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October 22, 2001

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Office of the Secretary
Federal Communications Commission
CY-B402
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Washington., DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-region, InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's October 2, 2001 Public Notice Requesting Comments are an original, two paper copies, and a diskette copy of the Comments of Mpower Communications Corp., Network Plus, Inc., and Madison River Communications, LLC.

Please date stamp and return the enclosed extra copy of this filing. Should you have any questions concerning this filing, please do not hesitate to call us.

Respectfully submitted,

Harisha J. Bastiampillai

Enclosures

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

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

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Dated: October 22, 2001

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SUMMARY

This application marks the fourth attempt by BellSouth to obtain Section 271 authority in one of the states in its region. After its last application in Louisiana was rejected,¹ this Commission provided a clear blueprint to BellSouth of areas in which it would need to improve, particularly in regard to its operations support systems (“OSS”). In the pre-ordering stage, the Commission identified problems with access to customer service records (“CSRs”) and due dates.² In the ordering stage, the Commission was concerned about flow-through,³ lack of timely firm order commitments (“FOCs”) and reject notices,⁴ and long installation intervals.⁵ The Commission was also concerned about inaccurate wholesale bills.⁶

An analysis of problems still encountered by Commenters and other CLECs demonstrates that all these problems still remain. In the pre-ordering stage, CLECs often find the LENS and EDI interfaces down, and have endured slow response times with the TAG interface. CLECs are also faced with the application of BellSouth business rules that impose discriminatory requirements on CLECs and make the migration of a customer from BellSouth to a CLEC both more arduous and expensive. CLECs are also still waiting, more than three years later, for access to parsed CSRs at parity with BellSouth’s retail division.

In the ordering stage, the poor flow-through with BellSouth’s OSS still continues, and this poor flow-through leads to more errors in the processing of the order, and delays in

¹ *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (1998) (“*Second Louisiana Order*”).

² *Id.* at ¶¶ 96-106.

³ *Id.* at ¶¶ 107-116.

⁴ *Id.* at ¶¶ 118-123.

⁵ *Id.* at ¶ 124.

⁶ *Id.* at ¶ 160.

obtaining FOCs and reject notices. When a CLEC does finally receive the FOC, the FOC date is often unreliable as BellSouth will call on, or near, the date to say it cannot provide the order on the promised date. In addition, the due date provided to the CLEC is often different from the due date in BellSouth's OSS thereby heightening the risk of a service outage for the new CLEC customer. When a CLEC calls BellSouth to resolve a problem, the CLEC is led through a maze of service representatives all claiming that they do not know how to solve the problem.

The delivery and installation of the facility does not end the ordeal for the CLEC as there are numerous inaccuracies with BellSouth's bills to the CLEC. Charges are often placed on the wrong bill, inappropriate additional charges are applied, wrong rates are billed, billing continues even after a disconnect order, and much retroactive billing occurs. When a CLEC attempts to dispute the bill it becomes mired in a protracted and cumbersome dispute resolution process where the very filing of the dispute requires the expenditure of vital time and resources. To compound matters, even after the dispute is filed, BellSouth will improperly threaten to disconnect service because it cannot track the disputed amounts.

In short, Bell South OSS problems continue to impede a CLEC's ability to obtain new customers and service their existing customers, and in some cases OSS problems have worsened with increased volumes of orders. The failure of BellSouth's OSS alone mandates denial of this application. Unfortunately for the Joint Commenters, the problems with BellSouth's service is not limited to OSS alone. For various reasons, many of which relate to poor provisioning, CLECs had to purchase high capacity facilities as special access circuits as opposed to UNEs. Now when the CLEC seeks to have the facilities properly converted to UNEs, BellSouth will not provide assurance that it will conduct the simple billing records change that such a conversion would entail. Instead, BellSouth often mandates the disconnection and substitution

of the facilities, despite the fact that the substituted facilities are the same and that BellSouth would not follow this process if the CLEC customer became a BellSouth customer. This “conversion” process results in stratospheric costs to CLECs, and the imperiling of service to its customer. It is also a procedure far out of line with the practices of other ILECs. Another practice that is out of line with those of other ILECs is BellSouth’s refusal to offer collocation power in increments that meet the equipment needs of CLECs and will prevent the over-recovery of BellSouth’s costs of providing such power.

CLECs have also experienced woefully poor service quality from BellSouth in regard to maintenance and repair of facilities. This situation is problematic enough, but BellSouth attempts to parlay the poor wholesale service it provides to the CLEC into a winback opportunity by denigrating CLEC service to the customer knowing full well it is the cause of the poor service. BellSouth’s actions transgress the bounds of acceptable market conduct and threaten the nascent state of competition in Georgia. The conduct is so bad that the Georgia Public Service Commission had to place limits on BellSouth’s marketing activities. This blatantly anticompetitive conduct demonstrates that BellSouth’s application is not in the public interest.

Further, BellSouth has also been using a local service freeze anticompetitively, to impede the migration of its customers. The freeze is applied in such a manner that many customers do not even know they have the freeze on their account and it is very difficult to remove. Given the limited state of competition in Georgia, the Commission should not condone use of such a freeze, particularly given BellSouth’s anticompetitive marketing practices. BellSouth also impermissibly “ties” the use of its DSL service to its voice service thereby failing its common carrier obligations to provide service by rejecting the reasonable requests for BellSouth DSL service to CLEC customers. This “tying” clearly provides disparate service to CLEC customers.

This application will set a vital precedent for the rest of the states in the BellSouth region. Other states will look to this application, and the Commission's treatment thereof, to gauge how to treat applications in their states. It is important, therefore, that this Commission ensure that all the problems raised by Joint Commenters are addressed and resolved before granting Section 271 authority. Even after such authority is granted, the Commission should mandate the implementation of strong backsliding measures and penalties to protect against the recurrence of any of these maladies.

**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 for)
Provision of In-Region, InterLATA Services in)
Georgia and Louisiana)

**COMMENTS OF MPOWER COMMUNICATIONS CORP., NETWORK PLUS, INC.
AND MADISON RIVER COMMUNICATIONS, LLC**

Mpower Communications Corp. (“Mpower”), Network Plus, Inc. (“Network Plus”), and Madison River Communications (“Madison River”) submit these comments concerning the above-captioned Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance (“BellSouth”) for Provision of In-Region, InterLATA Services in Georgia and Louisiana, filed October 2, 2001 (“Application”).⁷ For the reasons stated herein, the Federal Communications Commission (“Commission”) should deny the Application.

⁷ Comments Requested on the Joint Application By BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Georgia and Louisiana, Public Notice, CC Docket No. 01-277, DA 01-2286, released October 2, 2001.

