**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of<br><br>**Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services Georgia And Louisiana** | ) | CC Docket No. 02-35 |

**SUPPLEMENTAL COMMENTS OF AT&T CORP. IN RESPONSE TO BELLSOUTH CORPORATION'S SUPPLEMENTAL BRIEF**


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**DECLARATIONS IN SUPPORT OF AT&T's OPPOSITION TO BELLSOUTH'S SECTION 271 APPLICATION FOR GEORGIA AND LOUISIANA**

CC Docket No. 02-35

| EX. | DECLARANT | SUBJECT(S) COVERED |
|---|---|---|
| A | Bell | Performance Measures/Remedy Plan |
| B | Bickley | Pricing: Internal Costs |
| C | Bradbury/Norris | OSS |
| D | Lieberman | Pricing |
| E | Norris/Bursh | Performance Measures/Remedy Plan |
| F | Seigler | UNE-P |

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Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these Supplemental Comments in opposition to the Application of BellSouth Corporation ("BellSouth") for authorization to provide in-region, interLATA services in Georgia and Louisiana ("Application").

## INTRODUCTION AND SUMMARY

BellSouth withdrew its prior application for authorization to provide long-distance service in Georgia and Louisiana (its third application for Louisiana, its first for Georgia) just days before the FCC order was expected because the application was defective and was about to be denied. In two important respects, the Section 271 process worked as intended. First, and most obviously, a premature application was effectively rejected. Second, and of like importance, the commenters' submissions and the Commission's ongoing analysis served to identify serious matters that required substantial attention and improvement on BellSouth's part.

Had BellSouth responded with a determined effort to address and resolve those problem areas, it could then have filed a new application that could have been approved.

But BellSouth took a different tack. Rather than use the prior proceeding as a roadmap to make the fundamental changes necessary to satisfy Section 271, BellSouth committed first and foremost to a speedy refiling. BellSouth denied that any serious rethinking or other effort was required on its part. As the President of BellSouth Georgia made clear at the time, "[t]he refiling is not about going back and making changes. It's about providing additional data so the FCC staff has a high comfort level."[1]

Regrettably, "BellSouth has now done exactly as promised." Application at 1. A scant seven weeks after withdrawing its old application, BellSouth has filed a new one. And it is plain that BellSouth's focus during the interim has been on dressing up the record rather than making substantial improvements. Although BellSouth now asserts that changes have been made, those changes are by and large cosmetic, modest, and incomplete, and in many cases not yet even fully implemented, much less proven to be effective – a situation made inevitable by its overriding goal of ensuring a short span of time between applications. As a consequence, the refiled BellSouth application is "*déjà vu* all over again." It not only fails to remedy the serious problems identified in the last go-around, but is also reminiscent of BellSouth's 1998 refiled Louisiana application, which the Commission squarely rejected because "BellSouth ha[d] filed a

[1] *Company Plans to Refile After Gathering More Data for the FCC*, Augusta Chronicle (Dec. 21, 2001) (quoting BellSouth Georgia President Phil Jacobs).

second application for Louisiana without fully addressing the problems we identified in previous BellSouth applications."[2]

The Commission's prior steadfast rejections of BellSouth's repeated applications sent a vitally important message that is again applicable: a BOC's intransigence subjecting the Commission to repeated submissions of facially invalid applications is not a substitute for demonstrated nondiscriminatory performance and statutory compliance. Section 271 can be satisfied not by a BOC's persistence in making filings and attempting to wear the parties or the Commission down, but by its willingness to remove barriers, fix problems, and open markets.

Moreover, an application like this one – which if granted, will be a first for this BOC – in particular requires rigorous application of the Commission's standards. Otherwise, serious deficiencies will not only persist, but rapidly spread. For example, BellSouth asserts that its OSS are region-wide. Commission approval of this Application would thus be cited before state commissions in other States in BellSouth's region, and before this Commission in future Section 271 applications, as purported proof that further investigation and improvements in those systems are unnecessary to meet statutory requirements.[3] Similarly, BellSouth would rely on a "benchmarking" approach to pricing issues in order to institutionalize throughout its region the

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[2] *BellSouth Louisiana II*, ¶ 5; *see also id.*, Separate Statement of Commissioner Powell, at 2 (the "application suffers from some of the same important deficiencies we identified in BellSouth's South Carolina and initial Louisiana applications, and thus we are compelled by the statute to reject it").

[3] The Tennessee Authority is in the process of reviewing this very issue in a two-phased proceeding. Likewise, the Florida Public Service Commission decided to not to rely on OSS testing in Georgia to establish BellSouth's OSS compliance with Section 271 and is in the process of conducting its own test which is far broader in scope than the test upon which BellSouth relies to support this Application. *See* Norris Decl. ¶¶ 55-78. Any decision on BellSouth's regionality claims could impact these important state proceedings.

excessive rates reflected in the instant Application. Deficiencies in benchmark applications tend to recur in other states, making it especially important to avoid them.

BellSouth has styled its refiling as a "Supplemental Brief," and addresses in its brief only the "small subset" of issues it deems "unresolved." Application, p. 1. As to the remainder, BellSouth "adopts *in toto*" all its filings in the prior Georgia/Louisiana proceeding. *Id.* AT&T will likewise not repeat the analysis in its prior filings, and incorporates those filings by reference. With respect to some of the issues on which AT&T previously identified checklist violations – local number portability (checklist item 11), local loops (checklist item 4), interconnection (checklist item 1), customized routing for operator services and directory assistance (checklist item 6), and resale (checklist item 4) – AT&T has nothing further to add here, and, like BellSouth, AT&T stands on the existing record from the prior application. Each issue provides independent grounds for rejecting the newest application.

The remainder of AT&T's Supplemental Comments addresses issues on which there have been intervening factual or other developments since the last application, or to which BellSouth devotes further discussion in its Supplemental Brief. Part I demonstrates that BellSouth's OSS continue to fail to provide CLECs with nondiscriminatory access. BellSouth limits the OSS discussion in its Supplemental Brief to "four discrete areas" in which it has had persistent problems – excessive reliance on manual processing, failure to enable CLECs to achieve full integration of pre-ordering and ordering functionalities, discriminatory access to due dates, and inadequate change control. In each of those areas, and others as well, BellSouth continues to fail to meet the necessary requirements.

Part II demonstrates that BellSouth has not shown that its performance data are accurate, reliable, and stable, a fundamental showing in all prior approved Section 271 applications. Contrary to BellSouth's assertions, neither its commercial data nor the results of KPMG's audits confirm that its data are somehow trustworthy. BellSouth's performance monitoring and reporting systems remain rife with error. Furthermore, BellSouth's reported data are based upon measures with inherent deficiencies that skew actual performance results. Moreover, given the substantial problems regarding the integrity of BellSouth's data that have been uncovered to date during the audits in Georgia and Florida, as well as the considerable testing that remains to be completed, BellSouth cannot legitimately contend that KPMG's audit results show that its data are reliable. Significantly, even BellSouth's own highly selective, inadequate data show that it is not meeting its statutory obligations.

The continuing difficulties AT&T faces in obtaining non-discriminatory access to the combination of network elements known as UNE-P are addressed in Part III. AT&T's UNE-P customers continue to experience a significant number of outages and service troubles during the conversion process, and BellSouth has not yet implemented a solution for the recurring loss of dial tone. Moreover, BellSouth has also now created a substantial impediment to competitors seeking to win UNE-P customers that are using BellSouth's DSL service. BellSouth now places a code on their CSR that will cause BellSouth to reject any UNE-P orders for those customers, and requires the CLEC to contact the customer, and have the customer make the phone call to arrange to have BellSouth remove the offending code, before any such order can be provisioned. This is an anticompetitive practice that forcefully discourages customers from switching carriers.

Part IV demonstrates that BellSouth has done nothing to address the serious TELRIC errors in its Georgia and Louisiana cost studies. BellSouth has simply refiled the same rates with the same flaws that it filed with its original joint application. Therefore, the joint application still violates Checklist Item 2. If the Commission decides to approve BellSouth's Georgia application, however, it should at least condition that approval on immediate adoption of the switching and DUF rates that BellSouth has proposed in the ongoing Georgia state proceeding. All parties, including BellSouth, agree that BellSouth's switching and DUF rates should not exceed those levels. Failure to reset those rates now could distort future Section 271 applications and pricing proceedings in other BellSouth states by establishing the current excessive rates as a benchmark.

Finally, Part V demonstrates that the UNE rates in Louisiana effect a "price squeeze" that forecloses residential competition in that State and establishes two additional and independent grounds for denial of BellSouth's application for Louisiana. First, as the Supreme Court held in *FPC* v. *Conway Corp.*, 426 U.S. 271 (1976), this showing establishes that BellSouth's rates are "discriminatory," regardless of whether they otherwise comply with TELRIC. BellSouth's rates therefore violate Checklist Item Two. Second, this showing establishes that granting the Application as to Louisiana, where local markets are closed to new entrants, would fail to serve the "public interest" and defeat the purpose of Section 271. *See Sprint* v. *FCC*, 274 F.3d 549 (D.C. Cir. 2001). The Application should therefore be denied.

## I. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ITS OSS (CHECKLIST ITEM 2).

BellSouth contends that the "additional materials" it submits on the "four discrete aspects" of its OSS that it chooses to discuss "establish beyond legitimate dispute that BellSouth

is providing nondiscriminatory access and that it will continue to do so in the future." Application at 6. BellSouth's "materials," however, do nothing of the sort. Although it claims to have fixed some problems and promises solutions to others, the reality is that BellSouth has not satisfied its obligations even with respect to the four areas that it addresses – and continues to violate its OSS obligations in other respects.

BellSouth, for example, still places excessive reliance on manual processing that delays the return of order status notices and the provisioning of service. Bradbury/Norris Supp. Decl. ¶¶ 95-118. BellSouth has not established that it can manually process CLECs' orders with the degree of accuracy necessary for CLECs to have a meaningful opportunity to compete. *Id.* ¶¶ 119-126. Similarly, BellSouth still has not established that it has given CLECs the ability to achieve full integration of pre-ordering and ordering functionalities. *Id.* ¶¶ 13-76. Nor do BellSouth's "additional materials" establish that it provides the same automated capability to calculate correct due dates that it has in its own retail operations. *Id.* ¶¶ 77-92. Finally, BellSouth's change control process remains fatally, and fundamentally, flawed. *Id.* ¶¶ 138-194.

Rather than correct these deficiencies in its OSS, BellSouth seeks to fill the gaps in its showing with a series of promises, newly-implemented but unproven functionalities, data calculated under a newly (and unilaterally) adopted methodology, and distortions of the facts. Indeed, BellSouth even contends that it has now made improvements in its OSS that create a "virtuous circle" which ensures continued compliance with its OSS obligations. Application at 7, 23. But BellSouth's "virtuous circle" is based on *claimed* "improvements" – such as an increase in rates of flow-through and service order accuracy – that it simply has not yet implemented. *Id.* As was the case when it withdrew its previous application last December, BellSouth cannot reasonably be found in compliance with its OSS obligations.

### A. BellSouth's Interfaces Still Fail To Provide Nondiscriminatory Access.

BellSouth still fails to provide interfaces that afford CLECs access to OSS equivalent to that which BellSouth has in its own retail operations. Notwithstanding its claims to the contrary, BellSouth has not shown that it provides parity of access with respect to integration of pre-ordering and ordering functionalities, due date capability, flow-through, service order accuracy, and provisioning accuracy.

#### 1. BellSouth Has Not Shown That It Provides Nondiscriminatory Access To Pre-Ordering Functions.

BellSouth has not established that it provides nondiscriminatory access to pre-ordering functions. First, despite its claimed recent implementation of new "parsing" functionality, BellSouth still does not give CLECs the same ability to fully integrate pre-ordering and ordering functions that BellSouth has in its own retail operations. Second, BellSouth has not shown that it gives equivalent access to due dates, even after implementing "enhancements," allegedly designed to do so, in early February 2002.

***Parsing Functionality.*** BellSouth has not shown that it provides CLECs with the ability to "parse" customer service records ("CSRs") in connection with making local service orders – an ability that is critical to achieving full integration of pre-ordering and ordering functionalities. *See Texas 271 Order* ¶ 153 ("successful parsing is . . . a necessary component of successful integration"). Absent that capability, CLECs must manually re-enter information from a CSR into the local service order – a process that is more time-consuming, prone to error, and costly than would be the case if, as is done in BellSouth's retail operations, CLECs could parse the information and populate it electronically into such orders. Bradbury/Norris Supp. Decl. ¶¶ 13-14.

Although BellSouth has implemented a parsing functionality since the withdrawal of its previous application, the new functionality does not satisfy its obligation to provide CLECs with integration capability that is equivalent to its own. *See* Application at 19-23. Even when the parsing which CLEC had been seeking for years was finally implemented in January 2002, the parsing functionality was not that which the CLEC sought and – by BellSouth's own admission – suffered from numerous defects. Bradbury/Norris Supp. Decl. ¶¶ 15, 21-31. Although BellSouth claims to have recently corrected the majority of these defects, it still has not fixed other significant ones. Far from being "minor" and "low impact" (Application at 21), these defects substantially impede CLECs in their operations, requiring CLECs to utilize cumbersome manual "workarounds" or face the risk of order rejections. *Id.* ¶¶ 21-23.[4]

Even if it were defect-free, BellSouth's parsing functionality would still deny parity, because it is incomplete.[5] Contrary to the specifications that BellSouth agreed to implement in late 2000, BellSouth's parsed CSR functionality still does not enable CLECs to parse numerous fields of information, many of which are critical to the ordering process. *Id.* ¶¶ 27-28. BellSouth's explanation that it failed to parse these fields because they "are not on the CSR to be parsed" or "are not in LSOG format" do not withstand scrutiny, particularly since the data for many of these fields are already in BellSouth's CSR – and other RBOCs already have parsed them for CLECs. *Id.* ¶¶ 28-31.

