

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041269-TP

In the Matter of:

PETITION TO ESTABLISH GENERIC  
DOCKET TO CONSIDER AMENDMENTS TO  
INTERCONNECTION AGREEMENTS RESULTING  
FROM CHANGES IN LAW, BY BELLSOUTH  
TELECOMMUNICATIONS, INC.



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VOLUME 1

Pages 1 through 187

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER ISILIO ARRIAGA

DATE: Wednesday, November 2, 2005

TIME: Commenced at 9:40 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR  
Official FPSC Hearings Reporter  
(850) 413-6734

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## 1 APPEARANCES:

2 TRACY HATCH, ESQUIRE, AT&T Communications of the  
3 Southern States, LLC (05), 101 North Monroe Street, Suite 700,  
4 Tallahassee, Florida 32301, appearing on behalf of AT&T  
5 Communications of the Southern States, LLC.

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11 BILL MAGNESS, ESQUIRE, Casey, Gentz & Magness, P.A.,  
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13 appearing on behalf of CompSouth.

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17 MATTHEW FEIL, ESQUIRE, FDN Communications, 2301  
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1 APPEARANCES CONTINUED:

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6           MARTIN MCDONNELL, ESQUIRE, Rutledge Law Firm, Post  
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9           SUSAN MASTERTON, ESQUIRE, Post Office Box 2214,  
10 Tallahassee, Florida 32316-2214, appearing on behalf of Sprint  
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12           CHARLES A. GUYTON, ESQUIRE, Squire, Sanders &  
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14 Tallahassee, Florida 32301-1804, appearing on behalf of the  
15 City of Gainesville d/b/a GRUCom.

16           STEVEN CHAIKEN, ESQUIRE, and MARVA BROWN JOHNSON,  
17 2901 SW 149th Avenue, Suite 300, Miramar, Florida 33027,  
18 appearing on behalf of Supra Telecommunications and Information  
19 Systems, Inc.

20           ADAM TEITZMAN, ESQUIRE, and KIRA SCOTT, ESQUIRE,  
21 appearing on behalf of the Florida Public Service Commission  
22 Staff.

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COMMISSIONER DEASON: Call the hearing to order.

Could I have the notice read, please.

MR. TEITZMAN: Pursuant to notice issued September 26th, 2005, this time and place has been set for a hearing in Docket Number 041269-TP.

COMMISSIONER DEASON: Thank you. Appearances.

MS. WHITE: Nancy White and Meredith Mays for BellSouth Telecommunications.

MS. MASTERTON: Susan Masterton representing Sprint Communications Company, Limited Partnership.

MR. McDONNELL: Marty McDonnell on behalf of the Southeastern Competitive Carriers Association.

MR. FEIL: Matthew Feil, FDN Communications.

MS. KAUFMAN: Vicki Gordon Kaufman of the Moyle, Flanigan Law Firm on behalf of CompSouth and Covad Communications.

MR. MAGNESS: Bill Magness of Casey, Gentz & Magness on behalf of CompSouth.

MR. EARLY: Gary Early and Norman H. Horton, Jr., with Messer, Caparello & Self on behalf of NuVox Communications, Incorporated; Xspedius Management Company Switched Services, LLC; and Xspedius Management Company of Jacksonville, LLC.

MR. GUYTON: Charles Guyton with the law firm of

1 Squires, Sanders & Dempsey on behalf of the City of Gainesville  
2 doing business as GRUCom.

3 MS. McNULTY: Donna McNulty representing MCI.

4 MR. HATCH: Tracy Hatch with AT&T Communications of  
5 the Southern States, LLC.

6 MR. CHAIKEN: Steve Chaiken and Marva Brown Johnson  
7 on behalf of Supra Telecommunications and Information Systems,  
8 Inc.

9 MR. TEITZMAN: Adam Teitzman and Kira Scott on behalf  
10 of the Commission.

11 COMMISSIONER DEASON: Okay. Mr. Teitzman,  
12 preliminary matters.

13 MR. TEITZMAN: Yes, Commissioner. There are two  
14 preliminary matters, the two outstanding motions: BellSouth's  
15 motion for summary final order or, in the alternative, motion  
16 for declaratory ruling; and CompSouth's cross motion for  
17 summary final order or declaratory ruling.

18 COMMISSIONER DEASON: Okay. Are the parties prepared  
19 to argue these motions at this time?

20 MS. MAYS: Yes, Commissioner. Meredith Mays on  
21 behalf of BellSouth.

22 COMMISSIONER DEASON: Okay. Since the original  
23 motion is yours, I suppose you would proceed.

24 Staff, should we set a time limit on the argument?

25 MR. TEITZMAN: Five minutes might be appropriate.

1           COMMISSIONER DEASON: I think five minutes might be a  
2 little short after reading the motion.

3           MR. TEITZMAN: Okay. On second thought, ten minutes  
4 might be appropriate.

5           COMMISSIONER DEASON: Of course, I'm sure that  
6 Ms. Mays will do her best to proceed expeditiously.

7           MS. MAYS: Certainly, Commissioners.

8           COMMISSIONER DEASON: Okay. Does each party plan  
9 to -- I'm sorry. Who actually -- CompSouth filed the cross  
10 motion; is that correct?

11          MR. MAGNESS: Yes, Commissioner.

12          COMMISSIONER DEASON: Okay. Are you going to be the  
13 only one arguing the motion and the cross motion or are other  
14 parties prepared to argue as well?

15          MR. MAGNESS: I'm arguing for CompSouth. Actually I  
16 can't speak as to the other parties.

17          MR. FEIL: I don't plan on adding anything to what  
18 CompSouth has to say.

19          COMMISSIONER DEASON: Any of the parties -- just let  
20 me know if you do. I see all the heads are shaking in the  
21 negative. Very well.

22                 Commissioners, is it okay -- well, let me ask, should  
23 we address any other preliminary matters before we actually get  
24 to argument?

25          MR. TEITZMAN: This would be the only preliminary



1 matter, the BellSouth motion and the CompSouth cross motion.

2 COMMISSIONER DEASON: Okay. Well, then before we  
3 actually get to argument, let me open it up to the parties.  
4 Are there any other preliminary matters we need to address  
5 before we get to argument?

6 MS. MAYS: Commissioner, we had some discussion about  
7 exhibits, but we can discuss that after we do the motions, if  
8 it, if it pleases the Commissioners.

9 COMMISSIONER DEASON: We can do exhibits afterwards  
10 will be fine.

11 MR. HATCH: Commissioner Deason, after the prehearing  
12 conference, AT&T had filed a notice of dismissal from this  
13 proceeding. I just would like to request that that be  
14 acknowledged and then be excused from further participation in  
15 the proceeding on behalf of AT&T.

16 COMMISSIONER DEASON: That is acknowledged and you  
17 may be excused. I understand that there may be some other  
18 attorneys who may wish to be excused either now or at some  
19 later point. If they wish to be excused at a later point, I  
20 will entertain that at that time, or if they wish to be excused  
21 now, your pleasure, whatever you wish.

22 MS. MASTERTON: I have some testimony to move into  
23 the record, so I was going to ask at that point.

24 COMMISSIONER DEASON: All right. Well, what we will  
25 do is if there are parties who have testimony to be entered

1 into the record, obviously we will address that. And at the  
2 conclusion of that, if those witnesses are not subject to  
3 cross-examination and you wish to be excused, you may request  
4 that at that time.

5 All right. With that, we may proceed with arguments.  
6 Ms. Mays.

7 MS. MAYS: Thank you, Commissioners. Again, my name  
8 is Meredith Mays. I'm here with Nancy White on behalf of  
9 BellSouth. And we filed some time ago a motion for summary  
10 final order in this case, and I'd like to just briefly talk to  
11 you about why we filed it and why we think it would be  
12 appropriate for you to grant that motion before proceeding  
13 further in this case.

14 The reason we filed that motion is fairly  
15 straightforward. We're here on a change of law docket, and  
16 most of the issues that are pending are legal issues. We all  
17 have read the FCC's orders. Most parties in the industry are  
18 fully aware that the FCC has issued its Triennial Review Order  
19 and Triennial Review Remand Order, and they require certain  
20 changes to interconnection agreements. And in order to make  
21 those changes, we thought that it would be appropriate to get  
22 the legal questions answered so that you wouldn't be faced with  
23 a hearing with witnesses opining about what the law is,  
24 although they're lay witnesses. That was really the simple  
25 background behind the filing of that motion.

1           Well, since the time that we filed that motion, you  
2 know, many of the timing and procedural concerns that staff  
3 raised in its recommendation are rendered moot, and let me  
4 explain. We filed our motion and staff recommended that the  
5 motion be denied and that we proceed to hearing. When staff  
6 made that recommendation, they acknowledged that many of the  
7 issues were primarily legal, but they thought that you would  
8 benefit from having, hearing from the witnesses. And they also  
9 raised a concern that there might be some sort of appeal after  
10 a summary final order motion so that you'd entertain a motion,  
11 you'd reach an order, there would be an appeal and the hearing  
12 would be delayed. Well, we're here on the eve of hearing and  
13 that concern can be alleviated because, if you so chose, you  
14 could enter one order. You could enter an order on the summary  
15 final order motion, summary final motion order at the same time  
16 you did a posthearing order. So this concern about an appeal  
17 and a delay, I think, is alleviated by just simple timing.

18           And that concern, although we recognize it and  
19 understand it, isn't really what the legal standard is. In a  
20 summary final order, the legal standard is are there genuine  
21 factual issues? That's the legal standard. And in large  
22 measure there are not. That's the background.

23           Let me talk to you very briefly and highlight the  
24 group of issues that I want to address with you and explain to  
25 you why there are no factual issues and why we think our motion

1 is appropriate. And the issues I want to talk to you about are  
2 issues that I will group collectively as the 271 issues. They  
3 are Issue 7, Issue 13, Issue 16 and 17 and Issue 21, and I  
4 group those collectively as the 271 issues.

5 Now the background behind all of these issues is that  
6 with the FCC's orders they took away or eliminated certain  
7 unbundling requirements. They said under Section 251 of the  
8 Act, CLECs are impaired without access to certain services at  
9 cost-based rates. That obligation is removed. And in some  
10 instances they set forth transition periods. But there's no  
11 question that the 251 obligation goes away. Now what that  
12 leads to is that here in Florida BellSouth has obtained long  
13 distance relief and we have a separate set of obligations under  
14 Section 271, the 271 obligations. And we believe that what the  
15 CLECs are doing is trying to make an end-run around the FCC's  
16 findings under 251, and what they're trying to do is recreate  
17 the 251 environment under 271. And they're doing this by  
18 saying, you have a 271 obligation, it has to go into a  
19 252 interconnection agreement, this Commission needs to approve  
20 it, this Commission needs to set rates. It's the whole thing  
21 all over again. We disagree with that and it is a legal  
22 disagreement. We'd recognize the 271 obligation, but it's  
23 different. The FCC has --

24 COMMISSIONER DEASON: Ms. Mays, let me ask you a  
25 question.

1 MS. MAYS: Certainly.

2 COMMISSIONER DEASON: If, if, if a party believes  
3 that they have been harmed by a failure of BellSouth to meet a  
4 271 obligation, what is their remedy?

5 MS. MAYS: Their remedy is to go to the FCC,  
6 Commissioner Deason. They can file an enforcement action with  
7 the FCC and ask for that matter to be taken up. And we believe  
8 that the case law on that is very clear. We believe that since  
9 the time the TRO was issued, we've had federal district courts  
10 that resulted from some of the no new adds controversies where,  
11 you know, the FCC set forth a starting point. And in the  
12 Mississippi District Court order and in a Kentucky District  
13 Court order, both of these courts referred to the FCC having  
14 enforcement authority. We believe that standard, that legal  
15 standard is exactly what we're talking about here. It is the  
16 FCC's job and not the state commission's job to address  
17 disputes over Section 271.

18 COMMISSIONER DEASON: Have there been any disputes  
19 over 271 obligations filed with the FCC concerning BellSouth?

20 MS. MAYS: There has been a complaint filed by one of  
21 CompSouth's members, Momentum. They filed a complaint, and I  
22 believe there were some procedural issues that caused it to get  
23 dismissed without prejudice and then it got resubmitted under  
24 their procedural rules. And I believe that BellSouth has  
25 prepared a preliminary answer to that and that is pending at

1 the FCC as we speak.

2 COMMISSIONER DEASON: But it was filed, originally  
3 filed with the FCC and apparently will be refiled to some  
4 extent at the FCC.

5 MS. MAYS: I believe it was filed there and I believe  
6 it is currently pending at the FCC, Commissioner Deason.

7 COMMISSIONER DEASON: Thank you.

8 MS. MAYS: With respect to these 271 issues in  
9 particular, we ask you this morning to address them up-front.  
10 And the reason we ask you to address them is because permeated  
11 through all of these issues we have competing contract  
12 language. We have competing witness testimony and we have this  
13 issue about if the 251 obligation goes away, what comes in? If  
14 you answer this question as we believe the law requires you to,  
15 that is we don't have authority to do this, that removes many  
16 of the disputes over these issues.

17 Now we've laid out the case law in our motion and I  
18 won't belabor it given the time constraints, but I would like  
19 to point out that what we're asking you to do is something that  
20 many, many state commissions have already done. There's a  
21 series of decisions, we mentioned the federal decisions, but  
22 there are also many state commissions -- more state commissions  
23 have gone the way we are asking you to go. That is, they have  
24 said, we don't have authority over Section 271, you can't put  
25 it into a Section 252 agreement, it's not for the state

1 commissions to decide. And primarily in the Qwest region where  
2 over and over again those commissions in Washington, in Oregon,  
3 in Colorado, all of these commissions looked at that, answered  
4 it and said, no, this is not our job to do this. We've also  
5 cited to you decisions from Texas, and I'm forgetting the last  
6 one, but they're listed at length in our motion. The CompSouth  
7 lawyers, of course, have pulled out some of the decisions that  
8 have gone against us, and there are some, but they're --

9 COMMISSIONER DEASON: I believe the other state was  
10 Utah. What that correct?

11 MS. MAYS: Yes, Commissioner Deason. Thank you for  
12 reminding me.

13 But, again, I think that -- to summarize these  
14 271 issues, we think they're legal issues. We don't think  
15 that, irrespective of our legal differences, it makes sense to  
16 go through a drawn-out hearing about them, and we think those  
17 questions can be answered up-front now.

18 Beyond the 271 issues, there are other issues that I  
19 would just briefly highlight for you that you have already  
20 addressed. One of them is in that group, and it is the  
21 commingling issue. And you have addressed this issue --

22 COMMISSIONER ARRIAGA: Mr. Chairman, may I please?

23 COMMISSIONER DEASON: Yes. Yes, Commissioner.

24 COMMISSIONER ARRIAGA: Before you go into the next  
25 issues --

1 MS. MAYS: Certainly, Commissioner.

2 COMMISSIONER ARRIAGA: -- following what Commissioner  
3 Deason was saying, has the FCC made a ruling indicating  
4 something similar to what you're claiming, that we as a state  
5 commission do not have any, any authority over 271 issues?

6 MS. MAYS: We believe that when you read the FCC's  
7 orders --

8 COMMISSIONER ARRIAGA: No, that's not my question.  
9 Has the FCC made a ruling in that regard?

10 MS. MAYS: Well, I think the answer to that is, yes,  
11 Commissioner, but let me explain, if I can, because the FCC has  
12 not answered it in a manner that is so clear that we're not  
13 here fighting about it. And what I mean by that is there's  
14 language in the Triennial Review Order where the FCC talks at  
15 Paragraph 664 and around in similar paragraphs about what  
16 happens if there's a 271 issue. They talk about having  
17 enforcement authority, they talk about how a company could  
18 satisfy its 271 obligations, and they talk about arm's length  
19 agreements, and we have over 150 of those arm's length  
20 agreements, and they talk about tariffs. And we interpret from  
21 that language in the Triennial Review Order and from earlier  
22 statements they made in the UNE Remand Order that the FCC has  
23 that authority.

24 Now having said that, obviously, again, we read the  
25 same orders and they may have a different view. And we have



1 pending at the FCC right now a petition where we have filed  
2 from a decision of the Tennessee authority. The Tennessee  
3 Commission took 271 jurisdiction. We believe that was wrong,  
4 and we filed a declaratory petition with the FCC to say address  
5 this, this is a problem, and the FCC has not yet acted on that.  
6 However, our view is that their existing orders speak to this  
7 and they speak to it in the manner we are asking you to rule.  
8 And we believe that the fact that they haven't addressed our  
9 Tennessee petition isn't particularly surprising, given the  
10 fact that it takes them some time to move on things. And we  
11 liken the Tennessee petition to something we did with an  
12 earlier Florida decision in an analogous case where we had an  
13 issue about DSL over UNE-P. This Commission didn't agree with  
14 our position there and other commissions didn't, we filed a  
15 petition, and it took the FCC some time before it ruled on that  
16 petition and said, no, the state commission decisions on this  
17 issue were not correct.

18           So we take all of this together to say the existing  
19 orders speak to it, you don't have authority, there's a pending  
20 matter now, and we are here trying to get this transition  
21 happening. And at the end of the transition period, we've got  
22 to get these decisions in place. So if the FCC doesn't do  
23 anything else before March 2006, we need answers, and this  
24 Commission is going to have to rule one way or the other. We  
25 think it's a legal issue, and we would ask that you rule and do

1 not exercise the 271 authority they are asking you to exercise.

2 COMMISSIONER ARRIAGA: Thank you.

3 MS. MAYS: Just to conclude -- I think I've used my  
4 time up, but I'll be happy to take other questions. I would  
5 highlight for the Commission that you have addressed many of  
6 the issues before. You've addressed commingling in a decision  
7 involving some of the CompSouth members. You said that CLECs  
8 did not get to commingle a 251 obligation with a  
9 271 obligation. We ask you to stand by that ruling and address  
10 that.

11 You've also addressed other issues such as the EELs  
12 audits; you addressed that yesterday in ruling on a Verizon  
13 staff recommendation. And there are other issues that you have  
14 in front of you where you've already dealt with them. So this  
15 notion that you would benefit from hearing our witnesses go on  
16 and on, we respectfully disagree with. We think the benefit  
17 here would be for you to say we've ruled on these, our rulings  
18 stand and let's move on. I'll conclude now and be happy to  
19 take any further questions.

20 COMMISSIONER DEASON: I have a question of, I guess  
21 of practicality.

22 MS. MAYS: Certainly, Commissioner.

23 COMMISSIONER DEASON: As you noted, we are certainly  
24 here on eve of hearing. In fact, I guess we're at hearing.  
25 And I take it from reading your, your motion that part of the

1 motivation for that was to try to eliminate unnecessary  
2 activity here at this hearing concerning legal issues. If the  
3 Commission were inclined to agree with some or all of your  
4 arguments, what is the practical effect? Can we actually gain  
5 any efficiencies in this hearing by doing so?

6 MS. MAYS: I think, Commissioner, the answer to that  
7 is yes. I think we've gotten this hearing fairly streamlined.  
8 It can be further streamlined. And I also think as a real  
9 practical consequence the impact may be beyond the hearing.  
10 That wasn't really in our motion, but the real practical  
11 consequence we have here is that there are CLECs with whom we  
12 have not reached agreement. There are CLECs like AT&T who have  
13 stood up and said they're withdrawing, there are other CLECs  
14 who have withdrawn since this docket started and said we've  
15 gotten done, we've gotten an agreement in place or we've done  
16 what we need to do. But for those CLECs who haven't, some of  
17 them are waiting. And, quite frankly, we think they're waiting  
18 because they want the Commission to come in and recreate 251,  
19 and they're waiting to reach an agreement with us or an  
20 amendment with us, and they're waiting to make transitions  
21 because they think if they're going to get 271, there's going  
22 to be something here for them that prevents them from coming to  
23 the negotiating table and completing negotiations and thereby  
24 alleviating this Commission from dealing with things. So, so  
25 the real practical impact, Commissioner Deason, may really be

1 that you move along this transition period and answer this  
2 question so that CLECs can stop waiting for a lifeboat to come  
3 along and keep the 251 regime and move on and make plans and do  
4 this on a commercial basis.

5 COMMISSIONER DEASON: Thank you.

6 MS. MAYS: Thank you.

7 COMMISSIONER DEASON: Any other questions for  
8 Ms. Mays at this point?

9 Okay. Mr. Magness.

10 MR. MAGNESS: Thank you, Commissioners. First, I'd  
11 like to address the legal standards and efficiencies that  
12 Ms. Mays discussed, and then go into the substantive issues.

13 COMMISSIONER ARRIAGA: Please give me your name.

14 MR. MAGNESS: Bill Magness representing CompSouth.  
15 Sorry, Commissioner.

16 COMMISSIONER ARRIAGA: Magness, M-A-G-N-E-S?

17 MR. MAGNESS: M-A-G-N-E-S-S.

18 COMMISSIONER ARRIAGA: Thank you.

19 MR. MAGNESS: As to the legal standards, I first want  
20 to say CompSouth filed a cross motion for summary judgment. As  
21 we stated in our pleading, we don't think summary judgment is  
22 appropriate, but filed a cross motion in the event the  
23 Commission decided to grant some or all of summary judgment,  
24 that we believe we should get summary judgment going the other  
25 way from what BellSouth suggests. But we are not advocating

1 that this case be resolved by summary judgment. In fact, we  
2 would echo the staff's recommendation on the legal standards,  
3 that particularly as to BellSouth's request for a declaratory  
4 statement in this case that's not appropriate, given especially  
5 that the moving party's seeking a declaration that's going to  
6 affect the rights of other parties, parties not in this case  
7 perhaps, as Ms. Mays referenced. So the declaratory statement  
8 part of the request for relief we think under Florida law isn't  
9 appropriate because that's typically used for obtaining a  
10 policy statement of general applicability, where here these  
11 rulings would go directly into contract language affecting  
12 parties' substantive rights.

13 As to the general standards for summary judgment,  
14 there are what we consider numerous mixed questions of law and  
15 fact. As with so many cases before the Commission, there are  
16 policy considerations, factual considerations that blend into  
17 the questions of law. We highlighted in our papers the issue  
18 concerning HDSL loops, which when you get to the question of  
19 what does the law require about them, the first thing one must  
20 understand is what are they. And there's been testimony of a  
21 technical or network nature that explains those issues and is  
22 necessary as a factual predicate to get to understanding some  
23 of the FCC's rulings. We think that's true on a number of  
24 issues for which BellSouth requested summary judgment.

25 And as to the question of the practicalities,

1 Commissioner Deason, that you were raising, even if there was  
2 one ordered, there could be an appeal by a party of the  
3 granting of the motion for summary judgment. And if the whole  
4 case went up on appeal and it was found by a court that  
5 granting the summary judgment on the particular issue was not  
6 appropriate, that issue may have to be remanded, even though  
7 the underlying issue was also being dealt with in the same  
8 case. I mean, it may create some confusing procedural issues  
9 that could simply be avoided to everyone's benefit by just  
10 going forward with the hearing on these issues, letting the  
11 parties brief the issues that they consider legal and making  
12 one consolidated Commission decision. We think that would be,  
13 particularly here when we are, as you say, at hearing, the most  
14 appropriate course as far as creating an efficient order and an  
15 efficient process.

16 In addition, if some or part of the motion for  
17 summary judgment is granted, the parties are going to have to  
18 go back and redact their testimony, I suppose. If the motion  
19 for summary judgment removes certain issues in the testimony  
20 that's all teed up and ready to be admitted here by consent of  
21 all the parties, we may need to go back and figure out, okay,  
22 which part of what witness's testimony is affected by the  
23 summary judgment, and Ms. Mays and other counsel and I may  
24 agree on that or that may take some discussion to figure out  
25 exactly what parts should no longer be on the record because

1 they're not contested. That alone is going to create more  
2 delay in this hearing than if we just went forward today in a  
3 streamlined process. And I'll tell you as, as an aside, we are  
4 going to propose something later that we think is very much  
5 going to streamline the process in this case, because we have  
6 tried this case now seven times in seven states prior to  
7 getting here. There's a well-developed record, well-developed  
8 facts, as well as the mixed questions of law and fact that have  
9 been at issue in those cases.

10 One of the issues that BellSouth had raised in the  
11 initial proceedings was the length of the hearing, and we think  
12 this hearing can be done expeditiously given the amount of  
13 evidence that is already on the record in the other state  
14 cases, as well as the parties' ability to narrow the issues as  
15 we've gone through those cases. And I will note we've settled  
16 some significant issues before we got here in the process of  
17 going through the hearings in the other states.

18 As to the, the substantive issues, Ms. Mays focused  
19 on the Section 271 issue, and really in our view the place to  
20 start with the Section 271 issue is Section 271 itself. And in  
21 our pleadings at Page 10 and 11 in the CompSouth response to  
22 the motion for summary judgment we cite those provisions of  
23 Section 271, and they appear at Section 271(c)(2). In Section  
24 271, the Congress said, "If a Bell operating company like  
25 BellSouth wants to get into long distance, it has to do certain

1 things to assure that the local market stays competitive and  
2 stays open." Those things in a nutshell are the competitive  
3 checklist, 14 points identified specifically under Section 271,  
4 that BellSouth, if it's in long distance, has to continue to do  
5 in order to maintain its long distance authority.

6 Section 251, on the other hand, applies to all ILECs,  
7 all incumbent telephone companies whether they're a Bell  
8 company or not. It requires unbundling, among other things,  
9 unbundling is what's really at issue here, where there is a  
10 finding of impairment; that is, the competitive carrier or the  
11 CLEC is impaired without access to that unbundled element.

12 What the FCC said in the Triennial Review Order is --  
13 they faced this question: What happens when we no longer find  
14 that there's impairment under Section 251, so the ILEC, be it a  
15 Bell operating company or Sprint or whomever, is excused from  
16 providing it under Section 251, what happens to those Section  
17 271 obligations? Because the way the law is written, that  
18 competitive checklist includes unbundling, specifically as it  
19 matters most here, it includes unbundled switching, unbundled  
20 loops and unbundled transport. And the FCC faced the question,  
21 does a BOC still have to provide that unbundling once we say  
22 there's no impairment under Section 251? And the FCC said,  
23 yes, they do. And that's not something we disagree about.  
24 There is an independent, statutory obligation to provide, most  
25 critically here, switching, loops and transport even after



1 there is no availability under Section 251.

2           Then, of course, the question arises, it has to be  
3 provided under what terms? And if there's a dispute, and there  
4 are often disputes between us, if there is a dispute, who  
5 settles it? And in looking directly to Section 271 we find the  
6 answer. Section 271 provides, in Section 271(c)(2), that in  
7 order to meet the checklist, in order to stay in long distance,  
8 a Bell operating company must have, must be providing access  
9 and interconnection pursuant to one or more agreements  
10 described in Paragraph 1A of Section 271. And what they're  
11 referencing in Paragraph 1A is interconnection agreements  
12 approved by state commissions under Section 252. And that  
13 interconnection under that agreement has to meet the terms of  
14 the competitive checklist. And the statute goes on, as we  
15 quote on Page 11, of our papers, it says --

16           COMMISSIONER DEASON: I'm sorry. I need to interrupt  
17 for just a second.

18           MR. MAGNESS: Yes, sir.

19           COMMISSIONER DEASON: Where does it say that that  
20 agreement has to meet the terms of the competitive checklist?

21           MR. MAGNESS: In -- the paragraph reads, "Agreement  
22 required."

23           COMMISSIONER DEASON: Could you -- I'm on Page 11 of  
24 your filing. Is that an incorrect --

25           MR. MAGNESS: I'm sorry. I have it on Page 10.

1 COMMISSIONER DEASON: Page 10. Okay. I'm on Page  
2 10.

3 MR. MAGNESS: The part that we're quoting begins,  
4 "Agreement required," that section of the statutes that's set  
5 off there. "A Bell operating company meets the requirements of  
6 this paragraph if within the state for which authorization is  
7 sought such company is providing access and interconnection  
8 pursuant to one or more agreements described in Paragraph 1A."  
9 And if you go back and look at 1A, those are interconnection  
10 agreements. Or you can do it through a statement of generally  
11 available terms or SGAT. Then it says, "Such access and  
12 interconnection," that is the access and interconnection  
13 provided under that agreement, "meets the requirements of (b)  
14 of this paragraph." Subparagraph B contains that 14-point  
15 competitive checklist.

16 So that interconnection agreement is required as the  
17 vehicle by which Bell operating companies continue to  
18 demonstrate their compliance with the competitive checklist.  
19 That agreement is an interconnection agreement as defined by  
20 the Act. Interconnection agreements as defined by the Act are  
21 subject to review and approval by state commissions under  
22 Section 252.

23 And if you go to the next page, I think the, the  
24 additional provision directly from Section 271 says, "Agreement  
25 or statement." This is in 271(c)(1). "Bell operating company

1 meets the requirements of this paragraph if it meets the  
2 requirements of (a) or (b) of this paragraph for each state in  
3 which authorization is sought." That is long distance  
4 authorization. And one of those requirements is the presence  
5 of a facilities-based competitor. A Bell operating company  
6 meets the requirements of this subparagraph if it has entered  
7 into one or more binding agreements that have been approved  
8 under Section 252, specifying the terms and conditions that it  
9 will offer access. So Section 271 itself points to the Section  
10 252 process. It answers the question, how is it that we're  
11 going to maintain Bell operating company compliance with  
12 Section 271 after they're in the long distance market? The  
13 answer is the competitive checklist needs to be incorporated  
14 into agreements approved under Section 252.

15           Section 251 of the Act also points to Section 252 and  
16 says, all these obligations that all incumbent phone companies  
17 have, Bell operating companies, little companies, everybody who  
18 doesn't have a rural exemption has to obey 251. The process by  
19 which you get to your contract -- you don't do this by tariff,  
20 you don't do this by private agreement, you do this by  
21 negotiating a bilateral agreement between an ILEC and the  
22 competitor, the CLEC. And if you can't get to a deal, you take  
23 it to a state commission for arbitration. And Section  
24 252 references 251. Section 252 provides the specific process  
25 that this Commission and 49 others have had to deal with since

1 the Act passed of arbitrating these individual disputes that  
2 form these interconnection agreements. It is the same Section  
3 252 process that Section 271 points to and says, Bell operating  
4 company, you're in a different boat than any other incumbent.  
5 You are in a position where you have undertaken special  
6 obligations in order to stay in long distance. Those special  
7 obligations are the competitive checklist. The competitive  
8 checklist going forward has to be embodied in a Section  
9 252 interconnection agreement. That means an agreement that's  
10 approved by this Commission.

