COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

In the Matter of:	)	
Investigation Concerning the	)	
Propriety of InterLATA Services	)	**Case No. 2001-105**
By BellSouth Telecommunications Inc.,	)	
Pursuant to the Telecommunications Act	)	
of 1996	)	

BELLSOUTH'S POST-HEARING BRIEF IN SUPPORT OF ITS APPLICATION FOR INTERLATA RELIEF

BellSouth Telecommunications, Inc. ("BellSouth") submits this Post-Hearing Brief in the above-captioned proceeding in support of its application for interLATA relief. There is no doubt that the Kentucky local exchange market is irreversibly open to competition. BellSouth has presented substantial and convincing evidence that it has met the requirements of Section 271. In fact, it is the same evidence, except for state-specific evidence of Track A and performance data, upon which the Louisiana, Georgia, Mississippi and South Carolina Public Service Commissions found BellSouth in compliance with the competitive checklist. Competitive Local Exchange Carriers ("CLECs") are now reaping the benefits of the irreversible opening of the local exchange market; thus, BellSouth has earned the right to compete in the interLATA market. More importantly, however, the citizens and businesses of Kentucky are now entitled to the full benefits of marketplace competition from all providers of all services.

INTRODUCTION

The best evidence of market openness is the state of competition in the BellSouth region in general, and in Kentucky specifically. In BellSouth's nine-state region, CLECs serve over three million access lines. In Kentucky alone, using conservative estimates, as of August 2001,

BellSouth had lost over 100,000 access lines, approximately 7.8% of its total lines and 17.2% of its business lines to other carriers. Approximately 70% of these lines are served by CLECs using their own facilities, either exclusively or in combination with BellSouth's unbundled network elements ("UNEs"). In Kentucky, CLECs are collocated in BellSouth wire centers that serve 62% of BellSouth's total access lines. Competitive inroads are particularly significant in the large and small business markets.

Competition in Kentucky is comparable to the level of competition in states where Bell Operating Company ("BOC") Section 271 relief already has been granted. For example, CLECs had captured between 5.5% and 9.0% market share at the time interLATA relief was granted in Oklahoma. Moreover, experience in New York and Texas shows that the level of competition in local exchange services will accelerate after Section 271 relief is granted, as CLEC "fence sitters" lose their ability to delay BOC interLATA entry by deferring participation in the local market.

BellSouth has demonstrated its ability to process and provision CLEC orders through commercial usage of its region-wide Operations Support Systems ("OSS"), extensive performance data, and independent third party testing. BellSouth fills thousands of CLEC orders for access lines each month in BellSouth's region. There is no doubt that CLECs have achieved their substantial competitive gains because BellSouth's systems and processes provide the meaningful opportunity to compete required by the Act and the FCC.

BellSouth's performance data for Kentucky and for the region confirm that BellSouth has met the requirements of the competitive checklist. BellSouth has provided Kentucky performance measurement data showing that BellSouth provides CLECs with parity of service (for measures with retail analogs) and with a meaningful opportunity to compete (for other

measures). In addition, the third party test ("TPT") completed by KPMG in Georgia further corroborates that BellSouth is meeting its obligations. KPMG conducted independent tests of BellSouth's systems and processes and applied a comprehensive set of over 1,173 test measures. These tests were comparable in both scope and length to the tests conducted in New York and Texas to support Verizon's and SBC's successful interLATA entry. As in New York and Texas, the Georgia TPT was blind, conducted in a military-style format, covered the five primary OSS areas, addressed functionality, scalability, and change management, and provided for substantial CLEC involvement. KPMG found that BellSouth satisfied 96% of the test criteria. Moreover, BellSouth contends that its performance data demonstrate that none of the three areas in which KPMG found that BellSouth had not satisfied the criteria has a meaningful impact on a CLEC's ability to compete in Kentucky.

The CLECs' opposition to BellSouth's application is based on misstatements of the facts or misapplication of FCC precedent. Notably, however, the lessons of New York and Texas are that the CLECs that claim most vociferously that local markets are not open are the first to compete once the barrier to BOC interLATA entry falls. For example, in New York, AT&T stated that "[n]o competitor, including AT&T, is yet able to compete for large volumes of orders from either residential or small to mid-sized business customers." *Comments of AT&T Corp. in Opposition to Bell Atlantic's Section 271 Application for New York*, CC Docket No. 99-295, 2 (filed Oct. 19, 1999). However, just two months later, as Verizon was gaining Section 271 authority, AT&T seriously entered the market with a rapid increase from 97,989 local line customers in December 1999 to 750,000 local line customers by February 2001. *AT&T Offers New Yorkers a New Choice for Local Residential Phone Services,* (Dec. 1, 1999) (News Release), available at http://www.att.com/press/item/0,1354,2302,00.html (last visited October

18, 2001); *Local Exchange Companies Ranked by Lines Served,* New York Public Service Commission, as of 12/31/00, <http://www.dps.state.ny.us/telecom/rankbyal.htm>; Yochi J. Dreazen and Deborah Solomon. *AT&T Chief Says Baby Bells May Price Company Out of Local Service Markets*, Wall Street Journal A4 (Feb. 8, 2001).

This same scenario was repeated in Texas. AT&T told the FCC that "there is no factual basis on which this Commission could have concluded that competition in Texas will thrive with a level of service outages that the Commission deemed tolerable in New York," *Supplemental Reply Comments of AT&T Corp. in Opposition to SBC's Second Section 271 Application for Texas*, CC Docket 00-65, 22 (filed April 26, 2000), and that "[t]he simple fact is that SWBT does not provide parity access to its OSS now, and every indication is that the present disparity in treatment faced by CLECs will deepen as volume increases," *Reply Comments of AT&T Corp. in Opposition to SBC's Section 271 Application for Texas*, CC Docket 00-45, 42 (filed February 22, 2000). Despite these alleged problems, AT&T went from 150,000 local customers in Texas in July 2000 to 330,000 local customers by February 2001. Competitive lines lost to CLECs in Texas increased 81% between January 2000 and January 2001. *SWB Long Distance Accelerates Market Competition*, (Public Affairs Release), available at <http://www.sbc.com/Long_Distance/0,2951,7,00.html> (last visited June 22, 2001). Thus, real-world evidence shows that the best way to increase competition in the local exchange market is to grant the BOCs Section 271 authority and that CLEC cries of an inability to compete must be examined in light of actual CLEC behavior.

The CLECs have provided no basis for this Commission to withhold its support of BellSouth's 271 application. The CLECs' comments fall into several broad categories:

- *Incorrect statements of FCC rules or policies*. For instance, AT&T argues that BellSouth must provide electronic OSS for line splitting. However, the FCC has explicitly rejected this argument as a 271 requirement.[1]

- *Demands for BellSouth actions where no CLEC rights or ILEC obligations exist under federal or state rules*. In just one example, WorldCom alleges that BellSouth must provide DSL services via line splitting to CLEC voice customers. However, the FCC has rejected WorldCom's arguments several times, including in the *Southwestern Bell-Texas 271 Order*.[2] WorldCom also asserts that BellSouth should provide dedicated transport facilities between CLEC network locations where such facilities do not currently exist. The FCC held that ILECs are not required to do so both in the *Local Competition Order* and the *UNE Remand Order*.[3]

- *Misstatements of BellSouth policies or practices*. In one case, AT&T expresses concern that BellSouth wants a four-hour window within which to start conversions involving IDLC facilities. However, as AT&T concedes, BellSouth works IDLC conversions as time-specific hot cuts if so ordered by the CLEC in exactly the manner that AT&T says it wants. AT&T also claims that BellSouth uses different procedures for addressing erroneous disconnects caused by AT&T than it uses to address erroneous disconnects of its own customers. In fact, these disconnects are handled as a provisioning issue for both CLECs and BellSouth to re-establish service for a customer that was erroneously disconnected.

- *Factually incorrect claims.* AT&T alleges that CLECs in BellSouth's territory are unable to order and obtain customized routing. The truth, however, is that several state commissions have confirmed that BellSouth provides customized routing as required. AT&T itself concedes that BellSouth has proposed certain technologies and has implemented procedures that provide CLECs access to customized operator service/directory assistance routing.

- *Isolated problems occurring in the past*. WorldCom criticizes BellSouth for separating transit traffic from local and intraLATA toll traffic. However, BellSouth offers CLECs the "supergroup" trunk, which includes the very thing WorldCom requests: the exchange of both transit traffic and local and intraLATA toll traffic between a CLEC and BellSouth on the same trunks.

- *Problems caused by CLECs rather than BellSouth.* CLECs often cause the very problems about which they complain. For example, AT&T complains that in processing some customer orders, BellSouth delays disconnecting the customer after connecting AT&T service, resulting in improper routing of calls. The fault in these

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[1] *Verizon-MA Order,* Para. 180.

[2] *See also Verizon-PA Order,* Appendix C.

[3] *See UNE Remand Order,* Para. 324.

cases lies with AT&T because AT&T failed to provide the proper company code so the disconnect and connect orders could be coordinated.

In the face of a clear record of successful performance by BellSouth, the CLECs opposing the application largely focus their comments on isolated or alleged problems. In the ensuing sections of this response, each of these specific claims is squarely addressed. What is quickly evident, however, is that none of the CLEC objections demonstrates systemic problems or noncompliance with the checklist. Accordingly, as detailed below, BellSouth has met or exceeded the standards set for approval of its Section 271 application in Kentucky.

REGIONALITY

The FCC has said that state commissions "can conduct successful section 271 reviews . . . by building on the work of other states in their region." *SWBT-KS/OK Order* ¶2. Where access to a particular checklist item, such as OSS, is provided through region-wide processes, the FCC will consider both region-wide and state-specific evidence in its evaluation of that checklist item. *Second Louisiana Order,* 20637-38 (1998). In particular, the FCC has concluded that information from an "anchor" state may be used to supplement information for other states, where the "OSS are essentially the same throughout [the BOC's] region." *Second Louisiana Order*, 20655. The FCC requires either that a single OSS be used throughout the region or that separate OSS systems be identical. *SWBT-KS/OK Order*, ¶¶ 110-16.

BellSouth has demonstrated to this Commission that its OSS are the same throughout its region. Consequently, this Commission can consider, to the extent it deems necessary, commercial usage and performance data from Georgia and the independent third party test in Georgia.

BellSouth has a single set of OSS that operate region-wide, with a common set of processes, business rules, interfaces, systems, and personnel. *Direct Testimony of Ronald M.*

Pate, pp.179-180, 182-189 (filed May 18, 2001) ("*Pate*"); Testimony of Alfred Heartley, pp. 2-3 (filed May 18, 2001) ("Heartley") *Scollard, pp. 22, 27.* CLECs throughout the BellSouth region access its OSS through the same electronic interfaces – LENS, EDI, TAG, RoboTAG[tm], TAFI, and ECTA. *Rebuttal Testimony of Ronald M. Pate*, pp. 12-13 (filed July 30, 2001) ("*Pate Rebuttal*"). Manual processes are divided between BellSouth's centers by CLEC, not by state, and training of personnel and coordination of activities ensure that jobs are done in generally the same manner throughout the region. *Rebuttal Testimony of Ken L. Ainsworth*, p. 11 (filed July 30, 2001) ("*Ainsworth Rebuttal*"); *Rebuttal Testimony of Alfred Heartley*, p. 5 (filed July 30, 2001) ("*Heartley Rebuttal*"). The independent audit firm of PriceWaterhouseCoopers ("PwC") attested to the regionality of BellSouth's preordering and ordering OSS. Pursuant to American Institute of Certified Public Accountants ("AICPA") standards, the attestation is a written statement expressing PwC's conclusion about the reliability of BellSouth's regionality assertions. BellSouth modeled the PwC attestation on Ernst & Young's Southwestern Bell Telephone Company ("SWBT") Five State Regional OSS Attestation Examination, which was used in SBC's successful Section 271 applications. The PwC attestation differs from the SWBT attestation examination only in that PwC examined BellSouth's assertion that there are no material differences in the functionality of DOE and SONGS, BellSouth's manual order input systems. *Pate Rebuttal*, pp. 3-5; *Pate*, *Exh. OSS-74*.

PwC based its attestation on an examination of BellSouth's written statement regarding the regionality of its OSS. Under the AICPA attestation standards, an "examination" provides the highest level of assurance regarding an attestation. Following its examination, PwC attested that BellSouth's regionality assertions "are fairly stated, in all material respects." *Pate*, *Exh. OSS-74*; *Pate Rebuttal*, p. 4. Specifically, PwC validated BellSouth's assertions that:

> BellSouth Telecommunications (BST) utilizes the same Pre-Order and Order operational support systems (OSS) throughout BST's nine-state region to support wholesale competing local exchange carrier (CLEC) activity, based on the criteria established in the Report of Management Assertions and Assertion Criteria on BellSouth Telecommunication's Operational Support System; . . .
>
> BST's DOE and SONGS systems have no material differences in the functionality or performance for service order entry by the Local Carrier Service Centers (LCSC), based on the criteria established in the Report of Management Assertions and Assertion Criteria on BellSouth Telecommunication's Operational Support Systems. *Pate*, Rebuttal, p. 5.

In response to the specific interest of this Commission, PwC completed a thorough examination of the comparability of the DOE and SONGS systems. Contrary to AT&T's claim, *Bradbury Rebuttal pp.* 32-33, PwC specifically assessed the performance of the two systems and determined that they performed the same in all material respects. PwC performed a statistical comparison of the time required to input orders in DOE and SONGS, and an analysis of any errors that occurred after the orders were input. PwC found less than three minutes difference in the time required to input orders in the two systems. This difference is not material, in light of the fact that the average time to process an order through either DOE or SONGS is less than 1% of the overall Firm Order Confirmation ("FOC") interval. Additionally, PwC found no material difference in the system errors that occurred in DOE and SONGS indicating that the accuracy of the service orders processed by the two systems is the same in all material respects. PwC validated BellSouth's original assertion that there are no material performance differences in DOE and SONGS. *Pate Rebuttal*, 7-11; Exh. OSS-77 (affidavit of Mr. Robert Lattimore describing the additional PwC tests of DOE and SONGS).

BellSouth's regionality demonstration is not made on the basis of identical performance between the states. The test is whether BellSouth provides "equivalent access to all necessary OSS functions." *SWBT-KS/OK Order*, ¶ 105. Performance need not be identical in every case for OSS to be found to be equivalent. *Id.*, ¶ 117 (rejecting general speculation or anecdotal

evidence that differences exist in the face of demonstrated compliance); *Reply Affidavit of Larry K. Mah*, ¶¶ 31-33, *filed in SWBT-KS/OK Proceeding*, CC Docket No. 00-217 (filed Dec. 11, 2000) (explaining that certain variations in OSS performance are inevitable, due to "variables beyond SWBT's control.").

Nonetheless, BellSouth's performance data, upon which this Commission should rely to assess BellSouth's compliance with Section 271, demonstrate that BellSouth performs at an exceptional level throughout its region, including in Kentucky. BellSouth publishes its performance measurement results on its interconnection website (http://www.interconnection.bellsouth.com/mss/index.html) for all nine states utilizing the Georgia measurements and standards. Kentucky routinely has been one of the top BellSouth states, ranking first in June and second in July. While Kentucky ranked sixth in August, its performance differed by less than 1% from the state ranked first. Comparison of BellSouth's MSS data in all nine states demonstrate that there is little performance disparity.[4] *Tr.Vol. VI, pp. 19-21 (McElroy), MSS Summary Late-Filed Exhibit*.

[4] Although NewSouth did not participate in this proceeding, it raised regionality concerns in the cross examination of Mr. McElroy in SC, which was introduced as evidence in this proceeding. Specifically, NewSouth expressed concern about the possible effects of preferential treatment of requests submitted by CLECs in Georgia and Florida. *South Carolina Tr. Vol. XIV, pp. 5272-75 (McElroy)*. The limited implementation of preferential treatment of certain Georgia and Florida requests was an initial response to orders of the Georgia and Florida Commissions establishing new performance standards. These orders included more stringent targets for the timeliness of many tasks performed by the LCSC personnel, such as firm order confirmations ("FOCs") and Reject Notices. BellSouth took steps to increase the workforce in the LCSCs to satisfy these more stringent standards. In addition, for a short period of time, priority was given to manually submitted requests (via fax) from Georgia and Florida. Mechanized and partially mechanized requests continued to be handled on a first-come, first-served basis for the region. In December 2000, BellSouth instructed the LCSCs to discontinue the preferential treatment.

PwC addressed the issue of preferential treatment during its April 2001 investigation into the regionality of BellSouth's OSS. During its examination, PwC identified personnel at the Birmingham LCSC who mistakenly had not ceased the priority treatment for Georgia and Florida manual requests. BellSouth immediately took action to correct this problem in the Birmingham LCSC. PwC validated BellSouth's correction and closed the issue. The issue is not addressed in the PwC regionality reports because the lone instance of preferential treatment was identified and resolved with no impact on the scope or reporting of PwC's attestation. *SC Tr. Vol. XIV, pp. 5272-75 (McElroy)*. Further, BellSouth's regional MSS comparison demonstrates that there was no impact from any preferential treatment. The actual performance in all of BellSouth's states through July 2001 demonstrates that the

AT&T also mistakenly argues that BellSouth's Georgia performance measurements and TPT data should not be examined by the Commission because the FCC has not, as of yet, approved a BellSouth application. *Rebuttal Testimony of Jay M. Bradbury, pp.* 20-22 (filed July 9, 2001) ("*Bradbury-Rebuttal*"). Such a determination is not necessary for the Commission to conduct an independent review of performance data from Georgia. As the FCC has noted, "the Commission has adopted the practice of reviewing evidence from other *applications* and states." *SWBT-KS/OK Order*, ¶ 38 (emphasis added). Indeed, AT&T cites only its experience in Georgia and Florida, and WorldCom witness Ms. Lichtenberg explicitly states that Georgia evidence is relevant. *Bradbury,* Exh JMB-2, *Affidavit of Bernadette Seigler*; *Rebuttal Testimony of Sherry Lichtenberg*, p. 3 (filed July 9, 2001) ("*Lichtenberg*"). Moreover, at the hearing, AT&T witness Mr. Turner stated that the Commission "[a]bsolutely" could consider evidence from Georgia. *Tr. Vol. V, p. 108(Bradbury).* Finally, commissions in Georgia, Louisiana, Mississippi and South Carolina each have relied on such data in determining that BellSouth has satisfied the requirements of Section 271.[5]

BellSouth's concept of regionality does not request that the Commission should defer to findings of other state commissions rather than make an independent analysis. BellSouth consistently has urged the Commission to make its own, independent determinations. To that

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priority given to Georgia and Florida manual requests was short-lived and caused little difference in performance among the states.

[5] *Administrative Session Proceeding Record*, Georgia Public Service Commission (October 2, 2001) (*"GA Proceeding"). Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance With Section 271 of the Telecommunications Act of 1996 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-2252, Subdocket E, Order No. U-22252 (e), (La. P.S.C. Sept. 19, 2001) ("*LA PSC 271 Order*"). *Consideration Of the Provision Of In-Region InterLATA Services By BellSouth Telecommunications, Inc. Pursuant To Section 271 Of TA 96*, Docket No. 97-AD-321, Final Order, (Ms. P.S.C. Oct. 4, 2001) ("*MS PSC 271 Order*"). In relying, in part, on Georgia data and the TPT, the Louisiana and Mississippi Commissions each first concluded that BellSouth had demonstrated the regionality of its OSS.

end, BellSouth has provided the Commission with all relevant information to conduct its analysis – beginning with competitive data from Kentucky, but including Georgia data to the extent the Commission deems it appropriate to consult. Thus, while the Commission should look first to BellSouth's data for Kentucky, it may also consider the Georgia performance data and TPT results as evidence of BellSouth's checklist compliance. *Cox Rebuttal*, *pp. 35-36 (filed July 30, 2001)* ("*Cox Rebuttal*").

Sprint claims that BellSouth has not demonstrated the regionality of its OSS because of disparity in the loop make up information available electronically in each state. *Tr. Vol. V, pp. 222-22 (Felton)*; *Surrebuttal Testimony of Mark G. Felton*, p 2 (filed Aug. 20, 2001) ("*Felton Surrebuttal"*). The Loop Facilities Assignment Control System ("LFACS") contains the source data used for loop qualification and is available region-wide. Throughout the region, when LFACS contains insufficient data for a CLEC to qualify a particular loop, BellSouth develops the necessary loop makeup data using a combination of Engineering Work Orders, field visits, and plats that contain records of BellSouth's Outside Plant Facilities. The information is then added to LFACS. The data used to update LFACS are the same region-wide. BellSouth's method of storing the plats is the only difference. In some states, like Kentucky, the Outside Plant Facility data is recorded on paper plats. In other states, a digitized version of the plats is in a corporate facilities database ("CFD"). Regardless of how the plat is maintained, the process for developing the loop makeup information is accomplished in substantially the same time on a regional basis. *Surrebuttal Testimony of Ronald M. Pate*, pp. 3-4 (filed September 10, 2001) ("*Pate Surrebuttal*"). Thus, the difference in storage does not create a material difference in performance among BellSouth's states.

