

requirements. “First, an incumbent LEC must provide interconnection ‘at any technically feasible point within the carrier’s network.’” *GA/LA Order* App. D, ¶ 17 (quoting 47 U.S.C. § 251(c)(2)(B)). “Second, an incumbent LEC must provide interconnection that is ‘at least equal in quality to that provided by the [incumbent] to itself.’” *Id.* (quoting 47 U.S.C. § 251(c)(2)(C)). Third, “the incumbent LEC must provide interconnection ‘on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252.’” *Id.* (quoting 47 U.S.C. § 251(c)(2)(D)) (alteration in original). Technically feasible methods of interconnection include, but are not limited to, interconnection trunking, physical and virtual collocation at the premises of an ILEC, and meet-point arrangements. *Id.* App. D, ¶ 20. Section 252(d)(1) requires that the rates for such interconnection be based on “cost.”

As discussed below, BellSouth meets all applicable requirements for interconnection. The Commission found BellSouth in full compliance with Checklist Item 1 in its *GA/LA Order* and its *Five State Order*, and BellSouth follows procedures in Florida and Tennessee that are nondiscriminatory and substantively the same as those in BellSouth’s approved states. *Milner Aff.* ¶ 10 (App. A, Tab F). Both the FPSC and the TRA have found that BellSouth satisfies this checklist item. *See FPSC Staff Checklist Rec.* at 43, 76-87; *TRA Trans.* at 11-12.

CLECs in Florida and Tennessee thus have access to the most fundamental prerequisite of local competition – the ability of their customers to send calls to, and receive calls from, customers of BellSouth, and to link CLEC networks to BellSouth’s network for the mutual exchange of traffic. CLECs are able to connect their networks to BellSouth’s by the most efficient means possible, including CLECs’ placement of their own equipment in BellSouth’s buildings.

1. Methods of Interconnection

In Florida and Tennessee, BellSouth provides five standard means by which CLECs can interconnect their networks to BellSouth's network: (1) physical collocation; (2) virtual collocation; (3) assembly point arrangements; (4) fiber-optic meet-point arrangements; and (5) purchase of facilities from the other party. *See Milner Aff.* ¶ 12. Interconnection is available at the line side or trunk side of the local end office switch; the trunk interconnection points for the local or tandem switch; central office cross-connect points; out-of-band signaling transfer points; and points of access to UNEs. *Id.* ¶ 11.

BellSouth provides interconnection at all technically feasible points, including the option of selecting one technically feasible interconnection point in each LATA. *Id.*; *see also Ruscilli/Cox Joint Aff.* ¶ 27; *GA/LA Order* App. D, ¶¶ 19-20; *Pennsylvania Order* ¶ 100; *New York Order* ¶¶ 63, 66-67. Moreover, a CLEC may request, via the Bona Fide Request ("BFR") process, to utilize any other interconnection point when it is determined to be technically feasible. *See Milner Aff.* ¶ 11; *KS/OK Order* ¶ 232 & n.686. BellSouth will provide a preliminary analysis of a BFR within 30 days of receiving it and will fully develop the quote and specifications as soon as feasible (but not more than 90 days) after receiving the CLEC's approval to proceed. *See Ruscilli/Cox Joint Aff.* ¶¶ 12-13.

Interconnection rates, including those for collocation, have been set by the FPSC and the TRA based on this Commission's TELRIC methodology. *See id.* ¶¶ 14-16 (in general), ¶¶ 99-100 (Florida), ¶¶ 121-125 (Tennessee); *Caldwell Aff.* ¶¶ 144-145 (App. A, Tab C). Indeed, BellSouth's cost methodology used in these states is the same as that used by BellSouth in Georgia and Louisiana, which the Commission found to produce rates that are "just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1)." *GA/LA Order* ¶ 28; *see Ruscilli/Cox Joint Aff.* ¶ 16. All BFR rates proposed by

BellSouth will also be cost-based and in accordance with the TELRIC methodology (unless the CLEC agrees otherwise or the requested capability is not subject to the 1996 Act's pricing standards). *See Ruscilli/Cox Joint Aff.* ¶ 13.

BellSouth provides CLECs with Multiple Tandem Access ("MTA") and local tandem interconnection. MTA provides for LATA-wide BellSouth transport and termination of CLEC-originated local and BellSouth-transported intraLATA traffic by establishing a point of interconnection at a BellSouth access tandem with routing through multiple BellSouth access tandems as required. *See Milner Aff.* ¶ 13. For local tandem interconnection, a CLEC may request either basic local tandem interconnection, which allows CLECs to terminate traffic to BellSouth's end office switches and wireless service provider switches within the area served by the tandem, or enhanced local tandem interconnection, which adds the ability to terminate traffic to other CLEC and independent company switches in the area served by the tandem. *See id.* ¶ 56. As of July 31, 2002, BellSouth had provided more than 9,800 local tandem interconnection trunks in its region; more than 1,100 of those trunks are in Florida, and more than 2,600 are in Tennessee. *See id.*

