BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 13, 2005

IN RE:	)	
	)	
BELLSOUTH'S PETITION TO ESTABLISH GENERIC DOCKET TO CONSIDER AMENDMENTS TO INTERCONNECTION AGREEMENTS RESULTING FROM CHANGES OF LAW	)	**DOCKET NO. 04-00381**

ORDER GRANTING ALTERNATIVE RELIEF REQUESTED IN MOTIONS FOR EMERGENCY RELIEF

This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel ("Panel") assigned to this docket, for deliberations on several motions for emergency relief filed in the docket: the *Motion for Emergency Relief* filed February 25, 2005 by NuVox, KMC, and Xspedius;[1] *MCI's Motion For Expedited Relief Concerning UNE-P Orders* filed March 2, 2005, and *Cinergy Communications Company's Motion for Emergency Relief* filed March 2, 2005 (collectively "*Emergency Relief Petitions*"). Several intervening parties filed letters in support of the motions,[2] while BellSouth Telecommunications, Inc. ("BellSouth") responded in opposition.[3] The panel convened on April 11, 2005 for deliberations.

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[1] The *Motion for Emergency Relief* was filed by NewSouth/NuVox Communications, Inc ("NuVox"), KMC Telecom V, Inc and KMC Telecom III, LLC (together "KMC"); and Xspedius Communications, LLC on behalf of its operating subsidiaries, Xspedius Management Co. Switched Services, LLC, and Xspedius Management Co. of Chattanooga, LLC (together "Xspedius").

[2] *See* Letter of February 24, 2005 from LecStar Telecom to BellSouth (March 2, 2005), Letter of February 11, 2005 from ITC DeltaCom to BellSouth (March 2, 2005), Letter of March 3, 2005 from XO to Director Deborah Taylor Tate as Hearing Officer (March 3, 2005), Letter of February 28, 2005 from Navigator Telecommunications, LLC to BellSouth (March 9, 2005)

[3] *BellSouth Telecommunications Inc 's Response in Opposition to the Joint Petitioners' Motion for Emergency Relief* (March 8, 2005); *BellSouth Telecommunications Inc 's Response to Cinergy Communications Company's Motion for Emergency Relief* (March 10, 2005), and *BellSouth Telecommunications Inc 's Response to MCI's Motion for Expedited Relief Concerning UNE-P Orders* (March 10, 2005).

DEVELOPMENT OF THE CASE

BellSouth initiated this docket by filing its *Petition to Establish Generic Docket* ("*Petition*") on October 29, 2004. BellSouth asserted that the docket was necessary to address recent decisions of the Federal Communications Commission ("FCC")[4] and the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit")[5] related to local unbundling rules.[6] BellSouth specifically pointed to the FCC's *Triennial Review Order* (or "*TRO*"), the FCC's *Interim Rules Order*, and the *USTA II* decision of the DC Circuit.[7]

The FCC released the *Triennial Review Order* on August 21, 2003 The incumbent local exchange carriers ("ILECs") and competing local exchange carriers ("CLECs") appealed various aspects of the *TRO*, and the DC Circuit vacated portions of it. The FCC thereafter issued its *Interim Rules Order*, which further altered the parties' rights and obligations.

As set forth in BellSouth's *Petition*, the decisions "materially modified the rights and obligations" of ILECs such as BellSouth and of CLECs[8] The *TRO*, for example, set forth "substantial changes to existing requirements" regarding ILECs' provision of unbundled network elements ("UNEs").[9] Among other changes, the *TRO* removed the commingling restriction previously adopted by the FCC[10] and provided authorization for conversions between wholesale services and UNEs or UNE combinations.[11]

