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COMMISSION  
CLERK

November 9, 2009

Ms. Ann Cole  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 080631-TP: Petition for Commission to intervene,  
investigate and mediate dispute between DSL Internet Corporation  
d/b/a DSLi and BellSouth Telecommunications, Inc.**

Dear Ms. Cole:

Enclosed is an original and 15 copies of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Rebuttal Testimony of Cindy Clark and P.L. (Scot) Ferguson, which we ask that you file in the captioned docket. Confidential portions have been filed under a separate Notice of Intent this same day.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Manuel A. Gurdian

cc: All parties of record  
Gregory R. Follensbee  
Jerry D. Hendrix  
E. Earl Edenfield, Jr.

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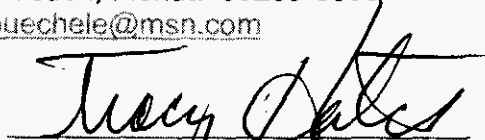
**CERTIFICATE OF SERVICE**  
**Docket No. 080631-TP**

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail  
and First Class U. S. Mail this 9th day of November, 2009 to the following:

Florida Public Service Commission  
Charles Murphy, Staff Counsel  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
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Eduardo Maldonado  
Vice President - Operations  
DSL Internet Corporation  
815 NW 57<sup>th</sup> Avenue  
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Manuel A. Gurdian

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AT&T FLORIDA  
REBUTTAL TESTIMONY OF CINDY A. CLARK  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 080631-TP  
NOVEMBER 9, 2009

Q. PLEASE STATE YOUR NAME, YOUR POSITION, AND YOUR BUSINESS ADDRESS.

A. My name is Cindy A. Clark. I am employed by AT&T Operations, Inc. as a Senior Quality/M&P/Process Manager. My business address is 2300 Northlake Centre Drive, Tucker, Georgia 30084.

Q. ARE YOU THE SAME CINDY A. CLARK WHO PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

A. Yes. On October 7, 2009, I filed 8 pages of Direct Testimony and 4 exhibits. On November 9, 2009, I filed 8 pages of Amended Direct Testimony.

Q. WHY DID AT&T FLORIDA FILE AMENDED DIRECT TESTIMONY?

A. In order to clarify certain factual assertions, AT&T Florida filed Amended Direct Testimony. In short, AT&T Florida discovered that DSL Internet Corporation's ("DSLi") had, in fact, submitted to AT&T Florida a spreadsheet for the

1 conversion of its delisted DS1 and DS3 UNE circuits. Prior to filing my Direct  
2 Testimony, I used due diligence in searching AT&T Florida's files and had been  
3 unable to locate any record of the spreadsheet being submitted by DSLi.  
4

5 Q. DOES THE FACT THAT DSLi SUBMITTED THE CONVERSION  
6 SPREADSHEET MAKE A DIFFERENCE IN THE AMOUNT BILLED TO  
7 DSLi?

8  
9 A. No, as I will discuss further below, the fact that the spreadsheet was submitted  
10 does not affect the calculated amount or DSLi's obligation to pay AT&T Florida.  
11 However, as I will discuss further below, there is a change to the amount AT&T  
12 Florida seeks from DSLi but it is unrelated to the spreadsheet being provided to  
13 AT&T Florida.  
14

15 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

16

17 A. I have reviewed the direct testimony filed in this docket on October 7, 2009 by  
18 DSLi witness, Mr. Eduardo Maldonado. My rebuttal testimony addresses a  
19 number of erroneous assertions made by Mr. Maldonado in his testimony.  
20

21 **ISSUE 1: WHAT DOCUMENT(S) AND/OR APPLICABLE LAW**  
22 **GOVERNS THE PARTIES' RELATIONSHIP AS IT RELATES TO**  
23 **AT&T'S "TRUE-UP" BILLING FOR \$188,820.59 PLUS LATE PAYMENT**  
24 **CHARGES AS APPLICABLE?**

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**ISSUE 2: WAS THE "TRUE-UP" AMOUNT AT&T SEEKS TO COLLECT FROM DSLI (\$188,820.59 PLUS LATE PAYMENT CHARGES AS APPLICABLE) CALCULATED IN ACCORDANCE WITH THE DOCUMENT(S) AND/OR APPLICABLE LAW IDENTIFIED IN ISSUE 1?**

**Q. DO YOU AGREE WITH DSLI'S ASSERTION (P.8) THAT IT SUBMITTED THE SPREADSHEETS LISTING THE DS1 AND DS3 CIRCUITS IT INTENDED TO CONVERT TO SPECIAL ACCESS CIRCUITS?**

**A. Yes. In my investigation related to filing my Rebuttal Testimony, I was able to confirm that DSLi submitted a list of DS1 and DS3 circuits to be converted to Special Access circuits but I was unable to confirm the date that it was actually submitted. However, AT&T Florida assumes for the purposes of this docket that the list was timely filed.**

**I examined the spreadsheet and reconciled the list of circuits DSLi requested for conversion and the circuits AT&T Florida billed in this true-up and the results indicate that the lists are consistent, with a few easily reconciled differences. As an example, there are circuits that DSLi installed as a UNE after the date it provided the list to AT&T Florida. Thus, these circuits do not appear on DSLi's spreadsheet, but they are a part of AT&T Florida true-up.**

**Q. DOES THE AMOUNT THAT AT&T FLORIDA SEEKS TO COLLECT FROM DSLI CHANGE BASED UPON DSLI SUBMITTING THE SPREADSHEET?**

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A. No, the fact that the spreadsheet was submitted does not affect the calculated and billed amount or DSLi's obligation to pay AT&T Florida. There is a change to the amount AT&T Florida seeks from DSLi, but it is unrelated to the spreadsheet being provided to AT&T Florida.

