

BellSouth to provide. AT&T disagrees with BellSouth's position, arguing instead that the DSLAM performs transporting functions and is an integral part of the unbundled loop. The DSLAM can receive a copper loop, split the low frequency voice signal from the high frequency data signal, and then transmit each of these two signals to their appropriate switch types: a circuit switch for the voice signal and a packet switch for the data signal. According to AT&T, BellSouth is now deploying NGDLC in a manner that integrated splitter/DSLAM cards can be installed into the NGDLC so that voice and data service combinations can easily be provisioned to end-user customers. (Test. of Turner, Tr. Vol. 10, Pgs. 577-578)

**(f) Line Splitting**

Both AT&T and WorldCom criticize BellSouth's unwillingness to permit line splitting between itself and a voice CLP. Their criticism arises from the situation where BellSouth provides both voice and DSL service to a customer and a CLP then wins the customer's voice business. BellSouth will not allow the CLP to use the splitter and provide voice service using the same line BellSouth uses to provide DSL service. The result is that the customer who wants to use BellSouth for DSL service and a CLP for voice service must use two separate lines at a higher cost. The customer faced with this choice, WorldCom insists, will then refrain from choosing the CLP to provide the voice service in order to maintain BellSouth's data service. (Test. of Darnell, Tr. Vol. 10, Pg. 339) BellSouth admits that it could continue to provide data service in this situation, but it chooses not to. BellSouth further admitted that its policy could affect "slightly less" than 500,000 customers in its nine-state region. (Test. Williams, Tr. Vol. 8, Pgs. 9-13)

AT&T alleges that the FCC requires BellSouth to make line splitting available to comply with the Act's requirements. According to AT&T, however, BellSouth makes line splitting available for a new customer *only* when the CLP owns its own splitter. In AT&T's opinion, BellSouth's refusal to permit CLPs to provide voice and advanced services to new customers through line splitting is unreasonably discriminatory and in violation of the FCC's *Line Sharing Order*. (Test. of Turner, Tr. Vol. 10, Pg. 558)

AT&T discerns no technical reason why BellSouth cannot add a splitter to a UNE-P loop that the CLP is already using to provide a North Carolina consumer bundled voice and advanced services. BellSouth is, in fact, willing to provide a splitter when BellSouth continues to provide the voice service. Thus, AT&T insists that BellSouth can provide the splitter, but it chooses not to. (Test. of Turner, Tr. Vol. 10, Pgs. 558-562)

Although BellSouth claims it has no legal obligation to provide the splitter, AT&T argues that BellSouth's rationale is flawed. According to AT&T, the FCC has not fully evaluated this issue, which is one of discrimination. AT&T notes that the Texas Commission concluded that SBC had a responsibility to provide access to splitters for both line sharing and line splitting. AT&T acknowledges that the FCC has granted 271 authority to ILECs that were not required to provide splitters, but AT&T distinguishes those cases. AT&T also acknowledges that this Commission ruled that BellSouth did not have to provide access to the splitter under any circumstances and may disconnect the splitter when the CLP is providing voice service to the end-user using UNE-P. Nevertheless, AT&T urges this Commission to reevaluate its decision pursuant to the nondiscriminatory requirements of the Act. (Test. of Turner, Tr. Vol. 10, Pgs. 562-570)

AT&T contends that, because BellSouth does not provide electronic OSS for CLP line splitting orders, it fails to provide nondiscriminatory access to line splitting. According to AT&T, each customer order for line splitting must be handled manually. AT&T worries that it is unclear how long BellSouth would take to process such an order, or if the order would be processed correctly. (Test. of Turner, Tr. Vol. 10, Pgs. 570-571)

AT&T asserts two additional claims that it argues illustrate BellSouth's anticompetitive behavior. First, BellSouth does not deploy splitters a line at a time, resulting in a CLP expending resources for capabilities it does not use. Second, BellSouth does not provide the same level of support for UNE-P when it is part of the line splitting configuration as it does when UNE-P is used only for voice. (Test. of Turner, Tr. Vol. 10, Pgs. 573-574)

### **Public Advocate Positions**

#### **(a) Access to Voice Grade Loops**

The Attorney General did not address this item in his Brief.

The Public Staff stated that BellSouth is providing nondiscriminatory access to voice grade loops. Consistent with the directives of the FCC, this finding is based upon the length of time it takes BellSouth to provision a voice grade loop, the extent to which BellSouth misses loop installations, the percentage of voice grade loops provisioned to CLPs that need repair within the first seven days, and the length of time it takes BellSouth to complete the necessary repairs.

**(b) Access to xDSL-Capable Loops**

The Attorney General did not address this item in his Brief.

The Public Staff stated that BellSouth provides nondiscriminatory access to xDSL-capable loops. This finding is based upon the length of time it actually takes BellSouth to provision an xDSL-capable loop, the extent to which BellSouth misses loop installation appointments, the length of time it takes BellSouth, on average, to repair a troubled xDSL loop, and the frequency with which CLPs have to make repeated requests for xDSL loop repairs. BellSouth has demonstrated that it provisions xDSL-capable loops for CLPs in substantially the same time and manner that it installs xDSL-capable loops for its own retail operations. Further, BellSouth demonstrates that it provides maintenance and repair functions for CLPs' xDSL-capable loops in accordance with the requirements for Checklist Item 4.

**(c) Hot Cut Conversions**

The Attorney General did not address this item in his Brief.

The Public Staff stated that BellSouth has demonstrated that it provisions hot cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruptions. BellSouth's hot cut process includes a number of steps that CLPs must take during the days preceding the hot cut. The process described in testimony satisfies the requirements of this checklist item.

**(d) Access to Sub-Loop Elements**

The Attorney General did not address this item in his Brief.

