BellSouth D.C., Inc.
Legal Department
Suite 900
1133 21st Street, N.W.
Washington, D.C. 20036-3351

bennett.ross@bellsouth.com

Bennett L. Ross
General Counsel-D.C.

202 463 4113
Fax 202 463 4195

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EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Unbundled Access to Network Elements*, WC Docket No. 04-313;

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338;

Dear Ms. Dortch:

BellSouth Telecommunications, Inc. ("BellSouth") submits this ex parte to address the establishment of a lawful wire center impairment test for DS-1 loops. BellSouth believes that the record conclusively demonstrates that competing local exchange carriers ("CLECs") are not impaired without access to unbundled DS-1 loops in wire centers with a significant concentration of business lines. Although the level of business line concentration sufficient to warrant a finding of non-impairment may be subject to debate, the Commission should be mindful of three critical facts in establishing the applicable threshold.

First, the framework for analyzing whether CLECs are impaired without access to unbundled DS-1 loops should utilize the same wire center approach for assessing whether CLECs are impaired without access to unbundled DS-3 loops. This is due, at least in part, to the fact that when a CLEC has incurred the time and expense of installing fiber optic facilities into a building to offer service at a DS-3 or higher transmission level, the CLEC can readily provide channelized service at a DS-1 level and thus would not be impaired without access to unbundled DS-1 loops from the incumbent.

As the CLECs readily acknowledge, the most significant costs of providing high-capacity services utilizing the CLEC's own network are associated with collocation, construction of a fiber ring, and installation of the transmission facilities (or so-called "laterals") to connect buildings to that fiber ring.[1] However, once those costs have been incurred to offer service at a

[1] *See, e.g.,* Declaration of James Falvey ¶¶ 14, 21 & 28; Declaration of Wil Tirado ¶¶ 10, 12 & 17.

DS-3 or higher transmission level, the incremental expense of offering DS-1 service is minimal. Indeed, once collocation arrangements are in place, the fiber ring has been constructed, and laterals to a building have been installed, the cost to a CLEC of providing DS-1 service is as little as $312 per DS-1 channel.[2] This minimal expense may explain why CLECs such as Xspedius and X/O both acknowledge providing DS-1 service utilizing their fiber optic facilities into a building and creating a DS-1 channel connecting to their backbone networks.[3]

Second, granting unbundling relief in larger wire centers (as measured by business line concentration) would still result in unbundled DS-1 loops being widely available. For example, if the Commission were to make a finding of non-impairment for unbundled DS-1 loops in central offices with 20,000 or more business lines, *unbundling relief would be granted in a total of only 81 central offices in BellSouth's region.* These 81 central offices represent only 5 percent of BellSouth's 1,583 central offices and serve less than 30% of BellSouth's total retail and resold business lines. Thus, if a finding of non-impairment is made in central offices with 20,000 or more business lines, *unbundled DS-1 loops would still be available in approximately 95% of BellSouth's central offices and would allow CLECs to utilize unbundled DS-1 loops to compete for more than 70% of BellSouth's business lines.*

Third, even in those wire centers where DS-1 unbundling relief is granted, CLECs would not be precluded from competing for business customers seeking a DS-1 service. In addition to special access service, BellSouth offers other unbundled loop facilities that will support a DS-1 service, including: (1) 2-wire or 4-wire High Bit Rate Digital Subscriber Line (HDSL) Compatible Loop; (2) Asymmetrical Digital Subscriber Line (ADSL) compatible Loop, which may be used to provide HDSL service; (3) 2-wire Unbundled Copper Loop - Designed (UCL-D), which is commonly referred to as a "dry copper" loop because it does not have any intervening equipment such as load coils, repeaters, etc., and may be used by a CLEC to provide HDSL service; and (4) Unbundled Copper Loop Non-Designed (UCL-ND), which also is a "dry copper" facility that may be used to provide HDSL service

Each of the unbundled loops described above are currently available to CLECs and will continue to be available in those wire centers where DS-1 unbundling relief is granted. Each of these unbundled loops would allow the CLEC's end user to send and receive traffic at transmission speeds equivalent to DS-1 service when the loop is connected to the appropriate electronic equipment provided by the CLEC, which consists of a modem at each end of the loop. Such equipment can be purchased for less than $300.00.

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[2] BellSouth calculated this amount by considering the cost to BellSouth of purchasing a multiplexer ($5,015 for a DDM-2000 manufactured by Lucent) and seven line cards at $531 per line card ($3,717), which would allow for the provision of 28 DS-1 channels. The cost of each channel would be approximately $312 (($5,015 + $3,717) ÷ 28 = $311.86). While the cost paid by a CLEC for a multiplexer and line cards may vary slightly, there can be no serious dispute that such costs are relatively modest. Indeed, the CLECs do not attempt to argue otherwise, and the evidence they have put forth in this record is noticeably silent about the costs they claim would be incurred in offering a channelized DS-1 service utilizing DS-3 or higher transmission level fiber optic facilities that already have been installed in a building.

[3] *See, e.g.,* Declaration of James Falvey ¶ 10; Declaration of Wil Tirado ¶ 6.

Please include this letter in the record in the above-referenced proceedings. Thank you for your attention to this matter.

Sincerely,

Bennett L. Ross

BLR:kjw

cc: Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Daniel Gonzalez
Scott Bergmann
Jeffrey Carlisle
Michelle Carey
Thomas Navin
Jeremy Miller
Ian Dillner
Russell Hanser
Marcus Maher
Austin Schlick
John Stanley
Christopher Killion
Jeffrey Dygert
Pamela Arluk

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