AFFIDAVIT

STATE OF MISSOURI

COUNTY OF BOONE

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

He is appearing as a witness before the Kentucky Public Service Commission in Case No. 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, his rebuttal testimony would be set forth in the annexed rebuttal testimony consisting of 17 pages and 0 exhibits.

Eric Fogle

LORI M. CONDRON
Notary Public - Notary Seal
State of Missouri
County of Boone
My Commission Expires October 22, 2006

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 2 DAY OF SEPTEMBER, 2005

Notary Public

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF ERIC FOGLE

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

DOCKET NO. 2004-00427

SEPTEMBER 8, 2005

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

A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., as a Director in BellSouth's Interconnection Marketing Organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME ERIC FOGLE THAT FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes. I filed direct testimony on August 16, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to provide BellSouth's response to the testimony and proposed contract language contained in the direct testimony of Joseph Gillan on behalf of The Competitive Carriers of the South, Inc. ("CompSouth") for Issues 6, 17, 18, 19, 20, 23, 24, 25, 26, 27, and 28.

To the extent that the parties provided Interconnection Agreement ("ICA") language supporting their positions on the issues, BellSouth has provided an edited version of the parties' proposed ICA language, attached to Pam Tipton's rebuttal testimony as PAT-5. This exhibit is provided to illustrate the ICA language that is acceptable to BellSouth. BellSouth has also considered additional modifications to some of the issues that I address, and my testimony includes additional language that is acceptable to BellSouth that is not included within exhibit PAT-5. I will explain BellSouth's redlines and the additional language that I include for the issues I address in this rebuttal testimony.

Issue 6: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?

Q. WHAT ARE THE DISAGREEMENTS BETWEEN THE PARTIES CONCERNING THIS ISSUE?

A. There are two (2) overall disagreements. First, the parties disagree about how to count High-bit Digital Subscriber Loop ("HDSL") lines for the purpose of evaluating impairment. Second, the parties disagree as to whether there should be continued access to HDSL-capable loops in wire centers in which Competitive Local Exchange Carriers ("CLECs") are not impaired and are not entitled to obtain Unbundled Network Element ("UNE") DS1 loops.

Q. WITH RESPECT TO THE FIRST DISAGREEMENT, DID BELLSOUTH COUNT HDSL-CAPABLE LOOPS AS DS1 EQUIVALENTS FOR THE

PURPOSE OF EVALUATING IMPAIRMENT?

A. No. As I stated in my direct testimony, BellSouth counted UNE HDSL-capable copper loops on a one-for-one basis and did not convert each HDSL-capable loop to voice grade equivalents. BellSouth elected to conservatively calculate deployed HDSL loops, although it would have been appropriate to convert deployed HDSL-capable loops to voice grade equivalents. If BellSouth had counted UNE HDSL-capable copper loops as voice grade equivalents, it would have had no impact to the Kentucky wire center list. While Mr. Gillan expressed concerns about calculating HDSL-capable loops, (Direct Testimony of Joseph Gillan, pp. 24 – 26) these concerns appear to be overstated.

In any event, I understand the Federal Communications Commission ("FCC") to have contemplated that currently deployed HDSL loops would be counted as the equivalent of 24 business lines based upon statements made in the Triennial Review Order (*"TRO")* that, "Carriers frequently use a form of DSL service, i.e., High-bit rate DSL (HDSL), both two-wire and four-wire HDSL, as the means for delivering T1 services to customers. We will use DS1 for consistency but note that a DS1 loop and a T1 are equivalent in speed and capacity, both representing the North American standard for a symmetric digital transmission link of 1.544 Mbps."

Because HDSL and DS1 loops are technically equivalent, and because the FCC clearly references the use of HDSL technology to deliver DS1 service, it

is clearly appropriate to count currently-deployed HDSL loops delivering DS1 level service as 24-line equivalents. To avoid a dispute on this issue, however, BellSouth counted loops using HDSL technology as one (line) instead of 24 business lines in its nonimpairment analysis.

