

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF BELLSOUTH)	
TELECOMMUNICATIONS, INC. TO ESTABLISH)	
GENERIC DOCKET TO CONSIDER)	CASE NO.
AMENDMENTS TO INTERCONNECTION)	2004-00427
AGREEMENTS RESULTING FROM CHANGES)	
OF LAW)	

DIRECT TESTIMONY OF WANDA G. MONTANO

ON BEHALF OF

US LEC OF TENNESSEE INC.

August 16, 2005

1 **Q: PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR**
2 **THE RECORD.**

3
4 **A:** My name is Wanda G. Montano. I am currently Vice President, Regulatory and
5 Industry Affairs for US LEC Corp., the parent company of US LEC of Tennessee
6 Inc. d/b/a US LEC Communications (“US LEC”), and its operating subsidiaries,
7 including the Respondent in this proceeding. My business address is 6801
8 Morrison Boulevard, Charlotte, North Carolina 28211.

9
10 **Q: PLEASE DESCRIBE YOUR RESPONSIBILITIES FOR US LEC.**

11
12 **A:** I am responsible for the management of US LEC’s relationships with state and
13 federal agencies who oversee our business, as well as for US LEC’s relationships
14 with incumbent local exchange carriers (“ILECs”), competitive local exchange
15 carriers (“CLECs”), independent telephone companies (“ICOs”), and wireless
16 companies.

17
18 **Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
19 **PROFESSIONAL EXPERIENCE.**

20
21 **A:** I joined US LEC in January 2000. Prior to that, I was employed in various
22 positions by Teleport Communications Groups (“TCG”) and then by AT&T
23 following AT&T’s acquisition of TCG. In 1998-1999, I served as General

1 Manager for North and South Carolina (Sales Executive) for AT&T (Charlotte,
2 NC). During 1997 – 1998 I was Vice President & Managing Executive for North
3 & South Carolina (Sales and Operation Executive) for TCG (Charlotte, NC).
4 During 1995-1997, I was Director of Process Reengineering for TCG (Staten
5 Island, NY). During 1992-1994, I was Director of Marketing for TCG (Staten
6 Island, NY). During 1990-1992, I was Senior Product Manager for Graphnet
7 (Teaneck, NJ). From 1982 – 1990, I was Regulatory Manager for Sprint
8 Communications Corp. in Reston, Virginia and, from 1979 – 1982, I was a
9 paralegal for GTE Service Corporation in Washington, D.C. I have a B.S. from
10 East Carolina University in Greenville, NC (1974). I received my Paralegal
11 Certificate from the University of Maryland in 1980 and I received my M.B.A. in
12 Marketing & Government Affairs from Marymount University of Virginia in
13 1988.

14

15 **Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE KENTUCKY**
16 **PUBLIC SERVICE COMMISSION?**

17

18 **A:** No. I, however, have testified before the New York Public Service Commission,
19 the Florida Public Service Commission, the Maryland Public Service
20 Commission, the North Carolina Utilities Commission, the Pennsylvania Public
21 Utility Commission, and the Georgia Public Service Commission.

22

1 **Q: WHAT IS YOUR ROLE IN US LEC'S INTERCONNECTION**
2 **NEGOTIATIONS WITH BELL SOUTH, INCLUDING THE**
3 **NEGOTIATIONS TO IMPLEMENT THE PROVISIONS OF TRIENNIAL**
4 **REVIEW ORDER, OR TRO, AND THE PROVISIONS OF THE**
5 **TRIENNIAL REVIEW REMAND ORDER, OR TRRO?**

6

7 **A:** I have reviewed the proposed revised Attachment 2, which is the portion of the
8 BellSouth interconnection agreement that governs US LEC's access to unbundled
9 network elements, as well as have reviewed the points of contention raised during
10 the negotiations to ensure their consistency with state and federal requirements
11 and policy.

