BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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

JOINT SUPPLEMENTAL REPLY AFFIDAVIT OF JOHN A. RUSCILLI AND CYNTHIA K. COX

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EXHIBITS

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We, John A. Ruscilli and Cynthia K. Cox, being of lawful age and duly sworn upon our oaths, hereby depose and state:

I. INTRODUCTION AND PURPOSE OF AFFIDAVIT

1. My name is John A. Ruscilli. I am employed by BellSouth Telecommunications, Inc. ("BellSouth") as a Senior Director for State Regulatory for the nine-state BellSouth region.

2. My name is Cynthia K. Cox. I am employed by BellSouth as a Senior Director for State Regulatory for the nine-state BellSouth region.

3. As part of BellSouth's filing in CC Docket No. 02-35, we filed a Joint Supplemental Affidavit with the Federal Communications Commission (the "FCC" or the "Commission") on February 14, 2002.

4. The purpose of this Joint Supplemental Reply Affidavit, to which we both attest in its entirety, is to respond to portions of the Comments filed on behalf of several parties in this proceeding on March 4, 2002. Specifically, we respond to portions of the Comments made by Allegiance Telecom of Georgia, Inc. ("Allegiance"), Association of

Communications Enterprises ("ASCENT"), AT&T Corp. ("AT&T"), Covad Communications Company ("Covad"), KMC Telecom, Inc. ("KMC"), Mpower Communications Corp. ("Mpower"), Nextel Communications, Inc. ("Nextel"), Sprint Communications Company, L.P. ("Sprint"), Triton PCS License Company ("Triton"), US LEC Corp. and XO Georgia, Inc. ("US LEC and XO" or "US LEC/XO Joint Comments"), WorldCom, Inc. ("WorldCom"), and Xspedius Corp.("Xspedius").

5. To the extent these Parties have included, either physically or by reference, their Comments filed with the Commission in CC Docket No. 01-277, we will not reiterate our responses provided in our Joint Reply Affidavit filed with the Commission on November 13, 2001, and incorporated by reference in our Joint Supplemental Affidavit in CC Docket No. 02-35 filed with the Commission on February 14, 2002.

II. CHECKLIST ITEM NO. 1: INTERCONNECTION

6. In their respective Supplemental Comments, Nextel and Triton complain about a situation that arises when they obtain NXX codes for numbers that are routed within BellSouth's service area in Georgia or Louisiana but have "rating points" (points used to determine rates) that are outside the BellSouth local calling areas where they choose to interconnect, and in an area where an independent local exchange company ("ICO") is the Incumbent Local Exchange Carrier ("ILEC"). Nextel and Triton are Commercial Mobile Radio Services ("CMRS") providers that, for their own reasons, in at least some instances, have chosen not to interconnect directly with the ICO. Accordingly, Nextel and Triton seek to route traffic without appropriately compensating BellSouth, or the ICO, for the costs incurred for transporting such traffic. Various forms of intercarrier compensation, including reciprocal compensation, access charges, and intercompany settlements, should apply to this traffic, but either are not paid or are paid incorrectly because of the

inappropriate NXX rating assignment used by the CMRS providers in the Local Exchange Routing Guide ("LERG").[1]

7. Consider a case where a wireline end user in an ICO's local calling area makes a call to a Nextel customer with an NXX assigned, for rating purposes, to that same ICO exchange. Because Nextel does not interconnect directly with that ICO, the call would be routed from the ICO's facilities through BellSouth's facilities in the BellSouth service area and on to Nextel's Mobile Transport and Switching Offices ("MTSO") (again in BellSouth's service area) for delivery to the Nextel wireless customer. In this case, Nextel would be using BellSouth's facilities to route the call outside of the ICO exchange. If, however, Nextel had assigned the NXX a rating point consistent with the actual routing, BellSouth would normally be entitled to access charges. Here, however, the rating point assigned to the called party's NXX is in the same exchange as the NXX for the calling party, and therefore the call appears to be local. In this circumstance, BellSouth currently has no method of receiving appropriate compensation associated with the transporting of this traffic – a situation to which BellSouth obviously objects. Alternatively, a CMRS provider can interconnect with the ICO and avoid routing through BellSouth's network in these situations. BellSouth also is concerned that the CMRS providers' use of these "virtual NXX" designations may be inconsistent with limitations contained in BellSouth's tariffs. [2]

8. Nextel and Triton do not, and indeed cannot, explain why they should not compensate BellSouth for the costs that they cause BellSouth to incur in transporting this traffic. To

[1] BellSouth is unaware of any actual dispute with a CMRS provider over NXX rating points in Georgia or Louisiana, though there are such disputes in South Carolina and Florida.

[2] *See* BellSouth General Subscriber Service Tariff ("GSST") for Georgia, §A35.1.1(O)(6) (attached to this Affidavit as Exhibit JAR/CKC-1) (requiring NXXs rated for a local exchange "different than the exchange where the BellSouth CMRS . . . interconnection exists" to be in "a company [i.e., BellSouth] exchange"), at http://cpr.bellsouth.com/pdf/ga/a035.pdf; BellSouth GSST for Louisiana, §A35.1.1(M)(5) (attached to this Affidavit as Exhibit JAR/CKC-2) (same), *at* http://cpr.bellsouth.com/pdf/la/a035.pdf.

the contrary, in the Commission's pending *Intercarrier Compensation* proceeding[3] (discussed further below), Triton has stated that it "has no objection, of course, to paying the actual costs incurred to transport traffic over a transiting LEC's facilities to an indirectly interconnected ILEC. Triton, like any other carrier, should pay for the transport service it receives." Comments of Triton PCS License Company, L.L.C., at 14, *Intercarrier Compensation NPRM*, CC Docket No. 01-92, at 14 (FCC filed August 21, 2001). Instead of dealing with the compensation issue, Nextel and Triton appear to allege that BellSouth refuses to route their calls as directed, or to allow them to use the NXX codes they desire, which they claim allegedly violates BellSouth's interconnection and numbering obligations under section 271 of the Act.

9. In fact, however, as BellSouth has recently clarified in a Carrier Notification Letter (*See* Supplemental Reply Exhibit JAR/CKC-3 attached to this Affidavit), BellSouth is not refusing to route calls or to permit NXX number assignments. Indeed, BellSouth has never failed to either route calls or permit NXX number assignments for Nextel or Triton in Georgia or Louisiana. Rather, BellSouth's position is that, if CMRS providers do not interconnect directly with the ICOs and insist that BellSouth arrange for the transmission of local calls within the ICOs' calling areas, then BellSouth should be compensated for the costs that it incurs on behalf of the CMRS providers. BellSouth also must ensure that the CMRS providers' requests are not inconsistent with BellSouth's tariffs. Consequently, while BellSouth will still carry traffic and recognize NXX assignments, BellSouth will seek a declaratory ruling on the matter from the Georgia Public Service Commission ("GPSC") and/or the Louisiana Public Service Commission ("LPSC"), as appropriate (*see id.)*, when it becomes aware of instances where CMRS providers seek to require BellSouth to route traffic in a manner inconsistent with the rating points of the

[3] *See* Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, ¶112 (2001) *(Intercarrier Compensation NPRM")*.

traffic. Indeed, because BellSouth is already aware of such concerns in Florida and South Carolina, BellSouth will soon file petitions for declaratory rulings with the state commissions in those states. Those petitions should place this dispute before the correct forums for resolving such discrete intercarrier issues that involve, among other things, the interpretation of state tariffs.

10. Put in the proper perspective, therefore, the issue Nextel and Triton raise involves a dispute about intercarrier compensation and state tariffs; it does not involve a refusal to interconnect or to adhere to numbering requirements. It is, thus, very similar to issues that the Commission has seen before and has properly concluded pose no obstacle to section 271 approval. For instance, with regard to an ILEC's obligation to "provide for a single *physical* point of interconnection per LATA," the Commission has held that the existence of physical interconnection satisfies section 271 and that the financial consequences of a carrier's unilateral interconnection choices should be addressed elsewhere. *Pennsylvania Order* ¶100. [4] The Commission noted that the single-point-of-interconnection issue was being addressed in a separate rulemaking, *see id.*, where the Commission has acknowledged that a carrier's unilateral interconnection choices might justify making it "pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears," *Intercarrier Compensation NPRM* ¶112. Moreover, in that same NPRM, the Commission invited comment on LEC-CMRS intercarrier

[4] Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania,* 16 FCC Rcd 17419 (2001). Nextel and Triton claim that BellSouth fails to provide a single physical point of interconnection within a LATA "by requiring [them] to interconnect directly with numerous smaller and rural ILECs." Nextel Opp. Comments at 5; *see also* Triton Opp. Comments at 4. But the Commission's single-point-of-interconnection requirement does not apply to interconnection with *other* carriers, *i.e.*, it does not require a single point of interconnection with *all* ILECs that happen to serve a given LATA. Rather, that requirement only "gives competing carriers the right to deliver traffic *terminating on an incumbent LEC's network"* – but not traffic terminating on another ILEC's network or on a CMRS network. Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services In Texas,* 15 FCC Rcd 18354, ¶78 (2000) *("SWBT Order-TX")* (emphasis added; internal quotations omitted). In any case, the Commission need not address Nextel's and Triton's claim. As explained, BellSouth is not refusing to carry any traffic, but rather desires to be compensated for that effort and to ensure that the CMRS providers' actions are consistent with state tariffs.

compensation, *id.* ¶¶90-96, and both Nextel and Triton (among others) have accepted that invitation with regard to questions raised by virtual NXX assignments.[5] Accordingly, issues closely related to this one are pending in another Commission docket, and that is where they should be resolved.

