

numerous CLECs participated. In January 2001, the Commission conducted formal hearings to consider rates, terms and conditions for unbundled xDSL loops, loop conditioning, line sharing, and line splitting. The hearings last four days resulting in a transcript exceeding 1,500 pages in length.

On June 11, 2001, the Commission rendered its decision in the docket. The Commission accepted a settlement agreement executed by BellSouth and various CLECs in which the parties agreed to resolve a number of the issues in dispute. The Commission also established nonrecurring rates for unbundled xDSL loops, loop conditioning, and line sharing.

**Docket No. 13542-U: In re: Generic Proceeding on Point of Interconnection and Virtual FX Issues**

In March 2001, the Commission established this expedited docket to consider issues relating to points of interconnection and compensation for virtual foreign exchange ("FX") service. Numerous CLECs intervened in the docket and filed testimony, and the Commission conducted hearings in May 2001. On July 23, 2001, the Commission decided that CLECs may choose the point of interconnection and may choose to interconnect at a single point in the LATA. Additionally, BellSouth is responsible for the costs of transporting its originating traffic to the CLEC's Point of Interconnection. The Commission also found that reciprocal compensation is not due for Virtual FX traffic.

**Docket No. 14361-U: Generic Proceeding to Review Cost Studies, Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Network**

On August 21, 2001, the Commission established a Procedural and Scheduling Order to set Cost-based rates for all Unbundled Network Elements and Unbundled Network Element Combinations. A technical workshop in connection with this docket is scheduled for October 30, 2001. Hearings before the Commission are scheduled for December 10-12, 2001.

**D. Interconnection Agreements**

Since the passage of the Federal Act, BellSouth has executed, and the Commission has approved, over 400 interconnection agreements in Georgia. This number alone demonstrates the great strides the Commission has made to open the local market to competition.

In November 1997, the Commission adopted procedures to resolve complaints arising out of interconnection agreements. These procedures provide for resolution of any complaints by a hearing officer and also provide for a preliminary hearing within five (5) days of the filing of the complaint to resolve, among other things, the question of whether immediate relief is necessary. To date, only two CLECs have availed themselves of these expedited dispute resolution procedures. The implementation of the procedures demonstrates both the Commission's commitment to staying actively

involved in the interconnection agreements it approves and its desire to resolve carrier disputes in an effective and expeditious manner.

Although the vast majority of the interconnection agreements executed by BellSouth have been voluntarily negotiated, various CLECs have petitioned the Commission for arbitration under Section 252 of the Federal Act. The Commission has fully accepted its obligation to arbitrate issues regarding interconnection agreements and, rather than delegating such duties to a hearing officer, has conducted arbitration hearings before the full Commission. The following is a brief overview of the arbitration proceedings in which the Commission has entered written orders in the past two years. The previous section discussed some of the major arbitrations conducted prior to this time.

**Docket No. 10418-U: Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.**

On December 28, 1999, the Commission issued its Order in this arbitration proceeding initiated by MediaOne Telecommunications of Georgia, LLC ("MediaOne"). The Commission held that BellSouth must provide access to unbundled network terminating wire and set forth the appropriate rates, terms, and conditions for such access in multi-dwelling units. The Commission also held that BellSouth's Calling Name Database ("CNAM") is an unbundled network element that must be provided at cost-based rates.

**Docket No. 10767-U: Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996**

On February 11, 2000, the Commission issued its Order in this arbitration proceeding initiated by ICG Telecom Group, Inc. ("ICG"). The Commission resolved such issues as: (1) the payment of reciprocal compensation for ISP-bound traffic; (2) the appropriate application of the tandem switching rate; and (3) the provision of Enhanced Extended Links ("EELs").

**Docket No. 10854-U: Petition by ITC^DeltaCom Communications, Inc. for Arbitration of its Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.**

On July 5, 2000, the Commission issued its Order in this arbitration proceeding initiated by ITC^DeltaCom Communications, Inc. ("DeltaCom"). The Commission resolved such issues as: (1) access to IDLC-delivered loops; (2) provisioning intervals for cageless collocation; (3) recovery of OSS costs; and (4) audits of Percent Local Usage ("PLU") and Percent Interstate Usage ("PIU") factors.

**Docket No. 11644-U: Petition by BellSouth Telecommunications, Inc. for Arbitration of its Interconnection Agreement with Intermedia Communications, Inc. pursuant to the Telecommunications Act of 1996.**

On September 26, 2000, the Commission issued its Order in this arbitration proceeding initiated by Intermedia Communications, Inc. ("Intermedia"). The

Commission resolved such issues as: (1) conversion of virtual to physical collocation; (2) unbundled access to packet switching; (3) rates, terms, and conditions for frame relay service; and (4) the establishment of local calling areas.

