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October 22, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
CY-B402
445 Twelfth Street, S.W.
Washington., DC 20554

Please deliver to:
9300 East Hampton Drive
Capitol Heights, Maryland 20743

REDACTED – FOR PUBLIC INSPECTION

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 El Paso Networks, LLC, PacWest Telecomm, Inc., and US LEC Corp in redacted form.

The Commenters are also submitting under seal the portions of supporting exhibits that contain material designated as confidential pursuant to the Protective Order in this matter. These pages bear a legend indicating that they are confidential. Questions pertaining to the access to this confidential material should be directed to the undersigned.

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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

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

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OFFICE OF THE SECRETARY

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 EL PASO NETWORKS, LLC PACWEST TELECOMM, INC., AND US LEC CORP.

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Dated: October 22, 2001

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SUMMARY

BellSouth should receive a failing grade concerning its provisioning of facilities and services to CLECs. CLECs generally order facilities either as unbundled network elements ("UNEs") or as tariffed products from BellSouth's special access tariffs. Regardless of the method of purchase, CLECs have been experiencing poor provisioning of such facilities. When the facilities are finally delivered, the CLEC and its customer have to endure numerous outages and poor response from BellSouth in regard to repair.

US LEC, as a major customer of BellSouth's high capacity facilities, has monitored BellSouth's performance in all stages of the provisioning process. What US LEC has experienced is inadequate performance at all stages of the process. In the ordering phase, BellSouth continually returns firm order commitments ("FOCs") beyond the required intervals. BellSouth also fails to provide a FOC that matches the customer's requested due date in numerous instances, and repeatedly fails to install the requested facilities on the promised date.

Once the facility is finally delivered, the nightmare really begins for the CLEC and the customer. US LEC has experienced hundreds of outages since January 2001, and the number of outages is increasing not decreasing. Since the end of August 2001, US LEC has been averaging nearly three outages a day. To compound the problem, it takes BellSouth days to repair the outages. BellSouth has admitted that 50% of these outages are due to human error. US LEC is attaching to these Comments a series of correspondence that demonstrates the Herculean efforts US LEC has had to undertake to get outages resolved, and the lack of BellSouth responsiveness on the outages. BellSouth does not deny that it has serious issues with its network reliability. Its solution, however, is to form teams and action plans to address the matter. The teams are

quickly disbanded, the action plans are never activated, and the problems continue, and get worse.

BellSouth knows it can continue this conduct with impunity as this Commission has heretofore declined to review special access provisioning in regard to checklist compliance. This lack of review coupled with the paltry penalties BellSouth must pay for service outages makes it cost-effective for BellSouth to provide poor service. The Commission must reevaluate its reluctance to review special access performance especially since the line between special access facilities and DS-1 and DS-3 UNE facilities is blurring and becoming increasingly irrelevant. Regardless of the way high-capacity facilities are characterized, CLECs use the facilities to perform essentially the same functions. In many instances, CLECs are left no choice but to purchase special access facilities due to poor UNE provisioning by BellSouth. Furthermore, the problems in special access provisioning and maintenance/repair are mirrored in regard to DS-1 and DS-3 UNE provisioning, suggesting that the problems are endemic to BellSouth's network.

Review of BellSouth's performance in regard to these vital facilities will leave the Commission with no other conclusion than that BellSouth is failing to meets its obligations in opening the Georgia and Louisiana markets to competition. BellSouth is also failing to meet the requirements of other vital checklist items. For instance in regard to Checklist Item 11, the performance data demonstrates that BellSouth is not meeting its obligations in regard to local number portability. BellSouth's response has been to challenge the metrics instead of improving its performance.

In regard to its OSS, there are significant concerns about the performance data that BellSouth is reporting. Numerous carriers have documented missing or inaccurate data that calls into question the validity of the data. Even taking the data at face value, however, BellSouth is not meeting the checklist requirements in regard to OSS.

