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1905-1992



September 5, 2001

VIA HAND DELIVERY
Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201

In Re: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*

Docket No: 01-00362

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the *Notice of Filing Exhibits by AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc.*, along with the attached Exhibits themselves (A, B and C). As noted therein, the Exhibits were to have been attached to the *Motion of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. for Reconsideration and Clarification of the Method the Authority Has Decided upon to Determine Whether BellSouth Telecommunications, Inc.'s Operational Support Systems Comply with State and* Federal Law[1], that was filed yesterday, but they could not be attached when it was filed because of a copying/transmission problem.

Copies are being served on all known counsel of record.

Yours very truly,

Jack W. Robinson, Jr.

JWRjr/plw
Enclosures
cc: Parties of record
Sylvia Anderson, Esq.
James P. Lamoureux, Esq.
Garry Sharp

[1] 1 Southeastern Competitive Carriers Association also joined in the Motion.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**
**NASHVILLE, TENNESSEE**

IN RE: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*

Docket No: 01-00362

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## NOTICE OF FILING EXHIBITS BY AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. AND TCG MIDSOUTH, INC.

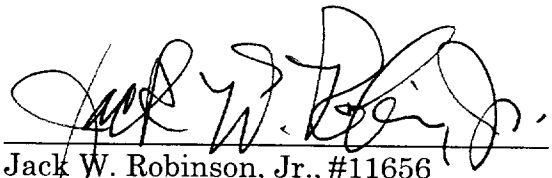
---

Notice is hereby given that AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. file the attached Exhibits A, B & C. Said Exhibits are in actuality the Exhibits to, and should have been attached to, the *Motion of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. for Reconsideration and Clarification of the Method the Authority Has Decided upon to Determine Whether BellSouth's Operational Support Systems Comply with State and Federal Law*[1] (the "Motion for Reconsideration") that was filed on September 4, 2001 in this proceeding. However, because of a copying/transmission problem said Exhibits could not be attached to the Motion for Reconsideration when it was filed on the 4th.

---

[1] Southeastern Competitive Carriers Association likewise joined in the Motion for Reconsideration.

Respectfully submitted,



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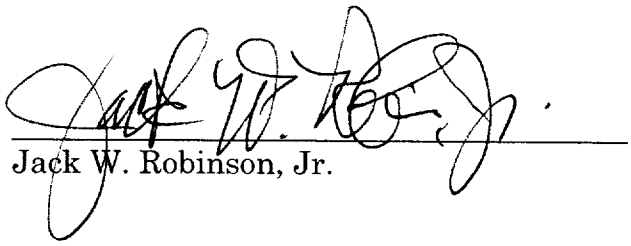
Attorneys for AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc.

## CERTIFICATE OF SERVICE

I, Jack W. Robinson, Jr., hereby certify that I have served a copy of the foregoing Notice on the following known counsel of record, by facsimile and by depositing a copy of the same in the United States Mail, postage prepaid, this 5th day of September, 2001.



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BellSouth Telecommunications, Inc.
675 W. Peachtree Street, Suite 4300
Atlanta, GA 30375

Exhibit A

BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2001-209-C

BELLSOUTH TELECOMMUNICATIONS, INC.,

Applicant,

and

VOLUME VI

AT&T OF THE SOUTHERN STATES, INC., UNITED TELEPHONE COMPANY OF THE CAROLINAS and SPRINT COMMUNICATIONS COMPANY, SOUTH CAROLINA CABLE TELEVISION ASSOCIATION, NEWSOUTH COMMUNICATIONS CORP., US LEC OF SOUTH CAROLINA, INC., RESORT HOSPITALITY SERVICES, INC., MCI WORLDCOM COMMUNICATIONS, INC., MCI WORLDCOM NETWORK SERVICES, INC., and MCImetro ACCESS TRANSMISSION SERVICES, LLC (collectively "WorldCom"), ACCESS INTEGRATED NETWORKS, INC., SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION, NUVOX COMMUNICATIONS, INC., ITC^DELTACOM COMMUNICATIONS, INC., KMC TELECOM III, and CONSUMER ADVOCATE OF THE STATE OF SOUTH CAROLINA,

INTERVENORS,

Hearing held before the South Carolina Public Service Commission, Thursday, August 23, 2001, commencing at 9:30 AM in Columbia, South Carolina.

Reported by Jane G. LaPorte, Notary Public in and for the State of South Carolina, holding Professional and Merit Certifications recognized by the National Court Reporters Association.

JANE G. LaPORTE
85 Miles Road, Columbia, SC 29223-3207
(803)788-9290 jglaporte@aol.com



APPEARANCES:

FOR THE APPLICANT:

BELLSOUTH TELECOMMUNICATIONS, INC.:

Caroline N. Watson
William F. Austin
Fred McCallum
Lisa Foshee
Kip Edenfield
Phil Carver

AT&T of the SOUTHERN STATES, INC.:

L. Hunter Limbaugh
Traci M. Vanek
Suzanne W. Ockleberry
Thomas A. Lemmer
Timothy G. Barber
Tami Lyn Azorsky
Michael A. Hopkins

William T. Prescott

UNITED TELEPHONE COMPANY OF THE CAROLINAS and SPRINT COMMUNICATIONS COMPANY, L.P. (Collectively "Sprint"):

Scott Elliott

Jack H. Derrick

Stephen H. Kukta

Jane G. LaPorte Depositions



(Appearances continued:)

SOUTH CAROLINA CABLE TELEVISION ASSOCIATION:

Frank R. Ellerbe, III

Bonnie D. Shealy

NEWSOUTH COMMUNICATIONS CORP.:

Frank R. Ellerbe, III

Bonnie D. Shealy

Lori Reese

US LEC OF SOUTH CAROLINA, INC.:

Faye Flowers

John A. Doyle, Jr.

