

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 4

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PROCEEDINGS: HEARING

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

DATE: Thursday, November 3, 2005

TIME: Commenced at 9:30 a.m.  
Concluded at 11:38 a.m.

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

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
(0850) 413-6732

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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## EXHIBITS

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## P R O C E E D I N G S

(Transcript follows in sequence from Volume 3.)

COMMISSIONER DEASON: Call the hearing to order.

Staff, do we have any preliminary matters before we continue with witnesses?

MR. TEITZMAN: We can move directly into witnesses.

MS. MAYS: Thank you, Commissioners. Good morning.

PAMELA A. TIPTON

was called as a witness on behalf of BellSouth Telecommunications, Inc., having been previously sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MS. MAYS:

Q Ms. Tipton, could you please provide your name and full business address for the record?

A Yes. My name is Pam Tipton. My business address is 675 West Peachtree Street, Atlanta, Georgia.

Q Who do you work for and what do you do?

A I work for BellSouth Telecommunications in the capacity of Director, Regulatory and External Affairs.

Q Did you cause to be prefiled in this proceeding 73 pages of direct testimony?

A Yes.

Q And did you also cause to be prefiled 51 pages of rebuttal testimony?

1 A Yes.

2 MS. MAYS: Commissioners, we have passed to the  
3 parties, the Commissioners, and to the court reporter an errata  
4 sheet for Ms. Tipton. Rather than go through all of them, we  
5 would like to have the errata marked as the next exhibit if we  
6 could.

7 COMMISSIONER DEASON: Yes. I believe that is Exhibit  
8 46.

9 MS. MAYS: Thank you.

10 (Exhibit 46 marked for identification.)

11 BY MS. MAYS:

12 Q Ms. Tipton, looking at the document that has been  
13 identified as Exhibit 46, are these the changes and corrections  
14 to your prefiled direct and rebuttal testimony?

15 A Yes, they are.

16 Q And subject to the errata, if I were to ask you the  
17 same questions that appear in your prefiled direct and rebuttal  
18 testimony, would your answers be the same?

19 A Yes, they would.

20 MS. MAYS: Commissioner Deason, we would ask that  
21 Ms. Tipton's direct and rebuttal testimony be entered into the  
22 record.

23 COMMISSIONER DEASON: Without objection, it shall be  
24 so inserted.

25

1                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                   DIRECT TESTIMONY OF PAMELA A. TIPTON  
3                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4                   DOCKET NO. 041269-TP  
5                   AUGUST 16, 2005  
6

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

10  
11   A.    My name is Pamela A. Tipton. I am employed by BellSouth  
12           Telecommunications, Inc., as a Director in the Interconnection Services  
13           Department. My business address is 675 West Peachtree Street, Atlanta,  
14           Georgia 30375.

15  
16   Q.    WHAT ARE YOUR CURRENT RESPONSIBILITIES?  
17

18   A.    I am a Director, responsible for regulatory policy implementation in  
19           BellSouth's nine-state region.  
20

21   Q.    PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.  
22

23   A.    I received a Bachelor of Arts in Economics from Agnes Scott College in  
24           1986, and a Masters Certification in Project Management from George  
25           Washington University in 1996. I have over 17 years experience in

1 telecommunications, with my primary focus in the areas of process  
2 development, services implementation, product management, marketing  
3 strategy and regulatory policy implementation. I joined Southern Bell in  
4 1987, as a manager in Interconnection Operations, holding several roles  
5 over a 5-year period including process development and execution, quality  
6 controls and services implementation. In 1994, I became a Senior  
7 Manager with responsibility for End User Access Services and  
8 implementation of Virtual and (later) Physical Collocation. In 2000, I  
9 became Director, Interconnection Services, responsible for development  
10 and implementation of UNE products, and later development of marketing  
11 and business strategies. In June 2003, I became responsible for  
12 implementation of state and federal regulatory mandates for the Local and  
13 Access markets, the development of regulatory strategies and the  
14 management of the switched services product portfolio. I assumed my  
15 current responsibilities on August 1, 2005.  
16  
17

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

19  
20 A. I set forth BellSouth's positions on Issue Nos. 1, 3, 4, 7, 9, 10, 13, 14, 15,  
21 21, 28 and 30, as listed in the July 15, 2005 Joint Issues Matrix filed with  
22 this Commission. In doing so, I present the interconnection agreement  
23 language that BellSouth is asking the Commission to approve in this  
24 proceeding. I also explain why BellSouth's contract language is  
25 appropriate in light of the FCC's applicable orders and rules.

1

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

6

7 Q. AS AN INITIAL MATTER, WHAT LEVEL OF SWITCHING DID THE FCC  
8 ADDRESS IN THE TRRO?

9

10 A. In the TRRO, the FCC addressed mass market local switching ("DS0 level  
11 switching") by eliminating the ILECs' obligation to provide access to DS0  
12 level switching as an unbundled network element ("UNE"). For purposes  
13 of my testimony, "Local Switching" is DS0 level switching.

14

15 The FCC earlier eliminated "DS1 and above" level "enterprise" switching in  
16 its Triennial Review Order ("TRO") in 2003. Effective March 11, 2005, the  
17 TRRO eliminated all new DS0 level switching. Thus, collectively, as a  
18 result of the TRO and the TRRO, ILECs are no longer obligated to provide  
19 unbundled access to either DS0 or DS1 and above level switching  
20 pursuant to Section 251 of the Act.

21

22 Q. ISSUE 1 SPECIFICALLY DEALS WITH THE TRANSITION OF THE  
23 EMBEDDED BASE FOR FORMER UNES. WHAT TIMEFRAME DOES  
24 THE TRRO SET FORTH FOR CLECS TO TRANSITION THEIR  
25 EMBEDDED BASE OF (1) LOCAL SWITCHING, (2) HIGH CAPACITY



1           LOOPS AND (3) DEDICATED TRANSPORT TO ALTERNATIVE  
2           SERVING ARRANGEMENTS?

3

4    A.    For most of these elements, the FCC established a 12-month transition  
5           period; however, some elements have an 18-month transition period. The  
6           transition period for each element is as follows:

7

8           LOCAL SWITCHING

9           The FCC established a 12-month period during which CLECs are  
10           obligated to transition their embedded base of local switching, including  
11           stand-alone switch ports and UNE-P lines, to alternative serving  
12           arrangements. This 12-month transition period began on March 11, 2005,  
13           and it ends on March 10, 2006.

14

15           HIGH CAPACITY LOOPS

16           DS1 and DS3 Loops

17           The FCC established a 12-month transition period during which CLECs  
18           must transition their embedded base of unimpaired and excess DS1 and  
19           DS3 loops to alternative serving arrangements. This 12-month transition  
20           period began on March 11, 2005, and it ends on March 10, 2006.

21

22           Dark Fiber Loops

23           The FCC established an 18-month transition period during which CLECs  
24           must transition their embedded base of dark fiber loops to alternative  
25           serving arrangements. This 18-month transition period begins on March

1 11, 2005 and it ends on September 10, 2006.

2  
3 DEDICATED TRANSPORT

4 DS1 and DS3 Transport Circuits

5 The FCC established a 12-month transition period during which CLECs  
6 must transition their embedded base of unimpaired and excess DS1 and  
7 DS3 transport to alternative serving arrangements. This 12-month  
8 transition period began on March 11, 2005, and it ends on March 10,  
9 2006.

10  
11 Dark Fiber Transport

12 The FCC established an 18-month transition period during which CLECs  
13 must transition their embedded base of dark fiber dedicated transport to  
14 alternative serving arrangements. This 18-month transition period began  
15 on March 11, 2005, and it ends on September 10, 2006.

16  
17 Q. CAN CLECS WAIT UNTIL THE END OF THE TRANSITION PERIOD TO  
18 BEGIN TRANSITIONING THEIR EMBEDDED BASE OF DSO LEVEL  
19 SWITCHING, HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT  
20 TO ALTERNATIVE ARRANGEMENTS?

21  
22 A. No. While some CLECs have taken the position that they are only  
23 required to submit their conversion orders (i.e., orders to convert their  
24 embedded base to an alternative arrangement) by March 10, 2006 (See  
25 July 22, 2005 Response of CompSouth to BellSouth's Motion for

1 Summary Judgment, p. 53), it is clear from the FCC's own language that  
2 is not what the FCC intended. The FCC stated that its timeframes  
3 provide: (1) adequate time to perform "the tasks necessary to an orderly  
4 transition" (TRRO, ¶ 143 (DS1/3 transport); ¶ 196 (DS1/3 loops); ¶ 227  
5 (local switching)); and (2) "the time necessary to migrate to alternative  
6 fiber arrangements" (TRRO, ¶ 144 (dark fiber transport); ¶ 198 (dark fiber  
7 loops)). Quite logically, the FCC provided a transition period for exactly  
8 that purpose, to have an orderly transition. The creation of a transition  
9 period by the FCC surely was not intended to simply provide the CLECs  
10 with a holding period during which they were required to do nothing other  
11 than prepare to submit, on the last day of the transition period, their orders  
12 to move to alternative arrangements.

13  
14 Furthermore, the FCC's creation of a transition period for the embedded  
15 base makes sense from BellSouth's perspective and should make sense  
16 from the CLECs' perspective as well. As this Commission is aware,  
17 BellSouth has interconnection agreements with over 300 CLECs in this  
18 state. Both BellSouth and the CLECs need time to effectuate the move  
19 from former UNEs to alternative serving arrangements; hence the  
20 transition period. No one acting in good faith could possibly think that the  
21 FCC intended to allow any CLEC to wait until March 10, 2006, to submit  
22 its conversion orders. Neither the CLECs nor BellSouth could handle  
23 such a volume of orders on a single day, or even in a single week, or a  
24 single month. BellSouth is committed to working with CLECs to make this  
25 transition as seamless as possible for the CLECs' end users, but the only

1 way the parties can accomplish this is if the CLECs are willing to  
2 communicate with us and work cooperatively to complete all the  
3 necessary work before the expiration of the transition period.

4

5 Q. WHAT PROCEDURE DOES BELL SOUTH PROPOSE IN ORDER TO  
6 ENSURE THAT AN ORDERLY TRANSITION IS COMPLETED BY  
7 MARCH 10, 2006?

8

9 A. BellSouth proposes the procedures outlined below for each de-listed  
10 element:

11

12 SWITCHING

13 Because four months of the transition period have expired with minimal  
14 conversion activity, BellSouth has contacted many of its UNE-P CLECs  
15 regarding their plans to convert their embedded base of UNE-P lines.  
16 BellSouth has urged CLECs who plan to convert their UNE-P lines to  
17 UNE-L to communicate their plans to BellSouth as soon as practicable.  
18 BellSouth also reminded these CLECs that they must build into their  
19 conversion plan adequate time for the preparation of collocation space,  
20 unless the CLEC already has adequate collocation space.

21

22 To effectuate the actual conversion activities, BellSouth has requested  
23 that CLECs submit orders by October 1, 2005, to convert or disconnect  
24 their Embedded Base Local Switching. Given the current view of the  
25 volume of lines that may need to be converted, this date represents the

1 last date on which such orders can be submitted with any reasonable  
2 assurance that the conversions can be completed in time. Again,  
3 BellSouth urges all CLECs to submit their conversion requests or  
4 spreadsheets to BellSouth as soon as practicable. The October 1, 2005  
5 deadline is reasonable, because it will take time for BellSouth to work with  
6 each CLEC to ensure all embedded base lines are identified, to negotiate  
7 project timelines, to issue and process service orders to change circuit  
8 inventory and billing records for those lines and to perform all necessary  
9 cutovers.

10  
11 BellSouth established this order/spreadsheet submission time deadline to  
12 ensure conversions are started in a timely manner. As I mentioned above,  
13 at least four months of the transition period have elapsed with minimal  
14 transition activity by CLECs. The October 1 deadline in no way suggests  
15 BellSouth plans to cut the transition period short. In fact, Bellsouth has  
16 been working to modify its on-line scheduling tool for bulk migrations to  
17 extend the scheduling window from 120 days to 200 days for just this  
18 purpose. CLECs will be able to schedule their bulk migration order due  
19 dates up to and including the March 10, 2006 transition period end date.

20  
21 This provides the CLECs with more than six months from the issuance of  
22 the TRRO to determine what they want to do with their embedded base. If  
23 CLECs are allowed to delay submission of their orders beyond October 1,  
24 2005, then, depending on the number of conversions that must occur, for  
25 the reasons stated above, it is unlikely that all of the conversions can be

1 accomplished before March 11, 2006.

2  
3 Meeting BellSouth's proposed deadline is important because, as was the  
4 case with the "new adds" issue involving adding new switching UNEs after  
5 March 11, 2005, the FCC's deadline of March 10, 2006 is a fixed date,  
6 beyond which CLECs are not entitled to maintain their embedded base of  
7 UNE-P lines or stand-alone local switching, or their embedded base of  
8 high capacity loops and transport (other than dark fiber loops and  
9 transport) in unimpaired wire centers. If a CLEC fails to submit orders to  
10 convert UNE-P lines to alternative arrangements in a timely manner so  
11 that BellSouth can work the changes, BellSouth will convert any remaining  
12 UNE-P lines to the resale equivalent effective March 11, 2006. For any  
13 remaining stand-alone switch port arrangements, BellSouth will disconnect  
14 these arrangements effective March 11, 2006. Disconnecting these ports  
15 is the only reasonable response to CLEC inaction, because, even though  
16 BellSouth does not have a tariffed service that is equivalent to a stand-  
17 alone switch port, there are other alternatives the CLECs may chose.  
18 Specifically, BellSouth has a Section 271 obligation to provide unbundled  
19 switching to CLECs, and CLECs may obtain stand-alone switching  
20 capability through one of BellSouth's commercial agreements.  
21 Alternatively, CLECs have all of the alternatives that the FCC found to  
22 exist, including using their own switches, or the switches of other CLECs.

23  
24 HIGH CAPACITY LOOPS

25 DS1 and DS3 Loops

1           There are two categories of DS1 and DS3 loops that must be addressed.  
2           First, there are those high capacity loops that were in service on March  
3           11, 2005, in wire centers where CLECs are not impaired without access to  
4           such high capacity loops. These constitute the "embedded base" of high  
5           capacity loops. In addition, the FCC provided, by rule, that even in wire  
6           centers where CLECs are impaired without access to DS1 and/or DS3  
7           loops, there is a cap of ten (10) DS1 loops and a cap of one (1) DS3 loop  
8           per building. Therefore, there are DS1 and DS3 loops in excess of the  
9           cap that must be addressed. BellSouth refers to these as the "excess"  
10          DS1 or DS3 loops, and they must be converted by March 10, 2006, just as  
11          the embedded base of DS1 and DS3 loops must be converted by March  
12          10, 2006.

13

14          To comply with the TRRO, BellSouth proposes that, by December 9,  
15          2005, CLECs submit spreadsheets identifying their Embedded Base and  
16          Excess DS1 and DS3 loops to be disconnected or converted to other  
17          BellSouth services. If a CLEC submits its spreadsheet by December 9,  
18          2005, BellSouth will establish a project schedule with that CLEC to convert  
19          its Embedded Base and Excess DS1 and DS3 loops to alternative  
20          arrangements by the end of the transition period. Again, as with  
21          switching, the submission of spreadsheets by December 9 initiates the  
22          process to be completed by March 10, 2006. If a CLEC does not provide  
23          notice in a timely manner, such that orderly conversions cannot be  
24          accomplished by March 10, 2006, BellSouth will convert any remaining  
25          embedded or excess high capacity loops to the corresponding tariff

1 service effective on March 11, 2006.

2

3 Dark Fiber Loops

4 The FCC established an 18-month transition period for dark fiber loops,  
5 recognizing that ILECs generally do not offer dark fiber loops as a tariffed  
6 service and that it “may take time for competitive LECS to negotiate IRUs  
7 [“Indefeasible Right of Use”] or other arrangements with incumbent or  
8 competitive carriers.” (*TRRO* at ¶197)

9

10 BellSouth proposes that, by June 10, 2006, CLECs submit spreadsheets  
11 identifying their Embedded Base Dark Fiber Loops that are to be either  
12 disconnected or converted to other BellSouth services. If a CLEC submits  
13 its spreadsheet by this date, BellSouth will establish a project schedule  
14 with that CLEC to convert its Embedded Base Dark Fiber Loops to  
15 alternative arrangements by the end of the transition period. As with the  
16 other de-listed UNEs, if a CLEC does not submit its orders in a timely  
17 fashion so that the conversions can be completed by September 11, 2006,  
18 BellSouth will commence, on that date, conversion of any remaining  
19 unbundled dark fiber to the corresponding tariff service.

20

21 DEDICATED TRANSPORT

22 DS1 and DS3 Dedicated Transport

23 As was the case with the high capacity loops, CLECs have DS1 and DS3  
24 transport that constitutes an embedded base, and, in some instances,  
25 between certain central offices, constitutes “excess” high capacity



1 transport. Provisions must be made to transition all of the embedded and  
2 excess high capacity transport. For purposes of fully implementing the  
3 TRRO, BellSouth includes Entrance Facilities in its discussion of  
4 Dedicated Transport

5  
6 BellSouth's proposes that, by December 9, 2005, CLECs must submit  
7 spreadsheets identifying their Embedded Base and Excess DS1 and DS3  
8 dedicated transport and Embedded Base Entrance Facilities that are to be  
9 either disconnected or converted to other BellSouth services. If a CLEC  
10 submits its spreadsheet by December 9, 2005, BellSouth will negotiate a  
11 project schedule with that CLEC to convert its Embedded Base and  
12 Excess DS1 and DS3 Dedicated Transport and Embedded Base Entrance  
13 Facilities to alternative arrangements by the end of the transition period.  
14 Again, the spreadsheet or order submission deadline initiates the  
15 transition process for CLECs that have not already done so. If a CLEC  
16 fails to submit such orders in a timely fashion so that the conversions can  
17 be completed by March 11, 2006, BellSouth will commence, on that date,  
18 to convert any remaining high capacity transport to the corresponding tariff  
19 service.

#### 20 21 Dark Fiber Dedicated Transport

22 The FCC established a longer, 18-month transition period for dark fiber  
23 conversions, recognizing that most ILECs do not offer dark fiber as a  
24 tariffed service and that it "may take time for competitive LECs to  
25 negotiate IRUs or other arrangements with incumbent or competitive

1 carriers.” (TRRO at ¶ 44)

2

3 For this reason, BellSouth proposes that, by June 10, 2006, CLECs must  
4 submit spreadsheets identifying their Embedded Base Dark Fiber  
5 Transport and Dark Fiber Entrance Facilities to be either disconnected or  
6 converted to other BellSouth services as conversions. If a CLEC submits  
7 its spreadsheet by June 10, 2006, BellSouth will establish a project  
8 schedule with that CLEC to convert its Embedded Base Dark Fiber  
9 Transport and Dark Fiber Entrance Facilities to alternative arrangements  
10 by the end of the transition period. As with the other de-listed UNEs, if a  
11 CLEC does not submit its orders in a timely fashion so that the  
12 conversions can be completed by September 11, 2006, BellSouth will  
13 commence, on that date, conversion of any remaining unbundled dark  
14 fiber to a corresponding tariff service.

15

16 Q. WHAT LANGUAGE DOES BELLSOUTH PROPOSE THAT THE  
17 COMMISSION APPROVE TO IMPLEMENT THE FCC'S TRANSITION  
18 PERIOD FOR DS0 LEVEL SWITCHING, HIGH CAPACITY LOOPS AND  
19 DEDICATED TRANSPORT?

20

21 A. LOCAL SWITCHING

22 For CLECs that had an interconnection agreement with BellSouth as of  
23 March 11, 2005, BellSouth proposes the language set forth in Section 4.2  
24 of Exhibit PAT-1 to my testimony for stand-alone switching and the  
25 language set forth in Section 5.4.3 of Exhibit PAT-1 to my testimony for

1           UNE-P .

2

3           BellSouth is not proposing any rates, terms or conditions for switching or  
4           UNE-P for new CLECs that sign an interconnection agreement with  
5           BellSouth after March 11, 2005, since the TRRO precludes CLECs from  
6           adding new UNE switching or UNE-P arrangements after that date.

7

8           DS1 AND DS3 LOOPS

9           For CLECs that had an interconnection agreement with BellSouth as of  
10          March 11, 2005, this language is set forth in Section 2.1.4, 2.3.6 and 2.3.8  
11          of Exhibits PAT-1 to my testimony.

12

13          DARK FIBER LOOPS

14          For CLECs that had an interconnection agreement with BellSouth as of  
15          March 11, 2005, BellSouth proposes the language set forth in Section  
16          2.8.4 of Exhibit PAT-1 to my testimony.

17

18          BellSouth is not proposing any rates, terms or conditions for dark fiber  
19          loops with new CLECs who signed an interconnection agreement with  
20          BellSouth after March 11, 2005, since the FCC found that "requesting  
21          carriers are not impaired without access to unbundled dark fiber loops in  
22          any instance." TRRO at ¶ 146

23

24          DS1 AND DS3 DEDICATED TRANSPORT AND ENTRANCE FACILITIES

25          For CLECs that had an interconnection agreement with BellSouth as of

1 March 11, 2005, this language is set forth in Section 6.2 of Exhibit PAT-1  
2 to my testimony.

3  
4 DARK FIBER DEDICATED TRANSPORT

5 For CLECs that had an interconnection agreement with BellSouth as of  
6 March 11, 2005, this language is set forth in Sections 6.9.1 of Exhibit PAT-  
7 1 to my testimony.

8  
9 **Issue 3, TRRO/Final Rules: What is the appropriate language to implement**  
10 **BellSouth's obligation to provide Section 251 access to high capacity loops**  
11 **and dedicated transport and how should the following terms be defined (i)**  
12 **Business Line (ii) Fiber-Based Collocation (iii) Building (iv) Route?**

13  
14 Q. CAN YOU ADDRESS THE TERMS MENTIONED IN ISSUE 3 THAT  
15 REQUIRE DEFINITION?

16  
17 A. Issue 3 addresses the situations where, following the TRO and the TRRO,  
18 BellSouth is still obligated to provide access to unbundled high capacity  
19 loops and transport. In a nutshell, BellSouth is required to continue to  
20 provide these elements in certain wire centers that do not meet specific  
21 criteria defined by the FCC. In the TRRO, the FCC set forth non-  
22 impairment thresholds for high capacity loops and dedicated transport.  
23 While the specific thresholds differ by service type, each contains a  
24 reference to "business line" count and "fiber-based collocation" count. The  
25 rules defining non-impairment for loops also include the term "building,"

1 and the rules for defining non-impairment for dedicated transport contain  
2 the term "route." Defining the terms "business line," "fiber-based  
3 collocation," "building" and "route" are all important because they affect the  
4 FCC's conclusions regarding the wire centers where CLECs are not  
5 impaired without access to high capacity loops or transport.

6  
7 First, I will address the definitions, and then I will describe the criteria  
8 relative to identifying the wire centers where CLECs are not impaired  
9 without access to high capacity loops and transport.

10

11 Q. WHAT IS THE PROPER DEFINITION OF "BUSINESS LINE?"

12

13 A. A business line, as used in my testimony and as defined by the FCC in 47

14 C.F.R. § 51.5, is:

15 ...an incumbent LEC-owned switched access line used to serve a  
16 business customer, whether by the incumbent LEC itself or by a  
17 competitive LEC that leases the line from the incumbent LEC. The  
18 number of business lines in a wire center shall equal the sum of all  
19 incumbent LEC business switched access lines, plus the sum of all  
20 UNE loops connected to that wire center, including UNE loops  
21 provisioned in combination with other unbundled elements. Among  
22 these requirements, business line tallies (1) shall include only those  
23 access lines connecting end-user customers with incumbent LEC  
24 end-offices for switched services, (2) shall not include non-switched  
25 special access lines, (3) shall account for ISDN and other digital  
26 access lines by counting each 64 kbps-equivalent as one line. For  
27 example, a DS1 line corresponds to 24 64 kbps-equivalents, and  
28 therefore to 24 "business lines."

29

30

31 Q. DOES THE FCC'S RULE EXCLUDE ANY PARTICULAR TYPE OF

32 UNBUNDLED LOOP FROM INCLUSION IN THE BUSINESS LINE

33 COUNT?

1

2 A. No, it does not.

3

4 Q. ARE YOU AWARE OF ANY DISAGREEMENT BETWEEN BELL SOUTH  
5 AND THE CLECS AS TO WHAT CONSTITUTES A BUSINESS LINE?

6

7 A. Yes. Some CLECs have questioned the manner in which BellSouth  
8 counted UNE loops, claiming, for example, that certain types of UNE loops  
9 that are used to provide DSL services are not "switched" by BellSouth.  
10 The FCC's definition of business lines clearly requires that BellSouth  
11 include "the sum of all UNE loops connected to that wire center, including  
12 UNE loops provisioned in combination with other unbundled elements."  
13 (emphasis added) Accordingly, BellSouth counted all UNE loops,  
14 including those that CLECs may contend are not "switched" by BellSouth.

15

16 With respect to BellSouth's retail lines, BellSouth counted only those retail  
17 lines used to serve business customers with switched voice lines or  
18 trunks, including those lines or trunks provided over high capacity  
19 transport links. When identifying the 64 Kbps equivalency of the high  
20 capacity links, BellSouth included only those high capacity transport links  
21 identified by their Uniform Service Order Codes (USOCs) as providing  
22 voice equivalent channels and did not count any with UCOCs indicating  
23 the high capacity transport was used for data equivalent channels.  
24 Where a CLEC provides a data service, such as a line sharing  
25 arrangement, BellSouth did not count any retail or resold lines that carried

1 a residence class of service, regardless of whether a CLEC was providing  
2 a data service over the same line. When both a voice and a data service  
3 were provided on the same line carrying a business class of service,  
4 BellSouth counted this as one line.

5  
6 Q. WHAT DOES THE TERM "ROUTE" MEAN?

7  
8 A. The term "route" is defined in 47 C.F.R. § 51.319(e) as the following:

- 9
- 10 ▪ a transmission path between one of an ILEC's wire centers or  
switches and another of the ILEC's wire centers or switches;
  - 11 ▪ a route between two points that may pass through one or more  
12 intermediate wire centers or switches; and
  - 13 ▪ transmission paths between identical endpoints are the same  
14 "route" irrespective of whether they pass through the same  
15 intermediate wire centers or switches, if any.

16  
17 Q, PLEASE DEFINE A FIBER-BASED COLLOCATION ARRANGEMENT.

18  
19 A. A fiber-based collocation, as specified by the TRRO in 47 C.F.R. § 51.5,  
20 and as used in my testimony is:

21  
22 "...any carrier, unaffiliated with the incumbent LEC, that maintains a  
23 collocation arrangement in an incumbent LEC wire center, with  
24 active electrical power supply, and operates a fiber-optic cable or  
25 comparable transmission facility that (1) terminates at a collocation  
26 arrangement within the wire center; (2) leaves the incumbent LEC  
27 wire center premises; and (3) is owned by a party other than the  
28 incumbent LEC or any affiliate of the incumbent LEC, except as set  
29 forth in this paragraph. Dark fiber obtained from an incumbent LEC

1 on an indefeasible right of use basis shall be treated as non-  
2 incumbent LEC fiber-optic cable. Two or more affiliated fiber-based  
3 collocators in a single wire center shall collectively be counted as a  
4 single fiber-based collocator. For purposes of this paragraph, the  
5 term affiliate is defined by 47 U.S.C. § 153(I) and any relevant  
6 interpretation of the Title.”  
7

8 In applying the FCC’s definition, BellSouth counted the number of  
9 collocators that have fiber-fed arrangements and not on how many fiber  
10 “providers” supply fiber to the wire center in question. This is consistent  
11 with the FCC’s focus on how many collocation arrangements are fiber-  
12 based.  
13

14 Q. WHAT IS THE APPROPRIATE DEFINITION OF A “BUILDING” FOR  
15 PURPOSES OF THESE CRITERIA?

16  
17 A. BellSouth is not proposing a definition of the word “building” in its contract  
18 language, because, as a practical matter, common sense dictates that the  
19 word “building” means just what it says – it is not a term of art or a  
20 technical term. If a dispute materializes, however, “building” should be  
21 defined using a “reasonable person” standard. That is, if reasonable  
22 people would believe something is a building, then it is a building. For  
23 instance, Koger Center located on Executive Center Drive in Tallahassee  
24 has separate buildings in the complex. In BellSouth’s view, Koger Center  
25 isn’t a single building, but is a complex of several separate buildings, and  
26 we believe that reasonable people would agree. Likewise, buildings such  
27 as the Sun Trust building, located at 215 Monroe Street in Tallahassee is  
28 a single building structure and - though it has multiple tenants - it is a  
29 single building. BellSouth’s view is that this is a single building, and we



1 believe that reasonable people would agree with that conclusion as well.

2

3 To my knowledge, the CLECs have not proposed a definition of the word  
4 "building." If they do so in direct testimony, BellSouth will comment on  
5 their proposed definition in rebuttal testimony.

6

7 Q. DO YOU EXPECT THAT ANY CLECS WILL ARGUE THAT, IN MULTI-  
8 TENANT BUILDINGS, EACH END USER PREMISES CONSTITUTES A  
9 SEPARATE BUILDING?

10

11 A. That would not surprise me, given what I have heard and seen in the past,  
12 but any such argument would not be reasonable. The TRRO certainly  
13 does not support such a definition for "building." Again, since the FCC did  
14 not define "building" in the TRRO, the only logical way to define this word  
15 is through its common use. A multi-tenant building is one building,  
16 regardless of the number of tenants that work or live in that building.

17

18 Q. BASED ON THE FCC'S NEW RULES, AND USING THE DEFINITIONS  
19 YOU HAVE JUST PROVIDED, UNDER WHAT CONDITIONS IS  
20 BELLSOUTH OBLIGATED TO MAKE HIGH CAPACITY LOOPS  
21 AVAILABLE TO CLECS ON AN UNBUNDLED BASIS?

22

23 A. The FCC has established specific criteria in the TRRO regarding an  
24 ILEC's continuing obligation to provide unbundled access to high capacity  
25 loops. There are unique thresholds for each type and capacity of service.

1           Once a particular threshold has been met, BellSouth is no longer obligated  
2           to provide the service associated with that threshold on an unbundled  
3           basis. In the following paragraphs, I describe the circumstances under  
4           which BellSouth remains obligated to provide access to unbundled high  
5           capacity loops pursuant to the FCC's rules, separated by loop type:

6  
7           DS1 Loops

8           BellSouth is obligated to make DS1 loops available on an unbundled basis  
9           only to buildings served by a wire center with less than 60,000 business  
10          lines or fewer than four fiber-based collocators. Said another way,  
11          BellSouth is not obligated to make DS1 loops available on an unbundled  
12          basis to buildings served by a wire center with at least 60,000 business  
13          lines and at least four fiber-based collocators. In wire centers that do not  
14          meet the FCC's threshold, and thus where unbundled DS1 loops are still  
15          available, CLECs may only obtain unbundled access to ten (10) DS1  
16          loops to any one building.

17  
18          Once a wire center has at least 60,000 lines and four fiber-based  
19          collocators, there will be no future unbundling of DS1 loops in that wire  
20          center. BellSouth provided its list of wire centers that met such criteria in  
21          its Carrier Notification Letter ("CNL") SN91085088, dated April 15, 2005,  
22          which is posted on BellSouth's interconnection website at  
23          [www.interconnection.bellsouth.com](http://www.interconnection.bellsouth.com) (and is attached to my testimony as  
24          part of Exhibit PAT-3). The April 15, 2005 CNL is based upon December  
25          2003 line count data, which I will discuss in more detail later in my

1 testimony. Since the April 15, 2005 CNL was posted, as requested by  
2 CLECs, BellSouth has recently updated its wire center list using  
3 December 2004 line count data. Attached, as Exhibit PAT-4, is the list of  
4 Florida wire centers that meet the FCC's criteria based upon the  
5 December 2004 data. Comparing the 2003 list to the 2004 list, the Florida  
6 wire centers meeting the DS1 loop threshold criteria did not change.

7  
8 The rules applicable to the provision of DS1 loops are set forth in 47 C.F.R  
9 §§ 51.319(a)(4)(ii) and (iii).

10  
11 DS3 loops

12 BellSouth is obligated to make DS3 loops available on an unbundled basis  
13 only to buildings served by a wire center with less than 38,000 business  
14 lines or fewer than four fiber-based collocators. Said another way,  
15 BellSouth is not obligated to make DS3 loops available on an unbundled  
16 basis to buildings served by a wire center with at least 38,000 business  
17 lines and at least four fiber-based collocators. In wire centers that do not  
18 meet the FCC's threshold, and thus unbundled DS3 loops are still  
19 available, CLECs may only obtain unbundled access to one (1) DS3 loop  
20 to any one building.

21  
22 Once a wire center has at 38,000 lines and four fiber-based collocators,  
23 there will be no future unbundling in that wire center. As explained above,  
24 BellSouth's April 15, 2005 CNL provided the list of unimpaired wire  
25 centers based on 2003 data, and Exhibit PAT-4 provides BellSouth's

1 Florida list based on 2004 data. Comparing the 2003 list to the 2004 list,  
2 the Florida wire centers meeting the DS3 loop threshold criteria did not  
3 change.

4  
5 The FCC's unbundling requirements for DS3 loops are set forth in 47  
6 C.F.R §§ 51.319(a)(5)(ii) and (iii).

7  
8 Dark Fiber Loops

9 BellSouth is no longer obligated to provide unbundled access to new dark  
10 fiber loops. The FCC addresses this in 47 C.F.R § 51.319 (a)(6)(ii).

11  
12 Q. UNDER WHAT CONDITIONS MUST BELLSOUTH PROVIDE  
13 UNBUNDLED ACCESS TO DEDICATED TRANSPORT?

