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 Pamela A. Tipton, 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 42 pages and 1 exhibits.

Pamela A. Tipton

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 6th DAY OF SEPTEMBER, 2005

LINDA M. HOBBS NOTARY PUBLIC GWINNETT COUNTY GA

Notary Public

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

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF PAMELA A. TIPTON

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

DOCKET NO. 2004-00427

SEPTEMBER 8, 2005

Q. ARE YOU THE SAME PAMELA A. TIPTON WHO FILED DIRECT TESTIMONY IN THIS DOCKET ON AUGUST 16, 2005?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I respond to and rebut portions of the direct testimony of CompSouth witness Joseph Gillan and U.S. LEC witness Wanda Montano. Specifically, I address their testimony and proposed interconnection agreement language as they relate to Issue Nos. 2, 4, 5, 8, 10, 11, 14, 15, 16, 22, 29 and 31 in the Joint Issues Matrix filed with this Commission on June 30, 2005.

Q. HAS BELLSOUTH REVIEWED THE CONTRACT LANGUAGE PROPOSED BY COMPSOUTH AND ATTEMPTED TO DETERMINE IF THE PARTIES CAN REACH AGREEMENT ON SOME OF THESE ISSUES?

A. Yes, BellSouth reviewed CompSouth's proposed language as it was filed with Mr. Gillan's direct testimony in Georgia. Mr. Gillan's proposed language in Kentucky is virtually identical to that which was filed as Exhibit JPG-1 to Mr. Gillan's direct testimony in Georgia. We have spent a significant amount of time reviewing and discussing CompSouth's proposed language with the goal of narrowing the disputes between the parties. We anticipate that these discussions will continue. It would have been helpful to have had this proposed language during the 90 day period when we were supposed to be negotiating these changes. Nevertheless, the proposed language at this late date still should be helpful to the Commission as it identifies the differences that remain between BellSouth and the other parties. I would also note that Mr. Gillan replaced his original Georgia exhibit with a revised JPG-1. I am not aware of Mr. Gillan making a similar filing in Kentucky.

Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT THE CONTRACT LANGUAGE PROPOSALS PRESENTED BY COMPSOUTH?

A. Yes, I do. One of our fundamental problems with CompSouth's proposed contract language is that in many instances it simply does not conform with the FCC's rules. For example:

- CompSouth wrongly asserts that CLECs may wait until March 10, 2006, the last day of the transition period, to submit orders to BellSouth to convert their embedded base and excess circuits from UNEs to alternative arrangements. The FCC provided for a transition period during which the parties were to work together to convert what was formerly a UNE to some other service.

The FCC provided a transition period to allow the CLECs to make an orderly transition, as opposed to a flash cut. The CLECs' proposed language would simply extend the transition period beyond 12 months and is in direct conflict with TRRO ¶¶ 142, 195, and 227;

- CompSouth erroneously alleges that the FCC's transition pricing for the de-listed elements applies only prospectively, from the date a CLEC amends its interconnection agreement forward. This interpretation conflicts with the clear language of the FCC, as set forth in TRRO ¶ 145, footnote 408; ¶ 198, footnote 524; and ¶ 228, footnote 630;

- CompSouth incorrectly asserts that CLECs may order new UNE-P, dark fiber loops and entrance facilities to serve their embedded base customers during the transition period. Again, this conflicts directly with and TRRO ¶227 (UNE-P), ¶ 146 and 182 (dark fiber loops) ¶ 66 and 141 (entrance facilities) ; and

- CompSouth fails to acknowledge that CLECs must undertake a reasonably diligent inquiry to determine if they are entitled to unbundled access to high capacity loops and transport before they place orders for these elements with BellSouth, which conflicts with TRRO, ¶ 234, among other provisions.

I will expand upon these conflicts in more detail as I address the various issues later in this testimony.

My second general comment is that CompSouth's proposed language is difficult to follow because CompSouth has presented only disjointed sections of proposed language to address specific issues while not including pertinent and related sections that would reside elsewhere in an interconnection agreement. The interconnection agreement is a lengthy document, with many interrelated and interdependent sections. At a minimum, the interconnection agreement attachment 2 language should be presented as a whole to ensure interrelated issues are consistently addressed. By limiting their proposed language changes to only portions of the agreement, CompSouth fails to address other related issues.

My third general comment is that CompSouth uses many supposedly defined terms (those which are capitalized), yet it provides no definition for these terms in its language proposal. Since these terms could be interpreted differently by different people, my rebuttal assumes that CompSouth has accepted BellSouth's definitions for these terms, unless it is obvious that they did not. For example, CompSouth uses the term "DS1 UNE loop" in its proposed language, but it does not provide a definition for this loop. Therefore, because BellSouth uses the term "DS1 loop" in its proposed language, we deleted the word "UNE" from "DS1 UNE loop" in BellSouth's redline of CompSouth's language, attached hereto as Exhibit PAT-5. In the few instances where CompSouth defined terms, but did so inconsistently with the FCC's rules (or even with its own definition supplied elsewhere in its language), we have modified such terms in Exhibit PAT-5.

Q. HAS BELLSOUTH MADE ANY ATTEMPT TO ADDRESS THESE SHORTCOMINGS IN COMPSOUTH'S PROPOSED LANGUAGE?

A. Yes. BellSouth has attempted to redline CompSouth's proposed interconnection agreement language in Exhibit JPG-1 to Mr. Gillan's testimony as it was originally filed in Georgia in an attempt to bring the CompSouth proposed language into compliance with the TRO and TRRO. BellSouth's working version of its redlines to the CompSouth-proposed contract language is attached as Exhibit PAT-5 to my testimony as an aid to the Commission in evaluating where the parties disagree and to highlight how CompSouth's proposed language is not compliant with current law. I will add that BellSouth is continuing to work with CompSouth to resolve some of the disagreements between the parties in the proposed contract language. However, because CompSouth did not propose a comprehensive set of terms and conditions, BellSouth cannot advocate adopting even BellSouth's redlined version of the CompSouth's proposal because it would be incomplete. I will note, however, that if the CLECs had made these proposals to BellSouth to be integrated into a complete document, it is possible that BellSouth could have negotiated some resolution to some of these disputes. We simply didn't have the chance to do that prior to filing this testimony on such short notice. As a result, since we have provided our own complete versions of this language to the Commission and these versions are attached as Exhibits PAT-1 and PAT-2 to my direct testimony, we request that the Commission adopt our complete statements of the relevant portions of our basic interconnection agreement with the CLECs.

Issue 2:

Transition Pricing

Q. IN COMPSOUTH'S PROPOSED LANGUAGE FOR THE TRANSITION OF EMBEDDED BASE HIGH CAPACITY LOOPS AND TRANSPORT, AND LOCAL SWITCHING/UNE-P, IT ALLEGES THAT TRANSITION PRICING FOR EACH OF THESE ELEMENTS IS BASED ON THE "TELRIC RATE" THE CLEC PAID FOR THAT ELEMENT ON JUNE 15, 2004. DOES THIS PROPOSAL CORRECTLY REPRESENT THE REQUIREMENTS IN THE TRRO?

