

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of)
)
Review of the Federal Communications)
Commission's Triennial Review Order) Case No. 2003-00379
Regarding Unbundling Requirements)
For Individual Network Elements)
_____)

SURREBUTTAL TESTIMONY

OF

GARY J. BALL

ON BEHALF OF

THE COMPETITIVE CARRIERS OF THE SOUTH

April 13, 2004

1 **Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Gary J. Ball. I am an independent consultant providing analysis of
4 regulatory issues and testimony for telecommunications companies. My business
5 address is 47 Peaceable Street, Ridgefield, Connecticut 06877.

6

7 **Q. ARE YOU THE SAME GARY BALL WHO SUBMITTED DIRECT**
8 **TESTIMONY IN THIS PROCEEDING ON MARCH 10, 2004, AND**
9 **REBUTTAL TESTIMONY ON MARCH 31, 2004?**

10 A. Yes.

11

12 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

13 A. I am testifying on behalf of the Competitive Carriers of the South (CompSouth).

14

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

16 A. The purpose of my testimony is to rebut issues raised by BellSouth witnesses
17 Shelley Padgett and Andy Banerjee in their rebuttal testimony.

18

19 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

20 A. My testimony is divided into seven sections. In Section I, I respond to Ms.
21 Padgett's claim that BellSouth does not have the burden of proof in this
22 proceeding. In doing so, I explain the importance of ensuring that BellSouth
23 meets its burden of demonstrating with specific, granular evidence that both the

1 self-provisioning and wholesale triggers are satisfied. In Section II, I respond to
2 Ms. Padgett's testimony regarding the appropriate definition of a transport route.
3 In this section, I explain that switched transport routes are separate and distinct
4 from dedicated transport, and that switched transport should not be included in
5 evaluating the triggers. In Section III, I respond to Ms. Padgett's incorrect
6 assumptions regarding operational readiness, and demonstrate that, under the
7 *TRO*, Ms. Padgett's analysis is incorrect. In Section IV, I respond to Ms.
8 Padgett's assertion that the triggers do not require analysis of the actual capacity
9 levels being provided, and her assertion that OC(n) level services should be
10 counted toward the DS3 and dark fiber triggers. In Section V, I respond to both
11 Ms. Padgett's and Dr. Banerjee's testimony regarding the definition of a customer
12 location; in this section, I demonstrate that, under the *TRO*, CLECs must have
13 access to an entire building before the self-provisioning trigger can be met. In
14 Section VI, I respond to Ms. Padgett's testimony pertaining to transitional issues,
15 and demonstrate that Ms. Padgett's previously proposed 90-day transition is
16 inadequate. Finally, in Section VII, I discuss Dr. Banerjee's inaccurate claims
17 about the potential deployment analysis.

18

19 **I. BELLSOUTH HAS NOT MET ITS BURDEN OF DEMONSTRATING**
20 **THAT CLECS ARE NOT IMPAIRED**

21 **Q. ON PAGE 2 OF HER REBUTTAL TESTIMONY, MS. PADGETT**
22 **CLAIMS THAT BELLSOUTH DOES NOT HAVE THE BURDEN OF**
23 **PROOF IN THIS CASE. DO YOU AGREE?**

1 A. No. BellSouth has the burden of proof in this proceeding. Ms. Padgett quotes the
2 *TRO* out of context. In making a national finding of impairment, the FCC did not
3 require either the ILECs or the CLECs "to prove or disprove the need for
4 unbundling." *TRO* ¶ 92. That statement, however, applied only to the FCC's
5 initial analysis of impairment. The FCC adopted a different approach that carriers
6 must use to rebut the national finding under the triggers. ILECs are permitted to
7 challenge the FCC's national finding of impairment by raising evidence that the
8 triggers have been satisfied at particular locations or on certain routes. States,
9 however, are only required to "address routes for which there is relevant evidence
10 in the proceeding that the route satisfies one of the triggers...." *TRO* ¶ 417. Since
11 it is the ILECs that are challenging the FCC's finding of impairment, then it is the
12 ILECs that bear the burden of proving that the triggers have been satisfied. Ms.
13 Padgett's testimony inappropriately offers a variety of assumptions to replace the
14 facts necessary to rebut the FCC's national finding, and shifts to the CLECs the
15 burden of re-proving the FCC's finding of impairment. Nothing in the *TRO*
16 permits this approach.

