

September 29, 2005

**VIA HAND DELIVERY**

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

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

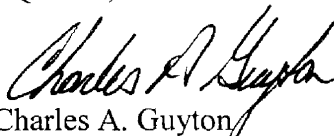
Dear Ms. Bayó:

Enclosed for filing are the original and fifteen (15) copies of GRUCom's Prehearing Statement, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows XP, and the word processing software in which the document appears is Word 2000.

If there are any questions regarding this transmittal, please contact me at 222.2300.

Very truly yours,

SQUIRE, SANDERS & DEMPSEY L.L.P.

  
Charles A. Guyton  
Partner

CAG:gcm  
Enclosure

Copy to: All Parties of Record

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition to establish generic docket to )  
consider amendments to interconnection )      Docket No. 041269-TP  
agreements resulting from changes in law, by )      Dated: September 29, 2005  
BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ )

**GRUCOM'S PREHEARING STATEMENT**

The City of Gainesville d/b/a GRUCom ("GRUCom"), pursuant to Order No. PSC-05-0736-PCO-TP, hereby files its Prehearing Statement in Docket No. 041269-TP.

**(a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony:**

GRUCom is not calling a witness.

**(b) A description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each:**

GRUCom has not prefiled any exhibits and does not, at this time, know of any exhibits it will use in cross examination. GRUCom reserves the right to introduce exhibits in cross examination.

**(c) A statement of basic position in the proceeding:**

GRUCom's focus in this docket is limited. GRUCom, the communications utility of the City of Gainesville offers high capacity loops exclusively in the Gainesville area. GRUCom is co-located at the two BellSouth Central Offices in Gainesville for the purpose of exchanging network traffic with BellSouth and other co-located carriers. We also purchase DS-1 Loops as unbundled network elements ("UNEs") from BellSouth when it is cost prohibitive for us construct GRUCom fiber to a customer location. These loops are then cross-connected to GRUCom fiber at the Central Office to complete the customer's circuit on the GRUCom network. The DS-1 Loops purchased from BellSouth are an integral extension of our network and are critical to our customers and to our business.

The two BellSouth Central Offices in Gainesville are currently impaired for DS-1 Loops, so GRUCom can still obtain these on an unbundled basis. However, GRUCom is very concerned that a determination that these Central Offices are unimpaired may be made at any time without adequate information, review and analysis. BellSouth has already issued at least two conflicting Carrier Notifications regarding impairment of one of these Central Offices. Given these conflicting Carrier Notifications, we are not confident that the information provided by BellSouth is or will be accurate.

There are numerous questions that should be answered in an impairment determination: what constitutes a business line for purposes of the impairment status count, what will be the process for reviewing and analyzing the data applicable to the impairment calculation, what

is the transition period and rules of the transition for CLECs where Central Offices that are currently impaired become unimpaired at some time in the future, and how will DS-1 Loops be made available to CLECs in a nondiscriminatory manner and at reasonable prices once they are no longer available as UNEs? These questions need to be answered in this proceeding. Additionally, we are also concerned with the continued availability of last mile facilities, particularly copper facilities including HDSL capable copper facilities, which we can utilize with our own equipment to produce our own loops. It is extremely important to the state of competition in our community that BellSouth loops and last mile copper facilities continue to be available to CLECs.

BellSouth has demanded that GRUCom execute an amendment to our Interconnection Agreement with them, which they prepared, and which they purport incorporates the ruling of the FCC. Because their proposed changes to our Agreement were so substantial and because BellSouth demonstrated no willingness to negotiate on the limited issues of importance to us, GRUCom declined to accept their agreement and intervened in this docket. Although our current Agreement already includes self effectuating language that automatically incorporates the FCC's order or any other applicable ruling, apparently this is not sufficient. We are hopeful that this proceeding will result in an amended Interconnection Agreement which we will feel more comfortable executing.

**d) A statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue:**

**e) A statement of each question of law the party considers at issue and the party's position on each such issue:**

**f) A statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issues:**

In setting forth the issues in this Prehearing Statement, GRUCom has used the issues and issue numbers identified in the Order Establishing Procedure. Whether issues are factual or legal has been a point of contention among the parties and the subject of motions for summary disposition. Rather than add to that controversy and to avoid confusion due to renumbering, GRUCom is simply setting forth each of the issues identified in the Order Establishing Procedure and stating a position.

