BEFORE THE COMMONWEALTH OF KENTUCKY

CASE NO. 2001-105

POST-HEARING BRIEF ON BEHALF OF

AT&T COMMUNICATIONS OF THE SOUTHERN CENTRAL

STATES, INC. AND TCG OHIO, INC.

AT&T Communications of the South Central States Inc. and TCG Ohio, Inc. (collectively "AT&T"), file this post-hearing brief regarding BellSouth Communications, Inc.'s ("BellSouth's") compliance with Section 271 of the Telecommunications Act of 1996.

I. INTRODUCTION

All three times that the Federal Communications Commission ("FCC") has evaluated an application from BellSouth Telecommunications, Inc. ("BellSouth") for authorization under Section 271 of the Telecommunications Act of 1996[1] ("the Act") to provide interLATA services, the FCC has rejected BellSouth's application.[2] Indeed, in the *Second Louisiana Order*, the FCC explicitly cautioned BellSouth that it must "remedy deficiencies identified in previous orders

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[1] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 251 *et seq.*

[2] Memorandum Opinion and Order, *In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, 13 FCC Rcd. 539 (F.C.C. Dec. 24,1997) (No. CC 97-208, FCC 97-418) ("*South Carolina Order*"); Memorandum Opinion and Order, *In the Matter of Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd. 6245 ¶ 1 (F.C.C Feb. 4, 1998) (No. CC 97-231, FCC 98-17) ("*First Louisiana Order*"); Memorandum Opinion and Order, *In the Matter of Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934 as Amended to Provide In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd. 20,599 ¶ 1 (F.C.C. Oct.13, 1998) (No. CC 98-121, FCC 98-271) ("*Second Louisiana Order*")

before filing a new Section 271 application, or face the possibility of summary denial."[3] The FCC identified deficiencies with BellSouth's operational support systems ("OSS"), major compliance problems with BellSouth's provisioning of nondiscriminatory access to its OSS for unbundled network elements ("UNEs"), and other compliance problems with interconnection, local loop transmission, switching, directory assistance services, operator call completion service, and number portability.[4] The FCC especially highlighted BellSouth's failure to provide performance measurement data sufficient to establish that BellSouth satisfied the requirements of the Act.

These problems continue. Indeed, BellSouth's most recent Section 271 application, a joint-application for Georgia and Louisiana, is currently under review by the FCC. The FCC has not yet made a decision. The Department of Justice ("DOJ"), however, has completed its evaluation and has declined to support BellSouth's application.[5] As the DOJ explained:

> An array of CLECs have lodged credible complaints about the sufficiency of BellSouth's [OSS] and neither the reported performance data nor the results of the third-party OSS testing relied on in this application are sufficient to determine that these complaints are unfounded. In addition, BellSouth's reported performance measures appear to be unreliable in several significant respects.[6]

In its evaluation, the DOJ identified several problem areas that "merit careful scrutiny":

- Problems with manual processing of orders and provisioning notices;[7]

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[3] *Second Louisiana Order* ¶ 5.
[4] *Id.* at ¶ 9-10.
[5] *See* Evaluation of the United States Department of Justice, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Georgia and Louisiana* ("*DOJ Evaluation*"), CC Dckt. No. 01-277, released November 6, 2001 at 2.
[6] *Id.*
[7] *Id.* at 14-23.

- Inability of competing local exchange carriers ("CLECs") to order UNE-Platform service without using the customer's address;[8]
- Pre-ordering and ordering interface outages;[9]
- Lack of a stable testing environment for testing and OSS development; and[10]
- Change management deficiencies.[11]

In addition, the DOJ also expressed its concern over the reliability of the performance data reported by BellSouth.[12]

Despite these continued deficiencies, BellSouth seeks this Commission's recommendation that it has met the requirements of Section 271. This Commission should reject BellSouth's request. As noted by DOJ and as demonstrated in the hearing, BellSouth's application is woefully premature. BellSouth has not yet remedied the deficiencies identified by the FCC in its previous orders. For example, BellSouth relies in its application on data produced under the "interim" performance measures plan to demonstrate its nondiscriminatory behavior toward AT&T and other CLECs. The "interim" plan is based on a performance measures plan used by BellSouth in Georgia, but it contains many unilateral modifications by BellSouth that never were reviewed by the Georgia Commission. On October 19, 2001, this Commission adopted the performance measures plan previously adopted by the Georgia Public Service Commission.[13] Prior to making any recommendation concerning BellSouth's Section 271

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[8] *Id.* at 23-25.
[9] *Id.* at 25-26.
[10] *Id.* at 26-28.
[11] *Id.* at 29.
[12] *Id.* at 13-39.
[13] *See* Order of the Kentucky Public Service Commission, In the Matter of Investigation Concerning the Propriety of InterLATA Services by BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, Dckt. No. 2001-105, released October 19, 2001, said order adopts the performance measures, benchmarks, retail analogs and penalty plan adopted by the Georgia Public Service Commission, pursuant to Orders released January 16, 2001 and May 7, 2001 respectively, in Georgia Dckt. No. 7892-U.

application, this Commission should require BellSouth to submit a compliant Service Quality Measures ("SQM") plan and three months of data under that plan. Then, this Commission may evaluate BellSouth's compliance in the context of that plan *before* making its recommendation on Section 271 relief.

Equally troubling, BellSouth has produced data to demonstrate compliance with these interim performance measures that is inaccurate and unreliable. BellSouth's data is missing significant numbers of CLEC transactions, and its reports are inconsistent with each other. Further, BellSouth inappropriately refuses to make available raw data,[14] thus preventing CLECs and this Commission from verifying the performance reports. An independent audit of BellSouth's data has not been completed.

In support of its application, and in the absence of robust state-specific performance data, BellSouth relies upon an inadequate substitute: the results of a third-party test conducted in Georgia. In its rush for approval, BellSouth ignores, and suggests this Commission do the same, the ongoing third-party test in Florida.

[14] BellSouth's early stage data is its truly raw data. BellSouth's PMAP data is manipulated data that BellSouth misleading refers to as "raw data." For purposes of this brief, references to raw data mean BellSouth's early stage data.

This Commission heard significant testimony about the limitations of the Georgia third-party test. Many important areas of testing were omitted including testing of the current operational support system in use, OSS99. The Georgia third-party test is rife with statistical and methodological problems in the development, design, and performance of the test. Further, the entity that conducted the test improperly relied on questionable statistical methods and unsubstantiated "professional judgment" to transform unsatisfied results to satisfied. Finally, the Georgia test is not sufficiently comprehensive, independent or blind to be persuasive. Indeed, the Florida Commission decided to conduct its own test based in part on its concerns about the Georgia test.

Moreover, even if the Georgia third-party test were problem free, it would not support BellSouth's application at this time because the Georgia test still is incomplete. Open exceptions relating to the accuracy and reliability of BellSouth's performance measures data are still under investigation. The Georgia Commission has ordered an audit of BellSouth's performance measures, processes, and data, which will not be complete before the end of the year.

Further, the Florida third-party test test results reveal the existence of a large number of problems, many of which supposedly had been "fixed" previously by BellSouth. It also examines a number of issues untouched by the Georgia third-party test. For example, the Georgia test did not evaluate currently used interfaces, manual systems, relationship management, and local number portability metrics. These important areas are being tested in Florida.

The results of the Georgia third-party cannot overcome the evidence of BellSouth's performance for CLECs in Kentucky. BellSouth has the burden of establishing that it has fully implemented the Section 271 checklist. The hearing revealed, however, that BellSouth has

implemented processes that place CLECs at a significant disadvantage relative to BellSouth. Accordingly, BellSouth cannot establish that it meets the requirements of the Section 271 checklist.

Checklist Item No. 1.: BellSouth fails to meet the Section 271 requirements as to interconnection, checklist item 1. Interconnection involves the connection of trunks between CLEC switches and BellSouth switches that allow the completion of calls between CLEC customers and BellSouth customers, regardless of which party originates the call. The hearing revealed that CLEC trunks suffer trunk blockages -- the inability of customers to complete calls --much more often than the trunks in BellSouth's local network. The clear disparity in trunk performance prevents BellSouth from demonstrating that it offers nondiscriminatory access to interconnection.

Checklist Item No. 2.: BellSouth has failed to provide nondiscriminatory access to network elements as required by checklist item 2. Specifically, BellSouth is deficient in the areas of: change management, access to its OSS, and access to unbundled network element UNE combinations. First, the change management process maintained by BellSouth is not adequate for several reasons. BellSouth disregards CLEC input because it retains and exercises a unilateral veto power. BellSouth also delays or fails to implement CLEC-initiated requests. BellSouth fails to provide a suitable testing environment for CLECs to test interfaces before beginning operations. Also, BellSouth consistently fails to adhere to its own change management procedures.

Second, BellSouth fails to provide nondiscriminatory access to its OSS.[15] BellSouth still has not remedied the deficiencies in its OSS identified by the FCC in the *Second Louisiana Order*. For example, BellSouth's excessive reliance on manual processing to handle CLEC orders is discriminatory and adversely effects competition. CLECs do not have access to the same features and functionality that BellSouth does. In addition, BellSouth's self-reported data indicates that its performance completing CLEC orders has been consistently worse than the service it provides itself. Nondiscriminatory access to OSS is essential to the development of local competition in Kentucky.

Another critical shortcoming is that AT&T and other CLECs have experienced serious difficulties successfully migrating customers from BellSouth's service to UNE-P service. Most alarming is the fact that AT&T and other CLECs have experienced an unacceptable number of loss of service incidents surrounding the conversion to UNE-P. This is unacceptable when a UNE-P conversion should be nothing more than a billing change.

Checklist Item No. 4.: BellSouth also fails to meet the Section 271 checklist with respect to unbundled local loops, checklist item 4. Most prominently, BellSouth continues to discriminate in the provisioning of "hot cuts" -- coordinated transfer of a local loop from BellSouth to a CLEC -- and in the area of advanced services which will allow CLECs to offer efficiently digital subscriber line based services ("xDSL") to Kentucky customers.

Checklist Item No. 7.: BellSouth has not demonstrated that it complies with checklist item 7, which requires nondiscriminatory access to OS/DA ("operator services and directory assistance"). Section 271 requires BellSouth to provide nondiscriminatory access to operator

[15] BellSouth's failure to provide nondiscriminatory access to the OSS also prevents BellSouth from complying with checklist item No. 14, Telecommunications services must be available for resale.

services, directory assistance and directory listing with no unreasonable delays. In order for CLECs to obtain OS/DA from a provider other than the ILEC, the CLEC must have access to customized routing. BellSouth, however, does not yet provide the necessary OSS to order customized OS/DA routing for a specific customer in an efficient and effective manner.

Checklist Item No. 11: BellSouth also failed to demonstrate that it meets checklist item 11, local number portability ("LNP"). LNP allows users to retain existing telephone numbers when switching from one carrier to another without impairment in quality, reliability, or convenience. BellSouth has fallen far short of meeting this requirement to provide number portability. AT&T customers have experienced numerous and persistent problems as a result of BellSouth's inadequate implementation of number portability, including loss of the ability to receive inbound calls, reassignment of their telephone numbers to new BellSouth customers, duplicate billing, and other difficulties.

Congress constructed Section 271 of the Act to require that effective local competition exist before an Incumbent Local Exchange Carrier ("ILEC") would be permitted to provide in-region interLATA service. Until local markets are open to competition, "there is an unacceptable danger that [the BOCs] will use their market power to compete unfairly in the long distance market."[16] Accordingly, Congress conditioned an ILEC'S entry into the interLATA long distance market on a showing that it meets the requirements of Section 271(c), which are intended to encourage the development of meaningful and effective competition in local markets. In essence, this Commission must establish what is most important to the development of competition in Kentucky and then consider whether BellSouth has met that standard. Unless and

[16] *Second Louisiana Order* ¶ 3.

until this Commission is satisfied that BellSouth has met the standard, then this Commission should not approve BellSouth's Section 271 Application.

II. LOCAL COMPETITION IN KENTUCKY IS MINIMAL, AND COMPETITIVE HARM WOULD RESULT IF BELLSOUTH RECEIVES SECTION 271 APPROVAL PREMATURELY

Before BellSouth is granted permission to offer interLATA services in Kentucky, the Commission must confirm that BellSouth provides entrants access to its network on terms that are nondiscriminatory and cost-based. The most telling evidence in this regard should be the emergence of measurable and meaningful local competition. However, the observed level of competition in Kentucky does not support such a finding.

BellSouth's assertion that local competition in the Kentucky market is meaningful -- much less "irreversible" -- is contradicted by the facts.[17] Local competition in Kentucky remains nascent, in large measure due to the success of BellSouth's obstructing tactics over the past five years.

BellSouth greatly exaggerates the level of local competition in Kentucky, ignoring critical trends and limitations affecting each of the three entry strategies: resale, UNEs and CLEC facilities.[18] Resale activity offers little probative value because evidence suggests it is neither viable nor irreversible. Resale is declining as a market entry vehicle around the country. Indeed, the data demonstrate that resold lines in Kentucky have declined by more than 28 percent over a three-month period in 2001.[19] One cause of the decline of resale is the existence of

[17] *See* Testimony of Joseph Gillan, filed July 9, 2001, at 2-3.
[18] *See* Gillan at 4.
[19] *See* Gillan at 9.

BellSouth's "winback" promotions, which through lower prices evade BellSouth's resale obligations.

The second strategy, UNE-based competition, also has failed to make any meaningful headway. Indeed, UNE-based competition has barely achieved a 1 percent market penetration more than five years after the federal Act became law.[20] UNE-based competition has failed to develop for a number of reasons.[21] First, the price to lease network elements in Kentucky is prohibitively high.[22] Second, BellSouth has been very slow to comply with its legal obligation to provide access to network combinations, delaying the availability of this important strategy until February of last year.[23] The effects of high prices, intransigence, and threatening behavior have combined to frustrate the development of UNE-based competition in Kentucky.[24]

BellSouth's conduct to date has been consistent with an incumbent trying desperately to hold on to market share until it has the unfettered opportunity to increase that share dramatically. For example, BellSouth's proposed Statement of Generally Available Terms and Conditions ("SGAT") rates for UNEs preclude competition in Kentucky. Indeed, not even BellSouth could profitably offer local service if required to lease UNEs at the rates it has proposed. While BellSouth enjoyed operating income of more than $346 million in Kentucky, if BellSouth were purchasing UNEs at the price it charges CLECs, BellSouth would barely have remained in the black.[25] As long as BellSouth controls the network, true competition cannot occur.

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[20] *See* Gillan at 11.
[21] Gillan at 12-13.
[22] *Id.* at 13.
[23] *Id.*
[24] *See* Tr. Vol. 5 at 11-12; Gillan at 12-13.
[25] *See* Gillan at 21.

With respect to the third strategy, contrary to BellSouth's contention, facilities-based activity is negligible, exhibiting a traffic pattern indicative of competition focused on a select customer segment. The number of interconnection trunks and data showing interconnection usage in Kentucky demonstrates an originating CLEC market share for facilities-based carriers of less than 0.4 percent.[26] Significantly, the directional interconnection usage data also indicates that CLECs were focused almost exclusively on serving customers that *received* local calls – most likely, internet service providers.[27] Even if BellSouth's exaggerated estimate of CLEC market share were accurate, a share of 6.3 percent after 5 years is not indicative of the level of competition that would be expected if CLECs truly enjoyed nondiscriminatory access to the existing network.[28]

Not only does the level of competition *today* fail to justify BellSouth's claim that it has opened its markets, the most likely effect of BellSouth's gaining interLATA authority would be for it to gain even greater dominance in the future. Unless entrants are assured nondiscriminatory access to the inherited network, only BellSouth will be positioned to offer packages that combine local service with other products (such as internet access and long distance) broadly across the market.[29] Consequently, granting BellSouth interLATA authority will increase its market power and position at the very same time that the Act's sole financial incentive to comply with its competition-enhancing provisions is removed.

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[26] *See* Gillan at 14-15.
[27] *See id.*
[28] *See* Gillan at 16-17.
[29] For instance, BellSouth's CEO Duane Ackerman has been quoted as predicting that BellSouth would quickly win "in the 25 to 30% market share range," with a "quick couple of billion" flowing to the bottom line as profit. *See* Gillan at 3 (citing "BellSouth Remains Confident, But Cautious About Growth," Atlanta Journal and Constitution, June 3, 2001).

III. THIS COMMISSION CANNOT RELY ON BELLSOUTH'S SELF-REPORTED PERFORMANCE DATA TO EVALUATE BELLSOUTH'S SECTION 271 APPLICATION

BellSouth bears the burden of establishing it satisfies each and every requirement of Section 271, including the obligation to provide nondiscriminatory access to its services and facilities.[30] In its attempt to satisfy this burden, BellSouth relies on self-reported performance data generated under its proposed Interim SQM plan.[31] BellSouth makes this data available to CLECs through its Performance Measures and Analysis Platform ("PMAP"). For purposes of this Section 271 determination, however, BellSouth cannot establish that its performance data is accurate and reliable.

BellSouth must provide "reasonable assurance that the reported data is accurate" and that the data reflect BellSouth's performance in Kentucky.[32] BellSouth has not provided such assurances to this Commission. Indeed, CLECs have presented this Commission with significant examples of why BellSouth's self-reported data is untrustworthy. The evidence CLECs presented to the Commission demonstrates:

- BellSouth's reported performance data from other jurisdictions is not reflective of its Kentucky performance;
- BellSouth's data is missing significant numbers of CLEC transactions;

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[30] *See, e.g.,* Memorandum and Order, *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, As Amended, to Provide In-Region, InterLATA Services in Michigan,* 12 FCC Rcd. 20,543 (F.C.C. August 19, 1997) (No. CC 97-137, FCC 97-298) ("*Ameritech Michigan Order*") ¶ 43 ("the ultimate burden of proof with respect to factual issues remains at all times with the BOC"), ¶ 158 (BOC "has the burden of demonstrating that it has met all of the requirements of Section 271," including that "it provides nondiscriminatory access to all OSS functions."); *South Carolina Order* ¶ 37 ("the BOC applicant retains at all times the ultimate burden of proof that its application is sufficient") (footnote omitted).

[31] *See* Direct Testimony of Alphonso J. Varner, filed May 18, 2001, Exhibit AJV-1.

[32] Memorandum and Order, *In the Matter of Application By Bell Atlantic New York for Authorization under Section 271 of the Communication Act to Provide In-Region, InterLATA Service in the State of New York,* 15 FCC Rcd. 3953 ¶ 433 (F.C.C. Dec. 22, 1999) (No. CC 99-295, FCC 99-404) ("*Bell Atlantic New York Order*"). This requirement, stated in the context of public interest review of a performance monitoring plan, applies at least equally to BellSouth's proffer of its own data to prove checklist compliance.

- BellSouth's SQM reports are inconsistent with each other;
- BellSouth inappropriately excludes data from its raw data files and from certain measures;
- Third-party tests of BellSouth's performance measures reporting in both Florida and Georgia confirm the inconsistencies between BellSouth's performance reports and the underlying data BellSouth allegedly uses to generate those reports, as well as discrepancies between the data BellSouth collects on the pseudo-CLEC and data the pseudo-CLEC collected about its own transactions; and
- BellSouth does not provide all of the raw data underlying all performance measures so that CLECs can evaluate discrepancies in BellSouth's reports.

These problems identified in Ms. Norris's testimony continue to this day.[33] As a result, BellSouth's data should be subjected to significantly more scrutiny before either CLECs or this Commission can rely on it.

A. BellSouth's Performance Reports Are Missing Data

BellSouth's performance data and associated reports do not reflect its total performance. Significant data continues to be missing.[34] This Commission heard testimony from both large and small CLECs regarding significant quantities of CLEC-specific data that were omitted from BellSouth's reports. As the Commission is aware, these performance reports are an important tool for both the Commission and CLECs to evaluate the quality of service BellSouth provides. Without complete and accurate reports, neither the Commission nor CLECs can properly gauge BellSouth's performance.

