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STATE OF GEORGIA

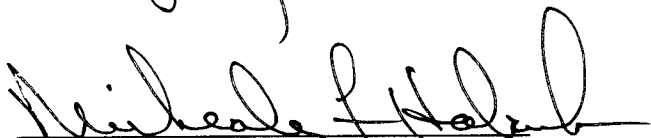
COUNTY OF FULTON

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Cynthia K. Cox, BellSouth Telecommunications, Inc., being by me first duly sworn deposed and said that:

She is appearing as a witness before the Kentucky Public Service Commission in "Investigation Concerning the Propriety of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996," KY PSC Case No. 2001-105, and if present before the Commission and duly sworn, her testimony would be set forth in the annexed transcript consisting of 41 pages and 4 exhibit(s).

  
\_\_\_\_\_  
Cynthia K. Cox

SWORN TO AND SUBSCRIBED BEFORE ME this  
25<sup>th</sup> day of July, 2001.

  
\_\_\_\_\_  
NOTARY PUBLIC

**MICHEALE F. HOLCOMB**  
Notary Public, Douglas County, Georgia  
My Commission Expires November 3, 2001

1                                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                                   REBUTTAL TESTIMONY OF CYNTHIA K. COX  
3                                   BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION  
4                                   CASE NO. 2001-105  
5                                   July 30, 2001

6  
7    Q.    PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH  
8           TELECOMMUNICATIONS, INC. (“BELLSOUTH”) AND YOUR BUSINESS  
9           ADDRESS.

10  
11   A.    My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for  
12           State Regulatory for the nine-state BellSouth region. My business address is 675  
13           West Peachtree Street, Atlanta, Georgia 30375.

14  
15   Q.    ARE YOU THE SAME CYNTHIA COX THAT FILED DIRECT TESTIMONY  
16           IN THIS PROCEEDING?

17  
18   A.    Yes. On May 18, 2001, I filed direct testimony, including five exhibits. On June  
19           22, 2001, I filed Supplemental Direct Testimony, including Revised Exhibit  
20           CKC-5.

21  
22   Q.    WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

23  
24   A.    The purpose of my rebuttal testimony is to respond to the testimony filed on  
25           behalf of several parties in this proceeding. Specifically, I respond to portions of

1 the testimonies of Messrs. Mark Argenbright and Greg Darnell filed on behalf of  
2 WorldCom, Inc. (“WorldCom”), Mr. Jay Bradbury and Ms. Denise Berger, filed  
3 on behalf of AT&T Communications of the South Central States, Inc. (“AT&T”)  
4 and Mr. Joseph Gillan, filed on behalf of the Southeastern Competitive Carrier  
5 Association (“SECCA”).

6

7 Q. HOW IS THE REMAINDER OF YOUR REBUTTAL TESTIMONY  
8 ORGANIZED?

9

10 A. The remainder of my rebuttal testimony is structured into four sections: 1)  
11 General Comments; 2) Status of Local Competition and Track A Compliance; 3)  
12 Specific requirements of the Act or checklist item being addressed by the specific  
13 intervening party; and 4) Comments of intervening parties that do not relate to a  
14 specific checklist item.

15

16 **GENERAL COMMENTS**

17

18 Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING THE  
19 TESTIMONY FILED ON BEHALF OF WORLDCOM?

20

21 A. Yes. As the Kentucky Public Service Commission (“KPSC” or “Commission”) is  
22 aware, the purpose of this proceeding is to address BellSouth’s compliance with  
23 the requirements of Section 271 of the Telecommunications Act of 1996 (the  
24 “Act”). As the FCC has noted, at any point in time there will be new and  
25 unresolved interpretive disputes about the precise content of an incumbent local

1 exchange carrier's ("ILEC's") obligation to its competitors, disputes that FCC  
2 rules have not yet addressed and that do not involve per se violations of self-  
3 executing requirements of the Act. (*See* SWBT Order-KS/OK<sup>1</sup> at ¶ 19).  
4 Requiring resolution of every interpretive dispute would undermine Congress'  
5 intent to give Bell Operating Companies ("BOCs") like BellSouth incentive to  
6 open its local market to competition. Thus, it is not incumbent upon the KPSC to  
7 resolve every interpretive dispute raised by the competitive local exchange  
8 carriers ("CLECs") in this proceeding. This is particularly true where, as here,  
9 many of these disputes have been brought before this Commission for discussion,  
10 and decisions have been made on the issues in the context of separate arbitrations,  
11 like the AT&T Arbitration in Case No. 2000-465.

12  
13 Despite the explicit purpose of this proceeding, WorldCom's witnesses have  
14 largely presented issues that currently are being, or have been, addressed in  
15 arbitration proceedings before this or other state commissions in BellSouth's  
16 region. In this proceeding, WorldCom now seeks to raise many of the same  
17 issues that it has arbitrated before other state commissions, some of which have  
18 been heard by this Commission in other arbitration cases. Although this  
19 proceeding is not the appropriate forum for many of the issues raised by  
20 WorldCom in their direct testimony, I will respond to these issues to the extent  
21 the KPSC has not heard them in the context of their implication in this  
22 proceeding.

23  
24

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<sup>1</sup> *Joint Application by SBC Communications, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Report and Order (Released January 22, 2001) ("SWBT Order-KS/OK").

1

2 **STATUS OF LOCAL COMPETITION AND TRACK A COMPLIANCE**

3

4 Q. DO YOU HAVE ANY GENERAL COMMENTS ON MR. GILLAN'S  
5 COMMENTS ON BELLSOUTH'S TRACK "A" COMPLIANCE?

6

7 A. Yes. SECCA, through the testimony of Mr. Gillan, is the only party to question  
8 the level of competition that BellSouth experiences in Kentucky. Mr. Gillan  
9 appears to advocate a market test that BellSouth must meet prior to receiving  
10 interLATA relief. The FCC has flatly rejected this approach. The requirements  
11 that BellSouth must meet to be in compliance with Track A are found in Section  
12 271(c)(1)(A) of the Act, which states in part:

13

14 PRESENCE OF A FACILITIES-BASED COMPETITOR.—A Bell  
15 operating company meets the requirements of this subparagraph if it has  
16 entered into one or more binding agreements that have been approved  
17 under Section 252 specifying the terms and conditions under which the  
18 Bell operating company is providing access and interconnection to its  
19 network facilities for the network facilities of one or more unaffiliated  
20 competing providers of telephone exchange service . . . to residential and  
21 business subscribers.

22

23 Therefore, there is no market share test. BellSouth is only required to  
24 demonstrate that facilities-based competition exists in Kentucky. As  
25 demonstrated in Exhibit CKC-3 (Checklist Compliance Matrix) attached to my  
26 direct testimony, BellSouth meets the requirements of Track A. Mr. Gillan  
27 provides no evidence that indicates otherwise. In fact, he never specifically states  
28 that BellSouth is not in compliance with Track A.

1 Q. WHAT AREAS OF CONCERN DOES MR. GILLAN HIGHLIGHT IN HIS  
2 TESTMONY WITH REGARD TO THE LEVEL OF COMPETITION IN  
3 KENTUCKY?

4  
5 A. First, Mr. Gillan claims that resale is in rapid decline and that resale is not an  
6 economically viable means of competition. Next, Mr. Gillan disputes BellSouth's  
7 calculation of the number of CLEC facility-based lines. I will demonstrate that  
8 Mr. Gillan's concerns in each of these areas are unfounded and do not dispute  
9 BellSouth's contention that it meets Track A requirements

10  
11 Q. IS MR. GILLAN'S DISCUSSION OF RESALE RELEVANT TO A  
12 DISCUSSION OF TRACK A COMPLIANCE?

13  
14 A. No. As stated earlier, Track A compliance requires that BellSouth have an  
15 interconnection agreement with a carrier that is providing service to residential  
16 and business customers, predominantly over its own facilities. Mr. Gillan's  
17 discussion and concerns about resale are irrelevant to a Track A determination.

18  
19 Q. IS RESALE COMPETITION, AS MR. GILLAN ALLEGES, IN RAPID  
20 DECLINE?

