

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Joint Application by BellSouth Corporation,  
BellSouth Telecommunications, Inc.,  
and BellSouth Long Distance, Inc. for  
Provision of In-Region, InterLATA Services  
in Georgia and Louisiana

CC Docket No. 02-35

To: The Commission

**SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF  
APPLICATION BY BELL SOUTH FOR PROVISION OF  
IN-REGION, INTERLATA SERVICES IN GEORGIA AND LOUISIANA**

JAMES G. HARRALSON  
FRED J. McCALLUM, JR.  
JIM O. LLEWELLYN  
LISA S. FOSHEE  
4300 BellSouth Center  
675 West Peachtree Street  
Atlanta, GA 30375

BENNETT L. ROSS  
1025 Lenox Park Blvd.  
Suite 6C01  
Atlanta, GA 30319

VICTORIA K. McHENRY  
365 Canal Street  
Suite 3060  
New Orleans, LA 70130

JONATHAN B. BANKS  
1133 21st Street, N.W.  
Room 900  
Washington, D.C. 20036  
*Counsel for BellSouth Corporation and  
BellSouth Telecommunications, Inc.*

MICHAEL K. KELLOGG  
SEAN A. LEV  
LEO R. TSAO  
KELLOGG, HUBER, HANSEN,  
TODD & EVANS, P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036

JEFFREY S. LINDER  
SUZANNE YELEN  
WILEY REIN & FIELDING, LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
*Counsel for BellSouth Corporation,  
BellSouth Telecommunications, Inc., and  
BellSouth Long Distance, Inc.*

HARRIS R. ANTHONY  
400 Perimeter Center Terrace  
Suite 350  
Atlanta, GA 30346  
*Counsel for BellSouth Long Distance,  
Inc.*

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## INTRODUCTION AND EXECUTIVE SUMMARY

As the Department of Justice (“DOJ”) has explained, the record in this case supports the conclusion that BellSouth’s markets are “fully and irreversibly open to competition” for all three modes of competitive entry. *DOJ Evaluation* at 2. The DOJ thus now recommends that this Commission “approve” BellSouth’s Joint Application. *Id.* at 3.

In explaining why approval is appropriate, the DOJ, which previously expressed some skepticism about certain aspects of BellSouth’s OSS, highlighted the “important” OSS changes that BellSouth has made over the last few months. Those changes, the DOJ emphasized, should “facilitate competitive entry by lowering the operating costs of the new entrants.” *Id.* at 7, 9-10. Although the DOJ noted a few remaining issues that the Commission should review – all of which are addressed in detail here and in the attached affidavits – the DOJ’s recent Evaluation makes clear that BellSouth has not made mere “cosmetic” changes, as some CLECs argue.<sup>1</sup> Rather, BellSouth has taken concrete steps to address the issues that previously concerned the DOJ and this Commission’s Staff. As the Commission is aware, and as CLEC commenters have stressed repeatedly in the past, the Commission must give the DOJ’s Evaluation “substantial weight” in this proceeding.

47 U.S.C. § 271(d)(2)(A).

The state regulatory agencies that have closely supervised BellSouth’s efforts to open the local market concur in the DOJ’s positive recommendation. The Georgia Public Service Commission (“GPSC”), after receiving extensive new filings from BellSouth and CLECs in February 2002, has concluded that “BellSouth . . . has demonstrated that it has

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<sup>1</sup> *AT&T Comments* at 2.

addressed OSS, performance data integrity, change management, and related issues raised by the FCC Staff.” *GPSC Comments* at 1. The Louisiana Public Service Commission (“LPSC”) has likewise concluded that BellSouth meets all applicable legal requirements. *See LPSC Comments* at 4. The GPSC and the LPSC have reviewed BellSouth’s compliance with section 271 exhaustively through multiple proceedings, workshops, and hearings over several years. Their recommendations should be given significant weight. *See Texas Order*<sup>2</sup> ¶ 51 (“[W]here the state has conducted an exhaustive and rigorous investigation into the BOC’s compliance with the checklist, we may give evidence submitted by the state substantial weight in making our decision.”).

These unanimous agency recommendations are not the only important evidence that BellSouth’s markets are open to competition. On March 5, 2002, just a day after filing its comments in this case, AT&T announced that it would offer BellSouth customers in Georgia, particularly residential consumers, a “new choice for local phone service.”<sup>3</sup> AT&T further emphasized that it would offer that choice by providing service over BellSouth’s facilities. WorldCom announced a similar mass entry into BellSouth’s Georgia market last summer – and immediately began signing up more than 16,000 customers a month.<sup>4</sup> Accordingly, the two largest long-distance companies (and the most vociferous opponents of this Joint Application) are now competing widely for both

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<sup>2</sup> 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 (2000).

<sup>3</sup> AT&T Ex Parte Letter, Attach., CC Docket No. 02-35 (FCC filed Mar. 5, 2002).

<sup>4</sup> Walter C. Jones, *PSC Opens Long-Distance Line for BellSouth*, Florida Times-Union, Oct. 3, 2001.

residential and business customers in BellSouth's region. That fact is fatal to claims by these parties (and other CLECs) that they lack a meaningful opportunity to compete in BellSouth's region.

Indeed, AT&T's real-world decision to compete is especially persuasive evidence in light of that company's stated criteria for entry. AT&T has emphasized that it will not enter in states if there are any "flaws" in the incumbent's network or if it is not "certain it could serve customers without disruption."<sup>5</sup> As one AT&T executive explained, "[w]e're not going to go into a community where we don't trust the [ILEC's] system."<sup>6</sup> AT&T's own business decision thus corroborates the conclusion that, notwithstanding AT&T's overheated and opportunistic rhetoric in this proceeding, competitors can and do compete in Georgia. Because there is no serious dispute that CLECs in Louisiana receive service through the same region-wide OSS as in Georgia, it is plain that the market there is open to competition as well. Indeed, one CLEC has recently confirmed publicly that local competition in Louisiana is economically feasible. *See BellSouth Ruscilli/Cox Supp. Reply Aff.* ¶ 84.

Finally, the best evidence that CLECs can compete is the fact that they indisputably are competing successfully every day – and BellSouth's systems are supporting that competitive entry. As the GPSC has explained, "the depth and breadth of competitive entry in Georgia is compelling evidence that the local market is irreversibly

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<sup>5</sup> Steve Alexander, *Judge Recommends Qwest Be Fined for Impeding Local Service by AT&T*, Star Tribune, Feb. 26, 2002, at 3D; *Verizon to Market Long-Distance Service*, The Patriot, Sept. 20, 2001, at B9.

<sup>6</sup> Sharon Smith, *Telecom Companies Continue Battle Over Local Telephone Service in York Pa.*, York Daily Record, Nov. 24, 2000.

open to competition.” *GPSC Comments* at 2. In January 2002, BellSouth’s systems processed 488,000 LSRs, over 50% more than in January 2001. In Georgia alone, BellSouth provisioned more than 44,000 UNE-P orders, 23,000 resale orders, and 1,000 orders for unbundled (2-wire analog) loops. Despite that very high volume, BellSouth still met more than 90% of its key performance metrics in January 2002. *See BellSouth Varner Supp. Reply Aff.* ¶ 94.

The record in this case, moreover, demonstrates that BellSouth has resolved each of the issues previously raised by the Commission’s Staff, as well as those noted in the DOJ’s recent Evaluation. As to several of these issues, the facts are hardly disputed. Only AT&T seriously challenges BellSouth’s overwhelming evidence that it enables integration, and AT&T’s arguments on that point are facially unpersuasive. For instance, AT&T continues to claim that it would be difficult and burdensome to integrate BellSouth’s pre-ordering and ordering functionalities (*AT&T Comments* at 12-15), despite record evidence that CLECs have done so using BellSouth’s documentation in as little as 30 person-days.

Nor is there any continuing concern about the “double FOC” issue. Birch has “confirm[ed]” that double FOCs are no longer a problem (*Birch Comments* at 24), and BellSouth quickly addressed, and has now remedied, the minor issue with supplemental orders that WorldCom has raised.

Although a few commenters still challenge BellSouth’s service order accuracy performance, the DOJ properly recognized that BellSouth has made “intensive” efforts on this front. *DOJ Evaluation* at 12. Those efforts have yielded compliant performance. WorldCom itself reports that BellSouth has a 2.3% error rate, which is better than both

the relevant benchmark and the rates of other BOCs that have been approved by this Commission, even with flow-through rates that CLECs claimed were inadequate. *See WorldCom Comments* at 25; *Pennsylvania Order*<sup>7</sup> ¶ 49 & n.190 (collecting performance numbers from prior approved applications). Birch also acknowledges BellSouth's improvement in the area of service order accuracy. *See Birch Comments* at 15. Additionally, as BellSouth has previously explained, to ensure continued solid service order accuracy performance, it has agreed to pay a penalty if its performance drops below the strict standards set by the state commissions.

BellSouth recognizes that the DOJ and others have voiced concern about the manner in which BellSouth's service order accuracy measure was modified. BellSouth has an established track record of alerting regulators and CLECs to any problems that BellSouth has identified with its performance data. Consistent with that long-term commitment, BellSouth has disclosed the changes made to its sampling methodology used in calculating service order accuracy results. As the GPSC has concluded, those modifications plainly render those results more accurate and more consistent with the Service Quality Measurement ("SQM") Plan in Georgia and Louisiana. *See GPSC Comments* at 19 n.17. That said, however, BellSouth acknowledges that the better course would have been to disclose such changes before they went into effect. Accordingly, BellSouth will implement expeditiously any state commission-established process for notifications in instances where BellSouth believes metrics calculations should be revised.

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<sup>7</sup> Memorandum Opinion and Order, *Application of Verizon Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (2001).



BellSouth's change control performance also meets this Commission's established test for compliance. As BellSouth has explained, it has taken numerous steps in recent months to make its change control process ("CCP") more effective, including scheduling implementation of the top 15 CLEC priorities in the next nine months (with the majority to be completed by the end of June). Even AT&T acknowledges that these changes are "welcome additions." *AT&T Comments* at 22. BellSouth recognizes that the DOJ has raised a concern about defects in recent releases and the sufficiency of BellSouth pre-release testing. Although any defect is unfortunate, the facts show that BellSouth's January 2002 parsed CSR release had a 0.2% error rate and that all errors were low-impact (and have now been corrected). BellSouth's overall error rate is exceedingly low, and BellSouth follows industry standards in testing. Nevertheless, BellSouth will work cooperatively with CLECs in the GPSC proceedings to discuss any remaining defect concerns – as well as any other CCP issues. The existence of that proceeding provides added assurance that BellSouth's change control performance will continue to remain compliant, and will in fact improve in ways responsive to CLEC concerns.

No CLEC has identified anything approaching a "systematic failure" in BellSouth's data reporting that would undermine BellSouth's "massive data compilation." *Arkansas/Missouri Order*<sup>8</sup> ¶¶ 18, 19. On the contrary, NewSouth expressly confirms that its internal data "are generally consistent with the performance data that BellSouth has provided according to Louisiana and Georgia state requirements."

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<sup>8</sup> Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Arkansas and Missouri*, 16 FCC Rcd 20719 (2001).

*NewSouth Comments* at 4. Only AT&T makes a serious attempt to contradict BellSouth's showing, and, for all its digging, it can highlight only minor issues that BellSouth has already revealed and that, at most, affect only a few individual measures. As the GPSC concluded after reviewing these same allegations, the issues raised by AT&T do nothing to undermine the overall accuracy of BellSouth's data; indeed, in many instances, AT&T simply disagrees with or misunderstands the measurements. *See GPSC Comments* at 31 & n.23. Moreover, although AT&T and the DOJ expressed some concern about the fact that KPMG's *third* Georgia audit is not yet complete, all but one of the test segments, including the important data replication segment, is now at least 67% complete. KPMG's testing to date is more comprehensive and thorough than any metrics audit that the Commission has previously reviewed with a section 271 application. KPMG has found nothing that would indicate that BellSouth's data do not provide a meaningful yardstick for this Commission to determine whether BellSouth has complied with its obligations under section 271. Indeed, in its data replication testing in Georgia, KPMG has not yet found a single instance where its result differs from BellSouth's in any significant way. *See BellSouth Varner Supp. Reply Aff.* ¶ 24.

Finally, there is neither a pricing nor a public interest issue in this case. The pricing arguments raised by several CLECs are recycled from BellSouth's prior Application, and these commenters uniformly fail to address BellSouth's detailed responses in that case. Their claims demonstrate no violation of basic TELRIC principles. AT&T's public interest argument is no more persuasive. First, contrary to AT&T's argument, nothing in the D.C. Circuit's recent decision even requires the Commission to engage in a price-squeeze inquiry, and there are many valid reasons,

including the fact that the 1996 Act's resale provisions already offer AT&T a guaranteed margin, not to do so. Second, AT&T's argument fails on the facts. AT&T's claimed public interest harm rests on the fact that it might need to rely on its own facilities or resale to compete for the "average" residential customer (not the high-usage customer that AT&T will target) in about 5% of the Louisiana market. On its face, such an argument fails to provide a basis to deny the consumers of Louisiana the hundreds of millions of dollars in savings that BellSouth long-distance entry will bring.

This Joint Application should be approved promptly.

**I. BELLSOUTH PROVIDES NONDISCRIMINATORY ACCESS TO ITS OSS**

**A. BellSouth Enables CLECs To Integrate BellSouth's Pre-Ordering and Ordering Interfaces**

In its Supplemental Application, BellSouth demonstrated that it meets *both* of the alternative tests for demonstrating that CLECs can integrate pre-ordering and ordering capabilities. First, BellSouth established that it meets the *Texas* test because it has taken the steps necessary to enable CLECs to take BellSouth's unparsed pre-ordering data stream and use it to populate a service order automatically. *See Texas Order* ¶ 153. Second, BellSouth demonstrated that it also meets the *New York* test because it now provides pre-ordering information in a parsed format that readily permits integration. *See New York Order*<sup>9</sup> ¶ 137.