RESORT HOSPITALITY SERVICES, INC.:

John F. Beach

John J. Pringle, Jr.

MCI WORLDCOM COMMUNICATIONS, INC.,
MCI WORLDCOM NETWORK SERVICE, INC.,
and MCIMETRO ACCESS TRANSMISSION
SERVICES, LLC (collectively "WORLDCOM"):

Darra W. Cothran

Janet Butcher

Kennard B. Woods

Susan Berlin

Marc Goldman

De O'Roark



(Appearances Continued:)

ACCESS INTEGRATED NETWORKS, INC.:

John F. Beach

John J. Pringle, Jr.

SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION:

Frank R. Ellerbe, III

Bonnie D. Shealy

NUVOX COMMUNICATIONS, INC.:

John F. Beach

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Nanette Edwards

KMC TELECOM III:

Frank R. Ellerbe III

Bonnie D. Shealy

Andrew Cline

CONSUMER ADVOCATE FOR THE STATE OF SOUTH CAROLINA:

Elliott F. Elam, Jr.

COMMISSION STAFF ATTORNEYS:

Florence P. Belser

Jocelyn G. Boyd

(Please consult the back of transcript for index.)



PROCEEDINGS

COMMISSIONER SAUNDERS: Please be seated. We are going to call the hearing back to order.

what we had in the business rules.

Q. If the CLEC had followed the business rules, their order would have been rejected?

A. Well, what I would suspect would take place, is that first we try to work them and call and say: Hey, and we would acknowledge it's wrong. Here is the correct fax number.

A lot of -- look at it this way. Other CLECs were faxing it to the right place, even though the business rules were wrong. Somehow they were using correct numbers, even though our documentation was incorrect. So we worked something out from that standpoint.

But somebody flatly refused. The burden is back on us to put a work around, make the business decision to get it to the right place. That's the case here.

Q. On these other two documents, the 38 and 40, they indicate that preference was given to orders from higher priorities were given to orders from Georgia and Florida, as compared to, let's say, South Carolina?

A. Yes.

Q. And those orders would include test orders from KPMG; wouldn't that be correct?

A. Yes, most definitely. You know, the same time, the criteria KPMG would be using, whatever SQM, service quality measurements, were in place. So coincidently the reason we are doing it, is SQMs compliance back with the meeting, the Commission, orders not being driven by the fact that it was third-party testing.

Q. But how does that impact your theory of regionality where, you know, you're giving preferential treatment to states, only to Georgia and Florida, and not to the other seven BellSouth states?

A. I don't think it's impactable, regionality is not preferential. You have the processes that are the same. And here the only difference in the process was from the time you get it in order to comply with SQM, then you get it to a spot that had something else.

I don't think that says the processes or a regionality standpoint is substantially different. We are comparing the process, based on trying to meet the standard here in SQM. I don't think it flaws the regionality issue.

Q. So you don't think it skews the test if you give preferential treatment to those orders from the states where the tests are being conducted?

A. No.

Q. If the test results from Georgia or Florida reflected preferential treatment, that wouldn't be indicative of performance at the same time that was occurring for South Carolina consumers or Tennessee consumers based on this?

Mr. McCALLUM: I want to object to the form of that question. I didn't understand what the question was.

MR. HOPKINS: I'll rephrase.

MR. McCALLUM: Please.

Q. The test results in the Georgia and Florida testing, they reflected in this practice, this preferential treatment; is that correct?

A. The test results were reflected this practice in place, if that's what you mean by preferential treatment.

Q. Yes.

A. You see described here, take the Georgia -- take the Florida orders that came in, so those were a part of the third-party testing timeframe.

Q. So, those tests weren't completely blind. BellSouth had found a way to influence those test results through a process?

A. Yes.

Q. And you state that the goal of transaction-based testing is to live the CLEC experience; is that correct?

A. Yes. That's the major goal. I refer to the term as blind, meaning they are actually asking a CLEC who's blind to us when they do a transaction, which is treated like any other transaction.

Q. Now, they performed transaction-based testing both in Georgia and Florida, correct?

A. Yes.

Q. And you said that the reason they do this transaction based is so that the CLEC -- the testing would be blind?

A. Yes.

Q. Now, the purpose of blind testing is to insure that there is non-preferential treatment given to the tester; is that correct?

A. Yes.

Q. And why don't you want preferential treatment?

A. The whole purpose of the tests is to show performance of the system, itself. If we were having preferential treatment, that's essentially saying the game of the system to skew the results to show

something more favorable, what you would like to present for your position.

And that's not the intent here. The whole intent of the third-party testing is to show that the systems performed as they are supposed to without anyone taking special efforts to assist. That's what is meant by the blindness.

Q. So, to put it in simple terms, to prevent cheating?

A. To cheat? To insure that everybody is treated the same. Which end of the spectrum you want to use to describe it?

Q. Did BellSouth provide any preferential treatment to orders from Georgia or Florida during the time when these tests were going on?

A. No.

Q. I want to go through three documents.

MR. HOPKINS: Could we go off the record for just a moment.

(OFF THE RECORD.)

MR. HOPKINS: Can I ask to take a brief break to work out this situation?

