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November 30, 2005

VIA HAND DELIVERY

Ms. Blanca S. Bayó, Director Division of the Commission Clerk and Administrative Services Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850

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Re: Docket No. 041269-TP

Dear Ms. Bayó:

Enclosed for filing please find an original and seven (7) copies of City of Gainesville d/b/a GRUCom's Post Hearing Statement and Brief, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows XP, and the word processing software in which the document appear is Word 2003.

If there are any questions regarding this transmittal, please contact me at (850) 222-2300.

Sincerely,

SQUIRE, SANDERS & DEMPSEY L.L.P.

Charles A. Guyton

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to establish generic docket to)
consider amendments to interconnection)
agreements resulting from changes in law, by)
BellSouth Telecommunications, Inc.)
_____)

Docket No. 041269-TP
Dated: November 30, 2005

CITY OF GAINESVILLE D/B/A GRUCOM'S
POST HEARING STATEMENT AND BRIEF

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GRUCOM'S POST HEARING STATEMENT

The City of Gainesville d/b/a GRUCom ("GRUCom") hereby files its Post Hearing Statement in Docket No. 041269-TP.

A statement of basic position in the proceeding:

BellSouth's (a) procedure for determining when wire centers become non-impaired and (b) process for conversion or termination of DS1 service when wire centers become non-impaired are unreasonable and unsupported by testimony and will frustrate competition. The Commission should adopt the procedures and process supported by the testimony of Mr. Maples.

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

GRUCom: GRUCom is unaffected by the FCC's transition plan, since the Gainesville wire centers are currently impaired for DS1 loops. However, the language appropriate to address how DS1 loops will be transitioned for Central Offices that become non-impaired later is that set forth by Mr. Maples.

ISSUE 2: TRRO / FINAL RULES:
a) **How should existing ICAs be modified to address BellSouth's obligation to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?**
b) **What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth's obligations to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?**

GRUCom: a) No position, but GRUCom reserve the right to incorporate into its Interconnection Agreement ("ICA") with BellSouth such language as may be adopted by the Commission.

b) No position.

ISSUE 3: **TRRO / FINAL RULES:** What is the appropriate language to implement BellSouth's obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport and how should the following terms be defined?

- (i) **Business Line**
- (ii) **Fiber-Based Collocation**
- (iii) **Building**
- (iv) **Route**

GRUCom: BellSouth is obligated to continue to provide GRUCom UNE DS1 services. However, that will change when the main Gainesville wire center becomes non-impaired. ICAs should be modified only to address matters at issue in this proceeding, including a fair process for determining wire center impairment status and post impairment conversions.

- (i) "Business Line" should be defined as in 47 C.F.R. §51.5. The dispute with BellSouth focuses on how the definition is interpreted. BellSouth's initial mathematical error and continuing business line count overstatement show the need for a reasonable review and transition process. Mr. Gillan's business line count method should be incorporated into ICAs.
- (ii) "Fiber-Based Collocation" should be defined in the same manner as it is in 47 C.F.R. §51.5. Collocation and business line data should be subject to an exhaustive due diligence procedure and potential challenges by CLECs before any Central Office is declared to be non-impaired.
- (iii) No position.
- (iv) No position.

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

- a) **Does the Commission have the authority to determine whether or not BellSouth's application of the FCC's Section 251 non-impairment criteria for high-capacity loops and transport is appropriate?**
- b) **What procedures should be used to identify those wire centers that satisfy the FCC's Section 251 non-impairment criteria for high-capacity loops and transport?**
- c) **What language should be included in agreements to reflect the procedures identified in (b)?**

GRUCom: a) Yes. BellSouth conceded as much in (a) requesting that the Commission approve ICA terms in this proceeding that address this issue and (b)

acknowledging in its testimony that the Commission has authority to approve ICA terms. The evidence shows the Commission needs to act to protect competition.

b) A reasonable Central Office non-impairment and subsequent period transition process should be implemented. CLECs should be allowed to review, analyze, and challenge BellSouth information. BellSouth's process imposes unreasonable notice (website only) and time limits on CLECs and is discredited by Gillan's and Maple's testimony.