BellSouth's OSS are regional, despite CLEC suggestions to the contrary, even though there are several servers throughout the region for order processing and billing. *BradburyRebuttal*, pp. 27-28. To the extent that there are separate servers for processing CLEC requests, the servers use the same programming code and are designed to operate in an indistinguishable manner. Moreover, the servers use the same type of hardware running identical software. *Pate Rebuttal*, p. 13; *Heartley Rebuttal*, p. 4; *Rebuttal of David P. Scollard* pp. 5-6 (filed July 30, 2001) ("Scollard Rebuttal"). BellSouth and CLEC queries return the same data in the same format. *Pate*, p. 187. The FCC rejected a claim similar to AT&T's in its review of the Kansas/Oklahoma application. *SWBT-KS/OK Order*, ¶ 117 (concluding that SWBT's two order processing servers are the same because they utilize "the same type of hardware running identical software."). Thus, BellSouth provides equivalent access to pre-ordering, and the fact that data within the system differ in each state does not affect OSS operation. Nor is regionality affected by the fact that BellSouth uses some different systems currently to dispatch technicians and inventory equipment throughout the BellSouth region. *Tr. Vol. IV, pp. 256-259 (Heartley)*. BellSouth is upgrading certain systems throughout its region; these upgrades cannot be completed simultaneously. For regionality purposes, what is important is that both systems have the same basic functionality. Thus, there is no material difference in the performance of the basic functions of the systems throughout the BellSouth region. *Id*.

The FCC's regionality standard is not affected by the fact that BellSouth's provisioning and maintenance and repair work groups are organized geographically and different performance will occur in different states. *Bradbury*, pp. 28-29; *Tr. Vol. IV, pp. 242-244 (Heartley)*. The FCC rejected similar claims in the Kansas/Oklahoma 271 proceeding. *Petition to Deny of Sprint Communications Co. in Joint Application by SBC Communications, et al. for Provision of In-*

Region InterLATA Services in Kansas and Oklahoma, CC Docket 00-217, 54-55 (filed November 15, 2000); *SWBT-KS/OK Order*, ¶ 113 (factors demonstrating the regionality of the field personnel include: "common centers coordinate field work activities [throughout the region]; field personnel access the same systems and use the same procedures [throughout the region]; personnel receive common training [throughout the region]; and there is a common organizational structure [throughout the region].") BellSouth meets the FCC's standard for demonstrating the regionality of network operations. Regional work groups report to the same regional manager and follow the same guidelines. The existence of groups in different physical locations is necessary to serve BellSouth's customers throughout its nine-state region. *Heartley Rebuttal*, 5. The fact that performance in the states differs due to varying state requirements, terrain, and weather conditions was recognized and accepted by the FCC and does not impact a finding of regionality. *Heartley Rebuttal*, 2-3.

In sum, BellSouth's OSS are the same throughout its nine-state region. Accordingly, consideration of information about the competitive experience in Georgia and the Georgia TPT relating to OSS is appropriate to the extent the Commission seeks to supplement BellSouth's Kentucky data for purposes of assessing BellSouth's compliance with the Act's competitive checklist.

STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS

In addition to negotiating and arbitrating private agreements with new entrants, the 1996 Act affords incumbent local exchange companies ("ILECs") the right to file a Statement of Generally Available Terms and Conditions ("SGAT").[6] Once approved or permitted to take

[6] Section 252(f)(1) of the 1996 Act provides that: "A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company *generally offers* within that state to comply

effect by the Commission, the SGAT can provide a vehicle for CLECs to use to enter the local market quickly without having to negotiate and/or arbitrate an interconnection agreement with an ILEC. In accordance with this provision, BellSouth filed a new SGAT in this proceeding. *Cynthia K. Cox, Hearing Exhibits, Exh. CKC-5 ("Cox. Exh..")*. BellSouth's SGAT provides a set of general terms and conditions from which any competitor in Kentucky can order interconnection facilities and UNEs or can resell BellSouth services.

To be approved, an SGAT must comply with Section 251 and the pricing standards for interconnection, unbundled network elements, and resale contained in Section 252(d). This is the same standard applied by this Commission for approval of arbitrated agreements. *Compare* 47 U.S.C. § 252(f)(2) *with* 47 U.S.C. § 252(e). BellSouth has developed and incorporated into the SGAT comprehensive performance standards and measurements that demonstrate that BellSouth is providing nondiscriminatory access to CLEC customers. In addition, BellSouth agrees that, upon establishment of final cost-based rates by this Commission in Administrative Case 382, BellSouth will incorporate these final rates into the SGAT. Accordingly, BellSouth's SGAT satisfies the requirements of Sections 251 and 252(d) of the 1996 Act.

The Act also explains that a BOC may use an approved SGAT under 47 U.S.C. § 271(c)(2)(A) ("Track A"), to supplement one or more binding agreements to demonstrate full compliance with the 14-point competitive checklist under that Track. *Evaluation of the United States Department of Justice, In re: Application of SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma*, CC Docket No. 97-121, ¶ 22-24 (filed Mar. 16, 1997). Accordingly, the rates, terms and conditions of interconnection, unbundling and resale in the SGAT give

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with the requirements of section 251 and the regulations thereunder and the standards applicable under this section." (emphasis supplied).

BellSouth a "concrete and specific legal obligation" to furnish each checklist item to competitors. As demonstrated above, BellSouth's SGAT satisfies the Act's requirements and should be approved by this Commission.

THE GEORGIA THIRD PARTY TEST

The commercial usage of BellSouth's OSS in Kentucky and throughout the BellSouth region demonstrates that BellSouth's OSS afford CLECs a meaningful opportunity to compete. BellSouth's performance data confirms that BellSouth provides such an opportunity at parity with the service it provides its retail units. While this evidence alone is sufficient to support a finding that BellSouth has discharged its legal obligations, and has been determined by the FCC to be the most probative evidence in an assessment of an ILEC's compliance with the Act, the third-party test ("TPT") conducted by KPMG under the auspices of the Georgia Public Service Commission further validates that BellSouth's systems and processes are operationally ready. Given the regionality of BellSouth's OSS, the Georgia TPT provides probative evidence of BellSouth's OSS checklist compliance. *Pate, pp.* 143, 146;

KPMG opined that "no deficiencies creating potentially material adverse impacts on competition currently exist in the Test categories of Pre-Ordering, Billing, Maintenance and Repair, Capacity Management, Change Management, and Flow-Through." *Pate,* p. 7, 158. Specifically, KPMG determined that BellSouth satisfied 95% of the 1,173 criteria KPMG evaluated. For the remaining criteria, KPMG determined that 1.8% were "not satisfied", 1.5% are "no reports and 3.0% are "not applicable". *Pate Rebuttal*, p. 1-2; *Exhibits OSS 64-66, OSS-67.* For the few "not satisfied" criteria, KPMG reminded the GPSC that it would "be able to monitor these issues on an ongoing basis, through the performance measures and/or penalty plans in place to address [them]." *Pate,* p. 158. Moreover, BellSouth has resolved all material

issues raised by these criteria, as evidenced by its current performance data. *McElroy Testimony*, pp. 23-24; *Pate*, pp. 159-178, 190; *Varner*, pp. 17-32; AJV-16. Today, only five exceptions of the Georgia TPT remain open. *Tr. Vol. VI*, p. 17 ("McElroy").[7]

AT&T's complaints about the Georgia TPT should be rejected out of hand. First, as AT&T has elsewhere conceded, the Georgia TPT meets the minimum requirements of the FCC. *SC Tr. Vol. XIII, pp. 5139-40 (Norris).* In fact, the Georgia TPT is comparable to those conducted in New York and Texas and approved by the FCC. *Pate Rebuttal*, pp. 17-18. The fact that the Georgia test did not test every possible BellSouth system is consistent with the GPSC's view, based on FCC orders, that commercial usage is the most probative evidence of compliance. Consequently, the TPT needed only to address those areas in which there was not, at the time the test was started, commercial usage upon which to assess BellSouth's performance.

Second, the Georgia test plan was mandated by the GPSC, drafted based on the parameters set by the GPSC, and approved by the GPSC. *Pate*, pp. 143-44, 146; *Pate Rebuttal*, pp. 14-15. It was not, as AT&T claims, "manipulated" by BellSouth. Rebuttal Testimony of Sharon E. Norris, p. 6, 20, 30, 45 (filed July 9, 2001) (*"Norris Rebuttal"*). The fact that BellSouth paid KPMG to conduct the test is hardly unique – in Georgia, in fact, the CLECs argued that BellSouth *should* pay for the test. Moreover, contrary to AT&T's claims, CLECs had a great deal of involvement in the Georgia test. CLECs were given an opportunity to comment on the Georgia test plan, and were invited by KPMG to participate in weekly calls and two face-to-face meetings to discuss the status of the test, including exceptions. *Pate*, pp. 146, 152-153. In some cases, CLECs even submitted orders on behalf of KPMG. Nor is AT&T correct in asserting that the statistical methodologies used by KPMG are flawed; in fact, these are

[7] Per the Commission's request, BellSouth filed Late Filed Exhibit 8 referencing the relevant Kentucky performance data on the "not satisfieds."

the same methodologies used by KPMG in New York and approved by the FCC. *Rebuttal Testimony of Robert M. Bell,* (filed July 9, 2001) *("Bell Rebuttal"); Pate Rebuttal, p. 31.*

AT&T also erroneously asserts that differences between the Florida TPT and Georgia TPT test results undercut the validity of the Georgia TPT. *Norris Rebuttal*, pp. 7-8. However, the different results are largely due to the fact that the tests differ based on the unique requirements of the respective state commissions. *Pate Rebuttal*, pp. 20-21. With respect to the metrics test, in some cases, the Florida test may have yielded an exception that was being closed in Georgia because the Florida test is using code that has not been updated from Georgia. *Testimony of Alphonso J. Varner*, p. 38 (filed July 30, 2001)(*"Varner Rebuttal")*, AJV-17. In all cases, AT&T's blanket assertions that exceptions were "the same" in Georgia and Florida are overbroad and should be disregarded. *McElroy Rebuttal, pp. 20-22; Varner Rebuttal, pp. 30-42.*

AT&T argues that the Commission should ignore the Georgia TPT and instead rely on the ongoing Florida TPT. Tr. Vol. V, pp. 106-107 (*"Bradbury Rebuttal")*, p. 7. Doing so would undoubtedly benefit AT&T because waiting for the Florida results would delay this proceeding and thereby delay BellSouth's entry into the long distance market. Given the evident reliability of the Georgia TPT, however—which, again, is merely cumulative to the persuasive real-world evidence that BellSouth's systems and processes are operationally ready—such delay is both unwarranted and harmful to consumers.

The Georgia TPT provides ample evidence that BellSouth's OSS is checklist compliant, and the FCC already has validated the Georgia test paradigm in the New York and Texas Section 271 proceedings. *Pate Rebuttal*, p. 17. Further, the FCC has specifically rejected the suggestion by CLECs that TPT should follow a "cookie cutter" approach. "In short, that the Georgia test

was different by design than other third-party OSS tests does not detract from the usefulness of the Georgia test." *Pate Rebuttal*, pp. 16-17.

Accordingly, BellSouth respectfully submits that the KPSC should rely on the Georgia TPT to the extent it believes it needs evidence, in addition to the extensive commercial usage of BellSouth's systems, that BellSouth's OSS are operationally ready.

BELLSOUTH'S PERFORMANCE DATA

The KPSC adopted BellSouth's Service Quality Measurements ("SQMs") for purposes of assessing BellSouth's compliance with the competitive checklist in Phase I of this proceeding. In addition, the Commission adopted a penalty plan for BellSouth in Kentucky to ensure that BellSouth does not backslide once it enters the interLATA market. BellSouth's performance data is reliable and should be used by this Commission to assess BellSouth's compliance with the checklist.

No doubt because BellSouth's level of performance is so high, and demonstrably meets the requirements of the checklist, several CLECs instead have argued that BellSouth's performance data is unreliable. These allegations are unfounded. In the vast majority of the cases their allegations are erroneous. In some cases, the CLECs misinterpret the SQM and/or the Raw Data User's Manual (RDUM). In other cases, the CLECs simply misinterpret the data. In no case has a CLEC substantiated a claim that BellSouth's data is unreliable.[8]

As a general proposition, there are numerous reasons why the Commission can rely on BellSouth's performance data. First, BellSouth has in place a series of validation practices designed to ensure the integrity of the data. BellSouth's systems have internal quality assurance

[8] Subsequent to the hearing in this matter, NuVox withdrew its allegations about "missing" data.

controls. As part of these controls, BellSouth's systems execute a number of validation checks to ensure that no records are lost between databases from the legacy systems to PMAP staging. In addition, raw data validation scripts are used to insure that the raw data made available to CLECs on the Web can be used to produce the Performance Measurement Analysis Platform ("PMAP") reports posted to the Web. BellSouth also performs a number of manual data validation processes within and between data processes to insure the accuracy and completeness of the data. The validation process includes both validation of the code, and a reasonableness validation of the data itself. These checks take place for both BellSouth data and CLEC data.

Further, BellSouth's data have been validated by multiple third party audits. KMPG conducted two audits of BellSouth's data in Georgia. In Phase I, KPMG conducted a comparison of metrics, levels of disaggregation and benchmarks and analogs against the September 1999 Georgia-ordered SQM Plan. Concurrent with the Phase I audit, KPMG conducted an extensive test of all systems and processes, including PMAP, BARNEY and manual processes, that are utilized by BellSouth to produce performance data. The KPMG test examined the following areas of metrics production: 1) Data Collection and Storage Verification and Validation; 2) Metrics Definition Documentation and Implementation Verification and Validation; 3) Metrics Change Management Verification and Validation; 4) Metrics Data Integrity Verification and Validation; and 5) Metrics Calculation and Reporting Verification and Validation. The status of Phase I completion is approximately 95% complete. All but 8 of the 420 non-Flow-Through metrics tests have been completed and satisfied. All 14 of the Flow-Through were completed and satisfied before the KPMG final report was issued.

In the second audit, or Phase II, KPMG audited all measures up to those implemented in the June 6, 2000, SQM and repeated certain of the testing conducted in Phase I. In the course of

these two audits, KPMG has reviewed approximately 85% of BellSouth's 75 measurements (before disaggregation) in the SQM. In the first audit, KPMG replicated 98% of BellSouth's disaggregated results, and replicated 95% in the second audit. The discrepancies in the measures that were not replicated are slight and were simply rolled into the third audit.

Moreover, BellSouth is in the midst of an unprecedented *third* audit, providing further assurance that BellSouth's data will continue to be accurate. In the Phase III audit KPMG is replicating the calculations of the Georgia SQM prescribed in the January 16, 2001, Order for three months. This audit re-examines all of the pre-existing measures to the extent those measures have changed, will reexamine the results KPMG could not replicate in the first audit, and reviews new measures and levels of disaggregation. In addition, KPMG is auditing the enforcement mechanism (SEEM). The status of the Phase III audit is as follows:

PMR1 - Data Collection and Storage, 65% complete;

PMR 2 - Standards and Definitions, 65% complete;

PMR 3 - Change Management, 65% complete;

PMR 4 - Data Integrity, 25% complete;

PMR 5 - Replication – SQM Reports, 47% complete;

PMR 6 - SEEM Statistical Analysis, 10% complete; and

PMR 7 - Enforcement, 10% complete.

Finally, the Commission's SQM and SEEM plan provide for additional annual third party audits of the measurements. This Commission can audit the SQM yearly for the next five years. In addition, the SEEM plan provides for an audit of Tier 1 and Tier 2 payments each year, with

no limit on the number of years the audits will occur. These on-going audit mechanisms ensure that the data will continue to be reliable.

In their respective state 271 proceedings, the GPSC and the LPSC both concluded – after extensive review and hands-on involvement – that BellSouth's performance data is sufficiently reliable to assess BellSouth's performance and to establish compliance with the competitive checklist. "The [GA] Commission concludes that BellSouth has provided 'reasonable assurance' that its performance data is reported 'in a consistent and reliable manner'." GPSC Comments, 129 Citing the Standard BA-NY Order P. 4172). The GPSC went on to say that:

> …given that BellSouth is reporting performance data on more than 2,200 sub-metrics each month, it is unrealistic to expect 'perfection' in BellSouth's performance reporting. PMAP processes over 80 million records each month, and with the work involved in producing the volume of aggregate and CLEC-specific performance reports required by the Commission, it is not surprising that coding errors and reporting problems have occurred. However, BellSouth states that these problems are largely isolated and either have been or are being addressed, and the [GA] Commission does not believe that such problems undermine the "integrity" of BellSouth's performance data. GPSC Comments, 130

BellSouth has been reporting performance data in Georgia and Louisiana for over three years. The GPSC also notes that "the Commission has had in place for more than three years a process to resolve any disputes related to performance measures and reporting. Under the Commission's Order, any dispute that cannot be resolved between the two companies may be brought to the Commission's attention by the filing of a complaint. It is noteworthy that, to date, *no CLEC has availed itself of these procedures*." GPSC Comments, 133 (emphasis added). Likewise, the LPSC stated that "it is the Louisiana Commission's opinion that BellSouth has sufficiently refuted…AT&T's allegations concerning the integrity of the performance data that BellSouth has filed and upon which it relies." LPSC Comments, 30.

BellSouth's commitment to data integrity is evidenced most clearly by its reposting and refiling of data. BellSouth consistently checks and rechecks its data to ensure that its performance reports are complete and accurate. BellSouth's comprehensive review process – which continues even after BellSouth has made its performance data publicly available – demonstrates BellSouth's pledge to accuracy. Where BellSouth determines that data are inaccurate, BellSouth promptly corrects the data on its website, provides CLECs with notice that corrected data is available, and refiles the data with the appropriate regulatory bodies. This practice ensures that CLECs and regulators have access to the most complete, up-to-date information available. In addition, BellSouth recalculates SEEMS payments as necessary. BellSouth is unaware of any RBOC that goes to such lengths to make its revised data public. This unprecedented practice underscores BellSouth's commitment to providing federal and state regulators all the tools they need to assess BellSouth's performance.

Isolated errors in BellSouth's performance data should not, as AT&T would suggest, be extrapolated to mean that BellSouth's entire data reporting system is unreliable. *Varner Rebuttal*, p. 15. To the contrary, the Commission should look at the thousands of calculations that BellSouth makes every month, the validation BellSouth undergoes, and the complexity of the system that produces these calculations, and place a high level of confidence on the data that BellSouth produces.

TRACK A AND THE STATUS OF LOCAL COMPETITION

BellSouth satisfies the Track A provisions of Section 271. Not one party challenges BellSouth's compliance with these requirements. Thus, the Commission should find that BellSouth has met Track A.

The state of competition in Kentucky demonstrates that the market is irreversibly open to competition. The level of competition in Kentucky is comparable to, or higher than, the level of local competition in other successful 271 applications. A total of 70 CLECs (providing service to 10 or more lines) that are parties to over 500 approved interconnection, collocation, and resale agreements serve over 100,000 access lines in the state as of August, 2001, which represents 7.8 percent of the total local access lines in BellSouth's territory. As of August 2001, CLECs served approximately 17.8 percent of the business market and 3.1 percent of the residential market. Approximately 70 percent of CLEC lines are served using their own facilities, either exclusively or in combination with BellSouth's unbundled network elements. For example, Insight Communications is offering local telephone service with AT&T via customers' cable lines. Insight currently has 3,200 customers in Jefferson County, with more expected. In addition, Insight has plans to continue to roll out its service in other parts of the State, including additional areas of Louisville, Lexington, and Henderson in the next few months, as well as to Bullitt and Oldham counties next year. Bill Wolfe, *Phone Customers Connect Via Cable*, The Courier-Journal, Nov. 13, 2001, A1. BellSouth has completed 200 collocation requests in 30 wire centers, which allow one or more CLECs to serve approximately 62 percent of BellSouth's total access lines and 73 percent of BellSouth's business access lines with their own facilities. *Cox, p. 16*; *Wakeling Affidavit, pp. 3-8.* (BellSouth Late Filed Exhibit No. 2).

Notably, while SECCA challenges BellSouth's estimates of competition in Kentucky. The CLECs provide *no* actual data to rebut BellSouth's evidence – strongly suggesting that the data supports BellSouth's position. *Gillan*, pp. 13-18, Moreover, while SECCA challenges BellSouth's Method 1 estimate, SECCA utterly disregards BellSouth's Method 2 which is based

on CLEC E911 listings that CLECs themselves report. *Cox Rebuttal*, p. 7. Even the Department of Justice in its Comments to the FCC on BellSouth's Application for Georgia and Louisiana utilized BellSouth's Method 2 calculation. The only competitive data that the CLECs presented at all was presented by WorldCom. The volume of LSRs that WorldCom reports for its local residential service division (MCI) in June corroborates the fact that local competition is robust. The UNE LSR transaction volumes, either the total of over 84,000 LSRs in June or MCI's continuing "1000 transactions a day," in addition to orders from other CLECs, imply an annualized quantity of approximately 1 million CLEC UNE LSR transactions for the BellSouth region. *Cox Surrebuttal*, p. 2. Such a volume would represent an approximate 40% annual growth rate compared to the mid-2001 installed base of CLEC facilities-based lines, a level of growth that indicates robust competition. *Id.*

Further, SECCA's adjustments to BellSouth's CLEC facilities-based line estimate are excessive and lack empirical support. SECCA applies an unsubstantiated method to reduce BellSouth's CLEC facilities-based line estimate by a factor of 10, from 41,134 to 3,752. Cox Rebuttal, p. 8. SECCA also provides no justification to support the reasonableness of SECCA's 94 percent reduction in total interconnection trunks from BellSouth's Exhibit VW-7. *Id*. This adjustment to total trunks is key to facilitating SECCA's dramatically lower facilities-based line result. SECCA's "corrected" estimates are contradicted by the CLECs' E911 listings, which show the estimated total of facilities-based lines is 19,515, a result more consistent with the 36% national average share of CLEC-provided "last mile" lines. *Id*., pp. 8-9.

