

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20544**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

AFFIDAVIT OF SHELLEY W. PADGETT

I, Shelley W. Padgett, being of lawful age, and duly sworn upon my oath, do hereby
depose and state:

1. My name is Shelley Padgett. I am employed by BellSouth as Assistant Director – Regulatory and Policy Support in the Interconnection Services organization. My business address is 675 West Peachtree Street, Atlanta Georgia 30375.
2. I graduated summa cum laude from Harding University in 1992, with a Bachelor of Arts degree in International Studies, and I did post-graduate work at The George Washington University. I began my career at ALLTEL Telecommunications, Inc. but left to obtain a Master of Business Administration degree from Texas A&M University, graduating in 1998. After receiving my graduate degree, I began employment with BellSouth in the Interconnection Services organization. I have held various positions involving negotiations, product management, and regulatory and policy support within the BellSouth Interconnection Services organization. I have held my present position since May 2004.

3. I am submitting this Affidavit in support of BellSouth's comments in this proceeding. The purpose of my Affidavit is to: (1) outline BellSouth's tests to determine whether Competing Local Exchange Carriers ("CLECs") are impaired without unbundled access to high capacity interoffice transport and high capacity loops; (2) identify those central offices in BellSouth's region where CLECs are not impaired without unbundled access to high capacity interoffice transport and high capacity loops based on the application of BellSouth's proposed impairment test; (3) explain how granting unbundling relief for high capacity interoffice transport and high capacity loops in the central offices identified by BellSouth would be consistent with the D.C. Circuit's decision in *USTA I* and *USTA II*; and (4) explain why entrance facilities should not be subject to unbundling.

Overview

4. CLECs self-provide high-capacity facilities by deploying their own fiber networks, as they have done for years. The term "high capacity facilities" refers to DS1 and above, which CLECs use to serve business customers (as well as other telecommunications carriers), and include transport, loops, and dark fiber.
5. In developing a test to determine whether CLECs are impaired without access to unbundled high capacity facilities, BellSouth began by examining readily available factors that are indicative of actual and potential competition. I will discuss each of these factors in greater detail below. BellSouth then examined the data for each factor and attempted to identify common and recurring patterns to determine the most significant correlation of the data to create a "bright line" test for assessing impairment. Through this process, it became obvious that grouping

of central offices by the number of business lines served by each office provided a compelling basis for identifying markets where competition was economically possible. The number of business lines was derived by adding the business and coin line counts from the December 2003 43-08 ARMIS Report to the UNE loop and UNE-P business line counts as of December 2003.

High Capacity Transport

6. BellSouth examined the deployment of competitive fiber optic facilities as an indication of actual competition. Fiber-based collocation arrangements are one indication of fiber optic deployment. Specifically, using billing data and collocation application records, BellSouth identified the number of fiber-based collocation arrangements in each central office in BellSouth's region. Fiber-based collocation refers to a collocation arrangement where the CLEC has non-BellSouth provided fiber optic cable entrance facilities. Fiber-based collocation provides a readily accessible indication of the level of competition in an area, as it clearly shows that alternative networks have been deployed and are accessible from a particular central office. Furthermore, the presence of even one fiber-based collocation or fiber optic network is evidence that carriers can enter and have entered the market. However, not all alternative networks extend into many, or even any, ILEC central offices, and many carriers bypass the ILEC network entirely or maintain networks that may be accessed from some place other than an ILEC central office, such as a collocation hotel. Thus, using fiber-based collocation as a proxy for competitive fiber optic network deployment underestimates the alternative facilities that are actually available.

7. Furthermore, fiber-based collocation arrangements only indicate where competitive fiber optic facilities have already been deployed; they say nothing about where competition by CLEC-provided high capacity transport is possible. Consequently, BellSouth also analyzed the annual special access revenues that it receives in each central office. The volume of special access services (as expressed by annual revenue) reflects the extent to which a market exists for “premium” telecommunications services and thus provides an indication where competitive fiber optic facilities could readily be deployed.
8. As reflected in Table 1, a strong relationship exists between fiber-based collocation and central offices that serve 5,000 or more business lines. Whereas, only 3.1% of BellSouth’s central offices with less than 5,000 business lines have one or more fiber-based collocation arrangements, almost 72% of central offices with at least 5,000 business lines have one or more fiber-based collocation arrangements. Similarly, only 1% of central offices with less than 5,000 business lines have two or more fiber-based collocation arrangements, as compared with over 50% of central offices with at least 5,000 business lines. This same pattern – a significantly greater preponderance of fiber-based collocation in central offices with 5,000 or more business lines -- continues when three, four, or more fiber-based collocation arrangements are considered.