A. No. The FCC stated that such pricing would be determined based on the higher of the rate **the CLEC paid** for that element or combination of elements on June 15, 2004, or the rate the state commission ordered for that element or combination of elements between June 16, 2004 and the effective date of the Triennial Review Remand Order. In most, if not all instances, the transitional rate will be the rate the CLEC paid for the element or combination of elements on June 15, 2004, plus the transitional additive ($1 for UNE-P/Local Switching and 15% for high capacity loops and transport). For UNE-P, this includes those circuits priced at market rates for the FCC's four or more line carve-out established in the UNE Remand Order.[1]

Q. IS IT CLEAR THAT THERE IS ACTUALLY A DISPUTE WITH THE CLECS OVER THIS PARTICULAR POINT?

A. Yes, it is. Some of BellSouth's older contracts include a market based price for switching for "enterprise" customers served by DS0 level switching that met the FCC's four or more line carve-out. That is, in some of our agreements, CLECs paid TELRIC-based rates for DS0 level switching provided to "mass market" customers

[1] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, released November 5, 1999

(those with three or fewer lines), and higher rates for those that were a part of the four or more line carve out. These terms and rates were included in the interconnection agreements and were in effect on June 15, 2004. Notwithstanding this, Mr. Gillan claims, on page 14 of his direct testimony, that "CLECs are entitled to pay TELRIC rates (plus ($1) for all analog customers, including any customers that BellSouth may have previously claimed were 'enterprise customers' because they had four or more lines." It is difficult to say how much clearer the FCC could have been than to say that for the embedded base of UNE-Ps the CLECs would pay either the higher of the rates that were in their contracts as of June 15, 2004, or the rates that the state commissions had established between June 16, 2004 and the effective date of the TRRO, plus $1. Yet according to Mr. Gillan, the FCC didn't really mean what it said. Mr. Gillan misrepresents the FCC as having directed that the CLECs would always pay TELRIC plus $1 for their embedded base, irrespective of what is in their contract with BellSouth.

Q. PLEASE IDENTIFY THE PORTIONS OF THE TRRO THAT ADDRESS WHAT RATES WILL APPLY TO EMBEDDED BASE DS1 AND DS3 LOOPS, DS1 AND DS3 DEDICATED TRANSPORT, AND LOCAL SWITCHING/UNE-P WHILE A CLEC IS LEASING THESE ELEMENTS FROM BELLSOUTH DURING THE RELEVANT TRANSITION PERIOD.

A. Although the language is very similar, I will separately address each set of elements below:

<u>DS1, DS3 AND DARK FIBER LOOPS</u>

The FCC established transition period pricing for DS1 loops in 47 C.F.R. 51.319(a)(4)(iii). The rule states:

> For a 12-month period beginning on the effective date of the Triennial Review Remand Order, any DS1 loop UNEs that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (a)(4)(i) or (a)(4)(ii) of this section, shall be available for lease from the incumbent LEC at a rate equal to **the higher of** (1) 115% of **the rate the requesting carrier paid** for the loop element **on June 15, 2004**, or (2) 115% of **the rate the state commission has established or establishes,** if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that loop element. (emphasis added)

The FCC prescribed the same transition period rate increases for DS3 loops and dark fiber loops in subsections 51.319 (a)(5)(iii), and 51.319 (a)(6) of that rule, respectively.

DS1, DS3, AND DARK FIBER TRANSPORT

The FCC established transition period pricing for DS1 transport in 47 C.F.R. 51.319(e)(2)(ii)(C). That rule states:

> For a 12-month period beginning on the effective date of the Triennial Review Remand Order, any DS1 dedicated transport UNE that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (e)(2)(ii)(A) or (a)(4)(ii)(B) of this section, shall be available for lease from the incumbent LEC at a rate equal to **the higher of** (1) 115% of **the rate the requesting carrier paid** for the dedicated transport element **on June 15, 2004,** or (2) 115% of **the rate the state commission has established or establishes,** if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. (emphasis added)

The FCC prescribed the same transition period rate increases for DS3 dedicated transport and dark fiber in subsections (e)(2)(iii)(C) and (e)(2)(iv)(C) of that rule, respectively.

LOCAL SWITCHING

The FCC established transition period pricing for DS0 level switching in 47 C.F.R. 51.319(d)(2)(iii). That rule states:

> ... for a 12-month period from the effective date of the Triennial Review Remand Order, ... [t]he price for unbundled local circuit switching in combination with unbundled DS0 capacity loops and shared transport obtained pursuant to this paragraph shall be **the higher of: (A) the rate at which the requesting carrier obtained that combination** of network elements **on June 15, 2004** plus one dollar, or **(B) the rate the state public utility commission establishes,** if any, between June 16, 2004 and the effective date of the Triennial Review Remand Order, for that combination of network elements, plus one dollar. (emphasis added)

There is absolutely no mention or reference to TELRIC rates in any of the rules addressing transitional pricing for these de-listed UNEs. Nor is there any suggestion that the rates included in the interconnection agreements should be restated to some different level before the additive is applied. In short, BellSouth's proposal regarding transition pricing is fully consistent with the FCC's rules, and CompSouth's is not.

Q. CONTINUING WITH REGARD TO TRANSITION PRICING, ON PAGE 9 OF HIS TESTIMONY, MR. GILLAN CLAIMS THAT THE FCC'S TRANSITION PERIOD PRICE INCREASES BECOME EFFECTIVE WHEN THEY ARE INTRODUCED INTO A CARRIER'S INTERCONNECTION AGREEMENT. DO YOU AGREE WITH HIS CLAIM?

A. No, not entirely. In the ordinary course of events, Mr. Gillan would be correct. Normally, when there is a change in the law, the parties must negotiate to incorporate the change into their contract, and the change is only effective prospectively.

However, as the litigation in Kentucky and elsewhere has demonstrated, the FCC has the power and the authority to determine that something should be done differently, and it has done so here. In this case, while it is true that the parties must amend their interconnection agreement to incorporate these transitional rates, these rates do not only apply on a limited, going forward basis as Mr. Gillan alleges. The FCC clearly indicated, to the contrary, that transition period pricing would apply for each de-listed UNE retroactively to March 11, 2005. For dedicated transport, for example, the FCC stated in footnote 408 of the TRRO that: "Dedicated transport facilities no longer subject to unbundling **shall be subject to true-up** to the applicable transition rate upon the amendment of the relevant interconnection agreements, including any applicable change of law process." (emphasis added). The FCC sets forth this same requirement for high cap loops and UNE-P in the sections of the TRRO addressing those elements.[2]

Indeed, this is another situation where the CLECs' proposed language seems to further confuse issues. Although it is surely just a simple error, CompSouth's proposed interconnection agreement language appears to conflict with Mr. Gillan's testimony with respect to the date the interim rates would become effective. CompSouth's proposed language states that BellSouth may charge the interim pricing for de-listed elements from the effective date of the CLEC's amended interconnection agreement to the end date of the transition period. (Sections 2.2.6, 2.3.6.3, 4.4.4, 5.3.3.4, 6.2.4.4 and 6.9.1.5, Exhibit JPG-1). Yet, in his testimony, on page 11, Mr. Gillan states that CLECs must simply "place an order with BellSouth to qualify for transition rates." This makes no sense. The TRRO makes it very clear that this

[2] See also TRRO, footnotes 524 and 630, addressing true-up of transition rates for high cap loops and UNE-P respectively.

interim pricing for each de-listed element applies from March 11, 2005, to March 10, 2006 (or September 10, 2006 for dark fiber), but only while the CLEC is leasing that element from the ILEC during the relevant transition period.