Q. PLEASE EXPLAIN.

A. DSLi provided the list of UNE DS1 and DS3 circuits they wished to convert to special access circuits as part of the project to identify and implement the actual conversions of the circuits.

AT&T Florida's calculation of the true-up amount does not rely on the circuit list provided by DSLi and the list does not impact this amount. One, with regard to embedded base circuits (i.e. those circuits in service prior to March 11, 2005), the true-up calculation captures the difference between the UNE recurring rates and the Special Access rates from the dates described in the TRRO(March 11, 2006) through the dates that DSLi's circuits were actually converted to Special Access circuits or disconnected entirely. With respect to those circuits that were converted, the Special Access rates were billed prospectively.

Second, with regard to those delisted DS1 and DS3 circuits which were inappropriately ordered by DSLi after March 10, 2005 rather than as a Special Access circuit, the true-up calculation captures the difference between the UNE recurring rates and the Special Access rates from the dates the a delisted circuit

1 was added through the dates that DSLi's circuits were converted to Special  
2 Access circuits or disconnected entirely. With respect to those circuits that were  
3 converted, the Special Access rates were billed prospectively.  
4

5 Q. WITH REGARD TO THE DS1 AND DS3 CIRCUITS LISTED ON DSLI'S  
6 SPREADHEET, THAT IT CLAIMED WAS SUBMITTED ON MARCH 10,  
7 2006 (P.8), WERE THEY CONVERTED?  
8

9 A. Yes, to the extent the circuits were not disconnected prior to conversion, they  
10 were converted. The conversions were completed between November 29, 2006  
11 and December 15, 2006.  
12

13 Q. WHEN DOES AT&T FLORIDA "TRUE-UP" BILLING BEGIN AND END?  
14

15 A. As stated in my Amended Direct Testimony, Special Access rates were in effect  
16 for the embedded base circuits (those circuits that were in place prior to March  
17 11, 2005) after March 11, 2006. For any new circuits inappropriately ordered as a  
18 UNE rather than as Special Access circuit after March 11, 2005, this billing began  
19 from the installation date. For each group of circuits, the true-up period ends with  
20 the disconnect date of the UNE circuit, i.e. when it was converted to a Special  
21 Access circuit, or disconnected.  
22

23 Q. ON PAGES 12-13 OF MR. MALDONADO'S TESTIMONY, MR.  
24 MALDONADO CLAIMS THAT AT&T FLORIDA DID NOT CALCULATE  
25 THE "TRUE-UP" BILLING ACCURATELY. DO YOU AGREE?

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A. For the most part, no, which I explain further below. In Mr. Maldonado's Direct Testimony, he makes three assertions regarding the accuracy of the true-up billing that I will address individually below. First, Mr. Maldonado asserts that AT&T did not allow DSLi to avail itself of the Tariff's term rates. Second, Mr. Maldonado asserts that the true up is incorrect as it relates to USOC 1L5ND; and, third Mr. Maldonado asserts that AT&T did not bill the applicable circuits at the transition rate of 115%. These are the type of questions that would have been addressed in the normal escalation of this billing dispute. Instead, these questions have never been posed to AT&T by DSLi. These issues are easily clarified and it is unfortunate that DSLi did not allow the business to business escalation process to continue so that AT&T and DSLi could have discussed these issues prior to this proceeding.

Q. ON PAGE 13 OF MR. MALDONADO'S TESTIMONY, MR. MALDONADO STATES THAT BECAUSE AT&T DELAYED BILLING DSLI, DSLI WAS EFFECTIVELY DENIED THE OPPORTUNITY TO ACQUIRE LONG TERM RATES ON THE "NETWORK ELEMENTS" AND SHOULD NOT BE PENALIZED FOR THIS DELAY. HOW DO YOU RESPOND?

A. Mr. Maldonado is correct that the true-up amount is based on the Special Access month to month rates. However, Mr. Maldonado asserts that DSLi was denied the opportunity to acquire the lower rates term rates because of the delay in billing the true-up amount. I disagree with this assertion.



1 I reviewed billing records since 2005 for all Special Access services provided to  
2 DSLi. This review included circuits ordered by DSLi as special access as well as  
3 those services that were converted to special access as a result of the TRRO. The  
4 ongoing billing for all DSLi special access service is at the month-to-month rate,  
5 which indicates that DSLi has not elected to avail itself of the longer term rates  
6 when it has had an opportunity to do so. In other words, DSLi has not ordered  
7 any Special Access services to be placed under one of the tariff term plans which  
8 would cause DSLi's ongoing billing to be billed at the lower rate. Instead, all of  
9 its Special Access circuits are billed the month-to-month rates, which are the  
10 same rates that AT&T Florida utilized in the true-up calculation. It is thus clear  
11 that DSLi prefers to have its special access circuits without term commitments  
12 rather than under a tariff term plan and any assertion that it would have entered  
13 into term commitments for the converted circuits appears to be an overstatement.

