

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

In the Matter of)
Joint Application by BellSouth Corporation)
BellSouth Telecommunications, Inc., and) **CC Docket No. 01-277**
BellSouth Long Distance, Inc., for)
Provision of In-Region, InterLATA)
Services in Georgia and Louisiana)

**DECLARATION OF
DAVID M. EPPSTEINER
ON BEHALF OF AT&T CORP.**

I, David M. Eppsteiner, state as follows:

1. My name is David M. Eppsteiner. My business address is 1200 Peachtree Street, NE, Atlanta, Georgia 30309.

2. I am employed by AT&T Corp. ("AT&T") as a Senior Attorney in its Law and Government Affairs Division for the Southern Region. My responsibilities include representation of AT&T in regulatory proceedings in the Southern region states, including Georgia and Louisiana. I currently coordinate AT&T's legal and regulatory activities related to BellSouth's efforts to gain interLATA authority in all states where BellSouth provides local service.

PURPOSE AND SUMMARY

3. The purpose of my affidavit is to describe the regulatory proceedings being conducted by state commissions where BellSouth operates, and to demonstrate that some state commissions are currently conducting proceedings, such as third party testing of BellSouth's operations support systems ("OSS"), that provide a genuine opportunity to

ensure that BellSouth fully complies with its obligations under the 1996 Act to open irreversibly its local markets to competition. At this juncture, however, those proceedings are not complete, and the Commission's endorsement of BellSouth's current joint application could disrupt these proceeding and ensure that BellSouth would not meaningfully cooperate in these ongoing state commission proceedings.

4. Additionally, my affidavit demonstrates that the proceedings conducted to date in Louisiana provide the Commission with no assurances that BellSouth has fully complied with its market-opening obligations under the Act. BellSouth's application relies on a series of exaggerated claims regarding the "pro-competitive commitment" of the LPSC and its purported efforts "over a period of years to ensure that competition is firmly rooted" in Louisiana. BellSouth Br. at 2. In fact, however, the LPSC took few measures to ensure BellSouth's compliance with the checklist, and, for example, continues to rely on previous findings of compliance that this Commission has already twice refused to endorse. Moreover, the few new proceedings conducted by the LPSC since the Commission's prior rejections of BellSouth's Section 271 applications were limited in purpose, scope and outcome. Unlike the state commissions that have reviewed the checklist compliance of BOCs submitting successful section 271 applications, the LPSC has not taken steps to create the extensive factual record for this Commission to use in evaluating BellSouth's section 271 compliance or to insure that the local market is open to competition.

INTRODUCTION

5. In its *Ameritech Order*, the Commission stressed that state commissions should develop "a comprehensive factual record" concerning both BOC compliance with

the requirements of section 271 of the Telecommunications Act of 1996 (the “Act”) and the status of local competition in order to fulfill their role under section 271(d)(2)(B). *In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd. 20543, ¶ 30 (“*Ameritech Order*”). The Commission recognized, however, that while some state commissions would develop a comprehensive record, others would undertake only a “cursory review” of BOC compliance with section 271. *Id.* The Commission has discretion to determine what deference it should accord a state commission’s determination. *Id.* The Commission will consider carefully determinations of fact by the state that are supported by a detailed and extensive record. Ultimately, it is the Commission’s role to determine whether the factual record demonstrates that the requirements of section 271 have been met. *Id.* See also Memorandum Opinion and Order, *In the Matter of Application of BellSouth Corp. et al, for Provision of In-Region, Inter-Region, Inter-LATA Services in Louisiana*, 13 FCC Rcd. 20599, ¶ 21 (1998) (“*Second Louisiana Order*”) (finding that “State Commissions may assist us greatly by providing factual information”).

6. In the Bell Atlantic New York 271 Order, the Commission elaborated on the role the state commission can play. The Commission explained that the 271 process used in New York “exemplifies the way in which vigorous state proceedings can contribute to the success of a Section 271 application.” *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953, ¶ 7 (1999) (“*BA-NY Order*”). Among other things, the Commission applauded the New York

Commission’s use of “collaborative sessions and technical workshops to clarify or resolve issues.” *Id.* ¶ 9. The Commission concluded that the “well-established pro-competitive regulatory environment in New York in conjunction with recent measures to achieve Section 271 compliance has, in general, created a thriving market for the provisions of local exchange and exchange access service.” *Id.* ¶ 13.

7. Similarly, in the Texas 271 Order, the Commission “applauded the efforts of the Texas Commission, which has expended significant time and effort overseeing SWBT’s implementation of the requirements of section 271.” *Application by SBC Communications Inc., et al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18354, ¶ 3 (2000). The Commission explained that “for more than two years the Texas Commission has worked with SWBT and competing carriers to identify and resolve a number of key issues related to SWBT’s compliance with the Act.” *Id.*

I. OTHER STATE COMMISSIONS ARE CONDUCTING PROCEEDINGS THAT COULD ENSURE THAT BELL SOUTH FULLY COMPLIES WITH ITS CHECKLIST OBLIGATIONS

8. In the region where BellSouth operates, there are a number of proceedings being planned or currently being conducted by state commissions that hold the promise of developing the detailed and comprehensive factual record that would assist this Commission in finding that BellSouth has complied with its checklist obligations, and most significantly, the obligation to provide nondiscriminatory access to OSS.

9. In particular, the Florida Public Service Commission is currently in the midst of a lengthy proceeding in which an independent third party – KPMG Consulting – is testing BellSouth’s OSS. As the Florida PSC has explained, this proceeding included

an initial phase to develop a “master test plan” that “would identify the specific testing activities necessary to demonstrate non-discriminatory access and parity of BellSouth’s systems and processes.” Order Approving Master Test Plan And Notice of Agency Action Order To Proceed With Third Party Testing of Operational Support Systems, Docket No. 960786-TL, 981834-TL, Order No. PSC-00-0104-PAA-TP, at 3 (Fla. P.S.C. Jan. 11, 2001) available at <http://www2.scri.net/psc/industry/telecomm/oss/oss.cfm> (Florida PSC web site for OSS testing). The Florida PSC stated that the test plan “scope includes a comprehensive evaluation of the OSS interfaces and processes that enable [C]LECs to compete with BellSouth [and] is intended to provide adequate breadth and depth to evaluate the entire BellSouth/[C]LEC relationship under real world conditions.” *Id.* at 4. The Florida PSC concluded that such testing was necessary to “allow us to fulfill our consultative role under Section 271” with regard to BellSouth’s provision of OSS and “will enable us to make a definitive determination of whether BellSouth” had provided nondiscriminatory access to its OSS. *Id.* at 3, 5.