BellSouth's application is also not in the public interest. BellSouth paints a rosy picture of competition in Georgia and Louisiana, but careful review of actual data on the state of competition portrays a much bleaker picture. Competition has failed to take root, and much of the blame must lie with BellSouth. BellSouth has not been promoting competition, but using anti-competitive measures to stifle competition. For instance, BellSouth engages in aggressive winback campaigns that disparage the financial stability and service quality of CLECs. Three states have had to impose marketing restrictions on BellSouth due to its anticompetitive conduct. The anticompetitive conduct takes other forms as well. US LEC has been forced to litigate over reciprocal compensation for ISP-bound traffic, and the applicable reciprocal compensation rate, despite the clear language of their interconnection agreements, and orders of the Georgia Public Service Commission requiring that such compensation be provided.

The standard of review should not simply be a pass/fail grade or something above an F. Rather, in order to serve customers and to foster competition, 271 applications should be rated a B or better. As demonstrated by the data discussed herein, BellSouth at best, gets a D. Granting BellSouth Section 271 authority is clearly not in the public interest.

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

In the Matter of	)	
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Joint Application by BellSouth Corporation,	)	
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Provision of In-Region, InterLATA Services in	)	
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COMMENTS OF EL PASO NETWORKS, LLC, PACWEST TELECOMM, INC. AND US LEC CORP.

El Paso Networks, LLC ("El Paso"), PacWest Telecomm, Inc. ("PacWest"), and US LEC Corp. ("US LEC") 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").[1] For the reasons stated herein, the Federal Communications Commission ("Commission") should deny the Application.

I. BELLSOUTH FAILS TO PROVIDE SPECIAL ACCESS FACILITIES AT PARITY

BellSouth, as the Commenters shall demonstrate, fails to provide high-capacity facilities on a nondiscriminatory basis. High capacity facilities, such as DS-1 and DS-3 loops and transport, are used by competitive local exchange carriers ("CLECs") in order to provision affordable, competitive broadband service options to business customers. As noted before the

[1] 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. 01-227, DA 01-2286, released October 2, 2001.

Georgia Public Service Commission, "next generation CLECs utilizing IP-based switching facilities to provide advanced services to small businesses in Georgia remain critically dependent upon BellSouth for high-cap connectivity to end users."[2] The Department of Justice has noted the "unique attributes of high-capacity loops, which are key inputs for CLECs competing for business customers."[3] CLECs purchase these facilities both as unbundled network elements pursuant to interconnection agreements and as tariffed products from the ILEC special access tariffs. CLECs have often been forced to purchase facilities as special access products given the poor provisioning of unbundled network elements by ILECs.[4]

Even when CLECs purchase special access facilities, however, CLECs encounter substandard and discriminatory provisioning and maintenance that significantly impacts their ability to compete. US LEC, for example, is one of BellSouth's primary facilities-based competitors, spending in excess of $38 million annually to purchase services from BellSouth. While one would think that a customer of this magnitude would rate superior service, BellSouth has every incentive to provision these vital facilities to US LEC in a discriminatory manner since it knows that this Commission has heretofore declined to evaluate an RBOC's special access provisioning. US LEC's experience demonstrates BellSouth's inadequate wholesale performance pervades all aspects of BellSouth's special access provisioning.

[2] GA PSC Docket No. 6863-U, Comments of BroadRiver Communication Corporation at Item ii, p. 2 (May 31, 2001) ("*BroadRiver GA Comments*").

[3] *Id., quoting,* CC Docket No. 01-88, Evaluation of the United States Department of Justice at 7, n. 23 (May 9, 2001).

[4] CLECs have been forced to purchase special access circuits instead of UNEs due to other BellSouth practices. For instance, BellSouth refuses to convert special access multiplexers to UNE multiplexers thereby requiring a CLEC to purchase special access circuits to access the multiplexing functionality. GA PSC Docket No. 6863-U, Comments of Cbeyond Communications, LLC at 10 (May 31, 2001) ("*Cbeyond GA Comments*"). CLECs have also experienced problems connecting UNE loops to special access transport. *Id.* at 8.