11           So the statute itself provides the reference into the  
12 arbitration process to be conducted by this Commission. The  
13 statute itself conducts the reference into -- or rather  
14 provides the reference into the state commission determination  
15 when there are disputes about what the rates, terms and  
16 conditions of these checklist elements should be.

17           Now we acknowledge and we have said nothing different  
18 in any of the testimony, despite what you may have heard a few  
19 minutes ago, that the rates that are going to be charged for  
20 the Section 271 checklist elements don't have to be the same as  
21 the Section 251 rates. In fact, the interim rates that we're  
22 proposing are higher than Section 251 rates. We're taking the  
23 interim rates that were set by the FCC in the Triennial Review  
24 Remand Order and applying those as an interim measure for  
25 Section 271 checklist elements for switching loops and

1 transport. So the rates go up. It's not recreating Section  
2 251. But the debate that remains to be resolved in a further  
3 proceeding is exactly what is the rate for those 271 elements?

4           The FCC didn't say once you get Section -- once  
5 you're in Section 271 but not Section 251 that the rate is  
6 deregulated. The FCC said the rate has to be just and  
7 reasonable. We look at just and reasonable, the FCC said,  
8 using the standards for interstate services that we've always  
9 used under the Communications Act, Section 201 and 202, just  
10 and reasonable standards. Those same just and reasonable  
11 standards have been used by state commissions for intrastate  
12 services. It's not a deregulated rate. It's a rate that  
13 references back to cost standards that both state commissions  
14 and the federal commission have used when they've set  
15 appropriate rates.

16           So in this case Section 271 itself points to this  
17 Commission's process. And does that mean that CompSouth is  
18 arguing that you should be enforcing Section 271, that you  
19 should be taking over the FCC's role of determining that  
20 BellSouth has violated its Section 271 obligations? No.  
21 Section 271(d)(6) says that the FCC will resolve complaints  
22 brought to them that allege BellSouth, SBC, whomever, is not  
23 complying with their Section 271 obligations, and they should  
24 be sanctioned, they should be removed from long distance,  
25 whatever the proposed remedy is.

1           We're not asking this Commission to take that  
2 authority. What we're asking this Commission to do is  
3 arbitrate rates, terms and conditions in a Section  
4 252 interconnection agreement that reflect the checklist items  
5 that BellSouth is required to provide. This Commission will  
6 decide on rates, terms and conditions. If one of my clients or  
7 someone else decides that those aren't any good, those aren't  
8 just and reasonable, I'm taking it up to FCC and try to get  
9 them out of long distance, that's an FCC enforcement action.  
10 The FCC has not, I repeat, has not said that state commissions  
11 do not have authority in this regard.

12           The Tennessee Regulatory Authority a year ago agreed  
13 with the arguments we're making here and said in an  
14 ITC^DeltaCom arbitration with BellSouth there should be an  
15 interim rate, Section 271 rate for switching. They just, the  
16 20th of October, issued their written order. Long before they  
17 issued the written order, I think, in fact, in July of 2004,  
18 BellSouth filed an emergency petition at the FCC and said, Holy  
19 cow, the Tennessee Authority has, you know, gone over the edge,  
20 they are approving a Section 271 checklist rate. You got to  
21 act immediately. And the FCC took briefs; I think the last  
22 briefs were filed August 16th of 2004. The FCC has never moved  
23 on this emergency petition. There is nothing in the Triennial  
24 Review Remand Order that directly, head-on addresses this issue  
25 of whether state commissions negotiate, rather, arbitrate

1 disputes concerning Section 271 checklist elements.

2           The federal court cases, in the Mississippi case, in  
3 the Kentucky case, the very slim references in those cases to  
4 Section 271 all asserted that enforcement authority is at the  
5 FCC. That's properly where enforcement authority is. And so  
6 to the extent that CLECs were arguing that Section 271 dictated  
7 BellSouth do something in particular about UNEs, if they wanted  
8 to bring it up as enforcement, it had to go to the FCC. Those  
9 cases did not directly address the question before the  
10 Commission here, which is what do we do with Section 271's  
11 reference to Section 252? How is it that we write that out of  
12 the statute by saying, okay, it doesn't have to be a Section  
13 252 agreement, it can be something else?

14           There are other federal court cases, including a case  
15 of Qwest versus the Minnesota Public Utilities Commission we  
16 cite in our papers, which while, I will admit, not directly  
17 addressing this point head-on, that court recognized that  
18 Section 271 elements have their home in Section 252 agreements.

19           In the Seventh Circuit decision in Indiana Bell  
20 versus the Indiana Public Service Commission -- again, I'm not  
21 trying to tell you that case is foursquare on, but in that case  
22 as well the court referenced where do the 271 elements go? And  
23 they mentioned the requirement that I read earlier about them  
24 being in interconnection agreements.

25           And on the state commission side, yes, Commissioners,

1 it's right, there have been mixed results on this issue. This  
2 issue has just now been teed up because while it's been brewing  
3 for some time, as I mentioned, the FCC first addressed it in  
4 the Triennial Review Order in 2003, while it's been brewing,  
5 until there were actual network elements that became  
6 unavailable under Section 251, it didn't really become a  
7 business issue because the question now facing CLECs is I know  
8 I'm going to transition off unbundled local switching under  
9 Section 271 -- I mean, under Section 251. I know I'm going to  
10 transition off of certain high capacity loops and transport  
11 that I use to connect to my switches to provide services. The  
12 question is what do I transition to? And that's how the issue  
13 has been joined. Is there a Section 271 just and reasonable  
14 rate that you're transitioned to that's approved by state  
15 commissions after arbitration, or is it what BellSouth wants to  
16 offer under its special access tariff or under a private, what  
17 they call, commercial agreement that's not presented to this  
18 Commission?

19 COMMISSIONER DEASON: Mr. Magness, can you point to  
20 me either an FCC decision or language in the law which says  
21 this Commission or any state commission has the, the ability,  
22 the authority to set a just and reasonable rate for a  
23 271 requirement?

24 MR. MAGNESS: Well, first in Section 271 the  
25 references into Section 252 are a reference into the state



1 Commission arbitration and interconnection agreement approval  
2 process. Section 252 itself doesn't point back. But Section  
3 271 says that is the kind of agreement you have to have. So --

4 COMMISSIONER DEASON: To meet the requirements to  
5 obtain the ability to provide long distance service; correct?

6 MR. MAGNESS: Well, I think the requirements are not  
7 only requirements to enter, but requirements to stay in.  
8 Because the FCC and, rather, the statute, Congress said you  
9 have to maintain compliance with a competitive checklist. So  
10 --

11 COMMISSIONER DEASON: You have to have an arbitrated  
12 agreement or some type of a statement of generally available,  
13 what is it, SGAT.

14 MR. MAGNESS: Statement of generally available terms,  
15 yes, sir.

16 COMMISSIONER DEASON: Yes. It's an either/or. And  
17 if there is an arbitrated -- and that's the reference to an  
18 arbitrated agreement in 271; correct? But get me to the point  
19 to where this Commission has the ability to set just and  
20 reasonable rates for those 271 requirements.

21 MR. MAGNESS: Well, the, in the Triennial Review  
22 Order, which is here somewhere, the FCC does not directly  
23 identify who is setting the rates in the Triennial Review  
24 Order.

25 In Paragraph 264 that Ms. Mays mentioned, the FCC

1 discusses that in its, in its kin, in its jurisdiction, the FCC  
2 would look at -- I'll just read from Paragraph 646. It says,  
3 "We note, however, that for a given purchasing carrier a BOC  
4 might satisfy this standard," that is the just and reasonable  
5 standard, "by demonstrating that the rate for a Section  
6 271 network element is at or below the rate at which the BOC  
7 offers comparable functions to similarly situated purchasing  
8 carriers under its interstate access tariff to the extent such  
9 analogs exist." And then as Ms. Mays read, "Alternatively, the  
10 BOC could show something else. You could look at what other  
11 carriers are purchasing it for." But the FCC does not give us,  
12 as they often don't, the lockdown answer on here's exactly what  
13 the just and reasonable standard means.

14 In Section, in Paragraph 6 -- let's see. Well,  
15 unfortunately I don't have it marked in this copy I'm carrying  
16 around. But in six sixty something -- I believe it's six  
17 sixty, yeah, 663, the one right before the one I just read you,  
18 the FCC speaks of the -- it says, "The pricing of checklist  
19 network elements that do not satisfy the unbundling standards  
20 in Section 251(d)(1)," that is the ones in dispute here, "are  
21 reviewed utilizing the basic just, reasonable and  
22 nondiscriminatory rate standard of Sections 201 and 202 that is  
23 fundamental to common carrier regulation, that has historically  
24 been applied under most federal and state statutes, including  
25 for interstate services, the Communications Act." In speaking

1 about the rate standard, the FCC is referencing state statutes,  
2 federal statutes to establish what the basic just and  
3 reasonable rate standard is. They do not in the paragraphs  
4 where they are discussing Section 271 checklist elements say  
5 this is going to be decided by us, the FCC, this is going to be  
6 decided by the state commission. Unfortunately, that's, I  
7 think, a lot of why we were fighting about it is that our view  
8 is that the Section 271 itself contemplates that there are  
9 Section 252 agreements, which by their definition are ones that  
10 come before state commissions and are arbitrated that have to  
11 be in place in order to maintain Section 271 compliance. So I  
12 think it's those references in Section 271 that point you  
13 directly back to Section 252 that we'd have to point you to,  
14 Commissioner, as the place that we believe Congress  
15 contemplated it was the Section 252 state commission job to set  
16 the terms for those checklist elements at a just and reasonable  
17 rate.

18 COMMISSIONER DEASON: Mr. Magness, has it been your  
19 experience that if the FCC is desirous of delegating something  
20 to the states, they do so explicitly, and if they're vague,  
21 that probably means they're retaining it for themselves?

22 MR. MAGNESS: I'm afraid I wouldn't hazard a guess  
23 about FCC vagueness. It seems that sometimes there are issues  
24 that -- well, and I think actually, Commissioner, this is a  
25 good example. If the FCC believed that it had lock down, no

1 question authority over everything 271, I don't understand why  
2 they didn't act on BellSouth's emergency petition over a year  
3 ago and say so. They -- that presented the issue pointedly.

4 In addition, in a forbearance petition that was  
5 partially granted by the FCC, SBC, I believe, and I don't think  
6 BellSouth made this request, but I'm pretty sure SBC did, said,  
7 FCC, if we don't have to provide an element under Section  
8 251 anymore, we want you to use your forbearance authority and  
9 say that we don't have to provide it under Section 271 anymore  
10 either. The FCC said no. They said yes for certain broadband  
11 elements. They said no as it affected loops, transport and  
12 switching; those still have to be available. And the FCC did  
13 not step in in that case to say, yes, and, you know, come to us  
14 and we will set the rates, we'll establish the terms and  
15 conditions. So I think the FCC has had every opportunity to  
16 retain this jurisdiction and take it for certain, but where  
17 they have addressed the issue explicitly in their orders they  
18 have not. And it's our contention that they can't, given that  
19 Section 271 contemplates a Section 252 agreement on an ongoing  
20 basis.

21 COMMISSIONER DEASON: Mr. Magness, how do you  
22 reconcile your arguments with the fact that the state's role in  
23 the 271 proceeding was essentially one of an advisory nature?

24 MR. MAGNESS: The state's role in the granting of  
25 271 was exactly as you say, and I think Section 271 is also

1 clear about that, that the state role in determining do you get  
2 in long distance or not, have you met the checklist enough to  
3 let you in was something Congress said the state should look  
4 at, give the FCC their opinion, and you'd go forward. And the  
5 state role was limited to that as far as entry into long  
6 distance. In the same way the state role as far as exit from  
7 long distance or enforcement of long distance authority is --  
8 there really isn't a strong role for the state. The state  
9 again can play an advisory role. The state could advise the  
10 FCC that it believes there isn't Section 271 compliance on an  
11 ongoing basis. But as far as enforcement, that state role was  
12 limited.

13           But the authority that we're talking about is in, you  
14 know, a different part of the statute that has to do with how  
15 you maintain, establish and maintain compliance with the  
16 checklist, and that's where we believe the references to  
17 Section 252, if they're not to be read out of the statute, take  
18 you directly back to a process for creating interconnection  
19 agreements that include state commission participation. Just,  
20 just as the FCC set a standard for TELRIC rates under Section  
21 251 and left it to the states to figure, figure out the details  
22 in arbitration. Again, the reference in Section 252 here  
23 appears to say, figuring out what the details of checklist  
24 compliance are, go into negotiation and arbitration, result in  
25 bilateral agreements under Section 252.

1           COMMISSIONER DEASON: Okay. Do you have anything  
2 further?

3           MR. MAGNESS: All I would add at the end is, just to  
4 pick up on something Ms. Mays said, we do need answers. The  
5 transition is coming for all of us. We need these issues  
6 resolved, and our desire to get on with it today reflects that  
7 as much as anything. We, we know the rules of the road have  
8 changed. We know that things that have gone away under Section  
9 251 have gone away under Section 251. The question is what are  
10 we transitioning to? Are we transitioning to these checklist  
11 elements? Are we transitioning to something else? And those  
12 are some of the key questions before you, and we think we ought  
13 to just go ahead and resolve them on the record in the hearing.

14           COMMISSIONER DEASON: Commissioners, questions for  
15 Mr. Magness?

16           COMMISSIONER ARRIAGA: I have questions. Thank you.

17           Why do you -- if our authority is in question, why  
18 are you seeking our answers, us, the PSC, the Florida PSC to  
19 give you answers? Why don't you go directly to the FCC?

20           MR. MAGNESS: Well, Commissioner, we believe that the  
21 Section 252 process that we've been talking about, that when  
22 the statute identifies how you create these bilateral  
23 interconnection agreements that my clients and BellSouth  
24 operate under, that process is one that comes to state  
25 commissions. When we can't work it out on a negotiated basis,

1 excuse me, we come here like we're coming here today to resolve  
2 the discrete disputed issues.

3 COMMISSIONER ARRIAGA: Did you say you cannot work it  
4 out? I was understanding from Ms. Mays' statement that you  
5 were ready to jump into negotiations if we approved her motion.  
6 Would that be correct?

7 MR. MAGNESS: I think the -- we have -- well, I'll  
8 say on behalf of the CompSouth members there are a number of  
9 issues that were worked out before we ever started litigating  
10 these cases. Several important issues have been taken off the  
11 table as we have litigated them. I don't believe that -- the  
12 way the issues are teed up now, I don't think that the granting  
13 or denial of the motion, except to the extent it resolves an  
14 issue, you know, totally, I don't think it would cause everyone  
15 to go into the back room and refigure their positions at this  
16 point in the game, so.

17 COMMISSIONER ARRIAGA: Okay. Thank you.

18 COMMISSIONER DEASON: Mr. Magness, the Commission was  
19 very liberal in allowing you sufficient time to argue your  
20 case, your motion, and I would allow Ms. Mays to take some  
21 brief time to close, if she wishes.

22 MS. MAYS: Commissioner, just, just two things. One  
23 is you asked Mr. Magness about the just and reasonable rate,  
24 who gets to set it, and I would urge, I would remind the  
25 Commission again what the TRO says at Paragraph 664. It says,

1 the first sentence, "Whether a particular checklist element's  
2 rate satisfies the just and reasonable pricing standard of  
3 Section 201 and 202 is a fact-specific inquiry that the  
4 Commission," talking about the FCC, "that the Commission will  
5 undertake in the context of a BOC's application for Section  
6 271 authority or in an enforcement proceeding brought pursuant  
7 to Section 271(d)(6)." We think that answers the rate setting  
8 question directly.

9           The second thing I would point out is that the most  
10 recent word we've had from the FCC is, it's prepared in the  
11 brief, the TRO has been appealed -- the TRRO, excuse me, has  
12 been appealed to the DC Circuit. And the FCC filed a brief,  
13 and depending on how this hearing goes, we may ask to either  
14 have that admitted or ask for you to take administrative notice  
15 of it. But there's a great deal of verbiage in the FCC's  
16 appellate papers where they talk about the just and reasonable  
17 rate and they compare it to TELRIC and they go on. And we  
18 think that also speaks to the fact very clearly that the FCC is  
19 the body that has the rate setting authority, not the state  
20 commissions. Thank you.

21           COMMISSIONER DEASON: Okay. Staff, do you have  
22 anything to add at this point, or how do you recommend we  
23 proceed?

24           MR. TEITZMAN: Well, Commissioners, staff's  
25 recommendation at this time is the same as was provided in our



1 recommendation that was filed on September 22nd, 2005, and that  
2 would be to deny both the motion and the cross motion. With  
3 regard to how to proceed at this time, I believe you could make  
4 a motion of whether or not to grant or deny those motions, and  
5 you could also make a partial ruling if that was what you would  
6 like to do.

7 COMMISSIONER DEASON: Okay. Commissioners,  
8 questions, motion?

9 COMMISSIONER ARRIAGA: To the staff.

10 COMMISSIONER DEASON: Yes.

11 COMMISSIONER ARRIAGA: Again, I'm troubled by the  
12 fact that our authority is in question here, so I'm wondering  
13 what are we doing here? Because whatever decision we make  
14 looks like it's going to be appealed or something like that. I  
15 don't know. What is your opinion? Do we have authority to  
16 continue on with this hearing?

17 MR. TEITZMAN: I want to be careful in how I respond  
18 to that because depending on --

19 COMMISSIONER ARRIAGA: Because, I'm sorry, because  
20 the FCC has not made a ruling, and I asked Ms. Mays directly  
21 that question, and I asked Mr. Magness directly why didn't they  
22 go to the FCC. So it seems it isn't clear if we should be  
23 doing this or not. Again, your opinion, please.

24 MR. TEITZMAN: Yes, Commissioner, I just wanted to  
25 state first that I want to be careful in setting forth a

1 position because depending on how you rule on this motion --  
2 if, for example, you were to deny it, this question would then  
3 come up again before the Commission after we prepared a final  
4 recommendation. And I don't want at this point to prejudice  
5 one way or the other what our recommendation may or may not be.  
6 In an attempt to respond to your question, I guess what I would  
7 say is both parties or BellSouth, CompSouth and the additional  
8 CLEC parties agreed to bring this proceeding before the  
9 Commission, and at that point we then proceed. I'd say it's  
10 the nature of the beast per se.

11           If the Commission issues a decision, a party decides  
12 to appeal it, that very well may be the case, but they'll then  
13 have a decision to work off of. So I believe basically because  
14 the parties have agreed to bring this before us, whether they  
15 argue at this point now or whether or not we have authority,  
16 that's the actual argument. But they've agreed to have the  
17 Commission answer that question and that's why I believe it's  
18 before us.

19           COMMISSIONER DEASON: Staff, let me ask you this  
20 question. If the Commission were inclined to agree with the  
21 argument put forth by BellSouth that this state commission does  
22 not have the authority to set just and reasonable rates for  
23 271 checklist items, if we made that decision sitting here  
24 today at this time, how does that affect the remainder of this  
25 hearing?

1           MR. TEITZMAN: Well, certainly Mr. Magness referenced  
2 there may be some delay today at least where the parties would  
3 have to go back and take another look at their testimony and  
4 decide what needs to be redacted from that testimony. Also,  
5 Ms. Mays was correct in that we could issue the order -- the  
6 final order could address both your ruling today and any  
7 additional issues that are addressed in the final  
8 recommendation and final decision by the Commission.

9           COMMISSIONER DEASON: Just let me say that I'm -- my  
10 preference, and, of course, I've not been assigned to this  
11 docket very long, but my preference would have been for this  
12 matter to have been resolved before now. I note that the  
13 original motion was filed, I believe, in July, but for whatever  
14 reason we're addressing it now. If it had been, if it had been  
15 addressed sooner and there had been, had been a decision that  
16 could have streamlined the hearing, it could have been  
17 effectuated much easier. And so we don't have the benefit of  
18 that at this point. I'm not so sure that it would be a wise  
19 use of time to try, to try to go back and strike testimony. It  
20 probably would be more time-consuming to try to identify the  
21 testimony at this point, not unless there was going to be a  
22 delay in the hearing, to delay this hearing at some later  
23 point, which may be a difficult thing to accomplish given that  
24 there is a March 10th, 2006, FCC-imposed deadline, if you will.

25           So having said all of that, Commissioners, I

1 certainly welcome your input and want to engage in some  
2 discussion here. It seems to me that it may be best just to go  
3 forward with the hearing without any ruling on the motion at  
4 this point, and at the conclusion of the hearing we could  
5 retake, we could take up the motion and the cross motion again  
6 if we were so inclined to rule one way or the other. I'm not  
7 so sure what the advantages or disadvantages of that are. I'm  
8 just -- I'm not sure at this point that there's going to be a  
9 lot of advantage of, as far as streamlining the hearing, of  
10 ruling. But I can share this with you, based upon the argument  
11 that I've heard and reading the motions, I as one Commissioner  
12 am reluctant to make a finding that this Commission has the  
13 authority to set just and reasonable rates for 271 checklist  
14 items. I would be extremely uncomfortable in doing so. And  
15 that's based upon my reading of the, of the law and the  
16 argument and having dealt with the FCC over a number of years.  
17 Those are my inputs. I would welcome other thoughts.

18 COMMISSIONER EDGAR: Commissioner Deason, a couple of  
19 thoughts. I agree, it probably would have been or it would  
20 have been neater and perhaps more efficient if, if this matter  
21 had been resolved previously. There are a variety of reasons  
22 why it was not, and I did serve as prehearing officer on this.  
23 One of the reasons was that there seemed to be some opportunity  
24 for the parties to reach agreement on some of the issues if  
25 given a little more time, and I do believe we've heard that

1 that did take place on some issues, if not all, although  
2 obviously not all. We also were looking for the -- because of  
3 some of the issues that have been raised by the parties, we  
4 were, it was my opinion that we were better off to have a full  
5 panel for the matters to come before us, and we needed a little  
6 more time to be able to be in that posture procedurally.

7           So, again, I do agree that it would have been more  
8 efficient if we had been able to move on this sooner, but I  
9 think there were good reasons why we were not, why we did not  
10 make the decision to do that.

11           I am less uncomfortable perhaps than you have  
12 expressed with the ability and authority of this Commission to  
13 move forward. It does seem to me that it is unclear, and if it  
14 is unclear due to some ambiguity from orders from the FCC, then  
15 I do feel that in some instances it is our obligation to move  
16 forward. So I'm not sure, quite frankly, what all of the  
17 options are that are before us, but I would point out the  
18 obvious, which is that we are all here and the parties are here  
19 and the witnesses are here. There does not seem to be a full  
20 meeting of the minds as to the law and the facts, and so it  
21 seems to me that it may be in the best interest to proceed.  
22 But I am also willing to have more discussion.

23           COMMISSIONER DEASON: Well, just let me say at this  
24 point, I believe -- I do agree that we're here. I think we're  
25 at a point where we need to proceed with the hearing. And it

1 seems to me that, perhaps that we could simply reserve ruling  
2 on the motion and cross motion and proceed to hearing, hear the  
3 witnesses, and if we wish to reentertain the motion and the  
4 cross motion at some future time, we could do so at that time.  
5 Staff, is that something that we could do?

6 MR. TEITZMAN: Oh, certainly, Commissioner. You  
7 could take it up after, at the conclusion of the hearing, if  
8 you would like to.

9 COMMISSIONER DEASON: Commissioner?

10 COMMISSIONER ARRIAGA: Commissioner Deason, as  
11 expressed by Commissioner Edgar, I don't feel so uncomfortable  
12 with continuing. And when in doubt like we are right now if we  
13 have the authority or not, I would assume that we have it  
14 before we give it away. We got here so far is because somebody  
15 out there thinks that we have the authority; otherwise, they  
16 would have gone to the FCC right away directly.

17 I'm also troubled by the fact that why did we get  
18 here? Why did we do all this, why all the time, all the effort  
19 and all the hearings and all the testimony and all the  
20 discovery, all the things that were done to come here today and  
21 say there's no authority to continue and let us negotiate  
22 directly? It is evident to me that there is not direct  
23 negotiation and there is no agreement and they're looking for  
24 some kind of resource that will tell them where to go.

25 I don't know what the effect of your proposal would

1 be legally. It can be challenged that we did not follow due  
2 process or -- I don't know the effect. But I think I am ready  
3 to make a decision if somebody makes a motion.

4 COMMISSIONER DEASON: Well, clearly I think the  
5 Commission can address the motion and a cross motion, and if  
6 there's a majority of the Commission that is agreeable to just  
7 deny those motions, we can do so at this point and move  
8 forward. That's certainly within our ability as well. So, you  
9 know, we can have further discussion or we can open it up for a  
10 motion. I'm agreeable either way.

11 COMMISSIONER EDGAR: My preference and my  
12 suggestion -- and I'll go ahead and make the motion that we  
13 deny the request for summary final order and the cross motion  
14 at this time.

15 COMMISSIONER DEASON: Okay.

16 COMMISSIONER ARRIAGA: I'll second it.

17 COMMISSIONER DEASON: It's been moved and seconded.  
18 All in favor, say aye.

19 COMMISSIONER ARRIAGA: Aye.

20 COMMISSIONER EDGAR: Aye.

21 COMMISSIONER DEASON: Nay. Motion carries on a  
22 two-to-one vote. So we have made some progress today.

23 Okay. Staff, that addresses the preliminary matters.  
24 I understand there are some general matters concerning  
25 exhibits.

1 MR. TEITZMAN: Yes, Commissioners. Staff has  
2 prepared a comprehensive exhibit list that was passed out to  
3 all the parties. They've had an opportunity to review it. In  
4 that list staff is proffering six exhibits; BellSouth is  
5 proffering one confidential composite exhibit comprised of  
6 region-wide discovery served by BellSouth regarding fiber-based  
7 collocators and the responses; and there are two joint exhibits  
8 consisting of the deposition transcripts of Joseph P. Gillan  
9 and Kristin Shulman. At this time staff would request that the  
10 comprehensive exhibit list be marked for identification as  
11 Exhibit 1.

12 COMMISSIONER DEASON: It will be so identified.

13 (Exhibit 1 marked for identification.)

14 MR. TEITZMAN: And staff would request additionally  
15 that the exhibits in the list marked for identification, as  
16 numbered in that list, 2 through -- be marked as 2 through 10.

17 COMMISSIONER DEASON: Okay. Let me see if I  
18 understand your request. We have identified Exhibit 1, which  
19 is the comprehensive exhibit list, and there are exhibits  
20 identified and numbered 1 through 28; correct?

21 MR. TEITZMAN: Correct. 11 through 28 are the  
22 testimony exhibits.

23 COMMISSIONER DEASON: And so we'll address those at  
24 the time the testimony is presented; is that correct?

25 MR. TEITZMAN: Yes, Commissioner.



1           COMMISSIONER DEASON: Okay. Now for Exhibits  
2 2 through 10, are you moving those into the record at this  
3 point?

4           MR. TEITZMAN: We would ask that they be marked and  
5 moved into the record. Yes, Commissioner.

6           COMMISSIONER DEASON: Okay. Any objection to the  
7 insertion into the record of Exhibits 2 through 10? Hearing  
8 none.

9           COMMISSIONER ARRIAGA: I have no objection, Mr.  
10 Chairman. I just don't know where 8, 9 and 10 are. I don't  
11 see it.

12           COMMISSIONER DEASON: Well, 8 is a proprietary  
13 exhibit.

14           COMMISSIONER ARRIAGA: Okay.

15           COMMISSIONER DEASON: And do we have in front of us  
16 the deposition transcripts which have been identified as  
17 Exhibits 9 and 10?

18           MR. TEITZMAN: In discussions with the parties, they  
19 were going to be responsible, as those were their joint  
20 exhibits.

21           MS. MAYS: Commissioner Deason, we have provided the  
22 court reporter with Exhibits 8 through 10. We would be happy  
23 to, if we can approach, provide those to the Commissioners if  
24 you would like them at this time.

25           COMMISSIONER DEASON: That would be appropriate. Is

1 Exhibit 8 properly identified as proprietary?

2 MS. MAYS: Yes, Commissioner. Exhibit 8 is  
3 proprietary.

4 (Pause.)

5 COMMISSIONER DEASON: Okay. For exhibits -- we have  
6 a motion to, for Exhibits 2 through 10 to be accepted into the  
7 record. Any objection? Hearing no objection then, show that  
8 Exhibits 2 through 10 as well as Exhibit 1 are entered into the  
9 record.

10 (Exhibits 2 through 10 marked for identification.)

11 (Exhibits 1 through 10 admitted into the record.)

12 COMMISSIONER DEASON: Staff, are there other matters  
13 at this point?

14 MR. TEITZMAN: I was approached prior to the hearing  
15 by Ms. Kaufman on behalf of CompSouth. I believe there's an  
16 additional stipulated exhibit at this time.

17 MS. KAUFMAN: Yes. Mr. Deason, we have discussed  
18 with BellSouth adding a stipulated exhibit to the list. I  
19 guess it would be 29, and I have copies of those. It's some  
20 discovery that was done in the Tennessee proceeding, and I  
21 don't believe there's any objection.

22 COMMISSIONER DEASON: Very well. Can you distribute  
23 that?

24 MS. KAUFMAN: Yes, sir.

25 (Pause.)

1           COMMISSIONER DEASON: This exhibit will be identified  
2 as Exhibit Number 29 and, without objection, shall be entered  
3 into the record.

4           (Exhibit 29 marked for identification and admitted  
5 into the record.)

6           COMMISSIONER DEASON: Other exhibits to be identified  
7 or admitted at this time?

8           MR. TEITZMAN: Commissioner, I believe, as  
9 Mr. Magness referenced earlier, he does have a proposal  
10 regarding an additional exhibit. I believe they're  
11 out-of-state transcripts.

