

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**August 8, 2002**

**IN RE:**

**DOCKET TO DETERMINE THE COMPLIANCE  
OF BELL SOUTH TELECOMMUNICATIONS,  
INC.'S OPERATIONS SUPPORT SYSTEMS  
WITH STATE AND FEDERAL REGULATIONS**

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**DOCKET NO.  
01-00362**

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**ORDER GRANTING RECONSIDERATION OF AND MODIFYING  
THE ORDER RESOLVING PHASE I ISSUES OF REGIONALITY**

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This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Ron Jones, of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, during a regularly scheduled Authority Conference held on July 23, 2002, for consideration of the *Motion for Reconsideration* filed by BellSouth Telecommunications, Inc. ("BellSouth") on July 8, 2002. BellSouth's Motion seeks reconsideration and reversal of the *Order Resolving Phase I Issues of Regionality*<sup>1</sup> issued by the Authority on June 21, 2002.<sup>2</sup>

**Background**

In the *Order Resolving Phase I Issues of Regionality*, the Authority took judicial notice of

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<sup>1</sup> The *Order Resolving Phase I Issues of Regionality* is attached hereto as Exhibit A. The background information and procedural history of this case contained in the Order are incorporated by reference herein.

<sup>2</sup> The *Order Resolving Phase I Issues of Regionality* reflects the deliberations of the Directors at the May 21, 2002 Authority Conference. Directors H. Lynn Greer, Jr. and Melvin J. Malone voted as the majority and signed the Order. Their terms as Directors of the Authority expired on June 30, 2002. Chairman Sara Kyle did not vote with the majority. Chairman Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Deborah Taylor Tate and Ron Jones was randomly selected and assigned to this docket.

the May 15, 2002 decision by the Federal Communications Commission ("FCC") approving BellSouth's application pursuant to 47 U.S.C. § 271 in Georgia and Louisiana. The FCC's decision was based, in part, on the FCC's finding that BellSouth's Operations Support System ("OSS")<sup>3</sup> does not distinguish between Georgia and Louisiana.<sup>4</sup> A majority of the Directors<sup>5</sup> concluded, based on the evidence in this docket, that BellSouth failed to satisfy its burden of establishing that its pre-ordering, ordering, provisioning, maintenance and repair and billing systems are regional. The Authority's analysis of the evidence presented in this docket is set forth in the *Order Resolving Phase I Issues of Regionality* attached hereto as Exhibit A. In reaching its conclusions, the Authority considered, *inter alia*, an empirical analysis that addressed monthly state-specific measures of "Percent Flow-Through" of CLECs' Local Number Portability orders for ten (10) months in 2001<sup>6</sup> which it determined revealed statistically

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<sup>3</sup> "[T]he term OSS refers to the computer systems, databases, and personnel that incumbent carriers rely upon to discharge many internal functions necessary to provide service to their customers." *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, FCC Docket No. 98-72, CC Docket No. 98-56; 13 FCC Rcd. 12,817 (released April 17, 1998) (*Notice of Proposed Rulemaking*) ¶9. The functions relevant to the *Order Resolving Phase I Issues of Regionality* are pre-ordering, ordering, provisioning, repair and maintenance and billing.

<sup>4</sup> See *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Service in Georgia and Louisiana* (*Memorandum Opinion and Order*) (issued May 15, 2002) ("Ga./La. Order").

<sup>5</sup> Chairman Kyle did not vote with the majority on the findings that BellSouth's OSS was not regional. During deliberations, she stated:

Based on, number one, the evidentiary record of OSS, number two, my judgment, and number three, the approval of Georgia's and Louisiana's 271 application by the Federal Communications Commission, it is my vote that Bell's OSS meets the requirements of Sections 251 and 252 of the federal act and fulfills our charge from the Tennessee General Assembly to promote competition in Tennessee. This would be another step toward 271, which I feel would be of great benefit to Tennessee consumers.

<sup>6</sup> Percent Flow-Through is a measurement of the percentage of CLEC orders that "flow through" BellSouth's system electronically. Orders that do not flow through are handled manually, which adds to the time it takes BellSouth to complete the orders. BellSouth recommended "Percent Flow-Through" of CLECs' Local Number Portability as the best test of its performance. The handling of Local Number Portability orders does not depend on technical complexities associated with orders for unbundled network elements. Nor is it materially affected by interstate differences in technical complexities (e.g., UNE orders) of CLECs' wholesale orders, local weather conditions, or local permitting requirements, factors which BellSouth has relied upon to explain interstate disparities in its performance. A majority of the Directors concluded that the Local Number Portability flow-through data raises questions about BellSouth's explanation for interstate disparities in its flow-through performance data, an issue of importance because Local Number Portability is crucial to competition.

significant disparities in Local Number Portability Percent Flow-Through data across BellSouth's nine-state region showing that the pre-ordering and ordering components of BellSouth's OSS are not regional. The Authority also considered the testimony, on cross-examination, of Robert L. Lattimore, an accountant for PriceWaterhouseCoopers L.L.P. ("PWC"), who provided a two-page "Attestation" in support of BellSouth's claim of regionality. The Authority determined that Mr. Lattimore's testimony lacked independence and objectivity because of his admitted close relationship with BellSouth.<sup>7</sup>

### **Positions of the Parties**

In its *Motion for Reconsideration*, filed on July 8, 2002, BellSouth seeks a reversal of the Authority's decision on the regionality of BellSouth's OSS on the grounds that the *Order Resolving Phase I Issues of Regionality* is contrary to authoritative legal precedent established by the FCC's Ga./La. Order approving BellSouth's application for section 271 approval in Georgia and Louisiana and finding that BellSouth's OSS does not distinguish between Georgia and Louisiana. BellSouth also maintains that the Authority applied a standard of review which did not focus solely on the regionality issue. BellSouth points out that, due to the bifurcation of this proceeding, the evidence was limited solely to issues of regionality. In addition, BellSouth argues that the *Order Resolving Phase I Issues of Regionality* applied an incorrect legal standard, asserting that the Authority was required to use the standard set forth by the FCC in its Order granting Southwestern Bell's application pursuant to 47 U.S.C. § 271 in Kansas and Oklahoma,<sup>8</sup> and arguing that the Authority's focus on whether BellSouth's systems produced substantially the same results in different states was improper. BellSouth claims that the Authority's

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<sup>7</sup> A thorough discussion of these findings and conclusion is set forth in *Order Resolving Phase I Issues of Regionality* at pp. 34 to 43.

<sup>8</sup> See *In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Service in Kansas and Oklahoma* (Memorandum Opinion and Order) 16 FCC Rcd 6337 (issued January 22, 2001).

conclusion that BellSouth failed to meet its burden of proof is erroneous. Further, BellSouth argues that it should have been permitted to cross examine the author of the Authority's empirical analysis of BellSouth's flow-through data and that the analysis is sufficiently flawed such that no conclusion can be drawn from it. In addition, BellSouth urges a reconsideration of the Authority's finding that the attestation of Robert L. Lattimore was not credible. BellSouth maintains that the FCC found the attestation to be credible.

On July 18, 2002, AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and MCI WorldCom, Inc. (collectively the "CLECs") filed their *Opposition to Motion for Reconsideration*, arguing that the FCC never intended, by its Ga./La. Order, to restrict Tennessee's investigation into the regionality of BellSouth's OSS. The CLECs argue that, in fact, the FCC expects states to exercise their expert judgment in conducting a rigorous investigation on such issues as regionality. The CLECs also maintain that the Ga./La. Order is not binding on the Authority as legal precedent pursuant to the FCC's own policy. Further, the CLECs observe that the factual record before the FCC was different from the record before the Authority, inasmuch as the FCC did not conduct a live hearing and therefore did not consider the live testimony of the PWC and KPMG witnesses or consider the state-specific flow-through information presented to the Directors.

As to BellSouth's contention that the Authority failed to confine itself to the regionality issue, the CLECs respond that BellSouth's arguments reflect a misunderstanding of the procedural framework of the OSS docket and the *Order Resolving Phase I Issues of Regionality*. The CLECs assert that while the over-all purpose of the OSS docket, as stated in the September 13, 2001 *Order Establishing Issues and Procedural Schedule*, was to determine whether BellSouth provided nondiscriminatory access to its OSS as required under state and federal law, the focus of Phase I was solely on regionality. The CLECs argue that the Authority clearly



stated that it was using the legal standard of regionality presented by BellSouth's own witness, Milton McElroy: that the applications and interfaces implemented and available are identical across the nine-state region. The CLECs assert that the empirical analysis contested by BellSouth is simply a mathematical analysis of data supplied by BellSouth and adopted by the Authority and that Tennessee law permits the Directors to rely upon the agency's own expertise, technical competence and specialized knowledge to analyze the evidence presented. Finally, as to the finding on the credibility of Mr. Lattimore, the CLECs respond that assessments of the credibility of witnesses are entitled to great deference when the trier of fact has seen the witnesses and had the opportunity to assess their demeanor.

#### **The July 23, 2002 Authority Conference**

During the July 23, 2002 Authority Conference, the voting panel of Chairman Kyle and Directors Tate and Jones deliberated BellSouth's *Motion for Reconsideration*. The parties in attendance at the Authority Conference included Guy M. Hicks, Esq. and R. Douglas Lackey, Esq., representing BellSouth, Henry Walker, Esq., representing the Southeastern Competitive Carriers Association ("SECCA"), Michael Hopkins, Esq., representing AT&T Communications of the South Central States, Inc. ("AT&T"), and TCG MidSouth, Inc. ("TCG") and Susan Berlin, Esq. and Jon E. Hastings, Esq., representing MCImetro Access Transmission Services, LLC ("MCImetro") and Brooks Fiber Communications of Tennessee, Inc. ("Brooks Fiber").

As deliberations on BellSouth's *Motion for Reconsideration* commenced, Chairman Kyle made the following comments:

I've thought long and hard about this case, and I have looked at the record, the FCC actions and other state orders. As the parties know, I was in the minority when this docket was decided by the first TRA. My position is clear. I have just a couple of brief comments. The FCC has held that appropriately employed regionality can give us a fuller picture of the BOCs' [Bell Operating Companies] compliance with section 271 requirements while avoiding for all parties involved in the section 271 process the delay and expense associated with redundant and

unnecessary proceedings and submissions. The standard has been set. The FCC has established the road map that states can follow.

After these comments, Chairman Kyle made a finding, based upon the FCC's Order, that BellSouth OSS was regional and nondiscriminatory and moved that BellSouth's *Motion for Reconsideration* be granted. Director Tate seconded the motion, concurring in the finding that BellSouth's OSS is regional.<sup>9</sup> In granting BellSouth's *Motion for Reconsideration*, the majority of the voting panel determined that BellSouth's OSS is regional.<sup>10</sup>

**IT IS THEREFORE ORDERED THAT:**

1. BellSouth's *Motion for Reconsideration* of the *Order Resolving Phase I Issues of Regionality* is granted and the decision of the Authority reflected in that Order is reversed.
2. BellSouth's Operations Support Systems are deemed to be regional.

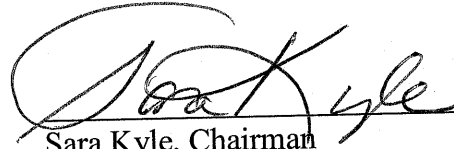
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<sup>9</sup> Preliminary to her vote, Director Tate commented that:

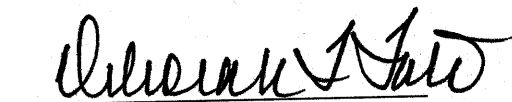
[M]y support is consistent with public interest, convenience, and necessity, and the congressional intent that has been set in motion that markets be open and will benefit Tennessee consumers through more competition in the marketplace...The FCC has stated... that the development and implementation plans under Section 271 are certainly an ongoing process. Unlike a specific purely legal case or purely legal issue, this is an administrative, regulatory, advisory and also constantly evolving arena, a mixture of both judicial and legislative, a mixture of economics, law, technology, and, in the end common sense. ...While the FCC has certainly given the state commissions and in this case the Authority great deference, responsibility, and latitude, we must not forget that we are merely acting in an advisory capacity.

<sup>10</sup> Director Jones did not vote with the majority. After stating that BellSouth's *Motion for Reconsideration* contains a multitude of issues that need to be addressed in detail, Director Jones moved to grant the Motion and set the matter for further proceedings at a subsequent conference to consider the merits of BellSouth's Motion. Director Jones' motion failed for lack of a second.

3. Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Comp. R. & Reg 1220-1-2-.20 within fifteen (15) days of the entry of this Order.



Sara Kyle, Chairman



Deborah Taylor Tate, Director

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Ron Jones, Director

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**JUNE 21, 2002**

**IN RE:**

**DOCKET TO DETERMINE THE COMPLIANCE  
OF BELL SOUTH TELECOMMUNICATIONS,  
INC.'S OPERATIONS SUPPORT SYSTEMS  
WITH STATE AND FEDERAL REGULATIONS**

**DOCKET NO.  
01-00362**

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**ORDER RESOLVING PHASE I ISSUES OF REGIONALITY**

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This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") during a regularly scheduled Authority Conference held on May 21, 2002, for consideration of the issues adopted in Phase I of this proceeding relating to the regionality of BellSouth Telecommunications, Inc.'s ("BellSouth's") Operations Support Systems ("OSS"). The Directors also considered the *Notice of Supplemental Authority* filed by BellSouth on May 16, 2002, voting unanimously to take notice of an order released by the Federal Communications Commission ("FCC") on May 15, 2002, approving BellSouth's application pursuant to 47 U.S.C. § 271 for interLATA authority in Georgia and Louisiana.<sup>1</sup> Upon reviewing the record of this docket, a majority of the Directors determined that BellSouth failed to satisfy its burden of establishing that its OSS is regional.<sup>2</sup>

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<sup>1</sup> See *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, FCC 02-147, 2002 WL 992213 (*Memorandum Opinion and Order*) (released May 15, 2002) (hereinafter "FCC Order").

<sup>2</sup> Chairman Kyle did not vote with the majority on the regionality of BellSouth's OSS. Her comments during deliberations are set forth at footnote 103

**EXHIBIT**

**A**

## **Background**

Under the Federal Telecommunications Act of 1996 and Tennessee law,<sup>3</sup> Incumbent Local Exchange Companies ("ILECs"), such as BellSouth Telecommunications, Inc. ("BellSouth"), must provide nondiscriminatory access to their OSS to Competing Local Exchange Carriers ("CLECs").<sup>4</sup> These statutes reflect a recognition that absent nondiscriminatory access to an incumbent's OSS, CLECs cannot effectively compete with ILECs. Discriminatory access to an ILEC's OSS may delay or prevent CLECs from obtaining data necessary to sign up customers, placing an order for services or facilities with the ILEC, tracking the progress of that order to completion, receiving relevant billing information from the incumbent, or obtaining prompt repair and maintenance for the elements and services it obtains from the ILEC.<sup>5</sup>

## **Procedural History**

At a regularly scheduled Authority Conference held on February 21, 2001, the Authority convened TRA Docket No. 01-00362 to explore whether CLECs operating in Tennessee have nondiscriminatory access to BellSouth's OSS. The focus of Docket No. 01-00362 is "to determine whether existing data or test results derived from OSS testing in other states is reliable and applicable to Tennessee and, in those instances where reliance

<sup>3</sup> See 47 U.S.C. § 251(c)(3); Tenn. Code Ann. § 65-4-124(a).

<sup>4</sup> "[T]he term OSS refers to the computer systems, databases, and personnel that incumbent carriers rely upon to discharge many internal functions necessary to provide service to their customers." *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, FCC Docket No. 98-72, CC Docket No. 98-56; 13 FCC Rd. 12,817 (released April 17, 1998) (*Notice of Proposed Rulemaking*) ¶9. The functions relevant to this docket are pre-ordering, ordering, provisioning, repair and maintenance and billing. Because many of the components of these functions are referred to in the record by acronyms, a glossary of such acronyms is attached hereto as Attachment A.

<sup>5</sup> *Id.*

on such testing is inappropriate, to conduct necessary testing.”<sup>6</sup> In establishing this docket, the Directors unanimously voted to engage an independent, third party consultant to advise the Authority on the reliability of existing data or test results and to conduct any required testing. The Authority appointed Director H. Lynn Greer, Jr. to serve as the Pre-Hearing Officer.

On May 3, 2001, the Pre-Hearing Officer issued his *First Report and Recommendation* setting forth a procedure for determining whether BellSouth’s Tennessee systems and processes operate sufficiently to provide wholesale services and elements to CLECs without impeding competition. The Pre-Hearing Officer proposed to direct the independent consultant to prepare a report consisting of the following elements: (1) identification of the systems or processes used by BellSouth’s Tennessee operations for providing services and network elements to competitors; (2) an audit of BellSouth’s Tennessee performance data; and (3) recommendations regarding performance and system testing necessary for the Authority to ascertain whether BellSouth is providing network services and elements to CLECs in Tennessee without impeding competition. The Pre-Hearing Officer also recommended that, upon completion of the consultant’s report, the Authority convene a hearing for the purpose of receiving testimony and other evidence from the consultant and interested parties. The Pre-Hearing Officer proposed that, after the conclusion of the hearing, the Authority render a decision on the consultant’s recommendation and the necessity for actual testing of BellSouth’s OSS in Tennessee. Under the Pre-Hearing Officer’s proposal, any necessary testing would be conducted after

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<sup>6</sup> *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.’s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362 (hereinafter “OSS Docket”) (Order Approving First Report and Recommendation of the Pre-Hearing Officer) pp. 2-3 (issued July 27, 2001).

the hearing. On May 14, 2001, Brooks Fiber Communications of Tennessee, Inc. ("Brooks Fiber"), MCImetro Access Transmission Services, LLC ("MCImetro") and the Southeastern Competitive Carriers Association ("SECCA") filed *Petitions to Intervene* in this docket. On September 5, 2001, the Pre-Hearing Officer granted these petitions.

At a regularly scheduled Authority Conference on May 15, 2001, the Pre-Hearing Officer recommended that the Authority direct the independent, third party consultant, once selected, to relate the testing in other states to Tennessee's systems and agreed that such a review would "verify the appropriateness, the independence and the accuracy of the testing so done."<sup>7</sup> The Pre-Hearing Officer then made a motion, contingent upon the Authority's approval of the *First Report and Recommendation*, that the Executive Secretary be authorized to select and retain a qualified consultant to prepare the report proposed in the *First Report and Recommendation*.

During the May 15<sup>th</sup> Authority Conference, the Directors voted unanimously to approve the *First Report and Recommendation*. Additionally, the Directors voted unanimously to authorize the Executive Secretary to select and retain a qualified consultant, subject to approval by the Authority.

After consultation with Authority staff, the Executive Secretary determined that only one consultant, KPMG Peat Marwick ("KPMG"), possessed the experience and expertise with BellSouth's OSS necessary to fulfill the TRA's stated requisites. After several meetings with and correspondence from representatives from KPMG, however, it became clear that KPMG was unwilling to provide a report which would verify the

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<sup>7</sup> *OSS Docket* (Transcript from May 15, 2001 Authority Conference, pp. 31-32).

appropriateness, independence and accuracy of the OSS testing performed in Florida and Georgia.

On July 27, 2001, the Authority issued its *Order Approving First Report and Recommendation of the Pre-Hearing Officer*, memorializing the May 15<sup>th</sup> deliberations during which the *First Report and Recommendation* of the Pre-Hearing Officer was approved. The *Order* approved the proposed procedure for determining whether BellSouth's Tennessee systems and processes operate in a manner that provides wholesale services and elements to CLECs in a nondiscriminatory manner and the bifurcation of the docket into two separate phases. Phase I was to yield a report by the selected consultant consisting of the following elements: (1) identification of the systems or processes used by BellSouth's Tennessee operations for providing services and network elements to competitors; (2) an audit of BellSouth's Tennessee performance data; and (3) recommendations regarding performance and system testing necessary for the Authority to determine whether BellSouth is providing network services and elements to CLECs in Tennessee without impeding competition. The *Order* also reflected the Authority's intent to convene a hearing for the purpose of receiving testimony and other evidence from the consultant and interested parties upon completion of the Phase I report. The Authority was to render a decision on the consultant's recommendation and the necessity for testing BellSouth's OSS in Tennessee after the conclusion of the hearing. Necessary testing, if any, was to be conducted during Phase II.

On August 15, 2001, the Executive Secretary filed a Status Report informing the Directors that he was unable to retain KPMG to provide the services requested by the



Authority. At the Executive Secretary's request, this docket was placed on the August 21, 2001 Authority Conference agenda.

At the August 21<sup>st</sup> Authority Conference, the Directors deliberated upon the Executive Secretary's Status Report. A majority of the Directors determined not to engage a third party consultant, but to move forward with the Authority's own contested case.<sup>8</sup> The same majority voted to amend those portions of the Pre-Hearing Officer's *First Report and Recommendation* which had proposed to engage a third party consultant to participate in Phase I of this proceeding.<sup>9</sup>

After this decision, the Pre-Hearing Officer scheduled a Pre-Hearing Conference to establish, with the participation of the parties,<sup>10</sup> the issues and a procedural schedule. During this Pre-Hearing Conference, which was convened on September 6, 2001, the Pre-Hearing Officer informed the parties that the case would be bifurcated into at least two phases, with Phase I addressing the regionality of BellSouth's OSS and Phase II addressing the reliability of OSS testing completed in other states.<sup>11</sup> The Pre-Hearing Officer also informed the parties that the Procedural Schedule controlling this docket would encompass the following issues:

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<sup>8</sup> See *id.* (Order Amending Order Approving First Report and Recommendation of the Pre-Hearing Officer) (filed January 2, 2002) pp. 10-12.

<sup>9</sup> Director Malone did not vote with the majority. Director Malone stated that he has always been and remains persuaded that the most responsible manner in which to engage an "independent" consultant was to issue a Request for Proposal ("RFP"). Further, it was Director Malone's opinion that the Authority should not retreat from its thoughtfully crafted and unanimously adopted framework for reviewing and evaluating BellSouth's OSS solely on the basis of KPMG's refusal to consult in the manner requested by the Authority. If a lesser method in which to proceed was superior to the method established by the Directors in the Order Approving the First Report and Recommendation, Director Malone was persuaded that the Authority would have initially pursued such method, irrespective of KPMG's positions. Director Malone's alternative proposals failed for lack of a second. See *OSS Docket* (Transcript of August 21, 2001 Authority Conference, pp. 31, 48).

<sup>10</sup> The parties to this proceeding are BellSouth, AT&T Communications of the South Central States, Inc. ("AT&T"), TCG MidSouth, Inc. ("TGC"), SECCA, Brooks Fiber and MCImetro. These parties, with the exception of BellSouth, are CLECs.

<sup>11</sup> *OSS Docket* (Transcript of September 6, 2001 Pre-Hearing Conference pp. 41-42).

**A. Phase I Issues – Regionality of BellSouth's OSS:**

1. Using the processes, sub-processes and activities identified by the Florida and Georgia Public Service Commissions for OSS testing as a starting point, identify all the OSS processes, systems and procedures used by BellSouth to provide wholesale elements and services in Tennessee.
2. For the inventory of processes, systems and procedures identified for BellSouth's Tennessee operations in Issue 1, compare such inventory with those processes, systems, and procedures that support BellSouth's wholesale operations in Georgia and Florida. Identify those Tennessee processes, systems and procedures that:
  - a. Are the same, physically and functionally, as those used to support BellSouth's Florida operations.
  - b. Differ from those used to support BellSouth's Florida operations. Explain in detail any differences.
  - c. Are the same, physically and functionally, as those used to support BellSouth's Georgia operations.
  - d. Differ from those used to support BellSouth's Georgia operations. Explain in detail any differences.
  - e. Are significant to the development of competition in Tennessee?

(Provide a matrix classifying each Tennessee process identified in Issue I into the categories identified above.)
3. For the Tennessee processes, systems and procedures that are the same as those used to support BellSouth's Florida operations, categorize each process, system or procedure as:
  - a. Tested or scheduled for testing in Florida as part of the master test plan approved by the Florida PSC, or;
  - b. Not included in the PSC-approved master test plan for testing in Florida.
4. For the Tennessee processes, systems and procedures that are the same as those used to support BellSouth's Georgia operations, categorize each process, system or procedure as:
  - a. Tested or scheduled for testing in Georgia as part of the master test plan approved by the Georgia PSC, or;
  - b. Not included in the approved master test plan for testing in Georgia.

**B. Phase II Issues – Reliance on OSS testing in Florida and Georgia and determination of the scope of OSS tests, if any, needed in Tennessee.**

1. For those processes, systems or procedures deemed by the Authority to be Tennessee specific, does measurable commercial usage, such as performance data ordered by the Authority, exist in sufficient volumes to allow the Authority to determine if the process, system or procedure is being provided in a nondiscriminatory manner?
2. For those Tennessee processes, systems or procedures identified by the Authority as the same as those used to support BellSouth's Georgia or Florida wholesale operations, does measurable commercial usage exist that will allow the Authority to determine if the process, system or procedure is being provided in a nondiscriminatory manner?
3. For those Tennessee processes, systems or procedures identified by the Authority as 1) the same as those used to support BellSouth's Georgia or Florida wholesale operations, and; 2) tested or scheduled for testing in either Georgia or Florida, indicate whether the Florida and/or Georgia testing of such process is still timely and relevant?
4. Identify the processes, systems, or procedures included in the Florida master test plan but not in the Georgia master test plan. Explain why such processes were not included in the Georgia test and whether or not testing of such process[es] would have been beneficial in arriving at a final decision on the adequacy of BellSouth's OSS in that state assuming that OSS availability is required for the provision, by competitors, of both residential and business service as contemplated under 47 U.S.C. § 271(c)(1)(A) of the Telecommunications Act of 1996, Tenn. Code Ann. § 65-4-123 and other applicable state and federal statutes.
5. Identify the processes, systems, or procedures included in the Georgia master test plan but not in the Florida master test plan. Explain why such processes were not included in the Florida test and whether or not testing of such process[es] would have been beneficial in arriving at a final decision on the adequacy of BellSouth's OSS in that state assuming that OSS availability is required for the provision, by competitors, of both residential and business service as contemplated under 47 U.S.C. § 271(c)(1)(A) of the Telecommunications Act of 1996, Tenn. Code Ann. § 65-4-123 and other applicable state and federal statutes.

6. Identify the processes, systems, or procedures that should be included in a master test plan designed to evaluate the availability of OSS provisioning for both residential and business service as contemplated under 47 U.S.C. § 271(c)(1)(A) of the Telecommunications Act of 1996, Tenn. Code Ann. § 65-4-123 and other applicable state and federal statutes, but were not included in the Florida master test plan. Explain why such processes were not included in the Florida test and whether or not testing of such process[es] would be beneficial in arriving at a final decision on the adequacy of BellSouth's OSS in Florida.
7. Identify the process[es] for arriving at a final master test plan in both Florida and Georgia. Evaluate the appropriateness, independence and accuracy of such process[es].
8. Provide recommendations as to the scope of OSS tests, if any, needed in Tennessee and the reliance that can be placed on Florida and Georgia tests.<sup>12</sup>

The Pre-Hearing Officer's rulings from the Pre-Hearing Conference, including the issues listed above, were reflected in the *Order Establishing Issues and Procedural Schedule* issued on September 13, 2001. Consistent with this Order, on September 17 AT&T, TCG and SECCA jointly filed their discovery requests to BellSouth, including Interrogatory No. 36, which requested the following information:

From January 2001 to the present, for each individual state in BellSouth's region and for the BellSouth region as a whole, please identify the achieved flow through rate and the CLEC error excluded flow through rate, by interface (i.e., LENS, TAG, EDI, and all interfaces) for the following categories: (a) LNP; (b) UNE; (c) Business Resale; (d) Residence Resale; and (e) Total (i.e., UNE, Business Resale, and Residential Resale combined).<sup>13</sup>

On September 24, BellSouth filed objections to six of those discovery requests and offered compromise responses to several of the discovery requests to which it objected.

