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T.R.A. DOCKET ROOM

March 15, 2004

VIA HAND DELIVERY

Hon Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Implementation of the Federal Communications Commission's Triennial Review Order (Nine-month Proceeding) (Loop & Transport)*
Docket No. 03-00527

Dear Chairman Tate.

Enclosed are the original and fourteen copies of the Rebuttal Testimony of Andy Banerjee and Shelley Padgett on behalf of BellSouth Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

JJP.ch

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

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BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF SHELLEY W. PADGETT

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 03-00527

MARCH 15, 2004

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A My name is Shelley W. Padgett. I am employed by BellSouth as Manager – Regulatory and Policy Support in the Interconnection Services organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME SHELLEY W. PADGETT THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING ON FEBRUARY 16, 2004?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony addresses the direct testimony of CompSouth witness Gary Ball and portions of NewSouth Communications Corp. witness Jake Jennings'

testimony. Mr Jennings' testimony is, in large measure, a brochure for NewSouth and the only substantive issue he addresses is the transition period, which I will respond to herein. A substantive response to the remainder of Mr. Jennings' testimony is unnecessary because the testimony fails to address the issues that this Authority will need to address in this proceeding.

Q. DO YOU HAVE ANY OVERALL COMMENTS CONCERNING MR. BALL'S DIRECT TESTIMONY?

A. Yes, I do Mr Ball's testimony is not relevant to the identification of the customer locations and transport routes where CLECs are not impaired without unbundled access to high-capacity loops and transport, which is the goal of this proceeding. Indeed, most of Mr. Ball's testimony simply discusses the FCC's *Triennial Review Order* ("TRO"), describing his interpretation of its policy objectives and applications. As I described in my direct testimony however, the TRO is quite clear in specifying how the self-provisioning and wholesale triggers tests should be correctly applied, and most of Mr. Ball's interpretations are substantially incorrect. Furthermore, Mr. Ball erroneously states that the ILECs bear the burden of proof in this case (page 16), which is flatly contradicted by TRO, ¶ 92, in which the FCC states that "[w]e do not adopt a 'burden of proof' approach that places the onus on either incumbent LECS or competitors to prove or disprove the need for unbundling."

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. There are at least two primary areas of the TRO that Mr Ball interprets incorrectly: the definition of a route and the definition of a customer location. Both Mr. Ball and Mr. Jennings address, albeit incorrectly, the transition period. I will address each of these in turn

(1) The definition of a route

Q. WHAT DOES MR. BALL SAY ABOUT THE DEFINITION OF A "ROUTE"?

A Mr. Ball claims that, for a CLEC to count towards the transport triggers on a given route, the CLEC must provide service directly connecting the two central offices at each end of the route, stating that to support a trigger claim, the ILEC must produce evidence that "the CLEC self-provisions transport service (.) between the two wire centers and that each collocation arrangement in question is being used as an endpoint for a transport route at the specific capacity level between two wire centers " (page 21 and 22)

Q. IS THIS INTERPRETATION CORRECT?

A. No Mr Ball's interpretation of a transport route is puzzling, at best. Mr Ball apparently believes that even if a carrier can indirectly send traffic between two

ILEC central offices, this carrier does not count toward the triggers test for that route. Mr. Ball further argues that most CLEC networks are constructed such that collocation arrangements are used as a traffic aggregation point that can only route back to the CLEC's switch and that the CLEC is incapable of routing traffic from its switch to the ILEC's central office across those same facilities (pages 13-15).

However, as the FCC has explained, passing through an intermediate wire center or an intermediate switch – ILEC or CLEC – does not prevent the connection of two central offices to form a route. Rule 319(e) clearly provides that "a *route* is a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (e.g , wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g , wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same *route*, irrespective of whether they pass through the same intermediate wire centers or switches, if any."

