



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: MAY 11, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMPETITIVE SERVICES (SIMMONS) *SAS*
 DIVISION OF ECONOMIC REGULATION (STALLCUP) *MS*
 DIVISION OF LEGAL SERVICES (KEATING, BANKS, HELTON) *Walt*
 DIVISION OF REGULATORY OVERSIGHT (HARVEY, VINSON) *FRB*

RE: DOCKET NO. 960786-TL - CONSIDERATION OF BELL SOUTH TELECOMMUNICATIONS, INC'S ENTRY INTO INTERLATA SERVICES PURSUANT TO SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

AGENDA: 05/15/01 - REGULAR AGENDA - MOTIONS FOR RECONSIDERATION OF NON-FINAL ORDER - ORAL ARGUMENT NOT REQUESTED, BUT MAY BE GRANTED AT THE COMMISSIONERS' DISCRETION

CRITICAL DATES: DIRECT TESTIMONY DUE MAY 31, 2001

SPECIAL INSTRUCTIONS: NONE

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CASE BACKGROUND

On June 28, 1996, the Commission opened this docket to begin to fulfill its consultative role on the eventual application of BellSouth Telecommunications, Inc. for authority to provide in-region interLATA service.

After an administrative hearing in September of 1997, having considered the record, by Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission rendered findings on whether BellSouth had met the requirements of Section 271(c). Specifically, the Commission found that BellSouth was not eligible to proceed under Track B at that time, because it had received qualifying requests for interconnection that if implemented would

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meet the requirements of Section 271(c)(1)(A), also known as Track A. Track B is applicable only when no provider has requested access and interconnection.

The Commission's evaluation of the record on whether BellSouth met the requirements of Section 271(c)(1)(A) indicated that while there was a competitive alternative in the business market, there was not sufficient evidence to determine whether there was a competitive alternative in the residential market. Thus, the Commission found that BellSouth had not met all of the requirements of Section 271(c)(1)(A). The Commission found that BellSouth had met checklist items iii, iv, viii, ix, x, xi, xii, xiii, and the majority of checklist item vii as set forth in Section 271(c)(2)(B) of the Act. BellSouth had not, however, met the requirements of checklist items i, ii, v, vi, and xiv. For those checklist items which the Commission determined that BellSouth had met, the Commission indicated BellSouth may not be required to relitigate those issues before the Commission in a future proceeding. The Commission did find, however, that when BellSouth refiles its 271 case with the Commission, it must provide the Commission with all documentation that it intends to file with the FCC in support of its application. Finally, the Commission found that it could not approve BellSouth's statement of generally available terms and conditions (SGAT) at that time.

On March 6, 2001, BellSouth filed a Motion to Request Scheduling Conference. On March 28, 2001, a status conference was conducted with all of the parties. Thereafter, by Order No. PSC-01-0832-PCO-TL, issued March 30, 2001, the schedule for this proceeding was established.

On April 24, 2001, the Prehearing Officer conducted an Issues Identification Conference to discuss which issues need to be identified for resolution in this proceeding and to hear argument on any disputed issues. Subsequently, by Order No. PSC-01-1025-PCO-TL, issued April 25, 2001, the Prehearing Officer rendered his ruling on the disputed issues and identified the list of issues appropriate for resolution in this proceeding.

Thereafter, on May 2, 2001, the Florida Competitive Carriers Association (FCCA) and AT&T Communications of the Southern States, Inc., (AT&T) (herein jointly referred to as FCCA/AT&T) filed a Motion for Reconsideration of the Prehearing Officer's Order. Therein, they argue that the Prehearing Officer erred by excluding

certain issues proposed by FCCA/AT&T. That same day, MCI WorldCom, Inc., (WorldCom) also filed a Motion for Reconsideration. WorldCom also believes that the Prehearing Officer erred by excluding the issues proposed by FCCA/AT&T. On May 9, 2001, BellSouth filed its Responses to the Motions for Reconsideration.

JURISDICTION

Part II of the Federal Telecommunications Act of 1996 (the Act), P.L. 104-104, 104th Congress 1996, provides for the development of competitive markets in the telecommunications industry. Part III of the Act establishes special provisions applicable to the Bell Operating Companies (BOCs). In particular, BOCs must apply to the FCC for authority to provide interLATA service within their in-region service areas. The FCC must consult with the Attorney General and the appropriate state commission before making a determination regarding a BOC's entry into the interLATA market. See Subsections 271(d)(2)(A) and (B). With respect to state commissions, the FCC is to consult with them to verify that the BOC has complied with the requirements of Section 271(c) of the Act.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant FCCA/AT&T's and WorldCom's Motions for Reconsideration of Order No. PSC-01-1025-PCO-TL?

