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August 16, 2005

VIA HAND DELIVERY

Hon. Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

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

Dear Chairman Jones:

Enclosed are the original and four paper copies and a CD ROM of Rebuttal Testimony on behalf of BellSouth by the following witnesses:

Kathy Blake
Eric Fogle
Pamela Tipton

Copies are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2005, a copy of the foregoing document was served on the following, via the method indicated:

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BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF ERIC FOGLE

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 04-00381

AUGUST 16, 2005

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

A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., as a Director in BellSouth's Interconnection Operations Organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q ARE YOU THE SAME ERIC FOGLE THAT FILED DIRECT TESTIMONY IN THIS DOCKET?

A Yes. I filed direct testimony on July26, 2005.

Q WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to provide BellSouth's response to the testimony and proposed contract language contained in the direct testimony of Joseph Gillan on behalf of The Competitive Carriers of the South, Inc ("CompSouth") for Issues 6, 17, 18, 19, 20, 23, 24, 25, 26, 27, and 28.

To the extent that the parties provided Interconnection Agreement ("ICA") language supporting their positions on the issues, BellSouth has provided an edited version of the parties' proposed ICA language, attached to Pam Tipton's rebuttal testimony as PAT-5. This exhibit is provided to illustrate the ICA language that is acceptable to BellSouth. I will explain BellSouth's redlines to the CLECs' language for the issues I address in this rebuttal testimony

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

Q. WHAT ARE THE DISAGREEMENTS BETWEEN THE PARTIES CONCERNING THIS ISSUE?

A. There are two overall disagreements. First, the parties disagree about how to count HDSL lines for the purpose of evaluating impairment Second, the parties disagree as to whether there should be continued access to HDSL capable loops in wire centers in which CLECs are not impaired and are not entitled to obtain UNE DS1 loops.

Q. WITH RESPECT TO THE FIRST DISAGREEMENT, DID BELLSOUTH COUNT HDSL-CAPABLE LOOPS AS DS1 EQUIVALENTS FOR THE PURPOSE OF EVALUATING IMPAIRMENT?

A. No As I stated in my direct testimony, BellSouth counted Unbundled Network Element ("UNE") High-bit rate Digital Subscriber Loop ("HDSL")

capable copper loops on a one-for-one basis and did not convert each HDSL capable loop to voice grade equivalents. BellSouth elected to conservatively calculate deployed HDSL loops, although it would have been appropriate to convert deployed HDSL capable loops to voice grade equivalents. While Mr. Gillan expressed concerns about calculating HDSL capable loops, (Direct Testimony of Joseph Gillan, pp. 24 – 27) these concerns appear to be overstated.

In any event, I understand the FCC to have contemplated that currently deployed HDSL loops would be counted as the equivalent of 24 business lines based upon statements made in the Triennial Review Order (*"TRO"*) that, "Carriers frequently use a form of DSL service, i e , High-bit rate DSL (HDSL), both two-wire and four-wire HDSL, as the means for delivering T1 services to customers. We will use DS1 for consistency but note that a DS1 loop and a T1 are equivalent in speed and capacity, both representing the North American standard for a symmetric digital transmission link of 1 544 Mbps."

Because HDSL and DS1 loops are technically equivalent, and because the FCC clearly references the use of HDSL technology to deliver DS1 service, it is clearly appropriate to count currently-deployed HDSL loops delivering DS1 level service as a 24-line equivalents. To avoid a dispute on this issue, however, BellSouth counted loops using HDSL technology as one (line) instead of 24 business lines in its nonimpairment analysis

Q TURNING TO THE SECOND AREA OF DISAGREEMENT, WHY DOES

BELLSOUTH CONCLUDE THAT CLECS ARE NOT ENTITLED TO UNE HDSL LOOPS IN OFFICES WHERE NO IMPAIRMENT FOR DS1 LOOPS EXISTS?