Central Offices By No. of Business Access Lines	Number of Fiber-Based Collocators				
	0	1+	2+	3+	4+
Below 5,000	96.9%	3.1%	1.0%	0.1%	0.1%
Above 5,000	28.4%	71.6%	50.3%	38.7%	28.4%

Table 1

9. As reflected in Table 2, almost 90% of BellSouth's central offices with one or more fiber-based collocation arrangements are those with 5,000 or more business lines. Central offices with 5,000 or more business lines also account for approximately 96% of central offices with two or more fiber-based collocation arrangements and nearly 100% of those with three or more fiber-based collocation arrangements. That competitors have deployed fiber optic facilities primarily in central offices with at least 5,000 business lines is compelling evidence that such central offices are attractive markets capable of supporting competitive transport facilities.

Number of Fiber-Based Collocators	Central Offices By No. of Business Access Lines	
	Below 5,000	Above 5,000
0	90.1%	9.9%
1+	10.2%	89.8%
2+	4.5%	95.5%
3+	0.6%	99.4%
4+	0.8%	99.2%

Table 2

10. A strong relationship also exists between BellSouth's annual special access revenues and central offices that serve 5,000 or more business lines. Of all BellSouth's central offices with at least 5,000 business lines

- more than 97% have at least \$200,000 in special access services purchased annually from BellSouth;
- almost 90% have more than \$400,000 in special access services purchased annually from BellSouth; and
- more than 50% have more than \$1,000,000 in special access services purchased annually from BellSouth.

Table 3 provides a detailed breakdown of these central offices by special access revenues.

Central Offices by No. of Business Access Lines	Special Access Revenues					
	\$200K+	\$400K+	\$600K+	\$800K+	\$1M+	\$2M+
Below 5,000	15.6%	4.6%	1.8%	1.1%	0.6%	0.2%
Above 5,000	97.4%	89.3%	74.6%	62.2%	54.3%	29.4%

Table 3

11. Table 4 shows a dramatic distinction at every revenue level in the distribution between central offices with less than 5,000 business lines and those that have at least 5,000 business lines. Seventy percent of the central offices with more than \$200,000 in special access services purchased annually from BellSouth also serve 5,000 or more business lines. Central offices with 5,000 or more business lines also account for approximately 88% of those central offices with more than \$400,000 in annual special access spend and more than 94% of those with more than \$600,000 in annual special access spend. In short, almost all of the “highest value” central offices (as measured by special access revenues) have at least 5,000 business lines, and the demand for “premium” telecommunications services (again, as measured by special access revenues) is greatest in central offices with at least 5,000 business lines. Of course, using BellSouth special access revenue as a proxy for markets where competitive supply would be economically possible is conservative because it does not account for all demand for telecommunications services. In particular, the demand for switched access services, services provided via alternative facilities, or services not offered by BellSouth are not included in the figures for special access revenues reflected in Table 4.

Annual Special Access Revenues	Central Offices By No. of Business Access Lines	
	Below 5,000	Above 5,000
\$200K+	30.0%	70.0%
\$400K+	12.2%	87.8%
\$600K+	5.9%	94.1%
\$800K+	4.3%	95.7%
\$1M+	2.9%	97.1%
\$2M+	1.6%	98.4%

Table 4

12. Because there is compelling evidence that competitors are providing competitive transport in central offices with at least 5,000 business lines and because there is a sizeable market for “premium” telecommunications services in those central offices, it is obvious that central offices with 5,000 or more business lines can economically support competitive high capacity transport.
13. Based on this evidence, the Commission should find that CLECs are not impaired without access to unbundled high-capacity transport from any central office with 5,000 or more business lines. This represents approximately 27% of BellSouth’s central offices. Exhibit SWP-1 contains a list of those central offices in BellSouth’s region where the Commission should grant unbundling relief. Exhibit SWP-1 also contains corresponding data for number of business lines, number of fiber-based collocation arrangements, and annual special access revenues for each of these central offices.
14. The Commission should consider impairment for interoffice transport on a central office basis and should not define each individual interoffice route as a market, which is both an inefficient and unrealistic method of examining competitive deployment.