<sup>12</sup> *Id.* (*Order Establishing Issues and Procedural Schedule*) (issued September 17, 2001) p. 9-11.

<sup>13</sup> *OSS Docket (AT&T Communications, Inc., TCG MidSouth, Inc. and Southeastern Competitive Carriers Association, First Set of Interrogatories to BellSouth Telecommunications, Inc.)* (filed September 17, 2001) p. 16.

BellSouth did not object to Interrogatory No. 36 in its September 24 filing.

On September 27, 2001, in lieu of responding to BellSouth's discovery objections, AT&T, TCG and SECCA filed a *Motion to Compel*, addressing BellSouth's objections to their five remaining Interrogatories and seeking to require BellSouth to provide answers. On October 4, 2001, BellSouth filed its *Response to Motion to Compel*, in which it asserted specific objections to the five Interrogatories listed in the *Motion to Compel*. AT&T, TCG and SECCA filed a *Motion for Protective Order* on October 1, 2001.

As discovery progressed, numerous discovery disputes arose. A Pre-Hearing Conference was held on October 9, 2001 to resolve them. At that time, the Pre-Hearing Officer informed the parties of his concerns regarding BellSouth's apparent unwillingness to make the witnesses who were involved in the third party testing of BellSouth's OSS in other states available for questioning notwithstanding BellSouth's intent to rely on such testing in this proceeding.<sup>14</sup> The Pre-Hearing Officer also expressed concern that BellSouth would fail to present witnesses who would be able to respond to the Directors' questions about the subject matter of their testimony.<sup>15</sup> Notwithstanding the Pre-Hearing Officer's repeated comments, BellSouth's maintained its position that the witnesses who participated in the testing from other states were employees of KPMG and Hewlett Packard and that BellSouth was not in a position to offer them as witnesses at the Hearing.<sup>16</sup> During the October 9<sup>th</sup> Pre-Hearing Conference, the Pre-Hearing Officer granted the *Motion for Protective Order* filed by AT&T, TCG and SECCA.

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<sup>14</sup> KPMG, Pricewaterhouse and Hewlett Packard were involved in the testing of BellSouth in Georgia. In addition, a representative of Pricewaterhouse filed an attestation regarding the regionality of BellSouth's OSS.

<sup>15</sup> *OSS Docket* (Transcript of September 6, 2001 Pre-Hearing Conference, pp. 69-70).

<sup>16</sup> *Id.*, pp. 47, 73.

After considerable discussion, the parties resolved many of their differences on the use of discovery material from other states. The *Motion to Compel* was resolved by agreement between the parties and both the *Motion to Compel* and BellSouth's response to the *Motion to Compel* were withdrawn. The Pre-Hearing Officer dismissed BellSouth's objections as moot. On October 17, 2001, the Pre-Hearing Officer issued the *Order Resolving Discovery Disputes* reflecting his rulings at the October 9<sup>th</sup> Pre-Hearing Conference.

Consistent with the Pre-Hearing Officer's ruling, the *Proposed Protective Order* was filed on October 10, 2001. The *Proposed Protective Order* required that all documents which a party claims are confidential "must be accompanied by proof of confidentiality, that is, an affidavit showing the cause of protection under this Order. The affidavit may be reviewed by the Pre-Hearing Officer . . . for compliance with this paragraph."<sup>17</sup>

On October 22, 2001, AT&T and SECCA filed a joint *Motion for Summary Finding*.<sup>18</sup> In the motion, AT&T and SECCA alleged that KPMG and Hewlett Packard ("HP") had not complied with discovery. The motion sought a summary finding that BellSouth cannot establish reliability without the participation of KPMG and HP in discovery, which, according to AT&T and SECCA, "is the functional equivalent of striking the third party tests."<sup>19</sup>

On October 22, 2001, BellSouth filed the Direct Testimony of Milton McElroy, Jr., BellSouth's Director of Interconnection Services. The stated purpose of his testimony was

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<sup>17</sup> *Id.* (*Protective Order*) (filed October 10, 2001), pp. 1-2.

<sup>18</sup> After this filing, the *OSS Docket* was placed on the agenda of the regularly scheduled Authority Conference on November 6, 2001.

<sup>19</sup> *Id.* (*Reply to Response of BellSouth to Motion of AT&T and SECCA for Summary Finding*) (filed November 1, 2001) p. 1.

to "provide this Authority with information about the Georgia and Florida OSS testing conducted by KPMG, along with that of regionality testing conducted by Pricewaterhouse Coopers."<sup>20</sup> KPMG's Final Report on Georgia's OSS and a Report and "Attestation" as to the Regionality of BellSouth's OSS conducted by PricewaterhouseCoopers L.L.P. ("PWC") at BellSouth's request were attached as exhibits to Mr. McElroy's Direct Testimony. Robert L. Lattimore, a PWC accountant, provided the two-page "Attestation" of regionality.

At the October 23<sup>rd</sup> Authority Conference, the *Order Resolving Discovery Disputes* issued in this docket on October 19, 2001 was discussed.<sup>21</sup> Questions regarding the discovery materials provided by BellSouth were raised and later were addressed in the Pre-Hearing Officer's *Order Amending and Clarifying Order Resolving Discovery Disputes* ("*Discovery Dispute Order*"), which was issued on October 26, 2001. The *Discovery Dispute Order* directed BellSouth to "update the discovery responses from other states it files or has filed in Tennessee as material necessary for them to remain current becomes available."<sup>22</sup> It specifically defined the term "discovery responses" to include "all written responses to discovery requests as well as all testimony, including deposition testimony and pre-filed testimony." BellSouth was further ordered to file, "[i]n conjunction with all discovery responses from other states BellSouth files or has filed in this docket, . . . an affidavit attesting as to (1) whether the discovery response is current; (2) what, if anything, in the discovery response has been updated; (3) whether the discovery response is Tennessee-specific,<sup>23</sup> or otherwise relevant to Tennessee; and (4) if the discovery response

<sup>20</sup> Direct Testimony of Milton McElroy, Jr. (October 22, 2001) p. 2.

<sup>21</sup> Prior to this discussion, the Authority ascertained that representative of all the parties to this docket were present.

<sup>22</sup> *Id.* (*Order Amending and Clarifying Order Resolving Discovery Disputes*) (issued October 26, 2001) p. 2.

<sup>23</sup> The order stated that "Tennessee-specific means that if the response had originally been submitted in Tennessee, it would have been identical."



is otherwise relevant to Tennessee, how is it so relevant.”<sup>24</sup>

On October 29, 2001, BellSouth filed its *Response of BellSouth to Motion of AT&T and SECCA for Summary Finding*. On November 2, 2001, AT&T and TCG filed *Procedural Motions of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc.* This filing included the following motions: (1) Motion to Strike Testimony that is beyond the scope of Phase I; (2) Motion to Revise the Procedural Schedule; (3) Motion to Strike the PWC Attestation; (4) Motion to Compel PWC to submit affidavits substantiating their claims that documents produced during discovery qualify for confidential treatment; and (5) Motion to Compel BellSouth to fully respond to discovery requests. The Motion to Compel Complete Answers to specific discovery requests alleged, *inter alia*, that BellSouth had not provided a complete response to Interrogatory No. 36.

At the Authority Conference on November 6, 2001, the Pre-Hearing Officer informed the parties that a Pre-Hearing Conference originally noticed for November 6<sup>th</sup> would be held on November 8<sup>th</sup> in order to hear oral argument on the pending motions.<sup>25</sup> During the Authority Conference, BellSouth again refused to commit to making KPMG witnesses available and stated affirmatively that it did not intend to call Mr. Lattimore, the PWC partner who authored the Attestation on the regionality of BellSouth's OSS.<sup>26</sup> The Pre-Hearing Officer reminded BellSouth that due process considerations required that witnesses involved in the production of documents which BellSouth intended to offer into evidence be in attendance at the Hearing and subject to cross-examination. BellSouth was

<sup>24</sup> *OSS Docket (Order Amending and Clarifying Order Resolving Discovery Disputes)* (filed October 26, 2001) pp. 2-3.

<sup>25</sup> Counsel for BellSouth, AT&T, TCG and SECCA attended the Authority Conference.

<sup>26</sup> *OSS Docket* (Transcript from November 8, 2001 Pre-Hearing Conference p. 12).



warned that documentary evidence that was not so supported, would be subject to being stricken.

The Pre-Hearing Officer heard oral argument on the pending motions during the November 8<sup>th</sup> Pre-Hearing Conference. Considerable discussion focused upon BellSouth's failure to respond to Interrogatory No. 36. During the Pre-Hearing Conference, BellSouth did not clearly indicate whether the requested data existed or was available, representing only that it did not know whether the requested data could be extracted in the manner suggested by AT&T.<sup>27</sup> In response, AT&T asserted that a KPMG witness who worked on the flow-through evaluation in Georgia had testified that BellSouth had the capability to provide state-specific flow-through reports. In addition, AT&T stated that BellSouth's flow-through reports are a computer program that runs on a database containing flags to identify the state referenced, a fact that could assist in the retrieval of the information.<sup>28</sup> AT&T explained that the requested information would either confirm or contradict the claim that BellSouth's ordering systems perform substantially the same from state to state for flow-through purposes.<sup>29</sup> In response, BellSouth reiterated that it did not produce flow-through reports on a state by state basis and was unsure whether it could.<sup>30</sup> After hearing considerable argument, the Pre-Hearing Officer ordered BellSouth to either produce the

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<sup>27</sup> See *id.*, 61, 63-64).

<sup>28</sup> A deposition taken on September 25, 2001 in the North Carolina §271 proceedings, which BellSouth filed in this proceeding, corroborated AT&T's assertion. Steven Strickland, a KPMG employee, testified as follows:

Q: Do you know whether the LSRs or that the flow-through data that's used to create a performance measures report can be broken down by state?

A: They can . . . the underlying data can. The current report is not. . . There's a state code on each of those transactions.

(Deposition of Steven Strickland, pp. 61-62).

<sup>29</sup> *OSS Docket* (Transcript from November 8, 2001 Pre-Hearing Conference p. 56).

<sup>30</sup> *Id.*, pp. 54, 57.

requested data or file a written explanation as to why producing such data would not be technically feasible no later than November 13, 2001.<sup>31</sup>

During the November 8<sup>th</sup> Pre-Hearing Conference, the Report on Georgia's OSS completed by KPMG and the PWC Report and Attestation were stricken from the record.<sup>32</sup> In addition, BellSouth was ordered to provide by November 13, 2001 a matrix as specified in the issues list included in the September 13<sup>th</sup> *Order Establishing Issues and Procedural Schedule*. The Pre-Hearing Officer also ordered BellSouth to comply with the *Order Amending and Clarifying Order Resolving Discovery Disputes*, issued on October 26, 2001, which required BellSouth to file by November 9, 2001 an affidavit attesting as to whether the discovery responses filed in this docket are current, Tennessee-specific or otherwise relevant to Tennessee. The Pre-Hearing Officer ordered BellSouth to comply with this mandate by November 13, 2001.

On November 13, 2001, BellSouth filed affidavits attesting that the discovery responses BellSouth filed in this docket are current, Tennessee-specific or otherwise relevant to Tennessee. BellSouth also filed matrices purporting to satisfy the requirements in the issues list included in the September 13<sup>th</sup> *Order Establishing Issues and Procedural Schedule*.

Notwithstanding the Pre-Hearing Officer's oral orders at the November 8<sup>th</sup> Pre-Hearing Conference, on November 13, 2001, BellSouth failed to file a response to

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<sup>31</sup> *Id.*, pp. 63-64.

<sup>32</sup> In striking this evidence, the Pre-Hearing Officer cited *Consumer Advocate v. TRA and United Cities Gas Company, Inc.*, No. 01A01-9606-BC-00286 1997 WL 92079, Tenn. Ct. App. March 5, 1997) ("It is elementary that administrative agencies are permitted to consider evidence which, in a court of law, would be excluded under the liberal practice of administrative agencies. Almost any matter relevant to the pending issue may be considered, provided interested parties are given adequate notice of the matter to be considered and full opportunity to interrogate, cross-examine and impeach the source of information and to contradict the information.").

AT&T's Interrogatory No. 36 or an explanation describing why such a response is not technically feasible. BellSouth also failed to file affidavits explaining why the documents it filed as proprietary should be classified as proprietary, notwithstanding being ordered by the Pre-Hearing Officer to do so.

On November 14, 2001, the Pre-Hearing Officer issued the *Order Resolving Procedural Motions* memorializing his rulings from the November 8<sup>th</sup> Pre-Hearing Conference. Because BellSouth failed to meet the November 13<sup>th</sup> deadline for filing its response to Interrogatory No. 36, the Pre-Hearing Officer also addressed BellSouth's failure to comply with his November 8<sup>th</sup> order, observing:

Without a state-specific flow-through report, it is impossible to determine if the performance from one or more states provides performance at a level sufficient to make up for any state that may not be performing well enough to meet satisfactory standards. This is particularly important when one considers the controversy surrounding Direct Order Entry (DOE) and Service Order Negotiation System (SONGS). According to BellSouth these systems have no material difference in functionality or reporting. This information could prove important in determining the regionality of BellSouth's OSS.

In addition, BellSouth produces state-specific reports on firm order confirmation ("FOC") timeliness and rejection notice timeliness which are further broken down into totally mechanized, partially mechanized and manual. This further confirms that BellSouth has the state-specific flow through information requested by AT&T. However, there is no indication either by AT&T or in BellSouth's publicly available *Monthly State Summary* of its wholesale performance that such flow through information is available or can be generated by the type of interface as requested by AT&T. Therefore, BellSouth is only required to provide the requested information by category but not broken down by the type of interface.<sup>33</sup>

The Pre-Hearing Officer concluded the *Order Resolving Procedural Motions* with the following directive:

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<sup>33</sup> OSS Docket (*Order Resolving Procedural Motions*) (filed November 14, 2001) p. 24-25.

The Motion to Compel Discovery filed by AT&T and TCG is granted in part as to Interrogatory No. 36. BellSouth is ordered to provide no later than Tuesday, November 20, 2001 the achieved flow-through rate and the CLEC error excluded flow-through rate for each individual state in BellSouth's region and for the BellSouth region in total for the following categories: a) LNP; b) UNE; c) Business Resale; d) Residential Resale; and e) Total (i.e., UNE, Business Resale, and Residential Resale combined).<sup>34</sup>

On November 16, 2001, BellSouth filed *Supplemental Responses to Interrogatories and Requests for Production*. BellSouth's document quoted AT&T's supplemental request with regard to Interrogatory No. 36:

BellSouth states that it does not produce flow-through data on a state-specific basis. According to KPMG, however, BellSouth is capable of producing such data. BellSouth, therefore, should either produce the requested data or explain why producing such data is not technically feasible.<sup>35</sup>

BellSouth then responded to AT&T's supplemental request in pertinent part that:

[it] has reviewed the Georgia Third Party Test, Florida Third Party Test Exceptions and Observations as well as the Georgia Third Party Test KPMG Consulting Flow-Through Evaluation Final Report. There is no mention of the state-specific reports or any questions about BellSouth's capability to produce state-specific Reports for Flow-through nor are there any exceptions or observations that addressed this issue . . . BellSouth's position remains the same. AT&T is misinformed on this issue. BellSouth has no record of an issue of state-specific reporting capability for Flow-Through Reports in the Flow-Through Evaluation (FT-1) conducted by KPMG in their OSS Evaluation for the Georgia Public Service Commission. Unless AT&T can identify the KPMG Exception or Observation as part of either the Georgia or Florida Third Party Test, or indicate where this capability is addressed in the Flow-Through Evaluation Final Report, BellSouth maintains that the Flow-Through Report is a regional report as indicated in the SQM. . . If technical feasibility could be determined, the development effort to implement such a measurement would require considerable programming effort and its associated costs.<sup>36</sup>

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<sup>34</sup> *Id.*, p. 27.

<sup>35</sup> *OSS Docket (BellSouth's Nonproprietary Supplemental Responses to Interrogatories and Requests for Production, Supplemental Item No. 36) (filed November 16 2001) p. 1.*

<sup>36</sup> *Id.* It is noteworthy that, notwithstanding the direction of the Pre-Hearing Officer, BellSouth's November 16, 2001 supplemental response to Interrogatory No. 36 did not explain why producing such data is not technically feasible.

On November 20, 2001, BellSouth filed a *Motion to Clarify Order Regarding AT&T Interrogatory No. 36*, arguing that "even if it were technically feasible to generate these reports, it is absolutely impossible to do so on one business day's notice."<sup>37</sup> BellSouth also contended that the portion of the *Order Resolving Procedural Motions* addressing Interrogatory No. 36 was inconsistent with the Pre-Hearing Officer's oral order at the Pre-Hearing Conference on November 8, 2001 and that under Tenn. R. Civ. P. 34 it was not required to create documents not already in existence.<sup>38</sup> BellSouth claimed that it did not receive the November 14<sup>th</sup> *Order Resolving Procedural Motions* until November 16.

On November 20, 2001, BellSouth also filed a *Motion for Reconsideration* of the Pre-Hearing Officer's order striking the Report on Georgia's OSS completed by KPMG and the PWC Report and Attestation. BellSouth argued that because the authors of the Report on Georgia's OSS and the PWC Report and Attestation had become available to testify, the Pre-Hearing Officer should allow the admission of that evidence. In addition, BellSouth filed the redacted testimony of Milton McElroy.

On November 21, 2001, the Pre-Hearing Officer issued the *Order Denying Motion to Clarify and Compelling Discovery*. The Pre-Hearing Officer ordered BellSouth to provide a response to Interrogatory No. 36 by November 29, 2001. On November 27, 2001, the Pre-Hearing Officer granted BellSouth's *Motion for Reconsideration*, allowing BellSouth to offer the Report on Georgia's OSS and the PWC Report and Attestation into evidence.

<sup>37</sup> Again, on November 20, 2001, BellSouth did not explain why producing the data requested in Interrogatory No. 36 is not technically feasible.

<sup>38</sup> It should be noted that Tenn. R. Civ. P. 34 addresses Requests for Production of Documents. The discovery request at issue is an Interrogatory. Interrogatories are governed by Tenn. R. Civ. P. 33.

On November 29, 2001, one business day before the Hearing, BellSouth filed its *Second Supplemental Responses to Interrogatories and Requests for Production*, which stated in pertinent part:

The underlying data necessary to calculate such rates does exist, in some form, inasmuch as BellSouth retains information regarding LSRs submitted and information regarding those LSRs in its databases.

Since the data does exist in some form, with the appropriate programming work, time and expenditure, a program could be created that could extract such information on a state-by-state basis.

BellSouth has researched this matter, and has instructed its affected employees to determine what would be required in order to do such programming to respond to the subject data request. In response, those BellSouth employees have indicated that if the task were begun on November 30, 2001, it would take until the first week in March, 2002, and at a substantial cost, to accomplish this task, a period of more than 90 days.<sup>39</sup>

With this language, BellSouth acknowledged, for the first time in this proceeding, that the requested data existed and could be obtained.<sup>40</sup>

**The December 3 through December 6, 2001 Hearing on the Merits**

The Hearing in this proceeding commenced on Monday, December 3, 2001. The parties in attendance included:

BellSouth Telecommunications, Inc. – **Guy M. Hicks, Esq.**, 333 Commerce Street, 22<sup>nd</sup> Floor, Nashville, TN 37201-3300 and **R. Douglas Lackey, Esq.**, **Lisa Foshee, Esq.**, and **E. Earl Edenfield, Jr.**, 675 West Peach Street, Suite 4300, Atlanta, GA 30375.

AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. – **Jack W. Robinson, Jr., Esq.**, Gullett, Sanford, Robinson & Martin, 230 Fourth Avenue, North, 3<sup>rd</sup> Floor, Nashville, TN, 37219 and **Michael A. Hopkins, Esq.** and **Tami Lyn Azorsky, Esq.**, McKenna & Cuneo, L.L.P., 1900 K Street, Washington, D.C. 20006.

<sup>39</sup> *OSS Docket* (BellSouth's *Second Supplemental Responses to Interrogatories and Requests for Production*, Supplemental Item No. 36) (filed November 29, 2001) p. 2.

<sup>40</sup> Although BellSouth conceded on November 29, 2001, that the underlying data necessary to respond to Interrogatory No. 36 existed, BellSouth did not commence the process necessary to produce the information first requested on September 17, 2001 and initially ordered to be produced by the Authority on November 14, 2001.

Southeastern Competitive Carriers Association ("SECCA") – **Henry Walker, Esq.**, Boulton, Cummings, Conners & Berry, 414 Union Street, No. 1600, P.O. Box 198062, Nashville, TN 37219-8062.

MCImetro Access Transmission Services, LLC ("MCImetro") and Brooks Fiber Communications of Tennessee, Inc. ("Brooks Fiber") – **Susan Berlin, Esq.**, 6 Concourse Parkway, Atlanta, GA 30328 and **Jon E. Hastings, Esq.**, Boulton, Cummings, Conners & Berry, 414 Union Street, No. 1600, P.O. Box 198062, Nashville, TN 37219-8062.

Time Warner Telecom of the Mid-South, L.P. and NewSouth Communications – **Charles B. Welch, Jr., Esq.**, Farris, Mathews, Branan, Bobango & Hellen, 618 Church Street, Suite 300, Nashville, TN 37219.

The first issue addressed, a preliminary matter, was the unresolved procedural issue of BellSouth's response to AT&T's Interrogatory No. 36. BellSouth presented testimony from several witnesses on the availability and amount of the time purportedly required to obtain the flow-through information including BellSouth witnesses Andrew James Saville, a BellSouth director of interconnection services specializing in the development and production of performance metrics and Ronald M. Pate, a BellSouth executive who has acted as an expert witness with regard to BellSouth's Operations Support System.<sup>41</sup>

Mr. Saville testified that BellSouth possessed an existing flow-through base that would have to be modified to produce the information at issue.<sup>42</sup> Mr. Saville testified that BellSouth has approximately 7,800 lines of code for flow-through but only some of the code would need to be rewritten to provide the flow-through information.<sup>43</sup> After the presentation of this testimony, BellSouth was ordered to provide the flow-through information ordered in the November 14, 2001 *Order Resolving Procedural Motions* within forty-five (45) days, by January 18, 2002.<sup>44</sup>

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<sup>41</sup> *OSS Docket* (Transcript of Hearing, December 3, 2001, p. 140).

<sup>42</sup> *Id.*, p. 146.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, p. 195.



After this ruling, the Authority focused exclusively on testimony related to the regionality of BellSouth's OSS. On December 3<sup>rd</sup>, Michael W. Weeks, the KPMG executive primarily responsible for the Report on Georgia's OSS, testified on BellSouth's behalf regarding the Georgia Report. On December 4<sup>th</sup>, two of BellSouth's Directors of Interconnection Services, Milton McElroy and Ronald Pate, testified. Mr. McElroy testified about third party testing of BellSouth's OSS in Georgia and the regionality testing conducted by PWC. Mr. Pate testified that BellSouth's OSS was nondiscriminatory. Robert Lattimore, a Global Risk Management Partner at PWC, testified for BellSouth on December 5<sup>th</sup> and 6<sup>th</sup> regarding his attestation that BellSouth's OSS was regional.<sup>45</sup> On December 5<sup>th</sup> Ken Ainsworth, BellSouth Director of Interconnection Operations, testified regarding the regionality of the BellSouth centers that support CLEC pre-ordering, ordering and maintenance activity. Alfred Heartley, BellSouth's General Manager of Network Product Improvement, testified on December 6<sup>th</sup> regarding the performance of the provisioning, maintenance and repair of CLEC orders in Tennessee and in the region and performance variations between states. Also on December 6<sup>th</sup>, David Scollard, Manager of Wholesale Billing at BellSouth Billing, Inc., a wholly owned subsidiary of BellSouth Telecommunications, Inc., testified about BellSouth's billing system.

On December 6<sup>th</sup>, Jay M. Bradbury, AT&T's District Manager of Law and Government Affairs, testified on behalf of AT&T regarding the differences in BellSouth's

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<sup>45</sup> During his testimony on behalf of PWC on December 5<sup>th</sup>, Mr. Lattimore was provided legal representation by counsel for BellSouth. (*OSS Docket* (Transcript of December 5, 2001 Hearing, pp. 3, 5, 133)). Mr. Lattimore testified that BellSouth was his biggest client, he had spent approximately 60% of his time on work related to BellSouth over the past several years and BellSouth paid him approximately \$800,000 for his Attestation. (*Id.*, pp. 36-37). Mr. Lattimore also testified that, had BellSouth asked him, he would have been willing to appear before the TRA to present, defend and otherwise comment on the Attestation. (*Id.*, p. 138). Mr. Lattimore testified that he provided BellSouth with several drafts of his Attestation before it was finalized. (*Id.*, p.42).



OSS from state to state. Sharon Norris, a consultant with SEN Consulting, Inc. retained by AT&T, testified about the testing of BellSouth's OSS in Georgia and Florida.

### **Post-Hearing Filings**

An *Order on Procedural Matters* was issued on December 31, 2001, memorializing the oral order requiring BellSouth to provide a response to Interrogatory No. 36 by January 18, 2002. To allow consideration of BellSouth's response to Interrogatory No. 36, the filing dates for Post-Hearing Briefs and Proposed Findings of Fact and Conclusions of Law for Phase I were extended seven (7) and twenty-one (21) days, respectively, from the date BellSouth filed its response to Interrogatory No. 36.<sup>46</sup>

On January 8, 2002, the Pre-Hearing Officer convened a Pre-Hearing Conference to discuss Phase II of this proceeding. The parties were directed to file comments on whether revisions to the issues list were advisable.

On January 15, 2002, BellSouth filed a *Motion for Reconsideration of the Hearing Officer's Order Regarding AT&T's Interrogatory No. 36*, seeking reversal of the requirement that BellSouth respond to Interrogatory No. 36 by January 18, 2002. BellSouth argued that compliance with the arbitrary timeframe was impossible and the ruling ignored BellSouth's undisputed evidence on the time required to produce the information.

BellSouth did not file a response to Interrogatory No. 36 on January 18, 2002. At a regularly scheduled Authority Conference on February 5, 2002, a majority of the Directors determined that BellSouth failed to comply with lawful orders and/or findings of the

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<sup>46</sup> Director Malone opined that Post-Hearing Briefs should not be submitted until the response to Interrogatory No. 36 had been produced and a determination made or an agreement reached on whether the response should become a part of the evidentiary record subject to cross-examination.

agency.<sup>47</sup> At the Conference, the Authority scheduled a hearing on February 20, 2002, to determine the propriety of subjecting BellSouth to a penalty, pursuant to Tenn. Code Ann. § 65-4-120, for violating or failing to comply with orders of the Authority.

On February 20, 2002, the Directors convened a hearing to consider imposing sanctions upon BellSouth pursuant to Tenn. Code Ann. § 65-4-120.<sup>48</sup> The Directors heard the argument of the parties and adjourned the Hearing to render a decision at a later date.

