

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:)	
)	
Joint petition by TDS Telecom d/b/a TDS)	
Telecom/Quincy Telephone; ALLTEL)	
Florida, Inc.; Northeast Florida Telephone)	
Company d/b/a NEFCOM; GTC, Inc. d/b/a)	
GT Com; Smart City Telecommunications,)	
LLC d/b/a Smart City Telecom; ITS)	
Telecommunications Systems, Inc.; and)	Docket No. 050119-TP
Frontier Communications of the South, LLC)	
["Joint Petitioners"] objecting to and)	
requesting suspension and cancellation of)	
proposed transit traffic service tariff filed by)	
BellSouth Telecommunications, Inc.)	
)	
Petition and complaint for suspension and)	Docket No. 050125-TP
cancellation of Transit Traffic Service Tariff)	
No. FL2004-284 filed by BellSouth)	
Telecommunications, Inc., by AT&T)	
Communications of the Southern States,)	Filed: January 30, 2006
LLC.)	

Rebuttal Testimony and Exhibit
Of
Timothy J Gates
On Behalf of
The Competitive Carriers of the South, Inc.

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In the Matter of:)	
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Joint petition by TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC ["Joint Petitioners"] objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc.)	Docket No. 050119-TP
)	
Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC.)	Docket No. 050125-TP
)	
)	Filed: January 30, 2006

**Rebuttal Testimony and Exhibit
Of
Timothy J Gates
On Behalf of
The Competitive Carriers of the South, Inc.**

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I. Introduction of Witness

Q. Please state your name.

A. My name is Timothy J Gates.

1 **Q. Are you the same Timothy Gates who filed direct testimony in this**
2 **proceeding on December 19, 2005?**

3 **A. Yes, I am.**

4

5 **II. Summary of Rebuttal Testimony and Recommendations**

6

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

8 **A.** The purpose of my rebuttal testimony is to respond to the direct testimonies of
9 BellSouth witness Kenneth Ray McCallen and Small LEC Joint Petitioners
10 (“Small LECs”) witness Steven E. Watkins. Specifically, I will respond to
11 BellSouth’s contentions that (a) its transit tariff is the appropriate mechanism for
12 setting out the terms, conditions and rates for transiting, (b) that transiting is not a
13 requirement pursuant to § 251 of the Telecommunications Act of 1996 (“TA96”),
14 and (c) that the tariff rate for transiting should be established by “eyeballing” rates
15 found in some existing agreements – rather than established in accordance with
16 TELRIC principles. With regard to the Small LECs, I will respond to Mr.
17 Watkins’ proposals for the Commission to require: (a) a three-party contract
18 addressing transiting obligations between the originating carrier, the transit
19 service provider, and the terminating carrier, (b) parties other than the Small
20 LECs to pay for the cost of transit traffic originated by Small LECs’ customers
21 and (c) a direct trunking threshold.

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Q. Please summarize your rebuttal testimony and recommendations.

A. The direct testimonies of both BellSouth and the Small LECs describe a situation in which those two parties have been unable to come to agreement on transit issues in negotiations. Instead of them bringing these disputed issues to the Commission for arbitration, BellSouth has filed a transit tariff that would apply as a default for any party who does not have a transit agreement in place with BellSouth, while the Small LECs recommend that the Commission require parties to a transiting arrangement to execute three-party transit contracts.

My rebuttal testimony will show that both of these parties' recommendations are unnecessary because the appropriate vehicle for establishing transit terms, conditions and/or rates is in an interconnection agreement. Both the FCC and the Florida Commission have come to this conclusion, and the interconnection agreement is the "tried and true" method for establishing transit terms, conditions and rates. Therefore, to the extent that BellSouth and the Small LECs are unable to agree on specific transit terms in negotiations, as indicated in their direct testimonies, they should bring those disputed issues to the Commission for arbitration. Accordingly, my *primary recommendation* is for the Commission to reject (and cancel) BellSouth's transit tariff, and reject the Small LECs three-party transit contract proposal. Instead, the Commission should require parties to establish transit terms, conditions and rates just as they have been for years – through negotiations and, if necessary, arbitration. The Commission should reject these parties' attempts to circumvent the

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 negotiation/arbitration process and turn disagreements between BellSouth and the
2 Small LECs into wide-ranging and potentially harmful changes to the competitive
3 market and future negotiations.

4 My rebuttal testimony addresses a number of additional problems with the
5 positions and recommendations of BellSouth and the Small LECs, including the
6 following:

- 7 • I explain that BellSouth's direct testimony is incorrect and internally
8 inconsistent regarding whether transit is an obligation under § 251 of the
9 TA96. BellSouth's direct testimony recognizes that § 251 requires
10 BellSouth to provide both direct and indirect interconnection, and that
11 transit is a form of indirect interconnection, but attempts to ignore the
12 logical conclusion that transiting is grounded in § 251.
13
- 14 • As mentioned above, my rebuttal testimony (along with my direct
15 testimony) explains why BellSouth's transit tariff is not the appropriate
16 mechanism for establishing terms, conditions and rates related to
17 BellSouth's transit offering. BellSouth's transit tariff is seriously flawed
18 in a number of respects, it is one-sided, and it is inconsistent with the
19 manner in which transit terms, conditions and rates have been established
20 in Florida in the past. I will also show why BellSouth's claim that it will
21 not be properly compensated for transit traffic absent its tariff is
22 misleading and incorrect, and that BellSouth's claim has previously been
23 rejected by the FCC. BellSouth needs only to request negotiations with
24 parties who are using its transit offering but who do not have separate
25 transit agreement with BellSouth – as required by the FCC – to ensure that
26 it is properly compensated for transit. And in instances where a transit
27 agreement does not exist, bill and keep should apply.
28
- 29 • Though I recommend the Commission reject and cancel BellSouth's
30 transit tariff outright, to the extent that the Commission disagrees with my
31 primary recommendation and finds that a transit tariff is appropriate
32 (which it should not), I recommend that the Commission summarily reject
33 BellSouth's method for establishing its tariff transit rate. BellSouth
34 explains in its direct testimony that it chose a per-minute of use transit rate
35 of \$0.003 because it was purportedly comparable to the total transit charge
36 paid by some CLECs via interconnection agreement. I will show that
37 BellSouth's rate-setting method is inappropriate and results in BellSouth
38 double-recovering its transit costs, and that BellSouth's tariff transit rate
39 should be substantiated through the use of TELRIC-based cost studies. I

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 will also show that BellSouth's tariff transit rate is unjust, unreasonable
2 and discriminatory, and, therefore, fails to meet even the minimum
3 requirements of §§ 201/202. If the Commission disagrees with my
4 primary recommendation to cancel BellSouth's transit tariff outright, it
5 should, at a minimum, require BellSouth to tariff the TELRIC-based
6 transit rate I recommend below. This rate was substantiated through
7 TELRIC-based cost studies, it was approved by the Commission, and it
8 was designed to recover the cost of transit traffic.
9

- 10
- 11 • My rebuttal testimony will show that the Small LECs' testimony and
12 recommendations subvert the well-established "originating carrier pays"
13 rule, and attempts to force other carriers to pay for the costs of the traffic
14 that the Small LECs originate. Given that the Small LECs' misguided
15 recommendations primarily stem from their misunderstanding of who the
16 "cost causer" is in a transiting arrangement, my rebuttal testimony points
17 out where the Small LECs' reasoning is flawed and correctly applies the
18 cost causation principle to demonstrate that the originating carrier should
19 continue to be responsible for compensating BellSouth for transiting and
20 compensating a third party for termination.

 - 21 • As mentioned above, I will explain that the Small LECs' three party
22 transit contract proposal is unnecessary, costly, unworkable and
23 potentially harmful, and that the current structure - whereby transit terms,
24 conditions and rates are established through interconnection agreements -
25 appropriately preserves all parties' rights.
26

 - 27 • Finally, my rebuttal testimony will show that the Small LECs' direct trunk
28 proposal is vague and lacks any basis whatsoever. Though the Small
29 LECs call for a "flexible" threshold, they actually recommend an
30 extremely low and rigid threshold, wherein the threshold would be
31 "triggered" in the greatest number of circumstances. Furthermore, the
32 Small LECs are apparently attempting to require other carriers to bear the
33 cost of such direct trunks once the threshold has been triggered, even if the
34 Small LECs originate 100% of the traffic. Accordingly, I recommend that
35 the Small LEC direct trunk threshold proposal be rejected.

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III. Rebuttal to BellSouth

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A. *BellSouth's claim that transiting is not a § 251 obligation is incorrect.*

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Q. BellSouth witness McCallen testifies that BellSouth is not required to provide the transiting function.¹ Does he explain the basis for his testimony on this issue?

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A. No. Mr. McCallen states as follows: “[a]lthough BellSouth is not required to provide a transit function, BellSouth is willing to provide transit services to TSPs because BellSouth has a ubiquitous network that is interconnected with most TSPs in its region.”² As I explained in my direct testimony, while there is no federal rule requiring incumbent local exchange carriers (“ILECs”) to provide transiting, BellSouth indeed has such an obligation under § 251 of the TA96 – a point BellSouth has conceded.³ Mr. McCallen provides no explanation as to why he believes BellSouth is not obligated to provide both direct and indirect interconnection (*e.g.*, transiting) pursuant to § 251 of the TA96.

Q. Does Mr. McCallen’s brief testimony on this topic actually support your contention that transiting *is* an obligation under § 251 of the TA96?

¹ Direct Testimony of Kenneth Ray McCallen on behalf of BellSouth Telecommunications, Inc., Florida PSC Docket Nos. 050119-TP/050125-TP, December 19, 2005 (“McCallen Direct”), p. 6, lines 7 – 10 and p. 17, lines 4 – 6.

² McCallen Direct, p. 6, lines 7 – 10.

³ See, Direct Testimony of Timothy J Gates on behalf of CompSouth, Florida Docket Nos. 050119-TP/050125-TP, December 19, 2005 (“Gates Direct”), p. 16.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 A. Yes. Mr. McCallen testifies as follows at page 12, lines 1-3 of his direct
2 testimony: “Yes. Although I am not a lawyer, I understand generally that *Section*
3 *251(a) of the TA96 requires all TSPs to interconnect their networks either*
4 *directly or indirectly* with each other and with any TSP requesting such
5 interconnection.”⁴ Given that Mr. McCallen acknowledges that transiting is an
6 indirect interconnection (McCallen Direct, p. 7, lines 14 – 15), it is unclear why
7 he continues to maintain that transiting is not required as an indirect
8 interconnection obligation under § 251 of the TA96. Mr. McCallen provides no
9 explanation for this inconsistency in his testimony.

10 Furthermore, Mr. McCallen’s testimony actually supports my contention
11 that transiting is an obligation under § 252(c) and should be provided at TELRIC
12 prices. He explains that BellSouth willingly provides transiting “because
13 BellSouth has a ubiquitous network that is interconnected with most TSPs in its
14 region.”⁵ What Mr. McCallen is describing is BellSouth’s incumbent local
15 network that it amassed during years of monopoly-provided local exchange
16 services. Given the incumbent advantages derived by possession of this
17 incumbent local network (and the interconnected nature of this network),
18 Congress, when creating the legislative requirements for local competition in the
19 TA96, imposed additional obligations on ILECs (beyond those obligations
20 assigned to carriers, in general), which required ILECs to open up their incumbent
21 local networks through, among other things, additional interconnection

⁴ Emphasis added.

