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**BELLSOUTH TELECOMMUNICATIONS, INC.**  
**REBUTTAL TESTIMONY OF ERIC FOGLE**  
**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 Eric Fogle. I am employed by BellSouth Resources, Inc., as a Director in BellSouth's Interconnection Marketing Organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME ERIC FOGLE THAT FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes. I filed direct testimony on August 16, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to provide BellSouth's response to the testimony and proposed contract language contained in the direct testimony of Joseph Gillan on behalf of The Competitive Carriers of the South, Inc. ("CompSouth"), and James Maples on behalf of Sprint Communications

1 Company L.P. (“Sprint”) for Issues 5, 16, 17, 18, 19, 22, 23, 24, 25, 26, and  
2 27. I also address one issue that DeltaCom Witness Steve Brownworth raises  
3 that is not part of this proceeding.

4  
5 To the extent that the parties provided Interconnection Agreement (“ICA”)  
6 language supporting their positions on the issues, BellSouth has provided an  
7 edited version of the parties’ proposed ICA language, attached to Pam Tipton’s  
8 rebuttal testimony as PAT-5. This exhibit is provided to illustrate the ICA  
9 language that is acceptable to BellSouth. BellSouth has also considered  
10 additional modifications to some of the issues that I address, and my testimony  
11 includes additional language that is acceptable to BellSouth that is not included  
12 within exhibit PAT-5. I will explain BellSouth’s redlines and the additional  
13 language that I include for the issues I address in this rebuttal testimony.

14  
15 *Issue 5: Are HDSL-capable copper loops the equivalent of DSL loops for the*  
16 *purpose of evaluating impairment?*

17  
18 Q. WHAT ARE THE DISAGREEMENTS BETWEEN THE PARTIES  
19 CONCERNING THIS ISSUE?

20  
21 A. There are two (2) overall disagreements. First, the parties disagree about how  
22 to count UNE High-bit Digital Subscriber Loop (“HDSL”) lines for the  
23 purpose of evaluating impairment. Second, the parties disagree as to whether  
24 there should be continued access to UNE HDSL-capable loops in wire centers  
25 in which CLECs are not impaired and are not entitled to obtain Unbundled

1 Network Element (“UNE”) DS1 loops.

2

3 Q. WITH RESPECT TO THE FIRST DISAGREEMENT, DID BELLSOUTH  
4 COUNT UNE HDSL-CAPABLE LOOPS AS DS1 EQUIVALENTS FOR  
5 THE PURPOSE OF EVALUATING IMPAIRMENT?

6

7 A. No. As I stated in my direct testimony, BellSouth counted UNE High-bit rate  
8 Digital Subscriber Loop (“HDSL”) capable copper loops on a one-for-one  
9 basis and did not convert each UNE HDSL-capable loop to voice grade  
10 equivalents. If BellSouth had counted UNE HDSL-capable copper loops as  
11 voice grade equivalents, it would have had no impact to the Florida wire center  
12 list. BellSouth elected to conservatively calculate deployed UNE HDSL loops,  
13 although it would have been appropriate to convert deployed UNE HDSL  
14 capable loops to voice grade equivalents. While Mr. Gillan expressed  
15 concerns about calculating UNE HDSL-capable loops, (Direct Testimony of  
16 Joseph Gillan, pp. 24 – 27; Direct Testimony of James Maples, pp. 27 - 28)  
17 these concerns appear to be overstated.

18

19 In any event, I understand the Federal Communications Commission (“FCC”)  
20 to have contemplated that currently deployed UNE HDSL loops would be  
21 counted as the equivalent of 24 business lines based upon statements made in  
22 the Triennial Review Order (“TRO”) that, “Carriers frequently use a form of  
23 DSL service, i.e., High-bit rate DSL (HDSL), both two-wire and four-wire  
24 HDSL, as the means for delivering T1 services to customers. We will use DS1  
25 for consistency but note that a DS1 loop and a T1 are equivalent in speed and

1 capacity, both representing the North American standard for a symmetric  
2 digital transmission link of 1.544 Mbps.”

