

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of:)) REVIEW OF FEDERAL COMMUNICATIONS) COMMISSION'S TRIENNIAL REVIEW ORDER) REGARDING UNBUNDLING REQUIREMENTS) FOR INDIVIDUAL NETWORK ELEMENTS) _____)	CASE NO. 2003-00379 Filed: March 31, 2004
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**REBUTTAL TESTIMONY AND EXHIBITS OF
JOSEPH GILLAN
ON BEHALF OF COMPSOUTH
** PUBLIC VERSION****

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I. Introduction

Q. Please state your name and the party you are representing.

A. My name is Joseph Gillan. I filed direct testimony on behalf of CompSouth in this proceeding.

Q. What is the purpose of your rebuttal testimony?

A. The principal purpose of my rebuttal testimony is to address the claim by BellSouth that there is sufficient mass market local competition by switch-based

1 CLECs in Kentucky to justify finding that the FCC-described “triggers” are
2 satisfied. Among other deficiencies, BellSouth counts enterprise switches as mass
3 market switches in violation of the TRO,¹ ignores whether carriers are *actively*
4 *providing* mass market services today, and relies upon trivial levels of competitive
5 activity that are far smaller than the FCC already *rejected* as evidence of non-
6 impairment.

7
8 The Commission’s evaluation of potential trigger candidates must not be taken
9 lightly. As the FCC explained, the purpose of its trigger analysis is to consider
10 whether “actual marketplace evidence shows whether new entrants, as a practical
11 matter, have surmounted barriers to entry in the relevant market,”² so that “...it is
12 feasible to provide service without relying on the incumbent LEC.”³ Or, more
13 simply: “If the triggers are satisfied, the states need not undertake any further
14 inquiry, because no impairment should exist in that market.”⁴

15
16 The FCC provided the states with the guidance and latitude to apply the triggers
17 in a manner true to their purpose. A faithful application of the triggers should
18 produce outcomes consistent with the FCC’s own findings – that is, where a state

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98 and 98-147, Released August 21, 2003 (“Triennial Review Order” or “TRO”).

² TRO ¶ 99.

³ TRO ¶ 93.

⁴ TRO ¶ 494, emphasis added.

1 commission observes facts that are comparable to data that the FCC used to find
2 impairment, then that *same* set of facts cannot be abused in a “trigger analysis” to
3 reverse that finding. The FCC was clear that the states were to apply judgment in
4 the same manner as the FCC: “To ensure that the states implement their delegated
5 authority in the same carefully targeted manner as our federal determinations, we
6 set forth in this Order federal guidelines to be applied by the states in the
7 execution of their authority pursuant to federal law.”⁵ Arriving at consistent
8 decisions when presented with consistent facts is an important feature of the TRO.

9
10 The level and form of competitive activity cited by BellSouth in this proceeding –
11 even if their data is accepted as accurate -- is no different than that which the FCC
12 rejected in the TRO as being adequate proof of non-impairment. Even if all of the
13 UNE loops provided by BellSouth are assumed to be mass market – and, as my
14 testimony explains below, UNE-L carriers are actually focused on offering
15 enterprise and not mass market services – the competitive share of UNE-L is less
16 than 0.3%.⁶ The FCC was well aware that *some* analog loops were being
17 purchased by CLECs, however, yet it *repeatedly* rejected claims that trivial levels
18 of UNE-L activity (including levels larger than BellSouth shows here) justified a
19 finding of non-impairment.⁷

⁵ TRO ¶ 189.

⁶ Source: BellSouth Form 477 Local Competition Filings with the FCC.

⁷ As I discuss later in this testimony, we have not yet located in BellSouth’s data responses the summary workpaper that Ms. Tipton provided in other states. Because this data is necessary

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As I explain below, the facts show that the mass market switching triggers have not been satisfied in Kentucky. BellSouth's claims that it should be excused from its federal obligation under section 251 of the Act to offer unbundled local switching should be denied.⁸

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Q. In addition to responding to BellSouth's claims regarding the self-provider switch trigger candidates, does your rebuttal testimony address any other issues?

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A. Yes. In addition to evaluating the trigger assertions by BellSouth, the rebuttal testimony also addresses:

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* The appropriate "market area" that the Commission should use for the evaluation of impairment, and

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* The appropriate DS0 to DS1 crossover point that sets the "regulatory" upper limit of the mass market.

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to evaluate BellSouth's trigger claims, we must reserve the opportunity to file supplemental testimony once this issue is resolved.

⁸ As explained in my direct testimony, BellSouth remains obligated to offer unbundled local switching under section 271's competitive checklist.

1 As the testimony below explains, the Commission should reject BellSouth’s
2 proposal to use “component economic areas” (CEAs) to define the relevant
3 geographic area of the mass market. These areas have nothing to do with
4 telecommunications – indeed, prior to BellSouth’s testimony in this proceeding,
5 the Commission would have been hard pressed to find anyone in the industry that
6 was even familiar with the term. The Commission should instead adopt a larger
7 area that more closely reflects the broad nature of the mass market, such as the
8 LATA boundaries that have defined Kentucky’s “exchange markets” for the past
9 two decades.

10
11 With respect to the “DS0-to-DS1” crossover, I recommend that the crossover in
12 the testimony of Mark Argenbright should be adopted. The calculation provided
13 by Mr. Argenbright is consistent with the approach described in my direct
14 testimony and reasonably estimates the boundary line between the “enterprise”
15 and “mass market” as required by federal rules, albeit an estimate that is (as
16 explained in my direct testimony) likely to be conservative and potentially too
17 low.⁹ The specific calculation is based on an analysis performed by Sprint in
18 Florida and, as a result, is implicitly endorsed by an incumbent. The Commission
19 should not – indeed, it cannot -- adopt BellSouth’s proposed “3-line cutoff,”

⁹ Given all this issues that need to be addressed in this proceeding, devoting additional time and resources to further perfect this calculation is not warranted at this time.

1 which is not supported by any evidence in this proceeding and, therefore, violates
2 the requirements of the TRO.¹⁰

3
4 **Q. Before turning to these specific issues, do you have a preliminary comment?**

5
6 A. Yes. If there is a single exhibit that captures the core debate in this proceeding, it
7 is Exhibit JPG-4 (attached). Exhibit JPG-4 compares the competitive lines added
8 by UNE-P and UNE-L, by wire center, throughout the state of Kentucky over the
9 past six months.¹¹ This exhibit best compares the level and geographic reach of
10 the local competition currently underway in Kentucky through the two relevant
11 entry strategies, UNE-L (loops *without* switching) and UNE-P (loops *with*
12 switching). The difference between UNE-P and UNE-L could not be more
13 striking – and it is this difference that is made possible by access to unbundled
14 local switching. As JPG-4 shows, UNE-P is actively bringing local choice to
15 every BellSouth exchange in the state, no matter how large or small. In contrast,
16 UNE-L is simply incapable of achieving anything on this scale.