BellSouth produced extensive evidence supporting each of these showings. That evidence included multiple third-party tests and detailed letters from CLECs explaining

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<sup>9</sup> Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York*, 15 FCC Rcd 3953 (1999).

how they were able to integrate with minimal effort (as little as 30 person-days) using BellSouth's documentation. *See BellSouth Stacy/Ainsworth/Varner Joint Supp. Aff.* ¶ 21. Accordingly, as the GPSC concluded after recently reviewing CLEC and BellSouth arguments on this issue, BellSouth has "more than adequately satisfied the FCC's requirements for establishing the successful integration of pre-ordering and ordering functions." *GPSC Comments* at 16.

BellSouth's comprehensive showing also has apparently satisfied even the CLEC community. The vast majority of CLEC commenters do not dispute that BellSouth has met the integration requirement of checklist compliance. *Compare Texas Order* ¶ 154 (noting that "several carriers in this proceeding claim to have encountered substantial difficulties in achieving full, successful integration"). AT&T, however, continues to maintain that BellSouth's exhaustive showing is still somehow insufficient. AT&T makes that argument despite the fact that: (1) it still has not shown that it has made any serious effort to integrate from BellSouth's unparsed data stream; and (2) it has conceded that it has not invested the resources necessary to implement BellSouth's new parsed CSR offering. *AT&T Bradbury/Norris Decl.* ¶ 17. AT&T's arguments lack merit.

*Integration Under the Commission's Texas Order.* AT&T begins its argument about BellSouth's *Texas* showing with a demonstrably false statement. AT&T asserts that the "short answer" to BellSouth's argument that it has satisfied the *Texas Order* standard for integration from an unparsed data stream is that the GPSC "rejected" BellSouth's evidence on this point. According to AT&T, the GPSC required BellSouth to implement a parsed CSR as a condition of its positive section 271 recommendation. *AT&T Comments* at 11. That is simply wrong. The GPSC determined that BellSouth

*does* enable CLEC integration from unparsed data, and has thus explained to this Commission that “BellSouth provides CLECs with all the requirements necessary for integrating BellSouth’s interfaces. . . . CLECs may integrate ordering and pre-ordering functions by integrating the TAG pre-ordering interface with the EDI ordering interface, or by integrating TAG pre-ordering with TAG ordering.” *GPSC Comments* at 87-88, CC Docket No. 01-277 (FCC filed Nov. 5, 2001). After reviewing BellSouth’s supplemental evidence on this issue, the GPSC has now reiterated that conclusion. *See GPSC Comments* at 11. Thus, although the GPSC required BellSouth to implement a parsed CSR in order to provide the “proper incentives for continued improvements in BellSouth’s performance,” it did *not* make such implementation a condition for checklist compliance. *Order, Consideration of BellSouth’s Telecommunications, Inc.’s Entry into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket Nos. 6863-U *et al.*, at 2 (GPSC Oct. 23, 2001) (Supp. Application App. – Ga., Tab 14).

AT&T also claims that (1) it would be “difficult and burdensome” for a CLEC to integrate, and (2) BellSouth has not identified how a CLEC could integrate from BellSouth’s documentation. *AT&T Comments* at 12. The first statement is directly contrary to the record, which shows that Access Integrated, a CLEC far smaller than AT&T, was able to integrate in approximately 30 person-days. *See BellSouth Stacy Supp. Reply Aff.* ¶ 104; *BellSouth Stacy/Varner/Ainsworth Supp. Aff.* ¶ 21 & Exh. SVA-3. Similarly, KPMG has explained to this Commission that the work necessary to convert data for use in submitting orders is “neither onerous, nor arcane” and that “BellSouth’s

documentation is sufficient to allow a CLEC to develop the parsers and filters required to accomplish electronic bonding.” *Id.* Exh. SVA-13, at 8.

The second statement is equally baffling. First, BellSouth has explained again and again how various documents can be used in integrating – describing, for instance, how the *CSR Job Aid* provides CLECs with details on the format of the CSR and how to interpret the CSR response, and how the *Pre-Order to Firm Order Mapping Matrix* provides CLECs with detailed mapping of the pre-order response fields to the firm order fields and their corresponding forms. *See BellSouth Stacy Aff.* ¶ 222 & Exhs. OSS-53 to OSS-54, CC Docket No. 01-277 (FCC filed Oct. 2, 2001). In contrast to AT&T’s feigned confusion, other CLECs have had no difficulty using these materials. As Exceleron/GoComm explained, “BellSouth’s documentation has and continues to be thorough, comprehensive and adequate.” *See BellSouth Stacy/Varner/Ainsworth Supp. Aff.* ¶ 21 & Exh. SVA-4, at 1. Access Integrated and Momentum have made similar statements.<sup>10</sup> This evidence of real-world commercial usage strongly confirms the adequacy of BellSouth’s documentation. *See Texas Order* ¶ 120 (“As an initial matter, we agree with SWBT and the Texas Commission that the adequacy of SWBT’s documentation is demonstrated by the fact that several competing carriers have constructed and are using EDI interfaces in a commercial environment.”).

Moreover, as BellSouth has explained, if CLECs are having difficulty, BellSouth makes a variety of resources available to them, including expert independent third-party

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<sup>10</sup> *See Stacy/Varner/Ainsworth Supp. Aff.* Exh. SVA-5 (“BellSouth provided documentation to Momentum’s vendor, allowing it to write software for integration”); *id.* Exh. SVA-3 (“BellSouth has met and exceeded our electronic interface development needs and expectations with their quality documentation and technical support which . . . has resulted in the successful development of Access’s own CSR parsing software.”).

consultants. *See Supp. Application* at 9-10; *Texas Order* ¶ 161 & n.437 (analogous offer provided “valuable assistance” to CLECs “seeking to design or improve their ordering systems to maximize the functionality offered by” SWBT).

AT&T’s attempt to quibble with the statements by multiple vendors and CLECs establishing their ability to integrate successfully using BellSouth’s materials and documentation is frivolous. *AT&T Comments* at 13 & n.14. AT&T cannot, and does not, dispute the core legal point here: that these CLECs have confirmed that “they are able to transfer information received electronically from [BellSouth] directly into their internal systems and into the ordering process.” *Texas Order* ¶ 155. AT&T simply establishes its own tests for the specific language that it wishes to see in these letters, and then faults the letters for not containing that precise language. *See AT&T Comments* at 13 (criticizing the Access Integrated letter because it says without qualification that Access could “parse the CSR” without detailing every field that it has parsed). Such an argument proves nothing. The key point is that, by any standard, the evidence contained in this record, including these letters, goes much further than the evidence in the *Texas Order* both in terms of the number of CLECs that have confirmed integration and in terms of the detail of their statements as to their ability to rely on BellSouth’s resources to accomplish that feat. *See Texas Order* ¶ 154 (“[T]he record contains statements from at least two carriers indicating that they have been able to integrate pre-ordering and ordering functions.”).

AT&T’s criticisms of the quality of the third-party testing of CLECs’ ability to integrate are equally unpersuasive. According to AT&T, the KPMG test is “starkly different from Telcordia’s integration testing in Texas” because KPMG “transferred data manually into an LSR.” *AT&T Comments* at 14. Even if AT&T’s criticisms of KPMG’s

conclusions had merit – and they do not, as explained in William Stacy’s attached affidavit (at ¶ 113) – they would be irrelevant. Telcordia has now successfully performed the *same integration testing* of BellSouth’s unparsed CSR data that it undertook for SWBT in Texas, including electronic population of an LSR. *See BellSouth Stacy Supp. Reply Aff.* ¶¶ 107-108 & Exh. WNS-15. BellSouth has thus provided the Commission with precisely the same kind of testing that, under this Commission’s precedent, is entitled to “substantial weight” in finding that CLECs can integrate. *Texas Order* ¶ 159 n.431.

Finally, BellSouth has now implemented telephone number (“TN”) migration for UNE-P, as well as many kinds of loop and resale orders. As both the DOJ and the GPSC have emphasized, this enhancement is “an important step” that has led to a 35% reduction in reject rates and a 60% reduction in address-related errors. *DOJ Evaluation* at 8-9; *GPSC Comments* at 5-10. WorldCom has even acknowledged that TN migration has cut its internally calculated reject rate by 10 percentage points. *See DOJ Evaluation* at 9.<sup>11</sup>

*Integration Under the Commission’s New York Order.* BellSouth also meets the alternative test for integration set out in the *New York Order*. With the release of BellSouth’s parsed CSR functionality in January 2002, CLECs now have the option of receiving either an unparsed or a parsed CSR. Testing by at least four separate independent parties has revealed that this new parsed CSR functionality works as intended. *See BellSouth Stacy Supp. Reply Aff.* ¶ 116. The GPSC, after requesting comment from BellSouth and CLECs on this issue, has likewise confirmed that “the

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<sup>11</sup> AT&T argues briefly that BellSouth’s implementation of this functionality was inconsistent with the GPSC’s requirements. *See AT&T Comments* at 11. The GPSC disagrees. *See GPSC Comments* at 7.



parsed CSR functionality implemented by BellSouth works in the manner intended.”

*GPSC Comments* at 12. The GPSC has explained that “BellSouth implemented this functionality consistent with the requirements of [the GPSC’s] *271 Order*, which directed BellSouth to provide ‘fully fielded parsed CSRs by January 5, 2002.’” *Id.*

AT&T, however, is not satisfied. It argues first that the minor defects associated with the release of the parsed CSR have impeded CLEC operations. *See AT&T Comments* at 9. That is not true, and, in any event, these defects have been promptly corrected. First, “[i]t is not unusual for any computer software release to have defects.” *GPSC Comments* at 13. BellSouth identified 23 such defects and fixed 16 of those prior to the filing of its Supplemental Application.<sup>12</sup> *See BellSouth Stacy Supp. Reply Aff.*

¶ 127. The remaining seven minor defects were corrected in the March 23, 2002 release. *See id.*

Further, there is nothing in the record here that supports the conclusion that any of these defects were significant impediments to competition. The GPSC, after recently receiving submissions from AT&T, WorldCom, and others, concluded that “there is simply no evidence” that the “minor defects associated with CSR parsing have prevented the testing or use of this functionality.” *GPSC Comments* at 14; *see also id.* at 13 (noting that AT&T never responded to a GPSC request to “provide all testing results or

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<sup>12</sup> AT&T argues that BellSouth’s characterization of these defects as “low-impact” is belied by the fact that BellSouth corrected them well within the 120-day period permitted by the CCP. *AT&T Comments* at 9 n.4. This claim is wrong factually, as there is no 120-day period for correction of low-impact defects under the CCP; rather, the CCP requires that BellSouth exercise its “best efforts” to correct low-impact defects. Furthermore, AT&T’s contention is remarkable in that it seeks to turn BellSouth’s exemplary performance in correcting these and other defects into a failing of some sort. *See BellSouth Stacy Supp. Aff.* ¶ 77 & nn.15-16. By AT&T’s logic, BellSouth should delay defect fixes, and thus not help CLECs, for fear that prompt action would be an admission of the defect’s severity.

commercial usage concerning parsed CSR functionality” and that “AT&T apparently has not devoted the resources to developing the necessary parallel software to make use of this functionality”) (internal quotation marks omitted). In this proceeding as well, AT&T simply asserts without evidence that the work-arounds are “burdensome.” *AT&T Bradbury/Norris Decl.* ¶ 23; *see also WorldCom Lichtenberg Decl.* ¶ 141 (similarly failing to provide specific evidence of how these defects allegedly limited the usefulness of the parsed CSR). Such unsupported assertions are entitled to no weight. *See New York Order* ¶ 50 (“Mere unsupported evidence in opposition will not suffice.”); *see also BellSouth Stacy Supp. Reply Aff.* ¶¶ 127-130.

AT&T further claims that BellSouth has failed in some way by not parsing every single field requested by CLECs. *AT&T Comments* at 9.<sup>13</sup> But no BOC has parsed every field on the CSR, and this Commission has never required a BOC to do so. Even before recent enhancements, as a result of the January 2002 parsed CSR release, BellSouth had successfully parsed and returned 87 of the 106 fields requested by CLECS, which is even more than what other BOCs provide in their parsing. *See BellSouth Stacy Supp. Reply Aff.* ¶¶ 123-124. Indeed, the GPSC explained that AT&T’s own data show that other BOCs do not parse at least seven of the fields that CLECs requested of BellSouth. *See GPSC Comments* at 15. Moreover, given that other BOCs did not parse certain of these fields and given that the information for the remaining fields at issue can be obtained elsewhere from the CSR, the GPSC properly found that “there has been no showing that

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<sup>13</sup> AT&T’s suggestion that BellSouth somehow “renewed” on a promise to parse all fields suggested by CLECs is false. *See AT&T Comments* at 9. BellSouth worked with CLECs to develop a “CLEC Requested Requirements” document, which was used as a guide for the development of requirements by BellSouth, not as a commitment by BellSouth to parse all of those fields. *See BellSouth Stacy Supp. Reply Aff.* ¶ 123; *BellSouth Stacy/Varner/Ainsworth Supp. Aff.* ¶¶ 77-88.

the parsing of these fields is critical to ensuring that ‘a broad range of residential customers are to have a competitive choice for local service.’” *Id.* at 15-16 (quoting *DOJ Evaluation* at 10, CC Docket No. 01-277 (FCC filed Nov. 6, 2001)). In any event, BellSouth has now implemented an enhancement to provide fields relating to hunting in a parsed format suitable for usage on an LSR. *See BellSouth Stacy Supp. Reply Aff.* ¶¶ 131-132.

