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 Kathy K. Blake, who, being by me first duly sworn deposed and said that:

She is appearing as a witness before the Kentucky Public Service Commission in Case No. 2004-00427, Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law, and if present before the Commission and duly sworn, her direct testimony would be set forth in the annexed testimony consisting of 20 pages and 1 exhibits.

Kathy K. Blake

Kathy K. Blake

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 12TH DAY OF AUGUST, 2005

Notary Public

MICHEALE F. BIXLER
Notary Public, Douglas County, Georgia
My Commission Expires November 3, 2005

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF KATHY K. BLAKE

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

DOCKET NO. 2004-00427

AUGUST 16, 2005

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

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, N.W., Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1981, with a Bachelor of Science degree in Business Management. After graduation, I began employment with Southern Bell as a Supervisor in the Customer Services Organization in Miami, Florida. In 1982, I moved to Atlanta where I held various positions involving Staff Support, Product Management, Negotiations, and Market Management within the BellSouth Customer Services and Interconnection Services Organizations. In 1997, I moved into the State Regulatory Organization with

various responsibilities for testimony preparation, witness support and issues management. I assumed my currently responsibilities in July 2003.

Q. CAN YOU BRIEFLY EXPLAIN THE EVENTS THAT LED UP TO THIS PROCEEDING?

A. On August 21, 2003, the Federal Communications Commission ("FCC") released its *Triennial Review Order* or *TRO*,[1] in which it modified incumbent local exchange carriers' ("ILECs") unbundling obligations under Section 251 of the Act.[2] Subsequent orders further clarified the scope of ILECs' section 251 unbundling obligations. These orders culminated in the permanent unbundling rules released with the *Triennial Review Remand Order*, or *TRRO*, on February 4, 2005.[3] The FCC's new rules removed, in many instances, significant unbundling obligations formerly placed on ILECs, and set forth transition periods for carriers to move the embedded base of these former unbundled network elements ("UNEs") to alternative serving arrangements. The *TRRO* explicitly requires

[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978 (2003), corrected by *Errata*, 18 FCC Rcd 19020 (2003), vacated and remanded in part, aff'd in part, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), *cert. denied*, 125 S. Ct. 313 (2004) (referred to, interchangeably, as the "*Triennial Review Order*" or the "*TRO*").

[2] The *Telecommunications Act of 1996* amended the *Communications Act of 1934*, 47 U.S.C. § 151 et seq. References to "*the Act*" refer collectively to these Acts.

[3] *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338, *Order on Remand*, FCC 04-290 (released February 4, 2005) (referred to, interchangeably, as the "*Triennial Review Remand Order*" or the "*TRRO*").

change of law processes and certain transition periods to be completed by March 10, 2006.[4]

While there are some competitive local exchange carriers ("CLECs") with whom BellSouth has successfully negotiated the changes necessitated by the *TRO* and the *TRRO,* there are other CLECs with whom discussions continue and still other CLECs that have simply ignored BellSouth's repeated efforts to modify interconnection agreements to reflect current regulatory policy.

The Kentucky Public Service Commission ("Commission") established this docket via its December 8, 2004 *Order*[5] in response to BellSouth's *Petition to Establish Generic Docket* to address any unresolved change-of-law issues resulting from the implementation of the *TRO* and *TRRO*.

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. My direct testimony provides BellSouth's position on numerous policy issues that have been raised in this proceeding and that have been identified on the Joint Issues Matrix, filed with the Commission on June 30, 2005. I also provide supporting evidence that the interconnection agreement language proposed by BellSouth and that is attached to BellSouth Witness Ms. Pamela Tipton's Direct Testimony is the appropriate language that should be adopted by this

[4] *See TRRO,* ¶¶ 143, 144, 196, 197, and 227.

[5] *See In the Matter of Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law,* Docket No. 2004-00427, *Order*, dated December 8, 2004.

Commission.

Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

A. Yes. I am not an attorney, and I am not offering legal opinions on the issues in this docket. Because the issues in this case result from FCC orders, however, my testimony refers to various FCC orders and rules. In doing so, my testimony addresses issues from a policy perspective.

