BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.	DOCKET NO. 041269-TP ORDER NO. PSC-05-1054-PHO-TP ISSUED: October 31, 2005

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on October 19, 2005, in Tallahassee, Florida, before Commissioner Lisa Polak Edgar, as Prehearing Officer.

APPEARANCES:

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On behalf of FLORIDA DIGITAL NETWORK, INC. d/b/a FDN COMMUNICATIONS ("FDN")

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On behalf of City of Gainesville, d/b/a GRUCom ("GRUCom")

BILL MAGNESS, Esquire, Casey, Gentz & Magness, L.L.P., 98 San Jacinto Blvd., Ste. 1400, Austin, Texas 78701
On behalf of The Competitive Carriers of the South, Inc. ("CompSouth" or "JT CLECS")

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On behalf of The Competitive Carriers of the South, Inc. (CompSouth) and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad" or "JT CLECS")

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On behalf of DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad" or "JT CLECS")

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On behalf of ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom" or "JT CLECS")

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On behalf of XO Communications, Inc. ("XO" or "JT CLECS")

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On behalf of US LEC of Florida, Inc. (US LEC) and Southeastern Competitive Carrier Association ("SECCA" or "JT CLECS")

SUSAN S. MASTERTON, Esquire, P.O. Box 2214, Tallahassee, Florida 32316
On behalf of Sprint Communications Company Limited Partnership ("SPRINT")

ADAM J. TEITZMAN, Esquire and KIRA SCOTT, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission ("STAFF").

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On August 21, 2003, the Federal Communications Commission (FCC) released its *Triennial Review Order*[1] *(TRO)*, which contained revised unbundling rules and responded to the D.C. Circuit Court of Appeals' remand decision in *USTA I.*[2]

On March 2, 2004, the D.C. Circuit Court of Appeals released its decision in *United States Telecom Ass'n v. FCC*[3] *(USTA II)*, which vacated and remanded certain provisions of the *TRO.* In particular, the D.C. Circuit held that the FCC's delegation of authority to state commissions to make impairment findings was unlawful, and further found that the national findings of impairment for mass market switching and high-capacity transport were improper.

The FCC released an *Order and Notice*[4] *(Interim Order)* on August 20, 2004, requiring ILECs to continue providing unbundled access to mass market local circuit switching, high capacity loops, and dedicated transport until the earlier of the effective date of final FCC unbundling rules or six months after publication of the *Interim Order* in the Federal Register. On February 4, 2005, the FCC released an *Order on Remand (TRRO)*, wherein the FCC's final unbundling rules were adopted with an effective date of March 11, 2005.

In response to the decisions handed down in *USTA II* and the FCC's *Interim Order*, BellSouth Telecommunications, Inc. (BellSouth) filed, on November 1, 2004, its Petition to establish a generic docket to consider amendments to interconnection agreements resulting from changes of law. Specifically, BellSouth asked that we determine what changes are required in existing, approved interconnection agreements between BellSouth and competitive local exchange carriers (CLECs) in Florida as a result of *USTA II* and the *Interim Order*.

On September 29, 2005, parties filed prehearing statements. Azul Tel, Inc., Orlando Telephone Company and Supra Telecommunications & Information Systems did not file prehearing statements.

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[1] 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, 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, rel. August 21, 2003 (*Triennial Review Order or TRO*).

[2] United States Telecom Association v. FCC, 290 F.3d 415 (D.C. Cir. 2002) (USTA I).

[3] 359 F. 3d 554 (D.C. Cir. 2004) (*USTA II*), cert. denied, 160 L. Ed. 2d 223, 2004 U.S. LEXIS 671042 (October 12, 2004).

[4] In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313; In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179, rel. August 20, 2004 *(Interim Order)*.

On July 1, 2005, KMC Telecom III LLC and KMC Telecom V, Inc. filed their Notice of Withdrawal with Prejudice from this docket. On October 7, 2005, Saturn Telecommunications Services, Inc. d/b/a STS Telecom filed its Notice of Withdrawal from this docket. Additionally, on October 19, 2005, US LEC of Florida, Inc. filed its Notice of Withdrawal.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in

envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 100 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes with the exception of Pamela Tipton and Joseph Gillan who shall be limited to ten minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other

exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Witness	Proffered By	Issues #
DIRECT & REBUTTAL		
Kathy K. Blake	BST	2, 6, 7, 8, 11, 12, 20, 29, 31
Eric Fogle	BST	5, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27
Pamela A. Tipton	BST	1, 3, 4, 7, 9, 10, 13, 14, 15, 21, 28, 30
Joseph Gillan	CompSouth	All

As a result of discussions at the prehearing conference, the following witnesses have been excused from this hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony shall be identified as shown in Section X of this Prehearing Order and be admitted into the record.

David Wallis[5]	BST	4
Wanda G. Montano[6]	SECCA	1, 3, 4(a), 4(b), 4(c), 9, 10, 30, 31
James M. Maples[7]	SPRINT	1, 3, 5, 9, 19, 22, 23, 25, 27
Kristin Shulman[8]	XO	1, 3, 4, 9, 10
Jerry Watts[9]	ITC^DeltaCom	30

[5] Direct Testimony Only

[6] Direct Testimony Only

[7] Direct Testimony Only

[8] Rebuttal Testimony Only

[9] Revised Direct Testimony Only

VII. WITNESS'S QUALIFICATIONS

BST: The testimony of CompSouth witness Joseph P. Gillan contains numerous statements that are presented as opinion, yet involve purely legal issues. Mr. Gillan has acknowledged in his deposition that he is not a lawyer. BellSouth objects to this testimony to the extent that it may improperly present legal opinions, rather than lay opinions.

VIII. BASIC POSITIONS

BST: To date, BellSouth and certain CLECs have not yet modified their interconnection agreements in Florida to include terms implementing the FCC's *Triennial Review Order* ("*TRO*")[10] and *Triennial Review Remand Order* ("*TRRO*")[11] both of which removed significant unbundling obligations formerly placed on ILECs. There are four broad categories of issues in dispute; Section 271 related issues, which include issues 7, 13, 16, 17, and 21; transition issues, which include issues 1, 2, 3, 4, 8, 9, 10, 11, 12; service issues, which include issues 12, 14, 15, 28, 29, 30, and 31; and network issues, which include issues 5, 18, 19, 22, 23, 24, 25, 26, and 27.

With respect to the Section 271 related issues, the prevailing federal law, and the majority of state commission decisions clearly provide that the FCC has exclusive authority over Section 271. The law precludes state commissions from requiring BellSouth to include Section 271 obligations in interconnection agreements; BellSouth complies with its Section 271 obligations through its commercial agreements and its applicable tariffs. *See TRO*, ¶ 664. This Commission has already recognized that BellSouth has no obligation to commingle UNEs with Section 271 services in Docket No. 040130-TP (Issue 26), which should any resolve remaining dispute concerning Issue 13. Finally, line sharing is not a Section 271 obligation, and even if a line sharing obligation exists (and it does not), the FCC has forborne from imposing it.

The transition issues include disputes over the wire centers that satisfy the FCC's non-impairment tests and the rates, terms, and conditions that govern the transition from former Section 251 UNEs to alternative services. BellSouth has applied the FCC's tests consistent with the *TRRO* and has made all of the

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[10] 18 FCC Rcd 16978, 17145, *corrected by Errata*, 18 FCC Rcd 19020, *vacated and remanded in part, aff'd in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), *cert. denied*, 125 S. Ct. 313 (2004) (referred to, interchangeably, as the "*Triennial Review Order*" or the "*TRO*").

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

supporting data underlying its business line calculations and fiber based collocators available to requesting CLECs. Generally, the necessary modifications to interconnection agreements simply require the removal of former unbundled network elements ("UNEs"), and the inclusion of transition language that properly recognizes that change of law processes and transitions must be completed by March 10, 2006, as is required by the *TRRO*. BellSouth's proposed language ensures that transitions are completed by March 10, 2006.

Service issues include removing former UNEs from the SQM plan, establishing interconnection agreement language that effectuates the FCC's EELs audit rights, and establishing that CLECs are entitled to convert special access circuits to UNEs only after the necessary contractual language is included in agreements.