12

13 **Q: HAS ATTACHMENT 2 OF THE INTERCONNECTION BETWEEN US**
14 **LEC AND BELL SOUTH BEEN AMENDED TO IMPLEMENT THE**
15 **PROVISIONS OF THE TRO?**

16

17 **A:** Yes, US LEC and BellSouth, in June 2004, concluded our negotiations to
18 implement the provisions of the TRO into Attachment 2 and the agreements have
19 been executed, filed with the Commission, and approved. Consequently, I will
20 not be testifying in regards to the Joint Issue Matrix Issues, as filed with the
21 Commission, numbers 14 through 29 because these issues relate to
22 implementation of the provisions of the TRO on which BellSouth and US LEC
23 have an executed and approved agreement.

1 **Q: WHAT IS THE STATUS OF ANY NEGOTIATIONS BETWEEN**
2 **BELLSOUTH AND US LEC ON THE FCC’S REVISED RULE THAT**
3 **ELIMINATED THE SO-CALLED “PICK AND CHOOSE” PREVIOUSLY**
4 **PERMITTED PURSUANT TO SECTION 252(i) OF THE ACT?**

5
6 **A:** US LEC and BellSouth have negotiated a mutually agreed upon amendment to the
7 interconnection agreement to implement the provisions of the revised FCC rule,
8 the amendment has been filed with the Commission, and has been approved. US
9 LEC, therefore, also does not provide testimony or evidence in regard to Joint
10 Issue Matrix Issue number 30.

11
12 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13
14 The purpose of my testimony is to explain what I understand to be the legal and
15 competitive policy arguments in support of US LEC’s position on the statutes,
16 regulations or other laws that govern BellSouth’s obligation to provide unbundled
17 network elements as modified by the TRRO. Primarily the impasse in the
18 negotiation between BellSouth and US LEC is the language that will identify the
19 embedded base of high capacity loops and dedicated transport and govern the
20 process for transitioning the embedded base to alternative services and then the
21 same issues in the event subsequent wire centers meet the FCC’s threshold criteria
22 for non-impairment. US LEC has not provisioned unbundled local switching (or
23 UNE-P) from BellSouth under the interconnection agreement, and, therefore, will

1 not address those portions of the issues that pertain to access to “unbundled
2 switching.” My testimony will address: the appropriate language to implement
3 the FCC’s transition plan for (1) high capacity loops and (2) dedicated transport
4 pursuant to the TRRO (Issue 2); the appropriate language to implement
5 BellSouth’s obligation to provide Section 251 unbundled access to high capacity
6 loops and dedicated transport (Issue 4); the Commission’s authority to resolve
7 disputes as to whether BellSouth’s application of the FCC’s Section 251 criteria is
8 appropriate, the procedures to identify those wire centers that satisfy the FCC’s
9 non-impairment criteria, and the language to implement the procedures (Issues 5
10 (a) – (c)); what are the appropriate rates, terms and conditions should govern the
11 transition of existing network elements that BellSouth is no longer obligated to
12 provide as Section 251 UNEs to non-Section 251 network elements and other
13 services (Issue 10); what are the appropriate rates, terms and conditions that
14 should apply to UNEs that are not converted on or before March 11, 2006, and
15 should the conduct of the parties have any impact upon the determination of the
16 applicable rates, terms and conditions that apply in such circumstances (Issue 11);
17 and what language should be used to incorporate the FCC’s *ISP Remand Core*
18 *Forbearance Order* into interconnection agreements (Issue 31).

19
20 **Q: CAN YOU PROVIDE A BRIEF SUMMARY OF THE DISPUTES**
21 **THAT REMAIN BETWEEN US LEC AND BELL SOUTH IN**
22 **REVISING THE LANGUAGE OF ATTACHMENT 2 TO**
23 **IMPLEMENT THE PROVISIONS OF THE TRRO?**

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A: Yes. The main disputes between US LEC and BellSouth center around (1) BellSouth’s desire to identify the current and subsequent wire centers that it believes are “non-impaired” as part of the agreement, and incorporate the lists into the interconnection agreement, without obtaining US LEC’s agreement that the identified wire centers meet the FCC’s threshold criteria for non-impairment; (2) BellSouth’s proposed dates by which orders for transition of the “embedded base” of UNEs must be submitted in connection with the transition period; and, (3) the length of any subsequent transition periods. Additionally, because US LEC has not been able to negotiate a final resolution of these issues, US LEC also has elected to withdraw its agreement to certain provisions of proposed Section 1.8 of Attachment 2 that govern the disputes over the wire centers that BellSouth claims meet the threshold requirements that I will address in my testimony addressing Issue 5.