3

4 Because HDSL and DS1 loops are technically equivalent, which both  
5 BellSouth and Sprint recognize (Maples, pp. 28 – 29) and because the FCC  
6 clearly references the use of HDSL technology to deliver DS1 service, it is  
7 clearly appropriate to count currently-deployed UNE HDSL loops delivering  
8 DS1 level service as a 24-line equivalents. To avoid a dispute on this issue,  
9 however, BellSouth counted UNE HDSL loops as one (line) instead of 24  
10 business lines in its nonimpairment analysis.

11

12 Q. TURNING TO THE SECOND AREA OF DISAGREEMENT, WHY DOES  
13 BELL SOUTH CONCLUDE THAT CLECS ARE NOT ENTITLED TO UNE  
14 HDSL LOOPS IN OFFICES WHERE NO IMPAIRMENT FOR DS1 LOOPS  
15 EXISTS?

16

17 A. The FCC has defined DS1 loops to include 2-wire and 4-wire copper loops  
18 capable of providing DS1 service using HDSL technology in its definition of  
19 DS1 loops. (47 C.F.R. § 51.319(a)(4). BellSouth has included the FCC’s  
20 definition in its ICA language, which provides that “DS1 Loops include 2-wire  
21 and 4-wire copper Loops capable of providing high-bit rate digital subscriber  
22 line services, such as 2-wire and 4-wire HDSL Compatible Loops.” (See PAT-  
23 1, Section 2.3.6.1) Based upon the FCC’s definition, DS1 loop relief includes  
24 relief from the obligation to provide UNE HDSL loops.

25

1 It is also useful to keep in mind that BellSouth is not attempting to restrict  
2 CLECs from using HDSL *technology*. In fact, the import of the FCC's Order  
3 is to encourage CLECs to deploy this technology on their own. Indeed, Sprint  
4 concedes that BellSouth has explained that Sprint can order Unbundled Copper  
5 Loops ("UCLs") (Maples, p. 37) with loop make-up ("LMU") to determine if a  
6 specific loop meets their criteria for deploying HDSL-based DS1 service and  
7 continue to avail themselves of HDSL technology. However, without  
8 impairment, there is no reason to compel BellSouth to continue to provide a  
9 loop product that is simply an indicator of a pre-defined set of conditions  
10 suitable for supporting HDSL technology, as the CLECs can provide this  
11 capability on their own. In other words, in offices where there is impairment,  
12 the UNE HDSL-capable loop that CLECs order today will remain unchanged.  
13 In offices where there is no impairment, the UNE HDSL-capable loop  
14 Universal Service Order Code ("USOC") that CLECs previously ordered  
15 (albeit infrequently) will no longer be available, but the exact same copper  
16 loop that could be ordered previously via the UNE HDSL-capable loop USOC  
17 is still available, and can be ordered using the UCL USOC. CLECs would  
18 need to check LMU to determine if the UCL being ordered meets the HDSL  
19 criteria. If the only reasons that the UCL does not meet the criteria are the  
20 presence of load coils or excessive bridged taps, then the CLEC can order  
21 ULM to make the necessary changes.

22  
23  
24  
25

1 Q: WHAT WOULD BE THE IMPACT TO CLECS IF BELL SOUTH IS NOT  
2 REQUIRED TO PROVIDE UNE HDSL LOOPS IN CERTAIN OFFICES?

3  
4 A. There would be minimal impact to CLECs. Despite Mr. Maple's concerns,  
5 BellSouth's records indicated that in the entire state as of the end of July,  
6 BellSouth provided 833 UNE HDSL loops to all CLECs, of which Sprint had  
7 none. Although Sprint suggests that BellSouth is attempting to unnecessarily  
8 complicate an ordering and provisioning process (Maples, p. 37) by allowing  
9 CLECs to order UCLs instead of a UNE HDSL loop, the reality is that  
10 BellSouth is simply trying to follow the FCC's rules, which also has the result  
11 of simplifying BellSouth's ordering systems.

12  
13 Q. WHAT ICA LANGUAGE DO THE CLECS PROPOSE WITH RESPECT TO  
14 HDSL LOOPS?

15  
16 A. The CLECs propose ICA language that states "HDSL-capable loops are not the  
17 equivalent of DS1 loops for the purpose of counting Business Lines." (Gillan  
18 Exhibit JPG-1, p. 19). This language improperly creates a distinction between  
19 HDSL and DS1 loops, when such a distinction does not exist. BellSouth  
20 recommends that the Commission reject CompSouth's proposed language  
21 from any approved contract language that results from this proceeding.