On February 21, 2002, BellSouth filed its response to Interrogatory No. 36. The parties filed their *Post-Hearing Briefs* on March 1, 2002. The post-hearing brief of AT&T, TCG, and SECCA includes an analysis of the response to Interrogatory No. 36.<sup>49</sup> On March 6, 2002, AT&T, TCG and SECCA filed a *Motion to Make Response to Discovery Part of the Evidentiary Record*, requesting that BellSouth's response to Interrogatory No. 36 be entered into evidence. The motion stated that BellSouth has no opposition to the admission of its response to Interrogatory No. 36 into the evidentiary record. BellSouth did not file a response to the motion. The parties filed their *Proposed Findings of Fact and Conclusions of Law* on March 15, 2002. The *Proposed Findings of Fact and Conclusions of Law* filed by AT&T, TCG and SECCA refer to BellSouth's response to Interrogatory No. 36.<sup>50</sup>

At a regularly scheduled Authority Conference held on March 26, 2002, the Authority deliberated upon the *Motion to Make Response to Discovery Part of Evidentiary*

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<sup>47</sup> Chairman Kyle did not vote with the majority.

<sup>48</sup> *Id.*, p. 9.

<sup>49</sup> See *id.* (Phase I Post-Hearing Brief AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association) (filed March 1, 2002) pp. 28-30.

<sup>50</sup> See *id.* (Phase I Proposed Findings of Fact and Conclusions of Law of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and the Southeastern Competitive Carriers Association) (filed March 15, 2002) ¶ 22.

*Record* filed by AT&T, TCG and SECCA on March 6, 2002. Before addressing the merits of the *Motion to Make Response to Discovery Part of Evidentiary Record*, the Authority posed several questions to the parties. The Authority asked BellSouth whether it objected to the *Motion to Make Response to Discovery Part of Evidentiary Record*. BellSouth responded that it had no objection. The Authority then specifically inquired of the parties whether they were waiving their right to interrogate, cross-examine and impeach the source of the information contained in BellSouth's response to Interrogatory No. 36.<sup>51</sup> Each party expressly waived its right to interrogate, cross-examine and impeach the source of the information contained in BellSouth's response to Interrogatory No. 36 as to Phase I, but reserved its right to interrogate, cross-examine and impeach the source of the information contained in BellSouth's response to Interrogatory No. 36 in Phase II of this proceeding. Thereafter, the Directors unanimously voted to grant the *Motion to Make Response to Discovery Part of Evidentiary Record*. The Authority issued a written order memorializing this ruling on May 15, 2002.

On May 16, 2002, BellSouth filed a *Notice of Supplemental Authority*. The notice sought to supplement the record with an order issued by the FCC on May 15 which approved BellSouth's application pursuant to 47 U.S.C. § 271 for interLATA authority in Georgia and Louisiana.

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<sup>51</sup> See *id.* (Transcript of March 26, 2002 Authority Conference, pp. 16-18); see *Consumer Advocate v. TRA and United Cities Gas Co.*, No. 01-A-01-9606-BC-00286, 1997 WL 92079 at \* 3 (Tenn. Ct. App. March 5, 1997).

## **Findings and Conclusions**

### **Positions of the Parties**

#### **A. BellSouth**

BellSouth argues that its OSS is regional under the FCC's definition of the term "regionality," which requires ILECs such as BellSouth to prove that they provide wholesale services to competing carriers in other states through an OSS "using common interfaces, systems and procedures, and, to a large extent, common personnel."<sup>52</sup> BellSouth maintains that regionality may be established with proof that competing carriers in various states share the use of a single OSS or that the OSS reasonably can be expected to behave the same way in the applicable states. BellSouth contends that because it has, throughout its nine state territory, the same electronic systems and manual processes for pre-ordering, ordering, provisioning, maintenance and repair and billing serving its own functions and those of the CLECs, its OSS is regional. Specifically, BellSouth asserts that its pre-ordering OSS is regional because they interface through TAG, RoboTAG, and LENS which serve all nine states.<sup>53</sup> BellSouth acknowledges that some of the Legacy Systems, the proprietary BellSouth systems accessed by the aforementioned pre-ordering systems, contain state-specific information, (e.g.: RSAG- the Regional Street Address Guide and Customer Service Records). BellSouth asserts, however, that this difference is irrelevant because the system acts in the same manner throughout the nine-state region regardless of the information inside.<sup>54</sup>

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<sup>52</sup> *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 2.

<sup>53</sup> *See id.*, p. 3-4; *see also Redacted Direct Testimony of Ronald Pate*, (filed November 19, 2001) p. 10.

<sup>54</sup> *See OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 3-6; *see also* (Transcript of Hearing, December 4, 2001, pp. 43, 96).

BellSouth also asserts that loop makeup information is regional, despite the fact that the Legacy System used to access the information is updated in a different manner in the former South Central states, such as Tennessee, than in the former Southern Bell states.<sup>55</sup> BellSouth admits that manual plats are used to update Loop Facility Assignment and Control System (LFACS) in the former South Central Bell states and that Corporate Facilities Database (CFD) is used in the former Southern Bell states. BellSouth nevertheless argues that LFACS is the central place for accessing loop makeup information regardless of state and because the access to LFACS is the same, the system is regional.<sup>56</sup> Furthermore, BellSouth explains that in the event that information is missing from LFACS, "BellSouth personnel use a combination of Engineering Work Orders, field visits, and the plats that contain records of BellSouth's Outside Plant Facilities to complete the loop makeup data that is stored in LFACS."<sup>57</sup>

BellSouth further asserts that its OSS for ordering is regional and that the systems, processes and centers that exist to support CLEC ordering are either the same, or are designed to function in the same manner as those used by BellSouth. In support of this contention, BellSouth relies upon the PWC Attestation report and the CLEC ordering manual.<sup>58</sup> While BellSouth acknowledges differences in the ordering system exist, such as the use of three Local Carrier Service Centers ("LCSCs"), it argues that such differences are not state-specific and thus, are of no consequence. As to the LCSC, BellSouth asserts that the difference in location is irrelevant because CLECs were assigned to a single LCSC

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<sup>55</sup> *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 3-6; *see also Redacted Direct Testimony of Ronald Pate*, (filed November 19, 2001) pp. 2-3. -

<sup>56</sup> *See OSS Docket* (Transcript of Hearing, December 4, 2001, p. 146)

<sup>57</sup> *See OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) p 6.

<sup>58</sup> *See id.*, pp. 10-11.

regardless of the state in which they did business and all personnel at the Centers attend the same training programs.<sup>59</sup>

BellSouth asserts the comprehensive business rules and guides it produces and publishes are also regional, existing as a resource for CLECs regardless of location. BellSouth also contends that it provides regional training for CLECs regardless of the state they serve.<sup>60</sup>

BellSouth acknowledges that the Service Order Negotiation System ("SONGS") is unique to the South Central Bell states and differs from its counterpart in the old BellSouth states, Direct Order Entry ("DOE"). Nevertheless, BellSouth asserts that there is no material difference between the two systems because they perform the same function.<sup>61</sup>

BellSouth relies upon two assertions attested to by PWC: (1) that BellSouth uses the same pre-ordering and ordering OSS throughout its nine-state region to support wholesale CLEC activity and (2) that BellSouth's DOE and SONGS have no material differences in the functionality or performance for service order entry by the LCSC based on the criteria established in the Report of Management Assertions and Assertion Criteria in BellSouth Telecommunications OSS.<sup>62</sup> PWC's examination of the regionality of the functionality and performance of BellSouth pre-ordering and ordering OSS was based on the following criteria:

- The same Local Service Orders (LSRs), created from a single set of business rules are used for order entry.
- The Service Order Communication System (SOCS) requires the same LSR screening and validating procedure.

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<sup>59</sup> See *id.*, pp. 7-9; see also Rebuttal Testimony of Ken Ainsworth (filed November 20, 2001) pp. 2-3.

<sup>60</sup> See *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 7-8; see also Redacted Direct Testimony of Ronald Pate (filed November 19, 2001) pp. 14-15.

<sup>61</sup> See *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 9-10; see also Rebuttal Testimony of Ken Ainsworth (filed November 20, 2001) pp. 4-5.

<sup>62</sup> See *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 7-8; see also Revised Redacted Direct Testimony of Milton McElroy (filed December 4, 2001) pp. 31-33.

- Similar processes are used for creating a Service Order.
- SOCS requires checking for and clearing order entry or initiation errors.
- Both systems output must adhere to the Service Order edits housed in SOCS.<sup>63</sup>

BellSouth defines the “same” as follows:

the applications and interfaces implemented and available that are identical across the nine-state region. ‘Identical’ is one unique set of software coding and configuration (version) installed on either one or multiple computer servers that support all nine states in an equitable manner. The processes, personnel, and work center facilities are consistently available and employed across the nine-state region and there are no significant aspects to the processes, personnel, or work center facilities that would provide one state greater service level or benefit than the other states in the nine-state region.<sup>64</sup>

BellSouth asserts that its response to AT&T’s Interrogatory No. 36, which requested state-specific flow-through data that BellSouth failed to produce prior to the Hearing, was not relevant to a determination of regionality.<sup>65</sup> BellSouth admits that the flow-through numbers for the different states differ, but argues that “[t]hese numbers are not, nor should they be the same. CLECs order different product mixes. It is this variation in product type and complexity that causes differences in the flow-through numbers throughout the states.”<sup>66</sup>

BellSouth maintains that its provisioning system is regional because its LCSC Project Management organization, which coordinates large and/or complex provisioning and project implementation for CLECs, serves all CLECs throughout the nine-state region.<sup>67</sup> BellSouth contends that the personnel in its Network Services organization, who

<sup>63</sup> See Revised Redacted Direct Testimony of Milton McElroy (filed December 4, 2001) pp. 31-32.

<sup>64</sup> See *OSS Docket (BellSouth’s Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 12; see also Revised Redacted Direct Testimony of Milton McElroy (filed December 4, 2001) pp. 31-32.

<sup>65</sup> See *OSS Docket (BellSouth’s Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 29.

<sup>66</sup> See *id.*, p. 29; see also *(BellSouth’s Response to AT&T’s Interrogatory 36)* (filed February 21, 2002) p. 2.

<sup>67</sup> See *OSS Docket (BellSouth’s Phase I Post-Hearing Brief)* (filed March 1, 2002), pp. 18-20; see also Prefiled Direct Testimony of Kenneth M. Ainsworth (filed October 22, 2001) pp. 15-16.



provide provisioning, maintenance and repair services for CLECs doing business in Tennessee, do their jobs in the same manner as the Network Services employees in the other BellSouth states and that BellSouth therefore meets the definition of “sameness” the FCC established in its *Kansas/Oklahoma Order*.<sup>68</sup> BellSouth argues that any differences in performance from state to state result from a host of variables and state-specific considerations and these differences in performance are unrelated in any way to the sameness of BellSouth’s network operations among the nine states.<sup>69</sup> BellSouth asserts that the functions of its Central Office Operations groups, Engineering and Construction groups, Circuit Provisioning Group (CPG) and Installation and Maintenance (I&M) groups, none of which operate on a state by state level, demonstrate the regionality of its OSS.<sup>70</sup>

BellSouth insists that its provisioning and maintenance flows are the same across all nine states, supported by common methods, procedures and systems;<sup>71</sup> however, BellSouth explains that it cannot be expected to achieve identical performance in each state because of many variables beyond its control. BellSouth lists several variables such as government regulations, weather, economic conditions, variation in the types of services that customers order, variation in customer physical arrangements and types of equipment, and delays caused by customers not being ready that can and do affect performance.

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<sup>68</sup> See *OSS Docket (BellSouth’s Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 18-20 (referring to *Joint Application by SBC Communications, Inc. et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC 01-29, 16 F.C.C.R. 6237, 2001 WL 55637 (*memorandum Opinion and Order*) (released January 22, 2001) ¶ 113); see *Prefiled Direct Testimony of Alfred Heartley* (filed October 22, 2001) p. 2.

<sup>69</sup> See *OSS Docket (BellSouth’s Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 23; see *Prefiled Direct Testimony of Alfred Heartley* (filed October 22, 2001) pp. 3-4.

<sup>70</sup> See *OSS Docket (BellSouth’s Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 23; *Prefiled Direct Testimony of Alfred Heartley* (filed October 22, 2001) pp. 6-7.

<sup>71</sup> See *OSS Docket (BellSouth’s Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 23-24; see also *Prefiled Direct Testimony of Alfred Heartley* (filed October 22, 2001) pp. 15-17.



BellSouth also states that variations in network topology can affect the validity of demand forecasts and thereby cause differences in performance results, because CLECs often do not inform BellSouth ahead of time about locations and customers that they plan to target.<sup>72</sup>

BellSouth asserts that it uses a single version of each of the Legacy Systems that support provisioning, maintenance and repair, and that those systems handle CLEC and BellSouth service orders on a nondiscriminatory basis, in compliance with the FCC requirement that Bell operating companies ("BOCs") show that components of manual processes operate pursuant to a common organizational structure, common methods and procedures and common training.<sup>73</sup> BellSouth disputes AT&T's claim that BellSouth's sameness showing is deficient because the work groups that handle manual processes are organized on a geographic basis. BellSouth argues that the work groups are in different locations because they need to serve local customers, not because they do their jobs differently.<sup>74</sup>

BellSouth opposes AT&T's presumption that the same processes must produce identical results, arguing that variables beyond BellSouth's control (including weather, topology, local regulations and different order volumes) are the reason for any differences in results between states. BellSouth maintains that the FCC did not require in its *Kansas/Oklahoma Order* that performance in those states be the same as in Texas in order

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<sup>72</sup> See *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 23-24; see also *Prefiled Direct Testimony of Alfred Heartley* (filed October 22, 2001) pp. 18-20.

<sup>73</sup> See *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 24-25; see also *Prefiled Rebuttal Testimony of Alfred Heartley* (filed November 20, 2001) p. 4.

<sup>74</sup> See *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 24-25; see also *Prefiled Rebuttal Testimony of Alfred Heartley* (filed November 20, 2001) p. 5.

for the FCC to accept Southwestern Bell Corporation's claim of OSS regionality.<sup>75</sup> BellSouth argues that the relevant question should be whether the systems and processes are the same, not whether the results are the same, and the FCC has determined that sameness of electronic processes may be demonstrated by showing either that the same systems or systems are used or that the systems "reasonably can be expected to behave in the same way."<sup>76</sup>

**B. AT&T, TCG, SECCA and MCI WorldCom**

AT&T, TCG, SECCA and MCI WorldCom (collectively "the CLECs") argue that BellSouth's pre-ordering OSS is highly regional but has some areas that are low to moderately regional.<sup>77</sup> Specifically, the CLECs contend that although LENS, TAG, and RoboTAG are largely regional, the information the systems interact with can be state-specific.

The CLECs submit that the Legacy Systems, from which pre-ordering information from TAG and LENS is accessed, are not regional because the data within the systems differ by state and there are different physical systems to support different states. The CLECs argue that by its nature the systems are inherently geographic and therefore are not regional.<sup>78</sup> The CLECS suggest that because the Legacy Systems operate from different servers connected by different linkages that vary by state, varied response time, loads and levels of reliability may result.

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<sup>75</sup> See *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 25; see also *Prefiled Rebuttal Testimony of Alfred Heartley* (filed November 20, 2001) pp. 2-3.

<sup>76</sup> See *OSS Docket (BellSouth's Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 27; see also *Prefiled Rebuttal Testimony of Alfred Heartley* (filed November 20, 2001) p. 3.

<sup>77</sup> See *OSS Docket (The CLECs' Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 9; see also *Rebuttal Testimony of Jay Bradbury*, (filed November 20, 2001) Exhibit JMB-R3.

<sup>78</sup> See *OSS Docket (The CLECs' Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 9-11; see also *Direct Testimony of Jay Bradbury* (filed October 22, 2001) p.9-12.

The CLECs contend that the ordering centers and the ordering systems are moderately regional, but the manual order processing is less regional.<sup>79</sup> In support of this contention the CLECs observe that the three LCSCs, located in Flemming Island, Florida, Atlanta, Georgia and Birmingham, Alabama, do not perform the same functions. The Flemming Island Center is predominantly responsible for answering CLEC questions while Atlanta and Birmingham process the partially mechanized and manual orders. The CLECs assert that the Atlanta LCSC handled sixty-six percent (66%) of all manually processed orders for the states of Florida and Georgia, while sixty-six percent 66% of the orders handled in Birmingham originated from the seven other BellSouth states.<sup>80</sup> According to the CLECs, their orders are assigned exclusively to either the Atlanta or Birmingham LCSC and because the two are not equally balanced by state the LCSCs are not regional.

The CLECs further argue that the ordering process may not be regional since SONGS is used in the former South Central Bell states, and DOE is used in the former Southern Bell states. The CLECs claim that the regionality of the ordering OSS cannot be confirmed without more information from BellSouth.<sup>81</sup> Regarding Interrogatory No. 36, the CLECs argue that the differing results by state are further proof that the systems are not regional.<sup>82</sup>

The CLECs maintain that the PWC Attestation was materially flawed in both design and execution, rendering the results unreliable.<sup>83</sup> The CLECs argue that the

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<sup>79</sup> See *OSS Docket (The CLECs' Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 10; see also Direct Testimony of Jay Bradbury (October 22, 2001) p. 8.

<sup>80</sup> See *OSS Docket (The CLECs' Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 11; see also Direct Testimony of Jay Bradbury (October 22, 2001) p.16.

<sup>81</sup> See *OSS Docket (The CLECs' Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 10-11; see also Direct Testimony of Jay Bradbury (October 22, 2001) p.16.

<sup>82</sup> See *OSS Docket (The CLECs' Phase I Post-Hearing Brief)* (filed March 1, 2002) pp. 25-26.

<sup>83</sup> See *OSS Docket (The CLECs' Phase I Post-Hearing Brief)* (filed March 1, 2002) p. 31.

Attestation's reliability is limited by its scope, which included a review of code of different OSS systems but failed to include an analysis of the code for functional differences.<sup>84</sup> Furthermore, according to the CLECs, PWC reviewed the systems for sameness but was not asked to verify that these systems produced the same results. The CLECs argue that PWC failed to qualify as significant the average input times for DOE and SONGS.<sup>85</sup> Finally, the CLECs question the relationship between PWC and BellSouth as well as the relationship between Mr. Lattimore and BellSouth. In support of this assertion they cited that BellSouth was Mr. Lattimore's biggest customer and that he spends sixty percent (60%) of his time on the BellSouth account.<sup>86</sup>

### **Standard of Review**

In reviewing the evidence and arguments of the parties with regard to the issue of whether the CLECs are provided nondiscriminatory access to BellSouth's OSS, the Authority is guided by a series of FCC orders beginning in August 1996 which addresses the standards and legal obligations for the provision of OSS.<sup>87</sup> BellSouth is statutorily mandated to provide nondiscriminatory access to its network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just,

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<sup>84</sup> See *OSS Docket* (The CLECs' *Phase I Post-Hearing Brief*) (filed March 1, 2002) pp. 25-27, 32; see also (Transcript of December 5, 2001 Hearing, p. 56).

<sup>85</sup> See *OSS Docket* (The CLECs' *Phase I Post-Hearing Brief*) (filed March 1, 2002) p. 33; see also (Transcript of December 5, 2001 Hearing, pp. 163-64) (According to Mr. Lattimore, PWC concluded that it takes less time to enter an order into SONGS than it does to enter an order into DOE. "DOE and SONGS are two systems being used within either a partially mechanized performance metric or a manual performance metric, and we understood those to be either 36 hours for manually processed orders—and so when we look at it in the context of 36 hours, we're talking about a 3 minute difference.").

<sup>86</sup> See *OSS Docket* (The CLECs' *Phase I Post-Hearing Brief*) (filed March 1, 2002) p. 35; see also (Transcript of December 5, 2001 Hearing, p.37) (Mr. Lattimore admitted that PWC received approximately \$30 million from BellSouth during fiscal 2000 as well as \$800,000 for the attestation.).

<sup>87</sup> See *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, 13 FCC Rcd 20599, 20655, 1998 WL 712899 (*Second Louisiana Memorandum Opinion and Order*) (released October 13, 1998) ¶91.

reasonable and nondiscriminatory.<sup>88</sup> The burden is on BellSouth to prove that it does so.<sup>89</sup>

### **The May 21, 2002 Authority Conference**

During the May 21, 2002 Authority Conference, the Directors deliberated on the issue of whether BellSouth established that its OSS was regional. The parties in attendance at the Authority Conference included Guy M. Hicks, Esq., representing BellSouth, Henry Walker, Esq., representing SECCA, and Marsha Ward, representing MCImetro. Michael A. Hopkins, Esq., representing AT&T, appeared telephonically.

As a preliminary matter, the Authority observed that BellSouth had filed a *Notice of Supplemental Authority* on May 16, 2002 in which it sought to supplement the record in this docket with the FCC Order issued on May 15, 2002 which approved BellSouth's application pursuant to 47 U.S.C. § 271 for interLATA authority in Georgia and Louisiana.<sup>90</sup> The parties were asked to comment on the impact of the FCC Order on the Authority's deliberations on regionality.

BellSouth requested that the Authority take administrative notice of the FCC Order, not as supplemental evidence, but as legal authority.<sup>91</sup> When asked about the applicability of the statutory obligation to provide an opportunity to rebut information so noticed,<sup>92</sup> BellSouth responded that the CLECs had not requested an opportunity to rebut. AT&T then inquired of BellSouth's purpose in seeking administrative notice, arguing that taking

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<sup>88</sup> See *id.*, ¶ 116; see also 47 U.S.C. § 251(c)(3); 47 U.S.C. § 271(c)(2)(B)(ii); Tenn. Code Ann. §§ 65-4-123 and 65-4-124(a).

<sup>89</sup> *Second Louisiana Memorandum Opinion and Order*, ¶ 91-92, 116; see also *Joint Application by SBC Communications, Inc. et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC 01-29, 16 F.C.C.R. 6237, 2001 WL 55637 (*memorandum Opinion and Order*) (released January 22, 2001) n.86; *Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996*, FCC Docket No. 97-298, 12 F.C.C.R. 20,543, 1997 WL 522784 (*Memorandum Opinion and Order*) (released August 19, 1997) ¶204; 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>90</sup> See note 1 for full citation of the FCC Order.

<sup>91</sup> See *OSS Docket* (Transcript of May 21, 2002 Authority Conference, pp. 21-22).

<sup>92</sup> See Tenn. Code Ann. § 4-5-313(6); 65-2-109(4).

such notice of factual findings would be inappropriate at this stage of the proceedings, but the Authority could decide whether the document was controlling as legal authority.<sup>93</sup> BellSouth noted that AT&T had had the opportunity to contest the facts during the FCC proceeding. SECCA asserted that taking administrative notice of the FCC order was unnecessary, because the Authority could cite the FCC Order, as it could any other legal authority, without doing so. SECCA stated that insofar as BellSouth was requesting the Authority to recognize that the FCC Order existed, it did not oppose BellSouth's request.<sup>94</sup>

After considering the parties' comments, the Authority unanimously voted to take notice of the FCC Order as requested. The Directors then turned to consideration of whether BellSouth established that it fulfilled its duty to provide wholesale services to competitors in a manner and quality that is the same in all material respects as equivalent services that BellSouth itself uses to provide retail services.<sup>95</sup> The Authority observed that in this proceeding, BellSouth elected to demonstrate that it allowed nondiscriminatory access to its network elements by showing that its systems are the same in all material respects to those systems or processes that have been tested or are being tested by an independent third party in Georgia and Florida.

In their deliberations, the Directors employed the definition of regionality provided by BellSouth's witness, Milton McElroy: that the applications and interfaces implemented and available are identical across the nine-state region. Under this definition, "identical" means one set of software coding and configuration installed on either one or multiple computer servers that support all nine states in any equitable manner.<sup>96</sup>

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<sup>93</sup> See *OSS Docket* (Transcript of May 21, 2002 Authority Conference, p. 22).

<sup>94</sup> See *id.*, p. 27.

<sup>95</sup> The Authority was not able to follow the issues list adopted during the September 6, 2001 Pre-Hearing Conference because the evidence presented did not address those issues.

<sup>96</sup> See *id.*, p. 32.

A majority of the Directors<sup>97</sup> determined that where any material OSS component is found to be not regional, then the process of which that component is a part is necessarily not regional as well. Using that construct, a majority of the Directors separately analyzed the regionality of BellSouth's pre-ordering, ordering, provisioning, repair and maintenance and billing systems.

With regard to the pre-ordering system, a majority of the Directors found, after reviewing the evidence, including the Georgia and Florida Master Test Plans, that BellSouth had successfully demonstrated the regionality of TAG, LENS, RoboTAG and LFACS. The same majority found that BellSouth failed to provide sufficient evidence that its loop make-up process, its Legacy Systems, RSAG and ATLAS are regional and BellSouth failed to provide any evidence to support its claim of regionality for many methods, processes and systems identified in the Master Test Plans, including but not limited to Fax Server, EXACT, CLEC Reports, Capacity Management, Force Models ISO Quality System and Performance Measurement Plan. Accordingly, a majority of the Directors concluded that, based on the evidentiary record, BellSouth failed to satisfy its burden of proving that BellSouth's pre-ordering system is regional.

A majority of the Directors then turned to BellSouth's ordering system, observing that BellSouth had relied upon the PWC attestation and report and the CLEC ordering manual to prove that the systems, processes and centers that exist to support CLEC ordering are either the same or designed to function in the same manner. It was noted that PWC had concluded that BellSouth's systems are regional and that there are no material

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<sup>97</sup> Chairman Kyle did not vote with the majority on the issue of the regionality of each of the components of BellSouth's OSS. At the conclusion of the deliberations, Chairman Kyle provided a comprehensive explanation for her vote which is quoted in full at footnote 103.



differences between SONGS and DOE and its LCSC. A majority of the Directors concluded that they could not rely on the results of PWC's review of the ordering system because it was limited to sameness and did not attempt to validate whether BellSouth's systems produced substantially the same results. According to the majority, a conclusory prediction of regionality based upon sameness disregards the ultimate goal of performance evaluation. A majority of the Directors determined that without such an investigation a conclusive finding of regionality cannot be reached. The same majority, based upon their review of the Georgia and Florida test plans, determined that BellSouth proved the regionality of TAG, LENS, EDI, CSOTS and the BellSouth Business Rules for Local Ordering, but failed to provide sufficient evidence to establish that its Electronic Legacy Systems and the Manual Legacy Work Groups are regional. A majority of the Directors found that BellSouth failed to address the regionality of many of the components of its ordering system, including but not limited to the following: Corporate Real Estate Process Flow, CLEC Reports, BellSouth Force Models, Performance Measurement Plan, the API Guide, RoboTAG User Guide, LENS User Guide, EDI Specification, Products and Services Interval Guide and the LISC Business Rules Data Dictionary. The same majority concluded, based on the evidentiary record in this proceeding, that BellSouth's ordering system is not regional.

The Authority then turned to provisioning, considering first BellSouth's contentions that (1) its provisioning and maintenance flow are the same across the nine BellSouth states, supported by common methods, procedures and systems; (2) it cannot be expected to achieve identical performance in each state because of many variables beyond



its control, including weather, government relations and economic conditions; and (3) sameness of system results is not relevant because sameness may be demonstrated with proof that electronic processes use either the same systems or systems that reasonably can be expected to behave in the same way.