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[4] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos 01-338, 96-98, 98-147, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 F C C R 16,978 (2003), *corrected by Errata*, 18 F.C.C R 19020 (2003), vacated and remanded in part, affirmed in part, *United States Telecom Ass'n v FCC*, 359 F.3d 554 (D C Cir 2004), *cert denied*, 125 S Ct 313, 316, 345 (2004) ("*Triennial Review Order*" or "*TRO*"), *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01- 338, WC Docket No 04-313, *Order and Notice of Proposed Rulemaking*, 19 F.C C R 16783 (2004) ("*Interim Rules Order*")

[5] *United States Telecom Ass'n v FCC*, 359 F 3d 554 (D C Cir 2004) ("*USTA II*")

[6] *Petition*, pp 1-2

[7] *Id.*

[8] *Id*

[9] *See TRO*, ¶ 4

[10] *See id* at ¶¶ 579-584

[11] *See id* at ¶¶ 585-589

BellSouth asserted that the *TRO* and *Interim Rules Order* mandated changes in the interconnection agreements between BellSouth and the CLECs. BellSouth represented that it had not been able to reach agreement with the CLECs on how to amend the interconnection agreements to implement the revised rules, and BellSouth asked the TRA to determine what changes to the agreements were necessary in accordance with the *TRO* and *Interim Rules Order*.

BellSouth also raised issues regarding the "final" FCC unbundling rules, which were expected from the FCC by early 2005.[12] The proposed issues matrix in BellSouth's *Petition* included questions about how the parties would implement the additional changes resulting from those final rules.

Several CLECs filed petitions to intervene in the docket, which the TRA granted.[13] Some also filed motions to dismiss, which later were withdrawn, converted, or deemed moot.[14] On January 10, 2005, during a regularly scheduled Authority Conference, the Panel unanimously granted BellSouth's *Petition* and voted to open a generic docket.[15] The Panel also appointed Director Deborah Taylor Tate as Hearing Officer.[16]

On February 4, 2005, the FCC released the *Triennial Review Remand Order* ("*TRRO*").[17] This was the "final" unbundling order BellSouth had referenced in its original issues matrix, filed on October 29, 2004 as Exhibit A to BellSouth's *Petition*. The *TRRO* set forth the FCC's reclassification of certain UNEs. The reclassification changed the obligation of ILECs to provide

[12] *Petition*, Ex A. On February 4, 2005, the FCC released the *Triennial Review Remand Order*, which contained the "final" rules referenced by BellSouth

[13] *Order Granting Petitions for Intervention, Directing Filing of Issues Matrix, and Establishing Status Conference Date* (February 3, 2005), *Order Granting Petition for Intervention, Granting Permission to Practice Pro Hac Vice, and Establishing Status Conference Date* (April 4, 2005)

[14] *See Order Granting Petition for Intervention, Granting Permission to Practice Pro Hac Vice, and Establishing Status Conference Date* (April 4, 2005)

[15] *Order Opening Generic Docket and Appointing Hearing Officer* (February 8, 2005)

[16] *Id*

[17] *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No 01-338, WC Docket No. 04-313, *Order on Remand*, 20 F C C R 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*")

those UNEs to CLECs. The *TRRO* also provided transition plans in which it distinguished CLECs' service to their embedded customer bases from new orders for the de-listed UNEs ("New Adds").

On February 11 and again on February 25, 2005, BellSouth issued carrier notification letters informing the CLECs that it would no longer provide New Adds as of the *TRRO* effective date, March 11, 2005. In response, several CLECs filed *Emergency Relief Petitions*, as detailed in the Hearing Officer's March 11, 2005 *Order Addressing Motions for Emergency Relief, Confirming Oral Argument, Replacing Motion to Dismiss With Motion to Bifurcate, and Establishing Status Conference Date*. BellSouth responded, and the matter was scheduled for oral argument on March 14, 2005 before the Panel.

