

our TELRIC standards. The Commission has previously noted that different states may reach different results that are each within the range of what a reasonable application of TELRIC would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here. We will not conduct a *de novo* review of a state's pricing determinations.⁸³ We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."⁸⁴

24. Because our review here is a stand-alone analysis, we review each issue on its own merits, rather than engaging in any benchmarking or other state comparisons. Although such benchmarking is advocated by some commenters,⁸⁵ our analysis is complete if it reveals that there are no basic TELRIC violations or clear errors on substantial factual matters, and we do not proceed further to determine TELRIC compliance on the basis of comparisons with other states, including those that have section 271 approval. To do otherwise would put the Commission in the position of establishing benchmark rates for the nation on the basis of the few states where the Commission, thus far, has found state commissions to apply TELRIC correctly.⁸⁶ We see no reason to do this as it undermines the importance of state-specific, independent analysis of rates for UNEs. The Act contemplates the states independently setting rates based on federally established guidelines. It is important to recognize both that costs may vary between states and that state commissions may reach different reasonable decisions on matters in dispute while correctly applying TELRIC principles.

25. As we have previously recognized, separate, reasonable applications of TELRIC principles can produce a range of rates. It would be inappropriate for us to reject an application that relied on rates that reflected a reasonable application of TELRIC principles merely because that application was filed after we had approved a separate application based on rates at a lower point in the TELRIC range. Thus, we use our benchmarking test based on the USF cost model only in the event we find that there may be clear error with a state's application of TELRIC. Benchmarking is used for the limited purpose of providing confidence that a rate, despite its potential TELRIC errors, falls within the range that a reasonable application of TELRIC would

⁸³ *Verizon Pennsylvania Order*, 16 FCC Record at 17453, para. 55 (citations omitted). *See also Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

⁸⁴ *Id.*

⁸⁵ *E.g.*, ASCENT GALA II Comments at 2-5; CompTel GALA I Comments at 10-17.

⁸⁶ The Commission has found, for example, that the New York, Texas and Kansas Commissions have applied TELRIC correctly for recurring UNE charges.

produce. We do not, however, regard failure to meet a benchmark, by itself, as evidence that a state commission failed to reasonably apply TELRIC in setting UNE rates.⁸⁷

26. Commenters also attack various rates by comparing them to similar rates in other states.⁸⁸ We are not persuaded by the commenters' comparative analyses. Commenters generally do not show why any particular alleged comparison is appropriate or relevant. Some commenters also compare dissimilar rate elements and do not explain their key economic assumptions.⁸⁹ Without a basis to weigh such comparisons to account for the differences between states and the fact that state commissions can reasonably reach different conclusions on disputed issues, such comparisons are not useful. Accordingly, we find the comparisons asserted by commenters in this proceeding do not establish that the relevant state commissions have committed clear error.

27. In this section, we first summarize the analyses and conclusions reached during the several different cost dockets of the Louisiana and Georgia commissions. We then turn to the commenters' challenges to BellSouth's pricing. In general, the commenters criticize BellSouth's loop rates, cost model inputs, switching rates, and Daily Usage File (DUF) rates.⁹⁰ With regard to loop rates, commenters argue that the rates would be lower if BellSouth used 100 percent Integrated Digital Loop Carrier technology and did not base its loop model or loading factors on an embedded network.⁹¹ With regard to cost model inputs, commenters argue that BellSouth's fill factors and productivity rates are too low, cost of capital is too high, drop lengths are too long, and inflation is double-counted.⁹² With regard to switching rates, commenters claim that BellSouth should not have used a meld of new and growth switch discounts in its cost model and that its switching rates are not TELRIC because new, lower rates have been proposed in Georgia.⁹³ Finally, commenters attack BellSouth's DUF rates in Georgia based on the inputs used in the cost study and assert that section 271 approval in Georgia should be conditioned on adopting, on an interim basis subject to true-up, the lower DUF and non-loop rates now proposed in the ongoing state proceeding.⁹⁴

⁸⁷ We note, however, that both Georgia's and Louisiana's loop and non-loop rates compare favorably with current New York rates when benchmarked using our universal service cost model that takes into account cost differences between states.

⁸⁸ *E.g.*, ASCENT GALA II Comments at 2-5; CompTel GALA I Comments at 10-17.

⁸⁹ *E.g.*, AT&T GALA II Comments at 45.

⁹⁰ *E.g.*, AT&T GALA I Reply at 32-43; WorldCom GALA I Comments at 54-60.

⁹¹ *Id.*

⁹² *E.g.*, ASCENT GALA II Comments at 6; AT&T GALA I Comments at 48-62; AT&T GALA I Comments, Ex. A, Declaration of Michael Baranowski at para. 9 (AT&T GALA I Baranowski Decl.).

⁹³ AT&T GALA I Comments at 48-53.

⁹⁴ AT&T GALA II Reply 43-45.

28. Based on the evidence in the record, we find that BellSouth UNE rates in Georgia and Louisiana are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1).⁹⁵ Thus, BellSouth UNE rates in Georgia and Louisiana satisfy checklist item two.

a. Background

(i) Pricing Proceedings before the Georgia Commission

29. The Georgia Commission set UNE rates over the course of three proceedings. Following a hearing process that lasted about one year, the Georgia Commission on December 16, 1997, established rates for individual network elements and interconnection services.⁹⁶ The Georgia Commission had previously approved a presumption that prices should be based upon TELRIC as a forward-looking methodology.⁹⁷ It adopted BellSouth's cost model after ordering a modification to prevent unbundled loop and port rates from reflecting "historical, embedded-cost prices" and making other adjustments to assumptions that BellSouth used to promote forward-looking pricing and competition.⁹⁸ In rejecting the Hatfield cost model sponsored by AT&T and MCI, the Georgia Commission noted "that the choice of inputs has more impact on the results than the choice of model," and concluded "that the end result of cost-based rates is ultimately more important than strict adherence to a particular methodology."⁹⁹

30. On February 1, 2000, the Georgia Commission established rates for the combinations of UNEs, including those commonly used in the UNE-platform.¹⁰⁰ As part of its

⁹⁵ See *infra* Appendix D, section IV.B.3.

⁹⁶ BellSouth GALA I Application App. G, Vol. 7, Tab 20, Docket No. 7061-U (*Georgia Commission's Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services* (Dec. 16, 1997) (*Georgia Commission UNE Rate Order*); see also Georgia Commission Comments at 11 (stating the Georgia Commission initiated this case in 1997, and it included several pre-hearing conferences and informal workshops to review various cost models presented by the parties numerous data requests, and fifteen intervenors participated in the five-day hearing. "The setting of these rates concludes a substantial leg of the journey toward full competition in the telecommunications marketplace in Georgia.") (citing *Georgia Commission UNE Rate Order* at 3)).

⁹⁷ See *Georgia Commission UNE Rate Order* at 20 (citing orders in Dockets No. 6415-U/6537-U on September 18, 1996 and in Docket No. 7061-U on December 6, 1996).

⁹⁸ *Id.* at 5, 11, 20 (stating that the Georgia Commission disallowed BellSouth's proposed Residual Recovery Requirement (RRR) because it "would run counter to the goal of moving Georgia's telecommunications market toward competition, and would contravene the directive of the 1996 Act. . . . BellSouth's proposed RRR would fluctuate in amount, depending upon the forward-looking TELRIC calculation, and simply adds to the TELRIC costs the amount that would result in full recovery of historical, embedded costs."). The Georgia Commission also modified cost of capital, depreciation, fill factors, and shared costs for labor rates. *Id.* at 26, 29, 33, 53.

⁹⁹ *Id.* at 17.

¹⁰⁰ See BellSouth GALA I Application App. I, Vol. 6a, Tab 7, Docket No. 10692-U (*Georgia Commission's Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements* (Feb. 1, 2000)) (*Georgia Commission UNE-platform Order*).

analysis in adopting a cost methodology, the Georgia Commission found the Hatfield model sponsored by AT&T and MCI was not reliable for computing cost-based rates, and “that the costs generated by the BellSouth models, with the proper modifications and inputs, best reflect the forward-looking costs of UNE Combinations.”¹⁰¹ The state commission noted, as it had in the UNE Rate Order, that after it reviewed the costs produced by the various models using different sets of inputs, it believed “the decisions most affecting the costs generated are the inputs and adjustments used, rather than the choice of the basic model itself.”¹⁰² The Georgia Commission stated that regardless of which model it selected, it “would need to adjust the model and modify the inputs.”¹⁰³ Many of the model inputs that the Commission ordered in the previous UNE rate proceeding were incorporated into BellSouth’s new model and cost studies.¹⁰⁴ In addition, the Georgia Commission made other adjustments, which included changes related to Digital Loop Carrier and related technology.¹⁰⁵

31. On June 11, 2001, the Georgia Commission decided issues that included rates for xDSL facilities, after, as in past hearings, conducting workshops which included competitive LECs and requiring comprehensive work papers and documents that explained the basis for BellSouth’s study assumptions, inputs and underlying analysis.¹⁰⁶ The state commission approved a settlement agreement on some issues. It also evaluated disputes regarding BellSouth’s cost studies, reducing some rates and also setting interim rates that it will revisit in a generic pricing docket now pending.¹⁰⁷ Hearings in this proceeding are scheduled to set new cost-based rates for UNEs, UNE combinations and interconnection.

¹⁰¹ *Id.* at 15-16.

¹⁰² *Id.* at 16.

¹⁰³ *Id.* (“The [Georgia] Commission has selected to use the BellSouth model and has made adjustments which reduce the costs generated by that model. However, even if the [Georgia] Commission were to choose the HAI model, it could not do so without modifications. It appears that after all the necessary adjustments were made, the costs ultimately produced by either model would be very similar.”)

¹⁰⁴ *Id.* at 18.

¹⁰⁵ *Id.* at 19. The Georgia Commission adjusted the model so that 98 percent of digital loop carrier (DLC) loops were served by integrated DLC, as opposed to the 49 percent proposed by BellSouth, which would result in a \$.71 decrease to the 2-wire loop/port UNE combination price.

¹⁰⁶ See BellSouth GALA I Application App. K, Vol. 5, Tab 11, Docket No. 11900-U (*Georgia Commission’s Investigation of BellSouth Telecommunications, Inc.’s Provision of Unbundled Network Elements for the xDSL Service Providers* (June 11, 2001)) at 2 (*Georgia Commission UNE xDSL Order*).

¹⁰⁷ *Id.*; see also Georgia Commission GALA I Comments at 19 (citing *Georgia Commission’s Generic Proceeding to Review Cost Studies, Methodologies, Pricing Policies and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.’s Network*). The Georgia Commission established a Procedural and Scheduling Order on August 21, 2001, which included a technical workshop.

(ii) Pricing Proceedings before the Louisiana Commission

32. The Louisiana Commission set rates for interconnection and UNEs in two cost dockets.¹⁰⁸ In its 1997 costing order in Docket U-22022/22093-A, the Louisiana Commission adopted nine specific TELRIC costing principles.¹⁰⁹ In the 2001 order presently before us in Docket U-24714-A, the Louisiana Commission applied the same TELRIC costing principles.¹¹⁰

33. On April 23-27, 2001, the Louisiana Commission held hearings on the merits of BellSouth's proposed new UNE rates.¹¹¹ BellSouth conducted new cost studies in support of the proposed new UNE rates and UNE combinations.¹¹² The testimony and cross examination of 21 witnesses were received into evidence.¹¹³ BellSouth, the parties, and the staff of the Louisiana Commission filed post-hearing briefs on June 25, 2001.¹¹⁴ The Louisiana Commission itself presented the expert testimony and economic analysis of its consultant Kimberly Dismukes.¹¹⁵ Ms. Dismukes affirmed that, in evaluating the reasonableness of BellSouth's BSTLM¹¹⁶ cost model, she relied on the same nine TELRIC costing principles that the Louisiana Commission had adopted in Docket U-22022/22093-A.¹¹⁷ In several instances, Ms. Dismukes recommended (and the Louisiana Commission ultimately adopted) loop assumptions, rates, and charges that were lower (or more favorable to the competitive LECs) than those BellSouth proposed.¹¹⁸

¹⁰⁸ BellSouth GALA I Application App. F-Louisiana, Vol. 9 Tab 40, Docket No. U-24714-A at 3-5 (*In Re: Final Deaveraging of BellSouth Telecommunications, Inc., UNE Rates pursuant to FCC CC 96-45 9th Report and Order on 18th Order on Reconsideration released 11/2/99 to be established and submitted for the December Louisiana Public Service Commission Business and Executive Session. August 4, 2000 republished to include: consideration of BellSouth Telecommunications, Inc.'s new cost studies to establish rates for unbundled network elements and network element combinations . . . as well as geographically deaveraged rates for certain unbundled network elements and combinations, Order Number U-24714 (Subdocket A), (September 21, 2001) (Louisiana Commission UNE/Deaveraged Rates Order).*)

¹⁰⁹ *Id.* at 4.