⁵ McCallen Direct, p 6, lines 7 – 10.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 obligations, unbundled access, and resale obligations. Each of these additional
2 obligations that Congress imposed on ILECs, such as BellSouth, tracks back to
3 the ubiquitous, interconnected, incumbent local network the ILEC possesses.
4 Though Mr. McCallen recognizes the incumbent advantage BellSouth possesses
5 through its ubiquitous and interconnected network, he attempts to ignore the
6 additional obligations that come with this incumbent network pursuant to § 251(c)
7 of TA96. One of these obligations is to provide interconnection at TELRIC-based
8 prices.

9
10 **Q. Have any other state regulatory commissions found that transiting is subject**
11 **to § 251 of the TA96 despite BellSouth's claims to the contrary?**

12 A. Yes. Just this month, the Tennessee Regulatory Authority ("Tennessee
13 Commission") reached this conclusion. Specifically, the Tennessee Commission
14 found as follows in its Order in Docket No. 03-00585:⁶ "...the reciprocal
15 compensation requirements of 47 U.S.C. § 251(b)(5) and the related negotiation
16 and arbitration process in § 252(a) and (b) apply to traffic exchanged indirectly
17 between a CMRS provider and an ICO member."⁷ As I have previously
18 explained, transit traffic is "traffic exchanged indirectly between a CMRS
19 provider [and CLEC] and an ICO member." Similarly, in Kentucky, BellSouth

⁶ *In Re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless; Petition for Arbitration of BellSouth Mobility LLC, BellSouth Personal Communications, LLC Chattanooga MSA Limited Partnership, collectively d/b/a Cingular Wireless; Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless; Petition for Arbitration of T-Mobile USA, Inc.; and Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS.* Tennessee Regulatory Authority Docket No. 03 – 00585 Order of Arbitration Award, January 12, 2006.

⁷ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 18.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 contended it was not obligated to negotiate and arbitrate transit issues because
2 transiting was not contained in Section 251(b) and (c),⁸ but the Kentucky Public
3 Service Commission disagreed, finding that: “[t]he Commission has not been
4 precluded by the FCC from requiring BellSouth to transit traffic under the
5 circumstances requested by the Joint Petitioners”⁹ and “[t]he Commission will
6 continue to require BellSouth to transit such traffic.”¹⁰ Furthermore, despite
7 BellSouth’s claims in North Carolina that “it was not required to provide a transit
8 traffic function because it is not a section 251 obligation under the Act[.]”¹¹ the
9 North Carolina Utilities Commission clearly concluded that “[t]he tandem transit
10 function is a Section 251 obligation[.]”¹²

11
12 **B. *BellSouth’s Transit Tariff is Not the Appropriate Mechanism To***
13 ***Address BellSouth’s Transit Service (Issue 1)***
14

15 **Q. Can you summarize the difference between your position and BellSouth’s**
16 **position on this issue?**

⁸ *In the Matter of Joint Petition for Arbitration of Newsouth Communications Corp., Nuvox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on behalf of its operating subsidiaries Xsepdus Management Co. of Lexington, LLC and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended.* Kentucky Public Service Commission Order in Case No. 2004 – 00044, September 26 2005, p. 15.

⁹ Kentucky Public Service Commission Order in Case 2004 – 00044, p. 15.

¹⁰ *Id.*

¹¹ *In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.* Docket No. P-772, Sub 8; Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket No. P-824, Sub 6; Docket No. P-1202, Sub 4. North Carolina Utilities Commission Order, July 26, 2005, p. 53.

¹² *Id.*

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 A. Yes. BellSouth has filed a transit tariff that applies to carriers who use
2 BellSouth's transit service but do not have a separate agreement addressing
3 transiting with BellSouth.¹³ While I do not disagree with the general principle
4 that, in some circumstances, a tariff can be an appropriate mechanism for
5 establishing terms, conditions and rates for a telecommunication service providers
6 services (subject to applicable rules, regulations, etc.), in this case, this issue
7 should be handled through negotiation and arbitration of interconnection
8 agreements as has always been the case in the past. No party has provided any
9 compelling reason for changing the negotiation/arbitration mechanism now.
10 Further, even if the Commission were to find a tariff-based vehicle to be
11 appropriate, BellSouth's transit tariff is flawed in a number of material ways and
12 is, therefore, *not* the appropriate mechanism for addressing BellSouth's transit
13 service. Therefore, I recommend that BellSouth's transit tariff be cancelled and
14 the same mechanism that has always been used to address transit be used going
15 forward, *i.e.*, § 252 interconnection agreements. To the extent that parties are
16 unable to come to agreement on terms and conditions regarding transiting during
17 negotiations, the proper vehicle for resolution is arbitration – not a unilateral
18 tariff, as recommended by BellSouth and not forced execution of three party
19 contracts, as proposed by the Small LECs. But if the Commission believes that
20 there should be some mechanism in place for carriers who, for whatever reason,
21 have not executed separate transit agreements with BellSouth, I strongly

¹³ McCallen Direct, p. 6, lines 4 – 7.

1 recommend that, at a minimum, the flaws in BellSouth's tariff be rectified as I
2 explained in my direct testimony (*see*, Gates Direct, pp. 23 – 24).

3
4 **Q. Mr. McCallen states that when BellSouth provides transiting, "BellSouth's**
5 **network has been used, and, absent the transit tariff, TSPs that have no**
6 **contractual agreement addressing transit traffic with BellSouth can originate**
7 **traffic that transits BellSouth's network without compensating BellSouth for**
8 **the use of its network."¹⁴ Does Mr. McCallen's direct testimony tell the**
9 **whole story?**

10 **A.** No. I am not suggesting that BellSouth should not be compensated for transit
11 traffic, but Mr. McCallen ignores a very important fact: there is no reason why
12 BellSouth should not have a contractual agreement addressing transit with all
13 parties utilizing BellSouth for transiting. All BellSouth needs to do is request that
14 these parties execute a compensation arrangement with BellSouth addressing
15 transiting.¹⁵ Indeed, BellSouth's direct testimony indicates that BellSouth did just
16 that in December 2004 for some Small LECs and that these negotiations are still
17 ongoing.¹⁶ Any disagreements between BellSouth and these parties that cannot be
18 resolved through negotiation should be brought to the Commission for arbitration.
19 If BellSouth established terms and conditions for transit with these carriers
20 through negotiated agreements, the BellSouth transit tariff would be rendered

¹⁴ McCallen Direct, p. 9, lines 20 – 23.

¹⁵ While I am not an attorney, I read § 251(b)(5) to require all local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

¹⁶ McCallen Direct, p. 2, line 17 – p. 3, line 3.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 moot. The fact that BellSouth has, for whatever reason, been unable to come to
2 agreement with certain parties on some issues does not justify allowing BellSouth
3 to establish a transit tariff over which it exerts unilateral control. In essence, it
4 appears that BellSouth is using its transit tariff as a “stick” to force all carriers
5 into default transit terms, conditions and rates if parties are unable to agree to
6 these rates, terms and conditions in negotiations. This is an inappropriate use of a
7 tariff. In sum, the proper resolution of this issue is for BellSouth to negotiate with
8 carriers who do not have contractual terms for transiting and, to the extent that
9 negotiations are unsuccessful in resolving all issues, bring disputed issues
10 between those particular parties to the Commission for arbitration.

11
12 **Q. Does BellSouth recognize that originating carriers must negotiate terms,**
13 **conditions and rates related to transit traffic once BellSouth (or another**
14 **carrier) requests it?**

15 A. Yes. Mr. McCallen testifies at page 17 of his direct testimony: “[t]he carrier
16 originating traffic has the obligation to negotiate the rates, terms and conditions
17 related to such [transit] traffic with both the terminating LEC as well as the
18 transiting company.” Mr. McCallen does not explain why a transit tariff is
19 needed given this obligation to negotiate. Again, according to BellSouth’s own
20 testimony, BellSouth need only request negotiation with carriers who do not have
21 contractual terms addressing transiting to address any perceived problem related
22 to originating carriers not compensating BellSouth for transit traffic. BellSouth’s
23 transit tariff is therefore unnecessary.

1

2 **Q. Did BellSouth explain why some originating carriers did not have**
3 **contractual terms for transiting with BellSouth?**

4 A. Mr. McCallen's only explanation is that despite BellSouth and the Small LECs
5 discussing transit traffic issues since December 2004, "[u]nfortunately, the parties
6 have not yet been able to reach mutually agreeable terms and conditions for a
7 transit traffic agreement..."¹⁷ However, importantly, Mr. McCallen did not
8 explain why BellSouth introduced a transit tariff as default terms, conditions and
9 rates instead of bringing the disputed terms and conditions between BellSouth and
10 the Small LEC(s) to the Commission for resolution as called for by § 252 of the
11 TA96.

12

13 **Q. Has the FCC concluded that the appropriate mechanism for establishing**
14 **intercarrier compensation obligations is through negotiation and arbitration**
15 **rather than tariffs?**

16 A. Yes. The FCC's *T Mobile Decision*¹⁸ amended the federal rules to prohibit the
17 use of tariffs to impose intercarrier compensation obligations with respect to non-
18 access CMRS traffic and to clarify that ILECs may request interconnection from a
19 CMRS provider and invoke the negotiation and arbitration procedures set forth in
20 § 252 of the TA96. The FCC stated:

¹⁷ McCallen Direct, p. 2, line 17 – p. 3, line 4.

¹⁸ *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, FCC Declaratory Ruling and Report and Order; FCC 05-42, 20 FCC Rcd 4855; 2005 FCC LEXIS 1212; 35 Comm. Reg. (P & F) 291. February 24, 2005 ("T Mobile Decision").

