

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

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

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FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

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EXECUTIVE SUMMARY

The Department of Justice ("DOJ") Evaluation of BellSouth's application, as well as recent rulings of the Louisiana Public Service Commission and the Kentucky Public Service Commission, confirm that BellSouth has not come close to satisfying the requirements of section 271. Because the evidence of record so clearly compels denial of BellSouth's application, the question is not what result the Commission must reach, but how the Commission can best provide guidance that BellSouth and the Louisiana PSC have requested. MCI therefore focuses its Reply Comments on three issues likely to recur in subsequent applications: combinations of unbundled elements, performance standards and remedies, and operations support systems ("OSS").

Based on the DOJ Evaluation and recent findings of the Kentucky PSC and several other state commissions, the Commission should make clear that a Bell Operating Company ("BOC") cannot satisfy the competitive checklist by offering collocation as the only means for competitive local exchange carriers ("CLECs") to combine elements. Any such requirement is unreasonable and discriminatory in violation of 47 U.S.C. §§ 251(c)(3) and checklist item (ii) because it degrades the quality of service new entrants can offer, unnecessarily increases new entrants' costs substantially above the costs BellSouth incurs for the same elements, substantially delays or blocks altogether widespread competition using unbundled elements, and unlawfully requires CLECs to deploy facilities of their own in order to combine a BOC's unbundled elements. As the Kentucky PSC found, "the requirement that a CLEC may combine UNEs only by means of collocation is both discriminatory and unwarranted. The provision violates the Act and must be reformed."^{1/}

^{1/} In re: Investigation Regarding Compliance of the Statement of Generally Available Terms of BellSouth Telecommunications, Inc. with Section 251 and Section 252(D) of the Telecommunications Act of 1996, Mem. Op. at 7 (Kentucky PSC No. 98-348) (Aug. 21, 1998) (ex. A hereto).

In addition, consistent with its prior 271 decisions and each of the DOJ's evaluations, the Commission should reiterate that a BOC cannot satisfy section 271 unless it is bound by contractual performance standards, backed by sufficient self-executing remedies, for each critical function a new entrant depends on the BOC to provide. As the Commission and the DOJ have repeatedly stated, because BOCs will have no incentive to assist new entrants following section 271 entry -- a proposition no party disputes -- enforceable performance standards are needed to prevent backsliding. In a recent order, the Louisiana PSC acknowledged that "adequate performance measures and standards for UNEs and resold services are essential to the immediate development of local competition in the State of Louisiana."^{2/} Nevertheless, there is "no evidence in the record that BellSouth has committed itself in any significant way to specific levels of performance or to any enforcement provisions to remedy inadequate performance." DOJ Evaluation at 38-39.

Moreover, as the Louisiana PSC and DOJ found, BellSouth's performance reports are deficient. BellSouth continues to resist reporting all critical functions, properly disaggregating the performance data, and allowing adequate access to raw data that includes BellSouth's retail performance. Thus, BellSouth's application must be denied on the ground that it has refused to be bound by performance standards and self-executing remedies and has not provided complete performance reports.

The Department also correctly found that BellSouth fell well short of establishing that its OSS is commercially available, reliable, and operationally ready, because BellSouth omitted important data in its application, lumped together other data so as to make a determination of

^{2/} Final Recommendation, In re: BellSouth Telecommunications, Inc. Service Quality Performance Measurements at 2 (LPSC No. U-22252) (Aug. 12, 1998) (emphasis added) (ex. B hereto).

parity impossible, and presented some data that affirmatively established inadequate and discriminatory OSS performance. The Department further pointed to the complete absence of a number of key functions from BellSouth's OSS, including a proven application-to-application pre-ordering interface; flow-through for large classes of orders; electronic jeopardy notices for significant classes of jeopardies; fully documented business rules for ordering processes; and adequate change management processes.

The Department primarily focused on the critical issue of BellSouth's failure to prove that its OSS is operationally ready and nondiscriminatory in practice, but in order to provide additional guidance to BellSouth and state commissions, the Commission should also discuss the facial deficiencies with BellSouth's OSS. For example, BellSouth has failed entirely to deploy automated processes for ordering permanent local number portability. Although it is not possible to predict additional OSS problems that will develop in the coming months, the public interest will be served by a more complete explanation of the OSS deficiencies that have been uncovered to date and that are discussed in MCI's and other parties' initial comments.