I. BELLSOUTH FAILS TO SATISFY CHECKLIST ITEM 2 IN REGARD TO OSS

A. Legal Standard

Checklist Item 2 requires that a BOC provide non-discriminatory access to network elements.⁸ In analyzing whether a BOC provides non-discriminatory access to OSS for Section 271 purposes, the Commission has adopted a two-step approach. First, the Commission determines “whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.”⁹

In the second step, the Commission determines if “the OSS functions that the BOC has deployed are operationally ready, as a practical matter.”¹⁰ It looks at performance measures and other evidence of commercial readiness.

B. Deficiencies in BellSouth’s Pre-Ordering OSS

In the pre-ordering stage, for a CLEC to be able to offer a comparable product and quality of service to the customer, the CLEC must have access to the same information as the ILEC. A CLEC must be able to retrieve and process information at parity with the RBOC. With BellSouth’s OSS, however, a CLEC has trouble even accessing information much less getting

⁸ 47 U.S.C. § 271(c)(2)(B)(ii).

⁹ *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 at ¶ 96 (June 30, 2000) (“*SBC TX 271 Order*”).

¹⁰ *Id.*

the information at parity. The OSS interfaces are often down, as a result of which the CLEC cannot access the information needed to make a determination on ordering and placing the order.

It is important to understand that the pre-ordering stage encompasses those activities that a carrier undertakes to gather and verify the information needed to place an ILEC service order to accommodate a customer's requirements. Before the CLEC can even begin to place the order, the CLEC must determine what the ILEC is able to provide. The CLEC operates at an information disadvantage vis-a-vis the ILEC, whose database already indicates what services can be provided to a particular end-user, and the CLEC must overcome this disadvantage quickly to retain the customer. As the Commission has noted:

[g]iven that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that inferior access to the incumbent's OSS does not render the carrier a less efficient or responsive service provider than the incumbent.¹¹

The general standard that this Commission has applied to the pre-ordering stage in the context of its Section 271 evaluations is that the BOC must demonstrate that "it provides requesting carriers access that enables them to perform these functions in substantially the same time and manner as [the BOC's] retail operations."¹² The Commission has previously emphasized that "providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC."¹³

¹¹ *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*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, ¶ 129 (1999) ("BANY 271 Order").

¹² *Id.*

¹³ *Id.*

CLECs have been experiencing numerous problems in regard to accessing pre-ordering information. The Southeastern Competitive Carrier Alliance (“SECCA”) observed how BellSouth’s Local Exchange Navigation System (“LENS”) and EDI are “often partially or totally out of service.”¹⁴ During the April-June 2001 period, there were 42 LENS outages ranging from 24 minutes to over 24 hours with the median outage lasting an hour and 15 minutes.¹⁵ During this period, there were 28 EDI outages, which ranged from 16 minutes to as long as 2 days with the median outage lasting almost two hours.¹⁶ AT&T noted that the problem with the LENS interface has been ongoing since December 2000 and that the “EDI interface continues to suffer outages and delay the processing of CLEC orders.”¹⁷

CLECs use these interfaces to perform pre-ordering and ordering functions. Thus, these periods of inaccessibility render CLECs incapable of processing orders. As SECCA posits:

LENS outages interfere with a CLEC’s ability to service new customers or customer prospects. The ability to order resold services, verify customer information, pull customer service records and make feature changes is suspended. EDI outages make it impossible to even order UNEs to serve new customers. Delays attributable to EDI outages can cause a CLEC to miss a committed installation date for a new customer.¹⁸

The consequence of these outages is that CLECs simply cannot place orders for existing or prospective customers. Thus, these outages fundamentally undercut CLECs’ ability to compete.

CLECs have also experienced problems with BellSouth’s TAG pre-ordering system. Mpower uses the TAG system to order loops. The TAG system is providing due dates outside of

¹⁴ *Consideration of BellSouth Telecommunications, Inc.’s Entry Into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Georgia Public Service Commission Docket No. 6863-U, Reply Comments of the Southeastern Competitive Carriers Association at 11 (July 16, 2001) (“*SECCA GA Reply Comments*”).

¹⁵ *Id.*

¹⁶ *Id.* at 11-12.

¹⁷ GA PSC Docket No. 6863-U, Comments of AT&T Communications of the Southern States, Inc., Item 2, at 8 (May 31, 2001) (“*AT&T GA Comments*”).

¹⁸ *SECCA GA Reply Comments* at 12.

the normal interval. Mpower has notified BellSouth, but BellSouth has yet to fix the problem. Mpower is left with the choice of either accepting a protracted due date interval, escalating the order, or resubmitting the order in the hope of getting a better date. Thus, Mpower has to choose between delay, higher cost in submitting another order, or BellSouth's time-consuming, and ineffective, escalation process. This is most certainly not provisioning at parity. Mpower has also experienced numerous outages with the TAG system. Over the past three and a half months, BellSouth has documented 27 TAG system outages which translates into one system outage every two and a half business days.¹⁹ There have been many more that have not been documented. Many orders that Mpower submits electronically via this system have to be later processed manually requiring longer provisioning intervals, and changing of delivery expectations and schedules with the client. WorldCom has experienced a problem with "slow or downgraded responses from BellSouth's TAG pre-ordering system."²⁰ BellSouth admits that it does have a problem with response intervals for one of the systems in TAG, the HAL/CRIS system, which it uses to access CSR data from the Business Office Customer Record Information System.²¹

CLECs have also experienced problems with customer service records ("CSRs"). A CLEC needs an integrated processing system that enables it to experience the same seamless ordering process that the incumbent's retail division possesses. In the BellSouth system, however, a CLEC must use multiple local service requests ("LSRs") and CSRs for orders and accounts that BellSouth's retail division has on one bill. When the CLEC tries to order by submitting a single LSR, the order is rejected. BellSouth's business rules appear to require a separate LSR for each CSR. CLECs should not be required, however, to submit multiple LSRs,

¹⁹ See Exhibit D, TAG Outages. See also, http://www.interconnection.bellsouth.com/markets/lec/ccp/ccp_so_tag.html

²⁰ GA PSC Docket No. 6863-U, Reply Comments of WorldCom, Inc., Affidavit of Sherry Lichtenberg at ¶ 16 (July 18, 2001) ("*WorldCom GA Reply Comments*").

²¹ BellSouth Application at 66.

and risk the coordination problems that multiple LSRs for the same customer will generate, particularly when BellSouth places those lines on a single bill.

Mpower has experienced problems when the customer has multiple lines that appear on multiple CSRs, but are on the same BellSouth bill. This situation arises when a BellSouth customer has incrementally added lines to its service but still receives one bill from BellSouth. When Mpower attempts to submit the order with a single LSR it is rejected due to the fact that the lines have different CSRs. Also due to LSR space limitations, the customer often needs to have to call BellSouth to request that the order be consolidated. BellSouth's retail division has a history of not responding to these requests, thereby necessitating repeated calls by the customer. Mpower cannot process the port request until the consolidation occurs, and this process can take weeks.