12           COMMISSIONER DEASON: Mr. Magness.

13           MR. MAGNESS: Yes, Commissioners. Bill Magness from  
14 CompSouth. We have discussed this with BellSouth over the  
15 course of several weeks but have not reached an agreement on  
16 this proposal, so we bring it to you as a motion. And that is  
17 to incorporate excerpts from the transcripts of the hearings on  
18 these same change of law proceedings conducted before the  
19 Georgia PSC August 30th to September 1st of 2005; Tennessee  
20 Regulatory Authority, September 13th and 14th, 2005; North  
21 Carolina Utilities Commission, September 20th and 21st, 2005;  
22 and the Alabama Public Service Commission, October 6th of 2005.  
23 The excerpts we're requesting be incorporated in the record  
24 here include the cross-examination of the three BellSouth  
25 witnesses who are here to testify on the very same issues, that

1 is Ms. Kathy Blake, Mr. Eric Fogle and Ms. Pam Tipton. In  
2 addition, the excerpts would include the redirect by BellSouth,  
3 as well as any clarifying questions that came from the  
4 particular commission staff or commissioners. We're making  
5 this request pursuant to Section 120.569(2)(g) of the  
6 Administrative Code which permits the Commission to consider  
7 all other evidence of a type commonly relied upon by reasonably  
8 prudent persons in the conduct of their affairs, whether or not  
9 such evidence would be admissible in a trial court. In  
10 addition, Section 90.202 of the Administrative Code provides  
11 for judicial notice by the Commission of documents including  
12 official actions of other state authorities or court records.  
13 Here we believe this qualifies in that it is sworn testimony  
14 before those state commissions, and we're providing the  
15 official transcript from those proceedings.

16 We have provided on computer disk copies of the  
17 transcripts as excerpted, and in support of the motion we would  
18 urge, one, these transcripts are undeniably relevant in that  
19 we've had, seven state commissions have conducted hearings.  
20 We're not submitting every single one of them, but we would be  
21 happy to submit less than four or more than four, depending on  
22 what the Commission desired. Our reason for selecting these  
23 four transcripts was it was the first four hearings. We  
24 believe that between those hearings all of the issues were  
25 fully developed in cross-examination in one state or another

1 and we would be simply repeating the cross-examination here.  
2 The issues are identical except for some numbering of the  
3 issues that's a little different here in Florida, and the  
4 witnesses are identical. The testimony that was prefiled  
5 that's the basis for the cross-examination is substantially  
6 identical. It is sworn testimony on issues that are certainly  
7 relevant to the Commission in that they are the very same  
8 issues that are before the Commission.

9           Second, no one, BellSouth or any other party, we  
10 think, would be prejudiced by entering these transcript  
11 excerpts into the record, and that from BellSouth's perspective  
12 it is sworn testimony of their witnesses. We're providing  
13 BellSouth's redirect as well as the cross-examination where  
14 BellSouth had the opportunity to rehabilitate the witness.

15           Frankly, Commissioners, CompSouth -- and I'm offering  
16 this only on behalf of CompSouth, but CompSouth could conduct  
17 the cross-examination and ask the same questions with the  
18 transcript pages in front of us and see if we get the same  
19 answers and try to impeach the witness with the transcript  
20 reference if we don't, but it seems a rather tedious process  
21 when all of that factual record has been well-developed in the  
22 other cases. Nothing in the excerpts constitutes evidence that  
23 was stricken from the other state proceedings. If there were  
24 any objections to the cross-examination questions by BellSouth,  
25 they're in the excerpts. And I would submit that there weren't

1 any objections that ended up in testimony being stricken or  
2 taken out that appears in these references.

3           And, third, the record includes material that  
4 BellSouth had the opportunity to object to at the time of  
5 hearing when its witnesses testified.

6           And then finally, in this case, as we've just gone  
7 through the exhibit list, BellSouth and CompSouth, the other  
8 parties have agreed to incorporate discovery that's been taken  
9 in other states in these similar proceedings. We have agreed  
10 to incorporate in the record depositions that were taken in  
11 Atlanta before the Georgia hearing and agreed that those  
12 depositions could be used throughout the region. So it isn't,  
13 it isn't as if there is not other material coming from the same  
14 state proceedings into this case. And in those instances  
15 BellSouth agreed to that.

16           Finally, we're asking this primarily for  
17 administrative efficiency in that I have crossed these  
18 witnesses seven times now, and I could do it again, we're  
19 prepared to do it again, but we don't know that that's  
20 necessary as a matter of administrative efficiency when those  
21 records could be before the staff, before the Commissioners as  
22 they are.

23           The witness summaries that each witness would still  
24 present tell the story that the witness wants to tell  
25 affirmatively, and those would -- we are not asking that those

1 witness summaries be waived or taken away. All that we are  
2 saying is that if the Commission grants the motion to allow  
3 these in, CompSouth will not have to do cross-examination and  
4 that we will rely on the prior cross-examination. And notably  
5 also in Florida why this is particularly apt here, the staff  
6 has done an enormous job of doing discovery in this case.  
7 There is a tremendous record in the discovery that staff has  
8 done that is not available in a lot of other states, and I  
9 think it, again, lessens the need to develop the record here in  
10 any unique way. And I can assure you it wouldn't be  
11 particularly unique, given that the case has been done several  
12 times.

13           So with that, we would move that those be entered  
14 into the record.

15           COMMISSIONER DEASON: Okay. Ms. Mays?

16           MS. MAYS: Commissioners, I think that BellSouth's  
17 primary objection to this is sort of illustrated with the  
18 discussion we just had on the motion. And the primary  
19 objection we have on this is that if we're going to move  
20 forward, if we're going to be heard, we would prefer that our  
21 witnesses be allowed to tell their story. If Mr. Magness wants  
22 to ask an identical question, then he can ask it. And when the  
23 witness answers it, you can hear them, you can look at them,  
24 you can ask whatever follow-up you may have. There's some  
25 questions, I realize, if we get to opening statements I may

1 need to come back to based on the Commissioners' discussion  
2 because there are some, there has been some back and forth  
3 here, there are some questions about what the disputes are,  
4 what the authority, what the scope of the authority -- the  
5 dispute about what your authority is and some other things.  
6 And if we're going to move forward with hearing, we simply want  
7 our witnesses to be heard. And that is why we object really to  
8 these transcripts. It's not a matter of relevancy, per se.  
9 It's a matter that if the transcripts go in and the witnesses  
10 give their summary and then we all go home because there's very  
11 limited questions, you're faced with pouring through four or  
12 five different states' transcripts to try to, oh, okay, that's  
13 what they were talking about in briefs, okay, that's what was  
14 done. We're simply -- if we're going to move forward, we would  
15 ask that our witnesses be heard. They can use the transcripts  
16 as they see fit, but to put them in the record and then just  
17 say let's go home is, I think, not -- we simply disagree with  
18 it and we would object to putting those transcripts in on that  
19 basis.

20 COMMISSIONER DEASON: Staff?

21 MR. TEITZMAN: Commissioner, I would just like to  
22 note that in the past this Commission has had transcripts of  
23 other states entered into the record; however, that has  
24 generally been under stipulation.

25 If you decide -- if the witnesses take the stand,



1 staff is prepared to conduct cross-examination on those  
2 witnesses. And I believe the, the decision would be at your  
3 discretion, as stated by Mr. Magness citing Section 120.

4 COMMISSIONER DEASON: So it's your position that if  
5 the Commission -- the Commission has the discretion to accept  
6 the transcripts into the record; is that correct?

7 MR. TEITZMAN: Well, at this point BellSouth has not  
8 raised any issues regarding relevancy. And seeing that they  
9 have not raised that, I believe it would be at your discretion  
10 at this time.

11 COMMISSIONER DEASON: Commissioners, any expressions  
12 of how we should exercise our discretion?

13 I am -- my initial reaction is while it would be  
14 expedient and the record would be complete most likely by  
15 accepting the transcripts into the record, I tend to agree that  
16 we as Commissioners may lose some benefit of having the  
17 witnesses take the stand and be able to engage in some  
18 questioning of our own, depending upon how the  
19 cross-examination and the redirect goes.

20 But at the same time, if it's the pleasure of the  
21 majority of the Commission simply to rely on those transcripts,  
22 it would certainly expedite the hearing. So I'm not  
23 necessarily opposed to that. I guess I'm just expressing some  
24 preference for at least having the ability to have the  
25 witnesses actually take the stand and ask questions directly.

1           COMMISSIONER ARRIAGA:  If I may, Mr. Chairman.  And  
2  I'd like both of you to indulge with me because you know I'm  
3  new here and I haven't heard the arguments.  I really, I've  
4  been trying to read as much as I can and understand as much as  
5  I can.  I think I would personally benefit very much by  
6  listening to the arguments and being able to ask questions.  So  
7  I know it's a little burden on your time and it'll make the  
8  hearing a little more delayed, but for my own benefit I would  
9  please ask you to consider the possibility of having this,  
10  having the witnesses speak and be able to cross-examine the  
11  whole thing.

12           COMMISSIONER DEASON:  Mr. Magness, the Commission --  
13  I'm speaking, I think, on behalf of the Commission --  
14  appreciates your efforts to expedite the hearing, and so don't  
15  take our decision any way contrary to that.  There have been  
16  many times that the Commission has relied on transcripts to  
17  expedite proceedings here.  But as staff has pointed out, I  
18  think the majority, if not all, of those times have been when  
19  all the parties have agreed to stipulate those in.  And the  
20  Commission has expressed a desire to have the benefit of live  
21  testimony, and so we're going to ask you to do it again for the  
22  eighth time, is that what it is?

23           MR. MAGNESS:  Commissioner, we certainly did not  
24  intend to imply that summaries wouldn't be given or any other  
25  party could ask any questions they want, which I expect they

1 intend to. I guess I'd ask, if we -- we will go forward with  
2 cross-examination, but is the evidentiary motion of including  
3 the transcripts in the record then denied? Because I think we  
4 could include the transcripts in the record so that we have the  
5 full record of what's happened in the cases and still do the,  
6 the standard cross-examination.

7 COMMISSIONER DEASON: Ms. Mays?

8 MS. MAYS: What I would prefer, if they're asking at  
9 the conclusion of a full and normal cross to have, to readmit  
10 those, that we take that up at that time. My concern is that  
11 if we admit the transcripts now, that the questions that have  
12 been developed in the other states will not be asked, that the  
13 Commissioners will then not have the opportunity to follow up,  
14 that the witnesses will not have the opportunity to tell their  
15 whole story. So we would ask that the motion at this point  
16 either be denied or delayed until after the hearing. If after  
17 the hearing we've gone through this and it's late today or  
18 sometime tomorrow and they still want to put them in and the  
19 witnesses have told their story, then we could certainly  
20 reconsider our objection, but our objection at this time  
21 stands.

22 COMMISSIONER DEASON: Okay. Mr. Magness, I'll just  
23 allow you to renew your motion at the conclusion of the  
24 cross-examination of the various witnesses.

25 MR. MAGNESS: Okay.

1           COMMISSIONER DEASON: Okay. We do have a number of  
2 stipulated witnesses. Staff, is it preferable to address those  
3 now or just take those up -- well, no, we need to take those up  
4 now because I think there are some attorneys who are wishing to  
5 have themselves excused, and that's acceptable as well. So  
6 let's address the stipulated witnesses, if that's appropriate.

7           MR. TEITZMAN: Yes, Commissioner.

8           COMMISSIONER DEASON: Okay. I will -- I'm looking at  
9 Page 6 of the prehearing order, and there are one, two, three,  
10 four, five witnesses whose testimony can be stipulated into the  
11 record, and all of this is direct testimony -- I'm sorry.

12 Witness, is it Wallis or Wallis and Montano and Maples, that's  
13 all direct testimony. Witness Shulman is rebuttal testimony  
14 and Witness Watts is revised direct testimony only. Is that  
15 correct?

16          MR. TEITZMAN: That is correct.

17          COMMISSIONER DEASON: Okay. BellSouth, I'll allow  
18 you to address Witness Wallis.

19          MS. MAYS: Thank you, Commissioner Deason. BellSouth  
20 would ask that the direct testimony consisting of three pages  
21 and the two direct exhibits identified on the composite list as  
22 Exhibits 15 and 16 be admitted into the record as though read  
23 at this time.

24          COMMISSIONER DEASON: Okay. Without objection, the  
25 prefiled testimony of Witness Wallis will be inserted into the

1 record, and the accompanying Exhibits 15 and 16 are admitted  
2 into the record.

3 (Exhibits 15 and 16 marked for identification  
4 admitted into the record.)

5 COMMISSIONER DEASON: Okay. Who's sponsoring Witness  
6 Montano?

7 MR. McDONNELL: Marty McDonnell on behalf of the  
8 Southeastern Competitive Carrier Association. At this time we  
9 would respectfully, pursuant to stipulation, admit the direct  
10 testimony of Witness Wanda G. Montano, which was filed with the  
11 Commission in this docket on August 16th, 2005. Her direct  
12 testimony consists of 24 pages, and there are no exhibits.

13 COMMISSIONER DEASON: Without objection, show then  
14 that the prefiled direct testimony of Witness Montano is  
15 inserted into the record, and there are no accompanying  
16 exhibits.

17 Witness Maples.

18 MS. MASTERTON: Yes, Commissioner. Sprint would ask  
19 that the direct testimony of James M. Maples filed on  
20 August 16th, 2005, and consisting of 68 pages be entered into  
21 the record as though read. And there are no exhibits for  
22 Mr. Maples.

23 COMMISSIONER DEASON: Okay. Without objection, show  
24 then that the prefiled testimony of Witness Maples is inserted  
25 into the record and that there are no accompanying exhibits.

1           Witness Shulman.

2           MS. KAUFMAN: Commissioner, I believe that  
3 Ms. Shaffer was excused from attendance at the hearing for XO,  
4 but on her behalf I would move Ms. Shulman's rebuttal testimony  
5 consisting of 23 pages, and she has no exhibits.

6           COMMISSIONER DEASON: Without objection, show then  
7 that the testimony of Witness Shulman is inserted into the  
8 record and that there are no exhibits. Thank you, Ms. Kaufman,  
9 for doing that.

10          Witness Watts.

11          MS. KAUFMAN: And I will also move Mr. Watts' revised  
12 direct testimony on behalf of ITC^DeltaCom. The way his  
13 revised testimony was filed, most of it was excerpted because  
14 he was left with only one issue, so there are actually just  
15 four pages and I believe one exhibit. I'm sorry. Yes, one  
16 exhibit consisting of two pages.

17          COMMISSIONER DEASON: Okay. I'm not showing an  
18 exhibit for Witness Watts on the comprehensive exhibit list.  
19 Am I overlooking something, staff?

20          MR. TEITZMAN: Number 22, Commissioner.

21          COMMISSIONER DEASON: Number twenty -- it was too  
22 close to the heading there. I didn't see it. Okay. That  
23 would be Exhibit 22. All right. Without objection then, show  
24 that the revised direct testimony of Witness Watts is inserted  
25 into the record and that the accompanying Exhibit 22 is

1 admitted into the record. And I believe that is all of the  
2 witnesses whose testimony was stipulated.

3 (Exhibit 22 marked for identification and admitted  
4 into the record.)

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1                                   **BELLSOUTH TELECOMMUNICATIONS, INC.**  
2                                   **DIRECT TESTIMONY OF DAVID WALLIS**  
3                                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
4                                   **DOCKET NO. 041269-TP**  
5                                   **AUGUST 16, 2005**

6  
7 P.    PLEASE STATE YOUR NAME, YOUR POSITION, AND YOUR BUSINESS  
8        ADDRESS.

9  
10 A.    My name is David Wallis. I am employed by Deloitte Financial Advisory  
11        Services LLP (“Deloitte FAS”) as Regional Telecom Practice Leader in Forensic  
12        and Dispute Services. My business address is 191 Peachtree Street NE, Suite  
13        1500, Atlanta, GA 30303.

14  
15 Q.    WHAT ARE YOUR CURRENT RESPONSIBILITIES?

16  
17 A.    I provide financial consulting services regarding litigation and other business  
18        disputes. I also provide financial consulting services regarding  
19        telecommunications regulatory matters. I am in charge of our firm’s Technology,  
20        Media, and Telecommunications practices in the Southeast region for Forensic  
21        and Dispute Services. I am a practice leader of the Atlanta Deloitte FAS practice.

22  
23 Q.    PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

24  
25 A.    I received a Bachelor of Arts in Business Economics and a Bachelor of Arts in  
26        Sociology from the University of California at Santa Barbara. I received a



1 Masters in Business Administration from Duke University. I am a Certified  
2 Public Accountant. I have over fourteen years experience in financial consulting.  
3 My primary focus is in the telecommunications industry, where I provide a wide  
4 range of consulting services including carrier and intercarrier matters. I am a  
5 member of the American Institute of Certified Public Accountants, the Georgia  
6 Society of Certified Public Accountants, and the Association of Certified Fraud  
7 Examiners.

8

9 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

10 A. I introduce two reports. The first is dated April 14, 2005, and the second is dated  
11 July 15, 2005. Both reports contain the conclusions of our review of the  
12 mathematical calculation of business line counts that BellSouth performed. Our  
13 April 14, 2005 report addresses the number of business lines as of December 31,  
14 2003. Our July 15, 2005 report addresses the number of business lines as of  
15 December 31, 2004. I understand that at the time of our initial report, 2004 line  
16 data was not yet available; thus, we used 2003 for our initial report and 2004 data  
17 once it become available for our second report. BellSouth witness Pamela A.  
18 Tipton describes these business line count calculations and their underlying  
19 methodology in her testimony.

20

21 Q. WHAT WERE THE RESULTS OF YOUR ENGAGEMENT?

22 A. Our conclusions are included within our reports, which are included as Exhibits  
23 DW-1 and DW-2.

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2 A. Yes, it does.

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23 593649

1 **Q: PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR**  
2 **THE RECORD.**

3  
4 **A:** My name is Wanda G. Montano. I am currently Vice President, Regulatory and  
5 Industry Affairs for US LEC Corp., the parent company of US LEC of Florida  
6 Inc. ("US LEC"), and its operating subsidiaries, including the Respondent in this  
7 proceeding. My business address is 6801 Morrison Boulevard, Charlotte, North  
8 Carolina 28211.

9  
10 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR US LEC.**

11  
12 **A:** I am responsible for the management of US LEC's relationships with state and  
13 federal agencies who oversee our business, as well as for US LEC's relationships  
14 with incumbent local exchange carriers ("ILECs"), competitive local exchange  
15 carriers ("CLECs"), independent telephone companies ("ICOs"), and wireless  
16 companies.

17  
18 **Q: ARE YOU PROVIDING THIS DIRECT TESTIMONY ONLY ON**  
19 **BEHALF OF US LEC OF FLORIDA INC.?**

20  
21 **A:** No, I am also testifying on behalf of the Southeastern Competitive Carrier  
22 Association, which is a party to the proceeding. I am currently the President of  
23 SECCA. SECCA is comprised of three member companies – US LEC, XO

1 Communications and Time Warner Telecommunications – although XO  
2 Communications is presenting its own witness to provide testimony on behalf of  
3 XO Communications.

4

5 **Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
6 **PROFESSIONAL EXPERIENCE.**

7

8 **A:** I joined US LEC in January 2000. Prior to that, I was employed in various  
9 positions by Teleport Communications Groups (“TCG”) and then by AT&T  
10 following AT&T’s acquisition of TCG. In 1998-1999, I served as General  
11 Manager for North and South Carolina (Sales Executive) for AT&T (Charlotte,  
12 NC). During 1997 – 1998 I was Vice President & Managing Executive for North  
13 & South Carolina (Sales and Operation Executive) for TCG (Charlotte, NC).  
14 During 1995-1997, I was Director of Process Reengineering for TCG (Staten  
15 Island, NY). During 1992-1994, I was Director of Marketing for TCG (Staten  
16 Island, NY). During 1990-1992, I was Senior Product Manager for Graphnet  
17 (Teaneck, NJ). From 1982 – 1990, I was Regulatory Manager for Sprint  
18 Communications Corp. in Reston, Virginia and, from 1979 – 1982, I was a  
19 paralegal for GTE Service Corporation in Washington, D.C. I have a B.S. from  
20 East Carolina University in Greenville, NC (1974). I received my Paralegal  
21 Certificate from the University of Maryland in 1980 and I received my M.B.A. in  
22 Marketing & Government Affairs from Marymount University of Virginia in  
23 1988.

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**Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION?**

**A:** Yes. I also have testified before the New York Public Service Commission, the Georgia Public Service Commission, the Maryland Public Service Commission, the North Carolina Utilities Commission, and the Pennsylvania Public Utility Commission.

**Q: WHAT IS YOUR ROLE IN US LEC'S INTERCONNECTION NEGOTIATIONS WITH BELLSOUTH, INCLUDING THE NEGOTIATIONS TO IMPLEMENT THE PROVISIONS OF TRIENNIAL REVIEW ORDER, OR TRO, AND THE PROVISIONS OF THE TRIENNIAL REVIEW REMAND ORDER, OR TRRO?**

**A:** I have reviewed the proposed revised Attachment 2, which is the portion of the BellSouth interconnection agreement that governs US LEC's access to unbundled network elements, as well as have reviewed the points of contention raised during the negotiations to ensure their consistency with state and federal requirements and policy.

1 **Q: HAS ATTACHMENT 2 OF THE INTERCONNECTION BETWEEN US**  
2 **LEC AND BELL SOUTH BEEN AMENDED TO IMPLEMENT THE**  
3 **PROVISIONS OF THE TRO?**

4  
5 **A:** Yes, US LEC and BellSouth, in June 2004, concluded our negotiations to  
6 implement the provisions of the TRO into Attachment 2 and the agreements have  
7 been executed, filed with the Commission, and approved. Consequently, I will  
8 not be testifying in regards to the Joint Issue Matrix Issues, as filed with the  
9 Commission, numbers 13 through 28 because these issues relate to  
10 implementation of the provisions of the TRO on which BellSouth and US LEC  
11 have an executed and approved agreement.

12  
13 **Q: WHAT IS THE STATUS OF ANY NEGOTIATIONS BETWEEN**  
14 **BELL SOUTH AND US LEC ON THE FCC'S REVISED RULE THAT**  
15 **ELIMINATED THE SO-CALLED "PICK AND CHOOSE" PREVIOUSLY**  
16 **PERMITTED PURSUANT TO SECTION 252(i) OF THE ACT?**

17  
18 **A:** US LEC and BellSouth have negotiated a mutually agreed upon amendment to the  
19 interconnection agreement to implement the provisions of the revised FCC rule,  
20 the amendment has been filed with the Commission, and has been approved. US  
21 LEC, therefore, also does not provide testimony or evidence in regard to Joint  
22 Issue Matrix Issue number 29.

23

1 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2

3 The purpose of my testimony is to explain what I understand to be the legal and  
4 competitive policy arguments in support of US LEC's position on the statutes,  
5 regulations or other laws that govern BellSouth's obligation to provide unbundled  
6 network elements as modified by the TRRO. Primarily the impasse in the  
7 negotiation between BellSouth and US LEC is the language that will identify the  
8 embedded base of high capacity loops and dedicated transport and govern the  
9 process for transitioning the embedded base to alternative services and then the  
10 same issues in the event subsequent wire centers meet the FCC's threshold criteria  
11 for non-impairment. US LEC has not provisioned unbundled local switching (or  
12 UNE-P) from BellSouth under the interconnection agreement, and, therefore, will  
13 not address those portions of the issues that pertain to access to "unbundled  
14 switching." My testimony will address: the appropriate language to implement  
15 the FCC's transition plan for (1) high capacity loops and (2) dedicated transport  
16 pursuant to the TRRO (Issue 1); the appropriate language to implement  
17 BellSouth's obligation to provide Section 251 unbundled access to high capacity  
18 loops and dedicated transport (Issue 3); the Commission's authority to resolve  
19 disputes as to whether BellSouth's application of the FCC's Section 251 criteria is  
20 appropriate, the procedures to identify those wire centers that satisfy the FCC's  
21 non-impairment criteria, and the language to implement the procedures (Issues 4  
22 (a) – (c)); what are the appropriate rates, terms and conditions should govern the  
23 transition of existing network elements that BellSouth is no longer obligated to

1 provide as Section 251 UNEs to non-Section 251 network elements and other  
2 services (Issue 9); what are the appropriate rates, terms and conditions that should  
3 apply to UNEs that are not converted on or before March 11, 2005, and should the  
4 conduct of the parties have any impact upon the determination of the applicable  
5 rates, terms and conditions that apply in such circumstances (Issue 10); and what  
6 language should be used to incorporate the FCC's *ISP Remand Core Forbearance*  
7 *Order* into interconnection agreements (Issue 30).

8  
9 **Q: CAN YOU PROVIDE A BRIEF SUMMARY OF THE DISPUTES**  
10 **THAT REMAIN BETWEEN US LEC AND BELLSOUTH IN**  
11 **REVISING THE LANGUAGE OF ATTACHMENT 2 TO**  
12 **IMPLEMENT THE PROVISIONS OF THE TRRO?**

13  
14 **A:** Yes. The main disputes between US LEC and BellSouth center around (1)  
15 BellSouth's desire to identify the current and subsequent wire centers that  
16 it believes are "non-impaired" as part of the agreement, and incorporate  
17 the lists into the interconnection agreement, without obtaining US LEC's  
18 agreement that the identified wire centers meet the FCC's threshold  
19 criteria for non-impairment; (2) BellSouth's proposed dates by which  
20 orders for transition of the "embedded base" of UNEs must be submitted  
21 in connection with the transition period; and, (3) the length of any  
22 subsequent transition periods. Additionally, because US LEC has not  
23 been able to negotiate a final resolution of these issues, US LEC also has



1 elected to withdraw its agreement to certain provisions of proposed  
2 Section 1.8 of Attachment 2 that govern the disputes over the wire centers  
3 that BellSouth claims meet the threshold requirements that I will address  
4 in my testimony addressing Issue 4.

5

6 **ISSUE 1: WHAT IS THE APPROPRIATE LANGUAGE TO**  
7 **IMPLEMENT THE FCC’S TRANSITION PLAN FOR (1) SWITCHING,**  
8 **(2) HIGH CAPACITY LOOPS, AND (3) DEDICATED TRANSPORT AS**  
9 **DETAILED IN THE FCC’S TRIENNIAL REVIEW REMAND ORDER**  
10 **“TRRO”), ISSUED FEBRUARY 4, 2005?**

11

12 **Q: WHAT LANGUAGE DOES US LEC PROPOSE TO IMPLEMENT**  
13 **THE TRANSITION PERIOD (FOR HIGH CAPACITY LOOPS**  
14 **AND DEDICATED TRANSPORT), AND HOW DOES IT DIFFER**  
15 **FROM BELLSOUTH’S?**

16

17 **A:** US LEC has offered language to implement the transition period for any  
18 “embedded base” high capacity loops and dedicated transport in  
19 conformance to the FCC’s decision in the TRRO. The transition period  
20 would include any high capacity loops or dedicated transport that were in  
21 excess of the caps adopted by the FCC as of March 11, 2005 as well. US  
22 LEC is willing to agree to the BellSouth definition of “embedded base,”  
23 which includes high capacity loops and dedicated transport that were

1 installed in wire centers that met the non-impairment threshold as of  
2 March 11, 2005 or are in excess of the applicable caps. The disputes  
3 between the companies are (a) whether BellSouth can identify these wire  
4 centers as part of the agreement without US LEC concurrence that US  
5 LEC agrees with the list; and (b) what is the date by which US LEC must  
6 issue orders to transition the “embedded base” of UNEs.

7  
8 **ISSUE 3: WHAT IS THE APPROPRIATE LANGUAGE TO**  
9 **IMPLEMENT BELLSOUTH’S OBLIGATION TO PROVIDE SECTION**  
10 **251 UNBUNDLED ACCESS TO HIGH CAPACITY LOOPS AND**  
11 **DEDICATED TRANSPORT?**

12  
13 **Q: WHAT LANGUAGE HAS US LEC PROPOSED TO IMPLEMENT**  
14 **BELLSOUTH’S OBLIGATION TO PROVIDE SECTION 251**  
15 **UNBUNDLED ACCESS TO HIGH CAPACITY LOOPS AND**  
16 **DEDICATED TRANSPORT?**

17  
18 **A:** US LEC has offered language that comports with Sections 51.319 (a) (4)  
19 and (e) of the FCC’s rules and affirmatively states that BellSouth must  
20 provide access to these UNEs unless the threshold requirements for non-  
21 impairment have been met. BellSouth’s language focuses solely on the  
22 embedded base and the transition period and does not affirmatively state  
23 when it must provide access to the unbundled high capacity loops and

1 transport. US LEC has been willing to agree to the BellSouth language so  
2 long as BellSouth compromised on the language addressing the date on  
3 which orders for the “embedded base” transition was required to be  
4 submitted as well as the length of any subsequent transition periods and  
5 the process by which the parties would agree on the identification of non-  
6 impaired wire centers. To date, BellSouth has been unwilling to make  
7 those compromises, although US LEC has been advised that BellSouth is  
8 considering US LEC’s proposal on the order submission date and the  
9 length of subsequent transition periods. The parties have reached an  
10 impasse on the wire center identification issue, however.

11  
12 **ISSUE 4: A) DOES THE COMMISSION HAVE AUTHORITY TO DETERMINE**  
13 **WHETHER OR NOT BELL SOUTH’S APPLICATION OF THE FCC’S SECTION**  
14 **251 NON-IMPAIRMENT CRITERIA FOR HIGH-CAPACITY LOOPS AND**  
15 **TRANSPORT IS APPROPRIATE? B) WHAT PROCEDURES SHOULD BE**  
16 **USED TO IDENTIFY THOSE WIRE CENTERS THAT THE FCC’S SECTION**  
17 **251 NON-IMPAIRMENT CRITERIA FOR HIGH-CAPACITY LOOPS AND**  
18 **TRANSPORT? C) WHAT LANGUAGE SHOULD BE INCLUDED IN THE**  
19 **AGREEMENTS TO REFLECT THE PROCEDURES IDENTIFIED IN (B)?**

20  
21 **Q: CAN YOU EXPLAIN THE IMPASSE ON THE WIRE CENTER**  
22 **IDENTIFICATION?**

1   **A:**    Yes. BellSouth proposes language that states:

2  
3            For purposes of this [applicable section in the Attachment 2], a list  
4            of wire centers meeting the criteria set forth in [applicable section  
5            set forth the threshold criteria] as of March 10, 2005 (Initial Wire  
6            Center List) is available on BellSouth's Interconnection Services  
7            Web site [www.interconnection.bellsouth.com](http://www.interconnection.bellsouth.com).