17

18 **Q. PLEASE DESCRIBE WHY BELLSOUTH BEARS THE BURDEN OF**
19 **DEMONSTRATING THAT THE TRIGGERS HAVE BEEN MET**

20 A. The starting point for this proceeding is the FCC's national finding of impairment
21 for loops and transport at the DS1, DS3, and dark fiber capacity levels. The FCC
22 has given BellSouth the opportunity to propose specific locations and routes for
23 which it believes that CLECs (or other carriers) provide sufficient services such

1 that CLECs are not impaired at the requisite capacity levels if the ILEC does not
2 offer loops or transport as a UNE at those locations or on those routes. BellSouth
3 has taken this opportunity, claiming that one building and certain routes in
4 Kentucky meet either the triggers or the potential deployment criteria. As the
5 entity seeking to obtain findings of non-impairment for specific transport routes
6 and building locations to override the FCC's national finding of impairment,
7 BellSouth is required to provide sufficient evidence consistent with the FCC's
8 requirements to support a finding of non-impairment by the Commission with
9 respect to each building location or transport route for which BellSouth asserts
10 that the triggers or the potential deployment criteria are met.

11

12 **Q. HAS BELLSOUTH MET ITS BURDEN IN THIS PROCEEDING?**

13 A. No. Under the *TRO*, the FCC requires that the carrier challenging the national
14 finding of impairment provide route-specific and location-specific evidence for
15 each capacity level for which it challenges the FCC's national finding of
16 impairment. BellSouth has not provided this information. Instead, BellSouth
17 relies on sweeping unsupported assertions to support its claim that the triggers
18 have been satisfied at the customer location and on various routes. As a result,
19 BellSouth has identified a larger list of buildings and routes than could satisfy the
20 FCC's triggers.

21

1 **Q. PLEASE DESCRIBE WHAT YOU MEAN WHEN YOU STATE THAT**
2 **BELLSOUTH BASED ITS FILING UPON ASSUMPTIONS ABOUT THE**
3 **POTENTIAL CAPABILITIES OF CLECS.**

4 A. As I describe in Sections III and IV, BellSouth made several broad assumptions
5 about the capabilities of CLEC networks, and used those assumptions as its
6 primary evidence to support the triggers. I describe this approach as an
7 "assumption-based trigger" that the Commission should reject. The Commission
8 should distinguish this approach, which the FCC does not sanction, from both the
9 triggers and the potential deployment analysis set forth in the *TRO*. In Section III,
10 I discuss BellSouth's assumption that a transport route that traverses a CLEC
11 switch (i.e., switched transport) can be counted as dedicated transport. This
12 approach is a subset of what I referred to in my rebuttal testimony as the "connect
13 the dots" approach, in which BellSouth assumes that any two CLEC wire center
14 collocations are end points of a transport route.

15
16 **Q. DID THE FCC PROVIDE THE ILECS WITH THE ABILITY TO**
17 **PROPOSE LACK OF IMPAIRMENT BASED UPON “ASSUMPTION-**
18 **BASED TRIGGERS”?**

19 A. No. In the *TRO*, the FCC only provides two options for demonstrating lack of
20 impairment: the self-provisioning and wholesale triggers, and the potential
21 deployment analysis. If BellSouth cannot demonstrate with respect to a particular
22 route between ILEC wire centers, or with respect to an enterprise customer
23 location, that the necessary number of CLECs or other carriers are providing the

1 service at the requisite capacity levels, then the only other recourse for BellSouth
2 is to attempt to prove that the location or route meets the potential deployment
3 test. The FCC's potential deployment test provides a more rigorous set of
4 requirements than the triggers, because it requires both a validation that the
5 location or route can accommodate multiple competitors, as well as an economic
6 analysis to compare the potential revenues and costs of each individual building
7 or route.

