

Florida Cable Telecommunications Association

Steve Wilkerson, President

VIA HAND DELIVERY

January 30, 2006

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
And Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 050119-TP & 050125-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the Rebuttal Testimony of the Florida Cable Telecommunications Association.

Copies of the Rebuttal Testimony have been served on the parties of record by electronic and U.S. Mail delivery. Please acknowledge receipt of filing of the above by stamping the duplicate copy of this letter and returning the same to me.

Thank you for your assistance in processing this filing. Please contact me with any questions.

Sincerely,

Michael A. Gross
Vice President, Regulatory Affairs &
Regulatory Counsel

Enclosure

cc: All Parties of Record

DOCUMENT NUMBER - DATE

00899 JAN 30 06

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Rebuttal Testimony of Florida Cable Telecommunications Association in Docket Nos. 050119 and 050125-TP has been served upon the following parties by electronic and U.S. Mail this 30th day of January 2006.

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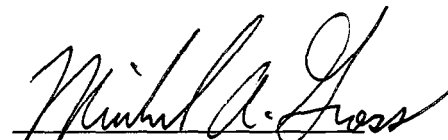
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Michael A. Gross

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Joint Petition by TDS Telecom
d/b/a TDS Telecom/Quincy Telephone;
ALLTEL Florida, Inc.; Northeast
Florida Telephone Company d/b/a
NEFCOM; GTC, Inc. d/b/a GT Com;
Smart City Telecommunications,
LLC d/b/a Smart City Telecom; ITS
Telecommunications Systems, Inc.;
and Frontier Communications of the
South, LLC ["Joint Petitioners"] objecting
to and requesting suspension and
cancellation of proposed transit traffic
service tariff filed by BellSouth
Telecommunications, Inc.**

Docket No. 050119-TP

**In re: Petition and Complaint for
suspension and cancellation of
Transit Traffic Service Tariff No.
FL2004-284 filed by BellSouth
Telecommunications, Inc., by AT&T
Communications of the Southern
States, LLC.**

Docket No. 050125-TP

REBUTTAL TESTIMONY OF

DON WOOD

ON BEHALF OF THE

FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION

Filed: January 30, 2006

DOCUMENT NUMBER-DATE

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1 **Background and Purpose of Testimony**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Don J. Wood. I am a principal in the firm of Wood & Wood, an
4 economic and financial consulting firm. My business address is 30000 Mill
5 Creek Avenue, Suite 395, Alpharetta, Georgia 30022. I provide economic and
6 regulatory analysis of telecommunications and related convergence industries
7 with an emphasis on economic policy, competitive market development, and
8 cost-of-service issues.

9

10 Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.

11 A. I received a BBA in Finance with distinction from Emory University and an
12 MBA with concentrations in Finance and Microeconomics from the College
13 of William and Mary. My telecommunications experience includes
14 employment at both a Regional Bell Operating Company ("RBOC") and an
15 Interexchange Carrier ("IXC").

16 Specifically, I was employed in the local exchange industry by
17 BellSouth Services, Inc. in its Pricing and Economics, Service Cost Division.
18 My responsibilities included performing cost analyses of new and existing
19 services, preparing documentation for filings with state regulatory
20 commissions and the Federal Communications Commission ("FCC"),
21 developing methodology and computer models for use by other analysts, and
22 performing special assembly cost studies.

1 I was employed in the interexchange industry by MCI
2 Telecommunications Corporation, as Manager of Regulatory Analysis for the
3 Southern Division. In this capacity I was responsible for the development and
4 implementation of regulatory policy for operations in the southern U. S. I
5 then served as a Manager in MCI's Economic Analysis and Regulatory
6 Affairs Organization, where I participated in the development of regulatory
7 policy for national issues.

8

9 Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE STATE
10 REGULATORS?

11 A. Yes. I have testified on telecommunications issues before the regulatory
12 commissions of forty-one states, Puerto Rico, and the District of Columbia. I
13 have also presented testimony regarding telecommunications issues in state,
14 federal, and overseas courts, before alternative dispute resolution tribunals,
15 and at the FCC. A listing of my previous testimony is attached as Exhibit
16 DJW-1.

17

18 Q. ARE YOU FAMILIAR WITH THE INTERCONNECTION AND
19 INTERCARRIER COMPENSATION OBLIGATIONS SET FORTH IN THE
20 TELECOMMUNICATIONS ACT OF 1996?

21 A. Yes. I have participated in investigations into the rates for Unbundled
22 Network Elements ("UNEs"), the underlying cost support for those rates, and

1 the application of element rates to the development of intercarrier
2 compensation levels in Alabama, California, Colorado, Delaware, Georgia,
3 Hawaii, Kentucky, Louisiana, Maryland, Mississippi, Montana, North
4 Carolina, Oregon, South Carolina, Tennessee, Texas, Washington, Wyoming,
5 the District of Columbia, Puerto Rico, and on several occasions here in
6 Florida.

7 While I am not an attorney and do not intend to provide legal
8 argument or conclusions in my testimony, I am familiar with the
9 interconnection requirements set forth in §251 of the Act and with the details
10 of the FCC's rules for calculating the rates for UNEs (and the intercarrier
11 compensation rates based on those cost elements) pursuant to §252 of the Act.
12

13 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

14 A. I have been asked by the Florida Cable Telecommunications Association
15 ("FCTA") to respond to the direct testimony of Mr. Kenneth McCallen on
16 behalf of BellSouth Telecommunications, Inc. ("BellSouth") and Mr. Steven
17 Watkins on behalf of the Small LEC Joint Petitioners ("small ILECs," or
18 "Joint Petitioners"), and to respond to the list of seventeen tentative issues as
19 set forth in Attachment A of Order No. PSC-05-1206-PCO-TP.
20

21 **FCTA's Interest and Summary of Recommendations**

22 Q. WHAT IS THE FCTA'S INTEREST IN THIS PROCEEDING?

1 A. The current dispute between BellSouth and the small ILECs has developed in
2 a way that has the potential to fundamentally disrupt the way that carriers
3 exchange local traffic in Florida and the way that carriers compensate each
4 other when such traffic is originated on the network of one carrier and
5 terminated on the network of another. The list of seventeen tentative issues
6 set forth in Attachment A to Order No. PSC-05-1206-PCO-TP include issues
7 that have important and significant implications for how FCTA members and
8 other carriers will work together to ensure that end user customers have the
9 ability to make calls to, and receive calls from, all other end user customers in
10 an economically efficient manner.

11 The fact that the Commission's decision in this case will have
12 implications for carriers beyond BellSouth and the Joint Petitioners is
13 illustrated by the breadth of intervenors to this proceeding: CLECs that utilize
14 a mixture of resale and their own facilities, CLECs with various types of
15 wireline networks, and CMRS carriers have all sought to intervene and
16 present testimony.

17

18 Q. HAVE YOU REVIEWED THE HISTORY OF THE DISPUTE BETWEEN
19 BELLSOUTH AND THE JOINT PETITIONERS?

20 A. Yes, at least as that history has been set forth in their respective testimonies.

21

22 Q. WHAT IS YOUR UNDERSTANDING OF HOW A DISPUTE BETWEEN

1 BELL SOUTH AND A GROUP OF INDEPENDENT ILECS DEVELOPED
2 INTO A BROADER PROCEEDING WITH SEVENTEEN IDENTIFIED
3 ISSUES AND POTENTIALLY BROAD POLICY IMPLICATIONS?

