

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

In the Matter of)

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

CC Docket No. 98-121

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

VOLUME VII

Filed August 4, 1998

**APPENDIX TO COMMENTS OF AT&T CORP.
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SECTION 271 APPLICATION FOR LOUISIANA**

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TAB	AFFIANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
A	Michelle Augier	AT&T Market Entry	§ 271(c)(1)(A), (c)(2)(B), (d)(3)
B	*William J. Baumol	Public Interest	§ 271(d)(3)(C)
C	*Robert H. Bork	Public Interest	§ 271(d)(3)(C)
D	Jay M. Bradbury	Operations Support Systems, Directory Listing, Number Portability, Resale	§ 271(c)(2)(B)(ii), (vi), (viii), (xi), and (xiv)
E	Robert V. Falcone	Unbundled Network Elements: Combinations	§ 271(c)(2)(B)(i), (ii), (v) and (vi)
F	Gregory R. Follensbee	Unbundled Network Elements: Pricing	§ 271(c)(2)(B)(i), (ii)
G	John M. Hamman	Unbundled Switching, Intellectual Property, Reciprocal Compensation	§ 271(c)(2)(B)(ii), (vi) and (xiii)
H	Donna Hasebrock	ADL, Interconnection, Operations Support Systems, Directory Listings, Number Portability	§ 271(c)(2)(B)(i), (ii), (viii) and (xi)
I	R. Glenn Hubbard and William H. Lehr	Public Interest	§ 271(d)(3)(C)
J	Patricia A. McFarland	Section 272 Compliance	§ 271(d)(3)(B)
K	Philip I. Miller and Dean A. Gropper	Public Interest - ILEC Ability to Harm Competition	§ 271(d)(3)(C)
L	Sharon Norris	Louisiana Public Service Commission Proceedings on Operations Support Systems	§ 271(c)(2)(B)(ii)

TAB	AFFIANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
M	C. Michael Pfau and Katherine M. Dailey	Performance Measurements	§ 271(c)(2)(B)(i), (ii) and (xiv)
N	Jordan Roderick	PCS	§ 271(c)(1)(A), (d)(3)

* Affidavits marked with this are as originally filed in CC Docket No. 97-231

MISCELLANEOUS APPENDIX

TAB	DESCRIPTION
O	Order, <u>AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc.</u> , No. 5:97-CV-405-BR (Eastern District of North Carolina, Western Division May 22, 1998)
P	Recommended Decision, Pennsylvania Public Utility Commission, <u>Petition of Bell Atlantic - Pennsylvania, Inc. For a Determination of Whether the Provision of Business Telecommunications Services is Competitive Under Chapter 30 of the Public Utility Code</u> , Docket No. P-00971307 (July 24, 1998)

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AFFIDAVIT

OF

GREGORY R. FOLLENSBEE

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT F

Filed August 4, 1998

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**AFFIDAVIT OF
GREGORY R. FOLLENSBEE
ON BEHALF OF AT&T CORP.**

INTRODUCTION AND QUALIFICATIONS

1. My name is Gregory R. Follensbee. My business address is 1200 Peachtree Street, N.E., Atlanta, Georgia 30309. I am employed by AT&T Corp. as a Director for Law & Government Affairs, in AT&T's Law & Government Affairs' Southern Region. I am a Certified Public Accountant, certified to practice in the state of Florida. I graduated from Florida State University in 1972 with a Bachelor of Science degree in accounting. I was subsequently employed by the Florida Public Service Commission from 1972 until late 1983. I was at first responsible for auditing public utilities, and later in charge of the Auditing and Financial analysis group for the agency. In late 1983, I was employed by AT&T as a District Manager in Government Affairs. In 1995, I was appointed Director for Regulatory Policy in the Southern Region. In 1996, I was assigned responsibilities for presenting AT&T's cost studies and recommended prices in the region's unbundled network element cost cases, as well as critiquing the cost studies and prices proposed by the incumbent local exchange carriers ("ILECs") in the region.

