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January 16, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

IN RE: IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS
COMMISSION'S TRIENNIAL REVIEW ORDER- 9 MONTH PROCEEDING-
SWITCHING, Docket No. 03-00491

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's *Affidavit and Direct Testimony of Steve Brown* in regards to Docket No. 03-00491. Kindly file same in this docket. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615)532-2590. Thank you.

Sincerely,

JOE SHIRLEY
Assistant Attorney General

cc: All Parties of Record

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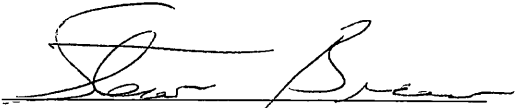
Before the
TENNESSEE REGULATORY AUTHORITY

**IN RE: IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS
COMMISSION'S TRIENNIAL REVIEW ORDER- 9 MONTH PROCEEDING-
SWITCHING**

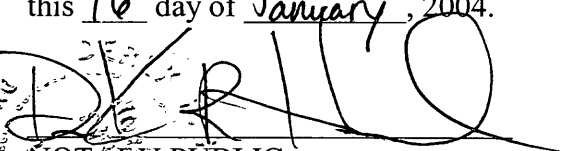
DOCKET NO. 03-00491

AFFIDAVIT

I, Steve Brown, for the Consumer Advocate and Protection Division of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate and Protection Division.


STEVE BROWN
Economist

Sworn to and subscribed before me
this 16 day of January, 2004.


NOTARY PUBLIC

My commission expires: Sept 24, 2005

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DOCKET NO. 03-00491

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I. Introduction

Q_1. Please state your name.

A_1. Steve Brown.

Q_2. What is your job title and where do you work?

A_2. I am an Economist in the Consumer Advocate and Protection Division (CAPD), Office of the Attorney General.

Q_3. What are your responsibilities as an Economist?

A_3. I review regulated companies' petitions for rate changes in Tennessee and follow the economic conditions that affect the companies regulated by the Tennessee Regulatory Authority (TRA).

Q_4. What experience do you have regarding regulated utilities?

A_4. In 1995 I began work as an economist in the Consumer Advocate and Protection Division (CAPD) of the Attorney General's Office. I have appeared as a witness and filed testimony for CAPD in several dockets before the TRA. From 1986 to 1995 I was employed by the Iowa Utilities Board as Chief of the Bureau of Energy Efficiency, Auditing and Research, and Utility Specialist and State Liaison Officer to the U.S. Nuclear Regulatory Commission. From 1984 to 1986 I worked for Houston Lighting & Power as Supervisor of Rate Design.

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1 From 1982 to 1984 I worked for Arizona
2 Electric Power Cooperative as a Rate Analyst.
3 From 1979 to 1982 I worked for Tri-State
4 Generation and Transmission Association as
5 Power Requirements Supervisor and Rate
6 Specialist. Since 1979 my work spanned many
7 issues including cost of service studies, rate
8 design issues, telecommunications issues and
9 matters related to the disposal of nuclear
10 waste.
11

12 **Q_5. What is your educational background?**
13

14 **A_5.** I have an M.S. in Economics from the
15 University of Wyoming, an M.A. and Ph.D. in
16 International Relations with a specialty in
17 International Economics from the University of
18 Denver, and a B.A. from Colorado State
19 University.
20

21 **Q_6. What were you asked to do with respect to this**
22 **case?**
23

24 **A_6.** I was asked to form an opinion on whether
25 CLECs would be impaired if they were to serve
26 the mass market without access to the UNE-P
27 platform in which the CLECs currently use the
28 incumbent's switch.
29

30 **Q_7. What standards did you rely on to develop your**
31 **opinion?**
32

33 **A_7.** I relied on the prescribed standards of the
34 Federal Communications Commission (FCC). The
35 standards are specified in the FCC's Triennial
36 Review Order (TRO).
37

38 **Q_8. When did the FCC adopt the TRO?**
39

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1 A_8. The FCC adopted the TRO on February 20, 2003.

2
3 Q_9. When was the resulting order from the
4 Triennial Review released?

5
6 A_9. The FCC released the TRO on August 21, 2003.
7
8
9
10
11
12
13

14 **II. Summary of Testimony**

15
16 Q_10. Would you provide a summary of your testimony?

17
18 A_10. Yes.
19
20
21

22 **II. A. - Foundation of Opinion**

23
24 Q_11. What does your opinion rely on?

25
26 A_11. My opinion specifically relies on paras. 84 and
27 782 of the TRO as the basis for my analysis.
28 Para 84 says in part:

29
30 *"...we ask whether all potential revenues from entering a*
31 *market exceed the costs of entry, taking into*
32 *consideration any countervailing advantages that a new*
33 *entrant may have. As explained in detail below, this*
34 *granular analysis is informed by consideration of the*
35 *relevant barriers to entry..."*
36

37 Para. 782 says in part:
38

"We have modified our impairment analysis to find that a requesting carrier is impaired when lack of access to a facility in the incumbent LEC's network poses barriers that are likely to make entry into the market uneconomic. These can include... economic barriers.... within the control of the incumbent LEC..."

The FCC identified many economic barriers likely to prevent CLECs UNE-L entry into the mass market. A table of those barriers appears at the end of my summary. However, my analysis focuses on the FCC identified barrier of termination charges and its ramifications. The table below shows where in the TRO the FCC identified termination charges as a barrier.

FCC Identified Barrier of "Termination Charges"

TRO Para.	FCC Economic Condition	Incumbent-Controlled Termination Charges:
75 - Foot Note 252	"An incumbent monopolist can induce customers to sign long-term contracts, with substantial penalties for breaching the contract. These contracts can act as a barrier to entry, if they prevent customers from switching to an entrant."	1. Prevent Mass Market Customers From Taking service From A CLEC; 2. Raise CLEC customer costs; 3. Reduce CLEC Profit Margins

II. B. - Opinion

Q_12. Would you please state your opinion?

A_12. Yes. With regard to competitive local exchange carriers (CLECs), my opinion is:

Opinion. The threading of termination charges throughout the incumbent's tariffs and contracts qualifies as an exceptional economic barrier to CLEC UNE-L mass market entry, a barrier that meets the FCC's directive in para. 503 of the TRO. To acquire a customer subject to the incumbent's termination charges, the CLEC's price must be lower than the total of the incumbent's price and the termination charge. Unless the customer is made whole by the CLEC's price, the customer will not pay termination charges because doing so means the customer loses the economic benefits of the incumbent's price reduction, as if there had been no competitive pressure forcing the incumbent's prices down. The termination charge is a fundamental barrier to entry and makes uneconomic the CLEC's mass-market-entry via UNE-L; per-line termination charges are a tacit price increase of the incumbent's UNE-L nonrecurring per-line charge for CLECs to connect their own switches to unbundled loops [see TRO para. 470.] The number of "termination-free" customers shrinks as the incumbent removes them from the CLECs' potential customer-base through financial inducements that must be repaid if the customer switches from the incumbent to the CLEC.

II. C. - Opinion's Support

Q_13. Would you please briefly provide the details which support your opinion?

A_13. Yes.

The FCC's rules regarding the 1996 Telecommunications Act have been followed by an incumbent-response composed of special tariffs, promotions, and contracts which lower the incumbent's prices to its current and new customers. Termination charges are a fundamental feature of the commercial instruments used by the incumbent to respond to competitive pressure in the mass market.

By including termination charges in its offerings, the incumbent offers economic benefits that can be withdrawn from the customer if it were to switch to a CLEC. In doing so, a mass market customer taking the incumbent's service will likely not pay termination fees to the incumbent in order to take service from the CLEC. By paying the termination charges, the customer loses the economic benefits of the incumbent's price reduction, as if it had never occurred, as if the customer had no alternative to the incumbent.

For example, in TRA Docket No. 03-00625, the incumbent offers the mass market customer a "Welcoming Reward" of \$75 per line if the customer takes the incumbent's service for a term, but if the customer switches to a competitor then the customer "...must pay

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1 BellSouth a termination liability..." according
2 to language in tariff A.13.90.61(6).
3

4 When the CLEC is a lower cost provider than the
5 incumbent, the termination charges present the
6 CLEC with a choice of not serving the customer
7 or paying termination charges in order to
8 access for the particular UNEs utilized to
9 serve the customer. In the latter case, there
10 is impairment because the CLEC is forced into
11 accepting a tacit price increase for the
12 incumbent's nonrecurring per-line charge for
13 CLECs to connect their own switches to
14 unbundled loops. However, at para. 582 of the
15 TRO the FCC says, "The Commission's [FCC's]
16 pricing rules for UNEs already ensure that
17 competitive LECs are paying appropriate rates
18 for UNEs and UNE combinations, and that
19 incumbent LECs are adequately compensated for
20 the use of their networks."
21

22 Thus the incumbent's termination fees are not
23 UNE prices nor are they any other rational
24 price set by economic standards; the charges
25 have no economic foundation.
26

27 To the extent the termination charges force the
28 customer to repay the incumbent's price
29 reductions, the charges capture foregone
30 profits and represent the continuation of
31 profits established in a monopoly environment,
32 rather than profit in a competitive market, and
33 the customer is the source of those monopoly
34 profits in the event a customer switches
35 service to a CLEC.
36

37 To the extent termination charges capture costs
38 that "would have been" if the customer had

1 continued taking the incumbent's service, such
2 termination charges are a fiction because the
3 costs were not incurred.
4

5 If the incumbent's termination charges capture
6 costs that should have been charged, the
7 incumbent's price is below the service's cost.
8

9 Since there is no economic basis for such a
10 charge, its amount can be tailored to fit
11 promotions, tariff or contract the incumbent
12 offers in response to the CLECs' offerings.
13 Thus the termination charge gives the
14 incumbent broad pricing-discretion that would
15 otherwise be curtailed in a market where
16 customers made their choices disciplined by
17 price-to-price and service-to-service
18 competition, instead of factoring in their
19 economic loss caused by leaving the
20 incumbent's fold.
21

22 Termination charges divide a geographic market
23 for mass market customers into two camps:
24 customers who have termination charges if they
25 switch to the CLEC and those who do not. The
26 dividing line between the camps and the
27 numbers in the camps shift at any time
28 depending on the incumbent's effort to
29 "induce" customers to the incumbent, as the
30 FCC noted. The CLEC cannot enter the mass
31 market through UNE-L because the number of
32 "termination-free" customers shrinks as the
33 incumbent induces them, as the FCC noted, into
34 purchasing services encumbered by termination
35 charges.
36

37 Because a UNE-L entry mode is a much more
38 expensive and more capital-intensive path to

1 the customer than the UNE-P avenue,
2 termination charges take on new significance
3 in a UNE-L environment: They are an economic
4 barrier preventing CLECs from serving an
5 entire market economically as long as the
6 incumbent retains the dual ability to induce
7 customers into taking a service while at the
8 same time preventing them from acting on
9 normal economic opportunities that
10 characterize a market when new entrants offer
11 a similar service at lower prices.
12

13 The incumbent's termination charge is a
14 fundamental economic barrier, which by itself
15 makes uneconomic the CLEC's mass-market-entry
16 via UNE-L, thus qualifying as an exceptional
17 economic barrier meeting the FCC's directive in
18 para. 503 of the TRO.
19

20 In the TRO the FCC identifies several economic
21 conditions which constitute economic barriers
22 to the CLEC's UNE-L entry to the mass market.
23 The table below lists those barriers.