**Docket No. 11853-U: Petition of AT&T for Arbitration of its Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.**

On April 24, 2001, the Commission issued its Order in this arbitration on eighteen unresolved issues including: (1) the terms and conditions under which AT&T can purchase UNEs or combinations currently purchased from BellSouth's tariffs; (2) access to Multiple Dwelling Units (MDUs); (3) loops for DSL services and (4) customized routing of operator services and directory assistance ("OS/DA").

**Docket No. 11901-U: Petition of MCI Communications Company for Arbitration of its Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996**

On March 7, 2001, the Commission issued its Order in this arbitration proceeding initiated by MCI. The Commission resolved such issues as: (1) unbundling of Operator Services and Directory Assistance; (2) the unbundling of dedicated transport between locations designated by MCI, including SONET rings in BellSouth's network; (3) use of two-way trunks; (4) inter-carrier compensation for voice calls over IP telephony; and (5) collocation.

**Docket No. 12444-U: Petition of Sprint Communications, Inc. for Arbitration of its Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.**

On June 1, 2001, the Commission issued its Order in this arbitration proceeding initiated by Sprint. The Commission resolved issues concerning augmentation intervals for collocation and should customer calling features be made available as UNEs on a stand-alone basis.

**II. BELLSOUTH'S COMPLIANCE WITH TRACK A**

**A. Overview**

In order for a Bell Operating Company ("BOC") to obtain in-region, interLATA authority, the BOC must first demonstrate that it satisfies the requirements of either 47 U.S.C. § 271(c)(1)(A) (Track A) or 47 U.S.C. § 271(c)(1)(B) (Track B). To satisfy the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service ... to residential and business subscribers." For purposes of Track A, "such telephone service may be offered ... either exclusively over [the competing provider's] own telephone exchange service facilities or predominantly over [the competing provider's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier." 47 U.S.C. § 271(d)(3)(A). The FCC has concluded that when a BOC relies upon more than one competing provider, Track A does not require each carrier to provide service to both

residential and business subscribers. See Memorandum Opinion and Order, *In re: Application of BellSouth Corporation, et al., for the Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, FCC 98-271, ¶¶ 46-48 (Oct. 13, 1998) (“*Second Louisiana Order*”).

**B. Comments of BellSouth**

BellSouth asserts that it has satisfied the requirements of Track A, noting that the local telephone market in Georgia is robust and continues to grow. As of May 22, 2001, BellSouth states that it has successfully negotiated, and the Commission has approved, over 377 interconnection, collocation, or resale agreements with Competing Local Exchange Carriers (“CLECs”) in Georgia. *Schaller Affidavit*, ¶ 7. Of these, BellSouth has interconnection agreements with 54 facilities-based providers that serve 10 or more access lines. *Schaller Affidavit*, ¶ 15. Among the many facilities-based providers in Georgia are MediaOne Telecom, MCImetro Access Transmission Services (includes WorldCom and MFS), Mpower Communications Corp. (“Mpower”), Teleport Communications, XO Communications, Inc. (“XO”), and Intermedia. *Schaller Affidavit*, ¶ 17.

According to BellSouth, CLECs competing in Georgia are providing local telephone exchange service to residential and business subscribers exclusively and predominantly using their own facilities. The 54 facilities-based CLECs operating in Georgia served approximately 138,000 residential access lines and approximately 527,000 business access lines in the State as of April 2001. In addition, CLECs served another approximately 115,000 access lines on a resale basis. *Schaller Affidavit*, Exh. DS-4. Overall, BellSouth estimates that, as of April 2001, CLECs provided local service

to more than 780,000 access lines, which represents approximately 28% of the business market and 16.0% of the total access lines in BellSouth's territory in Georgia. *Schaller Affidavit*, ¶ 15 (as revised).

