ORIGINAL

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October 27, 2003

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 030851-TP: Implementation of requirements arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers

Re: Docket No. 030852-TP Implementation of requirements arising from Federal Communications Commission Triennial UNE review: Location Specific-Review For DS1, DS3, and Dark Fiber Loops and Route-Specific Review for DS1, DS3, and Dark Fiber Transport

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Objections to Specific Issues Raised by the Other Parties to these Proceedings, in the captioned dockets.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (EB)

Nancy B. White

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cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

1 to each docket.

CERTIFICATE OF SERVICE
Docket Nos. 030851-TP and 030852-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail this 27th day of October 2003 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission triennial UNE review: Local Circuit Switching for Mass Market Customers.	)	Docket No. 030851-TP Filed: October 27, 2003
In re: Implementation of requirements arising from Federal Communications Commission Triennial UNE review: Location Specific-Review For DS1, DS3, and Dark Fiber Loops and Route-Specific Review for DS1, DS3, and Dark Fiber Transport	)	Docket No. 030852-TP Filed: October 27, 2003

BELLSOUTH'S OBJECTIONS TO SPECIFIC ISSUES RAISED BY THE OTHER PARTIES TO THESE PROCEEDINGS

Pursuant to the directions provided at the issue identification conference held Thursday, October 23, 2003, BellSouth Telecommunications, Inc. ("BellSouth") provides its comments and objections to the issues submitted by other parties that were not directly addressed during the conference.

I. General Comments

As a general matter, BellSouth would note that a number of the issues submitted by other parties, and particularly by the FCCA, failed to clearly distinguish between issues that related to the "triggers" tests established by the FCC, the "potential competition tests" established by the FCC, and the issue of "hot cuts." In a number of cases, which BellSouth will identify as it addresses individual issues submitted by the parties, these three separate matters are blurred and blended together by the issues framed by other parties. This is wholly inappropriate, and

issues offered in this haphazard manner must be rejected. Each of these three separate topics must be considered independently.

Second, the issues framed by the parties, and again particularly by the FCCA, relied almost exclusively on the language of the FCC's Triennial Review Order ("TRO"), without regard to the extensive rules that the FCC promulgated. While there is no need to rely on the literal language of the rules in every instance (such as Rule 51.319(d)(2)(iii)(B)(4), which relates to the determination of the "cross over" point that demarks "mass market" customers from "enterprise" customers), the language of the rules cannot be ignored either. The FCCA, at least in its initial set of proposed issues, did not identify a single rule implicated by the issues that it proposed..

Finally, it is clear that with regard to a number of the issues proposed, not only by the FCCA, but also by Sprint and Covad, there is no legal underpinning, or even valid legal theory, that can be articulated to support such issues. This will be addressed in more detail below, but Covad's issue regarding line splitting, and Sprint's issue regarding "de minimus" levels of CLEC competition, are examples of this type of problem.

Without doubt, the cases that the state commissions are going to have to hear and resolve within a very limited time frame are going to be complex and contentious. Extraneous issues that have no legal basis or that attempt to confuse the fundamental issues that have to be addressed during these proceedings, should not be included in the approved issues list.

II. The FCCA's Issues

The FCCA at this point seems to have three sets of issues. One set relates to Docket 030852-TP, dealing with high capacity loops and transport. A second set, consisting of 69 issues with numerous subparts, and a third set, which is somewhat shorter, relate to Docket 030851-TP, dealing with unbundled switching. BellSouth believes that the FCCA's issues are, for the most part, inappropriate, and are unnecessary since the arguments that the FCCA wants to make can be made, to the extent they are legitimate arguments, within the issues that have been proposed by the Staff and modified during the issue identification conference. Because of their length, BellSouth will address the FCCA's issues via three attachments, one dealing with the high capacity loop and transport issues in Docket No. 030852-TP, one dealing with the lengthy list of switching issues filed on October 21, 2003, in Docket No. 030851-TP, and one dealing with the somewhat shorter list that FCCA distributed during the issue identification conference on October 23, 2003.

III. Covad's Issue

Covad has attempted to interject a single issue into the unbundled switching docket, Docket No. 030851-TP. That issue is as follows:

> Are CLECs impaired in their ability to operationally transition from UNE-P to UNE-L and economically impaired in their ability to compete using UNE-L based on line splitting processes, rates, and OSS currently available from ILECs?

The first, and most obvious, defect in Covad's issue is that CLECs do not currently have line splitting in combination with UNE-P. Since those CLECs that currently use UNE-P are the carriers that would be required to move to their own, or someone else's

unbundled switching if BellSouth's unbundled switching were no longer offered at TELRIC rates, the process of moving from the UNE-P to the UNE-L would not, by definition, involve line splitting. Therefore, on its face, Covad's issue is defective, and should not be included in this docket where the central issue is whether BellSouth's unbundled switching should continue to be made available.

