Tab B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
Application of BellSouth Corporation, Pursuant to Section 271 of the Telecommunications Act of 1996, to Provide In-Region, InterLATA Services in the States of Florida and Tennessee	)	**WC Docket No. 02-307**

REPLY DECLARATION OF DENISE BERGER

1. My name is Denise Berger. I am the same Denise Berger who filed a declaration on October 10, 2002 in this proceeding.

2. The purpose of this declaration is to explain (1) why AT&T needs cost-based, nondiscriminatory access to BellSouth's "SL-2" loops, and the process that AT&T recently proposed to achieve that objective, and (2) how BellSouth currently does not satisfy the competitive checklist with respect to local number portability.[1]

I. BELLSOUTH'S HOT CUT RATES ARE UNLAWFUL.

3. As AT&T explained in its opening comments and in the Declaration of Jeff King, BellSouth's nonrecurring charges for hot cuts in Florida – $160 for the first hot cut, and $82.47 for each additional hot cut in the same order – are unreasonable and anticompetitive. While

[1] With respect to the issue of loop maintenance discussed in my opening declaration, AT&T has received an electronic mail message from BellSouth stating that it "had a change of heart" and was "working to develop procedures for this situation." It is too early to tell whether changes will be made that resolve the problem or whether those changes will work.

AT&T is currently serving the small and medium sized business market using UNE-P service, it is important to AT&T's business plan to be able to switch these customers to UNE-L service. Converting a UNE-P customer to UNE-L requires a hot cut, however, and as Mr. King explained in his declaration, BellSouth's hot cut rates are too high to make such conversions cost-effective.[2] AT&T has approximately **[BEGIN AT&T PROPRIETARY]** ********** *****[END AT&T PROPRIETARY]** UNE-P lines in Florida, and approximately **[BEGIN AT&T PROPRIETARY]** ********** **[END AT&T PROPRIETARY]** UNE-L lines. All of these UNE-L loops were ordered as new loops; they were not converted from UNE-P service.

4. BellSouth offers two kinds of loop conversions, called "SL-1" (Service Level 1) and "SL-2" (Service Level 2) loops. Some have suggested that AT&T could convert UNE-P lines to UNE-L lines by using "SL-1" loops, for which hot cuts are less expensive, instead of the "SL-2" loops at issue. SL-1 loops are not a substitute for SL-2 loops. For several reasons, CLECs require reasonably priced SL-2 loops, in addition to the SL-1 loop option.

5. The differences between SL-1 and SL-2 loops are significant. First, unlike an SL-1 conversion, conversion to an SL-2 loop includes order coordination and can be ordered as a *time-specific* coordinated hot cut, in which BellSouth guarantees that the disconnection and re-installation of each loop will occur at a specific time with a minimum of disruption to the customer. SL-1 loops do not include in its service capabilities any sort of order coordination. Although an SL-1 loop can be ordered with order coordination or with time-specific order coordination, an additional cost is added to the baseline cost of the loop for each option. The ability to select a specific time for the cutover is important to many small and medium-sized

[2] *See* King Dec. ¶ 13.

businesses, who depend on uninterrupted telephone service and who typically do not want to lose telephone service at certain busy times of the day. Time-specific coordination is thus critical to AT&T's ability to convert these lines to UNE-L without disrupting service to these small and medium-sized businesses.

6. Also, unlike SL-1 loops, with SL-2 loops, BellSouth also provides AT&T with loop testing and a design layout record. Loop testing allows AT&T to ensure the quality of the loop prior to the cutover. Moreover, as shown in an ex parte filed by BellSouth with the Commission,[3] SL-1 loops are out of service longer when troubles arise. For these reasons, all of AT&T's UNE-L loops are SL-2 loops.

7. To address the shortcomings of BellSouth's current system of hot cuts, AT&T recently proposed a new coordinated bulk conversion process to convert UNE-P customers to UNE-L. *See* Letter from Denise Berger (AT&T) to Jim Schenk (BellSouth), dated October 16, 2002 (Attachment 1 hereto). Under AT&T's proposal, BellSouth would convert between 100 and 500 lines at a time during the evening hours. AT&T's proposal provides for extensive coordination between BellSouth and AT&T during the hot cut process, including a telephone bridge during the conversion process itself, to ensure that conversions can be accomplished by keeping loss of service to a minimum. Performing a large number of hot cuts in a single bulk conversion would result in economies of scale that would lower the cost of each hot cut to a price that AT&T believes is less than $5 per cut. BellSouth has acknowledged receipt of AT&T's request, but has not yet provided a detailed response to AT&T's proposal.[4]

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[3] Ex parte Letter from Glenn T. Reynolds to Marlene Dortch (Oct. 25, 2002).

[4] According to the Interconnection Agreement between AT&T and BellSouth, BellSouth has thirty-five (35) calendar days to provide a detailed response to AT&T's New Business Request.

8. It has been suggested that if BellSouth were to guarantee that it would use the same loop in any conversion from UNE-P to UNE-L, such a guarantee might eliminate any need for loop testing or engineering records. It is true that such a guarantee might allow AT&T to use SL-1 loops in certain circumstances. However, in the majority of cases, customers require time-specific coordinated cutovers and the guarantee of a seamless conversion. These are add-on features that would raise the price of the SL-1 loop, like the SL-2 loop option, far above cost-based levels and far above the hot cut rates in other large states. For these reasons, AT&T has not formally proposed such a guarantee to BellSouth; instead, AT&T has proposed the bulk conversion process described above.

9. In short, SL-2 loops are critical to AT&T's ability to convert UNE-P customers to UNE-L in a commercially reasonable manner because SL-2 loops provide for order coordination, loop testing, and design layout record, with the capability to request a time-specific cut. BellSouth should not be permitted to use its high hot cut rates to force CLECs such as AT&T into using inferior SL-1 loop conversions. In short, BellSouth should fix the rates and the processes for SL-2 loop conversions.

II. BELLSOUTH DOES NOT PROVIDE LOCAL NUMBER PORTABILITY IN ACCORDANCE WITH CHECKLIST ITEM ELEVEN.

10. Section 271(c)(2)(B)(xi) requires BellSouth to demonstrate that it is complying with the number portability regulations of the FCC under Section 251 of the Act.[5] Congress has defined number portability as "the ability of users of telecommunications services to retain, at the same

[5] 47 U.S.C. § 271(c)(2)(B)(xi).

location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications service to another."[6]

11. BellSouth does not provide the "quality, reliability, and convenience" required by statute when it ports numbers for some products that serve large business customers. BellSouth has certain services for larger business customers (for example, MegaLink and PRI), which generally require a high capacity access facility (*i.e.*, a T-1 or above) to carry the service from the customer's PBX to the BellSouth central office.

12. In most cases when AT&T wins the customer's local service, AT&T will send a local service order ("LSR") to BellSouth asking BellSouth to port all of the numbers on that BellSouth facility from BellSouth to AT&T. In this scenario, AT&T has no intention of using the BellSouth facility; AT&T requires BellSouth *only* to port the numbers to AT&T.

13. In this situation, however, BellSouth will not process AT&T's order to port the numbers. Rather, BellSouth returns the order for "clarification" – *i.e.*, it asks AT&T for instructions regarding the disposition of the BellSouth retail access facility.

14. BellSouth's position is wholly unreasonable. In essence, BellSouth will not port the numbers until AT&T tells BellSouth what to do with *BellSouth's* facility. BellSouth does not need this information to port the numbers. Insisting that AT&T provide such "clarification" unnecessarily delays AT&T's order and delays AT&T's ability to provide service to the customer.

15. More importantly, BellSouth's "clarification" policy inappropriately forces AT&T to insert itself into the relationship, and any potential dispute, between its new customer and BellSouth's retail unit. If AT&T tells BellSouth to keep the facility in place, BellSouth often

[6] 47 U.S.C. § 153(30).

continues to bill the customer. When the customer inevitably becomes upset, under BellSouth's policy, BellSouth can tell the customer that the billing mix-up is AT&T's responsibility, thereby sowing discord between AT&T and its new customer. Conversely, if AT&T tells BellSouth to disconnect the facility, the customer may also become upset if he plans to purchase other services from BellSouth that would have been delivered over those facilities.

16. The bottom line is that, in order to "clarify" what BellSouth should do with the facility, AT&T must insert itself into the customer's relationship with *BellSouth*. The issue of what to do with BellSouth's facility is an issue that is solely between the customer and BellSouth's retail unit. BellSouth's policy in effect holds the number port hostage as a way of forcing AT&T to settle the customer's arrangements with BellSouth *on behalf of BellSouth*. Indeed, BellSouth's practice, by design, attempts to shift the responsibility (and liability) for winding down *BellSouth's* relationship with the customer from BellSouth to AT&T.

17. BellSouth's response to AT&T's requests for a change in this policy has been to point to Change Request 0414 (CR0414), which was implemented on June 29, 2001. BellSouth "believes the CLEC Community supported this view when, via the Change Control Process (CCP) the CLEC Community accepted and implemented BellSouth's Change Request (CR) 0414 in 2001."[7]

18. In fact, BellSouth failed to satisfy the Change Control Process in the implementation of CR0414. The following chronology will illustrate BellSouth's timing and tactics in pushing this change request through the process.

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[7] See BellSouth's letter from Jim Schenk to Denise Berger, dated September 24, 2002 (Attachment 1 to my original declaration).

a. May 23, 2001 — BellSouth held a scheduled monthly meeting. BellSouth did not present CR 0414 to the CLEC community.[8] In fact, CR0414 was never presented to the CLEC community for prioritization.

b. May 24, 2001 — BellSouth submitted CR0414 to the BellSouth Change Control Team.[9] The CLEC Community was not apprised of the request.

c. June 19, 2001 — The BellSouth Change Control Manager "accepted" the change request and moved the change request to "pending status."[10]

d. June 27, 2001 — BellSouth held a scheduled monthly meeting. CR0414 was presented as a "Scheduled Change Request," indicating that it had already worked through the change control process, although, prior to this, it was never presented to the CLEC community. It was further described as a change to "Add 'RMKS' to the RCO Chart for REQTYP C, as conditional in the BBR-LO." Nowhere in this description did it

[8] See BellSouth Change Control Monthly Status Meeting minutes, dated May 23, 2001 (Attachment 2 to my original declaration).

[9] See BellSouth Change Request Form for CR0414, dated May 24, 2001 (Attachment 3 to my original declaration).

[10] See *id.*, Item 31.

indicate that orders will be sent back for clarification for the disposition of remaining service.[11]

e. June 29, 2001 — BellSouth implemented CR0414 two days after the change request was first presented to the CLEC community.

f. June, 2002 — BellSouth began to send back AT&T orders for clarification for the disposition of remaining service.

19. The disposition of BellSouth's facility, and the winding down of the billing relationship between the BellSouth's former customer and BellSouth, has nothing to do with porting numbers. BellSouth has no legitimate justification for holding local number portability hostage while AT&T resolves an issue that is properly BellSouth's to resolve. In the last two months, AT&T has escalated this issue to the BellSouth Vice President of Interconnection Services, but BellSouth has refused to modify its policy.

20. At the most recent Executive meeting between BellSouth and AT&T, on October 24, 2002, AT&T again raised this issue and noted that the Change Control procedures had not been followed. BellSouth acknowledged that the CLECs had not voted on or approved the change in policy. BellSouth's only suggestion, however, was that CLECs should seek to change the policy through the Change Control process. Accordingly, BellSouth has not satisfied checklist item eleven.

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[11] See BellSouth Change Control Monthly Status Meeting minutes, dated June 27, 2001 (Attachment 4 to my original declaration).

I, Denise Berger, declare under penalty of perjury that the foregoing is true and correct.

/s/ Denise Berger
Denise Berger

Executed on November 1, 2002.

Attachment 1

October 16, 2002

Jim Schenk
BellSouth Telecommunications, Inc.
600 North 19th Street
8th Floor
Birmingham, Alabama 35203

RE: UNE-P to UNE-L Coordinated Bulk Conversion Process

Dear Jim:

The purpose of this letter is to follow up on my August 30, 2002, letter to you requesting BellSouth's adoption of a new process to convert AT&T's UNE-P customers to UNE-L via a coordinated bulk conversion process. The purpose of this new process is to allow AT&T to move its customers to AT&T's facilities-based local network. This process should be a seamless transition for AT&T customers moving from UNE-P to the UNE loop with ported numbers.

Please accept this letter as a New Business Request (NBR) from AT&T in accordance with Attachment 10 of our Interconnection Agreement. I have attached a proposed project plan, which outlines the support that AT&T needs from BellSouth to make this project a success. AT&T's goals for this project are as follows: maximize the use of AT&T's local facilities by converting UNE-P customers to UNE loops and minimize any disruption during the transition of AT&T's customers from UNE-P to the UNE loop.

As noted in our previous correspondence, it is AT&T's experience that the bulk process significantly lowers the per line migration cost, including the number port. The economies of scale gained through performing bulk should generally cost less than $5 per loop for this project as outlined in the attached project plan proposal.

Please let me know if additional information is needed to proceed with this project.

Sincerely,

cc: Greg Terry

UNBUNDLED NETWORK ELEMENT PLATFORM CONVERSION TO UNBUNDLED NETWORK ELEMENT LOOP PROJECT PLAN PROPOSAL

1. SCOPE

BellSouth will provide project management for the bulk conversion of unbundled network element platform (UNE-P) end-users to an unbundled network element loop (UNE-L) with number portability (LNP). The transition of service governed by this plan will convert no fewer than 100 customers and no more than 500 customers during one evening. These conversions will, upon mutual agreement between the two companies, convert customers within up to two (2) local serving offices (LSO). All conversions will take place after 5:00 PM local time, as defined as the time applicable to each LSO. This project will be ongoing and will be invoked as required by AT&T's notification to BellSouth. The terms and conditions of this agreement will be applicable to AT&T UNE-P end-user customers, as well as AT&T wholesale customers, who choose to migrate UNE-P customers on BellSouth's network to AT&T's network via UNE loop with Number Portability.

