

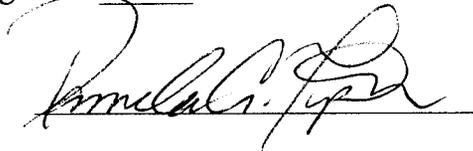
AFFIDAVIT

STATE OF GEORGIA

COUNTY OF FULTON

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Pam A. Tipton, who, being by me first duly sworn deposed and said that:

She is appearing as a witness before the Kentucky Public Service Commission in Case No. 2003-00379, Review of Federal Communications Commission's Triennial Review Order Regarding Unbundling Requirements for Individual Network Elements, and if present before the Commission and duly sworn, her surrebuttal testimony would be set forth in the annexed testimony consisting of 22 pages and 6 exhibits.



Pam A. Tipton

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 13th DAY OF APRIL, 2004

 Notary Public

MICHEALE F. BIXLER
Notary Public, Douglas County, Georgia
My Commission Expires November 3, 2005

EDITED DOCUMENT

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BELLSOUTH TELECOMMUNICATIONS, INC.
SURREBUTTAL TESTIMONY OF PAMELA A. TIPTON
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
DOCKET NO. 2003-00379
APRIL 13, 2004

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

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

Q. ARE YOU THE SAME PAMELA A. TIPTON WHO FILED DIRECT TESIMONY IN THIS DOCKET ON FEBRUARY 11, 2004?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. I respond to rebuttal testimony filed by AT&T witness Jay Bradbury, CompSouth witness Joe Gillan, and MCI witness Dr. Mark Bryant. All of these witnesses try

1 to place conditions and limitations on the FCC's self-provisioning trigger rule that
2 simply do not exist.

3

4 **Section 1: Discussion of Trigger Candidate Criteria**

5

6 Q. WITNESSES GILLAN, BRADBURY, AND BRYANT SUGGEST THE
7 COMMISSION MUST CONSIDER A HOST OF CRITERIA TO "QUALIFY"
8 CLECS AS TRIGGER CANDIDATES BEFORE THEY CAN BE COUNTED.
9 WHAT DO THE FCC RULES STATE?

10

11 A. The criteria for a CLEC to be counted with regard to the self-provisioning
12 switching trigger are clearly set forth in the FCC's Rules. 47 C.F.R. §
13 51.319(d)(2)(iii)(A)(1), Local switching self-provisioning trigger, states:

14 "To satisfy this trigger, a state Commission must find that three or more
15 competing providers not affiliated with each other or the incumbent LEC,
16 including intermodal providers of service comparable in quality to that of
17 the incumbent LEC, each are serving mass market customers in the
18 particular market with the use of their own local switches."

19 The other parties' attempt to include a number of other unique criteria that a
20 trigger "candidate" allegedly must meet is simply wrong. Had the FCC intended
21 for state Commissions to check off a laundry list of criteria before considering a
22 CLEC as a "trigger candidate," the rules would have said so. They do not. The
23 rule contains the only criteria that address the self-provisioning trigger; it is
24 straightforward, and it contains two, and only two, requirements. Competing
25 providers must: 1) not be affiliated with each other or the incumbent LEC, and

1 may include intermodal providers of service comparable in quality to that of the
2 incumbent LEC, and 2) be serving mass market customers in the particular
3 market with the use of their own switch. Unlike what the other parties' witnesses
4 would have this Commission believe, the FCC's discussion regarding the actual
5 self provisioning test, in Section VI.D.6.a.(ii)(b)(ii) of the Order, entitled "Triggers",
6 supports the straight forward and narrowly defined criteria set forth in the FCC's
7 rule. Exhibit PAT-8 is a decision flow chart that accurately represents the trigger
8 analysis as reflected in 47 C.F.R. § 51.319(d)(2)(iii)(A)(1). This is the only
9 decision-making analysis that needs to be conducted in this proceeding in
10 determining where the trigger is met, despite CLEC claims suggesting otherwise.

11

12 Q. HAVE THE CLECS MISSED THE FOCUS OF THE SWITCHING TRIGGER?

13

14 A. Yes. As the FCC explained in its brief filed in the D.C. Circuit in connection with
15 review of the Triennial Review Order, the switching trigger has to do "with
16 determining when market conditions are such that new entrants are not *impaired*
17 in *entering* the market." (Respondent's Brief filed January 16, 2004, p. 46, n. 22).
18 By seeking to impose unnecessary criteria to the trigger analysis, the CLEC
19 witnesses are advocating conditions that focus more on protecting their access to
20 unbundled switching than focusing on conditions that relate to market entry. For
21 example, on page 20 of his rebuttal testimony, Mr. Bradbury goes so far as to
22 insist that "the Commission must assure itself that UNE-L competition will exist in
23 every wire center." Of course, no such assurance is required either in the FCC's
24 Order or its rules.

25

1

2 Q. MCI WITNESS BRYANT ATTACHES A FLOW CHART TO HIS TESTIMONY
3 SHOWING A “TRIGGER ANALYSIS” HE HAS DEvised. SIMILARLY, MR.
4 GILLAN HAS PROVIDED A TABLE SUMMARIZING HIS IMAGINED TRIGGERS
5 CRITERIA. IS EITHER THE FLOW CHART OR TABLE SUPPORTED BY THE
6 FCC RULE?

