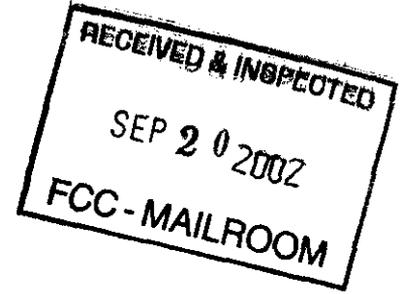


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)
)
Joint Application by BellSouth Corporation,)
BellSouth Telecommunications, Inc., And) WC Docket No. 02 - 150
BellSouth Long Distance, Inc. for Provision)
of In-Region, InterLATA Services in)
Alabama, Kentucky, Mississippi, North)
Carolina, and South Carolina)

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 2002

Released: September 18, 2002

By the Commission: Commissioner Copps issuing a statement.

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I. INTRODUCTION

1. On June 20, 2002, BellSouth Corporation and its subsidiaries, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, BellSouth) filed an application pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, interLATA service originating in the states of Alabama, Kentucky, Mississippi, North Carolina, and South Carolina.² We grant BellSouth's application

¹ We refer to the Communications Act of 1934, as amended, as the Communications Act or the Act. See 47 U.S.C. §§ 151 *et seq.*

² See *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 (filed June 20, 2002) (BellSouth Application); see also *Comments Requested on the Joint Application by BellSouth Corporation for Authorization under Section 271 of the Communications Act to Provide In-region InterLata Service in the States of Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, WC Docket No. 02-150, Public Notice, 17 FCC Rcd 11303 (2002).

in this Order based on our conclusion that BellSouth has taken the statutorily required steps to open its local exchange markets in these states to competition.

2. In ruling on BellSouth's application, we wish to acknowledge the effort and dedication of the Alabama Public Service Commission (Alabama Commission), the Kentucky Public Service Commission (Kentucky Commission), the Mississippi Public Service Commission (Mississippi Commission), the North Carolina Utilities Commission (North Carolina Commission), and the South Carolina Public Service Commission (South Carolina Commission) (collectively, state commissions), which have expended significant time and effort overseeing BellSouth's implementation of the requirements of section 271. The state commissions conducted proceedings to determine BellSouth's section 271 compliance and provided interested third parties with ample opportunities for participation in their proceedings. The state commissions also adopted a broad range of performance measures and standards,³ as well as Performance Assurance Plans designed to create a financial incentive for BellSouth's post-entry compliance with section 271. Moreover, the state commissions have committed themselves to actively monitor BellSouth's continuing efforts to open the local markets to competition. The Commission recognizes the vital role of the state commissions in conducting section 271 proceedings and their commitment to furthering the pro-competitive purposes of the Act.⁴ We commend and thank all of the states for the time and effort they spent to investigate the merits of this application.

3. We also recognize BellSouth for the progress it has made in opening its local exchange markets to competition in each of the five states subject to this application. According to BellSouth, competitive local exchange carriers (competitive LECs) provide facilities-based local service to some 202,149 lines in Alabama, 93,252 lines in Kentucky, 84,637 lines in Mississippi, 353,542 lines in North Carolina, and 143,471 lines in South Carolina.⁵ In addition, BellSouth states that competitive LECs have gained double-digit market share in Alabama (11.9 percent), North Carolina (13.4 percent), and South Carolina (11.8 percent), and have gained nearly as much market share in Mississippi (8.4 percent) and Kentucky (8.4 percent).⁶ Finally,

³ The performance metrics measuring BellSouth's performance in each of the states were calculated according to the business rules (the BellSouth Service Quality Measurement Plan or SQM) developed by the Georgia Public Service Commission (Georgia Commission). See BellSouth Application App. A, Vol. 8a, Tab K, Affidavit of Alphonso J. Varner (BellSouth Varner Aff.) at para. 5.

⁴ See, e.g., *Application of Verizon New York Inc., Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*).

⁵ BellSouth Application App. A, Vol. 7, Tab J, Affidavit of Elizabeth A. Stockdale (BellSouth Stockdale Aff.) at Tables 1, 4, 7, 10, 13.

⁶ BellSouth Reply App., Vol. 4a, Tab I, Reply Affidavit of Elizabeth A. Stockdale (BellSouth Stockdale Reply Aff.) at para. 11.

we note that, as of June 30, 2002, BellSouth states that it has provisioned approximately 15,913 loops in Alabama, 3,841 in Kentucky, 6,258 in Mississippi, 51,229 in North Carolina, and 14,901 in South Carolina.⁷

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required the Bell Operating Companies (BOCs) to demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before they would be permitted to provide in-region, interLATA long distance service. Congress empowered the Commission to review BOC applications to provide such service, and to consult with the affected state and the Attorney General.⁸

5. We rely heavily on the work completed by the state commissions in our examination of this joint application. As noted above, each of the state commissions has undertaken significant review of BellSouth's section 271 compliance. As summarized below, each commission assures us that BellSouth adheres to the pro-competitive requirements of the 1996 Act.

6. *Alabama.* On May 8, 2001, BellSouth notified the Alabama Commission of its intent to file an application to provide interLATA service in Alabama.⁹ In response, the Alabama Commission initiated a proceeding to examine BellSouth's compliance with the requirements of section 271.¹⁰ On May 22, 2002, the Alabama Commission approved BellSouth's petition for in-region, interLATA authority.¹¹

⁷ Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Aug. 14, 2002) (BellSouth August 14 OSS and Loops *Ex Parte* Letter.)

⁸ The Commission has summarized the relevant statutory framework in prior section 271 orders. *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (*Sprint v. FCC*); *Application by SBC Communications Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (2000) (*SWBT Texas 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*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC 3953, 3961-63, paras. 17-20 (1999) (*Bell Atlantic New York Order*), *aff'd, AT&T Corp v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

⁹ BellSouth Application at 8.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 9.

7. *Kentucky.* On April 26, 2001, the Kentucky Commission initiated a proceeding to advise the Commission as to whether BellSouth should be permitted to enter the in-region, interLATA market in Kentucky pursuant to section 271 of the Act.¹² The Kentucky Commission held formal hearings focusing on BellSouth's section 271 application, and issued an order "adopt[ing] the performance measures, benchmarks and retail analogs, and penalty plan adopted by the Georgia Public Service Commission."¹³ On April 26, 2002, the Kentucky Commission concluded in an Advisory Opinion that BellSouth has achieved compliance with the requirements of the competitive checklist under section 271 of the Act.¹⁴

8. *Mississippi.* On May 22, 2001, BellSouth notified the Mississippi Commission of its intent to file a section 271 application for Mississippi.¹⁵ The Mississippi Commission's proceeding, which was open to participation by all interested parties, culminated in an October 4, 2001 order concluding that BellSouth has met all legal requirements for section 271 authorization.¹⁶

9. *North Carolina.* On April 12, 2001, BellSouth notified the North Carolina Commission of its intent to file a section 271 application for North Carolina.¹⁷ The North Carolina Commission held evidentiary hearings from October 29 through November 6, 2001.¹⁸ On May 23, 2002, the North Carolina Commission released its Notice of Decision, finding that BellSouth has satisfied its obligations under the competitive checklist and Track A of the Act, and that BellSouth's entry into the interLATA market in North Carolina is consistent with the public interest.¹⁹

10. *South Carolina.* On May 16, 2001, BellSouth notified the South Carolina Commission of its intent to file an application to provide interLATA telecommunications services in South Carolina.²⁰ In response, the South Carolina Commission initiated a proceeding to examine BellSouth's compliance with the requirements of section 271. On February 14, 2002,

¹² Kentucky Commission Comments at 1.

¹³ BellSouth Application at 11.

¹⁴ Kentucky Commission Comments at 41.

¹⁵ BellSouth Application at 13.

¹⁶ *Id.* at 14.

¹⁷ *Id.* at 16.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 18.

the South Carolina Commission issued an order endorsing BellSouth's application to provide interLATA service originating in the state of South Carolina.²¹

11. The Department of Justice filed its recommendation regarding this joint application on July 30, 2002.²² The Department of Justice recommended approval of BellSouth's application for section 271 authority in the five states, stating that:

BellSouth's Application demonstrates that, in conjunction with the state commissions, it has made substantial progress in addressing issues previously identified by the department.²³

However, the Department expressed concern regarding several issues, including BellSouth's treatment of its performance metrics and its change management process for operations support systems (OSS).²⁴ In supporting approval of BellSouth's application, the Department of Justice noted that its conclusions were "subject to the Commission's review of the concerns expressed in this Evaluation."²⁵ Based on our analysis of these and other issues, we grant BellSouth's application.

III. EVIDENTIARY CASE

12. As a threshold matter, we address challenges to the validity of the data submitted by BellSouth. As BellSouth's data are important to its showing of compliance with several different checklist items, it is appropriate for us to dispose of this issue before addressing compliance with each checklist item.²⁶ BellSouth has submitted performance metric data with its

²¹ *Id.*

²² Section 271 (d)(2)(A) requires us to give "substantial weight" to the Department's evaluation. 47 U.S.C. § 271(d)(2)(a).

²³ Department of Justice Evaluation at 15.

²⁴ *Id.* at 8, 10, 11.

²⁵ *Id.* at 3.

²⁶ We note that the Commission discussed the importance of data validity issues in the *Bell Atlantic New York Order*, *SWBT Texas Order*, *Verizon Massachusetts Order*, and *BellSouth Georgia/Louisiana Order*. See *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9027, para. 16 (2002) (*BellSouth Georgia/Louisiana Order*); *Bell Atlantic New York Order*, 15 FCC Rcd at 3959, para. 11 (stating that the monthly review by the New York Commission of Bell Atlantic's raw data, the collaborative proceedings conducted by the New York Commission concerning the performance metrics, and the review by KPMG and the New York Commission of Bell Atlantic's internal controls surrounding the data collection process ensured that the performance data were accurate, consistent, and meaningful); *SWBT Texas Order*, 15 FCC Rcd at 18377-78, para. 57 (noting that SWBT's data had been subject to scrutiny and review by interested parties, to a large extent its accuracy had not been contested, and in those instances where it had been disputed, the Commission looked first to the results of data reconciliations between SWBT and competing carriers); *Verizon Massachusetts Order*, 16 FCC Rcd at 9058-59, para. 129 (claiming that (continued....))

application as evidence of meeting its nondiscriminatory requirements under the checklist. Each of the state commissions adopted the same SQM Plan that BellSouth used in Georgia and Louisiana for purposes of assessing section 271 compliance, and the audits and other checks on data reliability that we previously relied upon are also applicable here.²⁷ The SQM was developed in an open, collaborative proceeding conducted by the Georgia Commission.²⁸ The Georgia performance metric data has been subject to three audits ordered by the Georgia Commission, of which the first two are almost complete and the third is still in progress.²⁹

13. In its evaluation, the Department of Justice expressed concern about BellSouth's alleged implementation of changes to the performance metrics without notification to competing LECs and regulators until after the changes were implemented.³⁰ Commenters also contend that BellSouth did not provide competitive LECs with adequate prior written notice when it implemented the Performance Measurement Analysis Platform (PMAP) 4.0.³¹ We agree with the Department of Justice that, because of the potential impact on the reliability and usefulness of reported performance data, BOCs should provide adequate advanced notice and obtain prior regulatory approval of proposed changes to performance data.³² We find, however, that there is no evidence in the record that BellSouth's alleged failure to provide competitive LECs prior written notice impaired the quality or reliability of BellSouth's data during the relevant period. In addition, the record makes clear that, at the time, there was no formal process that required BellSouth to provide notice or obtain approval prior to changing metrics. We note, however, that BellSouth has committed itself to following a new formal notification process recently ordered by the Georgia Commission in the applicant states,³³ in which regulators and competing

(Continued from previous page) _____

when performance metric data are challenged and have not been audited, competing carriers should be given access to their carrier-specific data, and to the underlying data used for any special studies of the BOC's performance).

²⁷ BellSouth Varner Aff. at paras. 5, 26-55; *see also* BellSouth Application at 24.

²⁸ BellSouth Varner Aff. at paras. 14-25.

²⁹ One exception remains open for the first two audits. BellSouth Varner Aff. at paras. 127-59. An "exception" is a designation made by KPMG that identifies a problem with BellSouth's performance encountered by KPMG in the course of its audit and test, which KPMG was unable to resolve. BellSouth Application Mississippi App. E, Tab 29, KPMG OSS Evaluation at II-6.

³⁰ Department of Justice Evaluation at 12-14. The Department noted, in particular, that the changes in the calculation of the region-wide Service Order Accuracy metrics, and the conversion from the PMAP 2.6 data platform to PMAP 4.0, were made without advance public notice and regulatory review and approval. *Id.* at 12-13. The Department argued that advance notice was needed for three reasons: "First, metrics calculated under new rules may no longer be directly comparable to metrics previously reported. Second, changes to audited measures limit the applicability of those audits. Third, changes could have substantive implications on commission-established rules." Department of Justice Evaluation at 13-14.

³¹ *See, e.g.*, AT&T Comments App., Vol. IV, Declaration of Cheryl Bursh and Sharon Norris (AT&T Bursh/Norris Decl.) at para. 16.

³² Department of Justice Evaluation at 13.

carriers will be notified by BellSouth of proposed changes to the metrics at least one month before they take effect. This will give competing carriers an opportunity to comment on any proposed changes, and the state commissions the opportunity to review them.³⁴ This process should meet the Department of Justice's concerns about the allegation that BellSouth has unilaterally implemented changes to the metrics without advance notice or regulatory approval.³⁵

14. AT&T and ITC^DeltaCom also challenge the validity of the data provided by BellSouth. Specifically, they claim that there are numerous discrepancies and errors in the reported data;³⁶ the business rules were not implemented properly;³⁷ the pattern of restatements of the data by BellSouth and BellSouth's acknowledgements of problems with certain metrics indicate that the data are not stable enough to be relied upon;³⁸ and the data discrepancies uncovered when BellSouth switched from the PMAP 2.6 to the PMAP 4.0 data platform demonstrate that the data submitted in this proceeding using PMAP 2.6 are inaccurate, and raise serious questions concerning the integrity of the data using PMAP 4.0.³⁹ They also argue that BellSouth unilaterally changed the rules by which the metrics are calculated after the Georgia Commission had approved them, and does not follow a formal established change control

(Continued from previous page)

³³ BellSouth Varner Aff. at paras. 111-16; BellSouth Application Reply App., Vol. 4a, Tab J, Reply Affidavit of Alphonso J. Varner (BellSouth Varner Reply Aff.) at paras. 5-14. In response to an emergency motion filed in Georgia by the Southeast Competitive Carriers Association (SECCA), which represents competing LECs, BellSouth and SECCA reached a settlement agreement on setting up a workshop to discuss the establishment of a formal notification process, and to allow participants to question BellSouth about recent changes it has made to the metric calculations. This agreement was approved by the Georgia Commission on June 18, 2002. BellSouth Varner Aff. at paras. 111-13 & Exh. PM-29. On July 2, 2002, the Georgia Commission approved a staff recommendation, based on an agreement between BellSouth and SECCA, that established a formal notification process for changes to performance metrics. The Georgia Commission ordered, among other things, that BellSouth provide one month's notice of proposed changes to the metrics and provide regulators and competing carriers an opportunity to ask questions, and established a process for commenters to file comments, and for the Georgia Commission to block the changes if it chooses. BellSouth Varner Reply Aff. at paras. 7-9 & Exh. PM-1.

³⁴ BellSouth Varner Aff. at paras. 111-16; BellSouth Varner Reply Aff. at paras. 5-14 & Exh. PM-1.

³⁵ Department of Justice Evaluation at 12-14. We will monitor BellSouth's compliance with its obligation to provide notice. If evidence becomes available to the Commission sufficient to show a systemic problem with BellSouth's change management notification process, we will pursue appropriate enforcement action.

³⁶ AT&T Bursh/Norris Decl. at paras. 35-40; AT&T Reply App., Tab E, Reply Declaration of Cheryl Bursh and Sharon Norris (AT&T Bursh/Norris Reply Decl.) at paras. 11-20; Letter from Alan C. Geolot, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 6 (filed Aug. 23, 2002) (AT&T August 23 OSS and Data Integrity *Ex Parte* Letter).

³⁷ AT&T Bursh/Norris Decl. at paras. 41-58; ITC^DeltaCom Comments at 2.

³⁸ AT&T Bursh/Norris Decl. at paras. 59-62; ITC^DeltaCom Comments at 2-3. ITC^DeltaCom recommends that the Commission conduct an annual audit of BellSouth's performance data. ITC^DeltaCom Comments at 3.

