

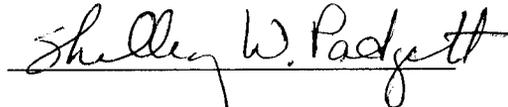
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STATE OF GEORGIA

COUNTY OF FULTON

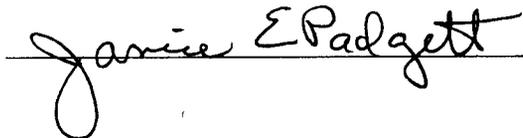
BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Shelley W. Padgett, who, being by me first duly sworn deposed and said that:

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 surrebuttal testimony would be set forth in the annexed testimony consisting of 15 pages and 0 exhibits.



Shelley W. Padgett

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 9 DAY OF APRIL, 2004

 Notary Public

Notary Public, Gwinnett County, Georgia
My Commission Expires Feb. 19, 2008

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BELLSOUTH TELECOMMUNICATIONS, INC.

SURREBUTTAL TESTIMONY OF SHELLEY W. PADGETT

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

DOCKET NO. 2003-00379

APRIL 13, 2004

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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, AND REBUTTAL TESTIMONY ON MARCH 31, 2004?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

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1 A. My surrebuttal testimony addresses the rebuttal testimony of CompSouth witness
2 Gary Ball.

3

4 Q. HOW IS YOUR TESTIMONY ORGANIZED?

5

6 A. My testimony first discusses issues that are applicable to both loops and transport.
7 Next I address issues with the self-provisioning trigger for loops, the wholesale
8 trigger for loops, and transport issues. Lastly, I address the transition period.

9

10 **(1) Issues applicable to Loops and Transport**

11 Q. MR. BALL STATES (P. 6-7) THAT THE FCC CONSIDERED AND
12 REJECTED USING DS1 OR DS3 CHANNELS RIDING AN OCN FACILITY
13 FOR PURPOSES OF MEETING THE TRIGGER. PLEASE RESPOND.

14

15 A. Mr. Ball’s reference is out of context. The FCC is not discussing the triggers
16 analysis in paragraph 325, but rather is discussing its national impairment
17 findings. The FCC found that “requesting carriers generally are impaired without
18 access to unbundled DS1 loops.” (Paragraph 325, emphasis added) However,
19 footnote 957 notes that some carriers have been able to self-deploy DS1 services
20 on existing OCn loops. While the FCC found that this doesn’t provide evidence
21 of the ability of the carrier to self-deploy stand-alone DS1 loops, paragraph 327
22 specifically states that DS1 channels on a higher capacity facility are alternatives
23 to the ILEC’s facilities. It says, “...evidence of alternative providers at the DS3

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1 and higher capacity levels suggests that there may be specific locations where
2 competitive carriers have deployed fiber and could offer excess capacity at the
3 DS1 loop level. Thus, we recognize the possibility that non-incumbent LEC DS1
4 loop alternatives may be available now or in the near future at particular customer
5 locations.” (emphasis added) The wholesale trigger was designed to identify
6 where this has occurred.

7
8 In a similar argument, the FCC states that, “[d]espite the economic barriers that a
9 competitive LEC faces in deploying single DS3 loops, the record indicates that
10 some carriers have been able to overcome these barriers when providing multiple
11 DS3s to a specific customer location...Therefore, as discussed below, we delegate
12 to the states the authority to collect and analyze more specific evidence of DS3
13 loop deployment...to determine customer locations where competitive carriers are
14 not impaired without access to incumbent LEC unbundled DS3s.” (Paragraph
15 321, emphasis added)

16
17 The triggers were designed to identify locations where carriers have overcome the
18 entry barriers identified by the FCC. The evidence that the FCC used to
19 determine that such locations existed were locations where the carrier had
20 deployed higher-capacity facilities and could be channelized. Accepting Mr.
21 Ball’s argument that the FCC precluded channels on a higher-capacity facility
22 from counting toward the triggers would eviscerate the FCC’s triggers entirely
23 and render them meaningless. That simply is not a reasonable conclusion.

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Q. MR. BALL CLAIMS THAT THE EVIDENCE SUBMITTED BY BELLSOUTH OF THE WILLINGNESS OF THOSE CARRIERS LISTED AS WHOLESALERS TO WHOLESALE IS NOT SUFFICIENT (P. 29-30). PLEASE RESPOND.

