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T.R.A. DOCKET ROOM

August 16, 2005

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

Re: *In Re: BellSouth's Petition to Establish Generic Docket to Consider Amendments
to Interconnection Agreements Resulting From Changes of Law*
Docket Number: 04-00381

Dear Chairman Jones:

Please accept for filing in the above-captioned proceeding the original and fourteen
copies of the Rebuttal Testimony of Joseph Gillan in behalf of CompSouth.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Henry Walker/dc

By:

Henry Walker

HW/djc
Enclosure

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104724-012
8/16/2005

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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 16th day of August, 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)

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

August 16, 2005

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I. Introduction

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 previously filed direct testimony on behalf of CompSouth in this
proceeding.**

1
2 **Q. What is the purpose of your rebuttal testimony?**

3
4 A. The purpose of my rebuttal testimony is to respond to several key areas of
5 disagreement highlighted by BellSouth's direct testimony.¹ Specifically, my
6 rebuttal testimony addresses:

7
8 * BellSouth's suggestion that it is no longer required to offer
9 unbundled access to fiber and hybrid loops used to serve enterprise
10 customers. As I explain below, BellSouth remains obligated to
11 offer access to DS1s, whether or not it has deployed a hybrid (or
12 all fiber) architecture. FCC broadband policies do not exempt
13 BellSouth from providing high-capacity loops to serve enterprise
14 customers, which include any customer desiring service over a
15 DS1.
16

17 * BellSouth's proposed wire center designations implementing the
18 FCC's impairment determinations for high capacity loops and
19 transport. In calculating the number of business lines, BellSouth
20 adopted an assumption unsupported by FCC Order, common sense
21 and the facts – that is, BellSouth assumes that every digital access
22 line is used to its *maximum potential capacity* to provide switched
23 access lines services to business customers. This assumption is not
24 only facially unreasonable, it violates the most basic requirements
25 of the TRO and is designed to accomplish one task – to artificially
26 limit BellSouth's unbundling obligations and protect its market
27 position.
28

¹ I note that the issues addressed by my rebuttal testimony are not the only areas where I disagree with BellSouth. In a number of areas, however, my direct testimony adequately addresses issues that were foreshadowed by the issues list in this proceeding. The focus of my rebuttal testimony is on new issues and areas where discovery and additional information is needed (for instance, with respect to the correct categorization of wire centers for purposes of defining BellSouth's obligations to offer high capacity loops and transport at TELRIC-based rates under §251 of the federal Act).

1 * BellSouth's refusal to address checklist items required under §271,
2 despite the clear language in the federal Act that such offerings
3 must be included in interconnection agreements approved pursuant
4 to §252 (which includes this Authorities' review and approval). In
5 addition, I respond to BellSouth's claim that federal commingling
6 obligations exclude wholesale offerings required under §271 and I
7 explain why the Authority must establish interim §271-compliant
8 transport rates in this proceeding.²
9

10 In addition to these three main areas, my rebuttal testimony also addresses a
11 number of other issues that, while individually important, are not as central to the
12 fundamental dispute as those listed above.
13

14 **II. BellSouth is Required to Provide Access to**
15 **DSIs on all FTTC, FTTH and Hybrid Loops**
16

17 **Q. Please summarize BellSouth's claims regarding its unbundling obligations**
18 **for broadband facilities.**
19

20 A. In the TRO (and subsequent Orders), the FCC adopted reduced unbundling
21 obligations for a variety of "broadband facilities," specifically "fiber to the home"
22 (FTTH),³ "fiber to the curb" (FTTC) and "fiber to the predominantly residential
23 multi-dwelling unit" (MDU). BellSouth's testimony, however, appears to extend
24 the application of these reduced obligations beyond what the FCC intended
25

² The Authority has already established an interim just and reasonable rate for local switching in an earlier arbitration between ITC^DeltaCom and BellSouth.

³ Although the FCC refers to fiber-to-the-home and abbreviates the architecture as FTTH, it defines the configuration as fiber-to-the-customer-premise.

1 According to BellSouth, the “basic principle” that the FCC adopted in its
2 broadband policies is simply that “CLECs continue to have access to currently
3 existing last mile cooper facilities, for as long as those facilities continue to
4 exist.”⁴ BellSouth goes on to describe its obligations as:

5
6 BellSouth, per TRO Paragraph 271, is not obligated to “offer
7 unbundled access to newly deployed or “greenfield” fiber loops.”⁵
8

9 ... the FCC ruled that hybrid loops should not be unbundled since
10 they are part of the next generation network.⁶
11

12 ... the same unbundling relief framework (including any
13 unbundling relief) established by the FCC in the TRO for FTTH
14 loops also applies to FTTC loops.⁷
15

16 **Q. Is BellSouth’s characterization of the FCC’s Orders complete?**
17

18 A. No. There is a critical *limiting* factor in the FCC’s “broadband exclusions” that
19 BellSouth completely ignores. That is, the *predicate* to BellSouth’s reduced
20 unbundling obligations for these network architectures is that the loops are used to
21 serve mass market customers. BellSouth was not granted a *total* exception to its
22 loop unbundling obligations for all fiber and hybrid loops; rather, the FCC’s

⁴ Fogle Direct, page 14.

⁵ Fogle Direct, page 17.

⁶ Fogle Direct, page 18.

⁷ Fogle Direct, page 19. FTTH and FTTC are abbreviations for “Fiber to the Home” and “Fiber to the Curb,” where the later requires that fiber be deployed to within 500 feet of each premise

1 broadband exclusions were specifically limited to circumstances where these
2 loops are used to serve mass market customers. This basic predicate permeates
3 the FCC's Orders:
4

5 ...we find that our unbundling rules for local loops serving the
6 mass market must account for these different loop architectures.⁸
7

8 Accordingly, we do not require incumbent LECs to provide
9 unbundled access to new mass market FTTC loops for either
10 narrowband or broadband services.⁹
11

12 The Commission granted the greatest unbundling relief for dark or
13 lit fiber loops serving mass market customers that extend to the
14 customer's premises (known as fiber-to-the-home or FTTH loops)
15 in new build or "greenfield" situations. For those loops, the
16 Commission determined that no unbundling is required.¹⁰
17

18 We decline to require incumbent LECs to unbundle the next-
19 generation network, packetized capabilities of their hybrid loops to
20 enable requesting carriers to provide broadband services to the
21 mass market.¹¹
22

23 ...with the knowledge that incumbent LEC next-generation
24 networks will not be available on an unbundled basis, competitive
25 LECs will need to continue to seek innovative network access
26 options to serve end users and to fully compete against incumbent
27 LECs in the mass market.¹²
28

⁸ TRO ¶ 221.

⁹ Order on Reconsideration, Federal Communications Commission, CC Docket 01-338, October 14, 2004, ("*FTTC Order*"), ¶ 14.

¹⁰ *FTTC Order*, ¶ 6.

¹¹ TRO ¶ 288 (emphasis added).

¹² TRO, ¶ 272 (emphasis added).