Network issues include establishing language that implements the various FCC rulings excluding new fiber loops from any unbundling requirement, appropriately categorizing line conditioning as a routine network modification, and establishing language that suitably addresses line splitting. When a CLEC is no longer permitted to order UNE DS1 loops from a given wire center, CLECs should also be precluded from ordering any UNE HDSL loops from the same wire center. In addition, it is appropriate to calculate UNE HDSL loops as 24 voice grade equivalent lines, even though BellSouth elected not to do so in its current analysis.

FDN: The changes in law brought about by the TRO and TRRO should be reflected in interconnection agreement amendments generally consistent with the proposals of the CLEC carriers in this proceeding. Further, in any instance where the Commission believes the TRO or TRRO does not provide guidance as clear as desirable to resolve an issue, the Commission should resolve the question so as to protect the rights of the parties while minimizing disruption and detriment to customers, carriers and competition.

GRUCom: GRUCom's focus in this docket is limited. GRUCom, the communications utility of the City of Gainesville offers high capacity loops exclusively in the Gainesville area. GRUCom is co-located at the two BellSouth Central Offices in Gainesville for the purpose of exchanging network traffic with BellSouth and other co-located carriers. We also purchase DS-1 Loops as unbundled network elements ("UNEs") from BellSouth when it is cost prohibitive for us construct GRUCom fiber to a customer location. These loops are then cross-connected to GRUCom fiber at the Central Office to complete the customer's circuit on the GRUCom network. The DS-1 Loops purchased from BellSouth are an integral extension of our network and are critical to our customers and to our business.

The two BellSouth Central Offices in Gainesville are currently impaired for DS-1 Loops, so GRUCom can still obtain these on an unbundled basis. However, GRUCom is very concerned that a determination that these Central Offices are

unimpaired may be made at any time without adequate information, review and analysis. BellSouth has already issued at least two conflicting Carrier Notifications regarding impairment of one of these Central Offices. Given these conflicting Carrier Notifications, we are not confident that the information provided by BellSouth is or will be accurate.

There are numerous questions that should be answered in an impairment determination: what constitutes a business line for purposes of the impairment status count, what will be the process for reviewing and analyzing the data applicable to the impairment calculation, what is the transition period and rules of the transition for CLECs where Central Offices that are currently impaired become unimpaired at some time in the future, and how will DS-1 Loops be made available to CLECs in a nondiscriminatory manner and at reasonable prices once they are no longer available as UNEs? These questions need to be answered in this proceeding. Additionally, we are also concerned with the continued availability of last mile facilities, particularly copper facilities including HDSL capable copper facilities, which we can utilize with our own equipment to produce our own loops. It is extremely important to the state of competition in our community that BellSouth loops and last mile copper facilities continue to be available to CLECs.

BellSouth has demanded that GRUCom execute an amendment to our Interconnection Agreement with them, which they prepared, and which they purport incorporates the ruling of the FCC. Because their proposed changes to our Agreement where so substantial and because BellSouth demonstrated no willingness to negotiate on the limited issues of importance to us, GRUCom declined to accept their agreement and intervened in this docket. Although our current Agreement already includes self effectuating language that automatically incorporates the FCC's order or any other applicable ruling, apparently this is not sufficient. We are hopeful that this proceeding will result in an amended Interconnection Agreement which we will feel more comfortable executing.

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

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

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

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

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

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

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

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

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

SPRINT: Sprint Corporation has experience operating as both a CLEC and incumbent local exchange carrier ("ILEC") in the state of Florida and is therefore both providing and receiving access to unbundled network elements ("UNEs"). Sprint's positions on the issues are balanced and based on reasonable interpretations of FCC rules and orders. Sprint has reached agreement with BellSouth on all the issues in this docket except for Issue 5. Sprint's position regarding Issue 5 is that HDSL-compatible loops are not the same as DS1 loops for purposes of finding impairment and should not be treated as such.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

IX. ISSUES AND POSITIONS

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

BST: Switching:

For the embedded base of local switching, CLECs should submit orders by 10/1/05 or as soon as possible to convert or disconnect their embedded base of UNE-P or standalone local switching. This will give BellSouth time to work with each CLEC to ensure all embedded base elements are identified, negotiate project timelines, issue and process service orders, update billing records, and perform all necessary cutovers. If a CLEC fails to submit orders to convert UNE-P lines to alternative arrangements in a timeframe that allows the orders to be completed by 3/10/06, BellSouth will convert remaining UNE-P lines to the resale equivalent no later than 3/11/06. For any remaining stand-alone switch ports, BellSouth will disconnect these arrangements no later than 3/11/06, as there is no other tariff or wholesale alternative for stand-alone switch ports.

High Capacity Loops and Dedicated Transport:

For unimpaired wire centers where the FCC's competitive thresholds are met or impaired wire centers where the FCC's caps apply, CLECs should submit spreadsheets by 12/9/05 or as soon as possible identifying the embedded base and excess DS1 and DS3 loops and transport circuits to be disconnected or converted to other BellSouth services (BellSouth and other active parties have agreed that the DS1 transport cap applies to routes for which there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport). The wire centers that satisfy the FCC's impairment tests are those identified in Ms. Tipton's testimony, and the Commission should require CLECs to convert their de-listed high capacity loops and transport facilities in these wire centers to alternative serving arrangements. The Commission should also reject any CLEC attempts to improperly recalculate business line counts, reject CLECs' unsupported fiber-based collocation language, and reject CLECs' arguments concerning counting AT&T and SBC as one company. If a CLEC does not provide notice in a timely manner to accomplish orderly conversions by 3/10/06, BellSouth will convert any remaining embedded or excess high capacity loops and interoffice transport to the corresponding tariff service offerings.

Dark Fiber:

CLECs should submit spreadsheets to identify their embedded base dark fiber to be either disconnected or converted to other services by 6/10/06. If CLECs do not submit orders in a timely manner so that conversions can be completed by 9/11/06, BellSouth will convert any remaining dark fiber loops or embedded base dark fiber transport to corresponding tariff service offerings.

The appropriate language also includes the following:

- The transition period applies only to the embedded base of UNE arrangements and does not permit CLECs to add new UNE-Ps, high capacity loops, high capacity transport, or UNE entrance facilities
- The transition process must begin and end within the transition period and may not be extended to some later date
- The transition rate is the rate the CLEC paid for the element or combination of elements on June 15, 2004, plus the FCC's prescribed transitional additive for that particular element. For UNE switching, the additive is $1.00. For UNE high capacity loops and transport, the additive is 15% of the rate paid (i.e., a rate equal to 115% of the rate paid as of June 15, 2004).
- Transition period pricing applies for each de-listed UNE retroactively to March 11, 2005. Facilities no longer subject to unbundling shall be subject to true-up to the applicable transition rate upon amendment of the

interconnection agreements as part of the applicable change of law process.

- The transition rates will not go into effect without a contract amendment but once the agreement is amended, the transition rate must be trued-up to the March 11, 2005 transition period start date.
- The transition rates apply only while the CLEC is leasing the de-listed element from BellSouth during the transition period. Once the de-listed UNE is converted to an alternative service, the CLEC will be billed the applicable rates for that alternative service going forward.

FDN: Agree with Joint CLECS.

GRUCom: GRUCom's services are not affected by the FCC's transition plan, since the two BellSouth Central Offices in Gainesville are currently impaired. Therefore, we do not take a specific position regarding the appropriate language to implement the FCC's transition plan. On the other hand, how high capacity loops will be transitioned for Central Offices that were impaired at March 11, 2005 but become unimpaired at some later date, is of great concern to us. This situation appears to be is addressed in Issue 9.

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

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

SPRINT: Sprint has reached agreement with BellSouth regarding Issue No. 1.

STAFF: Staff has no position at this time.

