”)), stating:

⁴⁴ TRO ¶ 663 (footnotes omitted).

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- (A) AGREEMENT REQUIRED - A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought—
 - (i)(I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A) [Interconnection Agreement], or
 - (II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B) [an SGAT], and
 - (ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph [the competitive checklist].⁴⁵

As the above-quoted language makes clear, the specific interconnection obligations of §271’s competitive checklist (item ii above) must be provided pursuant to the “agreements” described in Section 271(c)(1)(A). By directly referencing Section 271(c)(1)(A) and (B), the Act ties compliance with the competitive checklist to the review process described in Section 252. As Section 271(c)(1) states:

- (1) AGREEMENT OR STATEMENT- A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought.
 - (A) PRESENCE OF A FACILITIES-BASED COMPETITOR- A Bell operating company meets the requirements of this subparagraph if it has

⁴⁵ 47 U.S.C. § 271(c)(2)(A).

1 entered into one or more binding **agreements that**
2 **have been approved under section 252** specifying
3 the terms and conditions under which the Bell
4 operating company is providing access and
5 interconnection to its network facilities for the
6 network facilities of one or more unaffiliated
7 competing providers of telephone exchange service
8 (as defined in section 3(47)(A), but excluding
9 exchange access) to residential and business
10 subscribers.⁴⁶
11

12 Thus, just as the 252 arbitration process is the vehicle through which the new
13 unbundling rules described in the *TRRO* are implemented, so too must the 252
14 process be used to establish the contract terms, conditions and prices for §271-
15 compliant network elements. §271 specifically and unambiguously requires that
16 checklist items be offered through interconnection agreements approved under
17 §252 of the Act.
18

19 **Q. Has the Supreme Court addressed the complementary roles of the FCC and**
20 **the states in regulating interconnection agreements under §252?**
21

22 A. Yes. As the Supreme Court explained:
23

24 . . . 252(c)(2) entrusts the task of *establishing rates* to the state
25 commissions The FCC's prescription, through rulemaking, of
26 a requisite pricing methodology no more prevents the States from
27 establishing rates than do the statutory 'Pricing standards' set forth
28 in 252(d). *It is the States that will apply those standards and*

⁴⁶ 47 U.S.C. § 271(c)(1)(emphasis added).

1 *implement that methodology, determining the concrete result in*
2 *particular circumstances.*⁴⁷
3
4

5 The approach [in the federal Act] was deliberate, through a hybrid
6 jurisdictional scheme with the FCC setting a basic, default
7 methodology for use in setting rates when carriers fail to agree, but
8 leaving it to state utility commissions to set the actual rates.⁴⁸
9

10 Although the particular circumstance being addressed by the Supreme Court
11 concerned the TELRIC pricing standard, the *process* being endorsed by the Court
12 is appropriate operation of Section 252 framework, which relies on the state
13 commissions to arbitrate (when needed) and approve all interconnection
14 agreements.

15
16 *C. Establishing §271 Compliant Prices*
17

18 **Q. You indicated that the FCC adopted a “just and reasonable” pricing**
19 **standard to govern §271 rates. Is this standard significantly different than**
20 **the TELRIC standard used to judge the prices of §251 elements?**
21

22 A. No, not entirely. Indeed there is an important nexus between the two standards –
23 that is TELRIC rates *must* fall within the range of just and reasonable rates by
24 statute. The Act itself requires that rates for §251 network elements (which the

⁴⁷ *AT&T Corp. vs. Iowa Utilities Board*, 525 U.S. 366, 385, 119 S.Ct. 721, 732 (1999)
(emphasis added).

⁴⁸ *Verizon Communications, Inc. v. FCC*, 535 U.S. at 489.

1 FCC has interpreted to require compliance with the TELRIC standard) must be
2 “just and reasonable.”⁴⁹ However, the FCC has also concluded that the just and
3 reasonable standard could permit prices different than TELRIC-based rates:
4

5 So if, for example, pursuant to section 251, competitive entrants
6 are found not to be “impaired” without access to unbundled
7 switching at TELRIC rates, the question becomes whether BOCs
8 are required to provide unbundled switching at TELRIC rates
9 pursuant to section 271(c)(2)(B)(vi). In order to read the provisions
10 so as not to create a conflict, we conclude that section 271 requires
11 BOCs to provide unbundled access to elements not required to be
12 unbundled under section 251, *but does not require TELRIC*
13 *pricing.*⁵⁰
14

15 Thus, although §271 does not require TELRIC-based rates, the fact that such rates
16 must also all be within the range of just and reasonable rates should help inform
17 the Commission as to what rates would be appropriate in a §271-compliant
18 offering.
19

⁴⁹ Specifically, section 252(d) PRICING STANDARDS requires:

(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES-

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be—

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

⁵⁰ TRO ¶ 659 (emphasis added).

1 **Q. Are you prepared to recommend permanent §271 prices at this time?**

2

3 A. CompSouth has served discovery on BellSouth with the intent that specific rate
4 recommendations can be made in this proceeding. It may be necessary, however,
5 for the Commission to adopt interim §271 rates for high capacity loops and
6 transport (where no longer required under §251), pending the completion of a
7 separate “permanent” rate investigation.

8

9 **Q. If the Commission does adopt interim rates for high capacity loops and**
10 **transport, what rate level do you recommend?**

11

12 A. The *TRRO* adopted specific transitional pricing rules to apply to UNEs that are no
13 longer required to be unbundled under §251 of the Act. These transitional rates
14 imposed a 15% increase on loops and transport prices where §251 no longer
15 compelled TELRIC-based rates. These transitional increases would be a
16 reasonable first approximation of “just and reasonable” §271 rates if the
17 Commission is unable to establish permanent rates at this time. Indeed, this
18 approach was recently adopted by the Missouri Public Service Commission.⁵¹

⁵¹ Arbitration Order, Public Service Commission of Missouri, TO-2005-0336, July 11, 2005.

1 *D. BellSouth's Commingling Obligations Apply to §271 Elements*
2 *(Issues List No. 13)*

3
4 **Q. In addition to price, are there any other critical issues that must be addressed**
5 **for §271 offerings to provide entrants “meaningful access?”⁵²**

6
7 A. Yes. Price is only half the equation – in addition, §271 offerings must include
8 terms and conditions that are commercially useful. As a general policy, the
9 Commission should require that §271 offerings should be identical – except as to
10 price – to the §251 offerings they replace.

11
12 **Q. Is BellSouth required to “combine” §271 elements with other elements?**

13
14 A. Yes, although it is important to describe BellSouth's obligation in the appropriate
15 terms because of the semantic construction of federal rules concerning the
16 connection of network facilities for use by a competitor. Specifically, the FCC
17 has limited the term “combining” to refer to the particular circumstance where

⁵² Although the FCC's pricing standard for §271 network elements is frequently shortened to “just and reasonable,” the complete standard includes requirements that rates be nondiscriminatory and provide meaningful access (TRO, ¶663 emphasis added):

Thus, the pricing of checklist network elements that do not satisfy the unbundling standards in section 251(d)(2) are reviewed utilizing the basic just, reasonable, and nondiscriminatory rate standard of sections 201 and 202 that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes, including (for interstate services) the Communications Act. Application of the just and reasonable and nondiscriminatory pricing standard of sections 201 and 202 advances Congress's intent that Bell companies provide meaningful access to network elements.

1 both elements being requested by an entrant are required by §251 of the federal
2 Act. As such, BellSouth is not technically required to “combine” §271 elements,
3 but that does not mean that BellSouth does not have the same obligation to
4 *connect* §271 elements as it does for elements required under §251 – what
5 changes is the term used to describe the activity, not the obligation itself.

6

7 **Q. What term is used to describe BellSouth’s obligation to connect §251**
8 **elements to other wholesale services, such as §271 elements?**

9

10 A. The term commingling is used to describe BellSouth’s obligation to connect a
11 §251 network element to any other wholesale offering (such as a §271 network
12 element). As the FCC explained:

13

14 By commingling, we mean the connecting, attaching, or otherwise
15 linking of a UNE, or a UNE combination, to one or more facilities
16 or services that a requesting carrier has obtained at wholesale from
17 an incumbent LEC pursuant to any method other than unbundling
18 under Section 251(c)(3) of the Act, or the combining of a UNE or
19 UNE combination with one or more such wholesale services.⁵³
20

⁵³ TRO ¶ 597. Emphasis added. Specifically, in CFR 51.5:

Commingling means the connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services. Commingling means the act of commingling.

1 Obviously, §271 services listed in the competitive checklist are “wholesale
2 services” – indeed, these checklist items are such important wholesale services
3 that Congress specifically demanded that BellSouth agree to offer such services as
4 a precondition to its offering in-region long distance services.

5
6 **Q. Is BellSouth required to offer UNE combinations and commingled
7 arrangements?**

8
9 **A.** Yes. The FCC’s rules involving combinations and commingled arrangements
10 work together to ensure that each of the discrete elements offered by BellSouth –
11 whether offered under §251 of the Act, as special access or any other wholesale
12 arrangement (which would include elements offered pursuant to §271 of the Act)
13 – are also available in connected form. What defines the difference between a
14 “combination” and “commingling” is not the *facilities* themselves that are
15 connected, but the *legal* obligation under which they are offered. The
16 “combinations rules” (which apply to §251 network elements) are based on the
17 nondiscrimination requirement found in §251. “Commingled” arrangements,
18 however, include *both* §251 network elements and network facilities/functions
19 offered through a mechanism other than §251.

20
21 Importantly, the fact that commingled arrangements include both §251 and non-
22 §251 elements does not grant BellSouth a license to discriminate, for more than
23 just §251 of the federal Act prohibits discriminatory and anticompetitive conduct.

1 Specifically, the FCC has held (and the D.C. Circuit has affirmed) that the general
2 nondiscrimination obligations of §202 apply to these other wholesale offerings,
3 including those offerings required by the competitive checklist (loops, transport,
4 switching and signaling).⁵⁴

5
6 **Q. Has the FCC determined that general requirements of §§ 201 and 202**
7 **obligate BellSouth to connect elements to form “commingled” arrangements?**

8
9 **A.** Yes. Like its rules that apply specifically to §251 network elements, the FCC
10 found that the general nondiscrimination duties of §202 imposed similar
11 obligations where arrangements containing both §251 and non-§251 facilities
12 and/or services were involved:

13
14 In addition, upon request, an incumbent LEC shall perform the
15 functions necessary to commingle a UNE or a UNE combination
16 with one or more facilities or services that a requesting carrier has
17 obtained at wholesale from an incumbent LEC pursuant to a
18 method other than unbundling under Section 251(c)(3) of the Act.⁵⁵

19
20 ***

21
22 Thus, we find that a restriction on commingling would constitute
23 an “unjust and unreasonable practice” under 201 of the Act, as well
24 as an “undue and unreasonable prejudice or advantage” under
25 section 202 of the Act. Furthermore, we agree that restricting

⁵⁴ As explained in *USTA II*: “Of course, the independent unbundling obligation under § 271 is presumably governed by the *general* non-discrimination requirements of § 202.” U.S. Telecom Ass’n vs. FCC, 359 F3d 554, decided March 2, 2004, emphasis in the original.

⁵⁵ TRO ¶ 597.

1 commingling would be inconsistent with the nondiscrimination
2 requirement in Section 251(c)(3).⁵⁶
3

4 Thus, whether the applicable nondiscrimination standard is contained in §251 or
5 §202 is immaterial – BellSouth may not refuse to combine wholesale offerings,
6 whether such offerings are entirely comprised of §251 elements (combinations),
7 or §251 elements with other offerings (commingling).
8

9 **Q. Is it reasonable to require that BellSouth permit carriers to “mix and match”**
10 **wholesale offerings (including §271 network elements) in this way?**

11
12 A. Absolutely. There is no question that BellSouth must offer the individual
13 elements and facilities/services that comprise the combinations and commingled
14 arrangements that CLECs seek. The issue here is simply whether BellSouth
15 should be permitted to impose operational impediments to using elements
16 together, when the entire purpose of each of these wholesale arrangements
17 (assuming they are not sham attempts at feigned regulatory compliance) is
18 offerings that are commercially useful.
19

20 **Q. What do you recommend?**
21

⁵⁶ TRO ¶ 591. Footnotes omitted.

1 A. I recommend that the Commission require BellSouth to offer §271 elements under
2 the same terms and conditions as apply (or, in the case of switching, applied) to
3 the parallel §251 offering, except as to price.

4
5 *E. Performance Plans and §271*
6 *(Issues List No. 12)*
7

8 **Q. In addition to retaining all the other terms and conditions of service, should**
9 **the Commission also continue to apply performance plans to BellSouth's**
10 **§271 offerings in the same manner that such plans apply to UNEs required**
11 **under §251?**

12
13 A. Yes. The performance penalty plans were an important part of BellSouth's
14 commitment to maintain open markets after it had obtained approval to offer long
15 distance services. As the FCC explained when it granted BellSouth authority to
16 provide long distance services in Florida:

17
18 ...we find that the existing Service Performance Measurements
19 and Enforcement Mechanisms (SEEM plans) currently in place for
20 Florida and Tennessee provide assurance that these local markets
21 will remain open after BellSouth receives section 271
22 authorization. The Florida Commission's and the Tennessee
23 Authority's oversight and review of their respective plans and their
24 performance metrics provide additional assurance that the local
25 market will remain open. In prior orders, the Commission has
26 explained that one factor it may consider as part of its public
27 interest analysis is whether a BOC would have adequate incentives
28 to continue to satisfy the requirements of section 271 after entering
29 the long distance market. Although it is not a requirement for

1 section 271 authority that a BOC be subject to such performance
2 assurance mechanisms, the Commission previously has found that
3 the existence of a satisfactory performance monitoring and
4 enforcement mechanism is probative evidence that the BOC will
5 continue to meet its section 271 obligations after a grant of such
6 authority.⁵⁷

7
8 As the above made clear, these plans were used as probative evidence that
9 BellSouth would continue to meet its §271 obligations after a grant of authority.
10 As such, the mere fact that an element has moved from being a §251/§271
11 obligation to solely a §271 obligation hardly justifies eliminating provisions
12 adopted to ensure compliance with §271. As these plans were adopted to ensure
13 continuing compliance with §271, they should continue to apply to those offerings
14 made available to comply with §271.

15 16 V. Miscellaneous Issues

17 18 A. Routine Network Modifications 19 (Issues List No. 25-26)

20
21 **Q. What are routine network modifications?**

22
23 **A. The FCC defines routine network modifications as follows:**

⁵⁷ Memorandum Opinion and Order, Federal Communications Commission Docket CC 02-307, December 19, 2002, ¶ 167. Emphasis added.