RECOMMENDATION: No. The motions fail to identify a mistake of fact or law in the Prehearing Officer's decision.

STAFF ANALYSIS: Pursuant to Rule 25-22.0376, Florida Administrative Code, any party who is adversely affected by an order of a Prehearing Officer may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after the issuance of the order. The purpose of a motion for reconsideration is to bring to the Commission's attention some material and relevant point of fact that it overlooked or failed to consider when the order was issued, a mistake of law or fact, or abuse of discretion. Diamond Cab Co. v. King, 146 So.2d 889, 891 (Fla. 1962). Reconsideration is not intended as a procedure for re-arguing a case merely because the losing party disagrees with the judgment or the order. Id. This standard also applies to reconsideration by the Commission of a Prehearing Officer's order. See Order No. PSC-96-0133-FOF-EI, issued in Docket No. 950110-EI, on January 29, 1996 (denying motion for Reconsideration of Prehearing Officer's order denying motion to continue).

FCCA/AT&T

FCCA/AT&T contend that the Prehearing Officer improperly excluded the following sub-issues identified in their proposed list:

6. a) What performance measures should be used to evaluate whether BellSouth is providing nondiscriminatory access to network elements?

b) Does commercial experience show that BellSouth has provided access to network elements in a nondiscriminatory manner?

and

18. a) What performance measures should be used to evaluate whether BellSouth is providing nondiscriminatory telecommunications services for resale?

b) Does commercial experience show that BellSouth has provided telecommunications services for resale in a nondiscriminatory manner?

FCCA/AT&T note that the Order states that these sub-issues should be excluded because they are already being addressed in the third-party testing being conducted by KPMG, and that the appropriate performance measures for determining BellSouth compliance regarding the operations support systems (OSS) aspects of the 271 checklist have already been determined in the third-party OSS testing phase of this proceeding. FCCA/AT&T argue, however, that this is incorrect. Furthermore, they argue that exclusion of performance metrics and commercial experience issues will inappropriately curtail the evidence available for the Commission's review in this proceeding.

Specifically, FCCA/AT&T argue that Order No. PSC-00-0260-PAA-TI, the Order Approving Interim Performance Metrics, set only interim performance measures. They contend that nothing in that Order indicates that the Commission believed these interim metrics would be sufficient to meet ALEC needs. They argue that the Order even noted that the interim metrics were a "compromise to full implementation" of metrics, and that the interim metrics were a "starting point."

FCCA/AT&T maintain that while the third-party testing using the interim performance measures will provide valuable evidence for the Commission to consider, use of these interim measures should not result in the exclusion of evidence regarding BellSouth's compliance with permanent performance measures, which they contend is currently scheduled to be in place by July 16, 2001. They emphasize that consideration of BellSouth's performance under the permanent measures is crucial, because these are the measures that BellSouth will be subject to at the time of the 271 hearing.

As for commercial experience, FCCA/AT&T state that they adopt and support WorldCom's Motion for Reconsideration with respect to this sub-issue. In addition, they contend that it is necessary for the Commission to consider commercial experience in this proceeding, because such experience will differ from ALEC to ALEC.

They emphasize that the FCC has indicated that actual commercial data provides the best evidence of the status of OSS.¹ They add that while BellSouth is allowed to file commercial data in the third-party test, the ALECs have been precluded from doing so. Thus, the ALEC commercial data should be addressed through the hearing process.

Furthermore, they argue that the commercial data submitted in the third-party test will only be reviewed using the interim metrics. However, FCCA/AT&T believe that the commercial data should be reviewed using the permanent metrics developed in Docket No. 000121-TP, the Investigation Into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies, which includes a review of the information on an individual ALEC, as well as aggregate basis. Thus, they believe an issue pertaining to commercial data must be included.

In their motion, FCCA/AT&T also state that in Order No. PSC-01-1025-PCO-TL, the Prehearing Officer failed to consider the following sub-issue to issues 6 and 18:

(c) What OSS issues should the Commission consider that are beyond the scope of the KPMG test? Has BellSouth met its obligation as to those issues?

FCCA/AT&T indicate that this issue was included on a hand-out distributed at the issues identification conference, and which set forth several other revisions to its original preliminary issues list. They contend that not all OSS issues are being tested, and several are being tested only on a limited basis. As such, they contend that the Prehearing Officer's decision that OSS issues are being addressed in the third-party test is incorrect, because the proposed sub-issue specifically addresses OSS issues outside the scope of that test.

