



Louisiana Public Service Commission
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October 18, 2001

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Ms. Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Application of BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Georgia and Louisiana, CC Docket No. 01-277

Dear Secretary Salas:

Enclosed for filing at CC Docket No. 01-277, on behalf of the Louisiana Public Service Commission ("LPSC"), are an original and two (2) copies of its Evaluation of BellSouth's Preapplication to Provide InterLATA service in the State of Louisiana pursuant to 47 U.S.C. § 271 (d)(2)(B). An additional copy is included so that you may date-stamp and return same to me for our files.

The LPSC's Evaluation recommends that the application of BellSouth Corporation for authorization under Section 271 of the Communications Act to provide in-region, interLATA service in the State of Louisiana be granted.

Respectfully,

Lawrence C. St. Blanc
Executive Secretary

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BY AGC DE

- xc: Service List LPSC Docket No. U-22252 (E)
- James Davis-Smith, U.S. Department of Justice, Antitrust Division
- Janice Myles, Policy and Program Planning Division, Common Carrier Bureau
- Leon Bowles, Division of Telecommunications Unit, Ga. Public Service Commission
- Qualex International

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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In the Matter of

**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

* * * * *

**EVALUATION OF
THE LOUISIANA PUBLIC SERVICE COMMISSION**

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OCTOBER 19, 2001

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I. EXECUTIVE SUMMARY

On September 19, 2001, the Louisiana Public Service Commission (“LPSC” or “Louisiana Commission”) voted unanimously to adopt the 116-page Staff Final Recommendation that the LPSC find that BellSouth Telecommunications, Inc. (“BellSouth”) is in compliance with the requirements of the Telecommunications Act of 1996 (“1996 Act”), including the checklist requirements in section 271 (c)(2)(B) and the Federal Communications Commission’s (“FCC’s”) orders promulgated thereunder; and that, therefore, BellSouth’s application seeking authority to provide interLATA service should be endorsed. The Louisiana Commission submits this Evaluation of BellSouth’s compliance with Section 271, which is based on exhaustive and rigorous investigation and analysis conducted in multiple dockets over the past three years since the date the FCC denied BellSouth’s second application to provide interLATA service in Louisiana.

In its second denial dated October 13, 1998, the FCC noted that BellSouth’s “application...demonstrates that significant progress has been made toward reaching the goals of the Act,” and that BellSouth should be “commended ...for making significant improvements over the past 8 months since we issued the *First Louisiana Order*.” *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, Rel. October 13, 1998, ¶5 (“*Second Louisiana Order*”). Specifically, the FCC found that BellSouth had met six (6) checklist items and one subsection of a seventh item, but failed to provide adequate evidence of compliance with the remaining items. To assist BellSouth in future applications, the FCC set forth in detail the deficiencies in BellSouth’s application and the actions BellSouth needed to take to address those deficiencies.

The Louisiana Commission takes very seriously its obligation to ensure BellSouth's compliance with the 1996 Act in Louisiana, and has worked conscientiously to foster local competition within the State. Since the second denial of BellSouth's Section 271 application in October of 1998, the LPSC, in conjunction with BellSouth and the CLEC industry, has conducted multiple proceedings designed to ensure BellSouth's compliance with the 1996 Act and to open irreversibly the market for local telecommunications in Louisiana. In these dockets, as described below, the Louisiana Commission has adopted comprehensive service quality performance measurements, aggressive retail analogs and benchmarks, a self-executing enforcement plan designed to ensure non-discriminatory performance, and TELRIC-based, geographically deaveraged rates for UNEs and UNE combinations. Additionally, the Commission has encouraged cooperative resolution of operational issues and has sponsored informal collaborative meetings in order to foster this effort.

A. Commission Action Since Second Louisiana Order:

1. Service Quality Performance Measures

The Louisiana Commission opened generic Docket No. U-22252 in late 1996 to consider BellSouth's pre-application compliance with the requirements of Section 271 of the 1996 Act. This docket has remained open over the course of the years, and involved almost constant activity in multiple subdockets and other related dockets participated in by numerous industry players. Most notably, after adopting interim Service Quality Measurements in June of 1998 (immediately prior to BellSouth's filing of its second application), the Louisiana Commission opened Docket No. U-22252-C, and retained Acadian Consulting Group to address permanent Service Quality Measurements. Acadian Consulting Group reviewed and analyzed the comments, testimony, reply comments, and supplemental comments of e.spire, BellSouth, MCI

WorldCom, Cox, Intermedia Communications, AT&T, and Sprint. Acadian Consulting Group assisted Staff with a technical conference held on July 23, 1998. After the technical conference, Acadian Consulting Group prepared Staff's initial recommendation filed on August 5, 1998 and all parties were allowed to submit comments on this initial recommendation.