The Public Staff stated that BellSouth offers CLPs nondiscriminatory access to sub-loop elements. BellSouth offers loop concentration/multiplexing as a sub-loop element and also provides unbundled access to the sub-loop elements loop feeder, loop distribution, intrabuilding network cable, and network terminating wire. While no CLPs in North Carolina have purchased sub-loop elements, BellSouth stands ready to provide such elements upon CLP request. In fact, regionally, BellSouth has provided over 500 unbundled sub-loop elements to CLPs.

**(e) Line Sharing**

The Attorney General did not address this item in his Brief.

The Public Staff states that evidence of commercial usage supports BellSouth's assertion that it provides CLPs with nondiscriminatory access to line sharing loops. The Public Staff notes that as of August 31, 2001, BellSouth had installed splitters in 472 wire centers region-wide and 59 wire centers in North Carolina. Further, the Public Staff comments that as of August 31, 2001, BellSouth provided line sharing on 4,092 lines region-wide and 504 lines in North Carolina. The Public Staff also maintains that BellSouth provisions and maintains line sharing in a timely, accurate, and nondiscriminatory manner. The Public Staff states that performance measures concerning missed installation dates, mean time to repair, trouble report rates, and repeat trouble report rates support this finding.

**(f) Line Splitting**

The Attorney General did not address this item in his Brief.

The Public Staff believes that BellSouth demonstrated that it complies with the Act and the FCC's requirements to make line splitting generally available. The Public Staff comments that BellSouth facilitates line splitting by CLPs by cross-connecting a loop and a switch port to the collocation space of either the voice CLP or the data CLP. The Public Staff states that the CLPs may then connect the loop and the switch port to a CLP-owned splitter and split the line themselves. The Public Staff believes that BellSouth is not obligated to charge CLPs UNE-P rates for line splitting arrangements, and its policy is consistent with the FCC's precedent.

**Discussion**

**(a) Access to Voice Grade Loops**

The Commission finds that BellSouth is providing nondiscriminatory access to voice grade loops. Consistent with the directives of the FCC, the Commission bases this finding upon the length of time it takes BellSouth to provision a voice grade loop, the extent to which BellSouth misses loop installations, the percentage of voice grade loops provisioned to CLPs that need repair within the first seven days, and the length of time it takes BellSouth to complete the necessary repairs.<sup>136</sup> Thus, the Commission reviewed OCI, Missed Installation Appointments, Trouble Reports After Provisioning, and Average

**Maintenance Duration.** The record reflects that BellSouth's performance, while not perfect, is sufficient to warrant a finding of compliance with the requirements of Checklist Item 4.<sup>137</sup>

BellSouth's performance measures for OCI for June, July, and August 2001, which measure the length of time it takes BellSouth to provision a voice grade loop, show that BellSouth failed to meet the retail analogue of only two of the submetrics during that period in which there was CLP activity. In those cases, there were two orders or less by CLPs. Such a small universe for these measurements does not provide a statistically conclusive comparison with the retail analogue. (Supp. Varner Exhibit AJV-2, August Update, Pgs. 64-65) BellSouth's overall performance in this metric for 2-wire analog loops is solid. In August 2001, BellSouth met eight of nine performance submetrics for OCI in which there was CLP activity in the 2-wire loop category. In July, it met 100% of the 10 submetrics in which there was CLP activity. In June, it met six of eight submetrics in which there was CLP activity. (Supp. Varner Exhibits, AJV-2, August, July, and June Updates, B.2.1.8.1.1 - B.2.1.13.2.4)

This Commission also examined the Missed Installation Appointment Metric for 2-wire analog loops. BellSouth met or exceeded the retail analogue for 100% of the submetrics of 2-wire analog loops with CLP activity for June, July, and August 2001. These measurements indicate that BellSouth is generally not missing more installation appointments for CLPs than for its own retail. In light of this performance, the Commission does not believe KMC's assertion that BellSouth missed 23% of their installation appointments from September 2000 to April 2001 warrants a finding of noncompliance. BellSouth disputes the numbers, however, saying the Missed Installation Appointment percentage for KMC was only 19.07% for that time period, which decreased to 18.40% when the next month is added. BellSouth also states, however, that these percentages reflect CLP-caused misses. The Commission agrees with BellSouth that it should not be held responsible for misses caused by the CLPs or their end-users. Based on that premise, BellSouth only missed 4.71% of KMC's installation appointments during that time period. (Test. of Varner, Tr. Vol. 8, Pg. 507) BellSouth actually provisioned 91.5% of KMC's orders on time for that time period. (Test. of Ainsworth, Tr. Vol. 7, Pg. 205) For July 2001, BellSouth provisioned 97.8% of KMC's orders on time. Of those missed, BellSouth missed 10 for KMC reasons and only two for BellSouth reasons. (Test. of Ainsworth, Vol. 7, Pg. 205) Thus, the Commission finds that BellSouth's overall performance was in parity for May, June, and July for KMC high-volume products.

Upon review of the maintenance and repair submetrics for 2-wire analog loops, the Commission first notes that for the Maintenance Average Duration for June, July, and August 2001, was generally less for CLPs than for BellSouth's own retail. Furthermore,

the only Maintenance and Repair submetric that BellSouth missed in that same time period was Customer Trouble Report Rate /2W Analog Loop Non-Design / Dispatch (B.3.2.9.1) in August 2001. (Supp. Varner Exhibit AJV-2, August Update, Pg. 70) The Commission further notes that BellSouth met the retail analogue comparison for this sub-metric in May, June, and July. Additionally, for Maintenance Average Duration in June, July, and August 2001, BellSouth performed at parity for 100% of the 2-wire analog loop submetrics.

