

2006 Competitive Local Exchange Carrier (CLEC) Questionnaire  
(Due by July 14, 2006)

undocketed

Legal Company Name: PAETEC Communications, Inc.

D/B/A: \_\_\_\_\_

FPSC Company Code (e.g., TX000) TX234

Contact name & title: Judy Messenger, Manager – Regulatory Affairs

Telephone number: (585) 340-2822

E-mail address: judy.messeng@paetec.com

Stock Symbol (if company is publicly traded): NA

**Services Offered in Florida**

- 1. Do you offer local telephone service in Florida? Please check yes or no.  
 Yes  
 No
- 2. How is your local service provisioned? Please mark the appropriate response(s).  
 Resale agreement with ILEC  
 Agreement with ILEC for wholesale platform (formerly known as UNE-P).  
 Purchase some UNEs (other than wholesale platform) from ILEC  
 Purchase elements (e.g., loops, switching) from other than ILEC (e.g., other CLECs)  
 Completely self-provisioned  
 Other (please describe)

**PAETEC maintains a 5ESS switch and provisions by special access arrangements with Bell South**

- 3. In what ILEC exchanges are you providing residential and/or business local service? Attached is the Exchange Check List (also available in electronic form) for your response.  
 CMP \_\_\_\_\_  
 COM \_\_\_\_\_ Please see Attachment A.  
 CTR \_\_\_\_\_  
 ECR \_\_\_\_\_  
 GCL \_\_\_\_\_  
 OPC \_\_\_\_\_ Please see Attachment B  
 RCA \_\_\_\_\_ No, my company IS NOT required to complete any data tables.  
 SCR \_\_\_\_\_  
 SGA \_\_\_\_\_  
 SEC 1  
 OTH \_\_\_\_\_

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5. What services, other than local service, does your company offer in Florida? Check all that apply.
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Private line/special access | <input checked="" type="checkbox"/> Wholesale loops           |
| <input checked="" type="checkbox"/> VoIP                        | <input type="checkbox"/> Paging service                       |
| <input type="checkbox"/> Wholesale transport                    | <input type="checkbox"/> Cable television                     |
| <input checked="" type="checkbox"/> Interexchange service       | <input type="checkbox"/> Satellite television                 |
| <input type="checkbox"/> Cellular/wireless service              | <input checked="" type="checkbox"/> Broadband Internet access |
6. This question concerns **prepaid** local telephone service in Florida. Please place a check mark by the response that most accurately reflects whether or not you offer prepaid local telephone service.
- Company offers ONLY prepaid local telephone service in Florida
- Company offers prepaid AND non-prepaid local telephone service in Florida
- Company does NOT offer prepaid local telephone service in Florida

**Bundled Services**

7. Do you offer bundled services to your Florida residential and business customers? For the purpose of this question, bundled services are specially priced packages that consist of local service plus at least one other feature (e.g., call waiting) or service (e.g., long distance or broadband or video). Please mark the applicable response(s).
- Yes - Residential
- No - Residential
- Yes - Business
- No - Business
8. If you do offer bundled services, what is the percentage of your Florida residential and business customers that can purchase the bundles? Please provide the percentage below. If you do not offer bundled services, place a mark by "not applicable."
- Residential
- Business
- Not applicable
9. If you do offer bundled services, what percentage of your Florida residential and business customers purchase the bundles? Please provide the percentage below. If you do not offer bundled services, place a mark by "not applicable."
- Residential
- Business
- Not applicable

**VoIP**

10. Indicate below whether you are offering VoIP service to end users in Florida. VoIP service is defined as IP-based voice service provided over a digital connection. Check any that apply.

- Not offering VoIP service to end users
- Offering VoIP services to business end users
- Offering VoIP services to residential end users

11. If you are offering VoIP service in Florida:

a. Where are you offering VoIP service, e.g., specific cities, counties, statewide, etc.?

**Statewide**

b. What is the range of prices for residential VoIP service?

**N/A, PAETEC is currently only providing services to business customers**

c. What is the range of prices for business VoIP service?

**Required Service Packs (user must choose one or more of the following)**

[REDACTED]

[REDACTED]

[REDACTED]

d. Check all that apply to your VoIP service:

- Offer wireless VoIP service
- Offer wireline VoIP service
- Optional power backup
- Standard power backup
- Contribute to Universal Service Fund
- Peer-to-Peer only (no interconnection with PSTN).
- Use of public Internet
- Use of private IP network

e. If you are not offering VoIP service to end-user customers in Florida, do you anticipate doing so? If yes, identify rollout month/year.

N/A

**Broadband**

12. Do you offer broadband to residential customers in Florida? Please place a mark by the applicable answer.  
       Yes  
  X   No
13. If you do offer broadband to residential customers in Florida, please provide the percentage of customers to whom broadband is available.  
  N/A
14. How many residential broadband subscribers do you have in Florida?  
  N/A

**FCC's Triennial Review Remand Order (TRRO)**

15. As of March 11, 2005, please provide the total number of UNE-P access lines for your company that were affected by the above order.
16. As of March 11, 2006, please provide the number of UNE-P access lines that were transitioned in each of the categories below:
- a. Migrated to a different platform (i.e., UNE-L or resale)
  - b. Renegotiated as part of a commercial agreement
  - c. No longer providing service
  - d. Not transitioned as of March 11, 2006, due to quantity, etc., but will be or has been transitioned to a different platform as subject to agreement with ILEC.
  - e.        Other (please explain below)

**Mergers**

17. The following questions concern the mergers that have taken place recently (e.g., Sprint-Nextel, SBC and AT&T, and Verizon and MCI, as well as the recently announced AT&T purchase of BellSouth).

**Please see attached comments filed with the FCC.**

- a. Has your overall local competition strategy changed as a result of the completed mergers? If so, please explain how.

**Please see Attachment C.**

- b. Have these mergers affected your local competition strategy in Florida? If so, please explain how.

**Please see Attachment C.**

- c. How do you expect AT&T's purchase of BellSouth to affect your local competition strategy in Florida?

**Please see Attachment C.**

**Miscellaneous**

18. In 2005, how much money did you invest in your network directly serving Florida's local service customers? Place a check mark by the applicable answer.