(c) GRUCom recommends adoption of the language provided by Mr. Maples at Pages 42 to 44 of his Testimony for subsequent transition periods, and by Mr. Gillan in Ex. 23, First Revised Gillan Exhibit JPG-1, pages 20, 21 of 67, for determining future wire center non-impairment.

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

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

GRUCom: No, as implicitly conceded by BellSouth's count of business lines to determine impairment. HDSL loops are conditioned copper loops without associated electronics. DS1 loops include associated electronics. The FCC did not include restrictions on the use of conditioned copper loops nor did they make a finding of non-impairment of them.

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

Once a determination is made that CLECs are not impaired without access to high capacity loops or dedicated transport pursuant to the FCC's rules, can changed circumstances reverse that conclusion, and if so, what process should be included in Interconnection Agreements to implement such changes?

GRUCom: This issue is no longer in dispute.

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

- (a) Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?**
- (b) If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements?**
- (c) If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any, should be included in the ICA with regard to the terms and conditions for such elements?**

GRUCom: No position.

ISSUE 8: **TRRO / FINAL RULES:** What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?

GRUCom: No position.

ISSUE 9: **TRRO / FINAL RULES:** What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer obligated to provide as Section 251 UNEs to non-Section 251 network elements and other services and

(a) what is the proper treatment for such network elements at the end of the transition period; and

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

GRUCom: BellSouth's ICA language addressing prospective transitions when wire centers become non-impaired is facially unreasonable: (1) website notice rather than actual notice, (2) 10 days after constructive notice to contest and self-certify, and (3) 104 days to make a transition that the FCC afforded a year to make.

(a) At the end of transition, if the CLEC has not transitioned off, the remaining loops should be priced at the lowest available rate.

(b) The subsequent transition period for high capacity loops should be 12 months. During transition, BellSouth should be allowed to increase the price up to 15%. At the end of transition, if the CLEC has not transitioned off, the remaining loops should be priced at the lowest available rate. (Maples)

ISSUE 10: **TRRO / FINAL RULES:** What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms and conditions that apply in such circumstances?

GRUCom: No position.

ISSUE 11: **TRRO / FINAL RULES:** Should identifiable orders properly placed that should have been provisioned before March 11, 2005, but were not provisioned due to BellSouth errors in order processing or provisioning, be included in the "embedded base?"

GRUCom: This issue is no longer in dispute.

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

GRUCom: Agrees with Joint CLECs.

ISSUE 13: **TRO - COMMINGLING:** What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?

GRUCom: No position.

ISSUE 14: **TRO - CONVERSIONS:** Is BellSouth required to provide conversion of special access circuits to UNE pricing, and, if so, at what rates, terms and conditions and during what timeframe should such new requests for such conversions be effectuated?

GRUCom: No position.

ISSUE 15: **TRO – CONVERSIONS:** What are the appropriate rates, terms, conditions and effective dates, if any, for conversion requests that were pending on the effective date of the TRO?

GRUCom: No position.

ISSUE 16: **TRO – LINE SHARING:** Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?

GRUCom: No position.

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

GRUCom: No position.

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

GRUCom: No position.

ISSUE 19: **TRO – SUB-LOOP CONCENTRATION:** a) What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration? b) Do the FCC's rules for sub loops for multi-unit premises limit CLEC access to

copper facilities only or do they also include access to fiber facilities? c) What are the suitable points of access for sub-loops for multi-unit premises?

GRUCom: This issue is no longer in dispute.

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

GRUCom: This issue is no longer in dispute.

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

GRUCom: Agrees with Joint CLECs.

ISSUE 22: **TRO – GREENFIELD AREAS:** a) What is the appropriate definition of minimum point of entry (“MPOE”)? b) What is the appropriate language to implement BellSouth’s obligation, if any, to offer unbundled access to newly-deployed or ‘greenfield’ fiber loops, including fiber loops deployed to the minimum point of entry (“MPOE”) of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?

