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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 5, 2002

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Room CY-B-402
445 12th Street, S.W.
Washington, D.C. 20554

Re: Joint Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, WC Docket No. 02-150

Dear Ms. Dortch:

Accompanying this letter is the Reply Filing In Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina ("Reply Filing").

This Reply Filing contains confidential information. We are filing confidential and redacted versions of the Reply Filing.

1. The Reply Filing consists of (a) a stand-alone document entitled "Reply In Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina," and (b) one Reply Appendix containing supporting material.

2. Specifically, we are herewith submitting for filing:

- a. One original of only the portions of the Reply Filing that contain confidential information;
- b. One original of the redacted Reply Filing;

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REDACTED – For Public Inspection

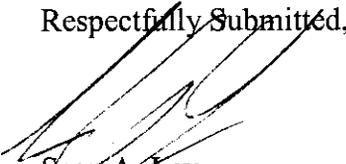
- c. Four copies of the redacted Reply Filing; and
 - d. An original and four copies of the CD-ROM containing the redacted Reply Filing.
3. We are also tendering to you certain copies of this letter and of portions of the Reply Filing for date-stamping purposes. Please date-stamp and return these materials.
4. Under separate cover, we are submitting copies (redacted as appropriate) of the Reply Filing to Ms. Janice Myles, Policy and Program Planning Division, Wireline Competition Bureau, Federal Communications Commission, Room CY-B-402, 455 12th Street, S.W., Washington, D.C. 20544. We are also submitting copies (redacted as appropriate) to the Department of Justice, to the Alabama, Kentucky, Mississippi, North Carolina, and South Carolina State Commissions, and to Qualex (the Commission's copy contractor).

All inquiries relating to access (subject to the terms of any applicable protective order) to any confidential information submitted by BellSouth in support of the Reply Filing should be addressed to:

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Thank you for your assistance in this matter. If you have any questions, please call me at 202-326-7975.

Respectfully Submitted,



Sean A. Lev

Encs.

REDACTED – For Public Inspection

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

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AUG - 5 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Joint Application by BellSouth Corporation,
BellSouth Telecommunications, Inc.,
and BellSouth Long Distance, Inc. for
Provision of In-Region, InterLATA Services
in Alabama, Kentucky, Mississippi, North
Carolina, and South Carolina

WC Docket No. 02-150

**REPLY IN SUPPORT OF APPLICATION BY BELL SOUTH FOR PROVISION
OF IN-REGION, INTERLATA SERVICES IN ALABAMA, KENTUCKY, MISSISSIPPI,
NORTH CAROLINA, AND SOUTH CAROLINA**

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GLOSSARY OF 271 ORDERS

- Arkansas/Missouri Order* Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719 (2001), *appeal pending, AT&T Corp. v. FCC*, No. 01-1511 (D.C. Cir.)
- Connecticut Order* Memorandum Opinion and Order, *Application by Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, 16 FCC Rcd 14147 (2001)
- GA/LA Order* Memorandum Opinion and Order, *Joint Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, 17 FCC Rcd 9018 (2002)
- KS/OK Order* Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237 (2001), *aff'd in part and remanded, Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001)
- Maine Order* Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization to Provide In-Region, InterLATA Services In Maine*, 17 FCC Rcd 11659 (2002)
- Massachusetts Order* Memorandum Opinion and Order, *Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988 (2001), *appeal pending, WorldCom, Inc. v. FCC*, No. 01-1198 (and consolidated cases) (D.C. Cir.)
- Michigan Order* Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, 12 FCC Rcd 20543 (1997)

- New Jersey Order* Memorandum Opinion and Order, *Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, 17 FCC Rcd 12275 (2002)
- New York Order* Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953 (1999), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000)
- Pennsylvania Order* Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (2001), *appeal pending*, *Z-Tel Communications, Inc. v. FCC*, No. 01-1461 (D.C. Cir.)
- Rhode Island Order* Memorandum Opinion and Order, *Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, 17 FCC Rcd 3300 (2002)
- Second Louisiana Order* Memorandum Opinion and Order, *Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599 (1998)
- South Carolina Order* Memorandum Opinion and Order, *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina*, 13 FCC Rcd 539 (1997), *aff'd*, *BellSouth Corp. v. FCC*, 162 F.3d 678 (D.C. Cir. 1998)
- Texas Order* Memorandum Opinion and Order, *Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, 15 FCC Rcd 18354 (2000)

Vermont Order

Memorandum Opinion and Order, *Application by
Verizon New England Inc., et al., for Authorization
To Provide In-Region, InterLATA Services in Vermont,*
17 FCC Rcd 7625 (2002), *appeal pending, AT&T Corp.
v. FCC, No. 02-1152 (D.C. Cir.)*

INTRODUCTION AND EXECUTIVE SUMMARY

The Department of Justice's ("DOJ") Evaluation of this Joint Application underscores the main reason why BellSouth's Application should be approved: BellSouth's performance in these five states today is as strong as – in fact, stronger than – the performance the Commission found compliant in Georgia and Louisiana a few months ago.

DOJ's Evaluation stresses that BellSouth has made "substantial progress" with regard to OSS and performance metric issues that DOJ previously identified even while recommending approval in the Georgia/Louisiana proceeding. *DOJ Eval.* at 3. Accordingly, just as in Georgia/Louisiana, DOJ explicitly recommends that the Commission "approve" this Application, subject to Commission review of a few remaining concerns. *Id.* Even as to its small number of remaining concerns, moreover, DOJ repeatedly recognizes that BellSouth has taken additional positive steps and is working cooperatively with CLECs and state regulators in reaching agreement on appropriate resolutions. *Id.* at 10, 12, 14.

As the Commission is aware, Congress has specified that DOJ's recommendation is entitled to "substantial weight" in this proceeding. 47 U.S.C. § 271(d)(2)(A). That deference is especially appropriate here, because DOJ's conclusion accords with the independent judgment of the expert state commissions in all five of these states, which have uniformly provided detailed evaluations to this Commission recommending approval, without so much as a single dissent by a state commissioner. Indeed, the North Carolina Utilities Commission ("NCUC") alone has filed a recommendation containing over 260 pages of cogent analysis as to why this Application should be approved.

Nor is there any sustainable argument that, as to the few issues that DOJ identifies as meriting review, BellSouth's current performance denies CLECs a meaningful opportunity to compete. For instance, with regard to implementation of CLEC priority change requests,

BellSouth will spend over \$100,000,000 to implement new features this year, and is on track to implement all of the CLEC “top 15” requests – 10 have already been implemented – as well as many other OSS enhancements. Moreover, both KPMG and the Florida PSC recently have determined that BellSouth’s “50/50” approach to allocating future release capacity is a reasonable one that properly addresses CLEC concerns. The decisions of these independent bodies, as well as substantial additional evidence discussed below, demonstrate that BellSouth is living up to its change control commitments in the Georgia/Louisiana proceeding, allowing CLECs a substantial voice in prioritization and capacity allocation, and implementing CLECs’ top change control priorities.

