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July 26, 2005

Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes

Docket 04-00381

Dear Chairman Jones:

Enclosed please find the original plus fourteen (14) copies of the Direct Testimony of Joseph Gillan on behalf of the Competitive Carriers of the South, Inc. in the above-captioned proceeding.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker

JLM/sja

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to:

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on this the 26th day of July, 2005.

Henry M. Walker

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

In the Matter of:	)	
Petition to Establish Generic Docket to	)	Docket No. 04-00381
Consider Amendments to Interconnection	)	
Agreements Resulting From Changes of Law	)	

Direct Testimony
Of
Joseph Gillan
On Behalf of
The Competitive Carriers of the South, Inc.
(CompSouth)

July 26, 2005

I. Introduction and Witness Qualifications

Q. Please state your name, business address and occupation.

A. My name is Joseph Gillan. My business address is P. O. Box 541038, Orlando, Florida 32854. I am an economist with a consulting practice specializing in telecommunications.

Q. Please briefly outline your educational background and related experience.

A. I am a graduate of the University of Wyoming where I received B.A. and M.A. degrees in economics. From 1980 to 1985, I was on the staff of the Illinois Commerce Commission where I had responsibility for the policy analysis of issues created by the emergence of competition in regulated markets, in particular the telecommunications industry. While at the Commission, I served on the staff subcommittee for the NARUC Communications Committee and was appointed to the Research Advisory Council overseeing the National Regulatory Research Institute.

In 1985, I left the Commission to join U.S. Switch, a venture firm organized to develop interexchange access networks in partnership with independent local telephone companies. At the end of 1986, I resigned my position of Vice President-Marketing/Strategic Planning to begin a consulting practice.

Over the past twenty-five years, I have provided testimony before more than 35 state commissions, six state legislatures, the Commerce Committee of the United States Senate, and the Federal/State Joint Board on Separations Reform. I have also been called to provide expert testimony before federal and state civil courts by clients as diverse as the trustees of a small competitive carrier in the Southeast to Qwest Communications. In addition, I have filed expert analysis with the Finance Ministry of the Cayman Islands and before the Canadian Radio-Telecommunications Commission.

Finally, I serve on the Advisory Council to New Mexico State University's Center for Regulation (since 1985) and am an instructor in their "Principles of Regulation" program taught twice annually in Albuquerque. I also lecture at Michigan State University's Regulatory Studies Program and have been invited to lecture at the School of Laws at the University of London (England) on telecommunications policy and cost analysis in the United States.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of Competitive Carriers of the South, Inc. ("CompSouth"). Although the members of CompSouth have worked jointly to develop consolidated positions (thereby simplifying the issues and options for the Authority), there are differences between individual carriers and their specific

business plans in terms of emphasis. Consequently, the Authority should understand that my recommendations represent the consensus views of the group and not necessarily the individual priorities of any particular member.

Q. What is the purpose of your testimony?

A. The *Triennial Review Remand Order* (*TRRO*)[1] eliminates a number of BellSouth's unbundling obligations under §251 of the federal Telecommunications Act of 1996. This is no small change in market dynamics. UNE-based competition is responsible for 70% of *all* the competition in TennesseeTennessee,[2] with local switching alone accounting for approximately 90% of all UNE-based competition in the state.[3]

The *TRRO* raises very practical issues as to how a §251 UNE is withdrawn from the market, including *what* is withdrawn, *when* is it withdrawn, *where* is it withdrawn and *how* it is withdrawn. The principal purpose of my testimony is to explain the changes to the parties' interconnection agreements needed to

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[1] In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313, Review of 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order on Remand (rel. Feb. 4, 2005) ("*TRRO*").

[2] Source: FCC Local Competition Report and BellSouth Form 477 Filing, data as of December 31, 2004 (most recent UNE data publicly released by FCC).

[3] Source: BellSouth Form477 Filing.

effectuate the *TRRO*, as well as certain remaining changes from the FCC's earlier *Triennial Review Order* (*TRO*).[4]

Q. In addition to addressing issues associated with the *withdrawal* of a network element under §251 of the federal Act, does your testimony also address *replacement* offerings that BellSouth must make available?

A. Yes. It is important to understand that this proceeding is not simply about making *less* available to CLECs, it is also about making *different* offerings available in their place. It is certainly true that the *TRRO* removes certain of BellSouth's unbundling obligations under §251 of the federal Act. Significantly, however, §251 does not define the *limits* of BellSouth's unbundling obligations. Except for certain specific broadband network elements that the FCC has expressly excluded (through forbearance), BellSouth remains obligated to offer through approved interconnection agreements each of the network elements listed in the competitive checklist of §271, albeit at a (potentially) different price.[5]

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[4] In the Matter of Review of §251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (rel. August 21, 2003) ("TRO").

[5] Whereas elements offered under §251 must be priced in accordance with the FCC's Total Element Long Run Incremental Cost (TELRIC) rules, elements offered in compliance with §271 are judged in accordance with the potentially more liberal "just and reasonable" standard.

Where UNEs are no longer required by §251 of the Act, the *TRRO* adopts "transition plans" to alternative arrangements. Significantly, one set of alternatives are the comparable obligations that BellSouth voluntarily accepted under §271 of the federal Act so that it could provide long distance services in Tennessee. As the Authority is well aware, that choice has proven to be quite profitable for BellSouth – it currently provides long distance service to over 46% of the Tennessee consumer market and nearly 55% of the Tennessee business market,[6] while competitors serve none using §271 compliant offerings.[7]

This proceeding will define the future of local competition in Tennessee in a post-*TRRO* environment. That future will be based, in part, on §271-compliant offerings, in much the same way that the Authority's arbitrations implementing §251 provided the foundation for initial entry. In order for competitors to make informed choices and so that BellSouth may remain in compliance with §271, §271-compliant offerings must be fully defined *contemporaneously* with the withdrawal of any UNE as outlined in the *TRRO*.[8]

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[6] Source: BellSouth Earnings Release, 1st Quarter 2005, April 21, 2005. BellSouth reports consolidated penetration rates for Tennessee and Florida, which received long distance authority concurrently.

[7] Prior to the TRRO, BellSouth's §271 obligations largely duplicated the mandatory unbundling obligations of §251 of the federal Act. Consequently, there has not previously been a need to establish commercially meaningful §271 offerings, most specifically by assuring just and reasonable rates, terms and conditions for such offerings.

[8] It is useful to recognize that §252 of the federal Act is common to implementing both the *TRRO* and §271. As I explain later in my testimony, BellSouth can only comply with §271 by offering those items required by the competitive checklist through interconnection agreements approved pursuant to §252. Moreover, the *TRRO* explicitly requires (as it must) that its terms be incorporated into new interconnection agreements similarly adopted according to §252.

Q. Does your testimony also recommend specific contract language?

A. Yes. Attached to my testimony is Exhibit JPG-1 recommending specific contract language that the Authority should order the parties to include in interconnection agreements. Because discovery remains outstanding, however, there are some issues that are not yet fully developed – for instance, recommendations concerning rates for specific §271 elements – while other issues will not be fully joined until after BellSouth has filed its direct testimony. As such, the specific proposed language in Exhibit JPG-1 may be updated as the proceeding progresses.

The contract language included in Exhibit JPG-1 is organized to match the organization of issues on the Joint Issues List submitted by BellSouth and CompSouth. In my testimony, I have identified Joint Issues List numbers that correspond to the issues discussed in the testimony. Some specific issues on the Joint Issues List that are not explicitly addressed in my testimony may be discussed in rebuttal in response to proposed contract language or testimony sponsored by BellSouth.

Consequently, it follows that this proceeding should conclude not only with contract terms implementing the declassification of certain network elements as UNEs under §251, but should also establish the terms of replacement offerings that satisfy the requirements of §271.

In addition, the Authority should understand that the contract language attached to my testimony represents a consensus effort by CompSouth to provide a *single* document to the Authority for its consideration. Individual companies, however, with their own business plans and priorities are continuing to negotiate with BellSouth. Because not all companies share the same level of concern on all issues, there may be instances during the proceeding where individual members negotiate individual contract language that differs from the consensus recommendations. Such diversity should be expected in a multi-company environment and the results of individual negotiations should not be interpreted as contrary to these consensus recommendations.

II. Issues Concerning the Application of Transitional Pricing (Issues List No. 2-3, 9, 11-12, 22)

Q. What are the primary issues relating to exactly *how* the market changes called for by the *TRRO* should be implemented?

A. The primary changes caused by the *TRRO* result from the reduction in BellSouth's unbundling obligations under §251 of the federal Act. As discussed above, these changes, however, cannot be implemented in a vacuum. The withdrawal of §251 network elements must be accompanied by the introduction of replacement offerings (for instance, the §271 alternatives described more fully later in my testimony), and with new contract provisions that permit carriers to

"commingle" the remaining §251 network elements with other wholesale offerings. The *TRRO* represents a package of changes (some dating back to the *TRO*), not just the introduction of higher rates by BellSouth.

Q. What are the primary transition issues introduced by the *TRRO*?

A. In simple terms, the primary transition issues involve:

1. When do the higher transitional prices begin;

2. When do the transitional prices end; and,

3. What other changes must accompany the end of the transitional prices to assure an orderly change to new arrangements.

The *TRRO* is not about *less* – it is about *change*. The §251 regime may be shrinking, but the fact that BellSouth still is required to provide meaningful wholesale options to carriers means that establishing an orderly process to a new market dynamic is as critical as the change itself.

Q. What is the basic framework to effect this "orderly change"?

A. The basic framework has two components. First, as always, carriers must establish new interconnection agreements that implement the *full package* of

changes needed for carriers to transition away from their traditional reliance on network elements required under §251 to alternative arrangements. Because there is not agreement between BellSouth and the CLECs as to all of the components of this new environment, state commissions must arbitrate these differences in proceedings such as this. Most of the testimony below addresses the key issues raised in establishing the new regime.

Secondly, the FCC itself adopted some transitional pricing protections to provide the necessary time to move between the old §251-based regime and a new environment that is only partially based on §251 offerings. In this section of my testimony I focus on when these transitional prices begin, when they end, and identify (in a broad sense) the additional changes that must be introduced simultaneously with the introduction of post-transition prices.

Q. How are the transitional prices[9] to be implemented?

A. As with other pricing changes, new rates become effective as they are introduced into carrier interconnection agreements. The FCC was quite clear that the changes called for by the *TRRO* are to take effect through contract changes, not unilateral action:

[9] Transitional price increases were established by the FCC for network elements that are no longer available under §251 at the following levels: for loop and transport elements, the transitional increase is 15%, while local switching rates were increased by $1 per month.

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order.[10]

The transitional rates adopted by the FCC are to be introduced into interconnection agreements, alongside other changes (such as commingling, discussed below) that enable carriers to adjust to these higher prices.[11] These higher rates do not introduce themselves, and BellSouth may not unilaterally impose them on carriers, nor may BellSouth impose the increases retroactively.

Q. If the transitional rate increases go into effect when they are introduced into carrier interconnection agreements, when do they end?

A. The general expectation of the *TRRO* is that carriers will have a year to determine alternative arrangements for network elements that will no longer be available under §251. One issue, however, concerns what price should apply when a CLEC has placed an order to move a particular UNE to an alternative arrangement, but BellSouth has not yet implemented that order. In such instances, a question arises as to whether the transition rate should apply. The *TRRO* is somewhat ambiguous

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[10] *TRRO* ¶ 233.

[11] The term "commingling" refers to a carrier mixing and matching §251 elements with other wholesale offerings Because one important wholesale offering will be the new wholesale services that BellSouth must introduce to remain in compliance with §271, I discuss commingling in that part of my testimony (IV) that address §271 issues. The need to incorporate commingling language into interconnection agreements, however, is not limited to the need to access §271 elements, it is needed to provide carriers that ability to connect the remaining §251 elements to any wholesale service.

on this point, at times indicating that the CLEC's obligation is to place the order, and at times suggesting that the lines must be moved to alternative arrangements:

> We require competitive LECs to submit the necessary orders to convert their mass market customers to an alternative service arrangement within twelve months of the effective date of this Order.[12]
>
> ***
>
> Consequently, carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes. At the end of the twelve-month period, requesting carriers must transition all of their affected high-capacity loops to alternative facilities or arrangements.[13]

Q. What do you recommend?

A. For a number of reasons, I believe the Authority should require only that CLECs place an order with BellSouth in order to qualify for transitional rates.

First, I think it is important to recognize that most of the affected UNEs are unlikely to be moved to different network arrangements as opposed to a different pricing schedule.[14] Consequently, any lag in processing CLEC orders should be minimal.

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12 *TRRO*, ¶227. Emphasis added.

13 *TRRO*, ¶196. Emphasis added.

14 Indeed, it would seem that BellSouth shares this view. Last year I appeared on a NARUC panel with Bennett Ross of BellSouth, who discouraged state commission staffs from

Second, and most importantly, the most important "alternative arrangement" that CLECs must consider will be BellSouth's §271 offering that parallels the §251 offering being withdrawn. As I explain in detail later in my testimony, whether BellSouth's §271 offerings are commercially viable is an issue that will be decided in this proceeding. Consequently, CLECs do not yet have even basic information concerning one of the most important options they must consider.

Third, with respect to loop and transport arrangements, CLECs do not yet know even *where* they must analyze alternative arrangements. It is clear that BellSouth has taken considerable license with its interpretation of where the *TRRO* permits it to limit CLEC access to §251 offerings. For instance, BellSouth claims that CLECs are limited to 10 DS1 transport facilities between every end office, even though the *TRRO* is clear that this limitation applies only where BellSouth need not unbundle DS3 transport.[15] Until CLECs have a final listing of exactly where

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developing batch hot-cut systems because of the expectation that most UNE-P lines would remain on the BellSouth network paying higher rates.

[15] See *TRRO*, §128 (emphasis added):

> On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits.... When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply.

I describe this particular issue in more detail in section III.C of my testimony. Clearly, if BellSouth is willing to ignore this clear statement by the FCC – insisting, instead, that it can limit carriers to 10 DS1s everywhere – there is no reason to believe that its wire center listings that are used more generally to limit its unbundling obligations are any more reasonable.

BellSouth is no longer required to unbundle certain high-capacity loop and transport offerings – a list that will be established in this proceeding – specific plans to transition facilities cannot be developed.

Finally, I note that once a CLEC has placed an order with BellSouth to migrate an arrangement to an alternative – whether the alternative is a network facility or an alternative pricing schedule – control passes to BellSouth. CLECs should not be penalized by paying higher prices for orders that BellSouth has not filled.

Q. Do you believe that this issue may become less critical as the docket proceeds?

A. Yes. As I indicated earlier, the most likely alternative arrangement for a post-§251 offering is the parallel offering that BellSouth must make available to remain in compliance with §271. Because the prices for §271 offerings must remain just and reasonable – a standard that §251 prices must also satisfy – there is every reason to expect that the §271 price will be "just and reasonably" close to the rates paid today. In fact, the Missouri Commission recently established interim §271 prices *equal* to the higher transition rates established by the FCC. Obviously, if this Authority were to follow the Missouri approach and establish interim §271 rates based on the existing transition rates (which is one of the options I present below), then the commercial significance of "when the order is placed compared to when it is implemented" issue becomes moot.

Q. Are there any other issues relating to the application of transitional pricing?

A. Yes. The transitional increase of $1 for local switching applies to lines used to serve "mass market" customers, a term that has not been clearly defined in the past. The *TRRO* makes clear that however the term "mass market" may have been used in previous orders, the term (as it relates to BellSouth's pricing obligations for unbundled local switching) includes all lines used to serve customers that use less than a DS1 capacity and that the transitional rules for pricing unbundled local switching apply:

> The *Triennial Review Order* left unresolved the issue of the appropriate number of DS0 lines that distinguishes mass market customers from enterprise market customers for unbundled local circuit switching.... The transition period we adopt here thus applies to all unbundled local circuit switching arrangements used to serve customers at less than the DS1 capacity level as of the effective date of this Order.[16]

Thus, the *TRRO* makes clear that CLECs are entitled to pay TELRIC rates (plus $1) for all analog customers, including any customers that BellSouth may have previously claimed were "enterprise customers" because they had four or more lines.

Q. Are there other changes that must be introduced before the transition ends?

[16] *TRRO*, footnote 625 (¶226).

A. Yes. Higher prices are not the only consequence of the *TRRO*. In addition to withdrawing §251 access, the FCC has also adopted new requirements that allow CLECs to more easily qualify to use UNEs, as well as important commingling rules that permit CLECs to use the remaining §251 elements in combination with other wholesale services that will take the place of those §251 UNEs being eliminated. These counterbalancing components of the FCC's decision must become effective at the same time that BellSouth is permitted to withdraw a UNE so that CLECs have a meaningful opportunity to adapt to the new environment.

III. Issues Relating to Loop/Transport Delisting (Issues List Nos. 2-7, 25)

Q. Please provide an overview of the principal issues the Authority must address to implement the *TRRO* with respect to the delisting of certain high capacity loop and transport UNEs.

A. With respect to high capacity loop and transport UNEs (DS1, DS3 and Dark Fiber), the FCC determined that BellSouth would not be required to offer these UNEs at TELRIC rates under §251 of the federal Act between (or, in the case of loops, from) certain wire centers meeting established criteria. There are two basic issues:

1. Identifying the specific wire centers in Tennessee that *currently* satisfy the criteria adopted by the FCC; and

2. Adopting a process to determine whether additional wire centers meet the criteria in the *future*.

In addition to these basic issues, BellSouth is attempting to further limit its unbundling obligations by applying a "cap" on DS1 transport beyond the wire centers permitted under federal rules (which I discuss in more detail in part C of this section).

A. The Appropriate Categorization of Wire Centers

Q. Please summarize BellSouth's unbundling obligations with respect to high capacity loops and transport.

A. The *TRRO* defines BellSouth's unbundling obligations according to different categories of wire centers determined by the number of business lines and fiber-based collocators in the wire center.

Wire Center Categorization Criteria for Dedicated Transport

Category	Wire Center Must Meet *Either* Criterion		BellSouth Need Not Unbundle
	Business Lines	Fiber-Based Collocators	
Tier 1	> 38,000	4 or more	DS1[17] or DS3
Tier 2	> 24,000	3 or more	DS3[18]

Similarly, the *TRRO* limited BellSouth's §251 unbundling obligations for local loops based on a wire center classification scheme, albeit applying different thresholds.

Wire Center Categorization Criteria for High Capacity Loops

BellSouth Need Not Unbundle	Wire Center Must Meet *Both* Criterion	
	Business Lines	Fiber-Based Collocators
DS1 Loops	> 60,000	4 or more
DS3 Loops	> 38,000	3 or more

Q, Why is it important for the Authority to review the categorization of wire centers?

A. The principal reason that Authority review is critical is that only BellSouth has access to the information used to categorize wire centers and yet, it is BellSouth that would gain by incorrectly assigning wire centers so as to curtail its unbundling obligations under §251. As a result, the Authority must review

[17] BellSouth must offer DS1 dedicated transport as a §251 network element unless both ends of the transport route are Tier 1 wire centers.

[18] BellSouth's unbundling obligations for dark fiber parallel those for DS3 dedicated transport.

BellSouth's claims to ensure that the interconnection agreements properly reflect those wire centers where a reduced level of unbundling is required.[19]

Q. "Business lines" are one half of the FCC's categorization criteria. How are "business lines" counted under the *TRRO*?

A. The *TRRO* is quite specific as to what lines should be counted in determining the total number of business lines. The basic definition of a business line is as follows:

> Business line. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements[20]

Thus, to arrive at the number of business lines in a particular wire center requires the summation of three values:

(1) The number of BellSouth's business switched access lines,

[19] Indeed, the FCC recognized that CLECs would not have the information needed (absent proceedings such as this) to validate BellSouth's claims *See TRRO* footnote 659, ¶234.

[20] 47 CFR § 51.5.

(2) The number of UNE loops (including, where appropriate, loops used with transport), and

(3) The number of business UNE-P.

As I explain below, while there are certain additional directives as to the source of, and qualifying requirements for, particular lines, the basic calculation involves these three categories.

