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December 22, 2003

VIA HAND DELIVERY

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

Re: *BellSouth Telecommunications, Inc.'s Motion to Modify Statement of Generally Available Terms: Amendment to Self-Effectuating Enforcement Mechanism*
Docket No. 03-00597

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's *Reply to CompSouth's Response to BellSouth's Motion to Modify SEEM Plan.* Copies of the enclosed are being provided to counsel of record in BellSouth's Performance Measurements Docket, No. 01-00193.

Cordially,

Joelle Phillips

Joelle Phillips

JJP:ch

THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Motion to Modify Statement of Generally Available Terms: Amendment to Self-Effectuating Enforcement Mechanism*

Docket No. 03-00597

BELLSOUTH'S REPLY TO COMPSOUTH'S RESPONSE TO BELLSOUTH'S MOTION TO MODIFY SEEM PLAN

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files its Reply to the Response of CompSouth("CLECs") to BellSouth's Motion to Modify SEEM Plan, and states the following:

On December 10, 2003, a number of CLECs that refer to themselves collectively as "CompSouth" (hereinafter "CLECs") filed a Response to BellSouth's Motion to Modify SEEM Plan.[1] The CLECs' Response to BellSouth's Motion to remove the penalty for line sharing from the SEEM Plan does not dispute the fact that the FCC has found that line sharing does not meet the impairment standard set forth in Section 251(b)(2)(d), and, is, therefore, not subject to the unbundling requirements of Section 251(c)(3). It is not surprising that the CLECs would (at least implicitly) concede this point, since the clarity of the FCC's ruling really leaves them no choice. Instead, the CLECs argue that the Authority should require the continued payment of penalties relating to line sharing, even though it is no longer a UNE, based on (1) the "public interest," and (2) the CLECs patently illogical argument that even as the FCC removed the unbundling requirement

[1] Access Integrated Networks, Inc., Access Point Inc., AT&T, Birch Telecom, Cinergy Communications Company, Covad Communications Company, IDS Telecom LLC, ITC^DeltaCom, KMC Telecom, LeeStar Telecom, Inc., MCI, Momentum Business Solutions, Network Telephone Corp., NewSouth Communications Corp., NuVox Communications Inc., Talk America Inc., Xspedius Communications, and Z-Tel Communications.

for line sharing (pursuant to Section 251), it also determined that Section 271 applies to, in effect, counteract that removal. The CLECs also contend (incorrectly) that BellSouth's Motion is based on the assertion that the SEEM Plan is voluntary.

To begin with the public interest argument, the CLECs essentially argue that, in their words, "BellSouth is not a benevolent monopoly,"[2] that BellSouth would not offer line sharing if it were not required to, and that CLECs must obtain line sharing from BellSouth on nondiscriminatory terms to compete. This argument proves nothing other than the CLECs' stubborn refusal to acknowledge the reality of the current competitive market. The plain fact is that BellSouth is not <u>any</u> sort of a monopolist (benevolent or otherwise). If BellSouth still held a monopoly in the local market, then it would not have obtained Section 271 relief. After a process that spanned several years, this Authority recommended that BellSouth receive Section 271 authority, because (among other reasons) the local market is open to competition. The FCC specifically endorsed this decision, and also ruled that the local market is, in fact, open to competition. The CLECs have utilized for many years the tactic of crying "monopolist" at every opportunity. The fact that they continue to do so at this late date merely demonstrates the paucity of real support for their argument.

Moreover, perhaps more important in the context of line-sharing is the fact that BellSouth has only a fraction of the data market. As the FCC explicitly held, CLECs (and other providers) can and do compete in the data market, and do not need access to ILEC facilities to do so. Thus, The CLECs' contention that BellSouth is a monopolist is not only incorrect for the voice market, it does not even focus on the data market, which is more relevant to line sharing.

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[2] CLEC Response, p. 4.

Likewise, the CLECs' contention that the removal of penalties for line sharing would have an anti-competitive effect is totally unsupported. The CLECs' "public interest" argument consists of little more than a general claim that the SEEM Plan is required to prevent anti-competitive behavior. The CLECs state that " as long as BellSouth is obligated to provide parity treatment to its competitors and its competitors' customers, plans like the SEEM Plan are required to enforce that obligation." (CLEC Response, p. 10). The real issue here, however, has nothing to do with whatever general competitive benefits (if any) there may be to having a SEEM Plan. The pertinent, specific question is whether line sharing should continue to be a part of the SEEM plan. The FCC's removal of line sharing from the list of UNEs that must be offered pursuant to Section 251 has clearly answered that question in the negative.

