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

ORIGINAL

In the matter of

**Application of BellSouth Corporation,)
BellSouth Telecommunications, Inc., and)
BellSouth Long Distance, Inc., for Provision)
of In-Region, InterLATA Service in the)
State of Louisiana)
_____)**

**CC Docket
No. 97-231**

**COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELLSOUTH'S
SECTION 271 APPLICATION**

APPENDIX - VOLUME VII

**APPENDIX TO COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELLSOUTH'S
SECTION 271 APPLICATION FOR LOUISIANA**

| TAB | AFFIDAVIT | SUBJECT(S) COVERED |
|------------|--|--|
| A | William J. Baumol | Public Interest |
| B | Robert H. Bork | Public Interest |
| C | Jay M. Bradbury | Operations Support Systems |
| D | Jim Carroll | AT&T Entry Plans |
| E | Robert V. Falcone and Michael E. Leshner | Unbundled Network Elements: Combinations |
| F | Jordan Roderick | PCS |
| G | Gregory R. Follensbee | Unbundled Network Elements: Pricing |
| H | R. Glenn Hubbard and William H. Lehr | Public Interest |
| I | Patricia A. McFarland | Resale Restrictions |
| J | Patricia A. McFarland | Section 272 Compliance |
| K | Sharon Norris | Operations Support Systems: Demonstration for La. PSC |
| L | C. Michael Pfau | Performance Measurements |
| M | James A. Tamplin, Jr. | Unbundled Network Elements |

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FEDERAL COMMUNICATIONS COMMISSION
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In the matter of

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

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CC Docket No. 97-231

AFFIDAVIT OF
C. MICHAEL PFAU
ON BEHALF OF
AT&T CORP.
AT&T EXHIBIT L

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Provision of In-Region, InterLATA)
Services in Louisiana)

**AFFIDAVIT OF C. MICHAEL PFAU
ON BEHALF OF AT&T CORP.**

1. My name is C. Michael Pfau. My business address is 295 North Maple Avenue, Basking Ridge, New Jersey 07920.
2. I am employed by AT&T Corp., and I serve as Division Manager, Local Services Division Negotiations Support.
3. My responsibilities include developing and communicating AT&T's business requirements for local services to the regional teams negotiating with the incumbent local exchange carriers ("incumbent LECs"). I also assist the regional teams in performing feasibility assessment of business arrangements offered by the incumbent LECs.
4. I am actively involved as an AT&T representative on the Local Competition Users Group Performance Measurement SubCommittee that recently published a set of proposed performance measurements for monitoring the performance of incumbent LECs in delivering access to their operations support systems, services and facilities to competing local service providers. I previously submitted affidavits regarding performance

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measurements to the Commission in response to the Section 271 applications of SBC Communications for Oklahoma, Ameritech for Michigan, and BellSouth for South Carolina.

5. I began my career at Bell of Pennsylvania, where I had various assignments in central office engineering, plant extension, circuit layout and regulatory operations. Just prior to divestiture, I moved to AT&T General Departments, where I was responsible for managing intrastate service cost models. My next assignment was in an AT&T regional organization responsible for regulatory implementation support of service and marketing plans within the five Ameritech states. I then moved to a headquarters position responsible for managing market research related to business communications services. Immediately prior to my current assignment, I worked within the product management organization, focusing upon private line data services.

6. I have a Bachelor of Science degree in Mechanical Engineering and a Masters Degree in Business Administration, both from Drexel University. In addition, I have a Professional Engineering License from the State of Pennsylvania.

I. SUBJECT OF STATEMENT

7. In its application to provide in-region interLATA long distance services in Louisiana, BellSouth again contends, as it did in its earlier South Carolina application, that it is providing competitive local exchange carriers ("CLECs") with the "nondiscriminatory access" to its operations support systems and associated services and facilities that is required

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under the Telecommunications Act of 1996 ("1996 Act") and the Commission's orders.¹ In support of this claim, BellSouth relies upon the same OSS interfaces and the same set of performance measurements, which have been updated only to add September 1997 data. The Affidavit of Jay Bradbury, submitted in this proceeding by AT&T, demonstrates that BellSouth is not providing CLECs with nondiscriminatory access to its operations support systems because, among other things, (1) BellSouth has not yet completed development of the real-time electronic interfaces that are required to provide CLEC's with equivalent access to BellSouth's operations support systems, and (2) the interim access arrangements presently offered by BellSouth do not provide equivalent access for CLECs.