1
2
3 Table of FCC Identified Barriers In The Mass
4 Market
5

TRO Source Para.	FCC Economic Condition	Condition Creates CLEC Impairment If:
499	"They[CLECS] must also be operationally ready and willing to provide service to all customers in the designated market. They should be capable of economically serving the entire market, as that market is defined by the state commission."	Incumbent-Control prevents CLEC from: 1. Being willing to serve all customers; 2. Economically serving the entire market.
75	"...Depending on the circumstances, barriers to entry can come from..., first-mover advantages, strategic behavior by the incumbent,...long-term contracts	Incumbent-Control 1. Incumbent creates these barriers, and they are effective in preventing CLEC entry.
127	"low levels of revenue... create tight profit margins ...force service providers to keep...customer costs at a minimum."	Incumbent-Control: 1. Reduces CLEC profit and increases CLEC customer cost.
73	"overall impact of the current hot cut process raises competitors' costs, lowers their quality of service, and delays the provisioning of service."	Incumbent-Control: 1. Raises CLECs' costs; 2. Lowers CLECs' quality-of-service.

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TRO Source Para.	FCC Economic Condition	Condition Creates CLEC Impairment If:
478	"the absence of unbundled local circuit switching requires seamless and timely migration not only to and from the incumbent's facilities, but also to and from the facilities of other competitive carriers"	Incumbent-Control causes: 1. The absence of a circuit-switching-migration plan; 2. Circuit-switching-migration plan is delayed, untimely.
582	"The Commission's [FCC's] pricing rules for UNEs already ensure that competitive LECs are paying appropriate rates for UNEs and UNE combinations, and that incumbent LECs are adequately compensated for the use of their networks."	Incumbent-Control causes 1. CLECs to pay more than the appropriate rates for access to UNEs.
75 - Foot Note 252	"An incumbent monopolist can induce customers to sign long-term contracts, with substantial penalties for breaching the contract. These contracts can act as a barrier to entry, if they prevent customers from switching to an entrant."	Incumbent's Termination Charges: 1. Prevent Mass Market Customer From taking service from a CLEC.

1
2
3

III. FCC Criteria For An Impairment Analysis

Q_14. In developing your opinions, what criteria did you use?

A_14. I developed my opinion by complying with the FCC's TRO, which details the criteria that limit and direct an "impairment" analysis conducted by a state regulatory agency and the parties to the state's impairment analysis.

The FCC's general instructions appear in para. 782 of the TRO:

"In this Order, we adopt rules regarding the unbundling of network elements. We have modified our impairment analysis to find that a requesting carrier is impaired when lack of access to a facility in the incumbent LEC's network poses barriers that are likely to make entry into the market uneconomic. These can include both operational and economic barriers, such as scale economies, sunk costs, first mover advantages, absolute cost advantages, and barriers within the control of the incumbent LEC..."

III. A. - FCC IMPAIRMENT ANALYSIS INCLUDES AN ECONOMIC ASSESSMENT OF BARRIERS TO CLEC UNE-L MARKET ENTRY

Q_15. Does your opinion include an assessment of whether a CLEC's entry into the incumbent's market is made "uneconomic" by barriers identified by the FCC?

1
2 A_15. Yes. My opinion includes an assessment of
3 whether a CLEC's entry into the incumbent's
4 market is made "uneconomic" by barriers
5 identified by the FCC.
6

7 Q_16. Why did you make that assessment?
8

9 A_16. I made the assessment regarding the CLECs'
10 potential "uneconomic" entry into the
11 incumbents' market for two reasons.
12

13 First, the FCC itself directs that such an
14 assessment be made.
15

16 Second, the FCC remarks in the TRO at para.
17 531 that all states "...have strong
18 incentives... to encourage competition (as a
19 means of providing citizens of their states
20 with a choice of service providers)"
21 Therefore, an impairment analysis is a method
22 to evaluate the extent of consumer-choice in
23 Tennessee's mass market and to find cures for
24 any infirmities ailing the state's mass
25 market.
26
27
28

29 **III. B. - FCC CRITERIA TO IDENTIFY**
30 **ECONOMIC BARRIERS TO CLEC UNE-L MASS**
31 **MARKET ENTRY**
32

33 Q_17. What are the FCC-identified economic barriers
34 to CLEC UNE-L mass market entry?
35

36 A_17. A number of barriers are identified throughout
37 the FCC's TRO. A summary of those barriers
38 already appear in the tables of my summary.

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1
2 **Q_18.** Do the FCC's economic barriers have to be
3 associated with the hot cut process to be an
4 economic barrier to CLEC UNE-L entry?
5

6 **A_18.** No. The FCC's economic barriers range beyond
7 the context of hot cut process.
8

9 For example, at para. 484 of the TRO the FCC
10 concluded, "we are persuaded that other
11 economic factors, in addition to the economic
12 and operational barriers associated with the
13 current hot cut process...may make entry
14 uneconomic" without access to the incumbent's
15 switch.
16

17
18 **Q_19.** Did you use the criteria the FCC prescribes in
19 forming your opinion?
20

21 **A_19.** Yes. I developed my opinion by using the FCC's
22 criteria.
23

24 **Q_20.** In assessing whether a CLEC's entry into the
25 incumbent's market is "uneconomic," what are
26 the criteria you employ?
27

28 **A_20.** I used the objective criteria which the FCC
29 specifies. In the TRO at para. 428 the FCC
30 affirms that "...we do establish 'objective,
31 carefully defined criteria for determining
32 where unbundling is (and is not)
33 appropriate.'"
34
35
36
37

**III. C. - FCC SPECIFIED ITS CRITERIA TO
LIMIT AN IMPAIRMENT ANALYSIS TO
FACT-FINDING**

Q_21. What reasons did the FCC give for specifying its criteria?

A_21. The FCC made its specifications, according to para. 428 because "these criteria...ensure that states undertake the tasks we give them consistently with the statute's substantive standards and stay within the parameters of federally established guidelines. Accordingly, we are not 'punting' unbundling decisions to the states.'" The FCC says further at para. 488 that state regulatory agencies "...possess the requisite expertise to apply Commission-prescribed standards, and they routinely utilize the processes and procedures - including discovery, sworn testimony, and cross examination on the record - that are essential to reasoned fact-finding."

Therefore, my opinion is based on the FCC's "prescribed standards" applied to the facts that I discovered.

Q_22. Is your opinion limited to "mass market" customers?

A_22. Yes, my opinion is limited to mass market customers.

Q_23. Why is your opinion limited to those customers?

1 A_23. My opinion is limited to those customers
2 because they are the subject of the instant
3 docket before the TRA.
4
5
6
7

8 **IV. FCC DEFINITION OF A MASS MARKET**
9 **CUSTOMER**

10
11 Q_24. What source did you consult for the definition
12 of "mass market" customers?
13

14 A_24. I relied on the FCC's definition of "mass
15 market" customers.
16

17 Q_25. What are "mass market" customers, according to
18 the FCC?
19

20 A_25. The FCC defines mass market customers in
21 operational terms and in economic terms. The
22 definitions appear in the TRO at paras. 127
23 and 497. However, the TRO definitions are the
24 same definitions that appeared in earlier FCC
25 orders dating back to 1999. Thus the
26 definition of mass-market customers is at
27 least four years old.
28
29
30
31

IV. A. - FCC OPERATIONAL DEFINITION

Q_26. How does the FCC define a mass market customer in operational terms?

A_26. With regard to operational terms, the FCC defines mass market customers according the number of lines serving the customer at a specific location. In Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3699, paras. 290-298 (1999) (UNE Remand Order), the FCC defined a mass market customer as any business or residential customer who is served by no more than three lines at a single location.

For example, in para. 293 of the UNE Remand Order the FCC concluded:

"We find, however, that a rule that provides access to unbundled local switching for requesting carriers when they serve customers with three lines or less captures a significant portion of the mass market. First, virtually all residential customers would be captured by such a rule. While an increasing number of American homes are served by second lines, we believe it is a rare case in which residences have three lines, and even more unusual for a home to have four or more lines. Second, any business that has three or fewer lines is likely to share more characteristics of the mass market customer than a medium and large business. In particular, small businesses are likely to use the same number of lines as

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many residential subscribers and purchase similar volumes and types of telecommunications services."

The FCC applies the same three-line limit in the TRO at para 497:

"... the appropriate cutoff will be four lines absent significant evidence to the contrary. We are not persuaded, based on this record, that we should alter the Commission's previous determination on this point."

In the TRO at para. 497 the FCC retains its single-location requirement for mass market customers by defining them as:

"customers [who] are analog voice customers that purchase only a limited number of POTS lines, and can only be economically served via DS0 loops...[and] Some mass market customers (i.e., very small businesses) purchase multiple DS0s at a single location."

Furthermore, the three-line limit at a single location can be traced back to the FCC docket "In Local Competition and Broadband Reporting CC Docket No. 99-301 Report and Order [Adopted: March 24, 2000 Released: March 30, 2000]." In that order at para. 77 the FCC directed Local Exchange Companies to report mass market data by billing address:

"We wish to monitor developments affecting certain broad categories of customers. Therefore, we require LECs to report the percent of total voice-grade equivalent lines they provide to residential and small business customers, which we consider, for purposes of Part II of the form, to be identified by separate billing

addresses to which fewer than four lines are in service
[emphasis added by CAPD.]"

This is the source of the four-line "cut off" mentioned in the TRO at para. 497. The Local Competition and Broadband Reporting Order of March 2000 resulted in the FCC's development of "FCC Form 477," the FCC's widely-known "Local Competition and Broadband Deployment Report." This semi-annual report embodies the FCC's implementation of its UNE Remand Order and makes clear that mass market customers are defined as those who have three or fewer lines in service to a single location.

Q_27. In your opinion what does the FCC mean by the phrase "billing address?"

A_27. In my opinion the FCC's term "billing address" means the physical location where the service is delivered to an end-user. This is consistent with the FCC's usage in other dockets.

For example, In Fourteenth Report And Order, Twenty-Second Order On Reconsideration, And Further Notice Of Proposed Rulemaking in CC Docket No. 96-45, And Report And Order In CC Docket No. 00-256, Adopted: May 10, 2001 Released: May 23, 2001, the FCC said:

"adoption of customer's billing address as a surrogate for service location eliminates the need for many mobile wireless carriers to create a new database for purposes of universal service funding."