ISSUE 2: WHAT IS THE APPROPRIATE LANGUAGE TO IMPLEMENT THE FCC’S TRANSITION PLAN FOR (1) SWITCHING, (2) HIGH CAPACITY LOOPS, AND (3) DEDICATED TRANSPORT AS DETAILED IN THE FCC’S TRIENNIAL REVIEW REMAND ORDER (“TRRO”), ISSUED FEBRUARY 4, 2005?

1 **Q: WHAT LANGUAGE DOES US LEC PROPOSE TO IMPLEMENT**
2 **THE TRANSITION PERIOD (FOR HIGH CAPACITY LOOPS**
3 **AND DEDICATED TRANSPORT), AND HOW DOES IT DIFFER**
4 **FROM BELLSOUTH’S?**

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6 **A:** US LEC has offered language to implement the transition period for any
7 “embedded base” high capacity loops and dedicated transport in
8 conformance to the FCC’s decision in the TRRO. The transition period
9 would include any high capacity loops or dedicated transport that were in
10 excess of the caps adopted by the FCC as of March 11, 2005 as well. US
11 LEC is willing to agree to the BellSouth definition of “embedded base,”
12 which includes high capacity loops and dedicated transport that were
13 installed in wire centers that met the non-impairment threshold as of
14 March 11, 2005 or are in excess of the applicable caps. The disputes
15 between the companies are (a) whether BellSouth can identify these wire
16 centers as part of the agreement without US LEC concurrence that US
17 LEC agrees with the list; and (b) what is the date by which US LEC must
18 issue orders to transition the “embedded base” of UNEs.

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20 **ISSUE 4: WHAT IS THE APPROPRIATE LANGUAGE TO**
21 **IMPLEMENT BELLSOUTH’S OBLIGATION TO PROVIDE SECTION**
22 **251 UNBUNDLED ACCESS TO HIGH CAPACITY LOOPS AND**
23 **DEDICATED TRANSPORT?**

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Q: WHAT LANGUAGE HAS US LEC PROPOSED TO IMPLEMENT BELL SOUTH'S OBLIGATION TO PROVIDE SECTION 251 UNBUNDLED ACCESS TO HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?

A: US LEC has offered language that comports with Sections 51.319 (a) (4) and (e) of the FCC's rules and affirmatively states that BellSouth must provide access to these UNEs unless the threshold requirements for non-impairment have been met. BellSouth's language focuses solely on the embedded base and the transition period and does not affirmatively state when it must provide access to the unbundled high capacity loops and transport. US LEC has been willing to agree to the BellSouth language so long as BellSouth compromised on the language addressing the date on which orders for the "embedded base" transition was required to be submitted as well as the length of any subsequent transition periods and the process by which the parties would agree on the identification of non-impaired wire centers. To date, BellSouth has been unwilling to make those compromises, although US LEC has been advised that BellSouth is considering US LEC's proposal on the order submission date and the length of subsequent transition periods. The parties have reached an impasse on the wire center identification issue, however.

1 **ISSUE 5: A) DOES THE COMMISSION HAVE AUTHORITY TO DETERMINE**
2 **WHETHER OR NOT BELLSOUTH’S APPLICATION OF THE FCC’S SECTION**
3 **251 NON-IMPAIRMENT CRITERIA FOR HIGH-CAPACITY LOOPS AND**
4 **TRANSPORT IS APPROPRIATE? B) WHAT PROCEDURES SHOULD BE**
5 **USED TO IDENTIFY THOSE WIRE CENTERS THAT THE FCC’S SECTION**
6 **251 NON-IMPAIRMENT CRITERIA FOR HIGH-CAPACITY LOOPS AND**
7 **TRANSPORT? C) WHAT LANGUAGE SHOULD BE INCLUDED IN THE**
8 **AGREEMENTS TO REFLECT THE PROCEDURES INDENTIFIED IN (B)?**

9
10 **Q: CAN YOU EXPLAIN THE IMPASSE ON THE WIRE CENTER**
11 **IDENTIFICATION?**

12
13 **A:** Yes. BellSouth proposes language that states:

14
15 For purposes of this [applicable section in the Attachment 2], a list
16 of wire centers meeting the criteria set forth in [applicable section
17 set forth the threshold criteria] as of March 10, 2005 (Initial Wire
18 Center List) is available on BellSouth’s Interconnection Services
19 Web site www.interconnection.bellsouth.com.