21  
22 A. No. Although not relevant for Track A, resale is a competitive option that  
23 BellSouth is providing as demonstrated in the discussion of Checklist Item No.  
24 14; therefore, I will respond to Mr. Gillan's concerns. Resale competition is  
25 continuing. In the discussion surrounding Table 2 on page 9, Mr. Gillan

1 compares the resale volume for December 2000, from BellSouth's Form 477 filed  
2 with the FCC, with the resale volume presented for March 2001 from Exhibit  
3 VW-3. As reported, this information does exhibit a significant drop. However,  
4 in responding to the recent inquiries regarding resale trends from the 271  
5 proceedings BellSouth has discovered that the December 2000 resale volumes  
6 were overstated by incorrectly including the counts for UNE-Platforms. The  
7 revised resale volume for December 2000 is 38,675 in contrast to the original  
8 FCC Form 477 amount of 48,425. Comparing this revised resale volume for  
9 December 2000 with the Exhibit VW-3 amount indicates a reduction of  
10 approximately 4,000 (or 10%) over the period. However through May, total  
11 resold lines have declined by less than a 1,000 lines a month from the March  
12 level. Further, for this period the gains for both residence and business UNE-Ps  
13 have exceeded the modest decline in resold lines and total competitive lines  
14 continue to grow. It appears that a migration from resale to the facilities-based  
15 UNE-P offering is at work.  
16

17 This long-term migration from resale service to facilities-based competition has  
18 been expected as competition matures. For example, the Association for Local  
19 Telecommunications Service (ALTS) indicated: "The amount of resale  
20 competition is expected to decline as CLECs continue to build their networks."  
21 Additionally, Dr. Marius Schwartz, affiant-economist for the DOJ, referring to  
22 UNEs and resale, wrote: "...such entry modes can assist and accelerate the  
23 transition to full-facilities competition, by allowing entrants to attain a customer  
24 base before being forced to build extensive facilities." See para. 50, Affidavit of

1 Dr. Marius Schwartz on behalf of the United States DOJ (May 14, 1997) re Bell  
2 Atlantic 271 filing.

3

4 Finally, in contrast to Mr. Gillan's depiction of resale as having "unattractive  
5 economics" (Gillan l. 19, p. 9) the ALTS Annual Report – 2001 at page 12  
6 indicates that 31% of the CLEC lines nationally were resold. The resold lines  
7 from BellSouth's Method One in Exhibit VW-3 equates to approximately 36% of  
8 the total CLEC lines estimate.

9

10 Q. DO YOU AGREE WITH MR. GILLAN/SECCA'S CRITICISMS OF THE  
11 CLECS' FACILITIES-BASED LINES ESTIMATE FROM BELLSOUTH'S  
12 METHOD ONE?

13

14 A. No. Mr. Gillan develops his own flawed metric to inaccurately challenge  
15 BellSouth's estimates. Although Mr. Gillan cites UNE and interconnection trunk  
16 quantities from Exhibit VW-6, his rework of BellSouth's Method One estimate  
17 disregards without comment the CLEC E911 Listings provided. These CLEC  
18 E911 listings are significantly higher than the UNE loops and UNE-P that he does  
19 adopt from Exhibit VW-6 and display at Gillan Table 3 on page 11. In  
20 challenging BellSouth's Method One estimate, Mr. Gillan must ignore the E911  
21 Listings that CLECs themselves report because it directly refutes his reworked  
22 estimate of CLEC facilities-based lines.

23

24 Mr. Gillan has incorrectly relied solely on, and made inappropriate adjustments  
25 to, the total CLEC interconnection trunk data from Exhibit VW-6 to arrive at his



1 flawed estimate. Ultimately, Mr. Gillan applies an adjusted partial trunk count  
2 that is entirely of his own device. He uses this newfound metric to restate lines  
3 such that his “corrected” facilities-based line count is reduced by a factor of 10 to  
4 only 3,752 from 41,134, the amount shown for BellSouth’s Method One estimate  
5 in his Table 1. He also provides no justification or supporting evidence from the  
6 SECCA CLEC members to substantiate the reasonableness of his 94% reduction  
7 in the total interconnection trunks from BellSouth’s Exhibit VW-7. Mr. Gillan  
8 describes this adjustment in his Table 4, “Specifically, the analysis (1) reduced  
9 the number of interconnection trunks by the number of trunks used to serve  
10 terminating traffic,...” This excessive and inappropriate adjustment to total  
11 trunks is key to achieving a dramatically lower trunk base to facilitate his very  
12 low facilities-based line result. This adjustment drives to Mr. Gillan’s estimate  
13 of 2,220 CLEC “Originating Trunks” at line “d”, Table 4. Mr. Gillan’s estimate  
14 is only 25% of the CLEC to BellSouth interconnection trunks provided by  
15 BellSouth as indicated in Mr. Milner’s testimony (at the bottom of page 18, top of  
16 19), which also indicates another 3,783 two-way trunks with CLECs in Kentucky.  
17

18 CLECs’ E911 listings alone directly refute Mr. Gillan’s “corrected” conclusion of  
19 3,752 facilities-based lines. Referring to Gillan Table 4, substitute the total of  
20 24,642 CLEC E911 listings at line “f” as an estimate of “Originating Lines using  
21 Interconnection Trunks”. A balance of 19,515 CLEC facilities-based lines  
22 results after subtracting the 5,127 UNE-loops at line “g”. Solely using the E911  
23 listings that CLECs themselves report gives a straightforward and extremely  
24 conservative result of 19, 515 facilities-based lines. I say this estimate is  
25 conservative because it takes no account for lines of any CLECs that have non-  
26 switched UNE loops providing DSL or interconnection trunks with BellSouth, but

1 no E911 listings. Such a result is based on specific CLEC E911 data and is  
2 clearly much more consistent with the 36% national average share of “last mile”  
3 lines CLECs themselves provide.<sup>2</sup> The conclusion is inescapable – Mr. Gillan’s  
4 alternate estimate of CLECs’ facilities-based lines depends on unsubstantiated  
5 adjustments, is inconsistent with the national average for CLECs, and is  
6 contradicted by other CLEC data from Exhibits VW-6 and VW-7 that Mr. Gillan  
7 ignores.

8

9 Q. DOES MR. GILLAN OFFER ANY OF SECCA’S OWN INFORMATION,  
10 EVEN IN THE AGGREGATE, AS A BASIS TO CHALLENGE  
11 BELLSOUTH’S CLEC LINE ESTIMATES?

12

13 A. No. Although CLECs have the data to either confirm or refute BellSouth’s  
14 estimates, Mr. Gillan does not offer any information on local lines of SECCA  
15 members, even in the aggregate. He chooses only to rework BellSouth’s  
16 estimates. Of course, nearly two-thirds of the total facilities-based lines in  
17 BellSouth’s Method Two (Exhibit VW-7) estimate rely on the E911 listings that  
18 CLECs themselves report to the E911 database contractor. The remaining third of  
19 the Method Two facilities-based lines estimate is comprised of UNE-Ps leased  
20 from BellSouth. Mr. Gillan does not directly challenge either the E911 listings or  
21 the UNE-P information from BellSouth’s two estimation methods. Exhibit VW-7  
22 shows 38,949 estimated facilities-based local end-user lines of which 24,642 are  
23 associated with CLECs’ E911 listings and the balance of 14,307 are based on  
24 CLECs’ UNE-Ps. No trunks or UNE loops are factored into the Method Two  
25 estimate.

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<sup>2</sup> ALTS Annual Report – 2001, at page 12, available at <<http://www.alts.org>>

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Q. DOES THE FCC BIENNIAL COMPETITION REPORT PROVIDE EVIDENCE REGARDING THE TREND OF LOCAL COMPETITION IN KENTUCKY?

A. Yes. The FCC competition study requires CLECs serving over 10,000 end user lines in a state to report biennially. The most recent report released in May 2001 (attached as Exhibit CKC-6) indicates at Tables 6 and 7 that 4 unidentified CLECs reported serving over 56,000 end-user lines in Kentucky statewide as of the end of December 2000. In comparison, BellSouth's line estimates for the 4 largest CLECs in its service area under its two methods range from 38,000 to nearly 42,000. However, the most recent CLEC E911 listings in BellSouth's area provide a simple and direct comparison regarding CLEC trends. The latest total of CLEC E911 listings of 28,208 for June represents a 72% compound annual growth rate for the three months March to June 2001. Growth in CLECs' E911 listings would reflect a rise in facilities-based lines in particular.