Q. PLEASE IDENTIFY BELLSOUTH'S WITNESSES AND THE ISSUES THEY ADDRESS IN THEIR DIRECT TESTIMONY.

A. The chart below identifies the BellSouth witnesses and the issues they address in whole or in part in their Direct Testimony:

Witness	**Issue Nos.**
Kathy Blake	3, 7, 9, 12, 13, 30 and 32
Pam Tipton	2, 4, 5, 8, 10, 11, 14, 15, 16, 22, 29 and 31
David Wallis	5(b)
Eric Fogle	6, 17, 18, 19, 20, 23, 24, 25, 26, 27 and 28

BellSouth is not sponsoring witness testimony to address Issue 21 because the CLECs have acknowledged there is no dispute concerning this issue. *See* July 22, 2005 Joint CLEC's Response to BellSouth's Motion for Summary Judgment. Also, BellSouth is not sponsoring witness testimony to address Issue 1, which was

included as a "placeholder" issue. If other parties file direct testimony concerning issues that were not included on the June 30, 2005 Joint Issues Matrix, BellSouth will address such matters in its rebuttal testimony.

Issue 3: ***(a) How should existing Interconnection Agreements ("ICAs") be modified to address BellSouth's obligation to provide network elements that the FCC has found are no longer 251(c)(3) obligations?***

(b) What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth's obligations to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?

Q. WHAT IS BELLSOUTH'S POSITION REGARDING ISSUE 3(a)?

A. With the FCC's determination that several network elements are no longer required to be unbundled pursuant to Section 251(c)(3), such elements must be removed from existing interconnection agreements ("ICAs"). This is because interconnection agreements address Section 251 obligations and those obligations are the only ones required to be included in Section 252 interconnection agreements. In order to memorialize the removal of such elements, the parties to the interconnection agreement must execute the appropriate amendment eliminating the availability of such network elements. BellSouth's proposed contractual language is attached to Ms. Tipton's Direct Testimony, and removes

those elements identified by the FCC that no longer are required to be unbundled pursuant to Section 251.[6]

BellSouth and a few of its CLEC customers have been able to reach agreement on the contractual language that incorporates the results of the *TRO* and the *TRRO*. In Kentucky, as of August 1, 2005, BellSouth has executed 64 *TRRO* amendments to Interconnection Agreements with a revised Attachment 2, which is the portion of BellSouth's ICA that sets forth the terms and conditions relating to UNEs. These amendments are not at issue in this proceeding because the parties have mutually agreed to contract language that addresses the *TRO* and the *TRRO*. However, there are numerous CLECs with whom BellSouth has not been able to reach agreement with respect to *TRO/TRRO* amendments. BellSouth is requesting that the Commission approve the contractual language attached to Ms. Tipton's testimony. BellSouth is also requesting that for those CLECs with whom BellSouth has not previously been able to reach agreement, the Commission require such CLECs to execute a contractual amendment with the Commission-approved language promptly following the conclusion of this proceeding.

Q. WHAT IS BELLSOUTH'S POSITION REGARDING ISSUE 3(b)?

[6] BellSouth's proposed Attachment 2 language is attached to BellSouth Witness Pamela A. Tipton Direct Testimony filed in this proceeding. Ms. Tipton is attaching two versions of Attachment 2. The first version "Network Elements and Other Services – For Renegotiation" is being used for CLECs that have an existing embedded customer base and need language addressing the transition period. The second version, "Network Elements and Other Services", is being used for new CLECs and new interconnection agreements.

A. For interconnection agreements that are pending in arbitration, BellSouth has requested that issues that are similar to issues identified in this proceeding be addressed here. That way the Commission will only have to address the issue once.

This proceeding is also intended to address interconnection agreements that are in the process of being negotiated, such as, for example, where an agreement is due to expire and the parties are negotiating the terms of a replacement agreement, but arbitration has not yet been filed. If there are *TRO/TRRO* issues that the parties cannot mutually agree upon, BellSouth proposes that it be allowed to incorporate the Commission-approved language from this proceeding in the parties' new agreement.