BellSouth also points to CLEC collocation arrangements in Georgia as further evidence of the extent to which CLECs are providing facilities-based service throughout the State. As of April 2001, BellSouth had completed nearly 745 collocation arrangements, with at least one collocation arrangement completed in 89 of BellSouth's wire centers. *Schaller Affidavit*, ¶ 20, Exh. DS-6. CLECs are collocated heavily in the BellSouth wire centers with greater density. Of the total collocation arrangements, approximately 51% of the completed CLEC collocation arrangements are located in 18 BellSouth wire centers that serve approximately 30% of BellSouth's total access lines in Georgia. From these 18 wire centers alone, according to BellSouth, different facilities-based CLECs can reach 25% and 43% of residential and business access lines in BellSouth's territory, respectively. According to BellSouth, the 89 wire centers that have one or more completed collocation arrangements enable facilities-based CLECs to reach 87% and 92% of BellSouth's total residence and business access lines, respectively. *Schaller Affidavit*, ¶ 20, Exh. DS-6.

BellSouth also notes the substantial investments made by facility-based CLECs in telecommunications infrastructure in Georgia. According to BellSouth, facilities-based CLECs have built high capacity state-of-the-art transmission facilities utilizing fiber optic cable that service the central business districts of Georgia metropolitan areas. *Schaller Affidavit*, ¶¶ 21-22. CLECs in Georgia are increasingly using the newest technologies,

e.g. voice-over-DSL (VoDSL), “softswitch” IP and microwave systems, to offer integrated communications services on a cost-effective basis. *Schaller Affidavit*, ¶ 22.

Finally, BellSouth argues that the high level of local competition in Georgia has been recognized by the FCC, which found that, as of December 31, 2000, only six states had more absolute end-user lines served by CLECs than Georgia – California, Florida, Illinois, New York, Pennsylvania, and Texas. *See Local Telephone Competition: Status as of December 31, 2000*, Industry Analysis Division, Common Carrier Bureau, FCC, May 2001, Table Six (“*FCC Local Competition Report*”). In terms of market share, only New York and Texas had a higher CLEC market share than Georgia – two states in which the BOC has been granted interLATA authority. *Id.* According to BellSouth, the relative level of access lines served by CLECs is higher in Georgia today than it was in either New York, Massachusetts, Texas, Kansas, or Oklahoma when Bell Atlantic and SBC Communications applied for and were subsequently granted long distance authority in those states. BellSouth asserts that CLECs have secured a greater share of both the residential and business markets in Georgia than was the case in any state where a BOC has been granted interLATA relief. *Schaller Affidavit*, ¶ 24.

**C. CLEC Comments**

In its initial comments, Cbeyond Communications, LLC (“Cbeyond”) argues that BellSouth does not qualify under Track A because it has not fully satisfied the checklist requirements. AT&T and Southeastern Competitive Carriers Association (“SECCA”) argue that BellSouth’s assertions concerning the level of competitive entry in Georgia “significantly overstates the facts,” claiming that the CLEC market share in the State is only between 4.5% and 5.7%. AT&T and SECCA also assert that the decline in resale

activity suggests that resale competition is neither viable nor irreversible. *Gillan Affidavit* ¶¶5-24.

**D. Discussion**

The record establishes that BellSouth has satisfied the requirements of Track A. BellSouth has entered into, and this Commission has approved, over 400 interconnection agreements with CLECs in Georgia. The Commission finds that Intermedia, MediaOne, WorldCom, Mpower, Teleport, and XO all provide telephone exchange service either exclusively or predominantly over their own facilities to residential and business subscribers. These facts were uncontested, and, thus, BellSouth has demonstrated compliance with the requirements of Track A.

The Commission disagrees with Cbeyond's argument that BellSouth cannot satisfy Track A because it has not satisfied the 14-point competitive checklist. The FCC has held that Track A compliance is a distinct issue from checklist compliance. *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended*, CC Docket No. 97-137, 12 FCC Rcd 20543, ¶ 105 (1997) ("*Ameritech-MI Order*"); see also *Joint Application by SBC Communications, Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, FCC 01-29, CC Docket No. 00-217, ¶ 8 (Jan. 22, 2001) ("*SBC-KS/OK Order*").

The Commission is not persuaded by AT&T and SECCA's arguments concerning the extent of competitive entry in Georgia. The *FCC Local Competition Report* indicates that 93% of the zip codes in Georgia had at least one CLEC providing service as

compared to the U.S. average of 58%. Georgia was tied for third in the number of large CLECs (over 10,000 lines in service) reporting to the FCC. According to the *FCC Local Competition Report*, the 19 CLECs reporting in Georgia had a market share of 10.3% as of December 2000, which greatly exceeds the current market share estimates offered by AT&T and SECCA.<sup>1</sup>

Finally, the Commission's Docket No. 5778-U Local Service Indicator Report compiles the number of access lines for CLECs in Georgia. This report indicates that for the end of June over 726,000 access lines were reported in service by certificated CLECs in Georgia with only 55% of the CLECs reporting.<sup>2</sup> This data confirms the reasonableness of BellSouth's estimates.