Q. DOES BELLSOUTH'S EVIDENCE INDICATE THAT LOCAL COMPETITION IS SIGNIFICANT IN KENTUCKY AND THAT THE ACT'S TRACK A REQUIREMENT HAS BEEN MET?

A. Yes. The conservative Method Two estimate shows that CLECs are serving at least 5.4% of the local access lines in BellSouth's area in Kentucky at the end of March 2001. This conservative lower estimate includes data for just 21 facilities-based CLECs, ten fewer than documented under BellSouth Method One. The

1 other ten CLECs excluded under Method Two are emphasizing broadband service  
2 to their end users in Kentucky. Based on website news releases, some of these  
3 ten, such as Network Telephone and DSL.net are provisioning voice over DSL  
4 capability. While there is no CLEC line share threshold or market share  
5 established in the 1996 Act, BellSouth's conservative estimates of CLEC market  
6 share for March 2001 range from 7.3% to 5.4% under its two methods. It is  
7 clear, however, that the ranges of CLEC market shares presented for BellSouth's  
8 area are consistent with and comparable to those of other successful 271  
9 applicants. For example, the New York CLEC market share for Bell Atlantic  
10 was approximately 7.3% at the time of its 271 application. The level of CLEC  
11 market share for SBC-Oklahoma in its successful 271 Application included  
12 estimates of 5.5% and 6.3%. In its last two annual reports, ALTS, the major  
13 CLEC industry group, has reported its national CLEC market share on the same  
14 basis that BellSouth, other 271 applicants and the FCC uses. At page 9 of the  
15 2001 edition of the ALTS Annual Report, the CLEC reported market share uses  
16 the local access line amount that closely approximates (a difference of 1.1%) the  
17 FCC's Table 6 amounts for its state market share measures. Mr. Gillan's call to  
18 redefine the ILEC base in the market share calculation is unjustified and totally  
19 out of step with precedent and practice.

20  
21 In summary, BellSouth's Method Two, Exhibits VW-4 and VW-7, identifies 21  
22 unaffiliated facilities-based CLECs that, conservatively, serve an aggregate of  
23 approximately 3,500 residence and 35,000 business lines in BellSouth's service  
24 area in Kentucky. These 21 facilities-based CLECs from Method Two also serve  
25 approximately 20,000 residential and over 10,000 business resold lines. Exhibit

1 VW-4, page 2 of 3, also shows 39 CLECs using the resale local entry method  
2 exclusively. These resale-only CLECs served an aggregate of over 16,000  
3 residence and 1,200 business lines in BellSouth's area in Kentucky in March  
4 2001. Thus, BellSouth's Method Two, by itself, establishes that BellSouth has  
5 met the Act's Track A requirements.

6

7 Q. ON PAGE 3, MR. GILLAN STATES, "THE MOST LIKELY EFFECT OF  
8 BELLSOUTH'S GAINING INTERLATA AUTHORITY WOULD BE FOR IT  
9 TO GAIN EVEN GREATER DOMINANCE IN THE *FUTURE*." PLEASE  
10 COMMENT.

11

12 A. I disagree. Contrary to Mr. Gillan's projections, the FCC has recently provided  
13 striking evidence that local competition has been stimulated the most in two states  
14 that received the earliest interLATA service authorization. The FCC reported:  
15 "CLECs captured 20% of the market in the state of New York – the most of any  
16 state. CLECs reported 2.8 million lines in New York....- an increase of over  
17 130%, from the time the FCC granted Verizon's long distance application..." and  
18 "CLECs captured 12% of the market in Texas, gaining over a half-a-million  
19 (644,980) end-user lines in the six months since the Commission authorized  
20 SBC's long distance application in Texas..." and "CLEC market share in New  
21 York and Texas (the two states that had 271 approval during the reporting period  
22 ending in December 2000) are over 135% and 45% higher than the national  
23 average, respectively." See Federal Communications Commission Releases  
24 Latest Data on Local Telephone Competition, May 21, 2001, para. 2 (Exhibit  
25 CKC-6).

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**CHECKLIST ITEM 1**

Q. MR. ARGENBRIGHT, ON PAGES 4-9, ARGUES WORLDCOM’S POSITION ON “POINT OF INTERCONNECTION”. HAS THIS COMMISSION PREVIOUSLY RULED ON THE POINT OF INTERCONNECTION (“POI”) ISSUE?

A. Yes. Although WorldCom has not filed for arbitration with this Commission, this issue was presented in Kentucky Case No. 2000-465, (“AT&T Arbitration”) and in Kentucky Case No. 2000-404 (“Level 3 Arbitration”). In its Order issued May 16, 2001 in the AT&T Arbitration Case, this Commission found:

The Commission recently addressed this issue in the arbitration proceeding between Level 3 Communications, LLC (“Level 3”) and BellSouth<sup>3</sup>. The Commission determined that Level 3 had a right to establish a minimum of one point of interconnection (“POI”) per LATA. The Commission also recognized the potential for abuse in that arrangement and required the CLEC to establish another POI when the amount of traffic passing through a BellSouth access tandem switch reached a DS-3 level.

AT&T and BellSouth have provided no additional evidence or differing circumstances justifying a changed outcome. Thus, the Commission affirms its previous rulings in the Level 3 case.

Q. IS THE POINT OF INTERCONNECTION ISSUE AS DISCUSSED BY MR. ARGENBRIGHT THE SAME ISSUE DECIDED IN THE AT&T ARBITRATION?

---

<sup>3</sup> Case No. 2000-404, Order dated March 14, 2001 at 1-4, Order dated April 23, 2001 at 1-2.

1 A. Yes. WorldCom, through the testimony of Mr. Argenbright, has presented no  
2 new evidence that should lead this Commission to reach a different conclusion  
3 here.

4  
5 Q. NOTWITHSTANDING MR. ARGENBRIGHT’S TESTIMONY, DOES  
6 BELLSOUTH PROVIDE A SINGLE POINT OF INTERCONNECTION IN  
7 COMPLIANCE WITH SECTION 271 OF THE ACT?

8  
9 A. Yes. BellSouth allows CLECs to interconnect at a single point in each LATA if  
10 they so desire in compliance with checklist item 1. The requirement of the Act, as  
11 interpreted by the FCC in its section 271 decisions, is that a BOC provide “a  
12 single interconnection point within a LATA.” SWBT Order-TX<sup>4</sup>, (¶ 78) (“[w]e  
13 note that in SWBT’s interconnection agreement with MCI (WorldCom),  
14 WorldCom may designate ‘a single interconnection point within a LATA.’ Thus,  
15 SWBT provides WorldCom interconnection at any technically feasible point, and  
16 section 252(i) entitles AT&T, or any requesting carrier, to seek the same terms  
17 and conditions as those contained in WorldCom’s agreement, a matter any carrier  
18 is free to take up with the Texas Commission.”) Also, in the SWBT Order-  
19 KS/OK, the FCC concluded “SWBT provides interconnection at all technically  
20 feasible points, including a single point of interconnection and therefore  
21 demonstrates compliance with the checklist item.” (¶ 232) Finally, in the  
22 Verizon Massachusetts Order<sup>5</sup>, the FCC concluded “Verizon provides

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<sup>4</sup> *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communication Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, Released June 30, 2000) (“SWBT Order-TX”).

<sup>5</sup> *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global*

1 interconnection at all technically feasible points, including a single point of  
2 interconnection, and therefore demonstrates compliance with the checklist item.”  
3 (§ 197). As evidenced by its interconnection agreements, BellSouth provides  
4 CLECs with a single point of interconnection, just as Verizon and SWBT do.  
5 Thus, irrespective of Mr. Argenbright’s testimony, BellSouth is in compliance  
6 with the checklist.

7

8 Q. PLEASE DESCRIBE BELLSOUTH’S UNDERSTANDING OF THE  
9 “TANDEM PROVIDER ISSUE” DISCUSSED IN MR. ARGENBRIGHT’S  
10 TESTIMONY (PAGES 11-14).