14  
15 A. DS1 Dedicated Transport

16 BellSouth is obligated to make DS1 Dedicated Transport available on an  
17 unbundled basis on all routes for which at least one end-point of the route  
18 is a wire center containing fewer than 38,000 business lines and fewer  
19 than four fiber-based collocators. Thus, BellSouth is no longer obligated  
20 to provide unbundled access to DS1 dedicated transport on routes  
21 connecting a pair of wire centers, each of which contains at least 38,000  
22 business lines or at least four fiber-based collocators. For routes between  
23 wire centers that do not meet the FCC's thresholds, a CLEC may obtain  
24 unbundled access to no more than ten (10) DS1 dedicated transport  
25 circuits on such routes.

1

2 Once a wire center has either 38,000 lines or four fiber-based collocators,  
3 there will be no future unbundling of DS1 dedicated transport to or from  
4 that wire center when the route originates from or terminates to a wire  
5 center also meeting the FCC's thresholds. As explained above,  
6 BellSouth's April 15, 2005 CNL provided the list of unimpaired wire  
7 centers based on 2003 data, and Exhibit PAT-4 provides BellSouth's  
8 Florida list based on 2004 data. Those wire centers designated as "Tier 1"  
9 in Exhibit PAT-4 meet the thresholds for DS1 dedicated interoffice  
10 transport, and unbundling is no longer required between these Tier 1 wire  
11 centers. Comparing the 2003 list to the 2004 list, the Florida wire centers  
12 meeting the Tier 1 transport test did not change.

13

14 The FCC addresses these unbundling requirements for DS1 dedicated  
15 transport in 47 C.F.R § 51.319(e)(2)(ii).

16

### 17 DS3 Dedicated Transport

18 BellSouth is obligated to make DS3 Dedicated Transport available on an  
19 unbundled basis on all routes for which at least one end-point of the route  
20 is a wire center containing fewer than 24,000 business lines and fewer  
21 than three fiber-based collocators. Thus, BellSouth is no longer obligated  
22 to provide unbundled access to DS3 dedicated transport on routes  
23 connecting a pair of wire centers, each of which contains at least 24,000  
24 business lines or at least three fiber-based collocators. For routes  
25 between wire centers that do not meet the FCC's thresholds, a CLEC may

1 obtain unbundled access to no more than twelve (12) DS3 dedicated  
2 transport circuits on such routes.

3  
4 Once a wire center has either 24,000 lines or three fiber-based  
5 collocators, there will be no future unbundling of DS3 dedicated transport  
6 to or from that wire center when the route originates from or terminates to  
7 a wire center also meeting the FCC's thresholds. As explained above,  
8 BellSouth's April 15, 2005 CNL provided the list of unimpaired wire  
9 centers based on 2003 data, and Exhibit PAT-4 provides BellSouth's  
10 Florida list based on 2004 data. Those wire centers designated as either  
11 "Tier 1" or "Tier 2" in the exhibit meet the thresholds for DS3 dedicated  
12 interoffice transport and unbundling is no longer required between Tier 1  
13 wire centers, between Tier 2 wire centers, or between a Tier 1 wire center  
14 and a Tier 2 wire center. Comparing the 2003 list to the 2004 list, due to  
15 an increase in business lines, one (1) Florida wire center (MIAMFLBR)  
16 that had been designated as Tier 3 on the 2003 list moved to Tier 2 on the  
17 2004 list.

18  
19 The FCC addresses its unbundling requirements for DS3 transport in 47  
20 C.F.R. § 51.319(e)(2)(iii).

21  
22 Dark Fiber Transport

23 BellSouth is obligated to make Dark Fiber Dedicated Transport available  
24 on an unbundled basis on all routes for which at least one end-point of the  
25 route is a wire center containing fewer than 24,000 business lines and

1 fewer than three fiber-based collocators. Thus, BellSouth is no longer  
2 obligated to provide unbundled access to dark fiber dedicated transport on  
3 routes connecting a pair of wire centers, each of which contains at least  
4 24,000 business lines or at least three fiber-based collocators.

5  
6 Once a wire center exceeds either of these thresholds, there will be no  
7 future unbundling of Dark Fiber dedicated transport to or from that wire  
8 center when the route originates from or terminates to a wire center also  
9 meeting these thresholds. As explained above, BellSouth's April 15, 2005  
10 CNL provided the list of unimpaired wire centers based on 2003 data, and  
11 Exhibit PAT-4 provides BellSouth's Florida list based on 2004 data.

12  
13 The FCC's unbundling Requirements for dark fiber dedicated transport are  
14 set forth in 47 C.F.R. § 51.319(e)(2)(iv).

15  
16 Entrance Facilities

17 Pursuant to 47 C.F.R. § 51.319(e)(2)(i), BellSouth is no longer obligated to  
18 provide unbundled access to entrance facilities, e.g. dedicated transport  
19 that does not connect a pair of BellSouth wire centers.

20  
21 Q. HOW ARE UNBUNDLING DETERMINATIONS MADE WITH RESPECT  
22 TO EELS?

23  
24 A. The principles described above, relative to loops and dedicated interoffice  
25 transport, also apply to EELs, as these elements are what comprise an

1 EEL. The end points of the dedicated transport portion of the EEL  
2 determine the route. Dependant on the capacity, if there is no impairment  
3 for dedicated transport at the wire centers comprising the end points of the  
4 transport portion of the EEL, then BellSouth does not have to provision  
5 that portion of the EEL on an unbundled basis. Likewise, if the designated  
6 competitive threshold for the wire center serving the loop location is met,  
7 BellSouth does not have to provision that portion of the EEL on an  
8 unbundled basis. Where the competitive thresholds have been met for  
9 both the dedicated transport and loop portions of the EEL, the service is  
10 not available on an unbundled basis.

11

12 Q WHAT LANGUAGE DOES BELL SOUTH PROPOSE THAT THE  
13 COMMISSION APPROVE TO IMPLEMENT BELL SOUTH'S  
14 OBLIGATION, WHICH YOU DISCUSSED IN THE PRECEEDING  
15 ANSWERS, TO PROVIDE SECTION 251 ACCESS TO HIGH CAPACITY  
16 LOOPS AND DEDICATED TRANSPORT?

17

18 A. DS1 AND DS3 LOOPS

19 For CLECs that had an interconnection agreement with BellSouth as of  
20 March 11, 2005, BellSouth is proposing the language is set forth in  
21 Sections 1.8, 2.1.4, 2.3.6.2, and 2.3.12 of Exhibits PAT-1 to my testimony.  
22 For CLECs that did not have an interconnection agreement with BellSouth  
23 prior to March 11, 2005, this language is set forth in Sections 1.8, 2.1.4,  
24 2.3.6, 2.3.6.2, 2.3.8 and 2.3.12 of Exhibit PAT-2 to my testimony.

25



1        DARK FIBER LOOPS

2        For CLECs that had an interconnection agreement with BellSouth as of  
3        March 11, 2005, BellSouth proposes the language contained in Section  
4        2.8.4 of Exhibit PAT-1 to my testimony.

5

6        For the same reasons I mentioned in my response to Issue 1, BellSouth is  
7        not proposing rates, terms or conditions for dark fiber loops in its  
8        interconnection agreements with new CLECs who signed an  
9        interconnection agreement with BellSouth after March 11, 2005,

10

11       DS1, DS3 DEDICATED TRANSPORT AND ENTRANCE FACILITIES

12       For CLECs that had an interconnection agreement with BellSouth as of  
13       March 11, 2005, this language is set forth in Sections 1.8, and 6.2 - 6.6 of  
14       Exhibit PAT-1 to my testimony. For CLECs that did not have an  
15       interconnection agreement with BellSouth prior to March 11, 2005, this  
16       language is set forth in Sections 1.8 and 5.2 – 5.5 of Exhibit PAT-2 to my  
17       testimony.

18

19       DARK FIBER DEDICATED TRANSPORT

20       For CLECs that had an interconnection agreement with BellSouth as of  
21       March 11, 2005, this language is set forth in Sections 1.8 and 6.9 of  
22       Exhibit PAT-1 to my testimony. For CLECs that did not have an  
23       interconnection agreement with BellSouth prior to March 11, 2005, this  
24       language is set forth in Sections 1.8 and 5.9 of Exhibit PAT-2 to my  
25       testimony.

1

2 **Issue 4(a), TRRO Final Rules: Does the Commission have the authority to**  
3 **determine whether or not BellSouth's application of the FCC's Section 251**  
4 **non-impairment criteria for high – capacity loops and transport is**  
5 **appropriate?**

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

8

9 A. The FCC established the impairment criteria for high capacity loops and  
10 transport in the TRRO. The FCC is, therefore, the appropriate agency to  
11 determine whether BellSouth has properly applied its criteria.

12

13 As a practical matter, however, this Commission is being asked to  
14 approve contract language that governs the transition away from UNEs. If  
15 the CLECs and BellSouth are unable to reach agreement on the wire  
16 centers that satisfy the FCC's impairment criteria, then this Commission  
17 will find itself in the position of deciding which wire centers satisfy the  
18 FCC's rules. Indeed, consistent with the dispute resolution language in  
19 the TRRO and in current interconnection agreements, disagreements  
20 between BellSouth and CLECs over CLEC orders in wire centers that  
21 satisfy the FCC's impairment criteria will have to be resolved by this  
22 Commission.

23

24 **Issue 4(b), TRRO Final Rules: What procedures should be used to identify**  
25 **those wire centers that satisfy the FCC's Section 251 non-impairment**

1 **criteria for high-capacity loops and transport?**

2

3 Q. ASSUMING AS A PRACTICAL MATTER THAT THE STATE  
4 COMMISSION MUST ADDRESS THE MATTER OF IDENTIFYING WIRE  
5 CENTERS WHERE CLECS ARE NOT IMPAIRED, IS THERE ANY NEED  
6 FOR THIS COMMISSION TO ESTABLISH PROCEDURES OR  
7 GUIDELINES FOR IDENTIFYING THOSE WIRE CENTERS?

8

9 A. Theoretically, no. The FCC has provided adequate guidance to allow  
10 ILECs, including BellSouth, to identify those wire centers where there is no  
11 impairment, without the need for intervention by this Commission. The  
12 information needed to make that assessment - business line counts and  
13 the presence of fiber-based collocation arrangements in BellSouth wire  
14 centers - is readily available to BellSouth, and BellSouth has determined  
15 the wire centers that meet the non-impairment test. However, although  
16 BellSouth has identified the wire centers in Florida that satisfy the FCC's  
17 impairment criteria, CLECs continue to place orders for high capacity  
18 loops in wire centers identified as meeting the FCC's criteria. In its April  
19 15, 2005 CNL posting, BellSouth indicates that the Miami Palmetto  
20 (MIAMFLPL) wire center has 85,624 business lines and 5 fiber based  
21 collocation arrangements, yet CLECs continue to place orders for high  
22 capacity loops in that wire center. Clearly, this wire center meets, and  
23 indeed exceeds, the FCC's non-impairment thresholds. Under the FCC's  
24 rules, however, BellSouth has been provisioning those orders, even  
25 though we believe that the CLECs are placing the orders in error and

1 without meeting the good faith due diligence requirements that the FCC  
2 placed on the CLECs regarding the placement of such orders. In addition,  
3 because some of BellSouth's obligations will end as the transition period  
4 ends, both CLECs and BellSouth will need to have a common  
5 understanding of what constitutes a CLEC's embedded base of  
6 customers. Therefore, in an effort to efficiently resolve these types of  
7 disputes in one proceeding, rather than dragging the matter out through  
8 individual proceedings for each wire center, BellSouth explains below how  
9 it identified the wire centers that satisfy the FCC's test.

10  
11 Q. WHAT IS YOUR UNDERSTANDING OF THE IMPAIRMENT TEST?

12  
13 A. My understanding of the impairment test is that, on a wire center basis,  
14 there are checkpoints for impairment for dedicated interoffice transport  
15 and high capacity loops. I explained the criteria in my response to Issue 3  
16 above, and briefly do so again here. The criteria for assessing impairment  
17 as set forth by the FCC in its TRRO is as follows: A CLEC is not impaired  
18 without access to DS1 transport on routes connecting a pair of wire  
19 centers, each of which contains at least four fiber-based collocators or at  
20 least 38,000 business lines. For DS3 transport and dark fiber transport, a  
21 CLEC is not impaired without access on routes connecting a pair of wire  
22 centers, each of which contains at least three fiber-based collocators or at  
23 least 24,000 business lines.

24  
25 For high capacity loops, CLECs are not impaired without access to DS3

1 loops to any building within the service area of a wire center containing  
2 38,000 or more business lines and four or more fiber-based collocators.  
3 CLECs are not impaired without access to DS1 loops to any building in a  
4 wire center serving area containing 60,000 or more business lines and  
5 four or more fiber-based collocators.

6  
7 Q. HOW DID BELLSOUTH IDENTIFY THE WIRE CENTERS THAT MEET  
8 THE VARIOUS CRITERIA YOU HAVE JUST DESCRIBED?

9  
10 A. In keeping with the FCC's request for wire center access line count data in  
11 early December 2004, the starting point, as indicated by the FCC in its  
12 request, was the Automated Reporting Measurement Information System  
13 (ARMIS) reports, filed annually with the FCC by all ILECs. At the time of  
14 the FCC's initial request in December 2004, the latest available filed  
15 ARMIS reports reflected line counts as of December 2003. Following the  
16 release of the TRRO in February 2005, BellSouth updated the line count  
17 information that it had filed with the FCC in December 2004 to include the  
18 UNE loop and UNE-P data not captured in ARMIS, as directed by the  
19 FCC's definition of a business line. This data, which was almost a year  
20 old at the time, was used to provide a consistent view of line counts and to  
21 meet the FCC's intent to use line counts that were publicly available, at  
22 least at a summary level. This ostensibly provided a consistent definition  
23 of business lines known to the industry. Recently, BellSouth has updated  
24 its wire center results to include the December 2004 ARMIS data and the

1 December 2004 UNE loop and UNE-P data so that the most current  
2 information is used to establish the wire centers that satisfy the FCC's  
3 tests.

4

5 Q. DID THE ARMIS REPORTS COUNT ALL OF THE LINES THAT THE  
6 FCC INCLUDED IN ITS DEFINITION OF BUSINESS LINES?

7

8 A. No. Unbundled loops, whether provisioned on a stand-alone basis or in  
9 combination with other network elements, are not included in BellSouth's  
10 switched access line counts in ARMIS. As a result, to comply with the  
11 FCC's definition of a business line, all UNE loops connected to a wire  
12 center, including UNE loops provisioned in combination with other  
13 unbundled elements, as well as all UNE-P arrangements for which a  
14 business class of service USOC had been assigned, had to be added to  
15 the data reflected in the ARMIS reports. Initially, BellSouth used in-  
16 service quantities for December 2003 for UNE-P and UNE Loop line  
17 counts to be consistent with the time period of the December 2003 ARMIS  
18 43-08 data. BellSouth's recent update used December 2004 line counts.

19

20 Q. WERE ANY CHANGES MADE TO THE ARMIS DATA?

21

22 A. Yes. The ARMIS data is reported in summary fashion, and is not reported  
23 by wire center. Therefore, BellSouth used the underlying source data for

1 retail and resold lines so that the ARMIS reported data could be provided  
2 at the wire center level. In addition, the ARMIS reports do not report high  
3 capacity business lines in the same manner that the FCC required in the  
4 TRRO. That is, BellSouth had to identify the business high capacity digital  
5 switched access lines in each wire center and expanded the count to full  
6 system capacity. ARMIS 43-08 line counts only include provisioned or  
7 "activated" 64 kbps channels that ride high capacity digital switched  
8 access lines. For example, if a switched DS1 Carrier System had  
9 eighteen (18) 64 kbps channels provisioned as business lines for a  
10 customer, the ARMIS 43-08 would count only 18 business lines. The  
11 TRRO definition of business lines requires that the full system capacity be  
12 counted as business lines, so for TRRO purposes, the business line count  
13 for that DS1 Carrier System would be the full system capacity, or 24  
14 business lines.

15

16 Q. DID YOU TREAT THE UNE-P AND UNE LOOPS IN EACH WIRE  
17 CENTER IN THE SAME MANNER AS YOU TREATED THE RETAIL AND  
18 RESOLD LINES?

19

20 A. Generally, yes. Like the treatment of high capacity retail and resold high  
21 capacity access lines, high capacity UNE Loop lines were counted at full  
22 system capacity. For example, a DS1 UNE Loop in a wire center was  
23 counted as having 24 business lines. Likewise, BellSouth counted DS1

1 and DS3 EELs on a voice- grade equivalency. BellSouth counted each  
2 EEL at the end user wire center, not at the interoffice transport terminating  
3 wire center. However, as Mr. Fogle explains, BellSouth did not count  
4 HDSL loops at a full system capacity. Also, for certain other UNE loops –  
5 such as ADSL compatible loops, UCL-S and IDSL loops – BellSouth  
6 counted these lines on a one-for-one basis, without converting them to  
7 voice grade equivalents. Bellsouth has thus presented the more  
8 conservative view of business access lines by not availing itself of the full  
9 potential capacity of an HDSL, ADSL or IDSL loop.

10

11 Q. HAS BELLSOUTH TAKEN ANY STEPS TO VERIFY ITS BUSINESS  
12 LINE COUNTS?

13

14 A. Yes. BellSouth retained an independent third-party, Deloitte & Touche  
15 (“Deloitte”), to confirm that BellSouth performed the analysis as stated and  
16 to confirm the conclusions that BellSouth reached in implementing the  
17 non-impairment thresholds set forth in the TRRO and to identify the  
18 specific wire centers where those thresholds have been met. The results  
19 of the Deloitte review are attached as exhibits to the direct testimony of  
20 Mr. David Wallis. BellSouth did not ask Deloitte to independently define  
21 “business line” nor make any interpretation of the application of the FCC’s  
22 rules. I am responsible for the decisions that were made regarding what  
23 constituted a business line, how high capacity loops were going to be



1 measured, and so forth. Deloitte was retained to determine whether we  
2 did what we said we were going to do, and whether we did it correctly.

3

4 Q. YOU DEFINED FIBER-BASED COLLOCATORS EARLIER IN YOUR  
5 TESTIMONY. CAN YOU NOW DESCRIBE HOW BELLSOUTH  
6 COUNTED FIBER-BASED COLLOCATION ARRANGEMENTS?

7

8 A. BellSouth examined its records to determine the number of competitive  
9 fiber-based collocation arrangements in each wire center. Consistent with  
10 the FCC's specifications, if a collocation arrangement was not fed by  
11 competitive fiber, or if the arrangement was fed by competitive fiber but  
12 the equipment was not actively powered, BellSouth did not count the  
13 collocation arrangement. BellSouth then conducted site visits to physically  
14 inspect each qualifying collocation arrangement that resided in a wire  
15 center potentially meeting one of the FCC's defined thresholds.

16

17 It is important to note that BellSouth did not rely only on its records for this  
18 information. BellSouth personnel visited each wire center that its records  
19 indicated had at least three fiber-based collocation arrangements to make  
20 a physical check of the number of collocation arrangements and verify that  
21 competitive fiber facilities were serving those collocation arrangements, as  
22 well as to verify that the equipment in the arrangement was powered up.

23

24 Q. DID BELLSOUTH COUNT AFFILIATED CARRIERS' COLLOCATION  
25 ARRANGEMENTS IN A SINGLE WIRE CENTER AS MULTIPLE FIBER-

1           BASED COLLOCATION ARRANGEMENTS IN THAT WIRE CENTER?

2

3    A.    No. After the physical verification of the collocation arrangements was  
4           completed, BellSouth manually compared the list of collocators in each  
5           wire center with a list of customer names and former names from  
6           BellSouth's records to determine if there were affiliated carriers in any wire  
7           center. Where this was the case, BellSouth counted only one of the  
8           affiliated carriers' fiber-based collocation arrangements.

9

10   Q.    PLEASE DESCRIBE HOW BELL SOUTH USED THE COUNT OF  
11           BUSINESS LINES AND FIBER-BASED COLLOCATION  
12           ARRANGEMENTS IN DETERMINING THE WIRE CENTERS WHERE  
13           CLECS ARE NOT IMPAIRED.

14

15   A.    The collocation information for each wire center was merged with the  
16           count of the business lines using December 2003 data in each of the wire  
17           centers. This information was consolidated into a single list that reflects  
18           the proper Tier for the wire center, as well as the Common Language  
19           Location Identifier ("CLLI") Code for the wire center, and the number of  
20           business lines. As explained earlier, BellSouth provided in Carrier  
21           Notification Letter SN91085088, dated April 15, 2005, those wire centers  
22           that qualified under the FCC's business line and or fiber-based collocator  
23           criteria, using December 2003 line counts. Exhibit PAT-4 provides the  
24           Florida information updated with December 2004 line counts.

25

1 Q. PLEASE EXPLAIN YOUR REFERENCE TO "TIER" IN YOUR PREVIOUS  
2 RESPONSE.

3

4 A. The FCC defines "Tiers" in 47 CFR §51.319(e)(3).

5 • Tier 1 wire centers are those ILEC wire centers that contain at least  
6 four fiber-based collocators, at least 38,000 business lines, or both.

7 Once a wire center is determined to be a Tier 1 wire center, that  
8 wire center is not subject to later reclassification as a Tier 2 or Tier  
9 3 wire center.

10 • Tier 2 wire centers are those ILEC wire centers that are not Tier 1  
11 wire centers, but contain at least three fiber-based collocators, at  
12 least 24,000 business lines, or both. Once a wire center is  
13 determined to be a Tier 2 wire center, that wire center is not subject  
14 to later reclassification as a Tier 3 wire center.

15 • Tier 3 wire centers are those ILEC wire centers that do not meet  
16 the criteria for Tier 1 or Tier 2 wire centers.

17

18 Q. HOW MANY WIRE CENTERS IN FLORIDA DID BELL SOUTH FIND  
19 MEET THE CRITERIA SET FORTH BY THE FCC?

20

21 A. As shown in BellSouth's April 15, 2005 CNL, using December 2003 data  
22 and the process described above, BellSouth determined that Florida has  
23 37 Tier 1 wire centers with at least four (4) fiber-based collocation  
24 arrangements or at least 38,000 business lines. Florida also has 14 Tier 2  
25 wire centers that have at least three (3) fiber-based collocation

1 arrangements or at least 24,000 business lines. As shown on Exhibit  
2 PAT-4, using the updated December 2004 data, BellSouth has 37 Tier 1  
3 wire centers and 15 Tier 2 wire centers in Florida.

4  
5 Again looking at December 2003 data, there are 10 wire centers in which  
6 CLECs are not impaired without unbundled access to DS3 high capacity  
7 loops, and 2 wire centers where CLECs are not impaired without  
8 unbundled access to DS1 high capacity loops. Using the December 2004  
9 data results in no change to these wire centers.

10  
11 Q. HAS THIS INFORMATION BEEN SHARED WITH CLECS?

12  
13 A. BellSouth initially shared the information based on the December 2003  
14 data with CLECs on February 18, 2005, via BellSouth's Carrier Notification  
15 Process. BellSouth subsequently released Carrier Notification Letters that  
16 provided further details. These letters are all published on BellSouth's  
17 website:

18 [http://interconnection.bellsouth.com/notifications/carrier/carrier\\_lett\\_05.ht](http://interconnection.bellsouth.com/notifications/carrier/carrier_lett_05.htm)  
19 [m](http://interconnection.bellsouth.com/notifications/carrier/carrier_lett_05.htm)l. Copies of these Carrier Notifications Letters regarding the impairment  
20 assessment process are attached as Exhibit PAT-3 to my testimony.  
21 Because BellSouth just received the validated 2004 data report from  
22 Deloitte, the updated wire center list based on December 2004 data has  
23 not yet been posted to BellSouth's interconnection website. As I noted  
24 earlier, the Florida wire center list is attached as Exhibit PAT-4 to my  
25 testimony.

1

2 **Issue 4(c), TRRO Final Rules: What language should be included in**  
3 **agreements to reflect the procedures identified in (b)?**

4

5 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

6

7 A. Once the "no impairment" wire center list is approved by an agency of  
8 appropriate jurisdiction, CLECs may no longer self-certify that they are  
9 entitled to obtain high capacity loops and transport on an unbundled basis  
10 in wire centers where they are not impaired.

11

12 Q. WHAT LANGUAGE DOES BELLSOUTH PROPOSE THAT THE  
13 COMMISSION APPROVE TO ADDRESS THIS ISSUE?

14

15 A. DS1 LOOPS

16 For CLECs that had an interconnection agreement with BellSouth as of  
17 March 11, 2005, BellSouth is proposing the language in Section 2.1.4.9 of  
18 Exhibits PAT-1 to my testimony. For CLECs that did not have an  
19 interconnection agreement with BellSouth prior to March 11, 2005, this  
20 language is set forth in Section 2.1.4.4 of Exhibit PAT-2 to my testimony.

21

22 DS3 LOOPS

23 For CLECs that had an interconnection agreement with BellSouth as of  
24 March 11, 2005, this language is set forth in Section 2.1.4.10 of Exhibits  
25 PAT-1 to my testimony. For CLECs that did not have an interconnection

1 agreement with BellSouth prior to March 11, 2005, this language is set  
2 forth in Section 2.1.4.5 of Exhibit PAT-2 to my testimony.

3  
4 DS1 DEDICATED TRANSPORT

5 For CLECs that had an interconnection agreement with BellSouth as of  
6 March 11, 2005, this language is set forth in Section 6.2.6.7 of Exhibit  
7 PAT-1 to my testimony. For CLECs that did not have an  
8 interconnection agreement with BellSouth prior to March 11, 2005, this  
9 language is set forth in Section 5.2.2.4 of Exhibit PAT-2 to my testimony.

10  
11 DS3 DEDICATED TRANSPORT

12 For CLECs that had an interconnection agreement with BellSouth as of  
13 March 11, 2005, this language is set forth in Section 6.2.6.8 of Exhibit  
14 PAT-1 to my testimony. For CLECs that did not have an interconnection  
15 agreement with BellSouth prior to March 11, 2005, this language is set  
16 forth in Section 5.2.2.5 of Exhibit PAT-2 to my testimony.

17  
18 **Issue 7, TRRO/Final Rules: (a) Does the COMMISSION have the authority to**  
19 **require BellSouth to include in its interconnection agreements entered into**  
20 **pursuant to Section 252, network elements under either state law, or**  
21 **pursuant to Section 271 or any other federal law other than Section 251?**  
22 **(b) If the answer to part (a) is affirmative in any respect, does the**  
23 **Commission have the authority to establish rates for such elements? (c) If**  
24 **the answer to part (a) or (b) is affirmative in any respect, (i) what language,**  
25 **if any should be included in the ICA with regard to the rates for such**

1 **elements, and (ii) what language, if any should be included in the ICA with**  
2 **regard to the terms and conditions for such elements?**

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5

6 A. The short answer is no – state regulators do not have the authority  
7 to require BellSouth to include in section 252 interconnection  
8 agreements any element not required by section 251 of the 1996  
9 Act. This is a legal issue that BellSouth has already addressed in  
10 its *Motion for Summary Judgment, or in the Alternative, Motion for*  
11 *Declaratory Ruling* in this proceeding. My understanding is that  
12 state commissions have no legal basis to require BellSouth to  
13 include, in its interconnection agreements, network elements that  
14 are not required by Section 251 of the Act, but that may be required  
15 pursuant to either state law, Section 271 or other federal law. The  
16 1996 Act requires interconnection agreements to comply with the  
17 requirements of Section 251, and Section 251 requirements are the  
18 only requirements that Section 252 obligates ILECs to include in  
19 these agreements. I will defer to BellSouth's legal briefs for any  
20 further comment on this issue.

21

22 **Issue 9, TRRO/Final Rules: What rates, terms, and conditions should**  
23 **govern the transition of existing network elements that BellSouth is no**  
24 **longer obligated to provide as Section 251 UNEs to non-Section 251**  
25 **network elements and other services and (a) what is the proper treatment**

1 for such network elements at the end of the transition period; and (b) what  
2 is the appropriate transition period, and what are the appropriate rates,  
3 terms and conditions during such transition period, for unbundled high  
4 capacity loops, high capacity transport, and dark fiber transport in and  
5 between wire centers that do not meet the FCC's non-impairment  
6 standards at this time, but that meet such standards in the future?

7

8 Q. HOW DO YOU INTERPRET THIS ISSUE AND HOW DOES THIS ISSUE  
9 DIFFER FROM ISSUE NUMBER 1?

10

11 A. I interpret this issue to address those de-listed network elements for which  
12 there is no transition period or for which the transition period has already  
13 ended. These network elements include: entrance facilities, enterprise or  
14 DS1 level switching, OCN loops and transport, fiber to the home, fiber  
15 sub-loop feeder, "greenfield" fiber build, and packet switching. To the  
16 extent CLECs have interpreted this issue differently I will address that in  
17 my rebuttal testimony.

18

19 Q. SHOULD THE PARTIES INCORPORATE LANGUAGE IN THEIR  
20 AGREEMENT TO ALLOW CLECS TIME TO TRANSITION OFF OF  
21 THESE ELEMENTS?

22

23 A. No. The FCC eliminated ILECs' obligation to provide unbundled access to  
24 these elements almost two years ago, when it released the TRO. Any  
25 CLEC that still has rates, terms and conditions for these elements in its



1 interconnection agreement has reaped the benefits of unlawful unbundling  
2 of these elements for far too long. The Commission can not, and should  
3 not, attempt to impose any sort of transition obligation where the FCC has  
4 not required one.

5

6 Q. WHAT SHOULD THE COMMISSION ORDER WITH RESPECT TO  
7 SUCH ELEMENTS?

8

9 A. BellSouth proposes that, to the extent a CLEC has rates, terms and  
10 conditions for these elements in its interconnection agreement those rates,  
11 terms and conditions should be removed. To the extent a CLEC has any  
12 such elements or arrangements in place after the effective date of the  
13 TRRO amendment, BellSouth shall, upon 30 days' written notice,  
14 disconnect or convert such services. If the CLEC fails to submit orders to  
15 disconnect or convert such arrangements within this 30 day period,  
16 BellSouth will transition such circuits to equivalent BellSouth tariffed  
17 services. If BellSouth must identify and transition the circuit, full  
18 nonrecurring charges shall apply as set forth in BellSouth tariffs.

19

20 Q. WHAT LANGUAGE DOES BELL SOUTH PROPOSE TO ADDRESS THIS  
21 ISSUE?

22

23 A. BellSouth is proposing the same language for both existing and new  
24 CLECs. This language is set forth in Section 1.7 of Exhibits PAT-1 and  
25 PAT-2 to my testimony.

1

2 **Issue 10, TRRO/ Final Rules: What rates, terms and conditions, if any,**  
3 **should apply to UNEs that are not converted on or before March 11, 2006,**  
4 **and what impact, if any should the conduct of the parties have upon the**  
5 **determination of the applicable rates, terms and conditions that apply in**  
6 **such circumstances?**

7

8 Q. DOES THIS ISSUE ADDRESS THE SAME NETWORK ELEMENTS  
9 THAT ARE ADDRESSED IN ISSUE NUMBER 1?

10

11 A. Yes, these are de-listed UNEs subject to a transition period.

12

13 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

14

15 A. BellSouth's position is that none of the de-listed network elements for  
16 which the FCC established a transition period may remain in place after  
17 March 10, 2006 (or September 10, 2006, in the case of dark fiber  
18 elements). I address each element in more detail below:

19

20 SWITCHING

21 The FCC made clear in the TRRO that CLECs must transition their entire  
22 embedded base of DS0 level switching/UNE-P lines to alternative  
23 arrangements *by* March 11, 2006, not *on* or *after* that date. 47 C.F.R.  
24 51.319(d)(ii) states that a CLEC "*shall* migrate its embedded base of end-  
25 user customers off of the unbundled local circuit switching element to an

1 alternative arrangement *within 12 months* of the effective date of the  
2 Triennial Review Remand Order." (emphasis added). There is no  
3 question as to whether any of these elements may remain in place beyond  
4 March 11, 2006. The plain language of the FCC's Rule makes clear that  
5 they may not.

#### 6 7 STAND-ALONE SWITCHING PORTS

8 Consistent with the FCC's goals to allow the parties time to "complete the  
9 tasks necessary to an orderly transition,"<sup>1</sup> BellSouth is asking CLECs to  
10 submit no later than October 1, 2005, orders to disconnect or convert their  
11 Embedded Base local switching ports to other BellSouth services. Since  
12 BellSouth offers no tariff equivalent for DS0 level switching, BellSouth  
13 requests that the Commission provide that BellSouth may disconnect any  
14 stand-alone switching ports which remain in place on March 11, 2006.

#### 15 16 UNE-P

17 As with stand-alone switching port UNEs, BellSouth is asking CLECs to  
18 submit orders or spreadsheets to disconnect or convert their Embedded  
19 Base UNE-Ps by October 1, 2005. If a CLEC fails to submit orders or  
20 spreadsheets to convert its entire embedded base to alternative  
21 arrangements by October 1, 2005, BellSouth should be permitted to  
22 identify all such remaining Embedded Base UNE-P lines and convert them  
23 to the equivalent resold services no later than March 10, 2006. Such lines  
24 will be subject to applicable disconnect charges and the full nonrecurring

---

<sup>1</sup> TRRO at ¶ 227

1 charges as set forth in BellSouth's tariffs.

