

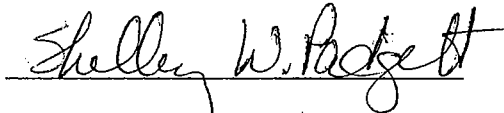
AFFIDAVIT

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 Shelley W. Padgett, 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 rebuttal testimony would be set forth in the annexed testimony consisting of 11 pages and 0 exhibits.



Shelley W. Padgett

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 29<sup>th</sup> DAY OF MARCH, 2004

 Notary Public

**Evelyn Parks Peters**  
Notary Public, Newton County, Georgia  
My Commission Expires May 12, 2007

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**BELLSOUTH TELECOMMUNICATIONS, INC.**  
**REBUTTAL TESTIMONY OF SHELLEY W. PADGETT**  
**BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION**  
**DOCKET NO. 2003-00379**  
**MARCH 31, 2004**

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

A. My name is Shelley W. Padgett. I am employed by BellSouth as Manager – Regulatory and Policy Support in the Interconnection Services organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME SHELLEY W. PADGETT THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING ON MARCH 10, 2004?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony addresses the direct testimony of CompSouth witness Gary Ball and portions of NewSouth Communications Corp. witness Jake Jennings’

1 testimony. Mr. Jennings' testimony is, in large measure, a brochure for  
2 NewSouth and the only substantive issue he addresses is the transition period,  
3 which I will respond to herein. A substantive response to the remainder of Mr.  
4 Jennings' testimony is unnecessary because the testimony fails to address the  
5 issues that this Commission will need to address in this proceeding.  
6

7 Q. DO YOU HAVE ANY OVERALL COMMENTS CONCERNING MR. BALL'S  
8 DIRECT TESTIMONY?  
9

10 A. Yes, I do. Mr. Ball's testimony is not relevant to the identification of the  
11 customer locations and transport routes where CLECs are not impaired without  
12 unbundled access to high-capacity loops and transport, which is the goal of this  
13 proceeding. Indeed, most of Mr. Ball's testimony simply discusses the FCC's  
14 *Triennial Review Order* ("TRO"), describing his interpretation of its policy  
15 objectives and applications. As I described in my direct testimony however, the  
16 TRO is quite clear in specifying how the self-provisioning and wholesale triggers  
17 tests should be correctly applied, and most of Mr. Ball's interpretations are  
18 substantially incorrect. Furthermore, Mr. Ball erroneously states that the ILECs  
19 bear the burden of proof in this case (page 15), which is flatly contradicted by  
20 TRO, ¶ 92, in which the FCC states that "[w]e do not adopt a 'burden of proof'  
21 approach that places the onus on either incumbent LECS or competitors to prove  
22 or disprove the need for unbundling."  
23

1 Q. HOW IS YOUR TESTIMONY ORGANIZED?

2

3 A. There are at least two primary areas of the TRO that Mr. Ball interprets  
4 incorrectly: the definition of a route and the definition of a customer location.  
5 Both Mr. Ball and Mr. Jennings address, albeit incorrectly, the transition period. I  
6 will address each of these in turn.

7

8 **(1) The definition of a route**

9

10 Q. WHAT DOES MR. BALL SAY ABOUT THE DEFINITION OF A “ROUTE”?

11

12 A. Mr. Ball claims that, for a CLEC to count towards the transport triggers on a  
13 given route, the CLEC must provide service directly connecting the two central  
14 offices at each end of the route, stating that to support a trigger claim, the ILEC  
15 must produce evidence that “the CLEC self-provisions transport service (...)”  
16 between the two wire centers and that each collocation arrangement in question is  
17 being used as an endpoint for a transport route at the specific capacity level  
18 between two wire centers.” (page 19 and 20)

19

20 Q. IS THIS INTERPRETATION CORRECT?

21

22 A. No. Mr. Ball’s interpretation of a transport route is puzzling, at best. Mr. Ball  
23 apparently believes that even if a carrier can indirectly send traffic between two

1 ILEC central offices, this carrier does not count toward the triggers test for that  
2 route. Mr. Ball further argues that most CLEC networks are constructed such that  
3 collocation arrangements are used as a traffic aggregation point that can only  
4 route back to the CLEC's switch and that the CLEC is incapable of routing traffic  
5 from its switch to the ILEC's central office across those same facilities (pages 12-  
6 13).