A majority of the Directors determined that the record demonstrated that BellSouth published a single list of Business Rules for Local Ordering, and the evidence was sufficient to establish that these rules are regional as are BellSouth's EDI, LENS and LFACS. The same majority concluded that BellSouth had not produced any evidence on such work groups as the Work Management Center (WMC) and Circuit Provisioning Group (CPG), nor has it shown that the Address/Facility Inventory Group (AFG) that supports its Tennessee operations performs the same as the Address/Facility Inventory Group that supports Georgia and Florida. A majority of the Directors concluded that in applying either a standard of expected behavior or a standard of actual performance, the latter of which is preferable, the relatively elevated degree of manual processing involved in BellSouth's provisioning systems likely results in either actual performance or expected behaviors that are dissimilar across the nine-state region. The same majority found that BellSouth failed to present sufficient evidence to demonstrate the regionality of the following OSS components: BellSouth SQM, Methods and Procedures, CLEC Facilities-Based Advisory Guide, CLEC Report on BellSouth's Website, CCSS, Complex Resale Support Group Methods and Procedures, DSAP, EXACT, Job Aid for CLEC Pending Facilities Report on BellSouth's Interconnection Website, LEO, LIST, LNP Gateway, LON, NISC, NISC Method and Procedures, ORBIT, Pending Order Status Job Aid,

Products and Service Interval Guide, RNS, SOAC, SOCS, SWITCH, TAG, API Guide, Technicians' Methods and Procedures, TIRKS, UNE Center Methods and Procedures and WFA Log Notes. Based on the foregoing, a majority of the Directors found that BellSouth's provisioning OSS is not regional.

The Authority then focused on billing, acknowledging that BellSouth views its billing and collections group as a single group located in Atlanta, Georgia and Birmingham, Alabama that uses the same processes and procedures to provide CLECs across the nine-state region with a single point of contact to establish master accounts and for billing and collection issues. A majority of the Directors concluded that, although BellSouth's view of its billing may be supportable, BellSouth failed to provide sufficient evidence necessary to determine the regionality of any of the OSS components used in BellSouth's billing services. Specifically, BellSouth failed to submit sufficient evidence to support its assertion that the following systems are regional: ACD, assignment of responsibility for function, BDATS, BIBS, BOCABS, BOCRIS, CABS, CMIA, CMTS, compliance with OBF Guidelines, Connect Direct, CRIS, customer Internet documentation, dedicated personnel assigned to task, Help Desk specifically assigned to these tasks, ICABS Internet documentation on bill re-send process. A majority of Directors determined that, based upon the evidentiary record in this proceeding, BellSouth's billing OSS is not regional.

The Authority then analyzed BellSouth's maintenance and repair OSS, comparing the positions of the parties. BellSouth contends that the TAFI system that provides CLECs with functionality is superior to its own TAFI system because the former can process both

residence and business trouble reports on the same processor. The CLECs counter that the electronic and manual Legacy Systems that support maintenance and repair functions in Tennessee have a low degree of relative regionality and that the Georgia OSS testing failed to test all of them. A majority of Directors determined that BellSouth presented no evidence to support its position, reasoning that any meaningful measure of regionality must produce comparable results. For example, according to the same majority, although BellSouth argues that its installation and maintenance work forces operate under a regional organization structure using regional training and regional methodology, BellSouth produced no evidence showing that installation and maintenance work forces serving Tennessee actually perform the same or similarly to those serving Georgia or Florida. A majority of the Directors found that BellSouth failed to provide sufficient support demonstrating the regionality of WMOC, WFA and LMOS, CO Methods and Procedures, CLEC TAFI, ECTA, I&M Methods and Procedures, ISO 9002 Audit, Joint Implementation Agreement for ECTA, LMOS, Operational Understanding, RCMAG Methods and Procedures, TAFI, UNE Center Methods and Procedures and WMC Methods and Procedures. The same majority concluded that, based on the evidentiary record in this proceeding, BellSouth's maintenance and repair OSS is not regional.

The decision of the majority on the regionality of BellSouth's OSS was based in part on evidence that was not addressed in the FCC order released on May 15, 2002, approving BellSouth's Georgia/Louisiana Section 271 application. This information included BellSouth's response to AT&T's Interrogatory No. 36, which was the subject of a heated discovery dispute. During the Authority Conference, a majority of the

Directors determined that an empirical analysis of the OSS performance data presented in BellSouth's response to Interrogatory No. 36 provided statistically significant results indicating that BellSouth provides different levels of service to CLECs in different states (attached hereto as TRA Exhibit 1). The empirical analysis addressed monthly state-specific measures of "Percent Flow Through" of CLECs' Local Number Portability orders for ten (10) months in 2001.<sup>98</sup> A majority of the Directors determined that this analysis revealed statistically significant disparities in Local Number Portability Percent Flow Through data across BellSouth's nine-state region which show that the pre-ordering and ordering components of BellSouth's OSS are not regional, even under BellSouth's own definition of OSS regionality.<sup>99, 100</sup>

As concerning the FCC's reliance on the PWC attestation in the FCC's order approving BellSouth's Georgia/Louisiana Section 271 application, a majority of the Directors took issue with the FCC's reference to the attestation as an "audit" when Mr. Lattimore specifically testified that BellSouth did not hire PWC to perform an audit

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<sup>98</sup> Percent Flow-Through is a measurement of the percentage of CLEC orders that "flow through" BellSouth's system electronically. Orders that do not flow through are handled manually, which adds to the time it takes BellSouth to complete the orders. BellSouth recommended "Percent Flow-Through" of CLECs' Local Number Portability as the best test of its performance. The handling of Local Number Portability orders does not depend on technical complexities associated with orders for unbundled network elements. Nor is it materially affected by interstate differences in technical complexities (e.g., UNE orders) of CLECs' wholesale orders, local weather conditions, or local permitting requirements, factors which BellSouth has relied upon to explain interstate disparities in its performance. A majority of the Directors concluded that the Local Number Portability flow-through data raises questions about BellSouth's explanation for interstate disparities in its flow-through performance data, an issue of importance because Local Number Portability is crucial to competition.

<sup>99</sup> BellSouth's definition of "regionality" was offered by Milton McElroy. Under his definition, "identical" means one set of software coding and configuration installed on either one or multiple computer servers that support all nine states in any equitable manner.

<sup>100</sup> AT&T introduced an exhibit during the Hearing (Exhibit No. 8) which contains state-specific Firm Order Completion (FOC) timeliness measurements for Tennessee, Georgia and Florida. AT&T introduced Exhibit No. 8 in its cross-examination of BellSouth witness Ronald M. Pate. According to AT&T, Exhibit No. 8 was prepared using data obtained from BellSouth's Interconnection Website, for the month of August 2001, and was presented as a surrogate to the state specific flow-through data requested in Interrogatory No. 36. The data contained in Exhibit No. 8 indicates a material disparity in the percent of Total Mechanized FOCs between Tennessee, Georgia and Florida which is consistent with findings of the majority of the Directors concerning the regionality of BellSouth's OSS.

assessing the regionality of BellSouth's OSS. The same majority found that PWC's attestation was seriously flawed by its failure to analyze OSS code or adequately analyze actual performance data, and by its failure to review BellSouth's highly complex ordering process for a sufficient period of time.<sup>101</sup>

Further, testimony from the December 3<sup>rd</sup> through 6<sup>th</sup> Hearing convinced a majority of the Directors that BellSouth had exerted inappropriate influence on PWC's attestation of the regionality of BellSouth's OSS. Such evidence included the fact that during the attestation review, BellSouth limited PWC's access to certain BellSouth employees who were in training and could not participate in the PWC review by placing balloons over their chairs. Given that the trainees were actually taking live orders, such action should have been questioned, if not challenged by PWC.<sup>102</sup> In addition, during the December Hearing, while PWC was testifying on the merits, BellSouth's legal counsel announced that PWC was being represented by BellSouth. During the Hearing, the PWC representative, James Lattimore, testified that BellSouth was his biggest client and he spent approximately sixty percent (60%) of his time on work related to BellSouth over the past several years and BellSouth paid him approximately \$800,000 for his two-page attestation. Although, when viewed in isolation, each of the foregoing facts may not rise to a questionable level, taken together, they seriously undermine the independence and objectivity necessary for the Authority to rely upon the representation of PWC. Therefore, a majority of the Directors found that this evidence was indicative of a relationship between BellSouth and PWC that lacked independence and objectivity.

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<sup>101</sup> PWC's review was limited to a single month.

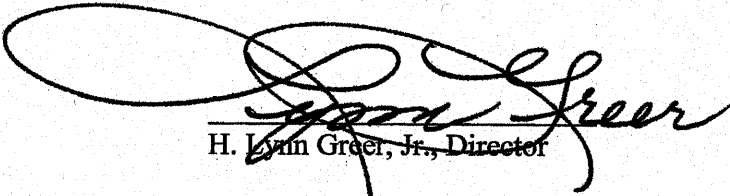
<sup>102</sup> See *OSS Docket* (Transcript of Hearing, December 5, 2002, pp. 156-57).

**IT IS THEREFORE ORDERED THAT:**

1. The Authority hereby takes judicial notice of notice of the FCC order released on May 15, 2002 approving BellSouth's application pursuant to 47 U.S.C. § 271 for interLATA authority in Georgia and Louisiana.
2. BellSouth failed to satisfy its burden of establishing that its pre-ordering, ordering, provisioning, maintenance and repair and billing systems are regional.


\* \* \* \* \*

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Sara Kyle, Chairman<sup>103</sup>

  
\_\_\_\_\_  
H. Lynn Greer, Jr., Director

  
\_\_\_\_\_  
Melvin J. Malone, Director

ATTEST:

  
\_\_\_\_\_  
K. David Waddell, Executive Secretary

<sup>103</sup> Chairman Kyle did not vote with the majority on the findings that BellSouth's OSS was not regional. During deliberations, she stated:

Based on, number one, the evidentiary record of OSS, number two, my judgment, and number three, the approval of Georgia's and Louisiana's 271 application by the Federal Communications Commission, it is my vote that Bell's OSS meets the requirements of Sections 251 and 252 of the federal act and fulfills our charge from the Tennessee General Assembly to promote competition in Tennessee. This would be another step toward 271, which I feel would be of great benefit to Tennessee consumers.

TRA Exhibit 1

Docket No. 01-00362

"Percent Flow-Through" for Local Number Portability

Date	Former South Central Bell States					Former Southern Bell States		
	Tennessee	Kentucky	Alabama	Mississippi	Louisiana	Georgia	Florida	S. Carolina
March-01	64.09	85.09	66.67	50.00	80.00	94.91	89.08	56.19
April-01	64.25	92.41	63.64	33.33	77.78	92.90	89.28	88.31
May-01	62.72	94.76	27.27	75.00	90.00	94.51	91.54	75.34
June-01	71.69	96.19	66.67	33.33	62.50	95.39	92.12	75.88
July-01	71.76	90.93	26.92	66.67	62.22	88.07	88.37	79.29
August-01	64.11	95.05	69.23	50.00	71.88	86.28	83.88	85.99
September-01	71.79	93.80	66.67	50.00	82.17	90.83	85.71	87.39
October-01	84.18	94.62	79.31	33.33	84.07	94.18	86.81	73.49
November-01	85.19	90.44	87.23	33.33	80.50	96.23	90.04	88.96
December-01	83.48	92.50	80.00	14.29	83.15	94.36	85.67	86.71
2001 Average	72.33	92.58	63.36	43.93	77.43	92.77	88.25	79.76

Date	Regional Averages*			BST-defined "Region" ***
	South Central	Southern	BellSouth	
March-01	69.17	77.51	72.88	89.32
April-01	66.28	86.81	75.40	89.28
May-01	69.95	83.63	76.03	90.65
June-01	66.08	86.44	75.13	91.61
July-01	63.70	84.57	72.98	86.36
August-01	70.05	84.09	76.29	84.40
September-01	72.89	85.55	78.51	86.96
October-01	75.10	82.39	78.34	89.09
November-01	75.34	89.01	81.41	91.24
December-01	70.68	84.11	76.65	87.62
2001 Average	69.92	84.41	76.36	88.65

\* Calculated as the sum of a region's state-specific Percent Flow Through monthly data divided by the region's number of states (i.e., 5, 4, 9).

\*\* Monthly data from BellSouth's response to Interrogatory No. 36.

Source: BellSouth's February 21, 2002, Response to Interrogatory No. 36





TRA Exhibit 1

Docket No. 01-00362

"Percent Flow-Through" for Local Number Portability

Date	Differences in "Percent Flow-Through" Rates						
	TN-LA	TN-GA	TN-FL	South-TN	uth-LA	ith-GA	South-FL
March-01	-15.91	-30.82	-24.99	8.79	-7.12	-22.03	-16.20
April-01	-13.53	-28.65	-25.03	11.15	-2.38	-17.50	-13.88
May-01	-27.28	-31.79	-28.82	13.31	-13.97	-18.48	-15.51
June-01	9.19	-23.70	-20.43	3.44	12.63	-20.26	-16.99
July-01	9.54	-16.31	-16.61	1.22	10.76	-15.09	-15.39
August-01	-7.77	-22.17	-19.77	12.18	4.41	-9.99	-7.59
September-01	-10.38	-19.04	-13.92	6.72	-3.66	-12.32	-7.20
October-01	0.11	-10.00	-2.63	-5.84	-5.73	-15.84	-8.47
November-01	4.69	-11.04	-4.85	-3.78	0.91	-14.82	-8.63
December-01	0.33	-10.88	-2.19	-6.83	-6.50	-17.71	-9.02
2001 Average	-5.10	-20.44	-15.92	4.04	-1.06	-16.40	-11.89

Date	Differences in "Percent Flow-Through" Rates				
	Region-BellSouth	Region-TN	Region-LA	Region-GA	Region-FL
March-01	16.44	25.23	9.32	-5.59	0.24
April-01	13.88	26.03	11.50	-3.62	0.00
May-01	14.62	27.93	0.65	-3.86	-0.89
June-01	16.48	19.92	29.11	-3.78	-0.51
July-01	13.38	14.60	24.14	-1.71	-2.01
August-01	8.11	20.29	12.52	-1.88	0.52
September-01	8.45	15.17	4.79	-3.87	1.25
October-01	10.75	4.91	5.02	-5.09	2.28
November-01	9.83	6.05	10.74	-4.99	1.20
December-01	10.97	4.14	4.47	-6.74	1.95
2001 Average	12.29	16.33	11.23	-4.11	0.40



TRA Exhibit 1

Docket No. 01-00362

"Percent Flow-Through" for Local Number Portability

Single Variable Correlation Coefficients

	TN	KY	AL	MS	LA	GA	FL	NC	SC	BellSouth	"Region"
TN	1.00										
KY	0.06	1.00									
AL	0.58	-0.06	1.00								
MS	-0.63	-0.05	-0.85	1.00							
LA	0.13	-0.08	0.19	-0.04	1.00						
GA	0.37	-0.19	0.34	-0.41	0.42	1.00					
FL	-0.16	-0.08	-0.33	0.20	-0.10	0.63	1.00				
NC	0.02	0.38	-0.12	0.17	-0.72	-0.41	0.12	1.00			
SC	0.29	0.49	0.20	-0.30	-0.02	-0.28	-0.32	0.42	1.00		
BellSouth	0.64	0.30	0.59	-0.37	0.46	0.28	-0.16	0.15	0.56	1.00	
"Region"	0.17	-0.05	0.10	-0.16	0.20	0.91	0.87	-0.09	-0.26	0.20	1.00

TRA Exhibit 1

Docket No. 01-00362

"Percent Flow-Through" for Local Number Portability

scriptive Statistic	Tennessee	Kentucky	Alabama	Mississippi	Louisiana	Georgia	Florida	N. Carolina	S. Carolina
Mean	72.33	92.58	63.36	43.93	77.43	92.77	88.25	76.87	79.76
Standard Error	2.84	1.02	6.50	5.70	2.90	1.05	0.85	1.52	3.22
Median	71.73	93.15	66.67	41.67	80.25	94.27	88.73	77.49	82.64
Standard Deviation	8.97	3.21	20.54	18.02	9.18	3.32	2.69	4.82	10.18
Sample Variance	80.47	10.33	422.09	324.55	84.28	10.99	7.23	23.21	103.64
Range	22.47	11.10	60.31	60.71	27.78	9.95	8.24	12.84	32.77
Minimum	62.72	85.09	26.92	14.29	62.22	86.28	83.88	69.71	56.19
Maximum	85.19	96.19	87.23	75.00	90.00	96.23	92.12	82.55	88.96

scriptive Statistic	South Central	Southern BellSouth	"Region"
Mean	69.92	84.41	88.65
Standard Error	1.22	0.97	0.73
Median	70.00	84.34	89.19
Standard Deviation	3.84	3.07	2.30
Sample Variance	14.76	9.43	5.30
Range	11.64	11.50	7.21
Minimum	63.70	77.51	84.40
Maximum	75.34	89.01	91.61

Source: BellSouth's February 21, 2002, Response to Interrogatory No. 36

TRA Exhibit 1

Docket No. 01-00362

"Percent Flow-Through" for Local Number Portability

Ordinary Least Squares Regression Analysis

Dependent Variable: Percent Flow-Through

Variable	Interpretation Aid	DF	Estimate	Std. Error	t-Value	Pr >  t
Intercept	all else = 0	1	68.8403	5.0162	13.7200	<.0001
AL	relative to TN	1	-8.9650	5.0162	-1.7900	0.0781
GA	relative to TN	1	20.4400	5.0162	4.0700	0.0001
FL	relative to TN	1	15.9240	5.0162	3.1700	0.0022
KY	relative to TN	1	20.2530	5.0162	4.0400	0.0001
LA	relative to TN	1	5.1010	5.0162	1.0200	0.3126
MS	relative to TN	1	-28.3980	5.0162	-5.6600	<.0001
NC	relative to TN	1	4.5430	5.0162	0.9100	0.3681
SC	relative to TN	1	7.4290	5.0162	1.4800	0.1430
APR	relative to March	1	2.5267	5.2875	0.4800	0.6342
MAY	relative to March	1	3.1533	5.2875	0.6000	0.5528
JUNE	relative to March	1	2.2511	5.2875	0.4300	0.6716
JULY	relative to March	1	0.0989	5.2875	0.0200	0.9851
AUG	relative to March	1	3.4167	5.2875	0.6500	0.5202
SEPT	relative to March	1	5.6356	5.2875	1.0700	0.2901
OCT	relative to March	1	5.4622	5.2875	1.0300	0.3050
NOV	relative to March	1	8.5367	5.2875	1.6100	0.1108
DEC	relative to March	1	3.7756	5.2875	0.7100	0.4775
Source		DF	Sum of Sq	Mean Sq		
Model		17.0000	19779.0000	1163.4496		
Error		72.0000	9058.3869	125.8109		
Corrected Total		89.0000	28837.0000			
Root MSE			11.2166			
Dependent Mean			76.3623			
Coeff Var			14.6886			
F Value		9.25				
Pr > F		<.0001				
R-Sq		0.6859				
Adj R-Sq		0.6117				

Source: BellSouth's February 21, 2002, Response to Interrogatory No. 36

## Acronyms

**ACD** = Automatic Call Distributor

**ADUF** = Access Daily Usage File

**AFIG** = Address Facility Inventory Group, located in Nashville performs the assignment functions and maintain records for copper cable and fiber facilities for Tennessee.

**ATLAS** (Application for Telephone number Load, Assignment and Selection): System that provides numbers for selection for telephone service.

**ATLAS DID** = Provides telephone numbers for Direct Inward Dialing

**ATLAS MH** = Provides telephone numbers for Multi-Line Hunting

**BBR LO** = BellSouth Business Rules for Local Ordering

**BDATS** = Billing Dispute Activity Tracking System (BellSouth management relies on reports generated by BDATS to track the volume of disputes and uses the information to make staffing decisions.)

**BIBS** = BellSouth Industrial Billing System:

We have customer records information system, or CRIS; the carrier access billing system, CABS; and a system called BIBS, which is the BellSouth industrial billing system, which is used to bill for unbundled network element usage. We use those systems to provide invoices and usage data to CLECs. These systems are physically processed in two data centers. One of those centers is in Birmingham which produces bills for Tennessee, Georgia, Alabama, Kentucky, Louisiana, and Mississippi. The other is in Charlotte, North Carolina. That center is used to produce bills and billing information for Florida, North Carolina, and South Carolina. To effectively manage the massive amounts of data processing required to keep the daily billing cycles running, customer accounts are actually segregated into twelve separate sets of databases depending on the state in which that account resides. Because of this, multiple occurrences of billing software are processed in parallel utilizing all of these databases; however, all of the software versions of CRIS, CABS, and BIBS are identical to each other and they are run on the same hardware for all states.<sup>1</sup>

...BIBS was added as an additional enhancement to provide CLECs with switch port usage.<sup>2</sup>

While the underlying logic for CRIS, CABS and BIBS is the same throughout the nine states served by BellSouth, state-specific and CLEC-specific differences within the systems are necessary due to account for such things as:

- different rates for products between states;
- varying tax rules that may be adopted by state and local governments;
- differences in the tariffs that have been approved by the Commissions;
- CLEC-specific differences in product rates or resale discounts.

<sup>1</sup> Testimony of David Scollard from Transcript of Hearing, December 6, 2001, pp. 101-102.

<sup>2</sup> Prefiled Direct Testimony of David Scollard, filed October 22, 2001, p. 4.

## Acronyms

To account for these differences, the reference tables BellSouth uses in its billing systems must carry state-specific and CLEC-specific information. However, the systems and processes used to maintain these tables, regardless of the state, are the same as those successfully tested in Georgia.<sup>3</sup>

Q. Okay. So what functions will that new [T]apestry or IBS perform that are currently being performed by another system?

A. There are several, I guess. First, the system I described as BIBS will be replaced and the usage for unbundled switchboards will actually go through the new system.<sup>4</sup>

**BOCABS** = Business Office Carrier Access Billing System<sup>5</sup> (?)

**BOCRIS** = Business Office Customer Record Inquiry System. An interface used within BellSouth to access CRIS and SOCS records from a single (non-windowing) terminal. (Provides service order information including Name, Address, Class of Service, Maintenance Plan, Restrictions, Features and Preferred Interexchange Carrier [PIC].): "The LCSC accesses the Business Office Customer Record Inquiry System ("BOCRIS") to obtain the CSR."<sup>6</sup>

**BRITE** = BellSouth Response Information Tracking Enabler

**CABS** = Carrier Access Billing System

**CAFE** = Common Access Front End (CAFE): A Web-based GUI to order trunks. CAFE sends ASRs to EXACT, the mainframe ordering system for ASRs.<sup>7</sup>

**CCSS** = Common Channel Signaling System

**CDIA** = Corporate Document and Information Access System - The BellSouth Electronic Library Service ("BELS") and the Corporate Document and Interface Access ("CDIA") systems offer web access to the documents relating to Network methods and procedures, as well as vendor related documents.

**CO-FWG** = Central Office - Frame Work Group

**CONNECT:Direct** = an electronic data feed available as either DIAL in or private line at speeds from 9.6KB to 56KB.

Through the capabilities provided by CABS, BellSouth provides bills to its IXC and retail customers in either an industry-developed print image format or in the OBF-developed Billing Data Tape (BDT) format. Print image bills can be obtained on paper, diskette or CD-ROM. BDT records can be delivered via magnetic tape (tape reels or cartridges) or Connect:direct transmission (point-to-point dedicated line data transfer).<sup>8</sup>

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<sup>3</sup> Prefiled Direct Testimony of David Scollard, filed October 22, 2001, p. 28.

<sup>4</sup> Testimony of David Scollard from Transcript of Hearing, December 6, 2001, p. 108.

<sup>5</sup> Staff assumes that this is the meaning of this acronym, although it does not appear in any testimony, nor was it addressed during the hearing.

<sup>6</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 2001, p. 25.

<sup>7</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 150.

<sup>8</sup> Prefiled Direct Testimony of David Scollard, filed October 22, 2001, p. 17.

## Acronyms

**CMTS** = Cable Modem Termination System

**COSMOS** (Computer System Mainframe Operations): Operations system designed to inventory and assign central office switching equipment and related facilities.<sup>9</sup>

**CPG** = Circuit Provisioning Group:

There is a Circuit Provisioning Group ("CPG") located in Nashville that designs and maintains records of facilities used for special services. The functions of the CPG are divided into low speed (less than DS1) and high capacity (DS1 and greater). The CPG designs low speed circuits and high capacity circuits. The CPG in Tennessee reports to a Director level in Tennessee, just as the CPG in Georgia reports to a Director level in Georgia. Those Directors then report to the Network Vice President for their respective state. All Network Vice Presidents report to the same Executive Vice President.<sup>10</sup>

**CRIS** = Customer Records Information System

**CRSG** = Complex Resale Support Group

**CSOTS** = CLEC Service Order Tracking System:

BellSouth utilizes a number of both on-line tools and centers to provide timely status information to CLECs. The CLEC Service Order Tracking System ("CSOTS") became available to CLECs in December 1999. This web-based electronic interface allows CLECs to view the status and SOCS image (excluding Remarks and Assignments) of their electronically and manually submitted service orders in SOCS. This tracking system is designed to provide CLECs with the capability to view service orders, determine order status, and track service orders.<sup>11</sup>

The CLEC Service Order Tracking System User's Guide is available at the Interconnection Web site and at the CSOTS Web site. A copy of the guide is attached as Exhibit OSS-28. A computer-based tutorial for new users is also available at the CSOTS site.<sup>12</sup>

BellSouth performed internal user acceptance testing (UAT) of CSOTS on October 21, 1999. This test demonstrated that CSOTS was functionally ready for CLEC testing. In addition, five CLECs participated in a carrier-to-carrier Beta test of CSOTS during October 25-29, 1999. The Beta test demonstrated that CSOTS was ready for use in full production.<sup>13</sup>

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<sup>9</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 13.

<sup>10</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 8.

<sup>11</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 2001, p. 33.

<sup>12</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 33.

<sup>13</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 156.

## Acronyms

[A] CLEC desiring more information on retrieving service order lists for posted orders needs only to review BellSouth's Web-based CLEC Service Order Tracking System ("CSOTS") User Guide. The same procedure is used whether the CLEC is accessing service order lists for Tennessee or specific end-users in any other state. In fact, a CLEC serving end users in multiple BellSouth states can retrieve a service order list for the entire region. If a list is desired for one or more of the individual states, the CLEC can then request a separate service order list for each state by clicking the Web option for such a list.<sup>14</sup>

**CTG** = Complex Translations Group

**CWINS** = Customer Wholesale Interconnect Network Services Center – "A single CWINS Center tracks and dispatches all CLEC Special Service orders and Special Service trouble tickets for all nine BellSouth states."<sup>15</sup>

A transaction from TIRKS also creates the control steps that are tracked by the CWINS Center. The work steps are tracked in the CWINS Center using WFA/C. Upon completion of the order by the Central Office Operations and I&M forces, WFA/DI and WFA/DO send a completion transaction to WFA/C. The CWINS Center then works with the CLEC on acceptance testing and order close-out. Once closed, the order is posted to the various systems to complete the process.<sup>16</sup>

**DLR** = Design Layout Record; also LMOS Display Line Record (displays the customer's Line Record in LMOS)

**DOE** = Direct Order Entry, used by BellSouth service representatives for service order entry in Florida, Georgia, North Carolina, and South Carolina.<sup>17</sup>

**DSAP** = Distributed Support Application

CLECs obtain due date calculations by initiating either a pre-order or a firm order request that contains the information required to obtain a due date calculation. BellSouth's response to the CLEC provides the due date calculation based upon established timelines governing the provision of the type of service ordered. The CLEC query is submitted through TAG to the DSAP for the specific central office serving that end user customer's telephone number.<sup>18</sup>

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<sup>14</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 186.