17
18 In its simplest form, BellSouth is asking the Commission to conclude, based on
19 the activity of UNE-L (the bottom chart on JPG-4), that UNE-P (the top chart) is
20 not needed in Kentucky. Exhibit JPG-4 graphically illustrates the absurdity of

¹⁰ The TRO makes clear (¶ 497, emphasis added) that “... a state must determine the appropriate cut-off for multiline DSO customers as part of its more granular review.”

¹¹ Source: BellSouth Response to CompSouth No. 3 and AT&T No. 56.

1 that position (although it is equally clear from the exhibit why BellSouth would
 2 want the Commission to reach that conclusion – eliminate UNE-P and
 3 BellSouth’s local monopoly is restored). Using the nomenclature of the TRO, the
 4 difference between the upper and lower graphs provides a vivid illustration of the
 5 impairment that constrains UNE-L that is overcome through access to unbundled
 6 local switching (thereby making UNE-P possible).

7
 8 **Q. Is UNE-P critical to both mass market residential and mass market business**
 9 **customers?**

10
 11 A. Yes. Table 1 analyzes the same data concerning the most recent competitive
 12 activity to determine the importance of unbundled local switching to residential
 13 and business customers in each of Kentucky’s LATAs.

**Table 1: Current Competitive Activity in BellSouth LATAs
 (Most Recent Six Months – April to Sept. 2003)**

BellSouth LATA	Share Gain by Method		UNE-P Share by Customer	
	UNE-P	UNE-L	Residential	Business
LOUISVILLE - KY	7.4%	0.0%	9.6%	4.1%
NASHVILLE - TN	9.5%	0.0%	12.0%	5.1%
OWENSBORO - KY	8.6%	0.0%	11.3%	3.5%
Statewide	7.6%	0.0%	9.8%	4.1%

14
 15 As Table 1 demonstrates, competitive activity from UNE-P is roughly 427 times
 16 that of UNE-L statewide, and even more in a number of LATAs. UNE-P brings
 17 competition to more places and more extensively than any alternative. Moreover,

1 UNE-P is just as important to competition for the mass market business customer
 2 as it is for the mass market residential customer.¹²

3
 4 There are a number of complex arguments in this case, but this much should be
 5 clear. Congress fully expected local competition would rely upon access to
 6 unbundled local switching, specifically listing local switching in section 271’s
 7 competitive checklist and twice referencing it in the Joint Explanatory Statement
 8 that accompanied the Act:

9
 10 The term “network element” was included to describe the facilities,
 11 such as local loops, equipment, such as switching, and the features,
 12 functions, and capabilities that a local exchange carrier must
 13 provide for certain purposes under other sections of the conference
 14 agreement.

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 18 Some facilities and capabilities (e.g., central office switching) will
 19 likely need to be obtained from the incumbent local exchange
 20 carrier as network elements pursuant to new section 251.¹³

21
 22
 23 Congress’ vision is beginning to emerge in Kentucky (and other states in the
 24 nation) precisely as intended – for the average user, in the average community,
 25 across the nation. I will explain in more detail below exactly why BellSouth’s

¹² I remind the Commission that the “mass market” is defined by the access method – analog or digital – and not the “customer label” used in retail tariffs. Table 1 underscores the fact that UNE-P is a critical entry strategy across the *entire* mass market, including the segment of mass market customers represented by small businesses.

¹³ Joint Explanatory Statement of the Committee of Conference, Report No. 104-458, 104th Congress, 2nd Session, emphasis added.

1 trigger claims are insufficient to withdraw access to local switching, as well as
2 how the Commission should structure its analysis of the mass market (as to
3 geography and customer size) to comply with the TRO. What should not be lost
4 in the details of these analyses, however, is the fundamental reality that UNE-P is
5 bringing competitive choice to customers that would fall by the wayside if it were
6 not available.

7
8 **II. Market Definition: Geographic Area and the DS0/1 Cutover**

9
10 **Q. Have you reviewed the proposed geographic areas suggested by BellSouth for**
11 **the Commission to use in its review of impairment?**

12
13 A. Yes. BellSouth is recommending that the Commission rely on the Bureau of
14 Economic Analysis' "component economic areas" (CEA). BellSouth further
15 recommends that the geographic areas be subdivided according to UNE rate
16 zones.

17
18 **Q. Do you support either of these approaches?**

19
20 A. No. First, as I noted in my direct testimony, one of the defining characteristics of
21 the mass market is that mass market customers reside *throughout* Kentucky.
22 Artificially limiting an analysis to only those customers located within

1 “component economic areas” having nothing to do with competitive activity
2 ignores the primary defining characteristic of the mass market as a broadly
3 dispersed customer set.

4
5 **Q. Should the Commission adopt “component economic areas” as suggested by**
6 **BellSouth?**

7
8 A. No. As a threshold observation, after more than 20 years of telecommunications
9 experience dealing with a wide range of competitive issues, I had never come
10 across any mention of the Bureau of Economic Analysis’ (“BEA’s”) “component
11 economic area” until BellSouth’s testimony was filed in these proceedings.
12 Without becoming too caught up in common sense, just how relevant can the
13 CEA be to market entry and impairment if it had never surfaced in any industry
14 discussion before now?

15
16 Second, the BEA’s *component* economic areas are exactly that – a “middle step”
17 in the process of defining economic areas that “serve as centers of economic
18 activity.” Not only do these areas have nothing to do with telecommunications,
19 they are not even the final product in the BEA’s effort to identify economic areas
20 that include, so far as possible, “the place of work and the place of residence of its
21 labor force.”¹⁴ Although the BEA begins with “component areas,” these are

¹⁴ For completeness, I have attached as Exhibit JPG-5, an article published in the Survey of Current Business that describes the development of “economic areas,” including the intermediate

1 intended to be building blocks that aggregate into economic areas that are
2 “economically large enough to be part of the BEA’s local area economic
3 projections.”

4
5 This last observation highlights the final problem with the “CEA approach.” The
6 BEA itself has decided that CEAs are not sufficiently large even for *its* purpose of
7 developing projections of economic activity. In effect, BellSouth is claiming that
8 areas that are too *small* for economic modeling are somehow sufficiently *large*
9 that an entrant serving that area alone would be able to take advantage of
10 available scale and scope economies.

11
12 **Q. Does it make sense for the Commission to use UNE -- which is to say loop --**
13 **rate zones in evaluating impairments associated with unbundled local**
14 **switching?**

15
16 A. Generally, no. As the question indicates, UNE rate zones create different rates for
17 the loop element. Although there are modest price differences between loops
18 used individually and loops obtained as part of UNE-P, the effect of deaveraged
19 loop rates should have little effect on the *relative* ability of a CLEC to use (or not
20 use) its own switching to compete. Whether a CLEC is using UNE-P or UNE-L,
21 the constant is the need to purchase the unbundled loop. In other words, while

step of the “component economic area.”