2. DUTIES OF BELLSOUTH

BellSouth will provide the necessary resources to perform the functions set forth below. The Parties believe, based on the information provided by AT&T regarding its requirements and BellSouth regarding its capabilities, that the functions set forth below for each Party shall be sufficient to convert UNE-P customers to UNE Loop with Number Portability. If additional functions become necessary, the Parties will work cooperatively and in good faith to incorporate additional functions as required.

2.1 BellSouth will prepare any internal orders required to convert end-user customers from UNE-P to UNE-L in the BellSouth systems and to port telephone numbers from the BellSouth switch to the AT&T switch. The source data for these orders will be a spreadsheet or other data source provided by AT&T.

2.2 The price conversion from UNE-P to UNE-L rates for these end-user customers shall be effective as of the date the order is implemented by BellSouth.

2.3 BellSouth will designate a project manager to act as the single point of contact (SPOC) within BellSouth to authorize, initiate, and direct work activities covered by this Agreement. BellSouth will provide the name, telephone number, cellular phone number, pager number and email address of the SPOC as well as

the same information for a back-up contact. The SPOC will have access to the appropriate provisioning and ordering systems to ensure compliance of the terms of this Agreement. BellSouth will define any special ordering instructions prior to the first meeting of the joint project team.

2.4 BellSouth will ensure AT&T's continued access to the BellSouth circuit facility assignment (CFA) database information. BellSouth will additionally ensure that the database information is updated and current.

2.5 The dedicated BellSouth team members, including, but not limited to, the technician, the project manager, the work center manager, etc., will be identified prior to the project kick-off. All contact detail, e.g., voice telephone number, facsimile telephone number, cellular telephone number; pager number, etc., should be shared with the appropriate AT&T personnel. In addition, escalation contacts names and numbers, up to the BellSouth Officer level, will be shared with the AT&T project manager.

2.6 BellSouth will acknowledge receipt of AT&T's spreadsheet via e-mail confirmation to the AT&T designated project manager.

2.7 BellSouth will provide an Excel spreadsheet containing AT&T Purchase Order Number (PON), BellSouth's Service Order Numbers, Firm Order Confirmations (FOC) and associated telephone numbers for each end-user included in the conversion project. BellSouth's FOC will signify BellSouth's commitment to the conversion date and that all potential customer rejects or clarifications have been identified prior to the cut with sufficient time to ensure joint resolution by BellSouth and AT&T in time for the conversion.

2.8 BellSouth will coordinate and facilitate conference calls with AT&T to discuss project issues. The frequency of these calls will be determined by agreement between the BellSouth project manager and the AT&T project manager.

2.9 BellSouth will notify the AT&T single point of contact (SPOC) by email of any requests in jeopardy due to clarification issues. BellSouth will also notify AT&T of the reasons for the clarifications and will provide the information and resources necessary to clear the clarifications. The companies will work cooperatively to immediately supplement the order as necessary.

2.10 BellSouth will establish a project tracking number for each bulk conversion. This tracking number will identify a particular group of customers that are assigned to convert on a specific date.

2.11 BellSouth will work cooperatively with AT&T to establish the appropriate project milestones and a mutually agreeable process for tracking the completion of the milestones.

2.12 The joint BellSouth and AT&T project team will determine and agree upon a date certain until which end users can be added to or substituted on the list for a scheduled conversion.

2.13 BellSouth will track the orders and coordinate meetings between the BellSouth centers involved. Coordination meetings will include, but not be limited to, identification of implementation work groups; identification of tasks; responsibilities; and critical time frames for implementation; coordination of order issuance; tracking orders through all systems for commitment due date status; identification of obstacles; strategies for overcoming obstacles; and reaffirmation of tasks and commitments with all work groups.

2.14 BellSouth will, at the time of the bulk conversions, participate in pre-cut calls with AT&T to determine final readiness. BellSouth personnel will also maintain availability during the cuts in the event that AT&T personnel have a need to contact for clarification or direction. An open conference bridge will be established to coordinate the bulk conversions. This bridge will remain open during the conversion process.

2.15 BellSouth and AT&T will work cooperatively to develop a process to restore all service outage conditions that are identified post-conversion.

2.16 BellSouth will use best efforts to ensure continuation of service during the replacement and to reuse the current facilities. While BellSouth cannot guarantee that there will be no outages during the replacement, outages are greatly minimized through the project management of these replacements. In the event an outage occurs, the AT&T SPOC set forth in Section 3.4 will contact the BellSouth SPOC set forth in Section 2.3 to coordinate with the BellSouth centers and BellSouth central offices identified to resolve the issues. Corrective action will commence immediately upon notification to BellSouth and BellSouth will give AT&T hourly status regarding the restoration of service. In those cases where an outage does occur, BellSouth will conduct a complete root cause analysis to determine the reasons for the outage and will implement corrective action to insure that further outages are minimized.

2.17 Twenty-four to 48 hours prior to conversion, BellSouth will perform all necessary readiness tests and resolve any identified issues prior to the conversion. These tests should include, but are not limited to, dial tone/ANI verification at the MDF of the new circuit and the existing ILEC circuit; pre-wiring; and loop qualification testing.

2.18 BellSouth will complete all scheduled cuts as scheduled. BellSouth will acknowledge completion of the required conversions via completion notices to AT&T.

2.19 BellSouth will respond to all service outage conditions that result from conversion within one-half hour of notification or detection. In the event that a

customer's service cannot be restored on the new loop, BellSouth technicians will immediately return the customer to the UNE-P service and notify the appropriate AT&T personnel.

3. DUTIES OF AT&T

3.1 AT&T will provide to BellSouth a spreadsheet with the complete information outlined in section 3.3 below.

3.2 AT&T is responsible for providing correct account records prior to conversion. AT&T will be responsible for correcting inaccurate information prior to the conversion of an end users service. AT&T's failure to provide accurate information in a timely manner may delay the conversion of service.

3.3 The spreadsheet provided by AT&T to the BellSouth SPOC will contain the following information:

a. LEC Name
b. Date
c. State
d. CCNA
e. ACTL
f. CFA
g. SCFA
h. Main BTN for Porting
i. All Subsequent Telephone Numbers for Porting
j. EU SWC
k. Existing BAN
l. AT&T PON
m. New BAN
n. RPON
o. CC
p. SPOC Name
q. SPOC Telephone Number
r. SPOC Fax or E-mail

3.4 AT&T will provide a single point of contact within AT&T to authorize, initiate, and direct work activities covered by this Agreement. AT&T will provide the name, telephone number, cellular phone number, pager and email address of a single point of contact (SPOC), as well as the same information for a back-up contact. Further, AT&T will provide the same information for the appropriate escalation contacts, through Officer level.

3.5 AT&T agrees that its SPOC will respond to emails regarding informational inquiries on specific AT&T accounts when problems are encountered. If

AT&T fails to respond in a timely manner, BellSouth will escalate for resolution. Orders may be cancelled and critical dates will be delayed should AT&T fail to respond within 48 hours.

3.6 AT&T will serve as the interface for all end user notifications, questions or concerns. AT&T will partner with BellSouth to resolve any CFA inventory discrepancies prior to the bulk conversion orders are confirmed by BellSouth.

3.7 The joint BellSouth and AT&T project team will determine and agree upon a date certain until which end users can be added to the list for a scheduled conversion.

3.8 AT&T will accept UNE Loops on the dates specified by BellSouth's SPOC.

3.9 AT&T agrees not to perform any order activity on end-user's service to be converted after the spreadsheet is provided to BellSouth.

3.10 AT&T agrees that the UNE-P service converted to UNE loops under the terms of this Agreement shall become subject to the rates, terms and conditions of the Interconnection Agreement between the Parties. If the FCC, Supreme Court, or other regulatory body with jurisdiction issues an effective order that affects the rate of such circuits or otherwise affects such circuits, the Parties agree to take the steps necessary to effectuate such order with regard to such circuits, including, but not limited to, amending the Interconnection Agreement and placing any additional orders required.

Tab C

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application by BellSouth Corporation,	)	
for Authorization To Provide In-Region,	)	
InterLATA Services	)	**WC Docket No. 02-307**
in the States of Florida and Tennessee	)	
	)	

REPLY DECLARATION OF JEFFREY A. KING
ON BEHALF OF AT&T CORP.

I. BACKGROUND

1. My name is Jeffrey A. King. I am the same Jeffrey King who submitted a declaration in this proceeding on October 10, 2002.

II. PURPOSE OF DECLARATION

2. My reply declaration discusses three issues. First, with respect to BellSouth's massively overstated $160 hot cut non-recurring charge addressed in my opening declaration, I am providing updated information on hot cut charges in various jurisdictions. Second, with respect to BellSouth's $200 per day, per line, expedite charge, I rebut BellSouth's claim that the expedite charge is not a UNE subject to the requirements of Section 251(c)(3) and describe BellSouth's efforts to impose that market-based, non-TELRIC compliant charge unilaterally on AT&T. Third, on BellSouth's growth tariff, I am attaching to my reply declaration a recent BellSouth filing in Tennessee in which BellSouth acknowledges that the SWA Contract Tariff was designed to have individually negotiated minimum discount levels, based on a carrier's specific volume levels. The Tennessee filing contradicts BellSouth's claims before the FCC that

its long distance affiliate BellSouth Long Distance, Inc. ("BSLD") cannot not take service under the SWA Contract Tariff because it did not satisfy the 3.3 billion access MOUs set forth in the SWA Contract Tariff filed with the Commission relating to Sprint. As BellSouth's Tennessee filing makes clear, BellSouth anticipated that it would negotiate contract tariffs with carriers -- including BSLD -- with the minimum usage level based on each carrier's specific volumes and not Sprint's volumes. Thus, BellSouth and BSLD could enter into the SWA Contract Tariff at any time, with the minimum usage level based on BSLD's access volumes.

III. BELLSOUTH'S HOT CUT RATES ARE OVERSTATED

3. As demonstrated in my opening comments, BellSouth's $160 nonrecurring charge for hot cuts restricts AT&T's ability to offer UNE-Loop service to small and medium sized businesses. In her reply declaration, Denise Berger discusses some of the business reasons why AT&T must purchase the more expensive SL-2 loops for hot cuts rather than the less expensive SL-1 loops offered by BellSouth.

4. Included in my opening declaration was a chart comparing hot cut rates in various jurisdictions. I am updating that chart with information on additional states and correcting the stated hot cut rate for Verizon in Florida that omitted portions of the full rate:

Table 1. Comparison of Hot Cut Rates in States

State (Company)	First Hot in Order	Additional Hot Cuts in Same Order
Florida (BellSouth)	**$160.29**	**$82.47**
Florida (Verizon/GTE)[1]	**$153.81**	**$59.83**
Alabama (BellSouth)	**$111.92**	**$55.00**
Tennessee (BellSouth)	**$109.35**	**$48.20**
New York Verizon/NYNEX)	**$35.00**	**$35.00**
Pennsylvania (Verizon/BA)	**$4.34**	**$3.28**
Texas (SBA/SWBT)	**$25.74**	**$25.74**
Michigan (SBC/Ameritech)	**$20.98**	**$20.98**

The disparity between the BellSouth hot cut rates and the hot cut rates in other jurisdictions is striking and supports my initial declaration and my testimony before the Florida Commission in the UNE proceeding that BellSouth's non-recurring charge for hot cuts is significantly overstated.

IV. BELLSOUTH IS UNLAWFULLY SEEKING TO IMPOSE AN EXPEDITE CHARGE OF $200 PER DAY PER LINE THAT VIOLATES SECTION 251(c)(3).

5. BellSouth is unlawfully seeking to impose a $200 per day per line charge for expediting orders for unbundled network elements. As stated in my initial Declaration, this charge is discriminatory and has no cost basis. Notwithstanding AT&T's requests, BellSouth has never provided a cost study that justifies this charge. Indeed, BellSouth cannot, as there can be no logical basis for an expedite charge based on the number of lines or the number of days by which the order is expedited. AT&T is willing to pay a reasonable, cost-based charge for expediting an order, but BellSouth's arbitrary $200 per day per line charge goes far beyond reasonableness. In my view, BellSouth is using its monopoly power to impose an exorbitant rate upon captive CLECs who are merely seeking to provide improved serve to their customers.

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[1] In my original Declaration I failed to include the provisioning component of Verizon Florida's hot cut rate and as a result understated the full rate.

6. BellSouth is apparently taking the position that the expedite charge is appropriate and an acceptable "market-based charge" because expediting a UNE order is not a UNE itself and therefore not subject to Section 251(c)(3)'s nondiscrimination and cost-based rate requirements. This argument flunks the straight face test. The establishment of a service date is part and parcel of the ordering and provisioning process. Changes in customer needs make modifications to previously scheduled service dates – including expediting those service dates – a fact of life for CLECs and, indeed, for BellSouth in serving their customers. This is the commercial reality of companies in a service industry.

7. In the *Local Competitive Order*, the Commission explicitly found that an ILEC's Operations Support Systems ("OSS") are a network element subject to the requirements of Section 251 (c)(3).[2] *Local Competition Order*, ¶¶ 516-18. This point has never been seriously disputed, and was reaffirmed in the *UNE Remand Order* (¶ 424). Ordering and provisioning are core functions of that network element, and expediting orders involves the establishment of service dates that is a central part of the ordering and provisioning operation. The fact that portions of the expediting process may be performed manually rather than electronically does not alter the fact that expediting requests are a part of the ordering and provisioning process and therefore part of OSS. Given that ordering and provisioning are OSS functions that are network elements, ILEC actions associated with ordering and provisioning, including expediting orders, are subject to the nondiscrimination and cost-based rate requirements of Sections 251(c)(3) and 252(d).