2  
3 HIGH CAPACITY LOOPS

4 DS1 and DS3 loops

5 The FCC stated clearly in the TRRO, again, that CLECs must transition  
6 their Embedded Base and Excess DS1 and DS3 Loops to alternative  
7 arrangements *by* March 11, 2006 (or September 10, 2006 in the case of  
8 dark fiber loops). The FCC stated, with regard to DS1 and DS3 loops, for  
9 example: "Because we remove a significant high-capacity loop unbundling  
10 obligations formerly placed on incumbent LECs, ..., we find it prudent to  
11 establish a plan to facilitate the transition of UNEs to alternative loop  
12 options. Specifically, we adopt a twelve-month plan for competing carriers  
13 to transition to alternative facilities or arrangements, including self-  
14 provided facilities, alternative facilities offered by other carriers, or tariffed  
15 services offered by the incumbent LEC. " (*TRRO at ¶195*)

16  
17 Here again, the FCC explained that it established a 12-month transition  
18 period to allow the parties time to "perform the tasks necessary to an  
19 orderly transition...."<sup>2</sup> To comply with the FCC's objectives, BellSouth is  
20 asking CLECs to submit spreadsheets by December 9, 2005, to  
21 disconnect or convert their Embedded Base and Excess DS1 and DS3  
22 Loops to other BellSouth services. If a CLEC fails to submit such  
23 spreadsheets by December 9, 2005, BellSouth should be permitted to  
24 identify all such remaining Embedded Base and Excess DS1 and DS3

---

<sup>2</sup> TRRO at ¶ 196

1 loops and transition such circuits to corresponding BellSouth tariffed  
2 services no later than March 10, 2006. Such lines shall be subject to  
3 applicable disconnect charges and full nonrecurring charges as set forth in  
4 BellSouth's tariffs.

5  
6 Dark Fiber Loops

7 BellSouth is asking CLECs to submit spreadsheets to disconnect or  
8 convert their Embedded Base Dark Fiber Loops to other BellSouth  
9 services by June 10, 2006. If a CLEC fails to submit such spreadsheets by  
10 June 10, 2006, BellSouth's position is that it may identify all such  
11 remaining Embedded Base Dark Fiber Loops and transition such circuits  
12 to the corresponding BellSouth tariffed service no later than September  
13 10, 2006. Such lines shall be subject to applicable disconnect charges  
14 and full nonrecurring charges as set forth in BellSouth's tariffs.

15  
16 DEDICATED TRANSPORT

17 DS1 and DS3 Dedicated Transport

18 As with the aforementioned elements, the FCC made clear its intention for  
19 CLECs to transition their embedded base and excess DS1, DS3 and Dark  
20 Fiber Transport to alternative arrangements by March 11, 2006. For  
21 example, with respect to DS1 and DS3 dedicated transport, the FCC  
22 stated: "Because we remove significant dedicated transport unbundling  
23 obligations, ..., we find it prudent to establish a plan to facilitate the  
24 transition from UNEs to alternative transport options, including special  
25 access services offered by the incumbent LECs. Specifically, for DS1 and

1 DS3 dedicated transport we adopt a twelve-month plan for competing  
2 carriers to transition to alternative facilities or arrangements..." (TRRO at  
3 ¶142)

4  
5 BellSouth is asking CLECs to submit spreadsheets by December 9, 2005,  
6 identifying all Embedded Base and Excess DS1 and DS3 Dedicated  
7 Transport and DS1 and DS3 Entrance Facilities to be disconnected or  
8 converted to other BellSouth services. If a CLEC fails to submit such  
9 spreadsheets by December 9, 2005, BellSouth should be permitted to  
10 identify any remaining Embedded Base and Excess DS1 and DS3  
11 Dedicated Transport as well as DS1 and DS3 Entrance Facilities and  
12 convert such circuits to corresponding BellSouth tariff services no later  
13 than March 10, 2006, and that such circuits shall be subject to all  
14 applicable disconnect charges and full non-recurring charges as set forth  
15 in BellSouth's tariffs.

16  
17 Dark Fiber Transport

18 BellSouth is asking CLECs to submit by June 10, 2006, spreadsheets  
19 identifying all Embedded Base Dark Fiber Transport to be disconnected or  
20 converted to other BellSouth services. If a CLEC fails to submit such  
21 spreadsheets by June 10, 2006, BellSouth's position is it may identify all  
22 remaining Embedded Base Dark Fiber Transport and covert such circuits  
23 to the corresponding BellSouth tariff service by September 11, 2006, and  
24 such circuits shall be subject to applicable disconnect charges and full  
25 non-recurring charges as set forth in BellSouth's tariffs.

1

2 To be absolutely clear, once again, what BellSouth is requesting is that  
3 the Commission make it clear that all conversions must occur prior to  
4 March 11, 2006 or, in the case of dark fiber, September 11, 2006. In an  
5 effort to ensure that end-user services are not disrupted because a CLEC  
6 has failed to arrange for the proper conversions, BellSouth has provided  
7 alternatives that unconverted elements can be changed to, for all  
8 elements other than stand-alone switching (for which BellSouth does not  
9 offer an alternative other than in its commercial agreement). However,  
10 just as was the case with the March 11, 2005 date regarding no "new  
11 adds," the March 11, 2006 date (September 11, 2006 for dark fiber) is a  
12 final date, not merely a suggestion. The FCC has provided an ample  
13 conversion period. BellSouth is willing and able to work with the CLECs to  
14 facilitate an orderly conversion. The conversions cannot, however, be left  
15 to the last minute, or last day. Should any CLEC elect to follow that  
16 course, it should be prepared for the consequences. If the CLECs meet  
17 the dates that BellSouth has requested, BellSouth will make the  
18 conversions before March 11, 2006.

19

20 Q. WHAT RATES, TERMS AND CONDITIONS DOES BELLSOUTH  
21 PROPOSE TO GOVERN EACH OF THE AFOREMENTIONED  
22 ELEMENTS IF THEY ARE NOT CONVERTED TO ALTERNATIVE  
23 ARRANGMENTS BY MARCH 11, 2006?

24

25 A. My response to this question is broken into subparts for each element

1 below:

2

3 LOCAL SWITCHING

4 For CLECs that had an interconnection agreement with BellSouth as of  
5 March 11, 2005, BellSouth proposes the language contained in Sections  
6 4.2.5 – 4.2.6 of Exhibit PAT-1 to my testimony for stand alone ports and in  
7 Sections 5.4.3.5 – 5.4.3.6 of Exhibit PAT-1 to my testimony for UNE-P.

8

9 DS1 AND DS3 LOOPS

10 For CLECs that had an interconnection agreement with BellSouth as of  
11 March 11, 2005, this language is set forth in Sections 2.1.4.11 – 2.1.4.11.2  
12 of Exhibits PAT-1 to my testimony.

13

14 DARK FIBER LOOPS

15 For CLECs that had an interconnection agreement with BellSouth as of  
16 March 11, 2005, BellSouth proposes the language contained in Sections  
17 2.8.4.7 – 2.8.4.7.2 of Exhibit PAT-1 to my testimony.

18

19 DS1 AND DS3 DEDICATED TRANSPORT

20 For CLECs that had an interconnection agreement with BellSouth as of  
21 March 11, 2005, this language is set forth in Sections 6.2.6.9 – 6.2.6.9.2 of  
22 Exhibit PAT-1 to my testimony.

23

24 DARK FIBER TRANSPORT

25 For CLECs that had an interconnection agreement with BellSouth as of



1 March 11, 2005, this language is set forth in Sections 6.9.1.9 – 6.9.1.9.2 of  
2 Exhibit PAT-1 to my testimony.

3

4 **Issue 13, TRO Commingling: What is the scope of commingling allowed**  
5 **under the FCC's rules and orders and what language should be included in**  
6 **Interconnection Agreements to implement commingling (including rates)?**

7

8 Q. HOW DOES THE FCC DEFINE COMMINGLING?

9

10 A. The FCC defines "commingling" in 47 C.F.R. § 51.5. There it states:

11

12 Commingling means the connecting, attaching, or otherwise linking  
13 of an unbundled network element, or a combination of unbundled  
14 network elements, to one or more facilities or services that a  
15 requesting telecommunications carrier has obtained at wholesale  
16 from an incumbent LEC, or the combining of an unbundled network  
17 element, or a combination of unbundled network elements with one  
18 or more such facilities or services.

19

20 Q. DID THE FCC CLARIFY WHAT IT MEANT BY "FACILITIES OR  
21 SERVICES THAT A REQUESTING TELECOMMUNICATIONS CARRIER  
22 HAS OBTAINED AT WHOLESALE FROM AN INCUMBENT LEC" IN ITS  
23 RULE?

24

25 A. Yes. The FCC describes these wholesale services in paragraph 579 of  
26 the TRO as "switched and special access services offered pursuant to  
27 tariff."

28

29 Q. DO THESE WHOLESALE SERVICES INCLUDE SECTION 271

1 ELEMENTS?

2

3 A. No. The FCC made clear in its TRO Errata Order that ILECs are not  
4 obligated to combine UNEs and UNE combinations with Section 271  
5 elements.

6

7 In paragraph 27 of its Errata Order, the FCC revised the first sentence of  
8 paragraph 584 in Part VIII A of the TRO by removing the italicized portion  
9 below: "As a final matter, we require that incumbent LECs permit  
10 commingling of UNEs and UNE combinations with other wholesale  
11 facilities and services, including *any network elements unbundled*  
12 *pursuant to section 271 and any services offered for resale pursuant to*  
13 *section 251(c)(4) of the Act."* That deletion makes clear the FCC's intent  
14 that ILECs are not required to commingle UNE and UNE combinations  
15 with Section 271 elements.

16

17 Some CLECs have attempted to confuse this issue by citing another  
18 portion of the Errata Order, where the FCC removed the sentence in italics  
19 below from footnote 1990:

20

We decline to require BOCs, pursuant to section 271, to combine  
22 network elements that no longer are required to be unbundled  
23 under section 251. Unlike section 251(c)(3), items 4-6 and 10 of  
24 section 271's competitive checklist contain no mention of  
25 "combining" and, as noted above, do not refer back to the  
26 combination requirement set forth in section 251(c)(3). *We also*  
27 *decline to apply our commingling rule, set forth in Part VII A, above*  
28 *to services that must be offered pursuant to these checklist items.*

29

1 This Commission should not be fooled. The FCC revised the text of the  
2 TRO specifically addressing this issue, and that demonstrates expressly  
3 the FCC's intent that ILECs are not required to commingle UNEs with  
4 section 271 elements. With the change to make that clear in the body of  
5 the Order, there was no reason to include the footnote language the FCC  
6 removed in the Errata Order.

7

8 Q. DO STATE COMMISSIONS HAVE JURISDICTION TO RESOLVE  
9 WHETHER THE FCC INTENDED FOR ILECS TO COMMINGLE UNES  
10 AND UNE COMBINATIONS WITH SECTION 271 ELEMENTS?

11

12 A. My lay understanding is that state commissions do not have jurisdiction  
13 over decisions related to an ILEC's 271 obligations. The Act makes clear  
14 that such decisions fall within the exclusive jurisdiction of the FCC. This  
15 has been discussed extensively in the briefs filed in this proceeding by  
16 BellSouth and I will defer to the comments made there.

17

18 Q. NOW THAT YOU HAVE ADDRESSED THE CLEC'S "271" ARGUMENT  
19 RELATED TO COMMINGLING, PLEASE TELL US TO WHAT EXTENT  
20 COMMINGLING IS ALLOWED PURSUANT TO THE TRO.

21

22 A. CLECs are permitted to commingle, or connect, attach, or otherwise link, a  
23 UNE or UNE combination with one or more of BellSouth's tariffed access  
24 services.

25

1 Q. IS BELLSOUTH OBLIGATED TO COMMINGLE EITHER ITS UNES OR  
2 TARIFFED SERVICES WITH ANOTHER CARRIER'S SERVICES?

3

4 A. No. Neither the TRO nor the TRRO imposes any obligation on ILECs to  
5 permit CLECs to commingle either their service, or a third party's service,  
6 with an ILEC UNE or tariffed service. The FCC's commingling rule  
7 requires only that "an incumbent LEC shall permit a requesting  
8 telecommunications carrier to commingle a UNE or a UNE combination  
9 with one or more facilities or services *that a requesting carrier has*  
10 *obtained at wholesale from an incumbent LEC* pursuant to a method other  
11 than unbundling under section 251(c)(3) of the Act." TRO at ¶ 579  
12 (emphasis added). Clearly, the FCC did not require ILECs to permit  
13 commingling of their services with any random service offered by another  
14 carrier.

15

16 Q. IS BELLSOUTH REQUIRED TO RATCHET INDIVIDUAL FACILITIES  
17 AND, IF NOT, HOW SHOULD BILLING FOR SUCH CIRCUITS BE  
18 HANDLED?

19

20 A. No, BellSouth is not obligated to ratchet individual facilities. The FCC  
21 made this clear in paragraph 580 of the TRO, where it stated: "...we do  
22 not require incumbent LECs to 'ratchet' individual facilities." It likewise  
23 stated in paragraph 582 of the TRO: "We decline, however, to require  
24 'ratcheting,' which is a pricing mechanism that involves billing a single  
25 circuit at multiple rates to develop a single blended rate." The FCC went

1 on, in paragraph 582, to address how billing of these circuits should be  
2 handled. It stated that ILECs are permitted to “assess the rates for UNEs  
3 (or UNE combinations) commingled with tariffed access services on an  
4 element-by-element and a service-by service basis.” In footnote 1796 of  
5 the TRO, the FCC provided an example of a CLEC combining a UNE loop  
6 to special access interoffice transport, and stated that the CLEC would  
7 pay “UNE rates for the unbundled loops and tariffed rates for the special  
8 access circuit.” Therefore, BellSouth will bill the UNE portion of the circuit  
9 at the rates set forth in the CLEC’s interconnection agreement, and the  
10 remainder of the circuit at the applicable tariff rate, or at the rates set forth  
11 in a separate agreement between the parties.

12  
13 Q. WHAT LANGUAGE DOES BELLSOUTH PROPOSE TO IMPLEMENT  
14 COMMINGLING IN ITS INTERCONNECTION AGREEMENTS?

15  
16 A. BellSouth is proposing the same language for both existing and new  
17 CLECs. This language is set forth in Sections 1.11 – 1.12 of Exhibits  
18 PAT-1 and PAT-2 to my testimony.

19  
20 **Issue 14, TRO – Conversions: Is BellSouth required to provide conversion**  
21 **of special access circuits to UNE pricing, and, if so, at what rates, terms**  
22 **and conditions and during what timeframe should such new requests for**  
23 **such conversions be effectuated?**

24  
25 Q. WHAT ARE THE FCC’S RULES REGARDING CONVERSIONS?

1

2 A. In the TRO, the FCC concluded that carriers can convert either 1) UNE or  
3 UNE combinations to wholesale services, or 2) wholesale services to UNE  
4 and UNE combinations, provided the CLEC meets any applicable service  
5 eligibility criteria. If the circuit fails to meet any applicable eligibility criteria,  
6 the ILEC can convert the UNE or UNE combination back to the equivalent  
7 wholesale service. In the TRRO, the FCC specifically prohibited CLECs  
8 from using UNEs or converting special access circuits to UNEs for the  
9 exclusive purpose of providing long distance or mobile service.<sup>3</sup>

10

11 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

12

13 A. BellSouth's position is that it is required to convert special access services  
14 to UNE pricing, subject to the FCC's limitations on high-capacity EELs,  
15 and to convert UNE circuits to special access services, provided that the  
16 requesting CLEC's contract has these terms incorporated in its contract.  
17 BellSouth believes the same conversion rate should apply regardless of  
18 the conversion and has offered that the conversion be effective as of the  
19 next billing cycle following receipt of a complete and accurate request for  
20 such a conversion. However, conversions should be limited to switch-as-  
21 is arrangements. If physical changes to the circuit are required, it should  
22 not be considered a conversion, and the full nonrecurring disconnect and  
23 installation charges should apply. In addition, conversions should be  
24 considered termination for purposes of any applicable volume and term

---

<sup>3</sup> TRRO, at ¶¶ 229 and 230

1 discount plan or grandfathered arrangements.

2

3 Q. WHAT IS BELLSOUTH'S PROPOSED LANGUAGE TO ADDRESS THIS  
4 ISSUE?

5

6 A. BellSouth is proposing the same language for both existing and new  
7 CLECs. This language is set forth in Sections 1.6, 1.13.1 and 1.13.2 of  
8 Exhibits PAT-1 and PAT-2 of my testimony:

9

10 Q. WHAT IS BELLSOUTH'S PROPOSED RATE IN FLORIDA FOR  
11 SWITCH-AS-IS CONVERSIONS?

12

13 A. In Florida, BellSouth proposes \$24.97 for the first single DS1 or lower  
14 capacity loop conversion on an LSR and \$3.52 per loop for additional  
15 loop conversions on that LSR. For a project consisting of 15 or more  
16 loops submitted on a single spreadsheet, BellSouth is proposing \$26.46  
17 for the first loop and \$5.01 for each additional loop on the same LSR  
18 generated via a spreadsheet . For DS3 and higher capacity loops and for  
19 interoffice transport conversions, BellSouth proposes a rate of \$40.28 for  
20 the first single conversion on an LSR and \$13.52 per loop for additional  
21 single conversions on that LSR. For a project consisting of 15 or more  
22 such elements in a state submitted on a single spreadsheet, BellSouth is  
23 proposing \$64.09 for the first loop and \$25.64 for each additional loop  
24 conversion on that same spreadsheet. The Commission previously  
25 ordered a rate of \$8.98 for EEL conversions.

1

2 **Issue 15, TRO-Conversions: What are the appropriate rates, terms and**  
3 **conditions and effective dates, if any, for conversion requests that were**  
4 **pending on the effective date of the TRO?**

5

6 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

7

8 A. BellSouth's position is that the terms of interconnection agreements in  
9 effect on the effective date of the TRO are the appropriate rates, terms,  
10 conditions, and effective dates for EEL conversion requests that were  
11 pending on that date.

12

13 It is my understanding that some carriers may try to claim that the TRO  
14 somehow held a retroactive requirement for ILECs to honor "pending  
15 CLEC requests" for conversion of individual elements, rather than  
16 combinations, to UNEs in spite of the fact that no rates, terms, or  
17 conditions for such conversions existed in interconnection agreements  
18 and ILECs had had no obligation to perform such conversions up to that  
19 point. However, there is no basis for this claim.

20

21 Q. PLEASE EXPLAIN HOW YOU CONCLUDE THAT ILECS DID NOT HAVE  
22 AN OBLIGATION TO PERFORM STAND-ALONE ELEMENT  
23 CONVERSIONS PRIOR TO THE TRO.

24

25 A. First, neither the FCC nor any other regulatory body had issued an order



1 obligating ILECs to perform stand-alone element conversions. In the  
2 TRO, the FCC held, for the first time, that ILECs had an obligation to  
3 convert special access circuits to stand-alone UNEs at TELRIC rates.  
4 (*TRO* at ¶¶ 586-87).

5  
6 Second, the language of the TRO itself makes clear that this was a new  
7 requirement. In paragraph 585 of the TRO, the FCC said: “We  
8 decline...to adopt rules *establishing* specific procedures....” (emphasis  
9 added) and “...carriers *can establish* any necessary procedures to perform  
10 conversions....” (emphasis added). In the next paragraph, the FCC stated:  
11 “We conclude that carriers may both convert UNEs and UNE  
12 combinations to wholesale services and convert wholesale service to  
13 UNEs and UNE combinations...” This language makes clear that this was  
14 a new requirement, and not a modification of any previous requirement.

15  
16 That point is also made clear by comparing the language above to the  
17 language addressing conversion of combinations in the TRO. The FCC  
18 stated in Paragraph 573: “We *reaffirm* our existing rules regarding UNE  
19 combinations.” (emphasis added) Paragraph 574 says: “We *reiterate* the  
20 conditions that apply to the duty of [ILECs] to provide UNE combinations  
21 upon request....” (emphasis added). In addition, paragraph 575 says:  
22 “...our rules *currently require* [ILECs] to make UNE  
23 combinations...available....” (emphasis added).

24  
25 Q. WHY DO CLECS THEN CLAIM THAT ILECS WERE REQUIRED BY THE

1 TRO TO CONVERT STAND-ALONE ELEMENTS IF THE CLEC HAD  
2 REQUESTED SUCH CONVERSIONS IN THE PAST?

3  
4 A. CLECs argue that paragraph 589 of the TRO supports this position.  
5 However, paragraph 589 discusses EELs, and only EELs. This paragraph  
6 required that for pending EEL requests that had not been converted  
7 (whether or not they would actually be converted due to the change in the  
8 qualifying criteria, i.e., the TRO's service eligibility criteria), CLECs were  
9 entitled to a true-up to the effective date of the TRO. Specifically,  
10 paragraph 589 of the TRO states:

11  
12 As a final matter, we decline to require retroactive billing to any time  
13 before the effective date of this Order. The eligibility criteria we  
14 adopt in this Order supersede the safe harbors that applied to EEL  
15 conversions in the past. To the extent pending requests have not  
16 been converted, however, competitive LECs are entitled to the  
17 appropriate pricing up to the effective date of this Order.

18  
19 There is nothing in this paragraph that addresses the conversion or  
20 requested conversion of individual elements.

21  
22 Q. WAS THIS PORTION OF THE TRO SELF-EFFECTUATING?

23  
24 A. No. In the TRO, the FCC expressly stated that the change in law  
25 procedures set forth in the interconnection agreements were the  
26 appropriate means to implement the obligations set forth in the TRO.  
27 "We decline the request of several BOCs that we override the section 252  
28 process and unilaterally change all interconnection agreements to avoid

1 any delay associated with renegotiation of contract provisions.” (TRO at  
2 ¶701).

3

4 **Issue 21, TRO – Call Related Databases: What is the appropriate ICA**  
5 **language, if any to address access to call related databases?**

6

7 Q. AS AN INITIAL MATTER, PLEASE IDENTIFY THE CALL RELATED  
8 DATABASES.

9

10 A. The FCC defines call related databases as “databases that are used in  
11 signaling networks for billing and collection or for the transmission, routing  
12 or other provision of telecommunications services.”<sup>4</sup> It identifies the  
13 following databases as call-related databases: 1) Line Information  
14 Database Base (“LIDB”), 2) Calling Name and Number (“CNAM”), 3) Toll  
15 Free Calling, 4) Local Number Portability (“LNP”), 5) Advanced Intelligent  
16 Network (“AIN”), and 6) E911.

17

18 Q. UNDER WHAT CIRCUMSTANCES IS BELLSOUTH OBLIGATED TO  
19 PROVIDE UNBUNDLED ACCESS TO ITS CALL RELATED  
20 DATABASES?

21

22 A. BellSouth is obligated to provide unbundled access to call-related  
23 databases only while it is obligated to provide unbundled access to local  
24 switching.

---

<sup>4</sup> TRO at ¶ 549

1

2 The FCC relieved ILECs of their obligation to provide unbundled access to  
3 DS1 level switching when it released the TRO almost two years ago.  
4 Therefore, BellSouth is no longer obligated to provide unbundled access  
5 to call-related databases associated with DS1 level switching.

6

7 Subsequently, in the TRRO, the FCC relieved ILECs of their obligation to  
8 provide unbundled access to DS0 level switching, subject to the transition  
9 period established in that Order. As a result, BellSouth is only obligated to  
10 provide unbundled access to call-related databases associated with DS0  
11 level switching through the end of the 12 month transition period for  
12 switching, or until March 10, 2006. Thereafter, call related databases will  
13 no longer be available on an unbundled basis.

14

15 Q. WHAT LANGUAGE SHOULD BE INCLUDED IN THE  
16 INTERCONNECTION AGREEMENT TO ADDRESS CALL-RELATED  
17 DATABASES?

18

19 A. For CLECs that had an interconnection agreement with BellSouth as of  
20 March 11, 2005, BellSouth proposes the language contained in Sections 7  
21 and 8 of Exhibit PAT-1 to my testimony. This language works in  
22 conjunction with BellSouth's proposed language for Local Switching and  
23 UNE-P, and must accompany that language. Again, BellSouth is only  
24 obligated to provide unbundled access to call-related databases while it is  
25 still obligated provide unbundled access to local switching and UNE-P.

1 BellSouth is not proposing rates, terms and conditions for call-related  
2 databases with new CLECs that sign an interconnection agreement with  
3 BellSouth after March 11, 2005, for the same reason BellSouth is not  
4 proposing rates, terms and conditions for switching and UNE-P in  
5 interconnection agreements with new CLECs.

6  
7 **Issue 28: What is the appropriate ICA language to implement BellSouth's**  
8 **EEL audit rights, if any, under the TRO?**

9  
10 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

11  
12 A. BellSouth's position is that the FCC was clear in stating the parameters of  
13 an EELs audit. The language in the interconnection agreements should  
14 reflect these parameters and need not go further. The TRO requires that:  
15 1. ILECs may audit on an annual basis to determine compliance with the  
16 qualifying service eligibility criteria;  
17 2. ILECs initially obtain and pay for the auditor;  
18 3. Auditors must be independent pursuant to American Institute for  
19 Certified Public Accountants (AICPA) standards for independence;  
20 4. The audit must be performed in accordance with AICPA standards for  
21 an "examination engagement;"  
22 5. The auditor determines material compliance or non-compliance;  
23 6. CLECs who are determined by the auditor to have failed to comply with  
24 the service eligibility requirements are required to true-up any  
25 difference in payments, convert noncompliant circuits and make

- 1 correct payments on a going-forward basis;
- 2 7. CLECs who are determined by the auditor to have failed to comply with
- 3 the service eligibility requirements must reimburse the ILEC for the
- 4 cost of the auditor;
- 5 8. ILECs must reimburse CLECs who are determined by the auditor to
- 6 have complied with the service eligibility requirements for its
- 7 demonstrable costs associated with the audit; and
- 8 9. CLECs must maintain the appropriate documentation to support their
- 9 certifications of compliance with the service eligibility requirements.

10

11 Q. WHAT IS BELLSOUTH'S PROPOSED LANGUAGE ON THIS ISSUE?

12

13 A. BellSouth is proposing the same language for both existing and new

14 CLECs. For CLECs that had an interconnection agreement with BellSouth

15 as of March 11, 2005, this language is set forth in Section 5.3.4.3 of

16 Exhibit PAT-1 to my testimony. For CLECs that did not have an

17 interconnection agreement with BellSouth prior to March 11, 2005, this

18 language is set forth in Section 4.3.4.3 of Exhibit PAT-2 to my testimony.

19

20 Q. IS THERE ANY REASON TO INCLUDE A LIST OF "ACCEPTABLE"

21 AUDITORS IN THE INTERCONNECTION AGREEMENT?

22

23 A. No. Because the TRO and the ICA language proposed by BellSouth

24 include the requirement that the AICPA standards be followed, any auditor

25 who can meet those standards should be acceptable. There is no

1 conceivable reason for requiring that the universe of auditors be limited  
2 beyond that standard nor be limited before any auditor is given the chance  
3 to make a proposal to perform an audit.

4  
5 Further, there is no requirement that the parties must agree to a particular  
6 auditor. Even if a list of "acceptable" auditors is written into the  
7 agreement, a CLEC might assert that it must agree to the particular  
8 auditor before the audit takes place. This would not only lead to great  
9 increases in the expense to both parties, but also would lead to endless  
10 delays and provide a convenient means for CLECs to avoid an audit  
11 altogether.

12  
13 Q. WHEN MUST A CLEC REIMBURSE AN ILEC FOR THE COST OF THE  
14 AUDITOR?

15  
16 A. The TRO says in paragraph 627 that "...we retain the requirement  
17 adopted in the *Supplemental Order Clarification* concerning payment of  
18 the audit costs in the event the independent auditor concludes the  
19 competitive LEC failed to comply with the service eligibility criteria."  
20 Further, footnote 1907 clarifies the *Supplemental Order Clarification* as  
21 requiring Competitive LECs to "reimburse the incumbent if the audit  
22 uncovers noncompliance with the local usage options." Paragraph 627  
23 goes on to say that "to the extent the independent auditor's report  
24 concludes that the competitive LEC failed to comply in all material  
25 respects with the service eligibility criteria, the competitive LEC must

1 reimburse the incumbent LEC for the cost of the independent auditor.”

2

3 Q. WHEN MUST AN ILEC REIMBURSE A CLEC FOR ITS  
4 DEMONSTRABLE COSTS OF THE AUDIT?

5

6 A. The TRO says in paragraph 628 that “to the extent the independent  
7 auditor’s report concludes that the requesting carrier complied in all  
8 material respects with the eligibility criteria, the incumbent LEC must  
9 reimburse the audited carrier for its costs associated with the audit.”

10

11 Q. THE LANGUAGE IN THE TRO FOR THESE TWO INSTANCES IS VERY  
12 SIMILAR. WHY DOESN’T BELLSOUTH PROPOSE TO USE THE  
13 PHRASE “IN ALL MATERIAL RESPECTS” IN BOTH CASES?

14

15 A. Through discussions with CLECs in attempting to negotiate this language,  
16 it became apparent that at least some CLECs would attempt unreasonably  
17 to twist the meaning of “all.” Some CLECs indicated that they would argue  
18 that they were not responsible for the cost of the auditor unless the auditor  
19 found that they did not comply in any respect with the service eligibility  
20 criteria. In other words, the CLECs argue that the sentence means “failed  
21 in all material respects.” However, while I am not a grammar scholar, the  
22 rules of English grammar suggest that the phrase “in all material respects”  
23 was intended to modify “comply,” not “failed.” The reading requires that  
24 the CLEC pay for the cost of the auditor if the CLEC did not materially  
25 comply with the service eligibility requirements. This may mean that the



1 auditor determines that the CLEC did not comply with one portion of the  
2 criteria, for instance, they did not have sufficient local interconnection  
3 trunks in a LATA or some percentage of the circuits in question did not  
4 meet the criteria. Whatever the noncompliance, to the extent the auditor  
5 determines that this noncompliance is material, the CLEC would be  
6 responsible for the cost of the audit even if each of the other criteria has  
7 been met to the auditor's satisfaction. To clarify this reading, BellSouth's  
8 proposal includes "any material respect" in the provision that governs  
9 when the CLEC is responsible for the cost of the auditor. Similar  
10 language changes were not needed with respect to the provision which  
11 governs when an ILEC is responsible for reimbursing the CLEC's  
12 demonstrable audit costs since no CLEC has indicated that they would  
13 argue that the language says they must have complied in each and every  
14 way before being eligible for reimbursement.

15  
16 **Issue 30, ISP Remand Core Forbearance Order: What language should be**  
17 **used to incorporate the FCC's ISP Remand Core Forbearance Order into its**  
18 **interconnection agreements?**

19  
20 Q. CAN YOU BRIEFLY DESCRIBE THE FCC'S ISP REMAND CORE  
21 FOREBEARANCE ORDER?

22  
23 A. Yes. In July 2004, Core Communications filed a petition requesting that  
24 the FCC forbear from applying the provisions of the FCC's Order on  
25 Remand and Report and Order in CC Docket 99-68 released April 27,

1 2001 ("ISP Remand Order"). Specifically, Core requested that the FCC  
2 forbear from applying the rate caps, growth caps, new markets rule, and  
3 mirroring rule of the ISP Remand Order. In the Core Order, the FCC  
4 granted Core's request in relation to the application of growth caps and  
5 the new market rule, but the FCC rejected Core's request for forbearance  
6 from the rate caps and the mirroring rule.

7  
8 Q. WHAT ARE THE RATE CAPS, GROWTH CAPS, NEW MARKETS RULE,  
9 AND MIRRORING RULE?

10  
11 A. The FCC's ISP Remand Order established that ISP-Bound Traffic is  
12 "information access" subject to Section 251(g) of the Telecommunications  
13 Act, therefore a part of the FCC's jurisdiction. The compensation method  
14 for ISP-bound Traffic consisted of growth caps, rate caps, as well as the  
15 new markets and the mirroring rule.<sup>5</sup> The FCC established growth caps to  
16 place a limit on the number of ISP-bound minutes for which a CLEC could  
17 collect compensation. The CLEC could not receive any compensation on  
18 such minutes over the established cap.

19  
20 Rate caps are limits on the per minute of use compensation rate applied to  
21 ISP-bound Traffic eligible for compensation. The declining rate structure  
22 was established as follows:

23 June 2001 through December 2001: \$0.0015

---

<sup>5</sup> ISP Remand Order- paragraphs 78-80

1 December 2001 through June 2003: \$0.0010

2 June 2003 until issuance of subsequent Order (current rate): \$0.0007

3

4 The new markets rule established that a CLEC did not qualify for  
5 compensation on ISP-Bound Traffic in any state where the CLEC was not  
6 being compensated for such traffic in the first quarter of 2001. The new  
7 markets rule disallowed compensation to new market entrants and to  
8 established CLECs who had entered into a bill and keep arrangement for  
9 ISP-bound Traffic, because in both cases, the CLEC business plan was  
10 not dependent on compensation for such traffic.

11

12 The mirroring rule requires that if ILECs want to utilize the rate caps  
13 described above for ISP-bound traffic, the ILECs must also offer to  
14 exchange traffic subject to section 251(b)(5), or what is commonly referred  
15 to as "Local Traffic," at the same declining rate as set forth in the rate caps  
16 for ISP-bound Traffic. So long as the ILEC offers to exchange both Local  
17 Traffic and ISP-bound Traffic at the capped rates, the CLEC may choose  
18 either the capped rate for both ISP-bound Traffic and Local Traffic, or may  
19 choose the capped rate for ISP-bound Traffic and the state ordered  
20 elemental rates for Local Traffic. Of course, the parties are free to agree  
21 on bill and keep or any other compensation mechanism.

22

1 Q. DOES BELLSOUTH AGREE THAT THE CORE PETITION SHOULD BE  
2 INCORPORATED IN CLEC INTERCONNECTION AGREEMENTS?

3

4 A. Yes. I will discuss this more fully below as there are some qualifiers to my  
5 response.

6

7 Q. IS IT POSSIBLE TO IMPLEMENT THIS ORDER IN THE SAME WAY  
8 WITH EVERY CLEC IN BELLSOUTH'S REGION?

9

10 A. No. This order should be handled on a case by case basis for the  
11 following reasons.

12

13 The mirroring rule allows for different rate structures that could be applied  
14 at the discretion of the CLEC. In other words, the CLEC may choose  
15 either the capped rate for both ISP-bound Traffic and Local Traffic, or may  
16 choose the capped rate for ISP-bound Traffic and the state ordered  
17 elemental rates for Local Traffic. If the Commission were to set forth a  
18 unilateral regime implementing the Core Order, the CLEC would no longer  
19 have the right to choose from these two rate structures.