Q. ON PAGES 9 AND 10 OF HIS TESTIMONY, MR. GILLAN STATES THESE RATE CHANGES MUST TAKE EFFECT THROUGH CONTRACT CHANGES, RATHER THAN VIA UNILATERIAL ACTION. HAS BELLSOUTH BEGUN BILLING TRANSITION RATES TO CLECS THAT HAVE NOT YET AMENDED THEIR INTERCONNECTION AGREEMENT TO INCORPORATE THE TRANSITION RATES?

A. No, it has not. Again, BellSouth assumes this is essentially a reference to the issue we had with regard to the "no new adds" controversy about whether an FCC-ordered change is self-effectuating. BellSouth has not asserted, with regard to the embedded base, that the transition rates would go into effect without a contract amendment. The FCC clearly stated that the contracts would need to be amended, and that the transition rates would then be retroactive to March 11, 2005. This is perfectly clear from reading the TRRO, and BellSouth has not proposed any language in its contract amendments that would suggest anything to the contrary.

Once interconnection agreements are amended to incorporate the rates, terms and conditions associated with the transition of each de-listed UNE or UNE combination, the transition rate must be trued-up in a timely manner to the March 11, 2005 transition period start date.

Q. ON PAGES 10-11 OF MR. GILLAN'S DIRECT TESTIMONY, HE SUGGESTS THAT THE TRRO IS UNCLEAR AS TO THE TIME PERIOD DURING WHICH THE TRANSITION RATES SHOULD APPLY. DO YOU AGREE?

A. No. The TRRO specifically states that these rates will apply only while the CLEC is leasing the de-listed element from the ILEC during the relevant transition period. See TRRO, ¶¶ 145, 198 and 228. The transition rates will thus apply until the earlier of March 10, 2006 (or September 10, 2006 for dark fiber), or the date the de-listed UNEs are converted to the alternative arrangements ordered by the CLEC. Once the de-listed UNE is converted to an alternative service, the CLEC will be billed the applicable rates for that alternative service going forward.

Transition Period

Q. MOVING FROM TRANSITION PRICING TO THE TRANSITION PERIOD ITSELF, BASED ON YOUR REVIEW OF COMPSOUTH'S PROPOSED LANGUAGE, DO THE PARTIES AGREE ON THE START DATE AND END DATES FOR THE TRANSITION PERIOD?

A. Yes. In the first paragraph under each bolded heading in CompSouth's proposed transition language, it delineates when the transition period will begin and end. (Sections 2.2.1, 2.3.6.1.1, 4.4.1, 5.3.3.1, 6.2.1, and 6.9.1.1) Based on this language, BellSouth and CompSouth do agree on the start and end dates for the transition period.

Q. IF THE PARTIES AGREE TO THE START AND END DATES FOR THE TRANSITION PERIOD, WHAT IS THE NATURE OF THE DISAGREEMENT ABOUT THE TRANSITION TIMEFRAME?

A. The issue between the parties is what activity must occur during the transition period. BellSouth believes that the transition process must begin and end within the transition period. According to Mr. Gillan, the CLECs evidently believe that the process only has to begin within the transition period, with the completion of the transition occurring at some later date. For example, in paragraph 2.2.9 of Exhibit JPG-1, Mr. Gillan proposes that "No later than March 10, 2006, CLEC shall submit spreadsheet(s) identifying all of the Embedded Customer Base of circuits ...." Any rational person must understand that a spreadsheet cannot be submitted on March 10, 2006, and worked that same date, particularly when the spreadsheet includes facilities that are to be "transitioned to wholesale facilities obtained from other carriers or self-provisioned ...." Consequently, simply as a matter of logic, since the parties agree as to when the transition period begins and ends, the CLECs' position on the submission of orders must be rejected.

Beyond that, the FCC itself made it clear that the purpose of the transition period was so that the process of transitioning former UNEs could begin and end during that 12-month period. The FCC said in Paragraph 227 of the TRRO what must occur during the transition period:

> We believe it is appropriate to adopt a longer, twelve-month, transition period than was proposed in the *Interim Order and NPRM*. We believe that the twelve-month period provides 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.** Consequently, carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes. By the end of the twelve month period, requesting carriers must transition the affected mass market local circuit switching UNEs to alternative facilities or arrangements. (footnotes omitted) (emphasis added).

How much more clear could the FCC be than saying "By the end of the twelve month period, requesting carriers must transition the affected mass market local circuit switching UNEs to alternative facilities or arrangements?" The FCC didn't say that the CLECs just had to arrange to make the transition, or just had to submit orders to effect the transition, but that the CLECs had to "transition" the affected UNEs to alternative arrangements. The CLECs' position is unfounded and contrary to the FCC's specific directives. It is simply another attempt, thinly veiled, to generate a few more days or months, or perhaps years, where the CLECs could obtain these former UNEs at TELRIC rates.

New Adds during the Transition period

Q. WHAT IS THE ISSUE WITH REGARD TO THE COMPSOUTH'S POSITION ON NEW ADDS?

A. CompSouth's proposed language provides that during the twelve month transition period that they can add new UNE-P/Local Switching, DS1 and DS3 loops, and DS1, DS3 and Dark Fiber Dedicated Transport to serve their embedded base. That

assertion is completely inconsistent with language of the TRRO and its accompanying rules.

Of course, CLECs are entitled to order high capacity loops and transport in wire centers where the CLEC has certified, after undertaking a reasonably diligent inquiry, that it is entitled to order such loops and transport at UNE rates. However, CompSouth does not include self certification requirement language in its language proposal, instead it simply claims that it is entitled to these additional loops and transport during the transition period.

Q. MAY CLECS ADD NEW ENTRANCE FACILITIES DURING THE TRANSITION PERIOD, AS WOULD BE PERMITTED PURSUANT TO COMPSOUTH'S PROPOSED LANGUAGE IN SECTION 6.2.2 OF EXHIBIT JPG-1?

A. Absolutely not. The FCC concluded in the TRO that CLECs were not impaired without unbundled access to entrance facilities, and it affirmed that finding in the TRRO.[3] BellSouth is offering to allow embedded base UNE entrance facilities to remain in place during the transition period as an accommodation to help effectuate an orderly transition process for embedded base and excess dedicated transport facilities. CLECs certainly have no right to order new UNE entrance facilities.

CompSouth's proposed language violates this requirement in Section 6.2.2 of Exhibit JPG-1, where it states "CLEC shall be entitled to order and BellSouth shall provision DS1 and DS3 UNE Dedicated Transport, including DS1 and DS3 UNE Entrance Facilities, that CLEC orders for the purpose of serving CLEC's Embedded Customer

[3] TRO, ¶ 366, footnote 1116; TRRO, ¶ 66

Base and such facilities are included in the Embedded Customer Base." This cannot be reconciled with the FCC's ruling.

Q. MAY CLECS ADD NEW UNE SWITCH PORTS OR UNE-P LINES DURING THE TRANSITION PERIOD, AS COMPSOUTH'S PROPOSED LANGUAGE SUGGESTS?