Q. WHAT SHOULD BE ASSUMED ABOUT CLECS' ABILITY TO PROVIDE TRANSPORT BETWEEN ILEC WIRE CENTERS?

A As explained by Mr. Gray in his direct testimony (page 9, line 6 through page 7, line 6), it is reasonable to assume that a carrier has a "route" between any pair of incumbent LEC wire centers in the same LATA where it has operational collocation arrangements. Indeed, Time Warner Telecom indicated that any point on their network can be connected to any other point on the network. Time Warner's response to BellSouth's Requests for Admissions, Interrogatories, and Requests for Production of Documents states, "TWTC admits that it can route or transport traffic using TWTC's own facilities between any pair of central offices to which it has deployed high capacity transport facilities in that state." In short, it is logical and reasonable to assume that a carrier's network within a LATA is fully interconnected.

Q. ARE THERE ANY OTHER PROBLEMS WITH MR. BALL'S DEFINITION?

A. Yes. Mr. Ball claims the FCC requires that a CLEC must be "providing transport service between the two ILEC wire centers" for a route to be counted (page 22, lines 1-3).

Q. WHY IS THIS INCORRECT?

A. The FCC's rules do not require that for a CLEC to qualify for the triggers it has to currently provide service between the two ILEC central offices at the ends of the route, but only that the "competing provider has deployed its own transport

facilities and is operationally ready to use those transport facilities to provide dedicated (.) transport along the particular route" ((47 C.F.R. §51.319(e)(2)(i)(A)(1)) Therefore, the statements made in Mr. Ball's testimony regarding the need to show evidence that a

CLEC is "providing service between the two ILEC wire centers" are inconsistent with the TRO and should be disregarded by this Authority.

As stated in the FCC's rules, the qualifying condition is that the CLEC has to be "operationally ready" to use those facilities to provide transport along the specific route, which a CLEC clearly is when it has operational fiber-based collocation arrangements at both ILEC central offices. Establishing a connection between two operationally ready collocations via a switch or hub typically requires only a software-based configuration of a circuit Thus, even if a CLEC does not ordinarily use its interoffice facilities to provide transport between ILEC central offices, this fact is irrelevant for the proceeding since they are operationally ready to do so

Q. MR. BALL STATES ON PAGE 19 OF HIS TESTIMONY THAT THE PRESENCE OF OCN EQUIPMENT IN A BUILDING OR ON A ROUTE IS NOT INDICATIVE OF WHETHER ANOTHER CARRIER CAN ECONOMICALLY PROVIDE DS3S SERVICES. DO YOU AGREE?

A. No OCn facilities indicate that a carrier can, and most likely is, providing or capable of providing DS3 services to a building or along a route. The FCC recognized that carriers don't deploy stand-alone DS3s when it stated, "When competitive LECs self-deploy fiber, they predominantly do so at the OCn-level." ¶298 The FCC found that there were economic barriers to deploying stand-alone DS3 facilities, yet found that significant competition exists in some locations and established the triggers specifically to identify these locations. "Despite the economic barriers that a competitive LEC faces in deploying single DS3 loops, the record indicates that some carriers have been able to overcome these barriers when providing multiple DS3s to a specific customer location." ¶321 Clearly, the FCC included facilities that carry multiple DS3s – OCn facilities – in determining that some carriers have overcome barriers to entry.

Further, the FCC's discussion of the rationale behind the triggers clearly includes DS3s that are channelized on an OCn facility. Paragraph 298 states, "evidence of self-deployment [of DS3s] ...is directly related to location-specific criteria". The footnote attached to this sentence (Note 860) explains these location-specific criteria. It says, "[W]hen customer demand is projected as several DS3s or optical level capacity a self-build decision is made...[There is] some evidence that DS3 loop service may be available from alternative providers.. in some buildings where competitive capacity to the building has already been provisioned at the OCn level."

(2) The definition of a customer location

Q. HOW DOES MR. BALL DEFINE A "CUSTOMER LOCATION"?

A. Mr. Ball claims in his testimony that in multi-tenant building, the customer location is defined as the tenant unit rather than the building (page 21). The implication of this assertion is that meeting the self-provisioning trigger for loops would require an individual end user to be served by two or more competing providers in order for the trigger to apply, and, even then, the unbundling relief would only apply to the facilities serving that particular end user.