A The FCC has defined DS1 loops to include 2-wire and 4-wire copper loops capable of providing DS1 service using HDSL technology, in its definition of DS1 loops (47 C.F.R. § 51.319(a)(4). BellSouth has included the FCC's definition in its ICA language, which provides that "DS1 Loops include 2-wire and 4-wire copper Loops capable of providing high-bit rate digital subscriber line services, such as 2-wire and 4-wire HDSL Compatible Loops." (*See* PAT-1, Section 2.3.6.1) Based upon the FCC's definition, DS1 loop relief includes relief from the obligation to provide HDSL loops.

It is also useful to keep in mind that BellSouth is not attempting to restrict CLECs from using HDSL *technology*. In fact, the import of the FCC's Order is to encourage CLECs to deploy this technology on their own CLECs can order Unbundled Copper Loops ("UCLs") and loop make-up ("LMU") to determine if a specific loop meets their criteria for deploying HDSL-based DS1 service and continue to avail themselves of HDSL technology. However, without impairment, there is no reason to compel BellSouth to continue to provide a loop product that is simply an indicator of a pre-defined set of conditions suitable for supporting HDSL technology, as the CLECs can provide this capability on their own

Q· WHAT WOULD BE THE IMPACT TO CLECS IF BELLSOUTH IS NOT

REQUIRED TO PROVIDE HDSL LOOPS IN CERTAIN OFFICES?

A. There would be minimal impact to CLECs BellSouth's records indicated that in the entire state, BellSouth provides 426 UNE HDSL loops to all CLECs. By allowing CLECs to order UCLs instead of a UNE HDSL loop, the reality is that BellSouth is simply trying to follow the FCC's rules, which also has the result of simplifying BellSouth' ordering systems.

Q. WHAT ICA LANGUAGE DO THE CLECS PROPOSE WITH RESPECT TO HDSL LOOPS?

A The CLECs propose ICA language that states "HDSL-capable loops are not the equivalent of DS1 loops for the purpose of counting business lines." (Gillan Exhibit JPG-1, p. 19) This language improperly creates a distinction between HDSL and DS1 loops, when such a distinction does not exist. BellSouth recommends that the Authority reject CompSouth's proposed language from any approved contract language that results from this proceeding.

Issue 17: 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?

Q PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE PARTIES.

A Even though the TRA has previously ruled on this matter in the Covad arbitration (Docket No. 04-00186) and the FCC has made clear in paragraphs 199, 260, 261, 262, 264, and 265 of the *TRO* that BellSouth is not obligated to provide new line sharing arrangements after October 1, 2004, the CLECs propose ICA language (Gillan Attachment JPG-1, Section 2.11) that would obligate BellSouth to continue to provide access to line sharing as an unbundled network element. This language should be rejected in its entirety

Q HAVE THE CLECS PROVIDED ANY EXPLANATION FOR THEIR LINE SHARING CONTRACT LANGUAGE?

A No. Although Mr. Gillan has included contract language, he failed to include any discussion supporting that language, which is likely because this issue is more of a legal dispute, which both parties have briefed. For more information on this issue, I refer the Authority to BellSouth's summary judgment briefs.

Issue 18: If the answer to the foregoing issue is negative, what is the appropriate language for transitioning off a CLEC's existing line sharing arrangements?

Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES CONCERNING THIS ISSUE?

A. The CLECs' proposed contract language does not include the FCC's transition plan. The CLECs' omission is clear when the language at my direct exhibit EF-1 at 3 1.2 is compared with Mr Gillan's proposed language at JPG-1,

Section 3.1.3. Consistent with its ruling in the Covad arbitration endorsing the FCC's transition plan, the Authority should simply reject the CompSouth language and adopt BellSouth's transition language (provided in my direct testimony as Exhibit EF-1), which includes the FCC's transition plan BellSouth's proposed language also requires CLECs that have ordered line sharing arrangements after October 1, 2004 to pay the full loop rate for those arrangements CompSouth's proposed language omits such a requirement.

Issue 19: What is the appropriate ICA language to implement BellSouth's obligations with regard to line splitting?

Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE PARTIES

A. Based on the ICA language proposed by Joseph Gillan (Exhibit JPG-1, Section 3), the parties' disagreement centers on the types of loops that should be included with line splitting, and who should provide the splitter.

