APPENDIX A

I.   **Allegations in the Complaint Concerning AT&T's Failure to Allow Use of Non-Designed DS-0 Loops in a Commingled Network**

Below is a selection of allegations from STS's Complaint that form the basis, in part, for the claims in Counts I through IX and XIII:[1]

- In April 2005, STS and BellSouth had "detailed discussions on the following topics: (i) costs of the network, including, without limitation, the initial (non-recurring) and operating (recurring) costs, (ii) numbers of lines at the [serving wire centers] and (iii) diagrams of the commingled network architecture."[2]

- "In 2005, when [BellSouth] solicited STS to sell it a commingled network to move STS's embedded base of customers, [BellSouth] assured STS that unbundled copper loops non-designed ("UCL-ND") could serve as the local loop."[3]

- In April 2005, the parties discussed "the tremendous cost savings to STS of this BellSouth designed commingled network."[4]

- In May 2005, BellSouth sent technical information to STS concerning the DS0 loops that could be used in STS's planned network. The only loops mentioned in the information BellSouth provided to STS were UCL-ND and SL1 loops. "No mention was made of utilizing Service Level 2 . . . loops."[5]

- In June 2005, BellSouth, "in order to sell STS . . . [an] expensive Special Access SMARTring," "represent[ed] to STS that more expensive UNE loops such as SL2s were not required in this BellSouth designed commingled network."[6]

- "STS's commingled network was designed by BellSouth utilizing UCL-ND and/or SL1 loops, and was sold to and approved by STS based on this key representation."[7]

- "In March 2006, after STS was committed to going forward with its commingled network, AT&T told STS that UCL-ND would not work in this commingled network, but rather a more expensive loop, service level ('SL1') one was needed."[8]

- "By the end of March [2006] the situation had degraded further as BellSouth informed STS that even the SL1 loop recently suggested would not work, and instead only the much more expensive SL2 would work."[9]

- "In March 2006, prior to and during the negotiations of the present Interconnection Agreement between STS and Bellsouth (n/k/a AT&T), AT&T represented to STS that the only DS0 UNE loop available in a commingled arrangement was a Service Level 2, or SL2, and that it was technically infeasible to provide a SL1 loop in a commingled arrangement. * * * BellSouth/ATT knew at the time the representation was made that the representations were false. * * * The

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[1] The quotations that appear in appendix omit internal footnotes used in the original.

[2] Complaint at para. 46

[3] Complaint at para. 223

[4] Complaint at para. 48

[5] Complaint at para. 51

[6] Complaint at para. 58

[7] Complaint at para. 233

[8] Complaint at 225; *see id.* at para. 68.

[9] Complaint at para. 72; *see id.* at para. 227.

above misrepresentations by AT&T were done in bad faith, for the purpose of discouraging commingling and raising barriers to entry for its competitors."[10]

- "An SL2 loop requires STS to pay approximately 15% more per month for each customer loop over the monthly charges for a SL1 loop. It more than doubles the initial investment in non-recurring charges that STS must pay to convert an existing or new customer to its commingled network above a SL1 loop. In fact, due to STS's customer make-up the initial investment in SL2 loops could be up to four (4) times the cost of using SL1s. On average STS' installation costs of an SL2 is approximately 3.6 times greater than the installation costs of an SL1."[11]

- "Initially, AT&T stated that STS could use the least expensive local loop for this commingled network, unbundled copper loop non–designed ('UCL-ND').   After hooking STS on acquiring the network by the low costs of the UCL-ND, BellSouth advised STS, that UCL-ND's could not be used in a commingled arrangement. Then AT&T instructed STS to utilize a more expensive DS0 loop – a Service Level 1 ('SL1'). When AT&T failed or refused to migrate lines or add new customers to the commingled network utilizing SL1s, AT&T mandated an even more expensive DS0 loop – the SL2 loop. AT&T's sales tactics are commonly referred to as a 'bait and switch.'"[12]

- "AT&T made a conscious decision to break the law and either not commingle DS0s, or make it as expensive and as burdensome as possible to discourage CLECs from commingling DS0s."[13]

