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August 16, 2005

Director Deborah T. Tate
ATTN Sharla Dillon, Dockets
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-5015

Via Hand Delivery

Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law; Docket No. 04-00381

Dear Director Tate:

Enclosed for filing are the original and 13 copies of the Rebuttal Testimony of Kristin Shulman on behalf of XO Communications Services, Inc. Thank you for your assistance. Please contact me if there are any questions.

Sincerely,

Don

H. LaDon Baltimore
Counsel for XO Communications Services, Inc

LDB/dcg
Enclosures
cc: Guy Hicks, Esq
James L. Murphy III, Esq.
Henry Walker, Esq.
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BEFORE THE
TENNESSEE REGULATORY AUTHORITY

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

REBUTTAL TESTIMONY OF XO COMMUNICATIONS SERVICES, INC.
KRISTIN SHULMAN ON BEHALF OF XO COMMUNICATIONS SERVICES, INC.
August 16, 2005

Q. Please state your name and business address.

A. My name is Kristin Shulman. My business address is 810 Jorie Blvd., Suite 200, Oak Brook, IL 60523.

Q. By whom are you employed and in what capacity?

A. I am an Executive Director – Regulatory Affairs of XO Communications, Inc. ("XO") In this position, I am responsible for all regulatory issues and policies, in which XO engages, in Michigan, Ohio, Illinois, Missouri and Texas.

Q. Please describe your educational background and professional experience within the telecommunications industry.

A. I graduated from the State University of New York at Albany ("SUNY Albany") where I received a Bachelor of Arts degree in English. I also received a Masters of Arts degree in Economics from the Pennsylvania State University.

I started my career in 1984 as a Manager, Corporate Books at the Rochester Telephone Company in Rochester NY. Over the next 16 years, I held many management positions in the regulatory and marketing departments of then Bell Atlantic and Ameritech, culminating in the position of Vice President of Marketing, Ameritech Industry Services in the late 1990's. Subsequent to working for the regional operating companies, I was principal of Active Strategies, LLC a telecom consulting firm. In that capacity, I assisted a number of CLECs in entering the market utilizing UNEs obtained from the Incumbent Local Exchange Carriers. In 2003, I joined Allegiance Telecom, Inc. as Regional Vice President, Regulatory Affairs and handled all regulatory matters in which Allegiance took part in the Verizon east states. In 2004, Allegiance Telecom, Inc. was acquired by XO Communications, Inc. and I took on my current job responsibilities as Executive Director, Regulatory Affairs.

Q. What is the purpose of your testimony?

A. My testimony addresses a number of issues related to the transition plans for high-capacity loop and transport network elements and an issue related to the definition of a dedicated transport "route."

Q. Please summarize your understanding of the FCC's transition plan for high capacity loops and transport.

A. In its simplest terms, the FCC adopted a twelve month transition period for DS1 and DS3 loops and transport beginning on March 10, 2005 and ending on March 10, 2006, and an eighteen month transition period for dark fiber loops and transport beginning on March 10, 2005 and ending on September 10, 2006. During the transition period, ILECs are permitted to charge rates equal to the higher of 115% of the unbundled network element rates in effect on June 15, 2004 or 115% of any UNE rates established by state Commissions between June 15, 2004 and March 10, 2005.

Q. Have you reviewed the testimony of CompSouth witness Joseph Gillan concerning the appropriate implementation of the FCC's transition plan?

A Yes, I have.

Q. Please summarize your understanding of Mr. Gillan's proposal for implementing the FCC's transition plan for high capacity loops and transport.

A. Mr. Gillan contends that the FCC required that CLECs (a) amend the provisions in their interconnection agreements concerning DS1 and DS3 loops and transport by March 10, 2006 and place orders by that date to convert their embedded base of DS1 and DS3 loops and transport to alternative arrangements and (b) amend the provisions in their interconnection agreements concerning dark fiber loops and transport by September 10, 2006 and place orders by that same date to transition their embedded base of dark fiber loops and transport to alternative arrangements. He proposes that the transition rates would become effective only upon amendment of the interconnection agreement and would remain in effect until BellSouth completes the conversion of the embedded base.

Q. Have you reviewed the testimony of BellSouth witness Pamela A. Tipton concerning the implementation of the FCC's transition plan?