GRUCom: No position.

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

GRUCom: No position.

ISSUE 24: **TRO – END USER PREMISES:** Under the FCC’s definition of a loop found in 47 C.F.R. §51.319(a), is a mobile switching center or cell site an “end user customer’s premises”?

GRUCom: This issue is no longer in dispute.

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

GRUCom: No position.

ISSUE 26: **TRO – ROUTINE NETWORK MODIFICATION:** What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already recovered in Commission-approved

recurring or non-recurring rates? What is the appropriate language, if any, to incorporate into the ICAs?

GRUCom: No position.

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

GRUCom: No position.

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

GRUCom: No position.

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

GRUCom: This issue is no longer in dispute.

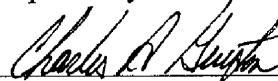
ISSUE 30: ISP Remand Core Forbearance Order: What language should be used to incorporate the FCC’s *ISP Remand Core Forbearance Order* into interconnection agreements?

GRUCom: No position.

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

GRUCom: Agrees with Joint CLECs.

Respectfully submitted,



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GRUCOM'S POST HEARING BRIEF

**I
INTRODUCTION**

GRUCom, the communications utility of the City of Gainesville, offers high capacity loops exclusively in the Gainesville area. GRUCom is co-located at the two BellSouth Central Offices in Gainesville for the purpose of exchanging network traffic with BellSouth and other co-located carriers. GRUCom also purchases Section 251 DS1 Loops as unbundled network elements ("UNEs") from BellSouth when it is cost prohibitive for GRUCom to construct fiber to a customer location. These loops are then cross-connected to GRUCom fiber at the Central Office to complete the customer's circuit on the GRUCom network. The DS1 Loops purchased from BellSouth are an integral extension of GRUCom's network and critical to our customers.

The two BellSouth Central Offices in Gainesville are currently impaired for DS1 Loops, so GRUCom can still obtain these on an unbundled basis. However, GRUCom is very concerned that a determination that these Central Offices are non-impaired may be made at any time without adequate information, review and analysis. BellSouth has already issued conflicting Carrier Notifications regarding non-impairment of one of these Central Offices. Given these conflicting Carrier Notifications and the conflicting evidence before the Commission, GRUCom lacks confidence in BellSouth's unilateral non-impairment determinations.

GRUCom's interest in this proceeding is limited but strong. GRUCom's perspective in this docket is also unique. As a city-owned entity charged with serving not only its customers but also the larger body of citizens in Gainesville, GRUCom's fundamental interest is in seeing that competition in the Gainesville market is preserved.

There are numerous questions before the Commission regarding the proper determination of impairment: what notice will be given CLECs of wire centers that become non-impaired; what constitutes a business line for purposes of determining non-impairment; what will be the process for reviewing, analyzing and, if necessary, challenging the data applicable to the impairment calculation; what is the transition period and rules of the transition for CLECs when wire centers become non-impaired in the future; and how will DS-1 Loops be made available to CLECs in a nondiscriminatory manner and at reasonable prices once they are no longer available as UNEs? These questions need to be answered in this proceeding. Additionally, GRUCom is also concerned with the continued availability of last mile facilities, particularly copper facilities including HDSL capable copper facilities, which we can utilize with our own equipment to produce our own loops. It is extremely important to the state of competition in our community that BellSouth loops and last mile copper facilities continue to be available to CLECs.

BellSouth has demanded that GRUCom execute an amendment to our Interconnection Agreement with them, which they prepared, and which they purport incorporates the ruling of the FCC. It appears to GRUCom that the changes proposed go far beyond mere change of law amendments necessary to implement FCC action. Because their proposed changes were so substantial and because BellSouth demonstrated no willingness to negotiate on the limited issues of importance to GRUCom, GRUCom declined to accept their agreement and intervened in this

docket. GRUCom is hopeful that this proceeding will result in an amended Interconnection Agreement which GRUCom will feel more comfortable executing.