III. CHECKLIST ITEM NO. 2: UNBUNDLED NETWORK ELEMENTS

A. TELRIC Compliance - General

11. AT&T, ASCENT, Allegiance, Covad and WorldCom continue to allege that BellSouth's UNE rates are not TELRIC compliant. Paragraphs 12-29 of our Joint Reply Affidavit (Reply App., Tab L) in CC Docket No. 01-277 address many of the issues these CLECs again raise here. Although we will not reiterate what was previously filed, there are two general points worth repeating. First, after conducting extensive examinations of BellSouth's cost studies, both the GPSC and the LPSC modified BellSouth's studies and adopted rates that the GPSC and LPSC found to be TELRIC-based, and in compliance with the Act and the Commission's rules. None of the Comments filed in this docket demonstrate that the findings of the GPSC or the LPSC are so deficient that they should be second-guessed here. Second, in contrast to its Evaluation of BellSouth's *Second Louisiana Application* and many other recent filings, the United States Department of

[5] *See, e.g.*, Reply Comments of Triton PCS License Company, L.L.C., at 8, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (FCC filed Nov. 5, 2001) (urging approval of the "practice of separating the routing of a call exchanged under reciprocal compensation arrangements from the rating – pricing – of the call. This practice permits a CMRS provider to offer its customers local telephone numbers across its service territory, even though the CMRS carrier may have only a single switch."); Comments of Nextel Communications, Inc., at 10-15, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (FCC filed August 21, 2001) (discussing a Missouri State Commission decision affirming the right of third-party ILECs to file tariffs requiring compensation for terminating CMRS traffic delivered by an ILEC having direct interconnection with the CMRS provider, and clarifying that the direct-connected ILEC might have an "obligation to assist any small ILECs that requested it in blocking CMRS traffic for non-payment" (*id*. at 13)); Ex Parte Letter from Laura H. Phillips, Counsel for Nextel, Inc., to Magalie Roman Salas, Secretary, FCC, at 4-5 (FCC filed October 2, 2001); *cf. Intercarrier Compensation NPRM* ¶91 n. 148 ("[W]ireless carriers can elect to deliver CMRS-originated calls to a large ILEC (typically a Regional Bell Operating Company [RBOC]) for routing to the rural LEC carrier. . . Increasingly, the large ILEC is unwilling to bill for the rural carrier, so rural LECs have begun to insist that the CMRS carrier deliver calls directly to the rural LEC's switch.").

Justice ("DOJ") did not raise pricing concerns in its evaluation of BellSouth's current or previous GA/LA application. This provides further support for a finding by this Commission that BellSouth's existing UNE rates are TELRIC-compliant.

12. In its Supplemental Comments, at page 45, AT&T makes the sweeping statement that "[n]o party disputes that the non-loop and daily usage file ("DUF") rates on which BellSouth's Georgia application relies are not TELRIC today. BellSouth has effectively conceded that point." AT&T's conclusion, allegedly based on the fact that BellSouth has recently submitted new cost studies to the GPSC as part of Docket No. 14361-U, is wrong. Both the GPSC, as well as this Commission, have rejected this argument. As the GPSC stated in its Comments in CC Docket No. 01-277, "[t]he Commission disagrees with WorldCom's suggestion that the rates established by this Commission in Docket Nos. 7061-U and 10692-U are not cost-based. While technology has changed and BellSouth's costs may need to be updated, this Commission has convened Docket No. 14361-U for this very purpose." GPSC Comments at 136.

13. Addressing AT&T's specific claim that BellSouth proposes to reduce its non-loop rates by 81%. (AT&T Supplemental Comments at 45). AT&T's allegation is misleading at best. In footnote 38, AT&T acknowledges that its calculated reduction ignores a $2.27 recurring monthly non-loop charge that BellSouth has requested in the ongoing proceeding. When that charge is added back, the new proposed rate approaches BellSouth's current rate, differing only by approximately 12% rather than AT&T's alleged 81%. This reduction does not, in any way, suggest that BellSouth's existing non-loop rates fall outside the range of possible TELRIC results, as AT&T suggests. *See, e.g., SBC-KS/OK Order* ¶91 ("TELRIC-based pricing can result in a range of rates").

14. As recently as its February 22, 2002, *Verizon-RI Order*[6], this Commission has also rejected AT&T's argument concerning ongoing proceedings. In paragraph 31, the Commission states:

> *We disagree with claims by AT&T and WorldCom that Verizon's UNE rates are not TELRIC compliant because the Rhode Island Commission will soon begin a new rate proceeding in which it will reconsider certain assumptions underlying the rates. The fact that the Rhode Island Commission has scheduled a rate proceeding to update existing rates does not, in itself, prove that existing rates are not TELRIC compliant. Indeed, the Commission has recognized that rates may well evolve over time to reflect new information on cost study assumptions and changes in technology, engineering practices, or market conditions.*

And further, quoting a ruling from the United States Court of Appeals for the D. C. Circuit agreeing with the position taken by the Commission:

> *[W]e suspect that the rates may often need adjustment to reflect newly discovered information, like that about Bell Atlantic's future discounts. If new information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change.* (Footnote 97 excluded.)
> Id.

15. BellSouth acknowledges that it is in the midst of a generic UNE cost proceeding in Georgia and the GPSC will establish new UNE rates in that proceeding. As stated in our Original Affidavit (App. A, Tab Q), in CC Docket No. 01-277, certain rates, including the DUF rates, in BellSouth's SGAT are interim and subject to true-up based upon a final order in GPSC Docket No. 14361-U. Therefore, to the extent that the GPSC orders lower rates in the current proceeding, AT&T, as well as all other CLECs, will receive the

[6] *In the Matter of Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island,* CC Docket No. 01-324, FCC 02-63, Released February 22, 2002 ("*Verizon-RI Order").*

benefit of these rates retroactively.[7] An ongoing cost proceeding is not, however, a basis on which to deny BellSouth's application as some CLECs are contending.

16. At this point, BellSouth would make one other observation with regard to AT&T's arguments concerning BellSouth ongoing Georgia UNE cost proceeding. The Commission should note that AT&T is presenting a totally one-sided approach to this issue. AT&T's argument highlights a few rates only where BellSouth has proposed reductions in Georgia. Noticeably absent from AT&T's discussion is any suggestion that BellSouth's entire new set of proposed rates be adopted. Over time, some costs, and therefore rates, will increase, and some will decrease. If AT&T truly believes that BellSouth's new cost studies more accurately reflect BellSouth's actual costs, then AT&T should be willing to immediately adopt all of the rates proposed to the GPSC. AT&T cannot pick and choose the rates it likes, and totally ignore the ones is does not. Because AT&T and other CLECs would never agree to adopt all of the new rates (both increases and decreases) proposed by BellSouth, the proper action, as recognized by the Commission in ¶¶35-38 of the *Verizon-MA Order*[8] (stressing the existence of a new rate proceeding even where, unlike in this proceeding, commenters had raised "legitimate concerns" about certain inputs) is to rely on the GPSC to establish new rates based on the record currently being developed and implement them accordingly.

17. AT&T also raises a concern about BellSouth's Georgia rates becoming a benchmark for other states. This argument has no relevance for this application and should be rejected.

AT&T's concern only becomes an issue should BellSouth try to rely on Georgia UNE rates as a benchmark for <u>future</u> 271 applications, and it certainly does not warrant a

[7] One exception to the availability of this true-up is for enhanced optional daily usage files ("EODUF"), where BellSouth has proposed to increase rates in the new proceeding, and therefore, a true-up is not appropriate.

[8] Memorandum Opinion and Order, *Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts ("Verizon-MA Order")*, 16 FCC Rcd 8988 (2001), (rel. April 16, 2001).

finding by the Commission of non-compliance with Checklist Item No. 2 in this proceeding.

B. Manual v. Electronic Ordering Charges

18. Both Mpower and Covad assert that BellSouth's policy with regard to manual ordering of DSL loops is discriminatory. Covad Supplemental Comments at 2; Mpower Supplemental Comments at 12-13. There is nothing discriminatory about BellSouth charging a manual ordering charge when a CLEC places a manual order, either for its own business reasons or because BellSouth does not have an electronic interface that will allow the CLEC to place the order electronically. BellSouth incurs costs when an order is placed manually, regardless of the reason, and BellSouth is entitled to recover those costs from the cost-causer – namely, the CLEC placing the manual service order. The GPSC and the LPSC have approved both manual ordering and electronic ordering charges, which are cost-based and comply with the Commission's TELRIC rules. BellSouth is not discriminating against anyone by charging a CLEC the state commission-approved manual ordering charge when the CLEC places an order manually.

19. That being said, however, BellSouth is somewhat confused about Covad's concern. BellSouth provides electronic interfaces for pre-ordering and ordering associated with most xDSL type loops. As the GPSC explained in its Comments filed with the Commission on March 4, 2002, BellSouth has enhanced, and continues to enhance, its electronic ordering capabilities. Specifically, the GPSC states at page 17,

> *Furthermore, BellSouth has enhanced the electronic ordering capabilities for DSL competitors, … Specifically, consistent with the Commission's 271 Order, BellSouth deployed electronic ordering for line splitting on January 5, 2002. In addition, on February 2, 2002, BellSouth made available electronic ordering of the UDC/IDSL.*

Although BellSouth acknowledges, as did the GPSC, that the UDC/IDSL orders will fall out for manual handling until May 19, 2002, CLECs no longer have to fax orders for the UDC/IDSL loop to BellSouth, and thus Covad can avoid paying manual ordering charges for these types of loops.

20. Covad also can avoid manual ordering charges for other types of xDSL loops by electronically ordering Asymmetrical Digital Subscriber Line ("ADSL") compatible loops without conditioning and Line Sharing without conditioning through Electronic Data Interchange ("EDI"). The capability to order these xDSL loops has been available since February 12, 2001 and September 30, 2000, respectively.

21. Moreover, under the Parties' Interconnection Agreement, if problems with electronic ordering systems prevent Covad from placing electronic orders that BellSouth normally accepts, Covad may order the services it desires manually and pay only the electronic ordering rates. Since electronic access is available for the vast majority of products purchased by Covad, manual ordering charges should not be a significant issue. If, however, Covad makes a business decision to place a manual order, or in the few instances where BellSouth does not have an electronic ordering interface such that Covad must place a manual order, manual ordering charges are appropriate.

C. LNP Coordination – After Hours Cuts

22. US LEC complains that BellSouth's charges for after hours "coordinated LNP cuts" (US LEC/XO Joint Supplemental Comments at 22-23) are anti-competitive and are not authorized by either a tariff or by the parties' interconnection agreements. The charges to which US LEC refers are for Project Management Coordination services for "After Hours Cut," or provisioning of LNP cuts outside the normal 8:00 AM to 5:00 PM workday. Although US LEC claims that these charges are not covered in US LEC's interconnection

agreements, it is mistaken. For example, Attachment 6, Section 1.2 of US LEC's Louisiana agreement states, "All other US LEC requests for provisioning and installation services are considered outside of the normal hours of operation and may be performed subject to the application of extra-ordinary billing charges." Until recently BellSouth waived its right to charge for the expense of executing this type of cut after normal working hours. This fee covers the cost of providing project management coordination. BellSouth described its intent to begin recovery of these costs in a BellSouth Carrier Notification Letter dated January 16, 2002. As set forth in the Notification Letter, the CLECs had two choices: they could schedule coordinated LNP cuts during normal working hours or they could participate in the trial outlined in the notification letter. The trial established the parameters under which BellSouth would perform LNP cuts after hours. The purpose of the trial was to determine the CLECs' interest in the service and to establish their willingness to pay. Apparently the letter was confusing to the CLEC community and on February 25, 2002, BellSouth decided that it would delay its efforts to begin recovering these costs. As such, BellSouth has not charged any carrier, and will not charge US LEC, for any after hours coordination performed thus far. Since the carrier notification letter was published, and in light of the subsequent confusion that ensued, BellSouth is reevaluating its proposal and will post an amended carrier notification letter to the website at the appropriate time. Until such time, BellSouth will continue to waive its right to recover these extraordinary costs and will continue to agree to perform after hours coordinated LNP conversions.