¹¹⁰ *Id.* at 3-5.

¹¹¹ *Id.* at 2.

¹¹² *Id.* at 1-2.

¹¹³ *Id.* at 2.

¹¹⁴ *Id.* at 2-3.

¹¹⁵ BellSouth GALA I Application App. F-Louisiana, Vol. 9 Tab 38, Docket No. U-24714-A, at 2 (Louisiana Commission Staff Post-Hearing Brief).

¹¹⁶ "BSTLM" stands for "BellSouth Telecommunications Loop Model." *Id.* at n.2; Louisiana Commission UNE/Deaveraged Rates Order at 5.

¹¹⁷ Louisiana Commission Staff Post-Hearing Brief at 2.

¹¹⁸ *Id.* at 5, 7, 8, 12, 13, 16.

34. The final recommendation of the Louisiana Commission staff was filed on August 31, 2001.¹¹⁹ After reviewing all of the post-hearing briefs, an administrative law judge filed a proposed order on September 10, 2001 that was considered and adopted, as amended, by the Louisiana Commission at its September 19, 2001 meeting.¹²⁰ On September 21, 2001, the Louisiana Commission issued an order in Docket U-24714-A that set new TELRIC rates for UNEs and UNE combinations and also established final deaveraged rates.¹²¹ In its September 21, 2001 order, the Louisiana Commission noted that only BellSouth developed cost models to establish rates for UNEs and UNE combinations.¹²² Although parties raised concerns about BellSouth's cost models, they did not object to the proper use of BellSouth's cost models to set rates in Louisiana.¹²³

b. Loop Rate Issues

35. Commenters criticize BellSouth's UNE loop rates as being inflated due to numerous purported TELRIC violations related to the use of loop sampling methodology, loop modeling, Universal Digital Loop Carrier and Integrated Digital Loop Carrier, loading factors, fill factors, and other loop rate inputs.¹²⁴ We address each of these issues below.

(i) Loop Sampling

36. *Georgia Loop Sampling.* Commenters argue that Georgia's loop rates are not consistent with TELRIC because BellSouth's cost models relied on loop sampling methodology that was based on a reproduction of BellSouth's existing network.¹²⁵ We disagree. The Georgia Commission was not hesitant to apply adjustments to BellSouth's cost model to ensure cost-based rates consistent with TELRIC and a forward-looking approach.¹²⁶ The evidence shows that

¹¹⁹ BellSouth GALA I Application App. C-Louisiana, Vol. 6 Tab 22, Docket No. U-22252-E, at 116 (*In re: Consideration and Review of Bellsouth Telecommunications, Inc.'s Preapplication Compliance With Section 271 of the Telecommunications Act of 1996 and Provide a Recommendation to the Federal Communications Commission Regarding Bellsouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*) (Louisiana Commission Staff Final Recommendation).

¹²⁰ *Louisiana Commission UNE/Deaveraged Rates Order* at 7.

¹²¹ *Id.* at 1.

¹²² *Id.* at 4.

¹²³ *Id.*

¹²⁴ Commenters also contend that loop rates cannot be justified in comparison with other states. As discussed above, comparative analysis, without more, is not evidence that a rate is not TELRIC compliant. *See supra* Section III.C.1.

¹²⁵ *See, e.g.,* AT&T GALA I Comments at 53, 55-59 (BellSouth utilized an "impermissible reproduction approach to compute loop costs."); ASCENT GALA II Comments at 5 (BellSouth "employed a statistical sample of its historical network design.")

¹²⁶ *Georgia Commission UNE Rate Order* at 5, 15, 17, 26, 31; *see also supra* Section III.C.1.a.(i).

the Georgia Commission deliberated over the loop sample methodology and corrected the omission of shorter multi-line business loops.¹²⁷ The state commission, however, did not accept AT&T's criticism that BellSouth's loop sample "improperly adjusted the loop characteristics to be forward-looking."¹²⁸ While BellSouth's loop model was based on a sample of existing loops, the record demonstrates that loops were redesigned to reflect forward-looking criteria rather than reproducing the existing network.¹²⁹ Also, the sample assumed cable routes would follow existing rights-of-way and roads that BellSouth would use today if it were to place that cable.¹³⁰ In addition, the sample size was statistically valid.¹³¹

37. Furthermore, there is evidence that even if the cost model advocated by AT&T and WorldCom were used, and it included modifications to reflect inputs consistent with those adopted by the Georgia Commission, the loop costs and rates would have been higher than those resulting from BellSouth's sample-based loop model.¹³² The Georgia Commission, which reviewed costs generated by various models, found that decisions about inputs and adjustments used in the model have the most impact on costs, compared to the choice of the model itself.¹³³ TELRIC does not require the use of any specific model, as long as the model complies with TELRIC principles. The Georgia Commission rejected the Hatfield models because "there were serious problems with each version that precluded its use in establishing forward-looking costs. . . ."¹³⁴ Here, we believe that the adjustments made were reasonable, and that the Georgia Commission reasonably considered and rejected the model proposed by AT&T and WorldCom. For the foregoing reasons, AT&T and WorldCom have failed to persuade us that either of these decisions constitutes clear error or otherwise show that the Georgia Commission's analysis was not forward looking.

¹²⁷ *Georgia Commission UNE Rate Order* at 37.

¹²⁸ *Id.* at 35.

¹²⁹ BellSouth GALA I Caldwell Reply Aff. at 4-6 (stating loops were redesigned to reflect placement of digital loop carrier systems and fiber feeder, bridge tap length reduction and cable gauge changes).

¹³⁰ *Id.* at 5.

¹³¹ BellSouth Caldwell GALA I Reply Aff. at 5. Expert testimony by a statistician, Ellis Smith, supported the 400 loop sample in Docket 7061-U ("[A] point is reached with sample sizes where increasing the sample size simply does not add significantly to the accuracy of the answer in a manner that is cost and time efficient.")

¹³² BellSouth GALA I Caldwell Reply Aff. at 6; *see also* BellSouth GALA I Caldwell Aff. at 25; BellSouth Jamshed K. Madan and Michael D. Dirmeier, Georgetown Consulting Group, Aff. at 1-17; BellSouth GALA I Reply at 63.

¹³³ *See supra* Section III.C.1.a.(i).

¹³⁴ Georgia Commission Reply at 29 (citing problems with versions of the model used in Docket 7061-U and Docket 10692); *see also Georgia Commission UNE-platform Order* at 15-16 (stating "while some of the principles used in constructing the Hatfield model are useful to consider in evaluating and in making adjustments to BellSouth's model, the Hatfield model itself has not been demonstrated to be a reliable method for computing the cost-based rates").

(ii) Loop Modeling

38. *Louisiana Loop Modeling.* The way BellSouth prices its UNEs is different from methods used by other BOCs that we have evaluated in previous section 271 proceedings. It separately determines prices for loops and ports on a stand-alone basis and loops and ports in combination. Because more efficient technology can be employed for the loop-port combination, this results in a higher price for a stand-alone loop and port, and a lower-priced UNE loop-port combination (UNE-platform). We have no objections to this pricing methodology even though other states may use different approaches in which they derive an average price for both. Different pricing methodologies may be used in light of the different technologies that may be employed for a stand-alone loop and port or UNE loop-port-combination.

39. In Louisiana Docket U-24714-A, BellSouth developed a new cost model for loop investment, called the BellSouth Telecommunications Loop Model, that replaced the loop sample approach.¹³⁵ The Louisiana Commission approved BellSouth's proposal to use five different network scenarios for costing UNEs and UNE combinations.¹³⁶ As a result of this costing methodology, BellSouth uses UDLC for stand-alone loops, and thus the price of a loop and port, when purchased as individual elements, is more than a UNE loop/port combination, which uses IDLC.¹³⁷

40. The Southeastern Competitive Carriers Association (SECCA) unsuccessfully argued that only the "Combo Scenario" should be used in developing all UNE loop and combination costs.¹³⁸ The Louisiana Commission investigated this issue extensively and found that modeling the cost under only the "Combo Scenario" understated BellSouth's cost of provisioning stand-alone loops and ports, and that the use of multiple scenarios is reasonable and consistent with TELRIC.¹³⁹ Based on the record, we believe the Louisiana Commission's findings here are supported by the evidence.¹⁴⁰

41. The evidence before the Louisiana Commission indicated that using only one scenario would lead to under-recovery of BellSouth's costs. For instance, the conclusion of the Louisiana Commission staff, reflected in the Louisiana Commission's decision, was that if

¹³⁵ BellSouth GALA I Caldwell Aff. at para. 61

¹³⁶ *Louisiana Commission UNE/Deaveraged Rates Order* at 8.

¹³⁷ See *infra* Section III.C.1.b.(iii). There is evidence in the record that UDLC is generally less efficient than IDLC, but there are additional costs that make IDLC an inefficient technology for unbundled loops. *Id.*; see also Louisiana Commission Staff Post-Hearing Brief at 4.

¹³⁸ Louisiana Commission Staff Post-Hearing Brief at 4.

¹³⁹ *Id.* at 2-4.

¹⁴⁰ We also reject commenters' assertions here that Louisiana loop rates are not consistent with TELRIC because BellSouth's proposal improperly used multiple scenarios to model loop costs for different kinds of loops. WorldCom GALA I Frentrup Decl. at para. 3; ASCENT GALA II Comments at 5.

BellSouth relied only on the “Combo Scenario,” it would not recover costs unique to providing stand-alone UNE loops or the cost of copper loops greater than 12,000 feet.¹⁴¹ In addition, we reject commenters’ criticism that the multiple scenario approach means that BellSouth’s cost model does not capture economies of scope inherent in the network.¹⁴² We agree with BellSouth that because it considers the entire quantity of lines in each scenario, its methodology reflects economy of scope.¹⁴³

42. In accepting the staff’s conclusion, the Louisiana Commission found that BellSouth’s methodology “is the most reasonable and accurate approach put forth in this proceeding for costing the UNEs and UNE combinations sought by competitive LECs in Louisiana.”¹⁴⁴ We believe the Louisiana Commission’s findings here are reasonable. We find that commenters have not presented evidence sufficient to show that the Louisiana Commission erred in its decision or to overcome the current evidence BellSouth has presented as to why the use of multiple scenarios is appropriate. Moreover, we have never held that an appropriate application of TELRIC precludes such an approach. Accordingly, we cannot conclude that the Louisiana Commission committed any clear error in adopting it.

(iii) Use of Universal Digital Loop Carrier and Integrated Digital Loop Carrier Technologies

43. *Background.* Loop cable can be either copper or fiber. Digital loop carrier (DLC) uses fiber cable to digitally encode and multiplex (combine) subscriber loop channels into DS1

¹⁴¹ Louisiana Commission Staff Post-Hearing Brief at 4. “[T]he Combo scenario assumes that all loops will be provided on fiber-based DLC systems directly integrated into BellSouth’s switch at the central office. However, voice grade unbundled loops, by definition, must terminate on the Main Distribution Frame. The costs for this conversion and the MDF termination are not included in the Combo run. Consequently, the cost under the Combo only scenario understates the true cost of provisioning these UNEs. In addition, the Combo scenario assumes that all loops greater than 12,000 feet from the wire center are served on fiber-fed DLC systems, which means that the Combo scenario only develops costs for copper loops less than 12,000 feet.” *Id.*

¹⁴² *E.g.*, WorldCom GALA II Reply at 41. The ALJ did not accept arguments by intervenors, including SECCA, WorldCom and Covad, against the use of different network scenarios in loop modeling, including the contention that different scenarios preclude capturing economies of scale, similar to the assertion WorldCom makes here. The ALJ concluded that the use of five scenarios “is the most reasonable and accurate approach” that was proposed. *In Re: Final Deaveraging of BellSouth Telecommunications, Inc., UNE Rates pursuant to FCC CC 96-45 9th Report and Order on 18th Order on Reconsideration released 11/2/99 to be established and submitted for the December Louisiana Public Service Commission Business and Executive Session. August 4, 2000 republished to include: consideration of BellSouth Telecommunications, Inc.’s new cost studies to establish rates for unbundled network elements and network element combinations . . . as well as geographically deaveraged rates for certain unbundled network elements and combinations*, Recommendation of the Administrative Law Judge, Docket Number U-24714 (Subdocket A) at 16-18 (September 21, 2001) (Louisiana Commission ALJ Recommendation).

¹⁴³ BellSouth GALA II Reply at 54.