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[4] BellSouth's claim that the defects in question are "low-impact" is belied by its expedited timetable for correcting them well in advance of the 120-day period permitted by its Change Control Process. Bradbury/Norris Supp. Decl. ¶¶ 22.

[5] The parsed CSR implemented by BellSouth also denies parity because it can only be used by users of its EDI and TAG ordering interfaces, both of which are application-to-application interfaces. CLECs using BellSouth's GUI interfaces for ordering (LENS and RoboTAG™) are still required to populate CSR data manually into the local service request ("LSR"). Bradbury/Norris Supp. Decl. ¶ 32.

Although BellSouth contends that certain third-party testing of the parsed CSR shows that it works "as intended" (Application at 19), the issue here is whether BellSouth provides CLECs with the same parsing capability that it has in its retail operations – and BellSouth has plainly not done so. *See Texas 271 Order* ¶ 152; Application at 19; Bradbury/Norris Supp. Decl. ¶ 33. In any event, the third-party testing on which BellSouth relies provides no support for its position.[6] Two of the "third parties," Birch and Exceleron, did not test the accuracy and completeness of the parsed CSR functionality that BellSouth actually implemented. *Id.* ¶¶ 37-39. The testing by the other third-party, Telcordia, was unreliable not only because of Telcordia's lack of independence, but because of the test's inadequate scope.[7] Telcordia, for example, parsed only 43 of the 88 fields on the parsed CSR, and auto-populated only 13 of those fields (15 percent of the total) into the LSR. *Id.* ¶ 35.[8]

Past experience has cast a long shadow on BellSouth's claims that a new parsing functionality is "commercially available" (Application at 3). These claims cannot be taken at

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[6] Clearly recognizing the inadequacy of its parsing functionality, BellSouth rationalizes that the lack of a parsed CSR "would not have prevented any CLEC from submitting an LSR to BellSouth" and that "little or no[] information from the CSR is needed to complete the LSR." Stacy/Varner/Ainsworth Supp. Decl. ¶¶ 86, 89. BellSouth's arguments are specious. Although the lack of a parsed CSR does not *prevent* CLECs from submitting orders, it denies parity by denying them the same ability to auto-populate data that BellSouth has in its own retail operations. Bradbury/Norris Supp. Decl. ¶ 40. Furthermore, CLECs need parsed CSR information not only to submit LSRs, but to be able to store such information efficiently in their own systems and databases. *Id.* ¶¶ 41-42.

[7] Telcordia, for example, is the vendor of the gateway being used to transport BellSouth's parsed CSR, the supplier of BellSouth's gateway for processing xDSL orders, and an affiliate of the company that BellSouth now promises to make available to "assist" CLECs in integrating pre-ordering and ordering functions. Bradbury/Norris Supp. Decl. ¶ 34.

[8] In fact, Telcordia's own report shows that it was required to *manually* populate some of the CSR information into the LSR, because some fields (such as the LTN field) had not been provided by BellSouth's parsed CSR at the time of the test. Bradbury/Norris Supp. Decl. ¶ 36; Stacy/Varner/Ainsworth Supp. Aff., Exh. SVA-19 at fn. 1 & Att. B.

face value until commercial experience demonstrates that BellSouth's parsing functionality really works. For example, on two occasions in 2001, BellSouth implemented purported "fixes" to its automated due date calculator – which nonetheless continued to provide erroneous due dates. *Id.* ¶¶ 82-83. Similarly, only four months ago BellSouth implemented "Telephone number migration" functionality that it *knew* would result in the rejection of 30 percent of CLEC orders. *Id.* ¶ 71.[9] Even after it fixed that problem, serious problems with "TN migration" have persisted – and BellSouth abandoned any attempt to implement the "TN migration by name" required by the Georgia PSC because it was unable to do so without causing high order rejection rates. *Id.* ¶¶ 72-73.[10] On another occasion, a "fix" implemented by BellSouth to reduce pre-ordering response times caused CLECs to lose access to certain critically important pre-ordering data. *Id.* ¶¶ 152 n.61, 175.

Clearly recognizing the inadequacy of its newly implemented parsing functionality, BellSouth alternatively argues – at length – that it "has 'enabl[ed] carriers to implement a parsing program that allows the seamless transfer of information from pre-ordering to the ordering stage.'" *See* Application at 8-19 (quoting *Texas 271 Order* ¶ 153). The short answer to BellSouth's argument is that it has been rejected by the Georgia PSC, which required

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[9] BellSouth's description of TN migration as a "great success" (Application at 18) is ironic, because BellSouth ignores not only the defects that have existed in that functionality since its implementation, but also the difficulties that CLECs experienced in obtaining that functionality at all. Although AT&T requested such functionality in December 1999, and WorldCom requested similar functionality in August 2000, BellSouth took no action to implement TN migration until it was *ordered* to do so by the Georgia PSC as a condition of the Georgia PSC's approval of its application. Bradbury/Norris Supp. Aff., ¶ 70.

[10] Although BellSouth contends that it has implemented additional functionality to remove one of those problems (erroneous rejection of orders due to a "mismatch" between its RSAG and CSR databases), that functionality was only implemented on February 2, 2002. Thus, it is premature to conclude that even this defect has, in fact, been fixed. *See* Bradbury/Norris Supp. Decl. ¶ 74; Stacy/Varner/Ainsworth Aff. ¶ 48.

BellSouth to provide parsed CSR functionality as a condition of its approval of BellSouth's application. *See* Bradbury/Norris Supp. Decl. ¶ 43.[11] Furthermore, BellSouth acknowledges that "integration" was one of the "concerns" expressed by the Commission Staff that led it to withdraw its prior application. Application at 1, 6.

Even leaving these facts aside, BellSouth has not made the "complicated showing" that a BOC must make in order to establish that it has "enable[d] carriers to implement a parsing program that allows the seamless transfer of information from pre-ordering to the ordering stage." *Texas 271 Order* ¶ 153. BellSouth itself has acknowledged its own difficulty in developing such a functionality – a task that would be far more difficult and burdensome for a CLEC. Bradbury/Norris Supp. Decl. ¶ 46-47. Furthermore, although BellSouth asserts that it provides the CLECs with "all the resources necessary to integrate BellSouth's TAG pre-ordering interface with its TAG and EDI ordering interfaces," it simply recites a list of its OSS documentation, providing no indication of how (if at all) CLECs could acquire the ability to develop a parsing functionality. *See* Application at 8-9; Bradbury/Norris Supp. Decl. ¶ 48.[12] BellSouth's newly-made offer to make "expert consultants" and its internal personnel available

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[11] Contrary to BellSouth's assertions, the GPSC and LPSC did not unequivocally hold that BellSouth had provided CLECs with the tools necessary to achieve full integration of pre-ordering and ordering functionalities. *See* Application at 16-17. Both State commissions conditioned their approval of BellSouth's application on the implementation of a parsed CSR functionality by January 2002. Indeed, the GPSC stated that its finding regarding integratability was an "interim" one pending implementation of the parsing functionality. *See* GPSC Comments filed November 5, 2001, in CC Docket No. 01-277, at 87-88; LPSC Evaluation filed October 23, 2001, in CC Docket No. 01-277, at 33.

[12] BellSouth asserts that no CLEC has previously indicated in this proceeding or other state commission 271 proceedings that it has "seriously attempted integration using BellSouth's supporting documentation but was unsuccessful," or has "seriously argued that CLECs could not integrate from unparsed pre-ordering data." *See* Application at 13-14. BellSouth knows better. AT&T has raised the issue both before the GPSC in arbitration, as well as before State commissions in several other BellSouth states. Bradbury/Norris Supp. Decl. ¶ 58 n.23.

to "CLECs that request assistance in integrating" belies any notion that CLECs can develop parsing functionality independently. Application at 9-10; Bradbury/Norris Decl. ¶¶ 61-62.[13]

BellSouth's reliance on the letters of four CLECs lends no support to its position the CLECs have the resources necessary to develop parsing functionality independently. Application at 10-17. One of the CLECs in question, Exceleron/GoComm, does not even assert that it can parse a CSR, and another (Momentum) indicates that it can only parse *parts* of the CSR. *Id.* ¶¶ 51, 53. Another CLEC, ITC DeltaCom, indicates that it has developed only limited parsing functionality – and could do so only through the assistance of a retired BellSouth employee with 30 years' experience. *Id.* ¶ 52. The remaining CLEC, Access Integrated, simply states that it "is able to parse the CSR" and populate an LSR electronically, without describing the *extent* to which it can do so. *Id.* ¶ 50.[14] In fact, only last December three of the four CLECs

[13]BellSouth announced the existence of its purported "CLEC Assistance Program for Pre-Order/Order Systems Integration" on February 13, 2001 – the very eve of the filing of its Application. *See* Stacy/Varner/Ainsworth Aff., Exh. SVA-65. This program, like the "assistance" from other sources that BellSouth offers, amounts to no more than a promise to perform in the future, which is irrelevant for purposes of determining whether BellSouth currently meets the requirements of the competitive checklist. *Michigan 271 Order* ¶¶ 55, 179.

[14] BellSouth's entire "integration" argument is based on the assumption that if a CLEC is able to perform *some* integration of pre-ordering and ordering functions, the CLEC must be able to parse a CSR in a manner equal to that which exists in BellSouth's processes. That is erroneous. Simply enabling CLECs to achieve *partial* integration, or to be able to parse *some* fields of a CSR, does not constitute the "successful" integration that the Commission requires, because partial integration will still require CLECs to manually transfer pre-ordering data into LSRs – thereby risking order rejections. *See Texas 271 Order* ¶ 152 ("a BOC has enabled 'successful integration' if competing carriers may, or have been able to, automatically populate information supplied by the BOC's pre-ordering systems onto an order form . . . that will not be rejected by the BOC's OSS systems"); Bradbury/Norris Supp. Decl. ¶ 45.

advised the Commission that they could integrate only on a "limited" basis, and one of the CLECs stated that it had an "unacceptable" error rate. *Id.* ¶¶ 51-53.[15]

BellSouth is similarly off the mark in citing the "integration" testing by KPMG. Application at 14-16. KPMG simply received a data dump of artificially created CSRs that it had requested from BellSouth, parsed it to some unknown degree in its proprietary databases, and used data from its own database to populate an LSR. KPMG did not test whether, in the real world, CLECs have the ability to parse the stream of actual CSR data sent by BellSouth through its interfaces and auto-populate that information onto an LSR. Bradbury/Norris Supp. Decl. ¶¶ 54-60. Furthermore, as BellSouth admits, KPMG did not even "attempt to parse every field on the LSR." Application at 16. In its only other test, KPMG simply transferred data *manually* into an LSR. *Id.*; Bradbury/Norris Decl. ¶ 56. KPMG's test is thus starkly different from Telcordia's integration testing in Texas, where Telcordia tested whether the OSS permitted the information to be parsed and electronically populated into the LSR.[16]

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[15] For these reasons, BellSouth's argument that the CLEC letters "provide even more detailed and robust evidence of successful parsing than this Commission had before it in the *Texas Order*" is illogical. *See* Application at 13. In the first place, the *Texas 271 Order* made clear that at least one of the CLECs upon which the Commission relied for its conclusions with respect to integration claimed ten months of experience in integrating pre-ordering and ordering functions. *Texas 271 Order* ¶ 155 n.417. BellSouth has not shown that any of the CLECs that it cites have such experience. *See, e.g.,* Stacy/Varner/Ainsworth Aff., Exhs. SVA-3 and SVA-6 (showing that Access Integrated had, at most, barely two months of commercial experience). Some of the CLECs submit only a relative handful of orders per month. *Id.* ¶ 30; Bradbury/Norris Supp. Decl. ¶¶ 51, 53. Moreover, despite their inability to obtain service address information from the address validation function, the CLECs cited in the *Texas 271 Order* were able to obtain such information from another pre-ordering function (the CSR) and auto-populate it on an LSR. *Texas 271 Order*, ¶ 155. By contrast, much of the information in the CSR cannot be obtained from other pre-ordering functions. Bradbury/Norris Supp. Decl. ¶ 42 n.16.

[16] *See Ex Parte* Letter from Joan Marsh, AT&T, to Magalie Roman Salas, CC Docket No. 1-277 (filed December 10, 2001); *Texas 271 Order* ¶ 158; Stacy/Varner/Ainsworth Aff. ¶ 38

In short, rather than demonstrate compliance with the Commission requirements, the "additional materials" provided by BellSouth on the parsed CSR establish that, in its rush to refile, BellSouth has not provided CLECs with parsing functionality that is equivalent (or even comparable) to that which is available to its retails service representatives. Nor has BellSouth established that it has provided CLECs with the ability to develop such equivalent parsing functionality independently.