Q. TURNING TO THE SECOND AREA OF DISAGREEMENT, WHY DOES BELLSOUTH CONCLUDE THAT CLECS ARE NOT ENTITLED TO UNE HDSL LOOPS IN OFFICES WHERE NO IMPAIRMENT FOR DS1 LOOPS EXISTS?

A. The FCC has defined DS1 loops to include 2-wire and 4-wire copper loops capable of providing DS1 service using HDSL technology, in its definition of DS1 loops. (47 C.F.R. § 51.319(a)(4). BellSouth has included the FCC's definition in its ICA language, which provides that "DS1 Loops include 2-wire and 4-wire copper Loops capable of providing high-bit rate digital subscriber line services, such as 2-wire and 4-wire HDSL Compatible Loops." (*See* PAT-1, Section 2.3.6.1) Based upon the FCC's definition, DS1 loop relief includes relief from the obligation to provide HDSL loops.

It is also useful to keep in mind that BellSouth is not attempting to restrict CLECs from using HDSL *technology*. In fact, the import of the FCC's Order is to encourage CLECs to deploy this technology on their own. In offices where there is no impairment, the HDSL-capable loop Universal Service Order Code ("USOC") that CLECs previously ordered (albeit infrequently) will no longer be available. Instead, the CLEC can order the exact same copper loop

using the Unbundled Copper Loops ("UCL") USOC. The CLEC would also order loop make-up ("LMU") to determine if the copper loop is capable of meeting the HDSL criteria. If the copper loop does not meet the HDSL criteria due to the presence of load coils or excessive bridged taps, then the CLEC can order Unbundled Loop Modification ("ULM") to make the necessary changes. In other words, , without impairment, there is no reason to compel BellSouth to continue to provide a loop product that is simply an indicator of a pre-defined set of conditions suitable for supporting HDSL technology, as the CLECs can provide this capability on their own. In offices where there is impairment, the HDSL-capable loop that CLECs order today will remain unchanged.

Q: WHAT WOULD BE THE IMPACT TO CLECS IF BELLSOUTH IS NOT REQUIRED TO PROVIDE HDSL LOOPS IN CERTAIN OFFICES?

A. There would be minimal impact to CLECs. BellSouth's records indicated that in the entire state, BellSouth provides 54 UNE HDSL loops to all CLECs. By allowing CLECs to order UCLs instead of a UNE HDSL loop, the reality is that BellSouth is simply trying to follow the FCC's rules, which also has the result of simplifying BellSouth's ordering systems.

Q. WHAT ICA LANGUAGE DO THE CLECS PROPOSE WITH RESPECT TO HDSL LOOPS?

A. The CLECs propose ICA language that states "HDSL-capable loops are not the equivalent of DS1 loops for the purpose of counting Business Lines." (Gillan

Exhibit JPG-1, p. 19). This language improperly creates a distinction between HDSL and DS1 loops, when such a distinction does not exist. BellSouth recommends that the Commission reject CompSouth's proposed language from any approved contract language that results from this proceeding.

Issue 17: Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?

Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE PARTIES.

A. Even though the FCC has made clear in paragraphs 199, 260, 261, 262, 264, and 265 of the *TRO* that BellSouth is not obligated to provide new line sharing arrangements after October 1, 2004, the CLECs propose ICA language (Gillan Attachment JPG-1, Section 2.11) that would obligate BellSouth to continue to provide access to line sharing as an unbundled network element. This language should be rejected in its entirety.

Q. HAVE THE CLECS PROVIDED ANY EXPLANATION FOR THEIR LINE SHARING CONTRACT LANGUAGE?

A. No. Although Mr. Gillan has included contract language, he failed to include any discussion supporting that language, which is likely because this issue is more of a legal dispute, which both parties have briefed. For more information

on this issue, I refer the Commission to BellSouth's summary judgment briefs.[1]

Issue 18: If the answer to the foregoing issue is negative, what is the appropriate language for transitioning off a CLEC's existing line sharing arrangements?

Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES CONCERNING THIS ISSUE?