20

21 BellSouth has also entered into carrier specific settlements that address  
22 the compensation of ISP-bound Traffic, making a unilateral approach  
23 unrealistic. Such settlements represented a compromise between the

1 carriers in relation to compensation for ISP-bound Traffic as well as other  
2 issues between the companies and, thus, a change in compensation  
3 structure would be inconsistent with the settlement agreement  
4

5 Finally, certain CLEC's agreements address changes in law differently and  
6 therefore the CLEC may not be entitled to implement the Core Order in  
7 accordance with the terms of that CLEC's Interconnection Agreement.  
8 For instance, Section 2.3 of Part A of the General Terms and Conditions  
9 of the interconnection agreement between MCI WorldCom  
10 Communications, Inc. ("MCI") and BellSouth dated September 12, 2001  
11 in the state of Florida states that:

12  
13 MCI or BellSouth may, on thirty (30) days written notice  
14 **(delivered not later than thirty (30) days following the**  
15 **date on which such action has become legally binding**  
16 **and effective)** require that such terms be renegotiated  
17 (Emphasis added)  
18

19 If MCI, or any company that opted in to the MCI interconnection  
20 agreement, did not provide BellSouth with a request to amend the  
21 interconnection agreement within 30 days following the effective date of  
22 the Core Order, then such company would not be entitled to amend the  
23 interconnection agreement to incorporate the Core Order.

1

2 Q. WHAT LANGUAGE DOES BELLSOUTH PROPOSE TO IMPLEMENT  
3 THIS ORDER?

4

5 A. BellSouth's proposed language will vary depending upon the CLEC's  
6 specific situation due to the fact that, as discussed above, the parties may  
7 be prohibited from implementing the Core decision depending on the  
8 terms of the current Interconnection Agreement and any settlement  
9 agreement between BellSouth and that CLEC. Additionally, if the parties  
10 are not prohibited from implementing the Core decision, the mirroring rule  
11 still permits the CLEC to choose between two different rate structures.  
12 Thus, there is no one set of language that would address each scenario  
13 for compensation of ISP-bound Traffic. In the event a CLEC proposes  
14 specific language to address this issue in its direct testimony, I will  
15 comment on such language in my rebuttal testimony.

16

17 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

18

19 A. Yes, it does.

1                   **BELLSOUTH TELECOMMUNICATIONS, INC.**  
2                   **REBUTTAL TESTIMONY OF PAMELA A. TIPTON**  
3                   **BEFORE THE**  
4                   **FLORIDA PUBLIC SERVICE COMMISSION**  
5                   **DOCKET NO. 041269-TP**  
6                   **SEPTEMBER 22, 2005**

7

8    Q.    ARE YOU THE SAME PAMELA A. TIPTON WHO FILED DIRECT  
9           TESTIMONY IN THIS DOCKET ON AUGUST 16, 2005?

10

11   A.    Yes, I am.

12

13   Q.    WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

14

15   A.    I respond to and rebut portions of the direct testimony of CompSouth witness Joseph  
16           Gillan, Sprint witness James Maples and U.S. LEC witness Wanda Montano.  
17           Specifically, I address their testimony and proposed interconnection agreement  
18           language as they relate to Issue Nos. 1, 3, 4, 7, 9, 10, 13, 14, 15, 21, 28 and 30 in the  
19           Joint Issues Matrix filed with the Florida Public Service Commission  
20           ("Commission") on July 15, 2005.

21

22   Q.    HAS BELLSOUTH REVIEWED THE CONTRACT LANGUAGE PROPOSED BY  
23           COMPSOUTH AND ATTEMPTED TO DETERMINE IF THE PARTIES CAN  
24           REACH AGREEMENT ON SOME OF THESE ISSUES?

25

1 A. Yes, BellSouth reviewed CompSouth's proposed language as it was filed with Mr.  
2 Gillan's direct testimony in Georgia. Mr. Gillan's proposed language in Florida is  
3 virtually identical to that which was filed as Exhibit JPG-1 to Mr. Gillan's direct  
4 testimony in Georgia. We have spent a significant amount of time reviewing and  
5 discussing CompSouth's proposed language with the goal of narrowing the disputes  
6 between the parties. We anticipate that these discussions will continue. It would  
7 have been helpful to have had this proposed language during the 90 day period when  
8 we were supposed to be negotiating these changes. Nevertheless, the proposed  
9 language at this late date still should be helpful to the Commission as it identifies the  
10 differences that remain between BellSouth and the other parties. I would also note  
11 that Mr. Gillan replaced his original Georgia exhibit with a revised JPG-1. I am not  
12 aware of Mr. Gillan making a similar filing in Florida.

13

14 Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT THE CONTRACT  
15 LANGUAGE PROPOSALS PRESENTED BY COMPSOUTH?

16

17 A. Yes, I do. One of our fundamental problems with CompSouth's proposed contract  
18 language is that in many instances it simply does not conform with the FCC's rules.  
19 For example:

20

21 ▪ CompSouth wrongly asserts that CLECs may wait until March 10, 2006, the  
22 last day of the transition period, to submit orders to BellSouth to convert their  
23 embedded base and excess circuits from UNEs to alternative arrangements.  
24 The FCC provided for a transition period during which the parties were to  
25 work together to convert what was formerly a UNE to some other service.



1           The FCC provided a transition period to allow the CLECs to make an orderly  
2 transition, as opposed to a flash cut. The CLECs' proposed language would  
3 simply extend the transition period beyond 12 months and is in direct conflict  
4 with TRRO ¶¶ 142, 195, and 227;

- 5
- 6       ▪     CompSouth erroneously alleges that the FCC's transition pricing for the de-  
7 listed elements applies only prospectively, from the date a CLEC amends its  
8 interconnection agreement forward. This interpretation conflicts with the  
9 clear language of the FCC, as set forth in TRRO ¶ 145, footnote 408; ¶ 198,  
10 footnote 524; and ¶ 228, footnote 630;

- 11
- 12       ▪     CompSouth incorrectly asserts that CLECs may order new dark fiber loops  
13 and entrance facilities to serve their embedded base customers during the  
14 transition period. Again, this conflicts directly with TRRO ¶227 (UNE-P), ¶  
15 146 and 182 (dark fiber loops) ¶ 66 and 141 (entrance facilities) ; and

- 16
- 17       ▪     CompSouth fails to acknowledge that CLECs must undertake a reasonably  
18 diligent inquiry to determine if they are entitled to unbundled access to high  
19 capacity loops and transport before they place orders for these elements with  
20 BellSouth, which conflicts with TRRO, ¶ 234, among other provisions.

21

22       I will expand upon these conflicts in more detail as I address the various issues later  
23 in this testimony.

24

1 My second general comment is that CompSouth's proposed language is difficult to  
2 follow because CompSouth has presented only disjointed sections of proposed  
3 language to address specific issues while not including pertinent and related sections  
4 that would reside elsewhere in an interconnection agreement. The interconnection  
5 agreement is a lengthy document, with many interrelated and interdependent sections.  
6 At a minimum, the interconnection agreement attachment 2 language should be  
7 presented as a whole to ensure interrelated issues are consistently addressed. By  
8 limiting their proposed language changes to only portions of the agreement,  
9 CompSouth fails to address other related issues.

10  
11 My third general comment is that CompSouth uses many supposedly defined terms  
12 (those which are capitalized); yet it provides no definition for these terms in its  
13 language proposal. Since these terms could be interpreted differently by different  
14 people, my rebuttal assumes that CompSouth has accepted BellSouth's definitions for  
15 these terms, unless it is obvious that they did not. For example, CompSouth uses the  
16 term "DS1 UNE loop" in its proposed language, but it does not provide a definition  
17 for this loop. Therefore, because BellSouth uses the term "DS1 loop" in its proposed  
18 language, we deleted the word "UNE" from "DS1 UNE loop" in BellSouth's redline  
19 of CompSouth's language, attached hereto as Exhibit PAT-5. In the few instances  
20 where CompSouth defined terms, but did so inconsistently with the FCC's rules (or  
21 even with its own definition supplied elsewhere in its language), we have modified  
22 such terms in Exhibit PAT-5.

23

24 Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT THE CONTRACT  
25 LANGUAGE PROPOSALS PRESENTED BY SPRINT?

1 A. Mr. Maples states that Sprint “redlined” sections of terms and conditions filed by  
2 BellSouth in a similar docket [19341-U] in Georgia”. Therefore, I will assume for  
3 purposes of my rebuttal testimony in this proceeding, that the terms and conditions  
4 which Mr. Maples has modified are terms and conditions from Exhibit PAT-1 to my  
5 direct testimony. I will also assume, for purposes of my rebuttal testimony, that  
6 where Sprint has proposed modifications to language from my exhibit which  
7 references other sections of Exhibit PAT-1, and Sprint has proposed no modifications  
8 to those referenced sections, that it accepts BellSouth’s proposed terms in those  
9 sections.

10

11 Additionally, BellSouth and Sprint have reached agreement on several issues raised  
12 by Sprint in Mr. Maples’ direct testimony. Therefore, I am not providing rebuttal  
13 testimony on those issues.

14

15 Q. HAS BELLSOUTH MADE ANY ATTEMPT TO ADDRESS THESE  
16 SHORTCOMINGS IN COMPSOUTH’S PROPOSED LANGUAGE?

17

18 A. Yes. BellSouth has attempted to redline CompSouth’s proposed interconnection  
19 agreement language in Exhibit JPG-1 to Mr. Gillan’s direct testimony in Georgia in  
20 an attempt to bring the CompSouth proposed language into compliance with the TRO  
21 and TRRO. BellSouth’s working version of its redlines to the CompSouth-proposed  
22 contract language is attached as Exhibit PAT-5 to my testimony as an aid to the  
23 Commission in evaluating where the parties disagree and to highlight how  
24 CompSouth’s proposed language is not compliant with current law. Because  
25 CompSouth did not propose a comprehensive set of terms and conditions, BellSouth

1 cannot advocate adopting even BellSouth's redlined version of the CompSouth's  
2 proposal because it would be incomplete. I will note, however, that if the CLECs had  
3 made these proposals to BellSouth to be integrated into a complete document, it is  
4 possible that BellSouth could have negotiated some resolution to some of these  
5 disputes. We simply didn't have the chance to do that prior to filing this testimony on  
6 such short notice. As a result, since we have provided our own complete versions of  
7 this language to the Commission and these versions are attached as Exhibits PAT-1  
8 and PAT-2 to my direct testimony, BellSouth requests that the Commission adopt the  
9 complete statements of the relevant portions of our basic interconnection agreement  
10 with the CLECs.

11  
12 **Issue 1:**

13 **Transition Pricing**

14  
15 Q. IN COMPSOUTH'S PROPOSED LANGUAGE FOR THE TRANSITION OF  
16 EMBEDDED BASE HIGH CAPACITY LOOPS AND TRANSPORT, AND  
17 LOCAL SWITCHING/UNE-P, IT ALLEGES THAT TRANSITION PRICING FOR  
18 EACH OF THESE ELEMENTS IS BASED ON THE "TELRIC RATE" THE CLEC  
19 PAID FOR THAT ELEMENT ON JUNE 15, 2004. DOES THIS PROPOSAL  
20 CORRECTLY REPRESENT THE REQUIREMENTS IN THE TRRO?

21  
22 A. No. The FCC stated that such pricing would be determined based on the higher of the  
23 rate **the CLEC paid** for that element or combinations of elements on June 15, 2004,  
24 or the rate the state commission ordered for that element or combination of elements  
25 between June 16, 2004 and the effective date of the Triennial Review Remand Order.

1 In most, if not all instances, the transitional rate will be the rate the CLEC paid for the  
2 element or combination of elements on June 15, 2004, plus the transitional additive  
3 (\$1 for UNE-P/Local Switching and 15% for high capacity loops and transport). For  
4 UNE-P, this includes those circuits priced at market rates for the FCC's four or more  
5 line carve-out established in the UNE Remand Order.<sup>1</sup>

6  
7 Q. IS IT CLEAR THAT THERE IS ACTUALLY A DISPUTE WITH THE CLECS  
8 OVER THIS PARTICULAR POINT?

9  
10 A. Yes, it is. Some of BellSouth's older contracts include a market based price for  
11 switching for "enterprise" customers served by DS0 level switching that met the  
12 FCC's four or more line carve-out. That is, in some of our agreements, CLECs paid  
13 TELRIC-based rates for DS0 level switching provided to "mass market" customers  
14 (those with three or fewer lines), and higher rates for those that were a part of the four  
15 or more line carve out. These terms and rates were included in the interconnection  
16 agreements and were in effect on June 15, 2004. Notwithstanding this, Mr. Gillan  
17 claims, on page 14 of his direct testimony, that "CLECs are entitled to pay TELRIC  
18 rates (plus (\$1) for all analog customers, including any customers that BellSouth may  
19 have previously claimed were 'enterprise customers' because they had four or more  
20 lines." It is difficult to say how much clearer the FCC could have been than to say  
21 that for the embedded base of UNE-Ps the CLECs would pay either the higher of the  
22 rates that were in their contracts as of June 15, 2004, or the rates that the state  
23 commissions had established between June 16, 2004 and the effective date of the  
24 TRRO, plus \$1. Yet according to Mr. Gillan, the FCC didn't really mean what it

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<sup>1</sup> Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, released November 5, 1999

1 said. Mr. Gillan misrepresents the FCC as having directed that the CLECs would  
2 always pay TELRIC plus \$1 for their embedded base, irrespective of what is in their  
3 contract with BellSouth.

4  
5 Q. PLEASE IDENTIFY THE PORTIONS OF THE TRRO THAT ADDRESS WHAT  
6 RATES WILL APPLY TO EMBEDDED BASE DS1 AND DS3 LOOPS, DS1 AND  
7 DS3 DEDICATED TRANSPORT, AND LOCAL SWITCHING/UNE-P WHILE A  
8 CLEC IS LEASING THESE ELEMENTS FROM BELLSOUTH DURING THE  
9 RELEVANT TRANSITION PERIOD.

10  
11 A. Although the language is very similar, I will separately address each set of elements  
12 below:

13 DS1, DS3 AND DARK FIBER LOOPS

14 The FCC established transition period pricing for DS1 loops in 47 C.F.R.  
15 51.319(a)(4)(iii). The rule states:

16  
17 For a 12-month period beginning on the effective date of the Triennial  
18 Review Remand Order, any DS1 loop UNEs that a competitive LEC  
19 leases from the incumbent LEC as of that date, but which the  
20 incumbent LEC is not obligated to unbundle pursuant to paragraphs  
21 (a)(4)(i) or (a)(4)(ii) of this section, shall be available for lease from  
22 the incumbent LEC at a rate equal to **the higher of (1) 115% of the**  
23 **rate the requesting carrier paid for the loop element on June 15,**  
24 **2004, or (2) 115% of the rate the state commission has established**  
25 **or establishes, if any, between June 16, 2004, and the effective date of**

1           the Triennial Review Remand Order, for that loop element. (emphasis  
2           added)

3

4           The FCC prescribed the same transition period rate increases for DS3 loops and dark  
5           fiber loops in subsections 51.319 (a)(5)(iii), and 51.319 (a)(6) of that rule,  
6           respectively.

7           DS1, DS3, AND DARK FIBER TRANSPORT

8           The FCC established transition period pricing for DS1 transport in 47 C.F.R.  
9           51.319(e)(2)(ii)(C). That rule states:

10

11           For a 12-month period beginning on the effective date of the Triennial  
12           Review Remand Order, any DS1 dedicated transport UNE that a  
13           competitive LEC leases from the incumbent LEC as of that date, but  
14           which the incumbent LEC is not obligated to unbundle pursuant to  
15           paragraphs (e)(2)(ii)(A) or (a)(4)(ii)(B) of this section, shall be  
16           available for lease from the incumbent LEC at a rate equal to **the**  
17           **higher of (1) 115% of the rate the requesting carrier paid** for the  
18           dedicated transport element **on June 15, 2004**, or (2) 115% of **the rate**  
19           **the state commission has established or establishes**, if any, between  
20           June 16, 2004, and the effective date of the Triennial Review Remand  
21           Order, for that dedicated transport element. (emphasis added)

22

23           The FCC prescribed the same transition period rate increases for DS3 dedicated  
24           transport and dark fiber in subsections (e)(2)(iii)(C) and (e)(2)(iv)(C) of that rule,  
25           respectively.

1           LOCAL SWITCHING

2           The FCC established transition period pricing for DS0 level switching in 47 C.F.R.  
3           51.319(d)(2)(iii). That rule states:

4                     ... for a 12-month period from the effective date of the Triennial  
5                     Review Remand Order, ... [t]he price for unbundled local circuit  
6                     switching in combination with unbundled DS0 capacity loops and  
7                     shared transport obtained pursuant to this paragraph shall be **the**  
8                     **higher of: (A) the rate at which the requesting carrier obtained**  
9                     **that combination** of network elements **on June 15, 2004** plus one  
10                    dollar, or **(B) the rate the state public utility commission**  
11                    **establishes**, if any, between June 16, 2004 and the effective date of the  
12                    Triennial Review Remand Order, for that combination of network  
13                    elements, plus one dollar. (emphasis added)

14  
15           There is absolutely no mention or reference to TELRIC rates in any of the rules  
16           addressing transitional pricing for these de-listed UNEs. Nor is there any suggestion  
17           that the rates included in the interconnection agreements should be restated to some  
18           different level before the additive is applied. In short, BellSouth's proposal regarding  
19           transition pricing is fully consistent with the FCC's rules, and CompSouth's is not.

20  
21    Q.   CONTINUING WITH REGARD TO TRANSITION PRICING, ON PAGE 9 OF  
22           HIS TESTIMONY, MR. GILLAN CLAIMS THAT THE FCC'S TRANSITION  
23           PERIOD PRICE INCREASES BECOME EFFECTIVE WHEN THEY ARE  
24           INTRODUCED INTO CARRIER'S INTERCONNECTION AGREEMENT. DO  
25           YOU AGREE WITH HIS CLAIM?



1 A. No, not entirely. In the ordinary course of events, Mr. Gillan would be correct.  
2 Normally, when there is a change in the law, the parties must negotiate to incorporate  
3 the change into their contract, and the change is only effective prospectively.  
4 However, as the litigation in Florida and elsewhere has demonstrated, the FCC has  
5 the power and the authority to determine that something should be done differently,  
6 and it has done so here. In this case, while it is true that the parties must amend their  
7 interconnection agreement to incorporate these transitional rates, these rates do not  
8 only apply on a limited, going forward basis as Mr. Gillan alleges. The FCC clearly  
9 indicated, to the contrary, that transition period pricing would apply for each de-listed  
10 UNE retroactively to March 11, 2005. For dedicated transport, for example, the FCC  
11 stated in footnote 408 of the TRRO that: “Dedicated transport facilities no longer  
12 subject to unbundling **shall be subject to true-up** to the applicable transition rate  
13 upon the amendment of the relevant interconnection agreements, including any  
14 applicable change of law process.” (emphasis added). The FCC sets forth this same  
15 requirement for high cap loops and UNE-P in the sections of the TRRO addressing  
16 those elements.<sup>2</sup>

17

18 Indeed, this is another situation where the CLECs’ proposed language seems to  
19 further confuse issues. Although it is surely just a simple error, CompSouth’s  
20 proposed interconnection agreement language appears to conflict with Mr. Gillan’s  
21 testimony with respect to the date the interim rates would become effective.  
22 CompSouth’s proposed language states that BellSouth may charge the interim pricing  
23 for de-listed elements from the effective date of the CLEC’s amended interconnection  
24 agreement to the end date of the transition period. (Sections 2.2.6, 2.3.6.3, 4.4.4,

---

<sup>2</sup> See also TRRO, footnotes 524 and 630, addressing true-up of transition rates for high cap loops and UNE-P respectively.

1 5.3.3.4, 6.2.4.4 and 6.9.1.5, Exhibit JPG-1). Yet, in his testimony, on page 11, Mr.  
2 Gillan states that CLECs must simply “place an order with BellSouth to qualify for  
3 transition rates.” This makes no sense. The TRRO makes it very clear that this  
4 interim pricing for each de-listed element applies from March 11, 2005, to March 10,  
5 2006 (or September 10, 2006 for dark fiber), but only while the CLEC is leasing that  
6 element from the ILEC during the relevant transition period.

7  
8 Q. ON PAGES 9 AND 10 OF HIS TESTIMONY, MR. GILLAN STATES THESE  
9 RATE CHANGES MUST TAKE EFFECT THROUGH CONTRACT CHANGES,  
10 RATHER THAN VIA UNILATERAL ACTION. HAS BELL SOUTH BEGUN  
11 BILLING TRANSITION RATES TO CLECS THAT HAVE NOT YET AMENDED  
12 THEIR INTERCONNECTION AGREEMENT TO INCORPORATE THE  
13 TRANSITION RATES?

14  
15 A. No, it has not. Again, BellSouth assumes this is essentially a reference to the issue  
16 we had with regard to the “no new adds” controversy about whether an FCC-ordered  
17 change is self-effectuating. BellSouth has not asserted, with regard to the embedded  
18 base, that the transition rates would go into effect without a contract amendment. The  
19 FCC clearly stated that the contracts would need to be amended, and that the  
20 transition rates would then be retroactive to March 11, 2005. This is perfectly clear  
21 from reading the TRRO, and BellSouth has not proposed any language in its contract  
22 amendments that would suggest anything to the contrary.

23  
24 Once interconnection agreements are amended to incorporate the rates, terms and  
25 conditions associated with the transition of each de-listed UNE or UNE combination,

1 the transition rate must be trued-up in a timely manner to the March 11, 2005  
2 transition period start date.

3

4 Q. ON PAGES 10-11 OF MR. GILLAN'S DIRECT TESTIMONY, HE SUGGESTS  
5 THAT THE TRRO IS UNCLEAR AS TO THE TIME PERIOD DURING WHICH  
6 THE TRANSITION RATES SHOULD APPLY. DO YOU AGREE?

7

8 A. No. The TRRO specifically states that these rates will apply only while the CLEC is  
9 leasing the de-listed element from the ILEC during the relevant transition period. See  
10 TRRO, ¶¶ 145, 198 and 228. The transition rates will thus apply until the earlier of  
11 March 10, 2006 (or September 10, 2006 for dark fiber), or the date the de-listed  
12 UNEs are converted to the alternative arrangements ordered by the CLEC. Once the  
13 de-listed UNE is converted to an alternative service, the CLEC will be billed the  
14 applicable rates for that alternative service going forward.

15

16 **Transition Period**

17

18 Q. MOVING FROM TRANSITION PRICING TO THE TRANSITION PERIOD  
19 ITSELF, BASED ON YOUR REVIEW OF COMPSOUTH'S PROPOSED  
20 LANGUAGE, DO THE PARTIES AGREE ON THE START DATE AND END  
21 DATES FOR THE TRANSITION PERIOD?

22

23 A. Yes. In the first paragraph under each bolded heading in CompSouth's proposed  
24 transition language, it delineates when the transition period will begin and end.  
25 (Sections 2.2.1, 2.3.6.1.1, 4.4.1, 5.3.3.1, 6.2.1, and 6.9.1.1) Based on this language,

1 BellSouth and CompSouth do agree on the start and end dates for the transition  
2 period.

3

4 On page 10 of his direct testimony, Mr. Maples acknowledges that the transition  
5 period for switching “must be completed 12 months after the effective date of the  
6 TRRO”, but he states that this completion date is March 11, 2006. While I believe  
7 that Sprint and BellSouth agree on the end date for the applicable transition periods, I  
8 would nonetheless like to clarify that the transition period for switching/UNE-P, DS1  
9 and DS3 loops, and DS1 and DS3 transport ends on March 10, 2006, not March 11,  
10 2006.

11

12 Finally, on page 17 of her direct testimony, Wanda Montano states that “U.S. LEC  
13 agrees that the transition period for UNE loops and dedicated transport that were  
14 installed in wire centers that are considered non-impaired as of March 11, 2005...  
15 ends as of March 10, 2006.”

16

17 Q. IF THE PARTIES AGREE TO THE START AND END DATES FOR THE  
18 TRANSITION PERIOD, WHAT IS THE NATURE OF THE DISAGREEMENT  
19 ABOUT THE TRANSITION TIMEFRAME?

20

21 A. The issue between the parties is what activity must occur during the transition period.  
22 BellSouth believes that the transition process must begin and end within the transition  
23 period. According to Mr. Gillan, the CLECs evidently believe that the process only  
24 has to begin within the transition period, with the completion of the transition  
25 occurring at some later date. For example, in paragraph 2.2.9 of Exhibit JPG-1, Mr.

1 Gillan proposes that “No later than March 10, 2006, CLEC shall submit  
2 spreadsheet(s) identifying all of the Embedded Customer Base of circuits ....” Any  
3 rational person must understand that a spreadsheet cannot be submitted on March 10,  
4 2006, and worked that same date, particularly when the spreadsheet includes facilities  
5 that are to be “transitioned to wholesale facilities obtained from other carriers or self-  
6 provisioned ....” Consequently, simply as a matter of logic, since the parties agree as  
7 to when the transition period begins and ends, the CLECs’ position on the submission  
8 of orders must be rejected.

9  
10 Beyond that, the FCC itself made it clear that the purpose of the transition period was  
11 so that the process of transitioning former UNEs could begin and end during that 12-  
12 month period. The FCC said in Paragraph 227 of the TRRO what must occur during  
13 the transition period:

14 We believe it is appropriate to adopt a longer, twelve-month, transition  
15 period than was proposed in the *Interim Order and NPRM*. We  
16 believe that the twelve-month period provides adequate time for **both**  
17 **competitive LECs and incumbent LECs to perform the tasks**  
18 **necessary to an orderly transition, which could include deploying**  
19 **competitive infrastructure, negotiating alternative access**  
20 **arrangements, and performing loop cut overs or other**  
21 **conversions.** Consequently, carriers have twelve months from the  
22 effective date of this Order to modify their interconnection  
23 agreements, including completing any change of law processes. By  
24 the end of the twelve month period, requesting carriers must transition

1           the affected mass market local circuit switching UNEs to alternative  
2           facilities or arrangements. (footnotes omitted) (emphasis added).

3  
4           How much more clear could the FCC be than saying “By the end of the twelve month  
5           period, requesting carriers must transition the affected mass market local circuit  
6           switching UNEs to alternative facilities or arrangements?” The FCC didn’t say that  
7           the CLECs just had to arrange to make the transition, or just had to submit orders to  
8           effect the transition, but that the CLECs had to “transition” the affected UNEs to  
9           alternative arrangements. The CLECs’ position is unfounded and contrary to the  
10          FCC’s specific directives. It is simply another attempt, thinly veiled, to generate a  
11          few more days or months, or perhaps years, where the CLECs could obtain these  
12          former UNEs at TELRIC rates.

13

14    **New Adds during the Transition period**

15

16    Q.    WHAT IS THE ISSUE WITH REGARD TO THE CLECS’ POSITION ON NEW  
17          ADDS?

18

19    A.    CompSouth’s proposed language provides that during the twelve month transition  
20          period that they can add new DS1 and DS3 loops, and DS1, DS3 and Dark Fiber  
21          Dedicated Transport to serve their embedded base. That assertion is completely  
22          inconsistent both with the language of the TRRO and its accompanying rules.

23

24          Of course, CLECs are entitled to order high capacity loops and transport in wire  
25          centers where the CLEC has certified, after undertaking a reasonably diligent inquiry,

1 that it is entitled to order such loops and transport at UNE rates. However,  
2 CompSouth does not include self certification requirement language in its language  
3 proposal; instead it simply claims that it is entitled to these additional loops and  
4 transport during the transition period.

5  
6 Q. MAY CLECS ADD NEW ENTRANCE FACILITIES DURING THE TRANSITION  
7 PERIOD, AS WOULD BE PERMITTED PURSUANT TO COMPSOUTH'S  
8 PROPOSED LANGUAGE IN SECTION 6.2.2 OF EXHIBIT JPG-1?

9  
10 A. Absolutely not. The FCC concluded in the TRO that CLECs were not impaired  
11 without unbundled access to entrance facilities, and it affirmed that finding in the  
12 TRRO.<sup>3</sup> BellSouth is offering to allow embedded base UNE entrance facilities to  
13 remain in place during the transition period as an accommodation to help effectuate  
14 an orderly transition process for embedded base and excess dedicated transport  
15 facilities. CLECs certainly have no right to order new UNE entrance facilities.

16  
17 CompSouth's proposed language violates this requirement in Section 6.2.2 of Exhibit  
18 JPG-1, where it states "CLEC shall be entitled to order and BellSouth shall provision  
19 DS1 and DS3 UNE Dedicated Transport, including DS1 and DS3 UNE Entrance  
20 Facilities, that CLEC orders for the purpose of serving CLEC's Embedded Customer  
21 Base and such facilities are included in the Embedded Customer Base." This cannot  
22 be reconciled with the FCC's ruling.

23  

---

<sup>3</sup> TRO, ¶ 366, footnote 1116; TRRO, ¶ 66

1 Q. MAY CLECS ADD NEW UNE SWITCH PORTS OR UNE-P LINES DURING  
2 THE TRANSITION PERIOD, AS COMPSOUTH'S PROPOSED LANGUAGE  
3 SUGGESTS?

4

5 A. No, not as CompSouth's language proposes. The FCC specifically stated: "This  
6 transition period shall apply only to the embedded customer base" (TRRO at ¶ 199) ,  
7 and does not permit competitive LECs to add "new local switching as an unbundled  
8 network element" 47 C.F.R.§(d)(2)(iii). Further, the DS0 capacity local switching  
9 rule is clear – ILECs have no obligation to continue provisioning unbundled local  
10 switching. This rule, at 47 C.F.R.§ 51.319(d)(2)(i) states that: "An incumbent LEC  
11 is not required to provide access to local circuit switching on an unbundled basis to  
12 requesting telecommunications carriers for the purpose of serving end user customers  
13 using DS0 loops.

14

15 CompSouth's proposed language in Sections 4.4.2 and 5.3.3.2 of Exhibit JPG-1  
16 violates this requirement. CompSouth's proposal is that "CLEC shall be entitled to  
17 order and BellSouth shall provision Local Switching orders [UNE-P] that CLEC  
18 orders for the purpose of serving CLEC's Embedded Customer Base and such  
19 facilities are included in the Embedded Customers Base." This proposed language is  
20 in direct conflict with the plain language of this Commission's ruling and the FCC's  
21 order.

22 **Process Issues**

23

24 Q. IS BELLSOUTH OBLIGATED TO PROVIDE WRITTEN NOTICE TO EACH  
25 CLEC OF THEIR EMBEDDED BASE OF UNES THAT MUST BE CONVERTED



1 TO ALTERNATIVE SERVING ARRANGEMENTS AS COMPSOUTH  
2 PROPOSES IN SECTIONS 2.2.9, 2.3.6.4, 4.4.5, 5.3.3.5, 6.2.4.7 AND 6.9.1.7 OF  
3 EXHIBIT JPG-1?  
4

5 A. No. The question is whether the CLECs are responsible for identifying what is in  
6 their embedded base, and telling BellSouth what the CLECs want to do with the  
7 embedded base as the embedded base is transitioned, or whether BellSouth should be  
8 required to notify the CLECs of the facilities that BellSouth believes are in the  
9 embedded base. It makes sense that each CLEC should identify its embedded base,  
10 and notify BellSouth of what it wants to do with that base. The alternative is for  
11 BellSouth to attempt to identify the embedded base, and then have the CLECs, in  
12 turn, figure out what they want to do with the embedded base, and then notify  
13 BellSouth of their decision. Why have two steps, performed by different players to  
14 achieve the results that one player, the CLEC, is clearly responsible for determining?  
15 Only the CLEC knows what it wants to do with its embedded base. What is the point  
16 in having BellSouth identify the base for the CLECs, who have their own records  
17 upon which they can make this determination? Other than hoping that BellSouth  
18 might miss some of the former UNEs, thus extending the CLECs use of something  
19 they are not entitled to have, there doesn't seem to be much point in the CLECs'  
20 position. Further, BellSouth has hundreds of CLECs with which it is going to have to  
21 coordinate in order to transition former UNEs. Requiring BellSouth to devote its  
22 resources to identifying the embedded base, when each individual CLEC can use its  
23 own resources to identify its own embedded base, is not very efficient.  
24

1 Q. MAY A CLEC SPREADSHEET TAKE THE PLACE OF A LOCAL SERVICE  
2 REQUEST ("LSR") OR ACCESS SERVICE REQUEST ("ASR") FOR PURPOSES  
3 OF CONVERTING EMBEDDED BASE AND EXCESS CIRCUITS TO  
4 ALTERNATIVE SERVING ARRANGEMENTS AS COMPSOUTH PROPOSES IN  
5 SECTIONS 2.2.9, 2.3.6.4, 4.4.5, 5.3.3.5, 6.2.4.7 AND 6.9.1.7 OF EXHIBIT JPG-1?  
6

7 A. It depends. CLECs must follow the ordering procedures that BellSouth has in place  
8 for each de-listed UNE. To bulk convert UNE-P services to UNE-L arrangements, a  
9 spreadsheet may not be substituted for an LSR. Instead, BellSouth has provided  
10 CLECs with an on-line pre-ordering scheduling tool to permit the reservation of due  
11 dates associated with Bulk Migrations. Once spreadsheets are submitted and the  
12 parties agree that all de-listed UNE circuits are identified, CLECs may proceed with  
13 the normal process for Bulk migrations. To convert high-cap loops and transport to  
14 alternative services, however, CLECs may submit such requests on a spreadsheet and  
15 the spreadsheet will take the place of an LSR/ASR. If the CLECs comply with the  
16 reasonable dates BellSouth has proposed for submitting conversion requests, we can  
17 achieve an orderly transition using BellSouth's existing procedures.  
18

19 **UNE-P transition**  
20

21 Q. ON PAGES 10 AND 11 OF HIS DIRECT TESTIMONY, MR. MAPLES  
22 ADDRESSES THE OCTOBER 1, 2005 DATE PROPOSED BY BELL SOUTH BY  
23 WHICH CLECS MUST SUBMIT ORDERS TO CONVERT THEIR EMBEDDED  
24 BASE OF UNE-P TO ALTERNATIVE ARRANGEMENTS. HOW DO YOU  
25 RESPOND?