AT&T witness Norris provided several examples of the kind of data that is missing from BellSouth's reports. Ms. Norris discussed instances in which BellSouth's firm order confirmation ("FOC") or rejection performance reports did not include all of AT&T's local

[33] *See* AT&T Late Filed Exhibit of King C. Timmons, filed Nov. 12, 2001.
[34] This problem continues in September 2001. *See* AT&T Late Filed Exhibit of King Timmons, filed Nov. 12, 2001.

service requests ("LSRs").[35] BellSouth does not dispute that its Response Completeness reports are missing data. BellSouth witness Varner attempts to minimize BellSouth's inability to provide accurate data for this measure by stating that BellSouth currently does not rely on these reports to evaluate its performance.[36] Yet Mr. Varner admits "BellSouth is continuing to investigate why differences exist . . . "[37] Mr. Varner's attempt to deflect the Commission's attention from BellSouth's failure is unavailing. Whether BellSouth plans to rely on this report in the future is irrelevant -- the data it has reported is wrong. Missing data results in inaccurate reports.

AT&T is not the only CLEC that has discovered BellSouth's performance reports are missing significant amounts of CLEC-specific data. NuVox Communications, Inc. ("Nuvox") witness Campbell also detailed significant discrepancies between the number of LSRs NuVox submitted to BellSouth (616) and the number of LSRs BellSouth reported on several of its PMAP reports (1,942).[38] Ms. Campbell's attempts to validate BellSouth's PMAP data only confirmed that none of NuVox's orders for UNEs and related services were included in the performance reports for the NuVox operating company number ("OCN") for which BellSouth provided data.[39] Ms. Campbell also explained that because of these data problems, BellSouth's Kentucky State Summary for CLEC aggregate data is incorrect.[40]

When significant numbers of LSRs are missing, it calls into question not only how well BellSouth is performing for affected CLECs, but also the accuracy of the aggregate reports. It is

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[35] *See* Rebuttal Testimony of Sharon E. Norris, (Data Integrity), filed July 9, 2001, at 7, as adopted by King Timmons at the hearing before the Kentucky Public Service Commission, Tr. Vol. 5 at 336.
[36] *See* Rebuttal Testimony of Alphonso J. Varner, filed July 30, 2001 at 14-15.
[37] *See* Varner Rebuttal at 11.
[38] *See* Testimony of Mary H. Campbell, filed September 21, 2001, at unnumbered page 5.
[39] *Id.* at 6.
[40] *Id.* at 7.

impossible for CLECs or this Commission to judge the level of BellSouth's performance when all of the data on all of the transactions are not reported. Absent a root cause analysis and implementation of corrections to ensure that all data is reported accurately and completely by BellSouth, this Commission cannot rely on any of BellSouth's self-reported data.[41]

B. BellSouth's Performance Reports Are Inconsistent

The unreliability of BellSouth's data is also revealed by inconsistencies between related reports: BellSouth's performance reports generated using common data sets still do not agree.[42] As AT&T witness Norris explained, BellSouth's business rules for the % Rejected Service Request, FOC/Reject Completeness, and FOC/Reject Response Completeness measures indicate that each measure is calculated using the same denominator: the number of LSRs received.[43] Accordingly, these measures should have identical volumes for the number of LSRs.[44] BellSouth's May 2001 performance reports, however, indicate differing volumes in the various reports.[45]

Similarly, BellSouth's business rules indicate that for any given OCN, the volume of LSRs submitted in the Percent Rejected – Mechanized report should match the number of LSRs submitted in the Flow Through report; the number of Fully Mechanized Rejections should match the number of Auto Clarifications in the Flow Through report, and the number of Partially Mechanized Rejections should match the number of CLEC-Caused Fallout in the Flow Through

[41] Norris (Data Integrity) Rebuttal at 13.
[42] This problem continues into September 2001. *See* AT&T Late Filed Exhibit of King Timmons, filed Nov. 12, 2001.
[43] *See* Supplemental Rebuttal Testimony of Sharon E. Norris, filed August 27, 2001, at 13, as adopted by King Timmons at the hearing before the Kentucky Public Service Commission, Tr. Vol. 5 at 336.
[44] *Id.*
[45] *Id.*

report.[46] Yet, BellSouth's data reveal discrepancies among these data sets.[47] Finally, BellSouth should report the same volume in its Missed Appointment and Completion Notice metrics.[48] Again, these reports do not agree.[49]

This Commission cannot base any Section 271 recommendation on data that is wrong. BellSouth witness Varner admits that the data BellSouth is reporting is not perfect.[50] The problems identified by CLECs are much worse than Mr. Varner admits. The inconsistencies within BellSouth's reports call into question all of the data BellSouth has presented in support of its Section 271 application. Accurate, reliable data is the cornerstone for a fully considered Section 271 recommendation. When performance reports are inaccurate, this Commission, and CLECs, have no way to verify whether BellSouth's performance complies with the nondiscriminatory mandate of the Act. This Commission should not recommend Section 271 approval until BellSouth can provide the Commission and CLECs accurate and reliable performance reports.

C. BellSouth Inappropriately Excludes Data From Its Performance Reports

This Commission cannot rely on BellSouth's self-reported performance measures reports because BellSouth has inappropriately excluded certain data from the measures it reports.[51] All data exclusions BellSouth applies must be listed in the SQM used to generate the data. Exclusions that are not included within BellSouth's SQM are unauthorized and inappropriate. CLECs agree there are times when it is appropriate for BellSouth to exclude certain data from a

[46] Norris (Data Integrity) Rebuttal at 13.
[47] Norris (Data Integrity) Rebuttal at 13-16.
[48] Norris Supplemental Rebuttal at 13-14.
[49] *Id.*
[50] *See* Varner Rebuttal at 11.
[51] *See* Norris (Data Integrity) Rebuttal Exhibit SEN-2 at 26-27.

measure. These exclusions, however, must be delineated in the SQM. Without access to all of the information related to a measure's calculation, neither this Commission nor CLECs can verify the accuracy of BellSouth's performance reports.

AT&T witness Norris has provided this Commission with three examples of exclusions BellSouth applies even though BellSouth's proposed Interim SQM does not document these data exclusions.[52] These are:

(1) Directory Listing Orders for certain ordering measures;

(2) Orders classified as Projects for certain ordering measures; and

(3) Local Service Requests ("LSRs") submitted in one month and rejected in another.

Indeed, BellSouth admits that it excludes directory listing orders from certain ordering measures and does not include them in its performance reports data regarding LSRs received in one month but rejected in a different month.[53] Accordingly, BellSouth is not complying with the proposed Interim SQM it has presented to this Commission.

BellSouth also excludes some information related to the three areas listed above from the raw data files it provides to CLECs. Thus, CLECs and this Commission cannot even review the data to determine whether BellSouth accurately determined if the data fits into one of the identified categories. It is inappropriate for BellSouth to withhold this information. Regardless of whether the information is required for calculation of a specific measurement this Commission may adopt, it should be included in the raw data made available to CLECs. CLECs

[52] *See* Norris Supplemental Rebuttal at 19.
[53] *See* Varner Rebuttal at 13, 18.

require raw data related to all of BellSouth's performance measurements to verify BellSouth's conclusions regarding what data should be included in BellSouth's reports and to determine whether BellSouth inappropriately excluded data from the measure.[54] Moreover, CLECs should be able to review BellSouth's total performance for CLECs whether or not the Commission has decided to require measurement of that performance.

BellSouth's data exclusion problems are not limited to the three examples listed above. AT&T witness Norris explained that BellSouth excluded certain AT&T Broadband PMAP performance reports from its May 2001 performance reports.[55] According to BellSouth, AT&T's Broadband reports were excluded from the May performance reports because of a BellSouth error that occurred during a database cleanup. Indeed, BellSouth's database cleanup problem impacted the performance measurement reports for numerous smaller CLECs as well.[56]

Performance reports that exclude relevant data and incorporate the raw data from other CLECs indicate that BellSouth's performance reporting systems are simply not ready to support local competition. These types of reports are a fundamental way for CLECs to assess the quality of BellSouth's service and the accuracy of its performance reporting.

This Commission should withhold its consideration of BellSouth's Section 271 application until it is assured that BellSouth's data exclusion problems are corrected. Additionally, this Commission should defer consideration of BellSouth's application until the Commission approves the data exclusions BellSouth plans to apply, fully implements the

[54] Tr. Vol. 5 at 344-45.
[55] Norris Supplemental Rebuttal at 17-18.
[56] *Id.*

Kentucky SQM adopted October 19, 2001, and has an opportunity to audit that data to ensure BellSouth complies with the Kentucky SQM.

D. Third-Party OSS Testing In Georgia And In Florida Have Identified Important Data Integrity Problems

Third-party OSS testing in Georgia and in Florida has confirmed the problems with BellSouth's performance data that CLECs identified. The Georgia test generated a number of key data integrity exceptions related to data retention and data replication issues.[57] For example, KPMG Consulting Inc. ("KCI") issued Georgia Exception 137 because it could not match the data it collected to BellSouth's data for three ordering measures.[58] KCI explained the importance of this exception: "CLECs rely on BellSouth's performance measurement reports to assess the quality of service provided by BellSouth and to plan future business activities. If SQM reports are based on incomplete or inaccurate raw data, CLECs will not receive accurate SQM information for these purposes."[59] Exceptions 79 and 89, both related to BellSouth's data collection and reporting, similarly are still open. These Georgia exceptions are still open because BellSouth has not resolved the problems.[60]

KCI's third-party testing in Florida is also uncovering numerous problems relating to the reliability of BellSouth's performance measurement reporting. KCI has been unable to replicate a number of BellSouth's reports using the raw data BellSouth makes available. Ms. Norris

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[57] *See* Norris Supplemental Rebuttal at 22. Some of the Georgia data integrity exceptions KCI has identified include: 79 (data retention), 86 (% Troubles in 30 days replication); 89 (data-integrity-% Troubles in 30 days), and 136 and 137 (related to ordering measures). *Id.* at 22n.16. Some of the Florida data integrity exceptions KCI has identified concern KCI's inability to replicate a number of BellSouth's reports using the raw data BellSouth makes available. *Id.* at 22.

[58] *See* Georgia Exception 137 *available at* http://www.psc.state.ga.us/cgi-bin/docftp.asp?txtdocname=46659.

[59] *Id.* at 3.

[60] *See* Testimony of Milton McElroy before the South Carolina Public Service Commission, September 11, 2001, at 5267-68 as stipulated to by the Parties and made a part of the record in the hearing before the Kentucky Public Service Commission on October 27, 2001, Dckt. No. 2001-105.

explained that KCI has issued nine exceptions (10, 11, 22, 27, 36, 78, 81, 95, and 101) relating to the calculating of performance measures.[61] Indeed, KCI issued three of these exceptions because it could not replicate BellSouth's performance reports.[62]

In addition, a third-party audit of BellSouth's data is ongoing in Georgia. The Georgia Commission ordered KCI to complete an audit of BellSouth's performance measures, processes, and data after BellSouth modified approximately 70% of those measures in response to the Georgia Commission's January 2001 order. This audit is not yet complete.[63] BellSouth's data has not been audited in almost two years. The Florida data integrity evaluation is also ongoing and largely incomplete. Until these audits are complete, this Commission cannot have confidence in the accuracy of the data BellSouth has provided.

This Commission should not rely upon any of BellSouth's self-reported performance data to evaluate whether BellSouth provides nondiscriminatory access to local services. The data integrity problems KCI and CLECs have experienced demonstrate that BellSouth's data is unverifiable and unreliable. Accordingly, any attempt by BellSouth to rely on self-generated performance reports to convince this Commission that BellSouth deserves Section 271 authority should be rejected until BellSouth can establish that the underlying data are reliable.

E. BellSouth Does Not Provide CLECs With All Necessary Raw Data

The raw data BellSouth provides to CLECs does not reflect all of BellSouth's transactions with CLECs.[64] Accordingly, CLECs cannot effectively verify the accuracy of

[61] *See* Norris Supplemental Rebuttal at 22.
[62] Norris Supplemental Rebuttal at 22; *see* McElroy South Carolina at 5268.
[63] *See* Tr. Vol. 4 at 329-30.
[64] Norris (Data Integrity) Rebuttal at 17.

BellSouth's reports.[65] Despite the January Order, BellSouth consistently refuses to provide raw data CLECs require to verify the accuracy of BellSouth's reports.[66] For example, BellSouth still does not provide raw data for the LNP flow-through report.[67] Because AT&T does not have access to BellSouth's LNP raw data, it cannot easily determine whether BellSouth is excluding data from its performance reports or assess the quality of service BellSouth is providing. CLECs should not be required to perform Herculean efforts to discover alternative ways to verify BellSouth's reports. BellSouth is obligated to provide CLECs the raw data necessary to verify BellSouth's reports. This Commission should withhold its consideration of BellSouth's Section 271 proceeding until BellSouth provides that raw data.

This Commission should not rely upon any of BellSouth's self-reported data for purposes of evaluating whether BellSouth presently complies with the Act's fourteen point checklist. The missing data, inconsistencies between reports, and unauthorized exclusions BellSouth has applied to its data calculations call into question the performance reports BellSouth has submitted to this Commission. BellSouth's data are simply not reliable, accurate, or complete. Further, BellSouth is unable to provide this Commission any assurance regarding the accuracy of its data. Therefore, this Commission should reject BellSouth's attempt to rely on its flawed data to convince this Commission that BellSouth is ready to enter the interLATA market.

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[65] *Id.* at 17 & n.6; Tr. Vol. 5 at 344-45; *see also* Order on Motions for Reconsideration and Clarification, *In re Performance Measures for Telecommunications Interconnection, Unbundling and Resale*, Georgia Public Service Commission Docket No. 7892-U (May 7, 2001).

[66] Although BellSouth has made progress in this area, it still fails to provide some categories of raw data. *See* AT&T Late Filed Exhibit of King Timmons, filed Nov. 12, 2001.

[67] *See* AT&T Late Filed Exhibit of King Timmons, filed Nov. 12, 2001.

IV. THIS COMMISSION SHOULD NOT RELY ON THE RESULTS OF THE GEORGIA THIRD-PARTY TEST TO EVALUATE BELLSOUTH'S COMPLIANCE WITH SECTION 271

As the FCC has explained, when evaluating the operational readiness of an ILEC's OSS, the most probative evidence is actual commercial usage in the state.[68] "Absent sufficient and reliable data on commercial usage in that state, the [FCC] will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing . . . ."[69] Significantly though, performance data from another state in which the ILEC has been granted 271 authority is relevant only in "certain instances," to supplement state-specific evidence.[70]

Commercial use data in Kentucky alone cannot support a Section 271 recommendation. Absent sufficient commercial use data, BellSouth has urged this Commission to accept the results of the Georgia third-party OSS test as persuasive evidence that BellSouth provides nondiscriminatory access to OSS in Kentucky.[71] Indeed, BellSouth seeks to have this Commission accept the Georgia test and completely ignore the more comprehensive test ongoing in Florida.[72] This Commission should reject BellSouth's plan.

The FCC has explained, "[t]he persuasiveness of a third-party test is dependent on the conditions and scope of the review"[73] and "'third-party reviews should encompass the entire obligation of the incumbent [Local Exchange Carrier] to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to

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[68] *Kansas and Oklahoma Order* ¶ 105.
[69] *Id.*
[70] *Id.* ¶ 107. In this case, BellSouth's application for interLATA authority in Georgia is still being reviewed by the FCC. As discussed *supra*, the Department of Justice has declined to support BellSouth's pending application for Georgia and Louisiana.
[71] Pate Direct at 9.
[72] See Tr. Vol. 4 at 310.
[73] *Ameritech Michigan Order* ¶ 216.

conduct business utilizing the incumbent's OSS access."[74] Third-party tests that are not comprehensive, not independent, and not blind are not persuasive evidence in assessing the real world impact of an incumbent's OSS on competing carriers.[75]

The Georgia third-party test results reported in KCI's *Master Test Plan Final Report, Supplemental Test Plan Final Report and Flow-Through Evaluation* ("Final Report")[76] do not provide this Commission persuasive evidence that BellSouth offers nondiscriminatory access to its OSS. BellSouth did not satisfy the test in areas that could have a material adverse impact on CLECs' ability to compete. Moreover, the Georgia test is not complete. The testimony presented to this Commission during the course of the hearings highlighted numerous reasons this Commission should not rely on the Georgia third-party test. These reasons include:

- the Georgia test does not establish that BellSouth's systems can handle commercial volumes of orders;
- a comparison of the Georgia and Florida third-party tests reveals the limitations and questionable conclusions of the Georgia test;
- KCI's objective tests masked aspects of BellSouth's deficient performance;
- KCI improperly relied on questionable statistical methods and its unsubstantiated "professional judgment" to transform unsatisfied results to satisfied;
- the Georgia test was not sufficiently comprehensive or independent to be persuasive; and
- BellSouth gave discriminatory preferential treatment to all orders originating from Georgia and Florida during a significant portion of the Georgia third-party test.

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[74] *Id.*
[75] *Bell Atlantic New York Order* ¶ 100.
[76] KCI filed its Final Report with the Georgia Public Service Commission on March 20, 2001 in docket number 8354-U *See* Direct Testimony of Ronald M. Pate, filed May 18, 2001 (adopted by Milton M. McElroy per Notice of Adoption of Testimony filed with the Kentucky Public Service Commission on September 10, 2001) Exhibit 64.

Accordingly, if the Kentucky Commission intends to rely on a third-party test, it should conduct its own or, it should consider the final results from the more comprehensive third-party test in Florida.

A. This Commission Should Not Rely On The Results Of The Georgia Third-party Test Because BellSouth's OSS Are Not Sufficiently The Same From State To State

BellSouth argues that this Commission can rely upon the results of the Georgia third-party test to evaluate its compliance with the Section 271 checklist in Kentucky because its OSS are regional.[77] BellSouth's concept of regionality, however, overlooks the important role of individual state commissions. BellSouth's OSS are not as "regional" as BellSouth would have this Commission believe. In fact, several aspects of BellSouth's OSS differ from state to state. Furthermore, BellSouth supports its regionality argument with an attestation from Pricewaterhouse Coopers ("PWC") that is both limited and fundamentally flawed.

1. BellSouth's Concept Of Regionality Overlooks The Important Role Of State Commissions

Each state in the BellSouth region is different. Consumers in each state have different needs and priorities, and the competitive environment is different. Each state commission has the responsibility of ensuring that BellSouth meets the requirements of the Act in the unique context of their state.[78] A state commission is uniquely positioned to evaluate whether BellSouth is meeting the requirements of the Act in its own state. If one state were to defer to the findings of another state, there would be no need for recommendations from state commissions. This is

[77] Pate Direct at 9. It would be inappropriate to use performance data from another state in place of actual Kentucky performance data. *See* Confidential Deposition of Robert L. Lattimore, taken in connection with proceedings before the North Carolina Utilities Commission, dated October 16, 2001, Dckt. No. P-55, Sub 1022, as stipulated to by the parties in the hearing before the Kentucky Public Service Commission, Dckt No. 2001-105, October 25, 2001, Tr. Vol. 6 at 6.

[78] Bradbury Rebuttal at 23.

not to say that evidence from other states (including third-party tests) is never relevant. However, each state commission should conduct a thorough investigation of the underlying basis of that evidence to determine its relevance to its state, and weigh the evidence accordingly.

2. BellSouth's OSS Are Not Sufficiently "Regional"

In its *Kansas and Oklahoma Order*, the FCC relied on certain findings from its earlier *SWBT Texas Order*, based on the premise that similar processes will result in similar performance.[79] However, that is not always the case. As BellSouth witness Heartley admits, the actual performance of BellSouth's OSS can and does vary from state to state.[80] In fact, performance can vary significantly.[81]

BellSouth's OSS differ from state to state in a number of areas. For example:

- *Account Establishment and Management* – When a CLEC enters the market, information is input or received by numerous work groups, operating on a geographic basis.[82] These same work groups also implement any changes required to support the CLECs' on-going business plans.[83] Careful coordination is required to avoid service disruptions.[84]

- *Pre-Ordering* – Pre-ordering performance may not be the same from state to state because BellSouth's legacy systems differ from.[85] The data for all nine states in the BellSouth region are not contained in a single centrally positioned database.[86] Moreover, pre-ordering for complex services depends on manual processes, work groups, and information that are organized on a state by state basis.[87]

- *Ordering* – Ordering performance is not the same from state to state because BellSouth's legacy systems, needed to accept orders, are unique to each state.[88] In addition, the input systems used by BellSouth personnel at the Local Carrier Service Centers ("LCSCs")

[79] *See Kansas and Oklahoma Order* ¶¶ 106-08.
[80] Tr. Vol. 4 at 241.
[81] Tr. Vol. 4 at 243.
[82] Bradbury Rebuttal at 26.
[83] *Id.* at 26-27.
[84] *Id.* at 27.
[85] *Id.*
[86] *Id.*
[87] *Id.* at 27-28.
[88] *Id.* at 28.

differ between South Central Bell states and Southern Bell states.[89] Kentucky is a former South Central Bell state, while Georgia is a former Southern Bell state.[90]

- *Provisioning, Maintenance and Repair* – BellSouth installs requested services and maintains and repairs existing services by using work groups, which are organized on a geographic basis.[91] Some work groups are organized state by state, while others are separated into multiple units within a state, known as "turfs."[92] As a result of this organization structure, performance data from one state does not accurately reflect actual performance in another state.[93]

- *Billing* – Billing is derived from call data collected in eleven BellSouth Data Centers, each serving a particular geographic area.[94] Performance at one Data Center may not be comparable to performance in a Data Center serving a different state.[95]

Given these variations in OSS from state to state, this Commission should not readily rely upon the results of the Georgia third-party test when determining the readiness of BellSouth's OSS in Kentucky.