1 A routine network modification is an activity that the incumbent
2 LEC regularly undertakes for its own customers.⁵⁸
3

4 Under FCC rules, BellSouth is obligated to make routine network modifications
5 for CLECs where the UNE loop has already been constructed.
6

7 **Q. Does the FCC list or provide examples of routine network modifications?**

8
9 A. Yes, it does. With respect to loops, the FCC stated:
10

11 Routine network modifications include, but are not limited to,
12 rearranging or splicing of cable; adding an equipment case; adding
13 a doubler or repeater; adding a smart jack; installing a repeater
14 shelf; adding a line card; deploying a new multiplexer or
15 reconfiguring an existing multiplexer; and attaching electronic and
16 other equipment that the incumbent LEC ordinarily attaches to a
17 DS1 loop to activate such loop for its own customer. They also
18 include activities needed to enable a requesting
19 telecommunications carrier to obtain access to a dark fiber loop.
20 Routine modifications may entail activities such as accessing
21 manholes, deploying bucket trucks to reach aerial cable, and
22 installing equipment casings.⁵⁹
23

24 **Q. Did the FCC also provide examples of what was not a routine network**
25 **modification?**

26
27 A. Yes, the FCC provided:
28

⁵⁸ 47 C.F.R. § 51.319(a)(8)(ii)(local loops); § 51.319(E)(5)(ii)(dedicated transport).

⁵⁹ *Id.*

1 Routine network modifications do not include the construction of a
2 new loop, or the installation of new aerial or buried cable for a
3 requesting telecommunications carrier.⁶⁰
4

5 **Q. Should the network modification language closely track the FCC's specific**
6 **discussion?**

7
8 A. Yes. The key is that the BellSouth must be required to provide all the same
9 network modifications for the CLEC's customers that it performs for itself. This
10 is particularly true for high-capacity facilities, which are the predominant loop-
11 type required by CLECs and the loop-type most frequently modified to support
12 high-capacity services.

13
14 **Q. Is it clear that the FCC intended that its routine network modification**
15 **policies would apply to high capacity loops?**

16
17 A. Yes. For example, in ¶633 of the *TRO*, the FCC noted that the ILECs, in
18 provisioning "high-capacity loop facilities" to CLECs, must make the same
19 routine modifications to their existing loop facilities that they make for their own
20 customers. Moreover, in ¶634, the FCC noted that its "operating principle is that
21 incumbent LECs must perform all loop modification activities that it [sic]
22 performs for its own customers." Finally, in ¶635, where the FCC actually

⁶⁰ *Id.*

1 discusses findings in the record about attaching routine electronics, the FCC
2 began by stating as follows:

3
4 The record reveals that attaching routine electronics, such as
5 multiplexers, apparatus cases, and doublers, to high-capacity loops
6 is already standard practice in most areas of the country.⁶¹
7

8 The key is that the provisions requiring BellSouth to perform the same routine
9 network modifications for high capacity loop facilities used to serve CLEC
10 customers as it does for itself.

11
12 **B. Line Conditioning**

13
14 **Q. Has the FCC adopted specific rules requiring BellSouth to condition loop**
15 **plant to support advanced data services?**

16
17 **A.** Yes. BellSouth is expressly required to perform "line conditioning" under 47
18 CFR 51.319 (a)(1)(iii):

19
20 (iii) Line conditioning. The incumbent LEC shall condition a
21 copper loop at the request of the carrier seeking access to a copper
22 loop under paragraph (a)(1) of this section, the high frequency
23 portion of a copper loop under paragraph (a)(1)(i) of this section,
24 or a copper subloop under paragraph (b) of this section to ensure
25 that the copper loop or copper subloop is suitable for providing
26 digital subscriber line services, including those provided over the
27 high frequency portion of the copper loop or copper subloop,

⁶¹ TRO, ¶ 635.

1 whether or not the incumbent LEC offers advanced services to the
2 end-user customer on that copper loop or copper subloop. If the
3 incumbent LEC seeks compensation from the requesting
4 telecommunications carrier for line conditioning, the requesting
5 telecommunications carrier has the option of refusing, in whole or
6 in part, to have the line conditioned; and a requesting
7 telecommunications carrier's refusal of some or all aspects of line
8 conditioning will not diminish any right it may have, under
9 paragraphs (a) and (b) of this section, to access the copper loop, the
10 high frequency portion of the copper loop, or the copper subloop.
11

12 **Q. Is Line Conditioning the same obligation as Routine Network Modification?**

13
14 **A.** No. As the above rule provision makes clear, BellSouth is obligated to condition
15 facilities "...whether or not the incumbent LEC offers advanced services to the
16 end-user customer on that copper loop or copper subloop." Thus, BellSouth need
17 not routinely condition loop facilities for its own services for it to be obligated to
18 condition facilities for other CLECs.⁶² The obligation to conduct routine network
19 modifications (discussed above), by contrast, is a separate and distinct obligation
20 from BellSouth's additional obligation to perform line conditioning for CLECs.
21 In fact, these two obligations are governed by distinct rules: Routine Network
22 Modifications are mandated by Rule 51.319(a)(8), while Line Conditioning is
23 mandated by Rule 51.319(a)(1)(iii). Thus, the structure of Rule 51.319 in itself
24 demonstrates that Line Conditioning is not the same obligation as a Routine
25 Network Modification.
26

⁶² I note that if BellSouth does routinely condition its own facilities, it would be required to perform such modifications for a CLEC.

1 Q. Can you provide an example that illustrates the difference between “Line
2 Conditioning” and a “Routine Network Modification”?

3
4 A. Yes. To a large extent, BellSouth’s DSL offerings are housed in remote
5 terminals, located closer to customers. CLECs, on the other hand, collocate their
6 equipment at the central office and, therefore, must frequently use longer loops.

7
8 To the extent that BellSouth limits its own line conditioning to shorter loops
9 because of its network architecture, it could claim that it does not need to perform
10 line conditioning for a CLEC because it was not a “routine network
11 modification.”⁶³ However, because the FCC has specifically established Line
12 Conditioning as an obligation that BellSouth must honor *whether or not it would*
13 *do so for its own customers*, BellSouth must still condition facilities at the request
14 of the CLEC at the TELRIC-compliant rates already approved by this
15 Commission.

16
17 C. EEL Audit Requirements
18 (Issues List No. 28)
19

20 Q. Do FCC rules permit BellSouth to audit CLEC use of high capacity EELs?

⁶³ The FCC defines a Routine Network Modification as “...an activity that the incumbent LEC regularly undertakes for its own customers.”

1

2 A. Yes. This authority, however, is not open ended. To the contrary, the FCC
3 determined that the ILEC should have only “a limited right to audit compliance
4 with the qualifying service eligibility criteria”⁶⁴ and left it to the state commission
5 to develop specific approaches:

6

7 ... we [the FCC] recognize that the details surrounding the
8 implementation of these audits may be specific to related
9 provisions of interconnection agreements or to the facts of a
10 particular audit, and that the states are in a better position to
11 address that implementation.⁶⁵
12

13 Principles that the FCC established are that the ILEC should use an independent
14 auditor and perform audits no more than once each year.⁶⁶ To assure
15 independence, the auditor should be mutually agreed upon by BellSouth and the
16 CLEC.

17

18 **Q. Is the FCC’s audit scheme intended to encourage “fishing expeditions?”**

19

20 A. No. The FCC’s principles are clear. BellSouth has only a “limited right to audit,”
21 not an open invitation; in addition, the FCC’s intention was to grant CLECs “...
22 unimpeded UNE access based upon self-certification, subject to later verification

⁶⁴ TRO, ¶626, emphasis added.

⁶⁵ TRO, ¶ 625.

⁶⁶ TRO, ¶ 626.

1 based upon cause.⁶⁷ It is not enough to merely want to audit, BellSouth must
2 have some basis that an audit is appropriate.

3
4 **Q. What type of procedure do you recommend?**

5
6 A. To assist a CLEC in preparing to respond to a BellSouth EEL audit request,
7 BellSouth should provide the CLECs with proper notification and the basis to
8 BellSouth's assertion that it has good cause to conduct an audit. CLECs are
9 entitled to review relevant documentation that forms the basis for the cause
10 alleged, and to know which circuits are implicated by those allegations. This
11 approach is necessary to give "teeth" to the FCC's *for-cause* audit standard;
12 undocumented cause is no cause at all. Moreover, because it makes relevant
13 documentation available early in the process, the approach proposed by
14 CompSouth would identify potential issues quickly, thus avoiding unnecessary
15 disputes over whether BellSouth may or may not proceed with an audit.
16
17 By requiring BellSouth to establish the scope and the basis for its claimed right to
18 audit up front, it is more likely that BellSouth and the target CLEC will be able to
19 narrow and/or more quickly resolve disputes over whether or not BellSouth has
20 the right to proceed with an EEL audit. Although the *TRO* did not include a
21 specific notice requirement, this Commission may order such a requirement. As

⁶⁷ *TRO*, ¶ 622. Emphasis added.

1 noted above, the *TRO* only includes “basic principles for EEL audits” and should
2 not be construed as a comprehensive overview of all EEL audit requirements.

3
4 *D. Mandated Migration Charges*
5 *(Issues List No. 8-10)*

6
7 **Q. How do you define a “mandated migration?”**

8
9 **A.** I use the term here to refer to any migration that BellSouth effectively forces on
10 an entrant because a particular UNE or Combination is no longer offered. These
11 migrations are not the choice of the CLEC. As the “moving party” for change,
12 BellSouth should accept responsibility for identifying circuits to be migrated and
13 absorb any non-recurring activity associated from implementing its own
14 decisions.

15
16 Establishing new arrangements – whether different network configurations or
17 simply new prices – are not the choice of the CLEC. Because it is BellSouth that
18 stands to garner all of the benefit from conversions from §251 UNEs to other
19 arrangements, BellSouth should shoulder the costs associated with implementing
20 its demands. The CLECs will already face higher costs by paying BellSouth
21 higher prices; they should not also be required to pay order placement charges,
22 disconnect charges or nonrecurring charges associated with a conversion to or
23 establishment of an alternative service arrangement.

1

2

VI. Conclusion

3

4

Q. Please summarize your testimony.

5

6

A. The decisions the Commission reaches in this arbitration will be the most competitively significant since the initial arbitrations established the foundation for local competition. As the market moves from §251-based offerings to alternatives, including §271-compliant offerings, the goal must be continued competition. The recommendations above are offered with that goal in mind.

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Q. Does this conclude your testimony?

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14

A. Yes.

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Q. What areas are addressed by your rebuttal testimony?

3

4

A. My rebuttal testimony is structured to respond to several key areas of disagreement highlighted by BellSouth's direct testimony.¹ Specifically, my rebuttal testimony addresses:

5

6

7

8

* BellSouth's suggestion that it is no longer required to offer unbundled access to fiber and hybrid loops used to serve enterprise customers. As I explain below, BellSouth remains obligated to offer access to DS1s, whether or not it has deployed a hybrid (or all fiber) architecture. FCC broadband policies do not exempt BellSouth from providing high-capacity loops to serve enterprise customers, which include any customer desiring service over a DS1.

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* BellSouth's proposed wire center designations implementing the FCC's impairment determinations for high capacity loops and transport. In calculating the number of business lines, BellSouth adopted an assumption unsupported by FCC Order, common sense and the facts – that is, BellSouth assumes that every digital access line is used to its *maximum potential capacity* to provide switched access lines services to business customers. This assumption is not only facially unreasonable, it violates the most basic requirements of the TRO and is designed to accomplish one task – to artificially limit BellSouth's unbundling obligations and protect its market position. In addition, I explain that the Commission should not "double-count" by counting both SBC and AT&T, as these companies stand on the eve of their merger.

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¹ I note that the issues addressed by my rebuttal testimony are not the only areas where I disagree with BellSouth. In a number of areas, however, my direct testimony adequately addresses issues that were foreshadowed by the issues list in this proceeding. The focus of my rebuttal testimony is on new issues and areas where discovery and additional information is needed (for instance, with respect to the correct categorization of wire centers for purposes of defining BellSouth's obligations to offer high capacity loops and transport at TELRIC-based rates under §251 of the federal Act).

1

2

* BellSouth's refusal to address checklist items required under §271, despite the clear language in the federal Act that such offerings must be included in interconnection agreements approved pursuant to §252 (which includes this Commission's review and approval). In addition, I respond to BellSouth's claim that federal commingling obligations exclude wholesale offerings required under §271 and I explain why the Commission must establish interim §271-compliant rates in this proceeding.

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In addition to these three main areas, my rebuttal testimony also addresses a number of other issues that, while individually important, are not as central to the fundamental dispute as those listed above.

12

13

14

15

Q. Does your testimony also identify areas where CompSouth has changed its position to move closer to BellSouth?

16

17

18

A. Yes. Attached to my testimony is a Revised Exhibit JPG-1 whose contract language has been modified, where possible, to narrow issues with BellSouth. Specifically, Revised Exhibit JPG-1 includes revised contract language to address the following areas:

19

20

21

22

23

* Contract language is revised to indicate that transitional rates will be applied retroactively to March 11, 2005. However, so as to ensure that all interrelated changes occur simultaneously, provisions incorporating revised EEL eligibility, commingling and conversions must be treated as effective on that same date.

24

25

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* The contract definition of a "business line" is revised to parallel the definition in the TRRO. It is clear that the dispute with

30

1 BellSouth involves an *interpretation* of how the definition should
2 be read and not the definition itself.
3

4 * The contract definition of a “building” is modified to move
5 towards the concepts discussed by BellSouth, recognizing,
6 however, that where individual tenants are served by independent
7 and distinct points-of-entry for telecommunications facilities – that
8 is, each area is, from a telecommunications perspective, an
9 independent structure – then each area served by such separate
10 point-of-entry for telecommunications services would be
11 considered a separate building.
12

13 In addition, Revised Exhibit JPG-1 includes contract language that implements
14 the discussion concerning BellSouth’s ongoing obligation to provide access to
15 DS1 loops to serve enterprise customers (even loops that might not be available to
16 serve a mass market customer), as well as editorial changes needed to clarify the
17 original intent of the proposal.
18

19 **II. BellSouth is Required to Provide Access to**
20 **DS1s on all FTTC, FTTH and Hybrid Loops**

21
22 **Q. Please summarize BellSouth’s claims regarding its unbundling obligations**
23 **for broadband facilities.**
24

25 A. In the TRO (and subsequent Orders), the FCC adopted reduced unbundling
26 obligations for a variety of “broadband facilities,” specifically “fiber to the home”

1 (FTTH),² “fiber to the curb” (FTTC) and “fiber to the predominantly residential
2 multi-dwelling unit” (MDU). BellSouth’s testimony, however, appears to extend
3 the application of these reduced obligations beyond what the FCC intended

4
5 According to BellSouth, the “basic principle” that the FCC adopted in its
6 broadband policies is simply that “CLECs continue to have access to currently
7 existing last mile copper facilities, for as long as those facilities continue to
8 exist.”³ BellSouth goes on to describe its obligations as:

9
10 BellSouth, per TRO Paragraph 273, is not obligated to “offer
11 unbundled access to newly deployed or “greenfield” fiber loops.⁴
12

13 ... the FCC ruled that hybrid loops should not be unbundled since
14 they are part of the next generation network.⁵
15

16 ... the same unbundling relief framework (including any
17 unbundling relief) established by the FCC in the TRO for FTTH
18 loops also applies to FTTC loops.⁶
19

20 **Q. Is BellSouth’s characterization of the FCC’s Orders complete?**
21

² Although the FCC refers to fiber-to-the-home and abbreviates the architecture as FTTH, it defines the configuration as fiber-to-the-customer-premise.

³ Fogle Direct, page 14.

⁴ Fogle Direct, page 17.

⁵ Fogle Direct, page 18.