Finally, a few CLECs take issue with the third-party testing of BellSouth’s parsed CSR functionality. AT&T contests the scope of Telcordia’s test.<sup>14</sup> *See AT&T Comments* at 10. However, the request/activity type combinations that Telcordia tested accounted for more than 79% of all activity received during a typical month, and more than 99% of all UNE-P migrate-as-specified orders. *See BellSouth Stacy/Varner/Ainsworth Supp. Aff.* ¶ 62. By any standard, such a broad test provides a significant gauge on whether a functionality works as intended. Moreover, although AT&T also challenges Birch’s testing of the parsed CSR, AT&T does not dispute that Birch’s representative successfully pulled parsed CSRs for both residential and business accounts, and that Birch concluded that all test cases “have been executed and both the CLEC and

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<sup>14</sup> AT&T also questions Telcordia’s independence. *See AT&T Comments* at 10. BellSouth and Telcordia, however, signed an arms-length testing agreement. *See BellSouth Stacy Supp. Reply Aff.* ¶ 116 n.19. AT&T, moreover, provides no facts to support its attack on Telcordia’s credibility. Nor does AT&T acknowledge the many times that this Commission has relied on Telcordia’s expert reports. *See, e.g.,* Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services In Kansas and Oklahoma*, 16 FCC Rcd 6237, ¶ 133 n.367 (2001) (“*Kansas/Oklahoma Order*”), remanded on other grounds, *Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001); *Texas Order* ¶ 99.

BellSouth have agreed that the success criteria specified in the test plan ha[ve] been met.”

*BellSouth Stacy Supp. Reply Aff.* ¶ 119.<sup>15</sup>

In sum, notwithstanding the complaints raised by commenters (chiefly, AT&T), the record firmly establishes that CLECs can integrate and have successfully integrated pre-ordering and ordering functionality.

**B. BellSouth’s Change Control Process Meets All Established Standards and Continues To Improve Under the Supervision of the State Commissions**

BellSouth satisfies all aspects of this Commission’s test for an adequate change control process. As the GPSC – which has many years of familiarity with BellSouth’s CCP and has repeatedly reviewed CLEC contentions on this point – recently concluded, the CCP is an “effective systems change management process to which [BellSouth] has adhered over time.” *GPSC Comments* at 28. Moreover, the DOJ and several CLECs have confirmed in this record that BellSouth has undertaken substantial improvements over the past few months in order to make the process even more efficient and effective. As the DOJ explains, it is “encouraged by the positive steps taken in the area of change management.” *DOJ Evaluation* at 18. Indeed, even AT&T acknowledges that BellSouth’s recent CCP enhancements are “welcome additions.” *AT&T Comments* at 22; *see also NewSouth Comments* at 3 (“BellSouth has made important strides in its responsiveness to customers and has shown an increased willingness to work with CLECs to resolve problems as they arise.”).

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<sup>15</sup> Birch has since tried to minimize the success of its testing of the parsed CSR with BellSouth by making much of the fact that only four accounts were tested. *See Birch Comments* at 26. But the fact is that Birch originally requested that only two types of accounts be tested, and BellSouth’s personnel offered to expand the test in an effort to help Birch achieve a more complete result. *See BellSouth Stacy Supp. Reply Aff.* ¶ 120.

Among other things, BellSouth has scheduled implementation of the top 15 change requests for this year (eight by the end of June); has added information technology experts to CCP meetings and ensured the availability of subject matter experts; has provided additional materials, such as a coding matrix, to ease CLEC use of interface enhancements; has provided new reports on the status of change requests; and has agreed to a series of measures that will track its performance. *See Supp. Application* at 27-30 (describing these and other enhancements).

BellSouth and the CLEC community, moreover, are in the midst of a GPSC proceeding, which will result in further process improvements. *See BellSouth Stacy Supp. Reply Aff.* ¶¶ 18-22. The LPSC is likewise examining the CCP and monitoring the GPSC proceeding. *See id.* ¶ 23. As part of the ongoing GPSC process, BellSouth “has indicated its support for a number of the modifications proposed by the CLEC Coalition and has made specific proposals to address CLEC concerns.” *GPSC Comments* at 26; *see also BellSouth Stacy Supp. Reply Aff.* ¶ 22. These GPSC proceedings should give this Commission significant assurance that BellSouth’s performance in this area will continue to improve even beyond its current compliant state. *See, e.g., Texas Order* ¶ 118 (“Given the extensive oversight of the Texas Commission . . . we have no reason to believe that SWBT will disregard its obligation to maintain in Texas a change management plan that affords competing carriers a meaningful opportunity to compete.”); *Pennsylvania Order* ¶ 3 (“[T]he Pennsylvania Commission will continue its oversight of Verizon’s performance through ongoing state proceedings. As the Commission has recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purposes of the Act serve a vitally important role in the section 271 process.”) (footnote

omitted); *see also BTI Comments* at 4 (“BTI has been encouraged by BellSouth’s willingness to participate in state commission-sponsored informal dispute resolution procedures. BTI has found these procedures to be helpful in resolving issues as they arise.”).

BellSouth recognizes that the DOJ has expressed some concern about the number of defects in BellSouth’s releases and whether BellSouth does sufficient pre-release testing. Some CLECs also express concern about the pace with which BellSouth implements CLEC requests. As BellSouth demonstrates below, however, the evidence shows that BellSouth has a very small percentage of defects in its releases and that it has implemented many change requests over the past months. These issues thus provide no basis to conclude that CLECs lack a meaningful opportunity to compete. Nevertheless, CLECs have raised these same issues in the ongoing GPSC proceeding, which will determine whether any further improvements are appropriate. CLECs are participating fully in that process, and BellSouth will adhere scrupulously to the GPSC’s determinations in the event that BellSouth cannot reach consensus with the CLEC community.

*BellSouth Meets the Commission’s Test for an Adequate Change Control Process.*

This Commission has established a specific test for an adequate change control process. That test requires the BOC to demonstrate that (1) CCP information is clearly organized and readily accessible; (2) CLECs have had substantial input into the design and continued operation of CCP; (3) there is a procedure for timely resolution of disputes; (4) its testing environment is stable and mirrors production; and (5) the documentation for

creating an electronic gateway is efficacious. *Texas Order* ¶ 108. Additionally, the Commission evaluates the BOC's history of compliance with its plan. *Id.*

These established requirements should guide the Commission's inquiry here.

BellSouth satisfies all components of the Commission's test.

*BellSouth Provides Clearly Organized and Accessible CCP Information.* No CLEC seriously disputes that information relating to the change control process is clearly organized and readily accessible to competing carriers. BellSouth's CCP document is comprehensive in scope, outlining each aspect of the change control process in a clear and concise manner. The CCP document is posted to the BellSouth interconnection web site so that it can be reviewed at any time by interested CLECs. *See BellSouth Stacy Supp. Reply Aff.* ¶¶ 12, 25. BellSouth also posts other information – including Release Notification and Schedule Change Request information, CCP Meeting Documents, and the CCP Activity Log – on the Internet. *See id.* ¶ 26. Additionally, BellSouth makes available to CLECs its release implementation schedule; a report on the status of each of the “top 15” change requests as prioritized by the CLECs; and a preliminary unit measurement estimate. *See id.* ¶ 27.

*CLECs Have Had Substantial Input into the Design and Continued Operation of the CCP.* There also can be no dispute that the current CCP has resulted from substantial CLEC input and that CLECs have an ongoing voice in the current direction and operation of the CCP. Numerous changes have been and continue to be made to the CCP at the request of CLECs and as a result of collaborative workshops held in several states to enhance the workings of the CCP. *See id.* ¶ 28. Indeed, in response to AT&T's September 2000 request for sweeping changes to the CCP, BellSouth implemented 67

separate changes to the CCP document. *See id.* ¶¶ 29-30. The vast majority of AT&T's proposed changes have thus been implemented. *See id.* ¶ 30.

The level of CLEC input in the process is further demonstrated by the current GPSC proceeding, in which BellSouth has responded to all CLEC requests for improvements and agreed to many of them, and the GPSC is currently supervising the resolution of the remaining disputes. *See id.* ¶ 32. Because an appropriate CCP process is "collaborative" and will evolve over time, it is not a surprise that CLECs still have suggestions for further improvements. *See Texas Order* ¶ 117. That does not mean, however, that, up until now, CLECs have lacked input into the process.

*The CCP Has Procedures for the Timely Resolution of Change Control Disputes.*

The current CCP document has clear escalation and dispute resolution procedures. No CLEC appears to contend otherwise. Indeed, the relevant procedures were *agreed* to by the CLECs and BellSouth. *See BellSouth Stacy Supp. Reply Aff.* ¶ 36. The escalation procedure in the process includes specific time-frames by which the BellSouth executives to whom issues are escalated must respond. *See id.* The CCP document also clearly defines the rights of both CLECs and BellSouth to take issues beyond the CCP and to the state commissions. *See id.* ¶ 37. Several state commissions, moreover, have specifically endorsed the reasonableness of these current procedures.<sup>16</sup> Nevertheless, as further

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<sup>16</sup> *See* Final Order on Arbitration, *Petition of AT&T Communications of the Southern States, Inc., et al., for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc.*, Docket No. 000731-TP, Order No. PSC-01-1402-FOF-TP, at 120 (Fla. Pub. Serv. Comm'n June 28, 2001) (finding that the dispute resolution process under the CCP is "equitable, well-defined and inclusive"); Order, *Petition of AT&T Communications of the Southern States, Inc., et al., for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc.*, Docket No. 11853-U, at 14 (GPSC Apr. 20, 2001) (finding



evidence of the good faith with which BellSouth is seeking to meet CLEC concerns, BellSouth has proposed adding another escalation level to the CCP. *See BellSouth Stacy Supp. Reply Aff.* ¶ 40. These procedures accord with this Commission’s precedents. *See New York Order* ¶ 108 (approving a dispute resolution mechanism that “allows [CLECs] to appeal to upper level management at [the BOC] on change management issues and also allows [CLECs] to raise these issues before the [state commission]”).

*The CAVE Testing Environment Is Stable and Mirrors Production.* Since BellSouth introduced its CAVE testing environment in July 2001, 10 CLECs and vendors have successfully tested in that environment without any major issues. *See BellSouth Stacy Supp. Reply Aff.* ¶ 44. This “evidence from commercial usage” demonstrates that BellSouth’s environment is stable and meets the needs of CLECs, just as similar evidence did in Texas. *Texas Order* ¶ 134. The GPSC has thus concluded that CAVE “provide[s] more than adequate assurance that BellSouth’s testing environment supports local competition.” *GPSC Comments* at 25 (internal quotation marks omitted). And the DOJ, which raised concerns about the test environment in its Evaluation of BellSouth’s October 2001 Application, now comments favorably on the evidence of commercial usage of CAVE. *See DOJ Evaluation* at 14-15. Moreover, as the DOJ also stresses, BellSouth has now improved CAVE by allowing LENS and DSL testing and by “substantially improv[ing] its availability.” *Id.* at 15. In the same vein, Birch “applauds” the ability to test LENS in CAVE and describes its experience as a beta tester of that functionality as “successful.” *Birch Comments* at 27-28.

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that, “[i]f parties have disputes arising from the CCP, then they should adhere to the escalation and dispute resolution process included in the CCP Document”).

Nevertheless, WorldCom continues to complain about CAVE. As in BellSouth's prior Application, WorldCom's argument centers on a single alleged problem that WorldCom supposedly had with its notifiers in late 2001. *See WorldCom Lichtenberg Decl.* ¶¶ 153-159. WorldCom's Ms. Lichtenberg, however, does not address BellSouth's prior showing that this allegation is unsupported by evidence, nor does she even attempt to deal with the fact that no other tester has reported a similar problem. *See BellSouth Stacy Supp. Reply Aff.* ¶¶ 43-44.

The GPSC has now reviewed this same WorldCom argument. It determined that "BellSouth has persuasively refuted WorldCom's allegations that production transactions were sent to WorldCom's test environment." *GPSC Comments* at 24.<sup>17</sup> The GPSC's resolution of this factual issue warrants significant respect. *See Texas Order* ¶ 51 ("We will look to the state to resolve factual disputes wherever possible."). That is especially the case where no other party has reported a similar issue. *Cf. New York Order* ¶ 228 (rejecting claim where CLEC "offer[ed] no data to support [its] position and no other commenters raise[d] this issue").

*BellSouth's Comprehensive Documentation Enables CLECs To Build an Electronic Gateway.* BellSouth provides comprehensive documents that CLECs can use and have used in building electronic gateways. Again, that fact is best shown by

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<sup>17</sup> WorldCom's Ms. Lichtenberg discusses (at ¶ 157 of her declaration) Florida Exception 6, but ignores BellSouth's showing that this exception relates to BellSouth's original test environment, not CAVE. *See BellSouth Stacy Supp. Reply Aff.* ¶ 45. Ms. Lichtenberg (at ¶ 157) also refers to Florida Exception 128, in which KPMG claimed that BellSouth did not support pre-order testing in CAVE. Apparently, KPMG has misunderstood what CLECs are able to test in CAVE, because CAVE has always allowed CLECs to test pre-ordering and ordering functions (including parsing), as BellSouth explained in its response to KPMG regarding this exception. *See BellSouth Stacy Supp. Reply Aff.* ¶ 46.

commercial evidence. An average of 35 CLECs use EDI and an average of 65 CLECs use TAG each month. Furthermore, more than 300 CLECs have established at least one electronic interface (including EDI, TAG, LENS, RoboTAG™, TAFI, and ECTA) to BellSouth's OSS, and those companies submitted 4.1 million electronic service requests (89% of all requests submitted) in 2001. *See BellSouth Stacy Supp. Reply Aff.* ¶ 48. Thus, although AT&T points to a few alleged "deficiencies" in BellSouth's documentation (*AT&T Bradbury/Norris Decl.* ¶¶ 176-178), it does not claim that these supposed flaws prevented AT&T from building an electronic gateway to BellSouth's OSS (indeed, it has done so), nor does it cite any evidence about difficulties experienced by AT&T in making use of BellSouth's documentation. *See BellSouth Stacy Supp. Reply Aff.* ¶¶ 49-50. The lack of such evidence is telling.