Q. What additional qualifying requirements did the FCC adopt?

A. The definition for a business line (partially cited above) includes the following additional directions. The business line tally:

(1) Shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services,

(2) Shall not include non-switched special access lines,

(3) Shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For

> example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."[21]

Importantly, these requirements are not "choose one of three" – for a line to be counted, the line must be for switched services before it becomes relevant as to how multi-channel switched lines should be counted. Furthermore, these additional requirements are only relevant for determining how to count UNE lines, for the FCC provides specific direction as to what *source* should be used to count BellSouth's switched business lines – ARMIS 43-08 – whose instructions effectively ensure that these additional requirements are satisfied.

Q. Is there *any* question that BellSouth is to use the ARMIS 43-08 business switched line count that it routinely files with the FCC in determining its own line count?

A. No, there is no question that the *TRRO* methodology is grounded in the ARMIS 43-08 data:

> Moreover, as we define them, business line counts are an objective set of data that incumbent LECs already have created for other regulatory purposes. The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops. [B]y basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which must also be reported, we can be confident in the accuracy

[21] 47 CFR § 51 5, emphasis added.

> of the thresholds, and a simplified ability to obtain the necessary information.[22]

As the FCC explained above, it was deliberately adopting simple measures that were already required (particularly the ARMIS data) that would, therefore, be less susceptible to gaming.

Q. Does the ARMIS 43-08 data already conform to the specific requirements included by the FCC in the *TRRO*?

A. Yes. The additional direction provided by the FCC in the definition of "business lines" boils down to two requirements. The first is that only switched lines are to be counted, while the second directs that multi-channel digital lines be converted to a voice grade equivalent. With respect to the Business Switched Access Lines (to which are added UNE lines), the FCC's directive that ARMIS 43-08 Business Switched Access Lines be used already conform to these requirements. Business Switched Access Lines are defined according to ARMIS as:[23]

> Business Switched Access Lines - Total voice-grade equivalent analog or digital switched access lines to business customers.

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[22] *TRRO*, ¶ 105. Emphasis added. Footnotes omitted.

[23] I note that not only did the text of the *TRRO* direct that ARMIS 43-08 be used for Switched Business Access Lines, but the footnote in the TRRO specifically references the 2004 instructions in which the term is defined. *See TRRO* footnote 303 (¶ 105), specifically referencing http://www.fcc.gov/wcb/armis/documents/2004PDFs/4308c04.pdf (see page 21).

(fc) Single Line Business Switched Access Lines - Includes single line business access lines subject to the single line business interstate end user common line charge, pursuant to § 69.104(h), excluding company official, mobile telephone/pagers and payphone lines.

(fd) Multiline Business Switched Access Lines - Include the total of analog and digital multiline business access lines subject to the multiline business interstate end user common line charge including PBX trunks, Centrex-CU trunks, hotel/motel LD trunks and Centrex-CO lines.

(fe) Payphone Lines - Lines that provide payphone service, i.e., total coin (public and semi-public) lines, including customer owned pay telephones.[24]

As the above ARMIS definition makes clear, Business Switched Access Lines only include (as one would expect) lines configured for switched service and the lines are already computed on a voice-equivalent basis. Thus, there is no justification for BellSouth modifying, in any way, the number of Business Switched Access Lines filed under ARMIS 43-08. To this value it would add UNE-L and business UNE-P lines to arrive at the total Business Line count used to categorize wire centers as required by the *TRRO*.

Q. How should BellSouth count UNE-L lines to ensure that the lines satisfy the specific requirement in the *TRRO* that the business line count "shall include

[24] *Ibid*, page 21. (Note: The rule sections cited above have been shortened to remove unnecessary references to other ARMIS filings).

only those access lines connecting end-user customers with incumbent LEC end-offices for switched services?"[25]

A. Although FCC rules are explicit that only lines used for switched services are to be counted, the FCC provided no guidance as to how that determination should be made for UNE-L lines. As explained above, the requirement that ARMIS 43-08 data be used resolves any issue with respect to BellSouth's Business Switched Lines and, by definition, UNE-P is a switched service. Moreover, BellSouth routinely counts (and reports to Wall Street) the number of UNE-P lines used to serve business customers. What BellSouth cannot measure directly is the number of UNE-L voice equivalent lines used to provide switched services.

Q. What do you recommend?

A. As a *starting* point, I recommend that BellSouth be permitted to *propose* wire center classifications that simply convert each digital UNE-L facility to its voice-grade equivalent assuming that each circuit is used to provide switched services to a business customer. In addition, BellSouth should file (as I recommend in the following section) the necessary workpapers to determine whether this assumption results in the reclassification of any particular wire center.[26] In this

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[25] *See* 47 CFR § 51.5, emphasis added.

[26] CompSouth has already requested this data from BellSouth to conduct an analysis in this proceeding.

way, the focus of any further analysis can be limited to only those particular circumstances where the assumption determines the outcome.

Second, in those wire centers where the assumptions do affect the classification of a wire center, BellSouth should be required to provide, under an appropriate protective order, the names of each carrier and the amount of digital capacity that BellSouth assumes is being used to provide switched services to business customers. This data can then be used by the Authority and affected parties to identify and, where appropriate, challenge the validity of BellSouth's assumptions.

Q. Are you aware of any other issues concerning BellSouth's conversion of UNE-L lines to voice-grade equivalents?

A. Yes. It is my understanding that BellSouth claims that HDSL-capable loops should be counted as though they are DS1 loops (and then converted to 24 business lines).[27] There is nothing in the *TRRO*, however, that justifies this adjustment.

[27] Based on a review of BellSouth's testimony in Georgia, BellSouth position is slightly more subtle. As I understand BellSouth's Georgia testimony, BellSouth states that it has *not* counted HDSL loops as 24 business lines, but that it would be *appropriate* to do so. Because BellSouth apparently reserves the right to do so in the future, the Authority must resolve the issue here, even though it may not effect wire centers in this proceedings.

First, the *TRRO* is specific that the only lines that are to be converted to voice-grade equivalent services are digital access lines, noting the business line count:

> ... shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."[28]

An HDSL-*capable* loop is exactly that – a dry copper line that is not a digital facility without the addition of CLEC equipment.

Second, the FCC was clear that its business line tally is not intended to identify CLEC loops. The FCC specifically rejected suggestions that it should expand the analysis to include CLEC loops:

> Although it may provide a more complete picture to measure the number of business lines served by competing carriers entirely over competitive loop facilities in particular wire centers, such information is extremely difficult to obtain and verify.[29]

The additional capacity of an HDSL-capable loop – to the extent it is activated at all – are essentially CLEC-created loops. Not only did the FCC *not* indicate that HDSL-capable loops should be included in the business line count, to include any additional capacity created on those loops by the CLEC would be the equivalent of counting CLEC capacity – an approach the FCC explicitly rejected.

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[28] 47 CFR § 51.5, emphasis added.

[29] *TRRO*, ¶105.

Q. Is there anything in the *TRRO* that even hints at treating a HDSL-capable loop as a DS1?

A. No, I do not believe that the *TRRO* can be legitimately read to suggest that HDSL-capable loops should be assumed equal to 24 switched business lines. It is true that the FCC recognized that HDSL *technology* may be one of the means used to provide a DS1 loop (by BellSouth).[30] In defining BellSouth's unbundling obligations, the FCC stated:

> A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services.[31]

Taken out of context, the second sentence of the above cite might be misread in isolation as implying that BellSouth's unbundling obligations for HDSL-capable loops were equivalent to its unbundling obligations for DS1 loops. (Of course, even this reading nowhere suggests that HDSL-capable loops are to be *counted* as though they are 24 switched business lines for purposes of categorizing wire

[30] It is useful to note that the FCC only referenced HDSL-capable loops as having some relation to a DS1 loop in that section of its rules addressing BellSouth's unbundling obligations. BellSouth's contribution to the total business line count used to categorize wire centers, however, is determined by its ARMIS 43-08 filing. There is no basis to confuse the FCC's discussion of the technologies used by BellSouth to provision a DS1 with how the Commission should count such loops for purposes of arriving at the business line count.

[31] 47 C.F.R. §51.319(a)(4).

centers). When both sentences are read together (as they must be), however, it is clear that the FCC was defining a DS1 loop as a facility that is a 1.544 mbps channel, not anything that could someday become one, with the second sentence merely recognizing that a variety of facilities could be used to actually support the service.

Q. Does the *TRRO* contain language that indicates the FCC intended that BellSouth's obligation to provide HDSL-capable loops would continue, even where it was not required to unbundle a DS1 loop?

A. Yes. As part of its rationale that CLECs would be able to serve customers even where DS1 loops would no longer be unbundled, the FCC reasoned that CLECs would be able to use HDSL-capable loops (ironically citing to BellSouth for record support):

> The record also suggests that in some cases, competitive LECs might be able to serve customers' needs by combining other elements that remain available as UNEs. *See* BellSouth Dec. 8, 2004 DS1 *Ex Parte* Letter at 2 (stating that competitive LECs can use the following types of copper loops to provide DS1 service to customers: (1) 2-wire or 4-wire High Bit Rate Digital Subscriber Line (HDSL) Compatible Loops; (2) Asymmetrical Digital Subscriber Line Compatible Loops; (3) 2-wire Unbundled Copper Loops-Designed; or (4) Unbundled Copper Loop Non-Designed).[32]

[32] *TRRO*, footnote 454 to ¶163, emphasis added

Obviously, the FCC could not have tied BellSouth's unbundling obligations for HDSL-capable loops to its DS1 unbundling obligations because it concluded (as encouraged to do so by BellSouth) that CLECs would still be able to use HDSL capable loops as UNEs to serve customers where DS1 loops were no longer unbundled.

Q. In addition to the number of business lines, the other variable used to categorize wire centers for purposes of determining §251 UNE availability is the number of "fiber-based collocators." How does the FCC define a fiber-based collocator?

A. The complete definition of a fiber-based collocator is as follows:

> Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that
>
> (1) terminates at a collocation arrangement within the wire center;
>
> (2) leaves the incumbent LEC wire center premises; and
>
> (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph.
>
> Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a

> single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.[33]

In practical terms, before BellSouth may restrict §251 access to high-capacity transport in a wire center that qualifies on the basis of the number of fiber-based collocators, there must be at least 4 independent fiber networks (or their equivalent) for DS-1 transport in both wire centers (or at least 3 such networks to eliminate §251 access to DS-3 transport).

Q. How should the Authority proceed to evaluate BellSouth's claims regarding the number of business lines and fiber-based collocators so as to correctly categorize each wire center as required by the *TRRO*?

A. As I noted earlier, nearly all of the information used to categorize wire centers is in BellSouth's control. Consequently, the first step in any validation process is to obtain all the requisite information to determine its accuracy.[34] CompSouth has initiated this process, serving discovery on BellSouth that will enable it the ability to thoroughly analyze the wire center categorizations proposed by BellSouth in its direct testimony. Thus, while the testimony above has explained the appropriate

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[33] 47 C.F.R. §51.5

[34] I note that this reason alone requires state commission oversight in which meaningful discovery is a standard procedure.

methodology to employ, until discovery is complete it is not possible to recommend specific categories for individual wire centers.

Q. Has your review identified any preliminary problems with BellSouth's analysis?

A. Yes. As I explained above, one of the most critical variables is the number of Business Switched Access Lines from BellSouth's ARMIS 43-08 filing. It is my understanding that BellSouth developed its analysis based on 2003 data, even though 2004 ARMIS 43-08 data is available.

Obviously, the most appropriate data is the most current. Indeed, when the FCC directed that ARMIS 43-08 data must be used for the measure of Business Switched Access Lines, it specifically referenced its instructions for the 2004 ARMIS filing.[35]

Moreover, the statewide data demonstrates that failing to incorporate the most recent data significantly overstates the number of Business Switched Lines. Between 2003 and 2004, the number of Business Switched Access Lines declined by nearly 27,000 in Tennessee alone, a reduction of 4.6%. Depending upon its geographic distribution among BellSouth wire centers, a reduction of this

[35] *See TRRO* footnote 303, ¶105.

magnitude could have a determinative effect on the appropriate classification of a wire center.

Q. What should the Authority do once it fully reviews the underlying wire center data (and the recommendations of your rebuttal testimony)?

A. I recommend that the Authority adopt an order establishing the appropriate wire center designations for the BellSouth's operating territory in Tennessee, subject to the annual-update process described in the following section. This list should be incorporated by reference in the interconnection agreements adopted to implement the *TRRO*.

B. The Recommended Process for Future Changes

Q. Should the Authority also establish a formal process to review proposed changes to the wire center list?

A. Yes. The fundamental problem complicating the creation of this initial wire center list – i.e., that BellSouth has exclusive access to the requisite information while having a incentive to distort the analysis – will be as true in the future as it is now. Thus, the Authority should establish a set procedure that will enable entrants to challenge/validate future changes.

Q. What process do you recommend the Authority adopt?

A. I recommend that an annual filing procedure be established that is keyed to BellSouth's annual filing of ARMIS business line data. Because the ARMIS 43-08 data provides a foundation to the analysis, I recommend that BellSouth's requested changes (if any) be proposed simultaneously with its ARMIS filing. Specifically:

* BellSouth would file a proposed list of any new wire centers on April 1 of each year (coincident with its filing of ARMIS 43-08 with the FCC), reflecting the number of business lines and fiber-based collocators in each wire center as of December 31st of the year just ending.

* Included with the April filing, BellSouth would file all supporting documentation that each new wire center meets *TRRO* criteria, including the following information. Such documentation would be available to CLECs under terms of a standing proprietary agreement.

  a. The CLLI of the wire center.
  b. The number of switched business lines served by RBOC in that wire center as reported in ARMIS 43-08 for the year just ending.
  c. The number of UNE-P lines used to serve business customers.
  d. The number of analog UNE-L lines in service.
  e. The number of DS-1 UNE-L lines in service.
  f. The number of DS-3 UNE-L lines in service.
  g. A completed worksheet that shows, in detail, any conversion of access lines to voice grade equivalents.
  h. The names of claimed independent fiber-optic networks (or comparable transmission facilities) terminating in a collocation arrangement in that wire center.

* CLECs would have until May 1 to file a challenge to any new wire center named by BellSouth.

* The Authority should have a standing hearing date reserved (by June 1) to take evidence on any disputed wire center, and issue a decision by June 15th.

* Any changes to the wire center list would become effective on July 1 of that year.

Under the schedule above, any dispute concerning the appropriate wire center designation would be resolved within 90 days of BellSouth's initial filing with a revised wire center list becoming effective July 1. By having a standard procedure, the Authority can provide BellSouth a reasonable opportunity to update wire center lists as often as a critical piece of new information is collected (i.e., the ARMIS 43-08), while still ensuring CLEC rights are protected and its own time is used efficiently.

C. The DS1 Transport Cap

Q. Please explain the issue concerning the cap on DS1 transport.

A. As I explained earlier, the FCC adopted different wire center standards to determine where DS1 and DS3 transport must be offered as §251 network elements. As a general rule, the FCC concluded that DS1 transport must be offered as a §251 element everywhere except between Tier 1 wire centers, while DS-3 transport would be available along a more limited set of routes (i.e., DS3

transport would not be available as a §251 element along routes connecting Tier 1 *and* 2 wire centers).

In reaching this determination, however, the FCC recognized that a DS3 is simply a larger unit of digital capacity that is equal to 28 DS1s. As a result, a carrier ordering multiple DS1s could, at some point, have sufficient transport requirements to justify a DS3. In such circumstances, the FCC needed to reconcile having *different* unbundling obligations for DS1 transport, even where a CLEC had (at least in theory) sufficient transport demand to have ordered a DS3 (at which point the FCC had concluded the CLEC was no longer impaired).

Q. How did the FCC reconcile these conclusions?

A. The FCC reconciled its impairment determinations by placing a cap on the number of DS1s a carrier may order on <u>any route where DS3s are not available</u>, under § 251 applying the theory that if the carrier had a sufficient number of DS1s that it *could* have ordered a DS3, then the non-impairment finding for DS3 transport on that route should apply.[36]

> On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that

[36] The FCC adopted a similar limitation with respect to DS3 transport, reasoning that if a carrier leased 12 DS3s along an individual route that it would have achieved the scale needed to justify deployment (*TRRO*, ¶131).

> each carrier may obtain on that route to 10 circuits. This is consistent with the pricing efficiencies of aggregating traffic. While a DS3 circuit is capable of carrying 28 uncompressed DS1 channels, the record reveals that it is efficient for a carrier to aggregate traffic at approximately 10 DS1s. When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply.[37]

As the above discussion makes clear, the FCC adopted its cap on DS1 transport only "on routes for which we [the FCC] determine that there is no unbundling obligation for DS3 transport," not along routes where DS3s themselves would be available.

Q. Is BellSouth attempting to game the FCC's findings by restricting access to DS1 transport along all routes?

A. Yes. As the above makes clear, the sole purpose for the FCC's cap on DS1 transport was to reconcile its impairment findings for DS1 transport with its broader limitation on DS3 transport. The limitation on DS1 transport is not a *general* limitation, it is specific to only those routes where there is no §251 unbundling obligation for DS3 transport.

Unfortunately, BellSouth is attempting to game the FCC's rules, claiming that the DS1 cap applies on all routes, even those routes where the FCC has determined CLECs would be impaired even if they had sufficient needs to justify a DS3.

[37] *TRRO*, ¶128. Footnotes omitted.

BellSouth takes this position (presumably) because the specific rule implementing the cap on DS1 transport is not as clear as the *TRRO* itself.[38]

Q. Is it responsible to read individual rules in isolation, without the accompanying text?

A. No. The cap on DS1 transport was adopted for a very specific purpose – to prevent CLECs with enough individual DS1s that they were purchasing the equivalent of a DS3 from avoiding the FCC's finding that the a DS3 need not be offered on that particular route (at least under §251). The TRRO is absolutely clear on this. I repeat:

> On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits.... When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply.[39]

BellSouth's claim that it need not offer more than 10 DS1s on routes where DS3s would also be available under §251 is fundamentally inconsistent with the FCC's

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[38] Specifically, 47 C.F.R. §51 319(a) (e)(2)(ii)(B) states:

Cap on unbundled DS1 transport circuits. A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

[39] *TRRO*, ¶128. Footnotes omitted, emphasis added

findings – on routes which include a Tier 3 wire center on either end, CLECs are just as impaired with respect to the 11th DS1 (or 12th or 13th) as they are with the 10th. Indeed, the FCC has concluded that on those routes the CLEC would be impaired even if it required a DS3 (or multiple DS3s). BellSouth has no justification for refusing to provide additional DS1s on routes where both the DS1 and the DS3 (if the CLEC chooses to request one) are available as §251 elements.

Q. What do you recommend?

A. The Authority should require that interconnection agreements conform to the finding in the *TRRO* that the 10 DS1 limitation on dedicated transport applies solely on routes where DS3 transport is not required to be unbundled under §251.

IV. Establishing §271 Alternatives (Issues List No. 8)

Q. Why is it important for the Authority to establish §271 compliant offerings in this proceeding?

A. As I explain in more detail below, BellSouth is subject to two, independent, unbundling obligations under the federal Act. First, there are the unbundling obligations under §251 of the Act that generally apply to incumbent LECs wherever the FCC has determined impairment. In addition, however, BellSouth

voluntarily embraced a broader unbundling obligation under §271 of the Act in exchange for the authority to provide long distance services in Tennessee.

Significantly, until this proceeding concludes with interconnection agreements reflecting the reduced unbundling obligations established by the *TRRO*, BellSouth's §271 obligations will have been satisfied by §251 offerings that duplicated the specific requirements of §271. As §251 offerings are removed (either in whole or in part), however, CLECs must make informed choices as to alternatives to the §251 offerings they have used in the past. Because BellSouth's §271 offerings represent an important option to CLECs, the Authority must give practical effect to this option so that an orderly transition from §251 offerings to §271 offerings (or other choices) may occur. This includes (as I describe below) establishing "just and reasonable" prices for §271 elements, as well as adopting appropriate terms and conditions of service.[40]

A. BellSouth's Unbundling Obligations are Defined by Both §251 and §271

[40] I recognize that this Authority is well aware that BellSouth must offer just and reasonable §271 offerings in interconnection agreements, with the states having responsibility as the arbiters of such agreements to establish such rates were disputes arise. The Authority already established such an interim rate in the ITC^DeltaCom arbitration for switching, in Docket 03-00119 Because CompSouth has informally agreed with BellSouth to present similar testimony in each of its nine states – and because these same issues apply to certain high capacity elements in addition to switching, where the Authority has established an interim just and reasonable price – I have retained most of the "generic" testimony of this issue in Tennessee, even though this Authority has more experience with the issue than other BellSouth states.