8
9 **II. BELLSOUTH'S ATTEMPT TO REDEFINE DEDICATED TRANSPORT**
10 **TO INCLUDE ALL TRANSPORT, INCLUDING SWITCHED TRANSPORT,**
11 **CANNOT BE INCLUDED IN THE DEDICATED TRANSPORT TRIGGERS**

12 **Q. ON PAGE 3 OR HER REBUTTAL TESTIMONY, MS. PADGETT**
13 **DEFENDS THE INCLUSION OF CLEC-PROVIDED SWITCHED**
14 **TRANSPORT IN THE DEFINITION OF DEDICATED TRANSPORT. IS**
15 **MS. PADGETT'S DEFINITION OF A TRANSPORT ROUTE CORRECT?**

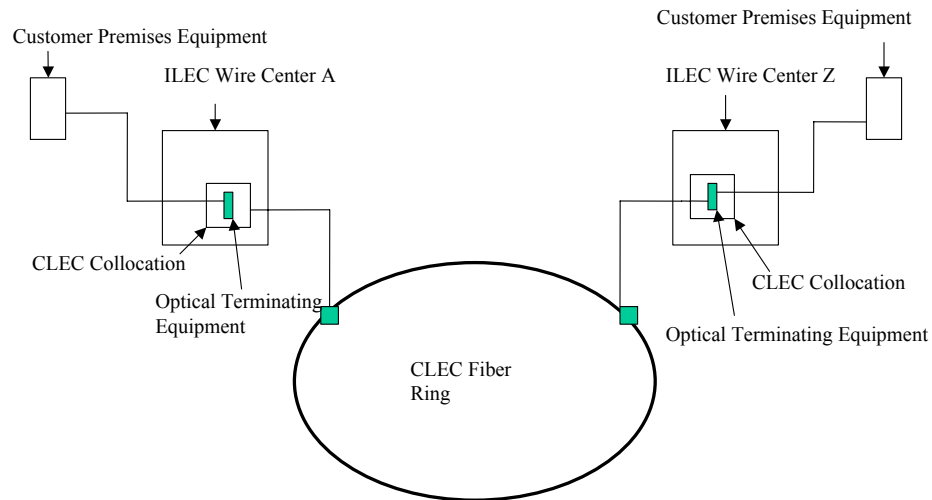
16 **A.** No. Ms. Padgett includes switched transport in the definition of dedicated
17 transport. The FCC provided a very specific and narrow definition of the type of
18 CLEC transport to be included in this test: dedicated transport between two ILEC
19 wire centers. Contrary to Ms. Padgett's broad interpretation, the FCC does not
20 even include all CLEC-provided dedicated transport, excluding any and all CLEC
21 transport that does not provide a connection between ILEC wire centers.

22

1 **Q IS IT POSSIBLE FOR ANY TYPE OF SWITCHED TRANSPORT**
2 **ARRANGEMENT TO MEET THE DEFINITION OF DEDICATED**
3 **TRANSPORT?**

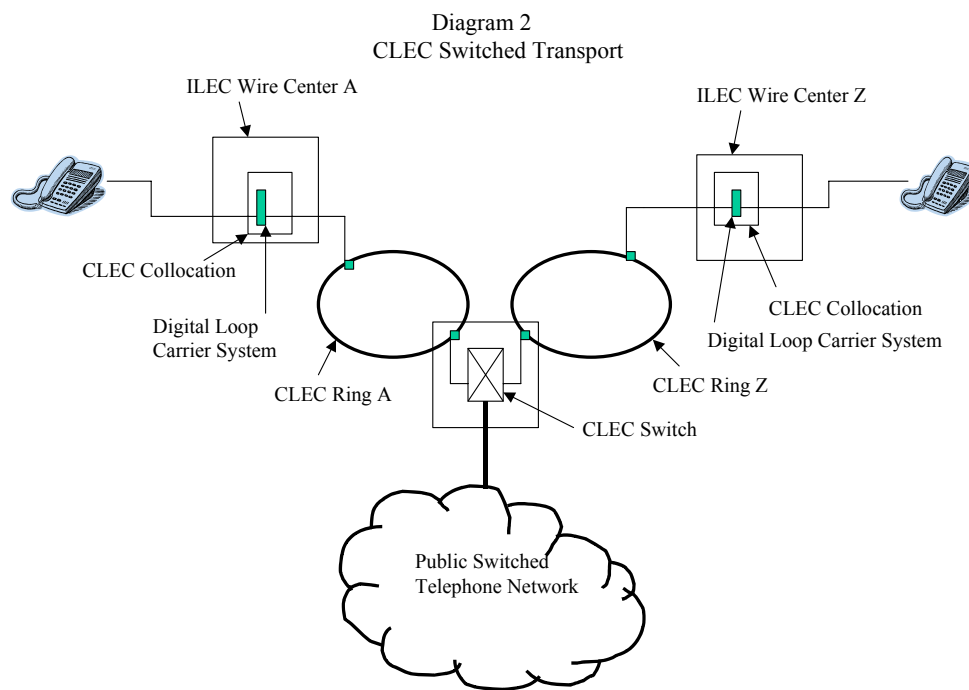
4 A. No. Dedicated transport, by definition, provides a fixed path between two points,
5 in this case BellSouth wire centers. In the *TRO*, the FCC defines dedicated
6 transport as “facilities dedicated to a particular customer or competitive carrier
7 that it uses for transmission among incumbent LEC central offices and tandem
8 offices.” *TRO* ¶ 360. Diagram 1 below provides a theoretical description of a
9 CLEC network configured to enable dedicated transport to be provided (subject to
10 the constraints described in my testimony previously submitted in this
11 proceeding).