- \$1 - \$249,999
- \$250,000 - \$999,999
- \$1,000,000 - \$9,999,999
- \$10,000,000 or more

19. Are you currently operating under Chapter 7 or Chapter 11 protection? Please indicate yes or no.

- Yes
- No

20. Please provide a copy of the Form 477 you filed with the FCC with data as of December 31, 2005.

**See Attachment D.**

**Comments**

21. Have you experienced any significant barriers in entering Florida's local exchange markets? Please list and describe any major obstacles or barriers encountered that you believe may be impeding the growth of local competition in the state, along with any suggestions as to how to remove such obstacles. Any additional general comments or information you believe will assist staff in evaluating and reporting on the development of local exchange competition in Florida are welcome.

**PAETEC has not experienced any significant barriers in entering Florida's local exchange markets.**

Attachment A  
Florida 2006 Local Competition Data Request  
PAETEC Communications, Inc.  
Public Copy

Company Name:

Company Code\*:

\* Your CLEC Company code is shown on the label affixed to the envelope in which this was mailed and on the cover letter.

Please check the boxes in the chart below indicating in which ILEC exchange you provide business or residential local service.

Alachua		
Alford		
Alligtorpt		
Altha		
Apalachicola		
Apopka		
Arcadia		
Archer		
Astor		
Avon Park		
Baker		
Baldwin		
Bartow		
Belleglade		
Belleview		
Beverlyhls		
Blountstn		
Boca Raton		
Bocagrande		
Bonifay		
Bonita Spg		
Bowlinggreen		
Boyntonbch		
Bradenton		
Branford		
Bristol		
Bronson		
Brooker		
Brooksvl		
Bunnell		
Bushnell		
Callahan		
Cantonment		
Cape Coral		
Cape Haze		
Carrabelle		
Cedar Keys		
Celebraln		
Century		
Chatahoche		
Cherrylake		
Chiefland		
ChIPLEY		
Citra		
Clearwater		
Clermont		
Clewiston		
Cocoa		
CocoaBeach		
Coral Spg		
Cottondale		
Crawfordvl		
Crescent City		
Crestview		
Cross City		
Crystalriv		

Dade City		
Daytonabch		
Debarry		
Deerfldbch		
Deland		
Deleon Spg		
Delray Bch		
Destin		
Dfuniakspg		
Dowling Pk		
Dunnellon		
East Point		
Eastorange		
Eau Gallie		
Englewood		
Eustis		
Everglades		
Fernadnbch		
Flaglerbch		
Florahome		
Fishesbyrnh		
Forest		
Fort Meade		
Fort Myers		
Fort White		
Fortpiece		
Freeport		
Frostproof		
FtlauderdL		
Ftmyersbch		
Ftwaltnbch		
Gainesvl		
Geneva		
Glendale		
Graceville		
Grandridge		
Greencvspg		
Greensboro		
Greenville		
Greenwood		
Gretna		
Groveland		
Gulfbreeze		
HainesCity		
Hastings		
Havana		
Hawthorne		
High Spg		
Hilliard		
Hobe Sound		
Holleyrvrr		
Hollywood		
Homestead		
Homossspg		
Hosford		
Howeyinhls		

Hudson		
Immokalee		
Indianlake		
Indiantown		
Interlachn		
Inverness		
Jacksolbch		
Jacksonvl		
Jasper		
Jay		
Jennings		
Jensen Bch		
Julington		
Jupiter		
Keaton Bch		
Kenansvl		
Keys		
Keystn Hts		
Kingsleyk		
Kissimmee		
La Belle		
Lady Lake		
Lake City		
Lake Wales		
Lakebutler		
Lakeland		
Lakeplacid		
Laurel Hill		
Lawtey		
Lee		
Leesburg		
Lehighacrs		
Live Oak		
Lkbnavist		
Luraville		
Lynn Haven		
Macclenny		
Madison		
Malone		
Marco Is		
Marianna		
Maxville		
Mayo		
Mcintosh		
Melbourne		
Melrose		
Miami		
Micanopy		
Middleburg		
Milton		
Molino		
Monticello		
Montverde		
Moorehaven		
Mount Dora		
Mulberry		

Munson		
Myakka		
Naples		
Ncapecoral		
Newberry		
No Naples		
Noft Myers		
North Dade		
North Port		
Nwptrichey		
Nwsmymbch		
Oak Hill		
Ocala		
Ocklawaha		
Okeechobee		
Old Town		
Orange Spg		
Orangecity		
Orangepark		
Orlando		
Oviedo		
Pace		
Pahokee		
Palatka		
Palm Coast		
Palmetto		
Panacea		
Panamacity		
Paxton		
Pensacola		
Perrine		
Perry		
Pierson		
Pineisland		
Plant City		
Pnamacybch		
Pntvdrabch		
Poinciana		
Polk City		
Pomnapark		
Pompanobch		
Ponce Leon		
Portst Joe		
Ptcharlott		
Ptst Lucie		
Puntagorda		
Quincy		
Raiford		
Reedycreek		
Reynoldshl		
Salt Spg		
Sanantonio		
Sanderson		
Sanford		
Sanrosabch		
Sarasota		

SeagrV Bch		
Sebastian		
Sebring		
Shalimar		
Sirspgshrs		
Sncpvisnds		
Sneads		
Sopchoppy		
Springlake		
St Cloud		
St Johns		
St Marks		
Starke		
Staugustin		
Stpetersbg		
Stuart		
Sunnyhills		
Tallahasse		
Tampa		
Tarpon Spg		
Tavares		
Thebeaches		
Titusville		
Trenton		
Trilacoche		
Tyndallab		
Umatilla		
Valparaiso		
Venice		
Vernon		
Vero Beach		
Waldo		
WalnutHill		
Wauchula		
Weekichspg		
Weirsdale		
Welaka		
Wellborn		
Westville		
Wewahitchk		
White Spg		
Wildwood		
Williston		
Windermere		
Winter Hvn		
Wintergrdn		
Winterpark		
Wkissimmee		
Wpalmbeach		
Yankeetown		
Yongstfntn		
Yulee		
Zephyrhills		
Zolfo Spg		

Attachment B  
Florida 2006 Local Competition Data Request  
PAETEC Communications, Inc.  
Public Copy



FLORIDA PUBLIC SERVICE COMMISSION

2006 CLEC Data Request TABLE-1

(Data as of May 31, 2006)

Company Name: PAETEC Communications, Inc.