1 **Q_28.** **Has the telephone incumbent in Tennessee filed**
2 **FCC Form 477 Part II, where the incumbent**
3 **identified customers by separate billing**
4 **addresses to which fewer than four lines are**
5 **in service?**

6
7 **A_28.** Yes. The telephone incumbent in Tennessee has
8 filed form 477 six different times with the
9 FCC. The first report was filed in March 2001
10 for data reported as of June 30, 2000. The
11 most recent report was filed in December 2003
12 for data reported as of June 19, 2003. My
13 Exhibit CAPD-SB Schedule 1, pages 1 through 3,
14 shows copies of computer screens on the FCC's
15 internet site where the data can be found.
16 Pages 4 and 5 of Schedule 1 confirm that the
17 incumbent has been filing data for FCC Form
18 477 Part II.

19
20 **Q_29.** **What does the FCC's operational definition**
21 **mean for the impairment analysis being**
22 **conducted in the TRA's instant docket?**

23
24 **A_29.** Regarding the TRA's instant docket, the
25 impairment analysis of the mass market
26 involves an assessment of whether CLECs have
27 impaired access to any and each location where
28 the incumbent has no more than three DS0 loops
29 in service to a customer. The FCC's single
30 location requirement prevents a mass market
31 customer from losing that customer designation
32 even if DS0 loops are aggregated across
33 different locations within a single customer's
34 account.

35
36 For example, if there are two DS0 lines in
37 service to a customer named "Robert L. Public"
38 in Memphis, Tennessee, and there are two DS0

1 lines in service to the very same "Robert L.
2 Public" in Mount Juliet, then "Robert L.
3 Public" would be a mass market customer with
4 two DS0 lines in each of two different
5 locations. "Robert L. Public" is not to be
6 construed as a customer who has four lines and
7 therefore is not a mass market customer. Also,
8 if "Robert L. Public" has telephone service
9 through four DS0 lines in Memphis, Tennessee
10 and two DS0 lines in Mount Juliet, then the
11 Mount Juliet location is a "mass market"
12 customer but the Memphis location is not. The
13 FCC's national policy on unbundling in the
14 mass market would apply to the Mount Juliet
15 location but not the Memphis location.
16

17 **Q_30. Does the FCC's operational definition of a**
18 **"mass market" customer allow a service provider**
19 **to combine two or more service locations for**
20 **the customer and treat the customer as if it**
21 **were not in the mass market?**
22

23 **A_30. No. It is not true that such customers could be**
24 **treated as if they were not mass market**
25 **customers. To treat them as if location did not**
26 **matter would conflict with the overwhelming**
27 **emphasis that the FCC's TRO places on the**
28 **customer's location and location in general.**
29 **The order is replete with the word "location"**
30 **and phrases such as "location-specific" and**
31 **"location-by-location" analysis.**
32

33 For example, at para. 495 in the TRO, the FCC
34 directs state commissions "to define each
35 market on a granular level, and in doing
36 so...take into consideration the locations of
37 customers actually being served (if any) by
38 competitors..."

1
2 **Q_31. How large is Tennessee's mass market?**

3
4 **A_31.** According to the FCC, Tennessee's mass market
5 exceeds 2.5 million lines, which is
6 approximately 75 percent of the telephone
7 lines in Tennessee. Exhibit CAPD-SB Schedule 2
8 shows the data and the source.
9
10
11
12
13

14 **IV. B. - FCC ECONOMIC DEFINITION**

15
16 **Q_32. How does the FCC define a mass market customer**
17 **in economic terms?**

18
19 **A_32.** With regard to economic terms, the FCC defines
20 mass market customers at para. 127 in the TRO:
21

22 *"Mass market customers consist of residential customers*
23 *and very small business customers. Mass market*
24 *customers typically purchase ordinary switched voice*
25 *service (Plain Old Telephone Service or POTS) and a*
26 *few vertical features. Some customers also purchase*
27 *additional lines and/or high speed data services...the low*
28 *levels of revenue that customers tend to generate create*
29 *tight profit margins in serving them. The tight profit*
30 *margins, and the price sensitivity of these customers,*
31 *force service providers to keep per customer costs at a*
32 *minimum. Profits in serving these customers are very*
33 *sensitive to administrative, marketing, advertising, and*
34 *customer care costs. These customers usually resist*
35 *signing term contracts."*
36

37 Therefore, the impairment analysis of the mass
38 market involves an assessment of whether the

1 mass market's tight profit margins are
2 contracted in ways that impair CLEC access to
3 any and each location where the incumbent has
4 no more than three DS0 loops in service to a
5 customer.
6
7
8
9

10 **V. IMPAIRMENT ANALYSIS TRIGGERS AND**
11 **LIMITATIONS**

12
13 **Q_33. What findings, if any, has the FCC made on the**
14 **question of whether CLEC service to the mass**
15 **market customers is impaired?**
16

17 **A_33. The FCC has already found that CLEC service to**
18 **the mass market customers is impaired.**
19

20 At para. 459 of the TRO the FCC concludes, "We
21 find on a national basis, that competing
22 carriers are impaired without access to
23 unbundled local circuit switching for mass
24 market customers." But the FCC has allowed for
25 exceptions to its findings in geographic
26 markets identified and analyzed by the state
27 regulatory authority. Thus at para. 459 of its
28 order the FCC also concludes: "We also
29 recognize that a more granular analysis may
30 reveal that a particular market is not subject
31 to impairment in the absence of unbundled
32 local circuit switching. We therefore set
33 forth two triggers that state commissions must
34 apply in determining whether requesting
35 carriers are impaired in a given market."
36

1 Q_34. What are the "two triggers" that the FCC tells
2 the state regulatory agency to use in the
3 impairment analysis of the mass market?
4

5 A_34. The FCC tells states to use the "self
6 provisioning trigger," which the FCC describes
7 in the TRO at para. 462 and the "wholesale
8 facilities trigger" which the FCC describes in
9 the TRO at para. 463.
10

11 Q_35. How does the FCC define the self-provisioning
12 and wholesale facilities triggers?
13

14 A_35. The self-provisioning trigger is defined by
15 the FCC at para. 462 of the TRO:
16

17 *"The analysis we prescribe with regard to mass market*
18 *switching is as follows. First, where a state determines*
19 *that there are three or more carriers, unaffiliated with*
20 *either the incumbent LEC or each other, that are serving*
21 *mass market customers in a particular market using self-*
22 *provisioned switches, the state must find 'no impairment'*
23 *in that market.'*
24

25 The wholesale trigger is defined at para. 463:
26

27 *"Second, a state must find no impairment when it*
28 *determines that there are two or more competitive*
29 *wholesale suppliers of unbundled local circuit switching,*
30 *unaffiliated with the incumbent or each other.'*
31

32 At para. 494 the FCC tells the states that
33 "...If the triggers are satisfied, the states
34 need not undertake any further inquiry," but
35 at para. 499 the FCC constrains the state's
36 determination, making it "subject to the
37 limitations described below," which include
38 paras. 499 and 503.

V. A. - FCC Conditions On the States' Determination That The Triggers Are Satisfied.

Q_36. What limitations, if any, apply to states' determination that the triggers are satisfied?

A_36. The states' determination, that the "triggers" are satisfied, is conditioned by the FCC's directives at paras. 499 and 503.

At para. 499:

"They[CLECS] must also be operationally ready and willing to provide service to all customers in the designated market. They should be capable of economically serving the entire market, as that market is defined by the state commission. This prevents counting switch providers that provide services that are desirable only to a particular segment of the market."

At para. 503:

"Exceptional Sources of Impairment. In exceptional circumstances, states may identify specific markets that facially satisfy the self-provisioning trigger, but in which some significant barrier to entry exists such that service to mass market customers is foreclosed even to carriers that self-provision switches...Where the self-provisioning trigger has been satisfied and the state commission identifies an exceptional barrier to entry that prevents further entry, the state commission may petition the Commission for a waiver of the application of the

trigger, to last until the impairment to deployment identified by the state no longer exists."

V. B. - FCC-Identified Barriers

Q_37. What economic barriers has the FCC identified as likely to impair the CLECs UNE-L entry to the mass market?

A_37. The FCC identifies several barriers likely to create CLEC-impairment if it migrates to a UNE-L platform. In the TRO, Section V "Principles of Unbundling," part B "The Impairment Analysis," subsection c, "Guidance from Analogous Legal Doctrines and Economic Literature" at para. 75 the FCC says:

"Many Factors Can Act as Barriers to Entry. Depending on the circumstances, barriers to entry can come from a variety of factors such as sunk costs, scale economies, scope economies, absolute cost advantages, capital requirements, first-mover advantages, strategic behavior by the incumbent, product differentiation, long-term contracts, and network externalities...."

Q_38. Has the FCC specified the circumstances that cause CLEC-impairment in the mass market?

A_38. Yes. The FCC has specified several circumstances that qualify and constitute CLEC impairment because such circumstances are "...beyond the burdens universally associated with competitive entry..."[see para. 465] in the mass market.

1
2 For example, in the TRO at para. 127 the FCC
3 says with regard to the mass market customer:
4

5 *"Although the cost of serving each customer is low*
6 *relative to the other customer classes, the low levels of*
7 *revenue that customers tend to generate create tight*
8 *profit margins in serving them. The tight profit margins,*
9 *and the price sensitivity of these customers, force service*
10 *providers to keep per customer costs at a minimum."*
11

12 Therefore, strategic behavior by the incumbent
13 and its first-mover advantages which shrink or
14 eliminate the CLECs' profit margin in the mass
15 market qualify as circumstances that cause
16 CLEC-impairment.
17

18 Continuing with this example, in the TRO at
19 para. 73 the FCC found:
20

21 *"We find the overall impact of the current hot cut*
22 *process raises competitors' costs, lowers their quality of*
23 *service, and delays the provisioning of service, thereby*
24 *preventing them from serving the mass market in the*
25 *large majority of locations."*
26

27 Therefore, incumbent behavior that raises the
28 CLECs' costs, lowers the CLECs' quality-of-
29 service to CLEC customers, and delays the
30 CLECs service to the mass market also qualify
31 as circumstances causing CLEC-impairment.
32

33 Continuing with this example, in the TRO at
34 para. 478 the FCC concluded:
35

36 *"Competition in the absence of unbundled local circuit*
37 *switching requires seamless and timely migration not*
38 *only to and from the incumbent's facilities, but also to*

1 *and from the facilities of other competitive carriers. Such*
 2 *interconnection requires that the incumbent LEC place*
 3 *cross connections between the competitive carriers'*
 4 *facilities in its central office on a timely basis. The*
 5 *incumbent's failure to do so will tend to delay*
 6 *competitors' entry, and thus to increase competitors'*
 7 *costs. We conclude that in some cases, such failure can*
 8 *give rise to impairment in the absence of unbundled local*
 9 *circuit switching."*

10
 11 Therefore, the absence of an incumbent's
 12 circuit-switching-migration plan, or the poor
 13 implementation of such migration, is a
 14 circumstance that qualifies as causing CLEC-
 15 impairment.