3. PWC's Attestation Cannot Be Relied Upon To Support BellSouth's Regionality Argument

In order to support its regionality argument, BellSouth engaged Pricewaterhouse Coopers to perform an examination of its OSS and attest to the regionality of its pre-ordering and ordering functionalities.[96] BellSouth's reliance on the PWC attestation, however, is misplaced. The PWC attestation does not support BellSouth's argument that this Commission should rely on the results of the Georgia third-party test because PWC does not attest to the regionality of BellSouth's OSS during the period of time when the Georgia third-party test was conducted. Furthermore, PWC's attestation is limited and fundamentally flawed.

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[89] *Id.*
[90] *Id.*
[91] *Id.* at 29.
[92] *Id.*
[93] *See id.*
[94] *Id.*
[95] *Id.*
[96] *See* Pate Rebuttal Exhibits 74 & 75.

BellSouth argues that this Commission can rely on the results of the Georgia third-party test because its OSS are the same in Kentucky as in Georgia. PWC attests to the sameness of BellSouth's pre-ordering and ordering OSS, however, "as of May 3, 2001."[97] The testing of BellSouth's ordering OSS in Georgia took place from November 1999 through February 2001.[98] Because PWC does not attest to the regionality of BellSouth's OSS until May 3, 2001, BellSouth cannot rely on the conclusions from PWC's attestation for dates prior.[99] Accordingly, BellSouth cannot rely on the PWC attestation to support its regionality argument.

The PWC report is also fundamentally flawed. Most importantly, the report does not address the key issue of OSS performance. Rather, it simply attests that the physical hardware making up the "CLEC-specific OSS gateway interfaces and linkages is the same for all nine BellSouth states and that the same programming code is running in each active system."[100] PWC failed to review the state-specific information in BellSouth's legacy systems and did not review the operation of the systems by BellSouth personnel in the various centers and workgroups other than the LCSC.[101] PWC did not address provisioning, maintenance and repair, billing, or general support of CLEC operations.[102] As PWC is careful to point out, its examination "was not directed toward establishing whether compliance with the aforementioned criteria would

[97] Pate Rebuttal Exhibit 74.
[98] *See* Pate Direct Exhibit 64 at V-A-34, V-A-37, V-A-39.
[99] *See also* Confidential Deposition of Robert L. Lattimore, at 72-73, taken in connection with proceedings before the North Carolina Utilities Commission, dated October 16, 2001, Dckt. No. P-55, Sub 1022, which addresses the impact of BellSouth's preferential treatment of Georgia orders on the date for the attestation. Deposition was admitted by stipulation in the hearing before the Kentucky Public Service Commission, Dckt No. 2001-105, October 25, 2001,Tr. Vol. 6 at 6.

[100] Bradbury Rebuttal at 30.
[101] *Id.*
[102] *Id.* at 32.

constitute legal compliance with Federal Communications Commission or any state Public Service Commission order or regulations and, accordingly, we express no such opinion."[103]

This Commission should reject the PWC attestation put forth by BellSouth as proof of the regionality of its OSS because of its limitations and flaws. In this case, BellSouth's OSS are not sufficiently the same in Georgia as in Kentucky. As a result, this Commission should refuse to rely upon the results of the Georgia third-party test to determine the readiness of BellSouth's OSS in Kentucky.

B. The Georgia Test Does Not Establish That BellSouth's Systems Can Handle Commercial Volumes and Florida Volume Testing Is Revealing Problems

In order to be persuasive evidence, a third-party test must establish that BellSouth's systems are scalable, *i.e.*, that they can handle the volumes of orders competition will bring. Indeed, the FCC has stated that "a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers' access to OSS functions."[104]

1. KCI's Volume Testing In Georgia Provides No Assurance That BellSouth's OSS Will Handle CLEC Volumes

An important part of determining whether a Bell Operating Company's OSS meet the requirements of Section 271 is whether those system have sufficient capacity to support CLECs' entry into the local market. Sufficient volume capacity is critical to supporting CLECs' entry into the local exchange market because CLECs are dependent on BellSouth's OSS for pre-ordering information, ordering and provisioning, billing, and maintenance and repair. The FCC

[103] Pate Direct Exhibit 74; *see also* Bradbury Rebuttal at 32.
[104] *Bell Atlantic New York Order* ¶ 88.

has stated that without nondiscriminatory access to OSS, CLECs "'will be severely disadvantaged, if not precluded altogether, from fairly competing in the local exchange market."[105] The fundamental purpose of volume testing is to ensure that the OSS can handle certain volumes of transactions without compromising the accuracy or the speed with which BellSouth handles those transactions.[106]

As part of the Georgia third-party OSS test, the Georgia Commission ordered normal and peak volume testing to evaluate BellSouth's wholesale (CLEC) transaction volume processing capabilities.[107] If BellSouth's OSS cannot handle the volumes of CLEC transactions, customer service will not be timely and accurately provisioned, bills will be late and inaccurate, and maintenance and repair issues will be unaddressed. Despite the importance of these concerns, the volume test conducted in Georgia, unlike volume tests KCI has conducted in any other state, did not test whether BellSouth's actual production system can handle forecasted CLEC volumes. Instead, KCI ran the volume test in an artificial environment, RSIMMS, which has substantially more capacity than the system used to process real customer orders.[108]

a. The Georgia third-party volume tests were conducted in an artificial environment

KCI recommended to BellSouth that volume testing be performed in the production environment that processes CLEC customer orders, ENCORE.[109] Indeed, KCI told BellSouth "running the volume test in something other than the production environment was not a[s] strong

[105] *Bell Atlantic New York Order* ¶ 83.
[106] McElroy South Carolina at 5255.
[107] *See* Georgia Public Service Commission's Staff Report and Order on Petition for Third Party Testing, Docket No. 8354-U, filed May 20, 1999.
[108] McElroy South Carolina at 5257-60.
[109] *See* McElroy South Carolina at 5263-64; *see also* Hearing Transcript dated May 8, 2001 in Georgia Docket No. 8354-U ("Georgia Hearing Transcript"), filed with the Kentucky Public Service Commission on May 14, 2001 at 213.

a record as running that same test in the production environment."[110] BellSouth, however, refused to have the volume test performed on its production environment. Instead, BellSouth relied on its artificial test environment, RSIMMS, in which KCI performed the volume tests. BellSouth's decision is highly unusual. KCI representatives could recall no other third-party test in which volume testing was performed in a test environment rather than the production environment.[111]

BellSouth may have insisted that volume tests be performed in an artificial environment because BellSouth knew its production environment could not satisfy KCI's volume testing. BellSouth told KCI that its "production environment did not have the computing capacity in the production environment to sustain the workloads 18 months to two years hence."[112] BellSouth's other reason for running volume tests in an artificial environment was purely financial. BellSouth did not want to incur the cost necessary to upgrade its production environment to a level that would satisfy KCI's volume tests.[113]

KCI has acknowledged that results from the test environment provide no assurance that the production environment performs to the Georgia Commission's standards, the standards BellSouth contends it complies with in Kentucky.[114] Even if BellSouth plans to upgrade its ENCORE system at some future date, no testing performed thus far demonstrates such an

[110] Georgia Hearing Transcript at 213.
[111] *See* Georgia Hearing Transcript at 226. In addition to Georgia, KCI has conducted third-party tests in Florida, Massachusetts, New Jersey, New York, Pennsylvania, Michigan, Illinois, Virginia, Rhode Island, and the 13 states in which Qwest is the local service provider.
[112] *See id.*; *see also* Georgia Hearing Transcript at 212-13.
[113] *See* McElroy South Carolina at 5292; *see also* Georgia Hearing Transcript at 213.
[114] *See* McElroy South Carolina at 5259-60; Georgia Hearing Transcript at 226.

upgrade would be sufficient to satisfy a volume test.[115] Nor have any Georgia tests evaluated whether CLEC operations would be adversely impacted during such an upgrade.[116]

The Georgia Commission's May 20, 1999 Order required BellSouth's systems to be tested "at both normal and peak volumes to evaluate BellSouth's ability to process representative future wholesale transaction volumes to support CLECs' entry into the market."[117] No such testing has been performed. Accordingly, this Commission has no information to judge whether CLECs will be harmed by OSS with an insufficient capacity to process CLEC transactions or what impact a deficient production environment may have on Kentucky consumers.

b. RSIMMS has significantly greater capacity than BellSouth's production system

Significant differences exist in the capacity and computing power between RSIMMS (the environment used for volume testing in Georgia) and ENCORE (the production environment.) Both KCI and BellSouth agree that the RSIMMS environment is more powerful and can process more orders than BellSouth's production environment.[118]

The Georgia Final Report on its face reveals that RSIMMS has at least twice the capacity of the production system. Mr. McElroy confirmed this fact. For all three applications used in the test –TAG, LESOG, and LNP – the test environment possessed substantially more power than BellSouth's production environment.[119] The RSIMMS TAG servers "'deliver a 20% faster compute performance'" than the ENCORE servers.[120] Likewise, the RSIMMS environment runs three LESOG servers, each of which possess a compute performance four to six times that of the

[115] *See* McElroy South Carolina at 5296; Georgia Hearing Transcript at 227.
[116] *See* Georgia Hearing Transcript at 227.
[117] May 20, 1999 Order at 4.
[118] *See* McElroy South Carolina at 5259-60; Georgia Hearing Transcript at 214.
[119] *See* McElroy South Carolina at 5260-63.
[120] *See* Pate Direct Exhibit 64, *RSIMMS and ENCORE Systems Review* in Final Report ("*RSIMMS Report*") at 7.

two ENCORE LESOG servers.[121] Additionally, the combined compute capacity of the RSIMMS LNP servers is almost 100% greater than the combined capacity in ENCORE.[122]

Merely upgrading the production environment to mirror the RSIMMS environment in terms of hardware and applications may not be sufficient to ensure that the computing power of the two systems will be identical.[123] ENCORE is configured to run from a local area network across three data centers while RSIMMS is run from a wide area network within one data center. Because data must transfer among the three data centers, ENCORE's processing time will likely be slower than RSIMMS's.[124] Indeed, KCI admits that delays across BellSouth's network could negatively impact ENCORE's performance.[125] KCI's RSIMMS evaluation thus provides this Commission little useful information regarding the capacity of BellSouth's OSS to handle increased CLEC volumes. Without such data, this Commission cannot fully evaluate BellSouth's Section 271 application.

In sum, this Commission cannot rely on the results of the Georgia volume testing as an accurate measure of BellSouth's OSS capabilities. KCI did not perform a complete evaluation of the capacity of BellSouth's current production environment. The only testing KCI performed in Georgia of BellSouth's production environment demonstrates that ENCORE cannot handle anticipated CLEC volumes. Absent such tests, this Commission has no assurance that BellSouth's system will be able to support the volumes required. If this Commission relies solely on the Georgia volume tests, then the Commission faces the substantial risk that the

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[121] *See id;* McElroy South Carolina at 5261.
[122] *See* Pate Direct Exhibit 64, *RSIMMS Report* at 7-8.
[123] *See id.* at 5.
[124] *See id.* at 5 & 7.
[125] *See id.* at 5 & 7.

BellSouth systems may fail leaving Kentucky consumers who are seeking to change local carriers as the casualties.

c. The limited tests on BellSouth's production system were a small fraction of those run in the test environment

KCI's limited volume testing of BellSouth's production system is not sufficient to establish that BellSouth's systems will be able to handle expected usage. The volume KCI used in its "normal volume" testing was based on the existing capacity of BellSouth's production system, not on projected CLEC volumes.[126] Indeed, KCI submitted only 24,594 pre-orders and 7,429 orders in the production environment tests.[127] When KCI ran normal volume testing in BellSouth's artificial test environment, however, the numbers of transactions were based on projected volume and were much greater: 118,000 pre-orders and 35,000 orders, a ratio of roughly 3.5 preordered transactions to 1 ordering transaction.[128] In June of 2001, the ratio of preordered transactions to ordering transactions was almost 7:1.[129] Thus, KCI's testing does not fully reflect the reality of CLECs' experience.

d. The Georgia third-party test volume test did not include testing of manual or partially mechanized orders

KCI's volume testing in Georgia did not include any testing of the LCSCs' manual or partially mechanized processes.[130] Because KCI only tested BellSouth's automated systems, it failed to consider the potential backlogs caused by inadequate procedures or staffing in the LCSC. Notably, BellSouth has blamed many of its performance deficiencies on errors made by

[126] The forecast requirements for ENCORE'S capacity at year end 2001 were at least twice BellSouth's stated capacity. Thus, KCI tests demonstrate BellSouth's production environment has only half of the capacity necessary to meet projected year end 2001 volumes. *See* Pate Direct Exhibit 64, *Final Report* at V-J-1.
[127] *See* Georgia Hearing Transcript at 240.
[128] *Id.*
[129] *See id.*
[130] *See* McElroy South Carolina at 5256 and Georgia Hearing Transcript at 209.

inadequately trained LCSC employees.[131] Given that the LCSC handles a significant volume of CLEC orders, this is a critical area that remains untested. The Florida third-party tests results will provide this Commission with some indicia regarding the quality of BellSouth's performance in this key area.

e. KCI did not perform any stress testing in Georgia

Stress tests are designed to determine the outer limits of a particular system's or interface's volume capacity.[132] Typically, stress tests are an attempt to continuously escalate the volumes placed through an interface until the interface breaks.[133] KCI did not perform any stress testing of BellSouth's RSIMMS test environment or the ENCORE production environment as part of the Georgia third-party test.[134] KCI explained that it decided against performing stress tests in Georgia because it believed stress testing was outside the scope of the Georgia third-party test.[135] In contrast, stress tests will be conducted in Florida.

2. Florida Volume Testing To Date Has Revealed Problems With BellSouth's Systems

As part of its Florida third-party OSS test, KCI is conducting rigorous volume testing in BellSouth's production environment. KCI began its normal volume testing in August 2001, and, as BellSouth witness McElroy admitted, BellSouth encountered substantial problems providing

[131] *See* Pate Direct at 164.
[132] *See* Third Party Test (3PT) Rebuttal Testimony of Sharon E. Norris, filed July 9, 2001 at 31.
[133] *See id.* For example, the New York stress test was designed to test and report the ability of Bell Atlantic-New York's EDI interface to timely process a higher than normal volume of pre-order and order transactions. *Id.* To perform the test, KCI took the highest hourly order volume, in this case 11% of total daily order volume, and used it to establish a baseline for the test. *Id.* The stress load for the test was 150% of the baseline hourly volume. *Id.* In the second hour of the test, KCI incrementally increased the transaction volume every fifteen minutes until the volume for the second hour was approximately 150% of the baseline hourly volume. *Id.* This increased volume was maintained for two hours during which KCI submitted orders evenly throughout each hour. *Id.* The volumes in the last two hours of testing were two and one-half times greater than the baseline hour volume. *Id.* None of this was done in the Georgia test. *See id.*
[134] *See* McElroy South Carolina at 5256.
[135] *See* Georgia Hearing Transcript at 209.

timely response for preordering transactions.[136] Mr. McElroy admitted that BellSouth also failed other volume tests involving the TAG, RoboTAG, and EDI interfaces.[137] Additionally, KCI has opened an exception related to BellSouth's volume capacity for manually processed orders.[138]

Because BellSouth argues its OSS are regional, the deficiencies KCI has identified in Florida likely indicate similar deficiencies in Georgia and Kentucky. Accordingly, this Commission should wait to make any recommendation until BellSouth can demonstrate its OSS are ready to handle normal anticipated CLEC volumes.

C. The Florida Test Is Revealing Deficiencies In Key Areas That Were Not Tested At All In Georgia

The Georgia third-party test is not comprehensive. By design, the Georgia test did not include all areas of testing that have been included in other states.[139] For example, KCI did not evaluate: currently used interfaces, manual systems, relationship management, and local number portability metrics.[140] These important areas are being tested in Florida.

1. Ability to Build Interfaces

A meaningful OSS test must evaluate: (1) whether BellSouth provides CLECs with the documentation necessary to design, develop and maintain OSS that can interface with BellSouth's OSS; and (b) the functionality of BellSouth's OSS interfaces used in commercial production.[141] The Georgia third-party test did not evaluate a CLEC's ability to build interfaces using BellSouth's documentation.[142] Indeed, BellSouth witness McElroy admitted KCI "did not

[136] *See* McElroy South Carolina at 5265.
[137] *See* McElroy South Carolina at 5264-65.
[138] *See* McElroy South Carolina at 5256.
[139] Norris 3PT Rebuttal at 6.
[140] Norris 3PT Rebuttal at 6.
[141] Norris 3PT Rebuttal at 9.
[142] McElroy South Carolina at 5253.

do the more thorough testing of the building of the interface and going through that experience."[143]

In contrast, the Florida Public Service Commission required KCI to build interfaces based on interface documentation from BellSouth intended for the CLEC community – just like real world CLECs must build them.[144] Test PPR5 in the Florida third-party test expressly evaluates the ability of a CLEC to build an interface using BellSouth's publicly available information.[145] The Florida test has identified deficiencies. Exception 6 in Florida remains open because KCI found BellSouth lacks an appropriate process, methodology and a robust test environment for testing of the EDI interface.[146] This exception reveals that BellSouth does not provide what CLECs need to build and test and interface that can communicate with BellSouth's systems.

2. Current Interfaces

Another critical area KCI failed to test in Georgia was the functioning of BellSouth's current interfaces. For example, KCI failed to evaluate the current production version of certain ordering interfaces, *e.g.* OSS99 version of the Electronic Data Interchange ("EDI") and Telecommunications Access Gateway ("TAG"). OSS99 is BellSouth's "state of the art" upgrade to its pre-ordering and ordering interface. It is the interface that BellSouth claimed in the late nineties would provide a "solution to its OSS problems," and it is the interface that most closely complies with industry standards. Over eighty percent (80%) of current CLEC transactions are

[143] McElroy South Carolina at 5254.
[144] Norris 3PT Rebuttal at 9. The third-party testing in New York also evaluated whether CLECs could build interfaces using the ILEC's instructions and support. *See Bell Atlantic New York Order* ¶ 134-135; *see also* Norris 3PT Rebuttal at 9.
[145] *See* McElroy South Carolina at 5254.
[146] *See* Florida Website Florida Public Service Commission, Exception Status Report dated 4/2/01, www.psc.state.fl.us/industry/telecomm/oss/pdf/exception.

conducted using OSS99 software. Yet, as BellSouth witness McElroy confirmed, KCI did not perform any transactional testing of this important ordering interface.[147] Mr. McElroy also told this Commission that, in Georgia, KCI did not evaluate any versions of other interfaces, e.g., LENS, which is currently the most popular interface,[148] and RoboTAG, which combines TAG with a front-end Graphical User Interface ("GUI").[149]

In Florida, KCI is performing functional testing of OSS99 and these other interfaces.[150] Indeed, the Florida test is identifying deficiencies related to all of these systems. At the time of Ms. Norris' testimony, there were eight open observations and 16 open exceptions in Florida that address OSS99,[151] two open observations and one open exception addressing RoboTAG and two open observations and three open exceptions addressing LENS.[152]

3. Manual Processes

In addition to demonstrating that its automated systems and processes do not discriminate, BellSouth also must demonstrate that its manual processes are nondiscriminatory. The FCC has stated that in order to provide nondiscriminatory access to OSS, an ILEC "must first demonstrate that it 'has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.'"[153] BellSouth cannot rely on the Georgia third-party test to make such a showing. As AT&T

[147] *See* McElroy South Carolina at 5248-49.
[148] Norris 3PT Rebuttal at 8. In July 2001, LENS accounted for over 65% of the total of all electronic Local Service Requests submitted in the region.
[149] Norris 3PT Rebuttal at 8.
[150] *See* McElroy South Carolina at 5249.
[151] *See* McElroy South Carolina at 5249.
[152] Norris 3PT Rebuttal Exhibit SEN3PT-1.
[153] *Bell Atlantic New York Order* ¶ 126 (citations omitted).

witness Norris explained, KCI did not test manual processes in Georgia. Yet, the Florida OSS test evaluated all of these key areas.[154]

The failure to evaluate BellSouth's manual support systems is an especially critical flaw for this proceeding. For two of the areas in which KCI concluded that BellSouth did not satisfy the test -- accuracy of rejects and clarifications and accuracy of switch translations -- BellSouth blamed errors by personnel in the LCSC for the not satisfied results.[155] Thus, this Commission does not have sufficient evidence to evaluate the full impact of BellSouth's manual performance problems. Accordingly, for this essential area the Commission has insufficient evidence to support a Section 271 recommendation.