ISSUE 2:

a. **How should existing ICAs be modified to address BellSouth's obligation to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?**

b. **What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth's obligations to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?**

BST: (a) and (b) Network elements that are no longer required to be unbundled pursuant to Section 251(c)(3) must be removed from existing interconnection agreements, subject to the appropriate transition language, and should not be included in new agreements. The appropriate contract language, whether in amendments to existing interconnection agreements or in new agreements that reflect the results of this docket, should be promptly executed following the conclusion of this proceeding so that transitions are completed by March 10, 2006.

FDN: Agree with Joint CLECs and agree with ITC DeltaCom regarding the charge for "grooming" a service (without field work) to a CLEC's own or third party's collocation arrangement.

GRUCom: a) No position, with the caveat that follows. It is our understanding that the high capacity loops that GRUCom utilizes are still Section 251(c)(3) obligations of BellSouth; however, their availability is now based on the impairment status of individual Central Offices.

b) No position.

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

Joint CLECs are troubled that BellSouth has filed, along with its testimony in this proceeding, an entirely new ICA Attachment 2 regarding its unbundling obligations. BellSouth's proposed new Attachment 2 addresses issues related to the TRO and TRRO that are *not disputed* in this proceeding (e.g., EELs eligibility criteria). In addition, BellSouth's proposal includes contract language on many issues that were not affected in any way by the recent changes in law arising from

the TRO and TRRO (e.g., white pages directory listings and intercarrier compensation). Joint CLECs urge the Commission not adopt the portions of BellSouth's proposed new Attachment 2 that are unrelated to the disputed issues in this case. Rather, BellSouth must specifically identify those portions of its Attachment 2 that apply directly to the issues in this proceeding, and, to the extent the Commission agrees with BellSouth's position, only the specified contract language should be included in ICA amendments.

(b) The appropriate way to implement in new agreements pending in arbitration modifications arising from this proceeding would depend on how the parties to the arbitration have treated the issue. If the issue resolved in this case is an unresolved disputed issue in a pending arbitration, the Commission's ruling in this case should govern the resolution of the arbitration. If the issue resolved in this case is *not* an unresolved disputed issue in a pending arbitration, and the parties to the arbitration have agreed that they will abide by their negotiated resolutions notwithstanding the results in this case, those resolutions should be honored. On the other hand, absent such a specific agreement, either party to the arbitration should be able to invoke the change of law provisions of the interconnection agreement once the agreement is approved by the Commission. That approach would enable the parties to adopt the new rulings by this Commission in an orderly manner consistent with any specific agreements they may have concerning how those rulings should be addressed.

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 2.

STAFF: Staff has no position at this time.

ISSUE 3: **What is the appropriate language to implement BellSouth's obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport and how should the following terms be defined?**
(i) Business Line
(ii) Fiber-Based Collocation
(iii) Building
(iv) Route

BST: BellSouth has a continuing obligation to offer Section 251 access to high capacity loops and transport except as set forth below:

Loops

- BellSouth is not obligated to provide Section 251 unbundled access to DS1 loops to buildings that are served out of wire centers containing at least 60,000 business lines and 4 or more fiber-based collocators.

• BellSouth is not obligated to provide Section 251 unbundled access to DS3 loops to buildings that are served out of wire centers containing at least 38,000 business lines and 4 or more fiber-based collocators.
• In the wire centers in which BellSouth has a Section 251 unbundling obligation, CLECs may only obtain unbundled access to 10 DS1 loops to any one building and 1 DS3 loop to any one building.
• BellSouth is not obligated to provide Section 251 unbundled access to dark fiber loops.

Transport
• BellSouth is not obligated to provide Section 251 unbundled access to DS3 or dark fiber transport on routes containing at least 24,000 business lines or 3 fiber based collocators. For routes between all other wire centers (and not those contemplated in the preceding sentence) a CLEC may only obtain unbundled access to 12 DS3 dedicated transport circuits on such routes. On routes for which there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, CLECs may only obtain unbundled access to 10 DS1 dedicated transport circuits on such routes.
• BellSouth is not obligated to provide Section 251 unbundled access to DS1 transport on routes between wire centers with at least 38,000 business lines or 4 fiber based collocators.

Definitions
For the purposes of implementing the FCC's non-impairment thresholds, the following definitions should apply:

"Business line" is defined by the FCC in 47 C.F.R. § 51.5.
"Building" should be defined from the perspective of a reasonable person – if a reasonable person believes a structure is a building, then it is a building. For example, a multi-tenant building is one building regardless of the number of tenants that work or live in that building.
"Fiber-based collocator" is defined by the FCC in 47 C.F.R. § 51.5.
"Route" is defined by the FCC in 47 C.F.R. §51.319(e).

Business lines include BellSouth retail and resold business switched access lines as reported in BellSouth's year-end 2004 ARMIS 43-08 report, all UNE loops connected to a wire center, including UNE loops provisioned in combination with other unbundled elements, and business UNE-P lines. All ISDN and other digital access lines, whether BellSouth's lines or UNE lines, shall be counted with their full system capacity; that is, each 64 kbps-equivalent is counted as one line. This Commission should reject any CLEC arguments that would improperly narrow the business line definition or result in a factually-intensive inquiry. The FCC has made clear its "test requires ILECs to count business lines on a voice grade equivalent basis. In other words, a DS1 loop counts as 24 business lines, not one" (*See* Sept. 9, 2005, Brief for FCC Respondents, United States Court of Appeals,

D.C. Cir., No. 05-1095), and CLECs have conceded as such by seeking reconsideration of the business line definition. Likewise, the FCC has made clear that its test includes all UNE loops. *See TRRO,* ¶ 105.

If there is no impairment for dedicated transport at the wire centers comprising the end points of the transport portion of an EEL, then BellSouth does not have to provision that portion of the EEL on an unbundled basis. If the threshold for the wire center serving the loop location is met, BellSouth does not have to provision that portion of the EEL on an unbundled basis. Where the competitive thresholds have been met for both the loop and transport portions of the EEL, the service is not available on an unbundled basis.

BellSouth is no longer obligated to provide unbundled access to entrance facilities.

FDN: Agree with Joint CLECs.

GRUCom: (i) "Business Line" should be defined in the same manner as it is in 47 C.F.R. §51.5. However, as pointed out by CompSouth witness Joseph Gillan, the dispute with BellSouth involves an interpretation of how the definition should be read and not the definition itself (Rebuttal Testimony, page 3 line 29 through page 4, line 2). For this reason, GRUCom recommends that an annual process be initiated by the Commission for identifying additional BellSouth Central Offices in Florida that qualify as unimpaired.

(ii) "Fiber-Based Collocation" should be defined in the same manner as it is in 47 C.F.R. §51.5. The definition seems clear, and the count should be irrefutable if substantiated with appropriate data. While we do not feel that this definition necessarily aligns with a determination that sufficient competition exists in the local markets, particularly in Gainesville, it is the definition specified by the FCC and therefore must be used. However, collocation and business line data should be subject to an exhaustive due diligence procedure and audit by the Commission staff before any Central Office is declared to be unimpaired.

(iii) No position.

(iv) No position.

JT CLECS: CompSouth has proposed contract language that faithfully implements the FCC's decisions regarding availability of high capacity loops and dedicated transport UNEs. Joint CLECs' differences with BellSouth are not focused so much on the appropriate definitions of the terms used in the TRRO, but on how those definitions are applied. In summary, Joint CLECs recommend that the FCC's definitions be read and applied in their entirety and that potentially contradictory parts of such definitions be applied in a way that harmonizes the various

provisions that comprise the definition. BellSouth's positions, by contrast, pull out and highlight particular provisions of certain definitions in a way that distorts the overall meaning of the FCC's definition. BellSouth's approach consistently leads to more non-impairment in more locations than is justified by the plain terms of the TRRO.

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

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

SPRINT: Sprint has reached agreement with BellSouth regarding Issue No. 3.

STAFF: Staff has no position at this time.