4 A. At the risk of putting an overly fine point on it, it appears that three events got
5 us where we are today:

- 6 1. BellSouth sought compensation for a network functionality that it is
7 providing to certain small ILECs,¹
8
- 9 2. In response, the small ILECs took untenable positions regarding their
10 interconnection obligations pursuant to §251 and sought to turn cost-causation
11 on its head in order to avoid paying any such compensation.
12
- 13 3. In an apparent attempt to gain negotiating leverage, BellSouth filed a tariff
14 for the functionality in question that includes a rate for an essential network
15 function that is well above cost and duplicative of the cost recovery already
16 being accomplished via other rates. This tariff has the potential to impact
17 numerous other carriers and to disrupt how those carriers interconnect,
18 exchange traffic, and compensate each other for doing so.²
19

20 Q. HOW SHOULD THE COMMISSION APPROACH THIS PROCEEDING?

21 A. The Commission should approach the issues in this proceeding with the goal
22 of addressing the specific dispute between BellSouth and the Joint Petitioners
23 while avoiding a disruption of the way that other carriers currently

¹ As I will explain in more detail in the next section of my testimony, while I agree that BellSouth is performing these functions for the small ILECs and is due an appropriate level of compensation for doing so, I am in no way suggesting that the rate set forth in BellSouth's tariff is reasonable, reflective of the underlying cost incurred by BellSouth to provide these functions, or in any other way appropriate.

² While I disagree with the Joint Petitioners' positions regarding their §251 obligations and do not support their apparent refusal to compensate BellSouth for performing a transit function, I do agree with the small ILECs that BellSouth's tariff represents an attempt to leverage its unique legacy position in a way that will harm both the continued development of competition and the public.

1 interconnect with, exchange traffic with, and mutually compensate BellSouth,
2 the small ILECs, and each other. Such a disruption would not only have
3 business implications for a large number of carriers, it would have an adverse
4 impact on end user customers in terms of higher rates, blocked calls, and
5 competitive choice. The Commission should also attempt to avoid any
6 disruption in the way that these carriers will interconnect, exchange traffic,
7 and compensate each other in the future.

8

9 Q. WHAT SHOULD THE COMMISSION DO IN ORDER TO ADDRESS THE
10 DISPUTE BETWEEN BELLSOUTH AND THE ILECS WHILE
11 AVOIDING A SIGNIFICANT DISRUPTION FOR BOTH CARRIERS AND
12 CUSTOMERS?

13 A. The Commission should do the following:

14 **1. While the Commission has no direct role in the §252 negotiation**
15 **process, it should encourage BellSouth and the small ILECs to negotiate**
16 **interconnection agreements that include the rates and terms for the**
17 **transit services provided by BellSouth.** An interconnection agreement,
18 rather than a tariff, is the proper place for interconnection rates and terms.
19 The FCC has noted the advantages of developing intercarrier compensation
20 arrangements within the context of a negotiated agreement rather than in a
21 tariff, and has changed its rules to make it clear that the small ILECs have the
22 opportunity to invoke the §252 negotiation and arbitration process. If one or

1 more parties do not agree to voluntary negotiations, either BellSouth or the
2 small ILECs should seek to initiate the §252 negotiation and arbitration
3 process.

4 If the negotiations between BellSouth and the small ILECs fail to
5 result in a resolution of the issue and the Commission is ultimately called
6 upon to arbitrate this dispute pursuant to the §252 process, then it should
7 apply the following principles:

8 **a. The industry standard of cost causation and intercarrier**
9 **compensation, created by the Act and subsequent FCC rules,**
10 **should not be turned upside down.** The Act and subsequent FCC
11 rules (consistent with industry practice) require that the originating
12 carrier – as the cost causer – be responsible for compensating another
13 carrier that performs transport and termination functions in order to
14 complete a call.

15 **b. The small ILECs are not excused from their §251**
16 **obligations.** The Joint Petitioners are seeking to avoid their
17 interconnection obligations while seeking the ability to dictate network
18 design and interconnection arrangements of other carriers.

19 **c. The rates for transit service functions, like other**
20 **interconnection rates, must be cost-based.** BellSouth should not be
21 permitted to mandate a rate that is in excess of its demonstrated level
22 of costs, and conversely the small ILECs should not be able to insist

1 on a rate that does not permit BellSouth to recover its relevant
2 economic costs.

3

4 **2. Conclude that BellSouth's tariff for transit services seeks to**
5 **preempt rates and conditions that are properly contained within an**
6 **interconnection agreement, and therefore the tariff is both unnecessary**
7 **and an inappropriate intrusion on the negotiation process.** Tariffing rates
8 and conditions that are properly negotiated by the carriers effectively
9 represents an attempt by one carrier to unilaterally dictate terms to other
10 carriers.

11 **3. If BellSouth's tariff is not rejected by the Commission, the**
12 **Commission should require that the language be changed to make it clear**
13 **that application of the tariff is strictly limited to those instances in which**
14 **the originating carrier elects not to seek an interconnection agreement**
15 **with BellSouth.** The proper remedy for BellSouth, if it believes that it is not
16 being properly compensated by a given carrier for performing an
17 interconnection function, is to seek such compensation through an
18 interconnection agreement. BellSouth's tariff for "transit traffic service"
19 should exist (if it exists at all) *only as an option* for carriers that have chosen
20 not to enter into an interconnection agreement with BellSouth for this purpose.
21 If its application is mandatory in the absence of such an agreement, BellSouth
22 would gain significant leverage in an interconnection agreement negotiation

1 or would have the ability to avoid the §252 negotiation and arbitration process
2 altogether.

3 **4. If BellSouth's tariff is not rejected by the Commission, the**
4 **Commission should require that the rate for this interconnection element**
5 **is cost-based.** Removing the transit element (or any other interconnection
6 element) from the context of an interconnection agreement and placing it in a
7 tariff does not change the pricing requirements for that element. Evidence in a
8 previous proceeding before the Commission indicates that BellSouth has no
9 cost basis or support for its tariffed rate for "transit traffic service"³ and the
10 FCC has ruled that interconnection facilities must be provided at cost-based
11 rates.⁴ The absence of a cost study suggests that BellSouth has no pretense
12 that its tariffed rate is cost-based, but instead suggests that the rate was set at
13 an excessive level in order to create negotiating leverage for BellSouth.

14 **5. If BellSouth's tariff is not rejected by the Commission, the**
15 **Commission should require that the language be changed to make it clear**

³ In Order No. 040130-TP (October 11, 2005) the Commission noted in Section XV.B that "when BellSouth was queried on whether or not it had conducted any cost studies in support of the TIC, witness Blake responded that BellSouth had not."

⁴ The FCC has been consistently clear regarding the ILECs' §251(c)(2)(a) obligation: facilities needed for "the transmission and routing" of "exchange access service" must be provided at cost-based rates. For example, in the *Triennial Review Remand Order*, the FCC notes "our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network." *Order on Remand*, FCC 04-290, released February 4, 2005, ¶140 ("*Triennial Review Remand Order*").

1 **that the existence of the tariff cannot interfere in any way with the**
2 **negotiation of the rates or terms of future interconnection agreements.** A
3 large number of carriers currently have interconnection agreements with
4 BellSouth in Florida, and many if not all of these agreements include rates and
5 terms for transit functions.⁵ While the dates vary, at some point in the future
6 each of these interconnection agreements will need to be renegotiated. As a
7 practical matter, if BellSouth has in place a “transit traffic tariff” that (1)
8 contains a rate that is well above cost and (2) will apply if no agreement is
9 reached by the parties, BellSouth’s incentive (and perhaps its ability) to meet
10 its §251(c)(1) obligation to “negotiate in good faith” will be reduced. The
11 existence of the tariff would give BellSouth the leverage to insist on a higher
12 rate or even to try to remove the rates and terms for transit functionalities from
13 the interconnection agreement negotiation entirely.

14 In summary, the present proceeding has evolved from a specific
15 dispute between carriers, and its focus should remain on that dispute while
16 avoiding a disruption of how other carriers interconnect, exchange traffic, and
17 compensate each other. BellSouth is performing a service for the small ILECs
18 for which it should be fairly compensated at a rate that will permit cost
19 recovery, but the proper remedy for BellSouth is negotiation and if necessary
20 arbitration, not an end-run around the negotiation process with a tariff filing.

