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To: Filings@psc.state.fl.us
Cc: Fatool, Vicki; Linda Hobbs; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Slaughter, Brenda ; Mays, Meredith
Subject: 041269-TL BellSouth Telecommunications, Inc.'s Prehearing Statement
Attachments: 041269-TL BellSouth Prehearing Statement.pdf

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 COM 3
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- B. Docket No. 041269-TL: In re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law
- C. BellSouth Telecommunications, Inc.
 on behalf of Meredith Mays
- D. 28 pages total
- E. BellSouth Telecommunication Inc.'s Prehearing Statement.

<<041269-TL BellSouth Prehearing Statement.pdf>>

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ORIGINAL

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September 29, 2005

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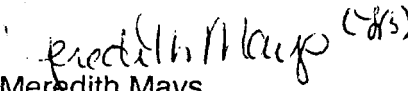
Re: Docket No. 041269-TP

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Prehearing Statement, which we ask that you file in the captioned docket.

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

Sincerely,


Meredith Mays

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

604107

DOCUMENT NUMBER-DATE

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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 29th day of September, 2005 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:)	
)	Docket No. 041269-TL
Petition to Establish Generic Docket to)	
Consider Amendments to Interconnection)	
Agreements Resulting From Changes of Law)	Filed: September 29, 2005
_____)		

**PREHEARING STATEMENT OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

In compliance with the Order Establishing Procedure (Order No. PSC-05-0736-PCO-TL, "Procedural Order") issued in this docket on July 11, 2005 BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its Prehearing Statement.

A. Witnesses

BellSouth will call the following witnesses to offer testimony on the issues in this matter:

<u>Witness</u>	<u>Subject Matter of Testimony</u>
Ms. Kathy K. Blake (Direct and rebuttal)	Ms. Blake's testimony addresses issues 2, 6, 7, 8, 11, 12, 20, 29, and 31
Mr. Eric Fogle (Direct and rebuttal)	Mr. Fogle's testimony addresses issues 5, 16, 17, 18, 19, 22, 23, 24, 25, 26, and 27
Mr. David Wallis	Mr. Wallis's testimony addresses issue 4
Ms. Pamela A. Tipton (Direct and rebuttal)	Ms. Tipton's testimony addresses issues 1, 3, 4, 7, 9, 10, 13, 14, 15, 21, 28, and 30

BellSouth has made a good-faith attempt to identify the subject matter addressed by these witnesses; however, any given witness' testimony may also relate to other issues in this docket.

BellSouth reserves the right to call witnesses to respond to Florida Public Service Commission (“Commission”) inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the Prehearing conference to be held on October 19, 2005.

B. Exhibits

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section “A” above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission. BellSouth includes below proposed exhibits that it has admitted in similar change of law proceedings, which are not sponsored by a particular witness.

<u>Witness/Sponsoring Party</u>	<u>Document Indicator</u>	<u>Title of Exhibit</u>
Kathy K. Blake	KKB-1	Sample CLEC Transition Letter
Eric Fogle	EF-1	Line Sharing Change of Law Amendment
	EF-2	Line Sharing Amendment Rates
	EF-3	Sampling of Covad Press Releases
David Wallis	DW-1	April 14, 2005 – Mathematical Calculation of BellSouth Business Line Counts as of Dec. 31, 2003
	DW-2	July 15, 2005 – Mathematical Calculation of BellSouth Business Line Counts for the Year 2004
Pamela A. Tipton	PAT-1	BellSouth’s Attachment 2,

		Network Elements and Other Services for CLECs with an Embedded Base
	PAT-2	BellSouth's Attachment 2, Network Elements and Other Services for New CLECs
	PAT-3	Carrier Letter Notifications Concerning Wire Centers that Satisfy the FCC's Non-Impairment Tests
	PAT-4	Wire Centers that Satisfy the FCC's Non-Impairment Tests Using 2004 Data
	PAT-5	BellSouth's Redline of CompSouth's Proposed Contract Language
BellSouth	Discovery Exhibit (CONFIDENTIAL)	BellSouth's Requests for Admission and all responses received thereto
BellSouth-CompSouth/ US LEC/XO/Sprint	Joint Exhibit 1	Deposition Transcript and errata of Kathy Blake
	Joint Exhibit 2	Deposition Transcript and errata of Eric Fogle
	Joint Exhibit 3	Deposition Transcript and errata of Pamela Tipton
	Joint Exhibit 4	Deposition Transcript, and errata, if any, of Joseph Gillan
	Joint Exhibit 5	Deposition Transcript, and errata, if any, of Edward Cadieux
	Joint Exhibit 6	Deposition Transcript, and errata, if any, of Wanda Montano
	Joint Exhibit 7	Deposition Transcript, and errata, if any, of Kristin Shulman
	Joint Exhibit 8	Deposition Transcript, and errata, if any, of James Maples

C. Statement of Basic Position

To date, BellSouth and certain CLECs have not yet modified their interconnection agreements in Florida to include terms implementing the FCC's *Triennial Review Order* ("TRO")¹ and *Triennial Review Remand Order* ("TRRO")² both of which removed significant unbundling obligations formerly placed on ILECs. There are four broad categories of issues in dispute; Section 271 related issues, which include issues 7, 13, 16, 17, and 21; transition issues, which include issues 1, 2, 3, 4, 8, 9, 10, 11, 12; service issues, which include issues 12, 14, 15, 28, 29, 30, and 31; and network issues, which include issues 5, 18, 19, 22, 23, 24, 25, 26, and 27.