10. Likewise, in Tennessee, the Tennessee Regulatory Authority (“TRA”) has opened a proceeding to “determine whether existing data or test results derived from OSS testing in other states is reliable and applicable to Tennessee, and, in those instances where reliance on such testing is inappropriate, to conduct necessary testing.” *See In re Docket To Determine the Compliance of BellSouth Telecomm. Inc.’s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362, pp. 2-3 (Order Approving First Report and Recommendation of the Pre-Hearing Officer) (July 27, 2001). The first phase of the proceeding is currently underway and is examining “the regionality of BellSouth’s OSS” – i.e., whether OSS testing and Florida and Georgia

would be useful in determining BellSouth's compliance with its OSS in Tennessee. *See In re Docket To Determine the Compliance of BellSouth Telecomm. Inc.'s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362, pp. 7, 9-10 (Order Establishing Issues and Procedural Schedule) (Sept. 13, 2001). A second phase will examine, among other things, "whether measurable 'commercial usage' exists that will allow the [TRA] to determine if BellSouth is providing nondiscriminatory access to it[s] OSS in Tennessee . . . and what, if any, OSS testing is needed for BellSouth's Tennessee operations." *Id.* at 7. In a prehearing conference, the pre-hearing officer concluded that some of BellSouth's legacy systems "serve only a subset of the region, . . . some serve only Tennessee, [and] [s]ome OSS processes that serve Tennessee customers are different from those that serve Georgia and Florida customers." First Report and Recommendation of Pre-Hearing Officer at 4. The pre-hearing officer expressed concern about "processes that are specific to Tennessee or utilize Tennessee labor, such as the process for 'hotcuts.'" *Id.* at 5. The review in this proceeding is being undertaken prior to the TRA's review of BellSouth's compliance with Section 271.¹

11. The Florida testing is still being implemented and executed. Indeed, as the most recent status report on the testing in Florida demonstrates, there are a host of defects in BellSouth's OSS. *See* KPMG Consulting, Florida BellSouth OSS Test Evaluation

¹ Indeed, BellSouth requested that the TRA delay its previously scheduled review of BellSouth section 271 compliance because, among other things, the delay would allow the TRA to complete its OSS work before completion of the 271 proceedings. *See* BellSouth's Motion to Amend Procedural Order, Tennessee Regulatory Authority Docket No. 97-00309 (filed Sept. 18, 2001). Earlier, BellSouth sought a delay in the 271 proceeding based on, among other things, BellSouth's "representations that BellSouth will not ask this Authority to hear this matter prior to an FCC decision in the Georgia 271 case. . . ." *See* BellSouth Telecommunications, Inc.'s Motion to Amend Procedural Schedule, Tennessee Regulatory Authority Docket No. 97-00309, filed Sept. 14, 2001, at 2.

Status Report, available at

<http://www2.scri.net/psc/industry/telecomm/oss/pdf/exceptions10-04-01.pdf>. *See also*

Declaration of Sharon Norris. Rigorous, independent third party testing, if properly designed, executed, and implemented, provides a genuine opportunity to verify that BellSouth's OSS are robust and can in fact be relied upon by CLECs to introduce local competition into BellSouth's markets. Consequently, at the end of these proceedings, the state commissions which are committed to broad and rigorous testing of BellSouth's OSS may succeed in pushing BellSouth into full compliance with its obligations to provide non-discriminatory access to OSS.

12. If the Commission were to approve BellSouth's applications at this time, however, these ongoing state commission proceedings could be disrupted, for BellSouth would lose all incentive to cooperate in these proceedings. Approval of these applications would convey an inappropriate message to BellSouth and these state commissions.

13. In addition to these actions by other states, both the Georgia and Louisiana Commissions have not yet completed activities in several dockets. These dockets also are critical to insure that BellSouth is meeting the requirements of section 271 and the competitive checklist.

14. For example, in Georgia, the GPSC has not completed the metrics portion of the independent third party test. As discussed in the declaration of Sharon Norris, exceptions regarding BellSouth's ability to produce accurate and reliable data remain unresolved. BellSouth's ability to provide CLECs with accurate and reliable data is a requirement for Section 271 relief. *See BA-NY Order* ¶ 433. Likewise, KPMG, at the

direction of the GPSC, is in the process of conducting an independent third party review of BellSouth's compliance with its January 2001 order on performance measurements. That review, which will not be completed until December 2001, is another critical step in assuring state regulators and this Commission that BellSouth's has fully complied with its checklist obligations.

15. The Georgia Commission also had not taken any action in response to AT&T's Petition for Investigation into BellSouth Telecommunications, Inc.'s Conduct in Processing Certain LSRs and Retiring Key OSS Systems. AT&T filed its petition following discovery in state 271 proceedings in other jurisdictions which revealed that BellSouth had provided discriminatory preferential treatment in its Local Carrier Service Centers (LCSCs). Such discriminatory treatment included orders or Local Service Requests (LSRs) from CLECs that were placed as part of third party test of BellSouth's OSS that would be used to report to the GPSC, this Commission, and the Department of Justice. AT&T also requested that the GPSC investigate BellSouth's decision to replace certain key OSS without providing CLEC's appropriate and necessary notice. AT&T filed its Motion on September 11, 2001, but to date, the Georgia Public Service Commission has taken no action.

