

State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: February 6, 2006

TO: Lisa Polak Edgar, Chairman
J. Terry Deason, Commissioner
Isilio R. Arriaga, Commissioner

FROM: Beth W. Salak, Director, Division of Competitive Markets & Enforcement

RE: Item 13 - February 7, 2006 Agenda - Docket No. 0401269-TP – Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law, by BellSouth Telecommunications, Inc.

Many of the issues in Docket No. 041269-TP have been addressed previously by the Commission. The attached document provides a brief issue-by-issue comparison of staff's recommendations in Docket No. 041269-TP and the prior decisions.

Specifically, the prior decisions reviewed are listed below:

Docket No.	Docket Title
000121A-TP	In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BELLSOUTH TRACK)
040130-TP	In re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.
040156-TP	In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.
040601-TP	In re: Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for arbitration of issue resulting from interconnection negotiations with BellSouth Telecommunications, Inc., and request for expedited processing.
041464-TP	In re: Petition for arbitration of certain unresolved issues associated with negotiations for interconnection, collocation, and resale agreement with Florida Digital Network, Inc. d/b/a FDN Communications, by Sprint-Florida, Incorporated.

If you have any questions regarding this information, please call Sally Simmons at 413-6605 or Michael Barrett at 413-6544.

CC: Dr. Bane
Mr. Hill
Ms. Bass
Mr. Hinton
Mr. Arisso
Docket File

DOCUMENT NUMBER-DATE

01035 FEB-6 06

FPSC-COMMISSION CLERK

Issue 1: What is the appropriate language to implement the FCC's transition plan for

- (1) switching,
- (2) high capacity loops and
- (3) dedicated transport as detailed in the FCC's Triennial Review Remand Order ("TRRO"), issued February 4, 2005?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission found that Verizon is obligated to provide unbundled access to the embedded bases of local circuit switching, high-capacity loops and transport, and dark fiber at the transitional rates established in the TRRO through the 12-month (18-month for dark fiber) transition period, beginning March 11, 2005; CLECs are entitled to receive the TRRO transitional rates for the full transition period; transitional rates end March 10, 2006, for affected de-listed switching and high-capacity loops and transport UNEs (September 10, 2006, for dark fiber UNEs); CLECs are to submit conversion orders by the end of the applicable transition period; CLEC unbundled access during the 12-month transition period is limited to the customer UNE arrangements existing as of March 11, 2005; CLECs are prohibited from accessing on an unbundled basis anything requiring a new de-listed UNE arrangement; Commission-approved non-recurring charges can be assessed for disconnecting UNE arrangements; parties may negotiate the appropriate non-recurring charges, if any, for the reconnection of service under a commercially negotiated alternative arrangement, since such charges may not be subject to this Commission's oversight; and de-listed arrangements will be re-priced to the applicable wholesale tariffed or resale rate once the applicable transition period ends.

Docket No. 041269-TP: The recommendation is consistent with the Commission's decision in Docket No. 040156-TP: the embedded base as used in the TRRO relates to de-listed UNE arrangements existing as of March 11, 2005; the applicable transition rates are those as stated in the rules attached to the TRRO; transitional rates are effective at the time of the ICA amendment and subject to true-up back to March 11, 2005; CLECs are entitled to transitional rates throughout the entire transition period, which ends on March 10, 2006 and September 10, 2006, for the affected de-listed arrangements, whether or not the former UNEs have been converted; CLECs are required to submit conversion orders for the affected de-listed arrangements by the end of the applicable transition period; if CLECs do not identify the applicable embedded base by the end of the transition periods, BellSouth will identify the arrangements and charge CLECs the applicable UNE disconnect charges and full installation charges; transitional pricing ends at the end of the applicable transition period, at which time CLECs will be charged the resale or wholesale tariffed rate; and applicable conversion rates should be Commission-approved.

The transition rate for DS0 level switching for customers subject to the FCC's four or more line carve-out was not an issue in Docket No. 040156-TP.

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission found that the amendment to the parties' interconnection agreements shall include rates, terms, and conditions relating to the changes in unbundling obligations resulting from the TRO and the TRRO. Neither the TRO nor TRRO ordered changes to change-of-law provisions in existing interconnection agreements. Therefore, no new change-of-law provisions need to be included in the amendment to the parties' ICAs.