**ISSUE 1: TRRO / FINAL RULES:** 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?

**GRUCom:** GRUCom's services are not affected by the FCC's transition plan, since the two BellSouth Central Offices in Gainesville are currently impaired. Therefore, we do not take a specific position regarding the appropriate language to implement the FCC's transition plan. On the other hand, how high capacity loops will be transitioned for Central Offices that were impaired at March 11, 2005 but become unimpaired at some later date, is of great concern to us. This situation appears to be addressed in Issue 9.

**ISSUE 2: TRRO / FINAL RULES:**

- 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?

**GRUCom:** a) No position, with the caveat that follows. It is our understanding that the high capacity loops that GRUCom utilizes are still Section 251(c)(3) obligations of BellSouth; however, their availability is now based on the impairment status of individual Central Offices.

b) No position.

**ISSUE 3: TRRO / FINAL RULES:** 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

**GRUCom:** (i) "Business Line" should be defined in the same manner as it is in 47 C.F.R. §51.5. However, as pointed out by CompSouth witness Joseph Gillan, the dispute with BellSouth involves an interpretation of how the definition should be read and not the definition itself (Rebuttal Testimony, page 3 line 29 through page 4, line 2). For this reason, GRUCom recommends that an annual process be initiated by the Commission for identifying additional BellSouth Central Offices in Florida that qualify as unimpaired.

(ii) "Fiber-Based Collocation" should be defined in the same manner as it is in 47 C.F.R. §51.5. The definition seems clear, and the count should be irrefutable if substantiated with appropriate data. While we do not feel that this definition necessarily aligns with a determination that sufficient competition exists in the local markets, particularly in Gainesville, it is the definition specified by the FCC and therefore must be used. However, collocation and business line data should be subject to an exhaustive due diligence procedure and audit by the Commission staff before any Central Office is declared to be unimpaired.

(iii) No position.

(iv) No position.

**ISSUE 4:**      **TRRO / FINAL RULES:**

- 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)?

**GRUCom:**

- a) Yes.
- b) An annual process should be implemented by the Commission for identifying additional BellSouth Central Offices in Florida that qualify as unimpaired. Such a process would allow CLECs a greater opportunity to review, analyze, and challenge where appropriate, information related to additional Central Offices designated as unimpaired by BellSouth. GRUCom supports the annual process outlined by CompSouth witness Joseph Gillan (Direct Testimony, page 30, line 7 through page 32, line 7). The conduct of the transition period is discussed in our response to issue 9.
- (c) GRUCom recommends adoption of the language provided by CompSouth witness Joseph Gillan (Direct Testimony, Exhibit JPG-1, pages 17 and 18).

**ISSUE 5:**      **TRRO / FINAL RULES:**

Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?

**GRUCom:**

No, HDSL Capable Loops are not the equivalent of DS-1 Loops for the purpose of evaluating impairment. The FCC rules are clear that only lines used to provide switched services are to be counted in the impairment calculation. GRUCom utilizes unbundled DS-1 Loops to extend data services and Internet access to remote customer locations, although we understand that some CLECs use these loops to deliver switched services. DS-1 Loops have a fixed data transfer capability of 1.544 Mbps. GRUCom does not currently use HDSL Capable Loops but hopes to in the future to deliver Internet access to customers. These loops are distance sensitive and provide a higher bandwidth transfer capability. Regardless, it is important that only the portions of these lines that can be proven to be used to provide switched services be counted in the impairment calculation, and this is anticipated to be different for DS-1 Loops versus HDSL Capable Loops.

