

service. *First Report and Order*, n. 1126. At that time, the Commission required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network database. *Id.* at ¶484. In the *UNE Remand Order*, the FCC clarified that the definition of call-related databases “includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.” *UNE Remand Order*, ¶403.

Based on the evidence in the record, the LPSC concludes that BellSouth satisfies the requirements of checklist item 10, and we note that no party to this proceeding appears to have made any allegation otherwise regarding this checklist item. This finding is consistent with the finding made by the FCC in its *Second Louisiana Order*, ¶267.

K. CHECKLIST ITEM 11: Local Number Portability

Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251. Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.” The 1996 Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” *Id.* at §153(30). In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications

carriers on a competitively neutral basis as determined by the Commission.” *Id.* at §251(e)(2); *see also Second Louisiana Order*, ¶274.

Pursuant to these statutory provisions, the FCC requires LECs to offer interim number portability “to the extent technically feasible.” Fourth Number Portability Order, 10. The FCC also requires LECs to gradually replace interim number portability with permanent number portability. *See Second Louisiana Order*, 275. The FCC has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability, and created a competitively neutral cost-recovery mechanism for long-term number portability. *Id.*

In its *Second Louisiana Order*, the FCC found that BellSouth failed to demonstrate that it provides interim number portability so that “users of telecommunications services [can] retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. *See Second Louisiana Order*, ¶279, citing 47 C.F.R. §52.21(k).

The LPSC finds that BellSouth complies with the requirements of checklist item 11. Certain parties have made allegations regarding BellSouth’s failure to provide number portability in a reliable fashion. Many of these same issues were addressed during the Collaborative Workshops with CLECs and many have already been resolved or are being resolved. Because most of these claims appear to be anecdotal in nature and have been or are being resolved, the LPSC does not believe that they warrant a finding of noncompliance with this checklist item. For instance, AT&T complains that BellSouth will reassign numbers that CLEC customers have ported with them. *See LPSC Docket No. U-22252-E, Wilson Affidavit*, ¶¶ 26-28, 62-64. BellSouth responds however, that it has identified the specific problem and has implemented an

interim manual solution to correct the problem, while a permanent software solution is being pursued. *See* LPSC Docket No. U-22252-E, Ainsworth Reply Affidavit, ¶5. AT&T also complains that certain customers that port their number upon changing service to a CLEC will experience double billing because BellSouth does not stop billing the end user. *See* LPSC Docket No. U-22252-E, Wilson Affidavit, ¶¶ 31-33, 67-69. As BellSouth points out, however, this situation can be caused by either the CLEC or BellSouth. Further, BellSouth has worked to resolve these types of issues in various collaborative meetings. Finally, a CLEC can contact the Billing Resolution Group to investigate any individual issues and work with the CLEC to resolve the matter in an expeditious manner. *See* LPSC Docket No. U-22252-E, Ainsworth Reply Affidavit, ¶¶ 7-9.

In its Proposed Recommendation, Staff instructed BellSouth, and any other interested party, to provide an update regarding the status of implementing “fixes” to LNP problems and whether there are any remaining issues to be resolved by the Commission concerning such problems. In response, BellSouth states that double billing occurs in isolated instances and can be caused by both CLECs and BellSouth. Any such problems are resolved expeditiously. Further, regarding the problem of reassignment of telephone numbers, BellSouth states that it has implemented an interim manual solution that has solved the problem in its entirety and is planning a permanent fix. *See* LPSC Docket No. U-22252-E, BellSouth Comments to Proposed Staff Recommendation, pp. 33-34. The LPSC will continue to monitor any LNP issues and requests that the parties inform Staff of any further instances of such problems.

L. CHECKLIST ITEM 12: Local Dialing Parity

Section 271(c)(2)(B)(xii) requires a BOC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing

parity in accordance with the requirements of section 251(b)(3). Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays.” Section 153(15) of the Act defines “dialing parity” as follows:

...a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation...

The FCC rules that implement section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC’s customers dial to complete a local telephone call. 47 C.F.R. §§51.205, 51.207. Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC’s customers. 47 C.F.R. §51.207.

The LPSC finds that BellSouth demonstrates that it provides local dialing parity in accordance with the requirements of section 251(b)(3) and thus satisfies the requirements of checklist item 12. The LPSC notes that no party to this proceeding has made any allegations against BellSouth concerning compliance with checklist item 12. We note that the FCC previously found BellSouth to be in compliance with this checklist item and we are unaware of any reason why the FCC should reconsider its decision. *See* Second Louisiana Order, ¶¶ 296-97.