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[2] The AT&T/BellSouth Interconnection Agreement similarly states that operations support systems are a network element and that BellSouth shall provide to AT&T "non-discriminatory access to Network Elements . . . on terms and conditions that are just, reasonable and non-discriminatory" as set forth in the interconnection agreement. AT&T/BellSouth Interconnection

8. In addition, the Commission has made clear that the unbundling obligations apply not just to the UNE itself, but also to access to that UNE. Indeed, the Commission noted that an ILEC could provide inferior access to UNEs -- and thereby injure a CLEC's ability to compete -- if it were not obligated to provide nondiscriminatory access to UNEs such as OSS. *Local Competition Order,* ¶ 307. Thus, the Commission specifically determined that access to OSS functions such as ordering and provisioning is subject to the requirements of Section 251(c)(3) that rates be just and reasonable and nondiscriminatory. *Id.* ¶¶ 315-16. BellSouth's $200 per day per line/circuit expedite charges is neither just and reasonable nor nondiscriminatory in any sense.

9. BellSouth has sought to impose this expedite charge unilaterally on AT&T. This effort began with BellSouth's Carrier Notification SN91083199 dated July 11, 2002 (Attachment 1 hereto) in which BellSouth announced it would begin billing CLECs for expediting orders on August 15, 2002. BellSouth stated that the expedite charges were

> "generally contained in Attachment 6 of the BellSouth Standard Interconnection Agreement. If the CLEC's Interconnection Agreement does not have the appropriate language addressing expedites, an amendment must be obtained prior to submitting an expedited request. Expedited requests will be rejected if the necessary language is not included in the CLEC's Interconnection Agreement."

Thus, before BellSouth would expedite an order after August 15, 2002, a CLEC had to agree on an expedite charge with BellSouth or risk not being able to expedite customer orders.

10. AT&T first learned about the specifics of the $200 per day per line charge in August 2002 when BellSouth proposed amendments to the AT&T/BellSouth Interconnection Agreement to update various rates. AT&T did not agree to the $200 per day per line/circuit

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Agreement, Attachment 2, 2.2.

charge and proposed that the parties negotiate an appropriate rate. In discussions with BellSouth and in an August 30, 2002 letter to BellSouth,[3] AT&T suggested that the expedite charge be made interim pending negotiation by the parties. BellSouth denied AT&T's request and stated that AT&T orders would be rejected if AT&T did not pay the expedite charge. In the August 30, 2002 letter, AT&T sought to escalate the issue with BellSouth.

11. On September 13, 2002, BellSouth responded by letter,[4] rejecting AT&T's request. BellSouth stated in response to an AT&T request for expediting an order, "the BellSouth service center will advise AT&T of the date offered on the FOC, as well as, any applicable charges." In other words, BellSouth has unilaterally determined that the charge would be $200 per day per line/circuit.

12. AT&T is continuing to try to resolve this matter with BellSouth and if no resolution can be reached will seek relief from the appropriate decision makers. This is just another example of BellSouth imposing costs on AT&T and other CLECs through its control of service availability to customers.

V. BELLSOUTH INTENDED ITS GROWTH TARIFFS TO HAVE INDIVIDUALLY NEGOTIATED MINIMUM DISCOUNT VOLUME LEVELS.

13. In responding to AT&T's arguments about BellSouth's growth tariff, BellSouth has argued to the Commission that BSLD could not take advantage of the SWA Contract because BSLD did not have the 3.3 billion access MOUs in year one, the threshold as set forth in the SWA Contract Tariff. In its state filings, however, BellSouth has been more candid. In opposition to a CLEC Coalition filing in Tennessee seeking suspension of BellSouth's

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[3] Letter from B. Peacock, AT&T, to J. Hendrix, BellSouth (Aug. 30, 2002) (Attachment 2 hereto).

[4] Letter from N. Bracy, BellSouth, to B. Peacock, AT&T (Sept. 13, 2002) (Attachment 3

Tennessee growth tariff filing, BellSouth filed an answer that discussed the intended practice relating to both the federal and state SWA Contract Tariffs.[5] BellSouth noted that its agreement with Sprint on the Contract Tariff served as the basis for the federal and state filings but then acknowledged that BellSouth would enter into arrangements with other carriers based on each carrier's specific volumes:

> Initially, BellSouth negotiated this arrangement with Sprint, and consequently, filed a Contract Tariff with the FCC for the interstate switched access service that Sprint would purchase. BellSouth also filed Contract Tariffs (in practical effect, contract service arrangements) in each of its nine states to memorialize the agreement with Sprint. The original structure of this Tariff filing was based on the requirements of the FCC that each discount plan be memorialized with each carrier and filed in the form of a separate contract tariff. Thus, BellSouth filed a contract tariff at the federal level for interstate service, then essentially mirrored the federal filing in the tariffs filed with the various states for intrastate service. These tariffs were approved and are currently in effect in six states in BellSouth's region. *Although the original contract tariffs (both federal and state) were based on Sprint's usage levels, BellSouth has always been willing to enter into comparable contracts with other carriers that have sufficient volume to qualify, based on that carrier's specific volume levels.*[6]

14. As the highlighted portion makes clear, the minimum discount level set forth in the SWA Contract Tariff filed with the FCC represents Sprint's minimum usage levels but was never intended to set the minimum level for all carriers. Indeed, BellSouth clearly intended to negotiate, and enter into, separate contracts with other carriers – including BSLD – with minimum usage levels based on "that carrier's specific volume levels." Thus, as AT&T has consistently argued, BellSouth's contract tariff was designed to be individually tailored to provide

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hereto).

[5] BellSouth's Answer to CLEC Coalition Petition to Suspend Tariff and to Convene a Contested Case Proceeding, *In re Petition to Suspend BellSouth Tariff No. TN 2002-256 and to Convene a Contested Case Proceeding*, Tenn Reg. Auth Docket No. 02-01073 (filed October 14, 2002) (Attachment 4 hereto).

[6] *Id.* at 2.

discounts based on each carrier's usage level, and BellSouth could enter into a Contract Tariff with BSLD based on BSLD's usage levels at any time.

VI. CONCLUSION

15. For the reasons set forth in my original declaration and in this reply declaration, BellSouth cannot be found to be in compliance with its obligations under checklist item two in light of its overstated $160 hot cut rate and $200 per day per line charge to expedite orders. In addition, BellSouth's proposed SWA Contract Tariff violates its nondiscrimination obligations under Section 272 of the Communications Act by discriminating against large interexchange carriers such as AT&T and favoring smaller, growing carriers such as BellSouth's long distance affiliate. This Commission should require the cancellation of the SWA Contract Tariff or its replacement by a tariff based on absolute volumes that tie the efficiencies that give rise to cost savings to the volumes that make such cost savings possible.

VERIFICATION

I declare under penalty of perjury that the facts stated herein are true and correct, to the best of my knowledge, information and belief.

/s/ Jeffrey A. King
Jeffrey A. King

Date: November 1, 2002

Attachment 1

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91083199

Date: July 10, 2002

To: Competitive Local Exchange Carriers (CLECs)

Subject: CLECs - BellSouth Billing of Charges for Service Date Advancements (Expedites) for Unbundled Network Elements (UNE)

This is to advise of the following BellSouth billing procedures:

Service Date Advancement Charge (Expedites): Effective August 15, 2002, BellSouth will begin billing CLECs for UNE Service Date Advancements. Expedited service dates are requested service intervals less than those set forth in the BellSouth Product and Services Interval Guide.

Provisions for Expedite charges are generally contained in Attachment 6 of the BellSouth Standard Interconnection Agreement. If the CLEC's Interconnection Agreement does not have the appropriate language addressing expedites, an amendment must be obtained prior to submitting an expedited request. Expedite requests will be rejected if the necessary language is not included in the CLEC's Interconnection Agreement.

Please contact your BellSouth Local Support Manager with any questions.

Sincerely,

ORIGINAL SIGNED BY JIM BRINKLEY

Jim Brinkley – Senior Director
BellSouth Interconnection Services

Attachment 2

AT&T

Promenade I
1200 Peachtree Street, N.E.
Atlanta, Georgia 30309

August 30, 2002

Mr. Jerry Hendrix
Director
BellSouth Interconnection Services
34S91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

VIA FACSIMILE AND U.S. MAIL

Re: BellSouth's Proposed Expedite Charge for Processing Local Service Requests

Dear Jerry:

AT&T and BellSouth have jointly prepared amendments to several of our ICAs in order to update the ICAs with new language and new state commission approved rates. On the rate exhibits provided by BellSouth to AT&T that were prepared to reflect the new state commission approved rates, BellSouth included a non-ordered, non-negotiated rate for expediting an order at the request of AT&T. AT&T requested that the new expedite charge rate be marked as interim, and be subsequently negotiated by the Parties. BellSouth has denied AT&T's request and stated that without the inclusion of the rate, that AT&T orders requesting an expedite of the due date would be rejected by BellSouth. This correspondence states AT&T's desire to escalate this issue with BellSouth such that additional discussions are held at higher levels of management within BellSouth.

Attachment 7, Section 3.13 of our ICA establishes the Expedite and Escalation Procedures jointly agreed to by the Parties. The language in Section 3.14 allows AT&T the opportunity to request an expedite:

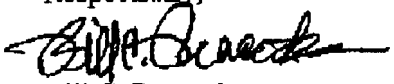
> "Requests for due dates that are earlier than the BellSouth offered date will be treated as an expedite request. In order to request an expedited due date, AT&T must request the expedite through the appropriate BellSouth service center on the appropriate service request form. The BellSouth service center will coordinate the request internally with the appropriate groups within BellSouth in order to establish the date BellSouth will target as the offered date. The BellSouth service center will advise AT&T of the date on the FOC. If the date on the FOC does not meet AT&T expedited request, AT&T may escalate to the appropriate center. BellSouth may bill expedite charges for expedited due date and will advise AT&T of any charges at the time the offered date is provided. BellSouth will provide an

escalation list to AT&T containing the names and numbers of the appropriate personnel escalations are to be referred."

AT&T will continue to operate and follow the procedures included in our ICA. If BellSouth is not already recovering its costs for processing an expedite request from AT&T, AT&T is not opposed to paying a negotiated charge for expedited orders. AT&T clearly stated this on the teleconference call that was held with BellSouth this morning at 9:00 am EST.

At your earliest convenience, please give me a call so that we can schedule additional discussions regarding BellSouth's proposed expedite charge.

Respectfully,



Bill C. Peacock
Director – Local Service &
Access Management

Cc: Greg Terry
Jeff King
Michael Karno, Esquire

Attachment 3

BELLSOUTH

BellSouth Interconnection Services
675 W. Peachtree Street, NE
34S91
Atlanta, Georgia 30375

Nicole Bracy
(404) 927-7596
FAX(404) 529-7839

September 13, 2002

Bill Peacock
AT&T
1200 Peachtree Street N.E.
Atlanta, GA 30309

Dear Bill:

This letter is in response to your letter dated August 30, 2002, to Jerry Hendrix regarding BellSouth's proposed expedite charge. BellSouth's position is that it will follow the process outlined in the Interconnection Agreement in Section 3.13 of Attachment 7, Expedite and Escalation Procedures. It states that once AT&T has requested an expedite, the BellSouth service center will advise AT&T of the date offered on the FOC, as well as, any applicable charges.

If you have any questions, please call me at 404-927-7596.

Sincerely,

Nicole Bracy
Manager, Interconnection Services

Attachment 4

BELLSOUTH

RECEIVED

BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

'02 OCT 14 PM 3 40

TN REGULATORY AUTHORITY
DOCKET ROOM

October 14, 2002

VIA HAND DELIVERY

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *CLEC Coalition Petition to Suspend Tariff and to Convene a Contested Case Proceeding*
Docket No. 02-01073

Dear Chairman Kyle:

Enclosed please find the original and fourteen copies of BellSouth's Answer to CLEC Coalition Petition to Suspend Tariff and to Convene a Contested Case Proceeding in the above-referenced matter.

Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH/jej

Enclosure

465777

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re: *Petition To Suspend BellSouth Tariff No. TN2002-256 And To Convene A Contested Case Proceeding*
Docket No. 02-01073

BELLSOUTH'S ANSWER TO CLEC COALITION PETITION TO SUSPEND TARIFF AND TO CONVENE A CONTESTED CASE PROCEEDING

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files its Answer to the CLEC Coalition Petition To Suspend Tariff And To Convene A Contested Case Proceeding, and states the following:

1. BellSouth denies each and every factual allegation of the Petition of the CLEC Coalition. Essentially, the Coalition contends that the current Tariff is designed to benefit a single carrier, and that it is discriminatory. Both of these claims are wrong. Further, while the Coalition makes passing reference to Tennessee law, its argument that the Tariff is discriminatory is based largely on the claim that the FCC has prohibited tariffs like the one at issue, which the Coalition mislabels a "growth tariff." This contention, however, is also wrong for two reasons: (1) the subject Tariff is not a growth tariff of the type that has been previously considered by the FCC; and (2) The FCC has never issued a blanket prohibition of growth tariffs.

2. Also, in the Petition, the Coalition contends that the Tariff at issue is the same in all practical respects as a switched access discount tariff that was previously filed by BellSouth in Tennessee, then withdrawn. The Coalition then goes on to conjecture that BellSouth's withdrawal of the first tariff was somehow based on the merits (or lack thereof) of the filing. Both the Coalition's contention that the two tariffs are the same and its conjecture as to why the first tariff was withdrawn are incorrect.

