All Measures Less Resale Monthly	Jan-03	Feb-03	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03
Illinois	87.0%	88.7%	89.6%	91.7%	91.4%	91.3%	92.2%	91.4%	91.9%	94.7%	93.7%	92.1%
Indiana	91.6%	90.6%	93.0%	93.7%	94.1%	92.7%	93.4%	93.6%	94.0%	94.6%	94.1%	94.1%
Michigan	90.5%	91.1%	93.1%	92.3%	92.8%	91.3%	94.0%	91.6%	92.8%	92.5%	94.4%	92.8%
Ohio	88.6%	91.5%	91.5%	93.0%	93.3%	93.2%	92.9%	93.5%	92.2%	94.0%	92.5%	93.3%
Wisconsin	91.0%	89.4%	91.6%	91.1%	92.3%	93.6%	92.6%	90.8%	94.0%	94.3%	91.3%	93.9%
TOTAL SBC - Midwest	89.4%	90.1%	91.6%	92.3%	92.6%	92.2%	93.0%	92.1%	92.8%	94.0%	93.4%	93.1%
California	89.5%	88.6%	91.9%	91.6%	88.1%	89.6%	91.5%	92.6%	91.9%	93.4%	90.7%	92.4%
Nevada	93.8%	94.3%	95.9%	96.2%	92.5%	96.1%	95.6%	92.7%	96.0%	96.1%	98.3%	95.0%
TOTAL SBC - West	90.7%	90.3%	93.0%	93.0%	89.3%	91.3%	92.5%	92.6%	92.9%	94.1%	92.7%	93.1%
Arkansas	90.5%	94.5%	91.7%	94.2%	90.6%	94.2%	90.6%	92.7%	93.7%	95.7%	94.4%	96.3%
Kansas	90.9%	93.6%	93.2%	93.6%	92.3%	94.4%	92.8%	91.3%	92.0%	97.1%	91.3%	95.5%
Missouri	92.3%	96.5%	94.1%	93.6%	94.3%	92.7%	96.6%	93.0%	95.0%	93.0%	95.3%	94.8%
Oklahoma	92.4%	96.0%	95.5%	95.3%	92.8%	94.2%	94.2%	93.7%	95.2%	93.1%	96.1%	96.3%
Texas	90.7%	91.4%	89.0%	91.7%	92.7%	91.0%	93.0%	91.5%	89.4%	90.0%	89.9%	90.4%
TOTAL SBC - Southwest	91.3%	93.6%	91.7%	93.0%	92.7%	92.6%	93.3%	92.2%	92.0%	92.4%	92.4%	93.3%
TOTAL SBC	90.1%	91.1%	91.8%	92.6%	92.3%	92.2%	93.0%	92.2%	92.6%	93.6%	93.0%	93.1%

All Measures Less Resale Monthly	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04
Illinois	94.0%	93.8%	93.1%	92.9%	90.3%	93.4%	94.8%	93.7%	91.3%	92.5%	93.5%	93.1%
Indiana	92.4%	93.5%	94.1%	93.7%	92.6%	94.6%	93.9%	94.4%	95.7%	95.6%	93.0%	94.5%
Michigan	92.4%	92.7%	93.8%	93.4%	91.1%	93.6%	95.1%	94.5%	94.5%	94.7%	94.1%	94.8%
Ohio	93.3%	94.3%	93.8%	95.5%	92.7%	93.4%	94.6%	94.9%	93.4%	96.4%	94.5%	94.6%
Wisconsin	92.7%	91.0%	91.0%	93.0%	88.8%	91.4%	95.1%	94.7%	92.7%	93.4%	95.2%	91.8%
TOTAL SBC - Midwest	**93.1%**	**93.2%**	**93.2%**	**93.6%**	**91.0%**	**93.4%**	**94.8%**	**94.4%**	**93.4%**	**94.1%**	**94.0%**	**93.8%**
California	90.8%	91.4%	90.8%	93.8%	86.6%	90.6%	92.2%	92.0%	93.9%	90.6%	90.9%	91.3%
Nevada	95.5%	94.3%	96.2%	95.9%	94.1%	98.4%	92.1%	97.4%	98.9%	96.7%	98.3%	92.9%
TOTAL SBC - West	**92.0%**	**92.1%**	**92.1%**	**94.3%**	**88.4%**	**92.5%**	**92.2%**	**93.4%**	**96.1%**	**92.2%**	**92.9%**	**91.7%**
Arkansas	95.9%	89.6%	98.1%	95.1%	92.8%	95.5%	97.5%	97.4%	99.3%	98.2%	97.5%	95.5%
Kansas	95.1%	96.0%	94.5%	96.0%	96.5%	91.9%	96.7%	96.5%	98.8%	97.8%	95.5%	96.6%
Missouri	95.1%	92.5%	94.8%	95.4%	92.5%	93.9%	93.7%	96.6%	95.8%	98.2%	93.4%	93.3%
Oklahoma	93.5%	93.4%	93.8%	95.6%	90.7%	95.0%	92.9%	92.3%	97.3%	98.6%	94.3%	95.5%
Texas	88.6%	88.1%	88.1%	88.3%	88.3%	90.1%	86.9%	90.4%	91.7%	91.3%	87.8%	88.9%
TOTAL SBC - Southwest	**91.3%**	**90.6%**	**92.0%**	**92.6%**	**91.0%**	**92.3%**	**91.6%**	**93.3%**	**94.6%**	**94.6%**	**91.9%**	**92.3%**
TOTAL SBC	**92.4%**	**92.3%**	**92.7%**	**93.4%**	**90.6%**	**92.9%**	**93.3%**	**93.9%**	**94.1%**	**94.0%**	**93.1%**	**93.0%**