ISSUE 4:

a. **Does the Commission have the authority to determine whether or not BellSouth's application of the FCC's Section 251 non-impairment criteria for high-capacity loops and transport is appropriate?**

b. **What procedures should be used to identify those wire centers that satisfy the FCC's Section 251 non-impairment criteria for high-capacity loops and transport?**

c. **What language should be included in agreements to reflect the procedures identified in (b)?**

BST: (a) The FCC is the appropriate agency to determine whether BellSouth has properly applied its criteria, but because this Commission must approve contract language that governs the transition for de-listed UNEs and the parties do not agree on the wire centers that satisfy FCC's impairment criteria, this Commission should confirm that the wire centers identified by BellSouth satisfy the FCC's

impairment thresholds. (b) This Commission should confirm that BellSouth has applied the appropriate procedures to identify the wire centers that currently satisfy the FCC's impairment thresholds (including the procedures identified in the parties' stipulated process regarding the identification of fiber-based collocators).

To the extent wire centers are later found to meet the FCC's no impairment criteria using the process identified in this proceeding, BellSouth will notify CLECs of these new wire centers via a Carrier Notification Letter. The non-impairment designation will become effective 10 business days after posting the Carrier Notification Letter. Beginning on the effective date, BellSouth would no longer be obligated to offer high capacity loops and dedicated transport as UNEs in such wire centers, except pursuant to the self-certification process. High capacity loop and transport UNEs that were in service when the subsequent wire center determination was made will remain available as UNEs for 90 days after the effective date of the non-impairment designation. This 90 day period is referred to as the "subsequent transition period." No later than 40 days from effective date of the non-impairment designation, affected CLECs must submit spreadsheets identifying their embedded base UNEs to be converted to alternative BellSouth services or to be disconnected. From that date, BellSouth will negotiate a project conversion timeline that will ensure completion of the transition activities by the end of the 90 day subsequent transition period.

(c) After this Commission confirms that BellSouth has identified the wire centers that satisfy the FCC's competitive threshold tests, CLECs may no longer self-certify that they are entitled to obtain high capacity loops and transport on an unbundled basis in those wire centers.

FDN: Agree with Joint CLECs.

GRUCom: a) Yes.

b) An annual process should be implemented by the Commission for identifying additional BellSouth Central Offices in Florida that qualify as unimpaired. Such a process would allow CLECs a greater opportunity to review, analyze, and challenge where appropriate, information related to additional Central Offices designated as unimpaired by BellSouth. GRUCom supports the annual process outlined by CompSouth witness Joseph Gillan (Direct Testimony, page 30, line 7 through page 32, line 7). The conduct of the transition period is discussed in our response to issue 9.

(c) GRUCom recommends adoption of the language provided by CompSouth witness Joseph Gillan (Direct Testimony, Exhibit JPG-1, pages 17 and 18)

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

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

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

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

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 4.

STAFF: Staff has no position at this time.

ISSUE 5: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?

BST: For those wire centers identified as meeting the FCC's impairment thresholds for DS1 loops, BellSouth is relieved of any obligation to provide CLECs with a UNE

HDSL loop. While BellSouth only counted each UNE HDSL loop as one line for purposes of evaluating impairment, UNE HDSL loops can and should be counted as 24 business lines.

FDN: Agree with Joint CLECs.

GRUCom: No, HDSL Capable Loops are not the equivalent of DS-1 Loops for the purpose of evaluating impairment. The FCC rules are clear that only lines used to provide switched services are to be counted in the impairment calculation. GRUCom utilizes unbundled DS-1 Loops to extend data services and Internet access to remote customer locations, although we understand that some CLECs use these loops to deliver switched services. DS-1 Loops have a fixed data transfer capability of 1.544 Mbps. GRUCom does not currently use HDSL Capable Loops but hopes to in the future to deliver Internet access to customers. These loops are distance sensitive and provide a higher bandwidth transfer capability. Regardless, it is important that only the portions of these lines that can be proven to be used to provide switched services be counted in the impairment calculation, and this is anticipated to be different for DS-1 Loops versus HDSL Capable Loops.

Additionally, HDSL Capable Loops should continue to be available to CLECs as UNEs, regardless of the impairment status of the associated Central Office. Based on the testimony of Sprint witness James M. Maples (Direct Testimony, Page 27, Lines 12 through 17): "Bellsouth has indicated that it will stop offering its HDSL-Compatible Loop product in its wire centers that meet the non-impairment criteria for DS-1 Loops, but has agreed that Sprint can essentially get access to the same facility by purchasing its Unbundled Copper Loop ("UCL") product and requesting the necessary level of line conditioning. This is a distinction without a difference and only succeeds in complicating the process for CLECs." The Commission's order in this proceeding should make it clear that HDSL Capable Loops are to continue to be offered as UNEs in all situations. Short of this finding, the Commission should require BellSouth to include in all amended Interconnection Agreements the concession agreed to by BellSouth for Sprint.

JT CLECS: No. BellSouth is attempting to prevent competitors from creating their *own* DS1 loops to serve customers in wire centers where BellSouth is not required to provide a DS1 loop at TELRIC-based rates. The FCC did not equate DS1 loops and HDSL-capable cooper loops for purposes of determining what loops are available where there is non-impairment under Section 251. The FCC recognized that competitors could use what is called an "HDSL-*capable*" loop to provide DS1-level services, even in those wire centers where BellSouth is not required to offer DS1s themselves. (An HDSL-capable loop is a type of "dry loop" that a competitor could use to offer DS1-level service by adding its own electronics). BellSouth is claiming that it is *also* not required to provide HDSL-capable loops wherever it no longer offers a DS1, even though the FCC

specifically stated that CLECs *could* use HDSL loops to offer service is such circumstances. BellSouth's position on this point would improperly deny CLECs the ability to add their own electronics to dry copper loops and create alternative voice/data services to small business customers in areas where Section 251 DS1 loops are no longer available.

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

SPRINT: HDSL Capable Loops are not the equivalent of DS1 loops for the purpose of determining impairment. Neither can BellSouth refuse to provide HDSL Capable Loops in wire centers where the DS1 loop impairment criteria has been met. HDSL Loops are conditioned copper loops. CLECs connect their own equipment to such loops to provide services, which are not restricted to HDSL. The FCC rules do not include restrictions on the use of conditioned copper loops nor did they make a finding of non-impairment for them. DS1 loops include the associated electronics provided by the ILEC.

STAFF: Staff has no position at this time.

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

Parties have indicated that this issue is no longer in dispute.

ISSUE 7:

a. **Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?**

b. **If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements?**

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

BST: (a), (b), and (c). State commissions do not have authority to require BellSouth to include in §252 interconnection agreements any element not required by §251; accordingly, this Commission has no authority to set rates, or impose terms or conditions for network elements offered pursuant to section 271; nor may the Commission require the inclusion of such elements in §252 agreements.

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

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

federal statute itself points to the Section 252 process as the means to implement BellSouth's Section 271 unbundling obligations. In the TRO, the FCC emphasized that Section 271 unbundling obligations are independent of and in addition to Section 251 unbundling obligations. The forum for establishing the rates, terms, and conditions of BellSouth's independent Section 271 unbundling obligations is the state commission ICA arbitration and approval process established in Section 252.

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

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

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

loops, transport, and switching network elements approved by the FCC in the TRRO.

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 7.

STAFF: Staff has no position at this time.

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

BST: CLECs should not be allowed to add new UNE arrangements that have been delisted, whether new arrangements would result from an order to add services, to move services (which would require a new arrangement at a different location), or to change services (which would require a new arrangement at a different location). BellSouth will provision CLEC orders for new high-capacity loops and dedicated transport based upon a CLEC's performance of a reasonably diligent inquiry and "self-certification"; however, CLECs have no legitimate basis to self-certify orders for new services relating to the wire centers that BellSouth has identified as satisfying the FCC's non-impairment tests.

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 8.

STAFF: Staff has no position at this time.

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

a. what is the proper treatment for such network elements at the end of the transition period; and

b. what is the appropriate transition period, and what are the appropriate rates, terms and conditions during such transition period, for unbundled high capacity loops, high capacity transport, and dark fiber transport in and between wire centers that do not meet the FCC's non-impairment standards at this time, but that meet such standards in the future?