Moreover, the arguments regarding Repeat Troubles by KMC and NuVox are unavailing. First, BellSouth met the retail analogue for Percent Repeat Troubles Within 30 Days for June, July, and August 2001 for the 2-Wire Analog Loops. Although the percentages are arguably high, the *actual* amount of troubles for the CLPs is relatively low. (Test. of Varner, Tr. Vol. 9, Pgs. 75-78) Second, there is no evidence, other than the bald assertion of KMC and NuVox that BellSouth closes trouble tickets prematurely. BellSouth, of course, refutes this assertion. Both KMC and NuVox have the opportunity to perform circuit acceptance testing prior to ticket closure. (Test. of Ainsworth, Tr. Vol. 7, Pg. 206) Neither NuVox nor KMC have shown that BellSouth does not have a policy of allowing this testing. Thus, if a trouble ticket is closed early, KMC and NuVox technicians are complicit in the early closing. (Test. of Ainsworth, Tr. Vol. 7, Pgs. 206, and 209) Finally, like the FCC, the Commission believes that a 271 application is an inappropriate forum to resolve this dispute regarding the premature closing of trouble tickets.<sup>138</sup>

The Commission finds that BellSouth performed similarly with digital loops as well. For OCI, BellSouth was in parity with retail for all three of the submetrics for which there was CLP activity in June, July, and August 2001. For Missed Installation Appointments, BellSouth met or exceeded the retail analogue for June, July, and August 2001.

BellSouth was not at parity for Percent Provisioning Troubles Within 30 Days for digital loops for the months of June, July, and August 2001. The Commission, however, credits BellSouth's unchallenged explanation that the disparity is the result of repeat troubles for the same line that were counted in contradiction to the Georgia SQM, which directs that only the first trouble ticket submitted within 30 days of completion should be counted. (Test. of Varner, Tr. Vol. 8, Pg. 509) The Commission further notes that BellSouth was in parity for the month of September for a submetric, Digital Loop < DS1 / < 10 circuits / Dispatch / NC (%). Thus, the Commission finds BellSouth's overall performance signals compliance with Checklist Item 4.

Finally, the Commission notes that the FCC found, as follows, in its *GALA II Order*

Based on the evidence in the record we find, as did the Georgia and Louisiana Commissions, that BellSouth provisions voice grade loops to competitors in Georgia and Louisiana in a nondiscriminatory manner. In order to determine that BellSouth's performance reflects parity, we review performance measures comparable to those we have relied upon in prior section 271 orders. [¶223 with footnotes omitted]

Based on the evidence in the record, we find, as did the Georgia and Louisiana Commissions, that BellSouth's performance with respect to digital loops complies with checklist item 4. [¶231 with footnotes omitted]

**(b) Access to xDSL-Capable Loops**

The Commission finds that BellSouth is providing nondiscriminatory access to xDSL-capable loops. This finding is based upon the length of time it actually takes BellSouth to provision an xDSL-capable loop, the extent to which BellSouth misses loop installation appointments, the length of time it takes BellSouth on average to repair a troubled xDSL loop, and the frequency with which CLPs have to make repeated requests for xDSL loop repairs.<sup>139</sup> Additionally, the Commission finds that BellSouth has a specific legal obligation to provide unbundled xDSL-capable loops to competing carriers through its interconnection agreements approved by this Commission.

The Commission finds that BellSouth has demonstrated that it provisions xDSL-capable loops for CLPs in substantially the same time and manner that it installs xDSL-capable loops for its own retail operations. In analyzing BellSouth's performance for checklist compliance, we rely primarily upon the performance measures identified in the FCC's *New York Order* and *Texas Order*, i.e., Average Completion Intervals and Missed Installation Appointments.<sup>140</sup>

For the OCI, the Commission finds that BellSouth's Average Completion Intervals for June, July, and August 2001, show nondiscriminatory treatment. (Supp. Varner Exhibit AJV-2, June Update, July Update, and August Update, B.2.18.5.1.1 - B.2.18.6.2.2). Moreover, in May, June, July, and August 2001, BellSouth met the retail analogue for Percentage Missed Installation Appointments in every submetric for which there was CLP activity. (Supp. Varner Exhibit AJV-2, June Update, July Update, and August Update, B.2.1.5.3.1- B.2.1.6.5.2)

Covad's objections to BellSouth's performance regarding the provisioning of xDSL loops are unavailing. As a preliminary matter, the Commission finds that it is not discriminatory for BellSouth to charge Covad to reinventory the ISDN loops as UDC/IDSL. As Covad admits, it was ordering ISDN loops for its IDSL service. Covad does not dispute that BellSouth correctly provisioned and inventoried those loops as ISDN loops. The Commission concurs with BellSouth that the work involved in changing Covad's loops' status to UDC/IDSL is more than a simple record change. (Test. of Ainsworth, Tr. Vol. 7, Pg. 42) BellSouth did an exhaustive study to determine the actual work content involved. As a result of the study, BellSouth offered Covad two scenarios for these changes: a less expensive automated approach that had a higher risk of outage or a more expensive manual approach that reduced the risk of outage. (Test. of Ainsworth, Tr. Vol. 7, Pg. 43) The Commission finds that BellSouth should not be faulted for performing the initial inventory correctly or for offering Covad two options to correct the problem.