In addition, Mpower incurs multiple order charges for what should be one order. If an order is submitted manually in Georgia, Mpower is billed per circuit, not per order, with a first time charge of \$18.94 and an additional charge of \$8.94.²² If the order is submitted electronically, each circuit costs \$3.50. This policy seriously discriminates against CLECs in the migration of a customer from BellSouth to a competitor. CLECs are forced to endure longer provisioning intervals due to the erroneous rejection of orders and higher acquisition costs because they have to place multiple orders for a single customer.

BellSouth also fails to offer at parity a process for "partial transfers" of service. An example of "partial transfer" is when a CLEC customer has five lines, and wishes to move four lines to a new address and disconnect the remaining line at the existing address. Another example is when a customer has five lines, and wishes to leave four at its present address, but move one to a new address. Under both these scenarios, if the customer was a BellSouth customer, BellSouth would process this transfer under one order. CLECs, however, are required to submit multiple LSRs to do the transfer. For instance, under the second scenario, the CLEC

²² In all other BellSouth states, Mpower is billed per order.

would have to process a disconnect at the present address and order a new loop at the new address. The requirement of multiple LSRs forces CLECs to incur extra service order charges, and to accede to extended due dates.

A CLEC also needs access to parsed CSRs/LSRs in the same manner as BellSouth's retail division. BellSouth's OSS, however, does not provide "parsed" CSRs to CLECs in the same manner that BellSouth's retail operations enjoy. Unfortunately, despite the fact that CLECs have requested parsed CSRs since 1998, CLECs will not have access to parsed CSRs until early 2002.²³

One of the major problems that CLECs have had in interfacing with a BOC's pre-ordering functionality pertains to the lack of "parsing"²⁴ pre-ordering information.²⁵ As this Commission has observed:

[I]n this regard, the BOC must enable competing carriers to transfer pre-ordering information electronically to the BOC's ordering interface or to the carriers' own back office systems, which may require "parsing" pre-ordering information into identifiable fields. Without an integrated system, a competing carrier would be forced to re-enter pre-ordering information manually into an ordering interface, which leads to additional costs and delays, as well as a greater risk of error. This lack of integration would place competitors at a competitive disadvantage and significantly impact a carrier's ability to serve its customers in a timely and efficient manner.²⁶

The lack of parsed CSRs leads to excessive CLEC order rejections. In addition, CLECs have had to expend valuable time and resources to get the information into a format that the

²³ *AT&T GA Comments*, Item 2, p. 4.

²⁴ Parsing involves the breaking down of information in specific fields. Parsed formats provide a readable format to the data by placing lines and spaces within the text. Many BOC ordering systems require CLECs to enter data in a parsed format.

²⁵ *In the Matter of Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Texas*, CC Docket No. 00-65, AT&T Comments at 51-53 (April 26, 2000) ("*AT&T SBC 271 Comments*"); MCI WorldCom Comments at 9 (April 26, 2000) ("*WorldCom SBC 271 Comments*").

²⁶ *BANY Order* at ¶ 137.

BellSouth OSS will accept. The disparity is exacerbated by the fact that many ILEC retail divisions do not have to perform parsing in order to place an order.²⁷ The mere fact that CLECs have been requesting parsing of CSRs on a parity with BellSouth retail operations, without success, since 1998 warrants rejection of the application.

C. Deficiencies in BellSouth's Ordering OSS

For a CLEC to be able to order at parity with BellSouth's retail division, a CLEC needs to be able to have its orders be processed electronically. Up to 68% of CLEC orders, however, are processed manually.

This Commission has previously focused on "flow-through" rates as an indication of parity in the ordering stage.²⁸ "Flow-through" refers to orders that are transmitted electronically through the gateway and accepted into the ILEC's back office ordering systems without manual intervention. The flow-through rate often "serves as a yardstick to evaluate whether an incumbent LEC's OSS is capable of handling reasonably foreseeable commercial volumes of orders." In addition, this Commission has focused on an ILEC's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems."²⁹

AT&T observes that 10 to 68% of electronic CLEC orders fall out for manual processing depending on the interface and product type.³⁰ WorldCom also documents what it terms "a high level of manual processing."³¹ The situation is so dire that the Georgia PSC had to order "the

²⁷ *WorldCom SBC 271 Comments* at p. 13.

²⁸ *BANY Order* at ¶ 160, fn. 488, ¶ 162, fn. 496.

²⁹ *Id.* at ¶ 163.

³⁰ *AT&T GA Comments*, Item 2, at 4.

³¹ GA PSC Docket No. 6863-U, Comments of WorldCom, Inc. at 3 (May 31, 2001) ("*WorldCom GA Comments*").

creation of an Improvement Task Force to expand the scope of CLEC electronic ordering and eliminate BellSouth system errors and designed manual fallout.”³² BellSouth’s response to the problem has not been to address the root cause of the problem, rather it “has begun to measure differently to make it appear as though there has been improvement.”³³ BellSouth, without notice to CLECs or approval of the Georgia commission, extended the time period for return of partially mechanized FOCs and rejects by nearly one and a half days to mask its flow-through problems.³⁴

This lack of flow-through and increased manual processing of orders has caused significant harm to CLECs. When an order is processed electronically, it takes on average 15 minutes for the CLEC to receive a FOC or reject notice. When the order falls out of the electronic processing and is handled manually, it takes on average 12 hours for BellSouth to provide a reject notice and at least 18 hours to provide a FOC.³⁵ CLECs have to expend additional resources to determine the status of the manually processed orders and the manual processing heightens the risk of error. Manually processed orders also get later due dates since due dates are not confirmed until a FOC is generated.³⁶ WorldCom notes that its customers have been experiencing a loss of dial tone shortly after migrating to WorldCom and suspects that the “excessive manual handling” of orders may be the cause.³⁷ Manual processing is clearly

³² *AT&T GA Comments*, Item 2, at 5.

³³ *Id.*

³⁴ *Id.* at 5-6.

³⁵ *AT&T GA Comments*, Item 2, at 4.

³⁶ *Id.* The concern over CLEC access to due dates resulting from delays in returning FOCs due to excessive manual processing of orders was one raised by the Commission in its *Second Louisiana 271 Order*. *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance for Provision of In-Region, InterLATA Service in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, ¶ 104 (1998) (“*Second Louisiana 271 Order*”).

³⁷ *WorldCom GA Comments* at 4.

problematic in that it will increase costs CLECs face, and decrease the quality of service they can provide. Customers will be reluctant to change carriers if such a change is not processed in a timely and seamless manner.