***Due Date Functionality.*** BellSouth has not shown that it now provides CLECs with equivalent access to due dates. This is a critical competitive issue because customers expect that – like BellSouth – CLECs will be able not only to provide service promptly but also to tell them, while they are on the line, the date on which their service will be installed. Bradbury/Norris Supp. Decl. ¶¶ 78-79. Recognizing these realities, the Commission held in the *Second Louisiana Order* that BellSouth was not providing access to due dates and stated that it would "closely examine BellSouth's automatic due date calculation capability in any future application." *Louisiana II Order* ¶¶ 104-106.

Despite ample time to fix the problem, BellSouth has still not established that it provides nondiscriminatory access to due dates. As previously indicated, even after implementation of two "fixes" in 2001 BellSouth's due date calculator continued to provide due dates that were erroneous and longer than those requested by the CLEC. Yet, rather than devote its resources to fixing the problem once and for all, BellSouth instead improvised a "workaround" under which BellSouth reviews LSRs four times each day and returns a second

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(acknowledging that "unlike the Telcordia test in the Texas 271 proceeding, KPMG did not automatically populate the order with the parsed field of information in [its] formal test").

FOC on orders that were originally (and erroneously) assigned erroneous due dates. Bradbury/Norris Decl. ¶¶ 82-85.

Typically, BellSouth's Application deals with this problem by attempting to minimize it. BellSouth describes the issue as one involving "double FOCs" (rather than of equivalent automated due date capability) and argues that the issue affects only "a very small – and declining – number of orders." Application at 31. BellSouth's "workaround" does not, and cannot, eliminate the denial of parity caused by its failure to provide equivalent automated capability. Bradbury/Norris Supp. Decl. ¶ 86.[17] Indeed, because of the shortcomings of the "workaround," AT&T has been required to utilize a different Line Level Activity Code on its UNE-P orders and prepare the orders (which would otherwise have been treated as "migrations-as-is, with changes") as "migrations as specified" – a procedure that avoids erroneous due dates but is costly and time-consuming. *Id.* ¶¶ 87-89.

BellSouth's insistence that "double FOCs" occur only in "some very small number of cases" is unproven. Application at 31. The data that BellSouth offers in support of its assertion are inherently unreliable, particularly since the volumes of UNE-P orders that it describes are significantly *higher* for some months than the total volume of UNE orders – when precisely the opposite should be true. Bradbury/Norris Supp. Decl. ¶ 90. Moreover, the percentages of "double-FOC'd orders" described by BellSouth are understated, because they do not take into account those orders for which AT&T (and possibly other CLECs) have used

[17]For example, although BellSouth suggests that its "workaround" will ensure that non-dispatch orders will receive same-day due dates, in reality a number of orders will be assigned the next day as the due date, because BellSouth reviews the orders only at certain times of the day. Bradbury/Norris Supp. Decl. ¶ 86.

alternative methods to avoid BellSouth's "workaround," and orders that BellSouth's HITTOPS program has failed to capture at all. *Id.* ¶ 91.

BellSouth asserts that it recently "implemented software enhancements that are designed to correct all known system defects in the due-date calculator." Application at 32-33. However, there is no basis for concluding that these "enhancements" have corrected the calculator's previous inability to provide equivalent access to due dates. BellSouth implemented these "enhancements" only three weeks ago. *Id.* ¶ 92. Given the failures of its two previous attempts to fix the problem, there is no basis for believing – until proven by substantial commercial usage over time or through comprehensive independent third party testing – that this third "fix" is any more effective. *Id.* ¶¶ 89, 92.

### 2. BellSouth Continues To Place Excessive Reliance on Manual Processing.

BellSouth has still not corrected the problems in its OSS that deny CLECs nondiscriminatory access to ordering and provisioning functions. Most notably, BellSouth continues its excessive reliance on manual processing that is the product of its own making. In December 2001, for example, 21 percent of all electronically-submitted LSRs fell out for manual processing either because of design decisions by BellSouth or BellSouth system errors. Bradbury/Norris Decl. ¶ 102.[18] Notwithstanding BellSouth's claims of "improvement" in its flow-through rates, the rate of BellSouth-caused manual fall-out showed *no* improvement during

[18]When the additional 6 percent of CLEC orders that cannot be submitted electronically *at all* (due to BellSouth's system design) are taken into account, a total of 27 percent of all CLEC orders are manually processed for reasons attributable to BellSouth. Bradbury/Norris Supp. Decl. ¶¶ 8, 102.

2001. *Id.* Even the flow-through rates that BellSouth selectively cites showed no, or little, improvement during the year. *See id.* ¶¶ 98-102; Application at 25.

Because BellSouth's retail operations enjoy a flow-through capability of nearly 100 percent, the high rate of manual processing of CLEC orders plainly denies CLECs parity and a meaningful opportunity to compete. *Id.* ¶¶ 95-96. First, because BellSouth continues to take 18 hours, on average, to return FOCs and rejection notices on electronically-submitted orders that fall out for manual processing ("partially mechanized orders"), CLECs are denied access to the real-time status that they need to compete effectively. Second, because due dates are not confirmed until a FOC is issued, the late return of FOCs on partially mechanized orders will result in later due dates for CLECs' customers than for BellSouth's retail customers. *Id.* ¶ 97. Third, orders that fall out for manual processing face the risk of input errors (and delays) during manual processing – and a corresponding risk of errors or delays in the provisioning of the order (problems that a customer will blame on the CLEC). *Id.* Fourth, manual processing results in an increase in CLECs' costs, denying them the benefits of their investments in electronic systems. *Id.*

The high rate of manual processing imposes an enormous burden on BellSouth's Local Carrier Service Center ("LCSC"), which must manually process such orders. In December 2001 alone, the LCSC was required to manually process more than 133,000 CLEC LSRs *Id.* ¶ 103.[19] These volumes are only likely to increase exponentially as CLECs ramp up for mass-market entry in the future, particularly since the percentage of all LSRs that are fully mechanized

[19]Electronically-submitted orders accounted for 69 percent of the total manual fall-out in December – and 84 percent of these electronically-submitted orders fell out for manual processing due to BellSouth system design or system error. *See* Bradbury/Norris Supp. Aff., ¶ 103.

has remained relatively constant (55 to 57 percent) for the last two years. *Id.* ¶¶ 104-105. In fact, within the last few months BellSouth has stated not only that it expects little improvement in manual fall-out by design in the foreseeable future, but also that CLECs can expect even greater volumes of manual fall-out in the future. *Id.* ¶ 104. As a result of the LCSC's greater workload, time intervals for the return of status notices on partially mechanized orders will grow longer, LCSC representatives will make more errors in re-keying such orders, provisioning errors will occur more frequently, and CLECs and their customers will incur greater costs in responding to these problems. *Id.* ¶ 105.

BellSouth cannot explain away these problems by citing the flow-through rates of other RBOCs. Application at 25. For purposes of determining whether BellSouth is providing nondiscriminatory access to its OSS, the only proper comparison here is between the flow-through rate for electronically-submitted CLEC orders and those for BellSouth's retail operations. Given the near-100 percent rate of the latter, the denial of parity is clear. *Id.* ¶ 106. Moreover, given the substantially different methodologies that Verizon and SBC use to calculate their flow-through rates, BellSouth's attempt to compare itself favorably with those RBOCs is not an "apples-to-apples" approach (Application at 25), but a useless apples-to-oranges comparison. Bradbury/Norris Supp. Aff. ¶¶ 107-108.[20]

[20] In its third-party testing in Florida, KPMG continues to find a host of problems resulting from BellSouth's excessive reliance on manual processing, including BellSouth's failure to return timely and complete FOCs on partially mechanized orders and to return "flow-through FOCs" on orders that BellSouth had designed to flow through. Bradbury/Norris Reply Decl. ¶¶ 112-118.

### 3. BellSouth's Poor Rates of Service Order Accuracy and Provisioning Accuracy Continue To Deny Parity of Access.

Accurate re-entry of manually processed orders by BellSouth is critical to a CLEC's ability to compete. Errors in manual entry can cause delays and errors in the provisioning of the LSR, resulting in customer dissatisfaction. *Id.* ¶ 119.

Although it acknowledges that service order accuracy was one of the concerns of the Commission Staff regarding its prior application, BellSouth asserts that its service order accuracy performance has "continued to improve" as a result of its "significant commitment to service order accuracy." Application at 1, 4, 25. BellSouth's evidence, however, does not bear out its assertion. BellSouth bases its claim of "improvement" on November and December 2001 rates that cannot be considered reliable, since they were calculated using a new methodology that BellSouth unilaterally adopted. Bradbury/Norris Supp. Decl. ¶ 122. Indeed, BellSouth's adoption of a new methodology precludes any claim of "improvement," given BellSouth's failure to produce data showing what its rates would have been for months *prior* to November 2001 under the new methodology. *Id.* ¶ 123. Furthermore, BellSouth's description of its newly-adopted methodology is so vague that no weight can be given to the new data. *See* Bursh/Norris Supp. Decl. ¶¶ 105-117; Bell Supp. Decl. ¶¶ 3-8.

The unreliability of BellSouth's November and December data on service order accuracy stands in stark contrast to both testing and real-world experience. BellSouth failed KPMG's test on service order accuracy in the third-party testing conducted by KPMG in Georgia. Bradbury/Norris Supp. Decl. ¶ 124. In the commercial environment, BellSouth frequently commits errors on AT&T's UNE-P orders. *See* Seigler Supp. Decl. ¶ 9-16; Bradbury/Norris Supp. Decl. ¶ 124.

BellSouth's errors on service orders have resulted in an unacceptably low rate of provisioning accuracy. Even after two rounds of retesting, KPMG recently found that almost 25 percent of CLEC orders were being provisioned inaccurately. Bradbury/Norris Supp. Decl. ¶¶ 133-34. The results of KPMG's test confirm those of its testing in Georgia, where its tester pronounced itself "Not Satisfied" with BellSouth's provisioning accuracy and found that this problem "could potentially have a material adverse impact on a CLEC's ability to compete effectively."[21] BellSouth's poor rates of provisioning accuracy result in increased costs and customer dissatisfaction that preclude CLECs from competing effectively in the local exchange market. *Id.* ¶¶ 97, 133-34.

### B. BellSouth's Change Control Process Remains Insufficient To Give CLECs a Meaningful Opportunity To Compete.

The Commission has repeatedly recognized the critical importance of an effective change management process not only to viable local competition, but also to the issue of checklist compliance. In its recent *RI 271 Order*, for example, the Commission stated:

> Without a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes. Change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence a BOC's compliance with section 271(2)(B)(ii).[22]

Thus, in determining whether a BOC has given CLECs a meaningful opportunity to compete, the Commission will give "substantial consideration to the existence of an adequate change

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[21] *See* Bradbury/Norris Supp. Decl. ¶¶ 133-136; AT&T Comments, Declaration of Sharon E. Norris, CC Docket No. 01-277, ¶ 32 (October 19, 2001).

management process and evidence that the BOC has adhered to the process over time." *RI 271 Order*, App. D ¶ 40; *Texas 271 Order* ¶ 106; *New York 271 Order* ¶ 102.

BellSouth asserts that, in response to concerns expressed by the Commission's Staff, it has now taken "extensive steps" to ensure that its change control process is "an effective mechanism for CLECs to request improvements in BellSouth's OSS." Application at 27. Certainly some of the steps that BellSouth has taken – changes that BellSouth, ironically, previously refused to implement despite repeated requests from CLECs – are welcome additions to the CCP. However, some of the "modifications" described by BellSouth – such as its offer to allocate specific percentages of release capacity to CLECs and its scheduled inclusion of the LENS interface in its "CAVE" testing environment – because they are recent and have not yet been implemented can only be regarded at this stage as promises of future performance, to which no weight can be given. *Michigan 271 Order* ¶¶ 55, 179.

Most fundamentally, the modifications that BellSouth describes in its Application – even if fully implemented – do not, and will not, change the defects in the CCP that deny CLECs a meaningful opportunity to compete. Those changes do not alter: (1) BellSouth's "veto power" over all proposed changes to its OSS and its power to determine what change requests will be implemented, what the final prioritization of change requests will be, and when the requests will actually be implemented; (2) the inadequate testing environment that BellSouth provides; and (3) BellSouth's proven record of disregarding the change control process to which it now professes to be committed. Bradbury/Norris Supp. Decl. ¶¶ 142-43. Moreover, the

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[22] *RI 271 Order*, App. D ¶ 41. *See also, e.g., Pennsylvania 271 Order*, App. C ¶ 41; *Texas 271 Order* ¶ 107; *New York 271 Order* ¶ 103.

proposed changes will do little, if anything, to reduce the backlog of 126 CLEC change requests that are stuck in the process.