Q. Does the federal Act include two separate and independent requirements concerning the unbundling of BellSouth's network?

A. Yes. Section 251 of the Act (which applies to all ILECs) calls for the unbundling of network elements upon a finding of impairment. Network elements unbundled in accordance with §251 of the Act must be priced at TELRIC in accordance with FCC rules. Bell Operating Companies (including BellSouth), however, are also subject to §271 of the Act that imposes *additional* unbundling obligations as a condition to their offering in-region, interLATA services.

Q. What network elements are specifically required to be offered by BellSouth in order to comply with §271 of the federal Act?

A. The specific obligations are spelled out in the "competitive checklist."[41] The FCC determined in the *TRO* that the competitive checklist imposed distinct obligations requiring the offering of local switching, local loops, transport, as well as databases and signaling. As the FCC summarized its decision:

> Specifically, the Commission considered the relationship between checklist item two (which references section 251) and checklist items four through six and ten (which do not). The Commission concluded that checklist items four through six and ten constitute a distinct statutory basis for the requirement that BOCs provide competitors with access to certain network elements that does not necessarily hinge on whether those elements are included among

[41] 47 U.S.C. § 271(d)(3).

> those subject to section 251(c)(3)'s unbundling requirements. Accordingly, the Commission stated that even if it concluded that requesting telecommunications carriers are not "impaired" without access to one of those elements under section 251, section 271 would still require the BOC to provide access.[42]

The FCC's conclusions regarding the additional obligations of §271 were affirmed by the D.C. Circuit in *USTA II*.[43] As such, BellSouth's obligations under Section 271 continue, unless and until the FCC "forebears" from the requirements of the competitive checklist.[44]

Q. Why would Congress establish additional unbundling obligations in §271 of the federal Act?

A. Congress well understood that permitting the RBOCs to offer in-region long distance services carried great risk. As everyone knew when the Act passed, the RBOCs' ability to bundle local and long distance would be the most powerful force in post-divestiture telecommunications. As noted earlier, BellSouth has achieved nearly a 55% penetration rate for mass market long distance services in

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[42] In the Matter of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), WC Docket 01-338 et al., Memorandum Opinion and Order at ¶ 7 (rel. Oct. 27, 2004) ("Broadband Forbearance Order") (footnotes omitted)

[43] *USTA v FCC*, 359 F.3d 554, 588-590 (D.C. Cir. 2004) ("*USTA II*").

[44] The FCC has chosen to forebear from requiring continued unbundling of certain "broadband" network elements. (*See generally Broadband Forbearance Order*) This decision, however, does not curtail BellSouth's obligations with respect to other affected elements, such as switching or high capacity loops or transport offered over conventional technologies.

Tennessee,[45] a level of success more than twice that achieved by MCI over twenty years.

Precisely because of this expected advantage, Congress was clear that interLATA authority would only be permitted where an RBOC had *fully* opened its network to competitors. Specifically, §271 of the Act required that each of the core elements of the local network – loops, transport, switching and signaling – would be available to competitive entrants in any state where the RBOC sought to offer long distance service, without the need for any additional findings by the FCC as to whether an entrant would be "impaired." As the FCC recognized:

> These additional requirements [the unbundling obligations in the competitive checklist] reflect Congress' concern, repeatedly recognized by the Commission and courts, with balancing the BOCs' entry into the long distance market with increased presence of competitors in the local market . . . . The protection of the interexchange market is reflected in the fact that section 271 primarily places in each BOC's hands the ability to determine if and when it will enter the long distance market. If the BOC is unwilling to open its local telecommunications markets to competition or apply for relief, the interexchange market remains protected because the BOC will not receive section 271 authorization.[46]

Q. What issues must be resolved in order to establish a §271-compliant offering?

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[45] BellSouth Investor Briefing, 1st Quarter 2005, April 21, 2005, page 6. Market penetration is for Tennessee and Florida combined.

[46] *TRO* ¶ 655.

A. The principal issue that must be resolved in order to establish a 271-compliant offering is price. The FCC has determined that §271 elements are subject to a *potentially* more liberal pricing standard than the standard that applies to elements offered under §251 of the Act. Specifically, network elements offered solely in order to comply with §271 must be just, reasonable, nondiscriminatory and provide meaningful access:

> Thus, the pricing of checklist network elements that do not satisfy the unbundling standards in section 251(d)(2) are reviewed utilizing the basic just, reasonable, and nondiscriminatory rate standard of sections 201 and 202 that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes, including (for interstate services) the Communications Act. Application of the just and reasonable and nondiscriminatory pricing standard of sections 201 and 202 advances Congress's intent that Bell companies provide meaningful access to network elements.[47]

In addition, state commissions must arbitrate appropriate terms and conditions of service, most specifically whether BellSouth is required to connect network elements obtained under §251 to elements obtained under §271 (or other wholesale offerings). As I explain below, when BellSouth "connects" §251 elements with non-§251 offerings, the act is referred to as "commingling."

B. §271 Elements Must be Offered in Interconnection Agreements

[47] *TRO* ¶ 663 (footnotes omitted).

Q. Does §252 govern the establishment of §271-compliant offerings, including the establishment of just and reasonable rates, terms and conditions?

A. Yes. Each §271 network element must be offered through interconnection agreements that are subject to the §252 state commission review and approval process. Section 271(c)(2)(A) of the Act clearly links a BOC's duty to satisfy its obligations under the competitive checklist to the BOC providing that access through an interconnection agreement (or a statement of generally available terms ("SGAT")), stating:

> (A) AGREEMENT REQUIRED - A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought—
>
> (i)(I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A) [Interconnection Agreement], or
>
> (II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B) [an SGAT], and
>
> (ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph [the competitive checklist].[48]

As the above-quoted language makes clear, the specific interconnection obligations of §271's competitive checklist (item ii above) must be provided pursuant to the "agreements" described in Section 271(c)(1)(A). By directly

[48] 47 U.S.C. § 271(c)(2)(A).

referencing Section 271(c)(1)(A) and (B), the Act ties compliance with the competitive checklist to the review process described in Section 252. As Section 271(c)(1) states:

> (1) AGREEMENT OR STATEMENT- A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought.
>
> (A) PRESENCE OF A FACILITIES-BASED COMPETITOR- A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding **agreements that have been approved under section 252** specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers.[49]

Thus, just as the 252 arbitration process is the vehicle through which the new unbundling rules described in the *TRRO* are implemented, so too must the 252 process be used to establish the contract terms, conditions and prices for §271-compliant network elements. §271 specifically and unambiguously requires that checklist items be offered through interconnection agreements approved under §252 of the Act.

[49] 47 U.S.C. § 271(c)(1)(emphasis added).

Q. Has the Supreme Court addressed the complementary roles of the FCC and the states in regulating interconnection agreements under §252?

A. Yes. As the Supreme Court explained:

> . . . 252(c)(2) entrusts the task of *establishing rates* to the state commissions . . . . The FCC's prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory 'Pricing standards' set forth in 252(d). *It is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances.*[50]
>
> ***
>
> The approach [in the federal Act] was deliberate, through a hybrid jurisdictional scheme with the FCC setting a basic, default methodology for use in setting rates when carriers fail to agree, but leaving it to state utility commissions to set the actual rates.[51]

Although the particular circumstance being addressed by the Supreme Court concerned the TELRIC pricing standard, the *process* being endorsed by the Court is appropriate operation of Section 252 framework, which relies on the state commissions to arbitrate (when needed) and approve all interconnection agreements.

C. Establishing §271 Compliant Prices

[50] *AT&T Corp vs. Iowa Utilities Board*, 525 U.S. 366, 385, 119 S.Ct. 721, 732 (1999) (emphasis added).

[51] *Verizon Communications, Inc. v. FCC*, 535 U.S. at 489.

Q. You indicated that the FCC adopted a "just and reasonable" pricing standard to govern §271 rates. Is this standard significantly different than the TELRIC standard used to judge the prices of §251 elements?

A. No, not entirely. Indeed there is an important nexus between the two standards – that is TELRIC rates *must* fall within the range of just and reasonable rates by statute. The Act itself requires that rates for §251 network elements (which the FCC has interpreted to require compliance with the TELRIC standard) must be "just and reasonable."[52] However, the FCC has also concluded that the just and reasonable standard could permit prices different than TELRIC-based rates:

> So if, for example, pursuant to section 251, competitive entrants are found not to be "impaired" without access to unbundled switching at TELRIC rates, the question becomes whether BOCs are required to provide unbundled switching at TELRIC rates pursuant to section 271(c)(2)(B)(vi). In order to read the provisions so as not to create a conflict, we conclude that section 271 requires BOCs to provide unbundled access to elements not required to be

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[52] Specifically, section 252(d) PRICING STANDARDS requires:

(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES-

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be—

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

> unbundled under section 251, *but does not require TELRIC pricing.*[53]

Thus, although §271 does not require TELRIC-based rates, the fact that such rates must also all be within the range of just and reasonable rates should help inform the Authority as to what rates would be appropriate in a §271-compliant offering.

Q. Are you prepared to recommend permanent §271 prices at this time?

A. CompSouth has served discovery on BellSouth with the intent that specific rate recommendations can be made in this proceeding. It may be necessary, however, for the Authority to adopt interim §271 rates for high capacity loops and transport (where no longer required under §251),[54] pending the completion of a separate "permanent" rate investigation.

Q. If the Authority does adopt interim rates for high capacity loops and transport, what rate level do you recommend?

A. The *TRRO* adopted specific transitional pricing rules to apply to UNEs that are no longer required to be unbundled under §251 of the Act. These transitional rates imposed a 15% increase on loops and transport prices where §251 no longer

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53 *TRO* ¶ 659 (emphasis added).

54 As noted earlier, the Authority has already established an interim just and reasonable rate for local switching in the ITC^DeltaCom arbitration (Docket 03-00119).

compelled TELRIC-based rates. These transitional increases would be a reasonable first approximation of "just and reasonable" §271 rates if the Authority is unable to establish permanent rates at this time. Indeed, this approach was recently adopted by the Missouri Public Service Commission.[55]

D. BellSouth's Commingling Obligations Apply to §271 Elements (Issues List No. 14)

Q. In addition to price, are there any other critical issues that must be addressed for §271 offerings to provide entrants "meaningful access?"[56]

A. Yes. Price is only half the equation – in addition, §271 offerings must include terms and conditions that are commercially useful. As a general policy, the Authority should require that §271 offerings should be identical – except as to price – to the §251 offerings they replace.

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[55] Arbitration Order, Public Service Commission of Missouri, TO-2005-0336, July 11, 2005.

[56] Although the FCC's pricing standard for §271 network elements is frequently shortened to "just and reasonable," the complete standard includes requirements that rates be nondiscriminatory and provide meaningful access (TRO, ¶663 emphasis added):

> Thus, the pricing of checklist network elements that do not satisfy the unbundling standards in section 251(d)(2) are reviewed utilizing the basic just, reasonable, and nondiscriminatory rate standard of sections 201 and 202 that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes, including (for interstate services) the Communications Act. Application of the just and reasonable and nondiscriminatory pricing standard of sections 201 and 202 advances Congress's intent that Bell companies provide meaningful access to network elements.

Q. Is BellSouth required to "combine" §271 elements with other elements?

A. Yes, although it is important to describe BellSouth's obligation in the appropriate terms because of the semantic construction of federal rules concerning the connection of network facilities for use by a competitor. Specifically, the FCC has limited the term "combining" to refer to the particular circumstance where both elements being requested by an entrant are required by §251 of the federal Act. As such, BellSouth is not technically required to "combine" §271 elements, but that does not mean that BellSouth does not have the same obligation to *connect* §271 elements as it does for elements required under §251 – what changes is the term used to describe the activity, not the obligation itself.

Q. What term is used to describe BellSouth's obligation to connect §251 elements to other wholesale services, such as §271 elements?

A. The term commingling is used to describe BellSouth's obligation to connect a §251 network element to any other wholesale offering (such as a §271 network element). As the FCC explained:

> 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.[57]

Obviously, §271 services listed in the competitive checklist are "wholesale services" – indeed, these checklist items are such important wholesale services that Congress specifically demanded that BellSouth agree to offer such services as a precondition to its offering in-region long distance services.

Q. Is BellSouth required to offer UNE combinations and commingled arrangements?

A. Yes. The FCC's rules involving combinations and commingled arrangements work together to ensure that each of the discrete elements offered by BellSouth – whether offered under §251 of the Act, as special access or any other wholesale arrangement (which would include elements offered pursuant to §271 of the Act) – are also available in connected form. What defines the difference between a "combination" and "commingling" is not the *facilities* themselves that are connected, but the *legal* obligation under which they are offered. The "combinations rules" (which apply to §251 network elements) are based on the

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[57] TRO ¶ 597. Emphasis added. Specifically, in CFR 51.5:

> Commingling means the connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services. Commingle means the act of commingling.

nondiscrimination requirement found in §251. "Commingled" arrangements, however, include *both* §251 network elements and network facilities/functions offered through a mechanism other than §251.

Importantly, the fact that commingled arrangements include both §251 and non-§251 elements does not grant BellSouth a license to discriminate, for more than just §251 of the federal Act prohibits discriminatory and anticompetitive conduct. Specifically, the FCC has held (and the D.C. Circuit has affirmed) that the general nondiscrimination obligations of §202 apply to these other wholesale offerings, including those offerings required by the competitive checklist (loops, transport, switching and signaling).[58]

Q. Has the FCC determined that general requirements of §§ 201 and 202 obligate BellSouth to connect elements to form "commingled" arrangements?

A. Yes. Like its rules that apply specifically to §251 network elements, the FCC found that the general nondiscrimination duties of §202 imposed similar obligations where arrangements containing both §251 and non-§251 facilities and/or services were involved:

[58] As explained in *USTA II*: "Of course, the independent unbundling obligation under § 271 is presumably governed by the *general* non-discrimination requirements of § 202." U.S. Telecom Ass'n vs. FCC, 359 F3d 554, decided March 2, 2004, emphasis in the original.

> In addition, upon request, an incumbent LEC shall perform the functions necessary to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to a method other than unbundling under Section 251(c)(3) of the Act.[59]
>
> ***
>
> Thus, we find that a restriction on commingling would constitute an "unjust and unreasonable practice" under 201 of the Act, as well as an "undue and unreasonable prejudice or advantage" under section 202 of the Act. Furthermore, we agree that restricting commingling would be inconsistent with the nondiscrimination requirement in Section 251(c)(3).[60]

Thus, whether the applicable nondiscrimination standard is contained in §251 or §202 is immaterial – BellSouth may not refuse to combine wholesale offerings, whether such offerings are entirely comprised of §251 elements (combinations), or §251 elements with other offerings (commingling).

Q. Is it reasonable to require that BellSouth permit carriers to "mix and match" wholesale offerings (including §271 network elements) in this way?

A. Absolutely. There is no question that BellSouth must offer the individual elements and facilities/services that comprise the combinations and commingled arrangements that CLECs seek. The issue here is simply whether BellSouth should be permitted to impose operational impediments to using elements

[59] TRO ¶ 597.

[60] TRO ¶ 591. Footnotes omitted.

together, when the entire purpose of each of these wholesale arrangements (assuming they are not sham attempts at feigned regulatory compliance) is offerings that are commercially useful.

Q. What do you recommend?

A. I recommend that the Authority require BellSouth to offer §271 elements under the same terms and conditions as apply (or, in the case of switching, applied) to the parallel §251 offering, except as to price.

E. Performance Plans and §271 (Issues List No. 13)

Q. In addition to retaining all the other terms and conditions of service, should the Authority also continue to apply performance plans to BellSouth's §271 offerings in the same manner that such plans apply to UNEs required under §251?

A. Yes. The performance penalty plans were an important part of BellSouth's commitment to maintain open markets after it had obtained approval to offer long distance services. As the FCC explained when it granted BellSouth authority to provide long distance services in Tennessee:

> ...we find that the existing Service Performance Measurements and Enforcement Mechanisms (SEEM plans) currently in place for Florida and Tennessee provide assurance that these local markets will remain open after BellSouth receives section 271 authorization. The Florida Commission's and the Tennessee Authority's oversight and review of their respective plans and their performance metrics provide additional assurance that the local market will remain open. In prior orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market. Although it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms, the Commission previously has found that the existence of a satisfactory performance monitoring and enforcement mechanism is probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.[61]

As the above made clear, these plans were used as probative evidence that BellSouth would continue to meet its §271 obligations after a grant of authority. As such, the mere fact that an element has moved from being a §251/§271 obligation to solely a §271 obligation hardly justifies eliminating provisions adopted to ensure compliance with §271. As these plans were adopted to ensure continuing compliance with §271, they should continue to apply to those offerings made available to comply with §271.

[61] Memorandum Opinion and Order, Federal Communications Commission Docket CC 02-307, December 19, 2002, ¶ 167. Emphasis added.

V. Miscellaneous Issues

A. Routine Network Modifications (Issues List No. 26-27)

Q. What are routine network modifications?

A. The FCC defines routine network modifications as follows:

> A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers.[62]

Under FCC rules, BellSouth is obligated to make routine network modifications for CLECs where the UNE loop has already been constructed.

Q. Does the FCC list or provide examples of routine network modifications?

A. Yes, it does. With respect to loops, the FCC stated:

> Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine modifications may entail activities such as accessing

[62] 47 C.F.R. § 51.319(a)(8)(ii)(local loops); § 51.319(E)(5)(ii)(dedicated transport).

> manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings.[63]

Q. Did the FCC also provide examples of what was not a routine network modification?

A. Yes, the FCC provided:

> Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.[64]

Q. Should the network modification language closely track the FCC's specific discussion?

A. Yes. The key is that the BellSouth must be required to provide all the same network modifications for the CLEC's customers that it performs for itself. This is particularly true for high-capacity facilities, which are the predominant loop-type required by CLECs and the loop-type most frequently modified to support high-capacity services.

Q. Is it clear that the FCC intended that its routine network modification policies would apply to high capacity loops?

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63 *Id.*

64 *Id.*

A. Yes. For example, in ¶633 of the *TRO*, the FCC noted that the ILECs, in provisioning "high-capacity loop facilities" to CLECs, must make the same routine modifications to their existing loop facilities that they make for their own customers. Moreover, in ¶634, the FCC noted that its "operating principle is that incumbent LECs must perform all loop modification activities that it [sic] performs for its own customers." Finally, in ¶635, where the FCC actually discusses findings in the record about attaching routine electronics, the FCC began by stating as follows:

> The record reveals that attaching routine electronics, such as multiplexers, apparatus cases, and doublers, to high-capacity loops is already standard practice in most areas of the country.[65]

The key is that the provisions requiring BellSouth to perform the same routine network modifications for high capacity loop facilities used to serve CLEC customers as it does for itself.

B. Line Conditioning (Issues List No. 33*)

Q. Has the FCC adopted specific rules requiring BellSouth to condition loop plant to support advanced data services?

[65] *TRO*, ¶ 635.

A. Yes. BellSouth is expressly required to perform "line conditioning" under 47 CFR 51.319 (a)(1)(iii):

> (iii) Line conditioning. The incumbent LEC shall condition a copper loop at the request of the carrier seeking access to a copper loop under paragraph (a)(1) of this section, the high frequency portion of a copper loop under paragraph (a)(1)(i) of this section, or a copper subloop under paragraph (b) of this section to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not the incumbent LEC offers advanced services to the end-user customer on that copper loop or copper subloop. If the incumbent LEC seeks compensation from the requesting telecommunications carrier for line conditioning, the requesting telecommunications carrier has the option of refusing, in whole or in part, to have the line conditioned; and a requesting telecommunications carrier's refusal of some or all aspects of line conditioning will not diminish any right it may have, under paragraphs (a) and (b) of this section, to access the copper loop, the high frequency portion of the copper loop, or the copper subloop.

