

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

IN RE:)
)
GENERIC PROCEEDING TO EXAMINE)
ISSUES RELATED TO BELLSOUTH'S) DOCKET NO. 19341-U
OBLIGATIONS TO PROVIDE)
UNBUNDLED NETWORK ELEMENTS)

POST-HEARING BRIEF OF DIECA COMMUNICATIONS, INC.
D/B/A COVAD COMMUNICATION COMPANY

Pursuant to the Order Initiating Hearings to Set a Just and Reasonable Rate Under Section 271, issued on January 20, 2006 by the Georgia Public Service Commission (the "Commission"), DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), by and through its undersigned counsel, hereby serves and files this, its Post-Hearing Brief.

I. INTRODUCTION

Covad supports and adopts the Post Hearing Brief of the Competitive Carriers of the South, Inc. ("CompSouth") with regard to non-line sharing rates. With regard to the majority of line sharing rates, Covad's proposed rates in this case are the only rates with any evidentiary support at all. BellSouth Telecommunications, Inc. ("BellSouth") provides an explanation of its methodology for only a single rate: its proposed \$9.75 recurring charge for line activation. BellSouth does not provide a single scrap of evidence in support of its proposed nonrecurring loop activation rate, its recurring and nonrecurring splitter rates or its loop modification rates. Covad, on the other hand, provides evidentiary support for all the rates it proposes, except those about which BellSouth and Covad agree.¹

¹ Covad and BellSouth agreed on the No Trouble Found rates and the disconnect rates for splitters.

II. ARGUMENT AND CITATION TO AUTHORITY

The Commission should adopt the rates for line sharing proposed by Covad because they are just and reasonable and supported by competent evidence. This is not a typical case where BellSouth attempted to provide an analysis of the pricing methodology it used to identify the rates it proposed. Indeed, BellSouth presented no evidence at all. As a consequence, the only rates presented to the Commission with any evidentiary support are those proposed by Covad.

A. Covad's Proposed Nonrecurring Rates

The nonrecurring rates proposed by Covad were calculated by averaging the non-zero nonrecurring UNE rates in the BellSouth region where Covad does business.² Such a methodology draws from the efforts of seven public service commissions and years of effort to insure that those rates adequately compensate BellSouth for provisioning each network element. Covad's methodology thereby derives its rates from rates already determined to be "just and reasonable".³ Some of the state commissions' rates are undoubtedly in the low range of a "just and reasonable" rate, while others are undoubtedly in the higher range of "just and reasonable" rates. By eliminating all zero rates and averaging the rates across the region, Covad endeavored to minimize the impact of any one deficiency in a state's rates and thereby propose an average rate which is in the mid-range of just and reasonable rates.

While BellSouth can be anticipated to challenge these rates because they are based on rates determined under TELRIC, such criticism fails for two reasons:

1. By eliminating all zero rates from its calculation, Covad avoided the most significant difference between a 271 rate and a TELRIC rate; those TELRIC rates not based on actual costs; and

² Direct Testimony of William Weber, filed February 10, 2006, at 3.

³ 47 U.S.C. §252(d)(1).

2. The only line sharing rate for which *BellSouth* provided supporting testimony in this proceeding was itself based on the TELRIC UNE rate for the whole loop.⁴ Presumably, if *BellSouth* considered a methodology based on TELRIC to be flawed in this context, it would **not** have relied on such a rate for its proposed rate. For reasons described below, a rate based on a standalone loop rate is inappropriately high for line sharing. Nevertheless, *BellSouth's* sole methodology is based on TELRIC UNE rates, so any criticism of *Covad's* methodology is misplaced at best.

Accordingly, the nonrecurring line sharing rates proposed *Covad* are just and reasonable and should be adopted by the Commission.