³⁹ AT&T Bursh/Norris Reply Decl. at paras. 23-43; AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 5-8.

process for changing the metric calculations and notifying others of changes.⁴⁰ Commenters contend that the lack of a completed audit and the problems found by KPMG in its Georgia and Florida audits of BellSouth's metric data, demonstrate that the data are unreliable,⁴¹ and BellSouth has failed to meaningfully engage in data reconciliations as it had promised.⁴²

15. BellSouth argues that its internal and external controls and checks ensure that its data continue to be reliable.⁴³ BellSouth observes that the data have been subjected to repeated audits and regular review by state commissions in which competing carriers may raise concerns.⁴⁴ It asserts that it has developed a data platform that is regional, reliable, accurate, and open to inspection by competing LECs and regulators.⁴⁵ Regarding the conversion from PMAP 2.6 to PMAP 4.0, BellSouth further states that this was an incremental upgrade of its processing infrastructure that was necessary to increase the capacity of its system, improve its auditability, and allow BellSouth to provide state-specific measurements in North Carolina and Florida, as required by the North Carolina and Florida Commissions.⁴⁶ BellSouth further contends that PMAP 2.6 and PMAP 4.0 generated "substantially similar" results when applied to the same month's data, and provided extensive evidence to demonstrate that the data discrepancies that appeared were small, and were mostly caused by corrections to errors in PMAP 2.6's calculations and by PMAP 4.0's improved ability to properly identify and classify orders.⁴⁷

⁴⁰ AT&T Bursh/Norris Decl. at paras. 10-21; ITC^DeltaCom Comments at 2-3; AT&T Bursh/Norris Reply Decl. at paras. 44-52; AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 5-6.

⁴¹ AT&T Bursh/Norris Decl. at paras. 63-75; AT&T Bursh/Norris Reply Decl. at para. 43; AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at n.12.

⁴² AT&T Bursh/Norris Decl. at paras. 22-34; ITC^DeltaCom Comments at 2; AT&T Bursh/Norris Reply Decl. at paras. 9, 21-22; AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 5-6. AT&T proposes that a formal procedure be put into place, with detailed deadlines for BellSouth to respond to competing LEC requests for data reconciliation. AT&T Bursh/Norris Reply Decl. at para. 22; Letter from Joan Marsh, Director – Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 Attach. at 2-3 (filed Sept. 9, 2002) (AT&T September 9 *Ex Parte* Letter).

⁴³ BellSouth Varner Aff. at paras. 117-26.

⁴⁴ *Id.* at paras. 125, 127-59.

⁴⁵ *Id.* at paras. 56-73. The PMAP database processes two billion records composing 200 Gigabytes each month to produce the Monthly State Summary (MSS) and SQM performance metric reports made available to regulators and competing LECs. It currently contains a total of 2.5 Terabytes of data. *Id.* at paras. 65-66.

⁴⁶ *Id.* at paras. 74-88.

⁴⁷ BellSouth Varner Aff. at paras. 89-103; Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed July 18, 2002) (BellSouth July 18 PMAP 4 System Analysis *Ex Parte* Letter); Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Aug. 5, 2002) (BellSouth August 5 *Ex Parte* Letter); BellSouth Varner Reply Aff. at paras. 148-240.

16. As we did in the *BellSouth Georgia/Louisiana Order*, we find that, as a general matter, BellSouth's performance metric data are accurate, reliable, and useful. This is based on extensive third party auditing,⁴⁸ the internal and external data controls,⁴⁹ BellSouth's making available the raw performance data to competing carriers and regulators,⁵⁰ BellSouth's readiness to engage in data reconciliations,⁵¹ and the oversight and review of the data, and of proposed changes to the metrics, provided by state commissions. We are prepared to pursue appropriate enforcement action if evidence becomes available to the Commission sufficient to show that incorrect data were submitted to the Commission in violation of Commission rules.

17. We also find the PMAP 4.0 metric results sufficient to rely on for purposes of our analysis of BellSouth's performance in the five states during the relevant period. BellSouth recently converted from the PMAP 2.6 to the PMAP 4.0 data platforms, and this change is first reflected in the April 2002 metric report. BellSouth and others have noted that there were certain discrepancies between the reports produced by the two platforms for the same month's data, and commenters have suggested that these discrepancies prove that the performance metric data are too unreliable to use.⁵² We disagree. Rather, we find, based on the evidence currently before us provided to us by BellSouth concerning the metrics involved, and the sizes and causes of the differences in results, that, for the relevant period, the discrepancies were usually small, often involving just a handful of orders, and that any discrepancies affecting the key metrics we traditionally rely on were too small to affect our analysis for the most important product categories.⁵³ We note that the current audit of the data in Georgia, part of which had audited the PMAP 2.6 data, will be extended to PMAP 4.0, and that the Georgia Commission will review the implementation of 4.0.⁵⁴ To ensure consistency in our data review, we do not rely on the February performance metric data, which was generated by PMAP 2.6, and instead rely on four months of data generated by PMAP 4.0 for March 2002 through June 2002.⁵⁵

⁴⁸ BellSouth Varner Aff. at paras. 125, 127-59.

⁴⁹ *Id.* at paras. 117-26.

⁵⁰ *Id.* at paras. 56-73.

⁵¹ BellSouth Varner Reply Aff. at paras. 15-24.

⁵² BellSouth Varner Aff. at paras. 92-103; AT&T Bursh/Norris Reply Decl. at paras. 23-43.

⁵³ BellSouth Varner Aff. at paras. 89-103; BellSouth July 18 PMAP 4 System Analysis *Ex Parte* Letter; BellSouth August 5 *Ex Parte* Letter; BellSouth Varner Reply Aff. at paras. 148-240.

⁵⁴ BellSouth Varner Aff. at paras. 104-08 & Exh. PM-29.

⁵⁵ Although the change from PMAP 2.6 to PMAP 4.0 took place in April 2002, BellSouth recalculated the March 2002 data for each of the five states and Georgia using PMAP 4.0 and submitted the results. *See, e.g.*, Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed July 3, 2002) (BellSouth July 3 Alabama PMAP 4.0 Data *Ex Parte* Letter); Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed July 3, 2002) (BellSouth July 3 North Carolina PMAP 4.0 Data *Ex Parte* Letter).

18. We reject AT&T and ITC^DeltaCom's argument that BellSouth's deficiencies in data reconciliation processes with competitive LECs preclude our reliance on BellSouth's data. While it is in general difficult to determine whether one side or the other failed to act in good faith in this area, either because they did not make reasonable attempts to set up meetings, or did not provide reasonable requests for information, or provided inadequate responses to such requests, BellSouth has provided evidence that it has responded to AT&T's and ITC^Deltacom's requests to meet, and did provide answers to questions about the data.⁵⁶ We note the importance of engaging in data reconciliation with requesting carriers, and of making the appropriate subject matter experts available for answering questions, and expect BellSouth to maintain this policy.⁵⁷ We cannot overstate the importance that BellSouth meet with competing carriers that have concerns about BellSouth's published performance metric data and, when appropriate, engage in data reconciliation with carriers.

19. For all these reasons, we find that BellSouth's data is sufficiently reliable for purposes of our section 271 analysis.⁵⁸ However, where specific credible challenges have been made to the BellSouth data, particularly with respect to checklist items 2 and 4, we will exercise our discretion to give that data lesser weight, and, as, discussed more fully below, look to other evidence in evaluating whether BellSouth has met its obligations under section 271. Independent of our section 271 determination here, we note that access to complete and accurate data will be important to the Commission's assessment of BellSouth's future performance for section 271(d)(6) compliance. As discussed below, BellSouth is required to report to the Commission all monthly MSS performance metrics reports and Self-Effectuating Enforcement Mechanism (SEEM) monthly reports for each of the five states. Failure to provide complete and accurate data to the Commission could result in enforcement action.

IV. PRIMARY ISSUES IN DISPUTE

20. As in past section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish checklist compliance with every checklist item. Rather, we rely on the legal and analytical precedent established in prior section 271 orders, and we attach comprehensive appendices containing performance data and the statutory framework for evaluating section 271 applications.⁵⁹ Our conclusions in this Order are based on,

⁵⁶ BellSouth Varner Reply Aff. at paras. 15-24 & Exhs. PM-6, 6a.

⁵⁷ We encourage commenters that are dissatisfied with BellSouth's current policy to raise the need for a more formal process before the relevant state commissions.

⁵⁸ We note that our approval of this application is based upon the evidence before us, including the metric data submitted. If new evidence becomes available, such as exceptions found by KPMG as part of its audit, which demonstrate that there are significant problems with the metric data, this may have a significant impact on our evaluation of the metric evidence in future section 271 applications. In addition, if such new evidence demonstrates that BellSouth is not meeting its section 271 obligations in the five states, this may constitute grounds for an enforcement action under section 271(d)(6). See 47 U.S.C. § 271(d)(6).

⁵⁹ See generally: Appendices B (Alabama Performance Data), C (Kentucky Performance Data), D (Mississippi Performance Data), E (North Carolina Performance Data), F (South Carolina Performance Data), G (Georgia (continued....))

among other things, performance data as reported in monthly performance reports reflecting service in the most recent months before filing (March 2002 through June 2002).⁶⁰

21. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing whether the application qualifies for consideration under section 271(c)(1)(A) (Track A), which requires the presence of facilities-based competitors serving both residential and business customers. Next, we address checklist item number 2, which encompasses access to unbundled network elements.⁶¹ We then address checklist item numbers 1, 4, 5, 8, 10, 11, and 12, which cover interconnection, access to unbundled local loops, transport, directory listings, databases and associated signaling, number portability, and dialing parity, respectively. The remaining checklist items are discussed briefly as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that BellSouth has satisfied these requirements. Finally, we discuss issues concerning compliance with section 272 and the public interest requirements.

A. Compliance with Section 271(c)(1)(A)

22. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).⁶² To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."⁶³ The Act states that "such telephone

(Continued from previous page)

Performance Data), and H (Statutory Requirements). See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9240, Apps. B, C.

⁶⁰ We examine data through June 2002 because such data performance occurred before comments were due in this proceeding on July 11, 2002. See *SWBT Texas Order*, 15 FCC Rcd at 18372, para. 39.

⁶¹ We note that the United States Court of Appeals for the District of Columbia Circuit recently opined in two relevant Commission decisions. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Doc. No. 98-147 and Fourth Report and Order in CC Doc. No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*). *USTA v. FCC*, 290 F.3d 415 (D. C. Cir. 2002), petition for rehearing and suggestion for rehearing en banc denied Sept. 4, 2002. The court's decision addressed both our UNE rules and our line sharing rules. The Commission is currently reviewing its UNE rules, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 22781 (2001) (*Triennial Review Notice*). Further, the court stated that "the *Line Sharing Order* must be vacated and remanded." *USTA v. FCC*, 290 F.3d at 429. The court also stated that it "gran[ed] the petitions for review[] and remand[ed] the *Line Sharing Order* and the *Local Competition Order* to the Commission for further consideration in accordance with the principles outlined." *Id.* at 430. On September 4, 2002, the D.C. Circuit denied petitions for rehearing filed by the Commission and others. See *Order*, Nos. 00-1012 and 00-1015 (D.C. Cir. filed Sept. 4, 2002).

⁶² 47 U.S.C. § 271(d)(3)(A).

⁶³ *Id.*

service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."⁶⁴ The Commission has concluded that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers,⁶⁵ and that unbundled network elements are a competing provider's "own telephone exchange service facilities" for purposes of section 271(c)(1)(A).⁶⁶ The Commission has further held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"⁶⁷ which a BOC can do by demonstrating that the provider serves "more than a de minimis number" of subscribers.⁶⁸ The Commission has interpreted Track A not to require any particular level of market penetration, however, and the D.C. Circuit has affirmed that the Act "imposes no volume requirements for satisfaction of Track A."⁶⁹

23. We conclude that BellSouth satisfies the requirements of Track A in Alabama. We base this decision on the interconnection agreements BellSouth has implemented with competing carriers in Alabama and the number of firms that provide local telephone exchange service, either exclusively or predominantly over their own facilities, to residential and business customers.⁷⁰ In support of its Track A showing, BellSouth relies on interconnection agreements with, among others, Birch, ICG Communications, ITC^DeltaCom, and Knology.⁷¹ Each of these carriers has an approved interconnection agreement with BellSouth, and each provides facilities-

⁶⁴ *Id.*

⁶⁵ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20589, para. 85 (1997) (*Ameritech Michigan Order*); see also *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20633-35, paras. 46-48 (1998) (*Second BellSouth Louisiana Order*).

⁶⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20598, para. 101.

⁶⁷ *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695, para. 14 (1997) (*SWBT Oklahoma Order*).

⁶⁸ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6257, para. 42; see also *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 78.

⁶⁹ *Sprint v. FCC*, 274 F.3d at 553-54; see also *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998) (*SBC v. FCC*) ("Track A does not indicate just how much competition a provider must offer either the business or residential markets before it is deemed a 'competing' provider.")

⁷⁰ BellSouth Application at 20-21; see also BellSouth Stockdale Aff. at paras. 6a, 57 & Exhs. ES-1, ES-6, ES-11-ES-13 (citing confidential information).

⁷¹ BellSouth Application at 20-21; BellSouth Stockdale Aff. at paras. 17, 19 & Table 2.

based service to both business and residential customers.⁷² We find that each of these carriers serves more than a *de minimis* number of residential and business customers predominantly over its own facilities and represents an “actual commercial alternative” to BellSouth in Alabama.⁷³ No commenter has challenged BellSouth’s assertion that it satisfies the requirements for Track A in Alabama.

24. In Kentucky, we also find that BellSouth demonstrates that it satisfies the requirements of Track A based on the interconnection agreements it has implemented with competing carriers and the numerous carriers providing facilities-based service to residential and business customers in this market.⁷⁴ In support of its Track A showing, BellSouth relies on interconnection agreements with, among others, AT&T and The Other Phone Company (AccessOne, Talk.Com, Omnicall).⁷⁵ The record demonstrates that each of these carriers serves more than a *de minimis* number of residential and business customers via UNE-P or full-facilities lines.⁷⁶ Thus, we find that there is an “actual commercial alternative” to BellSouth in Kentucky and that BellSouth satisfies the requirements of Track A in Kentucky. No commenter has challenged BellSouth’s assertion that it satisfies the requirements for Track A in Kentucky.

25. Based on the evidence in the record, we find that BellSouth satisfies Track A in Mississippi. In support of its showing, BellSouth cites interconnection agreements with, among others, ExpeTel (LS-One) and The Other Phone Company (AccessOne, Talk.Com, Omnicall), each of which independently satisfies the requirements of Track A.⁷⁷ We find that each of these carriers serves more than a *de minimis* number of residential and business customers predominantly over its own facilities. This represents an “actual commercial alternative” to BellSouth in Mississippi, and thus we conclude that BellSouth satisfies the requirements of Track A in that state. No commenter has challenged BellSouth’s assertion that it satisfies the requirements for Track A in Mississippi.

26. We also find that BellSouth satisfies the requirements of Track A in North Carolina. We base this conclusion on interconnection agreements BellSouth has implemented with competitive LECs, and the numerous carriers providing facilities-based service to

⁷² BellSouth Stockdale Aff. at para. 19; BellSouth Stockdale Reply Aff. at Exhs. ES-3-ES-4 (*citing confidential information*).

⁷³ *SWBT Oklahoma Order*, 12 FCC Rcd at 8695, para. 14.

⁷⁴ BellSouth provides evidence that there are at least 28 facilities-based providers in Kentucky. BellSouth Application at 21; BellSouth Stockdale Aff. at para. 27 & Table 5.

⁷⁵ BellSouth Application at 21; BellSouth Stockdale Aff. at para. 29 & Exh. ES-7; BellSouth Application Appendix B-Kentucky.

⁷⁶ BellSouth Stockdale Aff. at Exhs. ES-14-ES-16 (*citing confidential information*); Stockdale Reply Aff. at Exhs. ES-4-ES-5 (*citing confidential information*).

⁷⁷ BellSouth Stockdale Aff. at para. 37 & Table 8 & Exh. ES-8; BellSouth Stockdale Reply Aff. at para. 37 & Exhs. ES-6-ES-7 (*citing confidential information*); BellSouth Application Appendix B-Mississippi.

residential and business customers in North Carolina.⁷⁸ Among these facilities-based providers are Business Telecom (BTI), CTC Exchange Services, MCI/Worldcom, and Time Warner, each of which serves more than a *de minimis* number of residence and business lines.⁷⁹ Notably, the North Carolina Commission concludes that even the most conservative estimates show that competitive LECs serve more than a *de minimis* number of residential lines through their own facilities, and that the number of both residential and business lines served by competitive LECs is more than sufficient to show that there are competitive alternatives to BellSouth in North Carolina.⁸⁰ Given this evidence, we conclude that BellSouth satisfies the requirements of Track A in North Carolina. No commenter has challenged BellSouth's assertion that it satisfies the requirements for Track A in North Carolina.

27. Finally, we find that BellSouth satisfies the requirements of Track A in South Carolina based on interconnection agreements it has implemented with competitive carriers in South Carolina.⁸¹ The record demonstrates that Birch, ITC^DeltaCom, Knology, and The Other Phone Company (AccessOne, Talk.Com, Omnicall) each serve more than a *de minimis* number of residential and business customers predominately over their own facilities and represent an "actual commercial alternative" to BellSouth in South Carolina.⁸² Given this evidence, we conclude that BellSouth satisfies the requirements of Track A in South Carolina. No commenter has challenged BellSouth's assertion that it satisfies the requirements for Track A in South Carolina.