BellSouth offers CLECs various options to route local/intraLATA toll traffic and transit traffic over separate trunk groups or over a single trunk group, or over one-way or two-way trunks. *See id.* ¶¶ 15-17; *Second Louisiana Order* ¶ 64. BellSouth provisions local/intraLATA toll trunks for traffic between CLECs' end users and BellSouth's end users or wireless service providers and vice versa. *See Milner Aff.* ¶ 16. Local traffic or local/intraLATA toll traffic may be delivered at the BellSouth local tandem, the BellSouth access tandem, or the BellSouth end office. *See id.* These trunks may use multi-frequency or SS7 signaling and may be one-way or two-way. *See id.*

In addition, BellSouth provides transit trunks for traffic between a CLEC and a third party such as an independent company, interexchange carrier, or another CLEC. *See id.* ¶ 17. Transit trunk groups generally are two-way trunks but may be provisioned as one-way trunks. *See id.* They may use multi-frequency or SS7 signaling. *See id.* If a CLEC chooses, additional trunk groups may be established for operator services, directory assistance, emergency services, and intercept. *See id.* ¶ 18.

In the *GA/LA Order*, this Commission concluded that “BellSouth satisfies its statutory requirements for the provisioning of collocation and provides interconnection at all technically feasible points including a single point of interconnection in Georgia and Louisiana.” *GA/LA Order* ¶ 201. The same conclusion should be reached here. To carry traffic between BellSouth and CLEC locations, BellSouth has provisioned more than 158,000 interconnection trunks from CLECs’ switches to BellSouth’s switches in Florida and more than 51,000 such trunks in Tennessee. *See Milner Aff.* ¶ 19. BellSouth has provided more than 86,000 two-way trunks (including transit trunks) in Florida and more than 28,000 two-way trunks in Tennessee. *See id.* This substantial degree of commercial usage in and of itself demonstrates that CLECs can interconnect with BellSouth’s network.

2. Nondiscriminatory Access to Interconnection Trunks

BellSouth is providing interconnection trunks to CLECs in Florida and Tennessee at a level of quality that is indistinguishable from that which BellSouth provides to its retail units. BellSouth follows the same installation process for CLEC interconnection trunks as it does for itself. *See Milner Aff.* ¶¶ 15, 22. BellSouth also follows the same procedures for forecasting interconnection trunks for CLECs as it does for itself. *Id.* ¶ 23. *See generally New York Order* ¶¶ 64, 67-68; *Texas Order* ¶ 62. Thus, just as the Commission found in its *GA/LA Order* and its

Five State Order, BellSouth is in full compliance with the Act's nondiscrimination requirements for interconnection. *See GA/LA Order* ¶ 201; *Five State Order* ¶ 213.

The Commission concluded in the *GA/LA Order* that BellSouth's method of calculating trunk blockage, the Trunk Group Performance ("TGP") report, "effectively assesses BellSouth's performance." *GA/LA Order* ¶ 203. That report demonstrates that, in both these states, BellSouth met or exceeded parity for trunk blockage during all three months from May through July 2002 in Tennessee and for both June and July in Florida, with the miss in May due to unusually heavy traffic around Mother's Day. *See Varner Aff.* Exhs. PM-2 ¶ 32 (Florida), PM-3 ¶ 32 (Tennessee).

BellSouth also has met or exceeded the additional interconnection performance measures for ordering, provisioning, maintenance and repair, and billing. In both Florida and Tennessee, BellSouth met or exceeded parity for the missed installation appointments measure without exception. *See id.* Exhs. PM-2 ¶ 18, PM-3 ¶ 18. And BellSouth also met or exceeded parity with the relevant retail analogue for the order completion measure without exception. *See id.* Exhs. PM-2 ¶ 17, PM-3 ¶ 17. Indeed, in Florida, from May through July 2002, BellSouth met or exceeded the statistical comparison for two of the three months for all 26 of the ordering, provisioning, maintenance and repair, and billing submetrics for local interconnection trunks that had CLEC activity in all three months. *See id.* Exh. PM-2 ¶ 15. Similarly, in Tennessee, BellSouth met all submetrics with activity for at least two out of three of those months. *See id.* Exh. PM-3 ¶ 15.

3. Collocation

The provision of collocation is an essential prerequisite to demonstrating compliance with Checklist Item 1. *See GA/LA Order* App. D, ¶ 20. To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable

collocation arrangements are available on terms and conditions that are “just, reasonable, and nondiscriminatory” in accordance with section 251(c)(6) and the Commission’s implementing rules. *Id.* (internal quotation marks omitted). To assess BellSouth’s provision of collocation, the Commission may rely on data showing the quality of procedures for processing applications for collocation space as well as the timeliness and efficiency of provisioning collocation space. *See id.*

Just as it does in all its other states, BellSouth provides legally binding terms and conditions for collocation in its interconnection agreements and SGATs in Florida and Tennessee (and, in Florida, through its tariff as well). *See GA/LA Order* ¶ 205 (“We conclude that BellSouth provides legally binding terms and conditions for collocation in its interconnection agreements and SGATs.”); *Milner Aff.* ¶ 48 & Exh. WKM-2 ¶¶ 2-9; *see also Milner Aff.* Exh. WKM-2 ¶ 19 (noting that BellSouth affiliates obtain collocation in the same manner as CLECs).