COMMISSIONER SAUNDERS: Ten-minute break.

(OFF THE RECORD.)

COMMISSIONER SAUNDERS: Back on. Call

LSRs into LON prior to processing the remaining LSRs from other states. Once processed, the OA delivers the LSRs to the assigned manager and puts them in a tray marked for Florida and Georgia (kept separate from all other LSRs); however, managers review an MS Access report that indicates when the LON was received regardless of the state. Per discussion with management, the UNE department will discontinue the practice of separating Florida and Georgia from all remaining LSRs effective Monday, April 23, 2001. End quote.

Q. Now, Florida and Georgia are the two states that have third-party tests going on; is that correct?

A. Yes, that's correct.

Q. Wouldn't you agree that these documents, these interview notes from PWC indicates that BellSouth was giving preferential treatment to orders from Georgia and Florida?

A. That's a yes and no answer. I'm going to agree with you in the context to which you asked the previous question. That preferential treatment was not with respect to third-party testing. In the last comment I just read, the driver for that and why that process was in place, was a part of performance

measures that existed in that area or getting processing of these requests within certain time parameters. And those performance measures have been put in place by those Commissions where they didn't exist in other states. And that was why this process was being put in place. It had nothing to do with third-party testing.

Q. Well, doesn't the second document, Exhibit 39, indicate that they gave priority to company codes belonging to third-party tests?

A. What I read does, and let me explain the situation here.

Once again, third-party tests is referenced but it wasn't in context of third-party testing itself. It's more in context of business process giving priority, because in this particular situation I'm familiar with, KPMG was faxing some transactions into the local carrier service center, using fax number -- that was fax number of the business rules, so from their perspective, it was the correct fax number. However, business rules are wrong frankly, and it was going to an incorrect place in the local carrier service center.

So the process put in place was to give those to the right place for processing them in the

# Exhibit B

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August 16, 2001

**Via Hand Delivery**

Jo Anne Sanford, Chair
North Carolina Utilities Commission
Dobbs Building
430 N. Salisbury Street
Raleigh, North Carolina 27603-5918

Re: Docket # P-55, Sub 1022

Dear Madam Chairwoman:

As predicted in AT&T's Motion to Compel (at pages 7-8), KPMG continues to stonewall discovery in this proceeding.

AT&T served its initial discovery requests on KPMG on June 29, 2001. As of today, more than a month later, KPMG has yet to produce a shred of information in this proceeding. Rather, KPMG's attitude is that AT&T obtained sufficient discovery in Georgia; thus, no additional discovery is now needed in North Carolina. This argument assumes (incorrectly) that (1) discovery obtained by AT&T from KPMG in Georgia was sufficient; and (2) the 271 issues in this proceeding are the same as those presented by BellSouth in Georgia. As discussed in greater detail below, nothing could be further from the truth on both of these key assumptions underlying KPMG's Response to AT&T's Motion to Compel.

Similar to discovery events which occurred in Georgia, KPMG is attempting to lead this Commission down a familiar path. That path involves wasting valuable discovery time by arguing about the legitimacy of discovery ad nauseam with the hope of either (1) avoiding

discovery all together or, if that is not possible, (2) narrowing discovery requests so that responses thereto become practically meaningless and/or are produced so close to the hearing that their significance cannot be fully appreciated by the requesting party. Given this approach by KPMG, we now have reached the point in this proceeding whereby any additional or further delays will significantly jeopardize either the hearing scheduled by this Commission or its ability to make a decision on full information.

Despite KPMG's rhetoric, AT&T has no desire to engage in discovery disputes with KPMG in North Carolina or elsewhere. AT&T simply does not have the time to devote to such efforts given that BellSouth has initiated 271 proceedings consecutively in all nine of its states. Rather, AT&T simply seeks to efficiently gather all necessary information "outside the hearing room" so as not to waste this Commission's valuable time during the hearing with laborious cross-examination of various witnesses. Unlike KPMG, which never before has participated in proceedings before this Commission, AT&T's experience in North Carolina is that once the Commission establishes reasonable parameters where the parties are required to engage in full and open discovery prior to conducting the hearing, the issues become better defined, time in the hearing room is conserved and the record in the proceeding reflects a comprehensive effort to uncover and consider all relevant facts.

The response filed by KPMG reflects its attempt to have just the opposite occur in North Carolina. Rather, KPMG seeks to confuse the issues, waste hearing room time and, perhaps most importantly, hide relevant facts. This Commission should not condone these efforts, but rather should send KPMG a strong message that stonewalling discovery efforts will not be tolerated in this state in any form or fashion. Specifically, this Commission should order KPMG to immediately and completely respond to AT&T's discovery requests.

**KPMG's Response Is Replete With Fictions Regarding Discovery In Georgia; Accordingly, The Commission Should Order Oral Argument To Determine For Itself What Happened In The Georgia Proceeding And Then Require KPMG To Fully Respond To AT&T's Discovery**

It is with great reluctance that AT&T feels compelled to set the record straight as to what really happened regarding discovery in Georgia given that continuing this debate effectively gives KPMG just what it wants – more delay before actually responding to any discovery requests. To this very point, KPMG already has succeeded in delaying discovery for more than a month by cavalierly ignoring this Commission's Order to respond to AT&T's Motion to Compel by August 2, 2001, just as it ignored Orders of the Georgia Commission to produced documents by a particular date. Nevertheless, it appears that this debate will continue until the Commission schedules oral argument on AT&T's Motion to Compel and gets its questions answered as to what exactly happened in the Georgia proceeding. Support for the need for oral argument is found in the following brief summary of several fictions set forth in KPMG's response.

