

amps.⁷⁸ Reconfiguration of CLEC power arrangements is also not an option as it is cost prohibitive. NewSouth noted that to reconfigure one collocation space would be about \$3,000 to \$5,000 per application in addition to applicable labor and vendor costs.⁷⁹ Multiply this amount by say 80 collocation spaces and one can see how cost prohibitive this option is. Clearly if other ILECs such as SBC can provide a 100 amp option, BellSouth should be able to do so, and should be required to do so.

BellSouth's ability to recover for over 100 amps of unused power is not just or reasonable nor is it reflective of the costs BellSouth faces. The Commission has found that requiring a collocating carrier to make a minimum power purchase that far exceeds what a carrier actually requires is unreasonable and mandated that if power is provided on a non-usage basis that it be provided in appropriate power increments so that the carrier can purchase the power that it actually needs, or reasonably may need.⁸⁰

In its Massachusetts application, Verizon implemented new methods for billing power for collocation in order to demonstrate to this Commission its compliance with checklist item 1. Verizon gave CLECs the ability to be billed on the basis of the total number of load amps requested, on a per-load-amp basis, as opposed to a per-fused amp basis.⁸¹ BellSouth should similarly be required to craft a solution that will address power requirements on a single feed for amperages greater than 60 amps but less than 225 amps that will not require CLECs to incur additional costs for equipment, materials and/or work. The practices of other ILECs shows that

⁷⁸ *Id.* at 4: 13-26.

⁷⁹ *Id.* at 5: 11-16.

⁸⁰ *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, Second Report and Order, FCC 97-208, 12 FCC Rcd. 18730 at ¶¶ 59-61 (1997).

⁸¹ *Verizon MA 271 Order* at ¶ 203, n. 646.

not only is such a solution feasible, but necessary to demonstrate that BellSouth is in compliance with Checklist Item 1.

CLECs are also forced to purchase facilities that they do not need because of the 90 day interval for collocation augments regardless of the amount of facilities added. As a result, a CLEC is often forced to add more facilities than it may need at the moment. BellSouth should provide considerably *shorter* intervals where collocation necessitates *less* than the full complement of activities necessary for LECs to provision a full blown collocation application – *i.e.*, for simple modifications or additions to existing collocations.

V. BELLSOUTH VIOLATES CHECKLIST ITEM 4 IN REGARD TO PROVISIONING OF UNBUNDLED LOOPS

Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide, “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”⁸² The Commenters have been experiencing problems in obtaining loops when the customer is served by BellSouth’s remote terminals. For instance, when a requested loop has a digital loop carrier (“DLC”) system, BellSouth insists on providing a more expensive SL2 loop. This requirement violates the terms of interconnection agreements and imposes unnecessary costs. By requiring CLECs to purchase facilities that they do not need, BellSouth is able to drive up the CLEC’s cost of providing service to its customers, while it can offer the same customer a cheaper alternative.

Mpower has also experienced numerous jeopardy notifications and order rejections when it requests loops for customers served by BellSouth’s remote terminals. Mpower is told by BellSouth that no facilities are available. BellSouth could simply provide CLECs access to

⁸² Verizon PA 271 Order at ¶ 76.

existing loops where remote terminals are deployed by running a cross-connect from a central office terminal to the main distribution frame and then to the CLEC. Instead, BellSouth rejects the CLEC order, and requires that the CLEC purchase SL2 loops if it wishes to serve the customer. As discussed above, purchase of SL2 loops comes with a significantly higher cost. BellSouth clearly is not making loop facilities generally available to meet the needs of CLECs. As this Commission has held, “[T]he BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.”⁸³ BellSouth is failing to meet its obligations in this regard by making unbundled access to such loops, and the customers the loops serve, cost-prohibitive. There should be no instances where a CLEC is denied a loop facility to a customer that is already being served by BellSouth. Its failure is particularly indefensible given Mpower’s submission of loop forecasts to help plan for future growth. BellSouth appears to be disregarding these forecasts, and using the placement of remote terminals as a way to impede competitive access to its customers.⁸⁴

VI. BELLSOUTH IMPERMISSIBLY IMPEDES COMPETITION IN REGARD TO ITS DSL SERVICE

A. THE COMMISSION MUST STOP BELLSOUTH’S UNLAWFUL PRACTICE OF REFUSING TO PROVIDE ITS RETAIL DSL SERVICE TO CONSUMERS PURCHASING VOICE SERVICE FROM CLECs

⁸³ *SBC KS/OK 271 Order* at ¶ 178.

⁸⁴ BellSouth has an offering for a new loop with order coordination. Mpower has ordered this in the past with success. However, sometime last Spring, BellSouth stated that they could no longer process this type of order unless it is adopted in Mpower’s contract. Mpower then asked whether this service is available and Mpower was told no. Then, the product management team was contacted and BellSouth was supposed to develop a product that would allow Mpower to order a new installation with order coordination. However, BellSouth would not recognize the pre-existing product attached. They were supposed to have had a new loop with order coordination product created by October 19, 2001 that would have an additional cost beyond the normal NRCs but failed to deliver it.

The Commission must take steps to prevent BellSouth from using its monopoly power in the DSL market as leverage to strengthen its already firm grip on the voice market. Specifically, BellSouth refuses to sell its FastAccess DSL products to consumers who purchase voice service from CLECs. As the Commission observed in an analogous situation in the *Verizon-Connecticut 271 Order* (at ¶ 32), an RBOC's "policy of limiting ... DSL services to situations where [it] is the voice provider severely hinders the ability of other carriers to compete." This practice threatens to undermine the already troubled state of telecommunications competition in Georgia and Louisiana by effectively preventing CLECs from competing in the voice market for customers who purchase DSL from BellSouth. Customers who switch to CLEC voice service would lose their BellSouth DSL, and most CLECs are not in a position to offer customers alternative DSL service. Similarly, any current CLEC voice customer that wants DSL will have to drop the CLEC's service and purchase both voice and DSL from BellSouth. So long as this anticompetitive policy is in place, it would be clearly contrary to the public interest to grant BellSouth's Section 271 application.

BellSouth should not be permitted to deny its Internet access service to CLEC voice customers. The policy is both discriminatory and anticompetitive. The fact that FastAccess would be provided over a loop that has been leased to the CLEC presents no technical or regulatory problem, and as such does not provide a reasonable basis for BellSouth's refusal to provide FastAccess to CLEC customers.

Unreasonable denial of service. Section 201(a) of the Communications Act imposes a duty on common carriers to furnish service upon reasonable request. BellSouth's practice violates the Act, as CLEC voice customers are being denied service when they request FastAccess DSL service from BellSouth. As the FCC has held, "carriers who are requested to

provide service should make all efforts to do so,” particularly when the carrier occupies a monopoly “bottleneck” position thus rendering service from the dominant carrier essential if the needs of customers or competing carriers are to be served.⁸⁵ Given BellSouth’s virtual stranglehold on the DSL market throughout its region, and the way it restricts competitive provisioning of DSL, BellSouth’s refusal to provide service is rendered all the more unreasonable.

Unreasonable discrimination. BellSouth’s practice is also blatantly discriminatory. Section 202(a) prohibits carriers from unreasonably discriminating among customers. The Commission has established a three-prong test for evaluating whether disparate treatment of similarly situated customers violates the Act. First, the Commission assesses whether the services at issue are “like one another.” Second, the Commission determines whether disparate pricing or treatment exists. Third, if disparate pricing or treatment is present, then the Commission must determine whether such disparity is justified and, therefore, not unreasonable.⁸⁶

So judged, BellSouth’s refusal to provide FastAccess to CLEC customers served over a UNE loop is clearly discriminatory. The services at issue are exactly the same: both the CLEC’s and BellSouth’s voice customers are seeking BellSouth’s retail DSL service. The two are clearly treated disparately, since only the BellSouth voice customer can obtain BellSouth’s DSL service. Finally, the disparity is not justified. BellSouth has offered no justification for refusing to serve CLEC customers other than claiming that the law does not require it to do so. Indeed, BellSouth

⁸⁵ *Hawaiian Telephone Company*, 78 FCC 2d 1062, ¶¶ 8-9 (1980). There is no question that this is a reasonable request for service as DSL service is a service that BellSouth provides to its own customers.

⁸⁶ *Elkhart Telephone Company*, 11 FCC Rcd 1051, ¶ 40 (1995).

should welcome the opportunity to provide DSL service to CLEC customers, particularly where the CLEC that is providing the voice service is for all practical purposes bearing the full cost of the loop. BellSouth's only conceivable motivation in rejecting this arrangement is that it wants to suppress competition for both local voice and advanced services.