A. Yes, I have.

Q. Please summarize your understanding of Ms. Tipton's proposal for implementing the FCC's transition plan for high capacity loops and transport.

A Ms. Tipton argues that the transition rates apply to the embedded base of DS1, DS3, and dark fiber loops and transport as of March 10, 2005, regardless of when a CLEC's interconnection agreement is amended. She proposes that CLECs be required to submit orders by December 9, 2005 to convert their embedded base of DS1 and DS3 loops and transport to alternative arrangements and to submit orders by June 10, 2006 to convert their embedded base of dark fiber loops and transport. Under Ms. Tipton's proposal, transition pricing for the embedded base would end when BellSouth completed the conversion in the case of conversions that are completed before the end of the FCC's transition periods and would end on March 10, 2006 for DS1 and DS3 loops and transport and on September 10, 2006 for dark fiber loops in the case of conversions that BellSouth does not complete by the end of the applicable transition period.

Q. Do you agree with Mr. Gillan or Ms. Tipton concerning the appropriate implementation of the FCC's transition plans?

A. I really can't totally agree with either one.

Mr. Gillan is certainly correct that the FCC provided CLECs twelve months from March 10, 2005 to amend their interconnection agreements concerning DS1 and DS3 loops and transport and eighteen months to amend the provisions concerning dark fiber loops and transport. At paragraph 143 of its Order, referring to DS1 and DS3 transport, the FCC stated that "carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including any change of law processes." In footnote 406, the FCC said that "for dark fiber transport, carriers have eighteen months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes." The FCC said the same things concerning the transition periods for DS1 and DS3 loops in paragraph 196 and for dark fiber loops in footnote 523. Clearly, the FCC intended to provide up to twelve months for the modification of interconnection agreement provisions concerning DS1 and DS3 loops and transport and eighteen months to modify the provisions concerning dark fiber loops and transport.

When Mr. Gillan concludes that the FCC intended for its transition rates to become effective only upon the amendment of a CLEC's interconnection agreement, however, he appears to overlook relatively clear statements to the contrary. In footnotes 408 and 524, of the *TRRO*, the FCC stated that dedicated transport facilities and high capacity loops, respectively, "no longer subject to unbundling shall be subject to true-up to the applicable transition rate upon amendment of the relevant interconnection agreements, including any applicable change of law processes." Thus, the FCC has indicated that, once the parties have amended their interconnection agreement, a true-up of transition pricing is appropriate. Of course, as the FCC emphasized at several points in the *TRRO,* its transition plan should apply only where the parties have not agreed to different terms. For example, if the change of law provisions in a CLEC's interconnection agreement provide that changes of law will be implemented without true-ups or by some other means, that provision or other arrangement should be given effect. Additionally, as I explain below, BellSouth's argument that only transition pricing, and no other provisions of the FCC's order that have been delayed in implementation, must be trued-up should be rejected, as well.

I also agree with Mr. Gillan that the FCC did not require CLECs to convert their embedded base of high capacity loops and transport and UNE-P arrangements prior to the end of the transition period. In paragraph 143, the FCC said that "***[a]t the end of the twelve-month period,*** requesting carriers must transition the affected DS1 or DS3 dedicated transport UNEs to alternative facilities or arrangements." The FCC said the same thing with respect to DS1 and DS3 loops in paragraph 196. Although CLECs need to place their orders for the conversion of UNEs before the end of the transition period, Ms. Tipton is simply wrong in contending that the FCC required CLECs to ***complete*** the conversion of delisted UNEs to other arrangements by the end of the transition period. The FCC clearly intended to give CLECs the full twelve months (or eighteen months for dark fiber UNEs) to identify the best available alternatives to high capacity loops and transport that they currently lease on an unbundled basis but cannot retain as UNEs after the transition period and to place the necessary orders with BellSouth and other vendors to implement those alternatives.