15. First, the Commission must consider the impairment CLECs face, if any, when entering the market in a broader sense. While there may be some question as to the proper geographic market that should be examined, it is clear that carriers do not decide to enter a market consisting of a single route. Carriers enter a customer market and design their networks to serve the geographic area which encompasses those customer locations.
16. Second, examining competitive deployment on a route-by-route basis would ignore that CLECs are not constrained by the traditional tandem switch-end office switch design of the incumbent's network. Instead, CLECs design their networks so that they can reach the offices of interexchange carriers, carrier hotels, and numerous multi-tenant and other private buildings from a single central office. If CLECs can economically self-provide transport from a single central office, the end point of the fiber optic route is irrelevant in assessing impairment.
17. Third, a route-by-route impairment test for interoffice transport also will encourage CLECs to engage in gaming in order to minimize their transport costs. For example, assume the Commission finds that there is no impairment on the route between Central Office 1 and Central Office 2 (CO1-CO2) so UNE interoffice transport is not available along that route (see Exhibit SWP-2). Further assume the Commission requires that the ILEC provide unbundled access to transport between Central Office 1 and Central Office 3 (CO1-CO3) and between Central Office 2 and Central Office 3 (CO2-CO3). In this instance, when in the absence of market-distorting pricing regulations, carriers would route traffic directly from CO1 to CO2. However, in order to take advantage of

TELRIC transport rates, carriers would likely route their traffic from CO1 to CO3 and then from CO3 to CO2, for no reason other than to game the system.

18. Given the realities of market entry decisions as well as the gaming opportunities afforded by a route-by-route impairment ruling, the Commission should consider the characteristics of each central office when examining the impairment a carrier may face in a market.

High Capacity Loops

19. In proposing a test to determine whether CLECs are impaired without access to unbundled high capacity loops and unbundled dark fiber, BellSouth followed the same process as described above for analyzing competitive deployment and potential deployment: specifically, business lines by central office and fiber-based collocation arrangements. BellSouth also analyzed special access services used by CLECs to serve end users.
20. Although evidence of actual deployment of CLEC-provided high capacity loops would be probative, such evidence has been very hard to come by. It is has been difficult for BellSouth to obtain comprehensive information concerning the locations where CLECs have deployed high capacity loops either from third-party sources or the CLECs themselves. During the state impairment proceedings that were initiated in response to the *Triennial Review Order* (before the D.C. Circuit's decision in *USTA II*), BellSouth served discovery on numerous carriers in several of the states in BellSouth's region in an attempt to learn where CLECs had deployed fiber optic facilities. The CLEC responses to BellSouth's discovery responses were generally evasive and otherwise unhelpful in providing the

locations of high-capacity loops and transport, even though the CLECs obviously have this information.

21. However, there is little doubt that CLECs are deploying their own fiber optic facilities, including high capacity loops. For example, as noted in the 2004 UNE Fact Report, both AT&T and MCI have trumpeted the number of high-capacity circuits, including DS-1 equivalent service, provided exclusively through their own networks. While not a perfect test, fiber-based collocation also is indicative of the presence of alternative fiber optic networks, which, as discussed above, is highly concentrated in larger central offices.
22. Given these facts as well as the need for an easily administered, bright line impairment test, BellSouth considered several factors, which I describe below, each of which is indicative of competitive deployment or potential deployment of high-capacity loops. These factors, when considered as a whole, support the conclusion that CLECs are not impaired without access to unbundled high-capacity loops and unbundled dark fiber in central offices serving at least 5,000 business lines.
23. The first factor is evidence of actual competitive deployment of high-capacity loop facilities. As mentioned previously, CLECs have been less than forthcoming in providing such evidence, and BellSouth has been forced to derive competitive information from the GeoResults GeoLIT™ Plus Report ("GeoResults Report"), which is based on data self-reported by carriers to Telcordia. In this context, a building is "lit" if it is served in part or in whole by fiber optic cable facilities with associated electronic equipment in place. This data understates the extent of

competitive high-capacity loop deployment, if for no other reason than the GeoResults Report only contains self-reported data and does not reflect buildings served by carriers who have elected not to report such information to Telcordia. The data also is conservative in that BellSouth removed competitively lit buildings from the GeoResults Report in which BellSouth appeared to be the underlying wholesale provider of the fiber optic facilities. Based on the data in the GeoResults Report, BellSouth analyzed the percentage of central offices in which CLECs are providing high-capacity facilities to end users using non-BellSouth fiber optic facilities based on the number of business lines served by each central office. This analysis appears in Table 5.