22  
23 *Issue 16: Is BellSouth obligated pursuant to the Telecommunications Act of 1996*  
24 *and FCC Orders to provide line sharing to new CLEC customers after October 1,*  
25 *2004?*

1 Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE  
2 PARTIES.

3

4 A. Even though the FCC has made clear in paragraphs 199, 260, 261, 262, 264,  
5 and 265 of the *TRO* that BellSouth is not obligated to provide new line sharing  
6 arrangements after October 1, 2004, the CLECs propose ICA language (Gillan  
7 Attachment JPG-1, Section 2.11) that would obligate BellSouth to continue to  
8 provide access to line sharing as an unbundled network element. This  
9 language should be rejected in its entirety.

10

11 Q. HAVE THE CLECS PROVIDED ANY EXPLANATION FOR THEIR LINE  
12 SHARING CONTRACT LANGUAGE?

13

14 A. No. Although Mr. Gillan has included contract language, he failed to include  
15 any discussion supporting that language, which is likely because this issue is  
16 more of a legal dispute, which both parties have briefed. For more information  
17 on this issue, I refer the Commission to BellSouth's summary judgment briefs.

18

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

21

22 Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES  
23 CONCERNING THIS ISSUE?

24

25 A. The CLECs' proposed contract language does not include the FCC's transition

1 plan. The CLECs' omission is clear when the language at my direct exhibit  
2 EF-1 at 3.1.2 is compared with Mr. Gillan's proposed language at JPG-1,  
3 Section 3.1.3. The Commission should simply reject the CompSouth language  
4 and adopt BellSouth's transition language (provided in my direct testimony as  
5 Exhibit EF-1), which includes the FCC's transition plan. BellSouth's proposed  
6 language also requires CLECs that have ordered line sharing arrangements  
7 after October 1, 2004 to pay the full loop rate for those arrangements.  
8 CompSouth's proposed language omits such a requirement.

9

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

12

13 Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE  
14 PARTIES.

15

16 A. Based on the ICA language proposed by Joseph Gillan (Exhibit JPG-1, Section  
17 3), the parties' disagreement centers on the types of loops that should be  
18 included with line splitting, and who should provide the splitter.

19

20 Q. DOES THE ADDITIONAL LOOP TYPE INTRODUCED BY COMPSOUTH  
21 REQUIRE LINE SPLITTING?

22

23 A. No. BellSouth's contract language (Section 3 in Attachment 2) provides for  
24 line splitting over Unbundled Network Element-Loop ("UNE-L"), and, for a  
25 limited time, with Unbundled Network Element-Platform ("UNE-P")



1 arrangements. The proposed CompSouth ICA language attempts to require  
2 line splitting on a commingled arrangement of a loop and unbundled local  
3 switching pursuant to section 271. The loop described by CompSouth does  
4 not exist, is not required by the FCC, and, therefore, should not be included in  
5 the section of the ICA that addresses line splitting.

6

7 Q. WHAT DISAGREEMENT EXISTS CONCERNING SPLITTERS?

8

9 A. It appears that the CLECs propose that BellSouth be obligated to provide  
10 splitters between the data and voice CLECs that are splitting a UNE-L. As I  
11 stated in my direct testimony, splitter functionality can easily be provided by  
12 either an inexpensive stand-alone splitter or by utilizing the integrated splitter  
13 built into all Asynchronous Digital Subscriber Line (“ADSL”) platforms.  
14 Clearly, BellSouth should not be obligated to provide the CLECs with splitters  
15 when they are utilizing UNE-L and can readily provide this function for  
16 themselves.

17

18 ***Issue 19: SUB-LOOP CONCENTRATION: a) What is the appropriate ICA***  
19 ***language, if any, to address sub loop feeder or sub loop concentration? b) Do the***  
20 ***FCC’s rules for sub loops for multi-unit premises limit CLEC access to copper***  
21 ***facilities only or do they also include access to fiber facilities? c) What are the***  
22 ***suitable points of access for sub-loops for multi-unit premises?***

23

24

25

1 Q. HAVE THE CLECS PROVIDED ANY DIRECT TESTIMONY ON THIS  
2 ISSUE?

3  
4 A. Not as to Issue 19(a). In Georgia, the parties agreed to remove Issue 20(a),  
5 Issue 19(a) in Florida, as an active issue.