Additionally, HDSL Capable Loops should continue to be available to CLECs as UNEs, regardless of the impairment status of the associated Central Office. Based on the testimony of Sprint witness James M. Maples (Direct Testimony, Page 27, Lines 12 through 17): "BellSouth has indicated that it will stop offering its HDSL-Compatible Loop product in its wire centers that meet the non-impairment criteria for DS-1 Loops, but has agreed that Sprint can essentially get access to the same facility by purchasing its Unbundled Copper Loop ("UCL") product and requesting the necessary level of line conditioning. This is a distinction without a difference and only succeeds in complicating the process for CLECs." The Commission's order in this proceeding should make it clear that HDSL Capable Loops are to continue to be offered as UNEs in all situations. Short of this

finding, the Commission should require BellSouth to include in all amended Interconnection Agreements the concession agreed to by BellSouth for Sprint.

**ISSUE 6:**     **TRRO / FINAL RULES:**

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?

**GRUCom:**     It is GRUCom's understanding that this issue may no longer be in dispute.

**ISSUE 7:**     **TRRO / FINAL RULES:**

(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?

**GRUCom:**     No position.

**ISSUE 8:**     **TRRO / FINAL RULES:** 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?

**GRUCom:**     No position.

**ISSUE 9:**     **TRRO/FINAL RULES:** 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?

**GRUCom:**     GRUCom's position on this issue relates specifically to the transition of high capacity loops in Central Offices that will be appropriately identified as unimpaired at some time in the future. When these services are no longer available to GRUCom as UNEs, GRUCom will need to evaluate its alternatives on a case by case basis. Its options are expected to be: 1) accept the lowest offered price from BellSouth to continue utilizing the existing BellSouth loop (probably Special Access), 2.) where it is not cost prohibitive, extend GRUCom fiber to the customer premises, 3.) where distances and other parameters permit, replace the

circuits with BellSouth Unbundled Copper Loops utilizing GRUCom electronics, and 4.) in the worst case, work with a GRUCom customer to disconnect the GRUCom service and/or to move the customer back to BellSouth as the service provider. Evaluating these options and installing the appropriate facilities can take a significant amount of time. Therefore, GRUCom takes the following position related to this issue:

1.) The transition period for high capacity loops should be 12 months. (This is consistent with the recommendation of Sprint witness James M. Maples in his Direct Testimony, page 38, lines 16-19, and page 40, line 20 through page 41, line 14).

2.) During the transition period, BellSouth should be allowed to increase the price for these high capacity loops up to 15% (Sprint witness James M. Maples Direct Testimony, page 38, lines 19-22, and page 41, line 16 through page 42, line 2).

3.) At the end of the transition period, where the CLEC has not transitioned off of BellSouth high capacity loops, the remaining loops should be priced at the lowest available rate.

During negotiations with BellSouth, GRUCom requested a market based rate for these loops; however, BellSouth's response was "at this time DS1s and DS3s would only be available subject to the FCC No 1 tariff we do not currently have a market based rate offer." GRUCom is of the opinion that a market based rate should be available. CompSouth witness Joseph Gillan argues that BellSouth has a broader §271 unbundling requirement and that just and reasonable prices should be established by the Commission in conjunction with §271 for high capacity loops, as well as for other services, which BellSouth is no longer required to provide in conjunction with §251 (Direct Testimony, page 36, line 10 through page 46, line 18). We adopt the position taken by CompSouth related to the §271 requirement but defer to Mr. Gillan for support of that position.

With regard to the appropriate rates, terms and conditions during such transition period (what language should be included in agreements for unbundled high capacity loops in wire centers that do not meet the FCC's non-impairment standards at this time but that meet such standards in the future), GRUCom recommends adoption of the language provided by CompSouth witness Joseph Gillan. In Exhibit JPG-1 to his Direct Testimony, page 25, addressing Issue 9, Mr. Gillan states that this issue is addressed by CompSouth proposed language included under Issue 1. Issue 1 is then addressed in Exhibit JPG-1, pages 1-13. For high capacity loops, GRUCom is supportive of the language beginning with the paragraph labeled 2.2.3 on page 1 and continuing through the paragraph labeled 2.2.9.2 on page 3, with the assumption that for future transition periods this language would be modified as necessary to remove dates applicable to the initial transition period mandated by the FCC and the embedded base for that period.

**ISSUE 10:** **TRRO / FINAL RULES:** 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?

**GRUCom:** No position.

**ISSUE 11:** **TRRO / FINAL RULES:** 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?”

**GRUCom:** No position.

**ISSUE 12:** **TRRO / FINAL RULES:** Should network elements de-listed under Section 251(c) (3) be removed from the SQM/PMAP/SEEM?