Similarly, although any defect is unfortunate, the vast majority of the defects in BellSouth’s most recent OSS release affected only a few orders (in fact, 30 of the 34 CLEC-affecting defects impacted only 1 to 10 orders). BellSouth corrected other, arguably more significant, defects very quickly. Moreover, to produce these releases, BellSouth uses two highly respected vendors (Telcordia and Accenture) that have achieved high ratings for the quality of their software, and outside experts have confirmed that BellSouth’s recent releases compared favorably to the industry best-in-class. BellSouth also has instituted new procedures, including enhancing the “test decks” or scenarios that it uses in internal testing. Additionally, BellSouth has proposed to allow CLECs an enhanced role in determining whether to implement a release. The Florida PSC, moreover, has required BellSouth to implement certain performance metrics in this area, with penalties for substandard performance in resolving defects. Those penalties provide BellSouth a significant incentive to continue to improve performance.

Finally, DOJ indicates that the Commission should review BellSouth's performance metrics. It does so, however, not because of a concern about the overall accuracy of BellSouth's data, but rather to ensure that BellSouth provides advance notice of changes to its metrics. While BellSouth believes it provided sufficient notice in the past, this is a moot point. There is now a Georgia PSC order providing a specific and elaborate process for notification of metric changes. BellSouth is following this process in all five of these states, subject to any further state-specific orders. That should resolve any conceivable issue. Indeed, DOJ states that the requirements imposed by the Georgia Commission "will, with the necessary monitoring, prevent the further recurrence of undisclosed, unapproved metrics changes." *DOJ Eval.* at 14.

As BellSouth discusses below and in the attached affidavits, the arguments raised by CLEC commenters but not discussed by DOJ also provide no basis to reject this Application. These arguments are wrong on their own terms and, moreover, do not demonstrate that CLECs lack an opportunity to compete. CLECs in fact can and do compete with BellSouth in these markets every day. WorldCom offers its "Neighborhood" plan in all five of these states, and has repeatedly touted the success of this "ground-breaking" offering.¹ Overall, CLEC market share continued to grow at a rapid rate in all five of these states between March and June of this year. *See BellSouth Stockdale Reply Aff.* ¶ 25 (Reply App. Tab I). That real-world fact buttresses the abundant evidence in this record establishing that BellSouth's markets are open. This Application should be approved.

* * *

¹ "Since *The Neighborhood* launched in 32 states less than three months ago, more than half a million consumers have joined this ground-breaking service designed to unite historically separate local and long-distance services." MCI Press Release, *MCI Welcomes North Carolina to the Neighborhood* (July 10, 2002), at http://www.mci.com/about_mci/news_room/index.jsp.

These Reply Comments are organized as follows. Part I explains that BellSouth's OSS performance remains strong. Part II establishes that the comprehensive metrics on which BellSouth relies provide a meaningful yardstick to gauge BellSouth's performance, and that BellSouth is providing significant advance notice of metric changes. Part III demonstrates that, in challenging the rates established by these state commissions, AT&T and WorldCom rely nearly exclusively on arguments that were either rejected by this Commission in the Georgia/Louisiana proceeding, or that were never even made before the relevant state commissions. In any event, those claims do not establish the kind of clear TELRIC violation necessary under this Commission's precedent to second-guess the state commissions' conclusions. Part IV addresses additional checklist and section 272 issues that commenters have raised. Finally, Part V demonstrates that approval of this Application is strongly in the public interest.

I. BELLSOUTH'S OSS PROVIDE CLECS A MEANINGFUL OPPORTUNITY TO COMPETE

The record developed over the past month in this proceeding strongly fortifies BellSouth's showing in its Application that its region-wide OSS provide CLECs a meaningful opportunity to compete – a fact that this Commission confirmed just a few months ago in the Georgia/Louisiana proceeding. In its Evaluation, DOJ confirms that BellSouth has made “substantial progress” in improving its OSS even beyond the level that DOJ found statutorily compliant in Georgia/Louisiana. *DOJ Eval.* at 3. Moreover, since BellSouth filed its Application, KPMG has issued its Final Report on the Florida Third-Party Test – a test that CLECs have previously highlighted as providing particularly important evidence as to the

performance of BellSouth's OSS.² That report concludes that BellSouth has met 97% of the evaluation criteria in this extraordinarily detailed, rigorous, and broad test. *See BellSouth Stacy Reply Aff.* ¶ 241 (Reply App. Tab H). By any standard, that is a strong result, and it corroborates the evidence of nondiscrimination provided by BellSouth's consistently solid commercial usage performance and by the KPMG Georgia test.

Indeed, even the CLEC comments filed here prove BellSouth's point. WorldCom grudgingly concedes that, "[i]n some respects," BellSouth's OSS have "improved in recent months." *WorldCom Comments* at 1. Moreover, CLEC commenters no longer even contest that BellSouth meets its statutory obligations as to the vast majority of OSS components. CLECs thus do not raise many of the OSS issues that were of concern in the Georgia/Louisiana proceeding, including integration, parsed CSR functionalities, interface availability, "double FOCs," and line-loss reporting.

To be sure, CLECs continue to press some arguments about BellSouth's OSS. By and large, however, each of those issues is raised by only one or two CLECs. In any event, none of these claims establishes that CLECs lack a meaningful opportunity to compete, or that BellSouth is performing at a level lower than the Commission found satisfactory in the Georgia/Louisiana proceeding. BellSouth discusses here the few remaining concerns that DOJ noted in its Evaluation, as well as the other claims that CLECs have pressed most strongly in their comments. The remaining CLEC arguments are addressed – and refuted – thoroughly in the

² To quote AT&T's comments on the original Georgia/Louisiana Application: "[T]he Florida test is being conducted with far greater independence by the tester, has the benefit of much broader and more detailed participation by affected CLECs, and, most fundamentally, has been substantially more comprehensive and rigorous than the testing conducted in Georgia." AT&T Comments at 18, CC Docket No. 01-277 (FCC filed Oct. 19, 2001).

reply affidavits of William Stacy, Ken Ainsworth, Alphonso Varner, David Scollard, and John Ruscilli/Cynthia Cox.

A. Change Management

Overview of Continued CCP Improvement. BellSouth has devoted enormous effort, attention, and resources to improving its Change Control Process (“CCP”) beyond the level that this Commission found statutorily compliant in the Georgia/Louisiana proceeding. To put the few remaining CCP arguments in context, it is important first to understand the improvements that BellSouth has made because of its concentrated efforts, and how those improvements respond to each of the CCP issues noted in the Commission’s *GA/LA Order*. Simply put, this evidence shows that BellSouth has met the Commission’s challenge – and BellSouth’s own commitment – to continue to improve its CCP. *See GA/LA Order* ¶ 194.

As an initial matter, BellSouth has continued to provide a forum through which BellSouth and CLECs can continue to discuss and implement improvements to the CCP. *See id.* ¶ 182. The record shows that, since March 28, 2002, BellSouth has held 47 separate CCP meetings, many of which focused on process improvements. *See BellSouth Stacy Reply Aff.* ¶¶ 6, 17. BellSouth has thus provided many forums in which “competing carriers and [BellSouth] can work collaboratively.” *GA/LA Order* ¶ 182 (internal quotation marks omitted).