B. Checklist Item 2 – Unbundled Network Elements

28. Checklist item 2 of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.⁸³ Section 251(c)(3) requires incumbent LECs to provide

⁷⁸ BellSouth Stockdale Aff. at para. 43.

⁷⁹ BellSouth Stockdale Aff. at para. 44; BellSouth Stockdale Reply Aff. at Exhs. ES-8-ES-9 (*citing confidential information*).

⁸⁰ North Carolina Commission Comments at 255.

⁸¹ BellSouth Application at 23.

⁸² *Id.* See also BellSouth Stockdale Reply Aff. at Exhs. ES-10-ES-11 (*citing confidential information*).

⁸³ 47 U.S.C. § 271(B)(ii). Overturning a 1997 decision of the Eighth Circuit Court of Appeals, on May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of unbundled network elements "not ordinarily combined in the incumbent LEC's network" and to "combine unbundled network elements with the elements possessed by the requesting telecommunications carrier." *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646 (2002). In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999).

"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."⁸⁴

1. Pricing of Unbundled Network Elements

29. Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates for network elements must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.⁸⁵ Pursuant to this statutory mandate, the Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements.⁸⁶

30. In applying the Commission's TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state's pricing determinations.⁸⁷ We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."⁸⁸ We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

31. Commenters in these proceedings assert numerous challenges to BellSouth's pricing that were never raised before the state commissions. Just as it is impractical for us to conduct a *de novo* review of the state commissions' pricing determinations, it is likewise generally impractical for us to make determinations about issues that were not specifically raised before the state commissions in the first instance. During the course of their UNE pricing proceedings, the state commissions are able to cross examine witnesses, compel discovery, and direct the submission of additional record evidence on particular issues. This Commission lacks the time to employ such tools during the course of the 90-day statutory review period for section 271 applications. Without the means to test and evaluate evidence during this short statutory

⁸⁴ 47 U.S.C. § 251(c)(3).

⁸⁵ 47 U.S.C. § 252(d)(1).

⁸⁶ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition Order*); 47 C.F.R. §§ 51.501-51.515. The Supreme Court has recently upheld the Commission's forward-looking pricing methodology in determining the costs of UNEs. *Verizon v. FCC*, 122 S. Ct. at 1679.

⁸⁷ *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17453, para. 55 (2001) (*Verizon Pennsylvania Order*) (citations omitted); see also *Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

⁸⁸ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55.

review period, and without a state record to analyze with respect to issues not raised before the state commissions, we are often left to resolve factually complex issues based simply on the untested written assertions of various experts.

32. We take this opportunity to set forth the analytical framework we employ to review section 271 applications in these situations. As the Commission's previous decisions make clear, a BOC may submit as part of its *prima facie* case a valid pricing determination from a state commission. In such cases, we will conclude that the BOC meets the TELRIC pricing requirements of section 271,⁸⁹ unless we find that the determination violates basic TELRIC principles or contains clear errors of fact on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.⁹⁰ Once the BOC makes a *prima facie* case of compliance, the objecting party must proffer evidence that persuasively rebuts the BOC's *prima facie* showing. The burden then shifts to the BOC to demonstrate the validity of its evidence or the state commission's approval of the disputed rate or charge.⁹¹ When a party raises a challenge related to a pricing issue for the first time in the Commission's section 271 proceedings without showing why it was not possible to raise it before the state commission, we may exercise our discretion to give this challenge little weight. In such cases, we will not find that the objecting party persuasively rebuts the *prima facie* showing of TELRIC compliance if the BOC provides a reasonable explanation concerning the issue raised by the objecting party.

33. With these principles in mind and after thoroughly reviewing the record in this application, we find that BellSouth's UNE rates in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1). We therefore find that BellSouth's UNE rates in the five states satisfy checklist item 2. Before we discuss commenters' arguments and our conclusions, we summarize the pricing proceedings in each of the five states.

⁸⁹ When a state commission makes a determination that rates are TELRIC-compliant, it may not have explicitly analyzed every component of such rates, particularly when no party has taken issue with the component. Indeed, we do not provide extensive analysis on checklist items that receive little or no attention from commenters when our own review of the record leads us to conclude that the BOC has satisfied these requirements.

⁹⁰ See, e.g., *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12305, para. 68 (2002) (*Verizon New Jersey Order*).

⁹¹ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20635-39, paras. 51-59.

a. Background

34. *Alabama.* By order dated August 25, 1998, the Alabama Commission first established UNE rates for BellSouth in Docket 26029.⁹² On October 5, 2000, the Alabama Commission opened Docket 27821 to establish interim and/or permanent rates for xDSL loops and related elements and services. After initially denying a BellSouth motion to consolidate Docket 26029 (xDSL) with Docket 25980 (UNE rates), the Alabama Commission reconsidered, finding that “a combined proceeding for BellSouth would result in the most efficient use of the resources of all parties, including the [Alabama] Commission, and would minimize the possibility of duplicative proceedings and inconsistent decisions by the [Alabama] Commission.”⁹³ Hearings on the newly combined docket were held on May 14-18, 2001. A total of 20 witnesses testified, and additional witnesses filed written testimony on behalf of the various parties, including BellSouth, ITC^DeltaCom, Covad, BroadSlate, WorldCom, and SECCA.

35. In its *UNE Rate Order*, the Alabama Commission stated that, in evaluating BellSouth’s UNE pricing, it followed the Commission’s TELRIC pricing rules.⁹⁴ The Alabama Commission also adopted the following BellSouth cost models: (1) the BellSouth Telecommunications Loop Model (BSTLM) to support the cost development for UNEs, service-specific loops, and UNE combinations; (2) the Model Office Module of Telecordia’s Switching Cost Information System Model (SCIS/MO) and the Simplified Switching Tool (SST) Model to support the cost development for all switch-related elements, including ports, usage, and vertical features; (3) the BellSouth Cost Calculator, which converts input data (material prices/investments by field reporting code, recurring additives, non-recurring additives, and work times by job function code) into non-recurring costs; (4) the Capital Cost Calculator, which produces depreciation, cost of money, and income tax factors that are applied to investments to calculate capital costs; and (5) the Loop Multiplexer, Digital Loop Carrier (DLC), SONET, and DS-1 price calculators, which develop the material price of specialized components used in provisioning various network capabilities.⁹⁵ None of the competitive LECs proposed alternative models but focused their challenges on the inputs BellSouth used in its models.⁹⁶ Although the Alabama Commission determined that BellSouth’s several cost models were appropriate for the purpose of adopting TELRIC-compliant rates, it adjusted many inputs to the models.⁹⁷

⁹² See *Generic Proceeding to Establish Prices for Interconnection Services and Unbundled Network Elements*, Alabama Public Service Commission, Order, Docket No. 27821 (May 31, 2002) (*UNE Rate Order* or *Alabama Commission UNE Rate Order*) at 2.

⁹³ *Id.* at 8.

⁹⁴ *Id.* at 11-12.

⁹⁵ *Id.* at 13-14.

⁹⁶ *Id.* at 18.

⁹⁷ *Id.*

36. With regard to the BSTLM, the Alabama Commission accepted BellSouth's use of five different scenarios to set TELRIC rates and reduced BellSouth's recurring loop rates by 17.5 percent.⁹⁸ In setting non-recurring rates, however, BellSouth did not rely on a cost model but instead chose to make estimates of the work times for activities required to provision each element.⁹⁹ BellSouth subject matter experts calculated the probability of each activity occurring.¹⁰⁰ These estimates were then entered into the BellSouth Cost Calculator on the non-recurring input sheet by element and multiplied by the appropriate labor rate.¹⁰¹ After considering all of the evidence in the record, the Alabama Commission discounted non-recurring charges by 50 percent, with the exception of certain xDSL non-recurring charges, which were reduced by 53 percent.¹⁰²

37. The Alabama Commission also addressed a number of other pricing issues in the *UNE Rate Order*, including collocation costs, xDSL loops, loop conditioning, UNE deaveraging, line splitting and sharing, and UNE combinations. The Alabama Commission stated that it would entertain requests in the future for rate modification that are appropriately supported and filed.¹⁰³

38. *Kentucky*. The Kentucky Commission established UNE prices and the methodology for establishing UNE and interconnection rates on December 18, 2001, following an extensive two-year proceeding.¹⁰⁴ The proceeding included three rounds of data requests and responses,¹⁰⁵ as well as informal conferences with the parties.¹⁰⁶ In addition to reviewing the

⁹⁸ *Id.* at 24-25, 40-41. BellSouth separately determines prices for loop and ports on a stand-alone basis and loops and ports in combination. See section IV.B.1.b.(i), *infra*. The Commission previously approved this "multiple scenario" pricing methodology in the *BellSouth Georgia/Louisiana Order*. See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9041, para. 38.

⁹⁹ *Alabama Commission UNE Rate Order* at 40.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 42.

¹⁰³ *Id.* at 90.

¹⁰⁴ BellSouth Application App. D, Vol. 2, Tab 17, Administrative Case No. 382, *Kentucky Commission's Inquiry into the Development of Deaveraged Rates for Unbundled Network Elements* (Dec. 18, 2001) (*Kentucky Commission UNE Rate Order*). The Kentucky Commission noted also that it had previously established methodologies, interconnection prices, and UNE prices through arbitration proceedings. *Id.* at 2 (citing Case Nos. 96-431, *Petition by MCI for Arbitration of Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996*, and 96-478, *The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. [sic]*).

¹⁰⁵ *Kentucky Commission UNE Rate Order* at 6.

¹⁰⁶ *Id.* at 8.

record in its own proceeding, the Kentucky Commission reviewed the records and decisions of other commissions in the BellSouth region regarding the development of UNE rates.¹⁰⁷ In conducting its evaluation of UNE rates, staff from the Kentucky Commission, along with staff from the Alabama Commission, traveled to the offices of the Florida Commission to discuss “cost study models, inputs and expected results.”¹⁰⁸ Although the Kentucky Commission specifically solicited requests for a live hearing, no party requested a hearing.¹⁰⁹

39. During the proceeding, there was “little, if any, dispute regarding the use of the models submitted by BellSouth,”¹¹⁰ which, as in Alabama and Louisiana, included BSTLM, SCIS/MO, SST, the BellSouth Cost Calculator, the Capital Cost Calculator, the SNET Price Calculator, and DS-1 Channelization Price Calculator.¹¹¹ The BellSouth Cost Calculator, used to determine non-recurring rates, included BellSouth estimates of work times for activities required to provision each element and the probability of each activity occurring.¹¹² Only WorldCom and SECCA filed a rebuttal to the cost studies and testimony submitted by BellSouth,¹¹³ which the Kentucky Commission evaluated in its Order.

40. The Kentucky Commission adopted the results of a late-filed run of BellSouth’s cost models, which resulted in an additional 17.7 percent reduction in UNE rates.¹¹⁴ During the course of the proceeding, the Kentucky Commission approved a joint stipulation specifying certain deaveraged rates applying to a limited number of commonly sought network elements.¹¹⁵ In concluding its proceeding, the Kentucky Commission adopted rates that it found to be “reasonable, forward-looking, TELRIC-based prices,” while also advising that it would “continually monitor the appropriateness of these rates.”¹¹⁶ Additionally, the Kentucky Commission ordered BellSouth to submit copies of all documents and information supplied to

¹⁰⁷ *Id.* at 6.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 8.

¹¹¹ *Id.* at 9-11.

¹¹² *Id.* at 30-31.

¹¹³ *Id.* at 5.

¹¹⁴ *Id.* at 35.

¹¹⁵ The Joint Stipulation was filed by AT&T of the South Central States, Inc., BellSouth, Cincinnati Bell Telephone, GTE South Inc. n/k/a Verizon South, Inc., WorldCom, and TCG of Ohio. This stipulation was adopted by order on March 24, 2000, and implemented on May 1, 2000. *See id.* at 2-3.

¹¹⁶ *Id.* at 35.

the Florida Commission in its UNE docket within ten days of filing in Florida and also ordered that the decisions reached by the Florida Commission would be implemented in Kentucky.¹¹⁷

41. *Mississippi*. The Mississippi Commission set UNE rates over the course of three proceedings with a stated goal of establishing cost-based rates that are consistent with the Commission's TELRIC methodology.¹¹⁸ It first established permanent rates for UNEs and interconnection services in by order dated August 25, 1998.¹¹⁹ Then, by Order dated April 20, 2000, the Mississippi Commission established different rates for certain UNEs in four cost-related rate zones within the State of Mississippi in order to reflect geographic cost differences.¹²⁰ Subsequently, in response to a petition from BellSouth dated December 8, 2000, the Mississippi Commission opened a proceeding to (1) update the UNE rates that it had established in 1998; (2) establish rates for additional UNEs identified by this Commission in various orders issued subsequent to the Mississippi Commission's earlier UNE pricing order; and (3) set permanent geographically deaveraged rates for certain UNEs and combinations of UNEs.¹²¹

42. As part of this proceeding, the Mississippi Commission conducted an evidentiary hearing on June 26-28, 2001, in which BellSouth, Brooks Fiber, WorldCom, Access Integrated, and DixieNet participated.¹²² On October 12, 2001, the Mississippi Commission issued a final UNE rate order.¹²³

43. In that order, the Mississippi Commission found that "BellSouth's cost studies complied with all applicable legal standards and should be used to set UNE prices."¹²⁴ With respect to recurring UNE rates, the Commission found, with certain modifications discussed below, that "BellSouth's rates were cost-based and were the product of detailed cost studies that

¹¹⁷ *Id.* at 38.

¹¹⁸ *Generic Proceeding to Establish BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and Other Related Elements and Services*, Docket No. 00-UA-999 (Oct. 12, 2001) (*Mississippi Commission UNE Rate Order*) at 4-10 (citing Docket No. 97-AD-544).

¹¹⁹ *Id.* at 1.

¹²⁰ *PSC's Order Approving UNE Rates for BellSouth per Attached Joint Stipulation*, Docket No. 2000-AD-42 (April 20, 2000). These rates were either stipulated to, or were unopposed, by the parties in that docket and were based upon the statewide deaveraged rates that the Mississippi Commission established by order dated August 25, 1998, in Docket No. 97-AD-544. See *Mississippi Commission UNE Rate Order* at 1-2.

¹²¹ *Id.* at 2. See *BellSouth's Petition for Establishment of Generic Proceeding To Establish Prices for BellSouth's Interconnection Services, Unbundled Network Elements, and Other Related Elements and Services*, Docket No. 00-UA-999 (Dec. 8, 2000).

¹²² *Mississippi Commission UNE Rate Order* at 2-3.

¹²³ *Id.* at 49.

¹²⁴ *Id.* at 8.

complied fully with the pricing standards set forth in the Act and with the [Commission's] pricing rules."¹²⁵ Specifically, the Mississippi Commission found that the BSTLM "properly calculated the costs of loops and loop-related UNEs"¹²⁶ and that BellSouth's use of five BSTLM scenarios was reasonable.¹²⁷

44. The Mississippi Commission also rejected most of WorldCom's proposed input changes to BellSouth's recurring cost studies, including inputs relating to network design; engineering assumptions; structure, cable, and material costs; and expense and common costs.¹²⁸ The Mississippi Commission found that it was reasonable to use economic lives that it adopted in 1995 to determine BellSouth's depreciation expense¹²⁹ rather than the shorter economic lives proposed by BellSouth, which were based on a 2000 depreciation study.¹³⁰ It decided to use an overall cost of capital of 10 percent, also adopted in a previous order,¹³¹ rather than the 11.25 percent proposed by BellSouth.¹³² In addition, the Mississippi Commission imposed a "competitive discount" of approximately ten percent on all loop and UNE combination recurring charges.¹³³

45. With respect to nonrecurring charges proposed by BellSouth, the Mississippi Commission adopted a 50 percent discount "in order to further stimulate the development of competition in Mississippi."¹³⁴ It rejected, however, WorldCom's proposal to eliminate non-recurring charges for certain collocation costs, OSS, and service orders.¹³⁵ The Mississippi Commission also found that the Unbundled Loop Modification (ULM) rates for load coil and bridged tap removal should apply "whenever BellSouth performed this work at the request of a CLEC."¹³⁶ It concluded, however, that the ULM-Additive, which was designed to recover part

¹²⁵ *Id.* at 10.

¹²⁶ *Id.* at 11.

¹²⁷ *Id.* at 11-14.

¹²⁸ *Id.* at 14-24.

¹²⁹ *Id.* at 24.

¹³⁰ *Proceeding to Establish BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and Other Related Elements and Services*, Docket No. 00-UA-999 (Aug. 30, 2001) (*BellSouth's Proposed Mississippi UNE Rate Order*) at 20-21.

¹³¹ *Mississippi Commission UNE Rate Order* at 24.