FCCA/AT&T contend that the follow items are not being tested at all:

¹Citing Michigan 271 Order, ¶ 138; Louisiana 271 Second Order, ¶ 86; New York 271 Order, ¶ 89; Texas 271 Order, ¶ 98; and Texas 271 Order, ¶ 102.

- Interface installation or customer specific sub-loop unbundling at multi-tenant environments - FCCA/AT&T argue this is vital to the facilities-based cable telephony business and should be considered in the Commission's evaluation of whether BellSouth provides non-discriminatory access to multi-tenant environments.
- Ordering and provisioning of line-splitting - FCCA/AT&T argue that BellSouth is not providing this service, even though required to do so by the FCC². They emphasize that this is not included in the test, because it is not provided in Florida. Thus, if not addressed at hearing, line-splitting would not be considered at all by the Commission, in spite of the FCC's requirement.

FCCA/AT&T also argue that the following items are only being tested on a limited basis:

- Whether orders currently sent manually should, instead, be sent electronically - They contend that KPMG will not test whether ALECs lack access at parity because of the inability to place orders electronically. They maintain that the test report will not address whether a manual ordering is adequate, in spite of the Commission's indication that BellSouth should provide electronic interfaces.³
- Flow-through - while FCCA/AT&T acknowledge this is being tested, they contend that it is unclear if an exception will be issued if KPMG finds BellSouth is not compliance. They argue that it is important that an exception be issued, so that BellSouth will have to bring itself into compliance in order to satisfy the test requirements.
- Change control process - FCCA/AT&T argue that KPMG is only addressing "completeness and consistency." There is no test of whether this process meets

²Citing CC Docket No. 98-147, 96-98 at 11, fn 36.

³Citing Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, in Docket No. 960786-TL.

ALEC needs, nor anything to ensure fair and reasonable treatment. They contend the only thing specifically listed in the test pertains to tracking, which is purely administrative. FCCA/AT&T argue, however, that this process is very important to the ALEC community, because elements of the process are "insufficient, unwieldy, and anticompetitive. . . ."

- Content of change requests -
FCCA/AT&T argue that although ALECs have asked BellSouth to improve or simply fix its OSS, BellSouth refuses to do so. They argue this is not being addressed by KPMG in the third-party test.
- Problems and issues submitted through the change control process that are not being addressed in that process -
FCCA/AT&T contend that numerous issues have been identified through this process, but none have been addressed. They note that currently, there are 45 pending change requests. Among the problems identified are: ALEC inability to correct listings; ALEC inability to change main account telephone number; lack of method to address handling of services when ALEC only obtains portion of customer's account; inability to perform partial migrations; inability to combine existing accounts; inability to obtain facility connecting information; inability to relate multiple orders; inability to order enhanced extended loops (EELs); inability to create new listings through the Local Exchange Navigation System (LENS); lack of flow-through; lack of editing capability; lack of status notifications; inability to change number of directories delivered; corrections to programming regarding error returns; and documentation errors.
- Repair interface functionality -
They argue that this is a critical issue for 271.
- Compliance with industry standards -
They argue the test only addresses this in one area of repair.

Finally, FCCA/AT&T argue that KPMG is merely a fact-finder; thus, they will not be addressing in the test the adequacy of BellSouth's OSS and whether they provide parity. Therefore, FCCA/AT&T contend that there should be an issue addressing OSS issues that are beyond the scope of the third-party test.

WORLDCOM

WorldCom addresses only the issue pertaining to commercial experience.

WorldCom argues that the Prehearing Officer erred by determining that commercial data was intended to be, or should be, considered only in the third-party test. WorldCom contends that nothing in the Order establishing the third-party test or the Order approving the Master Test Plan specifically contemplated that KPMG would evaluate ALECs' commercial experience.

WorldCom further disagrees with the Prehearing Officer's reliance on statements in the third-party test Orders which indicate that KPMG should analyze any differences between BellSouth's access and ALECs' access through OSS that in these prior Orders on the third-party test. WorldCom disagrees with the Prehearing Officer's subsequent conclusion that such analysis is by its very nature an analysis of commercial experience. WorldCom contends that its position is supported by the fact that at the Commission's April 16, 2001 internal affairs conference, staff included an item titled "short briefing on additional procedural steps that are being incorporated into the third-party OSS test." (emphasis by WorldCom) These additional steps were added to address KPMG's analysis of commercial data. WorldCom argues these additional steps would not have been necessary, had they been included in the original master test plan.

WorldCom also argues that no commercial carrier has launched UNE-P on a mass market basis in Florida; therefore, KPMG will not have significant, Florida-specific data to evaluate as part of the recent additions to the test procedures.