By letter dated March 8, 2005, BellSouth notified the Hearing Officer that it had extended its March 11, 2005 deadline for the provision of New Adds. BellSouth would continue accepting and processing orders for New Adds until the earlier of (1) April 17, 2005 or (2) "an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders."[18] BellSouth, however, also put "the CLECs on notice that [BellSouth] intends to pursue the various CLECs who place orders for 'new adds' after March 10, 2005 to the greatest extent of the law, in an effort to recover the revenue that BellSouth loses as a result of placement of these unlawful orders."[19]

During the regularly scheduled Authority Conference on March 14, 2005, the parties presented oral argument on the correct interpretation and implementation of the *TRRO*'s provisions related to the discontinuance of New Adds.

POSITIONS OF THE PARTIES

The parties offered opposing interpretations of the *TRRO*. BellSouth contended that it was not required to provide New Adds to the CLECs after March 10, 2005. According to BellSouth, the *TRRO* was self-effectuating as to this change and thus not subject to the change-of-law provisions in

[18] Letter of March 8, 2005 from BellSouth to Director Deborah Taylor Tate as Hearing Officer, p 1 (March 8, 2005).
[19] *Id* , March 7, 2005 carrier notification from BellSouth to the CLECs included as an attachment to the letter

the parties' interconnection agreements. In support of this argument, BellSouth pointed to *TRRO* provisions that set forth a transition period applicable to CLECs' embedded customer bases but not to New Adds.[20]

The CLECs asserted that the reclassification of the UNEs was a change as contemplated by the change-of-law provisions in the interconnection agreements. They agreed with BellSouth that ILECs would not have to provide New Adds after an appropriate transition period. The CLECs, however, did not agree with BellSouth's proposed timing; the CLECs asserted that BellSouth must negotiate this change with them in accordance with their interconnection agreements. For support, they pointed to section VIII(B), paragraph 233 of the *TRRO*, in which the FCC stated, "We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act."[21]

APPLICABLE LAW

Congress enacted the Telecommunications Act of 1996 (the "Act" or "Telecommunications Act") for the benefit of consumers and to open the telecommunications service markets to competition.[22] Through the Act, Congress imposed requirements on the ILECs regarding interconnection, resale, and network access.[23] Under section 251 of the Act ("Section 251"), the FCC has authority to establish regulations implementing those requirements.[24] This includes authority to impose unbundling obligations on ILECs consistent with the Act. The FCC has been working to establish viable local unbundling rules for eight (8) years.[25] The *TRRO* is the FCC's latest effort to provide rules that are consistent with the DC Circuit decision and that will withstand legal challenges.

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[20] *TRRO*, ¶¶ 142-145, 195-198, 226-228
[21] *Id.* at ¶ 233
[22] *TRO*, ¶ 1, *TRRO*, ¶ 1
[23] *See* 47 U.S C. §251 (2001).
[24] *See id* § 251(d)
[25] *See TRRO*, Separate Statement of Chairman Michael K Powell, para 1

Previously, through the *TRO*, the FCC modified its rules regarding unbundling, commingling, and conversion. As the FCC stated in the *TRRO*, "The *Triennial Review Order* had the effect of limiting unbundled access to next-generation loops serving the mass market."[26] The *TRO* specifically provided for commingling

> By commingling, we mean the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services. . . . As a result, competitive LECs may connect, combine, or otherwise attach UNEs and combinations of UNEs to wholesale services (e.g., switched and special access services offered pursuant to tariff), and incumbent LECs shall not deny access to UNEs and combinations of UNEs on the grounds that such facilities or services are somehow connected, combined, or otherwise attached to wholesale services.[27]

Likewise, the *TRO* authorized conversions. "We conclude that carriers may both convert UNEs and UNE combinations to wholesale services and convert wholesale services to UNEs and UNE combinations, so long as the competitive LEC meets the eligibility criteria that may be applicable."[28]

Through the *TRRO*, the FCC again changed its unbundling requirements, though it did not alter its position on commingling and conversion The *TRRO* includes provisions that ultimately will change ILECs' unbundling obligations with regard to UNE platforms ("UNE-P") and high capacity loop and transport. The FCC previously determined that ILECs were required to provide these elements to the CLECs as Section 251 UNEs and at Total Element Long Run Incremental Cost ("TELRIC") rates.[29] In the *TRRO*, the FCC changed its impairment rating for these elements, thereby changing the ILECs' obligation to provide the elements.