Covad has argued that the FCC has ordered that in the switching case, "[t]he state must also consider the revenues a competitor is likely to obtain from using its facilities for providing data and long distance services and from serving business customers." (Covad's Proposed Issue List, page 2). BellSouth does not disagree that the FCC said that, but Covad clearly has misunderstood the plain language of the FCC's order. The issue is whether a CLEC can economically deploy its own switch. A seminal question then involves the revenues that the CLEC can expect to receive when it provides service via that switch. The language cited by Covad is addressing that revenue stream. If the CLEC is to receive both the voice and the data service revenues, then that CLEC has to be furnishing both. If the CLEC were line splitting with a data CLEC, the first CLEC would not be receiving the data service revenues, which would make the sentence cited by Covad nonsensical.

Finally, the hot cut process to which Covad refers involves the "migration of multiple lines served using unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier...." Rule 51.319(d)(2)(ii)(A)(3). The process in which the FCC is interested involves the migration of loops, not portions of loops and not facilities like splitters on those loops.

Clearly, Covad's issue, which is a transparent effort to move line splitting back to center stage in spite of the FCC's decision to the contrary, should not be included as an issue in this proceeding.

IV. Sprint's Issues

Sprint has proposed one issue in Docket No. 030852-TP and two issues in Docket No. 030851-TP. BellSouth understands that Sprint's issue in the first docket was addressed and resolved during the issue identification conference, and therefore will not address that issue further.

With regard to Docket No. 030851-TP, however, Sprint suggests the addition of two issues that have not been addressed fully. The first has to do with partitioning whatever markets the Commission ultimately determines to be appropriate into even smaller markets based on a CLEC's willingness or capacity to serve the market that the Commission has defined. The second issue asks whether there is evidence that CLECs that are providing their own switches are serving some "non-de minimis" number of mass marketing customers so as to qualify for use in applying the FCC's trigger tests.

BellSouth makes two observations with regard to Sprint's proposed issues. The FCC said, in footnote 1537 of the TRO, that in determining the scope of a geographic market, if competitors with their own switches are only serving certain geographic areas, then the state commission should consider establishing those areas as separate markets. However, this issue is clearly subsumed in the staff's existing issues related to how the geographic markets in the state of Florida will be defined. That footnote does not suggest, however, nor has Sprint cited any rule or order that

suggests, that having defined the market, the state commissions should then go back and subdivide those markets further. Absent some authority to the contrary, this issue should not be included as written.

Sprint's second proposed issue is even more troubling. That issue suggests that, for the purpose of applying the "triggers," once the relevant geographic market has been defined, the Commission should consider whether there is some *de minimis* number of mass market customers that, even though served by a CLEC using its own switch, would not qualify that CLEC for use in determining whether the "triggers" have been met. Sprint cites no authority for this proposition, and indeed, such a requirement would be wholly inconsistent with the "triggers" test. The FCC has clearly stated that "the existence of three self-provisioners of switching demonstrates adequately the technical and economic feasibility of an entrant serving the mass market with its own switch, and indicates that existing barriers to entry are not insurmountable." (Paragraph 501) The FCC established no threshold that had to be met; rather, the requirement is simply that the CLEC be serving mass market customers. If the FCC had intended to establish a *de minimis* level of mass market customers that would be necessary to qualify a switch, it could have said so. It did not, and it would be inappropriate to attempt to interject such a concept now.

BellSouth therefore objects to the issues that Sprint has attempted to interject into this proceeding.

V. Conclusion

It is difficult without appropriate citations to the rules or to the TRO, and without any discussion or explanation of the need for the particular issues, to fully address

whether any particular issue raised by a party is appropriately included in these dockets. Subject to that caveat, BellSouth believes that the issues that the Staff proposed, as modified during the issue identification conference, adequately set forth the issues in these two dockets, and that any matter germane to these proceedings can be fairly included within those issues. The additional issues proposed by the parties are neither necessary, nor helpful in the resolution of these cases and should be rejected.

Respectfully submitted this 27th day of October, 2003.

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FCCA's Issues for Docket No. 030852-TP

1. FCCA's Issues 1 and 7 deal with definitions. The rationale offered for including these issues was that it was important for the parties to have a common definition of various terms for use in the proceeding. Since the issues would not be resolved until the end of the proceeding, it would appear that having such definitions would not be of any benefit. BellSouth does not strongly object; there just does not seem to be much point in having such issues.

2. FCCA's Issue 2 deals with specific customer locations where the FCC's "triggers" are met. FCCA's Issue 2 is subsumed in the Staff's issues on these triggers.

3. FCCA's Issues 3, 4 and 5, relating to high capacity loops, and Issues 9, 10 and 11, present a very good illustration of the FCCA's improperly blending various concepts found in the TRO. FCCA's Issues 3 and 4, dealing with high capacity loops, ask whether there is any "condition," either in the ILEC's control or otherwise, that "acts as a barrier to CLEC entry" at locations identified in response to FCCA's Issue 2. FCCA's Issue 5 then asks, for all the locations "identified above, "for which locations should there be a finding of lack of impairment to CLECs?" FCCA's issues 9, 10 and 11 take a similar approach to the transport "triggers." These issues, however, do not reflect what the TRO or the FCC's rules require or allow.