A CLEC needs to be able to ascertain quickly the status of its orders. Unfortunately, CLECs have experienced significant difficulties in receiving adequate information about their orders. There are three types of notifications that a CLEC receives in regard to an order – acknowledgments, confirmation, and rejects. Acknowledgments state that the order has been received; confirmations tell the CLEC that the order will be performed on a specific date; and rejects notifies the CLEC that the order cannot be processed and gives the reason. CLECs have been experiencing problems in getting timely firm order confirmations (“FOCs”) and reject notices.

A CLEC needs to be able to receive a timely confirmation that its order will be delivered on the date requested. CLECs have encountered delays in getting such confirmations, and at other times, fail to get such confirmations altogether. In numerous instances, BellSouth will declare at the last minute that it cannot meet the promised date. In May 2001, BellSouth missed the following performance measures: FOC Timeliness benchmark for mechanized orders for i) loop interoffice transport, ii) xDSL, iii) 2W Analog Loop (Design), iv) 2W Analog Loop w/ LNP (Design), and v) 2W Analog Loop w/ LNP (Non-design).³⁸ In June 2001, BellSouth missed the following performance measures: FOC Timeliness Benchmark for mechanized orders for i) loop and port combinations, ii) xDSL, iii) 2W Analog Loop w/ LNP (Design), iv) Other Design, and v) LNP Standalone.³⁹ BellSouth did not meet the benchmark for reject notices for mechanized

³⁸ BellSouth Application, Varner Georgia Affidavit, Exhibit PM-2, p. 3.

³⁹ *Id.*, Exhibit PM-3, p. 3.

orders in May, June, or July 2001.⁴⁰ BellSouth also developed a metric called FOC & Reject Response Completeness which is “a complex new metric designed to indicate the percentage of CLEC service requests for which BellSouth generates and delivers a response in the form of either a reject (or clarification) of firm order confirmation.”⁴¹ BellSouth’s performance in regard to this metric has been woeful. For mechanized orders, it missed seven of eleven applicable sub-metrics in May;⁴² eight of twelve applicable sub-metrics in June;⁴³ and seven of ten applicable sub-metrics in July.⁴⁴ Predictably, BellSouth argues that “this measure understates BellSouth’s performance and cannot be relied upon to assess BellSouth’s performance.”⁴⁵

CLECs have also been encountering numerous instances of “blind FOCs.” A blind FOC occurs when BellSouth promises a firm order commitment date and then on or near the delivery date notifies the CLEC that the facility is not available and will not be delivered on the date. The CLEC will have scheduled the cutover date with the customer and set up technicians to handle the cutover. BellSouth will simply cancel the date without explanation. The failure of BellSouth is not merely a matter of inconvenience but one of wasting of valuable time and resources. Furthermore, the customer will not know the cause of the delay and will in all likelihood blame the CLEC. The delays in the ordering and provisioning of these facilities clearly have a significant impact on the competitive position of CLECs.

Mpower often receives invalid FOCs and has notified BellSouth of the fact. Nonetheless, Mpower still continues to receive invalid FOCs. WorldCom has failed to receive firm order

⁴⁰ BellSouth Application at 73.

⁴¹ BellSouth Application, Varner Georgia Affidavit at ¶ 42.

⁴² BellSouth Application, Varner Georgia Affidavit, Exhibit PM-2, p.4.

⁴³ BellSouth Application, Varner Georgia Affidavit, Exhibit PM-3, p.4.

⁴⁴ BellSouth Application, Varner Georgia Affidavit, Exhibit PM-4, p.4.

⁴⁵ BellSouth Application, Varner Georgia Affidavit at ¶ 42.

confirmations and order completion notifications.⁴⁶ Mpower has experienced high reject rates on DSL orders due to unclear BellSouth business rules. When Mpower orders DSL products from BellSouth the orders are frequently rejected due to the secondary NCNCI code. When Mpower asks BellSouth which code should be used, it receives conflicting responses and each of the codes suggested by BellSouth still result in a reject. AT&T noted that it too has experienced “an unacceptably high incidence of rejections in error because of BellSouth’s incomplete and inconsistent business rules.”⁴⁷ WorldCom also experienced high reject rates due to inexplicable BellSouth business rules.⁴⁸

A CLEC needs accurate due dates particularly when the customer migration requires coordination between BellSouth, the CLEC, and the customer. CLECs have been getting due dates that differ from the due dates in the BellSouth system. If the CLEC relies on the due date proffered by BellSouth, its customer will be put out of service. Network Plus continues to receive multiple FOC dates for single orders, in addition to FOC dates being changed after being published. This has a direct impact on Network Plus customers because Network Plus relies on these FOC dates to communicate service availability to customers.

BellSouth points to a system upgrade completed in June 2001 as the cause of the multiple FOC problem. Prior to the “upgrade,” Network Plus placed LSR orders via the Gateway based on BellSouth’s published standard intervals. BellSouth then took that order and verified the plausibility of the due date, based on manpower available. All systems were subsequently updated to reflect the approved date, and although this date was often not within standard

⁴⁶ GA PSC Docket No. 6863-U, Reply Comments of WorldCom, Inc. at 5 (July 18, 2001) (“*WorldCom GA Reply Comments*”).

⁴⁷ *AT&T GA Comments*, Item 2, at 13.

⁴⁸ *WorldCom GA Comments* at 5; Affidavit of Sherry Lichtenberg at ¶ 14.

intervals, ALL systems reflected the same date. After the upgrade, the process changed so that when the order was verified, and it was found that there was not sufficient manpower, the order dates were changed from what was originally requested. This change was not appropriately updated within BellSouth's systems. Network Plus was notified via the Gateway that the original date would be met and the BellSouth systems reflected a different date, one the original date and one a revised date. This occurred on 85% of the orders placed.

Network Plus was advised by its account team not to use the standard intervals listed but instead use the date that was generated by "CSOTS" which were two to five days longer. Again this is the due date that is generated by workload restraints.⁴⁹ This proposed "solution" did not work due to the fact that the CWIN center would call for concurrence on a day other than the due date previously assigned.

The issue took hundreds of hours for Network Plus to try to manage and could have led to many of its end users being taken out of service. Although it had weekly or bi-weekly calls with various departments in BellSouth the issue still has not received full resolution. In addition, Network Plus was told by a member of out account team that an "interval" is a target, not a guarantee, and that this mirrors the intervals a BellSouth retail customer would receive.