A. The Need for Monitoring of Special Access Provisioning

The Commission should reevaluate its blanket exclusion of special access services from Section 271 Competitive Checklist considerations. The Commission based its exclusion on the following:

> Although dedicated local transport and the interoffice portion of special access are generally provided over the same facilities, they differ in certain other respects. A number of these parties, however, assert that the checklist requirements focus on the provision of physical facilities, not the regulatory classifications that apply. We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some of the same physical facilities as a checklist item.[5]

The line between special access facilities and DS-1/DS-3 UNE facilities is increasingly becoming one of regulatory import only. As one commenter notes:

> The "special access line" is largely a consequence of the interLATA line-of-business restriction that BellSouth seeks to have removed in this proceeding. In simple terms, customers make two types of calls: local calls and long distance calls. Many larger customers separate these calls between two types of connections – so called "switched access lines" (for calls that BellSouth can handle), and "special access lines" (for calls that BellSouth cannot). This distinction, however, does not fundamentally change the service the customer is receiving, it only changes which carrier (BellSouth or a long distance company) terminates the call. Significantly, CLECs typically offer integrated services that render any distinction between "switched" and "special" lines irrelevant – CLEC lines are both "switched" and "special" because they handle both local and long distance calls.[6]

Thus, regardless of how the facility is characterized from a regulatory or tariffing perspective, the CLEC uses the facility to provide the same essential functions. This Commission has itself recognized that "incumbent LECs routinely provide the functional equivalent of an EEL through their special access offerings."[7] The Georgia Public Service

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5 *BANY 271 Order* at ¶ 340.

6 *SECCA GA Reply Comments*, Affidavit of Joseph Gillan at ¶ 16.

7 *UNE Remand Order* at ¶ 481.

Commission has also found that "special access circuits and DS1 combos are the same thing."[8] CLECs order special access facilities and DS-1 and DS-3 UNE facilities using the same Access Service Request process.[9] BellSouth relies upon this same industry standard for both special access and UNE DS-1s.[10] SBC and Qwest provide the same provisioning intervals for special access and DS-1 combinations.[11] Thus, it is an anomaly for the Commission to scrutinize a RBOC's performance for facilities when they are classified in one category, but to not evaluate its performance for those same facilities when they are classified in another category.

The situation is particularly troublesome when the CLEC is forced to order the facilities as special access facilities. Cbeyond noted that provisioning intervals for DS-1 UNEs are much longer than retail intervals, thus, requiring CLECs to order higher priced special access services to obtain shorter provisioning intervals that are competitive at the retail level.[12] In addition, Cbeyond noted that if it wants to get access to utilize UNE multiplexers, it must purchase special access circuits.[13] Also, while BellSouth's retail unit is able to order special access circuits electronically, CLECs must place orders for DS1 UNEs via a "less efficient manual process that is prone to errors and delays."[14] This forced migration – from both an economic and competitive viewpoint -- of CLECs to special access facilities essentially removes provisioning of high-capacity facilities from regulatory oversight.

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[8] *Re MCIMetro Access Transmission Services, LLC*, Georgia Public Service Commission Docket No. 11901-U, Order on Reconsideration, 2001 WL 1021085, *2 (April 17, 2001) ("*MCImetro GA Order*").

[9] *Id.*

[10] GA PSC Docket No. 6863-U, Comments of Cbeyond Communications, LLC at 14 (May 31, 2001) ("*Cbeyond GA Comments*").

[11] *Id.*

[12] *Cbeyond GA Comments* at 15.

[13] *Cbeyond GA Comments* at 9.

[14] *Cbeyond GA Comments* at 16; *see also, MCImetro GA Order* at *1.