Q. Is Line Conditioning the same obligation as Routine Network Modification?

A. No. As the above rule provision makes clear, BellSouth is obligated to condition facilities "...whether or not the incumbent LEC offers advanced services to the end-user customer on that copper loop or copper subloop." Thus, BellSouth need not routinely condition loop facilities for its own services for it to be obligated to condition facilities for other CLECs.[66] The obligation to conduct routine network modifications (discussed above), by contrast, is a separate and distinct obligation

[66] I note that if BellSouth does routinely condition its own facilities, it would be required to perform such modifications for a CLEC.

from BellSouth's additional obligation to perform line conditioning for CLECs. In fact, these two obligations are governed by distinct rules: Routine Network Modifications are mandated by Rule 51.319(a)(8), while Line Conditioning is mandated by Rule 51.319(a)(1)(iii). Thus, the structure of Rule 51.319 in itself demonstrates that Line Conditioning is not the same obligation as a Routine Network Modification.

Q. Can you provide an example that illustrates the difference between "Line Conditioning" and a "Routine Network Modification"?

A. Yes. To a large extent, BellSouth's' DSL offerings are housed in remote terminals, located closer to customers. CLECs, on the other hand, collocate their equipment at the central office and, therefore, must frequently use longer loops.

To the extent that BellSouth limits its own line conditioning to shorter loops because of its network architecture, it could claim that it does not need to perform line conditioning for a CLEC because it was not a "routine network modification."[67] However, because the FCC has specifically established Line Conditioning as an obligation that BellSouth must honor *whether or not it would do so for its own customers*, BellSouth must still condition facilities at the request of the CLEC at the TELRIC-compliant rates already approved by this Authority.

[67] The FCC defines a Routine Network Modification as "...an activity that the incumbent LEC regularly undertakes for its own customers."

C. EEL Audit Requirements (Issues List No. 29)

Q. Do FCC rules permit BellSouth to audit CLEC use of high capacity EELs?

A. Yes. This authority, however, is not open ended. To the contrary, the FCC determined that the ILEC should have only "a limited right to audit compliance with the qualifying service eligibility criteria"[68] and left it to the state commission to develop specific approaches:

> ... we [the FCC] recognize that the details surrounding the implementation of these audits may be specific to related provisions of interconnection agreements or to the facts of a particular audit, and that the states are in a better position to address that implementation.[69]

Principles that the FCC established are that the ILEC should use an independent auditor and perform audits no more than once each year.[70] To assure independence, the auditor should be mutually agreed upon by BellSouth and the CLEC.

Q. Is the FCC's audit scheme intended to encourage "fishing expeditions?"

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68 TRO, ¶626, emphasis added.

69 *TRO*, ¶ 625.

70 *TRO*, ¶ 626.

A. No. The FCC's principles are clear. BellSouth has only a "limited right to audit," not an open invitation; in addition, the FCC's intention was to grant CLECs "... unimpeded UNE access based upon self-certification, subject to later verification based upon cause."[71] It is not enough to merely want to audit, BellSouth must have some basis that an audit is appropriate.

Q. What type of procedure do you recommend?

A. To assist a CLEC in preparing to respond to a BellSouth EEL audit request, BellSouth should provide the CLECs with proper notification and the basis to BellSouth's assertion that it has good cause to conduct an audit. CLECs are entitled to review relevant documentation that forms the basis for the cause alleged, and to know which circuits are implicated by those allegations. This approach is necessary to give "teeth" to the FCC's *for-cause* audit standard; undocumented cause is no cause at all. Moreover, because it makes relevant documentation available early in the process, the approach proposed by CompSouth would identify potential issues quickly, thus avoiding unnecessary disputes over whether BellSouth may or may not proceed with an audit.

By requiring BellSouth to establish the scope and the basis for its claimed right to audit up front, it is more likely that BellSouth and the target CLEC will be able to

[71] *TRO*, ¶ 622. Emphasis added.

narrow and/or more quickly resolve disputes over whether or not BellSouth has the right to proceed with an EEL audit. Although the *TRO* did not include a specific notice requirement, this Authority may order such a requirement. As noted above, the *TRO* only includes "basic principles for EEL audits" and should not be construed as a comprehensive overview of all EEL audit requirements.

D. Mandated Migration Charges (Issues List No. 10)

Q. How do you define a "mandated migration?"

A. I use the term here to refer to any migration that BellSouth effectively forces on an entrant because a particular UNE or Combination is no longer offered. These migrations are not the choice of the CLEC. As the "moving party" for change, BellSouth should accept responsibility for identifying circuits to be migrated and absorb any non-recurring activity associated from implementing its own decisions.

Establishing new arrangements – whether different network configurations or simply new prices – are not the choice of the CLEC. Because it is BellSouth that stands to garner all of the benefit from conversions from §251 UNEs to other arrangements, BellSouth should shoulder the costs associated with implementing its demands. The CLECs will already face higher costs by paying BellSouth

higher prices; they should not also be required to pay order placement charges, disconnect charges or nonrecurring charges associated with a conversion to or establishment of an alternative service arrangement.

VI. Conclusion

Q. Please summarize your testimony.

A. The decisions the Authority reaches in this arbitration will be the most competitively significant since the initial arbitrations established the foundation for local competition. As the market moves from §251-based offerings to alternatives, including §271-compliant offerings, the goal must be continued competition. The recommendations above are offered with that goal in mind.

Q. Does this conclude your testimony?

A. Yes.

DIRECT TESTIMONY OF JOSEPH GILLAN
ON BEHALF OF COMPSOUTH

EXHIBIT JPG-1

COMPSOUTH PROPOSED CONTRACT LANGUAGE FOR ISSUES IDENTIFIED IN JOINT ISSUES LIST

NOTE: **ISSUE 1** was a "placeholder" issue on the Joint Issues List. It has no specific contract language associated with it.

ISSUE 2:
What is the appropriate language to implement the FCC's transition plan for (1) switching, (2) high capacity loops and (3) dedicated transport as detailed in the FCC's Triennial Review Remand Order (TRRO), issued February 4, 2005?

CompSouth's proposed contract language establishes the following processes for the transition of Section 251(c)(3) switching, high-capacity loops, dedicated transport, and dark fiber UNEs.

2.2
Transition for Certain DS1 and DS3 UNE Loops Under Section 251.

2.2.1
For purposes of this Section 2, the Transition Period for the Embedded Customer Base of DS1 and DS3 Loops (defined in 2.2.2) and for the Excess DS1 and DS3Loops (defined in 2.2.3) is the twelve (12) month period beginning March 11, 2005 and ending March 10, 2006.

2.2.2
For purposes of this Section 2, Embedded Customer Base means customers served by DS1 and DS3 Loops that were in service for CLEC as of March 10, 2005 in those wire centers that, as of such date, met the criteria set forth in Section 2.2.4.1 or 2.2.4.2. CLEC shall be entitled to order and BellSouth shall provision DS1 and DS3 Loops that CLEC orders for the purpose of serving CLEC's Embedded Customer Base, and such facilities are included in the Embedded Customer Base. Subsequent disconnects or loss of customers by CLEC shall be removed from the Embedded Customer Base.

2.2.3
Excess DS1 and DS3 Loops are those CLEC DS1 and DS3 Loops in service as the Effective Date of this Agreement, in excess of the caps set forth in Sections 2.2.4.1and 2.2.4.2, respectively, or that are otherwise no longer available as section 251 UNEs. Subsequent disconnects or loss of customers, by CLEC shall be removed from Excess DS1 and DS3 Loops.

2.2.4
Notwithstanding anything to the contrary in this Agreement, BellSouth shall make available DS1 and DS3 UNE Loops to the Embedded Customer Base as described in this Section 2.2 only during the Transition Period:

2.2.4.1
BellSouth shall provide CLEC nondiscriminatory access to DS1 Loops to any Building not served by a wire center with at least 60,000 Business Lines and at least four Fiber-Based Collocators. CLEC shall be entitled to obtain up to ten (10) DS1 UNE Loops to each Building in which DS1 Loops are available on an unbundled basis pursuant to Section 251(c)(3).

2.2.4.2
BellSouth shall provide CLEC nondiscriminatory access to DS3 Loops to any Building not served by a wire center with at least 38,000 Business Lines and at least four Fiber-Based Collocators. CLEC shall be entitled to obtain one DS3 UNE Loop to each Building in which DS3 UNE Loops are available on an unbundled basis pursuant to Section 251(c)(3).

2.2.4.3
The initial list of wire centers meeting the criteria set forth in Sections 2.2.4.1 and 2.2.4. 2 above as of the Effective Date of this Agreement is attached as Exhibit C.

2.2.6
Transition Period Pricing. From the Effective Date of this Agreement through the completion of the Transition Period, BellSouth may charge a rate for CLEC's Embedded Customer Base and CLEC's Excess DS1 and DS3 Loops described in this Section 2.2, except pursuant to the self-certification process as set forth in Section 1.8 of this Attachment 2, a rate equal to the higher of:

115% of the TELRIC rate paid for that element on June 15, 2004; or

115% of a new TELRIC rate the Authority establishes, if any, between June 16, 2004 and March 11, 2005.

These rates shall be set forth in Exhibit B.

2.2.7
Once a wire center exceeds both of the thresholds set forth in Sections 2.2.4.1 and 2.2.4.2, BellSouth will not be required to provide CLEC access to new DS1 UNE Loops for such wire center. In such cases, BellSouth will provide access to new DS1 Loops as required pursuant to section 271.

2.2.8
Once a wire center exceeds both of the thresholds set forth in Sections 2.2.4.1 and 2.2.4.2, BellSouth will not be required to provide CLEC access to new DS3 UNE Loops for such wire center. In such cases, BellSouth will provide access to new DS3 Loops as required pursuant to section 271.

2.2.9
BellSouth will provide written notice to CLEC no later than February 10, 2006 of the specific DS1 and DS3 UNE Loops, including the Embedded Customer Base and Excess DS1 and DS3 UNE Loops that are required to be transitioned to other facilities. CLEC may transition from these DS1 and DS3 UNE Loops to other available UNE Loops, wholesale facilities provided by BellSouth, including special access, DS1 and DS3 Loops unbundled under Section 271, wholesale facilities obtained from other carriers or self-provisioned facilities. No later than March 10, 2006, CLEC shall submit spreadsheet(s) identifying all of the Embedded Customer Base of circuits and Excess DS1 and DS3 Loops to be either (1) disconnected and transitioned to wholesale facilities obtained from other carriers or self-provisioned facilities; or (2) converted to other available UNE Loops or other wholesale facilities provided by BellSouth, including special access and DS1 and DS3 Loops unbundled under section 271. Such spreadsheet also shall identify circuits for which there is a dispute regarding its classification as part of the Embedded Customer Base or Excess DS1 and DS3 UNE Loops; the identification of such disputed circuits on the spreadsheet shall constitute self-certification as described in Section 1.8. Such spreadsheet shall take the place of an LSR or ASR. If CLEC chooses to convert the DS1 and DS3 UNE Loops into special access circuits, BellSouth will include such DS1 and DS3 Loops once converted within CLEC's total special access circuits and apply any discounts to which CLEC is entitled.

2.2.9.1
If CLEC fails to submit the spreadsheet(s) specified in Section 2.2.9 above for its Embedded Customer Base and Excess DS1 and DS3 UNE Loops prior to March 11, 2006, BellSouth may transition such circuits to the equivalent section 271 service.

2.2.9.2
For Embedded Customer Base circuits and Excess DS1 and DS3 UNE Loops transitioned pursuant to Section 2.2.9 or 2.2.9.1, the applicable recurring charges for alternative services provided by BellSouth shall apply as of the date such services are provided to CLEC, whether ordered from BellSouth or designated by spreadsheet pursuant to Section 2.2.9 by March 10, 2006. No nonrecurring charges shall apply to the transition of Embedded Customer Base and Excess DS1 and DS3 UNE Loops to (1) wholesale facilities obtained from other carriers or self-provided facilities; or (2) other available UNE Loops or other wholesale facilities provided by BellSouth, including special access and DS1 and DS3 Loops unbundled under Section 271. The transition of the Embedded Customer Base and Excess DS1 and DS3 UNE Loops pursuant to Section 2.2.9 and 2.2.9.1 should be performed in a manner that avoids, or otherwise minimizes to the extent possible, disruption or degradation to CLEC's customers' service.

2.3.6.1
Transition for Certain UNE Dark Fiber UNE Loops under Section 251

2.3.6.1.1
For purposes of this Section 2.3.6, the Transition Period for the Embedded Customer Base of Dark Fiber Loops (defined in 2.3.6.1.2) is the eighteen (18) month period beginning March 11, 2005 and ending September 10, 2006.

2.3.6.1.2
For purposes of this Section 2.3.6, Embedded Customer Base means end user customers served by Dark Fiber Loops that were in service for CLEC as of the Effective Date of the Agreement. CLEC shall be entitled to order and BellSouth shall provision Dark Fiber Loops that CLEC orders for the purpose of serving CLEC's Embedded Customer Base and such facilities are included in the Embedded Customer Base. Subsequent disconnects or loss of end user customers by CLEC shall be removed from the Embedded Customer Base.

2.3.6.2
Notwithstanding anything to the contrary in this Agreement, BellSouth shall make available Dark Fiber UNE Loops as described in this Section 2.3.6 only for CLEC's Embedded Customer Base during the Transition Period.

2.3.6.3
Transition Period Pricing. From the Effective Date of this Agreement through the completion of the Transition Period, BellSouth may charge a rate for CLEC's Embedded Customer Base as described in this Section 2.3.6, as set forth below:

A rate equal to the higher of:

115% of the TELRIC rate CLEC paid for that element on June 15, 2004; or

115% of the TELRIC rate the Authority establishes, if any, between June 16, 2004 and March 11, 2005.

These rates shall be set forth in Exhibit B

2.3.6.4
BellSouth will provide written notice to CLEC no later than June 10, 2006 of the specific Dark Fiber UNE Loops that are required to be transitioned to other facilities. CLEC may transition from these Dark Fiber UNE Loops to other available wholesale facilities provided by BellSouth, including special access, Dark Fiber Loops unbundled under section 271, wholesale facilities obtained from other carriers or self-provisioned facilities. No later than September 10, 2006, CLEC shall submit spreadsheet(s) identifying all of the Embedded Customer Base of circuits to be either (1) disconnected or transitioned to wholesale facilities obtained from other carriers or self-provisioned facilities; or (2) converted to other wholesale facilities provided by BellSouth, including special access

and Dark Fiber Loops unbundled under section 271. Such spreadsheets also shall identify circuits for which there is a dispute regarding its classification as part of the Embedded Customer Base. Such spreadsheet shall take the place of an LSR or ASR. If CLEC chooses to convert the Dark Fiber UNE Loops into special access circuits, BellSouth will include such Dark Fiber Loops once converted within CLEC's total special access circuits and apply any discounts to which CLEC is entitled.

2.3.6.5
If CLEC fails to submit the spreadsheet(s) specified in Section 2.3.6.4 above for its Embedded Customer Base prior to September 11, 2006, BellSouth may transition such circuits to the equivalent BellSouth section 271 service.

2.3.6.6
For Embedded Customer Base circuits transitioned pursuant to Section 2.3.6.4 or 2.3.6.5, the applicable recurring charges for alternative services provided by BellSouth shall apply as of the date such services are provided to CLEC, whether ordered from BellSouth or designated by spreadsheet pursuant to Section 2.3.6.4 by September 10, 2006. No nonrecurring charges shall apply to the transition of Embedded Customer Base to (1) wholesale facilities obtained from other carriers or self-provided facilities; or (2) other wholesale facilities provided by BellSouth, including special access and Dark Fiber Loops unbundled under Section 271. The transition of the Embedded Customer Base pursuant to section 2.3.6.4 and 2.3.6.5. should be performed in a manner that avoids, or otherwise minimizes to the extent possible, disruption or degradation to CLEC's customers' service.

4.4
Transition for Certain UNE Local Switching Under 251

4.4.1
For purposes of this Section 4.4, the Transition Period for the Embedded Customer Base of Local Switching (defined in 4.4.2) is the twelve (12) month period beginning March 11, 2005 and ending March 10, 2006.

4.4.2
For the purposes of this Section 4.4, Embedded Customer Base means end user customers served by Local Switching that was in service for CLEC as of the Effective Date of the Agreement. CLEC shall be entitled to order and BellSouth shall provision Local Switching orders for the purposes of serving CLEC's Embedded Customer Base and such facilities are included in the Embedded Customer Base. Subsequent disconnects or loss of end user customers by CLEC shall be removed from the Embedded Customer Base.

4.4.3
Notwithstanding anything to the contrary in this Agreement, BellSouth shall make available Local Switching as described in this Section 4.4 only for CLEC's Embedded Customer Base during the Transition Period.

4.4.3.1
BellSouth shall also make available the following elements relating to Local Switching, as such elements are defined at 47 C.F.R. §51.319(d)(4)(i), during the Transition Period: signaling networks, call-related databases, and shared transport. After the completion of the Transition Period, such elements may be transitioned to the equivalent BellSouth Section 271 offering, pursuant to the transition provisions herein applicable to Local Switching arrangements

4.4.4
Transition Period Pricing. From the Effective Date of this Agreement through the completion of the Transition Period, BellSouth may charge a rate for CLEC's Embedded Customer Base described in this Section 4.4 as set forth below

A rate equal to the higher of:

The TELRIC rate at which CLEC leased that combination of elements on June 15, 2004, plus one dollar; or

The TELRIC rate the Authority established, if any, between June 16, 2004, and the effective date of the TRRO, plus one dollar

4.4.5
BellSouth will provide written notice to CLEC no later than February 10, 2006 of the specific UNE Local Switching arrangements that are required to be transitioned to other facilities. CLEC may transition from these UNE Local Switching arrangements to other available wholesale facilities provided by BellSouth, including Local Switching unbundled under section 271, wholesale facilities obtained from other carriers or self-provisioned facilities. No later than March 10, 2006, CLEC shall submit spreadsheet(s) identifying all of the Embedded Customer Base of circuits to be either (1) disconnected or transitioned to wholesale facilities obtained from other carriers or self-provisioned facilities; or (2) converted to other wholesale facilities provided by BellSouth, including Local Switching unbundled under section 271. Such spreadsheets also shall identify circuits for which there is a dispute regarding its classification as part of the Embedded Customer Base. Such spreadsheet shall take the place of an LSR or ASR.

4.4.6
If CLEC fails to submit the spreadsheet(s) specified in Section 4.4.5 above for its Embedded Customer Base prior to March 11, 2006, BellSouth may transition such circuits to the equivalent BellSouth section 271 service.

4.4.7
For Embedded Customer Base circuits transitioned pursuant to Section 4.4.5 or 4.4.6, the applicable recurring charges for alternative services provided by BellSouth shall apply as of the date such services are provided to CLEC, whether ordered from BellSouth or designated by spreadsheet pursuant to Section 4.4.5 by March 10, 2006. No nonrecurring

charges shall apply to the transition of Embedded Customer Base to (1) wholesale facilities obtained from other carriers or self-provided facilities; or (2) other wholesale facilities provided by BellSouth, including special access and Local Switching unbundled under Section 271. The transition of the Embedded Customer Base pursuant to section 4.4.5 and 4.4.6 should be performed in a manner that avoids, or otherwise minimizes to the extent possible, disruption or degradation to CLEC's customers' service.

5.3.3
Transition Period for Certain UNE-P Under Section 251

5.3.3.1
For purposes of this Section 5.3.3, the Transition Period for the Embedded Customer Base of UNE-P (defined in 5.3.3.2) is the twelve (12) month period beginning March 11, 2005 and ending March 10, 2006.

5.3.3.2
For the purposes of this Section 5.3.3, Embedded Customer Base shall mean end user customers served by UNE-P as of the Effective Date of the Agreement. CLEC shall be entitled to order and BellSouth shall provision UNE-P that CLEC orders for the purpose of serving CLEC's Embedded Customer Base and such facilities are included in the Embedded Customer Base. Subsequent disconnects or loss of end user customers by CLEC shall be removed from the Embedded Customer Base.