IV. CHECKLIST ITEM NO. 4: LOOPS

23. Covad's allegation, at page 20, that "every time BellSouth now deploys fiber it removes the copper loops, not from the ground, but from LFACS" is not correct. Covad

Supplemental Comments at 20. BellSouth does not automatically remove copper facilities from LFACS whenever a retail customer's service is changed from copper to Digital Loop Carrier ("DLC") equipment or other fiber-based technologies. LFACS is the database that identifies the facilities serving a specified location, and is used to inventory and assign facilities for use by BellSouth and the CLECs in providing service. It is used by CLECs to identify qualified facilities that would enable a CLEC to serve a particular customer without additional engineering or construction.

24. Fiber and DLC placements can occur in one of two configurations, either as an overlay to the existing copper facilities or as a replacement for existing copper facilities. For a fiber overlay, the new fiber cable is placed in parallel with the existing copper cable, and both facilities would be shown in LFACS as available at a given address. When BellSouth employs an overlay situation, both the existing copper pairs and the new DLC pairs would be available for Covad's use.

25. By contrast, when fiber is used to replace copper facilities, the former copper pairs are no longer shown as available in LFACS because they are no longer physically spliced together, or the cable and terminals may no longer physically exist in the outside plant network. In other words, the copper facilities are no longer in LFACS because the facilities cannot be used to provide service by either BellSouth or a CLEC without additional engineering and construction work. For example, when BellSouth installs a DLC remote terminal in a particular location, the portion of the copper loop referred to as loop distribution (which runs from the remote terminal site to the customer's premises) is disconnected from the portion of the copper loop referred to as loop feeder (which runs from the remote terminal site to the serving central office). The copper loop distribution pairs are then connected to the DLC equipment, which in turn extends the derived pairs forward to the serving central office. Thus, the loop information in LFACS for those

copper loops served by DLC is modified to reflect the fact that the loop is not served entirely by copper facilities. Because the copper loop feeder pairs no longer extend to customers' premises (that is, they now end at the remote terminal site) those copper loop feeder pairs are not inventoried in LFACS as usable to any service address, and would not be reflected as available for use if a CLEC requests loop make-up information on a customer location served by that remote terminal site. Information regarding the copper loop distribution pairs (and their associated DLC derived pairs), however would appear in LFACS as being available in those terminals where they are currently connected and available for assignment.

26. BellSouth replaces copper cable with fiber for a number of reasons. The copper cable may be defective or either impossible or uneconomical to maintain. It may be affected by a pending road move or other rearrangement (e.g., the existing buried cable may be covered by asphalt or the dirt graded, making it impossible to maintain at its existing location). When copper facilities are replaced with fiber optic facilities, the new loop make-up information is built into the LFACS database, and the information regarding existing copper loops is updated to reflect that those loops have been cut-over to the new terminals and cable counts. Once all of the copper loops have been cut-over, the existing copper cable can be physically removed and retired (as would be the case with aerial cable) or it may be retired in place (as would be the case with direct buried cable). In either event (physical removal or retirement in place) the associated information regarding that cable is removed from LFACS.

27. Also on page 20 of its Supplemental Comments, Covad references a situation at a central office in Florida where Covad first thought that no copper loops would be available from that central office because fiber was being deployed. Covad later determined that not all of the loops serving that central office would be cut over to fiber, only the loops serving a

particular set of customers. Covad's contention is that BellSouth deprives Covad of access to those loops and those customers and that the Commission should require BellSouth to make its entire copper loop plant available to CLECs. Covad is mistaken.

28. Contrary to Covad's suggestion, seldom are all the loops serving a given central office cut-over at once from copper facilities to fiber optic facilities. Instead, economics determine the appropriate timing for such cut-overs. In any event, however, Covad has the same access to copper facilities as does BellSouth. It is a fact that, over the years, BellSouth has pursued an aggressive fiber and DLC deployment policy, perhaps more so than some other ILECs. As a result, approximately 40% of BellSouth's working or assigned loops region-wide are served by DLC, which may explain why there may be more copper pairs "available in other ILEC regions." BellSouth has published a report that is available on its interconnection website that shows, by wire center, the percentage of loops within that wire center that are served by copper facilities versus those served by DLC.

29. Moreover, the fact that a loop does not appear in LFACS does not mean a CLEC is precluded from gaining information about that loop. If a CLEC requests an unbundled copper loop from BellSouth and BellSouth does not have any copper facilities available to the serving terminal, the CLEC may submit a manual service inquiry to determine what BellSouth can do to provide such copper facilities. Upon receipt of a service inquiry, BellSouth will evaluate the work required and provide a cost estimate, which would include the cost of the engineering work order and the construction involved in physically placing new copper facilities or making splices to connect existing copper facilities. If no spare copper facilities are available, Covad always has the option of placing a Digital Subscriber Line Access Multiplexer ("DSLAM") at the remote terminal site and engaging in remote terminal line sharing, just as BellSouth does when it provides

its DSL service. Thus, simply because BellSouth has decided to serve an end user customer with DLC does not preclude Covad or any other CLEC from offering the customer competitive DSL service.

30. BellSouth previously provided Covad with this information about the availability of copper facilities and the functionality of LFACS as part of a series of meetings held last year at the direction of and with the involvement of the GPSC. Covad did not ask BellSouth for additional information nor did it request that the GPSC take any action, which justifiably led BellSouth to believe that Covad's concerns had been resolved. Under those circumstances, it is not clear why Covad has decided to raise these issues again in this proceeding after nearly six months.

V. CHECKLIST ITEM NO. 13: RECIPROCAL COMPENSATION

31. US LEC claims that BellSouth has used litigation as a way to forestall and avoid its legal obligations, particularly in regard to reciprocal compensation. Accordingly, US LEC claims that the Commission should deny BellSouth's application for failure to comply with Checklist Item 13. US LEC/XO Joint Supplemental Comments at 45. BellSouth disagrees. In its Joint Comments, US LEC cites various GPSC orders regarding the application of reciprocal compensation for ISP-bound traffic and BellSouth's appeals of those orders. As discussed in our Ruscilli/Cox Reply Affidavit in Docket 01-277, ¶¶ 68-77, these orders were the result of a dispute between BellSouth and US LEC whereby the parties disagreed on the intent of the contractual language as it pertained to the payment of reciprocal compensation. BellSouth pursued its rights to challenge those decisions through the judicial process. Furthermore, as of October 4, 2001, BellSouth and US LEC reached a settlement that resolved all past disputes over reciprocal compensation. Contrary to US LEC's claims contained in its Joint Comments, BellSouth has met its

legal obligations with regard to the payment of reciprocal compensation. In any event, the claim made by US LEC is irrelevant because, as the Commission has consistently recognized, payment of reciprocal compensation for ISP-bound traffic is not a checklist requirement.

32. Another issue that the US LEC/XO Joint Supplemental Comments cite is BellSouth's challenge of CLECs' entitlement to reciprocal compensation including the tandem interconnection rate. Prior to the Commission's *Intercarrier Compensation NPRM,* BellSouth interpreted the Commission's rules as establishing a two-prong test that had to be met in order for a CLEC to bill for tandem interconnection charges: the CLEC's switch must serve a comparable geographic area to BellSouth's tandem switches, and the CLEC's switch must perform functions similar to those performed by an ILEC's tandem switch. After the Commission issued its *Intercarrier Compensation NPRM* (at ¶105), it became clear that only the comparable geographic coverage test needed to be met. However, that test was required to be met by a CLEC's demonstration of its geographic coverage in a given jurisdiction. The GPSC's Order in Docket No. 9577-U, dated August 10, 2001, found that US LEC had demonstrated that its switch in the Atlanta area met the comparable geographic area test, and that US LEC is entitled to be compensated at the tandem interconnection rate from October 1, 1998 through the expiration of US LEC's 1998 agreement. As mentioned in the previous paragraph, BellSouth settled all past disputes over reciprocal compensation with US LEC, including this one, as of October 4, 2001. As with payment of reciprocal compensation on ISP-bound traffic, the fact that BellSouth pursued its legal rights to challenge the payment of the tandem interconnection rate does not indicate that BellSouth is in violation of its Section 271 checklist requirements.

VI. OTHER

A. Special Access Conversions

33. In the initial filings in BellSouth's 271 case (Docket 01-277), Mpower Joint Comments[9], US LEC Joint Comments[10] and Cbeyond raised issues related to the conversion of special access to UNEs. BellSouth responded to those issues in its November 13, 2001 Reply Affidavit of Ruscilli/Cox. At that time, the issue was before this Commission in the form of a complaint filed by Adelphia Business Solutions, Inc., Madison River Communications, LLC, Mpower Communications Corp. and Network Plus, Inc. BellSouth subsequently reached a settlement with the parties to that complaint.

34. US LEC and XO also assert in their comments that, "The Commission should reevaluate its blanket exclusion of special access services from Section 271 Competitive Checklist considerations." US LEC/XO Joint Supplemental Comments at 8-11. Thus, US LEC and XO admit that special access services are not included in the Section 271 Checklist requirements, and any comments related to provision of special access services by BellSouth in this proceeding are not relevant. As the Commission stated in its *Bell Atlantic New York Order*[11], "to the extent that parties are experiencing delays in the provisioning of special access services ordered from Bell Atlantic's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 complaint process." *Bell Atlantic New York Order* ¶ 341. The Commission's position that special access issues have no relevance in 271 proceedings was reiterated in the Commission's *SWBT Order-TX*. *See SWBT Order-TX* ¶ 335 ("As we found in the *Bell Atlantic New York Order,* we do not consider the provision of special access services

[9] In Docket 01-277, Mpower filed jointly with Network Plus, Inc. and Madison River Communications, LLC, referred to as "Mpower Joint Comments."
[10] In Docket 01-277, US LEC filed jointly with El Paso Networks, LLC and PacWest Telecomm, Inc., referred to as "US LEC Joint Comments."
[11] *Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, (1999) ("*Bell Atlantic New York Order*").

pursuant to a tariff for purposes of determining checklist compliance.") The Commission should reach the same result here.