PURPOSE AND SUMMARY OF AFFIDAVIT

2. The purpose of my affidavit is to address whether BellSouth has demonstrated that it is currently providing, or making available, interconnection and access to unbundled network elements (“UNEs”) at forward-looking, cost-based prices as required by the Telecommunications Act of 1996 (“Act”). As I will explain in greater detail below, BellSouth has failed to show that the prices it offers today are cost-based as required by Sections 252(d)(1) and (2) of the Act, and thus that it has complied with the pricing requirements of the competitive checklist in the Act. To the contrary, although BellSouth asserted that its rate proposals were based on forward-looking costs, the methodology employed by BellSouth, in fact, violated the most fundamental principles of forward-looking pricing. For that reason, the majority of the rates approved by the Louisiana Public Service Commission (“LPSC”) in its cost proceeding and relied upon by BellSouth for this Application, which were based on BellSouth’s flawed cost studies, far exceed any measure of true forward-looking costs.

3. My affidavit is divided into two sections. In the first section, I demonstrate that the UNE rates approved by the LPSC and proposed by BellSouth here were largely based upon BellSouth cost studies that reflected an improper backward-looking cost focus. While the LPSC Staff consultant modified some inputs into those cost studies, she failed to correct for (or even to review) many of the most fundamental flaws of the studies. As a result, even though the LPSC adopted the Staff consultant’s modifications to the cost study inputs, there can be no reasoned finding that the more than 400 rates produced by the BellSouth cost studies and offered by BellSouth properly reflect forward-looking costs. The Administrative Law Judge who presided over the LPSC cost proceeding recognized as much, rejecting the BellSouth studies and ordering

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BellSouth to resubmit new cost studies reflecting forward looking principles (a decision which was reversed by the LPSC less than one week later). I also discuss the highly compressed nature of the proceedings and the impact of the LPSC's rush to judgment on the validity of its findings. For all of these reasons, the rates approved by the LPSC and reflected in BellSouth's SGAT cannot be said to be based on forward-looking costs, as the Act requires.

4. In the second section of my affidavit, I demonstrate in more detail that a number of the individual rates approved by the LPSC plainly depart from fundamental principles of forward-looking costing. For example, the LPSC approved two separate recurring switching charges, one to recover costs of non-traffic-sensitive switching functionality and another to recover "costs" of vertical features of the switch. In fact, those two "costs" are redundant and constitute a double recovery of processing costs incurred when a switch is purchased -- modern digital switches come equipped with vertical feature functionality and providing that functionality imposes no additional costs on BellSouth. The approved switching charges collectively impose a recurring charge for the switch port with limited vertical feature functionality of more than \$10 per month -- as much as eight times higher than the port rates approved by other state commissions. Similarly, BellSouth's recurring monthly loop rate of \$19.35 is, inter alia, based on a sample that deliberately excluded shorter (and hence lower cost) loops and is further not geographically deaveraged as the Commission requires. BellSouth's physical collocation rates, some of which are completely open-ended and others of which are based on costs for constructing facilities that are completely inappropriate for the purpose at hand, are likewise plainly excessive. And the critical assumption underlying BellSouth's non-recurring charges -- that fully 20% of service orders would require manual intervention to provision and that other related activities would

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likewise be handled by manual, rather than mechanized, processes -- is antithetical to the basic tenet of efficient forward-looking technology. These examples simply underscore that the rates adopted by the LPSC and contained in BellSouth's SGAT do not comply with forward-looking costing principles.

I. BELLSOUTH'S RATES, WHICH ARE BASED ON BELLSOUTH'S BACKWARD-LOOKING COST STUDIES, DO NOT REMOTELY COMPLY WITH THE REQUIREMENT THAT RATES REFLECT FORWARD-LOOKING COSTS.

5. Section 271(c)(2)(B)(i) of the Act mandates that a Regional Bell Operating Company ("RBOC") such as BellSouth provide "interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1)." Section 271(c)(2)(B)(ii) of the Act mandates that a Regional Operating Company provide "nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1)." Section 271(c)(2)(B)(xiii) further mandates that a Regional Operating Company provide "reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." Thus, as a precondition to providing interLATA services in Louisiana, BellSouth must provide interconnection and unbundled network elements at rates that are "just, reasonable and nondiscriminatory," 47 U.S.C. §251(c)(2)&(3), and "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable)," *id.* § 252(d)(1)(A)(i).