⁶ Fogle Direct, pages 19-20. FTTH and FTTC are abbreviations for “Fiber to the Home” and “Fiber to the Curb,” where the later requires that fiber be deployed to within 500 feet of each premise

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1 A. No. There is a critical *limiting* factor in the FCC's "broadband exclusions" that
2 BellSouth completely ignores. That is, the *predicate* to BellSouth's reduced
3 unbundling obligations for these network architectures is that the loops are used to
4 serve mass market customers. BellSouth was not granted a *total* exception to its
5 loop unbundling obligations for all fiber and hybrid loops; rather, the FCC's
6 broadband exclusions were specifically limited to circumstances where these
7 loops are used to serve mass market customers. This basic predicate permeates
8 the FCC's Orders:

9

10 ...we find that our unbundling rules for local loops servicing the
11 mass market must account for these different loop architectures.⁷
12

13 Accordingly, we do not require incumbent LECs to provide
14 unbundled access to new mass market FTTC loops for either
15 narrowband or broadband services.⁸
16

17 The Commission granted the greatest unbundling relief for dark or
18 lit fiber loops servicing mass market customers that extend to the
19 customer's premises (known as fiber-to-the-home or FTTH loops)
20 in new build or "greenfield" situations. For those loops, the
21 Commission determined that no unbundling is required.⁹
22

23 We decline to require incumbent LECs to unbundle the next-
24 generation network, packetized capabilities of their hybrid loops to
25 enable requesting carriers to provide broadband services to the
26 mass market.¹⁰

⁷ TRO ¶ 221.

⁸ Order on Reconsideration, Federal Communications Commission, CC Docket 01-338, October 14, 2004, ("*FTTC Order*"), ¶ 14.

⁹ *FTTC Order*, ¶ 6.

¹⁰ TRO ¶ 288 (emphasis added).

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...with the knowledge that incumbent LEC next-generation networks will not be available on an unbundled basis, competitive LECs will need to continue to seek innovative network access options to serve end users and to fully compete against incumbent LECs in the mass market.¹¹

Thus, we determine that, particularly in light of a competitive landscape in which competitive LECs are leading the deployment of FTTH, removing incumbent LEC unbundling obligations on FTTH loops will promote their deployment of the network infrastructure necessary to provide broadband services to the mass market.¹²

... the rules we adopt herein do not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as the xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking (PON) capabilities to the mass market.¹³

In the *Triennial Review Order*, the Commission limited the unbundling obligations imposed on mass market FTTH deployments to remove disincentives to the deployment of advanced telecommunications facilities in the mass market. We find here that those policy considerations are furthered by extending the same regulatory treatment to incumbent LECs' mass market FTTC deployments.¹⁴

... we conclude that, treating FTTC loops the same as FTTH loops will encourage carriers to further deploy fiber architectures necessary to deploy broadband services to the mass market, and

¹¹ TRO, ¶ 272 (emphasis added).
¹² TRO ¶ 278 (emphasis added).
¹³ TRO ¶ 288 (emphasis added).
¹⁴ FTTC Order ¶ 2.

1 the benefits of such deployment outweigh the limited impairment
2 that competitive carriers face.¹⁵
3

4 The citations listed above are representative, not exhaustive, of the distinction
5 drawn by the FCC. In effect, the FCC adopted a broadband policy intended to
6 encourage broadband deployment in the mass market, principally to foster
7 competition for “triple play” services that combine voice, data and video.¹⁶ This
8 rationale does not apply to serving the enterprise market.
9

10 **Q. Does BellSouth recognize that the FCC’s unbundling exclusions for**
11 **broadband loop-types apply in the mass market?**

12
13 A. Yes, BellSouth correctly *identifies* the limiting principal, but then ignores its
14 importance. In BellSouth’s own testimony, it states:
15

¹⁵ *FTTC Order*, ¶ 13.

¹⁶ For instance, when extending its unbundling exclusion to the fiber-to-the-curb architecture, the FCC concluded (*FTTC Order*, ¶ 10 and ¶11):

The record reflects that when fiber is brought within 500 feet of a subscriber’s premise, carriers can provide broadband services comparable to that provided by FTTH architecture, including data speeds of 10 megabits per second (Mbps) in addition to high definition multi-channel video services.

[A]s with FTTH loops, competitive LECs deploying FTTC loops have increased revenue opportunities through the ability to offer voice, multi-channel video, and high-speed data services. As the Commission found with respect to FTTH loops in the *Triennial Review Order*, the substantial revenue opportunities that arise from offering this “triple play” of services helps ameliorate many of the entry barriers presented by the costs and scale economies.

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BellSouth maintains that the FCC determined in the *TRO* that ILECs have no obligation to unbundle FTTH mass market loops serving greenfield areas or areas of new construction.¹⁷

What is missing from any of BellSouth's testimony is acceptance that the FCC's rules are not a *blanket* exemption from unbundling obligations. BellSouth remains obligated to provide access to carriers serving enterprise customers, even where the CLEC could not gain access to the loop facility to serve a mass market customer.

Q. When a CLEC requests a DS1 loop, is it serving a mass market or an enterprise customer?

A. When a CLEC requests a DS1 loop, by definition the customer it is seeking to serve is considered an enterprise (and not mass market) customer. For instance, in the *TRO*, the FCC distinguished enterprise business customers from the mass market, noting:

All other business customers – whom we characterize as the enterprise market – typically purchase high-capacity loops, such as DS1, DS3, and OCn capacity loops. We address high-capacity loops provisioned to these customers as part of our enterprise market analysis.¹⁸

Thus, whenever a CLEC requests a DS1 loop to serve a customer, that request itself means that the customer is (or is becoming) a member of the enterprise

¹⁷ Fogle Direct, page 19, emphasis added. (footnote deleted).
¹⁸ *TRO*, ¶ 209.

1 market and BellSouth must comply with loop unbundling requirements as defined
2 for that market.¹⁹

3

4 **Q. Did the FCC clearly require ILECs to provide CLECs DS1 loops without**
5 **regard to whether the loop is FTTH, FTTC or a fiber/copper hybrid?**

6

7 A. Yes. As I explain later in my testimony, BellSouth's unbundling relief for DS1
8 loops is defined by the number of fiber-based collocators/switched business lines
9 in an end office, not by the type of loop architecture in place. (Not surprisingly,
10 BellSouth is attempting to obtain relief under both). As the FCC explained in the
11 *TRO*:

12

13 DS1 loops will be available to requesting carriers, without
14 limitation, regardless of the technology used to provide such loops,
15 e.g., two-wire and four-wire HDSL or SHDSL, fiber optics, or
16 radio, used by the incumbent LEC to provision such loops and
17 regardless of the customer for which the requesting carrier will
18 serve unless otherwise specifically indicated. See supra Part
19 VI.A.4.a.(v) (discussing FTTH). The unbundling obligation
20 associated with DS1 loops is in no way limited by the rules we
21 adopt today with respect to hybrid loops typically used to serve
22 mass market customers. See supra Part VI.A.4.a.(v)(b)(i).²⁰
23

24 Moreover, to the extent that there *had* been any confusion over the scope of the
25 FCC's broadband loop polices, that confusion should have been put to rest by the

¹⁹ I note that it is immaterial how many lines, or what type of facility, BellSouth may be using to initially serve the customer. If the CLEC is requesting a DS1 (or higher) loop facility for the customer, BellSouth must provide the DS1 so that the customer may become an enterprise customer.

²⁰ *TRO* ¶ 325, footnote 956. Emphasis added.

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1 FCC's own description of its policies to the D.C. Circuit Court of Appeals.
2 Responding to a pleading by Allegiance Telecom that expressed the fear that the
3 FCC may have restricted access to DS1 loops, the FCC explained:

4
5 Allegiance also claims that it will lose access to DS1 loops.
6 Motion at 11. It based that claim on the theory that when the
7 Commission changed "residence" to end user in the erratum, it
8 removed business customers served by DS-1 loops from the
9 unbundling obligation. That reading of the erratum is incorrect....
10 The text, as well as the rules themselves, make it clear that DS1
11 and DS3 loops remain available as UNEs at TELRIC prices.²¹
12

13 DS1 loops are available to CLECs, subject to the separate unbundling analysis
14 discussed in the following section of my testimony concerning the appropriate
15 wire center classifications governing access to high capacity loops and transport.

16

17 **Q. Is there any limitation on hybrid loops?**

18

19 A. Yes. The only "limitation" on BellSouth's unbundling obligations with respect to
20 fiber/copper hybrid loops is that BellSouth need not provide access to the packet-
21 based capability in the loop.²² This limitation, however, should not affect CLECs
22 ability to obtain access to DS1 (and DS3) loops in any meaningful way.

23

²¹ *Allegiance Telecom, Inc. et al. v. FCC*, D.C. Cir. No. 03-1316, Opposition of the Federal Communications Commission to Allegiance Telecom's Motion for Stay Pending Review (filed Oct. 31, 2003) at 12.

²² *TRO* ¶ 288.

1 First, the FCC made clear that BellSouth must still provide DS1 and DS3 loops on
2 such facilities:

3
4 We stress that the line drawing in which we engage does not
5 eliminate the existing rights competitive LECs have to obtain
6 unbundled access to hybrid loops capable of providing DS1 and
7 DS3 service to customers. These TDM-based services – which are
8 generally provided to enterprise customers rather than mass market
9 customers – are non-packetized, high-capacity capabilities
10 provided over the circuit switched networks of incumbent LECs....
11 Incumbent LECs remain obligated to comply with the
12 nondiscrimination requirements of section 251(c)(3) in their
13 provision of loops to requesting carriers, including stand-alone
14 spare copper loops, copper subloops, and the features, functions,
15 and capabilities for TDM-based services over their hybrid loops.²³

16 ***

17 Although packetized fiber capabilities will not be available as
18 UNEs, incumbent LECs remain obligated, however, to provide
19 unbundled access to the features, functions, and capabilities of
20 hybrid loops that are not used to transmit packetized information.
21 Thus, as discussed more specifically in the Enterprise Loops
22 section, consistent with the proposals of HTBC, SBC, and others,
23 incumbent LECs must provide unbundled access to a complete
24 transmission path over their TDM networks to address the
25 impairment we find that requesting carriers currently face. This
26 requirement ensures that competitive LECs have additional means
27 with which to provide broadband capabilities to end users because
28 competitive LECs can obtain DS1 and DS3 loops, including
29 channelized DS1 or DS3 loops and multiple DS1 or DS3 loops for
30 each customer.²⁴

31
32 Second, the FCC's policies are premised on the understanding that, to the extent
33 that an ILEC does deploy a packet-based architecture, the packet-architecture

²³ TRO ¶ 294. Footnotes omitted.

²⁴ TRO ¶ 289. Footnote omitted.

1 parallels its TDM-network, and would not isolate customers from access to CLEC
2 DS1-based services.

3
4 In their submissions in this proceeding, incumbent LECs
5 demonstrate that they typically segregate transmissions over hybrid
6 loops onto two paths, *i.e.*, a circuit-switched path using TDM
7 technology and a packet-switched path (usually over an ATM
8 network). *See, e.g.*, SBC Jan. 15, 2003 *Ex Parte* Letter at 4
9 (providing diagram to illustrate that its network architecture
10 consists of a TDM-based portion and a packet-switched portion).²⁵
11

12 Thus, the relatively narrow exception to BellSouth's general obligation to
13 unbundle DS1 (and DS3) services should have little practical effect. To the extent
14 that BellSouth is no longer required to provide access to DS1 (and DS3) loops,
15 those circumstances are defined by the wire center list addressed in the following
16 section of my rebuttal testimony (relating to the correctly establishing the number
17 of switched business lines and unaffiliated fiber-based collocators at a wire
18 center) and not by the loop architecture deployed by the incumbent.
19

20 III. Wire Center Designations

21
22 **Q. Is the testimony of Mr. Wallis of Deloitte Financial Advisory Services**
23 **relevant to any wire-center issue in dispute?**
24

²⁵ TRO ¶ 294, footnote 846.

1 A. No. My understanding of the Deloitte analysis is that the firm merely confirmed
2 that BellSouth's spreadsheets were free of mathematical error. The Wallis report
3 makes clear that it does not:

4
5 * Verify the accuracy and completeness of the source data
6 obtained for the calculation of the business lines;
7

8 * Verify the accuracy of the systems in which the business
9 lines are captured (and the source data that was extracted);
10

11 * Validate BellSouth's methodology developed to calculate
12 the business lines for FCC TRRO purposes; or
13

14 * Validate the definitions of "business lines" used by
15 BellSouth.²⁶
16

17 In other words, the testimony and analysis avoids the *issues* in question and, as
18 such, does nothing to legitimize BellSouth's claims in this proceeding (other than
19 its arithmetic).²⁷
20

21 **Q. What appears to be the two most significant errors with BellSouth's wire-**
22 **center analysis?**
23

²⁶ Exhibit DW-2, Mathematical Calculation of BellSouth Business Line Counts for the Year 2004, July 15, 2005, Deloitte Financial Advisory Services ("Wallis Report"), page 2.

²⁷ Indeed, the Wallis Report fully discloses its exceedingly narrow purpose, explaining "we [Deloitte] obtained an understanding of BellSouth's methodologies, a set of its applicable data, and then replicated the mathematical calculation utilized by BellSouth ..." (Wallis Report, page 2). In other words, Deloitte performed the role of a "shadow spreadsheet," confirming only that BellSouth's arithmetic was correct.

1 A. Based on the review that I have been able to conduct,²⁸ two issues appear to the
2 most significant. The first concerns an assumption used by BellSouth in how it
3 converts UNE-L to switched business lines. In effect, BellSouth assumes that the
4 *maximum potential capacity* of each UNE-L circuit is used to provide switched
5 business line service when, in fact, that is not the case. The second key issue
6 concerns fiber-based collocators and BellSouth's claim that several end offices
7 are served by multiple competitive fiber networks.

8
9 **Q. Please explain the first error in BellSouth's analysis, i.e., BellSouth's**
10 **assumption that the maximum potential capacity of each UNE-L circuit is**
11 **used as a switched access lines used to serve a business customer.**

12
13 A. The FCC defines a "business line" (in part) as:²⁹

14
15 A business line is an incumbent LEC-owned switched access line
16 used to serve a business customer, whether by the incumbent LEC
17 itself or by a competitive LEC that leases the line from the
18 incumbent LEC. The number of business lines in a wire center

²⁸ CompSouth's attempt to validate BellSouth's list of claimed unaffiliated fiber-optic collocators is ongoing. CompSouth only recently (August 11) obtained a list of the carriers that BellSouth claims are fiber-based collocators in Florida and CompSouth and BellSouth are serving discovery on such carriers in an effort to validate whether BellSouth's claims are accurate. BellSouth is only now collecting this information through discovery and has not yet provided a comprehensive collection of responses to CompSouth to enable us to perform our analysis. We expect the need to update our analysis during the hearing and may also require a post-hearing process to incorporate additional discovery in this important area. In fact, BellSouth and CompSouth have agreed to just such a process that we are finalizing and will be presenting to the Commission in the near future.

²⁹ As I indicated in the introduction, Revised Exhibit JPG-1 has been amended to incorporate this definition.