- "It is undeniable that [the] BellSouth designed commingled network utilizing SL1s as the local loop is technically feasible and BellSouth's refusal to convert is nothing more than anticompetitive and monopolistic behavior."[14]

- "AT&T's reasons for not permitting STS to commingle UCL-ND and SL1 loops have nothing to do with technical infeasibility, but instead appear to be geared towards raising STS's barriers to entry as they relate to commingling and prevent STS from effectively competing with AT&T for residential and small business customers."[15]

II.   Allegations in the Complaint Concerning AT&T's Failure to Provide Seamless Bulk Migration

Below is a selection of allegations from STS's Complaint that form the basis, in part, for the claims in Counts XI through XII:

- In January 2005, STS "specifically inquired of . . . BellSouth employees about the process that would be used to cutover STS's embedded base of UNE-P lines to its own switch . . . and requested information about the sufficiency of BellSouth's Bulk migration process to convert STS'S embedded base of UNE-P customers . . . once the commingled network was installed."[16] .

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[10] Complaint at paras. 285, 288, 291.

[11] Complaint at para. 73; *see id.* at para. 229.

[12] Complaint at para. 163.

[13] Complaint at para. 175.

[14] Complaint at para. 192.

[15] Complaint at para. 237 *see id.* at para. 291.

[16] Complaint at para. 31.

- In 2005, BellSouth assured STS that "(i) the commingled network could be built, (ii) STS's embedded base of UNE-P customers could be migrated to the commingled network prior to the termination of the transition period set forth in the TRRO, and (iii), the network could be built and operated profitably."[17]

- "In March 2006, over three (3) months after STS was ready to convert its embedded base, BellSouth informed STS that no such conversion process existed."[18]

- ". . . On March 28, 2006 [BellSouth] sent [STS] an e-mail stating that BellSouth had no ordering process for the conversion of UNE-P to a UNE-L terminating into a multiplexer other than the manual Local Service Request ("LSR"). . . . [N]ot only was the process being suggested by [BellSouth] manual in nature, it was not a conversion process at all, but instead a much more expensive disconnect of existing service and provision of new service that would undoubtedly, in addition to the greater expense, leave STS customers out of service for a significant period of time."[19]

- "Despite a request by STS, AT&T has refused to develop a conversion process whether batch migration (batch hot cut) or other type of process, for migrating UNE-P lines to commingled arrangements, in violation of 47 CFR §51.309(f) which requires AT&T to 'perform the functions necessary to commingle' a UNE with a wholesale service."[20]

- "In prior testimony before the FCC and state commissions, BellSouth claimed it could do batch hot cuts in a seamless manner in its campaigns to have the FCC terminate UNE-P."[21]

- "AT&T refuses to perform bulk migrations (or individual migrations), develop an electronic or manual bulk migration process, or even develop a single manual or mechanized conversion process for DS0 UNE-Ls in a commingled arrangement in order to migrate STS's embedded base of UNE-P lines to its commingled network, or to convert new DS0 lines to this commingled network."[22]

- "AT&T's failure to convert STS's lines in a seamless manner violates 47 CFR § 316 (b) which requires such conversions to occur 'without adversely affecting the service quality perceived by the requesting carrier's end-user customer.'"[23]

- "AT&T's failure to convert seamlessly and failure to properly and efficiently repair problems in STS'S commingled network violates 47 CFR § 311 (a) and (b) which requires the quality of, and the access to, the unbundled network be the same for all telecommunications companies and for itself."[24]

- "AT&T attempts to make commingling utilizing DS0s so difficult that CLECS are discouraged from doing commingling. AT&T's failure to perform the functions necessary to permit STS to

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[17] Complaint at para. 45.

[18] Complaint at para. 75.

[19] Complaint at para. 78.

[20] Complaint at para. 196; *see id.* at para. 164.

[21] Complaint at 274.

[22] Complaint at 178.

[23] Complaint at 203.