35. The US LEC/XO Joint Supplemental Comments state that BellSouth is in violation of Checklist Items 2, 4, and 5 because of BellSouth's failure to provide loops, multiplexing and transport, individually or in combination, at TELRIC prices. US LEC/XO Joint Supplemental Comments at 3, 4. Further, US LEC and XO state that BellSouth fails to provide DS-1 UNEs within intervals at parity with special access intervals. US LEC/XO Joint Supplemental Comments at 6. BellSouth's performance regarding the provisioning of DS1 UNEs is part of BellSouth's performance measurements plan. Mr. Varner provides evidence of BellSouth's performance. Further, BellSouth did not provision any DS1 UNEs for US LEC or XO in Georgia or Louisiana from October 2001 through January 2002.

36. US LEC and XO state that, "Although BellSouth has shown improvement since July 2001, the problems with outages [of special access facilities] continue for US LEC." US LEC/XO Joint Supplemental Comments at 14. As evidenced by Exhibit A to the US LEC/XO Joint Supplemental Comments, there have been frequent correspondence and discussions between BellSouth and US LEC from July to October regarding problems with special access provisioning. BellSouth admits that there have been problems, and BellSouth is working to remedy those problems. Further, there is no merit to the US LEC and XO complaint that BellSouth has acted in an anticompetitive manner by raising prices for special access in areas where it has been granted pricing flexibility. US LEC/XO Joint Supplemental Comments at 52-53. BellSouth has been granted pricing flexibility in those areas because it has demonstrated, per the Commission's orders, that competition for special access services is at or beyond a level sufficient to govern the marketplace. The bottom line, though, is that provisioning of special access is a tariffed

service, has not been considered within the scope of previous section 271 proceedings, and should not be considered in this application.

37. US LEC and XO complain that ILECs, including BellSouth, have "attempted to stretch the meaning of 'new construction' in an attempt to justify rejecting UNE orders that require nothing more than the installation of a line card or other minor electronics. BellSouth has adopted this tactic as a means of forcing CLECs to order special access in lieu of UNEs." US LEC/XO Joint Supplemental Comments at 4. It is well established that BellSouth is not required to construct new facilities for UNEs. As to the specifics of US LEC and XO's complaints, BellSouth is unable to respond because US LEC and XO offer only broad allegations, without specifics of any particular requests.

38. XO complains that, when requesting EEL conversions, XO has experienced protracted negotiations, delayed conversion requests, threats from BellSouth to impose additional charges (e.g., special access surcharges), and long provisioning intervals. US LEC/XO Joint Supplemental Comments at 4-5. BellSouth agrees that the entire process for converting special access to EELs for XO took longer than was anticipated by either party, due primarily to BellSouth and XO implementing a new process. Those delays, however, occurred more than a year ago (the conversion occurred on April 21, 2001), and they demonstrate nothing about current performance. In fact, negotiations paved the way to the current level of performance.

39. This was the first series of conversions undertaken by BellSouth. Since that time, many problems have been worked out, the process streamlined, and the series of events which took approximately 7 months for XO to be converted (once the Interconnection Agreement Amendment was executed) now takes an average of six weeks. The target time frame of the six weeks includes review by the Network Sales Engineer on the CLEC Care Team, as well as processing, scheduling, and management by the Project Manager.

40. As detailed in the Mpower October 22, 2001 comments, Mpower has had a long-standing issue with BellSouth over BellSouth's alleged failure to provide Mpower with conversion of special access circuits to UNEs. Mpower Supplemental Comments at 14. In fact, BellSouth has worked diligently with Mpower, resulting in a negotiated Confidential Settlement Agreement, detailing the rates, terms and conditions whereby BellSouth would convert/replace Special Access to UNEs. Final negotiations regarding implementation were concluded March 4, 2002, and this issue has thus been resolved.

41. Allegiance claims that upon its requests for conversion from special access DS1 loops to UNEs, BellSouth requires Allegiance to submit a disconnect order for the existing circuits and new orders for the UNEs. Allegiance Supplemental Comments at 8-9. Allegiance is concerned that the customer will be taken out of service. BellSouth has offered to use a Project Manager to personally manage replacement of the DS1s with UNEs for Allegiance, thereby reducing the out-of-service risk, as BellSouth has done with Network Plus. However, Allegiance has not accepted this offer.

B. <u>Misrouting of IntraLATA Calls (DUF Billing Records Accuracy)</u>

42. On page 23 of its Supplemental Comments, WorldCom alleges, "BellSouth continues to assign customers (or at least some calls of customers) to the wrong intraLATA provider." Continuing on page 24, WorldCom alleges, "WorldCom brought the problem of misrouted intraLATA calls to BellSouth's attention many months ago. BellSouth has not taken any steps to address the problem."

43. WorldCom is mistaken. As BellSouth understands this issue, WorldCom first portrayed this as a concern regarding BellSouth's DUF records. As explained by Mr. Scollard in his November 13, 2001 Reply Affidavit in Docket 01-277, (Reply App., Tab N), BellSouth investigated WorldCom's concerns and determined that BellSouth's DUF

records are correct. It now appears that WorldCom's concern is whether customers are being assigned to the proper intraLATA toll provider. BellSouth is very interested in talking to WorldCom in order to resolve this issue and, contrary to WorldCom's allegations, BellSouth has taken steps to do so. Specifically, BellSouth has tried, on several occasions, to discuss this issue with WorldCom, but to no avail because, as explained to BellSouth personnel, WorldCom is not prepared to discuss the issue.

C. Local Service Freeze

44. In ¶15 of Debra Goodly's Affidavit, Xspedius briefly mentions, "some customers have local service provider freezes in place preventing the conversion of these customers' accounts." This is precisely the purpose of a Local Service Freeze. A Local Service Freeze can be requested by an end user and is used primarily to prevent slamming by local exchange carriers. If the end user has requested that a Local Service Freeze be put on the account, BellSouth will change the local service provider that provides service on that account only if certain verification procedures are followed.

45. On a BellSouth retail account, only the end user customer, and not BellSouth, can request, remove, or change a Local Service Freeze. BellSouth's current process is in compliance with the Commission's slamming rules[12] that describe the allowable procedures to remove preferred carrier freezes. Paragraph 74 of FCC Order 00-255 states in relevant part, "As we stated in the Section 258 Order, . . .We concluded that LECs administering a preferred carrier freeze program must accept the subscriber's authorization, either oral or written and signed, stating an intent to lift a preferred carrier freeze. We determined that LECs also must permit a submitting carrier to conduct a three-way conference call with the LEC and the subscriber in order to lift a freeze. Our

[12] 47 CFR Part 64; *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 15 FCC Rcd 15996 (2000) ("FCC Order 00-255").

rules do not, however, prohibit LECs from requiring submitting carriers to use separate methods for lifting a preferred carrier freeze and submitting a carrier change request."

46. For a resale or UNE-P account, BellSouth's customer is the CLEC and only that CLEC can request, remove, or change a Local Service Freeze, either by itself or via a three-way call with the end-user, the CLEC and BellSouth. Because of different regulatory decisions, a Local Service Freeze is not currently available in all of BellSouth's states, including Georgia. A Local Service Freeze option is available in Louisiana upon affirmative election by the customer, pursuant to LPSC Special Order 6, dated June 5, 1998.

47. Because, as stated above, it is BellSouth's policy that the end user and not BellSouth initiates a Local Service Freeze, without more specific details from Xspedius, BellSouth cannot provide additional explanation regarding Ms. Goodly's concerns and allegation that "customers will advise Xspedius that they never authorized a local service provider freeze being placed on their accounts."

D. <u>Win back</u>

48. Allegiance, KMC, USLEC and XO, and Xspedius continue to complain about BellSouth's marketing efforts with respect to customers that have switched, or to retain customers that are contemplating switching, to a CLEC from BellSouth. BellSouth takes each of these allegations very seriously, particularly if they involve alleged violations of BellSouth's policies concerning win back and the use of CPNI and/or wholesale information, as well as violations of various orders of state commissions that are closely monitoring this issue and developing policies to balance CLEC concerns with a desire not to deny competitive options to consumers. Details regarding BellSouth's policies in this area were provided in our Joint Reply Affidavit in CC Docket No. 01-277. If a CLEC

believes that BellSouth has acted inconsistent with its legal obligations, the CLEC is free to raise such allegations with the state public service commissions, which is the appropriate forum to bring such concerns. As discussed below, XO, Access Integrated Networks ("AIN"), and Florida Digital Network ("FDN") have done just that. The allegations made by those companies, as well as other allegations made in this proceeding, however, do not indicate systemic problems and are certainly not grounds for this Commission to find that approval of BellSouth's 271 application is not in the public interest.

State Commission Update

49. Both the GPSC and LPSC are aware of and have policies in place to address the concerns raised by the CLECs. In addition to the specific win back requirements ordered by the GPSC, which were discussed in both our Joint Affidavit and Joint Reply Affidavit in CC Docket No. 01-277, the GPSC has directed the industry to develop a code of conduct**.** Attached as Supplemental Reply Exhibit JAR/CKC-4 is a copy of a letter dated January 10, 2002, in Docket No. 14232-U, from the GPSC Staff, in which the Staff stated "that the most effective code of conduct would be one that applies to all parties, does not discourage fair competition and provides for penalties for violations." The Staff went on to say that if the industry did not file a code of conduct, the Staff would itself file a recommended code with no input from the industry.

50. On March 18, 2002, the industry filed a status report of the development of a marketing code of conduct. The filing, attached to this Joint Supplemental Reply Affidavit as Exhibit JAR/CKC-5, includes a letter, signed by BellSouth, that informed the GPSC that agreement had been reached on a number of issues, although a few areas of disagreement remained; and that the parties continue to discuss these issues, with the possibility that

agreement will be reached on the remaining unresolved issues as well. Also included is a copy of "Georgia Telecommunications Services Marketing Code Of Conduct (Status as of March 18, 2002)." BellSouth will continue to work with the industry and the GPSC staff to bring this document to fruition. Following the completion of the marketing code of conduct, the industry will begin work on an operational code of conduct that will address such issues as the migration of customers from carrier to carrier.

