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STATE OF GEORGIA

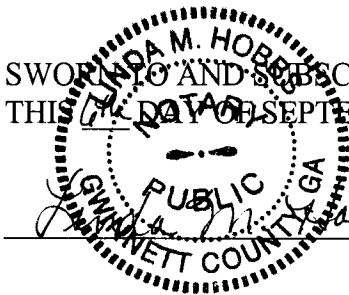
COUNTY OF FULTON


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 rebuttal testimony would be set forth in the annexed testimony consisting of 11 pages and 0 exhibits.


Kathy K. Blake

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 7th DAY OF SEPTEMBER, 2005



 _____ Notary Public

Notary Public, Gwinnett County, Georgia
My Commission Expires March 17, 2007

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF KATHY K. BLAKE
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
CASE 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 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, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed Direct Testimony on August 16, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to portions of the Direct Testimony filed on August 16, 2005 by Joseph Gillan on behalf of the Competitive Carriers of the South, Inc. (“CompSouth”) and Wanda G. Montano of US LEC Inc. (“US LEC”).

1 Q. ON PAGE 4 OF HIS DIRECT TESTIMONY, MR. GILLAN SUGGESTS
2 THAT THIS PROCEEDING IS “ABOUT MAKING *DIFFERENT*
3 OFFERINGS AVAILABLE” IN PLACE OF THOSE ELEMENTS THAT
4 ARE NO LONGER REQUIRED TO BE OFFERED PURSUANT TO
5 SECTION 251(C)(3) OF THE TELECOMMUNICATIONS ACT OF 1996
6 (THE “ACT”). DOES THE KENTUCKY PUBLIC SERVICE
7 COMMISSION (“COMMISSION”) HAVE JURISDICTION OVER
8 SECTION 271 OFFERINGS?

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10 A. Although I am not a lawyer, I understand the answer to that question to be
11 “No”. What Mr. Gillan advocates is for this Commission to require that
12 BellSouth “offer through approved interconnection agreements each of the
13 network elements listed in the competitive checklist of § 271, albeit at a
14 (potentially) different price.” As BellSouth described at length in its summary
15 judgment briefs, this Commission does not have jurisdiction over section 271
16 elements, nor are section 271 elements to be included in section 252
17 interconnection agreements. Thus, Mr. Gillan’s entire premise that “this
18 proceeding is not simply about making less available to the competitive local
19 exchange carriers (“CLECs”), it is also about making different offerings
20 available in their place” is incorrect.

21
22 Q. THAT BEING SAID, DOES BELLSOUTH CURRENTLY OFFER ANY
23 SERVICES THAT ARE “*DIFFERENT*” FROM, AND TAKE THE PLACE
24 OF, THOSE ELEMENTS THAT ARE NO LONGER REQUIRED TO BE
25 UNBUNDLED?

1

2 A. Yes. Almost a year and half ago, in response to the D.C. Circuit Court of
3 Appeals' vacatur of the FCC's rules associated with mass-market switching,
4 BellSouth developed and began offering CLECs a commercial wholesale
5 service which included stand-alone switching and DS0 loop/switching
6 combinations (including what was known as UNE-P) at commercially
7 reasonable and competitive rates. To date, over 150 CLECs have executed
8 commercial agreements containing negotiated terms and conditions relating to
9 the provision of BellSouth's Wholesale DS0 Platform.

10

11 With respect to high capacity loops and dedicated transport, BellSouth
12 currently offers, pursuant to its special access and private line tariffs, services
13 that are comparable to these loop and transport elements that are no longer
14 required to be unbundled pursuant to Section 251.

15

16 Q. ON PAGES 3-4, MR. GILLAN ADVOCATES THE INTERCONNECTION
17 AGREEMENT LANGUAGE HE BELIEVES IS "NEEDED TO
18 EFFECTUATE THE *TRRO*, AS WELL AS CERTAIN REMAINING
19 CHANGES FROM THE FCC'S EARLIER *TRIENNIAL REVIEW ORDER*
20 (*TRO*)." HAS BELLSOUTH BEEN ABLE TO NEGOTIATE
21 INTERCONNECTION AGREEMENTS WITH CLECS THAT DO IN FACT
22 EFFECTUATE THE *TRRO*?