14

15 Q. MR. MALDONADO HAS NOTED THAT AT&T MADE A MISTAKE IN THE  
16 CREDIT FOR USOC 1L5ND, (CLASS OF SERVICE UNC3X, CIRCUIT NO.  
17 60.HFFU.755367..SB), THAT WAS TO BE BILLED AT \$10.92 PER MILE  
18 UNDER THE ICA RATE. DO YOU AGREE THAT AT&T 'S  
19 CALCULATION RELATED TO THE 1L5ND USOC IS INCORRECT?

20

21 A. Yes. As a UNE circuit, 60.HFFU.755367..SB, was billed the USOC 1L5ND.  
22 This component is DS3 Local Loop in combination, and is billed on a per mile  
23 basis. DSLi was billed a total of \$32.76 per month, the UNE configuration for  
24 this circuit was billing 3 miles on this circuit at the ICA rate of \$10.92. That  
25 billing was correct. However, in the conversion data and calculation, AT&T

1 Florida overstated the mileage on this circuit and that is indeed an error. This  
2 error does result in overstating the amount owed by \$13,361.33 thus AT&T  
3 Florida is no longer seeking this amount as part of the total amount due.  
4

5 Q. ON PAGE 10 THROUGH 11 OF HIS DIRECT TESTIMONY, MR.  
6 MALDONADO PRESENTS HIS VIEW OF HOW AT&T FLORIDA IS  
7 CALCULATING THE "TRUE-UP" AMOUNT. SPECIFICALLY, HE STATES  
8 THAT "AT&T IS SEEKING TO BACK-BILL FOR DS1 AND DS3 LOOPS  
9 AND DEDICATED TRANSPORT WHICH WERE NOT A PART OF EITHER  
10 THE EMBEDDED BASE OR THE TRANSITION PERIOD, SINCE NONE OF  
11 THE BACK-BILLING IS AT THE TRANSITION RATE OF 115% THE 2003  
12 ICA AS OF JUNE 15, 2004. HOW DO YOU RESPOND?  
13

14 A. As indicated in my Amended Direct Testimony, AT&T Florida calculated the  
15 true-up amount by taking the difference between the UNE billing that was  
16 rendered to DSLi, and the appropriate special access billing for the particular  
17 circuit configuration, for the time period described above. AT&T Florida's  
18 calculation used the UNE billing rates (i.e. the UNE circuits' billed components,  
19 or USOCs), defined in the ICAs between DSLi and AT&T as the basis for the  
20 true-up. AT&T Florida's calculation is the difference between the amount that  
21 appeared on DSLi's bill for the UNE circuit and the appropriate billing for the  
22 identically configured Special Access circuit.  
23

24 Mr. Maldonado is correct that the true-up was not calculated using the transition  
25 rate. The transition rate was applied to embedded base circuits at 115% of the

1 UNE rate for the period between March 11, 2005 and March 10, 2006. AT&T  
2 Florida billed DSLi the transition rate on the embedded base circuits for this time  
3 period only. This true-up does not include any billing for the embedded base  
4 circuits for the transition period. If you will remember, as discussed in my  
5 Amended Direct Testimony, the true up period for embedded base circuits begins  
6 on March 11, 2006 and ends on the date the UNE circuit was actually converted  
7 or disconnected. Thus, any claim that DSLi should be billed the transition rates  
8 for these circuits is incorrect.

9  
10 **ISSUE 3: WAS THE "TRUE-UP" AMOUNT AT&T FLORIDA SEEKS**  
11 **TO COLLECT FROM DSLI (\$188,820.59 PLUS LATE PAYMENT**  
12 **CHARGES AS APPLICABLE) BILLED IN ACCORDANCE WITH THE**  
13 **DOCUMENT(S) AND/OR APPLICABLE LAW IDENTIFIED IN ISSUE 1?**

14  
15 Q. MR. MALDONADO CLAIMS ON PAGES 9-10 OF HIS DIRECT  
16 TESTIMONY THAT DSLi PROPERLY DISPUTED THE "TRUE-UP"  
17 BILLING SUBMITTED TO DSLi ON OR ABOUT MAY 28, 2008. HOW DO  
18 YOU RESPOND?

19  
20 A. AT&T Florida does not disagree that DSLi's early disputes were initiated  
21 properly, however, DSLi failed to follow the escalation process after this initial  
22 compliance. When DSLi initially submitted the dispute, AT&T Florida briefly  
23 questioned the basis for the dispute. However, after clarification, AT&T Florida  
24 accepted DSLi's dispute and in response to the dispute, AT&T Florida provided  
25 the billing detail to DSLi. AT&T Florida, having satisfied DSLi's request for

1 billing detail, subsequently denied the billing dispute. After a a short  
2 concurrence period, with no escalation from DSLi as provided for in the 2007  
3 Agreement, AT&T Florida closed the dispute in its dispute tracking system. Once  
4 the dollars were no longer subject of an open dispute, AT&T Florida attempted to  
5 collect the unpaid amount. DSLi then escalated the dispute denial and AT&T  
6 Florida reentered the billing dispute in its dispute tracking system and again  
7 provided the billing detail to DSLi. In order to facilitate the escalation process,  
8 AT&T Florida also requested that DSLi provide it with a specific rebuttal to the  
9 claim denial so that the companies could begin to work toward resolution of the  
10 escalated dispute. Instead of providing rebuttal information to AT&T Florida and  
11 complying with the terms of the Interconnection Agreement which requires  
12 completion of the escalation process, DSLi filed its petition with the Florida  
13 Public Service Commission.