Diagram 1
CLEC Dedicated Transport



12

1 If a switch is present along the transport route, then the fixed path no longer
2 exists, as traffic can be routed to and from points outside of the fixed path by the
3 switch, and traffic from other customers and carriers will “share” the transport
4 route. Diagram 2 below describes a CLEC network configured to aggregate ILEC
5 loops back to a CLEC switch.



6

7

8 **Q. IS SWITCHED TRANSPORT THE SAME AS SHARED OR COMMON**
9 **TRANSPORT?**

10 A. Yes. These terms all have the same meaning, and are used interchangeably when
11 describing the functionality in ILEC and CLEC networks of providing the
12 capability routing traffic between multiple points via a switch. In every instance,
13 switched or shared transport is treated as a completely separate service from

1 dedicated transport. For example, in BellSouth's access tariffs, switched transport
2 and dedicated transport have different sections and applications.

3

4 **Q. IN THE *TRO*, DOES THE FCC EVALUATE SWITCHED OR SHARED**
5 **TRANSPORT SEPARATELY FROM DEDICATED TRANSPORT?**

6 A. Yes. In footnote 1100 of the *TRO*, the FCC states, “[w]e refer generically to
7 “transport” in this Part as meaning dedicated transport. We address shared
8 transport in Part VI.E. of this Order.” If the FCC created a separate section to
9 evaluate shared transport, then it could not have intended to have it included as
10 dedicated transport as well.

11

12 **Q. BASED UPON YOUR EXPERIENCE, IS IT LIKELY THAT MOST OF**
13 **THE CLEC COLLOCATIONS THAT BELLSOUTH IDENTIFIES ARE**
14 **USED TO PROVIDE SWITCHED OR SHARED TRANSPORT, AS**
15 **OPPOSED TO DEDICATED TRANSPORT AS DEFINED IN THIS**
16 **SECTION?**

17 A. Yes. As I described in my direct testimony, the typical business plan for a CLEC
18 that has entered the switched voice market is to establish collocation
19 arrangements for the primary purpose of aggregating unbundled loops, and using
20 transport facilities to connect the loop aggregation equipment to a switch that is
21 located at another location. If the switch were located at the central office, as it is
22 for BellSouth, the CLEC would not need any transport facilities back to the

1 switch. This is why it is critical that information be collected from the CLECs
2 that would exclude switched transport in its entirety from the trigger analysis.

3

4 **Q. DOES THE DEFINITION OF A TRANSPORT ROUTE IN THE *TRO***
5 **ALLOW FOR INSTANCES FOR WHICH SERVICE IS NOT**
6 **CURRENTLY BEING PROVIDED, SUCH AS THAT PROPOSED UNDER**
7 **THE “CONNECT THE DOTS” “ASSUMPTION-BASED TRIGGER?”**

8 A. No. In the *TRO*, the FCC states: “Both triggers we adopt today evaluate transport
9 on a route-specific basis. We define a route, for purposes of these tests, as a
10 connection between wire center or switch 'A' and wire center or switch 'Z.' Even
11 if, on the incumbent LEC’s network, a transport circuit from 'A' to 'Z' passes
12 through an intermediate wire center 'X,' the *competitive providers must offer*
13 *service connecting wire centers 'A' and 'Z,'* but do not have to mirror the network
14 path of the incumbent LEC through wire center 'X.’” *TRO* ¶ 401 (emphasis
15 added). The FCC went on to state that “A route-specific test is sufficiently
16 granular to avoid falsely identify as competitive a route between two offices.”