Q. IS MR. BALL'S INTERPRETATION CORRECT?

A. No. Mr. Ball's interpretation is contrary to the rules, which distinguish between "customer locations" and "individual unit[s] within that location". 47 C.F.R. § 51 319(a)(4)(ii), (5)(i)(B). This distinction indicates that a customer location is a building, not an individual unit or suite in a multi-unit building.

Indeed, based on their discovery responses, the CLECs in Florida agree. The Authority's discovery specifically asked the CLECs to identify the "customer locations" to which they have deployed loop facilities and, in response, the CLECs provided the addresses of specific buildings.

Further, Mr. Ball contradicts his own position when he says on page 20 that "the loop must permit the CLEC to access all units within a customer location, such as all tenants in a multi-tenant building," indicating that the "customer location" is the building rather than the tenant unit.

(3) The transition period

Q. SHOULD THE AUTHORITY ADDRESS THE TRANSITION PERIOD IN ANOTHER PROCEEDING FOLLOWING THIS PROCEEDING AS MR. BALL AND MR JENNINGS SUGGEST?

A. No Any transition period should be addressed in this proceeding. It would make little sense to expend additional time and resources at a later time and further delay opening the market on routes or to locations for which the Authority has already found that competing carriers are not impaired.

Q. MR. BALL RECOMMENDS THAT THIS AUTHORITY INSTITUTE A MUTLI-TIERED TRANSITION PROCESS. (PAGES 42-43). PLEASE RESPOND.

A. Mr. Ball's plan apparently relies upon the switching and line sharing plans established by the FCC. Without commenting on the merits of such plans, I

disagree with Mr. Ball's reliance. This Authority may determine that CLECs are not impaired in competing along specific routes or to specific customer locations, not an entire market There is absolutely no reason for a phased in approach.

Q. MR. BALL CLAIMS THAT PARAGRAPH 584 OF THE TRO MANDATES THAT COMPETING CARRIERS MAY CONTINUE TO HAVE ACCESS TO COMBINATIONS OF LOOP AND TRANSPORT EVEN IF ONE OF THE ELEMENTS OF A PARTICULAR COMBINATION HAS BEEN DELISTED. (PAGE 41) PLEASE RESPOND.

A. Mr. Ball has inaccurately interpreted the FCC's intentions Paragraph 584 was modified in the FCC's Errata, released September 17, 2003, to remove any reference to network elements made available to competing carriers pursuant to Section 271 of the Telecommunications Act of 1996 (the Act). In note 1990, the FCC explicitly stated its intentions with regard to such network elements. It states, "[w]e decline to require BOCs, pursuant to section 271, to combine network elements that no longer are required to be unbundled under section 251. Unlike section 251(c)(3), items 4-6 and 10 of section 271's competitive checklist contain no mention of 'combining' and, as noted above, do not refer back to the combination requirement set forth in section 251(c)(3)." The FCC does not appear to agree with Mr. Ball.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

1

2 A. Yes.

ON BEHALF OF BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF ANIRUDDHA (ANDY) BANERJEE, Ph.D.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 03-00527

MARCH 15, 2004

I. INTRODUCTION AND SUMMARY

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT POSITION.

A. My name is Aniruddha (Andy) Banerjee. I am a Vice President at NERA Economic Consulting located at One Main Street, Cambridge, Massachusetts 02142.

Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS PROCEEDING?

A. Yes, I filed Direct Testimony in this proceeding on March 1, 2004.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A My Rebuttal Testimony responds to certain economic issues raised in the Direct Testimonies of Gary J Ball (on behalf of Competitive Carriers of the South) and Jake E. Jennings (on behalf of NewSouth Communications Corp.) that were filed in this proceeding on March 1, 2004. Mr. Ball purports [at 4-5] to offer "a workable framework for evaluating ILEC claims of non-impairment that is faithful to the principles and requirements set forth in the *TRO*."[1] My Rebuttal Testimony indicates that Mr. Ball's "framework"—as far as it concerns the conduct of the potential deployment test—is deficient in at least two important respects. My testimony also points out that Mr. Jennings overlooks completely the role of *potential* deployment (also set forth in the *TRO*) in any impairment analysis.