1 UNE rate zones may affect competition overall, the issue here concerns the
2 relative operational and other barriers to competition for mass market customers
3 that are mitigated by access to unbundled local switching. The consideration of
4 UNE loop rate zones thus has no place in the analysis of impairment as it relates
5 to the availability of unbundled local switching.

6
7 **Q. Do you have an overall comment about BellSouth’s proposed “markets?”**

8
9 A. Yes. Mass market competition is interdependent – that is, competition in rural
10 wire centers is possible because of competition in suburban wire centers; and
11 competition in suburban wire centers is possible because of competition in urban
12 centers. It is simply misleading to “force” granularity for the sake of granularity.
13 The fact is that the mass market is not discrete, and it requires – as its very name
14 suggests – *mass* in order for a competitor to succeed. BellSouth’s proposal would
15 subdivide its territory into 20 discrete areas, as though carriers could individually
16 enter as few as one and compete for residential and small business customers.
17 Notably, several CEAs are smaller than many of BellSouth’s wire centers, and
18 BellSouth claims its wire centers are too small to qualify as “markets” under the
19 TRO. Table 2 shows the number of retail lines located in each of BellSouth’s
20 claimed “mass markets” (i.e., each of the 20 discrete areas that it claims should be
21 used for impairment analysis).

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**Table 2: Access Lines in BellSouth’s Proposed Markets
 (Markets Where BellSouth Claims Non-Impairment in Bold)**

Component Economic Area	Zone 1	Zone 2	Zone 3
Bowling Green KY		42,340	5,250
Cincinnati OH-KY-IN	3,898		
Clarksville-Hopkinsville TN-KY		28,738	14,374
Evansville-Henderson IN-KY-IL		33,623	38,402
Lexington KY-TN-VA-WV	13,167	123,709	136,455
Louisville KY-IN	279,925	119,010	45,676
Memphis TN-AR-MS-KY			7,487
Nashville TN-KY			13,374
Owensboro KY	35,401		20,521
Paducah KY-IL	18,834	30,462	18,511

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Q. Do you believe that CLECs would approach the mass market in the highly discrete manner claimed by BellSouth?

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A. No. The mass market is located throughout the state and the issue (as it relates to the “triggers”) is to determine whether there is sufficient competition *across* that market from alternatives to determine that unbundled access to local switching is not necessary.¹⁵

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Although BellSouth’s “market definition” approach is needlessly complex and gratuitously granular, it is essentially irrelevant as well, because even after splitting the state into 20 discrete pieces, BellSouth claims that the triggers are met in so many places it hardly matters. BellSouth combines its preferred market

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¹⁵ I remind the Commission, but do not repeat here, my general caveats concerning BellSouth’s continuing obligations under section 271.

1 definition with a flawed interpretation of the FCC’s trigger criteria that would
2 have the effect of ending competition statewide. Indeed, BellSouth claims that
3 the triggers are met in “markets” containing roughly 40% of its access lines.
4 Adding those “markets” where BellSouth claims that CLECs are unimpaired
5 based on its “potential deployment” analysis would foreclose UNE-P based
6 competition in roughly 70% of the state.

7
8 **Q. Would BellSouth’s recommendations essentially close Kentucky to local**
9 **competition for mass market customers?**

10
11 A. Yes. As Table 1 shows, UNE-P produces competition at a completely different
12 level and scope than UNE-L. UNE-P brings competition to the heart of the mass
13 market (the residential customer), it brings needed competition to the forgotten
14 mass market customer (the small business), and it brings competition to
15 essentially every BellSouth wire center in the state. As I explained earlier, Exhibit
16 JPG-4 contrasts the share gain of UNE-P to that of UNE-L for each of
17 BellSouth’s wire centers during the most recent six months (April to September,
18 2003). Exhibit JPG-4 demonstrates that the competitive benefits achieved by
19 UNE-P are both broader and more substantial than that possible without access to
20 unbundled local switching.

21
22 **Q. What geographic areas do you recommend?**

1

2 A. I recommend that the Commission use LATAs to evaluate impairment. As I
3 noted repeatedly above, the mass market is spread throughout BellSouth's service
4 territory in Kentucky and *any* lesser area could potentially camouflage the
5 importance of this fact. However, the evidence (see Table 1) suggests that each
6 LATA is sufficiently comparable to the state overall that the Commission's
7 analysis would not be distorted by using these pre-existing areas in its analysis.
8 Other advantages are that LATA boundaries conform to wire center boundaries
9 (which are the fundamental building block of any analysis), the boundaries are
10 well understood (at least within the industry), and the boundaries were once
11 drawn to approximate the "local market" (albeit 20 years ago).

12

13 **Q. What DS0/DS1 crossover should the Commission use to define the "upper**
14 **limit" of the mass market?**

15

16 A. The TRA should adopt the crossover recommended in the testimony of Mark
17 Argenbright. Mr. Argenbright has applied a formula sponsored by Sprint in the
18 Florida proceeding to Kentucky-specific data. The Sprint/Argenbright calculation
19 is complies with the criteria outlined in my direct testimony and is a conservative
20 estimate (i.e., it produces a cut-off that is too low) that fully complies with the

1 TRO's direction that state commissions establish a fact-based cut-off as part of
2 their granular review.¹⁶

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4 **Q. Do you have any comment on BellSouth's suggestion that the "default" 3-line**
5 **limit should apply?**

6

7 A. Yes. BellSouth's proposed "3-line" value violates the TRO's specific direction
8 that the cut-off should be established at the point where "it is economically
9 feasible for a competitive carrier to provide voice service with its own switch
10 using a DS1 or above loop."¹⁷ BellSouth has offered no analysis that
11 demonstrates that 3-line voice customer could be economically served with DS-1
12 loop. Rather, BellSouth claims that it has "accepted the FCC's default" of 3-
13 lines.¹⁸

14

15 **Q. Is there a default 3-line invitation for BellSouth to "accept?"**

16

17 A. No, there is no "default" 3-line cap on the mass market. The FCC explicitly *did*
18 *not* (except for an interim period during which State Commissions address
19 impairment issues) preserve the "three line" (sometimes called the 4-line) rule,
20 which was a point of controversy with Commissioner Abernathy:

¹⁶ TRO ¶ 497.

¹⁷ TRO ¶421, n.1296.

¹⁸ Blake Direct, page 8.

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Commissioner Abernathy claims that our decision not to preserve
the previous Commission’s four-line carve-out represents a
“potentially massive expansion” of unbundled switching.
Commissioner Abernathy Statement at 8 n.27. This claim makes
no sense. If a state finds that the appropriate cut-off for
distinguishing enterprise from mass market customers in density
zone 1 of the top 50 MSAs is four lines, there will be no more
unbundled switching available than there was under the previous
carve-out.¹⁹

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Moreover, the prior limitation applied only in *selected* end-offices (i.e., those
Zone 1 end offices in the top 50 MSAs),²⁰ with *no limit* in any other area. Such a
structure is incompatible with a crossover point developed based on evidence
related to the relative costs of serving customers using analog loops or DS-1 loops
and the necessary customer premise equipment and other costs associated with
provisioning the DS-1 (even in a simple calculation).

