

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**Review of the Federal Communications )  
Commission's Triennial Review Order )  
Regarding Unbundling Requirements )  
for individual Network Elements )**

**Case No. 2003-00379**

**SURREBUTTAL TESTIMONY OF MARK DAVID VAN DE WATER**

**ON BEHALF OF**

**AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, LLC**

**APRIL 13, 2004**

**PUBLIC VERSION**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Mark David Van de Water. My business address is 7300 East  
3 Hampton Avenue, Room 1102, Mesa, AZ 85208-3373.

4 **Q. ARE YOU THE SAME MARK DAVID VAN DE WATER WHO**  
5 **PREVIOUSLY FILED DIRECT TESTIMONY IN THIS DOCKET ON**  
6 **FEBRUARY 11, 2004, AND REBUTTAL ON MARCH 31, 2004?**

7 A. Yes, I am.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. My Surrebuttal testimony responds to portions of the rebuttal testimony of  
10 BellSouth's witnesses Ken L. Ainsworth, Alfred A. Heartley, Ronald M. Pate,  
11 Kathy Blake, Eric Fogle, and A. Wayne Gray.

12 **Testimony of BellSouth Witness Ken Ainsworth**

13 **Q. ON PAGE EIGHT OF HIS TESTIMONY, MR. AINSWORTH RESPONDS**  
14 **TO TWO OF AT&T'S CONCERNS REGARDING BELL SOUTH'S**  
15 **BATCH PROCESS: (1) THAT THE PROCESS DOES NOT ALLOW**  
16 **AFTER HOURS CUTS, AND (2) THAT THE PROCESS DOES NOT**  
17 **INSURE THAT ALL END USER'S LINES WOULD BE PROVISIONED**  
18 **ON THE SAME DAY. DOES MR. AINSWORTH'S RESPONSE**  
19 **ALLEVIATE YOUR CONCERNS?**

20 A. No. For example, although Mr. Ainsworth states that BellSouth has agreed to  
21 provide after hours cuts, the information provided in Mr. Ainsworth's Rebuttal  
22 Exhibit KLA-8 indicates numerous restrictions. For example; batch sizes are too  
23 small or undefined for nights and weekends, loop types which can be included are  
24 restricted, and certain time-slots are excluded. Further, although he claims that he

1 has alleviated AT&T's concerns that all of an end users lines would be  
2 provisioned on the same day, he has not. Indeed, a careful reading of lines  
3 seventeen through twenty on page eight reveals that BellSouth still has not agreed  
4 to migrate all end-user's lines on the same day.

5 **Q. ON PAGE NINE OF HIS TESTIMONY, MR. AINSWORTH**  
6 **REFERENCES A WEB BASED SCHEDULING TOOL. HAS MR.**  
7 **AINSWORTH SUBMITTED A CHANGE REQUEST OR**  
8 **COLLABORATED WITH THE COMPETITIVE LOCAL EXCHANGE**  
9 **CARRIERS ("CLECS") ON THE SPECIFICS OF THIS PROMISED**  
10 **OFFERING?**

11 A. No. Until the CLECs know more about this tool, it is, of course, impossible to  
12 know if it will be adequate to meet their needs. AT&T recommends that the  
13 Commission order BellSouth to provide an electronic scheduling tool that advises,  
14 in increments of one hour, of batch availability. For example, the tool would  
15 advise that 8-9 a.m. March 01, 2004 is available.

16 **Q. ON PAGE FIFTEEN OF HIS TESTIMONY, MR. AINSWORTH ASSERTS**  
17 **THAT BELL SOUTH DOES HAVE A TIMELY PROCESS FOR**  
18 **RESTORAL OF CUSTOMER SERVICES. DO YOU AGREE?**

19 A. No. Mr. Ainsworth states that BellSouth has updated its UNE-P to UNE-L Bulk  
20 Migration Process to document the restoral process. However, the described  
21 process has no timeframes for completion. Other Incumbent Local Exchange  
22 Carriers ("ILECs"), such as SBC, are much more responsive to this customer-  
23 impacting issue. AT&T recommends that the Commission order the following  
24 requirements: If an individual cut in a batch fails, and the number has not been  
25 ported, the ILEC should restore the service in one hour. For numbers that have

1           been ported, the interval for restoring the customer’s service should not exceed 4  
2           hours.

3   **Q.   ON PAGE TWENTY-FIVE OF HIS TESTIMONY, MR. AINSWORTH**  
4   **NOTES THAT BELL SOUTH HAS AGREED TO REDUCE D THE 14 DAY**  
5   **PROVISIONING INTERVAL TO 8 DAYS. PLEASE COMMENT.**

6   **A.**   BellSouth’s offer is insufficient. The interval to confirm a CLEC’s request for a  
7           batch and provide the batch ID should be one day, and the interval from Local  
8           Service Request (“LSR”) submission to completion should be no more than four  
9           days<sup>1</sup>. This, of course, is still not at the required level of parity with Unbundled  
10          Network Element-Platform (“UNE-P”), but as I indicated in my direct testimony,  
11          no manual process, including a manual batch process, is capable of eliminating  
12          impairment.