¹⁴⁴ Louisiana Commission UNE/Deaveraged Rates Order at 8.

or higher signals for more efficient transmission or extended range than copper cable.¹⁴⁵ With DLC, analog signals, carried from the customer's premises to a remote terminal, are converted to digital signals, multiplexed with other signals, and transported to the LEC central office.¹⁴⁶ The two traditional DLC systems are Universal Digital Loop Carrier (UDLC) and Integrated Digital Loop Carrier (IDLC).¹⁴⁷ UDLC, the older version of DLC technology, is not directly integrated into the switch.¹⁴⁸ Digital signals must be routed through a central office terminal and converted back to analog signals before reaching the central office switch.¹⁴⁹ UDLC technology is therefore capable of interfacing with any analog or digital central office switch.¹⁵⁰ IDLC, on the other hand, eliminates the need for this digital-to-analog signal conversion and the demultiplexing (separating) of loop circuits before the signal reaches the switch.¹⁵¹ This is because IDLC technology establishes a direct, digital interface to a digital central office switch.¹⁵² IDLC therefore allows a carrier to multiplex and demultiplex traffic at a remote concentration point, or remote terminal, and to deliver the combined traffic directly into the switch, without first separating the traffic from the individual lines.¹⁵³ As a result, IDLC technology can only operate with a digital switch.¹⁵⁴

44. The Georgia and Louisiana Commissions reviewed and adopted a BellSouth cost model that used UDLC as the input for pricing stand-alone loops and a mix of IDLC and UDLC as pricing inputs for UNE combination loops. The state commissions accepted BellSouth's assumption that it deployed IDLC for the loop-port combinations, which is how BellSouth expects to serve its existing customer base.¹⁵⁵ The state commissions also accepted BellSouth's

¹⁴⁵ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24011, 24110, para. 212 (1998) (*Advanced Services Order*).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd 3696, 3793, para. 217 (1999) (*UNE Remand Order*).

¹⁵⁴ *Wireline Services Order*, 13 FCC Rcd at 24110, para. 212.

¹⁵⁵ BellSouth GALA I Application Reply Appendix, Vol. 1, Tab C, Reply Affidavit of D. Daonne Caldwell at para. 55 (BellSouth GALA I Caldwell Reply Aff.).

assumption that it did not use IDLC in pricing any stand-alone loops that a competitive LEC might purchase.¹⁵⁶

45. Specifically, in Georgia Docket 10692-U, the proceeding setting loop rates for the UNE-platform combination, the Georgia Commission ordered that BellSouth's cost studies "reflect 98 percent IDLC [for DLC systems]."¹⁵⁷ The Georgia Commission rejected AT&T's and WorldCom's argument that 100 percent of DLC loops should be IDLC.¹⁵⁸ In Georgia's 1997 cost docket (Docket 7061-U), the issue of BellSouth's use of UDLC in setting the rates for stand-alone loops did not arise.

46. The Louisiana Commission, in Docket U-24714-A, only indirectly considered the IDLC/UDLC issue as part of a commenter's general challenge to BellSouth's use of different scenarios in its BSTLM cost model.¹⁵⁹ The commenter argued that BellSouth should be required to use only the so-called "Combination Scenario" to calculate all two-wire analog voice grade UNE stand alone loop and combination loop costs.¹⁶⁰ The Combination Scenario is used to develop material investment costs for loops offered in combination with other unbundled network elements,¹⁶¹ and it assumes 100 percent IDLC for switched services.¹⁶² BellSouth stated that using only the Combination Scenario in the BSTLM would understate costs associated with unbundled loops or copper-only loops.¹⁶³ As reflected in the September 21, 2001 order, the Louisiana Commission accepted BellSouth's arguments concerning the Combination Scenario and thus the deployment of UDLC and IDLC for unbundled loops.¹⁶⁴

47. Because, as commenters argue, UDLC is generally less efficient than IDLC and because BellSouth uses UDLC for stand-alone loops,¹⁶⁵ BellSouth's price for a stand-alone loop

¹⁵⁶ See AT&T GALA I Comments at 54.

¹⁵⁷ Georgia Commission UNE-platform Order at 19.

¹⁵⁸ *Id.*

¹⁵⁹ Louisiana Commission Staff Post-Hearing Brief at 3-5.

¹⁶⁰ *Id.* at 4; BellSouth GALA I Application, Appendix A, Vol. 2, Tab D, Affidavit of D. Daonne Caldwell at paras. 73,75 (BellSouth GALA I Caldwell Aff.).

¹⁶¹ BellSouth GALA I Caldwell Aff. at para. 66.

¹⁶² Louisiana Commission Staff Post-Hearing Brief at 3.

¹⁶³ BellSouth GALA I Caldwell Aff. at para. 73. BellSouth states that the Combination Scenario does not include the costs of converting an unbundled loop from IDLC to UDLC. *Id.* IDLC systems are integrated directly with a digital switch; they do not terminate on the main distribution frame. Under these circumstances, when a competitive LEC purchases a stand-alone unbundled loop, without unbundled switching, the loop must be removed from the carrier system, converted to voice grade and terminated on the main distribution frame.

¹⁶⁴ Louisiana Commission UNE/Deaveraged Rates Order at 8, 10.

¹⁶⁵ *Id.*

is higher than that for a UNE combination loop. In Georgia, for example, the price of a loop and port, when purchased as individual elements, averages \$18.36.¹⁶⁶ By contrast, BellSouth's UNE loop/port combination in Georgia costs \$14.34. In Louisiana, the price of a loop and a port, when purchased as individual elements, is \$18.82,¹⁶⁷ and a UNE loop/port combination is \$17.63.

48. *Discussion.* AT&T and WorldCom challenge both state commissions' acceptance of BellSouth's assumption of 100 percent UDLC in setting the prices for stand-alone loops.¹⁶⁸ The commenters claim that UDLC is not forward-looking and therefore does not comply with TELRIC.¹⁶⁹ The commenters generally argue that the prices for stand-alone loops and ports would decrease if BellSouth used only IDLC to price these elements.¹⁷⁰

49. We note at the outset that no commenter challenged BellSouth's use of UDLC in setting rates for stand-alone loops in Georgia Docket 7061-U and that, in Louisiana Docket U-24714-A, the issue was raised only through a challenge to the BellSouth cost model. Previously we have explained that our role in considering a section 271 application is to review the record in the state UNE rate proceeding to determine whether the state commission correctly applied TELRIC principles in adopting UNE rates and made no clear error which causes the rates to fall outside a reasonable TELRIC range.¹⁷¹ As we have previously stated, we cannot conduct a *de novo* rate proceeding in a section 271 review.¹⁷² While we are not requiring parties to raise all pricing issues at the state level before raising them in a section 271 proceeding, we note that it is both impracticable and inappropriate for us to make many of the fact-specific findings the parties request concerning IDLC and UDLC.¹⁷³ In any event, commenters have failed to demonstrate that either state commission committed clear error regarding this issue.¹⁷⁴

¹⁶⁶ The individual prices for the sub-elements are as follows: loop -- \$16.51 (statewide average based on BellSouth's Sept. 24, 2001 SGAT); port -- \$1.85.

¹⁶⁷ The individual prices for the subelements are as follows: loop \$17.30 (statewide weighted average rate); port -- \$1.52.

¹⁶⁸ AT&T GALA I Comments at 54-55; WorldCom GALA I Comments at 55-56.

¹⁶⁹ AT&T GALA I Comments at 53-54; WorldCom GALA I Comments at 55-56.

¹⁷⁰ WorldCom GALA II Comments at 40-42.

¹⁷¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244, *aff'd*, *AT&T v. FCC*, 220 F.3d at 615-16. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59, *aff'd*, *Sprint v. FCC*, 274 F.3d at 556; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55.

¹⁷² *Id.*

¹⁷³ See *SWBT Missouri/Arkansas Order*, 16 FCC Rcd at 20754-55, para. 73.

¹⁷⁴ Of course, if we note a patent TELRIC error in the course of a section 271 review, we will not ignore it simply because it was not raised before the state commission.

50. Specifically, no commenter provides any cost analysis to show that IDLC is less expensive than UDLC for stand-alone loops and ports, and we are not persuaded, based on the record before us, that a correct application of TELRIC would require 100 percent use of such technology for that purpose.¹⁷⁵ Commenters did not present persuasive evidence that the use of IDLC would be cheaper for pricing stand-alone loops and ports. Indeed, there is some evidence that technical limitations associated with unbundling a stand-alone loop from an IDLC system may make IDLC more expensive than UDLC in some circumstances. In the *UNE Remand Order*, for example, the Commission specifically discussed this difficulty of using IDLC in conjunction with stand-alone loops and ports.¹⁷⁶ Several technical alternatives for using IDLC were reviewed in that context, including “side door grooming” (i.e., “hairpinning”), multiple switch hosting, integrated network architecture, and digital cross connect grooming.¹⁷⁷ The Commission stated that some of these options are “very expensive.”¹⁷⁸ The Commission also concluded that each option has limitations and that “such methods have not proven practicable.”¹⁷⁹ Thus, not only have commenters failed to offer persuasive evidence, but prior Commission orders have recognized that at least certain IDLC alternatives would likely be more expensive. Therefore, we find no error, on the present record, in either state commission’s approval of BellSouth’s employment of UDLC for stand-alone loops.¹⁸⁰

(iv) Loading Factors

51. *Georgia Loading Factors.* Commenters assert that BellSouth’s UNE loop and switch rates are inflated because its cost model did not apply loading factors correctly.¹⁸¹ In-plant loading factors generally are percentages of total costs for items like labor and additional materials that are added to the price of the equipment, such as the switch and copper or fiber cable,¹⁸² allowing engineering, furnishing and installation (EF&I) costs to be taken into account.

¹⁷⁵ The Georgia and Louisiana Commissions made decisions to price stand-alone and UNE-platform loops separately using the lowest cost technology for each. Other states have not distinguished between stand-alone and UNE-platform loops, and we do not require it; *see also infra* n.163

¹⁷⁶ *UNE Remand Order*, 15 FCC Rcd at 3793-94, para. 217 nn.417-18.

¹⁷⁷ Each of these options is described in further detail in the *UNE Remand Order*. *Id.* at para. 217 n.417.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at para. 217 n.418.

¹⁸⁰ Commenters’ related argument is that BellSouth’s prices for stand-alone loops would decrease if BellSouth were required to use 100 percent GR-303 technology. *See* AT&T GALA I Baranowski Decl. at paras. 21-22; WorldCom GALA II Comments at 40-42. This contention merely re-casts the UDLC/IDLC argument in different technical terms. GR-303 technology is not compatible with UDLC. Because we conclude that BellSouth may use UDLC to set prices for stand-alone loops, we also dismiss commenters’ argument that BellSouth must use 100 percent GR-303 technology in pricing stand-alone loops.

¹⁸¹ AT&T GALA I Comments at 48; WorldCom GALA I Comments at 56.

¹⁸² Only the equipment price, itself, is used as the input to the cost model.

The loading factor converts material costs to installed investment costs and thus provides for recovery of EF&I costs. ASCENT and AT&T argue that BellSouth bases its loading factors on an embedded rather than forward-looking network, and double counts certain items, including drop wires and network interface devices, that are recovered through loading factors.¹⁸³ WorldCom contends that the manner in which these factors were developed is not described in BellSouth's documentation of its cost models, and that the use of a single loading factor, or percentage, to determine costs, such as those for installation and switching, results in overstating UNE costs.¹⁸⁴

52. Based on the record, we conclude that the Georgia Commission made a reasonable determination of BellSouth's loading factors that is in accordance with TELRIC principles. The Commission has held that, "while TELRIC consists of 'methodological principles' for setting prices, states retain flexibility to consider 'local technological, environmental, regulatory, and economic conditions.'" ¹⁸⁵ In arriving at cost-based rates, the Georgia Commission established loading factors based on intensely factual and detailed information which may vary by cost model and by state.¹⁸⁶ The record indicates that the Georgia Commission accepted BellSouth's application of forward-looking principles rather than an embedded network approach in developing loading factors against forward-looking investment.¹⁸⁷

53. More recently, after reviewing commenters' criticism in this regard, the Georgia Commission noted that in the UNE rate proceeding, "BellSouth produced evidence establishing the reasonableness of the use of these loading factors, and BellSouth's cost studies explained in

¹⁸³ ASCENT GALA II Comments at 6; AT&T GALA I Comments at 61; AT&T GALA I Baranowski Decl. at 5, 8 (stating that drop and NID costs are counted "[o]nce as part of the cable material load factor and again as part of a specific cost model input to the cost study.") "A drop is a length of cable, typically two to five pair cable, that connects the outside plant distribution facility to the customer location. The NID, or network interface device, is a small box, typically hung on the outside of the customer premises, that represents the demarcation between the telephone outside plant and the customer owned facilities." AT&T GALA I Baranowski Decl. at 8.

¹⁸⁴ WorldCom GALA I Comments at 57.

¹⁸⁵ *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244 (citing *Local Competition First Report and Order*, 11 FCC Rcd at 15558-59 para. 114).

¹⁸⁶ BellSouth GALA I Caldwell Reply Aff. at 38-39 ("Each state negotiates vendor contracts independently, work content differs, and state taxes are unique. Thus, the in-plant factors may differ by state."). WorldCom generally asserts that BellSouth loading factors vary from state to state more than could be explained by labor or other cost differences but offers insufficient support for its contention; thus, we reject this assertion. WorldCom GALA II Comments at 36.