Finally, MCI's Reply Comments address recent discovery that has taken place in connection with state commission proceedings, and recent state commission rulings, which undermine assertions made by BellSouth concerning the adequacy of its OSS, the adequacy of its performance requirements, and the validity of the study BellSouth relied upon to argue that PCS service is a substitute for wireline service. The newly obtained evidence provides further confirmation that BellSouth's OSS is functionally deficient, that it has not committed to performance standards and remedies vital to local competition, that its performance reporting is incomplete and flawed, and that the PCS study BellSouth relied upon is unsound.

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EXHIBITS

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A	<u>In re: Investigation Regarding Compliance of the Statement of Generally Available Terms of BellSouth Telecommunications, Inc. with Section 251 and Section 252(D) of the Telecommunications Act of 1996</u> , Mem. Op. (Kentucky PSC No. 98-348) (Aug. 21, 1998)
B	Final Recommendation, <u>In re: BellSouth Telecommunications, Inc. Service Quality Performance Measurements</u> (Louisiana PSC No. U-22252) (Aug. 12, 1998)
C	MCI Telecommunications Corporation's Exception to Initial Recommendation, <u>In re: BellSouth Telecommunications, Inc. Service Quality Performance Measurements</u> (Louisiana PSC Docket No. U-22252) (filed Aug. 10, 1998)
D	Transcript of Deposition of Greg Berman and Jack Runnels, <u>In re: Investigation Concerning the Propriety of Provision of InterLATA Services By BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996</u> (Kentucky PSC No. 96-608) (Aug. 14, 1998)
E	Transcript of Deposition of Bill Denk, <u>In re: Investigation Concerning the Propriety of Provision of InterLATA Services By BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996</u> (Kentucky PSC No. 96-608) (Aug. 13, 1998)

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REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

The Department of Justice ("DOJ") Evaluation of BellSouth's application and recent rulings of the Louisiana Public Service Commission ("Louisiana PSC" or "LPSC") and Kentucky Public Service Commission ("Kentucky PSC") confirm that BellSouth has not come close to satisfying the requirements of section 271. The question is not what result the Commission must reach, but how the Commission can best provide guidance that BellSouth and the Louisiana PSC have requested. MCI therefore focuses its reply comments on three issues that are certain to recur in subsequent applications: combinations of elements, performance requirements, and operations support systems ("OSS"). MCI further addresses newly obtained evidence from state regulatory proceedings that directly contradicts assertions made by BellSouth concerning events that pre-date its application.

I. THE COMMISSION SHOULD MAKE CLEAR THAT A REQUIREMENT OF COLLOCATION AS THE ONLY MEANS FOR CLECS TO COMBINE ELEMENTS CANNOT SATISFY SECTION 271 UNDER ANY CIRCUMSTANCES

Based on irrefutable evidence submitted by MCI and other parties, the Department of Justice concluded that BellSouth's requirement that new entrants may combine unbundled network elements ("UNEs") only through collocation "imposes unnecessary costs on competing carriers, impairs the ability of competing carriers to provide reliable service, and will substantially delay entry," thereby placing CLECs at a "clear competitive disadvantage." Evaluation of the United States Department of Justice at 9-10 (Aug. 19, 1998) ("DOJ Eval."). Equally important, the Department found that this insurmountable entry barrier was not required or authorized by the decision in Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted, AT&T Corp. v. Iowa Utils. Bd., 118 S. Ct. 879 (1998), and indeed violates that ruling by requiring CLECs to deploy facilities of their own in order to combine UNEs DOJ Eval. at 14-15.

These findings are consistent with a growing consensus of state commissions and state administrative judges. See DOJ Eval. at 15 n.30 (citing decisions of Montana PSC and Florida PSC); MCI Comments at 16 n.15, 18 n.17 (citing decisions of Massachusetts PUC, Texas PUC, and Pennsylvania PUC administrative law judge). In addition, the Kentucky PSC -- having reviewed the same proposal BellSouth relies upon in the instant application -- recently and emphatically found that "the requirement that a CLEC may combine UNEs only by means of collocation is both discriminatory and unwarranted. The provision violates the Act and must be

reformed.”^{3/} This decision is particularly noteworthy because the Kentucky PSC properly recognized that the collocation requirement is invalid as a matter of law. Id. at 2, 7.

The DOJ ultimately concluded that the absence of local competition in Louisiana is no surprise given that the collocation requirement requires new entrants to bear substantial costs that the incumbent, BellSouth, is not required to pay. DOJ Eval. at 10. In short, BellSouth has made a calculated decision to block local competition, preventing the one crucial entry method that holds any hope for widespread competition, including residential competition, in the near term.