The situation is particularly problematic given the difficulties CLECs have been experiencing with regard to the provisioning of special access services. For instance, in New York and Massachusetts, proceedings have been initiated to address Verizon's continual failure to meet installation intervals for special access facilities.[15] However, in Massachusetts, Verizon has challenged the authority of the Massachusetts Department of Telecommunications and Energy to regulate the vast majority of special access facilities. Since this Commission's rules classify special access facilities on which traffic is more than 10% interstate as interstate facilities subject to federal jurisdiction, most special access facilities are subject to federal authority even when these facilities carry a significant portion of intrastate traffic.[16] Verizon has argued that this gives this Commission exclusive jurisdiction over these mixed-use facilities and denies jurisdiction to state commissions over such facilities.[17] This argument endeavors to preclude any attempts by state commissions to regulate the provisioning of the vast majority of special access service orders, even though it is local customers within that state whose service is being provided via these facilities.[18] Moreover, it is only due to the economic and competitive issues of pricing and provisioning intervals for special access that drive a CLEC to the federal tariff. Thus, such facilities fall into a regulatory "black hole" if a state finds it has no

[15] *Re Verizon New York Inc.*, New York Public Service Commission Case Nos. 00-C-2051 and 92-C-0665, Order Instituting Proceeding at 1 (November 24, 2000) ("*NY Special Access Order*"); *Investigation by the Department of Telecommunications and Energy on its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc. d/b/a Verizon Massachusetts' provision of Special Access Services,* Massachusetts Department of Telecommunications and Energy Docket No. 01-34, Vote and Order to Open Investigation at 2 (March 14, 2001) ("*MA Special Access Order*").

[16] *See, AT&T Communications of the Midwest, Inc. v. U S WEST Communications, Inc.*, Minnesota Public Utilities Commission Docket No. P-421/CC-99-1183, Order at 4 (August 15, 2000).

[17] *See,* MA DTE Docket No. 01-34, AT&T Communications of New England, Inc.'s Response to Verizon's Comments at 2 (April 30, 2001) ("*AT&T MA Response*").

[18] *AT&T MA Response* at 2.

jurisdiction over mixed access facilities, and this Commission declines to set standards for special access provisioning. This unfortunate reality provides even more of a perverse incentive for BellSouth to transform additional UNE special services orders into special access orders.

B. Ordering/Provisioning of Special Access Facilities

US LEC monitors BellSouth's provisioning of high capacity facilities in both the ordering and actual delivery phases.[19] US LEC monitors BellSouth's provisioning of T-1s in three specific areas. The first is firm order commitment ("FOC") interval. This metric was designed to measure BellSouth's ability to meet their interval of 48 hours to return a FOC except for project managed orders and local interconnection trunks. In April 2001, 48% of US LEC orders had the FOC returned beyond the 48 hour interval; in May 2001, 63% of the orders were returned beyond the interval; and in June 2001, 56% of the orders were returned beyond the interval. Clearly, these are unacceptable intervals and impact a CLEC's ability to manage installation of its customers. BellSouth's performance in this area rates an "F" for fail.

US LEC also measures BellSouth's ability to provide a firm order commitment that matched US LEC's requested due date or customer desired due date. In April and May 2001, 15% of the FOCs did not meet the requested due date, and in June 2001, 13% did not meet the requested due date. US LEC also reviewed BellSouth's ability to install to US LEC's requested due date. The facility acceptance date should be the day BellSouth delivers the circuit to US LEC. In April 2001, for 65% of the orders, the acceptance date did not match the requested due date; in May 2001, the requested due date did not match the acceptance date for 59% of the orders; and in June 2001, the percentage was 52%. US LEC also tracked the average number of business dates missed which was four days for April and May and three days in June 2001.

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[19] *See* Exhibit A, US LEC Review of BellSouth Provisioning Performance.

Again, these performance metrics are clearly unacceptable. Were one to evaluate these numbers based on the grading scale of any public school, BellSouth would receive a "D" or "F" in each of these categories.

US LEC also has encountered numerous instances of "blind FOCs." A blind FOC is when BellSouth sends US LEC a FOC with a firm order commitment date, and then on or near the delivery date notifies US LEC that the facility is not available and will not be delivered on the date. Based on the FOC received early on in the Special Access Ordering process, US LEC will have scheduled the cutover date with the customer and set up its technicians, staff of its customer, as well as technicians who support the customer's customer premise equipment to handle the cutover. BellSouth simply cancels the date without explanation. This failure of BellSouth is not merely a matter of inconvenience but one that wastes valuable time and resources of both the CLEC and the customer. 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 impact the competitive position of CLECs and BellSouth has every incentive to engage in substandard provisioning especially if it knows its performance is not monitored by this Commission.