[24] Complaint at 204.

commingle UNEs with wholesale services and its failure to provide seamless conversions raises STS'S barriers to entry and makes commingling uneconomic for CLECs."[25]

III. Allegations in FPSC Complaint About AT&T's Failure to Allow Use of Non-Designed DS-0 Loops in a Commingled Network[26]

- "Commencing in January 2005, STS inquired of BellSouth regarding its products, prices, and the feasibility of working with BellSouth to develop a facility to which STS's UNE-P base of customers could be migrated in a profitable manner in compliance with the section 227 of the TRRO and the decisions of this Commission."[27]

- "Commencing in February 2005 and continuing throughout the remainder of the year, BellSouth advised STS on numerous occasions that UNE-L ('Unbundled Voice Grade Loops') could be used such as Unbundled Network Element ('UNE') of Unbundled Cooper Loops Non-Designed or Unbundled Voice Grade Loops SL, the cost of which were provided for in the parties' TRRO Addendum."[28]

- "BellSouth verified the cost of the network and transition of the embedded base, verified that the UNE of Unbundled Copper Loops Non-Designed in combination with ACCESS (Enhanced Extended Links EELS Commingled) could be used for the conversion of the embedded base, and evidenced that, based upon these costs, this network would be profitable to build and operate."[29]

- "Throughout these discussions, STS requested and received assurances from BellSouth regarding the net cost on a per line basis for this network in order to ensure that it was economically feasible and practical to invest the substantial monies required to build and install the network, and to ensure that the end product would be profitable."[30]

- "In the beginning of February 2006 . . . BellSouth reaffirmed that Unbundled Copper Loops Non-designed and Unbundled Voice Grade Loops SL 1 could be used in the commingled network designed and built by BellSouth."[31]

- "[I]in February 2006, BellSouth stated for the first time that the only UNE that it would allow STS to use is UVL-SL2."[32]

- "Prior to February 2006, BellSouth had never mentioned the UVL-SL2."[33]

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[25] Complaint at 261.

[26] STS's FCC Comments contain very similar allegations as those in STS's FPSC Complaint, so in the interest of brevity we will not quote or paraphrase them here. *See, e.g.*, FCC Comments at 7, 10-13, 15, paras. 19, 32, 34-35, 37-41, 45.

[27] FPSC Complaint at 6, para. 8.

[28] FPSC Complaint at 9, para. at 26.

[29] FPSC Complaint at 10, para. 28.

[30] FPSC Complaint at 8, para. 19.

[31] FPSC Complaint at 10, para. 29

[32] FPSC Complaint at 13, para. 44.

[33] FPSC Complaint at 13, para. 45.

- "Prior to February 2006, Bellsouth advised STS that the UCL-ND could be used for every STS customer. In fact, the entire network was based upon the utilization of the UCL-ND in combination with transport."[34]

- "The installation costs of the SL-2s were substantially higher than the UCL-ND installation costs, which created an economic barrier for the migration of the company's embedded base of business. Moreover, the monthly recurring rates for the SL-2s were substantially greater than the recurring rates for the UCL-NDs. Such non-recurring rates for migrating an embedded base and the recurring rates made it impossible for any reasonably efficient CLEC to operate profitably in competition with BellSouth using this type of UNE or UNE combination."[35]

- "From the inception, BellSouth knew that the network it proposed and designed would never work in conjunction with its arbitrary commingling rules."[36]

- "[A]t no time throughout the entire process until February 2006 did BellSouth advise STS that the design it had engineered and the cost it had projected were not feasible."[37]

- "BellSouth's misrepresentations . . . were either intentional or done with reckless disregard for the truthfulness of the representation, and made with the intended or expected result that the higher cost would drive STS out of business, since the increased cost made the continued operation of STS's business unprofitable."[38]

- "BellSouth's conduct is in bad faith and violates the directives . . . in the TRRO." (citing passage from paragraph 233 of the *TRRO* stating, *inter alia*, that "the failure of an incumbent LEC or competitive LEC to negotiate in good faith under section 251(c)(1) of the Act . . . may subject that party to enforcement action.").[39]

- "BellSouth's refusal to construct and price the network according to its design is a violation of the [Act, as construed by the Commission]." [TRO].[40]

- "In spite of its representations and in violation of its commitments, BellSouth refused or was unable to transition STS's embedded base of customers in a timely manner to the network that BellSouth has designed and implemented. As a direct and proximate result of BellSouth's false and fraudulent misrepresentations, and refusal and/or inability to honor its commitments, STS's network is not functional for the intended purpose of converting the embedded base of UNE-P customers."[41]

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[34] FPSC Complaint at 13, para. 46.