1 Thus, we determine that, particularly in light of a competitive
2 landscape in which competitive LECs are leading the deployment
3 of FTTH, removing incumbent LEC unbundling obligations on
4 FTTH loops will promote their deployment of the network
5 infrastructure necessary to provide broadband services to the mass
6 market.¹³
7

8 ... the rules we adopt herein do not require incumbent LECs to
9 provide unbundled access to any electronics or other equipment
10 used to transmit packetized information over hybrid loops, such as
11 the xDSL-capable line cards installed in DLC systems or
12 equipment used to provide passive optical networking (PON)
13 capabilities to the mass market.¹⁴
14

15 In the *Triennial Review Order*, the Commission limited the
16 unbundling obligations imposed on mass market FTTH
17 deployments to remove disincentives to the deployment of
18 advanced telecommunications facilities in the mass market. We
19 find here that those policy considerations are furthered by
20 extending the same regulatory treatment to incumbent LECs' mass
21 market FTTC deployments.¹⁵
22

23 ... we conclude that, treating FTTC loops the same as FTTH loops
24 will encourage carriers to further deploy fiber architectures
25 necessary to deploy broadband services to the mass market, and
26 the benefits of such deployment outweigh the limited impairment
27 that competitive carriers face.¹⁶
28

29 The citations listed above are representative, not exhaustive, of the distinction
30 drawn by the FCC. In effect, the FCC adopted a broadband policy intended to
31 encourage broadband deployment in the mass market, principally to foster

¹³ *TRO* ¶ 278 (emphasis added).

¹⁴ *TRO* ¶ 288 (emphasis added).

¹⁵ *FTTC Order* ¶ 2.

¹⁶ *FTTC Order*, ¶ 13.

1 competition for “triple play” services that combine voice, data and video.¹⁷ This
2 rationale does not apply to serving the enterprise market.

3
4 **Q. Does BellSouth recognize that the FCC’s unbundling exclusions for**
5 **broadband loop-types apply in the mass market?**

6
7 A. Yes, BellSouth correctly *identifies* the limiting principal, but then ignores its
8 importance. In BellSouth’s own testimony, it states:

9
10 BellSouth maintains that the FCC determined in the *TRO* that
11 ILECs have no obligation to unbundle FTTH mass market loops
12 serving greenfield areas or areas of new construction.¹⁸
13

14 What is missing from any of BellSouth’s testimony is acceptance that the FCC’s
15 rules are not a *blanket* exemption from unbundling obligations. BellSouth
16 remains obligated to provide access to carriers serving enterprise customers, even

¹⁷ For instance, when extending its unbundling exclusion to the fiber-to-the-curb architecture, the FCC concluded (*FTTC Order*, ¶ 10 and ¶11):

The record reflects that when fiber is brought within 500 feet of a subscriber’s premise, carriers can provide broadband services comparable to that provided by FTTH architecture, including data speeds of 10 megabits per second (Mbps) in addition to high definition multi-channel video services.

[A]s with FTTH loops, competitive LECs deploying FTTC loops have increased revenue opportunities through the ability to offer voice, multi-channel video, and high-speed data services. As the Commission found with respect to FTTH loops in the *Triennial Review Order*, the substantial revenue opportunities that arise from offering this “triple play” of services helps ameliorate many of the entry barriers presented by the costs and scale economies.

¹⁸ Fogle Direct, page 19, emphasis added. (footnote deleted).

1 where the CLEC could not gain access to the loop facility to serve a mass market
2 customer.

3
4 **Q. By definition, when a CLEC requests a DS1 loop, is it serving a mass market**
5 **or an enterprise customer?**

6
7 A. When a CLEC requests a DS1 loop, by definition the customer it is seeking to
8 serve is considered an enterprise (and not mass market) customer. For instance,
9 in the *TRO*, the FCC distinguished enterprise business customers from the mass
10 market, noting:

11 All other business customers – whom we characterize as the
12 enterprise market – typically purchase high-capacity loops, such as
13 DS1, DS3, and OCn capacity loops. We address high-capacity
14 loops provisioned to these customers as part of our enterprise
15 market analysis.¹⁹
16

17 Thus, whenever a CLEC requests a DS1 loop to serve a customer, that request
18 itself means that the customer is (or is becoming) a member of the enterprise
19 market and BellSouth must comply with loop unbundling requirements as defined
20 for that market.²⁰

¹⁹ *TRO*, ¶ 209.

²⁰ I note that it is immaterial how many lines, or what type of facility, BellSouth may be using to initially serve the customer. If the CLEC is requesting a DS1 (or higher) loop facility for the customer, BellSouth must provide the DS1 so that the customer may become an enterprise customer.

1 **Q. Did the FCC clearly require ILECs to provide CLECs DS1 loops without**
2 **regard to whether the loop is FTTH, FTTC or a fiber/copper hybrid?**

3
4 A. Yes. As I explain later in my testimony, BellSouth's unbundling relief for DS1
5 loops is defined by the number of fiber-based collocators/switched business lines
6 in an end office, not by the type of loop architecture in place. (Not surprisingly,
7 BellSouth is attempting to obtain relief under both). As the FCC explained in the
8 *TRO*:

9
10 DS1 loops will be available to requesting carriers, without
11 limitation, regardless of the technology used to provide such loops,
12 e.g., two-wire and four-wire HDSL or SHDSL, fiber optics, or
13 radio, used by the incumbent LEC to provision such loops and
14 regardless of the customer for which the requesting carrier will
15 serve unless otherwise specifically indicated. *See supra* Part
16 VI.A.4.a.(v) (discussing FTTH). The unbundling obligation
17 associated with DS1 loops is in no way limited by the rules we
18 adopt today with respect to hybrid loops typically used to serve
19 mass market customers. *See supra* Part VI.A.4.a.(v)(b)(i).²¹
20

21 **Q. Is there any limitation on hybrid loops?**

22
23 A. Yes. The only "limitation" on BellSouth's unbundling obligations with respect to
24 fiber/copper hybrid loops is that BellSouth need not provide access to the packet-
25 based capability in the loop.²² This limitation, however, should not affect CLECs
26 ability to obtain access to DS1 (and DS3) loops in any meaningful way.

²¹ *TRO* ¶ 325, footnote 956. Emphasis added.

²² *TRO* ¶ 288.

1
2 First, the FCC made clear that BellSouth must still provide DS1 and DS3 loops on
3 such facilities:

4
5 We stress that the line drawing in which we engage does not
6 eliminate the existing rights competitive LECs have to obtain
7 unbundled access to hybrid loops capable of providing DS1 and
8 DS3 service to customers. These TDM-based services – which are
9 generally provided to enterprise customers rather than mass market
10 customers – are non-packetized, high-capacity capabilities
11 provided over the circuit switched networks of incumbent LECs....
12 Incumbent LECs remain obligated to comply with the
13 nondiscrimination requirements of section 251(c)(3) in their
14 provision of loops to requesting carriers, including stand-alone
15 spare copper loops, copper subloops, and the features, functions,
16 and capabilities for TDM-based services over their hybrid loops.²³

17 ***

18 Although packetized fiber capabilities will not be available as
19 UNEs, incumbent LECs remain obligated, however, to provide
20 unbundled access to the features, functions, and capabilities of
21 hybrid loops that are not used to transmit packetized information.
22 Thus, as discussed more specifically in the Enterprise Loops
23 section, consistent with the proposals of HTBC, SBC, and others,
24 incumbent LECs must provide unbundled access to a complete
25 transmission path over their TDM networks to address the
26 impairment we find that requesting carriers currently face. This
27 requirement ensures that competitive LECs have additional means
28 with which to provide broadband capabilities to end users because
29 competitive LECs can obtain DS1 and DS3 loops, including
30 channelized DS1 or DS3 loops and multiple DS1 or DS3 loops for
31 each customer.²⁴

²³ TRO ¶ 294. Footnotes omitted.