In order to provide the guidance BellSouth and the LPSC have requested (see, e.g., LPSC Comments at 10), the Commission should make clear, based on the overwhelming evidence of record and the clear requirements of the Telecommunications Act and Eighth Circuit order, that a Bell Operating Company (“BOC”) cannot satisfy the competitive checklist by offering collocation as the only means for CLECs to combine elements. Any such requirement is unreasonable and discriminatory in violation of 47 U.S.C. §§ 251(c)(3) and checklist item (ii) because it degrades the quality of service new entrants can offer, unnecessarily increases new entrants’ costs substantially above the costs BellSouth incurs for the same elements, substantially delays or blocks altogether widespread competition using unbundled elements, and unlawfully requires CLECs to deploy facilities of their own in order to combine a BOC’s unbundled elements. See DOJ Eval. at 9-16; MCI’s Comments at 11-24.^{4/}

^{3/} In re: Investigation Regarding Compliance of the Statement of Generally Available Terms of BellSouth Telecommunications, Inc. with Section 251 and Section 252(D) of the Telecommunications Act of 1996, Mem. Op. at 7 (Kentucky PSC No. 98-348) (Aug. 21, 1998) (ex. A hereto).

^{4/} In addition to the extensive evidence submitted by MCI and AT&T, Appendix A to CompTel’s paper “Broadening the Base” (attached to CompTel’s Comments) details the discriminatory nature of BellSouth’s collocation requirement. CompTel explains that combination through collocation necessitates repeated manual cross-connections, which have a number of discriminatory consequences. First, the process necessitates at least some interruption in service, and the probability of human error

The DOJ also correctly found that BellSouth failed to demonstrate that it is providing or even capable of providing UNEs in a timely and reliable fashion using collocation as the sole option. BellSouth failed to produce the evidence of successful commercial provisioning required under prior Commission precedent. It is critical, however, that the Commission not limit its findings to this deficiency. MCI agrees with the LPSC that state commissions and BOCs are entitled to more guidance. For example, even if there were (1) far shorter, binding intervals for collocation regardless of the number of requests, (2) proof that BellSouth had handled or could handle multiple collocation requests for purposes of combining elements in a timely fashion under commercially realistic conditions, (3) appropriate forward-looking costs governing all aspects of collocation, and (4) other binding terms in interconnection agreements governing all other aspects of collocation, the requirement of having to collocate at all is unreasonable and discriminatory. The collocation requirement -- in whatever flavor BellSouth offers -- increases CLECs' costs without justification, violates the requirement that CLECs have access to UNEs at any technically feasible point, degrades quality, and violates the Eighth Circuit's decision affirming the right of

and inefficiency threatens significant interruptions. Second, having to combine elements in collocations will delay CLECs' market entry, by necessitating collocation at each central office from which a CLEC would like to serve customers, and will slow the development of competition even once collocation is complete, as the manual work of cross-connections is limited both by physical space and by technician time. Third, CLECs' customers are likely to experience degraded service quality, due to strain on connecting wires caused by unnecessary handling and to the increased number of points of failure -- at least twice as many cross-connections than would be necessary absent a collocation requirement. Fourth, any collocation arrangement increases a CLECs' costs unnecessarily.

As CompTel's paper makes clear, these problems are not ameliorated by alternative collocation proposals, such as virtual collocation, shared collocation, or cageless collocation. Each of these alternatives still retains all of the unnecessary manual processes that makes physical collocation an unacceptable option. Thus, with any type of collocation arrangement, competition will be slowed, and CLEC customers will experience service interruptions and degraded service quality. No matter how the ILEC characterizes it, collocation is collocation and requires repeated, unnecessary manual cross-connections, with all of the problems that those processes bring.

CLECs to combine network elements to provide a finished service without using any of the CLEC's own elements. Iowa Utils. Bd., 120 F.3d at 814. The Commission should make clear, consistent with the DOJ Evaluation and recent findings of the Kentucky PSC, that under any circumstances collocation as the sole option for combining elements cannot satisfy section 271.