1 shall equal the sum of all incumbent LEC business switched access
2 lines, plus the sum of all UNE loops connected to that wire center,
3 including UNE loops provisioned in combination with other
4 unbundled elements.³⁰
5

6 Importantly, as BellSouth interprets this rule, it reads the second sentence in the
7 rule as granting a waiver of the first sentence. That is, even though the FCC rule
8 clearly defines a business line as “an incumbent LEC-owned switched access line
9 used to serve a business customer,” BellSouth believes that it is entitled to count
10 the maximum potential capacity of every UNE-L circuit as a switched access line
11 serving a business customers no matter *how* the circuit is actually configured and
12 to *what* use it is put.
13

14 **Q. Do you believe that the FCC sanctioned BellSouth’s assumption that the**
15 **maximum potential capacity of each UNE-L circuit is used to provide**
16 **switched access line service to business customers?**
17

18 A. No. I believe that the definition should be read completely – from top to bottom –
19 in a manner where each sentence is consistent with the sentences that precede and
20 follow it. The FCC did not sanction BellSouth’s assumption, as the full business
21 line definition makes clear.³¹
22

³⁰ 47 CFR § 51.5 emphasis added

³¹ I do not intend to suggest that BellSouth does not include the entire rule reference in its testimony. I will present the rule in components to more clearly illustrate why its selective *reading* of the rule is incorrect.

1 Business line. A business line is an incumbent LEC-owned
2 switched access line used to serve a business customer, whether by
3 the incumbent LEC itself or by a competitive LEC that leases the
4 line from the incumbent LEC. The number of business lines in a
5 wire center shall equal the sum of all incumbent LEC business
6 switched access lines, plus the sum of all UNE loops connected to
7 that wire center, including UNE loops provisioned in combination
8 with other unbundled elements. Among these requirements,
9 business line tallies (1) shall include only those access lines
10 connecting end-user customers with incumbent LEC end-offices
11 for switched services, (2) shall not include non-switched special
12 access lines, (3) shall account for ISDN and other digital access
13 lines by counting each 64 kbps-equivalent as one line. For
14 example, a DS1 line corresponds to 24 64 kbps-equivalents, and
15 therefore to 24 “business lines.”³²
16

17 As the rule definition above plainly states, the FCC went on to make clear that
18 among these requirements (i.e., what should be counted, including UNE-L), the
19 business line tallies “shall include *only* those access lines connecting end-user
20 customers with incumbent LEC end-offices for switched services.” Thus, while
21 BellSouth claims that the FCC rule does not exclude any particular type of
22 unbundled loop,³³ the rule most plainly does. The rule specifically requires that
23 only those access lines connecting end-user customers with incumbent LEC end-
24 offices for switched services shall be counted. It could not be clearer.

25
26 **Q. Does the directive that digital access lines should count “each 64 kbps-**
27 **equivalent as one line” override every other requirement in the rule?**
28

³² 47 CFR § 51.5 emphasis added.

³³ Tipton Direct, pages 16-17.

1 A. No. There is nothing in the rule that suggests the final instruction overrides the
2 entire rest of the rule. The rule should be read in its entirety and a circuit must
3 satisfy all requirements in the rule in order to be counted: it must be a switched
4 line, it must be ILEC-owned, it must be used to serve a business customer and, for
5 digital circuits that *satisfy* these requirements, each 64 kbps channel used to
6 provide switched service to a business customer should be counted as a line. But
7 this final instruction does not mean BellSouth may count unused capacity or
8 capacity that is not used to provide switched services to a business customer
9 merely because it is part of a digital circuit.

10

11 **Q. Do CLECs routinely offer non-switched services using UNE-L?**

12

13 A. Yes. Indeed, a staple of the CLEC product offering is the “integrated” service
14 that combines voice and data on the same access facility (typically a DS1). In
15 addition, CLECs offer data-only services and sometimes only partially-fill DS-1s
16 (even where only switched service is provided). It is patently unreasonable to
17 assume that the maximum potential capacity of each UNE-L is used to provide
18 business customers with switched services, which is the assumption that
19 BellSouth makes.

20

21 **Q. How significant is BellSouth’s assumption that all UNE-L capacity is used to**
22 **provide switched access line service to business customers?**

23

1 A. BellSouth's assumption is extremely significant. Exhibit JPG-2 identifies how
2 many of BellSouth's claimed business lines are associated with the total
3 maximum potential capacity of the UNE-L that it counted.³⁴ Overall, 20% of the
4 total claimed business lines depend upon BellSouth's assumption that the total
5 maximum potential capacity of every UNE-L is used to provide switched access
6 line service to business customers.

7

8 **Q. Are BellSouth's claims regarding the number of business lines filed here**
9 **substantially different than the evidence that BellSouth provided the FCC**
10 **during its deliberations leading to the *TRRO*?**

11

12 A. Yes, there is a dramatic difference between the number of business lines at each
13 wire center that BellSouth provided the FCC (and which it used in establishing its
14 impairment thresholds) and the number that BellSouth claims here. For the
15 BellSouth region overall, the following table compares the number of wire centers
16 that BellSouth told the FCC would fall in each category to its claims now.³⁵

³⁴ The analysis in Exhibit JPG-2 is limited to only those wire centers relevant (at least at the time BellSouth filed its direct testimony) to this proceeding – that is, those wire centers that BellSouth claims satisfy one or more of the FCC's requirements such that BellSouth would no longer be required to offer access to high capacity loop or transport (either at DS1 or DS3 levels).

³⁵ Source: BellSouth Ex Parte, WC Docket No. 04-313 and 01-338, filed December 7, 2004.

1

Table 1: Comparing the Number of Wire Centers BellSouth Told the FCC Would Meet Impairment Criteria to BellSouth's Claims Today

Criterion: WC lines>	Use of Criteria under TRRO ³⁶	Told FCC	Claims Now	Change
60,000	Restricts Access to DS1 Loops	3	11	267%
38,000	Restricts Access to DS3 Loops and DS1/DS3 Transport	15	34	127%
24,000	Restricts Access to DS3 Transport	54	100	85%

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In addition, as shown on Exhibit JPG-3, a primary driver for the changes illustrated in Table 1 is the number of business lines that BellSouth claims exist at its wire centers. Exhibit JPG-3 compares the number of business lines BellSouth informed the FCC it had at wire centers in Florida to the number of business lines BellSouth now claims exist. On average, BellSouth now claims that its relevant wire centers have nearly 20% more business lines than they did when they filed data with the FCC.

As Table 1 and Exhibit JPG-3 make clear, the evidentiary basis to the FCC's decision rested upon data quite different than that which BellSouth presents here. The FCC specifically indicated that the *TRRO* "is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-Loops" and cites *specifically* to BellSouth for the basis of its analysis. BellSouth is engaged in a game of bait-

³⁶ In addition to business line counts, the FCC criteria also considers, as either an alternative qualifying requirement (for transport), or a mandatory additional criteria (for loops), the number of fiber-based collocators.

1 and-switch, attempting to implement the FCC's *TRRO* with data far different than
2 the data the FCC relied upon in establishing its criteria.

3
4 **Q. Does BellSouth manipulate its own switched business line counts to impose**
5 **the same assumption that it applied to UNE-L?**

6
7 A. Yes. As further evidence of how extreme BellSouth's assumption is, BellSouth
8 went so far as to manipulate its own ARMIS 43-08 data – data that the FCC
9 specifically used³⁷ – in order to make it consistent with the assumption it applies
10 to the UNE-L data. As BellSouth “explains:”

11
12 ARMIS 43-08 line counts only include provisioned or “activated”
13 64 kbps channels that ride high capacity digital lines. For
14 example, if a switched DS1 Carrier System had eighteen (18) 64
15 kbps channels provisioned as business lines for a customer, the
16 ARMIS 43-08 would count only 18 business lines. The TRRO
17 definition business lines requires that the full system capacity be
18 counted as business lines, so for TRRO purposes, the business line
19 count for that DS1 Carrier System would be the full system
20 capacity, or 24 business lines.³⁸
21

22 In other words, BellSouth began its analysis with correct information – that is,
23 ARMIS 43-08 only counts lines that are actually used to provide switched access
24 line service to business customers – and then expanded the count so that it would
25 assume that the maximum potential capacity of each circuit was being used.

³⁷ *TRRO*, ¶ 105.

³⁸ Tipton Direct, page 34.

1 There is no greater indictment of BellSouth's interpretation than this, where
2 BellSouth elevates its unreasonable assumption to the point where it is used to
3 mask actual facts.

4
5 **Q. What changes do you believe the Commission must make to ensure that the**
6 **business line counts "shall include only those access lines connecting end-user**
7 **customers with incumbent LEC end-offices for switched services" as**
8 **required by 47 CFR § 51.5?**

9
10 A. I recognize that the FCC did not provide specific guidance as to the best way to
11 ensure that UNE-L counts appropriately include only those access lines used to
12 provide switched services to business customers. However, BellSouth's approach
13 – to simply *assume* that the maximum potential capacity of each UNE-L is entirely
14 used to provide switched services – is clearly unreasonable and dramatically
15 overstates the number of business lines at each wire center. The fact that
16 BellSouth then expands its own business line count to mirror the assumption --
17 rather than to use its actual business line count -- underscores the
18 unreasonableness of the approach. Fortunately, however, BellSouth's approach
19 provides the information needed to correct both deficiencies.

20
21 **Q. Please explain how BellSouth's data can be used to correct for both errors.**
22

1 A. First, BellSouth's workpapers permit me to directly correct for its phantom
2 business lines – i.e., the maximum potential capacity that its ARMIS 43-08 data
3 properly excludes because the capacity is not used to provide switched access line
4 service to business customers.

5
6 Second, however, this same data provides a *reasonable* estimate of the percentage
7 of digital capacity that is used to provide switched access line service to business
8 customers. That is, BellSouth's data reveals exactly what percentage of its digital
9 access capacity is used to provide switched access line service to business
10 customers. All that the Commission needs to do is to accept the simple and
11 straightforward assumption that the average utilization for the CLECs is equal to
12 the average utilization for BellSouth.

13
14 **Q. Did you correct BellSouth's business line count in this manner?**

15
16 A. Yes. Exhibit JPG-4 provides a corrected business line count by removing
17 BellSouth's phantom business lines and applying to the CLEC's digital UNE-L
18 capacity the same percentage of used-to-potential capacity that BellSouth
19 experiences.³⁹ I believe that it is plainly more reasonable to assume that CLECs
20 use approximately the *same* percentage of their potential digital capacity to
21 provide switched access line services to business customers as BellSouth, than it

³⁹ The percentage I applied is the average over the wire centers (shown in Exhibit JPG-4) that BellSouth claims satisfy one or more criteria for non-impairment.

1 is to assume that CLECs use *all* of their maximum potential capacity in this
2 manner (an assumption that is unquestionably false).
3

4 **Q. Have you also validated BellSouth's claims regarding the number of fiber-**
5 **based collocators?**

6
7 A. Yes, to the extent that discovery permits. As I indicated, we have only
8 recently received from BellSouth the names of those carriers that it claims have
9 fiber-based collocations in the wire centers at issue in this proceeding. BellSouth
10 is seeking confirmation from its named "fiber-based collocators" through
11 Requests for Admissions and is receiving a number of responses from carriers
12 denying that they are, in fact, fiber-based collocators in the claimed offices (as
13 well as obtaining the necessary validations). The key is assuring that the
14 claimed fiber-based collocators "...operate(s) a fiber-optic cable or comparable
15 transmission facility that (1) terminates at a collocation arrangement within the
16 wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned
17 by a party other than the incumbent LEC or any affiliate of the incumbent LEC.⁴⁰
18

19 **Q. Are you prepared to provide a fully correct alternative to BellSouth's**
20 **claimed list of wire centers?**
21

⁴⁰ 47 CFR § 51.5 emphasis added.

1 A. CompSouth is not yet in a position to validate each of its claimed fiber-based
2 collocators. However, we do have sufficient responses to provide a partially-
3 complete list of wire centers for Florida, which is attached as Exhibit JPG-5. As
4 CompSouth is provided additional discovery from BellSouth – in particular,
5 discovery responses from those carriers named by BellSouth as a fiber-based
6 collocator – we intend to update Exhibit JPG-5.

7
8 **Q. Does Exhibit JPG-5 correct for any other errors in BellSouth's analysis?**

9
10 A. Yes. One requirement of the FCC's standards to count a fiber-based collocator is
11 that two affiliated carriers should not be counted in the same wire center:

12
13 In tallying the number of fiber-based collocators for purposes of
14 our transport impairment analysis, parties shall only count multiple
15 collocations at a single wire center by the same or affiliated
16 carriers as one fiber-based collocation.⁴¹
17

18 BellSouth, however, is attempting to exploit the timing anomaly of the pending
19 AT&T-SBC merger by counting both carriers in the same wire center. I
20 recognize that the AT&T-SBC merger is pending (and has not yet closed), but it
21 would clearly be inappropriate for BellSouth to evade its unbundling obligation
22 merely because this merger has not yet closed.⁴² One can question whether SBC's

⁴¹ *TRO*, ¶ 102.

⁴² It was recently reported in Telecommunications Reports that the SBC-AT&T merger may close as early as next month.

1 out-of-region facilities should ever be counted as “competitive collocations,”⁴³ but
2 even if that were the case, counting *both* SBC and AT&T is to count one entrant
3 too many.
4

5 **IV. Section 271 Prices and Commingling**

6
7 **Q. As a threshold point, BellSouth claims that only elements required under**
8 **§251 must be provided in interconnection agreements.⁴⁴ Do you agree with**
9 **this claim?**

10
11 **A.** No. As I explain in my direct testimony, BellSouth has a separate obligation
12 under §271 to offer checklist items (for instance, loops, switching and transport)
13 in interconnection agreements, even where the FCC does not require such items to
14 unbundled pursuant to §251.⁴⁵ This requirement is clearly stated in §271(c)(1)(A)

⁴³ BellSouth’s reliance on SBC-collocation facilities is itself given that SBC’s entry decisions were (at least in part) adopted to satisfy regulatory mandates (and not market conditions) as part of its earlier merger with Ameritech and given that SBC’s Chairman had earlier told investors it did not intend to compete against its wireless partner, BellSouth. As SBC Chairman Whitacre explained:

UNIDENTIFIED PARTICIPANT: Apparently you're going to be offering a voice over IP product out of region; won't that anger perhaps Bell South and -

EDWARD WHITACRE: Well, absolutely it will. And just like if they come in (inaudible) it's going to anger us. Of course, the answer to that is, yes, but it's a non-issue since we have a good partnership and it's not happening. Impossible to speculate on things that don't happen. It's kind of a curt answer wasn't it but I don't know how to answer that any differently.

SBC Communications Analyst Meeting, Minutes, November 13, 2003,

⁴⁴ Blake Direct, page 5; Tipton Direct, page 42.

⁴⁵ See Gillan Direct, pages 38-45.