20
21
22 US LEC revised the language by adding between “ a list of wire centers” and
23 “meeting” the words “the Parties agree” and revised “meeting” to “meet.”
24 BellSouth has proposed that it may add wire centers to this Non-impaired Wire
25 Center List that become non-impaired subsequent to March 11, 2005 merely by
26 posting a carrier notification on its website, and without further notification to US

1 LEC. The posting of the carrier notification would trigger certain obligations of
2 US LEC to transition the applicable UNE loops or dedicated transport in the
3 newly-identified wire center within 90 days to an alternative service or dispute the
4 validity of the list.

5
6 US LEC disagrees that BellSouth may unilaterally include a list of wire centers as
7 meeting the “non impairment threshold” into the agreement, unless and until the
8 parties agree to the list. US LEC strongly objects to BellSouth’s to attempt to add
9 wire centers to a list that binds US LEC to certain provisions in the
10 Interconnection Agreement without actual notice, as provided by the notice
11 provision contained in the General Terms and Conditions Attachment of the
12 Interconnection Agreement.

13
14 US LEC firmly believes that BellSouth must provide US LEC the opportunity to
15 review the data on which BellSouth determined that each wire center met the
16 threshold requirement, such as the specific fiber-based collocators at each
17 specified wire center and the number of business lines, including the basis on how
18 the number was derived (e.g., the number of T1s and HDSL lines used to
19 determine the number and how the lines were identified as business lines as
20 opposed to residential lines.). In light of BellSouth’s acknowledged error on its
21 initial wire center list, US LEC believes that, before BellSouth may be exempted
22 from its 251 unbundling obligations for high capacity loops and transports, US

1 LEC should be able to check the facts and figures before having to subject itself
2 to a lengthy and costly dispute resolution process.

3

4 US LEC's objection to the language is directed not to the ordering of new high
5 capacity loops to buildings located within the Initial Wire Centers, or new
6 dedicated transport between the Initial Wire Centers, as the proposed Section 1.8
7 of Attachment 2, incorporates the right of US LEC, pursuant to paragraph 234 of
8 the TRRO to order these UNEs as long as US LEC certifies that it has conducted
9 a reasonably diligent inquiry and determines that the applicable UNEs are
10 available. The FCC held, in paragraph 234 of the TRRO, that

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To submit an order to obtain high-capacity loop or transport UNE,
a requesting carrier must undertake a reasonably diligent inquiry
and, based on the inquiry, self-certify that, to the best of its
knowledge, its request is consistent with the requirements
discussed [in the applicable sections of the TRRO] and that
therefore entitled to unbundled access to the particular network
elements sought pursuant to section 251(c)(3). (footnote omitted)
Upon receiving a request for access to a dedicated transport or
high-capacity loop UNE that indicates that the UNE meets the
relevant factual criteria discussed in [the applicable portion of the
TRRO], the incumbent LEC must immediately process the request.
To the extent that an incumbent LEC seeks to challenge any such
UNEs, it subsequently can raise that issue through the dispute
resolution procedures provided for in its interconnection
agreements.

The proposed section 1.8 of Attachment 2 states that by submitting an order for a
high capacity loop or dedicated transport, US LEC is certifying that it has

1 conducted reasonable due diligence of its own as to the status of the wire center
2 and has determined that the 251 UNE ordered is still available in the wire center
3 to US LEC. The section further requires BellSouth to provision these orders and
4 then dispute if BellSouth objects to US LEC's assessment of the impairment
5 status of that wire center.

6
7 US LEC's objection for either the initial or subsequent wire center lists lies in the
8 applicability of the lists to high capacity loops and dedicated transport that then
9 become "embedded base," subject to a transition to alternative service within the
10 appropriate transition period – either adopted by the FCC in the TRRO or as
11 negotiated by the parties for the subsequently non-impaired wire centers.