11

12 A. WorldCom wants access traffic to be delivered to BellSouth through WorldCom’s  
13 local switch and not from WorldCom’s access tandem to BellSouth’s access  
14 tandem. If such traffic is not exchanged through the companies’ respective access  
15 tandems, but is delivered to BellSouth end offices over local interconnection  
16 trunks, BellSouth is unable to identify and properly bill switched access traffic.  
17 BellSouth’s position is that CLECs should not be permitted to mix switched  
18 access traffic and local traffic by routing such switched access traffic over local  
19 interconnection trunks. The handling of switched access traffic is governed  
20 pursuant to switched access tariffs.

21

22 Q. ON PAGES 14-15 OF HIS TESTIMONY, MR. ARGENBRIGHT DISCUSSES  
23 THE “TWO-WAY TRUNKING ISSUE”. DOES BELLSOUTH PROVIDE  
24 TWO-WAY TRUNKS IN COMPLIANCE WITH SECTION 271?

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*Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Released April 16, 2001, (“Verizon Massachusetts Order”).



1

2 A. Yes. BellSouth makes two-way trunks available to CLECs when a CLEC does  
3 not carry a sufficient amount of traffic to justify separate one-way trunks. FCC  
4 rule 51.305(f) states that “[i]f technically feasible, an incumbent LEC shall  
5 provide two-way trunking upon request.” For purposes of compliance with  
6 checklist item 1, the FCC has interpreted this rule to mean that the ILEC must  
7 provide two-way trunks in those cases in which a CLEC does not carry a  
8 sufficient amount of traffic to justify separate one-way trunks.<sup>6</sup> As evidenced by  
9 its interconnection agreements and its SGAT, BellSouth is in compliance with this  
10 requirement of the competitive checklist.

11

12 Q. HAS THIS COMMISSION PREVIOUSLY ADDRESSED THIS ISSUE?

13

14 A. Yes. In its order in the Sprint Arbitration, Case No. 2000-480, dated June 13,  
15 2001, the Commission ruled that BellSouth must not only provide two-way  
16 trunking, but must also use the two-way trunks itself, if requested by Sprint to do  
17 so. BellSouth will comply with the terms of the Commission’s order in its  
18 interconnection agreement with Sprint. Although WorldCom does not have a  
19 current interconnection agreement in Kentucky, once the Sprint agreement is filed  
20 and approved, WorldCom can avail itself of the same two-way trunking language  
21 under the “pick and choose” rule, if and when it chooses to negotiate a new  
22 interconnection agreement.

23

24 **CHECKLIST ITEM 2**

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<sup>6</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11FCC Rcd (1996) (“Local Competition First Report and Order”), at ¶219.

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Q. ARE BELLSOUTH’S RATES COST-BASED?

A. Yes. BellSouth’s rates, in compliance with the Act, are cost-based. In addition, BellSouth has stated that any changes made by the KPSC in Case No. 382 will be included in its Statement of Generally Accepted Terms and Conditions, thereby, ensuring this Commission that BellSouth’s rates are in compliance with this Commission’s requirements.

Q. PLEASE COMMENT GENERALLY ON THE TESTIMONY OF MR. DARNELL AND MR. GILLAN CONCERNING COST-BASED UNBUNDLED NETWORK ELEMENT (“UNE”) RATES.

A. With regard to cost issues, to the extent that Mr. Darnell and Mr. Gillan may be asking this Commission to re-litigate the generic UNE administrative case (Administrative Cases No. 382) in this proceeding, such action is not necessary. Addressing cost issues in this proceeding, in light of the extensive generic UNE proceeding that the KPSC has undertaken, would be duplicative of the KPSC’s time and resources. In fact, the schedule established by the Commission in the UNE proceeding provides for BellSouth and all other parties to file by August 17, 2001, any additional information, including briefs, for the Commission’s consideration in establishing BellSouth’s UNE prices. That is the appropriate forum for cost issues.

In terms of BellSouth’s compliance with Section 271, the UNE rates currently in

1 effect in Kentucky are cost-based, as determined by the KPSC in its Order dated  
2 July 14, 1997 in the AT&T and MCI Arbitration Cases (Case Nos. 96-482 and 96-  
3 431). In addition, the KPSC approved interim deaveraged loop rates in its Order  
4 in Administrative Case No. 382, dated March 24, 2000.<sup>7</sup> Those interim rates were  
5 subsequently revised by the KPSC on April 12, 2001.<sup>8</sup> In the current cost  
6 administrative case, the KPSC will update these existing rates and establish cost-  
7 based rates for all UNEs for which a rate has not yet been established. As I  
8 discussed in my direct testimony, the rates BellSouth included on the Price List  
9 contained in its Statement of Generally Available Terms and Conditions  
10 (“SGAT”) (*see* Direct Testimony and Exhibit CKC-5, Attachment A, filed May  
11 18, 2001, and Supplemental Direct Testimony and Revised Exhibit CKC-5,  
12 Attachment A, filed June 22, 2001) will be modified to conform to the final prices  
13 established by the KPSC in the generic UNE cost proceeding. Therefore, for all  
14 checklist items to which Section 252(d) is applicable, BellSouth provides rates  
15 that meet the criteria of Section 252(d) of the Act.

16

17 Q. PLEASE RESPOND TO THE INSINUATION BY MR. DARNELL AND MR.  
18 GILLAN THAT INTERIM RATES THAT ARE SUBJECT TO TRUE-UP CAN  
19 NOT BE CONSIDERED COST-BASED UNDER THE ACT.

20

21 A. The FCC has specifically ruled otherwise. In its SWBT Order-TX, the FCC  
22 concluded that “interim rate solutions are a sufficient basis for granting a section  
23 271 application when an interim solution to a particular rate dispute is reasonable

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<sup>7</sup> The Commission’s March 24, 2000 Order approved the deaveraged rates in the Joint Stipulation of BellSouth, AT&T and MCI WorldCom.

<sup>8</sup> On April 12, 2001, the KPSC issued an order in Administrative Case No. 382 approving interim revised recurring deaveraged UNE loop rates and interim revised non-recurring stand-alone loop and port rates.

1 under the circumstances, where the state commission has demonstrated its  
2 commitment to our pricing rules, and provision is made for refunds or true-ups  
3 once permanent rates are set.” (§241) BellSouth and this Commission have  
4 demonstrated their commitment to the FCC’s pricing rules by establishing interim  
5 rates for those additional UNEs resulting from the FCC’s UNE Remand Order  
6 utilizing the FCC’s pricing rules. These interim rates, included in Attachment A  
7 to BellSouth’s SGAT filed as Exhibit CKC-5, are subject to retroactive true-up to  
8 the extent the current permanent rates are revised in Case No. 382.

9

10 Q. PLEASE COMMENT ON MR. GILLAN’S STATEMENT AT PAGE 20 THAT  
11 “THE KENTUCKY COMMISSION SHOULD PLACE PARTICULAR  
12 EMPHASIS ON ESTABLISHING COST-BASED RATES FOR UNES.”

13

14 A. Mr. Gillan’s suggestion is not necessary. The KPSC has always shown a  
15 commitment to cost-based rates, and has a comprehensive generic cost  
16 proceeding, Case No. 382, in progress. SECCA has filed extensive testimony in  
17 that docket, which identified their concerns. As I mentioned earlier, the KPSC  
18 has identified August 17, 2001 as the date for CLECs and interested parties to file  
19 final comments in the UNE docket. Mr. Gillan’s discussion of BellSouth’s  
20 proposed UNE rates, therefore, is not appropriate in the context of this  
21 proceeding.

22

23 Q. PLEASE RESPOND TO MR. DARNELL’S CONTENTION AT PAGES 6-7  
24 THAT THE RATES THIS COMMISSION APPROVED FOR A LOOP/PORT  
25 COMBINATION “VIOLATE THE ACT’S COST-BASED REQUIREMENTS.”

1

2 A. Mr. Darnell states that “[t]he current Commission approved BellSouth  
3 nonrecurring charge for a voice grade loop sold in combination with an analog  
4 switch port in Kentucky is \$70.44.” The price that Mr. Darnell quotes is the non-  
5 recurring stand-alone price for an unbundled 2-wire voice grade loop approved by  
6 the Commission on an interim basis.<sup>9</sup> BellSouth has proposed revised stand-alone  
7 rates, as well as rates for switch-as-is loop/port combinations and new loop/port  
8 combinations in the generic UNE cost proceeding, substantiated by cost studies  
9 filed in Administrative Case No. 382. According to the Commission’s latest order  
10 in that Case, all filings by the parties will be completed by the end of August;  
11 therefore, a decision on UNE rates is expected to be issued well before a decision  
12 will be issued in the current case.

