

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)	
)	
Petition of BellSouth Telecommunications, Inc.)	Case No. 2004-00427
To Establish Generic Docket to consider)	
Amendments to Interconnection Agreement)	
Resulting From Changes of Law)	

REBUTTAL TESTIMONY OF WANDA G. MONTANO
ON BEHALF OF
US LEC OF TENNESSEE INC. DBA US LEC COMMUNICATIONS

September 8, 2005

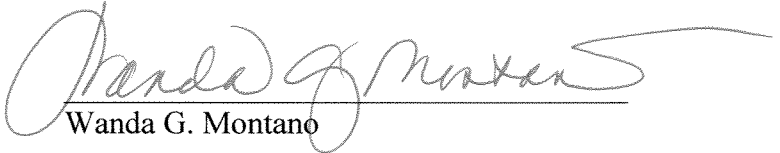
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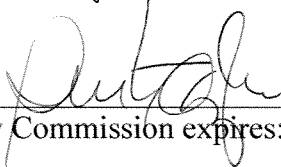
COUNTY OF MECKLENBURG

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Wanda G. Montano, 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, and if present before the Commission and duly sworn, her testimony would be set forth in her Rebuttal Testimony consisting of 12 pages.


Wanda G. Montano

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 8 DAY OF SEPTEMBER, 2005



Notary Public

My Commission expires:

June 1, 2009

1 **Q: PLEASE STATE YOUR NAME FOR THE RECORD.**

2

3 **A:** My name is Wanda G. Montano.

4

5 **Q: ARE YOU THE SAME WANDA G. MONTANO WHO FILED DIRECT**
6 **TESTIMONY IN THIS DOCKET ON AUGUST 16, 2005 ON BEHALF OF**
7 **US LEC OF TENNESSEE INC. D/B/A US LEC COMMUNICATIONS?**

8

9 **A:** Yes.

10

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

12

13 **A:** The purpose of my testimony is to respond to certain direct testimony propounded
14 by BellSouth's witnesses in this docket. Specifically, I will address matters
15 testified to by Kathy K. Blake and Pamela A. Tipton.

16

17 **Q: HOW DO YOU DIFFER WITH MS. BLAKE'S STATEMENTS ABOUT**
18 **THE TRANSITION PERIOD?**

19

20 **A:** Ms. Blake states that "the CLECs apparently believe they are only required to
21 submit orders before March 10, 2006 ... and not complete other steps necessary to
22 effectuate a smooth transition..." (Blake Direct Testimony (Issue 32), Page 20,
23 Lines 4 - 7). As I previously testified, US LEC is certainly willing to cooperate

1 with BellSouth and provide the necessary orders/conversion worksheets by the
2 December date that BellSouth has proposed for submitting the initial conversion
3 orders so long as BellSouth agrees that the pricing for the circuits does not
4 “convert” until March 10, 2006. BellSouth has been unwilling to make that
5 agreement. US LEC is concerned that BellSouth will attempt to change the
6 pricing on the circuits as of the date the conversion spreadsheets are submitted,
7 which is unacceptable to US LEC and contrary to the FCC’s rules, as I identified
8 in my Direct Testimony and will discuss in this testimony.

9

10 **Q: WHAT PORTIONS OF MS. TIPTON’S TESTIMONY DO YOU WANT TO**
11 **RESPOND?**

12

13 **A:** I wish to respond to Ms. Tipton’s testimony on the transition period process for
14 high capacity loops and dedicated transport (Tipton Direct Testimony, (Issue 2),
15 Page 5, Line 17 through Page 7, Line 3 and Page 9, Line 24 through Page 13, Line
16 14), and the manner in which BellSouth applied the FCC’s definition of “business
17 lines” to calculate the number of business lines in a wire center for the impairment
18 analysis (Issue 4, Page 16, Line 4 through Page 18, Line 4 and Issue 5(b), Page 29
19 Line 24 through Page 39, Line 21).

20

21 **Q: IN MS. TIPTON’S TESTIMONY ON BELL SOUTH’S TRANSITION**
22 **PROPOSAL, MS. TIPTON DESCRIBES BELL SOUTH’S PROPOSAL**
23 **THAT A CLEC SUBMIT SPREADSHEETS BY DECEMBER 9, 2005, TO**

1 **IDENTIFY THE LOOPS AND TRANSPORT THAT THE CLEC WILL BE**
2 **CONVERTING OR DISCONNECTING IN NON-IMPAIRED WIRE**
3 **CENTERS. ALTHOUGH YOU DISCUSSED YOUR CONCERNS ABOUT**
4 **THE PROPOSAL IN YOUR DIRECT TESTIMONY, CAN YOU BE MORE**
5 **SPECIFIC AS TO WHY US LEC HAS BEEN RELUCTANT TO ACCEPT**
6 **THE BELL SOUTH PROPOSAL?**