GRUCom seeks two limited but critically important areas of relief. Each of these matters has been placed at issue in this proceeding. They are closely related, so in GRUCom's argument in Section II, they are addressed together.

First, GRUCom seeks Interconnection Agreement ("ICA") language that sets forth an annual process to determine whether BellSouth Wire Centers have become non-impaired. This process should incorporate reasonable notice of the wire centers to be de-listed, access to detailed business line and collocator information necessary to review the de-listing, and an opportunity to challenge the determination.

Second, GRUCom seeks ICA language that provides a reasonable process for transition when it is clear that a wire center becomes non-impaired. The process proposed by BellSouth is facially unreasonable. There should be actual notice rather than website notice. There should be more than 10 days before BellSouth stops processing UNE orders. There should be reasonable access to data for CLECs to determine whether to self-certify. There should be reasonable time to investigate alternative arrangements before submitting conversion or disconnection orders (more than the 40 days proposed by BellSouth). There should be a reasonable transition period for conversion or disconnection (BellSouth proposes 104 days; the FCC found for the initial transition period an entire year was appropriate), and there should be transitional pricing.

If the Commission approves ICA language providing for reasonable alternatives to the language BellSouth has unilaterally attempted to impose and prohibits BellSouth from attempting to impose ICA language that goes beyond the scope of the issues in this proceeding,

then GRUCom believes that the citizens of the City of Gainesville will be adequately protected. In addition, telecommunications competition in Gainesville should be enhanced.

II
THE COMMISSION SHOULD APPROVE ICA LANGUAGE
THAT SETS FORTH A REASONABLE PROCESS FOR DETERMINING
WIRE CENTERS THAT BECOME NON-IMPAIRED AND FOR TRANSITION

In its Triennial Review Remand Order¹ (“TRRO”), the Federal Communications Commission (“FCC”) set forth two standards that had to be met for a wire center to become non-impaired, thus relieving Incumbent Local Exchange Companies (“ILECs”) from having to provide Section 251 UNE DS1 service. The wire center had to have 60,000 business lines and at least four fiber-based collocators to become non-impaired. 47 C.F.R. § 51.319(a)(4)(i). The FCC provided minimal guidance for subsequent transition periods when wire centers become non-impaired.

Given BellSouth’s multiple positions as to both business line and collocator counts, the continued controversy as to proper counts even after extensive, lengthy discovery, the fundamental differences in how BellSouth and the CLECs interpret various rule terms that affect these counts, and the dramatically different subsequent transition period processes advanced by BellSouth and CLECs, it is clear that the determination of whether a wire center becomes non-impaired under FCC criteria and the process to be followed when a wire center subsequently becomes non-impaired are the sources of significant controversy. There is no reason to believe that such controversies will not occur in the future as BellSouth determines other wire centers

¹ In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 and CC Docket No. 01-338, Order on Remand, FCC 04-290 (released February 4, 2005) (referred to, interchangeably, as the “Triennial Review Remand Order” or “TRRO”).

become non-impaired. Thus, there is a need for a reasonable process for determining whether wire centers become non-impaired, and that process should be written into BellSouth's ICAs.

A. BellSouth's Inconsistent Non-Impairment Determinations

The uncertainty associated with BellSouth's determinations of wire center non-impairment began before CLECs had access to BellSouth's detailed data and interpretations. A review of BellSouth's shifting positions on these counts is instructive.

BellSouth's initial Carrier Notification regarding wire center impairment merely posted a list of wire centers and whether or not they met non-impairment criteria. No business line count or any collocator count was provided. Ex. 19, PAT-3, pages 1-34. The Gainesville Main wire center was shown as non-impaired for DS1.² Not surprisingly, CLECs raised questions regarding BellSouth's unilateral determination of non-impairment and asked for underlying data.