17

18 **Q. DOES THE FACT THAT THE FCC PROVIDED THAT THE ROUTE**
19 **CAN GO THROUGH AN INTERMEDIATE POINT MEAN THAT**
20 **SWITCHING CAN BE INVOLVED IN THE ROUTE?**

21 A. No. The FCC merely acknowledged that CLEC networks do not mirror ILEC
22 networks, and that there may be an intermediate point where multiplexing or a
23 cross-connection occurs. Nothing in the *TRO* states that a dedicated transport

1 route can include switching functionality. If switching occurs at the intermediate
2 point, then the route cannot be classified as dedicated transport under the FCC
3 definitions.

4
5 **Q. IS IT REASONABLE TO ASSUME THAT A CLEC THAT HAS**
6 **PROVISIONED TRANSPORT BACK TO ITS SWITCH FROM TWO**
7 **WIRE CENTERS IS OPERATIONALLY READY TO PROVISION A**
8 **DEDICATED TRANSPORT ROUTE BETWEEN THE TWO WIRE**
9 **CENTERS?**

10 A. No. In her rebuttal testimony, Ms. Padgett makes an incorrect assumption, and
11 even refers to her statement as an assumption, that all CLECs can provide
12 transport between their collocations. *See* Padgett Rebuttal at 4-5. Ms. Padgett
13 selectively cites to one carrier that claims that its network can connect points
14 between ILEC central offices. (Notably, this is not one of the carriers that
15 BellSouth has identified as a trigger candidate.) BellSouth, however, ignores the
16 testimony and discovery responses of other CLECs that state that their networks
17 are not constructed in this manner and that they do not provide dedicated transport
18 between ILEC central offices. In my direct and rebuttal testimony, I stated that
19 the Commission should rely on the CLEC-provided discovery responses to
20 generate lists of routes and customer locations that could satisfy the FCC triggers.
21 This is precisely what commissions have done in other states.

22

1 **III. BELLSOUTH'S INTERPRETATION OF OPERATIONAL READINESS IS**
2 **WRONG**

3 **Q. ON PAGE 6 OF HER TESTIMONY, MS. PADGETT CLAIMS THAT**
4 **YOUR DEFINITION OF OPERATIONAL READINESS IS INCORRECT**
5 **BECAUSE YOU STATE THAT A DEMONSTRATION BE MADE THAT**
6 **THERE MUST BE EVIDENCE THAT A CLEC PROVIDES SERVICE**
7 **BETWEEN TWO WIRE CENTERS. IS MS. PADGETT CORRECT?**

8 A. No. To satisfy the triggers, the FCC requires that CLECs currently must provide
9 service at the relevant capacity level. In the *TRO*, the FCC states, that it is
10 establishing "two different types of triggers to identify the specific customer
11 locations where there may be no impairment for the high-capacity loops we
12 identify below and the incumbent LEC unbundling obligation can be eliminated at
13 that customer location: 1) where a specific customer location is identified as
14 *being currently served* by two or more unaffiliated competitive LECs with their
15 own loop transmission facilities *at the relevant loop capacity level* (Self
16 Provisioning Trigger); or 2) where two or more unaffiliated competitive providers
17 have deployed transmission facilities to the location and are offering alternative
18 loop facilities to competitive LECs on a wholesale bases *at the same capacity*
19 *level* (Competitive Wholesale Facilities Trigger.)" *TRO* ¶ 329 (emphasis added).

20
21 Likewise, in introducing the wholesale transport trigger, the FCC states, "we find
22 that competing carriers are not impaired where competing carriers have available
23 two or more alternative transport providers, not affiliated with each other or the

1 incumbent LEC, *immediately capable and willing to provide transport at a*
2 *specific capacity* along a given route between incumbent LEC switches or wire
3 centers. If a state commission finds no impairment for a specific capacity level of
4 transport on a route, the incumbent LEC will no longer be required to unbundle
5 that transport along that route, according to the transition schedule adopted by the
6 state commission." TRO ¶ 400 (emphasis added).