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There is no basis to support the claim that 3 lines is a reasonable measure of when
a customer should be served by a DS-1 (which provides capacity for 24 lines and
requires costly equipment to convert a customer’s voice traffic into digital format
for multiplexing onto a loop that is significantly more expensive than a simple
phone line). BellSouth’s “proposal” to accept a non-existent invitation from the
FCC must be rejected.

¹⁹ TRO ¶ 497, n. 1546, emphasis added.

²⁰ It should be noted that the “Zone 1” offices are those used by the FCC for special access pricing flexibility, and are not the same as the “Zone 1” used for deaveraged UNE rates.

1 **III. Evaluating the Alleged Mass Market Switching Trigger Candidates**

2
3 **Q. Have you completed your analysis of BellSouth's claims regarding the self-**
4 **provisioning switch triggers?**

5
6 A. No. An important element of my review of BellSouth's claimed self-provisioning
7 switch triggers (at least in other states) is a worksheet that summarizes the
8 information relied upon by BellSouth witness Tipton (by carrier, by wire center)
9 in developing her recommendations. Unfortunately, it does not appear that
10 BellSouth has provided that worksheet in response to the same discovery
11 questions in Kentucky as it has in other states.²¹ Importantly, Ms. Tipton's
12 workpapers cannot be evaluated without access to her summary worksheet.
13 Consequently, the following review of BellSouth's claims is preliminary until the
14 summary worksheet is located/provided and I have had the opportunity to review
15 Ms. Tipton's analysis in detail.

16
17 **Q. Please summarize BellSouth's basic claim that the FCC's triggers have been**
18 **satisfied.**

19
20 A. The essence of BellSouth's testimony is that trigger analysis can be conducted
21 blindfolded, simply by counting to three:

²¹ My understanding is that the Tipton summary has been provided in response to AT&T Data Requests 113, 114 or 115 in other states.

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The self provisioning trigger is straightforward: the Commission must find “no impairment” for unbundled switching when three or more unaffiliated competing carriers are serving mass market customers in a particular market²²

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BellSouth has reduced the trigger analysis from an examination of actual marketplace conditions to an arithmetic oversimplification that ignores the substantial guidance that the FCC has provided as to *how* the trigger analysis is to be conducted. It is true that the trigger analysis is different than the potential deployment analysis in that it requires that the Kentucky Commission focus on an objective standard (three self-providers) and data regarding the deployment of alternative switching that is actually serving the mass market. That does not mean, however, that the Kentucky Commission is not expected to interpret the data to make sure that each proffered trigger candidate is a “true alternative” that is “...actively providing voice service to mass market customers in the market.”²³

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Q. Has the FCC indicated that it expects state commissions to conduct their impairment analysis applying the same analysis as the FCC conducted?

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A. Yes. As I indicated in my introduction, the FCC was clear that it expected states to apply judgment in the same manner as the FCC: “To ensure that the states

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²² Tipton Direct, page 5.

²³ TRO ¶ 499.

1 implement their delegated authority in the same carefully targeted manner as our
2 federal determinations, we set forth in this Order federal guidelines to be applied
3 by the states in the execution of their authority pursuant to federal law.”²⁴
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5 There is nothing in the TRO that suggests the FCC expected the states to apply
6 the trigger analysis in a manner that ignored its guidance, with the result being
7 states reversing the FCC’s national impairment finding by reviewing data no
8 different than the FCC considered. Rather, the FCC expected consistency
9 between its analysis and that of the states, with similar facts producing:

10
11 For example, we [the FCC] note that CMRS does not yet equal
12 traditional incumbent LEC services in its quality, its ability to
13 handle data traffic, its ubiquity, and its ability to provide
14 broadband services to the mass market. Thus, just as CMRS
15 deployment does not persuade us to reject our nationwide finding
16 of impairment, at this time, we do not expect state commissions to
17 consider CMRS providers in their application of the triggers.²⁵
18

19 As noted above, where conditions and/or circumstances are comparable to those
20 reviewed by the FCC, the TRO makes clear that the FCC expects the states to
21 reach the same findings as the TRO.
22

²⁴ TRO ¶ 189.

²⁵ TRO ¶ 499, n. 1549, footnotes omitted, emphasis added.

1 **Q. Is BellSouth’s claim that the triggers are satisfied in Kentucky consistent**
2 **with this principle (i.e., that consistent facts should produce consistent**
3 **findings)?**

4
5 A. No. Consider the following. According to BellSouth’s June 2003 Local
6 Competition report to the FCC, the total market share of UNE-L in its Kentucky
7 exchanges is only 0.3%. This includes loops being used to serve enterprise
8 customers, as well as loops sold to companies not even claimed by BellSouth as
9 triggers. Even if every UNE-L in Kentucky is assumed to be sold to the alleged
10 trigger providers -- and further assuming that each UNE-L is being used to
11 provide mass market services -- the share is below levels *already* rejected by the
12 FCC as demonstrating non-impairment.

13
14 **Q. Has the FCC repeatedly reject market activity on the level claimed by**
15 **BellSouth here as proving non-impairment?**

16
17 A. Yes. For example, consider the following claims of low-level competitive
18 activity that all ended with the FCC national finding of impairment for mass
19 market switching:

20
21 ...the record indicates that competitive LECs have self-deployed
22 few local circuit switches to serve the mass market. The BOCs
23 claim that, as of year-end 2001, approximately three million
24 residential lines were served via competitive LEC switches.
25 Others argue that this figure is significantly inflated. Even

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accepting that figure, however, it represents only a small percentage of the residential voice market. It amounts to less than three percent of the 112 million residential voice lines served by reporting incumbent LECs.²⁶

We determine that, although the existence of intermodal switching is a factor to consider in establishing our unbundling requirements, current evidence of deployment does not presently warrant a finding of no impairment with regard to local circuit switching. In particular, we determine that the limited use of intermodal circuit switching alternatives for the mass market is insufficient for us to make a finding of no impairment in this market, especially since these intermodal alternatives are not generally available to new competitors.²⁷

The Commission’s *Local Competition Report* shows that only about 2.6 million homes subscribe to cable telephony on a nationwide basis, even though there are approximately 103.4 million households in the United States [2.6 percent]. Moreover, the record indicates that circuit-switched cable telephony is only available to about 9.6 percent of the total households in the nation ... it is difficult to predict at what point cable telephony will be deployed on a more widespread and ubiquitous basis.²⁸

Current estimates are that only 1.7% of U.S. households rely on other technologies to replace their traditional wireline voice service.²⁹

²⁶ TRO ¶ 438, footnotes omitted, emphasis added.
²⁷ TRO ¶ 443, footnotes omitted, emphasis added.
²⁸ TRO ¶ 444, footnotes omitted, emphasis added.
²⁹ TRO ¶ 443, n. 1356, emphasis added.