During its August, 1998 meeting (and while BellSouth's second application was pending), the Louisiana Commission voted to adopt Staff's recommendation. In its August 31, 1998 General Order in Docket No. U-22252-C, the LPSC ordered certain revisions to BellSouth's SQM. BellSouth commenced filing SQM reports pursuant to the LPSC's Order and has been filing performance data in the required format since late 1998. Additionally, the August 31st General Order required further workshops and technical conferences in which BellSouth, the CLEC community, and the Staff could work in a collaborative environment to resolve outstanding issues. These workshop were designed to address (1) clarification and refinement of the service quality performance measurements, including the possible need for additional disaggregation; (2) a statistical methodology to measure performance to CLECs against BellSouth's performance to its own retail end users; (3) the need for retail analogs and benchmarks to establish objective standards for performance; and (4) the need for a self-executing enforcement mechanism (SEEM) to provide meaningful incentives to BellSouth to provide appropriate performance, and to ensure swift repercussions in the event it failed to do so. *See* LPSC General Order, Docket No. U- 22252-C, dated August 31, 1998.¹

Over an approximate eighteen (18) month period, the Staff, assisted by Acadian Consulting Group, conducted a total of twenty-six (26) days of technical discussions. Thereafter, at the end of June 2000, the Staff issued an Interim Recommendation on sixty-nine (69)

remaining disputed issues. All parties were given ample opportunity to comment on Staff's Interim Recommendation. On August 10, 2000, the FCC issued its Order on Reconsideration, FCC Docket No. 98-147, and adopted national default intervals for collocation provisioning that were to take effect within 60 days, in the absence of a state order adopting generally applicable state-specific standards. *See* FCC Order on Reconsideration, FCC Dkt. No. 98-147, released August 10, 2000. In response, the Louisiana Commission issued Order No. 22252-C in which it adopted the Staff's recommendations with respect to collocation issues, including the endorsement of Louisiana-specific intervals and benchmarks for physical and virtual collocation.² *See* LPSC General Order dated October 9, 2000, Docket No. U-22252-C.

Parties to the workshops made significant progress towards developing permanent performance measurements; an appropriate statistical methodology to employ; appropriate retail analogues and benchmarks; and a penalty plan. The Louisiana Commission voted in February of this year to adopt Staff's Final Recommendation on the remaining 67 issues in dispute. *See* Staff's Final Recommendation, Docket No. U-22252-C. The Commission's resulting Order dated May 14, 2001 covered a wide range of topics, including addition of new measures, such as "hot cut" measures, additional product disaggregation for UNE loops and new xDSL product services, aggressive retail analogs and benchmarks for BellSouth's pre-ordering, ordering, provisioning, maintenance and billing services to CLECs, and a comprehensive self-executing enforcement plan designed to impose significant penalties on BellSouth in the event it fails to

¹ The following parties intervened and participated in these workshops: e.Spire, Sprint, MCI/WorldCom, AT&T, Cox, Intermedia, EATEL, and Actel, Xspedius, NewSouth and KMC did not participate in Docket U-22252-C.

² The LPSC's October 9, 2000 Order established a 90 calendar day interval for physical collocation, and directed Staff to consider the need for a separate interval for cageless physical collocation. In its Order No. U-22252-E issued September 21, 2001, the LPSC established a separate, shorter interval of 60 calendar days for cageless physical collocation.

deliver nondiscriminatory service to CLECs. A copy of the Commission's May 14, 2001 Order, together with the final staff recommendation it adopted, are attached as Exhibit 1.

The Louisiana Commission's work in Docket No. U-22252-C will not end with its May 14, 2001 Order, which calls for a six-month interim review of BellSouth's Performance measures, statistics, and remedy plan. Moreover, on motion for reconsideration filed by AT&T, the Louisiana Commission clarified its intent to conduct this review with full and open participation by interested CLECs. On October 8, 2001, Staff issued a Notice setting the date for the initial workshop for the 6-month review. Although Staff does not yet have 6 months worth of data under the revised SQM and SEEMs Reports, Staff intends to conduct this workshop to consider issues related to BellSouth's compliance with the May 14, 2001 Order and also issues raised in the LPSC's September 19, 2001 Order endorsing BellSouth's third Section 271 filing.³ The agenda for this workshop, issued on October 15, 2001 and attached hereto as Exhibit 2, includes BellSouth's revised SQM; its plan for improved flow-through results; the update to its product interval guide; its remedy report for July results; the LPSC performance issues noted for special monitoring in the LPSC's Order No. U-22252-E, dated September 21, 2001; and a discussion of future workshops.⁴

Additionally, the LPSC's May 14, 2001 Order calls for annual audits of BellSouth's SQM over the next 5 years.⁵ The first such audit is about to commence. KPMG has been

³ BellSouth filed its third application to provide interLATA long distance service with the LPSC on April 20, 2001. The LPSC opened Docket No. 22252-E to consider this application. See discussion at text, *infra* at pp. 10-12.

⁴ The agenda also lists issues to be addressed in future workshops, including performance measurement issues noted in the Commission's Order No. U-22252-E, dated September 21, 2001, the pending audit of performance measurements; and possible modifications to the self-executing enforcement plan and to the measures. See Exhibit 1, attached hereto.

⁵ The LPSC's prior August 31, 1998 Order adopting a set of SQM contained a similar provision. Staff, BellSouth and the CLECs involved in this docket worked cooperatively in 1999 and 2000 to prepare an audit work plan, and to jointly select KPMG as the third party auditor. KPMG finalized a Master Test plan in February of 2000.

retained and, by letter dated August 9, 2001, submitted a Master Test Plan for use in the audit, which will include weekly conference calls in order to allow BellSouth and interested CLECs to provide input. At Staff's request, KPMG also submitted its analysis of past, present and future metrics testing in other states in the BellSouth region that could be relied on in the Louisiana audit in order to avoid duplication of effort. Finally, KPMG submitted a proposed schedule for the audit. *See* Attachment B, Exhibit 1 (LPSC Agenda for October 24-25 Workshop).