4. Relationship Management

The Georgia test did not include any testing of relationship management. BellSouth's relationship management practices are important because CLECs need to be assured that the information BellSouth provides is consistent and repeatable throughout the BellSouth organization.[156] Every CLEC is required to go through the start-up procedures to establish an account with BellSouth and rely upon BellSouth's account teams for a myriad of day-to-day activities. Indeed, CLECs are heavily dependent on their account team for information, assistance in purchasing services, and escalating problems. Without well-documented relationship management procedures, CLECs may be hindered in their ability to establish their accounts promptly and efficiently and receive prompt resolution to problems because of inconsistent and contradictory information provided by BellSouth.[157] Despite the importance of

[154] *Id.*
[155] Pate Direct at 164.
[156] Norris 3PT Rebuttal at 12.
[157] *Id.* at 12-13.

this area, Mr. McElroy admitted KCI did not test BellSouth's relationship management in Georgia.[158]

Both the New York and Florida third-party tests evaluated this important area. For example, the New York third-party test evaluated "[a]ll stages of the relationship between Bell Atlantic and competing carriers . . ., from establishing the initial relationship, to performing daily operations, to maintaining the relationship."[159] Some of the specific testing areas in New York addressed network design requests, collocation, interconnection planning, and system administration help desk.[160] The Florida OSS test also evaluated these and other areas and has noted deficiencies in BellSouth's systems.[161] For example, at the time of Ms. Norris' testimony, KCI had opened three exceptions regarding Florida Test PPR2.[162]

5. Unbundled Network Elements ("UNEs")

BellSouth claims that it offers CLECs over eighty UNEs.[163] KCI, however, evaluated only six UNEs for ordering, provisioning, and billing activities.[164] Key UNEs omitted from the Georgia third-party test include digital UNEs, DS-1, Enhanced Extended Links ("EELs"), customized routing of OS/DA, and line-splitting/sharing. Moreover, the UNE billing test in Georgia was limited to those few order types that had been part of the ordering and provisioning tests.[165] Thus, the billing evaluation did not mirror the experiences of actual CLECs because the

[158] Norris 3PT Rebuttal at 12 & McElroy South Carolina at 5250-51.
[159] *Bell Atlantic New York Order* ¶ 97.
[160] *See id.* at ¶ 97 n.264.
[161] *See* Norris 3PT Rebuttal at 12.
[162] Norris 3PT Rebuttal at 12. This test evaluates BellSouth's policies and practices for establishing and managing CLEC account relationships. *Id.* KCI is evaluating these relationships to determine their adequacy, completeness, and compliance with stated BellSouth policies and procedures. *Id.* Additionally, to the extent specific retail analogs were identified, the test is designed to compare BellSouth's wholesale and retail performance for parity. *Id.*
[163] *See* Norris 3PT Rebuttal at 9.
[164] Norris 3PT Rebuttal at 9. xDSL was added in the Supplemental Test Plan. *Id.* at 9 n.7.
[165] Norris 3PT Rebuttal at 10.

testing did not rely on the results of actual pre-ordering, ordering and provisioning activities. Accordingly, the Georgia test provides information about only a small portion of BellSouth's activities. The Florida OSS test, in contrast, evaluates all of BellSouth's available products.

6. Local Number Portability

KCI failed to consider important performance measures in its Georgia third-party test. One metric of particular importance that remains untested in Georgia concerns LNP.[166] LNP is essential for CLECs to meaningfully compete in the local exchange market because it permits consumers to keep their own telephone numbers when switching carriers.[167] Consequently, many CLEC local service orders include LNP. Accordingly, evaluating BellSouth's ability to provide ordering and provisioning of LNP is critical to evaluating whether CLECs are provided a meaningful opportunity to compete in Kentucky.[168]

In Florida, KCI is testing LNP (PMR 5) and has issued at least six exceptions regarding the accuracy of BellSouth's LNP metrics calculations and its ability to verify metrics reports.[169] For example, AT&T witness Norris explained that KCI issued Florida Exceptions 10 and 11 because BellSouth's calculation for several measures was inconsistent with the measures' calculation methodology set forth in BellSouth's SQM.[170] Additionally, KCI identified 24 discrepancies where BellSouth reported time intervals using a method other than that defined in its SQM.[171] Failure to calculate performance measures using the defined methodology seriously impacts the integrity of the data provided to CLECs and this Commission regarding BellSouth's

[166] Norris 3PT Rebuttal at 13-14.
[167] *Id.* at 14.
[168] *Id.*
[169] *Id.* at 13. Exceptions 10, 11, 14, 21-22, and 24 all concern various aspects of KCI's LNP testing of metrics calculation and verification review. *Id.* at 13 n.8.
[170] Norris 3PT Rebuttal at 13-14.
[171] *Id.* at 13.

response to LNP orders. If BellSouth's data is inaccurate, CLECs and this Commission are prevented from receiving an accurate measure of BellSouth's performance.

7. Parity of Performance

The Georgia third-party test did not objectively and accurately analyze BellSouth's OSS performance in providing service to CLECs and compare that performance to the service BellSouth provides itself and its affiliates.[172] An evaluation of BellSouth's parity of performance is key evidence concerning whether BellSouth provides non-discriminatory access to its OSS.[173] Indeed, the FCC has stated parity measures are critical to assure BellSouth provides access that permits "[CLECs] to perform [OSS] functions in 'substantially the same time and manner'" as OSS functions used by BellSouth or its affiliates.[174] KCI, however, only tested parity in two areas in Georgia: Maintenance and Repair Process Evaluation (Test M&R10 of the GMTP) and xDSL Process Parity Evaluation (Test PO&P 16 of the GSTP).[175]

By way of comparison, the Florida third-party test evaluates nine additional process parity tests: Order Flow-Through (Test TVV3); Account Management (Test PPR2); Training (Test PPR4); Provisioning Process; (Test PPR9); Billing Work Center (Test PPR 10); Bill Production (Test PPR11); and Functional Review of Pre-Order, Ordering, and Provisioning (Test TVV1); Manual Processing of Orders (PPR7); and Capacity Management.[176] These nine process parity tests evaluate areas that go to the heart of CLECs' ability to compete.[177]

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[172] Norris 3PT Rebuttal at 7.
[173] *Id.*
[174] Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. (d/b/a Southwestern Bell Long Distance) for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd. 6237 (F.C.C. Jan. 22, 2001) (No. CC 01-29, FCC 00-217) ("*SWBT Kansas and Oklahoma Order*"); *see also Bell Atlantic New York Order* ¶ 83.
[175] Norris 3PT Rebuttal at 7.
[176] Norris 3PT Rebuttal at 7-8.
[177] *Id.* at 8.

D. The Florida Test is Revealing Deficiencies in Areas that Were Not Tested Adequately in Georgia

1. Change Management

An important aspect of CLEC parity with BellSouth's OSS is the ability of CLECs to alter their interfaces to conform with BellSouth's OSS in a timely and efficient manner whenever BellSouth alters its OSS. The importance of this capability was highlighted when the Bell Atlantic – New York ("BA-NY") OSS in New York "crashed" in early 2000 because of inadequate mechanisms to permit OSS changes to be fully implemented on a timely and coordinated basis.[178] Despite extensive (and expensive) work-arounds, CLECs simply could not compensate for this massive problem, and tens of thousands of customers' orders were lost or delayed, including 40,000 AT&T orders.[179]

The problems New York experienced could have been mitigated or prevented by an effective change control process. At the very least, existence of an appropriate testing environment, go/no go decision point involving CLECs, and a versioning process would have mitigated this disaster. BellSouth's current Change Control Process does not contain an adequate pre-release testing environment or a go/no go decision point.

The Georgia third-party test was supposed to evaluate BellSouth's Change Control Process.[180] It did not. KCI's evaluation of BellSouth's change control process focused on the existence of documentation describing the process, not on the appropriateness or adequacy of the process or on the timeliness and adequacy of implementation.[181] Indeed, KCI could not conduct

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[178] *Id.* at 18.
[179] *Id.*
[180] *See* Pate Direct Exhibit 64, *Final Report* at VIII-A-1.
[181] *See* Norris 3PT Rebuttal at 16-17; *see also* Georgia Hearing Transcript at 205.

a complete review. At the end of their testing, BellSouth's change management system was continuing to "evolve." In other words, there was no complete and final system in place for KCI to evaluate.

An adequate change control process is essential to a CLEC's ability to develop business systems and plans based on a set of agreed upon expectations. The Georgia third-party test does not provide this Commission with the information necessary to determine the adequacy of BellSouth's change management system. In order to protect Kentucky consumers from the problems experienced in New York, this Commission should defer its consideration of BellSouth's application until it can review the final results of KCI's Florida's Change Management testing.

2. Billing

KCI also limited billing testing to the types of orders that had been part of the ordering and provisioning tests. This limited UNE billing testing fails to ensure that customers will receive accurate bills. Accurate and timely billing is one of consumers' fundamental concerns. In their efforts to provide customers with timely and accurate bills, CLECs are dependent upon ILECs to provide usage information like BellSouth's Access Daily Usage Files ("ADUF") and Optional Daily Usage Files ("ODUF"). During its testing, KCI identified several issues concerning the accuracy of the information BellSouth provides.[182]

KCI's billing tests show that for test CLEC invoices, the expected usage did not match the Exchange Messages Interface ("EMI") provided by BellSouth.[183] KCI opened Exception 91 in connection with this problem but closed it based on BellSouth's promise to correct the

[182] Norris 3PT Rebuttal at 34-35.
[183] Pate Direct Exhibit 64, *Final Report* at VI-A-23.

problem.[184] KCI, however, never verified whether BellSouth's correction resolved the open exception.[185] For CLECs that use the wholesale bill as a means of billing their customers, this problem, if left uncorrected, could lead to inaccurate bills being sent to Georgia consumers.[186]

KCI also determined that significant problems exist in the accumulation of usage data for billing.[187] In the performance of billing tests, KCI found that service orders were "hung up" in the system, preventing usage from being delivered to the CLEC.[188] Nonetheless, KCI determined that tests BLG-2-1-2, BLG-2-1-10, and BLG-2-1-11,[189] tests related to the accuracy and completeness of usage files, were satisfied.[190] Rather than re-test these issues, KCI reached these conclusions in reliance on BellSouth's assurance that when these errors occur, CLECs would not be billed for the usage in question.[191]

BellSouth's decision not to bill CLECs for the delayed and missing usage does not address the deficiency identified by KCI. CLECs earn profit, in part, based upon the difference between what they pay BellSouth for usage and the amount CLECs charge their customers for that usage.[192] Accordingly, if BellSouth does not provide a CLEC some portion of its usage, then that CLEC cannot bill its customers. The transaction is effectively eliminated along with

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[184] *See* Norris 3PT Rebuttal at 34. KCI closure report for Exception 91 states "according to its response BellSouth expects to implement a fix for the Billing and Interrupt charges on September 19, 2000. KCI's professional experience indicates that if properly implemented, BellSouth's proposed fix is likely to adequately correct the issue identified in Exception 91." *Id.* at 34-35. No testing was performed on this fix.
[185] Norris 3PT Rebuttal at 35.
[186] *Id.*
[187] *See* Georgia Hearing Transcript at 197.
[188] Norris 3PT Rebuttal at 35.
[189] BLG-2-1-2's evaluation criteria states, "For all scripted and completed test calls that should generate a DUF record, all expected DUF records are contained in the electronically delivered Daily Usage Files." Pate Direct Exhibit 64 *Final Report* at VI-B-14. BLG-2-1-10 concerns whether BellSouth's "[p]rocess includes procedures to ensure all relevant usage is received, validated and processed." *Id.* at VI-B-16. BLG-2-1-11 tests whether BellSouth's "[p]rocess includes procedures to ensure all usage is correctly reported." *Id.* at VI-B-17.
[190] *Id.*
[191] *See Id.* at VI-B-15.
[192] *See* Norris 3PT Rebuttal at 36; Georgia Hearing Transcript at 199.

the CLEC's profit.[193] Thus, the "solution" BellSouth proposed and KCI accepted, will actually diminish CLECs' profits and thereby impair their ability to compete effectively.[194]

The deficiencies KCI identified in the Final Report comments may be even greater in the real-world environment of CLEC competition. It is impossible to tell because KCI's billing tests do not provide end-to-end testing. At the Georgia third-party test hearing, KCI acknowledged that the test bed for its billing tests was entirely separate from the pre-ordering, ordering and provisioning test beds.[195] Thus, even though CLECs are dependent upon BellSouth's systems to perform all of the electronic transactions regarding pre-ordering, ordering and provisioning, and billing customers, no test evaluated whether all of these systems functioned appropriately together.[196] Consequently, KCI's testing provides the Commission with no basis to evaluate whether these systems function properly together or whether a CLEC could order, provision, and accurately bill any of its local service requests.

Even if accurate usage files and invoices are delivered, CLECs may not have sufficient information to understand them. KCI used its "professional judgment" to reach determinations on tests evaluating CLECs' ability to understand BellSouth's bills. Tests BLG-5-1-1 through BLG-5-1-3 concern whether BellSouth's documentation sufficiently conveys information so that CLECs can understand the bills.[197] KCI's comments note certain deficiencies with BellSouth's documentation. For example, KCI's qualifications to BLG-5-1-2 include, "[t]here is no overview of how information is organized across various documents," and "[e]xamples or

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[193] *See Id.*
[194] *See* Georgia Hearing Transcript at 199.
[195] *See id.* at 202.
[196] *See* Final Report, Table VI-6.2 at VI-F-3-4; *see also* Norris 3PT Rebuttal at 27 & Georgia Hearing Transcript at 2032 & Hearing Ex. 73, JMB-8 at 203.
[197] *See* Pate Direct Exhibit 64, *Final Report* at VI-E-7 to 9; Georgia Hearing Transcript at 193.

illustrations were noted without corresponding explanation."[198] Regardless of these and other concerns, KCI determined the deficiencies would have little impact on CLECs.[199] KCI admits, however, it did not seek CLECs' opinions in reaching these conclusions.[200]

The CLECs' ability to render timely, accurate bills to their customers is completely dependent upon the performance of BellSouth's systems.[201] Yet, KCI's billing testing is insufficient to assure that BellSouth provides sufficient accurate and complete information to CLECs.

E. The Georgia Third-Party Test Does Not Provide An Accurate Portrait Of BellSouth's OSS Performance in Kentucky

1. BellSouth Provided Discriminatory Preferential Treatment To All Georgia And Florida Orders

During the Georgia third-party test, KCI relied extensively on transaction-based tests to measure BellSouth's performance in the areas of pre-ordering, ordering and provisioning, maintenance and repair, and billing.[202] It is undisputed that one of the goals of transaction-based testing is to enable the tester to "live the CLEC experience."[203] Therefore, transaction-based testing requires that test transactions be treated like any other.[204] Indeed, the FCC has noted the importance of putting measures in place to ensure that the tester's transactions do not receive discriminatory preferential treatment.[205] LSRs submitted from Georgia and Florida during the

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[198] Pate Direct Exhibit, *Final Report* at VI-E-6.
[199] *See* Norris 3PT Rebuttal at 37; Georgia Hearing Transcript at 194.
[200] KCI used similar professional judgment in evaluating tests BLG-1-1-30, BLG-1-1-43, and BLG-1-1-44. KCI deemed these tests satisfied even though the comments indicate a lack of compliance with the tests' evaluation criteria. *See* Pate Direct Exhibit 64, *Final Report* at VI-A-26 & VI-A-31; *see also* Georgia Hearing Transcript at 195.
[201] Georgia Hearing Transcript at 185-186.
[202] *See* Pate Direct Exhibit 64, *Final Report* at II-5.
[203] *See* Pate Direct at 149; *see also* Pate Direct Exhibit 64, *Final Report* at II-5.
[204] *See id.*
[205] *See Bell Atlantic New York Order* ¶ 99-100 ("Although it was virtually impossible for [test] transactions to be truly blind, [the tester] instituted certain procedures to ensure that [it] would not receive preferential treatment.").

third-party test, however, were given preferential treatment over LSRs submitted from other BellSouth states.

a. BellSouth gave preferential treatment to certain LSRs

Requests for services that cannot be handled by BellSouth's electronic systems are handled by one of three LCSCs.[206] In addition to handling orders that are submitted manually, the LCSCs handle requests that are submitted electronically but subsequently fall out for manual processing.[207] At least 30 percent of all CLEC orders are processed by BellSouth's LCSC. Of the three LCSCs, two (Atlanta and Birmingham) are mainly devoted to processing CLEC orders.[208] The third LCSC (Fleming Island) was recently opened by BellSouth to handle primarily telephone inquiries.[209]

BellSouth engaged Pricewaterhouse Coopers ("PWC") to examine and analyze its OSS for the purpose of attesting to the regionality of BellSouth's OSS in Section 271 proceedings. During its examination, PWC discovered that BellSouth's LCSCs gave special treatment to all LSRs submitted from Georgia and Florida.[210] In fact, BellSouth admits that it began giving priority to Georgia and Florida orders in early Fall 2000, and stopped this practice in April 2001.[211]

b. BellSouth's actions further undermine the validity and integrity of the results of the Georgia third-party test

[206] Bradbury Rebuttal at 28.
[207] *Id.*
[208] *See* Bradbury Rebuttal at 129.
[209] *See id.*
[210] *See* McElroy South Carolina at 5273-74.
[211] *See* McElroy South Carolina at 5274 (indicating that BellSouth implemented the preferential treatment practice "the latter part, I want to say August or September of 2000").

Providing priority handling of certain orders over others at BellSouth's LCSC artificially inflates test results and performance data involving the orders that were given preferential treatment (*e.g.*, orders from Georgia and Florida) while at the same time lowering the quality of service provided to orders from other states.[212] Specifically, the discriminatory preferential treatment provided by BellSouth's LCSCs could artificially inflate the test results and performance data relating to the following areas:

- Timeliness of status notices (*i.e.,* firm order confirmation and rejection notices);
- Provisioning intervals (*e.g.,* order completion interval and total service order cycle time) because orders that are handled faster are likely to receive earlier due dates; and
- The accuracy of BellSouth's ordering and provisioning process.

The Georgia third-party test was intended to give the Georgia Commission an accurate assessment of the readiness of BellSouth's OSS. By "living the CLEC experience" during the test, results should be indicative of what a real CLEC could expect to encounter when it utilizes BellSouth's OSS to compete. However, by giving preferential treatment to orders from Georgia, a practice that purportedly has been discontinued, BellSouth has ensured that the results of certain of the transaction-based tests do not serve as accurate indicators of the current, real-world readiness of BellSouth's OSS or of the performance of BellSouth's OSS for CLECs in Kentucky. Furthermore, BellSouth's willingness to provide discriminatory preferential treatment in one known area of the test raises grave concerns regarding the integrity of the entire test.

[212] Test results in Florida may be more indicative of what actual performance for Kentucky CLEC LSRs would be because the practice of preferential treatment stopped in April 2001 and a substantial portion of the Florida test took place after that time. *See* McElroy South Carolina at 5275.