1 We also find that, despite evidence demonstrating that narrowband
2 local services are widely available through CMRS providers,
3 wireless is not yet a suitable substitute for local circuit switching.
4 In particular, only about three to five percent of CMRS subscribers
5 use their service as a replacement for primary fixed voice wireline
6 service, which indicates that wireless switches do not yet act
7 broadly as an intermodal replacement for traditional wireline
8 circuit switches.³⁰
9

10 The ILECs have already tried to use low levels of competitive activity as
11 marketplace evidence of non-impairment and the FCC's rejected those attempts
12 with a national finding of impairment. Obviously, it would be inconsistent for the
13 FCC to delegate to the states a trigger analysis that, when applied to data showing
14 the same *de minimus* levels of competitive activity reviewed and rejected by the
15 FCC, produced findings that reversed the FCC's national finding of impairment.

16
17 **Q. Have you also reviewed each of the individual trigger candidate against the**
18 **qualifying criteria discussed in the TRO?**

19
20 A. Yes (to the extent that I am able to without complete access to Ms. Tipton's
21 workpapers). The full criteria are addressed in my direct testimony in this
22 proceeding. The reviewing criteria that I recommend are drawn directly from the
23 TRO and parallel, wherever possible, comparable findings and analysis of the
24 FCC. This is precisely the type of analysis that the FCC intended, with the states
25 evaluating local conditions by applying the guidance found in the TRO. The

³⁰ TRO ¶ 445, footnotes omitted, emphasis added.

1 analysis here focuses on the “self-provisioning switching” trigger.³¹ In short
2 form, a self-provisioning trigger candidate must satisfy each of the following:

- 3
4 1. The self-provisioning trigger candidate’s switches must not
5 be “enterprise” switches.
6
- 7 2. The self-provisioning trigger candidate must be actively
8 providing voice service to mass market customers in the
9 designated market, including residential customers, and
10 must be likely to continue to do so.
11
- 12 3. The self-provisioning trigger candidate should be serving
13 mass market customers throughout the market area.
14
- 15 4. The self-provisioning trigger candidate should be relying
16 on ILEC loops or, at the very least, be providing a service
17 that is comparable to the ILEC service in cost, quality, and
18 maturity.
19
- 20 5. The self-provisioning trigger candidate may not be
21 affiliated with the ILEC or other self-provisioning trigger
22 candidates.
23
- 24 6. The existence of the self-provisioning trigger candidate
25 should be evidence of sustainable and broad-scale mass
26 market competitive alternatives in the designated market.
27

28 **Q. Does your testimony evaluate each trigger candidate against each of these**
29 **criteria?**
30

³¹ BellSouth does not claim that there are wholesale carriers in Kentucky (Blake, page 9).

1 A. No. First, it is important to understand that a potential trigger candidate must
2 satisfy each and every criterion in order to be legitimately considered as one-of-
3 three providers sufficient to support a finding that impairment has been overcome
4 in the specific geographic area. Consequently, if a trigger candidate fails any
5 single criterion, it may not be counted as a trigger and further analysis is not
6 necessary. In addition, my review is ongoing as additional information becomes
7 available. Finally, some of the criteria outlined in the TRO – in particular, the
8 “key consideration” as to “whether the providers are currently offering and able to
9 provide service, and are likely to continue to do so”³² – may require a detailed
10 examination of a particular candidate that would be unnecessary if the candidate
11 is disqualified for other reasons.

12

13 **Q. BellSouth maintains that the Kentucky Commission is precluded from**
14 **evaluating “any other factors, such as the financial stability or well-being of**
15 **the competitive switch providers” in conducting a trigger analysis.³³ Do you**
16 **agree?**

17

18 A. Obviously I agree that the sentence does appear in the TRO. Where I part
19 company with BellSouth is with their interpretation that this *single* sentence wipes
20 away every other statement in the TRO that explains how the trigger analysis is to

³² TRO ¶ 500, emphasis added.

³³ Tipton Direct, page 5, citing TRO ¶ 500.

1 be conducted. For example, consider the paragraph that the sentence introduces
2 in its entirety:

3
4 For the purposes of these triggers, we find that states shall not
5 evaluate any other factors, such as the financial stability or well-
6 being of the competitive switching providers. Competing carriers
7 in Chapter 11 bankruptcy protection are often still providing
8 service. Regardless of their financial status, the physical assets
9 remain viable and may be bought by someone else and remain in
10 service. We note that requiring states to determine the financial
11 ability of competitive wholesale providers to provide service in the
12 future could hamper economic recovery efforts of companies in
13 financial distress. The key consideration to be examined by state
14 commissions is whether the providers are currently offering and
15 able to provide service, and are likely to continue to do so.³⁴

16
17 A couple of points are necessary to highlight here. First, when the passage
18 indicates that states should not consider “other factors,” that directive does not
19 suggest that the states should ignore the factors identified in the TRO. The FCC
20 specifically directed that the states are to approach the impairment analysis
21 considering the same types of factors that it applied (“to ensure that the states
22 implement their delegated authority in the same carefully targeted manner as our
23 federal determinations”),³⁵ which necessarily requires that the states consider the
24 same factors that the FCC applied in reaching its findings. Paragraph 500 cannot
25 be read to require that the states ignore factors relied upon by the FCC.

26

³⁴ TRO ¶ 500, footnotes omitted.

³⁵ TRO ¶ 189.

1 Second, within the very same paragraph that BellSouth cites favorably, the FCC
2 directs the states that “the key consideration” in a trigger review is the ability of
3 the provider to continue to offer service. The only way that this paragraph is
4 internally consistent is if it explains that a *past* bankruptcy is not to be considered,
5 but that any factor that would likely affect the *future* ability of the CLEC to
6 provide service must be a critical part of the analysis. Moreover, as noted above,
7 there is nothing in the passage that suggests that the FCC was directing the states
8 to ignore all the other guidance it provided, including requirements that enterprise
9 switches not be counted, that CLECs relying on their own loops should be
10 afforded less weight, and other factors and criteria described in my direct
11 testimony.³⁶

12
13 **Q. Turning to specific trigger candidates, which CLECs does BellSouth claim**
14 **are self-providers of local switching to provide mass market services?**

15
16 A. The following table summarizes the trigger candidates identified by BellSouth:

Table 3: Trigger Candidates

AT&T
ComCast
Network Telephone
Xspedius
SBC Telecom

³⁶ TRO ¶ 508 (“switches serving the enterprise market do not qualify for the triggers”), and footnote 1560, emphasis added, (“when one or more of the three competitive providers is also self-deploying its own local loops, this evidence may *bear less heavily* on the ability to use a self-deployed switch as a means of accessing the incumbent’s loops.”)