14  
15 DSLi's actions were not proper under the Interconnection Agreement between the  
16 parties. The Interconnection Agreement between AT&T and DSLi describes the  
17 billing dispute process and discusses the escalation process in Attachment 7,  
18 section 2.1. See Exhibit PLF-3. The process that DSLi and AT&T Florida agreed  
19 to in this section allows for the completion of a business to business escalation  
20 prior to either party seeking relief under the dispute resolution process in the  
21 General Terms and Conditions, (which would be the filing of a complaint), if the  
22 escalation discussion proved fruitless. DSLi did not allow this escalation attempt  
23 to move forward and be completed prior to the filing of the petition with the FL  
24 PSC.

25

1 After the filing however, I began to discuss this dispute with DSLi's designated  
2 negotiator, Frank Johnson. In those meetings, I believed we were making  
3 progress toward resolution, however, to date, the parties have been unable to  
4 resolve their dispute.

5

6 Q. ON PAGES 14-15 OF HIS DIRECT TESTIMONY, MR. MALDONADO  
7 CLAIMS THAT BECAUSE AT&T FLORIDA DID NOT BILL DSLi THE  
8 SPECIAL ACCESS RATES DURING THE RELEVANT TIME PERIOD, DSLi  
9 IS UNABLE TO COLLECT THE CHARGES FROM ITS CUSTOMERS. HOW  
10 DO YOU RESPOND?

11

12 A. On page 8 of his direct testimony, Mr. Maldonado asserts that DSLi submitted  
13 spreadsheets containing a listing of DS1 and DS3 circuits to AT&T Florida on  
14 March 10, 2006 and that "these lists contained those circuits which could not be  
15 provisioned under the 2003 ICA and that AT&T was to convert to special access  
16 billing." In fact, in the circuit lists attached to Mr. Maldonado's own testimony,  
17 the customer assigned Purchase Order Numbers for this conversion were  
18 formatted to indicate that the conversions were to be from UNE to Special Access  
19 ("DDSIUNETOSPA1, NDSIUNETOSPA1"). For DSLi to now claim that it did  
20 not know that the rates that it was being charged for the circuits listed in the  
21 spreadsheet were lower than it was supposed to be paying after the TRRO and the  
22 Commission's Order (PSC-06-0172-FOF-TP) is misleading.

23

24 Also, based upon this Commission's Order, DSLi was on notice that it would  
25 either have to disconnect the affected UNE circuits or convert them to special

1 access circuits and, to the extent it needed to modify its pricing, DSLi should have  
2 done so after the Commission made its decision in the Change of Law docket. In  
3 addition, on March 1, 2006, AT&T Florida, issued Carrier Notification  
4 SN91086028 on March 1, 2006 to advise CLECs of AT&T Florida's intent to bill  
5 the true-up. See March 1, 2006 Carrier Notification attached hereto as Exhibit  
6 CAC-5. In this Carrier Notification, AT&T states that "in accordance with the  
7 Commission's decision, affected CLECs should be prepared to true up the  
8 difference between any UNE rates charged after March 11, 2006 and the resale or  
9 tariffed rate for each of these elements, once converted, for the applicable period  
10 of time as allowed by the Commission Order."

11

12 **ISSUE 4(A): BASED ON THE DOCUMENT(S) AND/OR APPLICABLE**  
13 **LAW IDENTIFIED IN ISSUE 1, AND ANY AFFIRMATIVE DEFENSES,**  
14 **WHAT AMOUNT, IF ANY, DOES DSLI OWE FOR AT&T'S "TRUE-UP"**  
15 **BILLING OF \$188,820.59 PLUS LATE PAYMENT CHARGES AS**  
16 **APPLICABLE?**

17

18 **ISSUE 4(B): WHEN SHOULD ANY SUCH OWED AMOUNT BE DUE?**

19

20 Q. HOW MUCH DOES DSLi OWE AT&T FLORIDA FOR AT&T'S "TRUE-UP"  
21 BILLING?

22

23 A. Based upon the correction discussed above, DSLi owes AT&T Florida  
24 \$175,459.26 plus late payment charges. Attached hereto as Revised Proprietary  
25 and Confidential Exhibit CAC-4 is the late payment charges calculation.

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2 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

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4 A. Yes.