12
13 BellSouth has represented to US LEC that, because the Wireline Competition
14 Bureau of the FCC requested a list of the wire centers that BellSouth (and other
15 RBOCs) believed were non-impaired (this was by a letter from the Chief of the
16 Wireline Competition Bureau dated February 4, 2005), that BellSouth has the
17 right to create the list and BellSouth needs no agreement from US LEC or any
18 other CLEC as to the accuracy of the list before incorporating such list by
19 reference into the interconnection agreement. BellSouth has not provided, nor
20 have I found, any text within the TRRO that supports BellSouth's notion.
21 Moreover, the request for the wire center lists was directed only to the RBOCs
22 and not to all ILECs, and there was never any explicit or implicit "approval" of

1 the lists submitted nor even a suggestion by the Bureau that these lists were
2 “approved” as having met the FCC’s threshold criteria for non-impairment.

3
4 The Bureau’s request was to assist the CLECs in gathering the factual information
5 from the RBOCs, and to ensure that an expeditious implementation of the “fact-
6 dependent rules” into a revised interconnection agreements was completed. In
7 other words, the Bureau was attempting to provide sufficient information to
8 enable the CLECs to negotiate changes to the interconnection agreement, and be
9 able to conclude and agree to which of the RBOCs wire centers met the threshold
10 criteria of the FCC’s rules.

11
12 US LEC supports its position that any determinations that a wire center meets the
13 threshold criteria must be mutual, pursuant to the negotiation process in amending
14 the interconnection agreement by reference to paragraphs 233 and 234 of the
15 TRRO.

16 233. We [the FCC] expect that incumbent LECs and competing
17 carriers will implement the Commission’s finding as directed by
18 section 252 of the Act. (footnote omitted). Thus, carriers must
19 implement changes to their interconnection agreements consistent
20 with our conclusions in this Order. (footnote omitted)... Thus, the
21 incumbent LEC and competitive LEC must negotiate in good faith
22 regarding any rates, terms and conditions necessary to implement
23 our rule changes. (footnote omitted)....

24
25 234. We recognize that our rules governing access to dedicated
26 transport and high-capacity loops evaluate impairment based upon

1 objective and readily obtainable facts, such as the number of
2 business lines or the number of facilities-based competitors in a
3 particular market. (footnote omitted)....
4

5 The FCC rules (Sections 51.319(a)(4)(i), (a)(5)(i), (e)(2)(ii)(A), (e)(2)(iii)(A),
6 (e)(2)(iv)(A), and (e)(3)) define the criteria that must be met. Consequently, if the
7 ILECs and CLECs are to implement the rules adopted by the TRRO pursuant to
8 the requirements of section 252, then both parties, subject either by (a) mutual
9 agreement through the negotiation process must apply the objective and readily
10 obtainable facts to identify the wire centers that meet the threshold criteria
11 established by the FCC as of March 11, 2005 and subsequent to that date, or (b)
12 the Commission, through the arbitration process, must determine whether the list
13 provided by BellSouth meets the threshold criteria.

14
15 BellSouth has also taken the position that the Commission has no authority to
16 determine whether BellSouth's wire center list meets the FCC's fact-dependent
17 rules or not. BellSouth's position is that only the FCC has the authority to review
18 the data and make the determination. Of course, if that is the case, then US LEC
19 would suggest that even the incorporation by reference of the wire center list in
20 the interconnection agreement also is inappropriate as the Commission would
21 address the legitimacy of the list during its approval process under Section 252 of
22 the Act.
23

1 In proposed section 1.8 of Attachment 2, BellSouth proposed language that all
2 disputes as to the validity of the wire center lists would be submitted to the FCC
3 for resolution. US LEC initially agreed to this language optimistically hoping that
4 BellSouth would then agree to US LEC's language requiring the parties to agree
5 to the list. Again, US LEC believes that if BellSouth determined that certain wire
6 centers are non-impaired according to the FCC's rules, the data and calculations
7 should be fairly straightforward. Little, if any, dispute should arise if BellSouth
8 has abided by the requirements of the FCC's rules.