2. The Commission has Adopted TELRC-Based UNE Prices

In addition to the comprehensive work in the area of SQM, the LPSC has also held extensive hearings concerning the appropriate rates that BellSouth may charge competitive carriers for particular unbundled network elements ("UNEs"). The first such hearing was held in 1997 and resulted in an Order establishing rates for a comprehensive set of UNEs. *See* LPSC Order No. U-22022/22093, dated October 24, 1997. These rates were in place when BellSouth filed its second application for Section 271 authority. In its Evaluation of BellSouth's first application, the Department of Justice ("DOJ") stated that "[i]n Louisiana, BellSouth's pricing for unbundled elements is in most respects consistent with the Department's focus of pro-competitive pricing principles....The Department is satisfied that this methodology embodies the basic concepts of forward-looking cost-based pricing and is consistent with the Department's competitive standards." *See* Evaluation of the Department of Justice of Application of BellSouth in Louisiana, December 10, 1997, at p. 23. The DOJ had three concerns with BellSouth's UNE pricing: (1) the lack of geographically deaveraged UNE rates; (2) the bundled vertical features charge of \$8.28; and (3) the existence of "Individual Case Basis" prices for collocation rather than a set of cost-based, standardized rates.

Commencement of the audit was postponed in light of the fact that the SQMs were undergoing further revision as

The LPSC believes that it has addressed each of the DOJ's concerns, and that the rates adopted as the result of its recent Docket U-24714-A fully comply with the FCC's pricing rules and regulations. In 1999, the Louisiana Commission instituted Docket No. U-24714 to establish deaveraged UNE rates in order to comply with the FCC's pricing rules. In order to meet the FCC's May 1, 2000 deadline, the parties entered a joint stipulation concerning interim deaveraged rates, while the Commission conducted further proceedings to determine permanent rates. Subsequently, the Commission instituted Docket No. U-24714 (Subdocket A) to establish permanent deaveraged rates for loops and loop/port combinations, to update existing UNE rates, and to establish rates for new UNEs included in the FCC's UNE Remand Order. BellSouth relied in this proceeding on a new deaveraged loop model, and no party to the proceeding contested that model or presented any alternative model. The LPSC Staff, assisted by outside consultant, Acadian Consulting Group, filed comprehensive testimony relying on the same cost-based methodology it used in the earlier cost proceeding. The Staff testimony also included numerous proposed adjustments to BellSouth's inputs and assumptions.

After hearings and post hearing briefing by all parties to the Docket, the Administrative Law Judge issued proposed findings to the Louisiana Commission for its consideration. During its September meeting, the Commission adopted the Administrative Law Judge's recommendations, with several modifications recommended by Staff. The LPSC issued its Order in Docket No. U-24714-A on September 21, 2001. A copy of this order is attached as Exhibit 3. Among other things, the Order (1) establishes updated UNE rates based on a methodology already endorsed by the DOJ; (2) sets deaveraged rates based on a cost study

the result of the technical workshops.

accepted by all parties; (3) establishes standardized, cost-based rates for collocation; and (3) eliminates the bundled vertical features rate.

3. Other Proceedings Conducted by the Louisiana Commission

At the Commission's October Business and Executive Session, Commissioner Irma Muse Dixon directed the Staff to arrange a series of collaborative meetings to discuss issues involving Local Exchange Carriers (CLECs) in Louisiana. The purposes of these meetings were two-fold. First, they were to assist the Commission, its Staff and interested parties in gathering information about the current process, procedures and services being used by CLECs and ILECs operating in Louisiana. Second, they were to be instrumental in developing and implementing solutions to the problems that are experienced by the parties. While the Commission Staff had some idea on certain issues for discussion, they asked for suggestions from both CLECs and Incumbent Local Exchange Carriers (ILECs) to identify additional topics that needed to be addressed. This initiative was published in the Commission's Official Bulletin dated October 13, 2000 and a notice was mailed to all CLECs on October 30, 2000. Comments were received from the following carriers: KMC Telecom, ITC DeltaCom Communications, Inc., Birch Telecom of the South, Inc., ConnectSouth Communications of Louisiana, Inc., COVAD Communications, e-Spire Communications, New South Communications Corp., MCI WorldCom Communications, Inc., USLEC Corporation, AT&T Communications of the South Central States, Cox Louisiana Telecom, L.L.C., BellSouth Telecommunications, Inc., Network Telephone Corporation, New Edge Network, Inc., US Unwired/Xspedius Corporation and Z-Tel Communications, Inc.

A Pre-Collaborative meeting was held on December 12, 2000 wherein a procedural schedule was adopted. Participating in the Pre-Collaborative meeting were twenty-four (24) individuals representing fourteen (14) carriers. A consensus was reached on the format of the

meetings and an outline of the proposed agenda items for each of the scheduled meeting dates during the months of January and February 2001.