A. Mr. Ball’s testimony is without basis. While I agree that the quote from Adelphia/Telcove’s website is incomplete, the complete sentence demonstrates that carrier is a wholesale provider. The quote should read, “We are a facilities-based telecommunications provider with an 11-year history of delivering advanced, secure communications over our fiber optic network. Among our customers you will find Fortune 500 companies, educational institutions, government agencies, financial and healthcare organizations, and other communications service providers.” (www.telcove.com, emphasis added) Further, an April 7, 2004 press release from Telcove/Adelphia describes the company by saying, “...TelCove is a leading provider of business critical telecommunications services that offers enterprise companies and carriers superior Internet, Data, and Voice solutions via its reliable, secure and independently-owned metropolitan and intercity fiberoptic network.” (“TelCove Emerges From Chapter 11; Company Announces New Privately Held Ownership”, April 7, 2004, emphasis added) There is no doubt that Adelphia/Telcove describes itself as a wholesaler of transport services as well as loops.

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2 Similarly, Xspedius' website shows that it is offering wholesale services to other
3 carriers. Again, Xspedius admitted that it has deployed its own fiber between the
4 central offices identified. Yet, Mr. Ball suggests that Xspedius would not offer a
5 carrier access to its transport facilities in Kentucky. This conclusion simply
6 defies all logic.

7

8

(2) Self-provisioning Loop Trigger Issues

9 Q. MR. BALL CLAIMS THAT "CUSTOMER LOCATION" IN THE SELF-
10 PROVISIONING TRIGGER REFERS TO AN INDIVIDUAL UNIT RATHER
11 THAN AN ENTIRE BUILDING (P. 12-13). IS THIS CORRECT?

12

13 A. No. Even Mr. Ball quotes the FCC as requiring that a carrier must "have existing
14 facilities in place serving customers at that location" (TRO paragraph 332). If
15 there are multiple customers at a single location, the FCC can hardly have been
16 referring to a single unit within a building. In fact, in the next paragraph, the FCC
17 clarifies that they are referring to an entire building. Paragraph 333 says, "...the
18 facilities these competitors use must be their own facilities and not facilities
19 owned or controlled by one of the other two providers to the premises, i.e., the
20 incumbent LEC and the other competitive provider. To be clear, a competitive
21 LEC using the special access facilities of the incumbent LEC or the transmission
22 facilities of the other competitive provider in the building would not satisfy the
23 definition of a self-provisioning competitor for purposes of satisfying the trigger."

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1 (original emphasis omitted, emphasis added) Clearly, the FCC contemplated that
2 the ILEC and an additional two carriers with facilities in a building would satisfy
3 the self-provisioning trigger.

4

5 Q. MR. BALL CLAIMS (P. 17-18) THAT XSPEDIUS' LOOPS CANNOT BE
6 COUNTED TOWARD MEETING THE DS3 TRIGGERS BECAUSE IT
7 PROVIDES MORE CAPACITY THAN AN OCN. DOES THE FCC INCLUDE
8 IN ITS RULES ANY "CAPACITY CEILING" THAT WOULD ELIMINATE A
9 CARRIER FROM COUNTING TOWARD A TRIGGER?

10

11 A. No. The FCC laid out very specific rules and did not mention that a carrier that
12 provides more than any specified limit should not count toward meeting its
13 triggers. The Commission should not add Mr. Ball's requirements to the FCC's.

14

15 Q. MR. BALL STATES (P. 18) THAT XSPEDIUS' LOOPS CANNOT BE
16 COUNTED TOWARD MEETING THE DARK FIBER TRIGGER BECAUSE
17 IT DOESN'T SPECIFICALLY INCLUDE DARK FIBER IN ITS DISCOVERY
18 RESPONSES. WHY IS THIS BUILDING INCLUDED IN THE LIST OF
19 BUILDINGS MEETING THE DARK FIBER TRIGGER?

20

21 A. Simply because the carrier in question did not state that it has dark fiber at the
22 location, does not mean that the carrier does not have such facilities nor does it
23 mean that the carrier doesn't qualify for purposes of the dark fiber trigger. First,

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1 it can be inferred that any carrier that has deployed fiber facilities has deployed
2 dark fiber. Again, as both BellSouth witness Gray and I have stated, if the carrier
3 goes to the time and expense to lay fiber, it makes sense to deploy sufficient
4 facilities so that there will always be enough bandwidth to handle the traffic on a
5 given loop. The carrier then activates the amount of capacity and number of
6 channels needed along the loop as they are needed. Second, the applicable rule
7 clearly states that as long as a competitive carrier has deployed a fiber loop to a
8 customer location, it should qualify for the dark fiber trigger at that customer
9 location. Specifically, the FCC's rules require that "two or more competing
10 providers (...) have deployed their own dark fiber facilities at that specific
11 customer location." (47 C.F.R. § 51.319(a)(6)(i), emphasis added). The carrier in
12 question deployed its own dark fiber facilities since it admits to self-provisioning
13 DS3s. The mere fact that these facilities may now be lit does not negate the fact
14 that the carrier was not impaired in deploying the facilities in the first place.