8. Even if potentially adequate electronic interfaces were in a state of operational readiness, however, that alone would not establish that the access BellSouth is delivering to AT&T and other CLECs is nondiscriminatory. As the Commission made clear in its recent order denying Ameritech's application to offer interLATA services in Michigan, a BOC must also "substantiate" its claim of nondiscriminatory performance with empirical data demonstrating that the access being provided to CLECs is in fact "equal" or "equivalent" in terms of its availability, timeliness, accuracy and completeness to the access that BellSouth

¹ See, e.g., BellSouth Brief, pp. 23, 74; Affidavit of William N. Stacy on Checklist Compliance (Operations Support Systems) ("Stacy OSS Aff."), ¶ 146; Affidavit of William N. Stacy on Checklist Compliance (Performance Measures) ("Stacy PM Aff."), ¶ 69; Affidavit of David Hollett, ¶ 4.

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provides to itself.² Further, the Commission has specifically identified a number of performance measurements for which data should be provided by a BOC in support of a Section 271 application.³

9. This affidavit responds to the performance data offered by BellSouth in support of its application through the affidavits of Mr. William N. Stacy. It first addresses the requirements for performance measurement that BellSouth must meet to make a threshold showing of nondiscrimination. It then examines the performance data that BellSouth has presented with its application. Based on my analysis, I conclude that the performance information provided by BellSouth is not adequate to establish that BellSouth is providing CLECs with nondiscriminatory performance. In particular, I show that BellSouth has failed to provide data for most of the performance measurements which the Commission has found necessary to any showing that parity of performance is being provided to CLECs. Further, I show that BellSouth has continued to withhold relevant performance data from the Commission which demonstrates that BellSouth is *not* providing nondiscriminatory performance for

² Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137 (released August 19, 1997) ("*Ameritech Michigan Order*"), ¶¶ 139, 204.

³ See, e.g., *Ameritech Michigan Order*, ¶ 212. See also Memorandum Opinion and Order, *Application of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp.*, File No. NSD-L-96-10 (released August 14, 1997) ("*Bell Atlantic/NYNEX Order*"), App. D.

CLECs. Finally, in the very few instances where BellSouth has provided comparative performance data, I show that that data too confirms that nondiscriminatory performance is *not* being provided to CLECs, notwithstanding BellSouth's efforts to present its data in ways that obscure meaningful performance comparisons.

II. APPROPRIATE PERFORMANCE MEASUREMENTS ARE REQUIRED TO DETERMINE WHETHER BELLSOUTH IS PROVIDING NONDISCRIMINATORY PERFORMANCE FOR COMPETITORS.

A. The Evidence Needed To Show Nondiscriminatory Performance For CLECs.

10. BellSouth cannot establish that CLEC access to its operations support systems is nondiscriminatory simply by asserting or promising that it will be so. Nor can BellSouth rely on the allegedly nondiscriminatory design of its systems and procedures to obviate the need for review of its actual performance, for as the Commission has recognized, "the BOCs' use of nondiscriminatory, automated order processing systems . . . does not guarantee that requests placed via these systems are actually completed within [the same] period of time."⁴ Thus, BellSouth must *demonstrate* that nondiscriminatory access is actually being delivered to CLECs, and that demonstration requires that BellSouth monitor the access it provides -- both to CLECs and to itself -- pursuant to an appropriate measurement plan and

⁴ First Report and Order, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act*, CC Docket No. 96-149 (released December 24, 1996), ¶ 243.