Company Code\*: TX-234

\* Your CLEC Company code is shown on the label affixed to the envelope in which this was mailed and on the cover letter.

CLEC TABLE-1: TRADITIONAL ACCESS LINES on a VOICEGRADE EQUIVALENT (VGE) Basis

**DO NOT INCLUDE VoIP, WHOLESALE PLATFORM LINES (lines formally known as UNE-P), ANY UNE-P LINES THAT HAVE NOT YET TRANSITIONED, RESOLD LINES (INCLUDING THOSE SOLD UNDER COMMERCIAL AGREEMENTS) OR PRIVATE LINES IN THIS TABLE**

1	2	3
ILEC Territory	Res or Bus	Total VGE Lines
BellSouth	Bus	[REDACTED]
Smart City Telecom	Bus	
Sprint	Bus	
Verizon	Bus	
Grand Total		

NOTES/INSTRUCTIONS FOR COMPLETING TABLE-1:

A. The purpose of this table is to obtain CLEC retail access lines on a VGE basis, exclusive of VoIP, wholesale platform (lines formerly known as UNE-P), any UNE-P lines that have not yet transitioned, and resale (whether leased under an Interconnection Agreement or a Commercial Agreement).

B. An access line connects the end user's customer premises equipment (CPE) to the serving switch and allows the end user to originate and/or terminate local telephone calls on the public switched telephone network (PSTN). Do NOT include VoIP lines, Wholesale Platform lines, UNE-P lines or Resold access lines (including those leased under a Commercial Agreement). Do include UNE-L and EELs obtained from ILECs even if leased under a Commercial Agreement. The access line counts in Table-1 above must be based on all of your different types of access lines (including fixed wireless) with the exception of those used to provide VoIP service.

C. Each field must be populated. Do not use quotation marks.

D. Residential and business VGE access line counts may be obtained by querying your billing database, provisioning database, etc.

TABLE COLUMN INSTRUCTIONS:

Column 1. List ILEC Territory in alphabetical order (e.g. BellSouth, Verizon, etc.).

Column 2. Enter the abbreviation Res for Residential lines or Bus for Business lines. Each type must be entered in separate rows.

Column 3. Enter line count as voice-grade equivalents (VGEs). Report VGE Access Lines based on how you bill the customer. If you bill a customer for 1 DS1, the access line count would be 24 even if the customer is not utilizing all 24 channels. If you bill a customer for 10 channels in a DS1, then the line count would be 10. Report 2 VGEs for each ISDN-BRI and 23 VGEs for each ISDN-PRI. Lines must be entered without duplication, e.g., Enhanced Extended Link (EEL) loops must not be included in UNE-L counts and vice versa. Each line count must be entered in separate rows.

FLORIDA PUBLIC SERVICE COMMISSION

2006 CLEC Data Request TABLE-2

(Data as of May 31, 2006)

Company Name: PAETEC Communications, Inc.

Company Code\*: TX-234

\* Your CLEC Company code is shown on the label affixed to the envelope in which this was mailed and on the cover letter.

CLEC TABLE-2: ACCESS LINE COUNTS (not VGEs)

**DO NOT INCLUDE VoIP, WHOLESALE PLATFORM LINES (lines formally known as UNE-P), ANY UNE-P LINES THAT HAVE NOT YET TRANSITIONED, RESOLD LINES (INCLUDING THOSE SOLD UNDER COMMERCIAL AGREEMENTS) OR PRIVATE LINES IN THIS TABLE**

1	2	3	4
ILEC Territory	Res or Bus	Line Type	Total Lines
BellSouth	Bus	T1	[REDACTED]
Smart City Telecom	Bus	T1	
Sprint	Bus	T1	
Verizon	Bus	T1	
Grand Total			

NOTES/INSTRUCTIONS FOR COMPLETING TABLE-2:

A. The purpose of this table is to obtain a breakdown of access lines (reported in Table-1) by line type and actual line counts, not VGEs.

B. Each field must be populated. All entries must be made without quotation marks.

TABLE COLUMN INSTRUCTIONS:

Column 1. List ILEC Territory in alphabetical order (e.g. BellSouth, Verizon, etc.).

Column 2. Enter the abbreviation Res for Residential lines or Bus for Business lines. **Each type must be entered in separate rows.**

Column 3. For each line connected to the customer premises, enter Line Type as Analog, ISDN-BRI, ISDN-PRI, DS1, DS3, OC1, OC3, OCn (Identify value of n), xDSL (Identify x), etc. Include only those high speed lines that also provide voice. **Each type must be entered in separate rows.**

Column 4. Enter actual line count total, not VGEs, in the Total Lines column. EXAMPLE: Enter 1 for 1 Analog loop, 2 for 2 ISDN-PRI loops, etc. **Each actual line count total must be entered in separate rows.**

FLORIDA PUBLIC SERVICE COMMISSION

2006 CLEC Data Request TABLE-3

(Data as of May 31, 2006)

Company Name: PAETEC Communications, Inc.

Company Code\*: TX-234

\* Your CLEC Company code is shown on the label affixed to the envelope in which this was mailed and on the cover letter.

CLEC TABLE-3: VoIP ACCESS LINES on a VOICEGRADE EQUIVALENT (VGE) Basis

**THIS TABLE IS INTENDED TO ONLY CAPTURE VoIP LINES. DO NOT INCLUDE LINES REPORTED ON TABLE 1 IN THIS TABLE**

1	2	3
ILEC Territory	Res or Bus	Total VGE Lines
TCG	Bus	
Grand Total		

NOTES/INSTRUCTIONS FOR COMPLETING TABLE-3:

- A. The purpose of this table is to obtain retail VoIP access lines on a VGE basis.
- B. An access line connects the end user's customer premises equipment (CPE) to the serving switch and allows the end user to originate and/or terminate local telephone calls on the public switched telephone network (PSTN). The access line counts in Table 3 above must be based on all of your different types of access lines (including fixed wireless) that are used to provide VoIP service.
- C. Each field must be populated. All entries must be made without quotation marks.