16. The LPSC also has underway activities of a critical nature to establishing Section 271 compliance. For example, the LSPC had ordered an independent audit of BellSouth's performance measurement plan. That audit, however, is incomplete. Absent such an audit, the CLECs, the Commission, and the LPSC can have no assurance that BellSouth is complying with the LPSC's requirements. Given the critical importance of performance measurements and of a mechanism to prevent backsliding subsequent to any

section 271 approval, this compliance audit could be crucial. The LPSC also is conducting its own review with BellSouth's compliance with its performance measurements order. That review has just started.

17. Like the efforts by other states in BellSouth's region, these ongoing efforts in Georgia and Louisiana are necessary to push BellSouth into compliance with the requirements of the Act and the competitive checklist. Any endorsement of BellSouth's application "as is" and before completion of these processes will remove all incentive for BellSouth to cooperate in these proceedings, and will severely hinder the efforts of state regulators and new entrants to bring true and lasting local competition to Louisiana and Georgia.

II. THE LIMITED SCOPE OF PROCEEDINGS CONDUCTED BY THE LPSC BEAR NO RESEMBLANCE TO THE "VIGOROUS STATE PROCEEDINGS" THIS COMMISSION HAS PREVIOUSLY ENDORSED IN ITS REVIEW OF SECTION 271 APPLICATIONS

A. The LPSC Rejected Efforts, Such As Third Party OSS Testing, To Verify BellSouth's Checklist Compliance

18. In its Brief, BellSouth claims that the LPSC "has expended a truly extraordinary amount of time and effort to ensure that BellSouth's local market is open and that CLECs' concerns are fully aired and addressed." In fact, the LPSC has not shown the commitment to local competition recognized by the Commission in other states for which 271 approval was granted.

19. Indeed, BellSouth makes this claim following the two previous LPSC votes to recommend approval of BellSouth's application to provide interLATA services in Louisiana. In the first case, the LPSC claimed that "[b]ased on its thorough analysis," BellSouth met each of the 14 points of the Section 271 checklist. *See* LPSC FCC

Comments at 9 (filed Nov. 24, 1997). In the second application the LPSC again stated that “after a review of BellSouth’s application and a review of the progress BellSouth made, . . . the Louisiana Public Service Commission voted by a 4 to 1 vote to approve and support BellSouth’s 271 application.” LPSC FCC Comments at 3 (filed July 28, 1998). In both applications the LPSC claimed that it had taken steps to encourage competition. LPSC FCC Comments at 2. In commenting on BellSouth’s second application at this Commission, the LPSC cited its four years of involvement “in the issues of local competition.” *Id.*

20. Despite the LPSC’s claims and votes to recommend 271 approval, in both of BellSouth’s applications for interLATA relief for Louisiana, the Commission found that BellSouth had not met the requirements of Section 271. In reaching its conclusion on BellSouth’s Second Louisiana Application, the Commission noted that the LPSC “did not compile an evidentiary record or conduct a formal proceeding to determine whether BellSouth’s revised application complies with Section 271.” *Second Louisiana Order* ¶ 20. Additionally, and again in the face of the LPSC’s conclusion that BellSouth had met the requirements of Section 271, the Commission found that with respect to checklist item 2, BellSouth had “major compliance problems.” Among the problems identified was BellSouth’s “continued failure to provide competing carriers with nondiscriminatory access to its OSS functions.” *Second Louisiana Order* ¶ 9.

21. Following this Commission’s October 1998 decision that found “major compliance problems” with BellSouth’s checklist obligations, the LPSC took *no* formal steps to determine whether BellSouth’s OSS provide the nondiscriminatory access

required by the Act or to ensure that the OSS deficiencies twice identified by the Commission were addressed by BellSouth.

22. Significantly, AT&T requested that the LPSC take appropriate steps to review BellSouth's OSS – a request that was essentially ignored. On May 6, 1999, AT&T filed with the LPSC a Petition for the Establishment of an Independent Third Party Testing Program of BellSouth's Operational Support Systems (Exh. 1). AT&T's petition requested, among other things, that the LPSC establish a new docket to investigate BellSouth's OSS and in particular that, like in other states, the LPSC should require BellSouth to retain an independent third party to "conduct a comprehensive test of BellSouth's OSS and then evaluate the data." Pet. at 9. AT&T's Petition stressed that a third party test that was "properly designed, executed and monitored," could assist the LPSC (and ultimately this Commission) in "understand[ing] the complex technical issues involved" and could help "untangle the 'he said-she said' debate among" BellSouth and competing new entrants. *Id.* at 6.

23. The LPSC returned AT&T's petition and refused to docket the matter for review. The LPSC claimed that AT&T's Petition was not appropriate. As explained in the LPSC letter returning AT&T's Petition, "the Commission has clearly confirmed on two separate occasions that BellSouth has met all requirements for their FCC 271 Application, a portion of which addresses and approves of the OSS system of BellSouth." (See Exhibit 2) Thus, despite this Commission's clear determination on two occasions regarding deficiencies with BellSouth's OSS in Louisiana, the LPSC refused to take steps even to consider whether independent testing of BellSouth's OSS was necessary.

24. Despite AT&T's request, until the LPSC sought comments on BellSouth's compliance with Section 271 in May 2001, the LPSC did not conduct *any* formal review of whether BellSouth had remedied the compliance problems identified by the Commission in the two previous Louisiana decisions. Furthermore, even in its consideration of BellSouth's 271 compliance for this third application, the LPSC did not conduct a hearing or other live evidentiary proceedings to consider whether BellSouth had remedied the deficiencies identified by the Commission in the *Second Louisiana Order*. Rather, parties were permitted only to provide written materials in response to BellSouth's filing and provide written comments to Staff's proposed recommendation. In addition, the LPSC would not allow oral argument on the issue prior to its vote on September 18, 2001.

B. The LPSC's Collaboratives Were Too Narrow In Scope, And Did Not Significantly Improve BellSouth's Checklist Compliance

25. BellSouth also claims that the collaborative processes used in Louisiana provided CLECs with "an extensive opportunity to . . . resolve operational issues without litigation or delay." BellSouth Brief at 2. In fact, however, the collaborative processes used in Louisiana were limited, and in no way provide adequate assurances to this Commission that BellSouth has fully complied with the competitive checklist.