Docket No. 041269-TP: The recommendation here is similar to the recommendation in Docket No. 040156-TP in that amendments to interconnection agreements will include the changes in the ILEC's obligations resulting from the TRO and the TRRO. In the instant proceeding, staff is recommending the following: a) The TRO and TRRO have changed BellSouth's obligation to provide unbundled network elements pursuant to its §251(c)(3) obligation. Therefore, staff recommends that existing ICAs should be amended to reflect those changes to BellSouth's obligations. b) Amendments to new ICAs pending arbitration should be based on the Commission's decisions in this proceeding, unless the parties have specifically agreed otherwise. Accordingly, staff believes that all Florida CLECs having ICAs with BellSouth should be bound by the decisions in this proceeding effective upon issuance of the final orders approving the amendments or agreements.

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

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: Verizon claimed no non-impairment with regard to loops. Therefore, Verizon is obligated to continue to provide access until the requirements of the TRRO are met. The Commission determined that the amendment should address Verizon's obligations to continue providing dedicated transport, including dark fiber transport, under the limited circumstances outlined in the FCC's rules. The amendment should define business lines, and fiber-based collocators, as those terms are defined by the FCC.

- (i) The amendment should include the FCC's definition of "business lines."
- (ii) The amendment should also include the FCC's definition of "fiber-based collocators."
- (iii) The term "building" was not addressed.
- (iv) The term "route" was discussed insofar as it is part of the rule regarding transport. However, it was not separately defined.

Docket No. 041269-TP:

- (i) In determining whether non-impairment threshold have been met, BellSouth should include all business UNE-P, all UNE-L and HDSL-capable loops at full capacity in the business line counts. This recommendation defines business lines in accordance with the rule, but contains more discussion of the application of the rule to the line counts than in Docket No. 040156-TP. The difference is due to the fact that the definition was not as contentious in Docket No. 040156-TP. Many of the points raised by the parties in this docket were not raised in 040156-TP.
- (ii) Fiber based collocators are defined in accordance with the rule, as in Docket No. 040156-TP. As with business line counts, parties raised interpretative questions regarding the definition that were not raised in Docket No. 040156-TP. Notably, fiber-based collocation should be based on the number of collocators present when the count is made.
- (iii) The definition of a building should be based on a "reasonable telecom person" approach.
- (iv) The FCC's definition of a route is appropriate.

- Issue 4:**
- a. Does the Commission have the authority to determine whether or not BellSouth's application of the FCC's Section 251 non-impairment criteria for high-capacity loops and transport is appropriate?
 - b. What procedures should be used to identify those wire centers that satisfy the FCC's Section 251 non-impairment criteria for high-capacity loops and transport?
 - c. What language should be included in agreements to reflect the procedures identified in (b)?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP:

- a. Not addressed.
- b. The FCC's self-certification process was adopted. The amendment need not list Verizon's wire center designations.
- c. N/A.

Docket No. 041269-TP: This Commission has authority to resolve an ILEC's challenges to a CLEC self-certification, under an ICA's dispute resolution process. CLECs should exercise due diligence in making inquiries about the availability of UNEs and must self-certify that they are entitled to the UNE. BellSouth should provision such UNEs, but may bring disputes to this Commission for resolution in accordance with the TRRO. This portion of the recommendation is similar to Docket No. 040156-TP. The notable difference is the recommendation that this Commission should also approve the initial wire center lists as requested by the parties. This difference is due to the fact that both BellSouth and the CLECs agreed that it would be beneficial to include the initial list in the agreement.

Issue 5: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: Not addressed.

Docket No. 041269-TP: Staff is recommending that: 1) BellSouth's HDSL-capable loop offerings are the equivalent of DS1 loops for the purpose of evaluating impairment and should be counted as 24 voice grade equivalents; 2) BellSouth is obligated to provide CLECs with access to copper loops and to condition copper loops upon request; however, BellSouth is not obligated to offer pre-conditioned/pre-packaged loop offerings designed for a specific service type; and 3) an Unbundled Copper Loop Non-Designed (with or without conditioning) should be counted as one voice grade equivalent for each 2-wire (e.g., one voice grade equivalent for a 2-wire loop and two voice grade equivalents for a 4-wire loop).