*BellSouth Has Demonstrated a Pattern of Compliance with the CCP.* BellSouth consistently complies with CCP requirements.

Since September 2001, BellSouth has had 10 business days from the acknowledgment of a BellSouth- or CLEC-initiated change request in which to accept or reject the change request. During the fourth quarter of 2001, BellSouth accepted or rejected 18 out of 19 (95%) change requests within that period. *See id.* ¶ 52.<sup>18</sup> Moreover, to ensure continued excellent performance in this area, BellSouth has agreed to implement a new performance measure (CM-7) that tracks the percent of change requests (other than Type 1 or Type 6 change requests) submitted by CLECs that are accepted or rejected by BellSouth within 10 business days. *See id.* ¶ 54.

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<sup>18</sup> Although AT&T seeks to make a contrary showing (*AT&T Bradbury/Norris Decl.* ¶ 145), it can do so only by citing to change requests submitted before this 10-business-day deadline was even put in place. *See BellSouth Stacy Supp. Reply Aff.* ¶ 53.

Similarly, BellSouth consistently corrects defects within the period specified by the CCP. Since September 10, 2001, when new defect deadlines were put in place, BellSouth has identified seven high-impact defects associated with its releases; four were corrected within the specified 10-business-day period, and one high-impact defect is scheduled to be corrected within that period. The remaining two were missed by only two days and that was done to coordinate the correction with an upcoming release. *See id.* ¶ 78. BellSouth is on track to meet its deadlines for all medium-impact defects as well. *See id.* ¶ 79. These statistics refute WorldCom’s unsupported claim that “BellSouth often fails quickly to remedy . . . defects.” *WorldCom Lichtenberg Decl.* ¶ 143. Moreover, BellSouth has again agreed to implement a new performance measure (CM-6) that captures whether CLECs receive timely correction of BellSouth software defects. *BellSouth Stacy Supp. Reply Aff.* ¶ 81.

BellSouth also routinely complies with the timeframes for delivering draft User Requirements, final User Requirements, Final Specifications, and Business Rules (if applicable), which vary depending upon the type of release. *See id.* ¶¶ 55-56 & Exh. WNS-9. Indeed, even when BellSouth does not meet every deadline, it provides CLECs with significant documentation well in advance of a release. For instance, in the case of the January 2002 parsed CSR release – an example that AT&T and others highlight – BellSouth made available to CLECs a number of documents<sup>19</sup> concerning parsed CSR

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<sup>19</sup> These documents included: (i) BellSouth User Specifications, which were provided to CLECs through the CCP on September 6, 2001, and discussed with CLECs on September 20, 2001; (ii) Preliminary Field Specifications, which were provided to CLECs on October 12, 2001, and which could be used by CLECs to assist in their preliminary coding efforts; (iii) TAG API Guide, which was published on November 19, 2001, and which provides details used for coding the CLEC interface; (iv) CSR Job Aid, which was updated on November 9, 2001, to include information on parsed CSRs; and (v) updated

functionality as early as September 2001. *See id.* ¶ 57. Thus, although the business rules were delayed by 18 days, CLECs and vendors were able to use these documents in coding and testing the parsed CSR functionality, as is evidenced by the fact that Telcordia and others did in fact test that functionality prior to release. *See id.* In other instances when BellSouth has not met the CCP time-frames for documentation, that has been because of regulatory mandates or CLEC requests for changes. *See id.* ¶¶ 58-59 (providing examples).

*CLEC Complaints About BellSouth's Supposed Failure To Implement Sufficient Requests Are Not Well-Founded.* Although CLECs spend many pages discussing BellSouth's supposed failure to implement change requests – relying primarily on slanted anecdotal evidence – the numbers tell a different story. Between the inception of the CCP in June 1999 and March 24, 2002, BellSouth has received 490 change requests (which include regulatory mandates, industry standards, BellSouth- and CLEC-initiated, and defects) that have not subsequently been cancelled. *See id.* ¶ 61. Of these 490 change requests, 338 have already been implemented (69%), 55 are scheduled for implementation (11%), 50 are awaiting prioritization by the CLECs (10%), and 7 are waiting to be scheduled (1%). *See id.* That BellSouth has already implemented or scheduled for implementation nearly 80% of the change requests received since the inception of the CCP is compelling evidence that the process is working, especially

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Pre-Order Business Rules, which were provided on December 13, 2001, to include information for requesting parsed CSRs. *See BellSouth Stacy Supp. Reply Aff.* ¶ 57.

because many of the remaining requests are awaiting CLEC prioritization, a process that is beyond BellSouth's control. *See id.*<sup>20</sup>

Although several CLECs, including Birch, Covad, and AT&T, complain about a supposed "backlog" of change requests, this backlog consists of at most the 40 change requests (of the 490 discussed above) that are in "new" or "pending clarification" status. *See BellSouth Stacy Supp. Reply Aff.* ¶ 62. These 40 change requests represent approximately 8% of the 490 change requests eligible for implementation, which hardly constitutes a "backlog."<sup>21</sup> *See id.* Moreover, although WorldCom seeks to compare BellSouth's implementation of requests to Verizon's over a supposed 20-month period (*WorldCom Lichtenberg Decl.* ¶ 99), its figures ignore the most recent BellSouth releases. In the last three months, BellSouth has implemented the following OSS improvements:

- Parsed CSR
- Mechanized Line-Splitting
- New Install with No Prior Service at Location

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<sup>20</sup> Thus, although WorldCom's Ms. Lichtenberg complains (at ¶¶ 102-103 of her declaration) about the time that it takes BellSouth to allow CLECs to prioritize change requests, she ignores the fact that the CCP – not BellSouth – decides when prioritization meetings are held. *See BellSouth Stacy Supp. Reply Aff.* ¶ 70.

<sup>21</sup> Of these 40 change requests, BellSouth: (i) has indicated that it cannot support 14 of the change requests (35%), which the CLEC has neither cancelled nor escalated; (ii) has rejected 9 of the change requests (22%), but the CLEC has requested that BellSouth reconsider its decision or has escalated the issue; (iii) is currently reviewing 8 of the change requests for acceptance (20%); (iv) has implemented work-around solutions for 3 change requests (8%); and (v) has requested clarification from the CLEC for 3 of the change requests (8%), which the CLEC has never provided. The remaining 3 change requests in "new" or "pending clarification" status are related to the change management process and are being worked on or discussed with the CLEC community. *See BellSouth Stacy Supp. Reply Aff.* ¶ 63.

- Line Splitting – Remove Loop Make-Up Edit
- Electronic Processing of Unbundled Universal Digital Channel (“UDC”) Loop Orders
- Enhancements to Hunting
- Phase 1a – Order Tracking
- Migration of UNE-P Notifications
- Service Inquiry Enhancement for SL1, SL2, DS0, DS1, and ISDN
- Add Ability to Create New Listings in LENS
- Single C-Order Process
- Parsed CSR – Hunting
- Phase 1b – Order Tracking

*See BellSouth Stacy Supp. Reply Aff.* ¶¶ 66-68. And that is far from the complete list.

*See id.* Thus, although WorldCom prefers to focus on past periods, the more recent record rebuts its contention that change requests are not being implemented. *See Pennsylvania Order* ¶ 24 (relying on recent billing performance to establish checklist compliance in the face of CLEC complaints about prior performance).

Nevertheless, BellSouth remains sensitive to the need to implement change requests, especially high-priority items, as promptly as possible. Accordingly, BellSouth is implementing the “top 15” CLEC prioritized change requests this year and will have more than half done by the end of June 30. *See BellSouth Stacy Supp. Reply Aff.* ¶ 65. Moreover, as explained in the Supplemental Application, BellSouth has made a concrete offer to devote significantly more CCP resources to implementing CLEC requests than to BellSouth’s own changes. The CLECs have not accepted that proposal, however, and the

parties are before the GPSC attempting to reach a mutually agreeable result. *See id.* ¶¶ 18-22.

Finally, it is important to note that CLECs support implementation of prioritized changes only opportunistically. Thus, although WorldCom's Ms. Lichtenberg complains (at ¶ 106 of her declaration) that BellSouth has not implemented change request CR0186, which involves the use of Interactive Agent protocol, she correctly notes that Interactive Agent was assigned a relatively low priority by the CCP (21st out of 36 change requests). That fact readily explains why the change request has not been implemented. *See New York Order* ¶ 125 ("Because Bell Atlantic must accommodate a variety of interests with any given change release, we reasonably expect some [CLECs] to be less than satisfied with any given change."). Ms. Lichtenberg fails to note, however, that on January 18, 2002, WorldCom filed a petition requesting that the GPSC "force" BellSouth to implement Interactive Agent, even though this change request is not a high priority for other CLECs. *See BellSouth Stacy Supp. Reply Aff.* ¶ 71. If the GPSC were to grant WorldCom's request, BellSouth would be required to divert resources that would otherwise be used to implement those change requests that the CLECs have indicated are a higher priority. *See id.* Thus, despite its emphasis on the need to implement priorities in this proceeding, in other forums WorldCom argues strenuously that CLEC priorities should be circumvented in favor of its own particular interests.

*BellSouth Releases Have Few Defects.* BellSouth established above that it has a track record over the last six months of quickly fixing all defects in its releases. Beyond that, however, BellSouth also works hard to avoid defects in its new releases. BellSouth is aware that the DOJ has expressed concern on this point. BellSouth takes this issue



seriously and will continue to seek to improve its performance. At the same time, however, it is important to note that the evidence demonstrates that BellSouth's releases actually have few defects, and that BellSouth has rigorous testing processes in place.

In this regard, both WorldCom and AT&T highlight the example of the Release 10.3 software that contained the parsed CSR functionality. As BellSouth has explained, this software was released into production with 23 low-impact defects (all of which have since been corrected). Although any defect is unfortunate, these defects represented an error rate of approximately 0.2% post-release defects measured against the total instances of parsed CSR fields tested during the entire cycle. *See id.* ¶ 87. More generally, BellSouth's "defect density" – an industry standard measurement – for 2001 was 0.09 defects per thousand lines of code. *See id.* ¶ 88. That rate is equivalent to less than one defect per ten thousand lines of code. *See id.*

BellSouth has obtained those solid results because it follows a rigorous testing process. *See id.* ¶¶ 83-85. Thus, for its recent releases, BellSouth has required the following:

- Completion of at least 98% of System, Performance, and Regression testing
- A test case pass rate of at least 97%
- No Severity 1 defects outstanding
- No Severity 2 defects outstanding that do not have a path forward for completion and do not have a mechanized work-around

*See id.* ¶ 83. For its internal testing, BellSouth's goal is to allow sufficient time for appropriate pre-release testing within the release schedule. *See id.* BellSouth's testing cycle includes unit/product testing, system/integration testing, performance testing,

regression testing, and user-acceptance testing. *See id.* BellSouth's testing processes, moreover, adhere to the industry standard model. *See id.* ¶ 85.

Although the DOJ suggests that a KPMG Florida Exception raises concerns on this issue (*DOJ Evaluation* at 10 & n.39), as BellSouth explained in its response to this exception, BellSouth does mitigate the risk of reduced time for testing in a variety of ways, including adding more test case automation and, when required, increasing the number of trained testing personnel. *See BellSouth Stacy Supp. Reply Aff.* ¶ 89. For three recent major software releases, BellSouth completed 100%, 99.9%, and 100% of the planned testing, respectively. *See id.*

Despite all this, BellSouth is committed to working with the GPSC and CLECs to determine appropriate further process improvements to reduce defects. This issue is currently before the GPSC, which provides the appropriate forum for addressing any CLEC concerns. *See id.* ¶ 86. As the GPSC has explained, in the course of that proceeding, BellSouth "has indicated its support for a number of the modifications proposed by the CLEC Coalition and has made specific proposals to address CLEC concerns." *GPSC Comments* at 26. Although BellSouth will continue to work on further improvements, current performance in no way denies CLECs a meaningful opportunity to compete.

**C. BellSouth Accurately Processes the Relatively Few Orders That Require Manual Handling**

The DOJ's central concern with BellSouth's October 2001 Application was that BellSouth allegedly relied too heavily on manual handling and did not provision enough of these manual orders accurately. *See DOJ Evaluation* at 14-21, CC Docket No. 01-277 (FCC filed Nov. 6, 2001). Importantly, the DOJ raised no similar concern in its recent

Evaluation. On the contrary, it highlighted the many steps that BellSouth has taken to enhance its electronic capabilities and specifically noted that reject rates have dropped substantially, by 35% in the case of UNE-P orders. *See DOJ Evaluation* at 9, 11; *see also id.* at 21 (“BellSouth’s Supplemental Application demonstrates that it has made substantial progress in addressing issues previously identified by the [DOJ].”).

The DOJ’s assessment of this issue is correct. BellSouth’s flow-through performance has improved from January 2001 to January 2002 even though mechanical usage was 55% higher (over 160,000 more LSRs) in the more recent month. *See BellSouth Stacy Supp. Reply Aff.* ¶ 183. Moreover, BellSouth’s flow-through rates, on an apples-to-apples basis, are comparable to those that this Commission has seen in prior successful applications. *See id.* ¶ 188. BellSouth also continues to work with individual CLECs to identify the particular errors causing orders to fall out for manual handling and to address those errors in order to enhance flow through. *See id.* ¶¶ 192-195. For all these reasons, as the GPSC has found, “BellSouth has adequately resolved any concerns about its manual handling of CLEC orders.” *GPSC Comments* at 23. As one CLEC confirms, BellSouth’s “mechanized ordering appears to be working satisfactorily” and, “for the most part, orders to BellSouth flow through with a minimum of manual intervention.” *BTI Comments* at 2; *see id.* (“[I]t is clear that BellSouth has paid substantial attention to developing both its OSS system and the personnel operating the system.”).

Equally significant, BellSouth also has demonstrated that, when manual handling is necessary, orders are provisioned accurately. As the DOJ has stated, BellSouth has made “extraordinary” and “intensive” efforts to improve its service order accuracy.