BST: BellSouth's position is that this issue addresses de-listed network elements for which there is no transition period or for which the transition period has already ended; including, entrance facilities, enterprise or DS1 level switching, OCN loops and transport, fiber to the home, fiber to the curb, fiber sub-loop feeder, and packet switching. Generally, these elements were addressed by the *TRO*. Rates, terms and conditions for elements de-listed by the *TRRO* and which have a designated transition period, including those identified in subpart (b) above, are addressed by BellSouth under Issue 1.

Because the FCC eliminated the ILECs' obligation to provide unbundled access to these elements 2 years ago in the *TRO*, CLECs that still have the rates, terms and conditions for these elements in interconnection agreements have reaped the benefits of unlawful unbundling of these elements for far too long. As such, with the exception of entrance facilities (which BellSouth is allowing CLECs to transition with their embedded base and excess dedicated transport), BellSouth should be authorized in the terms of the interconnection agreement, to disconnect or convert such arrangements upon 30 days written notice absent a CLEC order to disconnect or convert such arrangements. BellSouth should also be permitted to impose applicable nonrecurring charges.

FDN: Agree with Joint CLECs and agree with ITC^DeltaCom.

GRUCom: GRUCom's position on this issue relates specifically to the transition of high capacity loops in Central Offices that will be appropriately identified as unimpaired at some time in the future. When these services are no longer available to GRUCom as UNEs, GRUCom will need to evaluate its alternatives on a case by case basis. Its options are expected to be: 1) accept the lowest offered price from BellSouth to continue utilizing the existing BellSouth loop (probably Special Access), 2.) where it is not cost prohibitive, extend GRUCom fiber to the customer premises, 3.) where distances and other parameters permit, replace the circuits with BellSouth Unbundled Copper Loops utilizing GRUCom electronics, and 4.) in the worst case, work with a GRUCom customer to disconnect the GRUCom service and/or to move the customer back to BellSouth as the service

provider. Evaluating these options and installing the appropriate facilities can take a significant amount of time. Therefore, GRUCom takes the following position related to this issue:

1.) The transition period for high capacity loops should be 12 months. (This is consistent with the recommendation of Sprint witness James M. Maples in his Direct Testimony, page 38, lines 16-19, and page 40, line 20 through page 41, line 14).

2.) During the transition period, BellSouth should be allowed to increase the price for these high capacity loops up to 15% (Sprint witness James M. Maples Direct Testimony, page 38, lines 19-22, and page 41, line 16 through page 42, line 2).

3.) At the end of the transition period, where the CLEC has not transitioned off of BellSouth high capacity loops, the remaining loops should be priced at the lowest available rate.

During negotiations with BellSouth, GRUCom requested a market based rate for these loops; however, BellSouth's response was "at this time DS1s and DS3s would only be available subject to the FCC No 1 tariff we do not currently have a market based rate offer." GRUCom is of the opinion that a market based rate should be available. CompSouth witness Joseph Gillan argues that BellSouth has a broader §271 unbundling requirement and that just and reasonable prices should be established by the Commission in conjunction with §271 for high capacity loops, as well as for other services, which BellSouth is no longer required to provide in conjunction with §251 (Direct Testimony, page 36, line 10 through page 46, line 18). We adopt the position taken by CompSouth related to the §271 requirement but defer to Mr. Gillan for support of that position.

With regard to the appropriate rates, terms and conditions during such transition period (what language should be included in agreements for unbundled high capacity loops in wire centers that do not meet the FCC's non-impairment standards at this time but that meet such standards in the future), GRUCom recommends adoption of the language provided by CompSouth witness Joseph Gillan. In Exhibit JPG-1 to his Direct Testimony, page 25, addressing Issue 9, Mr. Gillan states that this issue is addressed by CompSouth proposed language included under Issue 1. Issue 1 is then addressed in Exhibit JPG-1, pages 1-13. For high capacity loops, GRUCom is supportive of the language beginning with the paragraph labeled 2.2.3 on page 1 and continuing through the paragraph labeled 2.2.9.2 on page 3, with the assumption that for future transition periods this language would be modified as necessary to remove dates applicable to the initial transition period mandated by the FCC and the embedded base for that period.

JT CLECS: Transitional price increases were established by the FCC for network elements that are no longer available under Section 251 at the following levels: for loop and

transport elements, the transitional increase is 15%, while local switching rates were increased by $1 per month. During the transition period, which runs from March 11, 2005 to March 10, 2006, transition pricing applies to Section 251 network elements. CLECs may still order allegedly de-listed UNEs in wire centers designated as non-impaired by BellSouth pursuant to the "self-certification" process described in TRRO para. 234. The TRRO contains provisions for true-ups back to the March 11, 2005 effective date of the TRRO in some limited circumstances. CompSouth's proposed contract language includes provisions for ordering different arrangements (including Section 271 checklist network elements) that will substitute for de-listed Section 251 UNEs. Joint CLECs are committed to an orderly transition of circuits to alternative arrangements, but are opposed to BellSouth's efforts to limit the application of the FCC-mandated transition rates by forcing CLECs onto higher-priced arrangements before the completion of the transition period.

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

SPRINT: Sprint has reached agreement with BellSouth regarding Issue No. 9.

STAFF: Staff has no position at this time.

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

BST: The *TRRO* makes clear that CLECs must transition their entire embedded base of switching and high capacity loops and transport by 3/10/06, and not after that date. To accomplish this, BellSouth needs CLECs to timely provide it with information concerning their plans for these services. BellSouth is asking CLECs to identify their embedded base UNE-Ps by 10/1/05 or as soon as possible and to submit orders to disconnect or convert the embedded base in a timely manner so as to complete the transition process by 3/10/06. If CLECs fail to submit orders in a timely manner, BellSouth should be permitted to identify all such remaining embedded base UNE-P lines and convert them to the equivalent resold services no later than 3/10/06, subject to applicable disconnect charges and the full

nonrecurring charges in BellSouth's tariffs. Absent a commercial agreement for switching, this Commission should allow BellSouth to disconnect any stand alone switching ports which remain in place on 3/11/06.

For high capacity loops and dedicated transport, BellSouth is requesting CLECs submit spreadsheets by 12/9/05 or as soon as possible to identify and designate transition plans for their embedded base of these delisted UNEs. If CLECs fail to submit such spreadsheets, BellSouth should be permitted to identify such elements and transition such circuits to corresponding BellSouth tariffed services no later than 3/10/06, subject to applicable disconnect charges and full nonrecurring charges in BellSouth's tariffs.

For dark fiber, BellSouth is requesting that CLECs submit spreadsheets to identify and designate plans for their embedded base dark fiber loops and delisted dark fiber transport to transition to other BellSouth services or be disconnected by 6/10/06. If a CLEC fails to submit such spreadsheets, BellSouth should be allowed to identify all such remaining embedded dark fiber loops and/or de-listed dark fiber dedicated transport and transition such circuits to the corresponding BellSouth tariffed services no later than 9/10/06, subject to applicable disconnect charges and full nonrecurring charges set forth in BellSouth's tariffs.

FDN: Agree with Joint CLECs.

GRUCom: No position.

JT CLECS: The TRRO provides that until March 11, 2006, CLECs have a right to pay no more than the FCC's transition rates for Section 251 network elements subject to non-impairment findings. BellSouth may not force CLECs into paying higher rates prior to the end of the transition period. Both Joint CLECs and BellSouth desire an orderly process for those Section 251 network elements making a transition to a new service arrangement (including transitions to Section 271 network elements, tariffed special access services, or non-BellSouth facilities). The process for making such transitions should not, however, result in CLECs being denied transition pricing during the FCC's mandated transition period.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 10.

STAFF: Staff has no position at this time.

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

Parties have indicated that this issue is no longer in dispute.