[1] "ILEC" is the acronym for incumbent local exchange carrier "*TRO*" is shorthand for the *Triennial Review Order*, released on August 21, 2003 by the Federal Communications Commission ("FCC") in CC Docket Nos 01-338, 96-98, and 98-147

Q. WHAT ARE THE TWO FLAWS IN MR. BALL'S "FRAMEWORK?"

A. First, in providing an example of "how the definition of a loop could be misinterpreted by an ILEC," Mr. Ball [at 21] adopts a flawed definition of the term "customer location." Although Mr. Ball does so in his discussion of the requirements for satisfying the FCC-specified self-provisioning trigger analysis; the definition has serious consequences for the potential deployment analysis as well.

Second, Mr. Ball dismisses [at 39-40] the relevance of the potential deployment test in the event that the self-provisioning trigger test is not satisfied for a given customer location or transport route In fact, the reasons he constructs for conducting the potential deployment test are themselves flawed and run counter to the FCC's own instructions about when and how that test should be conducted

Q. PLEASE EXPLAIN WHY MR. BALL'S DEFINITION OF "CUSTOMER LOCATION" IS FLAWED.

A. Mr. Ball offers [at 21] the following example of how an ILEC *could* misinterpret the definition of a loop for the purposes of the self-provisioning trigger analysis.

> In a multi-tenant building, two CLECs may have provisioned fiber-optic facilities to serve one customer each, while the rest of the building is being served solely by the ILEC. Even though there are two competing loop facilities into the building, an ILEC request that the trigger is satisfied for the entire building, or even the two customers served by the CLECs, would be incorrect, as no customer location within the building is being served by the facilities of two or more competing providers. The key distinction in this example is that the customer location, which is the endpoint of the loop per the FCC, is a subset of a building location in a multi-tenant environment.[2]

This example is misleading because it relies on a flawed definition of "customer location " Mr. Ball draws an explicit distinction between a customer location and a building with multiple tenants. Nothing in the *TRO* or instructions given by the FCC to conduct either the trigger test or the potential deployment test makes that distinction. To the contrary, there is ample evidence that, in the context of the enterprise market, the FCC uses the term

[2] "CLEC" is the acronym for "competitive local exchange carrier "

"customer location" in the same sense as a "multiunit premises location" or building with multiple tenants. For example, while discussing the record on CLEC deployment of OCn-level fiber loops, the FCC states:

> ... the record shows that competitors have built fiber loops to *buildings* that carry a significant portion of the competitive traffic in certain MSAs. [*TRO*, ¶298; emphasis added]

The FCC's concern is clearly not so much with end-user customers as with buildings that are occupied by those customers. A similar reference by the FCC to the record on CLEC deployment of DS3 loops, in fact, cites WorldCom and AT&T:

> *See, e g*, WorldCom Fleming Decl. at para 10 (when customer demand is projected at several DS3s or optical level capacity a self-build decision is made); WorldCom Comments at 7 (customers in a *building* must commit to at least three DS3 circuits before it is economically viable to extend fiber to that building); AT&T Comments at 134 (a competitive LEC can only self-deploy to a location with enormous demand, the smallest of which would be at the OC3 level); AT&T Nov 25, 2002 *Ex Parte* Letter at 3 (the amount of committed traffic to support construction of loops for large business customers is about three DS3s, i e., an OC3), and Attach. B at 9 (at least three DS3s worth of demand is required before a facility build can generally be proven as financially prudent). The record also contains some evidence that DS3 loop services may be available from alternative providers other than the incumbent LECs in some buildings where competitive capacity to the *building* has already been provisioned at the OCn level. [*TRO*, fn 860; emphasis added]

Another example of the FCC's usage of the term comes from its discussion of the importance of demand and revenue, not just cost, in the CLEC's decision to deploy its own fiber loops:

> Because the cost to self-deploy local loops at any capacity is great, and the cost to deploy fiber does not vary based on capacity, a competitive LEC that plans to self-deploy its own facilities must target customer locations where there is sufficient demand from a potential customer base, usually a *multiunit premises location*, to generate a revenue stream that could recover the sunk construction costs of the underlying loop transmission facility, including laying the fiber and attaching the requisite optronics to light the fiber. [*TRO*, ¶303; emphasis

added][3]

Again, there is no evidence that the term "customer location" should mean "customer" or imply, as Mr. Ball puts it, a "subset of a building location in a multi-tenant environment."