13   **Q.   ON PAGE TWENTY-TWO OF HIS TESTIMONY, MR. AINSWORTH**  
14   **ALLEGES THAT YOUR PREMISE THAT THE MANUAL HOT CUT**  
15   **PROCESS IS INHERENTLY INCAPABLE OF SUSTAINING VOLUMES**  
16   **NECESSARY TO SUPPORT UNBUNDLED NETWORK ELEMENT-**  
17   **LOOPS (“UNE-L”) IS NOT IN “ACCORD” WITH THE TRIENNIAL**  
18   **REVIEW ORDER (“TRO”). DO YOU AGREE?**

19   **A.**   Absolutely not. I refer Mr. Ainsworth specifically to Paragraph 469 of the TRO  
20           which states “...rather the issue identified in the record is an inherent limitation in  
21           the number of manual cutovers that can be performed, which poses a barrier to  
22           entry that is likely to make entry into a market uneconomic.”

23   **Q.   ON PAGE TWENTY-FOUR OF HIS TESTIMONY, MR. AINSWORTH**  
24   **LISTS SEVERAL PROPOSED CHANGES TO BELL SOUTH’S BATCH**

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<sup>1</sup> Indeed, Mr. Ainsworth states on page 18 of his testimony that “BellSouth’s intervals for individual hot cuts range from 3-4 days...”

1       **ORDERING PROCESS FILED IN ITS DIRECT TESTIMONY. PLEASE**  
2       **COMMENT.**

3       A.     Because BellSouth has chosen to respond to some CLEC concerns in this docket,  
4       rather than through their request in operational channels for a workshop or  
5       collaborative, the information provided by BellSouth is in many cases too sketchy  
6       to fully evaluate.<sup>2</sup> Additionally, I have responded to some of these proposals  
7       earlier in this testimony. Further, attached as Exhibit MDV-SR1, is AT&T's  
8       assessment of how BellSouth's three offerings (one in Ainsworth and Pate direct,  
9       one in McElroy's direct, and another in Ainsworth's rebuttal) compare to AT&T's  
10      recommendations for a batch hot cut process. As is evident in the attached  
11      exhibit, there are numerous areas that are simply not addressed, others where  
12      BellSouth's proposals are inadequate, and still other cases where sufficient  
13      information is simply not available. AT&T urges the Commission to order the  
14      batch hot cut process it proposes. While not eliminating impairment, AT&T's  
15      recommendation would make much needed improvements that would facilitate  
16      migrations from UNE-P to UNE-L, when it is otherwise feasible to do so.

17       **Testimony of BellSouth Witness Alfred Heartley**

18      **Q.     BEGINNING ON PAGE FIVE OF MR. HEARTLEY'S TESTIMONY, HE**  
19      **DISCUSSES THE IMPACT OF INTEGRATED DIGITAL LOOP**  
20      **CARRIER ("IDLC"). PLEASE COMMENT.**

21      A.     While Mr. Heartley discusses the impact of IDLC on work loads, his information  
22      is also useful to the Commission for other reasons. He states that "based on

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<sup>2</sup> As I indicated in my rebuttal testimony on page eight and in Exhibit MDV-R2, BellSouth has resisted efforts by CLECs to have a batch process addressed in the Change Control Process.

1 regional estimates of 4,827 daily outside dispatches, well over 2.2 million  
2 dispatches could be required to complete the conversions and handle the growth.”  
3 Using BellSouth’s information that each IDLC cut-over (which is only one part of  
4 the hot cut process and thus the costs of the hot cut process) takes 1 hour, and  
5 multiplying that by a salary rate of approximately **\*\*\*Begin Confidential** [REDACTED]  
6 **End Confidential\*\*\*** per productive hour,” the costs to CLECs and their end-  
7 users is **\*\*\*Begin Confidential** [REDACTED] **End Confidential\*\*\***.  
8 Importantly, this figure does not include non-salary costs that CLECs would also  
9 have to bear. Critically, CLECs would be paying these millions of dollars for an  
10 activity that adds no value to the customer’s service, and in fact will likely  
11 degrade it.