With respect to the Section 271 related issues, the prevailing federal law, and the majority of state commission decisions clearly provide that the FCC has exclusive authority over Section 271. The law precludes state commissions from requiring BellSouth to include Section 271 obligations in interconnection agreements; BellSouth complies with its Section 271 obligations through its commercial agreements and its applicable tariffs. See *TRO*, ¶ 664. This Commission has already recognized that BellSouth has no obligation to commingle UNEs with Section 271 services in Docket No. 040130-TP (Issue 26), which should any resolve remaining dispute concerning Issue 13. Finally, line sharing is not a Section 271 obligation, and even if a line sharing obligation exists (and it does not), the FCC has forborne from imposing it.

¹ 18 FCC Rcd 16978, 17145, *corrected by Errata*, 18 FCC Rcd 19020, *vacated and remanded in part, aff'd in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA IP*"), *cert. denied*, 125 S. Ct. 313 (2004) (referred to, interchangeably, as the "*Triennial Review Order*" or the "*TRO*").

² *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338, Order on Remand, FCC 04-290 (released February 4, 2005) (referred to, interchangeably, as the "*Triennial Review Remand Order*" or "*TRRO*").

The transition issues include disputes over the wire centers that satisfy the FCC's non-impairment tests and the rates, terms, and conditions that govern the transition from former Section 251 UNEs to alternative services. BellSouth has applied the FCC's tests consistent with the *TRRO* and has made all of the supporting data underlying its business line calculations and fiber based collocators available to requesting CLECs. Generally, the necessary modifications to interconnection agreements simply require the removal of former unbundled network elements ("UNEs"), and the inclusion of transition language that properly recognizes that change of law processes and transitions must be completed by March 10, 2006, as is required by the *TRRO*. BellSouth's proposed language ensures that transitions are completed by March 10, 2006.

Service issues include removing former UNEs from the SQM plan, establishing interconnection agreement language that effectuates the FCC's EELs audit rights, and establishing that CLECs are entitled to convert special access circuits to UNEs only after the necessary contractual language is included in agreements.

Network issues include establishing language that implements the various FCC rulings excluding new fiber loops from any unbundling requirement, appropriately categorizing line conditioning as a routine network modification, and establishing language that suitably addresses line splitting. When a CLEC is no longer permitted to order UNE DS1 loops from a given wire center, CLECs should also be precluded from ordering any UNE HDSL loops from the same wire center. In addition, it is appropriate to calculate UNE HDSL loops as 24 voice grade equivalent lines, even though BellSouth elected not to do so in its current analysis.

**D, E, and F. BellSouth's Position on the
Factual³, Legal, and Policy Issues⁴**

Issue No. 1: 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?

BellSouth's Position:

Switching:

For the embedded base of local switching, CLECs should submit orders by 10/1/05 or as soon as possible to convert or disconnect their embedded base of UNE-P or standalone local switching. This will give BellSouth time to work with each CLEC to ensure all embedded base elements are identified, negotiate project timelines, issue and process service orders, update billing records, and perform all necessary cutovers. If a CLEC fails to submit orders to convert UNE-P lines to alternative arrangements in a timeframe that allows the orders to be completed by 3/10/06, BellSouth will convert remaining UNE-P lines to the resale equivalent no later than 3/11/06. For any remaining stand-alone switch ports, BellSouth will disconnect these arrangements no later than 3/11/06, as there is no other tariff or wholesale alternative for stand-alone switch ports.

High Capacity Loops and Dedicated Transport

For unimpaired wire centers where the FCC's competitive thresholds are met or impaired wire centers where the FCC's caps apply, CLECs should submit spreadsheets by 12/9/05 or as soon as possible identifying the embedded base and excess DS1 and DS3 loops and transport circuits to be disconnected or converted to other BellSouth services (BellSouth and other active parties have agreed that the DS1 transport cap applies to routes for which there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport). The wire centers that satisfy the FCC's impairment tests are those identified in Ms. Tipton's testimony, and the Commission should require CLECs to convert their de-listed high capacity loops and transport facilities in these wire centers to alternative serving arrangements. The Commission should also reject any CLEC attempts to improperly recalculate business line counts, reject CLECs' unsupported fiber-based collocation language, and reject CLECs' arguments concerning counting AT&T and SBC as one company. If a CLEC does not provide notice in a timely manner to accomplish orderly conversions by 3/10/06, BellSouth will convert any remaining embedded or excess high capacity loops and interoffice transport to the corresponding tariff service offerings.

³ BellSouth maintains that the majority of the issues in this proceeding are legal, not factual. For administrative ease, BellSouth has addressed all of the issues in sequential order under a grouped heading; this organizational structure should not be construed as a concession that particular issues present factual questions.

⁴ BellSouth identifies which of its witnesses address particular issues in Section A, *infra*.

Dark Fiber

CLECs should submit spreadsheets to identify their embedded base dark fiber to be either disconnected or converted to other services by 6/10/06. If CLECs do not submit orders in a timely manner so that conversions can be completed by 9/11/06, BellSouth will convert any remaining dark fiber loops or embedded base dark fiber transport to corresponding tariff service offerings.