On March 11, 2005, BellSouth issued another Carrier Notification in which BellSouth explained its methodology for interpreting the FCC's TRRO order and in which it provided for each wire center a count of business lines and a count of fiber based collocators. Ex. 19, PAT-3, pages 38-50. The business line count and fiber based collocator count for the Gainesville Main wire center were 70,699 and 5, respectively. (In that same Carrier Notification, BellSouth provided the business line counts and fiber based collocator counts it had provided to the FCC the previous December when the FCC was still considering how to resolve impairment criteria. Those counts for the Gainesville Main wire center, which BellSouth explained were developed using a different methodology, were 48,816 and 9, respectively.)

² Because GRUCom's interest in this proceeding is limited to UNE DS1 services at the Gainesville main wire center which is shown as approaching the criteria for non-impairment, the discussion in this brief will be limited to those DS1 non-impairment criteria and associated counts and not other non-impairment criteria and their associated counts.

Then, on March 24, 2005, BellSouth issued yet another Carrier Notification in which it acknowledged it had made a significant error in the counting of business lines. Ex. 19, PAT-3, pages 51-52. It also acknowledged that wire centers meeting non-impairment thresholds were not correctly identified. Rather than provide another set of business line and collocator counts, BellSouth announced that it had retained an independent third party to review its counts and that results would be posted when complete.

On April 15, 2005 BellSouth announced its corrected business line count in yet another Carrier Notification. Once again the business line for the Gainesville Main Wire Center changed, the business line and collocator counts were 55,785 and 5, respectively. Thus, the Gainesville Main wire center moved from being non-impaired to impaired for DS1 service, with BellSouth having to continue to provide Section 251 DS1 service to CLECs.

Thus, before this proceeding was initiated by BellSouth, there were considerable uncertainties as to just what the business line and collocator counts were for various wire centers. GRUCom was provided no less than three different counts by BellSouth for the Gainesville Main wire center all based upon 2003 year data. The three counts, with dramatically different results regarding non-impairment, are set forth below:

BellSouth's Differing Impairment Counts
Gainesville Main Wire Center
2003 Data

	Business Lines	Fiber Based Collocators
December 2004 Data Reported to FCC	48,816	9
Initial Counts Reported to CLECs	70,699	5
Corrected Counts Reported to CLECs	55,875	5

In this proceeding, BellSouth has, as it should have, updated its counts for more recent 2004 data. That data for the Gainesville Main wire center still shows it is impaired, with a surprising, but modest, decrease in the business line count. In addition, BellSouth has during the course of this hearing further adjusted its fiber based collocator count for Gainesville Main:

BellSouth's Differing Impairment Counts
Gainesville Main Wire Center
2004 Data

	Business Lines	Fiber Based Collocators
PAT-4, Page 1	55,681	5
Ex. 20 PAT-4, Revised	55,681	4

B. The Evidence Shows That BellSouth's Business Line Count Is Overstated.

Compounding the uncertainty created by Bellsouth's multiple quantifications of the impairment criteria is the compelling evidence in this proceeding that BellSouth's most recent 2004 business line count is overstated. Both Ms. Montano and Mr. Gillan make convincing arguments that BellSouth's methodology for counting business line for purposes of determining impairment is a misapplication of the FCC's TRRO and the rules adopted therein.

BellSouth's methodology multiplying each high capacity circuit by its maximum capacity without regard for whether it is activated and used to provide switched access just disregards significant portions of the FCC's definition of a business line, as both Ms. Montano and Mr. Gillan testify. Montano Rebuttal at page 10, line 18 – page 13, line 15; Gillan Rebuttal at page 14, line 21 – page 18, line 19. Ms. Montano makes it clear that CLECs do not use all their DS1 loop capacity to provide voice services. Montano Rebuttal at page 13, line 18 – page 14, line 4. In fact, none of the Section 251 DS1 loops purchased by GRUCom are being used to deliver voice services. Moreover, as Ms. Montano observes, BellSouth's methodology requires review of data not filed with the FCC and not available to CLECs. This is in contrast to ¶ 105 of the

TRRO where the FCC indicates that business line counts are “an objective set of data that incumbent LECs already have created for other regulatory purposes,” and where it also observes: “[B]y basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which must also be reported, we can be confident in the accuracy of the thresholds, and a simplified ability to obtain the necessary information.”