I would also note that with respect to Issue 3(b) in dockets in other states, there has been a dispute between BellSouth and certain CLECs about the timing of any Commission decision in this docket. For example, with CLECs Nuvox/Xspedius, BellSouth sought to defer and/or move certain arbitration issues to this docket. In doing so, BellSouth did not intend to delay implementation of the *TRRO*. To the extent that Nuvox/Xspedius claim that BellSouth has agreed to negotiate and arbitrate ***all*** changes of law into new agreements instead of separately signing amendments to existing agreements, BellSouth disagrees with NuVox/Xspedius' characterization of the parties' agreement.[7] It may be necessary for parties to

[7] Both the North Carolina Utilities Commission ("NCUC") and the South Carolina Public Service Commission ("SCPSC") have issued orders denying NuVox/Xspedius' arguments relating to the Abeyance Agreement. *See* the NCUC's *Order Concerning New Adds,* issued April 25, 2005, in Docket No. P-55, Sub 1550 and the SCPSC's *Commission's Directive,* issued April 13, 2005, in Docket No. 2004-316-C.

execute an amendment to an existing agreement that sets forth certain obligations concerning the transition away from UNEs. The parties may later include the same language in new interconnection agreements. The transition periods established by the FCC resulted from the *TRRO,* not the *TRO* or *USTA II*. This scenario would only occur if this Commission enters an order in this docket ***before*** it issues an arbitration order in Docket No. 2004-00044. However, if the foregoing scenario occurs, all CLECs, including NuVox/Xspedius will need to comply with such an order to ensure that a smooth transition away from de-listed UNEs occurs. No CLEC can extend the FCC's transition periods, which periods have explicit ending dates. Doing so would not only violate the FCC's rules, but also would give certain CLECs an unfair competitive advantage over others.

Issue 7: Once a determination is made that CLECs are not impaired without access to high capacity loops or dedicated transport pursuant to the FCC's rules, can changed circumstances reverse that conclusion, and if so, what process should be included in the Interconnection Agreements to implement such changes?

Q. WHAT IS BELLSOUTH'S POSITION REGARDING ISSUE 7?

A. Issue 7 asks whether a wire center, once determined to be "not impaired" for the purposes of unbundling high capacity loops and dedicated transport, can revert to an "impaired" wire center if circumstances change. The unambiguous answer is that the *TRRO* and the FCC's rules expressly state that changed circumstance cannot reverse the classification of unimpaired wire center. *See TRRO* ¶167 (at n.

466); 47 C.F.R. § 51.319(a)(4); 51.319(a)(5); 51.319(e)(3). Specifically, for DS1 and DS3 loops, "[o]nce a wire center exceeds [certain] thresholds, *no future DS1 [or DS3] loop unbundling will be required in that wire center*." 47 C.F.R. §51.319(a)(4) and (a)(5) (emphasis supplied). Likewise, for dedicated transport in Tier 1 or Tier 2 wire centers, the federal rules make clear "[o]nce a wire center is determined to be a Tier 1 [or Tier 2] wire center, that wire center is not subject to later reclassification." 47 C.F.R. §51.319(e)(3). The FCC explained that any other result "could be disruptive as applied to a dynamic market if modest changes in competitive conditions resulted in the reimposition of unbundling obligations." *TRRO,* n. 466. Consequently, this Commission should enter an order finding that changed circumstances cannot cause a wire center to revert, once a determination has been made that CLECs are not impaired without access to certain UNEs in that wire center.

Q. HAVE THE JOINT CLEC'S STATED THEIR POSITION WITH RESPECT TO THIS ISSUE?

A. Yes. In every state except for Kentucky, when filing their response to BellSouth's Motion for Summary Judgment, the CLEC's, filing as either Joint CLEC's or through a CLEC association, stated that "there is no live dispute between the parties that requires resolution on [this] issue[]" and that they agree to "removing [this] issue[] from the Issues List prior to the filing of testimony."[8]

[8] *See* responses filed in the following dockets: Alabama Docket No. 29543, CompSouth's Response, filed July 18, 2005, p. 5; Florida Docket No. 041269-TP, CompSouth's Response, filed July 22, 2005, p. 5, Georgia Docket No. 19341-U, Joint CLEC's Response, filed July 1, 2005, p. 5; Louisiana Docket No. U-28356 c/w U-28131, CompSouth's Response, filed August 12, 2005, p. 6; Mississippi Docket No. 2005-AD-139, Competitive Carrier's Response, filed July, 29, 2005, p. 5; North Carolina Docket No. P-55, Sub1549, CompSouth's Response, filed July 15, 2005, p. 5; South Carolina

In fact, on July 20, 2005, in Tennessee, the parties filed an amended Final Joint Issues Matrix removing Issue 7 from the issues list.