7

8 A. No, both Dr. Bryant’s and Mr. Gillan’s proposed trigger criteria go well beyond the
9 straightforward criteria set forth in the FCC’s rule.

10

11 Q. DOES THE FCC’S RULE CONTAIN LANGUAGE THAT PRECLUDES
12 CONSIDERATION OF SO-CALLED “ENTERPRISE” SWITCHES AS SEVERAL
13 WITNESSES, INCLUDING MR. GILLAN (CRITERIA #1), SUGGEST?

14

15 A. No.

16

17 Q. DOES THE FCC’S RULE REQUIRE ANY SPECIFIC CRITERIA ABOUT
18 SWITCHES IN THE CONTEXT OF ITS SELF-PROVISIONING TRIGGER
19 ANALYSIS?

20

21 A. No, it does not. In fact, in its Errata, the FCC deliberately removed the only
22 qualifier relating to the switches used in providing mass market service for the
23 trigger analysis when it struck the word “circuit” from its trigger rules. There are
24 no other switch qualifications, no count of switches required, and no restriction on
25 the type of switch used to provide service to mass market customers. The rule

1 simply requires that three or more CLECS are providing service using their own
2 switch.

3

4 Q. WOULD IT MAKE ANY SENSE TO EXCLUDE ANY SWITCH THAT SERVES
5 BOTH "ENTERPRISE" AND MASS-MARKET CUSTOMERS FROM THE
6 TRIGGER ANALYSIS, AS MR. GILLAN ADVOCATES?

7

8 A. No. As BellSouth witness Kathy Blake testifies, within the context of the FCC's
9 Order, an enterprise switch is a switch providing service to enterprise customers
10 through the use of DS1 or above loops (TRO ¶ 441, FN 1354). Where a CLEC is
11 already using its switch to serve customers using DS0 loops, clearly the serving
12 switch already has the capability to serve mass-market customers using DS0
13 loops and thus is not an "enterprise" switch, regardless of how many or few
14 mass-market customers the switch is serving. Such evidence demonstrates that
15 the CLEC has already invested the additional resources needed to provide
16 service to mass market customers. When a CLEC has self-deployed a switch
17 that is serving mass-market customers using DS0 loops as well as "enterprise"
18 customers, the CLEC constitutes a qualified trigger candidate.

19

20 Q. IS THERE ANY REQUIREMENT IN THE APPLICABLE RULE THAT THE SELF-
21 PROVISIONING TRIGGER CANDIDATE MUST BE PROVIDING VOICE
22 SERVICE TO "RESIDENTIAL CUSTOMERS" AS MR. GILLAN (CRITERIA #2),
23 MR. BRADBURY AND OTHERS SUGGEST?

24

25 A. No.

1

2 Q. DOES THE RULE REQUIRE THAT THE SELF-PROVISIONING TRIGGER
3 COMPANY RELY ON ILEC ANALOG LOOPS TO CONNECT THE CUSTOMER
4 TO ITS SWITCH AS WITNESS MR. GILLAN (CRITERIA #4), MR. BRADBURY,
5 AND OTHERS CONTEND?

6

7 A. No. The rule explicitly says that intermodal providers of service constitute trigger
8 candidates. In 47 C.F.R. § 51.5, the FCC defined intermodal as follows:

9 “Intermodal. The term intermodal refers to facilities or technologies other
10 than those found in traditional telephone networks, but that are utilized to
11 provide competing services. Intermodal facilities or technologies include,
12 but are not limited to, traditional or new cable plant, wireless technologies,
13 and power line technologies.”

14

15 Q. ARE THERE SPECIFIC REQUIREMENTS THAT APPLY FOR AN
16 INTERMODAL PROVIDER OF SERVICE TO QUALIFY FOR THE SWITCHING
17 TRIGGER (MR. BRADBURY, MR. GILLAN, CRITERIA #4)?

18

19 Q. Only one, which is that the service provided by the intermodal provider must be
20 comparable in quality to the service provided by the ILEC. While Mr. Bradbury
21 and Mr. Gillan do concede that there could be an alternative to ILEC loops, they
22 overstate the specific criteria to be applied to intermodal carriers. Dr. Bryant
23 goes so far as to say cable telephony providers are should not be considered
24 trigger companies because they do not reach all of ILEC’s mass market
25 locations. I strongly disagree with Dr. Bryant’s assertion. There is absolutely no

1 indication that the FCC contemplated that the trigger company's actual
2 deployment have exact ubiquity to the ILEC network, whether considering
3 intermodal or traditional providers.

4

5 Q. DOES THE FCC'S SELF-PROVISIONING TRIGGER RULE REQUIRE THAT
6 THE EXISTENCE OF THE CANDIDATE SHOULD BE EVIDENCE OF
7 SUSTAINABLE AND BROAD-SCALE MASS MARKET COMPETITIVE
8 ALTERNATIVES IN THE DESIGNATED MARKET" AS MR. GILLAN (CRITERIA
9 #6), MR. BRADBURY AND DR. BRYANT CLAIM?