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 As discussed above, precedent suggests that the Commission
2 intended for compensation arrangements to be negotiated
3 agreements and we find that negotiated agreements between
4 carriers are more consistent with the pro-competitive process and
5 policies reflected in the 1996 Act. Accordingly, we amend section
6 20.11 of the Commission's rules to prohibit LECs from imposing
7 compensation obligations for non-access traffic pursuant to tariff...
8

9 The same reasoning the FCC used in the *T Mobile Decision* supports the rejection
10 of BellSouth Florida's transit tariff and supports the continued use of negotiated
11 agreements to address the terms for BellSouth Florida's transit service. In
12 addition, the *T Mobile Decision* supports the point I made above that there is no
13 reason why BellSouth should not be able to execute compensation agreements
14 with all carriers originating transit traffic. As the *T Mobile Decision* states:

15 we also adopt new rules permitting incumbent LECs to invoke the
16 section 252 process and establish interim compensation
17 arrangements, which are triggered by a request for negotiation
18 from either carrier. For this reason, we reject claims that, in the
19 absence of wireless termination tariffs, LECs would be denied
20 compensation for terminating this traffic. Under the amended rules,
21 however, in the absence of a request for an interconnection
22 agreement, no compensation is owed for termination.¹⁹
23

24 This excerpt makes clear that either party (BellSouth or the carrier which does not
25 have a separate transit agreement with BellSouth) can request negotiation and, as
26 such, the FCC rejected the ILECs' claims that they would be denied
27 compensation in the absence of compensation tariffs. BellSouth has made an
28 identical argument in this docket, and the same reasoning the FCC used in
29 rejecting ILECs' claims in the *T Mobile Decision* warrants rejection of

¹⁹ *T Mobile Decision* at fn 57.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 BellSouth's claim here that, in the absence of its transit tariff, it will be denied
2 compensation for transit traffic. Moreover, the above excerpt states that in the
3 absence of a request for interconnection agreement, no compensation is owed.
4 Again, this undermines BellSouth's proposal for a tariff to apply in the absence of
5 a separate transit compensation agreement. Instead of a default tariff, the FCC
6 has found that no compensation is owed if no separate agreement is in place.
7

8 **Q. Does Mr. McCallen's testimony and stated positions on Issues #5, #8 and #9**
9 **actually support rejection of BellSouth's transit tariff?**

10 A. Yes. Mr. McCallen recommends under Issues #5, #8 and #9 that the Commission
11 *not* establish terms and conditions between parties in a transiting arrangement.
12 Specifically, Mr. McCallen explains at page 15 of his direct that his position on
13 Issue #5 is that the Commission should not establish the terms and conditions that
14 govern the relationship between an originating carrier and the terminating carrier,
15 where BellSouth is providing transit service and the originating carrier is not
16 interconnected with, and has no interconnection agreement with, the terminating
17 carrier. Under Issue #8, Mr. McCallen recommends that the Commission not
18 establish the terms and conditions that govern the relationship between BellSouth
19 and a terminating carrier where BellSouth is providing transit service and the
20 originating carrier is not interconnected with, and has no interconnection
21 agreement with, the terminating carrier.²⁰ Similarly, Mr. McCallen recommends
22 *against* the Commission establishing terms and conditions between BellSouth and

²⁰ McCallen Direct, p. 17.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 small LECs that originate transit traffic under Issue #9.²¹ I agree with Mr.
2 McCallen that the Commission should not establish the terms and conditions
3 governing the relationships of the parties in a transiting arrangement. However,
4 the primary problem with BellSouth's position is that its transit tariff would do
5 exactly what Mr. McCallen recommends *against* under Issues #5, #8 and #9, *i.e.*,
6 establish terms and conditions governing relationships between all parties in a
7 transiting arrangement.²² By asking the Commission to permanently approve its
8 tariff,²³ BellSouth is asking for the Commission to establish these terms and
9 conditions (terms and conditions that are one-sided in favor of BellSouth) – in
10 direct conflict with Mr. McCallen's stated positions on Issues #5, #8 and #9.
11 Therefore, the Commission should recognize and avoid the inconsistency in
12 BellSouth's positions, and instead adopt my positions on Issues #5, #8 and #9,
13 and cancel BellSouth's transit and require that the terms and conditions continue
14 to be established through negotiations between the parties (and arbitration, if
15 necessary).

²¹ McCallen Direct, p. 17.

²² Examples of BellSouth's transit tariff establishing terms and conditions between parties in a transiting arrangement in conflict with Mr. McCallen's stated positions under Issues #5, #8 and #9, are as follows: (1) Section A16.1.2C attempts to establish terms and conditions between the originating and terminating carriers in a transit arrangement by requiring the originating carrier to establish traffic exchange agreement(s) to address compensation between the originating carrier and terminating carrier(s); (2) Section A16.1.2B attempts to establish terms and conditions between BellSouth and the terminating carrier by including the phrase: "where BellSouth accepts Transit Traffic from a Telecommunications Service Provider, BellSouth is not liable or responsible for payment to the terminating carrier."

²³ McCallen Direct, p. 22, lines 19 – 20.

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C. Transit Rates Should Be Based on TELRIC (Issue 11)

Q. Mr. McCallen testifies that the “basis” for BellSouth’s transit tariff rate of \$0.003 per minute is that it is “comparable to rates in recently negotiated agreements between BellSouth and CLECs and between BellSouth and CMRS carriers for transit services.”²⁴ Is this sufficient justification for BellSouth’s tariff transit rate?

A. No. Tariff rates – and especially tariff rates required to be priced in accordance with TELRIC rules – should be substantiated with cost support and should *not* be established by *eyeballing* the rates currently established between parties in interconnection agreements. Rates in interconnection agreements are established between two parties based on negotiations (and some “give and take”), and if necessary arbitration, based on the business needs of individual carriers. In these negotiations and arbitrations, carriers generally rank issues by importance based on business needs and then expend resources to pursue these issues based on their individual priorities and budgets. Since carriers’ business plans are not identical, these priorities and budgets will vary by carrier. For example, if a carrier operates in an area where its customers can call the customer of a Small LEC as a local call but does not have a direct interconnection with the Small LEC, the terms, conditions and rates pertaining to BellSouth’s transit service would be more important to that carrier, than to a carrier whose customers cannot call a Small

²⁴ McCallen Direct, p. 11 and p. 19.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 LECs' customers as a local call or who already has a direct connection with the
2 Small LEC (everything else equal). In this instance, the former carrier would
3 likely expend more resources to negotiate and arbitrate the transit terms,
4 conditions or rates than its latter counterpart.

5 In contrast, BellSouth's transit tariff would establish the transit rate
6 generally for all carriers who do not have a separate agreement with BellSouth
7 pertaining to transit – *i.e.*, a benchmark. Establishing a tariff rate that will serve
8 as a benchmark based solely on the fact that it is “comparable” to rates that some
9 parties previously negotiated based on company-specific business needs and
10 constraints is inappropriate. It ignores applicable federal pricing requirements,
11 which require rates to be cost-based and substantiated with cost studies,²⁵ and
12 pigeonholes carriers by establishing a tariff rate based on some carriers who have
13 negotiated the issue before them and whose business plans and priorities likely
14 differed.

15
16 **Q. BellSouth's inappropriate “comparable” argument aside, Mr. McCallen**
17 **testifies that some CLECs' interconnection agreements with BellSouth**
18 **include a tandem intermediary charge (“TIC”) that applies to transit traffic**
19 **(see, e.g., Exhibits KRM-2, note 1). What is this charge?**

20 **A. The TIC charge is a non-cost based rate element that BellSouth applies to transit**
21 **traffic in addition to the tandem switching and common transport rate elements**
22 **per the terms of particular carriers' interconnection agreements. BellSouth has**

²⁵ See, Gates Direct, pp. 44 – 45.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 provided no cost support to justify the TIC charge, and given that BellSouth
2 recovers the cost of the transiting function through the TELRIC-based rate
3 elements for tandem switching and common transport, the TIC is a non-cost based
4 “adder” designed simply to boost BellSouth’s transit revenues at the expense of
5 competing carriers. While the specific TIC charge may vary by interconnection
6 agreement, it is my understanding that in a majority of circumstances, the TIC is
7 pegged at \$0.0015 per minute of transit traffic.

8
9 **Q. If BellSouth recovers the cost of transiting from cost-based tandem switching**
10 **and transport interconnection rate elements, what transit costs is the TIC**
11 **designed to recover?**

12 A. Given that BellSouth recovers the cost of transiting from the cost-based charges
13 for tandem switching and transport, BellSouth’s TIC does not recover any costs
14 related to transiting. This highlights a major problem with BellSouth’s transit
15 tariff rate: it was apparently designed to be *in the ballpark* of transit rates that
16 include non-TELRIC TICs and, therefore, allows BellSouth to double-recover (or
17 over-recover) transiting costs. This artificially increases BellSouth’s competitors’
18 costs and raises barriers to entry for local market competition in general.

19
20 **Q. Was the TIC included in the rate comparisons in your direct testimony, and**
21 **if not, why was it excluded?**

22 A. No, the TIC was not included in the rate comparisons in my direct testimony
23 because the TIC is not a TELRIC-based charge. It should therefore be excluded

1 from a comparison of BellSouth's transit tariff rate to rate(s) that would be
2 properly TELRIC-based - which is the purpose of the rate comparisons in my
3 direct testimony.

4
5 **Q. Does the TIC further highlight the unreasonableness of BellSouth's tariff**
6 **transit rate?**

7 A. Yes. BellSouth states that the total per-minute transit charge it assesses on Birch
8 Telecom is \$0.0023 (see, Exhibit KRM – 2), and the TIC portion of that total
9 transit charge is \$0.0015.²⁶ Hence, the non-cost based “addier” portion of the total
10 transit charge assessed by BellSouth is 65% of the total transit charge. In other
11 words, the non-cost based TIC charge more than doubles the total transit charge
12 assessed by BellSouth. Recall that BellSouth has provided absolutely no cost
13 support for this significant markup. The magnitude and lack of basis for the TIC
14 charge, coupled with the fact that BellSouth's transiting obligation stems from its
15 position as a monopoly provider of a ubiquitous, interconnected network,
16 illustrates the unreasonableness of BellSouth's unsupported tariff transit rate. The
17 unreasonableness of BellSouth's tariff transit rate is further demonstrated by the
18 fact that the tariff rate is higher than the total transit charge assessed by BellSouth
19 on some CLECs with the non-cost “addier” included.²⁷

²⁶ BellSouth's ICAs, including the BellSouth/Birch Telecom agreement referenced in this testimony, are available at the following URL: http://cpr.bellsouth.com/clec/docs/all_states/index7.htm#B

²⁷ For example, BellSouth Exhibit KRM – 2 indicates that the total transit charge for Birch Telecom is \$0.0023 per minute, which, as the footnote indicates includes the TIC. BellSouth's tariff transit rate is \$0.003 per minute – or more than 30% greater. Please note that I provide this comparison only to demonstrate the unreasonableness and discriminatory nature of BellSouth's tariff transit rate and do not endorse the inclusion of the TIC in proper rates for transiting.

1

2 **Q. Since the common transport mileage rate element is distance sensitive,**
3 **calculating a composite transit rate depends on the assumed transport**
4 **distance. Did BellSouth provide the number of transport miles that was**
5 **assumed in either its tariff transit rate or the rates listed in Exhibits KRM –**
6 **2 and KRM - 3?**

7 A. No. BellSouth provided no cost documentation for its rate whatsoever.

8

9 **Q. Is the transport mileage assumption critical to determining whether or not**
10 **BellSouth's tariff transit rate is reasonable?**

11 A. Not really. Though the transport mileage assumption has an impact on the
12 composite transit rate calculated, BellSouth's tariff transit rate appears
13 unreasonable and discriminatory regardless of the transport mileage assumption.
14 For example, if we utilize the cost-based per-minute of use rates for tandem
15 switching and common transport (excluding the non-cost-based TIC) from the
16 Birch/Bellsouth ICA and assume 1 mile of common transport, the total transit
17 charge would be \$0.0010426,²⁸ as compared to \$0.0011791 if the common
18 transport mileage assumption is changed to 40 miles [(0.0000035*40) + .0004372
19 + .0006019]. BellSouth's tariff transit rate of \$0.003 is more than double the

²⁸ I should note that in my direct testimony, I calculated this composite rate to be \$0.000802, but after further review, I discovered that the Birch/BellSouth ICA transit rates on which I relied in my direct testimony came from a prior Birch interconnection pricing schedule. The more recent Birch/BellSouth ICA transit rates have been used to calculate the total transit charge above [tandem switching: \$0.0006019; common transport, per mile: \$0.0000035; common transport facility termination: \$0.0004372. Furthermore, the Birch ICA rates should be considered for illustration purposes only because, as the Birch/BellSouth ICA pricing schedule indicates, the ICA actually calls for bill and keep for these rate elements.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 cost-based transit rate regardless of the common transport mileage assumption
2 used – and would be more than double even if we assumed 100 miles of common
3 transport. It is the non-cost based TIC “adder” that causes this huge chasm
4 between BellSouth’s tariff transit rate and proper cost-based transit rates. The
5 unreasonableness of BellSouth’s tariff transit rate is further evidenced by the fact
6 that its tariff transit rate is greater than total transit rate if we assume 40 miles of
7 common transport *and* include the non-cost based TIC adder.