The appropriate language also includes the following:

- The transition period applies only to the embedded base of UNE arrangements and does not permit CLECs to add new UNE-Ps, high capacity loops, high capacity transport, or UNE entrance facilities
- The transition process must begin and end within the transition period and may not be extended to some later date
- The transition rate is the rate the CLEC paid for the element or combination of elements on June 15, 2004, plus the FCC's prescribed transitional additive for that particular element. For UNE switching, the additive is \$1.00. For UNE high capacity loops and transport, the additive is 15% of the rate paid (i.e., a rate equal to 115% of the rate paid as of June 15, 2004).
- Transition period pricing applies for each de-listed UNE retroactively to March 11, 2005. Facilities no longer subject to unbundling shall be subject to true-up to the applicable transition rate upon amendment of the interconnection agreements as part of the applicable change of law process.
- The transition rates will not go into effect without a contract amendment but once the agreement is amended, the transition rate must be true-up to the March 11, 2005 transition period start date.
- The transition rates apply only while the CLEC is leasing the de-listed element from BellSouth during the transition period. Once the de-listed UNE is converted to an alternative service, the CLEC will be billed the applicable rates for that alternative service going forward.

Issue No. 2: (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?

BellSouth's Position: (a) and (b) Network elements that are no longer required to be unbundled pursuant to Section 251(c)(3) must be removed from existing interconnection agreements, subject to the appropriate transition language, and should not be included in new agreements. The appropriate contract language, whether in amendments to existing interconnection agreements or in new agreements that reflect the results of this docket, should be promptly executed following the conclusion of this proceeding so that transitions are completed by March 10, 2006.

Issue No. 3: What is the appropriate language to implement BellSouth's obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport and how should the following terms be defined: (i) business line; (ii) fiber-based collocation; (iii) building; (iv) route?

BellSouth's Position: BellSouth has a continuing obligation to offer Section 251 access to high capacity loops and transport except as set forth below:

Loops

- BellSouth is not obligated to provide Section 251 unbundled access to DS1 loops to buildings that are served out of wire centers containing at least 60,000 business lines and 4 or more fiber-based collocators.
- BellSouth is not obligated to provide Section 251 unbundled access to DS3 loops to buildings that are served out of wire centers containing at least 38,000 business lines and 4 or more fiber-based collocators.
- In the wire centers in which BellSouth has a Section 251 unbundling obligation, CLECs may only obtain unbundled access to 10 DS1 loops to any one building and 1 DS3 loop to any one building.
- BellSouth is not obligated to provide Section 251 unbundled access to dark fiber loops.

Transport

- BellSouth is not obligated to provide Section 251 unbundled access to DS3 or dark fiber transport on routes containing at least 24,000 business lines or 3 fiber based collocators. For routes between all other wire centers (and not those contemplated in the preceding sentence) a CLEC may only obtain unbundled access to 12 DS3 dedicated transport circuits on such routes. On routes for which there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, CLECs may only obtain unbundled access to 10 DS1 dedicated transport circuits on such routes.
- BellSouth is not obligated to provide Section 251 unbundled access to DS1 transport on routes between wire centers with at least 38,000 business lines or 4 fiber based collocators.

Definitions

For the purposes of implementing the FCC's non-impairment thresholds, the following definitions should apply:

"Business line" is defined by the FCC in 47 C.F.R. § 51.5.

"Building" should be defined from the perspective of a reasonable person – if a reasonable person believes a structure is a building, then it is a building. For example, a multi-tenant building is one building regardless of the number of tenants that work or live in that building.

"Fiber-based collocator" is defined by the FCC in 47 C.F.R. § 51.5.

"Route" is defined by the FCC in 47 C.F.R. §51.319(e).

Business lines include BellSouth retail and resold business switched access lines as reported in BellSouth's year-end 2004 ARMIS 43-08 report, all UNE loops connected to

a wire center, including UNE loops provisioned in combination with other unbundled elements, and business UNE-P lines. All ISDN and other digital access lines, whether BellSouth's lines or UNE lines, shall be counted with their full system capacity; that is, each 64 kbps-equivalent is counted as one line. This Commission should reject any CLEC arguments that would improperly narrow the business line definition or result in a factually-intensive inquiry. The FCC has made clear its "test requires ILECs to count business lines on a voice grade equivalent basis. In other words, a DS1 loop counts as 24 business lines, not one" (See Sept. 9, 2005, Brief for FCC Respondents, United States Court of Appeals, D.C. Cir., No. 05-1095), and CLECs have conceded as such by seeking reconsideration of the business line definition. Likewise, the FCC has made clear that its test includes all UNE loops. See *TRRO*, ¶ 105.

If there is no impairment for dedicated transport at the wire centers comprising the end points of the transport portion of an EEL, then BellSouth does not have to provision that portion of the EEL on an unbundled basis. If the threshold for the wire center serving the loop location is met, BellSouth does not have to provision that portion of the EEL on an unbundled basis. Where the competitive thresholds have been met for both the loop and transport portions of the EEL, the service is not available on an unbundled basis.

BellSouth is no longer obligated to provide unbundled access to entrance facilities.

Issue No. 4: (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)?

BellSouth's Position: (a) The FCC is the appropriate agency to determine whether BellSouth has properly applied its criteria, but because this Commission must approve contract language that governs the transition for de-listed UNEs and the parties do not agree on the wire centers that satisfy FCC's impairment criteria, this Commission should confirm that the wire centers identified by BellSouth satisfy the FCC's impairment thresholds. (b) This Commission should confirm that BellSouth has applied the appropriate procedures to identify the wire centers that currently satisfy the FCC's impairment thresholds (including the procedures identified in the parties' stipulated process regarding the identification of fiber-based collocators).