Physical collocation of CLEC equipment is available where space permits. *See id.* ¶ 17. BellSouth offers caged, shared caged, cageless, microwave, and remote terminal collocation, all at a CLEC’s option. *See id.* ¶¶ 21-28, 38-43. BellSouth also offers adjacent collocation if space in a particular premises is exhausted. *See id.* ¶¶ 29-37. If space in the initially sought premises subsequently becomes available, the CLEC may, at its option, relocate to that interior space. *See id.* ¶ 37. BellSouth gives notice to CLECs when space has become available in a previously exhausted central office and will allocate newly available space pursuant to the waiting list maintained for that central office. *See id.* ¶ 65. Virtual collocation is available where space for physical collocation is legitimately exhausted or at a CLEC’s request, regardless of the availability of physical collocation. *See id.* ¶¶ 45-48.

BellSouth permits the collocation of equipment that, under this Commission's definition, is "necessary" for interconnection or access to UNEs.²⁴ BellSouth also offers CLECs the opportunity to cross-connect with other collocated CLECs in conformance with the *Collocation Remand Order*. See *Milner Aff.* Exh. WKM-2 ¶ 103; *Collocation Remand Order*, 16 FCC Rcd at 15464-78, ¶¶ 55-84. BellSouth does not impose safety requirements on CLEC equipment that are more stringent than the safety requirements that it imposes on its own equipment located on the premises; BellSouth also affords CLECs direct access to their equipment 24 hours a day, seven days a week, as well as access to restrooms and parking. See *Milner Aff.* Exh. WKM-2 ¶¶ 109, 121-124, 127.

BellSouth provides interconnection points for collocation at the manhole or cable vault, which is the point as close as possible to BellSouth's premises that is accessible to both BellSouth and the CLEC. See *Milner Aff.* ¶ 46; 47 C.F.R. § 51.323(d)(1). BellSouth provides two such interconnection points where there are at least two entry points available and where capacity exists. See *Milner Aff.* ¶ 46; 47 C.F.R. § 51.323(d)(2).

BellSouth provisions physical and virtual collocation in accord with the intervals approved by FPSC and the TRA. See *Milner Aff.* Exh. WKM-2 ¶¶ 71-75, 79, 82-83; see also 47 C.F.R. § 51.323(l) (providing that the Commission's national default intervals for physical collocation are inapplicable where "a state sets its own deadlines").

Collocation is readily available, as evidenced by the fact that BellSouth has provisioned 1,208 physical collocation sites in 129 central offices in Florida and 413 physical collocation

²⁴ See 47 U.S.C. § 251(c)(6); *Milner Aff.* Exh. WKM-2 ¶ 44; see also Fourth Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 16 FCC Rcd 15435, 15443-64, ¶¶ 13-54 (2001) ("*Collocation Remand Order*"), petitions for review denied, *Verizon Tel. Cos. v. FCC*, 292 F.3d 903 (D.C. Cir. 2002).

sites in 59 central offices in Tennessee. *See Milner Aff.* ¶ 49. BellSouth has also provisioned 163 virtual collocation sites in Florida and 11 in Tennessee. *See id.* ¶ 53.

Not only is BellSouth making collocation available; it is doing so in a timely and accurate manner consistent with the intervals established by this Commission and the state commissions. From May through July 2002, BellSouth met the applicable benchmarks for *every* collocation measure and submetric in both Florida and Tennessee. *See Varner Aff.* Exhs. PM-2 ¶ 12, PM-3 ¶ 12. This Commission has found this type of performance data for collocation to be compelling evidence of compliance with the 1996 Act. *See GALA Order* ¶ 205; *Five State Order* ¶ 217.

Where collocation space is exhausted for a particular central office, BellSouth will submit to the FPSC or the TRA detailed information, including floor plans, demonstrating the lack of space. *See Milner Aff.* Exh. WKM-2 ¶ 59. In addition, BellSouth will provide any CLEC that is denied space due to exhaustion a tour of the entire premises in question within 10 calendar days of the denial of space. *See id.* To help alleviate exhaustion situations, BellSouth will remove unused, obsolete equipment from its premises upon reasonable request by a CLEC or order of a state commission. *See id.* ¶ 66.

BellSouth maintains a publicly available document on its Interconnection Website that lists all central offices where collocation space has been exhausted. BellSouth updates this document within 10 days of an event, such as space assignment for collocation or use by BellSouth, that exhausts collocation capacity in a particular premises (*i.e.*, leaves less than a single bay of collocation space). *See id.* ¶¶ 60-64. BellSouth's policy on this point satisfies its obligations as interpreted by the Commission's Enforcement Bureau.²⁵

²⁵ *See Order of Forfeiture, SBC Communications Inc. Apparent Liability for Forfeiture*, 16 FCC Rcd 10963, 10966, ¶ 10 (Chief, Enf. Bur. 2001) (finding that similar SWBT policy satisfies the requirements of 47 C.F.R. § 51.321(h)).

B. Checklist Item 2: Nondiscriminatory Access to Unbundled Network Elements

BellSouth satisfies Checklist Item 2 in both Florida and Tennessee by providing “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.” 47 U.S.C. § 251(c)(3); *see id.* §§ 252(d)(1), 271(c)(2)(B)(ii). *See also FPSC Staff OSS Rec.* at 96-97; *FPSC Staff Checklist Rec.* at 88, 105-13; *TRA Trans.* at 20.