TABLE COLUMN INSTRUCTIONS:

- Column 1. List ILEC Territory in alphabetical order (e.g. BellSouth, Verizon, etc.).
- Column 2. Enter the abbreviation Res for Residential lines or Bus for Business lines. Each type must be entered in separate rows.
- Column 3. Enter line count as voice-grade equivalents (VGEs). Report VGEs based on how the customer is billed. If the customer is billed for a dynamic bandwidth VoIP product, the line count would be the maximum number of VoIP lines available. If the customer is billed for a specific number of VoIP lines, or a range of lines, the VoIP line count would be the number of VoIP lines or the highest number of the range, respectively. Each line count must be entered in separate rows.

Attachment C  
Florida 2006 Local Competition Data Request  
PAETEC Communications, Inc.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C. 20554

**APPLICATIONS FOR CONSENT TO TRANSFER OF  
CONTROL FILED BY AT&T INC. and BELLSOUTH  
CORPORATION**

**WC Docket No. 06-74  
DA 06-904**

**COMMENTS OF PAETEC COMMUNICATIONS, INC.**

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Date: June 4, 2006

TABLE OF CONTENTS

SUMMARY.....ii

I. Introduction ..... 1

II. This Merger, Like the SBC/AT&T and Verizon/MCI Mergers Last Year, Will Inevitably Result in Anticompetitive Effects in the Special Access Markets ..... 3

1. The High Capacity Loop Market .....3

2. The Interoffice Transport Market .....5

III. The Commission Must Impose Conditions in the Special Access Market to Mitigate the Anticompetitive Effects of the Proposed Merger ..... 9

CONCLUSION..... 10

APPENDIX 1..... 1

## COMMENTS OF PAETEC COMMUNICATIONS, INC.

PAETEC Communications, Inc. ("PAETEC") submits these comments in response to the April 19, 2006 notice issued by the Federal Communications Commission (the "FCC" or "Commission") seeking comments on the applications for transfer of control filed by AT&T Inc. and BellSouth Corp. (the "Applicants").

### SUMMARY

PAETEC is an innovative supplier of communications solutions to medium and large businesses and institutions. Based in Fairport, New York, PAETEC offers a full line of telecommunications and Internet services, enterprise communications management software, security solutions, and managed services to its customers through its own switches and lines leased from other carriers in 28 of the nation's major metropolitan areas. Specifically, PAETEC leases special access service from ILECs to connect subscriber premises with the nearest PAETEC point-of-presence ("POP"). PAETEC does not rely on unbundled network elements, and it is dependent on incumbent local exchange carrier ("ILEC") special access services for 95 percent of its last-mile connections to end-users.

In its recent SBC/AT&T and Verizon/MCI merger orders, the Commission found that each merger was likely to result in anticompetitive effects in the provision of Type I special access services to certain specific buildings where AT&T or MCI was then the only competitive alternative to

the local incumbent, whether SBC or Verizon. The Commission stated that its concerns about these effects were only allayed because the applicants had entered into consent decrees with the Department of Justice and had “voluntarily” proffered certain additional conditions related to the high capacity loop special access market, conditions which the Commission accepted and incorporated in its final order for each merger.

This proposed merger presents the same potential for anticompetitive consequences in the market for high capacity loop special access in the BellSouth territory that those mergers presented in the SBC and Verizon territories. In addition, this merger also poses a potential for anticompetitive consequences in the market for interoffice transport in the BellSouth territory. PAETEC continues to believe, as it demonstrated in the course of the Verizon/MCI merger proceeding, that the anticompetitive effects that result in both special access markets from the merger of a regional Bell operating company (“RBOC”) and its largest competitor in the special access market extend far beyond a few buildings, and in fact require divestiture of overlapping in-region special access facilities under applicable antitrust and communications law. PAETEC recognizes, however, that such divestiture may not be the Commission’s preferred outcome in this proceeding. Therefore, PAETEC is urging the Commission also to condition its approval of the transfers on the acceptance by the Applicants of conditions related to both special access markets that are similar to those imposed on the high capacity loop market in the SBC/AT&T and Verizon/MCI merger orders.



Specifically, the Applicants should be required to commit that AT&T's and BellSouth's incumbent local operating companies will implement a performance metrics plan for interstate special access services, under which they will provide performance data on a quarterly basis. Second, the Applicants must commit not to raise rates paid by existing customers of AT&T's DS1 and DS3 local private line services and interoffice transport services that AT&T provides in AT&T's or BellSouth's in-region territory pursuant, or referenced, in its existing tariffs (or any successor or equivalent AT&T tariff). Third, the Applicants must commit that neither AT&T's nor BellSouth's incumbent local telephone companies will provide special access offerings to their wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions. Fourth, the Applicants must commit that, before AT&T/BellSouth provides a new contract tariff to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon or its wireline affiliates. Finally, the Applicants should commit that AT&T/BellSouth will not increase the rates in either AT&T's or BellSouth's interstate tariffs, including contract tariffs, for special access services that it provides in its in-region territory and that are set forth in tariffs on file at the Commission on the merger closing date. Each condition should apply for 30 months after the merger closing date.

## **I. Introduction**

PAETEC supplies its innovative package of telecommunications and Internet services, enterprise communications management software, security solutions, and managed services primarily to medium-sized and larger business customers in Tier 1 markets in AT&T's and BellSouth's territories (particularly California, Connecticut, Florida and Illinois) and throughout the Northeast (Verizon's footprint). PAETEC also provides long distance service throughout the 48 contiguous states. PAETEC's high-quality communications and managed services offerings to business customers require T-1 capacity levels or greater. PAETEC's targeted business customers are mainly medium-size and larger business customers, and they include subscribers in vertical markets such as hotels, hospitals, and universities, as well as government and private firms. Founded in 1998, PAETEC has grown into a successful and profitable company with over \$500 million in annual revenue.