7
8 **A:** Yes, I can. In our negotiations with BellSouth, we discussed the December 9th
9 date and expressed our reluctance to agree to that date because we were given no
10 assurances as to when BellSouth would deem the conversions to have been
11 completed. Under BellSouth’s proposal, the increase of pricing for a circuit that
12 was being converted from a UNE to special access (even though no physical
13 change to the circuit would be made) would be as of the date of the conversion of
14 the circuit to the alternate arrangement or as of March 11, 2006, whichever was
15 earlier; for example the language in connection with DS1 and DS3 Loops is in
16 Section 2.1.4.11.2 of Exhibit PAT-1, Attachment 2, Page 10. BellSouth gave us
17 no assurances of when the conversions would be completed, i.e. whether the
18 conversions would be completed prior to the end of the calendar year 2005 or at
19 some unstated and potentially arbitrary date sometime in 2006. Although the
20 BellSouth proposal provides that “the Parties shall negotiate a project schedule for
21 the Conversion” of the UNEs on the spreadsheet, no specifics of what was meant
22 by this very vague proposal was provided to us by BellSouth at any time (an
23 example of the language in connection with DS1 and DS3 loops is in Section

1 2.1.4.11 of Exhibit PAT-1, Attachment 2, Page 10). From our perspective, it is to
2 BellSouth's economic benefit, and our economic disadvantage, to have the
3 conversions completed prior to March 10, 2006. At no time during our
4 discussions did BellSouth ever offer to permit US LEC to select the dates on
5 which the conversions would occur. Neither did BellSouth ever provide us any
6 incentive to provide the spreadsheet earlier rather than later. The only incentive
7 provided was essentially a club over the head, *i.e.* if we failed to provide the
8 spreadsheet by the date they demanded it, US LEC would be assessed additional
9 charges for their "work" in identifying the circuits that would need to be
10 converted. For business reasons, we wanted to ensure that conversions to the
11 higher pricing for special access for the embedded base UNEs did not occur
12 during our 2005 fiscal year. In addition, it is clear that the FCC envisioned and
13 indeed ordered a transition period for the transition pricing through March 11,
14 2006.

15
16 Our initial counteroffer to BellSouth was that we would provide a spreadsheet to
17 them as soon as practicable upon signing of the TRRO amendment to our
18 Interconnection Agreements, so long as BellSouth would not deem the
19 conversions completed until March 10, 2006. Our offer was rejected, which
20 increased our concerns that BellSouth would work the spreadsheets as quickly as
21 possible to complete the conversions in advance of the expiration of the March
22 11, 2005 - March 10, 2006 twelve month transition period. Consequently, we
23 then offered to submit our spreadsheet identifying the circuits to be converted or

1 disconnected to BellSouth by December 31, 2005. This is a mere 22 days later
2 than the proposal by BellSouth, and gave us some assurance that we would not be
3 at risk of any price increase on the embedded base during the 2005 fiscal year.

4
5 US LEC has no issue with submitting a spreadsheet or issuing orders prior to
6 March 10, 2006. Rather, our issue is that the UNE transition rate be made
7 available on our embedded base facilities from March 11, 2005 until March 10,
8 2006. The plain meaning of Sections 51.319(a)(4) (iii), (a)(5)(iii), (e)(2)(ii)(C),
9 and (e)(2)(iii)C)¹ of the FCC's Rules is that the network element that a CLEC is
10 leasing from the ILEC at UNE rates as of March 11, 2005 remains available to the
11 CLEC at the UNE transitional rate until March 10, 2006. If the circuit is
12 disconnected during the transition period, then, of course, the billing for the
13 disconnected circuit would cease. But until the transition period ends, if the
14 CLEC has any network elements serving customers as of March 11, 2005, then
15 the rate for those elements does not increase above the UNE transitional rate until
16 March 11, 2006, whether that element is considered a UNE or special access
17 facility. Thus, US LEC believes that our embedded base of circuits in wire
18 centers that are found to be non-impaired are entitled to the UNE Transitional
19 Pricing until March 10, 2006. I remain concerned as noted in other portions of

¹ Generally each of these rules provide “[f]or a 12-month period beginning on the effective date of the Triennial Review Remand Order, any [DS1 or DS3 Loop or DS1 or DS3 Dedicated Transport] UNE that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is no longer obligated to unbundle pursuant to [applicable FCC rule cite], **shall be available for lease** from the incumbent LEC [at the applicable UNE transition rate] and the effective date of the Triennial Review Remand Order for that [loop or transport] element. (emphasis added)

1 my testimony that wire centers have been designated as non-impaired that will
2 subsequently be found to be impaired.