²⁴ TRO ¶ 289. Footnote omitted.

1 Second, the FCC's policies are premised on the understanding that, to the extent
2 that an ILEC does deploy a packet-based architecture, the packet-architecture
3 parallels its TDM-network, and would not isolate customers from access to CLEC
4 DS1-based services.

5
6 In their submissions in this proceeding, incumbent LECs
7 demonstrate that they typically segregate transmissions over hybrid
8 loops onto two paths, *i.e.*, a circuit-switched path using TDM
9 technology and a packet-switched path (usually over an ATM
10 network). *See, e.g.*, SBC Jan. 15, 2003 *Ex Parte* Letter at 4
11 (providing diagram to illustrate that its network architecture
12 consists of a TDM-based portion and a packet-switched portion).²⁵
13

14 Thus, the relatively narrow exception to BellSouth's general obligation to
15 unbundle DS1 (and DS3) services should have little practical effect. To the extent
16 that BellSouth is no longer required to provide access to DS1 (and DS3) loops,
17 those circumstances are defined by the wire center list addressed in the following
18 section of my rebuttal testimony (relating to the correctly establishing the number
19 of switched business lines and unaffiliated fiber-based collocators at a wire
20 center) and not by the loop architecture deployed by the incumbent.
21

²⁵ *TRO* ¶ 294, footnote 846.

III. Wire Center Designations

Q. To begin, is the testimony of Mr. Wallis of Deloitte Financial Advisory Services relevant to any wire-center issue in dispute?

A. No. My understanding of the Deloitte analysis is that the firm merely confirmed that BellSouth's spreadsheets were free of mathematical error. The Wallis report makes clear that it does not:

* Verify the accuracy and completeness of the source data obtained for the calculation of the business lines;

* Verify the accuracy of the systems in which the business lines are captured (and the source data that was extracted);

* Validate BellSouth's methodology developed to calculate the business lines for FCC TRRO purposes; or

* Validate the definitions of "business lines" used by BellSouth.²⁶

In other words, the testimony and analysis avoids the *issues* in question and, as such, does nothing to legitimize BellSouth's claims in this proceeding (other than its arithmetic).²⁷

²⁶ Exhibit DW-2, Mathematical Calculation of BellSouth Business Line Counts for the Year 2004, July 15, 2005, Deloitte Financial Advisory Services ("Wallis Report"), page 2.

²⁷ Indeed, the Wallis Report fully discloses its exceedingly narrow purpose, explaining "we [Deloitte] obtained an understanding of BellSouth's methodologies, a set of its applicable data,

1

2 **Q. What appears to be the two most significant errors with BellSouth’s wire-**
3 **center analysis?**

4

5 A. Based on the review that I have been able to conduct,²⁸ two issues appear to the
6 most significant. The first concerns an assumption used by BellSouth in how it
7 converts UNE-L to switched business lines. In effect, BellSouth assumes that the
8 *maximum potential capacity* of each UNE-L circuit is used to provide switched
9 business line service when, in fact, that is not the case. The second key issue
10 concerns fiber-based collocators and BellSouth’s claim that several end offices
11 are served by multiple competitive fiber networks.

12

13 **Q. Please explain the first error in BellSouth’s analysis, i.e., BellSouth’s**
14 **assumption that the maximum potential capacity of each UNE-L circuit is**
15 **used as a switched access lines used to serve a business customer.**

16

17 A. The FCC defines a “business line” (in part) as:

and then replicated the mathematical calculation utilized by BellSouth ...” (Wallis Report, page 2). In other words, Deloitte performed the role of a “shadow spreadsheet,” confirming only that BellSouth’s arithmetic was correct.

²⁸ CompSouth’s attempt to validate BellSouth’s list of claimed unaffiliated fiber-optic collocators is ongoing. CompSouth only recently (August 11) obtained a list of the carriers that BellSouth claims are fiber-based collocators in Tennessee and CompSouth is serving discovery on such carriers in an effort to validate whether BellSouth’s claims are accurate. As I indicate later in my testimony, one significant issue has been identified – that is, in the sole wire center in Tennessee that BellSouth claims it need no longer offer CLECs DS1 loops at cost-based TELRIC rates under §251 of the Act, its claim rests on the timing anomaly that AT&T and SBC are not “yet” affiliated, as the pending merger undergoes review.

1
2 A business line is an incumbent LEC-owned switched access line
3 used to serve a business customer, whether by the incumbent LEC
4 itself or by a competitive LEC that leases the line from the
5 incumbent LEC. The number of business lines in a wire center
6 shall equal the sum of all incumbent LEC business switched access
7 lines, plus the sum of all UNE loops connected to that wire center,
8 including UNE loops provisioned in combination with other
9 unbundled elements.²⁹
10

11 Importantly, as BellSouth interprets this rule, it reads the second sentence in the
12 rule as granting a waiver of the first sentence. That is, even though the FCC rule
13 clearly defines a business lines as “an incumbent LEC-owned switched access
14 line used to serve a business customer,” BellSouth believes that it is entitled to
15 count the maximum potential capacity of every UNE-L circuit as a switched
16 access line serving a business customers no matter *how* the circuit is actually
17 configured and to *what* use it is put.
18

19 **Q. Do you believe that the FCC sanctioned BellSouth’s assumption that the**
20 **maximum potential capacity of each UNE-L circuit is used to provide**
21 **switched access line service to business customers?**
22

23 **A. No. The FCC did not sanction BellSouth’s assumption, as the remainder of the**
24 **business line definition makes clear.**³⁰

²⁹ 47 CFR § 51.5 emphasis added

³⁰ I do not intend to suggest that BellSouth does not include the entire rule reference in its testimony. I will present the rule in components to more clearly illustrate why its selective *reading* of the rule is incorrect.

1
2 Business line. A business line is an incumbent LEC-owned
3 switched access line used to serve a business customer, whether by
4 the incumbent LEC itself or by a competitive LEC that leases the
5 line from the incumbent LEC. The number of business lines in a
6 wire center shall equal the sum of all incumbent LEC business
7 switched access lines, plus the sum of all UNE loops connected to
8 that wire center, including UNE loops provisioned in combination
9 with other unbundled elements. Among these requirements,
10 business line tallies (1) shall include only those access lines
11 connecting end-user customers with incumbent LEC end-offices
12 for switched services, (2) shall not include non-switched special
13 access lines, (3) shall account for ISDN and other digital access
14 lines by counting each 64 kbps-equivalent as one line. For
15 example, a DS1 line corresponds to 24 64 kbps-equivalents, and
16 therefore to 24 “business lines.”³¹
17

18 As the rule definition above plainly states, the FCC went on to make clear that
19 among these requirements (i.e., what should be counted, including UNE-L), the
20 business line tallies “shall include *only* those access lines connecting end-user
21 customers with incumbent LEC end-offices for switched services.” Thus, while
22 BellSouth claims that the FCC rule does not exclude any particular type of
23 unbundled loop,”³² the rule most plainly does. The rule specifically requires that
24 only those access lines connecting end-user customers with incumbent LEC end-
25 offices for switched services shall be counted. It could not be clearer.
26

27 **Q. Does the directive that digital access lines should count “each 64 kbps-**
28 **equivalent as one line” override every other requirement in the rule?**

³¹ 47 CFR § 51.5 emphasis added.

³² Tipton Direct, page 15.