1 of the federal Act and requires that such offerings be included in interconnection
2 agreements approved by state commissions under §252:
3

4 PRESENCE OF A FACILITIES-BASED COMPETITOR- A Bell
5 operating company meets the requirements of this subparagraph if
6 it has entered into one or more binding agreements that have
7 been approved under section 252 specifying the terms and
8 conditions under which the Bell operating company is providing
9 access and interconnection to its network facilities for the network
10 facilities of one or more unaffiliated competing providers of
11 telephone exchange service (as defined in section 3(47)(A), but
12 excluding exchange access) to residential and business
13 subscribers.⁴⁶
14

15 This unambiguous requirement that checklist items must be offered in
16 interconnection agreements was cited by a Federal District Court upholding fines
17 imposed by the Minnesota Commission on Qwest for failing to file certain
18 interconnection agreements:
19

20 Citing the fair notice doctrine, Qwest argues additionally that it
21 should not be penalized for failing to file some of the twelve ICAs
22 [interconnection agreements] because it did not know which
23 agreements were subject to the Act's filing requirement.
24

25 ***

26 ... despite the absence of a definition [for the term interconnection
27 agreement] in the Act, other sources outlined the scope of §252
28 and provided notice. For example, §271 includes a comprehensive
29 checklist of items that must be included in ICAs before an ILEC
30 may receive authority to provide regional long distance service.

⁴⁶ 47 U.S.C. § 271(c)(1)(emphasis added).

1 under Section 251(c)(3) of the Act, or the combining of a UNE or
2 UNE combination with one or more such wholesale services.⁴⁹
3

4 **Q. If the FCC did not exclude the wholesale offerings required by the**
5 **competitive checklist in the rule or by its Order, why does BellSouth claim**
6 **that its commingling obligations do not apply to these important offerings?**
7

8 A. BellSouth's claim rests upon (1) a single paragraph in the *TRO* (§579) as adopted,
9 and (2) an Errata that eliminated one sentence from an earlier "draft" of the
10 *TRO*.⁵⁰
11

12 First, BellSouth claims that paragraph 579 of the *TRO* limits wholesale service
13 subject to commingling to "switched and special access services offered pursuant
14 to tariff."⁵¹ The complete text of § 579, however, provides important context and
15 language that BellSouth fails to acknowledge in its testimony:
16

17 We eliminate the commingling restriction that the Commission
18 adopted as part of the temporary constraints in the *Supplemental*
19 *Order Clarification* and applied to stand-alone loops and EELs.
20 We therefore modify our rules to affirmatively permit requesting
21 carriers to commingle UNEs and combinations of UNEs with
22 services (e.g., switched and special access services offered
23 pursuant to tariff), and to require incumbent LECs to perform the
24 necessary functions to effectuate such commingling upon request.
25 By commingling, we mean the connecting, attaching, or otherwise
26 linking of a UNE, or a UNE combination, to one or more facilities

⁴⁹ *TRO* § 579, emphasis added

⁵⁰ Tipton Direct, pages 52-53.

⁵¹ *Ibid.*

1 or services that a requesting carrier has obtained at wholesale from
2 an incumbent LEC pursuant to any method other than unbundling
3 under section 251(c)(3) of the Act, or the combining of a UNE or
4 UNE combination with one or more such wholesale services.
5 Thus, an incumbent LEC shall permit a requesting
6 telecommunications carrier to commingle a UNE or a UNE
7 combination with one or more facilities or services that a
8 requesting carrier has obtained at wholesale from an incumbent
9 LEC pursuant to a method other than unbundling under section
10 251(c)(3) of the Act. In addition, upon request, an incumbent LEC
11 shall perform the functions necessary to commingle a UNE or a
12 UNE combination with one or more facilities or services that a
13 requesting carrier has obtained at wholesale from an incumbent
14 LEC pursuant to a method other than unbundling under section
15 251(c)(3) of the Act. As a result, competitive LECs may connect,
16 combine, or otherwise attach UNEs and combinations of UNEs to
17 wholesale services (*e.g.*, switched and special access services
18 offered pursuant to tariff), and incumbent LECs shall not deny
19 access to UNEs and combinations of UNEs on the grounds that
20 such facilities or services are somehow connected, combined, or
21 otherwise attached to wholesale services.
22

23 Importantly, neither of the parentheticals that mention “switched and special
24 access services” includes any discussion that *limits* the FCC’s commingling
25 decision to only these services. Rather, each parenthetical is introduced by (what
26 was dropped from BellSouth’s testimony citation) the abbreviation “*e.g.*,” defined
27 by Black’s Law Dictionary as *exempli gratia*, “for the sake of any example.”
28 Thus the FCC was *illustrating* its commingling rules, not *limiting* their
29 application.
30

31 Moreover, the FCC had good reason for using these particular access services as
32 *examples* of wholesale services to which its commingling rules would apply. As
33 the very first sentence of the paragraph explains, one consequence of its decision

1 would be that the FCC's new commingling rules would supersede the
2 "commingling restriction that the Commission adopted as part of the temporary
3 constraints in the *Supplemental Order Clarification*." The temporary constraints
4 in the *Supplemental Order* were adopted in order to prevent interexchange
5 carriers from substituting UNEs for access services. Thus, it would stand to
6 reason that the FCC would point to access services as a specific *example* to
7 remove any question that it was changing its prior approach.

8
9 **Q. BellSouth also points to one sentence deleted from the TRO to argue that the**
10 **FCC's commingling rules exclude the wholesale offerings required by §271.⁵²**
11 **Is this argument reasonable?**

12
13 A. No. The fact is that BellSouth cannot find support in any Order for its claim that
14 the wholesale services required by §271 were singled out by the FCC to be
15 uniquely (and discriminatorily) excluded from the commingling obligations.
16 Because BellSouth cannot find anything in an FCC Order that justifies its
17 position, it claims the policy was established by what was left out.

18
19 Before addressing the specifics of the Errata that BellSouth relies upon so heavily,
20 it is useful to put its claim in context. The competitive checklist represents
21 mandatory wholesale offerings that Congress insisted BellSouth must offer if it
22 wanted to provide long distance service. These are not just "any" wholesale

⁵² Tipton Direct, page 53.

1 offerings – these are offerings that the Congress of the United States wrote as
2 *specific* obligations that apply even where the FCC concludes there is no
3 impairment. BellSouth’s position is that not only that the FCC could relegate
4 these wholesale offerings to an inferior standing that excluded from them from the
5 ILEC’s general commingling obligations,⁵³ but that the *way* the FCC would
6 choose to effect such a remarkable policy was through an Errata deleting a single
7 sentence.

8
9 **Q. In your view, does the Errata accomplish the changes claimed by BellSouth?**

10
11 **A.** No. The Errata made two changes relevant to the issue at hand.

12
13 First, the portion of the Errata that BellSouth emphasizes effected the following
14 deletion [in brackets]:

15
16 As a final matter, we require that incumbent LECs permit
17 commingling of UNEs and UNE combinations with other
18 wholesale facilities and services, including [any network elements
19 unbundled pursuant to section 271 and] any services offered for
20 resale pursuant to section 251(c)(4) of the Act.⁵⁴
21

⁵³ The FCC adopted its commingling requirements concluding that a refusal to commingle would constitute an “unjust and unreasonable practice,” as well as an “undue and unreasonable prejudice or advantage.” BellSouth never even attempts to explain what it is about its §271 wholesale offerings that would reverse the FCC’s analysis and find that a refusal to commingle these services/facilities would be a reasonable practice.

⁵⁴ TRO, ¶ 584.

1 In the same Errata, the FCC also made the following change, deleting the final
2 sentence draft [in brackets below]⁵⁵ to footnote 1989:⁵⁶

3
4 We decline to require BOCs, pursuant to section 271, to combine
5 network elements that no longer are required to be unbundled
6 under section 251. Unlike section 251(c)(3), items 4-6 and 10 of
7 section 271's competitive checklist contain no mention of
8 "combining" and, as noted above, do not refer back to the
9 combination requirement set forth in section 251(c)(3). [We also
10 decline to apply our commingling rule, set forth in Part VII.A.
11 above, to services that must be offered pursuant to these checklist
12 items.]
13

14 Obviously, had the FCC intended to exempt the § 271 competitive checklist from
15 its commingling rules, it would not have eliminated this express finding.

16 BellSouth has characterized any discussion of this footnote as an attempt to
17 "confuse the issue,"⁵⁷ claiming the FCC deleted this statement because the text
18 was now clear. With all due respect to BellSouth, the facts simply cannot support
19 that claim.

20
21 At one time, the *TRO* included two contradictory statements regarding the
22 RBOC's obligation to commingle §251 elements with the wholesale offerings
23 listed in §271. Both citations were removed. Importantly, even if the
24 Commission focuses exclusively on the editorial deletion favored by BellSouth,

⁵⁵ I realize that "underlining" a deletion is not a standard editorial format, but I have done so to make clear exactly what sentence the FCC deleted from the draft *TRO* by its Errata.

⁵⁶ This footnote appears as footnote 1990 in the pre-Errata *TRO*.

⁵⁷ Tipton Direct, page 53.

1 the edit does not result in a sentence that limits BellSouth's commingling
2 obligations. The cited passage (post-Errata) still reads "...we require that
3 incumbent LECs permit commingling of UNEs and UNE combinations with other
4 wholesale facilities and services," which would include by definition, wholesale
5 facilities and services required by the § 271 competitive checklist.

6
7 One would expect that if the FCC had decided to eliminate an entire category of
8 wholesale offerings specifically adopted by Congress, they would have done so
9 expressly and not through the (absurdly) subtle method of issuing text in error and
10 correcting it. The plain language of the *TRO* applies the commingling rules to
11 wholesale services obtained "pursuant to any method other than unbundling under
12 section 251,"⁵⁸ and the language that would have exempted § 271 offerings from
13 commingling obligations was removed from the *TRO* by the Errata.

14
15 The Errata simply cannot be read as excusing BellSouth's wholesale offerings
16 required by §271 from its general commingling obligations.

17
18 **Q. Are you prepared to offer specific pricing recommendations for BellSouth's**
19 **§271 offerings?**

20
21 **A.** No, not at this time. CompSouth has propounded discovery to BellSouth that
22 would provide us information needed to propose just and reasonable rates.

⁵⁸ See *TRO* ¶ 579 (emphasis added).

1 BellSouth has objected to these questions and, as a result, necessary information
2 for detailed analysis is not available at this time.

3
4 There is, however, a need for the Commission to establish interim §271 prices
5 that would remain in effect until the conclusion of a permanent rate proceeding.

6 The Missouri Commission recently confronted the identical timing dilemma – that
7 is, there is a need for §271 prices, but the record did not provide the information
8 needed to establish such prices.

9
10 SBC offered no rates because its view is that these ICAs should not
11 contain prices for § 271 UNEs. Likewise, the [CLEC] Coalition’s
12 original suggestion that TELRIC rates be continued is not
13 appropriate given that the appropriate standard is now “just and
14 reasonable.” However, the Commission concurs that the
15 Coalition’s compromise position – rates patterned on the FCC’s
16 transition period rates for declassified UNEs – constitutes a
17 suitable interim rate structure for § 271 UNEs.⁵⁹
18

19 Because BellSouth has not provide the data to even propose permanent prices, I
20 believe that the “Missouri Approach” is the best avenue for loops and transport
21 (to the extent it is no longer available as a §251 network element under Exhibit
22 JPG-5).

23
24 **Q. Would establishing interim §271 rates in this manner fully compensate**
25 **BellSouth?**

⁵⁹ Arbitration Order, Public Service Commission of Missouri, TO-2005-0336, July 11, 2005, page 30.

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A. Yes. The network elements at issue in this proceeding are local switching and high-capacity (DS-1) transport. BellSouth has acknowledged (*see* testimony attached Exhibit JPG-6⁶⁰), that its principal concerns relating to the FCC's TELRIC methodology do not apply to *these* network elements, and that, therefore, existing UNE prices are a reasonable, if not conservative, estimate of its costs:

... it is the additional constraints currently mandated by the FCC that the incumbent local exchange carriers ("ILECs") object to with respect to TELRIC-based rates. The use of a hypothetical network and most efficient, least-cost provider requirements have distorted the TELRIC results and normally understate the true forward-looking costs of the ILEC.

These distortions, however, are most evident in the calculation of unbundled loop elements, and they are less evident in the switching and transport network elements that make up switched access. In fact, if BellSouth had conducted a TSLRIC study for switched access, the underlying assumptions with respect to forward-looking equipment and architectures would have been consistent with those used in the TELRIC studies for switching and transport UNEs.⁶¹

Although the service being addressed was switched access, BellSouth's testimony was focusing on the underlying cost of the network components used by switched access, i.e., the switching and transport UNEs. As BellSouth explained:

⁶⁰ Testimony of Robert McKnight on behalf of BellSouth, Public Service Commission of South Carolina, Docket No. 1997-239-C, December 31, 2003 ("McKnight Testimony"), Attached as Exhibit JPG-6.

⁶¹ McKnight Testimony, pages 7-8, emphasis in the original.

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1 BellSouth is using these UNE rates to show that the existing rates
2 for intrastate switched access service are above their costs, and,
3 therefore, provide implicit support for universal service...

4 ... Use of existing ordered UNE rates, which were
5 supported by detailed cost studies and which have already been
6 thoroughly reviewed by the Commission, provide a "conservative"
7 cost surrogate and price floor to make such a demonstration.⁶²
8

9 Moreover, BellSouth recognizes that TELRIC rates are above TSLRIC, which is
10 otherwise the appropriate cost standard to ensure a service is fully compensatory.

11
12 ... all else being held constant, the allowance of shared and
13 common costs under the TELRIC cost methodology increases
14 costs above those that would have been obtained from a
15 comparable TSLRIC switched access study.⁶³
16

17 ***

18
19 Since TSLRIC reflects all of the direct costs ... TSLRIC studies
20 are the basis of testing for cross-subsidization. If rates for a
21 service exceed the service's TSLRIC ..., then the service is not
22 being subsidized by other services.⁶⁴
23

24 My point here is that the CLECs are not seeking some unreasonable "ride" on
25 BellSouth's network – these competitors stand willing to pay a just and
26 reasonable rate to BellSouth for the use of network facilities at rates that
27 BellSouth has admitted (at least when it suited them to do so) are already
28 compensatory. Obviously, if the existing UNE rates already exceed TSLRIC,

⁶² McKnight Testimony, page 3.

⁶³ McKnight Testimony, page 8.

⁶⁴ McKnight Testimony, page 6.

1 then agreeing to pay those rates *plus a premium*⁶⁵ is clearly a reasonable offer.

2 What the CLECs cannot accept, however, is being forced to pay rates unilaterally
3 established by BellSouth without regulatory oversight. As the FCC stated:

4
5 It would be a hideous irony if the incumbent LECs, simply by
6 offering a service, the pricing of which falls largely within their
7 control, could utterly avoid the structure instituted by Congress to,
8 in the words of the Supreme Court, “give aspiring competitors
9 every possible incentive to enter local retail telephone markets,
10 short of confiscating the incumbents’ property.”⁶⁶
11

12
13 **V. Other Issues**

14
15 **Issue 2: General Implementation**

16
17 **Q. BellSouth is proposing a complete UNE Attachment for “all new CLECs and
18 all new interconnection agreements.”⁶⁷ Do you agree this is appropriate?**

19
20 **A.** No. My understanding of this proceeding is that it is to address changes required
21 by the TRO and TRRO, with respect to the issues listed. While obviously some
22 of the decisions the Commission reaches will require BellSouth to modify its
23 standard offering, this proceeding is not intended to short-circuit BellSouth’s

⁶⁵ In the case of switching, agreeing to pay \$1 more per month, and with respect to transport, agreeing to pay a 15% premium.