A. The CLECs' proposed contract language does not include the FCC's transition plan. The CLECs' omission is clear when the language at my direct exhibit EF-1 at 3.1.2 is compared with Mr. Gillan's proposed language at JPG-1, Section 3.1.3. The Commission should simply reject the CompSouth language and adopt BellSouth's transition language (provided in my direct testimony as Exhibit EF-1), which includes the FCC's transition plan. BellSouth's proposed language also requires CLECs that have ordered line sharing arrangements after October 1, 2004 to pay the full loop rate for those arrangements. CompSouth's proposed language omits such a requirement.

Issue 19: What is the appropriate ICA language to implement BellSouth's obligations with regard to line splitting?

Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE

[1] BellSouth Telecommunications, Inc.'s Motion for Summary Judgement or in the Alternative Motion for Declaratory Ruling, filed June 2, 2005.

PARTIES.

A. Based on the ICA language proposed by Joseph Gillan (Exhibit JPG-1, Section 3), the parties' disagreement centers on the types of loops that should be included with line splitting, and who should provide the splitter.

Q. DOES THE ADDITIONAL LOOP TYPE INTRODUCED BY COMPSOUTH REQUIRE LINE SPLITTING?

A. No. BellSouth's contract language (Section 3 in Attachment 2) provides for line splitting over Unbundled Network Element-Loop ("UNE-L"), and, for a limited time, with Unbundled Network Element-Platform ("UNE-P") arrangements. The proposed CompSouth ICA language attempts to require line splitting on a commingled arrangement of a loop and unbundled local switching pursuant to section 271. The loop described by CompSouth does not exist, is not required by the FCC, and, therefore, should not be included in the section of the ICA that addresses line splitting.

Q. WHAT DISAGREEMENT EXISTS CONCERNING SPLITTERS?

A. It appears that the CLECs propose that BellSouth be obligated to provide splitters between the data and voice CLECs that are splitting a UNE-L. As I stated in my direct testimony, splitter functionality can easily be provided by either an inexpensive stand-alone splitter or by utilizing the integrated splitter built into all Asynchronous Digital Subscriber Line ("ADSL") platforms.

Clearly, BellSouth should not be obligated to provide the CLECs with splitters when they are utilizing UNE-L and can readily provide this function for themselves.

Issue 20: SUB-LOOP CONCENTRATION: a) What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration? b) Do the FCC's rules for sub loops for multi-unit premises limit CLEC access to copper facilities only or do they also include access to fiber facilities? c) What are the suitable points of access for sub-loops for multi-unit premises?

Q. HAVE THE CLECS PROVIDED ANY DIRECT TESTIMONY ON THIS ISSUE?

A. No. In Georgia, the parties agreed to remove Issue 20(a) as an active issue. With respect to subparts (b) and (c), those were issues that were added to the Joint Issues List at the request of Sprint. Sprint did not file testimony in Kentucky, and BellSouth and Sprint have reached an agreement in principle that resolves all issues between the two companies except Issue 6. Based on this apparent lack of disagreement, this Commission should either remove this issue in its entirety or accept BellSouth's proposed ICA language in its entirety.

Issue 23: (a) What is the appropriate definition of minimum point of entry ("MPOE")? (b) What is the appropriate language to implement BellSouth's obligation, if any, to offer unbundled access to newly-deployed or 'greenfield' fiber

loops, including fiber loops deployed to the MPOE of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?

Issue 24: What is the appropriate ICA language to implement BellSouth's obligation to provide unbundled access to hybrid loops?

Issue 28: What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?

Q. DID THE CLECS PROVIDE ANY DIRECT TESTIMONY ON THESE ISSUES?

A. No.

Q. DOES BELLSOUTH AGREE WITH ANY OF THE CLECS' PROPOSED ICA LANGUAGE?

A. Yes. BellSouth agrees with the CLECs' proposed language for access to Fiber to the Home and Fiber to the Curb ("FTTH/FTTC") (Gillan Exhibit JPG-1, Paragraphs 2.1.2, 2.1.2.1, and 2.1.2.2, Issue 23). BellSouth does not agree with CompSouth's proposed language at Paragraph 2.1.2.3.

Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES CONCERNING COMPSOUTH'S PROPOSED PARAGRAPH 2.1.2.3?