All Measures Less Resale Monthly	Jan-05	Feb-05	Mar-05	Apr-05	May-05	Jun-05	Jul-05	Aug-05	Sep-05	Oct-05	Nov-05	Dec-05	Jan-06	Feb-06	Mar-06
Illinois	92.7%	92.1%	92.3%	93.4%	93.0%	95.0%	91.9%	92.1%	91.1%	93.7%	93.1%	88.2%	88.7%	87.8%	87.6%
Indiana	94.6%	93.4%	91.9%	94.5%	97.3%	95.2%	94.1%	92.8%	92.3%	94.9%	96.6%	91.2%	92.7%	93.5%	93.9%
Michigan	94.4%	93.4%	93.2%	91.3%	94.4%	93.5%	93.9%	94.7%	94.9%	94.2%	94.0%	89.4%	89.9%	90.9%	91.2%
Ohio	94.4%	93.4%	93.9%	92.8%	92.5%	95.8%	96.7%	95.3%	93.4%	96.5%	96.6%	93.4%	95.5%	95.7%	91.5%
Wisconsin	95.0%	94.4%	93.5%	93.7%	95.8%	97.4%	95.8%	93.9%	95.2%	93.9%	95.5%	94.2%	94.0%	90.7%	91.5%
TOTAL SBC - Midwest	**94.1%**	**93.2%**	**92.9%**	**93.0%**	**94.3%**	**95.1%**	**94.1%**	**93.8%**	**93.2%**	**94.5%**	**94.8%**	**90.7%**	**91.5%**	**91.2%**	**90.7%**
California	91.3%	91.9%	91.3%	90.6%	91.3%	91.2%	90.3%	90.6%	89.1%	89.4%	92.3%	91.6%	89.5%	93.3%	91.4%
Nevada	94.2%	97.0%	94.9%	96.6%	97.7%	95.4%	95.7%	95.9%	96.3%	98.8%	96.3%	96.1%	94.0%	92.9%	94.1%
TOTAL SBC - West	**92.0%**	**93.2%**	**92.2%**	**92.4%**	**93.0%**	**92.4%**	**91.8%**	**92.0%**	**90.9%**	**92.0%**	**93.3%**	**92.8%**	**90.7%**	**93.2%**	**92.1%**
Arkansas	98.4%	97.7%	93.5%	95.4%	92.9%	95.6%	97.6%	96.8%	96.4%	95.3%	97.8%	97.5%	98.1%	100.0%	98.1%
Kansas	94.9%	97.3%	95.3%	94.4%	95.7%	96.1%	97.8%	95.0%	96.4%	96.2%	98.0%	96.9%	99.0%	98.0%	95.0%
Missouri	96.6%	97.0%	95.8%	96.9%	94.4%	96.0%	97.7%	97.3%	98.3%	96.6%	97.4%	99.1%	99.1%	97.3%	98.1%
Oklahoma	94.9%	95.4%	94.2%	95.3%	97.0%	94.2%	98.4%	99.2%	96.9%	95.8%	94.5%	97.6%	95.9%	98.3%	97.6%
Texas	91.6%	92.1%	91.6%	93.2%	91.0%	93.7%	94.1%	89.6%	92.0%	94.0%	92.5%	95.8%	99.3%	98.8%	97.3%
TOTAL SBC - Southwest	**93.8%**	**94.7%**	**93.4%**	**94.6%**	**93.3%**	**94.4%**	**96.3%**	**93.9%**	**95.0%**	**95.7%**	**95.6%**	**97.3%**	**97.8%**	**98.5%**	**96.9%**
TOTAL SBC	**93.7%**	**93.7%**	**92.9%**	**93.3%**	**93.8%**	**94.5%**	**94.3%**	**93.4%**	**93.3%**	**94.3%**	**94.7%**	**92.6%**	**92.7%**	**93.3%**	**92.3%**