⁶⁶ TRRO ¶ 59.

⁶⁷ Blake Direct, footnote 2, page 5.

1 obligation to negotiate amendments or new agreements with CLECs. When the
2 Commission resolves the issues in this proceeding, it will require the parties to
3 modify existing or new interconnection agreements (as discussed below) and its
4 decision will affect the relative negotiation/arbitration postures of both BellSouth
5 and the CLECs. The proceeding should not, however, be used to obtain a
6 blanket-approval of BellSouth's complete Attachment 2, which has not been the
7 focus of this proceeding (nor the negotiations between BellSouth and many
8 CompSouth members). The issues identified do not impact every aspect of each
9 Attachment 2 currently in place between or subject to arbitration BellSouth and
10 CompSouth's members. Nor do they take account of agreements on language
11 already reached by BellSouth and many of CompSouth's members. Surely, the
12 goal of this proceeding cannot be to supplant what has been voluntarily negotiated
13 and agreed to between particular CLECs and BellSouth with a new standardized
14 Attachment 2, neither voluntarily agreed to nor designated for arbitration.

15
16 **Issue 1: Transition Requirements**

17
18 **Q. BellSouth claims that CLECs must complete all transitions by March 10,**
19 **2006.⁶⁸ Do you agree?**
20

⁶⁸ Tipton Direct, page 5. With respect to dark fiber, the transition period ends September 10, 2006. Tipton Direct, pages 4 and 5.

1 A. No. As I discussed in my direct testimony,⁶⁹ I believe that once a CLEC submits
2 an order it has satisfied its obligations and the “ball is in BellSouth’s court” to
3 implement that order. I also emphasize that I believe that the significance of this
4 issue will diminish once the Commission resolves other questions in this
5 proceeding.

6
7 Strategically, BellSouth wants to pressure CLECs to reconfigure their wholesale
8 offerings *before* CLECs even know precisely which wire centers and what
9 transport routes will no longer be available under §251,⁷⁰ and without *any*
10 knowledge as to the §271 offerings available as an option. BellSouth’s “squeeze
11 play” is preventing sound planning because the planning itself first requires
12 decisions by this Commission.

13
14 There is no provision in the *TRRO* permitting BellSouth to establish arbitrary cut-
15 off dates in advance of March 10, 2006 by which CLEC orders must be placed.⁷¹
16 Before BellSouth can reasonably expect CLECs to make informed choices the
17 Commission must establish (at least on an interim basis) the appropriate rate for
18 BellSouth’s parallel §271 offering. BellSouth is clearly able to “change prices”

⁶⁹ Gillan Direct, page 11.

⁷⁰ BellSouth’s attempt to “cap” the number of DS1 transport circuits CLECs may obtain even on transport routes where the FCC Order clearly does not impose such a limitation (Gillan Direct, page 33) is the most glaring example of BellSouth attempting to force a CLEC into “false planning” for a transition that is unnecessary.

⁷¹ For instance, BellSouth’s proposal for UNE-P would require that CLEC orders be placed by October 1, 2005, more than *five months* before the transition date chosen by the FCC and *three weeks before* briefs are even filed in this proceeding. (Tipton Direct, page 46.)

1 for a large number of orders on short notice – indeed, BellSouth’s proposal for
2 UNE-P lines that have not been migrated is to unilaterally change both the *price*
3 and the *service* that the CLEC is receiving (to resale). Consequently, it is hard to
4 conclude that it would be unable to handle other orders in a reasonable manner.

5
6 **Q. Does the TRRO permit transitional rates to be applied retroactively to**
7 **March 11, 2005?**

8
9 A. Yes. The problem, however, is that the *TRO* (which was adopted nearly two
10 years *before* the *TRRO*),⁷² adopted a number of other changes in unbundling
11 policy that are necessary to establish a consistent regime that reflects the
12 environment assessed by the FCC in making its *TRRO* impairment
13 determinations. Thus, if the Commission applies the transitional rates
14 retroactively to March 11, 2005, it must also include the retroactive application
15 effective date of these the *TRO* provisions as well. Specifically, the *TRO*:

- 16
17 * Made it simple and more efficient for EELs (i.e.,
18 loop/transport) combinations to qualify for UNE pricing by
19 adopting new high capacity EEL eligibility criteria;
20
21 * Permitted CLECs to commingle UNE and non-UNE
22 offerings to obtain complete circuits (thereby eliminating
23 commingling restrictions contained in the old EEL
24 eligibility criteria), and
25

⁷² The *TRO* was adopted February 20, 2003.

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* Clarified that CLECs are permitted to convert special access circuits to individual UNEs, as well as to combinations of UNEs.

In CompSouth's view, to the same extent that BellSouth is able to reach back in time and treat part of a circuit as a non-251 offering (and thus subject to higher transitional rates), these complementary *TRO*-mandated changes must also be in place. To do otherwise would mean that only those portions of the FCC's unbundling framework that enable BellSouth to charge higher rates would be effective, while the tools/options the CLECs need to adjust to the new §251 unbundling regime would not be in place.

Q. Can you give an example as to why these provisions must be effective together?

A. Yes. As mentioned above, one consequence of the *TRRO* is that high-capacity loops and transport will not necessarily be available as §251 UNEs in every wire center. (Indeed, one of the key issues in this proceeding is determining precisely where high-capacity loops and transport will no longer be available). One consequence of being "de-listed" is that an EEL (loop/transport combination) that had been comprised of all §251 elements will become a "commingled arrangement" consisting of a §251 element subject to standard UNE pricing and a non-§251 element subject to transitional rates.

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1 It is vital that at the very same time that BellSouth is able to treat a portion of the
2 circuit as a non-§251 offering (and thus subject to the higher transitional rates),
3 the CLEC must have language that entitles it to such a configuration that is part-
4 §251/part-other offering (commingling), including the ability to qualify under the
5 new rules for EEL combinations.⁷³ Unless commingling and the revised EEL
6 eligibility criteria are in place, it is possible that BellSouth might try to argue that
7 CLECs have no concurrent contractual right to commingle §251 loops with non-
8 §251 transport. Moreover, full conversion rights must be incorporated into
9 interconnection agreements, to allow CLECs to make full use of the remaining
10 §251 loop and transport offerings, regardless of whether such offerings are used
11 in combinations.

12
13 **Q. Is it unreasonable to make these provisions effective retroactively?**

14
15 A. No. The March 11, 2005 date is more than two years after the FCC adopted the
16 *TRO* giving CLECs “theoretical access” to commingling, conversions of special
17 access to individual UNEs or combinations of UNEs, and clearer, “architectural”
18 EEL eligibility criteria. It makes no sense to implement transition rates that apply
19 to a non-§251 portion of an EEL without making effective the language that
20 permits the arrangement in the first place (i.e., provisions that permit

⁷³ The *TRO* simplified eligibility requirements for EELs and clarified that the right of CLECs to convert circuits that had been ordered as special access to UNE status was not limited to UNE combinations, such as EELs, but that CLECs could convert special access circuits to individual UNEs, as well.

1 commingling and remove the commingling restrictions that the FCC jettisoned
2 when it adopted its new EEL eligibility criteria). Thus, to the same extent that
3 BellSouth is able to apply non-UNE rates retroactively, CLECs must have
4 language in their agreements to retroactively:

- 5
- 6 a. Qualify circuits for UNE treatment (i.e., new high capacity
 - 7 EEL eligibility criteria and full conversion rights), and
 - 8
 - 9 b. Grant access to circuit configurations that mix non-251
 - 10 offerings with §251 arrangements (commingling).
 - 11

12

13 **Q. BellSouth proposes that CLECs provide BellSouth with spreadsheets that**
14 **identify all circuits that will no longer be available under §251.⁷⁴ Is this**
15 **reasonable?**

16

17 A. No, I do not believe that it is. It is *BellSouth* that is withdrawing a service from
18 the market, not the CLEC. Consequently, it should be incumbent (no pun
19 intended) upon BellSouth to initially inform their customers of exactly which
20 circuits it will no longer offer as UNEs under §251, not the other way around.
21 CLECs would then have the opportunity (and obligation) to review BellSouth's
22 information and inform BellSouth of any disagreements.

⁷⁴ Tipton Direct, pages 10 and 11.

1
2
3 **Issue 3: Building Definition**

4
5 **Q. Have you revised the definition of a “building” in Revised Exhibit JPG-1?**

6
7 A. Yes. I have revised the proposed “building definition” taking, as a starting point,
8 BellSouth’s concept of a “reasonable person.”⁷⁵ The main difference is that the
9 recommended building definition in Revised Exhibit JPG-1⁷⁶ is based on the
10 concept of a “reasonable *telecom* person,” to ensure that the deciding factor in
11 defining a “building” is that the area is served by a single point of entry for
12 telecom services. Thus, a high-rise building with a general telecommunications
13 equipment room would be considered a single building, while a strip mall with
14 separate telecom-service points for each individual business in the mall would
15 not. Such circumstances should be treated, for loop-aggregation purposes, as
16 individual premises, even though they may share common walls.

17
18 **Issue 12: SQM/PMAP/SEEM**

19 **Q. Please summarize the fundamental issue concerning the continuing**
20 **application of the SQM/PMAP/SEEM plans.**

⁷⁵ Tipton Direct, page 19.

⁷⁶ *Ibid.*

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1 A. BellSouth's view is that the elements that are no longer required to be unbundled
2 under §251 of the Act should no longer be subject to these plans.

3
4 The purpose of establishing and maintaining a SQM/PMAP/SEEM
5 plan is to ensure that BellSouth provides nondiscriminatory access
6 to elements required to be unbundled under section 251(c)(3), and
7 if BellSouth fails to meet such measurements, it must pay the
8 CLEC and/or the state a monetary penalty.⁷⁷
9

10 **Q. Do you agree that the SQM/PMAP/SEEM plan is intended to ensure**
11 **compliance with section 251(c)(3)?**

12
13 A. No. These plans were developed in order to ensure continuing compliance with
14 §271, which includes but is not limited to BellSouth's obligations under
15 §251(c)(3). As the FCC explained:

16
17 In prior orders, the Commission has explained that one factor it
18 may consider as part of its public interest analysis is whether a
19 BOC would have adequate incentives to continue to satisfy the
20 requirements of section 271 after entering the long distance
21 market. Although it is not a requirement for section 271 authority
22 that a BOC be subject to such performance assurance mechanisms,
23 the Commission previously has found that the existence of a
24 satisfactory performance monitoring and enforcement mechanism
25 is probative evidence that the BOC will continue to meet its
26 section 271 obligations after a grant of such authority.⁷⁸

27

⁷⁷ Blake Direct, page 10.

⁷⁸ Memorandum Opinion and Order, Federal Communications Commission Docket CC 02-307, December 19, 2002, ¶ 167. Emphasis added.

1 As I explained in my direct testimony, the FCC’s impairment findings with
2 respect to loops, transport, switching and signaling do not eliminate BellSouth’s
3 obligations under §271 to continue to offer these elements.⁷⁹ As the above makes
4 clear, the “purpose” of establishing and maintaining a SQM/PMAP/SEEM plan is
5 not to comply with §251 (as claimed by BellSouth), but to ensure that BellSouth
6 will continue to meet its section 271 obligations. As such, the Commission
7 should continue to apply these plans to any offering required under §271.
8

9 **Issue 29: The All or Nothing Rule and Deemed Amended**

10
11 **Q. What is the issue with respect to language implementing the “All or Nothing**
12 **Rule”?**

13
14 **A.** The issue is not with the language proposed by BellSouth itself, but rather
15 BellSouth’s suggestion in discussing this issue that once the Commission rules, all
16 interconnection agreements should be “deemed amended.”⁸⁰ The Commission is
17 addressing a number of issues in this proceeding and in most (if not all) instances,
18 is provided with competing contract language. It is the CLECs view that once the
19 Commission rules, the parties will need to amend their contracts, including
20 (perhaps) developing language that tracks any Commission decision that only
21 partially adopts a party’s position. What the CLECs cannot accept is BellSouth’s

⁷⁹ See Gillan Direct, page 38.

⁸⁰ Blake Direct, page 13.

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1 unilateral interpretation of any decision such that the contracts are “deemed
2 amended.”

3

4 **Q. Do you oppose BellSouth’s suggestion that after the Commission rules in this**
5 **proceeding, the parties should be directed to file conforming ICA**
6 **amendments with 45 days?⁸¹**

7

8 A. No. Of course, the time-frame should accommodate any requests for
9 reconsideration, which the Commission should address expeditiously. So long as
10 the parties retain the right to seek meaningful reconsideration and have the ability
11 to address the unique circumstances of any individual negotiation/arbitration
12 process underway with BellSouth, it would be reasonable for the Commission to
13 establish a timeframe for the filing of amendments to implement its decision.

14

15 **Q. Does this conclude your rebuttal testimony?**

16

17 A. Yes.

⁸¹ Blake Direct, page 16.

1 THE WITNESS: Summary now?

2 Good afternoon, Commissioners, and thank you for
3 taking me out of order. My testimony is very thick and
4 addresses all the issues. I'm going to focus on three areas,
5 and I'm going to try and keep my summary within the five
6 minutes.

7 The first area has to do with Section 271. The
8 issues on that were fully joined this morning, so I will not go
9 into all the areas of my testimony that it addresses, but I do
10 want to make two points with respect to the 271 pricing issue.
11 The first is that if you go back to 1996 when the Congress
12 passed this act, the world was one where just a decade or so
13 earlier they had had to break up AT&T and separate BellSouth
14 and the other RBHCs from the provision of long distance
15 services and other services because there had been a pattern of
16 at least potential antitrust abuse for a number of decades
17 preceding that.

18 And so by 1996 the Department of Justice had in '84
19 implemented a quarantine on BellSouth, effectively said we
20 don't believe we can have long distance competition and
21 competition in information services and other markets because
22 the position that you as an RBHC enjoy in the local market is
23 so strong that if we permit you out of this quarantine we are
24 going to have anticompetitive actions that we can't police.

25 In '96, Congress tried a different path. Its path

1 was we will give you an opportunity to get out of your
2 quarantine, but wholly aside from all these debates about
3 impairment and whether people have choices and whether you can
4 go get network elements or facilities from other providers,
5 you, BellSouth, you, the RBHCs, have to agree to a set of
6 independent obligations that exist no matter what the FCC
7 determines about impairment. You still have to sell
8 competitors access to use loops, you have to sell them
9 switching, you have to sell them transport.

10 Now, our debate with BellSouth goes to fundamentally
11 is that a set of real obligations or are those fictions.
12 Because our reading of the statute is that Congress didn't just
13 see these as important conditions and then say, but, you,
14 BellSouth, you go figure out how you want to offer this stuff.
15 You can do whatever you want. Congress was specific in writing
16 the act to say you have to offer these items in interconnection
17 agreements approved pursuant to Section 252.