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## **Exhibit CAC-5**



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**BellSouth Interconnection Services**

675 West Peachtree Street  
Atlanta, Georgia 30375

**Carrier Notification**  
**SN91086028**

Date: March 1, 2006

To: Competitive Local Exchange Carriers (CLEC)

Subject: CLECs – (Product/Service) – **REVISED** - Interconnection Agreements in Florida that are Not Compliant with the Federal Communication Commission's Triennial Review Remand Order (originally posted on February 16, 2006)

On February 7, 2006, the Florida Public Service Commission ("Commission") rendered its decision in the Generic Change of Law proceeding, Docket No. 041269-TP, approving contract provisions to address the remaining disputed issues addressed in this proceeding. Importantly, the decision obligates both parties and non-parties to the proceeding to amend Interconnection Agreements that are not compliant with the Federal Communication Commission's (FCC) Triennial Review Order (TRO) and Triennial Review Remand Order (TRRO) so as to incorporate the Commission's ordered contract provisions ("change of law amendments"), and to file such change of law amendments with the Commission within 20 days of its decision (i.e., February 27, 2006).

**On February 17, 2006, Staff issued a recommendation that the Commission vacate its prior decisions on Issues 5, 13, 16-18, and 22(b) in Docket No. 041269-TP. On February 21, 2006, the Commission issued an Order extending the filing deadline for amendments and Interconnection Agreements compliant with its prior decisions on the non-vacated issues to March 10, 2006. On February 28, 2006, the Commission voted to 1) approve Staff's recommendation to vacate its prior decisions on Issues 5, 13, 16-18, and 22(b), 2) issue a final order on non-vacated issues immediately and 3) require the filing of Interconnection Agreements and amendments compliant with the non-vacated issues or otherwise negotiated by the parties by March 10, 2006.**

As a result, BellSouth hereby notifies all Florida CLECs that are operating under a non-TRO/TRRO compliant Interconnection Agreement with BellSouth that, **if you would like a revised amendment to remove the vacated language that addressed Issues 5, 13, 16-18, and 22(b), please submit your request to your contract negotiator no later than Thursday, March 2, 2006 at 5:00 PM. BellSouth will send a revised change of law amendment with the vacated language removed.** BellSouth requests that **all affected CLECs** review and execute the amendment promptly and return the executed agreement to BellSouth as soon as possible, but no later than **Monday, March 6, 2006 at 5:00 PM** so that the Commission's **March 10, 2006** filing requirement can be met.

It is critical that the aforementioned parties and non-parties to this proceeding execute and file their change of law amendments within this required 20-day timeframe as many of the joint issues in this proceeding arise out of the FCC's TRRO and are subject to the FCC's transition period, which ends on March 10, 2006 for all unbundled switch ports and Unbundled Network Element-Platform (UNE-P) and for high capacity loops and transport in unimpaired wire centers. The Commission's Order specifically states that if a CLEC does not identify its embedded base of unbundled switch ports and UNE-P and

de-listed high capacity loops and transport by March 10, 2006, the last day of the transition period for applicable elements, then BellSouth may identify such arrangements and convert them to the resale or tariffed equivalent service, as appropriate, charging the CLEC full disconnect and installation charges as of March 11, 2006.

In this regard, given the volume of unbundled switch ports and UNE-P and de-listed high capacity loops and transport that still remain in place despite the FCC's TRRO, it **would be impossible for BellSouth** to complete all of these conversions **by the March 10, 2006 conclusion of** the transition period. As a result, in accordance with the Commission's decision, affected CLECs should be prepared to true up the difference between any UNE rates charged after March 11, 2006, and the resale or tariffed rate for each of these elements, once converted, for the applicable period of time as allowed by the Commission's Order.

Finally, BellSouth notes that its Transitional Market Based Rate ("T-MBR") Agreement is still available. Any Florida CLEC that anticipates having UNE-P lines in service as of March 10, 2006, and that does not want those lines converted to resale effective March 11, 2006, should contact its BellSouth negotiator as soon as possible.

To obtain more information about this notification, please contact your BellSouth contract negotiator.

Sincerely,

**Original signed by Pat C. Finlen for Kristen E. Shore**

Kristen E. Shore - Director  
BellSouth Interconnection Services

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AT&T FLORIDA  
REBUTTAL TESTIMONY OF P.L. (SCOT) FERGUSON  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 080631-TP  
NOVEMBER 9, 2009

Q. PLEASE STATE YOUR NAME, YOUR POSITION, AND YOUR BUSINESS ADDRESS.

A. My name is Scot Ferguson. I am an Associate Director in AT&T Operations' Wholesale organization. As such, I am responsible for certain issues related to wholesale policy, primarily related to the terms and conditions of interconnection agreements throughout AT&T's operating regions, including Florida. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME P.L. (SCOT) FERGUSON WHO PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

A. Yes. On October 7, 2009, I filed 13 pages of Direct Testimony and 3 exhibits. On November 9, 2009, I filed 13 pages of Amended Direct Testimony.

Q. WHY DID AT&T FLORIDA FILE AMENDED DIRECT TESTIMONY?

DOCUMENT NO. DATE  
1 11208-09 11/9/09  
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A. In order to clarify certain factual assertions, AT&T Florida filed Amended Direct Testimony. In short, AT&T Florida discovered that DSL Internet Corporation (“DSLi”) had, in fact, submitted to AT&T Florida a spreadsheet for the conversion of its delisted DS1 and DS3 UNE circuits.