¹⁸⁷ BellSouth GALA I Caldwell Reply Aff. at paras. 71-72. "The in-plant factor development is based on the latest year-end data available at the time the studies are conducted. This relationship of capitalized labor, exempt material costs, and sales tax to material prices, however, is anticipated to continue in the future. Since the relationship (i.e. the in-plant factor applied against forward-looking material price) is one based upon an efficiently deployed network, the result by definition is forward-looking. Other loading factors reflect projected investments – pole, conduit, land, and building loading factors – based on anticipated additions. . . . Thus, when these [loading] factors are applied against forward-looking investments, the result projects a forward-looking investment." *Id.*

detail how these factors were developed.”¹⁸⁸ The state commission also considered the testimony of AT&T, but found that AT&T “did not offer any reasonable alternative to the use of BellSouth’s loading factors or propose any specific adjustments to BellSouth’s cost studies to address this issue, other than to advocate use of assumptions from the Hatfield model, which the Commission had rejected.”¹⁸⁹ The state commission noted that neither AT&T nor WorldCom raised any objections to BellSouth’s loading factors in the UNE-platform proceeding.¹⁹⁰ As we observed above, the Georgia Commission recognized the importance of making modifications to BellSouth’s cost model to ensure that the rates it established were forward looking, and in fact did so in several other instances.¹⁹¹ We may reasonably assume that the Georgia Commission would have also done so for loading factors if it believed they were not forward looking. However, it did not do so. We see nothing raised by commenters here that would give us reason to challenge the Georgia Commission’s exercise of its expertise and reasoned judgment in this matter and its choice of loading factors.

54. AT&T contends that “it appears that both drop and NID costs are double-counted within BellSouth’s loop costs” – “[o]nce as part of the cable material load factor and again as part of a specific cost model input to the cost study.”¹⁹² BellSouth shows that certain accounts track labor-related costs of placing drop wires and the associated NIDs.¹⁹³ It also explains that the material costs associated with drop wires and NIDs are distributed among the various asset accounts.¹⁹⁴ In addition, it shows that the development of in-plant factors does not include anything already assigned to the drop and NID accounts.¹⁹⁵ BellSouth asserts that this demonstrates the costs of placing service drops and NIDs are not reflected in the in-plant factors.¹⁹⁶ We find that this response to AT&T’s assertion is reasonable and convincing, and also note that AT&T has never contested it. Accordingly, AT&T’s claim here does not support a finding of clear error by the Georgia Commission.

55. We also are not persuaded by WorldCom’s contention that BellSouth did not describe and document how it developed these factors.¹⁹⁷ Most currently, BellSouth in an *ex*

¹⁸⁸ Georgia Commission GALA I Reply at 31 (citing Docket 7061-U).

¹⁸⁹ *Id.* (citing testimony of AT&T witness James Wells).

¹⁹⁰ *Id.*

¹⁹¹ *See supra* Section III.C.1.a.(i).

¹⁹² AT&T GALA I Baranowski Decl. at para. 9.

¹⁹³ BellSouth GALA I Caldwell Reply Aff. at para. 37 (additionally stating this issue was never raised in the Georgia Commission UNE proceedings).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ WorldCom GALA I Frentrup Decl. at para. 4.

parte filing either identified where the relevant description and documentation could be found in the record or provided it directly to WorldCom.¹⁹⁸ The evidence also shows that BellSouth documented in publicly available information how it developed loading factors,¹⁹⁹ and the Georgia Commission confirmed that “BellSouth’s cost studies explained in detail how these factors were developed.”²⁰⁰

56. WorldCom also contends that applying the same loading factors to all sizes of equipment would have a significant impact on costs.²⁰¹ BellSouth presents evidence that switch-related in-plant factors have a small impact on total switching costs.²⁰² Regarding the loop, BellSouth asserts that use of the same in-plant factors may overstate or understate costs to a degree, but its factors “accurately reflect the average costs associated with installing a cable.”²⁰³ BellSouth further argues that since loop costs are de-averaged, lower costs associated with larger cable sizes in denser areas are reflected in lower rates.²⁰⁴ Moreover, WorldCom fails to establish how much of an impact its criticism would have on costs. On the basis of the record, we find BellSouth’s argument more persuasive. In any event, WorldCom does not provide sufficient evidence to support its claim, and we cannot find that the Georgia Commission committed clear error with respect to BellSouth’s use of loading factors here.

57. For similar reasons, we reject WorldCom’s claim that BellSouth’s loading factors were excessive because they cause the cost of an unbundled loop in Georgia to more than double and that a factor “over 100 percent cannot be reasonable.”²⁰⁵ First, WorldCom’s general allegations do not address any violations with the kind of specificity that is required to provide

¹⁹⁸ Letters from Sean A. Lev, Counsel to BellSouth, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket 02-35 (March 1, 2002 and March 14, 2002). We note that there was a problem with incomplete filed information, but BellSouth took steps to correct it.

¹⁹⁹ BellSouth GALA I Caldwell Aff. at para. 69. BellSouth provided the Georgia Commission with a detailed description of the methodology, data sources and assumptions that were used in the development of its factors in the filed cost studies. Additionally, it provided the commission with an electronic copy of the files used to develop the factors to enable users to adjust the input.

²⁰⁰ Georgia Commission GALA I Reply at 31.

²⁰¹ WorldCom GALA II Frentrup Decl. at para. 16; WorldCom GALA I Comments at 57. “[B]ecause BellSouth applies the same loading factors to all sizes of equipment, these factors add a great deal more total cost to areas that are served by large switches or cable sizes, i.e., primarily the more densely populated areas of the state. This difference occurs despite the fact that the cost for laying a cable or placing a switch does not vary linearly with size, e.g., it does not require twice as much expense to lay a 2400 pair cable as it does to lay a 1200 pair cable.” *Id.*

²⁰² Letter from Glenn T. Reynolds, BellSouth Vice President-Federal Regulatory, to William Caton, Acting Secretary, Federal Communications Commission at 1-5, CC Docket No. 02-32 (March 26, 2002) (BellSouth March 26 *ex parte* letter).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ WorldCom GALA II Frentrup Decl at para. 15.

sufficient evidence to support its claim. It appears to ignore that various factors in a range may be applied to different kinds of equipment regarding the loop. Second, to support its contention, WorldCom compares the loop related loading factors here to switch related loading factors we evaluated in a separate proceeding. We find this comparison is inappropriate. For example, BellSouth contends that it may be reasonable for in-plant loading for unbundled loops to exceed 100 percent since the items captured by the in-plant factors – engineering labor costs, placing and splicing costs, exempt material and sales tax -- may exceed the cost of material.²⁰⁶ On the other hand, BellSouth asserts that its switching in-plant loading factor in Georgia is less than 8 percent (and in Louisiana, about 14 percent). There may be several reasons for this difference, including the labor-intensive nature of construction of outside plant facilities, the type of installation involved and the environment in which it is conducted.²⁰⁷ As a result, we find WorldCom's contention unpersuasive.

58. In sum, commenters have not presented evidence that is sufficient to show that the Georgia Commission erred in its decision or that is sufficient to support contentions they raise here with respect to loading factors. Accordingly, we conclude that BellSouth's loading factors do not reflect clear errors in factual findings so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.

59. *Louisiana Loading Factors.* Commenters assert that BellSouth's UNE loop and switch rates are inflated in Louisiana because its cost model did not calculate loading factors correctly, based on basically the same arguments made in Georgia.²⁰⁸ ASCENT and AT&T add here that BellSouth double counts inflation.²⁰⁹

60. Based on the record, we conclude that the Louisiana Commission made a reasonable determination of BellSouth's loading factors that are in accordance with TELRIC principles. In the course of its proceedings, the Louisiana Commission rigorously examined BellSouth's cost studies. The Louisiana Commission considered fact-intensive, specific information and detailed issues that may vary by cost model and state,²¹⁰ such as how loading factors were developed, as part of the process of setting rates based on TELRIC methodology.²¹¹

²⁰⁶ BellSouth March 26 *ex parte* letter at 4-5.

²⁰⁷ *Id.* at 5.

²⁰⁸ AT&T GALA I Comments at 48, 60; WorldCom GALA I Comments at 56. *See supra* para. 51.

²⁰⁹ ASCENT GALA II Comments at 6; AT&T GALA I Comments at 61; AT&T GALA I Baranowski Decl. at 5-8 (stating that inflation is counted in the material price through loading factors and again in calculating return on investment).

²¹⁰ BellSouth March 26 *ex parte* letter. In-plant factors differ by state "because each state negotiates vendor replacement contracts independently, has different work content, and imposes unique state taxes."

²¹¹ Louisiana Commission Staff Post-Hearing Brief at 10. "In-Plant Factors are account specific and are developed based on BellSouth-specific information for Louisiana. There are four types of In-Plant factors: (1) Material Loading, (2) Telco Loading, (3) Plug-in Loading, and (4) Hardwire Loading. The Material Loading is applied to a material price, the TELCO Loading to the vendor-installed investment, the Plug-in Loading to the deferrable plug-in (continued....)

Based on the ALJ's recommendation in the Louisiana proceeding to establish rates for UNEs, the Louisiana Commission adopted "BellSouth's 'in-plant factor' approach to the development of structure costs."²¹²

61. AT&T and ASCENT assert that BellSouth's loading factors reflect the cost of an embedded, rather than forward-looking, network.²¹³ The Louisiana Commission asserts that it already addressed these concerns. "[I]n Docket U-24714-A, the [Louisiana Commission] did not adopt the factors that BellSouth proposed."²¹⁴ The state commission staff "found that BellSouth's proposed expenses did not adequately recognize forward-looking technology and efficiencies because BellSouth relied on 1998 relationships between investment and expense."²¹⁵ As a result, "the Staff proposed a reduction by 10% as a reasonable means of achieving the development of forward-looking, rather than historical, costs."²¹⁶ The ALJ agreed with the staff's position which was adopted by the Louisiana Commission.²¹⁷ In addition, BellSouth contends that "since the relationship (i.e. the in-plant factor applied against forward-looking material price) is one based upon an efficiently deployed network, the result by definition is forward-looking."²¹⁸ We find the evidence is sufficient to support the Louisiana Commission's expertise and reasoned judgment in this matter and its choice of loading factors.

62. As in Georgia, BellSouth demonstrates here that it has documented in publicly available information how it developed loading factors,²¹⁹ and that service drop and NID costs

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and common plug-in material prices, and the Hardware Loading to the hardwire portion of an equipment material price."

²¹² Louisiana ALJ Recommendation at 27. "BellSouth utilizes in-plant loading factors to add engineering and installation labor costs and miscellaneous equipment costs to the material price and/or vendor installed price. The factor represents a mathematical relationship between the material prices and the additional expense; when applied, the factor converts the material price to an installed investment cost." *Id.*; see also *Louisiana Commission UNE/Deaveraged Rates Order* at 9.

²¹³ ASCENT GALA II at 6; AT&T GALA I Baranowski Decl. at para. 6.

²¹⁴ Louisiana Commission GALA I Reply at 11.

²¹⁵ *Id.*

²¹⁶ *Id.* at 12.

²¹⁷ *Id.* (citing *Louisiana Commission UNE/Deaveraged Rates Order* at 11).

²¹⁸ BellSouth Caldwell GALA I Reply Aff. at paras. 71-72. See *supra* n.187.

²¹⁹ *Id.* at 36-37 BellSouth provided the Louisiana Commission a detailed description of the methodology, data sources and assumptions that were used in the development of its factors in the filed cost studies. Additionally, it provided the commission an electronic copy of the files used to develop the factors to enable users to adjust the input. BellSouth points out that the Louisiana Commission consultant, Kimberly Dismukes, used this information and made modifications to these factors. The Louisiana Commission also explained this information was available to parties, including WorldCom, in Docket No. U-24714. Louisiana Commission GALA II Reply at 11-12. Most currently, BellSouth filed related information in our section 271 proceeding and pointed out the location of loading factor development in the record in an *ex parte* filing. See Letters from Sean A. Lev, Counsel to BellSouth, to (continued....)

were not double-counted.²²⁰ The Louisiana Commission considered and rejected AT&T's contention that inflation was double-counted by finding "[t]here are two distinct types of inflation which impact BellSouth's costs: an inflation amount which compensates investors for the use of their funds and an inflation amount associated with the increased price of the plant item over the year."²²¹

63. The Louisiana Commission specifically considered contentions similar to WorldCom's assertion here that applying the same loading factors to all sizes of equipment would significantly impact total cost but approved BellSouth's approach.²²² As an initial matter, we note that, like in Georgia, it is not clear from the record what the impact on costs would be as a result of WorldCom's assertion. Like in Georgia, BellSouth asserts that its factors reflect the average costs associated with installing a cable and that switch related in-plant factors have a small impact on total switching costs.²²³ The Louisiana Commission declared it was "committed to achieving accurate, forward-looking costs for each UNE" but was "not convinced, from the record in this proceeding, that an approach other than BellSouth's 'in-plant factor' approach would better accomplish that goal."²²⁴ The Louisiana Commission notes that "[u]nlike WorldCom's unsupported allegations," BellSouth presented evidence in Docket No. U-24714 that "the use of in-plant factors tends to understate the total cost of the installed copper under the model used to calculate UNE prices."²²⁵

64. For the foregoing reasons, our finding here is similar to that in Georgia. We conclude that commenters have not presented evidence that is sufficient to demonstrate that the Louisiana Commission made clear errors in these factual findings.