8
9 **Q. Is the unreasonableness of BellSouth’s tariff transit rate further illustrated**
10 **by a comparison to the rates for the transit analogue under BellSouth’s**
11 **interstate access tariff?**

12 A. Yes. Given that the rates in BellSouth’s interstate access tariff are not TELRIC-
13 based and recover embedded costs, they should not be used to establish transit
14 rates. However, because these rates show what BellSouth Florida assesses for the
15 transiting function in another context, they may be informative in putting
16 BellSouth’s transit tariff rate in context.

17 If we assume that a carrier purchases the transiting function with 40 miles
18 of transport from BellSouth’s interstate access tariff, it would expect to pay
19 \$0.002294 per minute.²⁹ Hence, BellSouth’s tariff transit rate is greater than the
20 total charge it assesses on customers purchasing the transit function from the

²⁹ BellSouth Florida’s interstate switched access tandem switching per MOU rate is \$0.001198, common transport fixed termination per MOU rate is \$0.000176 and common transport per mile per MOU rate is \$0.000023, for a composite rate (assuming 40 miles of transport) of \$0.002294 [0.001198 + 0.000176 + (40 * 0.000023)]. BellSouth Telecommunications, Inc. FCC Tariff No. 1, 14th revised 6-157.27 and 7th revised 6-157.2.4.

1 interstate access tariff, which further illustrates the unreasonableness of
2 BellSouth's transit rate.

3
4 **Q. Please summarize your discussion regarding the unreasonableness of**
5 **BellSouth's tariff transit rate.**

6 A. BellSouth's tariff transit rate is: (i) more than double the total transit charge a
7 proper forward-looking cost-based analysis would produce, (ii) greater than the
8 total transit charges assessed on some CLECs by BellSouth via ICA even when
9 the non-cost-based TIC "adder" is included (which it should not be), (iii) greater
10 than the total transit charges assessed on some CLECs regardless of the common
11 transport mileage assumption, and (iv) greater than the total charge a carrier
12 would expect to pay if it purchased the transit functionality from BellSouth's
13 interstate access tariff. Given that each of these factors demonstrates that
14 BellSouth's tariff transit rate of \$0.003 is unreasonable and/or discriminatory,
15 BellSouth's tariff transit rate should be rejected.

16
17 **Q. BellSouth has proposed a tariff transit rate of \$0.003. What tariff rate do**
18 **you recommend for transit in this case if the Commission concludes that a**
19 **transit tariff is necessary?**

20 A. If the Commission concludes that a transit tariff is appropriate (a position with
21 which I disagree and which I discussed earlier), I recommend that the
22 Commission require BellSouth to tariff a TELRIC-based rate for transit.
23 Specifically, the Commission should require BellSouth to tariff the most recent

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 Commission-approved rates from in Order No. PSC-01-1181-FOF-TP in Docket
2 990649-TP for the tandem switching and common transport functionalities.³⁰

3 Given that the common transport mileage rate element is distance sensitive, this
4 rate structure (just like the interconnection and interstate access rate structures)
5 requires an assumed common transport mileage distance in order for an accurate
6 composite per-minute of use rate to be calculated. BellSouth has bypassed this
7 issue by changing this rate structure into a single, flat rate per minute for transit
8 service in its tariff. Therefore, if the Commission concludes that BellSouth's new
9 rate structure wherein transit is priced at a single, per-minute of use rate, it should
10 require a per-minute of use rate of \$0.0009368.³¹

11
12 **Q. Was transit traffic included in the rate development for the cost-based**
13 **interconnection rates the Commission approved?**

14 A. Yes. Costs related to transit traffic were indeed included in the cost information
15 used to develop these TELRIC-based rates. This is evidenced by BellSouth's
16 own description of these rate elements, which shows that costs of traffic routed to
17 BellSouth's end offices as well as transit traffic was captured in the rate
18 development for these rates. BellSouth described the tandem switching
19 UNE/interconnection rate element as: "a call coming to a tandem from a CLEC

³⁰ These per-minute of use rates are: tandem switching – per minute (\$0.0001263), common transport mileage – per minute (\$0.0000034), common transport facility termination – per minute (\$0.0004493), shared tandem trunk port (\$0.0002252). See, *In re: Investigation Into Pricing of Unbundled Network Elements*. Florida Docket No. 990649-TP, Order No. PSC-01-1181-FOF-TP, May 25, 2001, Appendix A

³¹ This composite rate is based on an assumed 40 miles of common transport and is calculated as follows: $.0001263 + (.0000034 * 40) + .0004493 + .0002252 = .0009368$.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 switching will be terminated with that tandem's serving area either to a BellSouth
2 end office *or to another network provider.*³² Likewise, BellSouth's description
3 of interoffice common transport explains that it includes the "transmission path
4 and the associated electronics between switching locations that enable a call to be
5 transported from one location to another. These facilities/trunk groups are *shared*
6 *among all network providers who require calls to be transported between*
7 *particular switching locations.*³³ I have provided the pertinent portion of the
8 public source documentation for these BellSouth descriptions as Exhibit TJG – 2.
9 This information supports my point that transit traffic was included in the cost
10 development which led to the cost-based rates I recommend here.

11
12 **Q. Given that transit costs were included in the rate development for the**
13 **Commission-approved rates for tandem switching and common transport,**
14 **does this expose another flaw in BellSouth's pricing proposal?**

15 A. Yes. As shown above, the cost-based rates for tandem switching and common
16 transport were designed to recover costs associated with tandem traffic terminated
17 to BellSouth end offices as well as tandem traffic terminated to third-party
18 switches. Therefore, at a simplistic level, BellSouth developed a "pool" of costs
19 that contained costs related to both above-mentioned scenarios, and then designed
20 tandem switching and common transport rates to recover this entire pool of costs.

³² Direct Testimony of D. Daonne Caldwell filed on behalf of BellSouth Telecommunications, Inc., Florida Docket No. 990649-TP, Exhibit DDC-1 (CD ROM), Revised Cost Study Filing, file "Narrative.doc", section 6, page 45, August 16, 2000, emphasis added.

³³ Direct Testimony of D. Daonne Caldwell filed on behalf of BellSouth Telecommunications, Inc., Florida Docket No. 990649-TP, Exhibit DDC-1 (CD ROM), Revised Cost Study Filing, file "Narrative.doc", section 6, page 45, August 16, 2000, emphasis added.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 Thus, there is a positive correlation between the total pool of costs and the cost-
2 based rates – or, the greater the pool of costs is, the higher the cost-based rates
3 will be. BellSouth has now recommended that the Commission bifurcate this rate
4 structure such that traffic terminated to BellSouth end offices is compensated at
5 the TELRIC cost-based charges for tandem switching and common transport,
6 while transit traffic is terminated at the higher, flat per-minute of use rate of
7 \$0.003. As a result, BellSouth’s cost-based rates for tandem switching and
8 transport are still based on the entire pool of costs reflecting both BellSouth-
9 terminated and transit traffic – though BellSouth would now also recover the cost
10 of transit traffic via the separate \$0.003 rate for carriers who do not have separate
11 agreements containing transit terms and conditions. This results in a clear double-
12 recovery of transit costs - a double recovery that should not occur and would not
13 occur if the Commission adopts my recommended rates.

14
15 **Q. Assuming for the sake of argument that the Commission agrees with**
16 **BellSouth that a TIC is appropriately included in transit rates, would**
17 **BellSouth’s tariff transit rate still be problematic?**

18 A. Yes. As noted above, I strongly disagree with including the TIC in transit
19 charges, BellSouth’s tariff transit rate is greater than the total transit charges
20 BellSouth assesses on some CLECs, with the TIC included, and, as such,
21 BellSouth’s tariff transit rate is still unreasonable and discriminatory. Further,

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 given that BellSouth originally requested a tariff transit rate of \$0.006³⁴ and that
2 BellSouth has near unilateral control over its tariff transit rate, it is highly likely
3 that BellSouth will raise this rate in the near future and further widen the gap
4 between BellSouth's transit rate and the rate a proper cost-based analysis would
5 produce.

6
7 **Q. Hasn't the Commission already addressed the issue of the TIC in an**
8 **arbitration order?**

9 A. Yes. The Commission in its arbitration order in Docket No. 040130-TP³⁵ allowed
10 BellSouth to assess a non-TELRIC TIC charge on the particular CLECs involved
11 in the arbitration (in addition to the cost-based tandem switching and transport
12 rate elements) for transit traffic when these CLECs are not directly interconnected
13 with third parties.³⁶ However, there is an important distinction between the
14 arbitration order and the instant case: unlike the arbitration proceeding, the parties
15 that would be subject to BellSouth's tariff transit rate have not negotiated the
16 transit rate, but rather would become unilaterally subject to the rate. The
17 Commission recognized this important point in the arbitration order: "... we find
18 the TIC is not required to be TELRIC-based and *is more appropriately, in this*

³⁴ See, e.g., Watkins Direct, p. 6, lines 14 – 20.

³⁵ Order No. PSC-05-0975-FOF-TP, Docket No. 040130 – TP ,October 11, 2005.

³⁶ Order No. PSC-05-0975-FOF-TP, p. 53. I respectfully disagree with the Commission's decision in this regard and emphasize that this decision pertained to the particular CLEC parties involved in the arbitration proceeding. Notwithstanding this disagreement, I explain in my rebuttal testimony why the Commission should reject BellSouth's transit tariff and how the transit tariff issues differ from those considered in the arbitration.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 *instant proceeding, a negotiated rate between the parties*³⁷ Indeed, BellSouth's
2 own witness stated that "[s]hould BellSouth agree to do so [provide transiting], it
3 will be at 'rates, terms and conditions' contained in separately negotiated
4 agreements."³⁸ Though the Commission said that the TIC need not be TELRIC-
5 based, it concluded that the TIC is more appropriately a negotiated rate between
6 parties – a point made by BellSouth. Given that BellSouth's \$0.003 tariff transit
7 rate is a *tariff* rate, no party has negotiated that rate here,³⁹ and therefore, the
8 Commission arbitration order and the testimony provided by BellSouth's witness
9 in that case supports my recommendation to establish transit rates through
10 negotiation and interconnection agreements - as opposed to BellSouth's transit
11 tariff.

12 Further, though the Commission, in the arbitration order, correctly noted
13 that the FCC has not established federal rules regarding transiting, this does not
14 mean that cost-based rates should be discarded or that BellSouth should be able to
15 establish a tariff transit rate at any level it sees fit without a shred of supporting
16 documentation. TELRIC has not been affirmatively rejected for pricing transit on
17 the federal level, and even if we assume that TELRIC pricing will be rejected for
18 transit, the Commission must still ensure that BellSouth's tariff transit rate is "just

³⁷ Order No. PSC-05-0975-FOF-TP, p. 52 (emphasis added).