ATTACHMENT 9

LWC PERFORMANCE MEASURES
% OF DISAGS MADE - BY STATE ACROSS MONTH
FROM 2005-04 THRU 2006-03

STATE	2005-04	2005-05	2005-06	2005-07	2005-08	2005-09	2005-10	2005-11	2005-12	2006-01	2006-02	2006-03
AR	100.0	99.2	98.5	98.0	99.4	99.4	99.4	99.5	99.5	99.1	99.2	100.0
CA	92.0	94.4	95.3	93.7	96.0	97.8	96.8	95.5	94.9	91.9	92.2	92.4
CT	95.5	98.1	95.0	94.0	97.1	97.0	92.9	94.1	94.9	96.2	95.7	98.6
IL	99.4	98.7	99.5	99.1	98.6	99.1	98.9	99.3	97.6	97.2	98.9	96.7
IN	97.7	99.3	98.4	96.9	96.4	97.9	99.0	98.5	97.8	98.3	97.9	98.4
KS	99.0	98.1	95.3	94.9	96.5	98.3	99.4	98.6	99.2	98.1	98.2	96.4
MI	98.4	99.3	99.4	94.7	98.4	98.4	97.4	98.2	98.0	92.1	96.0	97.2
MO	98.3	99.2	98.0	99.4	98.7	97.2	100.0	97.7	99.2	98.9	97.5	97.8
NV	98.5	100.0	98.7	100.0	97.6	100.0	98.8	99.0	100.0	97.4	100.0	99.3
OH	97.9	98.6	97.0	96.7	99.1	96.5	97.7	98.6	99.0	98.1	97.6	98.3
OK	98.3	100.0	99.3	95.5	96.4	97.4	98.5	98.3	97.0	99.2	97.0	95.3
TX	97.9	95.6	97.5	95.2	96.0	97.0	94.3	95.6	98.4	96.1	97.7	96.7
WI	98.2	99.2	98.7	100.0	100.0	98.2	98.4	99.6	98.4	97.9	98.3	98.7
TOTAL	97.9	98.2	97.9	96.7	97.6	97.8	97.6	97.8	98.1	96.7	97.3	97.2

Reply Declaration of Ronald
Pate & Kevin Graulich

JOINT DECLARATION OF RONALD PATE AND KEVIN GRAULICH, DIRECTORS – BELLSOUTH BUSINESS MARKETS

I, Ronald Pate, hereby declare the following:

I, Kevin Graulich, hereby declare the following:

I. Introduction

1. My name is Ronald Pate. I am employed by BellSouth Telecommunications, Inc. ("BellSouth"). My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I am a Director - BellSouth Business Markets, a division of BellSouth Telecommunications. In this position, I am responsible for certain issues related to local interconnection matters, primarily Operational Support Systems ("OSS"), BellSouth's Service Quality Management ("SQM") Plans and Self Effectuating Enforcement Mechanisms ("SEEM") Plans. I have served in this capacity since June 1998. Prior to taking this position, I was a Geographic Market Manager in BellSouth's Small Business Services retail division. My professional career spans over thirty years of general management experience in operations, logistics management, human resources, sales and marketing. I graduated from the Georgia Institute of Technology in Atlanta, Georgia, in 1973, with a Bachelor of Science Degree. In 1980, I received a Doctor of Jurisprudence from Atlanta Law School. In 1984, I received a Masters of Business Administration from Georgia State University.

2. My name is Kevin Graulich. I am employed by BellSouth Telecommunications, Inc. ("BellSouth"). My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I am a Director - BellSouth Business Markets, a division of BellSouth Telecommunications. In my position I am responsible for items related to Wholesale service delivery, systems delivery and Service Level Agreements. I have served in this role since 2002. Before my current position, I was a manager with similar responsibilities including serving as the departments'

service level metric subject matter expert. I have over 11 years of service with BellSouth and the telecommunications industry. I received my Bachelor of Science degree in Electrical Engineering from Union College, Schenectady, New York in 1987. In 1994, I received my Masters of Science Management from Georgia Institute of Technology, Atlanta, Georgia.

3. In this declaration, we describe BellSouth's performance in providing certain services to other carriers and respond to some of the allegations made by commenters in this proceeding.

4. BellSouth has a strong and consistent record of performance associated with unbundled network elements ("UNEs"), interconnection, and resale, and has carefully designed performance plans in place to ensure that the company's performance remains at high levels sufficient to satisfy BellSouth's nondiscriminatory obligations under federal law. Contrary to the claims of some commenters in this proceeding, the performance data show that the company generally provides parity service to unaffiliated entities. BellSouth's UNE, interconnection and resale performance data show that the company achieved a level of parity performance sufficient to demonstrate to the FCC in 2002 that it had irreversibly opened its markets to competition throughout its home region. Since receiving Section 271 authorization, there is no evidence whatsoever of any backsliding by the company. To the contrary, the company's performance has continued to improve. BellSouth achieved approximately 83 percent parity region-wide in 2001, the last full year before it began to receive Section 271 authorizations. By the end of 2002, the company's results showed a three percent improvement, and BellSouth averaged about 85 percent in 2002, 2003 and 2004. In 2005, the average was close to 88 percent, a significant improvement over the initial averages, and despite the effect of the 2005 hurricane season and

other unique factors spanning the end of 2005 and the beginning of 2006, BellSouth has maintained an average of well over 86 percent in the first three months of 2006.

5. In response to competitive pressures and customer demands regarding special access services, BellSouth offers its customers a number of credits if BellSouth's service or provisioning does not satisfy agreed upon criteria, known as the Service Assurance Warranty ("SAW"), and Service Installation Guarantee ("SIG"). *See* FCC Tariff No. 1, §§ 2.4.4, 2.4.9. BellSouth also negotiates customer-specific credits and service level agreements in contract tariffs. *See, e.g.,* FCC Tariff No. 1, § 25.29. In addition to these service level agreement credits, BellSouth offers customers term and volume plans that provide discounts off BellSouth's month-to-month tariff rates. These plans permit customers with just one DS1 circuit to obtain discounts by agreeing to a certain term.