Q. WHAT ARE THE LIKELY CONSEQUENCES OF ADOPTING MR. BALL'S DEFINITION OF "CUSTOMER LOCATION?"

A. Despite the clear record of how the FCC has used that term, Mr. Ball appears to equate "customer location" with "customer," or at least with some entity short of the building itself That is neither inadvertent nor inconsequential. As is obvious from the passage reproduced above from Mr. Ball's testimony, such a definition would oblige any trigger or potential deployment analysis to demonstrate that at least two competing providers are serving either a customer or some undefined entity between the level of a customer and the building in which that customer is an occupant Taken to the extreme, this would amount to having to show that each customer (such as a medium or large-sized firm that is a tenant in the building) is in a position to be served by two or more competing providers using their own fiber loop facilities. In my reading of the *TRO*, the FCC has never required that, in order to establish non-impairment, a trigger or a potential deployment test be undertaken in the manner suggested by Mr. Ball Indeed, it is doubtful that non-impairment can ever be established in the circumstances envisioned by Mr. Ball The FCC's requirement for conducting either test is only that two or more competing providers be shown to be able to (either actually or potentially) serve the customer location of interest (namely, a building with multiple tenants)—not individual customers or the offices they occupy—using their own fiber loop facilities. Hence, the presence in the building of two or more self-deployed CLECs alongside the ILEC would suffice to satisfy the FCC's requirement.

[3] Other passages in the *TRO* reinforce the reasons for using the term "customer location" in the same sense as "building " See, e g , *TRO*, ¶¶343-358 (on subloops for multiunit premises access and network interface devices) Indeed, both the potential deployment analysis in my Direct Testimony and the trigger analysis in the Direct Testimony of Shelley Padgett in this proceeding have made such a usage In its discussion of the impairment issue, the FCC also reports that 3-5% of the nation's *commercial office buildings*—a term used by the FCC—are served by CLEC-deployed fiber loops See the *TRO*, fn 856

Q. PLEASE EXPLAIN WHY MR. BALL IS WRONG TO DISMISS THE RELEVANCE OF THE POTENTIAL DEPLOYMENT TEST WHEN, FOR SOME REASON, THE SELF-PROVISIONING TRIGGER TEST IS NOT SATISFIED.

A. Mr Ball reasons that if the self-provisioning trigger test is not satisfied, then it must mean that two or more competing providers have not deployed their own fiber loops to a customer location, or that three or more competing providers have not deployed their own transport facilities over a particular route. In any such situation, Mr. Ball argues, CLECs would clearly be impaired without unbundled access to ILEC fiber loop or transport facilities. In fact, Mr. Ball further reasons [at 40] that the only purpose of the potential deployment test at that point would be to demonstrate that "something unique to this particular customer location or this transport route rebuts the national finding of impairment "

This is a complete misinterpretation of the FCC's purpose behind conducting a potential deployment test Consider the following statement by the FCC of its rationale for such a test

> In applying the Self-Provisioning Trigger to high capacity loops, we find that actual competitive deployment is the best indicator that requesting carriers are not impaired, and therefore emphasize that this quantitative trigger is the primary vehicle through which non-impairment findings will be made. We recognize, however, that this high-capacity loop trigger measures only the existence of *actual* deployed competitive alternatives at a customer location rather than whether that particular customer location *could* be economically served by competitive carriers through deployment of alternative loop transmission facilities. Thus, when conducting its customer location specific analyses, a state must consider and may also find no impairment at a particular customer location even when this trigger has not been facially met *if* the state commission finds that no material economic or operational barriers at a customer location preclude competitive LECs from economically deploying loop transmission facilities to that particular customer location at the relevant loop capacity level [*TRO*, ¶335, emphasis in original][4]

The FCC makes no reference here to "unique" characteristics of the customer location in

