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January 21, 2004

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Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 030852-TP

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Shelley W. Padgett, which we ask that you file in the captioned docket.

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*  
Nancy B. White *(EPW)*

Enclosure

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

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**BELLSOUTH TELECOMMUNICATIONS, INC.**  
**REBUTTAL TESTIMONY OF SHELLEY W. PADGETT**  
**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**DOCKET NO. 030852-TP**  
**JANUARY 21, 2004**

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

A. My name is Shelley W. Padgett. I am employed by BellSouth as Manager – Regulatory and Policy Support in the Interconnection Services organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME SHELLEY W. PADGETT THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING ON DECEMBER 22, 2003, AND SUPPLEMENTAL DIRECT TESTIMONY ON JANUARY 9, 2004?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony addresses the revised direct testimony of Florida Competitive Carriers Association (FCCA) witness Gary Ball and portions of NewSouth Communications Corp. witness Jake Jennings' testimony. Mr.

1 Jennings' testimony is, in large measure, a brochure for NewSouth and the only  
2 substantive issue he addresses concerns Issue 20, the transition period. BellSouth  
3 has filed a Motion to Strike the remainder of the direct testimony of Mr. Jennings  
4 and the original direct testimony of Mr. Ball.

5

6 Q. DO YOU HAVE ANY OVERALL COMMENTS CONCERNING MR. BALL'S  
7 REVISED DIRECT TESTIMONY?

8

9 A. Yes, I do. Although Mr. Ball has inserted the issue numbers that his testimony  
10 claims to address, his testimony is still not relevant to the identification of the  
11 customer locations and transport routes where CLECs are not impaired without  
12 unbundled access to high-capacity loops and transport, which is the goal of this  
13 proceeding. Indeed, most of Mr. Ball's testimony simply discusses the FCC's  
14 *Triennial Review Order* ("TRO"), describing his interpretation of its policy  
15 objectives and applications. As I described in my direct testimony, however, the  
16 TRO is quite clear in specifying how the self-provisioning and wholesale triggers  
17 tests should be correctly applied, and most of Mr. Ball's interpretations are  
18 substantially incorrect. Furthermore, Mr. Ball erroneously suggests that the ILECs  
19 bear the burden of proof in this case (p. 4), which is contradicted by TRO, ¶ 92, in  
20 which the FCC states that "[w]e do not adopt a 'burden of proof' approach that  
21 places the onus on either incumbent LECS or competitors to prove or disprove the  
22 need for unbundling."

23

24

25

1 Q. HOW IS YOUR TESTIMONY ORGANIZED?

2

3 A. There are at least two primary areas of the TRO that Mr. Ball interprets  
4 incorrectly: the definition of a route and the definition of a customer location.  
5 Both Mr. Ball and Mr. Jennings address, albeit incorrectly, the transition period. I  
6 will address each of these in turn.

7

8

**(1) The definition of a route**

9

10 Q. WHAT DOES MR. BALL SAY ABOUT THE DEFINITION OF A "ROUTE"?

11

12 A. Mr. Ball claims that, for a CLEC to count towards the transport triggers on a  
13 given route, the CLEC must provide service directly connecting the two central  
14 offices at each end of the route, stating that to support a trigger claim, the ILEC  
15 must produce evidence that "the CLEC self-provisions transport service (...)  
16 between the two wire centers and that each collocation arrangement in question is  
17 being used as an endpoint for a transport route at the specific capacity level  
18 between two wire centers." (p. 21)

19

20 Q. IS THIS INTERPRETATION CORRECT?

21

22 A. No. Mr. Ball's interpretation of a transport route is puzzling, at best. Mr. Ball  
23 apparently believes that even if a carrier can indirectly send traffic between two  
24 ILEC central offices, this carrier does not count toward the triggers test for that  
25 route. Mr. Ball further argues that most CLEC networks are constructed such that

1 collocation arrangements are used as a traffic aggregation point that can only  
2 route back to the CLEC's switch and that the CLEC is incapable of routing traffic  
3 from its switch to the ILEC's central office across those same facilities (pp. 14-  
4 15).

5  
6 However, as the FCC has explained, passing through an intermediate wire center  
7 or an intermediate switch – ILEC or CLEC – does not prevent the connection of  
8 two central offices to form a route. Rule 319(e) clearly provides that “a *route* is a  
9 transmission path between one of an incumbent LEC's wire centers or switches  
10 and another of the incumbent LEC's wire centers or switches. A route between  
11 two points (e.g., wire center or switch “A” and wire center or switch “Z”) may  
12 pass through one or more intermediate wire centers or switches (e.g., wire center  
13 or switch “X”). Transmission paths between identical end points (e.g., wire  
14 center or switch “A” and wire center or switch “Z”) are the same *route*,  
15 irrespective of whether they pass through the same intermediate wire centers or  
16 switches, if any.”