All parties agreed, without question, that the *TRRO* established that New Adds ultimately will end. The questions before the Authority are when and how that transition will occur.

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[26] *TRRO*, ¶ 2
[27] *TRO*, ¶ 579
[28] *Id* at ¶ 586
[29] *See, e g* , *id.*, at ¶¶ 102, 668

Multiple sections of the *TRRO* include language that may be applicable to the parties' transition away from the reclassified UNEs to alternative arrangements Among them are provisions describing transition plans for each of the de-listed UNEs.[30] The *TRRO* also includes a provision entitled "Implementation of Unbundling Determinations"[31] These various provisions provided support for the different interpretations advocated by BellSouth and by the CLECs

ISSUES TO BE CONSIDERED

Legal Issues:

In support of its position, BellSouth pointed to the *TRRO* provisions that establish transition plans for the de-listed UNEs.[32] In describing the transition plans, the FCC specified that the plans apply only to the embedded customer base and do not permit CLECs to obtain New Adds.[33] Likewise, BellSouth referred to the Final Rules, which include similar language. BellSouth also relied on paragraph three of the *TRRO*, in which the FCC stated, "We believe that the impairment framework we adopt is self-effectuating, forward-looking, and consistent with technology trends that are reshaping the industry."[34] Section IX(A) of the *TRRO*, paragraph 235, provides that the requirements set forth in the *TRRO* shall take effect on March 11, 2005. Based on these provisions, BellSouth contended that it had no obligation to go through a change-of-law process with the CLECs regarding New Adds and that it had no duty to provide New Adds effective March 11, 2005

In contrast, the CLECs asserted that the parties must go through the change-of-law provisions of their interconnection agreements to implement the changes arising from the *TRRO*, including the elimination of New Adds for UNE-P and high capacity loop and transport They pointed to Section VIII(B), paragraph 233 of the *TRRO*, in which the FCC stated that it expected the parties to implement the *TRRO* findings as directed by section 252 of the Act. "Thus, carriers must implement

[30] *See TRRO*, ¶¶ 142-145, 195-198, 226-228
[31] *Id* at ¶¶ 233-234
[32] *See id* at ¶¶ 142-145, 195-198, 226-228
[33] *See id.* at ¶¶ 142, 195, 227
[34] *Id.* at ¶ 3

changes to their interconnection agreements consistent with our conclusions in this Order."[35] The FCC further specified that the ILECs and CLECs "must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule change."[36]

Technical and Administrative Issues:

In the *TRRO*, the FCC changed its impairment assessment of certain UNEs and modified its determination of whether ILECs were required to provide the UNEs, now de-listed, to the CLECs. To implement the changes, BellSouth would need to reprogram its system to reflect the new classifications, and the parties would have to cooperate in finding alternative service arrangements.[37]

According to BellSouth, the parties had nothing to negotiate regarding New Adds. "With all due respect, what is to negotiate? No new adds means no new adds."[38] BellSouth later acknowledged, however, that the CLECs and BellSouth disagreed about the *TRRO* provisions relating to the embedded base and what new orders the CLECs may place to serve the embedded base. "That is an issue that we have somewhat of a dispute on as well. . . . [W]e do have a disagreement on what the order and the rules mean with the 'new' there as well."[39]

The CLECs, in contrast, asserted that the termination of New Adds would not be a simple change as advocated by BellSouth but instead would affect many other issues, such as commingling and conversion.[40] According to the CLECs, for more than two years they have not been able to implement changes with BellSouth that were provided by the *TRO*.[41] For example, XO Communications Services, Inc. ("XO") contended that if BellSouth immediately terminated New Adds, before entering agreements with the CLECs covering commingling and conversion, the

