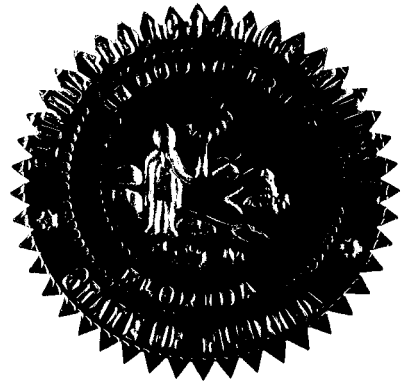


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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



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

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VOLUME 4

Pages 315 through 551

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER J. TERRY DEASON
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Thursday, March 30, 2006

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

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TIME: Commenced at 9:00 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Chief, Hearing Reporter Services Section
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

APPEARANCES: As heretofore noted.

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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 3.)

CHAIRMAN EDGAR: Good morning. We are back on the record.

Mr. Hoffman, your witness.

MR. HOFFMAN: Thank you, Madam Chairman. The Small LECs call Steven E. Watkins.

STEVEN E. WATKINS

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

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q Mr. Watkins, have you been sworn?

A Yes.

Q Would you please state your name and address?

A Steven E. Watkins, 2154 Wisconsin Avenue, N.W., Suite 290, Washington, D.C. 20007.

Q Mr. Watkins, by whom are you employed?

A I'm self-employed.

Q On whose behalf are you testifying in this proceeding?

A The Small LECs.

Q Have you prepared and caused to be filed 55 pages of Prefiled Direct Testimony in this proceeding?

A Yes.

1 Q Do you have any changes or corrections to your
2 Prefiled Direct Testimony?

3 A No.

4 Q If I asked you the questions contained in your
5 Prefiled Direct Testimony, would your answers be the same?

6 A Yes.

7 MR. HOFFMAN: Madam Chairman, I would ask that Mr.
8 Watkins' Prefiled Direct Testimony be inserted into the record
9 as though read.

10 CHAIRMAN EDGAR: Please show that Mr. Watkins'
11 prefiled testimony is to be inserted into the record as though
12 read.

13 MR. HOFFMAN: Madam Chairman, my notes also reflect
14 that the exhibit to his prefiled direct has been marked and
15 admitted as Exhibit 18.

16 CHAIRMAN EDGAR: Thank you.

17 BY MR. HOFFMAN:

18 Q Mr. Watkins, have you also prepared and caused to be
19 filed 19 pages of prefiled rebuttal testimony?

20 A Yes.

21 Q Do you have any changes or revisions to your prefiled
22 rebuttal?

23 A No.

24 Q If I asked you the questions contained in your
25 prefiled rebuttal testimony this morning, would your answers be

1 the same?

2 A Yes.

3 MR. HOFFMAN: Madam Chairman, I would ask that Mr.
4 Watkins' prefiled rebuttal testimony be inserted into the
5 record as though read.

6 CHAIRMAN EDGAR: Please show the prefiled rebuttal
7 testimony to be inserted into the record as though read.

8 MR. HOFFMAN: Thank you.

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1 **I. Introduction.**

2 **Q: Please state your name, business address and telephone number.**

3 A: My name is Steven E. Watkins. My business address is 2120 L Street, N.W.,
4 Suite 520, Washington, D.C., 20037. My business phone number is (202)
5 296-9054.

6 **Q: What is your current position?**

7 A: I am a self-employed consultant serving as Special Telecommunications
8 Management Consultant to the Washington, D.C. law firm of Kraskin,
9 Moorman & Cosson, LLC, which provides legal and consulting services to
10 telecommunications companies.

11 **Q: What are your duties and responsibilities in your Telecommunications**
12 **Management Consultant position?**

13 A: I provide telecommunications management consulting services and regulatory
14 assistance to smaller local exchange carriers ("LECs") and other smaller
15 firms providing telecommunications and related services in more rural areas.
16 My work involves assisting client LECs and related entities in their analysis
17 of regulatory requirements and industry matters requiring specialty expertise;
18 negotiating, arranging and administering connecting carrier arrangements;
19 and assisting clients in complying with the rules and regulations arising from
20 the passage of the Telecommunications Act of 1996 (the "Act"). Prior to my
21 association with the Kraskin, Moorman & Cosson client companies, I was the
22 senior policy analyst for the National Telephone Cooperative Association
23 ("NTCA"), a trade association whose membership consists of approximately

1 500 small and rural telephone companies. While with NTCA, I was
2 responsible for evaluating the then proposed Telecommunications Act, the
3 implementation of the Act by the Federal Communications Commission
4 ("FCC") and was largely involved in the association's efforts with respect to
5 the advocacy of provisions addressing the issues specifically related to rural
6 companies and their customers.

7 **Q: Have you prepared and attached further information regarding your**
8 **background and experience?**

9 A: Yes, this information is included in Exhibit ____ (SEW-1) following my
10 testimony.

11 **Q: On whose behalf are you submitting this Direct Testimony?**

12 A: I am submitting this Direct Testimony to the Florida Public Service
13 Commission ("Commission") on behalf of several small and rural incumbent
14 LECs, specifically TDS Telecom d/b/a TDS Telecom/Quincy Telephone;
15 Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT
16 Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; and
17 Frontier Communications of the South, LLC (collectively referred to as the
18 "Small LECs"). The Small LECs are all Rural Telephone Companies as that
19 term is defined in the Act.

20
21 **Q: What is the purpose of your Direct Testimony?**

22 A: The purpose of my Direct Testimony is to address the issues and public
23 policy implications of the tariff proposals filed with the Commission by

1 BellSouth Telecommunications, Inc. ("BellSouth") on January 27, 2005
2 which I will refer to as the "Transit Tariff".

3 **Q: Please summarize your testimony.**

4 A: I conclude in this testimony that:

5 (1) A tariff is not the proper mechanism to establish terms, conditions and
6 rates for BellSouth's provision of transit service.

7 (2) The terms and conditions of the Transit Tariff are inconsistent with the
8 actual obligations of the Small LECs.

9 (3) The Commission should conclude that the Small LECs have no obligation
10 to pay for transit service traffic for delivery of local traffic to points beyond
11 any technically feasible interconnection point on their incumbent LEC
12 networks just to accommodate a choice and request made by competitive
13 local exchange carriers ("CLECs") or Commercial Mobile Radio Service
14 ("CMRS") providers. It is the CLECs and CMRS providers that have chosen
15 to utilize an arrangement under which they are indirectly interconnected via
16 BellSouth's incumbent network. To the extent that the CLECs and CMRS
17 providers utilize BellSouth's transit arrangement provided outside of the
18 Small LECs' incumbent networks and beyond any interconnection
19 obligations of the Small LECs, then the CLECs and CMRS providers should
20 be responsible for payment to BellSouth for any transit charges that
21 BellSouth may desire to impose for the use of BellSouth's network.

22 (4) If the Commission determines that the Small LECs should somehow be
23 held responsible for transit services to accommodate the CLECs and CMRS

1 providers, then my testimony also addresses the proper rates, terms and
2 conditions that the Commission should establish for BellSouth's transit
3 service. My testimony also asks that a threshold mechanism be established
4 based on minutes of use over which such level the CLECs and CMRS
5 providers would be required to establish interconnection with the Small LECs
6 that no longer commingles traffic with BellSouth's and other carriers'
7 transited traffic.

8 **Q: How have you organized your Direct Testimony?**

9 A: I begin with some background information, basic principles, and a discussion
10 of the relationships associated with tandem switched transit traffic service
11 arrangements. I will then address, in numerical order, the Issues List attached
12 to the *Order Establishing Procedure* issued in this docket.

13
14 **II. Background.**

15
16 **Q: What is the genesis of tandem switched transit traffic?**

17 A: For a decade, CLECs and CMRS providers have requested, negotiated and
18 entered into interconnection agreements with BellSouth. Under the terms of
19 those bilateral agreements between BellSouth and a CLEC or between
20 BellSouth and a CMRS provider, BellSouth offered and has provided an
21 intermediary tandem switching and transport arrangement to the CLECs and
22 CMRS providers that allows the CLECs and CMRS providers to transmit to,
23 and to receive traffic from, other carriers (such as the Small LECs) with

1 which BellSouth already had some form of direct physical network trunking
2 arrangement in place. This arrangement has been expedient and convenient
3 for the CLECs and CMRS providers because they have avoided establishing
4 interconnection points with the Small LECs, and instead have relied on the
5 BellSouth designed intermediary arrangement. The CLECs and CMRS
6 providers have been the direct beneficiaries of these arrangements.

7 **Q: Has “transit traffic” been flowing between the CLECs and the Small**
8 **LECs and between the CMRS providers and the Small LECs?**

9 A: Yes. It is my understanding that BellSouth has offered and has provided the
10 capability to CLECs and CMRS providers to exchange traffic with the Small
11 LECs for as long as BellSouth has been establishing interconnection
12 agreements with those entities, if not before.

13 **Q: Can you provide some background as to the origin of this docket?**

14 A: Yes. My understanding is that BellSouth filed a tariff with the Commission
15 on November 30, 2004 proposing to establish rates, terms and conditions for
16 what BellSouth has defined as transit traffic service. In the initial filing,
17 BellSouth proposed a rate for transit traffic service of \$0.006 per minute of
18 use of local traffic and ISP-bound traffic originated by the Small LECs’ local
19 exchange service end users that would be switched and transported by
20 BellSouth for delivery to third party CLEC and CMRS providers’ networks.
21 On December 22, 2004, the Small LECs filed a Petition with the Commission
22 seeking suspension of BellSouth’s Transit Tariff and potential cancellation
23 pending the outcome of a regulatory examination of the tariff implications.

1 On January 14, 2005, BellSouth filed a letter withdrawing the tariff with the
2 stated intention of re-filing the proposal at a later date. BellSouth
3 subsequently re-filed the tariff on January 27, 2005 with a new per minute of
4 use rate for transit service of \$0.003.

5 **Q: Please provide the background and history of the Small LECs'**
6 **interconnection arrangements and relationships with BellSouth.**

7 A: Over the past decades, BellSouth and the Small LECs have established
8 service arrangements for the provision of intrastate toll and access services.
9 Furthermore, in more recent times, extended area service ("EAS") calling has
10 been established between the end users in some of the Small LECs' exchange
11 areas and end users in BellSouth's neighboring exchange areas. The
12 Commission and the industry embraced a policy that would provide
13 customers greater non-toll calling capability to allow "community of interest"
14 calls to their local governments, schools, doctors, etc. typically located in
15 adjacent service areas. As a result, EAS arrangements were established
16 between BellSouth and the Small LECs for local calling between specific
17 areas. This local service has been provisioned with trunking arrangements
18 whereby the Small LEC and BellSouth physically interconnect trunks at the
19 border between the Small LEC and BellSouth to use for the exchange of the
20 EAS calls. The implementation of these arrangements also resulted in some
21 minor increases in local service rates to recognize the loss of toll and access
22 revenues and the increase in costs to provision the new EAS service.

23

1 With the advent of competitive carriers, what were typical EAS calls from a
2 Small LEC to BellSouth may now also involve EAS calls from the Small
3 LEC to a customer of a CLEC that competes with BellSouth. In lieu of
4 establishing their own EAS facility arrangements with the Small LECs at the
5 typical border location, the CLECs simply chose to utilize the services of
6 BellSouth to have their EAS traffic switched and trunked in tandem,
7 commingled with other BellSouth traffic either over toll/access facilities or
8 over EAS trunks.

9 Now, after nearly a decade under this arrangement, BellSouth wants to charge
10 the Small LECs for the transiting service. This new treatment by BellSouth
11 will impose a new cost to be imposed on the Small LECs that the Small LECs
12 and the Commission never contemplated when the CLECs and CMRS
13 providers established their arrangements with BellSouth.

14 **Q: Has BellSouth ever imposed any charges on the Small LECs for the**
15 **tandem transit traffic service arrangement that BellSouth has with the**
16 **CLECs and CMRS providers?**

17 **A:** No. BellSouth's provision of this service to CLECs and CMRS providers did
18 not involve any charges to the Small LECs, and the Small LECs participation
19 has been according to terms under which they do not incur any additional
20 charges or extraordinary costs. It was not until recently, with BellSouth's
21 filing of pending tariff terms, that the issue of potential charges to the Small
22 LECs has arisen.

23

1 **Q: When BellSouth established interconnection with the CLECs and CMRS**
2 **providers, did BellSouth involve the Small LECs in the discussion of the**
3 **terms and conditions that would apply to transit traffic?**

4 A: No. It is my understanding that, even though the transit arrangement that
5 BellSouth offered to CLECs and CMRS providers necessarily involved
6 BellSouth's use of existing trunking arrangements that BellSouth had in place
7 with the Small LECs (*i.e.*, either existing access service arrangements and/or
8 EAS arrangements), BellSouth did not involve the Small LECs in the
9 establishment of the terms. The interconnection agreements that established
10 these terms with the CLECs and CMRS providers were bilateral agreements
11 between BellSouth and the CLEC or between BellSouth and the CMRS
12 provider.

13 The trunking arrangements that developed between the Small LEC networks
14 and BellSouth since the break-up of AT&T in the 1980s involve the
15 origination and termination of intraLATA toll traffic subject to the terms and
16 conditions of access tariffs. With the emergence of competitive carrier and
17 wireless traffic in more recent times, BellSouth offered and provided to third
18 party carriers, including CMRS providers and CLECs, the ability to deliver
19 to, and receive traffic from, the incumbent Small LECs over tandem-switched
20 trunking arrangements that BellSouth had originally established with the
21 Small LECs for intraLATA toll service purposes. It was BellSouth's
22 unilateral decision to utilize an interconnection arrangement authorized for
23 one purpose (*i.e.*, access or EAS) for an entirely different purpose (*i.e.*, a

1 transit arrangement). I would note that were it not for BellSouth's own
2 intrastate interexchange carrier services relationship with the Small LECs
3 (*i.e.*, BellSouth's use of access services of the Small LECs), BellSouth would
4 not have been able, in all cases, to offer and provide the transit service to
5 CLECs and CMRS providers.

6 **Q: Has any Small LEC provided BellSouth with the authority to negotiate,**
7 **on its behalf, the terms and conditions with third party CLECs or**
8 **CMRS providers?**

9 A: No.

10 **Q: Does this course of events concern the Small LECs?**

11 A: Yes. The fact that CLECs and CMRS providers utilize BellSouth's network
12 as the means to be interconnected indirectly with the Small LECs, together
13 with the terms of the BellSouth Transit Tariff, has the effect of forcing the
14 Small LECs to subsidize the CLEC and CMRS operations through the
15 payment of transit service charges to BellSouth for those CLECs' and CMRS
16 providers' use of the BellSouth network. BellSouth has allowed CLECs and
17 CMRS providers to interconnect at BellSouth's tandem without any
18 expectation of charges to the Small LECs. BellSouth now seeks to recover
19 these tandem switching and transport costs from the Small LECs under the
20 guise that the Small LECs have sought out and seek to "purchase" transit
21 traffic services from BellSouth or that the Small LECs are somehow willing
22 to accommodate the CLECs' or CMRS providers' desire for the Small LECs
23 to provision some disparate and "superior" network interconnection

1 arrangement. The result, of course, would be a new and extraordinary cost
2 foisted upon the Small LECs and their customers. There is no basis for
3 BellSouth, the CLECs, or the CMRS providers to expect or demand that the
4 Small LECs incur new and additional costs to accommodate the
5 BellSouth/CLEC/CMRS business arrangement and network design.

6 BellSouth occupies a substantial network position in Florida and other states.
7 The Small LECs are also concerned that BellSouth intends to use its network
8 position to exploit the competitive marketplace, as it is attempting to do here
9 with its proposed transit traffic service tariff. The effect of this course of
10 events is that BellSouth, CLECs and CMRS providers are attempting to
11 impose competitively unfair conditions and relationships on the Small LECs
12 without their consent and may intend to limit the alternatives for the Small
13 LECs other than the continued participation in the BellSouth tariff
14 arrangement.

15 For example, where a Small LEC has or wants to deploy its own tandem as
16 an alternative to the BellSouth tandem, the Small LEC's plans and ability to
17 deploy its own tandem can be effectively undermined where BellSouth
18 continues its tandem transit service without the agreement of the Small LEC.
19 This is troubling in a competitive world because one carrier should not be
20 allowed to thwart another carrier's network and service options. BellSouth
21 has no more right to dictate to the Small LECs end office/tandem subtending
22 arrangements than the Small LECs have such right to dictate such network
23 decisions to BellSouth.

1 A related concern is that the BellSouth arrangements, under which BellSouth
2 through its tandem switch commingles multiple carrier traffic, undermines
3 the ability of the Small LECs to identify and measure the components of
4 traffic for themselves which, in turn, has led to billing and collection
5 problems for rural LECs all across this nation. The terms and conditions that
6 would be necessary to address all of the rights and responsibilities on a fair
7 and non-discriminatory basis go well beyond the simple provision of billing
8 information, as BellSouth will likely contend should be the sole
9 consideration. I will discuss some of these necessary terms and conditions
10 later in this testimony. Needless to say, the Small LECs' lack of control over
11 traffic terminated to Small LECs' networks will hurt the rural customers of
12 the Small LECs if their rights remain unaddressed. It is just these concerns
13 that have led some rural LECs to deploy their own tandems and discontinue
14 their participation in Bell company tandem arrangements.

15 **Q: Have the Small LECs taken any action against BellSouth to address**
16 **these concerns?**

17 A: The Small LECs have not previously taken any direct action against
18 BellSouth or the CLECs or CMRS providers regarding the design of the
19 BellSouth transit service arrangement.

20 However, the smaller incumbent LECs are participants in the ongoing Federal
21 Communications Commission ("FCC") proceeding reviewing intercarrier
22 relationships. This proceeding is reviewing potential tandem switched transit
23 arrangements which continue to be a topic of discussion and disagreement.

1 I have prepared comments in the FCC proceeding on behalf of the small and
2 rural LEC industry. My comments to the FCC are consistent with the
3 positions taken in this testimony. Generally, it remains the position of the
4 vast majority of the small and rural LEC industry that under the Federal Act
5 the rural incumbent LECs do not have interconnection obligations, beyond
6 their incumbent networks, to transport traffic according to some superior
7 arrangement, at additional cost, simply to fulfill a request or demand of a
8 CLEC or CMRS provider. If a rural incumbent nevertheless voluntarily
9 accommodates a superior arrangement, its willingness to do so is dependent
10 on the requesting carrier being responsible for the extraordinary costs.

11 The Petition filed in this proceeding by the Small LECs, objecting to these
12 improper charges under the BellSouth transit tariff, is the first time that the
13 Small LECs have decided to use their limited resources to take direct action
14 against BellSouth on this matter. It is the potential application of new
15 charges under the BellSouth Transit Tariff terms that would cause an adverse
16 economic impact on the Small LECs. The Small LECs have had long-
17 standing concerns over the competitive marketplace implications of
18 BellSouth's central network role. However, until now, BellSouth's actions
19 have not had the effect of imposing monetary charges or costs on the Small
20 LECs. Now, with the charges proposed in the BellSouth Transit Tariff, the
21 Small LECs and their generally more rural customers are being asked to bear
22 the financial consequences of these network arrangements.

23

1 The third party carriers that apparently requested this arrangement, together
2 with BellSouth, have exchanged traffic with the Small LECs in this manner
3 for several years without any charge or the imposition of costs on the Small
4 LECs. That is the only manner in which the Small LECs would have
5 participated in such arrangements.

6 **Q: How do the bilateral agreements between BellSouth and the CLECs and**
7 **CMRS providers with which BellSouth has interconnection and**
8 **BellSouth's Transit Tariff effectively limit the options for the Small**
9 **LECs?**

10 A: The CLECs and CMRS providers, by virtue of the convenient and beneficial
11 transit arrangement that BellSouth offered to them without any agreement
12 from the Small LECs, have been allowed to exchange traffic with the Small
13 LECs without establishing an interconnection point at a technically feasible
14 point on the incumbent networks of the Small LECs as required under the
15 Act. For traffic originating from a CLEC or from a CMRS provider that is
16 destined to a Small LEC end user, the Small LEC has no real choice now but
17 to accept the tandem switched, commingled delivery of this traffic by
18 BellSouth. Obviously, once BellSouth actively allowed this traffic to flow,
19 it was not viable for the Small LEC to terminate the arrangement with
20 BellSouth or stop the termination of traffic. For Small LEC non-access (*i.e.*,
21 local) originating traffic, since the CLECs and CMRS providers have not
22 established interconnection points with the Small LECs at a point on the
23 network of the Small LECs, and the Small LECs have no apparent way to

1 force the CLECs and CMRS providers to do so, the Small LECs have no
2 other options to complete their own non-access, non-toll traffic other than to
3 continue to utilize the BellSouth arrangement or to provision, at extraordinary
4 cost, some superior form of network arrangement to transport traffic to
5 distant points beyond that which the Small LEC does for any other non-
6 access traffic. The result of this course of events is that the Small LECs are
7 left with no options other than to participate in the Transit Tariff, at
8 additional cost and burden to the Small LECs, to the benefit of the CLECs
9 and, CMRS providers.

10 Although the Small LECs have no statutory or regulatory obligation to
11 accommodate these options, the logical consequence of the actions of these
12 other carriers has been to "trap" the Small LECs into just such an improper
13 result.

14 **Q: Despite these concerns, would the Small LECs be willing to continue to**
15 **participate in a multi-party transit arrangement under some conditions?**

16 **A:** There are two aspects to the answer to this question.

17 First, there is the fundamental issue of a Small LEC's right to establish its
18 own tandem such that the Small LEC's end offices would no longer subtend
19 a BellSouth tandem. This is a competitive market issue that does not go
20 away. In a competitive world, carriers obviously will have the desire to
21 reconfigure their networks to decrease their reliance on BellSouth - a
22 potential competitor. There would be a chilling effect on the state of
23 competition if BellSouth or other large carriers believed they have the right

1 to dictate network design decisions to smaller LECs. In a competitive world,
2 each LEC must have the freedom to design its network in the manner it
3 chooses free from the impact of a competitor's independent network design
4 choices, and there can be no expectation that one competitor must depend
5 (*i.e.*, an end office-tandem subtending arrangement) on another.

6 Notwithstanding the network configuration issue, the Small LECs may
7 otherwise be willing to continue the transit arrangement voluntarily with
8 BellSouth, the CLECs, and CMRS providers under otherwise fair and
9 reasonable conditions under which the Small LECs are not responsible for the
10 additional charges. Regardless, as I will explain below, the Small LECs have
11 no obligation to expend extraordinary resources or to burden themselves with
12 extraordinary costs to transport traffic to distant points that are neither on the
13 incumbent LEC network of the Small LEC nor technically feasible for the
14 Small LEC for the benefit of CLECs and CMRS providers.

15
16 **ISSUE 1** Is BellSouth's Transit Service Tariff an appropriate
17 mechanism to address transit service provided by
18 BellSouth?

19
20 **Q: Is BellSouth's Transit Tariff an appropriate mechanism to address the**
21 **terms and conditions of multi-party, tandem-switched "transit" traffic?**

22 **A:** No. BellSouth's tariff is not an appropriate mechanism for the following
23 reasons:

1 1. As a fundamental matter, the Telecommunications Act of 1996
2 contemplates that the terms and conditions of non-access interconnection
3 arrangements between carriers should be the subject of a request, negotiation,
4 and the establishment of terms and conditions in a contract that governs that
5 relationship. The FCC has decided, with respect to tariffs filed by LECs for
6 the exchange of traffic with wireless carriers, that tariffs are not the
7 appropriate ongoing mechanism for the establishment of terms and conditions
8 for the exchange of non-access traffic. (*See, e.g., Declaratory Ruling and*
9 *Report and Order* issued by the Federal Communications Commission on
10 February 24, 2005 in CC Docket No. 01-92 at para. 14: regarding intercarrier
11 compensation for the exchange of non-access traffic. The FCC concluded that
12 “[p]recedent suggests that the [FCC] intended for compensation arrangements
13 to be negotiated agreements and we find that negotiated agreements between
14 carriers are more consistent with the pro-competitive process and policies
15 reflected in the 1996 Act.”) For the same reasons, the Small LECs maintain
16 that unilateral tariffs are also not appropriate here.

17
18 2. A unilateral tariff does not afford the necessary flexibility for all of the
19 parties to such non-access arrangements to put in place, and to modify, the
20 terms and conditions that would be necessary to address the rights and
21 responsibilities of all of the parties. Instead, proper agreements should be put
22 in place which address the rights and responsibilities of all of the parties,
23 including the availability of meaningful options for the Small LECs other

1 than being forced into involuntary arrangements at the demands of CLECs,
2 CMRS providers, and BellSouth. BellSouth and the third party CLEC and
3 CMRS providers have exercised their rights and opportunity to put in place
4 contractual terms. Those parties have no right to attempt to continue their
5 chosen network arrangement by imposing additional and extraordinary costs
6 on the Small LECs who were never part of any negotiation. BellSouth,
7 CLECs and CMRS providers have ignored the Small LECs' separate rights
8 and interests and are attempting to force the Small LECs to accept, at this late
9 date, new and unwarranted terms after the transit arrangement has already
10 been imposed upon them for years under substantially different terms.

11 3. The unilateral tariff is contrary to sound public policy because it would
12 allow BellSouth, CLECs and CMRS providers to impose involuntary terms
13 and effectively "trap" the Small LECs into the tariffed service arrangement.

14 **Q: What are some of the terms and conditions that must be addressed in a**
15 **multi-party transit arrangement?**

16 A: BellSouth should be required to establish explicit agreement terms with the
17 Small LECs that set forth the terms under which BellSouth will operate as an
18 intermediary between other carriers and a Small LEC where the Small LEC
19 elects to participate in such arrangements. In fact, BellSouth should have
20 established such arrangements with the Small LECs prior to the offering of
21 the intermediary transit arrangement to any other carrier. These issues are
22 contentious now because BellSouth proceeded originally without recognizing
23 the separate rights of the Small LECs.

1 If BellSouth expects to occupy a central intermediary carrier role (tandem and
2 transport), it is incumbent on BellSouth and the other carriers that request this
3 arrangement to put in place agreements that address all of the parties' rights
4 and responsibilities. If BellSouth's tariff were allowed, it would further
5 exacerbate the unresolved problems, fail to address the arbitrary and
6 discriminatory impact on the Small LECs, and would result in even less
7 incentive for BellSouth, the CLECs or the CMRS providers to resolve these
8 issues with the Small LECs in a competitively fair manner.

9 No carrier should be forced to accept a physical interconnection with another
10 carrier in the absence of agreements that define and address the basic
11 responsibilities and terms associated with that connection. It is BellSouth
12 that is interconnected physically and directly to the Small LEC networks, and
13 BellSouth should be required to establish proper contractual provisions
14 including, but not limited to, terms and conditions that:

- 15 (a) identify the trunking facilities, physical interconnection point with a Small
16 LEC, and scope of traffic that either party may deliver to the other party
17 over such facilities. Each type of traffic may be subject to individual terms;
- 18 (b) establish proper authority for the delivery of traffic of other carriers,
19 including third parties, over such facilities;
- 20 (c) address potential abuse of the scope of traffic authorized by the
21 arrangement (*i.e.*, the transmission of unauthorized traffic);
- 22 (d) ensure that the tandem provider produces complete and accurate usage
23 records and specifies what happens when the tandem provider fails to provide

1 complete and accurate information regarding the scope and components of
2 traffic;

3 (e) coordinate billing, collection, compensation, and auditing of traffic (for
4 traffic that is subject to compensation) where multiple parties use the same
5 facilities and bills are paid by multiple parties;

6 (f) require all of the parties to participate in the resolution of disputes that
7 will necessarily involve issues where the factual information is in the
8 possession of the tandem provider and the resolution involves multiple
9 carriers (*e.g.*, how much traffic was transmitted, and which carrier originated
10 or terminated the traffic). Where there is multiple carrier traffic commingled
11 over the same facilities, the components must necessarily equal the total. If
12 there is a discrepancy, the remedy will potentially affect all of the
13 components and all of the parties. Disputes necessarily involve all parties,
14 including most notably the tandem provider which most likely has in its
15 possession the best information;

16 (g) define the terms under which network changes may be implemented to
17 alter or terminate the voluntary tandem arrangement between a Small LEC
18 and BellSouth, and allow for the Small LEC to establish a new end
19 office/tandem arrangement with some other carrier's tandem or its own Small
20 LEC tandem;

21 (h) set forth terms under which tandem transit arrangements would not be
22 available to carriers (*e.g.*, above some potential threshold of traffic), and
23

1 (i) requires the tandem operator to take enforcement actions against other
2 carriers with which the tandem provider has a transit traffic agreement in the
3 event of default or non-payment by such carrier (again, for components of
4 traffic that are subject to compensation).

5 I do not suggest that this list is exhaustive. However, it is illustrative of the
6 scope of issues that must be addressed and are more typically expected to be
7 addressed through negotiations and agreements (and arbitrations, if
8 necessary). The unilateral tariff filed by BellSouth does not address these
9 issues. Without these contractual terms and conditions, the Small LECs and
10 their rural customers will be subject to uncertain and potentially harmful
11 conditions because there will be no way to enforce the application of the
12 terms set forth above with BellSouth, leaving the Small LECs trapped in an
13 improper and uncertain arrangement.

14 **Q: Does BellSouth's tariff proposal contain provisions under which a**
15 **potential "customer" of the transit traffic service may order or terminate**
16 **the service?**

17 A: No. The BellSouth tariff does not appear to allow for the ordering or
18 termination of the tariffed transit service. The effect of the tariff would be
19 that the Small LECs are forced involuntarily to obtain the tariffed service
20 from BellSouth -- a service that they do not want and have no requirement to
21 obtain in the first place.

22 **Q: Can you give some examples of where the tariff is conceptually flawed?**

1 A: Yes. Apart from my position that the tariff should be rejected, there are
2 several terms that are vague, incomplete and/or conceptually flawed.

3

4 For example, there is no assurance or guarantee that any party -- the
5 originating carrier, BellSouth in its intermediary role, or the terminating
6 carrier -- will be able to identify or measure completely and accurately all
7 of the traffic that BellSouth intends to define as Transit Traffic. BellSouth
8 makes it clear (Section A16.1.2, E) that it may not have complete and
9 accurate information regarding the relevant components of traffic. That
10 makes the provisions fundamentally arbitrary, and disputes will be impossible
11 to resolve accurately.

12 In Section A.16.1.1, D.1, the effect of BellSouth's tariff language appears to
13 be an attempt to redefine "local" traffic to include all intraLATA traffic for
14 which BellSouth does not collect access charges. Whether BellSouth
15 specifically collects access charges does not change the nature of originating
16 and terminating calls for the Small LECs. Much of the intraLATA traffic that
17 the Small LECs originate or terminate is subject to intrastate access charges.
18 This provision in BellSouth's Transit Tariff raises the question of whether
19 BellSouth is already delivering traffic to the Small LECs' networks that
20 should be subject to the Small LECs' terminating access charges, but is being
21 treated by BellSouth as "local." BellSouth may arguably define the scope of
22 intraLATA access calls differently from the way other Small LECs define
23 intraLATA access calls. However, the terms and conditions under which

1 non-local intraLATA traffic is originated and terminated by the Small LECs
2 are set forth in intrastate access tariffs. Clearly, BellSouth's Transit Tariff
3 cannot change or conflict with the Small LECs' Commission-approved
4 intrastate access tariffs.

5 Section A.16.1.1, D.2 suggests incorrectly that all wireline to wireless
6 intraMTA traffic would require compensation from the originating local
7 exchange carrier. However, some intraMTA traffic calls are provided by
8 interexchange carriers as long distance calls. The terms and conditions under
9 which BellSouth provides transport of interexchange carriers' traffic,
10 regardless of whether the calls are completed to mobile users within the same
11 MTA, is set forth in access tariffs. And it is the responsibility of the
12 interexchange carriers, not originating LECs, to compensate BellSouth for the
13 use of BellSouth's network to transport interexchange carrier service calls to
14 wireless carriers.

15 Sections A16.1.2, C and D suggest arbitrarily that BellSouth does not know
16 what terms and conditions it already has in place with terminating carriers
17 and does not know whether it already has responsibility to provide
18 compensation to a terminating carrier. Parties that would be subject to this
19 tariff do not know whether these provisions would apply because BellSouth
20 apparently does not know when it is responsible for compensation to
21 terminating carriers. Regardless of these terms, if BellSouth already has an
22 established compensation responsibility to a terminating carrier under

1 existing and separate terms, the filing of its Transit Tariff does not and cannot
2 negate that payment responsibility.

3 **Q: Do the Small LECs have additional concerns with the establishment of**
4 **terms and conditions for transit traffic service pursuant to a tariff?**

5 A: Yes. It is my understanding that under Florida law BellSouth's transit service
6 would not be considered a "basic local service." If the transit service was
7 considered to be a "non-basic service," then BellSouth (as a price regulated
8 carrier) would be authorized to impose an annual increase of 20% for the
9 service category that would include the transit service. If that were the case,
10 the financial burdens imposed on the Small LECs as a result of the Transit
11 Tariff would compound substantially.

12

13 **ISSUE 2** If an originating carrier utilizes the services of
14 BellSouth as a tandem provider to switch and
15 transport traffic to a third party not affiliated with
16 BellSouth, what are the responsibilities of the
17 originating carrier?

18 **Q: What are the obligations of a LEC with respect to the exchange of non-**
19 **access (i.e., local) traffic with another local carrier?**

20 A: With respect to local traffic subject to interconnection requirements under the
21 Act, the FCC's Subpart H rules (47 C.F.R. §51.701-717) set forth the
22 definitions, conditions, and scope of traffic subject to Section 251(b)(5) of the
23 Act. By the explicit terms and clear meaning of the words, the first section

1 of the Subpart H rules apply a framework where an interconnection point is
2 established between two local providers that are exchanging traffic subject
3 to the Subpart H rules. For example, Section 51.701(c) defines transport as
4 “. . . the transmission and any necessary tandem switching of
5 telecommunications traffic subject to section 251(b)(5) of the Act from the
6 interconnection point between the two carriers to the terminating carrier's end
7 office switch that directly serves the called party, or equivalent facility
8 provided by a carrier other than an incumbent LEC.” (Emphasis added.)

9 Under the terms of the Act that I have set forth below, the FCC has defined
10 the “interconnection point between the two carriers” to be no more
11 demanding for an incumbent LEC than one that is technically feasible for the
12 incumbent LEC that has received the interconnection request and is on that
13 incumbent LEC’s network.

14 **Q: How are the interconnection requirements to be established between an**
15 **incumbent LEC and a requesting carrier?**

16 A: Interconnection arrangements begin with a request for interconnection
17 services or arrangements by a CLEC or CMRS provider to an incumbent
18 LEC. Interconnection requirements are applied in the context of that
19 incumbent LEC fulfilling the interconnection request of the CLEC or CMRS
20 provider. To date, the interconnection arrangements in place with the CLECs
21 and CMRS providers that are relevant to this proceeding are the result solely
22 of a request made by those other carriers to BellSouth. And the

1 interconnection requirements that apply with respect to those requests are
2 requirements that apply solely to BellSouth.

3 If a CLEC or a CMRS provider were to make a request of a Small LEC to
4 exchange traffic subject to Section 251 of the Act, the requirement for that
5 Small LEC can be no more than what is set forth in the Act, and because the
6 Small LEC is a Rural Telephone Company, the applicable requirement may
7 be less, but certainly not more, than what applies to BellSouth. In any event,
8 in fulfilling the interconnection request of the CLEC or CMRS provider, that
9 Small LEC would be required, at most, to establish an interconnection point
10 with the CLEC or CMRS provider at a point on the network of that Small
11 LEC and at a point that is technically feasible for that Small LEC. These are
12 the interconnection requirements that apply to BellSouth. The Small LEC
13 is under no obligation to establish an interconnection point with a requesting
14 carrier at a point on some other incumbent LEC's network because such point
15 would neither be technically feasible to that Small LEC nor would the
16 interconnection point be on the incumbent LEC network of that Small LEC.
17 Accordingly, any such requested interconnection would be inconsistent with
18 the Act and the controlling rules.

19 The CLECs and CMRS providers will likely attempt to confuse the concepts
20 of "being indirectly interconnected" with the location of the "interconnection
21 point" as set forth in the Act and the FCC's rules for the exchange of traffic
22 that would be subject to the terms of Section 251(b)(5) of the Act and the
23 FCC's subpart H rule. The fact that the rules require that the interconnection

1 point that an incumbent LEC establishes with a requesting competitive carrier
2 for the exchange of non-access traffic be on that incumbent LEC's network
3 and be technically feasible to that incumbent LEC does not necessarily
4 suggest that the CLEC or CMRS provider cannot be indirectly
5 interconnected. These carriers may use BellSouth facilities to be indirectly
6 interconnected with the Small LECs, but that does not require the Small
7 LECs to provision arrangements that go beyond the actual requirements.
8 There is no requirement for one ILEC to establish an interconnection point
9 with a requesting CLEC or CMRS provider, for the exchange of traffic
10 subject to Section 251(b)(5) of the Act, at a point on some other ILEC's
11 network. BellSouth has no obligation to establish an interconnection point
12 with a requesting CLEC or CMRS provider at a point on one of the Small
13 LEC's network, and the Commission's decisions have never suggested any
14 such requirement. In fact, the Commission's previous decisions addressing
15 what BellSouth, as an incumbent, is required to do in response to requests of
16 CLECs and CMRS providers recognized and embraced the concept that the
17 interconnection point for the exchange of traffic would be "at any technically
18 feasible location within the ILEC's network." (*See Order on Reciprocal*
19 *Compensation*, Order No. PSC-02-1248-FOF-TP issued September 10, 2002
20 in Docket No. 000075-TP at p. 21 citing Sprint's comments about technically
21 feasible point on the incumbent LEC's network and on p. 24 accepting
22 Sprint's argument.)

1 The notion that a CLEC or CMRS provider can request interconnection with
2 a Small LEC based on an interconnection point on BellSouth's network, for
3 the exchange of traffic that is subject to Section 251(b)(5) of the Act is wrong
4 for at least two reasons. A point on the network of BellSouth is not a
5 technically feasible point for the Small LEC, and a point on the network of
6 BellSouth is not on the network of the incumbent (i.e., a Small LEC) that has
7 received the request from the CLEC or CMRS provider to exchange traffic
8 pursuant to the interconnection requirements.