Confronted with the obvious existence of competition in Kentucky, SECCA resorts to claiming that it is not growing fast enough. *Gillan*, p. 5. SECCA focuses on a purported drop in the level of resale entry as evidence that competition in Kentucky is either stagnating or

declining. *Gillan,* pp. 8-10. The supposed drop in resale activity is overstated. SECCA bases its conclusion on comparing resale data reported by BellSouth in December with the data from March, 2001 presented in Exhibit VW-3. *Gillan pp.* 8-9. BellSouth has recently determined that the numbers it reported for resale activity in December were overstated, as a result of UNE-P counts inadvertently being included in this figure. *Cox Rebuttal*, p. 6. Deducting the UNE-P counts from the December figures leaves a relatively modest line decline from December to March that is more than accounted for by the migration from resale lines to UNE-P during that same period. *Id., p.* 6.

Even if SECCA's claims about falling resale demand were accurate, this would not demonstrate a lack of local competition. The number of lines served by UNE-P continues to grow, as does the total competitive lines. *Cox Rebuttal, p. 6.* In order to determine whether a market is irreversibly open to competition, it is necessary to consider CLECs as a whole, not just one segment of competitive carriers. A decline in resale activity is also expected as the competitive market develops. Resale is a transitional measure used to allow competition before CLECs deploy their own facilities. It allows competitors to enter markets quickly and build customer bases with minimal investment. In the long run, however, resale entry is not as effective as other forms of entry because it prevents companies from differentiating their products or adding their own innovative features. *Taylor, p. 21.* It is thus logical to assume that as the competitive market matures, the demand for transitional measures such as resale will decline. Moreover, during the period SECCA identifies, UNE-P services have become available to CLECs. *Id.* Given that these services are cheaper than and functionally similar to resale, it is not surprising that CLECs would switch their services.

In any event, Section 271 does not guarantee any entrant business success – only an opportunity to compete. Application of Verizon Pennsylvania Inc., et al., for Authorization To Provide In-Region, Inter-LATA Services in Pennsylvania, Memorandum Opinion and Order, CC Docket No. 01-138, ¶ 126 (rel. September 19, 2001) ("Verizon-PA Order"). Rather than recognizing that other factors have affected CLECs nationwide, SECCA speculates that BellSouth's conduct is to blame for CLEC problems. *Gillan*, pp. 3, 12-13. Some CLECs have experienced difficulties; however, those difficulties arose primarily from factors such as a cyclical downturn in the economy, the tightening of capital markets, and efforts to compete against subsidized retail market rates. Finally, some CLECs, such as the long-distance companies, have strategic reasons to defer competitive local entry in an attempt to delay BOC entry into the long distance market. *Taylor,* pp. 13-14.

Experience shows that granting BellSouth Section 271 authority will further stimulate local competition. Both New York and Texas experienced increased local competition following Section 271 approval. CLECs serve 20% of the total market in New York—more than any other state. In Texas, CLECs now serve 12% of the total market, and made a gain of more than 500,000 lines in the six months following Section 271 approval. These levels of competition are much higher than are present in comparable states that have not allowed BOC long distance entry. News releases, Federal Communication Commission, *Federal Communication Commission Releases Latest Data on Local Telephone Competition* ¶ 2. *Taylor Rebuttal*, 17-18, May 21, 2001. It follows, therefore, that the Kentucky market, which is irreversibly open to competition, will experience further competition once BellSouth receives Section 271 approval.

PRICING

BellSouth provides access to its network at cost-based rates that are compliant with the FCC's TELRIC methodology. BellSouth's rates are set forth in its SGAT and are available to all CLECs in Kentucky. BellSouth has met the pricing requirements of the competitive checklist.

SECCA argues that local competition is being impeded by BellSouth's UNE rates, which SECCA contends are not cost-based. *Gillan*, p. 20. The UNE rates in effect in Kentucky are cost-based. This Commission has spent a great deal of time and effort setting UNE rates at appropriate, cost-based levels in the AT&T and MCI arbitrations and the extensive UNE cost dockets currently in progress. *Cox Rebuttal, p. 18*. (AC382) BellSouth will modify the rates identified in its SGAT to conform to the final prices set by the Commission in AC382. *Id.*, p. 18. It is thus neither necessary nor appropriate to raise general questions about the rates in this proceeding.

Moreover, SECCA bases its contention that the UNE rates are not cost-based on a simplistic and unsupported hypothetical. *Taylor Rebuttal*, pp. 33-34. SECCA claims that BellSouth's SGAT rates for UNEs are so unfavorable to CLECs that, if BellSouth were attempting to serve the market as a CLEC, it would find its profits shrinking dramatically. *Gillan*, pp. 13, 19-22. In order to make its point, SECCA simply took the balance sheet for BellSouth and replaced the depreciation and plant-related operating expenses with a calculation of what BellSouth UNE lease payments might be to serve its customer base. *Gillan*, pp. 20-21. SECCA provides no explanation for the assumptions about average usage that it used in developing this hypothetical, nor does it attempt to illustrate how the UNE lease payments were calculated. *Taylor Rebuttal*, p. 34. It is thus impossible to verify SECCA's calculations. However, even if SECCA's calculations are correct, all that this example would demonstrate is

that forward-looking costs such as TELRIC differ from embedded costs. In addition, the FCC has consistently "held that this profitability argument is not part of the section 271 evaluation of whether an applicant's rates are TELRIC-based. The Act requires that [the FCC] review whether the rates are cost-based, not whether a competitor can make a profit by entering the market," and that "[q]uestions of profitability are independent of this determination." Verizon-PA Order, ¶ 70.

THE COMPETITIVE CHECKLIST

Checklist Item 1: Interconnection

BellSouth satisfies its checklist item 1 obligation to "provide[] equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory . . . at any technically feasible point" within its network, including "providing collocation . . . in accordance with the [FCC's] rules." *Application of Verizon New England Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization To Provide In-Region InterLATA Services in Massachusetts,* 16 FCC Rcd 8988, ¶ 182 (2001) ("*Verizon-MA Order*"). Notably, state commissions in Georgia,[9] Louisiana,[10] Mississippi,[11] and South Carolina[12] have confirmed that BellSouth is meeting the checklist item 1 requirements.

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[9] *GA PSC 271 Order*.

[10] *LA PSC 271 Order*.

[11] *MS PSC 271 Order*.

[12] Application to Provide In-Region InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to Section 271 of the Telecommunication Act of 1996, Docket No. 2001-209-C, (SC P.S.C. November 6, 2001) (Commission Directive) ("SC PSC Commission Directive").

Methods of Interconnection

CLECs can interconnect to BellSouth's network through: (1) physical collocation; (2) virtual collocation; (3) assembly point arrangements; (4) fiber optic meet point arrangements; and (5) purchase of facilities from the other party. These arrangements are each available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and the point of access to UNEs. Milner, pp. 16-17.

No CLEC disputes that BellSouth provides interconnection at any technically feasible point within its network. WorldCom, however, contends that BellSouth should bear the cost of transporting traffic originated on BellSouth's network to the competitor's point of interconnection ("POI"), even when the POI is not in the same local calling area as the BellSouth customer and the CLEC customer. *Argenbright Rebuttal*, pp. 4-9. As an initial matter, WorldCom does not currently have an interconnection agreement with BellSouth in Kentucky, making its concerns purely hypothetical. *Tr. Vol. III, pp. 114-115 (Cox).* Further, the FCC has expressly rejected this argument as a basis for a finding of noncompliance with checklist item 1. *Verizon-PA Order*, ¶ 100 and n.341.[13] The FCC has held that this is not a Section 271 issue, but that it is more appropriately resolved by state commissions. *SWBT-KS/OK Order*,¶ 239. Further, this Commission has resolved this issue on two separate occasions. *Cox Rebuttal, pp. 13-15, (citing BellSouth arbitrations with Level 3 (Kentucky Case No. 2000-404) and with AT&T (Kentucky Case No. 2000-465)).* Thus, the Commission need not address this issue again in this proceeding.

[13] *See also* Staff's Final Recommendation, 28, *adopted in LA PSC 271 Order* (concluding that "apparently the FCC does not believe this issue to be critical to a 271 proceeding, given the fact that it has not required other ILECs to assume this obligation in other 271 proceedings.").

Nondiscriminatory Access to Interconnection Trunks

BellSouth "provide[s] competing carriers with interconnection trunking . . . that is equal in quality to the interconnection [BellSouth] provides to its own retail operations, and on terms and conditions that are just, reasonable and nondiscriminatory." *Verizon-MA Order*, ¶ 183; *Second Louisiana Order*, 20648-9 and n.210; *Cox*, p. 28. In Kentucky, BellSouth has provisioned 8,820 interconnection trunks from CLECs' switches to BellSouth's switches as of March 31, 2001, and 3,783 two-way trunks (including transit traffic) to 16 different CLECs. *Milner*, p. 4. This significant degree of commercial usage indicates that CLECs can and do interconnect with BellSouth's network. The evidence further shows that BellSouth provides access to interconnection trunks in a manner equivalent to that which it provides itself. BellSouth follows the same installation process and uses the same equipment, interfaces, technical criteria, personnel, and service standards for both CLECs and itself. *Milner*, pp. 15-27.

For June through September 2001, BellSouth met the approved standard for the Trunk Group Performance measure for trunk blocking. In fact, on only two occasions since September 2000 has there been a difference in overall trunk group performance between CLEC trunks and BellSouth trunks of one-half percent or greater for two consecutive hours. Regarding the benchmarks for ordering, provisioning, maintenance and repair, billing, and trunking for local interconnection trunks, BellSouth met 90.9% in May, 91.7% in June, 100% in July, 84.2% in August and 100% in September 2001. This exemplary performance demonstrates BellSouth is meeting the requirements of this checklist item.

The outdated trunk group blocking reports used by several CLECs do not accurately reflect BellSouth's performance. *Tr. Vol. IV, pp. 114-120 (Milner).* First, the trunk group blocking reports upon which the CLECs rely assume that all trunk groups are of the same size. Because trunk groups actually vary in size, the percentage of trunk groups experiencing blocking

does not accurately reflect the experience of end users. Second, the old trunk blocking reports do not differentiate between blocking caused by BellSouth and blocking caused by CLECs. BellSouth now reports the average number of blocked calls, providing a more accurate indication of the end-user experience. The new reports also account for CLEC-caused problems. *Tr. Vol. IV, pp. 119-122, 132-135 (Milner)*.

WorldCom criticizes BellSouth for separating transit traffic from local and intraLATA toll traffic. *Argenbright*, pp. 9-11. BellSouth has used separate trunk groups to facilitate proper billing of transit and other traffic. Nonetheless, as WorldCom is aware, BellSouth offers CLECs the "supergroup" trunk, which includes exchange of both transit traffic and local and intraLATA toll traffic between a CLEC and BellSouth. It is therefore unclear why WorldCom continues to raise the issue. *Scollard Rebuttal*, p. 2; Milner Rebuttal, p. 2. Further, in its *Second Louisiana Order*, the FCC stated that BellSouth "offers routing of local and intraLATA traffic over a single trunk group. Access traffic, as well as other traffic utilizing BellSouth's intermediary tandem switching function, is routed via a separate trunk group. BellSouth, therefore, establishes that it has a legal obligation to provide interconnection *consistent with our rules*." *Second Louisiana Order*, 20649 (emphasis added). Thus, requiring a separate trunk for transit traffic is consistent with the FCC's rules.

WorldCom also complains that BellSouth does not allow CLECs to use interconnection trunks to send access traffic to BellSouth end offices. This allegedly limits CLECs' ability to compete for tandem provider services because BellSouth always provides those services. *Argenbright*, pp. 11-14. The handling of switched access traffic is governed pursuant to switched access tariffs. If CLECs delivered terminating switched access traffic to BellSouth end offices over local interconnection trunks, BellSouth would not have the necessary information to

bill for its services. Call records do not contain the information required to determine which calls originate from a particular CLEC, leaving BellSouth unable to distinguish access traffic from local traffic. WorldCom's proposed alternative would force BellSouth to rely on "self-reports" of CLECs' usage. *Scollard Rebuttal*, pp. 2-4; *Cox Rebuttal*, p.15.

WorldCom also claims that BellSouth should be required to use the two-way trunks that it provides to CLECs. *Argenbright*, pp. 14-15. FCC rules, however, require only that "[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request." 47 C.F.R. 51.305(f). In the FCC's *Local Competition Order*, the FCC interpreted this rule to mean that ILECs must provide two-way trunking where the CLEC does not have sufficient traffic to justify use of separate one-way trunks and two-way trunking is technically feasible. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, *First Report and Order*, 11 FCC Rcd 15499, ¶ 219 (1996) ("*Local Competition Order*"). BellSouth complies with these rules, which is all that is required by Section 271. *Cox Rebuttal*, p. 16.

In any event, the Commission addressed this precise issue in BellSouth's arbitration with Sprint. In its arbitration order, the Commission required BellSouth not only to provide Sprint with two-way trunks, but also to use those trunks if requested by Sprint. The Sprint interconnection agreement has been filed and approved; therefore, WorldCom may opt-in to the two-way trunking provision when and if it ever decides to enter the Kentucky market. *Cox Rebuttal*, p. 16. In fact, WorldCom witness Mr. Argenbright acknowledged that the resolution of the Sprint arbitration addressed his concern. *Tr. Vol. V, pp. 332-333, (Argenbright).*

Collocation

BellSouth provides collocation in accordance with the FCC's rules. *BA-NY Order*, 3979. BellSouth's interconnection agreements and the SGAT it filed in this proceeding establish legally binding collocation terms and conditions, consistent with Sections 271 and 251. *Cox*, p. 28. BellSouth offers caged, shared cage, cageless, remote site, and microwave collocation, at the CLEC's option. BellSouth also offers adjacent collocation if space in a particular premises is legitimately exhausted. Virtual collocation is available where space for physical collocation is legitimately exhausted, or at a CLEC's request regardless of the availability of physical collocation. In addition, BellSouth makes physical collocation available in its remote terminals. *Milner*, pp. 28-31. BellSouth is updating its tariff and SGAT to allow collocation of any equipment permitted by the FCC's recent Collocation Remand Order, *Tr. Vol. III, p. 201 (Gray)*, and to offer collocator-to-collocator cross connects.

BellSouth's commercial usage and performance data demonstrate that BellSouth provides nondiscriminatory access to collocation. As of March 31, 2001, BellSouth had provisioned 198 physical collocation arrangements for over 20 different CLECs in Kentucky. Another 2 physical collocation arrangements and 2 virtual collocation arrangements were under way as of March 31, 2001. In addition, CLECs are collocated in 30 of the 178 central offices in Kentucky. *Milner*, pp. 28-30.

BellSouth met the applicable benchmarks for every collocation measure and sub-metric in May, June, August and September 2001. There was no measurable collocation activity in July 2001. The FCC has found this type of collocation performance data to be compelling evidence of compliance with the Act's interconnection requirements. *SWBT-TX Order*, 18382.

Nevertheless, the CLECs raise a laundry list of issues regarding BellSouth's compliance with the collocation requirements, none of which has merit. For example, AT&T devotes

considerable time and attention to attacking BellSouth's Collocation Handbook. *Rebuttal Testimony of Stephen E. Turner, p. 41-50, (filed July 9, 2001) ("Turner Rebuttal")*. However, notwithstanding Mr. Turner's claims to the contrary, the Collocation Handbook is only a resource guide to aid CLECs seeking to collocate with BellSouth; it does not control the rates, terms, or conditions of BellSouth's provision of collocation, nor is it the "legally binding document" upon which BellSouth relies for 271 purposes. Collocation is governed by interconnection agreements reviewed and approved by this Commission, which may not be "unilaterally" changed by BellSouth. BellSouth's legally binding obligations with respect to physical and virtual collocation are set forth in BellSouth's interconnection agreements, FCC tariff, Kentucky tariff, and SGAT. BellSouth cannot and does not use the Collocation Handbook to modify or avoid such obligations. *Rebuttal Testimony of A. Wayne Gray, p. 2-15, (filed July 30, 2001) ("Gray Rebuttal").*

AT&T further alleges that BellSouth unilaterally places the point of termination ("POT") bay far from the interconnection frames. *Turner Rebuttal p. 43*. Contrary to AT&T's claims, the placement of POT bays is mutually negotiated by the parties. If a CLEC places a POT bay in a secured cage, BellSouth would not have needed access to the device. Thus, in allocating floor space for POT bays, the parties must weigh the need for access to the POT bay, as well as the available floor space, and the proximity to caged equipment. AT&T and BellSouth negotiated such provisions in a recent interconnection agreement and a memorandum of understanding. *Gray Rebuttal*, pp. 12-13.

AT&T also claims that BellSouth fails to meet the requirements of the FCC's rules by not offering off-site adjacent collocation and not providing shared collocation in the appropriate manner. *Turner Rebuttal, pp. 47-50*. With respect to off-site adjacent collocation. AT&T itself

concedes that the FCC's rules do not explicitly require offsite adjacent collocation. Thus, off-site adjacent collocation is a non-issue for purposes of this proceeding. The FCC rules do require shared collocation "pursuant to the terms and conditions agreed to by the competitive LECs," *Advanced Services Order*, ¶41, and consistent with this Order, BellSouth provides shared collocation by contracting with a "host" CLEC, which in turn contracts with other CLECs. BellSouth then permits each CLEC in a shared collocation arrangement to order equipment placement, UNEs, interconnection, and other services directly from BellSouth. Indeed, AT&T agreed to these provisions in the interconnection agreement it recently negotiated with BellSouth. If AT&T desired a different collocation arrangement, it could have negotiated such an arrangement. *Gray Rebuttal*, pp. 22-24; *Tr. Day 1, pp. 178-179, 181 (Gray)*.

WorldCom raises a hypothetical concern about its desire for DC power in adjacent collocation space. *Testimony of Phillip A. Bomer*, *pp.* 18-25, (filed July 9, 2001) ("*Bomer*"); SC *Tr. Vol. 11, p. 4237 (Bomer)*. The FCC's rules do not require BellSouth to provide DC power to an adjacent collocation arrangement, and BellSouth faces the same power limitations in its own adjacent collocation space. *Gray Rebuttal*, pp. 47-56. For purposes of Section 271, an ILEC "may have a legitimate reason to exercise some measure of control over design or construction parameters," including the imposition of "reasonable safety and maintenance requirements." Advanced Services Order, 4786. BellSouth's DC power restriction is a reasonable safety requirement, which is permitted under the FCC's rules. This issue does not affect BellSouth's compliance with checklist item 1.

WorldCom also claims that this Commission should establish physical cageless collocation intervals for BellSouth that are shorter than the intervals for provisioning physical caged and virtual collocation. *Bomer*, pp. 5-18. Again, this is not a Section 271 issue.

BellSouth provisions collocation within the time frames established by the FCC as the FCC has required it to do. *SWBT-TX Order,* ¶ 1838673; *Gray Rebuttal*, 30-31. Consequently, BellSouth meets its existing collocation interval obligations.

WorldCom argues that BellSouth should be required to provide a firm cost quotation within fifteen days of receiving a collocation application. *Bomer*, pp. 17-18. BellSouth will support a shortened interval for cost quotations if CLECs adopt standardized pricing and site preparation fees. Further, as more CLECs adopt standardized pricing in their interconnection agreements, there is reduced need for price quotations. Thus, the importance of a particular response interval decreases significantly. *Gray Rebuttal*, p. 46.

WorldCom's complaints about the charges for physical collocation are similarly misplaced. *Bomer*, pp. 28-31. BellSouth's current space preparation rate structure is consistent with TELRIC principles, and the rates are based on forward-looking long-run incremental cost. This rate structure is included in BellSouth's standard interconnection agreement and several signed interconnection agreements. If BellSouth were required to perform a major renovation or upgrade to a central office in Kentucky to accommodate physical collocation, BellSouth is allowed to require collocators to share in the costs of such renovations or upgrades. *Gray Rebuttal*, pp. 61-67.

AT&T incorrectly claims that BellSouth is double recovering its costs of providing DC power. *Turner*, pp. 46-47. Even a cursory review of the collocation rates in Kentucky demonstrates the fallacy of AT&T's argument. Historically, there have been two power-related physical collocation charges: a recurring power rate and an ICB nonrecurring power construction charge. Each of these separate charges addresses different costs. BellSouth now offers a recurring power rate that includes both the old recurring power rate plus an incremental portion

of the non-recurring power construction charge. *Gray Rebuttal,* pp. 18-19. AT&T's interconnection agreement utilizes the new rate structure for new collocations, although AT&T elected to continue using ICB pricing for existing collocations. *Tr. Vol. III, pp. 185-186 (Gray).* There is no double-recovery by BellSouth under either rate structure.

The Commission requested a discussion of BellSouth's policies and pricing for "hibernation." From a review of the Kentucky hearing transcripts, it appears that a misnomer of "hibernation" was applied to BellSouth's policy of allowing a collocator to reduce power ("power down") its collocation space. As such, there is no such thing as a "hibernation" fee. However, there are specific charges associated with a collocator's request to reduce power to its existing collocation arrangement(s). To continue collocation occupancy in accordance with the FCC rules, BellSouth will permit a collocator that has ordered DC power from Bellsouth's main power board to reconfigure its power to run directly from the BellSouth Battery Distribution Fuse Board ("BDFB") and reduce power or "power down" to a minimum 10-amp fuse capacity. A collocator that currently receives its DC power directly from the BellSouth BDFB may also "power down" to a minimum 10-amp fuse capacity. Charges for this activity are based on TELRIC and are consistent with FCC collocation requirements. (BellSouth Late Filed Exhibit No. 4, (November 8, 2001). *Tr. Vol. III, p. 225 (Gray).*

Checklist Item 2: Unbundled Network Elements

BellSouth complies with the checklist item 2 requirements of Section 271 by providing competitors access to UNEs in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). In particular, BellSouth has demonstrated its compliance with the OSS, pricing, and combination requirements contained in the Act, the FCC's Section 271 Orders, and the FCC's rules.