3

4 I would also note that the FCC in the text of the TRRO distinguished between the
5 transition process for loops and transport and the UNE-P. In paragraphs 143
6 (transport) and 196 (loops) of the TRRO, the FCC states:

7

8 [carriers] have twelve months from the effective date of this Order
9 to modify their interconnection agreements, including completing
10 any change of law processes. At the end of the twelve-month
11 period, requesting carriers must transition all of their affected
12 [UNEs] to alternative facilities or arrangements.

13

14 I compare this language to the text of the order in connection with the transition
15 of UNE-P, (TRRO, paragraph 216) which states:

16

17 [c]ompetitive LECs must submit orders within twelve months to
18 convert their embedded UNE-P customer base to UNE-L or
19 another arrangement. However, within that twelve-month period,
20 incumbent LECs must continue to provide access to mass market
21 unbundled local circuit switching at a rate of TELRIC plus one
22 dollar for the competitive LEC to service those customers until the
23 incumbent LEC successfully convert those customers to the new
24 arrangement.

25

26 I have searched the TRRO and find no similar discussion that supports
27 BellSouth's position that it may change the UNE transition rate on loops and

1 transport that are subject to transition prior to the end of the transition period.
2 Consequently, if the FCC intended to modify the plain meaning of the cited
3 transition period rules for loops and transports to permit an ILEC to increase the
4 rate upon conversions, it certainly could have done so.

5
6 Most likely the reason that the FCC distinguished between the conversion of UNE
7 loops and dedicated transport from the conversion of UNE-P is that if a CLEC is
8 going to convert its UNE loops and dedicated transport to an alternative service of
9 the ILEC, the CLEC will choose to convert to special access. Such conversion to
10 special access generally does not require any physical rearrangement and the
11 facilities do not “change”, whereas the UNE-P conversion may require a physical
12 rearrangement to be accomplished, if, for example, the conversion is to a UNE-L.
13 Additionally, as the conversion for a UNE loop or dedicated transport is more a
14 “billing change” rather than a physical facility change, the billing change can be
15 accomplished after March 11, 2006, with a true-up back to the date to account for
16 the difference in pricing between the UNE transition rate and the higher special
17 access rate. Such a true-up will ensure that both parties are protected in
18 accordance with the TRRO. BellSouth is made whole for the alternative
19 arrangements effective as of March 11, 2006 and the CLEC is correctly billed the
20 UNE transition rates through the end of the transition period. Neither party thus
21 is able to game the system and invoke any economic harm on the other.

22

1 **Q: DO YOU HAVE ANY UNDERSTANDING OF THE DIFFERENCE**
2 **BETWEEN THE WORK THAT BELLSOUTH MIGHT HAVE TO DO IF**
3 **IT OBTAINED A LIST OF CIRCUITS FROM THE CLEC WHICH**
4 **IDENTIFIES THE CIRCUITS THAT MUST BE CONVERTED AND IF**
5 **BELLSOUTH CREATED THE LIST IDENTIFYING THE CIRCUIT?**

6

7 **A:** Yes, I believe I do. Even if US LEC were to produce and submit a spreadsheet
8 identifying all the UNEs that must be converted and/or disconnected, BellSouth
9 will independently produce a list of circuits that it believes US LEC to have in a
10 non-impaired wire center that must be converted or disconnected. My
11 understanding is that BellSouth, using this list, would compare its list to the US
12 LEC list and would identify any discrepancies between the two lists and then the
13 parties would discuss these discrepancies and resolve which list is correct. Thus,
14 BellSouth will create a list of circuits whether US LEC provides a spreadsheet by
15 December 9, 2006 or not.

16

17 **Q: DOES US LEC OBJECT TO CREATING SUCH A LIST AND WORKING**
18 **WITH BELLSOUTH TO IDENTIFY DISCREPANCIES BETWEEN THE**
19 **TWO LISTS?**

20

21 **A:** No, US LEC does not. We would welcome the opportunity to work with
22 BellSouth to identify the circuits and issue the orders needed for the conversions,
23 provided we have contractual assurances from BellSouth that **the conversions**
24 will not occur prior to the end of the FCC's 12 month transition period. In

1 addition, we have on several occasions advised BellSouth that we would not
2 object to the physical conversion of the circuits prior to March 11, provided that
3 the billing rates did not change until March 11, 2006. BellSouth has consistently
4 rejected this proposal.