26. In Louisiana, the LPSC began a collaborative process on performance measures in 1998 – before BellSouth's second Louisiana application had been reviewed by the Commission and after the LPSC had established the set of performance measurements it required BellSouth to use.

27. The collaborative process, although lengthy, was limited in scope and focused on a specific set of issues – primarily a penalty plan, calculation of remedies,

benchmarks for BellSouth, and the proper performance analogues. As a result, the collaborative on performance measures failed to consider a number of significant issues. To take just one example, the “collaborative” process did not permit CLECs to raise issues related to additional or new measures.² The measures being discussed were limited to those ordered by the LPSC outside the collaborative process. That was an especially harmful defect, given that certain types of local services – most notably xDSL and other advanced services – were just beginning to be deployed at that time. Because of these and other limitations, this collaborative process did not result in a performance measurement plan that will ensure that the local market in Louisiana is irreversibly open to competition.

28. The only other purported collaborative conducted in Louisiana was a process convened in late 2000 by a LPSC Commissioner, Irma Muse Dixon. By its own terms, that process was “informal and non-adversarial.” *See* 12/8/00 Notice at 9 (Exh. 3). The discussions in the workshop were not recorded and were not otherwise “on the record.” Moreover, although the informal discussions assisted CLECs in obtaining BellSouth’s position on certain specific competitive issues, the collaborative was more in the nature of a “gripe session,” in which CLECs could raise specific factual complaints and obtain BellSouth’s position. There was no attempt to address the underlying causes giving rise to the CLEC issues and, to the extent the CLEC did not agree with the position taken by BellSouth, there was no process for resolving such disputes.

29. Moreover, BellSouth would not discuss issues that CLECs had raised in arbitrations or other litigation. Such items were off limits in the process. Unlike the

² The sole exception was the consideration of measures related to hot cuts, which were considered near the end of the process.

collaborative processes used in New York and Texas, the Commission did not issue any formal order adopting or approving of any of BellSouth's actions as a result of the collaborative. Finally, to the extent that BellSouth suggests that issues were "resolved" or "closed" in the process, use of the terms "closed" or "resolved" in this context means only that the matter was no longer subject to discussion in the process. In other words, the terms "resolved" or "closed" often would simply mean that the issue was no longer going to be considered in the process because neither the CLECs nor BellSouth would change their positions.

30. Consequently, and unlike the collaborative processes used by state commissions in New York and Texas, the "collaborative process" employed by a single LPSC Commissioner was very limited in scope. The Louisiana process simply was not designed to identify and resolve key issues related to BellSouth's compliance with the Act. The Commission should not, therefore, rely on these processes in considering BellSouth's claims that it has fully complied with its checklist obligations.

CONCLUSION

31. Despite BellSouth's claims that the LPSC is committed to developing competition in Louisiana, the LPSC's September 19, 2001 Order represents the third time the LPSC has found it appropriate to recommend that this Commission approve BellSouth's Section 271 application. Yet, on two previous occasions, this Commission has determined that the LPSC's recommendation was premature and not supported by the record. Indeed, in its most recent review of BellSouth's application for Louisiana, the Commission found "major compliance problems" with BellSouth's OSS. Despite this finding, the LPSC ignored AT&T's request to conduct testing of BellSouth's OSS and,

until May 2001, did not seek comment or conduct any review of BellSouth's efforts to meet the concerns the Commission identified in its review of BellSouth's 271 compliance in its *Second Louisiana Order*. Furthermore, the 'collaborative process' provided by a single LPSC Commissioner cannot be considered the "rigorous collaborative process" cited with approval by the Commission in the Bell Atlantic New York Order. The process in Louisiana was limited in nature, scope and impact.

32. Rather than rely on the LPSC's recommendation, which comes without the detailed and comprehensive record that was created in other states where the Commission has approved section 271 applications, the Commission should await the results of efforts being made by other state commissions to verify BellSouth's checklist compliance. Moreover, the Commission should be mindful of the impact that its decision on these applications will have on efforts underway in other states, as well as proceedings currently being conducted by the GPSC and the LPSC. Those proceedings, while still being implemented, hold out the promise that BellSouth's OSS and other checklist items will actually succeed in passing a robust test and in opening the local markets to true competition.

EXHIBIT 1

AT&T Comments, Eppsteiner Decl. – October 19, 2001
BellSouth Georgia and Louisiana 271 Application

2.

The OSS are the computer systems which enable CLECs to gain nondiscriminatory access to BellSouth's network in order to obtain resale services and UNEs. OSS also include all related processes, information, and personnel resources which are needed for BellSouth to provide CLEC's with **nondiscriminatory** access to its network. Specifically, in its *First Report and Order*, the Federal Communications Commission ("FCC") identified access to OSS as UNEs in and of themselves and stated that OSS consist of at least five functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing. Additionally, the FCC "consistently has found that nondiscriminatory access to these systems, databases, and personnel is integral to the ability of competing carriers to enter the local exchange market and compete with the incumbent LEC." Louisiana II Order, ¶ 83.

3.

Over three years since the passage of the Act of 1996, there still exists virtually no competition in Louisiana's local telephone market. For decades, Louisiana ratepayers have paid BellSouth (several times over) to build a vast monopoly local telephone market that reaches into just about every home and business within BellSouth's territory. By virtue of this monopoly, BellSouth holds the key to the development of local competition. However, because BellSouth OSS are deficient, CLECs simply have been unable to enter the local market on a meaningful and significant basis. Extensive evidence has been submitted to this Commission on these deficiencies - deficiencies which only BellSouth can correct. If CLECs are to have a fair chance of breaking BellSouth's monopoly control over the local telephone market, CLECs must be assured that BellSouth's OSS are fully functional and operational and can process significant commercial

volumes of orders. Only after these assurances exist can CLECs make a sound business decision to commit resources for entering the local telephone market. Accordingly, if competition is to flourish, then this Commission must require BellSouth to treat CLECs, which must depend upon BellSouth's OSS, as valued customers rather than as hostile competitors. The most efficient and effective means to achieve this goal is to invoke the guidance and assistance of an independent third party to help BellSouth, this Commission and CLECs work through these difficult OSS issues. It is unfortunate, but the fact of the matter is that the current process of having CLECs, which want to compete with BellSouth, negotiate OSS issues with BellSouth simply has not worked. As a result, meaningful and significant local competition does not exist.