4. First, the TRO and the accompanying rules make it absolutely clear that if the "triggers" established by the FCC are met, the Commission "shall find that a requesting telecommunications carrier is not impaired without access" to the particular unbundled high capacity loop or transport in question. See, e.g., Rule 51.319(a)(4)(ii)

(wholesale facilities trigger for DS1 loops); Rule 51.319(a)(5)(i) (triggers for DS3 loops); Rule 51.319(e)(1)((ii)(wholesale DS1 transport); and Rule 51.319(e)(2)(i)(dedicated DS3 transport).

5. Therefore, if the appropriate 'triggers" are met, it is irrelevant that the CLEC may still perceive that there are barriers at that location. Rather, the FCC's TRO provides that after the appropriate "trigger" is met, the state commission in an appropriate case may petition the FCC for a waiver from the FCC to maintain the ILEC's unbundling obligation at that location. This provision for high capacity loops is found in Paragraph 336, and specifically applies where there are barriers to "further competitive facilities deployment at that location." The example given, which is clearly stated as being illustrative, and not exclusive and dispositive, is where a municipality has imposed a long-term moratorium on granting additional rights-of-way.

6. The similar provision for transport is found in Paragraph 411 of the TRO and speaks of a "significant barrier" to entry "such that deploying additional facilities is entirely foreclosed." Again, the example is where a municipality has foreclosed further grants of rights-of-way. In this latter case, the FCC's TRO also states, as is the case with high capacity loops, that the state commission can apply for a waiver from the FCC to continue to impose an unbundling obligation on the ILEC for the transport routes in question.

7. In both instances, however, the state commission must make a finding of "no impairment" for the location in question, and the cited sections of the TRO merely provide, in an appropriate case, a methodology for obtaining relief in some circumstances from the FCC. Even in these circumstances the state commission is not

relieved of its obligation to make the "no impairment" finding, which is embedded in the FCCA's version of the issues. The FCC itself, in Paragraph 411 stated this most clearly: "Nevertheless, as explained in the following Subpart, a state must make a finding of non-impairment under the wholesale availability trigger if two or more carriers make transport available at wholesale, pursuant to the trigger."

8. In its Issues 3, 4, 5, 9, 10 and 11, the FCCA implies that the issue of impairment must be resolved only after the FCCA has had an opportunity to demonstrate that, notwithstanding that the appropriate triggers are met, there are still barriers to entry that should lead this Commission to conclude that impairment exists for a specific route. That is not what the TRO requires. Instead, the only issue that the Commission must consider is whether the triggers, as set forth in the FCC's TRO, have been met. For those routes where that determination is made, the FCCA can ask the Commission to petition the FCC for a waiver for those routes, but that cannot be done until the routes meeting the triggers have been identified. The FCCA's proposed issues confuse this difference and should be rejected.

9. The FCCA's Issues 6 and 12 involve transition matters and are subsumed in the Staff's issue on transition.

10. Consequently, none of the FCCA's issues related to Docket No. 030852-TP should be adopted.

The FCCA's First Set of Issues dealing with Docket No. 030851-TP

The FCCA submitted two sets of issues related to Docket No. 030851-TP. At the issue identification conference, the FCCA could not state with certainty which, if either of the lists was complete or final, so BellSouth will address both, beginning with the first, and longer set of issues submitted by the FCCA on October 21, 2003 consisting of 69 issues and subparts. A number of the issues were not supported by citation to the FCC's TRO or the FCC's rules, and were not explained with sufficient specificity to understand exactly what was intended or why the issue was deemed necessary. Those issues should be rejected summarily. Turning to the remaining issues, BellSouth offers the following:

1. The FCCA's Issue 1 is subsumed in the Staff's issues.

2. The FCCA's Issue 2 is completely inappropriate. The FCC has determined that in geographic markets where three CLECs are self-provisioning switching, that a state commission must find "no impairment." The FCC explains in Paragraph 501 of the TRO that it selected a threshold of three CLECs because that level of participation assures that the market can support "multiple, competitive" local exchange service providers. In its Issue 2, and notwithstanding the FCC's clear pronouncement, the FCCA attempts to have the Commission determine anew whether the defined market can support multiple carriers. Given the FCC's clear rule, there is no basis for the Commission to conduct its own analysis. If there are three or more CLECs self-provisioning switching in a market serving mass market customers, the inquiry is over.

3. The FCCA's Issue 3 asks whether the carriers used to support the application of the trigger analysis are likely to be able to continue to offer service to the defined market. This issue is too open- ended. For instance, in Paragraph 500 of the TRO, the FCC states that the state commissions are precluded from evaluating any other factors for purposes of applying the triggers, such as the financial stability or well-being of the competitive switching providers. In a footnote (footnote 1556), the FCC noted that the state commission should review whether the competitive switching provider has filed a notice to terminate service in that market, but that is a far narrower circumstance than reflected in FCCA's Issue 3.