51. In its Evaluation filed in CC Docket No. 01-277 on October 19, 2001, ("LPSC Evaluation"), the LPSC also addressed the win back issue. On page 92, the LPSC notes:

> *[a]lthough no CLEC has filed a formal complaint against BellSouth in Louisiana (either in the proceeding below [*LPSC Order No. U-22252-E*] or elsewhere) alleging that BellSouth has engaged in inappropriate or illegal marketing activities targeted toward customers that have switched from BellSouth to CLECs, at least one CLEC, NewSouth, asserted in the state 271 proceeding that the Louisiana Commission should propose certain marketing restrictions on BellSouth's "win-back" efforts. We stress that there is no evidence in the record put before us of any illicit marketing activity.*

52. As we noted in ¶36 of our Original Reply Affidavit, the LPSC did adopt measures prohibiting BellSouth from certain marketing practices. In addition, as noted in its Evaluation, in adopting the Staff Recommendation on this issue, the LPSC went further and included an additional measure that BellSouth "shall be generally subject to fines and penalties to be imposed by the Commission [LPSC] if BellSouth is found to be engaging in any anticompetitive activity related to the prohibition of the win-back activities." LPSC Evaluation at 93. To date, no CLEC has brought a complaint or any evidence before the LPSC that BellSouth is not in compliance with the LPSC Order, and BellSouth has paid no fines or penalties for non-compliance of this issue. Referencing the specific issues made by CLECs in this proceeding, many of the allegations raised are repetitive and have been addressed in previous Affidavits. The remainder of this section will

generally only discuss new allegations made in the Comments filed with the Commission on March 4, 2002.

US LEC/XO

53. With the exception of the following discussion to which XO is a party, the Joint Supplemental Comments submitted by US LEC and XO provide no first-hand evidence or specific allegations that BellSouth's win back policies, or practices, are in any way anticompetitive or harmful to local competition. The Joint Supplemental Comments offer only a "he said/she said" repertoire of stale allegations made by other CLECs that may or may not be parties in this proceeding.

54. In footnote 187, the US LEC/XO Joint Supplemental Comments reference the Tennessee Regulatory Authority's ("TRA") Docket No. 01-00868[13]. On page 57 of the Joint Supplemental Comments, US LEC and XO correctly acknowledge that the matter has been to hearing and is now under review by the TRA. As noted above, and apparently as at least XO believes, the state regulatory authority is the appropriate forum to which such allegations should be brought, not a Section 271 proceeding. Nevertheless, because the TRA proceedings involve a new issue that previously has not been addressed, BellSouth will address it here.

55. The *XO/AIN Complaints* in Tennessee initially addressed an offering that purports to provide business customers with three months of free service. The offering referenced in these Complaints involved the combined use of BellSouth's 2001 Key Business Discount Program ("2001 Key Program") and the Select Business Program.[14] In the following paragraphs, we will describe: (1) the Select Business Program and recent modifications to that program; (2) the 2001 Key Program; and (3) the combined offering.

[13] *Complaint of XO Tennessee, Inc. against BellSouth Telecommunications, Inc.; Complaint of Access Integrated Networks, Inc. against BellSouth Telecommunications, Inc.*, Docket No. 01-00868 *("XO/AIN Complaints").*
[14] For ease of reference, this will be referred to as the "combined offering."

56. The Select Business Program is a loyalty marketing program similar to a frequent flyer program. There have been several iterations of this program. Under the current Select Business Program offering, small business customers that have at least $100 in BellSouth monthly billing (including at least one non-regulated service) or at least $100 in BellSouth Advertising and Publishing Corporation ("BAPCO") monthly billing are eligible to enroll in the Select Business Program. Customers that are enrolled in the program are awarded standard Select points based on their level of monthly billing with designated BellSouth companies. In addition to standard points, bonus points also were awarded in certain situations.

57. Prior to the modifications discussed in the following paragraph, participating business customers were allowed to redeem standard and/or bonus points for any of the following: discounts on non-regulated products and services including pre-paid phone cards; Select Partner awards (CPE, travel awards, etc.) provided by companies unaffiliated with BellSouth; and credits against the customer's BellSouth bill. The *non-regulated* operations of participating BellSouth companies are charged $.025 per point awarded.

58. Several modifications recently were made to the Select Business Program. Briefly, those modifications included: BellSouth Select, Inc. ("BSSI") has enhanced its systems to ensure that the value of points redeemed by a customer does not exceed the amount of the customer's aggregate non-regulated spending since joining the program less the value of points that customer has already redeemed; points may no longer be redeemed in the form of credits against the customer's bill, whether automatic or at the option of the customer; and bonus points are no longer awarded under the program in connection with subscription to a regulated BellSouth service.

59. As noted above, the offering being referred to here and included in the original complaint involved what were intended to be two separate offerings – the first is the Select Business

Program; and the 2001 Key Program, which is tariffed in Tennessee, and which is available to both new and existing customers in specific areas that meet certain criteria specified in the tariff. These two programs individually had been reviewed and approved by their respective company's attorneys (i.e., BSSI attorneys approved the Select Business Program and BellSouth attorneys approved the 2001 Key Program). The BellSouth employee responsible for developing and implementing the combined offering, however, thought that combining two approved programs was a minor change, and did not take the combined offering or any of the related materials to BellSouth's attorneys for review and approval.

60. Under the combined offering, BellSouth sales channels offered to enroll a customer in the Select Business Program at the same time that the customer subscribed to certain BellSouth regulated services in connection with the 2001 Key Program tariff. Depending on choices made by the customer (e.g., length of agreement and whether the customer subscribed to the hunting feature) the customer would receive bonus Select points with a value equal to up to three months of the customer's total BellSouth charges (regulated and non-regulated). Further, depending on the number of bonus Select points awarded, the points would be credited to the customer's Select account in the first, sixth and twelfth months of Select participation. The bonus Select points were redeemed as a credit against the customer's bill in the month in which the points were awarded.

61. Unfortunately, the program was not implemented correctly, in that requisite approvals were not obtained and flawed training materials for those sales channels engaged in efforts to sell the combined offering were used, resulting in the benefits of theses two separate offers not being accurately described to some of the customers that were contacted. Rather than the separate sets of benefits for the 2001 Key Program (i.e., discounts on regulated services pursuant to filed promotions) and the Select Business

Program (i.e., earned points redeemable for multiple non-regulated benefits, including a credit against a customer's bill), certain sales personnel described the combined offering as including "free" or "complementary" months of local service. This was *not* the intent of the Select Business Program.

62. When BellSouth learned that the combined offering had been implemented without requisite reviews and approvals, BellSouth took quick and appropriate action. First, BellSouth ceased marketing of the combined offering, and no further customers have been allowed to sign up for the offering. Additionally, the president of BellSouth's Small Business Services operations sent a letter to all customers that had accepted BellSouth's combined offering, with a letter attached from the president of BSSI explaining to those customers how the bonus points would actually be awarded and the benefits available under the Select Business Program. The letter from BellSouth's Small Business Services Operations President advised customers that if they were not satisfied with the explanation, they could terminate their 2001 Key Program term agreement with no termination liability or forfeiture of previously received discounts, and either remain a BellSouth customer participating in the Select Business Program; or if applicable, the customer could return to their previous local provider, at no cost to the customer. BellSouth took these actions before any customer that had accepted the combined offering redeemed three sets of bonus points under that offering.

63. In addition, BellSouth took appropriate action to address the fact that the combined offering had been implemented without the requisite internal reviews and approvals. The employee responsible for implementing the combined offering testified in the Tennessee state proceeding, acknowledging that he had made a mistake in judgment and that a letter had been put in his personnel file warning that he can be terminated for similar future actions. He also testified that he has been transferred to a new position and that he will

receive no stock options or pay raise this year. BellSouth also has ensured that all Small Business Service employees who are involved in the development of marketing offerings understand the requisite review and approval process that must be followed before any offering involving regulated services, non-regulated services, or both, is implemented and offered to customers. All of these employees understand that they are required to adhere to this review and approval process, and they are aware that appropriate disciplinary action, up to and including dismissal, may be taken by BellSouth if this process is not adhered to in the future.

64. On page 57, US LEC and XO refer to what they call a related proceeding in which Florida Digital Network ("FDN") has filed a petition with the Florida PSC requesting an investigation of BellSouth's alleged anticompetitive win back practices.[15] First, as US LEC and XO have acknowledged, FDN has filed this Petition in Florida with the FPSC. It has not filed a petition in either Georgia or Louisiana, and therefore, the argument is not relevant to this proceeding. Second, referencing FDN's Petition as related to the Tennessee proceeding discussed above is at best misleading. The Florida Petition deals specifically with BellSouth's Key Customer Promotional Tariffs and not with any combined offering, as was the case in the *AIN/XO Complaints* in Tennessee. Although BellSouth contends that FDN's filing has no relevance in this proceeding, because US LEC and XO have mentioned it, attached to this Affidavit, as Exhibits JAR/CKC-6 and JAR/CKC-7, are FDN's Petition and BellSouth's Response to the Petition (without attachments).

65. As stated above, FDN is using the appropriate forum, the FPSC, to raise its issue. That US LEC and XO have brought up FDN's Petition here, when FDN is not a party to this

[15] *In Re: Petition of Florida Digital Network, Inc., for Expedited Review and Cancellation Of BellSouth Telecommunications, Inc.'s Key Customer Promotional Tariffs and For an Investigation Of BellSouth Telecommunications, Inc.'s Promotional Pricing And Marketing Practices ("FDN Petition")*, Docket No. 020119-TP, filed with the FPSC February 14, 2002.

proceeding and does not offer service in Georgia or Louisiana, is further evidence that US LEC and XO can provide no first-hand evidence or specific allegations with regard to BellSouth's win back practices in Georgia or Louisiana.

KMC Telecom

66. KMC Telecom, on page 16 of its Supplemental Comments, alleges, "BellSouth, on more than one occasion, offered free service to win back CLEC customers in a clear violation of its tariffs." BellSouth responded to KMC's general allegations with regard to win back in our Original Reply Affidavit. In footnote 51, referring to the transcripts of the North Carolina Utilities Commission's ("NCUC") Docket No. P-55, Sub 1022[16], KMC alleges that "[t]he record demonstrates, … BellSouth offered 'three months free service' to a CLP customer, while BellSouth itself admitted … that 'an offer of free service is contrary to the tariff.'" What is actually being discussed in the NCUC transcript is the TRA's Docket. No. 01-00868 (the *XO/AIN Complaints* discussed in detail above). KMC's allegation, therefore, is the same as that of US LEC and XO.