A. No. The FCC specifically stated: "This transition period shall apply only to the embedded customer base" (TRRO at ¶ 199) and does not permit competitive LECs to "add new local switching as an unbundled network element."

47 C.F.R. § 51.319(d)(2)(iii). Further, the DS0 capacity local switching rule is clear – ILECs have no obligation to continue provisioning unbundled local switching. This rule, at 47 C.F.R. § 51.319(d)(2)(i), states that: "An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end user customers using DSO loops."

CompSouth's proposed language in Sections 4.4.2 and 5.3.3.2 of Exhibit JPG-1 violates this requirement. CompSouth's proposal is that "CLEC shall be entitled to order and BellSouth shall provision Local Switching orders [UNE-P] that CLEC orders for the purpose of serving CLEC's Embedded Customer Base and such facilities are included in the Embedded Customer Base." This proposed language in direct conflict with the plain words of the FCC's order.

Process Issues

Q. IS BELLSOUTH OBLIGATED TO PROVIDE WRITTEN NOTICE TO EACH CLEC OF THEIR EMBEDDED BASE OF UNES THAT MUST BE CONVERTED TO ALTERNATIVE SERVING ARRANGEMENTS AS COMPSOUTH PROPOSES IN SECTIONS 2.2.9, 2.3.6.4, 4.4.5, 5.3.3.5, 6.2.4.7 AND 6.9.1.7 OF EXHIBIT JPG-1?

A. No. The question is whether the CLECs are responsible for identifying what is in their embedded base, and telling BellSouth what the CLECs want to do with the embedded base as the embedded base is transitioned, or whether BellSouth should be required to notify the CLECs of the facilities that BellSouth believes are in the embedded base. It makes sense that each CLEC should identify its embedded base, and notify BellSouth of what it wants to do with that base. The alternative is for BellSouth to attempt to identify the embedded base, and then have the CLECs, in turn, figure out what they want to do with the embedded base, and then notify BellSouth of their decision. Why have two steps, performed by different players, to achieve the results that one player, the CLECs is clearly responsible for determining? Only the CLEC knows what it wants to do with its embedded base. What is the point in having BellSouth identify the base for the CLECs, who have their own records upon which they can make this determination? Other than hoping that BellSouth might miss some of the former UNEs, thus extending the CLECs use of something they are not entitled to have, there doesn't seem to be much point in the CLECs' position. Further, BellSouth has hundreds of CLECs with which it is going to have to coordinate in order to transition former UNEs. Requiring BellSouth to devote its

resources to identifying the embedded base, when each individual CLEC can use its own resources to identify its own embedded base, is not very efficient.

Q. MAY A CLEC SPREADSHEET TAKE THE PLACE OF A LOCAL SERVICE REQUEST (LSR) OR ACCESS SERVICE REQUEST (ASR) FOR PURPOSES OF CONVERTING EMBEDDED BASE AND EXCESS CIRCUITS TO ALTERNATIVE SERVING ARRANGEMENTS AS COMPSOUTH PROPOSES IN SECTIONS 2.2.9, 2.3.6.4, 4.4.5, 5.3.3.5, 6.2.4.7 AND 6.9.1.7 OF EXHIBIT JPG-1?

A. It depends. CLECs must follow the ordering procedures that BellSouth has in place for each de-listed UNE. To bulk convert UNE-P services to UNE-L arrangements, a spreadsheet may not be substituted for an LSR. Instead, BellSouth has provided CLECs with an on-line pre-ordering scheduling tool to permit the reservation of due dates associated with Bulk Migrations. Once spreadsheets are submitted and the parties agree that all de-listed UNE circuits are identified, CLECs may proceed with the normal process for Bulk migrations. To convert high-cap loops and transport to alternative services, however, CLECs may submit such requests on a spreadsheet and the spreadsheet will take the place of an LSR/ASR. If the CLECs comply with the reasonable dates BellSouth has proposed for submitting conversion requests, we can achieve an orderly transition using BellSouth's existing procedures.

Issue 4

Caps on DS1 and DS3 Loops

Q. DO YOU AGREE WITH THE LANGUAGE COMPSOUTH IS PROPOSING TO ADDRESS THE CAPS ON UNE DS1 AND DS3 LOOPS IN SECTIONS 2.2.4-2.2.4.2 OF EXHIBIT JPG-1?

A. I believe so. When Mr. Gillan filed his direct testimony in Georgia, CompSouth's proposed language asserted that the caps on DS1 and DS3 loops applied only to the Embedded Base during the transition period. It now appears that Sections 2.2.4, 2.2.5.1, 2.2.5.2 and 2.2.4.3 in Exhibit JPG-1 to Mr. Gillan's Kentucky testimony have been revised to correct this error in CompSouth's proposed language. The TRRO states that the caps apply: (1) even where the test requires DS3 loop unbundling (TRRO, ¶ 177 (limitation on DS3 loops)), and (2) where we have otherwise found impairment without access to such loops (TRRO, ¶ 181 (limitation on DS1 loops)).

Cap on DS1 Transport

Q. HOW DO YOU RESPOND TO MR. GILLAN'S ASSERTIONS, ON PAGES 32 – 36 OF HIS TESTIMONY THAT THE CAP ON UNBUNDLED ACCESS TO DS1 TRANSPORT APPLIES ONLY ON THOSE ROUTES WHERE THERE IS NO IMPAIRMENT FOR DS3 TRANSPORT?

A. CompSouth's position on how the cap on DS1 transport should be applied is based on paragraph 128 of the TRRO, however CompSouth acknowledges that the language BellSouth is proposing to implement the cap on DS1 transport reflects the FCC's rule in 47 C.F.R.§ 51.319 (e)(2)(B) where the FCC does not limit this cap only on routes where there is no impairment for DS3 transport. The rule states:

> Cap on unbundled DS1 transport circuits. A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

BellSouth's proposed language is also consistent with the outcome reached by the Massachusetts Department of Telecommunications and Energy. The Massachusetts Commission ruled in its July 14, 2005 Arbitration Order in D.T.E 04-33, on page 77, that "the plain language of the rule must prevail over the claim of inconsistency with the FCC's Triennial Review Remand Order" (addressing the purported conflict between the text of the TRRO and the final rules regarding the application of the DS1 transport cap).

Further, BellSouth believes the FCC intended for its rule to read as it does here since it justly recognizes that, once a CLEC has purchased 10 DS1 transport UNEs on a route, it has sufficient economics to buy or build DS3 transport on such routes. As the Court recognized in *USTA II*:

> After all, the purpose of the Act is not to provide the widest possible unbundling, or to guarantee competitors access to ILEC network elements at the lowest price that government may lawfully mandate. Rather its purpose is to stimulate competition-preferably genuine, facilities based competition. Where competitors have access to necessary inputs at rates that allow competition not only to survive but to flourish, it is hard to see any need for the Commission to impose the costs of mandatory unbundling. (USTA II, page 31)

Q. HAVE ANY CARRIERS AGREED TO BELLSOUTH'S PROPOSED LANGUAGE ON THE CAP FOR DS1 TRANSPORT?

A. Yes, Ms. Blake's testimony includes the numbers of carriers that have entered into contractual language that implements the TRRO and includes BellSouth's language regarding the cap for DS1 transport.