#### **E. Conclusion**

The Commission concludes that BellSouth has demonstrated compliance with the requirements of Track A.

### **III. BELL SOUTH'S COMPLIANCE WITH THE COMPETITIVE CHECKLIST**

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<sup>1</sup> The FCC noted the likelihood that the number of lines being served by CLECs was "understated" as a result of the reporting threshold, which allows smaller, but still significant CLECs to avoid having to report to the FCC the number of lines they serve. In light of such "understatement," there is no reason to believe that the CLEC market share in Georgia as of December 2000 was less than 10.3% and every reason to believe that this market share is currently considerably higher, particularly with the passage of time and increased competitive activity by such carriers as WorldCom as well as new entrants to the Georgia local market.

<sup>2</sup> Docket No. 5778-U Report, October 04, 2001.

Section 271(c)(2)(B) sets forth 14 checklist items. In evaluating whether a BOC has complied with the 14-point competitive checklist, the FCC has stated that it does not apply a standard of perfection but rather will look at the totality of circumstances. *SWBT-KA/OK Order*, ¶ 136. Under this standard, disparity in one performance measurement is unlikely to result in a finding of noncompliance. Rather, each individual measurement should be reviewed as one part of a larger picture in determining compliance or noncompliance. *SWBT-KS/OK Order*, ¶¶ 138 & 146; *see also* Memorandum Opinion and Order, *Application by SBC Communications, Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, ¶ 176 (2000) (“*SWBT-TX Order*”). Based on the totality of the circumstances as presented here, the Commission finds that BellSouth has demonstrated compliance with the 14-point competitive checklist.

**A. Checklist Item No. 1: Interconnection**

**(1) Overview**

Checklist Item 1 requires a BOC to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(i).” *See* 47 U.S.C. 271(c)(2)(B)(I). Section 251(c)(2) imposes upon incumbent local exchange carriers (“ILECs”) “[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network ... for the transmission and routing of telephone exchange service and exchange access.” *See* 47 U.S.C. 251(c)(2)(A). Such interconnection must be: (1) provided at any technically feasible point within the carrier’s network; (2) equal in quality to that provided by the incumbent to itself; and (3) provided on rates, terms and conditions that are just, reasonable, and

non-discriminatory in accordance with the terms and conditions of the agreement and the requirements of Sections 251 and 252. *See Second Louisiana Order*, ¶ 61. Technically feasible methods of interconnection include, but are not limited to, physical and virtual collocation at the premises of an ILEC. *Id.* at ¶ 62.

A BOC satisfies Checklist Item 1 by providing CLECs with interconnection at any technically feasible point within its network. Interconnection trunks provisioned by the BOC are one common method of interconnection, which must be at least equal in quality to the interconnection the ILEC provides for itself, on rates terms and conditions that are just, reasonable and nondiscriminatory. 47 U.S.C. § 251(c)(2). The FCC has interpreted this “just, reasonable, and nondiscriminatory” requirement to mean that the ILEC must provide interconnection to a competitor in a manner no less efficient than the manner in which the ILEC provides the comparable function to its own retail operations. *See First Report and Order, In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325 ¶ 218 (Aug. 8, 1996) (“*First Report and Order*”). The FCC has identified trunk group blockage data, installation intervals, and maintenance and repair intervals as evidence of whether a BOC has satisfied Checklist Item 1. *Memorandum Opinion and Order, Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953, ¶¶ 63-65, 67-68 (1999) (“*Bell Atlantic-NY Order*”); *SWBT-KA/OK Order*, ¶¶ 223-224.

Another common means of interconnection is collocation. To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions

that are “just, reasonable, and nondiscriminatory” in accordance with Section 251(c)(6) and the FCC’s implementing rules. *See Second Louisiana Order*, ¶¶ 183-84; *SWBT- TX Order*, ¶ 64. To assess a BOC’s provision of collocation, the FCC relies on data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space. *See Second Louisiana Order*, ¶¶ 61-62; *SWBT-TX Order*, ¶ 64.