| KPMG'S FICTIONS VERSUS THE FACTS | |
|---|---|
| **FICTIONS** | **FACTS** |
| In its response, KPMG alleges that AT&T had every opportunity to gather information in Georgia through depositions of KPMG witnesses. Specifically KPMG asserted "[KPMG] made its staff available for two days of depositions." Response, page 2. | This is totally misleading. First, as discussed in greater detail below, the Georgia Commission determined that it would not allow AT&T to inquire as to the scope (e.g., what was tested and what was not tested) in KPMG's Georgia OSS test versus the scope of KPMG's Florida OSS test, nor to explore the seemingly inappropriate cozy relationship between KPMG and BellSouth in Georgia. Thus, from the "get-go," these issues were off limits to AT&T vis-à-vis discovery of KPMG in Georgia.<br><br>Second, as to those limited inquiries which were determined to be "fair game" by the Georgia Commission, AT&T sought to depose numerous KPMG subject matter experts who were involved in the actual conduct of the Georgia test. Counsel for KPMG, however, arbitrarily limited the number of deponents to two. After yet another appeal to the Commission, AT&T was allowed to depose just four of KPMG's subject matter experts. |
| "[KPMG] produced twenty (20) witnesses for cross-examination under oath at a day-long hearing." Response, page 2. | This also is totally misleading. Although KPMG had numerous subject matter experts attend the hearing, AT&T was allowed to cross examine only two KPMG individuals at the one-day hearing. After being asked a question by AT&T, frequently, these two individuals would engage in whispered conversations with subject matter experts who were seated behind them. The answers would then come only from the two individuals subject to cross-examination. Confirmation that only two individuals were cross examined can be found by review of the transcript of the hearing itself which KPMG attached to its Response. See Procedure for Hearing in Docket No. 8354-U, attached as Exhibit A. |

| KPMG'S FICTIONS VERSUS THE FACTS | |
|---|---|
| **FICTIONS** | **FACTS** |
| "AT&T propounded substantially the same burdensome interrogatories with multiple sub-parts and virtually the same burdensome document requests on KPMG Consulting in the Georgia proceedings as it has propounded in these proceedings before this Commission." Response, page 2. | Counsel for AT&T specifically informed KPMG that it did not need to reply to any requests previously answered in Georgia, provided KPMG directed AT&T to specific KPMG responses provided in the Georgia proceeding. |
| "The Georgia Commission struck all of AT&T's interrogatories to KPMG Consulting." Response, page 3. | Yes, this did occur, but KPMG fails to inform this Commission why the Georgia Commission took this action. After the Georgia Commission first limited the scope of AT&T's discovery, it next found that AT&T could get access to the information requested in its interrogatories through full depositions and it was that conclusion which gave rise to striking AT&T's interrogatories. See Order, attached Exhibit G *to AT&T's Motion to Compel. However, as* discussed above, AT&T never got the opportunity to fully depose KPMG's subject matter experts. Rather, AT&T was limited to only four depositions over a two-day period and KPMG managed to delay the taking of these depositions the Thursday and Friday before the Georgia Commission conducted its one-day OSS test hearing on Tuesday, May 8, 2001. In fact, these depositions were delayed so close to the hearing date, that AT&T did not have time to fully utilize the discovered information at the May 8, 2001 hearing or to conduct follow-up discovery. |
| "AT&T was allowed to depose witnesses from KPMG Consulting, with the Commission placing no limitation in its Order on who could be deposed or on the number of witnesses to be deposed." Response, page 3. | Again, KPMG is correct that the Georgia Commission's "Order" did not itself limit depositions but, as discussed above, these depositions were subsequently limited to just four individuals. KPMG's counsel conveniently has not advised this Commission of this key fact. |

| KPMG'S FICTIONS VERSUS THE FACTS | |
|---|---|
| **FICTIONS** | **FACTS** |
| KPMG continually touts its production of ten (10) boxes of documents. Response, pages 3, 4 and 6. | As previously indicated in AT&T's Motion to Compel, eight (8) of the boxes produced contained useless "filler documents" which were nonresponsive and primarily consisted of local service requests. Again, at any oral argument scheduled for this matter, AT&T encourages the Commission to review for itself the quality (and lack thereof) of the documents in these "ten (10) boxes." |
| "The April 20, 2001 'Order Resolving Discovery Issues' rendered by the Georgia Commission is dispositive of the issue of whether AT&T can be relied upon to act reasonably in discovery. The Georgia Commission found that AT&T could not be relied upon to act reasonably in discovery." Response, page 7. | The actual holding of the Georgia Commission addresses KPMG's Motion for a Protective Order (which was denied) and AT&T's Motion to Compel (which was granted in large part). Rather than accept either counsel's rendition of the Order, the Commission is invited to review the Order which is Exhibit G to AT&T's Motion to Compel. |

As is apparent from the above review of just a few of the "fictions" in KPMG's response, there seems to be no easy way for this Commission to determine what really happened in the Georgia proceeding, except in a setting which has both parties standing before this Commission and having their assertions subject to inquiry. Thus, AT&T once again urges this Commission to establish oral argument as soon as reasonably possible regarding AT&T's Motion to Compel.

**KPMG's Response Improperly Assumes That The 271 Issues Pending In Georgia Are The Same As The 271 Issues Pending In North Carolina**

As mentioned above, most, if not all, of KPMG's response improperly assumes that the 271 issues being presented by BellSouth to this Commission are the same as those which are pending in Georgia. This is simply not the case.