Issue 7(a): Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?

Issue 7(b): If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements?

Issue 7(c): If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any should be included in the ICA with regard to the terms and conditions for such elements?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: Not addressed.

Docket No. 041464-TP: Not addressed.

Docket No. 041269-TP:

(a) No. Staff believes that the Commission does not have authority to require BellSouth to include in §252 interconnection agreements §271 elements. The inclusion of §271 elements in a §252 agreement would be contrary to both the plain language of §§251 and 252 and the regulatory regime set forth by the FCC in the TRO and the TRRO.

(b&c) If the Commission approves staff's recommendation in issue 7(a), issues 7(b) and 7(c) are moot.

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission found that while CLECs retain access to unbundled local circuit switching, high-capacity loops and dedicated transport during the transition period for their embedded end-user customers, that access is limited to the arrangements existing on March 11, 2005. Anything requiring a new UNE arrangement, such as a customer move to another location or an additional line, is not permitted under the TRRO. Modifications or rearrangements, such as adding features or changing telephone numbers, to the embedded base are permitted during the transition period.

Docket No. 041269-TP: The recommendation is consistent with the Commission's decision in Docket No. 040156-TP. CLEC access to unbundled local circuit switching, high-capacity loops and dedicated transport during the applicable transition period is limited to the arrangements existing on March 11, 2005. Orders to move a customer's service or to add a line to an existing customer's service are prohibited. However, changes to an existing service, such as adding or removing vertical features, are permitted during the applicable transition period because they do not require an order for new service.

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

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

Docket No. 040130-TP: Not addressed.

Docket No. 041464-TP:

(a) Not addressed.

(b) The Commission found that notifications for wire centers that subsequently meet the FCC's non-impairment standards shall be given directly over the Sprint web site, and updated lists of unimpaired wire centers sent to all carriers that have interconnection agreements. CLECs will have 30 days from receipt of the notice to challenge Sprint's determination before the Commission. All affected CLECs will have an opportunity to participate in the proceeding.

Docket No. 040156-TP:

(a) The Commission found that because Verizon had already issued a notice, it is not obligated to issue a second notice triggering a further 90-day transition period for TRO de-listed UNEs.

(b) Since Verizon has not claimed non-impairment in any wire center for DS1 and DS3 loops, the Commission found that Verizon is obligated to continue to provide such loops until the non-impairment requirements of the TRRO are met. Because Verizon has only a limited obligation to provide dark fiber loops during the transition period, the Commission found that Verizon shall not be required to list the wire centers where such loops are currently available in the agreement.

Docket No. 041269-TP:

(a) The recommendation here is based on BellSouth's proposal for transitioning the TRO de-listed UNEs. BellSouth proposed to provide a 30-day notice of discontinuation of the TRO de-listed UNEs. If a CLEC has any de-listed TRO elements or arrangements in place after the effective date of the change-of-law amendment, BellSouth should be authorized to disconnect or convert such services, after a 30-day written notice and absent a CLEC disconnection or conversion order. However, to be consistent with treatment of CLEC conversion orders submitted within the notice period, staff recommends that Commission-approved switch-as-is rates apply to conversions if ordered within the 30-day period. Otherwise, BellSouth should be allowed to transition such circuits to equivalent BellSouth tariffed services and impose full nonrecurring charges as set forth in those tariffs.

(b) This is the first case where the transition process and procedure for future de-listings of UNEs in subsequent wire centers is addressed. A summary of the recommendation is found in Table 9-1 on page 96. The recommendation represents a mix of the proposals proffered by the parties and follows similar transition pricing requirements and conversion requirements set forth for the initial transition period in Issue 1.