1

2 **Q. Have you evaluated the named mass market switching trigger candidates to**
3 **determine whether they satisfy the criteria in the TRO?**

4

5 A. Yes, to the extent that I am able in the absence of Ms. Tipton’s summary
6 information. In an effort to determine whether the named trigger candidates
7 satisfy the criteria to qualify as self-provisioning trigger candidates, I investigated
8 (within the limits of the time frame available to me) the types of services these
9 carriers offered to determine whether they satisfied the criteria outlined above.³⁷ I
10 understand that AT&T/TCG will file testimony that directly rebuts BellSouth’s
11 claim that they are serving the mass market with their own local switching and
12 meet the criteria to be considered a “trigger” candidate.

13

14 **Q. Have you analyzed the loop-purchasing pattern of these claimed trigger**
15 **companies to determine whether BellSouth’s claims in Kentucky are**
16 **plausible?**

17

18 A. Yes. In response to discovery, BellSouth has provided the number of analog and
19 digital loops leased to CLECs in the “market” where it claims the switch-triggers
20 are satisfied for the period from May 2002 through November 2003. This data

³⁷ Given the limited amount of time available to conduct this research, much of the research was conducted informally since the formal discovery process would not provide the needed information in time for the rebuttal filing date, and our review is ongoing.

1 demonstrates the fundamental fact that switch-based CLECs are focused on the
2 enterprise market, with analog loop activity both trivial and declining.

Table 4: UNE-L Activity in Kentucky

Loop Type	In Service UNE-L (VGEs)		Percent Change
	May 2002	Nov. 2003	
Analog Loops	2,426	1,161	-52%
Digital Loops	23,208	44,376	91%

3
4 As Table 4 demonstrates, BellSouth’s claim that there are three self-provisioning
5 mass market switch triggers in Kentucky is absurd. The total analog loop activity
6 in the two markets where BellSouth claims the switch triggers are satisfied has
7 fallen by 50% in the past 18 months and is barely 1,000 lines. Moreover,
8 BellSouth’s data did not indicate that it was leasing *any* analog loops to AT&T,
9 Network Telephone or SBC. Although there were a small number of loops that
10 BellSouth could not attribute to a particular carrier (less than 200), even if all this
11 “unattributed” activity were assigned to each of the claimed trigger candidates,
12 none could plausibly be considered evidence of mass market competition.
13 Perhaps this data explains why BellSouth is no longer providing Ms. Tipton’s
14 workpaper summary in response to discovery – to do so would starkly reveal the
15 fact that its claims have no merit.

16

Comcast

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Q. BellSouth has named Comcast as a triggering candidate. Is this appropriate?

A. No. To begin, the TRO makes clear that candidates that are not relying on use of the ILEC loop should be given less weight in determining whether CLECs in general are impaired without unbundled local switching.³⁸ There are a number of reasons, including the fact that the source of the national finding of impairment (the hot cut process) is not rebutted by the presence of a CLEC that does not rely on access to incumbent loops. As the FCC found:

...both cable and CMRS are potential alternatives not simply for switching, but for the entire incumbent LEC telephony platform, including the local loop. We are unaware of any evidence that either technology can be used as a means of accessing the incumbents' wireline voice-grade local loops. Accordingly, neither technology provides probative evidence of an entrant's ability to access the incumbent LEC's wireline voice-grade local loop and thereby self-deploy local circuit switches. Rather, competition from cable telephony and CMRS providers only serves as evidence of entry using *both* a self-provisioned loop *and* a self-provisioned switch.³⁹

Moreover, Comcast does not "self-provide" its own local switching. In November 2002, Comcast acquired the cable properties of AT&T Broadband and the AT&T

³⁸ TRO footnotes 1560 and 1572.
³⁹ TRO ¶ 446, footnotes omitted.

1 Broadband cable franchises and customer base. As a result of this transaction,
2 Comcast was able to maintain the leasing arrangement that AT&T Broadband had
3 obtained from AT&T Local Services. That arrangement provides for AT&T
4 Local Services to own and maintain the Local Class 5 circuit switch that
5 previously served the AT&T Broadband (now Comcast) cable telephony
6 customers and to provide services, including maintenance, transport from the
7 cable “headend,” and switching through to the public switched telephone network
8 (“PSTN”) for those customers. This unique circumstance is thus best viewed as
9 evidence of AT&T’s *withdrawal* from cable telephony rather than Comcast’s
10 *entry* into the POTS market. Indeed, Comcast has been reporting a decaying
11 telephony base for several quarters, refuting the notion that it is actively providing
12 POTS services.

13
14 Beyond the fact that Comcast does not “self-supply” its own mass market
15 switching, there is also the question as to whether it is likely to continue offering
16 POTS services (to the extent that it does so at all) in the future. Around the time
17 of the announcement of Comcast’s planned acquisition of AT&T Broadband it
18 was reported:

19
20 AT&T/Comcast should pass about 11.2 million telephony ready
21 homes by the end of the year [2002]. Comcast, which is currently
22 pushing video-on-demand, had been targeting telephony for 2003.
23 ‘They’re not touching circuit switched telephony with a 10-foot

1 pole ... They'll maintain what AT&T has done because ... the
2 expense has already been incurred' [quoting Kenneth Goodman of
3 the Yankee Group]. That expense doesn't include buying switches,
4 which Comcast has repeatedly disdained.⁴⁰
5

6 By year-end 2002, Comcast's intention to essentially abandon the analog
7 telephony business became even clearer with the report that:

8
9 Comcast will reverse AT&T Broadband's aggressive telephony
10 acquisition policies and implement its own corporate policy of
11 trailing and then deploying voice over IP services, a senior
12 executive said today. AT&T enlisted more than 1 million
13 telephony customers using conventional constant bit rate [CBR]
14 phone technology. Comcast will maintain these customers, but it
15 won't go looking for more, John Alchin, Comcast's executive vice
16 president and treasurer, said during a luncheon presentation at the
17 Warburg Media day in New York City. 'There is an element of
18 cutback on telephony', said Alchin, discussing Comcast's plans to
19 spend more than \$2 billion to upgrade AT&T Broadband plant
20 next year. 'While we haven't yet shared with you the details of the
21 capital plans for 2003, you should not expect us to take the
22 telephony product into a whole host of new markets. It will be a
23 case of supporting the product where it is today without
24 expanding.'⁴¹
25

26 Comcast confirmed this view during the 1st quarter of 2003, announcing that the
27 "number of Comcast Cable phone subscribers is expected to remain flat or decline
28 by up to 150,000 during 2003."⁴² In its Third Quarter 2003 Results, Comcast

⁴⁰ Jan. 7, 2002, Telephony Online "Comcast Pulls Telephony Turnaround." To the extent that Comcast offers VOIP based services in the future, such services are unlikely to satisfy the FCC's requirements concerning quality, cost and maturity for some time. In any event, a debate concerning VOIP-based alternatives is not ripe for this proceeding.

⁴¹ "Comcast Curtailing AT&T Telephony Deployments," Dec. 12, 2002, Telephony Online.

⁴² Source: <http://www.cmsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&t=Regular&id=445839&>.