6. BellSouth's Section 272 audit confirms that BellSouth provides nondiscriminatory special access services. The audit reviewed data regarding BellSouth's access service performance from June 2003 through May 2005 and showed that BellSouth provides the same quality of service to its own affiliates and non-affiliated entities in almost all cases. BellSouth has ensured its continued high-quality of service through automated provisioning systems and extensive training for employees.

II. BELLSOUTH HAS COMPREHENSIVE PERFORMANCE GUARANTEES THAT ENSURE WHOLESALE SERVICES ARE PROVIDED ON A NONDISCRIMINATORY BASIS.

A. UNEs, Interconnection and Resale

7. As an incumbent local exchange carrier ("ILEC"), BellSouth has numerous obligations under Section 251(c) of the Communications Act, 47 U.S.C. § 251(c). Under the statute, BellSouth must provide competitive local exchange carriers ("CLECs") with interconnection to its network "that is at least equal in quality to that provided by the local

exchange carrier to itself or to any subsidiary, affiliate, or any other party," in accordance with the terms of interconnection agreements established pursuant to Section 252 of the Act.

8. In order to demonstrate that it complies with Section 251(c), BellSouth has implemented a performance assessment plan that measures and quantifies the company's performance in providing (among other things) access to UNEs. BellSouth's performance assessment plan has been developed, modified and refined over several years through close cooperation with state regulators and competitive carriers, both in collaborative workshops and in adversarial state regulatory proceedings.

9. BellSouth's initial performance assessment plans varied in detail from state to state within BellSouth's region. Some states used a measurement-based plan, which resulted in a flat monetary payment any time a metric was missed. Other states used a transaction-based plan, which required the company to pay an amount for each transaction that caused its performance result to fall outside permissible levels. A transaction-based plan is generally superior in terms of providing incentives, because it is scalable rather than binary, and thus imposes greater penalties in those circumstances where numerous transactions fail to meet applicable standards.

10. In 2005, BellSouth petitioned the various state regulatory authorities to adopt a modified, regional, transaction-based plan. As of January 1, 2006, the new performance assessment plan was put in place in eight of the nine states in BellSouth's territory (with the sole exception being Louisiana). The plan went into effect in Alabama, Mississippi, North Carolina, and South Carolina on January 1, 2006, in Florida on October 1, 2005, and in Georgia, Kentucky, and Tennessee on August 1, 2005. Louisiana is in the process of considering the plan, but a final decision by the state regulators has not yet occurred.

11. The new plan was developed after extensive experience with the first generation of the performance assessment plans revealed ways in which these plans could be streamlined and improved while still retaining their effectiveness. This was appropriate because BellSouth's prior plans were developed prior to substantial competitive entry, and thus contained a number of features that, as the market evolved, were shown to be either unnecessary or a poor reflection of real-world market conditions. Specifically, BellSouth's initial plans contained numerous metrics that measured little, if any, CLEC activity; multiple measurements subjected BellSouth to monetary remedies for the same activity more than once; and measurements created excessive liabilities that were wholly disproportionate to the overall level of service that BellSouth was actually providing. For example, BellSouth's original Georgia plan included 1631 submetrics, but a review of performance data in December 2004 revealed that only 464 metrics had a meaningful volume (i.e., more than 30 transactions); in fact 539 of these metrics had no activity whatsoever. On average, less than 3 percent of the submetrics were meaningful to any given CLEC.

12. In order to address these deficiencies, the regional plan consolidated low-activity submetrics into larger groupings of homogenous transaction types, which provided a more meaningful basis for statistical determinations of parity. The plan also eliminated non-critical measures, including those that measured the same event in multiple ways, metrics that included the same transaction in more than one measurement, and measurements that tracked activities that were insignificant to, or only had a minor impact on, a CLEC's ability to compete.

13. The plan attracted substantial support from the CLEC community, although a few individual CLECs opposed the adoption of the plan in some states. Notably, the regional plan was supported by CompSouth, the principal CLEC trade organization in the Southeast, and it

was submitted to the state PSCs on the basis of a stipulated agreement between BellSouth and CompSouth.[1]

14. BellSouth's regional performance assessment plan consists of two parts. The first is a Service Quality Measurement ("SQM") process, and the second is an accompanying Self-Effectuating Enforcement Mechanism ("SEEM"). The SQM is made up of a comprehensive compilation of performance measures that are paired either with retail analogues or with appropriate benchmarks where no retail analogue exists. The SQM consists of 50 measures and approximately 700 submetrics.

15. The SEEM provides for self-effectuating remedy payments when BellSouth's performance does not meet the relevant retail analogue or designated performance benchmark. As its name implies, the SEEM is self-executing; there is no need for a CLEC to make claims for payment. The SEEM has been carefully designed to minimize any risk of "backsliding" (i.e., allowing BellSouth's performance to fall below the level that the company reached when it gained Commission authorization under Section 271 to offer long-distance services). The performance plan provides for significantly increased remedies for each measure when BellSouth's performance for any given month does not meet the relevant retail analogue or benchmark for that measure.