However, in Kentucky, the Joint CLEC's appear to have changed their position with respect to Issue 7. In their response to BellSouth's Motion for Summary Judgment, the Joint CLECs addressed Issue 7 and state concerns relating to BellSouth's self-designation and that "[w]hile BellSouth has represented that it will continue to take orders fro UNE loops and transport pursuant to the 'certify, provision and dispute' provisions in the *TRRO*, the numerous issues regarding the way in which billing, conversions and other remedial actions should be accomplished in the face of future *TRRO* wire center designations (whether by BellSouth or the FCC), should be addressed in this proceeding." Joint CLEC's Response, p. 8.

Q. IS SUCH A POSITION APPROPRIATELY ADDRESSED UNDER ISSUE 7?

A. No. Issue 7 deals with changed circumstances once a wire center has been determined to meet the criteria established by the FCC in the *TRRO* and that such changed circumstances can not change the classification of a wire center. The issue raised by the Joint CLEC's relates to the period between when BellSouth self-designates a wire center to be unimpaired and when the wire center is actually approved by a regulatory body of appropriate jurisdiction to be unimpaired. Such issues and concerns are more appropriately addressed under Issue 5 which Ms. Tipton addresses in her testimony.

Docket No. 2004-316-C, CompSouth's Response, filed July 18, 2005, p. 5; and Tennessee Docket No. 04-00381, Joint CLEC Response, filed July 5, 2005, p. 4.

Issue 9: ***What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?***

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. CLECs should not be allowed to add new UNE arrangements that have been de-listed nor should they be allowed to move an existing customer's service to another location.

With respect to local circuit switching, this issue is currently pending before the Commission as a result of a motion filed by Cinergy Communications Company ("Cinergy") As BellSouth explained in its opposition to Cinergy's Petition, "Cinergy's Petition is inconsistent with the text of the *TRRO or Order on Remand*, which bars all new 'UNE-P arrangements,' not just those used to serve new customers. *TRRO ¶ 227.*" (BellSouth's Response, p. 1) Even beyond that, allowing CLECs to continue to add new UNE-P arrangements for existing customers would be inconsistent with the core policy behind the FCC's transition plan. Instead of weaning carriers away from the UNE platform and toward alternative methods of competition, as the FCC plainly intended, it would allow CLECs in Kentucky to expand the very activities that the FCC found to be anticompetitive. The FCC also explained that its transition plan "does not permit competitive LECs to add *new UNE-P arrangements* using unbundled access to

local circuit switching pursuant to section 251(c)(3)." *TRRO* ¶ 227 (emphasis added). When a CLEC orders a new UNE-P line to serve an existing customer, it is ordering new local switching (and a "new UNE-P arrangement"), which is prohibited under the plain language of the FCC's order and rules.

Likewise, when a CLEC's customer moves their service, their old service is disconnected and their new service is considered a "new" order and therefore falls under the "no-new adds" policy in the *TRRO*.

In the situation where a CLEC's customer chooses simply to modify their existing service, i.e., change features, add features or suspend and restore, BellSouth will process this type of order during the transition period.

With respect to high-capacity loops and dedicated transport, the FCC allows CLECs who disagree with an incumbent LEC's classification of Tier 1 or Tier 2 qualifying wire centers (as those terms are defined in the FCC Rules) and have performed their own due diligence to submit "self-certifying" orders which the incumbent LEC must provision. *TRRO*, ¶ 234. The *TRRO* further states that once the "self-certifying" order has been provisioned, incumbent LECs are entitled to challenge the validity of such order(s) pursuant to the dispute resolution provision in the parties' interconnection agreement. BellSouth has been accepting CLEC orders for new high-capacity loops and dedicated transport in Tier 1 and Tier 2 wire centers since March 11, 2005. BellSouth is in the process of reviewing these "self-certifying" orders and will use the dispute resolution process as needed. Ms.

Tipton discusses the actions BellSouth is taking more fully in her testimony in Issue 5.

Issue 12: Should identifiable orders properly placed that should have been provisioned before March 11, 2005, but were not provisioned due to BellSouth errors in order processing or provisioning, be included in the "embedded base"?

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth does not object to including in the embedded base identifiable orders properly placed and scheduled to be completed by March 11, 2005 if errors or actions caused by BellSouth resulted in the orders not being provisioned by March 11, 2005.

Issue 13: Should network elements de-listed under section 251(c)(3) be removed from the SQM/PMAP/SEEM?