B. *BellSouth's* Proposed Nonrecurring Rates

The single nonrecurring rate mentioned in the testimony of Mr. Williams, \$52.00 for line sharing installations, is unsupported by any methodology or evidence. The totality of support for this rate is the statement: "The non-recurring rate for the installation of new line sharing arrangements should be \$52.00." Why? How did Mr. Williams arrive at that number? *BellSouth* fails to provide any further basis other than its flat statement that that is the rate.

Current rate evidence available to the Commission, however, demonstrates that the rate proposed by *BellSouth* is unreasonably high. With line sharing, the loop is already provisioned to the *BellSouth* voice customer.⁵ As a consequence, the primary activity for *BellSouth* to provision the High Frequency Portion of the Loop ("HFPL") (line sharing)⁶ to *Covad* is a cross-connect between a *BellSouth* splitter and *Covad's* collocation space.⁷ It is always, therefore, far less costly for *BellSouth* to provision the HFPL for line sharing than a standalone loop. The

⁴ Direct Testimony of Thomas Williams, filed February 10, 2006 ("Williams Testimony"), at 4-5.

⁵ Transcript of Hearing at 113. ("Transcript")

⁶ Where *BellSouth* provides the splitter. Loop conditioning costs may also apply, but are recovered under a separate rate.

⁷ Transcript at 136-37.

current nonrecurring rate for line sharing in Georgia is only \$10.51, and the regional average is the Covad-proposed \$24.53. The standalone loop nonrecurring charge in Georgia for ADSL, a 4 wire HDSL, and the UCL-ND is \$44.69. Yet BellSouth proposes a \$52.00 rate for provisioning line sharing.⁸ Not only is that proposed rate higher than the UNE rates for those standalone 2 wire loop rates (ADSL, UCL-ND or SL1 loops), it is even higher than the rate for a standalone 4 wire HDSL loop. BellSouth's proposed nonrecurring rate is, therefore, manifestly inflated.

Mr. Williams testified that BellSouth already recovers its costs to provide the underlying loop to the voice customer.⁹ As a result, if the Commission adopts the BellSouth proposed rates, it will unjustly provide BellSouth a double-recovery of its loop costs. The Commission should, consequently, reject the manifestly inflated and unsupported nonrecurring rate proposed by BellSouth. The nonrecurring rate proposed by Covad, while more than double the Georgia TELRIC rate, is nevertheless just and reasonable and should be adopted by the Commission as the section 271 rate for line sharing.

C. Covad's Proposed Recurring Rates

The recurring rates presented by Covad are just and reasonable under the very methodology suggested by BellSouth for other section 271 network elements. Dr. Taylor testified that rates arising from voluntary negotiations between equal bargaining parties are *per se* just and reasonable.¹⁰ It is important to recognize that Dr. Taylor also testified that in BellSouth's opinion the range of possible just and reasonable rates is above *and below* the rates produced by a commercial agreement.¹¹ While the parties certainly disagree over BellSouth's assertion that the bargaining positions of a monopoly and its customers is equal, Covad does

⁸ A chart comparing the Georgia UNE rates for 2 and 4 wire standalone loops with the rate proposed by BellSouth is attached hereto as Exhibit "A".

⁹ Transcript at 113.

¹⁰ Direct Testimony of William E. Taylor, filed February 10, 2006 ("Taylor Testimony") at 13.

¹¹ *Id.*

agree that the rates supported by the line sharing negotiation evidence presented to the Commission are just and reasonable. BellSouth's witness, Mr. Williams, testified that the recurring rates in actual commercial line sharing agreements range between \$4.75 and \$7.00.¹² Covad also presented confidential evidence associated with the rates considered during its unsuccessful negotiations with BellSouth.¹³ As Mr. Weber testified, the rates from commercial agreements between Covad and other Bell Operating Companies and the rates from negotiations with BellSouth demonstrate that the recurring rates suggested by Covad are just and reasonable.¹⁴ Indeed, according to Dr. Taylor's description of the range of possible just and reasonable rates, Covad's proposed rates are in the *middle* of the range of possible just and reasonable rates for line sharing.¹⁵

While BellSouth created a new "offer" in its line sharing negotiations with Covad after Covad requested the cost case data for its prior offers,¹⁶ and made that "offer" the week of the hearing in this case¹⁷ (presumably to make the argument that it is "just and reasonable" under Dr. Taylor's standard), that "offer" was multiples of rates previously considered by the parties, or even in other line sharing negotiations.¹⁸ The Commission should not give such obviously invented "offers" any weight in this case. The Commission should, accordingly, adopt the recurring rates proposed by Covad.