Definitions

Q. SHOULD THE COMMISSION ADOPT THE DEFINITION COMPSOUTH PROPOSES FOR THE TERM "BUILDING" IN SECTION 10.1 OF COMPSOUTH EXHIBIT JPG-1?

A. No. CompSouth's proposed definition of a "building," as set forth in Section 10.1 of Exhibit JPG-1 is unreasonable. To the best of my knowledge, neither the FCC nor any other agency has ever defined a "building" as CompSouth proposes defining the term. CompSouth's proposals are a transparent attempt to serve the interests of CLECs without regard for common sense. By attempting to define individual tenant space in a multi-tenant building as its own "building," a CLEC would have virtually unlimited access to UNE DS1 loops and DS3 loops to the one building housing all of these tenants in clear violation of the caps imposed by the FCC for these elements.

As I said in my direct testimony, the term "building" should be defined based on a "reasonable person" standard. As such, a single structure building, like National City Tower in Louisville, is one "building" regardless of whether there is one tenant or multiple tenants operating or residing in it.

Q. SHOULD THE COMMISSION ADOPT THE DEFINITION COMPSOUTH IS PROPOSING FOR A "BUSINESS LINE" IN SECTION 10.2 OF EXHIBIT JPG-1?

A. No. CompSouth's proposed definition does not conform with the FCC's definition of "business line" and, in fact, reaches well beyond what the FCC has prescribed in its Order For example, CompSouth proposes several modifications to the FCC's business line definition, including that business lines do not include non-switched loop facilities (which would potentially exclude some UNE loops). CompSouth also proposes to exclude unused capacity on channelized high capacity loops, yet the FCC's definition directs that digital access lines shall be counting each 64 kbps-equivalent as one line. In Georgia, CompSouth filed a revised Exhibit JPG-1 in which it replaced its proposed "business line" definition with the FCC's rule. I am not aware of CompSouth making a similar revised filing in Kentucky.

Q. SHOULD THE COMMISSION ADOPT THE DEFINITION OF "FIBER-BASED COLLOCATOR" AS CONTAINED IN COMPSOUTH EXHIBIT JPG-1, SECTION 10.4?

A. No. The memorialized definition in the interconnection agreement should not go beyond what the FCC has included in its rules. CompSouth's proposal goes well beyond the FCC's definition in several ways. They inappropriately broaden the definition of affiliates to incorporate companies who have done no more than engage in merger discussions. This is simply absurd. Merger discussions frequently break down for a variety of reasons. Further, there must be a date certain upon which the non-impairment facts are based. The key factor is what companies are actually

merged or affiliated on the date in which the non-impairment determination is made, whether that is the TRRO effective date or a future date when BellSouth designates additional unimpaired wire centers. More importantly, however, is how the collocator is served by fiber. CompSouth attempts to exclude arrangements where a collocated carrier (carrier A) has obtained fiber capacity from another collocated carrier (carrier B) for transporting traffic into and out of the wire center. In this example, assuming carrier A has fiber terminating equipment in its collocation arrangement and has fiber connected to that equipment that it obtained from carrier B, both collocated carriers, if actively powered, qualify as fiber based collocators under the FCC's definition. This, of course, is in addition to arrangements that a carrier has self-deployed fiber or obtained fiber from a third party delivered directly to the collocation arrangement from the cable vault.

Issue 5(b)

Wire Center Determinations

Q. ON PAGE 17 OF HIS TESTIMONY, MR. GILLAN REQUESTS THAT THIS COMMISSION REVIEW BELLSOUTH'S WIRE CENTER DETERMINATIONS, IMPLYING THAT BELLSOUTH MAY HAVE ADJUSTED ITS DETERMINATIONS TO SERVE ITS OWN INTERESTS. HOW DO YOU RESPOND?

A. First, let me reiterate that my understanding is that BellSouth's legal position is that the FCC is the only regulatory body that has jurisdiction over whether BellSouth properly applied the FCC's criteria. Having said this, however, I would like to assure

this Commission that BellSouth has tried to exercise every precaution to ensure that it properly applied the FCC's criteria to determine which of its wire centers exceed the non-impairment thresholds. We not only took great care in analyzing business line data, we also ensured the accuracy of our counts of fiber-based collocators by having BellSouth personnel visit wire centers to verify the presence of fiber-based collocators reflected in our billing records. We *absolutely did not* alter these findings to serve our own interests.

Q. DID BELLSOUTH TAKE ANY OTHER STEPS TO ENSURE THE ACCURACY OF ITS WIRE CENTER DETERMINATIONS?

A. Yes, we did. Notwithstanding our efforts to accurately count business lines, we found that a mathematical error had been made that impacted the initial results posted to our website. Thus, we retained Deloitte & Touche to conduct its own review of our calculations and to ensure that the calculations were correct based on the methodology we used. As David Wallis' testimony and exhibits demonstrate, Deloitte's calculations confirm BellSouth's determinations.

Q. DO YOU AGREE WITH MR. GILLAN'S REPRESENTATIONS, ON PAGES 18 – 20, AS TO HOW BELLSOUTH SHOULD HAVE COUNTED BUSINESS LINES?

A. At a very high level, yes. However, I disagree with certain of his arguments that conflict with the FCC's instructions regarding counting of business lines.

Q. DO YOU AGREE WITH MR. GILLAN'S RECOMMENDATIONS TO THIS COMMISSION REGARDING THE CONSIDERATION OF UNE-L LINES IN EACH WIRE CENTER?

A. No. Mr. Gillan argues that, before BellSouth can include UNE-L lines in its business line count, it must first determine which UNE-L lines are used to provide switched services. However, the FCC did not impose this requirement. Rather, the FCC's rule states that all UNE-L lines shall be counted:

> The number of business lines in a wire center shall equal the sum of all incumbent LEC switched access lines, *plus the sum of all UNE loops connected to that wire center*, including UNE loops provisioned in combination with other unbundled elements.[4] (emphasis added)

Of course, this definition makes sense. Remember, the objective here is to determine where the CLECs are not impaired without access to BellSouth's facilities as UNEs. The FCC has determined that business lines is a good indicator of that, but of course the fact that the CLECs have already purchased UNE loops in an wire center, irrespective of what services the CLEC provides over the UNE loops, is equally good proof that CLECs are not impaired in that wire center. Furthermore, the FCC no doubt recognized that the ILECs would have no way of knowing what the UNE loops are being used for; hence the requirement that all UNE loops be included in the business line count.

Q. IN ITS COUNT OF BUSINESS LINES, DID BELLSOUTH COUNT HDSL LOOPS AS IT DID DS1 LOOPS, COUNTING EACH 64 KBPS-EQUIVALENT AS ONE

[4] 47 C.F.R § 51.5 (emphasis added).

LINE, AS MR. GILLAN ASSUMES ON PAGES 24-25 OF HIS DIRECT TESTIMONY?

A. No, we did not. As BellSouth witness Eric Fogle explains in more detail, BellSouth counted HDSL conservatively, on a one-for-one basis, although it would have been appropriate to convert these loops to their voice grade equivalents. Let me also make clear that, although BellSouth has defined DS1 loops to include 2-wire and 4-wire HDSL Compatible Loops, BellSouth included only in service DS1 loops (converted to voice grade equivalents) and in service UNE HDSL loops (which were not converted).