4. The FCCA's Issue 4 suffers from the same infirmities as its Issue 2. FCCA's Issue 4 asks whether the carriers identified as potential candidates for use in a trigger analysis are able to "protect consumers," citing to Paragraph 505 of the TRO. First, Paragraph 505 of the TRO relates to the wholesale switching trigger, and not the self-provisioning trigger. Second, the terms of that paragraph that are included in FCCA's Issue 4 constitute an explanation by the FCC of why it selected two wholesale providers as the appropriate trigger threshold. The FCC said "...we find that two wholesale providers, in addition to the incumbent LEC, should provide competitive pressures on pricing and terms and minimize the risk of "umbrella pricing" while encouraging deployment." (footnote omitted). The FCCA in its Issue 4 attempts to have this Commission decide anew what the FCC has already resolved. Stated another way, what the FCCA is really asking the Commission to do, even in those markets where BellSouth demonstrates that the FCC's triggers are met because there are two

wholesale switching providers offering switching in the market to all interested parties, is to determine whether those specific carriers are "able to protect consumers...." The FCC has already resolved that issue and the FCCA's attempt to include it is inappropriate.

5. The FCCA's Issue 5 creates the same problem discussed in Attachment 1, dealing with high capacity loop and transport issues. In Issue 5 the FCCA asks whether, even if the triggers are met, there are still significant barriers to entry such that a finding of non-impairment would be inaccurate, citing Paragraphs 498 and 503 of the TRO. What those paragraphs actually provide (and it is really Paragraph 503, not Paragraph 498) is that in "exceptional circumstances, states may identify specific markets that facially satisfy the self-provisioning trigger, but in which some significant barrier to entry exists such that service to mass market customers is foreclosed even to carriers that self-provision switches." The example given involves the situation where no collocation space remains. In such a circumstance, the state commission is allowed to petition the FCC for a waiver for that particular market. That is, the state commission must still make a finding of "no impairment" for that particular market, but then can petition the FCC for a waiver in that market if the CLEC can demonstrate some significant barrier that forecloses the market to that CLEC. Again, the question of finding "no impairment" and actions that this Commission might take after making that determination to ask the FCC for a waiver are totally separate actions that cannot lawfully be mingled in the fashion proposed by the FCCA.

6. The FCCA's Issue 6 again attempts to add to the rationale that the FCC articulated in support of its decision to require a finding of "no impairment" when three or more unaffiliated competing carriers are each serving mass market customers in a particular market with their own switches. The FCC said that it picked that level of self-provisioning because that number will assure that the market can support "multiple, competitive" CLECs. The FCC also said that it believed that the existence of three self-provisioners demonstrates adequately the technical and economic feasibility of an entrant serving the mass market. The FCC said nothing about serving those mass market customers at "commercially significant volumes," which the FCCA introduces in its issue. Indeed, the FCC made no finding that there was any minimal number of mass market customers that had to be served by a CLEC before it could be used to satisfy the trigger. As with the Sprint issue, if the FCC had wanted to impose a *de minimis* level of customers served in order to qualify, it would have said so. It did not, and the FCCA's issue is inappropriate.

7. The FCCA's issue 7 is simply an inaccurate representation of what the FCC required. The FCC's language in the TRO and in its rules regarding any requirement that competitive service be at a level of cost, quality and maturity to that of the ILEC, only applies to "intermodal" alternatives, which the FCC defines as cable, wireless and power line technologies. The FCCA's statement is overly broad, and inaccurate.

8. The FCCA's Issue 8 suffers from the same problem as its Issue 5. In fact, it is the same issue, with the only difference being that in Issue 8 the FCCA specifically

mentioned collocation, while it used the more ambiguous phrase "significant barriers" in Issue 5. The result with respect to this issue should be same as with Issue 5.

9. There is no support for Issue 9. It asks whether there are other factors that the Commission should consider. The FCC, in Paragraph 500 of its TRO, stated that for the purpose of applying the triggers, that the states "shall not evaluate any other factors, such as the financial stability or well-being of the competitive switching providers." This issue is clearly inappropriate.

10. The FCCA's issue 10 addresses the wholesale switching triggers. This issue is fully subsumed in the staff's issues.

11. The FCCA's Issue 11 seems to relate to situations where a CLEC is not only providing its own switching, but its own loops as well. That situation is discussed in footnote 1560, not in the paragraphs cited by the FCCA, which deal not with the switching triggers, but with the "potential competition" analysis that follows in a market when the triggers have not been met. In that footnote, the FCC concluded that the fact that a CLEC was providing its own switching and loops did not affect the fact that the CLEC could be used as a part of the trigger analysis. Therefore, this issue does not appear to have any use or value and should not be included.

12. With Issue 12, although the FCCA does not so indicate, the FCCA appears to move from issues dealing with the trigger analysis, to matters dealing with the "potential competition" analysis. BellSouth reaches this conclusion because the paragraph in the TRO cited by the FCCA regarding this issue falls not in the triggers section of the TRO, but in the section of the TRO dealing with potential competition.

With that said, this issue is a restatement of what is contained in Paragraph 511 of the TRO. This paragraph begins the discussion of the operational barriers to be examined when the triggers analysis does not provide relief in a specific market. That is, when the trigger analysis does not provide relief in a market, the state commission can then look at whether the market has the potential for competition. This is done by (1) examining the existence of actual competition that does not quite rise to the level of meeting the triggers; (2) examining any operational barriers to competition that may exist in the market; and (3) looking at any economic barrier to competition. The FCCA's issue 12 misstates Paragraph 511, which only talks about potential barriers, but in any event, any valid issues raised here are fully covered in Staff's Issue 9. (The numbering may have changed as a result of the issue identification conference.) Consequently this issue is redundant and should be excluded. Importantly, BellSouth would note that this issue, and a number of those following, all deal with and relate to paragraphs relating to the "potential competition" analysis, not the triggers analysis. This is an important distinction, and one the FCCA does not make. If the triggers analysis is met, the various things that state commissions will look at in the "potential competition" analysis have no role to play.