9 The Small LECs have no interconnection obligations in areas in which they
10 are not an incumbent. The interconnection point that an incumbent LEC
11 must establish with a requesting CLEC or CMRS provider must be on that
12 incumbent LEC's network at a technically feasible point on that incumbent
13 LEC's network.

14 **Q: What provisions of the Act address the interconnection point for the**
15 **exchange of traffic subject to Section 251(b)(5)?**

16 A: In adopting the Subpart H rules that I have cited above, the FCC notes that
17 the interconnection point (at most for those carriers subject to the subsection
18 251(c) of the interconnection requirements in the Act) would be as set forth
19 in Section 251(c)(2). (*See, e.g.* the FCC's initial decision on competitive
20 interconnection, *First Report and Order* in CC Dockets 96-98 and 95-185,
21 released August 8, 1996 at paras. 26, 87, 173, and 186.) Under the most strict
22 interconnection requirements under the Act, the interconnection point must
23 comply only with the following provisions:

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(2) Interconnection.-- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-- (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection

47 U.S.C. §§ 251(c)(2)(A)-(C). (Emphasis added.)

Q: What conclusion do you draw from these provisions?

A: The interconnection obligations of incumbent LECs, under the most severe application, apply only with respect to the incumbent's network, not with respect to some other carrier's network in some other incumbent service area. An incumbent LEC has no responsibility to deliver local (non-access) traffic to an interconnection point that is neither on its incumbent LEC network nor to a point where the incumbent LEC is not an incumbent. This is consistent with this Commission's previous conclusions with respect to BellSouth in that BellSouth's originating traffic responsibility was to deliver local traffic to an interconnection point designated by the CLEC at a

1 technically feasible point on BellSouth's incumbent LEC network within the
2 LATA.

3

4 **Q: What relevance does this have to the Transit Tariff proposal?**

5

6 A: As I have explained above, the CLECs and CMRS providers have used
7 BellSouth's intermediary transit arrangement in a manner that has allowed the
8 CLECs and CMRS providers to avoid the designation of an interconnection
9 point on the networks of the Small LECs.

10 When a Small LEC sends traffic to CLECs and CMRS providers that have
11 elected to use BellSouth in lieu of establishing an interconnection point on
12 the incumbent LEC networks of the Small LECs, the CLECs and CMRS
13 providers have effectively elected (albeit without a request, negotiation and
14 an interconnection agreement) to designate the service border meet point that
15 the Small LEC has with BellSouth as their Interconnection Point.
16 Accordingly, it is the CLEC or CMRS provider that is utilizing BellSouth's
17 transit service arrangement.

18 An incumbent LEC has no responsibility to deliver local traffic to an
19 interconnection point that is neither on its incumbent LEC network or to a
20 point where the incumbent LEC is not an incumbent.

21 Therefore, for the exchange of local traffic among carriers, and under the
22 most rigorous requirements that apply to large Bell companies, the delivery
23 of local traffic is to an interconnection point designated by the CLEC that is

1 technically feasible, located on the incumbent LEC's network, and for Bell
2 companies, within the same LATA in which traffic is originated and
3 terminated.

4 **Q: Are there any other comments that you have concerning Issue 2?**

5
6 A: Yes. With respect to carriers' responsibilities as suggested by the issue
7 statement, all local exchange carriers have the obligation to put in place
8 interconnection agreements to set forth the terms for the exchange of non-
9 access traffic. This responsibility is not just with the originating carrier as
10 the issue statement suggests, it applies to the originating, the intermediary,
11 and the terminating carrier. The intermediary carrier is providing part of the
12 transport and termination of non-access traffic.

13 **Q: Are there other reasons why a Small LEC should not be responsible for**
14 **the provision of network functions and interconnection services provided**
15 **in areas beyond the area in which the Small LEC is an incumbent LEC?**

16 A: Yes. Please consider the following example to illustrate my point:
17 An end user is currently served by BellSouth in a service area that neighbors
18 one of the Small LEC's service areas. The end users served in the Small
19 LEC's exchange that neighbors the BellSouth exchange have local calling to
20 the exchange area in which the BellSouth end user is served. The Small LEC
21 and BellSouth have established an interconnection arrangement that
22 determines the relative rights and responsibilities of both parties for the
23 exchange of local calls (i.e., EAS). In most cases, it is my understanding that

1 the Small LEC, for the call that I have used in this example, is responsible to
2 deliver the local call to a meet point likely located at the border between the
3 Small LEC and BellSouth. Therefore, when a local call from the Small LEC
4 end user is terminated to the specific BellSouth end user, the Small LEC has
5 a specific responsibility to transport the call to a boundary point of
6 interconnection. There is no "additional" transit service tandem switching
7 and transport to some point beyond the border and/or to some other distant
8 point.

9 Now consider that the same BellSouth end user decides to change his or her
10 local service to a CLEC that competes with BellSouth. Under BellSouth's
11 transit traffic service tariff terms and conditions, the Small LEC would
12 immediately be responsible for additional charges and costs just because a
13 BellSouth end user changed his or her service to a CLEC operating in
14 BellSouth's territory. From the Small LEC point of view, it has originated
15 the same call, to be terminated to the same end user, but instead of its
16 responsibility being limited properly to the delivery of the call to the
17 boundary meet point, the Small LEC now may be forced to incur additional
18 and extraordinary costs to deliver the call to more distant points and to pay
19 BellSouth for additional tandem switching and transport.

20 However, even under the most rigorous forms of interconnection that apply
21 to Bell incumbent LECs as I have explained above, the incumbent LEC must
22 provide interconnection for the transmission and routing of calls at any
23 technically feasible point within the carrier's network and only at a level that

1 is at least equal in quality to that provided by the incumbent LEC to itself or
2 any other party. The expectations of CLECs and CMRS providers that Small
3 LECs will pay BellSouth for transit services (under the terms and conditions
4 of BellSouth's proposed tariff) would violate the two underlined provisions
5 of the Act. In other words, BellSouth's proposed tariff terms, together with
6 the implied expectations of CLECs and CMRS providers, would impose
7 requirements on the Small LECs that are more onerous and burdensome than
8 the requirements that would even apply to BellSouth and beyond a level that
9 is equal in quality to what the Small LEC does for itself, with BellSouth, or
10 with any other carrier in an EAS arrangement.

11 The Small LECs' interconnection responsibility is limited to providing for
12 interconnection arrangements that are at least equal, but not superior, to that
13 which the Small LEC does for any other local traffic, and not to discriminate
14 unreasonably among carriers. The CLECs and CMRS providers, together
15 with BellSouth's proposed tariff terms, are asking the Small LECs for much
16 more -- to provision a superior arrangement with extraordinary switching
17 and transport functions that would be more costly to the Small LEC. As I
18 have already stated, to the extent that a Small LEC is willing to accommodate
19 some superior arrangement which involves additional cost (*i.e.*, BellSouth
20 providing an intermediary tandem switching and additional transport) to
21 fulfill a request of a third party carrier, the Small LEC would do so only to
22 the extent that the third party carrier is willing to be responsible for the
23 extraordinary costs.

1 **Q: Are incumbent LECs required to provision superior or extraordinary**
2 **interconnection arrangements, at the request of a CLEC or CMRS**
3 **provider, that are beyond what they already do for their own local**
4 **traffic or for local traffic with other carriers?**

5
6 A: No. The FCC and the courts have already addressed this issue and support
7 my conclusion. On July 18, 2000, on remand from the United States
8 Supreme Court, the United States Court of Appeals for the Eighth Circuit
9 issued its opinion in *Iowa Utilities Board v. Federal Communications*
10 *Commission*, 219 F.3d 744 (8th Cir. 2000) (“*IUB I*”). In *IUB II*, the Eighth
11 Circuit Court of Appeals reaffirmed its earlier conclusion, not affected by the
12 Supreme Court’s remand, that the FCC had unlawfully adopted and
13 attempted to impose interconnection requirements on incumbent LECs that
14 would have resulted in the incumbent LECs providing superior arrangements
15 to that which the incumbent LEC provides to itself. The Court concluded
16 that “the superior quality rules violate the plain language of the Act.” I have
17 already quoted the plain language of the Act which states that incumbent
18 LECs, even under the most rigid requirements that apply to some incumbent
19 LECs, are limited to arrangements that are only at least equal in quality to
20 that provided by the local exchange carrier to itself or to any subsidiary,
21 affiliate, or any other party to which the carrier provides interconnection. The
22 Court concluded that the standard of “at least equal in quality” does not mean

1 “superior quality” and “[n]othing in the statute requires the ILECs to provide
2 superior quality interconnection to its competitors.” 219 F.3d at 757-758.

3 It is also noteworthy here to point out that, under the invalidated superior
4 quality rules that the FCC had originally adopted, the FCC had nevertheless
5 initially concluded that the LEC should not be responsible for the
6 extraordinary costs associated with any superior interconnection arrangement;
7 *i.e.* that the requesting competitive carrier should be responsible for these
8 costs. The CLECs and CMRS providers’ use of BellSouth’s transit traffic
9 service arrangement and BellSouth proposed tariff terms are an attempt to
10 require the Small LECs to provision superior quality interconnection
11 arrangements at extraordinary costs in direct violation of the Court’s decision
12 and the FCC’s original rules.

13
14 **ISSUE 3**

15 Which carrier should be responsible for providing
16 compensation to BellSouth for the provision of the
17 transit transport and switching services?

18 **Q: Which carrier should be responsible for providing compensation to**
19 **BellSouth for the provision of the transit transport and switching**
20 **services?**

21 **A:** As I have already explained, it should be the CLECs and the CMRS providers
22 that have elected to utilize this arrangement in lieu of establishing separate
23 interconnection points with the Small LECs. To the extent that the CLECs

1 and CMRS providers' use of the BellSouth transit arrangement involves
 2 extraordinary cost, and to the extent that the CLECs and CMRS providers
 3 continue to request that the Small LECs deliver their local traffic to a distant
 4 point where the CLECs and the CMRS providers have physically connected
 5 with BellSouth, then it is the CLECs and CMRS providers' responsibility to
 6 provide compensation for the extraordinary costs.

7
 8
 9 **ISSUE 4** 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?
 12

13 **Q: How does BellSouth route (*i.e.*, what trunking arrangement) the**
 14 **originating local (non-access) traffic of CLECs and CMRS providers**
 15 **where the CLECs and CMRS providers are using BellSouth's transit**
 16 **arrangement as the means to exchange traffic with the Small LECs?**

17 **A:** It is my understanding the BellSouth routes these calls over different types of
 18 trunk groups for specific Small LECs. As a result of this proceeding, the
 19 Small LECs expect to learn more about the trunking arrangements that
 20 BellSouth is using.

21 **Q: How does BellSouth route (*i.e.*, what trunking arrangement) non-local**
 22 **traffic that would be subject to access charges that BellSouth may**

1 **deliver to the Small LECs on behalf of the CLECs and CMRS**
2 **providers?**

3 A: The Small LECs are not certain what scope of traffic of third parties
4 BellSouth may be delivering to the Small LECs for termination. The Small
5 LECs expect that, as a result of this proceeding, they will learn more about
6 the scope of traffic of third parties that BellSouth transits to the Small LECs'
7 networks.

8 **Q: How do Small LECs route (i.e., what trunking arrangement) their**
9 **originating local exchange service traffic to CLECs and CMRS**
10 **providers where the CLECs and CMRS providers are using BellSouth's**
11 **transit arrangement as the means to exchange traffic with the Small**
12 **LECs?**

13 A: The Small LECs do not know in all cases what originating traffic is transited
14 to third party carriers. It is my understanding that traffic ultimately destined
15 to third party carriers that BellSouth may transit to such third party CLECs
16 and CMRS providers is delivered by the Small LECs over both trunks
17 provisioned for access purposes and trunks provisioned for EAS.

18

19 **ISSUE 5** Should the FPSC establish the terms and conditions
20 that govern the relationship between an originating
21 carrier and the terminating carrier, where BellSouth is
22 providing transit service and the originating carrier is
23 not interconnected with, and has no interconnection

1 agreement with, the terminating carrier? If so, what
2 are the appropriate terms and conditions that should
3 be established?
4

5 **Q: Should there be terms and conditions in place between originating**
6 **carriers and terminating carriers where the transit service arrangement**
7 **is utilized?**

8 A: Yes. For purposes of this proceeding, the Commission should establish that
9 it is the CLECs and CMRS providers, which have elected to use and are
10 requesting that the Small LECs deliver traffic pursuant to the transit
11 arrangements, that are responsible to BellSouth for any charges BellSouth
12 propose in connection with its transit service.

13 For the longer term, to the extent that a rural ILEC participates in such transit
14 arrangements to fulfill the request of a CLEC or CMRS provider that has
15 elected to use this arrangement, the terms and conditions among all of the
16 carriers involved must be set forth in agreements. I have already discussed
17 some of the obvious terms and conditions that necessarily involve the Small
18 LECs, BellSouth and the CLECs or CMRS providers. And those agreements
19 should properly address the rights of the Small LECs (as I have set forth
20 above) that are separate and apart from those of BellSouth and the CLECs
21 and CMRS providers. Those agreements would not be between just the
22 originating and terminating carriers, but would also involve responsibilities,
23 between and among all of the participants, including the transit provider. The

1 ultimate terms and conditions for potential voluntary transit arrangements,
2 between and among all of the participants, are necessarily beyond the scope
3 of BellSouth's tariff filing. At a minimum, BellSouth's tariff filing is not
4 consistent with either controlling requirements or obligations as they apply
5 to the Small LECs, and the tariff should be rejected. Only through voluntary
6 negotiation can proper terms and conditions be established.

7 However, there are no statutory rights that would allow the Small LECs to
8 force CLECs into interconnection agreements, and it has been my experience
9 that BellSouth has resisted meaningful discussions with similarly situated
10 small LECs in other states that would properly address the Small LECs'
11 rights. Therefore, the Commission should address this issue in a way that
12 will promote meaningful discussion among the parties.

13
14 **ISSUE 6**

Should the FPSC determine whether and at what
15 traffic threshold level an originating carrier should be
16 required to forego use of BellSouth's transit service
17 and obtain direct interconnection with a terminating
18 carrier? If so, at what traffic level should an
19 originating carrier be required to obtain direct
20 interconnection with a terminating carrier?
21

1 **Q: Do you support a threshold level of traffic that would require the CLEC**
2 **or CMRS provider to abandon the BellSouth commingled transit traffic**
3 **option in favor of a direct trunking arrangement with the Small LEC?**

4 A: Generally, yes, but I do not believe that a rigid requirement would be the right
5 way to go. Regardless of what may be differences of opinion about what
6 requirements apply to LECs with respect to transit arrangements, the
7 approach to any threshold level of traffic should be flexible. Some carriers
8 may want to continue to exchange traffic under these arrangements even
9 where some distinct threshold has been reached and exceeded. They should
10 be allowed to do so under voluntary terms.

11
12 However, there is no mandatory interconnection requirement that a Small
13 LEC end office subtend a BellSouth tandem, and BellSouth has no automatic
14 right to commingle third party traffic with BellSouth's access or local traffic.
15 Just because a specific level of traffic may be exceeded and the CLEC and
16 CMRS provider may no longer be afforded the opportunity, voluntary or not,
17 to continue to use the transit arrangement, it does not mean that the CLEC or
18 CMRS provider has to build its own facilities to meet the Small LEC on its
19 incumbent LEC network. It would only mean that the CLEC and CMRS
20 provider could continue to interconnect indirectly with the Small LEC, but
21 would now be using dedicated trunks (which could still be obtained from
22 BellSouth) instead of the arrangement under which CLECs' and CMRS
23 provider' traffic is commingled with BellSouth's on the same trunk group.

1 Accordingly, and contrary to the suggestion in the issue statement above, just
2 because the commingled transit traffic arrangement may not be available,
3 there are still dedicated trunking arrangements that would allow the parties
4 to be interconnected indirectly.

5 In any event, and subject to the caveats explained above, the Small LECs
6 believe that a reasonable level of traffic for a threshold would be the amount
7 of traffic that constitutes one T-1 amount of traffic usage, so that the Small
8 LEC and CLEC (or CMRS provider) would establish a single, T-1 dedicated
9 trunk group when that amount of traffic is exceeded.

10

11

12 **ISSUE 7** How should transit traffic be delivered to the Small
13 LEC's networks?

14

15 **Q: How should BellSouth deliver transit traffic to the networks of the Small**
16 **LECs?**

17 **A:** There is not a single, simple answer to this issue. As I have explained above,
18 the transit arrangement is a voluntary arrangement, not required by the
19 interconnection rules. Therefore, the terms and conditions should be subject
20 to voluntary negotiation. Regardless, the terms must properly recognize the
21 rights of the Small LEC to design and configure their own networks without
22 the interference of BellSouth (*i.e.*, establish their own tandem and end office
23 configurations).

1 Accordingly, at the request of the Small LEC, BellSouth should be required
2 to establish a separate trunk group for third-party local transit traffic rather
3 than delivering the traffic commingled with toll traffic.
4

5 **ISSUE 8**

Should the FPSC establish the terms and conditions
6 that govern the relationship between BellSouth and a
7 terminating carrier, where BellSouth is providing
8 transit service and the originating carrier is not
9 interconnected with, and has no interconnection
10 agreement with, the terminating carrier? If so, what
11 are the appropriate terms and conditions that should
12 be established?
13

14 **Q: Should the Commission establish the terms and conditions that govern**
15 **the relationship between BellSouth and a terminating carrier, where**
16 **BellSouth is providing transit service and the originating carrier is not**
17 **interconnected with, and has no interconnection agreement with, the**
18 **terminating carrier? If so, what are the appropriate terms and**
19 **conditions that should be established?**

20 **A:** To the extent that CLECs and CMRS providers, together with BellSouth's
21 transit arrangement, wish to continue to exchange traffic with Small LECs
22 pursuant to this option, then it is incumbent upon the CLECs, CMRS
23 providers, and BellSouth to set forth in proper contractual agreements the

1 rights and responsibilities of all of the participants. I have already discussed
2 these issues in my responses to the other issue statements.

3

4 **ISSUE 9** Should the FPSC establish the terms and conditions of
5 transit traffic between the transit service provider and
6 the Small LECs that originate and terminate transit
7 traffic? If so, what are the terms and conditions?

8

9 **Q: Should the Commission establish the terms and conditions of transit**
10 **traffic between the transit service provider and the Small LECs that**
11 **originate and terminate transit traffic? If so, what are the terms and**
12 **conditions?**

13 **A:** Yes. See my response to Issue 8 and the discussion above of the terms and
14 conditions that would necessarily require attention for such arrangements.

15

16 **ISSUE 10** What effect does transit service have on ISP-bound
17 traffic?

18

19 **Q: How should dial-up transit traffic originated by Small LECs and bound**
20 **for ISPs be treated?**

21 **A:** As I have stated above, it is the CLECs and CMRS providers that are the
22 parties that have requested and are using the BellSouth transit service, and it
23 should be those carriers that provide compensation to BellSouth. As such,

1 there should be no compensation effect on the Small LECs; the Small LECs
2 will continue to deliver ISP-bound traffic pursuant to the approach that they
3 have been willing to participate in for almost a decade including the
4 expectation of no compensation responsibility to BellSouth for the CLECs'
5 and CMRS providers' transit arrangement.

6 Some CLECs focus their service solely or almost exclusively on ISPs in
7 which case these CLECs expect to terminate large amounts of dial-up ISP
8 traffic. BellSouth has transited this traffic to the CLECs without charge to
9 the Small LECs for many years. (And the CLECs have terminated this traffic
10 without additional compensation other than that which the CLECs already get
11 from the ISP.) There should be no charge to the Small LECs.

12 **Q: Would the payment of intercarrier compensation to BellSouth for what**
13 **is a portion of the transport and termination of ISP-bound traffic be**
14 **appropriate?**

15 A: No. The FCC has interim rules in place that, even under the most onerous
16 application, limit the total of intercarrier compensation for ISP-bound traffic
17 to no more than \$0.0007 per minute of use. BellSouth, with its transit
18 arrangements, is providing only a portion of the transport and termination
19 functions that are the subject of this limit. (I would note that BellSouth is
20 expecting to be paid a rate that is over four times greater than the total
21 intercarrier compensation to which the FCC has decided to subject ISP bound
22 traffic.)

1 In any event, BellSouth and the CLECs have been providing dial-up ISP
2 bound traffic service to ISPs without any charges to the Small LECs for as
3 long as ISP-bound traffic has existed and for as long as BellSouth has been
4 providing transit arrangements. There is no basis, given the FCC's limit and
5 the existing "no compensation" arrangement, for BellSouth to start expecting
6 compensation.

7 **Q: How would the Small LECs be affected if they were forced to pay for**
8 **transit service, including the tariff rate proposed by BellSouth?**

9 A: To the extent that the rural ILECs were to be forced to pay BellSouth for the
10 transit service, they would be subjected to adverse economic consequences.
11 Because the amount of dial-up ISP-bound traffic is very large for some end
12 users, there is the potential for very high charges that could be imposed on a
13 Small LEC, even at what may seem like a very low rate. For example, for
14 a small business that may have a line dedicated to stay "dialed-up"
15 continuously to an ISP that is served by a CLEC that has a transit
16 arrangement in place with BellSouth, the monthly transit charge under
17 BellSouth's tariff would be \$129.60 for the traffic generated by that one
18 business customer. (30 days times 24 hours times 60 minutes times \$0.003
19 = \$129.60) Obviously, this is several times greater than the total of local
20 exchange service revenues that the Small LEC collects from the end user.
21 Even for more modest ISP users, say two hours a day, the charge would still
22 amount to \$10.80 per month. The Small LECs do not intend to be
23 responsible for such compensation and would not voluntarily participate in

1 such transit arrangements if they were to be subjected to such compensation
2 obligations.

3
4 **ISSUE 11** How should charges for BellSouth's transit service be
5 determined?

6 (a) What is the appropriate rate for transit service?

7 (b) What type of traffic do the rates identified in (a)
8 apply?

9
10 **Q: Assuming for argument sake that BellSouth were allowed to charge the**
11 **Small LECs for transit traffic that the Small LECs' originate, what**
12 **would be the appropriate rate?**

13 **A:** The functions that constitute transit service (*i.e.*, tandem switching and some
14 transport) are already offered by BellSouth in other contexts. BellSouth has
15 tariffed services for almost identical network functions offered under its
16 intrastate and interstate access tariffs (*i.e.*, "Access Tandem Switching" and
17 transport services). It is my understanding that BellSouth's rate for Access
18 Tandem Switching in Florida is \$0.0005 per minute of use. The per-minute
19 rate that BellSouth has filed for its transit service is six times as much as its
20 charge for tandem switching.

21 If a transit rate in BellSouth's transit service tariff is established, it should not
22 be greater than the equivalent rate for the same access service functions. I
23 understand that BellSouth has been ordered to "rebalance" its rates in a

1 manner in which its intrastate access rates will be the same as (*i.e.*, in parity
2 with) its interstate access rates. Accordingly, BellSouth's tariffed transit
3 service rate should be no higher than the rate that would apply for the
4 equivalent interstate access services.

5 **Q: Should any rate apply to ISP-bound traffic?**

6 A: No. The rate proposed by Bellsouth cannot apply, in any event, to ISP dial-
7 up traffic because the proposed rate would be several times greater than the
8 total intercarrier compensation that the FCC has limited compensation for ISP
9 Bound traffic. (See, generally, the FCC's Order on Remand and Report and
10 Order, released April 27, 2001, in CC Docket Nos. 96-98 and 99-68.)
11 Moreover, all of the parties have been exchanging ISP-Bound traffic without
12 charge to the Small LECs for any portion of the transport and termination
13 functions associated with dial-up local ISP-bound calls. Given the FCC's
14 interim treatment of ISP-bound calls to limit intercarrier compensation for
15 such calls, the FCC's discussion about the irrational (and potentially harmful)
16 consequences of potential intercarrier compensation for dial-up calls to ISPs,
17 and the fact that the Small LECs have not been subject to any compensation
18 responsibility for several years, it would be inconsistent for BellSouth to
19 begin to impose intercarrier compensation obligations on the Small LECs at
20 this time. To the extent that a compensation mechanism should apply,
21 BellSouth should recover the costs from the ISPs that are the cost causers of
22 this transit service functions. Furthermore, it is not clear whether the

1 transport and switching of an ISP-bound call is subject to state tariffing if the
2 FCC maintains its jurisdiction over such calls.

3
4 **ISSUE 12** Consistent with Order Nos. PSC-05-0517-PAA-TP
5 and PSC-05-0623-CO-TP, have the parties to this
6 docket (“parties”) paid BellSouth for transit service
7 provided on or after February 11, 2005? If not, what
8 amounts if any are owed to BellSouth for transit
9 service provided since February 11, 2005?

10
11 **Q: Have the Small LECs paid BellSouth for the Transit Tariff services**
12 **provided on or after February 11, 2005?**

13 A: Yes. It is my understanding that BellSouth has been billing the Small LECs,
14 and the Small LECs have been making payment for the transit services billed
15 by BellSouth. It is also the understanding of the Small LECs that these
16 charges are subject to refund pending the outcome of this proceeding.
17 However, consistent with my testimony set forth herein, the Small LECs have
18 no obligation to provide compensation to BellSouth for a transit service that
19 is the responsibility of the CLECs and CMRS providers. The compensation
20 responsibilities should be resolved consistent with the positions in this
21 testimony. If the Commission rightfully concludes that the Small LECs are
22 not responsible for the payment of the transit service charges, then BellSouth

1 should be ordered to refund all amounts pursuant to proper refund
2 procedures.

3

4 **ISSUE 13** Have parties paid BellSouth for transit service
5 provided before February 11, 2005? If not, should the
6 parties pay BellSouth for transit service provided
7 before February 11, 2005, and if so, what amounts, if
8 any, are owed to BellSouth for transit service
9 provided before February 11, 2005?

10

11 **Q: Are any amounts owed to BellSouth for its transit functions provided**
12 **before February 11, 2005?**

13 **A:** No. No amounts are owed to BellSouth for periods prior to February 11,
14 2005. To the extent that BellSouth is due compensation for the transit
15 services it provides, it is the CLECs and CMRS providers that are responsible
16 for payment. BellSouth has knowingly provided its tandem transit service
17 without charges, without seeking agreements with the Small LECs, and
18 without establishing any contractual terms with the Small LECs. BellSouth
19 has knowingly provided this transit service without charge and has no right
20 now to impose charges on the Small LECs for doing so. BellSouth has
21 established no right to bill the Small LECs for any period of time.

22

1 Commission should make such a finding (that the Transit Traffic rate
2 constitutes a substantial change in circumstances) in this proceeding in the
3 event that portion of the Transit Tariff imposing the rate on the originating
4 carrier is not rejected, canceled or otherwise invalidated by the Commission.
5

6 **ISSUE 15** Should BellSouth issue an invoice for transit services
7 and if so, in what detail and to whom?
8

9 **Q: How should the charges, if any, be reflected in invoices issued by**
10 **BellSouth?**

11 A: Assuming for argument sake that BellSouth were allowed to charge the Small
12 LECs for transit services, BellSouth should be required to submit a separate
13 invoice. Apparently, it is BellSouth's intention simply to net (with a single
14 line item deduction) transit service charges against compensation that
15 BellSouth otherwise owes the Small LECs for traditional access and service
16 revenue settlement arrangements. It is the Small LECs' position that, to the
17 extent they are to be billed, BellSouth must be required to submit a separate
18 invoice setting forth sufficient details of call records and any other
19 information necessary to determine the accuracy and completeness of usage.
20 At a minimum, the invoice should include dates for the billing period, a
21 summary by carrier indicating the number of calls and minutes, and a
22 summary of total calls and minutes to which the transit rate applies. Any
23 carrier that may be charged for transit services should have the right to obtain

1 complete and accurate information, and to audit other information, to verify
2 the accuracy of BellSouth's billing of transit service. BellSouth should not
3 be permitted to obtain its payment for transit services by simply netting the
4 charges against amounts that BellSouth otherwise owes other carriers,
5 because if there is a dispute, BellSouth will have already taken its payment.
6 Moreover, BellSouth's Transit Tariff does not set forth reasonably clear terms
7 for how the service would be billed if charges were to apply. As I have
8 explained above, BellSouth does not necessarily commit to have complete
9 and accurate information, and may want to rely on incomplete or arbitrary
10 information subject to speculation and dispute. The terms of the tariff do not
11 address this issue with clarity.

12

13 **ISSUE 16** Should BellSouth provide to the terminating carrier
14 sufficiently detailed call records to accurately bill the
15 originating carrier for call termination? If so, what
16 information should be provided by BellSouth?

17

18 **Q: Should BellSouth provide to the terminating carrier sufficiently detailed**
19 **call records that would allow the terminating carrier to bill originating**
20 **carriers, where applicable, for call termination?**

21 **A:** Yes. Because there may be multiple types of terminating traffic subject to
22 different terms and conditions, BellSouth should be required to provide
23 complete and accurate information for all traffic that it delivers to the

1 network of Small LECs. Because BellSouth commingles multiple party
2 traffic with BellSouth's own access traffic (and potentially with other
3 carriers' access traffic), and because BellSouth in most cases is the only
4 carrier that can completely and accurately identify and measure the traffic that
5 it switches through its tandem and commingles with a wide scope of traffic
6 of many carriers, it is incumbent upon BellSouth to be responsible for
7 complete and accurate records.

8 I understand that there are certain call record types that BellSouth may be
9 able to provide to the terminating carriers, but this information often excludes
10 the information that is necessary to identify the proper jurisdiction and
11 carrier. It is my understanding that the actual originating telephone number
12 may not be available with these records, or that the information that would
13 have identified the originating telephone number (and, consequently the
14 originating carrier and potentially jurisdiction of the call) is altered under
15 some makeshift arrangement that BellSouth has in place for recognition of
16 transit traffic. It is the belief of the Small LECs that BellSouth is terminating
17 calls for which the call record information would suggest are local (non-
18 access) but are calls that are actually subject to access charges.

19 The Small LECs' position is that BellSouth, at a minimum, should provide
20 unaltered call detail records in the "EMI Category 11 -- Carrier Access
21 Usage" format. It is my understanding from discussions with the Small
22 LECs that BellSouth is currently sending the Category 11 records, but the
23 actual originating number is being replaced with a "Billing Telephone

1 Number” which is a number assigned by BellSouth and cross-referenced by
2 BellSouth to a list of actual operating carriers. It is the position of the Small
3 LECs that BellSouth should be sending the complete record as it is recorded,
4 to include the actual originating number, the “Carrier Identification Code” of
5 the originating carrier, and the “Local Routing Number,” if present. The field
6 in the BellSouth call record that identifies the “Operating Carrier Number”
7 (or “OCN”) should be populated by the originating carrier and should, in any
8 case, be populated if the originating carrier does not have a “Carrier
9 Identification Code.”

10
11 **ISSUE 17** How should billing disputes concerning transit service
12 be addressed?

13 **Q: How should billing disputes concerning transit service be addressed?**

14 **A:** I have also effectively answered this question in my testimony already set
15 forth above. Nevertheless, there must be terms and conditions between and
16 among all of the parties that sets forth the manner in which disputes, which
17 as I have already explained necessarily involve all of the parties on an
18 interactive and interrelated basis. These terms necessary involve originating
19 carriers, terminating carriers and BellSouth in a coordinated manner.
20 BellSouth necessarily must be involved and has some financial responsibility
21 because what cannot be billed to one carrier has to be billed to one or more
22 of the others, including BellSouth. I have previously explained that the total
23 traffic must be reconciled with component parts of different carriers.

1 **Q: Does this conclude your Direct Testimony?**

2 **A: Yes.**

3

1 **Q: Please state your name, business address and telephone number.**

2 A: My name is Steven E. Watkins. My business address is 2154 Wisconsin Avenue,
3 N.W., Suite 290, Washington, D.C., 20007. My business phone number is (202)
4 333-5276.

5 **Q: Did you file Direct Testimony in this proceeding on December 19, 2005?**

6 A: Yes. I submitted Direct Testimony ("Watkins Direct") to the Florida Public
7 Service Commission ("Commission") on behalf of several small Rural Telephone
8 Companies, specifically TDS Telecom d/b/a TDS Telecom/Quincy Telephone;
9 Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT
10 Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; and
11 Frontier Communications of the South, LLC (collectively referred to as the "Small
12 LECs").

13 **Q: What is the purpose of your Rebuttal Testimony?**

14 A: The purpose of my Rebuttal Testimony is to address select issues and comments
15 of the other parties' witnesses, specifically the direct testimonies filed with the
16 Commission on December 19, 2005 by Kenneth Ray McCallen of BellSouth
17 Telecommunications, Inc. ("McCallen Direct"); Timothy J. Gates on behalf of the
18 Competitive Carriers of the South, Inc. ("Gates Direct"); Marc B. Sterling of
19 Verizon Wireless ("Sterling Direct"); and Billy H. Pruitt on behalf of Sprint
20 Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications
21 Company Limited Partnership, and T-Mobile USA ("Pruitt Direct").

22 **Q: Do you have any initial comments in response to the other parties'**
23 **testimonies?**

24 A: Yes. My Direct Testimony anticipated and, therefore, addresses many of the
25 contentions and positions of the other parties included in their Direct Testimony.

1 Accordingly, I will focus my Rebuttal Testimony on select contentions that I
2 believe merit further discussion and emphasis or may need clarification. To the
3 extent that I do not address all of the comments of the other witnesses, it should
4 not be construed to suggest that the Small LECs necessarily agree with such other
5 portions of the testimonies of the other witnesses.

6 **Q: Please provide a brief summary of the conclusions in your Direct Testimony?**

7 A: I concluded in my Direct Testimony that:

8 (1) A tariff is not the proper mechanism to establish terms, conditions and
9 rates for BellSouth's provision of transit service in an interconnection
10 arrangement. BellSouth should properly establish interconnection terms and
11 conditions in the same manner as other carriers and as required by law. (*See*
12 *Watkins Direct* at pp. 16-24 regarding the response to Issue 1.)

13 (2) The BellSouth Transit Tariff should not be permitted to be used as a
14 vehicle to thrust obligations on the Small LECs beyond those which are required
15 of the Small LECs (or any other LEC) under the Act and controlling rules. (*See*
16 *Watkins Direct* at pp. 24-35 regarding the response to Issue 2.)

17 (3) The Small LECs have no obligation to incur extra cost to transit local
18 traffic to points beyond any technically feasible interconnection point on their
19 incumbent LEC networks to accommodate a choice and request made by a
20 competitive local exchange carrier ("CLEC") or a Commercial Mobile Radio
21 Service ("CMRS") provider. The Small LECs may be willing to continue to
22 provision such extraordinary arrangements if the CLECs and CMRS providers are
23 willing to be responsible for the extraordinary costs that may arise solely because
24 of their preferred interconnection arrangements (*i.e.*, the expense of the transit
25 service).

1 (4) Assuming for argument sake that the Small LECs, in some situations,
2 were to be held responsible for the true cost of transit services, then all of the
3 interconnection terms and conditions including proper rates, should be properly
4 established for BellSouth's transit service.

5 (5) Such interconnection terms and conditions should, among other
6 things, limit BellSouth's commingling of third party transit traffic with
7 BellSouth's own access traffic to a certain level of minutes of use. In other
8 words, when third party traffic with a Small LEC is more than an insignificant
9 amount (i.e., above the threshold), separate trunk groups with that third party
10 should be provisioned. Separate and apart from the trunking arrangement with
11 any specific third party carrier, it is also the position of the Small LECs that transit
12 traffic that BellSouth delivers to, or receives from, a Small LEC or third party
13 carrier should be provisioned on trunks separate from those that BellSouth uses
14 for toll/access purposes.

15 **Q: On p. 8, lines 1-2 of McCallen Direct, BellSouth contends that the Small**
16 **LECs, as an option, can avoid the BellSouth Transit Tariff charges by simply**
17 **"entering into direct interconnection agreements with other**
18 **[Telecommunications Service Providers]." Do you have a response to this**
19 **suggestion?**

20 **A:** Yes. I have three responses.

21 First, as I explained in my Direct Testimony (in my response to Issue 2), the
22 Small LECs do not have an obligation to pay a cost caused by the CLECs or
23 CMRS providers. The use of BellSouth's network to transit traffic arises only
24 because such providers have made a decision, presumably driven by their own
25 cost savings, to utilize the BellSouth tandem to interconnect with the Small LECs.

1 The Small LECs should not bear the cost of that decision.

2 Second, the Small LECs may avoid BellSouth's Transit Tariff charges by
3 provisioning an indirect arrangement with CLECs and CMRS providers, rather
4 than through BellSouth's tandem switch. In other words, there are other options
5 available to Small LECs and third party carriers that would avoid the tandem
6 switched Transit Tariff service including indirect facility arrangements that do not
7 utilize the tandem transit service. Mr. McCallen's suggestion that avoidance of
8 the charge can be obtained through "direct interconnection" is true—what he fails
9 to say is that there are also other network options.

10 Third, unless the CLEC or CMRS provider establishes directly or indirectly a
11 technically feasible interconnection point ("IP") on the incumbent LEC network of
12 the Small LEC, the Small LEC is left with no practical alternative (other than to
13 route traffic via interexchange carriers) to route calls that terminate to the CLEC
14 and CMRS provider customers. No witness appearing on behalf of a CLEC or
15 CMRS provider is advocating that the Commission require such third party CLEC
16 or CMRS providers to establish proper terms, including the establishment of a
17 proper IP, that would allow the Small LECs "to avoid the tariffed transit charges."

18 Thus, Witness McCallen's belief that the Small LECs can avoid the transit charge
19 by interconnections with the CLECs and CMRS Providers ignores the reality that
20 such interconnections have not and will not occur in the real world so long as
21 there is no incentive to do so or so long as there is incentive and opportunity by
22 the CLECs and CMRS to attempt to shift costs to the Small LECs. Absent a
23 requirement by this Commission that the CLEC and CMRS providers, the cost
24 causers, bear any Commission approved transit charges, there will be no incentive
25 for interconnections that avoid the BellSouth tandem switched arrangement.

1 Q: On p. 6, lines 2-3 of the Sterling Direct, Mr. Sterling asserts that “a
2 terminating carrier has no control over how a call was sent to its network.”
3 Do you agree?