8  
9  
10           US LEC revised the language by adding between “ a list of wire centers” and  
11           “meeting” the words “the Parties agree” and revised “meeting” to “meet.”  
12           BellSouth has proposed that it may add wire centers to this Non-impaired Wire  
13           Center List that become non-impaired subsequent to March 11, 2005 merely by  
14           posting a carrier notification on its website, and without further notification to US  
15           LEC. The posting of the carrier notification would trigger certain obligations of  
16           US LEC to transition the applicable UNE loops or dedicated transport in the  
17           newly-identified wire center within 90 days to an alternative service or dispute the  
18           validity of the list.

19  
20           US LEC disagrees that BellSouth may unilaterally include a list of wire centers as  
21           meeting the “non impairment threshold” into the agreement, unless and until the  
22           parties agree to the list. US LEC strongly objects to BellSouth's to attempt to add  
23           wire centers to a list that binds US LEC to certain provisions in the  
24           Interconnection Agreement without actual notice, as provided by the notice  
25           provision contained in the General Terms and Conditions Attachment of the  
26           Interconnection Agreement.

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US LEC firmly believes that BellSouth must provide US LEC the opportunity to review the data on which BellSouth determined that each wire center met the threshold requirement, such as the specific fiber-based collocators at each specified wire center and the number of business lines, including the basis on how the number was derived (e.g., the number of T1s and HDSL lines used to determine the number and how the lines were identified as business lines as opposed to residential lines.). In light of BellSouth's acknowledged error on its initial wire center list, US LEC believes that, before BellSouth may be exempted from its 251 unbundling obligations for high capacity loops and transports, US LEC should be able to check the facts and figures before having to subject itself to a lengthy and costly dispute resolution process.

US LEC's objection to the language is directed not to the ordering of new high capacity loops to buildings located within the Initial Wire Centers, or new dedicated transport between the Initial Wire Centers, as the proposed Section 1.8 of Attachment 2, incorporates the right of US LEC, pursuant to paragraph 234 of the TRRO to order these UNEs as long as US LEC certifies that it has conducted a reasonably diligent inquiry and determines that the applicable UNEs are available. The FCC held, in paragraph 234 of the TRRO, that

To submit an order to obtain high-capacity loop or transport UNE, a requesting carrier must undertake a reasonably diligent inquiry and, based on the inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements

1 discussed [in the applicable sections of the TRRO] and that  
2 therefore entitled to unbundled access to the particular network  
3 elements sought pursuant to section 251(c)(3). (footnote omitted)  
4 Upon receiving a request for access to a dedicated transport or  
5 high-capacity loop UNE that indicates that the UNE meets the  
6 relevant factual criteria discussed in [the applicable portion of the  
7 TRRO], the incumbent LEC must immediately process the request.  
8 To the extent that an incumbent LEC seeks to challenge any such  
9 UNEs, it subsequently can raise that issue through the dispute  
10 resolution procedures provided for in its interconnection  
11 agreements.

12  
13 The proposed section 1.8 of Attachment 2 states that by submitting an order for a  
14 high capacity loop or dedicated transport, US LEC is certifying that it has  
15 conducted reasonable due diligence of its own as to the status of the wire center  
16 and has determined that the 251 UNE ordered is still available in the wire center  
17 to US LEC. The section further requires BellSouth to provision these orders and  
18 then dispute if BellSouth objects to US LEC's assessment of the impairment  
19 status of that wire center.

20  
21 US LEC's objection for either the initial or subsequent wire center lists lies in the  
22 applicability of the lists to high capacity loops and dedicated transport that then  
23 become "embedded base," subject to a transition to alternative service within the  
24 appropriate transition period – either adopted by the FCC in the TRRO or as  
25 negotiated by the parties for the subsequently non-impaired wire centers.

26

1 BellSouth has represented to US LEC that, because the Wireline Competition  
2 Bureau of the FCC requested a list of the wire centers that BellSouth (and other  
3 RBOCs) believed were non-impaired (this was by a letter from the Chief of the  
4 Wireline Competition Bureau dated February 4, 2005), that BellSouth has the  
5 right to create the list and BellSouth needs no agreement from US LEC or any  
6 other CLEC as to the accuracy of the list before incorporating such list by  
7 reference into the interconnection agreement. BellSouth has not provided, nor  
8 have I found, any text within the TRRO that supports BellSouth's notion.  
9 Moreover, the request for the wire center lists was directed only to the RBOCs  
10 and not to all ILECs, and there was never any explicit or implicit "approval" of  
11 the lists submitted nor even a suggestion by the Bureau that these lists were  
12 "approved" as having met the FCC's threshold criteria for non-impairment.

13  
14 The Bureau's request was to assist the CLECs in gathering the factual information  
15 from the RBOCs, and to ensure that an expeditious implementation of the "fact-  
16 dependent rules" into a revised interconnection agreements was completed. In  
17 other words, the Bureau was attempting to provide sufficient information to  
18 enable the CLECs to negotiate changes to the interconnection agreement, and be  
19 able to conclude and agree to which of the RBOCs wire centers met the threshold  
20 criteria of the FCC's rules.

21  
22 US LEC supports its position that any determinations that a wire center meets the  
23 threshold criteria must be mutual, pursuant to the negotiation process in amending

1 the interconnection agreement by reference to paragraphs 233 and 234 of the  
2 TRRO.

3 233. We [the FCC] expect that incumbent LECs and competing  
4 carriers will implement the Commission’s finding as directed by  
5 section 252 of the Act. (footnote omitted). Thus, carriers must  
6 implement changes to their interconnection agreements consistent  
7 with our conclusions in this Order. (footnote omitted)... Thus, the  
8 incumbent LEC and competitive LEC must negotiate in good faith  
9 regarding any rates, terms and conditions necessary to implement  
10 our rule changes. (footnote omitted)....

11  
12 234. We recognize that our rules governing access to dedicated  
13 transport and high-capacity loops evaluate impairment based upon  
14 objective and readily obtainable facts, such as the number of  
15 business lines or the number of facilities-based competitors in a  
16 particular market. (footnote omitted)....

17  
18 The FCC rules (Sections 51.319(a)(4)(i), (a)(5)(i), (e)(2)(ii)(A), (e)(2)(iii)(A),  
19 (e)(2)(iv)(A), and (e)(3)) define the criteria that must be met. Consequently, if the  
20 ILECs and CLECs are to implement the rules adopted by the TRRO pursuant to  
21 the requirements of section 252, then both parties, subject either by (a) mutual  
22 agreement through the negotiation process must apply the objective and readily  
23 obtainable facts to identify the wire centers that meet the threshold criteria  
24 established by the FCC as of March 11, 2005 and subsequent to that date, or (b)  
25 the Commission, through the arbitration process, must determine whether the list  
26 provided by BellSouth meets the threshold criteria.

27



1 BellSouth has also taken the position that the Commission has no authority to  
2 determine whether BellSouth's wire center list meets the FCC's fact-dependent  
3 rules or not. BellSouth's position is that only the FCC has the authority to review  
4 the data and make the determination. Of course, if that is the case, then US LEC  
5 would suggest that even the incorporation by reference of the wire center list in  
6 the interconnection agreement also is inappropriate as the Commission would  
7 address the legitimacy of the list during its approval process under Section 252 of  
8 the Act.

9  
10 In proposed section 1.8 of Attachment 2, BellSouth proposed language that all  
11 disputes as to the validity of the wire center lists would be submitted to the FCC  
12 for resolution. US LEC initially agreed to this language optimistically hoping that  
13 BellSouth would then agree to US LEC's language requiring the parties to agree  
14 to the list. Again, US LEC believes that if BellSouth determined that certain wire  
15 centers are non-impaired according to the FCC's rules, the data and calculations  
16 should be fairly straightforward. Little, if any, dispute should arise if BellSouth  
17 has abided by the requirements of the FCC's rules.

18  
19 US LEC has elected to withdraw its agreement to the proposed language that  
20 would provide the FCC jurisdiction over disputes on the determination of non-  
21 impairment of a wire center because of BellSouth's refusal to compromise on US  
22 LEC's request to have the parties agree on the wire center list. Contrary to  
23 BellSouth's argument that more disputes may arise through the process, US LEC

1 believes that less disputes will arise and that requiring agreement from US LEC  
2 and/or other CLECs will be a check on BellSouth's "math" which has proven to  
3 be inaccurate in the past.

4

5 Section 252(c)(1) of the Act specifically provides authority to the Commission, in  
6 resolving arbitrations, to ensure that the resolutions and conditions meet the  
7 requirements of section 251, including the regulations prescribed by the FCC  
8 pursuant to section 251. The non-impairment threshold rules are regulations that  
9 are prescribed by the FCC pursuant to section 251(c)(3) of the Act. The FCC in  
10 the TRRO, unlike its decision in the TRO, made a specific finding as to which  
11 UNEs would be found non-impaired. The state commissions are not required to  
12 subjectively make a determination of non-impairment, but have been armed with  
13 specific requirements that must be met by the ILEC's, before the unbundling  
14 obligations are eliminated. Consequently, if BellSouth wishes to place a list of  
15 the wire centers into the interconnection agreement whether as an attachment or  
16 by incorporating by reference a list, and US LEC disputes the list on the basis that  
17 it does not comply with the FCC's rules, then the Commission has the authority to  
18 resolve the dispute by determining whether the wire centers listed meet the  
19 requirements of the FCC rules.

20

21 **ISSUE 9: WHAT RATES, TERMS, AND CONDITIONS SHOULD GOVERN**

22 **THE TRANSITION OF EXISTING NETWORK ELEMENTS THAT**

1 BELLSOUTH IS NO LONGER OBLIGATED TO PROVIDE AS SECTION 251  
2 UNEs TO NON-251 NETWORK ELEMENTS AND OTHER SERVICES?

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**Q: WHAT IS THE DISPUTE BETWEEN US LEC AND BELLSOUTH IN CONNECTION WITH THE TRANSITION OF THE INITIAL SO-CALLED "EMBEDDED BASE" UNES TO ALTERNATIVE SERVICES?**

8 **A:** Once a resolution is made as to which wire centers meet the non-impairment  
9 threshold criteria, as discussed in my testimony on Issue 5, then US LEC agrees  
10 that the "embedded base" of UNEs are to be transitioned to alternative services  
11 pursuant to the FCC's rules.

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US LEC agrees that the transition period for UNE loops and dedicated transport that were installed in wire centers that are considered non-impaired as of March 11, 2005 (again recognizing that US LEC must either agree to BellSouth's identification of the wire center as being non-impaired or a Commission resolution of the dispute made) ends as of March 10, 2006. BellSouth has proposed language that requires US LEC to submit all its order to transition the "embedded base" of UNEs by December 9, 2005, or BellSouth will do the conversions and charge US LEC for BellSouth's conversion efforts. Further, once the conversions have been completed to the alternative services, the new rates for the alternative services would begin to be billed to US LEC, or, if the conversion had not been completed by March 10, 2006, then on March 10, 2006.

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US LEC's initial proposal was that it would create the spreadsheet orders as early as possible and submit them to BellSouth, if BellSouth would agree that the conversions would not be deemed to occur until March 10, 2006, and the new rates would not be billed until that date. BellSouth rejected the proposal. US LEC then proposed that rather than the December 9, 2005 date for submission of orders, a date of December 31, 2005 for submission of orders should be used. The December 31 date is only to set the date by which the orders would be submitted by US LEC. US LEC did not propose, and is not proposing, that the submission of the order date is the date on which the conversion has been deemed to occur or the date on which BellSouth may bill US LEC the new rates for the alternative service.

From US LEC's perspective, submitting the orders by December 31, 2005 would provide US LEC ample time to review the circuits needed to be transitioned and submit them to BellSouth, without adversely affecting US LEC's day-to-day operations. Additionally, it should provide sufficient time for BellSouth to complete the conversions by March 10, 2006, and even if BellSouth were unable to complete the conversions by March 10, 2006, US LEC is willing to agree that the new rates would be effective as of March 10, 2006. BellSouth is considering this offer, but has not provided a response as of July 28, 2005.

1 US LEC is concerned about the date by which the transition orders must be  
2 submitted, but more importantly, US LEC believes that regardless of when the  
3 conversion spreadsheets are submitted and processed, BellSouth must continue to  
4 lease the “embedded base” circuits to US LEC, until March 10, 2006, at the  
5 transition rates adopted by the FCC. The transition period rules, as adopted by the  
6 FCC, state that the embedded base of UNEs that are subject to the transition  
7 period ending March 10, 2006 “shall be available for lease from the ILEC at a  
8 rate equal to the higher of either 115 percent of the rate the requesting carrier paid  
9 for the dedicated element on June 15, 2004, or 115 percent of the rate the state  
10 commission has established or establishes, if any, between June 16, 2004 and  
11 [March 11, 2005].” This language is found in Sections 51.319(a)(4)(iii) (DS1  
12 Loops); 51.319(a)(5)(iii) (DS3 Loops); 51.319(e)(2)(ii)(C) (dedicated DS1  
13 transport); and, 51.319(e)(2)(iii) (dedicated DS3 transport).

14  
15 **Q: WHAT IS THE DISPUTE BETWEEN US LEC AND BELLSOUTH ON**  
16 **THE TRANSITION PERIOD FOR UNES IN WIRE CENTERS THAT ARE**  
17 **SUBSEQUENTLY IDENTIFIED?**

18  
19 **A:** Reiterating once again that US LEC disagrees with BellSouth’s process for  
20 identifying a subsequent non-impaired wire center, US LEC has an issue with  
21 BellSouth’s proposal that the transition period for these UNEs would be a mere  
22 90 days, and that the orders for the conversions would be required with 40 days of  
23 the date the carrier notification was placed on the BellSouth website. If US LEC

1 failed to submit the conversion orders by the 40<sup>th</sup> day, BellSouth would issue the  
2 conversion orders and charge US LEC for BellSouth's labor in identifying the  
3 affected circuits and preparing the paperwork for the conversions as well a charge  
4 to complete the conversion from UNE to the alternative service. Under  
5 BellSouth's proposal the new rates would apply once the circuit was converted or  
6 on the first date after the end of the subsequent transition period.

7  
8 US LEC is concerned about the short transition period proposed by BellSouth.  
9 US LEC believes that a 90-day period, especially if US LEC is required to submit  
10 orders 40 days after a carrier notification letter is posted on the BellSouth website  
11 – not even 40 days after actual notice, but merely constructive notice – is not an  
12 appropriate time period. Operationally, US LEC does not have the resources to  
13 continue its ordinary course of business provisioning and also provision  
14 “surprise” transition orders in such a compressed timeframe. Plus US LEC would  
15 be subjected to an unknown penalty amount for its failure to meet the short-fuse  
16 deadline.

17  
18 US LEC has proposed a 180-day transition period, which is a substantially shorter  
19 time period than the transition period adopted by the FCC for the initial transition  
20 period. US LEC's proposal is a compromise position between the 12-month  
21 transition period adopted by the FCC and BellSouth's 90-day proposal. US LEC  
22 would be unable to ensure an orderly transition of any affected circuits in less  
23 than this 180-day period. During the transition period, US LEC must have the

1 opportunity to review the wire center information; conduct its reasonable due  
2 diligence and come to an informed determination as to whether the wire center is  
3 non-impaired or not; and, if US LEC agrees, inventory the circuits required to be  
4 transitioned and determine the appropriate alternative services to transition the  
5 circuits.

6  
7 BellSouth takes for granted that US LEC will convert the UNE circuits to special  
8 access services provided by BellSouth as the alternative service. If the wire  
9 center is identified as non-impaired, it would seem that competitive services are  
10 available from other providers than BellSouth. If so, it may well be that the  
11 competitive providers may have services that may be at rates higher than the UNE  
12 rates, but lower than BellSouth's special access rate. If such competition is  
13 available, it is highly unlikely that US LEC would be able to transition its circuits  
14 to another provider in 90 days. Consequently, BellSouth's proposal appears to  
15 lock US LEC into continuing to obtain services from BellSouth at the higher  
16 rates, and increase BellSouth's revenue stream, rather than allowing competition  
17 to flourish for these wholesale services.

18  
19 US LEC's proposal is more appropriate as it permits US LEC the time necessary  
20 to coordinate the conversions of the UNEs to alternative services, and allows US  
21 LEC to use competitive providers rather than be locked into BellSouth's special  
22 access pricing.

23

1 **ISSUE 10: WHAT RATES, TERMS AND CONDITIONS, IF ANY, SHOULD**  
 2 **APPLY TO UNES THAT ARE NOT CONVERTED ON OR BEFORE MARCH 11,**  
 3 **2006, AND WHAT IMPACT, IF ANY SHOULD THE CONDUCT OF THE**  
 4 **PARTIES HAVE UPON DETERMINATIONS OF THE APPLICABLE RATES,**  
 5 **TERMS AND CONDITIONS THAT APPLY IN SUCH CIRCUMSTANES?**

6

7 **Q: WHAT IS US LEC'S POSITION ON THE UNES THAT HAVE NOT BEEN**  
 8 **CONVERTED AS OF MARCH 10, 2006?**

9

10 **A:** US LEC's major concern is that no UNE be disconnected as of March 10, 2006,  
 11 without an affirmative acknowledgment by US LEC that the circuit is either  
 12 pending conversion (and the rate for the analogous service should be charged as  
 13 of March 10, 2006 until such time as the conversion is completed) or that the  
 14 circuit may be disconnected. Despite best efforts, there is some likelihood that a  
 15 circuit may have been inadvertently omitted from a conversion order or a  
 16 conversion order may be in a clarification stage and not final by March 10, 2006.  
 17 Under no circumstances should the US LEC customer be taken out of service due  
 18 to the FCC's rules changes.

19

20 **Q: DOES YOUR ANSWER CHANGE BASED ON THE CONDUCT OF THE**  
 21 **PARTIES?**

22



1   **A:**    The question presumes that either US LEC or BellSouth may have acted in bad  
 2            faith in either failing to submit the order timely or properly or failing to process  
 3            the order timely or properly. US LEC does not believe that either party will  
 4            intentionally engage in such conduct. If either party should engage in such  
 5            conduct, then the other party has recourse other than impairing the service to US  
 6            LEC’s customer. The customer should not suffer due to a dispute between the  
 7            parties.

8

9    **ISSUE 30: WHAT LANGUAGE SHOULD BE USED TO INCORPORATE THE**  
 10 **FCC’S *ISP REMAND CORE FORBEARANCE* INTO INTERCONNECTION**  
 11 **AGREEMENTS?**

12

13 **Q:    DOES US LEC BELIEVE THAT THERE IS ANY ADDITIONAL**  
 14 **LANGUAGE NECESSARY TO INCORPORATE THE FCC’S *ISP***  
 15 ***REMAND CORE FORBEARANCE ORDER* INTO THEIR**  
 16 **INTERCONNECTION AGREEMENT?**

17

18 **A:**    No. Language contained in the interconnection agreement approved by the  
 19 Commission on July 9, 2004 (specifically section 7.1.4.1.2 of Attachment 3),  
 20 provides that

21  
 22  
 23  
 24

The Parties agree to apply the 3:1 methodology set forth in the  
 FCC’s April 2001 ISP Remand Order, and the 10% growth factor  
 set forth therein, and agree to continue to apply that methodology  
 until such time as the FCC, or any other governmental agency of

1                   competent jurisdiction, issues new rule and regulations to apply  
2                   this methodology.

3  
4                   US LEC believes that this language permits the parties to eliminate the  
5                   application of the growth caps in billing for traffic over the 3:1 ratio, and that  
6                   there is no need for additional language in the interconnection agreement to  
7                   incorporate the *Core* decision.

8

9   **Q:    DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

10

11   **A:    Yes.**

**SECTION I -- INTRODUCTION**

1 **Q. Please state your name, title and business address.**

2 A. My name is James M. Maples. I am employed as Regulatory Affairs Manager,  
3 for Sprint Corporation. My business address is 6450 Sprint Parkway, Overland  
4 Park, KS 66251.

5  
6 **Q. Please summarize your educational and professional background.**

7 A. I received a Bachelor of Science degree from East Texas State University,  
8 Commerce, Texas, in December 1973 with majors in mathematics and industrial  
9 technology. During that period, beginning in 1968, I was also employed by  
10 Sprint/United Telephone Texas as an installer/repairman of residential, simple and  
11 complex business systems and as a central office switchman. I completed the  
12 company's Management Training program in 1974 and was promoted to the  
13 position of Revenue Requirement Analyst later that same year.

14

15 For the next seventeen (17) years I held positions of increasing responsibilities in  
16 state, regional and corporate Sprint organizations. During that period, I prepared  
17 or was responsible for jurisdictional separation studies, revenue budgets, demand  
18 forecasts, access charge rates, and financial reporting to various regulatory  
19 agencies.

20

21 From 1991 through 1995, as Manager Cost Allocations at Sprint/United  
22 Management Corporation, I developed financial models for alternative regulation,

1 participated in a two year project to develop a system-wide product costing  
2 model, developed and trained personnel on revenue budget models, and  
3 standardized systems for separations costing through system design, development,  
4 testing and implementation.

5  
6 In 1995 I accepted the position of Manager-Pricing/Costing Strategy and for 17  
7 months coordinated several system-wide teams that were charged with the  
8 identification and development of methods, procedures, and system changes  
9 required to implement local competitive services. During that period, I  
10 coordinated the technical support needed to establish and maintain relationships  
11 with competitive local exchange companies ("CLECs").

12  
13 From September 1996 through July 1999 I held the position of manager of  
14 Competitive Markets – Local Access with the responsibility for pricing unbundled  
15 network elements, supporting negotiations with new competitive carriers, and  
16 assisting in implementation issues.

17  
18 I began my current position in August, 1999. My responsibilities include the  
19 review of legislation, court rulings and FCC and state commission orders  
20 affecting telecommunications policy, interpreting the impact to the corporation,  
21 developing positions, communicating them throughout the organization, and  
22 representing them before regulatory bodies such as the Public Service  
23 Commission of the State of Florida ("Commission").

1 **Q. Mr. Maples are you an attorney?**

2 **A.** I am not an attorney and my review and interpretation of federal and state orders  
3 and other applicable rulings is from a layman's perspective for the formulation of  
4 policy.

5

6 **Q. Have you testified before any regulatory commissions?**

7 **B.** Yes. I have testified before the Missouri, Florida, Nevada, and California  
8 regulatory commissions regarding interconnection and network unbundling  
9 issues.

10

11 **Q. On whose behalf are you testifying?**

12 **A.** I am testifying on behalf of Sprint Communications Company L.P (hereafter  
13 referred to as "Sprint").

14

15 **Q. What is the purpose of your Direct Testimony?**

16 **A.** The purpose of my Direct Testimony is to address the following issues identified  
17 in the Joint Issues Matrix adopted in this docket on July 11, 2005:

18 Issue No. 1 – TRRO/FINAL RULES:

19 What is the appropriate language to implement the FCC's transition plan for (1)  
20 switching, (2) high capacity loops and (3) dedicated transport as detailed in the  
21 FCC's Triennial Review Remand Order ("TRRO"), issued February 4, 2005?

22 Issue No. 3 – TRRO/FINAL RULES:

23 What is the appropriate language to implement BellSouth's obligation to provide

1 Section 251 unbundled access to high capacity loops and dedicated transport and  
2 how should the following terms be defined?

3 (i) Business Line

4 (ii) Fiber-Based Collocator

5 (iv)Route

6 Issue No. 5 - TRRO/FINAL RULES:

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

9 Issue No. 9 – TRRO/FINAL RULES:

10 What rates, terms, and conditions should govern the transition of existing network  
11 elements that BellSouth is no longer obligated to provide as Section 251 UNEs to  
12 non-section 251 network elements and other services and, (a) what is the proper  
13 treatment for such network elements at the end of the transition period; and (b)  
14 what is the appropriate transition period, and what are the appropriate rates, terms  
15 and conditions during such transition period, for unbundled high capacity loops,  
16 high capacity transport, and dark fiber transport between wire centers that do not  
17 meet the FCC's non-impairment standards at this time, but that meet such  
18 standards in the future?

19 Issue No. 19 – TRO – SUB-LOOP CONCENTRATION:

20 b) Do the FCC's rules for sub loops for multi-unit premises limit CLEC access to  
21 copper facilities only or do they also include access to fiber facilities?

22 c) What are the suitable points of access for sub-loops for multi-unit premises?

23 Issue No. 22 – TRO – GREENFIELD AREAS:

1 b) What is the appropriate language to implement BellSouth's obligation, if any,  
2 to offer unbundled access to newly-deployed or 'greenfield' fiber loops,  
3 including fiber loops deployed to the minimum point of entry ("MPOE") of a  
4 multiple dwelling unit that is predominantly residential, and what, if any,  
5 impact does the ownership of the inside wiring from the MPOE to each end  
6 user have on this obligation?

7 Issue No. 23 – TRO – HYBRID LOOPS:

8 What is the appropriate ICA language to implement BellSouth's obligation to  
9 provide unbundled access to hybrid loops?

10 Issue No. 25 – TRO ROUTINE NETWORK MODIFICATION:

11 What is the appropriate ICA language to implement BellSouth's obligation to  
12 provide routine network modifications?

13 Issue No. 27 – TRO – FIBER TO THE HOME:

14 What is the appropriate language, if any, to address access to overbuild  
15 deployments of fiber to the home and fiber to the curb facilities?

16  
17 **Q. Do you include proposed terms and conditions for an interconnection**  
18 **agreement in your testimony?**

19 **A.** My testimony includes "redlined" sections of terms and conditions filed by  
20 BellSouth in a similar docket in Georgia (Docket No. 19341-U). Terms proposed  
21 by BellSouth that must be stricken are ~~lined through~~, while terms proposed by  
22 Sprint that must be added are underlined. This testimony does not include terms  
23 and conditions filed by BellSouth that Sprint does not take issue with; however

1 Sprint reserves the right to address further language should BellSouth file terms  
2 and conditions in this proceeding different than what was filed in Georgia. Sprint  
3 has taken this approach due to the generic nature of this proceeding and the fact  
4 that the terms and conditions filed by BellSouth do not exactly match what the  
5 parties have been negotiating.

6  
7 **Q. Please summarize your Direct Testimony.**

8 **A.** Sprint Corporation has experience operating as both a CLEC and incumbent local  
9 exchange carrier (“ILEC”) in the state of Florida and is therefore both providing  
10 and receiving access to unbundled network elements (“UNEs”). Sprint’s  
11 positions on these issues are balanced, based on reasonable interpretations of FCC  
12 rules and orders. This testimony will prove the following:

- 13 • CLECs do not have to complete the transition of local switching to alternate  
14 arrangements until March 11, 2006. They should not be required to transition  
15 these UNEs prematurely, paying higher rates than necessary.
- 16 • The terms and conditions to be incorporated into the UNE amendment to the  
17 interconnection agreement regarding access to high capacity loops and  
18 dedicated transport should provide Sprint the opportunity to dispute potential  
19 BellSouth claims as to the non-impairment of a wire center via self-  
20 certification. Sprint must be notified in writing of any non-impairment claims  
21 by BellSouth to ensure Sprint has ample time to complete a thorough analysis  
22 of the claim and dispute, as warranted. Any such disagreements that arise  
23 regarding the status of a wire center should then be resolved via the dispute



1 resolution procedures included in the interconnection agreement. Sprint  
2 should be allowed to continue ordering the affected UNEs during the disputed  
3 period at the existing rate and not be required to transition to an alternate  
4 service, which Sprint selects, until the dispute is resolved in BellSouth's favor.

5 • The agreement should include the definitions of Business Lines, Fiber-Based  
6 Collocators and Routes consistent with those adopted by the FCC in its orders.  
7 The definition of a Route should also be clarified to include the concept of  
8 "reverse collocation". Non BellSouth locations where BellSouth has reverse  
9 collocation can be counted as a BellSouth wire center for the purpose of  
10 defining routes.

11 • HDSL-Compatible Loops are not the same as DS1 Loops for purposes of  
12 finding impairment and should not be treated as such. HDSL-Compatible  
13 Loops are dry copper pairs devoid of electronics conditioned at a pre-  
14 determined level. DS1 Loops are provided over various technologies and  
15 include the necessary electronics.

16 • As access to high capacity loops and dedicated transport is eliminated in the  
17 future due to the changing status of BellSouth wire centers, the transition  
18 process should mirror the one adopted by the FCC for the embedded base of  
19 UNEs in the TRRO (FCC 04-290, *Unbundled Access to Network Elements*,  
20 *Review of the Section 251 Obligations of Incumbent Local Exchange Carriers*,  
21 WC Docket 04-313 and CC Docket 01-338, Order on Remand, released  
22 February 4, 2005). There have been no new findings or evidence supporting  
23 the adoption of a different procedure.