Unlike most other CLECs, PAETEC has obtained its interoffice transport in the form of ILEC tariffed special access offerings or competitive access provider ("CAP") wholesale transport rather than unbundled network elements ("UNEs"). In addition, PAETEC generally uses T-1 special access loops to connect its customers' premises to various points of presence

("POPs") distributed throughout its serving area.<sup>1</sup> As a competitive IXC as well as a CLEC, PAETEC also relies heavily on special access to provide dedicated connections to customers who take long distance, but not necessarily local, service from PAETEC. Thus, PAETEC is intimately familiar with the special access market in the AT&T, and to a lesser extent, the BellSouth footprints and with the impact of the proposed merger on competition in those markets.

PAETEC has a relatively conservative network planning strategy. The company generally neither establishes a POP nor orders circuits to that POP until there is a critical mass of ready customers to be served by such circuits. That way, operational dollars are not needlessly expended by constructing facilities to an ILEC end office or tandem while waiting for customers to sign up for service. PAETEC's ownership of its switches, in combination with leased transport and special access facilities, results in a core network deployment strategy that requires no UNE loops, collocation, UNE transport, enhanced extended loops (or EELs), or dark fiber. PAETEC's measured growth strategy has worked extremely well. Unlike many other competitive telecom startups, PAETEC has never gone through a bankruptcy or financial reorganization, but has managed to grow successfully while honoring its commitments to all of its creditors and investors.

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<sup>1</sup> Recently, PAETEC has used commercially negotiated resale of ILEC DS0 services on a very limited basis, primarily to serve smaller branch locations of some of its customers. However, DS0 level services are a very minor component of PAETEC's overall service offerings.

## II. This Merger, Like the SBC/AT&T and Verizon/MCI Mergers Last Year, Will Inevitably Result in Anticompetitive Effects in the Special Access Markets

As successful as PAETEC has been in the competitive telecommunications marketplace, the fact is that its network and the continued growth of its business is dependent on the availability of reasonably priced special access facilities, which PAETEC leases almost exclusively from ILECs because there are very few alternatives to ILEC-provided services. PAETEC is deeply concerned about the impact of this merger on the availability and pricing of the two types of special access – interoffice transport and high-capacity loops.

The analysis of a proposed merger's anticompetitive effects begins, of course, with a definition of the relevant market. PAETEC agrees with the Commission that these are distinct markets, and believes that the definitions the Commission has adopted in the past are appropriate.<sup>2</sup> In any event, it is irrelevant whether this is one market or two because no matter how the markets are defined, the combined AT&T/BellSouth will have dominant market power in the AT&T and BellSouth territories. PAETEC further agrees with the Commission that in undertaking a competitive analysis of these markets, a route-specific inquiry is necessary.<sup>3</sup>

## III. The High Capacity Loop Market

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<sup>2</sup> See, e.g., *SBC Communications, Inc. and AT&T Corp. Applications for Transfer of Control*, Memorandum Opinion and Order, FCC 05-183 (rel. Nov. 17, 2005) (“*SBC/AT&T Merger Order*”) at ¶¶ 25-27.

<sup>3</sup> *Id.* at ¶ 28.

PAETEC has participated in the Commission's ongoing special access proceedings<sup>4</sup> and last year's Verizon/MCI merger proceeding.<sup>5</sup> In each proceeding, it has pointed out that the market for special access end user terminations – high capacity loops – continues to be monopolized by price cap LECs, including the RBOCs. The grant of pricing flexibility to ILECs makes it difficult, if not impossible, for competitive special access providers to compete effectively against ILECs in light of their ability to exploit their unconstrained monopoly power. These observations are not anecdotal. They are the observations of a growing competitor in the business telecommunications and information services marketplace that has set the bar for using this type of wireline access to reach its endusers.

The competitive analysis for the local access or high capacity loop market should be identical to that performed by the Commission last year in the SBC/AT&T and Verizon/MCI merger proceedings,<sup>6</sup> and the outcome of the analysis must also be identical. The only possible conclusion the Commission can reach is that “AT&T provides special access services in competition with [BellSouth]'s special access services, and that the merger, absent appropriate remedies, is likely to result in anticompetitive effects for wholesale special access services offered wholly over AT&T's own facilities to

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<sup>4</sup> See, e.g., Comments of PAETEC Communications, Inc., in *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM 10593, filed June 13, 2005.

<sup>5</sup> See, e.g., Comments of PAETEC Communications, Inc., in *Verizon Communications, Inc. and MCI Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, filed May 9, 2005.

<sup>6</sup> See *SBC/AT&T Merger Order* at ¶¶ 24, 32, 36-40; *Verizon Communications, Inc. and MCI Corp. Applications for Transfer of Control*, Memorandum Opinion and Order, FCC 05-184 (rel. Nov. 17, 2005) (“*Verizon/MCI Merger Order*”) at ¶ 24, 32, 36-40.

certain buildings.”<sup>7</sup> The Applicants do not even attempt to demonstrate otherwise; their Application fails to address the high capacity loop market.<sup>8</sup> Even assuming that the Applicants enter into a consent decree with the DOJ, pursuant to which the Applicants agree to certain divestitures in the form of IRUs for loops and transport necessary to reach to certain buildings where AT&T is the only competitive LEC that has a direct wireline connection, the Commission must still conclude, as it did in the *SBC/AT&T* and *Verizon/MCI Merger Orders*, that in order to remedy any likely anticompetitive effects, the Applicants must also agree to a series of conditions that limit their ability to exercise monopoly power in the high capacity loop special access market. Those necessary conditions, which are modeled after those imposed in the *SBC/AT&T* and *Verizon/MCI Merger Orders*, are discussed in more detail in Section III below.

#### IV. The Interoffice Transport Market

PAETEC also believes that the Commission should impose similar conditions related to the interoffice transport market. In the *SBC/AT&T* and *Verizon/MCI Merger Orders*, the Commission looked at this market and concluded that it was sufficiently competitive that anticompetitive effects from the merger, whether unilateral or coordinated, were unlikely and did

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<sup>7</sup> *SBC/AT&T Merger Order* at ¶ 24; see also *Verizon/MCI Merger Order* at ¶ 24.