Tying DSL and Voice Service Is Blatantly Anticompetitive. BellSouth's requirement that an end user seeking to purchase BellSouth's DSL service must also purchase its voice service constitutes an illegal tying arrangement, and a *per se* violation of the antitrust laws.⁸⁷ Though this is not an antitrust proceeding, the FCC has long employed antitrust-law principles to evaluate the anticompetitive conduct of entities within their jurisdictions.⁸⁸

In the *Private Payphone* case, for example, the FCC employed antitrust analysis in finding that a similar tying arrangement violated the underlying policy goals of the antitrust laws and, thus, was unreasonable under Section 201(b). AT&T established a plan that paid commissions to private payphone companies ("PPCs") for collect calls, third-party billed calls, and calling card calls (*i.e.*, "0+ service"). In order to be eligible for the commissions, the PPCs were required to designate AT&T as the presubscribed interexchange carrier (*i.e.*, "1+ service") for each PPC telephone line. *Id.* ¶ 2. The FCC found that AT&T's tying of its "0+" service to its "1+" service "violate[d] the underlying policy goals of the antitrust laws and was therefore unreasonable under Section 201(b)." *Id.* ¶ 25 Given the distinction between the 0+ and the 1+ markets, the FCC found that AT&T was thus leveraging its dominance in the "0+" market to impermissibly control the "1+" market. *Id.* ¶ 28. The Commission concluded that AT&T's

⁸⁷ See, e.g., *Eastman Kodak Co. v. Image Tech. Serv.*, 504 U.S. 451, 463 (1992).

⁸⁸ See, e.g., *AT&T's Private Payphone Commission Plan*, File No. ENF-87-19, 3 FCC Rcd. 5834, ¶ 23 (1988) ("*AT&T Private Payphone*").

conduct was sufficiently anticompetitive that it constituted an unreasonable practice under the Communications Act. *Id.* ¶ 26. The tie-bundling effectively foreclosed competition for the PPC's "1+" provider. *Id.*

The parallels between AT&T's arrangement and BellSouth's are striking. AT&T, at the time, dominated both the 0+ and 1+ market, and was using its dominance in the 0+ market to leverage further its dominance in the 1+ market.⁸⁹ Here, BellSouth is dominant in both the voice and DSL markets, and is using its bundled product offering of DSL and voice to leverage its position in both markets. BellSouth is requiring customers that want its DSL product to purchase its voice service even though these are two distinct services and even though the customer would prefer to have its voice service provided by another carrier. Since BellSouth controls upwards of 90% of the DSL market in Georgia and Louisiana, this tying arrangement forecloses competition for many customers.

BellSouth cites inapplicable language in the Commission's *Line Sharing*⁹⁰ and *Line Sharing Reconsideration Orders*,⁹¹ which states that ILECs do not have to provide line sharing when they are not the underlying voice provider, as the basis for its refusal to provide FastAccess on CLEC UNE loops. As the Commission explained in the *Verizon-Connecticut 271 Order* (at ¶ 31), however, this "position view is based on a misapplication of the Commission's line sharing rules. Line sharing is not a retail service; it is a UNE provided under section 251(c)(3). Therefore, the restriction on the line sharing UNE is inapplicable to Verizon's obligations

⁸⁹ *Id.* at ¶ 26.

⁹⁰ Third Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 14 FCC Rcd. 20912 (1999) ("*Line Sharing Order*").

⁹¹ Third Report and Order on Reconsideration in CC Docket No. 98-147, *et al.*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 01-26 (Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

relating to retail services.” Thus, BellSouth cannot cite the *Line Sharing Orders* as a basis for evading its *retail* obligations. CLEC UNE voice customers who wish to buy FastAccess DSL *at retail* should be permitted to do so.

Paragraph 26 of the *Line Sharing Reconsideration Order* is not to the contrary. In that proceeding, AT&T had asked the FCC to rule that the *Line Sharing Order* imposed a requirement with respect to ILEC provision of *retail* DSL services. In denying AT&T’s request, the Commission explained that the *Line Sharing Order* “does not require that [ILECs] provide xDSL service when they are no longer the voice provider.” As the Commission explained in the *Verizon Connecticut 271* order, the *Line Sharing Order* did not address, as a substantive matter, retail issues. Thus, in the *Reconsideration Order*, the FCC did not find that ILECs may lawfully refuse to provide DSL service on lines on which it is not the retail voice carrier. To the contrary, the FCC simply determined that AT&T’s request was beyond the scope of a reconsideration order, which, for procedural reasons, was limited to consideration of the ILECs’ obligation to provide access to line sharing as a UNE. Indeed, the FCC specifically noted that it did *not* rule on the merits of AT&T’s request, instead inviting any party aggrieved by an ILECs refusal to provide service to file a petition alleging that the ILEC’s practice constituted an unreasonable practice in violation of the common carrier obligations to provide service to the public on a nondiscriminatory basis. *Line Sharing Reconsideration Order* ¶ 26.

B. BELLSOUTH’S PRACTICES IMPEDE THE MIGRATION OF ITS DSL CUSTOMERS

Mpower has been experiencing difficulty in migrating customers when the customer’s CSR indicates that the customer has BellSouth’s retail ADSL product. Previously, Mpower could have the ADSL product removed on the same LSR used for moving the customer’s voice service to Mpower. BellSouth has implemented a new policy that requires that the customer call

BellSouth's business office and request that the ADSL service be disconnected prior to the submission by Mpower of the LSR conversion request. This leads to delays in the due date for the conversion as Mpower has to wait until BellSouth processes the disconnect. This will also provide BellSouth an opportunity to attempt to win the customer back before the conversion order is even processed. BellSouth allows the CLEC to request disconnection of its other retail services such as Memory Call on the LSR so there is no reason for this exceptional treatment of ADSL.

What is even more troubling is the instances where the BellSouth CSR states that the customer has ADSL when the customer does not in fact have ADSL service. BellSouth places an internal USOC code of AD11 to signify if the customer may be an ADSL candidate. This code is placed even if the customer just inquires about ADSL service. BellSouth will not process the order until the code is removed, and the customer has to call to get it removed. When Mpower requests that the customer call BellSouth to remove the ADSL product, the customer gets confused because he/she never ordered the product. In many cases, the customer gets nervous and simply decides to stay with BellSouth. Mpower is forced to endure needless provisioning delays because of BellSouth's erroneous CSR, and, often loses the customer, due to BellSouth's practices.

VII. BELLSOUTH DOES NOT COMPLY WITH CHECKLIST ITEM 13

Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."⁹² Section 252(d)(2)(A)(i) provides for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that

originate on the network facilities of the other carrier.”⁹³ Madison River has been duly providing CABS invoices to BellSouth. These invoices cover the costs of terminating BellSouth’s customers’ toll calls to Madison River customers.

BellSouth disputes CABS invoices using a flawed process that is biased toward BellSouth and disputes legitimate billing. For example, Madison River recently issued a CABS invoice that included only toll usage. BellSouth disputed the billing because Madison River did not apply BellSouth’s self-provided percent of local usage (PLU). For example, if the total usage is 1,000,000 minutes and 1% or 10,000 minutes are toll, BellSouth would dispute an invoice for 5,000 minutes that included only toll. BellSouth would re-rate this invoice with 4,950 minutes billed as local and 50 minutes billed as toll. The end result is that BellSouth disputes a bill that it knows to be legitimate. BellSouth also does not provide any detail supporting its disputes other than a three or four word description. Without these details, Madison River does not have the ability to determine the reasonableness of BellSouth’s disputes. These bad faith and incomplete disputes preclude Madison River’s ability to recover its costs of termination.

VIII. BELLSOUTH’S LOCAL FREEZE PROGRAM IS ANTICOMPETITIVE AND NOT IN THE PUBLIC INTEREST

The Commission has noted that if a BOC local service provider freeze program has an anticompetitive impact it will raise public interest concerns necessitating withholding of section 271 approval.⁹⁴ BellSouth has implemented a local service provider freeze program and is using

⁹² 47 U.S.C. § 271(c)(2)(B)(xiii).

⁹³ 47 U.S.C. § 252(d)(2)(A)(i).

⁹⁴ *Verizon MA 271 Order* at ¶ 133.

the program in an anticompetitive manner and in violation of this Commission's rules regarding local service provider freezes. BellSouth provides that one of the ways the freeze can be lifted is through a three-way conference call involving the customer, the CLEC, and BellSouth. Mpower and Network Plus have experienced aggressive winback behavior on the part of BellSouth during these conference calls which has resulted in Mpower and Network Plus losing prospective customers. For instance, BellSouth has used the calls to offer enticements for the customers to stay with BellSouth.⁹⁵ In other cases, the customer seeking to make the switch to Mpower or Network Plus has no knowledge of requesting or authorizing the freeze.⁹⁶ These anticompetitive practices are in line with other anticompetitive practices of BellSouth. The Southeastern Competitive Carriers Association ("SECCA") noted that:

BellSouth is marketing to new CLEC customers soon after the customers commit to the CLEC. Some of these customers are persuaded not to honor their contract with the CLEC and return to BellSouth even before the customer converts to the CLEC.⁹⁷

There are other problematic aspects of BellSouth's local service provider freeze program. Mpower has obtained a copy of a sample BellSouth letter of agency, attached hereto as Exhibit C, which is very troubling. The LOA does not provide:

- An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;⁹⁸

⁹⁵ *In re Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Florida Public Service Commission Docket No. 960786-A-TL, Notice of Withdrawal of Pre-filed Testimony of Scott Sarem at ¶ 10 (Oct. 3, 2001).