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report the results to the Commission with its application. As the Commission stated in its recent *Ameritech Michigan Order*, "proper performance measures with which to compare BOC retail and wholesale performance, and to measure exclusively wholesale performance, are a necessary prerequisite to demonstrating compliance with the Commission's 'nondiscrimination' and 'meaningful opportunity to compete' standards."⁵

11. In order to prove that nondiscriminatory access is actually being delivered to CLECs, BellSouth needs to provide the Commission with measurements sufficient to demonstrate that the access being provided to CLECs is in fact at least "the same" as,⁶

⁵ *Ameritech Michigan Order*, ¶ 204 (quoting Department of Justice Evaluation, filed June 25, 1997, App. A, p. A-3). See also Affidavit of Michael J. Friduss on behalf of the Dept. of Justice, filed November 4, 1997, in *Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-121 ("Friduss S.C. Aff. (DOJ)"), ¶ 19 ("the ability to detect discrimination . . . is dependent on the establishment of performance measures that will allow competitors and regulators to measure BOC performance"); Consultation of the Michigan Public Service Comm'n, dated June 9, 1997, in *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137 ("Michigan PSC"), pp. 33-34 ("a method or system of gauging the performance," including "complete and appropriate performance standards," "must be in place before a positive determination can be made by the FCC regarding Ameritech's compliance with this checklist item"); Order Regarding Statement, *In re BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996*, Georgia Pub. Serv. Comm'n Docket No. 7253-U (March 20, 1997), pp. 29-30 ("comparative standards must be evaluated to ensure that the interfaces provide nondiscriminatory access").

⁶ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (released August 8, 1996) ("*Local* (continued...)

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"equal,"⁷ or "equivalent to"⁸ the access that BellSouth provides to its own customer service representatives in terms of its availability, timeliness, accuracy and completeness. This means that BellSouth must show not only that it has provided appropriate electronic interfaces for use

⁶ (...continued)

Competition Order"), ¶ 523 ("the incumbent must provide *the same access* to competing providers" that it provides to its own customer service representatives); ¶ 316 ("the incumbent must provide access to [OSS] functions under *the same terms and conditions* that they provide services to themselves or their customers"); ¶ 518 (competing providers must be provided with the ability "to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially *the same time and manner* that an incumbent can for itself"); *Ameritech Michigan Order*, ¶ 135 (incumbent must provide access that enables competitors to perform "in substantially *the same time and manner* as the incumbent performs that function for itself"); ¶ 143 ("the BOC must provide *the same access* to competing carriers that it provides to itself") (emphasis added).

⁷ *Local Competition Order*, ¶ 315 (access must be provided on terms that are "*equal to* the terms and conditions under which the incumbent LEC provisions such elements to itself"); *Second Order on Reconsideration, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (released December 13, 1996) ("*Second Order on Reconsideration*"), ¶ 9 (OSS access "must be *equal to*" the access that the incumbent LEC provides to itself); *Ameritech Michigan Order*, ¶ 139 ("BOC must provide access to competing carriers that is *equal to* the level of access that the BOC provides to itself . . . in terms of quality, accuracy and timeliness"); ¶ 166 (incumbent LEC "must provide to competing carriers access to such OSS functions *equal to* the access that it provides to its retail operations") (emphasis added).

⁸ *Second Order on Reconsideration*, ¶ 9 ("incumbent LEC must provide *at least equivalent* electronic access to requesting carriers"); *Ameritech Michigan Order*, ¶ 128 (incumbent LEC must demonstrate that it provides access to OSS functions that "is *equivalent to* the access it provides to itself"); ¶ 130 (the nondiscriminatory access standard requires "access to OSS functions . . . that is *equivalent to* what it provides for itself"); ¶ 139 (Act requires "*equivalent access*"); ¶ 140 ("*equivalent access*" is the standard required by section 271 and section 251 of the Act"); ¶ 196 (BOC has "duty to provide *equivalent access*") (emphasis added).

by CLECs, but that CLECs are able to use those interfaces to interact with its operations support systems and that BellSouth is in fact able to process requests from CLECs in an efficient and nondiscriminatory manner.⁹

12. To make this showing, BellSouth must monitor and measure its performance for CLECs and submit that information to the Commission with its application together with "comparative performance information" regarding its performance of the same or analogous functions for its own retail operations.¹⁰ Moreover, BellSouth must show, based on stable and verifiable data, that parity of performance is being delivered for all operations support systems functions, including pre-ordering, ordering, provisioning, maintenance and repair, and billing,¹¹ and that such parity of performance is being delivered for each of the three modes of competitive entry: interconnection, services offered for resale, and unbundled network elements ("UNEs"), including combinations of elements.¹²

⁹ See also *Ameritech Michigan Order*, ¶¶ 134-135 (specifically rejecting Ameritech's argument that the duty to provide nondiscriminatory access to OSS functions "extends only to the interface requirement").