The progress made through those meetings has been substantial. Among other things, BellSouth has:

- Adopted the CLEC definition of “CLEC-Affecting Change” to govern the scope of the CCP;
- Agreed to provide change request capacity information;
- Agreed to enlarge the scope of the CCP to include “development” of new interfaces as opposed to just “implementation” of new interfaces;

- Agreed to enlarge the scope of the CCP to include documentation changes; and
- Agreed to lengthen the notification period for retirement of interfaces from 120 to 180 days.

BellSouth Stacy Reply Aff. ¶ 6; *see also id.* ¶¶ 24-25 (discussing additional process improvements).

BellSouth continues to work with CLECs to implement further improvements. Since the beginning of June alone, BellSouth and the CLECs have met on four different occasions to discuss additional enhancements, including initial requirements for a new CLEC testing website; corrections of defects found in “frozen” maps of interfaces; and CLEC participation in a go/no-go decision on software releases. *See id.* ¶ 6.

BellSouth has focused its collaborations with CLECs on increasing the transparency of BellSouth’s internal prioritization process. *See GA/LA Order* ¶ 185 (“encourag[ing]” BellSouth to “continue to collaborate with competitive LECs” in this area). BellSouth has agreed to provide CLECs information on BellSouth’s Legacy System releases (through the CCP website) and on all BellSouth maintenance release information (through the CCP Change Control Release Schedule). *See BellSouth Stacy Reply Aff.* ¶ 7. In addition, BellSouth now posts all Type 2 through Type 6 change requests to the Flagship Feature Release Schedule for the CLECs’ use. *See id.* Moreover, BellSouth now brings representatives from the Local Carrier Service Center (“LCSC”) and its Information Technology group to the CCP meetings, and has committed to bring subject matter experts as required. *See id.* Finally, BellSouth now provides CCP participants with a tracking report in which the status of all change requests is summarized. *See id.*

BellSouth has similarly followed through on the commitment, noted in the *GA/LA Order*, to implement an additional (fourth) level of escalation to its CCP dispute resolution procedure.

See GA/LA Order ¶ 186 n.699. In this regard, CLECs recently voted unanimously to change the escalation process to start with a higher management level (Operations Assistant Vice President) and end with a higher management level (Network - Vice President). *See BellSouth Stacy Reply Aff.* ¶ 8. BellSouth updated the CLEC website with this information on July 29, 2002. *See id.*

As discussed further below, BellSouth has also continued to work collaboratively with CLECs on prioritization issues and to provide CLECs with sufficient information to make informed decisions regarding prioritization of proposed system changes. *See GA/LA Order* ¶¶ 183 & n.689, 193. The Florida PSC voted unanimously to implement BellSouth's 50/50 prioritization proposal. *See BellSouth Stacy Reply Aff.* ¶¶ 9, 29-31. KPMG also commented favorably on the 50/50 proposal in its draft Final Report in the OSS Third-Party Test. *See id.* ¶¶ 9, 30. BellSouth is thus allowing CLECs "substantial input" in determining the enhancements that are implemented through the CCP, as this Commission contemplated it would in the *GA/LA Order* (¶ 183). To enable CLECs to implement this prioritization plan effectively, BellSouth now provides CLECs with release plans and change capacity information, both projected and historical. *See BellSouth Stacy Reply Aff.* ¶¶ 9, 32-41.

Importantly, BellSouth has continued to concentrate as much on adherence to the process as it has on process improvements. *See id.* ¶ 10. BellSouth has consistently met plan deadlines for responding to new requests and for providing documentation. *See BellSouth Stacy Reply Aff.* ¶ 10. Additionally, even with the industry release that the CLECs have voted to implement in 2003, BellSouth still projects that it can complete more than 70% of the change requests by year-end 2003. *See id.*

BellSouth also continues to improve its CAVE test environment. *See GA/LA Order* ¶ 190. CAVE has been available to CLECs for most of 2002. *See BellSouth Stacy Reply Aff.* ¶ 11. Thus, BellSouth is providing CCP members with ample testing opportunities. In addition, BellSouth is working with the CLECs to improve the CAVE testing process. Some of the improvements that the CCP has discussed include the establishment of a testing profile; the elimination of the requirement for a formal test agreement; implementation of regression testing; and implementation of a more defined defect-management process. *See id.* Moreover, as a result of CLEC input, BellSouth agreed to draft change requests to allow CLECs to test in CAVE using their own data. *See id.* BellSouth has also implemented a pre-release testing status report identifying unresolved defects. *See id.* BellSouth will update this report on a daily basis until production implementation of the release. *See id.* Coupled with that report, BellSouth will conduct weekly conference calls during pre-release CAVE testing to provide the opportunity for comment and the exchange of information related to the testing. *See id.*

Finally, BellSouth continues to implement improvements to its software testing and implementation to reduce defects to a minimum, including “consider[ing] any input from competitive LECs regarding software problems they discover during testing before BellSouth decides to implement a new software release.” *GA/LA Order* ¶¶ 181, 195. As BellSouth explains in more detail below, by all external standards, its recently implemented Release 10.5 was a success. *See BellSouth Stacy Reply Aff.* ¶ 12. That being said, BellSouth is continuing to look for ways to improve the quality of its software releases. BellSouth has hired a third-party vendor to expand BellSouth’s internal test deck cases used in pre-release testing. *See id.* The Florida Commission has also recently adopted three new CCP measures related to defects, with penalties associated with one. *See id.* The Florida Commission’s staff has proposed three

additional change management measurements, two of which BellSouth does not oppose, and one of which BellSouth will propose to modify. *See id.* Because the CCP is regional, BellSouth will report the data collected pursuant to these measures in all nine states. The Florida Commission also ordered new defect-correction timeframes that BellSouth has implemented. *See id.* Last, BellSouth has proposed to the CCP that CLECs that have tested in CAVE participate in a go/no-go decision in which they would recommend either that a particular release go forward as scheduled or that BellSouth defer implementation to a later date. *See id.*

Given all these facts, the Commission's conclusion that BellSouth "provides . . . 'an effective systems change management process to which it has adhered over time'" applies even more strongly today than it did at the time of the Georgia/Louisiana approval. *GA/LA Order* ¶ 194 (quoting Georgia PSC comments). Indeed, in its Evaluation, DOJ fully recognizes the change management improvements that BellSouth has made over the past few months. *See DOJ Eval.* at 9. DOJ, however, also encourages the Commission to review BellSouth's performance as to two discrete aspects of change control: implementation of prioritized CLEC requests and minimization of defects in BellSouth releases. *See id.* at 8-12.