4 A: No, I do not. When a CLEC or CMRS provider makes a decision not to establish
5 an IP either directly or indirectly on the network of the Small LEC as the Act and
6 rules require, or establish with the Small LEC some other arrangement consistent
7 with the obligations that apply to the Small LEC, then the terminating CLEC or
8 CMRS provider has decided, by not allowing any other options, how traffic will
9 be delivered — i.e., through the BellSouth tandem switched arrangement. If
10 Verizon Wireless chooses to interconnect indirectly through the BellSouth tandem,
11 then the Small LECs have no option to complete calls other than to transit the
12 BellSouth tandem (except for routing calls to interexchange carriers). The
13 Commission must stop this “interconnection coercion.” Verizon Wireless cannot
14 dictate where and how a local call must be delivered by the originating Small LEC
15 to Verizon Wireless and cannot dictate that a Small LEC must obtain transit
16 switched services from BellSouth. Congress has already addressed this issue in
17 the Act, as I explained in my Direct Testimony. Clearly, if the Small LEC has
18 control over how it sends its traffic, as Mr. Sterling suggests, then it follows that
19 the Small LECs do not have to send originating traffic via the BellSouth transit
20 arrangement. The Small LEC would elect to deliver traffic to Verizon Wireless
21 at a technically feasible interconnection point on the incumbent network of the
22 Small LEC as the controlling rules require. The point is that the Small LECs
23 must have lawful interconnection options available as alternatives to the Transit
24 Tariff service. There is simply no interconnection requirement which obligates
25 the Small LECs to obtain such service from BellSouth.

1 **Q: But doesn't Witness McCallen claim on p. 11, line 4 that "BellSouth is not**
2 **seeking to force ICOs to use its transit service"?**

3 A: Yes, he does. My fear is that by avoiding the thorny issues and apparent positions
4 of the other parties, Witness McCallen's comment is nothing more than a hollow
5 commitment, without practical application. Mr. McCallen does not explain how
6 the Small LECs will be able to exercise a right to pursue other options with the
7 third parties. If the Commission were to establish that the Small LECs have the
8 right to deliver their own originating local traffic to an IP that is technically
9 feasible for the Small LEC and is on incumbent Small LEC network, and that this
10 option is available as the means to avoid BellSouth's Transit Tariff service and
11 charges, then some, if not many, of the fundamental issues in this proceeding
12 regarding carriers' rights and competitive fairness would be resolved.

13 **Q: Does the manner in which the CLECs and the CMRS providers have**
14 **designed their existing arrangements with BellSouth, and the subsequent**
15 **roll-out by BellSouth of its proposed Transit Tariff service, present issues of**
16 **concern to the Small LECs?**

17 A: Yes. My Direct Testimony explained at length why the Small LECs' rights should
18 not be denied and limited by BellSouth and the CLEC/CMRS carriers' design.
19 The Small LECs remain concerned that CLECs and CMRS providers, with the
20 help of BellSouth, will attempt to improperly limit the Small LECs' network and
21 service options. The Small LECs do not have an obligation to purchase BellSouth
22 Transit Services as the means of interconnection to deliver local traffic to third
23 party CLECs and CMRS providers. The Transit Tariff and the third party
24 arrangements with BellSouth essentially attempt to force the Small LECs to incur
25 expenses to provision a transport arrangement at the Small LECs' cost to the

1 benefit of other carriers. The fundamental precept of a competitive environment
2 is undermined when two carriers (*e.g.* a CLEC and BellSouth, or a CMRS
3 provider and BellSouth) can design a network and business arrangement between
4 themselves and then dictate that arrangement to a third carrier (*e.g.* a Small LEC)
5 under which the third carrier must obtain services from one of the other two
6 interconnected carriers to accommodate that arrangement.

7 **Q: Witness McCallen suggests at p. 10, lines 16-17 of his Direct Testimony that**
8 **the "originator of the traffic decides if its traffic transits BellSouth's**
9 **network." Do you agree?**

10 A: No, that is also a distortion of the current facts. Mr. McCallen does not address
11 how a Small LEC should address a recalcitrant CLEC or CMRS provider that
12 refuses to establish a proper IP directly or indirectly with the Small LEC and
13 expects the Small LEC to pay the Transit Tariff rate. The Commission should use
14 this proceeding to correct these issues and reinforce the rights of the Small LECs.
15 Each Small LEC should have the right to expect that if CLECs and CMRS
16 providers want the Small LECs to exchange local interconnection traffic, then the
17 CLECs and CMRS providers must offer arrangements that would not necessarily
18 require the Small LEC to route traffic through the BellSouth transit arrangement
19 and would instead allow the Small LECs to deliver this traffic to a point that is
20 technically feasible for the Small LEC and on the Small LEC's network. Absent
21 such alternatives, it is fair and equitable that these carriers pay the costs for their
22 preferred network arrangements.

23 **Q: On p. 13, lines 6-9 of the McCallen Direct, the BellSouth witness suggests**
24 **that the blocking of traffic would be an option for the Small LECs. Do you**
25 **have any comment?**

1 A: First, I am concerned that the comment regarding "blocking" by Mr. McCallen
2 may be an attempt to elicit an emotional, negative reaction from the Commission
3 against the Small LECs. Let me make it clear. The Small LECs have no
4 intention of doing anything irresponsible, and Mr. McCallen's comment should be
5 viewed in that context.

6 Regardless, in an ideal world, the issue of blocking should never arise.
7 Fundamentally, no carrier has the right to send traffic to another without proper
8 terms and conditions being in place. However, for a variety of reasons, that has
9 not been the case for the sequence of events in recent years with the emergence of
10 CLEC and CMRS provider interconnection with BellSouth. I have already
11 explained in my Direct Testimony the background on the sequence of events
12 regarding so-called transit traffic over the last nine years. (See Watkins Direct at
13 pp. 5-16.) Nevertheless, it is the Small LECs' fundamental position that, prior to
14 service implementation by a new competitive carrier and/or the deployment of a
15 new NPA-NXX by a carrier that would involve local calling with the Small LEC,
16 proper agreements should be in place before the Small LEC begins to deliver
17 local traffic to the other carrier. In such case, there would be no issue of blocking
18 because the traffic would not flow in the first place until the parties address the
19 initial implementation of local interconnection and the rights and responsibilities
20 are settled.

21 Moreover, to the extent that there is no local interconnection option for the
22 Small LECs to route their originating traffic to CLECs and CMRS providers as
23 local calls under reasonable terms and conditions, or that the only option for
24 routing of such traffic would require transport responsibility to some distant point,
25 then short of blocking calls, the Small LECs could provision calls as long distance

1 calls, in which case calls would be routed to, and transported by, an interexchange
2 carrier. This option is not mentioned by Mr. McCallen. In such case, all calls
3 could be completed without blocking.

4 **Q: On p. 8, lines 10-13 of his Direct Testimony, Mr. McCallen defines "Local**
5 **Traffic" for wireline-to-wireline traffic. Is his explanation correct?**

6 A: No. I think that Mr. McCallen has left one important component out of his
7 explanation. He suggests that "any IntraLATA circuit switched call transiting
8 BellSouth's network" between two other wireline LECs would be Local Traffic
9 and treated under the terms of the Transit Tariff. I believe what he meant to say is
10 that any local intraLATA call between two transiting local wireline LECs would
11 be subject to the Transit Tariff. Local traffic for purposes of interconnection
12 between two wireline carriers is defined as that traffic that both originates and
13 terminates within the geographic area that constitutes the local calling area
14 pursuant to a state commission's determination of what the geographic area should
15 be for local calling. Many intraLATA calls are not local calls and are subject to
16 access charges. Non-local intraLATA calls are subject to the compensation terms
17 of intrastate access tariffs. Non-local intraLATA calls are not within the
18 definition of the transit traffic arrangement that Mr. McCallen discusses. Any
19 switching or transport of access traffic that BellSouth or the Small LECs perform
20 are subject to the terms and conditions of intrastate access tariffs, not the Transit
21 Tariff. Mr. McCallen's suggestion that potentially all intraLATA transited calls
22 could be subject to the tariff is simply wrong, and this omission should be
23 corrected.

24 **Q: On p. 10, lines 10-11 of his Direct Testimony, Mr. McCallen concludes that**
25 **the originating carrier of transit traffic is the cost causer and should be the**

1 **carrier that pays. Do you agree?**

2 A: No. That conclusion may be acceptable to two CLECs that operate on either side
3 of a BellSouth tandem, compete within the BellSouth area, and seek to exchange
4 traffic between them, and have voluntarily agreed to participate in such transit
5 arrangement with BellSouth in lieu of establishing dedicated trunks between
6 them. (Of course, there is also no requirement that a CLEC participate in such
7 transit arrangement or agree to receive traffic from BellSouth under which
8 multiple carrier local traffic is commingled with access traffic.) However, Mr.
9 McCallen's statement is not true for the situation where Small LECs provide
10 service in areas adjacent to BellSouth incumbent areas.

11 I set forth an example in my Direct Testimony of an end user of a Small LEC that
12 makes EAS calls to a BellSouth end user in a neighboring town. (*See* pp. 31-33 of
13 my Direct Testimony.) The economic arrangement between the Small LEC and
14 BellSouth for the provision of EAS calls, as required and ordered by the
15 Commission, makes the Small LEC responsible for transporting EAS calls to and
16 from a meet point with BellSouth (usually at or near the boundary between the
17 incumbent LECs). When an end user of BellSouth changes his or her local
18 service to a CLEC, and the CLEC is too small or incapable to have established (or
19 simply refuses to establish) an equivalent arrangement with the Small LEC, the
20 costs that arise as a result of BellSouth's provision of tandem switched transit
21 services are caused by the CLEC. The fact that an end user of Bellsouth changes
22 his or her service to a CLEC cannot create new and extraordinary obligations and
23 costs for a Small LEC for what is the exact same EAS call to the same end user
24 located at the same location. To the extent that there is additional switching
25 performed and additional transport above and beyond that which would apply if

1 the same EAS call were exchanged with a BellSouth end user, the cause of the
2 additional cost is the CLEC that demands a different and more costly treatment of
3 the same EAS call. To the extent that a CLEC does not have trunking
4 capabilities, or is unwilling to be responsible for the transport of EAS calls to and
5 from the meet point with the Small LECs, any additional cost to accommodate
6 some superior arrangement is caused by the CLEC's decisions. The Small LECs
7 have no obligation to subsidize CLECs by being responsible for the extraordinary
8 costs that arise for network arrangements that go beyond what the incumbent
9 LECs do for any other local call.

10 **Q: Mr. Sterling comments at p. 6, lines 15-17 of his Direct Testimony that other**
11 **state commissions have ruled in support of his conclusion that the Small**
12 **LECs should be responsible for the payment of transit charges to BellSouth**
13 **for the Small LECs. Do you have any comment?**

14 A: Yes. I am aware that some state commissions have concluded that where a LEC
15 routes its originating local traffic through BellSouth for what BellSouth describes
16 as a transit traffic arrangement, the originating LEC should be responsible.
17 However, the Georgia and Tennessee decisions that Mr. Sterling cites on p. 6 of
18 his Direct Testimony create no obligation for a small LEC to involuntarily route
19 its originating local traffic in that manner. In fact, the Tennessee decision that Mr.
20 Sterling refers to specifically notes that if the small LEC must transport traffic to a
21 distant location, then that traffic may be treated as an interexchange service and
22 routed to an interexchange carrier. In such case, the originating LEC would not be
23 using the BellSouth transit service (the interexchange carrier would be) and the
24 originating LEC would avoid the charge. In Georgia, the incumbent LECs are
25 free to require in the course of establishing interconnection with a CLEC that the

1 CLEC be responsible for the extraordinary costs of transit if the small, incumbent
2 LEC is willing to send local traffic via BellSouth. In the *Mountain*
3 *Communications* court case cited by Mr. Sterling, the court made no formal
4 decision on the transit traffic issue after the petitioner withdrew that part of its
5 appeal.

6 In any event, the spin that Mr. Sterling would want to attach to these decisions
7 cannot be squared with the explicit requirements of the Act and the FCC's rules.
8 Mr. Sterling incorrectly interprets these decisions to support the conclusion that a
9 CLEC or CMRS provider can demand that the IP for Small LECs, where local
10 traffic subject to Section 251(b)(5) of the Act is to be exchanged, must be on
11 BellSouth's incumbent network and not on the Small LEC's incumbent network.
12 The point on the BellSouth network is not technically feasible for the Small LEC
13 because the Small LEC is neither an incumbent LEC in BellSouth's territory nor
14 does it have network facilities in BellSouth's territory. Any interpretation
15 inconsistent with these principles would be wrong. *See Watkins Direct* at pp. 24-
16 35.

17 As I have previously discussed, the Federal Communications
18 Commission's rules require originating incumbent LECs to establish an
19 "interconnection point between the two carriers" (47 C.F.R. § 51.701(c)) for the
20 transport and termination of local traffic subject to Section 251(b)(5) of the Act
21 (47 C.F.R. § 51.701 (a)-(e)), and the incumbent LEC must allow the
22 interconnecting carrier to establish that interconnection point(s) "with the local
23 exchange carrier's network . . . at any technically feasible point within the carrier's
24 network." (47 U.S.C. §§ 251(c)(2)(A)-(C).

25 The Commission has consistently applied these rules in interconnection

1 proceedings involving BellSouth and there never has been any suggestion that the
2 IP would not be on the incumbent LEC network of BellSouth or any arrangement
3 beyond that which I have set forth immediately above as the Act and the rules
4 prescribe.

5
6 **Q: On p. 22 of your Direct Testimony, you maintain that the BellSouth's Transit**
7 **Tariff is flawed in that BellSouth does not provide assurance that BellSouth**
8 **will provide accurate and complete information about transit traffic to the**
9 **affected carriers. Does Mr. McCallen address this issue?**

10 **A:** Yes. Mr. McCallen admits at p. 16, lines 13-15 of his Direct Testimony that
11 BellSouth does not provision transit traffic with all third party carriers under what
12 it refers to as "Meet-Point-Billed" ("MPB") arrangements and that some traffic is
13 provisioned on a non-MPB basis. It is not clear how the Small LECs will know
14 which arrangement is applicable, and the tariff does not suggest a definitive
15 answer. It would appear that there are shortcomings in BellSouth's capabilities
16 with respect to what BellSouth refers to as non-MPB traffic. Perhaps more
17 critical, Mr. McCallen admits on p. 21 of his Direct Testimony that BellSouth
18 provides detailed records for MPB carriers but provides what he refers to as
19 "Summary Reports" for "UNE-P CLEC usage" and for "non-MPB CMRS usage."

20 BellSouth's Transit Tariff fails to disclose what type of information BellSouth
21 intends to provide for each example of usage and whether that information will be
22 complete and accurate. It is the position of the Small LECs that the information
23 that BellSouth currently is capable of providing (and is providing) to document
24 transited traffic contains "improvised" and arbitrary information that BellSouth
25 adds itself, and in some cases where BellSouth apparently does not create detailed

1 usage records, there remain questions as to what accurate and complete
2 information, if any, exists.

3 **Q: On p. 22, lines 7-13 of his Direct Testimony, Mr. McCallen states that**
4 **BellSouth's only obligation with respect to potential disputes between and**
5 **among carriers that transit traffic through BellSouth would be to provide**
6 **support to answer questions. Do you have any comment?**

7 A: Yes. BellSouth's "commitment" to provide "support to answer questions" as its
8 only responsibility in connection with transit traffic is an unconscionable
9 position. In my direct testimony, I set forth a list of terms and conditions which
10 would need to be addressed with BellSouth regarding its responsibilities. (*See, e.g.,*
11 *Watkins Direct at pp. 18-21.*) What is BellSouth's responsibility if it fails to
12 provide complete and accurate usage information? What is BellSouth's
13 responsibility to the other carriers when the other carriers are required to expend
14 resources to address BellSouth's mistakes and failures? How will the carriers be
15 expected to resolve the situation whereby the Small LEC measures the total
16 amount of traffic that BellSouth sends to the Small LEC over a specific trunk
17 group but the component usage parts that BellSouth identifies and reports do not
18 equal the total usage? Because BellSouth sends its own access traffic over trunk
19 groups with commingled third party traffic, BellSouth is responsible for
20 compensation for some of the traffic. Therefore, it is important that all of the
21 components can be reconciled with the total and that BellSouth pay for its proper
22 share. Will BellSouth be responsible for the payment of access for any short fall
23 of identified traffic or for any traffic that cannot be properly attributed to other
24 transiting carriers? To the extent that the Small LECs may be willing to
25 participate voluntarily in such transit arrangements with BellSouth, these issues

1 need to be addressed with contractual terms and conditions with BellSouth.
2 BellSouth has resisted addressing these issues and its response to this issue is
3 another example of its resistance.

4 I would note that Witness Pruitt agrees that if BellSouth intends to provide
5 transit services to CLEC and CMRS providers such that a Small LEC will be a
6 terminator of transited traffic (a service that BellSouth could not provide without
7 the involvement of the Small LECs), the relationship that BellSouth has with the
8 Small LEC should be pursuant to an interconnection agreement. (Pruitt Direct at
9 p. 26.) Moreover, Mr. Pruitt agrees that disputes over transit traffic usage should
10 be resolved pursuant to appropriately negotiated and potentially arbitrated
11 interconnection agreements. (*Id.* at pp. 32-33.)

12 **Q: On p. 19, lines 1-2 of his Direct Testimony, Mr. McCallen states that the**
13 **transit tariff rate of \$0.003 in its tariff is a "composite" rate that is**
14 **"comparable to rates in recently negotiated agreements." Do you have any**
15 **comment about this observation?**

16 **A:** Yes. BellSouth should be required to offer its transit services in a non-
17 discriminatory manner. A composite rate does not comply with non-
18 discrimination. To the extent that BellSouth has offered a better (*i.e.*, lower) rate
19 to some carrier(s) in Florida, then that rate should be available to all, even through
20 the tariff offering. I cannot see how BellSouth's tariff proposal could satisfy a
21 non-discrimination criterion if BellSouth's tariff did not offer the same
22 advantageous rate that BellSouth has already agreed to with other carriers.
23 For example, Witness Gates observes that BellSouth's proposed "composite" rate
24 is approximately three times as much as the effective rate BellSouth has with one
25 CLEC. Gates Direct at pp. 45-46 and footnote 35. Mr. Gates also observes that

1 the BellSouth transit rate is more than approximately twice that of BellSouth's
2 rates for the equivalent functions in BellSouth interstate access tariff. *Id.* at p. 46
3 and footnote 36.

4 Interestingly, in Docket No. 030869-TL, Petition by BellSouth
5 Telecommunications, Inc. to Reduce Its Network Access Charges Applicable to
6 Intrastate Long Distance in a Revenue-Neutral Manner, it has apparently been
7 BellSouth's position that its existing level of access rates were priced above cost,
8 creating what it maintains is an uneconomic subsidy. Yet, in the provisioning of
9 transit service where BellSouth is the dominant provider of the service, BellSouth
10 apparently intends to exploit its market position with rates twice that for the
11 equivalent functions in BellSouth's access tariff.

12 I would add that Witness Sterling admits that Verizon Wireless has a rate
13 of \$0.002 for transit service with BellSouth. Sterling Direct at p. 8. (*See also*
14 Watkins Direct at p. 46, regarding comparison to access rates.) The Commission
15 should require that BellSouth include a rate that is non-discriminatory based on
16 the other rates BellSouth has already agreed to.

17 **Q: On p. 29, lines 1-7 of the Direct Testimony of Mr. Gates, he states that the**
18 **market can and should determine when it is appropriate to establish**
19 **dedicated trunking arrangements. Do you agree?**

20 **A:** No. In theory, all things being equal, the market might do a reasonable job of
21 determining how carriers provision transport and switching for the exchange of
22 traffic. However, in the case here, there are no balanced market considerations
23 between those carriers serving the more urban markets and the Small LECs that
24 generally serve the more rural areas. There is often no balance of traffic between
25 Small LECs and CLECs. The CLECs want to design an arrangement that places

1 the burden on the Small LECs to serve the interests of the CLECs' business plans.

2 Most notable, many Internet Service Providers ("ISPs") obtain service
3 from CLECs that operate in the more large urban areas. With EAS calling
4 between the rural markets of the Small LECs and the urban markets of the CLEC,
5 an ISP is provided the capability to offer Internet access to rural customers and to
6 receive dial-up calls to its location in the more urban area. This creates a
7 significant benefit to the ISP. But there is no balancing of considerations if the
8 Small LEC, in order to send dial-up traffic to the ISP served by the CLEC, must
9 pay BellSouth to transport traffic to the CLEC on its way to the ISP. The small
10 LEC is harmed and the ISP (and its serving CLEC) greatly benefit. There is no
11 market balancing implication here. Since the traffic to ISPs (i.e., to the CLEC
12 serving the ISP) is one-way, there is no economic incentive for the CLEC to
13 establish a connection with the Small LEC, at a point on the Small LEC network,
14 in a manner that would allow the Small LEC to avoid the burdensome BellSouth
15 charges. Pursuant to the CLECs' imbalanced approach, the CLEC bills and
16 receives revenues from the ISP and both the CLEC and ISP benefit, while the
17 Small LEC is harmed, subjected to transit costs, and effectively subsidizes the
18 CLEC's offering to the ISP. There would be no incentive for the CLEC to change
19 this arrangement.

20 **Q: On p. 34, lines 7-10 of the Direct Testimony of Mr. Gates, he indicates that if**
21 **the Commission does establish a threshold which would determine when**
22 **traffic between a third party carrier and a Small LEC should be provisioned**
23 **with a distinct trunk group, it should be based on a sustained level of traffic,**
24 **such as over a three consecutive month period, to account for isolated**
25 **variations. Do you agree?**

1 A: Yes, the Small LECs believe that a three consecutive month period is a reasonable
2 basis over which to determine whether a traffic level threshold has been reached.

3 **Q: Does this conclude your Rebuttal Testimony?**

4 A: Yes. However, after I review the rebuttal testimony and responses to
5 interrogatories and information requests, I reserve the right to revise this
6 testimony in light of any new information.

1 BY MR. HOFFMAN:

2 Q Mr. Watkins, have you prepared a summary of both your
3 direct and rebuttal testimony?

4 A Yes.

5 Q Would you please provide your summary to the
6 Commission?

7 A Good morning. The Small LECs' position in this
8 proceeding is that an intrastate tariff is not the proper
9 mechanism for BellSouth to establish the terms for its transit
10 services. Even if BellSouth were allowed to proceed with its
11 tariff, there are remaining questions as to which carriers
12 should be responsible for the payment of the charges and how
13 much BellSouth should be allowed to charge.

14 Over the last ten years, BellSouth has entered into
15 interconnection agreements with competitive LECs and CMRS
16 providers for competitive services in BellSouth's exchanges.
17 As a result, the CLEC and the CMRS providers utilize
18 BellSouth's existing interconnection arrangements with the
19 Small LECs as the means to exchange traffic with the Small
20 LECs. The Small LECs did not stand in the way of the new
21 competitors and have endured these arrangements only because
22 the Small LECs were not responsible for any payment of charges
23 or the provision of extraordinary network or service
24 arrangements beyond that which they do with BellSouth.

25 Now BellSouth and the other carriers ten years later

1 want to change that arrangement and want to impose new costs on
2 the Small LECs to accommodate the network design and choices
3 made by the CLECs and the CMRS providers. Regardless of the
4 controlling interconnection requirements that I will discuss in
5 a moment, a tariff is not the proper mechanism to establish the
6 terms and conditions and rates for BellSouth's provision of
7 transit service for local interconnection traffic.

8 The Act clearly presumes that local competitive
9 interconnection should be initiated through a request,
10 negotiation, and potential arbitration, not through
11 unilaterally filed tariffs. We also question whether a state
12 tariff can be used for network functions for ISP-bound traffic
13 which the FCC has determined is an interstate service.
14 Moreover, a tariff should not be used to impose obligations on
15 the Small LECs that would not otherwise apply under the
16 interconnection requirements.

17 However, the terms of the BellSouth transit tariff
18 would impose just that improper result. Accordingly, the
19 Commission should confirm in this proceeding, as it has before,
20 that the small LEC incumbents have no local interconnection
21 obligation to transport local traffic to points beyond a
22 technically feasible point on their own incumbent LEC networks.
23 Whether the CLEC or CMRS providers exchange traffic with the
24 incumbents at that interconnection point either through direct
25 or indirect means does not change the obligations of the

1 incumbent LECs.

2 There is a troubling irony here. If the other
3 carriers interpretation as set forth in this proceeding is
4 imposed upon the Small LECs, the result would be that the small
5 rural telephone companies will be subject to more burdensome
6 interconnection obligations than those applied to large Bell
7 companies like BellSouth. That is not the result prescribed by
8 Congress under the Act.

9 The requirement established in the Act obligates a
10 small LEC only to transport local interconnection traffic to
11 points no farther than where the small LEC transports other
12 local or EAS calls, and that is to their service territory
13 border. The BellSouth transiting costs arise from an
14 affirmative decision by the CLEC and the CMRS providers to use
15 BellSouth's network in lieu of making the investments necessary
16 or provisioning other network arrangements to reach the Small
17 LEC's network. As such, these carriers are the cost-causers
18 and should pay any transit charge approved by the Commission.

19 If the Commission allows the use of a tariffing
20 mechanism as proposed by BellSouth, and apart from which
21 carrier is responsible for payment, the Commission should
22 certainly not bless a rate that is not properly established or
23 offered by BellSouth on a nondiscriminatory basis. Because
24 there are different compensation implications for different
25 types of traffic, BellSouth should not commingle transit

1 BY MR. TYLER:

2 Q Good morning, Mr. Watkins.

3 A Good morning.

4 Q You've worked in the telecommunications industry for
5 almost three decades, is that correct?

6 A That is correct.

7 Q And during that time, you have no doubt become
8 familiar with the various industry standards, is that correct?

9 A That's correct.

10 Q So you're aware of general industry practices?

11 A Yes.

12 Q And general industry procedures?

13 A Yes.

14 Q You have a familiarity with regulatory policies that
15 are relevant to carriers to whom you provide consulting
16 services over the years, correct?

17 A Yes.

18 Q You filed testimony on behalf of TDS Telecom, did you
19 not?

20 A Yes.

21 Q And you filed testimony on behalf of GT Com, as well,
22 correct?

23 A Yes.

24 Q And you filed testimony on behalf of Northeast
25 Florida Telephone Company?

1 A Yes.

2 Q Does TDS Telecom exchange any transit traffic with
3 BellSouth within the parties' EAS in Florida?

4 A I don't believe they do currently.

5 Q Does GT Com exchange any transit traffic with
6 BellSouth within the parties' EAS in Florida?

7 A I don't believe they do currently.

8 Q Does Northeast Florida Telephone Company exchange any
9 transit traffic with BellSouth within the parties' EAS in
10 Florida?

11 A Not currently, no.

12 Q So BellSouth isn't billing those parties a penny
13 under its transit traffic tariff, is it?

14 A That's true.

15 Q Would you agree with me that the transit service that
16 BellSouth provides is a valuable service to end users who wish
17 to place calls to one another and yet their carriers' networks
18 are not directly interconnected?

19 A Yes. If that is the only way to complete a call,
20 then that would be potentially valuable to carriers that want
21 to use that service, yes.

22 Q Does BellSouth incur a cost when it transits traffic
23 of other providers over its network?

24 A Yes.

25 Q Are you familiar with the concept in

1 telecommunications that the cost-causer pays for the costs that
2 it causes?

3 A I'm familiar that the concept is often discussed in
4 the context of policymaking. I'm not certain that it's part of
5 the rules that apply to the issues under review here.

6 Q Sir, my question to you was are you familiar --

7 A I am familiar.

8 Q Let me finish my question, if you would, sir, before
9 you provide an answer.

10 That was a yes, you are familiar?

11 A Yes.

12 Q Thank you. And you represent Frontier?

13 A Yes.

14 Q And you represent Smart City, as well?

15 A Correct.

16 Q Do they ever have end-user traffic that originates on
17 their network, transits BellSouth's network, and terminates
18 with the CLEC?

19 A Yes.

20 Q Do they ever have end-user traffic that originates on
21 their network, transits BellSouth's network, and then
22 terminates with a CMRS provider?

23 A I believe so, yes.

24 Q But the Small LECs think that they should not have to
25 pay BellSouth for transiting such calls that they originate, is

1 that right?

2 A Yes. We think the other carriers who have arranged
3 that arrangement are the carriers that should be obligated to
4 make the payment.

5 Q Have you read all of the testimony of the various
6 parties filed in this docket?

7 A At one point in time, yes.

8 Q Are you aware of any other party other than the Small
9 LECs in this docket that expresses a different view in its
10 testimony filed in this docket from the principle that the
11 originating carrier should be responsible for paying BellSouth
12 for BellSouth's transit service?

13 A No.

14 Q And you believe that the Small LECs should have
15 options available to them other than the use of BellSouth's
16 transit service and have the transit traffic tariff apply to
17 them?

18 A Yes.

19 Q And, in fact, the Small LECs do have other options
20 available to them, don't they?

21 A No, I don't agree that under the current state of
22 affairs that's a true statement.

23 Q Do you recall when I took your deposition?

24 A Okay. Yes.

25 Q Do you have that deposition testimony with you?

1 A Okay.

2 Q Turn with me to Page 34, please. One of the
3 questions I asked you there in terms of an option was whether
4 or not the parties could negotiate at arm's-length a transit
5 service. Do you see that?

6 A I see that.

7 Q And I asked you, "But certainly the parties can
8 negotiate at arm's-length a transit service such that the
9 transit tariff would not apply to the Small LECs, correct?"

10 Read your answer at 10, sir.

11 A "That's possible, yes."

12 However, just because we can negotiate doesn't
13 necessarily mean we are going to be provided other options.

14 Q Negotiating a contract is an option other than having
15 the tariff apply, isn't that correct?

16 A That's not clear that the result of that negotiation
17 would relieve us from having to pay BellSouth transit charges.

18 Q And, in fact, if a small LEC decided that it didn't
19 want to use BellSouth's network to terminate a call to a
20 third-party, the small LEC could enter into direct connection
21 with the third-party's network, isn't that true?

22 A That is certainly an option. Again, it's not clear
23 that it is an option available to us because that would require
24 the CMRS providers and the CLECs to agree to a different
25 arrangement than using BellSouth's transit arrangement.

1 Q Oh. So you're not aware of instances where, in fact,
2 they have directly interconnected?

3 A They have in some instances.

4 Q So then it is an viable option, it has actually
5 occurred, correct?

6 A It is not an option that we can guarantee that we
7 have the opportunity to deploy. It's at the option of the
8 other carriers.

9 Q And if a small LEC decided that it didn't want to use
10 BellSouth's network to terminate a call to a third-party, it
11 could decide not to even send that traffic over BellSouth's
12 network, isn't that true?

13 A That's hypothetically an option. That is not an
14 option we are considering in this proceeding, no.

15 Q Are you aware of anything in the Telecommunications
16 Act requiring that when BellSouth enters into an
17 interconnection agreement with parties other than the Small
18 LECs that BellSouth must involve the Small LECs in those
19 negotiations?

20 A I think that my position is that if BellSouth intends
21 to offer services to other carriers that also involve the Small
22 LECs, it's incumbent upon BellSouth to have terms and
23 conditions in place with the Small LECs that set forth
24 BellSouth's relationship with the Small LECs as a fundamental
25 common sense principle.

1 Q I believe I thoroughly understand your position, sir,
2 but that was not an answer to my question.

3 My question is are you aware of anything in the
4 Telecommunications Act of 1996 requiring that when BellSouth
5 enters into interconnection agreements with parties other than
6 the Small LECs that BellSouth must involve the Small LECs in
7 those negotiations?

8 A Not with BellSouth's negotiation with third parties,
9 no.

10 Q And, in fact, interconnection agreements are
11 routinely bilateral agreements, aren't they?

12 A They are.

13 Q You are familiar, sir, with industry standard billing
14 records?

15 A I'm not familiar with them on a daily usage basis,
16 but I'm familiar with them generally.

17 Q Is an EMI-110101 record a type of industry standard
18 billing record?

19 A That is my understanding it is one type of standard
20 record, yes.

21 Q And using EMI records, can a small LEC bill other
22 carriers for traffic that did not originate with BellSouth but
23 solely transitted BellSouth's network for termination on a
24 Small LEC's network?

25 A They certainly can prepare a bill based upon the

1 usage and certainly could send a bill. Whether they would
2 receive payment is another issue.

3 Q And that would be between the small LEC and the
4 originating carrier, wouldn't it?

5 A Potentially.

6 Q And you know of no explicit directive that BellSouth
7 is failing to abide by in providing EMI records to the Small
8 LECs for them to bill third-party originating carriers, do you?

9 A Well, my position is that BellSouth should have had
10 terms in place with the Small LECs if it was going to involve
11 the Small LECs, which would have set forth the parties relative
12 obligations and responsibilities. And since there isn't any
13 terms in place, it's hard to say whether they are living up to
14 their obligations or not. But we do know that some of those
15 records are either not complete or include information that
16 doesn't identify certain aspects in the record correctly, and
17 we also believe that BellSouth doesn't give us complete records
18 on all of the usage.

19 Q Once again, sir, I'm going to ask you not to
20 editorialize and to simply answer my question. I asked you do
21 you know of any explicit directive that BellSouth is failing to
22 abide by in providing EMI records to the Small LECs for them to
23 bill third-party originating carriers?

24 MR. HOFFMAN: Excuse me. Madam Chairman, I'm going
25 to object to counsel's characterization or mischaracterization

1 of his answer. As you know, a witness is allowed to respond to
2 the question and explain his answer, which is what he did.

3 MR. TYLER: Madam Chair.

4 CHAIRMAN EDGAR: Mr. Tyler.

5 MR. TYLER: The questions that I'm posing require an
6 affirmative or a negative. If after giving a yes or a no the
7 witness wants to expound on that, then I think that is
8 permissible. He did not respond with a yes or no to the
9 question, and this is the third time.

10 CHAIRMAN EDGAR: To the witness, if you can start
11 with a yes or a no answer. You certainly may, and I encourage
12 you to elaborate on your answer.

13 THE WITNESS: Thank you.

14 BY MR. TYLER:

15 Q Did you understand the question?

16 A Would you mind repeating it.

17 Q Do you know of any explicit directive that BellSouth
18 is failing to abide by in providing EMI records to the Small
19 LECs for them to bill third-party originating carriers?

20 A I do not know of any directives regarding records.

21 Q But you don't think that BellSouth's tariffed rate of
22 .003 is appropriate, is that correct?

23 A We think that BellSouth -- yes, that's not
24 appropriate.

25 Q And you mentioned in your direct prefiled testimony

1 that in its initial filing BellSouth had proposed a higher rate
2 of .006, but subsequently changed that. You didn't think .006
3 was appropriate either, did you?

4 A No.

5 MR. TYLER: Madam Chair, I would like to have an
6 exhibit handed out and marked sequentially as the next exhibit,
7 please.

8 CHAIRMAN EDGAR: We are on Exhibit 44.

9 MR. TYLER: And the title of this would be the
10 General Terms and Conditions Between GTC, Incorporated, doing
11 business as GT Com, and Sprint Communications Company, Limited
12 Partnership.

13 (Exhibit 44 marked for identification.)

14 BY MR. TYLER:

15 Q Do you have that document in front of you?

16 A Yes, I do.

17 Q Would you please turn to the final page of that
18 document. Are you there, sir?

19 A Yes.

20 Q Do you see where it says pricing attachment in the
21 top right-hand corner?

22 A Yes.

23 Q And if you go about halfway down, delineated under B,
24 do you see where it says transit traffic rate?

25 A Yes.

1 Q Read the rate.

2 A In dollars, 0.008 per minute.

3 MR. TYLER: Thank you, sir. I have no further
4 questions.

5 CHAIRMAN EDGAR: Mr. Gross.

6 MR. GROSS: No questions.

7 CHAIRMAN EDGAR: Mr. Hatch.

8 MR. HATCH: Hopefully just a couple of brief ones.

9 CROSS EXAMINATION

10 BY MR. HATCH:

11 Q Mr. Watkins, are you familiar on behalf of your
12 clients with the modified access-based compensation plan that
13 the Commission adopted probably the better part of 20 years ago
14 in the intraLATA LEC toll bill and keep docket?

15 A The originating responsibility plan, intraLATA access
16 arrangement?

17 Q Go ahead and describe your --

18 A I-TWORP (phonetic).

19 Q It has been labeled various things. In Florida it
20 ended up being called the modified access-based compensation
21 plan, but I suspect it is the same thing.

22 A I was involved with clients here in Florida at the
23 time, but --

24 Q Is it your understanding that under that plan for
25 incumbent -- back in those days, prior to very much competition

1 at the local, any competition at the local level -- that
2 incumbent-to-incumbent intraLATA toll, for that kind of traffic
3 that the originating carrier billed and kept the toll revenue,
4 it paid the terminating carrier switched access revenues, and
5 then if there was a transiting carrier, that carrier was paid
6 the local switching rate out of the access tariffs. Do you
7 recall that?

8 A Except in the access world there is no such thing as
9 transiting, it all becomes transport of access traffic.

10 Q But under the Commission's access-based compensation
11 plan, for example, are you familiar with the Jacksonville LATA?

12 A Not exactly, no.

13 Q Except for the subject to check, you have several
14 ICOs, or at least two ICOs plus BellSouth in the Jacksonville
15 LATA.

16 A Okay.

17 Q In fact, one of your clients, Northeast, is in the
18 Jacksonville LATA?

19 A Yes.

20 Q Along with AllTel?

21 A Okay.

22 Q Now, under the Commission's plan, a toll call from
23 AllTel to Northeast would transit BellSouth's access tandem.
24 And under the Commission's system, BellSouth would pay the
25 local switching rate?

1 Authority in August 2004 on behalf of the Small LECs in the
2 252(b) arbitration proceeding in which transit traffic was a
3 disputed issue?

4 A There were certain disputed issues. I'm not so sure
5 that you can say the transit traffic was necessarily an issue
6 under review in that proceeding. BellSouth had withdrawn its
7 tariff proposal in Tennessee and still hasn't refiled it, so
8 there is no BellSouth transit tariff in Tennessee.