16
 17
 18
 19 **VI. Termination Charges Create CLEC**
 20 **Impairment For a UNE-L Entry Into**
 21 **The Mass Market And Satisfy The**
 22 **Conditions In TRO Paras. 499 and 503**

23
 24 Q_39. Does the FCC constrain its definition of
 25 economic barriers to considerations of "the
 26 revenue opportunities available and the
 27 typical costs of utilizing a UNE-L strategy"
 28 as in para. 482 of the TRO?

29
 30 A_39. No. The FCC range of economic barriers extends
 31 beyond the context of "the typical costs of [a
 32 CLEC] utilizing a UNE-L strategy."

33
 34 For example, the FCC has already noted that
 35 termination charges are a barrier if they
 36 prevent a customer from switching to a CLEC.
 37

VI. A. - Economic Significance Of Termination Charges For CLEC UNE-L Entry To The Mass Market.

Q_40. What is the economic significance of termination fees in a UNE-L environment?

A_40. On a competitive continuum, UNE-L entry is much closer to full facilities-based competition than UNE-P. In the TRO at para. 36 the FCC set up a "investment-continuum" ranging from resale at one end to facilities based competition at the other.

"Total service resale requires the least initial capital investment...Full ownership of facilities...requir[es]the most capital investment. Leasing some parts of the network as UNEs [from the incumbent]...can be accomplished at a lower initial capital investment..."

In the TRO at para. 41, note 130, the FCC defined UNE-P service as consisting "of a leased combination of the loop, local switching and shared transport UNEs." Thus UNE-L service removes the switching and shared transport from the elements that a CLEC may lease from the incumbent.

There is no doubt that a UNE-L entry mode is more expensive and more capital intensive for the CLEC than the UNE-P entry. In this context, termination charges are an additional but unwarranted cost to the CLECs. They have to make investment decisions in preparation for head-to-head price competition with the incumbent, but any economic advantage the CLECs

1 may gain by investment in new equipment is
2 reduced, delayed and overcome by termination
3 charges. Thus the effect of termination charges
4 is to suppress CLEC investment in a UNE-L
5 platform and to undermine it in the near and
6 long-term economic horizon.
7
8
9

10 **VI. B. - Evidence Supporting Opinion**
11 **That Termination Charges Create CLEC**
12 **Impairment For a UNE-L Entry.**

13
14 Q_41. What evidence do you rely on to support your
15 conclusion that CLECs are impaired with regard
16 to accessing mass market customers through the
17 UNE-L platform?
18

19 A_41. I rely on Exhibit CAPD-SB Schedule 3, pages 1
20 - 3. Page 1 of 3 is list of BellSouth's
21 current and recent tariffs where there is
22 termination liability but where mass market
23 customers are either included or not
24 necessarily excluded from the service. The
25 list shows that termination charges have
26 applied to the residential and business
27 customers. Equally important, termination
28 charges could be employed in any of the
29 incumbent's future tariffs, once a regulatory
30 decision commits the CLEC to UNE-L entry of
31 the mass market.
32

33 Page 2 of 3 lists local exchange service long-
34 term contracts between the incumbent and
35 various customers in Tennessee. The far right
36 column titled "CLEC UNE Access Triggers
37 Termination Fees?" has a "Yes" or a "No" in

1 each row. The "Yes" and "No" indicate whether
2 the contract's termination language includes
3 the phrase "a service provider that utilizes
4 unbundled network elements." For example, the
5 long term contract between BellSouth and
6 Captain D's has termination language:
7

8 *"... Subscriber agrees that in the event it fails to meet its*
9 *obligations under this Agreement or terminates this*
10 *Agreement or services purchased pursuant to this*
11 *Agreement in order to obtain services from a facilities*
12 *based service provider or a service provider that utilizes*
13 *unbundled network elements, [emphasis added by*
14 *CAPD] Subscriber will be billed, as appropriate,*
15 *termination charges as specified in this Agreement.*
16

17 Many contracts have a "Yes" in the far-right
18 column.
19

20 **Q_42. Do the contracts provide any information to**
21 **identify the customer's service locations?**
22

23 **A_42. No. The contracts do not identify the**
24 **customer's service locations.**
25

26 **Q_43. Do the contracts identify or clearly indicate**
27 **if the locations are served by fewer than four**
28 **lines?**
29

30 **A_43. No, the contracts do not indicate if fewer**
31 **than four lines serve the locations.**
32

33 **Q_44. Do the contracts alone provide sufficient**
34 **information to indicate if the service**
35 **locations are in the mass market?**
36

37 **A_44. No. The contracts alone do not provide**
38 **sufficient information to indicate if the**

1 service locations are in the mass market.
2 However, the contracts' termination language
3 ".....a service provider that utilizes
4 unbundled network elements....." suggests that
5 the incumbent foresees a situation in which a
6 CLEC could use UNEs to replace the incumbent's
7 service, whatever that service may be. But the
8 termination language alone is not a strong
9 basis for determining if the service locations
10 have fewer than four lines in service.
11

12 **Q_45. Have you determined if the contracts, those in**
13 **which the termination language specifies UNEs,**
14 **serve locations that are in the mass market?**
15

16 **A_45.** Yes. By means of anecdotal evidence I have
17 determined that some contracts for local
18 exchange service with termination language, "a
19 service provider that utilizes unbundled
20 network elements" are likely to be utilized by
21 mass-market customers.
22

23 **Q_46. How did you determine that some of those**
24 **contracts are for locations with fewer than**
25 **four lines?**
26

27 **A_46.** I determined that those particular contracts
28 are for locations with fewer than four lines
29 by considering the nature of the businesses,
30 their physical location and by examining the
31 business listings in the telephone directories
32 for Chattanooga, Knoxville, Memphis and
33 Nashville and looking up the phone numbers and
34 street addresses of Captain D's, Shoney's,
35 Quick Cash, Security Finance. Those
36 directories are attached to my testimony as
37 Exhibit CAPD-SB Schedule 4.
38

1 The listings for Captain D's, Shoney's, Quick
2 Cash, and Security Finance have one telephone
3 number per street address. This alone is not a
4 confirmation, but when you consider the nature
5 of the business, meaning you have to drive to
6 a Captain D's or a Shoney's to enjoy their
7 food service, that they are serving local
8 markets, that services tend to be in small
9 single-tenant buildings, -- all these facts
10 add up and suggest they are mass market/
11 customers. As the contract's UNE termination
12 language suggests, the incumbent is concerned
13 that its service to these customers could be
14 replace by CLECs utilizing UNES. Therefore, I
15 conclude that Captain D's, Shoney's, Quick
16 Cash, and Security Finance are mass market
17 customers.
18

19 I reached my conclusions by looking beyond the
20 contract and finding publicly available
21 information to determine if the BellSouth's
22 local exchange long-term contracts are likely
23 to be offered to mass market customers. I now
24 have that information, which is evidence to
25 assess whether those contracts impair a CLEC
26 were it to use a UNE-L platform to serve mass
27 market customers taking contract service from
28 the incumbent.
29

30 **Q_47. What provisions in those contracts between**
31 **BellSouth and the mass market customers impair**
32 **the CLEC?**
33

34 **A_47. The termination provisions in the long-term**
35 **contracts between BellSouth and the mass**
36 **market customers impair the CLEC.**
37

1 **Q_48.** **How do the termination charges impair the CLEC**
2 **and make its entry uneconomic?**

3
4 **A_48.** The termination charges impair the CLEC and
5 make its entry uneconomic because they must be
6 added to the per line nonrecurring UNE-L cost
7 that the CLEC would have to bear if, for
8 example, Captain D's switched its services
9 from BellSouth to a CLEC.

10
11 For example, based on the directory listings,
12 Captain D's has more than 50 locations in
13 Tennessee locations served by three or fewer
14 lines. If a CLEC were to serve Captain D's
15 through the UNE-L platform, not only would the
16 CLEC have to pay the nonrecurring charges for
17 the line the CLEC would also have to pay the
18 per line termination charges.

19
20 Clearly, a termination charge is a
21 nonrecurring charge associated with
22 transferring the customer's service over to
23 the competitor. The FCC has already found that
24 high nonrecurring charges impair the CLEC. In
25 para. 470 the FCC says:

26
27 *"The hot cut cost assessed by the incumbent LEC is a*
28 *nonrecurring per line charge on competitive carriers that*
29 *connect their own switches to unbundled loops. The*
30 *record shows that the cost of connecting each customer*
31 *to the competitive LEC's switch makes it difficult to*
32 *compete... In addition to the high non-recurring charges*
33 *imposed by the incumbent LECs, the evidence in the*
34 *record shows that hot cuts also require significant*
35 *internal resources and expenditures which must be borne*
36 *by the competitive LEC... The record evidence indicates*
37 *that the non-recurring costs associated with cutting over*
38 *large volumes of loops would likely be prohibitively*

expensive for a competitive carrier seeking to provide service without the use of unbundled local circuit switching."

Clearly, the nonrecurring cost of termination is one more nonrecurring cost associated with transferring the customer's service over to the competitor.

Q_49. What is the term of the contract between Captain D's and the incumbent?

A_49. The contract's term is 36 months.

Q_50. Do you know what the per line termination charge would be in the case of Captain D's if it terminated before the contract's term was complete?

A_50. Yes. Exhibit CAPD-SB Schedule 3, page 3 of 3 shows the calculations, which approximates a minimum \$47 per line. This is a nonrecurring amount that a CLEC would have to absorb in its price to Captain D's if the CLEC were to make Captain D's whole for breaching the contract and switching to the CLEC.

However, the termination charges have no economic foundation.

Q_51. How do you know that the termination charges have no economic foundation?

A_51. The fact that the termination charges have no economic foundation was revealed the TRA Directors' Conference of Tuesday, September 28, 1999. That meeting's transcript shows the

expensive for a competitive carrier seeking to provide service without the use of unbundled local circuit switching."

Clearly, the nonrecurring cost of termination is one more nonrecurring cost associated with transferring the customer's service over to the competitor.

Q_49. What is the term of the contract between Captain D's and the incumbent?

A_49. The contract's term is 36 months.

Q_50. Do you know what the per line termination charge would be in the case of Captain D's if it terminated before the contract's term was complete?

A_50. Yes. Exhibit CAPD-SB Schedule 3, page 3 of 3 shows the calculations, which approximates a minimum \$47 per line. This is a nonrecurring amount that a CLEC would have to absorb in its price to Captain D's if the CLEC were to make Captain D's whole for breaching the contract and switching to the CLEC.

However, the termination charges have no economic foundation.

Q_51. How do you know that the termination charges have no economic foundation?