2. KCI inappropriately aggregated test results

The Georgia Commission specified disaggregation levels to be used in performing the third-party test. KCI, however, did not test to the ordered levels of disaggregation.[213] Although KCI's Final Report provides data at the levels of disaggregation set forth in the Georgia Commission's June 6 Order, the data was evaluated on an aggregated basis for the purposes of determining whether tests were satisfied.[214] Indeed, during the Georgia third-party test hearing, KCI admitted "our test was not constructed with the level of disaggregation specified in the June 6 Order."[215] As a result, BellSouth satisfied certain tests even though it did not meet Commission-established standards for important order types such as orders that allow consumers to keep their own telephone numbers when switching carriers.[216]

KCI's only excuse for making decisions based on aggregated data is that the Commission's June 6, 2000 Order establishing the appropriate standards was not issued until after it conducted the initial test. KCI, however, performed its first retest between August 25 through November 15, 2000[217] and conducted its second retest between January 19 and February 27, 2001,[218] both well after the Georgia Commission ordered testing of the disaggregated service types. During the Georgia third-party test hearing, KCI admitted it knew the Georgia Commission required disaggregated testing and that it could have changed its samples for the retest to comply with the Georgia Commission's Order.[219]

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[213] *See* Georgia Hearing Transcript at 75, 76 & 82.
[214] *See id.* at 82.
[215] *Id.*
[216] AT&T witness Norris' rebuttal testimony provides detailed examples of how aggregated results masked BellSouth's deficient performance. *See* Norris 3PT Rebuttal at 40-41.
[217] *See* Georgia Hearing Transcript at 76.
[218] *See id.* at 76–77.
[219] *See id.* at 76.

KCI's failure to perform the third-party testing according to the Georgia Commission's Order skews the test results. It masks poor performance for significant service/activity types such as LNP with 2 wire loops or FOC timeliness for 2-wire loops with LNP.[220] Evaluating test results based on aggregated data rather than on disaggregated data can permit otherwise unsatisfactory performances to remain undetected or to be counter-balanced by areas which might out-perform the standard.

3. KCI included data that masked the true performance of BellSouth's systems

KCI designed pre-order timeliness queries to evaluate various BellSouth back-end systems.[221] In evaluating those back-end systems, however, KCI did not confine its reporting and analysis to the time it took the systems to process queries. Instead, KCI admitted it included in the analysis queries that were rejected at the gateway, before they entered BellSouth's back-end systems.[222] The time for processing queries that are rejected at the gateway is generally shorter than the time for processing queries that actually enter BellSouth's back-end systems.[223] As a result, KCI reduced the average time for processing queries and masked the actual performance of BellSouth's back-end systems.

F. The Georgia Third-Party Test Report Demonstrates That BellSouth Failed To Meet Test Criteria In Key Areas

BellSouth failed to satisfy 20 of KCI's evaluation criteria.[224] Of these 20 tests, KCI has determined that tests in the following three areas can severely impact CLECs' ability to compete: timeliness of responses to fill mechanized orders; timeliness and accuracy of clarifications to

[220] Norris 3PT Rebuttal at 40.
[221] *See* Norris 3PT Rebuttal at 41; Georgia Hearing Transcript at 55.
[222] *See* Norris 3PT Rebuttal at 41; Georgia Hearing Transcript at 56.
[223] *See* Norris 3PT Rebuttal at 41; Georgia Hearing Transcript at 59.
[224] Norris 3PT Rebuttal at 47. KCI also determined 25 tests were not complete. Varner Direct at 4.

partially mechanized orders; and accuracy of translation from external (CLEC) to internal (BellSouth) service orders resulting in switch translation and directory listing errors.[225] In KCI's opinion, BellSouth's failure to meet these criteria could have a material adverse impact on CLECs' ability to compete effectively.[226]

O&P-5-2-1 is illustrative of the impact BellSouth's failures have on CLECs and consumers. The evaluation criteria for this test is: "Provisioning was completed accurately for orders placed in [BellSouth's ordering systems.]"[227] KCI applied a standard of 95% for provisioning accuracy for switch translations. The initial test of thirty-five lines shows only 91% were accurately provisioned. The first retest of eighty-nine lines showed only 87% were accurately provisioned. KCI rightly determined that these results are unsatisfactory. Competition will be difficult if CLECs cannot guarantee that their customers will get the services they ordered.

Indeed, each test that BellSouth has been unable to satisfy is critical to CLECs' ability to attract and adequately service Kentucky consumers. The tests evaluate CLECs' basic ability to have BellSouth timely process, fill and correctly provision its orders. Failure to satisfy these tests demonstrates that BellSouth's OSS is not ready to support CLECs' entry into the market. Even though KCI recognized the seriousness of BellSouth's performance deficiencies in Georgia, it attempted to disregard this significant concern:

> As you know, the Commission will be able to monitor those issues on an ongoing basis through the performance measures and/or penalty plans in place that address the timeliness of BellSouth

[225] Norris 3PT Rebuttal at 47. In these three areas, the following tests remain unsatisfied: O&P-1-2-1, O&P-1-3-2a, O&P-1-4-2, O&P-2-2-1, O&P-2-3-3a, O&P-2-4-2, O&P-3-3-1, O&P-4-3-1, O&P-5-2-1, PO&P-11-3-2a, PO&P11-3-36, PO&P-11-4-4, PO&P-13-4-3, PO&P-14-3-2. *See Id.*
[226] Pate Direct Exhibit 67.
[227] Pate Direct Exhibit 64, *Final Report* at V-E-7.

> responses, service order accuracy, and percent of provisioning troubles within 30 days.[228]

BellSouth has relied on KCI's statement to suggest to this Commission that monitoring these areas and use of a penalty plan will sufficiently negate the adverse impact CLECs experience because of BellSouth's performance deficiencies. There are two major flaws with this conclusion. First, the metrics review ordered by the Georgia Commission is not complete—in part because KCI has not been able to evaluate the adequacy of BellSouth's data. Until this review is complete, this Commission can have no confidence that BellSouth's performance in these three areas has improved. Moreover, if the data on which performance measure penalty plans are based are inaccurate or incomplete, there will be no way for CLECs to bring BellSouth's poor performance to the Commission's attention or to obtain penalties.

Second, there are no performance measures included in the penalty plan that address two of the three areas BellSouth did not satisfy.[229] For example, the penalty plan does not address the accuracy of service orders.[230] This measure is extremely important to CLECs because it is the only way CLECs can evaluate the accuracy of BellSouth's switch translation provisioning and directory listings. CLECs are entirely dependent on BellSouth to perform these tasks accurately. BellSouth's failure to do so results in customer dissatisfaction and can irreparably damage the customer-CLEC relationship. When this occurs, the penalty plan provides no compensation to CLECs for BellSouth's inadequate service.

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[228] *See* Norris 3PT Rebuttal at 49-50; Norris 3PT Rebuttal Exhibit SEN3PT–4 at 2.
[229] Norris 3PT Rebuttal at 50.
[230] *See* McElroy South Carolina at 5266-67.

The penalty plan also does not address the problems with accuracy of order rejects and clarifications BellSouth provides.[231] CLECs have experienced two types of problems with BellSouth's clarifications. First, CLECs receive error clarifications when in fact there was no error. Second, BellSouth's report incorrectly identifies the CLEC's error. Verifying BellSouth's clarifications cause CLECs added expense and delay for which no compensation is available under the penalty plan.[232]

Incorrect directory listings, incorrect switch translations, incorrect clarifications and delays in provisioning LSRs yield customer dissatisfaction. Yet, CLECs are powerless to correct any of these issues independently. Only BellSouth and this Commission can ensure these processes function properly. Until BellSouth demonstrates it provides compliant performance in these important areas in Kentucky, this Commission should refrain from any recommendation of Section 271 approval.

G. KCI Was Not An Independent Tester

The FCC has recognized that independence is an important factor that weighs heavily on the persuasiveness accorded to a third-party test.[233] Common sense dictates that the use of a third-party tester is of little meaningful value if the third party is not independent from the party being evaluated. The value of a third-party test stems from the fact that the independent third-party tester can prepare and conduct an objective test without undue influence from the party being evaluated.[234]

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[231] *See* McElroy South Carolina at 5267; Norris 3PT Rebuttal at 50.
[232] Norris 3PT Rebuttal at 50.
[233] *See Bell Atlantic New York Order* ¶ 100.
[234] *See* Norris 3PT Rebuttal at 20.

Significant to the FCC in its *Bell Atlantic New York Order,* the tester in New York did not work at the direction of Bell Atlantic – New York.[235] In Georgia, however, KCI was employed by and reported to, BellSouth.[236] This direct reporting relationship seriously undermines the reliability of the Georgia test. Indeed, the Florida Commission noted that it was hesitant to rely on the Georgia third-party test because of concerns over independence.[237] As a result, the Florida Commission decided to conduct its test similar to the way in which Pennsylvania and New York conducted their tests.[238] The Florida Commission described the stark contrasts between the New York and Georgia tests as follows:

> Under the New York DPS OSS testing "model," the state commission independently selects the third party tester and is the client in the engagement. Once the tester is selected, the state commission and the third party tester jointly develop the master test plan. The commission staff also plays a strong role in monitoring and controlling the testing, which is vital to ensure independence and objectivity of the test. In contrast, BellSouth selected the third party tester and serves as the client in the Georgia engagement. It also developed or guided the development of the master test plan.[239]

As the Florida Commission correctly pointed out, in Georgia the OSS Test Plan was drafted by BellSouth, not an independent third party.[240] This further undermines the reliability of the Georgia test. Again, common sense dictates that the designer of a test plan can have a substantial effect on the results of the test. The designer controls the scope, structure and basic

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[235] *See Bell Atlantic New York Order* ¶ 99.

[236] The Statement of Limiting Conditions in the Georgia Final Report contains the following statement: "This report is provided pursuant to the terms and conditions of the consulting contract between KPMG Consulting Inc. and BellSouth-Georgia." *See* Pate Direct Exhibit 64, *Final Report* at I-2.

[237] *See* Norris 3PT Rebuttal at 21 (citing to *Notice of Proposed Agency Action Order on Process for Third Party Testing, Florida Public Service Commission, In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786-IL at 7 (Aug. 9, 1999).

[238] *See id.*

[239] *Id.*

[240] *See id.*

assumptions, and is able to influence test parameters and standards in such a way so as to guarantee success.[241] In Georgia, the fact that the party being evaluated designed the test plan is of particular concern.

Furthermore, KCI willingly accepted information or explanations from BellSouth without independently verifying their accuracy or completeness.[242] The Georgia Final Report states that:

> Certain information and assumptions (oral and written) have been provided to KCI by the management of BellSouth and other third parties. KCI has relied on this information in our analysis and in the preparation of the report, and has not independently verified to the accuracy or completeness of the information provided . . .[243]

KCI Managing Director Michael Weeks explained that "if we have characterized something as, 'BellSouth has stated,' and didn't follow that up with some words to we tested or didn't test that, then the absence of that wording would suggest we just left it."[244]

KCI was not an independent tester in Georgia. KCI was employed by BellSouth and reported to BellSouth. BellSouth witness McElroy confirmed that KCI did not draft the test plan in Georgia,[245] BellSouth did. Further, KCI blindly relied on information and explanations provided to it by BellSouth. These facts weigh heavily against the reliability and persuasiveness of the Georgia third-party test.

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[241] *See id* at 23.
[242] *See id.*
[243] *See* id. (quoting the Final Report at I-2-3).
[244] *See id.* (quoting Transcript of Deposition of Michael Weeks, Georgia Public Service Commission, Docket No. 8354-U, May 4, 2000).
[245] *See* McElroy South Carolina at 5246.

H. Many of KCI's "Satisfied" Determinations In The Georgia Third-party Test Are Questionable

1. KCI used statistical methodology to mask poor performance

KCI improperly relied on a statistical analysis (P-value) in determining that certain test results were "satisfactory" even though the test results did not satisfy the benchmarks. This improper use of a P-value affected almost 30 measures.[246] For example, O&P-5-2-3 tested BellSouth's ability to complete timely Coordinated Customer Conversions.[247] BellSouth's SQM applies a standard of 95% within 15 minutes of the scheduled start time for customer conversions.[248] In order to satisfy this standard, BellSouth must begin its coordinated customer conversions within 15 minutes of the scheduled start time for 95% of the coordinated conversions it performs.[249] KCI observed 63 instances of this type of conversion, 57 of which were successful X in other words, a success rate of only 90.4%.[250] Since this 90.4% fell short of the standard, KCI calculated a P-value. Based on a P-value of 0.0945, KCI concluded BellSouth satisfied the 95% standard.[251] KCI, however, determined the statistical evidence was insufficient to support a finding that BellSouth did not satisfy the test.[252]

This P-value analysis is a statistical mechanism for determining the likelihood that the observed result was normal random error.[253] In KCI's words, it used statistical techniques "to try

[246] KCI applied this P-value analysis to 29 individual tests for which the Georgia Commission had established benchmarks: PRE-1-1-1, PRE-4-1-1, PRE-5-1-1, O&P-1-1-1, O&P-1-3-2a, O&P-1-3-2b; O&P-1-3-3a; O&P-1-3-3b; O&P-1-3-5; O&P-2-1-1; O&P-2-3-2a; O&P-2-3-2b; O&P-2-3-3a; O&P-2-3-3b; O&P-3-1-1; O&P-3-1-2; O&P-3-3-3; O&P-3-3-4; O&P-4-1-1; O&P-4-1-2; O&P-4-2-1; O&P-4-2-2; O&P-4-3-3; O&P-4-3-4; O&P-5-2-3; O&P-10-1-1; O&P-10-1-2; O&P-10-3-3; and O&P-10-3-4. Pate Direct Exhibit 64.
[247] *See* Rebuttal Testimony of Robert M. Bell, filed July 9, 2001, at 8; Pate Direct Exhibit 64, Final Report at V-E-8.
[248] Bell Rebuttal at 8; Pate Direct Exhibit 64, Final Report at V-E-8.
[249] *See* Bell Rebuttal at 8.
[250] *See id.* at 8.
[251] *Id.*
[252] *Id.* KCI, however, never applied this analysis to determine whether a borderline "satisfied" result was a random occurrence. *See id.* at 9-10.
[253] *See id.* at 7.

to determine whether or not the results that we were seeing were -- were in fact a true failure or just random variation in the process."[254] Such an analysis is not appropriate for Commission-established benchmarks. The Georgia Commission determined that Coordinated Customer Conversions should be completed within 15 minutes of the scheduled start time. By setting the standard at 95% within 15 minutes, the Georgia Commission included an allowance for random variation in the process. By applying a P-value to that Commission-established benchmark, KCI set a level of performance lower than that approved by the Georgia Commission. Essentially, KCI based its conclusion of satisfied on a 0.09 probability that BellSouth's deficient performance could occur by chance if BellSouth was meeting the standard.[255]

Another problem with KCI's use of the P-value is that KCI only considered whether BellSouth's performance was better than what KCI observed; KCI never conducted a statistical analysis to determine if BellSouth's performance could be worse.[256] For example, using O&P 5-2-3 again, KCI concluded that BellSouth satisfied the 95% benchmark when BellSouth's observed performance was 90.4%. KCI did not consider that BellSouth's true performance could have been as low as 85%.[257] This problem is of greatest concern for the tests in which the sample sizes were small. For those tests, even when the observed performance hit the

[254] Georgia Hearing Transcript at 39.
[255] *Id.* at 7.
[256] Statistical errors occur because of random variation. *See* Bell Rebuttal at 9. These errors are two types of statistical error. As AT&T witness Dr. Bell explained, Type I would occur if the statistical analysis showed BellSouth is not meeting the standard when, in reality, BellSouth had provided compliant service. *Id.* Type II error occurs if the statistical analysis indicates BellSouth is meeting the standard when, in fact, its performance is deficient. *Id.* Unlike Type I errors, to ensure a proper statistical methodology the statistician must specify an alternative hypothesis to adjust for the unaccounted deficiency.
[257] *See* Bell Rebuttal at 11-12.

benchmark, BellSouth's true performance could be well below the benchmark[258]. Accordingly, KCI's "satisfied" conclusions are undermined by this questionable statistical manipulation.

2. KCI used "professional judgment" to pass test results that did not meet the Georgia Commission's standards

When statistical analysis could not bring BellSouth's results up to the level of "satisfied," KCI applied its "professional judgment" to pass test results that did not meet standards established by this Commission.[259] Several sections of the Final Report are illustrative. In the Pre-Ordering and Ordering & Provisioning sections of the report, 20 tests were deemed satisfied based on KCI's "professional judgment."[260] Significantly, KCI admitted during the Georgia third-party test hearing that application of the Georgia Commission's standard – parity with retail performance – would require these tests be categorized as "not satisfied."

> A. If we stopped at comparing the benchmark to the achieved results, and applying the difference in analyzing whether it was statistically significant, we would have given it a technical "not satisfied."
>
> Q. But KCI passed it anyway, based on its professional judgment that the response time, though slower than the benchmark, was within a reasonable time frame; is that accurate?
>
> A. That's correct. We believe that one second was more than reasonable.[261]

In making its professional judgment, KCI did not perform any independent research, did not consult CLECs or seek CLECs' input regarding the tests' impact on their operations, and

[258] *See* Bell Rebuttal at 14-16.
[259] *See* Norris 3PT Rebuttal at 37, 46.
[260] These tests are PRE-1-3-3, PRE-4-3-1 through 8, PRE-5-3-1 through 5, PRE-5-3-8, O&P-5-1-1, O&P-10-3-5 through 9, O&P-10-3-9, O&P-10-3-12. Bell Rebuttal at 24.
[261] Georgia Hearing Transcript at 27-28.

rarely consulted the Commission for advice.[262] Rather, KCI's exercise of professional judgment entailed general conversations with other KCI employees.[263] No notes were taken at any of these meetings recording KCI's decision-making process.[264] No established criteria guided KCI's decision-making.[265] If KCI could not reach consensus as to a test's final determination, the head of the project made the decision.[266] Indeed, Dr. Bell explained to this Commission that he found it "curious" that KCI's use of professional judgment was inconsistent.[267] Dr. Bell explained KCI had determined in its professional judgment that the standard for reasonable average time for Service Available Queries, should be 8.0 seconds, but after reviewing testing results, used its professional judgment to accept 11.6 seconds as reasonable.[268]

3. KCI Relies Heavily On Subjective Analysis To Reach "Satisfied" Conclusions

Much of the Georgia third-party test involved KCI's subjective analysis.[269] BellSouth witness Varner relies on the fact that KCI found less than 2% of more than 1,100 tests not satisfied as evidence of BellSouth's systems' readiness to support local competition.[270] This statement, however, must be evaluated in its context. The majority of the tests involved subjective analyses of documentation and reports, rather than analysis of whether BellSouth complies with its documentation or the adequacy of its reports.[271] For example, in the Pre-Ordering test domain, 48 of the 81 test points involve review of documentation and other

[262] *See id.* at 33.
[263] *See id.*
[264] *See id.*
[265] *See id.* at 39.
[266] *See id.* at 42.
[267] Bell Rebuttal at 25
[268] *Id.*
[269] *See* Norris 3PT Rebuttal at 32.
[270] Varner Direct at 4.
[271] *See* Norris 3PT Rebuttal at 32.

subjective analyses.[272] In the Ordering and Provisioning test domain, 114 of the 177 test points could be classified as subjective analyses, rather than measurements against standards.[273] KCI found all of these particular tests satisfied.[274]

Moreover, although KCI concluded that BellSouth satisfied all of the tests based on its subjective analysis, several comments undercut the satisfied results. For example, KCI found significant problems with BellSouth's delivery of usage information necessary for CLECs to bill their customers, yet found that BellSouth "satisfied" the related billing tests.[275] KCI also found that BellSouth "satisfied" the change management tests, even though the system KCI evaluated was still evolving.[276] Furthermore, KCI admitted that in conducting its subjective analyses, it relied on BellSouth's representations without validating them[277] and did not consider the CLECs' point of view.[278]

KCI's heavy reliance on subjective analyses to reach satisfied results further undermines the reliability of the Georgia third-party test. Accordingly, the results of the test do not provide a true reflection of the readiness of BellSouth's OSS.