9

10 US LEC has elected to withdraw its agreement to the proposed language that
11 would provide the FCC jurisdiction over disputes on the determination of non-
12 impairment of a wire center because of BellSouth's refusal to compromise on US
13 LEC's request to have the parties agree on the wire center list. Contrary to
14 BellSouth's argument that more disputes may arise through the process, US LEC
15 believes that less disputes will arise and that requiring agreement from US LEC
16 and/or other CLECs will be a check on BellSouth's "math" which has proven to
17 be inaccurate in the past.

18

19 Section 252(c)(1) of the Act specifically provides authority to the Commission, in
20 resolving arbitrations, to ensure that the resolutions and conditions meet the
21 requirements of section 251, including the regulations prescribed by the FCC
22 pursuant to section 251. The non-impairment threshold rules are regulations that
23 are prescribed by the FCC pursuant to section 251(c)(3) of the Act. The FCC in

1 the TRRO, unlike its decision in the TRO, made a specific finding as to which
2 UNEs would be found non-impaired. The state commissions are not required to
3 subjectively make a determination of non-impairment, but have been armed with
4 specific requirements that must be met by the ILEC's, before the unbundling
5 obligations are eliminated. Consequently, if BellSouth wishes to place a list of
6 the wire centers into the interconnection agreement whether as an attachment or
7 by incorporating by reference a list, and US LEC disputes the list on the basis that
8 it does not comply with the FCC's rules, then the Commission has the authority to
9 resolve the dispute by determining whether the wire centers listed meet the
10 requirements of the FCC rules.

11

12 **ISSUE 10: WHAT RATES, TERMS, AND CONDITIONS SHOULD GOVERN**
13 **THE TRANSITION OF EXISTING NETWORK ELEMENTS THAT**
14 **BELLSOUTH IS NO LONGER OBLIGATED TO PROVIDE AS SECTION 251**
15 **UNEs TO NON-251 NETWORK ELEMENTS AND OTHER SERVICES?**

16

17 **Q: WHAT IS THE DISPUTE BETWEEN US LEC AND BELLSOUTH IN**
18 **CONNECTION WITH THE TRANSITION OF THE INITIAL SO-**
19 **CALLED "EMBEDDED BASE" UNES TO ALTERNATIVE SERVICES?**

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21 **A:** Once a resolution is made as to which wire centers meet the non-impairment
22 threshold criteria, as discussed in my testimony on Issue 5, then US LEC agrees

1 that the “embedded base” of UNEs are to be transitioned to alternative services
2 pursuant to the FCC’s rules.

3

4 US LEC agrees that the transition period for UNE loops and dedicated transport
5 that were installed in wire centers that are considered non-impaired as of March
6 11, 2005 (again recognizing that US LEC must either agree to BellSouth’s
7 identification of the wire center as being non-impaired or a Commission
8 resolution of the dispute made) ends as of March 10, 2006. BellSouth has
9 proposed language that requires US LEC to submit all its order to transition the
10 “embedded base” of UNEs by December 9, 2005, or BellSouth will do the
11 conversions and charge US LEC for BellSouth’s conversion efforts. Further,
12 once the conversions have been completed to the alternative services, the new
13 rates for the alternative services would begin to be billed to US LEC, or, if the
14 conversion had not been completed by March 10, 2006, then on March 10, 2006.

15

16 US LEC’s initial proposal was that it would create the spreadsheet orders as early
17 as possible and submit them to BellSouth, if BellSouth would agree that the
18 conversions would not be deemed to occur until March 10, 2006, and the new
19 rates would not be billed until that date. BellSouth rejected the proposal. US
20 LEC then proposed that rather than the December 9, 2005 date for submission of
21 orders, a date of December 31, 2005 for submission of orders should be used.
22 The December 31 date is only to set the date by which the orders would be
23 submitted by US LEC. US LEC did not propose, and is not proposing, that the

1 submission of the order date is the date on which the conversion has been deemed
2 to occur or the date on which BellSouth may bill US LEC the new rates for the
3 alternative service.