¹² Williams Testimony at 5.

¹³ Covad Confidential Exhibits 2 and 3.

¹⁴ A chart comparing the rates voluntarily offered by BellSouth in line sharing negotiations and the rates proposed by Covad is attached hereto as Exhibit "B".

¹⁵ Taylor Testimony at 13. (Describing the lower end of the range as the "reserve price", the upper end of the range as the "maximum willingness to pay price" and the middle of the range starting negotiation rate as the "ask price".)

¹⁶ Transcript at 16-18.

¹⁷ Transcript at 118.

¹⁸ Compare Williams Exhibit 1 with Covad Confidential Exhibits 2 and 3.

D. BellSouth's Recurring Rate

Unlike the recurring rates proposed by Covad, which are at or near the rates arrived at in commercial negotiations with other carriers and considered in negotiations with BellSouth, the recurring rates proposed by BellSouth are multiples of those rates.¹⁹ The rate BellSouth derives from the whole loop rate is significantly higher than the rates found in commercial agreements in other regions. In fact, BellSouth's proposed recurring rate is 200% to 139% of the rates produced in other commercial agreements for line sharing.

It is ironic that BellSouth points to what it purports to be arms-length commercial agreements for other 271 elements as definitive evidence of just and reasonable rates, yet dismisses the very same evidence when that evidence does not agree with its proposed rate. Like BellSouth's proposed nonrecurring rate, BellSouth's recurring rate is expressly tied to TELRIC rates compensating BellSouth for a whole loop, and therefore unjustly compensates BellSouth for providing only the HFPL. As previously explained, because BellSouth is already fully compensated for its loop costs by the underlying voice customer, providing BellSouth with a rate which is 88% of a whole loop rate literally provides BellSouth an unjust and unreasonable double-recovery of its costs to provide a standalone loop, when what it is actually providing is only the HFPL. The remaining recurring charges proposed by BellSouth for splitters are totally unsupported by any evidence and should be rejected.

E. BellSouth's Transitional Rate Proposal

BellSouth also proposes that the recurring rates for line sharing services be divided into several tiers based on when the line sharing service was ordered.²⁰ This proposal is flawed for two reasons:

¹⁹ Compare Covad Confidential Exhibits 2 and 3 with Exhibit "A" hereto.

²⁰ Williams Testimony at 4.

First, the transition period for ILEC line sharing was specifically designed to raise rates to the standalone UNE loop rate – not to arrive at a 271 “just and reasonable” rate for line sharing.²¹ With line sharing, Covad does not receive nor does BellSouth provide the whole loop.²² Accordingly, a just and reasonable rate for line sharing cannot be based on a rate for the whole loop.

Second, the FCC’s transition plan makes no provision for nor mention of 271 obligations or pricing.²³ The transition plan provided a process for the hundreds of ILECs in the United States with eliminated section 251 line sharing obligations to phase out their provision of section 251 line sharing. There is no indication in the FCC’s transition plan that the FCC intended the transition plan to apply to the 271 line sharing obligations of RBOCs like BellSouth.

As a consequence, the Commission should reject BellSouth’s baseless and cumbersome multi-tiered rate structure for line sharing and adopt the simple just and reasonable rates proposed by Covad.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the just and reasonable rates as proposed by Covad.

²¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147 Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (“TRO”) at ¶¶ 265-67.

²² Transcript at 113-114.

²³ See generally, *TRO* at ¶¶ 265-67.

Dated this 28 day of February, 2006.