18 And this brings me to my second point about 271.
19 Commissioner Deason, it's not an issue about FCC delegation.
20 We do not maintain that the FCC delegated rate-making authority
21 to this Commission. Our view is that the statute named this
22 Commission as the party to arbitrate disputes between BellSouth
23 and CLECs on the pricing of 271 elements. Our problem is if we
24 don't get an interim rate in this proceeding to go forward,
25 there is not going to be sufficient competition to argue about

1 it much later. Local competition in the state is in decline in
2 the residential and mass markets. You have recently permitted
3 BellSouth to begin increasing its rates. The competitive check
4 on those rate increases is going to be decided by what you do
5 here.

6 The second issue. The fiber based -- the access to
7 fiber to serve enterprise customers with DS-1s. Our view is
8 that the FCC order was quite clear and explicit that when the
9 FCC gave BellSouth an out on its fiber, that it doesn't have to
10 unbundle fiber, it did so in a limited -- what is a large
11 market, but it is a limited market. It did so when you are
12 using that fiber to serve mass market -- provide mass market
13 loops to those types of customers. The Commission, the FCC,
14 separated its analysis for the large business market and said
15 over here in the enterprise market, even for fiber, you have to
16 continue to provide customers, CLECs access to that fiber to
17 serve those types of customers.

18 It is a clear division in its policies. And I think
19 the clearest example of that is that BellSouth's position
20 provides you with an impossible contradiction. BellSouth's
21 position is wherever they have fiber they don't have to
22 unbundle anything faster than 64 kilobits, enough capacity for
23 one voice grade line. Yet, as even their own witness
24 acknowledged, all DS-3 loops, which are big fat pipes, are on
25 fiber. Every single one of them at a capacity of 45 megabits.

1 It turns out to be 672 times larger than an individual channel.

2 If the FCC had adopted a policy that said you don't
3 have to provide access to your fiber other than under some
4 circumstances, a single 64 kilobit channel, it never would have
5 had to do any analysis or come up with any rules about DS-3s.
6 Because all DS-3s are on fiber and all DS-3s are much faster
7 than 64 kilobits, and so under BellSouth's interpretation, the
8 FCC created an impossible situation where there were rules
9 about when CLECs could buy DS-3s, but there would never be a
10 situation where any CLEC would ever be permitted to buy a DS-3
11 because there is no unbundling obligation on fiber.

12 BellSouth's position on its fiber unbundling is just simply a
13 dramatic overreach intended to, again, avoid unbundling
14 obligations that they have.

15 Finally, there is an issue about how you count
16 business lines. It's important because the FCC's rules on
17 where BellSouth has to provide access to loops and transport in
18 part depend on how many business lines are at these wire
19 centers. BellSouth and CompSouth disagree on how the FCC
20 directed that that count be conducted. We both have an
21 interpretation of the FCC rules. BellSouth likes to
22 characterize their interpretation as no interpretation at all,
23 but it is an interpretation.

24 That rule has four sentences in it, and I won't use
25 up the remaining 27 seconds I have to go through all four

1 sentences, but the crux of our dispute with BellSouth is our
2 view is you have to read all four sentences in that definition
3 at one time. And you have to read them with an understanding
4 that no one sentence contradicts one of the other sentences,
5 that they have to be read so that from the beginning of the
6 definition to the end there are no impossible conflicts.

7 BellSouth's interpretation is you take each
8 individual sentence and you read it by itself. And if you read
9 it by itself and it happens to conflict with another sentence
10 in the definition, oh, well, you just keep doing whatever it
11 takes to end up with the largest line count you get. That's
12 the dispute. We want you to read the definition, all four
13 sentences together. Their calculation requires that you read
14 the sentences in isolation so that the fact that they conflict
15 with one another doesn't trouble you.

16 That concludes my summary.

17 MR. MAGNESS: I tender Mr. Gillan for cross
18 examination.

19 COMMISSIONER DEASON: Ms. Mays.

20 COMMISSIONER ARRIAGA: May I please ask a question,
21 Mr. Chairman?

22 COMMISSIONER DEASON: Yes, please.

23 COMMISSIONER ARRIAGA: To the witness, is it your
24 interpretation or the companies that you are representing that
25 the obligations, BellSouth's obligations to unbundle do not

1 have a time limit? Is this something that BellSouth is going
2 to have to do (inaudible).

3 THE WITNESS: They don't have a statutory expiration.
4 What they do have is they have two sets of unbundling
5 obligations; the ones that are in Section 251 of the federal
6 statute which require that the FCC reach a finding of
7 impairment before BellSouth is required to unbundle a
8 particular facility. So, so long as there is a finding of
9 impairment under 251, BellSouth must unbundle different
10 facilities. And to the extent that impairment goes away for
11 whatever reason, revenues go up, new technologies are
12 introduced, costs go down, whatever changes impairment will
13 cause or would cause that list to shrink through time.

14 Section 271 of the act, which applies only to Bell
15 companies, or companies that at one time had been part of the
16 Bell system with AT&T, that section has a 14-point checklist,
17 and inside of that they have an independent requirement to sell
18 loops, transport, and switching irrespective of impairment.
19 Again, that doesn't have a date expiration, but it has a
20 process expiration. The process is that BellSouth or any RBHC,
21 they go to the FCC and they ask the FCC to forbear from those
22 independent obligations. And through that forbearance process
23 they can have that unbundling obligation eliminated.

24 The FCC has actually applied that forbearance process
25 to these new fiber facilities. Now, again, BellSouth and I

1 disagree with what those new fiber policies are. But when the
2 FCC did say we are not going to -- we are going to relieve you
3 of your unbundling obligation for this new fiber, in our case
4 we would say in one circumstance, when used to serve mass
5 market customers, we are going to relieve you from that
6 obligation under Section 251 of the act.

7 The RBHCs then went back to the FCC and said if you
8 relieve us from that obligation under Section 251 of the act,
9 then please relieve us from that same obligation under Section
10 271 of the act. In fact, when they first went with that
11 request, they first asked the FCC, relieve us from all of our
12 checklist obligations, our Section 271 obligations to the
13 extent that they are different from our 251 obligations. And
14 it was clear that that request wasn't going to pass, but the
15 FCC did forebear from 271 for these fiber loops that -- again,
16 we are debating what fiber loops, but the fiber loops are
17 forborne from Section 271. So there is no time limit
18 expiration, but there is a process limit depending on different
19 circumstances being satisfied.

20 COMMISSIONER ARRIAGA: May I proceed?

21 COMMISSIONER DEASON: Sure.

22 COMMISSIONER ARRIAGA: I like your original
23 historical explanation and it brings me to a point. When
24 someone explained to me the TRO and the TRRO, the spirit of
25 both documents, I was told that what the FCC intended was for

1 the CLECs to become more competitive using their own resources.
2 Is that fair to assume?

3 THE WITNESS: I think that spirit is in the TRRO. I
4 don't know how clear it was in the TRO. Because the TRO was
5 more focused on impairment in a cleaner sense without a policy
6 overlay to it. If you go back to when they first came up with
7 these rules, they recognized that the act, and the Supreme
8 Court recognized that the act itself doesn't favor one form of
9 competition over another. That it is competitively neutral in
10 what types of activities should be favored. But, yes, by the
11 time the FCC adopted the TRRO, they were still -- they were
12 looking at trying to encourage more facilities deployment,
13 particularly facilities deployment that they didn't think was
14 going to happen otherwise, which is building fiber networks to
15 small customers in the mass market. And that was why the FCC
16 took the relatively extraordinary step of saying even if CLECs
17 are or are not impaired in their ability to serve this market,
18 we are still going to create an exception for these type of
19 fiber facilities. And we think, again, BellSouth has taken it
20 too far, but that was the idea behind it.

21 It is not a license to steal, however. It is not a
22 blank slate. The FCC still says there are 271 obligations.
23 The FCC still says that the rate has to be just and reasonable.
24 The statute still says that disputes over things in
25 interconnection agreements, including 271, are to be resolved

1 by state commissions under 252. Unfortunately, the FCC has
2 never voted clearly and unambiguously on how it should
3 interpret that statutory instruction. It has never said -- it
4 is clearly recognized that under the statute the FCC has some
5 responsibilities, but it has never said that its
6 responsibilities on setting those prices were exclusive and it
7 has never written an order that said that -- despite the best
8 efforts of BellSouth to get them to write that order, it has
9 never said that the statutory discussion about these items
10 being in interconnection agreements subject to state review is
11 somehow not in there or should be interpreted to cut the state
12 out of setting those just and reasonable prices. So that is
13 really kind of where the debate on the 271 thing comes out.

14 BellSouth does not want there to be an investigation
15 by a state of a just and reasonable price. And the CLECs' view
16 is, look, we know we are not necessarily entitled to TELRIC,
17 which is an economic costing approach, but we are still
18 entitled to some just and reasonable rate. And that, in our
19 view, doesn't mean any rate BellSouth sets, it means can -- in
20 our view, it's a rate you all look at the facts and you set.

21 COMMISSIONER DEASON: Ms. Mays.

22 MS. MAYS: Commissioners, I also have some documents.
23 And if I could distribute those now. I do have one that is in
24 a red folder because it is confidential.

25 COMMISSIONER DEASON: Very well.

1 MS. MAYS: Thank you, Commissioners.

2 I think I got these sort of mixed up when I was going
3 through them. So if you will tell me what order you have them
4 in, we can number them accordingly for identification.

5 COMMISSIONER DEASON: At the top of my list is a
6 transcript. It says Volume 18, and this is dated February
7 26th, 2004.

8 MS. MAYS: Okay. That is in Docket 030851 at the
9 very top, transcript of hearing.

10 COMMISSIONER DEASON: That is correct.

11 MS. MAYS: If we could mark that -- is the next one
12 40?

13 COMMISSIONER DEASON: Yes, Exhibit 40.

14 MS. MAYS: And then if we could take -- there is a
15 one-page document that is filed in this docket, 041269,
16 CompSouth's response to BellSouth's motion for summary final
17 order. Could we have that one identified as Exhibit 41?

18 COMMISSIONER DEASON: So identified.

19 MS. MAYS: And then there should be a document that
20 has petition for reconsideration. It's filed before the FCC.
21 If that could be identified as 42.

22 COMMISSIONER DEASON: So identified.

23 MS. MAYS: We have a large document, which is a draft
24 of this Commission's annual report on competition. If we could
25 have that marked as 43.

1 COMMISSIONER DEASON: So identified.

2 MS. MAYS: And if we could have the confidential
3 document marked as 44.

4 COMMISSIONER DEASON: So identified.

5 MS. MAYS: Thank you, Commissioners.

6 (Exhibits 40 through 44 marked for identification.)

7 MS. MAYS: Did I get my order off? I'm sorry, 42
8 should have been the last one.

9 THE WITNESS: Ms. Mays, did you intend for me to have
10 the local competition report, as well?

11 MS. MAYS: I did; and I'm sorry if I didn't get it to
12 you.

13 THE WITNESS: I appear to be getting it in abundance.

14 MS. MAYS: Let me go over that again, Commissioner
15 Deason. I think I confused myself with the numbering.

16 What did we have? We had 40 was the 030851; 41 was
17 the CompSouth response to summary final order; 42 was the FCC's
18 petition for reconsideration; 43 was this Commission's report;
19 and, 44 was the confidential document.

20 COMMISSIONER DEASON: That's what I have.

21 MS. MAYS: Okay. Just making sure.

22 Mr. Gillan, do you have all of those items now, sir?

23 THE WITNESS: I think so. But since I assume we are
24 going it through them one at a time, if I catch one, we will
25 catch it then.

1 MS. MAYS: Sure.

2 CROSS EXAMINATION

3 BY MS. MAYS:

4 Q Let me start with what has been identified as Exhibit
5 41, which is the one-page CompSouth response to summary final
6 order. Do you have that, Mr. Gillan?

7 A Yes.

8 Q And if I could direct your attention to the footnote,
9 it lists CompSouth's member companies. Do you see that, sir?

10 A Yes.

11 Q And do you have any reason to dispute that this is an
12 accurate listing of CompSouth's member companies?

13 A I'm not entirely sure about the status of AT&T, soon
14 to be SBC, soon to be AT&T again; but at the time this was
15 filed they were a member of CompSouth. Other than that, no, I
16 will accept it subject to correction later.

17 Q If I could direct your attention, sir, to what has
18 been marked as 42. That is the FCC petition, and if you will
19 compare that document to the Exhibit 41 you will see that at
20 least one of CompSouth's members, NuVox, signed onto this
21 petition for reconsideration. Do you see that, sir?

22 A Yes.

23 Q If I could direct you to Page 11 of what has been
24 marked as Exhibit 42, and let me know when you are there?

25 A Yes.

1 Q If you will look under Subheading A, there is some
2 discussion about the business line rule. And if you will look
3 at the third sentence it reads, "Thus, a DS-1 is counted as 24
4 lines, a DS-3 is counted as 672 lines, et cetera." Did I read
5 that correctly, sir?

6 A Yes. It doesn't say counted as business lines there,
7 but that is what that sentence says, yes.

8 Q I'm sorry, I didn't hear you, Mr. Gillan.

9 A It doesn't say counted as business lines, but that is
10 what that sentence says, yes.

11 Q Thank you. If I could get you to look at the
12 confidential item, which has been marked as Exhibit 44. Let me
13 represent to you, Mr. Gillan, that in discovery we produced to
14 you a line count data that related to the entire region. What
15 this exhibit represents is it extracts just Florida from the
16 document that you have been provided. Do you have any
17 reason -- will you accept that subject to check?

18 A Certainly, Ms. Mays. You have not lied to me yet.

19 Q Could I get you to flip to the very last page of the
20 document, Exhibit 44, please?

21 A Yes.

22 Q If you will look at the column to the right, the
23 second column to the far right at the very bottom there is a
24 number there. Do you see it?

25 A Yes.

1 Q And I will represent to the Commission that that
2 particular number is not confidential, and so I will read it to
3 you, sir. It is 824,297. Do you see that, Mr. Gillan?

4 A Yes.

5 Q And if you were to look at the top headings, what
6 that number represents is a number of wholesale lines. Do you
7 understand that to be the case, sir?

8 A The way you calculate it, that is what you represent
9 it to be, yes.

10 Q And if I could then get you to look at what has been
11 marked as Exhibit 43, and turn to Page 21, please.

12 A I'm sorry, did you say --

13 Q Page 21 of what has been marked as Exhibit 43, which
14 is this Commission's draft report on competition.

15 A Yes.

16 Q I would like to direct your attention to Table 2 on
17 Page 21. And if you look at that table, in the middle of the
18 table there is a column that is called CLEC. Do you see that?

19 A Yes.

20 Q And there is also a column to the left that is
21 labeled BellSouth. And if you took those two columns together,
22 there is a line count for CLEC business, and that line count
23 number reflected is 953,616. Do you see that?

24 A Yes.

25 Q Now, could I get your attention to what has been

1 marked as Exhibit 40, please?

2 A Which was that?

3 Q I'm sorry, it is Docket 030851.

4 A Okay.

5 Q And what that is, Mr. Gillan, and you can check it,
6 it is an excerpt of your surrebuttal testimony in the TRO
7 proceeding before this Commission.

8 A Yes.

9 Q I would like to direct your attention to the last
10 page. Do you see, sir, in your answer on the last page, it is
11 actually marked as Page 16. You state, "As my direct,
12 rebuttal, and surrebuttal testimony above makes clear,
13 BellSouth is obligated to provide UNE-P under Section 271 of
14 the act indefinitely," and it continues from there. Do you see
15 that, sir?