- 1           • The current FCC rules for sub-loops for multi-dwelling units include fiber  
2           based facilities. The fiber facility exclusions found elsewhere in the FCC  
3           rules do not apply. In addition, BellSouth cannot limit the points of access for  
4           such facilities to building terminals.
- 5           • The Fiber to the Home (“FTTH”) and Fiber to the Curb (“FTTC”) unbundling  
6           exemptions for ‘greenfield’ and overbuild situations do not apply to fiber  
7           facilities serving enterprise customers or predominately business multi-  
8           dwelling units.
- 9           • BellSouth should provide access to hybrid loops for the provision of  
10          broadband or narrowband services utilizing the time division multiplexing  
11          capabilities of such loops or spare home-run copper loops.
- 12          • And finally, BellSouth is obligated to provide routine network modifications  
13          to CLECs on the same basis that it does so for its own customers. It cannot  
14          charge for these modifications if the cost of doing so is included in existing  
15          UNE rates. It cannot limit routine network modification only to those events  
16          that it “anticipates”.
- 17          • BellSouth should agree to provide access to UNEs in accordance with the Act  
18          (The Telecommunications Act of 1934, as amended) and the orders, rules and  
19          regulations promulgated thereunder by the FCC, the Commission or a court of  
20          competent jurisdiction. Furthermore, the agreement should include terms and  
21          conditions for providing access to operations support systems.
- 22

23    **SECTION II – UNRESOLVED ISSUE DISCUSSION**

---

1        **Issue No. 1 – TRRO/FINAL RULES:**

2        **What is the appropriate language to implement the FCC's transition plan for**  
3        **(1) switching, (2) high capacity loops and (3) dedicated transport as detailed**  
4        **in the FCC's Triennial Review Remand Order ("TRRO"), issued February**  
5        **4, 2005?**

6  
7        **Q.     What is Sprint's position on this issue?**

8        **A.     The agreement should contain explicit language consistent with the transition plan**  
9        **established by the FCC in the TRRO. Therefore, the terms should accurately**  
10       **reflect the rules found at 47 C.F.R. §51.319(a)(4)(iii), §51.319(a)(5)(iii),**  
11       **§51.319(a)(6)(ii), §51.319(d)(2)(ii)-(iii), §51.319(e)(2)(ii)(C),**  
12       **§51.319(e)(2)(iii)(C) and §51.219(e)(2)(iv)(B). In addition, the FCC provided**  
13       **CLECs the ability to challenge an ILEC's claim as to whether or not a wire center**  
14       **meets the impairment criteria established for DS1 and DS3 Loops and DS1, DS3**  
15       **and Dark Fiber Dedicated Transport and the agreement should contain provisions**  
16       **to that effect.**

17  
18       **(1) Switching**

19  
20       **Q.     What transition mechanisms do the FCC Rules provide for switching?**

21       **A.     CLECs have 12 months from the effective date of the TRRO (March 11, 2005) to**  
22       **migrate customers that were in service as of that date to alternative arrangements.**  
23       **The FCC did not define a detailed process how this would occur, leaving it up to**

1 the parties to resolve. During that period ILECs are allowed to increase the price  
2 for each combination of loop, switching, and shared transport ("UNE-P") by  
3 \$1.00.

4  
5 **Q. What process should the parties use to transition these UNEs?**

6 **A.** The process can vary based on the alternative arrangement that the CLEC selects  
7 and the ILEC processes and systems. For example, if the CLEC enters into a  
8 commercial arrangement with the ILEC the ILEC may simply be able to change  
9 the rates in a billing system. On the other hand if the CLEC selects resale, this  
10 may involve different processes and systems, requiring some form of order  
11 processing.

12  
13 **Q. When should the transition be completed?**

14 **A.** The transition is supposed to be completed 12 months after the effective date of  
15 the TRRO, which is March 11, 2006.

16  
17 **Q. Does Sprint agree with BellSouth's terms requiring the placement of**  
18 **individual orders by October 1, 2005 for transitioning UNEP to alternative**  
19 **arrangements other than UNE loop?**

20 **A.** No. BellSouth's proposed terms assume the requirement of placing orders  
21 regardless of the alternative arrangement selected by the CLEC. They do not  
22 recognize the different volumes of customers that individual CLECs may have  
23 that need to be converted. Some may have tens of thousands while others have a

1 few thousand. If BellSouth works each order as it is placed the transition will be  
2 completed months before the end date allowed by the FCC, requiring CLECs to  
3 pay higher rates than necessary for several months.  
4

5 **Q. Does Sprint have a counterproposal?**

6 **A.** Specifically with respect to the conversion to resale or to a commercial  
7 arrangement, a definitive timetable could be developed if the parties knew the  
8 specific arrangement selected, the number of local switching and UNE-P lines  
9 that needed to be transitioned, and BellSouth's capabilities with respect to order  
10 processing. For example I will assume that BellSouth has 600,000 UNE-P lines  
11 in place in Florida and the conversion process to resale or a commercial  
12 arrangement are of equal duration. If BellSouth's systems could process 200,000  
13 orders in one month, a viable transition plan would require CLECs to place the  
14 last 200,000 orders by February 10, 2006. It makes sense to establish a plan  
15 where a certain percent of orders are placed by specific dates. One-third of CLEC  
16 demand could be placed by November 1, 2005, one-third by December 1, 2005,  
17 and one-third by January 9, 2006. The reasonableness of such a plan could be  
18 determined with sufficient facts. If the conversion process length for resale and a  
19 commercial arrangement are different the CLEC should be notified in advance  
20 and allowed to take this fact into consideration in determining the time frame for  
21 submitting orders.  
22  
23

1 **Q. Does Sprint have specific terms to propose?**

2 **A.** The exact terms depend on specific information which could only be provided by  
3 BellSouth; however, the following terms reflect the above proposal.

4 4.2.5 <<customer\_short\_name>> must submit orders, to disconnect or convert  
5 one third (1/3) all of its Embedded Base of Local Switching to other  
6 BellSouth services as Conversions pursuant to Section 1.6 above by  
7 October-November 1, 2005. <<customer\_short\_name>> must submit  
8 orders, to disconnect or convert the second third of its Embedded Base  
9 of Local Switching to other BellSouth services as Conversions pursuant  
10 to Section 1.6 above by December 1, 2005. Orders must be submitted  
11 for the remaining third to disconnect or convert its Embedded Base of  
12 Local Switching to other BellSouth services as Conversions pursuant to  
13 Section 1.6 above by January 9, 2006.

14

15 4.2.5.1 If <<customer\_short\_name>> fails to submit orders to disconnect or  
16 convert all of its Embedded Base of Local Switching as specified in  
17 Section 4.2.5 above ~~prior to October 1, 2005~~, BellSouth will identify  
18 <<customer\_short\_name>>'s remaining Embedded Base of Local  
19 Switching and will disconnect such Local Switching. Those circuits  
20 identified and disconnected by BellSouth shall be subject to the  
21 applicable disconnect charges as set forth in this Agreement.

22

23 5.4.3.5 <<customer\_short\_name>> must submit ~~orders, or~~ spreadsheets if

1 converting to UNE Loops through the Bulk Migration process, outlined  
2 in Section 2.1.10 above, to either disconnect or convert all of its  
3 Embedded Base of UNE-P to other BellSouth services as Conversions  
4 pursuant to Section 1.6 above by October 1, 2005. Otherwise,  
5 <<customer\_short\_name>> must submit orders, to disconnect or convert  
6 one third (1/3) of its Embedded Base of UNE-P to other BellSouth  
7 services as Conversions pursuant to Section 1.6 above by November 1,  
8 2005. <<customer\_short\_name>> must submit orders, to disconnect or  
9 convert the second third of its Embedded Base of UNE-P to other  
10 BellSouth services as Conversions pursuant to Section 1.6 above by  
11 December 1, 2005. Orders must be submitted for the remaining third to  
12 disconnect or convert its Embedded Base of UNE-P to other BellSouth  
13 services as Conversions pursuant to Section 1.6 above by January 9,  
14 2006.

15  
16 5.4.3.5.1 If <<customer\_short\_name>> fails to submit orders or spreadsheets  
17 converting all of the Embedded Base of UNE-P as specified in Section  
18 5.4.3.5 above ~~prior to October 1, 2005~~, BellSouth will identify  
19 <<customer\_short\_name>>'s remaining Embedded Base of UNE-P and  
20 will transition such UNE-P to resold BellSouth telecommunication  
21 services, as set forth in Attachment 1. Those circuits identified and  
22 transitioned by BellSouth shall be subject to the applicable disconnect  
23 charges as set forth in this Agreement and the full nonrecurring charges

1                   for installation of such BellSouth services as set forth in BellSouth's  
2                   tariffs.

3  
4           **(2) High Capacity Loops**

5  
6   **Q.    Did the FCC eliminate CLEC access to high capacity loops?**

7   **A.**The FCC eliminated access to high capacity loops (DS1 and DS3) for ILEC wire  
8           centers that meet specific criteria (47 C.F.R. §51.319(a)(4) and §51.319(a)(5)).  
9           Access to dark fiber loops was eliminated altogether and caps were placed on the  
10          number of high capacity loops that CLECs could purchase in wire centers that did  
11          not meet the criteria.

12  
13   **Q.    What transition mechanism did the FCC establish for high capacity loops?**

14   **A.**CLECs were given 12 months from the effective date of the TRRO to transition  
15          any affected DS1 and DS3 loops to alternative arrangements. The FCC provided  
16          an 18 month transition for all dark fiber loops. During that period ILECs are  
17          allowed to increase the price of the UNEs that are being transitioned by 15%.

18  
19   **Q.    You mention above that the agreement should include terms that allow**  
20          **CLECs to challenge an ILEC's claim as to whether or not a specific wire**  
21          **center meets the FCC criteria. Why is this important?**

22   **A.**Such language is necessary to allow a CLEC to continue ordering the impacted  
23          UNEs while the parties dispute the status of the wire center. To do otherwise



1 would place the CLEC in a position where it would be seriously disadvantaged in  
2 offering services to its customers. Therefore, the terms and conditions for DS1 and  
3 DS3 Loops should be designed to allow Sprint to continue ordering these UNEs  
4 from a wire center as it disputes the status with BellSouth. Furthermore, the terms  
5 should make clear that the disputed UNEs are not a part of the embedded base and  
6 CLECs should not be forced to transition the affected UNEs or pay increased  
7 prices until after the dispute has been resolved. When UNEs are transitioned to  
8 alternative services Sprint must have the choice of selecting which services it  
9 purchases from BellSouth and the agreement's terms and conditions should reflect  
10 that concept.

11  
12 **Q. What exactly did the FCC state with respect to this dispute process?**

13 **A.** The primary text is found in paragraph 234 of the TRRO:

14 We recognize that our rules governing access to dedicated transport and  
15 high-capacity loops evaluate impairment based upon objective and readily  
16 obtainable facts, such as the number of business lines or the number of  
17 facilities-based competitors in a particular market. We therefore hold that  
18 to submit an order to obtain a high-capacity loop or transport UNE, a  
19 requesting carrier must undertake a reasonably diligent inquiry and, based  
20 on that inquiry, self-certify that, to the best of its knowledge, its request is  
21 consistent with the requirements discussed in parts IV, V, and VI above  
22 and that it is therefore entitled to unbundled access to the particular  
23 network elements sought pursuant to section 251(c)(3). Upon receiving a  
24 request for access to a dedicated transport or high-capacity loop UNE that  
25 indicates that the UNE meets the relevant factual criteria discussed in

1 sections V and VI above, the incumbent LEC must immediately process  
2 the request. To the extent that an incumbent LEC seeks to challenge any  
3 such UNEs, it subsequently can raise that issue through the dispute  
4 resolution procedures provided for in its interconnection agreements. In  
5 other words, the incumbent LEC must provision the UNE and  
6 subsequently bring any dispute regarding access to that UNE before a state  
7 commission or other appropriate authority.

8  
9 The referenced text clearly includes any high capacity loop UNEs. This supports  
10 Sprint's position that the terms enabling it to order DS1 and DS3 Loops require  
11 only self certification. While the dispute is pending Sprint should be allowed to  
12 receive the UNE at current prices.

13  
14 **Q. How are such disputes supposed to be resolved?**

15 **A.** As noted in the above quote, the TRRO states that the ILEC can raise the issue  
16 through the dispute resolution terms contained in the interconnection agreement,  
17 which ultimately gets the issue before a regulatory body, such as this  
18 Commission. The Commission would then resolve the matter in an appropriate  
19 manner.

20  
21 **Q. How should the outcome of the dispute be reflected in the terms of the**  
22 **agreement?**

23 **A.** Assuming the CLEC has not been forced to transition any of the impacted UNEs  
24 to alternate services or pay higher prices, there would be no real changes, other  
25 than the removal of the wire center from the list of non-impaired locations if the

1 CLEC successfully challenges the status of the wire center. If the CLEC loses the  
2 dispute, the initial transition end date should apply for UNEs in service on March  
3 11, 2005 (the embedded base). Furthermore, any UNEs ordered during the  
4 dispute should be immediately converted to another service. Such terms could  
5 also be defined in any Commission finding resolving the dispute.  
6

7 **Q. Does Sprint have any terms and conditions to recommend?**

8 **A.** Sprint recommends the following modifications to terms proposed by BellSouth  
9 regarding the transition of DS1 and DS3 loops. The changes clarify that  
10 BellSouth's obligation to provide access to DS1 and DS3 loops during the  
11 transition period applies equally to the Embedded Base and Excess DS1 and DS3  
12 loops. In addition, the limitation on providing unbundling in the impacted wire  
13 centers does not apply to the loops that are being transitioned.

14 2.1.4.5 Notwithstanding anything to the contrary in this Agreement, and except  
15 as set forth in Section 2.1.4.12 below, BellSouth shall make available  
16 DS1 and DS3 Loops as described in this Section 2.1.4 only for  
17 <<customer\_short\_name>>'s Embedded Base and Excess DS1 and DS3  
18 Loops during the Transition Period:

19  
20 2.1.4.9 Once a wire center exceeds both of the thresholds set forth in Sections  
21 2.1.4.5.1 and 2.1.4.5.2 below, no future DS1 Loop unbundling will be  
22 required in that wire center except as provided for in 2.1.4.  
23

1           2.1.4.10 Once a wire center exceeds both of the thresholds set forth in Sections  
2                           2.1.4.5.1 and 2.1.4.5.2 below, no future DS3 Loop unbundling will be  
3                           required in that wire center except as provided for in 2.1.4.

4  
5           **(3) Dedicated Transport**

6  
7           **Q. Did the FCC eliminate CLEC access to dedicated transport?**

8           **A.** The FCC rules eliminate access to DS1, DS3 and Dark Fiber dedicated transport  
9                           on routes between wire centers that meet certain criteria (47 C.F.R.  
10                           §51.319(e)(2)(ii)(A), §51.319(e)(2)(iii)(A), §51.319(e)(2)(iv)(A),  
11                           §51.319(e)(3)(i)-(iii)). Caps were also placed on the number of DS1 and DS3  
12                           circuits that CLECs could purchase on routes between wire centers where the  
13                           UNEs were still available.

14  
15           **Q. What transition mechanism did the FCC establish for dedicated transport?**

16           **A.** CLECs were given 12 months from the effective date of the TRRO to transition  
17                           any affected DS1 and DS3 dedicated transport circuits to alternative  
18                           arrangements. The FCC provided an 18 month transition for all dark fiber  
19                           dedicated transport. During that period ILECs are allowed to increase the price of  
20                           the UNEs that are being transitioned by 15%.

21  
22           **Q. Can CLECs dispute the status of wire centers for the purpose of determining**  
23                           **Access to dedicated transport?**

1 A. Yes. The support provided immediately above with respect to high capacity loops  
2 also applies to dedicated transport. The process defined in ¶234 of the TRRO  
3 specifically mentions transport UNEs.  
4

5 **Q. Does Sprint have any terms and conditions to recommend?**

6 A. Sprint recommends the following modifications to terms proposed by BellSouth  
7 regarding the transition of DS1, DS3 and dark fiber dedicated transport. The  
8 changes clarify that BellSouth's obligation to provide access to DS1, DS3 and  
9 dark fiber dedicated transport during the transition period applies equally to the  
10 Embedded Base, Entrance Facilities and Excess DS1 and DS3 dedicated  
11 transport. In addition, the limitation on providing unbundling on routes between  
12 impacted wire centers does not apply to the dedicated transport that is being  
13 transitioned.

14 6.2.6 Notwithstanding anything to the contrary in this Agreement, BellSouth  
15 shall make available Dedicated Transport as described in this Section  
16 6.2 only for <<customer\_short\_name>>'s Embedded Base, Embedded  
17 Base Entrance Facilities, and Excess DS1 and DS3 Dedicated Transport  
18 during the Transition Period:

19

20 6.2.6.7 Once a wire center exceeds either of the thresholds set forth in Sections  
21 6.2.6.1 or 6.2.6.2 above, no future DS1 Dedicated Transport unbundling  
22 will be required in that wire center except as provided for in 6.2.  
23

1           6.2.6.8   Once a wire center exceeds either of the thresholds set forth in Sections  
2                   6.2.6.1 or 6.2.6.2 above, no future DS3 Dedicated Transport will be  
3                   required in that wire center except as provided for in 6.2.

4  
5           6.9.1.8   Once a wire center exceeds either of the thresholds set forth in Section  
6                   6.9.1.4 above, no future Dark Fiber Transport unbundling will be  
7                   required in that wire center except as provided for in 6.9.

8  
9   **Q.    Does Sprint have any other recommendations with respect to BellSouth's**  
10       **obligation to provide access to UNE dedicated transport?**

11   **A.**   BellSouth's terms and conditions lack a specific, clear statement that it will  
12       provide access to DS1, DS3, and dark fiber dedicated transport on all routes  
13       except those between wire centers that meet the specific criteria. The following  
14       modification to BellSouth's proposed definition of dedicated transport provides  
15       the needed clarification.

16       6.1    Dedicated Transport. Dedicated Transport is defined as BellSouth's  
17       transmission facilities between wire centers or switches owned by BellSouth, or  
18       between wire centers or switches owned by BellSouth and switches owned by  
19       <<customer\_short\_name>>, including but not limited to DS1, DS3 and OCn level  
20       services, as well as dark fiber, dedicated to <<customer\_short\_name>>.

21       BellSouth shall not be required to provide access to OCn level Dedicated  
22       Transport under any circumstances pursuant to this Agreement. In addition,  
23       except as set forth in Section 6.2 below, BellSouth shall not be required to provide

1 to <<customer\_short\_name>> unbundled access to interoffice transmission  
2 facilities that do not connect a pair of wire centers or switches owned by  
3 BellSouth (“Entrance Facilities”). BellSouth shall provide unbundled access to  
4 DS1, DS3 and dark fiber Dedicated Transport on all routes except those defined  
5 in § 6.2 and § 6.9, subject to the transition contained therein.  
6

7 **Issue No. 3 – TRRO/FINAL RULES:**

8 **What is the appropriate language to implement BellSouth’s obligation to**  
9 **provide Section 251 unbundled access to high capacity loops and dedicated**  
10 **transport and how should the following terms be defined?**

11 **(i) Business Line**

12 **(ii) Fiber-Based Collocator**

13 **(iv)Route**

14  
15 **(i) Business Line and (ii) Fiber-Based Collocator**

16  
17 **Q. Did the FCC define Business Lines and Fiber-Based Collocator in the**  
18 **TRRO?**

19 **A.** The FCC authored the following definitions and included them in 47 C.F.R.  
20 §51.5.

21 Business line. A business line is an incumbent LEC-owned switched access line  
22 used to serve a business customer, whether by the incumbent LEC itself or by a  
23 competitive LEC that leases the line from the incumbent LEC. The number of

1 business lines in a wire center shall equal the sum of all incumbent LEC business  
2 switched access lines, plus the sum of all UNE loops connected to that wire  
3 center, including UNE loops provisioned in combination with other unbundled  
4 elements. Among these requirements, business line tallies (1) shall include only  
5 those access lines connecting end-user customers with incumbent LEC end-  
6 offices for switched services, (2) shall not include non-switched special access  
7 lines, (3) shall account for ISDN and other digital access lines by counting each  
8 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64  
9 kbps-equivalents, and therefore to 24 “business lines.”

10  
11 Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with  
12 the incumbent LEC, that maintains a collocation arrangement in an incumbent  
13 LEC wire center, with active electrical power supply, and operates a fiber-optic  
14 cable or comparable transmission facility that (1) terminates at a collocation  
15 arrangement within the wire center; (2) leaves the incumbent LEC wire center  
16 premises; and (3) is owned by a party other than the incumbent LEC or any  
17 affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber  
18 obtained from an incumbent LEC on an indefeasible right of use basis shall be  
19 treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-  
20 based collocators in a single wire center shall collectively be counted as a single  
21 fiber-based collocator. For purposes of this paragraph, the term affiliate is  
22 defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.



1 **Q. Should these definitions be included in the terms of the agreement?**

2 **A.** The definitions should be included given their importance in determining which  
3 wire centers meet the FCC criteria and thus, where access to UNEs is eliminated.  
4 The parties need a common understanding.

5

6 **Q. What terms should be included in the agreement with respect to these**  
7 **definitions?**

8 **A.** The definitions can be incorporated verbatim or via a direct reference. Sprint  
9 recommends the following.

10 2.1.4.4 For purposes of this Section 2, a Business Line is as defined in 47 C.F.R.

11 § 51.5. Similarly, a Fiber- based Collocator is as defined in 47 C.F.R.

12 §51.5.

13

14 6.2.5 For purposes of this Section 6.2, a Business Line is as defined in 47

15 C.F.R. § 51.5. Similarly, a Fiber- based Collocator is as defined in 47

16 C.F.R. §51.5.

17

18 6.9.1.3 For purposes of this Section 6.9, a Business Line is as defined in 47

19 C.F.R. § 51.5. Similarly, a Fiber- based Collocator is as defined in 47

20 C.F.R. §51.5.

21

22 **(iv) Route**

23

1 **Q. Did the FCC define the meaning of the term “route”?**

2 **A.** The FCC included a definition of a “route” within its definition of the dedicated  
3 transport UNE found in 47 C.F.R. §51.319(e), which is shown below. It is a  
4 transmission path between ILEC wire centers or switches.

5 51.319 (e) Dedicated transport. An incumbent LEC shall provide a requesting  
6 telecommunications carrier with nondiscriminatory access to dedicated transport  
7 on an unbundled basis, in accordance with section 251(c)(3) of the Act and this  
8 part, as set forth in paragraphs (e) through (e)(4) of this section. A “route” is a  
9 transmission path between one of an incumbent LEC’s wire centers or switches  
10 and another of the incumbent LEC’s wire centers or switches. A route between  
11 two points (*e.g.*, wire center or switch “A” and wire center or switch “Z”) may  
12 pass through one or more intermediate wire centers or switches (*e.g.*, wire center  
13 or switch “X”). Transmission paths between identical end points (*e.g.*, wire  
14 center or switch “A” and wire center or switch “Z”) are the same “route,”  
15 irrespective of whether they pass through the same intermediate wire centers or  
16 switches, if any.

17  
18 **Q. Are there any exceptions to one end of the route having to be an ILEC wire**  
19 **center or switch?**

20 **A.** No; however, the FCC includes non-ILEC locations where an ILEC has  
21 collocated switching equipment in its definition of what constitutes a wire center.  
22 This is called “reverse collocation”. Following are excerpts from the TRRO  
23 defining reverse collocation.

1           87. As noted above, the D.C. Circuit criticized the Commission’s *Triennial*  
2           *Review Order* framework for dedicated transport for failing to provide a  
3           meaningful method to identify which routes were similar to other routes, and thus  
4           failing to make inferences where possible. We find that the best way to respond  
5           to this concern is by categorizing similar end-points, and then making  
6           determinations of impairment or non-impairment for the resulting combinations  
7           (*i.e.*, routes) connecting different classes of end-points. Specifically, we utilize  
8           evidence of actual deployment to define the general characteristics of incumbent  
9           LEC wire centers<sup>251</sup> where we believe there is a lack of impairment – that is,  
10          where reasonably efficient competitive LECs are capable of duplicating the  
11          incumbent LEC’s network. Thus, the proxies we use for this purpose identify  
12          where revenue opportunities are or could be sufficient to justify competitive LEC  
13          deployment. The tests that we adopt below therefore evaluate impairment  
14          through a focus on wire centers, the end-points of routes, in a manner that  
15          accounts for both actual and potential competition.

16          <sup>251</sup> By “wire center,” we mean any incumbent LEC switching office that  
17          terminates and aggregates loop facilities. Thus, line counts derived on a wire  
18          center basis include all loops that terminate in that location, even if they terminate  
19          on separate switches. To the extent that an incumbent LEC switching office  
20          exists that has no line-side function, such as an access tandem located in a  
21          building apart from line-side switching facilities, we provide for such offices in  
22          our analysis, below. This definition also includes any incumbent LEC switches

1 with line-side functionality that terminate loops that are “reverse collocated” in  
2 non-incumbent LEC collocation hotels.

3  
4 **Q. How should route be defined in the interconnection agreement?**

5 **A.** The definition should follow the FCC definition included in the FCC Rules and  
6 incorporate a reference to reverse collocation. The following modified terms  
7 taken from BellSouth’s proposed language meet these criteria.

8 6.6 <<customer\_short\_name>> may obtain a maximum of ten (10) unbundled  
9 DS1 Dedicated Transport circuits or twelve (12) unbundled DS3  
10 Dedicated Transport circuits, or their equivalent, on each route where the  
11 respective Dedicated Transport is available as a Network Element. A  
12 route is defined as a transmission path between one of BellSouth’s wire  
13 centers or switches and another of BellSouth’s wire centers or switches. A  
14 route between two (2) points may pass through one or more intermediate  
15 wire centers or switches. Transmission paths between identical end points  
16 are the same “route”, irrespective of whether they pass through the same  
17 intermediate wire centers or switches, if any. For the purposes of  
18 determining routes wire centers include non-BellSouth locations where  
19 BellSouth has reverse collocated switches with line side functionality that  
20 terminate loops.

21  
22 **Issue No. 5 - TRRO/FINAL RULES:**

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

3

4   **Q.    What is Sprint’s position with regard to this issue?**

5   **A.    HDSL-capable copper loops are not the equivalent of DS1 loops for the purpose**  
6           of evaluating impairment. Sprint should be able to order 2-wire and 4-wire  
7           HDSL-Compatible Loops in any wire center, even those that have been deemed to  
8           be non-impaired for purposes of unbundling DS1 loops. Sprint should continue to  
9           receive access to conditioned copper loops capable of providing high-bit rate  
10          digital subscriber line services in BellSouth wire centers that meet the non-  
11          impairment criteria for DS1 Loops established by the FCC in the TRRO.  
12          BellSouth has indicated that it will stop offering its HDSL-Compatible Loop  
13          product in its wire centers that meet the non-impairment criteria for DS1 Loops,  
14          but has agreed that Sprint can essentially get access to the same facility by  
15          purchasing its Unbundled Copper Loop (“UCL”) product and requesting the  
16          necessary level of line conditioning. This is a distinction without a difference and  
17          only succeeds in complicating the process for CLECs.

18

19   **Q.    What is Sprint’s recommendation to the Commission on this issue?**

20   **A.    BellSouth’s position should be rejected, and the Commission should require**  
21          BellSouth to continue to unbundle HDSL-Compatible Loops in DS1 non-  
22          impaired wire centers. HDSL-Compatible Loops should also be counted as 1 or 2  
23          voice grade equivalents (1 for 2-wire and 2 for 4-wire), just as any other copper

1 loop, when evaluating the number of business lines and not as 24 voice grade  
2 equivalentents.  
3

4 **Q. What is HDSL?**

5 **A.** HDSL or High-Bit-Rate Digital Subscriber Line is a technology that can be used  
6 to provide symmetrical data communications over 2-wire or 4-wire copper loops  
7 at speeds of 1.544 megabits per second (“Mbps”). The ability to use HDSL is  
8 limited by the total loop length, the amount of bridged tap, and the presence of  
9 any electronic devices such as load coils.  
10

11 **Q. What is BellSouth’s HDSL-Compatible Loop product?**

12 **A.** BellSouth defines the HDSL-Compatible Loop as:

13 2.3.5 2-wire or 4-wire HDSL-Compatible Loop. This is a designed Loop that  
14 meets Carrier Serving Area (CSA) specifications, may be up to 12,000  
15 feet long and may have up to 2,500 feet of bridged tap (inclusive of Loop  
16 length). It may be a 2-wire or 4-wire circuit and will come standard with a  
17 test point, OC, and a DLR.  
18

19 It essentially provides a CLEC with a conditioned copper loop to which the CLEC  
20 can attach its HDSL electronics. A CLEC need only place a single order to obtain  
21 the HDSL-Compatible loop that has specific limits on the length of the loop and  
22 amount of bridged tap as well as other features such as a test point.  
23

1 **Q. Could a CLEC use an HDSL-Compatible Loop for services other than**  
2 **HDSL?**

3 **A.** Yes, a CLEC could use an HDSL-Compatible Loop if it wanted to ensure higher  
4 bandwidth for products such as ADSL (Asymmetrical Digital Subscriber Line).  
5 Shorter loop lengths and minimal bridged tap enable greater bandwidth.

6  
7 **Q. What is a DS1 Loop?**

8 **A.** A DS1 Loop is a point to point circuit employing industry standards for digital  
9 transmission with a capacity of 1.544 Mbps. It can be divided into 24 channels,  
10 each with 64 Kbps (kilobits per second) of bandwidth. It can be provided over a  
11 variety of facility types and includes the necessary electronic equipment.

12  
13 **Q. What is BellSouth's DS1 Loop product?**

14 **A.** BellSouth defines its DS1 Loop product as:

15 2.3.6 4-wire Unbundled DS1 Digital Loop.

16 2.3.6.1 This is a designed 4-wire Loop that is provisioned according to industry  
17 standards for DS1 or Primary Rate ISDN services and will come  
18 standard with a test point, OC, and a DLR. A DS1 Loop may be  
19 provisioned over a variety of loop transmission technologies including  
20 copper, HDSL-based technology or fiber optic transport systems. It will  
21 include a 4-wire DS1 Network Interface at the End User's location. For  
22 purposes of this Agreement, including the transition of DS1 and DS3  
23 Loops described in Section 2.1.4 above, DS1 Loops include 2-wire and

1                   4-wire copper Loops capable of providing high-bit rate digital subscriber  
2                   line services, such as 2-wire and 4-wire HDSL Compatible Loops.

3

4   **Q.    Can HDSL technology be used to provide DS1 service?**

5   **A.    Yes, however a DS1 Loop is not the same as an HDSL-Compatible Loop.**

6

7   **Q.    Please explain.**

8   **A.    When a CLEC orders a DS1 Loop BellSouth selects the method of provisioning**  
9           the service based on the facilities to the end user's location. It also provides all  
10          the electronics, including any repeaters or doublers, and standard DS1 interfaces.  
11          On the other hand, when a CLEC orders an HDSL-Compatible Loop BellSouth  
12          provides a conditioned copper loop and no electronics. The CLEC provides the  
13          electronics. Furthermore, the FCC has not made a finding of non-impairment for  
14          copper loops or established use restrictions that prevent CLECs from accessing all  
15          the features and capabilities of those UNEs.