(2) **BellSouth Comments**

(a) **Point(s) of Interconnection**

BellSouth asserts that it satisfies Checklist Item 1 by providing five standard means by which CLECs can interconnect their networks to BellSouth’s network: (1) physical collocation; (2) virtual collocation; (3) assembly point arrangements; (4) fiber optic meet point arrangements; and (5) purchase of facilities from another party. Each of these interconnection arrangements is available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch; central office cross-connect points; out-of-band signaling transfer points; and points of access to UNEs. *Milner Affidavit*, ¶ 10. BellSouth provides interconnection at all technically feasible points, including the option of selecting one technically feasible interconnection point in each LATA. *Milner Affidavit*, ¶ 9. Moreover, a CLEC may request, through the Bona Fide Request Process (“BFR”), any other technically feasible interconnection point. *Milner Affidavit*, ¶ 9.

BellSouth provides CLECs with Multiple Tandem Access (“MTA”) and local tandem interconnection. *Milner Affidavit*, ¶¶ 11 & 45. BellSouth also offers CLECs various options to route local/intraLATA toll traffic and transit traffic over separate trunk

groups or over a single trunk group, or over one-way or two-way trunks. *Milner Affidavit*, ¶ 12. In addition, BellSouth provides transit trunks for traffic between a CLEC and a third party such as an independent company, interexchange carrier, or another CLEC. *Milner Affidavit*, ¶¶ 14-15.

BellSouth notes that, in its *Second Louisiana Order*, the FCC concluded that BellSouth had demonstrated that it has a legal obligation to provide interconnection in accordance with the FCC's rules. *See Second Louisiana Order*, ¶ 75, n. 210. BellSouth asserts that, in order to carry traffic between BellSouth and CLEC locations, BellSouth has provisioned approximately 105,948 interconnection trunks from CLECs' switches to BellSouth's switches as of March 31, 2001, and 80,347 two-way trunks (including transit traffic) to 40 different CLECs in Georgia. *Milner Affidavit*, ¶ 16. According to BellSouth, this significant degree of commercial usage in and of itself demonstrates that CLECs can interconnect with BellSouth's network.

**(b) Interconnection Trunking**

BellSouth asserts that it is providing interconnection trunks to CLECs at a level of quality that is indistinguishable from that which BellSouth provides its retail units. According to BellSouth, it follows the same installation process for CLEC interconnection trunks as it does for itself; provisions CLEC trunks using the same equipment, interfaces, technical criteria and service standards that are used for BellSouth's own trunks; follows the same procedures for forecasting interconnection trunks for CLECs as it does for itself; and designs interconnection facilities to meet the same technical criteria and service standards that are used in its own network. *Milner Affidavit*, ¶¶ 12 & 19-20.

BellSouth also points to performance data on trunk blockage, trunk installation, and trunk maintenance and repair to establish that it has satisfied Checklist Item 1. Between March 2001 and May 2001, BellSouth's Order Completion Interval ("OCI") for CLEC trunks was comparable to that for BellSouth's retail trunks in two of the three months, and in one month (March), the CLECs enjoyed a shorter average installation time for trunks than did BellSouth. With respect to other key performance measures, BellSouth met or exceeded the applicable retail analogues for Percent Missed Installation Appointments, Percent Provisioning Troubles within 30 days, and Missed Repair Appointments for interconnection trunks in March, April, and May 2001. See Monthly State Summary, Docket No. 7892-U.

(c) **Collocation**

BellSouth notes that it offers collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory as evidenced by its legally binding interconnection agreements and its SGAT. *Milner Affidavit*, ¶ 36; *Gray Affidavit*, ¶ 3. BellSouth has provisioned 745 collocation sites in the State, and CLECs are collocated in 89 of BellSouth's central offices. *Schaller Affidavit*, ¶ 20. BellSouth also asserts that, not only is it making collocation available, it is doing so in a timely and accurate manner consistent with the intervals established by this Commission in Docket No. 7892-U. *Milner Affidavit*, ¶ 40; *Gray Affidavit*, ¶ 4. In March, April, and May 2001, BellSouth notes that it met the applicable benchmarks for every collocation measure and submetric. See Monthly State Summary, Docket No. 7892-U.

As required by the FCC, BellSouth offers caged, shared cage, cageless and shared cageless collocation, all at a CLEC's option. *Gray Affidavit*, ¶ 13. BellSouth also offers

adjacent collocation if space in a particular premises is legitimately exhausted. *Gray Affidavit*, ¶ 20. Virtual collocation is available where space for physical collocation is legitimately exhausted, or at a CLEC's request regardless of the availability of physical collocation. *Gray Affidavit*, ¶ 36. BellSouth also makes physical and virtual collocation available in its remote terminals. *Gray Affidavit*, ¶ 26.