⁵ While I do not agree that it is either complete or accurate, BellSouth witness McCallen’s Exhibit KRM-2 does provide an illustration of the scope of this issue.

1

2 **The Dispute Regarding BellSouth's Transit Tariff**

3 Q. THE DISPUTE BETWEEN BELLSOUTH AND THE SMALL ILECS
4 CENTERS ON COMPENSATION FOR THE NETWORK
5 FUNCTIONALITY OF "TRANSIT." WHAT IS TRANSIT?

6 A. According to the FCC, "transiting occurs when two carriers that are not
7 directly interconnected exchange non-access traffic by routing the traffic
8 through an intermediary carrier's network. Typically, the intermediary carrier
9 is an incumbent LEC and the transited traffic is routed from the originating
10 carrier through the incumbent LEC's tandem switch to the terminating carrier.
11 The intermediary (transiting) carrier then charges a fee for use of its
12 facilities."⁶

13

14 Q. DOES THERE APPEAR TO BE A DISPUTE REGARDING A WORKING
15 DEFINITION OF "TRANSIT"?

16 A. No. Both Mr. McCallen (p. 3) and Mr. Watkins (pp. 5-6) provide a definition
17 that is consistent with that of the FCC.

18

19 Q. THE TRANSIT COMPENSATION IN DISPUTE WOULD APPLY TO
20 LOCAL CALLS. DOES THERE APPEAR TO BE A DISPUTE

⁶ *Further Notice of Proposed Rulemaking* in CC Docket No. 01-92, FCC 05-33, released March 3, 2005 ("2005 FNPRM").

1 REGARDING THE DEFINITION OF “LOCAL” FOR THIS PURPOSE?

2 A. No. Mr. McCallen correctly notes that (p. 8) “for wireline-to-wireline traffic,
3 local traffic is any intraLATA circuit switched call transiting BellSouth’s
4 network that originates and terminates to TSPs other than BellSouth,” and (pp.
5 8-9) if a wireless carrier originates or terminates a call (or both), the call is
6 “local” if it originates and terminates within the same Major Trading Area
7 (“MTA”). Mr. Watkins does not define the term “local” in his testimony, but
8 he does describe (pp. 9-10) the trunking arrangements currently in place
9 between the small ILECs and BellSouth in a way that suggests that no dispute
10 exists regarding the category of calls now at issue.

11

12 Q. IS IT REASONABLE AND APPROPRIATE FOR THE SMALL ILECS TO
13 COMPENSATE BELLSOUTH WHEN IT PERFORMS TRANSIT
14 FUNCTIONS FOR THEM?

15 A. Yes.

16

17 Q. HOW SHOULD THE RATE FOR THIS COMPENSATION BE
18 ESTABLISHED?

19 A. The rate for transit functions, like the rates for other elements of intercarrier
20 compensation, should be established in the context of a negotiated (or if
21 necessary, arbitrated) interconnection agreement.

22

1 Q. IS BELLSOUTH'S "TRANSIT TRAFFIC SERVICE" TARIFF THE RIGHT
2 WAY TO ESTABLISH THE RATES AND TERMS FOR INTERCARRIER
3 COMPENSATION?

4 A. No. BellSouth's tariff, as filed, not only removes the issue of this component
5 of intercarrier compensation from its proper place within an interconnection
6 agreement, it gives BellSouth a significant amount of negotiating leverage and
7 has the potential to distort the prices and terms of the transit function in future
8 interconnection agreements.

9

10 Q. MR. WATKINS ARGUES THAT BELLSOUTH – BY FILING ITS
11 "TRANSIT TRAFFIC TARIFF" – IS ATTEMPTING TO USE ITS UNIQUE
12 LEGACY NETWORK POSITION TO GAIN AN INAPPROPRIATE
13 ADVANTAGE WHEN NEGOTIATING WITH THE SMALL ILECS. DO
14 YOU AGREE?

15 A. Absolutely. Mr. Watkins states (p. 11) that the small ILECs are "concerned
16 that BellSouth intends to use its network position to exploit the competitive
17 marketplace, as it is attempting to do here with its proposed transit tariff
18 service tariff." I agree with Mr. Watkins' concern. BellSouth entered the
19 post-1996 competitive local market with a legacy "central network role" that
20 makes it uniquely positioned to provide the transit functions that make
21 indirect interconnection possible. Other carriers must and do rely on
22 BellSouth to provide the transit function in those situations in which direct

1 connection is not economic (typically due to the small volume of traffic being
2 exchanged) and in which no other transit provider is available.⁷

3 I also agree with Mr. Watkins' statement (p. 4) that "a tariff is not the
4 proper mechanism to establish terms, conditions and rates for BellSouth's
5 provision of transit service." Instead, an interconnection agreement is the
6 proper place for interconnection rates and terms. As the FCC has recently
7 concluded, "precedent suggests that the Commission intended for
8 compensation arrangements to be negotiated agreements and we find that
9 negotiated agreements between the carriers are more consistent with the pro-
10 competitive process and policies reflected in the 1996 Act. Accordingly, we
11 amend section 20.11 of the Commission's rules to prohibit LECs from
12 imposing compensation obligations for non-access traffic pursuant to tariff."⁸

13
14 Q. MR. MCCALLEN STATES (P. 7) THAT BELLSOUTH IS PROVIDING
15 TRANSIT SERVICE ONLY AS A "BUSINESS DECISION" AND (P. 17)
16 THAT BELLSOUTH IS NOT REQUIRED TO PROVIDE A TRANSIT
17 FUNCTION." DO YOU AGREE?

⁷ No evidence of the existence of any such alternative transit provider has been produced in this case. Even BellSouth has been careful not to make a claim that alternative providers are available to provide this function.

⁸ *Declaratory Ruling and Report and Order*, CC Docket No. 01-92, FCC 05-42, released February 24, 2005 ("*Declaratory Ruling*"), ¶14. While the rule changes referred to by the FCC apply specifically to the termination of traffic from CMRS carriers, the same fundamental principle is completely valid in the context of this case.

1 A. No. While Mr. McCallen makes these assertions, he does not provide any
2 basis for them. The fact that BellSouth is currently providing transit service
3 on what it calls a “voluntary” basis does not render this issue moot for two
4 reasons: (1) transit service is an interconnection service that BellSouth must
5 provide, and (2) BellSouth’s obligations under the 1996 Act determine the
6 way that this interconnection service must be priced.

7
8 Q. IN PREVIOUS PROCEEDINGS, BELLSOUTH HAS CITED TO THE
9 WIRELINE COMPETITION BUREAU’S *VIRGINIA ARBITRATION*
10 *ORDER*⁹ AND TO A SENTENCE IN ONE OF TWO THOUSAND, FOUR
11 HUNDRED, AND FORTY-SEVEN FOOTNOTES IN THE FCC’S
12 *TRIENNIAL REVIEW ORDER*.¹⁰ DO THE CITED PASSAGES SUPPORT A
13 CONCLUSION THAT BELLSOUTH IS NOT REQUIRED TO PROVIDE
14 TRANSIT SERVICE?

15 A. No. The *Virginia Arbitration Order* in no way supports a position that
16 BellSouth is not required to provide transit service. As an initial matter, the
17 Wireline Competition Bureau, hearing the case on delegated authority, did *not*
18 conclude that BellSouth had no obligation to provide transit service, but
19 simply noted (¶117) that “the Commission has not had occasion to determine

⁹ *Memorandum Opinion and Order*, CC Docket 00-251, released July 17, 2002 (“*Virginia Arbitration Order*”).

¹⁰ *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36, released August 21, 2003 (“*Triennial Review Order*”).