*DOJ Evaluation* at 12. The GPSC similarly concludes that “BellSouth’s efforts to improve its performance in the area of service order accuracy have been successful.”

*GPSC Comments* at 18; *see also BTI Comments* at 2 (“BellSouth’s ability to handle orders that require manual intervention has also seen steady improvement.”).

Only a few CLECs dispute the adequacy of BellSouth’s service order accuracy performance. Indeed, although WorldCom complains about BellSouth’s performance, it reports that BellSouth makes errors on only 2.3% of its Georgia orders. *See WorldCom Comments* at 24-25. That performance is well above the applicable GPSC benchmark. It is also significantly higher than this Commission has seen in prior applications, even with flow-through numbers that CLECs claimed were too low. *See Pennsylvania Order* ¶ 49 & n.190 (noting that the Commission had found accuracy levels of 82% to 99% “acceptable” even in the face of allegedly deficient flow-through performance).<sup>22</sup> Birch likewise agrees that service order accuracy has improved, although it expresses concern as to whether BellSouth’s performance will be sustained (an issue BellSouth addresses below). *See Birch Comments* at 7-8. NewSouth similarly reports that it “has observed significant improvements in the training of BellSouth personnel” and that “the vast

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<sup>22</sup> WorldCom also raises an issue about alleged misrouting of intraLATA calls. *See WorldCom Comments* at 23-24. 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 CC Docket No. 01-277, 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. *See BellSouth Ruscilli/Cox Supp. Reply Aff.* ¶¶ 42-43.

majority of [its] UNE Platform orders are completed satisfactorily.” *NewSouth Comments* at 6.

BellSouth’s metric results confirm that BellSouth’s performance in this area is strong. From October through January, of the six sub-metric categories that account for 98% of orders, BellSouth met the benchmark for five of the sub-metrics for three out of four months, and it met the sixth in two out of four months. *See BellSouth Varner Supp. Reply Aff.* ¶ 80. BellSouth has also looked at its level of accuracy for partially mechanized and manual orders. The error rate on these orders was about 5% in September and October data, and it improved even further to about 3% in November through January data. *See id.* ¶ 82. That improvement from already high performance levels demonstrates the positive effects of BellSouth’s process enhancements.

BellSouth acknowledges that some parties, including the DOJ, have raised concerns about the changes made by BellSouth to improve its service order accuracy sampling methodology. First, it is important to note that the new sampling methodology both improves the measure’s accuracy and confirms BellSouth’s strong performance. *See DOJ Evaluation* at 13 n.57 (“[t]he Department does not maintain that the current measure is faulty”); *BellSouth Johnson Supp. Reply Aff.* (responding to arguments attacking the new sampling methodology); *BellSouth Varner Supp. Reply Aff.* ¶¶ 61-76 (explaining the various ways that the new measure improves accuracy). The GPSC has thus concluded that BellSouth’s “changes were appropriate as they bring BellSouth’s reporting more closely in conformity with the requirements of the SQM.” *GPSC Comments* at 19 n.17. The new, more accurate measure demonstrates both that BellSouth’s current performance is excellent and that BellSouth previously understated its performance because, among

other things, the prior metric did not sample UNE-P orders. *See BellSouth Varner Supp. Reply Aff.* ¶ 75.

Second, BellSouth notified the CLECs and the GPSC of these modifications before this Application was filed. *See id.* ¶¶ 77, 79; *GPSC Comments* at 19 n.17. Thus, consistent with its long-term commitment to disclosing metric issues, BellSouth did not try to conceal these changes from the GPSC or this Commission. *See BellSouth Varner Supp. Reply Aff.* ¶ 79.

That said, however, BellSouth recognizes that the better approach would be for BellSouth formally to notify interested parties about proposed changes to metric calculations such as this one before such changes are put in place. *See id.* BellSouth is willing to work expeditiously with private parties and the state commissions to put such a formal process in place. *See id.*

Finally, the record here addresses the concern raised by Birch and the DOJ that BellSouth's performance will not stay at its current high level. First, BellSouth's process improvements have been in place (and have been enhanced) over a period of many months now, and they have yielded consistently good performance. *See BellSouth Ainsworth Supp. Reply Aff.* ¶¶ 3-15. BellSouth, moreover, continues to work with individual CLECs to identify concerns and to make changes to its processes that will benefit both the CLECs and BellSouth. *See id.* ¶ 3. Finally, and importantly, as BellSouth explained in its Supplemental Application (at 26-27), it has agreed to pay significant performance penalties if it fails to meet this measure in the future. Those penalties (as well as the possibility of an enforcement action by this Commission) provide a significant deterrent to any "backsliding." *See GPSC Comments* at 19

(“the prospect of BellSouth having to pay penalties provides additional incentive for BellSouth’s service order accuracy performance to continue to improve”); *BTI Comments* at 3 (“[T]he ongoing monitoring of BellSouth’s performance, through the use of . . . performance metrics, provides a degree of comfort that BellSouth’s performance will continue to improve.”). Reliance on these penalties is consistent with this Commission’s precedents. *See, e.g., Kansas/Oklahoma Order* ¶ 269 (“the fact that a BOC will be subject to performance monitoring and enforcement mechanisms . . . constitute[s] probative evidence that the BOC will continue to meet its section 271 obligations”).

In this regard, as the DOJ properly recognizes, the GPSC is considering whether to require BellSouth to review all partially mechanized orders on an electronic basis, instead of sampling orders. *See DOJ Evaluation* at 12 (noting that the DOJ “supports this effort”). If adopted, that new electronic methodology would form the basis for any penalty payments in the future. Thus, there is no basis for speculation that BellSouth will not continue its compliant performance in this area.

**D. BellSouth Has Resolved Any Remaining Issues with Due Dates**

Although the Staff previously raised concerns about a problem with “double FOCs” for certain orders, BellSouth demonstrated in its Supplemental Application that this issue has been adequately resolved. BellSouth’s software fixes have taken effect, and the mechanized work-around that generated the second FOC is no longer being used. No double FOCs have been issued since February 11. *See BellSouth Stacy Supp. Reply Aff.* ¶ 147. Indeed, Birch now “confirm[s]” that the issue has been resolved. *Birch Comments* at 24.

WorldCom and US LEC also raise an additional issue related to due dates. *See WorldCom Comments* at 28-29; *US LEC/XO Comments* at 35-36. Specifically, these CLECs argue that the due dates provided on FOCs associated with some supplemental orders may incorrectly contain the due date of the original order, and not the new due date. After an investigation, BellSouth determined that a system problem caused incorrect due dates to be assigned to FOCs for these supplemental requests. *See BellSouth Stacy Supp. Reply Aff.* ¶¶ 170, 172. Under no circumstances, however, did this problem deny CLECs a meaningful opportunity to compete. As an initial matter, this problem had only a minor impact in LSR processing, affecting only approximately 3.7% of all LSRs in February 2002. *See id.* ¶ 175. Moreover, the correct due date was available by checking the CLEC Service Order Tracking System or referencing the Electronic PON Status Report, but the FOC did not reflect that date. *See id.* ¶ 174.

As soon as BellSouth was alerted to this issue, BellSouth took immediate steps to investigate the problem and diligently worked through the CCP to resolve it. *See id.* ¶ 175. As promised, BellSouth implemented a permanent fix to address the issue of incorrect due dates on supplemental LSRs on March 23, 2002. *See id.*

**E. Other OSS Issues Raised by Commenters Lack Merit**

Some CLECs raise additional OSS issues that were not among the concerns identified by the Commission's Staff. BellSouth already has responded to many of these issues, and none of these claims establishes that CLECs lack a meaningful opportunity to compete. BellSouth responds to all these claims in the attached affidavits of William Stacy, Alphonso Varner, Ken Ainsworth, David Scollard, Eric Fogle, and John Ruscilli/Cynthia Cox. BellSouth will address several of these issues here as well.



*Regionality.* As was the case with BellSouth's prior Application, BellSouth relies primarily on strong evidence of commercial usage in both Georgia and Louisiana to support this Supplemental Application. Again, however, because BellSouth's OSS are the same across BellSouth's nine-state region,<sup>23</sup> this Commission may properly rely on Georgia performance and the Georgia third-party test to support the Louisiana Application, and on Louisiana performance to support the Georgia Application. *See Second Louisiana Order* ¶ 56. *See also LPSC Staff Final Recommendation* at 40, CC Docket No. 01-277 (FCC filed Aug. 31, 2001) (Oct. 2, 2001 Application App. C – La., Tab 22) (“BellSouth has provided substantial evidence . . . either that there is a shared use of a single OSS, or, [where] it relies in part on separate systems, that the OSS can be reasonably expected to behave the same in all states.”); *id.* at 37-43.

Only one party contests BellSouth's regionality showing, and even that effort is half-hearted. WorldCom argues fleetingly that, because Georgia and Louisiana come from different legacy companies, the “likelihood” of differences is magnified. *WorldCom Comments* at 34. But, yet again, WorldCom fails to provide any facts that would demonstrate differences, let alone anything sufficient to rebut BellSouth's hard

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<sup>23</sup> BellSouth provided a detailed factual basis of its regionality claim – which included a third-party analysis conducted by PricewaterhouseCoopers – in its prior application and supporting materials. *See BellSouth Stacy Aff.* ¶¶ 657-689, CC Docket No. 01-277 (FCC filed Oct. 2, 2001); *BellSouth Stacy Reply Aff.* ¶¶ 384-389, CC Docket No. 01-277 (FCC filed Nov. 13, 2001); *BellSouth Heartley Aff.*, CC Docket No. 01-277 (FCC filed Oct. 2, 2001). This showing followed the Commission's *Kansas/Oklahoma Order*. *See Kansas/Oklahoma Order* ¶ 110. The Commission has previously recognized that BellSouth uses essentially the same OSS throughout its entire region. *See Memorandum Opinion and Order, Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599, ¶ 88 (1998) (“*Second Louisiana Order*”). *See also Memorandum Opinion and Order, Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina*, 13 FCC Rcd 539, ¶ 97 (1997); *Kansas/Oklahoma Order* ¶ 38.

evidence of region-wide systems. The Commission has rejected precisely this sort of speculative argument from WorldCom in the past, and should do so again here. *See Kansas/Oklahoma Order* ¶ 117 (“We . . . find unpersuasive WorldCom’s general speculation that other OSS differences are ‘likely’ to exist.”).

WorldCom also makes the wholly unfounded and speculative argument that, because BellSouth did not simultaneously update all nine states with the single order “C” process, BellSouth’s OSS “could” vary between states, and there is “reason to believe” these differences “may” be significant. *WorldCom Comments* at 34. But the fact that BellSouth will update systems on a rolling basis does nothing to prove that those systems are not the same, as this Commission has defined that term. In any event, BellSouth updated this ordering process in Georgia and Louisiana at the same time.<sup>24</sup>

*DSL Service and the UNE-P.* Some CLECs complain about BellSouth’s policy of not providing wholesale DSL service over a line on which an end user is receiving UNE-P service from a CLEC. *See, e.g., AT&T Comments* at 42-43; *CompTel Comments* at 6-8; *KMC Comments* at 12-14; *Xspedius Comments* at 7-8.

As BellSouth explained in a March 19, 2002 *ex parte* filing, to a large degree these commenters are simply disagreeing with this Commission’s precedent on this issue.

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<sup>24</sup> WorldCom also briefly speculates that alleged differential treatment of its use of an asterisk on its orders in some circumstances demonstrates a regionality issue. *See WorldCom Comments* at 34. WorldCom’s argument is misguided. As an initial matter, BellSouth has previously explained that these address-related rejects are caused solely by WorldCom, which could easily avoid them simply by using a valid field delimiter instead of an asterisk. *See BellSouth Stacy Reply Aff.* ¶ 128, CC Docket 01-277 (FCC filed Oct. 2, 2001). As is the case again, however, WorldCom is apparently more interested in preserving this as a regulatory issue than in resolving the problem. Moreover, WorldCom fails to explain how this issue will “lead[] to different OSS performance or inhibit[] a carrier’s opportunity to compete.” *Kansas/Oklahoma Order* ¶ 117 (“[W]e find no support in the record that OSS differences identified by WorldCom . . . leads to different OSS performance or inhibits a carrier’s opportunity to compete.”).

First, because BellSouth offers stand-alone DSL service only on a wholesale basis to network service providers (“NSPs”), it (like SWBT) currently has no obligation to offer that service for resale as a condition of section 271 approval. *See* 47 U.S.C. § 251(c)(4); *Arkansas/Missouri Order* ¶¶ 78-84; *BellSouth Fogle Aff.* ¶¶ 3-12, CC Docket No. 01-277 (FCC filed Oct. 2, 2001); *Oct. 2, 2001 Application* at 146-47, CC Docket No. 01-277 (FCC filed Oct. 2, 2001).

Although BellSouth will offer its wholesale DSL service on a resold voice line (*BellSouth Fogle Reply Aff.* ¶¶ 3-4, CC Docket No. 01-277 (FCC filed Nov. 13, 2001)), it does not, and need not, offer its wholesale DSL service on a line served by the CLEC through the UNE-P. In the *Texas Order*, the Commission expressly “reject[ed] AT&T’s argument that we should deny this application on the basis of SWBT’s decision to deny its xDSL service to customers who choose to obtain their voice service from a competitor that is using the UNE-P. *Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop.*” *Texas Order* ¶ 330 (footnote omitted; emphasis added). The Commission further noted that CLECs that wish to provide voice and data over such a loop are free to engage in line-splitting arrangements. *See id.* “As a result, a UNE-P carrier can compete with [a BOC’s] combined voice and data offering on the same loop by providing a customer with line splitting voice and data service over the UNE-P in the same manner.” *Id.* BellSouth offers electronic ordering of line splitting.