<sup>8</sup> AT&T, Inc. and BellSouth Corporation Applications for Transfer of Control, WC Docket

not require mitigation.<sup>9</sup> In large part, this conclusion was premised on the assumption that any competitive problems could be better dealt with in the ongoing proceedings concerning special access performance metrics and pricing.<sup>10</sup>

The Commission should re-examine its assumptions and the facts, and reach a different conclusion in this case. As a buyer of special access throughout the U.S., PAETEC found the market for DS-3 interoffice transport to be quite competitive prior to the Verizon/MCI and SBC/AT&T mergers, and it benefited from the availability of multiple providers. In the northeast, for example, PAETEC's largest single interoffice transport supplier prior to the Verizon/MCI and SBC/AT&T mergers was MCI (through its MFS subsidiary), with Verizon a distant second in its territories. MFS's pricing was substantially lower than that of Verizon, and its network is second in scope only to that of the RBOC.

In PAETEC's experience, what competition existed in the special access markets prior to the Verizon/MCI and SBC/AT&T mergers came from MCI and, to a lesser extent, AT&T. PAETEC is deeply concerned about the effects of RBOC/IXC consolidation on competition in the special access market in the Verizon and AT&T footprints. Verizon and AT&T overwhelmingly dominate the high-capacity special access and transport markets in their territories. Since the mergers of SBC/AT&T and

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No. 06-74 (filed March 31, 2006), Description of Transaction, Public Interest Showing and Related Demonstration at 102-105.

Verizon/MCI, the competitive situation in the special access market in their territories has deteriorated substantially. PAETEC has found that MFS is no longer pricing as aggressively in either SBC or Verizon territory, and AT&T is also not behaving as competitively as before the mergers.

The situation in the BellSouth region is similar to that which existed in the SBC and Verizon territories prior to their mergers. AT&T and Verizon (through the legacy MCI and AT&T networks) are the largest competitors to BellSouth in providing interoffice transport in the BellSouth region. AT&T would exponentially increase its market power and dominance over additional markets by acquiring BellSouth's facilities. The anticompetitive effects that PAETEC is beginning to see in the AT&T and Verizon territories will spread, and grow, in the BellSouth territories if this merger is approved without conditions. The anticompetitive effects will not be ameliorated by the ongoing proceedings concerning special access performance metrics and pricing. It has been almost ten months since the Commission announced its approval of the SBC/AT&T and Verizon/MCI mergers, and there is no indication that the special access proceedings are any closer to resolution. The fact is that the anticompetitive effects of this merger may well make whatever decisions the Commission makes in those proceedings largely irrelevant in the BellSouth territory, unless the Commission imposes now specific merger conditions designed to offset those anticompetitive effects.

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<sup>9</sup> *SBC/AT&T Merger Order* at ¶ 45-55; see also *Verizon/MCI Merger Order* at ¶ 45-55.

<sup>10</sup> *SBC/AT&T Merger Order* at ¶ 55; see also *Verizon/MCI Merger Order* at ¶ 55.



It is incontestable that the actual rates charged for special access services have generally remained steady or increased, contrary to the trend for rates charged for other telecommunications services over the past several years, which have generally declined. Furthermore, no real competition has emerged in markets where ILECs such as BellSouth and AT&T have been granted special access pricing flexibility. Competitive providers such as PAETEC continue to be subject to monopoly rents for special access services, and the elimination of AT&T as a competitor in BellSouth's territory can only exacerbate that trend.

In order to prevent further competitive harm and preserve the competitive status quo while it addresses the industry-wide issues in the ongoing proceedings concerning special access performance metrics and pricing, the Commission should impose conditions related to the interoffice transport market. Specifically, it should require that the Applicants agree to certain divestitures in the form of IRUs for transport necessary to reach to certain central offices or wire centers where AT&T is the only competitive LEC that has a direct wireline connection. In addition, the Commission should conclude that in order to remedy any other likely anticompetitive effects, the Applicants must agree to a series of conditions that mirror those imposed in the high capacity loop market, which would limit the Applicants' ability to exercise monopoly power in the interoffice transport special access market. Those proposed conditions are detailed in the next section.

**V. The Commission Must Impose Conditions in the Special Access Market to Mitigate the Anticompetitive Effects of the Proposed Merger**

The Applicants have not shown, and indeed cannot show, that the proposed merger does not present a potential for anticompetitive effects in the high capacity loop and interoffice transport markets. Therefore, if the Commission is to approve the merger, it should condition that approval on the Applicants' agreement to specific conditions relating to special access services in both markets. Each of those conditions should remain in effect for a period of thirty months or more.

First, the Applicants should be required to commit that AT&T's incumbent local operating companies will implement a performance metrics plan for both types of interstate special access services, under which they will provide performance data on a quarterly basis. Second, the Applicants must commit not to raise rates paid by existing customers of AT&T's DS1 and DS3 local private line services and interoffice transport services that AT&T provides in AT&T's or BellSouth's in-region territory pursuant to, or referencing, its existing tariffs (or any successor or equivalent AT&T tariff). Third, the Applicants must commit that neither AT&T's nor BellSouth's incumbent local telephone companies will provide special access offerings to their wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions. Fourth, the Applicants must commit that, before AT&T/BellSouth provides a new contract tariff to its own section 272(a) affiliate(s), it will certify to the

Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon or its wireline affiliates. Fifth, the Applicants should commit that AT&T/BellSouth will not increase the rates in either AT&T's or BellSouth's interstate tariffs, including contract tariffs, for special access services that it provides in its in-region territory and that are set forth in tariffs on file at the Commission on the Merger Closing Date. Finally, the Applicants should be required to agree to certain divestitures in the form of IRUs for transport necessary to reach to those central offices or wire centers where AT&T is the only competitive LEC that has a direct wireline connection.

These necessary commitments and their duration are described in greater detail in Exhibit 1, which is modeled on the conditions accepted by the Commission in Appendix F to the *SBC/AT&T Merger Order*. The Commission found that those commitments would serve the public interest, so it "adopt[ed] them as conditions of our approval of the merger." It should do the same here, and in addition it should extend those conditions not only to the market for high capacity loops, but also to the interoffice transport market.