3. In general concept, the Tariff at issue operates by setting certain volume requirements for an interexchange carrier ("IXC" or "Carrier") to purchase from the Tariff. If a carrier does not qualify by having sufficient volume, then it is not eligible to buy from the tariff. If a carrier does qualify, then it may receive a discount by increasing the volume of its switched access purchases as set forth in the Tariff. If it fails to do so, however, there is no penalty. In this instance, the carrier would simply pay for access service at the tariffed rate that would otherwise apply. Thus, there is no commitment to purchase increased access services, nor is there any penalty for failing to do so. In essence, the plan simply provides an opportunity for carriers that purchase a certain volume of access services to receive a discount if they increase their purchases. Again, this option does not require a binding commitment of any sort.

4. Initially, BellSouth negotiated this arrangement with Sprint, and consequently, filed a Contract Tariff with the FCC for the interstate switched access service that Sprint would purchase. BellSouth also filed Contract Tariffs (in practical effect, contract service arrangements) in each of its nine states to memorialize the agreement with Sprint. The original structure of this Tariff filing was based on the requirements of the FCC that each discount plan be memorialized with each carrier and filed in the form of a separate contract tariff. Thus, BellSouth filed a contract tariff at the federal level for interstate service, then essentially mirrored the federal filing in the tariffs filed with the various states for intrastate service. These tariffs were approved and are currently in effect in six states in BellSouth's region.[1] Although the original contract tariffs (both federal and state) were based on Sprint's usage levels, BellSouth has always been willing to enter into comparable contracts with other carriers that have sufficient volume to qualify, based on that carrier's specific volume levels.

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[1] Alabama, Florida, Kentucky, Louisiana, Mississippi and South Carolina.

5. The Coalition argues that the tariff is designed to be available only to one carrier. This simply is not true. In fact, BellSouth withdrew the original tariff, and filed the subject Tariff in its current form, in large part, to make it completely clear that the volume-based discount is available to any qualifying carrier that wishes to make use of the plan.

6. BellSouth's plan allows for a discount from the otherwise available prices for switched access services on the basis of both the volume of services used and increases in the volume of services used. Again, this discount is available to every IXC with sufficient volume to qualify. More specifically, the plan, as detailed in the Tariff, functions as follows: for any carrier wishing to accept the plan, a minimum usage is established. Setting the minimum usage entails reviewing both the volume of usage and the usage patterns of the IXC over the previous 18 months, then projecting this usage forward for an additional 12 months. In order to be eligible for the discount plan, a carrier's minimum usage must be at least .1 billion minutes of use ("MOU") per year. Based on the volume of its minimum usage, (assuming it meets the above-described threshold), an IXC is eligible for one of three discount bands. In each band, there are specified percentage discounts that apply for usage that exceeds the minimum usage. Thus, the greater the carrier's volume of usage, the greater the potential discount (*see* page 3 of the Tariff for a more detailed description of the usage bands and the accompanying discount levels).

7. Again, the discount plan is based principally on volume, in two regards: (1) a minimum volume is necessary to qualify; (2) the discount is available on a per unit basis, which means that the greater the purchased volume, the greater the discount, as applied. The plan is also based in part on increases in volume. In other words, the greater the volume increase in usage above the minimum usage, the greater the discount.

8. BellSouth has structured this discount plan as a reasonable response to the current competitive market for switched access service. IXCs have available to them an unprecedented

array of alternatives to purchasing switched access services. Of course, special access arrangements have long been available, and continue to be so. Beyond this, an increasing number of IXCs are providing long distance service by obtaining access either through the use of their own facilities or the facilities of carriers other than BellSouth. It is for this reason that in February of 2001, the FCC granted BellSouth pricing flexibility in the offering of certain switched access services.[2]

Given the declining price of switched access service, and the increasing availability of competitive alternatives, BellSouth is attempting to provide a financial incentive to IXCs to not only purchase switched access service from BellSouth, but to increase the amount of these purchases.

9. Again, the discount plan is available to all IXCs. Moreover, it is structured so that the benefits to carriers (i.e., the inducement to increase the purchase of switched access from BellSouth) will be available to all. Specifically, BellSouth has set the discount so that the greater the percentage of the increase over the baseline usage, the greater the discount. Setting the discount based, in part, upon the percentage of increase allows both large and small IXCs to benefit financially from increasing the amount of service that they purchase from BellSouth. That is, even a relatively small IXC[3] that is unable to purchase switched access in volumes as great as the largest carrier can still obtain a discount by increasing proportionately the amount of its purchases.

10. At the same time, the discount plan does not include a penalty of any sort for a carrier that contracts to purchase services under the tariffed terms, but does not achieve the designated increases in volume. In this instance, the otherwise available rates would apply. In

[2] Memorandum Opinion and Order, released February 27, 2001, FCC 01-76, Docket (CB/CP) No. 00-21 ("Pricing Flexibility Order").

[3] The term "relatively small IXC" refers to a carrier that achieves the threshold of usage to qualify for the plan, but is small when compared to a dominant carrier such as AT&T.

other words, while the discount plan provides a lower rate for increases in levels of volume, it contains absolutely no penalty for a carrier that signs up for the plan, but whose subsequent usage is too small to qualify for the discount.

11. In granting BellSouth's request for pricing flexibility, the FCC set forth the requirement that flexible pricing plans entered into on a contract basis must be available in addition to the special access prices that would otherwise be available. (Pricing Flexibility Order, ¶ 6). This requirement is to ensure that no customer of the LEC "that has been granted [pricing] flexibility [will] be required to pay more than it would if the flexibility had not been granted." (*Id.*). BellSouth has complied with this requirement in its federal filings, and it has done the same in this case.

12. The Coalition contends that the Tariff discriminates against large IXCs such as AT&T because these carriers necessarily have "declining minutes of use (Petition, p. 4). Apparently, this contention is based on the fact that the volume of switched access services that AT&T has purchased from BellSouth in recent years has declined. However, this fact does not disqualify AT&T, if it elects to increase its purchases in the future. As described in the Tariff, discounts are given in a contract (of 36, 48 or 60 months) based on the percentage of incremental increase in use beyond the minimum usage (Tariff, p. 1). Again, the minimum usage is determined by looking at the purchasing trend of the IXC over the past eighteen months and projecting this trend forward for the next twelve months. The discount is then based upon the percentage by which the IXC exceeds this baseline usage.

13. Thus, an IXC that has purchased switched access service from BellSouth in increasing amounts over the past eighteen months would have a baseline usage that would reflect a projected increase over the next year, i.e., its baseline usage for discount purposes would be higher than its current usage. If, however, a given IXC's purchase of switched access from

BellSouth has declined over the past eighteen months (i.e. the AT&T situation), then this would be projected forward for the next twelve months in order to arrive at a baseline usage figure that would be lower than the current usage. To obtain a discount in the first year, that IXC would simply need to maintain its current usage. Thus, the formula, if anything, would benefit the IXC whose purchase volume during this eighteen month has declined, but that purchases more switched access from BellSouth in the future, i.e., the IXC that exhibits the future purchasing decisions that the Tariff is intended to encourage.

14. Beyond this, the Coalition's contention that the discounted Tariff offering is discriminatory appears to be based on its belief that the discount will be permanently unavailable to "carriers such as AT&T" because AT&T's purchase of switched access service from BellSouth will necessarily decline perpetually.[4] The Coalition also seems to imply not only that this result is a given, but that this result is entirely outside of AT&T's control. The contention, however, could only be true if two factors existed: (1) if AT&T is currently purchasing the absolute maximum amount of switched access from BellSouth that it can purchase (i.e., if it is eschewing all other alternatives), and (2) if AT&T is so doomed to fail in the future competition for long distance customers that AT&T's need for access to serve these customers will unavoidably decrease. AT&T has certainly not represented that either of these limiting factors exists.

15. In reality, the situation is simply that if AT&T anticipates that the amount of switched access that it purchases from BellSouth will decline in the future, then this is because AT&T has made a business decision to pursue other alternatives for access (and/or foresees only future market failures).

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[4] It is noteworthy that the current Coalition is composed of two members: the dominant IXC, AT&T, and a small carrier, Birch. Thus, when the Coalition contends that the Tariff discriminates in favor of "smaller carriers" it is apparently claiming that the Tariff would potentially discriminate against carriers such as AT&T and in favor of carriers such as Birch. It is noteworthy that similar petitions that have been filed in other states have been filed solely on behalf of AT&T.

16. Again, the purpose of this Tariff is to provide an incentive for IXC customers to remain on BellSouth's network and to increase their usage of BellSouth's switched network to serve their long distance customers. It is perfectly legitimate for BellSouth to create this incentive for IXCs through the subject Tariff. If AT&T does not care to take advantage of the offered discount, this in no way renders the Tariff discriminatory. AT&T's decision should also not provide a basis for it to prevent Sprint (or any other similarly situated IXC) from accepting the offer.

17. Four IXCs currently meet the Tariff's subscription threshold for intrastate usage in Tennessee: Sprint, AT&T, WorldCom and Qwest. The Coalition claim that the Tariff was designed for one carrier and is unavailable to others is clearly incorrect. Any of these carriers that make the business decision to increase the volume of switched access services they purchase may take advantage of this offer. Moreover, any IXC that reaches the usage threshold in the future may then subscribe as well.

18. The Coalition also claims that the subject Tariff is of a type that has been prohibited by the FCC. However, the FCC's rulings regarding growth tariffs are marketedly different from what the Coalition has represented them to be. First, the FCC has never considered the merits of a tariff like the subject BellSouth tariff. In other words, the BellSouth tariff is not a growth tariff as that term has been utilized by the FCC. In the Notice of Proposed Rulemaking, Third Report and Order and Notice of Inquiry,[5] the Commission provided the following example of a growth tariff:

> For example, if a buyer purchased $100 of services for a given three-month period, the seller's offer of a five percent discount on the buyer's purchase

[5] *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Access Providers,* CC Docket Nos. 96-262, 94-1, 91-213 and 96-263, *Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry,* 11 FCC Rcd 21354 (1996) ("*Access Reform NPRM*").

> for the next three month period if the buyer committed to purchasing $120 worth of services during that time would be considered a growth discount.

(*Id.*, fn 251)(emphasis added).

In other words, a salient characteristic of the described discount is that the buyer must commit to the increase in future growth in order to obtain the discounted price. Presumably, this commitment would be in the form of a contractual obligation that would be breached if the growth were not achieved. BellSouth's proposed discount does not operate in this fashion. Instead, a carrier that has sufficient volume to qualify for the offering receives a discount if it increases the volume of services purchased. However, if the volume of purchases does not increase, there is no penalty whatsoever. Instead, the carrier would simply pay the non-discounted tariffed price.

19. Moreover, BellSouth's Tariff is, in fact, a volume-based tariff. The discount is not available to a carrier that does not have current annual purchases of a certain requisite volume of services. Also, the discount levels are based on usage bands. A greater volume of usage means a carrier qualifies for a higher band and a larger discount. The FCC has never considered a tariff of this sort. Thus, AT&T's contention that the FCC has prohibited, under the general rubric of "growth tariffs," an offering like the one at issue is simply wrong.

20. Further, the FCC has not issued a blanket prohibition of growth tariffs. Instead, the FCC has merely declined to approve certain growth tariffs that have been considered in the context of past proceedings. For example, in the *Access Reform NPRM*, the Commission merely expressed concern that growth discounts might be inappropriately advantageous to BOC affiliates under certain circumstances. As the FCC stated, "we are concerned that because BOC affiliates will begin with existing relationships with end users, name recognition, and no subscribers, they will grow much more quickly than existing IXCs and other new entrants." (*Access Reform NPRM*, Par. 192). The Commission also noted, however, that "some incumbent

LECs argued in comments filed in response to our *Price Cap Second NPRM,* that growth discounts could benefit smaller IXCs that do not qualify for volume discount." (*Id.*). The Commission did not reject growth tariffs at that juncture, but instead invited parties to provide evidence that, among other things, "growth discounts would not circumvent the safeguards of Section 272." (*Id.*). The specific tariffs at issue had been proposed by Ameritech and Bell Atlantic. Since no additional support for growth discounts was provided, the FCC subsequently concluded that "without any affirmative benefit to growth discounts presented in the record before us, we have no basis for allowing such discounts."[6]

21. Thus, the FCC has never ruled that growth tariffs are discriminatory per se, even growth tariffs of the sort that they have considered. At most, the FCC has expressed general concern that a growth discount might be structured in a way that benefits RBOC affiliates. At the same time, the FCC, while approving BellSouth's five state 271 application, specifically found that the BellSouth discount plan does not violate section 272.