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[1] Given the very recent implementation of the regional plan, and the extensive modifications that the regional plan represents, the argument of opponents that BellSouth's performance measurements are "obsolete" is illogical. *See* Access Point, *et al.*, at 27-28. Furthermore, the suggestion that the regional plan is not effective to protect against anticompetitive behavior is false. *See* Access Point, *et al.* at 27-28. The regional plan was designed to address the areas of BellSouth's performance that are most critical to ensuring that CLECs have a meaningful opportunity to compete. To the extent any CLEC had concerns about the metrics included within the regional plan, the CLECs had ample opportunity to raise those concerns during the development and approval of the regional plan. Furthermore, as has been the case with BellSouth's prior performance plans, the regional plan will be subject to further review and refinement, as appropriate.

16. The remedy payments to which BellSouth is subject under the performance plans in each of its nine states incorporate a two-tier structure. Under Tier 1, payments are made directly to CLECs each month if specific performance standards are not met. The level of Tier 1 payments escalates for each consecutive month that a performance standard is missed, up to six consecutive months. In the sixth consecutive month of a failure, the penalty amount per missed transaction ranges from 2 to 5 times the amount for a single month's failure. Further, under BellSouth's new regional plan, there is an additional multiplier of 2.5 to 3 times the escalated Tier 1 amount that is paid to the individual CLECs if BellSouth misses the performance standard based on aggregate CLEC performance data.

17. In addition to the escalation factor and the multiplier that may apply at the Tier 1 level, if BellSouth misses these same performance standards for three consecutive months, Tier 2 payments are assessed and paid to the relevant state regulatory body until the performance meets the specified standard.

18. The combination of the escalation factor and the multipliers included in the Tier 1 mechanism and the addition of a Tier 2 penalty once the performance standard is missed for three-consecutive months can amount to substantial remedy payments. Thus, potential remedy payments under the SEEM plan are not insignificant and do not constitute a mere cost of doing business. For example, consistent failure to meet the performance standard under the measurement "Percent Flow-Through Service Requests" may generate large remedies. This measure captures the percentage of Local Service Requests (LSRs) submitted electronically through the CLEC ordering process that flow through the system without manual intervention. Under BellSouth's SEEM plan, after the third month of failure, it must pay $50 for *each* order falling below the specified benchmark. This figure is then multiplied by a factor of 2.5 to create

a $125 fee, per occurrence, if BellSouth fails the measure at the CLEC aggregate level. In addition, Tier 2 remedies of $120 per occurrence apply after the third consecutive month of failure. Given current order volumes, this means that BellSouth could be required to pay hundreds of thousands of dollars in liquidated damages for poor performance for a given month. For instance, if less than 90 percent (the average benchmark) of the wholesale customers' LSRs flow-through without manual intervention for three consecutive months, the liquidated damages could easily exceed $500,000.[2]

19. If this level of performance continued for several months, this one measure would generate millions of dollars in remedy payments. Similar remedies could apply to other measures as well if performance levels decline too far below established performance standards.

20. BellSouth's performance plan has also been designed to meet the criteria articulated by the FCC in the section 271 context. While the FCC has provided individual states and ILECs with the flexibility to implement performance plans that are uniquely tailored to their specific competitive circumstances, the Commission has set forth a series of five requirements by which it judges the adequacy of performance plans. As the FCC explained in the Verizon Massachusetts Section 271 Order, 16 FCC Rcd 8988, 9121 (2001), its criteria require:

a. potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;

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[2] Specifically, this hypothetical scenario assumes that CLECs submitted 50,000 LSRs in a given month, but that only 41,000 flowed through for a Firm Order Confirmation ("FOC"). The percent flowing through would thus be 82 percent. The benchmark for flow-through averages 90 percent. BellSouth would then apply the required fee amount to 8 percent (i.e., 90 percent minus 82 percent) of these orders, or 4,000 LSRs. In the third month of such a failure, BellSouth would pay $500,000 (4,000*$125) in Tier 1 penalties for this measure alone. In addition, since this example assumes this is the third month of the failure, Tier 2 penalties would also apply, at a rate of $120 per transaction. Assuming that the number of LSRs affected for Tier 2 is only 1000 rather than 4000 (because at the aggregate level performance is generally better), this would add an additional $120,000 (1000 occurrences at $120 each) to BellSouth's liability. Under this hypothetical, BellSouth's performance plan would require the company to pay about $620,000 in one month for this single measure.

b. clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;

c. a reasonable structure that is designed to detect and sanction poor performance when it occurs;

d. a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and

e. reasonable assurances that the reported data are accurate.

21. The BellSouth plan satisfies each of these requirements by including a comprehensive set of metrics that cover all of the transactions necessary for a CLEC to have a meaningful opportunity to compete. For example, each measurement domain (such as Ordering, Provisioning or Maintenance and Repair) contains at least one measure of timeliness and accuracy.