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission found that Verizon is obligated to provide unbundled access to the embedded bases of local circuit switching, high-capacity loops and transport, and dark fiber at the transitional rates established in the TRRO through the 12-month (18-month for dark fiber) transition period, beginning March 11, 2005; CLECs are entitled to receive the TRRO transitional rates for the full transition period; transitional rates end March 10, 2006, for affected de-listed switching and high-capacity loops and transport UNEs (September 10, 2006, for dark fiber UNEs); CLECs are to submit the conversion orders by the end of the applicable transition period; CLEC unbundled access during the 12-month transition period is limited to the customer UNE arrangements existing as of March 11, 2005; CLECs are prohibited from accessing on an unbundled basis anything requiring a new de-listed UNE arrangement; Commission-approved non-recurring charges can be assessed for disconnecting UNE arrangements; parties may negotiate the appropriate non-recurring charges, if any, for the reconnection of service under a commercially negotiated alternative arrangement, since such charges may not be subject to this Commission's oversight; and de-listed arrangements will be re-priced to the applicable wholesale tariffed or resale rate once the applicable conversion period ends.

Docket No. 041269-TP: The recommendation is consistent with the Commission's decision in Docket No. 040156-TP: the embedded base as used in the TRRO relates to de-listed UNE arrangements existing as of March 11, 2005; the applicable transition rates are those as stated in the rules attached to the TRRO; transitional rates are effective at the time of the ICA amendment and subject to true-up back to March 11, 2005; CLECs are entitled to transitional rates throughout the entire transition period, which ends on March 10, 2006 and September 10, 2006, for the affected de-listed arrangements, whether or not the former UNEs have been converted; CLECs are required to submit conversion orders for the affected de-listed arrangements by the end of the applicable transition period; if CLECs do not identify the applicable embedded base by the end of the transition periods, BellSouth will identify the arrangements and charge CLECs the applicable UNE disconnect charges and full installation charges; transitional pricing ends at the end of the applicable transition period, at which time CLECs will be charged the resale or wholesale tariffed rate; and applicable conversion rates should be Commission-approved.

The transition rate for DS0 level switching for customers subject to the FCC's four or more line carve-out was not an issue in Docket No. 040156-TP.

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: Not addressed.

Docket No. 000121A-TP: In May 2004, the Commission found that line sharing (a delisted element) should be phased out of BellSouth's performance measurement plan because the TRO removed the obligation to provide line sharing as a UNE, pursuant to §251. Specifically, the Commission ordered BellSouth to report line sharing in BellSouth's performance measurement plan until the three-year transitional period outlined in the TRO ended in October 2006.

Docket No. 041269-TP: Consistent with the Commission's prior decision, delisted elements pursuant to §251(c)(3) should not be subject to BellSouth's performance measurement plan (SQM/PMAP/SEEM). In May 2004, the Commission deemed that it was premature to answer the argument over obligations under §§251 and 271; however, the Commission did relieve BellSouth from obligations to provide line sharing, subject to the transitional period, pursuant to §251. More information on those findings is discussed on page 103 of staff's January 26, 2006 recommendation.

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

Docket No. 040130-TP: The Commission found that BellSouth was not obligated to commingle §271 checklist items with §251 UNEs.

Docket No. 040156-TP: The Commission ordered Verizon to allow the CLEC to commingle UNEs and UNE combinations with all wholesale services, including switched access, special access and resale services. The question of whether Verizon should be obligated to commingle §271 checklist items with §251 UNEs is moot, since Verizon in Florida is not a BOC.

Docket No. 041269-TP: Staff is recommending that BellSouth be required to commingle §271 checklist items with §251 UNEs, which differs from the Commission decision in Docket No. 040130-TP. The differences between the two are addressed on pp. 113-114.

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission found that Verizon is obligated to allow CLECs to convert wholesale services to UNEs/UNE combinations, as specified in the TRO, as of the effective date of an amendment. The Commission clarified that Verizon may charge existing rates that have been approved by the Commission or are included in an existing agreement, but may not charge new rates for conversions at this time.

Docket No. 041269-TP: Staff recommends that BellSouth be obligated to provide conversions of special access to UNE pricing. In Issue 1, staff recommends that BellSouth not be allowed to charge its proposed “switch-as-is” rates, but is not precluded from initiating a cost proceeding at a later date. The recommendation is the same.

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission found that Verizon is obligated to allow CLECs to convert wholesale services to UNEs/UNE combinations, as specified in the TRO, as of the effective date of the amendment.