BellSouth welcomes the Commission's review of these issues. As noted above and discussed further below, the record here demonstrates that BellSouth's current performance on these issues, and on change management generally, provides CLECs a meaningful opportunity to compete, as each of the five state commissions have concluded,³ and as the Georgia and

³*See Order at 169, BellSouth Telecommunications, Inc. Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to § 252(f) of the Telecommunications Act of 1996, and Notification of Intention to File a Petition for In-Region InterLATA Authority with the FCC Pursuant to § 271 of the Telecommunications Act of 1996, Docket No. 25835 (APSC July 11, 2002) ("APSC 271 Order") (filed with this Commission on July 11, 2002) ("BellSouth's change control process allows efficient competitors a meaningful*

Louisiana Commissions both previously determined. The evidence in this record further establishes that BellSouth is continuing to work, in cooperation with CLECs and state commissions, to improve its performance even further.

Implementation of CLEC-Prioritized Requests. The record evidence shows that BellSouth allocates an enormous amount of resources to change management, and that BellSouth's commitment on this point has resulted in the implementation of a large number of CLEC priorities and other enhancements in recent months. BellSouth will spend approximately \$108,000,000 in 2002 alone on implementing change requests. *See BellSouth Stacy Reply Aff.* ¶ 47. As a result of that significant investment, BellSouth is on track to implement 40 feature improvements this year, including all of the CLEC "top 15" requests. *See id.* ¶ 21. Far from being "abysmal," *AT&T Comments* at 10, performance that results in implementation of the top CLEC priorities, as well as a number of other improvements, confirms that BellSouth is meeting its responsibilities in this respect. *GA/LA Order* ¶ 193 (highlighting the large number of change

opportunity to compete."); Advisory Opinion at 29, *Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Case No. 2001-00105 (KPSC Apr. 26, 2002) ("KPSC 271 Order") (noting BellSouth's "efforts to address CLEC needs") (Application App. C – KY, Tab 38); Final Order at 61, *Consideration of the Provision of In-Region InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to Section 271 of TA 96*, Docket No. 97-AD-321 (MPSC Oct. 4, 2001) ("MPSC 271 Order") (concluding "BellSouth's change management process . . . satisfies the requirements of this checklist item") (Application App. C – MS, Tab 14); Order and Advisory Opinion Regarding Section 271 Requirements at 159, *Application of BellSouth Telecommunications, Inc. to Provide In-Region, InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. P-55, Sub 1022 (NCUC July 9, 2002) ("NCUC Order and Advisory Opinion") ("BellSouth's change management procedures afford an efficient competitor a meaningful opportunity to compete by providing sufficient access to BellSouth's OSS"); Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996 at 75, *Application of BellSouth Telecommunications, Inc. To Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2001-209-C, Order No. 2002-77 (SCPSC Feb. 14, 2002) ("SCPSC 271 Order") ("BellSouth satisfies the FCC's requirements for change management") (Application App. C – SC, Tab 33).

requests that BellSouth has implemented over the last several months in finding BellSouth's performance satisfactory). Indeed, Birch has previously indicated that it would be satisfied if BellSouth implemented only the *top 10* CLEC requests in 2002. *See* Reply Comments of Birch Telecom of the South, Inc. at 41, CC Docket No. 01-277 (FCC filed Nov. 13, 2001). BellSouth has already done that.

Thus, while BellSouth does not have infinite resources and cannot guarantee that it will implement all pending CLEC requests by a date certain – because, among other things, BellSouth has no control over the number of change requests that CLECs make – the evidence shows that BellSouth has been implementing, and will continue to implement, a large number of CLEC changes. *See BellSouth Stacy Reply Aff.* ¶¶ 66-67. Indeed, BellSouth estimates that it can implement 78% of the alleged “backlog” by the end of 2003, even if CLECs choose (as they have) to implement an industry-standard release that year. *See id.* ¶¶ 57-60. That figure is consistent with BellSouth's prior commitments and shows that BellSouth can in fact implement a large number of change requests. *See GA/LA Order* ¶ 193 & n.738 (noting that BellSouth had “demonstrated sufficient capacity in its future releases to be able to implement a significant number of change requests”).

Moreover, BellSouth has proposed a reasonable plan to ensure that resources for implementation of new requests will be allocated in a fair and even-handed way. As DOJ has recognized, allocating such capacity involves a “difficult balancing of interests.” *DOJ Eval.* at 10. In a good-faith attempt to strike a reasonable balance, BellSouth has proposed: (1) to provide the estimated size for all features requested for prioritization along with the estimated amount of capacity available for each release, and (2) to share equally (that is, on a 50/50 basis) that available capacity, after defect corrections, regulatory mandates, and needed updated

industry standards are included. *See BellSouth Stacy Reply Aff.* ¶ 29. BellSouth has established a complete process to accomplish these objectives. *See id.* ¶ 30.

Although AT&T decries this 50/50 plan as “patently inadequate,” *AT&T Comments* at 9, and suggests that BellSouth had no reasonable choice other than to accept every aspect of the CLECs’ competing proposal, as noted above, independent third parties and responsible regulators disagree. In a part of the Final Report for the Florida Third-Party Test that AT&T never comes to grips with, KPMG concluded that this prioritization process ““would provide CLECs with a process to conduct mutual impact assessment and resource planning”” and ““would allow CLECs a framework to evaluate, categorize, and prioritize Change Requests that affect them.”” *BellSouth Stacy Reply Aff.* ¶ 30 (quoting KPMG Final Report). Thus, far from confirming that “CLECs currently are denied a meaningful role in the prioritization of change requests,” *AT&T Comments* at 11, KPMG has found BellSouth’s proposal to be reasonable. In DOJ’s words, KPMG has concluded that BellSouth’s “proposals to increase CLEC participation in the prioritization of change requests would, if implemented, address the concerns” that KPMG had previously expressed. *DOJ Eval.* at 9. These KPMG statements are part of the same Florida test that AT&T previously stressed was the best indicator of BellSouth’s OSS capabilities. Even more important than KPMG’s statements, and as BellSouth also noted above, the Florida Commission recently adopted its staff’s recommendation and accepted BellSouth’s 50/50 proposal. *BellSouth Stacy Reply Aff.* ¶ 31.

AT&T is also wrong in asserting that BellSouth has “refused to provide even the most fundamental information that CLECs need to make change-control decisions.” *AT&T Comments* at 9. Earlier this year, CLECs and BellSouth agreed to a process by which BellSouth provides sizing information for BellSouth and CLEC feature requests that are candidates for prioritization,

as well as other relevant data. *See BellSouth Stacy Reply Aff.* ¶ 32 (describing the information provided in detail). Thus, before the May 22, 2002, prioritization meeting, BellSouth provided not only the sizing information for the relevant feature requests (except for 2 out of a total of 42 for which there were legitimate reasons not to do so), but also the capacity for two different release options and the estimated size of the flow-through requests (which are treated as regulatory mandates). *See id.* ¶¶ 33-41. CLECs were then able to use this information to slot their requests in different releases according to priority, size, and technical feasibility. *See id.* ¶ 33. AT&T's argument is thus contrary to the facts.

In sum, BellSouth is implementing CLEC priority change requests, has capacity available to implement more such requests, and is allocating its capacity in a way that has repeatedly been found to be reasonable. It is acting appropriately and certainly is not depriving CLECs of a meaningful opportunity to compete.