9 Q Well, let me try again.

10 Did you testify before the Tennessee Regulatory
11 Authority in a proceeding in Tennessee in August of 2004?

12 A Yes.

13 Q Was the issue of which party pays the transit fee an
14 issue in that proceeding?

15 A The issue was similarly -- that certainly could be a
16 potential implication of the issue, but the actual issue was
17 where the interconnection point should be between the carriers
18 and what the obligation of the small incumbents should be to
19 transport their traffic to an interconnection point. And if
20 the interconnection point was not on the network of the Small
21 LECs, then the potential exists that it might mean that traffic
22 would transit BellSouth's tariff, and the possibility exists
23 that transit charges could apply in the future.

24 Q And, in fact, the result of that proceeding and the
25 ruling by the TRA in that docket was that the POI was not on

1 the Small LECs network, and, therefore, the Small LECs could be
2 responsible, in fact, would be responsible for paying transit
3 charges to BellSouth, is that correct?

4 A I agree with the first part, I do not agree with the
5 second part. They didn't necessarily say that the
6 responsibility to get to the POI must be through BellSouth. In
7 fact, later in that same order they agreed that traffic could
8 be provisioned through interexchange services to complete calls
9 to wireless carriers. So it's not clear that the order results
10 in forcing the Small LECs to actually utilize BellSouth's
11 transit service.

12 Q Well, let me ask you this: Were you pleased with the
13 ruling by the TRA on that particular issue?

14 A Frankly, the ruling is --

15 MR. PALMER: Madam Chair, may I get a yes or no. He
16 has failed to respond yes or no and has launched into diatribes
17 several times, so I would appreciate a yes or no, and then he
18 can explain.

19 CHAIRMAN EDGAR: Once again, if you can, start with a
20 yes or no. Again, absolutely you may elaborate or qualify.
21 And let's make sure the questions are clear.

22 MR. PALMER: Fine. Thank you.

23 BY MR. PALMER:

24 Q Were you pleased with the ruling by the TRA on that
25 subject?

1 A Overall, no. I was pleased with parts and not
2 pleased with others.

3 Q With respect to the issue of where the POI could be
4 located, were you pleased?

5 A No.

6 Q Thank you. Did you also submit testimony on behalf
7 of AllTel in the February 2004 arbitration proceeding with
8 Verizon Wireless in Pennsylvania?

9 A Yes.

10 Q Were you pleased with the outcome of that ruling by
11 the Pennsylvania PUC?

12 A I don't recall the result of that ruling. I
13 discontinued my work with Alltel before the ruling came out.

14 Q Do you recall what testimony you might have presented
15 with respect to the issue of transit traffic?

16 A It would have been exactly consistent with my
17 testimony in this proceeding.

18 Q Thank you. And would your testimony in the Tennessee
19 proceeding have been the same as today?

20 A It was.

21 Q Thank you. In your deposition you mentioned the
22 FCC's Answer Indiana Ruling as something you rely upon for your
23 position on transit traffic, is that correct?

24 A It's -- yes.

25 Q Am I correct that the answer in the Indiana ruling is

1 commonly referred to as the Tex-Com decision?

2 A I believe so.

3 Q Are you aware that the Tenth Circuit Court of Appeals
4 in the Atlas Telephone Company versus Oklahoma Corporation
5 Commission said that the Small LECs reliance on Tex-Com was
6 unwarranted?

7 A I'm not exactly familiar with that decision in
8 detail, no.

9 MR. PALMER: Thank you. That's all I have.

10 CHAIRMAN EDGAR: Ms. Kaufman.

11 MS. KAUFMAN: Thank you. Madam Chair, I'm going to
12 defer to my colleagues for Mr. Watkins.

13 CHAIRMAN EDGAR: Ms. Berlin.

14 MS. BERLIN: No questions.

15 CHAIRMAN EDGAR: Mr. Atkinson.

16 MR. ATKINSON: Thank you, Madam Chair.

17 Commissioners.

18 CROSS EXAMINATION

19 BY MR. ATKINSON:

20 Q Good morning, Mr. Watkins.

21 A Good morning.

22 Q Bill Atkinson on behalf of Sprint Nextel. I have a
23 few questions for you this morning. I would like to start off
24 with the BellSouth Exhibit 44, which I believe is the Sprint
25 Limited Partnership/GT Com agreement that counsel for BellSouth

1 handed you a moment ago. I'll let you locate that, and I just
2 have a few general questions for you.

3 Now, I believe counsel for BellSouth asked you a
4 moment ago about the transit rate in the pricing attachment
5 from the Florida GT Com/Sprint Limited Partnership agreement.
6 Now, were you involved directly in the GT Com/Sprint LP
7 interconnection negotiations?

8 A No.

9 Q But you have represented companies many times in
10 interconnection negotiations over the years, isn't that
11 correct?

12 A Yes.

13 Q And isn't it true that in the give and take of
14 interconnection negotiations, based on your experience with
15 them, that parties normally concede on some issues and usually
16 gain something in return, something they want?

17 A That is very likely, yes.

18 Q Thank you. Mr. Watkins, it's fair to say that you
19 agree, don't you, with the Sprint T-Mobile witness, Mr. Pruitt,
20 that a tariff is not the appropriate vehicle through which
21 BellSouth should attempt to establish rates, terms, and
22 conditions for its provision of transit service, is that
23 correct?

24 A Yes.

25 Q And you agree with Mr. Pruitt, don't you, that the

1 FCC's intent, as indicated by its T-Mobile order, is for
2 intercarrier compensation arrangements for the exchange of
3 non-access traffic to be handled through the
4 negotiation/arbitration process in the '96 Act, is that
5 correct?

6 A Yes.

7 MR. ATKINSON: One moment, Madam Chairman.

8 That's all I have. Thank you, Mr. Watkins.

9 CHAIRMAN EDGAR: Mr. Self.

10 MR. SELF: Thank you, Madam Chairman.

11 CROSS EXAMINATION

12 BY MR. SELF:

13 Q Good morning, Mr. Watkins, I'm Floyd Self on behalf
14 of T-Mobile. I have just a couple of questions.

15 Do you know whether the TDS territory in Florida
16 encompasses a single exchange or multiple exchanges?

17 A I'm not certain.

18 Q Do you know with respect to any of the Small LECs
19 that you represent whether their service territory in Florida
20 is a single exchange or multiple exchanges?

21 A I believe some are single exchanges and some are
22 multiple exchanges.

23 Q Okay. Do you know whether any of the small LEC
24 companies that you represent operate a tandem in Florida in
25 conjunction with their Florida service territories?

1 A Yes.

2 Q I'm sorry?

3 A Do I know if some operate a tandem is your question?

4 Q Yes.

5 A Yes.

6 Q Which ones?

7 A I believe GT Com does.

8 Q Do you know how many EAS routes there are between
9 BellSouth and TDS?

10 A I do not.

11 Q Between BellSouth and Northeast Florida?

12 A None.

13 Q Between BellSouth and GT Com?

14 A I'm not certain.

15 Q BellSouth and Smart City?

16 A I'm not certain of the total. I am more familiar
17 with the local calling areas around the Orlando area, but I
18 don't know exactly how many there are.

19 Q And how about BellSouth and Frontier?

20 A I do not know.

21 Q Are EAS routes trunked on a -- in general, are EAS
22 routes trunked on a direct end office-to-end office basis, or
23 do they route that EAS traffic through a tandem?

24 A From the small company standpoint, if they don't have
25 a tandem, it is routed to an end office. How BellSouth routes

1 on its side is BellSouth's decision.

2 Q Okay. So if there was a EAS route between Frontier
3 and BellSouth, it would go from a Frontier end office to a
4 BellSouth end office?

5 A It would actually go from Frontier to a meet point at
6 the border and be handed off to BellSouth, and BellSouth
7 designs its own network on the other side to determine how it
8 completes EAS calls. Sometimes BellSouth may use tandems for
9 that purpose and sometimes they may not.

10 Q Okay. Do each of the Small LECs that you represent
11 exchange traffic with BellSouth through a BellSouth tandem?

12 A For EAS, no. We exchange EAS traffic with BellSouth
13 by delivering it to the meet point at our border, and that's
14 the sum total of our responsibility.

15 Q How about non-local traffic?

16 A Non-local is access, and the provision of transport
17 and switching of access traffic is a service that a local
18 exchange carrier provides to interexchange carriers, and the
19 compensation terms for that are set forth in access tariffs.
20 So it is similar to the question I had earlier, access is
21 subject to an entirely different framework that has been
22 developed and reflected in access tariffs.

23 Q All right. But I'm just trying to get to what would
24 be the physical connection. Take, for example, pick any long
25 distance carrier, say AT&t Long Distance. If they were trying

1 to -- if there is a call destined for a Frontier customer, do
2 you know whether AT&T Long Distance has a direct connection
3 with a Frontier switch, or would it route through a BellSouth
4 tandem?

5 A I don't know the exact answer, but I can tell you the
6 options. They either have a direct connection with Frontier,
7 or Frontier may have a meet point billing access charge
8 arrangement with BellSouth where each party bills its access
9 charges on a meet point billed basis, in which case then AT&T
10 would route its traffic through the BellSouth tandem. But
11 BellSouth's arrangement in that case is a service that
12 BellSouth is providing to AT&T, not to Frontier, for calls in
13 either direction.

14 Q So if a Frontier customer is presubscribed to AT&T --

15 A Correct. And presuming that the Frontier end office
16 does have a meet point billing arrangement with the BellSouth
17 tandem, Frontier would originate the call, hand it off at the
18 meet point. BellSouth would continue to transport that call on
19 to AT&T, but AT&T is the one that pays BellSouth for the access
20 service that BellSouth provides.

21 Q For that scenario, that Frontier-originated call, the
22 trunking that connects that Frontier office to the BellSouth
23 tandem, is that a facility that is entirely constructed by
24 Frontier, or entirely by BellSouth, or is there a manhole out
25 at the territorial boundary between Frontier and BellSouth

1 where Frontier runs a wire or cable or whatever, and BellSouth
2 and it meets in this manhole?

3 A Generally -- I don't know the exact situation -- but
4 generally Frontier would be responsible for facilities to a
5 meet point that is usually near their border, and then
6 BellSouth would be responsible for the trunks on its side to
7 its tandem.

8 Q Is it always at the border?

9 A It could be -- it's not always at the border, but
10 that is the most typical example.

11 Q Do you know how Frontier's arrangement is with
12 BellSouth?

13 A I don't know the specifics, no.

14 Q Or Smart City?

15 A I don't know the specifics. I do know that they have
16 meet points.

17 MR. SELF: That's all, Madam Chairman. Thank you.

18 CHAIRMAN EDGAR: Mr. Gerkin.

19 MR. GERKIN: Yes, ma'am. I have just a few
20 questions.

21 CROSS EXAMINATION

22 BY MR. GERKIN:

23 Q Good afternoon, Mr. Watkins, I'm Charlie Gerkin. I'm
24 here today for MetroPCS, LLC.

25 I believe we established that you have a significant

1 amount of experience in the telecommunications industry, is
2 that correct?

3 A I think so, yes.

4 Q And that experience is primarily working with small
5 and rural ILECs?

6 A That's correct.

7 Q In your experience, Mr. Watkins, do small ILECs, such
8 as your clients, generally experience the same economies of
9 scale as larger ILECs like BellSouth?

10 A No.

11 Q So your clients typically have higher costs for the
12 same function than BellSouth does?

13 A That's not always the case. But I would agree,
14 generally, if you have a smaller number of customers and more
15 sparsely populated service territory, that it's very likely
16 your per unit costs would be higher.

17 Q And do small ILECs typically have similar, say,
18 tandem switching costs on a per minute of use basis to the
19 costs that are incurred by large ILECs such as BellSouth?

20 A Again, there may be some that have the same cost
21 levels. But to the extent they have smaller tandems, then,
22 again, I would expect the economies to be that their per unit
23 costs would be slightly higher.

24 Q So basically what you are saying, I think, is that
25 because a small ILEC has a smaller amount of traffic or a

1 smaller customer base to spread total costs over, then its unit
2 cost is typically higher than a large ILEC?

3 A That's often the case, yes.

4 Q So would it be your opinion that a transit rate that
5 was based on cost would very likely be higher or lower for a
6 small ILEC than for a large ILEC performing the same transit
7 functions?

8 A More likely higher.

9 Q So the small ILEC would have a higher cost for
10 performing the transit function?

11 A Yes.

12 MR. GERKIN: Thank you, sir. No more questions.

13 CHAIRMAN EDGAR: Questions from staff?

14 MS. BANKS: Staff has no questions.

15 CHAIRMAN EDGAR: Redirect, Mr. Hoffman.

16 MR. HOFFMAN: Thank you, Madam Chairman.

17 REDIRECT EXAMINATION

18 BY MR. HOFFMAN:

19 Q Mr. Watkins, let me begin with, just for
20 clarification, a question from Mr. Self. I believe he asked
21 you if any of the Small LECs operated tandem. I believe your
22 answer was GT Com. Are there any others?

23 A I'm not certain, to be honest.

24 Q You had a few questions from Mr. Palmer regarding
25 your happiness or unhappiness with the order of the Tennessee

1 Regulatory Authority. Could you provide the Commission with
2 your understanding of what the Tennessee Regulatory Authority
3 determined with regard to financial responsibility for transit
4 fees?

5 A I don't believe they made any determination yet about
6 transit fees because the BellSouth tariff is not in place. I
7 believe there is some confusion in the order as to exactly what
8 interpretation you give to the conclusions that they came to.

9 Q With respect to the interconnection agreement between
10 GT Com and Sprint Communications Company, Limited Partnership,
11 that has been marked as Exhibit 44, do you have any knowledge
12 of the facts or circumstances that led to the rates that are
13 reflected in that agreement?

14 A No.

15 Q Did you have any involvement with the negotiation of
16 the rates that are reflected in that agreement?

17 A No.

18 Q Just a couple more questions, Mr. Watkins.

19 Mr. Tyler asked you a question concerning whether or
20 not BellSouth was required to include a small LEC in an
21 interconnection agreement negotiation with a CLEC or a wireless
22 carrier, and I believe that your response was no, BellSouth is
23 not required to do so. Why are you advocating, then, a
24 three-party negotiation process?

25 A Well, again, to the extent that BellSouth enters into

1 a bilateral agreement with a CLEC or a CMRS provider that
2 necessarily involves sending traffic to the Small LECs. As I
3 said earlier, it's incumbent that terms and conditions be in
4 place between BellSouth and the Small LECs that cover the
5 rights and responsibilities. And, therefore, the agreements
6 that BellSouth has with the Small LECs have to be compatible
7 and consistent with the agreements that BellSouth has with the
8 CLECs and the CMRS providers.

9 Now, you can accomplish that in two different ways.
10 You could have three sets of agreements between all of the
11 potential party combinations, or you could have one agreement
12 which guarantees that all the terms and conditions are
13 consistent among the various relationships. It's just my
14 position that one agreement would be simpler than three
15 separate relationship agreements.

16 Q Thank you. Mr. Tyler also asked you a question
17 concerning whether there was any explicit directive that
18 BellSouth was not following with regard to billing records.
19 Will you please explain your concerns with the billing records
20 that BellSouth provides to terminating carriers?

21 A Well, we put information in the record where we
22 question some of the information we get, we put information in
23 the record that shows where the original calling number is
24 replaced with some billing number which diminishes our ability
25 to police and to correctly identify calls and the jurisdiction

1 of calls. And we put other information in the record where we
2 think the traffic has just been misidentified by the wrong
3 carriers. But, more importantly, the independent industry over
4 the last fifty years has taken steps to diminish their reliance
5 on Bell Companies because they have always had problems with
6 the accuracy and completeness of billing records.

7 BellSouth really has no clear cut motivation to make
8 sure that it gets everything right for the Small LECs, so many
9 of my clients over the years have deployed their own tandems.
10 One primary purpose of deploying a tandem is so that they can
11 do their own identification of traffic and measurement of
12 traffic so that they are not reliant on BellSouth. I have
13 concerns as we move into a competitive world if the Small LECs
14 are forced to rely on BellSouth, that brings up competitive
15 implications as to dependence.

16 Q Last question. Mr. Tyler asked you a question along
17 the lines of the fact that all of the other parties in this
18 proceeding are taking the position that the originating carrier
19 should pay for any transit rate approved by the Commission.
20 Why do the Small LECs take a different position?

21 A The Small LECs are the only one in a position that is
22 distinct from all of the other parties. All of the other
23 parties are not in the same position as the Small LECs. They
24 all stand to gain by taking that position.

25 Q And why are the Small LECs in a different position

1 from the other parties?

2 A Because they are the only incumbent LECs that are
3 being asked to be responsible for delivery of traffic to points
4 beyond the technically feasible interconnection point on their
5 own network, a requirement that doesn't even apply to
6 BellSouth.

7 MR. HOFFMAN: No further questions. Thank you.

8 CHAIRMAN EDGAR: Thank you.

9 Mr. Tyler, would you like to move your exhibit?

10 MR. TYLER: Yes. Thank you, Madam Chair. BellSouth
11 would ask that Exhibit Number 44 be moved into the record.

12 MR. HOFFMAN: Madam Chairman, I'm going to object to
13 the admission of the exhibit. The testimony of Mr. Watkins
14 confirms that he had no involvement with the negotiation of the
15 rates that are reflected in this particular agreement and that
16 he has no knowledge of the facts and circumstances that led to
17 the rates that are reflected in this exhibit. Moreover, there
18 is no evidence in this record that GT Com provides a transit
19 service to Sprint which, as I understand it, is the entire
20 point of the exhibit. So we believe the exhibit is irrelevant
21 and should not be admitted.

22 CHAIRMAN EDGAR: Ms. Banks.

23 MS. BANKS: Give me one moment, Madam Chair.

24 Madam Chair, it's my understanding in looking at how
25 this document is labeled that this is something that was --

1 this agreement was actually filed with the Clerk's Office here
2 at the Commission. I think it's a document that probably
3 should be allowed under -- recognizing it as an official
4 document, or an official recognition. And so having said that,
5 I believe it is in your discretion to take official notice of
6 this document.

7 CHAIRMAN EDGAR: Okay. And so, first off, I note the
8 objection and the objection certainly is noted for the record.

9 It's my opinion that we can take this, and I'm going
10 to allow it to be entered into the record as Exhibit 44 with,
11 of course, your objection noted.

12 MR. HOFFMAN: Thank you, Madam Chairman.

13 (Exhibit 44 admitted into the record.)

14 CHAIRMAN EDGAR: And the witness is excused.

15 Ms. Berlin, your witness.

16 MS. BERLIN: CompSouth calls Tim Gates.

17 **TIMOTHY J. GATES**

18 **was called as a witness on behalf of CompSouth, and having been**
19 **duly sworn, testified as follows:**

20 **DIRECT EXAMINATION**

21 BY MS. BERLIN:

22 Q Please state your name and address for the record.

23 A My name is Timothy J. Gates. My address is 819
24 Huntington Drive, Highlands Ranch, Colorado 80126.

25 Q By whom are you employed and in what capacity?

1 A I'm employed by QSI Consulting as partner and Senior
2 Vice President.

3 Q And on whose behalf are you appearing today?

4 A On behalf of CompSouth.

5 Q Did you cause to be filed in this docket 51 pages of
6 direct testimony on December 19th, 2005?

7 A Yes, I did.

8 Q Was that testimony prepared under your direction and
9 supervision?

10 A Yes, it was.

11 Q Do you have any changes or corrections to your
12 testimony?

13 A Yes, I have four corrections to my direct. The first
14 correction appears on Page 12. At Line 21 the word "basis"
15 should be "basic." On that same page, Line 23, strike the word
16 "and" and replace it with "are," A-R-E. And then on Page 46,
17 Line 16, strike the word "Commission" and replace it with
18 "FCC." And, finally, on Page 50, Line 15, the word "existing"
19 should be "exists." Those are my changes for my direct
20 testimony.

21 Q Thank you. Did you file a revised Page 3 on January
22 4th, 2006?

23 A Yes, I did.

24 Q If I asked you these same questions today, would your
25 answers be the same?

1 A Yes, they would.

2 MS. BERLIN: Madam Chairman, I would ask that
3 Mr. Gates' prefiled direct testimony be entered into the
4 record.

5 CHAIRMAN EDGAR: Please show the prefiled testimony
6 to be entered into the record as read with the clarifications
7 and corrections that the witness has noted.

8 MS. BERLIN: Thank you.

9 BY MS. BERLIN:

10 Q Mr. Gates, do you have any exhibits to your direct
11 testimony?

12 A I believe there was one exhibit, my CV.

13 Q And I believe that it was stipulated into the record
14 as Exhibit 21.

15 Mr. Gates, did you also cause to be filed in this
16 docket 52 pages of rebuttal testimony on January 30th, 2006?

17 A Yes, I did.

18 Q And was that testimony prepared under your direction
19 and supervision?

20 A It was.

21 Q Do you have any changes or corrections to your
22 rebuttal testimony?

23 A I do have one correction on Page 7. At Line 11 on
24 Page 7, please change "252" to "251". And those are my only
25 changes to my rebuttal.

1 Q If I asked you these questions today, would your
2 answers be the same?

3 A Yes, they would.

4 MS. BERLIN: Madam Chairman, I would ask that Mr.
5 Gates' prefiled rebuttal be entered into the record as though
6 read.

7 CHAIRMAN EDGAR: Please show the rebuttal testimony
8 that has been prefiled to be entered into the record as though
9 read with the clarification given by the witness.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:)
)
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.)
)
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 Nos. 050119-TP/050125-TP

Direct Testimony and Exhibit
Of
Timothy J Gates
On Behalf of
The Competitive Carriers of the South, Inc.

December 19, 2005

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I. Introduction of Witness

Q. Please state your name and business address.

A. My name is Timothy J Gates. My business address is QSI Consulting, 819
Huntington Drive, Highlands Ranch, Colorado 80126.

Q. What is QSI Consulting, Inc. and what is your position with the firm?

Direct Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 A. QSI Consulting, Inc. (“QSI”) is a consulting firm specializing in traditional and
2 non-traditional utility industries, econometric analysis and computer-aided
3 modeling. I currently serve as Senior Vice President.

4

5 **Q. Please describe your educational background and work experience.**

6 A. I received a Bachelor of Science degree from Oregon State University and a
7 Master of Management degree in Finance and Quantitative Methods from
8 Willamette University's Atkinson Graduate School of Management. Since I
9 received my Masters, I have taken additional graduate-level courses in statistics
10 and econometrics. I have also attended numerous courses and seminars specific
11 to the telecommunications industry, including both the NARUC Annual and
12 NARUC Advanced Regulatory Studies Programs.

13 Prior to joining QSI, I was a Senior Executive Staff Member at MCI
14 WorldCom, Inc. (“MWCOM”). I was employed by MCI and/or MWCOM for 15
15 years in various public policy positions. While at MWCOM I was responsible for
16 various functions, including tariffing, economic and financial analysis,
17 competitive analysis, witness training, and MWCOM’s use of external
18 consultants. Prior to joining MWCOM, I was employed as a Telephone Rate
19 Analyst in the Engineering Division at the Texas Public Utility Commission and
20 earlier as an Economic Analyst at the Oregon Public Utility Commission. I also
21 worked at the Bonneville Power Administration (United States Department of
22 Energy) as a Financial Analyst performing total electric use forecasts while I
23 attended graduate school. Prior to doing my graduate work, I worked for ten

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1 years as a reforestation forester in the Pacific Northwest for multinational and
2 government organizations. Exhibit No. TJG-1 to this testimony is a summary of
3 my work experience and education.

4
5 **Q. Have you previously testified before the Florida Public Service Commission**
6 **(“Commission”)?**

7 A. Yes. I have testified in a number of Florida proceedings, including Docket Nos.
8 031047-TP,¹ 000084-TP,² 000907-TP³ and 930330-TP.⁴ I have testified more
9 than 200 times in 44 states and filed comments with the FCC on various public
10 policy issues ranging from costing, pricing, local entry and universal service to
11 strategic planning, merger and network issues. A list of all proceedings in which I
12 have filed testimony or provided comments is included in Exhibit No. TJG-1.

13
14 **Q. On whose behalf are you filing this testimony?**

15 A. I am filing this testimony on behalf of the Competitive Carriers of the South, Inc.
16 (“CompSouth”).⁵

¹ *Petition of KMC Telecom for Arbitration with Sprint Communications.* On Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc., and KMC Data, L.L.C.

² *Petition of BellSouth for Arbitration with US LEC of Florida, Inc.* On Behalf of US LEC.

³ *Petition of Level 3 for Arbitration with BellSouth.* On Behalf of Level 3.

⁴ *Investigation into IntraLATA Presubscription.* On Behalf of MCI.

⁵ CompSouth members that are sponsoring this testimony are: Access Point Inc., InLine, ITC^DeltaCom, LecStar Telecom, Inc., Momentum Telecom, Inc., NuVox Communications, Inc., Providing Active Competition Everywhere (PACE), Supra Telecom, Trinsic, XO Communications, and Xspedius Communications.

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II. Purpose of Testimony

Q. What is the purpose of your testimony?

A. I have been asked by CompSouth to analyze the issues in this docket and provide recommendations to the Commission with regard to the seventeen (17) disputed issues set forth in Attachment A to the Commission’s Order Establishing Procedure, Order No. PSC-05-1206-PCO-TP, issued on December 6, 2005. Each of these issues is listed below, and I have structured my testimony to address these issues in sequential order as they appear in Attachment A to the Commission’s procedural order. The issue statements for a number of these issues indicate that BellSouth or the small local exchange carriers (“LECs”) may have proposals to change the manner in which obligations are established in transiting arrangements and/or the manner in which transit traffic is routed. It is CompSouth’s position that no changes are necessary to the current transit structure. As a result, I will reserve my comments on the issues which may involve suggested changes to the current structure for rebuttal testimony, after I have had the opportunity to review the parties’ direct testimony and discovery responses.

III. Summary of Testimony and Recommendations

Q. Please summarize your testimony and recommendations.

A. I recommend that the Commission reject BellSouth’s transit tariff and issue appropriate refunds for any payments made under the tariff. I recommend that BellSouth continue to provide transiting as it has traditionally provided it –

1 through § 252 interconnection agreements (“ICAs”). However, if the
 2 Commission believes that a transit tariff is appropriate for carriers who do not
 3 have transit terms, conditions and rates in their ICAs with BellSouth, it should
 4 rectify the numerous problems in BellSouth’s tariff. This would include specific
 5 language making clear that the tariff does not impact existing ICAs that address
 6 transiting and should not be used as a benchmark for future ICA negotiations or
 7 renegotiations. This would also include requiring the transit rate to be TELRIC-
 8 based, just and reasonable, nondiscriminatory and based on a cost study and/or
 9 supporting documentation. Any BellSouth transit tariff the Commission approves
 10 should also omit the provision in BellSouth’s tariff that imposes specific
 11 requirements on relationships between originating and terminating carriers.
 12 While the CompSouth members oppose a BellSouth transit tariff altogether,
 13 should the Commission find that a transit tariff is needed, the abovementioned
 14 changes are just a few of the revisions that would need to be made to BellSouth’s
 15 tariff for it to be more in line with applicable rules and requirements. I will
 16 explain these revisions in more detail in my testimony.

17

IV. Policy Framework

18
19 **Q. Can you briefly explain the context in which the Commission should consider**
20 **proposals by parties in this proceeding?**

21 A. Yes. The issues raised in this docket must be reviewed in the context of current
22 practice as well as in the context of this Commission’s role to continue to foster a
23 competitive local telecommunications environment.

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Q. What is transiting?

A. According to the FCC, “transiting occurs when two carriers that are not directly interconnected exchange nonaccess traffic by routing the traffic through an intermediary carrier’s network. Typically, the intermediary carrier is an incumbent LEC [in this case, BellSouth] and the transited traffic is routed from the originating carrier through the incumbent LEC’s tandem switch to the terminating carrier. The intermediary (transiting) carrier then charges a fee for use of its facilities.”⁶ By way of example, transiting works as follows: a customer of Carrier A (originating carrier) calls a customer of Carrier B (terminating carrier), and since Carriers A and B are not directly interconnected, they utilize BellSouth’s transiting service as an indirect interconnection so that the call can terminate to Carrier B’s customer. BellSouth, as the incumbent LEC, is the only carrier capable of providing transit service connecting all carriers, primarily because of the ubiquitous local network BellSouth has been able to construct over many years of monopoly-provided services.

Q. Does BellSouth’s definition of “transit,” as used in its tariff, differ from the one you have provided above?

A. No. BellSouth’s definition is “Local Traffic originating on one Telecommunications Service Provider’s network that is delivered by BellSouth to

⁶ *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, Federal Communications Commission, 20 FCC Rcd 4685; 2005 FCC LEXIS 1390, FCC 05-33, rel. March 3, 2005 (“ICF FNPRM”), ¶ 120.

1 a different Telecommunications Service Provider's network for termination."

2 (BellSouth General Subscriber Service Tariff, A16.2 Transit Traffic Service;

3 Issued: January 27, 2005)

4
5 **Q. Why is transiting important to competitive local exchange carriers**
6 **("CLECs") and local competition as a whole?**

7 A. In the absence of transiting, each carrier (CLEC/CMRS⁷/small LECs) would be
8 forced to establish direct interconnection trunks with every other
9 CLEC/CMRS/small LEC carrier with which it exchanges local traffic in order for
10 all of its customers' calls to be completed. Duplicating the incumbent's network
11 has never been viewed as an economic way to enter the market, as it is simply not
12 cost effective or efficient to establish these multiple, duplicative direct trunks
13 between each of these carriers (especially for carriers who exchange small
14 amounts of traffic). As a result, it is likely that, in the absence of transiting, not
15 all carriers would be interconnected and calls between customers of these carriers
16 would therefore not be completed (*e.g.*, in the above example, the call between
17 Carrier A and Carrier B would be dropped as there would be no physical linkage
18 between Carrier A and Carrier B). Further, since BellSouth would be the only
19 provider able to efficiently interconnect with all carriers, and therefore the only

⁷ CMRS stands for Commercial Mobile Radio Service and is an FCC designation for any carrier or licensee whose wireless network is connected to the public switched telephone network and/or is operated for profit. Newton's Telecom Dictionary, 20th. Ed. The FCC defines CMRS as: A mobile service that is: (a)(1) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional equivalent of such a mobile service described in paragraph (a) of this section. 47 CFR § 20.3.

1 carrier that could complete calls to customers of all carriers, BellSouth would
2 have an insurmountable competitive advantage. Simply put, transiting is the one
3 of the most efficient means of interconnection between carriers and is critical to
4 the development of local competition. The FCC summarized the importance of
5 transiting as follows:

6 125. The record suggests that the availability of transit service is
7 increasingly critical to establishing indirect interconnection -- a
8 form of interconnection explicitly recognized and supported by the
9 Act. It is evident that competitive LECs, CMRS carriers, and rural
10 LECs often rely upon transit service from the incumbent LECs to
11 facilitate indirect interconnection with each other. **Without the**
12 **continued availability of transit service, carriers that are**
13 **indirectly interconnected may have no efficient means by**
14 **which to route traffic between their respective networks.**
15 (emphasis added)

16
17 126. Moreover, it appears that indirect interconnection via a transit
18 service provider is an efficient way to interconnect when carriers
19 do not exchange significant amounts of traffic. Competitive LECs
20 and CMRS carriers claim that indirect interconnection via the
21 incumbent LEC is an efficient form of interconnection where
22 traffic levels do not justify establishing costly direct connections.
23 As AT&T explains, "transiting lowers barriers to entry because
24 two carriers avoid having to incur the costs of constructing the
25 dedicated facilities necessary to link their networks directly." This
26 conclusion appears to be supported by the widespread use of
27 transiting arrangements.⁸
28

29 **Q. Has BellSouth historically provided this transit service in Florida and**
30 **elsewhere?**

31 A. Yes. BellSouth has historically provided transiting service, and therefore indirect
32 interconnection, in the past because of its unique market position. This has
33 allowed competitors to be more efficient and has allowed customers to reliably

⁸ ICF FNPRM, ¶¶ 125 – 126.

1 connect with any other local end user, regardless of carrier. From an operational
2 perspective, this is indisputably the most efficient outcome in the current multiple
3 carrier environment.

4
5 **Q. Before you address the policy framework surrounding transiting, please**
6 **provide a brief explanation of the basis for this proceeding and the primary**
7 **events that have transpired in this case leading up to your testimony.**

8 A. The primary source of dispute is BellSouth's transit tariff (General Subscriber
9 Services Tariff A.16.1), which BellSouth filed in Florida in January of 2005.

10 According to BellSouth, this tariff was designed to establish terms, conditions and
11 rates for BellSouth's transit services for carriers whose ICAs with BellSouth do
12 not address transiting.⁹ The proposed tariff, however, results in a dramatic
13 increase in the transit rate. For instance, BellSouth's rate of \$0.003 per minute of
14 use ("MOU") is more than five times higher than the rate currently in AT&T's
15 ICA,¹⁰ more than 3.5 times that of the rate currently in Birch Telecom's ICA, and
16 more than twice that of BellSouth's switched access rates. Not surprisingly, Joint
17 Petitioners¹¹ filed a petition objecting to BellSouth's transit tariff and requesting
18 suspension and cancellation of BellSouth's tariff, which became the subject of

⁹ Answer of BellSouth Telecommunications, Inc., Docket No. 050119-TL, filed March 3, 2005, p. 2.

¹⁰ See, AT&T Petition and Complaint, Docket No. 050125-TP, filed February 17, 2005, ¶ 9, p. 3
[“Under AT&T’s interconnection agreement with BellSouth in effect for Florida, BellSouth will
provide a transit traffic function, which has an associated “transit” charge of \$0.0005767 per
minute.”]

¹¹ Joint Petitioners consisted of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, ALLTELL
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.

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1 Docket 050119-TP. Similarly, AT&T filed a complaint seeking suspension and
2 cancellation of BellSouth's tariff, which became the subject of Docket 050125-
3 TP. The Commission, in Order No. PSC-05-0623-PAA-TP, consolidated the two
4 dockets, denied the requests for suspension of the transit tariff, and required
5 BellSouth to hold these transiting revenues for possible refunds depending on the
6 outcome of this proceeding. Subsequently, the parties worked to identify the
7 issues in the consolidated docket and the Commission adopted an issue list in
8 Order No. PSC-05-1206-PCO-TP.

9
10 **Q. Does BellSouth provide transiting to the CompSouth members currently,**
11 **and if so, is transiting provided via Agreement or via BellSouth's transit**
12 **tariff?**

13 A. Yes. CompSouth members have transiting terms, conditions and rates in their
14 existing ICAs with BellSouth.¹² For instance, Section 5.4.1 of the
15 BellSouth/Birch Telecom ICA in Florida states that "BellSouth shall provide
16 tandem switching and transport services for Birch's transit traffic."¹³ Section
17 3.3.2.1.5.2 of the BellSouth/Birch Telecom ICA further states that "tandem
18 switching shall provide connectivity to transit traffic to and from other carriers."

¹² All of the CompSouth members' interconnection agreements that I have reviewed contain terms, conditions and rates related to transit service including Birch Telecom, Nuvox, and XO Communications. It is my understanding that some carriers utilizing BellSouth's transit services use tandem switching and common transport and therefore pay BellSouth both the tandem switching and common transport rates, while some carriers only use tandem switching and therefore only pay the common transport rate.

¹³ The Birch Telecom/BellSouth § 252 ICA is used for illustrative purposes. The terms, conditions and rates for transit may not be uniform across all CompSouth members. BellSouth's ICAs, including the BellSouth/Birch Telecom agreement referenced in this testimony, are available at the following URL: http://cpr.bellsouth.com/clec/docs/all_states/index7.htm#B

1

2 **Q. What network architecture is used to provide transit service today?**

3 A. The basic architecture of this transiting arrangement is for transit traffic to be
4 transported on a single two-way trunk group or two one-way trunks between the
5 originating carrier and BellSouth's access tandem within a LATA. The traffic is
6 switched at the tandem and sent to the point of interconnection between BellSouth
7 and the terminating carrier for termination on the third party's network (the third
8 party may be a CLEC/CMRS/small LEC/other network provider).

9

10 **Q. How does BellSouth recover the cost of transiting traffic?**

11 A. This depends primarily on the parties' ICAs with BellSouth, but generally
12 BellSouth recovers costs for transiting via tandem switching and common
13 transport TELRIC-compliant rate elements.

14

15 **Q. What federal policy framework has the FCC established regarding**
16 **transiting?**

17 A. To date, the FCC has not created a well-defined federal policy framework for
18 transiting. When addressing Verizon's transiting obligations in the *Cavalier*
19 *Order*,¹⁴ the FCC Wireline Competition Bureau made note of this lack of
20 precedent as follows:

¹⁴ *In the Matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, WC Docket No. 02-359, Memorandum Opinion and Order, Federal Communications Commission, 18 FCC Rcd 25887; 2003 FCC LEXIS 6879, DA 03-3947, December 12, 2003 ("*Cavalier Order*").

1 We note that, as with the *Virginia Arbitration Order*, the
2 Commission has not yet had occasion to determine whether
3 incumbent LECs have a duty to provide transit service under the
4 Act or whether incumbent LECs must serve as billing
5 intermediaries for other carriers, nor do we find clear Commission
6 precedent or rules declaring such duties. In the absence of such a
7 precedent or rule, we decline, on delegated authority, to determine
8 for the first time that Verizon has such duties under the Act.
9 Where a Party undertakes to voluntarily provide transit service,
10 however, and proposes to incorporate the terms of such service
11 into a provision of an interconnection agreement which is subject
12 to arbitration by the Bureau, we have determined whether such
13 provisions are reasonable.
14

15 Indeed, the FCC has sought comment on a host of transiting issues in the pending
16 ICF FNPRM proceeding and, as such, is still in the process of setting its federal
17 policy regarding transiting. For instance, in ¶ 127 of the ICF FNPRM, the FCC
18 seeks comment on its legal authority to impose transiting obligations pursuant to §
19 251 of the Act, and the FCC seeks comment on the appropriate pricing
20 methodology for transiting in ¶ 132. This shows that the FCC is still pondering
21 the two most ^{basic} ~~basic~~ aspects of transiting policy – (1) the obligations of incumbent
22 local exchange carriers (“ILECs”) to provide transiting and (2) the appropriate
23 transiting rates – ^{are} ~~and~~ two issues that are clearly at issue in this docket.