To the extent wire centers are later found to meet the FCC's no impairment criteria using the process identified in this proceeding, BellSouth will notify CLECs of these new wire centers via a Carrier Notification Letter. The non-impairment designation will become effective 10 business days after posting the Carrier Notification Letter. Beginning on the effective date, BellSouth would no longer be obligated to offer high capacity loops and dedicated transport as UNEs in such wire centers, except pursuant to the self-certification process. High capacity loop and transport UNEs that were in service when the subsequent wire center determination was made will remain available as UNEs for 90

days after the effective date of the non-impairment designation. This 90 day period is referred to as the "subsequent transition period." No later than 40 days from effective date of the non-impairment designation, affected CLECs must submit spreadsheets identifying their embedded base UNEs to be converted to alternative BellSouth services or to be disconnected. From that date, BellSouth will negotiate a project conversion timeline that will ensure completion of the transition activities by the end of the 90 day subsequent transition period.

(c) After this Commission confirms that BellSouth has identified the wire centers that satisfy the FCC's competitive threshold tests, CLECs may no longer self-certify that they are entitled to obtain high capacity loops and transport on an unbundled basis in those wire centers.

Issue No. 5: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?

BellSouth's Position: For those wire centers identified as meeting the FCC's impairment thresholds for DS1 loops, BellSouth is relieved of any obligation to provide CLECs with a UNE HDSL loop. While BellSouth only counted each UNE HDSL loop as one line for purposes of evaluating impairment, UNE HDSL loops can and should be counted as 24 business lines.

Issue No. 6: 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?

BellSouth's Position: Changed circumstances cannot alter the designation of non-impaired wire centers, and BellSouth understands the CLECs do not claim otherwise, subject to the outcome of any motions for reconsideration pending at the FCC. In addressing any remaining CLEC concerns about this issue, BellSouth has agreed to include the following language in its interconnection agreements: "In the event that (1) BellSouth designates a wire center as non-impaired, (2) CLEC converts existing UNEs to other services or orders new services as services other than UNEs, (3) CLEC otherwise would have been entitled to UNEs in such wire center at the time alternative services were provisioned, and (4) BellSouth acknowledges or a state or federal regulatory body with authority determines that, at the time BellSouth designated such wire center as non-impaired, such wire center did not meet the FCC's non-impairment criteria, then upon request of CLEC, BellSouth shall transition to UNEs any alternative services in such wire center that were established after such wire center was designated as non-impaired. In such instances, BellSouth shall refund CLEC the difference between the rate paid by CLEC for such services and the applicable UNE rate, including but not limited to any charges associated with the unnecessary conversion from UNE to other wholesale services."

Issue No. 7: (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? (b) If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements? (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?

BellSouth's Position: (a), (b), and (c). State commissions do not have authority to require BellSouth to include in §252 interconnection agreements any element not required by §251; accordingly, this Commission has no authority to set rates, or impose terms or conditions for network elements offered pursuant to section 271; nor may the Commission require the inclusion of such elements in §252 agreements

Issue No. 8: 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?

BellSouth's Position: CLECs should not be allowed to add new UNE arrangements that have been delisted, whether new arrangements would result from an order to add services, to move services (which would require a new arrangement at a different location), or to change services (which would require a new arrangement at a different location). BellSouth will provision CLEC orders for new high-capacity loops and dedicated transport based upon a CLEC's performance of a reasonably diligent inquiry and "self-certification"; however, CLECs have no legitimate basis to self-certify orders for new services relating to the wire centers that BellSouth has identified as satisfying the FCC's non-impairment tests.

Issue No. 9: 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 and (a) what is the proper treatment for such network elements at the end of the transition period; and (b) what is the appropriate transition period, and what are the appropriate rates, terms and conditions during such transition period, for unbundled high capacity loops, high capacity transport, and dark fiber transport in and between wire centers that do not meet the FCC's non-impairment standards at this time, but that meet such standards in the future?

BellSouth's Position: BellSouth's position is that this issue addresses de-listed network elements for which there is no transition period or for which the transition period has already ended; including, entrance facilities, enterprise or DS1 level switching, OCN loops and transport, fiber to the home, fiber sub-loop feeder, "greenfield" fiber build, and packet switching. Generally, these elements were addressed by the *TRO*. Rates, terms and conditions for elements de-listed by the *TRRO* and which have a designated

transition period, including those identified in subpart (b) above, are addressed by BellSouth under Issue 1.

Because the FCC eliminated the ILECs' obligation to provide unbundled access to these elements 2 years ago in the *TRO*, CLECs that still have the rates, terms and conditions for these elements in interconnection agreements have reaped the benefits of unlawful unbundling of these elements for far too long. As such, with the exception of entrance facilities (which BellSouth is allowing CLECs to transition with their embedded base and excess dedicated transport), BellSouth should be authorized in the terms of the interconnection agreement, to disconnect or convert such arrangements upon 30 days written notice absent a CLEC order to disconnect or convert such arrangements. BellSouth should also be permitted to impose applicable nonrecurring charges.

Issue No. 10: 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?