A. CompSouth is asking BellSouth to agree to language that provides it with an unlimited right to FTTH/FTTC DS1 loops in impaired wire centers based on its reading of the FCC's *TRO* and subsequent reconsideration orders. BellSouth is willing to replace CompSouth's proposed paragraph 2.1.2.3 with the following language:

> FTTH/FTTC loops do not include local loops to predominantly business MDUs.

Also, because there are pending motions for reconsideration pending at the FCC, subsequent FCC action that may clarify this issue would need to be addressed through the change of law provisions of the interconnection agreement between the parties, as applicable. Thus, if the FCC addresses pending motions for reconsideration and sets forth that relief extends to all fiber deployments, then BellSouth would expect to incorporate any such order into its contracts.

In BellSouth's view the best reading of the *TRO,* the rules, and the FCC's goals of increasing broadband deployment is that the FTTH/FTTC relief extends to all such deployments. For example, the FCC stated in the *TRO* at ¶ 210 that while it adopted "loop unbundling rules specific to each loop type, our obligations and limitations for such loops do not vary based on the customer to be served." In the *TRO Errata* (issued September 2003), the FCC deleted the word "residential" from its rules defining FTTH loops, so that a fiber-to-the-home loop is a local loop serving an end user's customer premises (TRO Errata, ¶37). Also, in the TRO Errata, the FCC replaced the words "residential unit" with "end user's customer premises" in the rules defining new builds, so

that an ILEC is not required to provide fiber-to-the-home loop to an end user's customer premises. (TRO Errata, ¶ 38). Finally, in the Errata to the October 18, 2004 Order on Reconsideration, the FCC replaced the words "a residential unit" in its rules addressing new builds, so that an ILEC is not required to provide a FTTH or FTTC loop on an unbundled basis when the ILEC deploys such a loop to an end user's customer premises that has not been served by any loop facility.

Q. DOES BELLSOUTH HAVE CONCERNS WITH THE PROPOSED ICA LANGUAGE PROVIDED BY COMPSOUTH REGARDING HYBRID LOOPS (ISSUE 24)?

A. Yes. CompSouth omitted BellSouth's paragraph 2.1.2.3 which addresses availability to copper facilities in overbuild areas. With regard to hybrid loops, BellSouth disagrees with the additional language provided by CompSouth that attempts to create an obligation for access to hybrid loops, even if there is no impairment. Specifically, in paragraph 2.1.3, CompSouth proposes, "Where impairment does not exist, BellSouth shall provide such hybrid loop at just and reasonable rates pursuant to Section 271…" This language is not appropriate because, as set forth in its briefs, BellSouth has no obligation to include Section 271 obligations in interconnection agreements entered into under Section 251 and 252 of the Act.

Issue 25: Under the FCC's definition of a loop found in 47 C.F.R. §51.319(a), is a mobile switching center or cell site an "end user customer's premises"?

Q. DID THE CLECS PROVIDE ANY DIRECT TESTIMONY ON THIS ISSUE?

A. No.

Q. WHAT ICA LANGUAGE DO THE CLECS PROPOSE?

A. The CLECs have included language at JPG-1, page 52. BellSouth does not object to the CLECs' proposed language and this issue was removed as an active issue during the Georgia change of law docket.

Issue 26: What is the appropriate ICA language to implement BellSouth's obligation to provide routine network modifications?

Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE PARTIES.

A. The parties view Routine Network Modifications and line conditioning differently. BellSouth's position is that line conditioning is a subset of the Routine Network Modifications defined by the FCC in paragraphs 250, and 643 of the *TRO*. The CLECs' position is that the obligations for Routine Network Modifications and line conditioning are separate and independent.

Q. WHY DOES COMPSOUTH CLAIM THAT LINE CONDITIONING IS NOT A SUBSET OF ROUTINE NETWORK MODIFICATIONS?

A. On Page 57 of his direct testimony, Gillan states that "BellSouth is obligated to condition facilities '… whether or not the incumbent LEC offers advanced services to the end user customer on that copper loop or copper subloop.'" Then, he erroneously concludes that "BellSouth need not routinely condition loop facilities for its own services for it to be obligated to condition facilities for other CLECs." It is the latter conclusion with which BellSouth disagrees. BellSouth is not asserting that it needs to offer advanced services to a specific customer to have a routine network modification obligation. It is necessary, however, for BellSouth to routinely perform network modifications for its own services to have an obligation to perform similar modifications for CLECs.