12 **Volume of Hot Cuts**

13 **Q. SEVERAL OF BELLSOUTH’S WITNESSES (AINSWORTH AT PAGE**  
14 **SIXTEEN AND HEARTLEY AT PAGE FOUR) DISCUSS VOLUMES OF**  
15 **125 TO AS MANY AS 350 HOT CUTS ON A SINGLE DAY. HOW DO**  
16 **YOU RESPOND?**

17 A. It appears, that in certain central offices, for a single day, using extraordinary  
18 forcing (and likely unsustainable) methods, with their accompanying  
19 extraordinary costs, BellSouth can cut 125 lines and even up to 350 lines in a day.  
20 It is vital to note, however, that all the cut-over activity did not actually occur in  
21 one day. For example, during the PwC review, when 125 lines were “cut” per  
22 day, the pre-wiring work was actually done for up to four additional days in  
23 advance. (See Exhibit MDV-SR2)

1           Thus, unusually executed, occasional events, while interesting, are not  
2           dispositive in a proceeding which is designed to determine whether CLECs are  
3           impaired in providing day-to-day service to mass market customers. No evidence  
4           was provided that this same level of volume of work (as well as the central office  
5           work that must be done before the hot cuts) could be sustained on a regular basis.  
6           In addition to being capable of handling large volumes of customers, the batch  
7           process must also deliver seamless and low cost service. As I describe in my  
8           rebuttal testimony, PwC observed numerous instances of service impacting  
9           deficiencies in BellSouth's performance during the test. And, as I described  
10          earlier in this testimony and in my rebuttal testimony, BellSouth is asking this  
11          Commission to require CLECs to spend millions upon millions of dollars only to  
12          provide consumers with worse service than they receive today via UNE-P.

13           **Testimony of BellSouth Witness Kathy Blake**

14          **Q.    ON PAGE TWENTY FIVE OF HER TESTIMONY, MS. BLAKE**  
15          **DISCUSSES THE SEAMLESS NATURE OF UNE-P AND PRIMARY**  
16          **INTEREXCHANGE CARRIER ("PIC") CHANGES.    PLEASE**  
17          **COMMENT.**

18          A.    Ms. Blake appears to agree with AT&T and MCI that UNE-P migrations and PIC  
19          changes are seamless, while hot cuts are not. Ms Blake's testimony reveals that  
20          she does not maintain that hot cuts are seamless and in fact does not believe that  
21          they should be seamless. This position contradicts both the FCC and other  
22          BellSouth witnesses. In order to overcome impairment, the hot cut process must  
23          be seamless and low-cost.

1 **Q. ON PAGE TWENTY-SIX OF HER TESTIMONY, MS. BLAKE STATES**  
2 **THAT THE FCC “FLATLY REJECTED AT&T’S ELP PROPOSAL” AND**  
3 **STATED THAT THIS COMMISSION SHOULD DO THE SAME. DO**  
4 **YOU AGREE?**

5 A. Absolutely not. Ms. Blake ignores the part of the TRO in which the FCC states  
6 that although it declines to order Electronic Loop Provisioning (“ELP”) *at this*  
7 *time*, it may reexamine AT&T’s proposal if hot cut processes are not, in fact,  
8 sufficient to handle necessary volumes. TRO ¶ 419. Electronic loop provisioning  
9 would be both seamless and low cost, and could handle the volumes required by  
10 the mass market. AT&T is requesting that the Commission find that the ILECs’  
11 hot cuts processes are insufficient, thus impairing CLECs without access to  
12 unbundled switching, and to initiate another proceeding to determine whether  
13 ELP would eliminate this impairment.

14 **Q. ON PAGE TWENTY-FIVE OF HER TESTIMONY, MS. BLAKE STATES**  
15 **THAT “THE QUESTION FOR THE COMMISSION IS NOT WHETHER**  
16 **UNE-P IS THE SAME AS UNE-L.” DO YOU AGREE?**

17 A. No. Ms Blake is understandably choosing to ignore Paragraph 512 of the TRO  
18 that states, “[s]pecifically, we ask the states to determine whether incumbent  
19 LECs are providing nondiscriminatory access to unbundled loops”, which further  
20 explains in footnote 1574 that “this review is necessary to ensure that customer  
21 loops can be transferred from the incumbent LEC main distribution frame to a  
22 competitive LEC collocation as promptly and efficiently as incumbent LECs can  
23 transfer customers using unbundled local circuit switching.” Therefore, the issue  
24 of whether UNE-L is the same as UNE-P is clearly critical to this proceeding.



1           **Testimony of BellSouth Witness Ronald Pate**

2   **Q.   ON PAGE TWO OF HIS REBUTTAL TESTIMONY, MR. PATE**  
3   **INDICATED THAT BELLSOUTH’S IMPLEMENTATION OF AT&T’S**  
4   **CHANGE REQUEST FOR A BULK MIGRATION PROCESS DID MEET**  
5   **AT&T’S STATED NEEDS. IS MR. PATE CORRECT?**

6   **A.**   No, and this fact is not news to BellSouth. BellSouth has known since at least  
7           mid-2002 that AT&T was dissatisfied. In BellSouth’s September 20, 2002  
8           response to Ms. Denise Berger of AT&T, BellSouth stated “During our  
9           conversation you indicated that the new process resulting from CR0215 would not  
10          meet the needs of the internal AT&T organization. Those needs apparently have  
11          prompted the request for a different new process as outlined in your August 30  
12          letter.” BellSouth even suggested in the letter that AT&T submit another change  
13          request. (See Exhibit MDV-SR3.)