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Elements that are no longer required to be unbundled pursuant to Section 251(c)(3) ("de-listed elements") should not be subject to the measurements of a SQM/PMAP/SEEM plan. The purpose of establishing and maintaining a SQM/PMAP/SEEM plan is to ensure that BellSouth provides nondiscriminatory access to elements required to be unbundled under section 251(c)(3), and if

BellSouth fails to meet such measurements, it must pay the CLEC and/or the state a monetary penalty. Section 251(c)(3) elements are those elements which the FCC has determined are necessary for CLECs to provide service and without access to the ILEC's network, the CLEC would be impaired in its ability to do so. When making the determination that an element is no longer "necessary" and that CLECs are not "impaired" without access to an ILEC's UNE, the FCC found that CLECs were able to purchase similar services from other providers. These other providers are not required to perform under a SQM/PMAP/SEEM plan. To continue to impose upon BellSouth a performance measurement, and possible penalty, on competitive, commercial offerings is discriminatory and anticompetitive. For commercial offerings, the marketplace, not a SQM/PMAP/SEEM plan, becomes BellSouth's penalty plan. If BellSouth fails to meet a CLEC's provisioning needs, such CLEC can avail itself of other providers of the service and BellSouth is penalized because it loses a customer and associated revenues.

When a Section 251(c)(3) element is "de-listed," the incumbent LEC will most likely provide a wholesale service similar to such element pursuant to a commercially negotiated agreement or tariffed service with its own terms and conditions relating to the provision of such service. In fact, BellSouth's commercial agreements provide for consequences if BellSouth fails to perform in accordance with its contractual obligations. Such terms and conditions replace the need for SQM/PMAP/SEEM measurements and penalties. With over 150 CLECs having already executed commercial agreements with such terms and conditions, it is clear that those CLECs are satisfied with the penalties in the

commercial agreement and were willing to forego any SQM/PMAP/SEEM penalty payments should BellSouth not perform in accordance with the parties' agreement. Again, the market, not regulation, is the appropriate dictator of the implications should BellSouth, or any provider, fail to meet its customer's needs.

In addition, in May 2005, BellSouth and several CLECs entered into a Stipulated Agreement relating to issues analogous to the issue presented here and filed such agreement with the Georgia Public Service Commission in response to a Commission proceeding relating to whether BellSouth had the right to discontinue reporting and making payments under Tier 2 for performance deficiencies relative to the industry as a whole. The Georgia Public Service Commission recently entered an *Order Adopting Hearing Officer's Recommended Order*, dated June 23, 2005, in Docket No. 7892-U, which approved the Stipulation Agreement reached between BellSouth and several parties and included the following provisions:

> 1. All DS0 wholesale platform circuits provided by BellSouth to a CLEC pursuant to a commercial agreement to be removed from the SQM Reports; Tier 1 payments; and Tier 2 payments starting with May 2005 data.
>
> 2. The removal of DS0 wholesale platform circuits as specified above will occur region-wide.
>
> 3. All parties to this docket [the Performance Measurements' docket] reserve the right to make any arguments regarding the removal of any items other than the DS0 wholesale platform circuits

from SQM/SEEMs in Docket No. 19341-U [the Generic Change of Law docket] to the extent specified in the approved issues list.

The parties reserved the rights to address this issue for any service other than the DS0 wholesale platform in each state generic change of law docket, and thus, the CLECs are free to do so.

Issue 30: What is the appropriate language to implement the FCC's "entire agreement" rule under Section 252(i)?

Q. WHAT DOES THIS ISSUE ADDRESS?

A. On July 13, 2004, the FCC released its *Second Report and Order*[9] in which it adopted an "all or nothing" rule to replace the current "pick and choose" rule with respect to a CLEC's ability to adopt another CLEC's existing interconnection agreement. Under this new rule, CLECs who wish to adopt language from an effective interconnection agreement will have to adopt the entire agreement. The FCC found "the all-or-nothing approach to be a reasonable interpretation of section 252(i) that will 'restore incentives to engage in give-and-take negotiations while maintaining effective safeguards against discrimination.'" *Second Report and Order, ¶ 11.*

Q. WHAT LANGUAGE DOES BELLSOUTH PROPOSE TO IMPLEMENT THE

[9] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Second Report and Order*, 19 FCC Rcd 13494 (FCC 04-164), released July 13, 2004 ("*Second Report and Order*").

"ENTIRE AGREEMENT" RULE UNDER SECTION 252(i)?