22. AT&T responded to BellSouth's 271 application for five states, in part, by claiming that BellSouth's SWA tariff constitutes a § 272 violation. The FCC rejected this contention in a way that clearly demonstrates AT&T had no claim under federal law, and the Coalition has no claim here. Specifically, the FCC noted that AT&T had raised as an ostensible violation both BellSouth's federal (interstate) tariff, and the respective (intrastate) tariff for each of the five states subject to the 271 application. The FCC responded by stating unequivocally that "we reject AT&T's argument that BellSouth has violated Section 272 through its interstate

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[6] *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered By Competitive Local Exchange Carriers; Petition of US West Communications Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA,* CC Docket Nos. 96-262, 94-1 and 98-157 and CCB/CDD File No. 98-63, *Fifth Report and Order and Further Notice of Proposed Rulemaking,* 14 FCC Rcd 14221, 14294, ¶ 135 (1999).

and intrastate switched access (SWA) tariffs."[7] The Commission also stated that "BellSouth contends that there is no Section 272 violation because BellSouth Long Distance is not eligible to take service under the tariffs at issue. We agree." (*Id.*, ¶ 274). The Commission noted that each of the tariffs contained language "expressly limiting the availability of the tariff only to customers that meet certain minimum usage requirements associated with the SWA service." (*Id.*).[8] The FCC also noted that the federal tariff (like the instant Contract Tariff) "mandates that customers must subscribe within 30 days of tariff's effective date." (*Id.*). The Commission observed the fact that BellSouth Long Distance did not meet the minimum usage requirement, and therefore found "that these BellSouth tariff offerings do not result in a Section 272 violation." (*Id.*).[9]

23. Finally, the FCC noted that AT&T has the option of pursuing its claim that the Tariff is discriminatory by a federal action pursuant to Sections 201, 202, or 208 of the Act. (*Id.*, Footnote 1061). To date, of course, AT&T has not brought such a claim before the FCC.

24. Of course, in our case, the Coalition has not invoked § 272 specifically, probably because the FCC's recent Order would render such a claim frivolous. The Coalition, however, does misstate federal law in its representation that the FCC has made a categorical ruling that growth tariffs are discriminatory. Further, the subject Tariff does not operate in a discriminatory fashion. To the contrary, the tariff provides any IXC with sufficient volume with the opportunity

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[7] *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina,* WC Docket No. 02-150, *Memorandum Opinion and Order*, FCC 02-260, ¶ 272 (rel. Sept. 18, 2002) ("*Memorandum Opinion*").

[8] BellSouth Long Distance does not currently meet the usage threshold in Tennessee either.

[9] Also, the Commission rejected AT&T's contention that action should be taken now because, if at some point in the future BSLD becomes eligible to obtain the switched access discount, this could become a Section 272 violation. Specifically, the FCC responded to this argument by stating that "we reject AT&T's contention that we should find a violation based on a hypothetical future contract with BellSouth Long Distance." (*Id.*, fn 1061).

to receive a discount on switched access service when it makes the business decision to increase its usage. Again, election of this option involves no commitment to increase access usage, and there is no penalty if the increase does not subsequently occur.

WHEREFORE, BellSouth respectfully requests that, for the reasons set forth above, the Authority enter an Order dismissing or denying the Petition and denying all relief requested therein.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

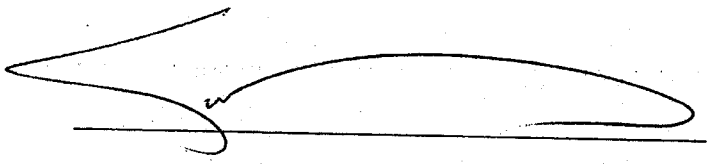
R. Douglas Lackey
J. Phillip Carver
675 West Peachtree St., NE, Suite 4300
Atlanta, Georgia 30375-0001

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

Henry Walker, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062
hwalker@boultcummings.com



Tab D

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application by BellSouth Corporation,	)	
for Authorization To Provide In-Region,	)	**WC Docket No. 02-307**
InterLATA Services in the	)	
States of Florida and Tennessee	)	

REPLY DECLARATION OF
JOHN C. KLICK AND BRIAN F. PITKIN
ON BEHALF OF AT&T CORP.

I. QUALIFICATIONS AND SUMMARY

1. Our names are John C. Klick and Brian F. Pitkin. We are the same John C. Klick and Brian F. Pitkin that filed a declaration in this proceeding on October 10, 2002.

2. Our declaration addresses two issues. First, we discuss why the Commission should address the double-count of inflation as part of this proceeding despite the Commission's determination in the Louisiana 271 proceeding. Second, we address BellSouth's erroneous claim that an inflation double-count will only exist if UNE rates are re-set every year.

II. THE LOUISIANA COMMISSION MADE A CLEAR ERROR -- THERE IS ONLY ONE TYPE OF INFLATION

3. The Louisiana Commission made a clear error in determining that "[t]here are two distinct types of inflation which impact BellSouth's costs: an inflation amount which compensates investors for the use of their funds and an inflation amount associated with the increased price of

the plant item over the year."[1] To make the record clear, there is only one type of inflation. BellSouth simply created a red herring by asserting that the amount of inflation included in the cost of capital is different than the inflation in the asset prices used to develop investment. The definition of inflation (in a financial context) is "a persistent increase in the level of consumer prices or a persistent decline in the purchasing power of money, caused by an increase in available currency and credit beyond the proportion of available goods and services."[2]

4. This fact is not subject to debate. We have reviewed an array of financial text books and publications regarding regulatory economics and have not found a single reference that allows for both the inflation of an asset price and the use of a nominal cost of capital in determining a revenue requirement.[3] On the other hand, in The Process of Ratemaking, Leonard S. Goodman explains that "[i]f the rate base has been adjusted for inflation, no further adjustment of the rate of return (or cost of capital) is warranted. An adjustment of rate of return in such circumstances would allow the [rate of return/rate base] method to include an excessive allowance for inflation."[4]

5. To illustrate this point, we have created an exhibit containing a number of different recovery patterns using the same assumptions as were in our previous declaration:

- Initial Investment of $1,000,000
- Economic Life is 10 years;
- Nominal Cost of Capital is 10%;
- Inflation Rate is 4%;

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[1] *Louisiana Commission UNE/Deaveraged Rates Order at 9.*

[2] The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

[3] Our review of academic literature found no instances in which an author advocated that inflation be included both in increasing the rate base (investment) and in the cost of capital.

[4] Leonard S. Goodman, *The Process of Ratemaking,* 599 (1998).

- Real Cost of Capital is 5.77% ((1.10 / 1.04) - 1).

6. Using the above assumptions, there are a number of ways in which BellSouth could be compensated for periodically having to replace this asset. Simplified examples of these alternatives are set forth in Exhibit 1, which displays a 50 year time horizon assuming a 10 year replacement interval.[5]

7. The most straight-forward approach would be for BellSouth's customers to pay BellSouth in full immediately each time it must spend money to replace the asset (this is the functional equivalent of BellSouth's customers actually making the investment themselves, which costs BellSouth nothing). This alternative is shown in the set of calculations of Exhibit 1 (denoted "Method 1"), which indicates the periodic investment required to replace the asset over the next 50 years as it wears out is $2,188,347. In other words, if BellSouth received this amount today, it would be fully compensated for all of the investments it would need to make to install this investment initially and to replace it periodically over the next 50 years. Thus, this present value is a useful benchmark against which we can compare various alternative cost recovery mechanisms.

8. Because it is appropriate to spread the costs of assets with long economic lives over the various activities that create the need for the asset, a number of alternative cost recovery mechanisms are commonly used. The second, third and fourth methods included in Exhibit 1 display three of the most common alternatives.

9. One regulatory approach is to use the "utility" method (denoted "Method 2"), under which the total cost recovered each year is an amount reflecting annual depreciation plus a return

[5] In essence, the analysis assumes that the investment is replaced at the end of its 10 year economic life.

on un-depreciated capital investment. This generates a pattern of cost recovery that starts out high in year one, declines in years 2 through 10 as the un-depreciated value of the asset declines, then jumps dramatically in year 11 as the asset is replaced with a more expensive asset (reflecting the accumulated effects of inflation since the asset was initially installed). This saw-tooth pattern repeats itself every 10 years as the asset gradually depreciates and then is replaced. Note that this cost pattern has a present value that is identical to the amount required to make BellSouth entirely whole for its periodic investment in the asset.

10. Using a "real" annuity approach and separately accounting for inflation is illustrated as "Method 3" in Exhibit 1. Under this pattern of cost recovery, an annuity is initially calculated using the "real" cost of capital, instead of the nominal cost of capital, but that annuity is increased *each year* to reflect the accumulated effects of inflation since the asset was installed. Note that this pattern of capital recovery increases steadily throughout not just the first 10 years that the initial asset lasts, but in fact throughout the entire time frame (in other words, there is no dramatic jump in the cost between year 10 and year 11, as there is with the other cost recovery patterns). It is this pattern of prices that is observed in mature, stable competitive markets, *i.e.*, a pattern in which prices generally track inflation. Exhibit 1 shows that this pattern of costs, too, has a present value identical to the others, *i.e.*, it fully compensates BellSouth for the initially installing the asset and for periodically replacing it at higher prices that reflect the effects of inflation.

11. The nominal annuity method of recovering investment cost is included as "Method 4." Household mortgages are a common example of a nominal annuity. Under this pattern of recovery, the annual cost is the same each year of the initial 10 years after installation, then the annual cost jumps for the next 10 years -- reflecting replacement of the initially installed asset with a new asset whose cost reflects the accumulated effects of inflation that have occurred since the

asset is initially installed. This cost remains flat for the ensuing 10 years, then jumps again and so on. This is the approach used in the BellSouth models, the HAI Model, and the FCC's Synthesis Model. The investment in the asset is assumed to be recovered over the economic life of the asset with a flat rate each year. As demonstrated in Exhibit 1, this step-wise pattern of cost *also* has a present value identical to the present value of "Method 1," *i.e.*, it fully compensates BellSouth for its initial investment in and periodic replacements of the asset.

12. In short, all four of the cost recovery patterns described above fully compensate BellSouth for its capital costs, *including* the effects of inflation on the costs it incurs to periodically replace the asset. Moreover, this approach shows that the inflation included in the nominal cost of capital (which was adopted by the Florida Commission) is the exact same inflation that increases the cost of the asset over time. There is simply no way around this mathematical fact.

13. On the other hand, BellSouth's methodology (depicted as "BellSouth Method") uses a nominal cost of capital (which includes inflation) and applies it against an asset that has been inflated into the future. BellSouth's implementation of this approach is to simply substitute the initial investment (the $1,000,000) with the investment after applying inflation (in this case, three years worth of inflation so that the initial investment is assumed to be $1,081,600).[6] Not only does using this approach overstate the recovery in the first ten years, it consistently overstates

[6] For illustrative purposes, imagine that a person was buying a home for $100,000 and needed to finance the entire amount through a mortgage. Under BellSouth's approach (which uses the nominal annuity method, similar to a mortgage), the annual payment for that loan would not be based on the $100,000 dollars needed to buy the house today, but based on the amount that house would cost in the future. If that the cost of the was increasing by 10% per year, BellSouth's approach would require that the purchaser take out a loan for $121,000 (assuming two years of inflation), not the $100,000 that the house actually costs today.

investments in each subsequent replacement of the asset. Over the fifty-year period, BellSouth's method results in a present value of $2,366,917, an 8.2% overstatement.

III. BELLSOUTH IS INCORRECT THAT A DOUBLE-COUNT WOULD ONLY OCCUR IF UNE RATES ARE RECALCULATED EVERY YEAR

14. In addition to showing that the Louisiana Commission (and the Florida Commission) erred in allowing BellSouth to inflate the asset base prior to applying a nominal cost of capital, the "BellSouth Method" illustrated in Exhibit 1 shows that this error results in an overstatement even when UNE rates are recalculated every ten years. Thus, BellSouth's claim that a double count will only occur if UNE rates are recalculated every year is false. Moreover, BellSouth's criticism has additional implications for the UNE rates established by the Florida Commission. Specifically, the UNE rates established by using a nominal cost of capital overstate the costs in early years and underrate the costs in later years.

15. The easiest way to examine BellSouth's assertion is to recalculate UNE rates every five years on an asset with a ten-year economic life. This calculation, shown in Example 1 of Exhibit 2, results in an overstatement of 8.3% in the UNE rates. This overstatement becomes even more severe if UNE rates are recalculated every year (shown in Example 2 of Exhibit 2). Interestingly, these overstatements result even without the double-count we discussed earlier. While this problem is not the subject of our declaration, we bring it up here to illustrate that BellSouth's assertion that an overstatement only occurs if UNE rates are reset every year is without merit. Resetting the prices of UNEs every year overstates the rates because the present value of inflation (over a ten-year period) is already included in the nominal cost of capital. BellSouth's approach of separately inflating the investments increases the already existing overstatement.

16. To illustrate, if BellSouth builds into its initial UNE cost calculations the average effect of three year's worth of inflation, and contemplates that UNE rates will be re-established every third year, the UNE rates will be overstated by 21.4% (shown in Example 3 of Exhibit 2). The effects of this overstatement increase over time, and the difference between economically appropriate cost recovery and over-recovery becomes larger over time -- so that the anti-competitive effect of this over-recovery in the UNE rates tends to accelerate.[7]

IV. CONCLUSION

17. The Louisiana Commission erred in concluding that there are two types of inflation, and the Florida Commission similarly erred in allowing the double count of inflation. Our declaration proves that there is only one type of inflation and that inflation can be recovered either by inflating the investment base and using the real cost of capital or using the current investment and a nominal cost of capital -- but not both. Further, BellSouth's excuse that a double-count does not occur unless UNE rates are reestablished every year is simply incorrect. Our declaration shows that frequent revisiting of UNE rates simply adds to the overstatement created by BellSouth's methodology.

[7] Further, the overstatement in UNE rates increases as the economic life of an asset increases. Thus, the amount of overstatement will increase for the vast majority of investment categories (such as cable and structure).

VERIFICATION PAGE

I declare under penalty of perjury that the foregoing Declaration is true and correct.

/s/ John C. Klick

John C. Klick

Executed on: November 1, 2002

I declare under penalty of perjury that the foregoing Declaration is true and correct.