The Commission notes that the FCC found in its *GALA II Order*

Based on the evidence in the record, we also find, as did the Georgia and Louisiana Commissions, that BellSouth provides ISDN loops to competitors in Georgia and Louisiana in accordance with the requirements of checklist item 4. [¶230 with footnotes omitted]

The Commission also rejects Covad's submission of performance data as evidence that BellSouth is not in compliance with the checklist. Covad's data are from only one month of the monthly state summaries. As such, it is not reflective of BellSouth's overall performance which is the focus of this Commission.<sup>141</sup> Additionally, the data itself fail to sway the Commission. The Percentage Orders in Jeopardy measure, which measures the percentage of orders that are given jeopardy notices for any reason, reveals neither the reason for the jeopardy nor whether the installation appointment was ultimately met. (Test. of Davis, Tr. Vol. 10, Pg. 147) As noted above, the FCC has placed great emphasis on whether the installation appointment was timely met.<sup>142</sup> While this Commission does not condone orders going into jeopardy, it notes that BellSouth met the retail analogue for all the percentage of missed installation appointments measurements, including those for ISDN loops, for June. (Supp. Varner Exhibit, AJV-2, August Update, Pg. 55) Moreover, Covad may be overemphasizing the impact of the performance data on the CLPs. For example, the 8% of the nonmechanized orders put in jeopardy in June amounts to only five orders out of the 62 orders placed. (Test. of Davis, Tr. Vol. 10, Pg. 147)

The Commission further concludes that BellSouth provides xDSL loops to competing carriers at a level of loop installation quality that meets the requirements of

Checklist Item 4. In analyzing installation quality, the Commission follows the direction of the FCC and relies primarily upon the measure identified in the *New York Order* and the *Texas Order - Percent Provisioning Troubles in 30 Days*.<sup>143</sup> The Percent Provisioning Troubles Within 30 Days measures the percent of trouble reports filed for loops within 30 days of installation. "Assessing the quality of loop installation is important because advanced services customers who experience substantial troubles following installation of an xDSL-capable loop are unlikely to remain with a competing carrier."<sup>144</sup> BellSouth's overall performance, while not perfect, compels this Commission to find that BellSouth is in compliance with the requirements of the checklist.

As BellSouth reported, its data show that it missed the retail analogue for the submetric Percent Provisioning Troubles UNE ISDN Loops / <10 Circuits/ Dispatch (B.2.19.6.1.1) in April, May, June, and July 2001. A closer examination of the numbers reveals, however, that one or two misses in this submetric could cause BellSouth to be out of parity. Furthermore, BellSouth met the retail analogue for this submetric in both August and September 2001. (Supp. Varner Exhibit AJV-2, September Update, Pgs. 53-54) In fact, in August, CLPs experienced 7.73% Provisioning Troubles Within 30 Days compared to BellSouth's 8.08%; and in September, CLPs experienced 4.17% Provisioning Troubles Within 30 Days compared to BellSouth's 9.30%, indicating a trend of improvement.<sup>145</sup> (Supp. Varner Exhibit AJV-2, August Update and September Update, B.2.19.6.1.1) Accordingly, the Commission rejects Covad's assertion that this metric demonstrates that CLPs experience substantially more troubles within 30 days than BellSouth. BellSouth's overall performance with regard to this metric indicates that it does not deny Covad or other CLPs a meaningful opportunity to compete.

The Commission next finds that BellSouth demonstrates that it provides maintenance and repair functions for CLPs' xDSL-capable loops in accordance with the requirements of Checklist Item 4. In analyzing BellSouth's maintenance and repair functions, the Commission, consistent with the FCC's previous orders, primarily relies upon the mean time to repair, repeat trouble rate measures, and missed repair appointments.<sup>146</sup>

BellSouth met all the retail analogues for Maintenance Average Duration for all xDSL loops in June, July, and August except for UNE ISDN / Dispatch. The Commission finds that BellSouth's average maintenance duration for CLPs was 5.52 hours in June 2001, compared with the retail analogue of 1.87 hours. (Supp. Varner Exhibit AJV-2, August Update, Pg. 60). In July, the average duration for 30 orders in this submetric was 3.87 hours compared to the retail analogue of 1.68 hours. In August, the average duration for 35 orders was further reduced to 3.30 hours as compared to the retail analogue of 1.68 hours. (Supp. Varner Exhibit AJV-2, August Update, Pg. 60) In September, the

average duration for 25 orders in this submetric was reduced to 3.19 hours as compared to the retail analogue of 1.74 hours (Supp. Varner Exhibit AJV-2, September Update, Pg. 56). Thus, the difference between the CLPs and BellSouth's retail has decreased from over three hours to an hour and 45 minutes, bringing BellSouth into near parity with its retail operation.<sup>147</sup> Accordingly, the Commission does not find any systemic discrimination associated with these orders.

As for the frequency with which CLPs have to make repeated requests for xDSL loop repairs, the Commission looks to Percentage Repeat Troubles Within 30 Days. The Commission finds that BellSouth's overall performance in this metric does not foreclose a finding of compliance. The Commission notes that BellSouth has implemented additional training for outside facilities technicians on trouble identification, testing, and turn-up procedures to reduce repeat troubles. (Supp. Exhibit AJV-2, August Updates, Pg. 61)

Finally, as for Percentage Missed Repair Appointments and Covad's assertion that BellSouth missed less than 1% of its own repair appointments, but missed 7.14% of the CLPs' repair appointments, the Commission finds that BellSouth has only missed one repair appointment for all the submetrics since May, and the CLPs had 93% of their repair appointments met by BellSouth. (Supp. Varner Exhibit, AJV-2, August Update, Pg. 57) Accordingly, the Commission finds no systemic discrimination in BellSouth's performance in providing access to xDSL-capable loops.