Indeed, BellSouth's failure to improve the change control process in any significant respect (even taking into account the modifications that it has implemented, or promises to implement) is reflected by the large backlog of change requests. Currently, a backlog of more than 125 change requests exists -- 93 change requests for features and 33 defect change requests. Almost half of the pending feature change requests have not yet been prioritized; some of them have languished since 2000 without even being scheduled for review and prioritization. *Id.* ¶ 145. Approximately one-third of the pending feature change requests, although prioritized, have not been scheduled for implementation in a release – even though more than half of them were submitted in 1999 or 2000. *Id.*. BellSouth has actually scheduled only 15 feature change requests for implementation, and all but one of those requests were submitted 18 to 32 months before the scheduled implementation date. *Id.*[23] The delays in the implementation of the pending change requests increase costs to CLECs and their customers, and impede the CLECs' ability to serve customers effectively. *Id.* ¶¶ 149-150.

Given the current backlog, it is hardly surprising that BellSouth has implemented only a limited number of change requests. According to the data in BellSouth's reply comments last November, BellSouth had implemented a total of only 32 CLEC-initiated change requests (within the preceding three years) and 33 BellSouth-initiated change requests (within the last two

[23]BellSouth's backlog of defect change requests is further evidence of its control of the implementation of change requests. Even though BellSouth has a maximum of 120 days under the CCP to implement such requests (and only if BellSouth classifies such a request as "low impact"), many of the pending defect change requests were submitted more than six months ago, including four requests submitted in (or before) September 2000. Bradbury/Norris Supp. Decl. ¶ 147.

years). Bradbury/Norris Supp. Decl. ¶ 148. Moreover, BellSouth's data confirmed the lengthy times that transpire from submission of a change request to its actual implementation – an *average* of 164 days for a CLEC request, as opposed to 60 days for a BellSouth-initiated request. *Id.* ¶ 151.[24]

None of the various modifications or proposals made by BellSouth alters its exclusionary control over the process that has caused these problems. *Id.* ¶¶ 153-166. For example, BellSouth's proposal to "devote 40% of CCP capacity to CLEC requests and CLEC-driven regulatory mandates" (Application at 30) is meaningless, because BellSouth alone would determine what change requests would be included in the 40 percent allocation. *Id.* ¶ 156. Moreover, BellSouth's "40% Solution" appears to be proposing only the *same* allocation to CLEC requests that BellSouth claims to have *already* made in the past. *Id.* Even if the 40 percent allocation would otherwise represent an improvement over BellSouth's prior treatment of CLEC requests, BellSouth has offered no basis for believing that a 40 percent allocation devoted to "CLEC requests" would be sufficient to meet the needs of CLECs.[25] As KPMG has determined in its third-party testing in Florida, BellSouth's rigid allocation formula could serve to limit – not expand – the implementation of necessary changes to the OSS. *Id.* ¶ 157.[26]

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[24] BellSouth's data are, if anything, understated. For example, some of the change requests that were implemented as part of BellSouth's releases in January and February 2002 were submitted as long ago as 1999. Bradbury/Norris Supp. Decl. ¶ 152. And BellSouth's attempt to attribute to "preparation time" the glaring 104-day difference in implementation times between CLEC requests and BellSouth requests is illogical. *Id.* ¶ 151 n.160.

[25] For example, CLECs may decide to assign a higher priority to particular change requests submitted by BellSouth (Type 4) than to their own change requests. Bradbury/Norris Supp. Decl. ¶ 157.

[26] BellSouth's suggestion that CLECs decided to raise the issue of the 40 percent allocation issue in the context of the GPSC's review of the CCP process, rather than continue discussions with BellSouth, is false. *See* Application at 30; Stacy/Varner/Ainsworth Aff. ¶¶ 130, 132-133. As

BellSouth's more recent allocation proposal is equally inadequate. *See* Application at 30. Under that proposal, CLEC change requests would be allocated "at least 50%" of the capacity remaining *after* allocation of capacity to (1) regulatory changes (Type 2), (2) industry standard changes (Type 3), and (3) defect changes (Type 6). Under this proposal, BellSouth alone would determine which CLEC change requests fell within the 50 percent allocation. *Id.* ¶ 160. Furthermore, like the "40% Solution," the new "50/50 Solution" would be based on an allocation formula, rather than on consideration of both CLEC-initiated and BellSouth-initiated change requests together. *Id.* The "50/50 Solution" could also leave CLECs in a *worse* position than would have been the case under the "40% Solution," because the actual amount of capacity allocated to CLECs under the "50/50 Solution" could be far lower than 40 percent. *Id.* ¶ 161. Indeed, that is precisely the case under BellSouth's current 2002 Release Schedule – which, on the basis of the number and types of change requests to be implemented, calls for only *13 percent* of total release capacity to be allocated to CLEC requests. *Id.*[27]

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BellSouth was well aware at the time, CLECs filed comments on the CCP (including a discussion of the proposed 40 percent allocation) on January 30, 2002, pursuant to the request of the Georgia PSC Staff. Moreover, shortly before the CLECs filed their comments with the GPSC, BellSouth rejected AT&T's request that the agenda of CCP meetings be expanded to include discussions of the CLECs' proposed changes to the CCP (including their counterproposal to BellSouth's "40% Solution") in parallel with (but apart from) the GPSC's proceedings. Instead, on the eve of the February 12, 2002, CCP meeting, BellSouth simply altered the agenda of the meeting to include its "50/50" allocation proposal. *See* Bradbury/Norris Supp. Aff. ¶¶ 158-159.

[27] Based on the number and types of change requests listed in BellSouth's 2002 Release Schedule, 60 percent of the release capacity for 2002 would be allocated to defect change requests, and 15 percent of the capacity to regulatory and industry standard change requests. Under BellSouth's "50/50 Solution," CLECs would therefore receive as little as 12.5 percent, and no more than 25 percent, of total release capacity. In fact, the 2002 Release Schedule assigns only *13 percent* of release capacity (approximately 50 percent of the capacity remaining after slotting the Type 2, 3, and 6 requests) to CLEC requests. Bradbury/Norris Supp. Decl. ¶ 161 & n.68.

BellSouth cannot salvage its "50/50 Solution" with its commitment to implement "as many of the CLEC top priority Types 4 and 5 features *as possible* in that remaining capacity in 60 weeks." Stacy/Varner/Ainsworth Aff. ¶ 133 (emphasis added). Although that commitment is a step in the right direction towards the CLECs' previous proposal for an unqualified 60-week deadline for implementation, BellSouth's inclusion of the phrase "as possible" renders its commitment meaningless. Such language would enable BellSouth alone to determine, from its standpoint, whether implementation of change requests within a particular time period was "possible." Because that is precisely the power that BellSouth has had (and has abused) in the past, its proposal is no change at all. Bradbury/Norris Supp. Decl. ¶¶ 162-63. Like the "40% Solution," the "50/50 Solution" would leave BellSouth free to make the final decisions regarding prioritization, scheduling, and implementation of change requests through its internal processes – from which CLECs have been, and are, entirely excluded. *Id.* ¶ 164. [28]

BellSouth's commitment to implement the "top 15 CLEC requests" in 2002, if kept, would certainly be welcomed by CLECs in view of its abysmal record of implementation in the past. *See* Application at 29-30. BellSouth's commitment, however, simply illustrates its exclusive power to decide what requests will be implemented, and when.[29] Furthermore,

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[28] In its Florida OSS testing, KPMG continues to express concern regarding the exclusionary nature of BellSouth's internal prioritization process. Bradbury/Norris Supp. Decl. ¶ 164. BellSouth, however, recently reiterated its refusal to allow any CLEC participation in that process, stating that it "still needs to conduct internal meetings to run its business without CLEC participation." *Id.* ¶ 165. BellSouth's statement underscores the underlying defect in the CCP: BellSouth treats decisions regarding prioritization and implementation of change requests as "its business," rather than as a matter that substantially affects the CLECs as well.

[29] *Compare, e.g., Texas 271 Order* ¶ 112 (noting that SWBT has implemented a "go/no go" vote, "whereby competing carriers can decide whether or not to implement a new release"). *See also* Bradbury/Norris Decl. ¶ 194 (describing various revisions that must be made in the CCP before it can meet its OSS obligations under the Act).

BellSouth's commitment does not address the issues of what additional CLEC-prioritized requests will be implemented (or when) during 2002, or thereafter. *Id.* ¶ 166.

BellSouth's modifications also do not alter the inadequate scope of the CCP. As in the past, the modifications would limit the CCP to interfaces – and not, for example, to BellSouth's front-end and legacy systems, where many changes affecting CLECs are made. *Id.* ¶ 167. Nor has BellSouth altered its previous position that changes in its billing systems are outside the scope of the CCP, or its limitation on the number of releases implementing change requests each year. *Id.* ¶¶ 168-169.

### C. BellSouth's Test Environment Remains Inadequate.

The Commission has expressly held that "[a]s part of a sufficient change management process, a BOC must provide competing carriers with access to a stable testing environment to certify that their OSS will be capable of interacting smoothly and effectively with the BOC's OSS," including a test environment "that mirrors the production environment in order for new carriers to test the new release." *Texas 271 Order* ¶ 132. Absent such an environment, CLECs might be "unable to process orders accurately and provision new customer services without delays," and might find that orders submitted successfully in the testing environment fail in actual production. *Id.; New York 271 Order* ¶ 109.

BellSouth's promised modifications to the CCP do little to cure the fundamental deficiencies in the testing environment. BellSouth promises to remove two of those deficiencies – its previous time limitation on the use of the "CAVE" testing environment for new releases, and its exclusion of the LENS interface from CAVE. Bradbury/Norris Supp. Decl. ¶ 172. However, even these modifications would remove none of the deficiencies in its testing

environment (whether in CAVE or in its "original" testing environment) that preclude it from mirroring the production environment. *Id.* ¶¶ 171-72. Moreover, BellSouth arbitrarily continues to exclude the RoboTAG™ interface from CAVE, thus forcing CLECs using that interface to perform live testing on their customers' orders to find programming errors by BellSouth associated with the new releases. *Id.* ¶ 170-71.

### D. BellSouth Has Consistently Refused To Comply With the Change Control Process.

One of the factors in the Commission's analysis of a BOC's change management process is "whether the BOC has demonstrated a pattern of compliance with" that process. *See RI 271 Order*, App. D ¶ 42; *Pennsylvania 271 Order*, App. C, ¶ 42. BellSouth's Application, however, does not even purport to address this issue. *See* Application at 27-31. The reason for BellSouth's silence is simple: BellSouth has consistently disregarded both the letter and spirit of the change management process. Bradbury/Norris Supp. Decl. ¶¶ 179-193.

On numerous occasions, for example, BellSouth has failed to comply with the time intervals required for the dissemination of OSS documentation. In some cases, BellSouth has provided the documentation one to three *months* late. *Id.* ¶¶ 181-184. In an exception that it issued in the third-party OSS test in Florida just two weeks ago, KPMG found that BellSouth's has failed to follow these intervals on five recent occasions, thereby "delay[ing] CLECs' development, testing, and implementation of release features" and rendering them "unable to benefit from enhancements and corrections to the BellSouth OSS in a timely manner." *Id.* ¶ 185. Similarly, BellSouth recently failed to publish the "workarounds" for the defects that it has acknowledged in its parsed CSR within the time periods required by the CCP. *Id.* ¶ 187. Indeed, BellSouth abused the CCP last month by reclassifying two change requests *twice* after

submitting them – including one patently improper reclassification of the requests as *CLEC* change requests. BellSouth compounded its abuse by requesting CLECs to ballot on the proposed changes for the obvious (and improper) purpose of avoiding further obligations to the CLECs and to regulators.[30]

BellSouth's disregard for the CCP is confirmed by KPMG's testing in Florida. As indicated by the above-described exception that KPMG recently issued regarding BellSouth's disregard of the CCP's time intervals, KPMG continues to issue exceptions finding BellSouth to be in violation of its own CCP. In fact, one KPMG observation issued last October remains open, even after KPMG recently conducted retesting. *Id.* ¶¶ 192-193.

Obviously recognizing the inadequacy of its change control process even after its recent modifications, and its record of noncompliance with the CCP, BellSouth urges the Commission to "confidently rely on the state commissions to ensure that BellSouth continues to provide CLECs with meaningful assistance through the CCP process." Application at 31. BellSouth's request should be emphatically rejected. As previously indicated, the Commission has repeatedly held that the adequacy of a change management process, including the actual extent to which the BOC has complied with that process, is a significant factor in determining whether the BOC is *currently* in compliance with Section 271. Rather than abdicate its responsibilities under Section 271 – as BellSouth clearly invites the Commission to do – the

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[30] *See* Bradbury/Norris Supp. Decl. ¶¶ 188-191. BellSouth's change requests involved implementation of some of the fields for the parsed CSR that BellSouth had initially agreed to implement, but later refused to include in its parsing functionality implemented last January. *Id.* ¶ 27-31, 188. BellSouth's request for "balloting" on the implementation of the additional fields was clearly intended to escape its full commitment to the CLECs (and its obligations to the Florida and Georgia PSCs), since any unqualified acquiescence in the balloting procedure by CLECs could later be cited by BellSouth as a concession that it had no such obligations. *Id.* ¶ 191.

Commission should insist that BellSouth develop, and demonstrate a record of compliance with, an effective CCP before any application for Section 271 authority can be granted.