10

11 A. No. It bears repeating that the FCC's rule for implementing the self-provisioning
12 trigger contains only two criteria, neither of which is that broad-scale mass
13 market alternatives presently exist. Remarkably, these witnesses appear to have
14 missed that the FCC issued an errata, in which it corrected paragraph 499, and
15 removed the requirement that the self-provisioning switching trigger candidates
16 must be ready and willing to serve *all* retail customers in the market – a
17 deliberate action by the FCC indicating that, contrary to the other witness's
18 assertion, such a requirement is not to be considered in the trigger analysis. To
19 the extent these witnesses are advocating for additional requirements, this
20 Commission should reject such arguments.

21

22 Q. IS THERE ANY REQUIREMENT IN THE FCC'S TRIGGER TEST THAT UNE-L
23 MUST HAVE THE SAME UBIQUITY AS UNE-P BEFORE THE TRIGGER IS
24 MET, AS MESSRS. BRADBURY AND GILLAN CLAIM?

25

1 A. Absolutely not.

2

3 Q. ON PAGE 9 OF HIS REBUTTAL TESTIMONY, DR. BRYANT IDENTIFIES
4 FOUR TRIGGER CRITERIA, WHICH HE CHARACTERIZES AS “FCC RULES”.
5 DO YOU AGREE?

6

7 A. No. The FCC rule regarding the self-provisioning trigger is set forth in 47 C.F.R.
8 § 51.319(d)(2)(iii)(A)(1). A plain reading of this rule shows that Dr. Bryant’s
9 “criteria” are not part of the FCC’s rule. As I stated in my direct testimony and
10 above, the FCC rule, supported by the Order’s discussion on the trigger analysis,
11 contains two and only two criteria, both of which are met by the trigger
12 candidates identified by BellSouth in this proceeding (§§462, § 501). Any attempt
13 to impose additional criteria in order to disqualify these trigger CLECS under the
14 guise of the FCC rules is misguided and should not be endorsed by this
15 Commission.

16

17 **Section 2: Discussion of Trigger Analysis**

18

19 Q. MR. BRADBURY ARGUES THAT EXHIBIT PAT-1 IS INACCURATE AS IT
20 RELATES TO AT&T AND CLECS IN GENERAL. DO YOU AGREE?

21

22 A. No. The source of the data in Exhibit PAT-1 is the Local Exchange Routing
23 Guide (“LERG”). If Mr. Bradbury believes my exhibit is inaccurate as to AT&T it
24 is inaccurate only to the extent AT&T submitted inaccurate information for the
25 LERG . Interestingly, Mr. Bradbury provides no support for his claim that Exhibit

1 PAT-1 is inaccurate as to CLECs in general. In fact, he admits that he “lack(s)
2 sufficient knowledge of the other CLECs’ switch deployments to determine
3 specifically other examples of inaccurate and irrelevant data...”.

4

5 Finally, Mr. Bradbury misrepresents the way I described Exhibit PAT-1 in my
6 direct testimony. Nowhere in my testimony do I state that Exhibit PAT-1 is a list
7 of switches “deployed in Kentucky”, as he claims. My testimony clearly states
8 that Exhibit PAT-1 is a “list of CLEC switches which provide service in Kentucky”.

9

10 Q. ON PAGE 10 OF HIS TESTIMONY, MR. BRADBURY ASSERTS IT IS
11 INAPPROPRIATE FOR BILLSOUTH AND ALLTEL TO RELY ON LERG DATA
12 BECAUSE EXHIBIT PAT-1 AND EXHIBIT JWR-2 DO NOT IDENTIFY THE
13 SAME CLECS AND SAME CLEC SWITCH DATA. HOW DO YOU RESPOND?

14

15 A. Exhibit PAT-1 was created to demonstrate that CLECs have deployed a
16 significant number of switches that provide service in Kentucky. Furthermore,
17 BellSouth did not rely solely on data in this exhibit to perform its trigger analysis
18 in Kentucky. Nonetheless, I will point out the obvious reasons why Mr. Reynolds’
19 and my respective exhibits contain different data. On pages 6 and 7 of is direct
20 testimony, Mr. Reynolds describes Exhibit JWR-2 as a list of “CLECs and CLEC
21 switches serving ALLTEL exchanges in Kentucky”. He then adds that “(t)here
22 are 18 CLECs with over 30 switches capable of serving customers within
23 ALLTEL’s markets”. Based on this reading of Mr. Reynolds’ testimony, it is
24 apparent that Mr. Reynolds’ Exhibit JWR-2 was created to identify CLEC

1 switches that are capable of serving Alltel's exchanges in Kentucky, while my
2 exhibit was created to identify CLEC switches that are providing service
3 anywhere within the state of Kentucky. This explains why PAT-1 and JWR-2 do
4 not identify the same CLECs and CLEC switches.