24. Table 5 reflects that, although only a little more than one-quarter of BellSouth's central offices have at least 5,000 business lines, 86% of the central offices with CLEC lit buildings are in central offices that have at least 5,000 business lines. CLECs have deployed fiber optic facilities to serve end users and these facilities are disproportionately concentrated in central offices with a business line density of at least 5,000.

Central Office by No. of Business Access Lines	Percent of Central Offices with Known CLEC Lit Buildings	Percent of Central Offices
Below 5,000	14.5%	72.7%
Above 5,000	85.5%	27.3%

Table 5

25. The second factor BellSouth considered is the level of actual competition using special access services. A carrier providing competitive service via special access is not impaired without access to the same underlying facilities purchased on an unbundled basis, as the D.C. Circuit recognized. Therefore, BellSouth analyzed

data from its billing records for all special access DS1 services provided to CLECs in July 2004. These records were then screened to remove services where the end user customer was listed as the requesting CLEC; other carriers, including wireless carriers; a collocation arrangement; or simply a piece of telecommunications equipment. BellSouth also analyzed data from its billing records from the same time period to ascertain unbundled DS1 loops provided to CLECs to serve their respective end user customers.

26. Through this analysis, BellSouth identified 106,640 buildings in its territory that are served by CLECs using DS1 circuits, either purchased as special access services, UNEs, or both. Of these 106,640 buildings, 63% (67,312) are served either by special access services exclusively (51.8%) or both special access services and UNE circuits (11.3%). While approximately 37% of the buildings (39,328) were served by CLECs using UNE DS1 circuits exclusively, it is not readily apparent why CLECs could not use special access to serve customers in those buildings. To be sure, UNEs are cheaper than special access, and it may be that certain CLECs have made the business decision to compete by paying the minimum amount for the underlying network facilities in order to maximize their profits. However, the fact that CLECs can earn more profit by buying UNE DS1 circuits does not mean that CLECs are impaired without access to unbundled high-capacity loops. Because only CLECs have access to the information underlying their business decisions, only CLECs can adequately explain why they must have UNE DS1 circuits to serve customers in some buildings when they can

readily compete using special access DS1 circuits to serve customers in many other buildings.

27. In addition to the ability of CLECs to use special access to compete, a strong relationship exists between such use and the number of business lines in central offices. As reflected in Table 6, 92.4% of the central offices with less than 5,000 business lines have 50 or fewer buildings in which CLECs are using DS1 special access circuits to serve end users. By contrast, 95.6% of the central offices with at least 5,000 business lines have more than 51 buildings in which CLECs are using DS1 special access circuits to serve end users.

28. Table 7 further underscores the relationship between CLECs' use of special access to serve end users and the number of business lines in the central office. Central offices that have 20 or fewer buildings served by CLECs using special access to serve end users and central offices with 21 to 50 buildings served by CLECs using special access are considerably more likely to be those central offices with fewer than 5,000 business lines (100% and 90.7%, respectively). By contrast, the vast majority (82.5%) of central offices with 51 or more buildings in which CLECs are using special access to serve end users are central offices with 5,000 or more business lines.

Central Offices by No. of Business Access Lines	Number of Buildings Served by CLECs using SpA to Serve End Users			
	0	1-20	21-50	51+
Below 5,000	16.9%	59.4%	16.2%	7.6%
Above 5,000	0.0%	0.0%	4.4%	95.6%

Table 6

Number of Buildings Served by CLECs using SpA to Serve End Users	Central Offices By No. of Business Access Lines	
	Below 5,000	Above 5,000
0	100.0%	0.0%
1-20	100.0%	0.0%
21-50	90.7%	9.3%
51+	17.5%	82.5%

Table 7

29. A third factor BellSouth considered were the revenues from CLEC using special access to serve end users, which is reflected in Table 8. Not surprisingly, central offices with fewer than 5,000 business lines account for considerably lower levels of special access revenues. For example, only 12.1% of the central offices with fewer than 5,000 business lines had special access revenues from CLECs serving end users that were in excess of \$200,000 annually. By contrast, more than 92% of the central offices with at least 5,000 business lines had special access revenues from CLECs serving end users that exceeded \$200,000 annually.

30. Table 9 indicates that more than 74% of the central offices in which there is more than \$200,000 generated annually by CLECs using special access to serve end users are central offices with 5,000 or more business lines. Central offices with 5,000 or more business lines also account for more than 93% of those in which at least \$400,000 in revenue is generated annually by CLECs using special access to serve end users.