4.

The best way to obtain the guidance and assistance of an independent third party is for this Commission to establish a new Docket for the independent third party testing of BellSouth's OSS.

II. NEED FOR THIRD PARTY TESTING

5.

Although the Act was passed in 1996, today Louisiana **customers simply cannot switch local phone companies with the same ease as occurs when they obtain local service directly from BellSouth.** And given the significant competition that exists today in the long distance market, Louisiana customers have come to expect switching long distance carriers with ease and without disruption of their long distance service. CLECs only will be able to compete for Louisiana customers on a commercial scale when they can sign up customers and provide local service with the same ease that BellSouth offers local service and with the same ease that has become expected in the long distance market. Without independent third party testing, this Commission cannot be sure

that Louisiana customers will be able to switch local phone companies easily and without service interruptions — again, as occurs millions of times a month in the long distance market. Anything short of similar customer experiences in these two related processes will leave customers angry, disenchanted, and ready to complain to this Commission on a moment's notice.

6.

As to whether BellSouth's OSS provide CLECs with nondiscriminatory access to BellSouth's network, the debate among the various parties before this Commission has been nothing short of adversarial and mired with rhetoric. CLECs argue that BellSouth has not satisfied the requirements of the Act — and BellSouth counters that it has. The finger pointing goes on as the parties put forth varying interpretations of complex data in efforts to convince this Commission that BellSouth's OSS either are, or are not, providing nondiscriminatory access to BellSouth's network. And although the FCC on not one, not two, but on three occasions, as well as most state commissions, has determined that BellSouth's OSS do not provide nondiscriminatory access to BellSouth's network, all state commissions have struggled to understand the complex technical issues involved, and to untangle the "he said-she said" debate among the parties. Thus, much time has been spent trying to evaluate the performance of BellSouth's OSS on the basis of testimony offered by BellSouth and the CLECs rather than based on the direct, impartial, and knowledgeable examination of the OSS by an independent third party. If properly designed, executed and monitored, independent third party testing is an efficient way to cut through the ever increasing quagmire of OSS disputes between BellSouth and the CLECs and to promote the development of OSS which fully support local competition in Louisiana. Specifically, thorough testing by an independent third party will isolate points where the OSS fail to perform properly and on a nondiscriminatory basis, so that the OSS can

be corrected quickly, thereby speeding the competitive process. Such independent third party testing also will ensure that any failure points related to CLEC systems are not improperly blamed by CLECs on BellSouth. Furthermore, a comprehensive effort by an independent third party to identify deficiencies (as well as the favorable aspects in BellSouth's OSS) also would expedite resolution of problems and hasten full and adequate OSS's being created by BellSouth.

7.

The idea of independent third party testing is not novel, although it does present this Commission with an opportunity to be the first state to truly test BellSouth's claims of the adequacy of its OSS. The New York Public Service Commission ("NYPSC") has recognized the need for robust and comprehensive independent third party testing for the purpose of assessing Bell Atlantic's OSS and correcting inadequacies and identifying compliance.

8.

In New York, Hewlett Packard ("HP") was hired as an independent firm to construct "pseudo" or "hypothetical" working systems to interface with Bell Atlantic, and KPMG Peat Marwick was hired as an independent firm to process orders over these "psuedo" systems developed by HP as well as evaluate all of BellSouth's related processes, information, and personnel resources which BellSouth uses to provide CLECs with nondiscriminatory access to its network. Thus, working together, these two independent companies have "stepped in the shoes" of CLECs by processing diverse transactions and exploring the full range of the functionality of BellAtlantic's OSS. Because BellSouth would not be the first such company subjected to independent third party testing, this Commission could benefit from experience gained from the testing that has been conducted in New York.

Accordingly, a properly designed and executed independent third party test offers benefits that compel its use in Louisiana. Three benefits are particularly important. First, having an independent third party conduct a comprehensive test of BellSouth's OSS and then evaluate the data will give this Commission an objective view of functionality, capacity and performance of these OSS. That evidence, when combined with subsequent satisfactory evidence of actual commercial usage, will enable this Commission to fully evaluate whether BellSouth's OSS meet the requirements under the Act. Second, such testing enables this Commission to assess a broad range of functions for a wide array of transactions – not just limited functions across only a few transactions. Thus, even if a particular aspect of BellSouth's OSS are not being used extensively by CLECs today, the Commission can be satisfied that all aspects of BellSouth OSS likely will be operational, provided the test scenarios are sufficiently comprehensive and all relevant functions and transactions are evaluated. Properly designed third party testing also can provide significant insight regarding operational capabilities for handling large volumes of orders placed by CLECs before real Louisiana customers are used as "guinea pigs" to test the capabilities of BellSouth's OSS to handle large volumes of actual orders. Accordingly, third party testing would lay a significant foundation for the subsequent real test of BellSouth's OSS – the handling of large volumes of actual orders by CLECs. Only after successfully addressing both of the aspects of testing – first, whether BellSouth OSS can handle "psuedo" orders and second, whether BellSouth's OSS can handle large volumes of actual orders -- will this Commission be able to establish an environment in which local competition really will flourish in Louisiana.

10.

An independent third party test also would prove useful in the context of CLEC complaints. A growing number of CLECs are filing highly complex OSS complaints against BellSouth at state commissions. In some states, this has significantly strained staff resources. An independent third party test is a much more efficient way to resolve these complaints rather than continued case-by-case complaint adjudication. And unlike case-by-case complaints, an independent third party test offers BellSouth the opportunity comprehensively to identify and correct all of its OSS problems in a structural environment rather than through piecemeal litigation.

III. PROPOSED PROCEDURE

11.