5.3.3.3
BellSouth shall also make available the following elements relating to Local Switching, as such elements are defined at 47 C.F.R. §51.319(d)(4)(i), during the Transition Period: signaling networks, call-related databases, and shared transport. After the completion of the Transition Period, such elements may be transitioned to the equivalent BellSouth Section 271 offering, pursuant to the transition provisions herein applicable to UNE-P arrangements.

5.3.3.4
Transition Period Pricing. From the Effective Date of the Agreement through the completion of the Transition Period, BellSouth may charge a rate for CLEC's Embedded Customer Base as set forth below.

A rate equal to the higher of:

The TELRIC rate at which CLEC leased that combination of elements on June 15, 2004, plus one dollar; or

The TELRIC rate the Authority established, if any, between June 16, 2004, and the effective date of the TRRO, plus one dollar

These rates shall be set forth in Exhibit B

5.3.3.5
BellSouth will provide written notice to CLEC no later than February 10, 2006 of the specific UNE-P arrangements that are required to be transitioned to other facilities. CLEC may transition from these UNE-P arrangements to other available wholesale facilities provided by BellSouth, including Local Switching unbundled under section 271 commingled with DS0 capacity loops unbundled under Section 251, wholesale facilities obtained from other carriers or self-provisioned facilities. No later than March 10, 2006, CLEC shall submit spreadsheet(s) identifying all of the Embedded Customer Base of circuits to be either (1) disconnected or transitioned to wholesale facilities obtained from other carriers or self-provisioned facilities; or (2) converted to other wholesale facilities provided by BellSouth, including Local Switching unbundled under section 271 commingled with DS0 capacity loops unbundled under Section 251. Such spreadsheets also shall identify circuits for which there is a dispute regarding its classification as part of the Embedded Customer Base. Such spreadsheet shall take the place of an LSR or ASR.

5.3.3.6
If CLEC fails to submit the spreadsheet(s) specified in Section 5.3.3.5 above for its Embedded Customer Base prior to March 11, 2006, BellSouth may transition such circuits to the equivalent BellSouth section 271 service, including Local Switching unbundled under section 271 commingled with DS0 capacity loops unbundled under Section 251

5.3.3.7
For Embedded Customer Base circuits transitioned pursuant to Section 5.3.3.5 or 5.3.3.6, the applicable recurring charges for alternative services provided by BellSouth shall apply as of the date such services are provided to CLEC, whether ordered from BellSouth or designated by spreadsheet pursuant to Section 5.3.3.6 by March 10, 2006. No nonrecurring charges shall apply to the transition of Embedded Customer Base to (1) wholesale facilities obtained from other carriers or self-provided facilities; or (2) other wholesale facilities provided by BellSouth, including special access and UNE-P unbundled under section 271. The transition of the Embedded Customer Base pursuant to section 5.3.3.5 and 5.3.3.6 should be performed in a manner that avoids, or otherwise minimizes to the extent possible, disruption or degradation to CLEC's customers' service.

6.2
Transition for Certain DS1 and DS3 UNE Dedicated Transport Including DS1 and DS3 UNE Entrance Facilities Under Section 251

6.2.1
For purposes of this Section 6.2, the Transition Period for the Embedded Customer Base of DS1 and DS3 UNE Dedicated Transport, including all DS1 and DS3 UNE Entrance Facilities (defined in 6.2.2) and for the Excess DS1 and DS3 UNE Dedicated Transport

(defined in 6.2.3) is the twelve (12) month period beginning March 11, 2005 and ending March 10, 2006.

6.2.2
For purposes of this Section 6.2, Embedded Customer Base means DS1 and DS3 UNE Dedicated Transport including DS1 and DS3 UNE Entrance Facilities that were in service for CLEC as of March 10, 2005 in those wire centers that, as of such date, meet the criteria set forth in Sections 6.2.4.1 and 6.2.4.2. CLEC shall be entitled to order and BellSouth shall provision DS1 and DS3 UNE Dedicated Transport, including DS1 and DS3 UNE Entrance Facilities that CLEC orders for the purpose of serving CLEC's Embedded Customer Base and such facilities are included in the Embedded Customer Base. Subsequent disconnects or loss of end user customers by CLEC shall be removed from the Embedded Customer Base.

6.2.3
Excess DS1 and DS3 Dedicated Transport are those CLEC DS1 and DS3 Dedicated Transport facilities in service as of the Effective Date of the Agreement, in excess of the caps set forth in Sections 6.2.4.1 and 6.2.4.2 respectively, or that are otherwise no longer available as section 251 UNEs. Subsequent disconnects or loss of end user customers by CLEC shall be removed from Excess DS1 and DS3 Dedicated Transport.

6.2.4
Notwithstanding anything to the contrary in this Agreement, BellSouth shall make available to CLEC's Embedded Customer Base DS1 and DS3 Dedicated Transport, including DS1 and DS3 Entrance Facilities, as defined in this Section 6.2 during the Transition Period.

6.2.4.1
BellSouth shall provide CLEC nondiscriminatory access to unbundled DS1 UNE Dedicated Transport on any Route connecting a pair of wire centers where both wire centers at the end points of the Route contain 38,000 Business Lines or four (4) or more Fiber-Based Collocators. In other words, BellSouth shall not be required to provide such unbundled DS1 UNE Dedicated Transport if both of the wire centers defining the CLEC requested Route are Tier 1 Wire Centers, as defined in this Attachment. CLEC shall be entitled to obtain up to (10) DS1 UNE Dedicated Transport circuits on each Route where there is no unbundling obligation for DS3 UNE Dedicated Transport. Where DS3 Dedicated Transport is available as UNE under Section 251(c)(3), no cap applies to the number of DS1 UNE Dedicated Transport circuits CLEC can obtain on each Route.

6.2.4.2
BellSouth shall provide CLEC nondiscriminatory access to unbundled DS3 UNE Dedicated Transport on any Route connecting a pair of wire centers where both wire centers at the end points of the Route contain 24,000 or more Business Lines or three (3) or more Fiber-Based Collocators. In other words, BellSouth shall not be required to provide such unbundled DS3 UNE Dedicated Transport if both of the wire centers defining the CLEC requested Route are either Tier 1 or Tier 2 Wire Centers, as defined in

this Attachment. CLEC may obtain up to twelve (12) DS3 UNE Dedicated Transport circuits on each Route where such DS3 UNE Dedicated Transport is available on an unbundled basis pursuant to Section 251(c)(3).

6.2.4.3
The initial list of wire centers meeting the criteria set forth in Section 6.2.4.1 and 6.2.4.2 above as of the Effective Date of this Agreement is attached as Exhibit D.

6.2.4.4
Transition Period Pricing. From the Effective Date of this Agreement through the completion of the Transition Period, BellSouth may charge a rate for CLEC's Embedded Customer Base and CLEC's Excess DS1 and DS3 UNE Dedicated Transport described in this Section 6.2, except pursuant to the self-certification process as set forth in Section 1.8 of this Attachment.

A rate equal to the greater of:

115% of the TELRIC rate CLEC paid for that element on June 15, 2004; or

115% of the TELRIC rate the Authority establishes, if any, between June 16, 2004 and March 11, 2005.

6.2.4.5
Once a wire center exceeds either of the thresholds set forth in this Section 6.2.4.1, BellSouth will not be required to provide CLEC access to new DS1 UNE Dedicated Transport on such Routes. BellSouth will provide access to new DS1 Dedicated Transport as required pursuant to section 271.

6.2.4.6
Once a wire center exceeds either of the thresholds set forth in Section 6.2.4.2, BellSouth will not be required to provide CLEC access to new DS3 UNE Dedicated Transport on such Routes. BellSouth will provide access to new DS3 Dedicated Transport as required pursuant to section 271.

6.2.4.7
BellSouth will provide written notice to CLEC no later than February 10, 2006 of the specific DS1 and DS3 UNE Dedicated Transport circuits, including the Embedded Customer Base of DS1 and DS3 Dedicated Transport circuits, including DS1 and DS3 UNE Entrance Facilities and Excess DS1 and DS3 UNE Dedicated Transport circuits that are required to be transitioned to other facilities. CLEC may transition from these DS1 and DS3 UNE Dedicated Transport circuits, including DS1 and DS3 UNE Entrance Facilities to other available UNE Dedicated Transport circuits, wholesale facilities provided by BellSouth, including special access, DS1 and DS3 Dedicated Transport circuits unbundled under Section 271, wholesale facilities obtained from other carriers or self-provisioned facilities. No later than March 10, 2006, CLEC shall submit spreadsheet(s) identifying all of the Embedded Customer Base of circuits and Excess

DS1 and DS3 Dedicated Transport circuits to be either (1) disconnected and transitioned to wholesale facilities obtained from other carriers or self-provisioned facilities; or (2) converted to other available UNE Dedicated Transport circuits or other wholesale facilities provided by BellSouth, including special access and DS1 and DS3 Dedicated Transport circuits unbundled under section 271. Such spreadsheet also shall identify circuits for which there is a dispute regarding its classification as part of the Embedded Customer Base or Excess DS1 and DS3 UNE Dedicated Transport; the identification of such circuits on the spreadsheet shall constitute self-certification as described in Section 1.8. Such spreadsheet shall take the place of an LSR or ASR. If CLEC chooses to convert the DS1 and DS3 UNE Dedicated Transport circuits into special access circuits, BellSouth will include such DS1 and DS3 Dedicated Transport circuits once converted within CLEC's total special access circuits and apply any discounts to which CLEC is entitled.

6.2.4.8
If CLEC fails to submit the spreadsheet(s) specified in Section 6.2.4.6 above for its Embedded Customer Base and Excess DS1 and DS3 UNE Dedicated Transport circuits prior to March 11, 2006, BellSouth may transition such circuits to the equivalent BellSouth section 271 service.

6.2.4.9
For Embedded Customer Base circuits and Excess DS1 and DS3 UNE Dedicated Transport circuits transitioned pursuant to Section 6.2.4.7 or 6.2.4.8, the applicable recurring charges for alternative services provided by BellSouth shall apply as of the date such services are provided to CLEC, whether ordered from BellSouth or designated by spreadsheet pursuant to Section 6.2.4.6 by March 10, 2006. No nonrecurring charges shall apply to the transition of Embedded Customer Base and Excess DS1 and DS3 UNE Dedicated Transport circuits to (1) wholesale facilities obtained from other carriers or self-provided facilities; or (2) other available UNE Loops or other wholesale facilities provided by BellSouth, including special access and DS1 and DS3 Dedicated Transport circuits unbundled under section 271. The transition of the Embedded Customer Base and Excess DS1 and DS3 UNE Dedicated Transport circuits pursuant to Section 6.2.4.7 and 6.2.4.8 should be performed in a manner that avoids, or otherwise minimizes to the extent possible, disruption or degradation to CLEC's customers' service.

6.9.1
Transition for Certain Dark Fiber UNE Transport and Dark Fiber UNE Entrance Facilities

6.9.1.1
For purposes of this Section 6.9, the Transition Period for the Embedded Customer Base of Dark Fiber UNE Transport, including all Dark Fiber UNE Entrance Facilities (defined in 6.9.1.2) is the eighteen (18) month period beginning March 11, 2005 and ending September 10, 2006.

6.9.1.2
For purposes of this Section 6.9, Embedded Base means Dark Fiber UNE Transport, including Dark Fiber UNE Entrance Facilities that were in service for CLEC as of the Effective Date of the Agreement. CLEC shall be entitled to order and BellSouth shall provision Dark Fiber UNE Transport, including Dark Fiber UNE Entrance Facilities that CLEC orders for the purpose of serving CLEC's Embedded Customer Base and such facilities are included in the Embedded Customer Base. Subsequent disconnects or loss of end user customers by CLEC shall be removed from the Embedded Base.

6.9.1.3
Notwithstanding anything to the contrary in this Agreement, BellSouth shall make available Dark Fiber UNE Transport, including Dark Fiber UNE Entrance Facilities as defined in this Section 6.9 for CLEC's Embedded Customer Base only during the Transition Period.

6.9.1.4
BellSouth shall provide CLEC nondiscriminatory access to unbundled DS3 UNE Dedicated Transport on any Route connecting a pair of wire centers where both wire centers at the end points of the route contain 24,000 or more Business Lines or three (3) or more Fiber-Based Collocators. In other words, BellSouth shall not be required to provide such unbundled DS3 UNE Dedicated Transport if both of the wire centers defining the CLEC requested Route are either Tier 1 or Tier 2 Wire Centers, as defined in this Attachment.

6.9.1.4.1
The initial list of wire centers meting the criteria set forth in Section 6.9.1.4 as of the Effective Date of this Agreement is Attached hereto as Exhibit D.

6.9.1.5
Transition Period Pricing. From the Effective Date of this Agreement through the completion of the Transition Period, BellSouth may charge a rate for CLEC's Embedded Customer Base described in this Section 6.9, except pursuant to the self-certification process has set forth in Section 1.8.

A rate equal to the greater of:

115% of the TELRIC rate CLEC paid for that element on June 15, 2004; or

115% of the TELRIC rate the Authority establishes, if any, between June 16, 2004 and March 11, 2005.

These rates shall be set forth in Exhibit B

6.9.1.6

Once a wire center exceeds the threshold set forth in Section 6.9.1.4.1, BellSouth will not be required to provide CLEC access to new Dark Fiber UNE Transport on such Routes. BellSouth will provide access to new Dark Fiber UNE Transport as required pursuant to section 271.

6.9.1.7
BellSouth will provide written notice to CLEC no later than June 10, 2006 of the specific Dark Fiber UNE Transport circuits, including the Embedded Customer Base of Dark Fiber UNE Transport circuits and Dark Fiber UNE Entrance Facilities that are required to be transitioned to other facilities. CLEC may transition from these Dark Fiber UNE Transport circuits, including Dark Fiber UNE Entrance Facilities to other available Dark Fiber UNE Transport circuits, wholesale facilities provided by BellSouth, including special access, Dark Fiber Transport circuits unbundled under section 271, wholesale facilities obtained from other carriers or self-provisioned facilities. No later than September 10, 2006, CLEC shall submit spreadsheet(s) identifying all of the Embedded Customer Base of circuits to be either (1) disconnected and transitioned to wholesale facilities obtained from other carriers or self-provisioned facilities; or (2) converted to other available Dark Fiber UNE Transport circuits or other wholesale facilities provided by BellSouth, including special access and Dark Fiber Transport circuits unbundled under section 271. Such spreadsheet also shall identify circuits for which there is a dispute regarding its classification as part of the Embedded Customer Base; the identification of such circuits on the spreadsheet shall constitute self-certification as described in Section 1.8. Such spreadsheet shall take the place of an LSR or ASR. If CLEC chooses to convert the Dark Fiber UNE Transport circuits into special access circuits, BellSouth will include such Dark Fiber UNE Transport circuits once converted within CLEC's total special access circuits and apply any discounts to which CLEC is entitled.

6.9.1.8
If CLEC fails to submit the spreadsheet(s) specified in Section 6.9.1.7 above for its Embedded Customer prior to September 11, 2006, BellSouth may transition such circuits to the equivalent BellSouth section 271 service.

6.9.1.9
For Embedded Customer Base circuits transitioned pursuant to Section 6.9.1.7 or 6.9.1.8, the applicable recurring charges for BellSouth provided services shall apply as of the date such services are provided to CLEC, whether ordered from BellSouth or designated by spreadsheet pursuant to Section 2.2.9 by September 10, 2006. No nonrecurring charges shall apply to the transition of Embedded Customer Base circuits to (1) wholesale facilities obtained from other carriers or self-provided facilities; or (2) other available Dark Fiber UNE Transport or other wholesale facilities provided by BellSouth, including special access and Dark Fiber Transport circuits unbundled under section 271. The transition of the Embedded Customer Base pursuant to Section 6.9.1.7 and 6.9.1.8 should be performed in a manner that avoids, or otherwise minimizes to the extent possible, disruption or degradation to CLEC's customers' service.

ISSUE 3:

a) *How should existing ICAs be modified to address BellSouth's obligation to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?*

b) *What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth's obligations to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?*

CompSouth Language:

The CompSouth proposed contract language for Issue 2 (TRRO Transition) implements the changes in BellSouth's obligations to provide loops, transport, switching, and dark fiber UNEs pursuant to Section 251(c)(3) obligations. CompSouth's contract language proposals also provide for availability of Section 271 checklist elements that will serve as substitutes for Section 251(c)(3) UNEs. In addition, specific contract language regarding commingling addresses how network elements that were previously "combined" will be "commingled" in instances where BellSouth no longer has an obligation to provide a UNE under Section 251(c)(3).

Existing ICAs should be amended to incorporate modifications in BellSouth's obligations to provide network elements pursuant to Section 251(c)(3), as well as BellSouth's obligations to provide Section 271 checklist items that will, in many cases, provide the wholesale service that will replace Section 251(c)(3) network elements.

ISSUE 4

What is the appropriate language to implement BellSouth's obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport and how should the following terms be defined?

(i) Business line
(ii) Fiber-based collocation
(iii) Building
(iv) Route

10.1

For purposes of this Attachment 2, a "Building" is a permanent physical structure in which people reside, or conduct business or work on a daily basis and which has a unique street address assigned to it. With respect to multi-tenant property with a single street address, an individual tenant's space shall constitute one "building" for purposes of this Attachment (1) if the multi-tenant structure is subject to separate ownership of each tenant's space, or (2) if the multi-tenant structure is under single ownership and there is no centralized point of entry in the structure through which all telecommunications services must transit. As an example only, a high rise office building with a general telecommunications equipment room through which all telecommunications services to that building's tenants must pass would be a single "building" for purposes of this Attachment 2. A building for purposes of this Attachment 2 does not include convention centers, arenas, exposition halls, and other locations that are routinely used for special events of limited duration. Two or more physical structures that share a connecting wall or are in close physical proximity shall not be considered a single building solely because of a connecting tunnel or covered walkway, or a shared parking garage or parking area so long as such structures have a unique street address. Under no circumstances shall educational, governmental, medical, research, manufacturing, or transportation centers that consist of multiple permanent physical structures on a contiguous property and are held under common ownership be considered a single building for purposes of this Attachment 2.

10.2

For purposes of this Attachment 2, a "Business Line" is, as defined in 47 C.F.R. § 51.5, a BellSouth-owned switched access line used to serve a business customer, whether by BellSouth itself or by a CLEC that leases the line from BellSouth. ARMIS 43-08 business line data reports shall be used in calculating business lines. Business lines *do not* include (i) non-switched loop facilities; (ii) lines used to serve residential customers; (iii) dedicated or shared transport; (iv) ISPs' transport facilities; (v) lines used to serve subsidiaries or affiliates of the ILEC; (vi) data lines, or any portions of data lines, not connected to the end-office for the provision of switched voice services interconnected to the PSTN; (vii) unused capacity on channelized high capacity loops; (viii) lines used for VoIP unless such facilities are switched at the wire center; and (ix) any lines not confirmed by the ILEC to conform to the above requirements. BellSouth may not "round up" when calculating 64 Kbps equivalents for high capacity loops (e.g., a 144 Kbps service is equal to two business lines, not three). In addition, when calculating data speeds for purposes of determining 64 Kbps equivalents, BellSouth must use the lowest

data speed associated with the line when sold to the customer, not a higher potential use or a higher one-way speed. Any Centrex extensions located in a wire center will be calculated with a value of 1/9 of a business line, consistent with the Centrex Equivalent Factor developed by the FCC in its Second Order on Reconsideration and Memorandum Opinion and Order, Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure, 12 FCC Red 16606, ¶¶ 31-32 (1997) and its Order and Second Order on Reconsideration, (FCC Docket 96-45) ____ FCC Red _____, ¶¶ 3-4 (2003). HDSL-capable copper loops are not the equivalent of DS1 loops for the purpose of counting Business Lines.