<sup>15</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 8.

<sup>16</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 16.

<sup>17</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 2001, p. 28.

<sup>18</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 90.



## Acronyms

The LSR for a stand-alone loop is distributed to the service representative to begin service order processing. The service representative verifies the LSR for accuracy and completeness, and types information from the document into DOE or SONGS, which then processes the LSR into SOCS. The service representative ensures that the order processes to AO or Pending ("PD") status, correcting errors detected in mechanized processing, if necessary. A FOC is transmitted to the CLEC via an electronically generated facsimile. CSOTS is manually updated with order numbers, due dates, the date and time the FOC was transmitted to CLEC, and any remarks. LSRs for UNE Loops associated with LNP will be discussed later in my testimony. If the LSR is inaccurate and/or incomplete, notification is transmitted to CLEC via an electronically generated facsimile advising the CLEC that the LSR is in clarification status and the reason for that status. Information related to the LSRs placement in clarification status, e.g., date, time, reason, is typed into CSOTS.<sup>19</sup>

**EBAG** = Electronic Billing Administration Group

**ECTA** = Electronic Communications Trouble Administration:

BellSouth also offers CLECs the machine-to-machine Electronic Communications Trouble Administration ("ECTA") Gateway which provides access to BellSouth's maintenance OSS supporting both telephone-number and circuit-identified services (i.e., designed and non-designed services). It supports both resold services and UNEs. To date, BellSouth has built five ECTA interfaces for CLECs. Two of those five are currently conducting various levels of testing, and one is actively using the ECTA interface. The other two still have the capability to access ECTA, but apparently have chosen not to do so for their own internal business reasons.<sup>20</sup>

BellSouth gives CLECs electronic access to its maintenance and repair OSS in a manner that far exceeds what is provided by the Web-based graphical user interface ("GUT") that Bell Atlantic had in place when it was approved by the FCC in December 1999.<sup>21</sup>

**EDI** = Electronic Data Interchange

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<sup>19</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 2001, pp. 69-70.

<sup>20</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 23.

<sup>21</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 160.



## Acronyms

**EXACT** = Exchange Access Control and Tracking System.<sup>22</sup>

The service representative in the LCSC inputs manually-submitted LSRs for Designed services into the Exchange Access Control and Tracking system ("EXACT") If the LSR comes in electronically and LESOG cannot issue the order, then it falls out for manual handling and the service representative issues the LSR through EXACT. The entry of the order is accomplished in substantially the same manner for both the retail and the resale/UNE situations, whether the customer belongs to a CLEC or BellSouth. Thus, it is the same customer "experience" in either case. After the service order is entered, the account team and project manager are notified by e-mail of the service order numbers and due dates. They follow up with the service centers and the end user customer or CLEC as necessary. These processes, with their substantial reliance on manual handling and paper forms, are common to both retail and CLEC complex orders. Thus, BellSouth provides to CLECs the ability to order complex services in substantially the same time and manner as it provides this ability to its retail customers and retail service representatives.<sup>23</sup>

**FACS** (Facility Assignments and Control System): An online system which maintains inventories and provides automatic assignment of outside plant and central office facilities. Its modules are LFACS and SOAC.<sup>24</sup>

**FOMS/FUSA** = Frame Operations Management System)/(Frame User assignment System Access: Stand-alone component of the SWITCH system which provides central office frame force administration and work packages.<sup>25</sup>

**ISO** = International Standards Organization

**LCSC** = Local Carrier Service Center

**LEO** = Local Exchange Ordering System<sup>26</sup>

**LEO IG** = Local Exchange Ordering Implementation Guide

**LFACS** = Loop Facility Assignment and Control System: An on-line system that performs loop plant and central office facility assignments or inventory functions.<sup>27</sup>

**LISC** = Local Interconnection Service Center

**LMOS** = Loop Maintenance Operations System. BellSouth OSS used for non-designed (POTS) trouble report management

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<sup>22</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 2001, p. 57.

<sup>23</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, pp. 149-150.

<sup>24</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 13.

<sup>25</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 13.

<sup>26</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 2001, p. 10.

<sup>27</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 13.

## Acronyms

**LNP Gateway** = The LNP Gateway is the major link in the LNP process because it supports both internal and external communications with various interfaces and processes, including the link between BellSouth and the CLECs for the electronic ordering of LNP. The electronic pre-ordering steps for LNP are the same as those for other UNEs and resale services. A clean and correct LSR for LNP is transmitted from the EDI or TAG ordering interface, then to the EDI or TAG gateways, and then to the LSR Router. The LSR Router sends LSRs for LNP to the LNP Gateway where error checks are performed for accuracy, completeness, and format. If an error is found, a reject notification is returned to the CLEC via EDI or TAG. If no errors are detected, the LSR is sent to LAUTO ("LNP Automation") for further processing. LAUTO interfaces with other BellSouth OSS to further check the LSR for validity. If an error is found, the error is recorded in the LNP Gateway database, and a clarification is returned to the CLEC. If LAUTO detects no errors and the LSR is eligible for mechanization, a service order is mechanically generated and transmitted to SOCS.<sup>28</sup>

For LSRs submitted electronically, CLECs receive completion notifications ("CNs") after a service order has been posted as complete in SOCS. A completion notification includes the date on which the order was completed. When SOCS is notified by downstream systems that an order has been completed, SOCS returns the completion notification to LEO. LEO then sends the completion notification electronically to the CLEC through EDI, TAG, or LENS, depending on which interface was used to submit the order. Except in the case of xDSL-compatible loops, which are sent back via SGG. In the case of LNP, the completion notification is returned via the LNP Gateway.<sup>29</sup>

**LON** = Local Order Number Tracking System (system used by LCSC)

**LQS** = Loop Qualification System

**LSOG** = Local Service Ordering Guidelines

**M&P** = Methods and Procedures

**M&R** = Maintenance and Repair

**MLT** = Mechanized Line Test

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<sup>28</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 134.

<sup>29</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 153.

## Acronyms

**MOBI** = Mechanized On-Line Billing System:

To determine the accuracy of orders input into DOE and SONGS, PwC reviewed the history log files maintained in SOCS. PwC documented the orders that experienced downstream system edit errors, which had to be subsequently corrected by a BellSouth service representative. PwC was unable to review SOCS history log files for some orders due to a change in the original order due date which resulted in an earlier completion of the order. The completed order history is purged from SOCS the day after an order completes. In these cases, PwC observed the final status of the order within the Mechanized On-line Billing System ("MOBI"). This allowed them to determine if the order had completed, was in pending status or had been cancelled.<sup>30</sup>

**MTR** = Multiple Trouble Reports

**NISC** = Network Infrastructure Support Center (includes AFIG, CPG, CTG, TCG and RCMAG)

**NSDB** (Network Services Database): Stores data received from the TIRKS system and SOAC system, distributes data to operations systems such as WFA/C, and receives completions and updates from WFA/C.<sup>31</sup>

**OBF** = Ordering and Billing Forum, an industry group hosted by the Alliance for Telecommunications Industry Solutions (ATIS)

**ODUF** = Optional Daily Usage File

**OPS-INE** = Operating System-Intelligent Network Element Group

**ORBIT** = On-line Reference By Intranet Technology

**PMAP** = Performance Management and Analysis Platform

**Predictor** = Identifies & verifies line features on the customer's line

**RCMAG** = Recent Change Management Administration Group. BellSouth's work center for administering vertical services translations in central offices.

**RNS** = Regional Negotiation System<sup>32</sup>

**RoboTAG** =

RoboTAG™ was not available at the time the Georgia test was developed. RoboTAG™ is a stand-alone product, which BellSouth sells to CLECs that choose not to develop applications to interact with the TAG gateway on their own. Currently, there are 337 CLECs/OCNs using LENS and 6 CLECs using RoboTAG™.<sup>33</sup>

**ROS** = Regional Ordering System<sup>34</sup>

**RSAG** = Regional Street Address Guide: System used by service centers during order negotiation to provide address validation.

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<sup>30</sup> Prefiled Direct Testimony of Milton McElroy, filed October 22, 2001, pp. 108-109.

<sup>31</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 13.

<sup>32</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 186.

<sup>33</sup> Prefiled Direct Testimony of Milton McElroy, p. 80.

<sup>34</sup> Prefiled Direct Testimony of Ronald Pate, filed October 22, 2001, p. 186.

## Acronyms

**SOAC** = Service Order Analysis & Control: Transfers service orders into assignment requests that it sends to LFACS for outside plant assignments and/or to COSMOS/SWITCH for central office assignments. Formats the assignment responses from LFACS and COSMOS/SWITCH into assignments and passes them to Service Order Communications System for distribution.

Excerpt from GA Master Test Plan (Exhibit MM4 of McElroy's Prefiled Direct Testimony):

### *2.1.2 Provisioning (Resale)*

The provisioning process begins once SOCS produces a complete and accurate service order. Once SOCS receives the order information, it is transmitted to the Service Order Analysis & Control System (SOAC). SOAC determines which downstream assignment and control systems require information necessary to complete order provisioning, based on information contained in the service order.<sup>35</sup>

**SOCS** = Service Order Control System. Used by BellSouth to keep track of the local service order process.

**SONGS** = Service Order Negotiation System, used by BellSouth service representatives for service order entry in Alabama, Kentucky, Louisiana, Mississippi, and Tennessee.<sup>36</sup>

**SWITCH**: (Not an acronym) Operations system that provides assignment and record-keeping functions to manage central office equipment, main distribution frames, facilities, and circuits.<sup>37</sup>

**TAFI** = Trouble Analysis Facilitation Interface. Man-to-machine interface used to process non-designed customer trouble reports.

**TAG** = Telecommunications Access Gateway

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<sup>35</sup> Prefiled Direct Testimony of Milton McElroy, Exhibit MM4 (GA Supplemental Test Plan Final Report, filed October 22, 2001, p. IV-6.

<sup>36</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 2001, p. 28.

<sup>37</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 13.

## Acronyms

### **Tapestry:**

During November and December, 2001, BellSouth plans to upgrade portions of the billing systems used to bill CLECs for unbundled switch ports and port / loop combinations (including the UNE-P). This effort has been referred to in certain venues as the "Tapestry" project. BellSouth refers to this initiative as the "Integrated Billing Solution" (IBS). The changes will involve usage processing functions currently being performed by BIBS, the calculation of charges for these products currently provided within CRIS today, and accounts receivable and financial tracking internal to BellSouth. The upgrade will also provide a flexible bill formatting tool for BellSouth to use in implementing OBF-directed changes to the bill formats for switch ports as well as different tools for the Service Reps to use in better serving the CLECs. Billing information currently provided to CLECs, i.e. Daily Usage Files, OBF compliant bill formats, CSR data and Billing Data Transmissions, will continue to be provided in compliance with industry formats and standards. The current schedule (subject to change driven by the results of system testing or other implementation concerns) calls for IBS to be implemented in Mississippi, Georgia and Florida by the end of 2001. Implementation in the remaining states in BellSouth's region is scheduled to be completed in 2002.<sup>38</sup>

**TCG** = Trunking Carrier Group

**TIRKS** = Trunk Inventory Record Keeping System: A number of mechanized conversion, interim, and ongoing inventory and assignment systems for facility equipment and circuit information used in trunks and Special Services operations.<sup>39</sup>

**WFA** = Work Force Administration:

[T]he issuance of a SOCS order and generation of an engineering design for a complex designed resale service causes the Work Force Administration ("WFA") system to generate a work activity schedule. The Overall Control Office ("OCO") which is responsible for the end-to-end provisioning and processing for designed coordinated services, utilizes WFA to track critical date activities through completion of the service order. The WFA system also loads work steps to the appropriate central office and field operations for work activities related to the service order. Complex services meeting project management criteria are assigned to a Project Manager, who verifies the service order accuracy, and tracks and monitors the order to completion. The ET in the CWINS Center reviews the WFA work lists for assigned critical date activities. Critical dates normally are Screen Date ("SCR"), Frame Continuity Date ("FCD"), and Due Date ("DD"). The ET reviews the order on the assigned critical dates, verifies a correct engineering document, initiates any action that may be necessary for problem resolution, and advises the CLEC of any jeopardy condition that could affect the Due Date. As appropriate, the ET also performs operational tests with the work groups in Network Operations to verify that the service meets designed requirements.

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<sup>38</sup> Prefiled Direct Testimony of David Scollard, filed October 22, 2001, p. 27, footnote 1.

<sup>39</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 13.

## Acronyms

Before contacting BellSouth, the CLEC should first complete an analysis of the end-user's trouble to determine that the problem is in the BellSouth network or facilities before it initiates a maintenance ticket to the CWINS Center. Once a trouble ticket is sent by a CLEC, the MA or ET in the CWINS Center gathers all the pertinent information from the CLEC (including the circuit identification), enters the ticket into the WFA system, and provides the trouble report number and commitment information to the CLEC. All the designed services trouble tickets are generated in the human-to-machine WFA - Control ("WFA/C") interface, which sends the tickets to either the WFA - Dispatch In or WFA - Dispatch Out modules to be worked by either a central office work group or an outside installation and maintenance work group, respectively, except where conditions are resolved up front with the technician.<sup>40</sup>

The issuance of the SOCS order and generation of the designed engineering document causes the WFA system to generate a work activity schedule. The CWINS Center uses this schedule to coordinate the installation, testing, and turn-up of the designed UNE. WFA is the system utilized by the OCO to track critical date activities through completion of the order. The WFA system loads work steps to the appropriate central office and field operations for activities required to complete service order activity.<sup>41</sup>

**WFA/C** = Work and Force Administration / Control: Directs and tracks the flow of work items to WFA/DI and WFA/DO. WFA/C facilitates communication between the WFA systems and external systems<sup>42</sup>

**WFA/DO** = Work and Force Administration / Dispatch Out: Loads, prioritizes, and schedules work assignments of outside POTS and Special Services installation and maintenance technicians, and provides on-line tracking and status of work requests and technicians.<sup>43</sup>

**WFA/DI** = Work and Force Administration / Dispatch In: Loads, prioritizes, and schedules work assignments of central office technicians, and provides on-line tracking and status of work requests and technicians.<sup>44</sup>

**WMC** = Work Management Center - POTS service orders and trouble tickets are tracked and dispatched from the WMC located in Knoxville that performs the work management functions for Tennessee.

**WFA Log Notes** = "Upon completion of the cutover activity, the CLEC is notified. Log notes are entered into WFA as part of the conversion process. These log notes are time stamped in the WFA system."<sup>45</sup>

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<sup>40</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 20001, pp. 46-48.

<sup>41</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 20001, p. 62.

<sup>42</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 12.

<sup>43</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 12.

<sup>44</sup> Prefiled Direct Testimony of Alfred Heartley, filed October 22, 2001, p. 13.

<sup>45</sup> Prefiled Direct Testimony of Ken Ainsworth, filed October 22, 20001, p. 63.



# TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director  
Ron Jones, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

October 9, 2002

Mr. Michael K. Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Chairman Powell:

The Tennessee Regulatory Authority recently determined that Bellsouth sufficiently complied with the requirements set forth in Track A and the 14 Point competitive Checklist and therefore recommends that the Federal Communications Commission (FCC) grant BellSouth's 271 application to provide in-region interLata services in Tennessee. As the Pre-Hearing Officer, I am writing this letter to provide some additional insight and to emphasize a few points to the Commission.

As you may know, this Recommendation comes after the submission of three (3) separate applications by BellSouth in Tennessee, including over 80,000 transcript pages and proceedings held over five (5) years. As you may also be aware, during the 2001-2 Legislative Session, the Tennessee General Assembly drastically amended the statutes regarding the Tennessee Regulatory Authority, including the appointment of an additional Director, resulting in a four (4) member agency. The Legislature, by statute, also instructed that the Authority would sit in panels of three (3) and that cases would be randomly assigned. The TRA Directors immediately developed a workable policy to meet the requirements of the law while keeping in mind judicial economy and timely review of pending matters.

As a new Director, and specifically as the Pre-hearing Officer in this Docket, I feel a certain responsibility to apprise you that although newly appointed we completed a thorough review of the record. We were fortunate to have seven other State Commission proceedings and recommendations to review, as well as the Georgia/Louisiana Orders from both the FCC and the Department of Justice.

As the Pre-Hearing process unfolded, it was apparent that the parties had agreed to many issues - substantive and procedural - and actually stipulated to a number of issues previously. In addition, in light of an extremely difficult budget year, and given the already lengthy history of this review in Tennessee, a consensus seemed more productive than another extended and expensive hearing. The parties were amenable to the suggestion of a "paper hearing", entered into settlement negotiations, and this collaborative, dispute resolution process resulted in what I believe to be a well-reasoned

Mr. Michael K. Powell, Chairman

October 9, 2002

Page 2

and fair agreement which allows for continued competition, a strong set of performance measures, self-enforcement of penalties, and a commitment by the TRA to insure an expedited process as issues arise post-271.

Having newly appointed Directors - rather than setting Tennessee back - actually may have encouraged a fresh approach. Likewise, the parties and the industry seemed to take advantage of this opportunity and hopefully will continue to be more collaborative in the years ahead in order to fully allow the Congressional intent of competition to flourish. We will all need to exhibit new approaches in an industry characterized by innovative technological change and agendas oftentimes involving policy-making rather than purely rate-setting.

The attached Advisory Opinion, I believe, will provide sufficient evidence that will support our conclusion that BellSouth has met the statutory requirements of Track A and the 14 point checklist. While we recognize that there is room for improvement on many sub-metrics included in the Performance Measurement Plan adopted by the TRA, we trust that as other states have noted, performance will continue to improve or penalties will immediately ensue.

It is important to note that our adoption of the Florida Performance Measurement Plan includes the addition of Tennessee specific data. In the interest of both time and expense, it seemed prudent to accept this well-reasoned Florida plan which was consistent with much of what the TRA staff had originally proposed as a Tennessee Performance Measurement Plan in the past. We hope that our staff will continue to be involved as such Plans evolve and new issues arise. We would welcome the opportunity to serve should you establish some type of Regional Committees regarding post-271 issues.

We are grateful for the parties' willingness to negotiate in good faith. The TRA Staff and the parties should be commended for their work in a less litigious, more collaborative environment in order to foster competition, improve services and encourage innovation for the citizens of Tennessee.

We respectfully submit this Advisory Opinion and hope that you will find it helpful and informative in your deliberative process.

Sincerely,



Deborah Taylor Tate  
Pre-Hearing Officer



**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**  
**August 29, 2002**

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of the  
Telecommunications Act of 1996*

Docket No. 97-00309

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**ORDER APPROVING SETTLEMENT AGREEMENT**

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This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Pat Miller, of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, during a Hearing that was continued from August 6 to August 7, 2002, for consideration of the Settlement Agreement entered into by the parties in this docket.

**Background**

On April 26, 2002 BellSouth submitted its third Section 271 filing to the Authority in this docket.<sup>1</sup> On May 8, 2002, Director Melvin Malone, serving as Pre-Hearing Officer, issued a Notice establishing a procedural schedule.<sup>2</sup> The parties proceeded with discovery pursuant to that Notice. On May 23, 2002, Pre-Hearing Officer

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<sup>1</sup> See 47 U.S.C. § 271.

<sup>2</sup> The terms of the former Directors of the Authority, Chairman Sara Kyle, and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Deborah Taylor Tate and Pat Miller was randomly selected and assigned to Docket No. 97-00309.

Malone issued another Notice directing the parties to reserve August 5 - 9, 2002 for the Hearing on the merits in this docket.

At a regularly scheduled Authority Conference held on July 23, 2002, the panel of Directors assigned to this docket voted unanimously to appoint Director Deborah Taylor Tate to act as Pre-Hearing Officer to prepare the docket for a hearing. A Pre-Hearing Conference was held on July 30, 2002. At the suggestion of the Pre-Hearing Officer, the parties initiated settlement negotiations. On July 30, 2002, the Pre-Hearing Officer issued a Notice informing the parties that the Hearing on the merits would commence on August 6, 2002. Immediately prior to the commencement of the Hearing, a Pre-Hearing Conference was convened on August 6 for the parties to report on the status of the settlement negotiations. At that time, the parties informed the Pre-Hearing Officer that the settlement negotiations were ongoing and requested additional time to continue with the negotiations. On August 7, 2002, the parties informed the Pre-Hearing Officer that they had reached a settlement agreement that would resolve matters of proof relating to the outstanding issues in this docket.

#### **August 7, 2002 Hearing and Authority Conference**

Immediately following the Pre-Hearing Conference on August 7, 2002, the Hearing in this matter was convened. Thereafter, Pre-Hearing Officer Tate informed the panel assigned to this docket that the parties had reached a proposed Settlement Agreement (attached hereto as Exhibit A). The parties then presented to the panel a summary of the Settlement Agreement and an explanation regarding how it affected this

docket and two other dockets: Docket No. 01-00362<sup>3</sup> and Docket No. 01-00193.<sup>4</sup> The parties also informed the panel that a number of the parties in this docket, Docket No. 97-00309, had agreed to the Settlement Agreement, and those parties that did not join in the Settlement Agreement had either withdrawn from the proceedings or concurred in the parties' agreement to submit the case to the panel for a decision based on the current record without conducting the previously scheduled evidentiary Hearing.

BellSouth summarized the Settlement Agreement for the panel as follows. With regard to Docket No. 97-00309, the parties proposed that the record should be closed as of July 31, 2002 and the case be submitted to the Directors for resolution based on that record. The parties agreed that no additional testimony, argument, briefs or opposition would be filed in the docket. The parties requested that the TRA publicly deliberate Docket No. 97-00309 on August 26, 2002.

As to Docket No. 01-00362, the parties agreed that they would ask the TRA to administratively close the docket. In addition, the parties proposed that the closing of the docket would not prevent any party from filing a complaint with the TRA regarding BellSouth's Operational Support System ("OSS").<sup>5</sup> The parties requested that the TRA provide expedited treatment to such complaints. The parties agreed, however, that no such complaints would be filed prior to the entry of an order by the TRA reflecting the TRA's decision in Docket No. 97-00309.

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<sup>3</sup> *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, Docket No. 01-00362.

<sup>4</sup> *Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, Docket No. 01-00193.

<sup>5</sup> "[T]he term OSS refers to the computer systems, databases, and personnel that incumbent carriers rely upon to discharge many internal functions necessary to provide service to their customers." *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, FCC Docket No. 98-72, CC Docket No. 98-56; 13 FCC Rcd. 12,817 (released April 17, 1998) (*Notice of Proposed Rulemaking*) ¶9.

With regard to Docket No. 01-00193, the parties requested that the Authority adopt, as the Tennessee Performance Assurance Plan, the service quality measurements and self-effectuating enforcement mechanisms adopted by the Florida Public Service Commission on February 14, 2002, as they presently exist and are modified in the future. Under the Settlement Agreement, the Florida plan would be effectuated no later than December 1, 2002. The parties agreed not to seek amendments to the plan until December 1, 2003, after which the TRA at its discretion may conduct a review of the plan and the parties are free to recommend modifications. The parties agreed that in the interim prior to December 1, 2002 BellSouth may implement the Georgia Performance Plan and self-effectuating enforcement mechanisms. The parties also proposed that the TRA adopt the Tennessee performance measurements for special access that were included as Attachment B to the *Amended Final Order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms* issued on June 28, 2002. The parties agreed that if the Federal Communications Commission ("FCC") implements national standards, no party is estopped from requesting the TRA to supplant the performance standards in Attachment B with the FCC standards.

The parties also agreed that the competitive local exchange carriers ("CLECs") that are parties to Docket No. 97-00309 may request, via the filing of a complaint, that the TRA open a generic contested proceeding to address the provision of BellSouth's DSL service to CLEC voice customers and related OSS issues.<sup>6</sup> The parties agreed that

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<sup>6</sup> DSL is an acronym for digital subscriber line, a developing technology that uses ordinary copper telephone lines to deliver high-speed information, including audio, video and text.

BellSouth could raise any and all defenses to the CLECs' complaints. BellSouth agreed not to oppose expedited treatment of such complaints.

Finally, as a condition to the TRA's acceptance of the Settlement Agreement, the parties will not comment in the FCC proceeding on the fact that the TRA will not conduct further Hearings in Docket No. 97-00309 and will not raise this as a criticism of the TRA's recommendation to the FCC regarding BellSouth's § 271 application.

After BellSouth finished presenting this summary of the Settlement Agreement, BellSouth, Birch Telecom of the South, Inc., Ernest Communications, Inc., ITC DeltaCom, Inc., MCI WorldCom Communications, Inc., and its subsidiaries, MCImetro Access Services, Inc. and Brooks Fiber Communications of Tennessee, Inc., DIECA d/b/a Covad Communications, Inc. and Time Warner Telecom of the MidSouth, LP orally agreed on the record to the terms of the Settlement Agreement. The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter stated that while said Division was not a signatory, it is supportive of the Settlement Agreement. On the signature pages of the Settlement Agreement, XO Tennessee, Inc., Intermedia Communications, Inc., Southeastern Communications Carriers Association, ICG Telecom Group, Inc., US LEC of Tennessee, Inc. and American Communications Services, Inc. indicated that they had withdrawn from this proceeding. AT&T Communications of the South Central States, KMC Telecom III, Inc. and KMC Telecom IV, Inc. signed a separate document stating that they were not parties to the Settlement Agreement, but agreed that this matter be submitted to the Authority on the current record without further submissions or hearings.

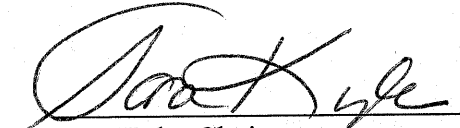
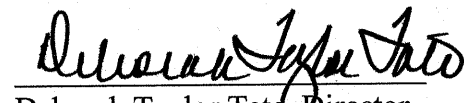
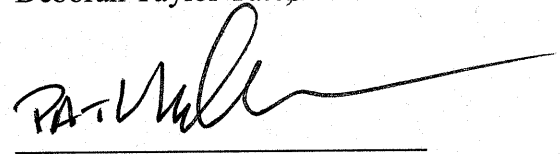
After considering the parties' statements, the panel in Docket No. 97-00309 unanimously voted to approve the Settlement Agreement on the condition that the panels in Docket No. 01-00362 and Docket No. 01-00193 accepted and approved those portions of the Settlement Agreement affecting those respective dockets. Shortly thereafter, the regularly scheduled Authority Conference that was continued from August 5 to August 7, 2002 reconvened and the panels in Docket No. 01-00193 and Docket No. 01-00362 both unanimously voted to accept the Settlement Agreement.

The panel in Docket No. 97-00309 then reconvened. After ascertaining that the respective panels in Docket No. 01-00193 and Docket No. 01-00362 had unanimously voted to accept the Settlement Agreement, the panel in Docket No. 97-00309 unanimously voted to accept the Settlement Agreement and to reconvene on August 26, 2002 to deliberate the merits of the issues raised in this docket.

**IT IS THEREFORE ORDERED THAT:**

1. The Settlement Agreement entered into by the parties in Docket No. 97-00309 and attached hereto as Exhibit A is accepted and approved.
2. Docket No. 97-00309 shall be reconvened on August 26, 2002 to deliberate the issues raised in this docket. The record for consideration in this docket shall be comprised of documents filed on or before July 31, 2002.

3. Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Comp. R. & Reg 1220-1-2-.20 within fifteen (15) days of the entry of this Order.