Respectfully submitted,

FRIEND, HUDAK & HARRIS, LLP

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EXHIBIT "A"

**CHART COMPARING GEORGIA UNE RATES FOR 2 AND 4 WIRE
STANDALONE LOOPS WITH BELLSOUTH'S PROPOSED RATE**

EXHIBIT A

BellSouth Line Sharing Rate Proposal Compared to UNE Whole-Loop Rates

Element	Total Recurring	Total Nonrecurring
BellSouth Proposed Line Sharing	\$12.25 ¹	\$52.00
4 Wire HDSL Compatible Loop	\$10.39	\$44.69
2 Wire ADSL Compatible Loop	\$11.23	\$44.69
2 Wire Analog - SL1	\$12.08	\$39.98
UCL-ND	\$11.02	\$44.69

¹ \$9.75 for line activation and \$2.50 for the splitter port.

EXHIBIT "B"

**CHART COMPARING RATES VOLUNTARILY OFFERED BY BELLSOUTH
IN LINE SHARING NEGOTIATIONS AND COVAD'S PROPOSED RATES**

EXHIBIT B
Non Recurring Rates (Disconnect)
For Line Sharing Under Section 271 in Georgia
NON-CONFIDENTIAL VERSION

Element	Proposed Covad Rate	Proposed BellSouth Rate	Current Georgia UNE Rate	Basis Provided by Covad For Rate	Basis Provided by BellSouth For Rate
	Feb. 2006	Feb. 2006	Feb. 2006		
Line Sharing Splitter - per Splitter System 96-Line Capacity in the Central Office w/o Test Jack	\$243.66 (\$90.11)	\$466.60 (\$90.11)	\$0.00	Average of Non-\$0.00 Regional UNE rates	None
Line Sharing Splitter - per Splitter System 24-Line Capacity in the Central Office w/o Test Jack	\$243.66 (\$90.11)	\$466.60 (\$90.11)	\$0.00	Average of Non-\$0.00 Regional UNE rates	None
Line Sharing Splitter - per Splitter System 8-Line Capacity in the Central Office w/o Test Jack	\$243.66 (\$90.11)	\$466.60 (\$90.11)	\$0.00	Average of Non-\$0.00 Regional UNE rates	None
Line Sharing Splitter - per Splitter Port in the Central Office w/o Test Jack	\$10.15 (\$3.75)	\$19.44 (\$3.75)	N/A	Average of Non-\$0.00 Regional UNE rates	None
Line Sharing - per Line Activation in the Central Office	\$24.53 (\$12.26)	\$52.00 (\$20.10)	\$10.51 (\$7.00)	Average of Non-\$0.00 Regional UNE rates	None
Unbundled Loop Modification - Load Coil / Equipment Removal	\$29.97	\$70.00	\$0.00	Average of Non-\$0.00 Regional UNE rates	None
Unbundled Loop Modification - Bridged Tap Removal	\$68.11	\$92.00	\$17.91	Dr. Taylor and Weber Testimony	None

Public Disclosure

Recurring Rates
For Line Sharing Under Section 271 in Georgia
NON-CONFIDENTIAL VERSION

Element	Redacted as Confidential	Proposed Covad Rate	Proposed BellSouth Rate	Georgia UNE Rate	Basis Provided by Covad for Rate	Basis Provided by BellSouth for Rate
Line Sharing Splitter - per Splitter System 96-Line Capacity in the Central Office w/o Test Jack	Redacted as Confidential	\$117.18	\$244.00	\$131.00	Dr. Taylor and Weber Testimony	None
Line Sharing Splitter - per Splitter System 24-Line Capacity in the Central Office w/o Test Jack	Redacted as Confidential	\$29.30	\$60.00	\$32.00	Dr. Taylor and Weber Testimony	None
Line Sharing Splitter - per Splitter System 8-Line Capacity in the Central Office w/o Test Jack	Redacted as Confidential	\$9.77	\$20.00	\$11.00	Dr. Taylor and Weber Testimony	None
Line Sharing Splitter - per Splitter Port in the Central Office w/o Test Jack	Redacted as Confidential	\$1.22	\$2.50	N/A	Dr. Taylor and Weber Testimony	None
Line Sharing - per Line Activation in the Central Office	Redacted as Confidential	\$3.28	\$9.75	\$0.61	Dr. Taylor and Weber Testimony	88% of UCL-ND UNE rate