Fundamentally, by the time discovery from KPMG was being sought by AT&T in Georgia, the Georgia Commission already had engaged in multiple proceedings regarding 271 over a period of several years. One of the most controversial of these proceedings involved the establishment of the third-party OSS test. Prior to the establishment of that test, AT&T urged the Georgia Commission, among other things, to test BellSouth's latest interface, "OSS 99," to establish testing criteria across many different product lines and service offerings, as well as to have the third-party tester work at the direction of the Georgia Commission and not BellSouth. AT&T's Comments on KPMG's Revised Third-Party Master Test Plan, Georgia Pub. Serv. Comm., Docket No. 8354-U, filed 11/5/99, Tab 1 at 1.

The Georgia Commission heard AT&T's arguments and, for the most part, declined to incorporate most of AT&T's changes into the proposed third-party OSS test plan and also approved a contractual relationship between Hewlett Packard[1] and BellSouth (as BellSouth proposed).

There is nothing new about this history of events and, indeed, many of the changes to the OSS test parameters originally proposed by AT&T in Georgia, as well as questions about who should direct the work of the third-party tester, subsequently were decided favorably to AT&T by the Florida Commission when it established its third-party OSS test.[2]

However, the history of how the OSS test was established in Georgia is important to the debate at hand for much of AT&T's original discovery in Georgia related specifically to the limited scope of the Georgia test, as opposed to the Florida test, as well as the unusual close relationship between KPMG and BellSouth regarding the Georgia OSS test. In particular, given the procedural history regarding how the Georgia OSS test was established, the Georgia Commission, quite bluntly, in reviewing AT&T's discovery requests, had little tolerance for AT&T's efforts to prove through discovery that the Georgia test was less robust than the Florida test, as well as AT&T's belief that there was far too cozy a relationship between KPMG and BellSouth in Georgia. Accordingly, in ruling on AT&T's discovery requests, the Georgia Commission instructed AT&T not to pursue discovery on these important issues. Arguably, the Georgia Commission took this position because it believed it already had enough insight into the scope of the Georgia test and the relationship between BellSouth and KPMG and that no further inquiry was necessary.

However, regarding OSS testing, this Commission does not stand in the same shoes as the Georgia Commission. This Commission has not established its own OSS test and, thus, has not been through the attendant procedural history of establishing OSS testing scope, parameters and related issues. Although BellSouth would like this Commission to look only to the Georgia test, AT&T and other parties have put front and center in this proceeding the specific question of whether the Florida test is the better indicator of whether BellSouth's OSS meet the 14-point checklist under 271.

As such, AT&T is entitled to actively pursue discovery on all issues regarding the OSS tests established in Georgia and Florida. BellSouth and KPMG may not like it, but this proceeding is not the Georgia proceeding in that all of the 271 issues, including, but not limited to, OSS issues, are different, unique and particular to North Carolina. Again, this Commission should send a strong message to KPMG that this Commission, not KPMG, will control the discovery proceeding in this state. In this vein, in considering the legitimacy of KPMG's response to AT&T's Motion to Compel, the Commission should view them in the context in

1 Hewlett Packard was subsequently replaced by KPMG as the third-party tester in Georgia.

2 As but one example, in Florida KPMG has been ordered to test OSS '99, BellSouth's latest interface to CLPs. In Florida, the contract with KPMG is between the Florida Commission and KPMG, and not with BellSouth.

which they are provided by KPMG – under the false assumption that the 271 issues in North Carolina are identical in all form and fashion to those pending in Georgia.

Based on all of the foregoing, AT&T hereby renews its request that the Commission established a date for oral argument on AT&T's Motion to Compel as soon as reasonably possible and, upon the conclusion of that hearing, order KPMG to fully and timely respond to all of AT&T's discovery requests.

This the 16th day of August, 2001.

Very truly yours,

WOMBLE CARLYLE SANDRIDGE & RICE,
*A Professional Limited Liability Company*

Timothy G. Barber

TGB:ja
cc: Lisa Foshee, Esq.
William B. Hill, Jr., Esq.
Edward L. Rankin, III, Esq.
Geneva S. Thigpen, Chief Clerk

Exhibit "A"

*Procedure for Hearing in Docket No. 8354-U*

The hearing in this matter is scheduled for one day and there are a large number of witnesses and topics that need to be covered. Accordingly, the following procedures will be utilized:

1. Examination of Witnesses

   - The witnesses will consist of 2 principal witnesses and up to 17 subject matter experts (SMEs).
   - All 19 witnesses will be sworn at the beginning of the hearing. However, only the 2 principal witnesses and those SMEs on the current Panel (see discussion of Panels below) will sit at the front of the hearing room.
   - In order to keep the hearing process manageable, attorneys will limit their cross-examination to the 2 principal witnesses whenever possible.
   - In the event the 2 principal witnesses need to consult a SME, they shall be permitted to do so. The principal witness will then answer the question.
   - If, for a particular question (or line of questions) this consultation process becomes unworkable, the SME may answer the question directly. In such event, the SME shall first state his or her name for the record. After response by the SME, the 2 principal witnesses shall be permitted to respond as well.

2. Panels. The hearing shall be divided, by topic, into six different Panels in the order set forth below. The 2 Principal Witnesses shall appear on each panel.