13

14 Mr.Darnell contends that “the rate for the stand-alone loop ignores the network  
15 efficiencies provided by NGDLC [Next Generation Integrated Digital Loop  
16 Carrier] technology.” (page 6) The KPSC is addressing this very issue in its  
17 current generic UNE cost administrative case, so I will only address it briefly  
18 here. If a loop is provisioned over IDLC, then that loop is integrated into  
19 BellSouth’s switch and cannot physically be unbundled. Therefore, when  
20 BellSouth studies the cost of unbundled loops, it appropriately excludes IDLC  
21 technology from the study. On the other hand, IDLC is an efficient way to  
22 provision loop/port combinations, which is one of the reasons why the  
23 combination rate is lower than the sum of the stand-alone rates. The bottom line  
24 is that, contrary to Mr. Darnell’s contention, the Commission’s costing  
25 methodology did not “assume antiquated technology in the development of the

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<sup>9</sup>Per the KPSC’s April 12, 2001 order in Administrative Case No. 382.

1 current rate for a voice grade loop sold in combination with an analog switch  
2 port.” (Darnell, p. 7)

3

4 Q. PLEASE COMMENT ON MR. GILLAN’S ALLEGED “ANALYSIS” (PAGES  
5 20-21) OF BELLSOUTH’S FINANCIAL PERFORMANCE IF BELLSOUTH  
6 WERE A UNE-BASED CARRIER.

7

8 A. Mr. Gillan states, on page 21, that “BellSouth could not even operate in Kentucky  
9 if required to lease the existing network. . .” Mr. Gillan’s “analysis” that leads  
10 him to this conclusion is nothing more than an attempt to divert this  
11 Commission’s attention from the real question at hand. The standard here is not  
12 whether anyone can make money at these cost-based rates. The FCC stated, in  
13 ¶41 of its Verizon-Massachusetts Order, “In the ‘SWBT Kansas/Oklahoma  
14 Order’, the Commission held that this profitability argument is not part of the  
15 section 271 evaluation of whether an applicant’s rates are TELRIC-based. The  
16 Act requires that we review whether the rates are cost-based, not whether a  
17 competitor can make a profit by entering the market.”

18

19 The question is whether BellSouth’s UNE rates have been developed in  
20 compliance with the Act and the FCC’s rules; that is, are the rates cost-based?  
21 The answer is yes. The fact that, in some cases, BellSouth’s proposed UNE rates  
22 are higher than BellSouth’s retail rates is not the result of an attempt on  
23 BellSouth’s part to limit competition. It is certainly not “news” to the KPSC that  
24 BellSouth’s retail residence local exchange rates are below the cost of providing  
25 that service. CLECs, however, have been successful in winning business

1 customers, in part due to the margin between BellSouth's business local exchange  
2 rates and BellSouth's UNE rates. In addition, resale that provides for a discount  
3 off of the tariffed retail rate also is available.

4  
5 Q. PLEASE RESPOND TO MR. GILLAN'S DISCUSSION, ON PAGES 22-24,  
6 WITH REGARD TO BELL SOUTH'S DAILY USAGE FILE ("DUF") RATES.

7  
8 A. Mr. Gillan's discussion/analysis is flawed. First, it is confusing as to what Mr.  
9 Gillan is actually calculating and what he is using to make his calculation. He  
10 states that it would appear that DUF rates apply on a per-message basis, which in  
11 general is correct. It then appears from footnotes 35 and 36 that he is using  
12 minutes (which would be greater than messages) to develop his costs. Mr. Gillan  
13 then restates BellSouth-Kentucky DUF cost per line based on "assuming" this,  
14 "estimating" that, and "an average" cost of something else. He uses this restated  
15 cost to compare to Qwest's proposed cost and another figure represented to be an  
16 Ameritech cost, neither of which is provided with an explanation.

17  
18 Mr. Gillan's analysis does not demonstrate that BellSouth is not in compliance  
19 with the Act and the FCC's pricing rules. As stated previously, the standard  
20 necessary for BellSouth to be in compliance is whether BellSouth's UNE rates  
21 comply with TELRIC principles. BellSouth has provided cost-based DUF rates to  
22 the KPSC as part of its filing in Administrative Case No. 382, and the  
23 Commission will review the cost methodology and results in the context of that  
24 docket. Any concerns Mr. Gillan has with those rates should be addressed in that  
25 docket.

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Nevertheless, it should be recognized that rate differences among BOCs do not preclude rates from being cost-based, and certainly do not preclude granting of 271 relief. Specifically, the FCC noted in its background discussion of UNE pricing in its SWBT-TX Order, “that SWBT’s nonrecurring charges are substantially higher than those charged by incumbent LECs in other states. . .” (Fn. 648.) In that Order, however, the FCC still determined that SWBT’s prices were cost-based and granted 271 relief in Texas.

**CHECKLIST ITEM 5**

- Q. PLEASE DESCRIBE BELLSOUTH’S UNDERSTANDING OF THE UNBUNDLED LOCAL TRANSPORT ISSUES DISCUSSED BY MR. ARGENBRIGHT (PAGES 15-21).
  
- A. Mr. Argenbright contends that BellSouth must provide dedicated interoffice transport between CLEC switching locations and between a CLEC’s network and another requesting carrier’s network. The FCC requires BellSouth to unbundle dedicated transport in BellSouth’s existing network and has specifically excluded transport between other carriers’ locations. BellSouth is not required to offer, and is not required to build, dedicated transport facilities between CLEC network locations, whether they be nodes or network switches or between the CLEC’s network and another carrier’s network. This issue has been arbitrated by BellSouth and WorldCom in other states and will be resolved via Commission orders in those states.



1

2 Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION?

3

4 A. The FCC's Local Competition Order, at paragraph 440, only requires that  
5 BellSouth:

6 ...provide unbundled access to dedicated transmission facilities  
7 between LEC central offices or between such offices and those of  
8 competing carriers. This includes, at a minimum, interoffice  
9 facilities between end offices and serving wire centers ("SWCs"),  
10 SWCs and IXC POPs, tandem switches and SWCs, end offices or  
11 tandems of the incumbent LEC, and the wire centers of incumbent  
12 LECs and requesting carriers.

13 (Emphasis added).

14

15 Q. DOES THE FCC'S UNE REMAND ORDER SUPPORT BELLSOUTH'S  
16 POSITION?

17

18 A. Yes. In its discussion of unbundled dedicated transport, the FCC specifically  
19 addresses the issue of whether an ILEC's obligations include constructing  
20 facilities between locations where the ILEC has not deployed facilities for its own  
21 use. Paragraph 324 of the UNE Remand Order states,

22 In the *Local Competition First Report and Order*, the Commission  
23 limited an incumbent LEC's transport unbundling obligation to  
24 existing facilities, and did not require incumbent LECs to construct  
25 facilities to meet a requesting carrier's requirements where the

1 incumbent LEC has not deployed transport facilities for its own  
2 use. Although we conclude that an incumbent LEC's unbundling  
3 obligation extends throughout its ubiquitous transport network,  
4 including ring transport architectures, we do not require incumbent  
5 LECs to construct new transport facilities to meet specific  
6 competitive LEC point-to-point demand requirements for facilities  
7 that the incumbent LEC has not deployed for its own use.

8 (Footnotes deleted).

9  
10 Q. AT PAGE 18, MR. ARGENBRIGHT SUGGESTS THAT THE FCC SUPPORTS  
11 WORLDCOM'S POSITION. DO YOU AGREE?

12  
13 A. No. Mr. Argenbright quotes the FCC's UNE Remand Order at paragraph 346 in  
14 an attempt to support WorldCom's position that BellSouth must provide dedicated  
15 interoffice transport between WorldCom's switching locations and between  
16 WorldCom's network and another requesting carrier's network. However,  
17 paragraph 346 does not require that an ILEC provide, let alone construct,  
18 dedicated transport for a CLEC between points designated by the CLEC. All  
19 paragraph 346 does is support the FCC's decision to require unbundled transport  
20 that already exists in BellSouth's network.