6. In its First Report and Order in CC Docket No. 96-98 (August 8, 1996) ("Local Competition Order"), this Commission implemented these provisions by adopting the forward-looking, total element long run incremental cost ("TELRIC") methodology for calculating

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network element costs. Local Competition Order at ¶¶ 690-93. The Commission found that the rates for network elements should not exceed forward-looking economic cost (including forward-looking common costs as defined by the Commission). The Commission further required that network element rates be appropriately structured -- to reflect the manner in which costs are incurred -- and geographically deaveraged to reflect significant cost differences. The Commission found that, in contrast, rates that recover embedded or opportunity costs do not comply with the Act. Id. at ¶¶ 704-11. The Commission further found that incumbent local exchange carriers (“LECs”) should bear the burden of proving that their rates for interconnection and unbundled elements meet the statutory requirements on the ground that such incumbent LECs “have greater access to the cost information necessary to calculate the incremental cost of the unbundled elements of the network.” Id. at ¶ 680.

7. In its Memorandum Opinion and Order issued on August 19, 1997 with regard to a Section 271 application of Ameritech Michigan in CC Docket No. 97-137 (“Ameritech Michigan Order”), the Commission expressly reaffirmed its determination in the Local Competition Order that the market entry intended by Congress requires that UNE and related prices be “based on forward looking economic costs,” id. at ¶ 289. See also id. at ¶ 290 (requiring that pricing requirements be “implemented through a method based on . . . TELRIC”). The Commission also confirmed that “a BOC will not be deemed to be in compliance with section 271(c)(2)(B)(i), (ii) and (xiv) of the competitive checklist unless it has shown that its non-recurring charges reflect forward-looking economic costs.” Id. at ¶ 296. The United States and others have asked the Supreme Court to review the United States Court of Appeals for the Eighth Circuit’s subsequent mandamus order prohibiting the Commission in its section 271 review

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capacity from interpreting the pricing requirements of the Act in the course of determining whether a BOC has complied with those requirements. The issue whether the Commission may interpret the pricing provisions of the Act in the course of applying them in a section 271 proceeding is also currently pending before the United States Court of Appeals for the District of Columbia Circuit.

A. **The BellSouth Cost Studies, Upon Which The LPSC-Approved Rates Were Based, Are Undeniably Backward-Looking**

8. The nearly four hundred recurring and nonrecurring charges set forth in the SGAT that BellSouth has submitted in support of its application do not remotely reflect efficient forward-looking costs. The source of those charges is LPSC Order No. U-22022/22093-A (consolidated) decided October 22, 1997 ("LPSC Pricing Order") (Tab 293). The rates adopted in the LPSC Pricing Order are based on "revised" cost studies filed by BellSouth on July 11, 1997. BellSouth filed those studies in an existing consolidated docket that BellSouth had commenced more than a year earlier and that had been dormant for some time at BellSouth's request. The revised studies were voluminous, highly complex, and largely unadjustable. As the LPSC staff's witness Dismukes explained, the many separate 'studies':

are prepared in separate, unlinked, excel spreadsheets. The results of which must be manually entered into BellSouth's TELRIC calculator, loop model, or shared and common cost model. Likewise, a proprietary version of BellSouth's Switched Network Calculator (SNC) model, which is used to calculate its switching costs, does not allow the user to change key inputs. Similar problems are present in the shared and common cost model -- key inputs are locked and cannot be changed. For example, in the shared and common cost model, the TELRIC labor rates cannot be changed in the model. Instead, one has to open another excel worksheet and manually change labor rates so that the appropriate TELRIC rates will be reflected in the model. Likewise, in some instances, one cannot correctly change values through the TELRIC calculator.

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Dismukes Test. (Tab 281) at 5 (emphasis added). See also Dismukes Tr. (Tab 281) at 2930 (“The BellSouth cost studies are voluminous. . . . They have numerous assumptions on them, thousands of assumption on them”).