  
Sara Kyle, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of  
the Telecommunications Act of 1996*

Docket No. 97-00309

SETTLEMENT AGREEMENT

In Docket No. 97-00309, the undersigned parties and BellSouth agree to the following:

1. The record in Docket No. 97-00309 will be closed as of July 31, 2002. No party will submit any further testimony, documentary evidence, argument, briefs, or opposition in this docket for consideration of the Tennessee Regulatory Authority. All of the parties agree to submit this case to the Directors for consideration and determination on its merits based on the existing record. The parties request that the Authority hold its public deliberations at a special session on August 26, 2002.

The parties agree that ~~Docket No. 01-00362 shall remain open for issues related to the parties agree that this will not prevent any party performance of BellSouth's operational support systems. This docket from filing a complaint with the TRA regarding shall not be used for challenges to BellSouth's compliance with 47 U.S.C. §271(c). No party shall file any complaint in Docket No. 01-00362 prior to entry of an order by the TRA reflecting the TRA's~~ *should be closed but the undersigned* *such* *on an expedited basis*

EXHIBIT

A



decision whether or not to recommend approval of BellSouth's 271 application.

3. In resolution of the contested issues in Docket 01-00193, the parties will request the Authority to adopt as the "Tennessee Performance Assurance Plan" the identical service quality measurement plan and self-effectuating enforcement mechanism adopted by the Florida Public Service Commission in Docket No. 000121-TP on February 14, 2002, as it exists today and as it may be modified in the future, plus the Tennessee Performance Measurements for Special Access contained in the Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms issued in this docket on June 28, 2002, as set forth in exhibit B to that order. If the FCC adopts national special access measurements, the parties reserve the right to argue to the TRA as to whether the FCC measures should supercede the Tennessee Measurements. The parties agree that the "Tennessee Performance Assurance Plan" will become effective no later than December 1, 2002. The parties further agree that until the "Tennessee Performance Assurance Plan" is implemented, BellSouth can use, on an interim basis, the "Georgia Performance Plan" approved by the FCC in BellSouth's Georgia/Louisiana 271 application. The parties agree that the "Tennessee Performance Assurance Plan," as defined above, shall continue until at least December 1, 2003, at

which time the Authority at its discretion may conduct a review of the then-existing plan, accept recommendations from interested parties, and make any appropriate modifications.

4. The CLECs may request that the TRA open a generic contested case proceeding to address expeditiously the issue of BellSouth's provision of DSL service to CLEC voice customers and related OSS issues. BellSouth may raise any and all defenses to such complaint. BellSouth will not oppose expedited treatment of such complaint.
5. This agreement is solely for the purpose of settling this docket in Tennessee. Nothing in this agreement restricts the right of any party to take a contrary position in any other forum. The intervening parties and BellSouth agree that the fact that this case was resolved without further hearings will not be used as a basis for opposing BellSouth's Tennessee 271 application at the FCC or for criticizing the TRA's recommendation of BellSouth's 271 application at the FCC. In the event that the TRA declines to act consistently with any portion of this agreement, then the agreement shall be void and shall in no manner be binding upon any party to this agreement.

BELLSOUTH TELECOMMUNICA-  
TIONS, INC.

By: [Signature]

Its: General Counsel - TN

XO TENNESSEE, INC.

By: [Signature]

Its: ally

TIME WARNER TELECOM OF THE  
MID-SOUTH, LP; NEW SOUTH  
COMMUNICATIONS CORP.

By: [Signature]

Its: Attorney

MCI WORLDCOM, INC.; MCI metro  
ACCESS TRANSMISSION SERVICES,  
LLC; BROOKS FIBER COMMUNI-  
CATIONS OF TENNESSEE, INC.

By: [Signature]

Its: Attorney

INTERMEDIA COMMUNICATIONS,  
INC.

By: [Signature]

Its: ally

DIECA d/b/a COVAD COMMUNICA-  
TIONS COMPANY

By: William H. Weber

Its: VICE PRESIDENT, EXTERNAL AFFAIRS

ICG TELECOM GROUP, INC.

By: [Signature]

Its: \_\_\_\_\_

SOUTHEASTERN COMPETITIVE  
CARRIERS ASSOCIATION

By: [Signature]

Its: ally

SPRINT COMMUNICATIONS, LP

NOT PRESENT  
DURING HEARING  
DATES

By: \_\_\_\_\_

Its: \_\_\_\_\_

QWEST f/k/a LCI INTERNATIONAL  
TELECOM CORP.

By: JUST MONITORING

Its: H. AD B. [Signature]

BELLSOUTH LONG DISTANCE, INC.

KMC TELECOM III, INC.;  
KMC TELECOM IV, INC.

NOT PARTY TO AGREEMENT;  
SEE STATEMENT IN  
RECORD + PAGE 7  
OF THIS AGREEMENT

By: Hank Anthony [Signature]

Its: General Counsel

By: \_\_\_\_\_

Its: H. AD B. [Signature]

COMMUNICATIONS WORKERS OF  
AMERICA

NOT PRESENT DURING  
HEARING DATES

By: \_\_\_\_\_

Its: \_\_\_\_\_

SBC TELECOM

By: Just monitoring

Its: \_\_\_\_\_

ASSOCIATION OF COMMUNICA-  
TIONS ENTERPRISES

NOT PRESENT  
DURING  
HEARING DATES

By: \_\_\_\_\_

Its: \_\_\_\_\_

ITC^DELTACOM

By: [Signature]

Its: [Signature]

US LEC OF TENNESSEE, INC.

~~Withdrawn~~

By: Thy Wal  
Its: attorney

By: Thy Wal  
Its: attorney

AMERICAN COMMUNICATIONS  
SERVICES, INC.

~~Withdrawn~~

By: Thy Wal  
Its: attorney

By: Thy Wal  
Its: attorney

BIRCH TELECOM OF THE SOUTH,  
INC.

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of  
the Telecommunications Act of 1996*

Docket No. 97-00309

AT&T is not a party to this agreement, but AT&T will agree that this matter  
may be submitted to the Authority on the current record without further  
submissions or hearings.

AGREED TO:

AT&T COMMUNICATIONS OF THE SOUTH  
CENTRAL STATES, LLC; TCG MIDSOUTH,  
INC.

By: MA [Signature]

Its: Counsel

KMC TELCOM TAKES THE SAME POSITION AS AT&T.  
KMC TELCOM III, INC. +  
KMC TELCOM IV, INC.

by: H. [Signature]  
ITS COUNSEL

# TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director  
Ron Jones, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

October 10, 2002

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-B204  
Washington, D.C. 20554

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996; TRA Docket No. 97-00309*

Dear Ms. Dortch:

Enclosed is the Advisory Opinion of the Tennessee Regulatory Authority ("Authority") relating to BellSouth Telecommunication's Inc. application pursuant to 47 U.S.C. § 271 for authorization to provide in-region, interLATA service in Tennessee. The Authority recommends that the application be granted.

Sincerely,

Sara Kyle  
Chairman

Deborah Taylor Tate  
Director

Pat Miller  
Director

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

In Re: Docket No. 97-00309; *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

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**ADVISORY OPINION TO THE  
FEDERAL COMMUNICATIONS COMMISSION**

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This matter came before the Tennessee Regulatory Authority (“Authority” or “TRA”) at a specially scheduled Authority Conference held on August 26, 2002 to consider the merits of the filings related to BellSouth Telecommunications, Inc.’s (“BellSouth’s”) application pursuant to 47 U.S.C. § 271.<sup>1</sup> The findings herein constitute the comments of the TRA to the Federal Communications Commission (“FCC”) in this matter.

### **Background and Statutory Framework**

With the passage of the Telecommunications Act of 1996 (the “Act”), Congress adopted a pro-competitive policy that fundamentally restructured local telephone markets by ending the monopoly of local service held by the incumbent Bell operating companies (“BOCs”).<sup>2</sup> Congress designed the Act to “open[ ] all telecommunications markets to competition,” by eliminating the barriers faced by competing local exchange carriers (“CLECs”) when offering competing local telephone service.<sup>3</sup>

To stimulate effective competition, the Act requires BOCs to offer CLECs three means of gaining access to local telephone networks: [1] by selling local telephone services to the CLECs at wholesale rates for resale to end users; [2] by leasing network elements to CLECs on an unbundled basis; and [3] by interconnecting a requesting CLEC’s network with their own.<sup>4</sup> Network elements and interconnection must be offered at “rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”<sup>5</sup>

The Act allows BOCs to enter the interLATA long distance market in a particular state only after satisfying certain statutory criteria set forth in 47 U.S.C. § 271 and receiving the

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<sup>1</sup> The voting panel in this docket consisted of Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Pat Miller.

<sup>2</sup> See 47 U.S.C. § 151 *et seq.*; see also *In the Matter of Bell Atlantic New York for Authorization under Section 271 of the Communications Act*, 220 F.3d 607, 611 (D.C. Cir. 2000).

<sup>3</sup> *Id.* (quoting S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 1 (1996)).

<sup>4</sup> *Id.* (citing 47 U.S.C. § 251(c)(2)-(4)).

<sup>5</sup> 47 U.S.C. § 251(c)(2)(D), (c)(3).

approval of the FCC.<sup>6</sup> No later than ninety (90) days after receiving a BOC's section 271 application, the FCC must issue a written disposition of the application. Prior to making any disposition under section 271, the FCC must consult with the United States Attorney General and with the State commission of the State that is the subject of the application in order to verify the compliance of the BOC with the requirements of subsection (c) of section 271. "The purpose [of these requirements] is to encourage these locally-dominant companies to open up their local markets to competition while preventing them from curtailing competition in the long-distance market or unfairly leveraging their own entry into that market."<sup>7</sup> The Act places on the BOC the burden of proving that all the requirements of section 271 are satisfied.

Section 271 provides a BOC with two avenues for satisfying this burden of proof in a section 271 application. The BOC may establish that it meets the requirements of 47 U.S.C. § 271(c)(1)(A) ("Track A") or 47 U.S.C. § 271(c)(1)(B) ("Track B"). Under Track A, the BOC must establish the presence of a facilities-based competitor by showing that the BOC has entered into one or more binding agreements that have been approved under 47 U.S.C. § 252 specifying the terms and conditions under which the BOC is providing access to and interconnection with its network facilities and the network facilities of one or more unaffiliated competing providers of telephone exchange service to residential and business subscribers.<sup>8</sup> Such telephone exchange service may be offered by competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

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<sup>6</sup> See 47 U.S.C. § 271. A consent decree arising from a 1982 antitrust suit brought by the Department of Justice permitted incumbents to provide local service in their respective regions, but barred them from providing long distance services. See *SBC Communications, Inc. v. FCC*, 138 F.3d 410, 412 (D.C. Cir. 1998).

<sup>7</sup> *AT&T Corp. v. U.S. West Communications, Inc.*, No. C98-634WD, 1998 WL 1284190 at \* 1 (W.D. Wash. June 4, 1998).

<sup>8</sup> See 47 U.S.C. § 271(c)(1)(A).

Track B provides the basis for filing a section 271 application even if no facilities-based competition exists in the state. The BOC must have filed a statement of the terms and conditions that the company generally offers to provide access and interconnection that has been approved or permitted to take effect by the state commission under 47 U.S.C. § 252(f).

BellSouth stated to the Authority that its section 271 application to the FCC seeking authority to provide in-region, interLATA service in the State of Tennessee would proceed under Track A.

The BOC must also satisfy the fourteen (14) point competitive checklist set forth at 47 U.S.C. § 271(c)(2)(B), prove that the requested authorization will be carried out in accordance with the requirements of 47 U.S.C. § 272 and demonstrate that the BOC's entry into the in-region, interLATA market is "consistent with the public interest, convenience and necessity."<sup>9</sup>

The competitive checklist includes the following:

Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

(i) Interconnection in accordance with the requirements of 47 U.S.C. §§ 251(c)(2) and 252(d)(1).

(ii) Nondiscriminatory access to network elements in accordance with the requirements of 47 U.S.C. §§ 251(c)(3) and 252(d)(1).

(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of 47 U.S.C. §§ 224.

(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

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<sup>9</sup> 47 U.S.C. § 271(d)((3)(C).

(vi) Local switching unbundled from transport, local loop transmission, or other services.

(vii) Nondiscriminatory access to--

(I) 911 and E911 services;

(II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

(III) operator call completion services.

(viii) White pages directory listings for customers of the other carrier's telephone exchange service.

(ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

(xi) Until the date by which the Commission issues regulations pursuant to 47 U.S.C. § 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of 47 U.S.C. § 251(b)(3).

(xiii) Reciprocal compensation arrangements in accordance with the requirements of 47 U.S.C. § 252(d)(2).

(xiv) Telecommunications services are available for resale in accordance with the requirements of 47 U.S.C. §§ 251(c)(4) and 252(d)(3).

### **Related Proceedings Before the TRA**

In anticipation that BellSouth would seek the FCC's approval to provide in-region, interLATA service in Tennessee, the Authority convened several contested case proceedings, beginning in 1997, to explore a number of issues contemplated by or related to 47 U.S.C. § 271. Three of these dockets are summarized below. Two of these dockets have had particular impact on the resolution of the instant proceeding.<sup>10</sup>

**Docket No. 97-01262: *In re Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements.***

At a regularly scheduled Authority Conference on July 15, 1997, the Directors voted to commence a contested case proceeding (Docket No. 97-01262) to establish permanent prices for interconnection and unbundled network elements ("UNEs"). This proceeding was divided into two phases. In Phase I, the Authority determined the adjustments for each cost model presented. The Authority conducted hearings on the issues in Phase I on November 17-21 and 24, 1997 and February 23 and 25-27, 1998. The Directors of the Authority deliberated on the Phase I issues at a regularly scheduled Authority Conference held on June 30, 1998.

The Authority issued its *First Interim Order* on January 25, 1999. Therein, the Directors unanimously determined, *inter alia*, that the forward-looking cost methodology as defined by the FCC's Total Element Long Run Incremental Cost ("TELRIC") methodology, including an appropriate mark-up for recovery of shared and common costs, would be used to set permanent prices for UNEs in Tennessee. The Authority also directed the parties to submit cost studies supporting their costs.

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<sup>10</sup> These dockets are Docket No. 01-00362: *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations* (the "OSS Docket") and TRA Docket No. 01-00193, *Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.* (the "Performance Measurements Docket").

In Phase II, the Authority determined the prices for interconnection and UNEs based on the cost studies filed in compliance with the Authority's *First Interim Order*. The final prices were based on criteria specified by the Act and orders issued by the FCC, including the Local Competition Order.<sup>11</sup> The *Final Order*, issued on February 23, 2001, reflects the Authority's decisions to set permanent prices for collocation elements and UNE rates and requires BellSouth to issue tariffs containing UNE rates approved by the Authority, based on cost studies provided by BellSouth (the *Final Order* and the tariff containing the approved UNE rates are attached hereto respectively as Exhibit A and B).

**Docket No. 01-00362: *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations***

On February 21, 2001, the Directors convened Docket No. 01-00362 to explore whether competing local exchange carriers ("CLECs") operating in Tennessee have nondiscriminatory access to BellSouth's Operations Support System ("OSS") as required by state and federal law.<sup>12</sup> The purpose of Docket No. 01-00362 (the "OSS Docket") was to determine whether existing data or test results derived from OSS testing in other states was reliable and applicable to Tennessee and, in those instances where reliance on such testing was inappropriate, to conduct necessary testing.

The OSS Docket was bifurcated into two phases. The focus of Phase I was to determine whether BellSouth's OSS is regional. Phase II focused on the reliability of existing third party testing of BellSouth's OSS in other states and whether CLECs were afforded nondiscriminatory

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<sup>11</sup> See *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 95-185 (*First Report and Order*) (released August 8, 1996) 1996 WL 452885, 11 FCC Rd. 15, 499 (hereinafter "Local Competition Order").

<sup>12</sup> "[T]he term OSS refers to the computer systems, databases, and personnel that incumbent carriers rely upon to discharge many internal functions necessary to provide service to their customers." *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, FCC Docket No. 98-72, CC Docket No. 98-56 (*Notice of Proposed Rulemaking*) (released April 17, 1998) 13 FCC Rd. 12,817, ¶9.

access to BellSouth's OSS. After a Hearing held from December 3 through 6, 2001 focusing solely on the Phase I issue of the regionality of BellSouth's OSS, a majority of the Directors found that BellSouth failed to satisfy its burden of establishing that its pre-ordering, ordering, provisioning, maintenance and repair and billing systems are regional. The Authority deliberated this decision during the May 21, 2002 Authority Conference. The Authority's decision was memorialized in the *Order Resolving Phase I Issues of Regionality* issued on June 21, 2002.<sup>13</sup>

On July 8, 2002, BellSouth moved for reconsideration and reversal of that Order. On July 23, 2002, a majority of the panel assigned to Docket No. 01-00362 voted to grant BellSouth's *Motion for Reconsideration*, relying in part on a finding in the May 15, 2002 decision by the FCC approving BellSouth's application pursuant to 47 U.S.C. § 271 in Georgia and Louisiana that BellSouth's OSS does not distinguish between Georgia and Louisiana.<sup>14</sup> The panel's decision was memorialized in the *Order Granting Reconsideration of and Modifying the Order Resolving Phase I Issues of Regionality* issued on August 8, 2002 (attached hereto as Exhibit C).<sup>15</sup>

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<sup>13</sup> The majority's decision in the June 21, 2002 Order reflects the deliberations of Directors H. Lynn Greer, Jr. and Melvin J. Malone. Their terms as Directors of the Authority expired on June 30, 2002. Chairman Sara Kyle did not vote with the majority. Chairman Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Deborah Taylor Tate and Ron Jones was randomly selected and assigned to the OSS Docket.

<sup>14</sup> See *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Service in Georgia and Louisiana*, CC Docket No. 02-35 (*Memorandum Opinion and Order*) (issued May 15, 2002) 2002 WL 992213, 17 FCC Rcd. 9018 ("Georgia/Louisiana Order").

<sup>15</sup> On August 27, 2002, BellSouth filed a Petition for Review in the Tennessee Court of Appeals, seeking review of the *Order Imposing Sanctions Against BellSouth Telecommunications, Inc. Pursuant to Tenn. Code Ann. § 65-4-120* issued on June 28, 2002 and signed by then Directors Greer and Malone. Chairman Kyle did not vote with the majority. The Order sanctioned BellSouth in the form of a penalty amounting to one thousand fifty dollars (\$1,050.00) for failing to conform its conduct to the Tennessee Rules of Civil Procedure, the TRA Rules and the lawful orders of the agency.



**Docket No. 01-00193: *In Re Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.***

On February 21, 2001, the Authority convened the Performance Measurements Docket for the purpose of developing a common set of performance measurements, benchmarks and enforcement mechanisms to ensure that BellSouth provides nondiscriminatory access to its network elements as required by the Act. Concurrent with the establishment of this docket, the Authority adopted, as a base, the performance measurements, benchmarks and enforcement mechanisms ordered in TRA Docket No. 99-00430, *In re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*.<sup>16</sup>

The Authority conducted a Hearing from August 20 through 23, 2001. Thereafter, a set of performance measurements, benchmarks and enforcement mechanisms was developed specifically for the regulation of telecommunications services in Tennessee. During deliberations at a regularly scheduled Authority Conference on April 16, 2002, the Directors unanimously voted to adopt these performance measurements, benchmarks and enforcement mechanisms.<sup>17</sup> On May 14, 2002, the Authority issued the *Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms*. This Order reflected the Directors' unanimous vote to adopt specific performance measurements, benchmarks and enforcement mechanisms to be implemented through interconnection agreements entered into between BellSouth and CLECs pursuant to 47 U.S.C. § 252.

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<sup>16</sup> See *In re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, TRA Docket No. 99-00430 (*Final Order of Arbitration*) (filed February 23, 2001).

<sup>17</sup> Chairman Kyle and Directors Greer and Malone made this decision. After their terms concluded on June 30, 2002, a three member voting panel consisting of Chairman Kyle and Directors Pat Miller and Ron Jones was randomly selected and assigned to the Performance Measurements Docket.

BellSouth filed its first *Motion for Reconsideration* in Docket No. 01-00193 on May 29, 2002. Therein, BellSouth argued, *inter alia*, that the Authority lacked jurisdiction to impose enforcement mechanisms and that the method used to adopt the performance measurements violated Tenn. Code Ann. § 8-44-101 *et seq.* (the “Open Meetings Act”). BellSouth also sought alterations in the implementation dates and other aspects of certain performance measurements adopted by the Authority, including the level of disaggregation and the value of delta ( $\delta$ ) in the truncated Z statistical method.<sup>18</sup> In concluding its Motion, BellSouth urged the Authority to reject the entire Tennessee plan, and adopt the performance measurements, benchmarks and enforcement mechanisms adopted by the Georgia Public Service Commission. On June 6, 2002, the CLEC Coalition filed its *Response to BellSouth’s Motion for Reconsideration*.

During a specially scheduled Authority Conference held on June 18, 2002, the Authority deliberated BellSouth’s first *Motion for Reconsideration*. The Directors unanimously rejected BellSouth’s contentions that the Authority lacked jurisdiction to impose enforcement mechanisms and that the Authority violated the Open Meetings Act.<sup>19</sup>

A majority of the Directors granted certain BellSouth requests for modifications of the *Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms* and

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<sup>18</sup> The Truncated Z methodology is a statistical approach to assess performance. The results produced by the methodology are themselves statistical measures. The parameter  $\delta$ , delta, central to the Truncated Z methodology, is used to determine whether differences in service received by ILEC retail customers relative to CLECs is material, *i.e.*, services are provided at parity. The choice of  $\delta$ , delta, defines the range of outcomes. For example, if BellSouth provides lower service levels to CLECs it may be judged to be a statistical variation rather than a failure to provide parity. Lower values of  $\delta$ , delta, require BellSouth to more closely approximate or exceed the level of performance it provides to itself in order to be found to provide parity service to CLECs. Larger values for  $\delta$ , delta, allow BellSouth greater leeway to provide service at a lower level to the CLECs than itself, while statistically still providing parity service under the Truncated Z methodology. Although a measurement may indicate that BellSouth provided service to a CLEC at a level lower than the quality it provided to itself, this measurement may not imply that BellSouth is not providing service at parity.

<sup>19</sup> See Transcript of June 18, 2002 Authority Conference, pp. 30-34.

denied others.<sup>20</sup> On June 28, 2002 the Authority issued its *Amended Final Order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms* reflecting the decision to grant the first *Motion for Reconsideration* and the various rulings on the substantive issues raised therein (attached hereto as Exhibit D).

On July 12, 2002, BellSouth filed a second *Motion for Reconsideration*, seeking review of the *Amended Final Order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms* issued on June 28, 2002. In this Motion, BellSouth reiterated its request that the Authority reject the performance measurements, benchmarks and enforcement mechanisms presently in place in Tennessee and adopt Georgia's performance measurements, benchmarks and self effectuating enforcement mechanisms ("SEEMs") in Tennessee.

On July 23, 2002, a majority of the newly composed panel voted to grant BellSouth's second *Motion for Reconsideration* as part of the two-step process established by Tenn. Comp. R. & Reg. 1220-1-2-.20, which contemplates deliberations on the merits of the Motion at a later

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<sup>20</sup> Chairman Kyle did not vote with the majority. Instead, the Chairman moved to implement BellSouth's Georgia performance measurements, benchmarks and self-effectuating enforcement mechanisms ("SEEMs") in Tennessee on an interim basis for six (6) months, reasoning as follows:

I do believe that performance measures is a move towards 271. I am ready to take those necessary steps to enact the goal of the general assembly. The FCC has since approved Georgia's 271 application which includes performance measure plans that meet the requirements for ensuring nondiscriminatory access. Such plans can be reviewed when necessary. The FCC has worked hard, and I believe we should take judicial notice of their work, and I also believe that time, money, and efforts by the staff will be reserved for more efficient use and ultimately benefiting the consumer. Therefore, my position and motion is to adopt the Georgia performance plan. We can monitor such plans to see the effect, and should we need to modify or reinstate the Tennessee plan, we can. If the plan is working, we will have benefited all people concerned, especially consumers, and not have created unnecessary measures and will have lost nothing. That is my position for the record.

See Transcript of June 18, 2002 Authority Conference, pp. 34-50. The Motion failed for lack of a second.

date.<sup>21</sup> The majority reasoned that the Motion was replete with issues presented in an evidentiary record developed by the previous directors and additional time was needed for a careful review of the record.

**Relevant Procedural History in TRA Docket No. 97-00309 (the 271 Docket)**

On March 4, 1997, at a regularly scheduled Authority Conference, the Authority opened TRA Docket No. 97-00309, *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996* (the 271 Docket) on its own motion, to commence a formal inquiry relating to BellSouth's compliance with the requirements for entry into the in-region, long distance (interLATA) markets in Tennessee.<sup>22</sup> At the same Authority Conference, the Directors appointed then Director Melvin Malone to serve as Hearing Officer for the purpose of presiding over any pre-

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<sup>21</sup> Chairman Kyle did not vote with the majority. Instead, she moved to implement BellSouth's Georgia SEEM plan in Tennessee, stating in pertinent part:

I recognize the FCC has spoken. The FCC decides ultimately whether local markets are open and how to ensure they stay open. The FCC has expressly found that the Georgia plan is appropriate. As the FCC stated, "We find that the existing service performance measurement and enforcement mechanisms currently in place for Georgia and Louisiana provide assurance that these local markets will remain open after BellSouth receives Section 271 authorization." Now, the Georgia plan serves as a template for the entire region. It can be implemented in Tennessee quickly. Therefore, the Authority -- I move the Authority adopt the Georgia performance measurement and enforcement plan approved by the FCC. I feel Tennessee consumers deserve no less. That will be my motion for this docket item.

The motion failed for lack of a second. See Transcript of July 23, 2002 Authority Conference, pp. 29-32.

<sup>22</sup> See *In re BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, TRA Docket No. 97-00309 (*Order Instituting Formal Inquiry and Adopting Procedure*) (issued March 21, 1997) (An Informal Investigation and Report provided by the TRA Staff, which was requested by the Directors on December 16, 1996 and issued on February 13, 1997, provided impetus to the decision to open this docket. The *Order Instituting Formal Inquiry and Adopting Procedure* deemed those entities that filed comments to the Staff Investigation and Report parties to this proceeding.). The parties participating in this proceeding include BellSouth, Birch Telecom of the South, Inc. ("Birch") and Ernest Communications, Inc. ("Ernest"), the Southeastern Communications Carriers Association ("SECCA"), AT&T Communications of the South Central States ("AT&T"), TCG MidSouth, Inc. ("TCG"), MCI WorldCom Communications, Inc., MCIMetro Access Services, Inc. and Brooks Fiber Communications of Tennessee, Inc. (collectively "WorldCom"), XO Tennessee, Inc. ("XO"), Time Warner Telecom of the MidSouth, LP ("Time Warner"), New South Communications Corp. ("New South"), Intermedia Communications, Inc. ("Intermedia"), DIECA d/b/a Covad Communications Co. ("Covad"), ICG Telecom Group ("ICG"), ITC DeltaCom, Inc., KMC Telecom III, Inc. and KMC Telecom IV, Inc. (collectively "KMC"), Sprint Communications Company, LP.

hearing or status conferences, resolving discovery disputes and such other matters as might aid in preparing the action for a Hearing.

On April 3, 1997, an initial Status Conference was held for the purposes of defining the specific factual, legal and policy issues to be considered in this docket and determining the extent and means of obtaining additional information within a procedural framework for this Inquiry. The *Report and Recommendation* issued by the Hearing Officer on April 18, 1997 reflected that BellSouth voluntarily agreed to provide the Authority with advance notice of at least ninety (90) days before filing its section 271 application with the FCC.<sup>23</sup>

#### **BellSouth's First Section 271 Filing**

On December 12, 1997, BellSouth filed its Notice of Filing, together with supporting documentation and testimony, with the Authority. BellSouth filed its SGAT on January 16, 1998. Thereafter, several Pre-Hearing Conferences and technical workshops were held by the Authority. Following a discovery period, and the submission of pre-filed testimony, a Hearing on the merits was held on May 5-7, May 11-15 and May 27-28, 1998.