As the Commission recognized in the *Texas Order*, by asking BOCs to continue to provide DSL service on the high-frequency portion of the loop over which a CLEC offers voice service, CLECs are effectively asking for access to a “low-frequency portion

of the loop” UNE, which the Commission has not obligated BOCs to provide. *See id.*

The possibility of mandating such a new UNE has now been raised with the Commission, and the Commission has asked for comment on that issue in its *Triennial Review* docket. *See* Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 22781, ¶ 54 (2001) (“At least one party has urged us to require incumbent LECs to provide access to a low-frequency network element in order to facilitate the provisioning of basic services, with or without the provisioning by another party of an advanced service on the same facility. We seek comment generally on parties’ experience with our current rules concerning access to the high frequency portion of the loop and the proposals for further sub-frequency unbundling put forth and incorporated by reference in this proceeding.”) (footnote omitted).

Accordingly, even if the *Texas Order* did not resolve the issue under current law, that rulemaking proceeding, not this section 271 case, provides the appropriate forum to resolve this UNE question of general applicability and importance. As the Commission has often explained, “there will inevitably be, at any given point in time, a variety of new and unresolved interpretive disputes about the precise content of an incumbent LEC’s obligations to its competitors, disputes that our rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act.” *Texas Order* ¶ 23; *see also, e.g., Rhode Island Order*<sup>25</sup> App. D ¶ 4.

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<sup>25</sup> Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, FCC 02-63 (rel. Feb. 22, 2002).

BellSouth also implements its policy regarding wholesale DSL service on UNE-P lines in an appropriate manner. As explained in BellSouth's March 19 *ex parte*, since November 3, 2001, BellSouth has adhered to a WorldCom-requested proposal designed to avoid end users inadvertently losing DSL-based service from an NSP. Under the process developed in response to WorldCom's request, BellSouth clarifies a UNE-P order back to the CLEC when an NSP is receiving wholesale DSL service from BellSouth on the line. At that point, the CLEC is responsible for contacting the end user so that the end user may cancel the DSL-based service with its NSP. The NSP then sends a disconnect order to BellSouth. BellSouth then stops providing DSL service over the line, and the CLEC can resubmit the LSR for the UNE-P service. *See BellSouth Fogle Supp. Reply Aff.* ¶ 6.

To address any delays associated with this process, on January 27, 2002, Birch submitted a change request (CR0625) through the flow-through task force suggesting a fix to this issue. *See id.* ¶ 13. Under the Birch proposal, by submitting a specially configured LSR that specifies DSL removal as part of the conversion process, CLECs will have orders flow through without clarification. *See id.* This solution should limit delay and, because of the need to submit a special LSR, should ensure that the CLEC's agent does not inadvertently strip away the DSL service. CLECs should prioritize this proposal in April 2002. *See id.* Once the requirements for this proposal are established, and assuming that CLECs prioritize it highly, BellSouth will proceed promptly with development and deployment of this solution. *See id.*

Some CLECs also argue that a DSL USOC – that is, a code indicating that BellSouth is providing wholesale DSL service to an NSP – appears on some customer

service records even though no DSL service is being provided. *See Birch Comments* at 30; *KMC Comments* at 15. That is incorrect. A DSL USOC is placed on a customer service record only if an NSP has ordered wholesale DSL service. *See BellSouth Fogle Supp. Reply Aff.* ¶¶ 4, 9. The USOC is never simply a “placeholder,” as the CLECs appear to allege. *See id.*

In limited instances, the DSL USOC could appear on an end user’s record even though the end user is not being provided a DSL-based service by the NSP. In some cases, BellSouth has provisioned DSL on a line, as requested by the NSP, but the NSP has not yet completed installing the end user’s service. *See id.* ¶ 10 & n.5. In that case, BellSouth is billing the NSP for wholesale DSL, but the customer is not yet receiving DSL-based service. *See id.* In other cases, the end user has disconnected service with the NSP, but the NSP has not placed the disconnect order with BellSouth or BellSouth has not completely processed the disconnect order. *See id.*

These gaps affect a very small number of CLEC orders. BellSouth has found that only **0.37%** of UNE-P orders were clarified in January 2002 because of a DSL USOC where an end user did not appear to be receiving DSL-based service on the line. *See id.* ¶¶ 11-12 (explaining how this figure was derived).

That does not mean, however, that BellSouth is ignoring this issue. To address CLEC concerns, BellSouth has made available (first through a trial with Birch and, as of April 1, 2002, as an interim process for all CLECs) a process by which a CLEC, after receiving a clarification, would have the option to call a dedicated group at BellSouth’s Local Carrier Service Center (“LCSC”) to inform BellSouth that the end user is not in fact receiving DSL. *See id.* ¶ 14 & Exh. EF-1. The LCSC would then remove the DSL

USOC from the end user's account. *See id.* This new procedure should allow orders to be processed in the one- to three-business-day period that is generally necessary to implement changes in billing information on a CSR. *See BellSouth Scollard Supp. Reply Aff.* ¶ 9 (explaining that three business days is the normal period for CSR updates under the normal bill processing requirements, but that more than 70% of the updates occur within the initial 24-hour period).

*Outages on Conversion.* CLECs yet again raise claims of outages on conversion related to BellSouth's now-discontinued use of the "D" and "N" two-order process. A few CLECs continue to exaggerate the number of service outages or disruptions caused by the two-order process, but the GPSC has again found no significant problem here. *See GPSC Comments* at 21 ("[T]he [GPSC] stands by its conclusion that the occurrence of lost dial tone during UNE-P conversion is relatively isolated."). From November 2001 until February 2002, BellSouth processed more than 238,000 UNE-P orders in its region; only 0.47% experienced conversion-related problems. *See BellSouth Ainsworth Supp. Reply Aff.* ¶ 34. This includes not only loss of dial tone problems, but also any type of problem. *See id.* Only 0.29% of the conversions actually lost dial tone. *See id.* Indeed, NewSouth expressly acknowledges that, although it previously experienced problems, BellSouth's "performance in these areas has substantially improved." *NewSouth Comments* at 4. Clearly, CLECs are afforded a meaningful opportunity to compete when utilizing the UNE-P product.<sup>26</sup>

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<sup>26</sup> Indeed, even WorldCom's own evidence, when correctly stated by WorldCom, demonstrates the minimal impact of this issue. WorldCom's KPMG report concluded that less than 1% of WorldCom's orders lost dial tone in the time period. *See BellSouth Ainsworth Supp. Reply Aff.* ¶ 35.

In any event, as mandated by both the GPSC and the LPSC, on March 23, 2002, BellSouth implemented the single “C” ordering process to replace the “D” and “N” two-order process. *See BellSouth Ainsworth Supp. Reply Aff.* ¶ 37; *BellSouth Stacy Supp. Reply Aff.* ¶ 149. One CLEC has completed successful testing of the single “C” process, and additional CLECs have begun testing in CAVE. *See BellSouth Stacy Supp. Reply Aff.* ¶ 150. Given that the primary source of CLEC complaints is no longer being used, any complaints concerning the two-order process are now moot.

*Interface Availability.* A few CLECs complain about the stability of BellSouth’s interfaces. But, as BellSouth has repeatedly demonstrated, BellSouth’s recent performance on the monthly interface availability measurement has been excellent. In fact, BellSouth consistently meets the state commission-approved measures for interface availability. *See id.* ¶ 234. This Commission has relied upon analogous metrics in considering this issue in its prior orders. *See id.* ¶ 221 (discussing measures and performance of other BOCs in prior successful section 271 applications).

AT&T and other CLECs complain about outages in LENS during January 2002. *AT&T Seigler Decl.* ¶ 17; *US LEC/XO Comments* at 33. Although there were nine outages to LENS totaling 266 minutes posted to the CCP web site, this problem was caused by an Internet Service Provider (“ISP”), not BellSouth. *See BellSouth Stacy Supp. Reply Aff.* ¶ 233. Other CLECs using a different ISP experienced no outage. NewSouth reports, moreover, that BellSouth has taken “steps to decrease the likelihood of service-affecting and loss of service incidents,” and NewSouth is now “generally satisfied with the performance of LENS.” *NewSouth Comments* at 6.



Birch complains that BellSouth failed to address its concerns about the interface availability issue through the CCP. *See Birch Comments* at 19-20. But, although BellSouth believes that this issue is outside the scope of the CCP, BellSouth has *never* refused to provide Birch a root-cause analysis. *See BellSouth Stacy Supp. Reply Aff.* ¶ 225. In fact, Birch’s experience with BellSouth is an excellent example of how seriously BellSouth takes all system outages. After Birch directed this request to the EC Support Team instead of the CCP, BellSouth was “extremely responsive” (*Birch Comments* at 20) and immediately implemented a system improvement action plan that included dedicated support to help track and resolve Birch’s concerns. *See BellSouth Stacy Supp. Reply Aff.* ¶ 225. As a result, BellSouth identified and resolved the problem, and provided Birch with an analysis of its findings on March 15, 2002. *See id.*

## **II. BELLSOUTH’S PERFORMANCE MEASURES ARE STABLE AND RELIABLE**

BellSouth’s Supplemental Application demonstrated that BellSouth’s data provide a meaningful yardstick by which to judge BellSouth’s performance. *See Supp. Application* at 33-37. The repostings that occurred last summer, which created concern on the part of the Commission Staff, have dissipated, and comprehensive third-party audits confirm that the data BellSouth is reporting are accurate and reliable. These audits – which are more comprehensive than any third-party metric reviews that this Commission has previously relied upon in a section 271 case – are thoroughly evaluating all aspects of BellSouth’s data reporting. Among other things, KPMG is reviewing collection and storage practices, confirming BellSouth’s compliance with the metrics established by the GPSC, ensuring the integrity of BellSouth’s procedures for processing data, and validating the accuracy of the reported performance results. KPMG’s first two

audits are complete, and BellSouth passed nearly every evaluation criterion. Moreover, as described further below, Audit III is now nearing completion – all but one test segment is at least 67% complete – and it again confirms the reliability of BellSouth’s data. In no case has KPMG opened any exception or issue with any significant impact on the measures on which BellSouth relies. *See BellSouth Varner Supp. Reply Aff.* ¶ 24. Given the fact that these repeated and comprehensive evaluations have found no fundamental flaws in BellSouth’s data, this Commission should conclude, in accord with past precedent, that there is no “systematic failure” in BellSouth’s metrics and that they can be relied upon in evaluating BellSouth’s performance. *Arkansas/Missouri Order* ¶¶ 18-19 (rejecting claims about alleged unreliability of SWBT’s “massive data compilation” where there was no showing of such a systematic problem).<sup>27</sup>

Accordingly, it is unsurprising that the vast majority of CLECs make no specific claims that BellSouth’s data are not reliable. Indeed, as noted at the outset, one CLEC expressly acknowledges that its internal results “are generally consistent with the performance data that BellSouth has provided according to Louisiana and Georgia state requirements.” *NewSouth Comments* at 4.

Additional evidence has now been placed in the record that confirms the reliability of BellSouth’s data. The GPSC, after reviewing BellSouth’s data over a four-year period and holding nine days of workshops and conferences as part of its current metrics review, has confirmed the reliability of BellSouth’s data. The GPSC “finds no evidence of any significant data integrity problems or any issue that undermines the

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<sup>27</sup> BellSouth’s performance results remain very strong. Discrete performance issues raised by commenters are addressed in the attached supplemental reply affidavit of Alphonso Varner.

overall reliability of BellSouth's performance data." *GPSC Comments* at 30. That conclusion is highly significant because this Commission "has relied on the ability of state commissions to rigorously review performance data [and] identify problems." *Arkansas/Missouri Order* ¶ 20. Indeed, "in light of the statutory 90-day review process, the Commission encourages, and expects, careful review of performance data by state commissions." *Id.* The GPSC has undertaken that responsibility here, and its expert conclusion should be given significant weight. Moreover, the LPSC has also carefully reviewed BellSouth's performance metrics through many proceedings spanning four years, and has likewise concluded that BellSouth's data are reliable. *See LPSC Reply Comments* at 9-10, CC Docket No. 01-277 (FCC filed Nov. 13, 2001).

Despite this evidence, a few commenters (again, chiefly AT&T) argue that BellSouth's performance data should not be relied upon. These arguments do not withstand scrutiny.

First, AT&T contends that, despite the lack of recent BellSouth repostings, BellSouth has allegedly experienced significant data problems during the last few months. *See AT&T Comments* at 32. But the only examples that AT&T can dig up prove BellSouth's point here, not AT&T's. For instance, AT&T highlights an issue involving BellSouth's December fatal reject figures. But BellSouth has long since revealed this issue to this Commission, and explained that there was simply a clerical error that caused November fatal reject data to be reported for December. *See BellSouth Varner Supp. Reply Aff.* ¶ 14. Such a ministerial mistake casts no doubt on BellSouth's overall data accuracy. Similarly, although AT&T highlights an alleged error in coordinated customer conversions data, BellSouth fully disclosed this exceedingly minor issue, as AT&T

acknowledges. *See AT&T Comments* at 32 (citing BellSouth exhibit). Moreover, as Mr. Varner explains, no reposting was necessary both because this error was miniscule – it involved a change of *less than 0.01%* – and because recoding was required. *See BellSouth Varner Supp. Reply Aff.* ¶ 18. AT&T also cites to an issue involving Average Completion Notice Interval. But BellSouth has repeatedly informed the Commission and the CLEC community about issues unique to that particular metric; the change again required recoding; and the error involved a 0.5 percentage point impact on results. *See id.* ¶ 17.