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William Caton, Acting Secretary, Federal Communications Commission, CC Docket 02-35 (March 1, 2002 and March 14, 2002).

²²⁰ BellSouth GALA I Caldwell Reply Aff. at 20-21 (explaining why there is no double-counting and additionally stating that this issue was not raised in the Louisiana UNE proceeding).

²²¹ *Louisiana Commission UNE/Deaveraged Rates Order* at 10.

²²² BellSouth GALA I Application App. F-Louisiana Vol. 2 Tab 10, SECCA Wood/Wilsky Testimony at 46-49; 52 (stating that BellSouth's "in-plant" factor approach distorts costs); *but see* Louisiana Commission ALJ Recommendation at 29 (summarizing BellSouth's argument that "there may be some cost distortion with regard to large size cable as well as with regard to small size cable, but overall distortion is minimal.") (concluding "[a]t this time, we choose to adopt BellSouth's 'in-plant factor' approach . . ."); *see also Louisiana Commission UNE/Deaveraged Rates Order* at 10 and BellSouth March 26 *ex parte* letter.

²²³ BellSouth March 26 *ex parte* letter at 3-5.

²²⁴ *Louisiana Commission UNE/Deaveraged Rates Order* at 9.

²²⁵ Louisiana Commission GALA II Reply at 12.

(v) Other Inputs to Loop Rates

65. ASCENT, WorldCom, and AT&T contend that BellSouth uses non-TELRIC fill factors and other loop rate inputs in calculating its UNE loop rates in Georgia and Louisiana.²²⁶ As a result, the commenters claim, BellSouth's resulting loop rates violate basic TELRIC principles. We separately discuss each of the allegedly non-TELRIC inputs and conclude that, with regard to inputs, the loop models adopted in each state do not violate basic TELRIC principles.²²⁷

66. *Fill Factors.* We first note that both the Louisiana and Georgia commissions considered substantial evidence concerning fill factors.²²⁸ In general, when used as an input to the loop model, a higher fill factor results in lower rates. In Georgia Docket 7061-U, the Georgia Commission adjusted BellSouth's loop utilization for the copper segments upward by 5 percent for a distribution fill factor of 48 percent and a copper feeder fill of 69.5 percent.²²⁹ Fiber feeder fill was set at 74 percent.²³⁰

67. In the most recent Louisiana cost docket (U-24714-A), the BellSouth model as approved by the Louisiana Commission contained fill rates of 41 percent for copper distribution and 74 percent for copper feeder.²³¹ These results, however, were generated as an *output* of the BSTLM cost model, itself, and consequently, are not an *input* to the cost model.²³² This distinction, as we discuss below, is important.

²²⁶ ASCENT GALA II Comments at 6; WorldCom GALA I Comments at 57-59; AT&T GALA I Comments at 59-60.

²²⁷ ASCENT also alleges that "loop installation charges in Georgia and Louisiana also exceeded comparable charges in New York, Massachusetts, Texas, Oklahoma, and Kansas by upwards to more than 180 percent." ASCENT GALA II Comments at 3. We reject this contention. ASCENT provides no support whatsoever for this allegation and does not explain how it arrived at this conclusion. Nor could we independently duplicate or verify ASCENT's figures. Moreover, as we previously stated, we cannot rely on a mere comparison of rates in other states as evidence that the rates in question are not TELRIC compliant. See *supra* Section III.C.1.

²²⁸ A fill factor is the estimate of the proportion of a facility that will be used. The per unit cost associated with a particular element should take into account the total cost associated with the element divided by a reasonable projection of the actual usage. If a fill factor is set too low, the network could have considerable excess capacity, which results in increases to the per-unit cost higher than an efficient firm's cost. If it is set too high, the network could have insufficient capacity to accommodate anticipated increases in demand. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17454-55, para. 58 n.230.

²²⁹ *Georgia Commission UNE Rate Order* at 33.

²³⁰ *Id.*

²³¹ *Id.* at para. 23.

²³² The BSTLM cost model generates fill factors as a product of, not an input to, the running of the model. The inputs for the fill factors are the actual physical locations of every BellSouth line, which is termed "geocoding," and an assumption of two lines for each residential location. See BellSouth GALA I Caldwell Reply Aff. at para. 24. No (continued....)

68. ASCENT alleges that BellSouth's 48 percent and 41 percent loop fill factors for copper distribution in Georgia and Louisiana, respectively, compared with other section 271-approved states are too low, in effect, driving up rates.²³³ The commenters also compare these percentages to the Synthesis Model,²³⁴ which uses fill factors of 50-75 percent, depending on density.²³⁵ The commenters also claim that BellSouth's fill factors for copper feeder and fiber feeder in Georgia (69.5 percent and 74 percent, respectively) are too low.²³⁶ By contrast, the commenters assert,²³⁷ the Synthesis Model uses a copper feeder fill factor of 80 percent²³⁸ and a fiber fill factor of 100 percent.²³⁹

69. With regard to Louisiana, no commenter challenges the actual inputs used to generate the fill factors that are a product of the BSTLM cost model. The Louisiana fill factors, as we have already noted,²⁴⁰ are an output of the cost model based on BellSouth's existing network and adjusted upward for reasonable growth. Accordingly, the fill factors are not inputs that affect the rates generated by the loop model.²⁴¹ Because no commenter argues that the inputs that generate the fill factors are flawed, we find no error with regard to Louisiana fill factors.

70. With regard to Georgia, the comparative analysis advocated by the commenters does not establish that the Georgia Commission committed clear error. The Commission has never determined that a mere comparison of fill factors between states provides persuasive evidence that the lower fill factor is incorrect. Further, as we have previously stated, inputs in the Synthesis Model are not binding on states in setting rates for UNEs.²⁴² We also note that the Georgia fill factors are not far off from fill factors we have approved in previous section 271

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commenter challenges any of the inputs that produced the fill factors, despite having challenged the BSTLM inputs in Louisiana Docket U-24714-A. *Id.* at para. 25.

²³³ ASCENT GALA II Comments at 6; AT&T GALA I Comments at 59 (challenging only the Louisiana distribution fill factor).

²³⁴ *E.g.*, WorldCom GALA I Comments at 58.

²³⁵ *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Tenth Report and Order, 14 FCC Rcd 20156, 20369, App. A (1999) (*Universal Service Tenth Report and Order*).

²³⁶ *E.g.*, WorldCom GALA I Comments at 58.

²³⁷ *Id.*

²³⁸ In fact, the Synthesis Model uses feeder fill factors ranging from 70.0% to 82.5%. *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20369, App. A.

²³⁹ *Id.* at 20247, para. 208.

²⁴⁰ *See supra* para. 67.

²⁴¹ In the cost models we have evaluated in the past, the fill factor is an input that affects loop rates. *E.g.*, *Verizon Massachusetts Order*, 16 FCC Rcd at 9007, para. 39; *SWBT Kansas/Oklahoma Order*, 15 FCC Rcd at 6275-76, para. 80.

²⁴² *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 245.

applications.²⁴³ In this case, the Georgia Commission extensively considered state specific evidence regarding loop utilization factors before adjusting and/or approving utilization rates. The Georgia Commission made an upward adjustment because “BellSouth’s [proposed] fill factors would result in charging the competitive LECs too much for the unused capacity in the feeder and distribution cable, which represents inappropriate cost causation and also would have an inhibiting effect on competition.”²⁴⁴ Despite the fact-specific nature of these determinations, commenters fail to convince us that any errors remain with the inputs chosen by the state to establish the fill factors at issue.

71. *Cost of Capital.* ASCENT claims that the cost of capital (10.09 percent) approved in Louisiana is over two points higher than what BellSouth needs for equity and debt financing.²⁴⁵ After considering competing evidence submitted by BellSouth and the competitive LECs, the Louisiana Commission rejected BellSouth’s proposed cost of capital of 11.25 percent and adopted a 10.09 percent cost of capital, which reflects a debt/equity ratio of 40/60.²⁴⁶ Louisiana determined that these ratios are appropriate because they approximate BellSouth’s actual capital structure in Louisiana.²⁴⁷ ASCENT provides no evidence on what should be the optimal mix of debt and equity capital when calculating the UNE cost of capital. Moreover, a change to a company’s capital structure generally would change the risk of investing in the company and therefore the company’s cost of debt and equity. Thus, if the estimate of a company’s capital structure is changed, then the estimates of the company’s cost of debt and equity may also require changes. ASCENT did not provide any evidence on the UNE cost of debt and equity, given an optimal UNE capital structure. We, therefore, decline to find that ASCENT has shown that the Louisiana Commission committed clear error.²⁴⁸

72. *Drop Lengths.* AT&T and WorldCom contend that BellSouth improperly used aerial drop lengths of 200-250 feet and buried drop lengths of 300 feet in its cost model based on

²⁴³ See generally *Bell Atlantic New York Order*, 15 FCC Rcd 3953; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd 6237; *SWBT Texas Order*, 15 FCC Rcd 18354.

²⁴⁴ *Georgia Commission UNE Rate Order* at 33.

²⁴⁵ ASCENT GALA II Comments at 6.

²⁴⁶ *Louisiana Commission UNE/Deaveraged Rates Order* at 8-9.

²⁴⁷ *Id.*

²⁴⁸ ASCENT also contends in a single sentence that BellSouth’s productivity factors in Georgia and Louisiana are insufficient because they “are a mere fraction of the 6.5 percent productivity factor recognized by the Commission as appropriate in the access charge context.” ASCENT GALA II Comments at 6. We reject this argument as insufficiently supported. First, the 6.5 percent reduction factor cited by ASCENT is not a productivity factor; it is a transitional mechanism. *Access Charge Reform Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, 15 FCC Rcd 12962, 13028, para. 160 (2000) (*Access Charge Reform Order*). We note further that the 6.5 percent figure was remanded to the Commission. See *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001). Additionally, the appropriate level of productivity reduction is a complicated, fact-specific analysis, and ASCENT has made no allegations of specific errors that were made by the Georgia or Louisiana Commissions in determining the productivity factors at issue.

BellSouth's embedded plant.²⁴⁹ The commenters claim that the national average drop length is 73 feet and that therefore the drop length approved by the Georgia and Louisiana Commissions must be too high.²⁵⁰ WorldCom adds that BellSouth's drop lengths in Georgia implies that customers are located on two-to-three acre lots which is "patently unreasonable,"²⁵¹ and that "drop lengths used to set UNE loop rates should vary by line density" instead of being a single average length.²⁵² Additionally, WorldCom asserts that Georgia's drop lengths used in setting UNE rates are longer than what the Commission found reasonable for purposes of modeling universal service costs.²⁵³ Based on the record, we believe that the Georgia and Louisiana Commissions' findings here are reasonable.

73. As an initial matter, the use of a national average drop length or the national defaults of the Commission's federal universal service cost model are not dispositive in considering a section 271 application for a specific state. The Commission generally adopted nationwide, rather than company-specific, input values in the federal model.²⁵⁴ For purposes of determining federal universal support amounts, the Commission found nationwide averages to be appropriate.²⁵⁵ The Commission did not consider what type of input values would be appropriate for any other purpose and has cautioned against relying on this model for other purposes, such as determining prices for unbundled network elements.²⁵⁶

74. In addition, the various regions of the United States contain divergent topographical features and population densities; therefore, national data do not necessarily reflect drop lengths in Georgia or Louisiana. We note that both the Georgia and Louisiana Commissions considered this very issue in Dockets 7061-U and U-24714-A, respectively, and that they adopted BellSouth's proposed drop lengths.²⁵⁷ Furthermore, the evidence shows that BellSouth's drop length data came from subject matter experts and reflect drop lengths anticipated for future

²⁴⁹ AT&T GALA I Comments at 60; AT&T GALA I Baranowski Decl. at para 33; WorldCom GALA I Comments at 58-59.

²⁵⁰ *E.g.*, WorldCom GALA I Comments at 58.

²⁵¹ *Id.* at 59; WorldCom GALA II Comments at 39.

²⁵² WorldCom GALA II Comments at 39.

²⁵³ WorldCom GALA II Comments at 39.

²⁵⁴ *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20172, para. 31-32.

²⁵⁵ *Id.* at para. 32.

²⁵⁶ *Id.*; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4084-85, para. 245.

²⁵⁷ *Georgia Commission UNE Rate Order* at 37; *Louisiana Commission UNE/Deaveraged Rates Order* at 10.

BellSouth provisioning.²⁵⁸ This is consistent with forward-looking methodology as opposed to using average national figures that reflect embedded data.