In addition, Mr. Gillan points out that the rules for Routine Network Modifications are in a different section of the rules from the line conditioning rules. BellSouth does not disagree that there are separately numbered subparts (or subsections) contained within the federal rules, but both subparts are included within the overall rubric of the FCC's "Specific Unbundling Requirements" at 47 C.F.R. § 51.319. The *TRO* at paragraphs 250 and 643 explains the relationship between Routine Network Modifications and line conditioning unbundling requirements. Specifically, in Paragraph 250, the FCC states, "Line conditioning constitutes a form of Routine Network Modification …" Later, in Paragraph 643, the FCC states, "Line Conditioning is properly seen as a Routine Network Modification …." In both cases, the phrase "constitutes a form" and the term "properly" are defined as a "subset." Stated simply, the FCC clearly identifies BellSouth's line conditioning obligation as a subset of BellSouth's routine network modification obligations.

Q. PLEASE RESPOND TO MR. GILLAN'S EXAMPLE ON PAGE 58 THAT PURPORTS TO ILLUSTRATE THE DIFFERENCE BETWEEN LINE CONDITIONING AND ROUTINE NETWORK MODIFICATIONS.

A. Mr. Gillan states that "to a large extent, BellSouth's DSL offerings are housed in remote terminals, located closer to customers." He continues, "CLECs, on the other hand, collocate their equipment at the central office and, therefore, must frequently use longer loops." Both claims are inaccurate. Like CLECs, BellSouth started its DSL deployment in central offices, and prefers deploying in central offices where possible. Within BellSouth's service territory, there are a large number of customers that cannot be reached with DSL service from the central office (by either CLECs or BellSouth). In these situations, it is necessary for both BellSouth and the CLECs (which some have chosen to do) to deploy Digital Subscriber Line Access Multiplexers ("DSLAMs") in remote terminals to reach customers. In either case, the CLEC and BellSouth are in the same situation, and must deploy the same equipment to reach the same customers. As a result, there is no distinction between the DSL service offered by BellSouth and the DSL service offered by CLECs that would create a situation where the line conditioning that BellSouth performs for itself would not also be sufficient for CLECs.

Mr. Gillan on Page 58 continues, stating that line conditioning is an "… obligation that BellSouth must honor *whether or not it would do so for its own customers* …" without any supporting justification for this position.

Clearly, CompSouth's position attempts to read away the FCC's plain language that specifies that line conditioning is a subset of Routine Network Modifications, and that as a result, BellSouth's line conditioning obligation is based entirely on what it would do for its own customers. In an effort to narrow the dispute between the parties, however, BellSouth can agree to some of CompSouth's proposed contract language as reflected in BellSouth witness Pam Tipton's Exhibit PAT-5.

Item 27: What is the appropriate process for establishing a rate, if any, to allow for the cost of routine network modification that is not already recovered in Commission-approved recurring or non-recurring rates? What is the appropriate language, if any, to incorporate into the ICAs?

Q. DID COMPSOUTH PROVIDE ANY DIRECT TESTIMONY OR PROPOSED ICA LANGUAGE ON THIS ISSUE?

A. No. CompSouth did not provide any direct testimony on this issue, but Mr. Gillan did propose ICA language that only allows BellSouth to recover costs for Routine Network Modifications based on the Total Element Long Range Incremental Cost ("TELRIC") rates already approved by the Commission, even if the Routine Network Modification being requested was not included in the calculation of that rate. Pages 58-59.

In contrast, BellSouth's position is that for Routine Network Modifications that have established TELRIC rates approved by this Commission, that the

Commission-approved rates would be used. For Routine Network Modifications that have not been included in Commission-approved TELRIC rates, BellSouth proposes that each such situation be handled on an individual case basis, until such time that the Commission approves a rate for the previously unspecified Routine Network Modification.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.