¹³² *BellSouth's Proposed Mississippi UNE Rate Order* at 21-22.

¹³³ *Mississippi Commission UNE Rate Order* at 24.

¹³⁴ *Id.* at 25.

¹³⁵ *Id.* at 26-28.

¹³⁶ *Id.* at 35.

of the cost of removing load coils on copper loops of less than 18,000 feet, was “not appropriate and should not be charged to CLECs,” as BellSouth had proposed.¹³⁷

46. The Mississippi Commission also established different rates for UNEs in four zones based on logical groupings using wire centers, proposed by BellSouth, rather than the nine zones proposed by WorldCom.¹³⁸ It ordered that “only the recurring cost of unbundled loops and local channels below the DS3 level [including sub-loops and combinations involving those elements] will be geographically deaveraged.”¹³⁹ It also found that BellSouth’s modified daily usage file charges were reasonable and should be adopted.¹⁴⁰

47. *North Carolina.* In its UNE proceeding, Docket No. P-100, Sub 133d, the North Carolina Commission held hearings that began in 1997 and continued through 2002. On December 10, 1998, following two weeks of hearings in which eight competitive LECs participated and the public was represented by the Public Staff and Attorney General, the state commission adopted permanent prices for unbundled network elements.¹⁴¹

48. The North Carolina Commission demonstrated its commitment to developing UNE prices based on a forward-looking cost methodology and the Commission’s TELRIC principles.¹⁴² The state commission, for example, rejected BellSouth’s proposed residual cost additive for the loop and port in its 1998 UNE order on grounds that it was inconsistent with forward-looking pricing and “would permit the reinstatement of embedded or historical cost recovery.”¹⁴³ The North Carolina Commission also concluded “that it would be more reasonable to modify the studies presented by the ILECs than to discard those studies in favor of the models

¹³⁷ *Id.* at 33.

¹³⁸ *Id.* at 35.

¹³⁹ *Id.* at 38.

¹⁴⁰ *Id.* at 43-45.

¹⁴¹ *General Proceeding to Determine Permanent Pricing for Unbundled Network Elements, Order Adopting Permanent Prices for Unbundled Network Elements*, Docket No. P-100, Sub 133d (Dec. 10, 1998) (*North Carolina Commission UNE Rate Order*). After rulings in this docket on motions for reconsideration (Aug. 18, 1999) and on comments and reply comments (Jan. 28, 2000), the North Carolina Commission issued an order adopting permanent UNE rates on March 13, 2000.

¹⁴² *See id.* at 11.

¹⁴³ *Id.* at 17-18. In evaluating the appropriate cost methodology for cost-based rates, the North Carolina Commission noted the following: “All of the parties to this proceeding generally agreed and took the position that the appropriate basis for establishing permanent prices for unbundled network elements is TELRIC plus a reasonable allocation of joint and common costs.” *Id.* at 10.

presented by AT&T and MCI and then attempt to adjust those models to make them suitable to North Carolina.”¹⁴⁴

49. North Carolina used BellSouth’s BSTLM, the Switched Network Calculator Model for switching, and the SCIS/MO for ports and feature costs. Although the North Carolina Commission adopted BellSouth’s cost models, it modified several of its inputs, including those related to residence/business line weighting, loop distribution fill factor, capital structure, cost of capital, depreciation and tax rates, and structure sharing.¹⁴⁵ As a result of its adjustments and modifications to BellSouth’s inputs, the North Carolina Commission approved a statewide average loop cost of \$15.60, compared to BellSouth’s proposed \$19.02.¹⁴⁶ It also modified and adjusted BellSouth’s nonrecurring cost studies which it selected over the Nonrecurring Cost Model proposed by AT&T and MCI.¹⁴⁷

50. On March 30, 2000, the North Carolina Commission issued an order that established a Phase I proceeding to consider geographic deaveraging and issues arising from the Commission’s *UNE Remand Order*¹⁴⁸ and *Line Sharing Order*.¹⁴⁹ An evidentiary hearing that began on September 25, 2000, resulted in the North Carolina Commission issuing an order

¹⁴⁴ *Id.* at 17-18; see also *Order Adopting Forward-Looking Economic Cost Model and Inputs*, Docket No. P-100, Sub 133b (April 20, 1998) (*North Carolina Commission FLEC Order*) at 19 (rejecting AT&T and MCI Hatfield 5.0 Model inputs for determining the forward-looking economic cost of providing universal service in North Carolina and concluding “that company-specific inputs, where they are forward looking and reasonable, should be used in lieu of default values”).

¹⁴⁵ *North Carolina Commission UNE Rate Order* at 28-29, 36, 41, 43, 50, 66. The North Carolina Commission found that BellSouth had incorrectly excluded a number of less costly business lines from its loop sample and adjusted the residential/business line make-up of the sample, reducing loop rates by over \$1 per month. *Id.* at 28-29. See also BellSouth Application App. A, Vol. 2, Tab C, Affidavit of D. Daonne Caldwell (BellSouth Caldwell Aff.) at para. 175. The state commission increased BellSouth’s distribution fill factor to 44.6% from its proposed 41.2%, consistent with the Universal Service Fund Docket P-100, Sub 133b. *North Carolina Commission UNE Rate Order* at 66. See also BellSouth Caldwell Aff. at para. 35. The forward-looking overall cost of capital was changed to 9.96%, compared to BellSouth’s proposed 11.25%. *Id.* at para. 36. Structure sharing percentages were adopted as approved in Docket No. P-100, Sub 133b. *Establishment of Universal Support Mechanisms Pursuant to Section 254 of the Telecommunications Act of 1996*, Docket No. P-100, Sub 133b, Order on Reconsideration, at 13-14 (July 2, 1998).

¹⁴⁶ BellSouth Application App. A, Vol. 4a, Tab G, Affidavit of John A. Ruscilli and Cynthia K. Cox (BellSouth Ruscilli/Cox Aff.) at para. 175. The North Carolina Commission adjusted BellSouth’s cost studies, setting a rate of \$15.88 (\$15.60 associated with the loop and \$0.28 with the amortized disconnect costs). *Id.*; see also BellSouth Caldwell Aff. at para. 188.

¹⁴⁷ *North Carolina Commission UNE Rate Order* at 75-83 (stating that the Nonrecurring Cost Model does not use North Carolina specific data, makes assumptions that are not reasonable or achievable, and produces inappropriate labor costs).

¹⁴⁸ *UNE Remand Order*, 15 FCC Rcd at 3696.

¹⁴⁹ *Line Sharing Order*, 14 FCC Rcd at 20912.

adopting permanent deaveraged UNE rates, effective December 11, 2001.¹⁵⁰ A Phase II UNE proceeding was held on October 23, 2000, to consider several policy issues concerning UNE combinations and the appropriate nonrecurring charges for xDSL loops.¹⁵¹ The North Carolina Commission adopted final UNE rates, excluding geographic deaveraging, from its Phase I and II UNE proceedings on May 1, 2002.¹⁵²

51. On May 7 and 9, 2002, BellSouth voluntarily amended its SGAT to reduce many of its nonrecurring UNE rates in North Carolina and to eliminate the recurring and nonrecurring rates associated with switching vertical features.¹⁵³ On May 23, 2002, the North Carolina Commission "concluded that good cause exists to advise the Federal Communications Commission" that BellSouth satisfied its section 271 obligations, including the competitive checklist provisions.¹⁵⁴ The North Carolina Commission has opened a new generic cost

¹⁵⁰ *Proceeding to Determine Permanent Pricing for Unbundled Network Elements, Order Adopting Final Permanent Deaveraged UNE Rates*, Docket No. P-100, Sub 133d (April 5, 2002) (*North Carolina Deaveraged UNE Rates Order*). Competitive LECs sponsored 10 witnesses in the September 25, 2000, hearing. The Public Staff and Attorney General also participated. On March 15, 2001, the North Carolina Commission issued a recommended order and, due to several requests for reconsideration, established a comment cycle on its order. On December 11, 2001, the state commission issued its order finalizing deaveraged UNE rates.

¹⁵¹ On June 7, 2001, the North Carolina Commission issued a 185-page *Recommended Order Concerning All Phase I and Phase II UNE Issues Excluding Geographic Deaveraging*. After considering all exceptions filed by the parties, the state commission issued its *Order Addressing Exceptions to Recommended Order on all Phase I and II Issues Except Geographic Deaveraging* on December 31, 2001. BellSouth Ruscilli/Cox Aff. at Exh. JAR/CKC-20.

¹⁵² *General Proceeding to Determine Permanent Pricing for Unbundled Network Elements, Order Adopting Final Permanent Phase I and Phase II UNE Rates for BellSouth and Verizon*, Docket No. P-100, Sub 133d (May 1, 2002).

¹⁵³ Letter from Edward L. Rankin, III, Counsel to BellSouth, to Geneva S. Thigpen, Chief Clerk, North Carolina Utilities Commission, Docket Nos. P-55, Sub 1022, P-100, Sub 133d (May 7, 2002) (BellSouth May 7 Letter). "If an ordered nonrecurring UNE rate in Louisiana was lower than the North Carolina rate, BellSouth substituted the Louisiana rate in its North Carolina SGAT Price List [not including collocation]." *Id.* at 2. Although BellSouth agrees with its state commission that North Carolina rates reflect UNE provisioning costs, it "recognized that some of the nonrecurring rates in North Carolina were higher than . . . in other BellSouth states [and] to avoid any conceivable issue, it . . . voluntarily reduce[d] some of its nonrecurring rates until [the new generic cost proceeding] is completed." BellSouth Ruscilli/Cox Aff. at para. 175.

¹⁵⁴ *Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1966, Notice of Decision*, Docket No. P-55, Sub 1022 (May 23, 2002) (*North Carolina Commission 271 Order*) at 1. In its decision, the state commission also approved as interim, subject to true-up, BellSouth's rates for remote terminal and virtual collocation elements, cable records, assembly point arrangements and unbundled copper loops-non-design (UCL-ND), including engineering information and testing. BellSouth has requested that the North Carolina Commission establish permanent rates for these elements in its current generic UNE proceeding. BellSouth Ruscilli/Cox Aff. at paras. 176-77.

proceeding, scheduled to begin in November 2002, to review updated cost information and revise cost-based rates, not including collocation.¹⁵⁵

52. *South Carolina.* By orders dated June 1, 1998 and September 18, 1998, the South Carolina Commission first set permanent rates for UNEs and interconnection services in Docket 97-372-C.¹⁵⁶ The South Carolina Commission also established interim deaveraged rates for certain UNEs by order dated April 24, 2000.¹⁵⁷ At BellSouth's request, the South Carolina Commission opened Docket 2001-65-C to update the 1998 UNE rates, set additional UNE rates, and to establish permanent deaveraged rates for certain UNEs and UNE combinations.¹⁵⁸ During the evidentiary hearing on June 18-21, 2001 for Docket 2001-65-C, the South Carolina Commission heard testimony from 11 witnesses representing BellSouth, NewSouth, NuVox, Broadslate, ITC^DeltaCom, KMC, and the South Carolina Consumer Advocate.¹⁵⁹ These parties also filed written testimony from ten additional witnesses.¹⁶⁰ After considering all of the pricing evidence, the South Carolina Commission issued its *UNE Rate Order* on November 30, 2001.¹⁶¹

53. In concluding that BellSouth's UNE rates complied with the Commission's TELRIC pricing rules, the South Carolina Commission specifically approved the BSTLM and the five different network scenarios that BellSouth used to develop recurring and non-recurring charges.¹⁶² The South Carolina Commission also determined that certain BellSouth UNE rates fell "at the upper end of a range of reasonable TELRIC rates" and therefore adopted the following "competitive discounts": 20 percent discount off proposed recurring rates for all UNE loops and combinations, except for the four-wire DS1 digital loops, which was discounted by 30 percent, and a 50 percent discount off all proposed non-recurring charges.¹⁶³ According to the

¹⁵⁵ BellSouth has proposed collocation rates in Docket Nos. P-100, Sub 133j and P-55, Sub 1022. It plans to update its SGAT Price List when the North Carolina Commission issues its final orders in these dockets. BellSouth May 7 Letter at 2 n.4.

¹⁵⁶ *Generic Proceeding to Establish Prices for BellSouth Telecommunications, Inc.'s Interconnection Services, Unbundled Network Elements and other Related Services*, Public Service Commission of South Carolina, Order on UNE Rates, Docket No. 2001-65-C (Nov. 30, 2001) (*UNE Rate Order* or *South Carolina Commission UNE Rate Order*) at 1.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 1-2.

¹⁵⁹ *Id.* at 2-3.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 3.

¹⁶² *Id.* at 6.

¹⁶³ *Id.*

South Carolina Commission, these discounts “produce[d] rates that are within, and possibly below, a reasonable TELRIC range.”¹⁶⁴

54. The South Carolina Commission also set permanent deaveraged UNE rates in the *UNE Rate Order*.¹⁶⁵ After noting that states have considerable latitude in determining how to deaverage rates, the South Carolina Commission adopted BellSouth’s deaveraging proposal, which deaveraged loop-related UNEs into three geographic areas using existing BellSouth rate groups based on BellSouth’s SGAT.¹⁶⁶ The South Carolina Commission stated that, “[u]nder BellSouth’s approach, customers who are located in the same geographic area and who have similar local calling areas would be in the same deaveraged zone for UNE pricing.”¹⁶⁷ Although the South Carolina Commission found that “deaveraging of UNEs will result in rates that vary in the opposite directions from the prices for BellSouth’s retail services,”¹⁶⁸ it nevertheless stated that BellSouth’s deaveraging methodology was consistent with the Commission’s rules.¹⁶⁹

55. In the *UNE Rate Order*, the South Carolina Commission also made determinations concerning rates for collocation, loop conditioning, line sharing and splitting, and UNE combinations. In adopting all of these rates, the South Carolina Commission noted that it would consider any new evidence in a subsequent docket.¹⁷⁰

b. Recurring Charges

(i) Loop Rates

56. *Loop Modeling.* BellSouth separately determines prices for loops and ports on a stand-alone basis and in combination. The Commission approved this “multiple scenario” pricing methodology when considering BellSouth’s application to provide in-region, interLATA service originating in Louisiana pursuant to section 271.¹⁷¹ Like the Louisiana Commission, the Alabama, Kentucky, Mississippi, and South Carolina Commissions also approved BellSouth’s proposal to use five different network scenarios for costing UNEs and UNE combinations.¹⁷²

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 6-8.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 7-8.

¹⁷⁰ *Id.* at 17.

¹⁷¹ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9041, para. 38.

¹⁷² See *Alabama Commission UNE Rate Order* at 24-25; *Kentucky Commission UNE Rate Order* at 13-15; *Mississippi Commission UNE Rate Order* at 13-14; *South Carolina Commission UNE Rate Order* at 6.

Those five scenarios are: (1) the BST 2000 scenario – used to develop forward-looking investment for all network elements except copper loops and UNE combinations; (2) the Combo scenario – used to develop the material investment associated with loops used in combinations (two-wire analog voice grade loop); (3) the Copper only scenario – used to develop the material investment of network elements served only by unloaded copper feeder and distribution facilities; (4) the BST2000 ISDN scenario – all loops in BST2000 scenario are converted to ISDN loops and ISDN customers are added; and (5) the Combo-ISDN scenario – used to develop the costs of an ISDN loop when offered in combination.¹⁷³

57. As a result of this costing methodology, BellSouth determines prices for stand-alone loops based on the assumed use of Universal Digital Loop Carrier (UDLC) but determines prices for UNE loop/port combinations based on the assumed use of Integrated Digital Loop Carrier (IDLC).¹⁷⁴ BellSouth assumes that UDLC is the appropriate technology for provisioning unbundled loops because IDLC technology integrates the loop directly into the switch.¹⁷⁵ BellSouth further assumes that it is less costly to provide a loop/port combination using IDLC than using UDLC. Therefore, BellSouth's methodology prices a loop and port, when purchased as individual elements, higher than a UNE loop/port combination (UNE-platform).

58. WorldCom argues that BellSouth's multiple scenario approach overstates costs by understating economies of scope.¹⁷⁶ According to WorldCom, there are inefficiencies inherent in this approach because it allows BellSouth to design networks for customer demand that would otherwise be served more efficiently using an alternate network design.¹⁷⁷ WorldCom illustrates its argument by explaining that, in developing the unbundled copper loop rates, BellSouth utilizes a model that assumes an all-copper network to reach all customer locations, even if a particular customer located far from a wire center would be more efficiently served using an alternative model, such as a remote terminal and fiber optics facilities.¹⁷⁸ WorldCom asserts that,

¹⁷³ BellSouth Caldwell Aff. at paras. 41-53.

¹⁷⁴ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9041, para. 39. As explained in more detail in the *BellSouth Georgia/Louisiana Order*, UDLC is an older version of DLC technology that is not directly integrated into the switch. UDLC requires digital signals to be routed through a central office terminal and converted back to analog signals before reaching the central office switch, making it capable of interfacing with any analog or digital central office switch. IDLC technology eliminates the need for digital-to-analog signal conversion by establishing a direct digital interface to a digital remote terminal, allowing delivery of the combined traffic directly into the switch without first separating the traffic from the individual lines. As a result, IDLC can operate only with a digital switch. See *id.* at 9042-43, para. 43.