Moreover, what cannot be found in any data submitted by BellSouth is the number of customers who stay with BellSouth and cancel their order with the CLEC. If the customer decides to cancel their order with the CLEC, their only near-term option is to stay with the monopoly provider.

C. Maintenance of High Capacity Facilities

In the Georgia 271 proceeding, US LEC documented the severe problems it was experiencing with BellSouth's maintenance and repair of high capacity facilities.[20] When a customer reports an outage, it contacts US LEC. US LEC opens an internal trouble ticket and investigates the problem. When the trouble is isolated to BellSouth's network, US LEC opens a trouble ticket with BellSouth.[21] From January 2001 to July 2001, US LEC experienced 388 outages on these circuits that it determined were due to problems on BellSouth's network. There was no dispute as to the cause of the problem.[22] US LEC monitored the "BellSouth Resolution Time" and "Total Time Open in Hours." The "BellSouth Resolution Time" tracks the elapsed time for BellSouth to resolve trouble on its facility. The "Total Time Open In Hours" tracks the total elapsed time from the time the US LEC trouble ticket was opened through the BellSouth trouble ticket resolution time, and the monitoring time after the ticket was closed to verify with the customer that the problem was corrected. This figure gives a complete picture of the customer's down time.[23] The average length of time required by BellSouth to resolve the trouble tickets was 54 hours. The average Total Time Open for these outages was 181 hours.[24] Outages of this frequency and duration imperils competition for customers who need high-capacity facilities. Since these facilities are used for vital business services, any protracted outage negatively impacts the CLEC's ability to keep the customer or obtain new ones, as well as the CLEC's reputation and brand

[20] GA PSC Docket No. 6863-U, Comments of the Southeastern Competitive Carriers Association, Affidavit of James M. Hvisdas (July 13, 2001) ("*Hvisdas Affidavit*").

[21] *Hvisdas Affidavit* at ¶ 6.

[22] *Id.* at ¶¶ 7-9.

[23] *Id.* at ¶¶ 9-10.

[24] *Id.* at ¶ 11.

The problems with outages continue for US LEC. As of early October, US LEC experienced an average of three outages a day.[25] US LEC's data shows that for the outages from the end of August to October 12th, the mean time to repair has been over nine hours.[26] Many of the outages appear to be due to gross human error on the part of BellSouth. In fact, during the October 18th weekly call during which US LEC and BellSouth review the outages from the preceding week, BellSouth representatives stated that in a review of 463 trouble tickets, 50% of US LEC's outages were the direct result of human error. It is not clear why the problems are being caused, and BellSouth's escalation process is very deficient. Moreover, BellSouth technicians are apparently making these errors in spite of internal safeguards such as alarm and warning signals prior to taking live circuits down. Outages due to human error can be prevented through better training and supervision. The fact that the outages have not been abated demonstrate BellSouth's disregard for service quality.

US LEC is attaching as Exhibit C to these Comments a series of correspondence with BellSouth that shows not only the severity of the problem and the time and expense US LEC has had to incur to seek resolution of the problem, but also BellSouth's failed response. The following is a summary of the correspondence:

- <u>June 13, 2001 BellSouth Letter from Susan Arrington, Manager, Regulatory and External Affairs to Terri Lyndall, Georgia counsel for US LEC</u> – BellSouth admits that there is a problem with its performance in provisioning and maintenance of special access facilities, but attempts to allay US LEC's concerns by stating that "US LEC is not the only customer that has expressed concern about BellSouth's performance with respect to

[25] *See* Exhibit B, Outages August 29-October 12, 2001, attached as a confidential exhibit.