1. Access to UNEs Generally

BellSouth has legally binding obligations to provide access to all UNEs identified by this Commission, including those added by the *UNE Remand Order*.²⁶ *See Milner Aff.* ¶¶ 57-64; *Ruscilli/Cox Joint Aff.* ¶ 8 & Exhs. JAR/CKC-1 (Florida), JAR/CKC-2 (Tennessee). In both states, BellSouth offers CLECs access to, among other things, dark fiber, subloops, local switching, tandem switching, signaling networks, call-related databases, and loop conditioning. *See Milner Aff.* ¶ 60. BellSouth also has committed to use its best efforts to obtain for CLECs, under commercially reasonable terms, intellectual property rights to each UNE necessary for CLECs to use such unbundled elements in the same manner as BellSouth. *See id.* ¶ 61.

2. UNE Combinations

As this Commission found in the *GA/LA Order*, “BellSouth provides access to UNE combinations in compliance with Commission rules.” *GA/LA Order* ¶ 199. *See also Five State Order* ¶¶ 209-212. Because BellSouth provides UNEs in Florida and Tennessee in substantively the same manner as in the other seven states in BellSouth’s region, that finding applies equally to

²⁶ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”), *petitions for review granted, United States Telecom Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

this Application. *See Milner Aff.* ¶ 58. And, as confirmed by actual commercial usage in Florida and Tennessee, BellSouth continues to provide CLECs access to pre-assembled combinations of network elements, including loop and port combinations, or UNE-P, on a reasonable and nondiscriminatory basis. *See FPSC Staff Checklist Rec.* at 105-06, 111-13. *See also Milner Aff.* ¶¶ 59-64, 79-87.

As of July 31, 2002, BellSouth had 438,395 loop and port combinations in place in Florida and 75,160 in place in Tennessee. *See Milner Aff.* ¶ 87. Across BellSouth's nine-state region, BellSouth had 1,166,295 such combinations in place for CLECs. *See id.* BellSouth also provides nondiscriminatory access to combinations of unbundled loops and transport network elements, commonly referred to as Enhanced Extended Links ("EELs"). *See id.* ¶ 86. As of July 31, 2002, BellSouth had provided 13,864 EELs to CLECs in BellSouth's region, including 3,375 EELs to CLECs in Florida and 1,076 to CLECs in Tennessee. *See id.*

These UNE combinations are available to all CLECs in Florida and Tennessee on a legally binding basis through interconnection agreements and the SGATs. *See id.* ¶¶ 57, 80. And, in accordance with the Commission's rules, BellSouth will not separate network elements that it currently combines unless a CLEC requests that it do so. *See Ruscilli/Cox Joint Aff.* ¶ 25. Moreover, BellSouth also complies with the Commission's combinations rules (47 C.F.R. § 51.315(c)-(f)) regarding its obligation to create new combinations for CLECs in accordance with the decision of the United States Supreme Court in *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646 (2002). BellSouth has amended its SGATs in both Florida and Tennessee to accord with these requirements. *See Ruscilli/Cox Joint Aff.* ¶ 25 & Exh. JAR/CKC-1 § II.D.3 of the General Terms and Conditions & Attach. C, § 4 (Florida SGAT); *id.* Exh. JAR/CKC-2,

Attach. 2, § 5 (Tennessee SGAT); *Milner Aff.* ¶ 80. BellSouth also makes access to UNEs available in a manner that allows CLECs to combine them. *See Milner Aff.* ¶¶ 57, 79.

Finally, BellSouth's provision of nondiscriminatory access to UNE combinations is confirmed by BellSouth's excellent performance in both Florida and Tennessee with respect to ordering, provisioning, and maintenance and repair of loop and port combinations. As to ordering, and maintenance and repair, much of that performance is discussed below in the OSS section. As to provisioning, BellSouth's performance for order completion interval ("OCI") for loop and port combinations is excellent in both Florida and Tennessee. Indeed, in both states, BellSouth met or exceeded the parity benchmark for every submetric with CLEC activity for loop and port combinations between May and July 2002. *See Varner Aff.* Exhs. PM-2 ¶¶ 50-51, PM-3 ¶¶ 48-49 (B.2.1.3.1.1 - B.2.1.3.2.4).

3. Pricing of Unbundled Network Elements

In the *GA/LA Order*, this Commission conducted a thorough "bottom up" review of BellSouth's rates in Georgia and Louisiana. *GA/LA Order* ¶ 23. The Commission analyzed "each issue on its own merits" and determined that, across-the-board, BellSouth's UNE rates in Georgia and Louisiana are "just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1)." *Id.* ¶¶ 24, 28. Again, in the *Five State Order*, the Commission thoroughly reviewed both BellSouth's rates and a long list of CLEC arguments about BellSouth's cost methodologies, and it again found no TELRIC violation. *See Five State Order* ¶¶ 34-127.