Docket No. 041269-TP: Staff recommends that any conversions to stand-alone UNEs pending on the effective date of the TRO should be effective with the date of an amendment or interconnection agreement that incorporates conversions. This recommendation is the same as in Docket No. 040156-TP.

Issue 16: Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?

Docket No. 000121A-TP: In this docket the Commission noted that the CLECs have made the argument that LEC obligations under Sections 251 and 271 of the Telecommunications Act may differ and that while line sharing has been removed from the list of 251 UNEs, it remains a 271 obligation. The Commission found that the appropriate resolution to this argument is not clear at this time and noted:

. . . it is not necessary for us to address this issue, which appears premature, because the FCC has clearly outlined a three-year transition period for line sharing. As such, we need not address this argument now. As TRO proceedings in court and at the state level proceed, it is hoped that the law on this point will be clarified.

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission ordered that ICAs shall be amended to reflect that line sharing is a discontinued facility, which will be transitioned in accordance with the FCC's transition plan delineated in 47 CFR 51.319(a)(1)(i), including all subsections.

Docket No. 040601-TP: The Commission ordered BellSouth to continue to provide access to line sharing pursuant to the parties' interconnection agreement until it expires on December 19, 2004 and that a true-up may be appropriate if the FCC affirmatively removes the section 271 line sharing obligation and shall revisit this matter if necessary.

The Commission later clarified this decision and noted that:

Upon review of the Agenda transcript, we find that we did not make an affirmative finding that there is an existing Section 271 line sharing obligation. Accordingly, the following clarification shall be made:

Additionally, we recognize that a true-up may be appropriate if the FCC affirmatively removes *any* Section 271 line sharing obligation and shall revisit this matter if necessary

Docket No. 041269-TP: Staff recommends that BellSouth is not obligated to provide line sharing to new CLEC customers after October 1, 2004. This recommendation is consistent with the Commission's decisions in Docket No. 040156-TP. However, staff notes that in this docket the Joint CLECs argue that BellSouth must continue to offer line sharing as a §271 obligation; this argument was not presented in Docket No. 040156-TP because Verizon is not a BOC in Florida. In addition, the §271 argument was made in Docket Nos. 000121A-TP and 040601-TP. Staff believes that its recommendation here is also consistent with the Commission's finding in these dockets; specifically that the Commission need not make an affirmative finding that there is an existing Section 271 line sharing obligation .

Issue 17: If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC's existing line sharing arrangements?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: Not addressed.

Docket No. 041269-TP: Staff believes that neither the language proposed by CompSouth nor BellSouth is totally appropriate to implement the recommended decision in Issue 16. Instead the language proposed by BellSouth in Exhibit 12, with modifications discussed in the staff analysis, should be adopted.

Issue 18: What is the appropriate ICA language to implement BellSouth's obligations with regard to line splitting?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission concluded that the ICAs should not be amended with respect to line splitting, since line splitting obligations remain as they were prior to the TRO and TRRO.

Docket No. 041269-TP: Unlike the line splitting issue in Docket No. 040156-TP, which specifically tied ICA amendments to changes in the TRO and TRRO, this issue specifically asks for language to implement BellSouth's obligations with regard to line splitting.

Staff's recommended language is based on three points: 1) BellSouth is obligated to provide nondiscriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements; 2) the CLEC requesting a line splitting arrangement should purchase the whole loop and provide its own splitter to be collocated in the central office; and 3) the CLEC requesting a line splitting arrangement should indemnify, defend and hold BellSouth harmless against any and all claims, loss or damages except where arising from or in connection with BellSouth's gross negligence or willful misconduct.

Staff notes that line splitting was not specifically addressed in Docket No. 040130-TP; however, the issue of indemnification was. Staff's recommendation regarding that aspect of this issue is similar to the recommendation made in Docket No. 040130-TP.

Issue 21: What is the appropriate ICA language, if any, to address access to call related databases?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: Not addressed.

Docket No. 041269-TP: BellSouth is obligated to offer to CLECs with existing agreements unbundled access to all of its call-related databases, including its 911 and E-911 call-related databases, through March 10, 2006. Beginning on March 11, 2006, this obligation is only applicable for the 911 and E 911 call-related databases.