[26] *Id.*

special access." BellSouth states that in response to the "failure frequency issues" it has implemented a Failure Frequency Process Improvement Team to "analyze the failure frequencies, identify root causes, and develop gap closure plans." It also stated that as a result of the team's findings that will be implemented in the "near future."

- July 11, 2001 US LEC Letter from Wanda G. Montano, Vice President, Regulatory & Industry Affairs to Susan Arrington, BellSouth – US LEC notes BellSouth's failure to make any specific commitments to rectifying US LEC issues. US LEC observes that despite the purported actions taken by BellSouth there has been no improvement in BellSouth's performance. US LEC asks for specifics about the "team" BellSouth put together to address the issue and how it managed to complete its work so quickly. US LEC notes how BellSouth's remark that other CLECs are experiencing network outages proves US LEC's point – that there is no network reliability.
- August 21, 2001 BellSouth Letter from Susan Arrington to Wanda Montano, US LEC – BellSouth claims that its Failure Frequency Process Improvement Team had been working on the problems for "some time" and has "completed its investigations and released its findings." BellSouth fails to offer any more specifics nor does it commit to a timeframe for root cause analysis that US LEC requested in its July 11th letter.
- September 21, 2001 US LEC from Aaron Cowell, Jr., President, to Phil Jacobs, President, BellSouth-Georgia – The letter follows-up on a meeting the two had at the end of August. Mr. Cowell regrettably notes that he had hoped the situation would improve after the meeting, but it has not. US LEC experienced its second OC48 outage affecting numerous US LEC customers. At the August 29th meeting, US LEC had expressed concern about the first OC48 outage which had taken 4 ½ days to resolve. US LEC also continued to

experience situations where DS-3 and DS-1s are unmapped and removed in central offices. The DS-3s contain live DS-1 circuits on them, and safeguards are in place to prevent live circuits being taken down, but the circuits keep going down. Another customer was out of service for seven hours on Monday, seven hours on Tuesday, and five hours on Wednesday because BellSouth could not find a clean cable pair. BellSouth then informed US LEC that the only solution would be to pull new fiber and gave a September 30th due date for the new fiber. Meanwhile, the customer remains out of service. US LEC attempts to no avail to escalate problems through the Access Customer Advocacy Center ("ACAC"). US LEC then contacted Mr. Jacob's office, who had given the assurances at the August meeting of improved service, but were advised that it was calling too much and to stop calling Mr. Jacob's office. US LEC would not have to attempt to escalate to that level if the ACAC and BellSouth's normal channels were responsive. US LEC notes that BellSouth has left it no alternative but to seek the assistance of the Georgia Public Service Commission.

- <u>September 26, 2001 Letter from Phil Jacobs, BellSouth, to Aaron Cowell, Jr., US LEC</u> – Mr. Jacbos states he has forwarded Mr. Cowell's letter to the Interconnection Services Group and that the issues raised are "operational issues" that are more appropriately addressed to US LEC's BellSouth account team.
- <u>October 8, 2001 Letter from Quentin Sanders, Vice President – Sales, Interconnection Services to Aaron Cowell, Jr.</u> – BellSouth admits that the two OC48 outages were caused by problems with BellSouth facilities. BellSouth claims it took "proactive steps" to address the issue, but, if so, it is unclear why the outages were so long and so disruptive. BellSouth also states that an action plan was implemented to address the two outages, but

it still had not completed root cause analysis on the problem. BellSouth states that it wished US LEC would have waited for it to implement its action plan before taking the issues to the Georgia Public Service Commission.

It is interesting to see how BellSouth's "responsiveness," which was already problematic to begin with declined after BellSouth's 271 application was endorsed by the Georgia Public Service Commission. The doors to upper level management for escalation purposes were quickly closed. The letters also demonstrates that BellSouth admits that it has a problem with its special access provisioning and that US LEC is not the only CLEC affected. BellSouth's response is to form teams and action plans, but the continued nature of the outages demonstrate that these responses are ineffectual. In fact, the paucity of details as to the actual nature of the BellSouth initiatives to address the problems suggests that they are band-aid solutions at best. In particular, it is troubling that the team BellSouth established was so quickly disbanded given the continuing nature of the problems. These outages are putting US LEC customers out of service for days and reflects badly on the US LEC product. Customers do not care if BellSouth is the cause of the problem; the customer has purchased reliable service and quick restoration of service when problems occur.