WorldCom further contends that it plans to launch competitive local service in mid-May in Georgia using the unbundled network element platform (UNE-P). Because BellSouth contends that its OSS are the same throughout its nine-state region, WorldCom's commercial experience in Georgia will provide valuable evidence that will not be available through the test.

Like FCCA/AT&T, WorldCom contends that the FCC has consistently indicated that commercial experience is the best test of the RBOC's OSS readiness. As such, this Commission should fully address this within the 271 proceeding. WorldCom adds that it

plans to submit its UNE-P experience in Georgia to the FCC when BellSouth files with the FCC regarding Florida. If this Commission declines to address this data, it will not have the benefit of addressing information that the FCC will be evaluating in addressing BellSouth's application.

For these reasons, WorldCom argues that the commercial data sub-issue should not have been excluded.

BELLSOUTH

BellSouth argues that the Prehearing Officer acknowledged that the third-party testing was established to address all issues associated with BellSouth's OSS for purposes of the 271 proceeding. BellSouth emphasizes that the Commission has been very clear about this approach. BellSouth contends that to now allow the ALECs to add a "myriad" of issues outside the third-party test would defeat the purpose of the test, rendering the time and expense invested moot. BellSouth adds that the list of items identified by the ALECs as not being tested is a "scattershot diversionary tactic" of the type the Commission intended to avoid in implementing the test in the first place. BellSouth emphasizes that the Commission stated that the OSS third-party test would ". . . provide better, more accurate information about the status of BellSouth's systems than might be obtained through further administrative proceedings. . . ." Order No. SPC-99-1568-PAA-TP at p. 10. Thus, BellSouth maintains that the Prehearing Officer properly considered and excluded any issue regarding consideration of OSS issues outside of the third-party test.

BellSouth also argues that the Commission's prior Orders leave no doubt that the interim metrics were to be used for purposes of the third-party test, and thus, for purposes of the Commission's decision in the 271 proceeding regarding OSS. BellSouth contends that while the permanent measures docket is important, the interim measures were intended to allow the Commission to move forward with its consideration of BellSouth's 271 application before final implementation of the permanent measures. BellSouth further notes that to implement new measures will likely take BellSouth six months, and therefore, use of the permanent measures would delay the Commission's ability to address BellSouth's compliance and BellSouth's application to the FCC.

As for commercial experience, BellSouth argues that this should not be considered in both the hearing and in the third-party test. Since the Commission has already indicated its desire to address this through the third-party test, BellSouth believes that to allow further consideration in the hearing track would unfairly provide the ALECs with a second opportunity to have this information addressed. BellSouth adds that the ALECs seem to ignore the fact that this information is going to be addressed in the third-party test.

BellSouth also argues that WorldCom's argument that the staff cannot expand the test to address this data should be rejected, because WorldCom has itself worked to expand the test.

As for WorldCom's assertions regarding its activities in Georgia, BellSouth contends that this is irrelevant, particularly since 362 other ALECs have been certified to provide service in Florida and currently serve 713,127 lines in BellSouth's service area. BellSouth adds that if WorldCom is concerned about commercial data, it should first come to Florida to compete.

Finally, BellSouth argues that parties will have an opportunity to comment on the third-party test and the performance data analysis. Any party may submit evidence that they believe is appropriate to address KPMG's conclusions. BellSouth believes that this will provide a "full and fair opportunity" for parties to address their concerns regarding the test and the test results.

For these reasons, BellSouth argues that FCCA/AT&T and WorldCom have failed to identify a mistake of fact or law made by the Prehearing Officer in rendering his Order. Therefore, BellSouth asks that the Motions for Reconsideration be denied.

Staff's Analysis

COMMERCIAL EXPERIENCE

Staff addresses first the issue upon which both FCCA/AT&T and WorldCom have requested reconsideration--the issue regarding data pertaining to commercial experience.

Staff believes that both FCCA/AT&T and WorldCom (ALECs) have failed to identify a mistake of fact or law in the Prehearing Officer's decision on this point. The ALECs contend that the FCC

has indicated that this type of information can be very telling when evaluating an RBOC's petition for interLATA authority. They also argue that this type of data will cover areas that the third-party test does not address. Staff agrees that the FCC has indicated this information is important; however, these arguments do not identify any error in the Prehearing Officer's decision. Furthermore, they fail to consider that this type of information will be considered by the Commission in this docket. It will simply be addressed in another venue besides the administrative hearing--that venue being the third-party test.