The Commission should uphold BellSouth's rates here for the same reasons as in prior orders. BellSouth's UNE rates in Florida and Tennessee are based on the same BellSouth cost study models and methodologies as in Georgia and Louisiana and the states covered by the recently approved Five State application. *See Ruscilli/Cox Joint Aff.* ¶ 20. As described in detail

in the affidavit of Daonne Caldwell, the cost models that BellSouth used in Florida are the same ones that it relied upon in Louisiana, Alabama, Kentucky, Mississippi, and South Carolina; the cost studies and models used in Tennessee are the same ones that BellSouth relied upon in Georgia and North Carolina. *See Caldwell Aff.* ¶ 4. Moreover, while the Commission found in the *Five State Order* that issues involving BellSouth's feature charges are "fact-intensive" and "complex" and could not be resolved because of the lack of an adequate state record, *Five State Order* ¶ 97, here the FPSC thoroughly reviewed the conflicting evidence on this point and provided a reasonable justification for adopting such a rate based on BellSouth's studies. *See Caldwell Aff.* ¶¶ 142, 159-160. In any event, BellSouth's non-loop rates in Florida benchmark to Louisiana rates, so there is no checklist issue here. *See Ruscilli/Cox Joint Aff.* ¶ 21. BellSouth does not recover for features in Tennessee, so this is not an issue as to that state.

Additionally, it is important to note at the outset that, in both Florida and Tennessee, the state commission established rates only after holding extensive proceedings that were fully open to CLEC participation. As discussed below, and as is evident from the face of the state commission orders, the state commissions fully justified both the ultimate rates that they established and the subsidiary decisions that they reached in written decisions that uniformly demonstrate their "commitment to TELRIC-based rates." *New York Order* ¶ 238; *Massachusetts Order* ¶ 27. The result is a full set of rates in each state that complies with the 1996 Act and this Commission's rules. *See Caldwell Aff.* ¶¶ 147-181 (Florida), ¶¶ 182-205 (Tennessee); *Ruscilli/Cox Joint Aff.* ¶¶ 99-100, 121-124, & Exhs. JAR/CKC-1 Attach. A (Florida), JAR/CKC-2 Attach. 2 (Tennessee).

In reaching their decisions, moreover, the state commissions addressed many of the same CLEC complaints – involving such things as the use of "multiple scenarios" in the BellSouth

Telecommunications Loop Model[©] (“BSTLM”) used in Florida, the proper method of determining switch discounts, and the claim that BellSouth double-counts certain inputs – that this Commission reviewed and rejected in the Georgia/Louisiana proceeding and the Five State proceeding. *See, e.g., Caldwell Aff.* ¶ 118.

As in prior cases, the determinations of these expert agencies on these inherently fact-intensive questions warrant respectful and highly deferential review. The Commission should “place great weight” on the state commissions’ determinations that BellSouth’s rates are TELRIC-compliant. *New York Order* ¶ 238. As the Commission has explained, it does not engage in *de novo* review of rates in section 271 proceedings. Rather, its proper role is quite limited: “we will reject the application only if *basic TELRIC principles are violated* or the state commission makes *clear errors* in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.” *Id.* ¶ 244 (emphases added); *see also Massachusetts Order* ¶ 20; *KS/OK Order* ¶ 59; *Pennsylvania Order* ¶ 55. Those extreme circumstances are not remotely present here. While the results reached in Florida and Tennessee are not precisely the same, they all fall comfortably within “the range of what a reasonable application of TELRIC would produce,” *GA/LA Order* ¶ 23 – indeed, they are likely at the lower end of that range.

Florida. The Florida UNE rates proceedings were extensive and fully open to CLEC participation. In response to a petition filed by CLECs, in 1999, the FPSC opened Docket No. 990649 to establish new UNE rates.²⁷ The FPSC then held several sets of live hearings, received

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²⁷ *See Order No. PSC-01-1181-FOF-TP at 18, Investigation into Pricing of Unbundled Network Elements, Docket No. 990649-TP (FPSC May 25, 2001) (“FPSC UNE Rate Order”) (App. D – FL, Tab 46).*

extensive prefiled testimony, and provided CLECs with significant opportunities for discovery. *See FPSC UNE Rate Order* at 18-23 (summarizing these proceedings).

Throughout these proceedings, BellSouth relied on TELRIC-compliant models and methodologies. BellSouth employed its BSTLM, the Telcordia Switching Cost Information System (“SCIS”), and the BellSouth Simplified Switching Tool[©] (“SST”). *See Caldwell Aff.* ¶ 33. The TELRIC-compliant nature of each of these models is described in detail in the attached affidavit of Daonne Caldwell. *See id.* ¶¶ 46-58, 99-117 (BSTLM), 60-63, 66, 118-143 (SCIS, SST, and others). As noted above, these are the same cost models that are the basis of BellSouth’s Louisiana rates, and that this Commission thus reviewed in the Georgia/Louisiana proceeding. *See, e.g., GA/LA Order* ¶¶ 38-42 (discussing the BSTLM and determining that the Louisiana PSC committed no error in relying upon it as used by BellSouth). BellSouth similarly relied on these same models to support Alabama, Kentucky, Mississippi, and South Carolina rates during the recent Five State proceeding. *See Caldwell Aff.* ¶ 4. BellSouth also relied on the same TELRIC-compliant cost development process for other key cost components in Florida that it has used throughout its region. *See id.* ¶ 144 (“BellSouth systematically applied the same methodology throughout its cost development process”); *id.* ¶¶ 7-31 (describing the uniform TELRIC-compliant cost development process that BellSouth has consistently employed to determine both recurring and nonrecurring costs).