6  
7 Q. SUBPARTS B AND C OF THIS ISSUE WERE RAISED SPECIFICALLY  
8 BY SPRINT. PLEASE SUMMARIZE THEIR CONCERNS.

9  
10 A. To the extent that Sprint wants to include specific portions of the FCC's  
11 subloop rules verbatim in the parties' ICA, BellSouth has no objection to  
12 discussing with Sprint how to include the rules as introductory language to  
13 BellSouth's existing subloop language, modified if necessary to reflect any  
14 specific operational limitations. Indeed, it is my understanding that BellSouth  
15 and Sprint have resolved any differences they may have had regarding subparts  
16 (b) and (c). If my understanding is incorrect, or the parties' agreement is not  
17 finalized, I will outline the potential disagreement..

18  
19 Q. PLEASE EXPLAIN THE POTENTIAL DISAGREEMENT.

20  
21 A. Sprint apparently believes that BellSouth offers only two forms of sub-loops,  
22 Unbundled Subloop Distribution ("USLD") and Unbundled Network  
23 Terminating Wire ("UNTW"). BellSouth actually satisfies its subloop  
24 obligations by offering four subloop elements; USLD-Voice Grade ("USLD-  
25 VG"), Unbundled Cooper Subloop ("UCSL"), USLD-Intrabuilding Network

1 Cable (“USLD-INC” aka riser cable), and UNTW. BellSouth’s offerings and  
2 proposed contract language are not intended to restrict its obligations; instead,  
3 a CLEC may desire some or all of BellSouth’s subloop offerings depending on  
4 its business needs. For example, although Sprint expresses a concern that  
5 BellSouth cannot limit its access to fiber subloops, the UNTW in BellSouth’s  
6 network is composed entirely from copper. BellSouth has no fiber UNTW in  
7 its network.

8

9 Q. CAN BELLSOUTH ADDRESS SPRINT’S CONCERN BY SIMPLY  
10 MODIFYING ITS UNTW LANGUAGE?

11

12 A. That approach would not be workable from BellSouth’s perspective, because it  
13 would result in Sprint redefining BellSouth’s products. BellSouth believes a  
14 better resolution of this issue may be to include the FCC’s rules in its  
15 introductory subloop language, modified if necessary to reflect any specific  
16 operational limitations. In the event that Sprint desires access to a subloop to  
17 serve an multiple dwelling unit (“MDU”), and wishes to access the subloop at  
18 some point other than a building entrance facility, then including the FCC’s  
19 rules should satisfy this concern.

20

21 ***Issue 22: (a) What is the appropriate definition of minimum point of entry***  
22 ***(“MPOE”)?*** ***(b) What is the appropriate language to implement BellSouth’s***  
23 ***obligation, if any, to offer unbundled access to newly-deployed or ‘greenfield’ fiber***  
24 ***loops, including fiber loops deployed to the MPOE of a multiple dwelling unit that is***

1 *predominantly residential, and what, if any, impact does the ownership of the inside*  
2 *wiring from the MPOE to each end user have on this obligation?*

3

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

6

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

9

10 Q. DID THE CLECS PROVIDE ANY DIRECT TESTIMONY ON THESE  
11 ISSUES?

12

13 A. No.

14

15 Q. DOES BELLSOUTH AGREE WITH ANY OF THE CLECS' PROPOSED  
16 ICA LANGUAGE?

17

18 A. Yes. BellSouth agrees with the CLECs' proposed language for access to Fiber  
19 to the Home and Fiber to the Curb ("FTTH/FTTC"). (Gillan Exhibit JPG-1,  
20 Paragraphs 2.1.2, 2.1.2.1, and 2.1.2.2, Issue 22). BellSouth does not agree  
21 with CompSouth's proposed language at Paragraph 2.1.2.3.

22

23 Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES CONCERNING  
24 COMPSOUTH'S PROPOSED PARAGRAPH 2.1.2.3?