1 whether incumbent LECs have a duty to provide transit service under
2 [§251(c)(2)]” and declined to determine on delegated authority that an ILEC
3 has “a section 251(c)(2) duty to provide transit service at TELRIC rates.” In
4 other words, the FCC has not concluded that BellSouth is *not* required to
5 provide transit at TELRIC rates, it simply hasn’t yet issued language that gave
6 the Wireline Competition Bureau sufficient comfort to conclude that it has
7 done so (or at least it hadn’t prior to July 2002).

8 Equally importantly, the *Virginia Arbitration Order* in no way
9 suggests that an ILEC has no §251(a)(1) to provide transit at cost-based rates.
10 At best, the *Virginia Arbitration Order* indicates that the FCC had not, as of
11 July 2002, required that an ILEC’s cost-based rates for transit functions be
12 consistent with the TELRIC methodology.¹¹

13 BellSouth has historically failed to cite the next paragraph of the
14 *Virginia Arbitration Order* that *rejects* a Verizon proposal that would have
15 allowed it to discontinue providing transit service in some circumstances. The
16 Wireline Competition Bureau concluded (¶118) that

17 Verizon’s proposal, which gives it unilateral authority
18 to cease providing transit services to WorldCom,
19 creates too great a risk that WorldCom’s end users
20 might be rendered unable to communicate through the
21 public switched network. The Commission has held, in
22 another context, that a ‘fundamental purpose’ of section
23 251 is to ‘promote the interconnection of all

¹¹ Footnote 1640 to the *Triennial Review Order* similarly states that “to date” [in that case August 2003] the FCC has not required transit to be provided and priced as a UNE.

1 telecommunications networks by ensuring that
2 incumbent LECs are not the only carriers that are able
3 to connect efficiently with other carriers ... such a
4 result would put new entrants at a severe competitive
5 disadvantage in Virginia, and would under mine the
6 interest of all end users in connectivity to the public
7 switched network.
8

9 Transit services are no less important to the fundamental purposes of
10 §251 in Florida than they are in Virginia.

11

12 Q. HAS THE FCC ISSUED A MORE RECENT DECISION IN WHICH A
13 CONCLUSION THAT ILECS – AT LEAST AS A POLICY MATTER –
14 SHOULD BE REQUIRED TO PROVIDE TRANSIT FUNCTIONS?

15 A. Yes. After receiving comments on the issue, the FCC concluded in March
16 2005 that:

17 The record suggests that the availability of transit
18 service is increasingly critical to establishing indirect
19 interconnection – a form of interconnection explicitly
20 recognized and supported by the Act (*See* 47 U.S.C §
21 251(a)(1)). It is evident that competitive LECs, CMRS
22 carriers, and rural LECs often rely upon transit service
23 from the incumbent LECs to facilitate indirect
24 interconnection with each other. Without the continued
25 availability of transit service, carriers that are indirectly
26 interconnected may have no efficient means by which
27 to route traffic between their respective networks ...
28 Moreover, it appears that indirect interconnection via a
29 transit service provider is an efficient way to
30 interconnect when carriers do not exchange significant
31 amounts of traffic.¹²

¹² 2005 FNPRM, ¶¶ 125-126.

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Having made the public policy determination, the FCC is now taking comment on its legal authority to require transit obligations pursuant to §251(a)(1) and §251(c)(2)(B).

Q. HAVE OTHER STATE REGULATORS REACHED THE CONCLUSION THAT ILECS ARE OBLIGATED TO PROVIDE TRANSIT FUNCTIONS?

A. Yes. For example, the North Carolina Utilities Commission, in its role as arbitrator, recently concluded – as it had done previously – that not only must BellSouth provide transit functionality at cost-based rates, it must do so at TELRIC rates.¹³ The Commissioner arbitrators noted that “BellSouth initially contended that it was not required to provide a transit traffic function because it is not a section 251 obligation under the Act,” but that “witness Blake modified her position concerning BellSouth’s section 251 obligations by agreeing that BellSouth had an obligation to provide a tandem transit function based upon the FCC’s Virginia arbitration orders and the Commission’s [NCUC’s] September 22, 2003 Order in Docket No. P-19, Sub 454 that found ILECs have an obligation to provide transit service.” The arbitrators also noted the position of the Public Staff that “there appears to be no dispute that BellSouth is obligated to provide transit service. Witness Blake

¹³ *Recommended Arbitration Order*, North Carolina Utilities Commission Docket Nos. P-772, Sub 8; P-913, Sub 5; P-989, Sub 3; P-824, Sub 6; P-1202, Sub4; July 26, 2005, pp. 52-54.

1 acknowledged that the Commission has previously found ILECs have an
2 obligation to provide transit service and that the FCC has found the tandem
3 transit function is a section 251 obligation ... Although BellSouth has
4 conceded that the tandem transit function is a section 251 obligation, it is
5 unclear why BellSouth still maintains that this function is not subject to the
6 pricing requirements set forth in section 252.” The arbitrators then reached
7 the conclusion that “the transit function is a section 251 obligation, and
8 BellSouth must charge TELRIC rates for it.”

9 The Public Utility Commission of Texas also has recently affirmed its
10 prior decisions “that SBC Texas shall provide transit services at TELRIC
11 rates,” and noted that “there has been no change in law or FCC policy to
12 warrant a departure from prior Commission decisions on transit service.
13 Further more, a federal court found that a state commission may require an
14 ILEC to provide transiting to CLECs under state law (*Michigan Bell Te. Co. v.*
15 *Chapelle*, 222 F. Supp. 2d 905, 918 (E.D. Mich. 2002)).” The PUCT based its
16 decision on an observation that transit services are necessary for carriers to
17 efficiently interconnect: “given SBC Texas’ ubiquitous network in Texas and
18 the evidence regarding absence of alternative competitive transit providers in
19 Texas, the Commission concludes that requiring SBC Texas to provide transit
20 services at cost-based rates will promote interconnection of all
21 telecommunications networks.” The PUCT also explicitly rejected an attempt
22 by the ILEC to remove transit issues from the §252 negotiation and arbitration

1 process: “the Commission finds that SBC Texas’ proposal to negotiate transit
2 services separately outside the scope of an FTA §251/252 negotiation may
3 result in cost-prohibitive rates for transit service.” BellSouth’s attempt to
4 remove transit issues from the §252 process by filing a tariff with inflated
5 rates will have the same effect of creating “cost-prohibitive rates for transit
6 service.”

7 The State Corporation Commission of Kansas recently reached a
8 similar decision.¹⁴ The Kansas Commission affirmed the decision of the
9 arbitrators that transit issues are properly addressed in an interconnection
10 agreement and are subject to §252 arbitration, even though the ILEC (SWBT)
11 had argued that they are not. The Kansas Commission reached its decision in
12 part because of the previous treatment of transit service: “transit traffic was
13 included in the parties’ existing ICA and SWBT has not cited any change in
14 law since that time to justify excluding these issues.” The Kansas
15 Commission acknowledged that the FCC is in the process of considering the
16 issue, but concluded that sound public policy required that it reach its
17 decision: “As stated in the award, the proper treatment of transit traffic is
18 before the FCC. Without the benefit of that decision, the Commission
19 concludes that it is necessary to ensure that all traffic is exchanged by
20 including these issues in the final ICA.” While treating transit issues within

¹⁴ *Order 11: Commission Order on Arbitrator’s Award*, State Corporation Commission of the State of Kansas, Docket No. 05-ABIT-507-ARB, July 21, 2005, pp. 15-16.

1 the scope of §252 negotiations and arbitrations will, according to the Kansas
2 Commission, “ensure that all traffic is exchanged,” BellSouth’s “transit traffic
3 tariff” would have the opposite effect: it has the potential to significantly
4 disrupt the way that traffic is exchanged and compensated.