(3) **CLEC Comments**<sup>3</sup>

(a) **Point(s) of Interconnection**

AT&T and BroadRiver question BellSouth's policies regarding points of interconnection. Specifically, AT&T states that BellSouth improperly requires CLECs that do not have interconnection points in each BellSouth local calling area to bear the cost of hauling BellSouth traffic over the CLEC network outside the local calling area where the call originates and terminates. *AT&T Comments*, Item #1, at 7. BroadRiver challenges BellSouth's alleged refusal to incorporate or discuss modifications to the parties' interconnection agreement, consistent with the terms in other interconnection agreements. *BroadRiver Comments* at 4-5.

(b) **Trunk Provisioning**

CLECs challenge three main aspects of BellSouth's trunk provisioning. First, they assert that BellSouth is tardy in augmenting trunk groups or improperly refuses to

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<sup>3</sup> As part of its Reply Comments filed on July 16, 2001, SECCA attached Affidavits of John Cheek, Jerry Willis, and Mary Haynsworth Campbell of NuVox Communications, Elina Padfield and James Tadlock of XO, James Falvey of e.spire Communications, and James Hvidas of US LEC of Georgia, Inc. The Commission believes that these affidavits could and should have been submitted on May 31, 2001, as part of the parties' Direct Comments. By waiting to submit these affidavits until its Reply Comments, SECCA denied BellSouth the opportunity to respond and prevented the Commission from obtaining all the information necessary to assess SECCA's claims. Under the circumstances, the Commission believes that these affidavits should be given little weight.

augment trunks upon request. *Fury Affidavit* ¶¶ 8-17; *Wilson Affidavit* ¶¶ 25-26 & 30-33. NewSouth Communications Corp. (“NewSouth”) argues that BellSouth almost never performs trunk augmentations to reciprocal trunk groups despite NewSouth’s forecasts demonstrating a need for additional trunks and has delayed filling trunk orders or refused to augment trunk groups upon request (or declined to do so unless NewSouth first identified the customers to be added). *Fury Affidavit* ¶¶ 8-17. AT&T asserts that BellSouth has not made sufficient efforts to provide adequate interconnection trunks or to augment trunks behind tandems. According to AT&T, in April 2001, BellSouth took 30 days to fill trunk orders for itself but 35 days for CLECs and 56 days for AT&T. AT&T further asserts that BellSouth has delayed 17 AT&T trunk orders for more than 30 days and that provisioning delays have forced AT&T to delay turning up its switches. *Wilson Affidavit*, ¶¶ 30-33.

Second, AT&T asserts that CLECs have experienced unacceptable and discriminatory levels of trunk blockage. *Wilson Affidavit* ¶¶ 21-24 & 39. AT&T points to performance data indicating that eight interconnection trunk groups and seven trunk groups behind tandem switches had blocking over 2% in March, with two interconnection trunk groups having blockage over 10%. AT&T also states that certain interconnection trunks in January and February had blocking rates over 10%. AT&T contends that its customers in Atlanta have experienced numerous blocking problems and that BellSouth’s retail customers do not experience the same blockage because BellSouth handles its own calls differently. *Wilson Affidavit*, ¶¶ 21-24.

Third, AT&T alleges that BellSouth imposes limits on the number of trunks AT&T may connect to BellSouth’s tandems and purportedly disconnects AT&T trunks

with little or no warning. According to AT&T, such alleged practices are unreasonable and discriminatory. *Wilson Affidavit*, ¶¶ 34-35 & 39.

(c) **Collocation**

AT&T and NewSouth contend that BellSouth's collocation offering does not comply with the FCC's requirements in several respects. For example, AT&T asserts that BellSouth retains the unilateral right to change the terms and conditions of collocation by revising its Collocation Handbook. *Turner Affidavit* ¶¶ 41-50. AT&T and NewSouth also challenge certain aspects of BellSouth's recovery of the costs of HVAC upgrades and electrical power, *Turner Affidavit*, ¶¶ 52-58; *NewSouth Comments* at 12-13; *Beasley Affidavit*, ¶¶ 3-10, and AT&T similarly claims that BellSouth can impose discriminatory costs on CLECs for power cabling by locating their cages far from key interconnection frames. *Turner Affidavit*, ¶¶ 59-66. Finally, AT&T criticizes BellSouth's practices with respect to shared-cage and adjacent collocation, insisting that such practices do not comply with FCC requirements. *Turner Affidavit*, ¶¶ 67-68 & 70-72.