17

18 Q. WHAT SHOULD BE ASSUMED ABOUT CLECS' ABILITIES TO PROVIDE  
19 TRANSPORT BETWEEN ILEC WIRE CENTERS?

20

21 A. As explained by Mr. Gray in his direct testimony (p. 8), it is reasonable to assume  
22 that a carrier has a “route” between any pair of incumbent LEC wire centers in the  
23 same LATA where it has operational collocation arrangements. Indeed, FPL  
24 FiberNet, Time Warner Telecom and Level 3 indicated that any point on their  
25 network can be connected to any other point on the network. FPL FiberNet's

1 response to the Staff's Discovery states, "All on-net locations are accessible (*sic*)  
2 to all other on-net locations and are not limited to the existing circuits  
3 documented below." Time Warner's response to the Staff's Discovery contains a  
4 note that states, "TWTC has or can provision over its own facilities transport  
5 routes from any of its cages to any of its cages." Another note says, "In Florida  
6 where TWTC has its own intercity network, TWTC is able to provision high  
7 capacity transport circuits between all cage locations in the state." Level 3's  
8 response to Staff's Discovery explains that, "[t]he Level 3 Gateway . . . is  
9 connected to every other Level 3 facility via the Level 3 intercity network."  
10 In short, it is logical and reasonable to assume that a carrier's network within a  
11 LATA is fully interconnected.

12  
13 Q. ARE THERE ANY OTHER PROBLEMS WITH MR. BALL'S DEFINITION?

14  
15 A. Yes. Mr. Ball claims the FCC requires that a CLEC must be "providing transport  
16 service between the two ILEC wire centers" for a route to be counted (p.21).

17  
18 Q. WHY IS THIS INCORRECT?

19  
20 A. The FCC's rules do not require that for a CLEC to qualify for the triggers it has to  
21 currently provide service between the two ILEC central offices at the ends of the  
22 route, but only that the "competing provider has deployed its own transport  
23 facilities and is operationally ready to use those transport facilities to provide  
24 dedicated (...) transport along the particular route" ((47 C.F.R.  
25 §51.319(e)(2)(i)(A)(1)). Therefore, the statements made in Mr. Ball's testimony

1 regarding the need to show evidence that a CLEC is “providing service between  
2 the two ILEC wire centers” are inconsistent with the TRO and should be  
3 disregarded by this Commission.

4

5 As stated in the FCC’s rules, the qualifying condition is that the CLEC has to be  
6 “operationally ready” to use those facilities to provide transport along the specific  
7 route, which a CLEC clearly is when it has operational fiber-based collocation  
8 arrangements at both ILEC central offices. Establishing a connection between  
9 two operationally ready collocations via a switch or hub typically requires only a  
10 software-based configuration of a circuit. Thus, even if a CLEC does not  
11 ordinarily use its interoffice facilities to provide transport between ILEC central  
12 offices, this fact is irrelevant for the proceeding since they are operationally ready  
13 to do so.

14

15 **(2) The definition of a customer location**

16

17 Q. HOW DOES MR. BALL DEFINE A “CUSTOMER LOCATION”?

18

19 A. Mr. Ball claims in his testimony that in multi-tenant buildings, the customer  
20 location is defined as the tenant unit rather than the building. (p. 20). The  
21 implication of this assertion is that meeting the self-provisioning trigger for loops  
22 would require an individual end user to be served by two or more competing  
23 providers in order for the trigger to apply, and, even then, the unbundling relief  
24 would only apply to the facilities serving that particular end user.

25

1 Q. IS MR. BALL'S INTERPRETATION CORRECT?

2

3 A. No. Mr. Ball's interpretation is contrary to the rules, which distinguish between  
4 "customer locations" and "individual unit[s] within that location". 47 C.F.R. §  
5 51.319(a)(4)(ii), (5)(i)(B). This distinction indicates that a customer location is a  
6 building, not an individual unit or suite in a multi-unit building.

7

8 Indeed, based on their discovery responses, the CLECs in Florida agree. The  
9 Commission's discovery specifically asked the CLECs to identify the "customer  
10 locations" to which they have deployed loop facilities and, in response, the  
11 CLECs generally provided the addresses of specific buildings.