BellSouth submitted a Notice of Supplemental Filing on July 22, 1998 to which the parties raised numerous objections. On November 19, 1998, a Status Conference was held to ascertain the status of several issues, including the late-filed exhibits to the Hearing. The parties reached a verbal agreement on December 15, 1998, permitting BellSouth to supplement its filing.

On March 10, 1999, the Authority issued a Final Conference Agenda providing notice to the parties that the Directors would be deliberating this case on its merits at the regularly scheduled Authority Conference on March 16, 1999. On March 10, 1999, BellSouth filed a

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<sup>23</sup> See *In re BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, TRA Docket No. 97-00309 (*Report and Recommendation*) (issued April 18, 1997) p. 6 (The Directors unanimously adopted and approved the *Report and Recommendation* at the April 29, 1997 Authority Conference).

Motion to remove this matter from the March 16, 1999 Authority Conference agenda. Various parties filed responses to BellSouth's Motion and the Motion was deliberated at the March 16, 1999 Authority Conference. After careful consideration, a majority of the Directors voted to deny BellSouth's Motion and declined to postpone the Hearing.<sup>24</sup> The Directors also directed Chairman Melvin Malone to act as Hearing Officer for the purpose of rendering a decision on the merits or taking such action as deemed appropriate.<sup>25</sup>

On April 8, 1999, BellSouth filed a *Notice of Voluntary Dismissal without Prejudice and Withdrawal of Advance Notice of Section 271 Filing* (hereinafter "Withdrawal"). BellSouth asserted that it had determined that rather than prepare another supplemental filing, it would withdraw its pending matters and renew its filing at the appropriate time.

On June 1, 1999, the Hearing Officer issued the *Initial Order Accepting BellSouth Telecommunication, Inc.'s Notice of Dismissal and Withdrawal*. At the June 8, 1999, Authority Conference, the Directors voted unanimously to accept BellSouth's Withdrawal.

#### **BellSouth's Second Section 271 Filing**

On May 30, 2001, BellSouth filed a *Preliminary Notice of Filing and Request for Scheduling Conference*. Therein, BellSouth stated its intention to file in late July 2001 a second section 271 application with the FCC seeking to gain authority to enter the interLATA long distance market in Tennessee. BellSouth also requested that the Authority convene a scheduling conference to facilitate the Authority's performance of its consultative role under 47 U.S.C. § 271. A Status Conference was held on July 12, 2001, after which the parties filed pre-filed testimony.

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<sup>24</sup> See *id.* (Order Denying BellSouth Telecommunications, Inc. March 10, 1999 Motion to Defer) (issued April 14, 1999) p. 10.

<sup>25</sup> See *id.*

On July 30, 2001, BellSouth filed with the Authority the section 271 application that it represented it would file with the FCC. On August 6, 2001, the Hearing Officer issued a discovery schedule.

On August 10, 2001, the Hearing Officer issued the *Initial Order of the Hearing Officer on July 12, 2001 Status Conference*, in which he outlined the procedural framework for this matter, bifurcated the hearing into phases and set a Phase I hearing date for October 3-5 and 8-9, 2001. Dates in November were reserved for further hearings on the merits. The Hearing Officer also notified the parties that issues related to 47 U.S.C. § 272 and the public interest aspects of BellSouth's section 271 application would be considered at the Hearing set for October 3, 2001.

On August 27, 2001, BellSouth filed a *Petition for Clarification and Reconsideration of Initial Order of the Hearing Officer on July 12, 2001 Status Conference*, arguing that the TRA's consideration of issues related to 47 U.S.C. § 272 and the public interest was unnecessary and inappropriate. BellSouth also asserted that consideration of BellSouth's compliance with the competitive checklist in 47 U.S.C. § 271 was not dependent upon the completion of the Performance Measurement Docket, TRA Docket No. 01-00193. BellSouth stated that it did not intend to use Tennessee-specific data to support its section 271 application because its Georgia-approved service quality measurements ("SQMs") were sufficient to support its application for Tennessee.

On September 10, 2001, the Hearing Officer issued the *Initial Order of Hearing Officer on Petition for Clarification and Reconsideration of Initial Order of the Hearing Officer on July 12, 2001 Status Conference and Restatement of BellSouth's Position*. The Hearing Officer rejected BellSouth's contention that the TRA should not consider issues related to 47 U.S.C. § 272 and the public interest. In addition, the Hearing Officer stated that it would be premature to preclude the adoption of Tennessee-specific performance measurements in this proceeding.

On September 17, 2001, the Hearing Officer issued the *Initial Order Resolving Discovery Disputes and Suspending Procedural Schedule*, which suspended the procedural schedule pending the completion of discovery. On September 18, 2001, BellSouth filed a *Motion to Amend Procedural Order* seeking to postpone the deliberations on the section 272 and public interest issues<sup>26</sup> and requesting the Authority to jointly consider the issues related to 47 U.S.C. §§ 271 and 272 and the public interest issues.<sup>27</sup>

On December 10, 2001, the Hearing Officer issued the *Initial Order Resolving Remaining Discovery Disputes*. Discovery continued through December 2001.

On January 28, 2002, BellSouth filed a *Petition to Establish Procedural Schedule*. BellSouth renewed its request that all the issues in this proceeding, including those arising under 47 U.S.C. §§ 271 and 272 and the public interest issue, be heard in a single hearing. BellSouth also sought permission to file additional evidence and proposed that the matter be heard in mid-April of 2002.

On February 4, 2002, SECCA, AT&T and TCG filed their *Response to BellSouth's Petition to Establish Procedural Schedule*, opposing BellSouth's request to submit additional evidence and requesting that the Authority strike BellSouth's entire section 271 filing. SECCA, AT&T and TCG argued that BellSouth could no longer represent to the Authority in good faith that its application was current, in light of the facts that (1) BellSouth had withdrawn the section 271 application it had filed with the FCC for Georgia and Louisiana in lieu of having the FCC reject that application and (2) the Georgia and Louisiana application was essentially identical to the application BellSouth intended to file for Tennessee.

<sup>26</sup> BellSouth requested that the Authority postpone the hearing on these matters until at least January 1, 2002.

<sup>27</sup> As noted previously, the TRA had opened a separate docket, TRA Docket No. 01-00362, on February 21, 2001 to consider whether BellSouth provided nondiscriminatory access to its OSS. See 47 U.S.C. § 271(c)(2)(B)(ii).



On March 1, 2002, the *Initial Order of the Hearing Officer on BellSouth Telecommunications, Inc. Petition to Establish Procedural Schedule* was issued. Therein, the Hearing Officer granted BellSouth's request that all the issues raised by its section 271 application be considered in a single Hearing. Further, the Hearing Officer reminded BellSouth of its representation that it had filed "a complete and compliant section 271 application" on July 30, 2001 and informed BellSouth that it would be held to that representation.<sup>28</sup> The Hearing Officer observed that BellSouth's withdrawal of its section 271 application for Georgia and Louisiana from consideration by the FCC considerably weakened its contention that its section 271 filing in Tennessee was current. In order to promote the interests of judicial economy and preclude the potential for staleness in the section 271 filing, the Hearing Officer ordered BellSouth to re-file its section 271 filing with the TRA or, alternatively, submit by March 15, 2002, a detailed, substantive affidavit, executed by BellSouth's president, affirmatively asserting that the July 30, 2001 filing with the TRA remained compliant with section 271 in all respects, consistent with the TRA's section 271 requirements and constituted in all respects the section 271 application BellSouth will file with the FCC.

### **BellSouth's Third Section 271 Filing**

On April 26, 2002 BellSouth submitted its third section 271 filing to the Authority in this docket.<sup>29</sup> On May 8, 2002, the Hearing Officer issued a Notice establishing a procedural schedule and the parties proceeded with discovery pursuant to that Notice. On May 23, 2002, the Hearing Officer issued a Notice directing the parties to reserve August 5-9, 2002 for the Hearing on the merits in this docket.

<sup>28</sup> *Initial Order of the Hearing Officer on BellSouth Telecommunications, Inc. Petition to Establish Procedural Schedule* (issued March 1, 2002) p. 7.

<sup>29</sup> BellSouth did not seek permission to withdraw its second application, even after filing its third application.

On June 25, 2002, BellSouth notified the Authority that the parties had agreed that the CLECs that are parties to this docket would not submit evidence contesting BellSouth's compliance with section 271 Checklist Items 3, 7, 9 and 12 or 47 U.S.C. § 272. On June 28, 2002, BellSouth and KMC filed their respective lists of proposed issues. AT&T, TCG and WorldCom jointly filed a list of proposed issues. The parties filed pre-filed testimony on July 12 and rebuttal testimony on July 22.

On June 30, 2002, the terms of Chairman Sara Kyle, and Directors H. Lynn Greer, Jr. and Melvin J. Malone expired. Chairman Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Deborah Taylor Tate, Pat Miller and Ron Jones were appointed as new Directors of the TRA and commenced their terms on July 1, 2002. Subsequently, a three member voting panel consisting of Chairman Kyle and Directors Tate and Miller was randomly selected and assigned to TRA Docket No. 97-00309 (the 271 Docket). At a regularly scheduled Authority Conference held on July 23, 2002, the panel voted unanimously to appoint Director Tate to serve as Pre-Hearing Officer to prepare the docket for a hearing. A Pre-Hearing Conference was held on July 30, 2002. At the suggestion of the Pre-Hearing Officer, the parties initiated settlement negotiations regarding the remaining contested issues. On July 30, 2002, the Pre-Hearing Officer issued a Notice informing the parties that the Hearing on the merits would commence on August 6, 2002. Immediately prior to the commencement of the Hearing, a Pre-Hearing Conference was convened for the parties to report on the status of the settlement negotiations. At that time, the parties informed the Pre-Hearing Officer that the settlement negotiations were progressing and requested additional time to continue with the negotiations. On August 7, 2002, the parties informed the Pre-Hearing Officer that they had

reached a settlement agreement that would resolve matters of proof relating to the outstanding issues in this docket.<sup>30</sup>

Immediately following the Pre-Hearing Conference on August 7, 2002, the panel in the 271 Docket convened the final Hearing. Thereafter, Pre-Hearing Officer Tate informed the panel assigned to this docket that the parties had reached a proposed Settlement Agreement (attached to Exhibit E). The parties then presented to the panel a summary of the Settlement Agreement and an explanation regarding how it affected this docket and two other dockets: Docket No. 01-00362<sup>31</sup> (the OSS Docket) and Docket No. 01-00193 (the Performance Measurements Docket).<sup>32</sup> The parties also informed the panel that a number of the parties in this docket, Docket No. 97-00309, had agreed to the Settlement Agreement, and those parties that did not join in the Settlement Agreement had either withdrawn from the proceedings or concurred in the parties' agreement to submit the case to the panel for a decision based on the current record without conducting the previously scheduled evidentiary Hearing.

BellSouth summarized the Settlement Agreement as follows: With regard to Docket No. 97-00309 (the 271 Docket), the parties proposed that the record should be closed as of July 31, 2002 and the case be submitted to the Directors for deliberations based on that record. The parties agreed that no additional testimony, argument, briefs or opposition would be filed in the docket. The parties requested that the panel publicly deliberate Docket No. 97-00309 (the 271 Docket) on August 26, 2002.

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<sup>30</sup> The following parties were involved in the settlement negotiations: BellSouth, Birch, Ernest, ITC DeltaCom, Inc., MCI WorldCom Communications, Inc., and its subsidiaries, MCImetro Access Services, Inc. and Brooks Fiber Communications of Tennessee, Inc., Covad, Time Warner, XO, Intermedia, SECCA, ICG, US LEC of Tennessee, Inc. and American Communications Services, Inc. AT&T and KMC.

<sup>31</sup> *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, Docket No. 01-00362.

<sup>32</sup> *Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, Docket No. 01-00193.

As to Docket No. 01-00362, (the OSS Docket) the parties agreed that they would ask the TRA to administratively close the docket. In addition, the parties proposed that the closing of the docket would not prevent any party from filing a complaint with the TRA regarding BellSouth's OSS in the future. The parties requested that expedited treatment be given to OSS complaints. The parties agreed, however, that no such complaints would be filed prior to the entry of an order by the TRA reflecting the TRA's decision in Docket No. 97-00309 (the 271 Docket).

With regard to Docket No. 01-00193, (the Performance Measurements Docket) the parties requested that the Authority adopt, as the Tennessee Performance Assurance Plan, the SQMs and SEEMs adopted by the Florida Public Service Commission on February 14, 2002, as they presently exist and may be modified in the future and implemented no later than December 1, 2002. The parties agreed not to seek amendments to the plan until December 1, 2003, after which the TRA at its discretion may conduct a review of the plan and the parties are free to recommend modifications. The parties agreed that in the interim, prior to December 1, 2002, BellSouth would implement the Georgia Performance Plan and self-effectuating enforcement mechanisms. The parties also proposed that the TRA adopt the Tennessee performance measurements for special access that were included as Attachment B to the *Amended Final Order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms* issued on June 28, 2002 (attached hereto as Exhibit D). The parties agreed that should the FCC implements national standards, no party would be estopped from requesting that the TRA adopt the FCC standards.<sup>33</sup>

The parties also agreed that the CLECs that are parties to Docket No. 97-00309 (the 271 Docket) may request, via the filing of a complaint, that the TRA open a generic contested

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<sup>33</sup> Attachment B is an attachment to Exhibit D herein.

proceeding to address BellSouth's obligations, if any, to offer DSL service to CLEC voice customers and related OSS issues.<sup>34</sup> The parties agreed that BellSouth could raise any and all defenses to the CLECs' complaints. BellSouth agreed not to oppose expedited treatment of such complaints.

Finally, the parties agreed not to comment in the FCC proceeding regarding the TRA decision to utilize a paper hearing and not to raise this as a criticism of the TRA's recommendation to the FCC regarding BellSouth's § 271 application.

After BellSouth finished presenting this summary of the Settlement Agreement, BellSouth, Birch, Ernest, ITC DeltaCom, Inc., MCI WorldCom Communications, Inc., and its subsidiaries, MCImetro Access Services, Inc. and Brooks Fiber Communications of Tennessee, Inc., Covad and Time Warner orally agreed on the record to the terms of the Settlement Agreement. The Office of the Tennessee Attorney General and Reporter, Consumer Advocate and Protection Division stated that while said Division was not a signatory, it is supportive of the Settlement Agreement. On the signature pages of the Settlement Agreement, XO, Intermedia, SECCA, ICG, US LEC of Tennessee, Inc. and American Communications Services, Inc. indicated that they had withdrawn from this proceeding. AT&T and KMC signed a separate document stating that they were not parties to the Settlement Agreement, but agreed that this matter be submitted to the Authority on the current record without further submissions or hearings.

After considering the parties' statements, the panel in Docket No. 97-00309 (the 271 Docket) unanimously voted to approve the Settlement Agreement on the condition that the panels in Docket No. 01-00362 (the OSS Docket) and Docket No. 01-00193 (the Performance

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<sup>34</sup> DSL is an acronym for digital subscriber line, a developing technology that uses ordinary copper telephone lines to deliver high-speed information, including audio, video and text.

Measurements Docket) accepted and approved those portions of the Settlement Agreement affecting those respective dockets. Shortly thereafter, the regularly scheduled Authority Conference that was continued from August 5 to August 7, 2002 reconvened and the panels in Docket No. 01-00193 and Docket No. 01-00362 both unanimously voted to accept the Settlement Agreement.

The panel in Docket No. 97-00309 (the 271 Docket) then reconvened. After ascertaining that the respective panels in Docket No. 01-00193 and Docket No. 01-00362 had unanimously voted to accept the Settlement Agreement, the panel in Docket No. 97-00309 (the 271 Docket) unanimously voted to accept the Settlement Agreement and to reconvene on August 26, 2002 to deliberate the merits of the issues raised in this docket. The *Order Approving Settlement Agreement* in Docket No. 97-00309 (the 271 Docket) memorializing these decisions was issued on August 29, 2002 (attached hereto as Exhibit E).

#### **The August 26, 2002 Authority Conference**

During a specially scheduled Authority Conference on August 26, 2002, the Authority deliberated the merits of the issues raised in the 271 docket. In its deliberations, the Authority relied upon (1) the record in this docket as of July 31, 2002, as required by the Settlement Agreement filed in this docket on August 8th, 2002 (the "Settlement Agreement"); (2) the Settlement Agreement itself; (3) the FCC's statements in its Georgia/Louisiana Order; and (4) the comments of the Department of Justice with regard to the 271 application filed by BellSouth with regard to Alabama, Kentucky, Mississippi, North Carolina, and South Carolina.

#### **A. Track A Requirements**

The Authority voted unanimously that BellSouth satisfies the Track A requirements contained in section 271(c)(1)(A) of the Act.

Approval of BellSouth's 271 application under Track A requires the existence of one or more binding agreements between BellSouth and a facilities-based competitor that have been approved under section 252 of the Act. The Authority found that the record shows that BellSouth has, through negotiations and/or arbitration, effected numerous interconnection agreements with CLECs in Tennessee. In fact, the Authority has approved approximately three hundred and twenty-four (324) such agreements between BellSouth and various CLECs. The parties have not disputed nor produced evidence refuting the fact that some of these CLECs provide facilities-based service.

During deliberations, the Authority gave little weight to the intervenors' argument that BellSouth's status as the dominant local service provider precludes approval of its 271 application. After noting that the Track A statutory language is entirely silent on the matter of market share or the power of the ILECs, the Authority found that the market share arguments advanced by the CLECs, particularly SECCA, have little, if any, relevance to the determination of whether BellSouth has satisfied the requirements of Track A. The Authority noted that its approach to the market share argument was consistent with the FCC's Georgia/Louisiana Order, which stated that "[e]ven if BellSouth's methodology inflates the total number of lines as the CLECs suggest, we still find there is an actual commercial alternative based on the sufficient number of voice customers served over competing LECs' own facilities."<sup>35</sup> In rejecting the contention that market share should be the sole test for entry into long distance, the Authority also referenced the FCC's statements in the Georgia/Louisiana Order indicating that BellSouth was not required to show that competitors had captured a particular market share and that

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<sup>35</sup> *In the Matter of BellSouth Corporation, Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, CC Docket No. 02-35 (Memorandum Opinion and Order) (released May 15, 2002) 2002 WL 992213, 17 FCC Rcd. 9018, ¶ 13.

Congress had declined to adopt a market share or other similar test for BOC entry into long distance.<sup>36</sup>

**B. Statement of Generally Available Terms**

Director Tate addressed BellSouth's request that the Authority find that its Statement of Generally Available Terms ("SGAT") is consistent with 47 U.S.C. § 251 and contains cost-based rates for network elements consistent with 47 U.S.C. § 252(d). Director Tate observed that the CLEC intervenors did not specifically address BellSouth's SGAT filing.

Director Tate explained that the SGAT functions as an interconnection agreement that a carrier can accept without the need for separate negotiation. She noted that 47 U.S.C. § 252(f)(2) instructs state regulators to deny an SGAT unless such agreement is consistent with the regulations promulgated by the FCC under 47 U.S.C. § 251 and the cost-based pricing standards for network elements set forth in 47 U.S.C. § 252(d).

Director Tate stated that, based upon the recent changes stemming from the Settlement Agreement in this docket and the resultant adoption of the Florida performance plan in the Performance Measurements Docket, the SGAT as currently filed requires substantial revision before the agency can review, much less approve, the SGAT. Director Tate observed that deferring action on BellSouth's SGAT does not impair its ability to receive section 271 relief in that BellSouth filed a Track A 271 application, and a legally binding SGAT is not necessary to receive FCC approval under Track A.

Director Tate then stated that she intended to ask the panel in Docket No. 01-00526 to

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<sup>36</sup> See *id.* at ¶ 14 (quoting *Sprint Communications Co., L.P. v. FCC*, 274 F.3d 549, 553-54 (D.C. Cir. 2001)). Nevertheless, the Authority acknowledged that BellSouth's estimates of CLEC penetration in Tennessee and the number of CLECs providing service appeared to be somewhat exaggerated. Information collected by the TRA as of May 31, 2002, revealed that thirty-seven (37) CLECs, serving approximately 396,000 access lines, excluding resale lines, were offering facilities-based or UNE-based local service in the state. The TRA's investigation also showed that, as of May 31<sup>st</sup>, BellSouth had approximately ninety-three (93) active facilities-based CLEC interconnection agreements in place in Tennessee.



review the SGAT because the common goal of both Docket 01-00526 and the SGAT was to establish terms and conditions that comply with the Act.<sup>37</sup>

Chairman Kyle then made a motion to approve SGAT under section 252(f) based on the findings that BellSouth's SGAT satisfies the requirements of 47 U.S.C. §§ 251 and 252(d). Changes reflecting the Settlement Agreement shall subsequently be incorporated into the SGAT. Director Miller seconded the motion.<sup>38, 39</sup>

**C. Section 271(c)(2)(B): The Fourteen Point Checklist**

The Authority then turned to the issue of BellSouth's compliance with 47 U.S.C. § 271(c)(2)(B) and the 14-point checklist contained therein.

**Checklist Item 1: Interconnection in accordance with the requirements of 47 U.S.C. §§ 251(c)(2) and 252(d)(1)**

The Authority unanimously voted that BellSouth complies with Checklist Item 1. In its deliberations, the Authority considered the FCC's practice of examining performance with respect to provision of interconnection trunks and collocation. The Authority recognized that, at the present time, according to the TRA's records, there are presently approximately one hundred and five (105) active interconnection agreements between BellSouth and various CLECs in Tennessee. The Authority further noted that the data provided by BellSouth in this proceeding, which is comparable to the data BellSouth provided to the FCC in the Georgia and Louisiana proceeding, shows adequate performance. The Authority further found that the record demonstrates that BellSouth provides various methods to allow CLECs to interconnect.

<sup>37</sup> On June 21, 2001, the Authority convened the *Generic Docket to Establish Generally Available Terms and Conditions for Interconnection* (Docket No. 01-00526) for the purpose of resolving frequently arbitrated issues and producing generally available terms and conditions for interconnection.

<sup>38</sup> Director Tate did not vote with the majority.

<sup>39</sup> The Authority will issue an order reflecting the majority's decision to approve the SGAT.

**Checklist Item 2: Nondiscriminatory access to network elements in accordance with the requirements of 47 U.S.C. §§ 251(c)(3) and 252(d)(1)**

The Authority unanimously voted that BellSouth is providing or generally offering nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) and, therefore, is in compliance with Checklist Item 2.

During deliberations, the Authority observed that the Settlement Agreement affected its consideration of the issues raised in Checklist Item 2. Specifically, the Authority recounted that the Settlement Agreement requested (1) the closing of the record in the 271 Docket as of July 31, 2002; (2) the administrative closing of the OSS Docket, Docket No. 01-00362 (although such closing would not prevent the parties from filing future complaints with the Authority regarding access to BellSouth's OSS); (3) the use of the Georgia performance plan as the interim performance plan for section 271 purposes and the adoption of the Florida performance plan, with the addition of the Tennessee Special Access measures, as the permanent plan as of December 1, 2002; and (4) the Authority's consent, upon request by the CLECs, to open a generic contested case proceeding to address expeditiously the issue of BellSouth's provision of DSL service to CLEC voice customers and related OSS issues. The Authority observed that the majority of the intervenors either withdrew their opposition to BellSouth's section 271 application, withdrew from these proceedings or agreed that this matter be submitted to the Authority on the current record without further submissions or hearings.

The Authority then addressed the performance measures submitted as part of the testimony of BellSouth witness Mr. Alphonso Varner, BellSouth's Assistant Vice President of Interconnection Services. The Authority observed that the CLECs' contention that these measures are inappropriate is moot under the Settlement Agreement, because the parties thereto had agreed that the Georgia SQMs would be implemented temporarily for purposes of determining 271 compliance. The Authority also noted that the Georgia SQMs were the subject

of three audits and were deemed to be appropriate by the FCC with regard to other BellSouth state applications.

The Authority commented that although the preordering benchmarks in the November and December, 2001 and January, 2002 SQMs (submitted as an attachment to Alphonso J. Varner's testimony) were not achieved every month, the failures were not sufficiently consequential to reveal a systematic failure by BellSouth. The Authority therefore concluded that BellSouth satisfactorily achieved the benchmarks established to measure preordering performance.

The Authority then observed that BellSouth either met or exceeded the benchmarks established under the Georgia SQMs in November and December of 2001 and January of 2002 regarding a majority of the ordering metrics. While recognizing that BellSouth failed to consistently meet the benchmark for flow-through, the Authority stated that, under the methodology used in the Georgia/Louisiana Order, meeting the benchmark for flow-through was not required for section 271 approval, provided BellSouth processes manual orders in a compliant manner. The Authority observed that BellSouth had satisfied the benchmark for Firm Order Commitments ("FOC") and for Reject Interval for Partially Mechanized and Manual Orders on the majority of the submetrics. The Authority commented that although some submetrics did not achieve the benchmark, the unsuccessful submetrics had significantly lower volumes than the successful submetrics and, therefore, only minimally impacted the measurement as a whole. The Authority stated that BellSouth is compliant on the majority of the items reported.

The Authority acknowledged the CLECs' contention that the results of the FOC and Reject Response Completeness Multiple Responses metric demonstrated that BellSouth had

engaged in "serial clarification."<sup>40</sup> The Authority then observed that the CLECs failed to submit any evidence supporting their contention, which left undisputed BellSouth's assertion that there are legitimate reasons for the multiple responses deemed to be "serial clarification" by the CLECs.

The Authority then commented that, upon review of the SQMs for provisioning, The evidence supported a finding that BellSouth's performance was at parity with retail, meaning that BellSouth had provided service to its CLEC customers equivalent to the service it provides to its retail customers. The Authority observed that the record indicates that in the instances where BellSouth's service was inferior to that which it provides to itself, the volumes were too low to warrant a determination of noncompliance. The Authority stated that although the performance reported for Service Order Accuracy for November, 2001 through January, 2002 failed to meet the Georgia benchmark for all the submetrics, this failure was not sufficient to warrant a finding that BellSouth was noncompliant with regard to Checklist Item 2 in its entirety. The Authority advised that it would continue to closely monitor BellSouth's performance with regard to both Service Accuracy and Percent Provisioning Troubles Within 30 Days.

Upon review of the SQMs for maintenance and repair, the Authority observed that BellSouth either meets or exceeds the benchmark on most of the measures. The Authority stated that the measures in which BellSouth's performance is less than the benchmark have a minimal impact on the CLECs' ability to compete because the volumes are significantly lower than the successful submetrics.

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<sup>40</sup> Serial clarification is a term that CLECs have used to describe BellSouth's alleged procedure of providing an incomplete response to an Observation or Exception noted by a third party tester, which then requires further inquiry and prevents the expeditious resolution of the matter. CLECs view this procedure as a form of obfuscation, the object of which is to confuse rather than enlighten.

The Authority then examined the remaining measures in the SQM: billing, collocation, and change control. Observing that BellSouth is predominately compliant with all but two billing measures: Billing Accuracy and Usage Data Delivery Timeliness, the Authority commented that the Authority should continue to monitor BellSouth's performance in these areas. The Authority further stated that Billing Accuracy is a parity measure, and although BellSouth failed to meet the measure for the month of January, 2002, the discrepancy was less than 1 percent (1%).