10.4
For purposes of this Attachment 2, a "Fiber-Based Collocator" is, as defined in 47 C.F.R. § 51.5, any carrier, unaffiliated with BellSouth, that maintains a collocation arrangement in a BellSouth wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the BellSouth wire center premises; and (3) is owned by a party other than BellSouth or any affiliate of BellSouth. For purposes of this definition: (i) carriers that have entered into merger and/or other consolidation agreements, or otherwise announced their intention to enter into the same, will be treated as affiliates and therefore as one collocator; provided, however, in the case one of the parties to such merger or consolidation arrangement is BellSouth, then the other party's collocation arrangement shall *not* be counted as a Fiber-Based Collocator, (ii) a Comparable Transmission Facility means, at a minimum, the provision of transmission capacity equivalent to fiber-optic cable with a minimum point-to-point symmetrical data capacity exceeding 12 DS3s; (iii) the network of a Fiber-Based Collocator may only be counted once in making a determination of the number of Fiber-Based Collocators, notwithstanding that such single Fiber-Based Collocator leases its facilities to other collocators in a single wire center; provided, however, that a collocating carrier's dark fiber leased from an unaffiliated carrier may only be counted as a separate fiber-optic cable from the unaffiliated carrier's fiber if the collocating carrier obtains this dark fiber on an IRU basis.

ISSUE 5:

a) *Does the Authority have the authority to determine whether or not BellSouth's application of the FCC's Section 251 non-impairment criteria for high capacity loops and transport is appropriate?*

b) *What procedures should be used to identify those wire centers that satisfy the FCC's Section 251 non-impairment*

Procedures for additional designations of "non-impaired" wire centers by BellSouth

__.1
If BellSouth seeks to designate additional wire centers as "non-impaired" for purposes of the FCC's Triennial Review Remand Order (*TRRO*), BellSouth shall file with the Authority a proposed list of any new wire centers on April 1 of each year (coincident with its filing of ARMIS 43-08 data with the FCC). The list filed by BellSouth shall reflect the number of business lines and fiber-based collocators, as of December 31 of the previous year, in each wire center that BellSouth proposes be considered "non-impaired."

__.2
In any such filing designating additional wire centers as "non-impaired," BellSouth shall file all supporting documentation that each new wire center meets *TRRO* criteria, including the following information. BellSouth agrees to make such documentation available to CLEC under the terms of an Authority protective order:

a. The CLLI of the wire center.
b. The number of switched business lines served by RBOC in that wire center as reported in ARMIS 43-08 for the year just ending.
c. The number of UNE-P or equivalent lines used to serve business customers.
d. The number of analog UNE-L lines in service.
e. The number of DS-1 UNE-L lines in service.
f. The number of DS-3 UNE-L lines in service.
g. A completed worksheet that shows, in detail, any conversion of access lines to voice grade equivalents.
h. The names of claimed independent fiber-optic networks (or comparable transmission facilities) terminating in a collocation arrangement in that wire center.

__.3
CLEC shall have until May 1 to file a challenge to any new wire center named by BellSouth in any such April 1 filing.

__.4
BellSouth and CLEC agree to resolve disputes concerning BellSouth's additional wire center designations in dispute resolution proceedings before the Authority.

__.5
Changes to the wire center designations shall become effective on July 1 following the April 1 filing by BellSouth, to the extent that such changes are approved by the Authority by that date.

__.6
After the completion of the annual process for additional wire center designations described above, BellSouth shall identify the additional wire centers that have been approved by the Authority in a carrier notification letter (CNL). Each such list of additional wire centers shall be considered a "Subsequent Wire Center List".

__.7
Effective ten (10) business days after the date of a BellSouth CNL providing a Subsequent Wire Center List, BellSouth shall not be required to unbundle DS1 and/or DS3 Loops, Dedicated Transport circuits, or Dark Fiber Loops or Transport, as applicable, in such additional wire center(s).

ISSUE 6:
Are HDSL-capable loops the equivalent of DS1 loops for the purpose of evaluating impairment?

See Issue 4: The CompSouth proposed definition of "Business Line" includes the following as its last sentence:

HDSL-capable copper loops are not the equivalent of DS1 loops for the purpose of counting Business Lines.

The proposed definition of HDSL-capable loop is as follows:

2.3.5 2-wire or 4-wire HDSL-Compatible Loop. This is a designed Loop that meets Carrier Serving Area (CSA) specifications, may be up to 12,000 feet long and may have up to 2,500 feet of bridged tap (inclusive of Loop length). It may be a 2-wire or 4-wire circuit and will come standard with a test point, OC, and a DLR.

ISSUE 7:
Once a determination is made that CLECs are not impaired without access to high capacity loops or dedicated transport pursuant to the FCC's rules, can changed circumstances reverse that conclusion, and if so, what process should be included in Interconnection Agreements to implement such changes?

CompSouth does not advocate language that permits "changed circumstances" to alter the designation of wire centers considered "non-impaired" pursuant to the *TRRO*. CompSouth does, however, advocate that the Authority approve language that addresses the situation in which BellSouth mistakenly lists a wire center and CLEC relies on such mistaken designation to its detriment. CompSouth urges that the following language be incorporated to address this situation:

__.1
Should BellSouth mistakenly list a wire center as non-impaired and CLEC relies to its detriment on BellSouth's designation, BellSouth shall immediately notify CLEC of its error and promptly refund CLEC of any overpayments, including but not limited to any charges associated with the unnecessary conversion from UNE to other wholesale services.

ISSUE 8:

(a) Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?

(b) If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements?

(c) If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any, should be included in the ICA with regard to the terms and conditions for such elements?

CompSouth's contract language proposals also provide for availability of Section 271 checklist elements that will serve as substitutes for Section 251(c)(3) UNEs. In addition, specific contract language regarding commingling addresses how network elements that were previously "combined" will be "commingled" in instances where BellSouth no longer has an obligation to provide a UNE under Section 251(c)(3) but retains its obligation to provide wholesale facilities and services pursuant to Section 271.

The Commission has authority to establish rates for Section 271 checklist items. Until the Commission establishes permanent "just and reasonable" rates for Section 271 items, the Commission should establish interim rates. The *TRRO* adopted specific transitional pricing rules to apply to UNEs that are no longer required to be unbundled under §251 of the Act. These transitional rates imposed a 15% increase on loops and transport prices where §251 no longer compelled TELRIC-based rates and a $1 per month increase in the rates for local switching. These transitional increases for loops and transport, accompanied by the 271 UNE switching adopted by the TRA in docket 03-00119, would be a reasonable first approximation of "just and reasonable" §271 rates if the Commission is unable to establish permanent rates at this time.

The contract language implementing Section 271 checklist items is incorporated throughout CompSouth's proposals. (For example, see the proposed language on Issue 2, regarding the TRRO Transition). Where a provision applies to only a section 251 UNE, CompSouth proposes using the term "UNE". For example, CompSouth defines Loops to include both section 251 and 271 Loops, but when referring to requirements such as a cap that apply only to 251 Loops, CompSouth proposes using the term "UNE Loop".

CompSouth's proposed language on interim Section 271 rates is as follows:

Interim Rates For Section 271 Checklist Items

__.1

Interim Just and Reasonable Rates for DS1, DS3, and Dark Fiber Loops and Dedicated Transport

BellSouth may charge a rate for DS1, DS3, and Dark Fiber Loops and DS1, DS3 and Dark Fiber Dedicated Transport offered pursuant to Section 271 that is equal to the higher of:

115% of the TELRIC rate paid for the same element as it was provided to CLEC by BellSouth under Section 251(c)(3) on June 15, 2004; or

115% of a new TELRIC rate the Commission establishes, if any, between June 16, 2004 and March 11, 2005.

__.2
Interim Just and Reasonable Rates for Commingled Section 271 Switching and Section 251 UNE DS0 Loops

BellSouth may charge a rate for Commingled Section 271 Switching and Section 251 UNE DS0 Loops offered pursuant to Section 271 that is equal to:

The 271 UNE switching rate adopted by the Authority in Docket 03-00119 combined with the TELRIC rate established by the TRA for a Section 251 UNE DS0 Loop.

ISSUE 9:
What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?

CompSouth's language regarding the *TRRO* Transition is detailed in response to Issue 2. In addition, the following proposed provisions address the definition of "embedded base" and the related restrictions imposed by the *TRRO*.

2.1.4.2
For purposes of the Transition Period in this Section 2, Embedded Customer Base is defined as (1) business entities, including corporations, limited liability companies, partnerships, sole proprietorships, cooperatives and other entities; (2) governmental and non-profit organizations; and (3) residential customer that had executed a valid contract or service order or were subscribed to CLEC's services as of March 10, 2005. CLEC shall be entitled to order and BellSouth shall provision DS1 and DS3 loops that CLEC orders for the purpose of serving CLEC's Embedded Customer Base. CLEC shall self-certify, if requested to do so by BellSouth, that a DS1 or DS3 CLEC orders is to be used to serve CLEC's Embedded Customer Base. Any DS1 or DS3 Loop that BellSouth provisions prior to March 11, 2005, and that does not satisfy the criteria set out in Section 2.1.5 for access to DS1 and DS3 Loops under Section 251 shall be subject to the transition set forth in this Section 2.1.4. BellSouth shall provision any DS1 or DS3 Loop that CLEC orders that it self-certifies; BellSouth shall have the right to dispute CLEC's ability to obtain such Loop after provisioning utilizing the process set forth in Section 2.1.5.2 below.

4.2.2

For the purposes of the Transition Period in this Section 4, Embedded Customer Base is defined as (1) business entities, including corporations, limited liability companies, partnerships, sole proprietorships, cooperatives and other entities; (2) governmental and non-profit organizations; and (3) residential customers that had executed a valid contract or service order or were subscribed to CLEC's services as of March 10, 2005. Local Switching to be provided to CLEC for service to its Embedded Customer Base includes any additional elements that are required to be provided in conjunction therewith. Subsequent loss of End Users by CLEC shall be removed from the Embedded Customer Base.

5.4.3.2

For the purposes of the Transition Plan in this Section 5.4.3 , Embedded Customer Base is defined as (1) business entities, including corporations, limited liability companies, partnerships, sole proprietorships, cooperatives and other entities; (2) governmental and non-profit organizations; and (3) residential customers that had executed a valid contract or service order or were subscribed to CLEC's services as of March 10, 2005. UNE-P to be provided to CLEC for service to its Embedded Customer Base includes any additional elements that are required to be provided in conjunction therewith.

Subsequent loss of End Users by CLEC shall be removed from the Embedded Customer Base.

ISSUE 10:
What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer obligated to provide as Section 251 UNEs to non-Section 251 network elements and other services and (a) what is the proper treatment for such network elements at the end of the transition period; and (b) what is the appropriate transition period, and what are the appropriate rates, terms, and conditions during such transition period, for unbundled high capacity loops, high capacity transport, and dark fiber transport in and between wire centers that do no meet the FCC's non-impairment standards at this time, but that meet such standards in the future?

This issue is addressed by the CompSouth proposed language included under Issue 2. In addition, CompSouth proposes the following language to apply to bulk migrations of lines from one service platform to another associated with the transition off certain Section 251(c)(3) UNEs.

Bulk Migration

2.1.9.4
BellSouth will make available to CLEC a Bulk Migration process pursuant to which CLEC may request to (1) migrate port/loop combinations, provisioned pursuant to either an Interconnection Agreement or a separate agreement between the parties, to Loops (UNE-L); (2) migrate BellSouth retail customers to CLEC using UNE-L or EELs; and (3) migrate another CLEC's customer base to CLEC using UNE-L. The Bulk Migration process may be used if such loop/port combinations being used to serve the customer before migration are (1) associated with two (2) or more Existing Account Telephone Numbers (EATNs); and (2) located in the same Central Office. The terms and conditions for use of the Bulk Migration process are described in the BellSouth CLEC Information Package, incorporated herein by reference as it may be amended from time to time. The CLEC Information Package is located at www.interconnection.bellsouth.com/guides/html/unes.html. The rates for the Bulk Migration process shall be the nonrecurring rates associated with the Loop type being requested on the Bulk Migration, as set forth in Exhibit A. Additionally, Operations Support Systems (OSS) charges will also apply. Loops connected to Integrated Digital Loop Carrier (IDLC) systems will be migrated pursuant to Section 2.6 below.

2.1.9.5
Should CLEC request migration for two (2) or more EATNs containing fifteen (15) or more circuits, CLEC must use the Bulk Migration process referenced in 2.1.11.1 above.

Hot Cut Performance

4.2.6
BellSouth is required to meet hot cut demand and shall work with CLEC to take all reasonable steps to prevent avoidable disruption to CLEC's customers' service. If BellSouth causes an outage lasting longer than 15 minutes or in any way fails to honor its commitments to the FCC and/or state commission regarding the hot cut or batch

migration process, BellSouth will refund all non-recurring charges applicable to the service to which CLEC's customers are being migrated. If BellSouth can not complete the hot cuts and batch migration process in accordance with the volumes and ordering process BellSouth has established, then BellSouth shall provide Local Switching at the rates set forth in Exhibit A plus $1.00, until the migration is completed.

ISSUE 11:

What rates, terms, and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms, and conditions that apply in such circumstances?

The conversion of Section 251(c)(3) UNEs to Section 271 checklist items or other services is addressed in the CompSouth language included under Issue 2. In addition, CompSouth proposes the following language for UNEs that were declassified under the terms of the TRO.

1.6

Except to the extent expressly provided otherwise in this Attachment, CLEC may not maintain a UNE or UNE Combination offered pursuant to a prior interconnection agreement that is no longer offered pursuant to this Agreement (e.g., DS1 capacity and above "enterprise" Local Switching) (collectively Arrangements). In the event BellSouth determines that CLEC has in place any Arrangements after the Effective Date of this Agreement, BellSouth will provide notice to CLEC identifying specific service arrangements (by circuit identification number) that it no longer is obligated to provide as UNEs under Section 251(c)(3) and that CLEC must disconnect or convert to Other Services or other service arrangements. CLEC may transition from these UNEs to other available UNEs, wholesale facilities provided by BellSouth, including special access, Section 271 checklist items, wholesale facilities obtained from other carriers or self-provisioned facilities. CLEC will acknowledge receipt of such notice and will have thirty (30) days from the date of such notice to verify the list, notify BellSouth of initial disputes or concerns regarding such list, or select alternative service arrangements (or disconnection). If CLEC fails to submit disputes or orders to disconnect or convert such Arrangements within such thirty (30) day period, BellSouth will transition such circuits to the equivalent tariffed BellSouth service(s). The transition of such UNE(s) shall take place in a seamless manner without any customer disruptions or adverse affects to service quality. There will be no service order, labor, disconnection, project management or other nonrecurring charges associated with the transition of UNEs to Other Services or other service arrangements. The Parties will absorb their own costs associated with effectuating the process set forth in this section. Recurring charges for comparable 271 services (as set forth in Exhibit B), or rates associated with the selected Other Service (as set forth in Exhibit B or the relevant BellSouth tariff) shall apply to all service arrangements as of the date that conversion to such BellSouth provided services is complete. If CLEC chooses to convert DS1 or DS3 Loops to special access circuits, BellSouth will include such DS1 and DS3 Loops once converted within CLEC's total special access circuits and apply discounts for which CLEC is eligible.

ISSUE 12:

Should identifiable orders properly placed that should have been provisioned before March 11, 2005, but were not provisioned due to BellSouth errors in order processing or provisioning, be included in the "embedded base"?

CLEC orders that are properly and timely placed should be considered part of the "embedded base" of customers for purposes of the *TRRO* transition. Specific contract language addressing the definition of "embedded base" is included under Issue 9. CompSouth's proposed contract language regarding the *TRRO* transition is included under Issue 2.

ISSUE 13:
Should network elements de-listed under section 251(c)(3) be removed from the SQM/PMAP/SEEM?

1.3
CLEC may purchase and use Network Elements and Other Services from BellSouth in accordance with 47 C.F.R § 51.309. Performance Measurements associated with this Attachment 2 are contained in Attachment _____. The quality of the Network Elements as well as the quality of the access to said Network Elements that BellSouth provides to CLEC shall be, to the extent technically feasible, at least equal to that which BellSouth provides to itself, and its affiliates.

1.4
The Parties shall comply with the requirements as set forth in the technical references within this Attachment 2. BellSouth shall comply with the requirements set forth in the technical reference TR73600, as well as any performance or other requirements identified in this Agreement, to the extent that they are consistent with the greater of BellSouth's actual performance or applicable industry standards. If one or more of the requirements set forth in this Agreement are in conflict, the technical reference TR73600 requirements shall apply. If the parties cannot reach agreement, the dispute resolution process set forth in the General Terms and Conditions of this Agreement shall apply.

ISSUE 14: TRO – COMMINGLING

What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?

1.11 Commingling of Services

1.11.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Combination, to one or more Telecommunications Services or facilities that *CLEC* has obtained at wholesale from BellSouth, or the combining of a Network Element or Combination with one or more such wholesale Telecommunications Services or facilities. The wholesale services that can be commingled with Network Elements or a Combination include network elements required to be unbundled under Section 271. *CLEC* must comply with all rates, terms or conditions applicable to such wholesale Telecommunications Services or facilities.

1.11.2 Subject to the limitations set forth elsewhere in this Attachment, BellSouth shall not deny access to a Network Element or a Combination on the grounds that one or more of the elements: 1) is connected to, attached to, linked to, or combined with such a facility or service obtained from BellSouth; or 2) shares part of BellSouth's network with access services or inputs for mobile wireless services and/or interexchange services.

1.11.3 Unless expressly prohibited by the terms of this Attachment, BellSouth shall permit CLEC to Commingle an unbundled Network Element or a Combination of unbundled Network Elements with wholesale (i) services obtained from BellSouth, (ii) services obtained from third parties or (ii) facilities provided by CLEC. For purposes of example only, CLEC may Commingle unbundled Network Elements or Combinations of unbundled Network Elements with other services and facilities including, but not limited to, switched and special access services, or services purchased under resale arrangements with BellSouth.

1.11.3 Unless otherwise agreed to by the Parties, the Section 251 Network Element portion and the Section 271 unbundled network element portion of a commingled arrangement will be billed at the rates set forth in this Agreement and the remainder of the circuit or service that is provided under tariff or under another agreement between the Parties will be billed in accordance with BellSouth's tariffed rates or rates set forth in that separate agreement.

1.11.4 When multiplexing equipment is attached to a commingled arrangement , the multiplexing equipment will be billed at the cost based rate contained herein . Central Office Channel Interfaces (COCI) will be billed from the interconnection agreement.

1.11.5 BellSouth shall not change its wholesale or access tariffs in any fashion, or add new access tariffs, that would restrict or negatively impact the

availability or provision of Commingling under this Attachment or the Agreement, unless BellSouth and *CLEC* have amended this Agreement in advance to address BellSouth proposed tariff changes or additions. BellSouth shall cooperate fully with *CLEC* to ensure that operational policies and procedures implemented to effect commingled arrangements shall be handled in such a manner as to not operationally or practically impair or impede *CLEC's* ability to implement new comm*ingled arrangements. BellSouth* acknowledges and agrees that the language of this Attachment complies with and satisfies the requirements of Bellsouth wholesale and access tariffs with respect to commingling.

1.11.6 Where processes, including ordering and provisioning processes, for any commingling or commingled arrangement available under this Agreement (including, by way of example, for existing services sought to be converted to a commingled arrangement) are not already in place, the Parties will develop and implement processes. BellSouth shall use existing ordering and provisioning processes already developed for other Network Elements, if possible; if doing so is not possible, BellSouth shall promptly determine what new processes are necessary. Until such processes are developed, BellSouth agrees (i) to accept *CLEC*'s orders for commingling via an electronic spreadsheet specifying the information reasonably necessary to complete such orders and to provision all such orders within fourteen (14) days of receipt, or (ii) if *CLEC* desires to issue a BFR, then BellSouth will allow CLEC to follow the BFR process. The Parties will comply with any applicable Change Management guidelines or BFR guidelines as applicable, provided however, that compliance with such Change Management guidelines shall not negate BellSouth's obligation to provide the Commingled Arrangements listed in Exhibit X as of the effective date of this Agreement. An electronic process will be developed through Change Management within 180 days.

1.11.7 Upon the effective date of this Agreement, BellSouth shall provide local switching unbundled under Section 271 commingled with unbundled Loops (provided as a Network Element under Section 251 or unbundled under Section 271) as Port/Loop Commingled Arrangements in the Arrangements identified in Exhibit X.

1.11.8 BellSouth shall only charge *CLEC* the non-recurring service order charge as set forth in Exhibit A that are applicable to the Section 251 Network Element(s), facilities or services that *CLEC* has obtained at wholesale from BellSouth.