7  
8 However, as the FCC has explained, passing through an intermediate wire center  
9 or an intermediate switch – ILEC or CLEC – does not prevent the connection of  
10 two central offices to form a route. Rule 319(e) clearly provides that “a *route* is a  
11 transmission path between one of an incumbent LEC's wire centers or switches  
12 and another of the incumbent LEC's wire centers or switches. A route between  
13 two points (e.g., wire center or switch “A” and wire center or switch “Z”) may  
14 pass through one or more intermediate wire centers or switches (e.g., wire center  
15 or switch “X”). Transmission paths between identical end points (e.g., wire  
16 center or switch “A” and wire center or switch “Z”) are the same *route*,  
17 irrespective of whether they pass through the same intermediate wire centers or  
18 switches, if any.”

19

20 Q. WHAT SHOULD BE ASSUMED ABOUT CLECS' ABILITY TO PROVIDE  
21 TRANSPORT BETWEEN ILEC WIRE CENTERS?

22

1 A. As explained by Mr. Gray in his direct testimony (page 9, line 6 through page 7,  
2 line 6), it is reasonable to assume that a carrier has a “route” between any pair of  
3 incumbent LEC wire centers in the same LATA where it has operational  
4 collocation arrangements. Indeed, MCI admitted in its response to BellSouth’s  
5 discovery requests that it could connect any “on-net” collocation to any other  
6 collocation. Specifically, MCI’s response states, “MCI has provided BellSouth  
7 with a list of its ‘on-net’ collocations. This list identifies the BellSouth wire  
8 center buildings that are physically on the network owned by MCI. Once traffic  
9 is delivered to MCI at any of its on-net collocation sites it can be delivered to any  
10 other MCI on-net collocation locations without leaving MCI’s network.” (See  
11 Discovery Responses of MCI filed December 15, 2003) In short, it is logical and  
12 reasonable to assume that a carrier’s network within a LATA is fully  
13 interconnected.

14

15 Q. ARE THERE ANY OTHER PROBLEMS WITH MR. BALL’S DEFINITION?

16

17 A. Yes. Mr. Ball claims the FCC requires that a CLEC must be “providing transport  
18 service between the two ILEC wire centers” for a route to be counted (page 20,  
19 lines 2-5).

20

21 Q. WHY IS THIS INCORRECT?

22

1 A. The FCC’s rules do not require that for a CLEC to qualify for the triggers it has to  
2 currently provide service between the two ILEC central offices at the ends of the  
3 route, but only that the “competing provider has deployed its own transport  
4 facilities and is operationally ready to use those transport facilities to provide  
5 dedicated (...) transport along the particular route” ((47 C.F.R.  
6 §51.319(e)(2)(i)(A)(1)). Therefore, the statements made in Mr. Ball’s testimony  
7 regarding the need to show evidence that a CLEC is “providing service between  
8 the two ILEC wire centers” are inconsistent with the TRO and should be  
9 disregarded by this Commission.

10

11 As stated in the FCC’s rules, the qualifying condition is that the CLEC has to be  
12 “operationally ready” to use those facilities to provide transport along the specific  
13 route, which a CLEC clearly is when it has operational fiber-based collocation  
14 arrangements at both ILEC central offices. Establishing a connection between  
15 two operationally ready collocations via a switch or hub typically requires only a  
16 software-based configuration of a circuit. Thus, even if a CLEC does not  
17 ordinarily use its interoffice facilities to provide transport between ILEC central  
18 offices, this fact is irrelevant for the proceeding since they are operationally ready  
19 to do so.

20

21 Q. MR. BALL STATES ON PAGE 17 OF HIS TESTIMONY THAT THE  
22 PRESENCE OF OCN EQUIPMENT IN A BUILDING OR ON A ROUTE IS

1 NOT INDICATIVE OF WHETHER ANOTHER CARRIER CAN  
2 ECONOMICALLY PROVIDE DS3S SERVICES. DO YOU AGREE?

3  
4 A. No. OCn facilities indicate that a carrier can, and most likely is, providing or  
5 capable of providing DS3 services to a building or along a route. The FCC  
6 recognized that carriers don't deploy stand-alone DS3s when it stated, "When  
7 competitive LECs self-deploy fiber, they predominantly do so at the OCn-level."  
8 ¶298 The FCC found that there were economic barriers to deploying stand-alone  
9 DS3 facilities, yet found that significant competition exists in some locations and  
10 established the triggers specifically to identify these locations. "Despite the  
11 economic barriers that a competitive LEC faces in deploying single DS3 loops,  
12 the record indicates that some carriers have been able to overcome these barriers  
13 when providing multiple DS3s to a specific customer location." ¶321 Clearly, the  
14 FCC included facilities that carry multiple DS3s – OCn facilities – in determining  
15 that some carriers have overcome barriers to entry.