Minimizing Defects. DOJ also encourages the Commission to review the evidence regarding BellSouth's actions to minimize defects in its releases. *See DOJ Eval.* at 10-12. Again, BellSouth welcomes this review. The facts demonstrate that BellSouth's releases are above industry standards; that most defects are minor; that BellSouth takes quick action to address more significant defects; and that BellSouth, working with the state commissions, has now taken additional steps to ensure that its performance improves even further in this regard.

As an initial matter, contrary to the suggestions of AT&T and WorldCom, BellSouth's recent Release 10.5 was better than the industry standard. The defect density of the release was 0.00467 defects per function point (reflecting 34 CLEC-affecting and 60 non-CLEC-affecting defects in 20,108 function points). *See BellSouth Stacy Reply Aff.* ¶ 74. This ratio was slightly better than the "best in class" defect density for a group of telecommunications providers that

includes AT&T. *See id.* BellSouth also engaged QP Management Group, a company that specializes in evaluating software quality, to review BellSouth's recent software releases. QP Management Group concluded that BellSouth's software compared favorably to the industry best-in-class in terms of defects per function point. *See id.* ¶ 75 & Exh. WNS-32. None of this should be surprising, given that BellSouth's software is written by Accenture and Telcordia, two respected companies that are rated very highly under the Capability Maturity Model that is used to measure the capabilities of software vendors. *See id.* ¶ 76.

Additionally, while any defect is unfortunate, most of the CLEC-affecting defects in Release 10.5 affected a very small number of CLEC orders. Indeed, 30 of the 34 CLEC-affecting defects affected between 1 and 10 LSRs. *See id.* ¶ 77. Many of these same defects affected only LSRs that were in progress when the software was upgraded. Indeed, in this regard, the number of defects in this release is misleading. Because a large number of these defects were transitory and affected a very small number of orders, they previously would not even have been classified as defects. *See id.*; compare *WorldCom Comments* at 2 (asserting that the number of defects was "staggering"). BellSouth did classify them as defects here only in the interest of complete disclosure and in an abundance of caution. *See BellSouth Stacy Reply Aff.* ¶ 77. These defects hardly posed a barrier to competition. Additionally, when defects were more significant, they were fixed very quickly. *See id.* ¶ 78 (listing more significant defects and noting that all were corrected by June 10); see also *WorldCom Comments* at 3 (conceding that "BellSouth did correct some of the defects quickly").

BellSouth, moreover, is committed to improving its performance further in this regard, and has every incentive to do so. As noted, it has hired a vendor to expand the number of "test deck cases" used during BellSouth's internal testing before release. *See BellSouth Stacy Reply*

Aff. ¶ 82. This expanded test deck will also be placed into the CAVE testing environment. *See id.* BellSouth also is providing CLECs a pre-release status report that addressed release-specific unresolved defects; the report is updated daily until the day of the release. *See id.* ¶ 89. BellSouth will also hold weekly pre-release conference calls during CAVE testing. *See id.*

The Florida Commission has also required BellSouth to add new performance metrics that will measure: the timeliness of defect corrections, the number of defects in a release, and the quality of a release as defined by a pre-defined set of test cases. *See id.* ¶ 85. BellSouth will report data collected pursuant to these metrics in all nine states, including the five at issue here. The Florida Commission, moreover, has subjected BellSouth to a penalty if it does not remedy defects quickly. *See BellSouth Varner Reply Aff.* ¶ 237 (Reply App. Tab J). Finally, the Florida PSC has also set strict time intervals for the correction of defects (10 business days for high-impact; 30 business days for medium-impact; and 45 business days for low-impact), which will ensure that any problems with releases are corrected expeditiously. *See BellSouth Stacy Reply Aff.* ¶ 90.

This significant oversight of BellSouth's CCP, and particularly the issue of defects, by the state commissions throughout BellSouth's region provides important assurance that BellSouth's performance will continue to improve. *See also, e.g., KPSC 271 Order* at 29 (“[T]he Commission plans to continue to monitor [the CCP] and will require BellSouth to address expeditiously CLEC complaints.”); *SCPSC 271 Order* at 75 (“We encourage BellSouth and the CLECs to continue to work together through the CCP to resolve disputes . . . and, if necessary, to use the dispute resolution process to seek the involvement of this Commission.”); *see generally Texas Order* ¶ 118 (“Given the extensive oversight of the Texas Commission . . . we have no reason to believe that SWBT will disregard its obligation to maintain in Texas a change

management plan that affords competing carriers a meaningful opportunity to compete.”); *Pennsylvania Order* ¶ 3 (“[T]he Pennsylvania Commission will continue its oversight of Verizon’s performance through ongoing state proceedings. As the Commission has recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purposes of the Act serve a vitally important role in the section 271 process.”) (footnote omitted). This oversight is especially relevant in this instance, where, as DOJ has expressly noted, BellSouth is “cooperating with state regulators and CLECs to determine necessary changes to its pre-release production and testing.” *DOJ Eval.* at 12. In sum, there is again simply no basis to conclude that BellSouth’s performance here deprives CLECs of a meaningful opportunity to compete.

Other Change Control Issues. CLECs also have raised a smattering of other change control issues. These issues are discussed comprehensively in the attached reply affidavit of William Stacy. BellSouth will address a few here as well.

AT&T continues to take issue with BellSouth’s CAVE testing environment. The Commission rejected this same argument in its *GA/LA Order*, where it found that CAVE “allow[s] competing carriers the means to successfully adapt to changes in BellSouth’s OSS.” *GA/LA Order* ¶ 187. Since that order was released, BellSouth has taken further steps to make CAVE usage easier and more efficient for CLECs. *See BellSouth Stacy Reply Aff.* ¶¶ 94-103. Moreover, as part of its Florida test, KPMG concluded that BellSouth satisfied the test criteria relating to the test environment. *See id.* ¶ 94.

AT&T, however, remains unsatisfied. It argues that all CLECs should be able to vote on go/no-go recommendations. *See AT&T Bradbury/Norris Decl.* ¶ 60. But, in light of its versioning process, BellSouth has no legal obligation even to allow a go/no-go recommendation, *see GA/LA Order* ¶ 181, and it is reasonable to limit such voting to CLECs that have expended

the time to become knowledgeable about a release by testing it in CAVE, see *BellSouth Stacy Reply Aff.* ¶ 103.

AT&T further argues that it was unable to test the parsed CSR functionality because “that functionality had not been implemented in CAVE.” *AT&T Comments* at 11. This same alleged problem was raised during the Georgia/Louisiana proceeding, see Letter from Robert W. Quinn, Jr., VP, Federal Gov’t Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-35, Attachment (FCC filed May 10, 2002), and it is no more persuasive here. As clarified in the reply affidavit of William Stacy, moreover, the problem that AT&T experienced was not with the existence of the functionality in CAVE, but rather involved a miscommunication between AT&T and BellSouth as to what AT&T wanted in its test plan. See *BellSouth Stacy Reply Aff.* ¶¶ 105-106.