³⁸ Order No. PSC-05-0975-FOF-TP, p. 51.

³⁹ The fact that some CLECs *may* have negotiated a rate similar to 0.003 within the context of their bilateral negotiations/arbitrations with BellSouth is irrelevant. Negotiated rates are established based on "give and take" within bilateral negotiations based on the individual business plans, priorities, and budgets of each carrier. In contrast, a tariffed rate would establish generally-available terms for all parties in the industry without an effective agreement with BellSouth pertaining to transit. In addition, it would become a "floor" for all subsequent agreements thus making negotiation meaningless.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 and reasonable” under §§ 201/202. I will explain in more detail below that the
2 evidence shows that BellSouth’s rate is not just and reasonable under §§ 201/202.

3
4 **Q. Did the Commission arbitration order reference costs associated with**
5 **transiting that may not be recovered by BellSouth’s cost-based rates for**
6 **tandem switching and common transport, and if so, does this warrant**
7 **establishing BellSouth’s tariff transit rate at \$0.003?**

8 A. As an initial matter, I should reiterate that I do not support BellSouth’s transit
9 tariff as a threshold matter, and recommend that the Commission cancel it. Given
10 this caveat, the answer to the question is: the Commission arbitration order did
11 reference costs that may not be recovered by BellSouth’s cost-based rates for
12 tandem switching and common transport, but this does not warrant adopting
13 BellSouth’s \$0.003 tariff transit rate.

14
15 **Q. Please elaborate.**

16 A. The Commission referenced two sources of such costs: (1) cost of providing
17 billing records and (2) cost of billing reconciliation when third party carriers
18 improperly bill BellSouth, and found that these costs “must be recognized.”⁴⁰
19 Regarding the cost of billing records, as I mentioned in my direct testimony, some
20 CLECs have deployed sophisticated switching and signaling networks that avoid
21 the need for BellSouth to provide them any billing records.⁴¹ In these instances,

⁴⁰ FPSC Order No. PSC-05-0975-FOF-TP, p. 53.

⁴¹ Gates Direct, p. 50.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 BellSouth would not incur the cost related to billing records and as a result,
2 BellSouth would be unjustly enriched at the CLECs' expense if it were allowed to
3 charge for them.

4 Regarding costs associated with billing reconciliation when third party
5 carriers improperly bill BellSouth: if the Commission does approve a transit tariff
6 for BellSouth (which it should not), BellSouth would not incur such costs because
7 the tariff specifically prohibits parties from billing BellSouth as follows:

8 [w]here BellSouth accepts Transit Traffic from a
9 Telecommunications Service Provider, BellSouth is not liable or
10 responsible for payment to a terminating carrier. Such payment is
11 the sole responsibility of the originating Telecommunications
12 Service Provider. By utilizing BellSouth's Transit Traffic Service
13 for the delivery of Transit Traffic, the originating
14 Telecommunications Service Provider is committing to
15 establishing a traffic exchange agreement or other appropriate
16 agreement to address compensation between the originating
17 Telecommunications Service Provider and the terminating
18 carrier(s).
19

20 BellSouth's transit tariff also states that if BellSouth is improperly billed, the
21 originating carrier "shall reimburse BellSouth for such charges or costs."
22 Furthermore, if an originating carrier purchases BellSouth's tariff transit product,
23 it must have in place an agreement with the terminating carrier so that BellSouth
24 is not improperly billed for transit traffic by the terminating carrier, and even if
25 BellSouth was somehow improperly billed under the tariff, the tariff requires the
26 originating carrier to reimburse BellSouth for these charges and costs. Thus,
27 while I disagree with BellSouth's transit tariff on a number of grounds (not the
28 least of which is BellSouth's proposed requirement that originating and

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 terminating transit carriers must have a compensation agreement in place) and
2 recommend rejecting it, given that BellSouth would not be improperly billed by
3 the terminating carrier under its tariff (or would be reimbursed for such improper
4 billing), it would not incur costs associated with reconciling billing with a third
5 party for improper charges that should have been billed to the originating carrier
6 under its tariff.⁴² It is therefore inappropriate for BellSouth to attempt to recover
7 these costs in a tariff rate, while at the same time establishing tariff terms that
8 would ensure that BellSouth does not incur these costs.

9 Finally, even if we assume that BellSouth would incur these costs in all
10 instances under its misguided tariff (which it would not), the markup to account
11 for these costs (reflected by the TIC) is clearly unreasonable. The TIC (\$0.0015)
12 constitutes half (50%) of BellSouth's tariff transit rate of \$0.003. This markup is
13 excessive in any circumstance, but when one considers that BellSouth would
14 likely not incur these costs in many, if any, instances, this markup is especially
15 egregious.

16
17 **Q. Have other state regulatory commissions required BellSouth's transit**
18 **charges to be priced at TELRIC?**

19 **A.** Yes. The Tennessee Commission required TELRIC pricing for transit in its
20 recent order in Docket 03-00585.⁴³ In that order, the Tennessee Commission
21 determined that “. . .[transit] rates should be based on forward-looking economic

⁴² My recommendation would call for these terms and conditions be established through negotiations between the parties.

⁴³ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 40.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 costs. Specifically, the costs should be set using the TELRIC pricing
2 methodology.”⁴⁴ The Tennessee Commission went on to reject the Small LEC-
3 proposed rates because they were not based on forward-looking cost studies and
4 because they were based on interstate access rates, which include embedded costs
5 that are inappropriate for inclusion in calculation of transit rates.⁴⁵ Similarly, the
6 North Carolina Utilities Commission rejected BellSouth’s non-TELRIC TIC as
7 follows:

8 Although BellSouth has conceded that the tandem transit function
9 is a Section 251 obligation, it is unclear why BellSouth still
10 maintains that this function is not subject to the pricing
11 requirements set forth in Section 252...The Commission can find
12 no basis for permitting BellSouth to impose a TIC for the tandem
13 transit function. The tandem transit function is a Section 251
14 obligation, and BellSouth must charge TELRIC rates for it...The
15 Commission concludes that BellSouth should not be permitted to
16 charge a TIC when providing a tandem transit function for CLPs.⁴⁶
17

18 Furthermore, the Kentucky Public Service Commission rejected BellSouth’s TIC
19 charge and required BellSouth to assess only TELRIC-based tandem switching
20 and common transport rates for transit.⁴⁷ And while not applicable to BellSouth,
21 the Texas Public Utilities Commission required SBC-Texas to “provide transit
22 services at TELRIC rates.”⁴⁸
23

⁴⁴ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 40.

⁴⁵ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 40.

⁴⁶ *In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.* Docket No. P-772, SUB 8; Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket No. P-824, SUB 6; Docket No. P-1202, SUB 4. North Carolina Utilities Commission Order, July 26, 2005, pp. 53 – 54.

⁴⁷ Kentucky Public Service Commission Order in Case No. 2004 – 00044, p. 15.

⁴⁸ *Arbitration of Non-Costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement*, Arbitration Award, Track 1, Texas Docket 28821, February 22, 2005.

1 **Q. If the Commission finds that the tariff transit rate need not be TELRIC-**
2 **based, should the BellSouth tariff transit rate still be rejected?**

3 A. Yes. Regardless of the Commission’s ultimate conclusion on whether TELRIC
4 applies to transit, the BellSouth tariff transit rate should still be rejected because it
5 violates a plain reading of USC Title 47, Chapter 5, Subchapter II, Part 1, §§
6 201(b) and 202(a), which are provided below:

7 201 (b) All charges, practices, classifications, and regulations for
8 and in connection with such communication service, shall be just
9 and reasonable, and any such charge, practice, classification, or
10 regulation that is unjust or unreasonable is hereby declared to be
11 unlawful:

12 202 (a) Charges, services, etc. It shall be unlawful for any common
13 carrier to make any unjust or unreasonable discrimination in
14 charges, practices, classifications, regulations, facilities, or services
15 for or in connection with like communication service, directly or
16 indirectly, by any means or device, or to make or give any undue
17 or unreasonable preference or advantage to any particular person,
18 class of persons, or locality, or to subject any particular person,
19 class of persons, or locality to any undue or unreasonable prejudice
20 or disadvantage.

21
22
23 While I am not an attorney, I interpret these rules to require that charges for
24 BellSouth’s tariff transit service to be “just and reasonable” and to prohibit
25 BellSouth from discriminating in its transit charges.

26 The FCC discussed the importance of §§ 201(b) and 202(a) for pricing
27 ILECs’ services not required to be unbundled under § 251 of the TA96 in its
28 *Triennial Review Order (TRO)* as follows:

29 663. The Supreme Court has held that the last sentence of section
30 201(b), which authorizes the Commission “to prescribe such rules
31 and regulations as may be necessary in the public interest to carry
32 out the provisions of this Act,” empowers the Commission to adopt

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 rules that implement the new provisions of the Communications
2 Act that were added by the Telecommunications Act of 1996.
3 Section 271 is such a provision. Thus, the pricing of checklist
4 network elements that do not satisfy the unbundling standards in
5 section 251(d)(2) are reviewed utilizing the basic just, reasonable,
6 and nondiscriminatory rate standard of sections 201 and 202 that is
7 fundamental to common carrier regulation that has historically
8 been applied under most federal and state statutes, including (for
9 interstate services) the Communications Act. Application of the
10 just and reasonable and nondiscriminatory pricing standard of
11 sections 201 and 202 advances Congress's intent that Bell
12 companies provide meaningful access to network elements.

13
14 664. Whether a particular checklist element's rate satisfies the just
15 and reasonable pricing standard of section 201 and 202 is a fact-
16 specific inquiry that the Commission will undertake in the context
17 of a BOC's application for section 271 authority or in an
18 enforcement proceeding brought pursuant to section 271(d)(6). We
19 note, however, that for a given purchasing carrier, a BOC might
20 satisfy this standard by demonstrating that the rate for a section
21 271 network element is at or below the rate at which the BOC
22 offers comparable functions to similarly situated purchasing
23 carriers under its interstate access tariff, to the extent such
24 analogues exist. Alternatively, a BOC might demonstrate that the
25 rate at which it offers a section 271 network element is reasonable
26 by showing that it has entered into arms-length agreements with
27 other, similarly situated purchasing carriers to provide the element
28 at that rate.⁴⁹
29

30 The FCC stated that the just, reasonable and nondiscriminatory rate standard of §§
31 201 and 202 "is fundamental to common carrier regulation" and goes on to
32 describe ways for a carrier to show that the §§ 201/202 standard has been met.
33 Carriers can demonstrate that the rate is at or below the rate at which the BOC
34 offers comparable functions to similarly situated purchasing carriers under its

⁴⁹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01- 338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) ("TRO"), ¶¶ 663 – 664.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 interstate access tariff, if such an analogue exists. A carrier might also show that
2 it has entered into arms-length agreements with other, similarly situated
3 purchasing carriers to provide the element at that rate. In this instance, an
4 interstate access analogue does exist and I have demonstrated that BellSouth's
5 tariff transit rate exceeds the interstate access analogue rate. I maintain that this
6 fact alone demonstrates that BellSouth's tariff transit rate is unjust, unreasonable
7 and discriminatory. BellSouth would likely argue that it has met the standard
8 under the second test because BellSouth's \$0.003 rate is purportedly
9 "comparable" to the transit rates contained in the agreements listed in Exhibits
10 KRM - 2 and KRM - 3. However, establishing a tariff transit rate at \$0.003
11 when carriers pay less for the same functionality from BellSouth's interstate
12 access tariff, results in discriminatory treatment for carriers purchasing transiting
13 vis-à-vis carriers purchasing interstate access - an apparent violation of the
14 requirements of §§ 201/202. Hence, BellSouth's transit rate would constitute an
15 unreasonable or unjust discrimination in charges.

