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May 6, 2005

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

**Re: Docket No. 041269-TL**

Dear Ms. Bayó:

During the status conference held in the above-listed docket on April 29, 2005, the Commission Staff asked the parties to identify issues that could be resolved as a matter of law, without an evidentiary hearing. The parties were to identify such issues using the first version of the issues list that staff distributed. For ease of reference, BellSouth has included that issues list, as Attachment A, which includes the modifications discussed by the Commission Staff and the parties. BellSouth remains willing to use this version of the issue list for this proceeding.

BellSouth believes there are actually two types of issues that should be identified. The first type of issue is one where the entire issue turns on a question of law. Issues 8(a) and (b) are examples of such issues. Issue 8(a) asks whether the state commissions have authority to require BellSouth to include in a Section 252 interconnection agreement, network elements under Section 271 or some applicable state law. BellSouth's position is that, as a matter of law, no state commission has such authority with regard to any Section 271 element, or with regard to any element based on state law, which conflicts with the FCC's findings. If the Commission determines that BellSouth is correct, Issue 8 will be resolved in *totalo* and the parties need not present evidence on that issue. Further, even if Issue 8(a) is somehow answered in the affirmative, Issue 8(b) asks whether a state commission has authority to establish rates for such elements. BellSouth maintains that, as a matter of law, only the FCC may review

rates to determine whether they are “just and reasonable” under Section 271, thus, to the extent Issue 8 (b) addresses pricing of Section 271 elements, that issue can also be resolved as a matter of law, without an evidentiary hearing.

Issue 17 is another example of this type of issue. Issue 17 asks whether BellSouth is obligated to provide line sharing to new CLEC customers after October 1, 2004. In BellSouth’s view, the TRO addresses this clearly and without equivocation, and the matter can be determined after briefing and without an evidentiary hearing.<sup>1</sup>

The second type of issue is somewhat different, although not completely so. If the Commission elects to use the attached issues list, the second type of issues all focus on the appropriate language to be included in parties’ interconnection agreements. In ruling on preliminary legal motions, BellSouth would not expect the Commission to actually decide whether BellSouth’s language or the CLECs’ language should be used. Instead, BellSouth would expect the Commission to make a legal decision that the parties could implement.

Issue 14, dealing with what constitutes the scope of “commingling,” is an example of the second type of issue. BellSouth believes that what constitutes “commingling” is clear, as a matter of law. That is, commingling is defined in the federal rules, which presumably no party disputes. BellSouth understands, however, that the CLECs may want to maintain that CLECs are entitled, under the law, to “commingle” DSL services with a UNE loop, or to combine 251(c)(3) UNEs with Section 271 network elements. Both of those points can be settled as a matter of law, without the necessity of testimony. That is, the Commission can issue an order setting forth the law. Once that decision is made, the parties will then have to agree upon the language that needs to be included in interconnection agreements to implement BellSouth’s “commingling” obligation. Until the questions of law are addressed, the parties will not know what has to be included in the agreement. Therefore, the legal determination must be made first.

BellSouth acknowledges that the second type of issue raises questions similar to the ones posed by the Commission Staff; namely, should the Commission first decide policy issues, then address interconnection agreement language. The distinction, in BellSouth’s view, is that each of the second type of issue presents an initial legal question, and not a policy question, that must be answered at the outset. While a hearing in which witnesses deal with policy considerations might arguably be useful, where the question is simply one of law, no hearing should be required.

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<sup>1</sup> BellSouth notes that, with respect to this issue, it is repetitive of pending Docket No. 040601-TP, which is currently in abeyance.

Ms. Blanca S. Bayó  
May 6, 2005  
Page 3

Because BellSouth and various CLECs are engaged in active negotiations, it is possible the parties will not have an actual disagreement over what the law requires regarding these second type of issues. The only way to determine that efficiently and with certainty, however, is to have the parties file motions identifying the legal issues to determine whether there is a dispute based on the responsive pleadings. If there is no legal dispute, then the testimony filed by the parties can focus on the language that should be included in the interconnection agreement, based on the parties' common understanding of the law.