21  
22 Q. MR. ARGENBRIGHT'S DISCUSSION ON PAGES 18-19 STATES  
23 WORLDCOM'S POSITION THAT BELL SOUTH SHOULD PROVIDE  
24 CONNECTIONS BETWEEN NODES ON WORLDCOM'S NETWORK. DO  
25 YOU AGREE?

1

2 A. No. The FCC only requires BellSouth to unbundle dedicated transport in  
3 BellSouth's existing network and has specifically excluded transport between  
4 other carriers' locations. As noted above, paragraph 440 of the FCC's Local  
5 Competition Order only requires that ILECs provide dedicated transport between  
6 LEC central offices or between LEC offices and those of competing carriers. It is  
7 highly unlikely that BellSouth will have existing facilities directly between two  
8 points on WorldCom's network or between WorldCom's network and the  
9 network of another carrier other than BellSouth. In the unlikely event BellSouth  
10 has dedicated transport that currently exists for BellSouth's use between points on  
11 WorldCom's network where WorldCom is requesting dedicated transport,  
12 BellSouth will provide WorldCom access to those facilities.

13

14 Q. IN LIGHT OF MR. ARGENBRIGHT'S TESTIMONY ON THIS CHECKLIST  
15 ITEM, DO YOU STILL CONTEND THAT BELLSOUTH PROVIDES ACCESS  
16 TO UNBUNDLED TRANSPORT IN COMPLIANCE WITH SECTION 271?

17

18 A. Yes. As I discussed in my direct testimony, FCC Rule 51.319 requires a BOC to  
19 offer access to local transport on the trunk side of a wireline local exchange  
20 carrier switch unbundled from switching or other services. In the Bell Atlantic  
21 Order, the FCC stated that it requires that BOCs provide both dedicated and  
22 shared transport to requesting carriers. (¶ 337). As evidenced by its  
23 interconnection agreements and its SGAT, BellSouth provides unbundled  
24 transport in compliance with these obligations. Because BellSouth is not  
25 obligated to provide dedicated transport between CLEC locations (or between a

1 CLEC and another carrier), Mr. Argenbright’s testimony has no bearing on  
2 whether BellSouth is compliant with the checklist item.

3

4 **CHECKLIST ITEM 13**

5

6 Q. WHAT IS BELLSOUTH’S UNDERSTANDING OF THE “TANDEM  
7 INTERCONNECTION ISSUE” DISCUSSED BY MR. ARGENBRIGHT  
8 (PAGES 22-26)?

9

10 A. The disagreement between BellSouth and WorldCom on this issue has been  
11 whether the FCC established a single-pronged or a two-pronged test to determine  
12 if a CLEC is eligible to receive the tandem interconnection rate for reciprocal  
13 compensation. A single-pronged test is based on whether the CLEC’s facilities  
14 serve a comparable geographic area to that served by BellSouth’s facilities. A  
15 two-pronged test refers to both a geographic test and a test as to whether the  
16 CLEC’s switch(s) perform comparable functions to BellSouth’s switch(s).

17

18 However, BellSouth acknowledges that the FCC’s language in its April 27, 2001  
19 NPRM accompanying its Order on Remand seems to resolve the question of  
20 whether a two-pronged or a single-pronged test is to be used.<sup>10</sup> Nonetheless, even  
21 if only the geographic test is required, the CLEC still has the burden of proof that  
22 it is entitled to the tandem switching rate in every instance based on the  
23 geographic coverage of its switch. WorldCom terminated its interconnection  
24 agreement in Kentucky, and chose not to file for arbitration for a new agreement.

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<sup>10</sup> The FCC’s *Notice of Proposed Rulemaking*, CC Docket No. 01-92, released April 27, 2001, states at ¶105, “...[S]ection 51.711(a)(3) of the Commission’s rules requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination.”

1 Therefore, WorldCom has not demonstrated whether or not it meets this  
2 geographic coverage test, and this should not be an issue for WorldCom in  
3 Kentucky at this time.

4

5 Q. HAS THE KPSC ADDRESSED THIS ISSUE?

6

7 A. Yes. In its order dated June 22, 2001 in AT&T Arbitration Case No. 2000-465 (p.  
8 6), the Commission clarified that:

9

10 The geographical area served by AT&T's switch is comparable to that  
11 served by BellSouth's tandem switch. Thus, the FCC's requirement for  
12 obtaining the tandem interconnection rate is met...

13

14 Q. MR. ARGENBRIGHT (P. 26) STATES THAT THE COMMISSION SHOULD  
15 FIND THAT BELLSOUTH IS NOT IN COMPLIANCE WITH CHECKLIST  
16 ITEM 13 UNLESS BELLSOUTH AGREES TO COMPENSATE CLECS AT  
17 THE TANDEM INTERCONNECTION RATE BASED SOLELY ON A  
18 COMPARABLE GEOGRAPHIC COVERAGE TEST. DOES BELLSOUTH  
19 PROVIDE RECIPROCAL COMPENSATION ARRANGEMENTS IN  
20 COMPLIANCE WITH SECTION 271?

21

22 A. Yes. As previously discussed, BellSouth does agree that a CLEC only needs to  
23 demonstrate that its switch serves a comparable geographic scope to receive the  
24 tandem interconnection rate, which should address Mr. Darnell's concerns.  
25 Further, the FCC found that Bell Atlantic was in compliance with this checklist  
26 item because "it (1) has in place reciprocal compensation arrangements in  
27 accordance with section 252(d)(2), and (2) is making all required payments in a

1           timely fashion.” (§ 376) Like Bell Atlantic, BellSouth has in place reciprocal  
2           compensation arrangements set forth in its binding interconnection agreements,  
3           and makes all payments pursuant to those arrangements in a timely fashion.  
4           Thus, BellSouth is in compliance with this checklist item. Additionally,  
5           BellSouth’s local traffic definition (see Section I.A) and the reciprocal  
6           compensation language (see Section XIII, footnote 3) contained in the terms and  
7           conditions portion of the SGAT that was attached to my supplemental direct  
8           testimony as Revised Exhibit CKC-5, comply with the FCC’s Order on Remand  
9           dated April 27, 2001, in CC Docket No. 96-98 and No. 99-68.

10

11   Q.    WHAT IS BELLSOUTH’S UNDERSTANDING OF THE “FX ISSUE”  
12           DISCUSSED BY MR. ARGENBRIGHT (PAGES 27-35)?

13

14   A.    This issue concerns compensation between carriers, rather than restrictions on  
15           assignments of NPA/NXX codes. Both BellSouth and CLECs agree that carriers  
16           are permitted to assign NPA/NXX codes in any manner desired, including outside  
17           the local calling area or rate center with which the codes are associated.  
18           However, if WorldCom chooses to give out its numbers in this manner, calls  
19           originated by BellSouth end users to those numbers are not local calls.  
20           Consequently, such calls are not local traffic under the agreement and no  
21           reciprocal compensation applies. Further, WorldCom should identify such long  
22           distance traffic and pay BellSouth for the originating switched access service  
23           BellSouth provides on those calls.

24

25   Q.    HAS THE KPSC HEARD THIS ISSUE?

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A. Yes, the Commission has heard this issue in the Level 3 Arbitration (Case No. 200-404), and in the Adelpia Arbitration (Case No. 2000-477). The Adelpia case was settled prior to issuance of an order from the KPSC. BellSouth and Level 3 also reached a negotiated settlement, but only after the Commission had issued its March 14, 2001 order. As an indication of the Commission’s position on this issue, that March 14 order stated:

Each party shall consider the other’s FX or virtual NXX service to be local traffic when the customer is physically located within this same LATA as the calling area with which the telephone number is associated.

Thus, although the Commission did not agree with BellSouth’s position, it did recognize the potential abuse if a CLEC assigns NXX numbers such that the call, appearing to be local to the originating party, actually crosses LATA boundaries, or even crosses state boundaries. In order to limit such potential abuse, the Commission limited compensation as local traffic to calls within the same LATA.