1 further reiterated its retrenchment from the provision of cable telephony utilizing
2 circuit switched technology. “As a result of the Company’s reduced marketing
3 efforts and focus on telephone service profitability, Comcast now expects to lose
4 approximately 175,000 Comcast Cable phone customers this year, a modest
5 adjustment from the original expectation of up to a 150,000 telephone customer
6 decline [announced in the February 27, 2003 guidance].”⁴³

7
8 In summary, it is inappropriate to consider Comcast a self-provisioning switch
9 trigger for the mass market because (a) by not relying upon ILEC loops,
10 Comcast’s activity offers no evidence that operational barriers to mass market
11 competition can be overcome, (b) Comcast does not own a switch and cannot,
12 therefore, properly be viewed a self-provider of switching, and (c) Comcast has
13 consistently indicated that conventional telephony services are not part of its
14 future plans.

15
16 **Network Telephone**

17
18 **Q. Does Network Telephone qualify as a self-providing switch trigger?**

19
⁴³ 3 Q 2003 Earnings Release, October 30, 2003, at
<http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&t=Regular&id=464588&>.

1 A. No, Network Telephone, Network Telephone should not be considered as a self-
2 provider of local switching to serve the mass market:

3

4 * Network Telephone’s principal business is to provide bundled
5 voice and data services to the small to medium size business
6 customers within its limited marketing footprint. These bundled
7 voice and data services are provided utilizing digital connectivity
8 via unbundled DS1 loops and ADSL-compatible UDC network
9 elements.

10

11 * The basic methods by which Network Telephone serves the
12 business customers’ bundled voice and data needs in Kentucky are
13 via an unbundled DS1 loop, a 2 wire ADSL-compatible loop, or a
14 UDC loop, each provisioned to the Network Telephone switch.
15 With any of these configurations, Network Telephone is required
16 to install equipment at the customer’s location and to make a
17 connection at its collocated DSLAM in order to provide the
18 customer with voice service.

19

20 * 100 % of the loops utilized by Network Telephone are DS1,
21 ADSL-capable or UDC loops. These loops provide customers
22 with Network Telephone’s bundled voice and data services.
23 There would be no instance today where Network Telephone
24 would provision an analog loop such as an SL1 or SL2 to provide
25 a small business customer with analog POTS service.

26

27 * The only residential customers that Network Telephone serves in
28 Kentucky today are “legacy” customers being served either via
29 resale or UNE-P, not via Network Telephone’s switch.

30

31 As noted, Network Telephone only offers digital services, either through a DS-1
32 obtained from BellSouth, or by creating digital service using a copper loop. In
33 other words, 100% of its switch is used for enterprise service. Network
34 Telephone does not provide analog mass market service and Network

1 Telephone's enterprise switch may not be counted in a mass market trigger
2 analysis.

3

4

Xspedius

5

6 **Q. Is Xspedius a legitimate candidate as a self-providing mass market switching**
7 **trigger?**

8

9 A. No. Based on information provided by Xspedius:

10

11 * The principal business of Xspedius is to serve the enterprise and
12 not the mass market in Kentucky. Xspedius does serve a very
13 limited number of small business customers in Kentucky utilizing
14 its switches. Xspedius does not serve residential customers in
15 Kentucky.

16

17 * Xspedius actively markets to medium and large business enterprise
18 customers with a high demand for a variety of sophisticated data-
19 centric telecommunications services and solutions.

20

21 * Xspedius currently serves Begin Proprietary ** ** End Proprietary
22 voice grade equivalent lines (VGEs) in Kentucky. Yet Xspedius
23 has only Begin Proprietary ** ** End Proprietary analog lines in
24 Kentucky, less than Begin Proprietary **** End Proprietary of the
25 total Xspedius VGE's in the state. Serving these DS-0 customers is
26 not currently, and never has been, a significant part of Xspedius
27 sales and marketing efforts.

28

29 * Xspedius' principal product is Complete Xchange,™ an integrated
30 T-1 product designed for and marketed to sophisticated small and
31 midsize companies with complex voice and data
32 telecommunications needs.

1

2

* Xspedius utilizes an individualized contract with each customer.

3

4

Q. Did the FCC recognize that enterprise switches (such as those operated by

5

Xspedius) would include some analog lines?

6

7

A. Yes. The FCC understood that enterprise switches would serve some analog

8

lines, but that did not change its conclusion that enterprise switches should not be

9

counted in a trigger analysis.⁴⁴ For instance, the FCC specifically recognized data

10

that showed enterprise switches serving analog lines, and cited that data as

11

evidence that simply counting switches did not address the critical distinction

12

between the enterprise and mass markets:

13

14

Incumbent LECs claim that the Commission should remove
virtually all unbundling obligations regarding local switching on a
national basis simply because competitive carriers have deployed
1,300 switches and are serving, according to the BOC UNE Fact
Report 2002, over 16 million lines with those switches. This
argument, however, ignores significant differences in the evidence
concerning the enterprise market and mass market. The record is
replete with evidence showing that competitive LECs are
successfully using their own switches to serve large business
customers that require high-capacity loops (which can be
connected to competitive carrier switches with few of the obstacles
that affect voice-grade loops). For example, BiznessOnline.Com
cites data compiled by a coalition of competitive carriers which
examined six representative markets and found that approximately

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⁴⁴ TRO ¶ 508.

1 90 percent of the loops used by competitive carriers in these
2 markets are DS1 capacity or higher loops.⁴⁵
3

4 As the above paragraph makes clear, the FCC was under no delusion that carriers
5 serving the enterprise market did so to the exclusion of all others. Rather, it
6 understood that such carriers would be predominately using DS-1 (or higher)
7 loops, even though some amount of analog activity might occur. Generally, the
8 carriers cited by the FCC as evidence that competitive CLECs were using their
9 switches to compete in the enterprise (but not mass) market relied on digital (DS-
10 1 and higher) loops for 80% to 90% of their connectivity. The specific study
11 referenced by the FCC is attached as Exhibit JPG-6 (*see* Table 4).

12 Moreover, none of the lines served by Xspedius are residential lines, further
13 demonstrating that it is not a legitimate trigger candidate. Residential lines
14 constitute roughly 80% of the mass market lines in BellSouth's Kentucky
15 territory.⁴⁶ Any carrier that ignores 80% of the mass market cannot be plausibly
16 considered to be "actively providing" mass market services.

17
18 Xspedius is an enterprise CLEC and should not be counted as a mass market
19 switch trigger.
20

⁴⁵ TRO ¶ 437, emphasis added.

⁴⁶ Source: ARMIS 2001.

SBC Telecom

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Q. BellSouth has named SBC Telecom as a trigger candidate. Should the TRA consider SBC Telecom a trigger candidate?