7
8 **IV. CAPACITY ISSUES**

9 **Q. ON PAGE 6 OF HER TESTIMONY, MS. PADGETT REITERATES HER**
10 **ASSERTION THAT LOOPS AND TRANSPORT AT THE OC(N) LEVEL**
11 **CAN QUALIFY FOR THE TRIGGERS. IS THIS ALLOWED BY THE**
12 **FCC?**

13 A. No. As I described above, the FCC requires that CLECs are *currently providing*
14 *service* at the *relevant capacity levels*. This language cannot be interpreted to
15 mean that CLEC facilities that are not being used to currently provide service at
16 the relevant capacity levels could be included.

17
18 **Q. DOES BELLSOUTH'S PROPOSAL REGARDING OC(N) LEVEL**
19 **SERVICES MAKE SENSE WITHIN THE FCC'S FRAMEWORK FOR**
20 **DETERMINING IMPAIRMENT?**

21 A. No. The FCC's impairment analysis is based upon the assumption that CLECs
22 receive enough revenue for locations where they have deployed OC(n) facilities
23 to justify the costs of extending their networks. The result of the FCC's analysis

1 is that there was no finding of impairment for OC(n) facilities, and CLECs no
2 longer can access OC(n) facilities as UNEs. For DS1, DS3, and dark fiber
3 services, the FCC's analysis was completely different. The FCC determined that
4 DS1, DS3, and dark fiber need to be treated as a separate class of services
5 because, unlike OC(n) services, the revenues associated with DS3s, DS1s, and
6 dark fiber are unlikely to be sufficient to recover their costs. It would be entirely
7 inconsistent to include a class of services for which a determination of non-
8 impairment already has been reached, in this case OC(n) services, for the
9 impairment analysis of another class of services for which non-impairment is
10 unlikely.

11
12 **Q. WOULD A DETERMINATION THAT OC(N) LEVEL SERVICE BE**
13 **INCLUDED FOR THE DS1, DS3, AND DARK FIBER TRIGGERS BE**
14 **CONSISTENT WITH THE FCC'S CONCLUSIONS?**

15 A. No. First, if the FCC had intended that result, then it would have simply declared
16 no impairment for any capacity level wherever OC(n) level services exists. The
17 FCC did the opposite. The FCC concluded that, on a national basis, CLECs are
18 impaired without access to DS3 and DS1 level services. I also would point out
19 that DS0 voice grade services also can be derived from an OC(n) loop, and no one
20 would suggest that a voice grade loop be removed as a UNE based upon the
21 existence of an OC(n) facility.

22

1 Second, it is important to remember that the triggers are intended to be a snapshot
2 of the services that CLECs are currently providing, and not a forward-looking
3 analysis of the potential capabilities of the CLECs networks. The FCC
4 recognized this distinction in development of the potential deployment analysis,
5 which requires a much more rigorous demonstration of both customer demand
6 and economic viability for locations to meet this test.

7
8 **Q. PLEASE EXPLAIN WHY THE OC(N) THEORY IS A “ASSUMPTION-**
9 **BASED TRIGGER” APPROACH, AND WHY IT IS NOT ALLOWED**
10 **UNDER THE FCC RULES?**

11 A. Under the “assumption-based trigger”, BellSouth only has identified CLEC
12 facilities that it believes may be capable of providing service at the requisite
13 capacity levels, but are not currently configured to do so. Both the self-
14 provisioning and wholesale triggers require that, for each capacity level, a
15 demonstration be made that “service is being offered” and that the carrier is
16 “operationally ready to provide service.” If a CLEC has not equipped its network
17 to provide DS3 or DS1 capacity, then it cannot meet either of those requirements.
18 BellSouth could have attempted to demonstrate that CLECs with OC(n) level
19 facilities meet the true potential deployment test, but has chosen not to in this
20 proceeding.

21

1 V. **BUILDING ACCESS ISSUES**

2 **Q. BOTH MS. PADGETT AND DR. BANERJEE ASSERT THAT SELF-**
3 **PROVISIONERS NEED NOT HAVE ACCESS TO THE ENTIRE**
4 **BUILDING IN ORDER FOR THAT BUILDING TO COUNT TOWARDS**
5 **THE TRIGGERS. DO YOU AGREE?**

6 A. No. In her rebuttal testimony, Ms. Padgett incorrectly challenges my definition of
7 a customer location. *See* Padgett Rebuttal at 8. Although BellSouth has used the
8 terms “building” and “customer location” somewhat interchangeably in the
9 discussion of the triggers, the intent of the impairment standard is to identify
10 locations where customers actually have the ability to be served by multiple
11 providers. If a CLEC can reach only a single customer in a multi-tenant building,
12 then the other customers in that building are unable to be served by that CLEC
13 unless the CLEC is able to reconfigure its network, and gain access to the
14 common house and riser cables into the building. The individual customer
15 location within the building may be used for the triggers in that instance, but not
16 the entire building. Again, this type of issue is a “assumption-based trigger”, not
17 evidence of actual deployment.