1.12 Terms and conditions for order cancellation charges and Service Date Advancement Charges will apply in accordance with Attachment 6 and are incorporated herein by this reference. The charges shall be as set forth in Exhibit A.

EXHIBIT X: COMMINGLED ARRANGEMENTS IMMEDIATELY AVAILABLE

I. Commingled loop and transport:

(a) UNE DSI loop connected to:
(1) a commingled wholesale/special access M13 multiplex and DS3 or higher capacity interoffice transport;
(2) a UNE DSI transport which is then connected to a commingled wholesale/special access M13 multiplex and DS3 or higher capacity interoffice transport; or,
(3) a commingled wholesale/special access DSI transport.

(b) UNE DSI transport connected to a commingled wholesale/special access M13 multiplex and DS3 or higher capacity interoffice transport.

(c) UNE DS3 transport connected to a commingled wholesale/special access higher capacity interoffice transport.

(d) High Cap Loop connected to a special access multiplexer

(e) Special Access DS1 loop to:
(1) UNE M13 multiplex and DS3 transport; or
(2) UNE DS1 transport

(f) Special Access DS3 loop connected to UNE DS3 transport

(g) UNE DS1 or DS3 loop provisioned onto 3rd party's interoffice transport or multiplexers

II. Commingled Port/Loop Arrangements:

(a) 2-wire voice grade port, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.

(b) 2-wire voice grade DID port, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.

(c) 2-wire CENTREX port, voice grade loop, CENTREX intercom functionality, unbundled end office switching, unbundled end

office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.

(d) 2-wire ISDN Basic Rate Interface, voice grade loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.

(e) 4-wire ISDN Primary Rate Interface, DS1 loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.

(f) 4-wire DS1 Trunk port, DS1 Loop, unbundled end office switching, unbundled end office trunk port, common transport per mile per MOU, common transport facilities termination, tandem switching, and tandem trunk port.

ISSUE 15: TRO – CONVERSIONS *Is BellSouth required to provide conversion of special access circuits to UNE pricing, and if so, at what rates, terms and conditions and during what timeframe should such new requests for such conversions be effectuated?*

__.1

Conversion of Wholesale Services to Network Elements or Network Elements to Wholesale Services. Upon request, BellSouth shall convert a wholesale service, or group of wholesale services, to the equivalent Network Element or Combination that is available to CLEC pursuant to this Agreement or convert a Network Element or Combination that is available to CLEC under this Agreement to an equivalent wholesale service or group of wholesale services offered by BellSouth (collectively "Conversion"). BellSouth shall charge the applicable nonrecurring switch-as-is rates for Conversions to specific Network Elements or Combinations found in Exhibit A. BellSouth shall also charge the same nonrecurring switch-as-is rates when converting from Network Elements or Combinations. Any rate change resulting from the Conversion will be effective as of the next billing cycle following BellSouth's receipt of a complete and accurate Conversion request from CLEC. A Conversion shall be considered termination for purposes of any volume and/or term commitments and/or grandfathered status between CLEC and BellSouth. Any change from a wholesale service/group of wholesale services to a Network Element/Combination, or from a Network Element/Combination to a wholesale service/group of wholesale services that requires a physical rearrangement will not be considered to be a Conversion for purposes of this Agreement. BellSouth will not require physical rearrangements if the Conversion can be completed through record changes only. Orders for Conversions will be handled in accordance with the guidelines set forth in the Ordering Guidelines and Processes and CLEC Information Packages as referenced in Sections 1.13.1 and 1.13.2 below.

ISSUE 16: **TRO – CONVERSIONS** *What are the appropriate rates, terms, conditions, and effective dates, if any, for conversion requests that were pending on the effective date of the TRO?*

Conversions pending on the effective date of the TRO should be handled using conversion provisions set forth in the amended ICAs. See issue 15 for proposed CompSouth contract language on conversions.

ISSUE 17: TRO – LINE SHARING

Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?

Line Sharing

2.11 BellSouth shall provide CLEC access to the high frequency portion of the local loop as an unbundled network element ("High Frequency Spectrum") at the rates set forth in Exhibit C. BellSouth shall provide CLEC with the High Frequency Spectrum irrespective of whether BellSouth chooses to offer xDSL services on the loop.

2.11..1 The High Frequency Spectrum is defined as the frequency range above the voiceband on a copper loop facility carrying analog circuit-switched voiceband transmissions. Access to the High Frequency Spectrum is intended to allow CLEC the ability to provide Digital Subscriber Line ("xDSL") data services to the end user for which BellSouth provides voice services. The High Frequency Spectrum shall be available for any version of xDSL presumed acceptable for deployment pursuant to 47 C.F.R. Section 51.230, including, but not limited to, ADSL, RADSL, and any other xDSL technology that is presumed to be acceptable for deployment pursuant to FCC rules. BellSouth will continue to have access to the low frequency portion of the loop spectrum (from 300 Hertz to at least 3000 Hertz, and potentially up to 3400 Hertz, depending on equipment and facilities) for the purposes of providing voice service. CLEC shall only use xDSL technology that is within the PSD mask parameters set forth in T1.413 or other applicable industry standards. CLEC shall provision xDSL service on the High Frequency Spectrum in accordance with the applicable Technical Specifications and Standards.

2.11..2 The following loop requirements are necessary for CLEC to be able to access the High Frequency Spectrum: an unconditioned, 2-wire copper loop. An unconditioned loop is a copper loop with no load coils, low-pass filters, range extenders, DAMLs, or similar devices and minimal bridged taps consistent with ANSI T1.413 and T1.601. The process of removing such devices is called "conditioning." BellSouth shall charge and CLEC shall pay as interim rates, the same rates that BellSouth charges for conditioning stand-alone loops as provided in this Interconnection Agreement (e.g., unbundled copper loops, ADSL loops, and HDSL loops) until permanent pricing for loop conditioning are established either by mutual agreement or by a state public utilities commission. The interim costs for conditioning are subject to true up as provided in this agreement. BellSouth will condition loops to enable CLEC to provide xDSL-based services on the same loops the incumbent is providing analog voice service, regardless of

loop length. BellSouth is not required to condition a loop in connection with CLEC's access to the High Frequency Spectrum if conditioning of that loop impairs service from the end users perspective. If CLEC requests that BellSouth condition a loop longer than 18,000 ft. and such conditioning significantly degrades the voice services on the loop, CLEC shall pay for the loop to be restored to its original state.

2.11..3 CLEC's termination point is the point of termination for CLEC's on the toll main distributing frame in the central office (" Termination Point"). BellSouth will use jumpers to connect CLEC's connecting block to the splitter. The splitter will route the High Frequency Spectrum on the circuit to the CLEC's xDSL equipment in the CLEC's collocation space.

2.11..4 For the purposes of testing line shared loops, CLEC shall have access to the test access point associated with the splitter and the demarcation point between BellSouth's network and CLEC's network.

2.11..5 The High Frequency Spectrum shall only be available on loops on which BellSouth is also providing, and continues to provide, analog voice service directly to the end user. In the event the end-user terminates its BellSouth provided voice service for any reason, and CLEC desires to continue providing xDSL service on such loop, CLEC shall be required to purchase the full stand-alone loop unbundled network element. In the event BellSouth disconnects the end-user's voice service pursuant to its tariffs or applicable law, and CLEC desires to continue providing xDSL service on such loop, CLEC shall be permitted to continue using the line by purchasing the full stand-alone loop unbundled network element. BellSouth shall give CLEC notice in a reasonable time prior to disconnect, which notice shall give CLEC an adequate opportunity to notify BellSouth of its intent to purchase such loop. The Parties shall work collaboratively towards the method of notification and the time periods for notice. In those cases in which BellSouth no longer provides voice service to the end user and CLEC purchases the full stand-alone loop, CLEC may elect the type of loop it will purchase. CLEC will pay the appropriate recurring and non-recurring rates for such loop as set forth in Attachment 2 of the Agreement, including a voice grade loop.

2.11..6 CLEC and BellSouth shall continue to work together collaboratively to develop systems and processes for provisioning the High Frequency Spectrum in various real life scenarios. BellSouth and CLEC agree that CLEC is entitled to purchase the High Frequency Spectrum on a loop that is provisioned over fiber-fed digital loop carrier. BellSouth will provide CLEC with access to feeder sub-loops at UNE prices. BellSouth and CLEC will work together to establish methods and procedures for providing CLEC access to the High Frequency Spectrum over fiber fed digital loop carriers.

2.11..7 Only one competitive local exchange carrier shall be permitted access to the High Frequency Spectrum of any particular loop.

2.11..8 To order High Frequency Spectrum on a particular loop, CLEC must have a DSLAM collocated in the central office that serves the end-user of such loop. BellSouth shall allow CLEC to order splitters in central offices where CLEC is in the process of obtaining collocation space. BellSouth shall install such splitters before the end of CLEC's collocation provisioning interval.

2.11..9 BellSouth will devise a splitter order form that allows CLEC to order splitter ports in increments of 8, 24 or 96 ports.

2.11..10 BellSouth will provide CLEC the Local Service Request ("LSR") format to be used when ordering the High Frequency Spectrum.

2.11..11 BellSouth will provide CLEC with access to the High Frequency Spectrum of the unbundled loop as follows:

2.12 For 1-5 lines at the same address within three (3) business days from BellSouth's issuance of a FOC; 6-10 lines at the same address within 5 business days from BellSouth's issuance of a FOC; and more than 10 lines at the same address is to be negotiated.

2.12..1 BellSouth shall test the data portion of the loop to insure the continuity of the wiring for CLEC's data using the LSVT test-set for both the provisioning and maintenance of a loop. This test shall be performed from the CLEC designated tie cable pair (which is connected to CLEC's DSLAM) to the Main Distribution Frame (MDF) where the customer's cable pair leaves the BellSouth central office. This process will be implemented unless, and until, CLEC and BellSouth mutually agree on another process. If BellSouth delivers a line shared loop that is not properly wired by BellSouth, BellSouth shall adjust the monthly recurring charge to reflect the day that the line shared loop was placed in service.

2.12..2 CLEC will use the Central Office Synch Test (COST) as referenced at [insert web site address].

MAINTENANCE AND REPAIR

2.12..3 CLEC shall have access, for test, repair, and maintenance purposes, to any loop as to which it has access to the High Frequency Spectrum. CLEC may access the loop at the point where the combined voice and data signal exits the splitter.

2.12..4 BellSouth will be responsible for repairing voice services and the physical line between the network interface device at the customer premise and the Termination Point of demarcation in the central office. CLEC will be responsible

for repairing data services. Each Party will be responsible for maintaining its own equipment.

2.12..5 If the problem encountered appears to impact primarily the xDSL service, the end user should call CLEC. If the problem impacts primarily the voice service, the end user should call BellSouth. If both services are impaired, the end user should contact BellSouth and CLEC.

2.12..6 BellSouth and CLEC will work together to diagnose and resolve any troubles reported by the end-user and to develop a process for repair of lines as to which CLEC has access to the High Frequency Spectrum. The Parties will continue to work together to address customer initiated repair requests and other customer impacting maintenance issues to better support unbundling of High Frequency Spectrum.

2.12..6.1 The Parties will be responsible for testing and isolating troubles on its respective portion of the loop. Once a Party ("Reporting Party") has isolated a trouble to the other Party's ("Repairing Party") portion of the loop, the Reporting Party will notify the end user to report the trouble to the other service provider. The Repairing Party will take the actions necessary to repair the loop if it determines a trouble exists in its portion of the loop.

2.12..6.2 If a trouble is reported on either Party's portion of the loop and no trouble actually exists, the Repairing Party may charge the Reporting Party for any dispatching and testing (both inside and outside the central office) required by the Repairing Party in order to confirm the loop's working status.

2.12..7 In the event CLEC's deployment of xDSL on the High Frequency Spectrum significantly degrades the performance of other advanced services or of BellSouth's voice service on the same loop, BellSouth shall notify CLEC and allow twenty-four (24) hours to cure the trouble. If CLEC fails to resolve the trouble, BellSouth may discontinue CLEC's access to the High Frequency Spectrum on such loop.

2.12..8 CLEC will use the Central Office Synch Test (COST) as referenced at [insert web site address].

ISSUE 18: TRO – LINE SHARING – TRANSITION

If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC's existing line sharing arrangements?

3 Line Sharing

3.1 General

3.1.1 Line Sharing is defined as the process by which CLEC provides digital subscriber line "xDSL" service over the same copper loop that BellSouth uses to provide Retail voice service, with BellSouth using the low frequency portion of the loop and CLEC using the high frequency spectrum (as defined below) of the loop.

3.1.2 Line Sharing arrangements in service as of October 1, 2003, under a prior Interconnection Agreement between BellSouth and CLEC, will be grandfathered until the earlier of the date the End User discontinues or moves XDSL service with CLEC. Grandfathered arrangements pursuant to this Section will be billed at the rates set forth in Exhibit A.

3.1.3 No new line sharing arrangements may be ordered.

3.1.4 Any Line Sharing arrangements placed in service between October 2, 2003 and October 1, 2004, and not otherwise terminated, shall terminate on October 2, 2006.

3.1.5 The High Frequency Spectrum is defined as the frequency range above the voiceband on a copper loop facility carrying analog circuit-switched voiceband transmissions. Access to the High Frequency Spectrum is intended to allow CLEC the ability to provide xDSL data services to the End User for which BellSouth provides voice services. The High Frequency Spectrum shall be available for any version of xDSL complying with Spectrum Management Class 5 of ANSI T1.417, American National Standard for Telecommunications, Spectrum Management for loop Transmission Systems. BellSouth will continue to have access to the low frequency portion of the loop spectrum (from 300 Hertz to at least 3000 Hertz, and potentially up to 3400 Hertz, depending on equipment and facilities) for the purposes of providing voice service. CLEC shall only use xDSL technology that is within the PSD mask for Spectrum Management Class 5 as found in the above-mentioned document.

3.1.6 Access to the High Frequency Spectrum requires an unloaded, 2-wire copper loop. An unloaded loop is a copper loop with no load coils, low-pass filters, range extenders, DAMLs, or similar devices and minimal bridged taps consistent with ANSI T1.413 and T1.601.

3.1.7 BellSouth will provide Loop Modification to CLEC on an existing loop for Line Sharing in accordance with procedures as specified in Section 2 of this Attachment. BellSouth is not required to modify a loop for access

to the High Frequency spectrum if modification of that loop significantly degrades BellSouth's voice service. If CLEC requests that BellSouth modify a loop and such modification significantly degrades the voice services on the loop, CLEC shall pay for the loop to be restored to its original state.

3.1.8 Line Sharing shall only be available on loops on which BellSouth is also providing, and continues to provide, analog voice service directly to the End User. In the event the End User terminates its BellSouth provided voice service for any reason, or in the event BellSouth disconnects the End User's voice service pursuant to its tariffs or applicable law, and CLEC desires to continue providing xDSL service on such loop, CLEC or the new voice provider, shall be required to purchase a full stand-alone loop UNE. To the extent commercially reasonable, BellSouth shall give CLEC notice in a reasonable time prior to disconnect. In those cases in which BellSouth no longer provides voice service to the End User and CLEC purchases the full stand-alone loop, CLEC may elect the type of loop it will purchase. CLEC will pay the appropriate MRC and NRC rates for such loop as set forth in Exhibit A to this Attachment. In the event CLEC purchases a voice grade loop, CLEC acknowledges that such loop may not remain xDSL compatible.

3.1.9 In the event the End User terminates its BellSouth provided voice service, and CLEC requests BellSouth to convert the Line Sharing arrangement to a Line Splitting arrangement (see below), BellSouth will discontinue billing CLEC for the High Frequency Spectrum and begin billing the voice CLEC. BellSouth will continue to bill the Data LEC for all associated splitter charges if the Data LEC continues to use a BellSouth splitter.

3.1.10 Only one CLEC shall be permitted access to the High Frequency Spectrum of any particular loop.

3.1.11 After the transition period, any new customer must be served through a line splitting arrangement, through use of stand-alone copper loop, or through an arrangement that a competitive LEC has negotiated with the incumbent LEC to replace line sharing.

3.1.12 Once BellSouth has placed cross-connects on behalf of CLEC and CLEC chooses to rearrange its splitter or CLEC pairs, CLEC may order Subsequent Activity. BellSouth will bill and CLEC shall pay the Subsequent Activity charges as set forth in Exhibit A of this Attachment.

3.1.13 BellSouth will provide CLEC the LSR format to be used when ordering the High Frequency Spectrum.

3.2 Maintenance and Repair – Line Sharing

3.2.1 CLEC shall have access for test purposes to any Loop for which it has access to the High Frequency Spectrum. CLEC may test from the collocation space, the Termination Point or the NID.

3.2.2 BellSouth will be responsible for repairing voice services and the physical line between the NID and the Termination Point. CLEC will be responsible for repairing its data services. Each Party will be responsible for maintaining its own equipment.

3.2.3 CLEC shall inform its End Users to direct data problems to CLEC, unless both voice and data services are impaired, in which event CLEC should direct the End Users to contact BellSouth.

3.2.4 Once a Party has isolated a trouble to the other Party's portion of the Loop, the Party isolating the trouble shall notify the End User that the trouble is on the other Party's portion of the Loop.

3.2.5 Notwithstanding anything else to the contrary in this Agreement, when BellSouth receives a voice trouble and isolates the trouble to the physical collocation arrangement belonging to CLEC, BellSouth will notify CLEC, and bill CLEC accordingly. If BellSouth reports a trouble to CLEC for the High Frequency Spectrum on the Loop, and no trouble actually exists within CLEC's portion of the network, CLEC may charge BellSouth, and BellSouth shall pay, for any dispatching and testing (both inside and outside the central office) required by CLEC in order to confirm the trouble is not within CLEC's portion of the network.

ISSUE 19: TRO – LINE SPLITTING *What is the appropriate ICA language to implement BellSouth's obligations with regard to line-splitting?*

3 Line Splitting

3.3 Line splitting shall mean that a provider of data services (a Data LEC) and a provider of voice services (a Voice CLEC) deliver voice and data service to End Users over the same Loop. The Voice CLEC and Data LEC may be the same or different carriers.

3.4 Line Splitting – UNE-L. In the event CLEC provides its own switching or obtains switching from a third party, CLEC may engage in line splitting arrangements with another CLEC using a splitter, provided by CLEC or a third party, in a Collocation Space at the central office where the loop terminates into a distribution frame or its equivalent.

3.5 Line Splitting –Loop and UNE Port (UNE-P) or commingled Loop and Unbundled Local Switching provided pursuant to Section 271.

3.5.13 To the extent CLEC is purchasing UNE-P pursuant to this Agreement, or is using a commingled arrangement that consists of a Loop and Unbundled Local Switching provided by BellSouth pursuant to Section 271, BellSouth will permit CLEC to utilize Line Splitting. The UNE-P arrangement will be converted to a stand-alone Loop, a Network Element switch port, two collocation cross-connects and the high frequency spectrum line activation. Where the converted arrangement replaces UNE-P that CLEC is using to provide service to its embedded base of customer, the resulting arrangement shall continue to be included in CLEC's Embedded Customer Base as described in Section 5.4.3.2.

3.5.14 CLEC shall provide BellSouth with a signed LOA between it and the Data LEC or Voice CLEC with which it desires to provision Line Splitting services, if CLEC will not provide voice and data services.

3.5.15 Line Splitting arrangements in service pursuant to this Section 3.3 that are provided using UNE-P must be disconnected or provisioned pursuant to Section 3.2 on or before the end of the transition plan specified by the FCC in the TRRO (March 10, 2006) unless such date is revised or eliminated, in which case the transition plan if it not eliminated, will continue until such date as may be specified by the FCC, the applicable state commission or court of competent jurisdiction.

3.6 Provisioning Line Splitting and Splitter Space

3.6.13 The Data LEC, Voice CLEC, a third party or BellSouth may provide the splitter. When CLEC or its authorized agent owns the splitter, Line Splitting requires the following: a non-designed analog Loop from the serving wire center to the NID at the End User's location; a collocation cross-connection connecting the Loop to the collocation space; a second collocation cross-connection from the collocation space connected to a

voice port; the high frequency spectrum line activation, and a splitter. When BellSouth owns the splitter, Line Splitting requires the following: a non-designed analog Loop from the serving wire center to the NID at the End User's location with CFA and splitter port assignments, and a collocation cross-connection from the collocation space connected to a voice port.