I can't agree with either Mr. Gillan or Ms. Tipton about when the FCC's transition pricing ends. Mr. Gillan contends that transition pricing should continue until BellSouth actually converts each delisted UNE, although BellSouth may not even receive CLECs' conversion orders until just before the end of the transition period, while Ms. Tipton contends that BellSouth should be permitted to charge higher rates for other arrangements as soon as it converts delisted UNEs when it does so before the end of the transition period. Yet the FCC clearly stated in paragraphs 145 and 198 that transition rates for high capacity loops and transport would apply "***during the relevant transition period.***" Similarly, 47 CFR §§ 51.319(a)(4)(iii) (DS1 loops), 51.319(a)(5)(iii) (DS3 loops), 51.319(e)(2)(ii)(C) (DS1 transport), and 51.319(e)(2)(iii)(C) (DS3 transport) all provide for transition pricing "for a 12-month period beginning on the effective date of the <u>Triennial Review Remand Order</u>," while 47 CFR §§ 51.319(a)(6)(ii) (dark fiber loops) and 51.319(e)(2)((iv)(B) apply transition pricing "[f]or an 18-month period beginning on the effective date of the Triennial Review Remand Order." In light of these statements, it seems clear that the FCC intended for transition pricing to end on March 10, 2006 for DS1 and DS3 loops and transport and on September 10, 2006 for dark fiber loops and transport, regardless of when the network elements are actually converted to alternative arrangements, assuming that orders are placed prior to the end of the transition period for circuits to be converted. While this will result in BellSouth providing special access circuits at UNE rates if it completes a conversion before the due date, this will be offset by its ability to charge special access rates for UNEs that it does not convert by the deadline. Also, it is important to note that, if special access pricing is effective March 10, 2006 for DS1 and DS3 loops and transport and on September 10, 2006 for dark fiber loops and transport, even when the actual conversion occurs at a later date, BellSouth should be required to make available special access term pricing on that same date, regardless of actual conversion date. In other words, BellSouth cannot have its cake and eat it, too – or have a special access "true-up" back to March 10, 2006, yet refuse to provide plan pricing because the circuits "were not yet converted."

Q. Please summarize how you believe the transition process should work.

A. The FCC intended to provide a period of one year for parties to amend the provisions of their interconnection agreements concerning DS1 and DS3 loops and transport and an eighteen month period to amend interconnection agreement provisions concerning dark fiber loops and transport. CLECs also should have until March 10, 2006 to place orders to convert DS1 and DS3 loops and transport to alternative arrangements, and until September 10, 2006 to place orders to convert dark fiber loops and transport. Once the interconnection agreement is amended, a true-up of all applicable provisions, consistent with the Authority's order in this docket, should apply, unless BellSouth has agreed otherwise with a particular CLEC. For interconnection agreements amended before the conclusion of this docket, the parties should be required to comply with the order in this docket unless they have clearly waived their right to do so. CLECs should not be penalized for working cooperatively with BellSouth to amend their interconnection agreements prior to the conclusion of this docket. Transition pricing should end on March 10, 2006 for all delisted UNEs except dark fiber and on September 10, 2006 for dark fiber loops and transport, no matter when the CLEC places orders to convert the UNEs as of those dates or when BellSouth completes the conversions.

Q. Do you believe that policy considerations support your conclusion?

A. Yes, I do. Aside from the FCC's clear statements of its intention, setting uniform dates for the commencement and termination of transition pricing is necessary in order to avoid creating inappropriate incentives and promoting discrimination. Delaying the onset of transition pricing until an interconnection agreement is amended would provide an incentive for CLECs to prolong negotiations and would discriminate against CLECs who heed the FCC's exhortations to promptly amend their agreements. Tying the end of transition pricing (or the availability of special access plan pricing) to BellSouth's completion of conversion orders would create an incentive for CLECs to delay placing their conversion orders (or for BellSouth to delay working those orders) and would permit BellSouth to discriminate based upon when it completes those orders. In each case, CLECs who worked cooperatively with BellSouth to amend their interconnection agreements promptly and to place their conversion orders in a timely fashion would effectively be penalized for doing so. On the other hand, if end of transition prices apply in all cases on March 10 or September 10, 2006, as appropriate, CLECs would have to place their conversion orders early in order to give BellSouth more time to complete them and thus minimize the risk of errors as BellSouth works to convert a massive number of network elements in a relatively short period of time

The Authority also needs to consider incentives in determining whether any other true-ups are appropriate. For example, CLECs have been entitled to commingle UNEs and wholesale services, to use EELs under clearer eligibility criteria,[1] and to convert commingled services to UNEs at least since the FCC's *Triennial Review Order,* but BellSouth has generally refused to permit such commingling, EELs usage and conversions until CLECs have amended their interconnection agreements to incorporate provisions that are favorable to BellSouth. If the Authority were to order a true-up to transition rates for delisted UNEs but not for issues such as commingling, EELs and conversions, BellSouth would continue have no incentive to amend agreements promptly to incorporate provisions that are favorable to CLECs. Unless a particular interconnection agreement or other agreed upon arrangement specifies that there will be no true-ups, the Authority should adopt a uniform policy for truing up all changes that result from implementation of the *TRO* and *TRRO*, and not only for those changes that favor BellSouth.

