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September 22, 2005

Mrs. Blanca S. Bayó
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Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 041269-TP

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Kathy Blake, Eric Fogle and Pamela A. Tipton, which we ask that you file in the above referenced 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,

Meredith Mays /RN

Meredith Mays

cc: All Parties of Record
Jerry Hendrix
R. Douglas Lackey
Nancy B. White

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CERTIFICATE OF SERVICE
Docket No. 041269-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and FedEx this 22nd day of September, 2005 to the following:

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(+)signed Protective Agreement
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BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF KATHY K. BLAKE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041269-TP

SEPTEMBER 22, 2005

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

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed Direct Testimony on August 16, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to portions of the Direct Testimony filed by Joseph Gillan, on behalf of the Competitive Carriers of the South, Inc. ("CompSouth"), the Direct Testimonies filed by Jerry Watts and Mary Conquest, on behalf of ITC^DeltaCom Communications, Inc. ("DeltaCom"), and Wanda G. Montano, on behalf of US LEC of Florida, Inc. and

Southeastern Competitive Carrier Association ("SECCA") on August 16, 2005.

Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING THE TESTIMONY FILED IN THIS PROCEEDING?

A. Yes. Portions of DeltaCom's witnesses' testimony relate to specific issues between BellSouth and DeltaCom that are outside the scope of the issues relevant to this proceeding. These issues, while important to both BellSouth and DeltaCom, are not appropriate to be considered by the Florida Public Service Commission ("Commission") in a generic proceeding, such as this.

Q. CAN YOU PROVIDE SOME EXAMPLES?

A. Yes. Mr. Watts provides several pages of testimony relating to issues that are part of DeltaCom's Petition for Mediation and Dispute Resolution, filed by DeltaCom before this Commission on June 30, 2005 ("DeltaCom's Petition"), but that are not issues identified in this proceeding. The two issues that Mr. Watts specifically refers to and even admits are outside the scope of the proceeding are Issues 20 and 27 (as identified on the Issues List attached to DeltaCom's Petition).

Similarly, Ms. Conquest discusses in detail BellSouth's Bulk Migration process. While she tries to address DeltaCom's concern relating to the Bulk Migration process under Issue 1 of the Joint Issues Matrix issued by this

Commission in this proceeding on July 11, 2005, Issue 1 actually has to do with the appropriate language to implement the Federal Communications Commission's ("FCC's") transition plan. Issue 1 does not speak to the actual processes and procedures used to effectuate such transition. The processes and procedures related to BellSouth's Bulk Migration process are not an issue in this proceeding. As a key member of CompSouth,[1] DeltaCom had the opportunity during issue identification between BellSouth and CompSouth to request and include an issue relating to BellSouth's hot cut process on the Joint Issues Matrix. It did not do so. As such, Ms. Conquests' testimony is outside the scope of this proceeding and should not be considered in the Commission's determinations.

Q. ON PAGE 4 OF HIS DIRECT TESTIMONY, MR. GILLAN SUGGESTS THAT THIS PROCEEDING IS "ABOUT MAKING *DIFFERENT* OFFERINGS AVAILABLE" IN PLACE OF THOSE ELEMENTS THAT ARE NO LONGER REQUIRED TO BE OFFERED PURSUANT TO SECTION 251(C)(3) OF THE TELECOMMUNICATIONS ACT OF 1996 (THE "ACT"). DOES THE COMMISSION HAVE JURISDICTION OVER SECTION 271 OFFERINGS?

A. Although I am not a lawyer, I understand the answer to that question to be "No". What Mr. Gillan advocates is for this Commission to require that BellSouth "offer through approved interconnection agreements each of the

[1] Jerry Watts, one of DeltaCom's witnesses in this proceeding, is the current President of CompSouth.

network elements listed in the competitive checklist of § 271, albeit at a (potentially) different price." As BellSouth described at length in its summary judgment briefs, this Commission does not have jurisdiction over section 271 elements, nor are section 271 elements to be included in section 252 interconnection agreements. Thus, Mr. Gillan's entire premise that "this proceeding is not simply about making less available to the competitive local exchange carriers ("CLECs"), it is also about making different offerings available in their place" is incorrect.

Q. THAT BEING SAID, DOES BELLSOUTH CURRENTLY OFFER ANY SERVICES THAT ARE "*DIFFERENT*" FROM, AND TAKE THE PLACE OF, THOSE ELEMENTS THAT ARE NO LONGER REQUIRED TO BE UNBUNDLED?