5

6 Q. MR. MCCALLEN SUGGESTS THAT BELLSOUTH’S TARIFFED RATE
7 FOR “TRANSIT TRAFFIC SERVICE” IS REASONABLE. DO YOU
8 AGREE?

9 A. No. The only basis for BellSouth’s rates provided by Mr. McCallen is that
10 “BellSouth’s tariffed transit rate is comparable to rates in recently negotiated
11 agreements between BellSouth and CLECs and between BellSouth and
12 CMRS carriers for transit services.” As support for this statement, Mr.
13 McCallen has produced Exhibits KRM-2 and KRM-3 that he claims are
14 “listings of such agreements and associated transit rates in effect in Florida.”

15 There are several problems with this “basis” for BellSouth’s tariffed
16 rate. First and foremost, BellSouth has produced no cost support at all for the
17 proposed rate (and as explained above, has previously stated that none exists).
18 Whether or not transit functions are subject to the TELRIC pricing
19 requirements of §252, as interconnection elements they still must be cost-
20 based. For this reason, Mr. McCallen’s exhibits, even if accurate, are simply
21 irrelevant.

22 Second, Mr. McCallen’s exhibits are not accurate because they are

1 under-inclusive. Although he describes them as a “listing,” Exhibit KRM-2 is
2 incomplete. For example, AT&T – whose current interconnection agreement
3 with BellSouth reflects a transit rate of only \$0.0005767 per MOU¹⁵
4 (significantly less than the tariffed rate of \$0.003) – does not appear in Exhibit
5 KRM-2. Other carriers may also be missing.

6 Third, Mr. McCallen’s exhibits are not accurate because at least some
7 of the information contained in Exhibit KRM-2 is just plain wrong. For
8 example, on page 2 of Exhibit KRM-2 he lists Comcast Phone, LLC
9 (“Comcast”) as having an effective transit rate of \$0.0025 in their current
10 interconnection agreement. This is incorrect. Attached as Exhibit DJW-2 is a
11 copy of page 170 of Comcast’s currently-effective interconnection agreement
12 with BellSouth (on file with the Commission). As this page shows, the parties
13 have agreed that a “bill and keep” arrangement (indicated by the “bk” notation
14 in this table) will apply for many of the interconnection elements. The
15 effective transit rate due to BellSouth from Comcast is not \$0.0025 as Mr.
16 McCallen’s Exhibit KRM-2 indicates, but is instead only \$0.0015 (the amount
17 of the “Tandem Intermediary Charge”) – one-half of BellSouth’s tariffed rate.

18 Fourth, while some of the rates listed in Exhibits KRM-2 and KRM-3
19 are equal to or above BellSouth’s tariffed rate of \$0.003, many are lower.

20 Even if it were complete and accurate, it is not clear that this listing would

¹⁵ See Petition and Complaint of AT&T Communications of the Southern States, LLC, filed February 17, 2005.

1 provide support for BellSouth's tariffed rate, and it certainly would not
2 replace the need for the cost study necessary to demonstrate that the rate is
3 cost-based.

4

5 Q. WHAT WEIGHT SHOULD THE COMMISSION PLACE ON EXHIBITS
6 KRM-2 AND KRM-3?

7 A. Very little. Rates in existing interconnection agreements, even if accurately
8 and completely listed, do not necessarily indicate what the level of a cost-
9 based rate should be.

10 One possible legitimate use of Exhibits KRM-2 and KRM-3 is for the
11 Commission to note that for a large number of carriers in Florida, the rates
12 and terms for transit functions exist exactly where they should – in
13 interconnection agreements.

14

15 Q. THROUGHOUT HIS TESTIMONY, MR. MCCALLEN SEEKS TO
16 MINIMIZE THE IMPACT OF BELLSOUTH'S TARIFF BY POINTING
17 OUT THAT ITS RATE WILL APPLY ONLY TO CARRIERS WHO DO
18 NOT HAVE A CONTRACT WITH BELLSOUTH THAT ADDRESSES
19 TRANSIT SERVICE. DOES THIS PROVISION TRULY MINIMIZE THE
20 TARIFF'S POTENTIAL IMPACT?

21 A. No. Mr. McCallen states (p. 7) that "the tariff *allows* TSPs that have not
22 negotiated contractual arrangements with BellSouth and that choose to send

1 their originated traffic over BellSouth's network to do so at the tariffed rate"
2 (emphasis added). This is not quite accurate; in reality, Section A16.1.2(A)
3 states that these charges "shall apply" in the absence of an interconnection
4 agreement. A more accurate characterization would be that "the tariff
5 *requires* TSPs that have not negotiated contractual arrangements with
6 BellSouth and that choose to send their originated traffic over BellSouth's
7 network to do so at the tariffed rate."

8 This distinction is significant. If a tariffed rate applies only if a carrier
9 *chooses* to have that rate apply rather than enter into an interconnection
10 agreement with BellSouth, then the tariff could be characterized as an option
11 that could be used to make the interconnection and intercarrier compensation
12 process more efficient.¹⁶ *But this is not what BellSouth has created:* the rate
13 in BellSouth's transit tariff "shall apply" in the absence of an interconnection
14 agreement. As a result, the tariff is not an option for carriers that can be
15 exercised to increase the efficiency of the interconnection process, it is better
16 characterized as a "big stick" that BellSouth can wield during the negotiation
17 process. Having a tariff in place that "shall apply" if no agreement is reached
18 means that BellSouth has significant leverage to dictate terms, and in no case
19 would it have an incentive to agree in an interconnection agreement
20 negotiation to a rate that is less than what it knows it can charge via the tariff

¹⁶ BellSouth should still be required to demonstrate that the rate in such a truly optional tariff is cost-based.

1 if no agreement is reached. The undisputed fact that the rate in BellSouth's
2 "shall apply" tariff is well above cost makes BellSouth's big stick even
3 bigger. *The implementation of BellSouth's "shall apply" tariff with a rate*
4 *that is above cost would mean that – unless BellSouth is just feeling charitable*
5 *that day – no future interconnection agreement can be negotiated with a cost-*
6 *based rate for transit service.* With the FCC having concluded that "the
7 availability of transit service is increasingly critical to establishing indirect
8 interconnection – a form of interconnection explicitly recognized and
9 supported by the Act" and now considering its legal authority to make transit
10 a §252 functionality, BellSouth's tariff certainly appears to be an attempted
11 end-run around the FCC.

12
13 Q. DOES BELLSOUTH CLAIM THAT ALTERNATIVES TO ITS "TRANSIT
14 TRAFFIC SERVICE" EXIST SO THAT ITS TARIFFED RATE – IF
15 EXCESSIVE – COULD BE AVOIDED?

16 A. No. Mr. McCallen appears to have been very careful in his language on this
17 point to avoid actually making a claim that such alternatives exist. He
18 suggests (p. 8) that the small ILECs could avoid BellSouth's tariffed transit
19 rate "by entering into contractual service arrangements for transit service with
20 BellSouth or *possibly* with any other TSPs that *may* offer transit service"
21 (emphasis added). While there is no evidence that carriers have the option of
22 avoiding BellSouth's tariffed rate by utilizing another provider of transit

1 services, the first half of Mr. McCallen's statement is correct: the small ILECs
2 could avoid the tariffed rate if they enter into an interconnection agreement (or
3 some other "contractual service arrangement") with BellSouth; in fact, this is
4 how such rates should be established and the process by which BellSouth
5 should seek compensation for the transit functions that it performs for the
6 small ILECs. If this route is followed, the current dispute between certain
7 carriers can be resolved by involving (and impacting) only those carriers. In
8 direct contrast, BellSouth's tariff creates problems that extend well beyond the
9 dispute between itself and the small ILECs, and represents the wrong way to
10 settle a dispute regarding payment for transit service.

11

12 **The Dispute Regarding the Small ILECs' §251 Obligations**

13 Q. WHEN DID THE DISPUTE BETWEEN BELLSOUTH AND THE SMALL
14 ILECS ORIGINATE?

15 A. Mr. McCallen indicates (pp. 2-3) that BellSouth "initiated communications
16 and discussions about transit traffic" with some of the small ILECs in
17 December 2004 and that an "active effort" to resolve the dispute continued
18 until April 2005 (with some discussions still ongoing)."