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

BST: Elements that are no longer required to be unbundled pursuant to Section 251(c)(3) ("de-listed elements") should not be subject to the measurements of a SQM/PMAP/SEEM plan. The purpose of establishing and maintaining a SQM/PMAP/SEEM plan is to ensure that BellSouth provides nondiscriminatory access to elements required to be unbundled under section 251(c)(3), and if BellSouth fails to meet such measurements, it must pay the CLEC and/or the state a monetary penalty. Section 251(c)(3) elements are those elements which the FCC has determined are necessary for CLECs to provide local service and without access to the ILEC's network on an unbundled basis, the CLEC would be impaired in its ability to do so. With a no-impairment designation, the FCC found that CLECs were able to economically self-provision or purchase similar services from other providers. These other providers are not required to perform under a SQM/PMAP/SEEM plan. To continue to impose upon BellSouth a performance measurement, and/or performance penalty, on competitive, commercial offerings is discriminatory and anticompetitive. When elements are "de-listed", the ILEC will most likely provide a wholesale service similar to such element pursuant to a commercially negotiated agreement or tariffed service with specific terms and conditions relating to the provision of such service. There is no parity obligation for Section 271 elements. Consequently, it is neither necessary nor appropriate to compare BellSouth's performance for such elements provided to CLECs to BellSouth's retail performance, and it certainly is not appropriate for BellSouth to be subject to any SQM/SEEM penalties for Section 271 elements.

FDN: Agree with Joint CLECs.

GRUCom: Agree with Joint CLECs.

JT CLECS: No, to the extent such network elements are still required pursuant to Section 271. The SQM/PMAP/SEEM performance measurements were instituted to confirm BellSouth's compliance with its Section 271 obligations. When switching, loop,

and transport network elements are no longer available under Section 251, BellSouth still must provide meaningful, non-discriminatory access to such network elements pursuant to the Section 271 competitive checklist. It is not compliance with Section 251 obligations that SQM/PMAP/SEEM are designed to measure; it is compliance with Section 271 obligations – including the provision of unbundled elements required even after a finding of no impairment under Section 251. The justification for performance measurement plans in Section 271 proceedings was to ensure there was no "backsliding" by BOCs on their promises to maintain open local telecommunications markets. The need for preventing backsliding does not change simply because the section of the federal Act under which unbundling occurs changes. The Section 271 checklist items that must be unbundled should remain subject to SQM/PMAP/SEEM.

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 12.

STAFF: Staff has no position at this time.

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

BST: BellSouth is willing to include the FCC's definition of commingling in its Section 252 agreements. Commingling is properly interpreted to include the combining of Section 251 UNEs with the ILEC's resale services and switched and special access services. Section 252 agreements should also include language that BellSouth has no obligation to combine Section 251 UNEs with Section 271 checklist items, which is clear from the FCC's *Supplemental Order Clarification,* the *Triennial Review Order,* and the statutory language in the Act (the Act makes clear that checklist items under Section 271 are to be provided "unbundled ... from other services"). Additionally, the rate for multiplexing equipment should always be associated with the higher bandwidth service that is being channelized into lower bandwidth increments. BellSouth notes that this Commission addressed commingling in Docket No. 040130-TP (Issue 26).

FDN: Agree with Joint CLECs.

GRUCom: No position.

JT CLECS: Commingling is one of the most important issues in this proceeding to CLECs operating in the small business market in Florida. The mixed voice/data services offered by CLECs using unbundled DS1 loops often rely on the connecting of loop and dedicated transport Section 251 UNEs. When both network elements are provided under Section 251, the FCC's "combinations" rules apply. When one of the connected network elements is no longer available under Section 251

(e.g., a de-listed dedicated transport route in a wire center qualifying as non-impaired), the connecting of the network elements is known as "commingling." As more network elements become unavailable under Section 251, commingling rights become extremely important to CLECs in the small business market.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 13.

STAFF: Staff has no position at this time.

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

BST: BellSouth will convert special access services to UNE pricing, subject to the FCC's service eligibility requirements and limitations on high-cap EELs, once a CLEC's contract has these terms incorporated in its contract. BellSouth will also convert UNE circuits to special access services. Special access to UNE conversions should be considered termination of any applicable volume and term tariffed discount plan or grandfathered arrangements. The applicable rates for single element conversions in Florida are:

Element	First Loop	Each Additional Loop
DS1 or lower capacity stand-alone loops		
- Single LSR	$24.97	$3.52

- Project of 15 or more submitted on one spreadsheet	$26.46	$5.01
DS3 and higher capacity stand-alone loops and for interoffice transport		
- Single LSR	$40.28	$13.52
- Project of 15 or more submitted on one spreadsheet	$64.09	$25.64

In addition, the rate of $8.98 applies for EEL conversions. If physical changes to the circuit are required, the activity should not be considered a conversion and the full nonrecurring and installation charges should apply.

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 14.

STAFF: Staff has no position at this time.

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

BST: The contract language contained in a CLEC's interconnection agreement at the time the *TRO* became effective governs the appropriate rates, terms, conditions

and effective dates for conversion requests that were pending on the effective date of the *TRO*.

Conversion rights, rates, terms and conditions are not retroactive and become effective once an interconnection agreement is amended.

FDN: No position.

GRUCom: No position.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 15.

STAFF: Staff has no position at this time.

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

BST: BellSouth is not obligated to provide new line sharing arrangements after October 1, 2004. *See TRO*, ¶¶ 199, 260, 261, 262, 264, and 265. In the absence of ILEC provided line sharing, CLECs have numerous options available for serving the broadband needs of their respective end-user customers that create better competitive incentives. For example, CLECs can 1) utilize line splitting, 2) purchase the entire loop facility, 3) provision the end-user customer with Integrated Services Digital Network ("ISDN") Digital Subscriber Line ("IDSL") service, 4) partner with a cable broadband provider to provide cable modem broadband service, 5) purchase BellSouth's tariff wholesale DSL offering 6) provision the end-user with a dedicated or shared T1, 7) deploy a fixed wireless broadband technology, 8) partner with a satellite broadband provider and finally, 9) build their own loop facilities or lease loop facilities from a third party. There is no Section 271 line sharing obligation, and, even if such an obligation existed (and it does not), the FCC has forborne from applying it to BellSouth.

FDN: No position.

GRUCom: No position.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 16.

STAFF: Staff has no position at this time.

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

BST: The FCC's line sharing transition language is appropriate. Per the *TRO,* as of October 1, 2004, BellSouth was no longer obligated to provide new line sharing arrangements (although CLECs have continued to request such arrangements and BellSouth has provided such arrangements pursuant to the existing interconnection agreement language that has not yet been appropriately amended). For any line sharing arrangements that were placed in service after October 1, 2004, the CLEC should be required to pay the full stand-alone loop rate for such arrangements. Per the FCC's line sharing transition plan, for all new line sharing arrangements provided to CLECs between October 2, 2003 (the effective date of the TRO) and October 1, 2004, the recurring rate should increase to 25 percent of the recurring rates for the zone-specific stand-alone copper loop until October 1, 2004; effective October 1, 2004, the recurring charge should increase to 50 percent of the recurring rate for the zone-specific stand-alone cooper loop until October 1, 2005; and, effective October 1, 2005, the recurring charge should increase to 75 percent of the recurring rate for the zone-specific stand-alone loop until October 1, 2006. At the end of the transition period (October 1, 2006), BellSouth is not obligated to continue providing the line sharing arrangements put in place between October 2, 2003 and October 1, 2004, nor is BellSouth obligated to provide any new line sharing arrangements; however, CLECs can purchase stand-alone loops at the rates in their interconnection agreements.

FDN: No position.

GRUCom: No position.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 17.

STAFF: Staff has no position at this time.

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

BST: BellSouth's line splitting obligations are limited to when a CLEC purchases a stand-alone loop from BellSouth and the CLEC provides its own splitter. BellSouth's contract language provides for line splitting over an Unbundled Network Element-Loop ("UNE-L"), and for a limited time, with Unbundled Network Element-Platform ("UNE-P") arrangements. BellSouth's language involves a CLEC purchasing a stand-alone loop (the whole loop), providing its own splitter in its central office leased collocation space, and then sharing the high frequency portion of the loop with a second CLEC.

FDN: Agree with Joint CLECs.

GRUCom: No position.