At this critical stage, an independent third party test is not just an adjunct to opening the local market to competition, but rather it is an essential component for developing robust local competition. To date, BellSouth has been unwilling or unable to produce acceptable details that allows either this Commission or CLECs to perform fundamental validation and root cause analyses in order to draw any conclusions from reported statistics and to successfully test BellSouth's assertions about the capabilities of its OSS. As a result, today many CLECs have no confidence in BellSouth's OSS. To the extent an independent third party test is able to validate BellSouth's historical raw data, CLECs' confidence in BellSouth's OSS will increase – as well as local competition. Accordingly, investing in thorough independent third party testing would be good for Louisiana customers.

As outlined in the attached plan, AT&T proposes that the following procedure be utilized as minimum requirements for independent third party testing:

a. The development, testing and monitoring process must be performed by an independent, technically skilled third party. This independent third party must be empowered to assure that comprehensive test scenarios are designed, that the test scenarios are executed in a manner that tests operational capabilities and volume capacity, and that the performance is measured in a manner that is consistent with that which will be employed in the competitive marketplace.

b. The process for selecting the independent third party and establishing its scope of work should occur in a public forum, under Commission supervision, and should begin immediately so as not to delay the process.

c. The independent third party which is selected should prepare a detailed plan for a comprehensive test of BellSouth's OSS, including all pre-ordering, ordering, provisioning, maintenance and repair and billing functions. The parties should have the opportunity to comment on the plan to ensure that the entire spectrum of OSS functions and business processes are tested.

d. Test scenarios must be developed carefully to reflect as much as possible the real world experience of CLECs, including the mix of services and operational transactions that are crucial to the development of competition. At a minimum, the basic capacities and functionalities required by the Act must be tested as if they were being put through the rigors expected from a fully competitive marketplace to determine whether BellSouth's OSS are adequate.

i.) For pre-ordering and ordering, the pre-ordering transactions and order types must represent a realistic sampling based on commercial experience and market entry plans of CLECs and

all types of service delivery methods, as well as conversions from one service delivery method to another. It also is important that testing cover actual provisioning of the loops, ports, and other elements ordered, including local number portability and ancillary services such as 911, directory assistance and listings, and combinations of these and other UNE's.

Only with this type of testing can BellSouth show that it can provision UNEs, alone and in combination, in a timely fashion and at levels that might subsequently support actual commercial volumes.

- ii.) For billing, any testing scenarios must involve multiple end offices and a diversity of call types, because proof that BellSouth can bill from a single end office for a particular call type is not proof that it can bill for all service delivery methods across its entire network.
- iii.) Repair and maintenance requests should be included for all relevant service delivery methods and should be conducted on live operating service configurations where possible. Finally, it is vital that this effort be viewed not simply as testing the existence of an electronic interface, but also, most critically, the underlying BellSouth processes, information and personnel resources which BellSouth uses to provide CLECs with nondiscriminatory access to its network.

e. The independent third party should be required to use specifications provided by BellSouth to develop the "pseudo" or "hypothetical" systems on the CLEC side of the interface necessary to interact with BellSouth's own OSS. BellSouth should not be permitted to provide guidance to the independent third party unless the same information, explanation, clarification and corrections are immediately disseminated to all CLECs and promptly incorporated into BellSouth's governing documentation. As part of this process, the independent third party also should be

required to evaluate BellSouth's change management process -- the process by which BellSouth makes changes to its OSS. Accordingly, any interface adjustments including, but not limited to, business rule modifications, and changes and data requirement formatting resulting from the testing process, also should be implemented through the change control management procedure.

f. CLECs should have the opportunity to verify what is being tested. In particular, they should receive a list of all documentation that BellSouth provides to the independent third party and documented summaries of all communications between BellSouth and the independent third party.

CLECs must be able to verify that the independent third party is using the same information which BellSouth provides to CLECs.

g. An independent third party test also should include protocols to test processes (relationship and operational analysis) as well as systems (transaction-driven system analysis). In this respect, tests should not be initiated until there is mutual agreement that the testing criteria have been established and processes have been established to identify and document critical flaws in the systems and processes under review, with repeated regression testing until the critical flaw is resolved.

h. As mentioned above, the independent third party should "stand in the shoes" of CLECs entering BellSouth's market, so that it will be able to fairly evaluate BellSouth's performance with regard to all tasks normally performed by CLECs. Therefore, the independent third party should test the entire market entry process, using all modes of entry contemplated by the Act, regardless of whether any single CLEC currently uses such entry strategy in BellSouth's territory, and regardless of pending legal challenges to issues related to the provisioning of UNEs or UNE combinations. The independent third party should incorporate test protocols to evaluate day-to-day operations and

operational management practices, including policy development, development of procedures and procedural change management. As stated, the independent third party should validate and verify processes to determine that they function correctly in accordance with existing documentation and must rely upon, as well as evaluate, BellSouth's established methods and procedures, including BellSouth's existing change control process.

i. Test orders also should be as "blind" as possible in that volume and stress testing should be initiated without advance warning to BellSouth. Additionally, the test should include "normal" and "peak" commercial volumes, to be established based on forecast information from BellSouth and the CLECs. Billing functionalities also should be tested for during several billing cycles. And, as mentioned above, when test failures occur, they should be identified as exceptions and the consequences of non-correction established before further testing continues. And to the extent corrections are made by BellSouth, the OSS should be retested to ensure that all corrective actions which BellSouth either elects or is required to correct do not cause problems in other parts of BellSouth's existing OSS.

j. For an independent test to have any meaning, the results must be measured against the performance standards developed. The process for gathering, computing and comparing performance results must be audited in order to assure that the results produced are in accordance with documentation and approved procedures for self-monitoring. Again, failure to satisfy performance standards should result in correction in the root cause of the problem and retesting as necessary.

k. Finally, any test report(s) should document procedures as well as test results, should evaluate test outcomes with respect to pre-established goals and should recommend improvements.

IV. COST OF THIRD PARTY TESTING

13.