5

6 Q. DID BELL SOUTH ASK THE CLECS TO IDENTIFY THEIR SWITCHES IN ITS
7 DISCOVERY REQUESTS?

8

9 A. Yes. BellSouth asked the CLECs to identify the switches they use to provide
10 qualifying service in Kentucky. Most, if not all, of the CLECs who use a non-
11 ILEC switch to provide qualifying service in Kentucky provided this information to
12 BellSouth. My proprietary Exhibit PAT-9 lists CLEC names and CLLIs for the
13 switches they identified as those that they use to provide qualifying service in
14 Kentucky. This exhibit includes both switches the CLECs own and those they
15 have acquired the right to use.

16

17 Q. SEVERAL WITNESSES, SUCH AS MESSRS. BRADBURY, GILLAN AND
18 OTHERS, ARGUE THAT "ENTERPRISE SWITCHES" SHOULD BE EXCLUDED
19 FROM THE SELF-PROVISIONING TRIGGER ANALYSIS. PLEASE
20 COMMENT.

21

22 A. As discussed above, these witnesses misinterpret the trigger analysis. First,
23 there is no switch qualifier in the FCC's rule or in the Order's discussion in the
24 Triggers section (Section VI.D.6.a.(ii)(b)(ii)). The FCC rule requires no count of

1 switches, other than presumably that each trigger candidate must have its own
2 switch; the rule has no discussion regarding how switches are used to provide
3 mass market service. The only mention of excluding “enterprise switches” is in
4 the “potential deployment” section of the TRO, and not in the portion of the order
5 addressing the triggers. If the FCC had intended any “qualification” of switches
6 to be included as part of the trigger analysis, it would have set forth the
7 requirement in its rule. It did not. The relevant inquiry is whether the competing
8 providers counted towards the trigger are providing mass market service using
9 their own switch(es).

10

11 Q. SHOULD EVIDENCE OF SELF-DEPLOYED SWITCHES SERVING
12 ENTERPRISE CUSTOMERS BE CONSIDERED IN EVALUATING MASS
13 MARKET SWITCHING IMPAIRMENT?

14

15 A. Absolutely. In the “potential deployment” phase of any case looking at
16 impairment, the FCC recognized the significance of such evidence. In its
17 discussion of the “potential deployment” analysis at paragraph 508 of its TRO,
18 the FCC states:

19 “We find the existence of switching serving customers in the *enterprise*
20 market to be a significant indicator of the possibility of serving the mass
21 market because of the demonstrated scale and scope economies of
22 serving numerous customers in a wire center using a single switch...The
23 evidence in the record shows that the cost of providing mass market
24 service is significantly reduced if the necessary facilities are already in
25 place and used to provide other higher revenue services...”

1

2 Q. IN HOW MANY MARKETS IN BELLSOUTH'S SERVING AREAS ARE THERE
3 THREE OR MORE SELF-PROVIDERS OF ENTERPRISE SWITCHING USING
4 DS1 LOOPS?

5

6 A. Based on BellSouth's internal data and CLEC discovery responses, there is 1
7 geographic market where three or more CLECS are serving the enterprise
8 market with their own switches using DS1 loops. This market is shown on the
9 attached Exhibit PAT-10.

10

11 Q. PLEASE COMMENT ON MR. GILLAN'S CONCLUSIONS CONCERNING
12 BELLSOUTH'S TRIGGER ANALYSIS.

13

14 A. Apparently, Mr. Gillan is drawing conclusions based upon his made-up trigger
15 analysis criteria and upon a subset of data that relates to a CLEC's presence in
16 the marketplace and does not relate directly to BellSouth's actual trigger
17 analysis. As I explained in my direct testimony and above, BellSouth's trigger
18 analysis considered CLEC provided data regarding its actual deployment, loop
19 data for business class customers from its loop inventory database, and numbers
20 ported to CLECS (which thus includes lines CLECS serve using their own
21 facilities). This contrasts with the narrow approach Mr. Gillan has apparently
22 taken, which is to disregard completely certain information BellSouth has
23 supplied in its responses to discovery, as well as CLEC's responses to BellSouth
24 discovery – which BellSouth produced under protective agreement. BellSouth
25 has diligently attempted to obtain data directly from CLECS to present this

1 Commission with the most accurate information. BellSouth has sought, as much
2 as possible, to rely upon data provided by the CLECS concerning the types of
3 customers served and where such customers are located in analyzing the
4 switching trigger.

5

6 **Section 3: Discussion of Trigger Candidates**

7

8 Q. SEVERAL WITNESSES, INCLUDING DR. BRYANT AND MR. GILLAN,
9 ATTEMPT TO DISQUALIFY CLECS AS TRIGGER CANDIDATES ON THE
10 BASIS THAT THEY ARE PROVIDING SERVICE TO BUSINESS CUSTOMERS
11 ONLY. WHAT IS YOUR REACTION?

12

13 A. The FCC's rule does not require a competitive LEC to provide service to
14 residential customers in order to qualify as a trigger candidate. The Commission
15 must determine if three or more competing providers are serving mass market
16 customers in a particular geographic market. The FCC defines mass market
17 customers as consisting of "residential customers and very small business
18 customers. Mass market customers typically purchase ordinary switched voice
19 service and a few vertical features. Some customers also purchase additional
20 lines and/or high speed data services." (§1127, TRO) (emphasis added). Any
21 suggestion that a particular trigger candidate must serve both residential and
22 small business customers goes beyond the FCC's clearly defined test.