Issue 22a: What is the appropriate definition of minimum point of entry (“MPOE”)?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: Not addressed.

Docket No. 041269-TP: Since no party has proposed language for a definition of MPOE within the contract, staff too concludes that no language is required.

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission found that in no event is Verizon obligated to offer unbundled access to FTTP loops (or any segment or functionality thereof) which terminate at an end user's customer premises that previously has not been served by any Verizon loop facility.

Docket No. 041269-TP: BellSouth is required to unbundle FTTH/FTTC loops to predominantly commercial MDUs, but has no obligation to unbundle such fiber loops to residential MDUs. While the FCC's rules provide that FTTH/FTTC loops serving end user customer premises do not have to be unbundled, CLEC access to unbundled DS1 and DS3 loops was also preserved. Accordingly, in wire centers in which a non-impairment finding for DS1 or DS3 loops has not been made, BellSouth is obligated upon request to unbundle a FTTH/FTTC loop to provide a DS1 or DS3 loop. This recommendation is different from Docket No. 040156-TP. The major difference in this docket is in both the amount of testimony and the introduction of the FCC's interpretation of its own order before the D.C. Circuit Court of Appeals (Exhibit 37). In Docket No. 040156-TP, no party indicated any conflict existed between the FCC's "greenfield" FTTH rules and its DS1 and DS3 loop unbundling rules. Since there was no identified interrelationship between these rules in Docket No. 040156-TP, both were handled as separate sections for purposes of the interconnection agreement.

Issue 23: What is the appropriate ICA language to implement BellSouth's obligation to provide unbundled access to hybrid loops?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission found that Verizon will provide access to DS1 or DS3 hybrid loops for the provision of broadband services, on an unbundled basis, over existing non-packetized time division multiplexing (TDM) features, functions and capabilities, where available. When a CLEC seeks access to a hybrid loop to provide narrowband services, Verizon may either provide:

- a) DS0 path on the hybrid loop,
- b) a spare homerun copper loop.

Docket No. 041269-TP: Staff recommends BellSouth be required to provide the CLEC with nondiscriminatory access to the time division multiplexing features, functions and capabilities of a hybrid loop. This recommendation is the same as in Docket No. 040156-TP.

Issue 25: What is the appropriate ICA language to implement BellSouth's obligation to provide routine network modifications?

Docket No. 040130-TP: Line Conditioning is defined as the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver xDSL capability,¹ to ensure that the copper loop or copper subloop is suitable for providing xDSL services² and provided the same for all telecommunications carriers requesting access to that network³ and at least in quality to that which the incumbent provides to itself.

Docket No. 040156-TP: ICAs should be amended to reflect Verizon's obligation to perform routine network modifications (RNMs) on a nondiscriminatory basis. RNMs are those activities that Verizon regularly undertakes for its own customers, excluding the installation of a new loop.

Docket No. 041269-TP: BellSouth should provide the same routine network modifications and line conditioning that it normally provides for its own customers. The recommendation is consistent with those in other dockets.

¹ See 47 C.F.R. § 51.319(a)(1)(iii)(A).

² See 47 C.F.R. § 51.319(a)(1)(iii).

³ See 47 C.F.R. § 51.311(a).

Issue 26: What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already recovered in Commission-approved recurring or nonrecurring rates? What is the appropriate language, if any, to incorporate into the ICAs?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: ICAs should be amended to reflect Verizon's obligation to perform line conditioning to ensure xDSL delivery at least equal in quality to that which Verizon provides to itself. However, the line conditioning rates included in the existing ICAs need not be amended.

Docket No. 041464-TP: FDN is required to compensate Sprint for the costs of routine network modifications to unbundled loop facilities to the extent the costs are not recovered in the unbundled loop rates. If Sprint performs network modifications for its own benefit in the normal course of its business and such network modifications also meet FDN's requirement, Sprint shall not charge FDN for the network modification.