Q. What about charges for conversions? Do you agree with BellSouth's proposals for charging CLECs to convert delisted UNEs to alternative arrangements?

A. Only partially. BellSouth will incur minimal costs associated with making the record changes required to convert UNEs to wholesale services, but in many cases the conversion charges that BellSouth proposes are excessive.

Q. What does Ms. Tipton propose that BellSouth would charge to convert a UNE or UNE combination to a wholesale service when the CLEC identifies the UNE or combination to be converted and places an order for the conversion?

A. Ms. Tipton doesn't address this issue directly in her testimony, but Section 1.6 of the proposed contract language attached to her testimony states that BellSouth will charge

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1 BellSouth's delay in permitting CLECs to operate under clearer eligibility criteria also underscores the need for the Authority to set a transition period for CLECs to evaluate existing EEL circuits and implement the new criteria after amendment of their interconnection agreements XO recommends adoption of a six-month transition period for EELs to the new criteria, during which BellSouth should not be allowed to conduct audits, thus allowing CLECs time to comply with the new criteria

switch-as-is rates to convert a Network Element or Combination to an equivalent wholesale service or group of wholesale services upon the request of the CLEC.

Q. Are such switch-as-is conversion charges appropriate?

A. Conceptually, yes they are. But BellSouth is proposing an excessive switch-as-is rate for converting UNE loops to wholesale services.

Q. Please explain.

A. In the rate tables included with the proposed interconnection agreement amendment that BellSouth has provided to CLECs and posted on its web site, BellSouth proposes to assess Authority-approved switch-as-is charges for converting dedicated transport UNEs and UNE loop and transport combinations to equivalent wholesale services. However, for purposes of this docket, BellSouth proposes to charge switch-as-is rates for conversion of stand alone UNE loops that differ from the conversion rates for UNE loop and transport combinations. In Tennessee, the proposed switch-as-is rate for stand alone UNE loops ($23.42) is less than one-half the rate for switch-as-is of UNE loop and transport and combinations ($52.73). In other states, however, the switch-as-in rate for stand alone UNE loops is much higher than the switch-as-is rate for UNE loop and transport combinations. In Georgia, for example, the Commission-approved switch-as-is rate for conversion of UNE loop and transport combination is $5.70. For converting a stand alone UNE loop, however, BellSouth has proposed a switch-as-is rate of $22.06. It cannot possibly cost BellSouth nearly four times as much to make the record change to convert a UNE loop as it does to convert a combination of that same loop and a dedicated transport interoffice channel. More importantly, since BellSouth uses the same service center personnel and the same systems for switch-as-is conversion in both Tennessee and Georgia, it should not cost BellSouth nearly ten (10) times as much to make a record change to convert a UNE loop in Tennessee as it does to convert a combination of a loop of a dedicated transport interoffice channel in Georgia.

Q. What justification does BellSouth provide for such a charge?

A. To my knowledge, none. BellSouth did not even disclose its proposed switch-as-is charges in its testimony, much less attempt to justify them.

Q. What is the appropriate switch-as-is charge for converting a UNE loop to a wholesale service?

A. I don't have enough information to answer that question. Certainly, it should be no more than the charge for converting a UNE loop and transport combination in the same service center using the same systems, regardless of the location of the facility. Keep in mind that this is a billing change performed at a centralized location, not physical work done in the field.

Q. What do you recommend that the Authority do about this issue?

A. Because the record change for a high capacity loop should involve less work than a record change for both a loop and a transport link, and the same process, systems, and personnel are used for record changes in the various states, the Authority should adopt a switch-as-is rate equal to the lowest switch-as-is rate adopted by any state Commission or Authority for BellSouth's conversion of a loop and transport combination, which is $5.43, the switch-as-is charge for loop and transport combinations in Louisiana and North Carolina.