Q. DOES THE ADDITIONAL LOOP TYPE INTRODUCED BY COMPSOUTH REQUIRE LINE SPLITTING?

A No. BellSouth's contract language (Section 3 in Attachment 2) provides for line splitting over Unbundled Network Element-Loop ("UNE-L"), and, for a limited time, with Unbundled Network Element-Platform ("UNE-P") arrangements. The proposed CompSouth ICA language attempts to require

line splitting on a commingled arrangement of a loop and unbundled local switching pursuant to section 271. The loop described by CompSouth does not exist, is not required by the FCC, and, therefore, should not be included in the section of the ICA that addresses line splitting.

Q. WHAT DISAGREEMENT EXISTS CONCERNING SPLITTERS?

A. It appears that the CLECs propose that BellSouth be obligated to provide splitters between the data and voice CLECs that are splitting a UNE-L As I stated in my direct testimony, splitter functionality can easily be provided by either an inexpensive stand-alone splitter or by utilizing the integrated splitter built into all Asynchronous Digital Subscriber Line ("ADSL") platforms. Clearly, BellSouth should not be obligated to provide the CLECs with splitters when they are utilizing UNE-L and can readily provide this function for themselves.

Issue 20: 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? c) What are the suitable points of access for sub-loops for multi-unit premises?

Q. HAVE THE CLECS PROVIDED ANY DIRECT TESTIMONY ON THIS ISSUE?

A. No. It is obvious that there is no disagreement between the parties, since the CLECs unanimously decided not to provide any direct testimony or proposed ICA language that differs from BellSouth's. Based on this apparent lack of disagreement, this Authority should accept BellSouth's proposed ICA language in its entirety.

Issue 23: (a) What is the appropriate definition of 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 MPOE 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?

Issue 24: What is the appropriate ICA language to implement BellSouth's obligation to provide unbundled access to hybrid loops?

Item 28: What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?

Q. DID THE CLECS PROVIDE ANY DIRECT TESTIMONY ON THESE ISSUES?

A No

Q DOES BELLSOUTH AGREE WITH ANY OF THE CLECS' PROPOSED

ICA LANGUAGE?

A. Yes. BellSouth agrees with the CLECs' proposed language for access to FTTH and FTTC (Gillan Exhibit JPG-1, Paragraphs 2.1.2, 2.1.2.1, and 2 1 2.2).

Q DOES BELLSOUTH HAVE CONCERNS WITH THE PROPOSED ICA LANGUAGE PROVIDED BY COMPSOUTH?

A. Yes. CompSouth omitted paragraph 2.1.2 3 which addresses availability to copper facilities in overbuild areas. With regard to hybrid loops, BellSouth disagrees with the additional language provided by CompSouth that attempts to create an obligation for access to hybrid loops, even if there is no impairment. Specifically, in paragraph 2.1.3, CompSouth proposes, "Where impairment does not exist, BellSouth shall provide such hybrid loop at just and reasonable rates pursuant to Section 271. " This language is not appropriate because, as set forth in its briefs, BellSouth has no obligation to include Section 271 obligations in interconnection agreements entered into under Section 251 and 252 of the Act

Issue 25: 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"?

Q DID THE CLECS PROVIDE ANY DIRECT TESTIMONY ON THIS ISSUE?

A. No.

Q. WHAT ICA LANGUAGE DO THE CLECS PROPOSE?

A. The CLECs have included language at JPG-1, page 52 BellSouth does not object to the CLECs' proposed language

Issue 26: What is the appropriate ICA language to implement BellSouth's obligation to provide routine network modifications?

Q. PLEASE SUMMARIZE THE DISAGREEMENTS BETWEEN THE PARTIES.

A. The parties view Routine Network Modifications and line conditioning differently. BellSouth's position is that line conditioning is a subset of the Routine Network Modifications defined by the FCC in paragraphs 250, and 643 of the *TRO*. The CLECs' position is that the obligations for Routine Network Modifications and line conditioning are separate and independent.