13. FCCA's Issue 13 is also a part of a "potential competition" analysis. Among the potential operational barriers that have to be examined is whether the ILECs are providing nondiscriminatory access to unbundled loops. Since the FCC, in the TRO, asks the state commissions to do this, it is an appropriate issue for the

Commission to consider. However, this issue is clearly subsumed in what was Staff's issue 9, just as was FCCA's Issue 12, and should not be included again.

14. FCCA issues 14, 15 and 16 simply repeat matters raised by the FCC in connection with the non-discriminatory provisioning of loops. These issues posed by the FCCA relate to evidentiary matters that will be used to prove or disprove the ILECs compliance with its obligation to provide non-discriminatory access to loops, and are not free standing issues. They should not be included in the issues list.

15. The FCCA's issue 17 raises a question about how the ILECs will minimize the increased risks of service disruption, citing paragraph 503 of the TRO. That paragraph deals not with "potential competition," but with the switching triggers, and there is no discussion there about the ILECs' minimizing the "increased" risks of service disruption. This more properly appears to be related to the "hot cut" process, which in and of itself should minimize service disruptions. There does not appear to be any basis for including this issue.

16. With regard to FCCA's Issue 18, the matters raised there are included in the Staff's Issue 9 (again subject to the renumbering that may have occurred as a result of the issue identification conference).

17. With FCCA Issue 19, the FCCA appears to have transitioned to the area of "hot cuts" although there is no specific indication of this transition. Again, BellSouth would point out that the triggers analysis, the potential competition analysis, and the hot cut analysis are all independent of each other. If the triggers analysis shows that there is no impairment, there is no need for a "potential competition" analysis. The state

commissions still have to examine the "hot cut" process, but that review does not affect the conclusion that "no impairment" has been found. The outcome of the "hot cut" analysis could affect the price charged by an ILEC for switching, but that is all. Turning to the specifics of the FCCA's Issue 19, the concept embedded there does not appear at all in the paragraph cited by the FCCA, either directly or by fair implication. If the point of FCCA's issue 19 is to question whether the ILECs' "hot cut" process was engineered to handle the number of hot cuts that would be generated if unbundled switching is no longer a UNE in a particular market, that type of issue is already captured in Staff's Issue 3 (again subject to the renumbering of issues).

18. The FCCA's issue 20 misstates the paragraph it attempts to use to support the issue. Footnote 1574, which is associated with Paragraph 512, says in pertinent part that "This review [of evidence of consistently reliable performance in three areas, timeliness, quality and maintenance and repair] is necessary to ensure that customer loops can be transferred from the incumbent LEC main distribution frame to a competitive LEC collocation as promptly and efficiently as incumbent LECs can transfer customers using unbundled local circuit switching." The FCCA has already included the question of the ILEC's timeliness, quality and maintenance and repair in its Issue 15, which is subsumed in a staff issue. Now the FCCA attempts to include as a separate issue, the very thing that the review of the ILEC's performance in the indicated areas was intended to test in the first instance. This issue is at best redundant, is inaccurately stated and is unnecessary.

19. The FCCA's issue 21 is not supported by the paragraph of the TRO it cites. There is no reference in that paragraph to a "viable, cost-effective, real-world-tested hot cut process...." In fact, the process the FCC has charged the states with establishing is set out in detail in Rule 51.319(d)(2)(ii), and is fully captured by the Staff's issues regarding batch hot cuts.

20. The FCCA's issue 22 is simply another variation of the issues surrounding the "hot cut" process, except this time the FCCA introduces the notion of how many hot cuts an ILEC can provision "per hour." Again, this does not appear in the paragraph cited by the FCCA, nor is it a requirement imposed by the FCC's rules. The Staff's batch cut process issues fairly capture the matters that need to be examined under the FCC's rules, and the number of hot cuts "per hour" is not among those requirements.

21. The FCCA's Issue 23 again deals with hot cuts. To the extent it raises legitimate issues, they are captured in the Staff's issues.

22. The FCCA's Issue 24 is simply a litany of issues about which AT&T has carped incessantly. For instance, Issue 24 C is identified as "Electronic Order Processing capability" and Paragraph 491 of the TRO is cited. A review of that paragraph reveals that AT&T evidently argued to the FCC that it should require "electronic loop provisioning" in connection with the migration of large volumes of customers. If this issue is intended to refer to electronic loop provisioning, the FCC has already told AT&T that it will not order electronic loop provisioning, although the FCC indicates that it will re-examine AT&T's proposal if hot cut processes are not sufficient to handle necessary volumes. If this is what the FCCA is raising here, it is simply trying to

relitigate what the FCC has already ruled upon. If it is something different, then Paragraph 491 provides no support for the issue and it should not be included in this proceeding. Similarly, the FCCA provides no support at all that the state commissions are required, or should look at such things as out-of-hours availability. (Issue 24 B). The FCCA raises again in this issue the "timeliness of process," the precise same issue that it raised in Issue 15, since it cites to footnote 1574 in support of the inclusion of this issue. In short, someone at a member company of the FCCA has simply tried to think of every possible factual question that could be raised by a hot cut process and included it as a separate issue, irrespective of whether the FCC's TRO or rules contemplated the issue, and regardless of whether the matter was raised in another issue, or covered by the staff's issues. Again, the Staff's issues on batch cuts follows the FCC's rules, and includes what the FCC requires the state commissions to review. It is enough, and the FCCA's Issue 24 should not be included as written.