Q. What about conversion charges when BellSouth identifies the UNEs that need to be converted, perhaps because a CLEC has not done so in a timely manner?

A. In Ms. Tipton's testimony and the attached proposed contract language, BellSouth proposes that when it identifies a UNE or combination to be converted to a wholesale service or services, the CLEC would be liable for any charge that the Authority has approved for disconnection of the applicable UNE plus the full tariffed nonrecurring charge for the wholesale service to which it is converted.

Q. Do you believe that such charges would be appropriate?

A. No. BellSouth may incur a small cost to identify delisted UNEs for which CLECs have not placed conversion orders, and BellSouth easily would recover such costs in the first month's higher recurring charges for wholesale services.. More significantly, the nonrecurring charges that BellSouth seeks to impose vastly exceed any possible cost of simply identifying circuits to be converted. For example, the nonrecurring charge for the installation of a DS1 local channel in Section 7.5.9(A)(1) of BellSouth's FCC special access tariff, which is the wholesale equivalent of a DS1 loop, is $650.00. The Authority has approved a nonrecurring charge of $313.08 for such a loop when ordered as a UNE, which the Authority has determined to be BellSouth's average TELRIC cost of provisioning the loop. There is no way that BellSouth's cost simply of identifying a loop to be converted could be as much as $313.08, not to mention the $746.86 ($650 special access nonrecurring charge plus $96.86 UNE disconnect charge) that BellSouth proposes to charge for doing so.

Q. What do you recommend that the Authority do about this issue?

A. BellSouth should not be allowed to impose any charges for identifying UNEs to be converted. However, if the Authority decides to permit BellSouth to impose any charge for identifying UNEs so that it can convert them to higher-priced wholesale services, the Authority should require BellSouth to submit a TELRIC cost study demonstrating its cost of identifying circuits to be converted. Pending the submission and review of such a cost study, the Authority should set an interim rate of zero. BellSouth cannot be permitted to impose above-cost charges for identifying UNEs so that it can convert them to wholesale services at significantly increased recurring rates.

Q. What has BellSouth proposed concerning the transition of high capacity loops and transport to wholesale services in the future, when additional wire centers exceed the FCC's business line count and/or collocator thresholds?

A. None of the BellSouth witnesses directly address this issue in testimony The contract language in Exhibits PAT-1 and PAT-2 to Ms. Tipton's testimony addresses it in Section 2.1.4.12 for DS1 and DS3 loops, in Section 6.2.6.10 for DS1 and DS3 transport, and in Section 6.9.1.10 for dark fiber transport.

In each case, BellSouth proposes that when it identifies an additional wire center that meets the FCC's criteria for delisting a high capacity loop or transport UNE, it would post a notification on its web site identifying the wire center and the delisted UNE. Effective ten business days later, BellSouth would not be required to provide the delisted UNE in that wire center. CLECs would be required to submit orders to convert the delisted UNEs in that wire center within forty days after BellSouth posted the notice on its web site, with the conversions to be completed within ninety days after the tenth business day after BellSouth posted the notice Similar to its proposal for the initial transition, BellSouth proposes that the FCC's transition rates would apply for the period beginning ten business days after it posted the notice and end on the earlier of when BellSouth completes the conversion or the end of the ninety day period, and BellSouth would assess switch-as-is charges for the conversion of circuits identified by CLECs in timely conversion orders and the sum of UNE disconnect charges and tariffed nonrecurring charges for circuits identified by BellSouth.

Q. Do you believe that those procedures are appropriate?

A. No, I do not.

Q. What transition provisions do you believe the Authority should adopt for the future delisting of high capacity loops and transport?

A. My testimony concerning the appropriate application of transition rates and conversion charges for the initial transition period is equally applicable to subsequent transitions. Transition rates should apply from the beginning to the end of the transition period, regardless of when conversion orders are placed or completed, and BellSouth should assess only Authority-approved switch-as-is conversion charges, with an additional Authority-approved charge to recover its cost of identifying circuits to be converted, when applicable.

The more important issues for subsequent transitions, however, concern the process for updating the list of wire centers where high capacity UNEs are delisted and the length of the transition period.