1

2 A. No. There is nothing in the rule that suggests the final instruction overrides the
3 entire rest of the rule. The rule should be read in its entirety and a circuit must
4 satisfy all requirements in the rule in order to be counted: it must be a switched
5 line, it must be ILEC-owned, it must be used to serve a business customer and, for
6 digital circuits that *satisfy* these requirements, each 64 kbps channel used to
7 provide switched service to a business customer should be counted as a line. But
8 this final instruction does not mean BellSouth may count unused capacity or
9 capacity that is not used to provide switched services to a business customer
10 merely because it is part of a digital circuit.

11

12 **Q. Do CLECs routinely offer non-switched services using UNE-L?**

13

14 A. Yes. Indeed, a staple of the CLEC product offering is the “integrated” service
15 that combines voice and data on the same access facility (typically a DS1). In
16 addition, CLECs offer data-only services and sometimes only partially-fill DS-1s
17 (even where only switched service is provided). It is patently unreasonable to
18 assume that the maximum potential capacity of each UNE-L is used to provide
19 business customers with switched services, which is the assumption that
20 BellSouth makes.

21

22 **Q. How significant is BellSouth’s assumption that all UNE-L capacity is used to**
23 **provide switched access line service to business customers?**

1

2 A. BellSouth's assumption is extremely significant. Confidential Exhibit JPG-2
3 identifies how many of BellSouth's claimed business lines are associated with the
4 total maximum potential capacity of the UNE-L that it counted.³³ Overall, 35%
5 of the total claimed business lines depend upon BellSouth's assumption that the
6 total maximum potential capacity of every UNE-L is used to provide switched
7 access line service to business customers.

8

9 **Q. Are BellSouth's claims regarding the number of business lines filed here**
10 **substantially different to the evidence that BellSouth provided the FCC**
11 **during its deliberations leading to the *TRRO*?**

12

13 A. Yes, there is a dramatic difference between the number of business lines at each
14 wire center that BellSouth provided the FCC (and which it used at establishing its
15 impairment thresholds) and the number that BellSouth claims here. For the
16 BellSouth region overall, the following table compares the number of wire centers
17 that BellSouth told the FCC would fall in each category to its claims now.³⁴

18

³³ The analysis in Confidential Exhibit JPG-2 and is limited to only those wire centers relevant to this proceeding – that is, those wire centers that BellSouth claims satisfy one or more of the FCC's requirements such that BellSouth would no longer be required to offer access to high capacity loop or transport (either at DS1 or DS3 levels).

³⁴ Source: BellSouth Ex Parte, WC Docket No. 04-313 and 01-338, filed December 7, 2004.

1

**Table 1: Comparing the Number of Wire Centers BellSouth Told the
FCC Would Meet Impairment Criteria to BellSouth's Claims Today**

Criterion: WC lines>	Use of Criteria under TRRO³⁵	Told FCC	Claims Now	Change
60,000	Restricts Access to DS1 Loops	3	11	267%
38,000	Restricts Access to DS3 Loops and DS1/DS3 Transport	15	34	127%
24,000	Restricts Access to DS3 Transport	54	100	85%

2

3

4

5

6

7

8

9

In addition, as shown on Confidential Exhibit JPG-3, a primary driver for the changes illustrated in Table 1 is the number of business lines that BellSouth claims exist at its wire centers. Confidential Exhibit JPG-3 compares the number of business lines BellSouth informed the FCC it had at wire centers in Tennessee to the number of business lines BellSouth now claims exist. On average, BellSouth now claims that its relevant wire centers have nearly 50% more business lines than they did when they filed data with the FCC.

10

11

12

13

14

15

As Table 1 and Confidential Exhibit JPG-3 make clear, the evidentiary basis to the FCC's decision rested upon data quite different than that which BellSouth presents here. The FCC specifically indicated that the *TRRO* "is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-Loops" and cites *specifically* to BellSouth for the basis of its analysis. BellSouth is engaged in a

³⁵

In addition to business line counts, the FCC criteria also considers, as either an alternative qualifying requirement (for transport), or a mandatory additional criteria (for loops), the number of fiber-based collocators.

1 game of bait-and-switch, attempting to implement the FCC's *TRRO* with data far
2 different than the data the FCC relied upon in establishing its criteria.

3
4 **Q. Does BellSouth manipulate its own switched business line counts to impose**
5 **the same assumption that it applied to UNE-L?**

6
7 A. Yes. As further evidence of how extreme BellSouth's assumption is, BellSouth
8 went so far as to manipulate its own ARMIS 43-08 data – data that the FCC
9 specifically used³⁶ – in order to make it consistent with the assumption it applies
10 to the UNE-L data. As BellSouth "explains:"

11
12 ARMIS 43-08 line counts only include provisioned or "activated"
13 64 kbps channels that ride high capacity digital lines. For
14 example, if a switched DS1 Carrier System had eighteen (18) 64
15 kbps channels provisioned as business lines for a customer, the
16 ARMIS 43-08 would count only 18 business lines. The TRRO
17 definition business lines requires that the full system capacity be
18 counted as business lines, so for TRRO purposes, the business line
19 count for that DS1 Carrier System would be the full system
20 capacity, or 24 business lines.³⁷
21

22 In other words, BellSouth began its analysis with correct information – that is,
23 ARMIS 43-08 only counts lines that are actually used to provide switched access
24 line service to business customers – and then expanded the count so that it would
25 assume that the maximum potential capacity of each circuit was being used.

³⁶ TRRO, ¶ 105.

³⁷ Tipton Direct, page 31.

1 There is no greater indictment of BellSouth's interpretation than this, where
2 BellSouth elevates its unreasonable assumption to the point where it is used to
3 mask actual facts.

4
5 **Q. What changes do you believe the Authority must make to ensure that the**
6 **business line counts "shall include only those access lines connecting end-user**
7 **customers with incumbent LEC end-offices for switched services" as**
8 **required by 47 CFR § 51.5?**

9
10 A. I recognize that the FCC did not provide specific guidance as to the best way to
11 ensure that UNE-L counts appropriately include only those access lines used to
12 provide switched services to business customers. However, BellSouth's approach
13 – *to simply assume that the maximum potential capacity of each UNE-L is entirely*
14 *used to provide switched services* – is clearly unreasonable and dramatically
15 overstates the number of business lines at each wire center. The fact that
16 BellSouth then expands its own business line count to mirror the assumption --
17 rather than to use its actual business line count -- underscores the
18 unreasonableness of the approach. Fortunately, however, BellSouth's approach
19 provides the information needed to correct both deficiencies.

20
21 **Q. Please explain how BellSouth's data can be used to correct for both errors.**
22

1 A. First, BellSouth's workpapers (at least with respect to its 2003 data) permit me to
2 directly correct for its phantom business lines – i.e., the maximum potential
3 capacity that its ARMIS 43-08 data properly excludes because the capacity is not
4 used to provide switched access line service to business customers.

5
6 Second, however, this same data provides a *reasonable* estimate of the percentage
7 of digital capacity that is used to provide switched access line service to business
8 customers. That is, BellSouth's data reveals exactly what percentage of its digital
9 access capacity is used to provide switched access line service to business
10 customers. All that the Authority needs to do is to accept the simple and
11 straightforward assumption that the average utilization for the CLECs is equal to
12 the average utilization for BellSouth.