M. CHECKLIST ITEM 13: Reciprocal Compensation

Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).” In turn, pursuant to section 252(d)(2)(A), “a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions

provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

Based on the evidence in the record, the LPSC concludes that BellSouth demonstrates that it has entered into reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2), and thus satisfies the requirements of checklist item 13. Only WorldCom raises allegations concerning BellSouth's actions under checklist item 13, all of which concern issues that are currently pending in its section 252 arbitration proceeding before this Commission (Docket No. U-25350). We believe that WorldCom's issues should be resolved in the context of its arbitration proceeding and do not believe that any such issues render BellSouth in noncompliance with this checklist item. We further note that the FCC previously found that BellSouth was in compliance with this checklist item, and we are unaware of any reason or condition that should cause the FCC to reconsider its prior decision. *See* Second Louisiana Order, ¶ 299.

N. CHECKLIST ITEM 14: Resale Obligation

Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services ... available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3). Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 252(d)(3) requires state commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection,

and other costs that will be avoided by the local exchange carrier. Section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on service resold under section 251(c)(4)(A). Consequently, the Commission concluded in the Local Competition First Report and Order that resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and non-discriminatory. If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers. If a state creates such a limitation, it must do so consistent with requirements established by the Federal Communications Commission. In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services. *Texas Order*, ¶387.

Based on the record evidence, the LPSC concludes that BellSouth demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements of checklist item 14. None of the parties to this docket make any serious contention otherwise. Staff notes that the FCC previously held that “but for deficiencies in its OSS systems, BellSouth demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3).” *See* Second Louisiana Order, ¶309. The LPSC has previously discussed and concluded that BellSouth has remedied the concerns regarding its OSS sufficient to comply with checklist item 2. *See* discussion under checklist item 2. Thus, this Commission finds BellSouth in compliance with checklist item 14.

IV. PUBLIC INTEREST ANALYSIS

A. Increased Competition in the InterLATA and Local Markets

The LPSC has previously determined in connection with BellSouth's first application under Section 271 that BellSouth's entry into the interLATA long distance market in Louisiana is in the public interest. *See* LPSC Order No. U-22252-A, dated September 5, 1997, at p. 14. The evidence today in states where RBOCs have been granted this authority overwhelmingly demonstrates that such entry not only substantially increases competition in the interLATA long distance market, but also provides a powerful incentive to large long distance companies to enter and compete aggressively in the local telecommunications market. The LPSC understands and acknowledges that an RBOC must demonstrate that it has met its obligations under the Act, but once it has done so, as we believe BellSouth has done here, there is simply no question that this additional competition is in the public interest.

B. Seven-Day Prohibition Against "Win-Back" Marketing

Although no CLEC has filed a formal complaint against BellSouth in Louisiana (either in the proceeding below or elsewhere) alleging that BellSouth has engaged in inappropriate or illegal marketing activities targeted toward customers that have switched from BellSouth to CLECs, at least one CLEC, New South, asserted in the state 271 proceeding that the Louisiana Commission should impose certain marketing restrictions on BellSouth's "win-back" efforts. We stress that there is no evidence in the record put before us of any illicit marketing activity. Nevertheless, we are aware of the importance of this issue to CLECs, and also that certain state commissions in BellSouth's region have initiated investigations into complaints that have been filed against BellSouth. Therefore, we have ordered as a prophylactic measure that BellSouth shall be prohibited "from engaging in any winback activities for 7 days once a customer switches to another local telephone service provider, including (1) prohibiting BellSouth's wholesale

divisions from sharing information with its retail divisions, at any time, such as notice that certain end users have requested to switch local service providers, and (2) prohibiting BellSouth from including any marketing information in its final bill sent to customers that have switched providers.” *See* LPSC Order No. U-22252-E, dated September 21, 2001, at p. 3.

The Louisiana Commission’s commitment to fair competition is demonstrated by the discussion on this point at the September 19, 2001 the Commission meeting during which Staff’s Final Recommendation was adopted. At that meeting, Commissioner “Jimmy” Field seconded Commissioner Blossman’s motion to adopt Staff’s Recommendation upon Commissioner Blossman’s concurrence that the motion would include a statement that BellSouth shall be generally subject to fines and penalties to be imposed by the Commission if BellSouth is found to be engaging in any anticompetitive activity related to the prohibition of the win-back activities.

C. The LPSC Self-Executing Enforcement Plan

In the LPSC’s initial order adopting SQM, LPSC General Order dated August 31, 1998 and issued in Docket No. U-22252-C, the LPSC adopted Staff’s recommendation for an expedited dispute resolution process in order to resolve CLEC service quality and other performance related problems. That Order also ordered further collaborative workshops to address issues, including the establishment of a voluntary self-executing enforcement plan. The Louisiana Commission is well aware that the FCC has repeatedly advised that the existence of a comprehensive self-executing enforcement plan is critical to its “public interest” analysis in order that it can be assured that there are appropriate safeguards in place to prevent “backsliding” after the ILEC is granted relief.