The CLECs' argument, that they must obtain line sharing from BellSouth to compete in the local market, was also made by these very same CLECs to the FCC. The FCC rejected this argument in the TRO[3] and found that competitive alternatives exist. In fact, the FCC found that there are available alternatives to line sharing based, in part, on the activity of two of the three CLECs that filed the instant Response. Specifically, the FCC stated the following:

> Moreover, we can no longer find that competitive LECs are unable to obtain the HFPL from other competitive LECs through line splitting. For example, the largest nonincumbent LEC provider of xDSL service, <u>Covad</u>, recently announced plans to offer ADSL service to 'more of <u>AT&T's fifty million consumer customers'</u> through line splitting.

(¶ 259) (emphasis added).

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[3] *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking). In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.,* CC Docket No. 01-338, *et al.,* FCC 03-36 (rel. Aug 21, 2003) ("Triennial Review Order" or "TRO").

The FCC also noted that the above-quoted information was contained in a press release by Covad, which stated "that this agreement will enable more of AT&T's 50 million consumer customers to obtain xDSL service through Covad's network, <u>which itself covers more than 40 million households and businesses nationwide</u>." (fn 767) (emphasis added). Given this, the FCC stated that it did "not find credible Covad's argument that the Commission's previous finding, that there are no third party alternatives to the incumbent LECs' HFPL, remains valid." (<u>Id.</u>).

Moreover, the FCC found that a continued unbundling requirement for line sharing could very well have an <u>anti-competitive</u> effect. As noted in BellSouth's Motion, the FCC specifically found the following:

> . . .. [R]ules requiring line sharing may skew competitive LECs' incentives toward providing a broadband-only service to mass market consumers rather than a voice-only service, or perhaps more importantly, a bundled voice and xDSL service offering. In addition, readopting our line sharing rules on a permanent basis would likely discourage innovative arrangements between voice and data competitive LECs and greater product differentiation between the incumbent LECs and the competitive LECs' offerings. We find that such results would run counter to the statutes' express goal of encouraging competition and innovation in all telecommunications markets.

(¶ 261).

In sum, the CLECs' public interest argument is entirely dependent upon their unsupported contention that the application of a SEEM penalty to line sharing is necessary to ensure competition. This contention completely ignores the facts that a competitive market for local services currently exists, that line sharing has been found to be competitively available (based in substantial part, upon the competitive activity of both AT&T and Covad), and that the FCC has also found that continuing to require the offering of unbundled line sharing under the standards that apply under Section 251 could well have an anti-competitive effect. Clearly, the CLECs' position is at odds with any reasonable assessment of the current competitive reality.

The CLECs' contention that BellSouth's Motion should fail because the SEEM Plan is not voluntary is nothing more than a red herring that the CLECs raise in an attempt to confuse the issue. The reason that line sharing should be removed from the SEEM plan has nothing to do with whether the Plan is voluntary or involuntary. SEEM penalties should not be paid for line sharing because the performance assessment plan in general, and the penalty portion of the Plan in particular, are designed to ensure BellSouth's compliance with the requirements of Section 251, and the offering of unbundled line sharing is no longer a Section 251 requirement.

The CLECs' contention that SEEM penalties should be paid for line sharing because it is required by Section 271 is an argument for a dramatic expansion of the SEEM Plan beyond its intended purpose. Further, even this argument for plan expansion fails because unbundled line sharing is <u>not</u> required by Section 271. The CLECs' argument to the contrary requires one to reach the patently unsustainable conclusion that the FCC went to great lengths to make the explicit pronouncement that line sharing need not be unbundled, pursuant to Section 251, but at the same time, buried within the Triennial Review Order language which should be read, by implication, to achieve precisely the opposite result.

The CLECs first attempt to support their implausible claim by mischaracterizing BellSouth's prior statements. Specifically, the CLECs contend that BellSouth has previously admitted that the SEEM Plan is intended to enforce some sort of unbundling requirement pursuant to Section 271. This claim is simply false.