[35] FPSC Complaint at 13, para. 47.

[36] FPSC Complaint at 14, para.49.

[37] FPSC Complaint at 14, para. 50.

[38] FPSC Complaint at 15, para. 54.

[39] FPSC Complaint at 16, paras. 60-61.

[40] FPSC Complaint at 16, para. 62.

[41] FPSC Complaint at 5, para. 5.

IV. **Allegations FPSC Complaint Concerning AT&T's Failure to Provide Bulk Migration**[42]

- "Commencing in January 2005, STS inquired of BellSouth regarding its products, prices, and the feasibility of working with BellSouth to develop a facility to which STS's UNE-P base of customers could be migrated in a profitable manner in compliance with the section 227 of the TRRO and the decisions of this Commission."[43]

- "Commencing in the first days of 2005, and continuing throughout the year, BellSouth advised STS that it had the ability and procedures in place to use Bulk Migration in the conversion process for STS's embedded base."[44]

- BellSouth made "written and oral promises" "regarding the viability of the network, . . . the cost of transitioning STS's embedded UNE-P base to the network by the 'Bulk Migration Process,' . . . [and] the cost of maintaining and servicing the network . . . ."[45]

- "On every occasion, BellSouth assured and represented to STS that BellSouth could convert STS's embedded base through the 'Bulk Migration' process . . . ."[46]

- "Multiple times, STS inquired of BellSouth whether it had commingling procedures in place and the ability to use Bulk Migration ("Batch Hot Cut Procedures") to convert the embedded base to STS's network . . . ."[47]

- "BellSouth continually assured STS that the 'Bulk Migration' process would work and that STS's embedded base of UNE-P customers would be timely converted to STS's [commingled] network . . . ."[48]

- "Until STS representatives attended a December 2005 training class for Bulk Migration given by BellSouth, there was no indication, whatsoever, that the Bulk Migration Process would not be available for STS."[49]

- "In February 2006, for the first time, BellSouth conceded that it had no Bulk Migration Process in place for the migration of STS's embedded base of UNE-P customers to the commingled network, and the migration would have to be handled manually."[50]

- "BellSouth knew or should have known since the commencement of negotiations in January 2005 that there was no Bulk Migration in place to convert the embedded base through the commingling rules of the TRRO."[51]

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[42] STS's FCC Comments contain very similar allegations as those in STS's FPSC Complaint, so in the interest of brevity we will not quote or paraphrase them here. *See, e.g.*, FCC Comments at 3-5, 7, 10-13, 15, paras. 9,11,14,19, 31-32, 34-38, 41, 43, 45.

[43] FPSC Complaint at 6, para. 8.

[44] FPSC Complaint at 9, para. 23.

[45] FPSC Complaint at 4-5, para. 5.

[46] FPSC Complaint at 7, para. 14.

[47] FPSC Complaint at 9, para. 22.

[48] FPSC Complaint at 8, para. 18.

[49] FPSC Complaint at 9, para. 24.

[50] FPSC Complaint at 13, para. 43.

[51] FPSC Complaint at 13, para. 48.

- "In spite of its representations and in violation of its commitments, BellSouth refused or was unable to transition STS's embedded base of customers in a timely manner to the network that BellSouth had designed and implemented."[52]

- "BellSouth's misrepresentations . . . were either intentional or done with reckless disregard for the truthfulness of the representation, and made with the intended or expected result that the higher cost would drive STS out of business, since the increased cost made the continued operation of STS's business unprofitable."[53]

- "BellSouth's actions . . . are reprehensible, a violation of numerous federal and state law, and contrary to the public interest."[54]

- "BellSouth's refusal to construct and price the network according to its design is a violation of the [Act, as construed by the Commission]."[55]

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[52] FPSC Complaint at 5, para. 5.

[53] FPSC Complaint at 15, para. 54.

[54] FPSC Complaint at 15, para. 55.

[55] FPSC Complaint at 16, para. 62.