¹⁷⁵ See BellSouth Reply App., Tab B, Reply Affidavit of D. Daonne Caldwell (BellSouth Caldwell Reply Aff.) at para. 11.

¹⁷⁶ WorldCom Comments at 15; WorldCom Comments, Tab B, Declaration of Chris Frentrup (WorldCom Frentrup Decl.) at para. 13. See also WorldCom Reply at 9-10; WorldCom Reply, Tab. B, Reply Declaration of Chris Frentrup (WorldCom Frentrup Reply Decl.) at paras. 9-12.

¹⁷⁷ WorldCom Frentrup Decl. at paras. 13-14.

¹⁷⁸ *Id.* at para. 14.

because the model assumes the existence of unrealistically long copper loops, and averages the higher cost of such loops with the shorter loops that would exist in an efficient network, the model artificially inflates the cost of copper loops.¹⁷⁹ WorldCom also argues that this approach further overstates cost by assuming only UDLC will be used for stand-alone loops and by assuming that some of the IDLC used to provide UNE-platform will not meet the current industry GR-303 protocol.¹⁸⁰ WorldCom contends that this approach violates sections 51.505(b), 51.511(b), and 51.503(b) of the Commission's rules¹⁸¹ by failing to take into account only the "lowest cost network configuration," which, in turn, must take into account BellSouth's provision of other elements and which must also be based on current levels of demand.¹⁸² Finally, WorldCom argues that loops should have been priced using only the Combo scenario because the majority of demand in the BellSouth region is for plain old telephone service (POTS), and therefore prices should be based largely on provision of POTS.¹⁸³

59. BellSouth responds that the multiple scenario approach is consistent with TELRIC and captures economies of scale and scope. BellSouth represents that it uses the same overall line count for each scenario and thus considers the total quantity of facilities in each scenario.¹⁸⁴ BellSouth further contends that this approach most accurately reflects actual costs because it accounts for the differences in the manner in which BellSouth provisions different loops (*e.g.*, stand-alone loops, UNE-platform loops) and reflects the cost differences associated with each.¹⁸⁵ BellSouth also notes that, because it cannot know today how a loop may be used by a competitive LEC in the future, its use of multiple scenarios is necessary.¹⁸⁶ BellSouth explains that the alleged inflation of copper loop costs described by WorldCom is impossible because specific length limits are imposed when developing costs.¹⁸⁷

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at para. 15 n.2.

¹⁸¹ 47 C.F.R. §§ 51.505(b), 51.511, 51.503(c).

¹⁸² *See* WorldCom Comments at 15-16; *see also* WorldCom Reply at 10 n.2.

¹⁸³ WorldCom Comments at 16.

¹⁸⁴ BellSouth Caldwell Reply Aff. at paras. 13-14.

¹⁸⁵ BellSouth contends that using only one scenario would, in fact, lead to under-recovery of costs because not all possible uses for a loop specific to a customer can be considered with a single scenario. BellSouth Caldwell Reply Aff. at para. 11.

¹⁸⁶ *Id.* at para. 14.

¹⁸⁷ Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communication Commission, WC Docket No. 02-150 at 4 (filed Aug. 9, 2002) (BellSouth August 9 *Ex Parte* Letter). BellSouth explains that the UCL-Short Loop does not exceed 18,000 feet, the UCL-ND does not exceed 24,000 feet, and the HDSL-compatible loop does not exceed 12,000 feet. *Id.* Accordingly, BellSouth states that only loops that meet these length limitations are considered when the costs are calculated, and therefore it is impossible for the average cost of these shorter loops to be inflated by costs of longer loops. *Id.*

60. As an initial matter, we note that various commenters, including WorldCom, also challenged BellSouth's multiple scenario approach in response to BellSouth's application to provide in-region, interLATA service originating in Louisiana pursuant to section 271,¹⁸⁸ as well as in the Alabama, Kentucky, and Mississippi UNE rate proceedings.¹⁸⁹ After evaluating such arguments, the Commission previously concluded that BellSouth's multiple scenario methodology is consistent with TELRIC and does reflect economies of scale and scope because it considers the entire quantity of lines in each scenario.¹⁹⁰ The Alabama, Kentucky, Mississippi, and South Carolina Commissions similarly accepted BellSouth's use of multiple loop modeling scenarios during their respective state UNE rate proceedings.¹⁹¹ Based on the record before us, we find that the Alabama, Kentucky, Mississippi, and South Carolina Commissions reasonably accepted BellSouth's use of multiple scenarios to price loops. For example, the Mississippi Commission addressed this issue in detail in its UNE rate order. It rejected WorldCom's contention that the use of multiple scenarios violates TELRIC, emphasizing that BellSouth used the same overall line count in each scenario, therefore ensuring that the total quantity of facilities was considered in each scenario.¹⁹² The Mississippi Commission also rejected the argument that the multiple scenario approach overstates costs, concluding that this methodology appropriately accounts for the differences in the manner in which BellSouth provisions different loops, and is, "in fact, necessary to accurately calculate BellSouth's costs."¹⁹³

61. We defer to the analyses of the state commissions, and we therefore reject WorldCom's criticism of the multiple scenario approach. As we noted in the *BellSouth Georgia/Louisiana Order*, because BellSouth considers the entire quantity of lines in each scenario, its methodology reflects economy of scope.¹⁹⁴ Moreover, WorldCom's criticism does not respond to the concern noted by the state commissions that use of a single scenario might in fact result in under-recovery of costs. A proper loop costing methodology must reflect that some customers purchase stand-alone loops, and BellSouth is entitled to recover the forward-looking costs

¹⁸⁸ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9041-42, paras. 40-41.

¹⁸⁹ See *Alabama Commission UNE Rate Order* at 20-24; *Kentucky Commission UNE Rate Order* at 13; *Mississippi Commission UNE Rate Order* at 13. Although the *South Carolina Commission UNE Rate Order* did not reference comments on this issue, it did specifically evaluate BellSouth's use of multiple scenarios. *South Carolina Commission UNE Rate Order* at 6.

¹⁹⁰ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9041-42, para. 41.

¹⁹¹ See *Alabama Commission UNE Rate Order* at 24-25; *Kentucky Commission UNE Rate Order* at 13-15; *Mississippi Commission UNE Rate Order* at 13-14; *South Carolina Commission UNE Rate Order* at 6.

¹⁹² *Mississippi Commission UNE Rate Order* at 13-14.

¹⁹³ *Id.* at 14; see also *Mississippi Commission Reply* at 9; *Alabama Commission UNE Rate Order* at 25; *Kentucky Commission UNE Rate Order* at 11-14; *South Carolina Commission UNE Rate Order* at 6. The findings of these state commissions are consistent with the findings of the Louisiana Commission, which found that using only one scenario would lead to under-recovery of BellSouth's costs. See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9041-42, para. 41.

¹⁹⁴ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9041-42, para. 41.

associated with provisioning those loops that may differ from the costs associated with provisioning a loop/switch combination (UNE-platform).¹⁹⁵ WorldCom does not explain how exclusive use of the Combo scenario would provide for recovery of these costs. We further find that BellSouth's explanation regarding the manner in which copper loops are priced addresses WorldCom's argument that the prices of such loops are inevitably inflated.

62. In addition, we reject WorldCom's arguments regarding the impact of using UDLC technology for stand-alone loops. WorldCom has not provided cost analysis to show that IDLC is necessarily less expensive than UDLC when used for stand-alone loops and ports, and we remain unpersuaded, based on the evidence before us, that a current application of TELRIC would require 100 percent use of such technology for that purpose.¹⁹⁶ Indeed, as we explained in the *BellSouth Georgia/Louisiana Order*, prior Commission orders have recognized that at least certain IDLC alternatives would likely be more expensive.¹⁹⁷ WorldCom's related argument, that BellSouth's prices for stand-alone loops would decrease if BellSouth used only GR-303 technology, also has been previously rejected by this Commission.¹⁹⁸ As we have explained, BellSouth may use UDLC to set prices for stand-alone loops, and UDLC is not compatible with GR-303 technology.¹⁹⁹

63. Accordingly, we find that WorldCom has not presented evidence sufficient to show that these state commissions erred in their decisions or to overcome the record evidence BellSouth has presented as to why the use of multiple scenarios is appropriate.

64. *Loading Factors.* WorldCom contends that BellSouth's excessive loading factors greatly inflate switching and loop costs in each of the five states.²⁰⁰ The loading factor (also called the EF&I factor, for "Engineered, Furnished and Installed") represents the cost of labor and additional materials required to make equipment operational. It converts material costs to installed investment costs and thus provides for recovery of EF&I costs.²⁰¹ Based on the record, we conclude that each of the five state commissions made a reasonable determination that

¹⁹⁵ See *Alabama Commission UNE Rate Order* at 25.

¹⁹⁶ See generally *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9046, para. 50.

¹⁹⁷ See *id.*

¹⁹⁸ See *id.* at 9046, para. 50 n.180. BellSouth states that there are additional costs and limiting factors to such an arrangement. BellSouth Caldwell Reply at para. 17.

¹⁹⁹ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9046, para. 50 n.180.

²⁰⁰ WorldCom Comments at 16.

²⁰¹ Each state has a total of 30 loading factors. Twenty-four of them relate to the outside plant (OSP), and six of them relate to the central office equipment (COE). Half of both of the OSP and COE factors are material factors (applied only to the material), and half are telco factors (applied to material and vendor engineering and vendor installation). See Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Aug. 16, 2002) (BellSouth August 16 *Ex Parte* Letter); BellSouth Caldwell Reply Decl. at para. 34.

BellSouth's loading factors accord with TELRIC principles. As WorldCom itself states, competitive carriers "adamantly challenged BellSouth's use of loading factors in the five states at issue here,"²⁰² and, in each case, the state commissions upheld the use of BellSouth's loading factors.²⁰³ We also note 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.²⁰⁴ Furthermore, we note that no party in this proceeding has challenged any particular loading factor or asserted that the derivation of any particular loading factor is not TELRIC-compliant.²⁰⁵

65. WorldCom argues that BellSouth's loading factors are derived from an embedded, rather than forward-looking, network and that this substantially overstates the EF&I costs in a forward-looking network.²⁰⁶ WorldCom states that the fact that the loading factors vary substantially from state to state is evidence that the factors are improperly determined.²⁰⁷ As an example, WorldCom notes that "the material in-plant loading factor for digital switching equipment in Kentucky was 28 [percent] higher than the factor used for this equipment in Mississippi, even though the cost of engineering and installing digital switching equipment should not vary significantly by state."²⁰⁸ WorldCom also contends that, based on runs of the BellSouth model for Florida and Georgia with certain adjustments WorldCom made to the loading factors, BellSouth's loading factors appear to have overstated costs by at least 15 percent.²⁰⁹ It submits exhibits from AT&T and WorldCom testimony filed in pending Florida

²⁰² WorldCom Comments at 18.

²⁰³ *Id.* at 16; see also *Alabama Commission UNE Rate Order* at 25-34, 40-41; *Kentucky Commission UNE Rate Order* at 15; *Mississippi Commission UNE Rate Order* at 17-21; *North Carolina Commission UNE Rate Order* at 50-52. Although there is no specific mention of loading factors in the *South Carolina Commission UNE Rate Order*, it is clear from the record that loading factors were discussed thoroughly during the course of the proceeding. See BellSouth Caldwell Reply Aff. at Exh. DDC-15 (Testimony of Don J. Wood, on behalf of NewSouth Communications, NuVox Communications, Broadslate Networks, ITC^DeltaCom Communications, and KMC Telecom, in the South Carolina Commission UNE Rate Proceeding at 1253-68 (June 4, 2001)) (Competitive Coalition Wood South Carolina Testimony).

²⁰⁴ BellSouth Application at 43; see also BellSouth Caldwell Aff. at para. 14.

²⁰⁵ WorldCom does assert that the fact that the material inplant loading factor for digital switching in Kentucky is 28% higher than the material inplant loading factor used for digital switching in Mississippi is evidence that the loading factors are improperly determined. We disagree. See discussion below.

²⁰⁶ WorldCom Comments at 17; WorldCom Frentrup Decl. at paras. 17-18. WorldCom states that, "[w]hile material costs would decrease in a forward-looking network, the costs of installation and maintenance would decrease even more, reducing the ratio of material to installed costs. In a forward-looking network, for example, most loops will be installed electronically via a circuit board without any need to rearrange circuits in the field." WorldCom Comments at 17.

²⁰⁷ WorldCom Frentrup Decl. at para. 17.

²⁰⁸ *Id.*

²⁰⁹ WorldCom Frentrup Reply Decl. at para. 13.

and Georgia UNE cases that it says “itemizes the effect of correcting [loading] . . . and other factors.”²¹⁰

66. BellSouth counters that it developed its in-plant loading factors based on the latest year-end data available at the time the studies were conducted and that these forward-looking factors were applied to a forward-looking material price.²¹¹ In addition, BellSouth states that in-plant factors should and do vary by state because “[e]ach state negotiates vendor contracts independently, the work performed differs due to such factors as terrain and climate conditions, and state taxes are unique.”²¹² Finally, BellSouth argues that using WorldCom’s proposed inputs to calculate fully loaded material prices are inappropriate because, among other reasons, “(1) they do not reflect BellSouth’s material prices; [and] (2) the installation costs, engineering costs, exempt material expenses, and taxes are not reflective of BellSouth[’s] incurred costs.”²¹³

67. The North Carolina Commission addressed the argument that BellSouth’s loading factors are derived from an embedded, rather than forward-looking, network in its UNE pricing order and found that it was “appropriate to require the four ILECs to input the loading factors [proposed by BellSouth and] adopted and approved by the [North Carolina] Commission in the FLEC Docket.”²¹⁴ It specifically noted that it had found the loading factors to be forward-looking in that docket.²¹⁵ In addition, WorldCom made the same argument before the Alabama²¹⁶ and Mississippi Commissions,²¹⁷ and neither Commission found the argument persuasive. Competitive carriers also asserted that BellSouth’s loading factors in Georgia and Louisiana

²¹⁰ *Id.* According to the exhibit that WorldCom submitted to the Florida Commission, loop costs would be reduced by 24.8% if the BellSouth model were changed to “Correct DLC In-plant Factors”; “Eliminate 25% Closing Factor and Correct Contract Labor Data”; “Update Inflation Factors”; “Correct Treatment for Exempt Material”; and “Correct Engineering Factors.” *Id.* at para. 14. Similarly, according to the exhibit that it submitted to the Georgia Commission, Zone One 2-Wire Analog Voice Loop costs would be reduced 15% if changes were made to account for “Inflation Double Count,” “Closing Factor,” “Exempt Material Loading,” “Indirect Labor Loading,” “Engineering Factors,” and “Bottoms-Up DLC Inputs.” *Id.* at para. 14.

²¹¹ BellSouth Caldwell Aff. at para. 11.

²¹² *Id.* at para. 12.

²¹³ BellSouth Caldwell Reply Decl. at para. 25.

²¹⁴ *North Carolina Commission UNE Rate Order* at 52. The FLEC Docket refers to a proceeding undertaken by the North Carolina Commission to determine the forward-looking economic costs of providing universal service in North Carolina. *Id.* at 5.

²¹⁵ *Id.* at 52.

²¹⁶ BellSouth Application App. D, Vol. 7a-b, Tab 16 Part B, (WorldCom, Inc. Direct and Rebuttal Testimony of Greg Darnell Before the Alabama Public Service Commission, Docket No. 27821, at 2803-06 (April 20, 2001)).

²¹⁷ BellSouth Application Caldwell Reply Aff. at Exh.DDC-14, (WorldCom, Inc. Direct and Rebuttal Testimony of Greg Darnell Before the Mississippi Public Service Commission, Docket No. 2000-UA-999, at 14-15 (April 16, 2001)) (WorldCom Darnell Mississippi Testimony).

reflected embedded costs,²¹⁸ but we concluded that the loading factors in Georgia and Louisiana were determined in accordance with TELRIC principles.²¹⁹ WorldCom has not presented any new evidence or argument that persuades us that the state commissions committed clear error in their choice of loading factors.

68. We also reject WorldCom's assertion that the fact that loading factors vary from state to state is evidence that the factors are improperly determined. We note that the state commissions in Alabama, Kentucky, Mississippi, and South Carolina did not accept the claims of competitive carriers that argued in the state proceedings that it was appropriate to use Florida data to calculate loading factors in Alabama, Kentucky, Mississippi, and South Carolina because these costs should not vary by state.²²⁰ BellSouth offers credible evidence that cost variations can be attributed to differences in vendor contracts, terrain and climate conditions, and state taxes, and WorldCom has not rebutted this evidence. Furthermore, we find that WorldCom is not correct when it states that the material in-plant loading factor for digital switching equipment in Kentucky is 28 percent higher than the factor used in Mississippi. BellSouth has submitted documentation showing that the material in-plant loading factor for digital switching equipment is 1.478 for Kentucky and 1.447 for Mississippi, approximately a two percent difference.²²¹ As in our *BellSouth Georgia/Louisiana Order*, we reject WorldCom's unsupported contention that BellSouth's loading factors vary more from state to state than can be explained by labor or other cost differences.²²²

²¹⁸ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9046-47, para. 51, 9051, para. 61.