BellSouth offers in its Standard Interconnection agreement an option for the parties to treat all calls within a LATA as local calls for purposes of reciprocal compensation. This option is consistent with the KPSC’s ruling on FX or Virtual NXX traffic. Likewise, BellSouth’s settlements with Level 3 and Adelpia are consistent with the Commission’s March 14 order in the Level 3 case. Specifically, those settlements resulted in the parties receiving reciprocal compensation for terminating all intraLATA traffic. In BellSouth’s negotiation with WorldCom in other states, WorldCom has not agreed to such treatment.

1 Q. DO YOU AGREE WITH MR. ARGENBRIGHT'S ASSERTION (AT P. 35)  
2 THAT BELLSOUTH IS NOT IN COMPLIANCE WITH THE COMPETITIVE  
3 CHECKLIST UNLESS IT AGREES TO COMPENSATE CLECS FOR FX  
4 TRAFFIC AS REQUESTED BY WORLDCOM?

5

6 A. No. The dispute is whether calls in the same situations should be treated as local  
7 or toll for the purposes of intercarrier compensation. BellSouth's position on this  
8 issue is the same as the Texas Commission and the FCC granted SBC 271  
9 authority in Texas. Obviously, BellSouth's position is not cause for checklist  
10 non-compliance.

11

12 **CHECKLIST ITEM 14**

13

14 Q. ON PAGE 10, MR. GILLAN COMPLAINS THAT "RESALE NEITHER  
15 PERMITS A CARRIER TO INNOVATE, OR EFFECTIVELY OFFER  
16 INTEGRATED LOCAL/LONG DISTANCE PACKAGES." PLEASE  
17 COMMENT.

18

19 A. First, whether resale permits a carrier to offer integrated packages is irrelevant to  
20 a determination of BellSouth's compliance under checklist item 14. To prove  
21 checklist compliance, Section 271(c)(2)(B)(xiv) provides that BellSouth is only  
22 required to demonstrate that "Telecommunications services are available for  
23 resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."  
24 BellSouth has demonstrated availability of resale services through its SGAT and  
25 through existing interconnection agreements (*see* Exhibit 3 attached to my direct



1 testimony).

2

3 Second, although not relevant for checklist compliance, I will respond to Mr.  
4 Gillan's assertions. In footnote 11 of his testimony, Mr. Gillan contends that this  
5 alleged limitation is a result of BellSouth continuing to assess access charges on  
6 the reseller's lines. Assessing access charges on resale lines is not unique to  
7 BellSouth. In its Local Competition First Report and Order (¶980), the FCC  
8 established that ILECs continue to bill access when local services are resold under  
9 section 251(c)(4). Access is not a retail offering, and so it is not subject to the  
10 resale discount. Congress envisioned three separate options for CLECs to enter  
11 the local exchange telecommunications market. Resale is one of those options.  
12 The situation Mr. Gillan presents is simply the construct of the resale model. As  
13 shown in the Status of Competition portions of both this testimony and Exhibit  
14 CKC-4 to my direct testimony filed in this proceeding, there are apparently  
15 several CLECs making a business of resale in Kentucky that may disagree with  
16 Mr. Gillan's conclusion. If resale is not a viable alternative for some CLECs,  
17 Congress also provided opportunities for a CLEC's entry through purchasing  
18 facilities from BellSouth or by constructing its own facilities. In addition,  
19 Congress did not envision resale as a long-term entry method. For this reason, as  
20 noted earlier in this testimony, the long-term migration from resale service to  
21 facilities-based service has been expected as competition matures.

22

23 Q. ON PAGE 25, MR. GILLAN BRIEFLY REFERENCES THE "ASCENT  
24 DECISION" AND ALLEGES THAT BELL SOUTH "MUST PERMIT THE

1           RESALE OF ITS ADVANCED DATA SERVICES AT A WHOLESALE  
2           DISCOUNT.” DO YOU AGREE WITH MR. GILLAN?

3

4    A.    No. The January 9, 2001 ruling by the United States Court of Appeals for the  
5           District of Columbia Circuit, as referred to by Mr. Gillan, does not support his  
6           allegation. Mr. Gillan has taken a statement out of context and used it  
7           inappropriately. This decision dealt with regulatory relief granted by the FCC  
8           regarding resale of advanced services *if conducted through the separate affiliate*  
9           *established in the Ameritech and SBC merger*. The Court merely ruled that an  
10          ILEC may not “sideslip §251(c)’s requirements by simply offering  
11          telecommunications services through a wholly owned affiliate.” This is not what  
12          is at issue here, nor does the ruling require BellSouth to resell its advanced data  
13          services at a wholesale discount, as Mr. Gillan would have this Commission  
14          believe. BellSouth has no separate affiliate for the sale of advanced services, and  
15          therefore, this decision does not apply to BellSouth.

16

17   Q.    IS THERE A MORE RECENT COURT RULING THAT SPEAKS DIRECTLY  
18          TO MR. GILLAN’S ALLEGATIONS?

19

20   A.    Yes. The United States Court of Appeals for the District of Columbia Circuit  
21          issued a decision speaking directly to this issue. In the Background discussion in  
22          its decision in “Association of Communications Enterprises, Petitioner v. Federal  
23          Communications Communication and United States of America, Respondents, On  
24          Petition for review of an Order of the Federal Communications Commission,”  
25          Case No. 00-1144; decided June 26, 2001, the Court states:

1  
2 At issue in this case is that part of the ‘Second Report and Order’  
3 in which the Commission addressed the question whether the  
4 resale requirement of §251(c)(4)(A) applies to an ILEC’s offering  
5 of advanced services. As the Commission acknowledged, it had  
6 previously determined that advanced services constitute  
7 ‘telecommunications service’ and that the end-users and ISPs to  
8 which the ILECs offer such services are ‘subscribers who are not  
9 telecommunications carriers’ within the meaning of §251(c)(4)(A).  
10 The remaining issue, therefore, was whether an ILEC’s offering of  
11 certain advanced services, including DSL, is made ‘at retail’ so as  
12 to trigger the discount requirement. The Commission ultimately  
13 concluded that while an incumbent LEC DSL offering to  
14 residential and business end-users is clearly a retail offering  
15 designed for and sold to the ultimate end-user, an incumbent LEC  
16 offering of DSL services to Internet Service Providers as an input  
17 component to the Internet Service Provider’s high-speed Internet  
18 service offering is not a retail offering. Accordingly, . . . DSL  
19 services designed for and sold to residential and business end-users  
20 are subject to the discounted resale obligations of section 251(c)(4)  
21 . . . [H]owever, . . .section 251(c)(4) does not apply where the  
22 incumbent LEC offers DSL services as an input component to  
23 Internet Service Providers who combine the DSL service with their  
24 own Internet Service.

25  
26 The Association of Communication Enterprises (ASCENT)  
27 petitioned for review of this determination, and various  
28 telecommunications and DSL providers intervened on behalf of the  
29 Commission.

30 In conclusion, the Court states:

31 In sum, having considered ASCENT’s objections, we find the  
32 Commission’s Order in all respects reasonable.

33  
34 The FCC reiterated its position on the resale of advanced services in its Bell  
35 Atlantic New York Order. In paragraph 393 of that Order, addressing Bell  
36 Atlantic’s ADSL Access Tariff offering, the FCC stated, “we agree with Bell  
37 Atlantic that it is not required to provide an avoided-cost discount on its  
38 wholesale ADSL offering because it is not a retail service subject to the discount  
39 obligations of section 251(c)(4).” More recently, in its Verizon Connecticut

1 Order, the FCC clearly stated that resale obligations only extend to  
2 telecommunications services offered at retail. Therefore, BellSouth is not  
3 required to offer its wholesale DSL service to CLECs at a resale discount, nor is it  
4 required to resell its Internet access service.<sup>11</sup> BellSouth is in compliance with  
5 the FCC's requirements with respect to resale of advanced services.

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7 Q. DOES BELLSOUTH TELECOMMUNICATIONS OFFER DSL  
8 TELECOMMUNICATIONS SERVICES AS A RETAIL OFFERING?

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10 A. No. The only DSL telecommunications service that BellSouth offers is a  
11 wholesale service. BellSouth does not offer a retail DSL service, and based on  
12 the FCC's Second Report and Order referred to above, as well as the Court's  
13 Decision, BellSouth has no obligation to make available its wholesale  
14 telecommunications DSL service at the resale discount, pursuant to section  
15 251(c)(4).