Allegiance Telecom

67. In its discussion of checklist item 2, Allegiance reiterates an allegation that it made in its original Reply Comments filed with the Commission in CC Docket No. 01-277. On page 10 of those Reply Comments, Allegiance states, "when BellSouth technicians are dispatched to Allegiance customer premises for installation or repair, the technicians sometimes disparage Allegiance's services or misinformed the customer about the services being installed." Allegiance then cites three specific occurrences of its allegations, and includes a related footnote referencing these same occurrences in its

[16] *In the Matter of: Application of BellSouth Telecommunications Inc. to Provide in-Region InterLATA service Pursuant to Section 271 of the Telecommunications Act of 1996, ("NC 271 Docket").*

filing in Docket 01-277. In the previous filing, footnote 20 states, "Allegiance brought these examples to the attention of BellSouth and Georgia Commission in its win back investigation, and identified the customers to BellSouth." This is incorrect.

68. Allegiance filed Comments with the GPSC in Docket No. 14232-U on September 6, 2001 making different allegations altogether. Allegiance claimed that, on two occasions, BellSouth had contacted customers "[*w]ithin the week"* (italics in original) following access to the customer service record by Allegiance, offering the customer a "Full Circle Program" contract. Allegiance claimed that this provided evidence of "[BellSouth's] practice of misusing information about whether an end user's CSR has been pulled." Allegiance provided no specific customer information at that time.

69. On October 2, 2001, BellSouth sent a letter to Mr. Morton J. Posner of Allegiance Telecom, Inc. requesting the identity and location of the customers referenced in the Comments filed in Docket No. 14232-U. On October 3, 2001, Allegiance's local counsel, Charles Hudak, provided BellSouth with the identities of the customers referenced. BellSouth investigated the allegations, revealing facts very different than the ones set forth by Allegiance in its filing. BellSouth concluded, after reviewing Company systems and interviewing BellSouth personnel and personnel from one of the other companies, that because Allegiance instructed the customer to switch back to BellSouth (the customer had service from AT&T – Teleport) prior to switching to Allegiance, that it was that action that triggered BellSouth's alleged win back offer.

70. The scenario described by Allegiance is not actually a win back offer at all. In fact, from BellSouth's perspective, the customer has chosen to receive service from BellSouth and the offer made to a former AT&T-Teleport customer would be a normal marketing transaction for a new customer. Exhibit JAR/CKC-8, attached hereto, is a filing made with the GPSC on December 3, 2001 regarding this allegation. The following will

demonstrate that Allegiance's allegation here is misplaced.

71. Although it is not entirely clear to BellSouth why Allegiance instructed the customer in the above scenario to switch back to BellSouth prior to switching to Allegiance, information garnered from the FPSC OSS Workshop, held on February 18, 2002, proves instructive and supports BellSouth's findings. In a discussion of ordering, ITC DeltaCom's participant, Mary Conquest discussing "the CLEC-to-CLEC experience" stated:

> *BellSouth in their billing system they have a repository of all of our CSRs, but I'm not authorized to see my friend Covad's, or Network Telephone, or any of the other CLEC's CSRs.*
>
> *For that reason typically when I assume a customer, I choose to return them back to BellSouth. Simply it makes the experience more streamlined and safer for my customer. … So one of my safety nets in doing that is sending the customer back to BellSouth and then I use my usual standard process for migrating them into me. In doing that I do assume some financial responsibility.*[17]

Further in Ms. Conquest's discussion, Commissioner Deason asked, "Do you see any irony in that? I mean, you are here complaining about the BellSouth system, but you're saying it's the best system out there." Ms. Conquest responded, "Well, no, I'm saying it's not the best; I'm saying it's – what I am geared to …"

The following exchange occurred in the same discussion:

> *CHAIRMAN JABER: So what you are saying is recognizing that the BellSouth system may have faults –*
> *MS. CONQUEST: Correct.*
> *CHAIRMAN JABER: --that is still better as a process than competitor-to-competitor switching?*
> *MS. CONQUEST: Given today's environment, yes.*
>
> * * *

[17] *In the Matter of Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal; Telecommunications Act of 199. (Third Party OSS Testing)* Docket No. 960786B-TP; and *Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc.'s Service Territory* Docket No. 981834-TP; OSS Workshop Transcript from Monday 18, 2002.

CHAIRMAN JABER: I am just really fascinated with what you just said about migrating the customer to BellSouth when you are transferring from ALEC-to-ALEC. You are actually creating an opportunity for the customer to have a conversation with BellSouth in that process, aren't you?

MS. CONQUEST: Yes, we are.

72. Hence, Allegiance's allegation that BellSouth's actions were improper is in error. As a practical matter, BellSouth has no way of knowing that a customer moving her service from a CLEC to BellSouth is only doing so in order to ultimately have her service moved to Allegiance. Consequently, BellSouth will offer this customer the services appropriate to meet her needs, just as BellSouth would do with any other new customer.

73. Moreover, it is Allegiance's choice to use this indirect process to migrate customers of other CLECs to its service. If Allegiance is truly concerned about BellSouth's ability to market to these customers, Allegiance should develop the mechanism to migrate customers directly from other CLECs.

74. In a further effort to resolve Allegiance's concerns with regard to BellSouth's win back policies, on November 16, 2001, BellSouth sent another letter to Mr. Posner, responding to additional specific allegations in connection with GPSC Docket No. 14232-U, and requesting additional information with regard to the Comments filed with this Commission on November 13, 2001 in CC Docket No. 01-277. With regard to the other allegations from Docket No. 14232-U, BellSouth found that in two instances, the names provided do not appear to be customers that BellSouth serves or served in the State of Georgia.

75. In a letter sent to Allegiance on November 27, 2001, BellSouth related the results of additional investigation into the Allegiance complaints. After thorough investigation into the company that Allegiance alleged was involved, the results showed that Allegiance had apparently provided the name of the attendant company in error. BellSouth would point out that, to date, not one of the so-called "examples" provided to BellSouth by

Allegiance has any merit.

76. As the record reflects, BellSouth takes each allegation of alleged improper behavior seriously. In the case of Allegiance, BellSouth has made a significant effort to obtain specific information in order to investigate and resolve any and all allegations made by Allegiance. Despite repeated requests for additional information from BellSouth so that Allegiance's allegations could be thoroughly investigated, however, Allegiance has failed to provide such information. In fact, Allegiance has repeatedly ignored BellSouth's requests for specific information, which makes its allegations somewhat suspect.

Xspedius

77. The Xspedius Comments and Affidavits reference some win back issues that are either outdated, of a general nature, or previously addressed by BellSouth. Marymargret Williams Groom, however, alleges one instance occurring in January 2002, pertaining to the United States Postal Service ("USPS") that we will address here. It should be noted that Xspedius has not previously raised this issue with the LPSC or with BellSouth. Xspedius alleges that after requesting a copy of the USPS's Customer Service Records ("CSR"), that the USPS received a call from BellSouth inquiring into why the USPS was considering switching its service to Xspedius.

78. BellSouth has investigated Xspedius' allegation through discussion with BellSouth's National Account Manager for the USPS. BellSouth's investigation substantiated that BellSouth's personnel are aware of their responsibilities with regard to Company win back policies. Further, the Account Manager was not familiar with Xspedius and was not aware that Xspedius, or any other CLEC, had requested a CSR for the USPS. The Account Manager also had no knowledge with regard to who might have contacted the USPS to find out why they were considering changing local service providers.

79. BellSouth has a three-year contract with the USPS. For various reasons, BellSouth's National Account Manager corresponds, including making on-site visits, with the USPS in New Orleans, as well as other locations. This is done in the normal course of maintaining and servicing a customer. BellSouth's investigation found nothing to substantiate Xspedius' allegation, or that would suggest any actions of an anticompetitive nature. Without additional information BellSouth can provide no additional information on this allegation.

VII. PUBLIC INTEREST

A. Price Squeeze-Margin Analysis

80. AT&T, through its Supplemental Comments, the Supplemental Declaration of Michael Lieberman, and the Declaration of Steve Bickley allege "BellSouth's rates effect a price squeeze that prevents UNE-based competitors from earning sufficient margins to provide local service in competition with BellSouth [in Louisiana]." AT&T Supplemental Comments at page 50. BellSouth disagrees.

81. AT&T directs its discussion only to the provision of residential service in Louisiana. AT&T does not suggest, nor could it, that it is unprofitable to enter the entire local market in Louisiana, including both business and residential segments. This Affidavit, therefore addresses only the residential segment of the market, and only Louisiana.

82. First, AT&T's price squeeze argument fails because there is ample residential competition in Louisiana. AT&T claims that this is irrelevant, based on its assertion that "nothing in . . . the *Sprint* decision . . . remotely establishes" a threshold residential market share test for the price-squeeze claim. AT&T Supplemental Comments at ¶53. In fact, the *Sprint* decision expressly and unequivocally confines its discussion to local markets that, "[I]n contrast to . . . New York and Texas," are "characterized by relatively

low volumes of residential competition."[18] The residential market in Louisiana is more competitive than New York and Texas at the time of their applications, (Supplemental Brief at 38-39); AT&T's argument, therefore, fails.

83. AT&T, seeking to overcome the fact that there is residential competition, tenders yet another argument; it is really UNE-based competition that is relevant, not competition as a whole. AT&T Supplemental Comments at 54. We discuss this argument briefly in our actual price-squeeze analysis. In summary, however, competitors have proven their ability to compete in Louisiana, whether they have chosen to use their own facilities, UNEs, resale, or some combination of the three. In addition, nothing in the *Sprint* decision supports AT&T's allegation. The *Sprint* decision expresses concern that a BOC's UNE prices might "doom[] competitors to failure" in the residential market. *Sprint*, 274 F.3d at 554. That concern obviously does not exist here.

84. This is particularly true in light of a recent public statement by EATEL that the LPSC's new UNE rates decided in September, 2001 have made it economically feasible for this CLEC to enter the residential market on a widespread basis in Louisiana. EATEL is now marketing and providing residential service to customers all over Louisiana, including New Orleans, Baton Rouge, Gonzalez, Shreveport and Lafayette.

85. Even if a price squeeze analysis were relevant, which BellSouth believes it is not, the following facts bear out that a price squeeze is not present in Louisiana, and AT&T's allegations still fail. The discussion that follows builds upon, and incorporates by reference, the Affidavits that we previously have filed on this issue.