25

1 A. CompSouth is asking BellSouth to agree to language that provides it with an  
2 unlimited right to FTTH/FTTC DS1 loops in impaired wire centers based on  
3 its reading of the FCC's *TRO* and subsequent reconsideration orders.  
4 BellSouth is willing to replace CompSouth's proposed paragraph 2.1.2.3 with  
5 the following language:

6 FTTH/FTTC loops do not include local loops to predominantly  
7 business MDUs.

8 Also, because there are pending motions for reconsideration pending at the  
9 FCC, subsequent FCC action that may clarify this issue would need to be  
10 addressed through the change of law provisions of the interconnection  
11 agreement between the parties, as applicable. Thus, if the FCC addresses  
12 pending motions for reconsideration and sets forth that relief extends to all  
13 fiber deployments, then BellSouth would expect to incorporate any such order  
14 into its contracts.

15

16 Q. CAN YOU EXPLAIN MORE FULLY THE DISAGREEMENT BETWEEN  
17 BELLSOUTH AND COMPSOUTH?

18

19 A. Yes. The disagreement stems from language within various FCC orders  
20 concerning the scope of unbundling relief relating to new fiber deployment. In  
21 the *TRO*, the FCC specifically found that "Incumbent LECs do not have to  
22 offer unbundled access to newly deployed or "greenfield" fiber loops" (*TRO*, ¶  
23 273) and also did not "require incumbent LECs to provide unbundled access to  
24 new FTTH loops for either narrowband or broadband services." *TRO*, ¶ 276.  
25 In the FCC's *MDU Reconsideration Order*, the FCC extended unbundling

1 relief to fiber loops that serve predominantly residential MDUs.<sup>1</sup> Likewise, in  
2 the FCC's *FTTC Reconsideration Order*, the FCC found that, "as with FTTH  
3 loops, we find that competitive carriers are not impaired without access to  
4 FTTC loops in greenfield deployments."<sup>2</sup> Finally, in its *Section 271*  
5 *Forbearance Order*, the FCC reiterated that it had previously "distinguished  
6 new fiber networks used to provide broadband services for the purposes of its  
7 unbundling analysis" and "determined, on a national basis, that incumbent  
8 LECs do not have to unbundle certain broadband elements, including FTTH  
9 loops in greenfield situations."<sup>3</sup> CompSouth reads language within some of  
10 these orders as limited unbundling relief to mass market customers.

11  
12 In BellSouth's view the best reading of the *TRO*, the *MDU Reconsideration*  
13 *Order*, the *FTTC Reconsideration Order*, the *271 Forbearance Order*, the  
14 rules, and the FCC's goals of increasing broadband deployment is that the  
15 FTTH/FTTC relief extends to all such deployments. For example, the FCC  
16 stated in the *TRO* at ¶ 210 that while it adopted "loop unbundling rules specific  
17 to each loop type, our obligations and limitations for such loops do not vary  
18 based on the customer to be served." The FCC also recognized that CLECs  
19 were leading the deployment of new fiber and that ILECs had no competitive  
20 advantage in deploying fiber. Likewise, in the *TRO Errata* (issued September  
21 2003), the FCC deleted the word "residential" from its rules defining FTTH  
22 loops, so that a fiber-to-the-home loop is a local loop serving an end user's

---

<sup>1</sup> *MDU Reconsideration Order*, FCC Docket Nos. 01-338, 96-98, 98-147 (August 9, 2004), ¶ 4.

<sup>2</sup> *FTTC Reconsideration Order*, FCC Docket Nos. 01-338, 96-98, 98-147 (October 18, 2004), ¶ 12.

<sup>3</sup> *Section 271 Forbearance Order*, FCC Docket Nos. 01-338, 03-235, 03-260, 04-48 (October 27, 2004) ¶ 6.

1 customer premises (TRO Errata, ¶37). Also, in the TRO Errata, the FCC  
2 replaced the words “residential unit” with “end user’s customer premises” in  
3 the rules defining new builds, so that an ILEC is not required to provide fiber-  
4 to-the-home loop to an end user’s customer premises. (TRO Errata, ¶ 38).  
5 Finally, in the Errata to the October 18, 2004 Order on Reconsideration, the  
6 FCC replaced the words “a residential unit” in its rules addressing new builds,  
7 so that an ILEC is not required to provide a FTTH or FTTC loop on an  
8 unbundled basis when the ILEC deploys such a loop to an end user’s customer  
9 premises that has not been served by any loop facility. CompSouth’s proposed  
10 contract language is contrary to the FCC’s goals of encouraging the  
11 deployment of new fiber networks by mandating access when CLECs are not  
12 impaired without FTTH/FTTC loops.