4
5 From US LEC's perspective, submitting the orders by December 31, 2005 would
6 provide US LEC ample time to review the circuits needed to be transitioned and
7 submit them to BellSouth, without adversely affecting US LEC's day-to-day
8 operations. Additionally, it should provide sufficient time for BellSouth to
9 complete the conversions by March 10, 2006, and even if BellSouth were unable
10 to complete the conversions by March 10, 2006, US LEC is willing to agree that
11 the new rates would be effective as of March 10, 2006. BellSouth is considering
12 this offer, but has not provided a response as of July 28, 2005.

13
14 US LEC is concerned about the date by which the transition orders must be
15 submitted, but more importantly, US LEC believes that regardless of when the
16 conversion spreadsheets are submitted and processed, BellSouth must continue to
17 lease the "embedded base" circuits to US LEC, until March 10, 2006, at the
18 transition rates adopted by the FCC. The transition period rules, as adopted by the
19 FCC, state that the embedded base of UNEs that are subject to the transition
20 period ending March 10, 2006 "shall be available for lease from the ILEC at a rate
21 equal to the higher of either 115 percent of the rate the requesting carrier paid for
22 the dedicated element on June 15, 2004, or 115 percent of the rate the state
23 commission has established or establishes, if any, between June 16, 2004 and

1 [March 11, 2005].” This language is found in Sections 51.319(a)(4)(iii) (DS1
2 Loops); 51.319(a)(5)(iii) (DS3 Loops); 51.319(e)(2)(ii)(C) (dedicated DS1
3 transport); and, 51.319(e)(2)(iii) (dedicated DS3 transport).

4

5 **Q: WHAT IS THE DISPUTE BETWEEN US LEC AND BELL SOUTH ON**
6 **THE TRANSITION PERIOD FOR UNES IN WIRE CENTERS THAT ARE**
7 **SUBSEQUENTLY IDENTIFIED?**

8

9 **A:** Reiterating once again that US LEC disagrees with BellSouth’s process for
10 identifying a subsequent non-impaired wire center, US LEC has an issue with
11 BellSouth’s proposal that the transition period for these UNEs would be a mere
12 90 days, and that the orders for the conversions would be required with 40 days of
13 the date the carrier notification was placed on the BellSouth website. If US LEC
14 failed to submit the conversion orders by the 40th day, BellSouth would issue the
15 conversion orders and charge US LEC for BellSouth’s labor in identifying the
16 affected circuits and preparing the paperwork for the conversions as well a charge
17 to complete the conversion from UNE to the alternative service. Under
18 BellSouth’s proposal the new rates would apply once the circuit was converted or
19 on the first date after the end of the subsequent transition period.

20

21 US LEC is concerned about the short transition period proposed by BellSouth.
22 US LEC believes that a 90-day period, especially if US LEC is required to submit
23 orders 40 days after a carrier notification letter is posted on the BellSouth website

1 – not even 40 days after actual notice, but merely constructive notice – is not an
2 appropriate time period. Operationally, US LEC does not have the resources to
3 continue its ordinary course of business provisioning and also provision
4 “surprise” transition orders in such a compressed timeframe. Plus US LEC would
5 be subjected to an unknown penalty amount for its failure to meet the short-fuse
6 deadline.

7
8 US LEC has proposed a 180-day transition period, which is a substantially shorter
9 time period than the transition period adopted by the FCC for the initial transition
10 period. US LEC’s proposal is a compromise position between the 12-month
11 transition period adopted by the FCC and BellSouth’s 90-day proposal. US LEC
12 would be unable to ensure an orderly transition of any affected circuits in less
13 than this 180-day period. During the transition period, US LEC must have the
14 opportunity to review the wire center information; conduct its reasonable due
15 diligence and come to an informed determination as to whether the wire center is
16 non-impaired or not; and, if US LEC agrees, inventory the circuits required to be
17 transitioned and determine the appropriate alternative services to transition the
18 circuits.