86. Further, AT&T's contention ignores the LPSC's historic social pricing policy under which retail residential 1FR rates are deliberately set low (and in some area below cost) in order to assure affordable, universal service. Local service providers, like AT&T, can make a business case the same way BellSouth has by selling higher margin business

[18] *Sprint Communications Co. v. FCC,* 274 F.3d 553 (D.C. Cir. 2001)

service and discretionary vertical services. Due to higher potential business margins, CLECs have, for the most part, simply ignored residential subscribers and targeted their offerings to business customers. Such focus is evidenced by the fact that CLECs have won significant numbers of business customers in Louisiana. *See* Stockdale Supplemental Affidavit (Supp. App., Tab D). The fact remains that, until recently, AT&T, as well as many other CLECs, expressed no desire or willingness to serve residential consumers in these areas. For CLECs, and specifically AT&T, to claim to the contrary in the face of purposeful "cherry picking" is just another ploy to delay BellSouth's entry into the long distance market. The fact that AT&T presents a price squeeze argument here, while not surprising, is certainly disingenuous. The UNE deaveraged cost structure that results in higher UNE rates in the rural areas is in direct response to CLEC requests for such a structure.

87. Further, and in any event, as Table 1 indicates, AT&T's price-squeeze analysis is not correct, and when compared to BellSouth's appropriate retail service, actually reveals a much different conclusion. BellSouth's analysis below includes revenue for BellSouth's Complete Choice® Offering in Louisiana, which is more appropriate for comparison to the cost associated with the UNE-P offering with features than is BellSouth's 1FR rate used by AT&T. BellSouth's Complete Choice® Service offering is found in Section A3.2.11 of BellSouth's GSST, and includes an exchange service access line, plus the following features: Custom Calling Services except Three-Way Calling with Transfer, TouchStar® Service excluding Calling Number Delivery Blocking-Permanent**,** Customized Code Restriction, RingMaster® Service, and Message Waiting Indication. BellSouth's Complete Choice® Service is comparable to Verizon's Unlimited Local Calling Offer.[19]

[19] In its *Verizon-RI Order*, ¶ 23, the Commission noted that "[T]he Rhode Island Commission relied on a showing by AT&T that the new rates would result in a wholesale cost of $25.45 for the UNE-Platform, which is lower than the $28.95 price of Verizon's Unlimited Local Calling Offer." Obviously, the Commission found a margin of

88. AT&T makes an additional argument with regard to revenues that is also flawed. On pages 59-60, AT&T uses its contention that "a carrier should not be forced to enter one market in order to be able to enter another," to conclude that it is not appropriate to consider intraLATA toll revenues in its margin analysis. AT&T Supplemental Comments at 59-60. AT&T's contention is not relevant, and the conclusion drawn is not correct. A margin analysis, however, plainly should take into consideration all revenues that a company can be expected to earn from the wholesale inputs that it is acquiring. As AT&T has admitted in other proceedings[20], it can provide intraLATA toll service over the UNE-Ps it purchases from an ILEC. AT&T's argument that it already offers intraLATA toll services, and therefore should not include intraLATA toll revenue in its analysis is strictly self-serving. While it is true that AT&T does already offer intraLATA toll services, it is extremely likely that its provision of those services, and therefore intraLATA revenues, will increase as AT&T adds new local service customers. Correcting AT&T's analysis with the addition of intraLATA toll revenues would further increase the potential margin in Zones 1 and 2 even above those reflected in Table 1. This is further evidence that there is no price-squeeze and that BellSouth's UNE rates allow an efficient competitor a meaningful opportunity to compete.

89. One other major flaw in AT&T's analysis is the inclusion of its alleged internal costs per customer of $10.00. *See* Supplemental Affidavit of Steven P. Bickley; AT&T Supplemental Comments at page 50. First, even if these alleged internal costs were relevant to the profit margin analysis, which BellSouth contends they are not, the

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approximately $3.50 to be acceptable. Verizon's Unlimited Local Calling Offer is comparable to BellSouth's Complete Choice® Service offering.

[20] *See*, e.g., Testimony of James D. Webber on Behalf of AT&T Communications of Wisconsin, Inc. and TCG Milwaukee at 35, Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Wisconsin Bell Telephone Company d/b/a Ameritech Wisconsin Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 05-MA-120 (Wisc. PSC June 30, 2000) ("Q.: Can the shared transport network be used to carry AT&T's intraLATA toll services in cases where AT&T is using the UNE-P? A: Yes.").

Commission certainly cannot accept AT&T's unsubstantiated cost estimates. If these costs were relevant, the Commission would need to look at a perfectly efficient competitor's costs (i.e., TELRIC). Unless AT&T could prove that it is perfectly efficient, its actual internal costs would not be germane to the calculation.

Table 1
Estimated Connectivity Margin for BellSouth – Louisiana

Costs	**Zone 1**	**Zone 2**	**Zone 3**	**Statewide Avg**	
UNE-P (loop/port combo)	$13.13	$23.75	$49.62	$17.60	
Usage (including features)	$ 6.48	$ 6.48	$ 6.48	$ 6.48	Note 1
DUF	$ 1.02	$ 1.02	$ 1.02	$ 1.02	Note 2
Platform-Recurring Cost	**$20.63**	**$31.25**	**$57.12**	**$25.10**	
Estimated Revenues					
BST's Complete Choice Rate – LA	$33.00	$33.00	$33.00	$33.00	
Subscriber Line Charge	$ 5.00	$ 5.00	$ 5.00	$ 5.00	
Access	$ 0.90	$ 0.90	$ 0.90	$ 0.90	Note 2
Total	**$38.90**	**$38.90**	**$38.90**	**$38.90**	
Margin-Complete Choice Residence	**$18.27**	**$ 7.65**	**-$18.22**	**$13.80**	
% (Margin divided by Total Revenue)	**47%**	**19.7%**	**-46.8%**	**35.5%**	
% of BellSouth access lines	**72%**	**23%**	**5%**		

Note 1 – BellSouth calculated the average usage cost for LA using the FCC's usage characteristics.
Note 2 – BellSouth has not validated AT&T's calculations of these items, however, for this analysis, Bell accepts AT&T's DUF cost estimate and Access revenue estimate.

90. As Table 1 shows, contrary to AT&T's suggestion, in Zones 1 and 2, which encompasses approximately 95% of the access lines in BellSouth's serving area, there is a positive margin. In Zone 1, where most CLEC business is concentrated, the margin is substantial

(far more than AT&T's alleged internal cost per line of $10.00, which, as discussed above, BellSouth disagrees). Even using the statewide average UNE-P cost, which AT&T has done in the past, produces a profit margin of $13.80, or 35.5%. It should also be noted that even substituting AT&T's advertised Georgia retail local package rate ($29.95), which AT&T apparently believes is viable, in place of BellSouth's $33.00 Complete Choice® rate would continue to result in positive margins of $15.22 in Zone 1 and $4.60 in Zone 2.

91. While the data still indicates that the cost of the UNE-P exceeds the potential residential revenue in Zone 3, several points must be made. First, the vast majority of access lines are in Zone 1 (72%), where, as noted, CLECs have a considerable margin. Second, a mere 5% of BellSouth's access lines are in Zone 3. CLECs can still pursue the most attractive, high revenue producing, customers in that 5% to ensure the highest profit margin possible.

92. Third, while AT&T complains that the rates are too high in Zones 2 and 3, the rates actually adopted by the LPSC are, in fact, much lower than those that the CLECs' deaveraging methodology would have produced. The deaveraging methodology presented by WorldCom during the LPSC's UNE docket (Docket No. U-24714 (A)) and supported by the CLECs, resulted in ten zones. Of these, in number of access lines, Zones 1-3 are comparable to the LPSC's Zone 1; Zones 4-5 are comparable to the LPSC's Zone 2; and Zones 6-10 are comparable to the LPSC's Zone 3. The LPSC-established loop rate for Zone 3 (SL-1) is $48.43. Table 2 below shows that applying WorldCom's deaveraging proposal *(see* Testimony of Greg Darnell and his relevant deaveraging exhibit attached to this Affidavit as JAR/CKC-9[21]), to the state average LPSC-established SL1 rate would have resulted in Zone 6-10 rates ranging from

[21] Mr. Darnell's deaveraging calculations were based on a statewide average rate of $12.87 as initially proposed by CLEC witnesses in Louisiana Docket U-24714. In that proceeding, Mr. Darnell's exhibit was presented such that his Zone Weightings could be applied to any statewide average rate.

$49.75 to $191.21.

Table 2
Zone Comparison

Zone	Zone Weighting	% of Total Lines in Zone	Calculated Zone Rates	
MCI PROPOSAL				
1	50.41%	21.95%	$8.75	
2	65.92%	40.71%	$11.40	
3	91.26%	16.14%	$15.79	
4	137.57%	8.94%	$23.80	
5	194.80%	5.99%	$33.70	
6	287.55%	3.66%	$49.75	
7	420.02%	1.62%	$72.66	
8	575.25%	0.82%	$99.52	
9	793.57%	0.12%	$137.29	
10	1105.28%	0.03%	$191.21	
State-wide average cost			**$17.30**	
Zone			**LPSC-Ordered Deaveraged Rates**	**Comparison to MCI Proposal**
1	74.57%	72%	$12.90	$8.72 - $15.79
2	134.86%	23%	$23.33	$23.80 - $33.70
3	279.94%	5%	$48.43	$49.75 - $191.21

93. As discussed in our Reply Affidavit in CC Docket No. 01-277, CLECs (including AT&T) were adamant in their demand for the deaveraging of UNE rates. As the Commission is well aware, the deaveraging of rates for UNEs, particularly the local loop, encourages CLECs to take advantage of state commissions' social pricing structure (i.e., rates that insure that all consumers have access to basic telecommunications service while allowing the ILEC to make up for the shortfall that results from low rural and residential rates by charging higher rates in other aspects of its business). BellSouth's residential rates have been set relatively low, especially in the rural areas (Zones 2 and 3), even though the associated cost per access line is generally higher in rural areas than in urban areas. Obviously, the deaveraging proposal supported by the CLECs in Louisiana would have exacerbated the problem about which they are now complaining.