Obviously, resources will be required to prepare and conduct the tests and to analyze test results, but experience gained from third party testing of Bell Atlantic's OSS in New York should serve to make third party testing cost-effective. If BellSouth's OSS operate with very little difficulty (as BellSouth alleges they do), costs will be lower than if the tests identify significant problems. BellSouth must demonstrate to both this Commission and the FCC that it has implemented nondiscriminatory OSS. Accordingly, because an independent third party test will be a critical component of BellSouth's efforts to prove that it meets its legal obligations under the Act, BellSouth should bear these costs. Such an investment, even if a few million dollars, is insignificant compared to BellSouth's reported press statements and in various regulatory proceedings that it already has spent hundreds of millions of dollars developing its OSS.

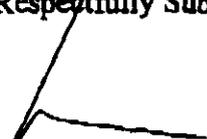
V. REQUEST FOR RELIEF

14.

WHEREFORE, based on the foregoing reasons, AT&T requests that the Commission establish a new Docket and initiate independent third party testing of BellSouth's OSS consistent with the showing above and the attached plan proposed by AT&T.

DATED this sixth day of May, 1999.

Respectfully Submitted:



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EXHIBIT 2

AT&T Comments, Eppsteiner Decl. – October 19, 2001
BellSouth Georgia and Louisiana 271 Application



Louisiana Public Service Commission

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LAWRENCE C. ST. BLANC
Secretary

(MRS.) VON M. MEADOR
Deputy Undersecretary

EVE KAHAO GONZALEZ
General Counsel

June 7, 1999

Mr. David Guerry, Esq.
Counsel for A T & T
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Baton Rouge, LA 70809-7013

In Re: Independent Third Party Audit of the Operational Support Systems (OSS) of
BellSouth Telecommunications Inc.

Dear Mr. Guerry:

I am in receipt of your petition dated May 6, 1999 requesting the Louisiana Public Service Commission ("Commission") commence a rulemaking docket concerning an independent Third Party Audit of the OSS system of BellSouth Telecommunications Inc. ("BellSouth").

I regret to inform you that this matter can not be docketed at this time. It is not Commission procedure to allow any carrier or person to file a petition to commence a rulemaking proceeding, as requested by your petition. Typically, complaints or ratemaking petitions are acceptable as filings by carriers or parties. Rulemaking proceedings are commenced by Staff when the Commission, on its own initiative or through the Executive Secretary, determines a proceeding should be commenced. With respect to the OSS issue addressed by your filing, the Commission has clearly confirmed on two separate occasions that BellSouth has met all requirements for their FCC 271 Application¹, a portion of which addresses and approves of the OSS system of BellSouth.²

I am returning your pleadings to you for your records. Should you have any questions, please do not hesitate to contact me at the above referenced number.

¹ Sec 47 U.S.C. §271(c)(2)(B).

² See Louisiana Public Service Commission Order U-22252-A and Comments filed on behalf of the Louisiana Public Service Commission in FCC Docket CC 98-121, respectively.

With kindest regards, I remain,

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence C. St. Blanc". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke extending to the right.

Lawrence C. St. Blanc
Executive Secretary

cc: BellSouth Telecommunications, Inc.
LSB/hmt

EXHIBIT 3

AT&T Comments, Eppsteiner Decl. – October 19, 2001
BellSouth Georgia and Louisiana 271 Application

12/8/00

E. ADJUDICATIONS

DOCKET NO. U-25373 - Sprint Communications Co., LP vs. BellSouth Telecommunications, Inc. In re: Petition for Arbitration of Interconnection between Sprint Communications Co., LP and BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996, 47 U.S.C. 252. (NOTICE OF INTERVENTION OR PROTEST SHALL BE FILED WITHIN 15 DAYS AFTER THE DATE OF THIS BULLETIN. If you have any questions regarding this matter, please call our office at (225) 342-1418.)

F. RULEMAKINGS - N/A

G. TARIFF FILINGS - N/A

H. MISCELLANEOUS

**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

LOCAL EXCHANGE CARRIER COLLABORATIVE WORKSHOP

In re: Local Exchange Company Collaborative regarding the Provision of Telecommunications Services in Louisiana.

NOTICE OF PRE-COLLABORATIVE WORKSHOP CONFERENCE

Please take notice that the Louisiana Public Service Commission has scheduled a pre-collaborative workshop conference on December 12, 2000 at 12:00 noon in the Marshall Burton Brinkley Auditorium, 16th Floor, One American Place (corner of North and Fourth Streets), Baton Rouge, Louisiana. The purpose of the pre-workshop conference will be to finalize the agenda for the January 10, 2001 Collaborative Workshop. This meeting will be open to the public.

Any party that is disabled and needs special accommodations at this hearing, should notify the Commission at 504/342-4427 at least five days prior to the hearing.

NOTICE OF COLLABORATIVE MEETING

At the Commission's Open Session on October 4, 2000, Commissioner Irma Muse Dixon, Chairperson, directed the Commission Staff to arrange a series of collaborative meetings to discuss issues involving Local Exchange Carriers in Louisiana. Notice was published in the Commission's Official Bulletin of October 13, 2000 regarding the collaborative meetings, setting forth topics for discussion and seeking comment from both Competitive Local Exchange Companies ("CLECs") and Incumbent Local Exchange Companies ("ILECs") as to additional topics of interest that need to be addressed. The Commission received comments regarding topics to be addressed from Network Telephone Corporation, KMC Telecom, ITC^DeltaCom Communications, Inc., Actel Integrated Communications, Birch Telecom of the South, Inc., ConnectSouth Communications of Louisiana, Inc., COVAD Communications, e.spire Communications, Inc., NewSouth Communication Corp., MCI WorldCom Communications, Inc., US LEC Corp., AT&T Communications of the South Central States, Cox Louisiana Telecom, L.L.C., and BellSouth Telecommunications, Inc.