¹⁰ *Ameritech Michigan Order*, ¶ 212 (BOC must provide "comparative performance information" for unbundled network elements as well as resale services to permit meaningful comparisons between its performance for CLECs and its performance for its own retail operations); ¶¶ 139-141.

¹¹ See *Ameritech Michigan Order*, ¶¶ 128, 130, 137, 158.

¹² See, e.g., *Ameritech Michigan Order*, ¶ 133 (BOC must provide access to OSS functions to
(continued...))

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13. Additionally, consistent with "the 1996 Act's goal of promoting local exchange competition," BellSouth must provide CLECs with access to OSS functions and associated services and facilities on terms and conditions that "provide an efficient competitor a meaningful opportunity to compete."¹³ This means that where BellSouth provides no analogous function or facility for itself, it must demonstrate that its performance is sufficient to enable CLECs to compete fairly in the provision of local services.¹⁴

14. The Commission's recent orders make clear that an appropriate performance measurement plan must include at least the following characteristics: (1) it must support statistically valid comparisons of the BOC's performance for CLECs with its performance for its own retail operations;¹⁵ (2) it must be based on clear and precise definitions of the performance measurements to be used and the data to be collected and

¹² (...continued)

competing carriers that "supports each of the three modes of competitive entry strategies established by the Act: interconnection, unbundled network elements, and services offered for resale"); ¶ 159-160 (specifically requiring proof of "nondiscriminatory access to OSS functions associated with unbundled network elements"); *Second Order on Reconsideration*, ¶ 9 ("to the extent that an incumbent LEC provides electronic pre-ordering, ordering, provisioning, maintenance and repair, or billing to itself, its customers, or other carriers, the incumbent LEC must provide at least equivalent electronic access to requesting carriers in the provision of unbundled network elements or services for resale").

¹³ *Local Competition Order*, ¶ 315.

¹⁴ *See Ameritech Michigan Order*, ¶ 141.

¹⁵ *See, e.g., Ameritech Michigan Order*, ¶¶ 212, 139-141.

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reported;¹⁶ (3) it must monitor the BOC's performance for each of the principal pre-ordering, ordering and provisioning, maintenance and repair, billing, and other OSS functions;¹⁷ (4) it must capture and retain sufficiently disaggregated information to account for performance differences caused by variations in the underlying service or activity mix;¹⁸ (5) it must be actually implemented and producing stable results which demonstrate that nondiscriminatory access is in fact being provided to CLECs for interconnection, services available for resale, and unbundled network elements;¹⁹ and (6) it must be subject to appropriate audit procedures so that all parties can rely with confidence on the data reported by the BOC.²⁰ Moreover, the Commission made clear that the mere fact that a BOC does not presently collect particular data in connection with its retail operations is not a valid basis for failing to provide performance data that is needed to determine whether nondiscriminatory performance is being provided to CLECs.²¹

¹⁶ See, e.g., *id.*, ¶¶ 209, 212.

¹⁷ See, e.g., *id.*, ¶¶ 128, 130, 137, 158.

¹⁸ See, e.g., *id.*, ¶¶ 206, 212.

¹⁹ See, e.g., *id.*, ¶¶ 133, 159-160.

²⁰ See, e.g., *Bell Atlantic/NYNEX Order*, App. C, p. 125 ("Bell Atlantic/NYNEX shall provide access to the available data and information necessary for a carrier receiving Performance Monitoring Reports to verify the accuracy of such reports").

²¹ See *Ameritech Michigan Order*, ¶ 210.

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15. In order to develop an appropriate set of performance measurements for determining whether or not parity of performance is being delivered to CLECs, AT&T has worked with a group of other CLECs, known as the Local Competition Users Group ("LCUG"), consisting of AT&T, MCI, Sprint, LCI and WorldCom. The objective of this group has been to develop a minimum set of performance measurements that adequately reflects whether parity is being provided to CLECs without imposing undue burdens or costs on incumbent LECs. The performance measurements developed by the Local Competition Users Group are set out in Attachment 1.²² Those performance measures are divided into eight categories: pre-ordering, ordering and provisioning, maintenance and repair, general, billing, unbundled network elements and UNE combinations, operator services and directory assistance, and network performance. Within each functional category, the Local Competition Users Group has identified a limited number of "key measures." These key measures