/s/ Brian F. Pitkin

Brian F. Pitkin

Executed on: November 1, 2002

Exhibit 1

			METHOD 1			METHOD 2						METHOD 3							METHOD 4				BELLSOUTH METHOD			
			Immediate Recovery			Utility Method						Real Annuity Method							Nominal Annuity Method				Nominal Annuity Method to Inflated Investments			
Year	Compounded Inflation	Replacement Cost	Periodic Reinvestment	PV Factor	PV of Periodic Reinvestment	Periodic Reinvestment	Depreciation	Return	Total	PV Factor	PV of Total	Initial Investment	Real Annuity	Compounded Inflation	Inflation Recovery	Total Recovery	PV Factor	PV of Annuity	Periodic Reinvestment	Nominal Annuity	PV Factor	PV of Annuity	Periodic Reinvestment	Nominal Annuity	PV Factor	PV of Annuity
-	1.0000	$ 1,000,000	$ 1,000,000	1.0000	$ 1,000,000	$ 1,000,000				1.0000		$ 1,000,000		1.0000			1.0000		$ 1,000,000		1.0000		$ 1,081,600		1.0000	
1	1.0400	$ 1,040,000		0.9091			$ 100,000	$ 100,000	$ 200,000	0.9091	$ 181,818		$ 134,386	1.0400	$ 5,375	$ 139,762	0.9091	$ 127,056		$ 162,745	0.9091	$ 147,950		$ 176,025	0.9091	$ 160,023
2	1.0816	$ 1,081,600		0.8264			$ 100,000	$ 90,000	$ 190,000	0.8264	$ 157,025		$ 134,386	1.0816	$ 10,966	$ 145,352	0.8264	$ 120,126		$ 162,745	0.8264	$ 134,500		$ 176,025	0.8264	$ 145,476
3	1.1249	$ 1,124,864		0.7513			$ 100,000	$ 80,000	$ 180,000	0.7513	$ 135,237		$ 134,386	1.1249	$ 16,780	$ 151,166	0.7513	$ 113,574		$ 162,745	0.7513	$ 122,273		$ 176,025	0.7513	$ 132,251
4	1.1699	$ 1,169,859		0.6830			$ 100,000	$ 70,000	$ 170,000	0.6830	$ 116,112		$ 134,386	1.1699	$ 22,827	$ 157,213	0.6830	$ 107,379		$ 162,745	0.6830	$ 111,157		$ 176,025	0.6830	$ 120,228
5	1.2167	$ 1,216,653		0.6209			$ 100,000	$ 60,000	$ 160,000	0.6209	$ 99,347		$ 134,386	1.2167	$ 29,115	$ 163,502	0.6209	$ 101,522		$ 162,745	0.6209	$ 101,052		$ 176,025	0.6209	$ 109,298
6	1.2653	$ 1,265,319		0.5645			$ 100,000	$ 50,000	$ 150,000	0.5645	$ 84,671		$ 134,386	1.2653	$ 35,655	$ 170,042	0.5645	$ 95,984		$ 162,745	0.5645	$ 91,866		$ 176,025	0.5645	$ 99,362
7	1.3159	$ 1,315,932		0.5132			$ 100,000	$ 40,000	$ 140,000	0.5132	$ 71,842		$ 134,386	1.3159	$ 42,457	$ 176,843	0.5132	$ 90,749		$ 162,745	0.5132	$ 83,514		$ 176,025	0.5132	$ 90,329
8	1.3686	$ 1,368,569		0.4665			$ 100,000	$ 30,000	$ 130,000	0.4665	$ 60,846		$ 134,386	1.3686	$ 49,531	$ 183,917	0.4665	$ 85,799		$ 162,745	0.4665	$ 75,922		$ 176,025	0.4665	$ 82,117
9	1.4233	$ 1,423,312		0.4241			$ 100,000	$ 20,000	$ 120,000	0.4241	$ 50,892		$ 134,386	1.4233	$ 56,887	$ 191,274	0.4241	$ 81,119		$ 162,745	0.4241	$ 69,020		$ 176,025	0.4241	$ 74,652
10	1.4802	$ 1,480,244	$ 1,480,244	0.3855	$ 570,698	$ 1,480,244	$ 100,000	$ 10,000	$ 110,000	0.3855	$ 42,410	$ 1,480,244	$ 134,386	1.4802	$ 64,538	$ 198,925	0.3855	$ 76,694	$ 1,480,244	$ 162,745	0.3855	$ 62,745	$ 1,601,032	$ 176,025	0.3855	$ 67,865
11	1.5395	$ 1,539,454		0.3505			$ 148,024	$ 148,024	$ 296,049	0.3505	$ 103,763		$ 198,925	1.0400	$ 7,957	$ 206,882	0.3505	$ 72,511		$ 240,903	0.3505	$ 84,435		$ 260,561	0.3505	$ 91,325
12	1.6010	$ 1,601,032		0.3186			$ 148,024	$ 133,222	$ 281,246	0.3186	$ 89,614		$ 198,925	1.0816	$ 16,232	$ 215,157	0.3186	$ 68,556		$ 240,903	0.3186	$ 76,759		$ 260,561	0.3186	$ 83,023
13	1.6651	$ 1,665,074		0.2897			$ 148,024	$ 118,420	$ 266,444	0.2897	$ 77,179		$ 198,925	1.1249	$ 24,839	$ 223,763	0.2897	$ 64,816		$ 240,903	0.2897	$ 69,781		$ 260,561	0.2897	$ 75,475
14	1.7317	$ 1,731,676		0.2633			$ 148,024	$ 103,817	$ 251,842	0.2633	$ 66,265		$ 198,925	1.1699	$ 33,789	$ 232,714	0.2633	$ 61,281		$ 240,903	0.2633	$ 63,437		$ 260,561	0.2633	$ 68,614
15	1.8009	$ 1,800,944		0.2394			$ 148,024	$ 88,815	$ 236,839	0.2394	$ 56,697		$ 198,925	1.2167	$ 43,098	$ 242,022	0.2394	$ 57,938		$ 240,903	0.2394	$ 57,670		$ 260,561	0.2394	$ 62,376
16	1.8730	$ 1,872,981		0.2176			$ 148,024	$ 74,012	$ 222,037	0.2176	$ 48,322		$ 198,925	1.2653	$ 52,778	$ 251,703	0.2176	$ 54,778		$ 240,903	0.2176	$ 52,427		$ 260,561	0.2176	$ 56,706
17	1.9479	$ 1,947,900		0.1978			$ 148,024	$ 59,210	$ 207,234	0.1978	$ 41,000		$ 198,925	1.3159	$ 62,847	$ 261,771	0.1978	$ 51,790		$ 240,903	0.1978	$ 47,661		$ 260,561	0.1978	$ 51,551
18	2.0258	$ 2,025,817		0.1799			$ 148,024	$ 44,407	$ 192,432	0.1799	$ 34,611		$ 198,925	1.3686	$ 73,317	$ 272,242	0.1799	$ 48,965		$ 240,903	0.1799	$ 43,329		$ 260,561	0.1799	$ 46,884
19	2.1068	$ 2,106,849		0.1635			$ 148,024	$ 29,605	$ 177,629	0.1635	$ 29,044		$ 198,925	1.4233	$ 84,207	$ 283,132	0.1635	$ 46,294		$ 240,903	0.1635	$ 39,390		$ 260,561	0.1635	$ 42,604
20	2.1911	$ 2,191,123	$ 2,191,123	0.1486	$ 325,696	$ 2,191,123	$ 148,024	$ 14,802	$ 162,827	0.1486	$ 24,203	$ 2,191,123	$ 198,925	1.4802	$ 95,532	$ 294,457	0.1486	$ 43,769	$ 2,191,123	$ 240,903	0.1486	$ 35,809	$ 2,369,919	$ 260,561	0.1486	$ 38,731
21	2.2788	$ 2,278,768		0.1351			$ 219,112	$ 219,112	$ 438,225	0.1351	$ 59,218		$ 294,457	1.0400	$ 11,778	$ 306,235	0.1351	$ 41,382		$ 356,595	0.1351	$ 48,187		$ 385,693	0.1351	$ 52,119
22	2.3699	$ 2,369,919		0.1228			$ 219,112	$ 197,201	$ 416,313	0.1228	$ 51,142		$ 294,457	1.0816	$ 24,028	$ 318,485	0.1228	$ 39,125		$ 356,595	0.1228	$ 43,806		$ 385,693	0.1228	$ 47,381
23	2.4647	$ 2,464,716		0.1117			$ 219,112	$ 175,290	$ 394,402	0.1117	$ 44,046		$ 294,457	1.1249	$ 36,767	$ 331,224	0.1117	$ 36,991		$ 356,595	0.1117	$ 39,824		$ 385,693	0.1117	$ 43,074
24	2.5633	$ 2,563,304		0.1015			$ 219,112	$ 153,379	$ 372,491	0.1015	$ 37,817		$ 294,457	1.1699	$ 50,016	$ 344,473	0.1015	$ 34,973		$ 356,595	0.1015	$ 36,204		$ 385,693	0.1015	$ 39,158
25	2.6658	$ 2,665,836		0.0923			$ 219,112	$ 131,467	$ 350,580	0.0923	$ 32,357		$ 294,457	1.2167	$ 63,795	$ 358,252	0.0923	$ 33,065		$ 356,595	0.0923	$ 32,912		$ 385,693	0.0923	$ 35,598
26	2.7725	$ 2,772,470		0.0839			$ 219,112	$ 109,556	$ 328,668	0.0839	$ 27,577		$ 294,457	1.2653	$ 78,125	$ 372,582	0.0839	$ 31,262		$ 356,595	0.0839	$ 29,920		$ 385,693	0.0839	$ 32,362
27	2.8834	$ 2,883,369		0.0763			$ 219,112	$ 87,645	$ 306,757	0.0763	$ 23,399		$ 294,457	1.3159	$ 93,028	$ 387,485	0.0763	$ 29,556		$ 356,595	0.0763	$ 27,200		$ 385,693	0.0763	$ 29,420
28	2.9987	$ 2,998,703		0.0693			$ 219,112	$ 65,734	$ 284,846	0.0693	$ 19,752		$ 294,457	1.3686	$ 108,528	$ 402,985	0.0693	$ 27,944		$ 356,595	0.0693	$ 24,728		$ 385,693	0.0693	$ 26,745
29	3.1187	$ 3,118,651		0.0630			$ 219,112	$ 43,822	$ 262,935	0.0630	$ 16,575		$ 294,457	1.4233	$ 124,647	$ 419,104	0.0630	$ 26,420		$ 356,595	0.0630	$ 22,480		$ 385,693	0.0630	$ 24,314
30	3.2434	$ 3,243,398	$ 3,243,398	0.0573	$ 185,874	$ 3,243,398	$ 219,112	$ 21,911	$ 241,024	0.0573	$ 13,813	$ 3,243,398	$ 294,457	1.4802	$ 141,411	$ 435,868	0.0573	$ 24,979	$ 3,243,398	$ 356,595	0.0573	$ 20,436	$ 3,508,059	$ 385,693	0.0573	$ 22,104
31	3.3731	$ 3,373,133		0.0521			$ 324,340	$ 324,340	$ 648,680	0.0521	$ 33,795		$ 435,868	1.0400	$ 17,435	$ 453,303	0.0521	$ 23,616		$ 527,848	0.0521	$ 27,500		$ 570,920	0.0521	$ 29,744
32	3.5081	$ 3,508,059		0.0474			$ 324,340	$ 291,906	$ 616,246	0.0474	$ 29,187		$ 435,868	1.0816	$ 35,567	$ 471,435	0.0474	$ 22,328		$ 527,848	0.0474	$ 25,000		$ 570,920	0.0474	$ 27,040
33	3.6484	$ 3,648,381		0.0431			$ 324,340	$ 259,472	$ 583,812	0.0431	$ 25,137		$ 435,868	1.1249	$ 54,424	$ 490,293	0.0431	$ 21,110		$ 527,848	0.0431	$ 22,727		$ 570,920	0.0431	$ 24,582
34	3.7943	$ 3,794,316		0.0391			$ 324,340	$ 227,038	$ 551,378	0.0391	$ 21,582		$ 435,868	1.1699	$ 74,036	$ 509,904	0.0391	$ 19,959		$ 527,848	0.0391	$ 20,661		$ 570,920	0.0391	$ 22,347
35	3.9461	$ 3,946,089		0.0356			$ 324,340	$ 194,604	$ 518,944	0.0356	$ 18,466		$ 435,868	1.2167	$ 94,432	$ 530,301	0.0356	$ 18,870		$ 527,848	0.0356	$ 18,783		$ 570,920	0.0356	$ 20,316
36	4.1039	$ 4,103,933		0.0323			$ 324,340	$ 162,170	$ 486,510	0.0323	$ 15,738		$ 435,868	1.2653	$ 115,644	$ 551,513	0.0323	$ 17,841		$ 527,848	0.0323	$ 17,075		$ 570,920	0.0323	$ 18,469
37	4.2681	$ 4,268,090		0.0294			$ 324,340	$ 129,736	$ 454,076	0.0294	$ 13,354		$ 435,868	1.3159	$ 137,705	$ 573,573	0.0294	$ 16,868		$ 527,848	0.0294	$ 15,523		$ 570,920	0.0294	$ 16,790
38	4.4388	$ 4,438,813		0.0267			$ 324,340	$ 97,302	$ 421,642	0.0267	$ 11,273		$ 435,868	1.3686	$ 160,648	$ 596,516	0.0267	$ 15,948		$ 527,848	0.0267	$ 14,112		$ 570,920	0.0267	$ 15,263
39	4.6164	$ 4,616,386		0.0243			$ 324,340	$ 64,868	$ 389,208	0.0243	$ 9,459		$ 435,868	1.4233	$ 184,508	$ 620,377	0.0243	$ 15,078		$ 527,848	0.0243	$ 12,829		$ 570,920	0.0243	$ 13,876
40	4.8010	$ 4,801,021	$ 4,801,021	0.0221	$ 106,078	$ 4,801,021	$ 324,340	$ 32,434	$ 356,774	0.0221	$ 7,883	$ 4,801,021	$ 435,868	1.4802	$ 209,323	$ 645,192	0.0221	$ 14,255	$ 4,801,021	$ 527,848	0.0221	$ 11,683	$ 5,192,784	$ 570,920	0.0221	$ 12,614
41	4.9931	$ 4,993,061		0.0201			$ 480,102	$ 480,102	$ 960,204	0.0201	$ 19,287		$ 645,192	1.0400	$ 25,808	$ 670,999	0.0201	$ 13,478		$ 781,344	0.0201	$ 15,694		$ 845,102	0.0201	$ 16,975
42	5.1928	$ 5,192,784		0.0183			$ 480,102	$ 432,092	$ 912,194	0.0183	$ 16,657		$ 645,192	1.0816	$ 52,648	$ 697,839	0.0183	$ 12,743		$ 781,344	0.0183	$ 14,268		$ 845,102	0.0183	$ 15,432
43	5.4005	$ 5,400,495		0.0166			$ 480,102	$ 384,082	$ 864,184	0.0166	$ 14,346		$ 645,192	1.1249	$ 80,561	$ 725,753	0.0166	$ 12,048		$ 781,344	0.0166	$ 12,971		$ 845,102	0.0166	$ 14,029
44	5.6165	$ 5,616,515		0.0151			$ 480,102	$ 336,071	$ 816,174	0.0151	$ 12,317		$ 645,192	1.1699	$ 109,591	$ 754,783	0.0151	$ 11,391		$ 781,344	0.0151	$ 11,791		$ 845,102	0.0151	$ 12,754
45	5.8412	$ 5,841,176		0.0137			$ 480,102	$ 288,061	$ 768,163	0.0137	$ 10,539		$ 645,192	1.2167	$ 139,783	$ 784,974	0.0137	$ 10,769		$ 781,344	0.0137	$ 10,719		$ 845,102	0.0137	$ 11,584
46	6.0748	$ 6,074,823		0.0125			$ 480,102	$ 240,051	$ 720,153	0.0125	$ 8,982		$ 645,192	1.2653	$ 171,182	$ 816,373	0.0125	$ 10,182		$ 781,344	0.0125	$ 9,745		$ 845,102	0.0125	$ 10,540
47	6.3178	$ 6,317,816		0.0113			$ 480,102	$ 192,041	$ 672,143	0.0113	$ 7,621		$ 645,192	1.3159	$ 203,837	$ 849,028	0.0113	$ 9,626		$ 781,344	0.0113	$ 8,859		$ 845,102	0.0113	$ 9,582
48	6.5705	$ 6,570,528		0.0103			$ 480,102	$ 144,031	$ 624,133	0.0103	$ 6,433		$ 645,192	1.3686	$ 237,798	$ 882,990	0.0103	$ 9,101		$ 781,344	0.0103	$ 8,054		$ 845,102	0.0103	$ 8,711
49	6.8333	$ 6,833,349		0.0094			$ 480,102	$ 96,020	$ 576,122	0.0094	$ 5,399		$ 645,192	1.4233	$ 273,117	$ 918,309	0.0094	$ 8,605		$ 781,344	0.0094	$ 7,322		$ 845,102	0.0094	$ 7,919
50	7.1067	$ 7,106,883		0.0085			$ 480,102	$ 48,010	$ 528,112	0.0085	$ 4,499		$ 645,192	1.4802	$ 309,850	$ 955,041	0.0085	$ 8,136		$ 781,344	0.0085	$ 6,656		$ 845,102	0.0085	$ 7,199
					$ 2,188,347						$ 2,188,347							$ 2,188,347				$ 2,188,347				$ 2,366,917