24 BellSouth’s decision to force the Commission’s hand to address these transiting
25 issues now due to its transit tariff filing while the FCC is also considering these
26 issues is inappropriate and premature. Case in point: BellSouth’s transit tariff
27 would, among other things, establish that BellSouth has no obligation under § 251
28 to provide transit services at the time the FCC is contemplating issuing federal
29 rules requiring transit to be provided pursuant to § 251 of the Act. BellSouth’s

1 brazen attempt to preempt the FCC's determinations on such critical issues should
2 be rejected.

3
4 **Q. Given that the FCC is in the process of establishing its transit policies, why**
5 **should the Commission rule on the transiting issues as you have proposed in**
6 **this testimony instead of simply waiting until the FCC acts?**

7 A. While CompSouth would have preferred that the parties await the FCC decision,
8 BellSouth has forced the Commission's hand by filing a transit tariff containing
9 unreasonable and discriminatory terms, conditions and rates. And, those rates are
10 in effect (subject to refund), until this Commission finds otherwise. Rather than
11 allow BellSouth to unilaterally subject competing carriers whose ICAs do not
12 address transiting to such terms and potentially "set the bar" for future
13 renegotiations for carriers whose ICAs already address transiting, the Commission
14 should step in and reject BellSouth's transit tariff, or in the alternative, rectify the
15 problems with BellSouth's proposed transit tariff by adopting the
16 recommendations set forth in my testimony.

17 Further, notwithstanding the current lack of FCC direction on whether
18 BellSouth has an obligation under § 251 to provide transiting, the FCC Wireline
19 Competition Bureau in the *Cavalier Order* found that when transiting is provided
20 via agreements subject to arbitration, as BellSouth has done, it is appropriate to
21 examine the reasonableness of the transiting offering. While it appears that
22 BellSouth is attempting to bypass this oversight by filing a transit tariff outside
23 the ICA process, the same type of oversight and examination of the

1 reasonableness of BellSouth’s transit terms should be conducted regardless of
2 whether transiting is provided via ICA or tariff – though the CompSouth members
3 contend that the § 252 ICA is the appropriate mechanism. Accordingly, there is
4 precedent for establishing the reasonableness of transiting offerings regardless of
5 whether transiting must be provided pursuant to § 251 and BellSouth should not
6 be allowed to escape this oversight by filing a tariff.

7
8 **Q. Does the Telecommunications Act of 1996 establish an affirmative obligation**
9 **for BellSouth (and ILECs in general) to provide transiting pursuant to §**
10 **251?**

11 A. Yes. First, § 251(a)(1) states that telecommunications carriers are required “to
12 interconnect directly or indirectly with the facilities and equipment of other
13 telecommunications carriers.” Accordingly, BellSouth is obligated to provide
14 indirect interconnection between CompSouth members and other carriers. As
15 explained above, transiting on the ubiquitous, interconnected network of
16 BellSouth is a form – and the most efficient form - of indirect interconnection.
17 Second, § 251(c)(2)(a) requires *ILECs* to interconnect with carriers for “the
18 transmission and routing of telephone exchange service and exchange access.”

19
20 **Q. Does this requirement for interconnection under § 251(c)(2)(A) include both**
21 **direct and indirect interconnection?**

22 A. Yes. There is no restriction in the Act limiting this obligation to direct
23 interconnection only, as BellSouth apparently contends. Further, since

1 BellSouth's transit obligation springs from § 251 – and more specifically 251(c) –
2 transit rates must, according to the FCC's rules, be developed consistent with
3 Total Element Long-Run Incremental Cost ("TELRIC") principles.¹⁵ Those
4 principles can be summarized as follows:

- 5 • Principle # 1: The firm should be assumed to operate in the long run.
- 6 • Principle # 2: The relevant increment of output should be total company
7 demand for the unbundled network element in question.
- 8 • Principle # 3: Technology choices should reflect least-cost, most efficient
9 technologies.
- 10 • Principle # 4: Costs should be forward-looking.
- 11 • Principle # 5: Cost identification should follow cost causation

12 Finally, BellSouth's TELRIC rates must be supported by a Commission-approved
13 cost study.

14
15 **Q. Has any state commission found that BellSouth is required pursuant to § 251**
16 **of the Act to provide transiting?**

17 **A.** Yes. The North Carolina Public Utilities Commission issued a recent order that
18 made a very specific statement on this issue: "[t]he tandem transit function is a §
19 251 obligation, and BellSouth must charge TELRIC rates for it."¹⁶ Likewise, the
20 Michigan Public Service Commission required SBC to provide transiting, and

¹⁵ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; First Report and Order, CC Docket Nos. 96-98 and 95-185; Released August 8, 1996; at ¶ 672 ("*Local Competition Order*").

¹⁶ *In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.*, North Carolina Docket No. P-772, Sub 8, Docket No. P-913, sub 5; docket no. P-989, sub 3; docket no. P-824, sub 6; docket no. P-1202, sub 4, North Carolina Utilities Commission, 2005 N.C. PUC LEXIS 888, July 26, 2005 ("*Joint CLEC/BellSouth Arbitration Order*").

1 though I am not an attorney, it is my understanding that the Michigan Public
2 Service Commission's ("PSC's") decision requiring transiting was upheld on
3 appeal.¹⁷

4
5 **Q. Has BellSouth conceded that transiting must be provided pursuant to § 251**
6 **of the Act?**

7 A. Yes. BellSouth has apparently conceded in at least one other state that it does
8 indeed have a § 251 obligation to provide transiting. This recent admission is
9 memorialized in the *Joint CLEC/BellSouth Arbitration Order* as follows:

10 The Public Staff stated in its Proposed Order that there appears to
11 be no dispute that BellSouth is obligated to provide transit service.
12 Witness Blake acknowledged that the Commission has previously
13 found ILECs have an obligation to provide transit service and that
14 the FCC has found the tandem transit function is a Section 251
15 obligation. . . *Although BellSouth has conceded that the tandem*
16 *transit function is a Section 251 obligation, it is unclear why*
17 *BellSouth still maintains that this function is not subject to the*
18 *pricing requirements set forth in Section 252.* The Public Staff
19 noted that the FCC has implemented specific rules to which the
20 Commission must adhere in determining the appropriate rates for
21 providing a tandem transit function. (emphasis added)
22

23 This concession from BellSouth is important because if BellSouth's transiting
24 obligations are grounded in § 251, as BellSouth has conceded, transiting must be
25 provided on a nondiscriminatory basis at any technically feasible point, and
26 TELRIC pricing principles must apply when developing the rates.

27

¹⁷ *Michigan Bell Telephone Co, d/b/a Ameritech Michigan v Laura Chappelle, et al.*, Case No. 01-CV-71517, United States District Court for the Eastern District of Michigan, Southern Division, 222 F. Supp. 2d 905; 2002 U.S. Dist. LEXIS 15269, August 12, 2002.

1 Q. What would be the impact if BellSouth refused to provide transit services?

2 A. Absent the incumbent's transiting services, CompSouth members could be
3 required to establish, monitor and maintain interconnection arrangements with
4 every other local carrier to handle this traffic. There is no operational or
5 economic justification for forcing CLECs to duplicate facilities which are already
6 in place and available – indeed, they are being used today for this purpose.
7 Further, given the lack of commercially reasonable alternatives for CLECs,
8 BellSouth would have no incentive in a “commercial negotiation” to provide
9 CompSouth members with reasonable rates, terms and conditions for transit.

10

11 V. Issue – By – Issue Analysis

12 General Issues

13 *Issue #1: Is BellSouth's Transit Service Tariff an appropriate mechanism to address*
14 *transit service provided by BellSouth?*
15

16 Q. Is BellSouth's Transit Service Tariff an appropriate mechanism to address
17 transit service provided by BellSouth?

18 A. No.

19

20 Q. Please describe your primary objections to BellSouth's transit service tariff.

21 A. BellSouth's transit tariff is wholly unnecessary. BellSouth has provided transiting
22 for years through ICAs – not tariffs – and under these ICAs, BellSouth has been
23 compensated via the appropriate Commission-approved, TELRIC-compliant

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1 tandem switching and common transport rates.¹⁸ BellSouth's tariff dramatically
2 alters this arrangement by establishing onerous terms and conditions and
3 dramatically increasing transit rates over which it has near unilateral authority.
4 Further, BellSouth has provided no justification for this tariff. My major concern
5 is that BellSouth could utilize this tariff, and particularly the extremely high
6 transit rate, during contract renegotiations to attempt to force CLECs into
7 accepting higher transit rates. For instance, when it comes time to negotiate or
8 renegotiate a contract with BellSouth, BellSouth's negotiators are likely to
9 attempt to force a carrier to accept a transit rate in the neighborhood of its tariffed
10 rate (\$0.003) - while the carrier would likely contend that a rate more in line with
11 the existing TELRIC-based transit rates (especially if that carrier is already
12 paying TELRIC-based rates for transiting) should apply – and require the carrier
13 to pay the tariffed rate if BellSouth's proposed “negotiated” rate is not accepted.
14 This puts BellSouth in the position to refuse to provide transit via agreement,
15 thereby forcing CLECs into the more onerous tariff terms and rates. Further,
16 since BellSouth has demonstrated a propensity to act nearly unilaterally in
17 changing its rates for transiting,¹⁹ this tariffed rate is likely to increase, thereby
18 exacerbating the scenario I describe above.

19
20 **Q. Is it discriminatory to charge carriers different prices for the same service?**

¹⁸ As mentioned above, I have been informed that some carriers utilize only tandem switching in conjunction with BellSouth's transit service.

¹⁹ The fact that BellSouth is proposing to increase its transit rates is *prima facie* proof that there is no good alternative to BellSouth's offering. Given the lack of competition, and BellSouth's ability and incentive to increase competitors' costs, the Commission should ensure that these rates are TELRIC rates and no more.

1 A. Yes. This is the very definition of discrimination – charging different prices to
2 similarly-situated customers with no differences in cost. This is especially
3 troublesome given the vast differences between BellSouth’s tariffed rate and the
4 ICA rates (as well as BellSouth’s switched access rates). As noted above, the new
5 proposed rate is more than 3.5 times higher than the rate being paid by Birch
6 Telecom.

7
8 **Q. You mentioned that the terms and conditions in the tariff are unreasonable.**
9 **Please explain.**

10 A. There are numerous examples. For instance, Section A16.1.2C of BellSouth’s
11 tariff states that “by utilizing BellSouth’s transit Traffic Service for the delivery of
12 transit traffic, the originating Telecommunications Service Provider is committing
13 to establishing a traffic exchange agreement or other appropriate agreement to
14 address compensation between the originating Telecommunications Service
15 Provider and the terminating carrier(s).” BellSouth has no authority to establish
16 parameters regarding relationships between originating and terminating carriers in
17 a transiting arrangement, especially when those parameters would significantly
18 increase the costs of BellSouth’s competitors by forcing them to establish an
19 agreement with each carrier with which it exchanges traffic but is not directly
20 interconnected as a prerequisite. Under BellSouth’s tariff, if a CLEC terminates
21 transit traffic to one (1) carrier, it must expend resources (both monetary and
22 manpower) to negotiate and, if a disagreement arises, arbitrate such a contract
23 with the terminating carrier whether or not the originating and terminating carrier

1 believe such a contract is necessary. If a CLEC terminates transit traffic to ten
2 (10) carriers, these costs increase ten-fold. Contrary to BellSouth's tariff,
3 originating and terminating carriers should not be forced into these agreements. It
4 is highly ironic that BellSouth would establish a tariff supposedly designed to
5 apply to carriers who do not have a transit agreement with BellSouth, but
6 BellSouth expects carriers to have transit agreements with each and every carrier
7 with which it exchanges transit traffic. If a carrier chooses not to execute an
8 agreement with BellSouth for transiting, it is highly unlikely that it would choose
9 to execute an agreement with every carrier with which it exchanges transit traffic,
10 and it is disingenuous for BellSouth to expect it to.

11 In addition, the transit rate in BellSouth's tariff is neither TELRIC-based,
12 nor "just and reasonable;" rather, it is discriminatory and anticompetitive. I will
13 explain in more detail below that there is absolutely no basis or support for
14 BellSouth's \$0.003 transit rate, which constitutes a dramatic increase over the
15 transit rates assessed via ICA. I will also explain that BellSouth's transit rate is
16 considerably higher than its interstate switched access tandem switching/tandem
17 transport rates assessed on interexchange carriers. At its most basic level,
18 BellSouth recovers its transit costs from the tandem switching and common
19 transport rate elements, and as such, the non-TELRIC, unsupported "Transit
20 Traffic Service" rate element in BellSouth's transit tariff is superfluous to proper
21 BellSouth cost recovery, and constitutes nothing more than an unwarranted
22 redistribution of revenue from CLECs and other carriers to BellSouth.

1 I have listed a few objections with BellSouth’s transit tariff above, but I
2 should note that this list is not intended to be exhaustive and I reserve the right to
3 add to this list of concerns.

4
5 **Q. Given your objections to Bellsouth’s transit service tariff described above, is**
6 **it your position that BellSouth’s transit service tariff is not the appropriate**
7 **mechanism to address transit service provided by BellSouth?**

8 A. Yes, that is correct. The problems described above renders BellSouth’s transit
9 tariff fatally flawed and it should be rejected by the Commission. Stated
10 differently, the Commission should not endorse BellSouth’s transit service tariff
11 because it is, among other things, discriminatory and anticompetitive.

12
13 **Q. Does CompSouth object to a transit tariff as a threshold matter?**

14 A. Yes. As explained above, CompSouth contends that BellSouth’s transit tariff is
15 unnecessary, and obligations regarding transiting should continue to be spelled
16 out in parties’ ICAs with BellSouth, where changes to these terms, conditions and
17 rates must be altered by negotiation and amendment between the parties.
18 CompSouth does not object to the concept of tariffs in general, and tariffs have
19 been used by BellSouth and other ILECs for years to make transparent the
20 generally available terms, conditions, and rates related to the LECs’ services,
21 interconnection and unbundled network elements (“UNEs”). When a tariff is
22 structured properly, it can foster competition by spelling out the minimum terms,
23 conditions and rates of the ILEC tariffed services and provide an option for

1 carriers that do not have an agreement with the ILEC. However, if the terms,
2 conditions and rates are discriminatory or anticompetitive – which is the case with
3 BellSouth’s transit tariff - the tariff can do much more harm than good to local
4 competition. Coupled with the fact that BellSouth’s tariff is unnecessary as
5 parties have established transit terms, conditions and rates through ICAs, I
6 recommend that the Commission cancel BellSouth’s transit tariff and require
7 BellSouth to issue appropriate refunds for any revenues collected under the tariff
8 and held by BellSouth subject to refund, as required by Order No. PSC-05-0623-
9 PAA-TP.

10
11 **Q. If you object to BellSouth’s transit service tariff serving as the appropriate**
12 **mechanism to address transit service provided by BellSouth, what**
13 **mechanism should be used?**

14 A. The mechanism that should be used is the same mechanism used by BellSouth
15 and originating carriers for a number of years – *i.e.*, the § 252 ICA. However, if
16 the Commission concludes that a transit tariff should be implemented in Florida,
17 perhaps for carriers who choose not to negotiate separate transit terms, conditions
18 and rates with BellSouth, it is imperative that the Commission, at a minimum, fix
19 the flaws of BellSouth’s tariff. In any event, transit tariff terms, conditions and
20 rates should have no bearing on the separate ICAs addressing transiting that are
21 already in place.

22

1 **Q. If the Commission finds that a transit tariff is needed, what changes are**
2 **necessary to BellSouth’s transit tariff to rectify the problems?**

3 A. First, the Commission should require the tariffed transit rate to be developed
4 consistent with TELRIC principles. Regardless of whether the Commission
5 agrees with my recommendation to price transit at TELRIC rates, the Commission
6 should, at a minimum, require BellSouth to provide cost support or supporting
7 documentation for any tariffed transit rate showing the basis and “just and
8 reasonableness” of such charge and showing that the charge is not unjustly
9 enriching BellSouth. This rate should also be applied on a nondiscriminatory
10 basis.

11 Second, the Commission should ensure that any transit tariff has no
12 bearing on ICAs that are in effect or may be negotiated in the future. As such,
13 any transit tariff should explicitly indicate that it has no bearing on existing ICAs
14 and will not serve as a benchmark or *de facto* standard for parties negotiating or
15 renegotiating transit terms, conditions and rates.

16 Third, to address the issue of BellSouth’s near unilateral authority over its
17 tariffs, the Commission should require the tariff to indicate that terms, conditions
18 and rates for the transit tariff can only be changed with affirmative approval from
19 the Commission. In other words, once the appropriate transit tariff is established,
20 any revisions to that tariff proposed by BellSouth would be automatically
21 suspended and reviewed by the Commission (with opportunity for comment by
22 interested parties) before going into effect.

1 Fourth, the tariff should make clear that any dispute arising from the
2 transit tariff will be addressed within the dispute resolution process of the parties
3 ICAs (to the extent an ICA exists) so as to ensure that any special dispute
4 resolution called for in the transit tariff would not trump any dispute resolution
5 process that exists between the parties.

6 I reserve the right to supplement this list after reviewing parties' discovery
7 responses and direct testimonies.

8
9 *Issue #2: If an originating carrier utilizes the services of BellSouth as a tandem*
10 *provider to switch and transport traffic to a third party not affiliated with*
11 *BellSouth, what are the responsibilities of the originating carrier?*
12

13 **Q. What are the responsibilities of the originating carrier under the existing**
14 **transit arrangements between BellSouth and CLECs?**

15 A. Carriers originating transit traffic are responsible for establishing the appropriate
16 trunks to the BellSouth access tandem. Further, the originating carrier is
17 responsible for compensating BellSouth for the transit service (which should be
18 recovered through the tandem switching/common transport rates). These basic
19 responsibilities are appropriate, have been memorialized in parties' ICAs, and
20 there is no basis for changing these originating carrier responsibilities. To my
21 knowledge, these basic responsibilities are not impacted by BellSouth's tariff.

22
23 **Q. Does the originating carrier have other responsibilities?**

1 A. Yes. The originating carrier of transit traffic is responsible for delivering its
2 traffic to the terminating party's network (or the terminating carrier's point of
3 interconnection with the transit carrier)²⁰ and compensating the terminating
4 carrier for terminating the transit traffic to the end user.

5
6 **Q. To the extent that the Commission implements a transit tariff, should this**
7 **tariff remain true to the above responsibilities?**

8 A. Yes. These responsibilities of the originating carrier are appropriate, should not
9 be changed, and should be made clear if the Commission requires a transit tariff.

10

11 *Issue #3: Which carrier should be responsible for providing compensation to BellSouth*
12 *for the provision of the transit transport and switching services?*
13

14 **Q. Who is responsible for providing compensation to BellSouth for the**
15 **provision of transit service under the existing transit arrangements between**
16 **BellSouth and CLECs?**

17 A. As explained above, the originating carrier is responsible for compensating
18 BellSouth for transit services.

19

20 **Q. Who is responsible for compensating BellSouth under BellSouth's transit**
21 **service tariff?**

22 A. I read BellSouth's tariff to maintain the "originating carrier pays" concept, but
23 instead of compensating BellSouth at the appropriate Commission-approved,

²⁰ See, e.g., ICF NPRM, ¶ 70.

1 cost-based tandem switching/common transport rates, as is the practice today, the
2 originating carrier is required to pay a much higher tariffed transit rate of \$0.003.
3 I will address BellSouth's proposed transit rate in more detail below.
4

5 **Q. Which carrier in a transit arrangement *should be* responsible for providing**
6 **compensation to BellSouth for the provision of transiting?**

7 A. As is the case in the existing ICAs addressing transiting, the originating carrier
8 should be responsible for compensating BellSouth for transiting – but such
9 compensation should be made based on the cost-based transit rates and not
10 BellSouth's new, much higher transit rate.
11

12 **B. Trunking and Routing**

13 *Issue #4: What is BellSouth's network arrangement for transit traffic and how is it*
14 *typically routed from an originating party to a terminating third party?*
15

16 **Q. Do you have a position on Issue #4?**

17 A. Not at this time. I will respond to other parties' testimony on this issue, if
18 necessary, in my rebuttal testimony.
19

20 *Issue #5: Should the FPSC establish the terms and conditions that govern the*
21 *relationship between an originating carrier and the terminating carrier, where*
22 *BellSouth is providing transit service and the originating carrier is not*
23 *interconnected with, and has no interconnection agreement with, the*
24 *terminating carrier? If so, what are the appropriate terms and conditions that*
25 *should be established?*
26

1 **Q. Should the FPSC establish the terms and conditions that govern the**
2 **relationship between the originating and terminating carrier in a transit**
3 **scenario?**

4 A. No. The Commission should establish the terms and conditions that govern this
5 relationship only *if the parties ask for it*, but it should not be mandated as
6 BellSouth's transit tariff would require (recall that BellSouth's transit tariff
7 requires carriers to have a traffic exchange agreement in effect as a prerequisite to
8 receiving BellSouth's tariffed transit service). BellSouth's "one size fits all"
9 requirement is unwarranted and inappropriate. The originating and terminating
10 carriers should have the ability to enter into compensation agreements for
11 termination if they so desire. There is no need for the Commission to establish
12 those terms and conditions in advance or for them to be mandated by BellSouth in
13 a tariff. One such arrangement that may not involve a traffic exchange agreement
14 between originating and terminating carriers is a bill and keep arrangement that
15 would not involve payments between these carriers. These types of arrangements
16 should not be interrupted by the Commission simply because BellSouth wants to
17 exert control over these relationships via its tariff. Again, I would like to point
18 out that there are no changes necessary to the relationships established between
19 originating and terminating carriers in a transit arrangement when BellSouth is the
20 transit provider.

1

2

3

4

5

6

7

Issue #6: Should the FPSC determine whether and at what traffic threshold level an originating carrier should be required to forego use of BellSouth's transit service and obtain direct interconnection with a terminating carrier? If so, at what traffic level should an originating carrier be required to obtain direct interconnection with a terminating carrier?

8

Q. Is there a requirement in BellSouth's transit tariff pertaining to direct

9

interconnection traffic thresholds?

10

A. I have reviewed BellSouth's transit tariff and have not been able to locate any

11

traffic threshold requirement for direct interconnection between originating and

12

terminating carriers. Accordingly, I'm rather puzzled as to why this issue is

13

included in the issues list. It appears to raise an issue that is beyond the scope of

14

the tariff.

15

16

Q. What is "direct interconnection" as that term is used in Issue #6?

17

A. As explained above, transiting occurs when originating carrier (Carrier A) utilizes

18

BellSouth for transit functionalities to terminate traffic to a third party carrier

19

(Carrier B). In this example, BellSouth would be the transit provider and would

20

provide an indirect interconnection between Carrier A and Carrier B so that calls

21

between the customers of the carriers can be completed. In contrast to the indirect

22

interconnection transiting provides, a "direct connection" is when Carrier A

23

establishes a direct interconnection trunk (or cross connect) with Carrier B instead

24

of using BellSouth's transiting services as the indirect connection.

25

1 **Q. Should the Commission establish a traffic threshold level over which an**
2 **originating carrier would be required to forego BellSouth's transit service**
3 **and establish direct interconnection with a terminating carrier?**

4 **A.** No, it should not. The market can, and should, determine when it is appropriate
5 to establish direct interconnection between two carriers for exchanging traffic that
6 has been exchanged heretofore as transit traffic. This is especially true since
7 BellSouth is being compensated for its role in transiting the traffic.

8
9 **Q. Please elaborate on your statement that "the market can and should**
10 **determine when it is appropriate to establish direct interconnection..."**

11 **A.** Recall my example above wherein Carrier A (originating carrier) was using
12 BellSouth's transiting service as an indirect interconnection to terminate traffic to
13 Carrier B (terminating carrier), and Carrier A was compensating BellSouth for
14 transiting charges and compensating Carrier B for termination charges. Given
15 that Carrier A is a profit maximizing firm,²¹ Carrier A will establish direct trunks
16 to Carrier B and bypass BellSouth's transiting service altogether when and if the
17 level of traffic originated by Carrier A (or more specifically, Carrier A's
18 customers) rises to the level that it would be more cost effective (*i.e.*, lower cost)
19 to establish direct trunks than to continue to use BellSouth's transiting.
20 Accordingly, the market already provides the appropriate incentives for
21 originating and terminating carriers to determine when and/or if it is appropriate

²¹ In economics, profit maximization is the process by which a firm determines the price and output level that returns the greatest profit.

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CompSouth
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1 to establish direct interconnections, and imposing arbitrary regulatory thresholds
2 is unwarranted.

3
4 **Q. Are there other reasons supporting your recommendation that the**
5 **Commission refrain from establishing direct interconnection thresholds?**

6 A. Yes. First, since the market already provides the proper signals for originating
7 and terminating carriers for determining if and when direct interconnections are
8 warranted instead of indirect interconnections, imposing arbitrary thresholds will
9 subvert these signals and introduce inefficiencies into the market. For instance,
10 assume for illustration purposes that a threshold of DS3 is established (meaning
11 that when traffic originated by Carrier A and “transited” by BellSouth to Carrier
12 B reaches a DS3 capacity level, a direct interconnection between Carrier A and B
13 must be established). If that threshold is too low (meaning that Carrier A would
14 be forced to establish direct interconnection with Carrier B before it is economical
15 to do so), Carrier A would be put in a position wherein it cannot economically
16 establish direct trunks but it cannot originate any additional traffic in order not to
17 exceed the arbitrary cap. In this scenario, calls between Carrier A and Carrier B
18 could potentially be dropped/blocked and competition would be undermined. In
19 contrast, if the threshold is too high, Carrier A is likely to establish direct
20 interconnection prior to reaching the threshold, and at worst, BellSouth is at the
21 risk of handling a higher level of transiting traffic (for which it is compensated).

22 Second, forcing originating carriers to establish direct interconnections
23 with terminating carriers at arbitrary thresholds will require duplicative,

1 unnecessary, and inefficient facilities and will ultimately force the CLECs'
2 networks to duplicate the antiquated "hub and spoke" network of the Bell
3 Operating Companies ("BOCs").

4 Only BellSouth is in the position of providing transit service capable of
5 connecting all carriers. The reason BellSouth is in this position is that it was able
6 to build a ubiquitous network over many years with revenues derived from
7 monopoly provided services. It would be absurd to ignore the ubiquity of
8 BellSouth's network and its ability to efficiently interconnect all carriers by
9 requiring these facilities to be duplicated not due to engineering practices or
10 business needs but because of regulatory intervention. Since BellSouth is already
11 interconnected with all carriers sending traffic to its network (Carriers A and B in
12 my example), the facilities over which parties exchange transit traffic have
13 already been constructed and are in place and are, therefore, the most efficient
14 way to exchange traffic. If a direct interconnection is required, Carrier A would
15 be forced to establish a new facility that duplicates the same path and function as
16 the facilities used by Carriers A and B and BellSouth in the transiting scenario.
17 This unnecessarily increases Carrier A's costs (and likely Carrier B's costs)²² and
18 squanders the efficiency brought about by BellSouth's ubiquitous, interconnected
19 network.

20 Furthermore, Carrier A would be forced to establish direct
21 interconnections with each and every carrier for which the traffic exceeds the

²² The costs for both the originating carrier and terminating carrier would increase because such a direct interconnection would require the carriers, at a minimum, to establish an interconnection agreement which will impose negotiation/arbitration costs as well as administrative costs not incurred in a transiting scenario.

1 threshold, thereby exponentially increasing these duplicative costs and
2 inefficiencies. For instance, my example thus far has included one originating
3 carrier (Carrier A) and only one terminating carrier (Carrier B). In reality,
4 however, Carrier A may be terminating transit traffic to any given number of
5 carriers. Hence, if we assume that Carrier A uses BellSouth's transit service to
6 terminate traffic to five different carriers (Carriers B, C, D, E and F), the costs and
7 inefficiencies of direct interconnection thresholds would increase 5-fold. Given
8 that Carriers B, C, D, E, and F could each be originating transit traffic (in addition
9 to terminating this traffic) to five or ten terminating carriers, the magnitude of the
10 costs and inefficiencies of a traffic threshold becomes readily evident. In essence,
11 this direct interconnection threshold would transform the CLECs' networks into a
12 variant of the BOCs' "hub and spoke" design which will hamper the use of next-
13 generation technologies and network topologies.

14 Third, as explained above, BellSouth's transit obligation is grounded in §
15 251. This obligation is not conditional upon a certain level of traffic, and
16 establishing a traffic threshold would read an inappropriate limitation into the Act.
17 Since there is nothing in the Act or FCC rules discussing such a threshold, it
18 would be inappropriate and inconsistent with § 251 for the Commission to
19 establish one here.

20 Fourth, there is absolutely no basis for establishing a traffic threshold at a
21 particular capacity level. Given the costs and inefficiencies that such a threshold
22 could cause, any such threshold would need to be carefully established based on
23 accurate analyses regarding, among other things, the costs of direct

1 interconnection between originating and terminating carrier and the cost of
2 transiting for the purpose of determining the precise level of traffic at which it is
3 more efficient for direct interconnections to be established. However, to my
4 knowledge, no such analysis has been provided by any party in Florida.

5
6 **Q. You explain that the market should be allowed to decide when direct**
7 **interconnections are established. Does this explanation support the use of**
8 **cost based rates for transit?**

9 A. Yes. An originating carrier needs to have the proper price signals to determine
10 the point at which it is economic to establish direct trunks instead of using
11 BellSouth's transiting service. TELRIC-based rates provide these proper price
12 signals by reflecting the forward-looking cost of constructing these facilities with
13 the most efficient technology available. In contrast, BellSouth's transit rate,
14 which is not supported by any information that I am aware of but which is
15 certainly not TELRIC-based, will not provide the proper price signals and will
16 skew the originating carrier's analysis of whether direct trunks should be
17 established – likely resulting in overinvestment in facilities to establish direct
18 interconnections.

19
20 **Q. Is it your testimony that the Commission should refrain from establishing a**
21 **traffic threshold at any level?**

1 A. Yes. Again, efficiency will be maximized by allowing the market to determine if
2 and when direct interconnections are established between the originating and
3 terminating carriers in place of transiting.

4 However, if the Commission does establish a traffic threshold (which it
5 should not), this threshold should be established based on a careful examination
6 of traffic patterns and at a relatively high level (certainly higher than a DS1).
7 Further, before direct interconnections are required based on such a threshold, this
8 threshold should be exceeded on a sustained basis (*e.g.*, three consecutive months)
9 such that an isolated spike in transit traffic does not trigger the direct
10 interconnection requirement. Recall that I explained above that setting the
11 threshold too low is significantly more harmful to competition than setting the
12 threshold too high – though any threshold is likely to introduce inefficiencies into
13 the market.

14
15 ***Issue #7: How should transit traffic be delivered to the Small LEC's networks?***

16
17 **Q. Do you have a position on Issue #7 at this time?**

18 A, No, but I reserve the right to address this issue in rebuttal once I have reviewed
19 parties' direct testimony and discovery responses.

20
21 ***Issue #8: Should the FPSC establish the terms and conditions that govern the***
22 ***relationship between BellSouth and a terminating carrier, where BellSouth is***
23 ***providing transit service and the originating carrier is not interconnected with,***
24 ***and has no interconnection agreement with, the terminating carrier? If so,***
25 ***what are the appropriate terms and conditions that should be established?***

1

2 **Q. What is your position on Issue #8?**

3 A. As discussed previously, it is my position that the transiting arrangements spelled
4 out in the parties' ICAs sufficiently establishes the relationships between parties
5 to a transiting arrangement and no additional terms and conditions are necessary.
6 If the parties are unable to agree during negotiations to terms and conditions
7 related to BellSouth as the transiting carrier, then the parties may come to the
8 Commission for resolution and the Commission can resolve the dispute in a
9 dispute resolution proceeding. However, broader Commission involvement into
10 the relationship between transiting carrier and terminating carriers than what is
11 reflected in existing ICAs is not needed.

12

13 *Issue #9: Should the FPSC establish the terms and conditions of transit traffic between*
14 *the transit service provider and the Small LECs that originate and terminate*
15 *transit traffic? If so, what are the terms and conditions?*
16

17 **Q. What is your position on Issue #9?**

18 A. It is my position that terms and conditions of transit traffic between the transit
19 service provider and small LECs that originate and terminate transit traffic should
20 be established consistent with the manner in which they are established between
21 BellSouth and the CLECs – negotiation and ICA. Given that transit service must
22 be provided in a nondiscriminatory manner, the means by which to establish those
23 terms and conditions should be the same regardless of what type of carrier
24 originates and terminates transit traffic. I reserve the right to elaborate on this

1 position once I have the opportunity to review the direct testimony and discovery
2 responses in this proceeding.
3

4 *Issue #10: What effect does transit service have on ISP bound traffic?*

5
6 **Q. What is the regulatory status of Internet Service Provider (“ISP”)-bound**
7 **traffic?**

8 A. Let me provide some background on this type of traffic. In 1996, the FCC
9 established rules that required ILECs to pay CLECs “reciprocal compensation”
10 for ILEC-originated traffic that CLECs terminated. The underlying statute (47
11 U.S.C. § 251(b)(5)) requires such compensation for all “telecommunications” the
12 ILEC might send to the CLEC (or vice versa). The FCC, however, initially
13 viewed the statute as applying only to “local” traffic, and so stated in its initial
14 rule for reciprocal compensation. *See Local Competition Order* at Appendix B
15 (1996 version of 47 C.F.R. § 51.701). Following this rule, many ILECs entered
16 into interconnection agreements with CLECs calling for compensation for “local”
17 traffic with no mention of traffic bound for ISPs. At the same time, consumer
18 demand for dial-up Internet access was booming, and for any number of reasons
19 ISPs found CLECs to be superior suppliers of the Public Switching Telephone
20 Network (PSTN) connectivity that the ISPs needed. As a result, ILECs started
21 receiving large bills from CLECs for reciprocal compensation for calls to ISPs.
22 ILECs objected, and industry parties in mid-1997 sought an explicit ruling from

1 the FCC that ISP-bound calls were “local” calls for purposes of the FCC’s then-
2 existing reciprocal compensation rule.²³

3 In February 1999, the FCC issued a convoluted answer to this question.²⁴
4 The FCC said that ISP-bound calls were jurisdictionally interstate – which few
5 had actually contested. It then said that, because the calls were interstate, they
6 could not be “local,” which made no sense since there are clearly local calls that
7 cross state boundaries.²⁵ It then said that, notwithstanding the fact that the calls
8 weren’t *really* “local” under its rules, and that it had no rule for this type of call, it
9 was perfectly alright for an interconnection agreement to have the effect of
10 *treating* such traffic as though it *were* “local,” and laid out some criteria for
11 assessing whether this was so in the case of any particular contract – criteria that
12 almost compelled the conclusion that a contract that did not specifically identify
13 and carve out ISP-bound traffic from the “local” category probably meant to
14 include them. And then the FCC initiated a rulemaking proceeding to set a
15 general rule. *ISP Declaratory Ruling, supra*.

16 From my lay person’s perspective, the courts did not view this ruling
17 kindly. To the contrary, on review, the D.C. Circuit concluded that it did not

²³ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, CC Docket Nos. 96-98, 99-69 (February 26, 1999) (“*ISP Declaratory Ruling*”) at ¶ 1 n.1.

²⁴ *Id.*

²⁵ There are plenty of calls that are simultaneously “local” and interstate, most notably landline-wireless calls that cross a state line but remain within a “Major Trading Area.” The same FCC ruling that limited reciprocal compensation to “local” calls specifically defined any such intra-MTA traffic to be “local” for these purposes. See *Local Competition Order* at ¶¶ 1033-35; 47 C.F.R. § 51.701(b)(3).

1 make any sense.²⁶ The fact that ISP-bound calls were jurisdictionally interstate,
2 the court found, had no particular bearing on whether the calls were subject to
3 reciprocal compensation or not.²⁷ The question was whether calls to ISPs were
4 more like “normal” LEC-to-LEC local calls, or more like calls where two LECs
5 collaborate to help a toll carrier to which they both connect complete a call.²⁸
6 Given that the FCC had so badly confused things, the court vacated the ruling “for
7 want of reasoned decision making” and sent it back to the FCC for another try.

8 In April 2001, the FCC tried again. This time the FCC paid more attention
9 to what the statute said. It noted that § 251(b)(5)’s reciprocal compensation
10 requirement on its face applied to all telecommunications, which would include
11 all “information access” traffic, including, specifically, calls to ISPs. In this
12 connection it noted that its original decision to limit the reach of § 251(b)(5) to
13 “local” traffic was a “mistake” that had created “ambiguity,” because “local” was
14 not a term that was used or defined in the underlying statute. It therefore
15 amended its reciprocal compensation rules to remove all references to “local”
16 traffic.²⁹

17 That said, the FCC did not believe that § 251(b)(5) applied to *all*
18 “telecommunications.” Instead, it concluded that two classes of traffic identified
19 in another section of the law – § 251(g) – were properly viewed as excluded.

²⁶ *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

²⁷ 206 F.3d at 3.

²⁸ 206 F.3d at 5.

²⁹ *ISP Remand Order*, ¶¶ 45-46.

1 These two supposedly excluded categories were “information access” and
2 “exchange access.”

3 In its ruling, the FCC did not set up any special compensation rule for
4 “exchange access,” which makes sense because the pre-existing access charge
5 regime already ensured that exchange access charges would be payable in
6 connection with toll calls. The FCC, however, re-affirmed its interstate
7 jurisdictional authority over ISP-bound traffic as a form of “information access,”
8 and set up a special intercarrier compensation regime applicable to it. Under that
9 regime, ISP-bound traffic and non-toll traffic (that is, traffic that is not “exchange
10 access”) are to be treated the same, with the specific rate – reciprocal
11 compensation or FCC-set – chosen by the ILEC.³⁰

12
13 **Q. Please explain the effect transit service has on ISP bound traffic.**

14 A. As explained above, transiting allows a customer of Carrier A to complete a call
15 to customer of Carrier B through an indirect interconnection (*i.e.*, the transit
16 service). In an ISP-bound scenario, the customer of Carrier A would be a dial-up
17 internet subscriber, the call would be a dial-up call destined for the Internet, and
18 the customer of Carrier B would be the ISP. In this scenario, transiting allows the

³⁰ Under the FCC’s rule, the ILEC can choose whether the rate that applies is a state-determined “reciprocal compensation” rate or the FCC’s own low rate (now \$0.0007 per minute), but *the same rate applies to all non-toll traffic*. To deal with what it saw as an immediate problem of “arbitrage,” the FCC initially ruled that the rate of growth in CLEC bills for ISP-bound traffic would be limited to a 10% annual traffic growth cap, and that no compensation for ISP-bound traffic would be due to CLECs who were not serving ISPs in a particular market as of the first quarter of 2001. These restrictions were removed as of October 2004 in the *Core* ruling. *In re Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, 19 FCC Rcd 20179 (FCC rel. Oct. 18, 2004). As a result, it is simply unlawful discrimination to establish a regime in which ISP-bound and non-ISP-bound “Section 251(b)(5)” traffic are compensated at different rates.