This issue was debated and discussed at great length in the workshops that took place during 1999 and 2000 in Docket No. U-22252-C. As we have previously noted, “[d]uring the workshops conducted in Louisiana many days were spent addressing the various remedy plans endorsed by BellSouth, AT&T, MCI WorldCom and Sprint.” (See May 14, 2001 General Order, Docket No. U-22252-C, Exhibit A, Staff Final Recommendation, p. 15). BellSouth, AT&T and WorldCom submitted proposals for self-executing remedy plan. BellSouth’s plan was structured similarly to the penalty plan adopted by the Texas Public Service Commission pursuant to which Tier 1 and Tier 2 penalties apply to certain critical measures. In addition, BellSouth’s proposal included a Tier 3 under which it forfeited its authority to offer interLATA long distance service.

The proposals were exhaustively considered by Staff, including an analysis of the financial impact on BellSouth of each proposed plan. BellSouth modified its proposal several times during the course of the workshops to reflect input from the Staff and CLECs. At the conclusion of the workshops, there were 22 unresolved issues concerning the latest version of BellSouth’s remedy proposal. Staff issued a proposed recommendation with respect to these and other issues and, after receiving comment from the parties, issued its Final Recommendation. *See* Final Staff Recommendation, Docket No. U-22252-C, adopted in LPSC Order No. U-22252-C, dated May 14, 2001.

The LPSC Staff recommended, and the LPSC adopted, a SEEM plan that, although based on BellSouth’s proposal, contained numerous adjustments proposed by the CLECs.³⁰ These adjustments included (1) additional product disaggregation for DSL product offerings (2) elimination of BellSouth’s proposed absolute cap (3) additional penalties for late, incomplete and

³⁰ AT&T and WorldCom supported their proposals throughout the course of the proceeding, and also advocated adjustments to the BellSouth plan in the event the Commission determined to adopt BellSouth’s proposed remedy structure.

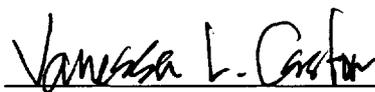
revised reports (4) additional Tier I measurements (5) calculation of Tier II remedies on the rolling 3 month basis as is done in the SWBT remedy plan (6) creation of a CLEC “market penetration adjustment” similar to that found in the SWBT remedy plan (7) addition of remedies to measures that reflect manual and partially mechanized processing (8) implementation prior to obtaining Section 271 relief rather than postponing implementation until after such authorization is granted as BellSouth proposed (9) additional reporting requirements and standards in the event BellSouth uses an affiliate to provide competitive local exchange provider in Louisiana; and (10) stringent annual audit requirements at BellSouth’s cost, and the right of any individual CLEC to request its own audit. BellSouth was ordered to revise its proposed SEEM plan to incorporate this Commission’s adjustments, and on June 28, 2001, BellSouth filed its compliance plan. A copy of that filing is attached as Exhibit 6.

Further, this Commission has ordered BellSouth to file data concerning the remedy payments made under the Commission’s order (*see* Final Staff Recommendation, at p. 13), and will conduct a 6-month review of BellSouth SQM and its remedy plan. The LPSC has retained Acadian Consulting to assist it in this review. Any interested CLEC will be able to participate in that review. *See* General Order dated July 31, 1001, amending General Order dated May 14, 2001. BellSouth filed its first report on remedy payments based on July 2001 data on September October 12, 2001. Staff has issued its Notice of the first workshop of the 6-month review to be held on October 24-25, 2001, and this remedy report is on the agenda. The LPSC intends to vigilantly monitor BellSouth’s performance and the remedy payments made under the plan and will not hesitate to take whatever action may be necessary to ensure that CLECs have the benefit of the non-discriminatory access required by the Act.

V. CONCLUSION

For all of the reasons expressed herein, the Louisiana Public Service Commission respectfully requests that the Federal Communications Commission grant BellSouth's application to provide interLATA service in Louisiana.

Respectfully submitted,
LPSC LEGAL DIVISION



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

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In the Matter of

Joint Application by BellSouth Corporation, *
BellSouth Telecommunications, Inc., *
and BellSouth Long Distance, Inc. for *
Provision of In-Region, InterLATA Services *
in Georgia and Louisiana *
* * * * *

CC Docket No. 01-277

LOUISIANA PUBLIC SERVICE COMMISSION

EVALUATION

EXHIBITS

1. LPSC Order No. U-22252-E, dated September 21, 2001, with ALJ Final Recommendation, dated August 31, 2001.
2. Agenda for October 24-25, 2001 Louisiana Performance Measurements Workshop Six-Month Review.
3. LPSC Order No. U-24714-A, dated September 21, 2001.
4. Transcript from LPSC June 20, 2001 B&E Meeting, pages 54-58.
5. Transcript from LPSC September 29, 2001 B&E Meeting, pages 44-52.
6. BellSouth's Revised Self-Executing Enforcement Plan with Exhibits, filed June 28, 2001 in Docket No. U-22252-C.