WorldCom has also experienced problems with due dates. WorldCom would submit requested due dates well within the specified interval and receive a FOC with a different longer due date. This is problematic because WorldCom promises the original due date to the customer

⁴⁹ BellSouth frequently fails to give installation dates within required intervals because of a purported lack of manpower. Presumably BellSouth has sufficient manpower for its retail division as it is completing its own orders in a shorter time frame than for CLECs on a number of submetrics. See BellSouth Application, Varner GA Affidavit, Exhibit PM-4, pp. 6-7. In addition, BellSouth must demonstrate that its OSS is not only operationally capable today, but is also sufficient to meet future demand. BellSouth cannot rely on a lack of manpower to discriminate particularly when its manpower appears sufficient for its retail orders.

and then has to explain the delay.⁵⁰ Mpower has also experienced a rise in the number of orders issued new FOC dates after the original FOC due date has been provided. AT&T also had problems with BellSouth's due dates noting that BellSouth's OSS "does not provide accurate Due Date calculations for all products and services and does not preserve a due date for CLEC's electronically submitted orders that fall out for manual handling because of BellSouth's ordering OSS design or failure."⁵¹

A CLEC requires a prompt and informed resolution of its problem(s) when it calls the RBOC service center, especially when it has its customer on the line. When CLECs have to call the BellSouth Local Carrier Service Center ("LCSC") to address any problems with orders, they face an arduous process where they are often transferred from one representative to another and have trouble escalating problems to persons with the ability to resolve the problem.

Mpower has often experienced the situation of being advised that the BellSouth representative is unable to assist with the issue and being transferred to another representative or another center. Likewise, Mpower has also experienced trouble in escalating issues to LCSC management. AT&T also noted that the speed of the answer at the LCSC is discriminatory compared to the speed of the answer in the BellSouth retail Business Service Center and Residence Service Center.⁵²

BellSouth has also failed to facilitate a process for CLEC-to-CLEC customer conversions that would allow for the reuse of existing facilities. When a CLEC acquires a customer from another CLEC, the CLEC is required to submit a LSR for new loops which is more expensive

⁵⁰ *Id.*, Affidavit of Sherry Lichtenberg at ¶ 15.

⁵¹ *AT&T GA Comments*, Item 2, at 4. The automatic due date problem is also a lingering problem from the Commission's *Second Louisiana 271 Order*. *Second Louisiana 271 Order* at ¶ 106.

⁵² *AT&T GA Comments*, Item 2, at 6.

than a conversion using the existing facilities. It also increases the chance for a “lack of facilities” response from BellSouth, increases the cost to the customer if BellSouth “deems” that the customer needs conduit, and increases the risk of the customer going out of service since on many occasions the F2 pairs are reused by the outside technician. BellSouth has proffered some “guidelines” for CLEC-to-CLEC conversions but has put the burden on Mpower to develop a process and submit it via the Change Control Process which is a time consuming process that will result in the further delay of due dates until the issue is resolved.

Mpower has also endured problems in ordering DSL-capable loops. Unlike other ILECs that offer electronic processing of loop conditioning requests, BellSouth provides only a manual process. This requires extensive follow-up on the part of the CLEC as the order is navigated through a series of BellSouth internal groups. As a result, loop conditioning times are much more protracted than those with other ILECs with many orders having FOCs thirty to sixty days beyond the order date.

In contrast to other ILECs, BellSouth also requires a Facilities Reservation Number (“FCN”). This number has to be included with the DSL loop order or else it will be automatically rejected. The FRN is obtained by performing a loop qualification on the LENS website. The information in the LENS system is often inaccurate. Thus, the CLEC has to expend much more time and effort to get the order processed.

This litany of problems CLECs face in both the pre-ordering and ordering process demonstrate that CLECs are not receiving nondiscriminatory access to OSS and that BellSouth is not meeting its obligations under Checklist Item 2.

D. BellSouth Fails To Provide Accurate Wholesale Bills to CLECs

Under checklist item 2, a BOC must demonstrate that it provides competitive LECs with wholesale bills that are complete, accurate, readable, auditable and timely.⁵³ The Commission has found that these qualities in wholesale billing are essential for competitive carriers if they are to have a meaningful opportunity to compete.⁵⁴ If, as the Commission determined, approval of Verizon's Pennsylvania application was a "close call" on billing issues, then BellSouth's Application is clearly insufficient. Two categories of billing data are to be scrutinized in Section 271 cases – usage data of a CLEC's customers, and wholesale bills for UNEs and interconnection services. While BellSouth's Application and the supporting Scollard and Stacy Affidavits provide some support for its usage billing systems, its evidentiary support for its wholesale billing performance is wholly inadequate to satisfy its burden of proof for this checklist item.

The Joint Commenters' experience with BellSouth's wholesale billing operations belie the very limited evidence offered by BellSouth. For example, bills submitted to Madison River are frequently incorrect because some charges are erroneously placed on bills for special access. Moreover, with respect to special access service, Madison River recently discovered that BellSouth has been imposing frequent expedite charges of \$200 per day for installation and conversion orders even when the company had not requested expedition. The charges are apparently triggered by the completion of a project prior to the Firm Order Commitment (FOC) date, with no notice or opportunity to decline provided to the CLEC. Madison River is required to expend considerable time and resources to get these bills corrected. As noted below, CLECs

⁵³ *In the Matter of Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, (CC Docket No. 01-138), ¶12 ("Pennsylvania 271 Order"). See also *Bell Atlantic New York 271 Order*, 15 FCC Rcd at 3989, ¶ 82.

⁵⁴ *Pennsylvania 271 Order* at ¶ 15.

have frequently been required, as a practical matter, to order special access instead of UNEs because of BellSouth's poor provisioning of UNEs.

Second, the Commission should investigate not only the timeliness and accuracy of BellSouth's wholesale bills but also the expediency with which BellSouth makes a commitment to resolve billing disputes. The Joint Commenters have found BellSouth's dispute resolution process to be highly cumbersome and inefficient. Not only have BellSouth's overbilling practices siphoned thousands of dollars from the Commenters and impaired their ability to report healthy financial statements needed to attract new capital, but now the Commenters have been forced to devote a growing share of their monetary and personnel resources to monitor their wholesale bills and prosecute disputes with BellSouth. BellSouth's flawed billing system thereby undermines the ability of the Commenters to compete effectively in the market.⁵⁵

A problem Network Plus recently experienced further demonstrates not only the inaccuracy of BellSouth's bills, but BellSouth's intransigence in resolving billing disputes. On Network Plus' September invoice, BellSouth retroactively billed Network Plus for collocation charges from February 2001. BellSouth subsequently considered the charges as over 90 days past due, issued disconnect notices to Network Plus, and sent the notices to all of the State Regulatory Commissions, threatening to disconnect all services on October 8th. The Network Plus team that rectifies the account called BellSouth and informed it that no charges were past due. BellSouth, however, claimed that it was correct and subsequently sent the disconnect letter to Network Plus. When Network Plus was notified by the Alabama Public Service Commission that it received the notice of future disconnection, Network Plus immediately began escalating and BellSouth acknowledged that it made a mistake. BellSouth then stopped the disconnect

⁵⁵ See *Pennsylvania 271 Order* at ¶ 15..

process and sent retractions to the Commissions. Network Plus' customers would have been put out of service due to BellSouth's misguided billing.