13
14 **Q. Did you correct BellSouth's business line count in this manner?**

15
16 A. Yes. Exhibit JPG-4 provides a corrected business line count by removing
17 BellSouth's phantom business lines and applying to the CLEC's digital UNE-L
18 capacity the same percentage of used-to-potential capacity that BellSouth
19 experiences.³⁸ I believe that it is plainly more reasonable to assume that CLECs
20 use approximately the *same* percentage of their potential digital capacity to
21 provide switched access line services to business customers as BellSouth, than it

³⁸ The percentage I applied is the average over the wire centers (shown in Exhibit JPG-4) that BellSouth claims satisfy one or more criteria for non-impairment

1 is to assume that CLECs use *all* of their maximum potential capacity in this
2 manner (an assumption that is unquestionably false).

3
4 **Q. Have you also validated BellSouth's claims regarding the number of fiber-**
5 **based collocators?**

6
7 A. No, not at this time. As I indicated, we have only just received from BellSouth
8 the names of those carriers that it claims have fiber-based collocations in the wire
9 centers at issue in this proceeding. CompSouth is seeking to validate through
10 discovery that these carriers do, in fact, satisfy the FCC's requirement that they
11 "...operate(s) a fiber-optic cable or comparable transmission facility that (1)
12 terminates at a collocation arrangement within the wire center; (2) leaves the
13 incumbent LEC wire center premises; and (3) is owned by a party other than the
14 incumbent LEC or any affiliate of the incumbent LEC."³⁹

15
16 As soon as the discovery responses are available, CompSouth will file the
17 responses with the Authority. Based on our review of BellSouth's testimony, it is
18 unclear whether BellSouth correctly counted each individual fiber network *once*,
19 irrespective of how many carriers may actually obtain some service over that
20 facility, or whether is inflated its count of fiber-based collocator by counting
21 every carrier that is cross-connected to a fiber network. For instance, BellSouth
22 described the purpose of its confirming site visits to:

³⁹ 47 CFR § 51.5 emphasis added.

1
2 ... make a physical check of the number of collocation
3 arrangements and verify that competitive fiber facilities were
4 serving those collocation arrangements, as well as to verify that the
5 equipment in the arrangement was powered up.⁴⁰
6

7 There are instances, however, where a carrier accesses a BellSouth wire center
8 using the fiber network of another carrier. Only one carrier, however, *operates*
9 that network, and that network only *terminates* once in that wire center (even if it
10 is then cross-connected to other carriers' collocation facilities). BellSouth's
11 description of its survey does not make clear that its personnel were instructed to
12 make sure that such cross-connected collocation facilities did not cause BellSouth
13 to count the same fiber network multiple times in determining the number of
14 fiber-based collocators.
15

16 **Q. Is there one important issue that you can comment on now?**
17

18 A. Yes. One requirement of the FCC's standards to count a fiber-based collocator is
19 that two affiliated carriers should not be counted in the same wire center:
20

21 In tallying the number of fiber-based collocators for purposes of
22 our transport impairment analysis, parties shall only count multiple
23 collocations at a single wire center by the same or affiliated
24 carriers as one fiber-based collocation.⁴¹
25

⁴⁰ Tipton Direct, page 33.

⁴¹ TRO, ¶ 102.

1 BellSouth, however, is attempting to exploit the timing anomaly of the pending
2 AT&T-SBC merger by counting both carriers in the same wire center. I
3 recognize that the AT&T-SBC merger is pending (and has not yet closed), but it
4 would clearly be inappropriate for BellSouth to evade its unbundling obligation
5 merely because this merger (which is anticipated to close by early next year, as
6 the results of this proceeding are being implemented) has not yet closed. One can
7 question whether SBC's out-of-region facilities should ever be counted as
8 "competitive collocations,"⁴² but even if that were the case, counting *both* SBC
9 and AT&T is to count one entrant too many.

10
11 **Q. Are you prepared to provide a fully correct alternative to BellSouth's**
12 **claimed list of wire centers?**⁴³
13

⁴² BellSouth's reliance on SBC-collocation facilities is itself given that SBC's entry decisions were (at least in part) adopted to satisfy regulatory mandates (and not market conditions) as part of its earlier merger with Ameritech and given that SBC's Chairman had earlier told investors it did not intend to compete against its wireless partner, BellSouth. As SBC Chairman Whitacre explained:

UNIDENTIFIED PARTICIPANT Apparently you're going to be offering a voice over IP product out of region; won't that anger perhaps Bell South and -

EDWARD WHITACRE: Well, absolutely it will. And just like if they come in (inaudible) it's going to anger us. Of course, the answer to that is, yes, but it's a non-issue since we have a good partnership and it's not happening. Impossible to speculate on things that don't happen. It's kind of a curt answer wasn't it but I don't know how to answer that any differently.

SBC Communications Analyst Meeting, Minutes, November 13, 2003,

⁴³ It appears that BellSouth's list is summarized in the last four pages of BellSouth's Tipton's Exhibits in what has been labeled (in other states) Exhibit PAT-4.

1 A. No, not at this time. Because CompSouth is not yet in a position to validate each
2 of its claimed fiber-based collocators – and several wire center classifications
3 depend *exclusively* on whether this measure has been done correctly – we cannot
4 fully correct BellSouth’s list. However, to the extent that a classification is based
5 on the number of Switched Business Lines, or if its classification is the result of
6 the double-counting of SBC-AT&T as explained, I have been able to provide a
7 partially corrected list of wire centers for Tennessee. This list appears in Exhibit
8 JPG-5 attached.

10 **IV. Section 271 Prices and Commingling**

11
12 **Q. As a threshold point, BellSouth claims that only elements required under**
13 **§251 must be provided in interconnection agreements.⁴⁴ Do you agree with**
14 **this claim?**

15
16 A. No. As I explain in my direct testimony, BellSouth has a separate obligation
17 under §271 to offer checklist items (for instance, loops, switching and transport)
18 in interconnection agreements, even where the FCC does not require such items to
19 unbundled pursuant to §251.⁴⁵ This requirement is clearly stated in §271(c)(1)(A)
20 of the federal Act and requires that such offerings be included in interconnection
21 agreements approved by state commissions under §252:

⁴⁴ Blake Direct, page 5; Tipton Direct, page 38.

⁴⁵ See Gillan Direct, pages 38-45.

1
2 PRESENCE OF A FACILITIES-BASED COMPETITOR- A Bell
3 operating company meets the requirements of this subparagraph if
4 it has entered into one or more binding agreements that have
5 been approved under section 252 specifying the terms and
6 conditions under which the Bell operating company is providing
7 access and interconnection to its network facilities for the network
8 facilities of one or more unaffiliated competing providers of
9 telephone exchange service (as defined in section 3(47)(A), but
10 excluding exchange access) to residential and business
11 subscribers.⁴⁶
12

13 This unambiguous requirement that checklist items must be offered in
14 interconnection agreements was cited by a Federal District Court upholding fines
15 imposed by the Minnesota Commission on Qwest for failing to file certain
16 interconnection agreements:
17

18 Citing the fair notice doctrine, Qwest argues additionally that it
19 should not be penalized for failing to file some of the twelve ICAs
20 [interconnection agreements] because it did not know which
21 agreements were subject to the Act's filing requirement.
22

23 ***

24 ... despite the absence of a definition [for the term interconnection
25 agreement] in the Act, other sources outlined the scope of §252
26 and provided notice. For example, §271 includes a comprehensive
27 checklist of items that must be included in ICAs before an ILEC
28 may receive authority to provide regional long distance service.
29 This list reveals that any agreement containing a checklist item
30 must be filed as an ICA under the Act.⁴⁷
31

⁴⁶ 47 U.S.C. § 271(c)(1)(emphasis added).