In sum, BellSouth has lived up to its commitment to work cooperatively with state commissions and CLECs to improve its CCP. That process is indisputably better now than it was when the Commission issued the *GA/LA Order*. The Commission should again find that BellSouth’s CCP provides CLECs a meaningful opportunity to compete.

B. Flow-Through

BellSouth explained in detail in its Application that, as the Commission held in the *GA/LA Order*, its systems are “capable of flowing through . . . orders in a manner that affords competing carriers a meaningful opportunity to compete.” *GA/LA Order* ¶ 143; see *Application* at 83-87. That conclusion is consistent with the findings of all five state commissions in this proceeding.⁴ Additionally, DOJ, which raised concerns about allegedly excessive manual

⁴ See *SCPSC 271 Order* at 57-58; *MPSC 271 Order* at 36-37; *NCUC Order and Advisory Opinion* at 124; *KPSC 271 Order* at 22-23; *APSC 271 Order* at 159-61.

handling early in the Georgia/Louisiana proceeding, does not dispute BellSouth's showing here. AT&T, however, contends that BellSouth's performance is inadequate. AT&T's claim is wrong for multiple reasons.

First, contrary to AT&T's argument, BellSouth's OSS are heavily mechanized, and its level of manual handling of orders in fact has not deteriorated, even though ordering volume has increased significantly over the past year. More than 90% of CLEC orders are submitted electronically. *See BellSouth Stacy Reply Aff.* ¶ 129. Moreover, due in part to the implementation of Telephone Number ("TN") migration, the vast majority of those orders are not rejected, but rather proceed through BellSouth's systems. *See id.* ¶ 121; *GA/LA Order* ¶ 125 & n.423 (noting the significant reduction of rejects associated with TN migration).

Even more to the point, AT&T is simply wrong in asserting that there has been a drop-off in flow-through performance. Region-wide, between June 2001 and June 2002, BellSouth's residential resale flow-through *increased* from 87.52% to 88.58%, while BellSouth's business resale flow-through *increased* from 57.11% to 73.74%. During the same period, BellSouth's flow-through rate for UNE products *increased* from 70.70% to 83.84%. These increases are all the more significant in light of the fact that the total volume of mechanical LSRs processed increased from 340,758 in June 2001 to 496,359 in June 2002 – a 46% increase. *See BellSouth Stacy Reply Aff.* ¶ 112. Although LNP flow-through dipped slightly in June, that is not the result of a deterioration in BellSouth's capabilities, but rather, as explained in the reply affidavit of William Stacy, stems from BellSouth's compliance with a Florida PSC order. *See id.* ¶ 114. BellSouth's UNE-P flow-through has also remained steady even with sharp increase in ordering volumes. *See id.* ¶¶ 144-149. Exhibit WNS-29 to the reply affidavit of William Stacy provides a series of easy-to-understand graphical illustrations of both BellSouth's month-by-month flow-

through performance over the past year and the spike in ordering volumes for UNEs. It refutes the core premise of AT&T's argument.⁵

In this regard, the Commission has found evidence that some CLECs achieve high flow-through rates "particularly informative" in demonstrating that BellSouth's systems are capable of high flow-through. *See GA/LA Order* ¶ 145. That evidence exists in this case. In May 2002, for instance, 39 users that submitted more than 1000 LSRs experienced flow-through rates of 90% or higher. *See BellSouth Stacy Reply Aff.* ¶ 125.

Moreover, contrary to AT&T's contention, *see AT&T Comments* at 15, these flow-through numbers are solid precisely *because* BellSouth, working through the Flow-Through Task Force and the CCP, has kept its commitment to enhance flow-through. For instance, BellSouth's June 2002 data reflect the fact that it has recently implemented a number of coding changes to enhance flow-through. *See Bellsouth Stacy Reply Aff.* ¶¶ 151-152; *BellSouth Stacy Aff.* ¶¶ 286 & 287 & Exh. WNS-49 (Application App. A, Tab I). BellSouth will continue to work cooperatively through the Flow-Through Task Force to implement coding enhancements that will enhance flow-through. *See BellSouth Stacy Reply Aff.* ¶¶ 151-152.

It is also important to note that BellSouth has a significant incentive to continue to improve in this area. It will face performance penalties in all five of these states if it does not meet flow-through benchmarks, and the Florida PSC has recently mandated that BellSouth pay double penalties for failure to do so. *See id.* ¶¶ 138-139; *Massachusetts Order* ¶ 80 ("[T]he

⁵ AT&T's contrary conclusion rests in part on its contention that the Commission has established that BellSouth's "achieved" flow-through measure (which includes planned manual fall out) is the only one of significance. *See AT&T Comments* at 15 & n.9. In fact, the Commission stated in the *New Jersey Order* (¶ 132) that a flow-through measure that excludes planned fall-out is the "most indicative of the BOC's ability to electronically process orders." *See also id.* ¶ 130 n.381 (describing Verizon's flow-through measures).

Massachusetts Department has added a special provision on flow-through to the Performance Assurance Plan (PAP). . . . This addition will provide a substantial disincentive to discriminate against competing carriers with regard to flow-through.”); *KS/OK Order* ¶ 269 (“the fact that a BOC will be subject to performance monitoring and enforcement mechanisms . . . constitute[s] probative evidence that the BOC will continue to meet its section 271 obligations”).

Additionally, and in response to an order of the Florida Commission, on July 30, 2002, BellSouth filed an extensive report with that commission detailing its plans to reduce system errors and thus enhance flow-through. *See BellSouth Stacy Reply Aff.* ¶¶ 139-143 & Exh. WNS-31. BellSouth will use information technology resources over and above those required by the CCP to improve flow-through, and implementation will begin in August 2002. *See id.* ¶¶ 139-143.

The Commission has also repeatedly stated that flow-through rates are not to be viewed in isolation, but rather are a single indicator of performance that must be viewed in the context of other data. *See, e.g., GA/LA Order* ¶ 143. Where other evidence demonstrates that the BOC’s OSS are able to process competing carriers’ orders at reasonably foreseeable commercial volumes, it is not appropriate to focus the analysis solely on flow-through rates. *See id.* The Commission therefore looks to such things as provision of timely FOC and reject notices, accurate processing of manually handled UNE and resale orders, and scalability of the BOC’s systems. *See id.*

These additional factors support BellSouth’s case here. BellSouth met the FOC *Timeliness* benchmark for partially mechanized UNE-P orders (that is, orders that are submitted electronically but do not flow through), for every month between January and May in North Carolina and Mississippi, and four out of five months in Alabama, Kentucky, and South

Carolina. *See id.* ¶ 117. BellSouth similarly met the benchmark for partially mechanized rejects for all five months in North Carolina and Mississippi, and four out of five months in the remaining states. *See id.* ¶ 119. BellSouth has implemented new work schedules to address the misses in some of these states in May 2002. *See id.* ¶¶ 118, 120. Additionally, BellSouth continues to post strong service order accuracy numbers, meeting the benchmarks for 32 out of 35 sub-metrics with activity between January and May. *See id.* ¶ 122. Given these facts, flow-through, which in any event is improving, “has significantly less value as an indication of deficiencies in BellSouth’s OSS.” *GA/LA Order* ¶ 144.