The CLECs quote BellSouth as stating that the SEEM Plan "is intended as an incentive for . . . carriers such as BellSouth to avoid 'backsliding' after intralata authority is granted." (CLEC Response, p. 2). Intralata authority is, of course, granted pursuant to Section 271. Still, this does not answer the question of what constitutes "backsliding." The CLECs quote the Authority as stating that the SEEM Plan is intended to "ensure that BellSouth's network and systems in Tennessee are open to CLECs in a non-discriminatory manner" (CLEC Response, p. 3), in other words, to ensure that the local market remains open. The standards that apply to determine (as both this Authority and the FCC have done) that the local market is open are the Section 251 requirements that the ILEC provide non-discriminatory access to UNEs, resale and interconnection. Thus, ensuring that backsliding does not occur simply means ensuring that the standards of Section 251 continue to be met after 271 authority is granted. Despite the CLECs' best efforts to twist BellSouth's words, there is no inconsistency in BellSouth's position on this point.

It is plain to see that the CLECs' interpretation of the Section 271 discussion in the Triennial Review Order is at odds with common sense. The TRO contains no explicit statement that line sharing must be offered on an unbundled, nondiscriminatory basis pursuant to Section 271. The TRO does, however, explicitly state that line sharing is no longer required to be provided on an unbundled basis pursuant to Section 251. Thus, the CLECs argue that the FCC has, after a lengthy analysis, explicitly determined that line sharing is no longer subject to the unbundling obligation of Section 251, then reimposed precisely the same unbundling obligation through the unarticulated implication of the TRO's discussion of Section 271. It is difficult to understand why the

FCC would devote several pages of analysis to the question of whether line sharing should be unbundled, answer the question in the negative, then reverse its decision in another portion of the TRO. However, if the FCC had intended this illogical result, then surely it would have stated this intention. Instead, the TRO's eighteen-paragraph-long discussion of Section 271 issues never mentions the words "line sharing," "the high frequency portion of the loop" or "HFPL." Nevertheless, the CLECs eschew a common sense reading of the TRO, and contend that the Section 271 discussion in the TRO reimposes an unbundling obligation.

To the contrary, while the TRO does discuss Section 271, there is nothing in the discussion from which one could reasonably conclude that the TRO ordered the provision of line sharing pursuant to Section 271. The TRO states that four of the checklist items for Section 271 compliance relate specifically to network elements that have been deemed to be UNEs subject to the standards of Section 251(c)(3). These include local transport, local switching, access to databases and associated signaling and "local loop transmission from the central office to the customer's premise," i.e., checklist items 4, 5, 6 and 10 (¶ 650). The CLECs make the simplistic assertion that since line sharing (i.e., the high frequency portion of the loop) is part of the loop, then the checklist item four requirements to provide loops must apply. This contention, however, flies in the face of the entire analytical framework that prevails, both in the *Line Sharing Order*[4] and in the TRO.

[4] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 14 FCC Rcd 20912 (1999) ("Line Sharing Order"), *vacated and remanded,* USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied,* 123 S. Ct. 1571 (2003).

The FCC decided almost four years ago in the *Line Sharing Order* to designate the high frequency loop spectrum as an unbundled network element, i.e., separate from the loop UNE. Specifically, the FCC stated in the *Line Sharing Order* that, "we conclude that access to the high frequency spectrum of a local loop meets the statutory definition of a network element and satisfies the requirements of Sections 251(d)(2) and (c)(3)." (¶ 25).[5] Despite the FCC's designation of the loop and the HFPL as separate UNEs, the CLECs argue that the TRO's discussion of loop unbundling in the context of Section 271 applies equally to the HFPL UNE. The CLECs' argument, however, cannot be reconciled with the FCC's decision to treat the loop and HFPL as separate UNEs. In other words, since the FCC ruled that the loop and the HFPL are separate UNEs, there is no basis for the CLECs to argue that a discussion of <u>loop</u> unbundling in the TRO also applies to the separate HFPL UNE, which was <u>not</u> <u>even</u> <u>mentioned</u> in this discussion.

Further, there are clear indications of the separate treatment of loops and HFPL throughout the TRO. The FCC found that requesting carriers of stand alone copper loops are generally impaired on a national basis (¶ 248), while, at the same time, finding that carriers that request HFPL are not impaired under any circumstances. Again, it makes no sense to conclude, as the CLECs do, that the FCC went to great lengths to conduct separate analyses of line sharing and whole loops for purposes of applying Section 251, but for purposes of applying Section 271, simply lumped these two separate UNEs together without any distinction. This conclusion makes even less sense when one considers that the FCC specifically found line sharing to be competitive

[5] This decision was specifically referenced in the TRO in the context of the FCC's decision that line sharing no longer meets the impairment test (¶ 259).