A. Yes. Almost a year and half ago, in response to the D.C. Circuit Court of Appeals' vacatur of the FCC's rules associated with mass-market switching, BellSouth developed and began offering CLECs a commercial wholesale service which included stand-alone switching and DS0 loop/switching combinations (including what was known as UNE-P) at commercially reasonable and competitive rates. To date, over 150 CLECs have executed commercial agreements containing negotiated terms and conditions relating to the provision of BellSouth's Wholesale DS0 Platform.

With respect to high capacity loops and dedicated transport, BellSouth currently offers, pursuant to its special access and private line tariffs, services

that are comparable to these loop and transport elements that are no longer required to be unbundled pursuant to Section 251.

Q. ON PAGES 3-4, MR. GILLAN ADVOCATES THE INTERCONNECTION AGREEMENT LANGUAGE HE BELIEVES IS "NEEDED TO EFFECTUATE THE *TRRO,* AS WELL AS CERTAIN REMAINING CHANGES FROM THE FCC'S EARLIER *TRIENNIAL REVIEW ORDER (TRO).*" HAS BELLSOUTH BEEN ABLE TO NEGOTIATE INTERCONNECTION AGREEMENTS WITH CLECS THAT DO IN FACT EFFECTUATE THE *TRRO?*

A. Yes. As I stated in my direct testimony, 75 CLECs have executed *TRRO* amendments, bringing their interconnection agreements into compliance with current law. In addition to the 75 *TRRO* amendments, BellSouth has entered into 36 new interconnection agreements with *TRRO*-compliant language for a total of 111 *TRRO*-compliant agreements in the state of Florida pursuant to which CLECs are purchasing Unbundled Network Elements ("UNEs")s. Thus, given the number of CLECs that have been able to reach agreement with BellSouth as to how to effectuate the *TRRO*, it is clear that Mr. Gillan's proposed language is not in fact "needed" to effectuate the *TRRO.* What is required is the parties' willingness to actually create an agreement that comports with what the FCC has required. BellSouth's proposed language does that. As is discussed in Ms. Tipton's testimony, Mr. Gillan's often does not.

Issue 2 – Amending Interconnection Agreements

Q. ON PAGES 9-10, MR. WATTS DISCUSSES THE FACT THAT THE ATTACHMENT 2 THAT WAS SENT TO DELTACOM CONTAINS REVISED LANGUAGE THAT IS UNRELATED TO CHANGE OF LAW ISSUES. WHY DID BELLSOUTH SEND A PROPOSED ATTACHMENT 2 WITH LANGUAGE REVISED OUTSIDE THE SCOPE OF THE GENERIC CHANGE OF LAW PROCEEDING?

A. BellSouth and DeltaCom have been in the midst of negotiating and arbitrating a new interconnection agreement since 2002. In the beginning of the recent negotiations to incorporate the changes resulting from the *TRO* and *TRRO*, BellSouth and DeltaCom agreed to use the Attachment 2 to the approved Georgia Interconnection Agreement executed pursuant to the Georgia Public Service Commission's *Arbitration Order*, in Docket No. 16583-U, dated January 16, 2004. For all other states, however, the language of Attachment 2 has not been agreed upon and, contrary to Mr. Watts' testimony, it has not been "approved". Since DeltaCom's Georgia interconnection agreement was based upon BellSouth's standard agreement from several years ago when the initial negotiations began in 2002, BellSouth proposed revisions to DeltaCom to incorporate language resulting from the *TRO* and *TRRO,* as well as language reflecting changes incorporated into BellSouth's current standard interconnection agreement.

Q. WAS IT APPROPRIATE FOR BELLSOUTH TO INCLUDE LANGUAGE IN THE PROPOSED ATTACHMENT 2 THAT WAS OUTSIDE THE SCOPE OF CHANGE OF LAW?

A. Yes. Given the extent of the negotiations between BellSouth and DeltaCom, BellSouth believed that if the two parties were to ever get resolution and reach agreement on a new interconnection agreement, it would be more efficient and a better use of both companies' resources to use an Attachment 2 that contains both generic change of law language as well as specific language relating to BellSouth and DeltaCom's separate on-going negotiations for a new agreement. It was not BellSouth's intent for the disputes relating to the non-*TRO/TRRO* language in Attachment 2 to be included in this generic proceeding. Such disputes are more appropriately addressed pursuant to the dispute resolution process provided for in their current interconnection agreement.