II. THE DOJ EVALUATION AND THE LPSC'S RECENT FINDINGS CONCERNING PERFORMANCE REQUIREMENTS CONFIRM THAT BELLSOUTH HAS NOT SATISFIED SECTION 271

In its August 19, 1998 Business and Executive Session, the LPSC adopted its staff's Final Recommendation concerning BellSouth's performance requirements. Although the LPSC failed to take the necessary action to establish performance standards and self-executing remedies immediately, it is significant that the LPSC recognized that "adequate performance measures and standards for UNEs and resold services are essential to the immediate development of local competition in the State of Louisiana." Final Staff Recommendation, In re: BellSouth Telecommunications, Inc. Service Quality Performance Measurements at 2 (LPSC No. U-22252) (Aug. 12, 1998; adopted by LPSC Aug. 19, 1998) ("Final Rec.") (emphasis added) (ex. B hereto). Thus, BellSouth's application must be denied on the ground that standards that are indisputably essential for the development of local competition are not yet in place.

The LPSC's finding on the importance of performance standards is consistent with the prior findings and statements of this Commission. See, e.g., Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, ¶¶ 393-94 (rel. Aug. 19, 1997) (discussing importance of performance standards and self-executing remedies); The Telecommunications Act of 1996, Moving Toward Competition Under Section 271, Hearings Before the Subcomm. on Antitrust, Business Right, and Competition, Committee on the Judiciary, 105th Cong. (March 4, 1998) (Statement of FCC Chairman William Kennard) ("The Commission

will consider whether the BOC has agreed to performance monitoring and whether there are appropriate enforcement mechanisms that are sufficient to ensure compliance with established performance standards.") (emphasis added).

In addition, having made clear in each of its prior evaluations the importance of performance standards and self-executing remedies, the DOJ was compelled to recommend against the instant application because it could find "no evidence in the record that BellSouth has committed itself in any significant way to specific levels of performance or to any enforcement provisions to remedy inadequate performance." DOJ Eval. at 38-39. Absent adequate performance standards with self-executing remedies,

CLECs who feel that BellSouth's performance is inadequate would need to file complaints with the Louisiana PSC and then, in the course of the resulting regulatory proceedings, establish the appropriate level of performance, whether BellSouth had failed to meet that performance level, and finally, establish the remedy. To be most effective in preventing backsliding, such issues should be resolved in advance, either in contracts between BellSouth and its competitors or through regulatory proceedings.

DOJ Eval. at 39 (emphasis added).

The reason for the consensus on the importance of performance standards and self-executing remedies is apparent: the BOCs have no answer to the fact that following section 271 entry, they will have no incentive to provide reasonable and nondiscriminatory service to CLECs. As the DOJ recognized, the prospect of uncertain remedies after lengthy formal complaint proceedings will hardly rein in a BOC's undisputed incentive to avoid helping competitors win away the BOC's customers. Only the existence of performance standards for each critical function a BOC provides to a CLEC -- each avenue a BOC can use to degrade service to a

CLEC -- coupled with self-executing remedies that are sufficiently severe to modify the BOC's natural incentives, hold any hope for local markets remaining open once a BOC has otherwise complied with section 271.

It is unfortunate for the prospect for successful local competition, however, that to date no agency has followed through to establish comprehensive requirements for a meaningful program of performance standards and self-executing remedies. Some, like the LPSC, have finally recognized the importance of performance standards, but have fallen prey to the BOCs' delay tactics and other efforts to limit the efficacy of performance standards. Thus, for example, having recognized the importance of performance standards, the LPSC nonetheless acceded to BellSouth's argument that performance standards are needed only where there is no analog to a BellSouth retail service, Final Rec. at 10-12, and BellSouth's argument that performance standards cannot be established without waiting for "special studies" to be conducted by BellSouth. Final Rec. at 12.

Both conditions are without basis in fact or law, and would undermine the prospects of local competition. All of the reasons that performance standards with self-executing remedies are needed -- to prevent backsliding, to allow CLECs a meaningful opportunity to compete by requiring delivery of raw materials at a fixed time and quality, and to ensure that BOCs do not favor their own affiliates or customers -- apply to every function that a CLEC depends upon a BOC to deliver. There is no rhyme or reason to the notion that standards are needed only where there is no retail analog.^{5/} Moreover, the statutory foundations for performance standards -- the

^{5/} The LPSC states that it will consider performance standards for functions where a retail analog does exist if over time performance reports show that BellSouth is performing at a "substandard level." Final Rec. at 14. This reasoning is circular, as "substandard" cannot be defined without setting the standard. Moreover, waiting until BellSouth has provided poor service to CLECs before even initiating

section 251(c) requirement that BOCs provide unbundled elements, interconnection, and resold services to CLECs on "reasonable" and "nondiscriminatory" terms, the section 271 checklist that incorporates these requirements, and the section 271 public interest test that requires that measures are in place to ensure that local markets will remain open after 271 entry -- apply with full force to every critical function that BOCs deliver to CLECs, and are not expressly or implicitly limited to functions that have no retail analog. The Commission should make clear that for precisely the reasons set forth in its prior decisions, in the DOJ evaluations, and in MCI's comments, adequate performance standards and self-executing remedies must be in place for all critical functions BOCs provide to CLECs.