23

24 Q. SEVERAL WITNESSES, INCLUDING BRYANT, GILLAN, AND BRADBURY,
25 ATTEMPT TO "DISQUALIFY" PARTICULAR (AND IN SOME CASES ALL)

1 CLECS FROM BELLSOUTH'S TRIGGER ANALYSIS COMPLETELY. HOW DO
2 YOU RESPOND?

3

4 A. I disagree with their assertions. Despite the claims of those witnesses, BellSouth
5 screened out locations served by DS1 loops so that it did not inadvertently
6 include an enterprise location in its mass market analysis. CLECS self-reported
7 their provision of one to three line service to end users in their discovery
8 responses. For CLECS who refused to respond to discovery, or who otherwise
9 did not provide adequate responses, BellSouth used its own data. BellSouth's
10 internal data was based on DS0 loops and residential ported numbers. I will
11 address specific assertions below.

12

13 Q. ON PAGE 6 OF THIS TESTIMONY, MR. BRADBURY STATES THAT AT&T
14 HAS NO LOCAL SWITCHES IN KENTUCKY – THAT IT OPERATES ONLY 2
15 TOLL SWITCHES IN THIS STATE. HE THEN CLAIMS THAT EXHIBIT PAT-1
16 MISREPRESENTS THE NUMBER OF SWITCHES AT&T IS OPERATING IN
17 KENTUCKY. DO YOU AGREE?

18

19 A. No. Let me reiterate that Exhibit PAT-1 is a list of CLEC switches derived from
20 the LERG. Additionally, my testimony does not report or allude to Exhibit PAT-1
21 as a list of mass market switches. Instead, my testimony explicitly describes the
22 list of switches as those "which provide service in Kentucky".

23

1 While Mr. Bradbury asserts that AT&T does not operate any switches capable of
2 serving mass market customers in Kentucky, AT&T has offered local service in
3 this state via its 4ESS switch. AT&T filed direct testimony in Docket No. 2000-
4 465 stating, "AT&T offers local exchange service in Kentucky via 4ESS switches,
5 which function primarily as long distance switches, and 5ESS switches, which act
6 as adjuncts to the 4ESS switches." (Direct Testimony of Gregory Follensbee,
7 page 32.) The LERG data in my Exhibit PAT-1 is consistent with Mr.
8 Follensbee's testimony.

9
10 Additionally, in his testimony, Mr. Bradbury only discusses whether AT&T has
11 local switches *in* Kentucky. He does not volunteer any information about whether
12 AT&T has a switch in another state that is capable of providing or is providing
13 service in Kentucky. BellSouth's internal residential ported number data shows
14 that AT&T is serving mass market customers in Kentucky. Only AT&T can tell us
15 which switch they are using to serve these customers.

16
17 Q. ON WHAT DOES DR. BRYANT BASE HIS ARGUMENTS THAT THE TRIGGER
18 COMPANIES IDENTIFIED BY BELL SOUTH SHOULD BE DISQUALIFIED?

19
20 A. Dr. Bryant attempts to disqualify several identified trigger companies simply
21 because they do not serve residential customers. To support his conclusion that
22 these CLECs be excluded from BellSouth's trigger analysis, Dr. Bryant attaches
23 pages from Xspedius' and Network Telephone's web sites. These exhibits
24 certainly confirm these CLECs are providing local service, but they are inclusive
25 as to whether they are serving residential customers. As I discussed earlier in

1 my testimony, the FCC did not define mass market customers as residential
2 customers, only. It defined “mass market customers” as residential and very
3 small business customers. Despite Dr. Bryant’s claim that Xspedius and
4 Network Telephone should not be trigger candidates, BellSouth’s analysis, which
5 included BellSouth’s internal data and CLEC discovery responses, reveals that
6 each of these CLECs are serving customers with DS0 analog loops. If these
7 CLECs are serving mass market customers with their own switches, they
8 certainly qualify as trigger companies.

9

10 Dr. Bryant goes on to argue that Comcast fails to meet the trigger criteria
11 because it provides service via cable lines. I infer, from Dr. Bryant’s statement,
12 that he believes Comcast is not a trigger candidate because it does not rely on
13 ILEC loops. I must again remind Dr. Bryant that the FCC did not exclude
14 intermodal providers of service from its self-provisioning trigger test. Rather, its
15 trigger test specifically includes intermodal providers whose service is
16 comparable in quality to that of the ILEC.

17

18 Exhibit PAT-11 is information obtained from Comcast’s web site, which clearly
19 demonstrates that Comcast meets the “comparable in quality” requirement and is
20 providing service to mass market customers.