1 A. Mr. Maples suggests that, “[a] definitive timetable could be developed if the parties  
2 knew the alternative arrangement selected, the number of UNE-P lines that needed to  
3 be transitioned, and BellSouth’s capabilities with respect to order processing.” I  
4 agree. If all CLECs had begun communicating with BellSouth about their conversion  
5 intentions early in the transition period, BellSouth might have proposed different  
6 transition language. The reality is, however, that most CLECs had not communicated  
7 with us about their conversion intentions even four months after the effective date of  
8 the TRRO. As a result, BellSouth proposed a date certain of October 1, 2005 by  
9 which CLECs need to submit their UNE-P conversion orders, since this date would  
10 permit BellSouth to work all UNE-P conversion options, including conversion to  
11 UNE-L, by March 10, 2006. BellSouth is not proposing to work all the conversion  
12 orders 5-6 months in advance of the end of the transition period. Rather, BellSouth  
13 proposes the transition process start in time to enable completion by the March 10,  
14 2006 end date.

15

16 Q. HOW DO YOU RESPOND TO THE STAGGERED ORDER SUBMISSION  
17 DATES SPRINT IS PROPOSING ON PAGE 11 OF MR. MAPLES’ TESTIMONY?

18

19 A. Sprint proposes that CLECs be required to submit orders to convert 1/3 of their  
20 embedded base of UNE-P by November 1, 2005, another 1/3 of its embedded base by  
21 December 1, 2005, and all remaining embedded base by January 9, 2006. Sprint’s  
22 proposal appears to be reasonable. However, I must mention here that while Sprint’s  
23 proposed staggered conversion dates may work for Sprint and perhaps other CLECs,  
24 they will likely not work for all CLECs. As Mr. Maples notes earlier in his  
25 testimony, due dates for conversion orders, spreadsheets, etc. must take into

1 consideration the size of each CLP's embedded base of UNE-P lines and the  
2 conversion alternative(s) the CLP has chosen. If a CLP has a large embedded base  
3 and intends to convert its entire embedded base of UNE-P to UNE-L, the staggered  
4 dates proposed by Sprint may not provide BellSouth ample time to perform all of  
5 these conversions by March 10, 2006.

6  
7 **DS1 and DS3 loop transition language**

8  
9 Q. ON PAGE 17-18 OF MR. MAPLES' TESTIMONY, HE PROPOSES  
10 MODIFICATIONS TO BELLSOUTH'S DS1 AND DS3 LOOP TRANSITION  
11 LANGUAGE. HOW DO YOU RESPOND?

12  
13 It is my understanding that BellSouth and Sprint have negotiated mutually acceptable  
14 changes to this language.

15  
16 On a related issue regarding BellSouth's High Capacity Loop language, I would like  
17 to make this Commission aware that BellSouth is revising sections 2.1.4.5, 2.1.4.9  
18 and 2.1.4.10 in Exhibit PAT-1. BellSouth is revising Section 2.1.4.5 to clarify that  
19 the transition period will apply to both Embedded Base and Excess DS1 and DS3  
20 Loops. BellSouth is revising Sections 2.1.4.9 and 2.1.4.10 to remove inadvertent  
21 section references within them.

22  
23 Sections 2.1.4.9 and 2.1.4.10 both reference Section 2.1.4.5.1, which sets forth the  
24 non-impairment thresholds for DS1 loops, and Section 2.1.4.5.2, which sets forth the  
25 non-impairment thresholds for DS3 loops. Since only the non-impairment thresholds

1 for DS1 loops should be addressed in Section 2.1.4.9, BellSouth is deleting the  
2 reference to 2.1.4.5.2 in that section. Likewise, since only the non-impairment  
3 thresholds for DS3 loops should be addressed in Section 2.1.4.10, BellSouth is  
4 deleting the reference to 2.1.4.5.1 in that section. These particular sections are  
5 redlined below to illustrate the changes BellSouth is making to its proposed language.

6  
7 2.1.4.5 Notwithstanding anything to the contrary in this Agreement, and except as  
8 set forth in Section 2.1.4.12 below, BellSouth shall make available DS1  
9 and DS3 Loops as described in this Section 2.1.4. only for  
10 <<customer\_short\_name>>'s Embedded Base and Excess DS1 and DS3  
11 Loops during the Transition Period:

12  
13 2.1.4.5.1 DS1 Loops at any location within the service area of a wire center  
14 containing 60,000 or more Business Lines and four (4) or more fiber-  
15 based collocators.

16  
17 2.1.4.5.2 DS3 Loops at any location within the service area of a wire center  
18 containing 38,000 or more Business Lines and four (4) or more fiber-  
19 based collocators.

20  
21 2.1.4.9.1 Once a wire center exceeds both of the thresholds set forth in Sections  
22 2.1.4.5.1 above and ~~2.1.4.5.2 below~~, no future DS1 Loop unbundling will  
23 be required in that wire center.

24

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 above ~~below~~, no future DS3 loop unbundling will  
3                    be required in that wire center.

4

5           BellSouth is making like changes to Sections 2.1.4.4 and 2.1.4.5 in Exhibit PAT-2.

6

7           **DS1 and DS3 Dedicated Transport Transition Language**

8

9   Q.   ON PAGE 19 OF MR. MAPLES' TESTIMONY, HE PROPOSES  
10       MODIFICATIONS TO BELLSOUTH'S DS1 AND DS3 DEDICATED  
11       TRANSPORT TRANSITION LANGUAGE. HOW DO YOU RESPOND?

12

13       As indicated above, I understand that BellSouth and Sprint have negotiated mutually  
14       acceptable changes to this language.

15

16       BellSouth disagrees with Mr. Maples' statement that BellSouth's obligation to  
17       provide access to DS1, DS3 and dark fiber dedicated transport applies equally to  
18       Entrance Facilities. As I stated earlier in my testimony, BellSouth is not obligated to  
19       provide entrance facilities on an unbundled basis, we are simply offering to include  
20       entrance facilities in the transition period to help create an orderly transition process  
21       for the embedded base and excess dedicated transport.

22

23       With respect to BellSouth's proposed Dedicated Transport language, BellSouth is  
24       also making changes to Sections 6.2.6, 6.2.6.7 and 6.2.6.8 of Exhibit PAT-1.  
25       BellSouth is revising Section 6.2.6 to clarify that the transition period will apply to

1 both Embedded Base and Excess Dedicated Transport. BellSouth is revising Sections  
2 6.2.6.7 and 6.2.6.8 to remove inadvertent section references within them.

3  
4 Sections 6.2.6.7 and 6.2.6.8 both reference Section 6.2.6.1, which sets forth the non-  
5 impairment thresholds for DS1 Dedicated Transport, and Section 6.2.6.2, which sets  
6 forth the non-impairment thresholds for DS3 Dedicated both Transport. Since only  
7 the non-impairment thresholds for DS1 Dedicated Transport should be addressed in  
8 Section 6.2.6.7, BellSouth is deleting the reference to 6.2.6.2 in that section.  
9 Likewise, since only the non-impairment thresholds for DS3 Dedicated Transport  
10 should be addressed in Section 6.2.6.8, BellSouth is deleting the reference to 6.2.6.1  
11 in that section. I have redlined these sections below to illustrate the changes  
12 BellSouth is making to correct this inadvertent error in our language.

13  
14 6.2.6 Notwithstanding anything to the contrary in this Agreement, BellSouth shall  
15 make available Dedicated Transport as described in this Section 6.2 only for  
16 <<customer\_short\_name>>'s Embedded Base and Excess Dedicated  
17 Transport during the Transition Period:

18  
19 6.2.6.1 DS1 Dedicated Transport where both wire centers at the end points of the  
20 route contain 38,000 or more Business Lines or four (4) or more fiber-based  
21 collocators.

22  
23 6.2.6.1.1 DS3 Dedicated Transport where both wire centers at the end points of the  
24 route contain 24,000 or more Business Lines or three (3) or more fiber-based  
25 collocators

1           6.2.6.7 Once a wire center exceeds either of the thresholds set forth in this Sections  
2                   6.2.6.1 and ~~6.2.6.2~~ above, no future DS1 Dedicated Transport unbundling will  
3                   be required in that wire center

4

5           6.2.6.8 Once a wire center exceeds either of the thresholds set forth in Sections  
6                   ~~6.2.6.1 or~~ 6.2.6.2 above, no future DS3 Dedicated Transport will be required  
7                   in that wire center.

8

9           BellSouth is making like changes to Sections 5.2.2.4 and 5.2.2.5 of Exhibit PAT-2.

10

11           **Issue 3**

12           **Caps on DS1 and DS3 Loops**

13

14           Q.     DO YOU AGREE WITH THE LANGUAGE COMPSOUTH IS PROPOSING TO  
15                   ADDRESS THE CAPS ON UNE DS1 AND DS3 LOOPS IN SECTIONS 2.2.4-  
16                   2.2.5.2 OF EXHIBIT JPG-1?

17

18           A.     I believe so. When Mr. Gillan filed his direct testimony in Georgia, CompSouth's  
19                   proposed language asserted that the caps on DS1 and DS3 loops applied only to the  
20                   Embedded Base during the transition period. It now appears that Sections 2.2.4,  
21                   2.2.5.1, 2.2.5.2 and 2.2.4.3 in Exhibit JPG-1 to Mr. Gillan's Florida testimony have  
22                   been revised to correct this error in CompSouth's proposed language. The TRRO  
23                   states that the caps apply: (1) even where the test requires DS3 loop unbundling  
24                   (TRRO, ¶ 177 (limitation on DS3 loops)), and (2) where we have otherwise found  
25                   impairment without access to such loops (TRRO, ¶ 181 (limitation on DS1 loops)).



1     Cap on DS1 Transport

2

3     Q.     THE PARTIES' DIRECT TESTIMONY INDICATES DISAGREEMENT ON THE  
4           DS1 TRANSPORT CAP. HAS THIS ISSUE BEEN RESOLVED?

5

6     A.     Yes, this issue has been resolved.

7

8     Definitions

9

10    Q.     SHOULD THE COMMISSION ADOPT THE DEFINITION COMPSOUTH  
11           PROPOSES FOR THE TERM "BUILDING" IN SECTION 10.1 OF COMPSOUTH  
12           EXHIBIT JPG-1?

13

14    A.     No. CompSouth's proposed definition of a "building," as set forth in Section 10.1 of  
15           Exhibit JPG-1 is unreasonable. To the best of my knowledge, neither the FCC nor  
16           any other agency has ever defined a "building" as CompSouth proposes defining the  
17           term. CompSouth's proposals are a transparent attempt to serve the interests of  
18           CLECs without regard for common sense. By attempting to define individual tenant  
19           space in a multi-tenant building as its own "building," a CLEC would have virtually  
20           unlimited access to UNE DS1 loops and DS3 loops to the one building housing all of  
21           these tenants in clear violation of the caps imposed by the FCC for these elements.

22

23           As I said in my direct testimony, the term "building" should be defined based on a  
24           "reasonable person" standard. As such, a single structure building, like the Sun Trust

1 building, is one "building" regardless of whether there is one tenant or multiple  
2 tenants operating or residing in it.

3

4 Q. SHOULD THE COMMISSION ADOPT THE DEFINITION COMPSOUTH IS  
5 PROPOSING FOR BUSINESS LINES IN SECTION 10.2 OF EXHIBIT JPG-1?

6

7 A. No. CompSouth's proposed definition does not conform with the FCC's definition of  
8 "business line" and, in fact, reaches well beyond what the FCC has prescribed in its  
9 Order. For example, CompSouth proposes several modifications to the FCC's  
10 business line definition, including that business lines do not include non-switched  
11 loop facilities (which would potentially exclude some UNE loops). CompSouth also  
12 proposes to exclude unused capacity on channelized high capacity loops, yet the  
13 FCC's definition directs that digital access lines shall be counting each 64 kbps-  
14 equivalent as one line. In Georgia, CompSouth filed a revised Exhibit JPG-1 in  
15 which it replaced its proposed "business line" definition with the FCC's rule. To the  
16 best of my knowledge, however, CompSouth has not filed a revised Exhibit JPG-1,  
17 revising its proposed "business line" definition, in Florida.

18

19 Q. SHOULD THE COMMISSION ADOPT THE DEFINITION OF "FIBER-BASED  
20 COLLOCATOR" AS CONTAINED IN COMPSOUTH EXHIBIT JPG-1, SECTION  
21 10.4?

22

23 A. No. The memorialized definition in the interconnection agreement should not go  
24 beyond what the FCC has included in its rules. CompSouth's proposal goes well  
25 beyond the FCC's definition in several ways. They inappropriately broaden the

1 definition of affiliates to incorporate companies who have done no more than engage  
2 in merger discussions. This is simply absurd. Merger discussions frequently break  
3 down for a variety of reasons. Further, there must be a date certain upon which the  
4 non-impairment facts are based. The key factor is what companies are actually  
5 merged or affiliated on the date in which the non-impairment determination is made,  
6 whether that is the TRRO effective date or a future date when BellSouth designates  
7 additional unimpaired wire centers. More importantly, however, is how the  
8 collocator is served by fiber. CompSouth attempts to exclude arrangements where a  
9 collocated carrier (carrier A) has obtained fiber capacity from another collocated  
10 carrier (carrier B) for transporting traffic into and out of the wire center. In this  
11 example, assuming carrier A has fiber terminating equipment in its collocation  
12 arrangement and has fiber connected to that equipment that it obtained from carrier B,  
13 both collocated carriers, if actively powered, qualify as fiber based collocators under  
14 the FCC's definition. This, of course, is in addition to arrangements that a carrier has  
15 self-deployed fiber or obtained fiber from a third party delivered directly to the  
16 collocation arrangement from the cable vault.

17  
18 While Exhibit PAT-1 does not currently contain a reference to the FCC's definition  
19 for "Fiber Based Collocator", BellSouth certainly has no objection to referencing the  
20 FCC's definition in its interconnection agreements with CLECs as Mr. Maples  
21 suggests on page 23 of his direct testimony. BellSouth is unwilling to include the  
22 language that CompSouth proposes concerning fiber based collocation, which is  
23 inconsistent with the FCC's definition. At present, BellSouth's count of fiber-based  
24 collocators only accounts for those arrangements served by fiber, although the FCC's

1 definition of business line permits the consideration of fiber optic cable or  
2 "comparable transmission facility".

3  
4 **Issue 4(b)**

5 **Wire Center Determinations**

6  
7 Q. ON PAGE 17 OF HIS TESTIMONY, MR. GILLAN REQUESTS THAT THIS  
8 COMMISSION REVIEW BELLSOUTH'S WIRE CENTER DETERMINATIONS,  
9 IMPLYING THAT BELLSOUTH MAY HAVE ADJUSTED ITS  
10 DETERMINATIONS TO SERVE ITS OWN INTERESTS. HOW DO YOU  
11 RESPOND?

12  
13 A. First, let me reiterate that my understanding is that BellSouth's legal position is that  
14 the FCC is the only regulatory body that has jurisdiction over whether BellSouth  
15 properly applied the FCC's criteria. Having said this, however, I would like to assure  
16 this Commission that BellSouth has tried to exercise every precaution to ensure that it  
17 properly applied the FCC's criteria to determine which of its wire centers exceed the  
18 non-impairment thresholds. We not only took great care in analyzing business line  
19 data, we also ensured the accuracy of our counts of fiber-based collocators by having  
20 BellSouth personnel visit wire centers to verify the presence of fiber-based  
21 collocators reflected in our billing records. We *absolutely did not* alter these findings  
22 to serve our own interests.

23  
24 Q. DID BELLSOUTH TAKE ANY OTHER STEPS TO ENSURE THE ACCURACY  
25 OF ITS WIRE CENTER DETERMINATIONS?

1 A. Yes, we did. Notwithstanding our efforts to accurately count business lines, we found  
2 that a mathematical error had been made that impacted the initial results posted to our  
3 website. Thus, we retained Deloitte & Touche to conduct its own review of our  
4 calculations and to ensure that the calculations were correct based on the  
5 methodology we used. As David Wallis' testimony and exhibits demonstrate,  
6 Deloitte's calculations confirm BellSouth's determinations.

7

8 Q. DO YOU AGREE WITH MR. GILLAN'S REPRESENTATIONS, ON PAGES 18 –  
9 20, AS TO HOW BELLSOUTH SHOULD HAVE COUNTED BUSINESS LINES?

10

11 A. At a very high level, yes. However, I disagree with certain of his arguments that  
12 conflict with the FCC's instructions regarding counting of business lines.

13

14 Q. DO YOU AGREE WITH MR. GILLAN'S RECOMMENDATIONS TO THIS  
15 COMMISSION REGARDING THE CONSIDERATION OF UNE-L LINES IN  
16 EACH WIRE CENTER?

17

18 A. No. Mr. Gillan argues that, before BellSouth can include UNE-L lines in its business  
19 line count, it must first determine which UNE-L lines are used to provide switched  
20 services. However, the FCC did not impose this requirement. Rather, the FCC's rule  
21 states that all UNE-L lines shall be counted:

22

23 The number of business lines in a wire center shall equal the sum of all  
24 incumbent LEC switched access lines, *plus the sum of all UNE loops*

1                   *connected to that wire center, including UNE loops provisioned in*  
2                   *combination with other unbundled elements.*<sup>4</sup> (emphasis added)

3  
4                   Of course, this definition makes sense. Remember, the objective here is to determine  
5                   where the CLECs are not impaired without access to BellSouth's facilities as UNEs.  
6                   The FCC has determined that business lines is a good indicator of that, but of course  
7                   the fact that the CLECs have already purchased UNE loops in an wire center,  
8                   irrespective of what services the CLEC provides over the UNE loops, is equally good  
9                   proof that CLECs are not impaired in that wire center. In paragraph 105, the FCC  
10                  acknowledged the data it considered in setting its thresholds as well as the  
11                  appropriateness of such data:

12  
13                  “The BOC wire center data that we analyze in this Order is based on ARMIS  
14                  43-08 business lines, plus business UNE-P, *plus UNE-Loops*. We adopt this  
15                  definition of business lines because it fairly represents the business  
16                  opportunities in a wire center, including business opportunities already being  
17                  captured by competing carriers through the use of UNEs.....[B]y basing our  
18                  definition in an ARMIS filing required of incumbent LECs, and adding UNE  
19                  figures, which must also be reported, we can be confident in the accuracy of  
20                  the thresholds, and a simplified ability to obtain the necessary information“  
21                  (*emphasis added*).

22  
23  

---

<sup>4</sup> 47 C.F.R § 51.5 (emphasis added).

1 Furthermore, the FCC no doubt recognized that the ILECs would have no way of  
2 knowing what the UNE loops are being used for; hence the requirement that all UNE  
3 loops be included in the business line count. Throughout the TRRO the FCC  
4 emphasizes the need for a straightforward, simplified process that does not require a  
5 fact-intensive inquiry. This includes the passage quoted above.

6

7 Q. IN ITS COUNT OF BUSINESS LINES, DID BELL SOUTH COUNT HDSL LOOPS  
8 AS IT DID DS1 LOOPS, COUNTING EACH 64 KBPS-EQUIVALENT AS ONE  
9 LINE, AS MR. GILLAN ASSUMES ON PAGE 24 OF HIS DIRECT TESTIMONY?

10

11 A. No, we did not. As BellSouth witness Eric Fogle explains in more detail, BellSouth  
12 counted UNE HDSL loops conservatively, on a one-for-one basis, although it would  
13 have been appropriate to convert these loops to their voice grade equivalents. Let me  
14 also make clear that, although BellSouth has defined DS1 loops to include 2-wire and  
15 4-wire HDSL Compatible Loops, BellSouth included only in service DS1 loops  
16 (converted to voice grade equivalents) and in service UNE HDSL loops (which were  
17 not converted).

18

19 Q. MR. GILLAN SUGGESTS ON PAGE 19, LINE 3 THAT ONLY UNE-P  
20 BUSINESS LINES SHOULD BE COUNTED. DID BELL SOUTH COUNT UNE-P  
21 RESIDENTIAL LINES IN ITS BUSINESS LINE COUNT DATA?

22

23 A. No we did not.

24

1 Q. MR. GILLAN PROPOSES THAT THE WIRE CENTER LIST BE  
2 INCORPORATED INTO INTERCONNECTION AGREEMENTS. DO YOU  
3 AGREE?

4

5 A. Since interconnection agreements will have to be amended to reflect the outcome of  
6 this proceeding, BellSouth is not opposed to the initial wire center list being  
7 incorporated into the interconnection agreements. BellSouth is, however, opposed to  
8 any requirement to have subsequent wire center lists incorporated into  
9 interconnection agreements, as that would require unnecessary administrative work  
10 when the same result can be achieved more efficiently. It makes more sense to refer  
11 in the interconnection agreements to BellSouth's website for the latest wire center  
12 list, as is the case with CLEC guides, collocation space exhaust lists and other  
13 instructional guides that impact the availability, ordering and provisioning of services  
14 offered pursuant to the interconnection agreement.

15

16 Q. IN HER TESTIMONY, WANDA MONTANO OF US LEC REQUESTS THE  
17 OPPORTUNITY TO REVIEW THE DATA BELLSOUTH RELIED UPON TO  
18 DETERMINE WHICH WIRE CENTERS MET THE THRESHOLD  
19 REQUIREMENT. IS BELLSOUTH WILLING TO PRODUCE THIS DATA?

20

21 A. Yes. BellSouth has made available its 2003 data to counsel for US LEC in Atlanta.  
22 BellSouth has also provided US LEC with copies of its confidential discovery  
23 responses with additional wire center data. Finally, BellSouth has previously  
24 responded to carriers' questions through letters and by providing copies of the  
25 Deloitte reports upon request. BellSouth has no objection to providing its wire center



1 data to any requesting carrier pursuant to this Commission's Protective Order and  
2 appropriate protective agreements.

3

4 Q. ON PAGE 17 OF WANDA MONTANO'S TESTIMONY, SHE ASSERTS THAT  
5 TRANSITION OF THE EMBEDDED BASE OF HIGH CAP LOOPS AND  
6 DEDICATED TRANSPORT CANNOT BEGIN UNTIL BELLSOUTH'S LIST OF  
7 WIRE CENTERS HAS BEEN APPROVED. HOW DO YOU RESPOND?

8

9 A. The wire center list attached to BellSouth's April 15, 2005 Carrier Notification Letter  
10 is reflective of the data the FCC instructed the ILECs to use. Therefore, CLECs  
11 should use this list to take the appropriate actions to identify their embedded base and  
12 determine the alternative arrangements to which they intend to convert these circuits.

13

14 Ms. Montano expresses some concerns about BellSouth's wire center list, and she  
15 bases her concern on the fact that BellSouth issued revisions to its initial list. While  
16 BellSouth did revise its initial list when we determined that it was not correct, we also  
17 took precautions to ensure that the revised list was accurate before we re-posted it on  
18 BellSouth's website. I addressed these precautions in my direct testimony and I  
19 summarize them again in this testimony. Also, as I indicated above, BellSouth is  
20 willing to provide CLECs with access to the data underlying its list and has done so  
21 when requested. If additional revisions are necessary to incorporate the results of  
22 confirmed CLECs' discovery responses, BellSouth will make such changes. The  
23 precautions BellSouth has taken, our willingness to provide the data, and our  
24 willingness to utilize the discovery process should alleviate Ms. Montano's concerns.  
25 Additionally, BellSouth is prepared to make CLECs whole in the event a CLEC

1 timely reacts to BellSouth's posted wire center list, and at a later date, the list is found  
2 to be incorrect.

3

4 Q. US LEC SUGGESTS, ON PAGE 14 OF WANDA MONTANO'S TESTIMONY,  
5 TWO PROPOSED METHODS FOR DETERMINING WHICH WIRE CENTERS  
6 MEET THE FCC'S IMPAIRMENT THRESHOLDS. HOW DO YOU RESPOND?

7

8 A. The first method proposed by Ms. Montano, which would require that the parties  
9 mutually agree on facts to identify the wire centers that meet the FCC's criteria, is  
10 really not a feasible option since it would only address U.S LEC's concerns about  
11 BellSouth's wire center list. It would be virtually impossible to go through this  
12 process with every CLEC in this state.

13

14 The second method proposed by U.S. LEC would require that the Commission  
15 approve BellSouth's wire center list through the arbitration process. For purposes of  
16 approving BellSouth's initial wire center list, this proceeding should suffice.  
17 However, BellSouth does not believe it would be an efficient use of the  
18 Commission's or BellSouth's resources to arbitrate separately with each CLEC  
19 modifications to subsequent wire center list. BellSouth proposes that Commission  
20 approval for subsequent wire center determinations be undertaken in an orderly, more  
21 expedited basis. BellSouth is also considering the proposal made by CompSouth in  
22 its exhibit JPG-1 associated with Issue 5. BellSouth has made certain preliminary  
23 modifications to the CompSouth proposal in Exhibit PAT-5 and anticipates having an  
24 opportunity to discuss this proposal with CompSouth and any other interested CLECs

1 prior to the hearing to determine whether there is some mutually agreeable resolution  
2 of this issue.

3  
4 **Modifications to the wire center list**

5  
6 Q. BEFORE YOU BEGIN ADDRESSING MR. GILLAN'S RECOMMENDED  
7 MEANS FOR HANDLING MODIFICATIONS TO THE APPROVED WIRE  
8 CENTER LIST, PLEASE BRIEFLY DESCRIBE HOW BELL SOUTH PROPOSES  
9 THAT SUCH MODIFICATIONS BE HANDLED.

10  
11 A. As reflected in the contract language set forth in my Exhibits PAT-1 and PAT-2,  
12 BellSouth proposed that, to the extent additional wire centers are found to meet the  
13 FCC's no impairment criteria, we will notify CLECs of these new wire centers via a  
14 Carrier Notification Letter. Our standard contract language states that ten business  
15 days (which equates to fourteen calendar days) after posting the Carrier Notification  
16 Letter, BellSouth would no longer be obligated to offer high cap loops and dedicated  
17 transport as UNEs in such wire centers, except pursuant to the self-certification  
18 process.

19  
20 High cap loop and transport UNEs that were in service when the subsequent wire  
21 center determination was made will remain available as UNEs for 90 days after the  
22 10<sup>th</sup> business day following posting of the Carrier Notification Letter (or 104 days in  
23 total from the date of posting). However, affected CLECs would be obligated to  
24 submit spreadsheets identifying these embedded base UNEs to be converted to  
25 alternative BellSouth services or disconnected no later than 40 days from the date of

1 BellSouth's Carrier Notification Letter. From that date, BellSouth will negotiate a  
2 project conversion timeline.

3

4 The language BellSouth is proposing to address modifications and updates to the wire  
5 center list is contained in Section 2.1.4 of Exhibits PAT-1 and PAT-2.

6

7 Q. IS BELLSOUTH WILLING TO CONSIDER MODIFICATIONS TO ITS  
8 PROPOSED PROCESS FOR ADDRESSING SUBSEQUENT WIRE CENTERS  
9 THAT ARE NOT IMPAIRED?

10

11 A. BellSouth believes its standard offering is commercially reasonable. However,  
12 BellSouth is willing to consider other commercially reasonable terms that could  
13 eliminate disputes. For example, BellSouth has achieved a compromise solution with  
14 one of its CLEC customers with material volumes of high capacity services. In  
15 exchange for the CLEC's agreement on other proposed terms, BellSouth agreed to  
16 extend its proposed timeline for transition to 120 days from the date BellSouth posts  
17 to its website the carrier notification letter identifying subsequent non-impaired wire  
18 centers. BellSouth is continuing its discussions with CompSouth's members as well  
19 as other CLECs on similar proposals in an effort to resolve this issue. Absent a  
20 mutually agreeable compromise, however, BellSouth's standard terms should apply.

21

22 Q. ON PAGE 31 OF HIS DIRECT TESTIMONY, MR. GILLAN PROPOSES THAT  
23 BELLSOUTH FILE ITS WIRE CENTER CHANGES ANNUALLY, COINCIDENT  
24 WITH ITS ARMIS FILING WITH THE FCC. IS BELLSOUTH WILLING TO  
25 ENTERTAIN SUCH A PROPOSAL?

1 A. As I indicated above, BellSouth is in the process of reviewing CompSouth's proposal  
2 and may be willing to agree to this proposal with modifications. BellSouth is not  
3 willing to accept Mr. Gillan's proposal in its present form.

4

5 **Issue 7**

6 **Section 271**

7

8 Q. ON PAGES 36 THROUGH 46 OF HIS DIRECT TESTIMONY, MR. GILLAN  
9 ARGUES THAT BELL SOUTH IS OBLIGATED TO OFFER "ADDITIONAL" 271  
10 OFFERINGS AT JUST AND REASONABLE RATES IN INTERCONNECTION  
11 AGREEMENTS SUBJECT TO SECTION 252 COMMISSION APPROVAL. HOW  
12 DO YOU RESPOND?

13

14 A. BellSouth addressed these legal issues in its *Motion for Summary Judgment, or in the*  
15 *Alternative, Motion for Declaratory Ruling* filed with this Commission. As I  
16 understand the situation, this is a legal issue, and that is why BellSouth filed its  
17 motions seeking a legal determination of these issues prior to hearings. Mr. Gillan,  
18 like me, isn't a lawyer. If there are relevant facts, I will be happy to discuss them, but  
19 I will leave the discussion of what the law requires to the lawyers. I would simply  
20 urge this Commission not to be led astray by Mr. Gillan's rhetoric and to focus  
21 instead on the legal arguments the parties have submitted.

22

23

24

25

1 **Issues 9 & 10**

2

3 Q. HOW DO YOU RESPOND TO MR. GILLAN'S ASSERTIONS ABOUT  
4 "MANDATED MIGRATIONS" ON PAGE 61 - 62 OF HIS DIRECT TESTIMONY?

5

6 A. Let me clarify that "mandated migrations" is a term Mr. Gillan uses to define what  
7 happens to UNEs that were de-listed by the FCC in the TRO almost two years ago. I  
8 disagree with his categorization of the conversion of these UNEs to alternative  
9 arrangements as those that "BellSouth effectively forces on an entrant because a  
10 particular UNE or Combination is no longer offered". To the contrary, these are  
11 UNEs which CLECs were obligated to convert to alternative services long before  
12 now. The only reason BellSouth would be the "moving party" (to use Mr. Gillan's  
13 term) to handle disposition of these UNEs at this point would be if 1) the CLEC failed  
14 to negotiate with BellSouth to remove rates, terms and conditions for these elements  
15 from their interconnection agreement and 2) failed to act to convert these UNEs to  
16 alternative services. As such, BellSouth should not be forced to absorb the non-  
17 recurring charges associated with converting these services to equivalent BellSouth  
18 tariffed services. This is not BellSouth's "own decision" as Mr. Gillan claims; rather,  
19 BellSouth is simply implementing the requirements of the TRO which some CLECs  
20 have chosen to disregard.

21

22 Q. SHOULD THIS COMMISSION ADOPT THE LANGUAGE COMPSOUTH IS  
23 PROPOSING IN SECTION 1.6 OF EXHIBIT JPG-1 TO ADDRESS THE  
24 HANDLING OF UNES THAT ARE NOT TRANSITIONED ON OR BEFORE  
25 MARCH 11, 2006?

1 A. The language CompSouth is proposing to address Issue 11 is, in large part, language  
2 that BellSouth is proposing for Issue 10: What rates, terms, and conditions should  
3 govern the transition of existing network elements that BellSouth is no longer  
4 obligated to provide as Section 251 UNEs to non-Section 251 network elements and  
5 other services.

6

7 Issue 10 addresses UNEs that were de-listed by the FCC almost two years ago in the  
8 TRO (enterprise switching, OCN loops and transport, etc.) which should no longer  
9 remain in place today. Issue 11 addresses UNEs that were de-listed by the FCC in the  
10 TRRO and should not remain in place after March 10, 2006. Although BellSouth and  
11 CompSouth propose similar language to address different issues, BellSouth will not  
12 agree to the language CompSouth proposes as Section 1.6 of Exhibit JPG-1. It should  
13 surprise no one at this point that CompSouth has revised BellSouth's language to 1)  
14 bide CompSouth members more time to transition off of de-listed UNEs, and 2)  
15 remove any references to charges that would apply if CLECs failed to convert or  
16 disconnect these UNEs and BellSouth had to initiate this effort on its own.

17

18 BellSouth urges this Commission to reject CompSouth's proposed language for Issue  
19 11. Such language would simply allow CLECs to have prolonged access to de-listed  
20 UNEs after the end of the transition period.

21

22 **Issue 13**

23 **Commingling**

24 Q. ON PAGES 47 OF MR. GILLAN'S DIRECT TESTIMONY, HE ASKS THIS  
25 COMMISSION TO REQUIRE THAT SECTION 271 OFFERINGS BE IDENTICAL

1 TO THE SECTION 251 OFFERINGS THEY REPLACE, EXCEPT AS TO PRICE.  
2 HOW DO YOU RESPOND?

3

4 A. This is a legal issue which BellSouth has addressed in its *Motion for Summary*  
5 *Judgment, or in the Alternative, Motion for Declaratory Ruling* in this docket.  
6 Therefore, I do not intend to provide any further comment on this particular issue.

7

8 Q. SHOULD THIS COMMISSION ADOPT THE LANGUAGE COMPSOUTH IS  
9 PROPOSING IN SECTION 1.11 OF EXHIBIT JPG-1 TO ADDRESS CARRIERS'  
10 COMMINGLING OBLIGATIONS?

11

12 A. No. In addition to the dispute regarding CompSouth's legal conclusions on this issue  
13 in general, BellSouth does not agree to CompSouth's proposal that multiplexing  
14 equipment should be billed at a cost-based rate. The cost of the multiplexing  
15 equipment should be based on the jurisdiction of the higher capacity element with  
16 which it is associated. For example, if a UNE DS1 loop is attached to a special  
17 access DS3 via a 3/1 multiplexer, the multiplexing function is necessarily associated  
18 with the DS3 – because it is the DS3 44 Mbps signal that is being “split”, or  
19 multiplexed, in to 28 individual 1.44 Mbps channels. Thus, the multiplexing  
20 equipment is always associated with the higher bandwidth service that is being  
21 broken down into smaller channel increments.