⁹⁶ *Id.*

⁹⁷ *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 12 (July 16, 2001).

⁹⁸ 47 C.F.R. § 64.1190(d)(1)(I).

- A description of procedures to lift the freeze, an explanation that these steps are in addition to the Commission's verification rules for changing a subscriber's preferred carrier selections, and an explanation that the subscriber will be unable to make a change in carrier selections unless he or she lifts the freeze;⁹⁹
- An explanation of any charges associated with the freeze.¹⁰⁰
- Language that specifies that the customer will be unable to make a change in carrier selection unless he or she lifts the preferred carrier freeze.¹⁰¹

The letter of agency to change service providers is also combined with the letter of agency for the implementation of the preferred carrier freeze which appears to violate the requirements of 47 C.F.R. § 64.1130(b) that a letter of agency for carrier changes be a separate document that only contains language authorizing the carrier change. The combining of the local service freeze option with the letter of agency language for service changes will only create the potential for confusion and could lead customers to mistakenly implement local service freezes on their account when all they wanted to do was change service providers. This could certainly explain why many Mpower customers were not even aware they had such a freeze on their account. In addition, BellSouth's policies make it difficult for carriers to lift the freeze. WorldCom noted that BellSouth requires the calls from the customers to lift the freeze to take place during BellSouth's regular business hours which is often not in concert with the time MCI is marketing local service.¹⁰²

⁹⁹ 47 C.F.R. § 64.1190(d)(1)(ii).

¹⁰⁰ 47 C.F.R. § 64.1190(d)(1)(iii).

¹⁰¹ 47 C.F.R. § 64.1190(d)(3)(ii)(D).

¹⁰² *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, Initial Comments of WorldCom, Inc., Affidavit of Sherry Lichtenberg at ¶ 18 (May 29, 2001).

In its order on the issue of subscriber carrier selection changes, the Commission addressed the issue of preferred carrier freezes for local exchange service.¹⁰³ In the its *Slamming Order*, the Commission declined to prohibit incumbent LECs from soliciting or implementing preferred carrier freezes for local exchange service.¹⁰⁴ The Commission did state, however, that:

in areas where little or no local competition exists, there is no real opportunity for slamming and the benefit to consumers from the availability of freezes is significantly reduced. Aggressive preferred carrier freeze practices under such conditions appear unnecessary and raise the prospect of anticompetitive conduct. We encourage parties to bring to our attention, or to the attention of the appropriate state commissions, instances where it appears that the intended effect of a carrier's freeze program is to shield that carrier's customers from any developing competition.¹⁰⁵

It is clear that BellSouth's local service provider freeze is being used to stunt competition. The Commission should conclude, as the Texas Public Utilities Commission has concluded, that local carrier freezes should not be permitted in light of the fact that local competition remains nascent and that such a freeze would have a detrimental impact on the development of local competition. The Texas PUC held that:

[r]ecent events have shown that local service competition in Texas has great promise. However, local competition is still in its early stages, particularly for residential customers, and far behind the level of competition in the intraLATA and interLATA markets. Furthermore, local service slamming is considerably more difficult, more expensive, and more easily discovered than long distance service slamming. Due to the limited value of a local service freeze and the potential for anti-competitive use, the proposed amendment prohibits freezes on local telephone service.¹⁰⁶

¹⁰³ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Procedures Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129 (Dec. 23, 1998) ("FCC Slamming Order").

¹⁰⁴ *Id.* at ¶ 135.

¹⁰⁵ *Id.*

¹⁰⁶ The Texas Public Utilities Commission reached this conclusion in its proposed amendment to §26.130 of its rules relating to the Section of Telecommunications Utilities, issued February 2, 2000.

This Commission should reach a similar conclusion and find that BellSouth's use of local service freezes is not in the public interest.

IX. IF THE COMMISSION GRANTS THE APPLICATION, SUPPLEMENTAL COMPETITIVE SAFEGUARDS MUST BE ESTABLISHED

The Commission considered backsliding measures in both the New York and the Texas proceedings as part of its public interest analysis.¹⁰⁷ In New York and Texas the Commission found that the performance monitoring and enforcement mechanisms in place “in combination with other factors” provided sufficient assurance that the local market would remain open after Bell Atlantic received Section 271 authorization.¹⁰⁸ In New York, the Commission relied heavily upon the fact that the performance monitoring and enforcement mechanisms contained the following attributes:

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier to carrier performance;
- a reasonable structure that is designed to detect and sanction poor performance when it occurs;
- a self executing mechanism that does not leave the door open unreasonably to litigation and appeal;
- and reasonable assurances that the reported data is accurate.¹⁰⁹

¹⁰⁷ *BANY 271 Order* at ¶¶ 429-43; *SBC TX 271 Order* at ¶¶422-30.

¹⁰⁸ *BANY 271 Order* at ¶ 429.

¹⁰⁹ *Id.* at ¶ 433.

The Commission accepted the New York plan because it found that it was “reasonably self-executing.”¹¹⁰ In the Texas 271 Order the Commission relied upon reasoning and analysis similar to that it had used in New York. It found that SBC’s performance remedy plan provided assurance that the local market would remain open after SBC received interLATA authority.

The Commission should carefully scrutinize the proposed performance penalty plans and establish significantly stronger backsliding measures. Experience has shown that, in fact, the approach accepted in New York and Texas is not sufficient to deter backsliding. The Commission is well aware that there has been significant backsliding in New York. The OSS problems that CLECs are currently experiencing in Georgia and Louisiana are similar to deficiencies that plagued CLECs in New York. On February 7, 2000, this Commission commenced an investigation into Bell Atlantic New York’s potential violations of Section 271 in connection with lost or mishandled orders submitted by its local service competitors. The Commission found:

Evidence submitted by Bell Atlantic in this investigation suggests that Bell Atlantic’s performance in providing order acknowledgments, confirmation and rejection notices, and order completion notices for UNE-Platform local service orders deteriorated following Bell Atlantic’s entry into the New York long distance market. Data submitted by Bell Atlantic indicates that the problem appears most acute for January and February of this year. Specifically, Bell Atlantic indicates that it received trouble tickets from competing carriers in November 1999 regarding 33,000 orders; 60,000 in December 1999, and more than 86,000 in January 2000. For the first eleven days of February 2000, Bell Atlantic reports receiving trouble tickets regarding another 48,000.¹¹¹

¹¹⁰ *Id.* at ¶ 441. While the Commission recognized that any “exceptions” or “waiver” process could effectively destroy the self-executing aspect of any plan it found that the three exceptions/waivers allowed in New York appeared to be generally reasonable and the New York Commission had stated that it would consider waiver requests only in “limited, extraordinary circumstances.”

¹¹¹ *Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to provide In-Region, InterLATA Service in the State of New York*, Order, FCC 00-92, 15 FCC Rcd. 5413 at ¶ 7 (March 9, 2000).

The number of affected orders is astounding. Based on this terrible OSS performance, Bell Atlantic was required to make a contribution of \$3,000,000 to the U.S. Treasury and the NY PSC had ordered Bell Atlantic to make \$10 million in rebates to competitors because of electronic ordering problems.¹¹² Verizon's overall performance in New York did not improve. In December 2000, Verizon was required to pay over \$3.5 million to CLECs pursuant to the New York Performance Assurance Plan. For January 2001, Verizon owed \$3.8 million.¹¹³ These amounts are, of course, a drop in the bucket for a company that had a net income of \$2.0 billion for the first quarter of 2001.¹¹⁴ The pervasive OSS problems with this application suggest that the potential for backsliding is even greater for BellSouth.

In Texas, the Texas legislature has noted that the level of competition has not improved since SBC's 271 approval. As AT&T chronicles. "The *TPUC Report* makes clear that even today, a year after obtaining 271 authorization in Texas, SWBT retains monopoly control of the residential local market in Texas and has raised prices for local service."¹¹⁵ In Texas, AT&T has reported in detail the difficulties it has encountered in obtaining penalty payments. Further, it states that the Texas remedy plan has "not generated payments that are automatically triggered by noncompliance with the applicable performance standards."¹¹⁶ Therefore, even if the Georgia

¹¹² Edie Herman, *FCC Decides BA Has Satisfied OSS Requirements in N.Y. State*, Communications Daily, Vol. 20, No. 120, June 21, 2000 at p. 2.

¹¹³ CC Docket 01-9, Reply Comments of Covad Communications at 2 (Feb. 28, 2001)..