A_51. The fact that the termination charges have no economic foundation was revealed the TRA Directors' Conference of Tuesday, September 28, 1999. That meeting's transcript shows the

1 following conversation from page 59 line 17 to
2 page 60 line 18:
3

4 *"CHAIRMAN MALONE: And if you're getting - - let's*
5 *say you're in a situation where you're getting actual*
6 *damages - - say the customer breaches and you're*
7 *getting actual damages. If the - - if you're allowed to*
8 *recover your profits and you get from a profit standpoint*
9 *what you would have gotten had the customer fulfilled*
10 *the contract - - do you follow me?*
11

12 *MR. HICKS: Yes.*
13

14 *CHAIRMAN MALONE: What permits you to get the*
15 *nonrecurring charges back and the contract preparation*
16 *charges back, because you wouldn't have gotten those*
17 *back if the customer had fulfilled the term of the*
18 *contract?*
19

20 *MR. HICKS: Right. The - - first of all, it would be*
21 *BellSouth's position that it be not limited to the profit it*
22 *would have had...*
23

24 *The nonrecurring charge...BellSouth has agreed up front*
25 *that it would waive or discount the nonrecurring*
26 *charge...*
27

28 *If on the other hand the customer chooses to terminate*
29 *early, you know, it seems reasonable and consistent with*
30 *past practice and past tariffs that BellSouth would be*
31 *able to recover that past discount that it gave to the*
32 *customer..."*
33

34
35 Mr. Hick's statements confirm that BellSouth's
36 termination charges permeate its tariffs as
37 well as its contracts. His statements also
38 make clear that the termination charge is a

1 nonrecurring charge recovering one or more of
2 the following:

- 3
- 4 ▪ profits that "would have been" if the
 - 5 discount had not been given;
 - 6
 - 7 ▪ costs that "would have been" if the
 - 8 customer had not terminated early;
 - 9
 - 10 ▪ costs that were waived.

11

12 However, in each instance the termination

13 charge has no economic foundation.

14

15 **Q_52. What is the basis for your opinion that the**

16 **termination charges have no have no economic**

17 **foundation?**

18

19 **A_52.** In my opinion the "would have had" nature of

20 the incumbent's profits and cost have no

21 economic foundation in a market. Once the

22 customer stops taking service from one

23 supplier, the customer is no longer a source

24 of profit and cost.

25

26 To the extent the termination charges force the

27 customer to repay the incumbent's discount or

28 price reduction, the charges recapture the

29 incumbent's foregone profits and represent the

30 continuation of profits established in a

31 monopoly environment, rather than profit in a

32 competitive market, and the customer is the

33 source of those monopoly profits in the event a

34 customer switches service to a CLEC.

35

36 To the extent the termination charges capture

37 costs that "would have been" if the customer

38 had continued taking service from the incumbent

1 such termination charges are a fiction because
2 the costs were not incurred.

3
4 To the extent the incumbent's termination
5 charges capture costs that should have been
6 charged, the incumbent's price is below the
7 service's cost.

8
9 **Q_53. Isn't it true that the incumbent's contract**
10 **with Captain D's covers the incumbent's cost**
11 **of serving Captain D's?**

12
13 **A_53.** Yes. A letter dated November 4, 2003 from the
14 incumbent to the state regulatory authority
15 reads:

16
17 *"RE: Special Contract for Captain D's, TN 03-E612-00*

18
19 *Dear.....:*

20
21 *The revenues generated from this contract are above cost*
22 *as required by T.C.A. § 65-5-208(c), and as*
23 *demonstrated in the cost studies already on file with the*
24 *Authority for the tariffed services included in this*
25 *contract as set forth in our letter of June 4, 2003.*
26 *BellSouth will continue to construe the termination*
27 *liability provisions contained in its related tariffs. Also,*
28 *BellSouth is submitting this document as an open record*
29 *subject to disclosure by the Authority...."*

30
31 However, the phrase, "BellSouth will continue
32 to construe the termination liability
33 provisions contained in its related tariffs"
34 confirms again that the incumbent's termination
35 charges extend through the tariffs as well as
36 the contract and makes clear that the
37 termination charges are an economic barrier

1 within the incumbent's control, which the FCC
2 identifies in para. 782 of the TRO:
3

4 *"We have modified our impairment analysis to find that a*
5 *requesting carrier is impaired when lack of access to a*
6 *facility in the incumbent LEC's network poses barriers*
7 *that are likely to make entry into the market uneconomic.*
8 *These can include both operational and economic*
9 *barriers... within the control of the incumbent LEC."*
10

11 The termination charges create CLEC impairment
12 in three different economic cases.
13

14 Case I. CLEC Sets Its Price To Make The
15 Customer Whole For The Incumbent's Termination
16 Charges.
17

18 **Q_54.** Would the CLEC be impaired if it sets its
19 price to make the Customer Whole for the
20 Incumbent's Termination Charges?
21

22 **A_54.** Yes, the CLEC would be impaired because such
23 payment would constitute an increased price
24 for access to UNEs, contrary to the FCC's
25 declaration at para. 582 of the TRO:
26

27 *"The Commission's [FCC's] pricing rules for UNEs*
28 *already ensure that competitive LECs are paying*
29 *appropriate rates for UNEs and UNE combinations, and*
30 *that incumbent LECs are adequately compensated for the*
31 *use of their networks."*
32

33 Not only would the incumbent be paid for its
34 "would-have-had" costs, but the incumbent
35 would get paid again for the UNEs used by the
36 CLEC. The economic effect is a price increase
37 for the UNEs, and in effect an increase of the
38 nonrecurring charge for the hot cut, which a

1 CLEC would need to serve a mass market
2 customer via the UNE-L platform.
3
4

5 Case II. Despite CLEC UNE Based Service Being
6 Less Expensive To The Mass Market Customer,
7 Customer Does Not Breach Contract And Does Not
8 Take Service From The CLEC.
9

10 Q_55. What does the FCC say in its TRO regarding
11 long-term contracts and termination charges?
12

13 A_55. The FCC recognized that such charges are a
14 likely barrier to CLEC entry. In the TRO at
15 para. 75 the FCC identified termination
16 charges as a barrier to entry. At footnote 252
17 the FCC noted:
18

19 *"An incumbent monopolist can induce customers to sign*
20 *long-term contracts, with substantial penalties for*
21 *breaching the contract. These contracts can act as a*
22 *barrier to entry, if they prevent customers from switching*
23 *to an entrant."*
24
25

26 Q_56. Why would a customer switch from the incumbent
27 to a CLEC?
28

29 A_56. A customer would switch to the CLEC if it were
30 a lower cost supplier than the incumbent.
31
32

33 Q_57. In your opinion, would a mass market customer
34 switch service to a CLEC utilizing UNEs if the
35 CLEC were a lower cost supplier than the
36 incumbent and if the customer had to pay
37 termination fees to the incumbent?
38

1 **A_57.** No. In my opinion, mass market customer would
2 not pay termination fees to the incumbent and
3 thus would not switch to the CLEC. By paying
4 the termination charges, the customer loses
5 the economic benefits of the incumbent's price
6 reduction, as if it had never occurred, as if
7 a CLEC had not been present until the day of
8 the breach.

9
10 **Q_58.** **How do you know this particular economic**
11 **evaluation is actually made by the customer?**

12
13 **A_58.** One way to make that evaluation is to consider
14 the commercial history of long-term contracts
15 in Tennessee.

16
17 For example, since 1998 the incumbent has
18 secured approximately 1000 long-term contracts
19 with customers in Tennessee, and there are
20 three sources to substantiate that number.

21
22 On August 17, 1999 over 200 contracts had been
23 approved by the TRA as indicated by the
24 testimony given on that day in TRA Docket No.
25 98-00559. In Vol. D, page 275, lines 23-24 the
26 incumbent's witness indicated that over 200
27 contracts had been approved to date: "...It's
28 not surprising to me that out of 200-some-odd
29 ...that have been approved...."

30
31 The TRA's web site publishes the agenda for
32 the agency's business meetings. From April 11,
33 2000 to March 3, 2003 the agendas list over
34 700 items with the caption "TARIFF FILING FOR
35 CONTRACT SERVICE ARRANGEMENT" where BellSouth
36 is the service provider. That list is not
37 attached to my testimony but is available in
38 my workpapers. Since April 2003, there have

1 been many additional long-term contracts
2 secured by the incumbent.

3
4 However, there is no public record that I know
5 which indicates how many, if any, of these
6 customers have breached, or if they have
7 breached, there is nothing in the public
8 record indicating what they paid in
9 termination charges and when the charges were
10 paid.

11
12 **Q_59. Isn't it true that the termination charges are**
13 **triggered when the CLEC is a lower cost**
14 **supplier than the incumbent?**

15
16 **A_59.** Yes, it is certainly true with regard to the
17 most of the local exchange service contracts.
18 This fact is clearly stated in the contracts'
19 termination language:

20
21 *"Subscriber agrees that in the event it...terminates this*
22 *Agreement...in order to obtain services from...a service*
23 *provider that utilizes unbundled network elements...*
24

25 This language means that the CLEC's price is
26 less than the incumbent's in a termination
27 situation; the customer would have no reason
28 to terminate if the CLEC's price was higher
29 than the incumbent's.

30
31 The additional language, "Subscriber will be
32 billed... termination charges..." --- means
33 directly that the contract is breached because
34 the customer evaluates the CLEC's offering
35 price as -- a) being lower than the
36 incumbent's price; and b) being low enough to
37 compensate the customer for paying the

1 termination charge, which has no economic
2 foundation.

3
4 Thus a breach will not occur unless the CLEC's
5 price is less than the total of the
6 incumbent's price plus the incumbent's
7 termination charge.
8

9 This language directly means that the customer
10 would be better off by switching to the CLEC,
11 but for the termination fees. The language has
12 no other economic meaning and creates a
13 barrier to CLEC entry that is, as the FCC
14 described, "...beyond the burdens universally
15 associated with competitive entry..."[see
16 para. 465].
17

18 **Q_60. Since the CLEC is a lower cost provider in a**
19 **situation where the customer leaves the**
20 **incumbent's fold, isn't it possible for the**
21 **CLEC to give the customer a price sufficiently**
22 **low so the customer is made whole over time**
23 **for its termination charges?**
24

25 **A_60. No, that situation is not possible because the**
26 **incumbent has direct knowledge of the CLEC's**
27 **costs to serve the customer and thus the**
28 **incumbent has direct knowledge of the CLEC's**
29 **potential profit margin in the mass market.**
30

31 **Q_61. How would the incumbent know anything about**
32 **the CLEC's profit margin?**
33

34 **A_61. Since the incumbent has been receiving UNE**
35 **payments from CLECs throughout Tennessee, for**
36 **the past two years, the incumbent already has**
37 **knowledge about what it would receive in UNE**
38 **payments from the CLEC, if the competitor were**

1 to serve the mass market customer. The
2 incumbent also knows its own price to the
3 customer. The difference between the
4 incumbent's price and the CLEC's UNE payments
5 constitutes a solid estimate of the CLECs'
6 profit margin.
7

8 The incumbent shrinks the CLEC's margin by
9 enforcing the termination charge, but since
10 there is no economic basis for the charge, its
11 amount can be tailored to fit promotions,
12 tariffs or contract the incumbent offers in
13 response to the CLECs' offerings. Thus the
14 termination charge gives the incumbent broad
15 pricing-discretion that would otherwise be
16 curtailed in a market where customers made
17 their choices disciplined by price-to-price
18 and service-to-service competition, instead of
19 factoring in their economic loss caused by
20 leaving the incumbent's fold.
21

22 **Q_62. How does the incumbent's knowledge of CLECs'**
23 **costs cause a situation where a CLEC does not**
24 **offer the customer a sufficiently low price to**
25 **induce the customer's breach?**
26

27 **A_62.** The incumbent's knowledge of the CLECs' costs
28 puts the incumbent in the position to set its
29 termination charges just high enough so the
30 CLECs' profits are reduced or eliminated if
31 the CLEC sets a price low enough to compensate
32 the customer who breaches and thus pays
33 termination charges to the incumbent.