1 user to access the Internet without its service provider being directly
2 interconnected with the carrier of his/her ISP when economics do not justify a
3 direct interconnection. This outcome fosters choice and expands the benefits of
4 the Internet to a larger group of Floridians.

5
6 **Q. Isn't dial-up Internet access becoming a smaller percentage of the total**
7 **traffic and less important to the industry?**

8 A. Yes and no. Dial-up for Internet access is the universal service equivalent of a
9 primary line for voice service. In other words, not all people can afford
10 broadband access to the Internet, but most people have a single line with which
11 they can access the Internet over a dial-up connection. Dial-up access is
12 especially important where broadband connections are not yet available.

13 Rural residents report less broadband availability than their counterparts in
14 suburban or urban areas of the United States. In fact, a Pew Internet & American
15 Life Project study found that rural residents were two to five times more likely to
16 not have broadband availability than urban and suburban residents.³¹ Pew
17 research associate Peter Bell also noted:

18 While gaps in income and age appear to be partly responsible, the
19 difficulty of getting Internet access remains a big barrier for many
20 rural users. Major Internet service providers accounted for about
21 40 percent of use among rural residents, whose most frequent
22 reason for choosing an ISP was that it was the only one available
23 to them. In contrast, online users in metropolitan areas usually
24 chose from a range of providers by seeking the best deal.³²

³¹ See, Pew Internet & American Life Project; Rural Areas and the Internet; "Rural American's Internet Use Has Grown, But They Continue to Lag Behind Others"; February 17, 2004.

³² See, Today's Seniors Network.com; "Rural use of Internet continue to lag, Costs, access remain barriers, new data shows." June 7, 2005.

1
2 Although dial-up Internet access is critical in rural areas, as a percentage of the
3 total, it is decreasing. While DSL and cable broadband connections have
4 significantly increased, from 2001 to 2003 dial-up Internet access actually
5 decreased by 12.7 percent. The same study showed that in rural areas 74.7
6 percent of the Internet connections were dial-up connections.³³
7

8 **Q. Despite the downward trend in dial up access, do you think it will remain an**
9 **important type of internet access?**

10 A. Yes. As I mentioned above, dial-up is critical to rural consumers where
11 broadband is not always available and competitive alternatives are limited. Garry
12 Betty, Earthlink's chief executive stated

13 Despite compelling reasons to switch to broadband, dial-up lines
14 will always have a place in American homes. Customers in rural
15 areas where broadband is not available will continue to log on via a
16 dial-up connection; other people may prefer the simplicity of dial-
17 up.³⁴
18

19 For those citizens of Florida that either cannot afford or do not have access to
20 broadband connectivity, dial-up internet provides access to one of – if not the -
21 cornerstone of economic and community vitality. The ability to apply for jobs,
22 get weather reports, crop price forecasts on a real time basis, participate in
23 educational endeavors, gain community information on safety and health, and

³³ See, "A Nation Online: Entering the Broadband Age"; U.S. Department of Commerce, Economics and Statistics Administration, National Telecommunications and Information Administration; September, 2004, pp. 5, 13.

³⁴ See, The New York Times, "Dial-up Internet Going the Way of Rotary Phones;" June 21, 2005.

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1 communicate via e-mail to friends and businesses, form the very fabric of
2 commerce in the world in which we live. Non-participation or lack of access,
3 simply stated, sentences portions of our society to second-class status. Without
4 vigorous competition to ensure low cost dial-up Internet access, both the citizens
5 of Florida and the State itself will suffer irreparable harm as a significant segment
6 of the population is unable to compete economically, advance educationally and
7 establish community ties.

8
9 **Q. What, if any, impact does the BellSouth transit tariff have on ISP-bound**
10 **traffic?**

11 A. Based on the transit traffic service rate alone (\$0.003), the cost of terminating
12 ISP-bound traffic would increase significantly. This is contradictory to the
13 actions of the FCC in the ISP Remand Order, whereby the FCC reduced the
14 compensation rates for ISP-bound traffic (BellSouth's transit rate is 329% higher
15 than the \$0.0007 ISP-bound compensation rate). This increase in transit costs will
16 increase the amounts paid by the originating carrier to BellSouth for the ability to
17 terminate the call to the terminating carrier, which would result in the originating
18 carrier increasing its rates to cover BellSouth's excessive transit charge and/or the
19 customer canceling its Internet access account due to higher prices. In this way,
20 BellSouth's transit rate could have detrimental impacts on customers' access to
21 the internet.

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C. Rates, Compensation and Cost Recovery

Issue # 11: How should charges for BellSouth's transit service be determined? What is the appropriate rate for transit service? What type of traffic do the rates identified in "a" apply?

Q. How should charges for BellSouth's transit service be determined?

A. The rates for BellSouth's transiting service should be TELRIC-based. As discussed above, BellSouth has an obligation under §§ 251(a) and 251(c) to provide transit service. § 251(c)(2)(D) states that interconnection must be provided "on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252." The pricing standards for interconnection are set forth in § 252(d) as follows:

(d) Pricing standards. (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. (emphasis added)

The cost-based pricing methodology that was adopted for interconnection pursuant to § 252(d) was TELRIC pricing methodology. As such, transit should be TELRIC-based.

1 matter) showing uncompensated costs for transiting. Clearly, requiring BellSouth
2 to substantiate charges that it assesses on its competitors is appropriate and
3 reasonable regardless of what pricing methodology applies, but in the case of §
4 251 offerings priced at TELRIC (of which transit is one), such substantiation is
5 required by law and BellSouth should not be allowed to avoid this burden.
6

7 **Q. Is it important for the Commission to require BellSouth to substantiate any**
8 **tariffed transit charge?**

9 A. Yes. Even if we assume for the sake of argument that transit need not be priced at
10 TELRIC, it is still important to require BellSouth to either (a) show that its costs
11 have increased or that costs would go unrecovered absent its transit charge or (b)
12 show that it has made an equal and offsetting reduction to charges and associated
13 revenues for other services such that the impact of the rate is total revenue neutral
14 for BellSouth. BellSouth has made no attempt to provide any support whatsoever
15 for its tariffed transit charge, so there is no basis for BellSouth to contend that its
16 tariffed transit rate is anything other than a simple revenue enhancement for
17 BellSouth.
18

19 **Q. Is BellSouth's tariffed transit rate reasonable?**

20 A. Absolutely not. BellSouth's rate is clearly not TELRIC-based, which is a fatal
21 flaw precluding its adoption. However, even if we assume *arguendo* that transit
22 rates need not be TELRIC-based, BellSouth's proposed rate is still unjust and
23 unreasonable as it constitutes an increase of 274% over the rate paid for

1 BellSouth's transit service pursuant to ICA.³⁵ It is therefore unreasonable on its
2 face. Further, BellSouth's \$0.003 transit rate is an increase of more than 114%
3 over BellSouth Florida's interstate switched access tandem switching/common
4 transport rates.³⁶ Hence, BellSouth's transit rate is discriminatory to CLECs vis-
5 à-vis interexchange carriers. Furthermore, given that BellSouth is the only
6 provider of transit service capable of providing efficient interconnections to all
7 carriers and also competes in the local market with the carriers for which it
8 provides transit services, BellSouth's tariffed transit rate is anticompetitive.

9
10 **Q. What transit rates do you propose?**

11 A. I recommend that the Commission reject any non-TELRIC-based transit rate
12 elements proposed by BellSouth and require BellSouth to assess a Commission-
13 approved tandem switching/common transport rate that is TELRIC-based. This
14 rate has historically applied for transiting and BellSouth has provided no basis for
15 changing the transit rate structure at this point. At the very least, the Commission
16 should require TELRIC-based transit rates until such time as the ~~Commission~~^{FCC}
17 renders a decision on this issue in the ICF FNPRM proceeding.

18

³⁵ This is based on the tandem switching per MOU rate of \$0.00029, common transport fixed termination per MOU rate of \$0.0005 and a common transport per mile per MOU rate of \$0.000012, for a composite rate of \$0.000802. These rates are taken from the BellSouth/Birch Telecom interconnection agreement in Florida. Note: the common transport, per mile component of this rate will vary depending on common transport mileage.

³⁶ BellSouth Florida's interstate switched access tandem switching per MOU rate is \$0.001198, common transport fixed termination per MOU rate is \$0.000176 and common transport per mile per MOU rate is \$0.000023, for a composite rate of \$0.001397. BellSouth Telecommunications, Inc. FCC Tariff No. 1, 14th revised 6-157.27 and 7th revised 6-157.2.4. Note: the common transport, per mile component of this rate will vary depending on common transport mileage.

1 Q. To what type of transit traffic would your recommended rate apply?

2 A. This rate should apply to all transit traffic provided by tariff, but should not
3 impact any rates established via a § 252 ICA.
4

5 *Issue #12: Consistent with Order Nos. PSC-05-0517-PAA-TP and PSC-05-0623-CO-*
6 *TP, have the parties to this docket ("parties") paid BellSouth for transit service*
7 *provided on or after February 11, 2005? If not, what amounts if any are owed*
8 *to BellSouth for transit service provided since February 11, 2005?*
9

10 Q. Have the CompSouth members paid BellSouth for transit service provided
11 on or after February 11, 2005?

12 A. The transit service provided by BellSouth to the CompSouth members is provided
13 via ICA. CompSouth members have paid BellSouth for transit service pursuant to
14 these agreements prior to February 11, 2005 as well as on and after February 11,
15 2005. To my knowledge, the CompSouth members do not owe BellSouth for any
16 unpaid transit service charges.
17

18 *Issue #13: Have parties paid BellSouth for transit service provided before February 11,*
19 *2005? If not, should the parties pay BellSouth for transit service provided*
20 *before February 11, 2005, and if so, what amounts, if any, are owed to*
21 *BellSouth for transit service provided before February 11, 2005?*
22

23 Q. Have the CompSouth members paid BellSouth for transit services provided
24 before February 11, 2005?

25 A. The transit service provided by BellSouth to the CompSouth members is provided
26 via ICA. CompSouth members have paid BellSouth for transit service pursuant to
27 these agreements prior to February 11, 2005 as well as on and after February 11,

1 2005. To my knowledge, the CompSouth members do not owe BellSouth for any
2 unpaid transit service charges.

3

4 *Issue #14: What action, if any, should the FPSC undertake at this time to allow the*
5 *Small LECs to recover the costs incurred or associated with BellSouth's*
6 *provision of transit service?*
7

8 **Q. Do you have a position on Issue #14 at this time?**

9 A. No, but I reserve the right to address this issue in rebuttal once I have reviewed
10 parties' direct testimony and discovery responses.

11

12 **D. Administrative Issues**

13 *Issue #15: Should BellSouth issue an invoice for transit services and if so, in what*
14 *detail and to whom?*
15

16 **Q. Is it your position that BellSouth should issue an invoice for transit services?**

17 A. Yes, just as it does today.

18

19 **Q. To whom should BellSouth issue the invoice for BellSouth's transit services?**

20 A. I have recommended above that the originating carrier should be responsible for
21 compensating BellSouth for the transit charges related to transit traffic. As such,
22 BellSouth should provide the invoice for transit services to the originating carrier.

23

24 **Q. Please describe the level of detail for transit service invoices sought by**
25 **CompSouth.**

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1 A. At this time, I am not aware of any information lacking regarding the current level
2 of detail provided. I would add, however, at least one CompSouth member is
3 concerned about being billed twice for these transit charges – once by BellSouth
4 and once by the terminating carrier. The originating carrier should only pay for
5 this transit service once.

6

7 *Issue #16: Should BellSouth provide to the terminating carrier sufficiently detailed call*
8 *records to accurately bill the originating carrier for call termination? If so,*
9 *what information should be provided by BellSouth?*

10

11 **Q. Please explain the importance of accurate call records in the context of**
12 **transiting.**

13 A. The accuracy of call records is critical in any carrier-to-customer or carrier-to-
14 carrier relationship to ensure proper billing and payment. In the context of
15 transiting, there are three parties involved wherein the transit provider must issue
16 call records to the terminating carrier in order for that terminating carrier to bill
17 the originating carrier for termination. The failure of BellSouth to provide
18 sufficient call detail to the terminating carrier to discern the originating carrier
19 may result in uncollectible transit termination revenues for the terminating carrier.
20 Since BellSouth transports traffic from the originating carrier to the terminating
21 carrier, BellSouth should be able to identify the originating carrier as a result of
22 its physical interconnection with the originating carrier.³⁷

23

³⁷ See, *Cavalier Order*, ¶ 40, fn 148.

1 **Q. Is it your position that BellSouth should provide the terminating carrier**
2 **sufficiently detailed call records to accurately bill the originating carrier for**
3 **call termination?**

4 A. Yes, it is. To the extent that the Commission believes a transit tariff is necessary,
5 require any transit tariff adopted to spell out that BellSouth will provide
6 sufficiently detailed call records to identify the originating carrier and render
7 accurate bills. I should add, however, that some carriers have deployed SS7
8 networks that obviate the need for BellSouth providing separate call records.
9 These arrangements should not be impacted by a transit tariff should the
10 Commission find that such a tariff is needed.

11
12 **Q. What information should BellSouth provide for the purposes of identifying**
13 **the originating carrier if the Commission finds that a transit tariff is needed?**

14 A. While the terms and conditions pertaining to information provided to the
15 terminating carrier that currently ~~exists~~^{exists} in ICAs should not be altered in any
16 way, there are a number of sources of information that can be used for this
17 purpose should the Commission believe that a transit tariff is needed. The
18 Operating Company Number (OCN)³⁸ for the company can identify originating
19 carriers, as can Carrier Identification Codes (CIC),³⁹ Location Routing Number

³⁸ An OCN is “a code used in the telephone industry to identify a telephone company.” Newton’s Telecom Dictionary 20th ed.

³⁹ A CIC is “four digits used by end-user customers to reach the services of interexchange carriers.” Newton’s Telecom Dictionary 20th ed.

1 (LRN)⁴⁰ and Calling Party Number (CPN). Any transit tariff required by the
2 Commission should state that the transiting carrier should pass along any
3 adequate combination of the above information (OCN, CIC, LRN, CPN) to
4 terminating carrier that it has in its possession without any manipulation of this
5 data by BellSouth.
6

7 *Issue #17: How should billing disputes concerning transit service be addressed?*
8

9 **Q. What is your position on Issue #17?**

10 A. It is my position that billing disputes between CLECs and BellSouth be addressed
11 according to the terms of their ICAs, and I recommend the same for BellSouth
12 and any other party. There is no need to change these processes or create new
13 processes.
14

15 **Q. Does this conclude your direct testimony?**

16 A. Yes.

⁴⁰ LRN is a 10 digit telephone number used to implement local number portability. Newton's Telecom Dictionary, 20th ed.

1 **Q.** Are you the same Timothy Gates who filed direct testimony in this
2 proceeding on December 19, 2005?

3 **A.** Yes, I am.

4

5 **II. Summary of Rebuttal Testimony and Recommendations**

6

7 **Q.** What is the purpose of your rebuttal testimony?

8 **A.** The purpose of my rebuttal testimony is to respond to the direct testimonies of
9 BellSouth witness Kenneth Ray McCallen and Small LEC Joint Petitioners
10 ("Small LECs") witness Steven E. Watkins. Specifically, I will respond to
11 BellSouth's contentions that (a) its transit tariff is the appropriate mechanism for
12 setting out the terms, conditions and rates for transiting, (b) that transiting is not a
13 requirement pursuant to § 251 of the Telecommunications Act of 1996 ("TA96"),
14 and (c) that the tariff rate for transiting should be established by "eyeballing" rates
15 found in some existing agreements – rather than established in accordance with
16 TELRIC principles. With regard to the Small LECs, I will respond to Mr.
17 Watkins' proposals for the Commission to require: (a) a three-party contract
18 addressing transiting obligations between the originating carrier, the transit
19 service provider, and the terminating carrier, (b) parties other than the Small
20 LECs to pay for the cost of transit traffic originated by Small LECs' customers
21 and (c) a direct trunking threshold.

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2 **Q. Please summarize your rebuttal testimony and recommendations.**

3 A. The direct testimonies of both BellSouth and the Small LECs describe a situation
4 in which those two parties have been unable to come to agreement on transit
5 issues in negotiations. Instead of them bringing these disputed issues to the
6 Commission for arbitration, BellSouth has filed a transit tariff that would apply as
7 a default for any party who does not have a transit agreement in place with
8 BellSouth, while the Small LECs recommend that the Commission require parties
9 to a transiting arrangement to execute three-party transit contracts.

10 My rebuttal testimony will show that both of these parties'
11 recommendations are unnecessary because the appropriate vehicle for establishing
12 transit terms, conditions and/or rates is in an interconnection agreement. Both the
13 FCC and the Florida Commission have come to this conclusion, and the
14 interconnection agreement is the "tried and true" method for establishing transit
15 terms, conditions and rates. Therefore, to the extent that BellSouth and the Small
16 LECs are unable to agree on specific transit terms in negotiations, as indicated in
17 their direct testimonies, they should bring those disputed issues to the
18 Commission for arbitration. Accordingly, my *primary recommendation* is for the
19 Commission to reject (and cancel) BellSouth's transit tariff, and reject the Small
20 LECs three-party transit contract proposal. Instead, the Commission should
21 require parties to establish transit terms, conditions and rates just as they have
22 been for years – through negotiations and, if necessary, arbitration. The
23 Commission should reject these parties' attempts to circumvent the

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1 negotiation/arbitration process and turn disagreements between BellSouth and the
2 Small LECs into wide-ranging and potentially harmful changes to the competitive
3 market and future negotiations.

4 My rebuttal testimony addresses a number of additional problems with the
5 positions and recommendations of BellSouth and the Small LECs, including the
6 following:

- 7 • I explain that BellSouth's direct testimony is incorrect and internally
8 inconsistent regarding whether transit is an obligation under § 251 of the
9 TA96. BellSouth's direct testimony recognizes that § 251 requires
10 BellSouth to provide both direct and indirect interconnection, and that
11 transit is a form of indirect interconnection, but attempts to ignore the
12 logical conclusion that transiting is grounded in § 251.
13
- 14 • As mentioned above, my rebuttal testimony (along with my direct
15 testimony) explains why BellSouth's transit tariff is not the appropriate
16 mechanism for establishing terms, conditions and rates related to
17 BellSouth's transit offering. BellSouth's transit tariff is seriously flawed
18 in a number of respects, it is one-sided, and it is inconsistent with the
19 manner in which transit terms, conditions and rates have been established
20 in Florida in the past. I will also show why BellSouth's claim that it will
21 not be properly compensated for transit traffic absent its tariff is
22 misleading and incorrect, and that BellSouth's claim has previously been
23 rejected by the FCC. BellSouth needs only to request negotiations with
24 parties who are using its transit offering but who do not have separate
25 transit agreement with BellSouth – as required by the FCC – to ensure that
26 it is properly compensated for transit. And in instances where a transit
27 agreement does not exist, bill and keep should apply.
28
- 29 • Though I recommend the Commission reject and cancel BellSouth's
30 transit tariff outright, to the extent that the Commission disagrees with my
31 primary recommendation and finds that a transit tariff is appropriate
32 (which it should not), I recommend that the Commission summarily reject
33 BellSouth's method for establishing its tariff transit rate. BellSouth
34 explains in its direct testimony that it chose a per-minute of use transit rate
35 of \$0.003 because it was purportedly comparable to the total transit charge
36 paid by some CLECs via interconnection agreement. I will show that
37 BellSouth's rate-setting method is inappropriate and results in BellSouth
38 double-recovering its transit costs, and that BellSouth's tariff transit rate
39 should be substantiated through the use of TELRIC-based cost studies. I

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1 will also show that BellSouth's tariff transit rate is unjust, unreasonable
2 and discriminatory, and, therefore, fails to meet even the minimum
3 requirements of §§ 201/202. If the Commission disagrees with my
4 primary recommendation to cancel BellSouth's transit tariff outright, it
5 should, at a minimum, require BellSouth to tariff the TELRIC-based
6 transit rate I recommend below. This rate was substantiated through
7 TELRIC-based cost studies, it was approved by the Commission, and it
8 was designed to recover the cost of transit traffic.
9

- 10 • My rebuttal testimony will show that the Small LECs' testimony and
11 recommendations subvert the well-established "originating carrier pays"
12 rule, and attempts to force other carriers to pay for the costs of the traffic
13 that the Small LECs originate. Given that the Small LECs' misguided
14 recommendations primarily stem from their misunderstanding of who the
15 "cost causer" is in a transiting arrangement, my rebuttal testimony points
16 out where the Small LECs' reasoning is flawed and correctly applies the
17 cost causation principle to demonstrate that the originating carrier should
18 continue to be responsible for compensating BellSouth for transiting and
19 compensating a third party for termination.
20
- 21 • As mentioned above, I will explain that the Small LECs' three party
22 transit contract proposal is unnecessary, costly, unworkable and
23 potentially harmful, and that the current structure - whereby transit terms,
24 conditions and rates are established through interconnection agreements -
25 appropriately preserves all parties' rights.
26
- 27 • Finally, my rebuttal testimony will show that the Small LECs' direct trunk
28 proposal is vague and lacks any basis whatsoever. Though the Small
29 LECs call for a "flexible" threshold, they actually recommend an
30 extremely low and rigid threshold, wherein the threshold would be
31 "triggered" in the greatest number of circumstances. Furthermore, the
32 Small LECs are apparently attempting to require other carriers to bear the
33 cost of such direct trunks once the threshold has been triggered even if the
34 Small LECs originate 100% of the traffic. Accordingly, I recommend that
35 the Small LEC direct trunk threshold proposal be rejected.

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III. Rebuttal to BellSouth

A. *BellSouth's claim that transiting is not a § 251 obligation is incorrect.*

Q. BellSouth witness McCallen testifies that BellSouth is not required to provide the transiting function.¹ Does he explain the basis for his testimony on this issue?

A. No. Mr. McCallen states as follows: “[a]lthough BellSouth is not required to provide a transit function, BellSouth is willing to provide transit services to TSPs because BellSouth has a ubiquitous network that is interconnected with most TSPs in its region.”² As I explained in my direct testimony, while there is no federal rule requiring incumbent local exchange carriers (“ILECs”) to provide transiting, BellSouth indeed has such an obligation under § 251 of the TA96 – a point BellSouth has conceded.³ Mr. McCallen provides no explanation as to why he believes BellSouth is not obligated to provide both direct and indirect interconnection (*e.g.*, transiting) pursuant to § 251 of the TA96.

Q. Does Mr. McCallen's brief testimony on this topic actually support your contention that transiting is an obligation under § 251 of the TA96?

¹ Direct Testimony of Kenneth Ray McCallen on behalf of BellSouth Telecommunications, Inc., Florida PSC Docket Nos. 050119-TP/050125-TP, December 19, 2005 (“McCallen Direct”), p. 6, lines 7 – 10 and p. 17, lines 4 – 6.
² McCallen Direct, p. 6, lines 7 – 10.
³ See, Direct Testimony of Timothy J Gates on behalf of CompSouth, Florida Docket Nos. 050119-TP/050125-TP, December 19, 2005 (“Gates Direct”), p. 16.

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1 A. Yes. Mr. McCallen testifies as follows at page 12, lines 1-3 of his direct
2 testimony: “Yes. Although I am not a lawyer, I understand generally that *Section*
3 *251(a) of the TA96 requires all TSPs to interconnect their networks either*
4 *directly or indirectly* with each other and with any TSP requesting such
5 interconnection.”⁴ Given that Mr. McCallen acknowledges that transiting is an
6 indirect interconnection (McCallen Direct, p. 7, lines 14 – 15), it is unclear why
7 he continues to maintain that transiting is not required as an indirect
8 interconnection obligation under § 251 of the TA96. Mr. McCallen provides no
9 explanation for this inconsistency in his testimony.

10 Furthermore, Mr. McCallen’s testimony actually supports my contention
11 that transiting is an obligation under § ~~252(e)~~ ^{251(c)} and should be provided at TELRIC
12 prices. He explains that BellSouth willingly provides transiting “because
13 BellSouth has a ubiquitous network that is interconnected with most TSPs in its
14 region.”⁵ What Mr. McCallen is describing is BellSouth’s incumbent local
15 network that it amassed during years of monopoly-provided local exchange
16 services. Given the incumbent advantages derived by possession of this
17 incumbent local network (and the interconnected nature of this network),
18 Congress, when creating the legislative requirements for local competition in the
19 TA96, imposed additional obligations on ILECs (beyond those obligations
20 assigned to carriers, in general), which required ILECs to open up their incumbent
21 local networks through, among other things, additional interconnection

⁴ Emphasis added.

⁵ McCallen Direct, p 6, lines 7 – 10.

1 obligations, unbundled access, and resale obligations. Each of these additional
2 obligations that Congress imposed on ILECs, such as BellSouth, tracks back to
3 the ubiquitous, interconnected, incumbent local network the ILEC possesses.
4 Though Mr. McCallen recognizes the incumbent advantage BellSouth possesses
5 through its ubiquitous and interconnected network, he attempts to ignore the
6 additional obligations that come with this incumbent network pursuant to § 251(c)
7 of TA96. One of these obligations is to provide interconnection at TELRIC-based
8 prices.

9
10 **Q. Have any other state regulatory commissions found that transiting is subject**
11 **to § 251 of the TA96 despite BellSouth's claims to the contrary?**

12 A. Yes. Just this month, the Tennessee Regulatory Authority ("Tennessee
13 Commission") reached this conclusion. Specifically, the Tennessee Commission
14 found as follows in its Order in Docket No. 03-00585:⁶ "...the reciprocal
15 compensation requirements of 47 U.S.C. § 251(b)(5) and the related negotiation
16 and arbitration process in § 252(a) and (b) apply to traffic exchanged indirectly
17 between a CMRS provider and an ICO member."⁷ As I have previously
18 explained, transit traffic is "traffic exchanged indirectly between a CMRS
19 provider [and CLEC] and an ICO member." Similarly, in Kentucky, BellSouth

⁶ *In Re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless; Petition for Arbitration of BellSouth Mobility LLC, BellSouth Personal Communications, LLC Chattanooga MSA Limited Partnership, collectively d/b/a Cingular Wireless; Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless; Petition for Arbitration of T-Mobile USA, Inc.; and Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS.* Tennessee Regulatory Authority Docket No. 03 – 00585 Order of Arbitration Award, January 12, 2006.

⁷ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 18.

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1 contended it was not obligated to negotiate and arbitrate transit issues because
 2 transiting was not contained in Section 251(b) and (c),⁸ but the Kentucky Public
 3 Service Commission disagreed, finding that: “[t]he Commission has not been
 4 precluded by the FCC from requiring BellSouth to transit traffic under the
 5 circumstances requested by the Joint Petitioners”⁹ and “[t]he Commission will
 6 continue to require BellSouth to transit such traffic.”¹⁰ Furthermore, despite
 7 BellSouth’s claims in North Carolina that “it was not required to provide a transit
 8 traffic function because it is not a section 251 obligation under the Act[.]”¹¹ the
 9 North Carolina Utilities Commission clearly concluded that “[t]he tandem transit
 10 function is a Section 251 obligation[.]”¹²

**B. *BellSouth’s Transit Tariff is Not the Appropriate Mechanism To
 Address BellSouth’s Transit Service (Issue 1)***

15 **Q. Can you summarize the difference between your position and BellSouth’s**
 16 **position on this issue?**

⁸ *In the Matter of Joint Petition for Arbitration of Newsouth Communications Corp., Nuvox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on behalf of its operating subsidiaries Xsepdius Management Co. of Lexington, LLC and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended.* Kentucky Public Service Commission Order in Case No. 2004 – 00044, September 26 2005, p. 15.

⁹ Kentucky Public Service Commission Order in Case 2004 – 00044, p. 15.

¹⁰ *Id.*

¹¹ *In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.* Docket No. P-772, Sub 8; Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket No. P-824, Sub 6; Docket No. P-1202, Sub 4. North Carolina Utilities Commission Order, July 26, 2005, p. 53.

¹² *Id.*

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1 A. Yes. BellSouth has filed a transit tariff that applies to carriers who use
2 BellSouth's transit service but do not have a separate agreement addressing
3 transiting with BellSouth.¹³ While I do not disagree with the general principle
4 that, in some circumstances, a tariff can be an appropriate mechanism for
5 establishing terms, conditions and rates for a telecommunication service providers
6 services (subject to applicable rules, regulations, etc.), in this case, this issue
7 should be handled through negotiation and arbitration of interconnection
8 agreements as has always been the case in the past. No party has provided any
9 compelling reason for changing the negotiation/arbitration mechanism now.
10 Further, even if the Commission were to find a tariff-based vehicle to be
11 appropriate, BellSouth's transit tariff is flawed in a number of material ways and
12 is, therefore, *not* the appropriate mechanism for addressing BellSouth's transit
13 service. Therefore, I recommend that BellSouth's transit tariff be cancelled and
14 the same mechanism that has always been used to address transit be used going
15 forward, *i.e.*, § 252 interconnection agreements. To the extent that parties are
16 unable to come to agreement on terms and conditions regarding transiting during
17 negotiations, the proper vehicle for resolution is arbitration – not a unilateral
18 tariff, as recommended by BellSouth and not forced execution of three party
19 contracts, as proposed by the Small LECs. But if the Commission believes that
20 there should be some mechanism in place for carriers who, for whatever reason,
21 have not executed separate transit agreements with BellSouth, I strongly

¹³ McCallen Direct, p. 6, lines 4 – 7.

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1 recommend that, at a minimum, the flaws in BellSouth's tariff be rectified as I
2 explained in my direct testimony (*see*, Gates Direct, pp. 23 – 24).

3
4 **Q. Mr. McCallen states that when BellSouth provides transiting, "BellSouth's**
5 **network has been used, and, absent the transit tariff, TSPs that have no**
6 **contractual agreement addressing transit traffic with BellSouth can originate**
7 **traffic that transits BellSouth's network without compensating BellSouth for**
8 **the use of its network."¹⁴ Does Mr. McCallen's direct testimony tell the**
9 **whole story?**

10 **A.** No. I am not suggesting that BellSouth should not be compensated for transit
11 traffic, but Mr. McCallen ignores a very important fact: there is no reason why
12 BellSouth should not have a contractual agreement addressing transit with all
13 parties utilizing BellSouth for transiting. All BellSouth needs to do is request that
14 these parties execute a compensation arrangement with BellSouth addressing
15 transiting.¹⁵ Indeed, BellSouth's direct testimony indicates that BellSouth did just
16 that in December 2004 for some Small LECs and that these negotiations are still
17 ongoing.¹⁶ Any disagreements between BellSouth and these parties that cannot be
18 resolved through negotiation should be brought to the Commission for arbitration.
19 If BellSouth established terms and conditions for transit with these carriers
20 through negotiated agreements, the BellSouth transit tariff would be rendered

¹⁴ McCallen Direct, p. 9, lines 20 – 23.

¹⁵ While I am not an attorney, I read § 251(b)(5) to require all local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

¹⁶ McCallen Direct, p. 2, line 17 – p. 3, line 3.

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1 moot. The fact that BellSouth has, for whatever reason, been unable to come to
2 agreement with certain parties on some issues does not justify allowing BellSouth
3 to establish a transit tariff over which it exerts unilateral control. In essence, it
4 appears that BellSouth is using its transit tariff as a “stick” to force all carriers
5 into default transit terms, conditions and rates if parties are unable to agree to
6 these rates, terms and conditions in negotiations. This is an inappropriate use of a
7 tariff. In sum, the proper resolution of this issue is for BellSouth to negotiate with
8 carriers who do not have contractual terms for transiting and, to the extent that
9 negotiations are unsuccessful in resolving all issues, bring disputed issues
10 between those particular parties to the Commission for arbitration.

11
12 **Q. Does BellSouth recognize that originating carriers must negotiate terms,**
13 **conditions and rates related to transit traffic once BellSouth (or another**
14 **carrier) requests it?**

15 A. Yes. Mr. McCallen testifies at page 17 of his direct testimony: “[t]he carrier
16 originating traffic has the obligation to negotiate the rates, terms and conditions
17 related to such [transit] traffic with both the terminating LEC as well as the
18 transiting company.” Mr. McCallen does not explain why a transit tariff is
19 needed given this obligation to negotiate. Again, according to BellSouth’s own
20 testimony, BellSouth need only request negotiation with carriers who do not have
21 contractual terms addressing transiting to address any perceived problem related
22 to originating carriers not compensating BellSouth for transit traffic. BellSouth’s
23 transit tariff is therefore unnecessary.

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1

2 **Q. Did BellSouth explain why some originating carriers did not have**
3 **contractual terms for transiting with BellSouth?**

4 A. Mr. McCallen's only explanation is that despite BellSouth and the Small LECs
5 discussing transit traffic issues since December 2004, "[u]nfortunately, the parties
6 have not yet been able to reach mutually agreeable terms and conditions for a
7 transit traffic agreement..."¹⁷ However, importantly, Mr. McCallen did not
8 explain why BellSouth introduced a transit tariff as default terms, conditions and
9 rates instead of bringing the disputed terms and conditions between BellSouth and
10 the Small LEC(s) to the Commission for resolution as called for by § 252 of the
11 TA96.

12

13 **Q. Has the FCC concluded that the appropriate mechanism for establishing**
14 **intercarrier compensation obligations is through negotiation and arbitration**
15 **rather than tariffs?**

16 A. Yes. The FCC's *T Mobile Decision*¹⁸ amended the federal rules to prohibit the
17 use of tariffs to impose intercarrier compensation obligations with respect to non-
18 access CMRS traffic and to clarify that ILECs may request interconnection from a
19 CMRS provider and invoke the negotiation and arbitration procedures set forth in
20 § 252 of the TA96. The FCC stated:

¹⁷ McCallen Direct, p. 2, line 17 – p. 3, line 4.

¹⁸ *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, FCC Declaratory Ruling and Report and Order; FCC 05-42, 20 FCC Rcd 4855; 2005 FCC LEXIS 1212; 35 Comm. Reg. (P & F) 291. February 24, 2005 ("T Mobile Decision").

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1 As discussed above, precedent suggests that the Commission
2 intended for compensation arrangements to be negotiated
3 agreements and we find that negotiated agreements between
4 carriers are more consistent with the pro-competitive process and
5 policies reflected in the 1996 Act. Accordingly, we amend section
6 20.11 of the Commission's rules to prohibit LECs from imposing
7 compensation obligations for non-access traffic pursuant to tariff...
8

9 The same reasoning the FCC used in the *T Mobile Decision* supports the rejection
10 of BellSouth Florida's transit tariff and supports the continued use of negotiated
11 agreements to address the terms for BellSouth Florida's transit service. In
12 addition, the *T Mobile Decision* supports the point I made above that there is no
13 reason why BellSouth should not be able to execute compensation agreements
14 with all carriers originating transit traffic. As the *T Mobile Decision* states:

15 we also adopt new rules permitting incumbent LECs to invoke the
16 section 252 process and establish interim compensation
17 arrangements, which are triggered by a request for negotiation
18 from either carrier. For this reason, we reject claims that, in the
19 absence of wireless termination tariffs, LECs would be denied
20 compensation for terminating this traffic. Under the amended rules,
21 however, in the absence of a request for an interconnection
22 agreement, no compensation is owed for termination.¹⁹
23

24 This excerpt makes clear that either party (BellSouth or the carrier which does not
25 have a separate transit agreement with BellSouth) can request negotiation and, as
26 such, the FCC rejected the ILECs' claims that they would be denied
27 compensation in the absence of compensation tariffs. BellSouth has made an
28 identical argument in this docket, and the same reasoning the FCC used in
29 rejecting ILECs' claims in the *T Mobile Decision* warrants rejection of

¹⁹ *T Mobile Decision* at fn 57.

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1 BellSouth's claim here that, in the absence of its transit tariff, it will be denied
2 compensation for transit traffic. Moreover, the above excerpt states that in the
3 absence of a request for interconnection agreement, no compensation is owed.
4 Again, this undermines BellSouth's proposal for a tariff to apply in the absence of
5 a separate transit compensation agreement. Instead of a default tariff, the FCC
6 has found that no compensation is owed if no separate agreement is in place.

7
8 **Q. Does Mr. McCallen's testimony and stated positions on Issues #5, #8 and #9**
9 **actually support rejection of BellSouth's transit tariff?**

10 A. Yes. Mr. McCallen recommends under Issues #5, #8 and #9 that the Commission
11 *not* establish terms and conditions between parties in a transiting arrangement.
12 Specifically, Mr. McCallen explains at page 15 of his direct that his position on
13 Issue #5 is that the Commission should not establish the terms and conditions that
14 govern the relationship between an originating carrier and the terminating carrier,
15 where BellSouth is providing transit service and the originating carrier is not
16 interconnected with, and has no interconnection agreement with, the terminating
17 carrier. Under Issue #8, Mr. McCallen recommends that the Commission not
18 establish the terms and conditions that govern the relationship between BellSouth
19 and a terminating carrier where BellSouth is providing transit service and the
20 originating carrier is not interconnected with, and has no interconnection
21 agreement with, the terminating carrier.²⁰ Similarly, Mr. McCallen recommends
22 *against* the Commission establishing terms and conditions between BellSouth and

²⁰ McCallen Direct, p. 17.