16  
17 Further, the FCC's discussion of the rationale behind the triggers clearly includes  
18 DS3s that are channelized on an OCn facility. Paragraph 298 states, "evidence of  
19 self-deployment [of DS3s] ...is directly related to location-specific criteria". The  
20 footnote attached to this sentence (Note 860) explains these location-specific  
21 criteria. It says, "[W]hen customer demand is projected as several DS3s or  
22 optical level capacity a self-build decision is made...[There is] some evidence  
23 that DS3 loop service may be available from alternative providers...in some



1 buildings where competitive capacity to the building has already been provisioned  
2 at the OCn level.”

3

4 **(2) The definition of a customer location**

5 .

6 Q. HOW DOES MR. BALL DEFINE A “CUSTOMER LOCATION”?

7

8 A. Mr. Ball claims in his testimony that in multi-tenant building, the customer  
9 location is defined as the tenant unit rather than the building (page 19). The  
10 implication of this assertion is that meeting the self-provisioning trigger for loops  
11 would require an individual end user to be served by two or more competing  
12 providers in order for the trigger to apply, and, even then, the unbundling relief  
13 would only apply to the facilities serving that particular end user.

14

15 Q. IS MR. BALL’S INTERPRETATION CORRECT?

16

17 A. No. Mr. Ball’s interpretation is contrary to the rules, which distinguish between  
18 “customer locations” and “individual unit[s] within that location”. 47 C.F.R. §  
19 51.319(a)(4)(ii), (5)(i)(B). This distinction indicates that a customer location is a  
20 building, not an individual unit or suite in a multi-unit building.

21

22 Indeed, based on their discovery responses, the CLECs in Florida agree. The  
23 Commission’s discovery specifically asked the CLECs to identify the “customer

1 locations” to which they have deployed loop facilities and, in response, the  
2 CLECs provided the addresses of specific buildings.

3

4 Further, Mr. Ball contradicts his own position when he says on page 18 that “the  
5 loop must permit the CLEC to access all units within a customer location, such as  
6 all tenants in a multi-tenant building,” indicating that the “customer location” is  
7 the building rather than the tenant unit.

8

9

**(3) The transition period**

10

11 Q. SHOULD THE COMMISSION ADDRESS THE TRANSITION PERIOD IN  
12 ANOTHER PROCEEDING FOLLOWING THIS PROCEEDING AS MR.  
13 BALL AND MR. JENNINGS SUGGEST?

14

15 A. No. Any transition period should be addressed in this proceeding. It would make  
16 little sense to expend additional time and resources at a later time and further  
17 delay opening the market on routes or to locations for which the Commission has  
18 already found that competing carriers are not impaired.

19

20 Q. MR. BALL RECOMMENDS THAT THIS COMMISSION INSTITUTE A  
21 MUTLI-TIERED TRANSITION PROCESS. (PAGES 38-39). PLEASE  
22 RESPOND.

23

1 A. Mr. Ball's plan apparently relies upon the switching and line sharing plans  
2 established by the FCC. Without commenting on the merits of such plans, I  
3 disagree with Mr. Ball's reliance. This Commission may determine that CLECs  
4 are not impaired in competing along specific routes or to specific customer  
5 locations, not an entire market. There is absolutely no reason for a phased in  
6 approach.

7  
8 Q. MR. BALL CLAIMS THAT PARAGRAPH 584 OF THE TRO MANDATES  
9 THAT COMPETING CARRIERS MAY CONTINUE TO HAVE ACCESS TO  
10 COMBINATIONS OF LOOP AND TRANSPORT EVEN IF ONE OF THE  
11 ELEMENTS OF A PARTICULAR COMBINATION HAS BEEN DELISTED.  
12 (PAGE 37). PLEASE RESPOND.

13  
14 A. Mr. Ball has inaccurately interpreted the FCC's intentions. Paragraph 584 was  
15 modified in the FCC's Errata, released September 17, 2003, to remove any  
16 reference to network elements made available to competing carriers pursuant to  
17 Section 271 of the Telecommunications Act of 1996 (the Act). In note 1990, the  
18 FCC explicitly stated its intentions with regard to such network elements. It  
19 states, "[w]e decline to require BOCs, pursuant to section 271, to combine  
20 network elements that no longer are required to be unbundled under section 251.  
21 Unlike section 251(c)(3), items 4-6 and 10 of section 271's competitive checklist  
22 contain no mention of 'combining' and, as noted above, do not refer back to the

1 combination requirement set forth in section 251(c)(3).” The FCC does not  
2 appear to agree with Mr. Ball.

3

4 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

5

6 A. Yes.