Mpower also has experienced billing problems that reflect not only the inaccuracy of BellSouth's wholesale bills but also BellSouth's dilatory dispute resolution process. In January 2001, BellSouth and Mpower executed an amendment changing the DSL loop rates in Georgia. Up to, and including, September invoices, BellSouth has continued to bill Mpower the old rates in effect prior to the amendment.⁵⁶ Mpower has repeatedly made BellSouth aware that there is a problem through several conference calls on the issue including one on October 15th. To make matters worse, BellSouth is threatening not to process new Mpower orders because BellSouth is unable to track charges that are properly disputed, and, therefore, unpaid.

Mpower has been disputing the invoices since March of this year, and only received its first resolution on August 7th. To obtain this resolution, Mpower had to engage in several conference call attempts and e-mails. In addition, starting in August, filing a dispute has become even more cumbersome. BellSouth has changed its policies for what is needed to file a dispute before a dispute is accepted into their system. The new policies were not previously communicated to Mpower and the guidelines on BellSouth's web page are extremely vague. The BellSouth personnel in charge of screening the disputes no longer have access to the BellSouth bills so the CLEC essentially has to "recreate" the BellSouth bills in order to file a dispute. Previously, CLECs were able to identify the disputed information and note the location on the bills. Now BellSouth requires much more information. The new dispute resolution policy has resulted in longer time periods to get a dispute filed, and then for BellSouth to accept the dispute. This has increased the potential for BellSouth to threaten shutoff of service, because it

does not realize that a dispute is pending over the charges until the dispute is accepted into its system. It is ironic that given how our system of jurisprudence has long since evolved to relaxed pleading requirements, BellSouth is implementing a system for filing disputes that invokes the days of yesteryear where the “writ” has to be pleaded to “perfection” for the matter to be filed.

BellSouth also continues to bill Mpower for months after Mpower has submitted a disconnect order for the particular facility. This adds to the difficulty in auditing bills and adds even more disputes to the list of disputes that need to be filed. On UNE loop bills, BellSouth’s LCSC sometimes ignores the Billing Account Number (BAN) on the CLEC’s LSR which is necessary for correct billing. This results in a bill that is very difficult to audit. This places a tremendous burden on CLECs to audit and propose corrections to bills. CLECs should not have to expend valuable time and resources in making sure that BellSouth gets its bills right. The unreflected rate changes coupled with the billing for disconnected facilities amount to 90% of Mpower’s billing disputes. In other words, the vast majority of Mpower’s problems with BellSouth’s bills result from BellSouth’s poor wholesale billing systems and procedures.

II. BELLSOUTH’S EFFECTIVE REFUSAL TO CONVERT SPECIAL ACCESS CIRCUITS TO UNES ON REASONABLE TERMS PRECLUDES A FINDING OF COMPLIANCE WITH CHECKLIST ITEM #2

BellSouth’s failure to provide nondiscriminatory access to unbundled network elements is in no case more evident than in its effective refusal to convert existing customer special access circuits to individual UNEs on reasonable rates, terms and conditions. Adelphia Business Solutions, Inc., Madison River, Mpower, and Network Plus filed a request for an accelerated docket proceeding to address this issue at the FCC on September 19, 2001. The Commenters have attached this request to these comments so that it may be incorporated into the record of

⁵⁶ In North Carolina, Madison River has been billed loop rates that are higher than those specified in its

this proceeding.⁵⁷ The Commenters have been attempting – one of them for nearly three years – to obtain from BellSouth what should be a routine billing records change of certain special access circuits to UNEs. BellSouth has dragged CLECs through a nightmarish and apparently never-ending cycle in which BellSouth fluctuates between insisting upon completely unreasonable terms punctuated by brief periods in which it promises a more reasonable alternative and then withdraws such promises.⁵⁸ The resulting stalemate to which BellSouth has subjected the CLECs is in many ways worse than outright refusal to perform the conversions, as the Commenters have wasted countless hours and resources pursuing relief that, without regulatory intervention, may never come. Among the many issues the Commission should require BellSouth to resolve prior to approval on the UNE Checklist item #2, special access to UNE conversions. This issue is of tremendous import to Commenters' ability to compete effectively in Georgia and Louisiana and is easily cured.

BellSouth's stance is in marked contrast to that of ILECs that have previously obtained Section 271 authority. SBC, in Ameritech states, and Verizon perform special access to UNE conversions on a routine basis. BellSouth, on the other hand, has insisted on unnecessary and in some cases ludicrous conditions for these conversions when in reality they should require far less work than BellSouth has invested in opposing CLECs' right to seek them.

CLECs, including each of the Commenters, at times purchase special access circuits between two collocation facilities and between collocation sites and end user customers. These

interconnection agreement. BellSouth was notified months ago, but there still has been no resolution.

⁵⁷ See Exhibit A, September 19th Letter from Counsel for Adelphia Business Solutions, Inc., Madison River Communications, LLC, Mpower Communications Corp. and Network Plus, Inc to Alexander Starr, Chief, Market Disputes Resolution Division, Enforcement Bureau, Federal Communications Commission.

⁵⁸ Attached hereto as Exhibit B is a chronology of Mpower's attempts to obtain these concessions or reasonable terms and conditions.

circuits would normally be purchased as UNEs from interconnection agreements, but were purchased as special access circuits from BellSouth's tariffs in part because of poor UNE provisioning by BellSouth.⁵⁹ Commenters have also chosen to order special access because of difficulties in obtaining interconnection agreements, failure of BellSouth to set UNE prices in a timely fashion, and required manual processing for some UNEs. Subsequently, the Commenters have requested conversion of these existing special access circuits to individual UNEs.

BellSouth does not – and could not – dispute that these circuits are identical to the UNEs to which the CLECs are attempting to “convert” the circuits. Because these circuits are already in place, the only action required of BellSouth to “convert” them is a paper records change. Instead, BellSouth has often insisted upon the unnecessary, costly and time-consuming disconnection of these facilities and the physical substitution of new facilities in order to provide the requested UNE. BellSouth's procedure – required apparently only to frustrate or discourage conversions – would result unnecessarily in service outages, unavailability of facilities, and invasive physical work at the customer's location. With the substitution of new cable pairs, at least some of the new circuits will have maintenance and service problems that were not present on the original circuit. These impositions pose tremendous risk of damage to a CLEC's reputation with its customers. The risk is especially grave where the CLEC is attempting to convert an inter-office facility, which carries traffic of numerous customers.