22. BellSouth also offers a commercial plan that serves as a substitute for UNE-P, which includes service level commitments and penalties if the company fails to achieve those service levels. These commitments and penalties are individually negotiated with each CLEC. Although BellSouth's performance for each CLEC under its commercial agreement is monitored, BellSouth does not produce aggregate data tracking its performance under these service level commitments.

B. SPECIAL ACCESS

23. *Performance Guarantees*. In response to competitive demands in the provision of special access services, BellSouth's special access tariffs offer not only steep discounts but also offer customers performance guarantees for the reliability and installation of certain BellSouth special access services. These guarantees include: (1) a Service Assurance Warranty ("SAW"), *see* FCC Tariff No. 1 § 2.4.9, and (2) a Service Installation Guarantee ("SIG"), *see* FCC Tariff

No. 1, § 2.4.4. BellSouth also offers service level commitment in certain contract tariffs, which typically are negotiated to reflect the customer's individual needs.

24. BellSouth's Service Assurance Warranty ("SAW") guarantees circuit level reliability and applies an automatic credit against the customer's monthly recurring charge if the customer experiences any special access "service interruptions." Under the tariff, service is considered interrupted: (1) if an access service is unable to function pursuant to the service's technical specifications and such impairment is caused by the failure of a BellSouth facility; or (2) for services with duplicative or alternatives paths, such as self-healing ring or SmartPath® Service, if the failure of a BellSouth facility results in the complete loss of the customer's service. BellSouth applies SAW credits to customers on a per circuit basis. For example, if a customer purchases two circuits and there is a qualifying trouble on each circuit, the customer would receive a SAW credit for both. The following chart summarizes BellSouth's Service Assurance Warranty credits:

<u>BELLSOUTH'S SERVICE ASSURANCE WARRANTY CREDITS</u>

System Failure: • OC-3,OC-12, or OC-38 Special Access Dedicated Ring (SMARTRing® Service)	1 second	100 percent of Monthly Recurring Charge ("MRC") after 1 second outage
Channel Interface Failure: • OC-3,OC-12, or OC-38 Special Access Dedicated Ring (SMARTRing® Service); • Special Access DS3 Point-to-Point Service (LightGate® Service) • Shared Ring DS1or DS3 Service (SmartPath® Service) • Special Access DS1 (Zone 1)	1 minute	100 percent of the MRC after 1 minute outage

Special Access DS1 (Zones 2 & 3)	30 minutes	25 percent of the MRC for a 30-150 minute outage 50 percent of the MRC for an outage of 151-210 minute outage 100 percent of the MRC for an outage of 211 minutes or more
Special Access DS0 DS0-DDAS, Analog, Program Audio, Telegraph, Broadcast Quality Video	30 minutes	1/1440 of the MRC for each 30 minutes of outage

25. BellSouth also offers a Service Installation Guarantee ("SIG"), which guarantees on-time provisioning for a scheduled installation date. The SIG offers BellSouth's customer assurance that orders will be installed and available for the customer's use no later than BellSouth's committed due date. If BellSouth does not meet the due date, the customer receives a credit for the non-recurring charge for the applicable service. BellSouth's Service Installation Guarantee applies to a wide range of services, including: OC-3, OC-12, OC-48 Dedicated Rings (SMARTRing® Service) (with the exception of ring level elements) Special Access DS3 Point-to-Point (LightGate® Service), Special Access Shared Ring DS1 or DS3 (SMARTPath® Service), Special Access DS1, Special Access DS0 Digital Data, and Special Access DS0 Voice-Grade Service.

26. *Contract Tariff Service Level Agreements*. In addition to the SIG and SAW credits, BellSouth has service level agreements in two of its contract tariffs. *See* FCC Tariff No. 1, §§ 25.17.2 (A) (BellSouth Contract Tariff Number 14), and 25.29.2 (A) (BellSouth Contract Tariff Number 26). BellSouth's Contract Tariff Number 14 provides customers with the following types of service level commitments for DS1 and DS3 services: (a) frequency failure of the circuit (measuring the annualized percentage of applicable circuits that have had a trouble

occurrence); (b) mean time to repair troubles and clear circuits; (c) the failure rate of new circuits (the percentage of circuits with a trouble report within 30 days of order completion); and (d) on-time provisioning (for DS1 only). BellSouth's performance is measured over an annual period and, if BellSouth fails to meet these commitments, the customer may receive a credit based on a percentage of the customer's pricing flexibility revenue and total billed revenue.

27. Similarly, BellSouth's Contract Tariff Number 26 provides customers with the following categories of service level commitments for DS1 and DS3 services: (a) firm order confirmation ("FOC") receipt (measuring BellSouth's response time to a completed access services request); (b) on-time performance to the FOC due date; (c) past due circuits (capturing the number of past due circuits at the end of a reporting period); (d) new circuit failure rate (measuring the percentage of circuits with a trouble report within 30 days of order completion); (e) failure rate (analyzing the quality of the customer's circuits by comparing the customer's total number of resolved trouble reports with the customer's total number of in-service circuits); (f) mean time to repair circuits with a trouble; and (g) repeat trouble report rate (measuring the number of repeat troubles on a circuit within 30 days). The credits vary based on the type of service, but the customer may receive a credit of up to $2650 per occurrence if BellSouth misses the performance level objective identified in the tariff.