²² The Local Competition Users Group also developed default performance "benchmarks" for application in those situations in which the BOC is unable or unwilling to provide comparative data on its performance of the same or analogous functions for its own retail operations. As a result of the Commission's determination that BOCs must, wherever possible, provide "comparative performance data . . . [to] permit comparisons with [the BOC's] retail performance" (*Ameritech Michigan Order*, ¶ 212), there should be no need to rely upon performance benchmarks except where there is no analogous function that the BOC performs for its own retail operations.

represent a minimum set of performance measurements that is required for determining whether a BOC is providing CLECs with nondiscriminatory performance.²³

16. Although the Commission has not yet addressed the full set of performance measures proposed by the Local Competition Users Group,²⁴ the Commission has approved or required a number of those measurements in its recent *Ameritech Michigan* and *Bell Atlantic/NYNEX* orders.²⁵ In addition, the Commission has specifically required BOCs to report some additional performance data bearing on their duty to provide CLECs with equivalent access to their operations support systems, such as data on the percentage of "flow through orders" processed by the BOC without manual intervention.²⁶

²³ Expansion beyond the minimal set of performance measures developed by the Local Competition Users Group should also be encouraged wherever mutual agreement exists or the Commission identifies additional measures that would be useful in detecting discrimination and ensuring parity of performance for CLECs. Particularly as CLECs gain greater experience with the use of unbundled elements and UNE combinations, existing measures may need to be altered or new measures may need to be defined.

²⁴ The Commission requested comments on the performance measurements developed by the Local Competition Users Group as a part of the Commission's request for comments on the petition for expedited rulemaking filed by LCI and CompTel. See Public Notice DA 97-1211, *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, RM 9101 (released June 10, 1997).

²⁵ See Attachment 1 (last two columns show corresponding performance measures required or addressed in *Ameritech Michigan* and *Bell Atlantic/NYNEX* orders).

²⁶ See *Ameritech Michigan Order*, ¶ 212; *Bell Atlantic/NYNEX Order*, App. D, Measure 7.

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17. The performance measures proposed by the Local Competition Users Group have also been well received by a number of state commissions. For example, on October 9, 1997, the California Public Utilities Commission issued an order instituting a formal rulemaking proceeding in which it proposed to adopt a set of performance measurements which includes nearly all of the proposed LCUG performance measurements.²⁷ On October 27, 1997, AT&T and Southwestern Bell Telephone Company submitted to the Texas Public Utility Commission for its approval a set of performance measurements which were negotiated under a staff-supervised dispute resolution procedure established by the Texas Commission and which also include nearly all of the proposed LCUG performance measurements.²⁸ Similarly, on August 19, 1997, AT&T and New York Telephone Company submitted to the New York Public Service Commission an agreed-upon set of performance standards which includes most of the LCUG performance measurements.²⁹ And on September

²⁷ See Opinion, *Order Instituting Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems*, R.97-10-016, I.97-10-017 (Cal. Pub. Utils. Comm'n October 9, 1997) (Attachment 2).

²⁸ See Attachment 17 to AT&T/Southwestern Bell Agreement for Texas, filed October 17, 1997, in *Application of AT&T Communications of the Southwest, Inc for Compulsory Arbitration of Further Issues to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company*, Docket No. 17579 (Tex. Pub. Util Comm'n) (Attachment 3).

²⁹ See Letter from Maureen F. Thompson, New York Telephone Co., and Bernie Belkin, AT&T Communications of N.Y., to J. Michael Harrison, ALJ, N.Y. Pub. Serv. Comm'n, (continued...)

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9, 1997, the Arizona Corporation Commission issued an order listing the performance measures it found to be appropriate for U S West, including most of the LCUG performance measurements.³⁰

B. The Performance Data Submitted By BellSouth Are Inadequate.

18. Taking the position that "[i]t is for BellSouth -- not the Commission . . . -- to determine what evidence to present,"³¹ BellSouth completely disregards the guidance provided by the Commission's prior orders regarding the performance data needed to show nondiscriminatory access for CLECs. Instead, BellSouth once again submits comparative performance data only for seven provisioning and maintenance measurements which it has used historically in its retail business.³² BellSouth contends that because it has found these

²⁹ (...continued)

dated August 19, 1997, with attached Performance Standards, filed in *Petitions of AT&T Communications of N.Y., Inc. and New York Telephone Co. for Arbitration Pursuant to 47 U.S.C. § 252*, Cases 96-C-0723, 96-C-0724 (N.Y. Pub. Serv. Comm'n) (Attachment 4).