JT CLECS: There are three issues in dispute in the competing contract language on line splitting: (1) the availability of line splitting to the UNE-P "embedded base;" (2) BellSouth's obligations when BellSouth chooses to control the splitter; and (3) BellSouth's obligations to "make all necessary network modifications" to its OSS to facilitate line splitting. BellSouth's requests that the Commission find that BellSouth's line splitting obligations are limited to when a CLEC purchases a stand-alone loop and provides its own splitter and that BellSouth has no obligation to provide line splitting under any other service arrangement.

BellSouth's position is inconsistent with its legal obligations under the FCC's TRO and TRRO, which are reflected in the FCC's rules. BellSouth's legal obligations include the provision of line splitting to the UNE-P "embedded base"; compatible splitter functionality (when BellSouth retains control of a splitter); and an obligation make OSS modifications to facilitate line splitting.

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 18.

STAFF: Staff has no position at this time.

ISSUE 19:

a. **What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration?**
b. **Do the FCC's rules for sub loops for multi-unit premises limit CLEC access to copper facilities only or do they also include access to fiber facilities?**
c. **What are the suitable points of access for sub-loops for multi-unit premises?**

Parties have indicated that this issue is no longer in dispute.

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

Parties have indicated that this issue is no longer in dispute.

ISSUE 21: **What is the appropriate ICA language, if any, to address access to call related databases?**

BST: BellSouth's proposed language recognizes that its obligation to provide unbundled access to call-related databases is limited to the time in which it is obligated to provide unbundled access to local switching. Call related databases will no longer be available on an unbundled, Total Element Long Run Incremental Cost ("TELRIC") priced basis after March 10, 2006. After March 10, 2006, CLECs may purchase access to call related databases pursuant to BellSouth's tariffs or a separate commercially negotiated agreement.

FDN: Agree with Joint CLECs.

GRUCom: Agree with Joint CLECs.

JT CLECS: Call-related databases are included in the Section 271 competitive checklist. Checklist item 10 requires BellSouth to provide "[n]ondiscriminatory access to

databases and associated signaling necessary for call routing and completion." 47 U.S.C. Section 271(c)(2)(B)(x). BellSouth therefore must continue to make these databases available at just and reasonable rates, terms, and conditions, for all the reasons discussed above in relation to Issue 7 (regarding Section 271 obligations that continue after Section 251 obligations cease).

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 21.

STAFF: Staff has no position at this time.

ISSUE 22:

a. **What is the appropriate definition of minimum point of entry ("MPOE")?**

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

BST: (a) The FCC has defined MPOE as "either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings." 47 C.F.R. 68.105(b). Consequently, in cases where the property owner has elected the use of MPOE, the MPOE is effectively the demarcation point between the inside wiring facilities at the multiple dwelling unit ("MDU") and BellSouth's loop facilities. Regardless of whether the ILEC owns or controls the inside wire beyond the demarcation point in an MDU, when the fiber portion of a loop extends to an MDU and that fiber connects to in-building copper cable facilities owned or controlled by an ILEC, the ILEC has no obligation to unbundle the fiber portion of the loop. (b) Greenfield fiber loops are part of newly-constructed fiber optic cable facilities to

residential or business areas (areas that have never had existing copper facilities). BellSouth has no obligation to provide CLECs with unbundled access to newly-deployed or "Greenfield" fiber loops." *See TRO* ¶ 273; *MDU Reconsideration Order*[12] ¶¶ 13, 21, 23; *FTTC Reconsideration Order*[13] ¶ 20 at n. 69, 23, 32.

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

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

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

> All other business customers – whom we characterize as the enterprise market – typically purchase high-capacity loops, such as

[12] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration, FCC 04-191 (rel. Aug. 8, 2004) ("MDU Reconsideration Order").

[13] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Sevices Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration, FCC 04-248 (rel. Oct. 18, 2004) ("FTTC Reconsideration Order").

> DS1, DS3, and OCn capacity loops. We address high-capacity loops provisioned to these customers as part of our enterprise market analysis. (TRO para. 209)

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

SPRINT: Sprint has reached agreement with BellSouth regarding Issue No. 22.

STAFF: Staff has no position at this time.

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

BST: BellSouth's sole obligation to provide access to hybrid loops is limited to a requirement to provide access to the time division multiplexing features of a hybrid loop, where continued access to existing copper is required by the FCC.

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

SPRINT: Sprint has reached agreement with BellSouth regarding Issue No. 23.

STAFF: Staff has no position at this time.

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

Parties have indicated that this issue is no longer in dispute.

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

BST: BellSouth's "routine network modifications" obligation is limited to the performing of those tasks that BellSouth regularly undertakes for its own customers (including xDSL customers).

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

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

SPRINT: Sprint has reached agreement with BellSouth regarding Issue No. 25.

STAFF: Staff has no position at this time.

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

BST: If BellSouth is obligated to perform a routine network modification, then the rate for that activity should be based on TELRIC. If BellSouth is not obligated to perform a particular function, or an activity is not routine (such as removal of load coils on loops longer than 18,000 feet or removal of bridged taps), then the applicable rate should be based on special construction/special assembly tariffs as appropriate. BellSouth also notes that this Commission has addressed this issue in Docket No. 040130-TP (Issues 36 A/B, 37, and 38).

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 26.

STAFF: Staff has no position at this time.

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

BST: BellSouth has no obligation to provide unbundled access to FTTH and FTTC loops.

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

SPRINT: Sprint has reached agreement with BellSouth regarding Issue No. 27.

STAFF: Staff has no position at this time.

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

BST: BellSouth's proposed language allows it to audit CLECs on an annual basis to determine compliance with the qualifying service eligibility criteria, and requires BellSouth to obtain and pay for an independent auditor pursuant to American Institute for Certified Public Accountants (AICPA) standards. The auditor determines material compliance or non-compliance. If the auditor determines that CLECs are not in compliance, the CLECs are required to true-up any difference in payments, convert noncompliant circuits and make correct payments on a going-forward basis. Also, CLECs determined by the auditor to have failed to comply with the service eligibility requirements must reimburse the ILEC for the cost of the auditor. BellSouth should not be required to agree to terms that would add

delay and expense to audits, such as: a requirement to show cause prior to the commencement of an audit, incorporation of a list of acceptable auditors in interconnection agreements, or a requirement that parties must agree on the auditor. Finally, to the extent that an auditor determines that a CLEC's noncompliance is material in one area, the CLEC would be responsible for the cost of the audit even if each of the other criteria has been met to the auditor's satisfaction. BellSouth notes that this Commission has addressed a similar issue in Docket No. 040130-TP (Issues 51 B/C).

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 28.

STAFF: Staff has no position at this time.

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

Parties have indicated that this issue is no longer in dispute.

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

BST: The Commission should order that BellSouth resolve this issue on a carrier by carrier basis depending on the specific facts that apply to a particular carrier. Specifically, for some CLECs, it may be as simple as removing the growth caps and new markets standard. However, other CLECs have adopted the mirroring rule, in which case alternative terms must be negotiated. Additionally, there may be other CLECs that are not entitled to implement the Core Order based upon the particular language negotiated between the parties in that CLEC's interconnection agreement.

FDN: Agree with Joint CLECs.

GRUCom: No position.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 30.

STAFF: Staff has no position at this time.

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

BST: At the end of this proceeding, this Commission should approve specific contractual language that resolves each disputed issue and which can be promptly executed by the parties, unless mutually agreed to otherwise, so that the FCC's transitional deadlines are met. The FCC's transitional periods for UNE switching and high capacity loops and dedicated transport cannot be extended beyond

March 10, 2006. This Commission should also allow BellSouth to incorporate the results of its decision into BellSouth's standard offering, or should approve BellSouth's PAT-1 and PAT-2 as a default for those CLECs that fail to respond to an order requiring the execution of *TRO*/*TRRO* ICA language.

FDN: Interconnection agreements should be amended consistent with the Commission's decision in this case (including reconsideration, if any) within no more than 45 days, then filed with and approved by the Commission.

GRUCom: Agree with Joint CLECs.

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

SPRINT: Sprint and BellSouth do not have a dispute with regard to Issue No. 31.

STAFF: Staff has no position at this time.

X. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
DIRECT			
Blake	BST	(KKB-1)	Sample CLEC Transition Letter
Fogle	BST	(EF-1)	Line Sharing Change of Law Amendment
Fogle	BST	(EF-2)	Line Sharing Amendment Rates
Fogle	BST	(EF-3)	Sampling of Covad Press Releases
Wallis	BST	(DW-1)	April 14, 2005 – Mathematical Calculation of BellSouth Business Line Counts as of Dec. 31, 2003
Wallis	BST	(DW-2)	July 15, 2005 – Mathematical Calculation of BellSouth Business Line Counts for the Year 2004

Witness	Proffered By	I.D. No.	Description
Tipton	BST	_______ (PAT-1)	BellSouth's Attachment 2, Network Elements and Other Services for CLECs with an Embedded Base
Tipton	BST	_______ (PAT-2)	BellSouth's Attachment 2, Network Elements and Other Services for New CLECs
Tipton	BST	_______ (PAT3)	Carrier Letter Notifications Concerning Wire Centers that Satisfy the FCC's Non-Impairment Tests
Tipton	BST	_______ (PAT-4)	Wire Centers that Satisfy the FCC's Non-Impairments Tests Using 2004 Data
Watts	ITC^DeltaCom	_______ (JW-1)	Proposed Language
REBUTTAL			
Tipton	BST	_______ (PAT-5)	BellSouth's Redline of CompSouth's Proposed Contract Language
Gillan	CompSouth	_______ (JPG-1) 1st Revised[14]	Proposed Contract Language
Gillan	CompSouth	_______ (JPG-2)	Significance of UNE-L Assumption on Business Line Count
Gillan	CompSouth	_______ (JPG-3)	Comparing BellSouth's Claims at the FCC to its Claims Here
Gillan	CompSouth	_______ (JPG-4)	Correcting BellSouth's Business Line Count
Gillan	CompSouth	_______ (JPG-5)	Corrected Wire Center Classifications
Gillan	CompSouth	_______ (JPG-6)	Testimony of Robert McKnight in Docket No. 1997-239-C

[14] Mr. Gillan originally filed CompSouth's proposed contract provisions as an attachment (Exhibit JP-1) to his Direct Testimony. After reviewing BellSouth's Direct Testimony, CompSouth revised it's proposed contract language to reflect efforts to narrow differences with BellSouth on the disputed issues. The revised proposal that CompSouth requests the Commission consider in this proceeding, and thus CompSouth will not offer the original exhibit into evidence.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

BST: BellSouth and CompSouth have reached an agreement to address any issues concerning fiber-based collocation (which is not a separately identified issue, but which impacts Issue 4). BellSouth has also agreed that it will accept CompSouth's proposed contract language concerning the DS1 transport cap (which is not a separately identified issue, but which impacts Issue 2).

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

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

Regarding Issue No. 4, BellSouth and CompSouth have agreed to a post-hearing process to address the identification of "fiber-based collocators" (to the extent any disputes remain after an agreed-upon process). See Attachment A.

SPRINT: Sprint and BellSouth have reached agreement on all issues except Issue No. 5. In addition, Sprint and BellSouth have agreed not to cross-examine each others witnesses, but to address Issue No. 5 in their respective post-hearing briefs.

XII. PENDING MOTIONS

BST: BellSouth's Motion for Summary Final Order ("Motion") is pending.

JT. CLECS: CompSouth's Cross motion for final summary order.

XIII. PENDING CONFIDENTIALITY MATTERS

JT. CLECS: CompSouth's Notice of Intent, filed September 27, 2005, regarding documents provided to it from BellSouth.

CompSouth's Notice of Intent, filed October 12, 2005, regarding documents its supplemental response to Staff's Interrogatory No. 27.

XIV. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

BST: BellSouth has filed a petition with the FCC, BellSouth Emergency Petition for Declaratory Ruling and Preemption of State Action, FCC Docket No. WC-04-245 ("Petition"). BellSouth has asked the FCC to: (1) declare that commercial agreements for network elements that are not required to be unbundled under section 251 need not be filed with, or approved by, state public service commission under section 252; (2) clarify that section 271 does not provide a jurisdictional basis for a state commission to regulate the prices and terms of section 271 elements; (3) grant its Petition and find that state public service commissions have no jurisdiction to establish rates for network elements that are not required to be unbundled pursuant to section 251; and (4) preempt a decision of the Tennessee Regulatory Authority that purported to do so. BellSouth's Petition is analogous to a previous petition filed with the FCC, BellSouth Emergency Request for Declaratory Ruling, WC Docket No. 03-251 (filed Dec. 9, 2003), which the FCC addressed by its Memorandum Opinion and Order and Notice of Inquiry, (released March 25, 2005), and which preempted this Commission's order Nos. PSC-02-0765-FOF-TP and PSC-03-0395-FOF-TP.

Various CLECs have filed Petitions for Reconsideration of portions of the TRRO with the FCC. In relevant part, the CLECs acknowledge that "a DS1 is counted as 24 'lines;' a DS3 is counted as 672 'lines,' etc."[15] CLECs also concede that under the FCC's business line definition "[a]ll UNE-L lines are included . . . regardless of whether they are used to serve business or residential customers."[16] CLECs have, however, inappropriately urged the FCC to count SBC and AT&T as affiliates under its definition of fiber-based collocator[17] Despite these pending

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[15] *Petition for Reconsideration,* filed by Birch Telecom Inc., et al., FCC Docket Nos. 04-313, 01-313, March 28, 2005 ("Birch Petition"), p. 11; *see also Petition for Reconsideration,* filed by CTC Communications Corp. et al. ("CTC Petition"), FCC Docket Nos. 04-313, 01-313, March 28, 2005, p. 12.

[16] Birch Petition, p. 15; CTC Petition, p. 12.

[17] Birch Petition, p. 24; CTC Petition, p. 5.

petitions for reconsideration, CompSouth advocates adjustments to the FCC's business line definition and fiber-based collocation definitions, instead of awaiting an FCC ruling on these issues. Consequently, if the Commission accepted CompSouth's proposed adjustments and/or contract language (which it should not do, as more fully explained by BellSouth's witness Pamela A. Tipton), a subsequent ruling by the FCC could impact any such decision.

Finally, CLECs[18] have also filed Petitions for Reconsideration of the FCC's FTTC Reconsideration Order. CLECs inappropriately seek access to DS1 and DS3 fiber loops, notwithstanding the FCC's complete fiber relief. See e.g., TRO, MDU Reconsideration Order, FTTC Reconsideration Order. BellSouth has opposed these petitions, explaining that the FCC's unbundling obligations do not vary based on the customer to be served. In this proceeding, the CLECs have proposed language that would negate a portion of the FCC's fiber relief rather than accepting BellSouth's proposed language pending further FCC action. To the extent this Commission entertains the CLECs' proposed language (it should not), a future FCC order could impact such a ruling.

FDN: Decisions by the FCC on pending motions for reconsideration or clarification to the TRRO and any court rulings on any appeals of or mandamus petitions regarding the TRRO pending or to be filed with the D.C. Circuit Court of Appeals may preempt or otherwise impact the Commission's ability to resolve any of the above issues. Otherwise, FDN is not aware of and FCC or court decision that has or may preempt or otherwise impact the Commission's ability to resolve any of the above issues

SPRINT: TRO and TRRO and various pending court appeals of those decisions.

XV. RULINGS

Opening statements, if any, shall not exceed fifteen minutes per party.

It is therefore,

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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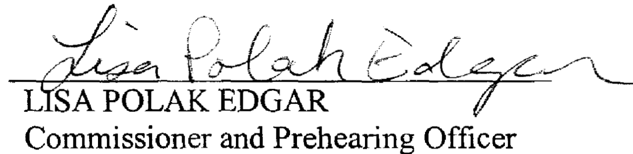
[18] Petition for Reconsideration and/or Clarification of Order on Reconsideration of Covad Communications Group, Inc., NuVox Communications, Inc. and XO Communications, Inc., FCC Docket No. 01-338 (filed Jan. 28, 2005).

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 31st day of October, 2005.



LISA POLAK EDGAR
Commissioner and Prehearing Officer

(S E A L)

AJT/KS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.