Docket No. 041269-TP: BellSouth should use the rates approved by this Commission in the UNE Order. If any additional rates are needed, BellSouth should petition this Commission to establish those rates. The recommended language states that BellSouth will not charge for routine network modifications it normally provides for its own customers and has recovered the costs of such modifications through other rates. This is similar to recommendations in other dockets

Issue 27: What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: The Commission found that the proposed language should incorporate the provisions outlined in the FCC's rules. Specifically, the incumbent carrier is required to provision either a 64 Kbps transmission path over the fiber loop or provide access to a copper loop.

Docket No. 041269-TP: The unbundling requirements of an incumbent carrier with respect to overbuilt FTTH/FTTC loops are limited to either the provision of a 64 Kbps transmission path over the FTTH loop or unbundled access to a copper loop. This recommendation is consistent with the decision in Docket No. 040156-TP.

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

Docket No. 041030-TP: The Commission ordered that BellSouth should provide written notice. The notice should include the cause that BellSouth believes warrants the audit, but need not identify the specific circuits that are to be audited or contain additional detailed documentation. The Commission also ordered that a list of auditors agreed to by the parties would be included in the interconnection agreement.

Docket No. 040156-TP: The Commission ordered that Verizon provide notice of the audit, but not be required to identify circuits or provide documentation prior to the audit. Also, Verizon should obtain and pay for a third party, independent auditor to conduct the audit. The Commission further ordered Verizon to comply with the specific requirements outlined in the TRO regarding the auditing procedures.

Docket No. 041269-TP: Staff recommends that BellSouth need not identify the specific circuits that are to be audited or provide additional detailed documentation prior to an audit of a CLEC's EELs. The audit should be performed by an independent, third-party auditor selected by BellSouth. The CLEC may dispute any portion of the audit following the dispute resolution procedures contained in the interconnection agreement after the audit is complete. The recommendations are similar, though different in the following aspects: a) staff recommends that BellSouth select the auditor, since the parties in this docket objected to inclusion of a list of auditors; b) staff does not recommend that BellSouth be required to provide any justification for the audit, as the TRO does not require such (BellSouth agreed to provide cause for the audit in Docket No. 040130-TP, but did not here).

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: Not addressed.

Docket No. 041269-TP: Staff recommends that while the Commission should make it clear that all affected CLECs are entitled to amend their agreements to implement the ISP Remand Core Forbearance Order, such amendments should be handled on a carrier-by-carrier basis. Accordingly, no language is necessary for this issue.

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

Docket No. 040130-TP: Not addressed.

Docket No. 040156-TP: Not addressed.

Docket No. 041269-TP: In accordance with the Commission's ruling in Order No. PSC-05-0639-PCO-TP, issued in this docket, staff believes that parties and non-parties should be bound to the amendments arising from the Commission's determinations in this proceeding. For non-parties, staff recommends that the resulting amendments be limited to the disputed issues in this proceeding and not affect language unrelated to the disputed issues in this proceeding. Staff recommends that it may be appropriate given the FCC's transitional deadlines to order the parties to file their respective amendments or agreements within 20 days of the decisions in this proceeding. Staff believes that this would allow the parties sufficient time to comply with the Commission's decisions in this proceeding and meet the March 11, 2006 deadline. In addition, staff requests that the Commission grant it administrative authority to approve any amendments and agreements filed in accordance with the Commission's decisions in this proceeding

Issue 32: Should this docket be closed?

Docket No. 040130-TP: Staff recommended in this docket that the parties submit a signed agreement that complies with its decisions for approval within 30 days of issuance of the Commission's Order. The Commission further ordered that the docket remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

Docket No. 040156-TP: The Commission ordered that the parties submit a signed agreement that complies with its decisions for approval within 30 days of issuance of the Commission's Order. The Commission further ordered that the docket remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

Docket No. 041464-TP: The Commission ordered that the parties submit a signed agreement that complies with its decisions for approval within 30 days of issuance of the Commission's Order. The Commission further ordered that the docket remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

Docket No. 041269-TP: In order to meet the FCC's transitional deadline of March 11, 2006, staff is recommending in the instant proceeding that the parties be required to submit signed amendments or agreements that comply with the Commission's decisions for approval within *20 days of the Commission's decisions/vote in this proceeding*, as opposed to within 30 days of issuance of the Commission's Order.