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1 small LECs that originate transit traffic under Issue #9.²¹ I agree with Mr.
2 McCallen that the Commission should not establish the terms and conditions
3 governing the relationships of the parties in a transiting arrangement. However,
4 the primary problem with BellSouth's position is that its transit tariff would do
5 exactly what Mr. McCallen recommends *against* under Issues #5, #8 and #9, *i.e.*,
6 establish terms and conditions governing relationships between all parties in a
7 transiting arrangement.²² By asking the Commission to permanently approve its
8 tariff,²³ BellSouth is asking for the Commission to establish these terms and
9 conditions (terms and conditions that are one-sided in favor of BellSouth) – in
10 direct conflict with Mr. McCallen's stated positions on Issues #5, #8 and #9.
11 Therefore, the Commission should recognize and avoid the inconsistency in
12 BellSouth's positions, and instead adopt my positions on Issues #5, #8 and #9,
13 and cancel BellSouth's transit and require that the terms and conditions continue
14 to be established through negotiations between the parties (and arbitration, if
15 necessary).

²¹ McCallen Direct, p. 17.

²² Examples of BellSouth's transit tariff establishing terms and conditions between parties in a transiting arrangement in conflict with Mr. McCallen's stated positions under Issues #5, #8 and #9, are as follows: (1) Section A16.1.2C attempts to establish terms and conditions between the originating and terminating carriers in a transit arrangement by requiring the originating carrier to establish traffic exchange agreement(s) to address compensation between the originating carrier and terminating carrier(s); (2) Section A16.1.2B attempts to establish terms and conditions between BellSouth and the terminating carrier by including the phrase: "where BellSouth accepts Transit Traffic from a Telecommunications Service Provider, BellSouth is not liable or responsible for payment to the terminating carrier."

²³ McCallen Direct, p. 22, lines 19 – 20.

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C. Transit Rates Should Be Based on TELRIC (Issue 11)

3

4

Q. Mr. McCallen testifies that the “basis” for BellSouth’s transit tariff rate of \$0.003 per minute is that it is “comparable to rates in recently negotiated agreements between BellSouth and CLECs and between BellSouth and CMRS carriers for transit services.”²⁴ Is this sufficient justification for BellSouth’s tariff transit rate?

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A. No. Tariff rates – and especially tariff rates required to be priced in accordance with TELRIC rules – should be substantiated with cost support and should *not* be established by *eyeballing* the rates currently established between parties in interconnection agreements. Rates in interconnection agreements are established between two parties based on negotiations (and some “give and take”), and if necessary arbitration, based on the business needs of individual carriers. In these negotiations and arbitrations, carriers generally rank issues by importance based on business needs and then expend resources to pursue these issues based on their individual priorities and budgets. Since carriers’ business plans are not identical, these priorities and budgets will vary by carrier. For example, if a carrier operates in an area where its customers can call the customer of a Small LEC as a local call but does not have a direct interconnection with the Small LEC, the terms, conditions and rates pertaining to BellSouth’s transit service would be more important to that carrier, than to a carrier whose customers cannot call a Small

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²⁴ McCallen Direct, p. 11 and p. 19.

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1 LECs' customers as a local call or who already has a direct connection with the
2 Small LEC (everything else equal). In this instance, the former carrier would
3 likely expend more resources to negotiate and arbitrate the transit terms,
4 conditions or rates than its latter counterpart.

5 In contrast, BellSouth's transit tariff would establish the transit rate
6 generally for all carriers who do not have a separate agreement with BellSouth
7 pertaining to transit – *i.e.*, a benchmark. Establishing a tariff rate that will serve
8 as a benchmark based solely on the fact that it is “comparable” to rates that some
9 parties previously negotiated based on company-specific business needs and
10 constraints is inappropriate. It ignores applicable federal pricing requirements,
11 which require rates to be cost-based and substantiated with cost studies,²⁵ and
12 pigeonholes carriers by establishing a tariff rate based on some carriers who have
13 negotiated the issue before them and whose business plans and priorities likely
14 differed.

15
16 **Q. BellSouth's inappropriate “comparable” argument aside, Mr. McCallen**
17 **testifies that some CLECs' interconnection agreements with BellSouth**
18 **include a tandem intermediary charge (“TIC”) that applies to transit traffic**
19 **(see, e.g., Exhibits KRM-2, note 1). What is this charge?**

20 **A.** The TIC charge is a non-cost based rate element that BellSouth applies to transit
21 traffic in addition to the tandem switching and common transport rate elements
22 per the terms of particular carriers' interconnection agreements. BellSouth has

²⁵ See, Gates Direct, pp. 44 – 45.

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1 provided no cost support to justify the TIC charge, and given that BellSouth
2 recovers the cost of the transiting function through the TELRIC-based rate
3 elements for tandem switching and common transport, the TIC is a non-cost based
4 “adder” designed simply to boost BellSouth’s transit revenues at the expense of
5 competing carriers. While the specific TIC charge may vary by interconnection
6 agreement, it is my understanding that in a majority of circumstances, the TIC is
7 pegged at \$0.0015 per minute of transit traffic.

8
9 **Q. If BellSouth recovers the cost of transiting from cost-based tandem switching**
10 **and transport interconnection rate elements, what transit costs is the TIC**
11 **designed to recover?**

12 A. Given that BellSouth recovers the cost of transiting from the cost-based charges
13 for tandem switching and transport, BellSouth’s TIC does not recover any costs
14 related to transiting. This highlights a major problem with BellSouth’s transit
15 tariff rate: it was apparently designed to be *in the ballpark* of transit rates that
16 include non-TELRIC TICs and, therefore, allows BellSouth to double-recover (or
17 over-recover) transiting costs. This artificially increases BellSouth’s competitors’
18 costs and raises barriers to entry for local market competition in general.

19
20 **Q. Was the TIC included in the rate comparisons in your direct testimony, and**
21 **if not, why was it excluded?**

22 A. No, the TIC was not included in the rate comparisons in my direct testimony
23 because the TIC is not a TELRIC-based charge. It should therefore be excluded

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1 from a comparison of BellSouth's transit tariff rate to rate(s) that would be
2 properly TELRIC-based - which is the purpose of the rate comparisons in my
3 direct testimony.

4
5 **Q. Does the TIC further highlight the unreasonableness of BellSouth's tariff**
6 **transit rate?**

7 A. Yes. BellSouth states that the total per-minute transit charge it assesses on Birch
8 Telecom is \$0.0023 (see, Exhibit KRM – 2), and the TIC portion of that total
9 transit charge is \$0.0015.²⁶ Hence, the non-cost based “addier” portion of the total
10 transit charge assessed by BellSouth is 65% of the total transit charge. In other
11 words, the non-cost based TIC charge more than doubles the total transit charge
12 assessed by BellSouth. Recall that BellSouth has provided absolutely no cost
13 support for this significant markup. The magnitude and lack of basis for the TIC
14 charge, coupled with the fact that BellSouth's transiting obligation stems from its
15 position as a monopoly provider of a ubiquitous, interconnected network,
16 illustrates the unreasonableness of BellSouth's unsupported tariff transit rate. The
17 unreasonableness of BellSouth's tariff transit rate is further demonstrated by the
18 fact that the tariff rate is higher than the total transit charge assessed by BellSouth
19 on some CLECs with the non-cost “addier” included.²⁷

²⁶ BellSouth's ICAs, including the BellSouth/Birch Telecom agreement referenced in this testimony, are available at the following URL: http://cpr.bellsouth.com/clec/docs/all_states/index7.htm#B

²⁷ For example, BellSouth Exhibit KRM – 2 indicates that the total transit charge for Birch Telecom is \$0.0023 per minute, which, as the footnote indicates includes the TIC. BellSouth's tariff transit rate is \$0.003 per minute – or more than 30% greater. Please note that I provide this comparison only to demonstrate the unreasonableness and discriminatory nature of BellSouth's tariff transit rate and do not endorse the inclusion of the TIC in proper rates for transiting.

1

2 **Q. Since the common transport mileage rate element is distance sensitive,**
3 **calculating a composite transit rate depends on the assumed transport**
4 **distance. Did BellSouth provide the number of transport miles that was**
5 **assumed in either its tariff transit rate or the rates listed in Exhibits KRM –**
6 **2 and KRM - 3?**

7 A. No. BellSouth provided no cost documentation for its rate whatsoever.

8

9 **Q. Is the transport mileage assumption critical to determining whether or not**
10 **BellSouth's tariff transit rate is reasonable?**

11 A. Not really. Though the transport mileage assumption has an impact on the
12 composite transit rate calculated, BellSouth's tariff transit rate appears
13 unreasonable and discriminatory regardless of the transport mileage assumption.
14 For example, if we utilize the cost-based per-minute of use rates for tandem
15 switching and common transport (excluding the non-cost-based TIC) from the
16 Birch/Bellsouth ICA and assume 1 mile of common transport, the total transit
17 charge would be \$0.0010426,²⁸ as compared to \$0.0011791 if the common
18 transport mileage assumption is changed to 40 miles $[(0.0000035*40) + .0004372$
19 $+ .0006019]$. BellSouth's tariff transit rate of \$0.003 is more than double the

²⁸ I should note that in my direct testimony, I calculated this composite rate to be \$0.000802, but after further review, I discovered that the Birch/BellSouth ICA transit rates on which I relied in my direct testimony came from a prior Birch interconnection pricing schedule. The more recent Birch/BellSouth ICA transit rates have been used to calculate the total transit charge above [tandem switching: \$0.0006019; common transport, per mile: \$0.0000035; common transport facility termination: \$0.0004372. Furthermore, the Birch ICA rates should be considered for illustration purposes only because, as the Birch/BellSouth ICA pricing schedule indicates, the ICA actually calls for bill and keep for these rate elements.

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1 cost-based transit rate regardless of the common transport mileage assumption
2 used – and would be more than double even if we assumed 100 miles of common
3 transport. It is the non-cost based TIC “adder” that causes this huge chasm
4 between BellSouth’s tariff transit rate and proper cost-based transit rates. The
5 unreasonableness of BellSouth’s tariff transit rate is further evidenced by the fact
6 that its tariff transit rate is greater than total transit rate if we assume 40 miles of
7 common transport *and* include the non-cost based TIC adder.

8
9 **Q. Is the unreasonableness of BellSouth’s tariff transit rate further illustrated**
10 **by a comparison to the rates for the transit analogue under BellSouth’s**
11 **interstate access tariff?**

12 A. Yes. Given that the rates in BellSouth’s interstate access tariff are not TELRIC-
13 based and recover embedded costs, they should not be used to establish transit
14 rates. However, because these rates show what BellSouth Florida assesses for the
15 transiting function in another context, they may be informative in putting
16 BellSouth’s transit tariff rate in context.

17 If we assume that a carrier purchases the transiting function with 40 miles
18 of transport from BellSouth’s interstate access tariff, it would expect to pay
19 \$0.002294 per minute.²⁹ Hence, BellSouth’s tariff transit rate is greater than the
20 total charge it assesses on customers purchasing the transit function from the

²⁹ BellSouth Florida’s interstate switched access tandem switching per MOU rate is \$0.001198, common transport fixed termination per MOU rate is \$0.000176 and common transport per mile per MOU rate is \$0.000023, for a composite rate (assuming 40 miles of transport) of \$0.002294 [$0.001198 + 0.000176 + (40 * 0.000023)$]. BellSouth Telecommunications, Inc. FCC Tariff No. 1, 14th revised 6-157.27 and 7th revised 6-157.2.4.

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1 interstate access tariff, which further illustrates the unreasonableness of
2 BellSouth's transit rate.

3

4 **Q. Please summarize your discussion regarding the unreasonableness of**
5 **BellSouth's tariff transit rate.**

6 A. BellSouth's tariff transit rate is: (i) more than double the total transit charge a
7 proper forward-looking cost-based analysis would produce, (ii) greater than the
8 total transit charges assessed on some CLECs by BellSouth via ICA even when
9 the non-cost-based TIC "adder" is included (which it should not be), (iii) greater
10 than the total transit charges assessed on some CLECs regardless of the common
11 transport mileage assumption, and (iv) greater than the total charge a carrier
12 would expect to pay if it purchased the transit functionality from BellSouth's
13 interstate access tariff. Given that each of these factors demonstrates that
14 BellSouth's tariff transit rate of \$0.003 is unreasonable and/or discriminatory,
15 BellSouth's tariff transit rate should be rejected.

16

17 **Q. BellSouth has proposed a tariff transit rate of \$0.003. What tariff rate do**
18 **you recommend for transit in this case if the Commission concludes that a**
19 **transit tariff is necessary?**

20 A. If the Commission concludes that a transit tariff is appropriate (a position with
21 which I disagree and which I discussed earlier), I recommend that the
22 Commission require BellSouth to tariff a TELRIC-based rate for transit.
23 Specifically, the Commission should require BellSouth to tariff the most recent

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1 Commission-approved rates from in Order No. PSC-01-1181-FOF-TP in Docket
 2 990649-TP for the tandem switching and common transport functionalities.³⁰
 3 Given that the common transport mileage rate element is distance sensitive, this
 4 rate structure (just like the interconnection and interstate access rate structures)
 5 requires an assumed common transport mileage distance in order for an accurate
 6 composite per-minute of use rate to be calculated. BellSouth has bypassed this
 7 issue by changing this rate structure into a single, flat rate per minute for transit
 8 service in its tariff. Therefore, if the Commission concludes that BellSouth's new
 9 rate structure wherein transit is priced at a single, per-minute of use rate, it should
 10 require a per-minute of use rate of \$0.0009368.³¹

11
 12 **Q. Was transit traffic included in the rate development for the cost-based**
 13 **interconnection rates the Commission approved?**

14 **A.** Yes. Costs related to transit traffic were indeed included in the cost information
 15 used to develop these TELRIC-based rates. This is evidenced by BellSouth's
 16 own description of these rate elements, which shows that costs of traffic routed to
 17 BellSouth's end offices as well as transit traffic was captured in the rate
 18 development for these rates. BellSouth described the tandem switching
 19 UNE/interconnection rate element as: "a call coming to a tandem from a CLEC

³⁰ These per-minute of use rates are: tandem switching – per minute (\$0.0001263), common transport mileage – per minute (\$0.0000034), common transport facility termination – per minute (\$0.0004493), shared tandem trunk port (\$0.0002252). See, *In re: Investigation Into Pricing of Unbundled Network Elements*. Florida Docket No. 990649-TP, Order No. PSC-01-1181-FOF-TP, May 25, 2001, Appendix A

³¹ This composite rate is based on an assumed 40 miles of common transport and is calculated as follows: $.0001263 + (.0000034 * 40) + .0004493 + .0002252 = .0009368$.

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1 switching will be terminated with that tandem's serving area either to a BellSouth
2 end office *or to another network provider.*³² Likewise, BellSouth's description
3 of interoffice common transport explains that it includes the "transmission path
4 and the associated electronics between switching locations that enable a call to be
5 transported from one location to another. These facilities/trunk groups are *shared*
6 *among all network providers who require calls to be transported between*
7 *particular switching locations.*³³ I have provided the pertinent portion of the
8 public source documentation for these BellSouth descriptions as Exhibit TJG - 2.
9 This information supports my point that transit traffic was included in the cost
10 development which led to the cost-based rates I recommend here.

11
12 **Q. Given that transit costs were included in the rate development for the**
13 **Commission-approved rates for tandem switching and common transport,**
14 **does this expose another flaw in BellSouth's pricing proposal?**

15 A. Yes. As shown above, the cost-based rates for tandem switching and common
16 transport were designed to recover costs associated with tandem traffic terminated
17 to BellSouth end offices as well as tandem traffic terminated to third-party
18 switches. Therefore, at a simplistic level, BellSouth developed a "pool" of costs
19 that contained costs related to both above-mentioned scenarios, and then designed
20 tandem switching and common transport rates to recover this entire pool of costs.

³² Direct Testimony of D. Daonne Caldwell filed on behalf of BellSouth Telecommunications, Inc., Florida Docket No. 990649-TP, Exhibit DDC-1 (CD ROM), Revised Cost Study Filing, file "Narrative.doc", section 6, page 45, August 16, 2000, emphasis added.

³³ Direct Testimony of D. Daonne Caldwell filed on behalf of BellSouth Telecommunications, Inc., Florida Docket No. 990649-TP, Exhibit DDC-1 (CD ROM), Revised Cost Study Filing, file "Narrative.doc", section 6, page 45, August 16, 2000, emphasis added.

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1 Thus, there is a positive correlation between the total pool of costs and the cost-
2 based rates – or, the greater the pool of costs is, the higher the cost-based rates
3 will be. BellSouth has now recommended that the Commission bifurcate this rate
4 structure such that traffic terminated to BellSouth end offices is compensated at
5 the TELRIC cost-based charges for tandem switching and common transport,
6 while transit traffic is terminated at the higher, flat per-minute of use rate of
7 \$0.003. As a result, BellSouth’s cost-based rates for tandem switching and
8 transport are still based on the entire pool of costs reflecting both BellSouth-
9 terminated and transit traffic – though BellSouth would now also recover the cost
10 of transit traffic via the separate \$0.003 rate for carriers who do not have separate
11 agreements containing transit terms and conditions. This results in a clear double-
12 recovery of transit costs - a double recovery that should not occur and would not
13 occur if the Commission adopts my recommended rates.

14
15 **Q. Assuming for the sake of argument that the Commission agrees with**
16 **BellSouth that a TIC is appropriately included in transit rates, would**
17 **BellSouth’s tariff transit rate still be problematic?**

18 A. Yes. As noted above, I strongly disagree with including the TIC in transit
19 charges, BellSouth’s tariff transit rate is greater than the total transit charges
20 BellSouth assesses on some CLECs, with the TIC included, and, as such,
21 BellSouth’s tariff transit rate is still unreasonable and discriminatory. Further,

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1 given that BellSouth originally requested a tariff transit rate of \$0.006³⁴ and that
2 BellSouth has near unilateral control over its tariff transit rate, it is highly likely
3 that BellSouth will raise this rate in the near future and further widen the gap
4 between BellSouth's transit rate and the rate a proper cost-based analysis would
5 produce.

6
7 **Q. Hasn't the Commission already addressed the issue of the TIC in an**
8 **arbitration order?**

9 A. Yes. The Commission in its arbitration order in Docket No. 040130-TP³⁵ allowed
10 BellSouth to assess a non-TELRIC TIC charge on the particular CLECs involved
11 in the arbitration (in addition to the cost-based tandem switching and transport
12 rate elements) for transit traffic when these CLECs are not directly interconnected
13 with third parties.³⁶ However, there is an important distinction between the
14 arbitration order and the instant case: unlike the arbitration proceeding, the parties
15 that would be subject to BellSouth's tariff transit rate have not negotiated the
16 transit rate, but rather would become unilaterally subject to the rate. The
17 Commission recognized this important point in the arbitration order: "... we find
18 the TIC is not required to be TELRIC-based and *is more appropriately, in this*

³⁴ See, e.g., Watkins Direct, p. 6, lines 14 – 20.

³⁵ Order No. PSC-05-0975-FOF-TP, Docket No. 040130 – TP ,October 11, 2005.

³⁶ Order No. PSC-05-0975-FOF-TP, p. 53. I respectfully disagree with the Commission's decision in this regard and emphasize that this decision pertained to the particular CLEC parties involved in the arbitration proceeding. Notwithstanding this disagreement, I explain in my rebuttal testimony why the Commission should reject BellSouth's transit tariff and how the transit tariff issues differ from those considered in the arbitration.

1 *instant proceeding, a negotiated rate between the parties*³⁷ Indeed, BellSouth's
2 own witness stated that "[s]hould BellSouth agree to do so [provide transiting], it
3 will be at 'rates, terms and conditions' contained in separately negotiated
4 agreements."³⁸ Though the Commission said that the TIC need not be TELRIC-
5 based, it concluded that the TIC is more appropriately a negotiated rate between
6 parties – a point made by BellSouth. Given that BellSouth's \$0.003 tariff transit
7 rate is a *tariff* rate, no party has negotiated that rate here,³⁹ and therefore, the
8 Commission arbitration order and the testimony provided by BellSouth's witness
9 in that case supports my recommendation to establish transit rates through
10 negotiation and interconnection agreements - as opposed to BellSouth's transit
11 tariff.

12 Further, though the Commission, in the arbitration order, correctly noted
13 that the FCC has not established federal rules regarding transiting, this does not
14 mean that cost-based rates should be discarded or that BellSouth should be able to
15 establish a tariff transit rate at any level it sees fit without a shred of supporting
16 documentation. TELRIC has not been affirmatively rejected for pricing transit on
17 the federal level, and even if we assume that TELRIC pricing will be rejected for
18 transit, the Commission must still ensure that BellSouth's tariff transit rate is "just

³⁷ Order No. PSC-05-0975-FOF-TP, p. 52 (emphasis added).

³⁸ Order No. PSC-05-0975-FOF-TP, p. 51.

³⁹ The fact that some CLECs *may* have negotiated a rate similar to 0.003 within the context of their bilateral negotiations/arbitrations with BellSouth is irrelevant. Negotiated rates are established based on "give and take" within bilateral negotiations based on the individual business plans, priorities, and budgets of each carrier. In contrast, a tariffed rate would establish generally-available terms for all parties in the industry without an effective agreement with BellSouth pertaining to transit. In addition, it would become a "floor" for all subsequent agreements thus making negotiation meaningless.

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1 and reasonable” under §§ 201/202. I will explain in more detail below that the
2 evidence shows that BellSouth’s rate is not just and reasonable under §§ 201/202.

3
4 **Q. Did the Commission arbitration order reference costs associated with**
5 **transiting that may not be recovered by BellSouth’s cost-based rates for**
6 **tandem switching and common transport, and if so, does this warrant**
7 **establishing BellSouth’s tariff transit rate at \$0.003?**

8 A. As an initial matter, I should reiterate that I do not support BellSouth’s transit
9 tariff as a threshold matter, and recommend that the Commission cancel it. Given
10 this caveat, the answer to the question is: the Commission arbitration order did
11 reference costs that may not be recovered by BellSouth’s cost-based rates for
12 tandem switching and common transport, but this does not warrant adopting
13 BellSouth’s \$0.003 tariff transit rate.

14
15 **Q. Please elaborate.**

16 A. The Commission referenced two sources of such costs: (1) cost of providing
17 billing records and (2) cost of billing reconciliation when third party carriers
18 improperly bill BellSouth, and found that these costs “must be recognized.”⁴⁰
19 Regarding the cost of billing records, as I mentioned in my direct testimony, some
20 CLECs have deployed sophisticated switching and signaling networks that avoid
21 the need for BellSouth to provide them any billing records.⁴¹ In these instances,

⁴⁰ FPSC Order No. PSC-05-0975-FOF-TP, p. 53.

⁴¹ Gates Direct, p. 50.

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1 BellSouth would not incur the cost related to billing records and as a result,
2 BellSouth would be unjustly enriched at the CLECs' expense if it were allowed to
3 charge for them.

4 Regarding costs associated with billing reconciliation when third party
5 carriers improperly bill BellSouth: if the Commission does approve a transit tariff
6 for BellSouth (which it should not), BellSouth would not incur such costs because
7 the tariff specifically prohibits parties from billing BellSouth as follows:

8 [w]here BellSouth accepts Transit Traffic from a
9 Telecommunications Service Provider, BellSouth is not liable or
10 responsible for payment to a terminating carrier. Such payment is
11 the sole responsibility of the originating Telecommunications
12 Service Provider. By utilizing BellSouth's Transit Traffic Service
13 for the delivery of Transit Traffic, the originating
14 Telecommunications Service Provider is committing to
15 establishing a traffic exchange agreement or other appropriate
16 agreement to address compensation between the originating
17 Telecommunications Service Provider and the terminating
18 carrier(s).
19

20 BellSouth's transit tariff also states that if BellSouth is improperly billed, the
21 originating carrier "shall reimburse BellSouth for such charges or costs."
22 Furthermore, if an originating carrier purchases BellSouth's tariff transit product,
23 it must have in place an agreement with the terminating carrier so that BellSouth
24 is not improperly billed for transit traffic by the terminating carrier, and even if
25 BellSouth was somehow improperly billed under the tariff, the tariff requires the
26 originating carrier to reimburse BellSouth for these charges and costs. Thus,
27 while I disagree with BellSouth's transit tariff on a number of grounds (not the
28 least of which is BellSouth's proposed requirement that originating and

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1 terminating transit carriers must have a compensation agreement in place) and
2 recommend rejecting it, given that BellSouth would not be improperly billed by
3 the terminating carrier under its tariff (or would be reimbursed for such improper
4 billing), it would not incur costs associated with reconciling billing with a third
5 party for improper charges that should have been billed to the originating carrier
6 under its tariff.⁴² It is therefore inappropriate for BellSouth to attempt to recover
7 these costs in a tariff rate, while at the same time establishing tariff terms that
8 would ensure that BellSouth does not incur these costs.

9 Finally, even if we assume that BellSouth would incur these costs in all
10 instances under its misguided tariff (which it would not), the markup to account
11 for these costs (reflected by the TIC) is clearly unreasonable. The TIC (\$0.0015)
12 constitutes half (50%) of BellSouth's tariff transit rate of \$0.003. This markup is
13 excessive in any circumstance, but when one considers that BellSouth would
14 likely not incur these costs in many, if any, instances, this markup is especially
15 egregious.

16
17 **Q. Have other state regulatory commissions required BellSouth's transit**
18 **charges to be priced at TELRIC?**

19 A. Yes. The Tennessee Commission required TELRIC pricing for transit in its
20 recent order in Docket 03-00585.⁴³ In that order, the Tennessee Commission
21 determined that ". . . [transit] rates should be based on forward-looking economic

⁴² My recommendation would call for these terms and conditions be established through negotiations between the parties.

⁴³ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 40.

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1 costs. Specifically, the costs should be set using the TELRIC pricing
 2 methodology.”⁴⁴ The Tennessee Commission went on to reject the Small LEC-
 3 proposed rates because they were not based on forward-looking cost studies and
 4 because they were based on interstate access rates, which include embedded costs
 5 that are inappropriate for inclusion in calculation of transit rates.⁴⁵ Similarly, the
 6 North Carolina Utilities Commission rejected BellSouth’s non-TELRIC TIC as
 7 follows:

8 Although BellSouth has conceded that the tandem transit function
 9 is a Section 251 obligation, it is unclear why BellSouth still
 10 maintains that this function is not subject to the pricing
 11 requirements set forth in Section 252...The Commission can find
 12 no basis for permitting BellSouth to impose a TIC for the tandem
 13 transit function. The tandem transit function is a Section 251
 14 obligation, and BellSouth must charge TELRIC rates for it...The
 15 Commission concludes that BellSouth should not be permitted to
 16 charge a TIC when providing a tandem transit function for CLPs.⁴⁶
 17

18 Furthermore, the Kentucky Public Service Commission rejected BellSouth’s TIC
 19 charge and required BellSouth to assess only TELRIC-based tandem switching
 20 and common transport rates for transit.⁴⁷ And while not applicable to BellSouth,
 21 the Texas Public Utilities Commission required SBC-Texas to “provide transit
 22 services at TELRIC rates.”⁴⁸
 23

⁴⁴ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 40.

⁴⁵ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 40.

⁴⁶ *In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.* Docket No. P-772, SUB 8; Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket No. P-824, SUB 6; Docket No. P-1202, SUB 4. North Carolina Utilities Commission Order, July 26, 2005, pp. 53 – 54.

⁴⁷ Kentucky Public Service Commission Order in Case No. 2004 – 00044, p. 15.

⁴⁸ *Arbitration of Non-Costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement*, Arbitration Award, Track 1, Texas Docket 28821, February 22, 2005.

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1 **Q. If the Commission finds that the tariff transit rate need not be TELRIC-**
2 **based, should the BellSouth tariff transit rate still be rejected?**

3 A. Yes. Regardless of the Commission's ultimate conclusion on whether TELRIC
4 applies to transit, the BellSouth tariff transit rate should still be rejected because it
5 violates a plain reading of USC Title 47, Chapter 5, Subchapter II, Part 1, §§
6 201(b) and 202(a), which are provided below:

7 201 (b) All charges, practices, classifications, and regulations for
8 and in connection with such communication service, shall be just
9 and reasonable, and any such charge, practice, classification, or
10 regulation that is unjust or unreasonable is hereby declared to be
11 unlawful:

12 202 (a) Charges, services, etc. It shall be unlawful for any common
13 carrier to make any unjust or unreasonable discrimination in
14 charges, practices, classifications, regulations, facilities, or services
15 for or in connection with like communication service, directly or
16 indirectly, by any means or device, or to make or give any undue
17 or unreasonable preference or advantage to any particular person,
18 class of persons, or locality, or to subject any particular person,
19 class of persons, or locality to any undue or unreasonable prejudice
20 or disadvantage.

21
22
23 While I am not an attorney, I interpret these rules to require that charges for
24 BellSouth's tariff transit service to be "just and reasonable" and to prohibit
25 BellSouth from discriminating in its transit charges.

26 The FCC discussed the importance of §§ 201(b) and 202(a) for pricing
27 ILECs' services not required to be unbundled under § 251 of the TA96 in its
28 *Triennial Review Order (TRO)* as follows:

29 663. The Supreme Court has held that the last sentence of section
30 201(b), which authorizes the Commission "to prescribe such rules
31 and regulations as may be necessary in the public interest to carry
32 out the provisions of this Act," empowers the Commission to adopt

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1 rules that implement the new provisions of the Communications
2 Act that were added by the Telecommunications Act of 1996.
3 Section 271 is such a provision. Thus, the pricing of checklist
4 network elements that do not satisfy the unbundling standards in
5 section 251(d)(2) are reviewed utilizing the basic just, reasonable,
6 and nondiscriminatory rate standard of sections 201 and 202 that is
7 fundamental to common carrier regulation that has historically
8 been applied under most federal and state statutes, including (for
9 interstate services) the Communications Act. Application of the
10 just and reasonable and nondiscriminatory pricing standard of
11 sections 201 and 202 advances Congress's intent that Bell
12 companies provide meaningful access to network elements.
13

14 664. Whether a particular checklist element's rate satisfies the just
15 and reasonable pricing standard of section 201 and 202 is a fact-
16 specific inquiry that the Commission will undertake in the context
17 of a BOC's application for section 271 authority or in an
18 enforcement proceeding brought pursuant to section 271(d)(6). We
19 note, however, that for a given purchasing carrier, a BOC might
20 satisfy this standard by demonstrating that the rate for a section
21 271 network element is at or below the rate at which the BOC
22 offers comparable functions to similarly situated purchasing
23 carriers under its interstate access tariff, to the extent such
24 analogues exist. Alternatively, a BOC might demonstrate that the
25 rate at which it offers a section 271 network element is reasonable
26 by showing that it has entered into arms-length agreements with
27 other, similarly situated purchasing carriers to provide the element
28 at that rate.⁴⁹
29

30 The FCC stated that the just, reasonable and nondiscriminatory rate standard of §§
31 201 and 202 "is fundamental to common carrier regulation" and goes on to
32 describe ways for a carrier to show that the §§ 201/202 standard has been met.
33 Carriers can demonstrate that the rate is at or below the rate at which the BOC
34 offers comparable functions to similarly situated purchasing carriers under its

⁴⁹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01- 338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) ("TRO"), ¶¶ 663 – 664.

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1 interstate access tariff, if such an analogue exists. A carrier might also show that
2 it has entered into arms-length agreements with other, similarly situated
3 purchasing carriers to provide the element at that rate. In this instance, an
4 interstate access analogue does exist and I have demonstrated that BellSouth's
5 tariff transit rate exceeds the interstate access analogue rate. I maintain that this
6 fact alone demonstrates that BellSouth's tariff transit rate is unjust, unreasonable
7 and discriminatory. BellSouth would likely argue that it has met the standard
8 under the second test because BellSouth's \$0.003 rate is purportedly
9 "comparable" to the transit rates contained in the agreements listed in Exhibits
10 KRM - 2 and KRM - 3. However, establishing a tariff transit rate at \$0.003
11 when carriers pay less for the same functionality from BellSouth's interstate
12 access tariff, results in discriminatory treatment for carriers purchasing transiting
13 vis-à-vis carriers purchasing interstate access - an apparent violation of the
14 requirements of §§ 201/202. Hence, BellSouth's transit rate would constitute an
15 unreasonable or unjust discrimination in charges.

16
17 **Q. Please summarize your position on the proper rate for transiting.**

18 A. As mentioned above, my primary recommendation is that transit terms, conditions
19 and rates be established via negotiation as they have been established in the past.
20 However, to the extent that the Commission concludes that a transit tariff is
21 needed, I recommend that the Commission require transiting to be priced at
22 TELRIC. To this end, the Commission should require that, to the extent a transit
23 tariff is established, the rates from Docket 990649-TP be tariffed. If the

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1 Commission finds that rates should be established based on more recent cost
2 studies, it should require the rates from Docket No. 990649-TP to be used on an
3 interim basis until such time as BellSouth files new cost studies and updated cost-
4 based rates are analyzed and approved by this Commission. In any event, any
5 tariff rate adopted by the Commission should be TELRIC based and should be
6 substantiated with a cost study, rather than arbitrarily selecting a rate that is in the
7 “ballpark” of rates that have been separately negotiated by other carriers with
8 different business plans. To the extent that the Commission finds that transiting
9 rates need not be TELRIC-compliant, the Commission should require that
10 BellSouth’s prices for transiting be just, reasonable and nondiscriminatory
11 pursuant to §§ 201/202.

12
13 **IV. Rebuttal to Small LEC Joint Petitioners**

14
15 **Q. Please summarize the primary thrust of the Small LEC testimony in this**
16 **proceeding.**

17 **A.** The Small LECs contend that the consequence of BellSouth’s transit service is to
18 “trap” them into a situation whereby they are forced to incur “extraordinary” costs
19 and provide a “superior” network arrangement. According to Mr. Watkins,
20 transiting (i) imposes “extraordinary” costs on the Small LECs, (ii) allows CLECs
21 to purportedly establish points of interconnection (“POIs”) with Small LECs that
22 are technically infeasible, (iii) allows CLECs to establish POIs that are not on the
23 Small LECs’ networks, and (iv) forces Small LECs to subsidize CLECs/CMRS

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1 providers. The Small LECs' proposed solution to the "problems" they perceive in
2 transiting arrangements is for the Commission to establish three party contracts
3 involving all parties to a transiting arrangement - BellSouth, Small LECs and
4 CLEC/CMRS providers.

5
6 **Q. What are the primary problems with the Small LECs' recommendations?**

7 A. First and foremost, the Small LEC recommendations would turn the "originating
8 party pays" concept on its head and force CLECs to pay the costs of calls Small
9 LEC customers originate. Second, the Small LECs' proposal for three-party
10 transit contracts is unnecessary, burdensome, unworkable and cost prohibitive.
11 The Small LECs also advance a confusing direct trunking threshold proposal that
12 would increase barriers to competition and inject inefficiencies into the market.

13
14 *A. The originating carrier should continue to be responsible for transit costs (Issue*
15 *2, Issue 3, Issue 14)*
16

17 **Q. What is the source of the "extraordinary" costs that Mr. Watkins claims**
18 **transiting imposes on Small LECs?**

19 A. Mr. Watkins claims that transiting requires Small LECs to subsidize the CLECs
20 by paying for the cost of delivering a call to an interconnection point that is not on
21 their networks. In essence, the Small LECs argue that their financial
22 responsibility regarding a call originated on their networks should end at the
23 Small LEC/BellSouth service border, and that any additional cost the Small LECs

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1 incur to switch or transport a call past that point would result in the Small LECs
2 subsidizing other carriers.

3

4 **Q. Are these costs “extraordinary” as Mr. Watkins claims?**

5 A. No. They are ordinary costs related to transporting and terminating local traffic
6 that are rightfully borne by the cost causer – the originating carrier.

7

8 **Q. What is the primary flaw in Mr. Watkins’ position on the issue of transit cost**
9 **recovery?**

10 A. Mr. Watkins’ testimony on the cost causer in a transiting scenario is incorrect. He
11 generally argues that it is BellSouth’s transit offering and the CLECs’ decision to
12 use transiting that is the cost causer in a transiting arrangement.⁵⁰ As a result,
13 according to Mr. Watkins, even when Small LECs are the originating carriers,
14 CLECs should pay for all transit costs, including compensating BellSouth for
15 transit as well as foregoing compensation from the Small LECs for terminating
16 their traffic. In sum, Mr. Watkins claims that there should be no compensation
17 effect on the Small LECs (or stated differently, the Small LECs should have no
18 financial responsibility) when they are the originating carriers of transit traffic.⁵¹

19

20 **Q. Is Mr. Watkins’ view correct?**

⁵⁰ Watkins Direct, pp. 35 – 36, see also, Watkins Direct, pp. 43 – 44.

⁵¹ Watkins Direct, p. 36.

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1 A. No. Mr. Watkins is wrong. The cost causer in this instance is the originating
2 carrier (or, more specifically, the originating carrier's customer who placed the
3 call), and the originating carrier should therefore be responsible for compensation.
4 This "originating carrier pays" concept is a well-established principle in
5 intercarrier compensation arrangements, and a plain reading of the FCC's rules
6 prohibit parties from ignoring this concept, as the Small LECs propose.
7 Specifically, 47 CFR§ 51.703(b) states that, "[a] LEC may not assess charges on
8 any other telecommunications carrier for telecommunications traffic that
9 originates on the LEC's network."

10
11 **Q. What would be the practical impact of the Small LECs' proposal?**

12 A. Under the Small LEC proposal, a Small LEC customer would originate a call to
13 be delivered to the CLEC, yet the CLEC would be financially responsible for the
14 entire routing of that call beyond the Small LEC/BellSouth border. This would
15 entail the CLEC compensating BellSouth for the tandem switching and transport
16 associated with the Small LEC-originated traffic as well as the CLEC "eating" the
17 costs of termination instead of recovering those costs from the Small LEC. As a
18 result of the Small LEC proposal, the CLEC would be responsible for all costs of
19 transporting and switching traffic exchanged between the CLEC and Small LECs
20 whether it is the originating *or* the terminating carrier. The ultimate outcome is a
21 "free ride" for the Small LECs for calls that are originated on the Small LECs'
22 networks and destined for termination to CLECs. This proposal is clearly one-
23 sided in favor of the Small LECs and subverts the well-established concept that

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1 the originating carrier pays. In contrast, my proposal is fundamentally fair by
2 requiring the originating party (whether that be Small LECs or CLECs) to be
3 responsible for transit costs for transit traffic originating on its network.
4

5 **Q. Has the “originating carrier pays” principle been upheld by other state**
6 **regulatory commissions in BellSouth’s territory?**

7 A. Yes. In its recent *Order on Transit Traffic Involving Competitive Local Exchange*
8 *Carriers and Independent Telephone Companies* in Docket 16772-U,⁵² The
9 Georgia Public Service Commission adopted the CLECs’ position on this issue
10 and found that, “...the decision to find that calling party pays is consistent with
11 policy rationale of the *Texcom Orders* as well as the traditional principles of
12 holding the cost causer accountable.”⁵³ Likewise, the Tennessee Commission
13 found that, “if a call originates in a switch on one party’s network then that party
14 is responsible for the transiting costs” and that if the originating carrier is a Small
15 LEC, the Small LEC is obligated “to pay the appropriate transport and
16 termination charges associated with getting that call to the POI...which is located
17 at the BellSouth tandem.”⁵⁴
18

⁵² *In Re: BellSouth Telecommunications Inc.’s Petition for Declaratory Ruling Regarding Transit Traffic*, Order on Transit Traffic Involving Competitive Local Exchange Carriers and Independent Telephone Companies, Georgia Public Service Commission Docket No. 16772-U, March 24, 2005 (“GAPSC 16772-U Order”).