I. Crucial Test Activities Are Not Finished In Georgia

The Georgia third-party test's metrics evaluation is incomplete. A number of important exceptions remain open in the metrics evaluation because KCI has not been able to verify that BellSouth-reported data is accurate and because BellSouth does not have data retention policies

[272] *See id.* at 33.
[273] *Id.*
[274] *See id.* at 34.
[275] *See id.* at 34-37.
[276] *See id.* at 16-19.
[277] *See* Norris 3PT Rebuttal at 23 (quoting Transcript of Deposition of Michael Weeks, Georgia Public Service Commission, Docket No. 8354-U, May 4, 2000).
[278] *See* Norris 3PT Rebuttal at 24-25.

in place to allow thorough audits of data.[279] For example, Exceptions 86, 89, 122, 136, and 137 are still open. In general terms, these exceptions focus on mechanisms for determining the accuracy of BellSouth's reported data and whether it matches early stage data. For example, as part of its testing, KCI compared BellSouth's early stage data (the truly raw data) with the PMAP data (the manipulated data BellSouth refers to as raw data) to determine whether they were consistent. KCI discovered instances where the PMAP data was not consistent with the early stage data.[280] Exception 79 relates to data retention policies that will allow thorough audits of data to uncover these types of discrepancies. Exception 89 relates to the actual discrepancies.

Exception 79 will not be closed until BellSouth creates and implements data retention policies. At the time of the August hearing, KCI indicated that it did not expect BellSouth to have the appropriate data retention policies in place before the third quarter of 2001.[281] Once BellSouth implements these policies, KCI will be able to conduct the analysis necessary to determine whether the data BellSouth reports are consistent with the early stage data.[282] Only after completion of that analysis could Exception 89 be closed.[283] These are critical metrics issues that should be completed before this Commission makes any decision based on the third-party test. The open metrics exceptions emphasize why CLECs need access to accurate and complete metrics data and demonstrate that such data is not available.

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[279] *See* McElroy South Carolina at 5267-68.
[280] *Id.*
[281] *See* Norris (Data Integrity) Rebuttal at 21.
[282] *See id* at 21.
[283] *See* Norris (Data Integrity) at 21; *see also* Georgia Hearing Transcript at 162.

CLECs are impacted by BellSouth's failure to report accurate data beyond the inconvenience and frustration of reconciling their data to BellSouth reports. BellSouth's failure to keep adequate records could preclude CLECs from receiving penalties due under the remedy plan this Commission will establish. If no data exist to demonstrate that BellSouth withheld data from the CLECs or that BellSouth reported inaccurate data, CLECs likely will receive no penalty. This places CLECS in the untenable position of receiving neither non-discriminatory treatment necessary to perform competitively nor the data necessary to establish that it is entitled to recompense for BellSouth's failure to provide non-discriminatory treatment. Accordingly, this Commission should satisfy itself that BellSouth has corrected the performance measures deficiencies identified by the Georgia third-party test before considering any recommendation on BellSouth's Section 271 application.

V. BELLSOUTH HAS FAILED TO DEMONSTRATE THAT IT PROVIDES NONDISCRIMINATORY ACCESS AND INTERCONNECTION IN ACCORDANCE WITH THE SECTION 271 CHECKLIST

BellSouth has the burden of establishing that it has fully implemented the Section 271 checklist.[284] In evaluating an ILEC's compliance with the checklist, the FCC has examined whether the ILEC provides access to CLECs in "substantially the same time and manner" as it provides access to itself.[285] Where no retail analog exists, the FCC considers whether the ILEC provides access in such a way so as to offer an efficient carrier a "meaningful opportunity to compete."[286] BellSouth has implemented processes that place CLECs at a significant disadvantage relative to BellSouth; thus, it has failed to offer CLECs a meaningful opportunity to

[284] *See Bell Atlantic New York Order* ¶ 44.
[285] *Id.*
[286] *Id.*

compete. Accordingly, BellSouth cannot establish that it meets the requirements of the Section 271 checklist.

A. BellSouth Has Failed To Demonstrate That It Provides Nondiscriminatory Access To Network Elements (Checklist Item 2)

BellSouth has failed to provide nondiscriminatory access to network elements. Specifically, BellSouth is deficient in the areas of: change management; access to its OSS; and access to UNE combinations.

1. BellSouth's Change Management Process is Inadequate And BellSouth Consistently Fails to Adhere to its Change Management Procedures

BellSouth must demonstrate that it offers efficient competitors a "meaningful opportunity to compete."[287] In determining whether an ILEC has met this burden, the FCC gives "*substantial consideration* to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time."[288] Without an adequate change management process, CLECs would be beholden to the whims of the ILEC.[289]

a. BellSouth's Change Control Process Is Inadequate

The change management process maintained by BellSouth (Change Control Process or "CCP") is not adequate for several reasons. First, BellSouth disregards CLEC input because it retains and exercises a unilateral veto power. Second, BellSouth delays or fails to implement CLEC-initiated requests. Third, BellSouth fails to provide a suitable testing environment.

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[287] Memorandum Opinion and Order, *In the Matter of Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18,354, ¶ 106; *Bell Atlantic New York Order* ¶ 102, (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) ("*SWBT Texas Order*").

[288] *SWBT Kansas and Oklahoma Order* ¶ 166; *see also SWBT Texas Order* ¶ 106; *Bell Atlantic New York Order* ¶ 102 (emphasis added).

[289] If an adequate change management process is not in place, then CLECs risk substantial costs should an ILEC make "changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes." *SWBT Texas Order* ¶ 107; *Bell Atlantic New York Order* ¶ 103.

(1) BellSouth Retains and Exercises Unilateral Veto Power

An adequate change management process must provide for meaningful CLEC input. As the FCC has stated, it "would be concerned about the impact of a BOC disregarding input from competing carriers on change management issues."[290] BellSouth disregards any real CLEC input because it retains and exercises a unilateral veto power.[291]

Nothing in BellSouth's CCP "requires BellSouth to comply with changes or improvements requested by CLECs, even if such requests are reasonable, unanimous, and necessary to avoid discrimination."[292] BellSouth's CCP allows CLECs to provide "input" to the CCP document and processes; however, BellSouth need not comply with any CLEC request.[293] Moreover, BellSouth exercises its veto power.[294] For example, BellSouth witness Pate testified that of the 7 contested items this year - items where the voting went against BellSouth - BellSouth overrode the vote in each case to implement its own language.[295] By retaining and exercising its veto power, BellSouth has essentially rendered CLEC voting in the CCP meaningless.

(2) BellSouth Delays or Fails to Implement CLEC-initiated Requests

BellSouth further disregards CLEC input by delaying or failing to implement CLEC-initiated requests. The most poignant example of delay relates to the parsing of Customer Service Records ("CSRs"). BellSouth has not provided CLECs with access to a parsing functionality at parity with the parsing functionality it provides itself, even though CLECs have

[290] *Bell Atlantic New York Order* ¶ 124
[291] Rebuttal Testimony of Jay M. Bradbury, filed July 9, 2001, at 98-100.
[292] Bradbury Rebuttal at 98.
[293] *Id.*
[294] Bradbury Rebuttal at 98-100.
[295] *See* Tr. Vol. 3 at 304-05.

been seeking equivalent parsing since 1998.[296] All the while, BellSouth's retail business has been utilizing a parsing functionality.[297] BellSouth testified that the target date for providing CLECs equivalent parsing functionality is January 2002, several years after it was requested.[298]

Even more troubling is BellSouth's internal change management prioritization process, which operates to give BellSouth an unfair advantage.[299] After CLECs rank their proposed change requests, BellSouth's internal release prioritization team considers the CLECs' prioritized list; as well as input from other sources within BellSouth: (1) the BellSouth third-party test team; (2) a regulatory team; (3) BellSouth's LCSC; and (4) possibly project managers.[300] A master list then emerges from BellSouth's release prioritization team.[301] As a result, the top priority CLEC change may not even make it into a release.[302]

(3) BellSouth Fails to Provide an Adequate Testing Environment

It is critical that CLECs have access to a stable testing environment and be given the opportunity to test new releases before implementation.[303] Otherwise, the CLECs risk major disruptions of service each time the ILEC makes a change to its side of the interface.[304]

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[296] Bradbury Rebuttal at 37-42. Parsing functionality involves the ability to populate service requests electronically with information contained in the CSR, thereby minimizing manual input. *See id.* at 37-38. Less manual input means less time, cost, and risk of error. *See id.* at 37.
[297] Bradbury Rebuttal at 107.
[298] *See id.* at 39; Tr. Vol. 3 at 297.
[299] *See* Tr. Vol. 3 at 305-10. The impact of BellSouth's internal change management prioritization process is reflected in a Florida Exception, which states that the internal prioritization process "does not allow [the] CLEC community to participate in prioritization of change requests that affect CLEC business. CLEC communities lack of participation . . . could result in change requests important to the CLEC community not being developed or implemented in a timely manner." AT&T Exhibit 5.
[300] *See* Tr. Vol. 3 at 307.
[301] *See id.* The team takes the top priority from each source and ranks those, then it continues down each source's list in the same fashion. *See* Tr. Vol. 3 at 307-09.
[302] *See* Tr. Vol. 3 at 309-10.
[303] *See Bell Atlantic New York Order* ¶ 109.
[304] *See id.* ¶ 109 n.302.

BellSouth's CCP fails to provide a separate testing environment sufficient to give CLECs an adequate opportunity to test new releases.[305] For instance, the current testing environment provided by BellSouth for EDI is not segregated from the production environment, thus testing of a new release would endanger normal CLEC transactions.[306] A catastrophic failure during test transactions could interrupt normal production processing.[307]

In its testimony, BellSouth refers to a new testing environment called the CLEC Application Verification Environment ("CAVE"), purportedly designed to be a separate test environment for pre-release testing.[308] CAVE, however, has several limitations. For instance, CAVE will not be used for new carrier testing and may not be utilized for testing "minor" releases as well.[309] Although said to be generally available on April 23, 2001, CAVE never has been used to test any BellSouth software release.[310] At least one CLEC testified that it has taken weeks to complete the procedural steps required to use CAVE.[311] In addition, only one user has beta tested the TAG portion of CAVE.[312]

The FCC has recognized, "prior to issuing a new software release or upgrade, the BOC must provide a testing environment that mirrors the production environment in order for competing carriers to test the new release."[313] During the process of attempting to perform an EDI beta test with CAVE, AT&T learned that CAVE was designed by BellSouth using a

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[305] Bradbury Rebuttal at 111-12.
[306] *Id.* at 111.
[307] *Id.*
[308] Direct Testimony of Ronald M. Pate, filed May 18, 2001, at 67-68.
[309] Bradbury Rebuttal at 112. BellSouth will make the determination of whether CLECs will have access to CAVE testing for "minor" releases. Pate Direct at 68.
[310] *See* Bradbury Rebuttal at 112.
[311] *See* Testimony of Sherry Lichtenberg, filed July 9, 2001, at 30.
[312] Bradbury Rebuttal at 112.
[313] *Bell Atlantic New York Order* ¶ 109.

communications strategy that did not match that which is used in the production environment.[314] Thus, BellSouth's "new" testing environment is inadequate because it does not mirror the production environment.

CAVE is further limited because BellSouth deliberately excluded two interfaces, LENS and RoboTAG, from the CAVE testing arrangement.[315] CLECs that use these two interfaces are forced to perform testing on their customers' orders in order to find any programming errors associated with new releases.[316] The exclusion of LENS from the CAVE testing environment is particularly egregious given that LENS carries almost two-thirds of all CLEC requests for service.[317]

Without an adequate change management process, BellSouth cannot demonstrate that it provides its competitors with a meaningful opportunity to compete. Therefore, BellSouth has failed to show that it provides nondiscriminatory access to network elements as required by checklist item 2.

b. BellSouth Consistently Fails to Adhere to CCP Procedures

In addition to providing an adequate change management process, BellSouth must show a pattern of compliance with its CCP.[318] BellSouth cannot meet this burden because it has failed, time and time again, to adhere to the procedures of the CCP. Examples include:

[314] Bradbury Rebuttal at 112.
[315] *See id.* at 112-13.
[316] *See id.* at 113.
[317] *Id.*
[318] *SWBT Texas Order* ¶ 108 ("After determining whether the BOC's change management plan is adequate, we evaluate whether the BOC has demonstrated a pattern of compliance with this plan.").

- Improper changes to the capabilities of planned releases;[319]
- Improper implementation of new business rules;[320]
- Unilateral changes to ordering software;[321]
- Preferential treatment of BellSouth-initiated change requests;[322] and
- The unilateral decision to implement a new CCP process.[323]

Indeed, BellSouth fails to notify CLECs regarding wholesale changes to its OSS, specifically, when and how its OSS will be retired and replaced.[324] As the FCC has recognized, change management is critical because an ILEC "can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing . . . accurate and timely notice and documentation of the changes."[325] For this reason, an ILEC must communicate information regarding changes to its OSS systems that impact competing carriers.

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[319] BellSouth made an improper change to a planned electronic OS/DA ordering capability. After accepting AT&T's request and announcing that the capability would be provided in a November 18, 2000 software release, BellSouth made the unilateral decision to drop the functionality from the release, later introducing a severely limited substitute. *See* Bradbury Rebuttal at 101-02. BellSouth's unilateral decisions were not made or communicated in accordance with the CCP. *See id.* at 102.

[320] BellSouth implemented Issue 9G of its Business Rules for Local Ordering without giving the required notice and opportunity for discussion. Bradbury Rebuttal at 102. Because BellSouth circumvented the CCP, CLECs were unable to make the necessary coding and process changes by the implementation date. *Id.* BellSouth refused to withdraw the unapproved changes and implemented the software on the proposed implementation date. *Id.* As a result, previously valid CLEC orders impacted by the changes were rejected. *Id.* The software release also contained coding errors that caused other types of CLEC orders to be rejected. *Id.*

[321] In November 2000, BellSouth made the unilateral decision to remove three features that were based on CLEC change requests from an ordering software release. Bradbury Rebuttal at 102-03. These features previously had been scheduled for release. *Id.*

[322] On November 13, 2000, BellSouth submitted four change requests, then proceeded to target these changes for implementation in November 2000. Bradbury Rebuttal at 103-04. Three of the changes were implemented as of December 20, 2000. *Id.* BellSouth's "fast-track" treatment of its own change requests violates the CCP because fixes for defects are the only changes entitled to such preferential treatment under the CCP. *Id.* Unfortunately, this is not an isolated incident. *Id.* at 104.

[323] AT&T requested consideration of specific changes to the CCP in September, 2000. Bradbury Rebuttal at 104-05. Under the process, these changes should have been addressed during the Monthly Status Meetings. *Id.* Instead, BellSouth established a separate set of CCP improvement meetings, resulting in several months delay. *Id.*

[324] *See* Tr. Vol. 3 at 314-15.

[325] *SWBT Texas Order* ¶ 107.

BellSouth also fails to utilize the CCP for new interfaces. As a result, the functionality of new interfaces brought online since the initiation of the CCP has not met CLEC needs.[326] BellSouth distinguishes between the "introduction" and "development" of new interfaces, such that development is not covered by the CCP.[327] This distinction is not supported by the CCP itself and "guarantees repeated deployment of interfaces and processes that do not meet the needs of the CLECs and are wasteful of the industry's limited resources."[328]

In sum, BellSouth has shown a pattern of not adhering to the CCP. As a result of these frequent departures from CCP procedures, BellSouth has failed to demonstrate that it provides competitors with a meaningful opportunity to compete. Therefore, BellSouth has failed to show that it provides nondiscriminatory access to network elements, as required by checklist item 2.

2. BellSouth Fails to Provide Nondiscriminatory Access to its OSS

Nondiscriminatory access to BellSouth's OSS is essential to the development of competition in Kentucky. The FCC consistently has found that "nondiscriminatory access to these systems, databases, and personnel is integral to the ability of competing carriers to enter the local exchange market and compete with the incumbent LEC."[329] Indeed, the last time BellSouth applied for Section 271 authority, the FCC criticized BellSouth's OSS and laid out the improvements necessary for 271 approval.[330] BellSouth has not made those improvements.

Absent adequate OSS, an ILEC cannot demonstrate that it complies with checklist item 2.[331] Nondiscriminatory access to OSS means that "[f]or those OSS functions that are

[326] *See* Bradbury Rebuttal at 105.
[327] *See id.* at 105-06.
[328] *Id.* at 106.
[329] *Second Louisiana Order* ¶ 83.
[330] *Id.* ¶¶ 82-160.
[331] *See SWBT Texas Order* ¶ 93; *Bell Atlantic New York Order* ¶ 84.

analogous to OSS functions that a BOC provides to itself – including pre-ordering, ordering and provisioning for resale services – a BOC must offer access to competing carriers equivalent to the access the BOC provides itself" in terms of quality, accuracy, and timeliness.[332]

a. BellSouth Relies Too Heavily on Manual Processing for CLEC Orders

BellSouth's excessive reliance on manual processing to handle CLEC orders is discriminatory and adversely impacts competition. BellSouth's retail operations have the capability to submit electronic orders for all products, services, and transactions, and BellSouth's OSS process such electronic orders automatically, without any manual processing.[333] In contrast, BellSouth's OSS do not process all CLEC orders electronically.[334] Moreover, a high percentage of CLEC orders fall out for manual processing because of BellSouth system design or system error.[335] Indeed, between 10 and 76 percent of CLEC orders fall out for manual processing, depending on the interface or product type.[336]

Excessive use of manual processing to handle CLEC orders is discriminatory and adversely impacts consumers and competition in several respects.

- Manual processing delays timely order status notices for CLEC LSRs that fall out for manual processing.[337] For example, it takes BellSouth approximately 12 hours on average to provide a rejection notice and approximately 18 hours to provide a FOC for electronic LSRs that fall out for manual processing.[338] In contrast, it takes less than 15 minutes on average to send a

[332] *South Carolina Order* ¶ 98; *see also Ameritech Michigan Order* ¶ 139.
[333] Bradbury Rebuttal at 50.
[334] *See id.*
[335] *See id.*
[336] *Id.; see id.* at 61-62.
[337] Bradbury Rebuttal at 54.
[338] *Id.*

rejection notice or FOC when the LSR flows through and is processed electronically.[339]

- Electronic LSRs that fall out for manual processing are subject to later due dates.[340] As explained above, manual processing severely delays the issuance of a FOC. Due dates are assigned on a first-come, first-served basis, at the time the system generates a FOC.[341]

- Electronic LSRs that fall out for manual processing face the risk of input errors.[342] Input errors could lead to a different service being "ordered" than that which the CLEC actually requested.

- Manual processing of LSRs is more costly than processing LSRs that electronically flow through.[343] In a competitive environment, lower costs lead to lower prices for consumers.

Indeed, the FCC has recognized that "excessive reliance on manual processing, especially for routine transactions, impedes the BOC's ability to provide equivalent access."[344] In addition, CLECs evaluate the extent to which BellSouth relies on manual processing as one criterion for determining BellSouth's readiness to handle full commercial volumes of orders.[345] The reality is that CLECs are less likely to launch a mass marketing campaign in which CLECs would likely submit thousands of LSRs a week if BellSouth continues to rely so heavily on manual processing. Further delays, a greater number of errors, and higher costs will only be amplified should BellSouth continue to rely so extensively on manual processing for CLEC orders.

In sum, BellSouth's retail operations have electronic ordering and flow through capability that is far superior to that provided to CLECs. This lack of parity gives BellSouth a distinct

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[339] *Id.*
[340] *Id.*
[341] *Id.*
[342] *Id.* at 55.
[343] *Id.*
[344] *Second Louisiana Order* ¶ 110.
[345] *See* Lichtenberg at 4.

advantage because it results in delays for CLEC orders, it increases the probability of error, and it increases the CLECs' cost of operations, while ultimately lowering the quality of service CLECs can provide to their customers. Accordingly, BellSouth fails to provide nondiscriminatory access to its OSS.

b. BellSouth fails to provide nondiscriminatory access to parsed Customer Service Records

Successful parsing is a necessary component of successful OSS integration.[346] In its *Second Louisiana Order*, the FCC found that BellSouth failed to satisfy checklist item 2, in part, because BellSouth did not provide CLECs nondiscriminatory access to parsed customer service record ("CSR") information.[347] Despite the FCC's finding, BellSouth continues to deny CLECs equivalent parsing functionality.[348]

One of the most efficient and effective ways to generate a service request for telephone service is for a sales representative to be able to take information from the customer service record and electronically populate that into the service request.[349] BellSouth's front-end retail systems have the capability to transmit and receive electronically parsed customer service record ("CSR") data internally, with little or no manual input, to facilitate retail operations.[350] Consequently, BellSouth's retail operations can electronically populate fields in its retail orders with CSR data. Accordingly, parsing saves BellSouth time and expense, and provides a greater level of accuracy.