³⁰ Procedural Order dated September 12, 1997, in *Petitions for Arbitration with U S West Communications, Inc. of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996*, Docket No. U-3021-96-448 *et al.* (Ariz. Corp. Comm'n) (Attachment 5).

³¹ BellSouth S.C. Reply Br., filed November 14, 1997, in *Application by BellSouth Corp., et al. for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-121, p. 51.

³² The 7 measurements are percent provisioning appointments met, percent provisioning troubles within 30 days, percent maintenance appointments met, maintenance average receipt
(continued...)

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measures adequate for its retail business, they should also be sufficient for demonstrating nondiscriminatory performance for CLECs.³³ BellSouth argues that these data show no discrimination against CLECs on the basis of "statistical process control" charts, which BellSouth uses to create a range of supposedly nondiscriminatory conduct.³⁴ BellSouth also submits five of the same performance measures for its provision of unbundled loops for CLECs without any comparative data on its performance of analogous functions for its own local retail operations.³⁵ Finally, BellSouth presents some limited data on systems availability, response times for its LENS pre-ordering interface, usage billing timeliness, and order flow through.³⁶

³² (...continued)

to clear, percent repeat troubles within 30 days, percent out-of-service less than 24 hours, and percent trouble report rate. Each of these 7 measurements is reported for resale services separately for residence and business, and by whether or not a dispatch was involved, producing a total of 28 charts. See Stacy PM Aff., ¶¶ 16, 40 & Exs. WNS-1 & WNS-9; BellSouth Brief, p. 73. In addition, four of these same measures are reported for local interconnection trunking. See BellSouth Brief, p. 71; Stacy PM Aff., ¶ 29 & Exs. WNS-1 & WNS-9A.

³³ See, e.g., BellSouth Ex Parte Presentation on Service Quality Measurements in CC Docket No. 97-208, October 31, 1997, p. 5, attached to Letter from Robert T. Blau, BellSouth, to the Commission, dated November 3, 1997.

³⁴ See Stacy PM Aff., ¶¶ 20-25, 38-41, 43 & Exs. WNS-9 & WNS-9B.

³⁵ See BellSouth Brief, p. 73; Stacy PM Aff., ¶¶ 25, 27-28, 44 & Exs. WNS-6 & WNS-10.

³⁶ See Stacy PM Aff., ¶¶ 32-37; Stacy OSS Aff., ¶¶ 109-110, 112-113 & Exs. WNS-36,
(continued...)

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19. The performance data submitted by BellSouth fall far short of establishing that BellSouth is providing nondiscriminatory performance for CLECs. In the first place, as discussed in detail below, BellSouth has failed to provide data for a number of performance measurements which both the Commission and the Department of Justice have found to be essential to any showing that parity is being providing to CLECs. As the Department concluded on November 4, 1997, with respect to BellSouth's application for South Carolina based on a nearly identical record, BellSouth "[h]as failed to measure and report all of the indicators of wholesale performance that are needed to demonstrate that it is currently providing adequate access and interconnection," and "BellSouth's failure to institute all of the necessary wholesale performance measurements prevents a determination that BellSouth is currently in compliance with the checklist requirements or that compliance can be assured in the future."³⁷ This same conclusion was reached by the Florida Public Service Commission

³⁶ (...continued)
WNS-37 & WNS-41.