Staff has reviewed the comments filed by the above parties and is in the process of formulating an agenda for the series of collaborative meetings. The agenda is to provide a framework for the collaborative meetings, but will not foreclose discussion of other relevant topics. Additionally, the parties will be expected to provide subject-matter representatives who are qualified to address the technical issues pertaining to the topics to be discussed. These collaborative meetings will be informal and non-adversarial. The purpose of the collaborative meetings is to assist the Commission and its Staff and the parties in gathering information about the current processes, procedures and services being used by CLECs and ILECs operating in Louisiana and developing and implementing solutions to problems that are arising. Following the first collaborative meeting, participants should be prepared to file comments with the Commission identifying the problems presented, the action items for the parties and/or the proposed solutions and an implementation period for such action items or solutions. A summary of this information will be compiled and updated after each of the collaborative meetings.

PLEASE TAKE FURTHER NOTICE that the first collaborative meeting has been scheduled for **Wednesday, January 10, 2001 at 9:30 a.m. in the Marshall Burton Brinkley Auditorium** of the Louisiana Public Service Commission, 16th Floor, One American Place (corner of North and Fourth Streets), Baton Rouge, Louisiana.

If you are disabled and need special accommodation at the collaborative meeting, please contact the Utilities Division at (225) 342-4416 at least five days prior to the meeting.

I. ORDERS

ORDER NO. U-24889 - 11/30/00. ENTERGY LOUISIANA, INC. AND ENTERGY GULF STATES, INC., EX PARTE. Docket No. U-24889 - In re: Joint application of Entergy Louisiana, Inc. and Entergy Gulf States, Inc. for authorization to participate in contracts for the purchase of capacity and electric power for the summer of 2000. **CONCLUSION** The following is a summary of our conclusions in this proceeding: (1) **Prudence of the Transactions:** *Prudence in Short Term Planning* a. The Commission concludes that the Companies' addition of 1918 MW for the Summer of 2000 at the Contract prices was prudent, from a short-term planning perspective. *Prudence in Long-Term Planning* b. The Commission concludes that this proceeding contains insufficient evidence to reach a determination of imprudence by the Companies in long-term planning. Accordingly, there shall be no disallowance finding by the Commission with regard to the Contracts for the Summer of 2000 based upon prudence in long-term planning. c. To the extent the Commission Staff wishes to propose a specific Commission investigation into the Companies' prudence in long-term planning, the Staff may proceed in accordance with established procedures for submitting such a proposal to the Commission for consideration. *Prudence From the Perspective of Ensuring Fair Allocation of Costs to Individual Operating Companies Within the Entergy System* d. The Commission accepts the Staff's recommendation that there be no disallowance of costs allocated to the Companies through the Entergy System Agreement with regard to the Summer of 2000 Contracts. e. The Commission further concludes that a finding of imprudence with regard to the System's negotiation and allocation of "energy only" contracts would be inappropriate in this circumstance, in which we have available to us after-the-fact data demonstrating, as both the Staff and the Companies attest, no disproportionate or unfair allocation of costs to the Louisiana operating companies. We, therefore, decline to declare the negotiation and allocation of "energy only" contracts imprudent in this instance. f. We note, however, that we believe that the Staff has raised viable concerns about such a practice in future contracting by the Companies. g. Consistent with our prudence findings, we conclude, pursuant to the General Order of 1983, that the public convenience and necessity were served through the Companies' participation in the Contracts. (2) **Categorization of Capacity Costs and Energy Charges for Base Rate or Fuel Clause Recovery** a. The Commission accepts the conclusion reached by the Staff and LEUG, and not disputed by the Companies, that the week-day, on-peak "energy only" contracts have a *capacity* component due to the reliability and firmness of supply they provide, despite the fact that the contracts do not state a capacity charge. b. Having recognized the existence of a capacity component in the on-peak, week-day "energy only" contracts, we further conclude that the capacity component of those contracts are not recoverable through the FAC unless the Companies establish qualification for an exception under the Fuel Clause Order. c. It is our conclusion that the Companies have failed to establish qualification for an exception under the Fuel Clause Order which would entitle the Companies to recovery, through their respective Fuel Adjustment Clause mechanisms, the capacity component of the "energy only" contracts. d. The Commission concludes that the 50/50 capacity/energy split proposed by the Staff and adopted by the ALJ, with regard to the on-peak, week-day costs of the "energy-only" contracts, while based upon sufficiently reliable methodology and analysis and the only reliable analysis presented by any party to this proceeding, should be modified to state a 34-66 capacity/energy split. We agree with the ALJ's finding that the imputation of capacity costs to these "energy only" contracts requires analytic judgment. e. In accordance with our conclusion that a 34/66 capacity/energy split is appropriate with regard to the on-peak, week-day portion of the costs of the "energy only" contracts, we conclude that \$11.1 million should be removed from ELI's FAC and assigned to base rates for purposes of next year's Formula Rate Plan proceeding, and that \$3.6 million should be removed from EGS' FAC and assigned to base rate recovery in EGS' next earnings review proceeding. (3) **Process By Which the Companies Sought Commission Approval of the Contracts** a. We find nothing in the 1983 General Order which expressly requires the Companies to include the Commission Staff in its resource planning, although we believe that some coordination between the Companies and the Staff during the planning stage would prove beneficial to the Companies, the Staff, and to the ratepayers. b. Similarly, we find nothing in the 1983 General Order which expressly requires the Companies to prepare planning documentation of a particular nature, other than the fairly general requirement stated in part 2 of the Order which requires a company submitting an application for approval to provide with the application the data it, in fact, utilized in justifying the purchased power. c. In this proceeding, we decline to find the Companies in violation of the 1983 General Order for their failure to coordinate resource planning with the Commission Staff or for their failure to prepare certain documentation which the Staff believes would have been useful to its investigation in this proceeding, but which is not specifically required in the Order. d. To the extent the Staff believes the 1983 General Order is deficient in such regard, the Staff may utilize regular procedures to request the initiation of a rule-making procedure for the purpose of reviewing and possibly revising the requirements of the Order. e. The Commission finds that the Companies' tardiness in filing the application for approval of its Summer of 2000 Contracts hampered the Commission's investigation under the 1983 General Order and thwarted the purpose of the 1983 General Order: to provide a mechanism for Commission review (to completion)