BellSouth's OSS is deployed and is operationally ready

Bellsouth's electronic and manual interfaces allow competing carriers access to all of the necessary OSS functions in substantially the same time and manner as BellSouth's retail units. *SWBT-TX Order*, 18399. Commercial usage and performance data for Kentucky confirm that BellSouth's OSS are operationally ready. Given that BellSouth's OSS in Kentucky and its other operating states are the same, BellSouth also has put forth the Georgia performance measurement data and the Georgia third-party test results as further evidence of its OSS operational compliance throughout its region.

Nondiscriminatory Access to OSS

In determining whether a BOC's OSS satisfy the statutory requirements, the FCC evaluates whether the BOC: (1) "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions"; (2) "is adequately assisting (CLECs) to understand how to implement and use all of the OSS functions available to them; and (3) has deployed systems that are "operationally ready" as a practical matter. *BA-NY Order,* 3992; *Second Louisiana Order,* 20654. For OSS functions with a retail analogue, the BOC must provide access that permits the CLECs to perform these functions in "substantially the same time and manner" as the BOC. *SWBT-TX Order,* 18398-99; *Second Louisiana Order,* 20655. For OSS functions without a retail analogue, such as UNEs, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete." *SWBT-TX Order*, 18398.

To meet this legal standard, a BOC "must demonstrate that it has developed sufficient electronic interfaces (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all the necessary OSS functions." *SWBT-TX Order*, 18399. Evidence related to this standard includes: the provision of specifications necessary for CLECs to build systems that communicate with the BOC's systems; disclosure of

internal business rules and formatting information to ensure the CLECs' orders are processed efficiently; and proof of sufficient capacity to accommodate both current demand and projected demand for competing carrier's access to OSS functions. *Id*. The FCC also examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS are handling current demand and will be able to handle reasonably foreseeable future volumes. The FCC has explained that it will look at the totality of the circumstances in evaluating OSS performance rather than focusing on isolated problems. *SWBT-KS/OK Order,* ¶ 138; *Verizon-MA Order,* ¶ 65. The FCC also has noted that in evaluating Section 271 compliance, it will not hold the BOCs accountable for errors caused by competing carriers. *See SWBT-KS/OK Order,* ¶ 146; *Verizon-MA Order,* ¶ 75.

In the *Second Louisiana Order*, the FCC found that, while BellSouth's second Louisiana application showed significant progress toward meeting the statutory requirements, it had not demonstrated that it was providing nondiscriminatory access to the pre-ordering function and ordering interface. *Second Louisiana Order*, 20657-65. Since the *Second Louisiana Order*, BellSouth has addressed all of the FCC's concerns. In particular, BellSouth has developed electronic and manual interfaces that give CLECs equivalent access to BellSouth's OSS functions. *See generally Testimonies of Ronald M. Pate, Testimony of Ken L. Ainsworth,(filed May 18, 2001) ("Ainsworth") and David Scollard*. As a result of BellSouth's diligent efforts, CLECs have nondiscriminatory access to BellSouth's OSS and, as noted in the Track A section above, enjoy a meaningful opportunity to compete.

This Commission should find that BellSouth provides CLECs with nondiscriminatory access to its OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing.

Pre-Ordering

Pre-ordering is the exchange of information between BellSouth's systems and the CLEC to assist the CLEC in interacting with its end-user customers. Pre-ordering activities enable the CLEC to submit complete and accurate service requests to BellSouth. Actual commercial usage demonstrates that CLECs are using BellSouth's pre-ordering interfaces. (For example,) CLECs submitted 688,930 region-wide pre-ordering transactions in January, 2001, 933,308 region-wide pre-ordering transactions in February 2001, and 1,140,909 region-wide pre-ordering transactions in March 2001 via LENS and TAG, [respectfully]". *Pate*, pp. 75-76. CLECs submitted 1,503,282 region-wide preordering transactions in July 2001.

BellSouth offers CLECs three different interfaces that provide real-time access to the same pre-ordering databases utilized by BellSouth's retail operations: (1) TAG; (2) RoboTAG; and (3) Local Exchange Navigation System ("LENS"). BellSouth's different interface options support each of the three modes of competitive entry, namely competitor-owned facilities, unbundled network elements, and resale, and provide competing carriers nondiscriminatory access to the same information available to BellSouth's retail representatives. TAG provides CLECs a standard Application Programming Interface ("API") to BellSouth's pre-ordering, ordering, and provisioning OSS. RoboTAG provides a standardized, browser-based interface to the TAG gateway that resides on a CLEC's Local Area Network ("LAN") server and thereby eliminates the need for CLECs to develop and maintain their own TAG interface. LENS is a human-to-machine, web-based graphical user interface ("GUI") to the TAG gateway. LENS uses TAG's architecture and gateway and therefore has TAG's pre-ordering and ordering functionality for resale and UNEs. BellSouth provides CLECs with all the technical

specifications necessary for integrating the machine-to-machine BellSouth interfaces with the CLECs' own systems which numerous CLECs have successfully done.[14] *Pate*, 3-5, 18.

Response Times. AT&T alleges that BellSouth's answering times for CLECs are slower than the answering times for BellSouth's retail customers. *Bradbury*, 48-49. The actual data refutes this claim. The CLEC answering times for September 2001 were significantly better (22.12 seconds) than the average answering times for BellSouth's retail customers in the Retail Service Centers (178.20 seconds). *Varner Supplemental Exhibit AJV-6 Attachment 10, measure F.4.1*. AT&T also complains about the pre-ordering response times for Customer Service Records ("CSRs") via LENS. *Bradbury*, 47. BellSouth released an upgrade to the CSR format and retrieval response time on July 28, 2001. As a result, current response times are one and one-half seconds which, despite AT&T's claims to the contrary, provide CLECs nondiscriminatory access. AT&T argues that BellSouth does not measure the proper interval for Pre-Ordering OSS Response Time. *Bradbury*, 46. BellSouth's SQM, however, measures pre-ordering response time exactly as AT&T's witness recommends. *Varner Rebuttal*, 58-59.

Other CLEC complaints are equally unfounded. The slow or downgraded responses from TAG experienced by WorldCom were caused by WorldCom. *Lichtenberg*, 11. WorldCom personnel were making separate requests through the TAG security server for each transaction they submitted even though the TAG security server was not designed to handle requests in this manner. *S.C. Tr. Vol. X, pp. 3571-72 (Lichtenberg)*. During the hearing, WorldCom admitted that this problem was resolved by WorldCom changing its internal practices. *Tr. Vol. V, pp. 61-62 (Lichtenberg)*.

[14] For example, AT&T's witness, Mr. Bradbury testified that AT&T has integrated TAG pre-ordering and EDI. *Tr. Day 3, pp. 120-23 (Bradbury)*.

Parsing. AT&T and WorldCom maintain that BellSouth's pre-ordering OSS does not provide CSR information parsing[15] to CLECs in the same manner that BellSouth enjoys in its retail operations. *Bradbury Rebuttal*, pp. 37-42; *Lichtenberg Rebuttal*, p. 7. Contrary to these allegations, the FCC has explained that BOCs are not required to perform parsing on their side of the interface. Indeed, when it approved SWBT's Section 271 application for Texas, the FCC specifically rejected this same argument by AT&T, stating that "[c]ontrary to AT&T's interpretation of the Bell Atlantic New York Order, we have not previously stated that a BOC must perform parsing on its side of the interface. Rather, we consider whether integration has been shown to be possible (or has actually been achieved)." *SWBT-TX Order,* n. 413.

Consistent with its 271 obligations, BellSouth provides CLECs the ability to parse information on the CSR using the integratable machine-to-machine TAG pre-ordering interface. *Pate Rebuttal, pp.* 91-92. CLECs can use the CSR data to parse to the same line level, using the same unique section identifiers and delimiters, that BellSouth uses for itself. *Id.* Because BellSouth provides CLECs with the ability to parse CSRs themselves, as SWBT did in Texas when the FCC approved its Section 271 application, BellSouth satisfies the statutory requirements.

While the CLECs, such as AT&T, profess that parsing is critical, AT&T admitted that it has not made any real attempt to conduct parsing on its side. During the Section 271 hearing in South Carolina, for example, Mr. Bradbury of AT&T stated that he was aware that third-party vendors advertise the ability to provide CLECs with parsed CSRs, yet made no effort to even contact these vendors. SC *Tr. Vol. X, pp. 3784-3785 (Bradbury)*.

[15] Parsing breaks down the information contained in the CSR into certain fields from a stream of data received from BellSouth.

In any event, even though not required by statute, BellSouth has worked diligently and expended an enormous amount of time and energy to provide CLECs with parsed CSRs. This parsing ability, currently scheduled to be tested in December 2001 and available for CLECs in January 2002, will address the concerns of AT&T and WorldCom. *Tr. Vol. V., p. 425*(Pate)*[16]

LENS Outages. AT&T further alleges that LENS suffers outages and is not functional for periods of time. *Seigler, pp.* 24-25. Contrary to the picture of system failure AT&T tries to paint, LENS was available to CLECs 97.27%, 98.2%, 92.77% and 96.45% of the time in March, April, May and June 2001, respectively. *Pate Rebuttal*, p.169. BellSouth met the benchmark for OSS Availability for May through September 2001. When occasionally outages do occur, BellSouth takes all outages seriously and informs CLECs when such problems arise. If a system outage cannot be resolved within 20 minutes, BellSouth provides a notification to CLECs via e-mail and posted to the web.

Access to Due Dates. In the *Second Louisiana Order*, the FCC held that BellSouth did not provide parity in access to due dates because of delays in returning a firm order confirmation ("FOC") to CLECs. BellSouth has remedied the FCC's concerns by providing CLECs with access to due dates and FOCs in a timely and nondiscriminatory manner. BellSouth met 19 of the 24 FOC timeliness benchmarks for UNEs in September 2001. The 5 failures are attributed to non—systemic causes or low volume. BellSouth has also introduced an automatic due date calculation functionality in LENS and TAG. *Pate,* pp. 78-79; *Pate Rebuttal* pp. 85-86. Due date intervals for CLEC end users are computed using the same guidelines as for BellSouth retail customers, except for UNEs, which BellSouth does not use in its retail operations. *Pate*, pp. 79-80.

[16] In its recent Order in Docket No. 6863-U, the Georgia Public Service Commission ordered BellSouth to provide CSR parsing by January 5, 2002.

AT&T alleges that BellSouth's pre-ordering OSS does not provide accurate due date calculations for all products and further asserts that due to a BellSouth design error, BellSouth does not preserve a due date for CLEC orders that fall out for manual handling. *Bradbury Rebuttal*, pp. 42-45. As noted above, however, BellSouth has made significant changes to its pre-ordering interfaces since *Louisiana II* and has implemented an electronic due date calculator in LENS that allows CLECs to view an installation calendar and obtain an automatically-calculated estimated due date. *Pate Rebuttal*, p. 85. While the initial KPMG test identified a problem calculating the due date through TAG, BellSouth quickly remedied this issue. Indeed, KPMG retested BellSouth's pre-order due date calculator after the enhancement and found that "BellSouth's pre-order interface [TAG] adequately provides functionality to process Calculate Due Date pre-orders…." *Pate Rebuttal*, p. 89 *(quoting KPMG report closing Georgia Exception 116)*. KPMG found that BellSouth's due date calculator satisfied all the test criteria. BellSouth further enhanced the electronic due date calculator on June 4, 2001 by releasing functionality for the calculation of due dates for resale services that did not require dispatches and for SL1 and SL2 loops with Local Number Portability ("LNP"). *Pate Rebuttal*, p. 86. Therefore, BellSouth meets the FCC's requirements.

Other due date delays can occur if CLEC representatives are not adequately trained. *Pate Rebuttal*, pp. 86-87. BellSouth provides CLECs with extensive documentation and training for its OSS. *Pate*, pp. 26-41. If proper procedures are not followed, CLECs can cause errors in the placement of their orders. The FCC has held that BOCs are not accountable for errors caused by competing carriers' mistakes and, therefore, such errors should not impact this Commission's evaluation of BellSouth's Section 271 compliance. *SWBT-KS/OK Order,* ¶ 146; *Verizon-MA Order,* ¶ 75.

Loop Makeup Information. BellSouth provides CLECs with nondiscriminatory access through TAG, RoboTAG and LENS to the same detailed loop qualification information contained in the Loop Facility Assignment and Control System ("LFACS") that is available to BellSouth retail units. Using the LFACS database, for example, the following loop makeup information provides an example of the information available to CLECs: cable and pair; loop status (such as SP, WKG, CT, CF); loop length by segment; length by gauge; 26 gauge equivalent loop length; quantity and location of load coils; loop makeup status; length of loop that is copper or fiber; location and length of bridge taps by occurrence; and the build out capacity, resistance and offset, among others. *Pate*, pp. 86-87. In addition, using the functionality in TAG, RoboTAG, or LENS, CLECs can create and cancel reservations for new or spare facilities. *Pate*, pp. 85-86.

Actual commercial usage demonstrates that BellSouth's interfaces afford CLECs nondiscriminatory access to loop makeup information. For the entire BellSouth region in June 2001, CLECs made 5005 electronic loop makeup inquiries, with 99.2% of the queries completed within one minute. *Pate Surrebuttal, p.* 4. In July 2001, CLECs submitted 5,290 regional electronic queries for loop makeup information, and BellSouth completed 100% of those queries within five minutes. *Id.* Furthermore, in Kentucky, BellSouth met the LMU benchmarks in May through September 2001. *Id.*

Sprint's suggestion that BellSouth has access to additional loop makeup ("LMU") data that are not made available to CLECs is incorrect. *Testimony of Mark G. Felton, pp.* 3-5 (filed July 9, 2001) ("Felton Rebuttal"). BellSouth complies with its statutory obligations and provides CLECs with the same detailed information about the loop that is available to BellSouth. If a CLEC determines that it needs additional information beyond what is available electronically,

the CLEC can submit a manual loop makeup request and this information is retrieved by BellSouth personnel in the same manner, regardless of whether it is a CLEC or BellSouth customer. *Id*. Thus, CLECs have access to the same loop makeup information that is available to BellSouth's retail operations.

Sprint's assertion that BellSouth personnel have faster access to manual LMU is unfounded. *Felton Surrebuttal*, pp. 3-5. Like all states in BellSouth's region, in Kentucky, the source data for loop makeup information is contained in LFACS. *Pate Surrebuttal*, pp. 2-3. On occasion, when additional loop makeup information is necessary to qualify a loop, the information must be obtained from manual or paper plats. *Id.* The FCC has recognized that some loop makeup information will be processed manually and this practice is consistent with the statute. *BA-NY Order*, ¶¶ 4021-4024; *SWBT-KS/OK Order,* ¶ 122. BellSouth's manual service inquiry processes for loop makeup information is accomplished in substantially the same time and intervals for both the CLECs' and BellSouth's retail customers. *Pate Surrebuttal*, pp. 3, 9. The FCC approved a substantially similar manual process in the New York Section 271 Order.[17] *BA-NY Order*, ¶¶ 4021-4024. *SWBT-KS/OK Order,* ¶ 122.

AT&T alleges that BellSouth does not provide AT&T direct access to Circuit Facilities Assignments in LFACS, *Berger, pp.* 2-4, and further argues that enhancements to loop makeup inquiry responses only were available in selected areas. *Bradbury Rebuttal, p.* 111. These allegations are unfounded. First, as noted above, BellSouth makes the LFACS information available on a timely and nondiscriminatory basis through its manual and electronic interfaces.

[17] In the New York Order, the FCC explained that CLECs could request a manual query for more detailed information about the makeup of a particular loop. The FCC recognized that "almost all" of this loop information must be obtained using paper loop plant records or plats and found that the "mechanized and manual processes enable requesting carriers to access loop qualification information in substantially the same time and manner as Bell Atlantic's retail operations." *BA-NY Order*, ¶¶ 4022-4024.

Pate Rebuttal, pp. 97-98. While BellSouth is still working to provide AT&T direct access to CFAs through LFACs, BellSouth provides CLECs with a web-based report that contains all of the CFAs necessary for AT&T to verify the CFAs in its own database. Thus, BellSouth provides AT&T the information necessary to provision its loops. *Tr. Vol. V, pp. 269-271, ("Berger")*

Second, the new loop makeup software, LFACS 27.0, was implemented in all BellSouth locations by March 31, 2001. *Id*., 96. BellSouth therefore satisfies the statutory requirement by providing CLECs with the same access to loop makeup information that BellSouth provides to its retail units.

As the Georgia,[18] Louisiana,[19] Mississippi,[20] and South Carolina[21] Commissions have found, by providing CLECs with three integrated pre-ordering interfaces, electronic access to due dates and nondiscriminatory access to loop make up information, BellSouth complies with the statute and provides nondiscriminatory access to pre-ordering.

Ordering and Provisioning

Ordering and provisioning are the processes whereby a CLEC requests facilities or services from BellSouth and then receives information such as a confirmation that the order has been accepted. 47 C.F.R. §51.5. In addition to TAG, RoboTAG, and LENS, BellSouth provides CLECs another industry-standard electronic ordering interface: EDI. Actual commercial usage demonstrates that BellSouth is providing nondiscriminatory access to ordering OSS. In 2000, CLECs sent 2,886,673 LSRs to BellSouth electronically. *Pate*, p. 5. In the first nine months of 2001, CLECs have already sent 2,806,182 LSRs to BellSouth electronically. Accordingly, as

[18] *GA PSC Order*.

[19] *LA PSC 271 Order*.

[20] *MS PSC 271 Order*.

[21] *SC PSC 271 Order*.

confirmed by KPMG's independent TPT, BellSouth provides nondiscriminatory access to the ordering and provisioning functionalities of OSS.

Line Splitting. BellSouth fully complies with the FCC requirements for ordering of line splitting by accepting CLEC manual line-splitting orders today in full compliance with the FCC requirements. *Pate Rebuttal*, p. 100. The FCC recently clarified that "the Line Sharing Reconsideration Order does not require Verizon to have implemented an electronic OSS functionality to permit line splitting." *Verizon-MA Order*, ¶ 180. AT&T's assertion that BellSouth must provide electronic OSS for CLEC line-splitting orders, *Turner*, p. 21, is at odds with the FCC's requirements. In any event, even though not required to obtain Section 271 approval, BellSouth has developed electronic OSS for line splitting that will begin (CLEC Application Verification Environment ("CAVE") testing in December and will be generally available for CLECs in January 2002. *Tr. Vol. IV, pp. 173-174 (Williams).*

Migration by Telephone Number. WorldCom requests that BellSouth permit CLECs to process orders based on the customer's telephone number. *Lichtenberg Surrebuttal*, p. 7. As confirmed by the GPSC, LPSC and SCPSC, this functionality is not required under Section 271. Nonetheless, on November 3, 2001, BellSouth implemented this feature in Release 10.2 and advised CLECS in a Carrier Notification Letter issued on November 2, 2001 of this enhancement. *Tr. Vol. I,* pp. 423-26 (Pate). *Notice of Ex Parte Presentations, CC Docket No. 01-277, November 7, 2001*. During the testing of Release 10.2, BellSouth discovered that while the new feature correctly processed 70% of the orders, there was an initial glitch processing LSRs when 2 or more addresses were associated with a telephone number in BellSouth's Regional Street Address Guide ("RSAG"). *Id*. BellSouth remedied this situation on November

17, 2001 and, as of today, all LSRs are correctly processed using the telephone migration feature in Release 10.2. BellSouth therefore has addressed WorldCom's concern.

Interactive Agent. WorldCom's assertion that BellSouth must implement an interactive agent as opposed to a third party value added network ("VAN") is unfounded. WorldCom fails to mention that CLECs have the option of a direct connection to BellSouth's system that obviates the need for CLECs to use the third party VAN. *Tr. Vol. III, pp. 416-417 (Pate)*. WorldCom's internal business decision to use the VAN in lieu of the direct connection does not impact BellSouth's statutory compliance. Moreover, while WorldCom claims this functionality is essential, the remainder of the CLEC industry does not agree having prioritized it in the Change Control Process near the bottom of the list. *Tr. Vol. V, pp. 43-44 ("Lichenberg")*

Order Flow-Through. BellSouth has addressed the FCC's concerns in the *Second Louisiana Order* regarding flow-through for ordering and provisioning. Indeed, KPMG's evaluation of BellSouth's flow through and overall functionality and scalability of BellSouth's ordering interfaces determined that BellSouth satisfied all of the test criteria.

In spite of allegations by the CLECs about "excessive manual handling" of CLEC orders, BellSouth processes a high percentage of its orders on a mechanized basis. BellSouth provides for the mechanized ordering of over 90% of all LSRs, and BellSouth continues to work with CLECs to increase that percent. The FCC has stated that, to be in compliance with nondiscriminatory access to OSS, a BOC does not have to provide for electronic ordering of all products and services. Manual entry of such complex orders is the same whether the customer belongs to a CLEC or BellSouth. *Pate*, p. 120. Thus, BellSouth's processing satisfies the FCC's requirements. BellSouth's current flow through rates compare very favorably to the flow through rates of both Verizon and SBC in the states where they received their 271 approval.

When orders do fall out for manual handling, BellSouth has deployed the centers and resources necessary to handle these orders accurately and in a timely manner.

Once CLEC orders enter BellSouth's mechanized systems, they flow through at a high rate, further minimizing the amount of handling. For resale residence orders, BellSouth's performance improved from 87.52% in June to 90.39% in September. For resale business orders, flow through improved from 57.11% in June to 68.74% in September. For UNEs, flow through increased from 70.70% in June to 79.33% in September.

BellSouth measures and reports a multitude of data in connection with its flow through report. This includes sufficient data on flow through to allow comparisons of BellSouth flow through to flow through in both Verizon and SBC states. Verizon's percent flow through measure divides the number of valid LSRs by the number of service orders issued, and excludes CLEC errors or a pending order status. Verizon's measure is broader and results in a lower percentage flow through than SBC's because SBC excludes planned order fallout for manual handling from its measure.