¹¹⁴ Verizon News Center, *Verizon Communications Posts Strong First Quarter Earnings* (April 24, 2001).
<http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=53088>

¹¹⁵ CC Docket No. 01-194, Comments of AT&T Corp. at 88-89 (September 10, 2001)(*"AT&T AR/MO Comments"*).

¹¹⁶ *AT&T AR/MO Comments* at 54.

and Louisiana plans are as strong as New York or Texas, the Commission should recognize that those plans were not sufficient and stronger plans should now be adopted.

The backsliding provisions should cover all stages of the provisioning process, including pre-ordering, ordering, maintenance and repair, and billing, and impose stiff penalties for backsliding. In addition, BellSouth should be required to adhere to a clear code of conduct to preclude further instances of its anti-competitive winback practices.

X. CONCLUSION

For the foregoing reasons, the Commenters urge the Commission to deny BellSouth's Application for Provision of In-Region InterLATA Services in Georgia and Louisiana.

Respectfully submitted,



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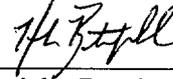
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Dated: October 22, 2001

CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on October 22, 2001, I caused to be served upon the following individuals the Comments of Mpower Communications Corp., Network Plus, Inc., and Madison River Communications, LLC in CC Docket 01-277:



Harisha Bastiampillai

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**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**

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.

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September 19, 2001

VIA COURIER

Alexander Starr, Chief
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Request for Commission Commencement of Pre-Filing Settlement Negotiations Between Adelpia Business Solutions, Inc., Madison River Communications, LLC, Mpower Communications Corp., and Network Plus, Inc. (the "Complainants") and BellSouth Telecommunications, Inc.

Dear Mr. Starr:

Adelpia Business Solutions, Inc., ("Adelpia") on behalf of its operating subsidiaries in BellSouth territory; Madison River Communications, LLC ("Madison River"), Mpower Communications, Corp. ("Mpower"), and Network Plus, Inc. ("Network Plus") (together the "Complainants") by their undersigned attorneys, and pursuant to Section 1.730 of the Commission's Rules, 47 C.F.R. § 1.730, request that the Commission commence pre-filing settlement negotiations with BellSouth Telecommunications, Inc. ("BellSouth") concerning the issues raised in this letter. As described below, BellSouth has violated the Communications Act of 1934, as amended (the "Act"), and the Commission's *Supplemental Order Clarification* by refusing to convert existing customer special access circuits to individual unbundled network

elements ("UNEs") -- e.g., a loop or interoffice transport -- upon the request of the Complainants.¹ BellSouth's refusal to permit conversion of existing special access circuits to individual UNEs violates its obligation under Section 251(c)(3) of the Act to provide UNEs on rates, terms, and conditions that are just, reasonable, and nondiscriminatory and the Commission's decisions on permissible conversions of special access circuits to enhanced extended loops ("EELs"). BellSouth's refusal to permit conversion of existing special access circuits to individual UNEs also violates BellSouth's interconnection agreements with competitive local exchange carriers ("CLECs"). Complainants also note that the requested conversion from special access to UNEs of single network elements is routinely provided by other ILECs, including Verizon and Ameritech. Most strikingly, the Georgia Public Service Commission has required BellSouth to perform such conversions with respect to EELs, rather than forcing CLECs to "go through the circuitous process" of submitting two orders.² It is a similar "circuitous process" that BellSouth seeks to impose upon Complainants and other CLECs with respect to the conversion of special access circuits to UNEs.

The Complainants request that the Commission direct BellSouth to:

- Implement conversions of special access circuits to individual UNEs as billing changes without any New Business Request/Bona Fide Request (NBR/BFR) or physical change in the facility provided.

¹ *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, 2001) ("*Supplemental Order Clarification*").

² *In re: Generic Proceeding to Establish Long-Term Pricing Policies For Unbundled Network Elements*, Docket No. 10692-U, at 12 (Ga. PSC Feb. 1, 2000).

- Establish a “spreadsheet” i.e., billing change order, conversion process similar to the process used to convert special access circuits to EELs;
- Establish an effective billing date for the conversion that does not reward past or future delay by BellSouth, such as the date of the Complainant’s conversion request or the date of notification by a Complainant 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 Complainants.

Issue for Resolution

- When requested by Complainants to convert special access circuits to single unbundled network elements, should BellSouth be permitted to physically terminate the special access circuits and require Complainants to order new facilities, with associated installation and other non-recurring charges and cut-over risks, or otherwise require a process other than a simple billing change for in-place facilities?

Factual Background

Adelphia, Madison River, Mpower, and Network Plus are CLECs operating in BellSouth territory. Each of the Complainants has purchased special access circuits between two collocation facilities and between collocation sites and end user customers. These circuits would normally be purchased as UNEs from interconnection agreements, but for various reasons, were purchased as special access circuits from BellSouth’s tariffs.³ Subsequently, the Complainants

³ The substantial time entailed by protracted interconnection agreement negotiations frequently forces CLECs to purchase special access circuits rather than UNEs to serve their customers. CLECs frequently face strict business plan deadlines, and in order to meet these in-service schedules, the CLECs feel that they have no choice but

have requested, and BellSouth has refused, to convert these existing special access circuits to individual UNEs, such as loops or inter-office transport. Instead, BellSouth has insisted upon the disconnection of these facilities and the physical substitution of new facilities in order to provide the requested UNE.

BellSouth has acknowledged that the Commission's decisions and established procedures obligating it to convert special access circuits to EELs; however, BellSouth denies that it has any obligation to convert Complainants' special access circuits to single UNEs such as a local loop or inter-office transport. In response to Madison River's request, BellSouth identified a process by which Complainants may achieve their desired objective of converting special access circuits purchased from BellSouth's special access service tariffs to UNE loops or transport purchased from Complainants' interconnection agreements with BellSouth. This process, however, is not a conversion of the existing circuits from the status of special access to that of UNEs and is unacceptable to the Complainants.

Under BellSouth's proposed conversion process, Complainants must submit new orders for the UNE loops, and after the loops are provisioned, submit disconnect orders for the existing special access circuits. BellSouth's position on the conversion of special access circuits to UNE loops or inter-office transport was described in a written response to Madison River dated August 20, 2001. BellSouth's response to Madison River was as follows:

This is in response to your verbal request on August 7, 2001, for an explanation in writing of BellSouth's position regarding the conversion of a Special Access Local Channel to an Unbundled Network Element (UNE).

As you may know, the requirement ordered by the Federal Communications Commission (FCC) to convert Special Access to

to purchase tariffed special access circuits to connect their customers while interconnection negotiations with BellSouth are ongoing.

loop/transport network elements does not apply to stand alone network elements. BellSouth will allow Madison River to substitute UNEs for individual tariffed services, e.g., special access local channels. Such substitutions are normally handled through the issuance of disconnect (D) and new connect (N) orders. Requests for any other process may be submitted through the New Business Request/Bona Fide Request (NBR/BFR) process consistent with Madison River's Interconnection Agreement.

Argument

The Complainants disagree with BellSouth's position on the process for conversion of special access circuits to individual UNEs for the reasons set forth below.

A. A Conversion Process to Individual UNEs Is Required Under the Commission's Supplemental Order Clarification

The conversion of special access circuits to individual UNEs is included within the requirements of the Commission's *Supplemental Order Clarification*. In that order, the FCC stated that, "the process by which special access circuits are converted to unbundled loop-transport combinations should be simple and accomplished without delay."⁴ The order went on to say, "[u]nder this process, the conversion should not require the special access circuit to be disconnected and re-connected because only the billing information or other administrative information associated with the circuit will change when a conversion is requested."⁵ If the Commission requires the conversion of special access circuits to combinations of UNEs without disconnection and re-connection, logically, the requirement to convert special access circuits to individual UNEs (a much simpler proposition) is also obviously permitted and required under the *Supplemental Order Clarification*, without disconnection and reconnection.

⁴ *Id.* at ¶ 30.

⁵ *Id.*

BellSouth's insistence on substitution of new circuits, rather than conversion to individual UNEs results in unnecessary non-recurring charges ("NRCs") being billed by BellSouth to the Complainants. BellSouth has stated that all NRCs applicable for the new UNE loops will be assessed. The Complainants are willing to pay the applicable tariff charges to install new special access circuits when first ordered; however, they are unwilling to pay unnecessary installation charges for a circuit that has already been installed. If BellSouth, as stated in paragraph 30 of the *Supplemental Order Clarification*, were to convert special access circuits to individual UNEs by only adjusting its billing system, it would be appropriate to charge CLECs a billing conversion charge similar to the charge imposed to convert special access circuits to EELs.⁶ BellSouth's proposed process, however, creates unnecessary and even harmful work by requiring the completely unnecessary disconnection and reinstallation of circuits to existing customers. To add insult to injury, BellSouth then proposes charging the Complainants installation and other fees for work that Complainants neither need nor wish to have performed.⁷ The Complainants believe that the same logic the Commission applied in the *Supplemental Clarification Order* to ILEC conversion of special access circuits to EELs applies in this instances where the tariffed service is being converted to individual EELs.