In addition, there is no basis whatever for deferring performance standards until a time when BellSouth conducts its own "special study," let alone for setting the standards at a level that BellSouth dictates.^{6/} Because a central purpose of performance standards is to guarantee delivery of service on reasonable terms and conditions -- *i.e.*, to afford CLECs a meaningful opportunity to compete -- the standard must be grounded in the timeliness and quality of delivery of raw materials the CLECs require in order to compete on an equal playing field against the BOC. The level of service is not dependent on what the supplier decides through internal "studies" it is

an inquiry into performance standards will defeat the purpose of establishing performance standards at the outset in order to ensure that BellSouth does not bring local competition to a grinding halt the moment it receives 271 authority.

^{6/} Contrary to the LPSC's statement, Final Rec. at 13, MCI has opposed deferring the establishment of performance standards until BellSouth conducts studies in the future. See, e.g., MCI Telecommunications Corporation's Exception to Initial Recommendation, In re: BellSouth Telecommunications, Inc. Service Quality Performance Measurements at 3 (LPSC No. U-22252) (filed Aug. 10, 1998) ("the Commission must adopt performance standards NOW If this Commission waits until BellSouth conducts benchmarking studies to establish performance standards, it will be open season on CLECs. BellSouth will have no standard of performance that it will be required to provide to CLECs.") (emphasis in original) (ex. C hereto).

willing to supply. Issues as to what level of service will provide a CLEC a meaningful opportunity to compete may need to be resolved in hearings or collaborative processes for some functions (because BellSouth will not commit to such standards voluntarily),^{7/} but they are not in any way dependent upon a self-serving internal "study" BellSouth promises to conduct at some unstated time in the future.

In short, the Commission should confirm that to meet section 271, a BOC must have in place legally binding performance standards supported by sufficient self-executing remedies. The performance standards must first include "objective" standards -- enforceable commitments to provide service at a fixed level in order to meet minimum standards of "reasonable" service and afford CLECs a meaningful opportunity to compete. In addition, performance standards must require service at parity (based on a pre-established statistical model) to prevent a BOC from improving service and "beating" the fixed, objective standard only for the BOC's own customers or affiliates. However, if performance standards are grounded only in "parity" without objective standards, CLECs will be unable to plan their operations or make commitments their customers

^{7/} Thus, the LPSC's belief that performance standards for all functions are not appropriate at this time because the standards endorsed by the Local Competition Users Group ("LCUG") are "not well documented and ... are intended to be extremely aggressive," Final Rec. at 11 n.30, begs the question entirely. MCI does not contend that the commission's sole option is to adopt the LCUG standards in toto, let alone that standards must be set without consideration of evidence or discussion by all parties. The fact that the LPSC believes that the LCUG intervals are too aggressive is no reason to reject out of hand the critical task of establishing what the intervals should be.

Indeed, the LPSC order requires BellSouth to agree to one standard -- performing a loop cutover, including number portability, in five minutes, not to exceed fifteen minutes. Final Rec. at 13. Obviously a "special study" was not needed to establish this standard. (To be effective, however, cutover/number portability standards must govern premature cutovers and other ways in which the BOCs have failed to coordinate the cutover, thus causing loss of service. In addition, any such standard must be backed by sufficient self-executing remedies. BellSouth will not be deterred if CLECs are forced to bring a breach of contract action or PSC complaint each time BellSouth botches a cutover).

expect because the delivery of raw materials will fluctuate wildly based on what the BOC reports as "parity." In addition, standards based only on "parity" give BOCs an incentive to falsely report their retail performance or to deliberately degrade retail service (and therefore the corresponding interval required for service to CLECs) for selected functions that are more critical to a particular CLEC than to BellSouth's retail operations. Although this Commission need not set the standards, it must insist on a showing that objective and parity-based standards are in place for each critical function, backed by self-executing remedies.