The following table compares BellSouth's Achieved Flow Through to Verizon's Flow Through using the methodology used by Verizon in its 271 applications:

	Verizon (PA)	Verizon (MA)	BellSouth
Resale	56%	46% to 49%	74% to 81%
UNE	54%	51% to 55%	58% to 69%
UNE-P	70%	66% to 71%	64% to 80%[22]

BellSouth's flow through rate is comparable to or higher than the flow through rate in states using Verizon's flow through measure. This means that relatively fewer orders drop out of BellSouth's systems for manual handling. It also means that relatively more CLEC orders are processed mechanically, extending the benefit of the most efficient processing to more CLEC orders.

The following table compares BellSouth's Percent Flow Through to SBC's flow through rates using the methodology used by SBC in its 271 applications:

	SBC (TX)	SBC (KS)	SBC (OK)	BellSouth
LEX/LENS	97% to 98%	89% to 91%	80% to 89%	81% to 90%
Cited in FCC Order			70% to 80%	
EDI/EDI	98% to 99%	54% to 92%	89% to 95%	71% to 82%
Cited in FCC Order		61% to 97%		

[22] The UNE-P rate represents WorldCom's Flow Through for June-August 2001.

EASE	97% to 98%	92% to 96%	93% to 96%	
TAG				69% to 85%

BellSouth's flow through rate is comparable to the rate of 271 approved states using the SBC flow through measure. Note that the SBC measure excludes orders that can be accepted mechanically but that are manually handled, which generally results in higher flow through levels, but may not give the same degree of insight into the amount of actual manual handling. As noted above, BellSouth's flow through rates based on the Verizon flow through measure is relatively high, which underscores the relatively low level of orders requiring manual handling by BellSouth.

In addition, BellSouth is providing FOCs and rejects in a timely manner, particularly in the partially mechanized and manual categories. For May through September 2001, BellSouth has met the benchmark for 151 of 166 relevant FOC timeliness measures and 120 of 153 relevant reject measures. The fact that orders, when they fall out, are handled in a timely fashion is compelling evidence of nondiscriminatory performance. *See SWBT-TX Order,* 18444-45 ("a BOC's ability to return timely order confirmation and rejection notices, accurately process manually held orders and scale its systems is more relevant and probative for analyzing the BOC's ability to provide access to its ordering functions than a simple flow-through analysis").

AT&T maintains that a high rate of CLEC orders falls out to manual processing while BellSouth can submit electronic LSRs that flow through up to 100% of the time. *Bradbury*, 63-64. In support of its argument, AT&T points to flow-through data from April 2001 that indicated that 19% of electronic LSRs fall out to manual processing by design or as the result of BellSouth system errors. Each of these arguments lack merit.

First, AT&T's comparison of CLEC LSRs to BellSouth ordering is incorrect. BellSouth does not issue LSRs. *Pate Rebuttal*, 111-15. The LSR is a benefit to the CLECs – it allows them to issue orders in one format throughout the country. The result of this standardization, however, is that the LSR must be translated to be accepted by BellSouth's legacy systems. *Pate Rebuttal*, 114-15.

Second, AT&T's flow-through calculation is inconsistent with the FCC's definition. AT&T's achieved flow-through measurement includes orders that fall out by design.[23] In the FCC's most recent Section 271 Order, the Commission again reaffirmed that achieved flow-through *excludes* orders that fall out by design and "measures the percentage of orders designed to flow through that do, in fact, flow through." *Verizon-PA Order,* n.183. Because AT&T's numbers rely upon a faulty definition of flow-through, AT&T's proffered numbers should be disregarded. By contrast, BellSouth uses the definition of flow-through that has been accepted by the FCC. *Pate Rebuttal*, pp. 107-109.

Third, BellSouth has introduced new versions of its interfaces that some CLECs chose not to implement. As a result, the flow-through enhancements that occurred with these new releases will not be reflected in those CLECs' flow-through percentages, which explains in part why some CLECs have a higher flow-through percentage than other CLECs. *Pate*, p. 103; *Pate Rebuttal*, pp. 123-25.

Fourth, AT&T fails to recognize that CLECs often make errors that diminish flow-through rates. In this regard, the FCC has stated "that on average for all carriers combined, Verizon rejected approximately 43 to 49 percent of resale orders and 21 to 25 percent of UNE

[23] When asked about AT&T's definition of flow-through in the South Carolina hearing, Bradbury explained that "[a]chieved flow-through … captures all of the BellSouth cause of reasons for fallout. It excludes all CLEC errors, but counts both design manual fallout and system errors as fallouts from the system." SC *Tr. Vol. X, p. 3792 (Bradbury)*. Bradbury also stated that AT&T believes this definition should be utilized by Commissions. *Id.*

orders. The Commission does not, however, hold a BOC accountable for rejects that occur for reasons within a competing carrier's control." *Verizon-MA Order,* ¶ 75; *See also, BA-NY Order,* 4038-4039 (noting that flow-through rates for UNE-P orders ranged from 1 to 83 percent); *Verizon-PA Order,* ¶ 49 (approving Verizon's application even though flow-through rates ranged from 54 to 66.5 percent from February through June 2001). With such a wide variety of flow-through rates, and recognizing that BOCs are not accountable for CLEC errors, the FCC evaluated whether Bell Atlantic's systems were *capable* of providing high levels of order flow through, rather than actual flow-through percentages. In so doing, the FCC found that Bell Atlantic's systems met the statutory requirements, notwithstanding the seemingly high fall-out rates. BellSouth easily meets this standard; its system is ready and able to process orders in a nondiscriminatory manner.

Cancellation Period. WorldCom complained about BellSouth's ten day cancellation period for rejected LSRs. BellSouth has increased its holding period to 30 days. *Tr. Vol. III, pp. 426-427 (Pate*). This change addresses WorldCom's concern.

Order Status Notices and Average Installation Intervals. BellSouth provides CLECs with timely access to ordering functionality, including order rejection notices, average installation intervals, FOC notices, order completion notices, and order jeopardy notices. For example, in addition to FOC and Reject Timeliness discussed above, in September 2001, BellSouth met all of the order completion interval and jeopardy notice interval metrics.

Ordering and Provisioning Functionality for UNE Combinations. BellSouth also has addressed FCC concerns in the *Second Louisiana Order* about the ordering of UNE combinations and now provides CLECs with the ability to order the UNE-P electronically via

EDI, TAG, RoboTAG, or LENS. In addition, BellSouth has modified its systems to enable CLECs to order both initial and subsequent partial migrations electronically.

AT&T and WorldCom nevertheless maintain that BellSouth's procedures for UNE-P conversion cause loss of dial tone to customers. *Seigler*, pp. 6-13; *Lichtenberg*, p. 5; *Lichtenberg Surrebuttal*, p. 6. While BellSouth takes any disruption in service seriously, the CLECs' arguments are vastly overstated and do not demonstrate systemic problems, but rather isolated occurrences. BellSouth's UNE-P conversion process is virtually seamless. WorldCom's witness herself conceded during the hearing that BellSouth provisions **99%** of UNE-P conversions without any loss of dial tone. *Tr. Vol. V, pp. 44-45 (Lichtenberg).* This high level of performance hardly warrants a finding of noncompliance with the checklist. Moreover, WorldCom raised this same concern before the FCC for SWBT's Section 271 applications for Kansas and Oklahoma. The FCC approved SWBT's applications even though a few end users experienced a disruption in service during UNE-P conversion, concluding that "SWBT has deployed an interim solution, is working through the change management process to resolve the issue permanently and, since the problem affected so few end users, we thus find it does not warrant a finding of checklist noncompliance." *SWBT-KS/OK Order*, ¶ 153. A similar finding is warranted here because BellSouth has a similarly effective process.[24]

BellSouth's investigation of the alleged disruption in service demonstrates that BellSouth's UNE-P ordering complies with Section 271. For example, BellSouth has converted over 3,139 AT&T end users from BellSouth to AT&T using the UNE-P conversion process. From these 3,139 conversions, only *three* customers lost service during conversion. *Ainsworth Rebuttal, pp.* 17-18. Similarly, an investigation of WorldCom's problems revealed that only

[24] Although it is not necessary for Section 271 approval, BellSouth is implementing a Single "C" ordering functionality.

0.11% of the UNE-P conversions experienced any loss of dial tone. *Ainsworth Rebuttal, pp.* 19-20.

WorldCom asserts that BellSouth's "Trouble After Service Order Completion" metric understates the problem of dialtone losses because a large number of the dialtone loss problems are wrongly classified as "Trouble Not Found" or "CPE." *Testimony of Karen Kinard*, pp. 7-8 (filed July 9, 2001) ("Kinard"). This allegation does not comport with BellSouth's performance data. If there were an alarmingly high volume of premature Trouble Not Found or CPE reports, the problem would appear in BellSouth's Customer Trouble Report Rate measurement under the product category of loop/port combinations. For September 2001, BellSouth's retail analog for this measure was 1.91% and 0.79% for dispatch and non-dispatch orders respectively. The corresponding CLEC Measures were 1.15% and 0.53%.

WorldCom also argues that some orders were erroneously rejected because the representatives failed to recognize the proper UNE-P transaction type or that the product code was not added to the order by BellSouth representatives during manual processing. *Lichtenberg*, pp. 8-9. BellSouth completed refresher training for all LCSC representatives on May 18, 2001, which has addressed the problem. *Ainsworth Rebuttal*, pp. 21-22.

Capacity. WorldCom and AT&T allege that BellSouth's OSS does not provide sufficient production capacity to process projected order volumes. *Bradbury Rebuttal,pp.* 85-87. The facts show otherwise. Actual commercial usage of BellSouth's OSS demonstrates that BellSouth's systems have the capacity to process high volumes of orders. For example, while WorldCom does not currently serve Kentucky, WorldCom entered the Georgia market on May 15, 2001 and already has over 40,000 customers, gaining 10,000 residential customers in the first 6 weeks alone. *Lichtenberg*, pp. 3-4; *SC Tr. Vol. IX, pp. 3465, 3507 (Lichtenberg).* BellSouth's

systems easily processed these high volumes of orders. In the year 2000, CLECs sent 2,886,673 LSRs electronically. In 2001, BellSouth's systems processed 272,114 LSRs in January, 255,162 LSRs in February and 291,083 LSRs in March 2001. *Pate, pp.* 91-92. Thus, BellSouth's systems can and do process the LSRs electronically submitted by CLECs.

In addition, the Georgia TPT confirms that BellSouth's systems have the capacity to process future order volumes. For example, while BellSouth typically sees 15,000-20,000 LSRs per day in production, the TPT tested normal and peak volumes of 35,000-45,000 LSRs per day. *Pate Rebuttal*, p. 158. The extensive volume testing validates that BellSouth's systems can meet future CLEC transaction workloads. *Id.* Moreover, since the Georgia TPT, BellSouth has increased the capacity of its production environment to ensure that its systems have sufficient capacity to process current and projected volumes. *Id.*

AT&T also questions BellSouth's production capacity for EDI and points to EDI outages as support for its concern. *Bradbury Rebuttal*, p. 87. The outages to which AT&T refers, however, have no relation to EDI's capacity. Rather, the outages cited by AT&T occurred because BellSouth had to transition to a new EDI translator. Bellsouth regrets any EDI outages that occurred during the transition to a new EDI vendor[25] and takes all outages seriously. BellSouth has worked diligently to make the transition as smooth as possible, including creating an on-site monitoring team that is available 24 hours per day, 7 days per week to monitor the process. *Pate Rebuttal,* 161-63. All CLECs have now been migrated to the new EDI vendor – MCI was the last CLEC moved and that move was completed on August 24, 2001. As noted above, the FCC has stated that it does not hold the BOCs to a standard of perfection, will not hold BOCs accountable for CLEC errors, and will look at the totality of circumstances in

[25] All CLECs, except one, were transitioned to the new vendor by the end of June 2001. *Pate Rebuttal*, p. 161. BellSouth continues to work to transition the remaining CLEC to its new vendor.

evaluating OSS. *SWBT-TX Order,* 18442*; SWBT-KS/OK Order,* ¶¶ 138, 146*; Verizon-MA Order,* ¶¶ 65, 75. BellSouth has worked diligently to correct all problems and address CLEC concerns. These efforts have been successful; as one CLEC admitted that there have been "dramatic improvements in BellSouth's performance during the last year" and that it "observed significant improvements in the training of BellSouth personnel, and now believes that these individuals are adequately prepared to assist competitive carriers with issues and problems that arise during the ordering and provisioning and processes." *Comments of NewSouth, In the Matter of BellSouth Corporation Pursuant to Section 271 of the Telecommunications Act of 1996 To Pro vide In-Region InterLATA Services in Georgia and Louisiana*, CC Docket No. 01-277, 3, 4 (filed October 22, 2001). BellSouth's commercial usage and performance data, as corroborated by the Georgia TPT, demonstrate that BellSouth satisfies its Section 271 obligations for ordering and provisioning UNEs.

Maintenance and Repair

The FCC has held that BOCs must provide "maintenance and repair functionality in substantially the same time and manner that it provides the functionality to itself." *BA-NY Order*, ¶ 4069. Importantly, this standard does not require BOCs to provide an integratable, application-to-application interface for maintenance and repair. *Id.*. BellSouth offers CLECs electronic interfaces for trouble reporting that provide CLECs with access to the maintenance and repair functions in substantially the same time and manner as BellSouth uses for its retail operating. *SWBT-KA/OK Order,* ¶¶ 161-162. BellSouth provides such access through its Trouble Analysis Facilitation Interface ("CLEC TAFI") and Electronic Communications Trouble Administration ("ECTA Local"). TAFI is the same system BellSouth uses for its retail units.

To determine nondiscriminatory access to maintenance and repair functions, the FCC "review[s] performance data reflecting the timeliness of the BOC's interfaces used for

maintenance and repair functions, the timeliness of its repair work, and the quality of the repair work." *Verizon-MA Order,* ¶ 96. BellSouth satisfies all of the FCC's requirements. BellSouth's repair interfaces are available for CLECs. In May through September 2001, BellSouth met the CLEC TAFI Availability for each month and BellSouth answered CLEC calls to the maintenance center in less time than it took to answer BellSouth retail calls each month.

BellSouth and CLEC end users experience troubles at roughly the same rate. In addition, BellSouth repairs problems CLECs experience in virtually the same time that it takes to repair problems for its retail customers. For the months of May through September 2001 CLEC results have exceeded the BellSouth retail analogue for UNE Customer Trouble Report Rate for 74 of 91 measures with activity and no individual measure has failed for the last three months (July through September). For the months of May through September 2001 CLEC results have exceeded the BellSouth retail analogue for Maintenance Average Duration for 66 of 70 measures with activity and no individual measure has failed for the last three months (July through September). *Varner Supplemental Exhibit, AJV-6*.

Finally, in virtually every case, there are fewer repeat troubles on CLEC end-user lines than on BellSouth end-user lines. For the months of May through September 2001 CLEC results have exceeded the BellSouth retail analogue for Maintenance Average Duration for 68 of 70 measures with activity and no individual measure has failed for the last three months (July through September). *Varner Supplemental Exhibit AJV-6*, *Attachments 1, 1A-1D measures B.3.4.1.1 – B3.4.12.2*

AT&T and WorldCom assert that although ECTA is a machine-to-machine interface, it does not provide nondiscriminatory access to maintenance and repair functions and is, therefore, inferior to TAFI. Specifically, WorldCom alleges that ECTA does not provide cause codes,

which enable the WorldCom system to communicate with ECTA. Tr. Vol. V, pp. 48-49 (*"Lichtenberg")*. As Ms. Lichtenberg admitted, however, ECTA is not designed to provide cause codes. *Id. pp. 46-47*.

AT&T also alleges that the electronic trouble reporting systems BellSouth provides are not equivalent to the systems utilized by BellSouth's own retail operations. *Bradbury Reply*, pp. 91-92. Specifically, AT&T argues that BellSouth is able to integrate TAFI with its own back office systems, but that CLECs cannot. Contrary to AT&T's allegations, the FCC does not require RBOCs to provide a machine-to-machine maintenance and repair interface. *BA-NY Order*, 4069-4070. More recently, in the *SWBT-TX Order*, the FCC reaffirmed that position, stating that "a BOC is not required, for the purpose of satisfying checklist item 2, to implement an application-to-application interface for maintenance and repair functions." *SWBT-TX Order*, n.565.

In addition, a 1999 letter from Mr. Lawrence Strickling, then-Chief of the FCC's Common Carrier Bureau, clarified that the FCC did *not* conclude, in its *Second LouisianaOrder*, that TAFI's lack of integration constitutes nondiscriminatory access. Instead, the letter confirmed BellSouth's view that its maintenance and repair access meets the FCC's requirements. *Pate Rebuttal*, pp. 138-139; *Strickling Letter* (attached thereto as Exhibit OSS – 86). Furthermore, the Florida Public Service Commission in its Final Order (Docket No. 000731-TP) dated June 28, 2001, confirmed that "BellSouth provides AT&T access to its M&R [maintenance and repair] trouble reporting systems in a manner similar to that it provides retail customers. While BellSouth's repair interfaces may not integrate all functionalities AT&T desires, repair reporting access is similar to that of BellSouth retail maintenance and repair."

In sum, BellSouth satisfies the maintenance and repair checklist obligation because it provides CLECs with access to maintenance and repair functions in substantially the same time and manner as it offers them to its retail customers.

Billing

The FCC has held that BOCs must provide competitive LECs with: (i) complete, accurate and timely reports on the service usage of their customers and (ii) complete, accurate and timely wholesale bills. *Verizon-PA Order* ¶*13*. BellSouth satisfies these requirements. *Scollard*, p. 3.

Specifically, BellSouth provides CLECs usage data in three ways: (1) the Optional Daily Usage File (ODUF); (2) the Access Daily Usage File (ADUF); and (3) the Enhanced Optional Daily Usage File (EODUF). *Pate*, p. 25. These data allow a CLEC to process call records in its billing systems in substantially the same time and manner that BellSouth processes these types of records in its own systems. *Pate, p.* 143. To establish that BellSouth provides nondiscriminatory access, KPMG initiated thousands of billing transactions as part of the OSS testing in Georgia. The resulting invoices and usage records were then reviewed against 161 different test criteria. All billing test criteria were satisfied.

BellSouth's performance data independently demonstrate compliance. For May through September 2001, BellSouth's invoice accuracy for CLECs exceeded that for BellSouth's retail units, and BellSouth provided invoices faster to CLECs than to BellSouth retail units. *Varner Supplemental Exhibit AJV-6, Attachments 1, 1A-1D, measures A.4.1, A.4.2, B.4.1 and B.4.2.*

Contrary to AT&T's claims, BellSouth's procedures for establishing Billing Account Numbers ("BANS") are not overly burdensome or difficult. Rather, AT&T caused the problems about which it complains. First, AT&T did not follow BellSouth's well-documented process for establishing BANS. Second, AT&T did not communicate its plan for requesting new UNE-P

service in additional states to BellSouth in a timely manner. *Scollard Rebuttal*, pp. 14-15. If AT&T had communicated its plan in advance, as opposed to at the time that it wanted to begin issuing orders, the process would not have been difficult or burdensome. *Id.*, *p.* 15. Currently, there are about 212 BANS established for CLECs in Kentucky and approximately 3,246 in the BellSouth region, demonstrating that the BANS process is efficient and effective when the proper procedures are followed. *Id.*.

Change Management Process

To satisfy the Section 271 requirements, a BOC must show that it provides CLECs with information and specifications for its systems and interfaces so that the CLECs are able to develop and modify their systems and procedures to access the BOC's OSS functions. *SWBT-KS/OK Order*, ¶ 166. Thus, a BOC must demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." *SWBT-KS/OK Order*, ¶ 166; *BA-NY Order*, 3999; *see also, SWBT-TX Order*, 18436. As part of this demonstration, the FCC gives "substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time." *SWBT-KS/OK Order*, ¶ 166.

BellSouth's change management process, known as the Change Control Process ("CCP"), meets the requirements of this checklist item. Specifically, (1) BellSouth provides information relating to the change management process that is clearly organized and readily accessible to CLECs; (2) CLECs had substantial input in the design and continued operation of the change management process; (3) the change management plan defines a procedure for the timely resolution of change management disputes; (4) an adequate testing environment is

available; and (5) the documentation BellSouth makes available for the purpose of building an electronic gateway is effective and useable. *Pate pp. 5, 45-55 SWBT-TX Order*, ¶ 18404.

BellSouth's CCP is committed to addressing CLEC concerns initiated through the CCP. In fact, after examining BellSouth's change management process, KPMG found that it was one of the many categories in "[which] no deficiencies creating potentially material adverse impacts on competition currently exist." *Pate, Exh. OSS-67;* KPMG's finding is fully supported by the record. For example, BellSouth has implemented 94 defect corrections, submitted by both CLECs and BellSouth, along with three regulatory changes. *Pate Rebuttal*, p. 62. Over 420 total change requests have been processed and BellSouth has implemented 155 changes to its systems in response to CLEC requests. *Id.* There are currently 66 CLEC-initiated change requests in various statuses within the CCP. *Id.*, p. 63. BellSouth works closely with CLECs to respond to their requests and concerns initiated through the CCP. The CLECs' arguments to the contrary are unpersuasive.

Alleged "Veto" Power. Citing isolated incidents, AT&T argues that BellSouth has used its alleged veto power to thwart CLEC participation in the CCP and has favored BellSouth-initiated changes. *Bradbury Rebuttal, pp.* 98-100; *Norris Rebuttal p.18*,. This is not rue. As of September 6, 2001, BellSouth has implemented (or is in the process of implementing) 70 CLEC-initiated change requests, but has implemented (or begun implementing) only 40 BellSouth-initiated change requests. *Pate Surrebuttal, pp. 27*-28. In addition, BellSouth and the CLECs have made a concerted effort to incorporate all reasonable requests for change in the CCP. *Pate Rebuttal*, p. 47.