Issue 1 and Issue 8 – Definition of DS1 and DS3 Loops and Transport and UNE-P Embedded Base during the Transition Period

Q. DO YOU AGREE WITH COMPSOUTH'S PROPOSED DEFINITION OF "EMBEDDED CUSTOMER BASE" USED IN EXHIBIT JPG-1?

A. No. Throughout Exhibit JPG-1, Mr. Gillan defines the "embedded base" as a CLEC's customers and the services subscribed to by such customers instead of the actual UNE service arrangement that has been provisioned. His customer-

based definition, however, conflicts with the FCC's rules which use a service-based definition. For example, for DS1 and DS3 loops and transport, the FCC defines the embedded base by the actual loop or transport facility that is provided to the CLEC and states that only those facilities that have been provisioned as of the effective date of the *TRRO* should be included in the embedded base. 47 C.F.R. § 51.319.[2] For local switching, the FCC's rules state that "[r]equesting carriers may not obtain new local switching as an unbundled network element." 47 C.F.R. §51.319(d)(2)(iii).

BellSouth's proposed language in Attachment 2 follows the FCC's definition more closely by defining the embedded base as the actual individual UNE service arrangement, i.e., the actual loop, local switching element, or dedicated transport element.

The difference between CompSouth's proposed definition and the FCC's rules is that CompSouth is defining the embedded base to mean the CLEC's customers versus the FCC's definition that is based on the actual UNE service arrangement or a carrier requesting (or not requesting) service. This difference is important because it impacts whether a CLEC can order new UNE service arrangements for its existing customer (whether at the same or a new location) during the transition period. It also raises issues relating to the actual transition and any true-ups associated for such time period.

[2] *See* 47 C.F.R. §51.319(a)(4)(iii) for the definition of the embedded base for DS1 loops. *See also* 47 C.F.R. §51.319(a)(5)(iii) for the definition of the embedded base for DS3 loops; 47 C.F.R. §51.319(e)(2)(ii)(C) for the definition of the embedded base for DS1 dedicated transport; and 47 C.F.R. §51.319(e)(2)(iii)(C) for the definition of the embedded base for DS3 dedicated transport.

Q. IS A CLEC ALLOWED TO CONTINUE ORDERING UNE-P FOR ITS EMBEDDED BASE DURING THE TRANSITION PERIOD?

A. No. CompSouth's position that CLECs can order new UNE-P service arrangements for its embedded base during the transition period violates the Commission's May 5, 2005 *Order Denying Emergency Petitions*, in which the Commission concluded that "the *TRRO* is quite specific, as is the revised FCC rule attached and incorporated in that Order, that the requesting carriers may not obtain new local switching as an unbundled element. ... Any other conclusion would render the *TRRO* language regarding 'no new adds' a nullity, which would, consequently, render the prescribed 12-month transition period a confusing morass ripe for further dispute.".[3] Such a decision precludes any other conclusion other than that a request from a CLEC to add a new UNE-P arrangement for an existing customer must be denied.

Q. MR. WATTS (PAGES 11-12) ALLEGES THAT, BASED ON BELLSOUTH'S INTERPRETATION OF THE *TRRO,* A CLEC CAN NOT MERGE ANOTHER CLEC'S EMBEDDED BASE INTO ITS EMBEDDED BASE "WITHOUT LOSING THE TRANSITIONAL PRICING FOR THE EMBEDDED BASE CUSTOMERS." IS THAT BELLSOUTH'S POSITION?

A. No. This is one of many issues which would be handled as part of negotiation

[3] *Order Denying Emergency Petitions,* Docket No. 041269-TP, Order No. PSC-05-04920-FOF-TP, issued May 5, 2005, p. 6.

of a transfer agreement pursuant to a merger of two CLECs. The mergers and acquisitions process developed by BellSouth is outlined in BellSouth's Carrier Notification SN91083998, dated March 10, 2004.

Issue 6 – Non-Impaired Wire Centers

Q. DOES ANY CLEC WITNESS PROVIDE TESTIMONY WITH RESPECT TO THIS ISSUE?

A. No. However, in Exhibit JPG-1 under Issue 6 (page 20), CompSouth states that it accepts that "changed circumstances" will not alter a wire center's designation as non-impaired pursuant to the *TRRO*. Alternatively, CompSouth does propose language to address situations in which BellSouth "mistakenly" lists a wire center as non-impaired and a CLEC relies upon such designation to its detriment.

Q. DOES BELLSOUTH AGREE WITH COMPSOUTH'S PROPOSED LANGUAGE?

A. Not in its entirety. BellSouth does agree with CompSouth that, if BellSouth were to designate a wire center as non-impaired and a determination was later made that the wire center should not have been on the non-impaired wire center list, then BellSouth should refund any amounts due to a CLEC that, under certain circumstances, had obtained tariffed high capacity loops and dedicated transport in that wire center. BellSouth, however, does not agree to

the language in its entirety as proposed by CompSouth and has provided a redline of such language attached to Ms. Tipton's rebuttal testimony as Exhibit PAT-5. BellSouth's proposed contract language is more reasonable because it makes clear precisely the circumstances in which a refund would be made and delineates also the amount of any such refund. In contrast, CompSouth uses language that is less precise. CompSouth also uses terms that are somewhat inflammatory, such as "mistakenly" and "relies to its detriment". This type of language reflects CLEC rhetoric and not commercially reasonable terms.