C. Regionality

BellSouth demonstrated in its Application that the Commission’s finding in the *GA/LA Order* (¶¶ 109-111) that BellSouth’s OSS were the same in Georgia and Louisiana applied equally to all five states at issue here. Indeed, the PriceWaterhouseCoopers (“PwC”) “sameness” attestation that the Commission relied upon in the Georgia/Louisiana proceeding – an attestation modeled after the similar examination relied upon by this Commission in the *KS/OK Order* – applied not just to Georgia and Louisiana, but to all nine BellSouth states. *See GA/LA Order* ¶ 111. As the Commission itself noted, PwC tested whether “the same pre-ordering and ordering OSS, processes and procedures are used to support competing LEC activity *across BellSouth’s nine-state region.*” *Id.* ¶ 109 (emphasis added). Moreover, the affidavits submitted with this Application provide comprehensive supporting evidence on this point, and all five state commissions have concluded that BellSouth’s OSS are in fact regional. *See Application* at 60-66 (summarizing this evidence); *APSC 271 Order* at 171 (“BellSouth has satisfactorily demonstrated that its systems in Alabama are sufficiently similar to its systems in Georgia”); *MPSC 271 Order* at 13 (“BellSouth’s OSS are the same throughout its region.”); *KPSC 271*

Order at 17 (noting the “functional equivalence” of BellSouth’s OSS); *Notice of Decision* at 2, *Application of BellSouth Telecommunications, Inc. To Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. P-55, Sub 1022 (NCUC May 23, 2002) (“BellSouth has provided sufficient evidence that its OSS are the same in Georgia and North Carolina.”) (Application App. C – NC, Tab 24); *SCPSC 271 Order* at 19, 22 (“The [SCPSC] concludes that BellSouth’s OSS are the same throughout its nine-state region.”).

Although AT&T and WorldCom still challenge the regionality of BellSouth’s systems, their arguments lack substance. See *AT&T Comments* at 18-20; *AT&T Bradbury/Norris Decl.* ¶¶ 118-146; *WorldCom Comments* at 8; *WorldCom Lichtenberg Decl.* ¶¶ 27-30. First, both AT&T and WorldCom claim that the Commission should rely upon the Tennessee Regulatory Authority’s (“TRA”) determination that BellSouth’s systems are not regional. The short answer to this claim is that the TRA itself no longer accepts the analysis in its prior order. In response to BellSouth’s petition for reconsideration, the TRA has reversed its prior determination. See *BellSouth Stacy Reply Aff.* ¶ 165. The TRA did so because its prior decision was fundamentally flawed and relied on an improper “averaging of the averages” to reach its conclusion. See *id.* ¶¶ 166-167. AT&T’s adoption of the reasoning in the now-discredited TRA order, see *AT&T Comments* at 19, is unpersuasive for the same reasons.

Nor is AT&T correct in its attempt to argue that variation in BellSouth’s performance demonstrates that its OSS are not regional. See *id.* at 19-20. The Commission has never mandated that a BOC show identical performance across a region to demonstrate “sameness,” nor would such a showing be possible given factors beyond the BOC’s control, such as different ordering patterns. Rather, the test established by the Commission’s precedent is whether “the relevant states utilize a common set of processes, business rules, interfaces, systems and, in many

instances, even personnel.” *GA/LA Order* App. D, ¶ 32; *see also KS/OK Order* ¶ 111. “[W]here a BOC has discernibly separate OSS, it must demonstrate that its OSS reasonably can be expected to behave in the same manner.” *GA/LA Order* App. D, ¶ 32. BellSouth has made those showings in this Application (just as it did in the Georgia/Louisiana proceeding), and AT&T and WorldCom can cite no authority for the proposition that BellSouth must also establish identical performance. No Commission order supports such a requirement. Their claims should thus be rejected.

D. DSL USOCs and Related Claims

Birch claims that BellSouth improperly places DSL USOCs on customer accounts and that this presents a significant competitive problem. *See Birch Comments* at 6-13. Birch is wrong, and the evidence it has submitted does not support its accusations.

As an initial matter, and as BellSouth explained in its Application for Georgia and Louisiana, BellSouth does not place inappropriate DSL USOCs on customer records. *See BellSouth Ainsworth Reply Aff.* ¶ 14 (Reply App. Tab A). There are two typical scenarios where the DSL USOC might appear on the end-user’s CSR, without DSL-based Internet access service being provided to the end-user. The first scenario occurs when BellSouth has provisioned the tariffed DSL service to the Network Service Provider (“NSP”), but the end-user service has not been completed by the NSP (including BellSouth’s own FastAccess[®] Service, which is provided by BellSouth.net). The second scenario arises when the end-user has disconnected his or her Internet access service with the NSP, but the NSP, or BellSouth, has not completed the subsequent disconnect of the tariffed DSL service. Either situation could lead to a DSL USOC being present on the CSR, and thus result in a clarification back to the CLEC, even though the end-user may say that he or she does not have DSL service on his or her line. *See id.* ¶ 15.

Birch has claimed that it is aware of cases where neither of these circumstances was present but that the DSL USOC still appears on the customer record. *See Birch Comments* at 7. The data submitted by Birch do not support this charge. BellSouth has reviewed the Birch data (which appear to be a sales list in which much of the data are not relevant to this concern about alleged “phantom USOCs”), and in each case where Birch provided sufficient information to investigate, there was in fact an order from an NSP on the customer record. *See BellSouth Ainsworth Reply Aff.* ¶¶ 16-18 & Exhs. KLA-3 & KLA-4.

The data also do not support Birch’s claim that there is a widespread problem with the existence of a DSL USOC on lines over which no DSL is currently provided. In May 2002, 0.17% of UNE-P conversions were clarified where the end-user did not have working DSL service or was not actively working to add or to disconnect that service. *See id.* ¶ 22; *GA/LA Order* ¶ 158 (finding that similar evidence demonstrated that “[t]his problem affects a very small number of orders”). Moreover, in the time since BellSouth (working with Birch) instituted an interim process to remove these codes from the line – a process that, contrary to Birch’s claims of hardship, requires a single phone call to BellSouth’s LCSC – only 99 calls per month have been received. *See BellSouth Ainsworth Reply Aff.* ¶¶ 24, 26; *GA/LA Order* ¶ 158 & n.571 (commenting favorably on BellSouth’s implementation of this interim process). Additionally, as BellSouth has explained, it will implement a permanent process that will electronically strip these DSL USOC codes off the customer record in December 2002. *See BellSouth Ainsworth Reply Aff.* ¶¶ 20, 27.