75. BellSouth provides evidence that even though its cost model began with an average drop length to calculate statewide average loop costs in Georgia, ratios were used to de-average those costs and “caused the final de-averaged rates to reflect ‘density-specific’ drop lengths.”²⁵⁹ We believe this addresses WorldCom’s concern about the need of drop lengths to vary by line density. Commenters have also attempted to quantify by how much loop rates are supposedly inflated, but provide no work papers or other supporting documentation that would enable us to understand their proposed analyses or conclusions.²⁶⁰ Accordingly, we find that commenters have not presented evidence in this matter sufficient to show that the state commissions erred in their decisions.

76. *Inflation.* AT&T alleges that BellSouth’s Louisiana cost model may double count inflation – once in the material price through loading factors and again in the calculation of the return on investment.²⁶¹ As we have already discussed, it is not double counting for a commission to account for inflationary pressures on both the price of material goods and on the price of money itself.²⁶²

77. *Conclusion.* For the foregoing reasons, we find that the Georgia and Louisiana Commissions have complied with basic TELRIC principles in their orders concerning BellSouth’s fill factors and other UNE loop rate inputs.

c. Switching Rate Issues

78. *Georgia Switch Rates.* Commenters contend that BellSouth inappropriately applied switch discounts in its model.²⁶³ We conclude that BellSouth provides sufficient

²⁵⁸ BellSouth GALA I Caldwell Reply Aff. at para. 30 (citing BellSouth witness Gray testimony in Georgia Docket No. 7061-U).

²⁵⁹ Letter from Glenn T. Reynolds, Vice President-Federal Regulatory, BellSouth, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-35 (March 26, 2002) (“In Georgia...zone-specific ratios from the Benchmark Cost Proxy Model (BCPM) were...applied to the statewide average loop cost in order to create de-averaged zone rates. The BCPM used internal algorithms to determine drop lengths that differ by density zone.”) In Louisiana, the BellSouth Telecommunications Loop Model produced loop costs that reflect specific drop lengths for actual customer locations for wire centers in each density zone.

²⁶⁰ AT&T GALA I Baranowski Decl. at para. 34; WorldCom GALA II Comments at 39.

²⁶¹ AT&T GALA I Comments at 61-62.

²⁶² See *supra* Section III.C.1.b.(iv) (discussing inflation).

²⁶³ AT&T GALA I Comments at 52. Commenters make several other allegations related to the switching rates that are addressed elsewhere. First, commenters assert that a benchmark or direct comparison with other states is appropriate here. See, e.g., AT&T GALA I Comments at 49-50; CompTel GALA I Comments at 10-17. Because we evaluate BellSouth’s rates on a stand-alone basis, we reject allegations that a failure to meet a benchmark or other comparison is evidence that the rates in question are not TELRIC compliant. See *supra* Section III.C.1. Second, (continued....)

evidence to demonstrate that its switch costs are consistent with a reasonable application of TELRIC. Based on the evidence in the record, we find that commenters have not established basic TELRIC violations or clear error on substantial factual matters. We believe that the Georgia Commission exercised reasonable judgment on fact-intensive issues which may vary by state in deciding that a meld of new and growth discounts could be used as an input to the switch model.

79. As a preliminary matter, the record shows that the Georgia Commission appropriately exercised its discretion to take account of conditions in Georgia in the course of deciding switch discounts and rate design.²⁶⁴ As noted previously, the Georgia Commission reviewed extensive factual records, including detailed cost studies and state specific information.²⁶⁵ It also had the opportunity to hear witnesses who could be cross-examined regarding the forward-looking nature of BellSouth's proposed cost models and rates.²⁶⁶

80. We reject AT&T's contention that BellSouth's switch rates are inflated because BellSouth applied switch discounts to its cost model that were not forward-looking.²⁶⁷ In its UNE Rate Order, the Georgia Commission noted its consideration of forward-looking pricing principles in adopting cost-based UNE rates.²⁶⁸ AT&T presented testimony concerning how BellSouth applied discounts in its switch modeling, including information on the average price for RBOC digital switches per line.²⁶⁹ BellSouth responded that AT&T's testimony regarding such average price reflected only new switch discounts, and that growth discounts should also be taken into consideration when setting forward-looking costs.²⁷⁰ The Georgia Commission adopted BellSouth's proposed switch pricing that reflected a meld of new and growth discounts.

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commenters contend that BellSouth has conceded that its current applicable rates are not TELRIC compliant because it has proposed lower rates in its ongoing state proceeding. *See infra* Section III.C.1.d.(ii). Finally, we address other minor challenges by commenters, such as loading factors. *See supra* Section III.C.1.b.(iv). We also address DUF charges separately. *See infra* Section III.C.1.d.(i).

²⁶⁴ BellSouth GALA I Application Caldwell Aff., App. A Tab D at 36 ("BellSouth entered detailed and specific data [in the switching cost model] for digital switches in Georgia []. Inputs included such items as: number of lines per office, number of trunks per office, CCS (hundred call seconds) per line, CCS per trunk, and vendor discount rates.")

²⁶⁵ *Georgia Commission UNE Rate Order* at 10; *see also Georgia Commission UNE-platform Order* at 4.

²⁶⁶ *Id.*

²⁶⁷ AT&T GALA I Comments at 52.

²⁶⁸ *Georgia Commission UNE Rate Order* at 11. "The Commission noted in its initial Procedural and Scheduling Order that it would presume that the cost study methodology should be forward-looking, consistent with the Total Element Long Run Incremental Cost ("TELRIC") approach previously approved by the Commission. . . ." *Id.*

²⁶⁹ AT&T Catherine E. Petzinger Rebuttal Testimony in Docket No. 7061-U at 4-5, 13-14.

²⁷⁰ BellSouth Surrebuttal Testimony of Zarakas and Caldwell in Docket No. 7061-U at 45 (stating that the cost of digital switches by AT&T's witness "fails to state [] that this is for replacement (new) investment only. . . . nowhere does the TELRIC methodology preclude the recognition of how switch expenditures have actually been made and (continued....)

81. Generally, certain vendors have provided a greater discount for new switches and smaller discounts for growth or expansion of existing switches, and such discounts were only valid when an overall purchase of both new and growth equipment was made.²⁷¹ The Georgia Commission found that BellSouth's cost model could, in a forward-looking manner, take into account specific new and growth discounts it received in contracts with vendors.²⁷² In reaching this conclusion, the Georgia Commission considered fact-intensive and complex information, including complicated vendor contracts.²⁷³

82. AT&T does not present sufficient evidence here that persuades us that "any volume discounts for equipment, like switches, must be based on th[e] assumption" that they are all "newly purchased."²⁷⁴ We have previously rejected AT&T's argument that our *Universal Service Tenth Report and Order* makes "recovery of the cost of 'augmented switches,' which are existing switches with capacity upgrades," a TELRIC violation.²⁷⁵ We have also specifically cautioned parties from making any claims in other proceedings based on the input values adopted in the *Universal Service Tenth Report and Order*.²⁷⁶ Furthermore, in prior section 271 applications, the Commission has taken notice that other states have concluded that costs should be recovered based on carrier vendor contracts that applied a larger discount for new switches and smaller discounts for growth.²⁷⁷ Rates that are generated based on a forward-looking network should reflect the cost of purchasing a new network at a specific point in time. The state commission may reasonably take into account that there will be growth in that network in the

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will continue to be made in the future. Melding of growth and replacement (new) discounts is more indicative of the cost of doing business to BellSouth. . . . Forward-looking costs cannot exclude consideration for growth expenditures which will continue in the future.").

²⁷¹ BellSouth GALA I Caldwell Reply Exhibit DDC-2 at 1.

²⁷² BellSouth GALA I Caldwell Reply at 25 (stating AT&T in Georgia did not dispute "that switches are purchased with the number of lines needed to serve two or three years' worth of demand. The switch is then grown as necessary, at regular intervals, to accommodate expected increases in demand. The growth equipment is purchased at a lower discount rate than the initial switch purchase, and considering both the higher initial discount coupled with a lower replacement discount is economically sound.").

²⁷³ AT&T Catherine E. Petzinger Rebuttal Testimony in Docket No. 7061-U at 18 ("Switch vendor contracts often are expressed in terms of price per line, rather than a discount off the list price. This is true for the BellSouth/Lucent contract and means that the telephone company must interpret these complicated contracts and develop equations to compute what the SCIS/MO discount input should be."). SCIS/MO refers to a program BellSouth used in its cost model known as Switching Costs Information System.

²⁷⁴ AT&T GALA I Reply at 52 (stating that the "correct level of switch discounts" should be based on all newly purchased switches rather than a mix of new and growth switch purchases which "understates the switch discounts that should be reflected in a forward-looking cost model.").

²⁷⁵ *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, paras. 243-245.

²⁷⁶ *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20172, para. 32; *see also id.*

²⁷⁷ *Verizon Rhode Island Order*, 17 FCC Rcd at 3318, para. 34; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6274, para. 77; *Verizon Massachusetts Order*, 16 FCC Rcd at 9004, para. 33.

future, and that it may not be cost-effective to acquire all of the projected need at the outset. Accordingly, the Georgia Commission adopted a meld of new and growth discounts available to BellSouth.²⁷⁸ It made a state-specific, factual determination of what discounts would be available if a carrier purchased a new network at a certain point in time, with anticipated future growth. AT&T does not argue here that the specific discounts that were applied were inappropriate. Therefore, we find that AT&T is incorrect in asserting that the use of a mix of new and growth switch purchases in the cost model may never be used to determine forward-looking costs.²⁷⁹

83. We also dismiss AT&T's contention that BellSouth "has not provided any details relating either to new or growth switch equipment discounts for which it is eligible."²⁸⁰ Most recently, BellSouth in an *ex parte* filing identified for WorldCom where this information was located.²⁸¹ The record also shows that AT&T previously was provided with BellSouth's switch vendor contracts, under protective restrictions, that contained those details. This information was utilized by AT&T witness Catherine E. Petzinger in developing her testimony in the state proceeding which criticized BellSouth's switch discounts and prices.²⁸² Furthermore, AT&T had the opportunity to obtain information it required through data requests and discovery before the Georgia Commission. BellSouth also filed Caldwell Reply Exhibit DDC-2 (proprietary) in its section 271 application that details BellSouth's switch modeling and discount rates used in Georgia.

84. *Louisiana Switch Rates.* WorldCom contends that Louisiana's switch usage costs are overstated and in violation of TELRIC principles because the Louisiana Commission allowed BellSouth to add costs of providing features to usage costs, even though the usage costs already included sufficient hardware and software cost to provide features.²⁸³ On this issue, the state

²⁷⁸ BellSouth GALA I Caldwell Reply Exhibit DDC-2 at 2 (stating that to reflect the Lucent negotiated contracts, the cost model used two discounts – "one for new jobs and one that reflected a meld of new and growth jobs. The new discount was applied to equipment that would only be purchased in conjunction with a 'new' switch. This equipment is referred to as 'getting started' investments and is comprised predominately of the switch processor. All other equipment was set at the melded discount.").

²⁷⁹ AT&T also argues that BellSouth states that the BellSouth model assumes the mix of new and growth discount reflects that the majority of switch related purchases are to support growth in existing switches. The BellSouth testimony quoted by AT&T addresses BellSouth's actual purchasing practices that underlie the negotiation of its vendor contracts, not the ratio of new and growth discounts used in the model. See AT&T GALA I Comments at 52; GALA II Comments at 46 n.39. AT&T also mistakenly relies on the *Verizon Rhode Island Order* for the proposition that overstating growth additions may not comply with TELRIC principles. See AT&T GALA II Comments at 46 n.39. In the *Verizon Rhode Island Order*, we found that switch prices based on an assumption of 100% growth additions did not comply with TELRIC, not that switch prices must be based on an assumption of 100% new switches. *Verizon Rhode Island Order*, 17 FCC Rcd at 3318, para. 34.

²⁸⁰ AT&T GALA I Baranowski Decl. at para. 15.

²⁸¹ Letter from Sean A. Lev, Counsel to BellSouth, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-35 (March 1, 2002).

²⁸² AT&T Petzinger Rebuttal Testimony in Docket 7061-U.