14   **Q.   PLEASE SUMMARIZE AT&T’S EXPERIENCE WITH THE**  
15   **IMPLEMENTATION OF “BATCH” OR “BULK” HOT CUTS IN**  
16   **BELLSOUTH.**

17   **A.**  
18          • Well over three years ago, AT&T requested that BellSouth provide a process  
19           that would accommodate both bulk ordering and provisioning of its customers  
20           from UNE-P to UNE-L.  
21          • Dissatisfied with the process BellSouth planned to implement, on August 30,  
22           2002, AT&T wrote a letter to BellSouth requesting that it develop a bulk

1 conversion process. (See Exhibit MDV-5 of Van De Water Direct  
2 Testimony.)

3 • BellSouth responded that AT&T should submit a second change request or a  
4 new business request.

5 • AT&T submitted a new business request for a bulk conversion process, to use  
6 at its option, to migrate its customers from UNE-P to UNE-L.

7 • BellSouth agreed that AT&T's request was feasible, but required exorbitant  
8 fees (\$134.32) in addition to the usual high hot cut charges, and refused to  
9 commit to a number of conversions to be implemented per day.

10 BellSouth's prices and lack of willingness to make volume commitments  
11 prevented AT&T from moving forward with its new business request for bulk  
12 conversions of its customers from UNE-P to UNE-L.

13 **Q. ON PAGE FOURTEEN OF HIS TESTIMONY, MR. PATE CLAIMS THAT**  
14 **YOU MISCHARACTERIZED DATA BECAUSE THE NUMBERS YOU**  
15 **USED TO COMPARE FLOW-THROUGH FOR UNE-P ORDERS VERSUS**  
16 **UNE-L ORDERS DID NOT IN FACT REPRESENT FLOW-THROUGH.**  
17 **DO YOU AGREE?**

18 A. Absolutely not. BellSouth described the percentage numbers I used from its  
19 responses to Interrogatories 28 and 32 as numbers for "fully mechanized" orders.  
20 Fully mechanized orders flow-through. Only fully mechanized orders flow-  
21 through; manually handled orders do not. Therefore, the terms are used  
22 interchangeably throughout the industry.

23 **Q. MR. PATE CRITIZED YOU FOR USING A 27.1 PERCENT FLOW-**  
24 **THROUGH RATE FOR UNE-L MIGRATIONS IN YOUR ANALYSIS.**

1           **WHAT PERCENT FLOWTHROUGH DOES BELLSOUTH USE TO**  
2           **CALCULATE ITS FORCING NEEDS FOR HANDLING LOOP WITH**  
3           **LOCAL NUMBER PORTABILITY (“LNP”) ORDERS IN ITS LOCAL**  
4           **CARRIER SERVICE CENTERS?**

5           A.     BellSouth also uses a number well below those Mr. Pate reviews in this  
6           testimony, 37 percent. (See Exhibit MDV-SR4)

7           **Q.     GIVEN THAT THE TERM FULLY MECHANIZED DOES NOT**  
8           **INCLUDE MANUALLY HANDLED, DID YOU HAVE ANY CONCERNS**  
9           **ABOUT USING BELLSOUTH’S FULLY MECHANIZED**  
10           **PERCENTAGES?**

11          A.     When I reviewed the data, I determined that BellSouth had in fact included  
12          manual LSRs in its calculation of “percent fully mechanized.” Although that  
13          could only result in overstating BellSouth’s fully mechanized or flow-through  
14          performance, I decided to make use of the information, as it is particularly  
15          relevant for this proceeding. It is specific to migrations, while the flow-through  
16          performance reports produced monthly by BellSouth also include other categories  
17          of information such as feature changes and LNP stand-alone. My intent was to  
18          illustrate the vast disparity in the flow-through or full mechanization of UNE-P  
19          and UNE-L migration orders. The information provided by BellSouth that I used  
20          in my testimony does exactly that.

21          **Q.     ON PAGES EIGHT THROUGH TEN OF HIS TESTIMONY MR PATE**  
22          **DISCUSSES FLOW-THROUGH PERFORMANCE. PLEASE**  
23          **COMMENT.**

24          A.     Mr. Pate’s analysis of UNE, resale, and talk of improvement plans appear  
25          intended to distract attention away from the issue I asked this Commission to

1 consider: most UNE-P migration orders are fully electronic and thus flow-  
2 through BellSouth's ordering systems; most UNE-L migration orders are  
3 manually created by BellSouth, and thus do not flow-through BellSouth's  
4 ordering systems. Mr. Pate's chart on page ten is particularly illuminating in this  
5 regard. It indicates that UNE-P LSRs comprise 78.6% of the LSR population,  
6 while LNP (which includes BOTH stand-alone LNP, and UNE-L migrations with  
7 LNP) comprise only 1.6%. BellSouth is asking this Commission to change the  
8 way that 78.6% of customer requests are handled and have them be treated as the  
9 <1.6% are treated, with abysmal flow-through performance.