A. No. It is useful that the Commission consider the circumstances that led to SBC Telecom’s “entry” into the Kentucky market and other markets in the southeast. SBC Telecom is a wholly owned subsidiary of SBC Communications that was formed in the fall of 1999 as a condition of SBC’s merger agreement with Ameritech. As a part its merger approval, SBC made specific commitments to provide local telephone services in 30 markets outside of its 13 state region. Specifically, SBC agreed to do the following in those out-of region markets:

- * Install a local telephone company exchange switch;
- * Provide facilities-based local exchange service to at least one unaffiliated business customer or one non-employee residential customer in that market. The term “facilities-based service” means service provided by SBC utilizing its own switch;
- * Collocate facilities in at least 10 wire centers that can be used to provide facilities-based service to customers served by those wire centers; and
- * Offer facilities-based local exchange service to all business and residential customers served by the wire centers in the market where SBC is collocated.

1 Failure to meet the FCC condition requirements could result in a payment of up to
2 \$40 million for each market.⁴⁷ Obviously, a company that is (in effect) bribed to
3 enter a local market under threat of a multi-million dollar penalty cannot
4 reasonably be used as evidence of non-impairment by other providers, particularly
5 when the company's "competitive activities" are as trivial as SBC Telecom's
6 have been in Kentucky.

7
8 It is clear that SBC Telecom never aggressively challenged local incumbents.
9 Rather, it appears to have done no more than the bare minimum needed to satisfy
10 its governmental merger mandate. According to New Paradigm Resources
11 Group, SBC Telecom installed 30 Class 5 local (Lucent 5ESS) circuit switches in
12 30 cities across the nation, as it committed to do. From these 30
13 markets/switches, however, SBC Telecom provisioned a total of only 5,400
14 access lines in service in 2002 and 6,000 access lines in service in 2003. Thus by
15 2003, SBC Telecom had an average of only 200 access lines in service on each of
16 its required 30 switches. Little wonder, considering SBC Telecom's nationwide
17 sales force is reported to include only 12 people.⁴⁸

18
19 **Q. Has SBC Telecom publicly "scaled back" even these minimal competitive**
20 **activities?**

⁴⁷ SBC 2000 Annual Report, page 12.

⁴⁸ 18th Edition CLEC Report 2004, New Paradigm Resources Group.

1

2 A. Yes. Relatively soon after “entering” its out-of-region markets, SBC began
3 scaling back its plans. Moreover, as USA Today reported, SBC Telecom’s
4 planned entry was principally focused on the enterprise market and, while its
5 withdrawal was “blamed” on its not receiving 271 entry (which it now enjoys), it
6 has never reenergized its plans:

7

8 SBC says the pullback is temporary, citing a shaky economy and
9 the firm's failure to win federal approval to offer long-distance
10 throughout its territory. Without that, SBC says it cannot serve
11 its prime customer: a big business that wants to link its offices
12 nationwide.

13

14

15 "We need to slow down the implementation until current
16 conditions, as well as long-distance approvals, come in line,"
17 SBC's Wendy Flanagan says. At that time, she says, SBC will "re-
18 evaluate
19 the plans."

20

21 "My belief is SBC made the offer strictly as a payoff to the
22 (Federal Communications Commission)," says analyst Ty Cottrill
23 of the Strategis Group, a former Justice Department official who
24 reviewed the SBC-Ameritech merger.⁴⁹

25

26 SBC has recently announced a “new” national strategy to utilize a digital
27 connectivity and Voice over Internet Protocol (VoIP) technology to provide data
28 and voice services outside of its region. As SBC explained:

29

30 VoIP could be introduced anywhere, just by purchasing special
31 access [i.e. a DS1 or T-1] from carriers – ILECs or CLECs. This

⁴⁹ *SBC Scales Back Plans For Local Telephone Service*, USA Today, March 19, 2001.

1 approach is a lot easier than trying to enter another ILEC territory
2 with traditional circuit switched service.⁵⁰
3

4 Even in the IP-based arena, however, SBC still shows an unwillingness to
5 undertake entry plans that (like a CLEC UNE-L business plan) must be executed
6 on a central office-by-central office basis. One SBC executive was quoted
7 recently as stating that SBC is “not looking to move forward with Centrex IP; we
8 have put that on a sales hold,” explaining that IPCentrex services had to be
9 deployed on a central office-by-central office basis, “and, there is a fair capex
10 associated with that.”⁵¹
11

12 Whether SBC Telecom’s “VoIP strategy” ultimately proves as empty as its
13 circuit-switched “national local” plan remains to be seen. What is clear, however,
14 is that its current activities cannot plausibly be deemed “active competition” for
15 mass market services.
16

17 **Q. Are there additional reasons to disqualify SBC Telecom as a “mass market”**
18 **switching provider?**
19

20 A. Yes. First, there is little question that SBC Telecom has retained its enterprise
21 focus (to the extent that it competes at all). Based upon statements of SBC

⁵¹ SBC To Take VoIP Nationwide, XCHANGE, January 2004, available online at <http://www.xchangemag.com/articles/411buzserv1.html> (quoting Marianne Gedeon, SBC’s director of voice data convergence).

1 Communications CEO and Chairman, Ed Whitacre, the main focus for the year
2 2004 in the business market is the large enterprise customer.⁵² Perhaps more
3 importantly, however, is whether SBC ever intends to compete with BellSouth.
4 SBC Communications (the owner of SBC Telecom) is BellSouth's strategic
5 partner, sharing ownership of Cingular Wireless (and currently set to acquire
6 AT&T Wireless). As Chairman Whitacre explained:

7
8 UNIDENTIFIED PARTICIPANT: Apparently you're going to be
9 offering a voice over IP product out of region; won't that anger
10 perhaps Bell South and -

11
12 EDWARD WHITACRE: Well, absolutely it will. And just like if
13 they come in (inaudible) it's going to anger us. Of course, the
14 answer to that is, yes, but it's a non-issue since we have a good
15 partnership and it's not happening. Impossible to speculate on
16 things that don't happen. It's kind of a curt answer wasn't it but I
17 don't know how to answer that any differently.⁵³
18

19 SBC has made clear that it has no intention of creating a "border war" with its
20 strategic partner and SBC Telecom should not be counted as a self-provisioning
21 switch trigger in Kentucky (or elsewhere) for each of the reasons stated above.

22
23 **Q. Does this complete your evaluation of the trigger candidates in Kentucky?**

24
25 **A. No.** Without access to the Tipton summary, it is not possible to fully understand
26 exactly why BellSouth claims these companies are providers of mass market

⁵² January 7, 2004, *SBC records eighth straight quarter of Broadband Growth*,
www.phoneplusmag.com

1 services in Kentucky. However, there is reason to disqualify each carrier
2 individually and, as I indicated earlier, collectively all of the UNE-L based
3 competition in Kentucky – enterprise as well as what small amount of mass
4 market competition may exist – does not rise to a level that would justify a
5 finding of non-impairment.

6
7 After review of the Tipton summary information (presuming BellSouth ultimately
8 complies with its discovery obligations), I may provide further analysis of these
9 carriers. However, I believe the analysis above is sufficient to disqualify these
10 carriers as self-provisioning mass market switch triggers.

11
12 **Q. Does this conclude your rebuttal testimony?**

13
14 **A. Yes.**