[346] *See SWBT Texas* ¶ 153; *see also Bell Atlantic New York Order* ¶ 137.
[347] *See Second Louisiana Order* ¶ 94.
[348] *See* Tr. Vol. 3 at 297-98.
[349] *See* Bradbury Rebuttal at 40-41.
[350] *See* Tr. Vol. 3 at 418-19.

BellSouth, however, does not provide CLECs with parsed CSR data and prevents CLECs from parsing CSR data with any reliability by withholding necessary data and information.[351] Further, the size and format of certain fields in the CLEC ordering interfaces that BellSouth has designed are not compatible with the size and format of the data obtained from customer service records.[352] Consequently, CLECs cannot electronically populate the LSR.

Until BellSouth provides CLECs with equivalent parsing functionality, CLECs cannot achieve the same degree of efficiency and effectiveness in generating customer orders as BellSouth. Parsing rules for CSRs have been included in industry standards since July 1998; CLECs have been requesting parsed CSRs since September 1998; and CLECs have advised BellSouth that parsed CSRs is a top priority of pending requests in the change control process.[353] Nevertheless, BellSouth has delayed the implementation of this functionality from its original target date of April 2000 to its current target date of January 2002.[354]

c. BellSouth Does Not Provide Equivalent Access to Maintenance and Repair

BellSouth provides two options for electronic trouble reporting.[355] For many services associated with a telephone number, BellSouth offers access to its proprietary Trouble Analysis Facilitation Interface ("TAFI").[356] For both telephone number-associated exchange services and individually designed services, BellSouth provides electronic trouble reporting through the Electronic Communication Trouble Administration ("ECTA") gateway.[357]

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[351] Bradbury Rebuttal at 41-42.
[352] *Id.* at 41.
[353] *Id.* at 38-40.
[354] *Id.* at 39-40.
[355] *Id.* at 90.
[356] *Id.*
[357] *Id.*

In rejecting BellSouth's Section 271 application for Louisiana, the FCC concluded that neither TAFI nor ECTA provided competitors with access to maintenance and repair functions that was equivalent to BellSouth's own capabilities.[358] Specifically, the FCC found that TAFI does not provide nondiscriminatory access because BellSouth could integrate TAFI with its back-office systems but CLECs could not:

> We also note that BellSouth concedes that it derives superior integration capabilities from TAFI than the capabilities offered to competitors. BellSouth states that TAFI is a 'human to machine interface,' meaning that new entrants using TAFI cannot integrate it with the new entrant's own back office systems . . . BellSouth, on the other hand, is able to take advantage of its own TAFI system's capability of 'automatically interacting with other systems as appropriate' and its customer service representatives need not duplicate their efforts in the same way. In other words, TAFI is integrated with BellSouth's other back office systems.[359]

Regarding ECTA, the FCC concluded that ECTA, as provided by BellSouth, did not provide nondiscriminatory access to maintenance and repair functions because, as BellSouth acknowledged, TAFI has superior functionality.[360]

BellSouth has not addressed the FCC's concerns by providing TAFI functionality via the ECTA interface, the solution that AT&T first requested in 1996.[361] Neither has BellSouth improved the functionality of ECTA. Thus, BellSouth essentially imposes upon CLECs the same Hobson's choice with respect to maintenance and repair that the FCC found discriminatory.[362]

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[358] *See Second Louisiana Order* ¶ 148.
[359] *Id.* ¶ 151.
[360] *See id.* ¶ 157.
[361] Bradbury Rebuttal at 94.
[362] *Id.* at 90-91.

3. BellSouth Fails to Provide Nondiscriminatory Access to UNE Combinations

According to the FCC and the Department of Justice, "it is critical that competitive LECs have the ability to enter the local exchange market through the use of combinations of UNEs."[363] However, AT&T and other CLECs have experienced serious difficulties successfully migrating customers from BellSouth's service to UNE-P service. Most alarming is the fact that AT&T and other CLECs have experienced an unacceptable number of loss of service incidents surrounding the conversion to UNE-P.[364]

a. BellSouth Fails to Utilize the "Single C-Order" for UNE-P Migration

When a customer converts from BellSouth's service to UNE-P, the conversion *should* have no impact on the end user's service at all. CLEC testimony, however, shows that BellSouth's migration process is not working properly, resulting in an unduly high number of incidents of loss of service.[365] To make matters worse, BellSouth's role in causing the loss of service is hidden from the consumer, leaving the CLEC to incur the customer's wrath and its own damaged business reputation.

Problems arise because BellSouth uses two separate internal orders to convert customers to UNE-P: a new or "N" order accomplishes the conversion to UNE-P; a disconnect or "D" order disconnects the customer's service from BellSouth.[366] As BellSouth witness Ken

[363] *Second Louisiana Order* ¶ 141.
[364] *See* Affidavit of Bernadette Seigler, Exhibit JMB-2 to Pre-filed Testimony of Jay Bradbury, filed July 9, 2001 ("Seigler Affidavit") ¶ 9 (describing the number of loss of service incidents for AT&T as a "pattern that has become much too familiar"); Lichtenberg at 4-6 (explaining MCI Worldcom's concerns regarding significant instances of loss of dial tone surrounding the conversion to UNE-P).
[365] *See* Seigler Affidavit ¶ 9.
[366] *See id.* ¶ 11.

Ainsworth admits, if BellSouth does not process these two orders in the proper sequence, the customer's service is disconnected *before* the conversion to the new service is complete.[367]

Currently, BellSouth puts a code on the N order and the D order, called the RRSO code, in order to link both orders in downstream processing.[368] Although intended to prevent inadvertent loss of dial tone, the continuing problems experienced by CLECs reveal that the RRSO coding is not serving its function.[369] These problems are avoidable, because two orders are not necessary. For example, when converting to resale, BellSouth does not use the two-order N and D process.[370] Instead, BellSouth uses a "single C-order" format,[371] thereby solving the problem of inadvertent loss of service related to migration for resale. For UNE-P migrations, however, BellSouth simply has failed to implement a single order.

BellSouth's process failures for UNE-P migration have put CLECs at a significant competitive disadvantage. CLECs brought this problem to BellSouth's attention several months ago at the UNE-P Users' Group Meeting for Georgia.[372] Although originally anticipated for year-end 2001, the target implementation date for single C-order processing for UNE-P conversion has been pushed back to early 2002.[373] BellSouth cannot demonstrate that it provides nondiscriminatory access to network elements while CLECs continue to experience unduly high incidents of loss of service when migrating customers to UNE-P. Until BellSouth implements single C-order processing for UNE-P conversion and proves that its processes function to

[367] *See* Tr. Vol. 4 at 55-57; *see also* Tr. Vol. 3 at 440-41; Seigler Affidavit ¶ 11.
[368] *See* Tr. Vol. 4 at 52.
[369] *See* Seigler Affidavit ¶ 9; Lichtenberg at 5-6.
[370] *See* Tr. Vol. 3 at 441.
[371] *See id.* The RRSO coding used for N and D orders is merely a method, albeit an unsuccessful one, of having the N and D orders processed as a C order.
[372] *See* Seigler Affidavit ¶ 12.
[373] *See* Seigler Affidavit ¶ 14.

eliminate loss of service surrounding migration, BellSouth fails to meet its burden for checklist item 2.

B. BellSouth Has Failed To Demonstrate That It Provides Nondiscriminatory Access To Unbundled Local Loops (Checklist Item 4)

BellSouth continues to discriminate through the access it provides to unbundled local loops. Most prominently, BellSouth continues to discriminate in the provisioning of "hot cuts" and in the area of advanced services. BellSouth's deficiencies are not necessarily in the area of its technical capability. Instead, BellSouth simply refuses to take the steps that would ensure full and open competition.

1. BellSouth Discriminates in Coordinated Cut-Over ("Hot Cut") Loop Provisioning

The hot cut process is a mechanism for the transfer of customers from BellSouth to a CLEC. This process is performed when a BellSouth customer changes its local service to AT&T or another CLEC. The process requires the coordinated transfer of an unbundled loop from BellSouth to a CLEC, along with the porting of the customer's telephone number so the customer can retain the existing telephone number when obtaining service from the CLEC.[374] In order to maximize predictability, AT&T orders, and pays a premium for, the port and the loop "with coordination" so AT&T can plan for the hot cut to proceed at a scheduled time on a scheduled date.[375]

Because a hot cut requires interruption of the customer's service, it is critical that the process be coordinated to run smoothly and predictably.[376] Any unexpected or prolonged service

[374] *See* Rebuttal Testimony of Denise C. Berger, filed July 9, 2001, at 6-7.
[375] *See id.* at 7-8.
[376] *Id.* at 8-9.

outage would deter customers from using CLECs for local service, inhibiting competition.[377] Reliability and predictability in the hot cut process are vital because the actual hot cut is the first time the customer experiences the results of the decision to move local service from BellSouth to a CLEC. Failures negatively impact both the customer, and as the CLECs' ability to compete.

As the FCC recognized in its *SWBT Texas Order*, "the failure to provision hot cut loops effectively has a particularly significant adverse impact on mass market competition because [hot cuts] are a critical component of competing carriers' efforts to provide service to the small- and medium-sized business markets."[378] Since there is no retail analog for hot cuts (a similar or same process that the ILEC performs for itself), the ILEC must demonstrate that it provides hot cuts "in a manner that offers an efficient competitor a meaningful opportunity to compete."[379] In order to meet this standard and satisfy checklist item 4, an ILEC must provide "hot cuts in a timely manner, at an acceptable level of quality, with minimal service disruption."[380] BellSouth cannot meet this standard because it fails to deliver a reliable and predictable hot cut process.

When AT&T requires a hot cut, it sends an electronic order to BellSouth for a coordinated cut-over.[381] BellSouth processes the order and returns a FOC to AT&T.[382] However, BellSouth does not check the connecting facility assignments ("CFA") to ensure that the appropriate facilities are available for the cut-over before returning the FOC to AT&T, thus

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[377] *See id.* at 4-5.
[378] *SWBT Texas Order* ¶ 256.
[379] *SWBT Kansas and Oklahoma Order* ¶ 199; *see also Bell Atlantic New York Order* ¶ 291.
[380] Memorandum Opinion and Order, *In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 12 FCC Rcd. 8988, *Massachusetts Order* ¶ 159 (F.C.C. April 16, 2001) (No. CC 01-9, FCC 01-130) ("*Massachusetts Order*"); *see also Bell Atlantic New York Order* ¶ 291.
[381] *See* Berger Rebuttal at 8.
[382] *See id.* at 8-9.

increasing the unpredictability of the process.[383] Based on the information contained in the FOC, AT&T confirms with its customer the date and time for the scheduled cut-over.[384] The process progresses smoothly until BellSouth finally checks the CFA and finds a problem, for example that facilities are not available at the planned cut-over time. This forces AT&T to reschedule the cut-over, and to apologize to the customer who has rightfully relied on the previous schedule.[385] AT&T is now seen as unreliable in the eyes of the customer.

If AT&T had access to BellSouth's Loop Facility Assignment Control System ("LFACS") database, AT&T could check the CFA *before* sending an order to BellSouth.[386] Despite agreements to do so, however, BellSouth has not yet provided AT&T access to LFACS.[387] BellSouth witness Keith Milner testified that, as of the date of the hearing, BellSouth had not yet provided access to LFACS, "[t]hat work is in progress."[388] Until BellSouth provides access to LFACS as promised, hot cuts cannot be consistently provisioned in a timely manner, with minimal disruption of service. By perpetuating unreliability and unpredictability in the hot cut process, BellSouth fails to meet its burden for checklist item 4.

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[383] *See id.* Tr. Vol. 4 at 100-01.
[384] *See id.* Tr. Vol. 5 at 252.
[385] The customer's planning often includes "modification of production and personnel schedules, as well as arranging for an equipment vendor to be present at the time of the cut." Berger Rebuttal at 17. AT&T also allocates its resources to accommodate the planned cut-over date. *Id.*
[386] Berger Rebuttal at 18; *see also* Tr. Vol. 5 at 253-54.
[387] *See* Tr. Vol. 4 at 102. BellSouth agreed to give AT&T access to LFACS in a Memorandum of Understanding ("MOU") effective on May 15, 2001. Berger Rebuttal at 18.
[388] Tr. Vol. 4 at 102.

2. BellSouth Policies Inhibit Competition in Advanced Services

Congress, when it enacted the Telecommunications Act of 1996, designed a blueprint to ensure that local telecommunications markets are open to competition, while also "encouraging the rapid deployment of new telecommunications technologies."[389] One of the fundamental goals of the Act is to "promote innovation and investment . . . in order to stimulate competition for all services, including advanced services."[390] The demand for advanced services has increased dramatically over the last few years. In 1998, a mere three years ago, the FCC issued its initial *Advanced Services Order*.[391] From the very beginning, the FCC stated that:

> As the demand for high-speed, high-capacity advanced services increases, incumbent telecommunications companies and new entrants alike are deploying innovative new technologies to meet that demand. The role of the [FCC] is . . . to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers.[392]

BellSouth, however, maintains a number of discriminatory policies that significantly inhibit CLECs from efficiently and effectively deploying innovative advanced services technologies in Kentucky.

Digital subscriber line based service ("xDSL") is one type of telecommunications service integral to the continued growth of the advanced services marketplace.[393] By employing

[389] Memorandum Opinion and Order and Notice of Proposed Rulemaking, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, et al.*, 63 FCC Rcd. 45,140 ¶ 1 (F.C.C. Aug. 7, 1998) (No. CC 98-147, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91, FCC 98-188) ("*Advanced Services Order*").
[390] *Id* ¶ 1.
[391] *Advanced Services Order.*
[392] *Id* ¶ 2.
[393] *See* Rebuttal Testimony of Steven E. Turner, filed July 9, 2001, at 7.

different frequencies, providers can transport voice or data services over the same line.[394] Through the use of "line splitting" or "line sharing," a customer is able to have both voice and high-speed data services without adding an additional line, because xDSL allows high-speed data to be added to the loop without impacting traditional voice service.[395]

Indeed, in its recent *Line Sharing Order* and *Line Sharing Reconsideration Order*, the FCC recognized the importance of access to the high frequency portion of the loop ("HFPL")[396] and made it clear that ILECs must provide nondiscriminatory access to unbundled loops for the provision of xDSL services.[397] The ILEC "has a concrete and specific legal obligation to provide unbundled xDSL-capable loops to competing carriers."[398] In order to meet the needs of Kentucky consumers and continue the rapid growth of advanced services and meaningful local competition in Kentucky, CLECs must be able to offer customers xDSL service, either by itself or in combination with voice services ("bundled services").[399]

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[394] *See* Memorandum Opinion and Order, *In the Matters of Deployment Wireline Services Offering Advance Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Dckt. No. 98-147, Fourth Report and Order, CC Dckt. No. 96-98, 14 FCC Rcd. 20,912 ¶ 17 (F.C.C. Dec. 9, 1999) ("*Line Sharing Order*").

[395] *See* Memorandum Opinion and Order, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration, CC Dckt. No. 98-147; Fourth Report and Order on Reconsideration, CC Dckt. No. 96-98, Third Further Notice of Proposed Rulemaking, CC Dckt. No. 98-147; Sixth Further Notice of Proposed Rulemaking, CC Dckt. No. 96-98, 16 FCC Rcd. 2101 ¶¶ 5, 17 (F.C.C. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

[396] See *Line Sharing Order* ¶ 5; *Line Sharing Reconsideration Order* ¶ 5 ("[L]ack of access to the high frequency portion of the local loop materially diminishes the ability of competitive LECs to provide certain types of advanced services to residential and small business users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings.").

[397] See *Line Sharing Reconsideration Order* ¶ 18.

[398] Memorandum Opinion and Order, *In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 12 FCC Rcd. 8988 ¶ 131 (F.C.C. April 16, 2001) (No. CC 01-9, FCC 01-130) ("*Massachusetts Order*")

[399] *See* Turner Rebuttal at 7. "Bundled services are important now and will be central to the competitive marketplace in the foreseeable future." *Id.* at 4.

BellSouth, however, consistently precludes CLECs that use UNE-P from offering customers bundled voice and data services, while at the same time BellSouth aggressively markets bundled services to its customers.[400] This practice has a particularly chilling effect on local competition for advanced services, given that UNE-P has been recognized as the most effective broad-based strategy for reaching most residential and small business customers.[401] Moreover, BellSouth's discriminatory policies appear to extend to the broadband services it offers over fiber-fed, next-generation digital loop carrier ("NGDLC") architecture.[402] In sum, BellSouth's refusal to effectively provide for the addition of xDSL capabilities to UNE-P voice service inhibits competition in the markets for voice services, data services, and bundled services.

a. BellSouth Impairs CLECs' Ability to Provide Line Sharing

"Line sharing" refers to the provision of xDSL-based service (data service) by a CLEC and voice service by an CLEC on the same loop.[403] The FCC has repeatedly recognized that CLECs must have unbundled access to the HFPL through line sharing in order to facilitate competition in advanced services.[404] Moreover, the requirement to provide line sharing is equally applicable where the loop is served by a remote terminal, as is the case in an NGDLC configuration.[405] NGDLC allows BellSouth to deploy fiber facilities from the central office to a

[400] Turner Rebuttal at 3.
[401] *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order, Fourth Further Notice of Proposed Rulemaking, 65 FCC Rcd. 2361, ¶ 273 & n.543 (F.C.C. Nov. 5, 1999) (CC Dckt. No. 96-98, FCC 99-238) (*"UNE Remand Order"*).
[402] Turner Rebuttal at 3.
[403] *See Line Sharing Reconsideration Order* ¶ 5.
[404] *See id.*; *Line Sharing Order* ¶ 5.
[405] *See Line Sharing Reconsideration Order* ¶ 10 ("[T]he requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (*e.g.*, where the loop is served by a remote terminal).").

remote terminal.[406] At the remote terminal, the fiber is connected with the copper loop to the customer's premises.[407] The "next generation" aspect of NGDLC arises from the availability of different plug-in cards, which allow the telecommunications carrier to provide voice service only, advanced service only, or combined voice and advanced services.[408]

As the FCC has recognized, it would be inconsistent with the goals of the Act "to permit the increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the competitive provision of xDSL services."[409] In its *Line Sharing Reconsideration Order*, the FCC expressed concern that a CLEC might attempt to provide line-shared xDSL services by collocating a Digital Subscriber Line Access Multiplexer ("DSLAM") at the central office, only to have the ILEC migrate its customers to fiber-fed facilities at a remote terminal.[410] The CLEC would then be forced to collocate another DSLAM at the remote terminal in order to continue providing line-shared services to these customers.[411] To alleviate this concern, the FCC requires the ILEC to provide the option of access to the HFPL at either the central office or the remote terminal, even when the customer is served by NGDLC facilities.[412]

BellSouth, however, does not offer full unbundled access to the local loop, because it does not offer any feasible means of line sharing in situations where it has deployed fiber-fed Digital Loop Carrier ("DLC") at remote terminals.[413] As a result, CLECs face three choices: (1) utilize traditional copper loops to deliver inferior service quality, assuming such copper loops are

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[406] Turner Rebuttal at 5 n.4.
[407] *Id.*
[408] *Id.*
[409] *Line Sharing Reconsideration Order* ¶ 13.
[410] *See id.* ¶ *11.*
[411] *See id.*
[412] *See id.* ¶¶ 11, 12.
[413] Turner Rebuttal at 5, 26-27.

available; (2) engage in cost prohibitive remote terminal collocation; or (3) forego competition for the customers served by BellSouth's expanding fiber-fed network.[414] None of these three choices provides a viable avenue for CLECs to compete successfully in the advanced services marketplace.