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Post-Hearing Brief of DIECA Communications, Inc. d/b/a Covad Communications Company via Electronic Mail and by depositing same in the United States mail in a properly addressed envelope with adequate postage thereon to insure delivery to the following parties:

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**ORIGINAL
RECEIVED**

**BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION FEB 28 2006**

IN RE:)
)
GENERIC PROCEEDING TO EXAMINE)
ISSUES RELATED TO BELL SOUTH'S)
OBLIGATIONS TO PROVIDE)
UNBUNDLED NETWORK ELEMENTS)

**EXECUTIVE SECRETARY
G.P.S.C.**

DOCKET NO. 19341-U

PETITION FOR TRADE SECRET PROTECTION

COMES NOW DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), by and through its undersigned counsel, and submits the following document in connection with the above-captioned filing: the redacted version of Exhibit "B" (the "Confidential Document"). Pursuant to the Public Service Commission's (the "Commission") Rule 515-3-1-.11 governing trade secrets, Covad hereby requests confidential treatment of the Confidential Document for the following reasons:

I.

Information contained in the Confidential Document is proprietary in nature. The information contained therein pertains to Covad's current business plans and its success in implementing such plans within the State of Georgia. Covad derives economic value from this information because it is not known to others. The Confidential Document thus constitutes a trade secret within the meaning of O.C.G.A. § 10-1-761(4).

II.

Covad competes for customers with telecommunications companies and other entities operating within the State of Georgia. Disclosure of the Confidential Document would provide competitors with valuable market information relating to Covad's customers and the manner in which it intends to offer service to such customers. Local exchange competitors could use such information to compete for Covad's customers.

III.

Covad maintains the secrecy of the information contained within the Confidential Document by retaining sole possession and control of the information, and by not disclosing such information to others.

IV.

Covad is submitting the Confidential Document to the Commission under protective seal with the designation "CONFIDENTIAL / TRADE SECRET DOCUMENT" prominently displayed on each page thereof.

V.

Covad shall maintain a master list of all filings submitted to the Commission pursuant to Rule 515-3-1-11 governing trade secrets. Covad's master list will identify the document submitted, the number of copies submitted, and the docket number related to Petitioner's filing.

WHEREFORE, DIECA Communications, Inc. d/b/a Covad Communications Company respectfully requests that the Commission designate the attached Confidential Document as confidential trade secret under Commission Rule 515-3-1-.11 and grant Covad such other relief as necessary to protect the confidentiality of this information.

Respectfully submitted this 28 day of February, 2006.

FRIEND, HUDAK & HARRIS, LLP



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February 28, 2006

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DOCKET # 19341
DOCUMENT # 90131
FEB 28 2006
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G.P.S.C.

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Re: *Generic Proceeding to Examine Issues Related to BellSouth Telecommunications, Inc.'s Obligations to Provide Unbundled Network Elements; Docket No. 19341-U (Phase II - Section 271)*

Dear Mr. McAlister:

Enclosed please find an original and sixteen (16) copies of BellSouth Telecommunications, Inc.'s Post-Hearing Brief in the above-referenced proceeding. I would appreciate your filing same and returning the one (1) extra copy stamped "filed" in the enclosed self-addressed and stamped envelope.

Thank you for your assistance in this regard.

Very truly yours,

Lisa S. Foshee

LSF:avd
Enclosures

cc: Mr. Leon Bowles (via electronic mail at leonb@psc.state.ga.us)
Mr. Patrick Reinhardt (via electronic mail at patrickr@psc.state.ga.us)
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BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

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FEB 28 2006

EXECUTIVE SECRETARY
G.P.S.C.