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The failure of BellSouth to meet its OSS obligations is confirmed by KPMG's testing of the OSS in Florida. That test continues to find serious deficiencies in numerous areas of the OSS – and dozens of previously-issued exceptions and observations remain open. *See* Bradbury/Norris Supp Decl. ¶ 200.[31] The FPSC's current schedule was recently revised to provide for publication of KPMG's final report on the test by June 21, 2002. *Id.* If, as BellSouth has repeatedly asserted, its OSS are indeed region-wide, the most comprehensive body of evidence regarding the current performance of the OSS clearly comes from the Florida test. As described above, that test removes any doubt that BellSouth's OSS remain harshly discriminatory.

## II. BELLSOUTH'S PERFORMANCE DATA DO NOT DEMONSTRATE THAT IT HAS SATISFIED ITS SECTION 271 OBLIGATIONS.

When BellSouth withdrew its application for Section 271 approval in December, it was clear that the performance data in its application were neither reliable nor accurate. The record showed that BellSouth's performance results could not properly be relied upon to show that BellSouth had somehow satisfied its statutory obligations due to serious problems that plagued BellSouth's performance monitoring and reporting processes. Bursh/Norris Supp. Decl.

[31] The adequacy of the capacity of BellSouth's OSS to handle reasonably foreseeable volumes has also not been demonstrated in KPMG's Florida test. BellSouth's electronic processes only recently "passed" the "normal volume" test conducted by KPMG, but failed KPMG's "peak volume" testing. KPMG has not even completed "normal volume" testing of BellSouth's manual processes, and has not commenced stress testing of either process. Bradbury/Norris Decl. ¶¶ 201-202.

¶ 5. Indeed on the very day that BellSouth withdrew its application, Chairman Powell stated that, "despite extensive conversation and collaboration with the FCC, questions remain regarding whether BellSouth has satisfied the rigorous requirements of the statute," including questions regarding the integrity of its data.[32]

In its latest application, BellSouth asserts that any previously-stated concerns regarding the integrity of its data should now be put to rest, and that its data show that it has provided nondiscriminatory access to its OSS. In attempting to embellish these arguments, BellSouth asserts that: (1) the dearth of any recent corrections to and repostings of its performance results illustrates the stability of its reporting processes; (2) KPMG's audits conducted to date convincingly prove that its data are reliable and accurate; (3) the CLECs' failure to use established procedures to challenge the integrity of BellSouth's data highlights the lack of merit of their claims; (4) BellSouth has adequately addressed all data integrity concerns raised by the CLECs in their comments; (5) all issues regarding the reliability of the performance measures on which BellSouth relies should be addressed in state proceedings; and (6) BellSouth's reported results show that it has satisfied its statutory obligations. BellSouth's arguments are demonstrably unsound.

### A. The Lack of Repostings Does Not Demonstrate Stability of Performance.

In their opening comments on BellSouth's original application, AT&T, the DOJ and other commenters explained that the frequency and magnitude of BellSouth's data corrections and repostings precluded any presumption that its performance data are accurate. DOJ Eval. at 34; Bursh/Norris Decl. ¶¶ 90- 91. In its Supplemental Application, BellSouth

[32] Statement of Chairman Powell on withdrawal of BellSouth 271 Application, released December 20, 2001.

asserts that "the issue that originally raised the Staff's concern about BellSouth's performance metrics has dissipated." Application at 33. In attempting to bolster this allegation, BellSouth contends that the stability of its data is demonstrated by the fact that it has not restated "a single metric since August 2001." *Id.* BellSouth's analysis cannot withstand scrutiny.

Although BellSouth correctly states that it did not repost data during the discrete period from September through December 2001, no solace can or should be taken that the substantial problems that plagued its performance monitoring and reporting systems suddenly "dissipated" during that time. By BellSouth's own admission, in November, it inappropriately included the same Service Order Number multiple times in its data on the Average Completion Notice Interval measure. *Id.* Similarly, BellSouth concedes that, prior to December 2001, it failed to exclude pending and cancelled orders from its calculation of performance results for coordinated customer conversions. Varner Supp. Aff. Supp. Ex. PM-14 at 2. And BellSouth's application reveals that its performance results generated from September through December contain other errors – errors that presumably should have spawned data repostings. Bursh/Norris Decl. ¶¶ 17-21. Indeed, BellSouth's failure to repost its data would appear to contradict its representation that, whenever "BellSouth determines that data are incorrect, BellSouth promptly corrects the data on its website, provides CLECs with notice that corrected data is available, and reposts the data with the appropriate regulatory bodies." Varner Reply Aff. ¶ 17.

More fundamentally, BellSouth's assertion that it "has not restated a single metric since August 2001" is flatly wrong. Application at 33. On January 31, 2002 — just two weeks before filing its supplemental application — BellSouth reposted its LNP and non-LNP December 2001 flow-through report. Bursh/Norris Supp. Decl. ¶ 16. True to form, even BellSouth's restated flow-through report contains errors that AT&T has brought to BellSouth's attention. *Id.*

This most recent restatement of its performance results, coupled with the seemingly unending stream of repostings described in AT&T's opening comments, further underscores the paucity of BellSouth's claims regarding the purported stability of its reporting processes. *Id.*

Tellingly, BellSouth's recent disclosures regarding its data production systems illustrate the frivolity of any assumption that BellSouth's systems are sufficiently mature, reliable and stable. On January 29, 2002, AT&T advised BellSouth that its November 2001 provisioning trouble report data contained incorrect order volumes. *Id.* ¶ 22. Astonishingly, not only did BellSouth concede that its data are erroneous, but BellSouth also admitted that it could not provide a corrected report because it mistakenly "*deleted*" the underlying records from its database. *Id.* The deleted, unrecoverable records involved thousands of AT&T's LSRs. Against this backdrop, BellSouth cannot seriously contend that its performance data are stable, and that its quality assurance teams and production processes assure "that valid records are not being lost," when its performance data are error-ridden, its restated reports are inaccurate, and its touted data production systems delete massive volumes of data, rendering it impossible to restate performance results. Varner Supp. Aff. ¶ 10.

### B. The KPMG Tests Do Not Demonstrate the Accuracy of BellSouth's Data.

Equally infirm is BellSouth's assertion that KPMG's audits in Georgia confirm that its data are accurate and reliable. BellSouth cannot appropriately rely on the three metrics tests in Georgia as evidence that its data are accurate. Notwithstanding BellSouth's suggestions to the contrary, the three audits are not "cumulative." DOJ Eval. at 32 n.104.

KPMG's third party test which includes Audit I "was limited in scope," and "a number of performance-related criteria were deemed satisfied even where performance did not

meet Georgia PSC standards." DOJ Eval. at 5 and n.14. Both Audits I and II, to the extent completed, also involved aged data and an examination of metrics, business rules and levels of disaggregation that have changed dramatically since those audits were conducted. Significantly, when it has otherwise suited its purposes, BellSouth has argued strenuously that audits based on aged data and performance standards that have undergone substantial revision are of no probative value in assessing its current performance. Varner Reply Aff. ¶ 10. KPMG also has stated that "[a]s the test results age, KPMG Consulting's confidence that the results represent current operations decreases."[33] For these reasons, Audits I and II cannot properly be relied upon as incontrovertible proof that BellSouth's data are trustworthy. Moreover, even KPMG's flawed and limited Audit I has open exceptions that raise significant issues regarding the integrity and reliability of BellSouth's data. Bursh/Norris Decl. ¶ 29.

Importantly, Audit III, in which KPMG is reauditing 39 measures that were examined in Audits I and II (because of the revisions in the metrics) and 21 new metrics, is far from complete. *Id.* ¶¶ 33, 39. Only 10% of the data integrity and 52% of the metrics replication tests have been completed. Both test segments are absolutely critical in assessing the accuracy, integrity and reliability of BellSouth's performance data. Indeed, most of the so-called "key measures" that BellSouth references in its latest application have not been tested in either test segment. Significantly, even the limited testing that has been completed to date in Audit III has revealed substantial problems regarding the reliability of BellSouth's data. *Id.* ¶¶ 68-70.

Similarly, the ongoing metrics testing in Florida further confirms the unreliability of BellSouth's data. Numerous observations and exceptions have been issued during the metrics

[33] Letter from David B. Wirching III to Lisa Harvey dated October 23, 2001 at 2.

test, and it remains unclear when the Florida metrics test will be completed. *Id.* ¶ 51. Because of difficulties in analyzing data transmitted from BARNEY, a major component of BellSouth's PMAP system, coupled with BellSouth's decision to replace BARNEY, KPMG has decided to extend the metrics testing period in Florida. *Id.* ¶ 63. Because BellSouth's systems used to collect performance measurement data are regionwide, presumably these developments could impact and delay the completion of the Georgia metrics test.

For all of these reasons, it is patently absurd for BellSouth to assert that the KPMG audits conducted to date convincingly prove that its data is accurate and reliable. The Georgia and Florida metrics audits are incomplete, and even the testing which has been conducted to date belie BellSouth's claims regarding the reliability of its data. *Id.* ¶ 51-63.

### C. BellSouth Has Not Resolved AT&T's Data Integrity Concerns.

BellSouth asserts that, "[t]he fact that CLECs have never raised concerns with the state commissions in the appropriate manner bolsters BellSouth's showing that there is no substantial claim that its performance metrics are unreliable." Application at 37. BellSouth also claims it has adequately addressed, resolved, or rebutted all data integrity issues raised by AT&T and other commenters during the pendency of its application. BellSouth's allegations are highly misleading.

When reduced to its simplest terms, BellSouth's argument is that the CLECs' claims regarding data integrity are frivolous because they have not seen fit to file a formal complaint against BellSouth in state proceedings. This argument simply elevates form over substance. As the DOJ correctly observed, AT&T and other "CLECs repeatedly raised issues about the metrics' accuracy with BellSouth, with KPMG during OSS and metrics test and with

representatives of the Georgia and Louisiana PSCs." DOJ Eval. at 40 n. 108. Likewise, CLECs raised numerous data integrity issues at workshops conducted by the GPSC in late 2001. Most recently WorldCom filed a petition, supported by AT&T, requesting hearings to address the inherent deficiencies in BellSouth's data. Not surprisingly, BellSouth has resisted these efforts. Bursh/Norris Supp. Decl. ¶ 73.

Furthermore, although BellSouth claims that it has addressed or successfully refuted all issues that have been raised by the commenters regarding the reliability of BellSouth's data, BellSouth is mistaken. BellSouth has yet to proffer legitimate explanations that would somehow justify the discrepancies in its common sets of data, inappropriate exclusion of data from its performance results, improper implementation of and unilateral modifications to performance standards, and refusal to provide the raw data that CLECs need in order to verify BellSouth's performance results. Bursh/Norris Supp. Decl. ¶¶ 74-94.

### D. BellSouth's Performance Measures are Inadequate.

BellSouth bears the burden of establishing that it is providing the services and facilities that CLECs require in a nondiscriminatory manner. *Michigan 271 Order* ¶¶ 43, 158; *South Carolina 271 Order* ¶ 37. As this Commission has recognized, "proper performance measures with which to compare BOC retail and wholesale performance, and to measure exclusively wholesale performance, are a necessary prerequisite to demonstrating compliance with the Commission's 'nondiscrimination' and 'meaningful opportunity to compete standards.'" *Michigan 271 Order* ¶ 204. In addition, appropriate performance measures and accurate performance data are absolutely critical to the effectiveness of any performance remedy plan. Indeed, the Commission has recognized that because a performance enforcement plan "rests

entirely on [the BOC's] performance as captured by the measurements, the credibility of the performance data should be above suspicion." *Texas 271 Order* ¶ 429.

The performance measures submitted by BellSouth with its application do not meet these requirements because they fail to capture accurate performance results, and, in many instances, are strongly biased in favor of BellSouth. The defective measures on which BellSouth relies include its measures on hot cuts, flow through, order completion interval, trunk blocking, missed appointments, and FOC and reject timeliness. Bursh/Norris Supp. Decl. ¶¶ 93-102.

In its supplemental application, BellSouth asserts that any issues regarding the infirmities in its measurements are being dealt with in state workshops and should not be addressed in this proceeding. BellSouth is wrong. Although the workshops are a step in the right direction, they do not and cannot absolve BellSouth of its burden of demonstrating that the performance measurements on which it relies are reliable and generate accurate results. BellSouth has not made and cannot make this fundamental showing.

### E. BellSouth's Own Data Show It Is Not Meeting Its Statutory Obligations.

Significantly, even BellSouth's own highly selective, incomplete, and otherwise inadequate data show that it has not satisfied its statutory obligations. With respect to a number of measures for which data are provided, its performance for CLECs was substantially worse than its performance for its own retail operations. As to other measures, BellSouth has failed to meet the benchmark standards.

Thus for example, BellSouth has experienced chronic failures in the area of service order accuracy. Bursh/Norris Decl. ¶ 116; Bursh/Norris Supp. Decl. ¶ 104. Essentially conceding as much, BellSouth now proclaims that its performance improved in December.

However, one month of so-called improved performance is wholly insufficient to demonstrate stability of performance. Even a cursory examination of BellSouth's data reveals that its service accuracy rates have been woefully low month after month. Moreover, BellSouth's professed improved performance – which happens to coincide with its unilateral modifications to the service order accuracy measure – must be eyed with suspicion. BellSouth's claimed improvements, including its elimination of state-specific data and evaluation of all service orders associated with an LSR, create a substantial risk that substandard performance in Georgia will be concealed and error-ridden service orders will be excluded from the sampled base. Bursh/Norris Supp. Decl. ¶¶ 105-117; Bell Decl. ¶¶ 3-7.