⁴⁷ *Qwest Corporation v. Minnesota Public Utilities Commission*, 2004 WL 1920970, at *7 (D. Minn. 2004) (citations omitted) (emphasis added).

1 Section 271 is clear that the wholesale requirements of the competitive checklist
2 are to be offered through interconnection agreements, and interconnection
3 agreements are subject to the arbitration and approval process of §252.

4
5 **Q. BellSouth also claims that the FCC excluded the wholesale offerings of the**
6 **competitive checklist when it adopted its commingling rules.⁴⁸ Do you agree**
7 **that this is a proper interpretation of the FCC's rules?**

8
9 **A. No. To begin, the FCC's discussion of commingling and its rule does not have**
10 **reference any exclusions, as shown by the following rule and discussion:**

11 47 C.F.R. §51.5: Commingling means the connecting, attaching,
12 or otherwise linking of an unbundled network element, or a
13 combination of unbundled network elements, to one or more
14 facilities or services that a requesting telecommunications carrier
15 has obtained at wholesale from an incumbent LEC, or the
16 combining of an unbundled network element, or a combination of
17 unbundled network elements, with one or more such facilities or
18 services. Commingle means the act of commingling.
19

20 ***
21

22 By commingling, we mean the connecting, attaching, or otherwise
23 linking of a UNE, or a UNE combination, to one or more facilities
24 or services that a requesting carrier has obtained at wholesale from
25 an incumbent LEC pursuant to any method other than unbundling
26 under Section 251(c)(3) of the Act, or the combining of a UNE or
27 UNE combination with one or more such wholesale services.⁴⁹
28
29

⁴⁸ Tipton Direct, page 47.

⁴⁹ TRO ¶ 579, emphasis added

1 **Q. If the FCC did not exclude the wholesale offerings required by the**
2 **competitive checklist in the rule or by its Order, why does BellSouth claim**
3 **that its commingling obligations do not apply to these important offerings?**

4
5 **A. BellSouth’s claim rests upon (1) a single paragraph in the *TRO* (§579) as adopted,**
6 **and (2) an Errata that eliminated one sentence from an earlier “draft” of the**
7 ***TRO*.⁵⁰**

8
9 First, BellSouth claims that paragraph 579 of the *TRO* limits wholesale service
10 subject to commingling to “switched and special access services offered pursuant
11 to tariff.”⁵¹ The complete text of § 579, however, provides important context and
12 language that BellSouth fails to acknowledge in its testimony:

13
14 We eliminate the commingling restriction that the Commission
15 adopted as part of the temporary constraints in the *Supplemental*
16 *Order Clarification* and applied to stand-alone loops and EELs.
17 We therefore modify our rules to affirmatively permit requesting
18 carriers to commingle UNEs and combinations of UNEs with
19 services (e.g., switched and special access services offered
20 pursuant to tariff), and to require incumbent LECs to perform the
21 necessary functions to effectuate such commingling upon request.
22 By commingling, we mean the connecting, attaching, or otherwise
23 linking of a UNE, or a UNE combination, to one or more facilities
24 or services that a requesting carrier has obtained at wholesale from
25 an incumbent LEC pursuant to any method other than unbundling
26 under section 251(c)(3) of the Act, or the combining of a UNE or
27 UNE combination with one or more such wholesale services.
28 Thus, an incumbent LEC shall permit a requesting

⁵⁰ Tipton Direct, page 48.

⁵¹ *Ibid.*

telecommunications carrier 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. 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. As a result, competitive LECs may connect, combine, or otherwise attach UNEs and combinations of UNEs to wholesale services (*e.g.*, switched and special access services offered pursuant to tariff), and incumbent LECs shall not deny access to UNEs and combinations of UNEs on the grounds that such facilities or services are somehow connected, combined, or otherwise attached to wholesale services.

Importantly, neither of the parentheticals that mention “switched and special access services” includes any discussion that *limits* the FCC’s commingling decision to only these services. Rather, each parenthetical is introduced by (what was dropped from BellSouth’s testimony citation) the abbreviation “*e.g.*,” defined by Black’s Law Dictionary as *exempli gratia*, “for the sake of any example.” Thus the FCC was *illustrating* its commingling rules, not *limiting* their application.

Moreover, the FCC had good reason for using these particular access services as *examples* of wholesale services to which its commingling rules would apply. As the very first sentence of the paragraph explains, one consequence of its decision would be that the FCC’s new commingling rules would supersede the “commingling restriction that the Commission adopted as part of the temporary constraints in the *Supplemental Order Clarification*.” The temporary constraints

1 in the *Supplemental Order* were adopted in order to prevent interexchange
2 carriers from substituting UNEs for access services. Thus, it would stand to
3 reason that the FCC would point to access services as a specific *example* to
4 remove any question that it was changing its prior approach.

5
6 **Q. BellSouth also points to one sentence deleted from the TRO to argue that the**
7 **FCC’s commingling rules exclude the wholesale offerings required by §271.⁵²**
8 **Is this argument reasonable?**

9
10 **A.** No. The fact is that BellSouth cannot find support in any Order for its claim that
11 the wholesale services required by §271 were singled out by the FCC to be
12 uniquely (and discriminatorily) excluded from the commingling obligations.
13 Because BellSouth cannot find anything in an FCC Order that justifies its
14 position, it claims the policy was established by what was left out.

15
16 Before addressing the specifics of the Errata that BellSouth relies upon so heavily,
17 it is useful to put its claim in context. The competitive checklist represents
18 mandatory wholesale offerings that Congress insisted BellSouth must offer if it
19 wanted to provide long distance service. These are not just “any” wholesale
20 offerings – these are offerings that the Congress of the United States wrote as
21 *specific* obligations that apply even where the FCC concludes there is no
22 impairment. BellSouth’s position is that not only that the FCC could relegate

⁵² Tipton Direct, page 48.

1 these wholesale offerings to an inferior standing that excluded from them from the
2 ILEC's general commingling obligations,⁵³ but that the way the FCC would
3 choose to effect such a remarkable policy was through an Errata deleting a single
4 sentence.

6 **Q. In your view, does the Errata accomplish the changes claimed by BellSouth?**

8 A. No. The Errata made two changes relevant to the issue at hand.

10 First, the portion of the Errata that BellSouth emphasizes effected the following
11 deletion [in brackets]:

13 As a final matter, we require that incumbent LECs permit
14 commingling of UNEs and UNE combinations with other
15 wholesale facilities and services, including [any network elements
16 unbundled pursuant to section 271 and] any services offered for
17 resale pursuant to section 251(c)(4) of the Act.⁵⁴
18

19 In the same Errata, the FCC also made the following change, deleting the final
20 sentence draft [in brackets below]⁵⁵ to footnote 1989:⁵⁶

⁵³ The FCC adopted its commingling requirements concluding that a refusal to commingle would constitute an "unjust and unreasonable practice," as well as an "undue and unreasonable prejudice or advantage." BellSouth never even attempts to explain what it is about its §271 wholesale offerings that would reverse the FCC's analysis and find that a refusal to commingle these services/facilities would be a reasonable practice.

⁵⁴ *TRO*, ¶ 584.

⁵⁵ I realize that "underlining" a deletion is not a standard editorial format, but I have done so to make clear exactly what sentence the FCC deleted from the draft *TRO* by its Errata.