10 **Q. ON PAGE TWENTY-ONE OF HIS TESTIMONY, MR. PATE INDICATES**  
11 **THAT CLEC-TO-CLEC MIGRATION ISSUES ARE BEING ADDRESSED**  
12 **BY A COLLABORATIVE IN FLORIDA. DO YOU AGREE?**

13 **A.** Yes. BellSouth, however, is responsible for many areas of concern that are not  
14 being addressed by the collaborative including:

- 15 • CLEC-to-CLEC migrations are not defined in the batch process,
- 16 • CLEC to CLEC UNE-L orders must be submitted manually,

17 **\*\*\*Begin Confidential**

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 **\*\*\*End Confidential**

1 Testimony of BellSouth Witness Wayne Gray

2 Q. ON PAGES FOURTEEN AND FIFTEEN OF HIS TESTIMONY, MR.  
3 GRAY PROVIDES HIS VIEW OF BELL SOUTH'S OBLIGATION TO  
4 PROVIDE CROSS CONNECTS. PLEASE COMMENT.

5 A. Inexplicably, Mr. Gray insists on discussing BellSouth's view of its obligations  
6 under Section 51.323, which are not at issue, and avoids addressing its obligations  
7 under Section 51.319, which are at issue in this docket. As I discussed in my  
8 rebuttal testimony, BellSouth is obligated to provide cross connects under the  
9 TRO.

10 First in Paragraph 478:

11 *Incumbent LEC Provisioning of Competitive LEC-to-Competitive LEC*  
12 *Cross –Connects.* We further find that an incumbent LEC's failure to  
13 provide cross-connections<sup>1473</sup> between the facilities of two competitive  
14 LECs on a timely basis can also result in impairment. Competition in the  
15 absence of unbundled local circuit switching requires seamless and timely  
16 migration not only to and from the incumbent's facilities, but also to and  
17 from the facilities of other competitive carriers.<sup>1474</sup> Such interconnection  
18 **requires that the incumbent LEC place** cross connections between the  
19 competitive carriers' facilities in its central office on a timely basis. The  
20 incumbent's failure to do so will tend to delay competitors' entry, and thus  
21 to increase competitors' costs. We conclude that in some cases, such  
22 failure can give rise to impairment in the absence of unbundled local  
23 circuit switching.

24 <sup>1473</sup> **Cross-connection is the "attachment of one wire to another usually by anchoring**  
25 **each wire to a connecting block and then placing a third wire between them so that**  
26 **an electrical connection is made."** *Id.*; see also AT&T Brenner Decl. at para. 21; Z-Tel  
27 Comments, Declaration of Peggy Rubino at para. 12.

28 (emphasis added). Second, in Paragraph 514:

29 *Competitive LEC – to – Competitive LEC Cross Connects.* We have also  
30 determined that an incumbent LEC's **failure to provide** cross-connections  
31 between the facilities of two competitive LECs on a timely basis can result  
32 in impairment. Therefore, a state commission considering whether to find

1 “no impairment” with regard to mass market switching must evaluate  
2 whether such delays increase requesting carriers’ costs to such a degree  
3 that entry into the market is rendered uneconomic in the absence of  
4 unbundled switching. **Evidence relevant to this inquiry would include,**  
5 **for example, information regarding the incumbent’s practices and**  
6 **procedures with regard to provision of cross-connects linking**  
7 **competitive carriers’ facilities,** competitive LECs’ complaints regarding  
8 the incumbent’s past performance in this area, the incumbent LEC’s  
9 response to these complaints, the **costs incurred in connection with**  
10 **deficient performance in this regard, and the degree to which those**  
11 **costs render entry into a given market uneconomic.**

12 (emphasis added). And in the TRO rules, Section 51.319 which states:

13  
14 Specifically, the state commission shall examine whether....difficulties in  
15 obtaining cross-connects in an incumbent LEC’s wire center render entry  
16 uneconomic for requesting telecommunications carriers in the absence of  
17 unbundled access to local circuit switching.

18 **Q. ON PAGE SIXTEEN OF HIS TESTIMONY, MR. GRAY DESCRIBES A**  
19 **NEW FCC TARIFF OFFERING IN WHICH BELLSOUTH WILL OFFER**  
20 **TO PROVIDE CROSS CONNECTS. DOES THIS ACCESS SERVICE**  
21 **TARIFF MEET CLEC NEEDS FOR CROSS CONNECTS FOR USE IN**  
22 **THE MASS MARKET?**

23 A. No. As I discussed in my rebuttal testimony, BellSouth's new FCC tariffed  
24 "Special Access product" will require that the CLECs wishing to have BellSouth  
25 provide a cross connection on BellSouth's frame between a connecting facility  
26 assignment ("CFA") from one CLEC's collocation to a CFA in a second CLEC's  
27 collocation to engage in "line splitting" of a local loop (not otherwise subject to  
28 the FCC's jurisdiction) and to certify that the traffic carried on that CFA to CFA  
29 connection (a frame jumper wire) meet the FCC's de minimus (10%) interstate  
30 rule. This unnecessarily subjects a non-complex Plain Old Telephone Service  
31 ("POTS") mass market line to cumbersome procedures such as certification and  
32 audits, and irrelevant obligations such as the requirement that the line carry at

1 least 10% interstate traffic.<sup>3</sup> While Mr. Gray cites, on page 15 of his testimony, to  
2 the portion of the rules pursuant to section 201 of the Act, he provides no offering  
3 pursuant to section 251 of the Act, which requires no such certification (and is  
4 referenced in the same paragraph of the rule).