13  
14 Q. DOES BELLSOUTH HAVE CONCERNS WITH THE PROPOSED ICA  
15 LANGUAGE PROVIDED BY COMPSOUTH REGARDING HYBRID  
16 LOOPS (ISSUE 23)?

17  
18 A. Yes. CompSouth omitted BellSouth’s paragraph 2.1.2.3 which addresses  
19 availability to copper facilities in overbuild areas. With regard to hybrid loops,  
20 BellSouth disagrees with the additional language provided by CompSouth that  
21 attempts to create an obligation for access to hybrid loops, even if there is no  
22 impairment. Specifically, in paragraph 2.1.3, CompSouth proposes, “Where  
23 impairment does not exist, BellSouth shall provide such hybrid loop at just and  
24 reasonable rates pursuant to Section 271...” This language is not appropriate  
25 because, as set forth in its briefs, BellSouth has no obligation to include

1 Section 271 obligations in interconnection agreements entered into under  
2 Section 251 and 252 of the Act.

3

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

6

7 Q. DID THE CLECS PROVIDE ANY DIRECT TESTIMONY ON THIS  
8 ISSUE?

9

10 A. No.

11

12 Q. WHAT ICA LANGUAGE DO THE CLECS PROPOSE?

13

14 A. The CLECs have included language at JPG-1, page 52. BellSouth does not  
15 object to the CLECs' proposed language and this issue was removed as an  
16 active issue during the Georgia change of law docket.

17

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

20

21 Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE  
22 PARTIES.

23

24 A. The parties view Routine Network Modifications and line conditioning  
25 differently. BellSouth's position is that line conditioning is a subset of the



1 Routine Network Modifications defined by the FCC in paragraphs 250 and 643  
2 of the *TRO*. The CLECs' position is that the obligations for Routine Network  
3 Modifications and line conditioning are separate and independent.

4  
5 Q. WHY DOES COMPSOUTH CLAIM THAT LINE CONDITIONING IS NOT  
6 A SUBSET OF ROUTINE NETWORK MODIFICATIONS?

7  
8 A. On Page 57 of his direct testimony, Gillan states that "BellSouth is obligated to  
9 condition facilities '... whether or not the incumbent LEC offers advanced  
10 services to the end user customer on that copper loop or copper subloop.'" Then, he erroneously concludes that "BellSouth need not routinely condition  
11 loop facilities for its own services for it to be obligated to condition facilities  
12 for other CLECs." It is the latter conclusion with which BellSouth disagrees.  
13 BellSouth is not asserting that it needs to offer advanced services to a specific  
14 customer to have a routine network modification obligation. It is necessary,  
15 however, for BellSouth to routinely perform network modifications for its own  
16 services to have an obligation to perform similar modifications for CLECs.

17  
18  
19 In addition, Mr. Gillan points out that the rules for Routine Network  
20 Modifications are in a different section of the rules from the line conditioning  
21 rules. BellSouth does not disagree that there are separately numbered subparts  
22 (or subsections) contained within the federal rules, but both subparts are  
23 included within the overall rubric of the FCC's "Specific Unbundling  
24 Requirements" at 47 C.F.R. § 51.319. The *TRO* at paragraphs 250 and 643  
25 explains the relationship between Routine Network Modifications and line

1 conditioning unbundling requirements. Specifically, in Paragraph 250, the  
2 FCC states, “Line conditioning constitutes a form of Routine Network  
3 Modification ...” Later, in Paragraph 643, the FCC states, “Line Conditioning  
4 is properly seen as a Routine Network Modification ....” In both cases, the  
5 phrase “constitutes a form” and the term “properly” are defined as a “subset.”  
6 Stated simply, the FCC clearly identifies BellSouth’s line conditioning  
7 obligation as a subset of BellSouth’s routine network modification obligations.  
8