B. BellSouth's Proposed Conversion Process Violates Section 251(c)(3) of the Act

Section 251(c)(3) of the Act states that "it is the duty [of the ILECs] to provide, to any requesting telecommunications carrier for the provision of a telecommunications service,

⁶ Such NRCs are not appropriate in those cases where, as discussed in footnote 3, above, BellSouth delays interconnection negotiations with CLECs and forces them to purchase special access services rather than individual UNEs.

⁷ The completely unnecessary costs that BellSouth seeks to impose for disconnecting and reconnecting elements are for all practical purposes the "wasteful reconnection costs" that the Commission's Rule 315(b) was designed to prevent, and that the Supreme Court cited in upholding that Rule. *Iowa Utilities Board v. Federal Communications Comm'n*, 119 S.Ct. 721, 737 (1999).

nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."⁸ BellSouth is violating Section 251(c)(3) because it provides inferior service to CLECs seeking conversions of special access circuits to individual UNEs when compared to the service quality it is providing to itself.⁹ BellSouth's process also violates Section 251(c)(3) because the unnecessary disconnection and reconnection and/or substitution of facilities and the imposition of a two-part application process with additional charges and processing delays, rather than a billing change for an in-place facility, does not constitute provision of UNEs on reasonable terms and conditions. Thus, neither the risk of disconnection of the customer nor the imposition of additional charges is incurred by BellSouth when providing service to its own retail customers. Discrimination is demonstrated by the fact that BellSouth insists upon the right to convert CLEC UNEs to its own retail use rather than install new facilities when it wins back a customer from a CLEC. Each of Complainants' interconnection agreements with BellSouth gives BellSouth the express right, when there is a disconnection of a CLEC customer that was served, in whole or in part, by use of BellSouth facilities or service, to "reuse the serving facility for the retail, resale service, or network element at the same location." BellSouth unquestionably included this language in its interconnection agreements so that it could transfer customers it

⁸ 47 U.S.C. § 251(c)(3) (emphasis added).

⁹ The FCC stated in the Local Competition First Report and Order:

Accordingly, we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; *See Interconnection Between*

wins back from one of the Complainants without incurring the expenses or disrupting customer service by substituting facilities, as discussed above. The Complainants are only asking here for the same non-discriminatory treatment from BellSouth.

Discrimination against CLECs is also shown because BellSouth's proposed conversion process for special access circuits to individual UNEs requires that CLECs use new and unproven outside plant facilities that are likely to have operational defects, rather than using BellSouth's facilities already in place and serving Complainants' customers. BellSouth's account team assigned to Network Plus stated that it would not reuse existing facilities after converting special access circuits to individual UNEs, while the BellSouth account teams assigned to Madison River, Mpower, and Adelphia indicated that they would try to get the local operational people to reuse existing facilities. BellSouth did not, however, guarantee these Complainants any results, only best efforts. Without a seamless conversion that is made possible by reuse of existing facilities, Complainants and their customers are at risk of outages or unavailability of facilities. The Complainants cannot put their reputation with their customers in BellSouth's hands without some guarantees.

Complaints have been filed with state public service commissions documenting numerous problems with BellSouth's special access circuits. With the substitution of new cable pairs, it is therefore highly likely at least some of the new circuits will have problems. Given the scale of problems, it is likely that a significant percentage of Complainants' customers will experience problems with substituted facilities. This negative customer impact reflects on the Complainants' reputations, not BellSouth's. The potential damage to a Complainant's

Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, CC Docket No. 96-98, at ¶ 312 (rel. August 8, 1996).

relationship with a single customer is important, but when inter-office facilities are involved, multiple customers may be impacted.

BellSouth's facility substitution process requires that Complainants have personnel on site at the customer's location for each circuit conversion. In order to leave the existing special access circuit in place, and install a new UNE circuit, BellSouth will have to install a new smartjack at the customer location. The customer equipment will be attached to the existing smartjack. Therefore, Complainants' personnel will have to disconnect the existing service, reconnect to the new circuit, and test the customer's service. There is no reason for this expense, out-of-service risk, and customer inconvenience on a circuit that is already operational. This is a serious discrimination against CLECs, because BellSouth does not need to do this when it uses a UNE obtained from a CLEC as a result of a customer winback.

BellSouth's proposal doubles the requirement for cable assignments in the Complainants' collocation sites. Circuits that are already moved to the Complainant's collocations are cross-connected by BellSouth to the Complainants' facilities. If the Complainants are forced to order new circuits for the UNE loops, they will have twice the required circuits terminating to it prior to the disconnect order on the special access circuits.

All of these factors place the Complainants at a competitive disadvantage vis-à-vis BellSouth in the conversion of special access circuits to individual UNEs. BellSouth does not incur these additional procedures, cost, or risk of service outages when it uses existing facilities in the conversion process.

Most recently, and perhaps in response to Complainants' objections to the cumbersome BellSouth process outlined above, BellSouth has proposed an alternative process that would eliminate all the unnecessary disconnection and reconnection set forth above. There is just one

catch: while BellSouth has imposed a \$50 non-recurring charge for a direct conversion of a special access circuit to an EEL, it seeks a non-recurring charge of \$1,000 for a direct DS-1 conversion and \$9,000 for a direct DS-3 conversion, without any disconnection and reconnection. These charges are obviously not cost-based, and are an exercise of BellSouth's power, absent regulatory intervention, to impose unreasonable and unnecessary charges on CLECs in order to thwart competition. A \$50 cap should be imposed upon direct conversions of special access circuits to DS-1 or DS-3 UNEs, which are no more complicated than conversion of special access circuits to EELs.

C. Other ILECs Offer CLECs Conversions of Special Access Circuits to Individual UNEs

The Complainants should not be disadvantaged by BellSouth's refusal to establish procedures to convert special access circuits to individual UNEs. Both Ameritech and Verizon have procedures established and have made conversions as requested by the Complainants. BellSouth's suggestion that Madison River employ the NBR/BFR process in effect asks Madison River to pay to develop procedures that BellSouth should already have in place and that other ILECs do have in place.

D. Relief Is Urgently Needed

Accelerated relief is urgently needed with respect to this matter. The additional charges that Complainants are forced to incur because of the BellSouth policy challenged herein are substantial, while the unnecessary process of disconnection and reconnection results in substantial delay and reduction in the quality of service. Competition is thereby severely impeded by BellSouth's policy. Delay in resolution of this issue would therefore result in a significant, irreparable harm both to the public and to Complainants and other CLECs.

Therefore, this is an appropriate case for the use of the Commission's procedures for accelerated resolution.

Request for Pre-Filing Negotiations

Complainants request that the Commission promptly commence pre-filing settlement negotiations pursuant to Section 1.730 of the Commission's Rules, 47 C.F.R. § 1.730, concerning the issue raised in this letter. Complainants respectfully request that the Commission direct BellSouth to implement the relief requested herein. If negotiations fail, Complainants request that the Commission accept a complaint under Section 208 of the Act for consideration under the accelerated "Rocket Docket" procedures.

Please date stamp and return the enclosed extra copy of this letter. Please do not hesitate to contact us should you have any questions regarding this matter.

Respectfully submitted,

Eric J. Branfman
Patrick J. Donovan

Counsel for Adelphia Business Solutions, Inc.,
Madison River Communications,
Mpower Communications Corp.,
and Network Plus, Inc.

cc: Dorothy Attwood
Jeff Carlisle
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Francis D.R. Coleman, Esq.

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

In the Matter of)	
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**COMMENTS OF MPOWER COMMUNICATIONS CORP.,
NETWORK PLUS, INC., AND MADISON RIVER COMMUNICATIONS, LLC**

EXHIBIT B

Mpower Chronology re UNE Conversion Issue

Continuing Chronology of Mpower's Efforts Since January 26, 1999 to Obtain From BellSouth The "Billing Conversion" of DS-3 Transport Circuit Pricing From Access to UNE Rates in Georgia

Date of This Issue - October 15, 2001

I. Summary and Legal Authority:

Mpower has been seeking since 1/26/99 to get BellSouth to comply with the statutes and regulations requiring BellSouth to convert a CLEC's DS-3 transport circuits to UNEs by the means the FCC has laid out with increasing clarity in one Order after another.