Mr. Gillan has developed an alternative count of wire center business lines correcting BellSouth’s methodology in Ex. 26, JPG-4. First, he eliminated BellSouth’s adjustments to ARMIS 43-08 data filed with the FCC. Second, he corrected the UNE-L count to assume that CLEC’s average utilization of digital UNE-L to provide switched access was the same as BellSouth’s average utilization. Correcting those overstatements in the line count, Mr. Gillan shows a corrected 2004 business line count for the Gainesville Main wire center of 53,624. The methodology used by Mr. Gillan is reasonable and is the methodology that the Commission should approve for counting business lines in non-impairment determinations.

C. The Evidence Demonstrates A Continuing Need For Dispute Resolution Regarding Whether Wire Centers Are Non-Impaired.

Regardless of the ultimate business line count and fiber based collocator count approved for wire centers in this proceeding, the following evidence is undisputed. (1) There has been great uncertainty in BellSouth’s quantification of business lines and fiber based collocators used to determine whether wire centers are impaired or non-impaired, including a self-acknowledged mathematical error that overstated the Gainesville Main line count by 27% and a surprising lower line count for the Gainesville Main when updating for more recent data. (2) BellSouth has used different methodologies for different counts, submitting a low line count when attempting to influence the FCC in the criteria to use to determine non-impairment and then using a different method that results in a higher line count when communicating line counts to CLECs. (3) There

is a legitimate dispute between BellSouth and CLECs regarding the proper interpretation of the FCC's wire center impairment criteria. (4) There is a legitimate dispute between BellSouth and CLECs as to business line counts at wire centers and possibly as to fiber based collocator counts. (5) These issues remain unresolved even after a lengthy proceeding, extensive discovery and fully developed testimony and exhibits.

Regardless of how the Commission resolves these issues in this proceeding, it is clear that the same potential for BellSouth/CLECs disputes regarding wire center non-impairment determinations will exist in the future. Therefore, there is a compelling need for the Commission to adopt a procedure to be included in ICA language that provides for a reasonable process for wire center non-impairment determinations and subsequent conversions or disconnections. Absent such language, or if BellSouth's proposed language is approved, CLECs will simply be forced to live with unilateral BellSouth determinations of wire center non-impairment determinations. Given the serious consequences of a determination of non-impairment,³ the Commission needs to have in place a reasonable procedure to address potential disputes and transitions. The process must assure adequate notice, access to data used by BellSouth to make its determination, an opportunity to contest the determination before the Commission and time to find and pursue alternatives.

D. BellSouth's Non-impairment and Conversion Procedure Is Facially Unreasonable.

BellSouth's proposed procedure for dealing with wire centers that become non-impaired, thus relieving BellSouth of its responsibility of having to provide Section 251 DS1 service, is facially unreasonable. It is set forth in Section 2.1.4.12 of Exhibits 17 and 18, PAT-1 and PAT-2

³ CLECs faced with no longer having UNE DS1 service have four choices, all of which adversely affect competition and some of which cannot be timely implemented without adequate time lines: (1) convert to a higher cost BellSouth service, (2) convert to another carrier for service, if available and economic, (3) build their own DS1 circuit, presumably at a higher cost, or (4) terminate service to their customer, turning them over to BellSouth.

and was addressed in Ms. Tipton's Rebuttal Testimony at pages 37 and 38. Each step will be addressed in turn.

However, before addressing each step, consider that BellSouth's process is unilaterally imposed. CLECs are not consulted. There is no opportunity for agreement with CLECs, unless CLECs just accept BellSouth's unilateral determination, which includes its disputed interpretation of FCC criteria for determining non-impairment. Indeed, Ms. Tipton testifies that a process that requires collaboration and agreement is "not a feasible option." Rebuttal Testimony at page 36. This unilateral imposition of a process that offers no collaboration is the initial sign that BellSouth's process is facially unreasonable.