   Principal Witnesses
   David Frey
   Mike Weeks

   Panels by Topic

   a. General Test Management & Pre-Ordering, Ordering & Provisioning
   Terry Trudgian
   Nicole Giugno
   Adina Brownstein
   Michael Bujan
   Russ Guzdar
   Jeff Johnson
   Brad Bodamer
   Terry Jaillet

   b. Metrics & Flow-Through Evaluation
   Larry Freundlich
   Steve Strickland

c. Billing
Liz Fuccillo
Eric Del Rosario
Van Howard

d. Change Management
Brian Rotter
Brad Bodamer

e. RSIMMS and Encore Systems Review & Systems Capacity Management
Sudhir Ullal
Mike Weeks

f. Maintenance & Repair
Greg Puleski
Rob Hawkins

# Exhibit C

# CONFERENCE APPROVAL SHEET

INSTRUCTIONS: To be used on Orders approved in a Conference. Not to be distributed to Commissioners for signature. Only one copy of this sheet is to be completed.

Docket Number P-55, SUB 1022

Docket Name Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996

Title of Order ORDER CONCERNING AT&T MOTION TO COMPEL

Order Written By Dan Long

Conference Approval Date August 30, 2001

By Instruction of James Y. Kerr, II

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Instructions: Number of Copies _____

fax to Ed Rankin, Tim Barber and William B. Hill, Jr.

Update Order Folder #

**STATE OF NORTH CAROLINA**
**UTILITIES COMMISSION**
**RALEIGH**

DOCKET NO. P-55, SUB 1022

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of BellSouth Telecommunications,<br>Inc. to Provide In-Region InterLATA Service<br>Pursuant to Section 271 of the Telecommunications<br>Act of 1996 | )<br>)<br>)<br>)<br>) | ORDER CONCERNING<br>AT&T MOTION TO<br>COMPEL |

BY THE CHAIR: On July 23, 2001, AT&T of the Southern States, Inc. (AT&T) filed Motion to Compel, Or, In the Alternative, To Strike Evidence. This concerns third-party testing of BellSouth Telecommunications, Inc.'s (BellSouth's) Operational Support System (OSS) conducted by KPMG Consulting, Inc. (KCI), an affiliate of KPMG, upon which BellSouth is relying. Specifically, AT&T requested the Commission to issue a subpoena compelling KCI to give deposition testimony on the subjects addressed in AT&T's First Set of Interrogatories and to produce in advance of the deposition the documents requested in AT&T's First Request for Production of Documents to KCI. Alternatively, AT&T requested that the Commission strike any evidence in this docket relating to the KCI third-party tests (TPT) in Georgia and Florida or any other state.

AT&T represented to the Commission that, as BellSouth's agent, KCI plays a pivotal role in this docket and that the Commission should have serious doubts about the reliability of KCI's work since, among other things, BellSouth is KCI's payor. KCI has refused to permit AT&T to undertake effective discovery on the Georgia testing process and is resisting discovery in North Carolina using the same techniques it applied in Georgia. Moreover, BellSouth has refused to assist AT&T in obtaining discovery from KCI, although it is evident that BellSouth has a measure of control over KCI's work papers and other documents in KCI's possession regarding the Georgia test.

AT&T argued that the Commission has the authority to compel KCI to produce documents and depositions and to strike evidence in the event that KCI continues to refuse. See, e.g., G. S. 62-60 (Commission has judicial powers); 62-61 (certain judicial powers same as Superior Courts); 62-62 (Commission may issue subpoenas); 1A-1, Rule 45(f) (failure to obey a subpoena may be deemed contempt); 1A-1, Rule 37(b)(2) (party refusing to answer discovery may be unable to introduce evidence related to the subject); N.C.R. Evid. 702 (expert testimony is inadmissible unless its reliability can be established). Notably, KCI has not asserted substantive objections to AT&T's discovery but has merely

said that it has produced everything it is required to produce. Striking testimony about the KCI third-party test is appropriate given the fact that KCI is the only entity capable of explaining the test process and, as such, KCI's report should be permitted as evidence only if KCI is subject to cross-examination on the report.

On July 24, 2001, the Commission noted AT&T's Motion and concluded that good cause existed to require BellSouth to respond to this Motion by August 2, 2001. The Commission's Order was also served on KCI, which was requested to file a Response on the same date.

BellSouth Response

On August 2, 2001, BellSouth filed a Response to AT&T's Motion to Compel against KCI. BellSouth stated that it was not blocking or attempting to block AT&T's discovery into the TPT but was, on the contrary, using every means at its disposal to persuade KCI, an independent third party, to work with the Commission and AT&T on discovery matters. Counsel for BellSouth has had several telephone conversations with counsel for KCI urging KCI to respond to reasonable discovery requests and has also made the same representations in writing.

BellSouth did point out, however, that it believed that AT&T's representations about discovery in Georgia were off the mark. KCI did in fact provide AT&T with substantial information, including approximately 10 boxes of documents and two days of depositions. The Georgia Commission also conducted a full day proceeding on the TPT in which AT&T participated. While AT&T evidently did not get all the discovery it desired, this was principally because the Georgia Commission struck all of AT&T's interrogatories since AT&T had been permitted to depose KCI and since a number of AT&T's data requests were deemed overbroad. AT&T has implied to BellSouth counsel that BellSouth controls the actions of KCI; this is not the case.