16
17 **Q. Please summarize your position on the proper rate for transiting.**

18 A. As mentioned above, my primary recommendation is that transit terms, conditions
19 and rates be established via negotiation as they have been established in the past.
20 However, to the extent that the Commission concludes that a transit tariff is
21 needed, I recommend that the Commission require transiting to be priced at
22 TELRIC. To this end, the Commission should require that, to the extent a transit
23 tariff is established, the rates from Docket 990649-TP be tariffed. If the

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 Commission finds that rates should be established based on more recent cost
2 studies, it should require the rates from Docket No. 990649-TP to be used on an
3 interim basis until such time as BellSouth files new cost studies and updated cost-
4 based rates are analyzed and approved by this Commission. In any event, any
5 tariff rate adopted by the Commission should be TELRIC based and should be
6 substantiated with a cost study, rather than arbitrarily selecting a rate that is in the
7 “ballpark” of rates that have been separately negotiated by other carriers with
8 different business plans. To the extent that the Commission finds that transiting
9 rates need not be TELRIC-compliant, the Commission should require that
10 BellSouth’s prices for transiting be just, reasonable and nondiscriminatory
11 pursuant to §§ 201/202.

12
13 **IV. Rebuttal to Small LEC Joint Petitioners**

14
15 **Q. Please summarize the primary thrust of the Small LEC testimony in this**
16 **proceeding.**

17 A. The Small LECs contend that the consequence of BellSouth’s transit service is to
18 “trap” them into a situation whereby they are forced to incur “extraordinary” costs
19 and provide a “superior” network arrangement. According to Mr. Watkins,
20 transiting (i) imposes “extraordinary” costs on the Small LECs, (ii) allows CLECs
21 to purportedly establish points of interconnection (“POIs”) with Small LECs that
22 are technically infeasible, (iii) allows CLECs to establish POIs that are not on the
23 Small LECs’ networks, and (iv) forces Small LECs to subsidize CLECs/CMRS

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 providers. The Small LECs' proposed solution to the "problems" they perceive in
2 transiting arrangements is for the Commission to establish three party contracts
3 involving all parties to a transiting arrangement - BellSouth, Small LECs and
4 CLEC/CMRS providers.

5
6 **Q. What are the primary problems with the Small LECs' recommendations?**

7 A. First and foremost, the Small LEC recommendations would turn the "originating
8 party pays" concept on its head and force CLECs to pay the costs of calls Small
9 LEC customers originate. Second, the Small LECs' proposal for three-party
10 transit contracts is unnecessary, burdensome, unworkable and cost prohibitive.
11 The Small LECs also advance a confusing direct trunking threshold proposal that
12 would increase barriers to competition and inject inefficiencies into the market.

13
14 **A. *The originating carrier should continue to be responsible for transit costs (Issue***
15 ***2, Issue 3, Issue 14)***

16
17 **Q. What is the source of the "extraordinary" costs that Mr. Watkins claims**
18 **transiting imposes on Small LECs?**

19 A. Mr. Watkins claims that transiting requires Small LECs to subsidize the CLECs
20 by paying for the cost of delivering a call to an interconnection point that is not on
21 their networks. In essence, the Small LECs argue that their financial
22 responsibility regarding a call originated on their networks should end at the
23 Small LEC/BellSouth service border, and that any additional cost the Small LECs

1 incur to switch or transport a call past that point would result in the Small LECs
2 subsidizing other carriers.

3

4 **Q. Are these costs “extraordinary” as Mr. Watkins claims?**

5 A. No. They are ordinary costs related to transporting and terminating local traffic
6 that are rightfully borne by the cost causer – the originating carrier.

7

8 **Q. What is the primary flaw in Mr. Watkins’ position on the issue of transit cost**
9 **recovery?**

10 A. Mr. Watkins’ testimony on the cost causer in a transiting scenario is incorrect. He
11 generally argues that it is BellSouth’s transit offering and the CLECs’ decision to
12 use transiting that is the cost causer in a transiting arrangement.⁵⁰ As a result,
13 according to Mr. Watkins, even when Small LECs are the originating carriers,
14 CLECs should pay for all transit costs, including compensating BellSouth for
15 transit as well as foregoing compensation from the Small LECs for terminating
16 their traffic. In sum, Mr. Watkins claims that there should be no compensation
17 effect on the Small LECs (or stated differently, the Small LECs should have no
18 financial responsibility) when they are the originating carriers of transit traffic.⁵¹

19

20 **Q. Is Mr. Watkins’ view correct?**

⁵⁰ Watkins Direct, pp. 35 – 36, see also, Watkins Direct, pp. 43 – 44.

⁵¹ Watkins Direct, p. 36.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 A. No. Mr. Watkins is wrong. The cost causer in this instance is the originating
2 carrier (or, more specifically, the originating carrier's customer who placed the
3 call), and the originating carrier should therefore be responsible for compensation.
4 This "originating carrier pays" concept is a well-established principle in
5 intercarrier compensation arrangements, and a plain reading of the FCC's rules
6 prohibit parties from ignoring this concept, as the Small LECs propose.
7 Specifically, 47 CFR§ 51.703(b) states that, "[a] LEC may not assess charges on
8 any other telecommunications carrier for telecommunications traffic that
9 originates on the LEC's network."

10

11 **Q. What would be the practical impact of the Small LECs' proposal?**

12 A. Under the Small LEC proposal, a Small LEC customer would originate a call to
13 be delivered to the CLEC, yet the CLEC would be financially responsible for the
14 entire routing of that call beyond the Small LEC/BellSouth border. This would
15 entail the CLEC compensating BellSouth for the tandem switching and transport
16 associated with the Small LEC-originated traffic as well as the CLEC "eating" the
17 costs of termination instead of recovering those costs from the Small LEC. As a
18 result of the Small LEC proposal, the CLEC would be responsible for all costs of
19 transporting and switching traffic exchanged between the CLEC and Small LECs
20 whether it is the originating *or* the terminating carrier. The ultimate outcome is a
21 "free ride" for the Small LECs for calls that are originated on the Small LECs'
22 networks and destined for termination to CLECs. This proposal is clearly one-
23 sided in favor of the Small LECs and subverts the well-established concept that

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 the originating carrier pays. In contrast, my proposal is fundamentally fair by
2 requiring the originating party (whether that be Small LECs or CLECs) to be
3 responsible for transit costs for transit traffic originating on its network.
4

5 **Q. Has the “originating carrier pays” principle been upheld by other state**
6 **regulatory commissions in BellSouth’s territory?**

7 A. Yes. In its recent *Order on Transit Traffic Involving Competitive Local Exchange*
8 *Carriers and Independent Telephone Companies* in Docket 16772-U,⁵² The
9 Georgia Public Service Commission adopted the CLECs’ position on this issue
10 and found that, “...the decision to find that calling party pays is consistent with
11 policy rationale of the *Texcom Orders* as well as the traditional principles of
12 holding the cost causer accountable.”⁵³ Likewise, the Tennessee Commission
13 found that, “if a call originates in a switch on one party’s network then that party
14 is responsible for the transiting costs” and that if the originating carrier is a Small
15 LEC, the Small LEC is obligated “to pay the appropriate transport and
16 termination charges associated with getting that call to the POI...which is located
17 at the BellSouth tandem.”⁵⁴
18

⁵² *In Re: BellSouth Telecommunications Inc.’s Petition for Declaratory Ruling Regarding Transit Traffic*, Order on Transit Traffic Involving Competitive Local Exchange Carriers and Independent Telephone Companies, Georgia Public Service Commission Docket No. 16772-U, March 24, 2005 (“GAPSC 16772-U Order”).

⁵³ GAPSC 16772-U Order, p. 8.

⁵⁴ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 30.

1 **Q. Mr. Watkins claims that transiting allows CLECs to establish a POI with the**
2 **Small LECs that is not technically feasible and is not on the Small LECs'**
3 **networks. Is he correct?**

4 A. No. First, I disagree with Mr. Watkins' characterization of this issue. When
5 CLECs use BellSouth's transiting offering, the CLECs have not established a POI
6 with the Small LECs at all. Rather, the CLECs have established a POI with
7 BellSouth for the purpose of exchanging transit traffic the CLECs originate,
8 which BellSouth will route to the appropriate carrier for termination. The
9 Tennessee Commission recently addressed this issue in its Arbitration Award:

10 What is at issue in this docket is the point of indirect
11 interconnection on the network which determines the
12 compensation obligation of an ICO member or a CMRS provider.
13 A majority of the Arbitrators concluded that the most efficient
14 means to resolve this issue is by maintaining the point of
15 interconnection that currently exists between the ICO members and
16 BellSouth and between the CMRS providers and BellSouth and
17 voted that, pursuant to 47 C.F.R. § 51.703(a) and (b), the company
18 that originates the call is responsible for paying the party
19 terminating the call.⁵⁵

20
21 Though Mr. Watkins questions the technical feasibility of such an arrangement,
22 he testifies that "BellSouth has offered and has provided the capability to CLECs
23 and CMRS providers to exchange traffic with the Small LECs for as long as
24 BellSouth has been establishing interconnection agreements with those entities, if
25 not before."⁵⁶ Therefore, such an arrangement is clearly technically feasible,
26 contrary to Mr. Watkins' inconsistent testimony on the topic.

⁵⁵ Tennessee Regulatory Authority Order of Arbitration Award, Docket No. 03-00585, p. 24.

⁵⁶ Watkins Direct, p. 6, lines 9 – 12.

1 **Q. Do you agree with Mr. Watkins’ assertion that transiting requires Small**
2 **LECs to establish a POI with CLECs that is not on the Small LECs’**
3 **networks?**

4 A. No, I disagree with Mr. Watkins’ assertion. Again, transiting, as it is used for the
5 purposes of this docket, involves an originating carrier establishing a POI with
6 BellSouth – not the Small LECs. As explained in my direct testimony, transiting
7 involves using indirect (as opposed to direct) interconnection, which means that
8 there is no physical point of interconnection between the originating and
9 terminating carriers. Accordingly, Mr. Watkins’ assertion that transiting requires
10 Small LECs to provide a “superior” network⁵⁷ is a red herring. The network
11 being used to transit the call is BellSouth’s network – not the Small LEC network.