All of these unnecessary burdens place the Commenters at a competitive disadvantage vis-à-vis BellSouth in the ability to provide continuous and quality service to its customers at competitive rates. BellSouth does not incur these additional procedures, cost, or risk of service outages when it uses existing facilities in the “conversion” process. When BellSouth wins back a

⁵⁹ The substantial time entailed by protracted interconnection agreement negotiations frequently forces

CLEC customer served by a special access circuit or UNE loop, BellSouth either does not disconnect the customer, or reserves the right not to do so, in order to effectuate the billing records change. BellSouth and the end-user are spared of all of the needless risks and burdens detailed above. The Commenters have only asked for the same non-discriminatory treatment from BellSouth.

Mpower has been attempting to secure reasonable terms for access to UNE conversions with BellSouth since January 1999. In one case, Mpower has an urgent business need to convert approximately 50 transport (DS-3) circuits in the Atlanta area to UNE pricing from Access Tariff pricing. This conversion is essential to Mpower's ability to compete in the Georgia telecommunications market. On several occasions during this lengthy saga, Mpower received assurances from BellSouth that the conversions would be processed as a paper records change and that the billing would be trued-up to the date of Mpower's request. Each time that Mpower appeared close to a successful resolution, however, BellSouth would retreat, perpetuating a cycle of withdrawn promises, cancelled and rescheduled meetings, and circular planning efforts. Madison River and Network Plus have also suffered similar run-arounds with BellSouth in their efforts to convert access circuits to UNEs. Mpower, Madison River and Network Plus experience additional charges totaling approximately \$150,000 per month because of BellSouth's refusal to permit single network element conversions on reasonable terms and conditions.

After months of promises to produce a policy that would allow conversions without a physical disconnection, in September 2001, BellSouth finally returned to Mpower with a different proposal. However, BellSouth's proposal included an extraordinary charge of \$9,129

CLECs to purchase special access circuits rather than UNEs to serve their customers.

per DS-3 conversion, for a total project cost to Mpower in excess of \$450,000. By contrast, as a result of the FCC's *Supplemental Order Clarification*, BellSouth's non-recurring charge for a direct conversion of a special access circuit to an EEL is \$50. BellSouth's proposal to charge more than 180 times that amount for a conversion that is, at most, of equivalent complexity is clearly an unfettered attempt to prevent CLECs from exercising their right to use UNEs to compete. CLECs have already paid one set of non-recurring charges to install the special access circuit; the effective imposition of a second installation charge for a record change that should require no physical work is completely unreasonable.⁶⁰ For instance, Verizon has testified before the Rhode Island PUC in its 271 hearing that it makes this conversion with a zero nonrecurring charge. To add injury to the insult, BellSouth further advised Mpower that it could not begin the conversion for at least two months, and that BellSouth no longer would agree to date the billing change as of the date of Mpower's conversion request.

BellSouth's effective refusal to permit conversion of existing special access circuits to individual UNEs violates Sections 201 and Section 251(c)(3) of Act, its interconnection agreements and the Commission's *Supplemental Order Clarification*.⁶¹ Section 271 relief is clearly not appropriate for as long as BellSouth insists upon its proposed unjust, unreasonable and discriminatory conversion policy that effectively denies to CLECs a meaningful opportunity to compete using unbundled network elements.⁶²

⁶⁰ Except where CLECs are forced to purchase special access services rather than individual UNEs due to an ILEC's delays in interconnection negotiations, the Commenters would not object to a reasonable billing conversion charge, similar to the charge imposed to convert special access circuits to EELs.

⁶¹ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98 (rel. June 2, 2000) ("*Supplemental Order Clarification*").

⁶² When BellSouth does undertake the conversions, it does so only on a piecemeal basis, and does not keep the CLEC apprised that some circuits have not been converted. Thus, Madison River has to audit its bills to detect the overcharges due to continued higher special access pricing.

BellSouth has been unable to offer any reasonable explanation as to why it will not establish a “spreadsheet” billing change order conversion process similar to the process used to convert special access circuits to enhanced extended loops (“EELs”), as required by the Commission’s *Supplemental Order Clarification*. As explained in the Commenters’ September 19, 2001 letter, the logical and policy justification for requiring such conversion for UNEs is the same as conversion to EELs, which, the Commission found, “should be simple and accomplished without delay.”⁶³ BellSouth has instead held its ground, responding to the Commenters’ September 19, 2001 letter to the Commission that it was unwilling to extend application of the logic and policy of the Supplemental Order Clarification beyond its “express terms” which addressed conversion to EELs.⁶⁴ Although BellSouth did offer to establish a spreadsheet conversion process, it made no commitments on costs and insisted that CLECs comply with EEL safe harbor provisions which will have no logical application to single network elements. The Commenters urge the Commission to express clearly to BellSouth that its extortionate and circuitous process for conversion to stand-alone UNEs is no more defensible under the Act than it was for EEL conversions.

Therefore, the Commission should withhold approval of BellSouth’s Section 271 application until such time as BellSouth agrees to offer the relief requested in the Commenters’ Petition, including:

- * Establish an effective billing date for the conversion that does not reward past or future delay by BellSouth, such as the date of the CLEC’s conversion request or the date of

⁶³ *Supplemental Order Clarification*. at ¶ 30.

⁶⁴ BellSouth response, October 9, 2001 at 3.

notification by a CLEC of its intent to convert, and correct past billing to be consistent with the effective billing date; and

* Issue billing credits for the difference between the UNE rates at which these circuits should have been billed and the tariffed special access rates at which BellSouth billed the CLEC.

III. BELLSOUTH'S CONCURRENT POOR QUALITY WHOLESALE SERVICE AND ITS WINBACK CAMPAIGN EFFORTS, TAKEN TOGETHER, DEPRIVE CLECS OF A MEANINGFUL OPPORTUNITY TO COMPETE

As part of items #1 and #2 of the competitive checklist, for interconnection and UNEs, BellSouth must establish that it provides sufficient quality of service to enable CLECs to have a meaningful opportunity to compete. For example, quality maintenance and repair service is an essential showing required to satisfy the OSS requirement of checklist item 2 (UNEs).⁶⁵ BellSouth's self-reported maintenance and repair performance for the month of July 2001 indicate maintenance standards that are so poor as to be unreasonable and discriminatory. These reports show excessive percentages of repeat trouble reports and lengthy average times to complete repairs. For instance, in July 2001, BellSouth was out of parity for missed repair appointments for 2W Analog Loop Non-Design/Non-Dispatch and Other Design/Non-Dispatch.⁶⁶ In regard to customer trouble report rate, BellSouth was out of parity for Other Design/Dispatch.⁶⁷ For the metric tracking out of service periods longer than 24 hours, BellSouth was out of parity for Other Design/Non-Dispatch.⁶⁸

⁶⁵ *Pennsylvania 271 Order* at ¶ 38.