BellSouth's performance failures are not confined to service order accuracy. BellSouth continues to rely excessively on manually processed orders. Bursh/Norris Supp. Decl. ¶ 118. Notwithstanding the fact that BellSouth unilaterally modified the business rules by excluding non-business hours from its calculation of FOC and rejection notice timeliness, BellSouth still cannot return these status notices to CLECs in a timely manner. *Id.* ¶¶ 120-125. Not only has BellSouth failed to provide service at parity during the provisioning process, but BellSouth's performance may be worse than reported because it excludes the FOC interval when calculating the completion interval. *Id.* ¶¶ 131-135. Additionally, BellSouth's data on trouble report rates and missed repair appointments show that it is not providing CLECs with maintenance and repair services in substantially the same manner as BellSouth's retail operations. Furthermore, BellSouth has failed to meet parity and benchmark standards during the billing process. *Id.* ¶¶ 136-137.

Invariably, BellSouth trivializes its performance results by stating that a root cause analysis has revealed that its performance was actually better than reported. Bursh/Norris

Supp. Decl. ¶ 127. However, these explanations are generally unaccompanied by any supporting empirical evidence. Alternatively, cognizant of the infirmities in its error-ridden performance monitoring and reporting practices, as well as its performance failures, BellSouth relies upon a veritable plethora of various commitments and promises of improved performance. Bursh/Norris Supp. Decl. ¶¶ 138-139. In one critical respect AT&T is fully in accord with BellSouth's comments on that front. It is absolutely imperative that BellSouth improve its performance.

At bottom, BellSouth invites this Commission to approve its application even though: the performance data on which it so heavily relies are unreliable, inaccurate and unstable; numerous metrics exceptions and observations in Georgia and Florida remain open; critical data integrity and metrics replication phases of the audits are far from complete; and BellSouth's own inadequate data show that it is not providing services in a nondiscriminatory manner. Given the current state of this record, the critical question is whether BellSouth's promises of improved future performance which are littered throughout its application provide an adequate basis upon which the Commission can properly conclude that the statutory standards for Section 271 approval have been met, or whether BellSouth must demonstrate that it already meets these standards. The answer to this question is well settled. Under the plain language of the Telecommunications Act of 1996, BellSouth must have "fully implemented" its checklist obligations before it can obtain interLATA authorization. 47 U.S.C. §§ 150(d), 271(d)(3)(a)(i).

## III. BELLSOUTH STILL DOES NOT MAKE UNE-P AVAILABLE ON A NON-DISCRIMINATORY BASIS.

BellSouth has an obligation to make UNE combinations available on a nondiscriminatory basis and must demonstrate that such combinations are available as "a legal and practical matter." *Louisiana II Order* ¶ 163. BellSouth does not meet that standard. To the

contrary, AT&T customers continue to experience outages and service troubles in converting to AT&T's UNE-P service. Furthermore, as a new and additional matter, BellSouth is now discriminating against CLECs by imposing improper restrictions on conversions of BellSouth DSL customers.

AT&T uses the UNE-P combination to offer its All in One™ service featuring local, intraLATA toll, long distance, calling card, toll free, and WorldNet Internet service to business customers. For this service to be successful, AT&T must rely on BellSouth to convert business customers in the seamless manner that business customers demand and expect. For many business customers, their telephone is their economic lifeline, and they cannot afford – and will not tolerate – outages or service disruptions.

UNE-P conversions involve a simple record change, and problems during conversions should therefore be extremely rare. Last October, however, AT&T's evidence showed that up to 8 percent of AT&T customers were experiencing service outages or disruptions as a result of BellSouth errors in the conversion to AT&T service. AT&T Comments, pp. 63-64. Notwithstanding the passage of four months since that October filing, AT&T customers continue to experience outages and service troubles as a result of BellSouth errors during the conversion process. Seigler Supp. Decl. at ¶¶ 9-18.

The most prominent problem remains the loss of dial tone, as a result of BellSouth's failure to coordinate the separate "D" (disconnect) and "N" (new) orders used to convert a customer to AT&T UNE-P service. Recognizing the importance of the issue, the Georgia Public Service Commission ordered BellSouth to implement a single "C" order to eliminate the dual order problem by January 4, 2002. Unfortunately, BellSouth's

implementation of the new "C" order is not expected to occur until mid-March 2002, if then. Consequently, at present the proposed single "C" order is merely a "paper promise" and is entitled to no weight in judging BellSouth's compliance with its statutory requirements. *Michigan 271 Order*, ¶ 55. Indeed, this particular paper promise is especially suspect and unreliable, because BellSouth has previously touted various systems changes that it claimed would resolve the "D" and "N" order problem and *none* of those prior efforts was successful. Seigler Supp. Decl. at ¶ 14. Accordingly, BellSouth must demonstrate that the use of the single "C" order actually eliminates the loss of dial tone problem (without other harmful consequences) before this issue can be considered resolved.

The evidence last October also demonstrated that AT&T customers experienced significant service troubles, including the failure to receive ordered features and increases in noise on the customer's line as a result of a change in the customer's facilities. AT&T Comments, pp. 65-66. These service troubles continue today, in large part due to shortcomings in BellSouth's OSS systems. As described in more detail *supra*, BellSouth's LCSC representatives frequently make errors in manually retyping UNE-P orders that have fallen out for manual processing. Seigler Supp. Decl. at ¶ 15. If the retyped order does not match the customer's requested services and features, an error will occur that will lead to a trouble ticket and a dissatisfied customer. In addition to problems with mistyped orders, BellSouth technicians incorrectly implement the wrong translations, causing the customer to receive the wrong features. Moreover, if BellSouth fails to coordinate the conversion order, one technician may disconnect the customer's facilities and a second technician may connect the customer using different facilities, which may be of lesser quality and cause noise on the line that would not be present if the customer's facilities had not changed. *Id.* Such service troubles undercut AT&T's

ability to compete for business customers and harm AT&T's reputation within the business community.[34]

BellSouth is also discriminating against CLECs through its restrictions on converting BellSouth's DSL customers. BellSouth places an "ADL11 USOC" code for billing purposes on the CSR of customers that receive DSL service from a BellSouth affiliate or reseller. BellSouth has established a policy that it will *reject* any UNE-P order for a customer having this ADL 11 USOC on its CSR.

This policy raises two very serious problems. First BellSouth does not reliably remove the ADL11 USOC code from CSRs of customers that no longer have BellSouth DSL service. Thus, UNE-P orders have been rejected because the customer has an ADL11 USOC code even though that customer is no longer a BellSouth DSL customer. Second, BellSouth requires that the CLEC contact the customer to have the customer notify the affiliate or reseller Network Service Provider ("NSP") that it no longer wants DSL, and have the NSP notify BellSouth to remove the ADL11 USOC from the customer's CSR. Only after the USOC designation is removed from the CSR will BellSouth process the CLEC's UNE-P order. Seigler Supp. Decl. at ¶¶ 19-21.

This is patently anticompetitive and discriminatory. It is technically feasible for a CLEC to provide UNE-P service and for a BellSouth DSL NSP to provide the DSL service. Seigler Supp. Decl. at ¶ 20. A BellSouth DSL provider may elect not to provide service to customers that sign up for AT&T UNE-P service, and in such cases, those customers will have to

[34] Other OSS problems, including the frequent outages (nine in January 2002 alone) of BellSouth's LENS ordering system, also undercut AT&T's ability to compete. Seigler Supp. Decl. at ¶ 17.

change DSL providers. But BellSouth cannot force prospective AT&T customers to call their NSP to have the NSP arrange for removal of a CSR USOC code. It is enough of a disincentive that customers may have to arrange for new DSL service if they elect AT&T's UNE-P offering. BellSouth's policy is a naked attempt to discourage its DSL customers from converting to other services.[35]

Even if the policy were acceptable (and it is not) BellSouth has also failed to establish a procedure that allows parties to obtain the necessary information to remove the ADL11 USOC from the CSR. In December 2001, BellSouth provided a toll-free number to handle UNE-P orders rejected because the customer CSR included the ADL 11 USOC, and CLEC were directed to call the toll-free number and obtain the identity of the customer's NSP so that the CLEC could contact the customer. To date, however, this process has not worked, and calls to the toll-free number have not enabled CLEC to obtain information about the customer's NSP. At the February 28, 2002 UNE-P Users Group meeting, BellSouth announced that it was abandoning the toll-free number process and stated that it was reviewing the matter. It indicated that it was seeking to develop a systems approach to the problem, but made no commitment other than to report on the status of the matter to the group at the upcoming March 26 UNE-P Users Group meeting. Seigler Supp. Decl. at ¶22-25. As a result, there is currently no process by which CLECs can convert current BellSouth DSL customers to UNE-P service. This is unacceptable. BellSouth must discard this discriminatory policy and permit CLECs to convert current BellSouth DSL customers to UNE-P service, whether or not the BellSouth NSP decides to continue to provide DSL service to that customer.

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[35] One CLEC that did follow this process found it took 60 days to remove the ADL11 USOC from the customer's CSR. Seigler Supp. Decl. at 19 n.7.

In short, the UNE-P problems identified last October still remain. BellSouth has promised to address some of them (*e.g.*, the dual "D" and "N" order issue) but has not yet done so, and other problems will not be resolved until there are improvements in BellSouth's OSS that BellSouth has not yet even promised. AT&T's efforts to offer UNE-P service to the business community will continue to be hampered until BellSouth (1) resolves the systems and OSS problems and (2) discontinues its discriminatory policy restricting the conversion of BellSouth DSL customers.

## IV. BELLSOUTH'S INFLATED UNE RATES PRECLUDE ANY FINDING OF COMPLIANCE WITH CHECKLIST ITEM TWO.

In the proceeding on BellSouth's prior application, the parties demonstrated that BellSouth's Georgia and Louisiana UNE rates fell far outside the range that any reasonable application of TELRIC principles would produce. *See, e.g.*, AT&T Comments at 48-62. The record clearly established that BellSouth's inflated Georgia and Louisiana rates were based on cost studies that, by their own terms, violated fundamental TELRIC principles.

BellSouth's current section 271 application addresses none of these serious flaws. In fact, BellSouth's application is based on the same inflated UNE rates on which it relied in its initial application. The new joint application simply ignores the record arguments and evidence demonstrating conclusively the many ways in which BellSouth's cost models violate the Commission's pricing rules. AT&T will not repeat, in detail, all of the serious problems with those rates here, but rather, as noted above, incorporates its prior filings by reference.

On pertinent point deserves emphasis. No party disputes that the non-loop[36] and daily usage file ("DUF")[37] rates on which BellSouth's Georgia application relies are not TELRIC today. BellSouth has effectively conceded that point. In the ongoing Georgia pricing proceeding, BellSouth has recently submitted new non-loop and DUF rates – that BellSouth claims are TELRIC compliant – that are substantially lower than those on which its Section 271 application is predicated. Indeed, while BellSouth's Application relies on a recurring non-loop charge of $6.83 and a recurring DUF charge of $2.96 in Georgia, it has proposed in the ongoing UNE rate proceeding before the GPSC a new recurring non-loop charge of $3.78[38] and a new recurring DUF charge of $1.40. *See* Lieberman Supp. Decl. ¶¶ 6-7. In other words, according to BellSouth's recent proposals in the state UNE rate proceeding, its current non-loop and DUF rates – on which its Section 271 application relies – are at least 81 percent and 112 percent above TELRIC levels, respectively.[39]

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[36] The total per line non-loop related charge includes the end office line-side ports and usage, as well as end office trunk ports, and transport elements. *See* Lieberman Decl. ¶ 6 n.1.

[37] The DUF charge is a fee that BellSouth and some other BOCs charge CLECs for information regarding CLECs' usage. CLECs use that information to verify the accuracy of BellSouth bills and as a basis for billing their own customers.

[38] The $3.78 non-loop charge does not include BellSouth's proposed feature additive charge of $2.27. As explained in the attached supplemental declaration of Michael Lieberman (¶ 6 n.2) BellSouth's feature additive clearly violates TELRIC, and the inclusion of such a charge in switching rates has already been rejected by the GPSC and the LPSC.

[39] It is not surprising that BellSouth's current rates are so high. As explained by AT&T in its initial comments, BellSouth's switching rates (the largest component of non-loop charges) and DUF rates are based on cost models that contain numerous TELRIC violations. For example, BellSouth's Georgia switching rates are based on pre-1997 data. *See* Lieberman Supp. Decl. ¶ 8. BellSouth's cost of providing switching have plummeted since 1997. *See id.* An analysis of BellSouth's Georgia net switch investment and its dial equipment minutes ("DEMs"), for example, shows that net switch investments have declined on a per-minute-of-use basis for the past several years and that net switch investment has grown much slower than DEMs. *See id.* The slow growing net switch investment, combined with the explosive increase in minutes, implies that there has been a 40% decline in switching investment per DEM between 1996 and

These facts alone are grounds to deny the Application. In the event the Commission decides otherwise, however, and considers granting this Application despite the OSS, pricing, and other deficiencies the commenters have identified, that approval should at least be conditioned on BellSouth first amending its SGAT to adopt, on an interim basis subject to true-up, the non-loop rates (of which the switching component is the dominant part) and DUF rates that it has proposed in the ongoing UNE rate proceeding before the GPSC.