III. BELLSOUTH'S UNE, INTERCONNECTION AND RESALE PERFORMANCE DATA DEMONSTRATE THAT THE COMPANY HAS CONSISTENTLY PROVIDED NONDISCRIMINATORY ACCESS TO WHOLESALE SERVICES.

28. BellSouth's performance data confirm that it has provided nondiscriminatory access to UNEs, interconnection, and resale services on a consistent basis, and that the company has maintained this high level of performance over the years.

29. BellSouth has compiled a comprehensive overview of its performance data going back through January 2001. These data are provided as Attachment A to this declaration. The data show BellSouth's aggregate UNE parity percentages region-wide, on a month-by-month basis. These percentages include all metrics for which there is either a retail analogue or an established performance benchmark.[3]

30. A full list of the metrics that are captured in these percentages is set forth in Attachment B (regional) and Attachment C (Louisiana). In broad terms, the data from the states that have adopted the regional plan include results from eight categories: (1) Billing; (2) Change Management; (3) Collocation; (4) Maintenance and Repair; (5) Ordering; (6) Pre-ordering; (7) Provisioning; and (8) Trunk Group Performance. In Louisiana, which has not yet adopted the new regional plan, there are ten categories: (1) Billing; (2) Bona Fide Requests; (3) Change Management; (4) Collocation; (5) Database Update; (6) Maintenance and Repair; (7) Ordering; (8) Pre-ordering; (9) Provisioning; and (10) Trunk Group Performance.

31. For the purposes of this declaration, the percentages are calculated by dividing the number of opportunities for parity by the number of opportunities in which parity was achieved,

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[3] Purely diagnostic metrics, which have no analogue or are parity by design, are not included in the data set because these results would not contribute to the analysis of BellSouth's parity performance.

on a monthly basis. Where there was no CLEC activity for a given metric in a given month, the metric is not included in either the numerator or the denominator. While this method of reporting gives an accurate portrayal of BellSouth's performance on a month-by-month basis, it can overstate the effect of any lack of parity relative to their actual impact on a CLEC's meaningful ability to compete. By reporting month-to-month data on parity, anomalous out-of-parity situations caused by small sample sizes or specific circumstances that occur in a given month but that are unlikely to recur may degrade artificially the import of an overall performance average.

32. BellSouth's aggregate performance data show that BellSouth has strong, consistent results, and that these results have actually been improving over time. In 2001, the company achieved an overall region-wide average of 82.87 percent. That number improved in the following years, with the company averaging about 85 percent in each 2002, 2003 and 2004. In 2005, the average was close to 88 percent, a substantial and meaningful improvement over the initial averages. Under the new regional performance plan, which was in effect in eight of BellSouth's nine states as of January 1, 2006, BellSouth's performance for the first quarter of 2006 is still averaging well over 86 percent.

33. In the corresponding Dysart, *et al.* declaration, AT&T describes its performance improvements since the merger of SBC and Ameritech. BellSouth does not have a corresponding merger to use as a benchmark. For BellSouth, however, the approval of its Section 271 applications serves as a useful comparison mark for examining the company's performance, because in approving BellSouth's Section 271 applications, the FCC determined that the company was providing nondiscriminatory performance with respect to UNEs, interconnection and resale and that the local markets in BellSouth's states were irreversibly open

to competition. Opponents of granting RBOCs 271 authorization frequently claimed that once this authorization was obtained, competitors would suffer from deteriorating wholesale performance and that RBOCs would "backslide" from the level of performance achieved in preparing for Section 271 applications.

34. The data here, however, show conclusively that, contrary to these arguments, there has been no "backsliding" at all. To the contrary, since the FCC determined that BellSouth was providing nondiscriminatory performance and granted the company authorization to provide long distance service, BellSouth's performance has improved. BellSouth received Section 271 authorization for each of the states in its home region during 2002.[4] BellSouth demonstrated an increase in its overall performance average from the end of 2001 (82.87 percent) to the end of 2002 (85.82 percent) of nearly three percentage points. While there was a minor down-tick in performance in late 2003, the average performance for that year still exceeded the 2001 average by nearly two and one-half percentage points. By the end of 2004, between 24 and 31 months after receiving Section 271 authorization, BellSouth's overall performance average had improved further to 85.92 percent, more than three percent better than its 2001 year-end number. By the close of the most recent year, 2005, between 36 and 43 months after obtaining Section 271 approval, BellSouth had registered another increase in its overall performance average, to 87.90 percent, more than five full percentage points better than its average for 2001.[5]

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4 BellSouth received long-distance authorization for Georgia and Louisiana on May 15, 2002; Alabama, Kentucky, Mississippi, and North and South Carolina on September 18, 2002; and Florida and Tennessee on December 18, 2002.