²¹⁹ *See id.* at 9047-48, paras. 52-53, 9050-51, paras. 60-61.

²²⁰ BellSouth Application App. D, Vol. 8, Tab 17 (SECCA Testimony of Cynthia M. Wilsky and Don J. Wood Before the Alabama Public Service Commission, Docket No. 27821 at 3206-09 (April 20, 2001)) (SECCA Wilsky/Wood Alabama Testimony); BellSouth Caldwell Reply Aff. at Exh. DDC-13, (SECCA Rebuttal Testimony of Cynthia M. Wilsky and Don J. Wood Before the Kentucky Public Service Commission, Administrative Case No. 382 at 54-55 (June 22, 2001)) (SECCA Wilsky/Wood Kentucky Testimony); WorldCom Darnell Mississippi Testimony at 27-28; Competitive Coalition Wood South Carolina Testimony at 1261-62. Challengers did not raise this issue in the proceeding before the North Carolina Commission.

²²¹ BellSouth Caldwell Reply Aff. at para. 34. 377C is the field reporting code for digital switching. As noted previously, WorldCom does not challenge any particular loading factor or demonstrate that it was calculated in error. It merely alleges that all of the loading factors are inflated and that one of them is 28% higher than a comparable one in another state. Moreover, we note that even if WorldCom were to establish a 28% difference in comparable loading factors in different states, a mere comparison, without anything more, is not sufficient to establish clear error. *See Verizon New Jersey Order*, 17 FCC Rcd at 12306, para 70; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9035, para. 26; *Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, Inter-LATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625, 7644, para. 35 (2002) (*Verizon Vermont Order*).

²²² *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9047, para. 52 n.186 (rejecting, due to lack of supporting evidence, WorldCom's assertions that loading factors varied more from state to state than could be explained by labor or other cost differences).

69. Furthermore, we are not convinced that WorldCom's runs of the BellSouth model for Florida and Georgia, which purportedly rely on WorldCom's adjustments to BellSouth's fully loaded material prices, demonstrate that BellSouth's loading factors for other BellSouth states overstate costs by fifteen percent. First, as we state above, WorldCom has not rebutted BellSouth's evidence that cost variations among BellSouth states can be attributed to differences in vendor contracts, terrain and climate conditions, and state taxes. Given this unrebutted evidence, WorldCom's model runs for Georgia and Florida do not provide a reliable measure of any overstatement of costs caused by the BellSouth's loading factors in other BellSouth states. Second, WorldCom merely provides "itemizations" purporting to specify what items were inflated that it has submitted to the Georgia and Florida Commissions.²²³ It does not explain or document the methodology, assumptions, calculations, or data relating to how it modified BellSouth's loading factors. These simple itemizations do not provide us with an adequate basis to find that the five state commissions' judgments regarding these loading factors violate basic TELRIC principles or constitute clear error.

70. WorldCom also asserts that BellSouth's application of the same loading factor to all sizes of equipment overstates installed investment costs in more densely populated areas and understates these costs in less populated areas.²²⁴ WorldCom states that, as a result, BellSouth does not properly deaverage costs.²²⁵ BellSouth counters that its model is consistent with our pricing rules because its loading factors fairly reflect the average costs associated with installing a cable.²²⁶ The state commissions in Alabama, Kentucky, Mississippi, and South Carolina all considered the argument that applying the same loading factor to all sizes of equipment overstates installed investment costs in more densely populated areas and understates these costs in less populated areas, and in each case the states did not adjust their loading factors.²²⁷ The Mississippi Commission specifically found that "[w]hile the relationship of the combined costs of installation, labor, exempt material, sales tax, and engineering to total material cost may not be perfectly linear, the use of In-Plant factors produces representative cost results when viewed on a total cable placement basis."²²⁸ WorldCom also argued in the BellSouth Georgia/Louisiana proceeding that applying the same loading factors to all sizes of equipment would significantly impact total costs.²²⁹ As we did in that proceeding,²³⁰ we conclude that WorldCom has not

²²³ WorldCom Frentrup Reply Decl. at paras. 13-14. As of yet, neither the Florida nor the Georgia Commission has issued its cost order.

²²⁴ WorldCom Comments at 17; WorldCom Frentrup Decl. at para. 21.

²²⁵ *Id.*

²²⁶ BellSouth Caldwell Aff. at para. 9.

²²⁷ SECCA Wilsky/Wood Alabama Testimony at 3200-03; SECCA Wilsky/Wood Kentucky Testimony at 48-49; WorldCom Darnell Mississippi Testimony at 26-27; Competitive Coalition Wood South Carolina Testimony at 1255. Challengers did not raise this issue in the proceeding before the North Carolina Commission.

²²⁸ *Mississippi Commission UNE Rate Order* at 19.

²²⁹ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9049, para. 56, 9052, para. 63.

presented evidence sufficient to demonstrate that the state commissions committed clear error with respect to BellSouth's loading factors.

71. BellSouth's loading factor methodology produces the average loading factor for all cable sizes included in the data from which it derives the factor. Use of the average loading factor will tend to overstate the cost of installing a cable that is larger than the average cable size when applied to the unloaded cable cost for such a cable. It will tend to understate the cost of installing a cable that is smaller than average when applied to the unloaded cable cost for such a cable. It overstates installation costs for large cables and understates these costs for small cables because cable costs are not a constant fraction of the unloaded cable cost to which the loading factor is applied. In concept, however, it will provide an accurate estimate of the cost of installing the average size cable when applied to the unloaded cable cost estimate for the average size cable.

72. We find for several reasons that BellSouth's use of an average loading factor for all cables sizes is reasonable. First, while not perfect, the factor does reflect that cable installation costs do increase with the size of the cable being placed. For example, splicing costs are greater for a large cable than for a small cable because more labor is required to splice the larger cable. Applying a fixed loading factor to a relatively large unloaded cost for a relatively large cable produces, as it should, a relatively large dollar amount for engineering, furnishing, and installing such a cable. In fact, the loaded cable inputs developed by the Commission for use in its synthesis model – inputs that WorldCom supports for use in developing unbundled loop prices²³¹ – rely to some extent on fixed percentage loading factors.²³²

73. Second, BellSouth provides evidence that its model produces a loop network with mostly small cables.²³³ Use of an average loading factor for every cable size in a case such as

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²³⁰ *Id.* at 9049, para. 56, 9052, para. 64.

²³¹ WorldCom Comments at 18; WorldCom Frentrup Decl. at para. 19.

²³² *Federal-State Joint Board on Universal Service Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 96-45 and CC Docket No. 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20231, paras. 168-69 (1999) (*Universal Service Tenth Report and Order*). For example, the Commission adopted loadings for splicing costs of 9.4% and 4.7% for every copper and fiber cable size, respectively, and a 10% loading for incumbent LEC engineering costs for every copper and fiber cable size. *Universal Service Tenth Report and Order*, 14 FCC Rcd at 20229, paras. 164-65.

²³³ While copper cable typically is sold in sizes ranging from approximately 25 pairs to 4200 pairs, BellSouth supplied data showing that approximately 92% of the copper cable in its model loop network is 25 (63%), 50 (14%), 100 (10%), or 200 (6%) pair cable. BellSouth Caldwell Reply Aff. at para. 21. Based on these BellSouth data, the route-feet weighted average copper cable size in the loop network produced by its model is approximately 109 pair cable. While fiber cable typically is sold in sizes ranging from approximately 6 strands to 216 strands, BellSouth supplied data showing that approximately 91% of the fiber cable in its model network is 6 (3%), 12 (67%), 18 (9%), 24 (6%), 30 (4%), or 36 (3%) strand cable. See Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communication Commission, WC Docket No. 02-150 (filed Aug. 29, 2002) (BellSouth August 29 *Ex Parte* Letter). Based on these BellSouth data, the route-feet weighted average fiber cable size in the loop network produced by its model is approximately 19 strand cable.

this, where the size of a substantially large percentage of the cable for which costs are developed is relatively close to the average cable size, will tend to produce relatively accurate estimates of the cost of installing cable.

74. Third, BellSouth also provides evidence that the average loading factor it uses to develop loop costs may tend to understate overall installation costs. The BellSouth model produces a loop network with relatively more small size cable than the actual cable placements reflected in the data from which BellSouth derives the copper cable loading factors.²³⁴ As a result, cable loading factors based on relatively large cable sizes are applied to unloaded cable costs for relatively small cables. Given that the cost of installing cable is typically a smaller fraction of the unloaded cost of relatively large cables compared to this fraction for relatively small cables,²³⁵ applying loading factors derived from data on relatively large cables to unloaded costs for relatively small cables will tend to understate the overall installation cost for cable.

75. Fourth, the use of an average loading factor has the benefit of simplicity without a significant loss of precision compared to use of multiple loadings. The complexity required to develop different loadings for different cable sizes, including the compilation and analysis of an enormous amount of disaggregated data that may not be readily available, even to the incumbent LEC, or the need to make many subjective judgments in the absence of these data, may not justify any possible gain in the precision of the loading estimates resulting from such a methodology.

76. For the foregoing reasons, WorldCom has not presented evidence sufficient to show that the five state commissions committed clear error in their decisions with respect to loading factors. Accordingly, we conclude that BellSouth's loading factors do not reflect clear errors in factual findings so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.

(ii) Switching Rates

77. AT&T challenges several technical aspects of BellSouth's switching cost study and asserts TELRIC errors in all five states resulting from (1) flawed switch discount calculations; (2) embedded trunking cost calculations; (3) inappropriate assumptions regarding combined local/tandem switches; and (4) improper allocation of "getting started" costs to

²³⁴ In particular, 85% of the copper cable reflected in the data from which BellSouth derives its loading factors is 25 (17%), 50 (28%), 100 (24%), or 200 (16%) pair cable. BellSouth Caldwell Reply Aff. at para. 21. Based on these BellSouth data, the route-feet weighted average copper cable size is approximately 156 pair cable. The cable in these data, like the copper cable produced by BellSouth's model, is mostly relatively small size cable. In addition, 59% of the fiber cable reflected in the data from which BellSouth derives its fiber cable loading factors is 6 (approximately 0%), 12 (11%), 18 (1%), 24 (31%), 30 (approximately 0%), or 36 (15%) strand cable. See BellSouth August 29 *Ex Parte* Letter. Based on these BellSouth data, the route-feet weighted average fiber cable size is approximately 49 strand cable. The majority of the cable in these data, like the fiber cable produced by BellSouth's model, is relatively small-size cable.

²³⁵ This is true due to the existence of certain fixed installation costs that do not vary with the size of the cable.

switching usage and features.²³⁶ AT&T also poses detailed and overall challenges to BellSouth's feature cost methodology, including the feature port additive.²³⁷

78. At the outset, we note that all of these issues involve complex and fact-specific challenges related to BellSouth's switching cost model or inputs which were approved in individual states only after state commissions made adjustments or modifications based on extensive hearings and evidence. Each of the state commissions has demonstrated a commitment to TELRIC principles in setting UNE prices.²³⁸ Despite multiple opportunities over several years to bring these specific issues to the attention of state commissions in ongoing UNE proceedings in each of the five states, AT&T barely did so.²³⁹ As a result, state commissions in the applicant states have not been afforded the opportunity to consider many fact-intensive questions presented for the first time by AT&T in response to this section 271 application. AT&T, furthermore, did not raise these specific, detailed complaints about BellSouth's cost models before the Commission when we evaluated and approved BellSouth's section 271 application for Georgia and Louisiana that used the identical models underlying this application.²⁴⁰ With respect to the complaints that AT&T raises regarding switch discounts, trunking equipment, combined local/tandem offices in BellSouth's cost models, and allocation of switching costs, as discussed below, we find that these claims are insufficient to establish that the state commissions committed clear error. We also conclude that our benchmark analysis demonstrates that non-loop rates, which include the cost of features, in Alabama, Mississippi, and South Carolina fall within the range that a reasonable application of TELRIC principles would produce.

79. *Discounts.* AT&T contends that BellSouth used the wrong discount for the 5ESS switch because it does not reflect the actual price BellSouth paid for new switches.²⁴¹ AT&T asserts that BellSouth used a small sample of recent switch purchases instead of using contract-specific new switch data and that, after applying the discount, switch prices actually exceeded

²³⁶ AT&T Comments at 34.

²³⁷ *Id.* at 34-37.

²³⁸ See section IV.B.1.a. *supra*.

²³⁹ AT&T did not raise the switching misallocation issue in the most current UNE cost proceedings in Alabama, Kentucky, Mississippi, and South Carolina. It was raised in 1998 before the North Carolina Commission and in early generic cost dockets in other states, but it was rejected. AT&T raised other arguments related to features and discounts before state commissions, but not the specific ones it raises here. The arguments related to trunk equipment technology and combined local/tandem offices were never presented before the commissions of the five applicant states. As we made clear in the *Verizon Vermont Order*, it is generally impracticable for the Commission to make fact-specific findings in the context of a section 271 proceeding when the state commission's fact-specific findings were not challenged at the state level. *Verizon Vermont Order*, 17 FCC Rcd at 7636, para. 20.

²⁴⁰ All five states use the Switch Cost Information System (SCIS) Model to generate switch unit investments. North Carolina uses the model that is identical to the one used in Georgia. Alabama, Kentucky, Mississippi, and South Carolina use the same model as Louisiana. *BellSouth Caldwell Aff.* at para. 28.

²⁴¹ AT&T Comments App., Tab E, Declaration of Catherine E. Pitts (AT&T Pitts Decl.) at para. 5.

the contract prices.²⁴² BellSouth used this incorrect discount, according to AT&T, to calculate the “getting started” cost of the switch and in the new and growth melding process that determined the discount applied to other equipment, resulting in inflated switch costs.²⁴³ AT&T also questions whether the use of a melded discount is appropriate²⁴⁴ and whether it was proper to use 1999-2002 as the sample period.²⁴⁵ We find that AT&T has not persuaded us that commissions in the five applicant states committed clear error in adopting BellSouth’s “new” switch discount for use in the SCIS model.

80. As an initial matter, we found in the *BellSouth Georgia/Louisiana Order* that switching prices may be based on a meld of new and growth discounts.²⁴⁶ We recognized that certain vendors have provided a greater discount for new switches and smaller discounts for growth or expansion of existing switches, and such discounts were only valid when an overall purchase of both new and growth equipment was made.²⁴⁷ Moreover, we have previously stated that the split between new and growth discounts is a fact-intensive and specific determination that should be decided in the first instance by state commissions.²⁴⁸ In this case, however, AT&T did not attempt to demonstrate to any of the state commissions, as it specifically asserts here, that BellSouth did not calculate the new and growth discounts properly, or how AT&T would have calculated them.

81. As the record shows, switch vendor contracts often are expressed in terms of a price per equivalent line, rather than a discount off the list price.²⁴⁹ BellSouth’s switching cost model, however, requires an input of a percentage off the list price. To develop a vendor

²⁴² AT&T Comments at 37; AT&T Pitts Decl. at para. 6.

²⁴³ AT&T Pitts Decl. at para. 6. “BellSouth used the new (replacement) switch price for equipment included in the first cost (getting started cost) of the switch and a melded new and growth price for all remaining switch equipment.” *Id.* at para. 5. “The ‘first cost’ of the switch is the initial up-front cost of purchasing a replacement switch, while the growth cost is the cost of switch equipment for adding equipment to an existing switch.” *Id.* at n.2. BellSouth disputes AT&T’s claim that BellSouth used a melded new and growth discount for the entire switch in North Carolina. AT&T Pitts Decl. at para. 5 n.1; BellSouth Caldwell Reply Aff. at para. 67.

²⁴⁴ AT&T Pitts Decl. at para. 5.

²⁴⁵ *Id.* at para. 7; *see also* AT&T Comments at 37.

²⁴⁶ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9057-58, para. 78. AT&T did not argue there that the specific discounts that were applied by BellSouth were inappropriate. *Id.* at 9059-60, para. 82.

²⁴⁷ *Id.* at 9059, para. 81.

²⁴⁸ *Verizon New Jersey Order*, 17 FCC Rcd at 12293, para. 43. We have found, however, that switch prices based on an assumption of 100% growth additions did not comply with TELRIC. *Application by Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3318, para. 34 (2002) (*Verizon Rhode Island Order*).