23

24 A. Yes. As I stated in my direct testimony, 64 CLECs have executed *TRRO*
25 amendments, bringing their interconnection agreements into compliance with

1 current law. In addition to the 64 *TRRO* amendments, BellSouth has entered
2 into 34 new interconnection agreements with *TRRO*-compliant language for a
3 total of 98 *TRRO*-compliant agreements in the state of Kentucky. Thus, given
4 the number of CLECs that have been able to reach agreement with BellSouth
5 as to how to effectuate the *TRRO*, it is clear that Mr. Gillan’s proposed
6 language is not in fact “needed” to effectuate the *TRRO*. What is required is
7 the parties’ willingness to actually create an agreement that comports with
8 what the FCC has required. BellSouth’s proposed language does that. As is
9 discussed in Ms. Tipton’s testimony, Mr. Gillan’s often does not.

10

11 **Issue 2 and Issue 9 – Definition of DS1 and DS3 Loops and Transport and UNE-P**

12 **Embedded Base during the Transition Period**

13

14 Q. DO YOU AGREE WITH COMPSOUTH’S PROPOSED DEFINITION OF
15 “EMBEDDED CUSTOMER BASE” USED IN EXHIBIT JPG-1?

16

17 A. No. Throughout Exhibit JPG-1, Mr. Gillan defines the “embedded base” as a
18 CLEC’s customers and the services subscribed to by such customers instead of
19 the actual UNE service arrangement that has been provisioned. His customer-
20 based definition, however, conflicts with the FCC’s rules which use a service-
21 based definition. For example, for DS1 and DS3 loops and transport, the FCC
22 defines the embedded base by the actual loop or transport facility that is
23 provided to the CLEC and states that only those facilities that have been
24 provisioned as of the effective date of the *TRRO* should be included in the

1 embedded base. 47 C.F.R. § 51.319.¹ For local switching, the FCC’s rules
2 state that “[r]equesting carriers may not obtain new local switching as an
3 unbundled network element.” 47 C.F.R. §51.319(d)(2)(iii).

4
5 BellSouth’s proposed language in Attachment 2 follows the FCC’s definition
6 more closely by defining the embedded base as the actual individual UNE
7 service arrangement, i.e., the actual loop, local switching element, or dedicated
8 transport element.

9
10 The difference between CompSouth’s proposed definition and the FCC’s rules
11 is that CompSouth is defining the embedded base to mean the CLEC’s
12 customers versus the FCC’s definition that is based on the actual UNE service
13 arrangement or a carrier requesting (or not requesting) service. This difference
14 is important because it impacts whether a CLEC can order new UNE service
15 arrangements for its existing customer (whether at the same or a new location)
16 during the transition period. It also raises issues relating to the actual
17 transition and any true-ups associated for such time period.

18
19 Q. IS A CLEC ALLOWED TO CONTINUE ORDERING UNE-P FOR ITS
20 EMBEDDED BASE DURING THE TRANSITION PERIOD?

21
22 A. No. As, I stated in my direct testimony, allowing CLECs to continue to add

¹ See 47 C.F.R. §51.319(a)(4)(iii) for the definition of the embedded base for DS1 loops. See also 47 C.F.R. §51.319(a)(5)(iii) for the definition of the embedded base for DS3 loops; 47 C.F.R. §51.319(e)(2)(ii)(C) for the definition of the embedded base for DS1 dedicated transport; and 47 C.F.R. §51.319(e)(2)(iii)(C) for the definition of the embedded base for DS3 dedicated transport.