Several considerations would counsel strongly in favor of such a condition.

*First*, all parties, including presumably BellSouth, agree that TELRIC-compatible recurring non-loop and DUF rates for Georgia today should not exceed those proposed by BellSouth in the state proceeding. The non-loop and DUF rates that are ultimately adopted by the GPSC are thus highly unlikely to exceed BellSouth's proposal. Indeed, AT&T and other CLECs will present evidence to the GPSC that BellSouth's newly proposed non-loop and DUF rates are still too high, and should be substantially reduced. In all events, no one has contended that BellSouth's proposed non-loop and DUF rates are too low, and these rates represent a substantial improvement upon the rates currently in effect.[40]

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2002. *See id.* A similar problem overstates BellSouth's DUF rates. *See id.* In addition, BellSouth's Georgia cost models inflate switching rates by computing those rates based on switch discounts for a *"mix* of new and growth switch purchases" where the "majority of switch-related purchases made by BellSouth are [assumed] to support growth in existing switches." BellSouth Initial Br., Caldwell Aff. ¶ 85 (emphasis added). As explained by AT&T in its initial briefs and declarations, that assumption improperly relies on BellSouth's embedded network to compute switching costs, and therefore plainly violates TELRIC principles. *See* AT&T Comments at 52-53 & Baranowski Decl. ¶ 15; AT&T Reply at 34; *See also RI 271 Order* ¶ 34 (overstating "growth additions" may "not comply with TELRIC principles").

[40] By contrast, the same cannot be said of BellSouth's proposed loop rates. The evidence in this proceeding makes clear that BellSouth's existing loop rates are inflated by numerous TELRIC errors. *See, e.g.*, AT&T Comments at 48-62 & Baranowski Decl. ¶¶ 5-36; WorldCom Initial

*Second*, BellSouth has never received Section 271 authority for any State in its region. If its application were approved here, Georgia might be cited as a "benchmark" against which the rates in other BellSouth states will be compared to determine whether they fall within a range of rates that a reasonable application of TELRIC principles would have produced. *See, e.g., Massachusetts 271 Order* ¶ 28. To the extent that the Georgia rates filed with this Application are above TELRIC levels – which they plainly are – they manifestly should not be entrenched as a standard for other States.

*Third*, the Commission cannot rely on the GPSC to address BellSouth's overstated Georgia rates, because there is no way to know *when* the GPSC will complete its pending review. And if BellSouth's Georgia application is approved, BellSouth will have every incentive to delay that action until it has obtained Section 271-approval in its other states on the grounds, at least in part, that its rates in those other states compare "favorably" to its overstated Georgia rates.

Nor is it any answer to state that BellSouth's Georgia DUF rates are subject to "true-up" and, therefore, that CLECs will ultimately be compensated for any overcharge in Georgia at the conclusion of the ongoing UNE rate proceeding. To begin with, the underlying premise – that the GPSC has ordered a true-up of the rates ultimately adopted – appears to be mistaken: AT&T has been unable to locate any GPSC order declaring that the DUF rates would

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Comments at 55-56. BellSouth has nevertheless proposed to *increase* those rates in the ongoing proceedings before the GPSC. There is no possible justification for that proposal. The Georgia loop rates relied upon by BellSouth's application were developed based on pre-1997 data. And as demonstrated in the attached supplemental declaration of Michael Lieberman, BellSouth's Georgia loop costs have fallen dramatically since then. Indeed, BellSouth's cable and wire investments – a proxy for loop costs – have fallen by 59 percent since 1996. *See* Lieberman Supp. Decl. ¶ 8 n. 4.

in fact be subject to true-up. (If there is such an order, presumably the GPSC or BellSouth will identify it in their reply comments.) In any event, a true-up – which would not occur until the conclusion of the GPSC proceedings – would not prevent the excessive rates currently in effect from being used as a benchmark during the pendency of those proceedings.

The serious problems that can result are vividly illustrated by Verizon's series of Section 271 applications for New York, Massachusetts, and Rhode Island. The Commission approved Verizon's New York Section 271 application even though Verizon's switching rates were substantially inflated by numerous factors. As noted by the Commission, AT&T had submitted evidence in the New York proceeding showing that Verizon overstated its switching rates by underestimating the switch discounts Verizon was receiving from vendors in New York, which resulted in overstated switching rates. *See New York 271 Order* ¶ 247. Nevertheless, in December 1999, the Commission approved Verizon's Section 271 application with the understanding that the "New York Commission was reexamining switching prices and would be revising them." *See RI 271 Order* ¶ 42 (citing *New York 271 Order* ¶ 247). As it turns out, the New York Commission did not actually reduce its non-TELRIC UNE rates until more than two years later, in January 2002.

Between the time that Verizon obtained Section 271 approval in New York and the time that the New York commission actually corrected Verizon's overstated New York rates, Verizon sought Section 271 approval in several other states in its region, including Connecticut, Pennsylvania, Massachusetts, New Jersey, Rhode Island and Vermont. In many of those states,

Verizon relied on its flawed New York rates as a benchmark to justify its rates in other states.[41] For example, more than a year after obtaining Section 271 approval in New York, Verizon imported New York's inflated rates into Massachusetts.

Verizon did not even attempt to defend its Massachusetts rates on TELRIC grounds. Instead, Verizon merely noted that its application should be approved because its Massachusetts rates were nearly identical to those in New York, a state that had already received Section 271 approval. The Commission reluctantly approved the Massachusetts application on that basis. *See Massachusetts 271 Order* ¶ 23. The Commission warned that "a decision by the New York commission to modify [the New York] . . . rates may undermine Verizon's reliance on those rates in Massachusetts and its compliance with the requirements of section 271," *see Id.* ¶ 30, and on January 28, 2002, the New York Commission finally issued a new Order substantially lowering Verizon's New York UNE rates. Predictably, however, Verizon has done nothing to correct its Massachusetts rates, which were approved based on a comparison to the old New York rates. Thus, Verizon's Massachusetts non-TELRIC UNE rates continue to foreclose broad-based competitive local entry in that state, while Verizon still is permitted to provide interLATA long distance services in that state. And had the New York Commission not acted shortly before Verizon's Rhode Island Application was scheduled for decision, the same scenario would have been repeated there. *See Rhode Island 271* ¶¶ 37-55.

To avoid repeating this situation in the BellSouth region, it is imperative that the Georgia and Louisiana rates fully comply with TELRIC principles. Accordingly, while the

[41] Notably, Verizon's New York switching rates were "significantly higher" than the switching rates in Section 271-approved states in SBC's region, *i.e.,* Texas, Kansas, Oklahoma, Missouri, and Arkansas. *See RI 271 Order* ¶ 46.

Commission should reject this application, if it concludes otherwise it should at least require the Georgia non-loop and DUF rates to be appropriately modified, so as to avoid establishing a benchmark that everyone recognizes would grossly exceed the cost-based rate required by the Act and the Commission's rules.

## V. BECAUSE BELLSOUTH'S LOUISIANA UNE RATES FORECLOSE LOCAL COMPETITION, THEY BOTH ARE DISCRIMINATORY IN VIOLATION OF THE CHECKLIST AND DEMONSTRATE THAT GRANTING THE APPLICATION WOULD DISSERVE THE PUBLIC INTEREST.

The evidence establishes not only that BellSouth's UNE rates are not TELRIC-compliant, but also that those rates are so high that they preclude efficient local entry in Louisiana. By imposing wholesale costs on competitors that render it impossible for them to offer a retail service that would be price competitive, BellSouth's rates effect a price squeeze that prevents UNE-based competitors from earning sufficient margins to provide local service in competition with BellSouth. *See* Lieberman Supp. Decl. ¶ 27.

Specifically, the evidence shows that residential gross margins are *negative* in two of the three UNE zones in Louisiana (negative $3.28 in zone 2 and negative $29.58 in zone 3). *See* Lieberman Supp. Decl. ¶¶ 27. The margin in zone 1 ($8.12) is not sufficient to cover any potential entrant's internal costs of operating a local telephone business, which typically amount to more than $10. *Id.*; Bickley Decl. ¶¶ 1-8. In any case, state-wide gross margins for Louisiana are a paltry $1.92 – again insufficient to cover any potential entrant's internal costs of operating a local telephone business. Thus, state-wide residential UNE-based entry would not be profitable in Louisiana. *See* Lieberman Supp. Decl. ¶ 27.

BellSouth's imposition of rates that foreclose broad-based local competition has two independent legal consequences in this proceeding. *First*, it establishes that those rates

violate the checklist. Checklist item 2 requires BellSouth to show that it provides UNEs "in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(ii). Section 251(c)(3), in turn, requires UNE rates that are "just, reasonable, and *nondiscriminatory*." 47 U.S.C. § 251(c)(3) (emphasis added). The Supreme Court has held that, even if a utility's wholesale rates are within the range of reasonable cost-based rates, the rates are "discriminatory" and "anticompetitive" if they fall at the high end of the range and they preclude wholesale purchasers from economically competing with the utility's retail services to any class of customers. *See FPC* v. *Conway Corp.*, 426 U.S. at 278-79 (1976). The resulting price squeeze establishes that the utility is discriminating by charging "high-end" rates to its wholesale customers but imputing "low-end" wholesale rates to its own retail operations. *Id.*

If BellSouth's UNE rates could somehow be found to be cost-based, it could only be on the theory that they fall at the high end of a range of rates that are reasonable under TELRIC. If these high-end UNE rates foreclose UNE purchasers from economically providing residential competition, then the Supreme Court's decision in *Conway* establishes that BellSouth is engaged in "discrimination," and it has not satisfied checklist item two even if the UNE rates can be deemed to be cost-based.

*Second*, the direct evidence of a price squeeze also establishes that granting the application could not be consistent with the "public interest." 47 U.S.C. § 271(d)(3)(C). The Supreme Court has explained that the statutory term "public interest" "takes [its] meaning from the purposes of the regulatory legislation." *NAACP* v. *FPC*, 425 U.S. 662, 669 (1976). The central purpose of Section 271 is to ensure that local telephone markets in a State are open to competition – and that competing carriers therefore have the legal and economic ability to provide competing local services – before a BOC in that State is permitted to provide long-

distance services. As the Commission has held, Congress adopted Section 271 in order to assure that BOCs could not provide long distance service at a time when their local monopolies would give them an "unfair advantage" over long distance competitors in, *inter alia*, providing "combined packages" of local and long distance service to customers who desire "one-stop shopping." *AT&T* v. *Ameritech*, 13 F.C.C. Rcd. 21438, ¶¶ 5, 39 (1998), *aff'd sub nom. U S West* v. *FCC*, 177 F.3d 1057 (D.C. Cir. 1999). If, by contrast, long-distance entry were allowed before other carriers could provide competing combined packages, it would "threaten competition" in both the local and the long-distance markets by granting the BOC a monopoly in the provision of such combined services. *Id.* ¶ 5. The Commission has thus held that the "public interest" prong of Section 271 requires it to "ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open." *Kansas/Oklahoma 271 Order* ¶ 267. A price squeeze that would foreclose efficient local entry into the residential market obviously constitutes such a "relevant factor." And proof that such a factor in fact exists demonstrates conclusively that the market is not – and cannot be – open.

The Commission nonetheless had previously held that it need not consider evidence of a price squeeze in evaluating a Section 271 application. That holding was based on the Commission's view that such evidence was "irrelevant," and that considering it would improperly involve the Commission in the process of setting local retail rates that are outside its jurisdiction. *Id.* ¶ 92. But the Court of Appeals for the D.C. Circuit, relying on the Supreme Court's decision in *Conway*, has now squarely rejected that view. *Sprint*, 274 F.3d 549 (D.C. Cir. 2001). Indeed, because the central purpose of the 1996 Act is "stimulating competition," the D.C. Circuit held that the "public interest" analysis under Section 271 may weigh even "*more*

*heavily* towards addressing potential 'price squeeze'" than was required under the Federal Power Act in *Conway*. *Id.* at 555 (emphasis added).

Under *Sprint* v. *FCC*, therefore, when evidence is presented in a Section 271 proceeding that UNE-based residential competition is economically infeasible, the Commission cannot grant that application without evaluating and addressing that evidence. Unless the Commission rejects this application on other grounds, therefore, it must develop and apply a framework in this proceeding for analyzing such price squeeze claims.

BellSouth raises numerous arguments inviting the Commission to brush aside the merits of the price squeeze argument. Application at 38-42. But this is the exact opposite of what the *Sprint* decision requires. BellSouth's concern over the Commission reaching the merits of the price squeeze issue is understandable: its own arguments are baseless.