Finally, no party disputes that the only way to determine if a BOC is favoring its own customers or affiliates over the CLECs, or is discriminating among CLECs, is to ensure that the BOC is accurately reporting its retail and wholesale services, using proper measurement methodologies (e.g., start and stop times), without aggregating disparate types of service or geographical areas that would allow discriminatory service to be masked. Despite the recognition that reporting requirements are useless if they do not include "apples to apples" comparisons, and that auditing requirements and access to raw data are critical because of a BOC's clear incentive to report "parity" whether or not it matches reality, BellSouth continues to resist reporting all critical functions, properly disaggregating the performance data, and allowing adequate access to raw data that includes BellSouth's retail performance

Indeed, in addition to the defects noted in the DOJ Evaluation, the LPSC's recent order requires greater geographic and product disaggregation than the aggregated reports BellSouth relies upon in the instant application, Final Rec. at 4-10, thus confirming the inadequacy of BellSouth's application. Similarly, the LPSC acknowledged that further modifications may be required concerning BellSouth's measurement methodologies. See, e.g., Final Rec. at 3-4, 6-8.

The LPSC also required measurements and reports of additional functions or detail BellSouth failed to include, such as interim local number portability cutovers, see, e.g., id. at Ex. A, p.19. It is thus clear that even apart from the absence of standards and remedies, the reporting BellSouth offered in its application is deficient.

III. THE COMMISSION SHOULD PROVIDE GUIDANCE TO BELLSOUTH AND STATE COMMISSIONS BY DISCUSSING BOTH OPERATIONAL AND FACIAL DEFECTS WITH BELLSOUTH'S OSS

The LPSC makes the remarkable claim that “[t]here is little serious debate that BellSouth has become proficient in the operation of OSS.” LPSC Comments at 4-5. Such a statement can only be made by ignoring entirely the unrefuted evidence submitted by CLECs who have tried to use BellSouth’s OSS, BellSouth’s own data, the prior findings of this Commission, prior findings of the Department of Justice, and prior findings of the Georgia PSC. See MCI Comments at 40-60; DOJ Eval. at 26-37. Not surprisingly, the LPSC does not purport to address any of this evidence.

The Department correctly found that BellSouth fell well short of establishing that its OSS is commercially available, reliable, and operationally ready, DOJ Eval. at 28, because BellSouth omitted important data in its application, lumped together other data so as to make a determination of parity impossible, and presented some data that affirmatively established inadequate and discriminatory OSS performance See, e.g., DOJ Eval. at 27-33. The Department further pointed to the complete absence of a number of key functions from BellSouth’s OSS, including a proven application-to-application pre-ordering interface; flow-through for large classes of orders; electronic jeopardy notices for significant classes of jeopardies; fully

documented business rules for ordering processes; and adequate change management processes.

DOJ Eval. at 27-28 n.51.

The Department primarily focused on the critical issue of BellSouth's failure to prove that its OSS is operationally ready and nondiscriminatory in practice, but in order to provide additional guidance to BellSouth and state commissions, the Commission should also discuss the facial deficiencies with BellSouth's OSS. Although it is not possible to predict additional OSS problems that will develop in the coming months, the public interest will be served by a more complete explanation of the deficiencies that have been uncovered to date. Because of these additional deficiencies, it would be misleading to imply that correcting only the problems identified by DOJ would, standing alone, satisfy BellSouth's obligations under section 271.^{8/}

For example, in addition to some of the facial defects DOJ noted, DOJ Eval. at 27-28 n.51, a critical defect in BellSouth's OSS is that BellSouth has failed entirely to deploy automated processes for ordering permanent local number portability ("LNP"). See MCI Initial Comments at 50-51; Green Decl. ¶ 152 (ex. B to MCI's Initial Comments). This means that MCI will be forced to place manually one of the primary types of orders MCI intends to use -- loop with LNP. Green Decl. ¶¶ 152-53. This significant defect in BellSouth's OSS will render MCI's EDI development efforts largely useless. Id. ¶ 153. Indeed, even if BellSouth successfully implements a process for ordering LNP via EDI, MCI will still be receiving discriminatory service because BellSouth does not plan to return any jeopardies or rejects on LNP orders (or orders for loops plus LNP) via EDI until some time next year. Id. ¶¶ 128-29. The automated return of rejects is vital, id. ¶ 129, as the

^{8/} Should the Commission instead decide to focus on only some of the problems with BellSouth's OSS, it should so state explicitly in order to avoid implying that there are no other functional or operational problems.

Commission made clear in rejecting BellSouth's South Carolina application. See Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934 to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, ¶ 120 (rel. Dec. 24, 1997) ("SC Order").