(i.e., not to meet the impairment test), while reaching a different conclusion regarding whole loops.

The CLECs have, of course, seen the above-stated position of BellSouth previously[6] in Reply Comments filed in other states and they have attempted to address it pre-emptively in their Response. Regrettably, they do so by again misstating BellSouth's position. Specifically, the CLECs mischaracterize BellSouth's position as being that the FCC's decision is illogical (CLEC Response. P. 9). To the contrary, what is illogical (as clearly stated above) is not the structure or effect of the TRO, but rather the strained, self-serving interpretation of the TRO offered by the CLECs. As BellSouth noted above, the TRO does discuss unbundling in the context of the 271 checklist items that apply to local transport, local switching, access to databases and local loops. This discussion makes perfect sense given the fact that State Commissions have been charged with the task of determining whether these and other UNEs continue to meet the impairment test. The only thing that is illogical (and, in fact, clearly implausible) is the CLECs attempt to ignore the entire framework of the TRO and argue that when the TRO refers to the "loop" (but not the HFPL) in the 271 discussion, the FCC means for this discussion to apply to both the loop and the HFPL. Again, the TRO carefully distinguishes between the loop and the HFPL and treats them differently throughout the Order. It contravenes both logic and simple common sense to think that in the portion of the TRO that addresses Section 271 these carefully wrought distinctions would somehow inexplicably disappear. It is even more difficult to believe that the FCC would have intended this result without ever stating this intention. The CLECs' argument that the TRO should be read in this manner is a plea to reduce the clear framework of the

6 See CLEC Response, p. 9.

TRO to self contradictory nonsense because this implausible interpretation is the only one that serves the CLECs' purpose.

Finding no support for their position in the TRO, the CLECs resort to the flawed tactic of citing to a variety of older, pre-TRO cases to support the notion that, despite the language of the TRO, the requirement to provide line sharing remains a 271 obligation under checklist four. The obvious response is that it does not matter whether the CLECs cite to one, ten or one hundred 271 applications or Orders that were rendered when there was an obligation to offer unbundled line sharing: that obligation no longer exists. Tellingly, the CLECs do not cite to a single decision that applies the result of the TRO's line sharing analysis. The CLECs do, however, attempt to give the impression that they reply on such a case.

Specifically, the CLECs attempt to support their illogical position that the FCC has treated line sharing differently for Sections 251 and 271 purposes, by contending that "a long line of FCC 271 Orders confirms the continuing obligation of BellSouth companies to offer unbundled access to HFPL loop transmission after Section 271 approval." (CLEC Response, p. 5). The CLECs cite to four 271 applications, all of which were filed before the current unbundling rules went into effect on October 2, 2003, and three of which were issued before that date. Further, the CLECs state that one of the cases upon which the reply "was filed more than a month after the FCC voted to eliminate the line sharing UNE and the FCC Order granting the application was issued two weeks after the Triennial Review Order became effective." (CLEC Response, p. 6).[7]

The CLECs quote from this Order at great length, and argue that the references in this Order to line sharing prove definitively that, even in the aftermath of the TRO, line sharing continues to be considered as part of the loop for purposes of checklist 4 analysis. Unfortunately, the CLECs have failed to disclose to the Authority what the FCC stated on this point. In the SBC Order, the FCC acknowledged that it adopted new unbundling rules as part of the Triennial Review on October 2, 2003 (¶ 10). The FCC then stated that for purposes of this application, it would apply the former rules. (¶ 11). Specifically:

> As the Commission found in the *Bell Atlantic New York Order*, we believe that using the network elements identified in the former unbundling rules as a standard in evaluating SBC's application, filed during the interim period between the time the rules were vacated by the DC Circuit and the effective date of the new rules, is a reasonable way to ensure that the application complies with the checklist requirements.

(Id.) (emphasis added).

Thus, the FCC applied, based in substantial part on the date the application was filed, the old unbundling rules rather than the new rules. This means that, contrary to the CLECs' assertion, the SBC case does not demonstrate that line sharing remains under the umbrella of checklist item 4, even after the TRO became effective.