²⁴⁹ BellSouth Caldwell Reply Aff. at para. 69.

discount percentage for use in the cost model, BellSouth used information from actual switch replacement jobs to determine what the price for a new switch would be without a discount, and then compared it to what was billed by the vendor with the discount.²⁵⁰ BellSouth analyzed each of its 28 new switch jobs in 1998 covered under its then-current vendor contracts that reflected what BellSouth paid to its switch vendors.²⁵¹ To develop forward-looking switch costs, it is reasonable to use current switch prices, reflecting actual purchases and existing vendor discounts, as a starting point. LECs today generally have digital switches in place throughout their entire network and are purchasing relatively few new switches. As a result, a study size of 28 new switches may not be unreasonable. Expanding the study size would require information on older purchases that might be less relevant to determining what BellSouth would pay for a switch on a forward-looking basis. BellSouth's cost studies were forward-looking in omitting analog switches and considering only the latest releases by switch vendors for switch generics and the latest central office processor.²⁵²

82. The state commissions determined switch-related costs and set rates based on the discount rates and methodology contained in BellSouth's cost studies.²⁵³ As we stated in prior section 271 proceedings, state commissions may reasonably find that cost models can, in a forward-looking manner, take into account specific new and growth discounts that are reflected in contracts with vendors.²⁵⁴ Based on the evidence, we do not believe that AT&T has established that the sample of recent switch purchases by BellSouth was clear error or that BellSouth relies on embedded switching costs that are inconsistent with TELRIC principles.²⁵⁵

²⁵⁰ *Id.* "Using actual orders, BellSouth populated SCIS/MO with engineering data (e.g., number of lines, number of trunks, CCS per line, etc.) taken directly from orders used to purchase new/replacement switches. These SCIS/MO runs produced a total non-discounted investment for the switch. The total material price was then compared to the actual billing from vendors. Since SCIS/MO requires an input of a % off list price, BellSouth used an [iterative] process (i.e., repeatedly changing the SCIS/MO discount input) to determine the correct switch discount required to match the amount actually billed per line. . . . Since the jobs were worked under the auspices of the current switch contracts, the actual billed data from actual new/replacement jobs reflect the appropriate rates per contract." *Id.* at paras. 69, 70.

²⁵¹ *Id.* at para. 74. BellSouth used billed data from its BellSouth Construction Activity System of replacement/new switch orders that reflected the amount paid by BellSouth to either Lucent or Nortel. "The 28 jobs BellSouth examined is [sic] extensive considering that the requirement for placing new switches or replacing existing analog switches is limited." This "reflected the totality of all replacement/new jobs that were worked under the current contracts and closed in 1998. . . ." *Id.*

²⁵² *Id.* at para. 58.

²⁵³ *Id.* at 77. "In the generic cost dockets in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, [] the state commissions established switch-related rates based upon BellSouth's cost studies, which developed switching investment by using BellSouth's existing contracts with Nortel and Lucent BellSouth's cost studies took into consideration the cost associated with both the initial placement and growth of the switch" BellSouth Caldwell Aff. at para. 105.

²⁵⁴ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9058-59, paras. 79, 81.

²⁵⁵ AT&T Pitts Decl. at para. 6; Letter from Alan C. Geolot, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 4 (filed Aug. 23, 2002) (AT&T August 23 (continued....))

Furthermore, BellSouth provides persuasive evidence that using actual billed data for jobs worked under vendor contracts is a more accurate way to determine discounts than attempting to derive this information directly from contracts, as AT&T argues.²⁵⁶ By contrast, we are left with no analysis or work papers demonstrating how AT&T arrived at its assertion that BellSouth's method of computing discounts led to prices that exceeded the contract rate,²⁵⁷ and, without more, we reject that assertion. BellSouth also reasonably explains that it based its meld of new and growth discounts on the number of lines projected to be purchased between 1999 and 2002. We do not believe, as AT&T contends, that this is an inappropriate sample period. We find that it rationally corresponds to the specified time frame of the cost study.

83. AT&T also asserts that the appropriate melded discount would reflect 82 percent of the new switch discount and 18 percent of the growth discount.²⁵⁸ AT&T apparently assumes that BellSouth would have received the same new and growth switch contract discounts regardless of the mix of new and growth purchases that BellSouth expected to make. As noted above, however, although vendors offer a higher discount rate for new switches and a lower discount for growth, vendors may realistically set the specific discount rates on the basis of the anticipated overall purchase.²⁵⁹ BellSouth argues that AT&T's "82% new purchase assumption is not realistic" because switch vendors would not have accepted the resulting reduction in their margin and that it "would invalidate the entire discount structure under which the contracts were negotiated."²⁶⁰ We find merit in BellSouth's assertion that the levels of new and growth switch discounts reflect the vendors' judgments about anticipated purchases. AT&T has not persuaded us that the new-growth switch discount alone could be changed without affecting the rest of the negotiated discount structure in the vendor contracts.

84. Using a meld of new and growth discounts in developing switching rates also recognizes that it may not be cost-effective to acquire all of the projected switching capacity

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Pricing and Growth Tariff *Ex Parte* Letter) (contending that BellSouth's reliance on embedded switches and overemphasis on growth/add-on investment violate TELRIC principles); *see also id.* App., Supplemental Reply Declaration of Catherine E. Pitts (AT&T Pitts Supp. Reply Decl.) at paras. 12-16.

²⁵⁶ *Id.*; BellSouth Caldwell Aff. at para. 71. Switch contracts do not provide the necessary detail and require interpretation and clarification of which rates apply. In addition, the "equivalent lines" expressed in a contract are not the same as the line count entered into the SCIS/MO cost model, so taking the lines from the cost model and multiplying by the price per equivalent line from the contract would understate the cost of a new switch. BellSouth Caldwell Aff. at para. 72.

²⁵⁷ AT&T Pitts Decl. at para. 6

²⁵⁸ AT&T Comments at 37-38; AT&T Pitts Decl. at para. 8, Exh. 1.

²⁵⁹ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9059, para. 81; *AT&T v. FCC*, 220 F.3d at 618 (stating that counsel for the Commission explained at oral argument that "growth additions to existing switches cost more than new switches because vendors offer substantial new switch discounts in order to make telephone companies dependent on the vendors' technology to update the switches").

²⁶⁰ BellSouth Caldwell Reply Aff. at para. 76.

needed over the life of the switch at the outset.²⁶¹ In calculating switching rates, BellSouth applied the higher (new) discount rate to about one-third of the investment, leaving the melded discount rate to be applied to the remaining two-thirds of the investment.²⁶² This has the effect of substantially narrowing the difference in rates resulting from the melded discount rate that was used by BellSouth and that advocated by AT&T. In sum, we have been presented with no evidence or rationale that would persuade us that the split of new to growth discounts in the cost models approved by the commissions in the applicant states is not TELRIC-compliant. We conclude, therefore, that AT&T has not established any clear error by the commissions in the five applicant states.

85. *Trunking Technology.* AT&T claims that BellSouth does not model forward-looking trunk equipment technology because it fails to assume the ubiquitous deployment of a switch component known as Digital Network Unit-SONET (DNUS).²⁶³ BellSouth admits that DNUS may be the latest technology for trunk terminations, but it disputes AT&T's contention that it is the most forward-looking, economical deployment in all instances because it is a high-capacity interface.²⁶⁴ BellSouth further asserts that, where the yearly growth rate justifies a high-capacity interface, BellSouth's model assumes DNUS use.²⁶⁵ Although AT&T states that it has raised this issue in the pending Georgia cost proceeding, it did not do so in any of the five states at issue here.

86. AT&T also asserts without any supporting analysis that "[c]orrecting the SCIS inputs to reflect the DNUS equipment in the current Georgia [cost] proceeding lowered the trunk costs eight percent."²⁶⁶ Again, we note that, although this issue is apparently under consideration in the Georgia cost proceeding, AT&T did not raise it in any of the five states represented in this section 271 application. At bottom, we have nothing more than AT&T's bare assertion that the use of DNUS technology would lower trunking costs, at least under certain circumstances.²⁶⁷

²⁶¹ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9059-60, para. 82.

²⁶² BellSouth Caldwell Reply Aff. at Exh. DDC-5.

²⁶³ AT&T Pitts Decl. at para. 9 (stating that BellSouth assumes the use of a Digital Line Trunk Unit (DLTU)).

²⁶⁴ BellSouth Caldwell Reply Aff. at para. 78. "The use of the DNUS decreases the cost per trunk, *but only if* it is fully utilized. The DNUS is a high capacity interface, capable of terminating 8,064 trunks. Thus, the utilization is relatively low except in a limited number of central offices where demand for trunk terminations is high." *Id.* (emphasis in original). Because DNUS requires that the interfaces be at the DS-3 level, it may also require additional expensive equipment to multiplex individual DS-1s to the DS-3 level. *Id.*

²⁶⁵ BellSouth Reply at 38. "DNUS is not intended to replace the DLTU in every office. BellSouth assumed the DNUS was present in an office if . . . the growth rate that triggers placement of DNUS equipment is 250 trunks per year, which is based on economic considerations . . ." BellSouth Caldwell Reply Aff. at para. 79. BellSouth also contends that it chose to use the DLTU in all cases for packet trunks (Primary Rate ISDN) to reduce costs. *Id.* at para. 80.

²⁶⁶ AT&T Pitts Decl. at para. 9.

²⁶⁷ See nn.264-65, *supra*.

although it has not established the magnitude of that reduction in this section 271 proceeding.²⁶⁸ Given the lack of any state record on this issue, AT&T's unsupported assertions, and BellSouth's reasonable explanation that DNUS is the cost-minimizing technology only where growth rates are high,²⁶⁹ we conclude that AT&T has not demonstrated that any of the states committed clear error in adopting BellSouth's assumption regarding trunk equipment technology.

87. *Combined Local/Tandem Modeling.* AT&T claims that BellSouth's cost model assumes its network uses only combined local/tandem switches and that there are no switches that perform only local end-office or tandem functions.²⁷⁰ AT&T asserts that this overstates costs by failing to reflect a greater discount for tandem switches, increasing the "getting started" costs, and understating switch utilization levels.²⁷¹ Although AT&T is correct that BellSouth's switching model assumes the exclusive use of combined local/tandem switches, AT&T has not established that this assumption necessarily overstates costs.²⁷²

88. As a preliminary matter, we note that it is appropriate for state commissions to consider these kinds of fact-specific issues pertaining to assumptions used in BellSouth's cost model, but neither AT&T nor any other party raised these issues in the state proceedings. In response to AT&T's arguments, BellSouth explains that it employed the local/end office combination designation to capture the cost difference between the trunk termination of a local trunk and the termination of a tandem trunk.²⁷³ In order to capture tandem trunks in the cost calculation, the SCIS/MO requires that an office carry the local/tandem designation.²⁷⁴ BellSouth also provides an analysis showing that, despite AT&T's contrary assertions, the combined local/tandem office designation actually decreases getting started costs.²⁷⁵ AT&T also fails to

²⁶⁸ AT&T Pitts Decl. at para. 9. Without endorsing AT&T's claim, BellSouth provides an analysis to show that reducing the trunk per minute of use rates by 8% (times the 5ESS distribution) only reduces the calculated average monthly usage rate by less than 1%, or three cents on average per line, per month (based on standard switching assumptions that the Commission uses in its benchmark analysis). BellSouth Caldwell Reply Aff. at para. 81.

²⁶⁹ See section IV.B.1. *supra*.

²⁷⁰ AT&T Comments at 38; AT&T Pitts Decl. at para. 10.

²⁷¹ AT&T Pitts Decl. at para. 10. AT&T appears to imply that tandem switches receive a greater discount than local end offices, and BellSouth does not reflect this in its cost study.

²⁷² The SCIS model provides long-run, forward looking costs, but the "program was not specifically developed for BellSouth or for TELRIC cost studies." *North Carolina Commission UNE Rate Order* at 54.

²⁷³ BellSouth Caldwell Reply Aff. at para. 82.

²⁷⁴ *Id.* "The difference in investment is slight in the 5ESS switch. However, in the DMS switch, the difference is more substantial since Norel recommends additional testing of the tandem trunk termination, which requires additional equipment." *Id.*

²⁷⁵ *Id.* at para. 83. The getting started investment for a 5ESS end office/tandem is approximately \$550 (discounted) more per switch than an end office, increasing costs by \$0.0008 per millisecond. The getting started investment for a DMS end office/tandem is less per switch than the equivalent investment for an end office by about \$22,000, reducing costs by about \$0.03 per millisecond.

offer sufficient evidence to support its implied conclusion that BellSouth receives a greater discount for combined local/tandem switches than local end offices.²⁷⁶ Furthermore, AT&T fails to substantiate its assertion that BellSouth overstates costs by understating the higher utilization levels associated with combined tandem/local offices.²⁷⁷ First, AT&T offers no analysis of the size of this cost impact, so we cannot evaluate the significance of its assertion. Second, even though BellSouth was constrained to designate only combined local/tandem offices in the cost model, we are persuaded by BellSouth's explanation that it was reasonable to use end office utilization data because the switch is actually serving an end office function in the network.²⁷⁸ In sum, BellSouth offers reasonable explanations for the modeling assumption necessary to accommodate the limitations of the SCIS model. Accordingly, we find that BellSouth's use of the combined local/tandem switch in its cost model is not inconsistent with results that a reasonable application of TELRIC principles would produce.

89. *Switch Allocation Issues.* AT&T raises issues related to the allocation of switching costs and rate structure design.²⁷⁹ It specifically argues that BellSouth should recover "getting started" costs "in the fixed port charges, and [its] allocation of these costs to the minute-of-use and feature port additive charges violates TELRIC's cost-causation principles."²⁸⁰ AT&T contends that this disparity between the way BellSouth attempts to recover its switch costs and

²⁷⁶ See AT&T Pitts Decl. at para. 10. "BellSouth obtains end offices under contract, but purchases tandem switches using a competitive bid process. BellSouth, however, applies only its end office discounts . . . to all of its switches." *Id.* BellSouth responds that it "has not used the bid process since the late 1990s for end offices or tandems." BellSouth Caldwell Reply Aff. at para. 85.

²⁷⁷ AT&T Comments at 38. AT&T contends that this understated utilization leads to increased costs per-processor-millisecond and inflated end-office and tandem minute-of-use and feature rate charges.

²⁷⁸ BellSouth Caldwell Reply Aff. at para. 84.

²⁷⁹ AT&T also raises similar issues to those it raised in the Maine section 271 proceeding in which AT&T argued that the majority of switching costs are not usage-sensitive and should be recovered in the fixed port charge rather than usage elements. AT&T Pitts Decl. at para. 14: *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maine*. CC Docket No. 02-61. Memorandum Opinion and Order, 17 FCC Rcd 11659, 11674-75, para. 27 (2002) (*Verizon Maine Order*). Consistent with prior section 271 orders, we believe that, as a general matter, rate design is appropriately decided by state commissions in the first instance. See, e.g., *Verizon New Jersey Order*. 17 FCC Rcd at 12300-01, para. 58 (concerning recovery of labor costs associated with DUF rates).

²⁸⁰ AT&T Comments at 38-39. "These 'getting started' costs are fixed and largely associated with maintenance, administrative, test, and spare equipment, memory, and other common equipment in the switch. Such 'getting started' costs do not vary with respect to the number of lines or switch usage. BellSouth has very low switch-processor utilization, which means that BellSouth's switch processors will not exhaust on calls," and thus the costs are not traffic sensitive. *Id.* According to AT&T, getting-started costs should be allocated to the port and not traffic sensitive elements because the number of switch modules required is driven by ports, not by calls or other usage. AT&T Pitts Decl. at paras. 11-16; AT&T Pitts Supp. Reply Decl. at paras. 17-19. AT&T also contends that BellSouth similarly misallocates a common part of the switch called Equivalent POTS Half Call to traffic sensitive instead of fixed rate elements. AT&T Comments at 38-39; AT&T Pitts Decl. at paras. 11-16.

the way it incurs costs disadvantages competitive LECs.²⁸¹ We conclude that BellSouth's allocation of switching costs conforms to our rules and is consistent with the allocation ratios that the Commission has previously approved. AT&T's evidence thus does not persuade us that the state commissions committed clear error in their allocation of switching costs.

90. As a preliminary matter, AT&T here refers to a feature port additive rate element that BellSouth no longer has in its rate structure.²⁸² To the extent that AT&T intends to refer to feature elements, we also note that BellSouth presently recovers these costs through the port, consistent with the manner in which AT&T contends they could be recovered.²⁸³

91. At the outset, the record shows that no party raised these arguments in the most current state proceedings in Alabama, Kentucky, Mississippi, and South Carolina.²⁸⁴ In the North Carolina UNE proceeding, AT&T raised the same argument that getting started investment consists of non-traffic sensitive costs and thus should be recovered in the non-traffic sensitive port rate element, but it was rejected.²⁸⁵ AT&T also contended, similar to its assertion here, that getting started costs consist of one-time fixed investments and that it is inappropriate to assume that this is traffic sensitive "because it does not follow the basic TELRIC principle of reflecting costs based on causation."²⁸⁶ The state commission, however, did not adopt AT&T's proposal and maintained BellSouth's allocation between non-traffic sensitive and traffic sensitive switch-related investments.²⁸⁷ The record also shows that the state commissions in Alabama, Mississippi, and South Carolina reached similar findings.²⁸⁸ As we discuss below, we

²⁸¹ AT&T Pitts Decl. at para. 15. "CLECs will incur a higher cost for usage than BellSouth incurs because the CLEC's minute-of-use element is inflated by the fixed costs." *Id.*

²⁸² We discuss features separately. See para. 94, *infra*. Prior to its section 271 application, BellSouth took 55% of the then existing feature port additive charge and added it to the port element in Alabama, Mississippi, and South Carolina. BellSouth also voluntarily eliminated charges associated with UNE vertical features in North Carolina. There was no separate charge for features in Kentucky.