BellSouth's failure to develop OSS for LNP orders is but one example of a glaring facial defect in its OSS. MCI will not repeat in this reply filing other critical functional defects outlined in MCI's initial comments and supporting affidavit, but urges the Commission to address these deficiencies in order to provide BellSouth and the LPSC the guidance they have requested -- guidance that will also prove useful for other state commissions in the process of evaluating section 271 applications based on the same region-wide OSS BellSouth purports to offer in Louisiana.

In addition, the Commission should make abundantly clear that the type of "testing" evidence BellSouth submitted is legally and factually deficient for section 271 entry. First, the Commission should reiterate that evidence of successful commercial usage is the standard under section 271 unless no CLEC has requested or intends to request a particular OSS function (and that the reason for not requesting the function is not in any way attributable to BellSouth's conduct). See SC Order ¶ 78. In the narrow circumstances in which evidence of testing may be relevant, the Commission should provide guidance to the BOCs on the minimum requirements for test evidence, as the DOJ outlined. For example, BellSouth cannot satisfy section 271 by providing test results that include "virtually no information about the nature of those tests or about each carrier's experience," DOJ Eval. at 36, by focusing solely on OSS interface and system capacity and not on end-to-end performance, id., by omitting critical information on "the specific methods, tests, and analyses upon which the [consultant's] conclusions are based," id., by

including conclusory statements of the types of tests used, or by focusing solely on the existence of specific processes rather than the “efficiency, effectiveness, and adequacy” of those processes, id. at 37 (emphasis in original).

In the limited situation in which testing evidence is arguably relevant -- as opposed to evidence of successful commercial deployment -- the Commission should therefore insist that the testing establish efficient end-to-end performance based on a showing that includes, at a minimum,

a clear and complete understanding of the scope of the work, including: how and by whom it was defined; the qualifications of the organization and of the individual persons who designed, conducted, and analyzed the tests; and the tests performed that form the basis for the conclusions reached, including the type, mix, and volume of test transactions submitted. To accept the results of an independent test without this information would simply surrender judgment to the tester without knowing the validity of the test.

DOJ Eval. at 37.

Indeed, a recent deposition of one of the outside consultants BellSouth relies upon confirms the inadequacy of BellSouth’s “test” data. BellSouth contends that its CGI specifications allow a CLEC to integrate LENS with a CLEC’s OSS, and specifically that a prototype CGI interface developed for BellSouth by its consultant, Albion International, demonstrates that CGI can be made to work successfully to allow CLECs to “parse” CSR data into a format that a CLEC can use to complete an order in EDI. See, e.g., BellSouth Br. at 27. However, in a deposition taken by MCI on August 14, 1998, Albion explained that it had developed a CGI application only for new residential orders. See Transcript of Deposition of Greg Berman and Jack Runnels, In re: Investigation Concerning the Propriety of Provision of InterLATA Services By BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996 at 24-25 (Kentucky PSC No. 96-608) (Aug. 14, 1998) (ex. D

hereto). On new residential orders, unlike orders to change existing customers, there is no need to access a CSR (in fact, the customer does not even have a CSR). Id. at 52. Only as an “afterthought” to the CGI project did Albion attempt to develop the capability to parse CSRs. Id. at 161. Even then, Albion conceded that it had not attempted to develop the ability to use CGI to access CSR information and to integrate that information into an EDI order; instead, Albion had only developed the ability to parse CSRs sufficiently to view the CSRs. Id. at 53. Albion confirmed that a CLEC could not parse CSRs down to the level of street name, street number, etc., id. at 81, 83, 84 -- information needed to integrate CSR information from pre-ordering to ordering. Albion also confirmed that in addition to the issues regarding CSR parsing, there were other problems with CGI. For example, the specifications contained mistakes that required clarification from BellSouth before development could be completed. Id. at 82. That these critical deficiencies were not fully revealed without a deposition reinforces the importance of requiring all testing details to be included in a BOC’s application -- and further confirms that test evidence is no substitute for commercial experience.

IV. THE COMMENTS AND RECENT ADMISSIONS OF BELL SOUTH’S CONSULTANT FURTHER UNDERMINE BELL SOUTH’S CLAIM THAT PCS IS A SUBSTITUTE FOR WIRELINE SERVICE

Several commenters have reinforced MCI’s rebuttal of BellSouth’s claim that “in Louisiana, PCS service is an ‘actual commercial alternative’ to wireline service for a substantial number of customers today.” BellSouth Br. at 14. In particular, third party comments explain that the M/A/R/C survey on which BellSouth relies does not provide meaningful support for BellSouth’s claim. The Competition Policy Institute (“CPI”), for example, demonstrates that the respondents to the M/A/R/C survey are not a random sample of PCS users in Louisiana, let alone

of all local exchange customers in Louisiana, and are therefore not necessarily representative of those larger groups. See CPI Comments at 17-20. Thus, the results of the M/A/R/C survey prove nothing at all about the universe of PCS users in Louisiana -- at best, they show that a percentage of the 202 survey respondents use PCS as a substitute for wireline local service. See id. at 20. Seen in this light, the survey plainly is of little use in determining whether local telephone customers in Louisiana consider PCS a viable alternative to wireline service.