12

13 Further, Mr. Ball contradicts his own position when he says on p. 19 that "the  
14 loop must permit the CLEC to access all units within a customer location, such as  
15 all tenants in a multi-tenant building," indicating that the "customer location" is  
16 the building rather than the tenant unit.

17

18 **(3) The transition period (Issue 20)**

19

20 Q. SHOULD THE COMMISSION ADDRESS THE TRANSITION PERIOD IN  
21 ANOTHER PROCEEDING FOLLOWING THIS PROCEEDING AS MR.  
22 BALL AND MR. JENNINGS SUGGEST?

23

24 A. No. Any transition period should be addressed in this proceeding. It would make  
25 little sense to expend additional time and resources later and further delay opening



1 the market on routes or to locations for which the Commission has already found  
2 that competing carriers are not impaired.

3

4 Q. MR. BALL AND MR. JENNINGS APPEAR TO CLAIM THAT A LONG  
5 TRANSITION PERIOD IS NECESSARY BECAUSE CLECS HAVE  
6 ENTERED INTO CONTRACTS WITH CUSTOMERS BASED ON UNE  
7 COSTS AND COULD NOT TOLERATE "SUDDEN COST INCREASES".  
8 (BALL, P. 39; JENNINGS, P. 15). PLEASE ADDRESS THIS ARGUMENT.

9

10 A. First, the FCC's initiated its Triennial Review in December 2001. Consequently,  
11 all carriers have been on notice at least for the past two years that some unbundled  
12 network elements may be delisted. That NewSouth has apparently failed to make  
13 contingency plans for this eventuality is no basis for a protracted delay or further  
14 proceedings to address transitional issues.

15

16 Second, and more importantly, if this Commission finds that CLECs are not  
17 impaired along a route or to a customer location, such a finding means there are  
18 alternatives to UNEs available. While a carrier may take time to evaluate its  
19 options and negotiate terms with other carriers, including the ILEC, a long  
20 transition period would only delay the movement of carriers toward the goal of  
21 promoting facilities-based competition as rapidly as possible. A long transition  
22 period would also require ILECs to continue to subsidize competitors in areas in  
23 which no impairment exists. A more reasonable time frame to allow carriers to  
24 make such alternative arrangements is 90 days.

25

1 Q. MR. BALL RECOMMENDS THAT THIS COMMISSION INSTITUTE A  
2 MUTLI-TIERED TRANSITION PROCESS. (P. 41). PLEASE RESPOND.

3

4 A. Mr. Ball's plan apparently relies upon the switching and line sharing plans  
5 established by the FCC. Without commenting on the merits of such plans, I  
6 disagree with Mr. Ball's reliance. This Commission may determine that CLECs  
7 are not impaired in competing along specific routes or to specific customer  
8 locations, not an entire market. There is absolutely no reason for a phased in  
9 approach.

10

11 Q. MR. BALL CLAIMS THAT PARAGRAPH 584 OF THE TRO MANDATES  
12 THAT COMPETING CARRIERS MAY CONTINUE TO HAVE ACCESS TO  
13 COMBINATIONS OF LOOP AND TRANSPORT EVEN IF ONE OF THE  
14 ELEMENTS OF A PARTICULAR COMBINATION HAS BEEN DELISTED.  
15 (PP. 40-41). PLEASE RESPOND.

16

17 A. Mr. Ball has inaccurately interpreted the FCC's intentions. Paragraph 584 was  
18 modified in the FCC's Errata, released September 17, 2003, to remove any  
19 reference to network elements made available to competing carriers pursuant to  
20 Section 271 of the Telecommunications Act of 1996 (the Act). In note 1990, the  
21 FCC explicitly stated its intentions with regard to such network elements. It  
22 states, "[w]e decline to require BOCs, pursuant to section 271, to combine  
23 network elements that no longer are required to be unbundled under section 251.  
24 Unlike section 251(c)(3), items 4-6 and 10 of section 271's competitive checklist  
25 contain no mention of 'combining' and, as noted above, do not refer back to the

1 combination requirement set forth in section 251(c)(3).” The FCC does not  
2 appear to agree with Mr. Ball.

3

4 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

5

6 A. Yes.

7

8 [522855]

**CERTIFICATE OF SERVICE  
Docket No. 030852-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Hand Delivery\* and FedEx this 21st day of January 2004 to the following:

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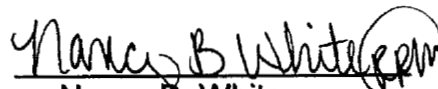
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