²⁸³ Letter from Joan Marsh, Director -- Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Aug. 1, 2002) (AT&T August 1 *Ex Parte* Letter). AT&T disputed the feature costs that BellSouth seeks to recover but agreed that any appropriate costs associated with features should be recovered through the port element rather than through usage charges. *Id.*

²⁸⁴ BellSouth Caldwell Reply Aff. at para. 95.

²⁸⁵ BellSouth Application App. D, Vol. 8a-c, Tab 10, Part C, Docket No. P-100, Sub 133d (Rebuttal Testimony of Catherine E. Petzinger (Pitts) on Behalf of AT&T Communications of the Southern States, Inc., Before the North Carolina Utilities Commission) (filed March 9, 1998) at 981 (AT&T North Carolina Testimony); BellSouth Caldwell Reply at para. 95.

²⁸⁶ AT&T North Carolina Testimony at 981. "In addition to the processor, there are numerous other items in the SCIS/MO Getting Started Investment, which are one-time fixed investments incurred as a first cost. BellSouth, however, has assumed that the entire Getting Started Investment for every switch is traffic sensitive." *Id.*

²⁸⁷ BellSouth Caldwell Reply Aff. at para. 95.

²⁸⁸ *Id.*

believe the state commissions acted in a manner that is consistent with our rules and previous decisions.

92. The *Local Competition Order* adopted the general rule that incumbent LECs' rates for interconnection and unbundled elements must recover costs in a manner that reflects the way they are incurred.²⁸⁹ The Commission also adopted additional rate structure rules for shared facilities that give states the flexibility to decide whether to recover these costs through either usage-sensitive or flat-rated charges.²⁹⁰ The Commission's rules also provide that local switching costs shall be recovered through a combination of a flat-rated charge for line ports which are dedicated facilities, and either a flat-rated or per-minute usage charge for the switching matrix and for trunk ports which are shared facilities.²⁹¹

93. At the same time, the Commission declined to prescribe the appropriate allocation of switching costs as between the line port, which must be flat-rated, and the switching matrix and trunk ports. Because the Commission did not prescribe a specific allocation, the states retain the flexibility to adopt an allocation within a reasonable range. As we stated in the *Verizon Maine Order*, because some portion of switching costs is fixed, an allocation of 100 percent of the switching costs to the minutes-of-use element would be unreasonable *per se*. We also found that a state commission's allocation of 30 percent fixed to 70 percent minutes-of-use does not fall outside a reasonable range.²⁹² BellSouth demonstrates that its allocation between non-traffic sensitive and traffic sensitive charges for the five applicant states is almost exactly the same here, ranging from an allocation of 32 percent fixed/68 percent minutes-of-use (Alabama) to 28 percent fixed/72 percent minutes-of-use (North Carolina and South Carolina).²⁹³ Thus, we conclude that the switching allocations adopted by these five states are consistent with allocations the Commission has previously approved.

94. *Vertical Features.* AT&T poses a number of challenges to BellSouth's feature cost development. BellSouth explains that it attempted to determine the forward-looking costs of providing competitive LEC customers with the ability to access all of the available features in

²⁸⁹ *Local Competition Order*, 11 FCC Rcd at 15874, para. 743.

²⁹⁰ *Id.* at 15877, para. 753. "Shared facilities are those used by multiple parties." *Id.* at 15873, para. 741; *see also* 47 C.F.R. § 51.507(c).

²⁹¹ *Local Competition Order*, 11 FCC Rcd at 15905, para. 810; 47 C.F.R. § 51.509(b). AT&T refers to "getting started" costs as "common equipment" in the switch. AT&T Pitts Decl. at paras. 11, 14. Thus, AT&T does not dispute that "getting started" costs refer to the portion of the switch that is a shared facility.

²⁹² *Verizon Maine Order*, 17 FCC Rcd at 11676, para. 29.

²⁹³ Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed July 26, 2002) (BellSouth July 26 *Ex Parte* Letter). Non-traffic sensitive to traffic sensitive comparisons for each of the five states are as follows: Alabama, 32% to 68%; Kentucky, 30% to 70%; Mississippi, 29% to 71%; North and South Carolina, 28% to 72%. *Id.*

a switch.²⁹⁴ The SCIS/MO cost model, however, was not designed to calculate the cost of access to all switch features, so BellSouth developed the SST model to derive feature costs.²⁹⁵ Generally, BellSouth tried to determine a feature cost that reflects the costs BellSouth incurs to give a typical customer access to all features and functions of a switch.²⁹⁶

95. More specifically, BellSouth attempts to calculate the demand placed on a switch in a peak period (busy hour) for various kinds of feature calls and multiplies this by the number of features used by an average customer.²⁹⁷ To get the average busy hour use, BellSouth used 56 features that it asserts are representative because they reflect a mix of features that use the various switch resources in processing feature-related calls, including the processor, line equipment, hardware, and signaling system.²⁹⁸ BellSouth used retail cost studies to develop an average busy hour demand placed on these various switch resources.²⁹⁹ BellSouth then multiplied the average busy hour demand by the number of features per average customer³⁰⁰ to get the average feature-related demand placed on the switch per line.³⁰¹ Finally, it multiplied this demand by the cost it developed from another study which analyzed the various costs of the switching components involved in providing features.³⁰² BellSouth also attempts to show that its features costs are reasonable by offering an analysis using feature penetration rates in Georgia and comparing BellSouth's feature rates to Verizon's New York rates.³⁰³

²⁹⁴ BellSouth Caldwell Reply Aff. at para. 104.

²⁹⁵ *Id.* at paras. 104-05. "[N]umerous assumptions had to be made in the modeling process. For example, how to condense the list of existing features to a palatable, yet representative, subset; how to accurately reflect the variation in feature switch resource requirements (some features only use the processor, some need hardware, etc.); how to determine a reflective input for the number of milliseconds, octets, or holding times required by the typical feature; and how to determine the CLEC feature usage characteristics." *Id.*

²⁹⁶ *Id.* at para. 104.

²⁹⁷ Switches are designed to handle calling for a peak period, or busy hour, and therefore switch costs are based on this capacity.

²⁹⁸ BellSouth Caldwell Reply Aff. at para. 107. "An attempt was made to reflect each possible combination of the four switch components (processor, line, hardware, SS7) in the list of 56 features. Additionally, these 56 are some of the most common features purchased." *Id.* They also are "a substantial portion of the 200 unique features that are available." BellSouth Reply at 41; *see also* BellSouth Caldwell Reply Aff. at para. 108.

²⁹⁹ *Id.* at para. 110.

³⁰⁰ BellSouth derived the number of features per average user from its Complete Choice retail offering. Complete Choice customers have access to an extensive list of features, but BellSouth contends that the average customer uses only four features. *Id.*

³⁰¹ *Id.*

³⁰² Letter from Sean A. Lev, Counsel to BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed July 25, 2002) (BellSouth July 25 *Ex Parte* Letter).

³⁰³ BellSouth Caldwell Reply Aff. at paras. 114, 122-26 & Exh. DDC 9-11.

96. BellSouth used its cost methodology in Alabama, Mississippi, and South Carolina to develop an average feature port additive rate for competitive LEC customers that ordered one or more features. Prior to filing this section 271 application, BellSouth incorporated 55 percent of the feature port additive rate into the port charge, paid by all customers. In response to AT&T criticism, BellSouth asserts that its modified features recovery is reasonable because 55 percent of its lines have at least one vertical feature and that this "take rate" is now reflected in the revenue-neutral pricing of features across all lines.³⁰⁴ AT&T contends that BellSouth's cost model for developing a composite feature rate is "fatally flawed."³⁰⁵ AT&T bases a substantial part of its argument related to feature costs on several technical aspects of BellSouth's feature cost methodology and its complex calculations.³⁰⁶ For example, AT&T argues that BellSouth's *underlying study of 56 features incorrectly mixes feature use together for various classes of service, fails to take into account usage characteristics based on penetration levels of features, and assumes 4.5 feature calls in the busy hour which are excessive.*³⁰⁷ AT&T also criticizes BellSouth's assumption that every feature uses the same amount of processor time³⁰⁸ and BellSouth's inclusion of both central and distributed processor costs in the 5ESS switch, which AT&T contends results in double-charging for features that do not use the central processors.³⁰⁹ AT&T further claims that BellSouth double-counts the hardware investment related to providing features, incorrectly uses averages in developing hardware unit investments, and does not

³⁰⁴ BellSouth Ruscilli/Cox Reply Aff. at para. 33; AT&T Comments at 36-37 (arguing that BellSouth's "take-rate" is too high and that as a result of BellSouth's modified recovery of features, all customers, instead of only those who order features, pay an inflated feature charge in the port rate); *see also* AT&T Reply App., Tab C, Reply Declaration of Catherine E. Pitts (AT&T Pitts Reply Decl.) at paras. 2, 6 (asserting that North Carolina data "demonstrate that the 55% factor used to spread the cost of the feature port additive across all subscriber lines is unsupported by BellSouth information on the take rate for features"); AT&T Pitts Supp. Reply Decl. at para. 9.

³⁰⁵ AT&T Pitts Decl. at para. 20; AT&T Comments at 35-37.

³⁰⁶ AT&T also argues that BellSouth's feature port additive rate is not TELRIC-compliant because the same rate applied "whether a customer incurs the costs associated with one feature or a dozen features." AT&T Comments at 35. A similar claim was raised before the Alabama and South Carolina Commissions. AT&T Reply at Attachs. 13-16. AT&T also criticizes BellSouth's consideration of feature-related hardware costs and the assumption that different switches process feature calls in the same way. AT&T Pitts Decl. at paras. 21-25.

³⁰⁷ AT&T Pitts Decl. at paras. 19-20; AT&T Pitts Reply Decl. at paras. 2, 3-4 (using North Carolina data to support its argument that the 56 features underlying BellSouth's cost methodology are not representative of features purchased by subscribers). "The result of BellSouth's inappropriate averaging combined with usage data for [a] large number of features that are not purchased by subscribers produces costs that are inaccurate and are not based on cost causation principles." *Id.* at para. 4; *see also* AT&T August 23 Pricing and Growth Tariff *Ex Parte* Letter at 3; AT&T Pitts Supp. Reply Decl. at paras. 3-4, 6-7.

³⁰⁸ AT&T Pitts Decl. at para. 11 n.13; AT&T Pitts Reply Decl. at para. 5. "Even if it were correct to assign getting started costs and EPHC [Equivalent POTS Half Call] costs to features, which it is not, such an assignment should not assume that every feature uses the same number of milliseconds as a basic call, as each feature is different, and there is no relationship between a feature and the number of milliseconds for a basic call." *Id.*

³⁰⁹ AT&T Pitts Decl. at para. 21.

substantiate hardware component costs.³¹⁰ In addition, AT&T contends that “the [hardware] capacities assume some level of average utilization that has not been identified or explained.”³¹¹

97. AT&T did not raise these specific challenges to BellSouth’s feature cost methodology before any of the state commissions, and it has not subsequently asked them to address these issues.³¹² As we have previously stated, 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.³¹³ That is why our decision-making process gives substantial weight to evidence that is submitted by the state.³¹⁴ In this case, however, there is no state record for us to review on the issues that AT&T raises, and we do not have the benefit of any state commission findings or evaluations to assist us. We are left with many fact-intensive, complex questions related to BellSouth’s new cost model and the numerous assumptions and inputs that it developed, such as whether it was appropriate for BellSouth to develop feature costs based on the 56 features it contends are “representative,” whether they are indeed representative, whether BellSouth reasonably relied on demand data from its retail Complete Choice plan to derive the number of features per average user, and so forth. We need not, however, resolve these complex issues regarding feature cost modeling because BellSouth’s non-loop rates in Alabama, Mississippi, and South Carolina pass a benchmark comparison to BellSouth’s non-loop rates in Louisiana. We conclude, therefore, that the non-loop rates in these three states, which include the cost of features, fall within the range that a reasonable application of TELRIC principles would produce.

98. *Benchmark Analysis.* States have considerable flexibility in setting UNE rates, and certain flaws in a cost study, by themselves, may not result in rates that are outside the reasonable range that correct application of TELRIC principles would produce.³¹⁵ The

³¹⁰ *Id.* at para. 22. AT&T also takes issue with BellSouth’s attempt to show that its feature rates are reasonable based on a comparison with Verizon’s rates in New York. AT&T Pitts Supp. Reply Decl. at paras. 10-11 (responding to BellSouth Caldwell Reply Aff. at paras. 122-26). AT&T asserts that direct comparisons are inappropriate because BellSouth and Verizon used different cost studies and assumptions. AT&T further contends that the comparison, when correctly adjusted, shows that BellSouth’s “hardware-related features cost is significantly overstated once feature penetration rates are appropriately taken into account.” AT&T August 23 Pricing and Growth Tariff *Ex Parte* Letter at 4.

³¹¹ AT&T Pitts Decl. at para. 22.

³¹² AT&T asserts that feature-related issues were raised before the Alabama and South Carolina Commissions, but the documentation it provides shows different arguments were presented there by different parties. Specifically, SECCA argued that the Alabama Commission should reject BellSouth’s features rate because there is no incremental cost in providing features, or, alternatively, require BellSouth to unbundle features and price each separately. The same arguments were made by NewSouth, NuVox, Broadslate Networks, ITC^DeltaCom, KMC Telecom, and WorldCom before the South Carolina Commission. AT&T Reply at Attachs. 13-16.

³¹³ *SWBT Texas Order*, 15 FCC Rcd at 18375, para. 51.

³¹⁴ *Id.*

³¹⁵ *Verizon Rhode Island Order*, 17 FCC Rcd at 3319-20, para. 37.

Commission has addressed past claims that a state commission has not applied TELRIC principles or has done so improperly by looking to rates in other section 271-approved states to see if the applicant state's rates nonetheless fall within the range that a reasonable TELRIC-based rate proceeding would produce.³¹⁶ To determine whether a comparison is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant or an appropriate benchmark.³¹⁷ Applying this standard to BellSouth's rates in Alabama, Mississippi, and South Carolina, we find that Louisiana is a permissible state for UNE rate comparison purposes.³¹⁸

99. Having determined that the Louisiana rates are appropriate rates for the benchmark comparison, we compare BellSouth's Alabama, Mississippi, and South Carolina non-loop rates to the Louisiana non-loop rates using our benchmark analysis, using state-specific data for weighting rates.³¹⁹ We find that BellSouth's non-loop rates in these states satisfy our benchmark analysis and the requirements of checklist item 2. Specifically, BellSouth's non-loop rates in Alabama, Mississippi, and South Carolina are lower than BellSouth's non-loop rates in Louisiana by 32, 25, and 20 percent, respectively. Comparing the costs, we find that the Alabama and Mississippi non-loop costs are higher than the Louisiana non-loop costs by 8 and 28 percent, respectively; the non-loop cost in South Carolina is 9 percent lower than in

³¹⁶ See, e.g., *Verizon New Jersey Order*, 17 FCC Rcd at 12295-96, para. 49; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

³¹⁷ See *Verizon New Jersey Order*, 17 FCC Rcd at 12295-96, para. 49; *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719, 20746, para. 56 (2001) (*SWBT Arkansas/Missouri Order*); *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63. In the *Verizon Pennsylvania Order*, we found that several of the criteria should be treated as indicia of the reasonableness of the comparison. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64; see also *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

³¹⁸ Louisiana is in the same geographic region, is served by the same BOC, has a similar rate structure, and the Commission has already found Louisiana's rates to be TELRIC-compliant on their own merits. See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9033-34, paras. 23-24. No commenter disputes that the Louisiana rates are an appropriate benchmark in determining TELRIC-compliance.

³¹⁹ As in past applications, our benchmark analysis combines per-minute switching rates with other non-loop rates, such as port, signaling, and transport rates, because competing LECs most often purchase these together rather than separately and because state commissions often differ in determining how to recover certain costs. *Verizon Rhode Island Order*, 17 FCC Rcd at 3320-21, para. 40; *Verizon New Jersey Order*, 17 FCC Rcd at 12297-98, para. 53 (explaining it is reasonable to use state-specific assumptions). No party in this proceeding has challenged the appropriateness of this analysis. The cost for features is considered in the port rate. BellSouth provided state-specific usage data in response to our request. Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Aug. 8, 2002) (BellSouth August 8 *Ex Parte* Letter); BellSouth August 9 *Ex Parte* Letter.