D. The Need for Performance Measurements and Penalties

It is clear from BellSouth's deficient performance in regard to special access circuits that adequate measures need to be implemented to ensure adequate provisioning. For instance, the "penalty" that BellSouth currently pays under the applicable tariff for outages is a service credit which is limited to the monthly charge for the circuit once the circuit has been out of service for 4 consecutive hours. Even if a circuit is down more than once, the CLEC customer is only reimbursed once. If the circuit is out of service for less than 4 hours, then the credit issued by

BellSouth is 1/1440th of the monthly cost multiplied by each 30 minute increment of outage (according to BellSouth's tariff, there are 1,440 30-minute increments in a month). So, a circuit which bills $325 per month and is out for 60 minutes is credited 46 cents ($325 divided by 1440 = $23 cents times two 30 minute increments). This paltry amount – be it the full circuit amount or the laughable 46 cents -- by no means compensates CLECs for the damage, both tangible and intangible, caused by the outage.

BellSouth also fails to proactively monitor its network. US LEC has repeatedly asked BellSouth if it monitors its network, such that BellSouth is aware of the trouble and working it without waiting to be notified by the customer, US LEC. BellSouth has repeatedly advised US LEC that at the DS-3 level, it does proactively monitor facilities. At the DS-1 level, reports are prepared 24 hours in arrears.

There is also a complete lack of performance measurements for high-capacity facilities. As will be shown below, BellSouth has been intransigently refusing to have its performance monitored in regard to DS-1/DS-3 facilities, so it will most definitely resist such monitoring for its special access provisioning especially since under the current system it can poorly provision such facilities with impunity.

BellSouth also self-reports its performance metrics by characterizing trouble tickets as Info tickets or as trouble tickets. This characterization of tickets affects the performance metrics as well as salary treatment of BellSouth employees depending upon whether the metrics are met. US LEC recently challenged a number of trouble tickets which BellSouth had characterized as Info tickets which US LEC believed were improperly classified. BellSouth investigated itself (since the CLECs have no ability to do so) and USLEC was told that BellSouth had mis-characterized 30% of its US LEC trouble tickets. US LEC is attaching a series of e-mails on this issue as Exhibit D. These tickets are allegedly being re-reported. On September 14, 2001, US LEC requested a detailed list of the tickets which were being re-characterized as well as those which remained as Info Tickets. This would allow us to determine whether BellSouth has corrected all the tickets. As of the date of this filing, BellSouth has not provided this new report, nor has it stated why they have not or when they will provide the report.

II. BELLSOUTH FAILS TO PROVIDE ADEQUATE NUMBER PORTABILITY IN VIOLATION OF CHECKLIST ITEM 11

Section 271(c)(2)(B) of the 1996 Act requires an RBOC to comply with the number portability regulations adopted by the Commission pursuant to section 251. Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[27] The 1996 Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[28]

In the *Second Louisiana Order*, this Commission found that the BellSouth failed to meet Checklist Item 11 because of its poor performance in coordinating provision of loops with number portability.[29] AT&T notes that its customers continue to experience problems with coordinated customer conversions.[30] In addition, its customers have "experienced numerous and persistent problems" with BellSouth's implementation of number portability, including

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[27] *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 ¶ 369 (June 30, 2000) ("*SBC TX 271Order*").