Q. What process do you propose for updating the list of wire centers?

A. I agree with Mr. Gillan's proposal for an annual proceeding to review business line count data. Because of the incentives for BellSouth to overstate business line counts in order to minimize its unbundling obligations, it is vitally important for the Authority to review this data before BellSouth is relieved of unbundling obligations. Since BellSouth's ARMIS data is updated annually, there should also be an annual update of the business line counts based on that data.

It is also important to give CLECs sufficient time to change their business processes to adjust to the impending loss of high capacity loop and transport unbundling in a wire center BellSouth proposes a period of only ten business days from the time it announces that a wire center has exceeded an applicable threshold and the time when it would no longer be required to unbundle a high capacity UNE in that wire center. Many CLECs tailor their marketing to the cost of serving particular customers, however, and they need significantly more than two weeks' notice that the loop or transport circuit required to serve a particular prospective customer will not be available at TELRIC rates. The knowledge that UNEs are likely to be delisted in a wire center following Authority review of business line counts in that wire center and the relatively brief time that would be required for such review under Mr. Gillan's proposal would provide the time that CLECs need to adjust their marketing and other business processes in anticipation of the delisting of the UNEs.

Q. Mr. Gillan's proposal appears to be limited to an annual review of updated business line counts. What if a wire center gains a fiber-based collocation and, as a result, qualifies for delisting of a UNE?

A. One approach would be to update the wire center nonimpairment lists only once a year after the Authority reviews updated business line counts, but that could require BellSouth to continue to provide high capacity loops or transport on an unbundled basis for a year or more after a wire center exceeded an applicable collocation threshold.

Although annual updates appear to be the only feasible approach to revising wire center impairment lists based upon line count data, in the case of updates resulting from new fiber-based collocations a better approach would be to require BellSouth to post a notice on its web site whenever it receives an order for new or modified collocation space that might result in a wire center exceeding an applicable collocation threshold. While BellSouth often would not know at the time it received the order whether the collocation in question would be fiber-based as defined by the FCC, the early notification would let CLECs know that a wire center was in jeopardy of qualifying for reduced unbundling so that they could adjust their business processes accordingly. BellSouth then should be required to post a second notice as soon as it has the information necessary to determine whether the new or modified collocation will in fact result in the delisting of any UNE. Of course, the actual delisting would not take effect until the collocation was completed, the fiber installed, and the collocation powered up, and such delisting should be subject to an appropriate transition period.

Q. You mentioned that the length of subsequent transition periods is also an important issue. Please elaborate.

A. The FCC found that CLECs need as much as a full year from March 10, 2005 to determine how best to transition their DS1 and DS3 UNEs to alternative arrangements and eighteen months to identify and implement alternatives to dark fiber loops and transport, despite the fact that CLECs have known at least since the FCC's August 20, 2004 *Interim Order* that high capacity loops and transport were likely to be delisted in the most dense wire centers. CLECs cannot possibly perform the analysis required to identify the best alternatives to existing high capacity UNEs in the ninety days proposed by BellSouth, especially when dark fiber transport is delisted.

Q. What transition periods do you believe should apply to the subsequent delisting of high capacity UNEs?

A. Because CLECs would have less advance notice of the likelihood of subsequent UNE delisting than they did for the initial delisting that took effect on March 10, 2005, it is arguable that the length of subsequent transition periods should be at least as long as the one year for DS1 and DS3 UNEs and eighteen months for dark fiber UNEs that the FCC adopted for the initial transition, if not longer. As long as the Authority establishes an appropriate process for reviewing updated business line counts and requires BellSouth to post a notice when it receives a collocation order that may result in the delisting of UNEs, however, I can agree with US LEC witness Wanda Montano's proposal for a six month transition period for DS1 and DS3 loop and transport UNEs that are delisted in the future. Because of the time required to install fiber, I believe that an eighteen month transition period is the minimum necessary to permit CLECs to transition from dark fiber transport UNEs.

Q. Do you agree with Ms. Tipton concerning the correct definition of a "route" for purposes of determining the availability of high capacity transport under the FCC's rules?