- In its First Report and Order, CC Docket 96-98, Rel. 8/8/96, the FCC stated that ILECs must provide "all technically feasible transmission capabilities, such as DS1, DS3..." (Para. 440) as UNEs and noted that "the 1996 Act requires BOCs to unbundle transport facilities prior to entering the in-region, interLATA market," citing 47 USC §271©(2)(B)(v). (Para. 439)
- In its Third Report and Order, CC 96-98, Rel. 11/5/99, the FCC concluded that carriers would not be impaired in their ability to serve high volume users "only when the EEL is provided" (Para. 298) and stated that ILECs "have developed routine provisioning processes to deploy the EEL using the ASR...and thus requesting carriers will not face material provisioning delays and costs to integrate the EEL into their networks." (fn 581)
- In its Supplemental Order Clarification, CC 96-98, Rel. 6/2/00, of more than a year ago, the FCC cited its expectations regarding EELs, which it had outlined in its Third Report and Order, and stated unequivocally that under these "routine provisioning procedures...the conversion should not require the special access circuit to be disconnected and reconnected because only the billing information...associated with the circuit will change when a conversion is requested." Thus, the FCC concluded that it "expect[s] that carriers will use this process for conversions" and thus, requesting carriers will "avoid material provisioning delays and unnecessary costs to integrate unbundled loop-transport combinations into their networks."

Clearly, BellSouth still refuses to recognize this obligation and comply with this process for Mpower and the unnecessary delays and costs continue to mount, as outlined below.

II. Chronology of Events:

- | <u>Date</u> | <u>Event</u> |
|-----------------------------|---|
| 1. <u>May 26, 1998</u> | The effective date of the first interconnection agreement between Mpower and BellSouth. The agreement included the terms and conditions necessary for Mpower to obtain DS-3 transport circuits as UNEs, excluding the price. |
| 2. <u>October 19, 1998</u> | Mpower still has not received from BellSouth the requested documentation on how to order UNE transport |
| 3. <u>January 26, 1999</u> | Mpower(Rick Heatter) letter to BellSouth requesting appointment of a designated representative to negotiate a resolution for converting the billing of DS-3 transport circuits from retail tariff rates to UNE rates without unnecessarily disconnecting and reconnecting the circuits. |
| 4. <u>February 16, 1999</u> | Mpower(Rick Heatter) letter to BellSouth repeating Mpower's request of January 26, 1999 that BellSouth appoint a designated representative with authority to settle this billing dispute, and reminding BellSouth of its obligation under the interconnection agreement to do so within 5 business days of receipt of Mpower's earlier request. |

5. March 31, 1999 Over two months after receipt of Mpower's request, BellSouth(Marcus Cathey) replies by letter to Mpower(Rick Heatter) stating that the BellSouth interconnection agreement does not yet contain UNE rates for DS-3 transport circuits, and identifying Marcus Cathey as BellSouth's designated representative to "discuss the issues"
6. Spring, 1999 Mpower(Kent Heyman, Rick Heatter and others) meet with BellSouth(Marcus Cathey and others) in Atlanta. BellSouth agrees to convert the DS-3 transport circuits from retail tariff to UNE prices, once technical concerns are resolved. Mpower requests that the effective billing date ("EBD") for the conversion be retroactive to 1998 when BellSouth's legal obligation to provide UNE pricing began.
7. February 3, 2000 Mpower (James Mitchell) signs amendment to its Interconnection Agreement with BellSouth to include DS-3 pricing.
8. Summer, 2000 BellSouth (Gretchen Temple) advises Mpower (Judy Salisbury) that BellSouth cannot conversion of DS-3 transport circuits because their systems cannot support paper conversions and because some of Mpower's access circuits do not fit within BellSouth's definition of UNE transport.
9. November 6, 2000 Mpower(Judy Novo) sends email to BellSouth(Andrew Caldarello, Robert Parker and others) containing the agenda for a meeting on Nov 7, including "... Migration of tariff transport to UNE update,...what additional information is needed, who will project manage,... and ...intervals"
10. November 7, 2000 Mpower and BellSouth meeting includes discussion of conversion of DS-3 pricing from retail tariff to UNE pricing. BellSouth (Andrew Caldarello, Bob Parker) confirm to Mpower (Troy Goldie, Todd Lewis, Judy Salisbury) that Mpower's current tariffed DS-3s have no term commitments and are therefore not subject to early termination penalties.
11. November 8, 2000 Mpower(Judy Novo) email to BellSouth(Andrew Caldarello, Robert Parker and others) providing notes from Nov 7 meeting, including... "5. Bob/Kim/Andrew: By next meeting - ...draft price list and drawings for UNE transport applications in network ...determine if existing tariff circuits will have termination fees if disconnected or moved to UNE ... ECD for tariff to UNE migration...6. Todd: Send list of circuits to BellSouth/Judy that need research for termination fees and list of tariff to UNE transport...7. Judy: Send UNE DS3 ... ordering information to provisioning. Provisioning will initiate UNE DS3 orders this week."
12. November 9, 2000 Mpower(Judy Novo) email to BellSouth(Andrew Caldarello, Robert Parker and others) to confirm meeting later in day to "Review BellSouth recommendations for network cost reductions."
13. November 22, 2000 BellSouth (Robert Parker) reverses its earlier position and provides with Mpower a spread sheet prepared by BellSouth as the template that Mpower must complete in order for BellSouth to perform a "paper" conversion of DS-3 pricing, from retail tariff to UNE rates.
14. Winter, 2000 Mpower evaluates DS-3 UNE transport circuits for reliability, service repair times, etc, and confirms its desire to proceed with the paper conversion from access to UNE pricing.
15. February 27, 2001 Based on conference call with BellSouth (Bob Parker and others), Mpower (Troy Goldie and others) split some DS-3 transport circuits to comply with BellSouth's definition of a transport UNE, and Troy Goldie enters the resulting information into the template provided by BellSouth (Robert Parker) for the paper conversion of 35 DS-3s by end of Q1/01, and emails it back to BellSouth (Robert Parker). It contains the details of the 35 DS-3 transport circuits to be converted.

16. March 12, 2001 BellSouth (Robert Parker) emails to Mpower(Troy Goldie) a blank "Local Service Conversion Request" form.
17. March 19, 2001 Mpower(Troy Goldie) emails to BellSouth(Robert Parker) attaching "the basic circuit examples". The email Subject is entitled "Conference Call to Discuss ACCESS to UNE Conversion".
18. Late Mar/Early Apr Conference call between BellSouth (Bob Parker and others) and Mpower (Troy Goldie and others) during which BellSouth reneges on its earlier commitment to provide paper conversions of DS-3 transport from access to UNE pricing.
19. April 31, 2001 Effective today, SBC/Ameritech completes the paper (same facility) billing conversion from retail tariff to UNE pricing for 142 transport circuits for Mpower.
20. July 31, 2001 BellSouth(Andrew Caldarello) email to Mpower(Troy Goldie) confirming that BellSouth in reneging on its earlier commitment to provide paper billing conversions of DS-3s from retail tariff to UNE pricing, and stating that conversion from Access to UNE will require a "D" order to disconnect the DS-3s, an "N" order for new DS-3 transport UNEs, and an effective billing date ("EBD") for the lower UNE rate that will not take effect until the new "N" order is completed.
21. August 6, 2001 Mpower(Todd Lewis) contacts BellSouth(Robert Parker and Andrew Caldarello) regarding DS-3 conversions. They confirmed to him BellSouth's new requirements including a new facilities order, a disconnect facilities order, a waiting period for the new facility, and a hot cut with risk of outage.
22. August 17, 2001 Mpower(Scott Sarem) email to BellSouth(Marcus Cathey, Andrew Caldarello, Paul Parker and Robert Parker) requesting meeting ASAP but no later than September 15, 2001 and enclosing agenda of items including network issues.
23. August 20, 2001 Mpower(Francis Coleman) email to BellSouth(Marcus Cathey, Andrew Caldarello, Paul Parker, Robert Parker) requesting that Mpower(Scott Sarem's) request be discussed at Mpower/BellSouth scheduled team conference call at 3 PM ET on August 23.
24. August 21, 2001 Mpower(Francis Coleman) email to BellSouth(Marcus Cathey and Andrew Caldarello) adds the DS-3 billing conversion issue to the agenda for the August 23, 2001 team call, and requests that the conversion utilize the same DS-3 facility and be a "billing change only" with effective billing date to be retroactive to date of receipt of Mpower's conversion orders.
25. August 21, 2001 BellSouth(Andrew Caldarello) email to Mpower(Todd Lewis) indicating that BellSouth has "no mechanism in place to request the re-use of facilities" for the DS-3 conversions. [Note: It is now over two and one half years since Mpower first requested such conversion, and two months after the successful completion of a similar conversion for Mpower by SBC/Ameritech]
26. August 24, 2001 BellSouth(Robert Parker) email to Mpower(Francis Coleman) stating that Mpower may wish to use BellSouth's New Business Request (NBR) process to request spread sheet conversion of DS-#s from Access to UNE pricing.
27. August 24, 2001 BellSouth/Mpower team conference call, during which BellSouth again declines to do "same facility" DS-3 conversions on a spreadsheet basis. Mpower seeks quick solution with BellSouth on accelerated basis, and suggests a facilitation process.
28. September 6, 2001 Mpower/Scott Sarem email to BellSouth(Bill Smith, President of BellSouth's Interconnection Services) stating in part that

"....Specifically, BellSouth reneged on a promise made to Mpower to complete a paper conversion from Access to UNE for several pieces of transport in the Atlanta market"

Access to UNE conversions:

For several months Mpower had been working with Bellsouth to change many of its access circuits to UNEs. This was the result of several months of discussion where it was found by Bellsouth that there is no reason why Mpower should not be able to have the exact same transport in place as a access treated as a UNE. This promise was based on the fact that Mpower's transport had been provisioned from its collocation cages located in Bellsouth central offices back to Mpower's switch for the purpose of transporting local interconnection traffic. As late as May of 2001 BellSouth was working on a paper transfer of the circuits in question from access classification to UNE classification. It is important to note that we recently completed the exact same transaction with SBC in the Ameritech region."