5
6 **Q: DO YOU AGREE WITH BELLSOUTH'S METHODOLOGY IN**
7 **DETERMINING THE NUMBER OF BUSINESS LINES WITHIN A WIRE**
8 **CENTER AS DESCRIBED IN MS. TIPTON'S TESTIMONY?**

9
10 **A:** No. My primary disagreement with the methodology used by BellSouth is that
11 BellSouth has significantly increased the number of business lines attributable to
12 a wire center by multiplying each high capacity circuit by its maximum
13 channelized capacity rather than (a) counting a UNE loop as one line regardless of
14 the capacity, and / or (b) only including the activated channels of a high capacity
15 facility provided by BellSouth that actually are providing voice switched access
16 service to a business customer. For example, for a T-1 UNE loop, BellSouth has
17 multiplied each circuit by 24, and for DS-3 capacity circuits, the multiplier is 672,
18 thus inflating the number of CLEC "business lines" considerably. Accordingly,
19 under BellSouth's calculations, a number of wire centers are considered "non-
20 impaired" when they should be deemed "impaired." These offices should be
21 removed from the BellSouth Non-impaired Wire Center Lists.

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23 **Q: COULD YOU EXPLAIN YOUR DISAGREEMENT IN MORE DETAIL?**

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A: Yes. BellSouth has interpreted the last sentence of the “business line” definition in Section 51.5 of the FCC rules (set forth in Ms. Tipton’s testimony on Page 16, Lines 13 –28) to permit it to create the “potential” number of business lines that **could** be activated in a wire center, whether by BellSouth or a CLEC. The FCC, in the text of the TRRO, does not support BellSouth’s reading as there is no discussion of any “grossing up” mechanism by which the ILECs could increase the ARMIS line information or the UNE loop numbers. The FCC stated that its analysis was based on “ARMIS 43-08 business lines, plus business UNE-P, plus UNE loops,” a formula that is clearly additive. (TRRO, Paragraph 105). There is no indication that the FCC expected anything but the “actual” line counts to be used. The FCC, at Paragraph 105 of the TRRO, stated “by basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which must also be reported, we can be confident in the accuracy of the threshold, and a simplified ability to obtain the necessary information.” BellSouth’s methodology is not so straightforward as they would have this Commission believe, and requires review of data that is not filed with the FCC and is not available to the CLECs to verify. Moreover, there is no indication in the TRRO that the FCC intended to inflate the business lines and, thereby, increase the number of wire centers that would be considered “non impaired.”

Further, the plain meaning of the last sentence of the definition reflects guidance by the FCC of how the ILEC is to use the ARMIS data and calculate the sum of

1 “the ILEC business switched access lines” that would then be added to the “ sum
2 of all the UNE loops connected to the wire center.” The last sentence in the
3 subsection entitled “Business Lines” contained in Section 51.5 of the FCC’s rules
4 states that “business line tallies (1) shall include **only** (emphasis added) those
5 access lines connecting end-user customers with incumbent LEC end-offices for
6 switched services, (2) shall not include non-switched special access lines, (3) shall
7 account for ISDN and other digital access lines by counting each 64 kbps-
8 equivalent as one line.” There is nothing within this last sentence, or indeed
9 anywhere within the TRRO, that would indicate that the FCC was approving the
10 “grossing up” of either the ILEC business switched access lines or high capacity
11 UNE loops to each of their maximum capacity. Moreover, the use of the phrase
12 “sum of all UNE loops” rather than the “sum of all UNE loop capacity” also
13 indicates that the FCC did not intend to increase the number of business lines in a
14 wire center by the maximum capacity of a UNE loop.

15
16 Further, the first sentence of the subsection entitled “Business Lines” contained in
17 Section 51.5 of the FCC rules states that a “business line” is “an incumbent-
18 owned switched access line used to serve a business customer, whether by the
19 incumbent LEC itself or by a competitive LEC that leases the line from the
20 incumbent LEC.” I don’t think that there is a disagreement between US LEC and
21 BellSouth that a “UNE loop” is not within this definition of “business line.”
22 Otherwise, there would be no reason for the FCC’s formula to have the ILECs do
23 a mathematical calculation that (1) adds the “business lines” (as previously

1 defined) with (2) “UNE loops” to determine the number of business lines in a
2 wire center, as set forth in the second sentence of the rule. This simply represents
3 the unilateral license that BellSouth has taken with the FCC’s language, and
4 BellSouth’s methodology must be rejected.

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6

7 **Q: DOES US LEC TYPICALLY UTILIZE ALL CHANNELS ON A T-1 LOOP**
8 **FOR SWITCHED VOICE SERVICES TO BUSINESS CUSTOMERS?**

9

10 **A:** No, we do not. Customers may purchase multiple T-1 facilities, which can be
11 configured as 100% data access, 100% Internet access or 100% voice. Customers
12 may also combine data services, Internet access and voice business lines on each
13 facility. Smaller customers who purchase a single T-1 for service may combine
14 all three services on the single circuit. Thus, it is erroneous for BellSouth to
15 assume that 100% of all facilities, both special access and UNE loops, are utilized
16 100% as business switched access lines.

17

18 **Q: DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

19

20 **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 8th day of September, 2005.

Douglas F. Brent