After reviewing BellSouth’s studies and its evidence as to their TELRIC-compliant nature, in May 2001, the FPSC issued a 621-page order analyzing in detail all the issues raised by the parties and establishing a full set of TELRIC-compliant rates. In that order, the FPSC made plain that it intended to comply fully with this Commission’s forward-looking cost rules:

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“We believe that a forward-looking cost methodology should be used as prescribed by the FCC.”

FPSC UNE Rate Order at 32.

The FPSC then proceeded to apply that methodology to all the issues that CLECs had presented. Given the length and detail of both that order and the FPSC’s *Reconsideration Order*,²⁸ all of the FPSC’s conclusions cannot be summarized here. Accordingly, BellSouth will focus on a few issues that were argued particularly vehemently before the FPSC and that CLECs have also raised in prior section 271 applications. If CLECs ask this Commission to second-guess any of the FPSC’s other fact-intensive and carefully defended conclusions, BellSouth will respond to those arguments in its reply comments and as otherwise requested by the Commission.

One issue that CLECs have repeatedly raised involves the use of multiple scenarios in the BSTLM to model the costs of different kinds of loops. As it has in prior proceedings before this Commission, BellSouth explained to the FPSC that it used the total quantity of facilities in each scenario, and that the different scenarios reflected cost differences associated with provisioning different kinds of loops and combinations. If BellSouth used the same scenario for all loops, it would under-recover costs. *See FPSC UNE Rate Order* at 145-48; *Caldwell Aff.* ¶¶ 101-115. The FPSC accepted those contentions and concluded that “BellSouth’s use of three distinct scenarios is reasonable for the purposes of this proceeding.” *FPSC UNE Rate Order* at 155.

The FPSC’s decision accords with this Commission’s judgment that it was “reasonable” for a state commission to set rates based on multiple BSTLM scenarios in order to prevent an “under-recovery” of costs. *GA/LA Order* ¶¶ 41-42 nn.140-142. The FPSC, like the other state

²⁸ See Order No. PSC-01-2051-FOF-TP, *Investigation into Pricing of Unbundled Network Elements*, Docket No. 990649-TP (FPSC Oct. 18, 2001) (“*FPSC Reconsideration Order*”) (App. D – FL, Tab 56).

commissions that have adopted BellSouth's methodology, committed no "clear error in adopting" the multiple-scenario approach. *Id.* ¶ 42; *Five State Order* ¶ 61 ("We defer to the analyses of the state commissions, and we therefore reject WorldCom's criticism of the multiple scenario approach.").

In this same May 2001 *FPSC UNE Rate Order*, the FPSC also accepted BellSouth's use of in-plant loading factors ("in-plants") – which convert a material price to an installed investment – but expressed some concern about the use of a single set of such factors when a UNE is deaveraged. *See FPSC UNE Rate Order* at 240-42. The FPSC thus required BellSouth to produce a "bottoms up" study for the structure and cable investments related to the loop elements "in order to determine the magnitude of discrepancies between using a loading factor approach as opposed to a 'bottoms up' approach for placements of plant directly related to loops." *Id.* at 284. The FPSC ordered "BellSouth to refile the BSTLM within 120 days from the issuance of this order explicitly modeling all cable and associated supporting structure engineering and installation placements." *Id.*

BellSouth complied with the FPSC's order. BellSouth's "bottoms up" run in Florida resulted in some loop costs increasing and some decreasing when compared to the previously established in-plant results. *See Caldwell Aff.* ¶ 14. In reviewing BellSouth's submission, the FPSC Staff expressly recognized that a "bottoms up" approach did not necessarily reduce rates: "when implemented, [the bottoms-up approach] result[s] in both increases and decreases in rates" over the rates set using in-plants.²⁹ On August 26, 2002, the Staff issued a subsequent recommendation that made adjustments to BellSouth's "bottoms up" study, and which, because of those adjustments, led to the new "bottoms up" results for loop rates being lower than the

²⁹ *See Staff Recommendation* at 72, *Investigation into Pricing of Unbundled Network Elements*, Docket No. 990649A-TP (FPSC June 3, 2002) (App. D – FL, Tab 68).

previously established in-plant results for loop rates.³⁰ At its September 6, 2002 agenda session, the FPSC set rates for loops based upon the FPSC Staff's August 26, 2002 Recommendation.³¹

Turning to switching costs, the FPSC rejected AT&T's claim that BellSouth's use of a mix of new and growth switch purchases to determine a switch discount was not forward-looking. As the FPSC explained: "We find that BellSouth's methodology is an appropriate approach to developing an average switch cost. As noted above, BellSouth applied the new switch discount to the getting started investment in all switches modeled, but used a 45% new/55% growth weighted average discount to the remaining switch investments. Contrary to AT&T witness Pitts' claim, the record indicates that prospectively 55% of BellSouth's switch line additions will be for growth additions, thus demonstrating the reasonableness of BellSouth's weighting. We find that BellSouth's selection of discounts represents a reasonable compromise." *FPSC UNE Rate Order* at 242.