The CLECs also failed to disclose that the FCC discussed in the TRO the fact that Section 271 requirements are based on the current law at any given point in time. In this regard, the FCC stated the following:

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[7] The CLECs refer to *Application by SBC Communications, Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio and Wisconsin,* Memorandum Opinion and Order, WC Docket No. 03-167, FCC 03-243, issued October 15, 2003 ("SBC Order").

> While we believe that Section 271(d)(6) established an ongoing duty for BOCs to remain in compliance, we do not believe that Congress intended that 'the conditions required for such approval' would not change with time. Absent such a reading, the Commission would be in a position where it was imposing different backsliding requirements on BOCs solely based on date of Section 271 entry, rather than based on the law that currently exists. <u>We reject this approach as antithetical to public policy because it would require the enforcement of out-of-date or even vacated rules</u>.

(¶ 665) (emphasis added).

Thus, the particular standards that the FCC applied for Section 271 purposes prior to the effective date of the TRO are different from the standards that will apply with the advent of the TRO. The above-referenced statement by the FCC clearly demonstrates that the CLECs many citations to older (pre-TRO) briefs, 271 applications or Orders simply have nothing to do with the standards that currently apply.[8]

Finally, the CLECs argue, almost in passing, that even if line sharing is not required by Section 251 or 271, penalties should still be assessed because of the existence of the transitional period (CLEC Response, p. 4). To the contrary, there is no continuing <u>legal</u> <u>requirement</u> under the Act to provide unbundled access to line sharing. Given this, the SEEM payments for line sharing should end immediately.

Although the TRO extends the time that line sharing must be offered, this extension does not in any way constitute a finding that there is a legal requirement to provide line sharing pursuant to Sections 251, 271 or any other portion of the Act. Both the three year transitional period and the grandfathering rule set forth in the TRO are designed solely to ensure that carriers that have utilized line sharing to provide service

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[8] In the Responses that CLECs filed in other States, they acknowledged that the TRO states that "BOCs must continue to comply with any conditions required for approval <u>consistent</u> <u>with</u> <u>changes</u> <u>in</u> <u>the</u> <u>law</u>." (See e.g., CLEC Response filed in Florida, p. 3) (emphasis added). For whatever reason, the CLEC Response filed with the Authority omitted this acknowledgement.

have adequate time to implement alternative arrangements, and to avoid the disruption of service to end users. The FCC specifically stated that the grandfathering rule is designed "to prevent consumers who rely on line sharing from losing their broadband service". (TRO, ¶ 264) In keeping with this intent, the "grandfathering" of existing line sharing arrangements pertains only until the next biennial review, which as the FCC noted, "will commence in 2004". (*Id.*) Thus, the grandfathering of existing service is clearly contemplated as a short-term arrangement to allow customers to transition to alternative service arrangements as quickly as possible.

Likewise, although the transitional period allows CLECs to order new line sharing arrangements for a three year period, the treatment of line sharing as a UNE that must be offered pursuant to 251 ends immediately. UNEs that must be offered on an unbundled basis pursuant to Section 251 are to be priced at TELRIC rates. (*See* TRO, ¶ 656) In contrast, during the transitional period, line sharing will immediately cease to be priced at the TELRIC rate. Instead, it will be priced at an amount that equals 25% of the state approved recurring rates for stand alone copper loops (*Id.*, ¶ 264), and that price will increase throughout the three year transitional period. Thus, as the transitional period begins, the TRO affects an immediate change in the regulatory treatment of line sharing.

As stated previously, the entire purpose of the performance assessment plan (including the SEEM component) is to ensure compliance with Section 251 obligations after Section 271 authority is granted. Therefore, immediate removal of the SEEM penalties for the line sharing UNE that has already been found not to be a required Section 251 offering is the only appropriate result. At the same time, BellSouth's proposal does allow for a transitional process within the context of the measurement and penalty plan. As BellSouth noted in its Motion, BellSouth does not propose line sharing measurements be immediately removed from the SQM. Instead, BellSouth's performance in providing line sharing will continue to be reported until the Authority deems in a future periodic review that such reporting is no longer necessary. The continuation of reporting without penalties is an appropriate match to the FCC-ordered approach of allowing a transitional period in which customers that utilize line sharing will migrate to other alternatives. It is not appropriate, however, to continue to treat line sharing in precisely the same manner for penalty purposes, even though it is no longer a Section 251 UNE.