The fact that these sorts of examples involving a few scattered issues apparently reflect the most significant concerns that AT&T can find confirms again the overall reliability of BellSouth’s data. *See also id.* ¶¶ 7-9, 45-60 (addressing other AT&T claims). As the GPSC itself has concluded after reviewing these same arguments, many of AT&T’s claims have “nothing to do with the integrity of BellSouth’s performance data,” but rather involve AT&T “complaints about certain exclusions in the SQM or the manner by which BellSouth had implemented the [GPSC’s] orders.” *GPSC Comments* at 31 n.23. In other instances, AT&T’s arguments simply “represent an apparent lack of familiarity with BellSouth’s SQM.” *Id.* Indeed, even if AT&T’s arguments as to these issues had merit, the measures that it attacks at most “comprise a handful” of the thousands of sub-metrics that BellSouth reports every month and, under this Commission’s precedent, would cast no doubt on the overall reliability of BellSouth’s data. *See Arkansas/Missouri Order* ¶ 18. In any event, the GPSC and the LPSC will continue to engage in review and monitoring of BellSouth’s data. *See GPSC Comments* at 30-31.

Nor has AT&T provided any basis to ignore BellSouth's excellent results in the KPMG audits. AT&T's lead argument is that Audit III is allegedly crucial, and that it is not sufficiently complete to reach a conclusion. *See AT&T Comments* at 34. Even if AT&T's claim were correct, AT&T ignores that KPMG has now completed at least 67% of all but one test segment, including data collection and storage, standards and definitions, and – of perhaps greatest significance – data replication. *See BellSouth Varner Supp. Reply Aff.* ¶ 20. KPMG has thus done extensive work in the third audit, and it has not found any problems that affect the fundamental validity of BellSouth's data. *See id.* ¶ 24.

In any event, this Commission has never previously required a complete audit of every measure. On the contrary, in the *Texas Order*, the Commission relied on SWBT's data even though much of it had not been audited (*Texas Order* ¶ 57), and, in the *Arkansas/Missouri Order* (at ¶ 16), the Commission expressly rejected the notion that SWBT's data must “undergo a comprehensive verification.” Here, BellSouth's data have undergone a more comprehensive verification than in any prior application, and they have been found to be reliable. No more is necessary.

### **III. COMMENTERS' RECYCLED PRICING ARGUMENTS DO NOT DEMONSTRATE ANY VIOLATION OF BASIC TELRIC PRINCIPLES OR CLEAR FACTUAL ERROR**

In its October 2001 Application, BellSouth demonstrated that its rates in both Georgia and Louisiana are fully compliant with the 1996 Act and this Commission's TELRIC rules. BellSouth submitted affidavits from Daonne Caldwell, Jamshed Madan/Michael Dirmeier, and John Ruscilli/Cynthia Cox that explained in detail why the record-based and fact-intensive determinations of the GPSC and the LPSC conformed in

all respects to this Commission's requirements. In its Evaluation of BellSouth's initial Application, the DOJ voiced no concern with BellSouth's prices in either state.

Nevertheless, some commenters – chiefly, the incumbent interexchange carriers that have an enormous incentive to prevent enhanced long-distance competition – raised a series of issues with BellSouth's rates. In its Reply Comments, BellSouth responded to each of those arguments. Specifically, the Reply Affidavits of Daonne Caldwell and John Ruscilli/Cynthia Cox explained why these arguments were inconsistent with the record developed by the state agencies, second-guessed reasonable record-based judgments by the expert regulators, ignored clear holdings from this Commission's prior orders, and were otherwise without merit. Additionally, BellSouth promptly addressed CLEC concerns on one issue by reducing its Daily Usage File ("DUF") rates in Louisiana. *See* Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 01-277 (FCC filed Dec. 18, 2001).

In this proceeding, the DOJ has once again raised no issue as to BellSouth's rates. A few commenters, however, recycle the same claims that were asserted in response to the October 2001 Application. They do so, however, without even noting, much less rebutting, BellSouth's demonstration in its Reply Comments in CC Docket No. 01-277 that these arguments are uniformly without merit. These parties' decision not even to counter BellSouth's arguments must be understood as a tacit admission that they have no legitimate response to BellSouth's submissions. In any event, the Supplemental Reply Affidavits of Daonne Caldwell and John Ruscilli/Cynthia Cox again refute each of these arguments. BellSouth will address in this brief only some of the arguments that the long-

distance incumbents press most vociferously. Two additional issues (involving loading factors and drop lengths) were addressed in an *ex parte* letter that BellSouth filed at the request of Commission Staff on March 26, 2002.<sup>28</sup>

In assessing these commenters' pricing claims, it is important to remember that the commenters bear a heavy burden. This Commission does not review pricing determinations *de novo*. Rather, to disturb the judgments that these state commissions made after lengthy proceedings including live testimony and opportunity for cross-examination, the Commission must conclude that the expert state agencies violated "basic TELRIC principles" or made "clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." *New York Order* ¶ 244. No party has come close to meeting that properly demanding test here.

*IDLC/UDLC and Use of Multiple Loop Scenarios.* WorldCom argues that the loop methodologies used in both Georgia and Louisiana are improper because they assume the use of UDLC, not IDLC – digital loop carrier that is integrated directly into a switch – to determine the forward-looking costs of unbundled loops. *See WorldCom Comments* at 40-42.

These claims have been rejected by both the GPSC and the LPSC and are unsupported by evidence, inconsistent with this Commission's own judgments, and infected by other errors. As an initial matter, it is important to stress that the Georgia studies in question were solely for *stand-alone unbundled* loops. Different studies and

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<sup>28</sup> See Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to William Caton, Acting Secretary, FCC, CC Docket No. 02-35 (FCC filed Mar. 26, 2002).

assumptions (including the extensive use of IDLC) were employed for loops combined with switch ports. *See BellSouth Caldwell Supp. Reply Aff.* ¶ 32.

Although, as WorldCom notes, IDLC can theoretically be used for unbundled loops, there are significant additional costs that make IDLC an inefficient technology for that purpose. *See id.* ¶¶ 28-30. Before a voice grade circuit can go to a CLEC's collocation space, an unbundled loop must be removed from the DLC digital DS1, converted to voice grade, and terminated on the main distribution frame ("MDF"). *See id.* ¶ 28. As the Commission has explained, the methods available to do this conversion are not economical. To provide an IDLC loop separate from the switch ports requires using such methods as "side door grooming" or "hairpinning," multiple switch hosting, and other work-arounds. *See id.* ¶ 29. This Commission has expressly recognized that these methods "have not proven practicable" and are "very expensive." Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, ¶ 217 nn.417-18 (1999). These approaches are thus neither efficient nor forward-looking, and it was, to say the least, not a violation of "basic TELRIC principles" to exclude IDLC loops for the purpose of pricing stand-alone loops. Indeed, WorldCom never even presented any evidence to the GPSC or the LPSC seeking to quantify the costs necessary to convert IDLC for use in provisioning stand-alone loops. *BellSouth Caldwell Supp. Reply Aff.* ¶ 30. Accordingly, WorldCom's assertion (*Frentrup Decl.* ¶ 12) that the "use of IDLC would significantly lower the cost of a loop" is wholly unsupported by the record and substantively invalid. *See BellSouth Caldwell Supp. Reply Aff.* ¶ 30; *see also*



*Massachusetts Order*<sup>29</sup> ¶ 147 (carriers should bring issues “to the attention of state commissions so that factual issues can be resolved before a BOC applicant files a section 271 application”). This claim provides no basis to reject this Application.<sup>30</sup>

For similar reasons, WorldCom is also incorrect in arguing that the use of multiple scenarios in BellSouth’s Louisiana study “results in loss of the economies of scope that occur in a multi-use network.” *WorldCom Comments* at 41. In fact, because BellSouth considers the entire quantity of lines in each scenario, its methodology captures economies of scope. *BellSouth Caldwell Supp. Reply Aff.* ¶ 40. Moreover, as the LPSC reasonably concluded, if BellSouth did not use multiple scenarios, it would not recover its costs. For instance, if BellSouth relied exclusively on the “combo” scenario, it would not recover costs unique to the provision of stand-alone loops. *See id.* ¶ 37. WorldCom provides no explanation why BellSouth should be saddled with such under-recoveries.

For all these reasons, the LPSC, after receiving extensive, conflicting testimony on this specific issue, acted reasonably in rejecting these same WorldCom arguments and adopting BellSouth’s approach as, in the LPSC’s words, the “most reasonable and

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<sup>29</sup> Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988 (2001).

<sup>30</sup> Nor is it correct, as WorldCom claims, that, where IDLC is included in a study, the only proper result is to assume 100% use of IDLC that uses the GR-303 protocol. *See WorldCom Comments* at 41. This precise issue was presented to the GPSC, which required BellSouth to include *more than 20 times* as much GR-303 in its study as BellSouth’s network actually contains, but rejected the argument that it should be assumed in all cases. *See BellSouth Caldwell Reply Aff.* ¶ 57, CC Docket No. 01-277 (FCC filed Oct. 2, 2001). The GPSC’s decision on that point is consistent with AT&T’s own witness’s statement that GR-303 deployment may not make sense in all circumstances. *See id.*

accurate.” Order at 8, *Final Deaveraging of BellSouth Telecommunications, Inc. UNE Rates*, Docket No. U-24714(A) (LPSC Sept. 21, 2001) (Oct. 2, 2001 Application App. F – La., Tab 40). Indeed, every state commission in BellSouth’s region that has decided the issue has concurred in that judgment. *See BellSouth Caldwell Reply Aff.* ¶ 68, CC Docket No. 01-277 (FCC filed Nov. 13, 2001).

*Residential/Business Mix.* WorldCom again states that the approximate 78% residential and 22% business weightings used in Georgia “are not consistent with the mix of residence and business lines reported by BellSouth in its latest ARMIS filing, or with the mix used in the SM.” *WorldCom Frentrup Decl.* ¶ 21. Besides the fact that Mr. Frentrup seeks to rely improperly on the *Universal Service* Synthesis Model in direct contravention of this Commission’s warnings (*see Kansas/Oklahoma Order* ¶ 84), his argument ignores the fact that the residential/business split contained in the GPSC’s decision is consistent with the results of the sample that BellSouth provided. *See BellSouth Caldwell Supp. Reply Aff.* ¶ 14. WorldCom has given this Commission no reason to disturb the GPSC’s factual judgment on this issue.

*Relevance of BellSouth’s Proposed Georgia Rates.* AT&T argues that, by submitting cost studies in the ongoing GPSC proceeding that would reduce those rates, BellSouth has somehow “conceded” that its current recurring “non-loop” and DUF rates in Georgia are too high. *AT&T Comments* at 45. AT&T’s argument is both misleading and contrary to precedent, fairness, and common sense.

First, although AT&T claims that BellSouth proposes to reduce “non-loop” costs by 81%, it acknowledges in a footnote (*id.* at 45 n.38) that it obtained that figure by *ignoring* a \$2.27 recurring monthly non-loop charge that BellSouth has requested in the

ongoing GPSC proceeding. When that charge is added back in, the new proposed rate approaches the current one (it differs by approximately 12%, not 81%) and does not suggest, even in isolation, that the existing non-loop rate falls outside the range of possible TELRIC results. *See Kansas/Oklahoma Order* ¶ 91 (“TELRIC-based pricing can result in a range of rates”); *BellSouth Ruscilli/Cox Supp. Reply Aff.* ¶ 13.

Even if there were some reason to believe that costs have dropped more dramatically, that would not help AT&T here. Both this Commission and the D.C. Circuit have squarely rejected such a claim: “[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.” *Rhode Island Order* ¶ 31 (quoting *AT&T Corp. v. FCC*, 220 F.3d 607, 617-18 (D.C. Cir. 2000)).

In any event, AT&T’s argument suggests an improper and wholly one-sided approach to this issue. Although AT&T highlights a few areas in the new GPSC proceeding in which BellSouth has identified a modest reduction in cost, it notably does not argue that BellSouth’s other proposed TELRIC rates – which are *higher* than existing prices – also be adopted. Over time, some costs will rise, and others will fall. If AT&T truly believes that BellSouth’s new cost studies more properly approximate costs, then it should support immediate implementation of *all* the rates contained in those studies. *See BellSouth Ruscilli/Cox Supp. Reply Aff.* ¶ 16. AT&T cannot pick the new BellSouth results that it likes, and ignore the ones that it does not.

Precisely because AT&T and other CLECs would never agree to accept BellSouth's new studies across-the-board, the proper course – and the one taken by this Commission in the past – is to rely on the GPSC to establish new rates based on the record that it is now developing. *See Massachusetts Order* ¶¶ 35-38. In this regard, the fact that BellSouth has recognized those instances where the GPSC may want to lower rates at the conclusion of its current proceeding simply demonstrates BellSouth's good faith, and should provide added assurance, if any were necessary, that rates in Georgia will continue to be forward-looking and consistent with competitive entry. *See BellSouth Ruscilli/Cox Supp. Reply Aff.* ¶¶ 11-17.

Finally, AT&T's argument is particularly misguided with regard to DUF rates. BellSouth has made clear that its current DUF rates in Georgia are subject to true-up. Thus, to the extent that the GPSC orders lower rates in its new proceeding, AT&T will receive the benefit of that determination retroactively. *See id.* ¶ 15. The only exception to the availability of true-up is for “enhanced optional daily usage files,” where BellSouth has proposed to increase rates in the new proceeding. *See* Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to William Caton, Acting Secretary, FCC, CC Docket No. 02-35 (FCC filed Mar. 15, 2002).<sup>31</sup>

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<sup>31</sup> AT&T further contends that, even if TELRIC-compliant, BellSouth's UNE prices are “discriminatory” in that they exceed the prices that BellSouth charges itself when it provides retail service. *AT&T Comments* at 51. First, the non-discrimination requirement in this context does not have anything to do with retail rates; rather, it ensures that the same wholesale rates are charged to all CLECs. *See First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶¶ 859-61 (1996) (subsequent history omitted). Moreover, AT&T's claim is predicated on the notion that BellSouth's retail rates are subject to an “imputation rule” – *i.e.*, a rule that “would require that the sum of prices charged for a basket of unbundled network elements not exceed the retail price for a service offered using the same basket of elements.” *Id.* ¶ 839. But the Communications

#### IV. APPROVAL OF THIS APPLICATION IS IN THE PUBLIC INTEREST

BellSouth's October 2001 Application established that entry into long distance in Georgia and Louisiana would result in hundreds of millions of dollars of consumer savings in local and long distance. *Oct. 2, 2001 Application* at 150-51, CC Docket No. 01-277. This analysis, which is based on data compiled by TRAC, a nonprofit public interest consumer group, is virtually undisputed. Indeed, no party contests that BellSouth's entry into long distance will trigger lower long-distance prices from the Big Three dominant interexchange carriers, as Bell company entry has done in other states. Nor does anyone doubt that, once BellSouth is authorized to provide long distance in Georgia and Louisiana, CLECs will ramp up their efforts even further to compete in the local market – again, as they have in other states with Bell company entry.