First, BellSouth asserts that "the *Sprint* decision is limited by its terms to local markets that, '[i]n contrast to . . . New York and Texas' are 'characterized by relatively low volumes of residential competition.'" Application at. 38. BellSouth claims that residential entry in Louisiana exceeds such entry at the time of the New York and Texas applications and that, under these circumstances, "the *Sprint* decision in no way obligates the Commission to depart from its usual practice of rejecting the price squeeze claim outright." Application at 39. There is nothing in Section 271 or the *Sprint* decision which remotely establishes a residential "market share test" that, in and of itself, would be dispositive of the UNE price squeeze issue. Indeed, BellSouth's interpretation of the *Sprint* decision squarely conflicts with the decision itself, which rejected the Commission's summary "brush-off" of the price squeeze issue and directed the Commission to consider on the merits "whether the UNE pricing selected here doomed

competitors to failure" (*Sprint,* 274 F.3d at 554, emphasis omitted). BellSouth's interpretation also conflicts with the Commission's own recent recognition that Section 271 requires a rational framework for consideration of the price squeeze issue.[42]

Moreover, BellSouth's argument that CLECs' share of the residential market in Louisiana is higher than CLECs' shares in New York and Texas at a comparable point is misleading in the context of an argument over whether BellSouth's UNE rates have foreclosed *UNE-based* entry. Market shares of *UNE-based* CLECs in New York and Texas were substantially higher -- both on a percentage and an absolute basis -- than the current levels of UNE-based entry in Louisiana reported by BellSouth. BellSouth's latest data for Louisiana, reflected in Table 1 below, show that nearly all of the 3.8% CLEC share of the residential market in Louisiana constitutes *resale* of BellSouth service. However, BellSouth's data show that only 5,145 residential lines in Louisiana – or just 0.3% of all residential lines -- are served by UNEs. By contrast, in New York 137,342 residential lines were served by UNE-based competitors at the time of Verizon's 271 application for New York -- or 1.8% of all switched residential lines in the State.[43] In Texas, there were about 120,000 UNE-P residential lines served by CLECs at the time of SBC's 271 application for Texas – or about 1.9% of the residential lines in the State.[44]

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[42] In recognition of the need to develop and apply such a framework in Section 271 proceedings where such claims are made, the Commission recently asked the Court of Appeals for the D.C. Circuit to suspend briefing in the appeal of its order granting BellSouth interLATA authority in Massachusetts. The Commission asked for that suspension so that it could address the price squeeze claims that had been made in that proceeding but that the Commission's order had not properly addressed. *See* FCC's Emergency Motion for Temporary Suspension of Briefing, *WorldCom* v. *FCC*, No. 09-1198 (D.C. Cir.) (filed January 7, 2002).

[43] *See* Declaration of William E. Taylor, *Application by New York Telephone Company (d/b/a/ Bell Atlantic –New York), et al., for Provision of In-Region InterLATA Services in New York,* CC Docket No. 99-295, Attachment A, Table 3 (FCC filed Sept. 29, 1999)(estimating 137,342 UNE-

**TABLE 1: Residential Market CLEC Penetration in BellSouth Louisiana Service Territory**

| | Quantity | Share |
|---|---|---|
| **BellSouth Louisiana Retail Residential Switched Access Lines** (Stockdale Supp. Aff. Table 4) | 1,591,902 | 96.1% |
| **CLEC Residential Facilities-Based Lines** (Stockdale Supp. Aff. Ex. ES-8) | 1,375 | 0.0% |
| **CLEC Residential UNE-P Lines** (Stockdale Supp. Aff. Ex. ES-8) | 5,145 | 0.3% |
| **CLEC Residential Resale Lines** (Stockdale Supp. Aff. Ex. ES-8) | 58,423 | 3.5% |
| **Total Residential Lines in BellSouth Louisiana Service Territory** (Stockdale Supp. Aff. Table 4) | **1,656,845** | **100.0%** |

Second, BellSouth claims that it is legally irrelevant that UNE-P purchasers cannot economically provide service under BellSouth's existing UNE rates in Louisiana, arguing that, even in the wake of the *Sprint* decision, "the Commission retains its well-established 'substantial' discretion to define the 'public interest' standard in section 271 to exclude any price-squeeze inquiry whatsoever in the section 271 context." Application at 40. In support of this argument, BellSouth relies on antitrust cases that purportedly hold that a price squeeze can exist only if "*all* . . . entry paths are priced too high to permit competition." *Id.* BellSouth claims that this standard cannot be met here because, in addition to UNE-based entry, the Act makes available facilities-based interconnection and resale, giving CLECs commercially viable means to gain access to BellSouth's network. These claims are baseless.

As an initial matter, the applicable antitrust decisions support AT&T's claim, not BellSouth's. *Alcoa* holds that a firm with monopoly control over an input essential to the

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based residential lines). BellSouth estimates that Verizon served approximately 7.7 million residential switched access lines in New York as of the end of 1999. Application at 39 n. 24.

[44] Based on information contained in the Supplemental Affidavit of SWBT witness John S. Habeeb filed in CC Docket No. 00-4 on April 5, 2000, CLECs in Texas provided UNE-P based service to 119,871 residential customers and 83,301 business customers as of February 2000. Supplemental Declaration of A. Daniel Kelley and Steven E. Turner on Behalf of AT&T Corp., Table 2, filed in FCC CC Docket No. 00-65 on April 26, 2000. Table 2 of Mr. Habeeb's initial

provision of a finished product is engaged in a price squeeze and is not charging a "fair" input price if purchasers of the input cannot make a "living profit" from sale of the finished product – as purchasers of UNEs plainly cannot in Louisiana. *United States v. Aluminum Co. of America,* 148 F.2d 416, 436-38 (2d Cir. 1945). In *Town of Concord* v. *Boston Edison*, 915 F.2d 17 (1st Cir. 1990), the court held that allegations that electric utilities have set wholesale rates to effect a price squeeze "generally" will not state claims under the antitrust laws because, among other things, the governing regulatory statute requires FERC to determine if a price squeeze will result at the time it reviews the lawfulness of the utility's wholesale rates. *Id.* at 28.

In any event, the antitrust decisions are besides the point here, for the reasons explained in *Town of Concord.* Whether or not BellSouth is also violating antitrust standards, section 271 bars the Commission from granting BellSouth long distance authority unless the Commission finds (1) that the UNE rates are "nondiscriminatory" as well as cost-based (47 U.S.C. §§ 252(d)(1), 271(c)(2)(B)(ii) & (d)(3)(A)) and (2) that the grant of the application is in the "public interest." § 271(d)(3)(C). If the available revenues from the provision of residential services are insufficient to cover the wholesale costs of the UNEs (and the firm's internal retail costs), this fact establishes both that checklist item two has not been met and that a grant of the application is not in the public interest. The Commission thus cannot lawfully grant a section 271 application unless it addresses claims that firms cannot economically provide residential service at existing UNE and retail rates.

BellSouth's arguments about resale and other entry vehicles are simply irrelevant if BellSouth's high end UNE rates effect a price squeeze and BellSouth is thus engaged in

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Affidavit, filed in CC Docket No. 00-4 on January 10, 2000, indicated there were approximately 6,423,000 residential lines in Texas at that time.

discrimination that violates checklist item two. When the checklist is not met, §271(d)(3) requires that the application must be denied, irrespective of any other factors.[45]

Similarly, BellSouth's reliance on the purported availability of resale to respond to evidence that its high UNE prices have doomed UNE-based competitors to failure is also unavailing in the public interest context. To begin with, resale is irrelevant for this purpose. The wholesale discount that has been set in Louisiana is wholly insufficient to allow any firm to cover its internal costs of service, and no firm could economically provide local exchange service in Louisiana through resale on a broad basis over time. *See* Lieberman Supp. Decl. ¶ 36. This is also borne out by the paltry number of resale-based residential competitors in Louisiana (*see* Table 1, *supra*) – a number that has actually *declined* by 2,000 lines in the short period since BellSouth filed its 271 application.[46]

More fundamentally, resale would be irrelevant even if the wholesale discount that has been set in Louisiana was sufficient, for resale does not give a CLEC access to the "inputs" required to provide long distance service. In particular, firms engaged in resale are entitled to use the BOCs' facilities to provide only exchange service and not exchange access service. *See Local Competition Order* ¶ 973. Resale thus has no effect on the BOC's monopoly over the exchange access services that originate and terminate all long distance calls, and resale

[45] In *Sprint*, the Court did not address the question of whether price squeeze that results from the charging of "high end" UNE rates establishes discrimination that precludes a finding of compliance with checklist item two – presumably because appellants had not presented that claim to the Commission in the Kansas-Oklahoma § 271 proceedings. *See* 47 U.S.C. § 405. However, the issue has been squarely raised in this proceeding, and it will be reversible error for the Commission to find checklist compliance without addressing the evidence of a price squeeze on the merits.

cannot eliminate a BOC's ability to leverage its exchange access monopoly into the long distance market.

Nor is there any other entry vehicle that is available to AT&T and other CLECs in Louisiana that could allow multiple CLECs to provide residential service throughout the state. As shown above, facilities-based providers serve less than 1% of all residential access lines in Louisiana. Under these circumstances, the only theoretical alternative to UNE-P would be an arrangement in which firms would attempt to provide residential service by leasing unbundled loops from BellSouth and combining them with the CLECs' switches to provide service. However, such a "UNE-L" strategy is now wholly uneconomic for this purpose in Louisiana (and elsewhere). Quite apart from the fact that carriers cannot rationally invest in switches until they have used UNE-P to build up a customer base (*UNE Remand Order* ¶ 260), BellSouth and other BOCs have not deployed technology that allows customers to change from one local exchange carrier to another efficiently and effectively, in mass market quantities and at low cost. Instead, these changes require manual "hot cuts" which are expensive and which have proven impossible for BellSouth and other BOCs to administer without causing unacceptable levels of service outages even when UNE-L is used only for low volumes of orders for business customers. *See* Lieberman Supp. Decl. ¶¶ 37-38.

Third, BellSouth argues that this proceeding is "the wrong context" in which to challenge a price squeeze. Application at 40. Instead, BellSouth argues that the proper remedy would be for the Commission to "preempt" state regulation of local retail rates to the extent such

[46] As reflected in Table 1 above, CLECs currently serve 58,423 residential lines via resale in Louisiana. When BellSouth initially filed its application, CLECs served 60,367 residential lines via resale in the State. AT&T Comments at 76, Table 4.

regulation has created entry barriers into local service. *Id.* at 40-41.[47] BellSouth's argument again flatly conflicts with the *Sprint* decision, which *requires* the Commission to consider the price squeeze issue in considering Section 271 applications. Indeed, the *Sprint* Court expressly rejected this argument in pointing out that the Commission can respond to a price squeeze *without disturbing retail rates*. Because the Commission has said that TELRIC rates exist within a "band," one entirely permissible solution is to "'fix[] the wholesale rates, which [a]re under its jurisdiction, at a lower level within'" that band. *Sprint*, 274 F.3d at 554-55 (citing *Conway*, 426 U.S. at 279).

Fourth, BellSouth asserts that, insofar as the price-squeeze argument attempts to force UNE prices down to the lowest possible level, it ought to be rejected out of hand because it is inconsistent with goals of the Act and the Commission to promote facilities-based competition. Application at 41. BellSouth's argument, however, is refuted by its own data in this proceeding. Today there are only 5,145 UNE-based based residential lines in the State of Louisiana. However, high UNE rates and a miniscule level of UNE-based entry has not compelled CLECs to build their own facilities: to date there are only 1,375 facilities-based residential lines in Louisiana. Given these data, there is no basis in the record to conclude that the availability of UNE-based entry in Louisiana would somehow thwart facilities-based entry in the State.

Finally, BellSouth argues that "as a purely factual matter, the price-squeeze claim does not bear scrutiny," because AT&T's analysis fails to take into account revenue for intraLATA toll. Application at 42. However, intraLATA toll is provided in a separate market

[47] In a variation on this same theme, BellSouth argues that to the extent relatively low retail rates squeeze the CLECs, it is because of the Commission's geographic deaveraging rule and that, because CLECs advocated deaveraging, they somehow lack standing to raise the price squeeze argument in this proceeding. Application at 42.

from local services, and AT&T is providing intraLATA toll service in Louisiana independent of any decision to offer local service. As the Commission has held in another context, a carrier should not be forced to enter one market in order to be able to enter another. *Line Sharing Order* ¶ 56 (firms that wish to provide DSL should not also be required to provide voice services); *see also* Brief of FCC, *USTA v. FCC*, D.C. Cir. No. 00-1012, p. 27 (filed Sept. 14, 2001).

In all events, AT&T's supplemental evidence demonstrates that adding intraLATA toll revenues to the Louisiana margin analysis would not change the fact that statewide margins in Louisiana are negative. *See* Lieberman Supp. Decl. ¶ 29.[48]

For all these reasons, even if the Commission were to find that BellSouth's UNE rates were within the range of cost-based rates, it would be required to reject the application for Louisiana on the grounds that (1) because the high-end UNE rates effect a price squeeze, they are "discriminatory" and checklist item two has not been met, and (2) in any event, the price squeeze means that the Application is not in the public interest.

[48] BellSouth also asserts that AT&T's margin analysis fails to account for interstate access revenues. That is wrong. AT&T's analysis accounts for the $0.34 of interstate access revenues that new entrants in Louisiana can expect to obtain in the residential market. *See* Lieberman Supp. Decl. ¶ 30.

## CONCLUSION

For the reasons stated above, AT&T respectfully submits that BellSouth's Joint Application for Georgia and Louisiana should be denied.

Respectfully submitted,

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March 4, 2002

## CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2002, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: March 4, 2002
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/s/ Peter M. Andros

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