A. Ms. Tipton accurately paraphrases the FCC's definition of a "route" contained in 47 CFR §51.319(e). Because of positions taken by BellSouth and other ILECs in the aborted state proceedings to implement the FCC's *Triennial Review Order*, however, it is important to clarify that the definition of a "route" does not limit the ability of CLECs to obtain high capacity transport UNEs on routes where the FCC has determined that CLECs are impaired without such UNEs. CLECs need to be able to collocate in a Tier 2 or Tier 3 wire center and obtain unbundled transport connecting that collocation to multiple Tier 1 or Tier 2 wire centers.

Q. Please elaborate.

A. In the state *TRO* proceedings, state Commissions were required to identify the routes, under the FCC's definition, where either (a) CLECs had constructed their own transport facilities or (b) transport facilities were available on a wholesale basis from sources other than the ILEC. If a CLEC had constructed its own transport facilities from one wire center to each of two other wire centers, BellSouth and other ILECs argued that a route existed between the two other wire centers because it would be possible to cross-connect the individual routes at the wire center where they had a common end point. Extending this argument, BellSouth could take the position that it is not required to provide unbundled high capacity transport on two or more routes connecting wire centers in one tier to a single wire center in a lower tier, which would permit it to avoid unbundling on routes where the FCC has found impairment.

For example, the FCC found that CLECs are impaired without the availability of unbundled DS1 transport between Tier 1 and Tier 3 wire centers, although it found that they are not impaired without unbundled DS1 transport connecting two Tier 1 wire centers. Thus, a CLEC with a collocation arrangement in a Tier 3 wire center must be permitted to obtain unbundled DS1 transport from that wire center to each of two or more Tier 1 wire centers. Applying the argument it employed in the state *TRO* proceedings, however, BellSouth could argue that because such routes could be cross-connected within the collocation at the Tier 3 wire center, BellSouth would only be required to provide one of the requested routes, otherwise the CLEC would have obtained unbundled DS1 transport on a route connecting two Tier 1 wire centers, where the FCC found no impairment.

Q. The FCC said something about using a Tier 3 wire center as a "hub" in paragraph 106 of the *TRRO*. Is that what you are referring to?

A. Not exactly. The FCC noted in paragraph 106 that it is unlikely that a CLEC desiring unbundled DS1 transport connecting two Tier 1 wire centers would collocate in a Tier 3 wire center and order DS1 transport from the Tier 3 wire center to each of the Tier 1 wire centers because of the cost of collocating at the Tier 3 wire center and the distance-sensitive rate for the two DS1 transport links, which likely would make the arrangement more costly than connecting the two Tier 1 wire centers directly with a special access circuit. The situation that I am concerned with is one where the CLEC wants unbundled transport from the Tier 3 wire center to each of several Tier 1 wire centers, perhaps as the transport component of EELs, connected to loops in the Tier 1 wire centers. In Georgia, this issue was identified as a sub-issue under Issue No. 4(iv) after it was raised by Digital Agent, LLC.

Q. Do any of the BellSouth witnesses address this issue in their testimony?

A. No, and I am not certain that BellSouth disagrees with my position. It is my understanding that BellSouth has agreed in negotiations that a CLEC may obtain unbundled DS1 transport on direct routes between a Tier 2 or Tier 3 wire center and each of two or more Tier 1 wire centers, as well as similar configurations of unbundled DS3 transport connecting a Tier 3 wire center to two or more Tier 1 or Tier 2 wire centers, but as far as I know BellSouth has not yet agreed to contract language stating this. I believe that it is important to include language clarifying this point so that BellSouth cannot later change its interpretation of the "route" definition.

Q. Do you believe that the FCC intended to prohibit a CLEC from obtaining an unbundled DS1 connection between two Tier 1 wire centers by ordering routes from a Tier 3 wire center to each of them and cross-connecting them at the Tier 3 wire center as discussed in paragraph 106?

A No. The FCC clearly recognized the possibility of such configurations, correctly concluded that they generally would not make economic sense, and did not expressly forbid them If the Authority concludes otherwise, however, it should prohibit the cross-connection at the Tier 3 wire center, rather than permitting BellSouth to deny unbundled DS1 transport connecting a Tier 3 wire center to more than one Tier 1 wire center.

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded via U. S. Mail, first class postage prepaid, overnight delivery, electronic transmission, or facsimile transmission to the following, this 16th day of August, 2005.

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