Q. DOES THE FACT THAT DSLi SUBMITTED THE CONVERSION SPREADSHEET MAKE A DIFFERENCE IN THE AMOUNT BILLED TO DSLi?

A. No, as discussed in Ms. Cindy A. Clark’s Rebuttal Testimony, the fact that the spreadsheet was submitted does not affect the calculated and billed amount or DSLi’s obligation to pay AT&T Florida. Also, as discussed by Ms. Clark in her Rebuttal Testimony, there is a change to the amount AT&T Florida seeks from DSLi, but it is unrelated to the spreadsheet being provided to AT&T Florida.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I have reviewed the Direct Testimony filed in this docket on October 7, 2009 by DSLi witness, Mr. Eduardo Maldonado. My Rebuttal Testimony addresses a number of erroneous assertions made by Mr. Maldonado in his testimony, specifically with respect to policy positions at issue in this proceeding

1           **ISSUE 1:   WHAT DOCUMENT(S) AND/OR APPLICABLE LAW**  
2           **GOVERNS THE PARTIES' RELATIONSHIP AS IT RELATES TO**  
3           **AT&T'S "TRUE-UP" BILLING FOR \$188,820.59 PLUS LATE PAYMENT**  
4           **CHARGES AS APPLICABLE?**

5

6   Q.   ON PAGES 7-9 OF HIS DIRECT TESTIMONY, MR. MALDONADO  
7       REFERENCES THE PARTIES' 2005 AND 2006 "MARKET-BASED RATE  
8       AGREEMENT." DO YOU AGREE THAT THESE AGREEMENTS ARE  
9       APPLICABLE TO THE PARTIES' DISPUTE?

10

11   A.   No.

12

13   Q.   WHAT IS A MARKET-BASED RATE AGREEMENT?

14

15   A.   In this context, a market-based rate agreement, or MBR, is a contractual  
16       arrangement<sup>1</sup> voluntarily entered into between incumbent local exchange carriers  
17       ("ILECs") and CLECs. These arrangements are not the result of a request for  
18       interconnection, services or network elements pursuant to 47 U.S.C § 251  
19       ("Section 251"). To the contrary, MBRs typically involve the rates, terms and  
20       conditions for services or facilities to which the FCC has found that CLECs are  
21       not impaired without unbundled access under Section 251(c)(3). In addition,  
22       these commercial agreements may include contractual arrangements for other  
23       services or facilities not requested under Section 251, including but not limited to  
24       requests for services or facilities under Section 271.

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<sup>1</sup> MBRs also may be referred to as "commercial agreements".

1

2 Q. PLEASE EXPLAIN WHY THE MARKET-BASED RATE AGREEMENTS DO  
3 NOT APPLY TO THE PARTIES' DISPUTE?

4

5 A. Very simply, the services that are at issue in this proceeding are not subject to the  
6 MBRs. Further, none of the provisions of the MBRs are relevant to this  
7 complaint. In accordance with the Commission's Order and at DSLi's request,  
8 AT&T Florida converted the DSLi circuits at issue in this proceeding to  
9 equivalent special access circuits. These circuits were not converted under any  
10 provisions or rates of the parties' MBR agreements. Tellingly, Mr. Maldonado's  
11 exhibits attached to his testimony only included "recitals" from the MBRs about  
12 "certain telecommunications services not required under Section 251 of the  
13 Telecommunications Act"; Mr. Maldonado did not cite one item from the services  
14 list or the MBR rate sheets showing that the newly converted equivalent special  
15 access circuits were covered by the MBRs.

16

17 Q. DO YOU AGREE THAT THESE 2005 AND 2006 MBRS REFLECT AN  
18 "UNDERSTANDING THAT NETWORK ELEMENTS NO LONGER  
19 REQUIRED UNDER THE TELECOMMUNICATIONS ACT ARE  
20 GOVERNED BY THE FEDERAL RULES AND STATUTES REGULATING  
21 COMMOM CARRIERS UNDER TITLE 47 OF THE UNITED STATES CODE?

22

23 A. Based upon my understanding of MBRs, I believe I can agree generally with Mr.  
24 Maldonado on this point. However, as I explained in the previous answer, the  
25 2005 and 2006 MBRS are not relevant to the issues raised in this proceeding.

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Q. HOW DO YOU RESPOND TO MR. MALDONADO'S TESTIMONY ON PAGES 11-12 THAT THE APPLICABLE DOCUMENT RELATING TO AT&T'S TRUE-UP BILLING IS AT&T'S FCC NO. 1 TARIFF AND THE "APPLICABLE LAW IS FOUND IN TITLE 47 OF THE UNITED STATES CODE, INCLUDING 47 U.S.C. SECTIONS 201, 202 AND 415"?

A. I am not a lawyer and I will let AT&T Florida's attorneys address the "applicable law" aspects found in Title 47, but, as I stated in my Amended Direct Testimony, the TRRO Amendment, the 2003 and 2007 Agreements and AT&T's FCC Tariff No. 1 are the applicable documents in this proceeding.

Section 1.9 of the TRRO Amendment, executed by the parties, states with regard to Embedded Base Circuits as follows

1.9 For Embedded Base circuits and Excess DS1 and DS3 Loops converted, the applicable recurring tariff charge shall apply to each circuit as of March 11, 2006. The transition of the Embedded Base and Excess DS1 and DS3 Loops should be performed in a manner that avoids, or otherwise minimizes to the extent possible, disruption or degradation to DSLi's customers' service.