In particular, BellSouth has provided CLECs with "substantial input in the design and continued operation of the change management process." *Pate*, p. 47; *SWBT TX Order,* ¶ 18404.

BellSouth first sought CLEC input into the CCP in October 1997, and has held numerous meetings with CLECs since that time. *Pate, p. 42*. The steering committee that developed, approved, and signed the original BellSouth Electronic Interface Change Control Process ("EICCP") was comprised of representatives of AT&T, WorldCom, Sprint, e.spire, LCI, and Intermedia. *Id.* In addition, throughout the development and modification of the CCP, CLECs have voted on CCP changes using written ballots, which AT&T helped to prepare.

The CCP document specifies the procedures BellSouth must follow when reviewing change requests. Where BellSouth has declined to adopt a CLEC change request, it provides a reason for its decision through the CCP and, if appropriate, will provide a detailed explanation from a BellSouth subject matter expert. *Pate Rebuttal, pp. 37, 49*. If a dispute arises, the CCP contains two escalation options for CLECs. First, CLECs can use the escalation process within BellSouth. This allows CLECs to escalate the dispute all the way up to senior management for reconsideration. In addition, CLECs can raise the dispute before any state regulatory authority, such as this Commission. *Pate*, pp. 58-59.

Although some CLECs are dissatisfied with certain aspects of the CCP, the FCC does not require that BOCs achieve unanimous support for their CCPs. Rather, as explained above, the FCC requires that BOCs give competitors an opportunity to provide "substantial input" into the change management process—including access to escalation and dispute resolution procedures—which BellSouth has done. Indeed, the FCC has made clear the BOCs must "accommodate a variety of interests with any given change release," invariably leaving some competing carriers "less than satisfied with any given change." *BA-NY Order*, 4011-12.

BellSouth's Compliance With The Requirements Of The CCP. AT&T alleges that BellSouth fails to provide CLECs with information regarding internal processes, makes

unilateral changes to planned implementations, and fails to utilize the process to implement new interfaces. *Bradbury Rebuttal, pp.* 100-101. These concerns are unfounded.

In reality, CLECs have an opportunity to provide "substantial input" in the CCP. *Pate, p. 46*. BellSouth also works with CLECs, both individually and through the BellSouth CCP steering group, to resolve differences of opinion and address issues of importance to the CLEC community. Because all carriers understand that some issues will lead to disputes that cannot be resolved informally, however, the CCP includes escalation and dispute resolution procedures to ensure that specific allegations of wrongdoing can be dealt with fairly and efficiently. Therefore, cases of specific alleged wrongdoing – such as the laundry list of complaints contained in pages 101-105 of Mr. Bradbury's testimony – are appropriately addressed through the CCP's escalation and dispute resolution procedures rather than in the context of the instant proceeding.

In fact, many of the issues and allegations raised by Mr. Bradbury are currently, or have been, the subject of other proceedings in various states in BellSouth's region. The commissions considering these issues, including those in Georgia and North Carolina, have held that BellSouth's change management process functions well and have accepted BellSouth's good faith commitment to improve those areas that need improvement. *Pate Rebuttal*, p. 43. Therefore, AT&T's specific allegations are best addressed in the context of arbitrations and other dispute resolution proceedings. *Id.*

Alleged Failure to Meet Stated CLEC Needs. AT&T alleges that BellSouth has failed to meet a number of stated CLEC needs, by, *inter alia*, (1) not establishing a "go/no go decision point"; (2) not providing parsed CSRs; (3) not implementing change requests; (4) not giving CLECs an opportunity to meet with BellSouth decision-makers; (5) not maintaining a stable test environment; and (6) not providing CLECs with an adequate opportunity to test changes prior to

implementation. *Bradbury Rebuttal, pp.* 107-111. These allegations are without merit and do not undermine the overall sufficiency of BellSouth's change management process. *Pate Rebuttal, pp.* 42, 44. Below, AT&T's primary claims are addressed, including the allegations involving the go/no go decision point, testing, and the introduction of new interfaces. The issue of parsed CSR data is addressed in the pre-ordering section; contrary to AT&T's assertions, BellSouth currently permits CLECs to parse CSR data themselves and will soon provide CLECs parsed data over and above BellSouth's Section 271 obligations.

Go/No Go Decision Point. AT&T claims that the CCP lacks a "go/no go" decision point provision, which would ensure that CLECs are not forced prematurely to cut over to a new release. *Bradbury Rebuttal, p.* 107. Although BellSouth's CCP document does not contain a specific "go/no go" provision, it does include a notification schedule designed to keep CLECs up to date on the implementation of new interfaces and program release upgrades. *Pate Rebuttal*, p. 58. Because BellSouth supports two versions of interface programs at all times (*i.e.*, the "current" version and the "new" version), *Pate, p.* 62, CLECs need not switch to the new version unless they are ready to make the transition. Moreover, in June 2001, BellSouth and the CLECs agreed to incorporate a new release management schedule into the latest version of the CCP in order to increase the advance notification CLECs receive regarding implementation of new interfaces and program releases. *Pate Rebuttal*, p. 58. Because the CCP's notification schedule achieves the same goal as a "go/no go" provision, AT&T's criticism is unwarranted.

Testing Environment. AT&T argues that BellSouth provides neither a stable test environment nor an adequate opportunity to test OSS changes prior to implementation. *Bradbury Rebuttal, p. 110*. Specifically, AT&T claims that BellSouth's new CLEC Application Verification Environment ("CAVE"): (1) will not be used to test minor releases; (2) improperly

excludes LENS and RoboTAG; (3) has failed to beta test LENS Releases 7, 8, and 9; and (4) was designed with a communications strategy that did not match what was used in the production environment. *Bradbury Rebuttal, pp.* 112-115.

BellSouth's current test environment and its new optional CAVE satisfy the FCC's requirement that ILECs provide a CLEC "with access to a stable testing environment to certify that [its] OSS will be capable of interacting smoothly and effectively with [the ILEC's] OSS." *SWBT-TX Order*, ¶ 18419. Under the FCC's formulation, the testing environment should "mirror the production environment in order for competing carriers to test the new release." *Id.*

BellSouth provides CLECs with two types of open and stable testing environments, and, together, these testing environments satisfy the FCC's requirements. The first of these testing environments is used when CLECs shift from a manual to an electronic environment, or when the CLEC is upgrading its electronic interface from one industry standard to the next. This environment allows CLECs to perform various types of testing, including: (1) application connectivity testing; (2) API testing; (3) application testing; (4) syntax testing; (5) validity testing; and (6) service readiness testing. In its Georgia TPT, KPMG found that, in connection with the release of OSS-99, BellSouth satisfactorily provided functional testing environments to CLECs for all supported interfaces, thereby demonstrating that the testing environment is stable and capable of certifying whether a CLEC's OSS will interact smoothly and effectively with an ILEC's OSS. *Supplemental Test Plan*, CM-2-1-6, p. VII-A-22**.** While WorldCom complained about the CAVE environment, Ms. Lichtenberg admitted during the hearing that WorldCom's connectivity issues were caused by WorldCom itself. *Litchenberg, p. 64.*

CAVE mirrors BellSouth's production environment to ensure that the new hardware and software releases facilitate successful order flow before the new releases are introduced to the

production environment. *Pate*, p. 67. The CAVE testing environment, which focuses on functionality, is comprised of the CLEC interfaces, TAG and EDI, and LEO, LESOG and the LNP Gateway that mirror the same interfaces and systems in production. *Id*. To simulate the production environment, CAVE also accesses BellSouth's production legacy systems, including the database for address validation, telephone number selection, service order generation, and product and services selection. *Id*. As such, BellSouth satisfies the FCC's requirement that the testing environment mirror the production environment. AT&T's allegations about various inadequacies in CAVE are untrue. Although AT&T claims that BellSouth will not use CAVE to test minor releases,[26] BellSouth will determine, based on the functionality in the minor release, whether a minor release will be available for CAVE testing by CLECs. *Pate, p.* 68. BellSouth makes these determinations on a case-by-case basis and informs the CLECs of its determinations through the CCP notification process. *Id.*

Similarly, AT&T's allegations regarding BellSouth's refusal to beta test CAVE are mistaken. In fact, BellSouth undertook carrier-to-carrier beta testing with a vendor that provided TAG interfaces to five CLECs in April 2001. *Id*, p. 67. In addition, CAVE is now available to any CLEC to test LENS Release 9.4. *Pate Rebuttal, p.* 80. CLECs need not perform carrier-to-carrier beta testing of CAVE before using it. *Id.*

Furthermore, AT&T's objection that KPMG improperly excluded CAVE from the Georgia Test is irrelevant. *Bradbury Rebuttal*, p. 112. The Georgia Test showed that even before the implementation of the optional CAVE, BellSouth provided an open and stable testing environment that satisfied the FCC's requirements. *Pate Rebuttal, p. 83.* CAVE is, therefore,

[26] As noted in Pate's testimony, minor releases are those that require little or no programming by the CLECs, and the changes are made on the BellSouth side of the interface. *Id., p. 2022.*

best viewed as an optional testing environment that provides CLECs with choices and capabilities beyond those required by the FCC.

Finally, AT&T's claim that CAVE has been the subject of exceptions and observations in the Florida TPT is overstated. BellSouth has an adequate EDI test environment and is currently in the process of providing a list of technical details on the environment to the test auditor to satisfy the exception and resolve the issue. *Id., p. 84*. However, the Florida test did not find any issues with CAVE, contrary to AT&T's implication.

Introduction of New Interfaces. AT&T charges that BellSouth has brought numerous new interfaces online since the initiation of the Change Control Process, but has not included them in the CCP. *Bradbury Rebuttal, p. 105*. This Commission in Case No. 2000-465 resolved this issue in BellSouth's favor, and no other CLEC has raised it. *Pate Rebuttal*, p. 56. Therefore, it would be inappropriate to relitigate this issue in this proceeding.

Florida Exceptions 12, 23, and 26. AT&T alleges that the KPMG Florida third-party OSS test reveals problems with BellSouth's Change Control Process, shown by three open exceptions: 12, 23, and 26. *Bradbury Rebuttal*, pp. 116-120; *Lichtenburg, p. 32*. AT&T and WorldCom allege that these exceptions indicate that CLECs are not offered a meaningful opportunity to compete. However, these allegations are not based on a thorough review of the observations and exceptions. While the scope of the Florida and Georgia tests is different, what they show is that the CCP continues to evolve as a management process. *Pate Rebuttal*, p. 72.

Regarding Exception 12, AT&T alleges that CLECs are adversely affected by BellSouth's failure to adhere to the procedures for System Outages (Type 1) established in the BellSouth change control process. AT&T argues that KPMG determined that BellSouth did not

provide notification of all system outages that occurred during the retest period, failed to meet the required system outage notification standard for 58% of the outages, and failed to meet the system outage notification standard for at least 95% of the outages reviewed. *Bradbury Rebuttal*, p. p. 16. However, BellSouth's investigation showed 84% of the outage notifications being sent in a timely manner. Meanwhile, BellSouth has implemented changes to address obstacles and to achieve the 97% benchmark level for the KPMG retest. *Pate Rebuttal*, p. 73.

Also, AT&T states that under Exception 23, the distribution of carrier notification updates associated with the BellSouth Change Control Process is not adequate. *Bradbury Rebuttal*, pp. 117-118. However, BellSouth disputed KPMG's findings on this issue because the CCP document at the time of review provided a clear and defined process for notification. *Pate Rebuttal*, p. 74. Additionally, a new release management schedule is incorporated in the most recent version of the CCP document. *Pate, Rebuttal Exh. OSS-81*. These notification issues were remedied and, as of July 19, 2001, KPMG closed Exception 23. *Id., p.* 73.

AT&T alleges that BellSouth has failed to address the issues under Exception 26, which finds that BellSouth does not have a defined process for the expedited release of BellSouth documentation defects. AT&T is mistaken, as the process is located on pages 44-50 of the current CCP document. *Pate Exhibit OSS-81*. KPMG is working on formally closing this exception. *Pate Rebuttal*, 77.

WorldCom also raised various complaints about the CCP, all of which were unjustified. One in particular highlights the CLECs' propensity to complain without justification. Ms. Lichtenberg alleged in her prefiled testimony about the timeframes within which BellSouth would provide documentation for new releases. During the hearing, however, Ms. Lichtenberg

admitted that the CCP had discussed and voted on exactly such timeframes and that WorldCom had not participated in the ballot. *Tr. Vol. V, pp. 71-72 (Lichtenberg)*..

UNE Pricing

BellSouth provides access to unbundled network elements and interconnection in accordance with the pricing standards in Section 252(d)(1), which requires the rates for interconnection and network elements to be cost-based (including a reasonable profit). The FCC's pricing rules require rates for interconnection and network elements to be based on the total element long run incremental ("TELRIC") cost methodology.

BellSouth's rates are cost-based, as determined by the Commission in the AT&T and MCI Arbitration Cases (Case Nos. 96-482 and 96-431) in 1997. *Cox Rebuttal, pp 17-18; Tr. Vol. III1, p. 49 (Cox)*. The Commission has additionally approved interim deaveraged loop rates in Administrative Case No. 382 ("cost docket") on March 24, 2000, which were revised on April 12, 2001. *Cox Rebuttal, pp. 17-18*

This Commission is updating and establishing new UNE rates in the cost docket. *Cox, pp. 13-14*. The rates for interconnection and UNEs that BellSouth submitted in the cost docket are included in Attachment A to BellSouth's proposed SGAT (See Exhibit CKC-5 to Cynthia K. Cox's May 18, 2001 testimony). *Cox, pp. 21-22*. Revisions to the SGAT were filed on June 23, 2001, and November 8, 2001 to reflect recent KPSC decisions, including the Sprint arbitration. Tr. Vol. III, p. 3 (Cox). Once the cost docket is complete, BellSouth will update its SGAT rates to reflect any modifications made by the KPSC, as well as any other recent KPSC decisions, including the Sprint arbitration. *Tr. Vol. III, p. 23 (Cox)*. In addition, BellSouth's rates are subject to retroactive true-up to the extent rates are modified by the Commission in the cost docket. *Cox Rebuttal, 19; Tr. Vol. III, pp. 49-51 (Cox)*.

WorldCom wrongly contends that the Commission cannot support BellSouth's 271 petition until permanent rates are established for all required UNEs. *Darnell, p. 5.* BellSouth's current rates are cost-based and subject to true-up, and the FCC has never required that permanent rates for all elements be established prior to approval of a Section 271 application. *See SWBT-Texas Order,* ¶ 18477*; Cox Rebuttal, pp. 8-19*. In any event, rates will never be "permanent" because setting cost-based rates is a dynamic process requiring regular review by the KPSC.

In addition to general attacks on BellSouth's UNE rates, the CLECs attempt to re-litigate issues that are fully, and more appropriately, addressed in the cost docket. For example, WorldCom wrongly contends that BellSouth's rates are not based on the least cost, most efficient network design as required by the FCC. *Darnell, pp. 5-6*. The KPSC is addressing this issue in the cost docket at this time, and, moreover, the current rates are not based upon antiquated technology. *Cox Rebuttal, pp. 19-21*. WorldCom's assertion that the stand-alone loop rate does not take advantage of Integrated Digital Loop Carrier ("IDLC") technology is misplaced. IDLC cannot be used for the stand-alone loop because IDLC integrates the loop into switch preventing unbundling; BellSouth, however, does use IDLC for provisioning loop/port combinations. *Id., p. 20.* Consideration of these issues in this proceeding is unnecessary and duplicative of the KPSC's time and resources. *Id., p. 17*.

SECCA suggests that BellSouth's UNE rates cannot currently be cost based since BellSouth could not operate in Kentucky if it were forced to lease its existing network at its current rates. *Tr. Vol. III, pp. 10-11 (Gillan); Gillan, pp. 20-22*. The FCC has "held that this profitability argument is not part of the Section 271 evaluation of whether the rates are TELRIC-based. The Act requires that we review whether the rates are cost-based, not whether a

competitor can make a profit by entering the market." *Cox Rebuttal*, p. 21*; Verizon-MA Order,* ¶ 41 (footnotes omitted).

SECCA further contends that BellSouth's Daily Usage File ("DUF") rate is excessive and not TELRIC-compliant since it is higher than the rates charged by Qwest and Ameritech for the same element. *Gillan, pp. 22-23*. SECCA's analysis of the cost of the DUF rate is flawed because it is unclear how SECCA prepares its calculation and compares its calculation to other carriers' rates. *Cox Rebuttal, pp. 22-23*. Furthermore, SECCA fails to demonstrate that BellSouth is not in compliance with the FCC's pricing rules because rate differences among BOCs do not prevent rates from being cost based; rather, they reflect differences in underlying costs. *Id*.

UNE Combinations

The FCC currently requires ILECs to provide UNE combinations to CLECs at cost-based prices if the elements are combined and capable of providing service at a particular location. In the *Local Competition Order*, the FCC Rules 315(b)-(f) governing UNE combinations. Rule 315(b) provides that an ILEC will not separate elements that it currently combines, and 315(c) provides that an ILEC must combine previously uncombined elements at a CLEC's request. In 1997, the Eighth Circuit invalidated Rule 315(c), finding such requirements to be inconsistent with Section 251(c)(3) of the Act. *Iowa Utilities Board v. FCC,* 120 F.3d 753 (8th Cir. 1997). The Supreme Court has granted *certiorari* to consider if regulators can require ILECs to combine previously uncombined elements. *Verizon Communications, Inc. v. F.C.C., et al 121 S. Ct. 877 (2001)*

In the AT&T and Sprint arbitrations, this Commission adopted a more expansive view of UNE combinations, requiring BellSouth to combine network elements for CLECs if BellSouth ordinarily combines those elements at any point in its network. BellSouth has appealed these

decisions, but has nevertheless amended its SGAT to comply with the Commission's orders. *Tr. Vol. III, pp. 89, 93-94 ("Lichenberg").* BellSouth thus will combine network elements that it ordinarily combines, even if the elements are currently uncombined for that specific customer.

The Commission therefore should find BellSouth in compliance with Checklist Item 2.

Checklist Item 3: Access to Poles, Ducts, Rights of Way

Checklist item 3 requires BellSouth to provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way that it owns or controls at just and reasonable rates in accordance with the requirements of Section 224. No CLEC has filed comments questioning BellSouth's compliance with this checklist item. BellSouth offers, through its interconnection agreements and its SGAT, nondiscriminatory access to poles, ducts, conduits and rights-of-way at rates that are just and reasonable. *Cox, p.* 40. Thus, the Commission should reaffirm the conclusion that it reached in 1999 and find that BellSouth meets the requirements of this checklist item.

Checklist Item 4: Unbundled Local Loops

BellSouth provides unbundled access to local loops on a nondiscriminatory basis as required by Sections 251(c)(3) and 271(c)(2)(B)(iv). *Milner, pp.* 46-47. In fact, BellSouth has gone beyond the requirements delineated by this Commission and the FCC in addressing the CLECs' expressed concerns. State commissions in Georgia,[27] Louisiana,[28] Mississippi,[29] and South Carolina[30] recently confirmed that BellSouth is meeting the obligations of checklist item 4.

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[27] *GA PSC 271 Order*.

[28] *LA PSC Commission Directive*.

[29] *MS PSC 271 Order*.

[30] *SC PSC 271 Order*.

Local Loops

BellSouth makes several loop types available to CLECs (*e.g.*, SL1 and SL2 voice grade loops; 2-wire ISDN digital grade loops; 2-wire ADSL loops). In addition, BellSouth provides CLECs with unbundled loops served by Integrated Digital Loop Carrier ("IDLC") technology. BellSouth also allows CLECs to purchase additional loop types through the bona fide request ("BFR") process. CLECs may access unbundled loops at any technically feasible point and enjoy local loop transmission of the same quality as BellSouth provides to itself, with the same equipment and technical specifications used by BellSouth to serve its own customers. As of March 31, 2001, BellSouth has provided 5,330 unbundled local loops to CLECs in Kentucky and over 353,992 unbundled local loops to CLECs in BellSouth's nine-state region. *Milner*, pp. 48.

BellSouth is providing local loops in compliance with Section 271. For stand-alone loop provisioning, the FCC examines the average Order Completion Interval ("OCI"); Missed Installation Appointments; Trouble Reports After Provisioning; and Mean Time To Repair. *Verizon-MA Order,* ¶ 162. For OCI, BellSouth reported CLEC activity in 49 sub-metrics related to UNE loops for May through September 2001. BellSouth met or exceeded the retail analogue in 46 of the categories.

For Missed Installation Appointments, BellSouth reported CLEC activity in 49 Sub-metrics for which CLEC data was reported for May through September 2001 and met or exceeded the retail analogue for 43 of the sub-metrics. BellSouth's performance for loops on Percent Provisioning Troubles in 30 Days is also good. For the same period, BellSouth met or exceeded the retail analogue for 24 of 30 of the sub-metrics with CLEC data. Finally, for Missed Repair Appointments and Maintenance Average Duration in the same time period, BellSouth met or exceeded the retail analogue for 50 of 52 and 48 of 52 sub-metrics for which there was CLEC activity respectively.

For loop-port combinations, in May through September 2001, BellSouth met or exceeded the retail analogue for OCI and Missed Installation Appointments for 23 of 24 and 23 of 25 sub-metrics respectively within these measures. BellSouth performed well on Percent Provisioning Troubles Within 30 Days meeting or exceeding the retail analogue for 15 of the 20 loop/port sub-metrics where there was CLEC activity. None of these measures have missed the analogue for all three of the most recent months – July through September 2001. In addition, BellSouth met or exceeded the Missed Repair Appointments (15 of 15) and Maintenance Average Duration (15 of 15) retail analogues for loop-port combination sub-metrics with activity.