1 new UNE-P arrangements for existing customers would be inconsistent with
2 the core policy behind the FCC’s transition plan. Instead of weaning carriers
3 away from the UNE platform and toward alternative methods of competition,
4 as the FCC plainly intended, it would allow CLECs in Kentucky to expand the
5 very activities that the FCC found to be anticompetitive. The FCC also
6 explained that its transition plan “does not permit competitive LECs to add
7 *new UNE-P arrangements* using unbundled access to local circuit switching
8 pursuant to section 251(c)(3).” *TRRO* ¶ 277 (emphasis added). When a CLEC
9 orders a new UNE-P line to serve an existing customer, it is ordering new local
10 switching (and a “new UNE-P arrangement”), which is prohibited under the
11 plain language of the FCC’s order and rules.

12

13 **Issue 7 – Non-Impaired Wire Centers**

14

15 Q. DOES ANY CLEC WITNESS PROVIDE TESTIMONY WITH RESPECT
16 TO THIS ISSUE?

17

18 A. No; in fact, the CLECs have filed a modified issues list that deletes Issue 7 as
19 an open issue in this proceeding. However, in Exhibit JPG-1 under Issue 7
20 (page 20), CompSouth states that it accepts that “changed circumstances” will
21 not alter a wire center’s designation as non-impaired pursuant to the *TRRO*.
22 Alternatively, CompSouth does propose language to address situations in
23 which BellSouth mistakenly lists a wire center as non-impaired and a CLEC
24 relies upon such designation to its detriment.

25

1 Q. DOES BELLSOUTH AGREE WITH COMPSOUTH'S PROPOSED
2 LANGUAGE?

3

4 A. Not in its entirety. BellSouth does agree with CompSouth that, if BellSouth
5 were to designate a wire center as non-impaired, which was not disputed by the
6 CLEC, and a determination was later made that the wire center should not have
7 been on the non-impaired wire center list, then BellSouth should refund any
8 amounts due to a CLEC that, under certain circumstances, had obtained
9 tariffed high capacity loops and dedicated transport in that wire center.
10 BellSouth, however, does not agree to the language in its entirety as proposed
11 by CompSouth and has provided a redline of such language attached to Ms.
12 Tipton's rebuttal testimony as Exhibit PAT-5. BellSouth's proposed contract
13 language is more reasonable because it makes clear precisely the
14 circumstances in which a refund would be made and delineates also the
15 amount of any such refund. In contrast, CompSouth uses language that is less
16 precise. CompSouth also uses terms that are somewhat inflammatory, such as
17 "mistakenly" and "relies to its detriment". This type of language reflects
18 CLEC rhetoric and not commercially reasonable terms.

19

20 **Issue 13 – Removal of De-listed Elements from BellSouth's SOM/SEEM Plan**

21

22 Q. ON PAGES 52-53, MR. GILLAN ARGUES THAT ELEMENTS PROVIDED
23 UNDER SECTION 271 MUST BE INCLUDED IN STATE
24 PERFORMANCE PLANS. DO YOU AGREE?

25

1 A. No. The purpose of establishing the SQM/SEEM Plan was to ensure that
2 BellSouth met and continues to meet its parity obligations under Section 251
3 of the Act. This Commission recognized when it established the performance
4 measurements docket that “[w]ith this plan in place, Kentucky has
5 implemented the necessary steps to monitor BellSouth’s performance and
6 prevent backsliding.”² The requirement to provide nondiscriminatory access to
7 its network is a Section 251(c)(3) obligation. The FCC, in granting BellSouth
8 authority to provide long distance services in Kentucky, stated that because the
9 Kentucky performance plan is “precisely the same as the Georgia SEEM plan,”
10 it accorded the plan “the same probative value” as the Georgia plan and
11 believed that the Kentucky plan provided “sufficient incentives to foster post-
12 entry compliance.”³ Interestingly, the FCC also stated:

13 “[A]s we stated in the *BellSouth Georgia/Louisiana Order*, the
14 performance plans adopted by each state commission do not
15 represent the only means of ensuring that BellSouth continues
16 to provide nondiscriminatory service to competing carriers. In
17 addition to the financial penalties imposed by these plans,
18 BellSouth faces other consequences if it fails to sustain a high
19 level of service to competing carriers, including federal
20 enforcement action pursuant to section 271(d)(6), liquidated
21 damages under dozens of interconnection agreements, and

² .Kentucky Case No. 2001-00105, *Advisory Opinion dated April 26, 2002, page 9.*

³ *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, CC Docket No. 02-150, *Memorandum Opinion and Order*, FCC 02-260, issued September 18, 2002, ¶ 293 (“5-State 271 Approval Order”).

1 remedies associated with antitrust and other legal actions.”⁴
2 Thus it is clear that the FCC did not rely solely on the presence of a
3 performance measurements plan when granting long-distance approval to
4 BellSouth.

5
6 Indeed, the structure of the SQM/SEEM Plan demonstrates that it should not
7 include Section 271 elements. As this Commission is aware, the SQM/SEEM
8 Plan establishes a retail analogue or benchmark for each Section 251 element
9 BellSouth provides. This mechanism allows the Commission to compare
10 BellSouth’s performance for its retail customers to BellSouth’s performance
11 for CLECs and to determine if BellSouth is providing service at parity.

12
13 There is no parity obligation for Section 271 elements. Consequently, it is
14 neither necessary nor appropriate to compare BellSouth’s performance for such
15 elements provided to CLECs to BellSouth’s retail performance, and it certainly
16 is not appropriate for BellSouth to be subject to any SQM/SEEM penalties for
17 Section 271 elements.

18
19 Importantly, and as I discussed in my direct testimony, the removal of de-listed
20 elements from the performance measurement plan does not mean that
21 BellSouth will no longer meet its provisioning commitments. Indeed, the fact
22 that the elements are no longer required under Section 251 means that there are
23 competitive alternatives available, and if BellSouth were to fail to meet its

⁴ *5-State 271 Approval Order*, ¶ 294.

1 commitments, CLECs have other options for serving their end user customers.
2 Many of BellSouth's tariffs contain provisioning commitments that, if missed,
3 carry substantial penalties payable to the customer, as well as out-of-service
4 refund commitments. Thus, the removal of de-listed elements from
5 BellSouth's performance plan does not mean that BellSouth will be able to
6 ignore its commitments. It simply means that there are market forces that
7 penalize BellSouth in the event that BellSouth fails to meet its commitments.

8

9 Q. IS THE SECTION ENTITLED "HOT CUT PERFORMANCE" IN
10 COMPSOUTH'S PROPOSED LANGUAGE UNDER ISSUE 10 (PAGE 25-
11 26 OF EXHIBIT JPG-1) NECESSARY?

12

13 A. No. The language proposed by CompSouth with respect to hot cut
14 performance should not be included because hot cut performance
15 measurements are already included in the current SQM/SEEM Plan. The
16 Commission should not accept CompSouth's language, because any reference
17 or additional language in Attachment 2 would be duplicative and potentially
18 contradictory to the SQM/SEEM Plan already agreed to by CompSouth and
19 approved by this Commission.

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21 **Issue 30 – Implementation of FCC "All-or-nothing" Order**

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23 Q. DID ANY CLEC WITNESS ADDRESS THIS ISSUE?

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25 A. No.

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Q. DOES THE FACT THAT NO WITNESS ADDRESSED ISSUE 30 OR PROVIDED EVIDENCE WITH RESPECT TO ISSUE 30 HAVE AN IMPACT ON HOW THIS AUTHORITY SHOULD DETERMINE THIS ISSUE?

A. Yes. BellSouth provided direct testimony proposing language for this Commission to adopt and also provided BellSouth's rationale for such language. No witness has proposed alternative language for BellSouth to consider and either support or rebut. The Commission should, therefore, approve BellSouth's proposed language.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.