21

22 Finally, Dr. Bryant argues that SBC should be disqualified as a trigger company.
23 In support of this argument, he attaches an article about SBC that appeared on
24 C/NET NEWS.COM’s web page. Referring to the merger of SBC and
25 Ameritech, and SBC’s agreement to offer service in 30 new markets in 30

1 months, Dr. Bryant notes, “it has been reported SBC intends to scale back its
2 service offerings to only the most basic local exchange service and not to actively
3 market those services in the markets it was required to enter.” The key point to
4 take away from this article is that, while SBC may be cutting its data plans, it still
5 intends to offer local exchange service in these markets.

6

7 Q. ON PAGE 29 OF HIS TESTIMONY, MR. GILLAN DISCUSSES THE LOOP
8 PURCHASING PATTERNS OF THE TRIGGER COMPANIES IDENTIFIED BY
9 BELL SOUTH AND ASSERTS THAT DATA PRODUCED BY BELL SOUTH
10 INDICATES IT IS NOT LEASING ANY ANALOG LOOPS TO AT&T, NETWORK
11 TELEPHONE OR SBC. HOW DO YOU RESPOND?

12

13 A. Let me reiterate that BellSouth used CLEC provided data as well as its loop and
14 ported number data to conduct its trigger analysis. While CLEC loop purchasing
15 patterns are an interesting discussion point, this information is inconclusive about
16 how CLECs are serving mass market customers. Certain of these companies
17 are, in fact, ordering analog loops from BellSouth. Others are using ported
18 numbers to serve customers. It appears that the data Mr. Gillan is referring to
19 does not include BellSouth’s SL1 loop data. BellSouth has explained repeatedly
20 in these proceedings that, given the way our records are kept, we are unable to
21 produce SL1 loop data on both a CLEC basis and wire center basis. Therefore,
22 BellSouth was unable to produce SL1 data in the format that was requested by
23 AT&T in its discovery requests. However, at no time did AT&T request SL1 data
24 in a different format than was provided.

25

1 Q. REGARDING MR. GILLAN'S TESTIMONY ON BEHALF OF COMPSOUTH,
2 SHOULD ANY WEIGHT BE GIVEN TO HIS TESTIMONY CONCERNING
3 QUALIFYING TRIGGER CANDIDATES?
4

5 A. Absolutely not. Beginning on page 28 of his rebuttal testimony, Mr. Gillan makes
6 certain assertions about specific CLEC trigger candidates and their alleged
7 failure to serve the mass market segment. To support some of his arguments,
8 Mr. Gillan attaches to his testimony affidavits not previously filed in this docket
9 from Network Telephone and Xspedius. In the affidavits, these CLECs state they
10 should not be considered trigger companies either because they are not "actively
11 marketing" to these customers or because they consider any DS0 lines served as
12 incidental lines. The FCC's criteria requires a determination of whether CLECs
13 are serving mass market customers. Nowhere, in its trigger test, does the FCC
14 require CLECs to be "actively marketing" to these customers. The discovery
15 responses from Network Telephone clearly indicate that it is serving mass market
16 customers. Likewise, Xspedius is serving mass market customers – it
17 acknowledges that it does in its affidavit. Certainly, these two companies qualify
18 as trigger companies.

19
20 Mr. Gillan also attempts to disqualify SBC as a trigger candidate based on some
21 of the same arguments Dr. Bryant raised. Additionally, Mr. Gillan claims that
22 SBC's primary focus in the business market in 2004 is the large enterprise
23 customer. I am not sure what Mr. Gillan intended to gain by making this point.
24 The question to be answered in this proceeding is SBC is serving mass market
25 customers in a particular market using its switch. If it is, then it qualifies as a

1 trigger candidate. BellSouth's internal data shows that SBC has ordered SL1
2 loops from BellSouth. Therefore, this certainly indicates that SBC is serving
3 mass market customers in the identified markets using its own switch and is a
4 self-provisioning trigger company.

5

6 Q. DOES MR. GILLAN SEEK TO DISQUALIFY ANY OF THE OTHER TRIGGER
7 COMPANIES IDENTIFIED BY BELLSOUTH?

8

9 A. Yes. Mr. Gillan makes a weak attempt to disqualify Comcast as a trigger
10 candidate. He begins by referencing random sections of the Triennial Review
11 Order that are not reflective of the FCC's ultimate conclusion regarding
12 intermodal providers. He specifically avoids mentioning that the FCC's local
13 switching self-provisioning trigger includes intermodal providers whose service is
14 comparable in quality to that of the ILEC. Mr. Gillan also makes statements
15 about BEGIN PROPRIETARY***

16 ***END PROPRIETARY that are in direct conflict with Mr. Bradbury's
17 testimony on this subject. On page 32 of his rebuttal testimony, Mr. Gillan

18 asserts that, BEGIN PROPRIETARY***

19

20

21

22

***END

23

PROPRIETARY In contrast, Mr. Bradbury states, "With the merger of AT&T

24

Broadband and Comcast, all assets and customers were transferred to Comcast.

25

The assets "included the cable head end and associated collocation arrangement

1 in Lexington and the associated switch in Louisville (LSVLKYCSDS4).” Based
2 on Mr. Bradbury’s testimony, it certainly appears that BEGIN
3 PROPRIETARY*** [REDACTED] ***END PROPRIETARY owns the above-referenced
4 switch. At the very least, BEGIN PROPRIETARY*** [REDACTED] ***END
5 PROPRIETARY has acquired the right to use this switch.