[28] *Id.*

[29] *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, ¶ 279 (1998) ("*Second Louisiana Order*").

reassignment of telephone numbers, duplicate billing by BellSouth, loss of inbound service, and problems with partial ports of service.[31] Some AT&T Broadband customers endured loss of their long distance service because BellSouth "erroneously recorded that the customer was disconnecting service rather than changing providers."[32] As AT&T notes, while BellSouth causes the problems, it is often the CLEC that the customer blames.[33]

In Louisiana, AT&T notes that BellSouth reassigns numbers that CLEC customers have ported with them.[34] AT&T also observes that some customers that port their number upon changing service to a CLEC will experience double billing because BellSouth does not stop billing the end user.[35]

The problems are compounded by a lack of service center support due to insufficient staffing. For instance, until recently, all LNP-related problems were referred to a single person.[36] Another person has been recently added to cover the hours when the other person is out of the office, but given all the problems with LNP issues, more than one or two people are clearly needed.[37]

The performance data that BellSouth reports show that there are clearly problems with LNP. In addition to the problems with FOCs on LNP orders described below in the OSS section,

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30 *AT&T GA Reply Comments* at 49.

31 *Id.*

32 *Id.*

33 *Id.*

34 *Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region*, Louisiana PSC Docket No. U-22252(E), Staff's Final Recommendation at 107 (2001) ("*LA Staff Recommendation*").

35 *Id.*

36 *AT&T GA Reply Comments* at 49..

37 *Id.*

BellSouth missed four of the nine submetrics for the May-July period for order completion interval for LNP standalone.[38] BellSouth did not meet the % missed installation appointment metric for INP standalone in the May-July period.[39] For average completion notice interval, BellSouth did not meet the retail analogue for the measure for six of the nine submetrics in May-July period, and missed all the submetrics for LNP standalone.[40]

These performance deficiencies are particularly troubling because as the Commission has noted number portability is essential to meaningful competition and provides consumers flexibility in the way they use their telecommunications services.[41] What is particularly problematic is that when BellSouth's performance is below standard in certain areas such as average disconnect timeliness it simply states that the metric does not provide meaningful information, and asks the Georgia PSC to change the metric.[42] It appears that BellSouth's strategy for metrics it does not like is to first apply self-help by not paying the penalties, and then attempt to have the metrics changed, as opposed to determining the root cause of the problem. Moreover, BellSouth refuses to pay CLEC penalties imposed by the Georgia Public Service Commission for failure to meet these metrics and instead allegedly places the amount in escrow. CLECs have yet to be notified where the money is being escrowed, or the amounts being escrowed. In addition, BellSouth has taken the performance data supporting this metric and the resulting penalty amounts as to LNP metrics off its website, which is clearly another attempt to mask poor performance. This makes it impossible to monitor whether BellSouth is complying

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[38] *See* BellSouth Application, *Varner GA Affidavit* at ¶ 269.

[39] *Id.* at ¶ 271.

[40] *Id.* at ¶ 273.

[41] *AT&T GA Reply Comments* at 49, *citing*, *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, First Report and Further Notice of Proposed Rulemaking, FCC 96-286, 11 FCC Rcd. 8352, ¶ 28 (1996).

[42] *Id.* at ¶ 267.

with LNP metrics. Taken as a whole, BellSouth is approach to LNP is discriminatory and blatantly unlawful.

In addition, when BellSouth utilizes its Blind FOC methodology discussed above, it often fails to link the number portability order associated with the facility with the change in the facility due date. This can result in the customer being taken out of service when the number is ported prior to the facility being delivered. As a result, US LEC has implemented a policy which delays entering the Local Service Request into BellSouth's system until it can be assured that the FOC date is met and the facility delivered. Should BellSouth meet its FOC date, the facility sits for some period of time unused by the customer and paid for by US LEC. This is the penalty US LEC pays for having an unreliable vendor.

III. IN CONTRAVENTION OF CHECKLIST ITEMS 4 AND 5, BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO HIGH CAPACTIY LOOPS AND TRANSPORT

A. Legal Standard

BellSouth is required to provide CLECs with DS-1 facilities for use as both high-capacity loop and transport facilities. In evaluating BellSouth's performance for specific loop types such as DS-1 loops, the Commission must consider patterns of systemic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete.[43]

DS-1 circuits can also be used to provide unbundled local transport. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other

[43] *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, ¶ 122 (Apr. 16, 2001) ("*Verizon MA 271 Order*").