23. The FCCA's issue 25, which is presented without citation, is simply a misstatement of the law as established by the FCC. The hot cut process is not intended to eliminate all operational and economic impairment at least as those terms are used in the "potential competition" portion of the TRO. They are separate matters. Since the FCCA did not cite to any particular part of the TRO in offering this issue, or provide any explanation of it, there is no justification for including it in the list of issues.

24. The FCCA's issues 26, 27 and 28 are included in the Staff's issues on the batch cut process.

25. The FCCA included two Issue 36s in the list. The first relates to a question of how the ILECs will unbundle loops served over IDLC where CLECs are serving mass market customers. It is out of place, and the context is not clear, but if the question seeks to ask what will happen in a market where "no impairment" is found because the switching triggers are met, with regard to loops served over IDLC, then this issue is simply inappropriate. If the triggers are met, the state commissions are required to find that there is "no impairment" in the market. If there is some significant barrier to entry such that further competitive entry may be impossible, then the state commission has to petition the FCC for a waiver.

26. The next issue, which the FCCA lists as Issue 29, also speaks about IDLC, but in this instance the FCCA does cite a reference, Paragraph 512, which deals with loop provisioning, which is a part of the examination of potential operational barriers in connection with the "potential competition" analysis. The issues of potential operational issues related to matters included in Paragraph 512 were included in earlier FCCA issues, and this one is therefore redundant.

27. FCCA Issues 30, 31 and 32 are again general evidentiary matters that relate to the questions associated with operational barriers related to a "potential competition" analysis, although the FCCA does not make that distinction. BellSouth would note that in Issue 32, the FCCA now specifically refers to "electronic loop provisioning," which was discussed above with regard to Issue 24. Again, AT&T has raised this precise issue with the FCC and the FCC declined to give AT&T what it sought. AT&T is now trying to get this Commission to address a matter that the FCC,

whose actions have lead to this proceeding in the first instance, has already found inappropriate. These issues should not be included in the issues list.

28. The FCCA's Issues 33, 34 and 35 deal again with collocation. These collocation issues are subsumed in the Staff's Issue 9. Beyond that, however, Issue 34 improperly asks whether, if no impairment is found, but there is no collocation space available, should the ILECs be required to offer UNE-P at TELRIC rates? This issue simply makes no sense. The TRO provides that the state commissions can consider the question of collocation space when the commissions are considering whether there are operational barriers to "potential competition," but once a "no impairment" finding has been made for a market, there is no provision of the TRO or the FCC's rules that provide a state commission authority to subsequently require the provision of UNE-Ps in that market at TELRIC rates. Indeed, when the self provisioning triggers are met, the only way to obtain relief is to have the state commission petition the FCC for a waiver. There is no reason to believe that a similar conclusion would not result here.

29. The FCCA's Issues 36 (the second Issue 36), 37, 38 and 39 all deal with carrier cross connects. The Staff's issues on the "potential competition" analysis includes everything that the FCC's rule on operational barriers requires with regard to cross connects. Rule 51.319(d)(2)(iii)(B)(2). The FCCA's issues are unnecessary.

30. According to the FCCA, Issues 40 through 49 all are based on the provisions of Paragraphs 563 and 564 of the TRO. Those two paragraphs deal with OSS functions, and conclude that ILECs must continue to offer to CLECs unbundled access to the ILEC's OSS based on the FCC's determination that CLECS are impaired

without access to ILECs' OSS. Therefore, the availability of the ILECs' OSS is not properly an issue in this proceeding, where the question is whether the CLECs should be required to provide their own switching in certain markets, or whether they are entitled to have access to the ILECs' unbundled switching. In this regard, BellSouth would point out once again that the FCC in the TRO and its rules, makes it clear that where the switching "triggers" are met, there must be a finding of "no impairment." These issues that the FCCA seeks to raise have to do with the impact of a "no impairment" finding on the access of the CLECs to the ILECs OSS. There is not any legitimate basis for raising such issues in this proceeding. The FCC has not delegated to the states any authority to make findings regarding OSS. Rather, the state commissions have to make impairment decisions based on whether the switching triggers are met, or, if not, whether a "potential competition" analysis indicates that there is no impairment. The FCC did not suggest in any way that any OSS issues would be involved in such an analysis, and there is no basis to include those issues in this case.