5 Further, BellSouth's new "product" cannot be ordered efficiently. UNE  
6 local loops are ordered on a Local Service Request ("LSR"). When such a loop is  
7 to be "split" between two CLECs, BellSouth will require that the connection  
8 necessary to accomplish the "split" be ordered and provisioned out of its FCC  
9 Access Tariff using an Access Service Request ("ASR"). There will be no means  
10 of electronically ordering such an arrangement and the coordination, through  
11 relating the LSR and ASR, that will be required to establish working services  
12 (voice and ADSL) for the customer. Thus the voice CLEC must issue an LSR,  
13 the data CLEC must issue an LSR, and one of the CLECs (depending on the  
14 routing of the loop between the two) must issue an ASR. Manual processing will  
15 be required for all three ordering documents. Such a manual and restrictive  
16 process creates operational and economic barriers to providing Digital Subscriber  
17 Line ("DSL") services to mass market customers.

18 Further, BellSouth has assigned the exorbitant rate of \$350.00 per 2 wire  
19 circuit for this access service.<sup>4</sup> In contrast, BellSouth is only permitted to charge  
20 \$12.30 for cross-connects for local service. (See Ruscilli Exhibit JAR-4)

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<sup>3</sup> It makes no sense for BellSouth to offer cross connects via an access tariff in this mass market proceeding when it has clear responsibilities to provide cross-connects for mass markets under the TRO.

<sup>4</sup> The exorbitant rate and tortured procedures offered for cross connects is belied by the testimony of BellSouth witness Varner, who at page twenty-seven of his direct testimony states, "As previously stated in this testimony, the cross-connect process is a very basic procedure that BellSouth performs frequently on an ongoing basis. There is no appreciably greater difficulty involved in providing co-carrier cross-connect as compared to a cross-connect between BellSouth and a CLEC. A cross-connect is a cross-connect."

1 BellSouth's proposed policies and practices for this service are designed to  
2 complicate and hinder the provision of line splitting service to CLEC customers  
3 and should be rejected by this Commission.

4 **Q. ON PAGES SEVENTEEN THROUGH TWENTY-ONE OF HIS**  
5 **TESTIMONY, MR. GRAY DISCUSSES BELLSOUTH'S POLICY**  
6 **REGARDING THE USE OF MULTIPLE COMPANY CODES AND**  
7 **RECOMMENDS ACTION THAT AT&T TAKE TO ADDRESS THIS**  
8 **ISSUE. PLEASE COMMENT.**

9 A. On page seventeen, beginning at line twenty-four of his testimony, Mr. Gray  
10 succinctly describes the root cause of the problem I described on pages fifty  
11 through fifty-four of my direct testimony: "It is BellSouth's policy not to accept  
12 assignments from CLECs other than the owner of the collocation space. . . ." (Mr.  
13 Gray does not indicate how he thinks the ordering CLEC could have the  
14 assignments to provide them to BellSouth without first having obtained them  
15 from the owning CLEC). Mr. Gray goes on to say that the reason for this policy  
16 is "to protect a CLEC's assets/property," and that "BellSouth's ordering and  
17 provisioning systems contain edits that prevent unauthorized assignment of its  
18 customer's collocation assets." Incredibly, BellSouth takes this position when  
19 AT&T attempts to use its own assets that have differing codes, although it knows  
20 full well that AT&T owns the equipment and is therefore fully "authorized."  
21 Instead, it offers extremely costly and burdensome options to remove protection  
22 AT&T has not requested.

23 **Q. DOES MR. GRAY ACKNOWLEDGE THAT BELLSOUTH'S POLICIES,**  
24 **PRACTICES, AND SYSTEMS EFFECTIVELY PREVENT A CLEC**



1 **FROM BEING ABLE TO ORDER A LOOP FROM BELLSOUTH AND**  
2 **SWITCHING FROM ANOTHER CLEC?**

3 A. Yes, he does, although it follows his initial answer of no. The net of Mr. Gray's  
4 response (on pages 17-20) is that BellSouth will permit a DS1 loop to be ordered  
5 from BellSouth by one CLEC and delivered to the collocation space of another  
6 CLEC, but will *not* permit a DS0 loop be ordered from BellSouth by one CLEC  
7 and delivered to the collocation space of another CLEC. DS0 loops are those  
8 used to serve mass market customers and accordingly they are the subject of this  
9 proceeding. It is unclear why Mr. Gray felt it necessary to include enterprise  
10 loops in his response.