15

16 Q. MR. BALL CLAIMS THAT SBC HAS "ACKNOWLEDGED THAT
17 GEORESULTS FALSELY IDENTIFIES CLECS AS PRESENT IN
18 BUILDINGS WHEN THEY ACTUALLY ARE NOT" (P. 16). HAS
19 BELL SOUTH ACKNOWLEDGED THAT GEORESULTS MAY IDENTIFY A
20 BUILDING AS BEING SERVED BY A CARRIER WHEN, IN FACT, IT IS
21 NOT?

22

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1 A. Yes. In fact, BellSouth has always recognized that there is room for error in the
2 GeoResults report, which GeoResults only purports to be a list of buildings that
3 contain fiber-based equipment and the carriers that own the equipment. BellSouth
4 used the GeoResults report only in instances where a carrier did not provide
5 complete information through discovery. However, even in those instances,
6 BellSouth took pains to remove buildings which were not served by competitive
7 facilities.

8
9 The GeoResults GeoLit Plus™ Report utilizes the Telcordia COMMON
10 LANGUAGE® Location Codes (CLLI™ Codes) in the CLONES (Central
11 Location Online Entry System) master database and associated descriptions to
12 identify fiber equipment installations. Included in GeoResults data were locations
13 where carriers did not self-provision fiber, but obtained fiber-based services from
14 other companies such as BellSouth's SMARTRing® Service.

15
16 In order to use the GeoLit data to identify carriers which self-provisioned fiber,
17 BellSouth eliminated carrier locations where fiber was obtained on a wholesale
18 basis from a separate company. Review of the CLONES data, in particular the
19 "Description" field, for those records that GeoResults had used to include that
20 carrier's location in their database, allowed BellSouth to determine if the record
21 was for a wholesale service. These wholesale services were identified in
22 CLONES as being provisioned by one company, identified in the "OTC"

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1 (Operating Telephone Company) field, for another company, identified in the
2 free-form “Description” field.

3
4 For example, the MIATFLAD location had been identified in the GeoLit Plus
5 data as a fiber installation for WorldCom. Review of the CLONES data for this
6 record indicated that it was a wholesale-provided fiber service. Thus, the carrier’s
7 location was removed from the GeoLit Plus data for purposes of identifying self-
8 provisioned fiber installations.

9

10	CLLI	MIATFLAD
11	Address	49 NW 5TH ST (Miami, FL)
12	Desc	SMARTRING – WORLDCOM
13	OTC	BS (BellSouth)
14		

15 Q. MR. BALL ADVOCATES USING THE GEORESULTS DATA TO PROVIDE
16 CLECS WITH A LIST OF BUILDINGS TO VALIDATE THE DATA (P. 19).
17 DID BELLSOUTH USE THE DATA IN THIS MANNER?

18
19 A. Yes. BellSouth did, in fact, send lists of specific addresses to some carriers when
20 further clarification of their initial discovery responses was needed. The
21 responses received were incorporated into the triggers analysis.

22

(3) Wholesale Loop Trigger Issues

23
24 Q. MR. BALL CLAIMS THAT LOOPS ARE NOT WIDELY AVAILABLE IF
25 THE WHOLESALE CARRIER REQUIRES THE REQUESTING CARRIER TO

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1 EXTEND ITS NETWORK TO REACH THEM. IS THAT HOW THE FCC
2 USED THE PHRASE “WIDELY AVAILABLE” IN ITS WHOLESAL
3 TRIGGERS?

4

5 A. No. The rules require that “[t]he competing provider ...offers a ...loop...on a
6 widely available wholesale basis...” (51.3119(a)(4)(ii)(A) and
7 51.319(a)(5)(i)(B)(1)) The wholesale carrier can offer a loop on a widely
8 available basis regardless of where the loop is physically located. Nevertheless,
9 carriers frequently meet one another at carrier hotels or other location besides the
10 ILEC central office. Mr. Ball is simply attempting to rewrite the FCC’s
11 requirements.