19

20 Q. WHAT IS BELLSOUTH SEEKING FROM THE SMALL ILECS?

21 A. According to Mr. McCallen (p. 5), BellSouth is seeking "compensation for the
22 use of its network." He asserts (p. 11) that such compensation should be

1 consistent with an “originating party pays” concept and that small ILECs,
2 “just like” other telecommunications carriers, “should be responsive for
3 paying for the services they use.”

4

5 Q. IS BELLSOUTH’S REQUEST TO RECEIVE SOME LEVEL OF
6 COMPENSATION FROM THE SMALL ILECS FOR PERFORMING A
7 TRANSIT FUNCTION REASONABLE?

8 A. Yes. While I *do not* agree that the tariffed rate of \$0.003 per MOU is
9 reasonable or that BellSouth’s tariff is the appropriate mechanism for such a
10 rate to be established or assessed, I do agree with Mr. McCallen that (1)
11 BellSouth should be compensated for the use of its network, (2) such
12 compensation should come from the carrier that originates a call that
13 “transits” BellSouth’s network, and (3) small ILECs should not be exempt
14 from paying for services received from other carriers.

15

16 Q. JOINT PETITIONER WITNESS WATKINS ARGUES THAT THE SMALL
17 ILECS HAVE NO OBLIGATION TO INTERCONNECT WITH OTHER
18 CARRIERS UNLESS THOSE CARRIERS ESTABLISH A POINT OF
19 INTERCONNECTION ON THE SMALL ILEC’S NETWORK. ARE YOU
20 AWARE OF ANY BASIS FOR SUCH AN ASSERTION?

21 A. No. Mr. Watkins makes various claims regarding the small ILECs’
22 interconnection obligations in his testimony. For example, he argues (p. 4)

1 that “the Commission should conclude that the small LECs have no obligation
2 to pay for transit service traffic for delivery of local traffic to points beyond
3 any technically feasible interconnection point on their incumbent LEC
4 networks.” Unfortunately, Mr. Watkins provide no citations to any authority
5 that would support his counter-intuitive and (at least in my experience) novel
6 claims.

7 Like Mr. Watkins I am not an attorney, but I do have some familiarity
8 with the language of the 1996 Act and an understanding of how that language
9 has been applied by the FCC, state regulators, and the courts. §251(a)(1)
10 creates a duty for all telecommunications carriers “to interconnect *directly or*
11 *indirectly* with the facilities and equipment of other telecommunications
12 carriers” (emphasis added). Any claim by Mr. Watkins that other carriers
13 must establish a form of direct connection with the small ILECs appears to be
14 directly at odds with the “directly or indirectly” phrase, and any suggestion
15 that the small ILECs have engaged in such interconnection only on a
16 “voluntary” basis certainly appears to be at odds with the phrase “every
17 telecommunications carrier has the duty.”

18 As incumbent local exchange carriers, and subject only to the
19 exemptions contained in §§251(f)(1) and (2), the small ILECs have additional
20 duties pursuant to §251(c), including a duty to “provide, for the facilities and
21 equipment of any requesting telecommunications carrier, interconnection with
22 the local exchange carrier’s network at any technically feasible point within

1 the carrier's network" (§251(c)(2)(B)). In other words, the small ILECs have a
2 duty to provide for interconnection "at any technically feasible point" on their
3 network *if* such a request is made by another telecommunications carrier. Mr.
4 Watkins is trying to turn this ILEC duty around 180 degrees to create a
5 requirement for the interconnecting carrier to come to the small ILEC and
6 interconnect at the point of the small ILEC's choosing. He complains (p. 14)
7 that BellSouth – by providing a transit function – has allowed CLECs and
8 CMRS carriers "to exchange traffic with the small LECs without establishing
9 an interconnection point at a technically feasible point on the incumbent
10 networks of the small LECs as required under the Act." It is again
11 unfortunate that Mr. Watkins has provided no citation to the Act that might
12 support his claim. It is clear that §251 does not do what Mr. Watkins claims;
13 while it creates a duty for ILECs to accept interconnection – upon request – at
14 any technically feasible point, it in no way creates an obligation for all carriers
15 who have a need to interconnect with the ILEC to do so directly rather than
16 indirectly.

17 Again without providing any citations to support his claims, Mr.
18 Watkins argues (p. 8): "In lieu of establishing their own EAS facility
19 arrangements with the small LECs at the typical border location, the CLECs
20 simply chose to utilize the services of BellSouth to have their EAS traffic
21 switched and trunked in tandem." What Mr. Watkins neglects to explain or
22 support is why such arrangements might be illegal, improper, inefficient, or

1 even bad public policy. There is of course no requirement for all carriers to
2 directly interconnect with all other carriers (including but not limited to the
3 small ILECs), nor would such universal “direct interconnection” be efficient
4 or desirable. His reference to direct interconnection as “typical” is
5 demonstrably false: far more carriers are indirectly connected than are directly
6 connected.

7 In direct contrast to Mr. Watkins’ uncited (and nonexistent)
8 requirement that all carriers must come forth and directly interconnect with
9 the small ILECs, the FCC has recently concluded that indirect interconnection
10 accomplished through the use of transit service is “a form of interconnection
11 explicitly recognized and supported by the Act,” that such interconnection
12 may represent the only “efficient means by which to route traffic” between
13 carrier networks, particularly “when carriers do not exchange significant
14 amounts of traffic.”^{17 18}

15
16 Q. MR. WATKINS ARGUES (P. 11) THAT BELLSOUTH SHOULD NOT
17 HAVE THE RIGHT TO DICTATE THE SMALL ILECS’ NETWORK

¹⁷ 2005 FNPRM, ¶¶125-126.

¹⁸ On January 12, 2006, the Tennessee Regulatory Authority (“TRA”) issued an *Order of Arbitration Award* in Docket No. 03-00585, in which Mr. Watkins presented virtually identical arguments on behalf of the small ILECs. In its order, the TRA rejects Mr. Watkins’ arguments and concludes that small ILECs do indeed have §251 interconnection and compensation obligations consistent with those that I describe in my testimony.

1 ARRANGEMENTS. DO YOU AGREE?

2 A. Yes, but Mr. Watkins' testimony is inconsistent on this point. He states (p.11)
3 that "one carrier should not be allowed to thwart another carrier's network and
4 service options. BellSouth has no more right to dictate the small LECs end
5 office/tandem subtending arrangements than the small LECs have such right
6 to dictate such network decisions to BellSouth." With no acknowledgment of
7 the inherent irony, he goes on (p. 14) to assert that the small ILECs are now
8 being disadvantaged because "the CLECs and CMRS providers have not
9 established interconnection points with the small LECs at a point on the
10 network of the small LECs" – something, of course, that the CLECs and
11 CMRS providers are not required to do – and "the small LECs have no
12 apparent way to force the CLECs and CMRS providers to do so." Apparently
13 Mr. Watkins' "no right to dictate" rule does not apply universally; according
14 to Mr. Watkins' the only thing that is keeping the small ILECs from "forcing"
15 other carriers to conform to a network design of the small ILEC's choosing is
16 that lack of an apparent way for the small ILEC to do so. In reality, Mr.
17 Watkins' "one carrier should not be allowed to thwart another carrier's
18 network and service options" dictum is consistent with the requirements of the
19 Act, while his assertion that all carriers have an obligation to establish, at their
20 expense, a direct connection with the small ILECs is not.

21

22 Q. MR. WATKINS ARGUES THAT OTHER TELECOMMUNICATIONS

1 CARRIERS SHOULD COMPENSATE BELLSOUTH FOR PROVIDING
2 TRANSIT FUNCTIONS BECAUSE THOSE OTHER CARRIERS ARE
3 THE BENEFICIARIES OF THE INDIRECT INTERCONNECTION WITH
4 THE SMALL ILECS. IS HE RIGHT?