In Re:)
)
Generic Proceeding to Examine Issues) Docket No. 19341-U
Related to BellSouth's Obligations to) (Phase II – Section 271)
Provide Unbundled Network Elements)
)
_____)

BELLSOUTH TELECOMMUNICATIONS, INC.'S
POST-HEARING BRIEF (SECTION 271 PHASE)

INTRODUCTION

Pursuant to its January 20, 2006 *Order Initiating Hearings to Set a Just and Reasonable Rate Under Section 271* (“Order”), the Georgia Public Service Commission (“Commission”) conducted hearings and received evidence on February 20 - 21, 2006 consistent with its desire to “set just and reasonable rates for de-listed UNEs pursuant to Section 271 of the Federal Telecom Act.” Order, at p. 4.¹ At issue are the rates that should apply to de-listed switching, high capacity loops and transport, and line sharing.² As set forth more fully herein, this Commission should enter an order confirming the standard rates contained within BellSouth’s standard commercial agreements for switching are just and reasonable rates under Section 271 of the Act.

¹ BellSouth Telecommunications, Inc. (“BellSouth”) maintains its vehement objection to this course of action and reminds the Commission that it has already appealed the *Order* to the United States District Court, Northern District of Georgia, Civil Action No. 1:06-CV-0162. This brief is submitted subject to, and without waiving BellSouth’s rights, which rights are expressly reserved. BellSouth fully intends to address its legal concerns with the Commission’s *Order* in federal district court.

² Separate and apart from BellSouth’s jurisdictional objection to the *Order*, BellSouth disagrees that specific findings made by this Commission comply with binding federal law. In relevant part, BellSouth disputes that line sharing is or ever was a Section 271 checklist item 4 obligation. BellSouth intends to supplement its district court appeal to address the unlawful nature of the Commission’s determination concerning line sharing. It defies logic to find that line sharing is Section 271 checklist item 4 obligation given that the Section 251 line sharing unbundled network element (“UNE”) was *created* in 1999 – three years *after* the 1996 Act, with its Section 271 checklist, was adopted. If the line sharing UNE did not exist at the time the 1996 Act was passed, then obviously line sharing cannot and never did fall within the checklist item obligations included in Section 271. While BellSouth proposed rates in this proceeding for line sharing, such proposal shall in no way be construed as a waiver of BellSouth’s argument that it has no obligation to provide line sharing.

Likewise, the Commission should confirm that the rates contained within BellSouth's applicable interstate and intrastate tariffs for high capacity loops and transport are just and reasonable rates for loops and transport under Section 271. Finally, to the extent that the Commission violates federal law and sets a rate for line sharing, the Commission should affirm the rates set forth in BellSouth Hearing Exhibit 2 as just and reasonable line sharing rates. BellSouth addresses these points more fully below.

DISCUSSION

I. COMPSOUTH'S PROPOSED RATES FOR LOCAL SWITCHING AND LOOPS AND TRANSPORT VIOLATE FEDERAL LAW.

The Commission should not adopt Competitive Carriers of the South, Inc.'s ("CompSouth") rate proposals for local switching, high-capacity loops, and high-capacity transport. Mr. Gillan's proposals not only ignore the FCC's tests for determining whether rates for 271 elements are just and reasonable, his proposals require the Commission to ignore the FCC's findings regarding the status of competition in the local market. For the Commission to ignore any of these things would distort market forces. Indeed, the course advocated by CompSouth would (1) reward inefficient competitors; (2) hurt consumers; (3) negatively impact BellSouth's incentive to invest; and (4) negatively impact CLECs' incentive to self-supply. (Taylor Direct Testimony, at 21-22).