16

17   **Q.    Are copper loops UNEs?**

18   **A.    Yes, ILECs such as BellSouth have an obligation to provide access to unbundled**  
19          copper loops. The FCC confirmed that CLECs were impaired without access to  
20          copper loops in the TRO. This determination has not been the subject of any  
21          court challenge or reconsideration and remains in effect.

22

23   **Q.    Are ILECs required to condition copper loops so that CLECs can provide**



1           **services such as HDSL over them?**

2    **A.**     Yes they are. The FCC established the following rule (47 C.F.R.  
3           §51.319(a)(1)(iii)) in the TRO which explicitly requires ILECs to condition  
4           copper loops for CLECs so that they can provide digital subscriber line services,  
5           such as HDSL, over them:

6  
7           Line conditioning. The incumbent LEC shall condition a copper loop at  
8           the request of the carrier seeking access to a copper loop under paragraph  
9           (a)(1) of this section, the high frequency portion of a copper loop under  
10          paragraph (a)(1)(i) of this section, or a copper subloop under paragraph (b)  
11          of this section to ensure that the copper loop or copper subloop is suitable  
12          for providing digital subscriber line services, including those provided  
13          over the high frequency portion of the copper loop or copper subloop,  
14          whether or not the incumbent LEC offers advanced services to the end-  
15          user customer on that copper loop or copper subloop. If the incumbent  
16          LEC seeks compensation from the requesting telecommunications carrier  
17          for line conditioning, the requesting telecommunications carrier has the  
18          option of refusing, in whole or in part, to have the line conditioned; and a  
19          requesting telecommunications carrier's refusal of some or all aspects of  
20          line conditioning will not diminish any right it may have, under  
21          paragraphs (a) and (b) of this section, to access the copper loop, the high  
22          frequency portion of the copper loop, or the copper subloop.

1 **Q. Has the FCC established any restrictions on how CLECs use UNEs, such as**  
2 **HDSL-Compatible Loops?**

3 **A.** The FCC has established some use restrictions in section 51.309 of the Code of  
4 Federal Regulations (Title 47). For example, CLECs cannot use UNEs for the  
5 exclusive provision of interexchange or mobile wireless services. However, there  
6 is no rule stating that CLECs cannot use copper loops to provide HDSL service.  
7 BellSouth's own general definition of loop included in its proposed terms  
8 acknowledges that when a CLEC purchases a loop it has access to all the features,  
9 functions, and capabilities of that loop.

10 2.1 General. The local loop Network Element is defined as a transmission  
11 facility that BellSouth provides pursuant to this Attachment between a  
12 distribution frame (or its equivalent) in BellSouth's central office and the  
13 loop demarcation point at an End User premises (Loop). Facilities that do  
14 not terminate at a demarcation point at an End User premises, including,  
15 by way of example, but not limited to, facilities that terminate to another  
16 carrier's switch or premises, a cell site, Mobile Switching Center or base  
17 station, do not constitute local Loops. The Loop Network Element  
18 includes all features, functions, and capabilities of the transmission  
19 facilities, including the network interface device, and attached electronics  
20 (except those used for the provision of advanced services, such as Digital  
21 Subscriber Line Access Multiplexers (DSLAMs)), optronics and  
22 intermediate devices (including repeaters and load coils) used to establish  
23 the transmission path to the End User's premises, including inside wire

1 owned or controlled by BellSouth. <<customer\_short\_name>> shall  
2 purchase the entire bandwidth of the Loop and, except as required herein  
3 or as otherwise agreed to by the Parties, BellSouth shall not subdivide the  
4 frequency of the Loop.

5  
6 **Q. What is BellSouth's justification for its position that it can stop offering**  
7 **HDSL-Compatible Loops in wire centers that meet the DS1 non-impairment**  
8 **threshold established by the FCC?**

9 **A.** It is Sprint's understanding from discussions with BellSouth that its primary  
10 reasoning is based on the following definition of DS1 loops included in the FCC  
11 rules (47 C.F.R. §51.319(a)(4)):

12 DS1 loops. (i) Subject to the cap described in paragraph (a)(4)(ii), an  
13 incumbent LEC shall provide a requesting telecommunications carrier  
14 with nondiscriminatory access to a DS1 loop on an unbundled basis to any  
15 building not served by a wire center with at least 60,000 business lines and  
16 at least four fiber-based collocators. Once a wire center exceeds both of  
17 these thresholds, no future DS1 loop unbundling will be required in that  
18 wire center. A DS1 loop is a digital local loop having a total digital signal  
19 speed of 1.544 megabytes per second. DS1 loops include, but are not  
20 limited to, two-wire and four-wire copper loops capable of providing high-  
21 bit rate digital subscriber line services, including T1 services.

22 Sprint does not agree that the rule as crafted by the FCC is intended to limit the  
23 use of copper loops by CLECs, preventing them from using them for HDSL.

1 Q. Why?

2 A. First, as stated above, there is no rule that states that a CLEC cannot use a copper  
3 loop for HDSL service. Second, it is illogical. Why should the FCC single out  
4 HDSL service when there are other digital subscriber line services that are either  
5 faster or slower that CLECs can provide over copper loops, from Asymmetric  
6 Digital Subscriber Line (“ADSL”), Symmetric Digital Subscriber Line (“SDSL”),  
7 ISDN Digital Subscriber Line (“IDSL”), to Very-high-bit-rate Digital Subscriber  
8 Line (“VDSL”)? And third, Sprint submits that the FCC’s intent was to ensure  
9 that ILECs would not refuse to provide DS1 Loops if they used other technologies  
10 such as HDSL, not standalone copper loops. In each case where the FCC referred  
11 to the use of HDSL technology in this context it was in the provision of DS1  
12 loops, which includes both the loop facility and any attached electronics. Note  
13 the following from footnote 956 of the TRO:

14

15 DS1 loops will be available to requesting carriers, without limitation,  
16 regardless of the technology used to provide such loops, *e.g.*, ***two-wire***  
17 ***and four-wire HDSL*** or SHDSL, fiber optics, or radio, used by the  
18 incumbent LEC to provision such loops and regardless of the customer for  
19 which the requesting carrier will serve unless otherwise specifically  
20 indicated. *See supra* Part VI.A.4.a.(v) (discussing FTTH). The unbundling  
21 obligation associated with DS1 loops is in no way limited by the rules we  
22 adopt today with respect to hybrid loops typically used to serve mass  
23 market customers. *See supra* Part VI.A.4.a.(v)(b)(i) (emphasis added).

1 And the following from footnote 634 of the TRO,

2 A DS1 is a 1.544 Mbps first-level signal in the digital transmission  
3 hierarchy. In the time division multiplexing hierarchy of the telephone  
4 network, DS1 is the initial level of multiplexing. Traditionally, 24 64 kbps  
5 DS0 channels have been multiplexed up to the 1.544 Mbps DS1 rate, with  
6 each DS0 channel carrying the digital representation of an analog voice  
7 channel. *See* TELCORDIA, INC., NOTES ON THE NETWORK,  
8 TELCORDIA TECHNOLOGIES SPECIAL REPORT, SR-2275, Issue 4,  
9 Oct. 2000, Glossary at 46 (TELCORDIA NOTES ON THE NETWORK).  
10 DS1 loops are provided over various transmission media and  
11 combinations of transmission media, including but not limited to two-wire  
12 and four-wire copper, fiber optics, or radio. DS1 loops may be channelized  
13 typically into up to 24 DS0 channels of 56/64 kbps each, or  
14 unchannelized, *i.e.*, providing a continuous bit stream for data (such as  
15 frame relay, ATM, or Internet access) or other customer applications. We  
16 note that throughout the record in this proceeding parties use the terms  
17 DS1 and T1 interchangeably when describing a symmetric digital  
18 transmission link having a total 1.544 Mbps digital signal speed. *Carriers*  
19 *frequently use a form of DSL service, i.e., High-bit rate DSL (HDSL),*  
20 *both two-wire and four-wire HDSL, as the means for delivering T1*  
21 *services to customers.* We will use DS1 for consistency but note that a  
22 DS1 loop and a T1 are equivalent in speed and capacity, both representing  
23 the North American standard for a symmetric digital transmission link of

1           1.544 Mbps. *See* NEWTON'S TELECOM DICTIONARY 242 (18th ed.  
2           2002) (definition of DS1); *id.* at 718 (definition of T1); *see also*  
3           ENGINEERING AND OPERATIONS IN THE BELL SYSTEM 198-201  
4           (R.F. Ray Technical ed., 2d ed. 1983) (channelization process for  
5           transmission of telecommunications), 369-73 (technical characteristics of  
6           DS1 loops), 386-93 (describing T-carrier hierarchy and necessary  
7           equipment); TELCORDIA, INC., NOTES ON THE NETWORK, SR-  
8           2275, section 7.7 (Dec. 2000) (describing digital data services provided  
9           over local loops) at 7-23 (overview of DS hierarchy) (emphasis added).

10  
11           In these comments the FCC is saying that DS1 loops encompass 2-wire and 4-  
12           wire copper facilities, including the attached HDSL electronics and ILECs cannot  
13           refuse to provide DS1 loops using such technology. BellSouth's HDSL-  
14           Compatible Loops do not meet this definition since they are devoid of the HDSL  
15           or DS1 electronics. Furthermore, BellSouth indirectly supports Sprint's position  
16           by not restricting Sprint's use of other copper loop products.

17  
18   **Q.    How does BellSouth indirectly support Sprint's position?**

19   **A.**When Sprint first reviewed BellSouth's proposed terms Sprint was concerned that  
20           BellSouth was seeking to carve out HDSL, attempting to establish an  
21           unreasonable restriction on how CLECs use a conditioned copper loop. In order  
22           to do that BellSouth would have to state explicitly that Sprint could not use a  
23           conditioned copper loop for those purposes (HDSL) or limit the amount of

---

1 conditioning that Sprint could request for a copper loop. We therefore asked if  
 2 Sprint would be prohibited from providing HDSL over an Unbundled Copper  
 3 Loop with the appropriate line conditioning or Unbundled Loop Modification  
 4 (“ULM”). The answer was no. So, in BellSouth wire centers that meet the non-  
 5 impairment criteria for DS1 loops, Sprint cannot order an HDSL-Compatible  
 6 Loop but it can order a UCL with ULM, and accomplish the same thing.  
 7 Therefore, all BellSouth is accomplishing is the modification and probable  
 8 complication of the process that the parties will have to follow in ordering and  
 9 provisioning the desired UNE. Sprint sees this as a wasted and unnecessary  
 10 exercise.

11  
12 **Q. What terms does Sprint recommend to reflect its position?**

13 **A.** BellSouth’s proposed definition of DS1 loops should be modified as follows:

14 2.3.6.1 This is a designed 4-wire Loop that is provisioned according to  
 15 industry standards for DS1 or Primary Rate ISDN services and will  
 16 come standard with a test point, OC, and a DLR. A DS1 Loop may be  
 17 provisioned over a variety of loop transmission technologies including  
 18 copper, HDSL-based technology or fiber optic transport systems. It  
 19 will include a 4-wire DS1 Network Interface at the End User’s  
 20 location. For purposes of this Agreement, including the transition of  
 21 DS1 and DS3 Loops described in Section 2.1.4 above, DS1 Loops  
 22 include 2-wire and 4-wire copper Loops capable of providing high-bit  
 23 rate digital subscriber line services when BellSouth provides the

1                    associated electronics on those loops such as 2-wire and 4-wire HDSL  
2                    Compatible Loops.

3                    **Issue No. 9 – TRRO/FINAL RULES:**

4                    **What rates, terms, and conditions should govern the transition of existing**  
5                    **network elements that BellSouth is no longer obligated to provide as Section**  
6                    **251 UNEs to non-section 251 network elements and other services and (a)**  
7                    **what is the proper treatment for such network elements at the end of the**  
8                    **transition period; and (b) what is the appropriate transition period, and**  
9                    **what are the appropriate rates, terms and conditions during such transition**  
10                   **period, for unbundled high capacity loops, high capacity transport, and dark**  
11                   **fiber transport between wire centers that do not meet the FCC’s non-**  
12                   **impairment standards at this time, but that meet such standards in the**  
13                   **future?**

14  
15                   **Q.    What is Sprint’s position with respect to this issue?**

16                   **A.    Sprint recognizes that it is possible for the status of BellSouth’s wire centers to**  
17                   **change in the future, which would result in a finding of non-impairment for DS1**  
18                   **and DS3 Loops and DS1, DS3 and Dark Fiber Dedicated Transport. It is**  
19                   **therefore imperative that the agreement include terms for how this is going to be**  
20                   **implemented. Sprint disagrees with the timelines for notification and transition**  
21                   **that BellSouth has proposed.**

22  
23                   **Q.    What is Sprint’s recommendation to the Commission on this issue?**



1 A. This Commission should adopt a finding that requires the transition process for  
2 future declassification events to mirror the one adopted by the FCC in the TRRO  
3 for the embedded base of UNEs. As wire centers and routes meet the FCC  
4 thresholds in the future, thus removing a CLEC's access to UNEs for that  
5 particular wire center or route, BellSouth should notify each CLEC directly, not  
6 simply via a carrier notification letter ("CNL") posted to its website. Sprint  
7 should have a minimum of 30 days from the date it receives notification from  
8 BellSouth regarding the status of a wire center in which to determine if it will  
9 self-certify and if not, modify its process to stop ordering the impacted UNE.  
10 Sprint should be allowed to continue ordering the affected UNE during that 30-  
11 day period. Sprint should also be allowed to dispute BellSouth's claim regarding  
12 the status of the wire center, which means that it can continue ordering the  
13 impacted UNE after the initial 30-day period, the price will not be increased  
14 during the dispute, and it will not be required to transition the affected UNEs until  
15 after the Commission has resolved the dispute (see discussion above with respect  
16 to Issue 2). Sprint should also have 12 months from the date it receives the notice  
17 from BellSouth to transition DS1 and DS3 Loops and DS1 and DS3 Dedicated  
18 Transport to alternate services selected by Sprint and 18 months for Dedicated  
19 Dark Fiber Transport. If Sprint has not self-certified and disputed BellSouth's  
20 claim, the same transition period applies; however, BellSouth should be allowed  
21 to increase the price during the transition period consistent with the TRRO  
22 transition procedure (up to a 15% increase).

23

1 **Q. Why does Sprint object to BellSouth's initial 10-day period?**

2 **A.** First, the 10-day period proposed by BellSouth does not give Sprint sufficient  
3 time to review the BellSouth claim regarding the status of a wire center and  
4 determine if it is going to self-certify its disagreement or stop placing orders. The  
5 detailed data needed to review an ILEC's claim regarding the status of a wire  
6 center is not generally available and CLECs may in fact have to request additional  
7 information from the ILEC in conducting its "reasonably diligent inquiry" (see  
8 TRRO, Paragraph 234). Sufficient time must be provided to allow for  
9 correspondence between the parties in resolving these and related issues. Second,  
10 Sprint needs sufficient time to develop job aids to assist its personnel in ordering  
11 and provisioning services, including the identification of alternate suppliers,  
12 should it decide not to challenge BellSouth's claim. BellSouth's language  
13 unreasonably allows for notification via a CNL posted to its website and requires  
14 Sprint to stop ordering services within 10 days of receiving the notice unless  
15 Sprint disputes BellSouth's finding. Such a lack of a direct notification  
16 requirement and an abbreviated period for filing disputes may even have the  
17 perverse effect of CLECs filing needless disputes based on incomplete  
18 information in an effort to preserve their rights.

19

20 **Q. What is the basis for Sprint's proposed transition timeline?**

21 **A.** The FCC explicitly established a 12-month transition for DS1 and DS3 loops and  
22 DS1 and DS3 transport in the TRRO. The FCC found "that the twelve-month  
23 period provides adequate time for both competitive LECs and incumbent LECs to

1 perform the tasks necessary to an orderly transition, including decisions where to  
2 deploy, purchase, or lease facilities” (TRRO, ¶143). The FCC established an 18-  
3 month transition for Dark Fiber Loop and Dark Fiber Transport. The FCC  
4 determined that a longer period was warranted for dark fiber since ILECs do not  
5 generally offer dark fiber as a tariffed service and “because it may take time for  
6 competitive LECs to negotiate IRUs or other arrangements with incumbent or  
7 competitive carriers” (TRRO, ¶144). Absent new findings or evidence, the  
8 Commission should not adopt a different timeline. In addition, the fact that a  
9 CLEC knows that the ILEC could declare that the status of a wire center has  
10 changed sometime in the future does not provide the type of advance warning that  
11 a CLEC needs to be ready to transition to alternate ILEC services, alternative  
12 providers, or self-provided services. As I stated above, the data at the wire center  
13 level is not generally available for CLECs to monitor ILEC wire center status and  
14 ILECs do not provide any advance warnings.

15  
16 **Q. What is the basis for Sprint’s proposal to allow the UNE price to be**  
17 **increased by as much as 15% during the transition period?**

18 **A.** The FCC provided for a 15% price increase during the transition period it  
19 established for the embedded base in the TRRO. It stated “that the moderate price  
20 increases help ensure an orderly transition by mitigating the rate shock that could  
21 be suffered by competitive LECs if TELRIC pricing were immediately eliminated  
22 for these network elements, while at the same time, these price increases, and the  
23 limited duration of the transition, provide some protection of the interests of the

1 incumbent LECs in those situations where unbundling is not required” (TRRO, ¶  
2 145).

3  
4 **Q. If the Commission adopts Sprint’s proposed timeline, when should Sprint be**  
5 **required to provide BellSouth with a list of impacted UNEs to begin the**  
6 **transition?**

7 **A.** BellSouth proposes that Sprint provide it with a list of impacted UNEs within 40  
8 days of receiving the notification regarding the status of the wire center.  
9 BellSouth’s proposed timeline should be modified to 9 months for DS1 and DS3  
10 Loops and Dedicated Transport and 15 months for Dark Fiber Dedicated  
11 Transport. The 9 months is consistent with the December date requested by  
12 BellSouth for the embedded base of DS1 and DS3 Loops, and the longer period  
13 for Dark Fiber Dedicated Transport recognizes the FCC’s 18-month transition  
14 period.

15  
16 **Q. Does Sprint have any terms and conditions to recommend?**

17 **A.** Following are the terms proposed by BellSouth that should be modified to reflect  
18 Sprint’s position.

19 2.1.4.12.1 In the event BellSouth identifies additional wire centers that meet  
20 the criteria set forth in Section 2.1.4.5 above, but that were not  
21 included in the Initial Wire Center List, BellSouth shall notify  
22 <<customer short name>> in writing (“Notification”) of such  
23 change include such additional wire centers in a carrier notification

1                    ~~letter (CNL)~~. Each such list of additional wire centers shall be  
2                    considered a "Subsequent Wire Center List".

3  
4            2.1.4.12.2    Effective ~~ten (10) business~~ thirty (30) days after the date of a  
5                    BellSouth CNL providing Subsequent Wire Center List, BellSouth  
6                    shall not be required to unbundle DS1 and/or DS3 Loops, as  
7                    applicable, in such additional wire center(s), except pursuant to the  
8                    self-certification process as set forth in Section 1.8 of this  
9                    Attachment.

10  
11           2.1.4.12.3    For purposes of Section 2.1.4.12 above, BellSouth shall make  
12                    available DS1 and DS3 Loops that were in service for  
13                    <<customer\_short\_name>> in a wire center on the Subsequent  
14                    Wire Center List as of the ~~tenth (10th) business~~ thirtieth (30<sup>th</sup>) day  
15                    after the date of BellSouth's ~~CNL~~ Notification identifying the  
16                    Subsequent Wire Center List (Subsequent Embedded Base) until  
17                    ~~ninety (90) days~~ twelve (12) months after the ~~tenth (10th) business~~  
18                    ~~day~~ from the date of BellSouth's ~~CNL~~ Notification identifying the  
19                    Subsequent Wire Center List (Subsequent Transition Period).

20  
21           2.1.4.12.6    No later than ~~forty (40) days~~ nine (9) months from BellSouth's  
22                    ~~CNL~~ Notification identifying the Subsequent Wire Center List,  
23                    <<customer\_short\_name>> shall submit a spreadsheet(s)

1 identifying the Subsequent Embedded Base of circuits to be  
2 disconnected or converted to other BellSouth services. The Parties  
3 shall negotiate a project schedule for the Conversion of the  
4 Subsequent Embedded Base.

5  
6 2.1.4.12.6.1 If <<customer\_short\_name>> fails to submit the spreadsheet(s)  
7 specified in Section 2.1.4.12.6 above for all of its Subsequent  
8 Embedded Base within ~~forty (40) days~~ nine (9) months after the  
9 date of BellSouth's ~~CNL~~ Notification identifying the Subsequent  
10 Wire Center List, BellSouth will identify  
11 <<customer\_short\_name>>'s remaining Subsequent Embedded  
12 Base, if any, and will transition such circuits to the equivalent  
13 tariffed BellSouth service(s). Those circuits identified and  
14 transitioned by BellSouth shall be subject to the applicable  
15 disconnect charges as set forth in this Agreement and the full  
16 nonrecurring charges for installation of the equivalent tariffed  
17 BellSouth service as set forth in BellSouth's tariffs.

18  
19 6.2.6.10.1 In the event BellSouth identifies additional wire centers that meet  
20 the criteria set forth in Sections 6.2.6.1 or 6.2.6.2 above, but that  
21 were not included in the Initial Wire Center List, BellSouth shall  
22 notify <<customer\_short\_name>> in writing ("Notification") of  
23 such change include such additional wire centers in CNL. Each

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such list of additional wire centers shall be considered a Subsequent Wire Center List.

6.2.6.10.2 Effective ~~ten (10) business~~ thirty (30) days after the date of a BellSouth ~~CNL~~ Notification providing a Subsequent Wire Center List, BellSouth shall not be required to provide DS1 and DS3 Dedicated Transport, as applicable, in such additional wire center(s), except pursuant to the self-certification process as set forth in Section 1.8 above.

6.2.6.10.3 For purposes of Section 6.2.6.10 above, BellSouth shall make available DS1 and DS3 Dedicated Transport that was in service for <<customer\_short\_name>> in a wire center on the Subsequent Wire Center List as of the ~~tenth (10th) business~~ thirtieth (30<sup>th</sup>) day after the date of BellSouth's ~~CNL~~ Notification identifying the Subsequent Wire Center List (Subsequent Embedded Base) until ~~twelve (12) months~~ ninety (90) days after the ~~tenth (10th) business~~ day from the date of BellSouth's ~~CNL~~ Notification identifying the Subsequent Wire Center List (Subsequent Transition Period).

6.2.6.10.6 No later than nine (9) months ~~forty (40) days~~ from BellSouth's ~~CNL~~ Notification identifying the Subsequent Wire Center List <<customer\_short\_name>> shall submit a spreadsheet(s) identifying the Subsequent Embedded Base of circuits to be

1 disconnected or converted to other BellSouth services. The Parties  
2 shall negotiate a project schedule for the Conversion of the  
3 Subsequent Embedded Base.

4  
5 6.2.6.10.6.1 If <<customer\_short\_name>> fails to submit the spreadsheet(s)  
6 specified in Section 6.2.6.10.6 above for all of its Subsequent  
7 Embedded Base within nine (9) months ~~forty (40) days~~ after the  
8 date of BellSouth's ~~CNL~~ Notification identifying the Subsequent  
9 Wire Center List, BellSouth will identify  
10 <<customer\_short\_name>>'s remaining Subsequent Embedded  
11 Base, if any, and will transition such circuits to the equivalent  
12 tariffed BellSouth service(s). Those circuits identified and  
13 transitioned by BellSouth shall be subject to the applicable  
14 disconnect charges as set forth in this Agreement and the full  
15 nonrecurring charges for installation of the equivalent tariffed  
16 BellSouth service as set forth in BellSouth's tariffs.

17  
18 6.9.1.10.1 In the event BellSouth identifies additional wire centers that meet  
19 the criteria set forth in Section 6.9.1.4.1 above, but that were not  
20 included in the Initial Wire Center List, BellSouth shall notify  
21 <<customer short name>> in writing ("Notification") of such  
22 change ~~include such additional wire centers in a CNL~~. Each such  
23 list of additional wire centers shall be considered a "Subsequent  
24 Wire Center List".



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6.9.1.10.2     Effective ~~ten (10) business~~ thirty (30) days after the date of a  
BellSouth ~~CNL~~ Notification providing a Subsequent Wire Center  
List, BellSouth shall not be required to provide unbundled access  
to Dark Fiber Transport, as applicable, in such additional wire  
center(s), except pursuant to the self-certification process as set  
forth in Section 1.8 above.

6.9.1.10.3     For purposes of Section 6.9.1.10, BellSouth shall make available  
Dark Fiber Transport DS1 and DS3 Loops that was in service for  
<<customer\_short\_name>> in a wire center on the Subsequent  
Wire Center List as of the ~~tenth (10th) business~~ thirtieth (30<sup>th</sup>) day  
after the date of BellSouth's ~~CNL~~ Notification identifying the  
Subsequent Wire Center List (Subsequent Embedded Base) until  
eighteen (18) months ~~ninety (90) days after the tenth (10th)~~  
~~business day~~ from the date of BellSouth's ~~CNL~~ Notification  
identifying the Subsequent Wire Center List (Subsequent  
Transition Period).

6.9.1.10.6     No later than fifteen (15) months ~~forty (40) days~~ from BellSouth's  
~~CNL~~ Notification identifying the Subsequent Wire Center List  
<<customer\_short\_name>> shall submit a spreadsheet(s)  
identifying the Subsequent Embedded Base of circuits to be  
disconnected or converted to other BellSouth services. The Parties

1 shall negotiate a project schedule for the Conversion of the  
2 Subsequent Embedded Base.

3  
4 6.9.1.10.6.1 If <<customer\_short\_name>> fails to submit the spreadsheet(s)  
5 specified in Section 6.9.1.10.6 above for all of its Subsequent  
6 Embedded Base within fifteen (15) months ~~forty (40) days~~ after the  
7 date of BellSouth's ~~CNL~~ Notification identifying the Subsequent  
8 Wire Center List, BellSouth will identify  
9 <<customer\_short\_name>>'s remaining Subsequent Embedded  
10 Base, if any, and will transition such circuits to the equivalent  
11 tariffed BellSouth service(s). Those circuits identified and  
12 transitioned by BellSouth shall be subject to the applicable  
13 disconnect charges as set forth in this Agreement and the full  
14 nonrecurring charges for installation of the equivalent tariffed  
15 BellSouth service as set forth in BellSouth's tariffs.

16  
17  
18 **Issue No. 19 – TRO – SUB-LOOP CONCENTRATION:**

- 19 **b) Do the FCC's rules for sub loops for multi-unit premises limit CLEC**  
20 **access to copper facilities only or do they also include access to fiber**  
21 **facilities?**
- 22 **c) What are the suitable points of access for sub-loops for multi-unit**  
23 **premises?**
- 24

1 **Q. Were these issues added to the joint issues matrix at Sprint's request?**

2 A. Yes.

3

4 **Q. Why did Sprint add these issues?**

5 A. BellSouth offers two forms of sub-loops, Unbundled Subloop Distribution  
6 ("USLD") and Unbundled Network Terminating Wire ("UNTW"). The FCC  
7 established two types of sub-loops in the TRO: copper sub-loops; and sub-loops  
8 for access to multi-unit premises wiring. Sprint interprets the proposed terms for  
9 USLD as meeting the copper sub-loop obligation and UNTW as meeting the  
10 obligation for sub-loops for access to multiunit premises wiring. BellSouth  
11 defines UNTW as follows:

12 2.8.3.1 UNTW is unshielded twisted copper wiring that is used to extend  
13 circuits from an intra-building network cable terminal or from a  
14 building entrance terminal to an individual End User's point of  
15 demarcation. It is the final portion of the Loop that in multi-subscriber  
16 configurations represents the point at which the network branches out  
17 to serve individual subscribers.

18

19 Sub-loops for access to multi-unit premises are not restricted to copper facilities  
20 but include fiber facilities. Sprint also believes that the access points for sub-  
21 loops for multi-unit premises are not limited to intra-building network cable  
22 terminals or building entrance terminals.

23

1 **Q. What is the basis for Sprint's position?**

2 **A.** The FCC's definition of sub-loops for access to multiunit premises wiring found  
3 in 47 C.F.R. §51.319(b)(2) and §51.319(b)(2)(i) includes fiber facilities and does  
4 not limit the points of access as defined by BellSouth.

5  
6 (2) Subloops for access to multiunit premises wiring. An incumbent LEC  
7 shall provide a requesting telecommunications carrier with  
8 nondiscriminatory access to the subloop for access to multiunit premises  
9 wiring on an unbundled basis *regardless of the capacity level or type of*  
10 *loop that the requesting telecommunications carrier seeks to provision*  
11 *for its customer.* The subloop for access to multiunit premises wiring is  
12 defined as any portion of the loop that it is technically feasible to access at  
13 a terminal in the incumbent LEC's outside plant at or near a multiunit  
14 premises. One category of this subloop is inside wire, which is defined for  
15 purposes of this section as all loop plant owned or controlled by the  
16 incumbent LEC at a multiunit customer premises between the minimum  
17 point of entry as defined in § 68.105 of this chapter and the point of  
18 demarcation of the incumbent LEC's network as defined in § 68.3 of this  
19 chapter.

20  
21 (i) Point of technically feasible access. A point of technically feasible  
22 access is any point in the incumbent LEC's outside plant at or near a  
23 multiunit premises where a technician can access the *wire or fiber within*

1            *the cable* without removing a splice case to reach the wire or fiber within  
2            to access the wiring in the multiunit premises. *Such points include, but*  
3            *are not limited to, a pole or pedestal, the network interface device, the*  
4            *minimum point of entry, the single point of interconnection, and the*  
5            *feeder/distribution interface* (emphasis added).  
6

7    **Q.    Aren't ILECs exempted from providing CLECs access to FTTH and FTTC**  
8            **and, therefore exempted from providing access to fiber sub-loops?**

9    **A.**    No, the FTTH and FTTC unbundling exemptions are for entire loops which  
10           extend from the distribution frame in an ILEC central office to the point of  
11           demarcation at an end user customer premises, not sub-loops. The sub-loop  
12           extends from some point in the network to the point of demarcation. The FCC  
13           established the obligation to unbundle fiber sub-loop for access to multi-unit  
14           premises at the same time it established the FTTH exemption. This access is not  
15           required for non multi-unit premises. Furthermore, the FCC required access to  
16           dark fiber loops at the same time it provided for the FTTH exclusion and FTTH  
17           loops are defined as being either dark or lit (see 47 C.F.R. §51.319(6)). The  
18           FTTH exemption was not intended to eliminate CLEC access to every fiber loop.