5 A. No. Throughout his testimony he claims that “CLECs and CMRS providers
6 have been the direct beneficiaries” of the indirect interconnection
7 arrangements, and that “by virtue of the convenient and beneficial transit
8 arrangement,” CLECs and CMRS providers have been allowed, in a
9 presumably efficient fashion, to engage in what Mr. Watkins apparently
10 believes is the highly questionable activity of “transmitting to, and receiving
11 traffic from, other carriers (such as the small LECs).”

12 There are two primary problems with Mr. Watkins’ view. First, the
13 “convenient and beneficial transit arrangement” that permits indirect
14 connection among carriers that he derides is in reality “a form of
15 interconnection explicitly recognized and supported by the Act,” that may
16 represent the only “efficient means by which to route traffic” between carrier
17 networks. There is nothing at all pernicious about an efficient means of
18 exchanging traffic among carriers so that customers of all service providers
19 can make calls to the customers of all other service providers. Mr. Watkins
20 complains (p. 9) that BellSouth did not “involve the small LECs” when
21 negotiating interconnection agreements with other carriers, but of course
22 BellSouth is not required to do so. More importantly, the small ILECs’ duty

1 to interconnect was *not* created, as Mr. Watkins suggests, by the act of
2 BellSouth entering into an interconnection agreement with another carrier, but
3 instead was created the act of Congress that created §251.

4 Second, Mr. Watkins sees only half of the story in terms of the
5 benefits that are created by indirect interconnection. He consistently points
6 out that the indirect interconnection made possible when BellSouth acts as a
7 transit provider provides benefits to other carriers (and the customers of those
8 carriers), but he fails to recognize that these benefits are reciprocal. As Mr.
9 McCallen correctly points out (pp. 4-5): “the ability to place calls to the
10 networks of these additional TSPs is valuable to ICOs – it allows ICO end
11 users to place calls ubiquitously to friends, family members, and businesses
12 that have opted to use wireless phones or that have switched their telephone
13 service to a CLEC. It also allows the ICO to avoid the expense of building
14 facilities to interconnect directly with each of these TSPs. *The transit service*
15 *functionalities and value to an ICO as an originating TSP are inherently the*
16 *same as those for CLEC and CMRS originated traffic” (emphasis added). Mr.*
17 *Watkins’ characterization of indirect interconnection as an arrangement*
18 *beneficial to other carriers and their customers is only half right: the small*
19 *ILECs and their customers equally benefit.*

20
21 Q. MR. WATKINS CLAIMS THAT A REQUIREMENT TO COMPENSATE
22 BELLSOUTH FOR THE USE OF ITS NETWORK WILL CAUSE SMALL

1 ILECS TO INCUR ADDITIONAL COSTS. IS HE RIGHT?

2 A. No. Mr. Watkins refers throughout his testimony to what he calls (p. 11)
3 “new and extraordinary costs foisted upon the small LECs and their
4 customers.” In reality, for as long as small ILEC customers have originated
5 local calls that terminated on the network of another carrier via a BellSouth
6 tandem, the small ILECs have *caused* the costs at issue to occur. It is my
7 understanding that for some period of time the cost-causers (the small ILECs)
8 did not contribute to the recovery of those costs. What is new in this dispute
9 is not the cost, but the intercarrier compensation that would permit its
10 recovery.

11 Mr. Watkins goes on (p. 8) to point out that BellSouth now “wants to
12 charge the small LECs for the transiting service” that it has been providing
13 them, and argues that “this new treatment by BellSouth will impose a new
14 cost to be imposed on the small LECs that the small LECs and the
15 Commission never contemplated when the CLECs and CMRS providers
16 established their arrangements with BellSouth.” Given the requirements of
17 the 1996 Act, it is difficult to imagine how the small ILECs could have “never
18 contemplated” that they would be required to interconnect, exchange traffic,
19 and compensate other carriers when doing so. To the extent that any “new
20 cost” was “imposed” on the small LECs, it happened when the 1996 Act went
21 into effect, not when other carriers entered into interconnection agreements
22 with BellSouth.

1 Mr. Watkins' characterization (pp. 14-15) of the small ILECs as
2 victims with "no options" gets premised on an example that is factually
3 backward. He states that "for traffic originating from a CLEC or from a
4 CMRS provider that is destined to a small LEC end user, the small LEC has
5 no real choice now but to accept the tandem-switched, commingled delivery
6 of this traffic by BellSouth." This is wrong for two reasons. First, the small
7 ILECs certainly *do* have a choice: they can take the initiative to establish a
8 direct connection with the CLEC or CMRS carrier rather than sitting back and
9 demanding that the other carrier come to them. Second, in the example Mr.
10 Watkins uses (presumably to make it appear that it is customers of other
11 carriers that are creating a "new and extraordinary cost"), the small ILECs are
12 the terminating, not the originating carrier. It would be the CLEC or CMRS
13 provider in Mr. Watkins' example that would be required to compensate
14 BellSouth for performing a transit function, *not* the small ILEC. In fact, if the
15 small ILEC has availed itself of its ability pursuant to 47 CFR §20.11(f) to
16 request an interconnection agreement and "invoke the negotiation and
17 arbitration procedures contained section 252 of the Act" *it will be the carrier*
18 *that is receiving compensation* for completing the call.

19

20 Q. DOES MR. WATKINS' TESTIMONY PROVIDE THE COMMISSION
21 WITH ANY VALID REASON TO CHANGE THE "ORIGINATING
22 CARRIER PAYS" REGIME CURRENTLY IN PLACE IN THE

1 INDUSTRY?

2 A. No. 47 CFR 51.703(b) directly and clearly states that “a LEC may not assess
3 charges on any other telecommunications carrier for telecommunications
4 traffic that originates on the LEC's network.” Mr. Watkins has provided no
5 basis, in law or public policy, for a conclusion that this rule should simply be
6 ignored.

7

8 **Response to the List of Tentative Issues**

9 Q. IS BELLSOUTH'S TRANSIT SERVICE TARIFF AN APPROPRIATE
10 MECHANISM TO ADDRESS TRANSIT SERVICE PROVIDED BY
11 BELLSOUTH (ISSUE 1)?

12 A. No. BellSouth should pursue compensation for transit service through the
13 negotiation (and if necessary, arbitration) of an interconnection agreement.

14

15 Q. IF AN ORIGINATING CARRIER UTILIZES THE SERVICES OF
16 BELLSOUTH AS A TANDEM PROVIDER TO SWITCH AND
17 TRANSPORT TRAFFIC TO A THIRD PARTY NOT AFFILIATED WITH
18 BELLSOUTH, WHAT ARE THE RESPONSIBILITIES OF THE
19 ORIGINATING CARRIER (ISSUE 2)?

20 A. The responsibilities of the originating carrier, if a request is made by
21 BellSouth, are to (1) negotiate in good faith with BellSouth to develop an
22 interconnection agreement that sets forth the rates and terms for the transit

1 functions performed by BellSouth, and (2) to compensate BellSouth, pursuant
2 to a negotiated or arbitrated cost-based rate, for providing this function.

3

4 Q. WHICH CARRIER SHOULD BE RESPONSIBLE FOR PROVIDING
5 COMPENSATION TO BELLSOUTH FOR THE PROVISION OF THE
6 TRANSIT TRANSPORT AND SWITCHING SERVICES (ISSUE 3)?

7 A. The originating carrier is responsible for compensating the transit provider.

8

9 Q. WHAT IS BELLSOUTH'S NETWORK ARRANGEMENT FOR TRANSIT
10 TRAFFIC AND HOW IS IT TYPICALLY ROUTED FROM AN
11 ORIGINATING PARTY TO A TERMINATING THIRD PARTY (ISSUE
12 4)?