The workshops provided an opportunity for dialogue between operational personnel employed by the CLECs and BellSouth in an informal, non-adversarial setting to discuss numerous operational issues, including customer conversions, trunking issues, provisioning, maintenance and repair, collocation, order processing, BellSouth's Operational Support Systems, information available on BellSouth's websites, CLEC training, and access to poles, ducts and conduit. As part of this collaborative effort, BellSouth provided central office tours of its New Orleans Main Central Office that was well attended by both CLECs and the Commission. Included within this tour were examples of both virtual and physical collocations, as well as caged and cageless collocations.

The Commission Staff conducted a total of nine (9) days of collaborative workshops in an effort to further promote competition in the local telecommunications market in Louisiana. The workshops were informal in nature and allowed for open dialogue for the CLECs with numerous BellSouth Subject Matter Experts (SMEs) as well as a dialogue between and among other CLECs. In each workshop, a list of Action Items was developed relative to those issues that could not be resolved during the workshop session. The Commission held its final CLEC Workshop on May 16, 2001, which was designed to finalize pending Action Items. These Action Items were continuously monitored and updated at each workshop until they were mutually considered "resolved or closed" for purposes of the collaboratives.⁶ At the Commission's June Business and Executive Session, Commissioner Dixon and Staff reported on the collaboratives and Staff reminded the parties that any party may bring up any unresolved

issues through the Commission's formal complaint proceeding process. See transcript of June B&E Meeting, at p. 56, attached as Exhibit 4. To date, no such complaints have been docketed.⁷

Although no formal complaints were received, Commissioner Dixon and Staff held a follow-up meeting on September 13, 2001 attended by counsel for certain CLECs and BellSouth. At that meeting, the parties agreed that unresolved issues could be addressed in further proceedings, including the LPSC's ongoing review of service quality performance in Docket No. U-22252-C. Additionally, counsel for CLECs were invited to submit lists of unresolved items in order for Staff to consider the necessity, if any, for further Commission action. The LPSC Staff is committed to resolving CLEC complaints, whether through resolution of formal complaints, informal mediation through further collaborative effort, or the on-going service quality review in Docket No. U-22252-C.

4. BellSouth's Section 271 Application to Provide Inter-LATA Service

On April 20, 2001, BellSouth filed with the LPSC its Notice of Intent to File Section 271 Application with the FCC, Brief in Support of BellSouth's Pre-Application Compliance with Section 271, Revised SGAT, and supporting affidavits. In response, the Louisiana Commission published the opening of Docket No. U-22252-E in its April 27, 2001 Official Bulletin and invited interested parties to intervene and participate. The Notice also established a procedural

⁶ A copy of the Agenda, List of Participants, and Action Item List is attached as Exhibit A to the Final Staff Recommendation attached to LPSC Order No. U-22252-E dated September 21, 2001 (attached as Exhibit 4 hereto)

⁷ Numerous issues discussed at these workshops resulted in process improvements designed to further enhance existing processes. Issues involving service advocacy to the CLECs by BellSouth resulted in the creation of a Louisiana-based Service Advocacy Center designed to help complete UNE tasks for CLECs within BellSouth's Network organization. In addition, as a result of the Commission's idea for a series of informal collaborative workshop efforts to improve communications, BellSouth created a regional CLEC User Group initiative designed after the Louisiana initiative. The initial CLEC User Group meeting was held on March 22, 2001 and covered the UNE-P User Group that attracted twenty-two (22) different CLEC companies represented with thirty-two (32) participants. A second User Group Forum was held on March 29, 2001 on the topic of collocation. The CLECs have chosen to meet every two (2) months in order to continue the dialogue began with the Louisiana workshops.

schedule pursuant to which intervening parties could file comments and supporting affidavits, and BellSouth could reply to those comments and affidavits. Further, the procedural schedule called for filing of a proposed Staff recommendation, opportunity for further comment, a final Staff Recommendation, and a vote of the LPSC at the September Business and Executive meeting. The following parties intervened in Docket U-22252-E: Cox Louisiana Telcom, LLC, Sprint Communications Company (“Sprint”), COVAD Communications (“Covad”), MCI WorldCom, KMC Telecom, Inc., AT&T of the South Central States (“AT&T”), SECCA, Xspedius Corporation, NewSouth Communications, and Access Integrated Networks. No party objected to the LPSC’s proposed process for resolving BellSouth’s application.

On June 11, 2001, COVAD, MCI WorldCom, KMC Telecom, Inc., AT&T, SECCA, Xspedius Corporation, NewSouth Communications, and Access Integrated Networks provided comments and/or affidavits to BellSouth’s filing. BellSouth filed comments and affidavits in response to the intervenors’ filings on June 25, 2001. In addition, Staff ordered BellSouth to file May Monthly State Summary (“MSS”) performance data by July 11, 2001, and June MSS data by August 11, 2001.⁸ All parties were provided an opportunity to comment on such data in separate filings. AT&T and COVAD provided comments regarding BellSouth’s May performance data.

Future plans for additional User Groups include such topics as Resale and Facility-Based (including Data) CLECs and Training.