19  
20    **Q.    Didn't the FCC eliminate access to dark fiber loops in the TRRO?**

21    **A.**    The FCC did eliminate an ILEC's obligation to provide unbundled access to dark  
22           fiber loops in the TRRO, but did not alter its rules for sub-loops.

1 **Q. You mentioned earlier that the access points should not be limited to intra-**  
2 **building network cable terminals or building entrance terminals as proposed**  
3 **by BellSouth. Why?**

4 A. The FCC definition above states that a point of technically feasible access is “*any*  
5 *point* in the incumbent LEC’s outside plant at or near a multiunit premises where  
6 a technician can access the *wire or fiber within the cable* without removing a  
7 splice case to reach the wire or fiber within to access the wiring in the multiunit  
8 premises (emphasis added).” The definition also goes on to provide a partial list  
9 of points of access that is broader than that offered by BellSouth, “Such points  
10 include, but are not limited to, a pole or pedestal, the network interface device, the  
11 minimum point of entry, the single point of interconnection, and the  
12 feeder/distribution interface.”

13

14 **Q. Do BellSouth’s other sub-loop products provide the access that Sprint is**  
15 **seeking?**

16 A. No. BellSouth’s other sub-loop products offered as Unbundled Subloop  
17 Distribution (“USLD”) are also limited to copper facilities and do not mention  
18 multiunit premises, but specifically end-user premises. The USLD - Intrabuilding  
19 Network Cable (USLD-INC) product is riser cable, which can be found in  
20 multiunit premises, but again it is limited to copper facilities.

21

22 **Q. What is Sprint’s recommendation with respect to the terms and conditions**  
23 **included in the agreement?**

1 BellSouth's proposed terms should be modified as follows.

2 2.8.3.1 UNTW is unshielded twisted copper wiring or fiber that is used to  
3 extend circuits from a point of technically feasible access at or near an  
4 MDU an intra-building network cable terminal or from a building  
5 entrance terminal to an individual End User's point of demarcation.  
6 Such points include, but are not limited to, a pole or pedestal, the  
7 network interface device, the minimum point of entry, the single point  
8 of interconnection, an intra building network cable terminal, a building  
9 entrance terminal, and the feeder/distribution interface. It is the final  
10 portion of the Loop that in multi-subscriber configurations represents  
11 the point at which the network branches out to serve individual  
12 subscribers.

13  
14 Sprint realizes that the above modifications may not fit with BellSouth's product  
15 development and would consider alternative terms. For example, BellSouth could  
16 develop an Unbundled Fiber Subloop ("UFL") product for multiunit premises and  
17 modify the other products as necessary to include sub-loop fiber access.

18  
19 **Issue No. 22 – TRO – GREENFIELD AREAS:**

20 **b) What is the appropriate language to implement BellSouth's obligation, if**  
21 **any, to offer unbundled access to newly-deployed or 'greenfield' fiber**  
22 **loops, including fiber loops deployed to the minimum point of entry**  
23 **("MPOE") of a multiple dwelling unit that is predominantly residential,**

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

3  
4   **Q.    What is the ‘greenfield’ fiber loop exclusion?**

5   **A.**In the TRO the FCC eliminated an ILEC’s obligation to unbundle fiber to the  
6           home (FTTH) loops in areas that had never been previously served by a loop  
7           facility (47 C.F.R. §51.319(3)(i)). This exclusion does not apply to enterprise  
8           customers or predominately business multi-unit premises or multi-dwelling units  
9           (“MDUs”).

10  
11   **Q.    What is the basis for Sprint’s position on enterprise customers?**

12   **A.**The FCC originally defined FTTH loops in the TRO in its discussion of mass  
13           market loops and specifically referred to them as mass market in ¶274 (see TRO,  
14           ¶214-¶220 and ¶273-¶285). In addition, in its discussion of an ILEC’s obligation  
15           to provide access to DS1 Loops in footnote 956 of the TRO, the FCC clearly  
16           included fiber optic facilities (see discussion above on Issue 6). The initial  
17           definition incorporated in the FCC rules at 47 C.F.R. §51.319(a)(3) restricted the  
18           FTTH loops to residential units but was subsequently changed to “end user  
19           customer premises” in an Errata (FCC 03-227, *Review of the Section 251 Un*  
20           *bundling Obligations of Incumbent Local Exchange Carriers, Implementation of*  
21           *the Local Competition Provisions of the Telecommunications Act of 1996,*  
22           *Deployment of Wireline Services Offering Advanced Telecommunications*  
23           *Capability*, CC Dockets 01-338, 96-98, 98-147, ERRATA, released September



1 17, 2003). Furthermore, as mentioned above the FCC required access to dark  
2 fiber loops at the same time it provided for the FTTH exclusion and FTTH loops  
3 are defined as being either dark or lit. The FTTH exemption was not intended to  
4 eliminate CLEC access to every fiber loop; however, the FTTH loop unbundling  
5 restrictions do apply to certain small business customers, but not enterprise  
6 customers.

7  
8 **Q. You only mention FTTH loops. What about FTTC loops?**

9 **A.** The FCC further extended the FTTH unbundling restrictions to FTTC loops in a  
10 subsequent order referred to as the FTTC Order (FCC 04-248, *Review of the*  
11 *Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,*  
12 *Implementation of the Local Competition Provisions of the Telecommunications*  
13 *Act of 1996, Deployment of Wireline Services Offering Advanced*  
14 *Telecommunications Capability*, CC Dockets 01-338, 96-98, 98-147, Order on  
15 Reconsideration, released October 18, 2004).

16  
17 **Q. Why don't the FTTH/FTTC exemptions apply to predominately business**  
18 **MDUs?**

19 **A.** The FCC further extended the fiber unbundling exemptions to loops that are  
20 serving predominately residential multi-dwelling units in the MDU Order (FCC  
21 04-191, *Review of the Section 251 Unbundling Obligations of Incumbent Local*  
22 *Exchange Carriers, Implementation of the Local Competition Provisions of the*  
23 *Telecommunications Act of 1996, Deployment of Wireline Services Offering*

1        *Advanced Telecommunications Capability*, CC Dockets 01-338, 96-98, 98-147,  
2        Order on Reconsideration, released August 9, 2004). In paragraph 8 of that order  
3        the FCC clearly stated that the exemption did not apply to predominately business  
4        MDUs since ILECs did not need any incentive to build broadband facilities to  
5        those locations:

6                Second, we conclude that tailoring FTTH relief to predominantly  
7                residential MDUs is more appropriate than a single, categorical rule  
8                covering all types of multiunit premises. A categorical rule either would  
9                retain disincentives to deploying broadband to millions of consumers  
10                contrary to the goals of section 706 *or would eliminate unbundling for*  
11                *enterprise customers where the record shows additional investment*  
12                *incentives are not needed.* As discussed above, we find that extending  
13                relief to predominantly residential MDUs best tailors the unbundling relief  
14                to those situations where the analysis of impairment and investment  
15                incentives indicates that such relief is appropriate. *We thus reject*  
16                *commenters' categorical assertions that the FTTH rules should never*  
17                *apply in the case of any multiunit premises, or that the unbundling relief*  
18                *should extend to all multiunit premises.* Because we can draw an  
19                administratively workable distinction between predominantly residential  
20                MDUs and other multiunit premises, we find that we can more carefully  
21                target the unbundling relief warranted by the consideration of section  
22                706's goals (emphasis added).

1 **Q. What terms and conditions should be included in the agreement to**  
2 **incorporate Sprint’s position?**

3 **A.** BellSouth’s proposed definition of FTTH/FTTC loops should be modified as  
4 shown below.

5 2.1.2 Fiber to the Home (FTTH) loops are local loops consisting entirely of  
6 fiber optic cable, whether dark or lit, serving an End User’s premises or, in  
7 the case of predominantly residential multiple dwelling units (MDUs), a  
8 fiber optic cable, whether dark or lit, that extends to the MDU minimum  
9 point of entry (MPOE). Fiber to the Curb (FTTC) loops are local loops  
10 consisting of fiber optic cable connecting to a copper distribution plant  
11 that is not more than five hundred (500) feet from the End User’s premises  
12 or, in the case of predominantly residential MDUs, not more than five  
13 hundred (500) feet from the MDU’s MPOE. The fiber optic cable in a  
14 FTTC loop must connect to a copper distribution plant at a serving area  
15 interface from which every other copper distribution subloop also is not  
16 more than five hundred (500) feet from the respective End User’s  
17 premises. FTTH/FTTC loops do not include local loops to enterprise  
18 customers or predominantly business MDUs.

19  
20 **Issue No. 23 – TRO – HYBRID LOOPS:**

21 **What is the appropriate ICA language to implement BellSouth’s obligation**  
22 **to provide unbundled access to hybrid loops?**

1 **Q. What is a hybrid loop?**

2 **A.** A hybrid loop is a local loop that is usually comprised of fiber feeder and copper  
3 wire or cable distribution. The fiber feeder extends from the central office or wire  
4 center to an intermediate point where it is connected to the copper distribution,  
5 which extends on to the point of demarcation at the end user customer premises.  
6 The intermediate point contains electronics such as a next generation digital loop  
7 carrier (“NGDLC”), which connects to two facilities (see 47 C.F.R.  
8 §51.319(a)(2)).

9

10 **Q. Do ILECs have to provide unbundled access to hybrid loops?**

11 **A.** ILECs must provide unbundled access to hybrid loops for both broadband (DS1  
12 and DS3) UNE loops and narrowband (DS0) UNE loops. The broadband UNE  
13 loops are provided using the time division multiplexing (“TDM”) capabilities of  
14 the hybrid loop (see 47 C.F.R. §51.319(a)(2)(ii)). Narrowband UNE loops are  
15 providing by using the TDM capabilities of the hybrid loop or providing access to  
16 a spare home-run copper loop (see 47 C.F.R. §51.319(a)(2)(iii)(A)-(B)).

17

18 **Q. What terms should be included in the agreement regarding this obligation?**

19 **A.** BellSouth’s proposed terms should be modified as shown below.

20 2.1.3 A hybrid Loop is a local Loop, composed of both fiber optic cable, usually  
21 in the feeder plant, and copper twisted wire or cable, usually in the  
22 distribution plant. BellSouth shall provide <<customer\_short\_name>>  
23 with nondiscriminatory access to the time division multiplexing features,

1 functions and capabilities of such hybrid Loop, on an unbundled basis to  
2 establish a complete transmission path between BellSouth's central office  
3 and an End User's premises for the provision of broadband services. For  
4 Narrowband services BellSouth shall provide <<customer short name>>  
5 with nondiscriminatory access to an entire hybrid loop capable of voice  
6 grade service using the time division multiplexing features, functions and  
7 capabilities or such hybrid loop or access to a spare home-run copper loop.

8  
9  
10 **Issue No. 25 – TRO ROUTINE NETWORK MODIFICATION:**

11 **What is the appropriate ICA language to implement BellSouth's obligation**  
12 **to provide routine network modifications?**

13  
14 **Q. What is a routine network modification?**

15 **A.** The FCC defined a routine network modification as "an activity that the  
16 incumbent LEC regularly undertakes for its own customer" (see 47 C.F.R. §  
17 51.319(a)(7) and § 51.319(e)(4)(ii)).

18  
19 **Q. Why did the FCC establish the rules for routine network modifications?**

20 **A.** The FCC wanted to ensure non-discriminatory treatment and to prevent any  
21 undue restrictions for access to UNEs.

22  
23 **Q. Did the FCC provide a detailed of list of what constitutes a routine network**

1           **modification?**

2    **A.**    No. The FCC established principles and listed examples in the rule but in  
3           paragraph 634 of the TRO it declined to formulate a detailed list of electronic  
4           components.

5  
6    **Q.**    **Can ILECs charge for routine network modifications that they perform on**  
7           **behalf of CLECs?**

8    **A.**    ILECs cannot require additional charges for routine network modifications unless  
9           they prove that the costs they represent are not already included in the UNE  
10           recurring and/or non-recurring rates. The FCC warned against double recovering  
11           these costs in paragraph 640 of the TRO. Any separate charge proposed by  
12           ILECs should therefore be reviewed to determine which costs are included in the  
13           existing rates and which ones are not.

14  
15   **Q.**    **Do the terms proposed by BellSouth accurately reflect this position?**

16   **A.**    The general terms proposed by BellSouth reflect this position with one exception.

17  
18   **Q.**    **What is the exception?**

19   **A.**    BellSouth proposes an additional restriction defining a modification as routine  
20           only if "it has anticipated the request".

21  
22   **Q.**    **Why does Sprint object to this restriction?**

23   **A.**    The language is vague and has no basis in the FCC Rules or orders. I could find

1 no mention of “anticipation” with respect to routine network modifications.  
2 Furthermore, think about how that phrase “anticipated the request” could and  
3 perhaps would be interpreted. Does it mean that a modification isn’t routine if  
4 BellSouth doesn’t anticipate what UNE the CLEC orders, or that a modification  
5 isn’t routine if BellSouth doesn’t anticipate when the CLEC orders the UNE, or  
6 that a modification isn’t routine if BellSouth doesn’t anticipate the number of  
7 UNEs contained on a specific order, or that a modification isn’t routine if  
8 BellSouth doesn’t anticipate where the UNE ordered by the CLEC is provisioned?  
9 BellSouth could use any of these excuses to justify rejecting a UNE order or  
10 demanding additional charges.

11  
12 **Q. What terms does Sprint recommend for routine network modifications?**

13 **A.** BellSouth’s proposed terms should be modified as shown below.

14 1.10 BellSouth will perform Routine Network Modifications (RNM) in  
15 accordance with FCC 47 C.F.R. § 51.319 (a)(7) and (e)(4) for Loops and  
16 Dedicated Transport provided under this Attachment. If BellSouth  
17 performs ~~has anticipated~~ such RNM ~~and performs them~~ during normal  
18 operations and has recovered the costs for performing such modifications  
19 through the rates set forth in Exhibit A, then BellSouth shall perform such  
20 RNM at no additional charge. RNM shall be performed within the  
21 intervals established for the Network Element and subject to the  
22 performance measurements and associated remedies set forth in  
23 Attachment 9 of this Agreement to the extent such RNM were anticipated

1 in the setting of such intervals. If BellSouth ~~has not anticipated a requested~~  
2 ~~network modification as being a RNM~~ and has not recovered the costs of  
3 such RNM in the rates set forth in Exhibit A, then such request will be  
4 handled as a project on an individual case basis. BellSouth will provide a  
5 price quote for the request and, upon receipt of payment from  
6 <<customer\_short\_name>>, BellSouth shall perform the RNM.

7  
8 **Issue No. 27 – TRO – FIBER TO THE HOME:**

9 **What is the appropriate language, if any, to address access to overbuild**  
10 **deployments of fiber to the home and fiber to the curb facilities?**

11  
12 **Q. What is an overbuild deployment of FTTH/FTTC?**

13 **A.** An overbuild deployment is where an ILEC either replaces an existing copper  
14 loop facility with FTTH/FTTC or installs a FTTH/FTTC facility in parallel with  
15 an existing copper loop facility (see 47 C.F.R. §51.319(a)(3)(iii)).

16  
17 **Q. What are an ILEC's unbundling obligations with respect to an overbuild**  
18 **deployment of FTTH/FTTC?**

19 **A.** An ILEC does not have to unbundle the FTTH/FTTC overbuild facilities as long  
20 as it maintains access to the existing copper loop facilities (see 47 C.F.R.  
21 §51.319(a)(3)(iii)(A)). If the ILEC maintains access to the existing copper loop  
22 facilities it does not have to preserve the copper loop facility's ability to be used  
23 for providing service; however, it must restore that capability if it receives a



1 request for access to the copper loop facilities from a CLEC (see 47 C.F.R.  
2 §51.319(a)(3)(iii)(B)). If the ILEC retires the existing copper loop facilities it  
3 must do so consistent with the FCC Rules for network reporting and must offer a  
4 64 kilobit transmission path over the FTTH/FTTC (see 47 C.F.R.  
5 §51.319(a)(3)(iii)(C)).

6  
7 **Q. Does the FTTH/FTTC overbuild exemption apply to facilities to enterprise**  
8 **customers or predominately business MDUs?**

9 **A.** No, the overbuild exemption does not apply just as the greenfield restrictions do  
10 not apply and for the same reasons included above regarding Issue 23.

11  
12 **Q. Do any of the terms and conditions proposed by BellSouth need to be**  
13 **modified to reflect the appropriate interpretation?**

14 **A.** The modifications that Sprint recommends above with respect to Issue 23 also  
15 apply to the FTTH/FTTC overbuild situations.

16  
17 **Other Issues:**

18  
19 **Q. Are there any other matters that you would like to address?**

20 **A.** There are two other issues not included in the joint issues matrix that should be  
21 addressed.

22  
23 **Q. What additional concerns does Sprint have?**

1    **A.**     Sprint has two concerns. First, the terms and conditions proposed by BellSouth  
2            make few references to the FCC Rules, either directly or indirectly, and only  
3            includes a commitment to comply with the section 251(c)(3) of the Act. It is  
4            therefore imperative that BellSouth affirmatively acknowledge its intent to  
5            comply with the FCC Rules in its provision of UNEs as well as pertinent orders  
6            from the Commission and the courts. Second, Operations Support Systems  
7            (“OSS”) remains a UNE in the FCC Rules, yet BellSouth provides no terms and  
8            conditions committing itself to provide non-discriminatory access to OSS. Such  
9            language should be included in any final agreement between the parties.

10

11   **Q.**     **Why didn’t Sprint raise these matters when the joint issues matrix was**  
12            **established?**

13   **A.**     The terms and conditions that were being negotiated between Sprint and  
14            BellSouth at that time addressed these issues; however, the terms and conditions  
15            that BellSouth has filed in other proceedings, which Sprint expects to be filed in  
16            this proceeding, do not.

17

18   **Q.**     **Why is it important to include a commitment by BellSouth that it complies**  
19            **with the FCC Rules and pertinent orders from the Commission and the**  
20            **courts?**

21   **A.**     For the sake of clarity, it is important for the parties to agree with what  
22            requirements are applicable regarding BellSouth’s unbundling obligations and  
23            that BellSouth agree to provide Sprint access to unbundled network elements in

1           accordance with those requirements. Sprint does not believe that the Act  
2           constitutes all requirements. Section 251(c)(3) of the Act establishes an ILEC's  
3           general obligation to unbundle network elements and refers to other sections of  
4           the Act that establish the access standards used by the FCC to determine  
5           impairment, specifying which network elements must be unbundled. The FCC  
6           rules implement the Act and orders from the Commission and the courts can  
7           impact the rules and may be incorporated into the agreement via the change in law  
8           process.

9

10   **Q.    Are there other reasons why it is important to include a reference to the FCC**  
11   **rules?**

12   **A.    As stated above, the terms and conditions proposed by BellSouth include only**  
13   **few select references to FCC rules, referring to them as "requirements" (see**  
14   **2.1.2.2; 2.9.1.5; 2.9.1.6; 5.3.4.1 and 5.3.4.2.4.). Sprint has no desire to duplicate**  
15   **the entire set of rules in the agreement but it must contain language to ensure that**  
16   **both parties agree that the entire set of FCC rules is applicable without exception.**  
17   **Absent this statement BellSouth could argue that a rule that was not explicitly**  
18   **referred to was not applicable.**

19

20   **Q.    What terms and conditions does Sprint propose to be included in the**  
21   **agreement to address this matter?**

22   **A.    The following terms are acceptable and should be approved by the Commission.**  
23   **A reference to the agreement's General Terms and Conditions has also been**

1 added to ensure that the parties agree that nothing in this amendment supersedes  
2 those terms and that they remain applicable to this amendment.

3  
4 1.1 This Attachment is subject to the General Terms and Conditions of this  
5 Agreement and sets forth rates, terms and conditions for unbundled  
6 network elements (Network Elements) and combinations of Network  
7 Elements (Combinations) that BellSouth offers to  
8 <<customer\_short\_name>> for <<customer\_short\_name>>'s provision of  
9 Telecommunications Services in accordance with its obligations under  
10 Section 251(c)(3) of the Act and the orders, rules and regulations  
11 promulgated thereunder by the FCC, the Commission or a court of  
12 competent jurisdiction. Additionally, this Attachment sets forth the rates,  
13 terms and conditions for other facilities and services BellSouth makes  
14 available to <<customer\_short\_name>> (Other Services). Additionally,  
15 the provision of a particular Network Element or Other Service may  
16 require <<customer\_short\_name>> to purchase other Network Elements  
17 or services. In the event of a conflict between this Attachment and any  
18 other section or provision of this Agreement, the provisions of this  
19 Attachment shall control.

20  
21 **Q. Why should the agreement include terms and conditions with respect to**  
22 **OSS?**

23 **A.** As I stated above, OSS remains a UNE. The FCC confirmed this requirement in

1 the Triennial Review Order ("TRO"), which has not been the subject of any court  
2 challenge or FCC petition (FCC 03-36, *Review of the Section 251 Un bundling*  
3 *Obligations of Incumbent Local Exchange Carriers, Implementation of the Local*  
4 *Competition Provisions of the Telecommunications Act of 1996, Deployment of*  
5 *Wireline Services Offering Advanced Telecommunications Capability*, CC  
6 Dockets 01-338, 96-98, 98-147, Report and Order and Order on Remand and  
7 Further Notice of Proposed Rulemaking, released August 21, 2003). The  
8 obligation is incorporated in the FCC Rules at 47 C.F.R. § 51.319(g).

9  
10 **Q. What terms and conditions should be included in the agreement with respect**  
11 **to OSS?**

12 **A.** At a minimum, the agreement should contain the following language.

13 **10 OSS**

14 10.1 BellSouth shall provide <<customer short name>> with  
15 nondiscriminatory access to BellSouth's operations support systems on an  
16 unbundled basis, in accordance with section 251(c)(3) of the Act and the  
17 FCC Rules. Operations support system functions consist of pre-ordering,  
18 ordering, provisioning, maintenance and repair, and billing functions  
19 supported by BellSouth's databases and information. BellSouth, as part of  
20 its duty to provide access to the pre-ordering function, shall provide, at a  
21 minimum, <<customer short name>> with nondiscriminatory access to  
22 the same detailed information about the loop that is available to BellSouth.

1 Q. Does this conclude your Direct Testimony?  
2 A. Yes.  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

1 Q. Please state your name and business address.

2 A. My name is Kristin Shulman. My business address is 810 Jorie Blvd., Suite 200,  
3 Oak Brook, IL 60523.

4  
5 Q. By whom are you employed and in what capacity?

6  
7 A. I am an Executive Director – Regulatory Affairs of XO Communications, Inc.  
8 (“XO”). In this position, I am responsible for all regulatory issues and policies, in  
9 which XO engages, in Michigan, Ohio, Illinois, Missouri and Texas.

10  
11 Q. Please describe your educational background and professional experience  
12 within the telecommunications industry.

13 A. I graduated from the State University of New York at Albany (“SUNY Albany”)  
14 where I received a Bachelor of Arts degree in English. I also received a Masters of  
15 Arts degree in Economics from the Pennsylvania State University.

16  
17 I started my career in 1984 as a Manager, Corporate Books at the Rochester  
18 Telephone Company in Rochester NY. Over the next 16 years, I held many  
19 management positions in the regulatory and marketing departments of then Bell  
20 Atlantic and Ameritech, culminating in the position of Vice President of Marketing,  
21 Ameritech Industry Services in the late 1990’s. Subsequent to working for the  
22 regional operating companies, I was principal of Active Strategies, LLC a telecom  
23 consulting firm. In that capacity, I assisted a number of CLECs in entering the  
24 market utilizing UNEs obtained from the Incumbent Local Exchange Carriers. In  
25 2003, I joined Allegiance Telecom, Inc. as Regional Vice President, Regulatory

1 Affairs and handled all regulatory matters in which Allegiance took part in the  
2 Verizon east states. In 2004, Allegiance Telecom, Inc. was acquired by XO  
3 Communications, Inc. and I took on my current job responsibilities as Executive  
4 Director, Regulatory Affairs.

5

6

7 **Q. What is the purpose of your testimony?**

8 A. My testimony addresses a number of issues related to the transition plans for high-  
9 capacity loop and transport network elements and an issue related to the definition of  
10 a dedicated transport "route" discussed in the direct testimony of other parties.

11

12 **Q. Please summarize your understanding of the FCC's transition plan for high  
13 capacity loops and transport.**

14 A. In its simplest terms, the FCC adopted a twelve month transition period for DS1 and  
15 DS3 loops and transport beginning on March 10, 2005 and ending on March 10,  
16 2006, and an eighteen month transition period for dark fiber loops and transport  
17 beginning on March 10, 2005 and ending on September 10, 2006. During the  
18 transition period, ILECs are permitted to charge rates equal to the higher of 115% of  
19 the unbundled network element rates in effect on June 15, 2004 or 115% of any UNE  
20 rates established by state commissions between June 15, 2004 and March 10, 2005.

21

22 **Q. Have you reviewed the testimony of CompSouth witness Joseph Gillan  
23 concerning the appropriate implementation of the FCC's transition plan?**



1 A. Yes, I have.

2

3 **Q. Please summarize your understanding of Mr. Gillan's proposal for**  
4 **implementing the FCC's transition plan for high capacity loops and transport.**

5 A. Mr. Gillan contends that the FCC required that CLECs (a) amend the provisions in  
6 their interconnection agreements concerning DS1 and DS3 loops and transport by  
7 March 10, 2006 and place orders by that date to convert their embedded base of DS1  
8 and DS3 loops and transport to alternative arrangements and (b) amend the  
9 provisions in their interconnection agreements concerning dark fiber loops and  
10 transport by September 10, 2006 and place orders by that same date to transition their  
11 embedded base of dark fiber loops and transport to alternative arrangements. He  
12 proposes that the transition rates would become effective only upon amendment of  
13 the interconnection agreement and would remain in effect until BellSouth completes  
14 the conversion of the embedded base.

15 **Q. Have you reviewed the testimony of BellSouth witness Pamela A. Tipton**  
16 **concerning the implementation of the FCC's transition plan?**

17 A. Yes, I have.

18

19 **Q. Please summarize your understanding of Ms. Tipton's proposal for**  
20 **implementing the FCC's transition plan for high capacity loops and transport.**

21 A. Ms. Tipton argues that the transition rates apply to the embedded base of DS1, DS3,  
22 and dark fiber loops and transport as of March 10, 2005, regardless of when a  
23 CLEC's interconnection agreement is amended. She proposes that CLECs be

1 required to submit orders by December 9, 2005 to convert their embedded base of  
2 DS1 and DS3 loops and transport to alternative arrangements and to submit orders by  
3 June 10, 2006 to convert their embedded base of dark fiber loops and transport.  
4 Under Ms. Tipton's proposal, transition pricing for the embedded base would end  
5 when BellSouth completed the conversion in the case of conversions that are  
6 completed before the end of the FCC's transition periods. It would end on March  
7 10, 2006 for DS1 and DS3 loops and transport and on September 10, 2006 for dark  
8 fiber loops in the case of conversions that BellSouth does not complete by the end of  
9 the applicable transition period.

10  
11 **Q. Do you agree with Mr. Gillan or Ms. Tipton concerning the appropriate**  
12 **implementation of the FCC's transition plans?**

13 A. I really can't totally agree with either one.

14  
15 Mr. Gillan is certainly correct that the FCC provided CLECs twelve months from  
16 March 10, 2005 to amend their interconnection agreements concerning DS1 and DS3  
17 loops and transport and eighteen months to amend the provisions concerning dark  
18 fiber loops and transport. At paragraph 143 of its Order, referring to DS1 and DS3  
19 transport, the FCC stated that "carriers have twelve months from the effective date of  
20 this Order to modify their interconnection agreements, including any change of law  
21 processes." In footnote 406, the FCC said that "for dark fiber transport, carriers have  
22 eighteen months from the effective date of this Order to modify their interconnection  
23 agreements, including completing any change of law processes." The FCC said the

1 same things concerning the transition periods for DS1 and DS3 loops in paragraph  
2 196 and for dark fiber loops in footnote 523. Clearly, the FCC intended to provide up  
3 to twelve months for the modification of interconnection agreement provisions  
4 concerning DS1 and DS3 loops and transport and eighteen months to modify the  
5 provisions concerning dark fiber loops and transport.

6  
7 When Mr. Gillan concludes that the FCC intended for its transition rates to become  
8 effective only upon the amendment of a CLEC's interconnection agreement,  
9 however, he is correct as to implementation of the rates, but, in my opinion,  
10 overlooks relatively clear statements regarding the application date of the rates once  
11 such amendment is executed. In footnotes 408 and 524, of the *TRRO*, the FCC stated  
12 that dedicated transport facilities and high capacity loops, respectively, "no longer  
13 subject to unbundling shall be subject to true-up to the applicable transition rate upon  
14 amendment of the relevant interconnection agreements, including any applicable  
15 change of law processes." Thus, the FCC has indicated that, once the parties have  
16 amended their interconnection agreement, a true-up of transition pricing is  
17 appropriate. Of course, as the FCC emphasized at several points in the *TRRO*, its  
18 transition plan should apply only where the parties have not agreed to different terms.

19 For example, if the change of law provisions in a CLEC's interconnection agreement  
20 provide that changes of law will be implemented without true-ups or by some other  
21 means, that provision or other arrangement should be given effect. However,  
22 BellSouth's position on this issue, that only transition pricing, and no other

1 provisions of the FCC's order that have been delayed in implementation, must be  
2 trued-up is not correct and should be rejected, as well.