BellSouth's Position: The *TRRO* makes clear that CLECs must transition their entire embedded base of switching and high capacity loops and transport by 3/10/06, and not after that date. To accomplish this, BellSouth needs CLECs to timely provide it with information concerning their plans for these services. BellSouth is asking CLECs to identify their embedded base UNE-Ps by 10/1/05 or as soon as possible and to submit orders to disconnect or convert the embedded base in a timely manner so as to complete the transition process by 3/10/06. If CLECs fail to submit orders in a timely manner, BellSouth should be permitted to identify all such remaining embedded base UNE-P lines and convert them to the equivalent resold services no later than 3/10/06, subject to applicable disconnect charges and the full nonrecurring charges in BellSouth's tariffs. Absent a commercial agreement for switching, this Commission should allow BellSouth to disconnect any stand alone switching ports which remain in place on 3/11/06.

For high capacity loops and dedicated transport, BellSouth is requesting CLECs submit spreadsheets by 12/9/05 or as soon as possible to identify and designate transition plans for their embedded base of these delisted UNEs. If CLECs fail to submit such spreadsheets, BellSouth should be permitted to identify such elements and transition such circuits to corresponding BellSouth tariffed services no later than 3/10/06, subject to applicable disconnect charges and full nonrecurring charges in BellSouth's tariffs.

For dark fiber, BellSouth is requesting that CLECs submit spreadsheets to identify and designate plans for their embedded base dark fiber loops and delisted dark fiber transport to transition to other BellSouth services or be disconnected by 6/10/06. If a CLEC fails to submit such spreadsheets, BellSouth should be allowed to identify all such remaining embedded dark fiber loops and/or de-listed dark fiber dedicated transport and transition such circuits to the corresponding BellSouth tariffed services no later than 9/10/06, subject to applicable disconnect charges and full nonrecurring charges set forth in BellSouth's tariffs.

Issue No. 11: 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?”

BellSouth’s Position: BellSouth agrees that 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, are included in the “embedded base.” To BellSouth’s knowledge, this issue is not in dispute.

Issue No. 12: Should network elements de-listed under section 251(c) (3) be removed from the SQM/PMAP/SEEM?

BellSouth’s Position: Elements that are no longer required to be unbundled pursuant to Section 251(c)(3) (“de-listed elements”) should not be subject to the measurements of a SQM/PMAP/SEEM plan. The purpose of establishing and maintaining a SQM/PMAP/SEEM plan is to ensure that BellSouth provides nondiscriminatory access to elements required to be unbundled under section 251(c)(3), and if BellSouth fails to meet such measurements, it must pay the CLEC and/or the state a monetary penalty. Section 251(c)(3) elements are those elements which the FCC has determined are necessary for CLECs to provide local service and without access to the ILEC’s network on an unbundled basis, the CLEC would be impaired in its ability to do so. With a no-impairment designation, the FCC found that CLECs were able to economically self-provision or purchase similar services from other providers. These other providers are not required to perform under a SQM/PMAP/SEEM plan. To continue to impose upon BellSouth a performance measurement, and/or performance penalty, on competitive, commercial offerings is discriminatory and anticompetitive. When elements are “de-listed”, the ILEC will most likely provide a wholesale service similar to such element pursuant to a commercially negotiated agreement or tariffed service with specific terms and conditions relating to the provision of such service. There is no parity obligation for Section 271 elements. Consequently, it is neither necessary nor appropriate to compare BellSouth’s performance for such 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.

Issue No. 13: 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)?

BellSouth’s Position: BellSouth is willing to include the FCC’s definition of commingling in its Section 252 agreements. Commingling is properly interpreted to include the combining of Section 251 UNEs with the ILEC’s resale services and switched and special access services. Section 252 agreements should also include language that BellSouth has no obligation to combine Section 251 UNEs with Section 271 checklist items, which is clear from the FCC’s *Supplemental Order Clarification*, the *Triennial Review Order*, and the statutory language in the Act (the Act makes clear that checklist

items under Section 271 are to be provided “unbundled ... from other services”). Additionally, the rate for multiplexing equipment should always be associated with the higher bandwidth service that is being channelized into lower bandwidth increments. BellSouth notes that this Commission addressed commingling in Docket No. 040130-TP (Issue 26).

Issue No. 14: 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?

BellSouth’s Position: BellSouth will convert special access services to UNE pricing, subject to the FCC’s service eligibility requirements and limitations on high-cap EELs, once a CLEC’s contract has these terms incorporated in its contract. BellSouth will also convert UNE circuits to special access services. Special access to UNE conversions should be considered termination of any applicable volume and term tariffed discount plan or grandfathered arrangements. The applicable rates for single element conversions in Florida are:

Element	First Loop	Each Additional Loop
DS1 or lower capacity stand-alone loops		
- Single LSR	\$24.97	\$3.52
- Project of 15 or more submitted on one spreadsheet	\$26.46	\$5.01
DS3 and higher capacity stand-alone loops and for interoffice transport		
- Single LSR	\$40.28	\$13.52
- Project of 15 or more submitted on one spreadsheet	\$64.09	\$25.64

In addition, the rate of \$8.98 applies for EEL conversions. If physical changes to the circuit are required, the activity should not be considered a conversion and the full nonrecurring and installation charges should apply.

Issue No. 15: 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*?

BellSouth’s Position: The contract language contained in a CLEC’s interconnection agreement at the time the *TRO* became effective governs the appropriate rates, terms, conditions and effective dates for conversion requests that were pending on the effective date of the *TRO*.

Conversion rights, rates, terms and conditions are not retroactive and become effective once an interconnection agreement is amended.

Issue No. 16: 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?