The TRO states that the purpose of the transitional period is to "encourage requesting carriers either to migrate their customers to the whole loop in an orderly manner or to reach agreement, if it is desired, with the incumbent LEC to continue access to the HFPL on different terms and conditions." (TRO, ¶ 267). Continuing to pay penalties relating to line sharing throughout the transitional period would impede this desired migration of customers to other alternatives to line sharing or the negotiations of other arrangements. In the TRO, the FCC specifically found that, given the fact that line sharing does not meet the impairment test, continued treatment of line sharing as a UNE would have an anticompetitive affect. As BellSouth noted in its Motion (and previously herein, p. 4), the FCC stated the following in this regard:

> ... [R]ules requiring line sharing may skew competitive LECs' incentives toward providing a broadband-only service to mass market consumers rather than a voice-only service, or perhaps more importantly, a bundled voice and xDSL service offering. In addition, readopting our line sharing rules on a permanent basis would likely discourage innovative arrangements between voice and data competitive LECs and greater

> product differentiation between the incumbent LECs and the competitive LECs' offerings. We find that such results would run counter to the statutes' express goal of encouraging competition and innovation in all telecommunications markets."

(¶ 261) (emphasis added)

While the FCC contemplated that the removal of Section 251 obligations for line sharing would be handled in a way that would not cause disruption to customer service, the FCC obviously recognized the dangers of continuing to treat line sharing as a UNE even though it no longer meets the impairment test. It only follows from this recognition that alternative arrangements (either functional alternatives to line sharing or alternative line sharing arrangements that would be negotiated with ILECs) should be implemented as quickly as possible in order to avoid a deleterious, anti-competitive effect. Again, the entire point of the transition period is to encourage CLECs to find (in an orderly fashion) other alternatives to the current line sharing arrangements. If, however, BellSouth is required to pay penalties for line sharing throughout the entire transitional period – as if line sharing were still a Section 251 UNE – this requirement will obviously slow the transition and thwart the intent of the FCC.

The FCC clearly intended that a balance be struck between not transitioning current line sharing arrangements to other alternatives too quickly (since this could have an ill effect on customers) and not transitioning too slowly (since this would have an ill effect on competition). It is (in part) for this reason that the FCC ordered that line sharing should be treated differently throughout the transitional period than it was treated when it was a Section 251 UNE. If, the FCC's decision notwithstanding, BellSouth is required to continue to pay penalties relating to line sharing as if it were a UNE, then this will only provide an additional incentive for CLECs to continue to utilize line sharing under the present arrangement for as long as possible. In other words, this will prevent achievement of the FCC's goal of ensuring that the transition occurs as quickly as possible.

Again, while it may have been appropriate to pay penalties for line sharing when it was categorized as a Section 251 UNE, now that it is not categorized in this manner (and is, therefore, clearly outside of the structure of the plan) the treatment of UNEs under the plan must change. The FCC has ordered a transitional process that must begin immediately. This means that the treatment of line sharing must change now, not at some later point. The CLECs, of course, argue to the contrary because it is in their self interest to receive as many penalty payments as possible for as long as possible, despite the current legal requirements. Likewise, the CLECs can only perpetuate their receipt of penalties (if penalties are paid for line sharing measurements during the transitional period) by ignoring the FCC's intent and keeping the current line sharing arrangements in place for as long as possible. For this reason, the only ruling by the Authority that would be consistent with the clearly articulated intent of the FCC is to change the treatment of line sharing under the penalty plan immediately.

CONCLUSION

Perhaps the most important aspect of the CLECs' Response is not what it contends, but rather what it concedes, that the FCC has removed line sharing from the unbundling obligations of Section 251. This removal provides the most compelling reason that the penalty for line sharing should be removed from the SEEM Plan. The CLECs' arguments to the contrary are based on a misreading of the TRO that would render the TRO patently illogical. Beyond this, the CLECs also rely on a "public interest" argument that is only valid if one accepts the CLECs' unsupported contentions that BellSouth is a monopolist, that there is no competition in the local market, and that line sharing specifically is not competitive. Both this Authority (in the case of the first two assertions) and the FCC (in the case of all three) have specifically rejected these arguments.

WHEREFORE, BellSouth respectfully requests the entry of an Order granting all relief requested in its Motion.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: ____________________________

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2003, a copy of the foregoing document was served on the following parties, via the method indicated:

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