Q. MR. GILLAN SUGGESTS ON PAGES 18-19, THAT ONLY UNE-P BUSINESS LINES SHOULD BE COUNTED. DID BELLSOUTH COUNT UNE-P RESIDENTIAL LINES IN ITS BUSINESS LINE COUNT DATA?

A. No we did not.

A.

Q. MR. GILLAN PROPOSES THAT THE WIRE CENTER LIST BE INCORPORATED INTO INTERCONNECTION AGREEMENTS. DO YOU AGREE?

A. Since interconnection agreements will have to be amended to reflect the outcome of this proceeding, BellSouth is not opposed to the initial wire center list being incorporated into the interconnection agreements. BellSouth is, however, opposed to

any requirement to have subsequent wire center lists incorporated into interconnection agreements, as that would require unnecessary administrative work when the same result can be achieved more efficiently. It makes more sense to refer in the interconnection agreements to BellSouth's website for the latest wire center list, as is the case with CLEC guides, collocation space exhaust lists and other instructional guides that impact the availability, ordering and provisioning of services offered pursuant to the interconnection agreement.

Q. IN HER TESTIMONY, WANDA MONTANO OF US LEC REQUESTS THE OPPORTUNITY TO REVIEW THE DATA BELLSOUTH RELIED UPON TO DETERMINE WHICH WIRE CENTERS MET THE THRESHOLD REQUIREMENT. IS BELLSOUTH WILLING TO PRODUCE THIS DATA?

A. Yes. BellSouth has made available its 2003 data to counsel for US LEC in Atlanta. BellSouth has also provided US LEC with copies of its confidential discovery responses with additional wire center data. Finally, BellSouth has previously responded to carriers' questions through letters and by providing copies of the Deloitte reports upon request. BellSouth has no objection to providing its wire center data to any requesting carrier pursuant to this Commission's Protective Order and appropriate protective agreements.

Q. ON PAGES 17-18 OF WANDA MONTANO'S TESTIMONY, SHE ASSERTS THAT TRANSITION OF THE EMBEDDED BASE OF HIGH CAP LOOPS AND DEDICATED TRANSPORT CANNOT BEGIN UNTIL BELLSOUTH'S LIST OF WIRE CENTERS HAS BEEN APPROVED. HOW DO YOU RESPOND?

A. The wire center list attached to BellSouth's April 15, 2005 Carrier Notification Letter is reflective of the data the FCC instructed the ILECs to use. Therefore, CLECs should use this list to take the appropriate actions to identify their embedded base and determine the alternative arrangements to which they intend to convert these circuits.

Ms. Montano expresses some concerns about BellSouth's wire center list, and she bases her concern on the fact that BellSouth issued revisions to its initial list. While BellSouth did revise its initial list when we determined that it was not correct, we also took precautions to ensure that the revised list was accurate before we re-posted it on BellSouth's website. I addressed these precautions in my direct testimony and I summarize them again in this testimony. Also, as I indicated above, BellSouth is willing to provide CLECs with access to the data underlying its list and has done so when requested. If additional revisions are necessary to incorporate the results of confirmed CLEC's discovery responses, BellSouth will make such changes. The precautions BellSouth has taken, our willingness to provide the data, and our willingness to utilize the discovery process should alleviate Ms. Montano's concerns. Additionally, BellSouth is prepared to make CLECs whole in the event a CLEC timely reacts to BellSouth's posted wire center list, and at a later date, the list is found to be incorrect.

Q. US LEC SUGGESTS, ON PAGE 15 OF WANDA MONTANO'S TESTIMONY, TWO PROPOSED METHODS FOR DETERMINING WHICH WIRE CENTERS MEET THE FCC'S IMPAIRMENT THRESHOLDS. HOW DO YOU RESPOND?

A. The first method proposed by Ms. Montano, which would require that the parties mutually agree on facts to identify the wire centers that meet the FCC's criteria, is really not a feasible option since it would only address U.S LEC's concerns about BellSouth's wire center list. It would be virtually impossible to go through this process with every CLEC in this state.

The second method proposed by U.S. LEC would require that the Commission approve BellSouth's wire center list through the arbitration process. For purposes of approving BellSouth's initial wire center list, this proceeding should suffice. However, BellSouth does not believe it would be an efficient use of the Commission's or BellSouth's resources to arbitrate separately with each CLEC modifications to subsequent wire center list. BellSouth proposes that Commission approval for subsequent wire center determinations be undertaken in an orderly, more expedited basis. BellSouth is also considering the proposal made by CompSouth in its exhibit JPG-1 associated with Issue 5. BellSouth has made certain preliminary modifications to the CompSouth proposal in Exhibit PAT-5 and anticipates having an opportunity to discuss this proposal with CompSouth and any other interested CLECs prior to the hearing to determine whether there is some mutually agreeable resolution of this issue.

Modifications to the wire center list

Q. BEFORE YOU BEGIN ADDRESSING MR. GILLAN'S RECOMMENDED MEANS FOR HANDLING MODIFICATIONS TO THE APPROVED WIRE

CENTER LIST, PLEASE BRIEFLY DESCRIBE HOW BELLSOUTH PROPOSES THAT SUCH MODIFICATIONS BE HANDLED.

A. As reflected in the contract language set forth in my exhibits PAT-1 and PAT-2, BellSouth proposed that, to the extent additional wire centers are found to meet the FCC's no impairment criteria, we will notify CLECs of these new wire centers via a Carrier Notification Letter. Our standard contract language states that ten business days (which equates to fourteen calendar days) after posting the Carrier Notification Letter, BellSouth would no longer be obligated to offer high cap loops and dedicated transport as UNEs in such wire centers, except pursuant to the self-certification process.

High cap loop and transport UNEs that were in service when the subsequent wire center determination was made will remain available as UNEs for 90 days after the 10^{th} business day following posting of the Carrier Notification Letter (or 104 days in total from the date of posting). However, affected CLECs would be obligated to submit spreadsheets identifying these embedded base UNEs to be converted to alternative BellSouth services or disconnected no later than 40 days from the date of BellSouth's Carrier Notification Letter. From that date, BellSouth will negotiate a project conversion timeline.

The language BellSouth is proposing to address modifications and updates to the wire center list is contained in Section 2.1.4 of Exhibits PAT-1 and PAT-2.

Q. IS BELLSOUTH WILLING TO CONSIDER MODIFICATIONS TO ITS PROPOSED PROCESS FOR ADDRESSING SUBSEQUENT WIRE CENTERS THAT ARE NOT IMPAIRED?

A. BellSouth believes its standard offering is commercially reasonable. However, BellSouth is willing to consider other commercially reasonable terms that could eliminate disputes. For example, BellSouth has achieved a compromise solution with one of its CLEC customers with material volumes of high capacity services. In exchange for the CLEC's agreement on other proposed terms, BellSouth agreed to extend its proposed timeline for transition to 120 days from the date BellSouth posts to its website the carrier notification letter identifying subsequent non-impaired wire centers. BellSouth would be willing to discuss with CompSouth's members as well as other CLECs similar proposals in an effort to resolve this issue. Absent a mutually agreeable compromise, however, BellSouth's standard terms should apply.