9. Although BellSouth nominally referred to its July 11 cost studies as forward-looking, it made no serious attempt to conceal the true nature of those studies. As the ALJ appointed by the LPSC stated, BellSouth contended in the Louisiana cost proceeding that this Commission’s Local Competition Order pricing standards are not controlling and conceded that the BellSouth cost studies complied with those standards only “to some [unspecified] extent.” Final Recommendation, Docket Number U-22093 (Tab 292) at 15 (October 17, 1997) (“Final Recommendation”). BellSouth instead took the position that “it should be allowed to recover its actual, or embedded costs.” Id. at 18. Indeed, BellSouth’s pricing witness Mr. Alphonso Varner testified that BellSouth’s revised cost studies included all of BellSouth’s actual costs, including historic or embedded costs and costs reflecting existing network architecture. Varner Reb. Test. at 3-5 (Tab 273/2); Varner Tr. (Tab 273) at 43, 91. In a oxymoronic attempt to square its embedded cost view with the LPSC’s own “Regulations for Competition in the Local Telecommunications Market,” which direct that cost studies reflect forward-looking costs, BellSouth explained that “it has performed studies in accordance with the forward-looking methodology mandated by this Commission and by the FCC, but that it has done so in a manner that will allow it to recover its actual costs.” Final Recommendation (Tab 292) at 18 (emphasis added).

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10. As this “explanation” confirms, BellSouth’s embedded cost “lens” colored -- and irreversibly distorted -- every aspect of its cost studies. With respect to general methodology, for example, BellSouth’s view was that “the TSLRIC definition, which provides that ‘TSLRIC is based on the least cost, most efficient technology that is capable of being implemented at the time the decision to provide the service is made,’ directs an analysis of available technology as of the date BellSouth placed equipment into service and not as of the date of the cost studies.” Final Recommendation (Tab 292) at 19 (emphasis added). Compare Local Competition Order at ¶ 683 (“[f]orward-looking cost methodologies, like TELRIC, are intended to consider the costs that a carrier would incur in the future”) (emphasis added). Thus, BellSouth refused to base its cost proposals on a truly forward-looking network because “prices based upon such costing methods will be below BellSouth’s costs to provide interconnection and unbundled elements.” Final Recommendation (Tab 292) at 18 (emphasis added). And BellSouth’s version of “forward-looking” costing “allows for consideration of the ILEC’s existing facilities and services,” id. (Tab 292) at 19, and, indeed, measures efficiency on a backward-looking basis as of the date BellSouth placed its existing facilities, rather than on a forward-looking basis as of the date of the cost studies. Id. Compare Local Competition Order ¶ 685 (“the reconstructed local network will employ the most efficient technology for reasonably foreseeable capacity requirements”) (emphasis added).

11. BellSouth’s specific calculations dutifully and invariably followed its underlying embedded cost theory. “BellSouth’s study uses . . . existing cable routes, sizes, and types of placement.” Affidavit of D. Daonne Caldwell, at 10, submitted with Reply Brief in Support of Application by BellSouth for Provision of In-Region, InterLata Services in Louisiana (December

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19, 1997) ("Caldwell La. Reply Aff."). See also id. ("While there may be some exceptions, the existing type of placement (aerial, buried or underground) was chosen"). With regard to fill factors, "BellSouth based its calculations on its actual utilization levels," rather than efficient forward-looking practices. Final Recommendation (Tab 292) at 46. Compare Local Competition Order at ¶ 682 (fill factors should reflect "the proportion of a facility that will be 'filled'") (emphasis added). "BellSouth d[id] not dispute that its depreciation rates are designed to recover past investments." Final Recommendation (Tab 292) at 34 (emphasis added). Compare Local Competition Order at ¶ 686 ("properly designed depreciation schedules should account for expected declines in the value of capital goods") (emphasis added). BellSouth's calculation of its shared and common costs also improperly "assume[d] a business as usual view." Final Recommendation (Tab 292) at 41-42. And BellSouth's studies employed statewide averaged loop rates, id. at 24, in direct contravention of this Commission's finding that the Act mandates that rates for unbundled elements "must be geographically deaveraged." Local Competition Order at ¶ 764.