Case III. Termination Charges Prevent The CLEC From Being "Willing To Provide Service To All Customers In Designated Market" And Prevent CLECs Of "Being Capable Of Economically Serving The Entire Market."

Q_63. In your opinion will CLECs willingly serve or plan to serve mass market customers who have termination liability with the incumbent?

A_63. No. In my opinion the CLECs will avoid such customers because the termination charges make those customers too costly to serve despite the CLEC being the lower cost provider.

Q_64. How do the incumbent's termination charges affect the definitions of geographic markets by the TRA?

A_64. The incumbent's termination charges divide any TRA-determined geographic market for mass market customers into two camps: those customers who have little or no profit potential because they must pay termination fees to switch from the incumbent to the CLEC, and those customers who are "termination free."

Also, the dividing line between the two camps and the numbers in the camps can shift at any time depending on the incumbent's effort to "induce" customers into services conditioned on termination liability.

1 Because the termination charges have a scope
2 that extend throughout Tennessee, my opinion
3 is that the CLECs are fundamentally impaired.
4

5 In my opinion the threading of termination
6 charges throughout the incumbent's commercial
7 instruments qualifies as an exceptional
8 economic barrier, one that meets the FCC's
9 directive in para. 503 of the TRO.
10

11 Also, in my opinion, the threading of
12 termination charges throughout the incumbent's
13 commercial instruments qualifies as an
14 economic barrier, causing the CLECs to be
15 unable to meet the FCC's directive in para.
16 499, that CLECs "...should be capable of
17 economically serving the entire market, as
18 that market is defined by the state
19 commission." The CLECs cannot serve an entire
20 market economically as long as the incumbent
21 retains the dual ability to induce customers
22 into taking a service while at the same time
23 preventing them from acting on normal economic
24 opportunities that characterize a market when
25 new entrants offer a similar service at lower
26 prices.
27

1 As a general conclusion, my impairment
2 analysis leads me to the opinion that the
3 termination charges specifically triggered
4 when a customer breaches a tariff arrangement
5 or a contract to take service from a CLEC
6 utilizing UNEs is an economic barrier contrary
7 to FCC's rule § 51.309:
8

9 *"Use of unbundled network elements.*

10
11 *(a) Except as provided in § 51.318, an incumbent LEC*
12 *shall not impose limitations, restrictions, or requirements*
13 *on requests for, or the use of, unbundled network*
14 *elements for the service a requesting telecommunications*
15 *carrier seeks to offer."*
16

17 **Q_65. Do you recommend any changes in the incumbent's**
18 **tariffs and long term contracts involving mass**
19 **market customers?**
20

21
22 **A_65. Yes. In my opinion the incumbent's tariffs and**
23 **long-term contracts should readily communicate**
24 **the FCC's customer-designation for the**
25 **customers involved. If the tariffs and**
26 **contracts do not communicate the FCC's**
27 **customer designations, regulatory authorities**
28 **and other interested parties will have a**
29 **difficult task identifying mass market**
30 **customers, masking their identity and removing**
31 **them from the pool of potential customers who**
32 **could one day be CLEC customers.**
33

34 Also, the FCC's customer designations should
35 be not just in the long-term contracts for
36 Local Exchange Service but also volume and
37 term contracts or other contracts where
38 multiple locations are involved.

1
2 In my opinion as an economist, to the extent
3 the incumbent's tariffs and contracts do not
4 reflect the FCC' customer designations, the
5 tariffs and contracts are inconsistent with
6 the FCC's policies aimed at substituting a
7 competitive market for one that traditionally
8 has been regulated.
9

10 Q_66. What is your opinion regarding any regulatory
11 decision committing CLECs to a UNE-L entry
12 mode?
13

14 A_66. My opinion regarding such a decision is that
15 it address the harmful effects of termination
16 charges and defer transitioning the CLECs to a
17 UNE-L entry mode "until the impairment...no
18 longer exists," as provided for in the TRO.
19

20 This concludes my testimony at this time.
21

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File Names and Contents
High-Speed Services for Internet Access. Provides summary statistics of subscribership data that facilities-based providers of high-speed services file twice a year on FCC Form 477
12/03 Release. As of 6/30/03 HSPD1203 PDF (4.190K)
06/03 Release. As of 12/31/02 HSPD0603 PDF (871K)
12/02 Release. As of 6/30/02 HSPD1202 PDF (843K)
07/02 Release. As of 12/31/01 HSPD0702 PDF (1.659K)
03/02 Release. As of 6/30/01 HSPD0302 PDF (871K)

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10/00 Release. As of 6/30/00 [HSPD1000 PDF \(2,009K\)](#)

Local Telephone Competition. Provides summary statistics of data that incumbent and competitive local exchange carriers, and mobile wireless telephone service providers, file twice a year on FCC Form 477, or summary statistics of voluntary survey data and selected other data (in the 1998 and 1999 releases)

12/03 Release. As of 6/30/03 [LCOM1203 PDF \(2,870K\)](#)

06/03 Release. As of 12/31/02 [LCOM0603 PDF \(922K\)](#) or [LCOM0603 ZIP \(357K\)](#)

12/02 Release. As of 6/30/02 [LCOM1202 PDF \(951K\)](#) or [LCOM1202 ZIP \(529K\)](#)

07/02 Release. As of 12/31/01 [LCOM0702 PDF \(930K\)](#) or [LCOM0702 ZIP \(537K\)](#)

02/02 Release. As of 6/30/01 Also examines annual revenue data through 2000 [LCOM0202 PDF \(918K\)](#) or [LCOM0202 ZIP \(644K\)](#)

05/01 Release. As of 12/31/00 [LCOM0501 PDF \(846K\)](#)

12/00 Release. As of 6/30/00 [LCOM1200 PDF \(1,672K\)](#)

08/00 Release. As 12/31/99 Examines the number of lines by state provided by CLECs and wireless carriers, as well as revenues reported by various categories of carriers [LCOM0800 PDF \(60K\)](#) or [LCOM0800 ZIP \(75K\)](#)

08/99 Release. As of 12/31/98 [Text in the ZIP file is in WordPerfect 5.1 format] [LCOMP99-1 PDF \(146K\)](#) or [LCOMP99-1 ZIP \(412K\)](#)

12/98 Release. As of 6/30/98 [Text in the ZIP file is in WordPerfect 5.1 format] [LCOMP98 PDF \(1,526K\)](#) or [LCOMP98 ZIP \(589K\)](#) The maps that appear in the report as Charts 4.4 and 4.7 are contained in a separate file [LCOMP98M PDF \(5,771K\)](#)

Miscellaneous data from FCC Form 477. This section contains miscellaneous data not summarized elsewhere Form 477 data are as of June 30 and December 31

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Selected RBOC Local Telephone Data.
As of 12/31/02. Posted 06/03
[RBOC Local Telephone Dec 2002.xls \(570K\)](#)
As of 6/30/02. Posted 12/02
[RBOC Local Telephone June 2002.xls \(568K\)](#)
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[RBOC Local Telephone Dec 2001.xls \(32K\)](#)
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[RBOC Local Telephone June 2001.xls \(32K\)](#)
As of 12/31/00. Posted 8/02
[RBOC Local Telephone Dec 2000.xls \(31K\)](#)
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As of 12/31/99. Posted 8/02

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Holding Companies Filing Form 477 *

(Reporting Data as of June 30, 2000)

	Broadband Part I	Local Exchange Part II	Mobile Wireless Part III
@Link Holdings, Inc.	X		
3 Rivers Telephone Cooperative, Inc.		X	
Ace Telephone		X	
Adelphia		X	
Advanced Tel, Inc.		X	
Advanced TelCom Group, Inc.	X		
Alaska Communications Systems Holdings, Inc.		X	
Allegiance Telecom, Inc.		X	
ALLTEL Corporation	X	X	X
American Cellular Corporation			X
Arvig Enterprises, Inc.		X	
AT&T Corp.	X	X	X
Atlantic Telephone Membership Corporation		X	
ATX Telecommunications Services, Ltd	X	X	
Beehive Telephone Co.		X	
Bell Atlantic Corporation	X	X	
BellSouth Corporation	X	X	X
Ben Lomand		X	
Birch Telecom Inc.		X	
Bishop Communications Corporation		X	
Bixby Telephone Company		X	
Blackwater Cellular Corporation			X
Bledsoe Telephone Cooperative, Inc.		X	
Block Communications, Inc.	X	X	
Blue Star	X		
Board of Water, Electric and Communications	X		
Brandenburg Telephone Company	X	X	
Brindlee Mountain Telephone Company		X	
Broadview Networks, Inc.		X	
Broadwing, Inc.	X	X	X
Bulloch County Rural Telephone Cooperative, Inc.		X	
Business Telecom, Inc./BTI Telecom Corp.		X	
Cable One, Inc.	X		
Cable Properties Inc.	X		
Cal-One Cellular LP.			X
Cameron Communications Corp.		X	
Canby Telephone Association	X	X	
Cascade Utilities, Inc.		X	
Cass County Electric Cooperative, Inc.	X		
Cavalier Telephone, LLC	X	X	
Cellular Mobile Systems of Saint Cloud			X
Cellular Network Partnership			X
Cellular XL Associates, L.P.			X
Celulares Telefónica, Inc.			X
Centennial Cellular	X	X	X
Century Telephone Enterprises, Inc.	X	X	X
CFW Communications Company	X	X	X
CGKC&H Rural Cellular Limited Partnership			X
Charter Communications	X		
Chester Telephone Company		X	

* Includes carriers that were required to file as well as those that voluntarily filed.