29. September 10, 2001 BellSouth/Mpower team conference call, during which BellSouth informs Mpower that the DS-3 spreadsheet conversion issue has been reviewed again by their senior management, that BellSouth expects to inform Mpower of the results on BellSouth's Strategic Advantage Conference in Florida on Thursday September 13, 2001, and that BellSouth would prefer to resolve this issue without involving regulators. Mpower informs BellSouth that time is running out and that Mpower and 3 other CLECs are preparing a complaint letter against BellSouth to the FCC "Rocket Docket" which they expect will be ready to file within days.
30. September 13, 2001 BellSouth informs Mpower(Scott Sarem) that they propose to charge Mpower \$9,129 per DS-3 to be converted from access to UNE, and to not backdate the billing to their initial commitment for a bill date in June 2001. BellSouth further indicates that they will not be in a position to convert DS-3s from access to UNE for about two more months.
31. September 14, 2001 BellSouth(Quentin Sanders and Marc Cathey) call to Mpower(Francis Coleman) acknowledging Mpower's position that their proposal of a \$9129 charge per DS-3 conversion from Access to UNE was "way too high" and indicating that BellSouth expected to propose another approach by September 18, 2001.
32. September 18, 2001 BellSouth(Andrew Caldarello) email to Mpower(Scott Sarem and Francis Coleman) to discuss BellSouth's new Access to UNE conversion proposal by conference call at 10 AM CDT on September 19, 2001. This time is accepted by Mpower.
33. September 18, 2001 Mpower files supplemental comments at GA PSC withdrawing Mpower's support of BellSouth's 271 Application in GA and indicating, *inter alia*, that BellSouth has breached its commitment to Mpower to complete a paper conversion of DS-3s in the Atlanta market from Access Tariff to UNE pricing – a conversion which Mpower requested over two years ago – the continued delay of which is wrongfully costing Mpower very significant sums per month.
34. September 19, 2001 BellSouth(Andrew Caldarello) email to Mpower(Scott Sarem and Francis Coleman) postponing Access to UNE call and declining to set new time for call
35. September 19, 2001 Mpower, along with Adelphia, Madison River, and Network Plus, file letter with Enforcement Bureau of FCC requesting commencement of pre-filing settlement negotiations with BellSouth on this DS-3 billing conversion issue.
36. September 20, 2001 BellSouth(Andrew Caldarello) email to Mpower(Francis Coleman, Scott Sarem, and Todd Lewis) proposing conference call on September 21 to discuss Access to UNE conversion, and requesting details on DS-3 circuits to be converted in GA and FL, beyond the 35 in Atlanta
37. September 20, 2001 BellSouth(Andrew Caldarello) email attaching a proposed draft agreement for Access to UNE DS-3 conversions

38. September 20, 2001 Mpower(Francis Coleman) email to BellSouth(Andrew Caldarello) requesting conference call be moved to September 26 due to unavailability of some Mpower people, and requesting basic answers about draft agreement including 1) why does it cover changed facilities, when Mpower wants same facilities?; 2) why does it not deal with EBDs and delays? 3) why no "all inclusive" price per conversion?
39. September 21, 2001 Mpower(Scott Sarem) call to BellSouth(Andrew Caldarello and Marc Cathey) emphasizing importance of BellSouth guarantee of no service outage during conversion.
40. September 24, 2001 BellSouth(Andrew Caldarello) email to Mpower(Francis Coleman) scheduling conference call on September 26 to discuss Access to UNE conversions.
41. September 26, 2001 Conference call. BellSouth stated that the purpose of the call was for BellSouth/Cathy Williams, Tom Oakland, Laura McKenzie, Marc Cathey, Andrew Caldarello, Paul Parker, Licia Anderson, Lia Cooper to confirm Mpower's DS-3 conversion requirements. Mpower/Francis Coleman, Todd Lewis, Gary Durbin, Marilyn Ash, Rick Heatter, Scott Sarem again reiterated Mpower's conversion requirements – billing conversion only (no facility change), no conversion outages, reasonable all-inclusive pricing, EBD certainty, avoidance of EBD delays – initially for 35 DS-3s in GA. BellSouth continued not to propose any conversion pricing.
42. September 27, 2001 FCC sends September 19 "Rocket Docket" letter from Mpower and others to BellSouth, requesting BellSouth's written response by October 9, 2001, and scheduling a meeting of the parties at the FCC on October 30, 2001 to begin negotiations.
43. September 27, 2001 BellSouth(Kathy Williams) emails to Mpower(Scott Sarem) second proposed draft agreement for Access to UNE DS-3 conversions, still refusing re-use same facilities, and still containing no proposed onversion pricing.
44. October 1, 2001 At regularly scheduled conference call with Mpower/Fran Coleman, John Kerkorian, and Pat Wilson, BellSouth/Mark Cathey, Andrew Caldarello, Paul Parker, Bob Parker, Pam Tipton, Eric Gamble, and Ed Honeycutt declined to offer any date by which Mpower would receive BellSouth's proposal on DS-3 conversion pricing, and declined to clarify whether the conversion would be by records change rather than facility change.
45. October 5, 2001 Still no word from BellSouth on when or whether Mpower will receive BellSouth's proposal on paper conversion of DS-3 pricing.
46. October 12, 2001 Another week and still no word from BellSouth on when or whether Mpower will receive BellSouth's proposal on paper conversion of DS-3 pricing.
47. October 19, 2002 Another week and still no word from BellSouth on when or whether Mpower will receive BellSouth's proposal on paper conversion of DS-3 pricing.

**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**

EXHIBIT C

Sample BellSouth Letter of Agency

Example of Letter of Agency

Account Number:
Account Billing Name:
Billing Address:

Telephone Numbers covered by this change request (only the number listed will be changed):

This letter is to designate/authorize BellSouth to act as my agent in order to change the:

- local exchange carrier from _____ to BellSouth.
- local exchange freeze to BellSouth.
- intra-LATA long distance carrier from _____ to BellSouth.
- intra-LATA long distance carrier freeze to _____.
- inter-LATA long distance carrier freeze to _____.
- remove freeze on local exchange carrier.
- remove freeze on intra-LATA long distance carrier.
- remove freeze on inter-LATA long distance carrier.

I understand that I may select and be presubscribed to only one primary intra-LATA long distance carrier, one primary local exchange carrier, and one primary inter-LATA long distance carrier for any one telephone number. I also understand that the primary inter-LATA long distance carrier may be different from the primary intra-LATA long distance carrier or primary local exchange carrier, and that the primary intra-LATA long distance carrier may be different from the primary local exchange carrier.

I have elected to subscribe to the (name of product or service that is being promised or offered in exchange for the switch). This service (include a description of any and all terms, conditions or charges that will be incurred).

I am authorized to request changes on this account. I further understand that there may be a charge for each provider change and could involve a charge in changing back to the original primary carrier.

Name (Printed)

Signature
This signature will result in a change of your provider.