22

23

24

25



1           **Issue 14**

2

3    Q.    COMPSOUTH HAS PROPOSED LANGUAGE REGARDING SPECIAL ACCESS  
4           TO UNE CONVERSIONS UNDER ISSUE 15 IN EXHIBIT JPG-1. HOW DO YOU  
5           RESPOND?

6

7    A.    BellSouth is generally in agreement with CompSouth's proposed language and has  
8           made minor modifications to it as reflected in Exhibit PAT-5. However, CompSouth  
9           references rates found in "Exhibit A" which are not attached to CompSouth's  
10          proposed language. I proposed "switch-as-is" rates in addressing this issue in my  
11          direct testimony. BellSouth recommends that the Commission adopt BellSouth's  
12          proposed rates.

13

14       **Issue 15**

15    Q.    COMPSOUTH HAS PROVIDED A RESPONSE REGARDING ISSUE 16 IN  
16          EXHIBIT JPG-1. HOW DO YOU RESPOND?

17

18    A.    BellSouth believes that any conversions pending on the effective date of the TRO  
19          should be guided by whether the CLEC had the appropriate conversion language in  
20          its interconnection agreement at the time the TRO became effective. To the extent  
21          this is what CompSouth is proposing, then the parties are in agreement. There is  
22          nothing in the FCC's rules to indicate that these conversion provisions should be  
23          applied retroactively.

24

25

1 **Issue 21**

2 **Call Related Databases**

3

4 Q. DO YOU AGREE WITH COMPSOUTH'S PROPOSED LANGUAGE IN  
5 SECTION 4.4.3.1 TO ADDRESS BILLSOUTH'S OBLIGATIONS TO PROVIDE  
6 CALL RELATED DATABASES DURING THE TRANSITION PERIOD?

7

8 A. For the most part, yes, provided that the parties can reach agreement on the  
9 appropriate language to govern the transition of the embedded base DS0 local  
10 switching and UNE-P lines to alternative arrangements.

11

12 Q. HOW DO YOU RESPOND TO THE LANGUAGE THAT IS INCLUDED IN MR.  
13 GILLAN'S EXHIBIT JPG-1 THAT IS ATTRIBUTED TO COMPSOUTH  
14 MEMBER MCI?

15

16 A. It should not be adopted. The FCC rejected MCI's proposal in paragraph 558 of the  
17 TRO.

18

19 **Issue 28**

20 **EEL Audits**

21

22 Q. IT APPEARS COMPSOUTH IS THE ONLY PARTY TO PROVIDE TESTIMONY  
23 OR PROPOSED LANGUAGE ON THIS ISSUE. WHAT ARE YOUR SUMMARY  
24 COMMENTS REGARDING THE COMPSOUTH PROPOSED LANGUAGE?

25

1 A. Generally, the CompSouth proposed language goes well beyond the FCC's  
2 requirements implementing an ILEC's right to audit. BellSouth has provided redlines  
3 to the CompSouth proposed language under Issue 29 that BellSouth is willing to  
4 accept, attached as a component of Exhibit PAT-5.

5

6 Q. DO YOU AGREE WITH MR. GILLAN'S PROPOSAL, ON PAGE 61 OF HIS  
7 DIRECT TESTIMONY, THAT BELLSOUTH PROVIDE CLECS WITH 1)  
8 NOTICE OF ITS INTENT TO AUDIT AND 2) THE GROUNDS PURSUANT TO  
9 WHICH IT BELIEVES IT HAS GOOD CAUSE TO CONDUCT THE AUDIT?

10

11 A. BellSouth has already agreed to Notice of Audit provisions in many of its  
12 interconnection agreements, even though the FCC does not place any such obligation  
13 on BellSouth. The FCC's rules permit BellSouth to conduct an audit on an annual  
14 basis to determine if a particular CLEC is complying with the service eligibility  
15 criteria; and since BellSouth must bear the cost of the audit, the audits we have  
16 conducted so far are certainly not "fishing expeditions" as Mr. Gillan claims on page  
17 60, line 2 of his direct testimony. As the FCC found in the TRO, permitting ILECs to  
18 conduct an annual audit "strikes the appropriate balance between the incumbent  
19 LECs' need for usage information and risk of illegitimate audits that impose costs on  
20 qualifying carriers."<sup>5</sup> BellSouth is under no obligation to provide the grounds to  
21 support its request for an audit. Doing so would serve no purpose other than to  
22 enable the audited CLEC to unreasonably dispute and, therefore, delay the audit.

23

---

<sup>5</sup> TRO, ¶ 626.

1 Q. HOW DO YOU RESPOND TO COMPSOUTH'S PROPOSED LANGUAGE IN  
2 SECTION 5.3.4.4. OF EXHIBIT JPG-1 THAT THE PARTIES MUST MUTUALLY  
3 AGREE UPON THE INDEPENDENT AUDITOR?

4

5 A. CompSouth's proposed language once again imposes requirements upon BellSouth  
6 for which there is no foundation. Since the TRO requires that BellSouth use an  
7 "independent" auditor, there should be no concern that the auditor is in any way  
8 biased toward BellSouth's interests. BellSouth would not knowingly violate the law.  
9 Furthermore, if BellSouth is going to bear the cost of the audit, then BellSouth  
10 certainly has the right to select that auditor on its own. Requiring that BellSouth and  
11 the audited CLEC mutually agree on the auditor will also lead only to unreasonable  
12 and unnecessary delays and disputes.

13

14 Q. HOW DO YOU RESPOND TO COMPSOUTH'S PROPOSED LANGUAGE IN  
15 SECTIONS 5.3.4.5 AND 5.3.4.6 OF EXHIBIT JPG-1?

16

17 A. The language is good, but it does not go far enough. In Section 5.3.4.5, CompSouth  
18 acknowledges the FCC's requirement that, "To the extent the independent auditors  
19 report concludes that the competitive LEC failed to comply with the service eligibility  
20 criteria, that carrier must true-up any difference in payments, convert all  
21 noncompliant circuits to the appropriate service, and make the correct payments on a  
22 going-forward basis."<sup>6</sup> However, this language fails to properly address the FCC's  
23 requirement that it must also "reimburse the incumbent LEC for the cost of the  
24 independent auditor."<sup>7</sup>

---

<sup>6</sup> TRO, ¶ 627.

<sup>7</sup> Id.

1           CompSouth addresses this requirement in Section 5.3.4.6; yet its proposed language  
 2           does not clarify that reimbursement to BellSouth by CompSouth for the cost of the  
 3           audit is required “in the event the independent auditor concludes the competitive LEC  
 4           failed to comply with the service eligibility criteria.” (TRO, ¶ 627). Additionally,  
 5           CompSouth’s proposed language places limits on the auditor costs for which it would  
 6           have to reimburse BellSouth. Contrary to CompSouth’s proposal, the TRO requires  
 7           that the audited CLEC would have to reimburse BellSouth for the *full* cost of the  
 8           independent auditor if found to be non-compliant.

9

10   **Issue 30**

11   **ISP CORE FORBEARANCE ORDER**

12

13   Q.    IS MS. MONTANO OF U.S. LEC CORRECT IN HER STATEMENT THAT  
 14           ADDITIONAL LANGUAGE IS UNNECESSARY TO EFFECTUATE THE CORE  
 15           ORDER?

16

17   A.    No. Ms. Montano’s account of the language in the Interconnection Agreement  
 18           between BellSouth and US LEC dated June 20, 2004 (“US LEC Interconnection  
 19           Agreement”) is correct, but incomplete. It is clear from Sections 14.2 and 14.3 of the  
 20           General Terms and Conditions of the US LEC Interconnection Agreement that any  
 21           change to the provisions of the US LEC Interconnection Agreement should be made  
 22           in writing and signed by both parties.

23

24           Section 14.2 of the General Terms and Conditions of the US LEC  
 25           Interconnection Agreement states:

1           No modification, amendment, supplement to, or waiver of the  
2           Agreement or any of its provisions shall be effective and binding upon  
3           the Parties unless it is made in writing and duly signed by the Parties.

4

5           It is clear from this section that neither party can unilaterally implement changes to  
6           the US LEC Interconnection Agreement without a formal amendment signed by both  
7           parties.

8

9           Section 14.3 of the General Terms and Conditions of the US LEC Interconnection  
10          Agreement is also relevant. It states:

11           In the event that any effective legislative, regulatory, judicial or other  
12           legal action materially affects any material terms of this Agreement, or  
13           the ability of [US LEC] or BellSouth to perform any material terms of  
14           this Agreement, [US LEC] or BellSouth may, on thirty (30) days'  
15           written notice require that such terms be renegotiated, and the Parties  
16           shall renegotiate in good faith such mutually acceptable new terms as  
17           may be required. In the event that such new terms are not renegotiated  
18           within ninety (90) days after such notice, the Dispute shall be referred  
19           to the Dispute Resolution procedure set forth in this Agreement.

20

21          Contrary to Ms. Montano's testimony and pursuant to the aforementioned sections of  
22          the US LEC Interconnection Agreement, the Parties are required to negotiate the new  
23          terms necessary to effectuate the Core Order and such terms must be in writing,  
24          signed by both Parties, and incorporated into the US LEC Interconnection Agreement

1 before such terms are considered effective unless a regulatory body has expressly  
2 ordered otherwise.

3  
4 Q. TO IMPLEMENT THE CORE ORDER, COMPSOUTH SIMPLY PROPOSES  
5 THAT ALL REFERENCES TO "NEW MARKETS" AND "GROWTH CAP"  
6 RESTRICTIONS BE DELETED FROM ALL INTERCONNECTION  
7 AGREEMENTS BETWEEN BELL SOUTH AND CLECS. IS THIS PROPOSAL  
8 REASONABLE FOR ALL CLECS?

9  
10 A. No. Since all Interconnection Agreements do not necessarily reference "new  
11 markets" and "growth caps," simply ordering the deletion of these terms would not  
12 address all scenarios. In fact, many of the Interconnection Agreements between  
13 BellSouth and CLECs are "bill and keep" on ISP-bound Traffic and, thus, the  
14 deletion of "new markets" and "growth cap" restrictions would not be applicable.

15  
16 As I stated in my direct testimony, if the parties are not prohibited from implementing  
17 the Core decision, the mirroring rule still permits the CLEC to choose between two  
18 different rate structures. Thus, if the Interconnection Agreement between BellSouth  
19 and a CLEC has "bill and keep" on ISP-bound Traffic and the parties are not  
20 prohibited from implementing the Core Order, then the CLEC would have to identify  
21 the rate structure it desires and the Parties would then have to craft language to  
22 incorporate this rate structure into the Agreement in replacement of the "bill and  
23 keep" terms. Thus, simply ordering the deletion of "new markets" and "growth cap"  
24 restrictions does not effectively address all scenarios that may be encountered in the  
25 implementation of the Core Order.

1 Other Issues

2

3 Q. ON PAGE 63 OF HIS DIRECT TESTIMONY, SPRINT WITNESS JAMES  
4 MAPLES RAISES TWO ISSUES THAT ARE NOT INCLUDED IN THE JOINT  
5 ISSUES MATRIX FILED WITH THIS COMMISSION ON JULY 15, 2005. ARE  
6 BELLSOUTH AND SPRINT STILL NEGOTIATING THESE ISSUES?

7

8 A. It is my understanding that Sprint and BellSouth reached agreement on Sprint's first  
9 issue about the UNE attachment referencing the FCC's rules and pertinent orders  
10 from Commissions and Courts.

11

12 Q. WHAT IS THE "OTHER" ISSUE RAISED BY MR. MAPLES?

13

14 A. The second issue raised by Mr. Maples is his concern that there are no terms and  
15 conditions for BellSouth's Operational Support System ("OSS") in BellSouth's  
16 proposed UNE attachment.

17

18 Q. DOES BELLSOUTH'S STANDARD INTERCONNECTION AGREEMENT  
19 TEMPLATE CONTAIN TERMS AND CONDITIONS FOR OSS?

20

21 A. Yes. BellSouth's proposed OSS terms and conditions are contained in a separate  
22 "Ordering and Provisioning" attachment within BellSouth's standard interconnection  
23 agreement. Since OSS was not an issue being addressed in this proceeding, I did not  
24 attach the Ordering and Provisioning attachment as an exhibit to my testimony.

25



1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes.

4 601054v2

1 BY MS. MAYS:

2 Q Ms. Tipton, did you also cause to be prefiled four  
3 exhibits with your direct testimony?

4 A Yes.

5 Q And on your errata you have identified certain  
6 changes to Exhibits PAT-1 and PAT-2. Are there any other  
7 changes to PAT-1 or PAT-2?

8 A Not that I'm aware of.

9 Q And do you have any changes to the Exhibit PAT-3?

10 A No.

11 Q Ms. Tipton, you have passed out a revised Exhibit  
12 PAT-4, is that correct?

13 A Yes.

14 MS. MAYS: Commissioners and parties, we have  
15 actually passed out a revised PAT-4.

16 BY MS. MAYS:

17 Q Ms. Tipton, can you explain for the Commission the  
18 changes to your Exhibit PAT-4, which has been distributed?

19 A Yes. After BellSouth determined its initial list  
20 following the FCC's criteria, we posted that to the website.  
21 And once all of the generic change of law proceedings had been  
22 opened in each of the states, BellSouth issued discovery to the  
23 CLECs to ask them to affirm or deny the fiber-based collocation  
24 arrangements that we had identified in our initial list. As a  
25 result of that discovery, there have been several changes to my

1 exhibit here in Florida, PAT-4, because CLECs have identified  
2 locations where they have either installed the fiber and not  
3 actually activated it or did not, in fact, qualify under the  
4 FCC's criteria for a number of reasons. We have also had CLECs  
5 who have identified locations where they do qualify as  
6 fiber-based collocators, but BellSouth had not identified them.

7           Once a CLEC actually responded that they did not  
8 qualify under the fiber-based collo definition of the FCC, we  
9 did call them to clarify the reasons why. And that is how we  
10 determined that in some cases the fiber had not been activated  
11 or in some cases they had not actually installed the fiber,  
12 though they had told BellSouth they intended to and had, in  
13 fact, paid the installation charge to have that installed to  
14 their collocation arrangement. So these types of things  
15 resulted in a change to the number of fiber-based collocation  
16 arrangements counted by BellSouth.

17           Additionally, we worked with CompSouth to arrive at  
18 some -- a process by which to make this whole fiber-based collo  
19 count be vetted out and are trying to minimize the disputes  
20 that BellSouth is claiming are related to fiber-based collo.

21           MS. MAYS: And it is BellSouth's request,  
22 Commissioner Deason, if we could have the prefiled PAT-4  
23 replaced with the revised PAT-4 that we have distributed. That  
24 document has been identified on the exhibit sheet, and we can  
25 either mark this as a new exhibit or simply replace it as the

1 Commission pleases.

2 COMMISSIONER DEASON: Staff, do you have a  
3 preference?

4 MR. TEITZMAN: Staff has no preference. I think we  
5 could just simply replace it.

6 COMMISSIONER DEASON: Any objection to replacing this  
7 exhibit with the revised exhibit?

8 Okay. Then that would -- PAT-4 has been previously  
9 identified as Exhibit 20, so we will show Exhibit 20 as being  
10 the revised version.

11 MS. MAYS: Thank you, Commissioner Deason.

12 BY MS. MAYS:

13 Q The revised PAT-4 that you have distributed,  
14 Ms. Tipton, is that the current -- does that represent the  
15 current list of fiber-based -- I'm sorry, the current list of  
16 wire centers in Florida that BellSouth is asking this  
17 Commission to confirm?

18 A Yes, it does.

19 Q With your rebuttal testimony, Ms. Tipton, did you  
20 cause to be prefiled one exhibit?

21 A Yes.

22 Q And are there any changes or corrections to your  
23 rebuttal testimony exhibit?

24 A No, but I will qualify that BellSouth made its red  
25 lines to CompSouth's first exhibit filed as in the Georgia

1 case. Because it is a rather lengthy exhibit and because the  
2 change of law proceedings were, you know, back to back, we  
3 relied upon that to give the Commission an idea of where the  
4 parties disagree. I do acknowledge that CompSouth has filed a  
5 Revised Exhibit 1, and that we have not had the opportunity to  
6 take that version and red line it yet. So there may be some  
7 additional items or perhaps some things that we now agree upon  
8 that would not be reflected based upon what is in my Exhibit  
9 PAT-5.

10 Q Thank you. Ms. Tipton, could you please provide the  
11 Commission with a summary of your testimony?

12 A Certainly.

13 Good morning. I testify on a number of issues in  
14 this proceeding, but I am actually going to limit my summary to  
15 three issues that are really important to BellSouth. First, is  
16 the competitive thresholds, and I will focus most of my time on  
17 the discussion of business line count. Second is commingling,  
18 and third, EELs.

19 Regarding the competitive thresholds, as I mentioned  
20 a minute ago, the parties have reached an agreement on how to  
21 address the disputes regarding fiber-based collocation, at  
22 least to minimize those disputes, and so the only remaining  
23 issue regarding fiber-based collo will be addressed in the  
24 briefs.

25 Regarding the business line count and how BellSouth

1 approached that, we certainly have a disagreement regarding how  
2 that business line rule is read. BellSouth followed the FCC  
3 instructions. I know that yesterday you heard Mr. Gillan say  
4 that we have taken line-by-line-by-line, but we believe that we  
5 have addressed it in whole and not disregarding any part of  
6 that.

7           In implementing the FCC's instructions, we actually  
8 relied upon the business rule as contained in Section 51.5, as  
9 well as the information provided by the Commission in Paragraph  
10 105. In Paragraph 105, the Commission acknowledges the use of  
11 data that they requested that the ILECs file prior to  
12 establishing the business line threshold. And they also  
13 acknowledged the appropriateness of inclusion of UNEs, because  
14 it represents the business opportunity that CLECs are already  
15 capturing in the market.

16           Pursuant to the FCC's rule, BellSouth counted the sum  
17 of all of our ILEC switched business lines, and that includes  
18 retail and resold lines, because the Commission actually asked  
19 us to include all of those that are used to serve both ILEC  
20 customers as well as CLEC customers. That data has been  
21 represented in the ARMIS, that's A-R-M-I-S, 43-08 report filed  
22 with the FCC. The rule also called for us to include all UNE  
23 loops, including those that are offered in combination with  
24 other services. And we find out from Paragraph 105 we were  
25 supposed to include only those business UNE-P. But there is no

1 way for us to know what a CLEC is using the UNE loops or EELs  
2 to serve, whether it is business or residence and what it is  
3 actually used for.

4           And, finally, the Commission's rule asked us to count  
5 the entire capacity of digital access lines. They refer to it  
6 as the 64 kilobit equivalency. It is also referred to in some  
7 reporting as voice grade equivalency. The dispute between the  
8 parties regards the counting of all UNE loops and the inclusion  
9 of the entire capacity of a high capacity circuit. We believe  
10 that the FCC clearly intended for us to count all UNE loops, in  
11 addition to the entire capacity, as it has stated in Paragraph  
12 105 and in the rule. There is a lot of history around what  
13 data has been filed when, and all of that has actually been put  
14 into the record as a result of staff's discovery request to  
15 BellSouth.

16           But it's important for me to point out to you a  
17 couple of things. One is that before the FCC established its  
18 thresholds, the FCC asked the ILECs in an informal request to  
19 provide certain pieces of data. They asked us to provide our  
20 resale and retail line count. They asked us to provide all  
21 stand-alone UNE loops, and they asked us to provide business  
22 UNE-P, and what we -- and fiber-based collo. But they didn't  
23 put any qualifiers around how to define fiber-based collo.  
24 They didn't put qualifiers around how to limit or not limit  
25 UNE-L. They told us to provide the actual line count and not

1 the voice grade equivalency. After the TRRO came out, they  
2 came back to the ILECs and issued a formal request in writing,  
3 which we have supplied in response to staff discovery, asking  
4 us to update our line count pursuant to their new business  
5 rule.

6 So there is no hidden agenda here. BellSouth has  
7 made all of this data available publicly to the FCC. We have  
8 also made all of this data available to all the CLECs that are  
9 parties to this case. However, unfortunately, CompSouth who  
10 also issued discovery to BellSouth, and we provided all of this  
11 line count data, including spreadsheets that indicated how we  
12 had come about implementing the FCC's rule. Taking the line  
13 count, pulling out the digital high capacity digital access  
14 lines, and showing the calculation that we used to create the  
15 64 kilobit equivalency pursuant to the rule.

16 Despite all of that, CompSouth filed in its exhibit,  
17 in JPG-3, a comparison in an attempt to try to discredit  
18 BellSouth's line counts. They had the data available to them  
19 to do an apples-to-apples comparison, but they chose not to.  
20 They chose, instead, to use data that was used prior to the  
21 release of the TRRO, the data BellSouth filed in December of  
22 2004, and compare that to BellSouth's 2004 data that included  
23 all of the adjustments in the FCC's order.

24 Additionally, CompSouth believes that we had -- as  
25 filed in a late-filed exhibit of Mr. Gillan's, that we had not



1 matched up our data with what we had filed in the Form 477  
2 report with the FCC. And to alleviate any concerns there, the  
3 instructions for the Form 477 have instructed BellSouth to file  
4 the UNE loop count that it provides when it is not also  
5 providing switching. And BellSouth has consistently supplied  
6 its stand-alone loop count, but it did not include EELs. We  
7 have refiled that data with the FCC to show both the  
8 stand-alone loop count and the loop count including EELs to  
9 alleviate any concern here. The data matches what we have also  
10 filed in this case.

11           CompSouth will also ask you to ignore the FCC's  
12 instructions to count the entire capacity of the digital access  
13 lines. And they refer to that as the 64 kilobit equivalency.  
14 In the business rule it specifically says a DS-1 counts as 24  
15 business lines. So, instead, CompSouth would ask you to make  
16 some type of what we consider a convoluted calculation to  
17 arrive at some fill rate which approximates what a CLEC is  
18 actually using to provide switched services. But even the FCC  
19 in its appellate brief acknowledges that it has instructed the  
20 ILECs to count the full capacity. And I believe yesterday Ms.  
21 Mays asked you to take administrative notice of that appellate  
22 brief that was filed in September.

23           The bottom line is that CompSouth will ask you to use  
24 processes and exclusions that are not contained in the FCC's  
25 rules, and a complicated data gathering and analysis that

1 clearly is absent from the FCC's intent of a simplified  
2 approach with readily verifiable data. The data is filed with  
3 the FCC in its ARMIS report and the Form 477. Their  
4 instructions on doing the 64 kilobit equivalency are clear.  
5 BellSouth has made that calculation available to all parties  
6 for examination. The Commission has fully recognized the  
7 Commission's intent of a simplified approach in your Verizon  
8 decision.

9           Let me briefly touch on commingling, and I believe  
10 you are familiar, we talked about this a lot yesterday. The  
11 real issue is are we required to combine a Section 271 UNE with  
12 a Section 271 checklist element. The legal argument is one  
13 thing, and I'm not going to try to go there, but the practical  
14 application is another. BellSouth will continue to combine  
15 Section 251 UNE loops with our special access transport or  
16 EELs. And I believe Mr. Magness referred to that as the bread  
17 and butter for CLECs, and they will still have access to that  
18 combination. And BellSouth has demonstrated its willingness to  
19 combine and commingle, if you will use those terms loosely, on  
20 a commercial basis through our commercial agreement. We  
21 believe the same finding the Commission has made in the Joint  
22 Petitioners case is appropriate here.

23           Regarding EELs, and EEL audits, rather than try to  
24 summarize what our position is, I just urge the Commission to  
25 make the same result -- or find the same result that it found

1 in the Verizon case that was voted on Tuesday.

2 Thank you, and this concludes my summary.

3 MS. MAYS: The witness is available for cross  
4 examination.

5 COMMISSIONER DEASON: Cross.

6 MR. FEIL: Mr. Magness, did you want to go first?

7 MR. MAGNESS: No.

8 MR. FEIL: Okay. I will go first, then.

9 CROSS EXAMINATION

10 BY MR. FEIL:

11 Q Ms. Tipton, I'm Matt Feil with FDN Communications.

12 Your revised PAT Number 4, which has been marked 20,  
13 this is the last best list. Is that a correct statement?

14 A Yes. We have received responses from all CLECs in  
15 Florida.

16 Q Okay. FDN was one of those CLECs, right?

17 A Yes.

18 Q Okay. And we worked with you to correct the list,  
19 right?

20 A Yes, you did.

21 Q Okay. I'm a little bit confused here on the vintage  
22 of the data on the list. It says at the top here December 2004  
23 data.

24 A Yes.

25 Q That is line count data is 2004?

1           A     Yes.  The line count data is 2004, because we were  
2 asked to rely upon the ARMIS 43-08 report which are only filed  
3 on an annual basis.

4           Q     Okay.  But the fiber-based collocators, the  
5 tabulation here is relatively current?

6           A     Oh, yes, absolutely.

7           Q     Okay.  After you gathered all the discovery from the  
8 CLECs including FDN, and you guys updated your list, did you go  
9 through any sort of verification or validation process on the  
10 list after you got the information from the CLECs?

11          A     I'm not under -- I'm not sure I understand what you  
12 are asking me.

13          Q     Did you do additional physical inspections to  
14 validate what the CLECs told you?

15          A     No, we just called the CLECs if we had a question,  
16 because -- one thing I did not mention in my summary or in  
17 addressing the changes to the list, BellSouth had actually gone  
18 and conducted site inspections prior to its original posting.  
19 So, the list that was originally posted to BellSouth's website  
20 in April included information that we had gathered from site  
21 inspections.  So we used two primary criteria.

22                 First, the CLEC would have to have requested the  
23 installation of a private competitive fiber in its collocation  
24 application; and the second thing is we had to have actually  
25 visually seen a fiber cable entering the collocation space.  We

1 are not allowed to actually enter the space, but you can look  
2 into the fiber trough, if you will, that is part of the cable  
3 support structure, and see that there is a fiber cable going in  
4 there. So that site inspection had already been done. So  
5 that's why I mentioned that we had several occasions where a  
6 fiber cable may have been going into the arrangement, and it  
7 was either not turned up or it was being used for other  
8 purposes, like it was a connection to -- it wasn't actually  
9 activated, I guess is what I'm trying to say.

10 Q Okay. In short, the criteria that you used weren't  
11 necessarily the be all and end all because the list changed?

12 A Well, I believe there is nothing we could have done  
13 differently to have arrived at a different result, and that's  
14 why it was very important to have the cooperation of CLECs in  
15 validating the data that we found.

16 Q Okay. In terms of the number of iterations that the  
17 list has been through, walk me through. You mentioned in your  
18 summary that prior to the FCC's decision there was a list,  
19 after the FCC's decision there was a list. Through the process  
20 of, I guess, the posting on BellSouth's website was -- was that  
21 a third list or the same as the post-FCC list?

22 A Actually, you know, I will be happy to start at the  
23 beginning. There really was no list, per se, prior to the TRRO  
24 because we didn't know what the competitive thresholds were  
25 going to be. So we simply provided data.

1 Q Okay.

2 A It contained business line count data and it -- well,  
3 we call it business line count now, at the time it was just  
4 resale and retail lines, UNE-L, UNE-P, and fiber-based collo.  
5 After the FCC's order came out, we did publish a list of wire  
6 centers that we believed met the criteria.

7 I believe yesterday the attorney from GRUCom  
8 mentioned that there was a list that had been provided to  
9 CLECs, and it contained a mathematical calculation error. It  
10 was simply a spreadsheet error. A formula had been inserted  
11 and then copied down the row, and it resulted in a  
12 miscalculation of business lines. As soon as we identified  
13 that, we notified all parties via carrier notice posting that  
14 we had found this mathematical calculation error. We pulled  
15 down our list and we notified the FCC that we had made a  
16 mathematical calculation error.

17 So we recalculated using the corrected formula. We  
18 then hired an outside auditor to ensure that we, in fact, had  
19 done the math right the second time before we reposted. And  
20 then we reposted that list to the BellSouth website, and we  
21 refiled that list with the FCC that had been fully vetted by  
22 the audit that we had asked to be done.

23 Q Okay. Well, help me here. I want to make sure I  
24 count the number of lists.

25 A Uh-huh.

1 Q There was the one -- let's leave out for now the  
2 one -- or the data that you filed before the FCC decided.

3 A Right.

4 Q There was one list filed immediately after the FCC  
5 decided that BellSouth provided at the FCC's request?

6 A Correct.

7 Q Then there was the math error discovered, so you  
8 pulled the first one and posted or provided a second one?

9 A Right. I believe it was April the 15th was the  
10 posting date.

11 Q Okay. Were there any changes posted to your website  
12 after that second one?

13 A No. We have not reposted changes because there have  
14 been -- as we just talked about, the fiber-based collo numbers  
15 have been in flux as we have been waiting for discovery  
16 responses to come in.

17 Q Okay.

18 A And until all of that discovery was received, it  
19 would do nothing but cause confusion to repost every time we  
20 got a new set of discovery, because we were very successful in  
21 getting the majority of the discovery early. However, quite  
22 frankly, we just got some additional discovery responses  
23 yesterday.

24 Q Okay.

25 A It didn't apply to Florida, but it was just

1 yesterday. So, as you can understand, the discovery was  
2 issued, I think originally in July, and it's November. So we  
3 would have had to repost the list. And I can't imagine how  
4 many iterations that would have caused, and I think it would  
5 cause a lot of confusion.

6 Q Okay. But through the course of discovery in this  
7 proceeding, the list was updated at the request of CompSouth or  
8 Covad?

9 A We've had some informal discussions, yes. But we  
10 have not made that our firm, final, you know, has to stick to  
11 it, unless we have reached agreements with certain parties,  
12 which we have, to abide by the list as it is today, and then  
13 true-up any differences once the final list is approved.

14 Q The PAT-4 originally filed, was that the same as List  
15 Number 2 or was that a Version 3?

16 A What are you referring to as List Number 1 versus  
17 List Number 3?

18 Q List Number 1 was the one you filed right after the  
19 FCC decided. List Number 2 was the one where you found the  
20 math error, and then you updated and corrected. Was PAT Number  
21 4 the original Version 3 or was it the same as Version 2?

22 A I'm sorry. I apologize, I got lost again. Okay.  
23 List Number 1 is what?

24 Q List Number 1 or Version 1, you filed right after the  
25 FCC decided.



1 A Okay.

2 Q Version 2 was when, after you found the math error,  
3 you did the correction?

4 A Right.

5 Q So is PAT Number -- is PAT-4, the one you originally  
6 filed with your testimony, Version 3 or is it the same as  
7 Version 2?

8 A I'm sorry, I understand.

9 Q Sorry.

10 A I believe, and I would have to go back and  
11 double-check, but I believe it is the same information that was  
12 used as posted to our website.

13 Q Okay. PAT-4 revised here today is Version 3, at  
14 least, then?

15 A Yes.

16 Q Okay. You mentioned in your testimony that you  
17 wanted -- well, even this is still subject to change, correct?

18 A I don't believe so. I mean, in my opinion, this is  
19 final. We have responses from every CLEC regarding their  
20 fiber-based collocation arrangements affirmed or denied, and we  
21 believe our business line count has been appropriately applied  
22 pursuant to the FCC's business rules. So we consider this list  
23 final.

24 Q So when you got your information from the CLECs, did  
25 you take it at face value or did you in any instances say, you

1 know, CLEC A said we don't have fiber-based collocation here,  
2 but we think they are wrong?

3 A Ultimately, the end result was we took it at face  
4 value. Again, we went back to CLECs that we had a question  
5 about because -- you know, I personally went and inspected a  
6 few of the offices just out of curiosity. And I personally  
7 engaged in some of the discussions with CLECs to say, well, I  
8 saw the fiber, and can you help me understand why this doesn't  
9 qualify. And in the instance it was the example I gave,  
10 because I had personal knowledge, and the CLEC said, yes, we  
11 did install the fiber. We just have not activated it, and we  
12 plan on activating it actually this month, in November. But it  
13 had not been activated yet. So the ultimate outcome is that we  
14 took all of the CLEC responses at face value, and they are  
15 reflected in my PAT-4 revised.

16 Q Okay. You mentioned that CompSouth and BellSouth had  
17 agreed to a vetting process, presumably post-hearing, in the  
18 event there are any disputes regarding fiber-based collocation.  
19 Do I take it from your testimony now that that vetting process  
20 would not apply to Florida in BellSouth's view?

21 A Actually, we are in the process of doing that now,  
22 and I don't recall where we actually are in that process, but  
23 we are continuing that process. We have shared all of our  
24 discovery responses that have been supplied to BellSouth from  
25 the CLECs under the nondisclosure agreement to CompSouth. So

1 they have the exact same data we do. And as evidenced by the  
2 progress we have made in other states, we are coming to  
3 agreement on what the discovery actually says and what  
4 fiber-based collocation should and should not be counted.

5 Q Well, the reason I asked is because just before that  
6 question I asked whether or not the list could change. So you  
7 are saying as far as you are concerned this is the final list,  
8 but there still is a possibility that it could change after  
9 this vetting process with CompSouth?

10 A Well, I think without any disrespect, when a CLEC has  
11 said we affirm we are a fiber-based collocator --

12 Q Right.

13 A -- CompSouth is taking that at face value like we  
14 are.

15 Q Right.

16 A And so you can put an X in the affirm or the deny  
17 column, and that's what you end up with is what is in my PAT-4.

18 Q Okay. Sorry it took me a little long to get you  
19 there.

20 A That's okay.

21 Q You mentioned in your testimony that you wanted or  
22 BellSouth wanted CLECs to submit spreadsheets by December 9th  
23 that would show which circuits the CLEC believed should be  
24 converted from a UNE to wholesale/special access, is that  
25 right?