16

17 **OTHER**

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19 Q. PLEASE COMMENT ON MR. BRADBURY'S DISCUSSION OF  
20 REGIONALITY BEGINNING ON PAGE 19 OF HIS TESTIMONY.

21

22 A. In his arguments on the regionality of BellSouth's legacy OSS systems and  
23 manual OSS processes and procedures, Mr. Bradbury has fundamentally confused

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<sup>11</sup> *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Memorandum Opinion and Order (Released July 20, 2001) ("Verizon Connecticut Order")(fn 93).

1 BellSouth's position regarding the weight that this Commission should give to the  
2 third-party OSS test in Georgia and to BellSouth's Georgia performance in  
3 general. (See AT&T's Bradbury Testimony at pp. 22-23). In accord with  
4 established precedent, BellSouth has argued that the best evidence here is actual  
5 commercial usage in Kentucky. BellSouth has urged the KPSC to look at the  
6 Georgia test and Georgia performance only to the extent that the KPSC deems it  
7 necessary to rely on evidence other than commercial usage of OSS in Kentucky.  
8 Mr. Bradbury's concern that "neither the Georgia PSC nor the FCC has relied  
9 upon that information [Georgia test and Georgia performance] in making a  
10 determination regarding BellSouth's OSS" is irrelevant to the fact that the  
11 evidence in this record shows that BellSouth's OSS are regional. (See Bradbury  
12 at p. 20).

13  
14 The Georgia evidence has been and will continue to be subject to substantial  
15 scrutiny by the Georgia Commission, and there is no need for the KPSC to  
16 duplicate those efforts. Any OSS process improvements that have been and will  
17 continue to be implemented as a result of the Georgia third-party test will  
18 necessarily be applied on a region-wide basis, given the regionality of BellSouth's  
19 OSS. Accordingly, it is appropriate for the KPSC to rely on Georgia evidence in  
20 the fashion envisioned by the FCC. Where commercial volumes may not exist in  
21 Kentucky, it is proper to supplement the record and review with performance and  
22 testing results from Georgia. Where data are inconsistent, potentially based on  
23 low order volumes, the FCC has found performance from other states to be  
24 relevant evidence. (See SWBT Order-KS/OK at ¶¶ 34-38, 150). Indeed, AT&T  
25 itself recognizes this to be appropriate. (See Bradbury Testimony, pp. 20-21.)

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Q. PLEASE RESPOND TO MS. BERGER’S/AT&T’S ALLEGATION (P. 3) THAT NONE OF THE ISSUES DISCUSSED IN HER TESTIMONY WILL BE RESOLVED IN A TIMELY MANNER “AS A RESULT OF BUSINESS-TO-BUSINESS NEGOTIATIONS.”

A. Contrary to Ms. Berger’s allegation, BellSouth most certainly continues to discuss and attempt to resolve all valid issues raised by AT&T, even those that are before regulatory bodies. In certain circumstances, where legal or policy issues are involved, these matters must be discussed with policy decision makers and/or the legal department, regardless of whether these issues are before regulatory bodies. This additional but necessary step may add some time to the response period; however, BellSouth will continue to strive, in all instances, to respond to AT&T’s concerns in a timely and reasonable fashion.

Q. HOW HAS BELL SOUTH ADDRESSED CONCERNS OF INDIVIDUAL CLECS IN A BUSINESS-TO-BUSINESS CONTEXT?

A. BellSouth offers various avenues for dealing with individual CLEC concerns. In addition to individual Account Teams, numerous CLEC centers, and other processes that are tailored specifically for CLECs, BellSouth has established an External Response Team (“ERT”) for handling inquiries and responding to issues raised by the CLECs. In the timeframe from 1998 through mid-2001, BellSouth has processed over 3000 individual CLEC ERT letters. These letters have dealt with a variety of subjects from requests for specific data to Root Cause Analysis.

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Q. DOES BELLSOUTH HAVE OTHER FORUMS IN PLACE THAT DEAL WITH CONCERNS OF THE CLEC COMMUNITY AS A WHOLE?

A. Yes. BellSouth has in place several collaboratives to address CLECs’ issues and concerns. BellSouth established these collaboratives to allow BellSouth and the CLEC community to meet, identify, discuss, and resolve, on a weekly, monthly, quarterly, semiannual, or annual basis, the various substantive issues that BellSouth and the CLEC community face in a competitive market. Importantly, these collaboratives are region-wide, thereby providing the CLEC community with a single forum to address any BellSouth-specific issues or concerns they may have from any state in BellSouth’s service territory. Further, to foster a cooperative environment that is focused on the resolution of issues, as opposed to advocating legal and regulatory positions, attorneys are prohibited from attending these collaboratives. To date, more than 80 CLECs have participated in these collaboratives and numerous issues have been resolved. A summary of the collaboratives currently offered by BellSouth follows:

1. BellSouth User Groups - This collaborative consists of four groups, (UNE-P, Collocation, Resale, and Facilities Based) each of which has its own separate collaborative. The purpose of these groups is to bring BellSouth and CLECs together to resolve potential issues relating to each group prior to legal or regulatory intervention. The groups meet once a quarter, except for the UNE-P group, which meets every two months. Over 76 CLECs have participated in these

1 collaboratives and several meetings are scheduled in the next couple  
2 of months. As information, I have attached as Exhibit CKC-7, a  
3 detailed description of each of the BellSouth User Group  
4 Collaboratives.

5  
6 2. CLEC Inforum - In this collaborative, BellSouth, in a convention-like  
7 setting, informs CLECs of the latest information on BellSouth  
8 products, Operations Support Systems (“OSS”), sales and marketing  
9 initiatives, and operational issues. In addition, the collaborative also  
10 provides educational workshops and sessions, opportunities to meet  
11 and discuss issues with BellSouth Subject Matter Experts (“SMEs”),  
12 and allows CLECs to network with their BellSouth account executives  
13 and other CLECs. This collaborative is generally held on an annual  
14 basis. The most recent meeting was held on July 15-17, 2001, in  
15 Atlanta. More than 275 people representing over 80 CLECs attended  
16 this recent meeting, which included educational workshops and  
17 sessions offered by BellSouth addressing: (1) Local Number  
18 Portability; (2) Tariffs; (3) LENS; (4) “How to Improve Operational  
19 Efficiency”; (5) “Mergers and Acquisitions – Your Responsibilities”;  
20 (6) “How to Provide Magical Customer Service”; (7) UNE-P; and (8)  
21 Loop Make-up. A copy of the Agenda for the recent Third Annual  
22 2001 Summer CLEC Inforum is provided as Exhibit CKC-8.

23  
24 3. Line Sharing/Line Splitting Collaborative – These industry  
25 collaborative meetings consist of four distinct groups, each of which



1 has its own collaborative: (1) Central Office Based Line Sharing –  
2 BellSouth Owned Splitter; (2) Central Office Based Line Sharing –  
3 DLEC Owned Splitter; (3) Remote Site Based Line Sharing –  
4 BellSouth Owned Splitter; and (4) Line Splitting. These  
5 collaboratives provide CLECs with an opportunity to meet with  
6 BellSouth on a regularly scheduled basis to develop by mutual  
7 agreement the processes and procedures required to implement Line  
8 Sharing and Line Splitting. In 2000 alone, the Central Office Based  
9 groups met over 70 times, and in 2001, to-date, the groups have met  
10 approximately 25 times. Approximately 12 CLECs have participated  
11 in this collaborative. Exhibit CKC-9 provides a description of the  
12 groups in this collaborative.

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14 Q. MR. GILLAN’S TESTIMONY (p. 26) MENTIONS THE NEED FOR AN  
15 EXPEDITED DISPUTE RESOLUTION PROCEDURE. IS THIS  
16 NECESSARY?

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18 A. No, Mr. Gillan’s proposal is not necessary. BellSouth’s Standard Interconnection  
19 Agreement, as well as specific company Interconnection Agreements, provide for  
20 a dispute resolution procedure as well as a process for expediting issues. Mr.  
21 Gillan puts forth no reason why this Commission needs to consider a procedure in  
22 the context of this docket.

23  
24 Q. DOES THIS CONCLUDE YOUR TESTIMONY?  
25

1 A. Yes.

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