Holding Companies Filing Form 477 *

(Reporting Data as of December 31, 2002)

	Broadband Part I	Local Exchange Part II	Mobile Wireless Part III
3 Rivers Telephone Cooperative, Inc.	X	X	X
Access Integrated Networks, Inc.		X	
Ace Telephone	X	X	
Adams Telephone Co-Operative	X		
Adelphia	X	X	
Advanced Tel, Inc.	X	X	
Agri-Valley Communications, Inc.			X
airBand Communications, Inc.	X		
Alaska Communications Systems Holdings, Inc.	X	X	X
Alaska Power & Telephone, Inc	X	X	
Allegiance Telecom, Inc.	X	X	
Allendale Telephone Company	X		
Alliance Communications Cooperative, Inc	X		
ALLTEL Corporation	X	X	X
Alma Telecom, Inc.	X		
Alpine Communications, LC	X		
Altio Communications, Inc.	X		
AMA Wireless L.L.C.	X		
Amarillo CellTelCo	X		X
American Cellular Corporation			X
AOL Time Warner	X	X	
Armstrong Utilities, Inc.	X		
Arrival Communications, Inc.	X	X	
Arvig Enterprises, Inc.	X	X	
Ascendtel, LLC	X		
AT&T Corp.	X	X	
AT&T Wireless Services, Inc.			X
Baraga Telephone Company	X		
Beaver Creek Cooperative Telephone Company	X		
Beehive Telephone Company, Inc.		X	
BellSouth Corporation	X	X	
Bén Lomand	X	X	
Bend Cable Communications, LLC	X		
Benton Ridge Telephone Company	X		
Birch Telecom, Inc	X	X	
Bishop Communications Corporation		X	
Bixby Telephone Company	X	X	
Blackfoot Telephone Cooperative, Inc	X	X	
Block Communications, Inc	X	X	
Blue Earth Valley Communications, Inc.		X	
Brandenburg Communications Corporation	X	X	
Broadwing, Inc.	X	X	X
Business Telecom, Inc (BTI)/BTI Telecom Corp.		X	
Cable & Communications Corporation	X		
Cable One, Inc.	X		
Cable Services, Inc.	X		
Cal-One Cellular LP.			X
Calaveras Telephone Company	X		
California RSA #3 Ltd Ptnrshp			X
Cameron Communications, L.L.C.	X	X	
Canby Telephone Association	X	X	
Cannon Valley Communications, Inc	X	X	
Carson Communications, LLC	X		
Cascade Utilities, Inc.	X	X	
CAT Communications International, Inc.		X	

* Includes all carriers that were required to file as well as those that voluntarily filed.

End User Switched Access Lines In Tennessee

June 30, 2003

	Incumbents	CLECs
Total Customers	3,042,739	346,060
Mass Market Customers	2,555,901	124,582

Source:

*Local Telephone Competition:**Status as of June 30, 2003**Tables 6 and 11*

Prepared By

FCC Industry Analysis and Technology Division

Wireline Competition Bureau

December 2003

www.fcc.gov/wcb/stats

Incumbent's Tariffs With Termination Liability				
Tariff Cite	Tariff Page	Business/Residential	Effective Date	Termination Language Present?
A13.91 2 A 4	96	Residence	07/01/02	Yes
A13 90 1.A 6	(1) 78	Business	08/10/00	Yes
A13 90 2 A.6	(1) 79	Business	08/10/00	Yes
A13 90 3.A 6	(1) 81	Business	11/09/00	Yes
A13.90 5 A 5	(3) 83	Business	10/30/02	Yes
A13 90.6.A 6	(1) 85	Business	05/03/02	Yes
A13 90.8 A 6	(1) 88	Business	03/29/02	Yes
A13 90 10.A.4	(1) 90	Business	05/19/02	Yes
A13 90 12 A.11	93	Business	06/26/02	Yes
A13.90.14 A 6	94 3	Business	07/01/02	Yes
A13 90 15 A 6	94 4	Business	07/01/02	Yes
A13 90 16 A.6	94.5	Business	07/29/02	Yes
A13 90 19 A.5	94 9	Business	09/30/02	Yes
A13.90 20 A 4	(1) 94 10	Business	01/02/03	Yes
A13 90 22.A 4	(1) 94.12	Business	04/01/03	Yes
A13 90 23 A 7	(1) 94 13	Business	07/18/03	Yes
A13 90 24 A 3	94 15	Business	01/02/03	Yes
A13.90 25 A 5	(2) 94 16	Business	05/03/03	Yes
A13 90 26.A 7	(1) 94 17	Business	04/02/03	Yes
A13 90 32 A.3	94 23	Business	04/01/03	Yes
A13 90 38 A 7	94 29	Business	08/25/03	Yes
A13 90.40 A 9	94 31	Business	07/01/03	Yes
A13 90 41 A.11	94 32	Business	07/01/03	Yes
A13.90 42 A 11	94 33	Business	07/01/03	Yes
A13 90 43 A 9	94 34	Business	07/01/03	Yes
A13 90 44 A.11	94 35	Business	07/01/03	Yes
A13.90.45 A 10	94.36	Business	07/01/03	Yes
A13 90 46 A 12	94 38	Business	07/29/03	Yes
A13 90.47 A 22	94.40	Business	08/20/03	Yes
A13 90 49 A 14	94 43	Business	10/01/03	Yes
A13 90.50 A 14	94 44	Business	10/01/03	Yes
A13 90 51 A.15	94 45	Business	10/01/03	Yes
A13.90 52 A.18	94 47	Business	10/01/03	Yes
A13.90 53 A.13	94.48	Business	10/01/03	Yes
A13.90.56 A 14	94 52	Business	10/01/03	Yes
A13 90.57 A.13	94 53	Business	10/20/03	Yes
A13 90 58 A.13	94 54	Business	11/17/03	Yes
A13.90.59 A.11	94 56	Business	12/08/03	Yes
A13 90.61.A 6	94 58	Business	01/02/04	Yes
A13 90 62 A.14	94 60	Business	01/02/04	Yes
A13 90 63 A 13	94 62	Business	01/02/04	Yes
A13 90 64.A 13	94 63	Business	01/02/04	Yes
A13 90 65 A 14	94 64	Business	01/02/04	Yes
A13 90 66.A 13	94 65	Business	01/02/04	Yes
A13 90 68.A 13	94 67	Business	01/02/04	Yes
A13 90 69 A.13	94 68	Business	01/02/04	Yes
A13.90 70.A 13	94 69	Business	01/02/04	Yes
A13.90.71 A 15	94.70	Business	01/02/04	Yes

**Long-Term Contracts For Local Service
June 2002 - November 2003**

Docket No 03-00491
Exhibit CAPD-SB
Direct Testimony
Schedule 3
Page 2 of 3

Incumbent's LongTerm Local Exchange Contracts						
Date Signed	TRA Tariff #	Item Description	Customer	Term (Months)	Service	CLEC UNE Access Triggers Termination Fees?
06/21/02	2002262	Bell, CSA TN02-D999-00	Southern Pipe and Supply Co , Inc	24	Local Exchange	No
09/20/02	2002341	Bell, CSA TN02-E759-03	Belk Store Services	24	Local Exchange	Yes
09/09/02	2002359	Bell, CSA TN02-C925-00	The Fresh Market, Inc	24	Local Exchange	Yes
09/09/02	2002444	Bell, CSA TN02-C921-00	The Fresh Market, Inc	24	Local Exchange	Yes
10/16/02	2002445	Bell, CSA TN02-L292-00	The Fresh Market, Inc	24	Local Exchange	Yes
04/09/02	200200555	Bell, CSA TN02-8688-00	Pioneer Credit Company	24	Local Exchange	Yes
04/09/02	200200578	Bell, CSA TN02-5146-01	Pioneer Credit Company	24	Local Exchange	Yes
10/15/02	2002580	Bell, CSA TN02-L151-00	Business Opening Solutions	24	Local Exchange	Yes
04/09/02	200200604	Bell, CSA TN02-8692-00	Pioneer Credit Company	24	Local Exchange	Yes
03/07/02	200200661	Bell, CSA TN02-1850-00	Kenny Pipe and Supply	36	Local Exchange	Yes
12/15/02	2003044	Bell, CSA, TN02-N439-01	First National Online Processing, Inc	24	Local Exchange	Yes
11/26/02	2003075	Bell, CSA, TN02-N897-01	First National Online Processing, Inc	24	Local Exchange	Yes
12/13/02	2003139	Bell, CSA TN02-P522-00	InTown Suites	24	Local Exchange	Yes
12/13/02	2003140	Bell, CSA TN02-P634-00	InTown Suites	24	Local Exchange	Yes
01/24/03	2003246	Bell, CSA TN02-N402-02	Cato Corporation	36	Local Exchange	No
02/21/03	2003506	Bell, CSA TN03-1134-01	Adventist Health System/Sun	60	Local Exchange	No
04/11/03	2003587	Bell, CSA TN03-1486-03	Central Parking System	36	Local Exchange	Yes
05/13/03	2003607	Bell, CSA TN03-7596-00	Mori Luggage & Gifts	24	Local Exchange	Yes
06/17/03	2003664	Bell, CSA TN03-9670-00	Dunlap & Kyle Co , Inc	24	Local Exchange	Yes
04/20/03	2003667	Bell, CSA TN03-1381-00	S & K Famous Brands	24	Local Exchange	Yes
06/24/03	2003685	Bell, CSA TN03-A381-01	Downtown Partnership	24	Local Exchange	Yes
06/25/03	2003722	Bell, CSA TN03-A299-01	National Car Wash	36	Local Exchange	Yes
06/30/03	2003735	Bell, CSA TN03-9567-02	Florida Rock Industries	48	Local Exchange	Yes
06/25/03	2003751	Bell, CSA TN03-9942-00	First American Title	24	Local Exchange	Yes
06/25/03	2003752	Bell, CSA TN03-9939-00	First American Title	24	Local Exchange	Yes
06/27/03	2003753	Bell, CSA TN03-9473-00	Lauderdale County	36	Local Exchange	Yes
06/11/03	2003754	Bell, CSA TN03-9178-01	Clark Retail Enterprises	24	Local Exchange	Yes
06/17/03	2003755	Bell, CSA TN03-9138-00	Mohawk Carpet Distribution	24	Local Exchange	Yes
06/30/03	2003781	Bell, CSA TN03-6394-02	Crown Castle USA, Inc	36	Local Exchange	No
07/11/03	2003792	Bell, CSA TN03-A293-01	Central South Distribution	24	Local Exchange	Yes
07/17/03	2003827	Bell, CSA TN03-B486-00	Epley Sales	24	Local Exchange	Yes
07/01/03	2003835	Bell, CSA TN03-5952-02	Walgreen	38	Local Exchange	No
05/08/03	2003861	Bell, CSA TN03-6846-00	Athens Paper Co	24	Local Exchange	No
09/03/03	2003924	Bell, CSA TN03-C695-00	Quick Cash	24	Local Exchange	Yes
09/17/03	2003928	Bell, CSA TN03-C066-01	MidSouth Minority Business	24	Local Exchange	Yes
09/29/03	2003950	Bell, CSA TN03-D204-00	Mapco Express	24	Local Exchange	Yes
08/22/03	2003994	Bell, CSA TN03-A636-02	Synovus Financial Corp	24	Local Exchange	Yes
09/05/03	20031030	Bell, CSA TN03-A411-01	TNT Logistics North America	36	Local Exchange	Yes
09/03/03	20031069	Bell, CSA TN03-D694-00	Morris Property Management	24	Local Exchange	Yes
09/17/03	20031072	Bell, CSA TN03-D307-01	Shoe Show, Inc	36	Local Exchange	No
09/29/03	20031134	Bell, CSA TN02-L109-01	Money Tree	36	Local Exchange	Yes
09/15/03	20031145	Bell, CSA TN03-C568-02	Delta Air Lines	24	Local Exchange	No
09/17/03	20031149	Bell, CSA TN03-E605-00	OSA Crop Marketing	36	Local Exchange	Yes
08/28/03	20031152	Bell, CSA TN03-C979-00	Trans-Carrier, Inc	24	Local Exchange	Yes
09/30/03	20031153	Bell, CSA TN03-B366-00	Security Finance	36	Local Exchange	Yes
09/30/03	20031154	Bell, CSA TN03-B365-00	Security Finance	24	Local Exchange	Yes
09/04/03	20031161	Bell, CSA TN03-D933-00	Gaines Fitness Center	24	Local Exchange	Yes
09/30/03	20031176	Bell, CSA TN03-A848-02	Avaya, Inc	24	Local Exchange	No
08/06/03	20031201	Bell, CSA TN03-6316-01	Kohl's Department Store	24	Local Exchange	No
10/13/03	20031216	Bell, CSA TN03-F474-00	Kohl's Department Store	24	Local Exchange	No
10/17/03	20031223	Bell, CSA TN03-C722-05	Aaron Rents, Inc	24	Local Exchange	Yes
09/09/03	20031224	Bell, CSA TN03-D715-01	KENTEC	24	Local Exchange	Yes
10/28/03	20031226	Bell, CSA TN03-E612-00	Captain D's	36	Local Exchange	Yes
10/28/03	20031227	Bell, CSA TN03-E671-00	Shoney's	36	Local Exchange	Yes
10/24/03	20031234	Bell, CSA TN03-F684-00	County of Lauderdale	36	Local Exchange	No
09/29/03	20031250	Bell, CSA TN03-R554-00	Food Sales, Inc	24	Local Exchange	Yes
10/24/03	20031268	Bell, CSA TN03-G200-00	Enterprise Rent-A-Car	24	Local Exchange	Yes
11/17/03	20031301	Bell, CSA TN03-F986-00	Pennant Food Services	36	Local Exchange	Yes