Birch also claims that BellSouth has a practice of placing DSL service on a main customer line. *See Birch Comments* at 13-16. That too is incorrect. In fact, BellSouth policy permits the end-user to place DSL service on any customer-requested line that currently

qualifies. See *BellSouth Ainsworth Reply Aff.* ¶ 30. Thus, the sales training used by BellSouth.net FastAccess[®] sales agents prompts the agent to ask the customer which phone number the customer would like to use for its service. If the telephone number provided by the customer qualifies for DSL, then the agent is instructed to place the DSL order on the line requested by the customer. Moreover, if the first choice of the customer does not currently qualify for DSL service, the sales agent usually will recommend provisioning the DSL service on the customer's fax line (assuming that the fax line qualifies for DSL service). See *id.*; see also *GA/LA Order* ¶ 157 & n.565 (describing BellSouth's policies and concluding that BellSouth takes "adequate steps to remedy any confusion that may arise when customers order DSL"). At the same time, BellSouth has no knowledge or control over the sales practices of other NSPs that purchase BellSouth's tariffed wholesale DSL service. See *BellSouth Ainsworth Reply Aff.* ¶ 30.

Finally, Birch claims that "mysterious" pending service order ("PSO") indicators are present on customer records and that this causes improper order clarifications. See *Birch Comments* at 16. Birch is incorrect. Analysis of the evidence that it has submitted reveals that these PSO indicators have resulted either from a customer request or from a request by Birch acting as an agent for a customer. See *BellSouth Ainsworth Reply Aff.* ¶¶ 36-37 & Exhs. KLA-6, KLA-7 & KLA-8.

E. Other OSS Issues

FLEX ANI. Ernest Communications raises an issue involving its alleged inability to obtain the "FLEX ANI" feature when ordering UNE-P to serve payphone providers. See *Ernest Comments* at 4-6. FLEX ANI is necessary to allow payphone providers to bill long-distance companies for dial-around calls.

Ernest is correct that there is now a system anomaly that affects a portion of its UNE-P orders (those seeking new payphone lines as opposed to conversions of existing lines). *See BellSouth Stacy Reply Aff.* ¶¶ 200-211. Once this issue was brought to BellSouth's attention, BellSouth gave Ernest the option of avoiding this problem on an interim basis by submitting the orders manually, and began work on a coding change to address the electronic systems issue (which will be implemented in December 2002). *See id.* ¶¶ 204, 210-211. Ernest has chosen not to order manually, however, and has continued to submit orders electronically, knowing that this will result in errors that would need to be corrected through review of spreadsheets. *See id.* ¶ 211.

Given Ernest's choice, BellSouth has worked diligently to address the issues raised by Ernest's electronic orders. BellSouth's customer support manager for Ernest, Trent Clack, reviews spreadsheets sent by Ernest, verifies the lines that have been provisioned incorrectly because Ernest has ordered them electronically, and works closely with the LCSC to have the lines converted to the proper class of service with the FLEX ANI feature. *See id.* ¶¶ 210-211; *BellSouth Clack Reply Aff.* ¶ 5 (Reply App. Tab C). BellSouth has thus responded appropriately to this issue and in fact has now added the FLEX ANI capability for all orders of which it has been notified. *See BellSouth Clack Reply Aff.* ¶¶ 5, 8 ("During the period in question, I was in constant contact with [Ernest] Reynolds on the issue at hand and other matters. . . . I took personal responsibility for implementing the interim solution selected [by Ernest]."; "[A]ll lists submitted as of July 31, 2002 have been correctly input into the system. The last one received in that period, sent on July 26, 2002, . . . was completed on July 31, 2002."). In sum, BellSouth has taken significant and appropriate steps to address this problem cooperatively with Ernest on both an interim and a long-term basis.

Billing. AT&T challenges BellSouth's billing performance. It claims that BellSouth's bills are "replete with errors." *AT&T Comments* at 17. As David Scollard explains in the attached reply affidavit, however, AT&T disputes only approximately 1.5% of the amount that it has been billed by BellSouth since January 2001. *See BellSouth Scollard Reply Aff.* ¶ 3 (Reply App. Tab G). Some of that amount reflects inadvertent errors that BellSouth has corrected or is correcting, and the rest reflects what BellSouth believes are legitimate charges. *See id.* In any event, it is hardly unusual for large carriers to have disputes about some portions of the charges that they assess each other, and, because such disputes are commonplace, BellSouth's interconnection agreement with AT&T provides mechanisms through which the parties agreed to resolve such disputes. *See id.* ¶ 4.

These kinds of run-of-the-mill billing issues do not come close to establishing a checklist violation. BellSouth has provided substantial evidence of the efficacy of its region-wide billing process, *see Application* at 97-99; *BellSouth Scollard Aff.* (Application App. A, Tab H), and all five state commissions have agreed that BellSouth provides nondiscriminatory access to billing. *See APSC 271 Order* at 166 ("BellSouth's performance data leads us to conclude that BellSouth offers its competitors access to nondiscriminatory access to billing functions."); *KPSC 271 Order* at 27 ("BellSouth does provide adequate billing processes to CLECs."); *MPSC 271 Order* at 39-40 ("BellSouth provides nondiscriminatory access to its OSS for . . . billing."); *NCUC Order and Advisory Opinion* at 146 ("BellSouth is providing nondiscriminatory access to billing functions"); *SCPSC 271 Order* at 50 ("BellSouth provides nondiscriminatory access to its OSS for . . . billing."). Moreover, this Commission found these same billing processes nondiscriminatory in the Georgia/Louisiana proceeding. *See GA/LA Order* ¶¶ 173-178.

AT&T's claims do not reflect the kind of "systemic wholesale billing problems" that this Commission has properly indicated are necessary to find noncompliance. *Pennsylvania Order* ¶ 28. Rather, at most, AT&T has established that there is the kind of "nominal level of dispute over wholesale billing" that, as this Commission has explained, "is to be expected in any large-volume, carrier-to-carrier relationship." *Id.* ¶ 26 & n.93 (citing evidence of significantly higher percentages in dispute in states where section 271 approval was granted). AT&T's argument should be rejected, and this issue should be resolved through the contractual processes that AT&T and BellSouth mutually agreed upon.

The billing issue raised by Covad is similarly insubstantial. Covad argues, *see Covad Comments* at 15-17, that, because of BellSouth's processes, it may be billed early for line sharing. Such early billing is not the norm, and because recurring line-sharing charges are minimal, any difference would amount to \$.02, \$.04, or \$.06, and BellSouth will adjust Covad's bill if notified of the concern. *See BellSouth Scollard Reply Aff.* ¶ 15. In any event, BellSouth has developed an electronic fix for this issue that is to be implemented this year. *See id.* ¶ 16.

II. BELLSOUTH HAS COMPREHENSIVE AND RELIABLE STATE-APPROVED PERFORMANCE MEASUREMENTS

BellSouth's performance metrics continue to be comprehensive and reliable. Indeed, in notable contrast to the Georgia/Louisiana proceeding, there is no longer much dispute on those points. Unlike in that prior proceeding, where DOJ expressed concern about relying on BellSouth's performance data when it was contested,⁶ here DOJ does not caution the Commission about the overall accuracy of the data that BellSouth has provided with this Application, nor do the significant majority of CLEC commenters. As discussed below and in

⁶ Evaluation of the United States Department of Justice at 20, CC Docket No. 02-35 (FCC filed Mar. 21, 2002).