8.2%

Exhibit 2

			METHOD 4				EXAMPLE 1				EXAMPLE 2				EXAMPLE 3			
			Nominal Annuity Method				Resetting UNE Rates Every 5 Years				Resetting UNE Rates Every Year				Double-Count and Resetting Rates Every 3 Years			
Year	Compounded Inflation	Replacement Cost	Periodic Reinvestment	Nominal Annuity	PV Factor	PV of Annuity	Periodic Reinvestment	Nominal Annuity	PV Factor	PV of Annuity	Periodic Reinvestment	Nominal Annuity	PV Factor	PV of Annuity	Periodic Reinvestment	Nominal Annuity	PV Factor	PV of Annuity
-	1.0000	$ 1,000,000	$ 1,000,000		1.0000		$ 1,000,000		1.0000		$ 1,000,000		1.0000		$ 1,081,600		1.0000	
1	1.0400	$ 1,040,000		$ 162,745	0.9091	$ 147,950		$ 162,745	0.9091	$ 147,950	$ 1,040,000	$ 162,745	0.9091	$ 147,950		$176,025.42	0.9091	$ 160,023
2	1.0816	$ 1,081,600		$ 162,745	0.8264	$ 134,500		$ 162,745	0.8264	$ 134,500	$ 1,081,600	$ 169,255	0.8264	$ 139,880		$176,025.42	0.8264	$ 145,476
3	1.1249	$ 1,124,864		$ 162,745	0.7513	$ 122,273		$ 162,745	0.7513	$ 122,273	$ 1,124,864	$ 176,025	0.7513	$ 132,251	$ 1,216,653	$176,025.42	0.7513	$ 132,251
4	1.1699	$ 1,169,859		$ 162,745	0.6830	$ 111,157		$ 162,745	0.6830	$ 111,157	$ 1,169,859	$ 183,066	0.6830	$ 125,037		$198,004.66	0.6830	$ 135,240
5	1.2167	$ 1,216,653		$ 162,745	0.6209	$ 101,052	$ 1,216,653	$ 162,745	0.6209	$ 101,052	$ 1,216,653	$ 190,389	0.6209	$ 118,217		$198,004.66	0.6209	$ 122,945
6	1.2653	$ 1,265,319		$ 162,745	0.5645	$ 91,866		$ 198,005	0.5645	$ 111,768	$ 1,265,319	$ 198,005	0.5645	$ 111,768	$ 1,368,569	$198,004.66	0.5645	$ 111,768
7	1.3159	$ 1,315,932		$ 162,745	0.5132	$ 83,514		$ 198,005	0.5132	$ 101,608	$ 1,315,932	$ 205,925	0.5132	$ 105,672		$222,728.31	0.5132	$ 114,295
8	1.3686	$ 1,368,569		$ 162,745	0.4665	$ 75,922		$ 198,005	0.4665	$ 92,371	$ 1,368,569	$ 214,162	0.4665	$ 99,908		$222,728.31	0.4665	$ 103,904
9	1.4233	$ 1,423,312		$ 162,745	0.4241	$ 69,020		$ 198,005	0.4241	$ 83,973	$ 1,423,312	$ 222,728	0.4241	$ 94,459	$ 1,539,454	$222,728.31	0.4241	$ 94,459
10	1.4802	$ 1,480,244	$ 1,480,244	$ 162,745	0.3855	$ 62,745	$ 1,480,244	$ 198,005	0.3855	$ 76,339	$ 1,480,244	$ 231,637	0.3855	$ 89,306		$250,539.06	0.3855	$ 96,594
11	1.5395	$ 1,539,454		$ 240,903	0.3505	$ 84,435		$ 240,903	0.3505	$ 84,435	$ 1,539,454	$ 240,903	0.3505	$ 84,435		$250,539.06	0.3505	$ 87,812
12	1.6010	$ 1,601,032		$ 240,903	0.3186	$ 76,759		$ 240,903	0.3186	$ 76,759	$ 1,601,032	$ 250,539	0.3186	$ 79,829	$ 1,731,676	$250,539.06	0.3186	$ 79,829
13	1.6651	$ 1,665,074		$ 240,903	0.2897	$ 69,781		$ 240,903	0.2897	$ 69,781	$ 1,665,074	$ 260,561	0.2897	$ 75,475		$281,822.37	0.2897	$ 81,634
14	1.7317	$ 1,731,676		$ 240,903	0.2633	$ 63,437		$ 240,903	0.2633	$ 63,437	$ 1,731,676	$ 270,983	0.2633	$ 71,358		$281,822.37	0.2633	$ 74,213
15	1.8009	$ 1,800,944		$ 240,903	0.2394	$ 57,670	$ 1,800,944	$ 240,903	0.2394	$ 57,670	$ 1,800,944	$ 281,822	0.2394	$ 67,466	$ 1,947,900	$281,822.37	0.2394	$ 67,466
16	1.8730	$ 1,872,981		$ 240,903	0.2176	$ 52,427		$ 293,095	0.2176	$ 63,786	$ 1,872,981	$ 293,095	0.2176	$ 63,786		$317,011.84	0.2176	$ 68,991
17	1.9479	$ 1,947,900		$ 240,903	0.1978	$ 47,661		$ 293,095	0.1978	$ 57,987	$ 1,947,900	$ 304,819	0.1978	$ 60,307		$317,011.84	0.1978	$ 62,719
18	2.0258	$ 2,025,817		$ 240,903	0.1799	$ 43,329		$ 293,095	0.1799	$ 52,716	$ 2,025,817	$ 317,012	0.1799	$ 57,017	$ 2,191,123	$317,011.84	0.1799	$ 57,017
19	2.1068	$ 2,106,849		$ 240,903	0.1635	$ 39,390		$ 293,095	0.1635	$ 47,923	$ 2,106,849	$ 329,692	0.1635	$ 53,907		$356,595.20	0.1635	$ 58,306
20	2.1911	$ 2,191,123	$ 2,191,123	$ 240,903	0.1486	$ 35,809	$ 2,191,123	$ 293,095	0.1486	$ 43,567	$ 2,191,123	$ 342,880	0.1486	$ 50,967		$356,595.20	0.1486	$ 53,006
21	2.2788	$ 2,278,768		$ 356,595	0.1351	$ 48,187		$ 356,595	0.1351	$ 48,187	$ 2,278,768	$ 356,595	0.1351	$ 48,187	$ 2,464,716	$356,595.20	0.1351	$ 48,187
22	2.3699	$ 2,369,919		$ 356,595	0.1228	$ 43,806		$ 356,595	0.1228	$ 43,806	$ 2,369,919	$ 370,859	0.1228	$ 45,559		$401,121.10	0.1228	$ 49,276
23	2.4647	$ 2,464,716		$ 356,595	0.1117	$ 39,824		$ 356,595	0.1117	$ 39,824	$ 2,464,716	$ 385,693	0.1117	$ 43,074		$401,121.10	0.1117	$ 44,796
24	2.5633	$ 2,563,304		$ 356,595	0.1015	$ 36,204		$ 356,595	0.1015	$ 36,204	$ 2,563,304	$ 401,121	0.1015	$ 40,724	$ 2,772,470	$401,121.10	0.1015	$ 40,724
25	2.6658	$ 2,665,836		$ 356,595	0.0923	$ 32,912	$ 2,665,836	$ 356,595	0.0923	$ 32,912	$ 2,665,836	$ 417,166	0.0923	$ 38,503		$451,206.69	0.0923	$ 41,645
26	2.7725	$ 2,772,470		$ 356,595	0.0839	$ 29,920		$ 433,853	0.0839	$ 36,403	$ 2,772,470	$ 433,853	0.0839	$ 36,403		$451,206.69	0.0839	$ 37,859
27	2.8834	$ 2,883,369		$ 356,595	0.0763	$ 27,200		$ 433,853	0.0763	$ 33,093	$ 2,883,369	$ 451,207	0.0763	$ 34,417	$ 3,118,651	$451,206.69	0.0763	$ 34,417
28	2.9987	$ 2,998,703		$ 356,595	0.0693	$ 24,728		$ 433,853	0.0693	$ 30,085	$ 2,998,703	$ 469,255	0.0693	$ 32,540		$507,546.16	0.0693	$ 35,195
29	3.1187	$ 3,118,651		$ 356,595	0.0630	$ 22,480		$ 433,853	0.0630	$ 27,350	$ 3,118,651	$ 488,025	0.0630	$ 30,765		$507,546.16	0.0630	$ 31,995
30	3.2434	$ 3,243,398	$ 3,243,398	$ 356,595	0.0573	$ 20,436	$ 3,243,398	$ 433,853	0.0573	$ 24,863	$ 3,243,398	$ 507,546	0.0573	$ 29,087	$ 3,508,059	$507,546.16	0.0573	$ 29,087
31	3.3731	$ 3,373,133		$ 527,848	0.0521	$ 27,500		$ 527,848	0.0521	$ 27,500	$ 3,373,133	$ 527,848	0.0521	$ 27,500		$570,920.41	0.0521	$ 29,744
32	3.5081	$ 3,508,059		$ 527,848	0.0474	$ 25,000		$ 527,848	0.0474	$ 25,000	$ 3,508,059	$ 548,962	0.0474	$ 26,000		$570,920.41	0.0474	$ 27,040
33	3.6484	$ 3,648,381		$ 527,848	0.0431	$ 22,727		$ 527,848	0.0431	$ 22,727	$ 3,648,381	$ 570,920	0.0431	$ 24,582	$ 3,946,089	$570,920.41	0.0431	$ 24,582
34	3.7943	$ 3,794,316		$ 527,848	0.0391	$ 20,661		$ 527,848	0.0391	$ 20,661	$ 3,794,316	$ 593,757	0.0391	$ 23,241		$642,207.81	0.0391	$ 25,138
35	3.9461	$ 3,946,089		$ 527,848	0.0356	$ 18,783	$ 3,946,089	$ 527,848	0.0356	$ 18,783	$ 3,946,089	$ 617,508	0.0356	$ 21,973		$642,207.81	0.0356	$ 22,852
36	4.1039	$ 4,103,933		$ 527,848	0.0323	$ 17,075		$ 642,208	0.0323	$ 20,775	$ 4,103,933	$ 642,208	0.0323	$ 20,775	$ 4,438,813	$642,207.81	0.0323	$ 20,775
37	4.2681	$ 4,268,090		$ 527,848	0.0294	$ 15,523		$ 642,208	0.0294	$ 18,886	$ 4,268,090	$ 667,896	0.0294	$ 19,642		$722,396.45	0.0294	$ 21,244
38	4.4388	$ 4,438,813		$ 527,848	0.0267	$ 14,112		$ 642,208	0.0267	$ 17,169	$ 4,438,813	$ 694,612	0.0267	$ 18,570		$722,396.45	0.0267	$ 19,313
39	4.6164	$ 4,616,366		$ 527,848	0.0243	$ 12,829		$ 642,208	0.0243	$ 15,608	$ 4,616,366	$ 722,396	0.0243	$ 17,557	$ 4,993,061	$722,396.45	0.0243	$ 17,557
40	4.8010	$ 4,801,021	$ 4,801,021	$ 527,848	0.0221	$ 11,663	$ 4,801,021	$ 642,208	0.0221	$ 14,190	$ 4,801,021	$ 751,292	0.0221	$ 16,600		$812,597.76	0.0221	$ 17,954
41	4.9931	$ 4,993,061		$ 781,344	0.0201	$ 15,694		$ 781,344	0.0201	$ 15,694	$ 4,993,061	$ 781,344	0.0201	$ 15,694		$812,597.76	0.0201	$ 16,322
42	5.1928	$ 5,192,784		$ 781,344	0.0183	$ 14,268		$ 781,344	0.0183	$ 14,268	$ 5,192,784	$ 812,598	0.0183	$ 14,838	$ 5,616,515	$812,597.76	0.0183	$ 14,838
43	5.4005	$ 5,400,495		$ 781,344	0.0166	$ 12,971		$ 781,344	0.0166	$ 12,971	$ 5,400,495	$ 845,102	0.0166	$ 14,029		$914,061.96	0.0166	$ 15,174
44	5.6165	$ 5,616,515		$ 781,344	0.0151	$ 11,791		$ 781,344	0.0151	$ 11,791	$ 5,616,515	$ 878,906	0.0151	$ 13,264		$914,061.96	0.0151	$ 13,794
45	5.8412	$ 5,841,176		$ 781,344	0.0137	$ 10,719	$ 5,841,176	$ 781,344	0.0137	$ 10,719	$ 5,841,176	$ 914,062	0.0137	$ 12,540	$ 6,317,816	$914,061.96	0.0137	$ 12,540
46	6.0748	$ 6,074,823		$ 781,344	0.0125	$ 9,745		$ 950,624	0.0125	$ 11,856	$ 6,074,823	$ 950,624	0.0125	$ 11,856		$1,028,195.40	0.0125	$ 12,824
47	6.3178	$ 6,317,816		$ 781,344	0.0113	$ 8,859		$ 950,624	0.0113	$ 10,778	$ 6,317,816	$ 988,649	0.0113	$ 11,209		$1,028,195.40	0.0113	$ 11,658
48	6.5705	$ 6,570,528		$ 781,344	0.0103	$ 8,054		$ 950,624	0.0103	$ 9,799	$ 6,570,528	$ 1,028,195	0.0103	$ 10,598	$ 7,106,683	$1,028,195.40	0.0103	$ 10,598
49	6.8333	$ 6,833,349		$ 781,344	0.0094	$ 7,322		$ 950,624	0.0094	$ 8,908	$ 6,833,349	$ 1,069,323	0.0094	$ 10,020		$1,156,579.99	0.0094	$ 10,838
50	7.1067	$ 7,106,683		$ 781,344	0.0085	$ 6,656		$ 950,624	0.0085	$ 8,098	$ 7,106,683	$ 1,112,096	0.0085	$ 9,473		$1,156,579.99	0.0085	$ 9,852
	7.3910	$ 7,390,951																
						$ 2,188,347				$ 2,369,964				$ 2,548,217				$ 2,655,768
										8.3%				16.4%				21.4%