12
13 **Q. Mr. Watkins characterizes transiting as “convenient and beneficial”⁵⁸ and**
14 **“expedient and convenient”⁵⁹ for CLECs/CMRS. Is Mr. Watkins**
15 **characterization that transiting benefits only CLECs/CMRS accurate?**

16 A. No. As an initial matter, I have explained that the transiting obligation is
17 grounded in the nondiscriminatory requirements of the TA96, and is designed to
18 promote competition and benefit the public interest as a whole. In addition, I find
19 it disingenuous for Mr. Watkins to claim now that transiting benefits only
20 CLECs/CMRS when he admits at page 44 of his direct testimony that “BellSouth
21 has transited this [Small LEC-originated] traffic to the CLECs without charge to

⁵⁷ Watkins Direct, pp. 13, 15 and 33 - 35.

⁵⁸ Watkins Direct, p. 14.

⁵⁹ Watkins Direct, p. 6.

1 the Small LECs for many years.” Obviously, the Small LECs have derived
2 benefits from transiting for many years, and now they want the CLECs to pay for
3 that benefit.

4
5 **Q. Mr. Watkins discusses “expectations” and “implied expectations”**
6 **CLECs/CMRS purportedly possess that Small LECs will pay BellSouth for**
7 **transit services (under the terms and conditions of BellSouth’s transit**
8 **tariff)...”⁶⁰ Do the CLECs have the expectation or implied expectation that**
9 **Small LECs will pay BellSouth for transit services under BellSouth’s transit**
10 **tariff as Mr. Watkins claims?**

11 **A.** No. As my testimony indicates, I recommend that the Commission reject
12 BellSouth’s tariff outright and cancel it. Accordingly, if the Commission follows
13 my recommendation, CLECs do not expect that Small LECs will pay BellSouth
14 for transiting per the transit tariff because there will be no such transit tariff in
15 place. I simply expect that the originating carrier will be responsible for the
16 traffic originated on its network, and to the extent that an agreement does not exist
17 between BellSouth and Small LECs pertaining to transit traffic, either party may
18 request negotiations on the topic.

19
20 **B. *The Commission should not establish transit terms and conditions between the***
21 ***parties through three party contracts and should leave these matters up to***
22 ***negotiations between the parties (Issue 5, Issue 8, Issue 9, Issue 15, Issue 16***
23 ***and Issue 17)***
24

⁶⁰ Watkins Direct, p. 33, lines 2 - 6.

1 **Q. A major theme of the Small LEC testimony is that the Commission should**
2 **establish a three-party transit contract that would dictate terms, conditions**
3 **and rates between all parties to a transiting arrangement – i.e., Small LECs,**
4 **BellSouth and the CLECs/CMRS providers.⁶¹ Is such a three- party transit**
5 **contract necessary?**

6 A. No. The existing structure allows parties to engage in negotiations and establish
7 terms and conditions related to transit in interconnection agreements, and this
8 mechanism has been employed by BellSouth and CLECs for years to address
9 transiting, and as such, no changes are necessary to this structure. To the extent
10 that a carrier does not have a separate transit agreement in place with BellSouth
11 and/or believes that its rights are not properly addressed in the current structure
12 (either in its relationship with BellSouth as a transit provider or in its relationship
13 with a third party originating/terminating carrier), it should address those issues in
14 negotiations with the appropriate carrier.⁶² Certainly, another layer of negotiated
15 contracts which duplicate, or worse yet, conceivably revise the existing contracts,
16 is inappropriate.

17
18 **Q. Are there other reasons why the Small LEC proposal for a three-party**
19 **contract should be rejected?**

20 A. Yes. As an initial matter, the Small LECs' three-party contract proposal is
21 nebulous, which makes it difficult to address the specifics of the plan. According

⁶¹ Watkins Direct, pp. 38 – 39 (Issue 5), pp. 42 – 43 (Issues 8 and 9), p. 54 (Issue 17).

⁶² Mr. Watkins even concedes at page 39 that the small LECs' recommendation does not relate to BellSouth's transit tariff and is therefore out of place in this docket.

1 to Mr. Watkins' brief description of this proposal (see, Watkins Direct, p. 38), the
2 Small LEC would only participate in these three-party contracts *voluntarily*, (see,
3 lines 13 – 14) meaning that, conceivably, Small LECs could trump all requests for
4 BellSouth's transiting services. This aspect of the Small LEC proposal would
5 undermine federal obligations regarding interconnection and therefore warrants
6 rejection on that basis alone.

7 Further, the Small LECs' proposal is unworkable, as it would require
8 potentially hundreds of new contracts, as each party involved in a transiting
9 arrangement would be required to execute a three-party transit contract for each
10 three-party transiting arrangement in which it engages. For instance, if all of the
11 CLEC/CMRS carriers listed in BellSouth's Exhibits KRM – 2 and KRM – 3 used
12 BellSouth's transit service to terminate traffic to just one Small LEC, under the
13 Small LECs' proposal, the parties would need to negotiate and execute about 200
14 new transiting contracts. Given that there is more than one Small LEC involved
15 in transiting arrangements, this number would likely be exponentially higher.
16 This would create an administrative nightmare. Furthermore, negotiating and
17 executing possibly hundreds of new transiting contracts would impose costs on all
18 parties and significantly reduce the efficiencies inherent in transiting.

19
20 **Q. Mr. Watkins claims at page 39 of his direct testimony that Small LECs have**
21 **no statutory right to force CLECs into interconnection agreements and that**
22 **BellSouth has resisted such meaningful discussions. Are the Small LECs'**
23 **claims accurate and, if so, does this have any bearing on whether the**

1 **Commission should adopt the Small LECs' proposal for a three-party transit**
2 **contract?**

3 A. No. Mr. Watkins suggests that Small LECs' rights in a transiting arrangement
4 can be preserved only if a three-party transit contract is established. This is not
5 the case. Regarding Mr. Watkins' testimony on the Small LECs' statutory
6 authority to force CLECs into interconnection agreements, I am not an attorney
7 and will leave this issue to be addressed in the briefs. However, I would add that
8 if Mr. Watkins' interpretation is correct, and Small LECs have no authority to
9 request negotiations for a compensation agreement with CLECs, then there would
10 also be no basis for the Small LECs' proposed three-party transit contract. More
11 importantly, whether or not BellSouth resists the Small LECs' request for
12 meaningful discussions or not, BellSouth is required to negotiate and, if
13 necessary, arbitrate terms and conditions with the Small LECs. Therefore, to the
14 extent that BellSouth is resisting the Small LECs' efforts in this regard as Mr.
15 Watkins claims, then the proper resolution of this issue would be for the Small
16 LECs to follow the proper process to arbitrate these disputed issues with
17 BellSouth before the Florida Commission – not establish another duplicate,
18 complicated process and layer of agreements between three parties. Therefore, all
19 the Small LECs must do is follow the negotiation/arbitration process already
20 provided for and no change is necessary to the current structure.

1 **Q. Mr. Watkins criticizes transiting for purportedly dictating the Small LECs'**
2 **network deployment decisions.⁶³ Is this criticism warranted?**

3 A. No. Small LECs are free to deploy their network as they choose. For example, if
4 a Small LEC finds that it originates a large amount of traffic destined for a third
5 party, the Small LEC could request negotiations related to a direct interconnection
6 with that third party and bypass BellSouth's transit services. The same goes for
7 CLECs and CMRS providers who may originate a large amount of traffic destined
8 for Small LECs. Any issues related to the physical interconnection between
9 Small LECs and BellSouth should be addressed in negotiations between those
10 parties. The bottom line is that both the originating and terminating carriers in a
11 transiting arrangement with BellSouth have the flexibility to physically
12 interconnect with BellSouth as they see fit (subject to regulatory requirements),
13 and parties can negotiate direct interconnections should they want to bypass
14 BellSouth's transiting. Hence, transiting does not dictate the Small LECs'
15 network deployment decisions.

16
17 **Q. Did the Tennessee Commission address the Small LEC three-party contract**
18 **proposal in its recent order in Docket 03-00585?**

19 A. Yes. The Tennessee Commission soundly rejected the Small LEC proposal:

20 The Arbitrators unanimously concluded that when a third-party
21 provider transits traffic, the third party is not required to be
22 included in the interconnection agreement between the originating
23 and terminating carriers. This circumstance will require the ICO
24 members to also negotiate an interconnection agreement with a

⁶³ Watkins Direct, pp. 14 – 16 and 18.

Rebuttal Testimony of Timothy J Gates
CompSouth
Docket Nos. 050119-TP/050125-TP

1 transit provider...The Arbitrators found nothing in the 1996 Act,
2 FCC Rules or any FCC Order that requires three-party
3 interconnection agreements. To the contrary the FCC has
4 discouraged three-party interconnection agreements.⁶⁴
5

6 **Q. The excerpt from the Tennessee Order above states that the FCC has**
7 **discouraged three-party interconnection agreements. Can you elaborate?**

8 A. Yes. The FCC, in its First Report and Order, found that, “[w]e believe that the
9 arbitration proceedings generally should be limited to the requesting carrier and
10 the incumbent local exchange provider. This will allow for a more efficient
11 process and minimize the amount of time needed to resolve disputed issues. We
12 believe that opening the process to all third parties would be unwieldy and would
13 delay the process.”⁶⁵
14

15 **C. *A direct trunking threshold should not be established (Issue 6)***

16
17 **Q. What is Mr. Watkins’ position on a direct trunking threshold?**

18 A. Mr. Watkins testifies that he generally supports a direct trunking threshold, but
19 recommends against a rigid requirement in favor of a “flexible” threshold level.⁶⁶
20 Ultimately, Mr. Watkins recommends a T1 threshold.⁶⁷
21

22 **Q. Do you disagree with Mr. Watkins position on this issue?**

⁶⁴ TRA Arbitration Award, p. 26.

⁶⁵ FCC First Report and Order, ¶ 1295.

⁶⁶ Watkins Direct, p. 40, lines 4 – 7.

⁶⁷ Watkins Direct, p. 41, lines 5 – 9.

1 A. Yes, I do. I explained at pages 29 – 34 of my direct testimony why the
2 Commission should refrain from establishing direct trunking thresholds. I adopt
3 and will not repeat that reasoning here.

4
5 **Q. Did Mr. Watkins provide any information in his direct testimony to support**
6 **a direct trunking proposal?**

7 A. No. Mr. Watkins only dedicates one and one-half pages of testimony to this issue
8 (See, Watkins Direct, p. 40, line 1 – p. 41, line 9), and this testimony is void of
9 any basis for a direct trunking threshold, much less a threshold at the “T-1 amount
10 of traffic usage...”⁶⁸

11
12 **Q. Mr. Watkins advocates a “flexible” direct trunk threshold level and goes on**
13 **to recommend a T1 threshold. Is Mr. Watkins’ proposed T1 threshold**
14 **flexible?**

15 A. No. All direct trunking thresholds are, by definition,⁶⁹ rigid and, therefore,
16 inflexible. Therefore, Mr. Watkins’ proposal for a “flexible” threshold is
17 inconsistent and is not a realistic option. Flexibility regarding decisions related to
18 direct trunking between carriers is maximized by leaving this decision up to
19 negotiation between the parties.

20 Furthermore, Mr. Watkins’ proposed T1 threshold may be the lowest
21 capacity threshold available (which would trigger the threshold, and increase

⁶⁸ Watkins Direct, p. 41, line 7.