(d) **Other Issues**

Certain CLECs raise additional interconnection-related issues. At a broad level, Access Integrated Networks, Inc. ("Access Integrated") takes issue with the FCC's ruling that the word "equal" in Section 251(c)(2) of the Federal Communications Act means "substantially the same" or a "meaningful opportunity to compete." Access Integrated also questions whether Congress improperly delegated legislative power to the FCC and challenges BellSouth's compliance with Checklist Item 1 based upon alleged, "misconduct" in competing against Access. *Access Integrated Comments*, Section I.

Finally, Cbeyond states that BellSouth is breaching its interconnection agreement by failing to connect UNE loops to special access circuits or to convert special access multiplexers to UNE multiplexers, and by charging third-party SS7 providers additional charges for CLEC calls. *Cbeyond Comments*, at 9-11.

**(4) Discussion**

**(a) Point(s) of Interconnection**

The Commission concludes that the evidence in the record establishes that BellSouth provides equal-in-quality interconnection on terms and conditions that are just and reasonable in accordance with the requirements of sections 251(c)(2) and 252(d)(1), as required by Checklist Item 1. No CLEC disputes that BellSouth provides interconnection at any technically feasible point in its network, although AT&T raises the issue of whether BellSouth should bear the cost of transporting traffic originated on BellSouth's network to the competitor's point of interconnection, even when the interconnection point is not in the same local calling area as the BellSouth customer. The Commission has resolved this issue in Docket No. 13542-U by ordering BellSouth to bear the cost of transporting its originating traffic to the CLECs point of interconnection in the LATA, regardless of whether the CLEC's point of interconnection is in the same local calling area as the call originated and terminated, and BellSouth filed a revised SGAT on August 27, 2001 that incorporated the Commission's decision in the docket. Additionally, CLECs may request interconnection trunks by submitting an Access Service Request ("ASR") to BellSouth's Interconnection Purchasing Center.

The Commission finds unconvincing BroadRiver's complaint that BellSouth has "refused" to renegotiate BroadRiver's Interconnection Agreement to incorporate certain

language on the Point of Interconnection and Virtual FX issues. The Commission concludes that it was reasonable for the parties to wait until a final Commission decision in Docket No. 13542-U prior to amending their interconnection agreement.

**(b) Trunk Provisioning**

BellSouth's performance data demonstrate that BellSouth is providing interconnection trunks to CLECs equal in quality to that provided by BellSouth to itself. This data illustrates that the timeframe for BellSouth's installations and maintenance of CLEC interconnection trunks is comparable to the timeframe for BellSouth's installation and maintenance for its own retail operations. With respect to the key interconnection performance measures, BellSouth consistently has improved its ability to pass the metrics relating to trunk provisioning. For the months of March to June 2001, BellSouth met the Performance metrics for Order Completion Interval, Percent Missed Installation Appointments, Percent Provisioning Troubles Within 30 Days, and Missed Repair Appointments for interconnection trunks with one exception. For the one exception, BellSouth failed to meet the performance metric for C.2.1 "Order Completion Interval" in the month of April 2001.

BellSouth's performance during March to June 2001 has been as follows:

**ORDER COMPLETION INTERVAL<sup>4</sup>**

<b>Mar-01</b>	<b>33.57</b>	<b>70</b>	<b>33.43</b>	<b>46</b>
<b>Apr-01</b>				
<b>May-01</b>	<b>28.21</b>	<b>143</b>	<b>31.77</b>	<b>65</b>
<b>Jun-01</b>	<b>26.32</b>	<b>143</b>	<b>26.00</b>	<b>93</b>

While the data for April shows an almost 10 day difference in installation time, BellSouth provided an investigation that reveals 6 of the 81 orders in this sub-metric had intervals greater than 98 days that were requested by the CLEC. Removal of these orders would reduce the CLEC interval to 30.7 days.<sup>5</sup> While these data show some differences, the Commission does not believe it prevents the CLECs from a meaningful opportunity to compete.

With respect to trunk blockage, the following is BellSouth's performance under the Commission's trunk blockage measure "Trunk Group Performance Aggregate" for the months of March through July 2001:

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<sup>4</sup> Docket No. 7892-U Performance Measurements.

<sup>5</sup> Stacy Performance Measurements Affidavit) ¶ 37.