BellSouth's Position: BellSouth is not obligated to provide new line sharing arrangements after October 1, 2004. See *TRO*, ¶¶ 199, 260, 261, 262, 264, and 265. In the absence of ILEC provided line sharing, CLECs have numerous options available for serving the broadband needs of their respective end-user customers that create better competitive incentives. For example, CLECs can 1) utilize line splitting, 2) purchase the entire loop facility, 3) provision the end-user customer with Integrated Services Digital Network ("ISDN") Digital Subscriber Line ("DSL") service, 4) partner with a cable broadband provider to provide cable modem broadband service, 5) purchase BellSouth's tariff wholesale DSL offering 6) provision the end-user with a dedicated or shared T1, 7) deploy a fixed wireless broadband technology, 8) partner with a satellite broadband provider and finally, 9) build their own loop facilities or lease loop facilities from a third party. There is no Section 271 line sharing obligation, and, even if such an obligation existed (and it does not), the FCC has forborne from applying it to BellSouth.

Issue No. 17: If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC's existing line sharing arrangements?

BellSouth's Position: The FCC's line sharing transition language is appropriate. Per the *TRO*, as of October 1, 2004, BellSouth was no longer obligated to provide new line sharing arrangements (although CLECs have continued to request such arrangements and BellSouth has provided such arrangements pursuant to the existing interconnection agreement language that has not yet been appropriately amended). For any line sharing arrangements that were placed in service after October 1, 2004, the CLEC should be required to pay the full stand-alone loop rate for such arrangements. Per the FCC's line sharing transition plan, for all new line sharing arrangements provided to CLECs between October 2, 2003 (the effective date of the *TRO*) and October 1, 2004, the recurring rate should increase to 25 percent of the recurring rates for the zone-specific stand-alone copper loop until October 1, 2004; effective October 1, 2004, the recurring charge should increase to 50 percent of the recurring rate for the zone-specific stand-alone copper loop until October 1, 2005; and, effective October 1, 2005, the recurring charge should increase to 75 percent of the recurring rate for the zone-specific stand-alone loop until October 1, 2006. At the end of the transition period (October 1, 2006), BellSouth is not obligated to continue providing the line sharing arrangements put in place between October 2, 2003 and October 1, 2004, nor is BellSouth obligated to provide any new line sharing arrangements; however, CLECs can purchase stand-alone loops at the rates in their interconnection agreements.

Issue No. 18: What is the appropriate ICA language to implement BellSouth's obligations with regard to line splitting?

BellSouth's Position: BellSouth's line splitting obligations are limited to when a CLEC purchases a stand-alone loop from BellSouth and the CLEC provides its own splitter. BellSouth's contract language provides for line splitting over an Unbundled Network Element-Loop ("UNE-L"), and for a limited time, with Unbundled Network Element-Platform ("UNE-P") arrangements. BellSouth's language involves a CLEC purchasing a stand-alone loop (the whole loop), providing its own splitter in its central office leased collocation space, and then sharing the high frequency portion of the loop with a second CLEC.

Issue No. 19: (a) What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration? (b) Do the FCC's rules for sub loops for multi-unit premises limit CLEC access to copper facilities only or do they also include access to fiber facilities? (c) What are the suitable points of access for sub-loops for multi-unit premises?

BellSouth's Position: The language BellSouth has proposed in Exhibits PAT-1 and PAT-2 is appropriate, unless mutually agreed to otherwise. BellSouth does not believe this issue is in dispute.

Issue No. 20: What is the appropriate ICA language, if any, to address packet switching?

BellSouth's Position: No ICA language is appropriate, as BellSouth has no obligation to provide packet switching. BellSouth does not believe this issue is in dispute.

Issue No. 21: What is the appropriate ICA language, if any, to address access to call related databases?

BellSouth's Position: BellSouth's proposed language recognizes that its obligation to provide unbundled access to call-related databases is limited to the time in which it is obligated to provide unbundled access to local switching. Call related databases will no longer be available on an unbundled, Total Element Long Run Incremental Cost ("TELRIC") priced basis after March 10, 2006. After March 10, 2006, CLECs may purchase access to call related databases pursuant to BellSouth's tariffs or a separate commercially negotiated agreement.

Issue No. 22: 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?

BellSouth's Position: (a) The FCC has defined MPOE as "either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings." 47 C.F.R. 68.105(b). Consequently,

in cases where the property owner has elected the use of MPOE, the MPOE is effectively the demarcation point between the inside wiring facilities at the multiple dwelling unit (“MDU”) and BellSouth’s loop facilities. Regardless of whether the ILEC owns or controls the inside wire beyond the demarcation point in an MDU, when the fiber portion of a loop extends to an MDU and that fiber connects to in-building copper cable facilities owned or controlled by an ILEC, the ILEC has no obligation to unbundle the fiber portion of the loop. (b) Greenfield fiber loops are part of newly-constructed fiber optic cable facilities to residential or business areas (areas that have never had existing copper facilities). BellSouth has no obligation to provide CLECs with unbundled access to newly-deployed or “Greenfield” fiber loops.” See *TRO* ¶ 273; *MDU Reconsideration Order*⁵ ¶¶ 13, 21, 23; *FTTC Reconsideration Order*⁶ ¶ 20 at n. 69, 23, 32.

Issue No. 23: What is the appropriate ICA language to implement BellSouth’s obligation to provide unbundled access to hybrid loops?

BellSouth’s Position: BellSouth’s sole obligation to provide access to hybrid loops is limited to a requirement to provide access to the time division multiplexing features of a hybrid loop, where continued access to existing copper is required by the FCC.

Issue No. 24: 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”?