Again, the FPSC's conclusion accords with prior decisions of this Commission and of the federal courts. In upholding the switching rates in New York, the Commission explicitly rejected the argument that "TELRIC does not permit recovery of the cost of 'augmented switches,' which are existing switches with capacity upgrades," and that "Bell Atlantic's proposal to recover such costs here violates TELRIC." *New York Order* ¶ 243; *see AT&T Corp. v. FCC*, 220 F.3d 607, 617-18 (D.C. Cir. 2000); *GA/LA Order* ¶ 82; *Five State Order* ¶ 80; *Caldwell Aff.* ¶¶ 119-124, 159.

³⁰ See Staff Recommendation at 14-77, *Investigation into Pricing of Unbundled Network Elements*, Docket No. 990649A-TP (FPSC Aug. 26, 2002) (App. D – FL, Tab 71); *Caldwell Aff.* ¶ 14.

³¹ See FPSC Vote Sheet at 1, *Investigation into Pricing of Unbundled Network Elements*, Docket No. 990649A-TP (FPSC Sept. 6, 2002) (App. D – FL, Tab 72); Transcript of Special Agenda Conference, *Investigation into Pricing of Unbundled Network Elements*, Docket No. 990649A-TP (FPSC Sept. 6, 2002) (App. H – FL, Tab 60); *Caldwell Aff.* ¶¶ 14, 166.

The FPSC also carefully examined competing arguments regarding the details of BellSouth's methodology for determining switch feature costs. Among other things, the FPSC considered AT&T Witness Catherine Pitts' claim that BellSouth should have used a weighted average of switch features, not a straight average, in determining the cost of an average feature, as well as BellSouth's response that such a weighted average was inappropriate because BellSouth did not know CLEC marketing plans. *See FPSC UNE Rate Order* at 251. The FPSC also noted that neither AT&T nor any other party submitted an alternative to BellSouth's methodology, and that AT&T had also failed to demonstrate the impact of using a weighted average methodology. *See id.* at 255.

Ultimately, the FPSC agreed that BellSouth's methodology was a reasonable attempt to model costs in this very complex area. The FPSC concluded that the CLEC arguments regarding feature costs were not sufficient "to throw out the entire feature cost portion of the SST model. The use of estimates is necessary in any modeling situation. The model may simulate the real world, but it is not the real world." *Id.* at 259. The attached affidavit of Daonne Caldwell demonstrates in detail why the FPSC's judgment on this issue is a reasonable one that is consistent with forward-looking cost principles. *See Caldwell Aff.* ¶¶ 119-143, 165. Among other things, Ms. Caldwell points to evidence showing that a weighted average of features would have led to *higher* feature costs than BellSouth's methodology. *See id.* ¶ 136.

The Commission should defer to the FPSC's reasonable resolution of this "complex" and "fact-intensive" issue. *Five State Order* ¶ 97. The FPSC heard the conflicting evidence on this point and made a considered judgment that BellSouth's methodology provided a reasonable method of determining forward-looking costs. While AT&T may have preferred a methodology that differed in some details from BellSouth's, that does not come close to establishing that the

FPSC made a clear TELRIC error in this extremely complicated area. As the Commission said about this precise issue in the *Five State Order*, “the Commission does not have the time or the resources during our 90-day statutory review period for section 271 applications to resolve complex technical disputes about cost model assumptions. That is why our decision-making process gives substantial weight to evidence that is submitted by the state.” *Id.* (footnote omitted). Here, the FPSC, in its order, has provided evidence that it fully considered this issue (and many others), and rejected AT&T’s claims. This Commission should not second-guess the FPSC’s determination made after a full hearing and careful deliberations.

Tennessee. The TRA set most UNE rates through Docket No. 97-01262 (App. D - TN) and rates for line sharing and a few other elements in Docket No. 00-00544 (App. F - TN). *See Ruscilli/Cox Joint Aff.* ¶¶ 121-123. CLECs had full opportunity to participate in both proceedings. *See id.* Because BellSouth submitted its cost studies in Tennessee at an earlier date than it did in Florida, it employed studies that mirror the ones that were used in Georgia and North Carolina, not those used in Louisiana and the other states this Commission has reviewed. Nevertheless, this Commission has fully reviewed these same models, as well as issues regarding BellSouth’s inputs, and determined that they created no TELRIC compliance issue. Those findings apply fully here.

Just as in Georgia and North Carolina, one key issue raised by CLECs in Tennessee was whether BellSouth’s sample-based Loop Model conflicted with TELRIC principles because it was allegedly based on an historical cost, not a forward-looking, methodology. As explained in Daonne Caldwell’s affidavit, these claims are without merit.

First, as in Georgia, there is no merit to the claim, which some parties may raise again here, that the model should have included integrated digital loop carrier (“IDLC”) in developing

costs for *stand-alone* unbundled loops. *See Caldwell Aff.* ¶¶ 85-89. The TRA ultimately required that BellSouth assume IDLC usage *only* for loop-port combinations. *See id.* ¶ 89.