**TRUNK GROUP PERFORMANCE AGGREGATE<sup>6</sup>**

Month	Performance
Mar-01	
Apr-01	
May-01	0
Jun-01	
Jul-01	0

Although the CLEC blockage benchmark was exceeded during the hours of 7:00 a.m. and 8:00 a.m. in March and April 2001, the Commission is persuaded by BellSouth's explanation that such blockage problems were attributable to the lack of trunks in two reciprocal trunk groups between BellSouth and one CLEC. *Stacy Performance Reply Affidavit*, ¶ 88. Additionally, the blockage benchmark was exceeded during the hours of 9:00 p.m. and 10:00 p.m. and 10:00 p.m. and 11:00 p.m. for June 2001 for the CLECs. Although the Commission has not received an explanation for this blockage, BellSouth met the applicable CLEC blockage benchmark in May, July, and most recently August 2001. The Commission also noted that individual CLECs have not experienced significantly disparate levels of trunk blockage as evidenced by the relatively small amounts of Tier I penalties BellSouth has paid under this measure.

Furthermore, there is evidence in the record that CLECs have been the cause of at least some of the trunk blockage problems by providing poor trunk forecasts or failing to inform BellSouth about expected increases in traffic volume. For example, although NewSouth complains about its experience with a trunk group in Baton Rouge, BellSouth notes that traffic volumes on this trunk group almost tripled in a one-month period

<sup>6</sup> Docket No. 7892-U Performance Measurements.

without NewSouth providing any advance notice of this expected increase. *Milner Reply Affidavit*, ¶ 11. The Commission does not believe that CLEC-caused trunk blockage constitutes grounds to find that BellSouth is not in compliance with Checklist Item 1.

The Commission is not persuaded by AT&T's argument that BellSouth has a "policy" of limiting trunks for CLECs. BellSouth denies that it has any such policy, and the Commission believes that BellSouth has adequately explained that the so-called "policy" to which AT&T refers was merely a temporary solution to an isolated situation in South Florida. *Milner Reply Affidavit*, ¶¶ 25-26 & 49-55.

Nor is the Commission persuaded by AT&T's complaints about delays in BellSouth's trunk provisioning. The evidence establishes that such delays were caused, at least in part, by AT&T's failure to: (1) provide timely Firm Order Confirmations ("FOCs") on reciprocal trunk orders; (2) provide accurate Circuit Facility Assignment ("CFA") information; and (3) revise its due dates when BellSouth was delayed due to FOC or CFA issues. BellSouth also claims that AT&T was not ready on due dates of orders AT&T placed with BellSouth in Georgia in 48% of the cases through June 2001, which could have contributed to delays in trunk provisioning. *Milner Reply Affidavit*, ¶¶ 21-23.

AT&T's complaint about alleged unannounced trunk disconnections also is unconvincing. As BellSouth has explained, CLEC trunks are not disconnected due to low usage without the CLEC being first contacted to determine if greater future traffic is expected. *Milner Reply Affidavit*, Exh. WKM-18. BellSouth's policy specifically gives the CLEC the opportunity to demonstrate the need for the excess capacity, and, if the capacity is indeed excess, BellSouth and the CLEC will negotiate a disconnect date. The

Commission agrees with BellSouth that the network should be maintained in the most efficient manner possible, which includes preventing the underutilization of facilities. As BellSouth points out, to the extent a CLEC wants to retain underutilized trunks, that CLEC may submit a "binding forecast," which commits the CLEC to purchase and BellSouth to provide a specified volume of trunks regardless of the volume of traffic on such trunks. *See Milner Reply Affidavit*, ¶¶ 34-15 & 47-48.

(c) **Collocation**

The Commission finds that BellSouth's commercial usage and performance data demonstrate that BellSouth is providing nondiscriminatory access to collocation. In the *Second Louisiana Order*, the FCC expressed concern that BellSouth "fails to make a *prima facie* showing that it can provide collocation on terms and conditions that are 'just, reasonable, and nondiscriminatory' in accordance with section 251(c)(6)." *Second Louisiana Order*, ¶ 65. The FCC concluded that BellSouth's reliance on its SGAT, which referred to terms and conditions set forth in BellSouth's Collocation Handbook, failed to demonstrate *legally binding* terms and conditions for collocation, including binding provisioning intervals. *Id.* at ¶¶ 66-72. In addition, the FCC questioned the reasonableness of BellSouth's non-binding provisioning intervals. *Id.*

Since the *Second Louisiana Order* this Commission has established reasonable collocation provisioning intervals to which BellSouth has consistently adhered. These provisioning intervals as well as other rates, terms, and conditions of BellSouth's provision of collocation are governed by interconnection agreements reviewed and approved by this Commission as well as BellSouth's SGAT, which constitute "legally binding" obligations on BellSouth's part with respect to collocation. The Commission