⁸ BellSouth has been filing performance data with the Commission since late 1998. This performance data did not, however, contain the level of detail nor is it as comprehensive as the data that is required in order to make a *prima facie* case of compliance with the FCC. In order to address this inadequacy, BellSouth developed and submitted in the 271 proceeding performance data that is based upon the SQM set forth by the Georgia Public Service Commission in its Order in Docket 7892-U. We agree with BellSouth that this format substantially comports with the revised SQM that BellSouth was in the process of implementing in response to this Commission’s May 14, 2001 order in Docket U-22252-C. The Louisiana Commission believes that the Louisiana data presented by BellSouth in the Georgia-SQM format is at least as detailed and complete as that ordered by this Commission in May 2001, and that it is adequate for use in BellSouth’s 271 proceeding. None of the intervenors made any serious

Staff issued its Proposed Recommendation on August 6, 2001, including Staff's analysis of BellSouth's checklist compliance and BellSouth's April and May Louisiana performance data filed in the Monthly State Summary format. After reviewing comments from Sprint, AT&T, KMC Telecom, Inc., Covad Communications Company, WorldCom, Inc., Access Integrated Networks, Inc., New South Communications Corp., Xspedius Corporation, and BellSouth, Staff issued its Final Recommendation on August 31, 2001. Staff recommended (1) a finding that BellSouth complied with the checklist requirements of Section 271 and FCC rules promulgated thereunder; (2) endorsement of BellSouth's application; and (3) approval of BellSouth's Statement of Generally Available Terms and Conditions. Additionally, and in order to further spur competition in Louisiana, Staff recommended imposition of additional requirements upon BellSouth.

During its September 19, 2001 meeting, the Louisiana Commission voted unanimously (5-0) to adopt Staff's Final Recommendation. *See* LPSC Order No. U-22252-E, September 21, 2001, attached as Exhibit 5. The analysis of BellSouth's compliance with Track "A" is discussed in Part II herein, and the analysis of BellSouth's checklist compliance, including the LPSC's review of BellSouth's Louisiana MSS performance data, is set forth in Part III. Finally, although not necessary to its finding of checklist compliance, the Louisiana Commission also imposed additional requirements on BellSouth in order to further foster competition in Louisiana. *See* LPSC Order No. 22252-E, dated September 21, 2001, at pp. 3-6. These additional requirements, including requirements concerning combinations of network elements, collocation terms and conditions, parsing of service orders, ordering of UNE/loop combinations, and "win-back" prohibitions are addressed in Part III and IV herein

challenge to BellSouth's use of performance data in the Georgia-SQM, except to re-urge the same claims concerning

II. TRACK "A" COMPLIANCE

In its April 20, 2001 filing, BellSouth elected to pursue compliance with section 271 under Track A. In order to satisfy the requirements of Track A, BellSouth must show that it:

[H]as entered into one or more binding agreements that have been approved under Section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service to residential and business subscribers. Such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominately over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

47 U.S.C. § 271(c)(1)(A).

In its *Second Louisiana Order*, the FCC concluded that BellSouth had failed to make a *prima facie* showing that it satisfies the requirements of Track A based on its implemented interconnection agreements with PCS carriers in Louisiana. *Second Louisiana Order*, ¶ 24. In light of its conclusion that BellSouth did not satisfy the requirements of the competitive checklist and section 272, the FCC declined to address whether BellSouth satisfied the requirements of Track A based on its implemented interconnection agreements with competitive wireline LECs. *Id.*, at ¶ 48.

In its third application at the state level, BellSouth provided evidence that it meets the requirements of Track A based on its implemented interconnection agreements with competitive wireline LECs. Indeed, although various parties question the level of competition described by BellSouth in its filings, *no party challenged BellSouth's compliance with Track A.*

the adequacy of the measures themselves that were presented and rejected in Docket U-22252-C.

BellSouth demonstrated that as of January 2001, a total of 64 CLECs were providing local service to more than 208,000 lines in Louisiana. Numerous carriers are currently providing facilities-based service to business and residential customers in Louisiana. Among the dozens of facilities-based CLECs in Louisiana are Adelphia Business Solutions, Advanced Tel, (EATEL) Cox Louisiana Telecom, Centurytel Solutions, Xspedius, Intermedia Communications, ITC^DeltaCom, KMC Telecom, Stratos Telecom, and The Other Phone Company (Access One). Each of these carriers has an approved interconnection agreement with BellSouth, and each provides facilities-based service to either (or both) business and residential customers. *See* Docket No. U-22252-E, Affidavit of Victor Wakeling, at ¶17, and Exhibit VW-4. Indeed, these carriers alone serve an estimated 57,000 business lines and over 4,000 residential lines on a facilities basis. Although for purposes of Track A BellSouth relied upon all of the carriers identified in the Wakeling affidavit and its attachments and exhibits, these carriers alone establish that BellSouth is providing “access and interconnection” to “unaffiliated competing providers” of facilities-based “telephone exchange service . . . to residential and business subscribers.” On this basis, the Louisiana Commission found that BellSouth meets the requirements of Track A. *See* 47 U.S.C. § 271(c)(1)(A).

In further support of the level of local competition presently experienced in Louisiana, the LPSC took administrative notice of the latest data on local telephone competition released by the FCC on May 21, 2001. The FCC’s local competition report found that total lines reported by CLECs grew to 16.4 million (or 8.5%) of the approximately 194 million nationwide local telephone lines, representing a 93% growth in market share over the one-year period of January to December 2000. The FCC’s data revealed that as of December 31, 2000, reporting CLECs had garnered 380,947 end-user lines in Louisiana, representing a fourteen percent (14%) market

share. This 14% CLEC market share in Louisiana ranked third (3rd) in the nation, behind only New York (at 20%) and Minnesota (at 15%). This same data shows that CLEC market share in Texas, a state previously granted 271 relief, totals only twelve percent (12%) by comparison.