The Commission notes that the FCC found in its *GALA II Order*

Based upon the evidence in the record, we find, as did the Georgia and Louisiana Commissions, that BellSouth demonstrates that it provides xDSL-capable loops in accordance with the requirements of checklist item 4. . . [¶228 with footnotes omitted]

**(c) Hot Cut Conversions**

BellSouth's hot cut process is designed to move a loop that is in service from BellSouth's service to a CLP's switch. (Test. of Milner, Tr. Vol. 8, Pg. 70) Based upon their business needs, CLPs may request that BellSouth perform the hot cut at a specific time or with no specified time. The specific time cutovers require coordination between BellSouth and the CLP. The Commission finds this practice generally consistent with the hot cut provisioning options the FCC approved in the *Kansas/Oklahoma Order*.<sup>148</sup>

BellSouth's hot cut process includes a number of steps that BellSouth and the CLPs must take during the days preceding the hot cut. The Commission believes the process described in the testimony satisfies the requirements of the Checklist.<sup>149</sup>

The record also reveals that BellSouth provided 41,000 unbundled local loops to over 20 CLPs in North Carolina as of February 28, 2001. The vast majority of these loops were provisioned with number porting. The Commission finds this commercial activity to be compelling evidence that BellSouth is providing nondiscriminatory access to unbundled local loops. (Test. of Milner, Tr. Vol. 8, Pg. 132)

The Commission agrees that "[t]he ability to provision working, trouble-free loops through hot cuts is critically important in light of the substantial risk that a defective hot cut will result in competing carriers' customers experiencing service outages for more than a brief period."<sup>150</sup> Because the hot cut process is performed when a BellSouth customer changes its local service to a CLP, there is no retail analogue for comparing BellSouth's customers' experience to the CLP's customers' experience. Thus, to comply with the checklist, BellSouth must demonstrate that it provides hot cuts in North Carolina in a timely manner, at an acceptable level of quality, with minimal service disruption, and with a minimum number of troubles following installation.<sup>151</sup> BellSouth's data, which shows that it met or exceeded the benchmarks on 37 of 39 measurements or 95% of the benchmarks from May to July 2001, demonstrate that BellSouth provides hot cuts in the manner described above. (Test. of Varner, Tr. Vol. 8, Pg. 495) The Commission is strongly persuaded by such evidence.

AT&T, however, raises a variety of concerns about BellSouth's hot cut procedures. As an initial matter, the Commission notes that AT&T and BellSouth have executed an MOU regarding the procedure to be used for hot cuts. The parties negotiated for two years on this agreement. BellSouth states that the hot cut processes agreed to in the MOU are now used for all CLPs. (Test. of Milner, Tr. Vol. 8, Pg. 133) Since AT&T is a party to this freely negotiated agreement, it cannot now complain to the Commission about the process. Furthermore, many of AT&T's claims involve speculation that BellSouth will not follow the MOU. Such speculation is insufficient to warrant a finding of noncompliance with the checklist.

AT&T also fails to demonstrate that BellSouth causes unreasonable delays of the hot cuts through failing to check CFAs before returning the FOC to AT&T. As the Commission has noted, hot cut performance is a complicated issue that requires the cooperation of both parties. Undisputed evidence in the record shows that CLPs may be partly responsible for this delay. When a CLP orders a UNE, such as an unbundled loop,

the CLP must specify the CFA to which BellSouth should connect the unbundled loop. If the CLP submits the CFA in error, BellSouth cannot proceed until the CLP corrects the mistake, because only the CLP knows what it wants. (Test. of Milner, Tr. Vol. 8, Pgs. 135-136) Nevertheless, BellSouth has agreed to provide AT&T access to CFA information within LFACS in a future update to that mechanized system to help AT&T track its CFAs. (Test. of Milner, Tr. Vol. 8, Pg. 183) Until then, BellSouth's provides a daily website-based report concerning CFA assignments to CLPs on the internet. (Test. of Milner, Tr. Vol. 8, Pg. 183) Thus, the Commission believes that BellSouth has satisfactorily addressed AT&T's concerns.

The Commission next rejects AT&T's claim that because BellSouth refuses to perform conversions involving IDSL facilities as a time-specific hot cut, it does not comply with the checklist. BellSouth would prefer a four-hour window to start the conversion. The Commission finds that this claim is speculative since BellSouth has not actually implemented this change and still counts IDLC hot cuts as time-specific. In fact, BellSouth has proposed to continue to do so in the future if the CLP cannot accommodate the four-hour window. (Test. of Milner, Tr. Vol. 8, Pg. 137) Thus, the Commission concludes that this unripe claim does not compel a finding of noncompliance with the checklist.

Both AT&T and KMC raise concerns about erroneous disconnects. Although the Commission is concerned by the claim that their customers have been without service, neither party adequately supports its claim with concrete information. Moreover, the performance measures submitted by BellSouth belie these unsupported claims. Both parties allege that these outages occur after either one of them supplements an LSR to change a due date or some other such change. AT&T alleges that its customers go without service for a longer period of time than BellSouth's customers when this occurs.

Evidence in the record shows, however, that BellSouth allows AT&T to accept the conversion and perform appropriate testing prior to accepting service. Thus, AT&T exercises some control over this process. For BellSouth to reestablish service, service orders must be issued for erroneous disconnects, regardless of who provides that service to the end-user. (Test. of Ainsworth, Tr. Vol. 7, Pg., 195) Thus, AT&T fails to show that BellSouth discriminates against it. Furthermore, the record also shows that BellSouth has had problems with KMC supplementing its orders numerous times before the due date. (Test. of Milner, Tr. Vol. 8, Pg. 142) When supplemented orders come in late, the chance of a premature disconnect occurring is increased. (Test. of Milner, Tr. Vol. 8, Pg. 143) BellSouth has adequately described the procedure it has in place to address this problem (see Test. of Milner, Tr. Vol. 8, Pgs. 142-143), and the Commission finds these procedures to demonstrate compliance with the checklist.

Accordingly, the Commission finds that BellSouth has demonstrated that it provisions hot cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption.