Q. ON PAGE 31 OF HIS DIRECT TESTIMONY, MR. GILLAN PROPOSES THAT BELLSOUTH FILE ITS WIRE CENTER CHANGES ANNUALLY, COINCIDENT WITH ITS ARMIS FILING WITH THE FCC. IS BELLSOUTH WILLING TO ENTERTAIN SUCH A PROPOSAL?

A. As I indicated above, BellSouth is in the process of reviewing CompSouth's proposal and may be willing to agree to this proposal with modifications. BellSouth is not willing to accept Mr. Gillan's proposal in its present form.

Issue 8

Section 271

Q. ON PAGES 36 THROUGH 46 OF HIS DIRECT TESTIMONY, MR. GILLAN ARGUES THAT BELLSOUTH IS OBLIGATED TO OFFER "ADDITIONAL" 271 OFFERINGS AT JUST AND REASONABLE RATES IN INTERCONNECTION AGREEMENTS SUBJECT TO SECTION 252 COMMISSION APPROVAL. HOW DO YOU RESPOND?

A. BellSouth addressed these legal issues in its *Motion for Summary Judgment, or in the Alternative, Motion for Declaratory Ruling* filed with this Commission. As I understand the situation, this is a legal issue, and that is why BellSouth filed its motions seeking a legal determination of these issues prior to hearings. Mr. Gillan, like me, isn't a lawyer. If there are relevant facts, I will be happy to discuss them, but I will leave the discussion of what the law requires to the lawyers. I would simply urge this Commission not to be led astray by Mr. Gillan's rhetoric and to focus instead on the legal arguments the parties have submitted.

Issues 10 & 11

Transition

Q. HOW DO YOU RESPOND TO MR. GILLAN'S ASSERTIONS ABOUT "MANDATED MIGRATIONS" ON PAGE 61 AND 62 OF HIS DIRECT TESTIMONY?

A. Let me clarify that "mandated migrations" is a term Mr. Gillan uses to define what happens to UNEs that were de-listed by the FCC in the TRO almost two years ago. I disagree with his categorization of the conversion of these UNEs to alternative arrangements as those that "BellSouth effectively forces on an entrant because a particular UNE or Combination is no longer offered". To the contrary, these are UNEs which CLECs were obligated to convert to alternative services long before now. The only reason BellSouth would be the "moving party" (to use Mr. Gillan's term) to handle disposition of these UNEs at this point would be if 1) the CLEC failed to negotiate with BellSouth to remove rates, terms and conditions for these elements from their interconnection agreement and 2) failed to act to convert these UNEs to alternative services. As such, BellSouth should not be forced to absorb the non-recurring charges associated with converting these services to equivalent BellSouth tariffed services. This is not BellSouth's "own decision" as Mr. Gillan claims; rather, BellSouth is simply implementing the requirements of the TRO which some CLECs have chosen to disregard.

Q. SHOULD THIS COMMISSION ADOPT THE LANGUAGE COMPSOUTH IS PROPOSING IN SECTION 1.6 OF EXHIBIT JPG-1 TO ADDRESS THE HANDLING OF UNES THAT ARE NOT TRANSITIONED ON OR BEFORE MARCH 11, 2006?

A. The language CompSouth is proposing to address Issue 11 is, in large part, language that BellSouth is proposing for Issue 10: What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer

obligated to provide as Section 251 UNEs to non-Section 251 network elements and other services.

Issue 10 addresses UNEs that were de-listed by the FCC almost two years ago in the TRO (enterprise switching, OCN loops and transport, etc.) which should no longer remain in place today. Issue 11 addresses UNEs that were de-listed by the FCC in the TRRO and should not remain in place after March 10, 2006. Although BellSouth and CompSouth propose similar language to address different issues, BellSouth will not agree to the language CompSouth proposes as Section 1.6 of Exhibit JPG-1. It should surprise no one at this point that CompSouth has revised BellSouth's language to 1) bide CompSouth members more time to transition off of de-listed UNEs, and 2) remove any references to charges that would apply if CLECs failed to convert or disconnect these UNEs and BellSouth had to initiate this effort on its own.

BellSouth urges this Commission to reject CompSouth's proposed language for Issue 11. Such language would simply allow CLECs to have prolonged access to de-listed UNEs after the end of the transition period.

Issue 14

Commingling

Q. ON PAGES 47 OF MR. GILLAN'S DIRECT TESTIMONY, HE ASKS THIS COMMISSION TO REQUIRE THAT SECTION 271 OFFERINGS BE IDENTICAL TO THE SECTION 251 OFFERINGS THEY REPLACE, EXCEPT AS TO PRICE. HOW DO YOU RESPOND?

A. This is a legal issue which BellSouth has addressed in its *Motion for Summary Judgment, or in the Alternative, Motion for Declaratory Ruling* in this docket. Therefore, I do not intend to provide any further comment on this particular issue.

Q. SHOULD THIS COMMISSION ADOPT THE LANGUAGE COMPSOUTH IS PROPOSING IN SECTION 1.11 OF EXHIBIT JPG-1 TO ADDRESS CARRIERS' COMMINGLING OBLIGATIONS?

A. No. In addition to the dispute regarding CompSouth's legal conclusions on this issue in general, BellSouth does not agree to CompSouth's proposal that multiplexing equipment should be billed at a cost-based rate. The cost of the multiplexing equipment should be based on the jurisdiction of the higher capacity element with which it is associated. For example, if a UNE DS1 loop is attached to a special access DS3 via a 3/1 multiplexer, the multiplexing function is necessarily associated with the DS3 – because it is the DS3 44 Mbps signal that is being "split", or multiplexed, in to 28 individual 1.44 Mbps channels. Thus, the multiplexing equipment is always associated with the higher bandwidth service that is being broken down into smaller channel increments.

Issue 15

Q. COMPSOUTH HAS PROPOSED LANGUAGE REGARDING SPECIAL ACCESS TO UNE CONVERSIONS UNDER ISSUE 15 IN EXHIBIT JPG-1. HOW DO YOU RESPOND?

A. BellSouth is generally in agreement with CompSouth's proposed language and has made minor modifications to it as reflected in Exhibit PAT-5. However, CompSouth references rates found in "Exhibit A" which are not attached to CompSouth's proposed language. I proposed "switch-as-is" rates in addressing this issue in my direct testimony. BellSouth recommends that the Commission adopt BellSouth's proposed rates.

Issue 16

Q. COMPSOUTH HAS PROVIDED A RESPONSE REGARDING ISSUE 16 IN EXHIBIT JPG-1. HOW DO YOU RESPOND?

A. BellSouth believes that any conversions pending on the effective date of the TRO should be guided by whether the CLEC had the appropriate conversion language in its interconnection agreement at the time the TRO became effective. To the extent this is what CompSouth is proposing, then the parties are in agreement. There is nothing in the FCC's rules to indicate that these conversion provisions should be applied retroactively.

Issue 22

Call Related Databases

Q. DO YOU AGREE WITH COMPSOUTH'S PROPOSED LANGUAGE IN SECTION 4.4.3.1 TO ADDRESS BELLSOUTH'S OBLIGATIONS TO PROVIDE CALL RELATED DATABASES DURING THE TRANSITION PERIOD?