Issue 12 – Removal of De-listed Elements from BellSouth's SQM/SEEM Plan

Q. MR. GILLAN (PAGES 52-53), SUPPORTED BY MS. CONQUEST (PAGE 6), ARGUES THAT ELEMENTS PROVIDED UNDER SECTION 271 MUST BE INCLUDED IN STATE PERFORMANCE PLANS. DO YOU AGREE?

A. No. The purpose of establishing the SQM/SEEM Plan was to ensure that BellSouth met and continues to meet its parity obligations under Section 251 of the Act. The requirement to provide nondiscriminatory access to its network is a Section 251(c)(3) obligation. The FCC, in granting BellSouth authority to provide long distance services in Florida, stated "it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms."[4] In fact, the FCC recognized that

[4] *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Florida and Tennessee,* CC Docket No. 02-307,

Section 271(d)(6) provides the FCC with enforcement powers outside of any performance penalty plan to act "quickly and decisively to ensure that the local market remains open."[5]

Indeed, the structure of the SQM/SEEM Plan demonstrates that it should not include Section 271 elements. As this Commission is aware, the SQM/SEEM Plan establishes a retail analogue or benchmark for each Section 251 element BellSouth provides. This mechanism allows the Commission to compare BellSouth's performance for its retail customers to BellSouth's performance for CLECs and to determine if BellSouth is providing service at parity.

There is no parity obligation for Section 271 elements. Consequently, it is neither necessary nor appropriate to compare BellSouth's performance for such Section 271 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.

Importantly, and as I discussed in my direct testimony, the removal of de-listed elements from the performance measurement plan does not mean that BellSouth will no longer meet its provisioning commitments. Indeed, the fact that the elements are no longer required under Section 251 means that there are competitive alternatives available, and if BellSouth were to fail to meet its

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Memorandum Opinion and Order, FCC 02-331, issued December 19, 2002, ¶ 167 ("*Florida 271 Approval Order*").

[5] *Florida 271 Approval Order*, ¶ 171.

commitments, CLECs have other options for serving their end user customers. Many of BellSouth's tariffs contain provisioning commitments that, if missed, carry substantial penalties payable to the customer, as well as out-of-service refund commitments. Thus, the removal of de-listed elements from BellSouth's performance plan does not mean that BellSouth will be able to ignore its commitments. It simply means that there are market forces that penalize BellSouth in the event that BellSouth fails to meet its commitments.

Q. IS THE SECTION ENTITLED "HOT CUT PERFORMANCE" IN COMPSOUTH'S PROPOSED LANGUAGE UNDER ISSUE 9 (PAGE 25-26 OF EXHIBIT JPG-1) NECESSARY?

A. No. The language proposed by CompSouth with respect to hot cut performance should not be included because hot cut performance measurements are already included in the current SQM/SEEM Plan. The Commission should not accept CompSouth's language, because any reference or additional language in Attachment 2 would be duplicative and potentially contradictory to the SQM/SEEM Plan already agreed to by CompSouth and approved by this Commission.

Issue 29 – Implementation of FCC "All-or-nothing" Order

Q. DID ANY CLEC WITNESS ADDRESS THIS ISSUE?

A. Before I respond, it is BellSouth's understanding that this issue has been settled. However, in an effort to provide complete testimony, I will respond with the following: Yes, US LEC's witness, Ms. Wanda Montano, is the only witness who addressed Issue 29. Ms. Montano simply stated that US LEC and BellSouth have entered into an amendment implementing the "all-or-nothing" rule as revised by the FCC's *Second Report and Order.*

Q. DOES THE FACT THAT NO OTHER CLEC WITNESS ADDRESSED ISSUE 29 OR PROVIDED EVIDENCE WITH RESPECT TO ISSUE 29 HAVE AN IMPACT ON HOW THIS COMMISSION SHOULD DETERMINE THIS ISSUE?

A. Yes. BellSouth provided direct testimony proposing language for this Commission to adopt and also provided BellSouth's rationale for such language. The fact that the one witness who did address this issue has already reached agreement with BellSouth demonstrates BellSouth's willingness to negotiate acceptable language if presented the opportunity. No other witness has proposed alternative language for BellSouth to consider and either support or rebut. The Commission should, therefore, approve BellSouth's proposed language.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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