Finally, the Commission notes that the FCC found in its *GALA II Order*

Like the Georgia and Louisiana Commissions, we find that BellSouth is providing voice grade loops through hot cuts in Georgia and Louisiana in accordance with the requirements of checklist item 4. BellSouth provides hot cuts in Georgia and Louisiana within a reasonable time interval, at an acceptable level of quality, with minimal service disruption, and with a minimum number of troubles following installation. [¶220 with footnotes omitted]

**(d) Access to Sub-Loop Elements**

The Commission finds that BellSouth offers CLPs nondiscriminatory access to sub-loop elements consistent with the requirements of Section 271 and the *UNE Remand Order*. The FCC's *UNE Remand Order* requires ILECs to provide competitors access to sub-loop elements at any technically feasible point to ensure that requesting carriers [have] maximum flexibility to interconnect their own facilities with those of the incumbent LEC.<sup>152</sup> The FCC explained in the *UNE Remand Order* that technically feasible points of interconnection near a customer's premises could include poles or pedestals, the NID or the minimum point of entry, the FDI, or a remote terminal or environmentally controlled vault.<sup>153</sup> A review of BellSouth's testimony on this sub-issue demonstrates that its performance is consistent with the above authority. (Test. of Milner, Tr. Vol. 8, Pg. 65)

AT&T takes issue, however, with BellSouth's policies of making remote terminal sites available for collocation so that AT&T and the other CLPs may provide services to those customers being served by fiber-fed digital loop carrier. AT&T claims that because of the expense of remote-site collocation, BellSouth is effectively prohibiting AT&T's access to sub-loop elements. AT&T submits that BellSouth should be required instead to provide dual-purpose line cards instead of requiring collocation, so that AT&T can compete. AT&T further argues that its position is consistent with the FCC's rules and various orders.

The Commission, however, disagrees with AT&T's contention. AT&T has failed to show that BellSouth's policies are discriminatory. In the *Massachusetts Order*, the FCC

found that, "consistent with our rules, Verizon allows collocation inside remote terminals on a space-available basis. Where space is unavailable, competitive LECs may deploy an adjacent cabinet to access sub-loops through an interconnecting cable."<sup>154</sup> The evidence shows that BellSouth likewise provides for this collocation. (Test. of Gray, Tr. Vol. 7, Pg. 259) Therefore, AT&T cannot credibly claim that BellSouth violates the FCC's rule and orders by requiring CLPs to collocate at remote site terminals to provide services to customers being served by fiber-fed digital loop carrier. Moreover, for BellSouth to provide ADSL service to loops served by fiber-fed remote terminals, it too must place a DSLAM at the remote terminal. (Test. of Gray, Tr. Vol. 7, Pg. 257) Thus, AT&T also cannot show that BellSouth discriminates against it. Finally, the Commission dismisses AT&T's claim that collocation space at remote terminals is seldom available on the grounds that neither AT&T nor any other CLP has applied for collocation space at a remote terminal site.

Additionally, the Commission notes that the FCC found in its *GALA II Order*

. . . We reject AT&T's allegation because although incumbent LECs are required to provide unbundled access to the entire loop, we have found that "the high frequency portion of the loop network element is limited by technology, *i.e.*, is only available on a copper facility." Furthermore, competitive LECs may provide data services to BellSouth voice customers served by digital loop carriers by either collocation in the remote terminal or, in the event that the Commission's four-part test for packet switching is met, access to unbundled packet switching . . . [¶240 with footnotes omitted]

While, the Commission recognizes that no CLP has purchased unbundled sub-loop elements in North Carolina, the Commission notes that BellSouth has provided over 500 unbundled sub-loop elements region-wide and finds that it has nondiscriminatory procedures and policies in place to provide such access in North Carolina. For this reason and the reasons set forth above, the Commission concludes that BellSouth does not impermissibly limit access to unbundled loops.

**(e) Line Sharing**

Line sharing allows CLPs to provide high-speed data service to BellSouth voice customers. BellSouth must provide line sharing in accordance with the FCC's *Line Sharing Order* and *Line Sharing Reconsideration Order*. BellSouth has produced evidence showing that it complies fully with the requirements established in the above-cited orders. BellSouth's evidence shows that it provides access to the high frequency portion of the loop as an unbundled network element. BellSouth has collaborated with the CLPs in

developing the line sharing product. For loop make-up information, the process is the same whether the CLP wants to obtain an xDSL-capable loop or the high frequency portion of the loop. The ordering, provisioning, and maintenance and repair processes for the line sharing product are very similar to the processes for xDSL-capable loops.

BellSouth's evidence of commercial usage further convinces the Commission that BellSouth provides CLPs with nondiscriminatory access to line sharing loops. As of August 31, 2001, BellSouth had installed splitters in 472 wire centers region-wide and 59 wire centers in North Carolina. As of August 31, 2001, BellSouth provided line sharing on 4,092 lines region-wide and on 504 lines in North Carolina. (Test. of Williams, Tr. Vol. 7, Pgs. 411-412)

The Commission finds that BellSouth provisions and maintains line sharing in a timely, accurate, and nondiscriminatory manner. In making this finding, the Commission first examines performance measures concerning missed installation due dates, average installation intervals, trouble reports within 30 days of installation, mean time to repair, trouble report rates, and repeat trouble report rates.<sup>155</sup> BellSouth met all of the FOC and reject timeliness benchmarks for line sharing in June, July, and August 2001. With respect to provisioning of line sharing, BellSouth did not meet the OCI for Line Sharing/6 Circuits/Non-Dispatch in June or July but did meet it in August. BellSouth likewise did not meet the retail analogue for Percent Missed Installation Appointments in July and August, but the Commission finds that the few CLP orders in this submetric render the comparison inconclusive. (Supp. Varner Exhibit, AJV-2, August Update, Pg. 56) BellSouth met the retail analogue for provisioning troubles within 30 days for June, July, and August 2001, performing better for the CLPs than its own retail service in August. However, the Commission notes that the CLP order volumes were also very low relative to BellSouth for these measures in June, July, and August 2001. (Supp. Varner Exhibit, AJV-2, August Update, B.2.19.7.1.1-B.2.19.7.2.2)

The Commission does not believe that Sprint's complaint regarding BellSouth's treatment of its line sharing applications shows that BellSouth impeded its access to line sharing. The testimony of both parties seems to reflect a general misunderstanding of the proper procedures for ordering line sharing. While the Commission urges the parties to continue to work together to simplify the line sharing process, the Commission cannot state that Sprint's complaint warrants a finding of noncompliance with the checklist. The evidence shows that Sprint was a party to the collaborative regarding this product in Georgia.