⁶⁹ The term “threshold” is defined as “the point that must be exceeded to begin producing a given effect or result or to elicit a response.” Thefreedictionary.com

1 costs, in the greatest number of circumstances), and provides no opportunity for
2 consideration of any individual factors or extenuating circumstances. Hence,
3 despite advocating a “flexible” threshold, Mr. Watkins selected possibly the most
4 onerous, rigid threshold available. In effect, the Small LECs’ proposal attempts
5 to inappropriately dictate the terms of the transit services carriers purchase from
6 BellSouth by establishing an arbitrarily threshold above which BellSouth’s transit
7 service would not longer be available.

8
9 **Q. Do you have any other concerns with Mr. Watkins’ direct trunking threshold**
10 **proposal?**

11 A. Yes. Mr. Watkins’ proposal is extremely vague. For instance, Mr. Watkins does
12 not explain who would pay for these dedicated facilities or whether trunks would
13 be one-way or two-way trunks – just to name a few. However, my interpretation
14 of Mr. Watkins’ testimony suggests that once the traffic exchanged between a
15 CLEC and a Small LEC reaches a T1 level, the *CLEC* would be required to
16 establish and pay for the direct connections to the Small LEC. Such an outcome
17 would inappropriately shift the Small LECs’ costs to the CLECs, because,
18 conceivably, Small LECs’ customers could generate 100% of that T1 level of
19 traffic, but it would be CLECs who would bear the costs to establish a direct
20 connection once the threshold is exceeded. This appears to be another example of
21 the Small LECs’ attempt to shirk their obligations as originating carriers.

1 Q. Mr. Watkins states that carriers could still interconnect with Small LECs
2 indirectly even if a threshold is established, but “would now be using
3 dedicated trunks (which could still be obtained from BellSouth) instead of
4 the arrangement under which CLECs’ and CMRS provider traffic is
5 commingled with BellSouth’s on the same trunk group.”⁷⁰ Do you agree?

6 A. No. A dedicated connection between a CLEC and a Small LEC (regardless of
7 who actually owns the dedicated facility) is a *direct* connection – not an *indirect*
8 interconnection, as Mr. Watkins claims. Regardless of what these dedicated
9 facilities are called, if a CLEC would purchase dedicated facilities from BellSouth
10 to connect with the Small LEC, the CLEC would incur the same types of costs as
11 if the CLEC built out the dedicated facilities to the Small LEC itself (albeit,
12 maybe not of the same magnitude as if the CLEC trenched cable itself). For
13 instance, BellSouth assesses a number of recurring and non-recurring charges for
14 its dedicated point to point circuits purchased from its special access tariff.⁷¹
15 Thus, forcing CLECs to purchase dedicated facilities from BellSouth for the
16 purposes of directly connecting with a third party and bypassing BellSouth’s
17 transit service would entail the same types of costs and inefficiencies as if the
18 CLEC was forced to construct these dedicated facilities itself. The Small LEC
19 testimony on this issue is a red herring.

20

⁷⁰ Watkins Direct, p. 40.

⁷¹ By way of example only, one of these charges is a \$650 non-recurring charge BellSouth assesses for an initial DS1 local channel. See, BellSouth Telecommunications, Inc. FCC Tariff No. 1, 9th revised page 7-144.1, effective April 7, 2004.

1 Q. Does this conclude your rebuttal testimony?

2 A. Yes, at this time.

**FLORIDA DOCKET NO. 990649-TP -- REVISED FILING
TABLE OF CONTENTS**

SECTION 1 EXECUTIVE SUMMARY (5 pages)

STATEMENT OF PURPOSE
OVERVIEW
PROCESS FLOWCHARTS

SECTION 2 BELLSOUTH FINAL COST SUMMARY

SECTION 3 STUDY METHODOLOGY (4 pages)

TOTAL ELEMENT LONG RUN INCREMENTAL COST (TELRIC)
RECURRING COSTS
NONRECURRING COSTS

**SECTION 4 DESCRIPTION OF MODELS AND PRICE
CALCULATORS (13 pages)**

1. BELLSOUTH COST CALCULATOR©
2. CAPITAL COST CALCULATOR©
3. DS1 CHANNELIZATION PRICE CALCULATOR
4. SIGNALING SYSTEM 7 (SS7) PRICE CALCULATOR
5. SIMPLIFIED SWITCHING TOOL© (SST)
6. SONET PRICE CALCULATOR
7. MAIN DISTRIBUTING FRAME (MDF) MATERIAL PRICE
STUDY
8. SWITCHING COST INFORMATION SYSTEM/MODEL OFFICE
(SCIS/MO)
9. BELLSOUTH TELECOMMUNICATIONS LOOP MODEL©
(BSTLM)

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**FLORIDA DOCKET NO. 990649-TP -- REVISED FILING
TABLE OF CONTENTS**

**SECTION 5 INPUTS – DESCRIPTION OF LOADINGS AND
FACTORS (18 pages)**

1. BELLSOUTH REGION TELEPHONE PLANT INDEXES
INVESTMENT INFLATION FACTORS
2. INPLANT LOADINGS
3. SUPPORTING STRUCTURE LOADINGS
4. LOADINGS
SUPPORTING EQUIPMENT AND POWER
LAND AND BUILDING
POLE AND CONDUIT
RIGHT-TO-USE (RTU)
5. ANNUAL COST FACTORS
CAPITAL COSTS FACTORS
PLANT SPECIFIC EXPENSE FACTORS
AD VALOREM AND OTHER TAXES
GROSS RECEIPTS TAX FACTOR
6. DISCONNECT FACTORS
7. LABOR RATES
8. SHARED AND COMMON COST FACTORS

**SECTION 6 UNBUNDLED NETWORK ELEMENT STUDIES
(102 pages)**

- INTRODUCTION
- LIST OF COST ELEMENTS
- NARRATIVES
 - ELEMENT DESCRIPTION
 - STUDY TECHNIQUE
 - SPECIFIC STUDY ASSUMPTIONS

**APPENDIX A BELLSOUTH COST CALCULATOR STATEWIDE
OUTPUT SUMMARY**

**APPENDIX B BELLSOUTH COST CALCULATOR DEAVERAGED
OUTPUT SUMMARY**

**APPENDIX C EXAMPLE FOR BELLSOUTH
TELECOMMUNICATIONS LOOP MODEL**

Docket Nos. 050119-TP & 050125-TP
Gates Exhibit TJG-2

Florida Docket 990649-TP – Revised Filing

Page 2 of 5

**FLORIDA DOCKET NO. 990649-TP -- REVISED FILING
TABLE OF CONTENTS**

APPENDIX D	SIMPLIFIED SWITCHING TOOL (SST) USER GUIDES SIMPLIFIED SWITCHING TOOL - USAGE© (SST-U) SIMPLIFIED SWITCHING TOOL - PORT© (SST-P) SST METHODOLOGY DATA DICTIONARY
APPENDIX E	CAPITAL COST CALCULATOR MODEL DESCRIPTION ILLUSTRATIVE EXAMPLE OF CAPITAL COST CALCULATOR CALCULATIONS
APPENDIX F	LOADINGS, FACTORS AND LABOR RATES (electronic only) CAPITAL COST CALCULATOR MODEL CALCULATIONS SHARED AND COMMON COST SUPPORTING DOCUMENTS DESCRIPTION OF OPERATING EXPENSE PROJECTION CALCULATION SUPPORTING MICROSOFT EXCEL WORKSHEETS BELLSOUTH REGION TELEPHONE PLANT INDEXES AND INVESTMENT INFLATION FACTORS FACTORS AND LOADINGS – INPLANT; PLUG-IN, HARDWIRED; SUPPORTING EQUIPMENT AND POWER; PLANT SPECIFIC; LAND AND BUILDING; POLE AND CONDUIT; RTU FEE AD VALOREM AND OTHER TAXES STATE AND FEDERAL INCOME TAXES LABOR RATES
APPENDIX G	NETWORK DIAGRAMS AND SUPPORTING FILES DARK FIBER DESIGNS NETWORK DESIGNS SUPPORTING FILES (electronic only)
APPENDIX H	BELLSOUTH TELECOMMUNICATIONS LOOP MODEL MODEL DOCUMENTATION USER GUIDE (To be provided under separate cover)

Simplified Switching Tool -
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**FLORIDA DOCKET NO. 990649-TP -- REVISED FILING
TABLE OF CONTENTS**

APPENDIX I	SCIS MODEL INSTRUCTIONS FOR INSTALLATION OF SERVICE PATCH OVERVIEW SCIS MODEL AND SERVICE PATCH (electronic only)
APPENDIX J	COMPACT DISK APPLICATION REQUIREMENTS AND LOADING INSTRUCTIONS ELECTRONIC COPIES OF FILING, MODELS, SPREADSHEETS AND INSTRUCTIONS (PROPRIETARY AND NONPROPRIETARY)
APPENDIX K	SCIS MODEL USER GUIDES
APPENDIX L	BELLSOUTH COST CALCULATOR STATEWIDE OUTPUT REPORTS
APPENDIX M	BELLSOUTH COST CALCULATOR DEAVERAGED OUTPUT REPORTS

**FLORIDA DOCKET NO. 990649-TP -- REVISED FILING
SECTION 6
UNBUNDLED NETWORK ELEMENT STUDIES**

- C.0 UNBUNDLED SWITCHING AND LOCAL INTERCONNECTION**
- C.1 END OFFICE SWITCHING**
- C.1.1 END OFFICE SWITCHING FUNCTION, PER MOU**
- C.1.2 END OFFICE TRUNK PORT - SHARED, PER MOU**
- C.2 TANDEM SWITCHING**
- C.2.1 TANDEM SWITCHING FUNCTION, PER MOU**
- C.2.2 TANDEM TRUNK PORT - SHARED, PER MOU**
- D.0 UNBUNDLED TRANSPORT AND LOCAL INTEROFFICE TRANSPORT**
- D.1 COMMON TRANSPORT**
- D.1.1 COMMON TRANSPORT - PER MILE, PER MOU**
- D.1.2 COMMON TRANSPORT - FACILITIES TERMINATION PER MOU**

Element Description

Unbundled End Office Switching provides the CLEC's customers with the ability to place phone calls, either to another end user on the same switch, or to an end user located at another central office.

Unbundled Tandem Switching allows CLECs who are purchasing UNEs from BellSouth to route calls between BellSouth end offices, or between a CLEC switch and BellSouth's end office(s). Calls that originate from a BellSouth end office will come to the tandem in order to be routed to a terminating location within that same serving area or to be transported to another tandem serving area, or to a CLEC. A call coming to a tandem from a CLEC switch will be terminated within that tandem's serving area either to a BellSouth end office or to another network provider.

Unbundled Interoffice Common Transport provides a transmission path and the associated electronics between switching locations that enable a call to be transported from one location to another. These facilities/trunk groups are shared among all network providers who require calls to be transported between particular switching locations. These facilities/trunk groups may be transported over various transmission configurations (e.g., DS1, OC3, etc.) based on total shared network requirements.

Study Technique

Investments for Unbundled Local Switching, Tandem Switching and Interoffice Transport – Shared are developed using the Simplified Switching Tool – Usage (SST-U).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Rebuttal Testimony and Exhibit of Timothy J. Gates on Behalf of The Competitive Carriers of the South, Inc., was served via (*) hand delivery and first class United States mail this 30th day of January, 2006, to the following:

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