²⁸³ WorldCom GALA II Comments at 37-38. Commenters also assert that a benchmark or direct comparison with (continued....)

commission disagreed with the ALJ's recommendation and concluded "that the features cost recognized by Staff should be incorporated into the per minute of use switching rate, thus zeroing out any stand alone features charge and increasing the switching per minute of use rate to \$0.0018679."²⁸⁴ WorldCom ignores that the Louisiana Commission carefully considered this issue in the course of its decision. First, the costs added to the switch charge were those recommended by the Commission's staff, which was about 13 percent less than the amount requested by BellSouth.²⁸⁵ Second, there was considerable discussion of this issue at the Louisiana Commission's September 19, 2001 session when the methodology of including feature costs in the minutes of use switching charges was adopted.²⁸⁶ In addition, the record contained evidence that there are costs associated with features that are not recovered in the separately calculated usage rates.²⁸⁷ On that basis, the Louisiana Commission found the average cost of the total switching element, including the feature element, to be just and reasonable.²⁸⁸ The state commission made a fact-sensitive and state-specific determination that "[c]ontrary to the allegations of WorldCom, there was substantial evidence in the record to support a cost associated with features."²⁸⁹ We thus cannot find that the Louisiana Commission committed clear error.

d. Other Pricing Issues

(i) Daily Usage Files

85. *Background.* Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with complete, accurate, and timely reports on the service usage of their customers in substantially the same time and manner that a BOC provides such information to itself.²⁹⁰ This is both an OSS and a pricing issue. We will discuss the former below.²⁹¹ As a pricing matter, several commenters challenge the Georgia and Louisiana

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other states is appropriate here. *See, e.g., AT&T GALA I Comments at 53.* Because we evaluate BellSouth's rates on a stand-alone basis, we reject allegations that a failure to meet a benchmark or other comparison is evidence that the rates in questions are not TELRIC compliant. *See supra* Section III.C.1.

²⁸⁴ Louisiana Commission UNE/Deaveraged Rates Order at 10.

²⁸⁵ Louisiana Commission GALA II Reply at 13.

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 13-14 (citing rebuttal testimony in Docket No. U-24714 from BellSouth witness Daonne Caldwell, e.g., hardware equipment that is required to make some features function).

²⁸⁸ *Id.*

²⁸⁹ Louisiana Commission GALA II Reply at 14.

²⁹⁰ *See, e.g., SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6316-17, para. 163; *SWBT Texas Order*, 15 FCC Rcd at 18461, para. 210; *Bell Atlantic New York Order*, 15 FCC Rcd at 4075, para. 226; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17426, para. 14 & n.38.

²⁹¹ *See infra* Section III.C.2.

Commissions' conclusions that BellSouth's Daily Usage File (DUF) rates²⁹² comply with basic TELRIC principles.²⁹³ They also allege that BellSouth's DUF rates fail any analysis that compares them to other section 271-approved states.²⁹⁴

86. As an initial matter, the commenters include DUF rates as part of the switching price.²⁹⁵ Although carriers only purchase DUF when they purchase unbundled switching, DUF charges are separated from switching charges, and we have not included them in our earlier benchmark comparisons of non-loop rates among states.²⁹⁶ Nor is the cost for DUF service provided by an incumbent LEC to a competitive LEC reflected in the Synthesis Model that we use to compare relative local exchange network costs.²⁹⁷ We conclude that any analysis of DUF charges should be done independently.²⁹⁸

87. *Louisiana Proceedings.* The Louisiana Commission considered DUF rates as part of the UNE cost proceeding in Docket U-24714-A. That commission reviewed proposed recurring and non-recurring charges for each of several UNE elements. DUF charges were among these elements. Louisiana used demand estimates for DUF rates that were calculated for

²⁹² BellSouth GALA I Caldwell Reply Aff. at para 78-81. BellSouth offers three types of DUFs in Georgia and Louisiana: the Access Daily Usage File (ADUF); the Optional Daily Usage File (ODUF); and the Enhanced Optional Daily Usage File (EODUF). ADUF provides the competitive LEC with records for billing interstate and intrastate access charges, whether the call was handled by BellSouth or an IXC. ADUF also provides records for billing reciprocal compensation charges to other local exchange carriers and IXCs for calls originating from and terminating to unbundled switch ports.²⁹² ADUF includes records for both originating and terminating traffic. ODUF contains information on billable transactions for resold lines, interim number portability accounts, and unbundled switch ports. For end users who are served by resold lines, interim number portability, or unbundled switch ports (including the UNE-platform), a competitive LEC can use ODUF to bill for usage events associated with calls placed by those end users (e.g., *69, operator assistance). EODUF is an enhancement to ODUF and includes usage records for local calls originating from a reseller's flat-rated lines (BellSouth's retail flat-rated local service offering purchased for resale). EODUF would only be necessary for a reseller that needs usage data for calls that are placed on flat-rated lines. Thus, a UNE-platform provider would typically not need to purchase EODUF and could obtain the requisite billing information from ADUF and ODUF.

²⁹³ AT&T GALA I Comments at 51; WorldCom GALA I Comments at 59-60.

²⁹⁴ E.g., AT&T GALA I Comments at 51.

²⁹⁵ E.g., AT&T GALA I Comments, Ex. G, Declaration of Michael Lieberman at Ex. 2 (showing that Georgia switching cost of \$10.89 includes DUF charge of \$2.96)(AT&T GALA I Lieberman Decl.).

²⁹⁶ E.g., *Verizon Massachusetts Order*, 15 FCC Rcd at 9000-02, paras. 23-28; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17456-59, paras. 62-67.

²⁹⁷ See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 n.249 (listing costs derived from the Synthesis Model).

²⁹⁸ *Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, Inter-LATA Services in Vermont, CC Docket No. 02-7, Memorandum Opinion and Order, FCC 02-118, 67 Fed. Reg. 20771, (rel. April 17, 2002) (Verizon Vermont Order).*

the 2000-2002 time period based on information available in 2000 and submitted on March 26, 2001, before the record closed in the UNE docket.²⁹⁹ In this proceeding's final order on September 21, 2001, the Louisiana Commission adopted BellSouth DUF rates, but subsequently learned that more current demand data were available. As a result, on November 27, 2001 the state commission directed BellSouth to file an amended Statement of Generally Available Terms and Conditions (SGAT) by December 7, 2001, proposing updated DUF rates that reflect new demand data.³⁰⁰ The Louisiana Commission stated that "[s]taff is concerned that the DUF pricing recently established by this Commission does not take into account the latest demand data for these specific UNEs (i.e., DUF rates) and that, therefore, the pricing of these UNEs may be higher than they otherwise should be."³⁰¹ BellSouth responded by filing updated DUF rates on December 6, 2001, which are generally lower.

88. *Georgia Proceedings.* In Docket 10692-U, the Georgia Commission established DUF rates on February 1, 2000. BellSouth revised its SGAT on August 27, 2001, to reflect lower ADUF and ODUF rates that are presently in effect on an interim basis subject to true-up based on a final order in the new state UNE proceeding.³⁰² The same demand estimate for the 2000-2002 time period submitted by BellSouth in Louisiana on March 26, 2001, was also used to update these Georgia DUF rates.³⁰³ BellSouth's filing on October 1, 2001, in the current UNE proceeding (Docket No. 14361-U) includes updated cost studies for all UNEs in Georgia³⁰⁴ and

²⁹⁹ Letter from Glenn T. Reynolds, BellSouth Vice President-Federal Regulatory, to Magalie Roman Salas, Secretary, Federal Communications Commission at 1, CC Docket No. 01-277 (Nov. 13, 2001) (BellSouth Nov. 13 *ex parte*); see also BellSouth GALA I Application App. F-Louisiana, Vol. 3 Tab 14, Docket. No. U-24714-A, BellSouth Caldwell Rebuttal Test. at 52-54 (Caldwell Rebuttal Test. in Docket No. U-24714-A). BellSouth uses region-wide demand estimates in its DUF rate model. The Louisiana DUF rates reflect demand figures that were updated over the course of the Louisiana cost proceeding. BellSouth explains that, after the Louisiana docket had opened but before the hearing, it filed revised demand numbers that resulted in lower DUF rates. BellSouth states that the cost study that produced the original DUF rates was based on projected demand that reflected "rather stagnant" record numbers. *Id.* at 53. The actual number of records, BellSouth discovered, was higher, and BellSouth therefore filed updated demand inputs for the study period 2000-2002. The revised demand figures resulted in lower DUF rates. It was these lower rates, which were based on BellSouth's higher record numbers, that the Louisiana Commission adopted on September 21, 2001; see also *Louisiana Commission UNE/Deaveraged Rates Order* at 1.

³⁰⁰ Letter from Lawrence C. St. Blanc, Secretary, Louisiana Commission, to William A. Oliver, President, BellSouth-Louisiana (Nov. 27, 2001).

³⁰¹ *Id.*

³⁰² BellSouth GALA I Application Reply Appendix, Vol. 2, Tab L, Joint Reply Affidavit of John A. Ruscilli and Cynthia K. Cox at paras. 24-25 (BellSouth GALA I Ruscilli/Cox Reply Aff.). The SGAT rate was established by running the currently approved model with the new demand estimate. DUF rates were revised in the course of the Georgia Commission's review of Docket 6863-U concerning BellSouth's application to provide interLATA service in Georgia. The competitive LECs challenged the previously approved DUF rates as non-cost-based.

³⁰³ BellSouth GALA I Ruscilli/Cox Reply Aff. at para. 24-25 ("These [present interim] rates were the result of increased demand that reduced certain rates.").

³⁰⁴ BellSouth GALA I Ruscilli/Cox Reply Aff. at para. 24.

uses a demand estimate for the 2002-2004 time period that was calculated in September, 2001.³⁰⁵ BellSouth's proposed DUF rates in the pending proceeding are generally lower than the present interim rates in the Georgia SGAT.³⁰⁶

89. *Challenges to the DUF Rates.* As a preliminary matter, we dismiss commenters attack on DUF rates in Louisiana because the only challenge was based on rates that existed before the most current rates were filed. The old rates are no longer relevant to our analysis, and there is no direct and independent attack on current Louisiana DUF rates. As discussed further below, we conclude that there is insufficient evidence that either the Georgia or Louisiana Commission's approvals of BellSouth's DUF rates violate basic TELRIC principles.³⁰⁷

90. AT&T attacks the Georgia DUF cost study underlying the current DUF rates as not being TELRIC-compliant.³⁰⁸ Under the circumstances presented here, we find this dispute is best handled by the Georgia Commission. First, AT&T's challenges to the reasonableness of the DUF cost study were not made in the original cost proceeding. Second, as noted above, the rates in effect are interim subject to true-up with the rates that will be adopted in the ongoing cost proceeding. Third, the Georgia Commission has demonstrated a continuing commitment to implementing TELRIC principles. Accordingly, we conclude that it is appropriate under these circumstances to defer to the state commission to address AT&T's concerns in the first instance.

91. We also reject AT&T's assertion that BellSouth's 271 application should be conditioned on its immediate adoption of the lower DUF rates proposed in the pending Georgia UNE docket.³⁰⁹ BellSouth's filing of interim DUF rates represents an effort to update rates with the latest information available at the time. We are satisfied that the filing of interim rates in this case meets our requirements by eliminating uncertainty. The fact that the rates are subject to a downward true-up with the state commission's final determination gives us further confidence that competitive LECs will be compensated for any overcharges in a timely manner.³¹⁰

³⁰⁵ BellSouth Nov. 13 *ex parte*.

³⁰⁶ BellSouth GALA I Ruscilli/Cox Reply Aff. at para. 24 (explaining this is a result of updated demand volumes).

³⁰⁷ Some commenters rely on a mere comparison of Georgia DUF rates with those in other states. *See, e.g.,* CompTel GALA I Comments at 15-17. As we have noted, we cannot rely on such comparisons to accurately assess whether DUF rates fall outside a range of reasonableness. *See supra* Section III.C.1. AT&T also contends that BellSouth has effectively conceded that its DUF rates in Georgia are too high and not TELRIC simply by filing new proposed DUF rates in Docket 14361-U. AT&T GALA I Comments at 51; AT&T GALA II Comments at 45. As discussed *infra* Section III.C.1.d.(ii), the filing of new lower proposed rates is not evidence that currently effective rates are not TELRIC compliant.

³⁰⁸ AT&T GALA II Reply at 43-45.

³⁰⁹ AT&T GALA II Comments at 46. Georgia DUF rates are "[i]nterim and subject to true-up based upon final Order in Docket No. 14361-U." *See Georgia SGAT Attach. A.*

³¹⁰ The Commission previously has approved a section 271 application based on interim rates. *Bell Atlantic New York Order*, 15 FCC Rcd at 4090-91, paras. 258-60. As the Commission noted in approving Bell Atlantic's 271 application in New York, "Uncertainty will be minimized if the interim rates are for a few isolated ancillary items, (continued....)"

92. As a separate argument, CompTel argues that BellSouth's DUF rates are not TELRIC compliant because BellSouth provides some DUF information free of charge to some independent LECs,³¹¹ an assertion that BellSouth does not dispute.³¹² BellSouth explains, however, that it exchanges usage information with both independent and competitive LECs at no charge, where the independent or competitive LEC has its own switch. Accordingly, both BellSouth and the LEC receive data from one another. By contrast, competitive LECs that use BellSouth's local switching UNE do not generate their own usage information. Rather, they must receive their usage information from BellSouth and are thus charged for the usage information service.³¹³ It appears that BellSouth makes a reasonable distinction in this respect. Thus, we are not persuaded that the provision of DUF rate information as part of an exchange with some LECs that have their own switches necessarily suggests that charging LECs that purchase BellSouth's switching UNE for DUFs violates TELRIC.