BellSouth's claim that 6% of PCS customers in Louisiana subscribed to PCS instead of wireline service, for instance, is entirely unfounded. See BellSouth Br. at 12-13. All the M/A/R/C survey shows is that 13 individual PCS customers reported subscribing to PCS instead of wireline. There is no basis for BellSouth's extrapolation from those 13 customers to a conclusion about all PCS users in Louisiana. See id. at 21.^{9/}

The limitations of the M/A/R/C survey became even more evident when MCI recently took the deposition of William Denk, the affiant who sponsored BellSouth's submission of the survey. In that deposition,^{10/} Mr. Denk was questioned about a parallel survey that M/A/R/C conducted in Kentucky using the same methodology as the Louisiana survey. Mr. Denk repeatedly stated that the purpose of the survey was simply to determine whether there were customers among the population of PCS users who had substituted PCS for wireline service --

^{9/} For additional, expert criticism of the M/A/R/C survey, as well as of BellSouth's study purporting to show that PCS is price-competitive with wireline local service for a substantial number of BellSouth customers, see the Declaration of Carl Shapiro and John Hayes at 10-11, 14-23 (Appendix B to Sprint Comments).

^{10/} The deposition took place in connection with a section 271 proceeding before the Kentucky Public Service Commission. See Transcript of Deposition of Bill Denk, In re: Investigation Concerning the Propriety of Provision of InterLATA Services By BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996 (Kentucky PSC No. 96-608) (Aug. 13, 1998) ("Denk Dep.") (ex. E hereto).

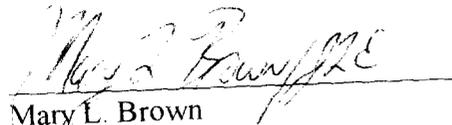
that is, the survey's purpose was merely to determine the presence of such customers in the marketplace, not their prevalence. See, e.g., Denk Dep. at 8, 15, 17, 20, 30, 48. Therefore, it was not important to the goal of the survey that the respondents even be representative of the universe of PCS users, and, in fact, Mr. Denk conceded that the survey sample was not necessarily representative. See id. at 12, 51, 52, 54

Thus, Mr. Denk conceded that it was not the purpose of the M/A/R/C study to support conclusions about any group other than the limited group of survey respondents. In response to the question, "[A]re you drawing an inference from the results of your study to all PCS users?" Mr. Denk flatly answered "No." Id. at 50. Later, when asked further questions about whether the survey results could be projected into conclusions about all PCS users, Mr. Denk stated: "Well, what I can say factually is that, you know, of the 214 people we talked to, this percentage of people answered these questions this way. That's what I can say, you know, without a question." Id. at 54. What Mr. Denk could not say, and what cannot be said about the survey submitted by BellSouth in this proceeding, is that the survey responses demonstrate that PCS is an actual commercial alternative to wireline local service. See id. at 49 ("Q: Did M/A/R/C draw any conclusions whether PCS is a commercially viable alternative to wireline local service? A: No, we didn't draw any of those conclusions."). The survey simply says nothing about whether the universe of PCS users in Louisiana, let alone the universe of all local telephone users in Louisiana, considers PCS a substitute for wireline service

CONCLUSION

For the foregoing reasons, and the reasons set forth in MCI's initial comments, BellSouth's application to provide in-region interLATA services in Louisiana should be denied.

Respectfully submitted,



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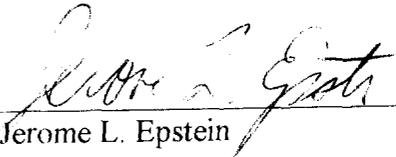
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August 28, 1998

CERTIFICATE OF SERVICE

I, Jerome L. Epstein, hereby certify that I have on this 28th day of August, 1998, caused a true copy of the foregoing Reply Comments of MCI Telecommunications Corporation to be served upon the parties on the attached list by hand, except where noted by Federal Express.



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