⁶⁶ BellSouth Application, Varner GA Affidavit, Exhibit PM-4, p. 27.

⁶⁷ *Id.* at p. 28.

⁶⁸ *Id.* at p. 28.

Mpower has observed that BellSouth provides better “mean time to repair” for service issues on SL2 loops than SL1 loops. BellSouth’s failure to provide adequate maintenance and repair for SL1 loops is inexplicable save for the fact that SL2 loops are more expensive. BellSouth knows that CLECs would prefer to avoid the higher cost of the SL2 loop. Thus, CLECs are forced to order a more expensive loop to obtain adequate service.

Mpower has also experienced numerous instances of trouble tickets being closed as “no trouble found” despite the existence of a problem with the facility. BellSouth charges the CLEC for “no trouble found” tickets, but not for tickets where trouble is found and repaired. Mpower has followed-up with customers who had “no trouble found” tickets, and they all stated that a BellSouth technician did appear, and did conduct repairs, and then the problem was resolved. BellSouth is improperly characterizing these trouble tickets, and requiring CLECs to incur invalid charges.

BellSouth has consistently provided unreliable and substandard service with regard to operation, ordering and repair, thereby degrading significantly the quality of service that CLECs are able to provide to their end users. Were this the entirety of the Commenters’ concern, it would be enough to warrant rejection of BellSouth’s Application.

The Commenters wish, however, to emphasize to the Commission that BellSouth has taken its anticompetitive conduct one significant step further, a step which requires immediate redress if CLECs are to have a meaningful opportunity to compete. BellSouth is compounding the effect of its sub-par maintenance and repair performance by targeting CLEC customers with stepped-up winback campaigns that allege that a customer’s difficulties stem from their CLEC’s

poor quality of service.⁶⁹ While the Commenters of course do not object to reasonable winback efforts on a level playing field, read in conjunction with BellSouth's self reported performance results, BellSouth's current campaign is clearly unreasonably anti-competitive. The Commission should therefore withhold Section 271 approval until BellSouth agrees to suspend winback campaigns based on allegations of a CLEC's poor performance.

In addition to its formal marketing efforts, BellSouth engages in what can be an even more damaging smear campaign against CLECs through its employees who are supposed to be providing service to CLECs as its wholesale customer. BellSouth's technical and customer service personnel frequently disparage CLECs with inflammatory statements, some of which are completely false, while other statements are, ironically, true only because of the poor service that BellSouth provides to CLECs. For example, CLEC customers are often told that the problems they are experiencing are the result of their CLEC's inferior network and service; others have been told that their repair needs will be addressed only after BellSouth is able to attend to its retail customers. In another case, BellSouth needed to dig on the property of a Network Plus customer as part of a routine facility expansion project. However, rather than admit the truth about the project, a BellSouth representative told the customer that the project was necessitated by their switch to Network Plus. The disparagement does not even stop when BellSouth has won back a customer. In numerous cases, BellSouth has misinformed winback customers that their migration back to BellSouth had been delayed due to a failure of Network Plus to release their number in a timely manner. Some of these customers have then, perhaps at the suggestion of BellSouth, filed complaints against Network Plus at state utility commissions. However,

⁶⁹ The Commenters have been unable to determine the manner in which BellSouth's retail unit obtains the names of customers for its direct mail and telemarketing efforts. On numerous occasions, customers that had recently switched to the Commenters have been contacted by BellSouth and offered discounts to return to BellSouth.

Network Plus' investigation revealed that in most of these cases, Network Plus never received an order from BellSouth. To address this problem, BellSouth should implement a code of conduct, with compelling enforcement mechanisms, for its employees governing statements to consumers about CLECs. Until it presents greater evidence to the Commission that it has stopped its anticompetitive official and unofficial marketing practices against CLECs, the Commission should withhold approval of BellSouth's Section 271 Applications.

IV. **BELLSOUTH'S COLLOCATION POWER PRICING VIOLATES CHECKLIST ITEM 1**

Checklist Item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."⁷⁰ Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable and nondiscriminatory."⁷¹ Section 251(d)(1) requires state determinations regarding the rates, terms and conditions of interconnection to be based on cost and to be nondiscriminatory.⁷²

In its application, BellSouth demonstrates three options under which a CLEC may order power for its collocation space from BellSouth.⁷³ First, a CLEC may request power from BellSouth's Battery Distribution Fuse Board ("BDFB") in power increments from 10 amps to 60 amps. Second, the CLEC may install its own BDFB inside its collocation space and order power directly from BellSouth's main power board. BellSouth requires a 225 amp power feed to

⁷⁰ *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, ¶ 198 (Apr. 16, 2001) ("*Verizon MA 271 Order*")., citing, 47 U.S.C. § 271(c)(2)(B)(I).

⁷¹ *Id.*, citing, 47 U.S.C. § 251(c)(2).

⁷² *Id.*, citing, 47 U.S.C. § 252(d)(1).

⁷³ *BellSouth Application*, Affidavit of Wayne Gray at ¶ 89.

connect the CLEC's BDFB with BellSouth's main power board. BellSouth claims that it does not "support" smaller protection devices than 225 amps. The third option provides for a CLEC to install its own BDFB in its collocation space and request power from BellSouth's BDFB, again in power increments that range from 10 amps to 60 amps.⁷⁴

If a CLEC desires power in the 60 amp to 225 amp range, the CLEC is forced to purchase 225 amps worth of power even if it does not need all that power. For instance, Network Plus has determined that under its current power needs, it only needs power of 90 amps or less. BellSouth, however, has stated that it currently cannot provide any single feed power demand of less than 225 amps directly from its Main Power Distribution Board. BellSouth bases its power charges on the number of fused amps.⁷⁵ In Georgia, BellSouth is proposing a recurring power rate of \$8.06 per-48V DC amp.⁷⁶ Thus, Network Plus would have to pay \$1088.10 (\$8.06 x 135 amps) in monthly recurring charges for excess power that it would not be using, and does not want.

Numerous CLECs face this same problem. NewSouth Communications ("NewSouth") filed testimony in the North Carolina Utilities Commission 271 proceeding noting that it is "forced to order 225 amps of fused power to meet its need for only 100-120 fused amps."⁷⁷ It is unclear why BellSouth cannot "support" power requirements in the 60-225 amp range, because, other ILECs such as SBC offer power to CLECs in increments of 20, 30, 50, 100 and 200

⁷⁴ *Id.*

⁷⁵ *Id.* at ¶ 93.

⁷⁶ *Id.* at ¶ 94.

⁷⁷ *Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, North Carolina Utilities Commission Docket No. P-55. Sub 1022, Testimony of Jake E. Jennings on Behalf of NewSouth Communications at 4: 8-9 (2001) ("*NewSouth Communications*").