Hot Cuts

Hot cuts involve the conversion of an existing BellSouth customer to the network of a competitor by transferring the customer's in-service loop over to the CLEC's network. *Milner*, p. 57. Typically this involves "cutting" the local loop to the CLEC as an unbundled loop and providing local number portability so that the customer does not have to change telephone numbers. The large volume of successful unbundled local loop provisioning confirms that BellSouth is providing nondiscriminatory access. As the FCC noted, "[t]he ability of a BOC to provision working, trouble-free loops through hot cuts is critically important in light of the substantial risk that a defective hot cut will result in competing carrier customers experiencing service outages for more than a brief period." *SWBT-TX Order*, 18484-85.

In Kentucky, BellSouth has met the hot cut benchmarks for every submetric during every month for which data was submitted (including September), as AT&T witness Ms. Berger recognized. *Tr. Vol. V, p. 262 (Berger).*

AT&T and BellSouth executed a Memorandum of Understanding ("MOU") on April 16, 2001, setting forth a mutually agreeable hot cut provisioning process, AT&T complains about

BellSouth's hot cut procedures.[31] *Berger Rebuttal*, pp. 11-13. BellSouth has trained its personnel and has updated its internal processes based on the MOU, and BellSouth has been abiding by these procedures since April 16, 2001, even though the MOU was not effective until May 15, 2001. In a meeting between BellSouth and AT&T on May 10, 2001, AT&T personnel stated that since the April 16, 2001, implementation of the MOU, it had no complaints regarding BellSouth's compliance with the MOU. *Milner Rebuttal,* pp. 7-10.

AT&T also complains about a so-called "operational disagreement" regarding IDLC and BellSouth's hot-cut performance metrics. *Berger Rebuttal*, pp. 19-22. This complaint is entirely hypothetical. Although it is BellSouth's position that conversions involving IDLC facilities should not be worked as time specific hot cuts, BellSouth has *not* made any change to its measurements or its process that would necessitate an AT&T complaint to this Commission. In fact, BellSouth has been, and still is, counting IDLC hot cuts as time specific if so ordered by the CLEC, as AT&T concedes. *Milner Rebuttal*, pp. 11-12, *Tr. Vol. V, pp. 244-245 (Berger)*. In any event, AT&T's witness, Ms. Berger, testified that this issue alone would not warrant denial of BellSouth's 271 application. *Id.*

In addition, AT&T insists that BellSouth refuses to check the availability of connecting facilities assignments ("CFAs")—the facilities that connect a CLEC collocation with BellSouth's network—prior to issuing a FOC. *Berger Rebuttal*, pp. 16-18. CFAs identify the facilities that connect a CLEC's collocation arrangement with BellSouth's network. The root of AT&T's problem is its poor record keeping. *Milner Rebuttal*, pp. 10-11. When AT&T orders an unbundled network element, such as an unbundled loop, AT&T specifies the CFA to which BellSouth should connect the unbundled loop. The CFA extends the loop from BellSouth's

[31] BellSouth now uses the process it negotiated with AT&T as a model with all CLECs.

distribution frame to AT&T's collocation arrangement. AT&T often submits LSRs for an unbundled loop specifying CFAs that are already in use for other unbundled loops. This problem should not occur; AT&T can easily check the status of these CFAs before submitting its LSR to BellSouth, eliminating problems with erroneous CFA assignments on its LSRs. *Milner Rebuttal*, p. 11. BellSouth produces a report three times per week showing the status of each CFA between BellSouth's network and AT&T's collocation arrangements. In addition, BellSouth has agreed to provide AT&T access to the CFAs contained in LFACS as addressed in more detail above. *Pate Rebuttal*, pp. 130-131.

AT&T incorrectly claims that BellSouth's method of addressing erroneous disconnects caused by AT&T is different from how BellSouth addresses erroneous disconnects of its own customers. *Berger Rebuttal*, pp. 23-24. In reality, these disconnects are handled as a provisioning issue for both CLECs and BellSouth. BellSouth and CLECs each must submit an LSR to re-establish service for a customer that was erroneously disconnected. *Ainsworth Rebuttal*, pp. 28-29.

In short, BellSouth has demonstrated that it "provisions hot-cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption." *BA-NY Order*, 4104-05; *Verizon-MA Order,* ¶ 152*; SWBT-KS/OK Order,* ¶ 204.

Access to xDSL-Capable Loops

BellSouth is meeting its obligation to provide xDSL-capable loops. BellSouth provides both electronic and manual ordering of xDSL-capable loops. With respect to timeliness of loop installation, BellSouth provisioned xDSL loops without conditioning in less than the 7 day benchmark every month from May through September 2001. In addition, BellSouth met or exceeded the retail analogue for Percent Missed Installation Appointments for this same period for xDSL where there was CLEC activity. BellSouth not only delivers service in a timely

manner, it does so with the same quality of service BellSouth provides for its retail orders. The Percent Provisioning Troubles Within 30 Days for xDSL in September was 4.08% for CLEC orders and 6.97% for BellSouth retail orders.

When CLECs did experience trouble on xDSL-capable loops, BellSouth handled the troubles in the same time and manner as it handled the troubles for its retail units. BellSouth met or exceeded the retail analogue for Missed Repair Appointments for both xDSL sub-metrics and Further, the Maintenance Average Duration for CLECs was shorter than BellSouth retail for both xDSL sub-metrics for May through September 2001.

Line Sharing

BellSouth provides access to the high frequency portion of the loop as an unbundled network element pursuant to the requirements of the FCC's *Line Sharing Order* and the *Line Sharing Reconsideration Order*.[32] *Testimony of Thomas G. Williams, p.* 2-9, (filed May 18, 2001) ("*Williams*"). BellSouth developed and tested its line sharing procedures through collaborative meetings with CLECs, including Covad, DuroCommunications, NewEdge, Rhythms, and NorthPoint. BellSouth continues to hold line sharing collaborative meetings to further develop and refine its line sharing procedures. BellSouth has entered into region-wide interconnection agreements with CLECs such as Covad, NewEdge, BlueStar, NorthPoint, and Rhythms for the ordering and provisioning of line sharing in the BellSouth region. BellSouth has provisioned line sharing on 2,765 lines region-wide, and 172 lines in Kentucky. *Williams*, pp. 5-8, 16; *Tr. Vol. IV, p. 178 (Williams)*.

[32] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order CC Docket No. 98-147 and Fourth Report and Order CC Docket No. 96-98, 14 FCC Rcd 20912 (1999)("*Line Sharing Order"); Deployment of* Wireline Services Offering Advanced Telecommunications Capability, Order on Remand, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91 (1999)(*"Line Sharing Reconsideration Order"*).

The FCC does not require an ILEC to allow a CLEC to collocate its line cards in the ILEC's Digital Subscriber Line Access Multiplexer ("DSLAM"), contrary to AT&T's position. Verizon did not allow such an arrangement in Massachusetts, and its application was approved. Moreover, the FCC is explicitly considering this issue in its Advanced Services docket, thereby confirming that there is no current obligation for BellSouth to allow CLECs to collocate line cards. *Deployment of Wireline Services Offering Advanced Telecommunications Capability And Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Further Notice of Proposed Rulemaking*, FCC 01-26, 2001 FCC LEXIS 413, ¶ 14 (2001). Indeed, AT&T's witness, Mr. Turner, conceded that BellSouth is not currently obligated to allow CLECs to install line cards in its DSLAMs. *Tr. Day 3, p. 320 (Turner).*

AT&T is really seeking to require BellSouth to provide unbundled packet switching. However, the FCC has declined to impose such a duty except in limited circumstances. *Milner Rebuttal, pp.* 14-16. The FCC concluded that "regulatory restraint . . . may be the most prudent course of action in order to further the Act's goal of encouraging facilities-based investment and innovation." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report And Order And Fourth Further Notice Of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 317. The FCC declined to require ILECs to unbundle packet switching out of concern that such a requirement would impede competition and stifle innovation. *Id*., ¶¶ 3839-3840; *Tr. Vol.VI, pp. 215-216 (Williams)*. Consequently, BellSouth is not obligated to provide unbundled packet switching to demonstrate compliance with checklist item 4.

AT&T alleges that BellSouth's position on NGDLC means that BellSouth will permit CLECs to line share only over copper facilities. *Turner*, pp. 35-36. This allegation is incorrect. AT&T has a number of options by which it may serve its customers. For example, AT&T can

self-provision its own fiber optic cable, install its DSLAM in its own cabinetry rather than the remote terminal, and acquire only the unbundled loop distribution sub-loop element to serve its customers. AT&T is not foreclosed from serving its customers regardless of whether those customers are served over copper loops. *Milner Rebuttal*, p. 17.

Line Splitting

BellSouth provides line splitting in accordance with the same line splitting arrangement that the FCC described in the *Southwestern Bell-Texas Order* and the *Line-sharing Reconsideration Order*. Specifically, BellSouth facilitates line-splitting by cross-connecting a loop and a switch port to the collocation space of either the voice CLEC or the data CLEC. The CLECs may then connect the loop and the switch port to a CLEC-owned splitter and split the line themselves. *Williams*, p. 18-19. Thus, BellSouth satisfies its statutory obligations regarding this issue.

AT&T argues that BellSouth must charge CLECs UNE-P rates for a line-splitting arrangement. *Turner*, p. 24. However, the FCC has held that "if a competing carrier is providing voice service using the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to *replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services*." *Deployment of Wireline Services Offering Advanced Telecommunications Capability And Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Further Notice Of Proposed Rulemaking In CC Docket No. 98-147, Sixth Further Notice Of Proposed Rulemaking In CC Docket No. 96-98, ¶ 19 (rel. Jan. 19, 2001) (emphasis added); *Verizon-PA Order*, ¶ 197; *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, Memorandum Opinion And Order, CC Docket No. 01-100, ¶ 53 (rel. July 20, 2001) (*Verizon-CT Order*); *SWBT-KS/OK Order*, ¶ 225; *SWBT-TX Order,* ¶ 325. Thus, the FCC recognized that once the loop and port are used to provide line splitting, as opposed to a simple voice arrangement, the "UNE-P" no longer exists. The arrangements are fundamentally different. Therefore, it would be unreasonable to require BellSouth to charge the same rate for line splitting that it charges for a UNE-P.

Also contrary to FCC decisions, AT&T argues that BellSouth should be required to own the splitter in a line-splitting arrangement. *Turner*, p. 12-23. Not one BOC in any state for which Section 271 authority has been granted owns the splitter in a line-splitting arrangement. Furthermore, the FCC has ruled numerous times that the ILEC is *not* required to do so. *See e.g. SWBT-TX Order,* 18516 ("we reject AT&T's argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P"). In addition, the FCC has rejected AT&T's contention that BellSouth's policy to provide the splitter in a line sharing arrangement but not in a line splitting arrangements is somehow "discriminatory."[33] Thus, BellSouth's position is based on clear direction from the FCC. Nonetheless, BellSouth has agreed to provide the splitter in line-splitting arrangements as an option for CLECs.

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[33] In particular, the FCC held that:

> AT&T suggests in passing that SWBT "voluntarily" provides the line splitter functionality to competing carriers engaging in line sharing with SWBT voice services and that it has for that reason incurred an obligation to provide all UNE-P carriers with the same option. Even if AT&T had fully developed this issue, this argument would lack merit and would in any event be unripe for our review here. What AT&T requests is not line sharing, but access to the entire loop and the splitter in order to provide both voice and advanced services. Line sharing and line splitting present two different scenarios under our rules. With respect to line sharing, we stated in the *Line Sharing Order* that incumbent LECs have discretion to maintain control over the splitter. With respect to line splitting, as described above, we have not imposed any obligation on incumbent LECs to provide access to their splitters. AT&T presents no evidentiary or conceptual basis for concluding that SWBT's practices in these two different contexts somehow amount to "discrimination" against AT&T.

SWBT-TX Order, 18517.

Further, BellSouth is not required to provide DSL services on CLEC loops. The FCC has repeatedly rejected CLEC arguments on this point. *Line Sharing Reconsideration Order*, 397-398; *SWBT-TX Order*, 18517-18 ("we note that under the Line Sharing Order, the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access."). Likewise, in the *Line Sharing Reconsideration Order*, the FCC expressly held that the *Line Sharing Order* does not require that an ILEC provide xDSL service when it is are no longer the voice provider. *Line Sharing Reconsideration Order*, 397-398; *see also SWBT-TX Order*, 18517-18.; Verizon-PA Order, Appendix C, P. C-25.

The policy reasons for the FCC's position are clear. BellSouth has no market power for broadband services and customers have other choices for DSL. Further, when a CLEC purchases an unbundled loop, it acquires the rights to the high frequency spectrum of that loop. To provide FastAccess®, BellSouth's DSL product, over CLEC loops, BellSouth would need to negotiate with each CLEC for the right to access the high frequency spectrum. Operationally, BellSouth's databases would not include the telephone numbers of CLEC voice customers used by BellSouth to properly provision FastAccess® service and repair problems. *Tr. Vol VI, pp. 201-202 (Williams).*

AT&T also asserts that BellSouth should deploy splitters on a "line-at-a-time" basis. *Turner*, p. 22. As noted above, the FCC does not require ILECs to provide splitters for line splitting or line sharing at all, as AT&T witness Mr. Turner concedes. *SWBT-TX Order,* 18516; *Tr. Day 3, p. 303 (Turner)*. Consequently, there is no obligation to provide a splitter a line at a time. When BellSouth voluntarily provides the splitter, its equipment has either 8, 96 or 144

ports. BellSouth allows CLECs to purchase a full 96-port splitter or 24- or 8-port increments. Requiring BellSouth to deploy an entire shelf of 96 or 144 ports when a CLEC seeks a single port would be extremely inefficient and would increase the cost to the CLEC. It also would inequitably shift the risks of under utilization from the CLEC who requested the equipment to BellSouth.

AT&T's complaint is particularly unreasonable in light of the fact that BellSouth's 8-port option is the result of a settlement between BellSouth and the Data Coalition (a CLEC conglomerate consisting of the major DSL market players, such as Covad) that was reached in the Georgia xDSL proceeding and was extended by BellSouth on a region-wide basis. Based on that settlement, this Commission can reasonably conclude that the CLECs that actually plan to use line splitting to provide service to local customers are satisfied with 8 ports. *Rebuttal Testimony of Thomas G. Williams*, 18-19, (filed July 30, 2001) ("*Williams Rebuttal*").

AT&T also complains that line splitter installations will result in a disruption of service to the customer. *Turner*, 19. Wiring a loop to a splitter – regardless of who owns the splitter – will always require a minimal disruption of service. *Williams Rebuttal*, 16-17. Only where there are no wiring changes required can there be no service disruption. This does not evidence noncompliance with this checklist item. .

Checklist Item 5: Unbundled Local Transport

No material changes have occurred since the FCC concluded that, but for the OSS issues addressed above, BellSouth provides unbundled local transport in accordance with the requirements of Section 271. *Second Louisiana Order,* ¶ 20720. BellSouth continues to provide dedicated and shared transport between end offices, and between end offices and tandems, and BellSouth has demonstrated that it has procedures in place for the ordering, maintenance and provisioning of dedicated and shared transport. *Cox,* p. 51.

Only one party raises any concerns with BellSouth's unbundled local transport. WorldCom alleges that BellSouth does not provide, as a UNE, dedicated transport that: (1) connects two points on a CLEC's network (*e.g.,* two switches, two network nodes, or a network node and a switch), or (2) connects a point on a CLEC's network to a point on the network of a different CLEC where the facilities to provide such UNEs are currently in place. *Argenbright, pp. 15-16.* While the FCC has required ILECs to provide unbundled transport in the ILEC's existing network, it has specifically excluded transport between other carriers' locations. *Cox Rebuttal, 26*. ILECs are not required to offer, and are not required to construct, dedicated transport facilities between CLEC network locations where such facilities do not currently exist. *Local Competition Order*, 15718; *UNE Remand Order,* ¶324*; Cox Rebuttal, 24-26*. Thus, BellSouth is in compliance with checklist item 5.

Checklist Item 6: Unbundled Local Switching

This checklist item requires a BOC to provide "local switching unbundled from transport, local loop transmission, or other services." 47 U.S.C. § 271(c)(2)(B)(vi). The BOC must demonstrate, "that it provides (1) line-side and trunk-side facilities; (2) basic switching functions; (3) vertical features; (4) customized routing; (5) shared trunk ports; (6) unbundled tandem switching; (7) usage information for billing exchange access and (8) usage information for billing for reciprocal compensation." *BA-NY Order,* 4128-29.

In the *Second Louisiana Order*, the FCC concluded that BellSouth proved that it provides, or can provide, the line-side and trunk-side facilities of the switch, the basic switching function, trunk ports on a shared basis, and unbundled tandem switching. *See Second Louisiana Order*, 20724-26, 20732-33. BellSouth continues to provide unbundled switching in accordance with the requirements of the FCC. BellSouth provides CLECs unbundled switching capability

with the same features and functionality available to BellSouth's own retail operations, in a nondiscriminatory manner. *Cox, pp. 54-57*.

Despite finding that BellSouth provided the basic switching functionality on an unbundled basis, the FCC concluded in the *Second Louisiana Order* that BellSouth failed to meet its burden of proof with respect to access to vertical features, customized routing, usage information for billing exchange access, and usage information necessary for billing for reciprocal compensation. BellSouth has remedied the FCC's concerns. *Cox, p. 54*. BellSouth provides all vertical features that the switch is capable of providing whether or not BellSouth offers a particular feature on a retail basis. *Milner, pp. 68-69*. BellSouth offers two methods of customized routing: Advanced Intelligent Network ("AIN") and Line Class Codes ("LCC"), *Milner*, p. 73, either of which meets the FCC's requirements. Finally, BellSouth currently provides usage information via the Access Daily Usage File ("ADUF"), which gives CLECs records for billing interstate and intrastate access charges (whether the call was handled by BellSouth or an interexchange carrier) or reciprocal compensation charges to other LECs and interexchange carriers for calls originating from and terminating to unbundled ports. *Scollard*, p. *20.*

BellSouth has demonstrated that it provides CLECs with local circuit switching on an unbundled network element basis in compliance with checklist item 6, and no CLEC has filed comments questioning BellSouth's compliance.

Checklist Item 7: 911, Directory Assistance, Operator Services

911 and E911 Services

Checklist item 7 requires a BOC to provide nondiscriminatory access to 911 and E911 services. *Second Louisiana Order*, 20737. The FCC has concluded that BellSouth satisfies this requirement. *Second Louisiana Order*, 20742. BellSouth continues to provide

nondiscriminatory access to 911 and E911 services in a manner consistent with that previously presented to the FCC, and no CLEC has filed comments questioning BellSouth's compliance. *Cox*, p. 64.

Directory Assistance/Operator Services

To comply with checklist item 7, BellSouth must also provide access to directory assistance ("DA") and operator services ("OS") so that CLECs' customers can obtain telephone numbers and operator call completion services on a nondiscriminatory basis. 47 U.S.C. § 271(c)(2)(B)(vii). BellSouth provides CLECs access to directory assistance services and operator call completion services at a level of quality and performance that is at least equal to that which BellSouth provides to itself. *Milner*, p. 78.

AT&T claims that BellSouth does not satisfy the requirements of checklist item 7 because CLECs in BellSouth's territory are allegedly unable to order and obtain customized OS/DA routing "as a practical matter." *Bradbury*, p. 136. AT&T also asserts that BellSouth has never provided methods and procedures necessary to order customized OS/DA routing for specific customers, and criticizes the BellSouth document that explains the ordering information that enables CLECs to order customized routing as "confusing, inadequate, and impossible to implement." *Id., p.* 139.

AT&T is the only party that has complained about customized routing. *Milner Rebuttal*, p. 18. BellSouth provides customized routing via the LCC and AIN methods, and additionally provides customized branding via originating line number screening ("OLNS") applications. Each of these options is available to CLECs in Kentucky. *Id., p.* 22. The Commission confirmed that BellSouth has met its obligations to provide customized routing in the recent arbitration case between AT&T and BellSouth. *Id.*, p. 19.

BellSouth provides CLECs with methods and procedures necessary to order customized OS/DA routing for specific customers. BellSouth and AT&T have reached agreement on a procedure that would entail one default routing plan per state with multiple pre-assigned routing options. *Id*. The multiple routing options will be built into the BellSouth switches where CLEC service is requested. *Id*. Those switches are able to route the OS/DA traffic for AT&T end users to different platforms, as prescribed by AT&T. *Id*. The AT&T prescribed routing will be the default routing for its end users for each of those classes of service. *Id*., pp.19-20. If AT&T requests multiple customized OS/DA routing options in an end office and the appropriate LCCs have been established, AT&T may order an OS/DA branding option other than the established default plan by providing an indicator identifying the specific routing to be used. *Milner Rebuttal*, p. 20. Given the interconnection agreement language recently agreed to by BellSouth and AT&T, all issues associated with OS/DA and customized routing have been resolved. *Id*. AT&T concedes that it has reached an agreement with BellSouth that AT&T is "very comfortable with" to provide customized routing via the LCC for individual customers. *Tr. Vol. III, p. 174-176* (*Bradbury*). It is therefore unclear why AT&T continues to claim it is unable to provide customized OS/DA routing using the LCC methodology.

Moreover, contrary to AT&T's allegations, BellSouth has developed and provided to CLECs detailed ordering procedures, with which AT&T concurred during the above-referenced negotiations. *Milner Rebuttal*, 21. These procedures include several methods and technologies by which CLECs can order and obtain customized routing. The procedures that AT&T labels as "confusing, inadequate, and impossible to implement" are the same procedures that resulted from the collaboration in which AT&T participated. *Id*., p. 22.