13 A. FCTA believes that BellSouth is in the best position to provide information
14 regarding its network arrangements.

15

16 Q. SHOULD THE FPSC ESTABLISH THE TERMS AND CONDITIONS
17 THAT GOVERN THE RELATIONSHIP BETWEEN AN ORIGINATING
18 CARRIER AND THE TERMINATING CARRIER, WHERE BELLSOUTH
19 IS PROVIDING TRANSIT SERVICE AND THE ORIGINATING
20 CARRIER IS NOT INTERCONNECTED WITH, AND HAS NO
21 INTERCONNECTION AGREEMENT WITH, THE TERMINATING
22 CARRIER? IF SO, WHAT ARE THE APPROPRIATE TERMS AND

1 CONDITIONS THAT SHOULD BE ESTABLISHED (ISSUE 5)?

2 A. No. The terms and conditions that govern interconnection and intercarrier
3 compensation should be negotiated by the carriers. It is not necessary for an
4 originating carrier to have an interconnection agreement with the terminating
5 carrier in order for the originating carrier to properly compensate BellSouth.
6 If the terminating carrier elects to pursue compensation for this traffic, it
7 should initiate negotiations with the originating carrier for the development of
8 an interconnection agreement.

9

10 Q. SHOULD THE FPSC DETERMINE WHETHER AND AT WHAT
11 TRAFFIC THRESHOLD LEVEL AN ORIGINATING CARRIER SHOULD
12 BE REQUIRED TO FOREGO USE OF BELLSOUTH'S TRANSIT
13 SERVICE AND OBTAIN DIRECT INTERCONNECTION WITH A
14 TERMINATING CARRIER? IF SO, AT WHAT TRAFFIC LEVEL
15 SHOULD AN ORIGINATING CARRIER BE REQUIRED TO OBTAIN
16 DIRECT INTERCONNECTION WITH A TERMINATING CARRIER
17 (ISSUE 6)?

18 A. No. Carrier should be permitted to determine how best to efficiently
19 interconnect their networks.

20

21 Q. HOW SHOULD TRANSIT TRAFFIC BE DELIVERED TO THE SMALL
22 LEC'S NETWORKS (ISSUE 7)?

1 A. FCTA has no position on this issue, but is not aware of any reasons why the
2 existing trunking arrangements cannot be used.

3

4 Q. SHOULD THE FPSC ESTABLISH THE TERMS AND CONDITIONS
5 THAT GOVERN THE RELATIONSHIP BETWEEN BELLSOUTH AND A
6 TERMINATING CARRIER, WHERE BELLSOUTH IS PROVIDING
7 TRANSIT SERVICE AND THE ORIGINATING CARRIER IS NOT
8 INTERCONNECTED WITH, AND HAS NO INTERCONNECTION
9 AGREEMENT WITH, THE TERMINATING CARRIER? IF SO, WHAT
10 ARE THE APPROPRIATE TERMS AND CONDITIONS THAT SHOULD
11 BE ESTABLISHED (ISSUE 8)?

12 A. No. The terms and conditions that govern interconnection and intercarrier
13 compensation should be negotiated by the carriers. It is not necessary for an
14 originating carrier to have an interconnection agreement with the terminating
15 carrier in order for the originating carrier to properly compensate BellSouth.

16

17 Q. SHOULD THE FPSC ESTABLISH THE TERMS AND CONDITIONS OF
18 TRANSIT TRAFFIC BETWEEN THE TRANSIT SERVICE PROVIDER
19 AND THE SMALL LECS THAT ORIGINATE AND TERMINATE
20 TRANSIT TRAFFIC? IF SO, WHAT ARE THE TERMS AND
21 CONDITIONS (ISSUE 9)?

22 A. No. These terms and conditions should be negotiated by the carriers. The

1 Commission's involvement should be limited to those occasions in which the
2 parties are unable to reach an agreement and have submitted the dispute to the
3 Commission for arbitration.

4

5 Q. WHAT EFFECT DOES TRANSIT SERVICE HAVE ON ISP BOUND
6 TRAFFIC (issue 10)?

7 A. FCTA has no position on this issue.

8

9 Q. HOW SHOULD CHARGES FOR BELLSOUTH'S TRANSIT SERVICE BE
10 DETERMINED (ISSUE 11)?

11 (a) WHAT IS THE APPROPRIATE RATE FOR TRANSIT
12 SERVICE?

13 (b) WHAT TYPE OF TRAFFIC DO THE RATES IDENTIFIED IN
14 (A) APPLY?
15

16 A. The appropriate rate for transit service is the rate negotiated by the parties to
17 an interconnection agreement. If no agreement is reached and the issue is
18 submitted for arbitration, the appropriate rate is a cost-based rate as
19 determined by the Commission. This rate would apply whenever a carrier that
20 is not the originating or terminating carrier delivers a local call to the
21 terminating carrier so that the call can be completed.

22

23 Q. CONSISTENT WITH ORDER NOS. PSC-05-0517-PAA-TP AND PSC-05-
24 0623-CO-TP, HAVE THE PARTIES TO THIS DOCKET ("PARTIES")

1 PAID BELLSOUTH FOR TRANSIT SERVICE PROVIDED ON OR
2 AFTER FEBRUARY 11, 2005? IF NOT, WHAT AMOUNTS IF ANY ARE
3 OWED TO BELLSOUTH FOR TRANSIT SERVICE PROVIDED SINCE
4 FEBRUARY 11, 2005 (ISSUE 12)?

5 A. FCTA has no position on this issue.

6

7 Q. HAVE PARTIES PAID BELLSOUTH FOR TRANSIT SERVICE
8 PROVIDED BEFORE FEBRUARY 11, 2005? IF NOT, SHOULD THE
9 PARTIES PAY BELLSOUTH FOR TRANSIT SERVICE PROVIDED
10 BEFORE FEBRUARY 11, 2005, AND IF SO, WHAT AMOUNTS, IF ANY,
11 ARE OWED TO BELLSOUTH FOR TRANSIT SERVICE PROVIDED
12 BEFORE FEBRUARY 11, 2005 (ISSUE 13)?

13 A. FCTA has no position on this issue.

14

15 Q. WHAT ACTION, IF ANY, SHOULD THE FPSC UNDERTAKE AT THIS
16 TIME TO ALLOW THE SMALL LECS TO RECOVER THE COSTS
17 INCURRED OR ASSOCIATED WITH BELLSOUTH'S PROVISION OF
18 TRANSIT SERVICE (ISSUE 14)?

19 A. It is FCTA's position that any questions regarding the recovery of costs by the
20 small ILECs are separate and distinct from questions regarding the appropriate
21 method of compensation for transit services. Any action regarding small
22 ILEC cost recovery is properly addressed within the context of the

1 Commission's regulation of each individual ILEC.

2

3 Q. SHOULD BELLSOUTH ISSUE AN INVOICE FOR TRANSIT SERVICES
4 AND IF SO, IN WHAT DETAIL AND TO WHOM (ISSUE 15)?

5 A. BellSouth should seek payment from the originating carrier according to the
6 terms set forth in its interconnection agreement with that carrier.

7

8 Q. SHOULD BELLSOUTH PROVIDE TO THE TERMINATING CARRIER
9 SUFFICIENTLY DETAILED CALL RECORDS TO ACCURATELY BILL
10 THE ORIGINATING CARRIER FOR CALL TERMINATION? IF SO,
11 WHAT INFORMATION SHOULD BE PROVIDED BY BELLSOUTH
12 (ISSUE 16)?

13 A. Yes. The scope and form of this information should be pursuant to the
14 terminating carrier's interconnection agreement with BellSouth.

15

16 Q. HOW SHOULD BILLING DISPUTES CONCERNING TRANSIT
17 SERVICE BE ADDRESSED (ISSUE 17)?

18 A. Billing disputes for transit services, like other interconnection services, should
19 be handled according to the dispute resolution language in each carrier's
20 interconnection agreement with BellSouth.

21

22 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

1 A. Yes.

2