A. The Commission should confirm BellSouth's standard commercial agreement local switching rates as just and reasonable.

The guiding principle for just and reasonable switching rates is simple -- because CLECs are not impaired without access to local switching, the rates that BellSouth charges for switching provided under section 271 should be judged upon market factors rather than upon an evaluation

of BellSouth's costs. The FCC concluded as much in paragraph 664 of the Triennial Review Order ("*TRO*"), which provides as follows:

Whether a particular checklist element's rate satisfies the just and reasonable pricing standard of section 201 and 202 is a fact-specific inquiry that the Commission will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6). We note, however, that for a given purchasing carrier, a BOC might satisfy this standard by demonstrating that the rate for a section 271 network element is at or below the rate at which the BOC offers comparable functions to similarly situated purchasing carriers under its interstate access tariff, to the extent such analogues exist. Alternatively, a BOC might demonstrate that the rate at which it offers a section 271 network element is reasonable by showing that it has entered into arms-length agreements with other, similarly-situated purchasing carriers to provide the element at that rate.

BellSouth has entered into almost 200 arms-length agreements with similarly-situated carriers, nine of whom are members of CompSouth.³ CompSouth agrees that a possible test of just and reasonable rates is whether there are arms-length commercial agreements in existence. *Transcript*, at 222. CompSouth also acknowledged, subject to check, that prior to Momentum Business Solutions, Inc.'s and Momentum Telecom, Inc.'s ("*Momentum*") execution of a commercial agreement, BellSouth had signed almost 200 commercial agreements and that those agreements covered 91% of the former UNE-P lines in Georgia. *See Transcript*, at 207. Therefore, based on the market approach established by the FCC for assessing rates for section 271 network elements, the standard rates offered by BellSouth for local switching satisfy the just and reasonable standard under Section 201.⁴

³ Since the hearing, Momentum executed a commercial agreement with BellSouth bringing the total number of identified CompSouth members with a commercial agreement to 9.

⁴ CompSouth will undoubtedly make much to do about nothing concerning the volume and terms rate BellSouth agreed to with CLEC 12. BellSouth can and should have the liberty to modify its standard commercial offering given the totality of the trade offs inherent in any given agreement. This Commission need not address any specific terms that parties remain free to alter. Instead, it should simply affirm BellSouth's standard commercial offering – which rates are \$7 higher than TELRIC for mass market customers and \$10 higher than TELRIC for enterprise customers – are well within the parameters of just and reasonable switching rates. *See CompSouth Hearing Exh. 1*, which includes BellSouth's standard rates.

Ms. Tipton's testimony demonstrated the process by which BellSouth established the just and reasonable rates in its standard commercial agreements. BellSouth considered at least five different inputs into the commercial rates: (1) BellSouth's costs; (2) resale rates for similar services; (3) BellSouth's filed TELRIC rates; (4) relief probability; and (5) CLEC cost to build. *CompSouth Hearing Exhibit 3*, at 6. At the hearing, Ms. Tipton elaborated on the factors BellSouth considered in setting the base switching rate:

... [w]hat we did look at were BellSouth's retail rate, the filed TELRIC rate that BellSouth believes fully recovers its costs in a forward-looking model; an internal activity-based accounting system which looks at incremental cost of providing the service. We looked at CLEC cost to build. We also took into account the rates that we offer our services in the retail market. And then again, we looked at the rates that the Commissions had ordered. So all of those were component elements that were taken into account when developing the unbundled switching rate as part of our commercial offer.

Transcript, at 162-163. While BellSouth did not consider other wholesale switching offers, *Transcript*, at 167, BellSouth "took into account ... an estimate around what a CLEC's cost to build might be." *Id.* This analysis is important because it proves that

[BellSouth] did take into account from a competitive -- meaning competitive against BellSouth -- a CLEC building out its own network and we hope to price under that so they would be led to our wholesale voice platform service instead of continuing to build out their own network.

Transcript, at 168.

To avoid the application of the FCC's straightforward market test, Mr. Gillan argues (when all the rhetoric is boiled down) that BellSouth's commercial agreements are not arms-length agreements and thus do not demonstrate that the rate contained therein is just and reasonable.

Q. ... what else is it that you have to show [to prove the rates are just and reasonable]?