12. In short, virtually every aspect of BellSouth's cost studies was backward-looking, suffered from an embedded cost, historical network design focus, or was otherwise fatally flawed. As a result, those studies produced extraordinarily high "costs." For example, for the loop and port alone BellSouth sought more than \$37 in fixed monthly recurring charges -- with only partial vertical feature functionality. This \$37 figure excludes the enormous nonrecurring, collocation and other charges that BellSouth would assess to make those elements "operational." But BellSouth did not stop there. Because its embedded cost approach to "forward-looking" costing did not quite push rates over the embedded cost finish line, BellSouth simply added another \$2

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that BellSouth labeled a “residual recovery requirement,” providing further proof that BellSouth’s UNE prices are designed to ensure that competition based on UNEs has no effect on its revenues. The label “forward-looking” costs used by BellSouth is just that -- a label completely lacking in substance.

B. The Limited Adjustments To Certain Generic Inputs In The BellSouth Cost Studies Made by the LPSC Staff Were Wholly Inadequate to Correct the Fundamental Flaws in Those Studies -- As the Staff’s Witness Conceded and As the ALJ Held

13. Two weeks after BellSouth filed its revised cost studies, the LPSC suddenly ordered that review of the new studies, opening and rebuttal testimony, hearings, briefing, and the ALJ’s final recommendations all be completed in less than 90 days -- in time for the LPSC’s October 22, 1997 “Open Session” at which it would conduct its final review of BellSouth’s initial 271 application. At a July 31, 1997 status conference convened to accommodate this highly compressed schedule, August 25, 1997 and September 5, 1997 were set as the filing dates for AT&T’s (and other intervenors’) prepared testimony and BellSouth’s prepared rebuttal testimony, respectively. Report on July 31, 1997 Status Conference and Notice of Revised Procedural Schedule dated Aug. 1, 1997 (Tab 259). Obviously, little discovery was possible in these time frames. Hearings for cross-examination were held between September 8 and 16, 1997.

14. On September 22, 1997, less than a week following the conclusion of these hearings, the LPSC Staff filed the prepared testimony of its cost consultant, Ms. Dismukes. Ms. Dismukes used the July 11 revised BellSouth cost studies described above and made limited adjustments to some of the inputs into those studies that she was able to access. Ms. Dismukes adjusted fill factor, cost of capital, depreciation and a handful of other “generic” inputs common

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to all of the BellSouth studies and also removed the obviously unlawful “residual revenue” requirement designed solely to ensure full embedded cost recovery. Although these limited adjustments had the effect of changing almost all of BellSouth’s rates, Ms. Dismukes concededly did not even attempt to address myriad other defects in the BellSouth studies. As BellSouth has subsequently conceded, Ms. Dismukes “did not modify underlying network technologies, basic design, study methodology or the models themselves.” Caldwell La. Reply Aff. at 9. Indeed, Ms. Dismukes admitted that she was not able even to review many of the individual cost studies or assumptions. As a result, the adjusted proposed rates were still largely based on BellSouth’s flawed, backward-looking methodology and largely reflected BellSouth’s historic, embedded costs. Two days after the LPSC Staff filed Ms. Dismukes’ testimony, on September 24, 1997, hearings were continued for cross-examination of Ms. Dismukes.

15. On October 17, 1997, following the submission of post-hearing briefs on September 29, 1997, the ALJ issued her Final Recommendation. In her 66-page, point-by-point analysis, the ALJ flatly rejected BellSouth’s position on virtually every costing and pricing issue. See, e.g., Final Recommendation at 57 (Tab 292) (“We concur with the conclusions of the Michigan Commission, the FCC, intervenors, and Commission Staff, that forward-looking costs should not reflect a company’s embedded facilities costs”); id. at 58 n.94 (“We specifically reject BellSouth’s argument that the TSLRIC definition . . . directs an analysis of the technology available at the time BellSouth placed individual facilities or equipment into service as opposed to the date of the cost studies”); id. at 26 (“we reject the use of statewide average rates”); id. at 39 (“we find that BellSouth’s proposed depreciation rates do not reflect forward-looking costs, and are inadequate for the purposes of this proceeding”); id. at 55 (“we conclude that rates for

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collocation are subject to the same pricing standards applicable to interconnection and unbundling”). Accordingly, the ALJ recommended that the LPSC order BellSouth to conduct additional cost studies consistent with forward-looking principles, to revise its tariff to reflect certain limited adjustments that LPSC cost consultant Dismukes proposed with respect to the few aspects of the BellSouth cost studies that she was able to review, or to reflect the results of the cost studies submitted by AT&T and MCI, and to make clear that most of the tariffed rates based on BellSouth’s cost studies, even as revised, were to serve only as interim rates, subject to revision upon determinations of permanent, cost-based rates