III. THE COMPETITIVE CHECKLIST

A. Checklist Item No. 1: Interconnection

Checklist item 1 requires BellSouth 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 LECs “[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 section 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. This checklist item generally covers interconnection trunking and collocation.

I. Nondiscriminatory Access to Interconnection Trunks

In its *Second Louisiana Order*, the FCC concluded that BellSouth had demonstrated that it has a legal obligation to provide interconnection in accordance with its rules. *See* Second Louisiana Order, fn. 210. BellSouth’s actions and performance are consistent with its previous showing, and nothing material has changed since 1998 that should cause either the FCC or this

Commission to reach a different conclusion than it reached in 1998. Moreover, to carry traffic between BellSouth and CLEC locations, BellSouth has provisioned approximately 409,933 interconnection trunks from CLEC's switches to BellSouth's switches as of February 28, 2001 within the BellSouth region. *See* LPSC Docket No. U-22252-E, Milner Affidavit, ¶ 16.

The FCC also concluded, however, that BellSouth had not made a *prima facie* showing that it was providing interconnection equivalent to the interconnection it provides itself. *See* Second Louisiana Order, ¶74. Based on the evidence presented to it, the LPSC concluded that BellSouth is providing interconnection trunks to CLECs in a manner equivalent to the interconnection it provides to itself. No CLEC that commented in the proceeding below seriously contended otherwise. BellSouth follows the same installation process for CLEC interconnection trunks as it does for itself. *See* LPSC Docket No. U-22252-E, Milner Affidavit, ¶19. To ensure nondiscrimination, BellSouth provisions CLEC trunks using the same equipment, interfaces, technical criteria and service standards that are used for BellSouth's own trunks. *Id.*, ¶12.

a. Trunk Blockage and Delays. Most of the comments received from CLECs in LPSC Docket No. U-22252-E proceeding involved issues relating to trunk performance. Both AT&T and NewSouth raised issues relating to trunk blockage and alleged delays in provisioning. Specifically, NewSouth claimed that BellSouth does not order and provision interconnection trunks in a timely fashion in accordance with NewSouth's forecasts of need (*See* LPSC Docket No. U-22252-E, NewSouth Comments, pp. 3-4) and that BellSouth does not do an adequate job in meeting its responsibility to monitor local traffic flow and identify blockages or deflections. (*See* LPSC Docket No. U-22252-E, NewSouth Comments, pp. 8-11). These issues were raised by NewSouth at the CLEC Collaboratives and discussed at length. To assist in resolution of this

problem, the parties, including NewSouth, agreed to and did submit fresh trunking forecasts to BellSouth. Further, although AT&T was one of the most outspoken critics of BellSouth's performance in this area, AT&T did admit during the collaborative workshops that it did not forecast any need for trunks in Louisiana over the succeeding six-month period.

Additionally, the parties discussed and reached an informal agreement for appropriate procedures to be implemented by BellSouth before disconnection of interconnection trunks due to underutilization of those trunks. We believe that the discussions and actions taken during the collaborative will go a long way towards resolving any such problems in the future.

Rather than weigh the relative merit of the parties' comments concerning specific or isolated trunking problems, the Louisiana Commission reviewed the Louisiana CLEC aggregate MSS performance data reported by BellSouth to evaluate whether BellSouth is providing interconnection equal in quality to that which it provides to itself. An analysis of such data is more probative of BellSouth's compliance with checklist item 1, than individual accounts of past problems that may have already been resolved.

Performance results under the Trunk Group Performance Aggregate Measure (MSS Item C.5.1) show that BellSouth met the approved aggregate benchmark for both April (*See Exhibit AJV-2 dated June 25, 2001, page 19*) and May (*See Exhibit AJV-2 dated July 23, 2001, page 10*) 2001. A review of the results for June (*See Supplemental Exhibit AJV-2, dated August 23, 2001, p. 10*) indicates that BellSouth again met the trunk blocking aggregate benchmark. BellSouth also met the benchmark for July and August. Further, and from a provisioning standpoint, although BellSouth missed the Order Completion Interval (C.2.1) retail analogue in April (p. 16), it met or exceeded it in May (p. 7) 2001. In June, July and August, BellSouth again met the Order Completion Interval (C.2.1). From an ordering perspective, the Reject Interval and FOC

Timeliness (C.1.3) benchmarks were missed in April (*See Exhibit AJV-2 dated June 25, 2001, p. 16*), but met due to improvement in May (*See Exhibit AJV-2 dated June 25, 2001, p. 7*). BellSouth again met the Reject Interval (C.1.2) and FOC Timeliness benchmark in June and July. In August, BellSouth met the Reject Interval but missed the FOC Timeliness benchmark. Additionally, the standard for FOC and Reject Response Completeness was met in May. BellSouth again met the benchmark for FOC and Reject Response Completeness in June, July and August. Finally, the MSS reports for May 2001 indicate that BellSouth met 100% of the maintenance and repair measures (“M&R”) after demonstrating that they met 80% (8 out of 10) in April. MSS results for June and August 2001 indicate that BellSouth again met 100% of the M&R measurements, while meeting 87.5% (7 out of 8) in July. BellSouth met 17 of 20 (85%) of the measurements within the Local Interconnection Trunks category in June, which is up from 15 of 19 (79%) in May. July and August results are comparable. The Louisiana Commission believes that such performance supports a finding of checklist compliance on Item No. 1.