⁵⁶ This footnote appears as footnote 1990 in the pre-Errata *TRO*

1
2 We decline to require BOCs, pursuant to section 271, to combine
3 network elements that no longer are required to be unbundled
4 under section 251. Unlike section 251(c)(3), items 4-6 and 10 of
5 section 271's competitive checklist contain no mention of
6 "combining" and, as noted above, do not refer back to the
7 combination requirement set forth in section 251(c)(3). [We also
8 decline to apply our commingling rule, set forth in Part VII.A.
9 above, to services that must be offered pursuant to these checklist
10 items.]
11

12 Obviously, had the FCC intended to exempt the § 271 competitive checklist from
13 its commingling rules, it would not have eliminated this express finding.
14 BellSouth has characterized any discussion of this footnote as an attempt to
15 "confuse the issue,"⁵⁷ claiming the FCC deleted this statement because the text
16 was now clear. With all due respect to BellSouth, the facts simply cannot support
17 that claim.
18

19 At one time, the *TRO* included two contradictory statements regarding the
20 RBOC's obligation to commingle §251 elements with the wholesale offerings
21 listed in §271. Both citations were removed. Importantly, even if the Authority
22 focuses exclusively on the editorial deletion favored by BellSouth, the edit does
23 not result in a sentence that limits BellSouth's commingling obligations. The
24 cited passage (post-Errata) still reads "...we require that incumbent LECs permit
25 commingling of UNEs and UNE combinations with other wholesale facilities and

⁵⁷ Tipton Direct, page 48

1 services,” which would include by definition, wholesale facilities and services
2 required by the § 271 competitive checklist.

3
4 One would expect that if the FCC had decided to eliminate an entire category of
5 wholesale offerings specifically adopted by Congress, they would have done so
6 expressly and not through the (absurdly) subtle method of issuing text in error and
7 correcting it. The plain language of the *TRO* applies the commingling rules to
8 wholesale services obtained “pursuant to any method other than unbundling under
9 section 251,”⁵⁸ and the language that would have exempted § 271 offerings from
10 commingling obligations was removed from the *TRO* by the Errata.

11
12 The Errata simply cannot be read as excusing BellSouth’s wholesale offerings
13 required by §271 from its general commingling obligations.

14
15 **Q. Are you prepared to offer specific pricing recommendations for BellSouth’s**
16 **§271 offerings?**

17
18 **A.** No, not at this time. CompSouth has propounded discovery to BellSouth
19 addressing that would provide use information needed to propose just and
20 reasonable rates. BellSouth has objected to these questions and, as a result,
21 necessary information for detailed analysis is not available.

22

⁵⁸ See *TRO* ¶ 579 (emphasis added).

1 There is, however, a need for the Authority to establish interim §271 prices that
2 would remain in effect until the conclusion of a permanent rate proceeding. The
3 Missouri Commission recently confronted the identical timing dilemma – that is,
4 there is a need for §271 prices, but the record did not provide the information
5 needed to establish such prices.

6
7 SBC offered no rates because its view is that these ICAs should not
8 contain prices for § 271 UNEs. Likewise, the [CLEC] Coalition's
9 original suggestion that TELRIC rates be continued is not
10 appropriate given that the appropriate standard is now "just and
11 reasonable." However, the Commission concurs that the
12 Coalition's compromise position – rates patterned on the FCC's
13 transition period rates for declassified UNEs – constitutes a
14 suitable interim rate structure for § 271 UNEs.⁵⁹
15

16 Because BellSouth has not provide the data to even propose permanent prices, I
17 believe that the "Missouri Approach" is the best avenue for loops and transport
18 (to the extent it is no longer available as a §251 network element under Exhibit
19 JPG-5).

20
21 **Q. Should the Authority also establish an interim rate for local switching based**
22 **on the transitional rate increases?**
23

⁵⁹ Arbitration Order, Public Service Commission of Missouri, TO-2005-0336, July 11, 2005, page 30.

1 A. No. The Authority already established an interim rate for local switching in an
2 arbitration between ITC^DeltaCom and BellSouth.⁶⁰ That interim rate (\$5.08 per
3 port, with no additional usage charge) was based on BellSouth's embedded cost
4 of switching and is significantly above TELRIC, particularly when compared to
5 other TELRIC-based rates for local switching for other states (and the FCC) that
6 have adopted a flat-rate structure (such as that proposed by ITC^DeltaCom and
7 adopted by the Authority.

Comparing ITC^DeltaCom Offer to TELRIC

State	TELRIC Rate	DeltaCom Proposal	Premium
Illinois	\$2.18	\$5.08	133%
Indiana	\$2.98	\$5.08	70%
Wisconsin	\$2.83	\$5.08	80%
Utah	\$3.55	\$5.08	43%
Minnesota	\$3.12	\$5.08	63%
FCC (Virginia)	\$2.83	\$5.08	80%
Average	\$2.92	\$5.08	74%

9
10 In addition, the interim rate in the ITC^DeltaCom arbitration is approximately
11 \$1.05 per month above the average \$251-based rate in Tennessee,⁶¹ which is very
12 close to the FCC's transitional rate of TELRIC plus \$1.

⁶⁰ Petition for Arbitration of ITC^DeltaCom Communications Inc., with BellSouth Telecommunications Inc., Pursuant to the Telecommunications Act of 1996. Docket 03-00119.

⁶¹ See Letter from Henry Walker to Chairman Tate, April 27, 2004, Docket 03-00119.

V. Other Issues

Issue 3: General Implementation

Q. BellSouth is proposing a complete UNE Attachment for “all new CLECs and all new interconnection agreements.”⁶² Do you agree this is appropriate?

A. No. My understanding of this proceeding is that it is to address changes required by the TRO and TRRO, with respect to the issues listed. While obviously some of the decisions the Authority reaches will require BellSouth to modify its standard offering, this proceeding is not intended to short-circuit BellSouth’s obligation to negotiate amendments or new agreements with CLECs. When the Authority resolves the issues in this proceeding, it will require the parties to modify existing or new interconnection agreements (as discussed below) and its decision will affect the relative negotiation/arbitration postures of both BellSouth and the CLECs. The proceeding should not, however, be used to obtain a blanket-approval of BellSouth’s complete Attachment 2, which has not been the focus of this proceeding (nor the negotiations between BellSouth and many CompSouth members). The issues identified do not impact every aspect of each Attachment 2 currently in place between or subject to arbitration BellSouth and CompSouth’s members. Nor do they take account of agreements on language already reached by BellSouth and many of CompSouth’s members. Surely, the

⁶² Blake Direct, footnote 2, page 5.

1 goal of this proceeding cannot be to supplant what has been voluntarily negotiated
2 and agreed to between particular CLECs and BellSouth with a new standardized
3 Attachment 2, neither voluntarily agreed to nor designated for arbitration.

4
5 **Issue 2: Transition Requirements**

6
7 **Q. BellSouth claims that CLECs must complete all transitions by March 10,**
8 **2006.⁶³ Do you agree?**

9
10 **A.** No. As I discussed in my direct testimony,⁶⁴ I believe that once a CLEC submits
11 an order it has satisfied its obligations and the “ball is in BellSouth’s court” to
12 implement that order. I also emphasize that I believe that the significance of this
13 issue will diminish once the Authority resolves other questions in this proceeding.