Central Office by No. of Business Access Lines	Annual Special Access Revenues from CLECs Serving End Users						
	<\$100K	\$100K+	\$200K+	\$400K+	\$600K+	\$800K+	\$1M+
Below 5,000	72.3%	27.7%	12.1%	2.0%	0.6%	0.3%	0.1%
Above 5,000	2.8%	97.2%	92.5%	73.4%	54.1%	40.1%	31.7%

Table 8

SpA Revenues From CLECs Serving End Users	Central Offices By No. of Business Access Lines	
	Below 5,000	Above 5,000
<\$100k	98.6%	1.4%
\$100k+	43.2%	56.8%
\$200k+	25.8%	74.2%
\$400k+	6.8%	93.2%
\$600k+	2.9%	97.1%
\$800k+	1.7%	98.3%
\$1M+	0.7%	99.3%

Table 9

31. Given the need for a simplified test and that these items all show the presence of existing competition or indicate that competition is possible, the Commission should find that CLECs are not impaired without access to unbundled high-capacity loops from any central office with 5,000 or more business lines. Exhibit SWP-3 contains a list of those central offices in BellSouth's region where the Commission should grant unbundling relief. Exhibit SWP-3 also contains corresponding data for number of business lines, number of fiber-based collocation arrangements, annual end user special access revenues and quantity of end user special access circuits for each of these central offices.

D.C. Circuit Decisions

32. A determination that CLECs are not impaired without unbundled access to high capacity loops, transport and dark fiber in central offices with 5,000 or more business lines is consistent with the decisions of the D.C. Circuit.

33. First, BellSouth's impairment test takes into account not only those geographic areas where CLECs are currently deploying competitive fiber optic facilities but also where they are capable of doing so without access to unbundled network elements. Specifically, eliminating the unbundling of high capacity loops and transport and dark fiber in central offices with 5,000 or more business lines is

consistent with the evidence that CLECs are serving customers in those central offices with their own fiber optic networks or readily could be.

34. Second, BellSouth's impairment test recognizes that CLECs are not impaired in those geographic areas when they can and do serve customers via special access. In fact, competition for high capacity loops and transport has emerged in central offices with 5,000 or more business lines with CLECs relying more upon special access than UNEs, which undermines any CLEC claims of impairment.
35. Third, making impairment determinations for high capacity loops and transport and dark fiber at the central office level, as BellSouth proposes, is consistent with the D.C. Circuit's admonition in *USTA I* that the Commission should use "nuanced market definitions" in analyzing impairment. Because high capacity loops and transport are designed primarily to serve business customers, BellSouth's impairment test focuses on business access lines. Furthermore, examining impairment at the central office level for high capacity loops and transport is consistent with competitive entry.
36. Finally, BellSouth's impairment test is straightforward, easily administered, and provides a "bright line" for determining where high-capacity loops and transport must be unbundled. Furthermore, as required by the D.C. Circuit, the test will allow the Commission to make reasonable impairment findings without further fact-finding proceedings or involvement of the states.

Entrance Facilities

37. The Commission properly found in its Triennial Review Decision that entrance facilities should not be classified as UNEs. First, entrance facilities are dedicated

to one carrier customer and are built to order. When a requesting carrier orders an entrance facility from BellSouth, BellSouth designs, engineers, constructs and deploys the facility based on the carrier's order. After construction, the entrance facility is dedicated to the use of the ordering carrier and is not used by BellSouth to serve its own end users.

38. Second, the ordering carrier has a variety of options for provisioning the facility and no one provisioning company faces more impairment than any other. The carrier may choose BellSouth, provision its own entrance facilities, or purchase capacity from a wholesaler. In any of these cases, the provisioning company faces the same obstacles, including costs and provisioning time.

39. Third, the entrance facility market is highly competitive. Most carriers who chose to order entrance facilities order BellSouth's special access services. Almost 99% of the entrance facilities provisioned by BellSouth are purchased as special access facilities, while less than 1.5% are purchased as UNEs. However, in the past year, 10-20% of the entrance facilities BellSouth had provided have been replaced by non-BellSouth facilities.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Shelley W. Padgett
Assistant Director – Regulatory & Policy Support
Interconnection Services

Subscribed and sworn to before me

This 4th day of October, 2004



Notary Public

Gay P. Ditz
Notary Public, DeKalb County
Georgia
My Commission Expires
February 09, 2007