BellSouth thus provides all CLECs, including those in Kentucky, with nondiscriminatory access to 911/E911 services, directory assistance services, and operator call completion services at a level of quality and performance that is at least equal to that which BellSouth provides to itself, thereby satisfying the requirements of checklist item 7.

Checklist Item 8: White Pages Directory Listings

Checklist item 8 requires that BellSouth provide CLECs with nondiscriminatory access to white page directory listings. In particular, BellSouth must provide white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers. *BA-NY Order*, 4135. No party disputes that BellSouth does so.

Both the FCC and this Commission already have concluded that BellSouth has satisfied its obligation under this checklist item. *Second Louisiana Order*, 20747; *Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Case No. 96-608, (KY P.S.C. July 8, 1999) (Advisory Opinion), 6. BellSouth continues to make its white pages listings available to CLECs and to allow other carriers access to BellSouth's white pages listing capabilities. *Milner*, 92; *Cox*, 66.

Checklist Item 9: Numbering Administration

Checklist item 9 provides that, until the date by which telecommunications numbering administration guidelines, plans or rules are established, BellSouth must provide nondiscriminatory access to telephone numbers for assignment to other carriers' telephone exchange service customers. The FCC has concluded that BellSouth met this requirement, *Second Louisiana Order*, 20751, and no CLEC has filed comments questioning BellSouth's compliance. Since that time, NeuStar has assumed the responsibilities of the North American Numbering Plan Administrator ("NANPA"). *Milner,* 93. BellSouth is no longer responsible for

the assignment of central office codes (NXXs) or for NPA relief planning. *Id.,* 94-95. The FCC now requires that a BOC demonstrate that it adheres to the industry numbering administration guidelines and the FCC's rules, including accurate reporting of data, to be compliant with this checklist item. *BA-NY Order*, ¶363; *SWBT-TX*, ¶360. BellSouth offers through its agreements, as well as its SGAT, nondiscriminatory access to telephone numbers. *Cox,* 70. BellSouth also adheres to all relevant industry guidelines and FCC rules, including those provisions requiring accurate reporting of data to the Code Administrator. *Id., SWBT-TX Order*, 18531. For these reasons, BellSouth continues to comply with this checklist item.

Checklist Item 10: Access to Databases and Signaling

Checklist item 10 requires that BellSouth offer nondiscriminatory access to databases and associated signaling necessary for call routing and completion. Both this Commission and the FCC already have ruled that BellSouth satisfies the requirements of checklist item 10. *Second Louisiana Order*, 20753; *KYPSC 1999 Advisory Opinion*, 7. No CLEC has filed comments questioning BellSouth's compliance. BellSouth's agreements, as well as its SGAT, provide for nondiscriminatory access to BellSouth's signaling networks and call-related databases used for call routing and completion. *Cox*, 72. Thus, BellSouth has demonstrated that it complies with checklist item 10.

Checklist Item 11: Number Portability

Section 271(c)(2)(B)(xi) requires that BellSouth comply with the number portability regulations adopted pursuant to Section 251, which states that all LECs must "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b)(2). In conformance with the FCC's regulations, BellSouth provides both interim and permanent number portability to competing carriers through remote call forwarding, direct inward dialing, and directory number routing indexing. *Milner*, 110-12.

Through its implementation of local number portability, BellSouth has enabled customers of facilities-based CLECs to retain existing telephone numbers "without impairment in quality, reliability, or convenience." 47 U.S.C. § 153(30).

Contrary to AT&T's complaints, *Berger Rebuttal*, 47-51, BellSouth's performance data confirm that it is providing number portability in compliance with checklist item 11.[34] For example, for all order types, mechanized, partially mechanized, and non-mechanized, BellSouth met the LNP benchmark for Reject Interval and FOC Timeliness in 37 out of 45 sub-metrics with activity in May through September 2001. With respect to provisioning, BellSouth met 12 of the 15 metrics with activity during the same time periods. Furthermore, BellSouth has implemented number portability in Kentucky in full compliance with FCC rules. As of March 31, 2000, BellSouth had equipped all of its switches in Kentucky with LNP capability. *Milner*, 111. As of March 31, 2001, BellSouth had ported 26,613 business directory numbers and 110 residence directory numbers in Kentucky using LNP. *Id.* In its nine-state region, BellSouth had ported 1,113,649 business and 133,703 residence directory numbers as of that same date. *Id*. These data show that BellSouth has implemented LNP in conformance with its statutory and regulatory obligations and that BellSouth continues to comply with this checklist item.

AT&T complains that when a telephone number is ported to AT&T, the number sometimes is erroneously reassigned to a new BellSouth line. *Berger Rebuttal*, 39-40. this issue was discovered in the last quarter of 2000. Determined to resolve this issue quickly, BellSouth devised an interim manual solution by January 2001. *Rebuttal Testimony of Ken L. Ainsworth*, ("*Ainsworth Rebuttal*"), filed July 30, 2001, 2. BellSouth is currently pursuing a permanent software solution. To ensure that ported numbers will not be mistakenly reassigned, this manual

[34] AT&T's complaints in this proceeding regarding number portability and "dead air" were withdrawn after this Commission dismissed AT&T's complaint as satisfied. Case No. 2001-179, Order, September 12, 2001.

workaround will continue until a software solution has been implemented. *Id.*, at 2-3. Additionally, BellSouth began working with all CLECs to verify all numbers that have been ported since January 2000. The review for AT&T was completed on May 23, 2001, and BellSouth does not expect that this problem will reoccur. *Id.*, at 3. Because BellSouth took steps to resolve the problem of reassigned numbers as soon as BellSouth was notified, this issue does not support a finding of noncompliance.

AT&T also alleges that its customers continue to receive bills from BellSouth even after having been switched. *Berger Rebuttal*, 41-42. Duplicate billing does, on occasion, occur, but it occurs both for BellSouth's wholesale and retail customers. *Ainsworth Rebuttal*, 3. Moreover, CLECs can be the source for the duplicate billing. *Id*. Where a CLEC does not transfer all of its customers' services or where the CLEC does not properly complete the porting of all telephone numbers associated with the LSR, BellSouth will continue to bill until the discrepancies created by the CLEC are resolved. *Id*., 3-4.

For example, recently a problem occurred with over 300 telephone numbers that AT&T had ported in Kentucky. *Milner Rebuttal*, filed Oct. 3, 2001, 13. Upon investigation, BellSouth found that AT&T had sent Local Service Requests ("LSRs") to BellSouth using a valid Company Code. However, when AT&T submitted the Create SV messages to the Number Portability Administration Control ("NPAC"), AT&T used a different Company Code. *Id*. Despite receiving a conflict message from NPAC, AT&T further submitted Activate SV messages to complete the ports. The use of the incorrect code by AT&T prevented BellSouth from recognizing that the numbers had been ported, and billing therefore continued to these end users until BellSouth was able to issue disconnect orders. *Id*.

Occurrences of improper reassignment of numbers and duplicate billing are rare. In fact, AT&T has not provided the Commission any specific examples, other than those tied to AT&T's now dismissed complaint that was traced to misuse of Company Codes in Kentucky, to support its allegations of porting problems. *Milner Surrebuttal*, 8. Moreover, BellSouth has implemented an efficient process by which the CLEC can resolve any such matters. In the few instances where duplicate billing does occur, the CLEC should contact BellSouth, which will work with the CLEC to resolve the matter expeditiously. *Ainsworth Rebuttal*, 4. BellSouth thus complies with this requirement of checklist item 11.

Incoming Calls and Loss of Dial Tone

AT&T maintains that some business customers occasionally lose the ability to receive calls from BellSouth customers. According to AT&T, the problem occurs because BellSouth does not perform translation work on switches that cannot implement an automatic "trigger" at the time the number is ported from BellSouth. *Berger Rebuttal*, 36-39. To ensure efficient number portability, BellSouth utilizes triggers for the majority of port orders. For some directory numbers that cannot be handled mechanically (*i.e.*, using a trigger order), such as the Direct Inward Dialing ("DID") to a Private Branch Exchange ("PBX") referenced by Ms. Berger, BellSouth's process calls for the formation of a Project Team to handle the conversion. *Milner Rebuttal*, 23-24. BellSouth also has appointed Project Managers to address those orders that are large and complex in order to ensure accurate, timely conversion. *Id*. The Project Team and Managers ensure that complex orders are worked properly and that conversions are accurately handled for all CLECs, including AT&T. *Id*., at 24.

While BellSouth takes seriously all customer complaints, whether retail or CLEC, AT&T's assertions must be regarded with skepticism. In response to the AT&T complaints, BellSouth sent a letter to AT&T on August 25, 2000, in which it explained its policy of handling

DID conversions and requested a list of the Purchase Order Numbers ("PONs") in question to enable the project team to investigate the issues and work through the resolution of the problems. *Id*., at 25-26. To date, AT&T has not responded to this request and has not provided BellSouth with any additional information. Although AT&T chose to raise the issue with the Commission, it did not provide the Commission any specific information that would be useful in making a factual determination. *Id*., at 26.

Partial Ports

According to AT&T, when a customer chooses to migrate only some of its lines to a CLEC, BellSouth does not properly port the customer's number, especially if it happens to be the main number used by BellSouth for billing. *Berger Rebuttal*, 42-43. In these situations, if the customer later wants to change features or call in a repair, AT&T maintains that BellSouth may not be able to process the request. *Id*., at 42. Nevertheless, AT&T did not provide any concrete examples to support of this allegation. Therefore, BellSouth cannot address the concerns except to point out that BellSouth routinely conducts successful partial migrations for CLECs without any interruption to the end user's service daily. *Ainsworth Rebuttal*, 6.

CLECs performing a partial port must inform BellSouth on the LSR which billing number will be ported and which telephone number the customer wishes to use as BellSouth's new billing number. *Id*., at 6-7. If this information is not provided by the CLEC, the efficiency of the partial port process will be affected. *Id*., at 7.

Snap-Back Services

During the hearing, AT&T witness Ms. Berger described "snap-back service" as a process to bring the customer whose number is being ported back to BellSouth in the event that something "significant happens with the network or he loses dial tone or this is noise on the line." *Tr. Vol. V, p. 238 (Berger)*. The snap-back process is not an efficient means for assuring

the continuity of service once the customer has been ported. The most efficient process is for a CLEC to perform adequate testing prior to number porting to eliminate any CLEC facility issues. Additionally, BellSouth works with CLECs to resolve any post-port service issues at the time of the conversion. BellSouth's joint resolution process for conversion issues minimizes end user service impacts, additional customer inconvenience, and unnecessary work. In the case of post-port problems, where the problems were not identified and resolved pre-port, a CLEC can request the immediate return of the customer to Bellsouth. BellSouth will then work with the LCSC to provide new orders and reestablish those orders in an expeditious matter.

In the case of pre-port problems, the CLEC is responsible for conducting tests of the target line to validate whether it is ready to be used. *Tr. Vol. IV, pp. 39-40 (Ainsworth)*. If those tests indicate that there are problems with the line, the CLEC should resolve the problems before porting the number. *Id.*, at 38. If the pre-port problem is serious, the CLEC should contact the CWINS Center, and BellSouth will then work with the CLEC to resolve the issue. *Id.* If necessary, BellSouth could at this point perform a port-back. *Id.* However, once the CLEC has ported a customer's number in NPAC, the order is completed and BellSouth requires that an order be issued to port the customer back to BellSouth, as BellSouth cannot port back a number without a customer's consent. *Ainsworth Rebuttal,* p. 7.

Caller ID For CLEC Customers

AT&T contends that its customers have experienced problems with their Caller ID because BellSouth has not implemented appropriate capabilities in its Signaling System 7 network. *Berger Rebuttal*, 43. BellSouth is resolving this issue in a permanent fashion by implementing ten-digit Global Title Translation ("GTT") since March, 2001. *Milner Rebuttal,* 30. GTT is a technology that allows a carrier to handle calls involving advanced telecommunications services, such as Automatic Callback and Caller Name Delivery. AT&T is

aware of BellSouth's implementation schedule in Kentucky, which calls for completion of the update by November 23, 2001. *Id*.

In the interim, BellSouth has offered AT&T two solutions to resolve this issue and update BellSouth's CNAM database, both of which are electronic. The first solution employs the same methodology that BellSouth and other CLECs use to update the database electronically for its own end users. *Id.*, 30-31. AT&T initially indicated it would use this process, but did not submit the necessary paperwork to establish its account. Instead, AT&T insisted that BellSouth manually enter customer names. *Id*., at 31. To accommodate AT&T further, BellSouth developed a second solution that enabled AT&T to pass a simple text file to BellSouth so that BellSouth can then update the database. *Id*. Nonetheless, AT&T has not utilized this process to load the names of any of its customers in Kentucky.

Staffing of Service Centers

AT&T alleges that only two BellSouth representatives are trained to handle LNP issues. *Berger Rebuttal*, 24. AT&T is wrong. BellSouth employs over 400 persons who are highly trained in LNP processes in order to provide assistance before AT&T or any other CLEC accepts responsibility for a ported number. *Ainsworth Rebuttal*, 29. To further aid AT&T, BellSouth has created an additional center to provide support with post-port problems. *Id*. This office is staffed by 13 highly-trained employees. Finally, BellSouth has implemented a process to handle emergency situations on a 24-hour, 7-day a week basis. *Id*.

Checklist Item 12: Local Dialing Parity

Checklist item 12 obligates BellSouth to provide nondiscriminatory access to such services or information as are necessary to allow a requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3). Both this Commission and the FCC have ruled that BellSouth satisfies the requirements of checklist item 12. *Second Louisiana*

Order, 20772; *1999 KPSC Advisory Opinion*, 8-9. No CLEC has filed comments questioning BellSouth's compliance with this checklist item.

Checklist Item 13: Reciprocal Compensation

The FCC has held that an ILEC complies with checklist item 13 when "it (1) has reciprocal compensation arrangements in accordance with section 252(d)(2) in place, and (2) is making all required payments in a timely fashion." *Bell Atlantic-NY Order*, 4141 (footnotes omitted). BellSouth has in place reciprocal compensation arrangements set forth in its binding interconnection agreements, and BellSouth thereby complies with Section 252(d)(2). Also, BellSouth makes timely payments pursuant to these compensation arrangements. *Cox Rebuttal*, 29. Consequently, not one CLEC in this proceeding contends that BellSouth fails to satisfy the test set forth by the FCC. Additionally, BellSouth has revised the local traffic definition and the reciprocal compensation language contained in the terms and conditions portion of the SGAT that was attached to Ms. Cox's direct testimony in this proceeding, as Exhibit CKC-5, to comply with the FCC's recent Order on Remand, dated April 27, 2001, in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151 (2001) ("*Local Competition Order on Remand and R&O*").

WorldCom is the only entity that challenges any aspect of BellSouth's compliance with checklist item 13. It insists that Foreign Exchange ("FX") traffic must be treated as local traffic subject to the payment of reciprocal compensation in order for BellSouth to satisfy checklist item 13. *Argenbright*, 27-35. BellSouth agrees that carriers are permitted to assign NPA/NXX codes in any manner desired, including outside the local calling area or rate center with which the codes are associated. *Cox Rebuttal*, 29. However, contrary to WorldCom's assertions, the determination of whether a call is local depends on the physical location of the calling and called

parties; that is, the end points of a call determine the jurisdiction of the call, not the NPA/NXX dialed. *Id*. This view is consistent with the Commission's decision to limit compensation for local traffic to calls within the same LATA. *Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996*, Case No. 2000-404, (KY P.S.C. March 14, 2001) (Order), 7; *Cox Rebuttal,* 30.

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 Commission's rulings on FX traffic. Likewise, BellSouth's settlements with Level 3 and Adelphia provide that each party will receive reciprocal compensation for terminating all intraLATA traffic.

WorldCom further argues that BellSouth does not comply with checklist item 13 because BellSouth insists that an CLEC must provide both geographic comparability and similar functionality in order to be entitled to compensation at the tandem interconnection rate. *Id.,* 22-27. WorldCom believes that CLECs qualify for the higher tandem interconnection rate by showing only geographic comparability. *Id*., 24.

WorldCom incorrectly describes BellSouth's position. BellSouth agrees with WorldCom that the test for determining whether a CLEC is eligible to receive the tandem interconnection rate for reciprocal compensation is the "comparable geographic coverage" test. *Cox Rebuttal,* 27-28. This is a question of fact and if WorldCom demonstrates that its switch(es) provide the requisite geographic coverage, it will receive compensation at the tandem switching rate. *Id.,* 27. As previously stated, this Commission and the FCC have resolved this issue, and BellSouth is complying with those orders.

BellSouth provides reciprocal compensation arrangements in Kentucky at terms and conditions that are the same as those previously found to be compliant by the FCC and the Commission. *Cox*, 87. BellSouth continues to provide reciprocal compensation arrangements in accordance with Section 252(d)(2), and is making all required payment in a timely fashion. *Cox Rebuttal*, 29. Thus, BellSouth is in compliance with checklist item 13.

Checklist Item 14: Resale

Checklist item 14 requires that CLECs be allowed to resell BellSouth's retail telecommunications services on a nondiscriminatory basis. *SWBT-TX Order*, [¶ 93]. BellSouth complies with this checklist item. In particular, BellSouth provides services for resale to CLECs in Kentucky in substantially the same time and manner as for its retail customers. BellSouth met 126 of 144 (87.5%), 131 of 145 (90.3%) and 154 of 170 (90.6%) metrics associated with all facets of resale for July, August and September 2001 respectively.

Although the evidence shows that BellSouth provides a nondiscriminatory opportunity to resell its services, SECCA states that no meaningful competition has emerged for resale because of unattractive economics and because resale does not permit a carrier to innovate or to offer integrated local/long-distance packages. *Testimony of Joseph Gillan/SECCA*, ("*Gillan*"), filed July 9, 2001, 9-10. These allegations are based on mistaken assumptions and erroneous data comparisons. To satisfy checklist item 14, BellSouth must demonstrate only that it offers services for resale in compliance with Sections 251(c)(4) and 252(d)(3). Thus, whether resale permits a carrier to innovate or to offer integrated packages is irrelevant to a determination of BellSouth's compliance with checklist item 14. *Cox Rebuttal*, 31.

Finally, SECCA asserts without any supporting analysis, that this Commission must ensure that BellSouth makes available for resale at a wholesale discount its xDSL services, as per the order issued by the United States Court of Appeals for the District of Columbia in

Association of Communications Enterprises v. FCC, 235 F.3d 662 (D.C. Cir. 2001) ("*Ascent I*"). *Gillan*, 25. This claim ignores a subsequent decision involving the same parties before the same court, *Association of Communications Enterprises v. FCC* ("*Ascent II*"), 253 F.3d 29 (D.C. Cir. 2001). Even a cursory analysis of the *Ascent* decisions shows that BellSouth does not have to provide such services at a discount in order to satisfy checklist item 14 under either of these cases.

Section 251(c)(4) requires only that BellSouth "offer for resale at wholesale rates any telecommunications service that [it] provides *at retail* . . ." 47 U.S.C. § 251(c)(4) (emphasis added). The case upon which SECCA relies, *Ascent I*, arose from the 1998 merger between Ameritech and SBC. The FCC approved the merger and permitted the new company to offer advanced services sold to end users through a wholly-owned affiliate separated from the ILEC operations without provisioning advances services at a wholesale discount. On appeal, the D.C. Court of Appeals essentially held that the advanced services sold through the wholly-owned affiliate were "at retail." The court ruled that an ILEC may not "sideslip § 251(c)'s requirements by simply offering telecommunications services through a wholly owned affiliate." *Ascent I*, 235 F.3d at 666. *Ascent I* does not support SECCA's arguments. Unlike SBC, BellSouth does not provide xDSL at retail through a wholly-owned affiliate or otherwise. Rather, BellSouth only provides these services to telecommunications carriers and ISPs on a wholesale basis. *Id*. The Commission affirmed this finding in its Southeastern Tel arbitration in which it concluded that BellSouth is not required to resell its wholesale DSL product.

The DC Circuit Court of Appeals reaffirmed this position in the *Ascent II* case. This case involved an FCC order that ruled that the discount-for-resale provision applies only when an ILEC offers advanced services to an end-user, not when it offers such services to an ISP. Ascent

II, 253 F. 3d 29. The FCC reasoned that the latter offering is not made "at retail" because the ISP packages and ultimately resells the services to end users. The court upheld the FCC's position that xDSL services provided to ISPs are not offered "at retail" and do not trigger the discount requirements. Thus, such services need not be offered for resale at a wholesale discount. *Id*., 33.

BellSouth does offer its xDSL Internet access service, FastAccess®, at retail. However, FastAccess is an information service, not a telecommunications service; thus, it remains outside the scope of § 251(c)(4)(A) even though it is offered at retail. Nothing in the *Ascent II* decision suggests that an ILEC is required to break apart its DSL-based Internet access offering to create such a retail xDSL service. Thus, BellSouth does not need to resell its xDSL transport service at a discount under Section 251(c)(4).

This Commission already has found BellSouth in compliance with checklist item 14. Because BellSouth continues to meet the requirements of this checklist item, the Commission should find again that BellSouth satisfies checklist item 14.

CONCLUSION

BellSouth has irreversibly opened the local market in Kentucky to competition and has provided CLECs with products and services satisfying all 14 points of the Act's competitive checklist. The CLECs fail to raise a single valid reason for further delaying BellSouth's Section 271 authority. The time has come to bring the benefits of competition in the interLATA market to Kentucky consumers. BellSouth therefore requests that the Commission:

(1) Find BellSouth is in compliance with Track A;

(2) Find BellSouth satisfies the competitive checklist; and

(3) Approve BellSouth's SGAT.

This 19th day of November 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

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