BellSouth, furthermore, argued that striking the evidence of TPT from the case would be both unnecessary and punitive. First, there are means by which KCI can be compelled to submit to discovery. Second, while AT&T does have a right to discovery, there is sufficient evidence in the record and publicly available to permit the Commission to assess the Georgia TPT--for example, the 2000 page Final Test Report, an extensive Master Test Plan and Supplemental Test Plan, public Exception Reports, and Exception Closure Reports. BellSouth will also stipulate to AT&T's use of all of the discovery that it has already obtained in Georgia. BellSouth also noted that AT&T had the opportunity to have participated in the weekly conference calls conducted by KCI on the Georgia TPT since January 2000.

AT&T Letter

On August 3, 2001, AT&T filed a letter noting that KCI had ignored the Commission's Order and had not filed a Response. AT&T therefore renewed its Motion that the Commission either issue a subpoena to compel KCI to produce the information or strike the BellSouth testimony related to the KCI testing. AT&T also stated that it was facing time-related problems with respect to its discovery requests to Hewlett Packard (HP) and PriceWaterhouseCoopers (PWC), which have not been answered. AT&T suggested that the Commission schedule oral argument on its Motion during the week of August 13, 2001, and also issue a subpoena.

KCI Response

On August 9, 2001, KCI filed its Response to AT&T's Motion to Compel or, in the Alternative, to Strike Evidence. After stating that it respected the authority and sovereignty of the Commission, KCI argued that AT&T's discovery demands "are strategically designed to create a 'discovery dispute' where none exists." KCI emphasized that it is not an agent of BellSouth and it argued that AT&T had mischaracterized the Georgia proceedings. AT&T has propounded substantially the same burdensome interrogatories with multiple sub-parts and virtually the same burdensome document requests on KCI in Georgia proceedings as it has done here. The Georgia Commission had in fact instructed AT&T to revise its requests more narrowly, but AT&T did not comply. The Georgia Commission then struck AT&T's interrogatories to KCI, found them to be overbroad, instructed the Commission Staff to narrow them, and had allowed AT&T to depose witnesses from KCI. KCI responded amply. KCI is willing to provide the North Carolina Commission with a copy of the original three box production and with the eight boxes left from the ten box production which AT&T did not take custody of.

On May 8, 2001, the Georgia Commission conducted its public hearing in Docket No. 8354-U concerning the development of electronic interface for BellSouth's OSS, in which KCI produced a total of 20 witnesses. The hearing transcript, which KCI attached, reflects the fact that the vast majority of the hearing time was consumed by AT&T's cross-examination of KCI witnesses. Thus, AT&T already has in its possession KCI's Final Report on the Georgia Section 271 Test, the deposition testimony and transcripts of four key KCI witnesses, the transcript of the above-noted hearing, three boxes of documents produced in response to AT&T's First Request for Production of Documents in the Georgia proceedings, and two additional boxes of documents considered proprietary and confidential to KCI (out of a total of ten delivered to AT&T, of which eight were declined by AT&T).

KCI therefore contended that there was no actual discovery dispute, since AT&T already has a vastly sufficient fund of information from which to assess whether KCI's findings and conclusions are correct. As a prerequisite for discovery, AT&T should be

required to show the relevancy and necessity for further discovery. KCI should not be subjected to further burdensome and unreasonable discovery from AT&T. KCI urged that the Commission not allow AT&T to engage in any form of third-party discovery unless it has first made a showing of relevancy to the issue of whether KCI's findings and conclusions are correct based upon the information KCI relied on and the methods it employed in the testing. AT&T should also show that it does not currently have in its possession a sufficient fund of information, AT&T should reimburse KCI for all its costs and attorney's fees incurred in responding to any third-party discovery.

AT&T Reply to KCI

On August 16, 2001, AT&T filed a Reply to KCI. AT&T stated that it believed that KCI's response was "replete with fictions regarding discovery in Georgia" and that the Commission should order oral argument to determine for itself what happened in the Georgia proceeding and then require KCI to respond to AT&T's discovery in full. AT&T provided a list in matrix form of what it believed to be misleading statements made by KCI in its filing.

For example, AT&T does not believe that it had an adequate opportunity to gather information in Georgia because the Georgia Commission limited the scope of inquiries, including the number of subject-matter experts from KCI who could be deposed. AT&T maintained that at the one-day hearing, it had been able to cross-examine only two KCI individuals, not the twenty that KCI implied. AT&T has told KCI that it did not need a reply to any requests previously answered in Georgia, so AT&T is not plowing the same ground as KCI suggests. While the Georgia Commission did indeed strike AT&T's interrogatories, this was because it found that AT&T could get the information through depositions, which were of limited effectiveness and confined to only four individuals. As for the ten boxes of documents which KCI touts, AT&T believes that eight of the boxes contained useless "filler documents" which were unresponsive to AT&T's requests. The Georgia Commission did not find that AT&T could not be relied upon to act reasonably; the Georgia Commission granted AT&T's Motion to Compel in large part.

AT&T further maintained that KCI's response improperly assumes that the 271 issues pending in Georgia are the same as those in North Carolina. North Carolina does not stand in the same shoes as Georgia because this Commission has not established its own OSS test and has not been through the attendant procedural history. AT&T is entitled to actively pursue discovery on all issues regarding the OSS tests established in Georgia and Florida.

Oral Argument

On August 24, 2001, the Commission issued an Order Setting Oral Argument for August 29, 2001, on AT&T's Motion to Compel, or, In the Alternative, to Strike Evidence.