19
20 BellSouth takes for granted that US LEC will convert the UNE circuits to special
21 access services provided by BellSouth as the alternative service. If the wire
22 center is identified as non-impaired, it would seem that competitive services are
23 available from other providers than BellSouth. If so, it may well be that the

1 competitive providers may have services that may be at rates higher than the UNE
2 rates, but lower than BellSouth's special access rate. If such competition is
3 available, it is highly unlikely that US LEC would be able to transition its circuits
4 to another provider in 90 days. Consequently, BellSouth's proposal appears to
5 lock US LEC into continuing to obtain services from BellSouth at the higher
6 rates, and increase BellSouth's revenue stream, rather than allowing competition
7 to flourish for these wholesale services.

8
9 US LEC's proposal is more appropriate as it permits US LEC the time necessary
10 to coordinate the conversions of the UNEs to alternative services, and allows US
11 LEC to use competitive providers rather than be locked into BellSouth's special
12 access pricing.

13
14 **ISSUE 11: WHAT RATES, TERMS AND CONDITIONS, IF ANY, SHOULD**
15 **APPLY TO UNEs THAT ARE NOT CONVERTED ON OR BEFORE MARCH 11,**
16 **2006, AND WHAT IMPACT, IF ANY SHOULD THE CONDUCT OF THE**
17 **PARTIES HAVE UPON DETERMINATIONS OF THE APPLICABLE RATES,**
18 **TERMS AND CONDITIONS THAT APPLY IN SUCH CIRCUMSTANES?**

19
20 **Q: WHAT IS US LEC'S POSITION ON THE UNES THAT HAVE NOT BEEN**
21 **CONVERTED AS OF MARCH 10, 2006?**

22

1 **A:** US LEC’s major concern is that no UNE be disconnected as of March 10, 2006,
2 without an affirmative acknowledgment by US LEC that the circuit is either
3 pending conversion (and the rate for the analogous service should be charged as
4 of March 10, 2006 until such time as the conversion is completed) or that the
5 circuit may be disconnected. Despite best efforts, there is some likelihood that a
6 circuit may have been inadvertently omitted from a conversion order or a
7 conversion order may be in a clarification stage and not final by March 10, 2006.
8 Under no circumstances should the US LEC customer be taken out of service due
9 to the FCC’s rules changes.

10

11 **Q: DOES YOUR ANSWER CHANGE BASED ON THE CONDUCT OF THE**
12 **PARTIES?**

13

14 **A:** The question presumes that either US LEC or BellSouth may have acted in bad
15 faith in either failing to submit the order timely or properly or failing to process
16 the order timely or properly. US LEC does not believe that either party will
17 intentionally engage in such conduct. If either party should engage in such
18 conduct, then the other party has recourse other than impairing the service to US
19 LEC’s customer. The customer should not suffer due to a dispute between the
20 parties.

21

1 **ISSUE 31: WHAT LANGUAGE SHOULD BE USED TO INCORPORATE THE**
2 **FCC'S *ISP REMAND CORE FORBEARANCE* INTO INTERCONNECTION**
3 **AGREEMENTS?**

4

5 **Q: DOES US LEC BELIEVE THAT THERE IS ANY ADDITIONAL**
6 **LANGUAGE NECESSARY TO INCORPORATE THE FCC'S *ISP***
7 ***REMAND CORE FORBEARANCE ORDER* INTO THEIR**
8 **INTERCONNECTION AGREEMENT?**

9

10 **A:** No. Language contained in the interconnection agreement approved by the
11 Commission on July 9, 2004 (specifically section 7.1.4.1.2 of Attachment 3),
12 provides that

13 The Parties agree to apply the 3:1 methodology set forth in the
14 FCC's April 2001 ISP Remand Order, and the 10% growth factor
15 set forth therein, and agree to continue to apply that methodology
16 until such time as the FCC, or any other governmental agency of
17 competent jurisdiction, issues new rules and regulations to apply
18 this methodology.

19

20 US LEC believes that this language permits the parties to eliminate the
21 application of the growth caps in billing for traffic over the 3:1 ratio, and that
22 there is no need for additional language in the interconnection agreement to
23 incorporate the *Core* decision.

24

25 **Q: DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

1

2 **A:** Yes.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing testimony has been filed electronically as permitted by the procedural order governing Case No. 2004-00427 this 16th day of August, 2005.

Douglas F. Brent