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[35] *TRRO*, ¶ 233
[36] *Id*
[37] *See, e g* , Transcript of April 4, 2005 Authority Conference ("April 4 Tr."), pp 22-23
[38] Transcript of March 14, 2005 Authority Conference ("March 14 Tr "), p. 102
[39] *Id.* at pp 130-131
[40] *See, e g* , Transcript of March 8, 2005 Status Conference ("March 8 Tr "), p 18, March 14 Tr , p 88, Transcript of March 28, 2005 Status Conference ("March 28 Tr "), p 34
[41] *Id*

CLECs would have few or no options for continuing some telecommunications services[42] thereby impeding what the FCC has called a "primary purpose of the Act - the promotion of facilities-based competition."[43] Likewise, the CLECs alleged the potential complications may frustrate the FCC's stated interest in a smooth transition, to the detriment of consumers.

Timing Issues:

The FCC released the *TRRO* on February 4, 2005. BellSouth, however, did not provide the CLECs with proposed language to incorporate the *TRRO* changes into the interconnection agreements until March 11 or possibly later.[44] Additionally, the language proposed by BellSouth did not address all changes associated with the de-listed UNEs. According to BellSouth, the language covered the transition period and migration for the embedded customer base but not the termination of New Adds.[45] "We don't even think we need to send an amendment that . . . takes out UNE-P or certain high-capacity loops and transport."[46]

The CLECs contended that BellSouth, in the past, had always taken the position that any change arising from an FCC order must be negotiated by the parties, no matter how clear the language.[47] For example, the CLECs pointed to the *TRO* changes that required ILECs to allow commingling and conversion The CLECs asserted that those provisions were very clear.[48] They claimed, however, that for more than two (2) years they had not been able to get those changes implemented with BellSouth.[49]

The CLECs asserted that BellSouth now should not be able to pick and choose the provisions of the *TRRO* that are favorable to BellSouth and implement those immediately without first

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[42] March 8 Tr , pp 18-19
[43] *TRRO*, ¶ 52, *see also TRRO*, ¶ 2, March 8 Tr , p 18
[44] March 14 Tr., p 113, March 28, p 30-33.
[45] March 14 Tr , pp 115-116.
[46] *Id But see* Transcript of January 31, 2005 Authority Conference ("January 31 Tr."), pp 13, 17-18, 21, where, before release of the *TRRO*, BellSouth indicated that the changes would be implemented through the interconnection agreements
[47] March 14 Tr , pp 88, 109, 119, March 28 Tr , pp 33-34
[48] *Id.*
[49] *Id.*

implementing the *TRO* changes favorable to CLECs.[50] "There are a lot of issues underneath what could be seen as a pretty straightforward issue. . . . [W]e thought the commingling rule and the line conditioning rules were pretty darn clear "[51] The CLECs went on to say:

> [T]he *TRO* was clear in several respects. The *TRRO* has been clear. The FCC has clearly said before things like you must allow commingling, things like you must convert special access circuits to UNE. And Bell's position has always been – no matter how clear the change of law is, their position has been you've got to negotiate a change of law.[52]

The CLECs asserted that they had been "waiting for some of the good that has come out of the *TRO* for over two years. We can't get commingling. We can't get clear eligibility criteria. We can't . . . pick and choose . . . and we don't think it's appropriate that BellSouth does."[53]

FINDINGS AND CONCLUSIONS

The TRA is responsible for effectively governing and regulating utilities placed under its jurisdiction.[54] In so doing, the Authority must consider the consumers, the public good, and the overall landscape of the utility industries. With respect to the *Emergency Relief Petitions*, the TRA also was guided by the purpose and intent of Congress in enacting the Telecommunications Act and of the FCC in issuing its rules, including the *TRRO*.