9 Q. PLEASE RESPOND TO MR. GILLAN’S EXAMPLE ON PAGE 58 THAT  
10 PURPORTS TO ILLUSTRATE THE DIFFERENCE BETWEEN LINE  
11 CONDITIONING AND ROUTINE NETWORK MODIFICATIONS.  
12

13 A. Mr. Gillan states that “to a large extent, BellSouth’s DSL offerings are housed  
14 in remote terminals, located closer to customers.” He continues, “CLECs, on  
15 the other hand, collocate their equipment at the central office and, therefore,  
16 must frequently use longer loops.” Both claims are inaccurate. Like CLECs,  
17 BellSouth started its DSL deployment in central offices, and prefers deploying  
18 in central offices where possible. Within BellSouth’s service territory, there  
19 are a large number of customers that cannot be reached with DSL service from  
20 the central office (by either CLECs or BellSouth). In these situations, it is  
21 necessary for both BellSouth and the CLECs (which some have chosen to do)  
22 to deploy Digital Subscriber Line Access Multiplexers (“DSLAMs”) in remote  
23 terminals to reach customers. In either case, the CLEC and BellSouth are in  
24 the same situation, and must deploy the same equipment to reach the same  
25 customers. As a result, there is no distinction between the DSL service offered

1 by BellSouth and the DSL service offered by CLECs that would create a  
2 situation where the line conditioning that BellSouth performs for itself would  
3 not also be sufficient for CLECs.

4

5 Mr. Gillan on Page 58 continues, stating that line conditioning is an "...  
6 obligation that BellSouth must honor *whether or not it would do so for its own*  
7 *customers ...*" without any supporting justification for this position.

8

9 Clearly, CompSouth's position attempts to read away the FCC's plain  
10 language that specifies that line conditioning is a subset of Routine Network  
11 Modifications, and that as a result, BellSouth's line conditioning obligation is  
12 based entirely on what it would do for its own customers. In an effort to  
13 narrow the dispute between the parties, however, BellSouth can agree to some  
14 of CompSouth's proposed contract language as reflected in BellSouth witness  
15 Pam Tipton's Exhibit PAT-5.

16

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

21

22 Q. DID COMPSOUTH PROVIDE ANY DIRECT TESTIMONY OR  
23 PROPOSED ICA LANGUAGE ON THIS ISSUE?

24

1 A. No. CompSouth did not provide any direct testimony on this issue, but Mr.  
2 Gillan did propose ICA language that only allows BellSouth to recover costs  
3 for Routine Network Modifications based on the Total Element Long Run  
4 Incremental Cost (“TELRIC”) rates already approved by the Commission,  
5 even if the Routine Network Modification being requested was not included in  
6 the calculation of that rate. Page 58.

7

8 In contrast, BellSouth’s position is that for Routine Network Modifications  
9 that have established TELRIC rates approved by this Commission, that the  
10 Commission-approved rates would be used. For Routine Network  
11 Modifications that have not been included in Commission-approved TELRIC  
12 rates, BellSouth proposes that each such situation be handled on an individual  
13 case basis, until such time that the Commission approves a rate for the  
14 previously unspecified Routine Network Modification.

15

16 Q. PLEASE EXPLAIN THE ISSUE THAT YOU NOTED IN YOUR OPENING  
17 REMARKS THAT HAS BEEN INJECTED BY DELTACOM WITNESS  
18 STEVE BROWNORTH.

19

20 A. Mr. Brownworth, on Page 11 of his direct testimony, raises an issue of  
21 providing narrowband services on Integrated Digital Loop Carrier (“IDLC”)  
22 and analog-to-digital conversions. That issue is not a part of this proceeding.  
23 In fact, that issue is part of Issue 8 in Docket No. 030137-TP, which is  
24 DeltaCom’s Petition for Arbitration of its Interconnection Agreement with  
25 BellSouth. Mr. Brownworth filed Direct Testimony about this same issue on

1            May 19, 2003, and BellSouth has provided its response to Issue 8 in the  
2            appropriate proceeding. BellSouth reserves the right to supplement its direct  
3            and rebuttal testimony if the Commission opts to properly move this issue into  
4            this proceeding.

5

6    Q.    DOES THIS CONCLUDE YOUR TESTIMONY?

7

8    A.    Yes.

9    601027