93. WorldCom also argues that BellSouth should eliminate DUF charges altogether in both Louisiana and Georgia since BellSouth already recovers DUF rates in the shared and common costs that BellSouth adds to the direct costs of its other UNEs.³¹⁴ BellSouth provides evidence that the company identified and removed costs that are directly assigned in the cost studies from the development of the shared and common factors in both Georgia and Louisiana.³¹⁵ We find that this evidence addresses WorldCom's concerns about any double-counting of DUFs.

(Continued from previous page) _____

permanent rates that have been established are in compliance with our rules, and the state has made reasonable efforts to set interim rates in accordance with the Act and the Commission's rules." *Id.* at para. 258. Here, BellSouth has sought to provide assurance that "to the extent that the GPSC [Georgia Public Service Commission] orders lower rates in the current proceeding, AT&T, as well as all other CLECs, will receive the benefit of these rates retroactively." BellSouth GALA II Ruscilli/Cox Reply at 8-9. Thus, it appears that BellSouth has minimized uncertainty by proposing lower rates and committing to refund any DUF overcharges. This consists of the difference between the interim rates and new permanent rates to be established by the Georgia Commission, and is retroactive to August 27, 2001.

³¹¹ Z-Tel GALA I Ford Aff. at para. 32.

³¹² BellSouth GALA I Ruscilli/Cox Reply Aff. at para. 27.

³¹³ *Id.*

³¹⁴ WorldCom GALA I Comments at 60.

³¹⁵ BellSouth GALA I Caldwell Reply Aff. at para. 38. WorldCom apparently alleges that BellSouth is double-counting because the same expense accounts appear in both the DUF studies and in the shared and common cost factors. WorldCom GALA I Frentrup Decl. at para. 25. BellSouth, however, identified and removed costs that are directly assigned in the cost studies from the development of the shared and common factors. Caldwell GALA I Reply Aff. at 38. Specifically, file EXPPROJ00.xls, contained in the cost study filed in Louisiana, outlines the adjustments BellSouth made to remove the directly assigned costs. *Id.* Although the doubling-counting of DUF rates was not raised in Georgia, BellSouth made the same adjustments to its shared and common factors there as it made in Louisiana. *Id.*

94. *Conclusion.* Based on the foregoing, we therefore find that rates that BellSouth charges to provide DUFs to competitive LECs are just, reasonable, and nondiscriminatory in compliance with checklist item 2.

(ii) **Effect of BellSouth's Proposed UNE Rates on Our Analysis of BellSouth's Existing Rates**

95. BellSouth has proposed new UNE rates in Georgia in connection with a new cost docket that was initiated on October 1, 2001. Commenters contend that the new rates proposed by BellSouth represent an admission that the 1997 rates on which BellSouth bases its 271 Georgia application are outdated, not in compliance with TELRIC or checklist item 2 and should be rejected.³¹⁶ We disagree.

96. In this case, we do not believe that the existence of a new Georgia cost docket, without more, should affect our review of the currently effective rates submitted with BellSouth's section 271 application. States review their rates periodically to reflect changes in costs and technology.³¹⁷ As a legal matter, we see nothing in the Act that requires us to consider only section 271 applications containing rates approved within a specific period of time before the filing of the application itself. Such a requirement would likely limit the ability of incumbent LECs to file their section 271 applications to specific windows of opportunity immediately after state commissions have approved new rates to ensure approval before the costs of inputs have changed. We doubt that Congress, which directed us to complete our section 271 review process within 90 days, intended to burden the incumbent LECs, the states, or the Commission with the additional delays and uncertainties that would result from such a requirement. That a cost factor has changed does not always invalidate rates that were originally set according to a TELRIC process. As the D.C. Circuit stated, "[i]f new [cost] information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change."³¹⁸

97. AT&T also asserts that BellSouth's 271 application should be conditioned on its immediate adoption of the lower non-loop rates and DUF rates that have been proposed in the pending Georgia UNE docket because they represent an improvement or may affect future

³¹⁶ *E.g.*, ASCENT GALA II Comments at 6; AT&T GALA I Reply Comments at 33 ("In a separate Georgia UNE pricing proceeding commenced just prior to submission of this Application, BellSouth submitted new switching rates that are 35 percent lower than those upon which it now relies. Because the rates in BellSouth's Georgia Section 271 Application do not reflect these reduced costs, its Application fails to satisfy Checklist Item 2."); *Id.* at 34 (stating that Georgia's 271 application includes a DUF rate that when applied to AT&T would be \$2.96 per line per month as opposed to the \$1.40 per line per month proposed in its pending state UNE proceeding); Allegiance Telecom GALA II Comments at 1-4 (stating because BellSouth is seeking new Georgia rates, including proposed increases, the Commission should not rely on them in its section 271 evaluation); Covad GALA II Comments at 15-16.

³¹⁷ We note that Georgia is, in fact, revisiting BellSouth's rates in a timely manner as contemplated by the Act. *See* Georgia Commission Proceedings to Open the Local Market at 133.

³¹⁸ *AT&T v. FCC*, 220 F.3d at 617.

benchmarking.³¹⁹ As discussed above, we find no need to condition 271 approval on different rates because the Commission has repeatedly held that the existence of a new cost proceeding is insufficient reason to find that a state's existing rates do not satisfy TELRIC principles.³²⁰ We decide the merits of BellSouth's 271 application based on its present rates, and it would be arbitrary and inappropriate for the Commission to consider other rates here that have been proposed in another proceeding, especially just because rates are lower. Some of these proposed rates are lower, like the non-loop and DUF, and others are higher, like the loop, but they are all appropriately before the Georgia Commission to decide whether they constitute an improvement or require additional adjustments based on the updated cost models, data and other evidence before it.

98. Allegiance, Cbeyond and Covad also contend that BellSouth's proposed increases for some rates affecting loops and transport in the ongoing Georgia UNE rate proceeding are unreasonably high and anti-competitive, and that therefore, BellSouth's 271 application here should be denied.³²¹ While competitive LECs are concerned about the proposed increases in some of the UNE rates,³²² these proposed rates have not yet been put to the test in evidentiary hearings where they will face challenge by competitive LECs and the scrutiny of the Georgia Commission. The commission has been working diligently since 1995 to establish the conditions necessary to support local market entry, including its commitment to TELRIC-based pricing of UNEs. It also recognizes its "work is not done."³²³ The Georgia Commission is actively involved in overseeing BellSouth's obligations and establishing ongoing state policies to ensure that local competition thrives in the future.³²⁴ This provides us with added assurance that the Georgia Commission will examine BellSouth's proposal appropriately and weigh concerns about anti-competitive conduct in continuing to set cost-based rates for UNEs in the future. Furthermore, the Commission decides the merits of a section 271 application based on its present rates. As we have previously noted, it would be inappropriate here for us to preempt the orderly disposition of intercarrier disputes by state commissions which follow our rules in their disposition of those disputes.³²⁵ Moreover, as we have pointed out in past section 271 proceedings, if "prices are not set in accordance with our rules and the Act, we retain the ability

³¹⁹ AT&T GALA II Comments at 46-50.

³²⁰ *Verizon Rhode Island Order*, 17 FCC Rcd at 3317, para. 31 (citing *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247, *aff'd*, *AT&T Corp. v. FCC*, 220 F. 3d at 617).

³²¹ Allegiance GALA II Comments at 1-4; Cbeyond GALA I Comments at 26; Covad GALA II Comments at 15-16.

³²² *E.g.*, Letter from Florence M. Grasso, Covad, to William F. Caton, Jr., Acting Secretary, Federal Communications Commission, Docket No. 02-35 (filed March 29, 2002).

³²³ Georgia Commission GALA II Reply at 5 (stating it was reviewing BellSouth's performance measures and enforcement plan and the entire Change Management process, as well as overseeing completion of the audit for BellSouth's performance data and reexamining BellSouth prices for UNEs and interconnection services).

³²⁴ *Id.*

³²⁵ *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9102, para. 203.

going forward to take appropriate enforcement action, including action pursuant to section 271(d)(6).³²⁶ Thus, we do not consider commenters' criticism of some proposed BellSouth UNE rates in Georgia's pending proceeding to be relevant or ripe for our consideration here.

99. We also believe that AT&T's concern at this point -- that future benchmarking problems may result in evaluating BellSouth's Georgia 271 application on its present rates even though newer rates are pending in another proceeding -- is premature, speculative and misplaced.³²⁷ It does not address whether or not the Georgia Commission followed basic TELRIC principles or whether it made errors of fact so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.

100. For the foregoing reasons, we conclude that BellSouth has demonstrated that its Georgia and Louisiana UNE rates satisfy the requirements of checklist item two.³²⁸

2. Access to Operations Support Systems

101. We find, consistent with the Georgia and Louisiana Commissions, that BellSouth provides competitive LECs nondiscriminatory access to its OSS and, thus, satisfies the requirements of checklist item 2.³²⁹ In reaching this conclusion, we note that since its October 2001 section 271 filing, BellSouth has made a number of improvements to its systems in response to concerns raised by the Department of Justice and the Commission.

³²⁶ *Id.* at para. 30; see 47 U.S.C. § 271(d)(6).

³²⁷ AT&T also speculates that a situation like Massachusetts could repeat itself in the BellSouth region. AT&T GALA II Comments at 48-50. In Massachusetts, Verizon's rates were equivalent to those in New York, and Verizon in Massachusetts obtained section 271 approval based on a comparison of its Massachusetts and New York rates, even though the New York Commission was in the process of setting new rates in a state proceeding. New York recently adopted new rates, including lower switching rates, but AT&T asserts "Verizon has done nothing to correct its Massachusetts rates." *Id.* at 49. As the Commission noted, New York's action to modify its rates may undermine Verizon's compliance with the requirements of section 271 in Massachusetts, and the Commission retains the ability to take appropriate enforcement action pursuant to section 271(d)(6). *Verizon Massachusetts Order*, 16 FCC Rcd at 9002-03, para. 30. The Commission is currently investigating a complaint filed by WorldCom pursuant to section 271(d)(6) about Verizon's rates in Massachusetts. *WorldCom v. Verizon New England*, File No. EB-02-MD-017 (filed April 24, 2002).

³²⁸ AT&T also argues that BellSouth's UNE rates in Louisiana create a price squeeze which makes them discriminatory in violation of checklist item two. AT&T GALA II Comments at 50-60. We discuss this claim *infra* Section VI.A.

³²⁹ Georgia Commission GALA II Comments at 3-5; Louisiana Commission GALA I Comments at 54; Georgia Commission GALA I Comments at 84.

a. Background

102. The Commission has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide service to their customers,³³⁰ and consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.³³¹ Because the Commission has described its two-step analysis of OSS in previous orders, we do not repeat that analysis here.³³² We focus our discussion of BellSouth's OSS on the major areas of contention. Specifically, we analyze BellSouth's performance in providing access to pre-ordering, ordering, provisioning, and maintenance and repair as well as BellSouth's change control process. Our assessment of these issues form the basis of our conclusion that BellSouth provides nondiscriminatory access to its OSS. Also, because BellSouth contends that its OSS systems are the same in Georgia and Louisiana, we describe the analytical roadmap we use in reviewing the regionality of BellSouth's OSS.

b. Third-Party Testing and OSS "Sameness" Audit

103. *KPMG's Independent Third-Party Testing.* The Georgia Commission ordered BellSouth to conduct an independent, third-party test of the readiness of specific aspects of BellSouth's OSS, and related interfaces, documentation, and processes supporting local market entry by competitive LECs.³³³ Though the test was conducted in Georgia, BellSouth relies on the test to support its Louisiana application on the basis of the PricewaterhouseCoopers region-wide OSS audit discussed below.³³⁴ Under the direction of the Georgia Commission, KPMG conducted a Master Test Plan (MTP) which focused on UNE loops, UNE switch ports, UNE-P, and combinations. The Master Test reviewed the five OSS functions, as well as normal and peak volume testing of the OSS interfaces supporting pre-ordering, ordering, and maintenance and repair functions for both resale and UNE services.³³⁵ On January 12, 2000, the Georgia Commission ordered BellSouth to develop a Supplemental Test Plan (STP) to describe additional third-party testing of aspects of BellSouth's OSS. The STP evaluated the Electronic Interface Change Control Process, pre-ordering, ordering and provisioning of xDSL-capable loops, pre-ordering, ordering and provisioning, maintenance and repair, and billing of resale services, as

³³⁰ *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83; *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Service in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, 585, para. 82 (*BellSouth South Carolina Order*); *SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92.

³³¹ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3900, para. 83; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653-57, paras. 83-90; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-49, 585, paras. 14-18, 82.

³³² See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 3991-92, paras. 85-86; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6284-85, paras. 104-05.

³³³ Georgia Commission GALA I Comments at 113; BellSouth GALA I Application at 59.

³³⁴ BellSouth GALA I Application at 59.

³³⁵ KPMG MTP Final Report at II-3.