The Telecommunications Act was designed to open local telecommunications service markets to competition, foster the deployment of advanced services, and reduce regulation.[55] Likewise, the *TRO* and *TRRO* encouraged and were predicated on continuing facilities-based competition. Through the *TRO*, the *Interim Rules Order*, and the *TRRO*, the FCC created a new world for the telecommunications industry. In the new world, New Adds are coming to an end

The *TRRO*, like the *TRO* and the *Interim Rules Order*, changed the landscape in which ILECs and CLECs compete and changed the law concerning the provision of UNEs. The FCC's orders,

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[50] *Id.*
[51] March 28 Tr , p 34
[52] March 14 Tr , p 109
[53] *Id* at 119
[54] Tenn Code Ann §§ 65-4-104 and -106 (2004)
[55] *TRO*, ¶3, *TRRO*, ¶ 1

together, set forth a plan for an orderly and reasoned transition away from certain UNEs within the industry This is an overarching tenet of the *TRRO*. The transition must be reasonable to ensure continuing service and choices for all customers.

The Authority took note of the FCC's statements of its purposes regarding the *TRRO*. "In this Order, the Commission takes additional steps to encourage the innovation and investment that come from facilities-based competition."[56] "Our unbundling rules are designed to remove unbundling obligations over time as carriers deploy their own networks and downstream local exchange markets exhibit the same robust competition that characterizes the long distance and wireless markets "[57]

Additionally, the Authority noted that the FCC supported negotiations between ILECs and CLECs. "Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period."[58] Further, the FCC encouraged state commissions to monitor the transition and implementation process closely. "We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay."[59]

The *TRRO* language regarding the effective date of the New Adds change is not at all clear Utilities all across the country brought this issue before commissions and courts. The parties in this docket filed many of the resulting orders, and each side attempted to support its position by reference to various commission and court decisions. The inconsistencies within those orders, however, underscore the lack of clarity and the absence of a precise interpretation of the *TRRO* language

The TRA has a statutory obligation to promote competition and protect the interests of consumers.[60] The Authority must ensure that businesses and individuals continue to receive reliable

[56] *TRRO*, ¶ 2
[57] *Id.* at ¶ 3.
[58] *Id* at ¶¶ 145, 198, 228
[59] *Id* at ¶ 233
[60] Tenn. Code Ann §65-4-123 (2004).

telecommunication services and that any change among providers is handled in a stable, orderly manner. The TRA also has a duty to monitor closely the parties' implementation of the *TRRO* changes.[61] The questions before the TRA are when and how New Adds will end and what that will mean to companies and customers.

BellSouth initiated this docket and voluntarily brought these questions to the TRA. BellSouth asked the Authority to interpret the FCC's orders and then consider how to implement the changes.[62] According to BellSouth, the docket issues and proceedings would be similar to those considered by the TRA "all the time There's been a change. We argue about what the change means, and we talk about the process about how to implement that in interconnection agreements "[63]

According to the CLECs, an abrupt termination of New Adds would harm competition and consumers. If the switching, affected high capacity loops and transport were removed without provision for commingling and conversion, the CLECs would be at a great disadvantage and may not be able to satisfy their customers' needs. The CLECs had been entitled to commingling and conversion for more than two (2) years. The CLECs and BellSouth disagreed about why they had not yet implemented the changes.[64] The relevant point for consumers, however, was that the CLECs, without the ability to augment their network, would not have the tools they need as competitors in the new telecommunications world.