Moreover, Section 1.8 of Attachment 2 of the 2007 Agreement provides as follows with regard to any high capacity Loops or high capacity Dedicated Transport added after March 10, 2005:

BellSouth shall bill DSLi the difference between the UNE recurring rates for such circuits pursuant to this Agreement and the applicable recurring charges for the equivalent BellSouth tariffed service or 271 service in the state of Georgia from the date UNE circuit was installed

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in the unimpaired wire center to the date the circuit is disconnected or transitioned to the equivalent BellSouth tariffed service. If DSLi fails to submit an LSR or spreadsheet identifying such de-listed circuits within thirty (30) days as set forth above, BellSouth will identify such circuits and convert them to the equivalent BellSouth tariffed service, and charge DSLi applicable disconnect charges for the UNE circuit and the difference between the UNE recurring rate billed for such circuit and the full non-recurring and recurring charges for the tariffed service from the date the UNE circuit was installed in the unimpaired wire center to the date the circuit is transitioned to the equivalent BellSouth tariffed service.

As described by Ms. Clark in her Amended Testimony and Rebuttal Testimony, AT&T Florida used the difference between the UNE billing rendered to DSLi and the appropriate special access billing for the particular circuit configuration, for the relevant time period, to determine the “true-up” amount.

**ISSUE 2: WAS THE “TRUE-UP” AMOUNT AT&T SEEKS TO COLLECT FROM DSLI (\$188,820.59 PLUS LATE PAYMENT CHARGES AS APPLICABLE) CALCULATED IN ACCORDANCE WITH THE DOCUMENT(S) AND/OR APPLICABLE LAW IDENTIFIED IN ISSUE 1?**

**Q. DOES THE FACT THAT DSLI SUBMITTED THE CONVERSION SPREADSHEET MAKE A DIFFERENCE IN AT&T FLORIDA’S POSITION REGARDING THE AMOUNT CALCULATED AND BILLED TO DSLI AND AT&T FLORIDA’S RIGHTS TO COLLECT THAT AMOUNT?**

**A. No.** As AT&T Florida’s witness, Cindy Clark, explains in her Rebuttal Testimony, the fact that the spreadsheet was submitted does not affect the calculated and billed amount or DSLi’s obligation to pay AT&T Florida.



1           However, as Ms. Clark discusses in her Rebuttal Testimony, there is a change to  
2           the amount AT&T Florida seeks from DSLi but it is unrelated to the spreadsheet  
3           being provided to AT&T Florida. With this change, AT&T Florida believes that  
4           its billing was calculated correctly in accordance with the rulings and documents  
5           cited in my Amended Direct Testimony, and that DSLi owes AT&T Florida the  
6           corrected amount indicated in Ms. Clark's Rebuttal Testimony.

7

8           **ISSUE 3:    WAS THE "TRUE-UP" AMOUNT AT&T FLORIDA SEEKS**  
9           **TO COLLECT FROM DSLI (\$188,820.59 PLUS LATE PAYMENT**  
10           **CHARGES AS APPLICABLE) BILLED IN ACCORDANCE WITH THE**  
11           **DOCUMENT(S) AND/OR APPLICABLE LAW IDENTIFIED IN ISSUE 1?**

12

13    Q.    ON PAGE 9 OF HIS DIRECT TESTIMONY, MR. MALDONADO INDICATES  
14           THAT THE PARTIES 2007 AGREEMENT PROVIDES FOR "BACK-BILLING  
15           IN PARAGRAPH 27 AND GENERALLY LIMITS THAT BACK-BILLING TO  
16           ONE YEAR AFTER SERVICES HAVE BEEN PROVIDED." HOW DO YOU  
17           RESPOND?

18

19    A.    As an initial matter, there is a difference between "back-billing" and "true-up"  
20           billing and the difference lies in the reason for the adjustment to the billing.

21

22           "Backbilling" pertains to situations where a billing anomaly is caused by a system  
23           or human error. The correction of such an error is typically handled according to  
24           certain limitations in the billing provisions in the agreement between the parties.  
25           For example, if a system error caused AT&T Florida to bill a CLEC a lesser (and

1 incorrect) amount than what the agreement's rates allow AT&T Florida to bill for  
2 a product or service, AT&T Florida could only go back 12 months to recover lost  
3 revenues due to its own error. That is the general limitation of the 2007  
4 Agreement's "backbilling" provision.