Without a feasible means of access to the HFPL through line sharing at the remote terminal, BellSouth cannot meet the unbundling requirements set forth by the FCC. CLECs are entitled to access to unbundled loop elements, which consist of "all features, functions, and capabilities that provide transmission functionality between a customer's premises and the central office, regardless of the technologies used to provide, or the services offered over, such facilities."[415] BellSouth's deployment of NGDLC architecture does not change the basic characteristics or functionality of the loop element to which CLECs are entitled. As the FCC stated: "[u]sing the loop to get to the customer is fundamental to competition."[416] Accordingly, BellSouth should be required to implement the FCC's mandate and provide unbundled loop access at its remote terminals before gaining authority to enter the interLATA market in Kentucky.

As BellSouth witness Williams acknowledged, a technically feasible arrangement exists whereby CLECs could "virtually collocate" at the remote terminals using "line cards" with BellSouth's DSLAM.[417] BellSouth, however, does not currently offer that arrangement.[418] BellSouth has indicated that it is testing the use of line cards.[419] If implemented in a non-

[414] Turner Rebuttal at 5.
[415] *Id.* at 32 (emphasis omitted).
[416] *Line Sharing Order* ¶ 30; *see also id.* ¶ 29.
[417] Tr. Vol. 4 at 180-81.
[418] *Id.* at 181-82.
[419] *Id.* at 182.

discriminatory manner, CLEC access to line cards could be a feasible alternative to the cost-prohibitive option of collocating CLEC-owned DSLAMS at all of BellSouth's remote terminals. Nonetheless, it is BellSouth's current policy not to use this technology. As a result, BellSouth fails to provide nondiscriminatory access in compliance with checklist item 4 because it fails to provide CLECs a feasible means of line sharing at the remote terminal.

b. BellSouth Provisions Line Splitting in a Discriminatory Manner

"Line splitting" exists when one CLEC provides voice service and another CLEC, or the same CLEC, provides data service on the same loop.[420] The FCC has recognized that in order to compete effectively with BellSouth for both voice and data services, UNE-P CLECs must be able to offer bundled services.[421] Because the availability of line splitting will enhance competition in the advanced services market, ILECs must allow CLECs to "offer both voice and data service over a single unbundled loop."[422] The FCC has stated that ILECs have a "current obligation to provide [CLECs] with the ability to engage in line splitting arrangements."[423]

BellSouth apparently has now abandoned its plainly discriminatory policy of refusing to provide the splitter.[424] In this proceeding, BellSouth witness Williams testified that it remains BellSouth's position that it is not legally obligated to provide the splitter in a line splitting arrangement.[425] Nonetheless, he further stated that "because of adverse rulings in Louisiana and Georgia . . . we decided that we would offer to own the splitter in all line-splitting situations."[426] However, details concerning how BellSouth will provide the splitter, including terms, conditions,

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[420] *See Line Sharing Reconsideration Order* ¶ 17.
[421] *See id.* ¶ 18.
[422] *Id.* ¶ 18; *see also id.* ¶ 23.
[423] *Id.* ¶ 18.
[424] *See* Tr. Vol. 4 at 172-73.
[425] *See* Tr. Vol. 4. at 172.
[426] Tr. Vol. 4 at 172-73.

and pricing, are not readily available.[427] In fact, BellSouth's shift in policy occurred very recently, approximately two weeks before the Kentucky hearing.[428]

Given that BellSouth maintains its position that is it not legally obligated to provide line splitters, it is reasonable to be skeptical of the long-term viability of this recent policy shift. Although BellSouth witness Williams professes the shift in policy from the witness stand, his words cannot replace actual evidence that BellSouth does in fact provide line splitters to new line splitting customers. Until such time as BellSouth fully documents and implements this policy, BellSouth fails to provide nondiscriminatory access in compliance with checklist item 4.[429]

c. BellSouth Inhibits Competition By Discontinuing Advanced Services To Customers Who Switch Voice Service to a CLEC UNE Service

If a BellSouth xDSL customer switches its voice service to a CLEC that uses UNE-Loop ("UNE-L") or UNE-P, BellSouth terminates that customer's xDSL service.[430] BellSouth does not perform the disconnect because of technical limitations.[431] Instead, BellSouth has determined as a matter of policy that it will provide its advanced services only to customers who use BellSouth's retail voice service or a resold BellSouth service.[432] This policy decision inhibits competition in voice markets. For example, if a CLEC using UNE-P attempts to compete for a Kentucky customer who currently is served by BellSouth voice and data, that

[427] *See* Tr. Vol. 5 at 308. It appears that rather than charging CLECs a UNE-P rate when CLECs are engaged in line splitting, BellSouth intends to charge for each of the separate elements. Tr. Vol. 4 at 185-86. BellSouth's position on this issue imposes unjustified additional costs on CLECs and is inconsistent with the Georgia Commission's determination that the recurring rate for line-splitting should be the UNE-P rate. *See id.* at 186.
[428] *See* Tr. Vol. 5 at 307.
[429] Furthermore, BellSouth should be required to deploy line splitters on a line at a time basis. BellSouth currently deploys the splitter in increments of 8, 24, and 96 ports (lines). Turner Rebuttal at 22-23. Deploying splitters one line at a time would simplify the ordering process and prevent CLECs from expending resources for capabilities it may not use. *Id.* at 23.
[430] Tr. Vol. 4 at 182.
[431] *See generally* Tr. Vol. 4 at 183.
[432] *See* Tr. Vol. 4 at 182.

customer is unlikely to choose the CLEC as its voice carrier, because such a choice would require termination of BellSouth's data service.[433] Once again, in support of its anti-competitive policy, BellSouth relies on the absence of a legal obligation to provide data service on a UNE loop.

BellSouth's policy of terminating its xDSL customers who switch voice service providers is discriminatory and inhibits competition in voice services. Because of BellSouth's policy, growth in the numbers of BellSouth xDSL customers results in a significant decrease in Kentucky consumers available to be served by CLECs' UNE-P service. In order to protect competition in voice services in Kentucky, this Commission should require that BellSouth discontinue this anti-competitive policy. A company that engages in such behavior is not promoting the kind of competition Section 271 requires.

d. BellSouth has no OSS for Line Splitting

In the *Line Sharing Reconsideration Order*, the FCC stated that "incumbent LECs are required to make all necessary network modifications to facilitate line splitting, including provisioning nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in splitting arrangements."[434] BellSouth does not provide electronic OSS for ordering, provisioning and maintaining line splitting.[435] Until electronic OSS for line splitting is available, any CLEC customer orders for bundled services, to the extent BellSouth will allow them at all, must be handled manually.[436]

[433] *See generally* Tr. Vol. 4 at 182-83.
[434] *Line Sharing Reconsideration Order* ¶ 20.
[435] Turner Rebuttal at 20-21.
[436] *Id.* at 21.

C. BellSouth Has Failed To Demonstrate That It Provides Nondiscriminatory Access To Interconnection (Checklist Item 1)

BellSouth must demonstrate that it provides CLECs with interconnection equal in quality to that which it provides itself.[437] Interconnection involves the deployment of trunks between CLEC switches and BellSouth switches that allows the completion of calls between CLEC customers and BellSouth customers, regardless of which party originates the call. Trunks carry the calls from switch to switch within the network.[438] When a trunk group is filled to capacity and no alternative trunks are available, additional simultaneous calls are blocked.[439] Hence, if sufficient interconnection trunk capacity is not available, then calls between CLEC customers and BellSouth customers will experience high levels of blocking. When a call is blocked, the customer hears either a fast busy signal or a recorded message such as, "All circuits are busy."[440] In determining whether an ILEC provides interconnection equal in quality to that which it provides itself, the FCC considers the incidence of trunk blockage.[441] Indeed, the FCC has found that "disparities in trunk group blockage indicate[] a failure to provide" equal-in-quality interconnection.[442]

The trunks in Kentucky may be put into four categories: common transport trunk groups ("CTTG"), BellSouth's local network trunks, BellSouth-administered CLEC trunks, and CLEC-administered CLEC trunks.[443] Of the four, BellSouth-administered CLEC trunks experience far

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[437] *See* § 271(c)(2)(B)(i); § 251(c)(2)(C). The "equal in quality" standard requires BellSouth to provide interconnection that is at least indistinguishable from that which it provides itself. *See Second Louisiana Order* ¶ 77 n.219.
[438] Tr. Vol. 4 at 76-77.
[439] Tr. Vol. 4 at 79-80.
[440] *See id.*
[441] *See Second Louisiana Order* ¶ 77.
[442] *Bell Atlantic New York Order* ¶ 64.
[443] *See* Tr. Vol. 4 at 81-83; *see also* AT&T Exhibit 17.

greater instances of trunk blockage than any of the other categories.[444] Specifically, in August 2001, 4.1 percent of the BellSouth-administered CLEC trunk groups for Kentucky were observed blocking above a 3 percent measured blocking threshold.[445] In contrast, only 0.3 percent of BellSouth's local network trunk groups for Kentucky were observed blocking over a 3 percent blocking threshold.[446] Moreover, BellSouth's threshold for measured blocking significantly exceeds the levels of trunk blocking observed in the states in which the FCC has granted interLATA authority.[447] While such a disparity continues to exist, BellSouth cannot demonstrate that it provides interconnection to CLECs equal in quality to that which it provides itself. As a result, BellSouth cannot show that it provides nondiscriminatory access to interconnection.

Rather than remedy the high incidences of trunk blockage among BellSouth-administered CLEC trunk groups, BellSouth has responded by simply inventing a new metric for measuring trunk blockage that masks its deficient performance. The trunk blocking statistics cited above came from the August 2001 Trunk Group Service Report, found on BellSouth's PMAP website ("Trunk Group Service Report").[448] Although BellSouth continues to produce the Trunk Group Service Report, in June 2000 it began producing a second report on trunk performance. This "new format," however, does not correspond to the way in which the FCC views data on trunk blocking, and as such it is flawed and misleading.

In its *Second Louisiana Order*, the FCC derived trunk blockage rates for comparison purposes by dividing the percentage of CLEC trunk groups blocked by the percentage of

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[444] *See* Tr. Vol. 4 at 83-85. Notably, 1.0 percent of CLEC-administered CLEC trunk groups for Kentucky were observed above a 3 percent measured blocking threshold. *Id.* at 85. None of the CTTG trunk groups were observed above a 2 percent blocking threshold. *Id.* at 84.
[445] Tr. Vol. 4 at 84.
[446] *Id.* at 84.
[447] *See id.* at 85-86.
[448] AT&T Exhibit 17.

BellSouth retail trunk groups blocked.[449] Using the FCC's calculation method, CLECs' trunk blockage percentage for August was 1200% greater than the trunk blocking percentage for BellSouth's retail trunk groups.[450] In contrast, the CLEC trunk blocking percentages reflected in the *Second Louisiana Order* were 54.5%, 69.2%, and 38.8% greater than that experienced by BellSouth for the three months included.[451] As these numbers indicate, recent percentage blocking differences far exceed those from BellSouth's second application in Louisiana.

Rather than employing the methodology the FCC used in the *Second Louisiana Order*, BellSouth's new report gives an average of the blocking that occurs across all trunks state-wide.[452] This kind of measurement, however, is flawed because it masks the poor performance of specific trunk groups.[453] For example, if there is significant trunk blockage in Lexington, and very little blockage in the other cities and towns around the state, BellSouth's new report would easily mask the blockage in Lexington. The Trunk Group Service Report, however, would show that a trunk group was blocking in Lexington.[454]

For these reasons, BellSouth's new report on trunk performance is misleading. Accordingly, this Commission should not rely on this new report to determine whether BellSouth provides nondiscriminatory access to interconnection. Instead, the Commission should base its analysis on the Trunk Group Service Report, which more closely accords with the FCC's position on this issue. The Trunk Group Service Report shows the vast disparity in trunk

[449] *Second Louisiana Order* ¶ 77 n.218; *see also* Tr. Vol. 4 at 112-13.
[450] Tr. Vol. 4 at 116-17; *see also* Nuvox Exhibit 2 (illustrating the FCC calculation method).
[451] *Second Louisiana Order* ¶ 77 n.218.
[452] *See* Tr. Vol. 4 at 130-31 (indicating that the new report aggregates all of the call attempts throughout the whole state and all the blocked calls throughout the whole state, calculating percentages at this aggregate level).
[453] *Id.* at 131, 133 (testifying that it is possible that the new report masks blocking in a particular trunk group, "[t]hat's just the tyranny of high level reports").
[454] Tr. Vol. 4 at 133.

performance between BellSouth-administered CLEC trunk groups and the remaining trunk groups. Accordingly, while such a disparity in trunk performance exists, BellSouth fails to provide nondiscriminatory access to interconnection.

D. BellSouth Has Failed To Provide Adequate Number Portability (Checklist Item 11)

The FCC has recognized that "number portability is essential to meaningful competition in the provision of local exchange services."[455] Number portability provides consumers flexibility and promotes competition from CLECs.[456] Accordingly, BellSouth must provide number portability in a manner that allows users to retain existing telephone numbers, "without impairment in quality, reliability, or convenience when switching from one telecommunications carrier to another."[457] AT&T, however, has experienced numerous and persistent problems with BellSouth's implementation of number portability.[458] For example AT&T has experienced:

- Incidents of loss of the ability of customers to receive inbound calls;[459]
- Chronic number reassignment problems;[460]
- Instances of duplicate billing;[461]
- Problems with partial ports of service;[462] and
- Difficulties transferring customers back to BellSouth immediately, if necessary ("snap back").[463]

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[455] First Report and Further Notice of Proposed Preliminary, *In the Matter of Telephone Number Portability*, 11 FCC Rcd. 8352 ¶ 28 (July 2, 1996) (CC Docket No. 95-116, FCC 96-286).
[456] *See id.*
[457] 47 U.S.C. § 251(b)(2); *see also Bell Atlantic New York Order* ¶ 367; *SWBT Texas Order* ¶ 369.
[458] Berger Rebuttal at 35.
[459] *Id.* at 35-38.
[460] *Id.* at 35, 39-40.
[461] *Id.* at 35, 41-42.
[462] *Id.* at 35, 42-43.
[463] *Id.* at 35, 46-47.

In addition, BellSouth's self-reported results for number portability do not meet benchmarks for several of the reported metrics.[464]

Loss of inbound service stems from a process problem at BellSouth that causes customers to lose the ability to receive calls from BellSouth customers.[465] The problem has become so pervasive when porting business customers that "AT&T has established special procedures to call BellSouth and remind them to do the translation work in their switches on the due date."[466] Furthermore, reassignment problems occur when a telephone number is ported to AT&T or another CLEC, yet BellSouth erroneously reassigns the number to a new BellSouth line.[467] As a result, the AT&T customer receives calls from people who are attempting to reach the new BellSouth customer.[468] Number reassignment problems, rare among BellSouth customers, can surface more than a year after the number was ported to the CLEC customer.[469]

Duplicate billing occurs when AT&T customers continue to receive bills from BellSouth after they switched local service to AT&T and ported their number.[470] BellSouth has also had difficulty porting a subset of a customer's numbers, especially when the main number, which BellSouth has used for billing, is ported to a CLEC.[471] Finally, unlike every other ILEC, BellSouth does not have procedures for performing "snap backs."[472] Snap backs occur when a

[464] *Id.* at 36, 47-51.
[465] *Id.* at 36.
[466] *Id.*
[467] *Id.* at 39.
[468] *Id.* at 39-40.
[469] *Id.* at 40.
[470] *Id.* at 41.
[471] *Id.* at 42.
[472] *Id.* at 46-47.

significant problem arises at the time of port, such as loss of dial tone or noise on the line.[473] An efficient snap back process is necessary to ensure the customer continuity of service.[474]

These continuing problems show that BellSouth fails to provide number portability of sufficient quality and reliability. Accordingly, BellSouth has failed to demonstrate that it provides number portability in compliance with checklist item 11.

F. BellSouth Fails To Provide Access To OS/DA (Checklist Item 7)

A CLEC is required to "permit all [CLECs] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[475] In order for CLECs to obtain OS/DA from a provider other than the ILEC, the CLEC must have access to customized routing.[476] BellSouth, however, does not provide the necessary OSS to order customized OS/DA routing for a specific customer in an efficient and effective manner.[477] "Specific, verifiable terms and conditions for ordering and provisioning customized routing, including business rules and an electronic ordering process (or even a documented manual ordering process) for applying customized routing to specific customers simply do not exist."[478]

On May 17, 2001, BellSouth published a CLEC Information Package, entitled "Selective Call Routing Using Line Class Codes."[479] This document included two "Ordering Information"

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[473] *See* Tr. Vol. 5 at 238.
[474] Berger Rebuttal at 47.
[475] *SWBT Texas Order* ¶ 345 (citing Section 251 of the Act); *see also Verizon Massachusetts Order* ¶ 222; *SWBT Kansas and Oklahoma Order* ¶ 255. It should be noted that the FCC, in its *Second Louisiana Order*, found that BellSouth satisfied one of the three requirements of checklist item 7. *See Second Louisiana Order* ¶ 8 n.13. However, the FCC found that BellSouth remained deficient in the areas of OS/DA. *See Second Louisiana Order* ¶¶ 8, 9, 243.
[476] *See* Bradbury Rebuttal at 135.
[477] *See id.*
[478] *Id.* at 136.
[479] *Id.* at 139.

paragraphs.[480] However, the information is "confusing, inadequate, and impossible to implement."[481] Notably, the Florida third-party tester cited these same instructions when it opened Exception 69 in the Florida test.[482] Exception 69 states that "BellSouth does not provide an accurate method for assigning the Universal Service Order Code (USOC) to request BellSouth's Operator Services & Directory Assistance (OS/DA) Branding feature."[483]

In sum, it is not clear how CLECs are to submit orders for customized OS/DA routing for particular customers. As a result, BellSouth currently fails to provide a customized OS/DA routing method by which CLECs can obtain OS/DA service from their own platforms or from a third party. Accordingly, BellSouth has failed to demonstrate its compliance with checklist item 7.

CONCLUSION

BellSouth's Section 271 application is woefully premature. Indeed, the DOJ recognized this earlier this month with respect to the pending Georgia and Louisiana Joint Application. Congress constructed Section 271 to require that effective local competition exist before BellSouth and the other ILECs would be permitted to provide in-region interLATA service. As demonstrated through the hearing testimony and the related submissions of the parties, BellSouth simply is not ready to establish that such local competition exists or that it has met all of the requirements of the Section 271 checklist.

In its rush to submit the pending application, BellSouth has failed to remedy the shortcomings identified by the FCC in BellSouth's three previous unsuccessful Section 271

[480] *See id.*
[481] *Id.*
[482] *Id.*
[483] *Id.* at 139-40.

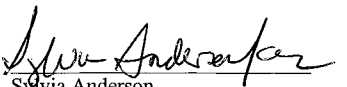
applications. As identified above, BellSouth's OSS still contains major deficiencies; significant compliance problems still exist with BellSouth's provisioning of nondiscriminatory access to its OSS for UNEs; and many other compliance problems still abound as to interconnection, local loop transmission, switching, number portability, and OS/DA. Thus, it is clear that BellSouth has not met the checklist items.

Furthermore, the data BellSouth produces to show compliance with the SQM is demonstrably inconsistent, unreliable, incomplete, and unverifiable in many instances. In addition, BellSouth ignores the comprehensive third-party test ongoing in Florida and relies instead on the Georgia third-party test. As demonstrated above, the Georgia third-party test contains countless errors and omissions. The test conductor made many mistakes and relied on questionable statistical methods and other practices. Significantly, the Georgia third-party test still is incomplete, with open exceptions relating to data integrity still under investigation and a pending second audit of BellSouth's performance measures, processes, and data. By contrast, the ongoing Florida third-party test is free of many of the problems and irregularities that plague the Georgia third-party test.

For the reasons given above, this Commission should deny BellSouth's Section 271 Application. Instead, the Commission should direct BellSouth to collect data over the next three months in accordance with the SQM adopted on October 19, 2001. At that time, not only will the Commission have relevant data concerning Kentucky, but also it will have the benefit of more information and results from the ongoing Florida third-party test. Both the parties and the Commission will have a much better sense of whether BellSouth can meet its burden of proof with respect to its Section 271 Application. Given the great uncertainty now, and the large

amount of data that can be collected in the next three months, the best course of action would be for the Commission to deny BellSouth's application and proceed accordingly.

Respectfully submitted this the 16th day of November, 2001.

By: 

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