3.6.14 An unloaded 2-wire copper Loop must serve the End User. The meet point for the Voice CLEC and the Data LEC is the point of termination on the MDF for the Data LEC's cable and pairs.

3.6.15 The foregoing procedures are applicable to migration from a UNE-P arrangement to Line Splitting Service, including a Line Splitting Service that includes a commingled arrangement of Loop and unbundled local switching pursuant to Section 271.

3.7 CLEC Provided Splitter – Line Splitting

3.7.13 To order High Frequency Spectrum on a particular Loop, CLEC must have a DSLAM collocated in the central office that serves the End User of such Loop.

3.7.14 CLEC must provide its own splitters in a central office and have installed its DSLAM in that central office.

3.7.15 CLEC may purchase, install and maintain central office POTS splitters in its collocation arrangements. CLEC may use such splitters for access to its customers and to provide digital line subscriber services to its customers using the High Frequency Spectrum. Existing Collocation rules and procedures and the terms and conditions relating to Collocation set forth in Attachment 4-Central Office shall apply.

3.7.16 Any splitters installed by CLEC in its collocation arrangement shall comply with ANSI T1.413, Annex E, or any future ANSI splitter Standards. CLEC may install any splitters that BellSouth deploys or permits to be deployed for itself or any BellSouth affiliate.

3.8 Maintenance – Line Splitting.

3.8.13 BellSouth will be responsible for repairing voice troubles and the troubles with the physical loop between the NID at the End User's premises and the termination point.

3.8.14 CLEC shall indemnify, defend and hold harmless BellSouth from and against any claims, losses, damages, and costs , which arise out of actions related to the other service provider, except to the extent caused by BellSouth's gross negligence or willful misconduct.

3.8.15 BellSouth must make all necessary network modifications, including providing non-discriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.

ISSUE 20: TRO – SUB-LOOP CONCENTRATION

a) What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration? B) Do the FCC's rules for sub loops for multi-unit premises limit CLEC access to copper facilities only or do they also include access to fiber facilities?

CompSouth does not propose contract language on this issue at this time. CompSouth reserves the right to offer alternatives to contract language proposed by BellSouth on this issue.

ISSUE 21: TRO – PACKET SWITCHING *What is the appropriate ICA language, if any, to address packet switching?*

CompSouth does not propose contract language on this issue at this time. CompSouth reserves the right to offer alternatives to contract language proposed by BellSouth on this issue.

ISSUE 22: TRO – CALL-RELATED DATABASES *What is the appropriate language, if any, to address access to call related databases?*

CompSouth proposes language as part of the *TRRO* transition that ensures that call-related databases associated with unbundled Local Switching are provided during the transition period. After the transition, call-related databases will be available as Section 271 checklist items. (This language is included as part of the transition language in Issue 2 and is repeated here.)

4.4.3.1
BellSouth shall also make available the following elements relating to Local Switching, as such elements are defined at 47 C.F.R. §51.319(d)(4)(i), during the Transition Period: signaling networks, call-related databases, and shared transport. After the completion of the Transition Period, such elements may be transitioned to the equivalent BellSouth Section 271 offering, pursuant to the transition provisions herein applicable to Local Switching arrangements

MCI offers additional language in its proposed Pre-Ordering, Ordering, Provisioning, Maintenance And Repair attachment. The MCI language requires that BellSouth provide a download with daily updates to directory assistance database, without regard to unbundled Local Switching availability. BellSouth is required to provide nondiscriminatory access to call-related databases under Sections 251(b)(3) of the Act and any other applicable law. Nondiscriminatory access contemplates use of the data without use restrictions, and at a price that is nondiscriminatory. MCI's proposed language is as follows:

8 Directory Assistance Data

8.1 Consistent with applicable laws and regulations, and as set forth herein, BellSouth shall
provide to CLEC via its Directory Assistance Database Service (DADS), the subscriber records used by BellSouth to create and maintain its Directory Assistance Data Base, in a non-discriminatory manner. The records shall include all records in BellSouth's Directory Assistance Database, including those of its own customers, independent telephone companies' customers, and customers of CLECs. Neither Party shall use the records for any
purpose, which violates federal or State laws, statutes, or regulatory orders.

8.2 Directory Assistance Data shall be provided in a nondiscriminatory manner on the same terms, conditions, and pricing that BellSouth provides to itself or other third parties.

8.2.1 Unless otherwise directed by CLEC, BellSouth shall provide CLEC subscriber records along with BellSouth subscriber records to third party

carriers that request directory assistance records from BellSouth. If CLEC does direct otherwise, BellSouth shall remove CLEC's subscriber records from BellSouth's Directory Assistance database.

8.2.2 BellSouth shall provide CLEC, to the extent authorized, a complete list of ILECs, CLECs, and independent Telcos that provided data contained in the database.

8.2.3 BellSouth will provide daily updates that will reflect all listing change activity occurring since CLEC's most recent update. BellSouth shall provide updates to CLEC on a Business, Residence, or combined Business and Residence basis.

8.2.4 BellSouth shall provide complete refresh of the Directory Assistance Data upon mutual agreement of BellSouth and CLEC and subject to applicable charges pursuant to Attachment 1 of this Agreement.

8.2.5 Provided that CLEC maintains, at its own expense, equipment and systems necessary at CLEC's end for the Parties to exchange directory assistance data in the Intermediate Record Format (IRF), negotiated and agreed upon by the Parties, as such format may be amended by further mutual agreement, all directory assistance data shall be provided in IRF. CLEC is not responsible for providing any equipment or systems on BellSouth's end in order for the Parties to exchange records using IRF.

8.2.6 Subject to amendments to the IRF that may be agreed to by the Parties, records exchanged using IRF shall include all identifiers and indicators currently used for processing Subscriber Listing Information ("SLI").

8.2.7 CLEC and BellSouth, upon mutual agreement, will designate a Technically Feasible point at which the data will be provided.

8.2.8 Directory Assistance Data Information Exchanges and Interfaces.

8.2.8.1 BellSouth shall provide to CLEC the following:

8.2.8.1.1 List of NPA-NXXs relating to the listing records being provided.

8.2.8.1.2 List of directory section names and their associated NPANXXs.

8.2.8.1.3 List of community names expected to be associated with each of the NPA-NXXs for which listing records are provided.

8.2.8.1.4 List of independent company names and their associated NPA-NXXs for which their listing data is included in BellSouth's listing data.

8.2.8.1.5 Identification of any area wide or universal service numbers which may be listed.

8.2.8.1.6 Identification of the telephone number to be provided to callers outside the servicing area.

8.2.8.1.7 Identification of any listing condition(s) unique to BellSouth's serving area which may require special handling in data processing in the directory. Indented listings (Captions) must be identified and delivered and handled as specified.

8.2.9 BellSouth and CLEC shall exchange records using Network Data Mover (NDM), or another electronic transmission method on which the Parties may agree. BellSouth shall identify tracking information requirements (for example, use of header and trailer records for tracking date and time, cycle numbers, sending and receiving site codes, volume count for the given dataset).

8.2.10 BellSouth shall identify dates CLEC should not expect to receive daily update activity.

ISSUE 23: TRO – GREENFIELD AREAS

a) What is the appropriate minimum point of entry ("MPOE)? B) What is the appropriate language to implement BellSouth's obligation, if any, to offer unbundled access to newly –deployed or "greenfield" fiber loops, including fiber loops deployed to the minimum point of entry of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?

2.1.2 Fiber to the Home (FTTH) loops are local loops consisting entirely of fiber optic cable, whether dark or lit, serving an End User's premises or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the MDU minimum point of entry (MPOE). Fiber to the Curb (FTTC) loops are local loops consisting of fiber optic cable connecting to a copper distribution plant that is not more than five hundred (500) feet from the End User's premises or, in the case of predominantly residential MDUs, not more than five hundred (500) feet from the MDU's MPOE. The fiber optic cable in a FTTC loop must connect to a copper distribution plant at a serving area interface from which every other copper distribution subloop also is not more than five hundred (500) feet from the respective End User's premises.

2.1.2.1 In new build (Greenfield) areas, where BellSouth has only deployed FTTH/FTTC facilities, BellSouth is under no obligation to provide such FTTH and FTTC Loops. FTTH facilities include fiber loops deployed to the MPOE of a MDU that is predominantly residential regardless of the ownership of the inside wiring from the MPOE to each End User in the MDU.

2.1.2.2 In FTTH/FTTC overbuild situations where BellSouth also has copper Loops, BellSouth will make those copper Loops available to CLEC on an unbundled basis, until such time as BellSouth chooses to retire those copper Loops using the FCC's network disclosure requirements. In these cases, BellSouth will offer a 64kbps second voice grade channel over its FTTH/FTTC facilities. BellSouth's retirement of copper Loops must comply with Applicable Law.

ISSUE 24: TRO- HYBRID LOOPS

What is the appropriate ICA language to implement BellSouth's obligation to provide unbundled access to hybrid loops?

2.1.3
A hybrid Loop is a local Loop, composed of both fiber optic cable, usually in the feeder plant, and copper twisted wire or cable, usually in the distribution plant. BellSouth shall provide CLEC with nondiscriminatory access to the time division multiplexing features, functions and capabilities of such hybrid Loop, including DS1 and DS3 capacity under Section 251 where impairment exists, on an unbundled basis to establish a complete transmission path between BellSouth's central office and an End User's premises. Where impairment does not exist, BellSouth shall provide such hybrid loop at just and reasonable rates pursuant to Section 271 at the rates set forth in Exhibit B. This access shall include access to all features, functions, and capabilities of the hybrid loop that are not used to transmit packetized information.

2.1.3.1
BellSouth shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to this Attachment.

ISSUE 25: TRO- END USER PREMISES *Under the FCC's definition of a loop found in 47 C.F.R. § 51.319(a), is a mobile switching center or cell site an "end user customer's premises"?*

CompSouth's proposed language on this issue is included with proposed Section 2.1:

Facilities that do not terminate at a demarcation point at an End User premises, including, by way of example, but not limited to, facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center or base station, do not constitute local loops under Section 251, except to the extent that CLEC may require loops to such locations for the purpose of providing telecommunications services to its personnel at those locations.

ISSUE 26: TRO – ROUTINE NETWORK MODIFICATIONS
What is the appropriate ICA language to implement BellSouth's obligation to provide routine network modifications?

CompSouth's proposed language for Routine Network Modifications (RNM) is provided below. CompSouth notes that BellSouth may contend that issues regarding "Line Conditioning" should be addressed as part of RNM. CompSouth strongly disagrees, and provides its proposed contract language on Line Conditioning issues under Issue 33*.

1.9 **Routine Network Modifications**

1.9.1 BellSouth will perform Routine Network Modifications (RNM) in accordance with FCC 47 C.F.R. § 51.319 (a)(7) and (e)(4) for Loops and Dedicated Transport provided under this Attachment. BellSouth shall make all routine network modifications to unbundled loop and transport facilities used by CLEC at CLEC's request where the requested loop and/or transport facility has already been constructed. BellSouth shall perform these routine network modifications to facilities in a non-discriminatory fashion, without regard to whether the loop or transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier. A routine network modification is an activity that BellSouth regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that BellSouth ordinarily attaches to a loop or transport facility to serve its own customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a CLEC.

1.9.2 BellSouth shall perform routine network modifications pursuant to the existing non-recurring charges and recurring rates ordered by the state commission for the loop and transport facilities set forth in Exhibit A and not at an additional charge. RNM shall be performed within the intervals established for the Network Element and subject to the performance measurements and associated remedies set forth in Attachment 9 of this Agreement except to the extent BellSouth demonstrates that such RNM were not anticipated in the setting of such intervals. If BellSouth believes that it has not anticipated a requested network modification as being a RNM and has not recovered the costs of such RNM in the rates set forth in Exhibit A, BellSouth can seek resolution from the state commission. However, in the interim, BellSouth will perform the RNM at the existing recurring and non-recurring rates associated with the provision of the loop or transport facility. There may not be any double recovery or retroactive recovery of these costs.

ISSUE 27: TRO – RNM (Pricing)

What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already recovered in the Authority-approved recurring or non-recurring rates? What is the appropriate language, if any, to incorporate into the ICAs?

See Issue 26 for CompSouth proposed contract language.

ISSUE 28: TRO – FIBER TO THE HOME

What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?

See Issue 23 for CompSouth proposed contract language.

ISSUE 29: TRO-EEL Audits

What is the appropriate ICA language to implement BellSouth's EEL audit rights, if any, under the TRO?

CompSouth notes that Issue 29 is limited to the question of "EELs audits." The issue of implementation of EELs "service eligibility criteria is also a critical TRO implementation issue. CompSouth includes proposed language on that issue here because EELs eligibility criteria are not otherwise identified as an issue in the Issues List.

EELs Audit provisions

5.3.4.3 BellSouth may, on an annual basis and only based upon good and sufficient cause, conduct an audit CLEC's records in order to verify material compliance with the high capacity EEL eligibility criteria. To invoke its limited right to audit, BellSouth will send a Notice of Audit to CLEC, identifying the particular circuits for which BellSouth alleges non-compliance and the cause upon which BellSouth rests its allegations. The Notice of Audit shall also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit will be delivered to CLEC with all supporting documentation no less than thirty (30) calendar days prior to the date upon which BellSouth seeks to commence an audit. For purposes of this Section, an "annual basis" means a consecutive 12-month period, beginning upon BellSouth's written notice that an audit will be performed for a {state}.

5.3.4.4 The audit shall be conducted by a third party independent auditor mutually agreed-upon by the Parties and retained and paid for by BellSouth. The audit shall commence at a mutually agreeable location (or locations) no sooner than thirty (30) calendar days after the parties have reached agreement on the auditor. The audit must be performed in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the high capacity EEL eligibility criteria. AICPA standards and other AICPA requirements related to determining the independence of an auditor shall govern the audit of requesting carrier compliance. The concept of materiality governs this audit; the independent auditor's report will conclude whether or the extent to which CLEC complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.

5.3.4.5 To the extent the independent auditor's report finds material non-compliance with the service eligibility criteria, BellSouth may file a complaint with the Authority pursuant to the dispute resolution process as set forth in this Agreement. In the event BellSouth prevails, CLEC must true-up any difference in payments, convert all

noncompliant circuits to the appropriate service, and make the correct payments on a going-forward basis.

5.3.4.6 To the extent the independent auditor's report concludes that CLEC failed to comply in all material respects with the service eligibility criteria, CLEC shall reimburse BellSouth for the reasonable and demonstrable cost of the independent auditor. Similarly, to the extent the independent auditor's report concludes that CLEC did comply in all material respects with the service eligibility criteria, BellSouth will reimburse CLEC for its reasonable and demonstrable costs associated with the audit, including, among other things, staff time. The Parties shall provide such reimbursement within thirty (30) calendar days of receipt of a statement of such costs.

EELS Eligibility Criteria

5.3 Enhanced Extended Links (EELs)

5.3.1 EELs are combinations of Loops and Dedicated Transport as defined in this Attachment, together with any facilities, equipment, or functions necessary to combine those Network Elements. BellSouth shall provide CLEC with EELs where the underlying Network Element are available and are required to be provided pursuant to this Agreement and in all instances where the requesting carrier meets the eligibility requirements, if applicable.

5.3.2 High-capacity EELs are (1) combinations of Loop and Dedicated Transport, (2) Dedicated Transport commingled with a wholesale loop, or (3) a loop commingled with wholesale transport at the DS1 and/or DS3 level as described in 47 C.F.R. § 51.318(b).

5.3.3 By placing an order for a high-capacity EEL, CLEC thereby certifies that the service eligibility criteria set forth herein are met for access to a converted high-capacity EEL, a new high-capacity EEL, or part of a high-capacity commingled EEL as a UNE. BellSouth shall have the right to audit CLEC's high-capacity EELs as specified below.

5.3.4 Service Eligibility Criteria

5.3.4.1 High capacity EELs are Combinations of loops and transport as described in 47 CFR Section 51.318(b). EELs consisting of DS0 loops with higher-capacity transport, or with DS0 transport are not "high capacity EELs" and are not required to meet the service eligibility criteria set forth in Section 5.3.4. High capacity EELs must comply with the following service eligibility requirements. CLEC must certify for each high-capacity EEL that all of the following service eligibility criteria are met:

5.3.4.1.1 CLEC has received state certification to provide local voice service in the area being served;

5.3.4.2 For each combined circuit, including each DS1 circuit, each DS1 EEL, and each DS1-equivalent circuit on a fully utilized DS3 EEL:

5.3.4.2.1 1) Each circuit to be provided to each End User will be assigned a local number prior to the provision of service over that circuit;

5.3.4.2.2 2) Each DS1-equivalent circuit on a fully utilized DS3 EEL must have its own local number assignment so that each fully utilized DS3 must have at least twenty-eight (28) local voice numbers assigned to it;

5.3.4.2.3 3) Each circuit to be provided to each End User will have 911 or E911 capability prior to provision of service over that circuit;

5.3.4.2.4 4) Each circuit to be provided to each End User will terminate in a collocation arrangement that meets the requirements of 47 C.F.R. § 51.318(c); if the EEL is commingled with a wholesale service, the wholesale service must terminate at the collocation arrangement;

5.3.4.2.5 5) Each circuit to be provided to each End User will be served by an interconnection trunk over which CLEC will transmit the calling party's number in connection with calls exchanged over the trunk;

5.3.4.2.6 6) For each twenty-four (24) DS1 EELs or other facilities having equivalent capacity, CLEC will have at least one (1) active DS1 local service interconnection trunk over which CLEC will transmit the calling party's number in connection with calls exchanged over the trunk; CLEC is not required to associate the individual EEL collocation termination point with a local interconnection truck in the same wire center; and

5.3.4.2.7 7) Each circuit to be provided to each End User will be served by a switch capable of switching local voice traffic.

5.3.4.2.8 For a new circuit to which Section 5.3.4.2.3 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a local telephone number is assigned and 911/E911 capability is provided. In such case, CLEC shall satisfy EEL eligibility criteria if it assigns the required local telephone number(s) and implements 911/E911 capability within 30 days after BellSouth provisions such new circuit.

5.3.4.2.9 CLEC may provide the required certification by sending a confirming letter to BellSouth on a blanket basis. A disconnect notice for any single circuit shall be sufficient to constitute notification to BellSouth that a blanket certification for multiple circuits that were part of a single order has been modified. In addition, CLEC may provide written notification from time to time, or will provide written confirmation in response to a request from BellSouth made no more often than once each calendar year, certifying that CLEC's EELs circuits satisfy all of the eligibility criteria set out above.

5.3.4.2.10 Existing circuits, including conversions or migrations, are governed by Section _____

ISSUE 31: ISP Remand Core Forbearance Order
What language should be used to incorporate the FCC's ISP Remand Core Forbearance Order into interconnection agreements?

The FCC's Core Forbearance Order requires that reciprocal compensation provisions delete references to the "new markets" and "growth cap" restrictions that were part of the FCC's ISP Remand Order. CompSouth proposes that such deletions be made from the reciprocal compensation provisions of BellSouth's ICAs.

ISSUE 32: **General Issue**
How should determinations made in this proceeding be incorporated into existing § 252 interconnection agreements?

CompSouth does not propose contract language associated with this Issue. Issue 32 is a legal/procedural issue to be determined by the Authority in this proceeding.

Generic Issue 33*: Line Conditioning:
(a) How should Line Conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to Line Conditioning? (b) Should the Agreement contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less? (c) Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

Line Conditioning

2.5.1 BellSouth shall perform line conditioning in accordance with FCC 47 C.F.R. 51.319 (a)(1)(iii). Line Conditioning is as defined in FCC 47 C.F.R. 51.319 (a)(1)(iii)(A). Insofar as it is technically feasible, BellSouth shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

2.5.2 BellSouth will remove load coils on copper loops and subloops of any length at the rates set forth in Exhibit A.

2.5.3 Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line conditioning orders that require the removal of other bridged tap will be performed at the rates set forth in Exhibit A of this Attachment.

2.5.4 CLEC may request removal of any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates set forth in Exhibit A.