6

7 Q. WHAT DOES THE TRIENNIAL REVIEW ORDER SAY ABOUT CLECS WHO
8 HAVE ACQUIRED THE RIGHT TO USE A NON-ILEC SWITCH?

9

10 A. The FCC addresses this scenario in footnote 1551, which states:

11 “...if a carrier were to acquire the long term right to use of a non-
12 incumbent LEC switch sufficient to serve a substantial portion of
13 the mass market, that carrier should be counted as a separate,
14 unaffiliated self-provider of switching.”

15

16 Regardless of whether BEGIN PROPRIETARY*** [REDACTED] ***END

17 PROPRIETARY owns the switches it identified in its discovery responses (see
18 Proprietary Exhibit PAT-9) or it has obtained the right to use these switches
19 through its merger with AT&T Broadband, it certainly qualifies as a self-provider
20 of switching.

21

22 Q. IS THERE ANY INDICATION THAT COMCAST INTENDS TO EXIT THE MASS
23 MARKET?

24

1 A. No. Comcast has a valid tariff on file with the Kentucky Public Service
2 Commission.

3

4 None of the trigger companies identified by BellSouth are affiliated with each
5 other or with BellSouth. Clearly, all of these CLECS qualify as trigger companies
6 pursuant to the FCC's straight-forward, bright line self-provisioning trigger.

7

8

9

Section 4: Discussion of Market Definition

10

11 Q. ON PAGE 15, COMPSOUTH WITNESS JOE GILLAN RECOMMENDS USING
12 LOCAL ACCESS TRANSPORT AREA ("LATA") AS THE APPROPRIATE
13 MARKET DEFINITION. WHAT IS THE OUTCOME OF BELLSOUTH'S SELF-
14 PROVISIONING TRIGGER ANALYSIS IF LATA WAS THE MARKET
15 DEFINITION?

16

17 A. Using this definition would also result in 1 market satisfying the trigger test.
18 BellSouth's trigger analysis using LATA as the market definition is attached as
19 Exhibit PAT-12.

20

21 Q. IN OTHER STATE IMPAIRMENT PROCEEDINGS, CLECS HAVE
22 RECOMMENDED USING METROPOLITAN SERVING AREAS ("MSAs") AS
23 THE APPROPRIATE MARKET DEFINITION. WHAT IS THE OUTCOME OF
24 BELLSOUTH'S TRIGGER ANALYSIS IF MSA WAS THE MARKET
25 DEFINITION?