The Oral Argument was held as scheduled at that date, with Commissioner Kerr presiding, Representatives from AT&T, BellSouth and KCI were in attendance. The parties, including KCI, and Commissioner Kerr engaged in an extended colloquy on and off the record to arrive at a procedure whereby the reasonable needs of AT&T for discovery in addition to that already provided in Georgia could be met.

WHEREUPON, after careful consideration, the Presiding Commissioner reaches the following

## CONCLUSIONS

1. That reasonable discovery by AT&T of information in addition to that already received by AT&T in the Georgia proceeding should be allowed. BellSouth has stated that it will not object to the use of discovery previously produced in Georgia in this docket. AT&T's Motion to Compel, or in the Alternative, to Strike Testimony shall be held in abeyance pending further Order.

2. That counsel for KCI, William B. Hill, Jr. and Jessie Fenner, be allowed to practice before the Commission for the purpose of this discovery dispute and until its resolution.

3. That KCI be requested to intervene formally in this proceeding. This is desirable for the purposes of procedural efficiency. It is anticipated that KCI's active participation in this proceeding shall cease once this discovery dispute has been resolved. Counsel for KCI will consult with KCI and advise the Commission of its decision as soon as practicable. For the purposes of this Order, when the term "parties" is used, such term shall include KCI.

4. That the starting point for further discussions on this discovery shall be AT&T's revised version of its First Set of Interrogatories and Production of Documents which were served on KCI on August 17, 2001, and its Second Set of Interrogatories filed on August 28, 2001. The end-point is the provision of reasonable information to AT&T on discovery which is in addition to that already provided in Georgia. AT&T is requested to file the revised First Set of Interrogatories and Production of Documents with the Commission as soon as practicable.

5. That the issue of the contractual relations between BellSouth and KCI has been substantially resolved, pending review by AT&T of the information on the subject previously provided by BellSouth in response to a discovery request from AT&T.

6. That the May 9, 2001, Order Setting Hearing and Procedural Schedule will be amended at the appropriate time to accommodate the special discovery schedule as set out below. In the meantime, it is provided that, since AT&T is the Movant in this matter,

AT&T will not be required to prefile its intervenor testimony regarding only the issue of third-party testing on September 10, 2001, nor will BellSouth be required to prefile its rebuttal testimony on the same topic on October 8, 2001. The date on which they shall file is subject to later Order. All other intervenors shall file as to all issues on September 10, 2001 and BellSouth shall file in rebuttal to same on October 8, 2001, as previously ordered.

7. That the parties, including KCI, shall enter into an appropriate Protective Agreement similar to the one entered into in Georgia as soon as practicable.

8. That a special discovery schedule designed to resolve this discovery dispute be promulgated as follows:

a. In order to assess what has already been produced and what has not been produced, AT&T shall provide an index to the documents and information it received in the Georgia proceeding by no later than 12:00 p.m. on Thursday, August 30, 2001. KCI and BellSouth shall file an index of what they produced in the Georgia proceeding no later than 5:00 p.m. on Tuesday, September 4, 2001.

b. Relying on the information exchanged pursuant to Paragraph 8(a), AT&T, KCI, and BellSouth shall agree on appropriate adjustments to the discovery requests which should effect the removal of requests for items and information which have been requested in this docket but have already been produced to AT&T in the Georgia proceeding.

c. There will be a conference call on the afternoon of Thursday, September 6, 2001, among the parties and the Commission for the purpose of allowing technical experts to discuss the remaining discovery requests and, specifically, what information is reasonably available and necessary. It is anticipated that this conference will lead to the agreement on some factual issues and the universe of additional information which might reasonably be discovered in this docket. The parties shall reach an agreement on these issues, to the extent possible, by no later than Friday, September 7, 2001.

d. KCI shall produce such additional information or file objections on or before Tuesday, September 11, 2001. To the extent that KCI raises objections to the production of any information, it should provide the Commission with copies of any information withheld to permit in camera inspection of same.

f. The Presiding Commissioner or his designee will hear and rule on any objections orally by conference call on Wednesday, September 12, 2001. KCI shall produce such information for which its objections have been overruled by no later than September 13, 2001.

g. It is anticipated that depositions will be allowed to be conducted during the period of Thursday, September 20, 2001, through Friday, September 28, 2001. KCI is instructed to take immediate steps to make those persons who were identified as potential witnesses in Georgia (i.e., witness list filed on April 16, 2001 in GPSC Dkt. No. 8354-U) aware that they may be deposed and should take reasonable steps to ensure their availability. For its part, AT&T is encouraged to limit the number of witnesses it wishes to depose and to inform KCI of their identity, the topics on which they will be examined, and the estimated time and length of their deposition, as soon as practicable. An Order governing the number, timing, scope and conduct of the depositions will be issued at a later time.

h. For the purposes of this special discovery schedule, the parties are to copy or file with the Commission all written communications and exchanges of information. Given the compressed schedule, it is recommended that the parties cooperate with each other and utilize facsimile, overnight mail, or similar means to communicate information between the parties and with the Commission.

9. Finally, the Presiding Commissioner notes that valuable time and energy has been wasted by the parties in dealing with this discovery dispute. While mindful of the busy schedules and obligations of the parties and their counsel, the Presiding Commissioner believes that the compressed schedule set out herein is workable provided the parties work hard, raise their points with clarity and specificity, and conduct themselves with sincerity and in good faith. The Commission has neither the time nor the resources to involve itself to such a degree in discovery disputes and, were it not for the uniqueness of this case and the importance of this docket, the Commission would have declined to do so.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the _____ day of August, 2001.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount, Deputy Clerk

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