94. Further, because of the availability of resale, CLECs can still serve residential customers in Zone 3 at the wholesale discount rate of 20.72% established by the LPSC. AT&T's contention, at page 57 of its Supplemental Comments, that "[t]he wholesale discount that has been set in Louisiana is wholly insufficient to allow any firm to cover its internal costs of service," is inconsistent with the provisions of the Act. Sections 251(c)(4) and 252(d)(3) provide for rates for resale to be set at a discount from BellSouth's retail rates. There is no requirement that the statutorily prescribed discount be sufficient to cover what AT&T is referring to as "internal costs of service." In fact, there is no mention that the wholesale discount has anything to do with a competitor's costs, except the cost it pays to purchase BellSouth's retail service.

95. Finally, CLECs always have the option to serve customers using their own facilities. As described in the Affidavits of Ms. Stockdale (Reply App., Tab Q) (Supp. App., Tab D) (Supp. Reply App., Tab H) and Mr. Wakeling (App. A, Tab 22), many customers are being served by CLEC-owned facilities, and this is certainly an option for AT&T. AT&T apparently believes that BellSouth's Zone 3 costs are too high to allow CLECs to serve customers profitably and that resale also is not a viable option. Perhaps, the best option, if BellSouth's costs are too high, is for AT&T to serve this small group of customers by deploying its own facilities, or using existing facilities just as other CLECs have done in Louisiana, and as AT&T has done in other BellSouth states.

B. Competitive Factors

96. Sprint raises myriad issues that it alleges warrant a finding by this Commission that approval of BellSouth's application is not in the public interest. Not only does BellSouth disagree completely with Sprint's allegations, but the Commission, as noted below, apparently also was not persuaded by many of Sprint's arguments. Much of Sprint's

opposition is summarized in Section III of its Supplemental Comments filed with the Commission in this docket on March 4, 2002. In this section, Sprint opines:

> *This suggests that the Commission believes that the public interest considerations should only include factors within the control of the applicant. Sprint disagrees. In Sprint's view, consideration of the public interest should include all factors, whether or not they are within the applicant's control, that bear on whether the local market has indeed been irreversible open. The fact that the carriers which are best prepared to enter the local markets are not even attempting to do so in any market outside their local territories is indicative of some deterrent to entry (whether attributable to BellSouth's conduct or not) should give the Commission pause as it considers whether or not the market is fully and irreversibly enabled.*

97. Sprint's allegations are without merit. What Sprint is requesting is that BellSouth be held accountable for factors that are not within its control. This is in no way a requirement of the Act; nor is it a part of the Competitive Checklist or a public interest consideration. Addressing what appears to be these very same allegations in its *Verizon-RI Order*, the Commission states, in ¶106:

> *Sprint also argues that the fact that the BOCs have generally chosen not to compete against each other out of region (particularly against Verizon in Rhode Island) and the continuing bankruptcy of competitive LECs mean that the public interest is not served by granting Verizon section 271 approval in Rhode Island. We reject these arguments. Factors beyond the control of the applicant, such as a weak economy, individual competing LEC and out-of-region BOC business plans, or poor business planning by potential competitors can explain the lack of entry into a particular market.*

Nothing has changed or is different in BellSouth's region that warrants a different finding by the Commission in this proceeding.

98. One other issue raised by Sprint in its Public Interest discussion (Section II, page 6) is the alleged regulatory uncertainty facing the CLECs. BellSouth does not dispute that the proceedings mentioned by Sprint are indeed ongoing. What Sprint fails to acknowledge, however, is that BellSouth faces that same regulatory uncertainty. In addition, it is

possible that there will always be some uncertainty over some aspect affecting local competition, with or without regulation. As referenced above, in the discussion of pricing, responding to AT&T and WorldCom allegations that Georgia UNE rates are not TELRIC compliant because a new rate proceeding is pending, both this Commission and the D.C. Circuit Court have recognized that the local communications environment is not stagnant. The Commission recognizes that rates may evolve over time to reflect, among other things, changes in technology, engineering practices, or market conditions. The D.C. Circuit Court, going a step further, states, "If new information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change." *Verizon-RI Order* ¶31 (quoting *AT&T Corp. v. FCC*, 122 F.3rd (D.C. Cir. 2000)).

C. <u>Personnel Turnover</u>

99. The US LEC/XO Joint Supplemental Comments, at page 61, allege "BellSouth seems to go out of its way to make its relationship with CLECs difficult." This allegation could not be further from the truth. US LEC and XO base this contention on "the turnover of personnel in the account management teams." Because US LEC and XO have given no specifics to support their allegation, BellSouth must assume that they are referencing the realignment of BellSouth's Interconnection Services' Sales Organization that began in January of this year.

100. In a Carrier Notification Letter (Exhibit JAR/CKC-10 to this Affidavit), originally posted to BellSouth's ICS website on January 4, 2002, BellSouth advised all BellSouth ICS customers that the ICS Sales Organization would be restructuring to a functional structure to provide customers more direct access to subject and process experts for local services, while maintaining traditional account team support for Strategic Products. The

restructure was based on recommendations from an outside consulting firm. The firm was hired to evaluate and determine the feasibility of making organizational changes that would provide for a more efficient and higher quality customer care organization, as well as improving BellSouth's focus on product sales.

101. Reorganization or restructuring is a normal part of doing business, as is apparently recognized by XO. BellSouth would point out that, prior to January 1, 2002, US LEC and XO had not had a major BellSouth Account Team change. The same Assistant Vice President and Sales Director had been assigned to them for several years. The majority of the BellSouth Account Team members had been in place for approximately the previous year and a half. In addition, most of the BellSouth Account Team members assigned to US LEC and XO came with a vast amount of experience and knowledge.

102. BellSouth has what it believes to be a very good working relationship with XO and XO's allegation to the contrary comes as a total surprise. BellSouth and XO have partnered in weekly contacts, as well as quarterly meetings. BellSouth and XO are having an executive/quarterly meeting in April 2002. Additionally, these meetings include both local and access issues. BellSouth and XO also worked on a task force to jointly resolve issues related to ordering, maintenance, billing, etc.

103. Although US LEC has not had significant personnel changes, other issues can lead to a strained relationship. In this case, the relationship between the parties (BellSouth and US LEC) began to deteriorate when US LEC began improperly billing BellSouth millions of dollars in reciprocal compensation that resulted in a complaint being brought by BellSouth against US LEC at the North Carolina Utilities Commission. BellSouth ultimately prevailed in the case, which resulted in significant financial ramifications for US LEC.

104. Even though the relationship has been difficult, BellSouth and US LEC continue to have

weekly operational conference calls, as well as joint quarterly service review meetings. As with XO, these meetings include both local and access issues. The previous account manager worked with US LEC personnel to develop an action register that continues to be used during the weekly calls between BellSouth and US LEC. BellSouth is open to US LEC suggestions to improve and grow the working relationship with US LEC.

D. Anti-backsliding Measures

105. In the Introduction and Summary (Section I of Sprint's Comments), Sprint raises the proverbial §271 "carrot" argument:

> *If the BOCs are allowed to enjoy the §271 "carrot" before local competition is fully established, they will have little incentive to cooperate with competitive LECs thereafter, unless they are subject to continuing regulation. . . . It would be far preferable to withhold the §271 "carrot" until local competition is sufficiently entrenched that competitive forces can supplant the intensive regulation and enforcement that otherwise would be required.*

First, BellSouth has shown throughout its filings that "local competition is sufficiently entrenched" in both Georgia and Louisiana.

106. Further, besides being legally required to continue to meet its obligations to CLECs after 271 relief is granted, with BellSouth's Self-Effectuating Enforcement Measurements ("SEEM") plan and remedies discussed throughout the Affidavits and Reply Affidavits in this Docket as well as CC Docket No. 01-277, BellSouth demonstrates that it currently has *significant* incentive, both legal and financial, to ensure nondiscriminatory treatment of CLECs in Georgia and Louisiana, both prior to and after 271 approval.

107. In ¶109 of the Verizon-RI Order, the Commission lists several key elements that it considers important and/or reviews in any performance remedy plan: "total liability at risk in the plan; performance measurement and standards definitions; structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures

in the plan; and accounting requirements." In the above-mentioned Affidavits, BellSouth provides the details of its SEEM and makes evident that the Plan exhibits the key elements recently discussed by the Commission.

108. Moreover, both the GPSC and the LPSC have ordered the ongoing evaluation of BellSouth's performance in the local telecommunications service market. *See* [GPSC (Georgia App. C, Tab 15) and LPSC 271 (App. C – Louisiana, Tab 23) Orders].

109. Additionally, this Commission will continue to have significant regulatory oversight after 271 approval has been granted to BellSouth. Section 271(d)(6) of the Act provides specific measures for "enforcement of conditions." Subsection (A) states:

> (A) *Commission authority.—If at any time after the approval of an application under paragraph (3), the Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for hearing—*
>
> *i. issue an order to such company to correct the deficiency;*
> *ii. impose a penalty on such company pursuant to title V; or*
> *iii. suspend or revoke such approval.*

110. Finally, and most importantly, the marketplace will provide incentive for BellSouth not to backslide after receiving 271 relief. BellSouth has invested millions of dollars and dedicated thousands of employees to meet the requirements of the 1996 Act. The "carrot" mentioned by Sprint is much more than the entry into long distance. Setting aside the legal requirements of Sections 251 and 252 and subsequent Orders of this Commission that BellSouth will continue to meet, it is the marketplace itself that is the key driver to police BellSouth's commitment. BellSouth intends to be a full service provider to its customers and to provide robust competition by providing the best services available. To meet that competitive goal in the marketplace, BellSouth cannot afford to be placed in a position whereby some of its service or packages can be held in abeyance due to failure of BellSouth to meet its lawful requirements. Such uncertainty would place

BellSouth in the unenviable position of being a part time competitor with incomplete packages competing against full time complete package players. The marketplace is not likely to place confidence in such a competitor, or wait on that competitor until it can again offer a full package of services. BellSouth cannot afford to let such an event occur.

111. Beginning on page 19 of its Supplemental Comments, Mpower alleges a need for anti-backsliding measures. Although Mpower proffers several suggestions, it also seems to recognize that this 271 proceeding is not the appropriate forum for these measures, which BellSouth contends are not necessary, to be developed. Mpower makes no specific allegations in its discussion that warrant a finding by this Commission that BellSouth's entry into the long distance market is not in the public interest.

112. For the above reasons, the Commission should find that neither the allegations made by AT&T, Sprint, Mpower or US LEC/XO warrant a finding that BellSouth's application for 271 relief in Georgia and Louisiana is not in the public interest.

113. Further affiants sayeth not.