1

2 A. Using this definition would result in 1 market satisfying the trigger test.

3 BellSouth's trigger analysis using MSA as the market definition is attached as

4 Exhibit PAT-13.

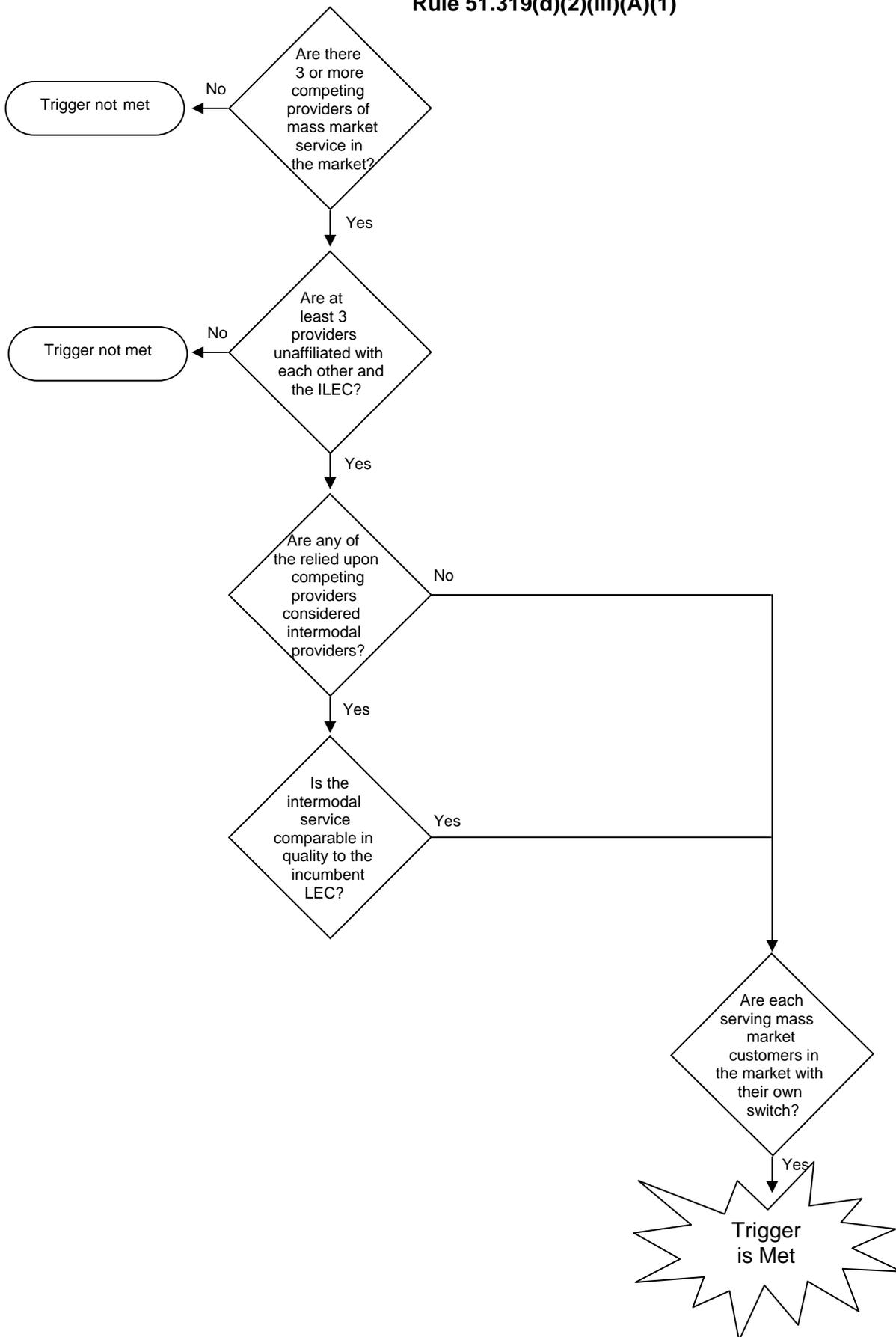
5

6 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

7

8 A. Yes.

Decision Flow Chart to Determine if FCC Self-Provisioning Trigger is Met Rule 51.319(d)(2)(iii)(A)(1)



CLEC Switches Providing Qualifying Service in Kentucky	
Switch CLLI	CLEC

* Identified by CLECs in response to BellSouth's discovery requests

Markets with 3 or More CLECs Self-Providing DS1 level Switching

MARKETS

Louisville KY-IN Zone 1

Kentucky Public Service Commission
Docket No. 2003-00379
Surrebuttal Testimony of Pamela A. Tipton
Exhibit No. PAT-11

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FAQ Answer

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YOUR FAQ ANSWER

FAQs > Product Information > Comcast Digital Phone

What is Comcast Digital Phone?

Comcast brings you the future of local phone service with the power of broadband technology. With Comcast Digital Phone Service, you can enjoy digital quality and reliable local phone service with 15 of the most popular calling features all for one low monthly rate or a la carte. Plus, our great single-and multiple-line packages let everyone in the family communicate, all at the same time.

Did this information help to answer your question?

- Yes
- No

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FAQs > Product Information > Comcast Digital Phone

What Are the Differences Between Digital Phone Service and Analog Service?

All Digital telecommunications networks work in a similar way. Analog voice signals (the old way) are converted to digital signals (the new way) at or near the originating point (your telephone), then translated back to analog at the receiving end. In this process, much of the noise and distortion can be removed.

Digital signals take your voice and translate it into an encoded series of zeros and ones. The digital signal is then translated and routed over our hybrid fiber coaxial (HFC) network (your cable) and then translated back into your voice.

The digital delivery process transmits a "cleaner" signal with less noise and distortion. Noise is screened out of the signal.

Comcast is able to deliver this new form of service using a customer's existing telephone equipment in their home. Because the signal is converted to digital over the network, customers are not required to replace their equipment.

Analog signals are continuously varying and subject to distortion and signal loss (the signal gets weaker as it gets further away from the point of origination.)

An analog signal is a continuous wave so, if there is noise or distortion, it is transmitted along with your voice.

Did this information help to answer your question? Yes No**Submit**

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FAQ Answer

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FAQs > Product Information > Comcast Digital Phone

If my cable goes out, will my phone go out too?

In order to maintain continuous phone service, our local telephone service will automatically reroute itself if a line in your area is damaged. Although there are extreme situations that would result in a loss of service, we are required to maintain a reliability rate of 99.9 percent for local telephone service.

Did this information help to answer your question?

Yes

No

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FAQs > Product Information > Comcast Digital Phone

On average, how long does it take to install Comcast Digital Phone?

Installation currently takes approximately three to four hours for private homes and slightly less time for apartments. Once Comcast Digital Phone Service is installed, your home will be ready for any future upgrades or additions, unless inside wiring is required.

Did this information help to answer your question?

- Yes
- No

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Will I still be listed in the telephone book if I switch my local service?

Yes. Switching to Comcast Digital Phone Service has no effect on your directory listing. You will continue to be listed in the telephone directory for your area.

Did this information help to answer your question?

Yes

No

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Tariffs: Kentucky



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LATAs Where the Self-Provisioning Trigger is Met

LATA

462

Market

Louisville, KY

3 or more CLECs
Serving locations with 3 or less lines
Based on currently available data

MSAs Where the Self-Provisioning Trigger is Met

MSAs

Louisville

3 or more CLECs
Serving locations with 3 or less lines
Based on currently available data