1 A Yes.

2 Q And when a CLEC does that, it should use the new  
3 Exhibit 20, Revised PAT-4, is that correct?

4 A Actually, the spreadsheet we've asked them to submit  
5 is the embedded base that was in service as of March 11th; and,  
6 yes, using that spreadsheet that I have filed as revised.

7 Q Okay. But in short, this is the list that we are  
8 supposed to use if we are submitting a spreadsheet to you by  
9 December 9th?

10 A Yes.

11 Q Okay. Were you in the room yesterday when  
12 Commissioner Arriaga said that his understanding that one of  
13 the primary points of the TRRO was that the FCC wanted  
14 competitive carriers to use their own facilities?

15 A Yes.

16 Q Do you agree or disagree with that?

17 A I agree. I think that the tenet upon which even the  
18 Telecom Act was established and the requirement for ILECs to  
19 unbundle their network was to provide an entry mechanism until  
20 such time that CLECs could build out their facilities to serve  
21 competitors. And I think that the -- I believe it's still  
22 draft, but the draft local competition report here in Florida  
23 indicates that that is actually happening.

24 If my memory serves me correctly, I didn't memorize  
25 the whole report, of course, but some things that are very

1 interesting to me is that CLECs that are providing switched  
2 services to businesses, 85 percent of those lines are served  
3 from a CLEC's own switch. You have some carriers that have  
4 deployed their own facilities. One particular carrier,  
5 Comcast, is providing service, switched service to over  
6 1.2 million customers in Florida.

7           So, I certainly believe that the tenet upon which the  
8 Telecom Act was established was to provide an entry mechanism  
9 using unbundled elements and resale in an effort to get --  
10 allow a base to be established, and ultimately for CLECs to be  
11 able to serve customers using their own facilities. I think  
12 that it is certainly understood there are some components of  
13 the ILEC network that will likely remain available on an  
14 unbundled basis, such as that final mile in the loop to the  
15 residence, simply because it is probably not practicable for  
16 there to be a complete overlay in all cases.

17           Q     By the way, I forget to ask, do you have your  
18 deposition up there with you?

19           A     No, I don't.

20           Q     Okay. I was going to ask you a question from your  
21 deposition which was taken, I think, August 17th, 2005?

22           A     Uh-huh.

23                   MR. FEIL: Do you have a copy of it?

24                   MS. MAYS: Uh-huh.

25 BY MR. FEIL:

1 Q But before we get to that, or while they are bringing  
2 that over, you mentioned in the course of your deposition  
3 testimony several times that even though the effect of the  
4 TRRO -- I'm sorry, I didn't mean to be talking while you are  
5 distracted.

6 A That's okay.

7 Q Even though the end result of the TRRO is that there  
8 are going to be instances where a CLEC has to convert a UNE to  
9 special access or wholesale product from BellSouth, BellSouth  
10 would like to keep as much on its network as it could. Do you  
11 agree with that?

12 A Right.

13 Q Okay. Could you turn to your deposition on Page 155,  
14 toward the end?

15 A Okay.

16 Q Ms. Nanette Edwards from Deltacom was asking you some  
17 questions there on Line 12. And so the Commissioners don't  
18 have to go searching through Exhibit 7 to find the reference, I  
19 will read it. It says what if hypothetically I have a  
20 customer, a loop, a DS-1 loop going from the customer frame to  
21 the central office, and today it is actually an EEL, so in  
22 other words, it is a loop from the customer premise to the  
23 central office, and an EEL, the transport component from that  
24 central office to another central office. I have lost the  
25 ability to have the transport at UNE pricing, so I want to

1 disconnect the transport piece from BellSouth's multiplexing  
2 equipment and connect it to a third-party provider. Does  
3 BellSouth have any specific nonrecurring charge that is  
4 designed for that situation? And your answer was there, I  
5 don't know.

6           Is it your understanding that BellSouth is developing  
7 or is about to announce a product that suits just that purpose?

8           A     Yes.

9           Q     Okay. Do you know what date BellSouth is going to  
10 make that product available?

11          A     I don't know the date, but it is my understanding  
12 that they were going to have the process -- I think have the  
13 processes available this month.

14          Q     The idea -- I mean, product development isn't an easy  
15 thing for you all. I understand that. But the basic  
16 principles, I assume, BellSouth wants to make sure they have  
17 covered is you want to make sure the process works, orders get  
18 submitted, orders get processed. And in terms of the pricing,  
19 you want to make sure that if you have costs you can recover  
20 your costs, right? Is that a fair assessment?

21          A     That's correct.

22          Q     Okay. In the context of her question, Ms. Edwards  
23 asked about a situation where you want to flip that transport  
24 component from BellSouth to a third-party provider. But let's  
25 say the carrier wants to flip it to his own facilities rather

1 than Bell transport. Is it going to be the same product?

2 A Yes. In essence, BellSouth considers an EEL as an  
3 end-to-end service. It's not actually two components. So we  
4 provision it as one continuous -- one circuit ID, one product  
5 identifier. And so whether -- we are essentially breaking that  
6 circuit in half, based on what Ms. Edwards was questioning me  
7 about here. And the scenario she is talking about is taking  
8 that loop component and disconnecting it from the facility  
9 assignment for the interoffice piece and swinging it to a  
10 collocation arrangement. So in either event, whether it's a  
11 third-party provider or to their own facilities, the activities  
12 will be the same because it will be going to a collocation  
13 arrangement, whether to a third-party's collo arrangement or to  
14 the CLEC's own collocation arrangement.

15 Q And would you agree with me that at least in the  
16 context where it is going to the CLEC's own collocation  
17 arrangement and the CLEC will be using its own transport that  
18 that is a good thing because that's facilities-based  
19 competition?

20 A Well, sure, it is a good thing from the standpoint of  
21 facilities-based competition. But I think as you introduced  
22 this particular subject, BellSouth is interested in fully  
23 utilizing its network. And so we are continuing to make  
24 services available and ways for CLECs to utilize our network  
25 available.



1 Q So would you agree with me that BellSouth has an  
2 incentive to keep carriers on its network?

3 A Certainly.

4 Q Would you agree that in reviewing this product that  
5 is going to be coming out, you said next week?

6 A My understanding from product management is the  
7 process is going to be available in November. I don't know any  
8 specific date.

9 Q Okay. For this product that is coming out in  
10 November, would you agree with me that the Commission may want  
11 to look at it from a policy standpoint in terms of bearing in  
12 mind that BellSouth has an incentive to keep carriers on its  
13 network, but the Commission may have an interest in promoting  
14 facilities-based competition?

15 A I'm not sure I understand the question.

16 Q Well, you said that -- you admitted that BellSouth  
17 has an incentive for keeping these services on its network,  
18 right?

19 A Right.

20 Q Okay. And the carriers involved have an incentive to  
21 put these facilities or put these services on its own network,  
22 right?

23 A Right.

24 Q And promoting facilities-based competition is a good  
25 thing, right?

1           A     That is one of the goals I'm sure this Commission is  
2 very interested in doing.

3           Q     Okay. So when this product is priced and structured,  
4 BellSouth has an incentive, does it not, to price and structure  
5 it so that CLECs don't want to use it?

6           A     Well, when you are talking about taking an unbundled  
7 element that is a Section 251 element, and one component of  
8 that BellSouth no longer has an obligation to offer it at  
9 mandated TELRIC prices, the activities associated with moving  
10 that, BellSouth believes that it still is going to have to  
11 offer that activity, that nonrecurring activity at TELRIC  
12 prices. So to me it is apples to oranges. You are talking  
13 about a competitive marketplace and BellSouth having an  
14 incentive or creating an incentive for CLECs to keep services  
15 on their network. And that is where BellSouth's, you know,  
16 marketing engine comes in.

17                     And it is not -- certainly not my expertise, but it  
18 is where, you know, we would consider all of the factors in a  
19 competitive marketplace and what incentives we might want to  
20 provide CLECs to utilize our network. To me that is a  
21 completely separate issue than recovering BellSouth's costs for  
22 the work activities that are necessary to break apart a circuit  
23 and swing one end of it to another termination in the central  
24 office. To me those are two separate things.

25           Q     The product you are talking about was the basis for

1 ITC^DeltaCom, or part of the basis for ITC^DeltaCom withdrawing  
2 from this proceeding. Is that a fair statement?

3 A I think so, but I was not a party to all of those  
4 negotiations.

5 Q Is BellSouth intending on filing a cost study for  
6 this product once it is announced and available?

7 A I don't know.

8 Q Okay. Do you have an objection or a problem with  
9 BellSouth providing that product, or a description and rates as  
10 a late-filed exhibit in this proceeding?

11 A I don't even know any -- I mean, I can tell you that  
12 I don't know about the cost study or the actual processes or  
13 any of that. I don't know if the cost study has been performed  
14 yet. I assume it has, but I'm not certain. I was, in fact, in  
15 marketing up until August 1st of this year, but I'm not  
16 involved in marketing anymore, so I don't know the status of  
17 that.

18 MR. FEIL: Does counsel have a problem with providing  
19 that as a late-filed exhibit when it becomes available?

20 MS. MAYS: Let's think about that and let's take that  
21 off the record.

22 MR. FEIL: Okay. Let me check here and see if I have  
23 anything else.

24 BY MR. FEIL:

25 Q Well, would you agree with me, Ms. Tipton, that

1 having that information and that product data is important,  
2 because it will influence the CLEC's decision as to what it  
3 puts on its December 9th list?

4 A No, I don't believe so. I think that where there is  
5 an embedded base circuit where the UNE is no longer available  
6 pursuant to TELRIC pricing, an activity will need to take place  
7 with that UNE. A transition activity will need to take place.  
8 So, necessarily, the embedded base is, if you will, a defined  
9 list of circuits. And the CLEC will then need to say whether  
10 we will physically move that or to convert it to special  
11 access. So the activity might be different, but the containing  
12 of that circuit on the list is definitive.

13 Q So a CLEC has two choices. They can physically move  
14 that circuit. Let's take, for example, an EEL. They may make  
15 the choice of either, in the case of some facilities-based  
16 carrier, putting a collo out there and doing the transport  
17 itself. So Choice A would be to groom the EEL such that that  
18 EEL, the transport component is now on the CLEC's own  
19 facilities or, Choice B, go to special access?

20 A Actually, the CLEC has a number of choices.

21 Q Well, let's just assume those are the two choices  
22 available for the purposes of this question. Don't you think  
23 that the pricing and the product for that grooming product I  
24 was talking about before is going to have a large influence on  
25 whether or not you choose A or B?

1           A     I would say it may have an influence. I don't know  
2 how large of an influence because cost-recovery for  
3 nonrecurring charges are typically in a very simple economic  
4 analysis spread across a number of months to determine the  
5 viability of the cost savings on Option A versus Option B.  
6 And, also, I think CLECs have more than just two choices,  
7 however. They certainly can self-provide facilities, they can  
8 go to a third-party, they can choose resale, or they can choose  
9 BellSouth's special access.

10          Q     Okay. Well, going to a third-party would involve  
11 that same grooming analysis I talked about.

12          A     Uh-huh.

13          Q     Okay. Well, if you were a CLEC, and you had the  
14 choice to make, you would want to look at the numbers, wouldn't  
15 you?

16          A     Yes.

17               MR. FEIL: Okay. Thank you. That is all I have.

18               COMMISSIONER DEASON: Let me ask a question at this  
19 point. When you say an option of converting to special access,  
20 does that mean that everything stays the same, it is just  
21 priced differently, or is there a physical change in the  
22 arrangement when you say convert to special access?

23               THE WITNESS: I don't believe that there is a  
24 physical change in the circuit, but it would become -- that  
25 segment would become priced at special access.

1 COMMISSIONER DEASON: Okay.

2 MR. MAGNESS: Commissioners, we have got an exhibit  
3 to distribute.

4 COMMISSIONER DEASON: Mr. Magness, do you wish to  
5 have this identified?

6 MR. MAGNESS: Yes, Commissioner, if we could identify  
7 it as a composite -- one composite exhibit. This is excerpts  
8 from Ms. Tipton's testimony before the Georgia Public Service  
9 Commission and the Tennessee Regulatory Authority, and I  
10 believe we are at Number 48.

11 COMMISSIONER DEASON: I believe it's 47, unless I  
12 missed --

13 MR. MAGNESS: I'm sorry.

14 COMMISSIONER DEASON: 47. Mr. Feil inquired about a  
15 potential late-filed, but we don't have resolution on that yet.

16 MR. FEIL: I'll ask Ms. Mays once we finish up.  
17 Thank you.

18 (Exhibit 47 marked for identification.)

19 CROSS EXAMINATION

20 BY MR. MAGNESS:

21 Q Ms. Tipton, good morning.

22 A Good morning.

23 Q Just to pick up on the question Commissioner Deason  
24 asked, I would ask you to turn within this Exhibit 47 to the  
25 second set of documents, which is your testimony before the

1 Tennessee Regulatory Authority. Sort of midway through the  
2 document you will find a cover page for the Tennessee Authority  
3 proceeding. I think they are stapled separately. And I would  
4 ask you to turn to Page 255. The page numbers are right at the  
5 top left-hand corner in the Tennessee transcript. Just let me  
6 know when you are there.

7 A Uh-huh.

8 Q And you were asked at the bottom of that page at Line  
9 23, the transition we are talking about, for example, from a  
10 UNE DS-1 loop to special access DS-1 loop is mainly a records  
11 change, right? And your answer was primarily. Would you still  
12 give that answer today?

13 A Yes.

14 Q And a records change in BellSouth's parlance, does  
15 that --

16 COMMISSIONER ARRIAGA: Mr. Chairman.

17 COMMISSIONER DEASON: Yes.

18 COMMISSIONER ARRIAGA: Excuse me a minute. I lost  
19 you. Would you kindly take me back?

20 MR. MAGNESS: Yes. There's a set -- it begins with  
21 this set here, and then you get midway through, and there is a  
22 cover page from the Tennessee Authority.

23 COMMISSIONER ARRIAGA: Where are you? I'm sorry, but  
24 I'm lost, Mr. Chairman.

25 COMMISSIONER DEASON: This is Exhibit 47.

1 MS. MAYS: I think they are stapled together.

2 COMMISSIONER ARRIAGA: Exhibit 47.

3 MS. MAYS: Mine were stapled together in the center.

4 COMMISSIONER ARRIAGA: All right. What page?

5 MR. MAGNESS: If you flip through the last page,  
6 there's a --

7 COMMISSIONER ARRIAGA: I found it. I found it.  
8 Thank you. I'm sorry.

9 BY MR. MAGNESS:

10 Q So we're at Tennessee Regulatory Authority minutes,  
11 Page 255. And I think we just discussed this transition from a  
12 UNE DS-1 to special access constituting a records change, and I  
13 was asking the parlance that BellSouth uses it. Is it fair to  
14 say records change is primarily a keyboard driven software kind  
15 of change?

16 A Yeah.

17 Q Because as Mr. Fogle, I think, testified yesterday,  
18 there is no are underlying facility change there, right?

19 A Right.

20 Q So it's a change from one billing system to another,  
21 right?

22 A Right. And all the engineering records and all of  
23 that stuff, too.

24 Q And take one of these DS-1 UNE loops that's currently  
25 offered at TELRIC rates. If the same DS-1 UNE loop was



1 purchased under the interstate special access tariff here in  
2 Florida, what would it cost?

3 A I don't know.

4 Q It is higher than the TELRIC rate, I take it?

5 A Oh, yes, it's higher.

6 Q Okay. Do you know by what magnitude?

7 A No, I don't.

8 Q And you and Mr. Feil were discussing some process and  
9 conversion issues -- excuse me, in your testimony, and in the  
10 contract language there is this December 9th date Mr. Feil  
11 referenced, which, tell me if you agree with me, is a date by  
12 which BellSouth would have CLECs provide a spreadsheet of their  
13 embedded base that needs to be converted away from Section 251  
14 high capacity loops or transport, right?

15 A Was your question is there a date?

16 Q Well, is that the December 9th date that we have been  
17 talking about that you propose that CLECs would have that to  
18 you by December 9th?

19 A Yes. That was certainly our initial proposal. But,  
20 also, in response to staff's discovery, they asked whether we  
21 would be willing -- is that like the final date or is there  
22 some flexibility there? I think the practical application is  
23 that BellSouth proposed that date in its initial request to  
24 CLECS in the change of law to implement the TRRO, and that was  
25 back this spring. December 9th is quickly upon us, and we

1 certainly recognize that.

2           So we have been negotiating individually with CLECs  
3 to arrive at a mutually agreed-upon date by which spreadsheets  
4 will be submitted. For some CLECs that is December 9th. For  
5 others it's a little later in the timetable. There are some  
6 CLECs that are waiting on the outcome of this proceeding before  
7 they are willing to amend their interconnection agreement or  
8 even agree to submitting their spreadsheets. So while it would  
9 certainly be more practicable to ensure an orderly transition  
10 and to ensure the transition completes by the end of the  
11 transition period, to have those spreadsheets sooner rather  
12 than later, we certainly recognize that December 9th cannot be  
13 an absolute cutoff.

14           Q     So is BellSouth still advocating the Commission adopt  
15 the contract language that includes that December 9th cutoff?

16           A     We are at this point. However, it is certainly in  
17 the Commission's discretion to establish an alternative date,  
18 and we commented on that in our response to staff's discovery.  
19 As I mentioned, we certainly are negotiating and continue to  
20 negotiate actual dates for submission with CLECs individually.

21           Q     And that December 9th date has been out there a  
22 while, but I think you said in answering Mr. Feil's questions,  
23 that the process by which a CLEC would be able to convert over  
24 to another facility for transport, a competitive facility, and  
25 know how much that is going to cost, right now doesn't look

1 like it will be ready until the end of November?

2 A At some point in November. I think -- what we had  
3 done is to develop a process that would be priced at TELRIC. A  
4 CLEC can actually do that today. CLECs have been grooming  
5 their network. Actually, not just CLECs, but carriers,  
6 interexchange carriers have been grooming their network for  
7 years. The price that a CLEC would do -- would pay, excuse me,  
8 today would be the disconnection charge for the EEL and their  
9 reinstallation of a UNE. We are trying to make that a more  
10 seamless process and offer a conversion rather than a  
11 disconnect and install. So that is why we developed the  
12 process, which that development began pretty soon after the  
13 TRRO came out, to make it be a much more seamless process.

14 Q And if there are situations where, for example, a  
15 CLEC is installing its own switching facilities so that it can  
16 use an unbundled loop but use its own switching facility, are  
17 there provisions in BellSouth's processes for how to deal with  
18 that?

19 A Yes, there are. I can't speak to them in detail,  
20 but, yes, there are provisions for that.

21 Q And would you agree that the -- whatever processes  
22 are getting worked out in real time, I think as we are dealing  
23 with this, that ultimately the transition rates that the FCC  
24 approved in the triennial review remand order will apply in any  
25 circumstance until March 10th of 2006?

1           A     Well, it has been BellSouth's position that as soon  
2 as a CLEC actually migrates its service to another  
3 arrangement -- let me take, for example, an UNE-P that a CLEC  
4 has ultimately elected to convert to a resale circuit. It has  
5 been BellSouth's position that once that circuit -- the CLEC  
6 submits the order and the circuit converts to resale, that they  
7 should begin paying the resale rates. We certainly acknowledge  
8 that the Commission has arrived at a different determination in  
9 the Verizon case, and so I just want to acknowledge that. But  
10 in the event a CLEC is actually moving to a totally different  
11 service such as with UNE-P to resale, it makes sense that once  
12 they have already obtained that new service that it is  
13 appropriate for the CLEC to begin paying for that resale  
14 instead of paying for the UNE-P.

15           Q     Well, Ms. Tipton, as I read your testimony, you seem  
16 to complain that CLECs may be waiting to convert and that might  
17 cause an operational mess. And yet if they convert, you are  
18 taking the position that their rates go up immediately because  
19 they can't take advantage of the transition rate until its  
20 natural end. So I guess I am asking, then, are you willing to  
21 accept the Commission's resolution of this in the Verizon case,  
22 which provided for some disconnect charges, but also said the  
23 CLEC does get to take the rate, the transition rate, until the  
24 end of the transition period?

25           A     Well, quite frankly, I'm not in a position to change

1 BellSouth's policy from the stand, but I am certainly willing  
2 to acknowledge the Commission's decision in Verizon.

3           Clearly, when a CLEC is moving to a different type of  
4 service, it just makes business sense that they should begin  
5 paying for that type of service. But I recognize the quagmire  
6 that we are in. If you have a CLEC who is choosing to go to a  
7 commercial agreement, then we can make that effective on a  
8 mutually agreed-upon date, because there is no change in the  
9 service itself, essentially, from a technical standpoint. The  
10 service becomes under a commercial agreement for its pricing  
11 terms and conditions, but there are no other changes. It is  
12 not a change in class, so to speak.

13           For CLECs that are doing hot cuts, however, we have a  
14 very different scenario. You are going from a CLEC who is  
15 using BellSouth's loop and switch port that are physically  
16 connected together to a situation where the loop is going to be  
17 physically swung to terminate at a CLEC's collocation space.  
18 And that requires physical activity, and it requires  
19 coordination between BellSouth and the CLEC. And I believe the  
20 hot cut processes have been fully vetted before this Commission  
21 in a separate proceeding very recently. So in those instances  
22 it doesn't make sense that it -- first of all, from an  
23 operational standpoint, it is not physically possible to  
24 convert 100 percent of the embedded base on March the 10th,  
25 2006.

1           There are thousand and thousands of UNE-Ps in  
2 Florida. And in some wire centers there are CLECs that have  
3 already indicated to BellSouth that it intends to convert those  
4 to UNE loop and provide their own switching. That is what the  
5 competitive marketplace looks for, so that is a good thing for  
6 the CLECs to be able to use their own investment in their  
7 switches.

8           However, we cannot physically convert thousands and  
9 thousands of UNE-P to a UNE loop and ensure continuity of  
10 service for those CLECs. I think the CLECs have always been  
11 very interested in ensuring that there is limited downtime when  
12 they swing from a BellSouth provided switch to a CLEC provided  
13 switch. So once that loop -- or the UNE-P, excuse me, is swung  
14 from a UNE-P BellSouth provided switching to a CLEC provided  
15 switching, they no longer have the UNE-P service from  
16 BellSouth. So it also doesn't make sense that they would  
17 continue to pay a transitional rate on that UNE-P when they  
18 don't even have that service. So once they obtain the UNE-L,  
19 they start paying for the UNE-L, instead of UNE-P.

20           Now, with BellSouth's transition, we modified our  
21 systems back in August so that CLECs could go in and begin  
22 using an on-line scheduling tool for these hot cuts, and they  
23 could establish a due date. The scheduling tool allows the  
24 CLEC to select a due date it desires, and it could select a due  
25 date as late as March the 10th. And as of at least a couple of

1 weeks ago no CLEC had actually gone in and selected a date that  
2 late. Actually, CLECS are already starting to do the migration  
3 now, because they recognize that to do a few each week rather  
4 than thousands each week makes a lot more sense for their  
5 business, as well.

6           BellSouth has never been asking that we do the  
7 conversion immediately, December 9th, January 1st, or whatever.  
8 We wanted to have a staggered approach to ensure that we had an  
9 orderly transition, and intended fully to negotiate with CLECs  
10 for the most desirable due dates for them as the operations of  
11 both companies could tolerate.

12           Q     So wouldn't it assist in solving the operational  
13 problem that faces both the CLEC, who has to swing a loop over  
14 to another service platform, or enter into a commercial  
15 agreement, or if in a state there is a 271 alternative, convert  
16 to that, wouldn't it assist that whole process if there was a  
17 recognition that when the CLEC switched over it didn't lose the  
18 transition rates? I mean, I understand you say from a business  
19 sense it doesn't -- it doesn't make any sense, et cetera, but  
20 we do have a problem here. And I guess I hear you saying that  
21 BellSouth is willing to accept the disconnect fees that were  
22 part of the Verizon case here, but as soon as you convert, you  
23 are going to the higher priced special access if it is loop and  
24 transport and you lose the transition rate. I guess we haven't  
25 seen any changes to the BellSouth contract language proposed

1 since it was first offered, so what is it the Commission should  
2 do to effectuate this?

3 A Could you kind of consolidate your question? I'm not  
4 sure what you're asking.

5 Q Yeah. I guess, should the Commission accept the  
6 language that you've proposed in the BellSouth contract  
7 proposal on this issue?

8 A As I stated, yes, I believe the Commission should.  
9 But I qualify that with the Commission certainly has the leeway  
10 to make modifications that it believes are appropriate for the  
11 state of Florida and for the timing of the proceeding here and  
12 knowing the unit counts that we have here in Florida,  
13 recognizing that BellSouth is successfully negotiating with the  
14 parties who come to the table and are interested in actually  
15 seeing that a transition does, in fact, complete before the end  
16 of the transition period.

17 Q Okay. If you look in the Exhibit 47 packet, about  
18 two pages in from the very front, it's labeled Page 570 from  
19 the Georgia proceeding, we are talking about what happens if  
20 the CLEC doesn't give BellSouth the spreadsheets under your  
21 proposal in your testimony. And I believe you testified, and  
22 in the event CLECs ignore us, which has happened in some cases,  
23 not all, we have been completely ignored in all of our attempts  
24 to try to begin this process and what we propose is, is  
25 essentially a club, if you will. I'll just call a spade a



1 spade. In the event the CLEC doesn't cooperate and BellSouth  
2 has to identify the embedded base itself and issue those orders  
3 itself, the CLEC would then need to pay the Commission-ordered  
4 disconnect rate for that UNE as well as the nonrecurring charge  
5 to move it to the other alternative arrangement.

6           Is that approach of having a club at your disposal  
7 that is in your contract language still part of what you  
8 propose this Commission approve?

9           A     I will answer yes, and then if you will allow me to  
10 explain, because the Commission was not present in the Georgia  
11 hearing. This line of questioning was actually rather lengthy,  
12 and this was towards the end of that whole discussion, so I  
13 don't want you to assign an inappropriate weight to my use of  
14 the term "club," if you will.

15           Q     You were just worn down by then, I guess.

16           A     Well, yes, you wore me down. Because I have been  
17 asked, you know, is it punitive? Is it -- you know, are you  
18 trying to force their hand, et cetera, et cetera. What we have  
19 found in our history of working through some of these issues is  
20 that there will always be parties who prefer to just drag their  
21 feet and not cooperate. And if you have a financial incentive  
22 associated with motivating activity, typically it is very  
23 successful. So what we were offering is that for those CLECs  
24 who would come to the table and talk with us and identify the  
25 embedded base spreadsheet and work through that process with us

1 and assign a project schedule, that they would be afforded an  
2 opportunity to have this TELRIC-based nonrecurring charge to  
3 switch those services over. But for those CLECs who drug their  
4 feet and didn't want to cooperate and wait until the very last  
5 minute, BellSouth would then have to take on all of those  
6 activities to identify the embedded base and make some  
7 assumptions about what the CLEC wanted to do. So it was simply  
8 trying to provide, if you will -- put another way, an incentive  
9 for them to come to the table now and work with us rather than  
10 waiting until the eleventh hour.

11 We have found that it just results not only in  
12 administrative, but operational issues, and we want to avoid  
13 that. We want to ensure that we have limited service outage,  
14 if any, and that customers don't lose service. And those are  
15 CLEC customers. Those aren't even BellSouth customers. So we  
16 are just trying to ensure we have an orderly transition  
17 process.

18 Q So if the CLEC does cooperate, they are rewarded with  
19 getting to pay the higher rate earlier, right? They get their  
20 rate increased to special access, or resale, or whatever it is,  
21 earlier?

22 A When we are talking about earlier, in terms of, you  
23 know, the relief that is being granted is not widespread. And  
24 so we are talking about a month, month and a half. We are not  
25 talking about six months, eight months, ten months even,

1 because that time line has already expired.

2           And let me spend a moment just to explain the  
3 December 9th date and how we got there. We got there by  
4 identifying the total universe of what we believe to be the  
5 embedded base, based upon our initial list that was posted in  
6 April. And that list has now shrunk. So there are fewer  
7 circuits for both transport and loops that something needs to  
8 happen with. Of course, all of UNE-P is going away. But we  
9 looked at the total universe of those circuits that we would  
10 need to do something with, whether physically or even a records  
11 change.

12           And we know from our experience of doing special  
13 access to UNE conversions that the first spreadsheet that is  
14 submitted is never correct. It requires a lot of cooperative  
15 work between BellSouth and the CLEC to get the right  
16 information on the spreadsheet. Because that spreadsheet is  
17 used to issue orders against that CLEC's account. And we don't  
18 want to issue an order on the wrong circuit or perhaps risk a  
19 disconnection. So there is a mutual interest. Because if we  
20 get it wrong, BellSouth ends up in a trouble report, so we are  
21 having to doing double work, too. So there is a lot of  
22 interest in us having to work this process through.

23           XO isn't present here, but they are a great example.  
24 We have worked with them on numerous occasions using the  
25 spreadsheet process to do special access to UNE conversions.

1 This is just the reverse of that. And we know it typically  
2 takes at least 45 days there, or some cases it has taken us  
3 longer than that as the two companies working together to get  
4 the spreadsheet right before we can even start issuing orders.

5 So the process considered that we might get the  
6 spreadsheet sometime in early December, we know the holidays  
7 would be coming, so it would give us a couple of weeks to  
8 really start working through some of that. So we expected the  
9 spreadsheets to be final sometime, say, January or early  
10 February, at which time we could start issuing the orders and  
11 issue them sometime mid-February and on into March to make that  
12 conversion happen.

13 So we aren't talking about trying to issue orders in  
14 December and have a CLEC pay the higher rate for those circuits  
15 they elect to keep on our network for that entire time period.  
16 So I just wanted to put that in some context that you  
17 understand how we got there.

18 Q And if you submit the spreadsheet and go in early,  
19 and you need a form of facilities cut-over, if a CLEC picks the  
20 March 10th date so it can try to maximize the time it actually  
21 gets the transition rate, BellSouth can only perform 200 of  
22 those a day, right?

23 A That is the UNE-P to DS-0 loop hot cuts, 200 per day  
24 per wire center.

25 Q And you mentioned the process that BellSouth and

1 CompSouth have been going through on identifying the  
2 fiber-based collocators, right?

3 A Yes.

4 Q I mean, you would agree with me that you and Mr.  
5 Gillan, in particular, and counsel have been involved in kind  
6 of an iterative process to identify where there need to be  
7 changes in the original list and move those forward to each  
8 Commission, right?

9 A Right.

10 Q And I think in your -- in your filing -- or rather  
11 your errata today, you identified some changes from the number  
12 of delisted wire centers you had originally identified to the  
13 ones that you are saying should be delisted now, right?

14 A Yes, that's correct.

15 Q So at least as to certain wire centers which are  
16 likely popular wire centers, there is a fair amount of  
17 uncertainty as to whether a CLEC is going to have to convert  
18 away from Section 251 UNEs or not, right?

19 A I'm not sure I understand what you mean by certain --

20 Q Well, for example, if a CLEC -- if a wire center is  
21 not delisted under Section 251 for, let's say, high capacity  
22 loops, DS-1 loops, then the CLEC can continue doing what it is  
23 doing today, nothing has to change. It can continue to order  
24 DS-1 UNE loops into that wire center, right?

25 A Right.

1 Q So the question of whether that wire center is  
2 delisted or not impacts whether that CLEC needs to do anything  
3 at all to change its provisioning to its DS-1 loop customers,  
4 right?

5 A Right.

6 Q So for those issues -- so for those wire centers  
7 where we have good faith disputes, there is at least some  
8 built-in uncertainty as to those, right?

9 A But I think in Florida those built-in disputes, as  
10 you will, are very limited.

11 Q Even as to the business line counts?

12 A With the exception of the business line count. You  
13 were specially talking about fiber-based collocation and the  
14 updates to my PAT-4.

15 Q So as to the business line counts, there are several  
16 that are still in dispute, right?

17 A Regarding the business line count, I think -- yes, I  
18 believe so. Based on what Mr. Gillan has filed in his prefiled  
19 testimony, that is certainly something the Commission will need  
20 to consider in how both parties have viewed the business line  
21 count definition and the instruction the FCC provides in the  
22 TRRO. I think that you will find that BellSouth has  
23 appropriately applied that definition, especially in context  
24 with how they discuss that in the other parts of the order.

25 Q I would ask you to turn in this package to Page 671

1 of the Georgia transcript, which is the first set. And here I  
2 think you and I, in fact, were having a discussion about  
3 whether AT&T and SBC should be counted as two fiber-based  
4 collocators. Do you see that here?

5 A Yes.

6 Q Here and, I guess, the next page?

7 A Uh-huh.

8 Q And on Page 20 you were stating your position on that  
9 and testified at Line 20, yes, because, again, there has to be  
10 a date certain in time at which that known impairment finding  
11 is made, and it's just an unfortunate set of circumstances in  
12 this particular situation. It seems likely that the particular  
13 merger is going to go through. The FCC contemplated that there  
14 will continue to be mergers and acquisitions. And, you know, I  
15 don't know that it says so explicitly, but you have to have a  
16 cutoff date. Would that still be your testimony?

17 A Yes.

18 Q And since that time, I guess the end of August, that  
19 merger has now been approved by the FCC and the Department of  
20 Justice, right?

21 A Yes, it has.

22 Q Okay. If we could go back to the -- actually, let me  
23 ask you to turn to your direct testimony at Page 58. And this  
24 was one of the places where some changes were made in your  
25 errata today, right?

1 A Yes.

2 Q And I'm directing you in particular to Line 10, where  
3 it says what is BellSouth's proposed rate in Florida for  
4 switched as-is conversions? And you -- I guess -- well, there  
5 were several of these that changed. Some went up and some went  
6 down, right?

7 A Yes, all except one went down.

8 Q And you note here that the Commission has ordered a  
9 rate of \$8.98 for EEL conversions, correct?

10 A Yes.

11 Q And the rates that BellSouth is proposing here --  
12 well, let me stop there a second. Would you agree with me an  
13 EEL is a combination of loop and transport?