16. Five days later -- without one word of analysis or comment -- the LPSC, in a ruling subsequently reflected in a five page order (of which all but one paragraph was devoted to procedural background), scrapped the ALJ’s recommendations in their entirety. LPSC Pricing Order (Tab 293). Without analysis or comment or a single mention of the cost studies, cost models and rates submitted by AT&T and MCI, the LPSC approved the four hundred recurring and non-recurring charges proposed by BellSouth, with only the limited adjustments proposed by cost consultant Dismukes, deeming them “permanent” and “cost-based rates.” Id. at 4. Merely by adjusting certain inputs to the BellSouth cost studies, the LPSC found, contrary to the ALJ and even Ms. Dismukes herself, that “Ms. Dismukes developed costs using the TSLRIC methodology adopted by the [LPSC] allowing for the recovery of shared and common costs (the TELRIC methodology).” Id. The LPSC did not address any of the ALJ’s cost findings or conclusions, much less explain why it chose to disregard them.

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17. There is no conceivable basis for the LPSC's finding. Although the LPSC attempted to cloak its reliance on BellSouth's embedded cost studies by nominally approving the "cost-based rates presented by Ms. Dismukes," id., the reality is that Ms. Dismukes' proposals came from the BellSouth cost studies with only modest adjustments. As the LPSC Staff counsel (on whose behalf Ms. Dismukes presented her testimony) frankly acknowledged, "we spent more time on certain issues and less time on other issues and where we did not spend a significant amount of time, the staff used BellSouth's numbers as default, meaning we didn't say they were good or we didn't say they were bad. We just said, we don't have time to do an in depth analysis of what these numbers are. We're going to go with them." Transcript of LPSC, October 22, 1997 Open Session ("Open Session Transcript") at 87.

18. This alone merits a finding that BellSouth has not met its burden of demonstrating that it is providing access to network elements at nondiscriminatory rates that reflect forward-looking costs. As explained above, all of BellSouth's cost studies, and hence all of the proposed rates supported by those studies, were infected with BellSouth's embedded cost focus. That is precisely why when asked whether she "believe[d] the Commission should accept the TSLRIC/TELRIC studies filed by BellSouth," Ms. Dismukes answered unequivocally "[n]o." Dismukes Test. (Tab 281) at 8-9. Indeed, limiting herself to just her "major areas of disagreement" with the BellSouth studies, Ms. Dismukes listed "the development of annual cost factors (depreciation, cost of capital, and taxes), the development of annual expense factors, pole and trench sharing, fill factors, labor rate calculations, shared and common cost calculations and assumptions, drop wire assumptions, vertical features, assumptions used to develop nonrecurring costs and the residual recovery requirement." Id. at 10.

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19. Yet despite the substantial core of disagreement, Ms. Dismukes conceded that she did not even specifically review large portions of the BellSouth cost studies, including those infected by errors she identified. Rather, Ms. Dismukes focused almost entirely on a few generic inputs like cost of capital and depreciation. Although her adjustments to these inputs produced modest reductions to virtually all of BellSouth's rates, Ms. Dismukes simply ignored equally important -- and equally defective -- assumptions, including both additional generic assumptions and assumptions specific to the individual BellSouth cost studies. For example, Ms. Dismukes' adjustments had no effect on the fact that the studies analyzed the existing placement of network infrastructure rather than a reconstructed, most efficient network design assuming the existing location of network switches. Nor did Ms. Dismukes correct for BellSouth's flawed assumption that equipment and infrastructure efficiency should be measured as of the date of placement of the facilities rather than as of the date of the cost studies.

20. Further, Ms. Dismukes did not address any specific evidence of collocation costs. As explained below, the BellSouth collocation proposals far exceed any notion of forward-looking costs in an area that is of considerable importance given BellSouth's demands that new entrants collocate in every single one of BellSouth's wire centers if they wish to provide service through combined network elements. In the same vein, Ms. Dismukes explained her pricing proposal for Operations Support Systems ("OSS") as follows: Basically what I did . . . is I followed the BellSouth methodology. . . . In essence I'm relying on BellSouth's subject matter experts to derive that number." Dismukes Tr. (Tab 281) at 2940. Similarly, when asked why two prices for certain directory assistance services shown in her exhibit were different, Ms. Dismukes responded:

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A: I cannot answer that question. That is basically the way that BellSouth's model ran.