BellSouth’s Position: A mobile switching center or cell site is not an “end user customer’s premises.” In addressing this issue, CompSouth proposed the following contract language which is acceptable to BellSouth: “Facilities that do not terminate at a demarcation point at an End User premises, including, by way of example, but not limited to, facilities that terminate to another carrier’s switch or premises, a cell site, Mobile Switching Center or base station, do not constitute local loops under Section 251, except to the extent that CLEC may require loops to such locations for the purpose of providing telecommunications services to its personnel at those locations.”

Issue No. 25: What is the appropriate ICA language to implement BellSouth’s obligation to provide routine network modifications?

⁵ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, *Order on Reconsideration*, FCC 04-191 (rel. Aug. 8, 2004) (“*MDU Reconsideration Order*”).

⁶ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, *Order on Reconsideration*, FCC 04-248 (rel. Oct. 18, 2004) (“*FTTC Reconsideration Order*”).

BellSouth's Position: BellSouth's "routine network modifications" obligation is limited to the performing of those tasks that BellSouth regularly undertakes for its own customers (including xDSL customers).

Issue No. 26: 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?

BellSouth's Position: If BellSouth is obligated to perform a routine network modification, then the rate for that activity should be based on TELRIC. If BellSouth is not obligated to perform a particular function, or an activity is not routine (such as removal of load coils on loops longer than 18,000 feet or removal of bridged taps), then the applicable rate should be based on special construction/special assembly tariffs as appropriate. BellSouth also notes that this Commission has addressed this issue in Docket No. 040130-TP (Issues 36 A/B, 37, and 38).

Issue No. 27: What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?

BellSouth's Position: BellSouth has no obligation to provide unbundled access to FTTH and FTTC loops.

Issue No. 28: What is the appropriate ICA language to implement BellSouth's EEL audit rights, if any, under the *TRO*?

BellSouth's Position: BellSouth's proposed language allows it to audit CLECs on an annual basis to determine compliance with the qualifying service eligibility criteria, and requires BellSouth to obtain and pay for an independent auditor pursuant to American Institute for Certified Public Accountants (AICPA) standards. The auditor determines material compliance or non-compliance. If the auditor determines that CLECs are not in compliance, the CLECs are required to true-up any difference in payments, convert noncompliant circuits and make correct payments on a going-forward basis. Also, CLECs determined by the auditor to have failed to comply with the service eligibility requirements must reimburse the ILEC for the cost of the auditor. BellSouth should not be required to agree to terms that would add delay and expense to audits, such as: a requirement to show cause prior to the commencement of an audit, incorporation of a list of acceptable auditors in interconnection agreements, or a requirement that parties must agree on the auditor. Finally, to the extent that an auditor determines that a CLEC's noncompliance is material in one area, the CLEC would be responsible for the cost of the audit even if each of the other criteria has been met to the auditor's satisfaction. BellSouth notes that this Commission has addressed a similar issue in Docket No. 040130-TP (Issues 51 B/C).

Issue No. 29: What is the appropriate language to implement the FCC's "entire agreement" rule under Section 252(i)?

BellSouth's Position: BellSouth's standard language on this issue is contained in the General Terms and Conditions portion of its interconnection agreement and provides as follows: "Pursuant to 47 USC § 252(i) and 47 C.F.R. § 51.809, BellSouth shall make available to <<customer_short_name>> any entire interconnection agreement filed and approved pursuant to 47 USC § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted." It is BellSouth's understanding that the CLECs do not contest or dispute this proposed language, and BellSouth does not believe this issue is in dispute.

Issue No. 30: What language should be used to incorporate the FCC's *ISP Remand Core Forbearance Order* into interconnection agreements?

BellSouth's Position: The Commission should order that BellSouth resolve this issue on a carrier by carrier basis depending on the specific facts that apply to a particular carrier. Specifically, for some CLECs, it may be as simple as removing the growth caps and new markets standard. However, other CLECs have adopted the mirroring rule, in which case alternative terms must be negotiated. Additionally, there may be other CLECs that are not entitled to implement the Core Order based upon the particular language negotiated between the parties in that CLEC's interconnection agreement.

Issue No. 31: How should the determinations made in this proceeding be incorporated into existing § 252 interconnection agreements?

BellSouth's Position: At the end of this proceeding, this Commission should approve specific contractual language that resolves each disputed issue and which can be promptly executed by the parties, unless mutually agreed to otherwise, so that the FCC's transitional deadlines are met. The FCC's transitional periods for UNE switching and high capacity loops and dedicated transport cannot be extended beyond March 10, 2006. This Commission should also allow BellSouth to incorporate the results of its decision into BellSouth's standard offering, or should approve BellSouth's PAT-1 and PAT-2 as a default for those CLECs that fail to respond to an order requiring the execution of *TRO/TRRO* ICA language.

G. Stipulations

BellSouth believes the following issues are no longer in dispute in this proceeding: 6, 11 (BellSouth stipulates that 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 should be included in the 'embedded base'), 19 (a), 20, 24, and 29. BellSouth also states, with respect to issue 19, subparts (b)

and (c), which issues were included at the request of Sprint, that it has reached an agreement in principle with Sprint that resolves those issues. While these issues may not be appropriate for removal pending execution of an agreement, BellSouth does not anticipate litigating these issues at the hearing.