Long-Term Contracts For Local Service June 2002 - November 2003

Docket No 03-00491
Exhibit CAPD-SB_____
Direct Testimony_____
Schedule 3_____
Page 3 of 3_____

Calculation of Per Line Termination Charge For Captain D's			
Termination Language:			
Per A4.2.3.2.A and B2.4.9.A.4 the termination charge would be the lesser of:			
(a) the sum of the repayment of discounts received during the service and the repayment of the prorated amount of any waived or charges; or			
(b) six percent (6%) of the total			
Captain D's Contract: Tariff			
Termination Liability if contract canceled after 12 months (36 month			
under (a) above:			
Tariffed rate:	\$39.70		
Contract rate:	\$22.00		
Savings per month:	\$17.70		
	X 12		
Discount received in prior 12 months	\$212.40		
Non-recurring:			
Contract Prep:	\$391.00		
Line Connection:	\$58.50	This assumes only one line in service	
Total:	\$449.50		
Divided by:	36	(months in contract)	
	\$12.49	prorated amount per month	
	X 24	months voided in contract	
Penalty:	\$299.67		
Discount for prior 12 months:	\$212.40		
Termination Charge under (a):	\$512.07	Total termination charge (without consideration of Touch-Tone Service)	
under (b) above:			
Contract rate per month:	\$22.00		
Contract Length:	X 36		
Total Contract:	\$792.00		
	X 6%		
Termination Charge under (b):	\$47.52	Termination Charge	

CRY V DDS
Building
ort Ogleshorpe 30742 866-84
ervice 4810 Alabama Av 37409 821-8
od
st Ridge 37412 629-1
15321 Dayton Blvd 875-8
Line 877-4
1001 Mountain Creek Rd 37415 877-2
nooga
on 37343 874-1
ol 4601 North Terr 37411 622-2
Nazarene
hannanooga 37416 892-5

ort Ogleshorpe 30707 861-5
Baptist Church 843-8
Baptist Church 622-2
ist Church 518 Highway 41 891-9
ist Church 866-8
37411 877-1
rch East Ridge 485-1
d 3613 7th Av 37407 867-4
mentary School 825-7

e 866-8
tments 621 Memorial Dr 37415 877-1
hannanooga 37421 622-1
hannanooga 37403 267-0
i Inc 2255 Center St 37421 899-6
ompany
l-Electronics
37406 624-4
624-4

ents-
r 37402 756-8
ron Cir 37402 756-8
09 Cameron Cir 37402 756-8
Chestnut St 37450 756-8
633 Chestnut St 37450 877-2
Columbus Rd 842-7
ip Station 1809 Albemarle Dr Hxsn 843-3

si Mountain 37377 886-3
Day Camp 706 539-1
n Chickamauga Ga 30707 706 539-1
Camper Rentals 843-1

ip Jordan Rd East Ridge 37412 490-0
Jordan Rd 37412 490-0
uccession Stand 1
37412 892-8
Field 499-9
East Ridge 37412 899-6
ffice 493-4
East Ridge 37412 267-1
Rd Hrrsn 37341 820-1
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IRRY J atty 267-5
neys
03 266-1

att 1200 James Bldg 425-7
AUL III atty
Bldv 821-4
n Lookout Mountain 265-3
12 E 2nd St 37403 629-1
3rd St 37404 472-6
nter- 622-2
SW Cleveland 37311 867-1
Ringgold Rd East Ridge 37412 867-1
13th Av 37407 867-1

ancer Association
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Toll Free-Dial '1' & Then 800 992-2623
Cancer & Tumor Clinic Of Chattanooga Erlanger Hospital - 266-3029
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1009 Broad St 37408 875-9785
3007 Highway 153 Hixson 37343 698-0024
Candlelight House The 515 Spruce St 37404 874-5734
Candlelighters Family Support Group
1305 Darlene Cir 37412 485-8036
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Candy Executive 603 Tunnel Blvd Chattanooga 37411 629-2124
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Candy World Day Care & Learning Center
1605 E 12th St Chattanooga 37404 267-4496
Candyland 200 Market St Chattanooga 37402 894-6467
Candyworks USA Inc 6401 Lee Hwy 37421 892-9184
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1631 Jenkins Rd 37421 624-2611
Cannon Allison A MD 721 Glenwood Dr 37404 756-7771
Cannon Angela G CPA 624-2611
Cannon Don A MD ofc 721 Glenwood Dr 37404 752-4751
Cannon Eddie stock broker 721 Broad St 37402 752-1000
Cannon Equipment 950 Riverside Dr Chattanooga 37403 894-1081
Cannon Properties 5321 Highway 58 Chattanooga 37416 756-5171
Cannon Wade K atty 320 McCallie Av 37402 622-6293
Cannon's Auto Repair 4112 Ringgold Rd East Ridge 37412 894-2564
Cannon's Climate Control Self Storage
4976 Highway 58 Chalt 37416 488-1111
Cannon's Plumbing Co 877-2223
Cannon's Racks & Axles
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Cannon's Wrecker & Auto Repair Service
4112 Ringgold Rd E Rdg 37402 899-2558
Cannon Rental Harpeth River 855-4961
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Games Burgers & More 499-0745
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Ringgold Branch 101 Alabama Hwy 706 935-2265
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Capital Investors Inc 1042 Graysville Rd Chattanooga 37421 296-4201
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Capital Toyota Inc-
Number 1 5808 Lee Hwy Chattanooga 37421 892-0661
Parts Dept 5808 Lee Hwy 37421 892-6574
Fax 899-6628
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J Walter Sledge MD FACC
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CareerPro Resume Services
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CareMed 6212 Highway 58 Harrison 37341 344-9087
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Flour Sales 1 Riverside Dr 37406 697-6257
Customer Service 1 Riverside Dr 37406 697-6201
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2116 McCallie Av 37404 **622-1678**

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Exhibit CAPD-SB
Direct Testimony
Schedule 4
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Carrage Candle Factory Of Chatter
5794 Brainerd Rd 37411
Carrage Cleaners-
908 Lafayette Rd Rossville
715 Signal Mountain Rd 37405
Carrage Cleaners 3835 Dayton Blvd
Carrage Hill Insurance Of Chattanooga
Carrage Motors 1106 Lafayette Rd R
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CARRIER/BRYANT MID-
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Carriger William C atty 400 Krystal Bl
Carringer Ironside & McGlothlin
7 Communications Ln Ringgold 30736
Carroll Corina F MD 4519 Hixson Pike
Carroll P Brooke CAS 6822 McCutche
Carroll Parker L ofc 2121 Hamill Rd Hi
Carroll Richard MD
1949 Gunbarrel Rd Ste 285
725 Glenwood Dr 37404
Cars Plus 1512 McFarland Av Rossville
Carson & Associates 5959 Shawlow
Carson Construction 4520 Shawlow F
CARSON PHILIP C DDS
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Res 400 East Brow Rd Ukout Min 3735
Children's Telephone 406 East Brov
Carson-Webb Gail PsyD
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Carta Employees Credit Union 1617
Carta North Garage 215 Broad St 374
Carta Shuttle Park South 1398 Mark
CARTA-Chattanooga Area Regional
Route & Schedule Information
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Care-A-Van Service 1617 Wilcox Bl
TDD Users 1617 Wilcox Blvd 37406
Carter Barry DVM
8488 East Brainerd Rd Chattanooga
Carter Distributing Company 1305 B
Carter Group The 524 Middle Rd Look
Carter Heating And Air Conditionin
3903 Volunteer Dr Chattanooga 3741
Carter John Beauty Salon 1418 S Mc
Carter M Elizabeth MD ofc
1949 Gunbarrel Rd Ste 285
725 Glenwood Dr 37404
Carter Plumbing Heating And Air C
3903 Volunteer Dr Chattanooga 3741
Carter Shooting Supply guns
6210 Highway 58 Harrison 37341
Carter Walter H Inc
Carterwright Gil ofc 206 Tremont St 374
Res 151 Glenwood Dr 37404
Carterwright Gil ofc 206 Tremont St Cha
CARTWRIGHT HITCHINI
801 Broad St 37402
Cartwright Michael W 801 Broad St
Caruthers Thomas J Jr MD 3300 Will
Carver Eugene ins 5959 Shawlowfor R
Carver Swimming Pool 600 N Orchar
Carver Yachts 3001 Kings Point Rd 37
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CASE PRINTING 161 Old Mill
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Cash Centers Of America
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-3798	Select Distributing Inc	922 N Central St 37917	63
-3777	Select Equipment Inc	922 N Central St 37917	63
-3722	Office	922 N Central St 37917	63
-3753	Select Specialty At Fort Sanders	1901 Clinch Av 37916	52
-3757	Select Specialty Hospital At St Mary's	900 E Oak Hill Av 37917	54
-3709	Select Ticket Service Knoxville		68

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2004, a true and exact copy of the enclosed document was served via First-Class U.S. Mail, Postage-PrePaid or electronic mail on the following parties of record:

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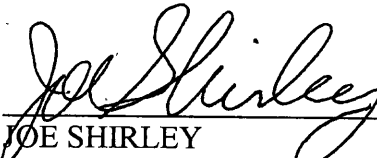
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