That conclusion accords with this Commission's precedents. As this Commission has recognized, IDLC is integrated directly into a switch, and can only be used to provide an unbundled loop through the use of costly work-around processes, such as "side door grooming" or "multiple switch hosting." There is thus no TELRIC violation in determining that IDLC is not a forward-looking technology for providing stand-alone loops (as opposed to loops combined with switching). *See GA/LA Order* ¶ 50 (citing the *UNE Remand Order* in concluding that "there is some evidence that technical limitations associated with unbundling a stand-alone loop from an IDLC system may make IDLC more expensive than [universal digital loop carrier] in some circumstances"); *Caldwell Aff.* ¶¶ 87-88.

There is also no basis for the argument that BellSouth's loop sampling methodology does not accord with forward-looking principles. *See Caldwell Aff.* ¶¶ 36-45 (describing BellSouth's methodology in detail). In fact, BellSouth did not simply sample its existing loops; rather, it redesigned the loops in the sample to accord with forward-looking principles by, for instance, assuming digital loop carrier on loops over 12,000 feet and assuming the least cost gauge of copper on shorter loops. *See id.* ¶ 37. In sum, as the Commission stated in reviewing arguments about the same sampling methodology in Georgia, the "loops were redesigned to reflect forward-looking criteria rather than reproducing the existing network. Also, the sample assumed cable routes would follow existing rights-of-way and roads that BellSouth would use today if it were to place that cable. In addition, the sample size was statistically valid." *GA/LA Order* ¶ 36 (footnotes omitted). Moreover, as in Georgia, the TRA, after an extensive review of the sampling process, substantially altered the residential/business mix of the sampled loops (from

79.99%/20.01% to 62.89%/37.11%) to ensure TELRIC compliance. *See Caldwell Aff.* ¶ 188. By itself, that change in the sample reduced the rate for a 2-wire analog loop by approximately \$1.00 per month. *See id.*

Moreover, and again as in Georgia and North Carolina, this issue is only of academic interest. The attached affidavit of Jamshed Madan and Michael Dirmeier of the Georgetown Consulting Group demonstrates that, if the TRA had adopted the Hatfield Model sponsored by AT&T/MCI and used inputs consistent with the ones that the TRA actually ordered, BellSouth's loop rates would actually have been *higher*. *See Madan/Dirmeier Joint Aff.* ¶ 2 (App. A, Tab E). The Commission found an identical showing to be persuasive evidence of TELRIC compliance in the Georgia/Louisiana proceeding. *See GA/LA Order* ¶ 37.

The TRA also acted reasonably in determining loop inputs. It set the distribution fill factor at 50.2%, a figure that is comparable to those previously found reasonable by this Commission. *See Massachusetts Order* ¶ 39; *see also Caldwell Aff.* ¶¶ 186. The TRA also adopted AT&T's proposals as to drop lengths and adjusted BellSouth's structure-sharing assumptions. *See TRA Interim Phase 1 Order*³² at 18-19, 27-28; *Caldwell Aff.* ¶¶ 187, 189. The TRA also made numerous other adjustments to BellSouth inputs, including those relating to cost of capital (resulting in a 10.4% cost of capital) and the shared and common cost factor. *See Caldwell Aff.* ¶¶ 195-196, 198-199. No party expressly raised BellSouth's in-plant loading factors as an issue, and the CLECs ultimately advocated use of BellSouth's model (which used

³² Interim Order on Phase I of Proceeding to Establish Prices for Interconnection and Unbundled Network Elements, *Petition to Convene a Contested Case Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 (TRA Jan. 25, 1999) ("*TRA Interim Phase 1 Order*") (App. D – TN, Tab 39).

loading factors) with adjustments not relevant to that issue. *See TRA Interim Phase 2 Order*³³ at 6; *Caldwell Aff.* ¶ 192. In any event, this Commission recently carefully evaluated BellSouth's loading-factor methodology and concluded that "BellSouth's loading factors do not reflect clear errors in factual findings so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce." *Five State Order* ¶ 76; *see id.* ¶ 64 (noting that "WorldCom does not dispute BellSouth's assertion that the loading factor methodology challenged here is the same methodology that we reviewed and accepted in the Georgia/Louisiana proceeding").

In establishing switching rates, the TRA has determined switch discounts based only on new switches, as AT&T urged, and set the feature rate at \$0. *See Caldwell Aff.* ¶¶ 120, 143, 197; *TRA Final Order*³⁴ at 9.

4. Nondiscriminatory Access to OSS

Since May of this year, this Commission has twice concluded that "BellSouth provides competitive LECs nondiscriminatory access to its OSS and, thus, satisfies the requirements of checklist item 2." *GA/LA Order* ¶ 101; *Five State Order* ¶ 128. Because the OSS used by BellSouth in the seven states that have already received section 271 approval are the same as those used by BellSouth across its entire nine-state region, that finding of compliance is equally applicable to the instant Application. Just as in those seven states, therefore, BellSouth's OSS provide CLECs serving end users in Florida and Tennessee with a meaningful opportunity to

³³ *See* Second Interim Order Re: Revised Cost Studies and Geographic Deaveraging, *Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 (TRA Nov. 22, 2000) ("*TRA Interim Phase 2 Order*") (App. D – TN, Tab 59)

³⁴ *See* Final Order, *Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 (TRA Feb. 23, 2001) ("*TRA Final Order*") (App. D – TN, Tab 65).