Tab E

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application by BellSouth Corporation,	)	
for Authorization To Provide In-Region,	)	**WC Docket No. 02-307**
InterLATA Services in the	)	
States of Florida and Tennessee	)	

REPLY DECLARATION OF BRIAN F. PITKIN
ON BEHALF OF AT&T CORP.

I. QUALIFICATIONS AND SUMMARY

1. My name is Brian F. Pitkin. I am the same Brian F. Pitkin that filed a declaration (jointly with John C. Klick) in this proceeding on October 10, 2002.

2. The purpose of my testimony is to explain that a significant overstatement may exist in the UNE rates adopted by the Florida Commission due to an error in the underlying data used by BellSouth.[1]

II. A SIGNIFICANT DATA ERROR WAS IDENTIFIED BY BELLSOUTH IN THE NORTH CAROLINA UNE PROCEEDING

3. BellSouth filed, on June 10, 2002, direct testimony in the ongoing North Carolina UNE proceeding.[2] On October 1, 2002, BellSouth filed supplemental direct testimony in the

[1] In this proceeding, AT&T has not raised the multiple TELRIC violations in the UNE rates established by the Florida Commission but rather is limiting its comments to clear errors in the Florida Commission's findings. See Declaration of John C. Klick and Brian F. Pitkin (noting double count of inflation in Florida UNE proceeding). The same principle applies here of identifying clear, potential errors that are not the subject of interpretation or opinion but are based on simple mathematics underlying the data relied on by BellSouth and the Florida Commission.

[2] North Carolina Utilities Commission, Docket No. P-100, Sub 133d, Proceeding to Determine Permanent Pricing for Unbundled Network Elements.

North Carolina UNE proceeding indicating that an error existed in BellSouth's calculation of its hardwire and plug-in loading factors -- the factors used to determine the installation costs of circuit equipment, such as digital loop carrier equipment. Specifically, BellSouth's witness Reid states that "[d]ue to incorrect source referencing, the amounts included on these lines in the original filing were not the correct North Carolina numbers."[3] The following figure demonstrates that this error results in a significant overstatement of installation costs.[4]

Figure 1

Overstatement Resulting from BellSouth's Error

Account	Original	Revised	Overstatement
257.0000	2.7240	1.6208	1.7771
377.0000	2.5413	2.2319	0.2512

4. Importantly, field report code ("FRC") account 257 reflects the installation factor (and the resulting overstatement) for DLC equipment -- one of the most significant investment items in BellSouth's model. Notably, correcting these errors in BellSouth's North Carolina filing reduced the UNE costs of a two-wire loop by $1.04 and reduced the cost of a DS-1 loop by $14.63.

[3] Supplemental Direct Testimony of Walter S. Reid, Before the North Carolina Utilities Commission, Docket No. P-100, Sub 133d, Proceeding to Determine Permanent Pricing for Unbundled Network Elements, October 1, 2002.

[4] The loading factors used in BellSouth's model are multiplied by material investments to generate total installed investments. Thus, subtracting one (1) from each of these values reflects the installation portion of investments. As an example, for a loading factor of 1.5, the installation portion of that loading factor is 0.5. For a loading factor of 2.5, the installation portion of that loading factor is 1.5, or three times higher than the installation factor for the 1.5 loading factor. The overstatements reflected above show the extent to which BellSouth's factors overstated the installation costs of these equipment items.

III. AT&T HAS ATTEMPTED TO DETERMINE IF THIS ERROR EXISTS IN FLORIDA

5. Given the substantial impact that this error has on UNE results, three days after learning of BellSouth's error, on October 4, 2002, AT&T filed a discovery request in the North Carolina UNE proceeding to determine if BellSouth made a similar error in cost studies filed in UNE proceedings in other states. On October 15, 2002, BellSouth responded with the following objection:

> BellSouth objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is not likely to lead to the discovery of admissible evidence and that is irrelevant to this North Carolina proceeding. First, the content of BellSouth cost studies filed in other states is irrelevant to the cost study at issue here. In addition, it would be extremely burdensome for BellSouth to review every cost study it has filed in every state to determine whether an incorrect input was used. The burden is magnified by the fact that AT&T's request is not limited to a specific time period or a specific type of cost study. BellSouth verifies the accuracy of its cost studies during the normal course of filing such studies and where, as here, it later identifies an error, it voluntarily brings such error to the attention of the appropriate regulatory body. AT&T is in possession of the various cost studies BellSouth has filed throughout its region, and it has vigorously examined and analyzed those studies during the course of many, many proceedings. It does not hesitate to bring the existence of even a purported error to the attention of the appropriate tribunal. AT&T is in the same position as BellSouth regarding an examination of previously filed cost studies, and it can undertake the burden of reviewing cost studies from other States if it so chooses. BellSouth should not be compelled to undertake that chore while it focuses its resources in preparing for the hearing in this North Carolina proceeding.[5]

6. BellSouth's objection is wholly unresponsive. In addition, it is incorrect in some significant respects. AT&T is not in a position to review the cost studies and determine if an error exists because AT&T does not have access to the underlying data in BellSouth's systems to perform such a validation. Moreover, BellSouth states that where it "it later identifies an error, it voluntarily brings such error to the attention of the appropriate regulatory body." BellSouth has

[5] North Carolina Utilities Commission Docket No. P-100, Sub 133d, BellSouth Telecommunications, Inc.'s Responses to AT&T's 5th Set of Interrogatories, October 4, 2002, Item No. 1(C).

nonetheless failed to perform or confirm that it has performed any due diligence to validate that such an error does not exist in the studies upon which this application rests.

IV. IT APPEARS LIKELY THAT THE SAME ERROR IDENTIFIED IN NORTH CAROLINA EXISTS IN THE UNE RATES ADOPTED BY THE FLORIDA COMMISSION

7. AT&T did not raise this issue in its initial comments because BellSouth had not provided a response by the filing date of October 10. Given BellSouth's failure to simply confirm or deny the existence of this error in Florida or other proceedings, AT&T is raising the issue at this time because the possibility that such an error does, in fact, exist is real. BellSouth uses the same cost study on a regionwide basis and it is often the case that the factors are determined using the same methodology on a regionwide basis.

8. Indeed, the evidence suggests BellSouth's underlying data used to set the UNE rates in Florida contain the same error as BellSouth identified in North Carolina. Specifically (and as the above chart shows), BellSouth's hardwire equipment loading factor for FRC 257 (Digital Circuit - Pair Gain) changed from 2.7424 to 1.6208. In Florida, BellSouth's hardwire equipment loading factor for FRC 257 was 2.5184 -- much closer to the erroneous factor BellSouth originally filed in the North Carolina UNE proceeding than to the corrected factor BellSouth later provided.

9. Thus, while I am not able to definitively confirm that there is an error in the factors relied on in developing the Florida UNE rates, the evidence suggests that such an error does exist for the following reasons:[6]

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[6] While the evidence suggests that an error may exist, it is possible that the substantial difference is the result of other factors, such as data being used from a different time period or state-by-state differences. However, it appears unlikely that either of these reasons would result in such substantial differences in the ratio of installed investments to material investments. BellSouth has

- There was an error in BellSouth's initial filing in North Carolina -- indicating that an error may exist in BellSouth's default methodology for developing the loading factors at issue;
- BellSouth has refused to confirm that an error does not exist. If no such error exists, then BellSouth should simply say so;
- The factor used in Florida aligns much more closely with the erroneous factor in North Carolina than the correct factor;
- BellSouth documentation in the North Carolina UNE proceeding did not identify any changes in BellSouth's factor development methodology that would have resulted in a new error being introduced into that process.

V. CONCLUSION

10. BellSouth identified an error in its methodology for developing loading factors in the North Carolina proceeding. The evidence available to me suggests that the same error is likely to exist in the data underlying the UNE rates adopted by the Florida Commission. While BellSouth says that when "it later identifies an error, it voluntarily brings such error to the attention of the appropriate regulatory body," BellSouth is apparently unwilling to voluntarily "verif[y] the accuracy of its cost studies." In other words, BellSouth will not voluntarily perform the review that would enable it to identify that such an error exists. This is particularly problematic because the magnitude of this error -- an approximate 6.4% overstatement in the two-wire loop costs and an approximate 17.4% overstatement of the DS-1 loop cost.[7]

11. At a minimum, this Commission should require BellSouth to identify whether or not an error exists in the development of the loading factors filed in the Florida UNE proceeding that were ultimately relied on by the Florida Commission in setting UNE rates. Such a review should

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certainly not provided any basis supporting that installation costs were three times higher several years ago than they are today or that installation costs are three times higher in Florida than they are in North Carolina.

[7] These percentages are based on BellSouth's North Carolina filing. The percentage in Florida is likely higher because BellSouth's digital loop carrier investments resulting from the Florida Commission's order are a higher percentage of the overall loop costs.

be straightforward and should not be unduly burdensome for BellSouth,[8] especially given the significant ramifications that such an error may have on competition in Florida.

[8] As I understand it, this should simply require BellSouth to confirm that the "amounts included on these lines" had correct "source referencing" and "were the correct [Florida] numbers." North Carolina Utilities Commission Docket No. P-100, Sub 133d, BellSouth Telecommunications, Inc.'s Responses to AT&T's 5th Set of Interrogatories, October 4, 2002, Item No. 1(C).

VERIFICATION PAGE

I declare under penalty of perjury that the foregoing Declaration is true and correct.

/s/ Brian F. Pitkin

Brian F. Pitkin

Executed on: November 1, 2002