b. Pricing. The Louisiana Commission set TELRIC-based rates for interconnection in Docket No. U-22022/22093 pursuant to the 1996 Act, and these rates were included by BellSouth in the SGAT filed on April 20, 2001. Recently, the LPSC updated those rates in LPSC Order No. U-247114-A, dated September 21, 2001. BellSouth’s approved SGAT was revised on September 25, 2001 to incorporate these new rates.

c. Miscellaneous Issues. WorldCom and SECCA raised issues concerning BellSouth’s alleged obligation to deliver at its own expense traffic originated on its network to the point of interconnection selected by the CLEC even if that traffic originates in a BellSouth local calling area different from where the CLEC point of interconnection is established. *See LPSC Docket No. U-22252-E, Argenbright Affidavit, pp. 4-8; Gillan Affidavit, p. 9.* This issue

was raised before the Commission in the WorldCom arbitration (Docket No. U-25350), the AT&T arbitration (Docket No. U-25264) and the Sprint arbitration (Docket No. U-25373). The LPSC is unaware of any FCC rule or regulation that specifically addresses this issue. Sprint advised the Commission by letter dated July 11, 2001 that this issue has been resolved between BellSouth and Sprint. Likewise, AT&T has advised the Commission by letter dated July 25, 2001 that this issue has been resolved between BellSouth and AT&T. To the extent BellSouth and WorldCom are unable to resolve the issue, this Commission expects to address the issue appropriately in WorldCom's pending arbitration. This Commission further notes that apparently the FCC does not believe this issue to be critical to a 271 proceeding, given the fact that it has not required other ILECs to assume this obligation in other 271 proceedings.

WorldCom also argued that WorldCom should not be required to segregate local, intraLATA toll and transit traffic into separate trunk groups (*See* LPSC Docket No. U-22252-E, Argenbright Affidavit, pp. 4-8); that BellSouth inappropriately requires CLECs that are providing terminating access service for IXCs to route calls to access tandems (*See* LPSC Docket No. U-22252-E, Argenbright Affidavit, pp. 10-12); and that BellSouth should provide and use 2-way trunking at WorldCom's request. WorldCom was the only CLEC to raise these issues, each of which is pending in WorldCom's arbitration. Nothing in the FCC's rules or this Commission's Orders squarely addresses these issues, which appear to involve the type of "new and unresolved interpretive dispute about the precise content of an ILEC's obligations to its competitors, disputes that [the FCC's rules] have not yet addressed and that do not involve per se violations of self-executing requirements of the Act." *Texas Order*, ¶23. This Commission believes that these issues need not be resolved for purposes of the section 271 proceeding, and will be appropriately resolved in WorldCom's arbitration proceeding.

2. *Collocation*

The provision of collocation is an essential prerequisite to demonstrating compliance with checklist item 1. The FCC concluded in the *Second Louisiana Order* 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* at ¶65. In its second filing at the FCC, BellSouth relied on its SGAT, which referred to terms and conditions incorporated into a BellSouth Collocation Handbook. The FCC concluded that this showing 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. The LPSC is of the opinion that both of these concerns have been adequately addressed.

a. Legally Binding Terms and Conditions. The LPSC believes that BellSouth has clearly demonstrated that it now provides legally binding terms and conditions for collocations. BellSouth provides physical and virtual collocation consistent with Sections 271 and 251 of the Act and with the FCC’s Orders in legally binding interconnection agreements. *See* LPSC Docket No. U-22252-E, Interconnection Agreement Between BellSouth and Stratos Telecom, Inc., Att. 4, BellSouth’s Original Comments. In addition, BellSouth has filed a collocation tariff setting forth legally binding terms and conditions. *Louisiana Access Services Tariff*, Section E20 (approved December 13, 2000). BellSouth’s SGAT filed in this proceeding also incorporates these same terms and conditions.⁹ AT&T witness Turner alleges that BellSouth can use its

⁹ On September 25, 2001, BellSouth revised its approved SGAT to comply with the LPSC’s requirements in its Section 271 order, LPSC Order No. U-22252-E, September 21, 2001. The revised SGAT thus now incorporates the LPSC’s recent requirements concerning collocation, including appropriate allocation of security costs, a 60-day interval for cageless collocation, and access to power. *See* discussion at text, *infra* at pp. 21-23. Additionally, on October 1, 2001, BellSouth filed several revisions to its SGAT for the purpose of incorporating recent requirements

Collocation Handbook to unilaterally alter the terms and conditions of interconnection agreements and the collocation tariff. The LPSC disagrees. The terms and conditions of the parties' interconnection agreements or the collocation tariff control BellSouth's provision of collocation and if AT&T or any other party believes that BellSouth has violated those terms and conditions, appropriate enforcement action will be taken.

b. *Binding Intervals.* Further, this Commission has adopted binding provisioning intervals for collocation and established appropriate benchmarks. Specifically, the Commission ordered an Average Response Time Measure and benchmark of 95% within 10 calendar days for space availability and 95% within 30 calendar days for a full price quote. *See* General Order, p. 10, October 9, 2000, Docket U-22252-C. It also ordered an initial Average Arrangement Time measure and benchmark for normal physical and virtual collocation arrangements of 120 calendar days; and for extraordinary arrangements, 180 calendar days. After a period of six months (or effective April 9, 2001), the benchmarks were increased to 95% within 90 calendar days for ordinary physical and virtual arrangements and 95% within 120 calendar days for extraordinary arrangements. On March 15, 2001, BellSouth filed a modification to its collocation tariff to shorten its provisioning intervals as specified in the General Order, to be effective on April 9, 2001.