With this explanation, Attachment B to this letter identifies the issues that BellSouth believes are legal issues, separated into Type 1 legal issues and Type 2 legal issues as explained above. This identification represents BellSouth's preliminary identification of legal issues, and BellSouth reserves the right to modify or supplement this list, if needed, as this docket proceeds.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



R. Douglas Lackey

Enclosures

cc: Parties of Record  
Nancy White

584445v2

**CERTIFICATE OF SERVICE**  
**Docket No. 041269-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
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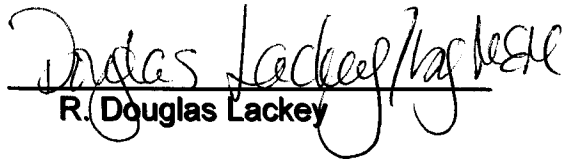
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R. Douglas Lackey

**CHANGE OF LAW GENERIC DOCKET  
ISSUES MATRIX**

**ATTACHMENT A**

<b>NO.</b>	<b>ISSUE DESCRIPTION</b>
<b>1</b>	<b>TRRO / FINAL RULES:</b> The Section 252 process requires negotiations and to the extent parties may not be able to negotiate resolution of particular issues arising out of the Final Rules/TRRO or to the extent that new issues related to the Final Rules/TRRO arise, issues related to those matters will be added to this list.
<b>2</b>	<b>TRRO / FINAL RULES:</b> 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?
<b>3</b>	<b>TRRO / FINAL RULES:</b> 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?
<b>4</b>	<b>TRRO / FINAL RULES:</b> What is the appropriate language to implement BellSouth's obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport?
<b>5</b>	<b>TRRO / FINAL RULES:</b> 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)?
<b>6</b>	<b>TRRO / FINAL RULES:</b> Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?
<b>7</b>	<b>TRRO / FINAL RULES:</b> 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?

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ISSUES MATRIX**

**ATTACHMENT A**

NO.	ISSUE DESCRIPTION
8	<p><b>TRRO / FINAL RULES:</b></p> <p>(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?</p> <p>(b) If the answer to part (a) is affirmative in any respect, does the Authority have the authority to establish rates for such elements?</p> <p>(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?</p>
9	<p><b>TRRO / FINAL RULES:</b> 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?</p>
10	<p><b>TRRO/FINAL RULES:</b> 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?</p>
11	<p><b>TRRO / FINAL RULES:</b> 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?</p>
12	<p><b>TRRO / FINAL RULES:</b> 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?"</p>
13	<p><b>TRRO / FINAL RULES:</b> Should network elements de-listed under section 251(c) (3) be removed from the SQM/P/MA/SEEM?</p>
14	<p><b>TRO - COMMINGLING:</b> 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)?</p>
15	<p><b>TRO - CONVERSIONS:</b> 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?</p>
16	<p><b>TRO - CONVERSIONS:</b> 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?</p>
17	<p><b>TRO - LINE SHARING:</b> 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?</p>



**CHANGE OF LAW GENERIC DOCKET  
ISSUES MATRIX**

**ATTACHMENT A**

<b>NO.</b>	<b>ISSUE DESCRIPTION</b>
18	<b>TRO – LINE SHARING – TRANSITION:</b> If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC’s existing line sharing arrangements?
19	<b>TRO – LINE SPLITTING:</b> What is the appropriate ICA language to implement BellSouth’s obligations with regard to line splitting?
20	<b>TRO – SUB-LOOP CONCENTRATION:</b> What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration?
21	<b>TRO – PACKET SWITCHING:</b> What is the appropriate ICA language, if any, to address packet switching?
22	<b>TRO – CALL-RELATED DATABASES:</b> What is the appropriate ICA language, if any, to address access to call related databases?
23	<b>TRO – GREENFIELD AREAS:</b> 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?
24	<b>TRO – HYBRID LOOPS:</b> What is the appropriate ICA language to implement BellSouth’s obligation to provide unbundled access to hybrid loops?
25	<b>TRO – END USER PREMISES:</b> 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”?
26	<b>TRO – ROUTINE NETWORK MODIFICATION:</b> What is the appropriate ICA language to implement BellSouth’s obligation to provide routine network modifications?
27	<b>TRO – ROUTINE NETWORK MODIFICATION:</b> 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?
28	<b>TRO – FIBER TO THE HOME:</b> What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?
29	<b>TRO – EELS AUDITS:</b> What is the appropriate ICA language to implement BellSouth’s EEL audit rights, if any, under the TRO?
30	<b>252(i):</b> What is the appropriate language to implement the FCC’s “entire agreement” rule under Section 252(i)?
31	<b>ISP Remand Core Forbearance Order:</b> What language should be used to incorporate the FCC’s <i>ISP Remand Core Forbearance Order</i> into interconnection agreements?

**CHANGE OF LAW GENERIC DOCKET  
ISSUES MATRIX**

**ATTACHMENT A**

<b>NO.</b>	<b>ISSUE DESCRIPTION</b>
<b>32</b>	<b>General Issue:</b> How should the determinations made in this proceeding be incorporated into existing § 252 interconnection agreements?

## **ATTACHMENT B**

### **Type 1 Legal issues**

3(a), 3(b), 6, 7, 8(a), 8(b), 17, 23, 25, 30, 32

### **Type 2 Legal Issues**

2, 11, 14, 15, 19, 20, 21, 22, 24, 26, 28, 29