I accepted their methodology with respect to directory assistance services. I did not, as I explained before, go into that particular cost study, and verify and evaluate every assumption that they made.

Q: Again, that is one of those timing issues that we have discussed? Would you like an opportunity to review that in more detail?

A: Yes.

Id. at 2930-2932. As Ms. Dismukes acknowledged, BellSouth's poles and conduit, virtual collocation and number portability proposals similarly escaped review by her. See Dismukes Test. (Tab 281) at 2920 (poles and conduit, virtual collocation); id. at 2929-2932 (directory assistance); id. at 2940 (operational support systems); id. at 2943-44 (interim number portability). Nor did Ms. Dismukes address BellSouth's proposed prices for signaling and AIN. In short, other than her "generic" annual cost factor adjustments (e.g., depreciation and cost of capital), which affected all rates, Ms. Dismukes made no attempt whatever to review or adjust many of BellSouth's cost studies or individual rate assumptions and proposals.

21. That reflected no lack of effort on the part of Ms. Dismukes or the LPSC Staff, but was an inevitable result of the complexity and closed nature of the BellSouth cost models and the LPSC's rush to judgment. Although Ms. Dismukes found fault with every aspect of the BellSouth cost studies she had time to review, the unalterable characteristics of BellSouth's cost models and the LPSC's severe time constraints precluded her from making most of the adjustments required to cure these faults.

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22. Thus, where, as in most cases, embedded costs could not be rooted out simply by denying a proposed charge altogether,¹ Ms. Dismukes was unable to transform the anticompetitive BellSouth proposals into forward-looking rates. In many cases, she frankly conceded that there was simply no time to correct clear errors. See Dismukes Test. (Tab 281) at 3110 (“I didn’t always achieve the desired goal of being able to, for example, in the operational support system area, I did not have an alternative recommendation to that of BellSouth”). In other cases, she failed to act based on the LPSC Staff’s fundamentally flawed views of the requirements of the Act. For example, Ms. Dismukes elected to take no position at all on BellSouth’s averaged loop rates apparently because the LPSC Staff decided to ignore the Commission’s geographic deaveraging mandate based on its view that: “There should not be geographic deaveraging of wholesale rates without geographic deaveraging of retail rates. There should be no geographic deaveraging outside the context of a universal service fund proceeding.” LPSC Open Session Transcript at 85-86.

23. And even where Ms. Dismukes elected to make adjustments, those adjustments were, by her own admission, severely constrained by the lack of time adequately to review and modify the BellSouth cost studies. Indeed, Ms. Dismukes’ efforts were so severely constrained that the ALJ and even Ms. Dismukes’ client, the LPSC Staff, were unable to support her proposals as permanent cost-based prices. See e.g., Final Recommendation (Tab 292) at 39 (recommending the use of the results of certain of Ms. Dismukes adjustments “[i]n the meantime” pending further proceedings) (emphasis added); LPSC Open Session Transcript at 88 (Comments

¹ Like the ALJ, Ms. Dismukes summarily dismissed the most arbitrary of BellSouth’s proposals, the “residual recover charge,” as “plainly a method by which BellSouth seeks to recover the embedded cost of the local loop.” See Final Recommendation (Tab 292) at 20.

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of Staff counsel) (“With regard to vertical features, staff does not oppose conducting further proceedings to true these numbers up in the future”) (emphasis added).