BellSouth's performance data indicates that it is meeting the Commission's ordered benchmarks. As contained in the three separate collocation reports (E.1.1.1 through E.1.3.2):

1) Average Response Time, 2) Average Arrangement Time and 3) Percent Due Dates Missed, BellSouth met the approved benchmarks for 5 of the 6 sub-metrics with CLEC activity in April

imposed by the FCC concerning co-carrier cross connects. The LPSC intends to publish notice of these proposed revisions in its October 26, 2001 Official Bulletin, seek comment, and address the proposed revisions expeditiously thereafter.

(See Exhibit AJV-2 dated June 25, 2001, p. 14) (83.3% of all measures) and met all 9 in May (See Exhibit AJV-2 dated July 23, 2001, p. 5) (100% of all measures). In June, BellSouth again met all (100%) measurements within the collocation category. BellSouth continued excellent performance in July and August.

In Docket No. U-22252-E, WorldCom witness Bomer noted that this Commission has directed Staff to consider a separate interval for cageless physical collocation in its October 9, 2000 General Order. The LPSC agreed with WorldCom and ordered that the provisioning interval for cageless collocation should be 60 calendar days for ordinary arrangements and 90 calendar days for extraordinary arrangements. Such intervals shall run from date of firm order. The terms "ordinary" and "extraordinary" shall have the same meaning as is ascribed to them in General Order dated October 9, 2000. CLECs are encouraged to provide BellSouth forecasts, but are not required to do so. Finally, the LPSC will permit BellSouth to file for waiver of the applicable benchmarks in appropriate circumstances.

c. Pricing. AT&T, WorldCom, Xspedius, and NewSouth all raised concerns about BellSouth's collocation rate elements, including particularly its security and power costs. At the time BellSouth filed its third Section 271 application with the Louisiana Commission, BellSouth offered rates for collocation that were subject to true-up after the LPSC's resolution of Docket No. U-24714-A. BellSouth's approved SGAT now incorporates the collocation rates ordered by the LPSC Commission in LPSC Order No. U-24714-A dated September 21, 2001. These rates also incorporate the LPSC's requirement in the 271 proceeding, based on input of these CLECs, that security costs should be allocated on a square footage basis, as CLECs contended, rather than on the per head basis proposed by BellSouth. See LPSC Order No. U-22252-E, dated September 21, 2001.

Finally, the LPSC in its Section 271 order addressed certain complaints raised by certain CLECs concerning purchase of power in collocation space. *See* LPSC Order No. U-22252-E, dated September 21, 2001, at pp. 3-4.¹⁰ BellSouth revised its approved SGAT on September 25, 2001 to incorporate the requirements imposed by the LPSC with respect to CLEC purchase of power.

d. Miscellaneous Issues. WorldCom and AT&T alleged that BellSouth does not provide adjacent and shared collocation consistent with the FCC's orders. WorldCom witness Bomer alleges that the FCC's orders require BellSouth to provide DC power to adjacent collocation spaces, and that BellSouth refuses to do so. *See* LPSC Docket No. U-22252-E, Bomer Affidavit, ¶¶21-25. In response, the LPSC has ordered BellSouth to provide DC power to adjacent collocation sites where technically feasible, as that term has been defined by the FCC. *See* LPSC Order No. 22252-E, dated September 21, 2001, Exhibit A, Staff Final Recommendation, at pp. 34-35. BellSouth's approved SGAT contains a revision filed on September 25, 2001 to comply with this requirement.

Based on the foregoing, the LPSC finds that BellSouth meets the requirements of Checklist Item No. 1.

¹⁰ Several CLECs apparently have installed their own BDFB in their collocation space, and order power directly from BellSouth. These CLECs complained about the charges that result from BellSouth's requirement in such an arrangement for a standard 225amp power feed. After reviewing BellSouth's justification for its requirements, the LPSC approved BellSouth's power options, but ordered that any CLEC that is currently purchasing 225 amps directly from BellSouth's main power board has the option of reconfiguring such power in order to purchase smaller increments from BellSouth's BDFB. Where a CLEC decides to reconfigure its collocation power so as to purchase smaller increments of power from BellSouth's BDFB, the LPSC further ordered that the CLEC should submit an application to BellSouth regarding such reconfiguration and that BellSouth must respond to the application and permit the conversion within seven (7) calendar days. Additionally, BellSouth was ordered to waive any application fee or charges that are otherwise due to accomplish this conversion. The actual work to accomplish the conversion would be performed by a certified vendor hired by the CLEC. Such work should include removal of the cabling between the CLECs BDFB and BellSouth's main power board. Further, the CLEC must follow applicable National Electric Safety Code standards for running power to BellSouth's BDFB. Further, the LPSC ordered BellSouth to provide CLECs with an additional option by allowing CLECs to purchase power directly from an electric utility company.