One goal of the *TRRO* was to encourage facilities-based competition. That aim would be frustrated by a hasty implementation of the New Adds change. Even facilities-based CLECs would be harmed if they lost access to New Adds before gaining the options of commingling and

[61] *TRRO*, ¶ 233
[62] Transcript of December 13, 2004 Authority Conference ("December 13 Tr "), p 78
[63] Transcript of January 10, 2005 Authority Conference ("January 10 Tr."), p. 43.
[64] *See, e g* , December 13 Tr , pp 70-72, 74; Transcript of January 31 Status Conference ("January 31 Tr "), pp 11-12, 16-17; March 8 Tr , pp. 15, 33-33; March 14 Tr , pp 114-117, 119, 128, March 28 Tr , pp 30-33

conversion. For example, XO, a facilities-based CLEC, asserted that it would encounter service problems from such a change [65]

BellSouth, in comparison, did not establish that it would suffer any harm by a continuance of New Adds if the continuance provided for a true up. In fact, BellSouth voluntarily extended its deadline for New Adds orders from March 11, 2005 to April 17, 2005, an extension of thirty-seven (37) days. BellSouth also conceded that BellSouth and the CLECs did not agree about the meaning of the "embedded base" and what qualified as service to the embedded base This clearly was an issue associated with New Adds; the CLECs may or may not be able to order certain services, based on whether or not BellSouth agreed that the order was for service to the embedded base. Certainly, BellSouth and the CLECs would need to negotiate and reach agreement on that issue before BellSouth started rejecting orders for de-listed UNEs.

The majority of the Panel[66] found that the public good and competition would not be served by an immediate implementation of the New Adds restriction. Rather, the CLECs and BellSouth should negotiate an appropriate implementation of both the *TRRO* New Adds change and the availability of commingling and conversion provided in the *TRO*. The Authority set an initial negotiation period of thirty (30) days.[67] The Authority encouraged both sides to negotiate expeditiously and in good faith. Although BellSouth must continue providing New Adds during the negotiation period, the New Adds orders placed on or after March 11, 2005 will be subject to a true up.[68]

[65] March 8 Tr , pp 18-19

[66] Director Kyle did not vote with the majority and instead moved that BellSouth's responsibility to continue furnishing UNEs exempted by the *TRRO* ended on March 11, 2005.

[67] This initial 30-day period is less than the extension BellSouth itself implemented by its carrier notification dated March 7, 2005.

[68] Through the true up, the parties will apply the agreed-upon rate retroactively to the New Adds orders placed on or after March 11, 2005

IT IS THEREFORE ORDERED THAT:

1. The *Emergency Relief Petitions* are granted to the extent they seek alternative relief and otherwise are denied.

2. BellSouth and the CLECs must negotiate (a) the rates, terms and conditions under which BellSouth will provide commingling and conversion, (b) the rates, terms and conditions under which the CLECs may order services currently provided as New Adds, and (c) the meaning of "embedded base" within the transition plans set forth in the *TRRO*.

3. The negotiations shall continue for thirty (30) calendar days, from April 11, 2005 through May 11, 2005.

4. During the negotiation period and until further notice from the Authority, BellSouth must continue to accept, and not reject, CLEC orders for New Adds

5. BellSouth must provide the New Adds according to the rates, terms and conditions established or otherwise referenced in the existing interconnection agreements between BellSouth and the CLECs. This includes any interconnection agreement under which BellSouth and a CLEC are operating, even if the agreement has expired.

6. The charges for New Adds placed on or after March 11, 2005 will be subject to a true up, back to March 11, 2005, in accordance with the transition plan negotiated between BellSouth and the CLECs for such services.

7. At the May 2, 2005 Status Conference, BellSouth and the CLECs must report on the progress of their negotiations. If the parties have not reached agreement on all issues (including the

provision of commingling and conversion) before the expiration of the thirty-day negotiation period, the parties must come back before the panel.[69]

8. The transition plans established in the *TRRO* for embedded customer bases shall apply to each CLEC's existing service for its embedded customer base unless or until the parties agree otherwise.

Deborah Taylor Tate, Director

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Sara Kyle, Director

Ron Jones, Director

[69] During the May 2, 2005 Status Conference, the parties agreed to extend the negotiation period until May 17, 2005, and to come before the panel during the Authority Conference scheduled on May 16, 2005