As for BellSouth's performance on maintenance and repair, BellSouth met the retail analogue for repair appointments in June, July, and August 2001 (Missed Repair Appointments, metrics B.3.1.7.1 and B.3.1.7.2). In August, BellSouth had a lower maintenance average duration for CLPs than for its retail orders, but again the CLP volume was low. (Supp. Varner Exhibit, AJV-2, August Update, B.3.3.7.1 and B.3.3.7.2) Covad's assertions regarding the customer trouble report rate simply do not show BellSouth has denied it a meaningful opportunity to compete. While BellSouth was not in parity for this metric in June 2001, for non-dispatch line sharing loops, BellSouth was in parity for dispatch. (Test. of Varner, Tr. Vol. 8, Pg. 516) The Commission does not find the 1.72% difference in performance on non-dispatched troubles for line sharing between BellSouth retail and the CLPs so great as to cripple the CLPs' ability to compete. (Test. of Varner, Tr. Vol. 8, Pg. 516) Moreover, evidence in the record indicates that reports are included in the measure even when no trouble is ultimately found. (Test. of Varner, Tr. Vol. 8, Pg. 516) The Commission also finds that Covad's assertion regarding the M&R-4 report on percent repeat troubles within 30 days is inconclusive because with only one order for dispatch, the volume is too low to make a comparison. (Test. of Varner, Tr. Vol. 8, Pg. 516) Therefore, based on the totality of the circumstances, BellSouth's performance measures show compliance with the checklist.

The Commission must also reject AT&T's argument that BellSouth should allow CLPs to install line cards in BellSouth's DSLAM to comply with the checklist. The Commission agrees with BellSouth that essentially AT&T seeks BellSouth to provide unbundled packet switching. (Test. of Milner, Tr. Vol. 8, Pgs. 138-139) The FCC does not impose that obligation on BellSouth.<sup>156</sup> Furthermore, this Commission has expressly stated in Docket No. P-100, Sub 133d: "An ILEC is not required to provide CLPs with unbundled access to packet switching capabilities (including frame relay) unless the conditions in FCC Rule 51.319(c)(5) have been met." Contrary to AT&T's assertion, none of BellSouth's NGDLC systems have ever been equipped with the necessary functionality to make use of dual purpose line cards, except for a small selection used for testing purposes. (Test. of Milner, Tr. Vol. 8, Pg. 141) Since BellSouth complies with this Commission's own order, we cannot find that BellSouth is not in compliance with the requirements of Checklist Item 4.

BellSouth further demonstrates that its position on NGDLC does not limit AT&T to *line sharing only over copper facilities*. BellSouth provides a number of alternatives by which a CLP can serve its customers. AT&T could collocate its DSLAM in BellSouth's remote terminal, acquire the unbundled loop distribution sub-loop element, and acquire dark fiber from BellSouth to serve its customers. Alternatively, AT&T can also provision its own fiber optic cable, install its DSLAM in its own cabinetry in proximity to BellSouth's

remote terminal, and acquire only the unbundled loop distribution sub-loop element to serve its customers. (Test. of Milner, Tr. Vol. 8, Pgs. 141-142) Thus, BellSouth does not preclude CLPs from serving customers regardless of whether those customers are served by copper loops.

The Commission notes that, most recently, the FCC has found in its *GALA II Order*

Based on the evidence in the record, we find, as did the Georgia and Louisiana Commissions, that BellSouth demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop. BellSouth offers line sharing in Georgia and Louisiana under its interconnection agreements and the terms of its tariff, in accordance with the requirements of the *Line Sharing Order* and the *Line Sharing Reconsideration Order*. [¶238 with footnotes omitted]

**(f) Line Splitting**

BellSouth demonstrates that it complies with the Act and the FCC's requirements to permit CLPs to engage in line splitting. As described in its testimony, BellSouth facilitates line splitting by CLPs by cross-connecting a loop and a switch port to the collocation space of either the voice CLP or the data CLP. The CLPs may then connect the loop and the switch port to a CLP-owned splitter and split the line themselves. BellSouth offers the same arrangement to CLPs that the FCC described with approval in the *Texas Order* and the *Line Sharing Reconsideration Order* (Test. of Williams, Tr. Vol. 7, Pg. 436)<sup>157</sup> Although not required by the FCC or this Commission, BellSouth will provide the splitter in a line splitting arrangement. (Test. of Williams, Tr. Vol. 7, Pg. 412) BellSouth's SGAT includes BellSouth's line splitting offering. (Test. of Williams, Tr. Vol. 7, Pg. 436)

As BellSouth now agrees to provide the splitter region-wide, the Commission finds AT&T's claims that it should compel BellSouth to provide the splitter to be moot. This Commission agrees, however, with BellSouth that it has no legal obligation to provide the splitter pursuant to this Commission's and the FCC's previous Orders. Thus, it logically follows that this Commission cannot conclude that BellSouth has a legal obligation to provide line splitting one line at a time. Even if the Commission were so inclined, the Commission finds that BellSouth's settlement with the Data Coalition to provide an 8-port splitter compelling evidence that BellSouth is working with the CLPs to provide nondiscriminatory access. (Test. of Williams, Tr. Vol. 7, Pg. 448) As both a legal and factual matter, therefore, AT&T's argument on this issue is without merit.