A. All CLEC interconnection agreements should be modified to incorporate the FCC's "entire agreement" or "all or nothing" rule, so that all CLECs are bound by the FCC's requirement. BellSouth proposes the following language as the new Section 11 in the General Terms and Conditions section of all CLEC interconnection agreements:

11 Adoption of Agreements

Pursuant to 47 USC § 252(i) and 47 C.F.R. § 51.809, BellSouth shall make available to <<customer_short_name>> any entire interconnection agreement filed and approved pursuant to 47 USC § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted.

The Commission should affirm that such language is appropriate and necessary to implement the FCC's "all or nothing" requirement under Section 252(i) of the Act.

Q. IS BELLSOUTH ATTEMPTING TO "EXTEND THE 'ALL-OR-NOTHING' RULE BEYOND ITS INTENDED SCOPE" AS COMPSOUTH CLAIMS ON PAGE 55 OF ITS RESPONSE TO BELLSOUTH'S MOTION FOR SUMMARY JUDGMENT?

A. No. A CLEC has two options for entering into a new interconnection agreement with BellSouth: 1) it can adopt another CLEC's interconnection agreement in its entirety (as long as such agreement is in full compliance with the law and has at

least six months remaining before expiration) or 2) it can enter into negotiations using BellSouth's Standard Interconnection Agreement. This approach is consistent with the statements made by the FCC in its Brief before the Ninth Circuit hearing the appeal relating to the *Second Report and Order*. "A CLEC always is free to negotiate with an ILEC to obtain the individual items of interconnection it needs, without regard to their availability in another CLEC's existing negotiated agreements. The ILEC (as well as the CLEC) in such a case has an obligation 'to negotiate in good faith.' This process is backed by the right to arbitration. Indeed, it was in large part to ensure the usefulness and integrity of this negotiation process – a central feature of the 1996 Act – that the FCC decided to abandon its pick-and-choose rule, which it found to be a deterrent to effective negotiation." (Cites Omitted) (FCC Brief, p. 15).

Issue 32: How should the determinations made in this proceeding be incorporated into existing § 252 interconnection agreements?

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. When this Commission issued its December 8, 2004 *Order*, it stated that BellSouth had filed proof that BellSouth had served 330 CLECs who might be affected by this proceeding and that such parties had been given notice of the proceeding and were therefore made a party to this proceeding. Therefore, when issuing its final decision in this proceeding, the Commission should affirm that its decision will be binding upon ***all*** CLECs in Kentucky, including those CLECs

that were active in those proceeding as well as those CLECs that have been provided notice but elected not to participate.

Through this proceeding, BellSouth seeks to resolve common *TRO/TRRO* issues, thus avoiding multiple proceedings. Just as it would in any generic proceeding, the Commission should determine that its decisions are binding on all CLECs in Kentucky.

It is important that, at the end of this proceeding, the Commission approves specific contractual language that can be promptly executed by the parties, unless otherwise agreed to, so that the FCC's transitional deadlines are met. For example, to ensure that a smooth transition occurs, the Commission could order that within 45 days of its written order setting forth contract language that parties must execute compliant amendments (*i.e.*, those that track the Commission language, unless otherwise mutually agreed to) to their agreements. The Commission could also clarify that if an amendment is not executed within the allotted timeframe, the Commission's approved language will go into effect for all CLECs in the state of Kentucky, regardless of whether an amendment is signed.

It is important for the Commission to be clear in its order that the transition period established by the FCC in the *TRRO* for transitioning CLEC's embedded base, both on UNE-P and those on high-cap loops and transport, must be completed by March 10, 2006, without exception. The CLECs will have had one year's notice of the need to move their customer base, and no legitimate argument for additional time exists. BellSouth is currently making every effort to ensure

CLECs have a smooth transition for their embedded base,[10] and if CLECs do not avail themselves of BellSouth's notices and offers for planning such a smooth transition, they should not be permitted to seek an extension from this Commission. This is particularly important given that the CLECs apparently believe that they are only required to submit orders before March 10, 2006 (*See* p. 61, July 22, 2005, Joint CLEC's Response to BellSouth's Motion for Summary Judgment), and not complete other steps necessary to effectuate a smooth transition, notwithstanding the FCC's pronouncements that the reason for a twelve month transition period was to "***provide[] adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, which could include deploying competitive infrastructure, negotiating alternative access arrangements, and performing loop cut overs or other conversions."*** *TRRO*, ¶ 227.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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[10] Attached as Exhibit KKB-1 is a redacted copy of a certified letter BellSouth sent to several CLECs requesting information relating to their transition plans for delisted elements.