**GRUCom:** No position.

**ISSUE 13:** **TRO - COMMINGLING:** 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)?

**GRUCom:** No position.

**ISSUE 14:** **TRO - CONVERSIONS:** 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?

**GRUCom:** No position.

**ISSUE 15:** **TRO – CONVERSIONS:** 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?

**GRUCom:** No position.

**ISSUE 16:** **TRO – LINE SHARING:** 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?

**GRUCom:** No position.

**ISSUE 17:** **TRO – LINE SHARING – TRANSITION:** If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC’s existing line sharing arrangements?

**GRUCom:** No position.

**ISSUE 18:** **TRO – LINE SPLITTING:** What is the appropriate ICA language to implement BellSouth’s obligations with regard to line splitting?



**GRUCom:** No position.

**ISSUE 19:** **TRO – SUB-LOOP CONCENTRATION:** 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?

**GRUCom:** No position.

**ISSUE 20:** **TRO – PACKET SWITCHING:** What is the appropriate ICA language, if any, to address packet switching?

**GRUCom:** No position.

**ISSUE 21:** **TRO – CALL-RELATED DATABASES:** What is the appropriate ICA language, if any, to address access to call related databases?

**GRUCom:** No position.

**ISSUE 22:** **TRO – GREENFIELD AREAS:** 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?

**GRUCom:** No position.

**ISSUE 23:** **TRO – HYBRID LOOPS:** What is the appropriate ICA language to implement BellSouth’s obligation to provide unbundled access to hybrid loops?

**GRUCom:** No position.

**ISSUE 24:** **TRO – END USER PREMISES:** 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”?

**GRUCom:** No position.

**ISSUE 25:** **TRO – ROUTINE NETWORK MODIFICATION:** What is the appropriate ICA language to implement BellSouth’s obligation to provide routine network modifications?

**GRUCom:** No position.

**ISSUE 26:** **TRO – ROUTINE NETWORK MODIFICATION:** 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?

**GRUCom:** No position.

**ISSUE 27:** **TRO – FIBER TO THE HOME:** What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?

**GRUCom:** No position.

**ISSUE 28:** **TRO – EELS AUDITS:** What is the appropriate ICA language to implement BellSouth’s EEL audit rights, if any, under the TRO?

**GRUCom:** No position.

**ISSUE 29:** **252(i):** What is the appropriate language to implement the FCC’s “entire agreement” rule under Section 252(i)?

**GRUCom:** No position.

**ISSUE 30:** **ISP Remand Core Forbearance Order:** What language should be used to incorporate the FCC’s *ISP Remand Core Forbearance Order* into interconnection agreements?

**GRUCom:** No position.

**ISSUE 31:** **General Issue:**  
How should the determinations made in this proceeding be incorporated into existing Section 252 interconnection agreements?

**GRUCom:** No position.

**g) A statement of issues that have been stipulated to by the parties:**

**h) A statement of all pending motions or other matters the party seeks action upon:**

GRUCom has no pending motions or other matters upon which it seeks.

**i) A statement identifying the parties’ pending requests for confidentiality:**

GRUCom has no pending claims for confidentiality.

**j) A statement as to any requirement set forth in the Order Establishing Procedure that cannot be complied with, and the reasons therefore:**

GRUCom has complied with all requirements for orders regarding prehearing procedures.

**k) A statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter:**

GRUCom is not aware of any such FCC or court decisions.

**l) Any objections to a witness' qualifications as an expert:**

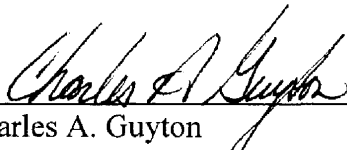
GRUCom has no objections to the qualifications of the witnesses.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of GRUCom's Prehearing Statement has been served by hand delivery (\*) and U.S. Mail this 29th day of September, 2005 on:

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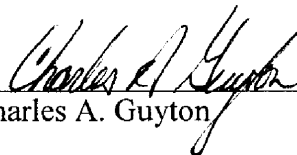
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