31. The FCCA's Issue 50 raises many of the same concerns. The FCCA worries about whether the ILECs' current interconnection and tandem switching resources will be sufficient to handle a shift to a competitive environment that relies solely on the use of UNE-L. First, if this were a legitimate issue, it would have to be addressed on a market- by- market basis, not as a general proposition as posed by the FCCA. Second, this issue seems to imply that if there were not sufficient interconnection and tandem switching resources, that this would somehow impact a "no impairment" analysis. This simply is not accurate. The FCC has already said, with

regard to the switching "triggers," that a finding of "no impairment" must be made if the triggers are met. The FCCA seems to be suggesting by this issue that if there is some facilities problem (which is speculative at best and has no foundation in anything that the FCCA has raised to this point) that this could override a "no impairment" finding. That is simply not what the FCC said in its TRO or rules.

32. FCCA Issue 51 is simply another hot cut issue, a repeat in fact of what was included in Issue 24, which has already been addressed.

33. The FCCA's Issue 52 relates to line splitting. This is an inappropriate issue for the same reasons that Covad's issue regarding line splitting was inappropriate.

34. The FCCA's Issue 53, dealing with business cases is an interesting one, since AT&T has objected to producing business case information in this proceeding. In fact, business cases may well be relevant to the "potential competition" analysis. This issue, however, is subsumed in the Staff's issues on "potential competition."

35. The FCCA's Issue 54 deals with the economic barriers to entry in a "potential competition" analysis. These issues seem to be simply a more detailed breakdown of the evidence that will have to be examined to some degree, in order to answer the staff's issue of whether it is economic for CLECs to self-provision local switching. BellSouth agrees that most, if not all of these issues will have to be addressed as evidentiary matters in the hearing. These matters, however, fit into the Staff's issue on economic impairment.

36. The FCCA's issue 55 appears to be a subset of the FCCA's Issue 38, or at least is included in the FCCA's issues dealing with cross connects, which are subsumed in the Staff's issues on that same matter.

37. The FCCA's Issues 56, 57, 58 and 59 have no citation to the TRO or any rule adopted by the FCC. In a triggers analysis, they clearly have no place. With regard to a "potential competition" analysis, Issues 56, 57 and 58 would be a part of any analysis of economic barriers. Issue 59 appears to simply be an incorrect statement of the law.

38. The FCCA's Issue 60 misstates what the FCC has set out in the TRO. The FCC has said, where neither the triggers analysis nor the "potential competition" analysis leads to a conclusion of "no impairment," that the state commissions must determine whether using a "rolling access to unbundled local circuit switching approach" would address the impairment found. The FCC found that such an approach might address certain types of barriers; there is no suggestion that such an approach has to eliminate all operational and economic barriers for an efficient CLEC.

39. The FCCA's Issue 61 deals with transition matters. That is subsumed in the Staff's issues.

40. The FCCA's Issue 62 deals with future cases, asking what barriers the Commission should erect to prevent ILECs from bringing additional cases for markets where impairment is found to exist for unbundled local switching. There is nothing in Paragraph 526, cited by the FCCA, to suggest that there are any conditions that can or should be imposed on subsequent requests by ILECs for additional reviews of "no

impairment" findings under the TRO. In fact, the FCC explicitly found that the framework it established contemplates ongoing state review of the status of unbundled switching, and that the operational and economic factors governing the analysis the FCC requires are unlikely to remain constant, and the competitive market for local exchange services continues to mature. This issue is simply inappropriate.

41. The FCCA's Issue 63 appears to simply be another restatement of the basic question that this Commission has to address regarding impairment findings in specific markets. It is already subsumed in the Staff's issues.

42. The FCCA's Issue 64 simply asks what the definition of the appropriate geographic market is. That issue is subsumed in the Staff's issues.

43. The FCCA's issues 65 and 66 again deal with the definition of the appropriate geographic market to be used in this docket. The Staff's issue on the definition of the appropriate market covers these issues.

44. The FCCA's Issue 67 is simply a repeat of its earlier issues regarding collocation and need not be included.

45. The FCCA's Issue 68 again addresses the manner in which the appropriate geographic market is to be defined. The Staff's issues address this matter.

46. The FCCA's Issue 69 deals with the appropriate demarcation point that divides the "mass market" from the "enterprise market." That issue has been included by the Staff in the issues list, and does not need to be repeated.

The FCCA's Proposed Changes to the Staff's Switching issues.

During the issue identification conference on October 23, 2003, the FCCA distributed a document indicating that it was the "Staff's Proposed Issues (Modified by CLECs)". This Attachment addresses the changes that the FCCA has proposed to the Staff's switching issues.

1. The Staff's first two issues, dealing with market definition, were rearranged and changed during the issue identification conference. The issues as worded there should be adopted, without any further changes as proposed by the FCCA.

2. The Staff's Issue 3, dealing with the batch cut process was amended during the issue identification conference. The FCCA's issues list does nott reflect those changes. The changes proposed by the FCCA to the Staff's original Issue 3 do not add anything of value to the Staff's issue as previously worded, which should not be accepted.

3. The Staff's Issue 3(g) adequately addresses the issue of those markets where a hot cut process need not be implemented. The FCCA's rewrite of the issue did not improve it.

4. The FCCA's addition of Issue 5, asking whether a batch hot cut process would eliminate all operational and economic impairment does not make sense. The analysis of the hot cut process, the switching "triggers" analysis, and the "potential competition" analysis are all independent of each other, and not tied together as this issue would indicate. This issue should be rejected.