Date: _____

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

EXHIBIT D

TAG System Outages

OCTOBER 2001

- 10/11/2001 Outage # 2232. TSC # 1475085 First call received @ 8:14am cdt and verified @ 8:34am cdt. User's are receiving "Backend Resource limitation" errors when trying to do pre-orders and address validations this is effecting Lan users on Tag version 7602. At 9:14am cdt users report they are now able to operate in Tag, trouble was caused by navigator issues in GA,TN and AL.bxf
- 10/09/2001 Outage # 2227 . TSC # 1468656 First call received @ 7:26am cdt and verified at 7:46am. User's are unable to submit LSR's in the Ga region.bxf As of 8:45am this problem is now effecting the LA region. Navigator was bounced @ 8:10am, problem is still being researched because error logs hadn't completely cleared @ 9:09am .Service was restored @ 9:26am by clearing the queues and bouncing the Navigator.bxf
- 10/08/2001 Outage # 2224 TSC # 1466768. First call received at 1:42pm and verified at 2:02pm cdt. Users are unable to submit LSR's in the GA region.bxf Trouble resolved @ 2:13pm by bouncing the Navigator.bxf Received call @ 2:41pm advising trouble had resurfaced, currently being investigated.bxf Navigator was restarted @ 2:54pm to resolve.
- 10/08/2001 Outage # 2222. TSC # 1464657 User's are unable to submit LSR's in the GA region. All versions of Tag are effected. First call received @ 8:09am .Problem resolved @ 8:27am by bouncing the navigator server.bxf
- 10/01/2001 Outage # 2214. Tag version 7.5.0.12 Internet TSC # 1448234. User's are getting no response from TAG.bxf First call received @ 5:15pm and verified @ 5:35. Orbix box was bounced to resolve trouble. Service was restored @ 5:51pm cdt.bxf
- 10/01/2001 Outage # 2213. TAG LAN version 7.5.0.17. Problem was first reported at 2:00 PM CDT and was verified at 2:20 PM CDT. Users are not receiving notifications from TAG. Trouble was caused by a problem in one of the Leo control regions, as of 3:00pm cdt the problem has been resolved and customers are receiving notifications. bxf

SEPTEMBER 2001

- 09/27/2001 Outage #2208. TSC # 1436892. Problem first reported at 7:02 AM CDT and verified at 7:15 AM CDT. Users are receiving the following error message "Backend Resource Limitation Exception: Unexpected CORBA system exception (acquiring security credentials)."jph. The problem was resolved at 7:28 AM CDT. A problem was corrected on one of the TAG servers.
- 09/18/2001 Outage # 2198. First reported @ 2:08pm cdt and verified @ 2:28pm cdt. Users are unable to access the internet site due to a problem with the IOC firewall.bxfAs of 3:15pm cdt All proxy servers have been shut down due to a new worm virus NIMDA no ETR at this time.bxf at 3:35 PM CDT - This problem was classified as NO OUTAGE. While proxy servers were shut down access to TAG was left available. ava 4:15 PM CDT - As investigation of the virus continues BellSouth has discovered several CLECs affected by this virus and attempting to connect to BellSouth. These CLECs will be shut off from Internet communications with BellSouth. If you experience problems connecting to TAG via your internet connection please call EC Support at 888-462-8030. As of 5:18pm cdt it was determined that CLEC's did not pose a threat to the Bell network. No CLEC's were ever blocked or shut down.
- 09/13/2001 Outage # 2196 the first call was received @ 4:05pm cdt and verified @ 4:31pm cdt. Users are receiving BLP errors when submitting LSR's in the SF region.bxf Navigator was bounced @ 4:56pm cdt to restore service.bxf
- 09/10/2001 Outage #2190. All Tag versions. users are timing out when submitting LSR's in the Ga region.bxf Navigator server was bounced to correct trouble.As of 9:55am service has been restored.bxf
- 09/05/2001 Outage # 2180. Tag version 75016. Users are timing out when attempting to do pre-order transactions. First reported @ 12:18pm cdt and verified @ 12:38pm cdt.bxf At 1:19pm cdt user's Orbix server was found to be down. User will restart orbix server to correct.This is not a system outage.bxf
- 09/05/2001 Outage # 2179. All versions. First reported at 8:19 AM CDT and verified at 8:44 AM CDT. Users are receiving Backend Resource limitation errors when submitting transactions in the Alabama area. Update 9:45 AM CDT - This problem is no longer specific to Alabama. This is occurring in all 9 BellSouth states. Service was restored at 10:29 AM CDT. This outage was caused by communication problems with backend systems.

AUGUST 2001

08/31/2001 Outage # 2172. Version 7.5.0.16 1st reported @ 1:15pm cdt and verified @ 1:50pm cdt. Users are receiving sporadic "Backend Resource Limitation errors" and intermittent slow response times.bxf Problem resolved at 2:02 PM CDT by restarting version 7.5.0.16.

08/31/2001 Outage # 2171. TSC # 1375326. Versions 7.5.0.16 and 7.6.0.5 accessing via the LAN. First reported at 10:55 AM CDT and verified at 11:15 AM CDT. Users are receiving sporadic "Backend Resource limitation - Unexpected CORBA System exception" errors and slow response times. These errors are intermittent and currently being investigated. Additional BLP's were added to the server and the application was restarted @ 11:44am..bxf

08/30/2001 Outage # 2167 First reported @ 3:53pm cdt and verified @ 4:23pm cdt. Users are receiving "Corbra System exception errors.bxf Tag server was bounced @ 4:50pm cdt to restore service. bxf

08/30/2001 Outage # 2166 version # 7.6.0.12 lan. First reported at 1:25pm cdt and verified @ 2:06pm cdt. Users are not receiving a response when doing AVQ queries. bxf Server was bounced @ 2:38pm cdt to resolve trouble.bxf

08/29/2001 Outage # 2165. All versions of TAG accessing via the LAN and Internet. First reported at 10:10 AM CDT and verified at 10:30 AM CDT. Users are receiving "Backend Resource limitation" errors when submitting transactions in the D04 (Alabama) region. This problem was resolved at 10:46 AM CDT. This problem was caused by a locked up transaction on the D04 mainframe.

08/14/2001 Outage # 2142. All versions of TAG. First reported at 9:41 AM CDT and verified at 10:01 AM CDT. Users are unable to complete transactions in the Southeast Florida, South Florida, North Carolina and Louisiana regions.As of 11:13cdt service has been restored. Root cause is still under investigation.bxf

08/13/2001 Outage # 2139. Tag version 75015 1st call received @ 4:40pm cdt and verified @ 5:00pm cdt . Users are receiving error TGWT0102COM Unable to create tab object. Tag server was bounced @ 5:56pm user's now successful in submitting orders.bxf

08/06/2001 Outage # 2121. TAG LAN to LAN version 75016. TSC # 1311532. Outage first reported at 7:12 AM CDT and verified at 8:55 AM CDT. Users can not connect to server. At 9:00 AM CDT it was confirmed by customers that this problem was resolved. The root cause of this outage is still under investigation.

08/05/2001 Outage # 2120. First reported @ 6:39am cdt and verified @ 7:20am cdt. Users report they are getting no response from TAG versions accessed via the LAN. TSC # 1310435. Trouble resolved at 9:52 am cdt by bouncing the TAG server.

08/03/2001 Outage # 2114. TAG version 7.5.x and 7.6.x accessing via the LAN. Outage verified at 11:11 AM CDT. Users are sporadically reporting slowness accessing the box and sending transactions. Some are reporting "Unable to create TAP Object" errors and "BLP/POG" errors. These problems are sporadic and once reported resolved quickly. BellSouth is working toward a permanent resolution. As of 4:30 PM CDT - A configuration change will be made tonight during the TAG maintenance window to correct this problem. As of 8:15 AM CDT TAG is functioning properly. During the maintenance window configuration changes were made which have resolved the slow response times.

JULY 2001

07/30/2001 Outage # 2104. First reported @ 6:45pm cdt and verified @ 7:05pm cdt. Users report they are timing out and receiving communication failure errors.bxf TSC # 1297302 Trouble resolved @ 7:13pm cdt by bouncing the Tag server.bxf

07/30/2001 Outage # 2103 First reported @ 1:28pm cdt and verified @ 4:45pm. Users are receiving timeout errors and unable to connect to server.bxf Tag server was bounced @ 4:46pm cdt users are now able to connect.bxf. **Correction - this problem was first reported at 4:28 PM CDT. ava**

07/30/2001 Outage # 2102. Outage verified 1:33 PM CDT. Version 7.5.0.15 and 7.6.0.2 accessing via the Public Internet. Users are unable to connect to TAG. They are receiving "Unexpected Corba system exceptions" and "Security server not registered in implementation repository." Problem resolved at 1:45 PM C by restarting the versions.

07/26/2001 Outage # 2089. Trouble first reported @ 11:35am cdt Problem verified @ 12:20pm. User's are receiving "Corbra System Exception Error Connection Failure.bxf Tag server was restarted @ 12:21pm users report that they are now able to connect.bxf

07/25/2001 Outage # 2084 TSC # 1285774 Problem first reported @ 4:56pm and verified @ 5:32pm cdt. User 's report they are unable to connect to the server.bxf At 5:46pm cdt users report they are back up and running. Problem was resolved by bouncing the Tag server.bxf.

07/03/2001 Outage # 2007. TAG- all versions is currently experiencing a system outage. Problem reported and verified at 11:01 PM CDT. Due to an emergency maintenance for the LNP Gateway.TAG will not be available for LSR processing and NPAC beginning at 11:01 PM CDT until July 4, 2001 at 6 AM CDT.tg

07/02/2001 TAG all version. Outage # 2000. Outage was first reported at 1:18 PM CDT and was verified at 1:38 PM CDT. Users are unable to submit orders or retrieve data in the ARC (Georgia) region. Some users are receiving "Sync Contract failure" errors and others are receiving browser time-outs. The problem in the ARC region was resolved at 1:38 PM CDT.