³⁷ See Department of Justice Evaluation, filed November 4, 1997, in *Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-121 ("DOJ S.C. Evaluation"), pp. 4, 29. See also *id.*, p. 48 ("BellSouth has not yet instituted the necessary performance measures . . . or demonstrated a satisfactory performance"), App. A, p. A-31 (omission of "numerous critical measurements" necessitates finding that "BellSouth's proposed performance measurements are deficient"), pp. A-33 to A-36 ("BellSouth's proposed permanent performance measurements fall considerably short of what is needed"), *Friduss S.C. Aff. (DOJ)*, ¶¶ 77-78 (based on the omission by BellSouth of numerous "critical measures," "I conclude that BellSouth has not provided sufficient

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which, based on a thorough evidentiary record, found on November 19, 1997, that BellSouth has not met the requirements of Section 271 on the ground, among others, that "BellSouth has not developed adequate performance standards."³⁸

20. In addition, BellSouth has again withheld from the Commission available performance data regarding its performance in providing firm order confirmations and order rejections to AT&T and other CLECs -- data which clearly shows that BellSouth's performance for CLECs is both inadequate and discriminatory.

21. Finally, in those few instances where BellSouth does provides comparative performance data, BellSouth's "statistical process control" charts do not show nondiscriminatory performance. On the contrary, as shown below, despite BellSouth's attempt to set broad "control limits" that would immunize it from almost any claims of discrimination, its own charts actually demonstrate that BellSouth is discriminating against CLECs. BellSouth has thus failed to meet its burden of establishing that the performance being delivered to

³⁷ (...continued)

performance measures in its application to make a determination of parity or adequacy in the provision of resale or UNE products and services to CLECs in the state of South Carolina").

³⁸ Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, in *Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786-TL (Fla. Pub. Serv. Comm'n) ("*Florida PSC Order*"), p. 197.

CLECs is equivalent in terms of its availability, timeliness, and accuracy to the performance that BellSouth provides to itself.

III. BELLSOUTH HAS FAILED TO PROVIDE NECESSARY PARITY OF PERFORMANCE MEASUREMENTS.

22. BellSouth has not provided a number of performance measurements that are essential to any determination as to whether BellSouth is providing nondiscriminatory access for CLECs. Indeed, BellSouth has not even attempted to provide with its application several of the performance measurements specifically found to be necessary in the Commission's recent *Ameritech Michigan* and *Bell Atlantic/NYNEX* orders.

23. In its *Ameritech Michigan Order*, the Commission provided "guidance" to all parties in the form of a detailed "roadmap" setting forth the evidence that BOCs are expected to submit with their Section 271 applications in order to meet their burden of showing, among other things, that they are providing nondiscriminatory performance for CLECs.³⁹ In particular, at paragraph 212 of that order, the Commission specifically identified seven categories of performance data that BOCs should provide with their applications in addition to the performance data that had been submitted by Ameritech.⁴⁰ Further, the

³⁹ See Separate Statements of Chairman Hundt and Commissioners Quello, Ness and Chong.

⁴⁰ *Ameritech Michigan Order*, ¶ 212 ("We therefore conclude that, in order to provide us with the appropriate empirical evidence upon which we could determine whether Ameritech is providing nondiscriminatory access to OSS functions, Ameritech should provide as part of a
(continued...)

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Commission specifically rejected Ameritech's contention -- repeated here by BellSouth -- that the performance measures historically used by the BOC to show adequate service for retail customers must necessarily be sufficient also to show nondiscriminatory performance for CLECs.⁴¹

24. The Commission provided further guidance to BOCs concerning the performance measurements that are needed to establish nondiscriminatory access in its *Bell Atlantic/NYNEX Order*. In Appendix D of that order, the Commission listed 22 specific performance measurements that Bell Atlantic and NYNEX are required to monitor and report as a condition to Commission approval of their merger.

25. Notwithstanding these prior Commission orders, BellSouth has failed to submit data for all but two of the seven measurements found necessary in the *Ameritech Michigan Order*, and BellSouth has provided no data at all on at least 10 of the 22 measures

⁴⁰ (...continued)

subsequent section 271 application, the following performance data, in addition to the data that it provided with this application: (1) average installation intervals for resale; (2) average installation intervals for loops; (3) comparative performance information for unbundled network elements; (4) service order quality and percent flow through; (5) held orders and provisioning accuracy; (6) bill quality and accuracy; and (7) repeat trouble reports for unbundled network elements") (footnotes omitted).

⁴¹ *Ameritech Michigan Order*, ¶ 210 ("The empirical evidence necessary to demonstrate . . . nondiscriminatory access . . . may not be the same as those performance measurements that Ameritech currently provides to its retail operations [because] such measurements alone will not provide us with sufficient information to decide whether the statutory standard has been met").