18
19 VI. **TRANSITIONAL ISSUES**

20 **Q. ON PAGE 9 OF HER TESTIMONY, MS. PADGETT OPPOSES A MUTLI-**
21 **TIERED TRANSITION PROCESS, AS WELL AS OPPOSING A NEW**
22 **PROCEEDING TO ADDRESS TRANSITIONAL ISSUES. IS THIS**
23 **REASONABLE?**

1 A. No. If anything, Ms. Padgett’s proposal is the unreasonable one. First, if CLECs
2 were forced to disconnect their existing UNEs and convert them to some other
3 type of service, it would take BellSouth much longer than the 90 days previously
4 suggested by Ms. Padgett just to develop a cutover plan for transitioning the
5 circuits to another CLEC’s network. *See* Padgett Direct at 39. A “special
6 project” such as this would have to be coordinated with the day-to-day operational
7 activities of BellSouth as well as the numerous other carriers involved. Second,
8 the Commission must ensure that CLECs can transition their services to another
9 CLEC before such a transition could occur, which as I stated in my direct
10 testimony, is not a simple conversion process. The Commission must provide
11 sufficient time for this conversion to occur in an orderly manner, without
12 threatening customer disruption.

13
14 **Q. WOULD CLECS CONVERT THEIR UNES TO BELLSOUTH’S SPECIAL**
15 **ACCESS SERVICES?**

16 A. No. CLECs would face a significant increase in their underlying costs if they
17 were forced to purchase special access instead of unbundled network elements. If
18 the triggers are implemented properly, then the CLECs will have non-ILEC
19 alternatives available to them. A transition plan should permit the CLECs to take
20 advantage of those alternatives.

21
22 **Q. ON PAGE 10 OF HER TESTIMONY, MS. PADGETT CITES THE FCC**
23 **ERRATA REGARDING PARAGRAPH 584 AS SUPPORT THAT**

1 **BELLSOUTH DOES NOT NEED TO COMBINE DELISTED ELEMENTS**
2 **WITH UNES. IS THE CITATION RELEVANT?**

3 A. No. There is nothing in the FCC’s errata that would preclude a state from
4 requiring that delisted elements be combined with UNEs or other delisted
5 elements. As I explained in my direct testimony, such combinations will be
6 necessary to allow CLECs to continue to provide competitive services to their
7 customers through such network arrangements as EELs.

8
9 **VII. POTENTIAL DEPLOYMENT**

10 **Q. ON PAGE 9 OF HIS REBUTTAL TESTIMONY, DR. BANERJEE**
11 **ATTEMPTS TO SUPPORT HIS INTERPRETATION THAT THE**
12 **POTENTIAL DEPLOYMENT TESTS FOR LOOPS AND TRANSPORT**
13 **CAN BE MET WITHOUT ANY EVIDENCE THAT CLECS HAVE**
14 **DEPOLYED FACILITIES TO THOSE LOCATIONS OR ON THOSE**
15 **ROUTES. DOES HE SUCCEED?**

16 A. No. Dr. Banerjee ignores the plain reading of the potential deployment
17 requirements in the *TRO*. For loops, in paragraph 335 of the *TRO*, the FCC lists
18 “evidence of alternative loop deployment” as the first issue that state commissions
19 must consider in evaluating whether a location meets the potential deployment
20 analysis. If this condition is not met, then there is absolutely no evidence that any
21 other CLEC could overcome the numerous obstacles inherent in constructing a
22 loop, nor is there evidence that the location has sufficient business to support
23 multiple providers. Likewise for transport, in paragraph 441, the FCC provides

1 that the state commission must first find that the route is suitable for “multiple,
2 competitive supply” as well as determining that the economic cost characteristics
3 of the route allow CLECs to economically deploy for the DS3 or dark fiber
4 capacity levels.

5

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 A. Yes.

8