11 **Q. PLEASE SUMMARIZE THE RELEVANCE OF THIS PROBLEM TO**  
12 **THIS PROCEEDING.**

13 A. Any CLEC who wanted to order wholesale switching, should it become available,  
14 to use with analog UNE loops (DS0) for mass market customers would encounter  
15 the problems described in my direct testimony and the testimony of Mr. Gray.  
16 These difficulties are caused solely by BellSouth's claimed policy decision to  
17 provide unwanted protection to CLECs. If BellSouth's interest is truly to protect  
18 CLECs, as well as itself, it could require that a letter of authorization between the  
19 two company entities/CLECs be provided before service is provisioned.  
20 BellSouth does this today for DS1 or higher level of service. It simply refused to  
21 do so for DS0 service.

22 **Testimony of BellSouth Witness Eric Fogle**

1 **Q. ON PAGE FIVE OF HIS TESTIMONY, MR. FOGLE ASSERTS THAT**  
2 **YOU MISCHARACTERIZED LINE SPLITTING AS UNE-P BASED.**  
3 **PLEASE RESPOND.**

4 A. Based on his response, Mr. Fogle does not appear to take issue with my detailed  
5 description of line splitting, only the “UNE-P based” label. Further, as he did not  
6 take issue with the substance of my description, it is unclear why he believes I  
7 was operating under a “misconception”.

8 **Q. DO BELLSOUTH EMPLOYEES ALSO REFER TO “UNE-P LINE**  
9 **SPLITTING?”**

10 A. Yes. For example, in the bracketed section of the second page of BellSouth-  
11 generated meeting notes from the December 11, 2003 BST Line sharing/Line  
12 Splitting Collaborative, BellSouth reports “Readily identified as high importance  
13 were a) migrating *existing UNE-P with line splitting* to UNEL and retain  
14 DSL...” (emphasis added) (See Exhibit MDV-SR5.)

15 **Q. ON PAGE TWELVE OF HIS TESTIMONY, MR. FOGLE REFERENCES**  
16 **THE FACT THAT DEDICATED WIRING DOES NOT MAKE SENSE**  
17 **FOR A 4% TAKE RATE OF DSL. PLEASE RESPOND.**

18 A. AT&T never indicated that it “made sense,” only that installing dedicated CLEC  
19 collocation cage to CLEC collocation cage cabling was the only process available.  
20 Further, it appears that Mr. Fogle does not share the same optimism as other  
21 BellSouth witnesses about CLECs’ ability to attract DSL customers. For example,  
22 in her testimony at Exhibit DJA-05, Dr. Aron indicates that in three years a single  
23 CLEC would obtain a 15% penetration rate of the DSL market, and 25% of the  
24 small business DSL market.

1 **Q. ON PAGE THIRTEEN OF HIS TESTIMONY, MR FOGLE SUGGESTS**  
2 **THAT AT&T DISPATCH ON EVERY DSL ORDER INSTEAD OF**  
3 **WIRING DEDICATED CABLING. PLEASE RESPOND.**

4 A. As I indicated in footnote 22 of my direct testimony, AT&T is aware of the  
5 dispatch option, but views such an arrangement as both economically and  
6 operationally infeasible. Therefore, Mr. Fogle simply offers to exchange one  
7 inefficient process for another. He recommends that AT&T approach BellSouth  
8 to provide technician dispatches at undefined “market” rates. However, in  
9 calculating our “savings” if we do not deploy some of the equipment I described  
10 in my direct testimony, he fails to provide the additional costs of the required  
11 dispatches, which I assume would minimally include the \$350.00 per line charge  
12 for a cross connect.

13 **Q. GIVEN THE OPERATIONAL AND ECONOMIC HURDLES OF LINE**  
14 **SPLITTING USING UNE-L YOU HAVE DESCRIBED IN YOUR**  
15 **TESTIMONY, WHAT DO YOU RECOMMEND?**

16 A. Those hurdles are an additional source of impairment to an already impaired  
17 UNE-L process. As such, a finding that CLECs are impaired without access to  
18 unbundled switching would certainly address the problems of being forced to use  
19 such a process.

20 **Q. FOR ANY CASES WHERE A CLEC CHOOSES TO PROVIDE DSL VIA**  
21 **UNE-L LINE-SPLITTING, HAS BELL SOUTH MET ITS OBLIGATIONS?**

22 A. No. As I described above in my response to Mr. Gray, the TRO at ¶514  
23 specifically determined that “an incumbent LEC’s failure to provide cross

1 connections between the facilities of two competitive LECs on a timely basis can  
2 result in impairment.” BellSouth’s “access” cross-connect is not economically or  
3 operationally feasible. Further, BellSouth’s existing “Co-carrier Cross  
4 Connection Arrangement” is not, in fact, a cross connection offering at all, it is  
5 only BellSouth’s authorization for two CLECs to install a dedicated cable  
6 between the respective collocations in the same central office.