14 A Yes.

15 Q And an EEL conversion would be a conversion of that  
16 combination of loop and transport from interstate special  
17 access to a UNE?

18 A I'm sorry, say that again.

19 Q When you say an EEL -- well, just tell me, when you  
20 say an EEL conversion, what do you mean by that?

21 A Oh, yes, a switch as-is from one -- like special  
22 access to UNE or UNE to special access.

23 Q Okay. And a switch as-is of the transport component  
24 and the loop component?

25 A Both stay, yes.



1 Q Right. Okay. And the rates you are proposing in  
2 this case are for separate rates for loop conversions and for  
3 transport conversions, correct?

4 A Yes.

5 Q And the rates you are proposing, are they supported  
6 by a cost study that was filed in this docket?

7 A Yes, they are supported by a cost study, and  
8 BellSouth has supplied that cost study in response to staff's  
9 discovery. And the rates that you see here -- we are not  
10 asking in this proceeding that the EEL rate be changed. What  
11 we are asking the Commission to do is establish a single  
12 element conversion rate, switch as-is rate. And I am certain  
13 that the next question that may be asked is why would we be  
14 coming here asking you to authorize a rate for single elements  
15 that's higher than what you have already ordered for EELs?  
16 And --

17 Q Actually, no.

18 A And the answer is very simple, if you'll allow me to  
19 finish, Mr. Magness.

20 Q I'm going to object to asked and answered here in a  
21 second. Go ahead.

22 A When BellSouth performed its cost study that is  
23 submitted to the Commission for the EEL switch as-is rate, it  
24 did not have experience doing those types of conversions yet.  
25 And it made the assumption that the only activity that was

1 going to be necessary was for a central office technician to  
2 pull the new engineering record and reassign the circuit ID and  
3 retag the circuit. That's the only activity, it's my  
4 understanding, that was included in that EEL switch as-is  
5 conversation rate. We have got a lot of experience doing  
6 switch as-is conversions now.

7           And, unfortunately, but true, there are things called  
8 fallout, which means a service order is issued, and for  
9 whatever reason -- there may be a number of reasons that a  
10 circuit falls out of our mechanical records update process. It  
11 is typically because the facilities have been mechanically  
12 reassigned. And we don't want that to happen, because that  
13 means a circuit would be taken out of service. And we  
14 certainly don't want that to happen. It causes cost for  
15 BellSouth, and it causes an out-of-service condition for the  
16 CLEC end user. So we want to always reuse facilities, and  
17 that's supposed to be mechanically applied.

18           But the cost study contemplates that there is a  
19 percentage of circuits that do fall out because we know what  
20 that percentage is. And that has been incorporated in these  
21 cost studies to appropriately reflect the activities of the  
22 work centers that would be involved in the event there is a  
23 fallout. Now, that percentage is not high, and the amount of  
24 time is not large. We are talking, in some cases, 30 seconds  
25 for someone to validate the facilities and fix it on an order

1 and re-release it. So we are not talking about a lot of time  
2 here. But when you add up the different work groups that have  
3 to touch that order in the event it does falls out, we need to  
4 appropriately recover our costs. And we are not doing that  
5 with the rate that has been established for the EEL switch  
6 as-is, because it did not incorporate those other work groups.  
7 And that can be evaluated in the cost study that BellSouth has  
8 supplied to staff in its discovery.

9 Q And the cost study was provided for the first time in  
10 response to the staff discovery, right?

11 A Yes.

12 Q Did you sponsor any testimony concerning the cost  
13 study or its assumptions?

14 A BellSouth has not done that, no.

15 Q Is there any witness that CompSouth could have  
16 deposed or questioned at hearing concerning anything about that  
17 cost study?

18 A No.

19 Q I think I just have one other question. When you  
20 count business lines -- I think you may have mentioned this in  
21 your summary. It is BellSouth's belief that when you count  
22 unbundled network element loops, you need to -- you may end up  
23 counting ones -- or you have ended up counting ones that are  
24 residential as well as business, right?

25 A Yes.

1 MR. MAGNESS: Commissioner, if I could have just a  
2 moment, I may be able to --

3 BY MR. MAGNESS:

4 Q I do have one other question on commingling, and I  
5 would ask you to turn to the first page in Exhibit 47.

6 A I'm sorry. Exhibit 47 was what?

7 Q I'm sorry. It's the transcript references from  
8 Georgia and Tennessee.

9 A Georgia?

10 Q Yes, ma'am. In this discussion, I think we are -- I  
11 understand that it is BellSouth's position that it is not  
12 legally required to commingle Section 271 network elements with  
13 Section 251 network elements. We don't want to tangle with you  
14 about that, okay?

15 A Okay.

16 Q I think that the issue here was if there was a  
17 Section 271 network element approved by a state commission,  
18 what BellSouth's position was on how commingling would occur.  
19 And I believe at Line 13, you testify -- we had identified that  
20 type of situation, I think. If BellSouth were to elect to have  
21 its 271 unbundled offer pursuant to some commercial agreement,  
22 the steps that would be necessary would be if there was an  
23 existing EEL and a wire center was found to be unimpaired --  
24 let's just say the route became unimpaired, then the CLEC would  
25 need to do the combining on their own behalf. So the loop

1 would be re-terminated to a collo and the dedicated transport  
2 would be re-terminated to the collo. Is that still your  
3 position on what would need to happen in that situation?

4 A Yes, unless the commercial agreement offered by  
5 BellSouth, which, again, this is fully hypothetical, allowed  
6 for the combining of elements, of two elements within the  
7 commercial agreement. BellSouth has, in the case of loop and  
8 switching, agreed to do that on a commercial basis voluntarily  
9 without government-mandated rules and regulations about how to  
10 do that. So this, again, was just purely a hypothetical in the  
11 event we offered a commercial arrangement, separate 271  
12 commercial arrangement, on an individual element basis.

13 Q If the Commission decided that it was going to  
14 approve a Section 271 element, say transport that was in the  
15 interconnection agreement, is it BellSouth's position that if  
16 the Commission did that the CLEC would have to do its own  
17 combining of that network element with a Section 251 UNE?

18 A I don't know that I can really answer that  
19 definitively, because BellSouth would then need to evaluate  
20 from a business perspective how it may want to offer services.  
21 We went through a fairly rigorous analysis in developing our  
22 commercial agreement and making a decision whether to offer  
23 simply stand-alone switching, and that's it, or to offer a  
24 platform service, if you will. And, ultimately, as you can see  
25 by the number of commercial agreements we've reached, BellSouth

1 did elect as a business decision to offer this platform  
2 service. We may elect to do the same thing, but I am certainly  
3 not in the position to testify to that because it requires a  
4 lot of business analysis about whether we would actually offer  
5 some type of loop and transport combination in a commercial  
6 agreement under a 271 type offering.

7           Of course, today CLECs can get that, because we are  
8 meeting our 271 obligation using our special access tariff.  
9 And we believe the commingling rules require us to combine our  
10 special access tariff services with our 251 elements. So today  
11 a CLEC can get that combination.

12           Q     That is as long as the CLEC is willing to buy special  
13 access. If you buy special access and combine it with a  
14 Section 251 loop, commingling is not a problem, right?

15           A     Right.

16           Q     It is the same thing physically as a combination,  
17 right?

18           A     What's the same thing?

19           Q     A combination and a -- one is a verb and one is a  
20 noun. A combination and commingling, would you agree with me,  
21 are essentially the same thing physically. They are just under  
22 different legal obligations, right?

23           A     Exactly. It's all about what we are mandated to do.  
24 And we are just simply seeking our right to have a  
25 commercial -- on a commercial basis in a competitive

1 environment to be able to establish those terms and conditions.

2 Q Okay. So when the CLEC is willing to buy interstate  
3 special access for the delisted transport part of the EEL, then  
4 commingling is something that's -- nothing to it, just like it  
5 was with the combination, right?

6 A Yes. I'm not sure -- I'm getting kind of lost in  
7 your use of the term it is just like a combination. So I'm not  
8 sure how to answer your question.

9 Q Well, in a combination the loop and the transport are  
10 combined or connected somehow, right?

11 A Yes.

12 Q In commingling the loop and the transport are  
13 combined or connected somehow?

14 A Yes. Uh-huh.

15 Q Okay. That's what I mean.

16 A Right.

17 Q Do you understand?

18 A Yes.

19 Q Okay. So if the CLEC is willing to buy interstate  
20 special access for transport, then there is no -- there is no  
21 impediment to BellSouth completing that commingled arrangement,  
22 just as it would complete a combination arrangement, right?

23 A Right.

24 Q But if a commission decides that there is an  
25 obligation that isn't special access, and the CLEC takes

1 advantage of it, you are not so sure whether the commingling  
2 can be done without requiring, as you say in this testimony, a  
3 hot cut and a re-termination to a collocation, right?

4       A     No, that is not right. I think I just said, it --  
5 you know, the physical connection, there is no question, we can  
6 do that. You know, what we are seeking is a legal right to  
7 offer our 271 compliant elements completely unattached from  
8 other elements. But if we elected to offer on a combined  
9 basis, on a commercial basis, that we be allowed to do that.  
10 BellSouth elected to fulfill its 271 obligation using its  
11 special access tariff, and we know what that means. We did  
12 that with our eyes wide open, if you will.

13               We realized that that creates a blur in this whole  
14 legal argument, which I'm not going to pretend to try to get in  
15 the middle of. But, you know, the bottom line is that we  
16 believe we do not have a mandated requirement to commingle a  
17 271 element with a 251 element. And I believe this Commission  
18 has already reached a conclusion on that in the joint CLECs  
19 arbitration decision.

20       Q     Okay. Well, I hear what you are saying about the  
21 legal obligations. I was really asking a more practical  
22 question, which is if a commission approved such a network  
23 element under Section 271 that was in an interconnection  
24 agreement, and the CLEC decided to use that in the place of  
25 interstate special access, it is BellSouth's position that it



1 will not, because it is not obligated to, do the commingling  
2 for the CLEC in that situation, right?

3 A I think I said just a few moments ago I cannot say  
4 that we would not do that. It requires a business analysis on  
5 BellSouth's part to determine if its commercial offering that  
6 it would make available to Section 271 might include a  
7 combination, just like our commercial offering for the loop and  
8 the port does.

9 Q You mentioned that there is a stand-alone switching  
10 offering, right?

11 A Yes.

12 Q Has any CLEC taken it?

13 A I don't know. I know -- we have, you know,  
14 150-something CLECs that have signed a commercial agreement,  
15 but I don't know how they are actually using it.

16 Q Okay. But I'm just asking -- but you don't know if  
17 anyone has taken -- you know exactly the number that have taken  
18 the commercial agreement. Do you know if any at all have taken  
19 the stand-alone switching offering?

20 A I don't know that. What I do know is that there were  
21 approximately 1,200 stand-alone switch ports in Florida. It's  
22 not huge. But some of those stand-alone switch ports may now  
23 be offered under a commercial agreement. If those CLECs that  
24 were purchasing those switch ports, stand-alone switch ports,  
25 have actually signed the agreement. I just don't know where

1 those lists intersect.

2 Q Okay. You don't know if anybody has taken that deal?

3 A They may have. I don't know.

4 MR. MAGNESS: Okay. Thank you.

5 COMMISSIONER DEASON: Staff.

6 CROSS EXAMINATION

7 BY MR. TEITZMAN:

8 Q Good morning, Ms. Tipton.

9 A Good morning.

10 Q I have a few questions concerning --

11 COMMISSIONER DEASON: Let me ask a question just a  
12 second. How extensive is your cross going to be?

13 MR. TEITZMAN: Let's see. At this point not very  
14 extensive, probably ten minutes.

15 COMMISSIONER DEASON: We'll go ahead and take a  
16 ten-minute recess at this time.

17 (Brief recess.)

18 COMMISSIONER DEASON: Call the hearing back to order.  
19 Staff, you may inquire.

20 MR. TEITZMAN: I'm going to wait for Ms. Tipton.

21 COMMISSIONER DEASON: Oh, I guess that would help,  
22 wouldn't it? (Laughter.) You might get quicker answers.

23 BY MR. TEITZMAN:

24 Q Ms. Tipton, I'm going to start off with some  
25 questions concerning the change of law provisions for switching

1 resulting from the TRRO. In your rebuttal testimony, you  
2 define the embedded base of local circuit switching as any  
3 UNE-P or stand-alone unbundled switching at less than DS-1  
4 capacity level, correct? And am --

5 A Yes.

6 Q And am I correct that the embedded base for switching  
7 includes four line carve-out circuits that are priced at market  
8 rates?

9 A Yes.

10 Q Is there a dispute between BellSouth and CompSouth  
11 regarding what rates should apply to the embedded base of  
12 circuits during the transition period?

13 A Yes, there is, and let me explain. CompSouth has  
14 taken the position that only the TELRIC rates should apply to  
15 any UNE-P that is below the DS-1 level. And the rules from the  
16 FCC clearly say that the CLEC should pay the transitional rate  
17 or the transitional additive, if you will, on top of the rate  
18 that it was paying as of June the 15th. Actually, more  
19 specifically, it says it should pay the transitional additive  
20 to the higher of the rate it was paying or the rate the state  
21 commission ordered subsequent to June the 15th, 2004.

22 So for many CLECs who had already obtained UNE-P that  
23 were a part of the FCC's four or more line carve-out, they were  
24 already paying a market rate as of June 15th, 2005, and so it  
25 is appropriate for the transitional additive to go on top of

1 that market rate. I will qualify, however, that BellSouth has  
2 not advocated adding that transitional rate to the market  
3 prices. We are simply charging CLECs the market rate they were  
4 already paying.

5 Q Do all BellSouth/CLEC Section 252 interconnection  
6 agreements include rates for DS-0 circuits that meet the FCC's  
7 four or more line carve-out?

8 A I don't know.

9 Q For those CLECs that had separate commercial  
10 agreements that included the rate for the DS-0 level switching  
11 that met the four or more line carve-out, were the rates in  
12 those commercial agreements approved by this Commission?

13 A The rates in the commercial agreement? Are you  
14 asking about the rates in the commercial agreement?

15 Q Yes.

16 A No, they were not.

17 Q Did this Commission approve any rates for DS-0 level  
18 switching applicable to the four or more line carve-out  
19 circuits between June 16th, 2004, and March 11th, 2005?

20 A No.

21 Q For those CLECs whose agreements with BellSouth did  
22 not include a price for DS-0 level switching for four or more  
23 lines, what should the transitional rate be?

24 A Let me answer the question this way. It is my  
25 understanding that any CLEC who actually had services that fell

1 into the four or more line carve-out did have that rate in  
2 their agreement. They had negotiated for that rate in their  
3 agreement. In the event there happens to be a CLEC that does  
4 not have those terms in their interconnection agreement, it  
5 means that they were paying the TELRIC rate at the time. So if  
6 they didn't have a rate for the four-line carve-out, then I  
7 think BellSouth probably has a missed opportunity, and we have  
8 to abide by what the FCC said, and that is that they pay the  
9 rate they were paying for that element on June the 15th.

10 Q I believe you were discussing this earlier, but to go  
11 over it again, it is your testimony that the transition rates  
12 for local circuit switching and nonimpaired high capacity loops  
13 and transport only apply until the date that one of those  
14 delisted UNEs is converted to alternative arrangements or March  
15 10th of 2006, whichever is earlier, is that correct?

16 A Yes, that's correct.

17 Q I have placed before you a copy of the TRRO rules  
18 and, specifically, it is highlighted, the portion that we are  
19 going to be discussing. It is 51.319, Subsection (e) to  
20 (ii)(c). Could you take a look at that, please?

21 A Yes.

22 Q Can you point to me anywhere in that rule where it  
23 indicates that transition rates only apply until a conversion  
24 has occurred?

25 A No.

1 Q If the Commission agrees with BellSouth that CLECs  
2 must identify by a date certain the circuits to be transitioned  
3 or discontinued or submit UNE-P conversion orders, but yet  
4 finds that transition pricing stays in effect throughout the  
5 transition period, does this violate any portion of that rule?

6 A No, it does not violate any portion of the rule.  
7 BellSouth has established its position in this issue based upon  
8 a reading of the TRRO in total. And the Commission continually  
9 talks about how it expects the transition to be an orderly  
10 process. And an orderly process means you can't wait until the  
11 last minute to make a change. And in the event there is  
12 physical activity, as I described earlier, in the example I  
13 gave, granted, we are looking at the loop, or transport --  
14 transport language here, but in the event there is a physical  
15 activity, such as the hot cut from a UNE-P to a UNE-L, the CLEC  
16 would actually be transitioning to an element that cost less.  
17 And so it doesn't make practical sense that they would continue  
18 paying for an element that they are no longer actually  
19 obtaining from BellSouth.

20 Q Now, it is correct that BellSouth is proposing some  
21 rates for performing conversions in this proceeding that have  
22 not been previously approved by this Commission, correct?

23 A That is correct.

24 Q Are these switch as-is rates the only rates listed in  
25 Exhibits A and B to your Exhibit PAT-1 that have not been

1 approved by the Commission?

2 A I believe that BellSouth answered that question in  
3 response to its discovery, so subject to what we've supplied  
4 there. Because I'm not prepared to address every rate that  
5 might be contained in its Exhibit A and B. It is my  
6 understanding that these are the only rates that are currently  
7 in that -- that are in that attachment that have not been  
8 approved by the Commission that BellSouth affirms or asserts  
9 are TELRIC rates.

10 Q Were switch as-is rates approved for BellSouth in its  
11 last UNE cost proceeding before this Commission, and that was  
12 Docket Number 990649A-TP?

13 A I will take that subject to check, because I'm  
14 assuming you are in a much better position to know when those  
15 rates were actually approved. And I'm assuming you are  
16 referring to the EEL switch as-is rates?

17 Q Yes.

18 A Yes.

19 Q One second. And why are those switch as-is -- let me  
20 go back a little bit. Why are those switch as-is rates not  
21 appropriate to use here?

22 A As I discussed earlier, the cost study that was  
23 conducted to support the rate BellSouth proposed in the former  
24 UNE docket for the EELs switch as-is conversion rate, the study  
25 was conducted prior to any actual experience that BellSouth had

1 in doing any type of switch as-is conversions. It is a very  
2 limited scope cost study, which only took into account the  
3 tagging of the circuit by the central office technician.

4 And I think I explained earlier that the current cost  
5 studies are based upon real life experience and those work  
6 centers that have to become involved in that percentage of time  
7 or cases. When an order needs to be handled manually, it is  
8 falling out because facilities have been reassigned or some  
9 other reason. And so in this case the cost studies that have  
10 been filed in response to staff's discovery will show those  
11 work groups that are appropriately included in the cost study,  
12 but had been excluded due to inexperience from the previous  
13 cost study.

14 Q And that's the cost study that was provided a week  
15 ago, is that correct?

16 A Yes.

17 Q Just a couple more questions. I would like to move  
18 to Issue 28 and the auditing of a CLEC's compliance with the  
19 EEL service eligibility criteria.

20 If the auditor determined that a CLEC failed to  
21 materially comply with the service eligibility criteria, who  
22 bears the cost of that audit?

23 A The CLEC would.

24 Q In your rebuttal testimony, and it's Page 46, Lines 9  
25 through 10.



1           A     Okay.

2           Q     All right.  Here you state if BellSouth is going to  
3 bear the cost of the audit, then BellSouth certainly has the  
4 right to select that auditor on its own.  If the CLEC may bear  
5 the cost of the audit, shouldn't the CLEC also have a right to  
6 be included in the selection of the auditor?

7           A     Well, I think it kind of goes to perhaps a legal  
8 standard that you are innocent until proven guilty.  And while  
9 BellSouth would have reason to believe that a CLEC might not be  
10 compliant with the service eligibility criteria, hence it is  
11 invoking its right to audit, it must go into the process with  
12 the assumption of a business risk that it must pay the cost of  
13 the audit.  And only in the event that the auditor, in fact,  
14 finds that they have not complied with service eligibility  
15 criteria would the CLEC then be responsible for the auditor.

16          Q     I'm not sure that you answered the question, though.  
17 If the CLEC is going to bear the cost of the audits, shouldn't  
18 they then have the right to be included in the selection of the  
19 auditor?

20          A     I'm not certain how to answer your question because  
21 that assumes up front before the audit is conducted that the  
22 CLEC is, in fact, non-compliant.  So you would have to know for  
23 a fact that they are materially non-compliant before the audit  
24 is -- before the auditor is selected.  So the reason I answered  
25 my question the way I did is because going in BellSouth must

1 make the assumption that it may have to bear the business risk  
2 of paying for the auditor, because it doesn't know for a fact,  
3 based on an audit outcome, that the CLEC is going to be the one  
4 to pay for the auditor. So I don't think there is any  
5 circumstance in which any party wants to assume that the CLEC  
6 is, in fact, going to pay for the auditor.

7 Q So we may end up with the result, though, that the  
8 CLEC will bear the cost and not have participated in the  
9 selection of the auditor, is that correct?

10 A That's true.

11 MR. TEITZMAN: No further questions. Thank you.

12 COMMISSIONER DEASON: Commissioners, questions?

13 COMMISSIONER ARRIAGA: Help me understand, please,  
14 the issue of December 9th. This date, from what I have heard,  
15 looks like a drop-dead date or something like that. What is it  
16 specifically BellSouth is looking for by setting a fixed date?  
17 What are you trying to accomplish?

18 THE WITNESS: The December 9th date was the date by  
19 which we asked CLECs to identify those circuits that they  
20 believed were part of the embedded base. And the FCC defines  
21 the embedded base as those circuits that were in service as of  
22 the effective date of the TRRO, which was March 11th, 2005. So  
23 that is a definitive list. They had to have already been in  
24 service on March 11th, 2005.

25 So if a CLEC has an unbundled loop or an interoffice

1 transport on a route where it no longer is allowed to purchase  
2 that at UNE rates, it needs to supply that list. And that  
3 begins the process that I described earlier about ensuring that  
4 the list matches BellSouth records. Because the very next step  
5 we would do is to match that against our records to, first of  
6 all, make sure that each of the circuits listed we show as  
7 actually billing, that we have a record of it. And if there  
8 are any circuits that appear to have been overlooked, that we,  
9 for example, may show, I will just take a DS-3 loop out of a  
10 particular wire center that the CLEC didn't list. And we would  
11 go back and forth in discussions with the CLEC to ensure that  
12 the spreadsheet was complete and accurate, contained the right  
13 information necessary to issue a service order.

14           So, as I described earlier, what we did is we started  
15 with the number of circuits that we anticipated may require  
16 some activity. And that snapshot was taken last spring. The  
17 number of circuits has changed for several reasons. One is we  
18 have reduced the number of wire centers that meet the  
19 nonimpairment standard. Secondly, CLECs have already started  
20 doing some migration. But we had to have a starting point, and  
21 so we determined based upon the universe of circuits that we  
22 had at that time and the number of CLECs that we may need to  
23 negotiate with, and we backed up from there, and arrived at the  
24 December 9th date. So there is really no -- there is no magic,  
25 and it's not -- it is a drop-dead date only from the standpoint

1 that this is what BellSouth proposed to get the process  
2 started. And so from that date we would then work with the  
3 CLEC to get the spreadsheet correct, negotiate a time schedule  
4 for the actual issuance of those orders and the due dates for  
5 those circuits.

6 COMMISSIONER ARRIAGA: Now, I think that you stated  
7 that some CLECs may be dragging their feet in trying to comply  
8 with that. Is there a specific reason why they would be doing  
9 that? Is it a question of rates? Is it a question of they  
10 needed kind of clarification from this panel or from this  
11 Commission? Why would you think they are dragging their feet?

12 THE WITNESS: I think there is two things, and one is  
13 a valid concern. And I believe Mr. Feil raised that in his  
14 questioning with me. And that is that CLECs before having an  
15 absolute idea about which wire centers are, in fact,  
16 unimpaired, CLECs are relying upon this Commission to make a  
17 determination regarding that. BellSouth has alleviated that  
18 concern, however, because we have already agreed to make CLECs  
19 whole, in the event we have a wire center listed on our list  
20 that ultimately is found to not comply with the competitive  
21 thresholds.

22 Let me take that one step further into a practical  
23 application. Let's say BellSouth identified -- we don't serve  
24 Tallahassee, so I'll just pick Jacksonville, a Jacksonville  
25 wire center. And we believe that we are no longer required to

1 provide UNE loops from that wire center, DS-3 loops from that  
2 wire center. And so a CLEC submits us a spreadsheet, and we  
3 convert their DS-3 UNE loops from that wire center to special  
4 access. At a later date, the Commission determines that we  
5 erred in some way in applying the threshold. BellSouth has  
6 agreed to go back and make the CLEC whole. So it would make  
7 the service retroactively back to the date of the conversion,  
8 convert it back to UNE with no financial hardship on the CLEC  
9 at all.

10 The second reason that CLECs, we believe, are  
11 dragging their feet, if you will, is they are trying to extend  
12 their access to UNEs beyond the March 10th date. And we  
13 believe that because the testimony filed in this case says that  
14 they shouldn't even have to submit orders until March the 10th.  
15 Clearly, you can't do a conversion like that, especially if it  
16 requires some type of physical change to the circuit as in the  
17 case of hot cuts.

18 COMMISSIONER ARRIAGA: But if they, on the other  
19 hand, decided to all come at once and take the date and  
20 initiate the process of conversions immediately, is BellSouth  
21 in the capacity to handle them all at once?

22 THE WITNESS: What we would do in that process is  
23 actually do what we do today. In all scheduling of projects,  
24 the way that works is we just negotiate with all the parties to  
25 determine what the appropriate staggering of dates would be.

1 Anytime we have a project of 15 or more circuits, we negotiate  
2 that project schedule. So you might have five circuits due on  
3 day 10, five circuits on day 11, five circuits due on day 12,  
4 for example. So that is just part of our normal process that  
5 we do today. You know, outside of any transition period, we do  
6 projects literally every day. We do conversion on the retail  
7 side. We do conversions on the wholesale side.

8 COMMISSIONER ARRIAGA: So the answer is yes?

9 THE WITNESS: The answer is yes.

10 COMMISSIONER ARRIAGA: Okay.

11 THE WITNESS: I apologize.

12 COMMISSIONER ARRIAGA: Thank you.

13 COMMISSIONER DEASON: Redirect?

14 MS. MAYS: Yes, Commissioner Deason. Could I  
15 approach the witness?

16 COMMISSIONER DEASON: Yes.

17 REDIRECT EXAMINATION

18 BY MS. MAYS:

19 Q Ms. Tipton, what I have handed you is Exhibit JPG-5,  
20 which has been marked, and I believe admitted in this docket as  
21 CompSouth Exhibit 27. And I would like to ask you --  
22 Mr. Magness asked you some questions about some uncertainty as  
23 to wire centers, and he used the specific example of a DS-1  
24 loop. Do you recall those questions?

25 A Yes.

1 Q And you have provided -- did you provide on your  
2 revised PAT-4 the identification of wire centers that BellSouth  
3 believes are entitled to DS-1 loop relief?

4 A I'm sorry. Could you -- somebody was rustling so I  
5 couldn't hear the question.

6 Q I'm sorry. On your revised PAT-4, has BellSouth  
7 identified the wire centers in Florida that it believes are  
8 entitled to DS-1 loop relief?

9 A Yes.

10 Q Could you look at your PAT-4 and compare that to  
11 revised Exhibit JPG-5, and tell me what the two exhibits say as  
12 to DS-1 loop relief?

13 A My revised Exhibit PAT-4 demonstrates that there is  
14 no impairment for DS-1 loops in the Miami -- I believe that is  
15 Palmetto. It's M-I-A-M-F-L-P-L. And in the Miami-Grande  
16 office, which is M-I-A-M-F-L-G-R. Looking at the revised  
17 Gillan Exhibit JPG-5, it indicates that there is no impairment  
18 in the same two-wire centers.

19 Q Would there be any uncertainty on the part of  
20 CompSouth's members as to what wire centers in Florida are  
21 entitled to DS-1 loop relief?

22 A Based on the comparison, no.

23 Q Thank you. I want to ask you also about --  
24 Commissioner Arriaga asked you about the December 9th date. Do  
25 you recall that question?

1 A Yes.

2 Q What is the end of the transition period by which  
3 CLECs must transition away from Section 251 UNEs?

4 A It's March the 10th, 2006.

5 Q Can you explain how the December 9th date that is  
6 proposed in BellSouth's contract language relates to the March  
7 10th, 2006, date?

8 A Yes. And I believe I have addressed part of that,  
9 but the December 9th date is simply the date by which we were  
10 trying to start the process to begin the transition to ensure  
11 that the transition was actually completed by March 10th, 2006.

12 MS. MAYS: Thank you. I have no further questions.

13 COMMISSIONER DEASON: Exhibits?

14 MS. MAYS: Commissioner Deason, BellSouth would like  
15 to move Exhibits 17 through 21 and Exhibit 46.

16 COMMISSIONER DEASON: Okay. Without objection, show  
17 that Exhibits 17 through 21 are admitted and Exhibit 46, which  
18 is the errata sheet.

19 (Exhibits 17 through 21 and Exhibit 46 admitted into  
20 evidence.)

21 MS. KAUFMAN: Commissioner, CompSouth would move  
22 Exhibit 47.

23 COMMISSIONER DEASON: Without objection, show that  
24 Exhibit 47 is admitted.

25 (Exhibit 47 received into evidence.)



1           COMMISSIONER DEASON: And I believe, according to my  
2 list, Exhibits 1 through 47 have been moved and entered with  
3 the exception of the late-filed exhibits.

4           MR. FEIL: Commissioner, on the subject of  
5 late-files, Ms. Mays and I did reach an agreement for a  
6 late-filed exhibit for a product and price description for the  
7 grooming product. And she has committed that as long as she  
8 has the information that she will file that late-filed at the  
9 same time as she does the others.

10           COMMISSIONER DEASON: That is November the 18th and  
11 that will be Late-Filed Exhibit 48.

12           (Late-filed Exhibit 48 marked for identification.)

13           MS. KAUFMAN: Commissioner, on Late-Filed Exhibit  
14 Number 35, which was Ms. Blake's delineation of the provisions  
15 that BellSouth is seeking the Commission to approve, since  
16 CompSouth hasn't seen that exhibit, obviously, and won't have  
17 the opportunity to cross her on it, we would just like to  
18 reserve our right to comment or object on it to the extent that  
19 that may be necessary.

20           COMMISSIONER DEASON: I think that is customary for  
21 late-filed exhibits, and I think that would be acceptable.

22           MS. KAUFMAN: Thank you.

23           COMMISSIONER DEASON: Okay.

24           THE WITNESS: May I be excused?

25           COMMISSIONER DEASON: Yes, you may be excused. Thank

1 you.

2 Staff, are there other things we need to review  
3 before we adjourn the hearing?

4 MR. TEITZMAN: Just go over the significant dates. I  
5 remind parties that the briefs are due December 2nd, 2005,  
6 and, also, I would point out that the transcripts will be  
7 due -- will be filed November 14th, 2005.

8 COMMISSIONER DEASON: When is this set for agenda?

9 MR. TEITZMAN: I don't know if there is a firm date  
10 set yet, Commissioner. However, I believe we are looking at  
11 February. And there are two agendas in February. I do not  
12 believe that one has been selected yet.

13 COMMISSIONER DEASON: Well, just let me ask a  
14 practical question. We have been talking about a March 10th  
15 FCC imposed deadline, if you will, and there appears to be some  
16 uncertainty out there about some matters. Let me ask the  
17 parties, is a February decision date going to be acceptable? I  
18 mean, I guess we are going to decide when we decide, and you  
19 don't really have a choice, but I am at this point asking for  
20 some input.

21 MS. MAYS: Commissioner Deason, obviously, we do have  
22 a serious timing concern, and the earlier we get a decision the  
23 better. The only thing that, I guess, on BellSouth's part we  
24 could do to assist the Commission in that is it may be possible  
25 to -- we may at least be able to file our brief a little bit

1 earlier, because we have filed briefs now in other states. And  
2 although we will need to make it Florida-specific, I think we  
3 could probably get it in a little bit earlier if that would  
4 help the Commission. But the sooner we get a decision, the  
5 better.

6 COMMISSIONER DEASON: Ms. Kaufman, do you have any  
7 input?

8 MS. KAUFMAN: Well, I agree with Ms. Mays that the  
9 sooner -- the sooner we have the decision, I think the better  
10 it would be for all the parties. In terms of filing the brief  
11 earlier, I think I could probably agree to that, subject to  
12 check, since it's not my responsibility to prepare the brief,  
13 and Mr. Magness has left us. But as Ms. Mays said, this is not  
14 the first state in which briefs will be filed, so that probably  
15 is a possibility. I don't know if that would help the staff  
16 schedule or not.

17 COMMISSIONER DEASON: Well, I'm sure the sooner the  
18 briefs are filed, the more it helps that. And maybe staff has  
19 a little bit of built-in lead time, as well. I'm not exactly  
20 sure, but we will leave the dates as they are with the  
21 understanding that -- I will leave it to the parties. If you  
22 all can mutually agree to file your briefs earlier with the  
23 understanding that staff will endeavor to expedite their  
24 recommendation, that may speed things along.

25 MR. TEITZMAN: (Indicating affirmatively.)

1           COMMISSIONER DEASON: Anything else to come before  
2 the Commission at this time?

3           MR. TEITZMAN: No, Commissioner.

4           COMMISSIONER DEASON: Okay. I would like to express  
5 my appreciation to the parties for your preparation. I know  
6 that -- you should be in good practice if this is the seventh  
7 time. And we appreciate going through the cross-examination.  
8 I think it has been beneficial for the Commissioners to listen  
9 to that.

10           And, Staff, my appreciation to you, as well, but you  
11 still have a lot of work in front of you.

12           With that, this hearing is adjourned.

13           MS. KAUFMAN: Thank you, Commissioner.

14           (The hearing was concluded at 11:38 a.m.)

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STATE OF FLORIDA     )  
  
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CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 14th day of November, 2005.

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JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
FPSC Division of Commission Clerk and  
Administrative Services  
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