The first step in BellSouth's process is BellSouth being able, at any time, to post a website Carrier Notification Letter that within 10 business days BellSouth would no longer have to provide UNE high capacity loops at newly designated non-impaired wire centers, except pursuant to the self-certification process. CLECs would receive no actual notice. To receive any notice at all, they would need to monitor constantly BellSouth's website. BellSouth could make the notice at any time during the year, even though the ARMIS 43-08 data the FCC thought would be used to make this determination is reported to the FCC only once a year in early April. It is difficult to ascertain what is more unreasonable, BellSouth wanting to give constructive website notice rather than actual notice or BellSouth reserving the right to spring this on CLECs at any time of the year even though the data necessary to review the determination becomes publicly available only once a year. Both Ms. Montano and Mr. Maples testified that this website notice rather than actual notice was unreasonable. Montano Direct, page 10, lines 22-26; Maples Direct, page 39, lines 3-6.

The next step in BellSouth's process would be for CLECs to self-certify within 10 days to be able to continue ordering new DS1 service. That self-certification determination requires some review of underlying data to determine whether BellSouth's designation is reasonable. The FCC contemplated a "reasonably diligent inquiry" before self-certification. TRRO, ¶ 234. However, under BellSouth's procedure, there would be no underlying available data from which to make this determination, even if the CLEC were fortunate enough to timely review BellSouth's website notice. Once again, this is patently unreasonable.

The next step in BellSouth's process would be for CLECs to file within 40 days of the website notice a spreadsheet addressing which of the UNE DS1 services they have been taking are to be disconnected or converted. Once again, no time line should be triggered by anything other than actual notice. Forty days from constructive notice is hardly sufficient time for CLECs to consider all their options, contact customers if necessary and then file a spreadsheet with BellSouth.

BellSouth's final step is that 90 days after the running of the 10 business days from the notice (104 days total), BellSouth will convert or terminate UNE DS1 service. Perhaps the best evidence that this time line is facially unreasonable is that the FCC in its TRRO provided a one year transition period for the same type of conversions.

E. The Evidence Provides Two Reasonable Alternative Procedures.

Both Mr. Maples and Mr. Gillan proposed reasonable alternative procedures to BellSouth's facially unreasonable procedure. Each is addressed below.

Mr. Maples urged the Commission to adopt a transition process for future declassifications that mirrored the one adopted by the FCC in the TRRO for the embedded base of UNEs. Maples Direct at 39 - 42. He also proposed ICA language to effect his proposal.

Direct Testimony at pages 42 – 44, Sections 2.1.4.12.1 through 2.1.4.12.6.1. He proposed actual rather than website notice to CLECs. He proposed a minimum of 30 days from the date notice was received by CLECs (rather than 10 days from a website notice that might or might not be seen) for CLECs to determine if they would self-certify or stop their process for ordering UNE service. During those 30 days, the CLECs should be allowed to continue to order UNE service. He also testified that CLECs should be able to dispute BellSouth's wire center determination and continue ordering UNE service after 30 days, and that until the dispute is resolved, prices for the service should not increase and there should be no requirement to transition off the service. If CLECs did not self-certify or dispute BellSouth's determination, then BellSouth should be allowed to increase the price during the transition period by 15%, consistent with the TRRO. Orders for disconnection or conversion should be required only after nine months rather than the 40 days proposed by BellSouth. The entire transition period should be one year as adopted by the FCC for similar conversions in the TRRO rather than the 104 days proposed by BellSouth.