3  
4 Most importantly, I agree with Mr. Gillan that the FCC did not require CLECs to  
5 convert their embedded base of high capacity loops and transport and UNE-P  
6 arrangements prior to the end of the transition period. In paragraph 143, the FCC said  
7 that "[a]t the end of the twelve-month period, requesting carriers must transition the  
8 affected DS1 or DS3 dedicated transport UNEs to alternative facilities or  
9 arrangements." The FCC said the same thing with respect to DS1 and DS3 loops in  
10 paragraph 196. Although CLECs need to place their orders for the conversion of  
11 UNEs before the end of the transition period, Ms. Tipton is simply wrong in  
12 contending that the FCC required CLECs to *complete* the conversion of delisted  
13 UNEs to other arrangements by the end of the transition period. The FCC clearly  
14 intended to give CLECs the full twelve months (or eighteen months for dark fiber  
15 UNEs) to identify the best available alternatives to high capacity loops and transport  
16 that they currently lease on an unbundled basis but cannot retain as UNEs after the  
17 transition period and to place the necessary orders with BellSouth and other vendors  
18 to implement those alternatives.

19  
20 I can't agree with either Mr. Gillan or Ms. Tipton about when the FCC's transition  
21 pricing ends. Mr. Gillan contends that transition pricing should continue until  
22 BellSouth actually converts each delisted UNE, although BellSouth may not even

1 receive CLECs' conversion orders until just before the end of the transition period,  
 2 while Ms. Tipton contends that BellSouth should be permitted to charge higher rates  
 3 for other arrangements as soon as it converts delisted UNEs when it does so before  
 4 the end of the transition period. Yet the FCC clearly stated in paragraphs 145 and 198  
 5 that transition rates for high capacity loops and transport would apply "*during the*  
 6 *relevant transition period.*" Similarly, 47 CFR §§ 51.319(a)(4)(iii) (DS1 loops),  
 7 51.319(a)(5)(iii) (DS3 loops), 51.319(e)(2)(ii)(C) (DS1 transport), and  
 8 51.319(e)(2)(iii)(C) (DS3 transport) all provide for transition pricing "for a 12-month  
 9 period beginning on the effective date of the Triennial Review Remand Order," while  
 10 47 CFR §§ 51.319(a)(6)(ii) (dark fiber loops) and 51.319(e)(2)(iv)(B) apply  
 11 transition pricing "[f]or an 18-month period beginning on the effective date of the  
 12 Triennial Review Remand Order." In light of these statements, it seems clear that the  
 13 FCC intended for transition pricing to end on March 10, 2006 for DS1 and DS3 loops  
 14 and transport and on September 10, 2006 for dark fiber loops and transport,  
 15 regardless of when the network elements are actually converted to alternative  
 16 arrangements, assuming that orders are placed prior to the end of the transition period  
 17 for circuits to be converted. While this will result in BellSouth providing special  
 18 access circuits at UNE rates if it completes a conversion before the due date, this will  
 19 be offset by its ability to charge special access rates for UNEs that it does not convert  
 20 by the deadline. Also, it is important to note that, if special access pricing is effective  
 21 March 10, 2006 for DS1 and DS3 loops and transport and on September 10, 2006 for  
 22 dark fiber loops and transport, even when the actual conversion occurs at a later date,

1 BellSouth should be required to make available special access term pricing on that  
2 same date, regardless of actual conversion date. In other words, BellSouth cannot  
3 have its cake and eat it, too – or have a special access “true-up” back to March 10,  
4 2006, yet refuse to provide plan pricing because the circuits “were not yet converted.”

5  
6 **Q. Please summarize how you believe the transition process should work.**

7  
8 A. The FCC intended to provide a period of one year for parties to amend the provisions  
9 of their interconnection agreements concerning DS1 and DS3 loops and transport and  
10 an eighteen month period to amend interconnection agreement provisions concerning  
11 dark fiber loops and transport. CLECs also should have until March 10, 2006 to place  
12 orders to convert DS1 and DS3 loops and transport to alternative arrangements, and  
13 until September 10, 2006 to place orders to convert dark fiber loops and transport.  
14 Once the interconnection agreement is amended, a true-up of all applicable  
15 provisions, consistent with the Commission’s order in this docket, should apply,  
16 unless BellSouth has agreed otherwise with a particular CLEC. For interconnection  
17 agreements amended before the conclusion of this docket, the parties should be  
18 required to comply with the order in this docket unless they have clearly waived their  
19 right to do so. CLECs should not be penalized for working cooperatively with  
20 BellSouth to amend their interconnection agreements prior to the conclusion of this  
21 docket. Transition pricing should end on March 10, 2006 for all delisted UNEs  
22 except dark fiber and on September 10, 2006 for dark fiber loops and transport, no  
23 matter when the CLEC places orders to convert the UNEs as of those dates or when  
24 BellSouth completes the conversions.

1

2 **Q. Do you believe that policy considerations support your conclusion?**

3

4 A. Yes, I do. Aside from the FCC's clear statements of its intention, setting uniform  
5 dates for the commencement and termination of transition pricing is necessary in  
6 order to avoid creating inappropriate incentives and promoting discrimination.  
7 Delaying the onset of transition pricing until an interconnection agreement is  
8 amended would provide an incentive for CLECs to prolong negotiations and would  
9 discriminate against CLECs who heed the FCC's exhortations to promptly amend  
10 their agreements. Tying the end of transition pricing (or the availability of special  
11 access plan pricing) to BellSouth's completion of conversion orders would create an  
12 incentive for CLECs to delay placing their conversion orders (or for BellSouth to  
13 delay working those orders) and would permit BellSouth to discriminate based upon  
14 when it completes those orders. In each case, CLECs who worked cooperatively with  
15 BellSouth to amend their interconnection agreements promptly and to place their  
16 conversion orders in a timely fashion would effectively be penalized for doing so. On  
17 the other hand, if end of transition prices apply in all cases on March 10 or September  
18 10, 2006, as appropriate, CLECs would have to place their conversion orders early in  
19 order to give BellSouth more time to complete them and thus minimize the risk of  
20 errors as BellSouth works to convert a massive number of network elements in a  
21 relatively short period of time.

22

23 The Commission also needs to consider incentives in determining whether any other  
24 true-ups are appropriate. For example, CLECs have been entitled to commingle

1           UNEs and wholesale services, to use EELs under clearer eligibility criteria, and to  
 2           convert commingled services to UNEs at least since the FCC's *Triennial Review*  
 3           *Order*, but BellSouth has generally refused to permit such commingling, EEL usage  
 4           and conversions until CLECs have amended their interconnection agreements in their  
 5           entirety to incorporate provisions that are favorable to BellSouth. If the Commission  
 6           were to order a true-up to transition rates for delisted UNEs but not for issues such as  
 7           commingling, EELs and conversions, BellSouth would continue to have no incentive  
 8           to amend agreements promptly to incorporate provisions that are favorable to CLECs.  
 9           Unless a particular interconnection agreement or other agreed upon arrangement  
 10          specifies that there will be no true-ups, the Commission should adopt a uniform  
 11          policy for truing up all changes that result from implementation of the *TRO* and  
 12          *TRRO*, and not just those changes that favor BellSouth.

13  
 14          **Q.    What about charges for conversions? Do you agree with BellSouth's proposals**  
 15          **for charging CLECs to convert delisted UNEs to alternative arrangements?**

16          A.    Only partially. BellSouth will incur minimal costs associated with making the record  
 17          changes required to convert UNEs to wholesale services, but in many cases the  
 18          conversion charges that BellSouth proposes are excessive.

19  
 20          **Q.    What does Ms. Tipton propose that BellSouth charge to convert a UNE or UNE**  
 21          **combination to a wholesale service when the CLEC identifies the UNE or**  
 22          **combination to be converted and places an order for the conversion?**



1 A. Ms. Tipton doesn't address this issue directly in her testimony, but Section 1.6 of  
 2 BellSouth's proposed contract language attached to her direct testimony states that  
 3 BellSouth will charge switch-as-is rates to convert a Network Element or  
 4 Combination to an equivalent wholesale service or group of wholesale services upon  
 5 the request of the CLEC.

6  
 7 **Q. Are such switch-as-is conversion charges appropriate?**

8  
 9 A. Conceptually, yes they are. But BellSouth is proposing an excessive switch-as-is rate  
 10 for converting UNE loops to wholesale services.

11  
 12 **Q. Please explain.**

13  
 14 A. In the rate tables included with the proposed interconnection agreement amendment  
 15 that BellSouth has provided to CLECs and posted on its web site, BellSouth proposes  
 16 to assess Commission-approved switch-as-is charges for converting dedicated  
 17 transport UNEs and UNE loop and transport combinations to equivalent wholesale  
 18 services. However, for purposes of this docket, BellSouth proposes to charge switch-  
 19 as-is rates for conversion of stand alone UNE loops that differ from the conversion  
 20 rates for UNE loop and transport combinations. In most states, including Florida,  
 21 BellSouth's proposed switch-as-in rate for stand alone UNE loops is much higher  
 22 than the switch-as-is rate for UNE loop and transport combinations. In Georgia, for  
 23 example, the Commission-approved switch-as-is rate for the conversion of UNE loop  
 24 and transport combination is \$5.70. For converting a stand alone UNE loop,  
 25 however, BellSouth has proposed in this docket a switch-as-is rate of \$22.06. It

1 cannot possibly cost BellSouth nearly four times as much to make the record change  
2 to convert a UNE loop as it does to convert a combination of that same loop and a  
3 dedicated transport interoffice channel. More importantly, since BellSouth uses the  
4 same service center personnel and the same systems for switch-as-is conversions in  
5 both Florida and Georgia, and other states, for that matter, it should not cost  
6 BellSouth more to make a record change to convert a UNE loop in Florida than it  
7 does to convert a combination of a loop and dedicated transport interoffice channel  
8 in Georgia, or North Carolina, or Louisiana, for example. The "switch as is" charge  
9 for the record change to convert a UNE loop should be no more than the lowest rate  
10 in the BellSouth region for converting a loop and transport combination, or Enhanced  
11 Extended Loop (EEL).

12 **Q. What justification does BellSouth provide for such a charge?**

13  
14 A. To my knowledge, none. BellSouth did not even disclose its proposed switch-as-is  
15 charges in its testimony, much less attempt to justify them.

16  
17 **Q. What is the appropriate switch-as-is charge for converting a UNE loop to a  
18 wholesale service?**

19 A. I don't have enough information to answer that question with specificity, but,  
20 certainly, as I state above, it should be no more than the charge for converting a UNE  
21 loop and transport combination in the same service center using the same systems,  
22 regardless of the location of the facility. Keep in mind that this is a billing change  
23 performed at a centralized location, not physical work done in the field.

24

1 **Q. What do you recommend that the Commission do about this issue?**

2

3 A. Because the record change for a high capacity loop should involve less work than a  
4 record change for both a loop and a transport link, and the same process, systems, and  
5 personnel are used for record changes in the various states, the Commission should  
6 adopt a switch-as-is rate equal to the lowest switch-as-is rate adopted by any state  
7 commission for BellSouth's conversion of a loop and transport combination, which  
8 is \$5.43, the switch-as-is charge for loop and transport combinations in Louisiana and  
9 North Carolina.

10

11 **Q. What about conversion charges when BellSouth identifies the UNEs that need  
12 to be converted, perhaps because a CLEC has not done so in a timely manner?**

13 A. In Ms. Tipton's direct testimony and the attached proposed contract language,  
14 BellSouth proposes that when it identifies a UNE or combination to be converted to a  
15 wholesale service or services, the CLEC would be liable for any charge that the  
16 Commission has approved for disconnection of the applicable UNE plus the full  
17 tariffed nonrecurring charge for the wholesale service to which it is converted.

18

19

20

21 **Q. Do you believe that such charges would be appropriate?**

22

23 A. No. BellSouth may incur a small cost to identify delisted UNEs for which CLECs  
24 have not placed conversion orders, and BellSouth easily would recover such costs in  
25 the first month's higher recurring charges for wholesale services. More significantly,  
26 the nonrecurring charges that BellSouth seeks to impose vastly exceed any possible

1 cost of simply identifying circuits to be converted. For example, the nonrecurring  
2 charge for the installation of a DS1 local channel in Section 7.5.9(A)(1) of  
3 BellSouth's FCC special access tariff, which is the wholesale equivalent of a DS1  
4 loop, is \$650.00. The Commission has approved a nonrecurring charge of \$195.30  
5 (1<sup>st</sup>) and \$165.48 (each additional) for such loops when ordered as a UNE, which the  
6 Commission has determined to be BellSouth's average TELRIC cost of provisioning  
7 the loop. There is no way that BellSouth's cost simply of identifying a loop to be  
8 converted could be as much as almost \$200, not to mention the \$746.86 (\$650  
9 special access nonrecurring charge plus \$96.86 UNE disconnect charge) that  
10 BellSouth proposes to charge for doing so.

11  
12 **Q. What do you recommend that the Commission do about this issue?**

13  
14 **A.** BellSouth should not be allowed to impose any charges for identifying UNEs to be  
15 converted. However, if the Commission decides to permit BellSouth to impose any  
16 charge for identifying UNEs so that it can convert them to higher-priced wholesale  
17 services, the Commission should require BellSouth to submit a TELRIC cost study  
18 demonstrating its cost of identifying circuits to be converted. Pending the submission  
19 and review of such a cost study, the Commission should set an interim rate of zero.  
20 BellSouth cannot be permitted to impose above-cost charges for identifying UNEs so  
21 that it can convert them to wholesale services at significantly increased recurring  
22 rates.

23

1 Q. What has BellSouth proposed concerning the transition of high capacity loops  
2 and transport to wholesale services in the future, when additional wire centers  
3 exceed the FCC's business line count and/or collocator thresholds?

4 A. None of the BellSouth witnesses directly address this issue in testimony. The contract  
5 language in Exhibits PAT-1 and PAT-2 to Ms. Tipton's testimony address it in  
6 Section 2.1.4.12 for DS1 and DS3 loops, in Section 6.2.6.10 for DS1 and DS3  
7 transport, and in Section 6.9.1.10 for dark fiber transport.

8  
9 In each case, BellSouth proposes that when it identifies an additional wire center that  
10 meets the FCC's criteria for delisting a high capacity loop or transport UNE, it would  
11 post a notification on its web site identifying the wire center and the delisted UNE.  
12 Effective ten business days later, BellSouth would not be required to provide the  
13 delisted UNE in that wire center. CLECs would be required to submit orders to  
14 convert the delisted UNEs in that wire center within forty days after BellSouth posted  
15 the notice on its web site, with the conversions to be completed within ninety days  
16 after the tenth business day after BellSouth posted the notice. Similar to its proposal  
17 for the initial transition, BellSouth proposes that the FCC's transition rates would  
18 apply for the period beginning ten business days after it posted the notice and end on  
19 the earlier of when BellSouth completes the conversion or the end of the ninety day  
20 period. BellSouth proposes to assess switch-as-is charges for the conversion of  
21 circuits identified by CLECs in timely conversion orders and the sum of UNE

1 disconnect charges and tariffed nonrecurring charges for circuits identified by  
2 BellSouth.

3

4 **Q. Do you believe that those procedures are appropriate?**

5

6 A. No, I do not.

7

8 **Q. What transition provisions do you believe the Commission should adopt for the  
9 future delisting of high capacity loops and transport?**

10 A. My testimony concerning the appropriate application of transition rates and  
11 conversion charges for the initial transition period is equally applicable to subsequent  
12 transitions. Transition rates should apply from the beginning to the end of the  
13 transition period, regardless of when conversion orders are placed or completed, and  
14 BellSouth should assess only Commission-approved switch-as-is conversion charges,  
15 with an additional Commission-approved charge to recover its cost of identifying  
16 circuits to be converted, when applicable.

17

18 The more important issues for subsequent transitions, however, concern the process  
19 for updating the list of wire centers where high capacity UNEs are delisted and the  
20 length of the transition period.

21

22 **Q. What process do you propose for updating the list of wire centers?**

23

24 A. I agree with Mr. Gillan's proposal for an annual proceeding to review business line  
25 count data. Because of the incentives for BellSouth to overstate business line counts  
26 in order to minimize its unbundling obligations, it is vitally important for the

1 Commission to review this data before BellSouth is relieved of unbundling  
2 obligations. Since BellSouth's ARMIS data is updated annually, there should also be  
3 an annual update of the business line counts based on that data.

4  
5 It is also important to give CLECs sufficient time to change their business processes  
6 to adjust to the impending loss of high capacity loop and transport unbundling in a  
7 wire center. BellSouth proposes a period of only ten business days from the time it  
8 announces that a wire center has exceeded an applicable threshold and the time when  
9 it would no longer be required to unbundle a high capacity UNE in that wire center.  
10 Many CLECs tailor their marketing to the cost of serving particular customers,  
11 however, and they need significantly more than two weeks' notice that the loop or  
12 transport circuit required to serve a particular prospective customer will not be  
13 available at TELRIC rates. The knowledge that UNEs are likely to be delisted in a  
14 wire center following Commission review of business line counts in that wire center  
15 and the relatively brief time that would be required for such review under Mr.  
16 Gillan's proposal would provide the time that CLECs need to adjust their marketing  
17 and other business processes in anticipation of the delisting of the UNEs.

18  
19 **Q. Mr. Gillan's proposal appears to be limited to an annual review of updated**  
20 **business line counts. What if a wire center gains a fiber-based collocation and,**  
21 **as a result, qualifies for delisting of a UNE?**

22 **A.** One approach would be to update the wire center nonimpairment lists only once a  
23 year after the Commission reviews updated business line counts, but that could

1 require BellSouth to continue to provide high capacity loops or transport on an  
2 unbundled basis for a year or more after a wire center exceeded an applicable  
3 collocation threshold.

4 Although annual updates appear to be the only feasible approach to revising wire  
5 center impairment lists based upon line count data, in the case of updates resulting  
6 from new fiber-based collocations a better approach would be to require BellSouth to  
7 post a notice on its web site whenever it receives an order for new or modified  
8 collocation space that might result in a wire center exceeding an applicable  
9 collocation threshold. While BellSouth often would not know at the time it received  
10 the order whether the collocation in question would be fiber-based as defined by the  
11 FCC, the early notification would let CLECs know that a wire center was in jeopardy  
12 of qualifying for reduced unbundling so that they could adjust their business  
13 processes accordingly. BellSouth then should be required to post a second notice as  
14 soon as it has the information necessary to determine whether the new or modified  
15 collocation will in fact result in the delisting of any UNE. Of course, the actual  
16 delisting would not take effect until the collocation was completed, the fiber  
17 installed, and the collocation powered up, and such delisting should be subject to an  
18 appropriate transition period.

19  
20 **Q. You mentioned that the length of subsequent transition periods is also an**  
21 **important issue. Please elaborate.**

22 A. The FCC found that CLECs need as much as a full year from March 10, 2005 to  
23 determine how best to transition their DS1 and DS3 UNEs to alternative



1 arrangements and eighteen months to identify and implement alternatives to dark  
2 fiber loops and transport, despite the fact that CLECs have known at least since the  
3 FCC's August 20, 2004 *Interim Order* that high capacity loops and transport were  
4 likely to be delisted in the most dense wire centers. CLECs cannot possibly perform  
5 the analysis required to identify the best alternatives to existing high capacity UNEs  
6 in the ninety days proposed by BellSouth, especially when dark fiber transport is  
7 delisted.

8  
9 **Q. What transition periods do you believe should apply to the subsequent delisting  
10 of high capacity UNEs?**

11 A. Because CLECs would have less advance notice of the likelihood of subsequent UNE  
12 delisting than they did for the initial delisting that took effect on March 10, 2005, it is  
13 arguable that the length of subsequent transition periods should be at least as long as  
14 the one year for DS1 and DS3 UNEs and eighteen months for dark fiber UNEs that  
15 the FCC adopted for the initial transition, if not longer. As long as the Commission  
16 establishes an appropriate process for reviewing updated business line counts and  
17 requires BellSouth to post a notice when it receives a collocation order that may  
18 result in the delisting of UNEs, however, I can agree with US LEC witness Wanda  
19 Montano's proposal for a six month transition period for DS1 and DS3 loop and  
20 transport UNEs that are delisted in the future. Because of the time required to install  
21 fiber, I believe that an eighteen month transition period is the minimum necessary to  
22 permit CLECs to transition from dark fiber transport UNEs.

23

1 Q. Do you agree with Ms. Tipton concerning the correct definition of a “route” for  
2 purposes of determining the availability of high capacity transport under the  
3 FCC’s rules?

4 A. Ms. Tipton accurately paraphrases the FCC’s definition of a “route” contained in 47  
5 CFR §51.319(e). Because of positions taken by BellSouth and other ILECs in the  
6 aborted state proceedings to implement the FCC’s *Triennial Review Order*, however,  
7 it is important to clarify that the definition of a “route” does not limit the ability of  
8 CLECs to obtain high capacity transport UNEs on routes where the FCC has  
9 determined that CLECs are impaired without such UNEs. CLECs need to be able to  
10 collocate in a Tier 2 or Tier 3 wire center and obtain unbundled transport connecting  
11 that collocation to multiple Tier 1 or Tier 2 wire centers.

12  
13 Q. Please elaborate.

14  
15 A. In the state *TRO* proceedings, state Commissions were required to identify the routes,  
16 under the FCC’s definition, where either (a) CLECs had constructed their own  
17 transport facilities or (b) transport facilities were available on a wholesale basis from  
18 sources other than the ILEC. If a CLEC had constructed its own transport facilities  
19 from one wire center to each of two other wire centers, BellSouth and other ILECs  
20 argued that a route existed between the two other wire centers because it would be  
21 possible to cross-connect the individual routes at the wire center where they had a  
22 common end point. Extending this argument, BellSouth could take the position that it  
23 is not required to provide unbundled high capacity transport on two or more routes

1 connecting wire centers in one tier to a single wire center in a lower tier, which  
2 would permit it to avoid unbundling on routes where the FCC has found impairment.

3  
4 For example, the FCC found that CLECs are impaired without the availability of  
5 unbundled DS1 transport between Tier 1 and Tier 3 wire centers, although it found  
6 that they are not impaired without unbundled DS1 transport connecting two Tier 1  
7 wire centers. Thus, a CLEC with a collocation arrangement in a Tier 3 wire center  
8 must be permitted to obtain unbundled DS1 transport from that wire center to each of  
9 two or more Tier 1 wire centers. Applying the argument it employed in the state *TRO*  
10 proceedings, however, BellSouth could argue that because such routes could be  
11 cross-connected within the collocation at the Tier 3 wire center, BellSouth would  
12 only be required to provide one of the requested routes, otherwise the CLEC would  
13 have obtained unbundled DS1 transport on a route connecting two Tier 1 wire  
14 centers, where the FCC found no impairment.

15  
16 **Q. The FCC said something about using a Tier 3 wire center as a “hub” in  
17 paragraph 106 of the *TRRO*. Is that what you are referring to?**

18 **A.** Not exactly. The FCC noted in paragraph 106 that it is unlikely that a CLEC desiring  
19 unbundled DS1 transport connecting two Tier 1 wire centers would collocate in a  
20 Tier 3 wire center and order DS1 transport from the Tier 3 wire center to each of the  
21 Tier 1 wire centers because of the cost of collocating at the Tier 3 wire center and the  
22 distance-sensitive rate for the two DS1 transport links, which likely would make the  
23 arrangement more costly than connecting the two Tier 1 wire centers directly with a

1 special access circuit. The situation that I am concerned with is one where the CLEC  
2 wants unbundled transport from the Tier 3 wire center to each of several Tier 1 wire  
3 centers, perhaps as the transport component of EELs, connected to loops in the Tier 1  
4 wire centers. In Georgia, this issue was identified as a sub-issue under Issue No. 4(iv)  
5 after it was raised by Digital Agent, LLC.

6  
7 **Q. Do any of the BellSouth witnesses address this issue in their testimony?**

8  
9 A. No, and I am not certain that BellSouth disagrees with my position. It is my  
10 understanding that BellSouth has agreed in negotiations that a CLEC may obtain  
11 unbundled DS1 transport on direct routes between a Tier 2 or Tier 3 wire center and  
12 each of two or more Tier 1 wire centers, as well as similar configurations of  
13 unbundled DS3 transport connecting a Tier 3 wire center to two or more Tier 1 or  
14 Tier 2 wire centers, but as far as I know BellSouth has not yet agreed to contract  
15 language stating this. I believe that it is important to include language clarifying this  
16 point so that BellSouth cannot later change its interpretation of the "route" definition.

17  
18 **Q. Do you believe that the FCC intended to prohibit a CLEC from obtaining an**  
19 **unbundled DS1 connection between two Tier 1 wire centers by ordering routes**  
20 **from a Tier 3 wire center to each of them and cross-connecting them at the Tier**  
21 **3 wire center as discussed in paragraph 106?**

22 A. No. The FCC clearly recognized the possibility of such configurations, correctly  
23 concluded that they generally would not make economic sense, and did not expressly  
24 forbid them. If the Commission concludes otherwise, however, it should prohibit the

1 cross-connection at the Tier 3 wire center, rather than permitting BellSouth to deny  
2 unbundled DS1 transport connecting a Tier 3 wire center to more than one Tier 1  
3 wire center.

4

5 **Q. Does this conclude your rebuttal testimony?**

6 **A. Yes.**

1 **Q: PLEASE STATE YOUR NAME POSITION AND BUSINESS ADDRESS.**

2 A: My name is Jerry Watts, I am Vice President of Government and Industry Affairs  
3 for ITC^DeltaCom, Communications, Inc. d/b/a ITC^DeltaCom ("DeltaCom"). My  
4 business address is 7037 Old Madison Pike Huntsville, Alabama, 35806.

5  
6 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND BUSINESS  
7 EXPERIENCE.**

8 A: I am a graduate of Auburn University with a B.S. in Accounting. I have over thirty  
9 years experience in the telecommunications industry including positions with  
10 Southern Bell, South Central Bell, BellSouth, AT&T, and ITC^DeltaCom. Most of  
11 my career has been in the area of Government Affairs with responsibility for both  
12 regulatory and legislative matters at the state and federal level.

13  
14 I have served as an officer or board member for several industry associations  
15 including the Alabama Mississippi Telephone Association, The Georgia  
16 Telephone Association, The Alabama Inter-Exchange Carriers Association, The  
17 Southeastern Competitive Carriers Association and The Georgia Center for  
18 Advanced Telecommunications Technology. I currently serve as President of  
19 The Competitive Carriers of the South, ("CompSouth"), a non-profit association of  
20 20 competitive telecommunications companies operating in the Southeast. I also  
21 serve as a board member of CompTel/ALTS. CompTel/ALTS is the leading  
22 industry association representing 350 competitive facilities-based  
23 telecommunications service providers, emerging VoIP providers, integrated

1 communications companies, and their supplier partners. CompTel/ALTS  
 2 members are building and deploying packet and IP-based networks to provide  
 3 competitive voice, data and video services in the U.S. and around the world. The  
 4 association, based in Washington, D.C., includes companies of all sizes and  
 5 profiles, from the largest next-generation network operators to small,  
 6 entrepreneurial companies. I have previously presented testimony in Georgia.

7

8 **Q: WHAT ARE YOUR RESPONSIBILITIES AT ITC^DELTACOM?**

9 A: I am responsible for ITC^DeltaCom's relationship with state and federal  
 10 government entities including state public utility commissions, state legislatures,  
 11 the FCC and the US Congress. I am also responsible for facilitating the working  
 12 relationship of ITC^DeltaCom with other telecommunications companies  
 13 including incumbent local exchange companies, competitive local exchange  
 14 companies and other providers.

15

16 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

17 A: The purpose of my testimony is to provide DeltaCom's position on certain generic  
 18 issues filed with the Commission by CompSouth and BellSouth and the non-  
 19 generic issues identified in Deltacom's petition for mediation and dispute  
 20 resolution. I will also discuss the status of DeltaCom's bilateral TRO/TRRO  
 21 amendment negotiations with BellSouth and describe the process that allows  
 22 DeltaCom to participate in the generic proceedings as well as two-party dispute  
 23 resolution proceedings.

10 Q: ARE THERE ANY OTHER CHANGE OF LAW ISSUES NOT RELATED TO  
11 THE TRO/TRRO THAT HAVE BEEN RAISED?

12 A: Yes. The Pick and Choose Order and the Core ISP Remand Order. However, I  
13 will focus on the Core ISP Remand decision. The Core ISP remand order states  
14 that the growth caps and new markets rule no longer applies. BellSouth takes the  
15 position that the template language in the interconnection agreement should not  
16 incorporate this FCC order and points to the fact that BellSouth has reached  
17 individual settlements with certain carriers. DeltaCom submits that each such  
18 specific negotiation should be between that carrier and BellSouth but that on a  
19 generic basis and certainly in a template agreement, the language offered in the  
20 template should be compliant with the most recent orders – including those  
21 orders that BellSouth disfavors. For the template agreement, DeltaCom  
22 recommends the language noted in Exhibit JW-1.

23 Q: DOES THIS CONCLUDE YOUR TESTIMONY?



1 A: Yes.

1           COMMISSIONER DEASON: Now if there are any attorneys  
2 who wish to be excused, you may seek permission at this time.

3           MS. MASTERTON: Okay. Susan Masterton for Sprint,  
4 and with the witness testimony -- excuse me. With the witness  
5 testimony being stipulated, we've agreed with BellSouth to  
6 address the remaining issue in dispute in our posthearing  
7 brief, so I would like to ask permission to be excused from  
8 attendance at the remainder of the hearing with leave to file a  
9 posthearing brief on the remaining issue.

10           COMMISSIONER DEASON: Permission is granted.

11           MS. MASTERTON: Thank you.

12           MR. EARLY: Gary Early for Nuvox and Xspedius, and  
13 we, for like reasons, would ask to be excused at this point.  
14 All the stipulated exhibits and witnesses we agree with, and  
15 the remainder of the proceeding can proceed, I think, without  
16 me.

17           COMMISSIONER DEASON: You may be excused. Thank you.  
18 Okay. Anyone else?

19           (Transcript continues in sequence with Volume 2.)  
20  
21  
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25

1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

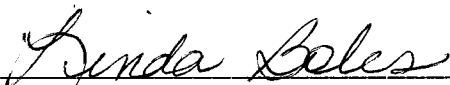
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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 14TH DAY OF NOVEMBER, 2005.

  
LINDA BOLES, RPR, CRR  
FPSC Official Commission Reporter  
(850) 413-6734