Director Tate then addressed the issue of change control, stating that despite the acceptable performance results for change control, she shared the Department of Justice's concerns regarding this important process. After acknowledging BellSouth's argument that the CLECs are merely complaining about their inability to totally take charge of change control, Director Tate observed that the CLECs had raised legitimate concerns. Of particular concern were the CLECs' allegations of a backlog of changes that could take nine (9) months to fully implement and which may be mishandled by BellSouth due to its rush to deploy new versions of software before they have been adequately tested. Director Tate cautioned that while BellSouth's desire to expeditiously resolve these issues as it pursues section 271 approval is understandable, to do so at the expense of the CLECs' it is attempting to appease would be shortsighted. Director Tate posited that, in light of the regional nature of change control and the intense involvement of both the Georgia and Florida Commissions in developing policies on change control, it would be imprudent for Tennessee to arbitrarily step in at this juncture and begin to impose additional policies. For this reason, Director Tate instructed Staff to issue a data

request to obtain an updated change control issue list from BellSouth and a statement of the applicable status of the issues with all the other state commissions and the FCC.<sup>41</sup>

The Authority specifically addressed WorldCom's argument that BellSouth's cost-based UNE rates are excessive because they are predicated on out-of-date technology derived from data from 1995 to 1998, prior to many technological advances. On February 23, 2001, the Authority ordered permanent prices for collocation elements and UNE rates in the Permanent Prices Docket, after a contested case proceeding.<sup>42</sup> In light of the findings in that docket, the record in the instant docket and the absence of evidence demonstrating that BellSouth's rates are not based on TELRIC methodology, the Authority concluded that BellSouth provides UNEs at rates that are nondiscriminatory.

The Authority then commented that BellSouth's refusal to provide its Fast Access Digital Subscriber Line ("DSL") Service to customers that choose a CLEC as their voice provider has been the subject of heated debate, not only in this proceeding but also in BellSouth's other 271 applications to the FCC. The Authority observed that although the FCC found that BellSouth's Fast Access Service policy was compliant with FCC rules, other state commissions, notably Florida and Kentucky, have initiated proceedings related to Fast Access Service. The Authority commented that, pursuant to the Settlement Agreement, any concerns regarding the FCC's policy raised by the comparatively low rate of residential penetration in Tennessee could be explored in a separate docket in an expedited manner.

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<sup>41</sup> Director Tate also expressed her support for the establishment of a regional committee to address change control issues. She observed that such a committee, if established, could more efficiently provide guidance on a regional rather than a state-by-state basis which could result in savings in cost and manpower to both state commissions and the industry.

<sup>42</sup> See In re Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements, Docket No. 97-01262 (Final Order) (issued February 23, 2001).

The Authority commented that other issues brought forth by the CLECs, including AT&T's complaint about application of rates in its interconnection agreement and Ernest's complaint that BellSouth failed to assign FLEX ANI features to lines Ernest had ordered, are misplaced in this docket. The Authority found that these issues could be more appropriately handled as individual complaints.

Director Tate then addressed AT&T's complaint of existing problems in states other than Tennessee where customer outages have continued even after BellSouth implemented the single "C" order process for UNE-P conversions. According to BellSouth, the single "C" order process for UNE-P conversions was to be implemented in Tennessee by August of 2002. Director Tate acknowledged BellSouth's assertion that only 0.046 percent (.046%) of UNE-P conversions ordered through the single "C" order process were affected and BellSouth's assurance that the problem should have been alleviated. Director Tate commented that notwithstanding the small number of orders affected, the Authority should take an interest in this matter to prevent unnecessary outages in consumer services in the future. Director Tate then directed the Staff to issue a data request to require BellSouth to file an update on the single "C" order process as it has been implemented in Tennessee.

In order to facilitate the Authority's supervision and regulation of BellSouth's service under the Georgia SQMs, Director Tate directed Staff to issue a data request to BellSouth to obtain an itemized list of all enforcement mechanisms paid and their corresponding metrics in conjunction with any and all payments for both the interim and the permanent performance plan. Director Tate stated that the information supplied in BellSouth's response may be used by parties in pinpointing areas of needed attention as well as verification of payments made under the SEEMs.

**Checklist Item 3: Nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned or controlled by the Bell Operating Company at just and reasonable rates in accordance with the requirements of 47 U.S.C. § 224**

The Authority unanimously voted that BellSouth is providing or generally offering nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell Operating Company at just and reasonable rates in accordance with the requirements of 47 U.S.C. § 224 and, therefore, is in compliance with Checklist Item 3. The parties stipulated to this section 271 checklist item.

In support of its decision, the Authority found that BellSouth has methods and procedures in place for offering access to BellSouth's poles, ducts, conduits, and rights-of-way that are set forth in its license agreement for rights-of-way, conduits, and pole attachments. The Authority also determined that (1) negotiating carriers and BellSouth have agreed to the terms of the license agreement in numerous instances; (2) BellSouth's license agreement places a time period for itself and new entrants to access poles, ducts, conduits, and rights-of-way; and (3) BellSouth has requested that entrants occupy the space within 12 months of the day the space is assigned.

**Checklist Item 4: Local loop transmission from the central office to the customer's premises unbundled from local switching or other services**

The Authority unanimously determined that BellSouth is providing or generally offering local loop transmission from the central office to the customer's premises unbundled from local switching or other services and, therefore, is in compliance with Checklist Item 4. During deliberations, the Authority examined whether BellSouth provides loop facilities from central offices to customer premises unbundled from local switching or other network elements. The Authority applied the standard for weighing the evidence on this issue used in the Georgia/Louisiana Order, finding that satisfactory performance data is sufficient to show nondiscriminatory access to unbundled loop facilities.



After reviewing the performance data submitted in support of Checklist Item 4, the Authority found that BellSouth's performance was satisfactory in Tennessee. According to the Authority, the record reveals no systemic problems associated with either BellSouth's provisioning or maintenance and repair activities associated with unbundled loops. The Authority found that BellSouth, with only limited exceptions, met parity as compared to a retail analog for the majority of reported performance metrics.

The Authority further found that the record does not support Covad's argument that BellSouth's installation of Digital Loop Carrier ("DLC") services is effectively re-monopolizing the local loop. The Authority commented that Covad has other options that would allow it to provide service to customers behind DLC remote terminals. The Authority also noted that Covad's failure to file a written complaint against BellSouth with the TRA undermines its assertion that BellSouth failed to provide line sharing within the time interval specified by its interconnection agreement.

**Checklist Item 5: Local transport from the trunk side of a wire line local exchange carrier switch unbundled from switching or other services**

The Authority unanimously found that BellSouth is providing or generally offering local transport from the trunk side of a wire line local exchange carrier switch unbundled from switching or other services and, therefore, is in compliance with the Checklist Item 5. In analyzing Checklist Item 5, the Authority referred to its prior finding in Docket No. 99-00377 that BellSouth's provisioning of enhanced extended loops ("EELs")<sup>43</sup> is consistent with the requirements of the Act and related federal rules and orders.<sup>44</sup> The Authority recounted that it

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<sup>43</sup> See *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. 99-00377 (*Final Order of Arbitration*) (issued August 4, 2000) p. 5; EELs are unbundled local loops that are cross-connected to interoffice transport.

<sup>44</sup> See *In re Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. (Final Order of Arbitration) (issued August 4, 2000) pp. 2-7.

had determined that requiring BellSouth to provide EELs is appropriate from a public policy perspective in that it fostered competition in the telecommunications market by allowing competing carriers to serve areas without having to install their own switches, trunks, and loops, or without having to collocate in BellSouth owned and operated central offices.

The Authority then observed that the parties had not challenged BellSouth's evidence showing that BellSouth provides unbundled transport to competitive carriers in a nondiscriminatory manner and thus concluded that BellSouth had demonstrated the existence of a number of dedicated and common transport arrangements provided to competitive carriers.

**Checklist Item 6: Local switching unbundled from transport, local loop transmission, or other services**

The Authority unanimously found that BellSouth is providing or generally offering local switching, unbundled from transport, local loop transmission, or other services and, therefore, is in compliance with Checklist Item 6. In support of this finding, the Authority determined that the record herein shows that BellSouth 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 reciprocal compensation. The Authority found that BellSouth demonstrated that it provides a significant number of unbundled switch ports and loop port combination arrangements to competitive carriers. The Authority determined that this evidence is sufficient to satisfy Checklist Item 6.

The Authority acknowledged that both AT&T and Covad had raised billing issues related to this Checklist Item. AT&T argued that the daily usage filed and wholesale bills it receives from BellSouth have contained such errors as: (1) originating switching charges for calls originated on AT&T's own switch; (2) monthly billing for one-time collocation charges; (3) failing to bill for local minutes of use for a six-month period; (4) billing new accounts for past-

due balances; and (5) assessing late payment charges against AT&T when payment was not overdue. The Authority found that a substantial majority of AT&T's bills are correct and that BellSouth and AT&T have entered into a dispute resolution process to resolve the billing problems.

Covad contended that it is prematurely billed for Line Shared Loop orders. BellSouth reiterated its commitment to addressing Covad's problem and that the result of the premature billing is a minimal one-time overcharge that can be resolved by disputing the bill. The Authority found that the billing issues raised by the parties were not sufficiently material to warrant a finding of noncompliance with Checklist Item 6.

**Checklist Item 7: Nondiscriminatory access to (1) 911 and E911 services; (2) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (3) operator call completion services**

The Authority unanimously voted that BellSouth is providing or generally offering nondiscriminatory access to 911 and E911 services, directory assistance services to allow the other carriers' customers to obtain telephone numbers, and operator call completion services, and, therefore, is in compliance with Checklist Item 7. The parties stipulated to the fact that BellSouth satisfies the requisites of Checklist Item 7.

In support of its finding on this issue, the Authority observed that the record shows BellSouth affords competitors the ability to access 911 and E911 services and maintains the database entries for CLECs with the same accuracy and reliability that it maintains the database entries for its own customers. The Authority observed that BellSouth provides municipality listings to CLECs that enable the CLECs to translate 911 calls to the appropriate directory number and acknowledged BellSouth's statement that it will continue to load CLEC end-user information into the associated databases.

The Authority found that BellSouth provides CLECs with equivalent access to its directory assistance and operator services. BellSouth offers access to directory assistance databases either through access to the directory assistance database ("DADS") or through the directory access directory assistance services ("DADAS"). In addition, the Authority found that CLECs have the option of using BellSouth's directory assistance and operator services through customized routing or providing their own operator and directory assistance services. The Authority noted that when the CLEC customers use directory assistance and operator services of BellSouth, the CLECs may request that BellSouth brand the call.

**Checklist Item 8: White pages directory listings for customers of other telecommunications carriers' telephone exchange service**

The Authority unanimously found that BellSouth is providing or generally offering white pages directory listings for customers of the other carriers' telephone exchange services and, therefore, is in compliance with Checklist Item 8. In considering this issue, the Authority acknowledged that some CLECs had presented anecdotal evidence of noncompliance with Checklist Item 8 in the context of BellSouth's five-state section 271 application to the FCC.<sup>45</sup> The Authority also noted that although KMC had presented evidence that BellSouth is not complying with Checklist Item 8 in the proceedings on BellSouth's Georgia and Louisiana application, the FCC had not found KMC's argument sufficiently compelling to support a finding that BellSouth was not in compliance. The Authority concluded that in the instant proceeding, the CLECs presented no evidence that BellSouth does not comply with Checklist Item 8.

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<sup>45</sup> The states included in the five-state application are Kentucky, North Carolina, South Carolina, Mississippi and Alabama.

**Checklist Item 9: Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to other carriers' telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules**

The Authority unanimously found that BellSouth is providing or generally offering nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers and, therefore, is in compliance with Checklist Item 9. The parties stipulated that BellSouth meets the requirements of sections 271(c)(2)(B)(ix) and 251(b)(3) of the Act and, therefore, satisfies the requisites of Checklist Item 9.

During the deliberations on this issue, the Authority observed that Lockheed Martin assumed the responsibility of acting as the North American Numbering Plan Administrator ("NANPA") in 1998 and, in BellSouth's region, the transition began July 6, 1998 and concluded August 14, 1998. The Authority also noted that BellSouth no longer performs the central office code assignment function; inasmuch as NeuStar assumed all NANPA responsibilities on November 17, 1999 when the FCC approved the transfer of Lockheed Martin's Communications Industry Service Division to NeuStar, Inc. The Authority concluded that BellSouth had demonstrated that it assists CLECs in obtaining NPA/NXX codes, adheres to industry guidelines as well as FCC rules and continues to demonstrate accurate reporting of data to the central office code administrator.

**Checklist Item 10: Nondiscriminatory access to databases and associated signaling necessary for call routing and completion**

The Authority unanimously found that BellSouth provides nondiscriminatory access to databases and associated signaling necessary for call routing in Tennessee and, therefore, has complied with the requirements of Checklist Item 10. During deliberations, the Authority observed that the parties did not contest BellSouth's claim that it is in compliance with Checklist Item 10. The Authority then commented that the information filed in this docket is comparable

to the data used by the FCC to find that BellSouth was in compliance with Checklist Item 10 in the Georgia/Louisiana Order.

**Checklist Item 11: Until the date by which the commission issues regulations pursuant to 47 U.S.C. § 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.**

The Authority unanimously found that BellSouth is providing or generally offering number portability in compliance with the FCC's number portability regulations adopted pursuant to section 251 and is therefore in compliance with Checklist Item 11. In support of its finding, the Authority observed that the record shows BellSouth has been providing permanent local number portability pursuant to the FCC's requirements<sup>46</sup> since November 19, 2001.<sup>47</sup> Further, the Authority noted that the parties presented no evidence contradicting BellSouth's claims of compliance with Checklist Item 11.

**Checklist Item 12: Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of 47 U.S.C. §§ 251(c)(4) and 252(d)(3)**

The Authority unanimously found that BellSouth is providing or generally offering nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) and, therefore, is in compliance with Checklist Item 12. The parties stipulated that BellSouth satisfies the requisites of Checklist Item 12.

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<sup>46</sup> See *In the Matter of Telephone Number Portability*, CC Docket No. 95-116 (*Third Report and Order*) 1998 WL 238481, 13 FCC Rcd. 11,701 (released May 12, 1998).

<sup>47</sup> The Authority observed that Congress had defined number portability as the ability of users of telecommunications services to retain at the same location existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. Without number portability, customers ordinarily cannot change their local companies unless they change their telephone numbers.

During deliberations, the Authority made the following findings. The Authority observed that BellSouth is required to allow CLECs to permit similarly situated telephone exchange service end users to dial the same number of digits to make a local telephone call notwithstanding the identity of the end-user's or the called party's service provider. The Authority then found that the record supported BellSouth's contention that it provides for local and toll dialing parity to CLECs with no unreasonable delays and provides for dialing parity for all originating telecommunications services that require dialing in order to route a call.

The Authority further commented that it had approved BellSouth's Second Revised IntraLATA Toll Dialing Parity Plan with the following modifications: (1) customers shall be notified that they would not automatically be defaulted to a carrier if they had not selected a carrier; and (2) customers shall be required to dial an access code to place intraLATA toll calls until they make an affirmative choice of an intraLATA toll carrier.<sup>48</sup> The Authority observed that BellSouth had amended its plan to include a statement agreeing to comply with all applicable rules of both the FCC and the TRA. The Authority noted that the parties had lodged no complaints regarding post-dial delays, call completion rates, or transmission quality relating to local call dialing parity.

**Checklist Item 13: Provision of reciprocal compensation arrangements in accordance with the requirements of 47 U.S.C. § 252(d)(2)**

The Authority unanimously found that BellSouth is providing or generally offering reciprocal compensation arrangements in accordance with the requirements of 47 U.S.C. §§ 251(c)(4) and 252(d)(3) and, therefore, is in compliance with Checklist Item 13.

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<sup>48</sup> See *Petition of BellSouth Telecommunications, Inc. for Approval of an IntraLATA Toll Dialing Parity Implementation Plan*, TRA Docket No. 97-01399 (*Order Approving BellSouth Telecommunications, Inc. Second Revised IntraLATA Toll Dialing Parity Plan*) (issued June 22, 1999) p. 7.

Prior to this finding, Director Tate stated that the interconnection agreements on file with this Authority reveal that BellSouth agreed to pay reciprocal compensation consistent with 47 U.S.C. § 251(b)(5). She further noted that, in responding to CLECs' concerns voiced in this proceeding regarding the rate to be paid for tandem switching, BellSouth indicated it would pay the tandem switching rate if the CLEC switch serves a geographic area comparable to BellSouth's tandem switch.<sup>49</sup>

Director Tate commented that BellSouth's statement necessitated the reiteration or clarification of the Authority's mandate regarding this issue. Director Tate stated that in a number of arbitration decisions, the Authority had ordered BellSouth to pay reciprocal compensation at tandem interconnection rates.<sup>50</sup> She observed that the Authority's orders on the issue of reciprocal compensation are consistent with the FCC's recent *Memorandum Opinion and Order* issued on July 17, 2002.<sup>51</sup> The *Memorandum Opinion and Order* states:

in order to qualify for the tandem rate, a competitive LEC need only demonstrate that its switch serves a geographic area comparable to that of the incumbent LEC's tandem switch. . . The requisite comparison under the tandem rate is whether the competitive LEC's switch is **capable of** serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch.<sup>52</sup>

<sup>49</sup> See Pre-Filed Direct Testimony of John Ruscilli (filed April 26, 2002) p. 102.

<sup>50</sup> See, e.g., *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, TRA Docket No. 99-00948 (*Interim Order of Arbitration Award*) p. 12; *Petition of MCIMetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. for Arbitration of Certain Term and Condition of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996*, TRA Docket No. 00-00309 (*Interim Order of Arbitration Award*) (issued April 3, 2002) pp. 32-34.

<sup>51</sup> See *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and For Expedited Arbitration*, CC Docket No. 00-218 (*Memorandum Opinion and Order*) 2002 WL 1576912 ¶¶ 304-310; see also *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (*Notice of Proposed Rulemaking*) 2001 WL 455872, 16 FCC Rcd 9610, 9648, ¶ 105.

<sup>52</sup> *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and For Expedited Arbitration*, CC Docket No. 00-218 (*Memorandum Opinion and Order*) 2002 WL 1576912 ¶ 309 (emphasis added).



Director Tate reiterated the Authority's prior conclusion that BellSouth must pay the tandem switching rate if a CLEC's switch is capable of serving an area comparable to BellSouth's tandem switch. Director Tate then moved to find BellSouth in compliance with Checklist Item 13, based on BellSouth's compliance with FCC and TRA orders on reciprocal compensation and payment of the tandem switching rate when a CLEC's switch is capable of serving a geographic area comparable to the area served by BellSouth's tandem.

**Checklist Item 14: Telecommunications services are available for resale in accordance with the requirements of 47 U.S.C. §§ 251(c)(4) and 252(d)(3)**

The Authority unanimously voted that BellSouth is providing or generally offering telecommunications services such that they are available for resale in accordance with the requirements of 47 U.S.C. §§ 251(c)(4) and 252(d)(3) and, therefore, is in compliance with Checklist Item 14. During deliberations on this issue, Director Tate stated that the record is consistent with the conclusion that BellSouth satisfies the requirements of Checklist Item 14. In support of that statement, Director Tate observed that BellSouth had demonstrated that it had entered into numerous resale agreements with competing carriers. She also stated that the record indicates that BellSouth's resale agreements and tariffs are compliant with the resale provisions of the Act as well as the resale requirements of this Authority, including the resale procedures and wholesale discounts in the Avoidable Cost Docket, 97-01331, and the Arbitration Awards Docket, 96-01271 and 96-01152.<sup>53</sup> Director Tate also acknowledged the accuracy of BellSouth's assertion that the FCC does not require BOCs to make nonretail DSL services available for

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<sup>53</sup> See *The Avoidable Costs of Providing Bundled Service for Resale by Local Exchange Telephone Companies*, TRA Docket No. 96-01331 (*Final Order*) (issued January 17, 1997); *In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, TRA Docket No. 96-01271 (*Second and Final Order of Arbitration Awards*) (issued January 23, 1997); *In the Matter of the Interconnection Agreement Negotiation Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, TRA Docket No. 96-01152 (*Second and Final Order of Arbitration Awards*) (issued January 23, 1997).

resale as a condition of meeting its resale obligations under the Act. Further, Director Tate noted that the parties had not entered testimony into the record directly contradicting BellSouth's assertion of the compliance.

Director Tate then referred to the testimony of BellSouth's witness John Ruscilli, BellSouth's Senior Director of State Regulatory Affairs, that retail promotions offered for more than 90 days will be made available for resale at the stated tariff rate less the wholesale discount or at the promotional rate.<sup>54</sup> Director Tate expressed her concern that Mr. Ruscilli's position is inconsistent with BellSouth's tariffs and in conflict with the FCC's Local Competition Order,<sup>55</sup> which discussed the determination of the retail rate for the purpose of calculating the wholesale rate and made the determination that rates for short-term promotions of less than 90 days are not considered retail for wholesale obligation purposes. Director Tate stated that the FCC had further elaborated that promotions lasting more than 90 days must be offered for resale with wholesale discounts. Director Tate concluded that the promotional rate offered by BellSouth is considered retail for long-term promotions. She commented that in order for BellSouth to meet its resale obligations under the Act, BellSouth must resell its retail promotions offered for more than 90 days at the promotional rate less the wholesale discount. Director Tate stated that otherwise, BellSouth could effectively shelter selected services from competition through resale by offering long-term promotions or merely renewable short-term promotions.

Director Tate then commented, based upon BellSouth's actions regarding existing promotional tariffs filed with the TRA and not on the testimony of Mr. Ruscilli, that the Authority find BellSouth is in compliance with Checklist Item No. 14.

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<sup>54</sup> See Pre-Filed Direct Testimony of John Ruscilli (filed April 26, 2002) p. 107.

<sup>55</sup> See Local Competition Order, 1996 WL 452885, 11 FCC Rcd. 15,499, ¶ 950; see also 47 C.F.R. § 51.613.

**D. Public Interest**

The Authority unanimously found that entry by BellSouth into the interLATA long distance market is consistent with “the public interest, convenience, and necessity” in accordance with the Act.<sup>56</sup> The Authority based its finding upon its previous findings during the deliberations, the record,<sup>57</sup> the Georgia/Louisiana Order and the comments of the Department of Justice in the five-state filing, and the Settlement Agreement, which contemplates the adoption of the Florida performance measurements and SEEMs.

Prior to this finding, the Authority acknowledged that some CLECs may have been aggrieved by certain actions by BellSouth, which may be perceived as inappropriate or anticompetitive. The Authority concluded, however, that the record does not support the CLECs’ allegation that BellSouth’s actions, practices, policies, and overall behavior constitute an impediment to competition in Tennessee. The Authority concluded that the public interest concerns of section 271 were not undermined by BellSouth’s business practices.

The Authority then addressed BellSouth’s assertion that its win-back strategies are supported by the Act and the FCC.<sup>58</sup> The Authority found BellSouth’s position unpersuasive. While acknowledging that the FCC had concluded in its Customer Appropriate Network Information Order that win-back programs are consistent with 47 U.S.C. § 222(c)(1), the Authority observed that the FCC had also found that retention marketing campaigns can harm competition if a carrier uses carrier-to-carrier information such as switch or presubscribed interexchange carrier orders to trigger this type of marketing campaign.<sup>59</sup> The Authority further

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<sup>56</sup> 47 U.S.C. § 271(d)(3)(C).

<sup>57</sup> According to information provided by BellSouth, CLECs have acquired 32.2% of the business lines in Tennessee, which represents the highest percentage of CLEC-controlled business lines in BellSouth’s nine-state region.

<sup>58</sup> See Pre-Filed Direct Testimony of John Ruscilli (filed April 26, 2002) p. 119.

<sup>59</sup> See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115 (*Order on Reconsideration and Petitions for Forbearance*) (released Aug. 16, 1999) 1999 WL 688467, 14 FCC Rcd. 14,409 ¶ 70 (“Customer Appropriate Network Information Order”).

commented that 47 U.S.C. § 222(b) also prohibits a carrier from using carrier proprietary information to retain soon-to-be former customers when the carrier gains notice of the customer's imminent cancellation of service through the provision of carrier-to-carrier service. The Authority concluded that neither the Act nor the FCC's rules provide blanket endorsement to BellSouth's win-back programs, which may be based on marketing strategies that exploit the precarious position of the CLECs in the local exchange market.

The Authority then expressed their understanding that BellSouth has an internal policy in effect in other states requiring it to refrain for ten (10) days from contacting customers who have switched to another carrier. The Authority applauded this policy, and noted their expectations that it would be applied similarly in Tennessee.

The Authority commented that in order to ensure that BellSouth continues to provide competitors with nondiscriminatory access to the items contained in the 14-point checklist following section 271 approval, it is important to implement measures to prevent BellSouth from backsliding. The Authority stated that the most effective way to accomplish this is to implement a set of performance measurements to continually monitor BellSouth's actions in a post-271 environment. According to the Authority, having the Florida performance measures and self-effectuating enforcement mechanisms in place pursuant to the Settlement Agreement will assist the Authority in ascertaining whether BellSouth's provision of interLATA long distance services continues to be in the public interest.

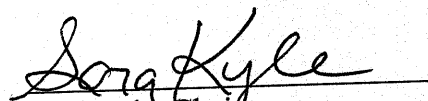
E. **Compliance with 47 U.S.C. § 272: Special Provisions Concerning Bell Operating Companies**

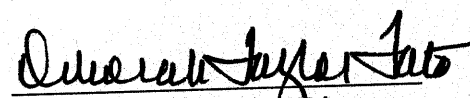
The Authority unanimously found that BellSouth had sufficiently demonstrated that it is in compliance with the requirements of 47 U.S.C. § 272. The parties stipulated to this issue. The CLECs did not submit evidence contesting BellSouth's compliance.


During deliberations, the Authority observed that in support of its claim of 272 compliance, BellSouth submitted its Articles of Incorporation, a Joint Cost Report for 2001 filed with the FCC through the Automated Reporting and Management Information System ("ARMIS"), and BellSouth's 2001 10K Securities and Exchange Commission filing. The Authority also noted that BellSouth had provided a report from its auditor, Pricewaterhouse Coopers ("PWC") that contains consolidated balance sheets and the consolidated statements of income cash flows and shareholders equity. The Authority stated that this audit presented fairly the financial position of BellSouth and its subsidiaries. The Authority further stated that, given that BellSouth Long Distance ("BSLD") is not a Tier 1 carrier, the PWC audit of the position of BellSouth and its subsidiaries is consistent with 47 C.F.R. § 64.904, which covers all affiliate transactions. The Authority commented additionally that the information BellSouth presented was sufficient to convince the FCC that BellSouth made a prima facie showing that it would comply with section 272, as indicated in the Georgia/Louisiana Order.

**F. Conclusion**

Based upon the foregoing, the Tennessee Regulatory Authority finds that BellSouth has achieved compliance with 47 U.S.C. § 271 and 47 U.S.C. § 272. In addition, the Authority finds that entry by BellSouth into the interLATA long distance market is consistent with the public interest, convenience, and necessity in accordance with the Federal Telecommunications Act of 1996. Accordingly, the Authority recommends that the FCC approve the application for section 271 approval filed by BellSouth.

  
Sara Kyle, Chairman

  
Deborah Taylor Tate, Director

  
Pat Miller, Director