## CONCLUSION

For the foregoing reasons, PAETEC respectfully urges the Commission to condition its approval of the application for transfer of control upon the

agreement by the applicants to fulfill the conditions set forth in Exhibit 1

hereto.

Respectfully submitted,

A handwritten signature in black ink that reads "Mark C. Del Bianco". The signature is written in a cursive style with a horizontal line at the end.

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Date: June 4, 2006

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of June, 2006, a true and correct copy of the foregoing Comments of PAETEC Communications, Inc. was served via electronic mail on the following:

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445 12th Street, S.W.  
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Best Copy and Printing, Inc.  
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/S/ Mark C. Del Bianco

## APPENDIX 1

### Proposed Conditions in WC Docket No. 06-74

[All capitalized terms used in this proposal and not defined herein shall have the meanings attributed to them in the Commission's SBC/AT&T Merger Order, except that Merger Closing Date refers to the date the AT&T/BellSouth merger closes.]

#### Special Access

1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Communications Act of 1934, as amended ("AT&T BOCs"),<sup>11</sup> will implement, in the AT&T Service Area,<sup>12</sup> the Service Quality Measurement Plan for Interstate Special Access Services ("the Plan"), as described herein and in Attachment A. The AT&T BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed in Attachment A [to be developed]. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T Service Area. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T/BELLSOUTH's section 272 affiliates, (ii) its BOC and other affiliates, and (iii) non-affiliates.<sup>13</sup> The AT&T BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45<sup>th</sup> day after the end of the quarter. The AT&T BOCs shall

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<sup>11</sup> For purposes of these conditions, AT&T Advanced Services, Inc. ("ASI") shall not be considered an AT&T BOC.

<sup>12</sup> For purposes of this condition, "AT&T Service Area" means the areas within AT&T's service territory in which AT&T's Bell Operating Company subsidiaries, as defined in 47 U.S.C. § 153(4)(A), are incumbent local exchange carriers.

<sup>13</sup> BOC data shall not include retail data.



implement the Plan for the first full quarter following the Merger Closing Date. This condition shall terminate on the earlier of (i) thirty months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth file their 10<sup>th</sup> quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

2. For a period of thirty months after the Merger Closing Date, AT&T/BELLSOUTH shall not increase the rates paid by existing customers (as of the Merger Closing Date) of (a) the DS1 and DS3 local private line services that AT&T/BELLSOUTH provides in AT&T/BELLSOUTH's in-region territory<sup>14</sup> pursuant, or referenced, to its TCG FCC Tariff No. 2 (or any successor or equivalent AT&T tariff), or (b) interoffice transport special access services that AT&T/BELLSOUTH provides in AT&T/BELLSOUTH's in-region territory pursuant to or referenced in [appropriate tariffs to be identified] above their level as of the Merger Closing Date.

3. For a period of thirty months after the Merger Closing Date, AT&T/BELLSOUTH will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

4. To ensure that AT&T/BELLSOUTH may not provide special access offerings to its affiliates that are not available to other special access customers, for a period of thirty months after the Merger Closing Date, before AT&T/BELLSOUTH provides a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a) affiliate(s), it will certify to the Commission that it

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<sup>14</sup> For purposes of these conditions, AT&T's "in-region territory" means the areas within AT&T's service territory in which an AT&T operating company is the incumbent local

provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates. AT&T/BELLSOUTH also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.

5. AT&T/BELLSOUTH shall not increase the rates in AT&T/BELLSOUTH's interstate tariffs, including contract tariffs, for special access services that AT&T/BELLSOUTH provides in its in-region territory and that are set forth in tariffs on file at the Commission on the Merger Closing Date. This condition shall terminate thirty months from the Merger Closing Date.

6. AT&T/BELLSOUTH shall divest (in the form of IRUs or other arrangement acceptable to the Commission) those transport facilities identified on Attachment B [to be developed], which are necessary to reach to those central offices or wire centers where AT&T is the only competitive LEC that has a direct wireline connection.

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exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

Attachment D  
Florida 2006 Local Competition Data Request  
PAETEC Communications, Inc.  
Public Copy

All filers must complete Items 1 through 8 of this Cover Page. Data as of:

December 31, 2005

Review Instructions before completing this form. Instructions are posted at:

<http://www.fcc.gov/Forms/Form477/477instr.pdf>

1. Company.

2. Filers must report data for ILEC and non-ILEC operations on separate forms. Use the following drop-down box to indicate whether this worksheet contains data for ILEC or for non-ILEC operations.

3. Use the following drop-down box to select the name of your parent or controlling entity. If you are not affiliated with any other filer, select your company name. Select "not shown" if no appropriate name appears in the list. See Instructions section IV.B.1 for information on preparing file names.

If you selected "not shown" above, then provide the following:

Parent or controlling entity name (if none, enter company name).

4. Filers must report data for different states in separate forms.

State.

5. Contact person (person who prepared the data contained below).

6. Contact person telephone number and email address.

Phone.

Email.

7. Indicate whether this is an original or revised filing.

8. Indicate whether you request non-disclosure of some or all of the information in this file because you believe that this information is privileged and confidential and public disclosure of such information would likely cause substantial harm to the competitive position of the filer.

Reminders:

- 1) Ensure files are virus free by using up-to-date virus detection software. Filers are encouraged to submit files via email (address: FCC477@fcc.gov).
- 2) If you are filing original or revised data for an earlier semi-annual reporting period, do not use this particular form (which is only for data as of December 31, 2005). See reminder 4.
- 3) You may not insert or delete columns or rows, move cells, or edit text or numbers outside the cells provided for data entries. Filers will be required to correct and resubmit any files that cannot be opened in EXCEL2002, any files whose structure has been altered, and any files with improper names.
- 4) If you have questions about the form, contact the Wireline Competition Bureau, Industry Analysis and Technology Division at (202) 418-0940; via email at 477INFO@fcc.gov; or via TTY at (202) 418-0484.
- 5) You must submit a Certification Statement signed by an officer of your company. A single statement may cover all files submitted. See Instructions sections IV & V.
- 6) Name your files as specified in Instructions section IV.B.1. To assist you, complete this Cover Page to generate an "example" name, below. Replace the character "#" in this example name with a sequence number as specified in Instructions. This number should be "1" unless using "1" would cause you to submit more than one file with the identical file name.