Moreover, BellSouth's refusal to permit line splitting between itself and a CLP providing voice services does not threaten its compliance with Checklist Item 4. BellSouth frankly admits that such line splitting is technically possible, yet correctly maintains that the FCC requires no such line splitting. In sum, the FCC has determined this very question for us when it stated,

[W]e reject AT&T's argument that we should deny this application on the basis of SWBT's decision to deny its xDSL service to customers who choose to obtain their voice service from a competitor that is using the UNE-P. Under our rules, the incumbent LEC **has no obligation** to provide xDSL service over this UNE-P carrier loop.<sup>158</sup>

In fact, most recently, the FCC has again come to this conclusion as outlined in the FCC's *GALA II Order* wherein the FCC stated

BellSouth states that its policy "not to offer its wholesale DSL service to an ISP or other network services provider [ ] on a line that is provided by a competitor via the UNE-P" is not discriminatory nor contrary to the Commission's rules. Commenters allege that BellSouth will not offer its DSL service over a competitive LEC's UNE-P voice service on that same line. We reject these claims because, under our rules, the incumbent LEC has no obligation to provide DSL service over the competitive LEC's leased facilities. Furthermore, a UNE-P carrier has the right to engage in line splitting on its loop. As a result, a UNE-P carrier can compete with BellSouth's combined voice and data offering on the same loop by providing the customer with line splitting voice and data service over the UNE-P loop in the same manner. Accordingly, we cannot agree with commenters that BellSouth's policy is discriminatory. Further, we note that BellSouth is taking adequate steps to remedy any confusion that may arise when customers order DSL. [¶157 with footnotes omitted] [Emphasis added]

Neither AT&T nor WorldCom offers this Commission sufficient reason to jettison the FCC's prior rulings on this matter in a similar proceeding.

The Commission does not concur with AT&T's contention that BellSouth should charge CLPs UNE-P rates for a line splitting arrangement. BellSouth's policy is consistent with the FCC's precedent. The FCC has held that

... If a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P with a configuration that allows provisioning of both data and voice service.<sup>159</sup>

Thus, once the loop and port are used to provide line splitting, they "replace" the UNE-P and the UNE-P no longer exists. Provisioning separate loop and port network elements to a CLP eliminates the efficiencies derived from a UNE-P provisioned arrangement. Thus, the Commission finds that BellSouth's refusal to charge CLPs UNE-P rates for line splitting arrangements does not warrant a finding of noncompliance.

Finally, the Commission finds that there is no requirement that BellSouth must implement electronic ordering for line splitting as a prerequisite to compliance with Checklist Item 4. The FCC approved Verizon's application for in-region, interLATA authority in Massachusetts, even though Verizon has not yet "implemented an electronic OSS functionality to provide line splitting."<sup>160</sup> Specifically, the FCC states in Paragraph 180 of its *Massachusetts Order*.

We disagree with WorldCom's claim that Verizon's OSS does not comply with our *Line Sharing Reconsideration Order* in other respects. The *Line Sharing Reconsideration Order* does not require Verizon to have implemented an electronic OSS functionality to permit line splitting. Rather, the Commission's *Line Sharing Reconsideration Order* recognizes that a state-sponsored xDSL collaboratives [sic] is the appropriate place for Verizon to evaluate how best to develop this functionality. For example, Verizon has represented that it is actively working on developing the OSS upgrades necessary to provide for electronic ordering of line-split services in the context of the New York Commission's xDSL collaborative. We recognize that Verizon has not, to date, implemented the OSS upgrades necessary to electronically process line-splitting orders in a manner that is minimally disruptive to existing voice customers; but that such functionality may require significant software upgrades and testing. It is undisputed that the parties in the New York DSL collaborative commenced discussion of line splitting over a year ago; that in April 2000 Verizon formally posed numerous questions to competitors concerning initial detailed business rules to Verizon. Thus it appears that Verizon has the necessary information to implement the necessary OSS upgrades. Verizon has been able to provide its customers line-shared DSL service for approximately two years. Our *Line*

*Sharing Reconsideration Order* is fulfilled by Verizon's adoption of an implementation schedule for line splitting as directed by the New York Commission that will afford competitors the same opportunities. [Footnotes omitted]

Nevertheless, it appears that BellSouth has implemented electronic OSS for ordering, provisioning, and maintaining line splitting on January 5, 2002. According to the FCC's May 15, 2002 *GALA II Order*

We also disagree with AT&T's claim that BellSouth's OSS does not comply with our Line Sharing Reconsideration Order. Specifically, AT&T asserts that BellSouth does not provide electronic OSS for ordering, provisioning and maintaining line splitting. Pursuant to the Georgia Commission's mandate to make such OSS available for line splitting, BellSouth implemented permanent OSS for line splitting on January 5, 2002, and competitive LECs have raised no complaints about this new process. We find, therefore, given the record before us, BellSouth's process for line splitting orders is in compliance with the requirements of the checklist at this time. [¶243 with footnotes omitted]

Finally, the Commission notes that the FCC concluded in its *GALA II Order*

Based on the evidence in the record, we find, as did the Georgia and Louisiana Commissions, that BellSouth complies with its line-splitting obligations and provides access to network elements necessary for competing carriers to provide line splitting. [¶241 with footnotes omitted]

### **Conclusion**

The Commission concludes that BellSouth is providing or generally offering local loop transmission from the central office to the customer's premises unbundled from local switching or other services and is in compliance with Checklist Item 4.

### **Checklist Item 5**

**Issue: Is BellSouth providing or generally offering local transport from the trunk side of the wireline local exchange carrier's switch unbundled from switching or other services?**