16 A Well, yes, but where it continues is, "Or at least
17 until the FCC decides to forbear from holding BellSouth to its
18 terms," which is the exit path from a 271 obligation that I
19 mentioned to the Commissioner. In addition, if we had the
20 entire testimony in front of us, I'm sure elsewhere in it it
21 explains that there is a pricing difference between the type of
22 arrangement offered under Section 271 and Section 251, which is
23 the dispute we are having in this proceeding and elsewhere as
24 to what the pricing difference should be.

25 Q Is it still your testimony, with that explanation, as

1 reflected on Exhibit 40, sir?

2 A Yes. But I want to be clear about this because there
3 has been an unfortunate trend in misrepresentation in some
4 places. Nothing against you, Ms. Mays. When I refer to UNE-P
5 under Section 271, and have done so repeatedly, I'm referring
6 to the fact that they still have to sell us --

7 COMMISSIONER ARRIAGA: Mr. Chairman, excuse me.
8 Would you clarify what you meant by saying an unfortunate trend
9 of misrepresentation? On whose behalf?

10 THE WITNESS: There is a desire on BellSouth's part
11 to find a sentence that they can quote in their brief that says
12 Mr. Gillan just wants UNE-P to last forever, the FCC got rid of
13 UNE-P, therefore, Mr. Gillan must be wrong. At least that is
14 my perception of BellSouth's intent.

15 The fact is that the FCC gave BellSouth unbundling
16 relief from selling switching at TELRIC, which stands for total
17 element long-run incremental cost, because there is an issue as
18 to whether or not that pricing standard is appropriate,
19 particularly once a finding of nonimpairment has been reached.

20 But the point that I want to continue to make clear,
21 always within the same paragraph of anything where I'm alleged
22 to have said UNE-P should last forever is that I recognize that
23 the price for UNE-P under a 271 just and reasonable standard
24 could be higher than the price that would result from a TELRIC
25 standard. And that's the unfortunate -- that's the

1 representation of my testimony that I'm concerned with.

2 BellSouth has been known to file things and has, in
3 fact, filed things at the FCC that allege that my testimony is
4 that switching should still be priced at TELRIC under Section
5 271. And yet my testimony, I think, has repeatedly tried to
6 make the point that that is not correct. I recognize the fact
7 that the price may go up, I just don't believe it's responsible
8 to increase that price by \$7 to competitors who then have to go
9 and increase prices to consumers and small businesses by \$7,
10 that that is an unjust and unreasonable rate increase.

11 MS. MAYS: Commissioner Deason, that's all the
12 questions I have. I would like to have the exhibits that have
13 been marked moved into the record.

14 COMMISSIONER DEASON: We will do that at the
15 conclusion of all cross-examination and redirect.

16 Staff, you may proceed.

17 CROSS EXAMINATION

18 BY MR. TEITZMAN:

19 Q Good afternoon, Mr. Gillan. Do you have a copy of
20 the rebuttal testimony of BellSouth Witness Fogle?

21 A No, not with me.

22 Q I think Mr. Magness is going to come to the rescue.

23 A The issue will be the time. (Pause.) Yes.

24 Q If you could please refer to Pages 12 and 13 of Mr.
25 Fogle's rebuttal testimony.

1 A Yes.

2 Q There Mr. Fogle states that the major area of
3 contention between BellSouth and CompSouth is that CompSouth
4 believes it has a right to fiber to the home and fiber to the
5 curb DS-1 loops, is that correct?

6 A Yes, that and DS-3 loops. But, yes, that as long as
7 we are buying a DS-1 that that access has been preserved
8 because, by definition, a DS-1 speeds and greater is considered
9 an enterprise loop even if the technology is fiber to the
10 premise or fiber to the curb.

11 Q I would like to now direct you to Page 15 of Mr.
12 Fogle's rebuttal testimony.

13 A Yes.

14 Q Here he notes that the TRO errata corrected the rules
15 implementing this section by replacing the words residential
16 unit with end user customer premise, is that correct?

17 A Yes. That is not the source of our disagreement with
18 BellSouth, but the statement is correct.

19 Q And that the FCC further corrected its fiber to the
20 curb order, its order on reconsideration, to replace the words
21 a residential unit with an end user's customer premises, is
22 that correct?

23 A Yes. The FCC was making clear that inside the mass
24 market you didn't have to be a residential customer, you could
25 be a small business customer that had service that would be

1 comparable to the type of service a residential customer would
2 obtain. Basically, a couple of regular voice lines.

3 Q Okay. If the FCC defined mass markets as being
4 broader than just residential customers as it does in Paragraph
5 209, could you interpret this correction to simply note that
6 some business customers are part of the mass market?

7 A Yes. In fact, I believe that is exactly what that
8 paragraph and Paragraph 210 are intended to convey is the idea
9 that there are going to be times when there is a customer that
10 is typically -- and I'm pretty sure it routinely uses the
11 phrase typically associated with the mass market. Like a
12 residential customer is typically associated with the mass
13 market, but if it wants a DS-1 then it should be treated as an
14 enterprise loop.

15 And, conversely, there are times when a customer that
16 is typically associated with the enterprise market, say, Exxon,
17 wants a regular phone line into a greenfield area. And what
18 the FCC was saying, in all of those paragraphs that Mr. Fogle
19 points to where the FCC says the customer designation doesn't
20 drive our policy, they were saying, look, we understand there
21 are going to be times when there is a residential customer that
22 is typically associated with a mass market wants an enterprise
23 loop.

24 And there are going to be times when a large
25 enterprise customer, a customer typically associated with the

1 enterprise market wants a regular voice grade line. The fact
2 that Exxon is an enterprise customer doesn't guarantee them the
3 voice grade line in a greenfield situation. The greenfield
4 policy applies to all regular voice grade lines whether or not
5 it is a customer that you think of typically as an enterprise
6 customer.

7 On the other hand, if for some reason a residential
8 customer wants a DS-1 loop, they get -- even though they
9 wouldn't be able to get access to fiber to serve that
10 residential customer under the greenfield policy, because it
11 wants a DS-1 it's going to be treated as an enterprise customer
12 and it is going to get access to a DS-1. That is what those
13 FCC provisions address. They just address the fact that you
14 don't hold it against the customer that they are typically
15 associated with one or other of the customer classes when they
16 are trying to obtain a loop type, that whatever policy applies
17 to the loop type is what governs whether you gain access to it.

18 Q Is it correct that the final rules implementing this
19 section of the TRO make no explicit reference to mass market or
20 enterprise market?

21 A Yes, I believe that is true. I believe it is all
22 just replete throughout the entire text. And, quite frankly,
23 as I explained before, under BellSouth's interpretation, all
24 the sections on DS-3 loops, in particular, would be completely
25 irrelevant. Because under BellSouth's interpretation of the

1 provision, if it's fiber you don't get it, yet the only way you
2 get a DS-3 is on fiber, in which case there is no such thing as
3 a DS-3 loop, so why did they have an impairment analysis and
4 promise the D.C. circuit that we were going to retain access to
5 it? It is an impossibility.

6 Q Paragraph 289 of the TRO regarding broadband services
7 over hybrid loops, here the FCC states that ILECs must provide
8 unbundled access to a complete transmission path over their TDM
9 networks to address the impairment we find that requesting
10 carriers currently face. Do you believe that this requirement
11 is restricted to only the mass market or does it apply to all
12 loops?

13 A I believe that it applies -- that all of these
14 broadband policies apply only to the mass market. That you can
15 still gain access to the facilities you need to supply services
16 to enterprise -- on what are called enterprise loops because
17 they are typically used to serve enterprise customers. In
18 fact, if you go to Footnote 956, on Paragraph 325, I think they
19 tried to say that. Where they say -- the last sentence of
20 that, "The unbundling obligation associated with DS-1 loops is
21 in no way limited by the rules we adopt today with respect to
22 hybrid loops typically used to serve mass market customers." I
23 don't know what that means other than what it says on its face.

24 Q Okay. For the enterprise market, do you believe
25 ILECs are required to unbundle the entire hybrid loop,

1 including the next generation network packetized capabilities?

2 A No. But importantly when the FCC wrote this idea
3 that there is this next generation packetized capability in the
4 loop, they were looking at a set of ex partes from SBC that
5 laid out a network diagram that said here is our network that
6 is used to provide traditional DS-1 services, and then we are
7 going to build a parallel network that is going to have packet
8 technology in it for next generation services. So when the FCC
9 said you don't get access to the packetized portion of the
10 packetized capability, they were doing so looking at
11 information that said there would still be a parallel network
12 in place there for carriers to still get DS-1s and DS-3s over.
13 That is the factual situation the FCC was reviewing when it
14 wrote those sections of the order.

15 Q One final question. Do you believe ILECs are
16 required to unbundle more features and functionalities of the
17 hybrid loop for the enterprise market than for the mass market?

18 A Yes, if you use the word features and functions to
19 include speed. I mean, the reality here is if you are wanting
20 to offer a DS-1 or DS-3 service, which would be an enterprise
21 loop configuration, the additional feature and function you are
22 getting is faster, 1.544 megabits and 45 megabits per channel
23 each, respectively.

24 MR. TEITZMAN: No further questions for the witness.

25 Thank you.

1 COMMISSIONER DEASON: Commissioners, questions?
2 Redirect.

3 MR. MAGNESS: Commissioners, first, just for the
4 record, I would like to note that the ex parte that Mr. Gillan
5 referenced filed by SBC is in the record. It is attached to
6 the deposition transcript of Mr. Fogle. It is in the record,
7 and I just wanted to point that out. It is not obvious that it
8 is in the record.

9 REDIRECT EXAMINATION

10 BY MR. MAGNESS:

11 Q Mr. Gillan, if I could direct your attention to the
12 confidential exhibit in the Florida competition report draft
13 that Ms. Mays discussed with you, Exhibit 43 and 44. The
14 business line number that Ms. Mays pointed out to you, what
15 significance do you believe that has to the analysis that you
16 have conducted concerning business lines in this case?

17 A I presume that Ms. Mays was attempting to show that
18 because the number of business lines BellSouth estimates in its
19 region in Florida, roughly about 825,000, is not dramatically
20 off the number that CLECs had reported, the 953,000, that
21 somehow that gives credibility to the number that they claim in
22 whichever exhibit this one is, the one that we are disputing.

23 And what I find -- one can only leave that impression
24 without looking into the facts. Because the 953,000 number
25 would include lines served by CLECs where they lease facilities

1 from BellSouth and all the lines CLECs serve on facilities that
2 they themselves have deployed, whereas the only thing you are
3 supposed to be counting in the BellSouth wire center count are
4 lines leased from BellSouth. So there is no reason to believe
5 one way or the other when you see that CLECs in Florida, you
6 know, assuming all the data in the staff report is correct,
7 that they serve 953,000 business customers, unless you are able
8 to both know, one, how many of those lines are served on the
9 CLEC's own facilities, which are not to be counted, and, two,
10 whether or not all of those lines represent voice grade or
11 circuits used for voice service. You wouldn't be able to draw
12 any conclusion about the reasonableness about BellSouth's line
13 count number.

14 Factually, many CLECs provide service on facilities
15 where the Internet capacity grows or shrinks depending on the
16 voice needs of the customers. In which case if I were a CLEC,
17 I would probably report all of it just because it is a simpler
18 way to report it. But this is an apples-to-oranges comparison,
19 and there is no way, looking at the local competition report,
20 to get an independent validation one way or the other of the
21 BellSouth number. They just don't measure the same thing.

22 Q Are you aware of any other reports where BellSouth
23 purports to report business lines where the reports actually
24 show lower numbers than what they have claimed in this case?

25 A Yes. Everywhere they have always shown consistently

1 much lower numbers than they report here. When they report
2 their number of business lines that they provide on Wall Street
3 it has been lower. When they report the number of UNE loops to
4 Wall Street it has been lower. So, you know, there are two
5 issues. One is did they follow the definition correctly, which
6 I think candidly is something the Commission could just look at
7 the two definitions, you are going to make a judgment one way
8 or the other.

9 And then the other one is BellSouth's view of the
10 world. BellSouth went to the FCC and told the FCC that it had
11 so many business lines throughout its region. The FCC came up
12 with the thresholds for this impairment test, and now BellSouth
13 is claiming dramatically higher numbers. They are doing it
14 arguing that the FCC so dramatically changed the definition of
15 business lines that it was able to come up with thresholds
16 looking at one set of data, and then change the definition so
17 that the data was completely different.

18 The reality is we have looked at every conceivable
19 source of information that the FCC has looked at, and there is
20 no data the FCC ever would have had that could have -- that
21 would have given them the basis to change the definition in the
22 manner that BellSouth claims that they changed it.

23 MR. MAGNESS: I don't have any other questions.

24 COMMISSIONER DEASON: Okay. Exhibits?

25 MR. MAGNESS: Yes. Commissioners, we would at this

1 point move the admission of Mr. Gillan's exhibits that are
2 numbered 23 through 28.

3 COMMISSIONER DEASON: Without objection, show then
4 that Exhibits 23 through 28 are admitted.

5 (Exhibits 23 through 28 admitted into the record.)

6 COMMISSIONER DEASON: Other exhibits?

7 MS. MAYS: Yes, Commissioner Deason. I believe our
8 exhibits would have been 40 through 44.

9 COMMISSIONER DEASON: Exhibits 40 through 44, without
10 objection --

11 MR. TEITZMAN: Commissioner, I did have a concern
12 with regard to the confidential exhibit. It is my
13 understanding that not everything in here is confidential.
14 Will you be filing a redacted version?

15 MS. MAYS: We will be happy to provide a redacted
16 version of 44.

17 COMMISSIONER DEASON: Very well. Staff, would you
18 wish to go ahead and identify the redacted version as a
19 separate exhibit?

20 MR. TEITZMAN: I believe we could do that as 45.

21 COMMISSIONER DEASON: We will identify then as
22 Exhibit 45 the redacted version of Exhibit 44. We will admit
23 Exhibits 40 through 44 and 45 will be a late-filed exhibit.

24 Ms. Mays, when can that be provided?

25 MS. MAYS: We can provide that at the same time we

1 file the other late-fileds, on November 18th.

2 (Exhibits 40 through 44 admitted into the record.
3 Late-filed Exhibit 45 marked for identification.)

4 COMMISSIONER DEASON: Very well. Thank you, Mr.
5 Gillan. You may be excused.

6 I believe we only have one last witness and I believe
7 we are going to take that witness tomorrow. We will reconvene
8 tomorrow at 9:30. Thank you all.

9 (The hearing adjourned at 4:00 p.m.)

10 (Transcript continues in sequence with Volume 4.)

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1
2 STATE OF FLORIDA)

3 :

CERTIFICATE OF REPORTER

4 COUNTY OF LEON)

5
6 I, JANE FAUROT, RPR, Chief, Office of Hearing
7 Reporter Services, FPSC Division of Commission Clerk and
8 Administrative Services, do hereby certify that the foregoing
9 proceeding was heard at the time and place herein stated.

10 IT IS FURTHER CERTIFIED that I stenographically
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13 transcript constitutes a true transcription of my notes of said
14 proceedings.

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

20 DATED THIS 14th day of November, 2005.

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