Example >>>

**FCC Form 477 -- Local Telephone Competition and Broadband Reporting Part I: Broadband**

PAETEC Communications, Inc. for Florida December 31, 2005

OMB NO: 3060-0816  
EXPIRATION DATE: 05/31/2008

Complete Part I.A if you provide one or more lines or wireless channels in the state that connect end users to the Internet at information transfer rates exceeding 200 kbps in at least one direction. For this purpose, include connections provided over your own local loop facilities or over lines or wireless channels you provisioned to enable information transfer at the end user location at rates exceeding 200 kbps in at least one direction. See Instructions for definitions of "broadband", "end user", "own local loop facilities", and "residential end user premises".

If you complete Part I.A, you must provide in Part V specified lists of 5-digit Zip Codes. See Instructions.

Do not report anywhere in the form any high-capacity connections between two locations of the same end user customer, ISP or communications carrier.

Data as of December 31, 2005

I.A. Lines and wireless channels connecting end users to the Internet that you provided over your own local loop facilities, or over UNE loops or other lines and wireless channels that you obtained from unaffiliated entities and equipped as broadband, categorized by technology at the end user location.

- 1-1. Asymmetric xDSL.
- 1-2. Symmetric xDSL.
- 1-3. Traditional wireline such as T-carrier.
- 1-4. Cable modem.
- 1-5. Optical carrier (fiber to the end user).
- 1-6. Satellite.
- 1-7. Terrestrial fixed wireless (licensed or unlicensed).
- 1-8. Terrestrial mobile wireless (licensed or unlicensed).
- 1-9. Electric power line.
- 1-10. All other technologies. Report specific technology and the corresponding number of connections in the comment section of Part IV.

	Percentages of lines and wireless channels reported in (a), and									
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Total connections to end users (information transfer rates exceeding 200 kbps in at least one direction)										
Provided to residential end user premises		0%			0%					
Provided over your own local loop facilities or the wireless last-mile equivalent		0%			0%					
Billed (or incorporated in a service billed) to end users by you, or your affiliates or agents										
That have information transfer rates exceeding 200 kbps in both directions, and:										
Have information transfer rates in the faster direction greater than 200 kbps and less than 2.5 mbps					0%					
Have information transfer rates in the faster direction greater than or equal to 2.5 mbps and less than 10 mbps					0%					
Have information transfer rates in the faster direction greater than or equal to 10 mbps and less than 25 mbps					0%					
Have information transfer rates in the faster direction greater than or equal to 25 mbps and less than 100 mbps					0%					
Have information transfer rates in the faster direction greater than or equal to 100 mbps					0%					

Note: In Part I.A, report actual counts of connections. Do not report voice-grade equivalent measures.

PAETEC Communications, Inc. for Florida December 31, 2005

Complete Part I.B ONLY IF you are an ILEC (or an affiliate of an ILEC) that is reporting asymmetric or symmetric xDSL connections in Part I.A OR you are a cable system (or an affiliate of a cable system) that is reporting cable modem connections in Part I.A.

For the purposes of completing Part I.B:

- (1) "Residential end user premises" include residential living units, individual living units in such institutional settings as college dormitories and nursing homes, and other end user locations to which you (including affiliates and agents) market broadband services that are primarily designed for residential use.
- (2) The "service area" of an ILEC consists of those residential end user premises to which the ILEC can deliver telephone service over local loop facilities (or the fixed-wireless last mile equivalent) that it owns.
- (3) The "service area" of a cable system consists of those residential end user premises to which the system can deliver cable service over cable plant that it owns.

I.B. Report your best estimate of the percentage of residential end user premises in your service area, in this state, to which your broadband connections could be provided using installed distribution facilities.

(a)
Estimated % of residential end user premises

I - 11. Providers of xDSL (asymmetric or symmetric) connections should base responses on the service area of the affiliated ILECs.

0%
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I - 12. Providers of cable modem connections should base responses on the service area of the affiliated cable systems.

0%
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PAETEC Communications, Inc. for Florida December 31, 2005

Complete Part III if you serve one or more mobile voice telephony subscribers in the state over your own facilities. See Instructions for definitions of "mobile voice telephony subscribers" and "own facilities".

Data as of December 31, 2005

III.A. Mobile voice telephony subscribers in service and served over your own facilities. (Include directly billed subscribers, pre-paid subscribers, and subscribers served via resellers.)

(a) Network telephone service subscribers	(b) Percentage of subscribers reported in (a) that are directly billed or pre-paid subscribers
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III - 1. Cellular, PCS and other mobile telephony.



Note: In Part III, count a subscriber as a mobile handset, car-phone or other revenue-generating active voice unit that has a unique phone number and that can place and receive calls from the public switched network. Subscriber counts by state should be based on the area codes of the phone numbers provided to subscribers.





PAETEC Communications, Inc. for Florida December 31, 2005

Filers reporting broadband connections (Part I) must supply lists of the 5-digit Zip Codes in which the filer provided each type of broadband connection reported in Part I, except that: (1) filers reporting mobile wireless broadband connections must report in column (g) the Zip Codes that best represent the "coverage area" in which the filer's mobile wireless broadband service was deployed and offered for sale to end users; and (2) the traditional wireline and other categories are combined in column (i).

Filers reporting voice telephone service provided to end users (Line II-1 of Part II) must provide in column (j) a list of the Zip Codes in which the filer provided such service.

V - 1. 5-digit Zip Codes, in the state, that are associated with the information reported in Part I and Part II, as specified herein. (Do not provide customer counts by Zip Code.)

Data as of December 31, 2005

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Table with 10 columns: (a) Asymmetric xDSL, (b) Symmetric xDSL, (c) Cable modem, (d) Optical carrier (fiber to the end user), (e) Satellite, (f) Terrestrial fixed wireless, (g) Terrestrial mobile wireless, (h) Electric power line, (i) Other including traditional wireline, (j) Wireline and fixed wireless exchange telephone. The table contains 38 rows of data, with several columns partially obscured by black redaction bars.

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