5. BellSouth objects to the FCCA's rewording of the Staff's Issue 6. The FCCA has misstated the FCC's requirements set forth in the TRO and its rules. For instance, the requirement that the competitive service being offered is at a level of cost, quality and maturity comparable to the ILEC's voice service only applies to services offered by "intermodal" providers, not every provider. Further, the FCCA's Issue 6(b) once again ignores the fact that for the switching trigger analysis, if the triggers are met, the state commissions are not allowed to look at other factors such as the financial well-being of the three or more providers used to demonstrate that the trigger is met. To the extent that the FCCA intends to include the provisions of Paragraph 503 in this issue, that paragraph provides that in "exceptional circumstances" where the triggers have been met and a "no impairment" finding has been made, that the state commission, after making the "no impairment" finding, can petition the FCC for a waiver of that finding for that market. The FCCA's wording of Issue 6(b) is completely inappropriate.

6. BellSouth objects to the FCCA's addition of Issue 7 in its proposal to modify the Staff's issues. Issue 7 implicates the same matter as Issue 6(b). In a triggers analysis, the triggers are either met or they are not. Once they are met, if there are other factors that a CLEC wants to claim forecloses the market, that is a matter that must be taken to the FCC by the state commission in order to get a waiver of the "no impairment" finding mandated by the triggers.

7. BellSouth objects to the FCCA's inclusion of Issue 8, for the same reasons set forth in Attachment 2, where the FCCA attempted to insert this issue in this proceeding. The Staff's issues have correctly set forth the issues based on the FCC's

rules. The FCC in the TRO precluded the state commissions from considering other factors where the triggers are met, other than insuring that CLECs used to meet the triggers have not announced that they are withdrawing from the market.

8. BellSouth objects to FCCA's Issue 9 because it improperly attempts to introduce criteria that are not part of the "triggers" analysis. The issue is simply whether the triggers are satisfied. The Commission is not permitted to consider "other factors" in answering that question. Consequently, the FCCA's issue 9 is inappropriate and should be rejected.

9. BellSouth objects to the FCCA's Issue 10 for the same reasons it objected to the FCCA's Issue 9. The issue is whether there are three non-affiliated CLECs serving mass market customers in the defined geographic market. There is no requirement that each CLEC be capable of economically serving the entire market.

10. BellSouth objects to the FCCA's Issue 11 for the same reasons it objected to the FCCA's Issues 8 and 9. The FCC specifically precluded the analysis of any other factors when the trigger analysis is met, other than seeing whether any of the CLECs used to meet the trigger have announced that they are withdrawing from the market.

11. BellSouth objects to the FCCA's Issue 12, which deals with wholesale triggers, on the same basis that it has objected to the FCCA's issues 8, 9 and 11.

12. The FCCA's Issues 13 and 14 attempt to rewrite the Staff's Issues 9(a) and 9(b). Those issues were being changed slightly as a result of the issue identification conference. The FCCA's Issue 13 appears to be a close restatement of the Staff's issue, so there is no need to include it in lieu of the Staff's issue. In the

FCCA's Issue 14, the FCCA has dropped the reference to intermodal providers of service that the Staff included. Since the Staff's version of the issue reflects the language in the FCC's rule on this subject, and the FCCA's version does not, the Staff's version should be retained.

13. The FCCA's Issue 15 is simply an attempt to restate the Staff's issue on operational barriers that have to be analyzed when considering "potential competition." Since the Staff's issue follows the FCC's rule, and the FCCA's restatement of that issue does not, the Staff's issue should be retained.

14. The FCCA's Issue 16 is a restatement of its Issue previously submitted (and discussed in Attachment 2) regarding the economic barriers that must be considered when a "potential competition" analysis is done. BellSouth will rely upon its earlier comments regarding this issue.

15. The FCCA's Issue 18 is simply an amalgamation of a number of issues posed in its initial issues list, which BellSouth addressed in Attachment 2. BellSouth objects to Issue 18 for all the reasons stated with regard to those issues as set forth in Attachment 2.

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17. The FCC, in its TRO and rules, has provided for the transition from UNE-P to UNE-L where there is a finding by a state commission of "no impairment."

Consequently, Issue 20 posed by the FCCA is not needed with regard to the unbundled switching docket.

18. The FCCA's Issue 21 is a repeat of an issue contained in its initial issues list, and essentially asks the Commission to establish barriers to prevent ILECs from filing subsequent cases seeking additional findings of "no impairment." The Commission already has procedures in place for initiating proceedings. What the FCCA is really requesting, as is evident from its initial issues list, is for the Commission to adopt some sort of standard to hinder the ILECs in coming back to the Commission for subsequent proceedings. Erecting such barriers is improper. The FCC has made it clear, as BellSouth explained in Attachment 2 when objecting to this same issue, that it expects the state commissions to have ongoing reviews of the status of unbundled switching. The FCC made it clear that this was an area where the operational and economic factors governing the analysis the FCC has required the states to make will be unlikely to remain constant. There is no basis for the Commission to attempt at this point to interpose barriers for any ILEC to file further proceedings seeking "no impairment" findings from the Commission. This issue should be rejected.

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