A. For the most part, yes, provided that the parties can reach agreement on the appropriate language to govern the transition of the embedded base DS0 local switching and UNE-P lines to alternative arrangements.

Q. HOW DO YOU RESPOND TO THE LANGUAGE THAT IS INCLUDED IN MR. GILLAN'S EXHIBIT JPG-1 THAT IS ATTRIBUTED TO COMPSOUTH MEMBER MCI?

A. It should not be adopted. The FCC rejected MCI's proposal in paragraph 558 of the TRO.

Issue 29

EEL Audits

Q. IT APPEARS COMPSOUTH IS THE ONLY PARTY TO PROVIDE TESTIMONY OR PROPOSED LANGUAGE ON THIS ISSUE. WHAT ARE YOUR SUMMARY COMMENTS REGARDING THE COMPSOUTH PROPOSED LANGUAGE?

A. Generally, the CompSouth proposed language goes well beyond the FCC's requirements implementing an ILEC's right to audit. BellSouth has provided redlines to the CompSouth proposed language under Issue 29 that BellSouth is willing to accept, attached as a component of Exhibit PAT-5.

Q. DO YOU AGREE WITH MR. GILLAN'S PROPOSAL, ON PAGES 60 OF HIS DIRECT TESTIMONY, THAT BELLSOUTH PROVIDE CLECS WITH 1)

NOTICE OF ITS INTENT TO AUDIT AND 2) THE GROUNDS PURSUANT TO WHICH IT BELIEVES IT HAS GOOD CAUSE TO CONDUCT THE AUDIT?

A. BellSouth has already agreed to Notice of Audit provisions in many of its interconnection agreements, even though the FCC does not place any such obligation on BellSouth. The FCC's rules permit BellSouth to conduct an audit on an annual basis to determine if a particular CLEC is complying with the service eligibility criteria; and since BellSouth must bear the cost of the audit, the audits we have conducted so far are certainly not "fishing expeditions" as Mr. Gillan claims on page 60, line 2 of his direct testimony. As the FCC found in the TRO, permitting ILECs to conduct an annual audit "strikes the appropriate balance between the incumbent LECs' need for usage information and risk of illegitimate audits that impose costs on qualifying carriers."[5] BellSouth is under no obligation to provide the grounds to support its request for an audit. Doing so would serve no purpose other than to enable the audited CLEC to unreasonably dispute and therefore delay the audit.

Q. HOW DO YOU RESPOND TO COMPSOUTH'S PROPOSED LANGUAGE IN SECTION 5.3.4.4. OF EXHIBIT JPG-1 THAT THE PARTIES MUST MUTUALLY AGREE UPON THE INDEPENDENT AUDITOR?

A. CompSouth's proposed language once again imposes requirements upon BellSouth for which there is no foundation. Since the TRO requires that BellSouth use an "independent" auditor, there should be no concern that the auditor is in any way biased toward BellSouth's interests. BellSouth would not knowingly violate the law.

[5] TRO, ¶ 626.

Furthermore, if BellSouth is going to bear the cost of the audit, then BellSouth certainly has the right to select that auditor on its own. Requiring that BellSouth and the audited CLEC mutually agree on the auditor will also lead only to unreasonable and unnecessary delays and disputes.

Q. HOW DO YOU RESPOND TO COMPSOUTH'S PROPOSED LANGUAGE IN SECTIONS 5.3.4.5 AND 5.3.4.6 OF EXHIBIT JPG-1?

A. The language is good, but it does not go far enough. In Section 5.3.4.5, CompSouth acknowledges the FCC's requirement that, "To the extent the independent auditors report concludes that the competitive LEC failed to comply with the service eligibility criteria, that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service, and make the correct payments on a going-forward basis."[6] However, this language fails to properly address the FCC's requirement that it must also "reimburse the incumbent LEC for the cost of the independent auditor."[7]

CompSouth addresses this requirement in Section 5.3.4.6; yet its proposed language does not clarify that reimbursement to BellSouth by CompSouth for the cost of the audit is required "in the event the independent auditor concludes the competitive LEC failed to comply with the service eligibility criteria." (TRO, ¶ 627). Additionally, CompSouth's proposed language places limits on the auditor costs for which it would have to reimburse BellSouth. Contrary to CompSouth's proposal, the TRO requires

[6] TRO, ¶ 627.
[7] Id.

that the audited CLEC would have to reimburse BellSouth for the *full* cost of the independent auditor if found to be non-compliant.

Issue 31

ISP CORE FORBEARANCE ORDER

Q. IS MS. MONTANO OF U.S. LEC CORRECT IN HER STATEMENT THAT ADDITIONAL LANGUAGE IS UNNECESSARY TO EFFECTUATE THE CORE ORDER?

A. No. Ms. Montano's account of the language in the Interconnection Agreement between BellSouth and US LEC dated June 20, 2004 ("US LEC Interconnection Agreement") is correct, but incomplete. It is clear from Sections 14.2 and 14.3 of the General Terms and Conditions of the US LEC Interconnection Agreement that any change to the provisions of the US LEC Interconnection Agreement should be made in writing and signed by both parties.

Section 14.2 of the General Terms and Conditions of the US LEC Interconnection Agreement states: b

> No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

It is clear from this section that neither party can unilaterally implement changes to the US LEC Interconnection Agreement without a formal amendment signed by both parties.

Section 14.3 of the General Terms and Conditions of the US LEC Interconnection Agreement is also relevant. It states:

> In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of [US LEC] or BellSouth to perform any material terms of this Agreement, [US LEC] or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

Contrary to Ms. Montano's testimony and pursuant to the aforementioned sections of the US LEC Interconnection Agreement, the Parties are required to negotiate the new terms necessary to effectuate the Core Order and such terms must be in writing, signed by both Parties, and incorporated into the US LEC Interconnection Agreement before such terms are considered effective unless a regulatory body has expressly ordered otherwise.

Q. TO IMPLEMENT THE CORE ORDER, COMPSOUTH SIMPLY PROPOSES THAT ALL REFERENCES TO "NEW MARKETS" AND "GROWTH CAP" RESTRICTIONS BE DELETED FROM ALL INTERCONNECTION AGREEMENTS BETWEEN BELLSOUTH AND CLECS. IS THIS PROPOSAL REASONABLE FOR ALL CLECS?

A. No. Since all Interconnection Agreements do not necessarily reference "new markets" and "growth caps," simply ordering the deletion of these terms would not address all scenarios. In fact, many of the Interconnection Agreements between

BellSouth and CLECs are "bill and keep" on ISP-bound Traffic and thus the deletion of "new markets" and "growth cap" restrictions would not be applicable.

As I stated in my direct testimony, if the parties are not prohibited from implementing the Core decision, the mirroring rule still permits the CLEC to choose between two different rate structures. Thus, if the Interconnection Agreement between BellSouth and a CLEC has "bill and keep" on ISP-bound Traffic and the parties are not prohibited from implementing the Core Order, then the CLEC would have to identify the rate structure it desires and the Parties would then have to craft language to incorporate this rate structure into the Agreement in replacement of the "bill and keep" terms. Thus, simply ordering the deletion of "new markets" and "growth cap" restrictions does not effectively address all scenarios that may be encountered in the implementation of the Core Order.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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