[4] A similar rationale appears in the *TRO*, ¶410, for a potential deployment analysis of transport routes

the manner suggested by Mr. Ball. Rather, it is clear that, when the self-provisioning trigger test is not fully satisfied, the role of the potential deployment analysis is to show that some required number of self-deployed CLECs would not be precluded by "material economic or operational barriers" from providing service to the customer location or building in question. Thus, as explained in my Direct Testimony, if the trigger analysis shows that a building is actually being served by one self-deployed CLEC, then it would suffice for the potential deployment analysis to show that at least one more CLEC can potentially (i.e., in a financially viable manner) serve that building using its own fiber loops In addition, if the trigger analysis shows that no CLEC is actually serving a building, then it would suffice for the potential deployment analysis to show that at least two CLECs can potentially serve that building using their own fiber loops. In that sense, the FCC's two tests can be regarded as being complementary: between them, they must establish the actual or potential presence of two or more self-deployed CLECs at a given customer location.

It is particularly noteworthy that, although it considers "actual competitive deployment" to be the "best indicator" of non-impairment, the FCC certainly does not hold *actual* deployment to be the *only* indicator for that purpose From this, it is reasonable to infer that even customer locations for which there is *no* actual competitive deployment presently may be subjected to the potential deployment test. Upon doing so, non-impairment would be established if at least two CLECs could be found to potentially serve a customer location using their own fiber loops.[5] For this reason, I disagree with Mr. Ball's assertion [at 39] that "the potential deployment test posits a situation that is extremely unlikely to occur." It is *not* that unlikely when the complementary nature of the two tests is properly understood.

A similar logic applies to the use of the two tests for non-impairment on transport

[5] Logically, *any* demonstration that at least two CLECs could potentially deploy their own fiber loops to a building would establish non-impairment This would be true *regardless* of whether any actual competitive deployment has occurred to either fully or partially satisfy the self-provisioning trigger test In that sense, my conduct of the potential deployment test in my Direct Testimony clearly *exceeded* the FCC's minimum requirements for demonstrating non-impairment

routes. The FCC has established that, to demonstrate non-impairment on a given transport route, three or more self-deployed CLECs should be able to actually or potentially serve that route Thus, if the trigger analysis shows the presence of two such CLECs on that route, then the potential deployment analysis must establish that it would be financially viable for at least one more self-deployed CLEC to serve that route. If the trigger analysis shows the presence of only one (or zero) self-deployed CLEC, then the potential deployment test would have to establish that at least two (or three) self-deployed CLECs could viably serve that route. This is exactly the direction followed in my Direct Testimony.

Q. WHY DO YOU TAKE ISSUE WITH MR. JENNINGS' TESTIMONY?

A. In his entire discussion [at 13-17] of how any impairment analysis for high capacity loops and transport facilities should be conducted in accordance with the FCC's instructions in the *TRO*, Mr Jennings never mentions the complementary role of the potential deployment test when the trigger tests are not completely satisfied. This omission leaves the impression that the impairment analysis need only consist of the trigger analysis. For example, after a lengthy explanation of how the self-provisioning and wholesale facilities triggers should be applied in an impairment analysis, Mr. Jennings concludes [at 15-16]:

> In determining whether impairment no longer exists on a particular loop or route, a state commission *does not need to go beyond the triggers* or to rely on state laws as a basis for UNE availability The state commission must insist that "relevant evidence [demonstrates] that the customer location [or route] satisfies one of the triggers." (emphasis added). If it does so, very few customer locations or transport routes will meet the impairment trigger and in those instances CLECs will be able, as a practical, economic, and operational matter, to use alternatives to the ILEC facilities without impairment.[6]

This appears to suggest that the triggers alone should matter in the impairment analysis, despite the FCC's express instruction to state commissions [*TRO*, ¶335 and ¶410] to conduct the potential deployment test when the trigger tests are not "facially met." Also, the conclusion that "very few" customer locations and transport routes should qualify as

[6] Emphasis added

being non-impaired under the trigger tests appears to disregard the possibility that additional such locations and routes could qualify under the FCC's potential deployment test Indeed, my Direct Testimony shows that 225 customer locations and 21 transport routes pass the potential deployment test.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.