BellSouth and CompSouth have reached an agreement to address any issues concerning fiber-based collocation (which is not a separately identified issue, but which impacts Issue 4). BellSouth has also agreed that it will accept CompSouth's proposed contract language concerning the DS1 transport cap (which is not a separately identified issue, but which impacts Issue 2).

BellSouth is willing to stipulate into the record the pre-filed testimony and any exhibits of David Wallis, James Maples, Wanda Montano, and Kristen Shulman consistent with prior agreements in past hearings.

H. I. Pending Motions

BellSouth's Motion for Summary Final Order ("Motion") is pending, with a Commission vote scheduled for Tuesday, October 4, 2005. BellSouth respectfully disagrees with staff's recommendation to deny its Motion. In particular, staff recognized that Issues 7, 16, 1, 2, 13, 18, 21, 25, and 28 are "primarily .. legal issue[s]." Moreover, Commissioners Bradley and Edgar recently voted in Docket No. 040130-TP on similar issues. Likewise, related issues are also scheduled for a decision by Commissioners Bradley and Edgar in Docket No. 040156-TP, and a staff recommendation was recently released in that docket. In light of the foregoing, BellSouth respectfully disagrees with staff's conclusion that the Commission "will benefit from taking testimony" on these issues.

BellSouth is also filing, or will file, various Requests for Confidential Classification.

J. Other Requirements

BellSouth knows of no requirements set forth in any Prehearing Order with which it cannot comply.

K. Decisions

State commissions have no authority to require BellSouth to include, in 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. The authority that supports BellSouth's position is detailed in BellSouth's Motion for Summary Final Order and in BellSouth's Response in Opposition to CompSouth's Cross-Motion for Summary Judgment.

In addition, BellSouth has filed a petition with the FCC, *BellSouth Emergency Petition for Declaratory Ruling and Preemption of State Action*, FCC Docket No. WC-04-245 ("Petition"). BellSouth has asked the FCC to: (1) declare that commercial agreements for network elements that are not required to be unbundled under section 251 need not be filed with, or approved by, state public service commission under section 252; (2) clarify that section 271 does not provide a jurisdictional basis for a state commission to regulate the prices and terms of section 271 elements; (3) grant its Petition and find that state public service commissions have no jurisdiction to establish rates for network elements that are not required to be unbundled pursuant to section 251; and (4) preempt a decision of the Tennessee Regulatory Authority that purported to do so. BellSouth's Petition is analogous to a previous petition filed with the FCC, *BellSouth*

Emergency Request for Declaratory Ruling, WC Docket No. 03-251 (filed Dec. 9, 2003), which the FCC addressed by its *Memorandum Opinion and Order and Notice of Inquiry*, (released March 25, 2005), and which preempted this Commission's order Nos. PSC-02-0765-FOF-TP and PSC-03-0395-FOF-TP.

Various CLECs have filed Petitions for Reconsideration of portions of the *TRRO* with the FCC. In relevant part, the CLECs acknowledge that "a DS1 is counted as 24 'lines;' a DS3 is counted as 672 'lines,' etc."⁷ CLECs also concede that under the FCC's business line definition "[a]ll UNE-L lines are included . . . regardless of whether they are used to serve business or residential customers."⁸ CLECs have, however, inappropriately urged the FCC to count SBC and AT&T as affiliates under its definition of fiber-based collocator.⁹ Despite these pending petitions for reconsideration, CompSouth advocates adjustments to the FCC's business line definition and fiber-based collocation definitions, instead of awaiting an FCC ruling on these issues. Consequently, if the Commission accepted CompSouth's proposed adjustments and/or contract language (which it should not do, as more fully explained by BellSouth's witness Pamela A. Tipton), a subsequent ruling by the FCC could impact any such decision.

⁷ *Petition for Reconsideration*, filed by Birch Telecom Inc., et al., FCC Docket Nos. 04-313, 01-313, March 28, 2005 ("Birch Petition"), p. 11; *see also Petition for Reconsideration*, filed by CTC Communications Corp. et al. ("CTC Petition"), FCC Docket Nos. 04-313, 01-313, March 28, 2005, p. 12.

⁸ *Birch Petition*, p. 15; *CTC Petition*, p. 12.

⁹ *Birch Petition*, p. 24; *CTC Petition*, p. 5.

Finally, CLECs¹⁰ have also filed Petitions for Reconsideration of the FCC's *FTTC Reconsideration Order*. CLECs inappropriately seek access to DS1 and DS3 fiber loops, notwithstanding the FCC's complete fiber relief. *See e.g., TRO, MDU Reconsideration Order, FTTC Reconsideration Order*. BellSouth has opposed these petitions, explaining that the FCC's unbundling obligations do not vary based on the customer to be served. In this proceeding, the CLECs have proposed language that would negate a portion of the FCC's fiber relief rather than accepting BellSouth's proposed language pending further FCC action. To the extent this Commission entertains the CLECs' proposed language (it should not), a future FCC order could impact such a ruling.

L. Witness's Qualifications

The testimony of CompSouth witness Joseph P. Gillan contains numerous statements that are presented as opinion, yet involve purely legal issues. Mr. Gillan has acknowledged in his deposition that he is not a lawyer. BellSouth objects to this testimony to the extent that it may improperly present legal opinions, rather than lay opinions.

¹⁰ *Petition for Reconsideration and/or Clarification of Order on Reconsideration of Covad Communications Group, Inc., NuVox Communications, Inc. and XO Communications, Inc.*, FCC Docket No. 01-338 (filed Jan. 28, 2005).

Respectfully submitted, this 29th day of September, 2005.

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