14
15 Strategically, BellSouth wants to pressure CLECs to reconfigure their wholesale
16 offerings *before* CLECs even know precisely which wire centers and what
17 transport routes will no longer be available under §251,⁶⁵ and without *any*
18 knowledge as to the §271 offerings available as an option. BellSouth’s “squeeze

⁶³ Tipton Direct, page 5. With respect to dark fiber, the transition period ends September 10, 2006. Tipton Direct, pages 4 and 5.

⁶⁴ Gillan Direct, page 11.

⁶⁵ BellSouth’s attempt to “cap” the number of DS1 transport circuits CLECs may obtain even on transport routes where the FCC Order clearly does not impose such a limitation (Gillan Direct, page 33) is the most glaring example of BellSouth attempting to force a CLEC into “false planning” for a transition that is unnecessary.

1 play” is preventing sound planning because the planning itself first requires
2 decisions by this Authority.

3
4 There is no provision in the *TRRO* permitting BellSouth to establish arbitrary cut-
5 off dates in advance of March 10, 2006 by which CLEC orders must be placed.⁶⁶
6 Before BellSouth can reasonably expect CLECs to make informed choices the
7 Authority must establish (at least on an interim basis) the appropriate rate for
8 BellSouth’s parallel §271 offering. BellSouth is clearly able to “change prices”
9 for a large number of orders on short notice – indeed, BellSouth’s proposal for
10 UNE-P lines that have not been migrated is to unilaterally change both the *price*
11 and the *service* that the CLEC is receiving (to resale). Consequently, it is hard to
12 conclude that it would be unable to handle other orders in a reasonable manner.

13
14 **Q. BellSouth proposes that CLECs provide BellSouth with spreadsheets that**
15 **identify all circuits that will no longer be available under §251.⁶⁷ Is this**
16 **reasonable?**

17
18 **A. No, I do not believe that it is. It is *BellSouth* that is withdrawing a service from**
19 **the market, not the CLEC. Consequently, it should be incumbent (no pun**
20 **intended) upon BellSouth to initially inform their customers of exactly which**

⁶⁶ For instance, BellSouth’s proposal for UNE-P would require that CLEC orders be placed by October 1, 2006, more than *five months* before the transition date chosen by the FCC and *three weeks before* briefs are even filed in this proceeding. (Tipton Direct, page 42.)

⁶⁷ Tipton Direct, pages 10 and 11.

1 circuits it will no longer offer as UNEs under §251, not the other way around.
2 CLECs would then have the opportunity (and obligation) to review BellSouth's
3 information and inform BellSouth of any disagreements.

Issue 13: SQM/PMAP/SEEM

4
5
6
7 **Q. Please summarize the fundamental issue concerning the continuing**
8 **application of the SQM/PMAP/SEEM plans.**

9
10 A. BellSouth's view is that the elements that are no longer required to be unbundled
11 under §251 of the Act should no longer be subject to these plans.

12
13 The purpose of establishing and maintaining a SQM/PMAP/SEEM
14 plan is to ensure that BellSouth provides nondiscriminatory access
15 to elements required to be unbundled under section 251(c)(3), and
16 if BellSouth fails to meet such measurements, it must pay the
17 CLEC and/or the state a monetary penalty.⁶⁸
18

19 **Q. Do you agree that the SQM/PMAP/SEEM plan is intended to ensure**
20 **compliance with section 251(c)(3)?**

21
22 A. No. These plans were developed in order to ensure continuing compliance with
23 §271, which includes but is not limited to BellSouth's obligations under
24 §251(c)(3). As the FCC explained:

⁶⁸ Blake Direct, page 10.

1
2 In prior orders, the Commission has explained that one factor it
3 may consider as part of its public interest analysis is whether a
4 BOC would have adequate incentives to continue to satisfy the
5 requirements of section 271 after entering the long distance
6 market. Although it is not a requirement for section 271 authority
7 that a BOC be subject to such performance assurance mechanisms,
8 the Commission previously has found that the existence of a
9 satisfactory performance monitoring and enforcement mechanism
10 is probative evidence that the BOC will continue to meet its
11 section 271 obligations after a grant of such authority.⁶⁹

12
13 As I explained in my direct testimony, the FCC's impairment findings with
14 respect to loops, transport, switching and signaling do not eliminate BellSouth's
15 obligations under §271 to continue to offer these elements.⁷⁰ As the above makes
16 clear, the "purpose" of establishing and maintaining a SQM/PMAP/SEEM plan is
17 not to comply with §251 (as claimed by BellSouth), but to ensure that BellSouth
18 will continue to meet its section 271 obligations. As such, the Authority should
19 continue to apply these plans to any offering required under §271.
20

⁶⁹ Memorandum Opinion and Order, Federal Communications Commission Docket CC 02-307, December 19, 2002, ¶ 167. Emphasis added

⁷⁰ See Gillan Direct, page 38.

Issue 30: The All or Nothing Rule and Deemed Amended

Q. What is the issue with respect to language implementing the “All or Nothing Rule”?

A. The issue is not with the language proposed by BellSouth itself, but rather BellSouth’s suggestion in discussing this issue that once the Authority rules, all interconnection agreements should be “deemed amended.”⁷¹ The Authority is addressing a number of issues in this proceeding and in most (if not all) instances, is provided with competing contract language. It is the CLECs view that once the Authority rules, the parties will need to amend their contracts, including (perhaps) developing language that tracks any Authority decision that only partially adopts a party’s position. What the CLECs cannot accept is BellSouth’s unilateral interpretation of any decision such that the contracts are “deemed amended.”

Q. Do you oppose BellSouth’s suggestion that after the Authority rules in this proceeding, the parties should be directed to file conforming ICA amendments with 45 days?⁷²

A. No. Of course, the time-frame should accommodate any requests for reconsideration, which the Authority should address expeditiously. So long as the

⁷¹ Blake Direct, page 13.

⁷² Blake Direct, page 16.

1 parties retain the right to seek meaningful reconsideration and have the ability to
2 address the unique circumstances of any individual negotiation/arbitration process
3 underway with BellSouth, it would be reasonable for the Authority to establish a
4 timeframe for the filing of necessary amendments to implement its decision.

5

6 **Q. Does this conclude your rebuttal testimony?**

7

8 **A. Yes.**

**Exhibit JPG-5
Rebuttal Testimony of Joseph Gillan
Docket No. 19341-U**

Corrected Wire Center Classifications

Wire Center	Business Lines		Fiber-Based Collocators		Transport Tiers		Corrected Loop	
	Claimed	Corrected	Claimed	Corrected	Tier 1	Tier 2	DS3	DS1
NSVLTNMT	78,781	70,400	4	3	x		x	
KNVLTNMA	37,284	33,563	4		x			
MMPHTNOA	36,686	31,680	3			x		
MMPHTNBA	34,364	29,436				x		
MMPHTNEL	30,973	26,462	4		x	x		
NSVLTNBW	28,974	23,528						
MMPHTNGT	26,311	22,535						
NSVLTNDO	24,914	20,779						
NSVLTNST	24,911	20,833						
CHTGTNBR	24,314	21,005						
MMPHTNMA	23,520	21,495	7		x			
CHTGTNNS	23,166	20,063	3			x		
MMPHTNSL	22,432	19,810	3			x		
NSVLTNUN	19,987	17,238	3			x		
MMPHTNMT	10,289	8,962	3			x		

Note: Shaded area represents a wire center classification dependent upon the number of fiber-based collocators claimed by BellSouth that has not yet been verified by CompSouth. As such, shaded classifications may be subject to further adjustment.

If no "X" in Transport Tier, wire center is a Tier 3 wire center and subject to full unbundling.