Instead of disputing this concrete evidence of consumer gain, a few commenters – AT&T in particular – argue that it is outweighed by speculative concerns regarding a so-called “price squeeze” created by BellSouth's UNE prices in Louisiana. *AT&T Comments* at 50-60; *see Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir.

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Act grants states broad authority to set retail rates, *see* 47 U.S.C. § 152(b), and does not even suggest that those rates must impute UNE rates. Indeed, the House bill that ultimately became the 1996 Act would have required an ILEC, in establishing retail rates for intrastate telecommunications services provided over its own network, “to impute to itself the charge for access [to UNEs] and interconnection that it charges other persons for providing such services.” H.R. Conf. Rep. No. 104-458, at 121 (1996); *see also* H.R. Rep. No. 104-204, Pt. 1, at 4, 73 (1995). That provision was ultimately rejected. And, as the Supreme Court has explained, “[f]ew principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442-43 (1987) (internal quotation marks omitted).

2001) (remanding without vacating *Kansas/Oklahoma Order* for explanation of rejection of price-squeeze claim). This claim fails both on the law and on the facts.<sup>32</sup>

The price-squeeze claim fails at the outset because the Louisiana market is characterized by ample residential competition. AT&T claims that this is irrelevant, on the theory that “nothing in . . . the *Sprint* decision . . . remotely establishes” a threshold residential market share test for the price-squeeze claim. *AT&T Comments* at 53. In fact, the *Sprint* decision expressly and unequivocally confines its holding to local markets that, “[i]n contrast to . . . New York and Texas,” are “characterized by relatively low volumes of residential competition.” *Sprint*, 274 F.3d at 553. Because the residential market in Louisiana is *more* competitive than in Texas or New York at the time of their applications, *see Supp. Application* at 38-39, AT&T’s claim fails.

AT&T seeks to avoid this damning fact on the theory that it is really UNE-based competition that is relevant, not competition as a whole. *AT&T Comments* at 54. But nothing in the *Sprint* decision supports that characterization, and it would make no sense. The *Sprint* decision expresses concern that a BOC’s UNE prices might “doom[] competitors to failure” in their efforts to compete in the residential market. *Sprint*, 274 F.3d at 554 (emphasis added). That concern obviously does not exist when, as here, competitors have proven their ability to compete in that market, regardless of whether they have chosen to use their own facilities, UNEs, resale, or some combination of the three.

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<sup>32</sup> A few commenters also raise other alleged public interest concerns regarding supposedly improper win-back activity and local service freezes, among other things. BellSouth addressed these arguments in its Reply Comments in CC Docket No. 01-277 (at 90-92) and further discusses them in the attached supplemental reply affidavit of John Ruscilli/Cynthia Cox.

Moreover, even if the Louisiana residential market were not sufficiently competitive to allay the *Sprint* court's concern, the Commission would still have ample discretion to reject the price-squeeze claim out-of-hand. *See Supp. Application* at 39. AT&T disagrees, reasoning that the *Sprint* decision itself *commands* the Commission to evaluate the merits of the price-squeeze claim in the context of section 271. *See AT&T Comments* at 55. But, as BellSouth explained in its Supplemental Application – and as AT&T flatly ignores – the D.C. Circuit expressly gave the Commission the option of “explain[ing] why the public interest does not require it to” pursue a price-squeeze analysis. *Sprint*, 274 F.3d at 554.

In doing so, moreover, the court itself identified two reasons why such an analysis would be unsuited to the section 271 process. First, “the potential scale of a serious price squeeze inquiry” may be incompatible with the “90-day limit [that] constrains the scope of the Commission’s inquiries.” *Id.* at 555-56. And, second, such an analysis may be futile, as “the residential market may not be attractive to competitors even if UNE costs are at the lower end of TELRIC.” *Id.* at 556.<sup>33</sup> The *Sprint* decision thus plainly permits – even encourages – the Commission simply to conclude that the price-squeeze claim has no place in the section 271 public interest analysis (provided it articulate its reasoning for that conclusion).

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<sup>33</sup> AT&T brazenly contends that, in its request to defer briefing in the pending appeal of the *Massachusetts Order*, the Commission expressly “recogni[zed]” that it must grapple with the claim under section 271. *AT&T Comments* at 54. In fact, the Commission’s request to defer briefing was, by its own terms, made only so that the Commission could assess the impact, if any, of the *Sprint* decision on the record in that case. *See FCC’s Emergency Motion to Defer Briefing* at 3, *WorldCom, Inc. v. FCC*, No. 01-1198 (D.C. Cir. filed Jan. 7, 2002). It hardly presents a definitive statement of the Commission’s views on the issue.

The reasons supporting this conclusion are many. First, as AT&T concedes (at 55-56), the price squeeze argument is relevant only insofar as AT&T can identify a single “input” that is “essential” to the provision of local exchange service. AT&T has numerous options for competing in the local market – it can offer facilities-based service, resell BellSouth’s services, use stand-alone UNEs, or use the UNE-P. An analysis that focuses only on one of these alternatives fails on its face to establish that competitors are “doom[ed] to failure” in the local market.

Recognizing this, AT&T makes a half-hearted attempt to explain why the options other than UNE-P are not viable. As to facilities-based competition, for example, AT&T claims that not enough lines are *currently* being served on a facilities-basis to make this a meaningful mode of entry. *See AT&T Comments* at 58. But that says nothing at all about whether competitors that *choose* to provide such service can in fact do so. Indeed, as the DOJ has recognized, “[f]acilities-based competition for residential customers [in Louisiana] has been strengthened by the entry of Cox Louisiana Telecom.” *DOJ Evaluation* at 6. Likewise, as to stand-alone UNEs, AT&T baldly claims that switches are too expensive, and that hot cut performance is too unreliable to permit entry. *AT&T Comments* at 58. But CLECs have already deployed switches in Louisiana, and AT&T does not suggest that these switches cannot be used to provide residential service. Moreover, AT&T’s conclusory claims regarding hot cuts are contradicted by the record evidence that demonstrates beyond legitimate dispute that BellSouth’s performance easily provides CLECs a meaningful opportunity to compete. *See BellSouth Varner Ga. Aff.* ¶¶ 238-244, CC Docket No. 01-277 (FCC filed Oct. 2, 2001); *BellSouth Varner La. Aff.* ¶¶ 251-257, CC Docket No. 01-277 (FCC filed Oct. 2, 2001).



Most fundamentally, AT&T wholly fails to come to grips with the availability of resale to serve the residential market. As BellSouth has previously explained, by *guaranteeing* CLECs the ability to serve all residential customers at a statutorily mandated discount, the statute expressly accounts for – and renders impossible – a price squeeze. *See Supp. Application* at 40. And AT&T’s claim that resale is irrelevant – because it does not allow a CLEC to provide exchange access over the BOC’s facilities (*AT&T Comments* at 57) – is nothing short of bizarre. The question posed by *Sprint* is whether BellSouth’s UNE prices can conceivably “doom[] competitors to failure” in the local market. Congress has decided to avoid such concerns by granting CLECs a guaranteed margin if they chose one mode of entry into that market. AT&T’s assertion that this method is insufficient is simply a complaint about the statutory scheme that Congress enacted. And, of course, there is nothing in the 1996 Act that would prohibit a reseller from also providing long-distance service. In any event, to the extent AT&T is now arguing that its concerns are really about a price squeeze in the long-distance market (*see id.*), the Commission has decisively rejected that possibility. *See, e.g.,* First Report and Order, *Access Charge Reform*, 12 FCC Rcd 15982, ¶¶ 277-278 (1997) (confirming that Commission’s existing rules prevent BOCs from using exchange access to squeeze competitors in the long-distance market).

At bottom, the legal authority for AT&T’s price-squeeze claim is the Supreme Court’s decision in *FPC v. Conway Corp.*, 426 U.S. 271 (1976). *See AT&T Comments* at 51. But, as discussed above, the D.C. Circuit plainly did not read *Conway* as creating a requirement that the Commission consider the price-squeeze issue in this context, as its decision expressly allows the Commission simply to explain why such an inquiry is not

appropriate here. In any event, that case is inapposite. As the Commission has previously explained, “[b]y definition, . . . a price squeeze determination requires an analysis at two sets of prices – one at the wholesale level and one at the retail level.” Memorandum Opinion and Order, *INFONXX, Inc. v. New York Tel. Co.*, 13 FCC Rcd 3589, ¶ 18 (1997). *Conway* involved the “paradox of dual ratesetting” under the Federal Power Act – the *federal* agency had authority over wholesale rates, although the state had jurisdiction over retail rates. *See City of Anaheim v. FERC*, 941 F.2d 1234, 1245 (D.C. Cir. 1991) (internal quotation marks omitted). Here, by contrast, the 1996 Act places jurisdiction over *both* retail rates and specific UNE rates at the state level. Thus, to the extent a price-squeeze claim may be relevant at all, it must be directed at the state commission. AT&T is of course free to challenge the Louisiana wholesale rates in a federal district court under 47 U.S.C. § 252(e)(6), and it is equally free to challenge Louisiana residential retail rates in a proceeding before the appropriate state tribunal. It may even be able to argue that Louisiana residential retail rates are a barrier to entry under 47 U.S.C. § 253. Its efforts to raise its price-squeeze concerns before this Commission in the section 271 process, however, are misplaced.<sup>34</sup>

Even if the Commission were to examine AT&T’s price-squeeze claim on the facts, moreover, it would still fail. As explained in the supplemental reply affidavit of John Ruscilli and Cynthia Cox, AT&T’s analysis is unsubstantiated in many places – when, for example, it insists that a CLEC requires a \$10 margin per customer to enter the

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<sup>34</sup> To the extent such a claim can be made to this Commission, moreover, it should be made under 47 U.S.C. § 253(d), which gives the Commission authority to preempt state legal requirements that operate as a barrier to entry. *See Supp. Application* at 40-41. Aside from its misreading of the *Sprint* decision, AT&T offers nothing to call that conclusion into question. *See AT&T Comments* at 58-59.

local market – and just plain wrong in others – when, for example, it insists that intraLATA toll revenue should not be included in a margin analysis. *See BellSouth Ruscilli/Cox Supp. Reply Aff.* ¶¶ 85-95. A properly conducted analysis, even without considering toll revenues, shows that BellSouth’s UNE prices provide CLECs a margin of \$18.27 (or 47%) for approximately 72% of the lines in the state, and a margin of \$7.65 (or 19.7%) for an additional 23% of the lines. *See id.* ¶¶ 89-90 & Table 1. On a state-wide average basis, *AT&T could obtain a potential 35% margin in Louisiana*, a fact that by itself negates AT&T’s price-squeeze claim. Thus, at most, AT&T can establish that, for approximately 5% of the BellSouth lines in Louisiana, it may be unprofitable to serve the *entire* residential market on an undifferentiated basis. *See id.* ¶ 91. But AT&T has no interest in serving the entire residential market on an undifferentiated basis – rather, it attempts to pick off high-volume, high-revenue customers. *See id.* And, in any event, even if AT&T wishes to market to that entire 5%, it can do so by reselling BellSouth’s service at more than a 20% discount. *See id.* ¶ 94. It is simply impossible to say that BellSouth’s UNE prices “doom[] [AT&T] to failure” in the residential market in Louisiana.

Moreover, AT&T’s complaint is particularly disingenuous in light of the fact that, if the LPSC had accepted the CLECs’ proposal, the UNE rates for most rural 5% of BellSouth lines in Louisiana that is at issue here would have been considerably higher. In particular, WorldCom and other CLECs argued for extreme rate deaveraging in Louisiana, which could have led to UNE-P rates as high as \$191 per month in some areas (as opposed to the current \$48 rate). *See id.* ¶¶ 92-93 & Table 2. Having supported such

extraordinary deaveraging before the LPSC, AT&T is hardly in a position to complain about the effects of the LPSC's more limited deaveraging.

### CONCLUSION

This Joint Application should be approved promptly.

Respectfully submitted,

JAMES G. HARRALSON  
FRED J. McCALLUM, JR.  
JIM O. LLEWELLYN  
LISA S. FOSHEE  
4300 BellSouth Center  
675 West Peachtree Street  
Atlanta, GA 30375

BENNETT L. ROSS  
1025 Lenox Park Blvd.  
Suite 6C01  
Atlanta, GA 30319

VICTORIA K. McHENRY  
365 Canal Street  
Suite 3060  
New Orleans, LA 70130

JONATHAN B. BANKS  
1133 21st Street, N.W.  
Room 900  
Washington, D.C. 20036  
*Counsel for BellSouth Corporation and  
BellSouth Telecommunications, Inc.*

---

MICHAEL K. KELLOGG  
SEAN A. LEV  
LEO R. TSAO  
KELLOGG, HUBER, HANSEN,  
TODD & EVANS, P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036

JEFFREY S. LINDER  
SUZANNE YELEN  
WILEY REIN & FIELDING, LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
*Counsel for BellSouth Corporation,  
BellSouth Telecommunications, Inc., and  
BellSouth Long Distance, Inc.*

HARRIS R. ANTHONY  
400 Perimeter Center Terrace  
Suite 350  
Atlanta, GA 30346  
*Counsel for BellSouth Long Distance,  
Inc.*

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