Q. WHY DOES COMPSOUTH CLAIM THAT LINE CONDITIONING IS NOT A SUBSET OF ROUTINE NETWORK MODIFICATIONS?

A On Page 59 of his direct testimony, Gillan states that "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 '"

Then, he erroneously concludes that "BellSouth need not routinely condition loop facilities for its own services for it to be obligated to condition facilities for other CLECs." It is the latter conclusion with which BellSouth disagrees. BellSouth is not asserting that it needs to offer advanced services to a specific customer to have a routine network modification obligation. It is necessary, however, for BellSouth to routinely perform network modifications for its own services to have an obligation to perform similar modifications for CLECs

In addition, Mr. Gillan points out that the rules for Routine Network Modifications are in a different section of the rules from the line conditioning rules. BellSouth does not disagree that there are separately numbered subparts (or subsections) contained within the federal rules, but both subparts are included within the overall rubric of the FCC's "Specific Unbundling Requirements" at 47 C F R. § 51.319. The *TRO* at paragraphs 250 and 643 explains the relationship between Routine Network Modifications and line conditioning unbundling requirements. Specifically, in Paragraph 250, the FCC states, "Line conditioning constitutes a form of Routine Network Modification ..." Later, in Paragraph 643, the FCC states, "Line Conditioning is properly seen as a Routine Network Modification ." In both cases, the phrase "constitutes a form" and the term "properly" are defined as a "subset." Stated simply, the FCC clearly identifies BellSouth's line conditioning obligation as a subset of BellSouth's routine network modification obligations

Q. PLEASE RESPOND TO MR. GILLAN'S EXAMPLE ON PAGE 60 THAT PURPORTS TO ILLUSTRATE THE DIFFERENCE BETWEEN LINE

CONDITIONING AND ROUTINE NETWORK MODIFICATIONS.

A. Mr. Gillan states that "to a large extent, BellSouth's DSL offerings are housed in remote terminals, located closer to customers." He continues, "CLECs, on the other hand, collocate their equipment at the central office and, therefore, must frequently use longer loops." Both claims are inaccurate. Like CLECs, BellSouth started its DSL deployment in central offices, and prefers deploying in central offices where possible. Within BellSouth's service territory, there are a large number of customers that cannot be reached with DSL service from the central office (by either CLECs or BellSouth). In these situations, it is necessary for both BellSouth and the CLECs (which some have chosen to do) to deploy Digital Subscriber Line Access Multiplexers ("DSLAMs") in remote terminals to reach customers In either case, the CLEC and BellSouth are in the same situation, and must deploy the same equipment to reach the same customers As a result, there is no distinction between the DSL service offered by BellSouth and the DSL service offered by CLECs that would create a situation where the line conditioning that BellSouth performs for itself would not also be sufficient for CLECs.

Mr. Gillan on Page 60 continues, stating that line conditioning is an "... obligation that BellSouth must honor *whether or not it would do so for its own customers* . " without any supporting justification for this position.

Clearly, CompSouth's position attempts to read away the FCC's plain language that specifies that line conditioning is a subset of Routine Network

Modifications, and that as a result, BellSouth's line conditioning obligation is based entirely on what it would do for its own customers

Item 27: What is the appropriate process for establishing a rate, if any, to allow for the cost of routine network modification that is not already recovered in Commission-approved recurring or non-recurring rates? What is the appropriate language, if any, to incorporate into the ICAs?

Q. DID COMPSOUTH PROVIDE ANY DIRECT TESTIMONY OR PROPOSED ICA LANGUAGE ON THIS ISSUE?

A. No. CompSouth did not provide any direct testimony on this issue, but Mr. Gillan did propose ICA language that only allows BellSouth to recover costs for Routine Network Modifications based on the TELRIC rates already approved by the Authority, even if the Routine Network Modification being requested was not included in the calculation of that rate Page 60.

In contrast, BellSouth's position is that for Routine Network Modifications that have established TELRIC rates approved by thisAuthority, that the Authority-approved rates would be used. For Routine Network Modifications that have not been included in Authority-approved TELRIC rates, BellSouth proposes that each such situation be handled on an individual case basis, until such time that the Authority approves a rate for the previously unspecified Routine Network Modification.

Q DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.