⁵³ GAPSC 16772-U Order, p. 8.

⁵⁴ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 30.

1 **Q. Mr. Watkins claims that transiting allows CLECs to establish a POI with the**
2 **Small LECs that is not technically feasible and is not on the Small LECs'**
3 **networks. Is he correct?**

4 A. No. First, I disagree with Mr. Watkins' characterization of this issue. When
5 CLECs use BellSouth's transiting offering, the CLECs have not established a POI
6 with the Small LECs at all. Rather, the CLECs have established a POI with
7 BellSouth for the purpose of exchanging transit traffic the CLECs originate,
8 which BellSouth will route to the appropriate carrier for termination. The
9 Tennessee Commission recently addressed this issue in its Arbitration Award:

10 What is at issue in this docket is the point of indirect
11 interconnection on the network which determines the
12 compensation obligation of an ICO member or a CMRS provider.
13 A majority of the Arbitrators concluded that the most efficient
14 means to resolve this issue is by maintaining the point of
15 interconnection that currently exists between the ICO members and
16 BellSouth and between the CMRS providers and BellSouth and
17 voted that, pursuant to 47 C.F.R. § 51.703(a) and (b), the company
18 that originates the call is responsible for paying the party
19 terminating the call.⁵⁵

20
21 Though Mr. Watkins questions the technical feasibility of such an arrangement,
22 he testifies that "BellSouth has offered and has provided the capability to CLECs
23 and CMRS providers to exchange traffic with the Small LECs for as long as
24 BellSouth has been establishing interconnection agreements with those entities, if
25 not before."⁵⁶ Therefore, such an arrangement is clearly technically feasible,
26 contrary to Mr. Watkins' inconsistent testimony on the topic.

⁵⁵ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 24.

⁵⁶ Watkins Direct, p. 6, lines 9 – 12.

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1 **Q. Do you agree with Mr. Watkins' assertion that transiting requires Small**
2 **LECs to establish a POI with CLECs that is not on the Small LECs'**
3 **networks?**

4 A. No, I disagree with Mr. Watkins' assertion. Again, transiting, as it is used for the
5 purposes of this docket, involves an originating carrier establishing a POI with
6 BellSouth – not the Small LECs. As explained in my direct testimony, transiting
7 involves using indirect (as opposed to direct) interconnection, which means that
8 there is no physical point of interconnection between the originating and
9 terminating carriers. Accordingly, Mr. Watkins' assertion that transiting requires
10 Small LECs to provide a “superior” network⁵⁷ is a red herring. The network
11 being used to transit the call is BellSouth's network – not the Small LEC network.

12
13 **Q. Mr. Watkins characterizes transiting as “convenient and beneficial”⁵⁸ and**
14 **“expedient and convenient”⁵⁹ for CLECs/CMRS. Is Mr. Watkins**
15 **characterization that transiting benefits only CLECs/CMRS accurate?**

16 A. No. As an initial matter, I have explained that the transiting obligation is
17 grounded in the nondiscriminatory requirements of the TA96, and is designed to
18 promote competition and benefit the public interest as a whole. In addition, I find
19 it disingenuous for Mr. Watkins to claim now that transiting benefits only
20 CLECs/CMRS when he admits at page 44 of his direct testimony that “BellSouth
21 has transited this [Small LEC-originated] traffic to the CLECs without charge to

⁵⁷ Watkins Direct, pp. 13, 15 and 33 - 35.

⁵⁸ Watkins Direct, p. 14.

⁵⁹ Watkins Direct, p. 6.

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1 the Small LECs for many years.” Obviously, the Small LECs have derived
2 benefits from transiting for many years, and now they want the CLECs to pay for
3 that benefit.

4
5 **Q. Mr. Watkins discusses “expectations” and “implied expectations”**
6 **CLECs/CMRS purportedly possess that Small LECs will pay BellSouth for**
7 **transit services (under the terms and conditions of BellSouth’s transit**
8 **tariff)...”⁶⁰ Do the CLECs have the expectation or implied expectation that**
9 **Small LECs will pay BellSouth for transit services under BellSouth’s transit**
10 **tariff as Mr. Watkins claims?**

11 **A. No.** As my testimony indicates, I recommend that the Commission reject
12 BellSouth’s tariff outright and cancel it. Accordingly, if the Commission follows
13 my recommendation, CLECs do not expect that Small LECs will pay BellSouth
14 for transiting per the transit tariff because there will be no such transit tariff in
15 place. I simply expect that the originating carrier will be responsible for the
16 traffic originated on its network, and to the extent that an agreement does not exist
17 between BellSouth and Small LECs pertaining to transit traffic, either party may
18 request negotiations on the topic.

19
20 ***B. The Commission should not establish transit terms and conditions between the***
21 ***parties through three party contracts and should leave these matters up to***
22 ***negotiations between the parties (Issue 5, Issue 8, Issue 9, Issue 15, Issue 16***
23 ***and Issue 17)***
24

⁶⁰ Watkins Direct, p. 33, lines 2 - 6.

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1 Q. A major theme of the Small LEC testimony is that the Commission should
2 establish a three-party transit contract that would dictate terms, conditions
3 and rates between all parties to a transiting arrangement – i.e., Small LECs,
4 BellSouth and the CLECs/CMRS providers.⁶¹ Is such a three- party transit
5 contract necessary?

6 A. No. The existing structure allows parties to engage in negotiations and establish
7 terms and conditions related to transit in interconnection agreements, and this
8 mechanism has been employed by BellSouth and CLECs for years to address
9 transiting, and as such, no changes are necessary to this structure. To the extent
10 that a carrier does not have a separate transit agreement in place with BellSouth
11 and/or believes that its rights are not properly addressed in the current structure
12 (either in its relationship with BellSouth as a transit provider or in its relationship
13 with a third party originating/terminating carrier), it should address those issues in
14 negotiations with the appropriate carrier.⁶² Certainly, another layer of negotiated
15 contracts which duplicate, or worse yet, conceivably revise the existing contracts,
16 is inappropriate.

17
18 Q. Are there other reasons why the Small LEC proposal for a three-party
19 contract should be rejected?

20 A. Yes. As an initial matter, the Small LECs’ three-party contract proposal is
21 nebulous, which makes it difficult to address the specifics of the plan. According

⁶¹ Watkins Direct, pp. 38 – 39 (Issue 5), pp. 42 – 43 (Issues 8 and 9), p. 54 (Issue 17).
⁶² Mr. Watkins even concedes at page 39 that the small LECs’ recommendation does not relate to BellSouth’s transit tariff and is therefore out of place in this docket.

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1 to Mr. Watkins' brief description of this proposal (see, Watkins Direct, p. 38), the
2 Small LEC would only participate in these three-party contracts *voluntarily*, (see,
3 lines 13 – 14) meaning that, conceivably, Small LECs could trump all requests for
4 BellSouth's transiting services. This aspect of the Small LEC proposal would
5 undermine federal obligations regarding interconnection and therefore warrants
6 rejection on that basis alone.

7 Further, the Small LECs' proposal is unworkable, as it would require
8 potentially hundreds of new contracts, as each party involved in a transiting
9 arrangement would be required to execute a three-party transit contract for each
10 three-party transiting arrangement in which it engages. For instance, if all of the
11 CLEC/CMRS carriers listed in BellSouth's Exhibits KRM – 2 and KRM – 3 used
12 BellSouth's transit service to terminate traffic to just one Small LEC, under the
13 Small LECs' proposal, the parties would need to negotiate and execute about 200
14 new transiting contracts. Given that there is more than one Small LEC involved
15 in transiting arrangements, this number would likely be exponentially higher.
16 This would create an administrative nightmare. Furthermore, negotiating and
17 executing possibly hundreds of new transiting contracts would impose costs on all
18 parties and significantly reduce the efficiencies inherent in transiting.

19
20 **Q. Mr. Watkins claims at page 39 of his direct testimony that Small LECs have**
21 **no statutory right to force CLECs into interconnection agreements and that**
22 **BellSouth has resisted such meaningful discussions. Are the Small LECs'**
23 **claims accurate and, if so, does this have any bearing on whether the**

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1 **Commission should adopt the Small LECs' proposal for a three-party transit**
2 **contract?**

3 A. No. Mr. Watkins suggests that Small LECs' rights in a transiting arrangement
4 can be preserved only if a three-party transit contract is established. This is not
5 the case. Regarding Mr. Watkins' testimony on the Small LECs' statutory
6 authority to force CLECs into interconnection agreements, I am not an attorney
7 and will leave this issue to be addressed in the briefs. However, I would add that
8 if Mr. Watkins' interpretation is correct, and Small LECs have no authority to
9 request negotiations for a compensation agreement with CLECs, then there would
10 also be no basis for the Small LECs' proposed three-party transit contract. More
11 importantly, whether or not BellSouth resists the Small LECs' request for
12 meaningful discussions or not, BellSouth is required to negotiate and, if
13 necessary, arbitrate terms and conditions with the Small LECs. Therefore, to the
14 extent that BellSouth is resisting the Small LECs' efforts in this regard as Mr.
15 Watkins claims, then the proper resolution of this issue would be for the Small
16 LECs to follow the proper process to arbitrate these disputed issues with
17 BellSouth before the Florida Commission – not establish another duplicate,
18 complicated process and layer of agreements between three parties. Therefore, all
19 the Small LECs must do is follow the negotiation/arbitration process already
20 provided for and no change is necessary to the current structure.

21

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1 **Q. Mr. Watkins criticizes transiting for purportedly dictating the Small LECs'**
2 **network deployment decisions.⁶³ Is this criticism warranted?**

3 A. No. Small LECs are free to deploy their network as they choose. For example, if
4 a Small LEC finds that it originates a large amount of traffic destined for a third
5 party, the Small LEC could request negotiations related to a direct interconnection
6 with that third party and bypass BellSouth's transit services. The same goes for
7 CLECs and CMRS providers who may originate a large amount of traffic destined
8 for Small LECs. Any issues related to the physical interconnection between
9 Small LECs and BellSouth should be addressed in negotiations between those
10 parties. The bottom line is that both the originating and terminating carriers in a
11 transiting arrangement with BellSouth have the flexibility to physically
12 interconnect with BellSouth as they see fit (subject to regulatory requirements),
13 and parties can negotiate direct interconnections should they want to bypass
14 BellSouth's transiting. Hence, transiting does not dictate the Small LECs'
15 network deployment decisions.

16
17 **Q. Did the Tennessee Commission address the Small LEC three-party contract**
18 **proposal in its recent order in Docket 03-00585?**

19 A. Yes. The Tennessee Commission soundly rejected the Small LEC proposal:

20 The Arbitrators unanimously concluded that when a third-party
21 provider transits traffic, the third party is not required to be
22 included in the interconnection agreement between the originating
23 and terminating carriers. This circumstance will require the ICO
24 members to also negotiate an interconnection agreement with a

⁶³ Watkins Direct, pp. 14 – 16 and 18.

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1 transit provider...The Arbitrators found nothing in the 1996 Act,
2 FCC Rules or any FCC Order that requires three-party
3 interconnection agreements. To the contrary the FCC has
4 discouraged three-party interconnection agreements.⁶⁴
5

6 **Q. The excerpt from the Tennessee Order above states that the FCC has**
7 **discouraged three-party interconnection agreements. Can you elaborate?**

8 A. Yes. The FCC, in its First Report and Order, found that, “[w]e believe that the
9 arbitration proceedings generally should be limited to the requesting carrier and
10 the incumbent local exchange provider. This will allow for a more efficient
11 process and minimize the amount of time needed to resolve disputed issues. We
12 believe that opening the process to all third parties would be unwieldy and would
13 delay the process.”⁶⁵
14

15 **C. *A direct trunking threshold should not be established (Issue 6)***
16

17 **Q. What is Mr. Watkins’ position on a direct trunking threshold?**

18 A. Mr. Watkins testifies that he generally supports a direct trunking threshold, but
19 recommends against a rigid requirement in favor of a “flexible” threshold level.⁶⁶
20 Ultimately, Mr. Watkins recommends a T1 threshold.⁶⁷
21

22 **Q. Do you disagree with Mr. Watkins position on this issue?**

⁶⁴ TRA Arbitration Award, p. 26.

⁶⁵ FCC First Report and Order, ¶ 1295.

⁶⁶ Watkins Direct, p. 40, lines 4 – 7.

⁶⁷ Watkins Direct, p. 41, lines 5 – 9.

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1 A. Yes, I do. I explained at pages 29 – 34 of my direct testimony why the
2 Commission should refrain from establishing direct trunking thresholds. I adopt
3 and will not repeat that reasoning here.

4

5 **Q. Did Mr. Watkins provide any information in his direct testimony to support**
6 **a direct trunking proposal?**

7 A. No. Mr. Watkins only dedicates one and one-half pages of testimony to this issue
8 (See, Watkins Direct, p. 40, line 1 – p. 41, line 9), and this testimony is void of
9 any basis for a direct trunking threshold, much less a threshold at the “T-1 amount
10 of traffic usage...”⁶⁸

11

12 **Q. Mr. Watkins advocates a “flexible” direct trunk threshold level and goes on**
13 **to recommend a T1 threshold. Is Mr. Watkins’ proposed T1 threshold**
14 **flexible?**

15 A. No. All direct trunking thresholds are, by definition,⁶⁹ rigid and, therefore,
16 inflexible. Therefore, Mr. Watkins’ proposal for a “flexible” threshold is
17 inconsistent and is not a realistic option. Flexibility regarding decisions related to
18 direct trunking between carriers is maximized by leaving this decision up to
19 negotiation between the parties.

20 Furthermore, Mr. Watkins’ proposed T1 threshold may be the lowest
21 capacity threshold available (which would trigger the threshold, and increase

⁶⁸ Watkins Direct, p. 41, line 7.

⁶⁹ The term “threshold” is defined as “the point that must be exceeded to begin producing a given effect or result or to elicit a response.” Thefreedictionary.com

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1 costs, in the greatest number of circumstances), and provides no opportunity for
2 consideration of any individual factors or extenuating circumstances. Hence,
3 despite advocating a “flexible” threshold, Mr. Watkins selected possibly the most
4 onerous, rigid threshold available. In effect, the Small LECs’ proposal attempts
5 to inappropriately dictate the terms of the transit services carriers purchase from
6 BellSouth by establishing an arbitrarily threshold above which BellSouth’s transit
7 service would not longer be available.

8
9 **Q. Do you have any other concerns with Mr. Watkins’ direct trunking threshold**
10 **proposal?**

11 A. Yes. Mr. Watkins’ proposal is extremely vague. For instance, Mr. Watkins does
12 not explain who would pay for these dedicated facilities or whether trunks would
13 be one-way or two-way trunks – just to name a few. However, my interpretation
14 of Mr. Watkins’ testimony suggests that once the traffic exchanged between a
15 CLEC and a Small LEC reaches a T1 level, the *CLEC* would be required to
16 establish and pay for the direct connections to the Small LEC. Such an outcome
17 would inappropriately shift the Small LECs’ costs to the CLECs, because,
18 conceivably, Small LECs’ customers could generate 100% of that T1 level of
19 traffic, but it would be CLECs who would bear the costs to establish a direct
20 connection once the threshold is exceeded. This appears to be another example of
21 the Small LECs’ attempt to shirk their obligations as originating carriers.

22

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1 **Q. Mr. Watkins states that carriers could still interconnect with Small LECs**
2 **indirectly even if a threshold is established, but “would now be using**
3 **dedicated trunks (which could still be obtained from BellSouth) instead of**
4 **the arrangement under which CLECs’ and CMRS provider traffic is**
5 **commingled with BellSouth’s on the same trunk group.”⁷⁰ Do you agree?**

6 **A. No.** A dedicated connection between a CLEC and a Small LEC (regardless of
7 who actually owns the dedicated facility) is a *direct* connection – not an *indirect*
8 interconnection, as Mr. Watkins claims. Regardless of what these dedicated
9 facilities are called, if a CLEC would purchase dedicated facilities from BellSouth
10 to connect with the Small LEC, the CLEC would incur the same types of costs as
11 if the CLEC built out the dedicated facilities to the Small LEC itself (albeit,
12 maybe not of the same magnitude as if the CLEC trenched cable itself). For
13 instance, BellSouth assesses a number of recurring and non-recurring charges for
14 its dedicated point to point circuits purchased from its special access tariff.⁷¹
15 Thus, forcing CLECs to purchase dedicated facilities from BellSouth for the
16 purposes of directly connecting with a third party and bypassing BellSouth’s
17 transit service would entail the same types of costs and inefficiencies as if the
18 CLEC was forced to construct these dedicated facilities itself. The Small LEC
19 testimony on this issue is a red herring.

⁷⁰ Watkins Direct, p. 40.

⁷¹ By way of example only, one of these charges is a \$650 non-recurring charge BellSouth assesses for an initial DS1 local channel. See, BellSouth Telecommunications, Inc. FCC Tariff No. 1, 9th revised page 7-144.1, effective April 7, 2004.

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1 **Q. Does this conclude your rebuttal testimony?**

2 **A. Yes, at this time.**

1 BY MS. BERLIN:

2 Q And I believe, Mr. Gates, you prepared an Exhibit
3 TJG-2 with your rebuttal testimony?

4 A Yes, I did.

5 Q And I think that has already been entered into the
6 record as well as Stipulated Exhibit 22.

7 Mr. Gates, have you prepared a summary of your direct
8 and rebuttal testimony?

9 A Yes, I have.

10 Q Please give it.

11 A Madam Chair, Commissioners, good morning.

12 We are here today because there are two parties to
13 this proceeding, BellSouth and the Small LECs, who could not
14 reach an agreement on a transit issue. And instead of bringing
15 that issue to the Commission for arbitration, BellSouth decided
16 to file a tariff, a tariff that would apply when any carrier
17 without an interconnection agreement would pay a specified
18 rate, the .003 rate per minute for transit.

19 Now, there are several problems with this approach.
20 First, the appropriate method, the standard method that we have
21 used for years in the industry is to negotiate the terms of
22 transit and interconnection rates, and if that fails, then we
23 bring the issues to the Commission for arbitration.

24 So my primary recommendation to this Commission today
25 is to reject the BellSouth tariff and cancel that tariff. I

1 also recommend that the Commission reject the Small LECs
2 proposal for a three-party contract for transit. I mean, after
3 all, if BellSouth and the Small LECs can't reach an agreement
4 between themselves, adding yet another party to the fray isn't
5 going to help them reach a mutually satisfactory decision
6 either. So my testimony explains why a tariff is not the best
7 way to settle issues regarding transit.

8 The standard practice is to negotiate the terms for
9 transit traffic in the interconnection agreements pursuant to
10 Section 251(a)(1) and 251(c)(2)(a). So given that requirement,
11 the tariff is completely unnecessary. If we could have done
12 this with tariffs back in 1996, we would have all filed tariffs
13 and we would have been done, but we haven't done that. We have
14 had hundreds and hundreds of arbitrations over the last nine
15 years with the help of commissions to ensure that we have
16 TELRIC compliant rates that don't unjustly enrich the
17 incumbent.

18 Those ICAs have ensured compensation for BellSouth
19 through the years through your Commission-approved TELRIC
20 compliant rates. BellSouth has admitted in this case that the
21 tariff has no cost basis. They provided no cost support
22 whatsoever. They have admitted that, the lawyers have and the
23 witnesses have, for the rates that they propose. Section 251
24 of the Act, however, requires interconnection services to be
25 provided at TELRIC rates. The rate that BellSouth proposes is

1 many times higher than the Commission-approved rates, about
2 three times higher, 3.2 times higher. The TELRIC rates are
3 compensatory for BellSouth, the ones that you have approved, so
4 the proposed tariff will unjustly enrich BellSouth.

5 BellSouth is -- to be clear, we are not opposing
6 compensation for the transit traffic. BellSouth is providing a
7 valuable service, an important service, and they deserve to be
8 compensated for that service, but not at tariff rates, at
9 TELRIC rates.

10 BellSouth has argued that a tariff is required for
11 those companies that don't have interconnection agreements in
12 place. The fact is a tariff isn't necessary. In fact, the
13 existence of a tariff, especially one that is many times higher
14 than the TELRIC rates, will provide very little incentive for
15 BellSouth to negotiate in good faith. After all, if the end
16 result of failing to negotiate an agreed-upon rate is that the
17 tariff goes into effect which provides them 300 percent more
18 money per minute of use, would that give them a very good
19 incentive to negotiate? I don't think so. It certainly would
20 not.

21 In fact, the .003 rate is a huge stick that BellSouth
22 will use to drive negotiations towards the .003 rate. In fact,
23 I would not be surprised if this tariff is approved that
24 BellSouth would then argue, well, we aren't going to negotiate
25 transit rates any more, we already have a tariff. There is no

1 needs to negotiate transit rates going forward. That would be
2 a huge mistake for the industry and for consumers. So
3 BellSouth has a 251(c)(1) obligation to negotiate the terms of
4 interconnection in good faith.

5 Finally, my testimony addresses the Small LEC
6 proposals for three-party transit contracts and for very low
7 direct trunk transport threshold. In short, the Small LEC
8 proposal is unnecessary, is very costly, and is completely
9 unworkable. The direct trunk threshold is also unnecessary if
10 the parties use the tools that are already available to them,
11 and that is negotiation and arbitration.

12 One last point. The Small LECs argue that the CLECs
13 are the cost-causers, even when the small LEC customers
14 originate all the calls. And the Small LEC position turns the
15 traditional calling party pays convention that we've used for
16 75 years on its head. And it is just simply wrong. The result
17 of the Small LEC proposal would be that any traffic that leaves
18 the exchange of a small LEC would be paid for by everybody
19 else. Even though the Small LECs are compensated for all of
20 that traffic, everybody else would have to pay for terminating
21 and transporting that traffic on their behalf. So I would ask
22 the Commission to maintain its convention that the cost-party
23 pays.

24 That concludes by summary. Thank you.

25 MS. BERLIN: Mr. Gates is available for

1 cross-examination.

2 CHAIRMAN EDGAR: Mr. Tyler.

3 MR. TYLER: Mr. Culpepper will cross-examine
4 Mr. Gates.

5 CHAIRMAN EDGAR: Mr. Culpepper.

6 MR. CULPEPPER: Thank you, Madam Chair.

7 CROSS EXAMINATION

8 BY MR. CULPEPPER:

9 Q Good morning, Mr. Gates.

10 A Good morning.

11 Q Let's begin with some questions regarding the
12 application of BellSouth's transit tariff. CompSouth members
13 that you are testifying on behalf of in this docket pay for
14 transit traffic under their interconnection agreements,
15 correct?

16 A Yes, they do.

17 Q So the transit traffic tariff doesn't apply to such
18 CompSouth members, does it?

19 A It would not apply directly, but the existence of a
20 tariff would be damaging to future negotiations.

21 Q You haven't negotiated any transit-related terms and
22 conditions in the interconnection agreement, have you, Mr.
23 Gates?

24 A In which interconnection agreement?

25 Q In any interconnection agreement.

1 A I have supported clients in their negotiation efforts
2 in arbitrations, but I personally have not negotiated any rates
3 with an ILEC.

4 Q You haven't negotiated any transit-related terms and
5 conditions, correct?

6 A That's correct.

7 Q And you haven't participated in any interconnection
8 negotiations on behalf of any CompSouth member that supports
9 your testimony, have you?

10 A No, I have not.

11 Q And you don't know whether any CompSouth member that
12 supports your testimony has been involved in any
13 transit-related negotiations with BellSouth since the transit
14 tariff went into effect, do you?

15 A No, I wouldn't know that.

16 Q And it's your testimony that BellSouth has an
17 obligation under 251 of the Federal Telecom Act to provide
18 transit service at TELRIC compliant rates, correct?

19 A Yes, 251 and 252.

20 Q And you aware that this Commission has already
21 determined that transit service is not a 251 obligation,
22 correct?

23 A Well, I believe this Commission may have reached that
24 conclusion in a bilateral arbitration. Certainly other states
25 have reached other conclusions, and I would hope that the

1 Commission would reconsider that decision here, given the
2 important impact on the industry.

3 Q Let's talk some about 251 and 252. Section 251 of
4 the Act sets forth the general duties of all telecom carriers,
5 correct?

6 A Yes, it does.

7 Q And Section 251(a)(1) requires all telecom carriers
8 to interconnect directly or indirectly with the facilities and
9 equipment of other telecom carriers, correct?

10 A Yes.

11 Q And it's your position that transit service or
12 transit traffic is a form of indirect interconnection, correct?

13 A Yes. That is my position, and, of course, the FCC
14 has found that, as well, that it is absolutely critical to the
15 provisioning of indirect interconnection.

16 Q And it's your testimony that all telecom carriers
17 have a 251(a)(1) obligation to provide transit service,
18 correct?

19 A Not to provide transit service, but to interconnect.
20 Is that what you meant by your question? 251(a)(1) refers to
21 interconnection directly or indirectly, it doesn't mention
22 transit.

23 Q Mr. Gates, do you have your deposition with you?

24 A I do.

25 Q Would you turn to Page 16 of your deposition, the

1 question beginning at Line 5 running through your answer at
2 Line 7. Would you agree with me that the question I asked you
3 is:

4 "Question: Is transiting a duty of all telecom
5 carriers that is set forth in 251(a)(1) of the Act?"

6 And what is your answer?

7 A My answer was: "I think it is, yes." But I was
8 focussing on transiting as being a duty of the incumbent local
9 exchange carriers. I was not focussing on the 251(a)(1)
10 specifics. Clearly the ubiquitous nature of the incumbent
11 networks is what makes them the only natural provider of
12 transit service. Not all local exchange carriers can provide
13 transiting because not all local exchange carriers, for
14 instance, in the state of Florida, have a ubiquitous network
15 that would even permit that service.

16 Q Does TELRIC pricing apply to all telecom carriers?

17 A No, it does not.

18 Q Does TELRIC pricing apply to Section 251(a)?

19 A I think TELRIC applies pursuant to Section 252(d).
20 It refers back in that section to 251(c).

21 MR. CULPEPPER: Madam Chair, to facilitate this line
22 of questioning, I would ask to approach the witness and provide
23 him with a copy of Section 251 and 252 of the Act.

24 CHAIRMAN EDGAR: Fine.

25 MR. CULPEPPER: And, Madam Chair, I would ask for

1 these two sections to be identified as the next two hearing
2 exhibits.

3 CHAIRMAN EDGAR: Do you want to make these two
4 separate exhibits, or together?

5 MR. CULPEPPER: Together would work.

6 CHAIRMAN EDGAR: That would be Exhibit 45.

7 (Composite Exhibit 45 marked for identification.)

8 MS. BANKS: Madam Chair, if I could just clarify for
9 the exhibit we just labeled Number 45. Is that a composite
10 exhibit?

11 CHAIRMAN EDGAR: Yes.

12 MS. BANKS: And I didn't hear a description.

13 CHAIRMAN EDGAR: Mr. Culpepper.

14 MR. CULPEPPER: Telecom Act, Sections 251 and 252.

15 BY MR. CULPEPPER:

16 Q And, Mr. Gates, if you would, let's focus on the
17 pricing standard in Section 252. Do you have Section 252 with
18 you?

19 A Yes, I do.

20 Q Would you agree with me that the pricing standards in
21 Section 252(d)(1) are limited to interconnection facilities and
22 network elements that an ILEC is obligated to provide pursuant
23 to Section 251(c)(2) and 251(c)(3)?

24 A Yes. I think that's what I said in my previous
25 answer before you distributed these. If I misspoke, I

1 apologize, but I specifically recall referring to 251(c) in my
2 previous answer.

3 Q And to be clear, would you agree with me that there
4 is no mention of Section 251(a) in the pricing standards set
5 forth in Section 252(d)?

6 A Yes. I don't see a reference to 251(a). I see other
7 references to 251(b)(5) and 251(c)(4), but I wouldn't
8 necessarily expect to see 251(a) here, since 251(a) is kind of
9 the general duty of telecommunications carriers and is not very
10 specific.

11 Q And I believe it's your testimony, Mr. Gates, that
12 transit service is also a Section 252(c)(2) obligation,
13 correct?

14 A Yes, that's correct.

15 Q Indirect interconnection isn't mentioned in
16 252(c)(2), is it, Mr. Gates?

17 A No, it refers generally to interconnection, which I
18 think we have to interpret as both direct and indirect.

19 Q Mr. Gates, would you agree with me that the FCC has
20 defined interconnection as the linking of two networks for the
21 mutual exchange of traffic, and the FCC has stated that
22 interconnection doesn't include the transport and termination
23 of traffic?

24 A Are you suggesting that interconnection does not
25 include the transport and termination of traffic, is that what

1 you're asking me?

2 MR. CULPEPPER: Madam Chair, may I approach the
3 witness and provide him with another exhibit to facilitate this
4 line of questioning?

5 CHAIRMAN EDGAR: You may.

6 MR. CULPEPPER: Thank you.

7 A Thank you. Yes, I see that definition, Mr.
8 Culpepper.

9 Q Would you read the definition of interconnection
10 contained in the FCC rules aloud?

11 A Yes. "Interconnection is the linking of two networks
12 for the mutual exchange of traffic. This term does not include
13 the transport and termination of traffic."

14 Q Let's continue with some questions regarding the
15 appropriate pricing standards that should apply to BellSouth's
16 tariffed transit traffic rate. It's your testimony that if
17 this Commission decides that TELRIC pricing is inappropriate
18 that the Commission should determine if the transit traffic
19 rate is just, reasonable, and nondiscriminatory under Sections
20 201 and 202 of the Federal Telecommunications Act, correct?

21 A Could you point me to my testimony, Mr. Culpepper,
22 where you are reading this?

23 Q Rebuttal testimony, Page 36.

24 A Thank you.

25 Q Lines 8 through 11.

1 A Yes. Of course, my testimony is that this Commission
2 should use its already existing TELRIC rates, but if this
3 Commission chooses to not require TELRIC compliant rates, then,
4 yes, they should be just and reasonable.

5 Q And, Mr. Gates, are you aware that this Commission in
6 an order issued in a generic docket earlier this month
7 specifically noted that whether a rate satisfies the standards
8 of Section 201 and 202 is an inquiry for the FCC to undertake?

9 A I'm not aware of that decision, but certainly this
10 Commission has a duty to find that rates are fair and
11 nondiscriminatory. And just and reasonable has always been a
12 standard that Commissions have adhered to over the years. So I
13 don't think it is inconsistent to suggest that this Commission
14 would want just and reasonable rates for consumers in the
15 state, including consumers such as CLECs and Small LECs.

16 Q And as an alternative to TELRIC pricing, you
17 testified that the Commission should not require BellSouth, or
18 should require BellSouth to show that its costs have increased,
19 or that its costs would go unrecovered absent its transit
20 charge, or to show that it has made an equal and offsetting
21 reduction to other charges and revenues so the impact of the
22 rate is revenue neutral, is that correct?

23 A Where are we in my testimony now, Mr. Culpepper?

24 Q Your direct testimony, Page 45.

25 A Thank you. Direct?

1 Q Yes, sir, direct.

2 A Thank you. Yes, at Page 45, Lines 7 through 17, I
3 point out that if this Commission decides to avoid a TELRIC
4 rate, which I certainly wouldn't recommend, it should at least
5 ensure that BellSouth is not unjustly enriched by this 300
6 percent increase it is imposing on carriers with no cost
7 support.

8 Q Mr. Gates, are you aware that BellSouth has elected
9 to be subject to price regulation under Florida law and,
10 therefore, BellSouth is exempt from any rate base or rate of
11 return regulation under Florida law?

12 A Yes. I don't doubt that BellSouth has price cap
13 regulation, but that doesn't mean that this Commission should
14 allow an unjustified increase in rates with no showing of a
15 cost basis for that increase in rates.

16 Q It's your testimony, Mr. Gates, that the Tennessee
17 Regulatory Authority has ruled that transit service must be
18 priced at TELRIC? And I refer you to Page 31 of your rebuttal
19 testimony.

20 A Yes. At the bottom of the page there I quote the
21 Tennessee Commission order stating that transit rates should be
22 based on forward-looking economic costs. Specifically, the
23 costs should be set using the TELRIC pricing methodology, close
24 quote.

25 MR. CULPEPPER: Madam Chair, may I approach the

1 witness again and provide him with a copy of the Tennessee
2 Regulatory order that is cited on Page 31 of his rebuttal
3 testimony?

4 CHAIRMAN EDGAR: Ms. Banks?

5 MS. BANKS: Excuse me, Madam Chair. Before we
6 proceed to that, I think Mr. Culpepper referenced Section 51.5,
7 and I didn't hear it marked for identification purposes.

8 CHAIRMAN EDGAR: That is just about what I was
9 getting ready to do. Thank you, Ms. Banks.

10 You may. But before we move on to that, let's go
11 ahead and label the most recent handout, which will be Exhibit
12 Number 46. Do you want to title it for me?

13 MR. CULPEPPER: FCC Rule 51.5.

14 CHAIRMAN EDGAR: Okay. We will show that as Exhibit
15 46. We will take them up at the end of the witness' testimony.
16 And go ahead and hand out your next exhibit.

17 (Exhibit 46 marked for identification.)

18 CHAIRMAN EDGAR: Mr. Culpepper, this will be Number
19 47?

20 MR. CULPEPPER: Yes, Madam Chair. We could title
21 this TRA Order of Arbitration.

22 CHAIRMAN EDGAR: Okay.

23 (Exhibit 47 marked for identification.)

24 BY MR. CULPEPPER:

25 Q Mr. Gates, is this the TRA order that is cited on

1 Page 31 of your rebuttal testimony?

2 A Yes, it is.

3 Q If you would, would you turn to Page 38.

4 A Yes, I'm there.

5 Q If you would, would you read out loud Issue 8?

6 A "Issue 8: What is the appropriate pricing
7 methodology for establishing a reciprocal compensation rate for
8 the exchange of indirect or direct traffic?"

9 Q Mr. Gates, please turn to Page 40. And I believe
10 this is the page that you quoted from?

11 A Yes, it is.

12 Q And you inserted the word "transit" into the quote on
13 Page 40, correct?

14 A Yes, I did.

15 Q Would you turn to Page 41 of the order. Would you
16 read aloud the first full paragraph that starts, "A majority of
17 the Arbitrators"?

18 A Yes. "A majority of the Arbitrators voted to
19 establish as an interim rate the reciprocal compensation rate
20 set for BellSouth in the TRA's permanent price proceeding
21 subject to true-up. The majority determined that the BellSouth
22 reciprocal compensation rate is appropriate to adopt in the
23 interim for two reasons. First, the interim rate will be
24 subject to true-up, thus mitigating the risk that either the
25 ICO members or CMRS providers will be unduly enriched or left

1 inadequately compensated once the final rate is established.
2 Second, the rate is a reasonable interim rate because it is a
3 rate established for an incumbent LEC. In approving the
4 establishment of an interim rate, the majority also voted to
5 commence additional proceedings to establish a permanent
6 cost-based rate for reciprocal compensation and to resolve the
7 issue of whether such rate must be symmetrical between the ICO
8 members and the CMRS providers. Given this decision, the
9 arbitrators then appointed Chairman Miller to prepare the
10 additional issues for hearing by the full panel."

11 Q Thank you, Mr. Gates. When BellSouth provides a
12 transit service, it neither originates nor terminates the call,
13 correct?

14 A That's correct.

15 Q Now, let's turn to the FCC T-Mobile decision.

16 A Okay. I don't have that decision in front of me.

17 MR. CULPEPPER: Madam Chair, I believe the T-Mobile
18 decision is one of the stipulated exhibits. We will pass it
19 out, but I don't intend to mark it, since it's a stipulated
20 exhibit.

21 CHAIRMAN EDGAR: Ms. Banks, can you help us identify.

22 MS. BANKS: I'm searching, Madam Chair. Give me one
23 moment.

24 CHAIRMAN EDGAR: Certainly.

25 MS. BANKS: Mr. Culpepper, do you have any idea who

1 may have proffered that? I'm not able to locate any reference
2 in --

3 MR. CULPEPPER: Yes, I believe the FCC's T-Mobile
4 decision was produced by CompSouth in response to Staff's
5 Second Request for Production of Documents, or Request for
6 Production of Documents Number Two, I believe.

7 MS. BANKS: Madam Chair, we're checking. We think it
8 might be part of Stipulation 3, but staff is checking that.

9 CHAIRMAN EDGAR: Mr. Culpepper, will it break your
10 rhythm too much if we take a short break? It's about that time
11 in the morning.

12 MR. CULPEPPER: That's fine.

13 CHAIRMAN EDGAR: Commissioner Carter, do you have a
14 comment or question first?

15 COMMISSIONER CARTER: (Inaudible. Microphone not on.)

16 CHAIRMAN EDGAR: We may. It's about that time and I
17 would say let's take a fifteen-minute break and come back at a
18 quarter till by the clock on the wall.

19 MS. BANKS: Madam Chair, we did locate it. It is a
20 part Stipulation Exhibit 2.

21 CHAIRMAN EDGAR: All right. We'll take that up when
22 we come back.

23 MS. BANKS: Okay.

24 CHAIRMAN EDGAR: Thank you.

25 (Recess.)

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STATE OF FLORIDA)

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COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 13th day of April, 2006.

JANE FAUROT, RPR
Official FPSC Hearings Reporter
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Administrative Services
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