12

13 Q. DID THE FCC REQUIRE THAT EVIDENCE BE PROVIDED THAT CLECS
14 ARE WILLING TO OFFER WHOLESAL LOOPS TO THE INDIVIDUAL
15 LOCATIONS IN ORDER TO QUALIFY FOR THE WHOLESAL TRIGGERS
16 AS MR. BALL CONTENDS (P. 22)?

17

18 A. No. Carriers do not advertise, nor do they make decisions, at that granular a level.
19 A carrier does not have to be *currently selling* wholesale services to qualify for
20 the wholesale trigger; the carrier only has to be *willing* to provide wholesale
21 service (TRO ¶329). The decision to wholesale is one of business model, and so
22 it is made at the company level rather than on a location-by-location basis. In
23 other words, if a carrier is willing to wholesale high-capacity loops at a given

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1 publicly that it offers alternatives to the ILEC's facilities to end-user buildings in
2 two cities in Kentucky. (See Exhibit SWP-11). Because BellSouth disagrees
3 with this assumption, the building is included.

(4) Transport Issues

6 Q. MR. BALL CLAIMS (P. 10-11) THAT THE FCC WAS REFERRING TO A
7 SWITCHING CENTER OR LOCATION WHEN IT USED THE TERM
8 "SWITCH" IN ITS DEFINITION OF "ROUTE" IN ITS RULES. IS THIS AN
9 ACCURATE USE OF THE TERM?

11 A. I do not dispute Mr. Ball's interpretation of the term "switch" to mean an end
12 office, switching center, or central office. However, Mr. Ball claims that facilities
13 that pass through these buildings are precluded from counting as a route when the
14 FCC clearly included such facilities. Mr. Ball advocates a position that carriers
15 routing all of their traffic from an ILEC CO to their own switches do not provide
16 "transport" for purposes of the trigger analysis. The applicable rules contain no
17 such limitation, and current network equipment allows carriers to route its traffic
18 from an ILEC CO through its own central office and to another ILEC CO. In this
19 instance, the carrier clearly has a "route" that meets the FCC's definition.
20 Whether or not the carrier currently routes all its traffic to the switch is not
21 relevant for the purposes of the trigger analysis, however, as the trigger requires
22 only that the carrier be operationally ready to provide transport. As BellSouth
23 witness Gray explains, even if the carrier currently has its network arranged as

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1 Mr. Ball claims, it must attach a high-capacity transport facility to a piece of
2 equipment that is capable of demultiplexing the facility to its DS1 and DS0
3 equivalents and directing the traffic to the switch. This equipment is equally
4 capable of directing the traffic to another facility that connects to another ILEC
5 CO.

6

7 Q. MR. BALL CLAIMS THAT IT IS “INAPPROPRIATE TO USE
8 [BELLSOUTH’S] COLLOCATION RECORDS” (P. 28) TO DETERMINE
9 WHERE FIBER ROUTES EXIST BETWEEN BELLSOUTH CENTRAL
10 OFFICES. PLEASE RESPOND.

11

12 A. As a preliminary matter, BellSouth’s collocation records were used only in the
13 absence of information that complied with the FCC’s requirements from the
14 carriers themselves. BellSouth used its records, generated from information
15 supplied by the carriers, to identify where fiber-based collocation arrangements
16 exists. For instance, Xspedius admitted that it had deployed facilities to certain
17 central offices but refused to admit it had deployed “transport” based upon its
18 faulty definition of a route and based upon its refusal to admit that an OCn facility
19 is operationally ready to provide DS1 or DS3 transport . Specifically, Xspedius
20 states,

21

22

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1 [REDACTED]

2 [REDACTED]

3 [REDACTED] Adelphia has never responded
4 to BellSouth's requests for discovery, thus BellSouth used its records.

5

6 **(5) Transition Period**

7 Q. MR. BALL CLAIMS THAT THIS COMMISSION SHOULD EVALUATE
8 ILEC PROCESSES FOR ORDERING COMBINATIONS OF LOOPS AND
9 TRANSPORT, IN SITUATIONS WHERE ONE OR BOTH NETWORK
10 ELEMENTS HAVE BEEN DELISTED (P. 55). IS THIS ACCURATE?

11

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

22 This is not an issue that this Commission needs to pursue.

23

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1 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

2

3 A. Yes.