24. For example, Ms. Dismukes admitted that BellSouth’s history-based depreciation proposal “is analogous to assigning the cost of ‘stranded investment’ to CLECs,” see Final Recommendation (Tab 292) at 36, and agreed that it was necessary to eliminate from those studies “factors that are not valid for purposes of determining the price of unbundled network elements that a CLEC will purchase from BellSouth.” Dismukes Test. (Tab 281) at 12. Ms. Dismukes concluded that, “[i]deally, it would have been preferable for BellSouth to have conducted a depreciation study reflecting the lives and salvage values for the network that it has reflected in its TELRIC/TSLRIC cost studies.” Id. at 16. However, acknowledging that “such a [depreciation] study does not exist,” id. (emphasis added), Ms. Dismukes instead proposed an arbitrary and ad hoc approach that on its face fails to produce forward-looking depreciation lives for facilities placed in the relevant Louisiana wire centers and related areas. Indeed, the approach she used was designed always to produce the shortest possible lives under the alternatives available to her. While BellSouth’s lives were within the Commission-prescribed ranges, which are not Louisiana specific, Ms. Dismukes used those lives. Where the BellSouth lives were not within the Commission’s ranges, Ms. Dismukes adopted the Commission’s lives for BellSouth’s Louisiana operations, but only if those lives were shorter than the low end of the Commission’s ranges of lives. Where the lives approved by the Commission for Louisiana were higher than the low end of the Commission’s ranges, Ms. Dismukes used the low end of the range. Id. at 17-18.

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25. Ms. Dismukes treatment of non-recurring costs was even more arbitrary. BellSouth based its cost studies and proposals on the assumption that fully 20% of the orders it receives from new entrants would have to be handled manually, rather than electronically, thereby increasing non-recurring charges by an order of magnitude. As the intervenors pointed out, that assumption is wholly incompatible with forward-looking technology and with the statements of other incumbent LECs that they can achieve "fallout" (to manual processes) of less than 1-2% with their existing facilities.² The only solution Ms. Dismukes could offer in the limited time available to review the non-recurring cost studies, however, was to split the difference: "AT&T and MCI assumed a 2 percent fallout rate, BellSouth in its studies has assumed a 20 percent fallout rate, and I simply took the average of the two." Dismukes Tr. (Tab 281) at 3032. However, it does not appear that such an adjustment was reflected in Ms. Dismukes' proposed prices ultimately adopted by the LPSC. Indeed, the LPSC staff itself recognized the manifest arbitrariness of the "split-the-difference" adjustment and instead "used BellSouth's OSS fall out rates as a default number because of time constraints." LPSC Open Session Transcript at 85.

26. In short, the LPSC's approval of rates derived from BellSouth's flawed, backward-looking cost studies, altered only by the limited Dismukes adjustments, cannot conceivably be characterized as a reasoned or adequate application of the checklist requirement that BellSouth's rates constitute the offering of interconnection and network elements at the forward-looking costs of efficiently providing those elements. Putting aside her modest annual charge factor

² Indeed BellSouth claims today that it has electronic flow-through rates of 96% for residential orders, BellSouth Br. at 26, which represents the overwhelming majority of its orders. See AT&T Affidavit of C. Michael Pfau & Katherine M. Dailey, ¶ 76. Based on BellSouth's data, its overall flow rate is about 95%. Id.

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adjustments, Ms. Dismukes did little more than reduce BellSouth's patently ridiculous loop charges through rough modifications to a few key inputs. See Dismukes Test. (Tab 281) at 2925 ("I focused on the loop study in this case. . . . I did not and could not go into each study that BellSouth did and validate or not validate each assumption that they used"). Even as adjusted, the loop rate is well above the forward-looking cost based determinations of most state commissions. More fundamentally, however, recurring loop rates aside, most of the BellSouth cost studies — and the hundred of recurring and nonrecurring charges they generate — escaped Ms. Dismukes' review altogether and those charges unquestionably remain well above any notion of forward-looking costs.

II. A NUMBER OF THE INDIVIDUAL RATES APPROVED BY THE LPSC VASTLY EXCEED FORWARD-LOOKING COSTS.

27. For precisely the same reasons that the LPSC's rush to judgment prevented Ms. Dismukes from fully analyzing or even reviewing the approved BellSouth rates, it is not possible here to list all the ways in which BellSouth's improper cost studies produced rates that bear no relation to forward-looking costs. Some of the more egregious examples are listed below

A. Recurring Switching Rates.

28. The traditional recurring switching rates approved by the LPSC -- a recurring port charge of \$2.20 and a recurring end office minute of use charge of \$0.0023 -- are within the range of figures that many state commissions have approved as reasonable estimates of the forward-looking costs of all switching facilities -- including processors equipped to provide complete