5  
6 With respect to the "true-up" billing at issue in this complaint, AT&T Florida  
7 does not believe that this billing falls into the same category of adjustment as the  
8 typical "backbilling" scenario I described above. AT&T Florida believes that this  
9 is a special circumstance based upon a specific change to certain services as ruled  
10 on by the FCC and this Commission. These rulings provide AT&T Florida  
11 certain rights to perform the "true-up" billing that is in dispute in this case. These  
12 specific rights were memorialized in the interconnection agreement when both  
13 parties signed the TRRO Amendment. Moreover, to the extent the Commission  
14 considers the billing at issue to be "backbilling, the 2007 Agreement at Paragraph  
15 27.1 of the General Terms and Conditions provides for an exception to the 12  
16 month requirement. Specifically, Paragraph 27.1 states that "both Parties  
17 recognize that situations may exist which could necessitate back billing beyond  
18 twelve months" and then provides an exception to the 12 month requirement for  
19 "[c]harges for which a regulatory body has granted, or a regulatory change  
20 permits, the billing Party the authority to back bill." Thus, to the extent that the  
21 Commission's Order and the TRRO do not already provide AT&T Florida the  
22 authority to bill DSLi the "true-up" amount, the Commission also has the  
23 authority to authorize AT&T Florida to bill DSLi for the amount in dispute.

24

1 Q. DOES PARAGRAPH 27 OF THE 2007 AGREEMENT PREVENT AT&T  
2 FLORIDA FROM BILLING DSLI?

3

4 A. No, for the reasons provided in the answer above.

5

6 **ISSUE 4(A): BASED ON THE DOCUMENT(S) AND/OR APPLICABLE**  
7 **LAW IDENTIFIED IN ISSUE 1, AND ANY AFFIRMATIVE DEFENSES,**  
8 **WHAT AMOUNT, IF ANY, DOES DSLI OWE FOR AT&T'S "TRUE-UP"**  
9 **BILLING OF \$188,820.59 PLUS LATE PAYMENT CHARGES AS**  
10 **APPLICABLE?**

11

12 Q. HOW DO YOU RESPOND TO MR. MALDONADO'S TESTIMONY ON  
13 PAGES 13-15 THAT CERTAIN PROVISIONS OF FEDERAL LAW BAR  
14 AT&T FLORIDA'S "TRUE-UP" BILLING?

15

16 A. I am not a lawyer, and I will let AT&T Florida's attorneys address the legal  
17 ramifications of Mr. Maldonado's statements in the post-hearing brief.

18

19 Q. PLEASE EXPLAIN WHY AT&T'S BILLING OF THE "TRUE-UP" AMOUNT  
20 IS NOT AN UNREASONABLE BILLING PRACTICE.

21 .

22 A. The 2003 Agreement was amended by the TRRO Amendment on March 10, 2006  
23 to address the change of law associated with the Commission's Order No. PSC-  
24 06-0172-FOF-TP implementing the TRRO. The "true-up" billing that DSLI is  
25 challenging was rendered in accordance with the TRRO, the Commission's Order

1 and the TRRO Amendment. There was no specific time frame in which a “true-  
2 up” or AT&T Florida’s conversions/disconnections of the de-listed circuits were  
3 supposed to occur in the Commission’s Order and, as explained in my Amended  
4 Direct Testimony, due to a large number of CLECs not submitting the required  
5 spreadsheets, AT&T Florida had the daunting task of performing a tremendous  
6 amount of work that CLECs failed to perform.<sup>2</sup> Thus, under the circumstances,  
7 AT&T’s billing of DSLi was timely and reasonable.

8  
9 Q. ON PAGE 14, MR. MALDONADO CLAIMS THAT AT&T FLORIDA’S  
10 BILLING OF THE SUBJECT CHARGES “MAKES IT IMPOSSIBLE FOR  
11 DSLi TO COLLECT THOSE CHARGES FROM ITS CUSTOMERS AND  
12 RECOVER THE LOSS – IMPOSING AN UNREASONABLE BURDEN ON  
13 DSLi’S BUSINESS.” DO YOU AGREE?

14  
15 A. No. DSLi knew – beginning at the issuance of the TRRO in early 2005– that  
16 there would be some billing adjustments due to AT&T Florida at some point in  
17 the future from the ruling. DSLi was free to charge its end users whatever it  
18 wished in order to cover its costs of doing business, and, DSLi should have begun  
19 making plans for the higher rates contained in AT&T’s Tariff. Also, based upon  
20 Commission Order No. PSC-06-0172-FOF-TP, DSLi knew that it would either  
21 have to disconnect the affected UNE circuits or convert them to special access  
22 circuits. Moreover, the TRRO Amendment, executed by DSLi, provides that the

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<sup>2</sup> Also, a number of CLECs simply refused to sign the Commission ordered TRRO Amendments to their interconnection agreements and AT&T Florida was forced to file a Motion for Order Decreeing Amendments to Interconnection Agreements Executed and Approved in June 2006 in Docket No. 041269-TP.

1           “applicable recurring tariff charge shall apply to each circuit as of March 11,  
2           2006” Thus, any claim that DSLi had no knowledge of the higher rates for the  
3           subject circuits after conversion or that it was not able to charge its customers  
4           higher rates is factually unsupportable.

5

6           **ISSUE 4(B): WHEN SHOULD ANY SUCH OWED AMOUNT BE DUE?**

7

8    Q.    HOW MUCH DOES DSLi OWE AT&T FLORIDA FOR AT&T’S “TRUE-UP”  
9           BILLING?

10

11   A.    Despite Mr. Maldonado’s statements to the contrary, DSLi owes AT&T Florida  
12           the amount plus late payment charges indicated in Ms. Clark’s Rebuttal  
13           Testimony.

14

15   Q.    DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

16

17   A.    Yes.

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