7 **Q. ON PAGE NINETEEN OF HIS TESTIMONY, MR. FOGLE APPEARS TO**  
8 **INDICATE THAT THE CLEC’S “INTEREST” IN UNE-L LINE**  
9 **SPLITTING HAS BEEN LIMITED AND RECENT. IS THAT YOUR**  
10 **UNDERSTANDING?**

11 A. No. A review of BellSouth’s line-splitting collaborative meeting notes indicates  
12 that in the February 27, 2003 meeting, MCI agreed to provide information to the  
13 group about UNE-L or loop-splitting. Further, it is clear from the attached July  
14 2003 e-mails from Denise Berger of AT&T to various BellSouth employees that  
15 discussions on this topic occurred in the May and June 2003 collaborative  
16 meetings. Finally, the July 30, 2003 e-mail from Denise Berger asked a series of  
17 questions attempting to gain information on this topic. (See Exhibit MDV-SR6.)  
18 Ms. Berger received no response from Bellsouth to her July request until  
19 December 19, 2003 in which her questions were still not answered, but she was  
20 referred to an upcoming tariff. (See Exhibit MDV-SR7.)

21 **Q. YOU MENTIONED THAT AMONG OTHER OBSTACLES, THE USE OF**  
22 **AN ASR IS REQUIRED IN BELLSOUTH’S OFFERING. DOESN’T**  
23 **THAT DIFFER FROM MR. FOGLE’S TESTIMONY ON PAGE**  
24 **SIXTEEN?**

1 A. Yes. Mr. Fogle says ASRs are not needed for any *currently* available  
2 components needed for Line Splitting. However, the process BellSouth is  
3 offering to obtain cross-connects for UNE-L line splitting does require ASRs, and  
4 the effective date of the tariff is January 9, 2004.

5 **Q. ON PAGE TWENTY-TWO OF HIS TESTIMONY, MR. FOGLE**  
6 **INDICATED THAT THE CLECS HAD NOT FORMALLY REQUESTED**  
7 **BELLSOUTH TO BEGIN WORK ON ESTABLISHING PROCEDURES,**  
8 **ETC. FOR HOT CUT MIGRATIONS TO UNE-L. PLEASE RESPOND.**

9 A. While I am unsure what sort of “formal” request BellSouth requires, I assume Mr.  
10 Fogle is not insinuating that CLECs have not repeatedly communicated with  
11 BellSouth on the need for a viable means of loop splitting and attempted to move  
12 forward to implementation, as it is absolutely clear that is not the case. For  
13 example, as I described earlier in my testimony, AT&T attempted in writing to  
14 obtain more information from BellSouth in July 2003 by posing the following  
15 questions:

- 16 1. How does BellSouth plan to solicit and incorporate CLEC input into  
17 the development of this capability and the subsequent offering? In  
18 which CLEC forum will this be discussed?
- 19 2. What is the timeframe for delivery of this service?
- 20 3. How does BellSouth plan to provide procedures and business rules for  
21 ordering and provisioning?
- 22 4. How does BellSouth plan to provide CLECs with information around  
23 cost/price?
- 24 5. Does BellSouth plan to provide a mechanized ordering option for  
25 CLECs? Will this interface require systems upgrades or systems work  
26 by CLECs? When does BellSouth plan to provide such information?
- 27 6. Will there be a manual ordering option for CLECs?
- 28 7. Will CLECs be able to order this functionality via a single LSR?

1                   8. Will BellSouth require CLECs to install any special or additional  
2                   collocation equipment?

3                   9. If special equipment is required, will BellSouth offer the access to  
4                   such equipment as an unbundled network element?

5                   See Exhibit MDV-SR6. To date, BellSouth has not answered our questions nor  
6                   referred us to the appropriate forum to place a “formal” request. The Commission  
7                   should require that BellSouth answer these legitimate questions regarding a local  
8                   service they are obligated to provide to avoid CLEC impairment, and to put in  
9                   place an efficient electronic Operations Support System upgrades to allow the  
10                  ordering and provisioning of this local service using the Local Service Request  
11                  (LSR) process.

12   **Q.    DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

13   **A.    Yes, it does.**

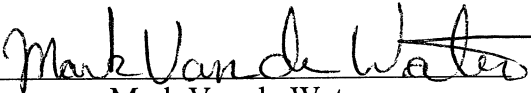
AFFIDAVIT

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 MARK DAVID VAN DE WATER, who, being by me first duly sworn deposed and said that:

He 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, his testimony would be set forth in his Surrebuttal Testimony consisting of 21 pages and 7 exhibit(s).

  
Mark Van de Water

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 6<sup>th</sup> DAY OF APRIL, 2004

Olmachukwe Notary Public

Notary Public, Gwinnett County, Georgia  
My Commission Expires Jan .21, 2005