5 The performance data set forth in this declaration cannot be directly compared to AT&T's performance data provided in the corresponding Dysart, *et al.* declaration. Indeed, there are cases when identical performance measured under the differing criteria of the two sets of plans would produce different results. This is because there are numerous differences between the companies' performance plans. For example, AT&T's plan uses benchmarks more extensively than BellSouth. In particular, for measurements related to provisioning and maintenance and repair, BellSouth primarily uses retail analogs, as opposed to benchmarks. The

35. This year will mark the four-year anniversary of BellSouth's 271 authorizations in its various in-region states, and its overall performance is still strong, showing no signs of "backsliding." For the first three months of 2006, the company's performance is still almost four percentage points ahead of where it was at the end of 2001. While the data show a minor down tick in performance versus the overall numbers for 2005, this is primarily the result of a number of circumstances in November, 2005 through January, 2006 that are unlikely to recur. First, the southeast region experienced a particularly severe hurricane season during that time, which placed a huge strain on BellSouth's resources. In particular, hurricanes Katrina and Rita required personnel from all parts of BellSouth's region to be redeployed to the affected areas well after the disasters actually occurred. Although BellSouth was not required to pay penalties on certain provisioning and maintenance and repair measures pursuant to a force majeure provision in the SEEM plan, BellSouth was still required to report performance results during this period.

36. Second, as a result of FCC-imposed deadlines established for the conversion of delisted UNEs to alternative serving arrangements, BellSouth's service centers received a significant increase in service conversion orders from CLECs. Specifically, CLECs issued a large numbers of orders seeking to convert from UNE-P offerings to UNE-L or Resale. This increased demand for CLEC conversion orders in concert with hurricane related demand affected service levels during the end of 2005 and beginning of 2006.

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use of a benchmark rather than a retail analog can make a significant difference in assessing performance. And even where both AT&T and BellSouth use benchmarks, the benchmarks are sometimes not comparable. There are also some transactions that BellSouth includes in its measurements that AT&T does not include, which can account for differences in reported results. That said, there is one significant manner in which each company's data are comparable; the data for each company show significantly improving performance over time and overall strong performance today.

37. However, these performance downticks do not represent a long term trend. By February and March 2006, BellSouth's overall performance results rose above 87 percent. The company expects that its strong performance in the first quarter 2006 will continue.

IV. BELLSOUTH'S SECTION 272 AUDIT DEMONSTRATES THAT BELLSOUTH PROVIDES SPECIAL ACCESS ON A NON-DISCRIMINATORY BASIS.

38. BellSouth's Section 272 Biennial Report also shows that BellSouth does not discriminate in the provision of special access services. That Report examined DSO, DS1, DS3, Feature Group D, and OCn exchange access services provided via an Access Service Request ("ASR"). The audit showed that BellSouth provides the same quality of service to its own affiliates and non-affiliated entities, with minor exceptions.

39. The audit reviewed BellSouth's compliance with all aspects of Section 272. For exchange access services, BellSouth provided performance data for the period June 1, 2003 through May 31, 2005 which indicated the intervals for processing orders, for provisioning of service, and for performing repair and maintenance services for BellSouth's Section 272 affiliates, BellSouth, BellSouth's other affiliates, and non-affiliates for exchange access services and PIC change orders. The data were reported using the same metrics proposed in the *Non-Accounting Safeguards* proceeding.

40. In those few instances where the auditors found statistically significant differences in performance, those conditions occurred because of: (i) the different types of services ordered by affiliates and non-affiliates; (ii) extensive "no trouble found" or "trouble ok" findings on non-affiliate trouble reports because all problems, regardless of whether they originate on BellSouth's network, are usually reported to BellSouth; or (iii) a cable or fiber cut that disproportionately affected non-affiliates. *Section 272 Biennial Report for BellSouth Telecommunications, Inc.*, EB

Docket No. 03-197, Appendix A at 82-116, Appendix C at 213-217 (filed Oct. 31, 2005). In addition, certain minor chronic discrepancies were caused by technical or operational problems, including the opening of multiple trouble tickets for individual circuits and a workload imbalance for Firm Order Confirmation processing, that have since been resolved. *Id.*

41. Any party disagreeing with the audit findings was given the opportunity to comment by the FCC, but none did so. *See* FCC Public Notice, *Enforcement Bureau Seeks Comment on BellSouth Telecommunications, Inc., Section 272 Biennial Audit Report in EB Docket No. 03-197*, DA 05-3180 (rel. Dec. 14, 2005) (requesting comments on BellSouth Audit Report by February 13, 2006). As a result, neither the FCC nor any state commission found any basis upon which to take any action based on the results of the audit.

42. BellSouth has invested substantial resources in ensuring that its special access provisioning systems are high-quality. These systems are automated for all purchasers, with the majority of orders generated and provisioned requiring no manual handling. Only circuits requiring a dispatch or other network activity (such as completing a cross connect) require manual processing. Moreover, BellSouth's provisioning systems are consistent with industry-established ("OBF") standards, which require that all requests be processed in the same manner regardless of whether they are from an affiliated or non-affiliated entity. In addition, BellSouth has extensive training programs in place for its employees on special access policies and procedures, which forbid discriminatory treatment of wholesalers who compete with BellSouth's retail service offerings.

I declare under penalty of perjury that the foregoing is true and correct

Signature:	Ronald Pate Director—BellSouth Business Markets
Date:	June 16, 2006
Signature:	Kevin Graulich Director—BellSouth Business Markets
Date:	June 16, 2006