Several points Mr. Maples makes demonstrate just how unreasonable BellSouth's proposed process is. BellSouth's ten day period before terminating UNE service does not give CLECs adequate time to review BellSouth's declassification or determine if it is going to self-certify. Direct Testimony at page 40. He accurately noted that information necessary to assess BellSouth's determination is not readily available (as shown by the time discovery undertook in this case as well), and he pointed out that such information is also necessary if a CLEC is going to undertake the "reasonably diligent inquiry" required by the FCC's self-certification process. Id. He pointed out that in the TRRO the FCC found a 12 month transition period for high capacity loops provided "adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, including decisions where to deploy,

purchase, or lease facilities.” Direct Testimony at pages 40, 41. That stands in stark contrast to the 104 days BellSouth proposes.

Mr. Gillan also proposed an alternative procedure. It is found at pages 20 and 21 of Ex 23, First Revised Gillan Exhibit JPG-1. Rather than initiating the process with a website notice, Mr. Gillan proposes a BellSouth filing with the Commission on April 1 of each year (coincident with the filing of ARMIS 43-08 data with the FCC) in which BellSouth would provide the count of business lines and fiber based collocators for each wire center it considered newly non-impaired. The filing would also contain detailed supporting data. CLECs, which could anticipate and be ready for the filing, would then have 30 days to challenge the non-impairment status of any newly designated wire center. The challenge would be resolved expeditiously by the Commission. Changes in wire center designations approved by the Commission would become effective July 1 of the year. After completion of the process, BellSouth would issue a Carrier Notification letter listing the approved wire centers in a Subsequent Wire Center List. Within 10 days after the date that the Subsequent Wire Center List was provided by BellSouth, BellSouth would not be required to offer UNE DS1 loops at such newly designated wire centers.

Mr. Gillan’s process is more streamlined than Mr. Maples’ process. It is best seen as a middle ground between BellSouth’s facially unreasonable process and Mr. Maples’ process that is consistent with the initial transition process set forth in the TRRO.

F. GRUCom Recommends The Adoption of a Reasonable Process.

The most reasonable process the Commission could adopt would be a combination of the processes advocated by Mr. Gillan and Mr. Maples. Such a process would be supported by the evidence. Mr. Maples is correct when he states that the process should generally follow the transition process set forth by the FCC in the TRRO. The Commission knows that process is

reasonable. However, there are advantages as well to Mr. Gillan's requirements that a detailed filing be made with the Commission once a year, coincident with the filing of supporting ARMIS data with the FCC, to initiate a Commission procedure, if necessary, to resolve challenges to BellSouth's determinations. Following Mr. Maples' longer time line would avoid having to rush that dispute resolution and afford CLECs sufficient time to develop alternatives, including the build option that requires more time to implement.

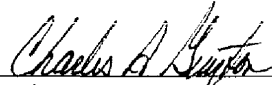
If the Commission feels compelled to choose between the two reasonable processes advocated in the evidence before it, GRUCom recommends adoption of Mr. Maples' process. It is consistent with the initial transition process adopted in the TRRO, and it avoids some of the rush inherent in Mr. Gillan's approach. Regardless of the alternative chosen, Mr. Maples', Mr. Gillan's or a combination of both, what is clear is that BellSouth facially unreasonable process should not be adopted.

III CONCLUSION

If telecommunications competition is to thrive in Gainesville, there needs to be in GRUCom's ICA a reasonable process for determining whether wire centers become non-impaired in the future. The process proposed by BellSouth is facially unreasonable with its website notice and seriously brief time lines for self-certification, processing of orders and other steps necessary for a rational transition. At a minimum, the process in the ICA should provide CLECs with (a) reasonable notice, (b) access to all data necessary to review and, if necessary, challenge BellSouth's determination and (c) adequate time for transition if the wire center is properly declassified. The Commission has two reasonable alternatives before it, with the most reasonable alternative to be a combination of the best elements of both. If the Commission feels

compelled to choose between the two alternatives, the better alternative before the Commission is the one advanced by Mr. Maples.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of GRUCom's Post Hearing Statement and Brief has been served by hand delivery (*) and U.S. Mail this 30th day of November, 2005 on:

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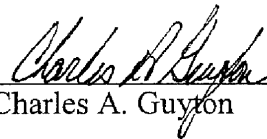
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