The ALECs also argue that this information must be considered using the permanent performance metrics yet to be established in Docket No. 000121-TP. As such, even if it is being addressed within the third-party test, it should still be addressed at hearing in order to further evaluate the information using the new metrics. However, as more fully addressed in the following section pertaining to performance measures, the Commission has been very clear in its Orders pertaining to the third-party test that the interim performance metrics currently being used in the test would be the metrics used for purposes of the OSS testing. The Commission has been equally clear that the third-party testing process would be the method whereby issues pertaining to OSS would be addressed. The Prehearing Officer addressed the parties' arguments on this point, referred to the pertinent Commission Orders, and determined that not only is commercial data being addressed in the third-party test, but addressing such information within the testing process is proper and consistent with the prior Commission decisions.⁴ The parties have not identified any mistake on this point. Instead, they are simply rearguing points previously made at the Issues Identification conference.

⁴Citing Order No. PSC-99-1568-PAA-TP, issued August 9, 1999 (the third-party test will address the OSS concerns the Commission identified in Order No. PSC-97-1459-FOF-TL); PSC-00-0260-PAA-TL, issued February 8, 2000 (the interim metrics will be used for purposes of the third-party test); Order No. PSC-00-0104-PAA-TP, issued January 11, 2000 (noting that KPMG will provide a report, in addition to the test results, which shall address, among other things the "differences between the access to OSS functions BellSouth provides itself and that which it provides to ALECs," including operational effect of the differences.)

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FCCA/AT&T in particular emphasize that while the test will consider this information in the aggregate, the information should also be considered on an individual ALEC basis, as set forth in the Staff's Proposed Performance Assessment Plan in Docket No. 000121-TP. Again, the issue of performance metrics is addressed more fully below. However, as for whether information is considered in the aggregate or on an individual basis, the ALECs actually appear to be asking that the Commission consider information that would more properly be addressed through a complaint process, at least pending finalization of permanent performance measures. The Commission was very clear in its original 271 Order, Order No. PSC-97-1459-FOF-TL, that the 271 proceeding is not the proper venue for handling complaints. Order at p. 14. Furthermore, staff is aware of no requirement, or even an indication for that matter, from the FCC that commercial data should be considered on an individual ALEC basis. To do so would take a very long time. Regardless, this argument does not identify a mistake in the Prehearing Officer's decision.

The ALECs also indicate that if the commercial data is considered only in the OSS testing phase, then they will be precluded from submitting their own commercial data for consideration. This assertion is simply incorrect. While a specific time had previously been identified internally for BellSouth to file its commercial data, this does not, nor was it intended, to preclude the ALECs from filing their own data at any time. Any such information submitted in the OSS testing phase will be considered and addressed by KPMG, as with any of the ALEC comments.

WorldCom further argues that the portion of Order No. PSC-00-0104-PAA-TP referenced in the Prehearing Officer's Order as support for the decision that commercial data is properly being addressed within the third-party OSS test does not specifically refer to commercial data; therefore, WorldCom believes that this data was not originally contemplated to be included in the test. It also notes that staff presented a briefing to the Commission at a recent Internal Affairs conference regarding "additional procedural steps" incorporated into the testing phase to address commercial data, and contends that this further supports its argument that commercial data was never contemplated to be addressed in the third-party test from the beginning. WorldCom fails to explain, however, what the Commission could possibly have meant when it required KPMG to provide a report comparing BellSouth's own access with that of

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ALECs using BellSouth's OSS and providing an analysis of the operational effect of such differences. While the term of art "commercial data" may not have been used, staff believes that this is the only thing that the Commission could possibly have meant with this language. While staff agrees with WorldCom that this was not originally a part of the Master Test Plan, it was intended to be addressed in KPMG's final report. The test itself tests BellSouth's systems, while the report is to address more than just the test results, including among other things, commercial data.

As for WorldCom's reliance on staff's Internal Affairs briefing, staff agrees that procedures have been added to handle the commercial data, but that is due to the fact, as noted above, that this data will be analyzed by KPMG through its report. Also, staff only recently became concerned about the handling of this issue, because as we approach the 3/4 mark of the test, staff began to consider what would be necessary to complete the testing phase and fulfill KPMG's responsibilities, including how KPMG's report should be developed. Staff determined that it would be beneficial to have a clearly defined workshop and comment period to gather as much information regarding the commercial data as possible.

Finally, WorldCom asserts that it will be rolling out local service in Georgia in May using UNE-P. WorldCom contends that the Commission should avail itself of the commercial information WorldCom gains from its experience using BellSouth's systems in Georgia. It is somewhat curious that WorldCom raises this argument, when in the immediately preceding paragraph, WorldCom expresses concern that the Commission will not have access to Florida-specific commercial data regarding OSS support of UNE-P. Staff notes that WorldCom is not precluded from submitting this information in the third-party testing phase of this proceeding. Nevertheless, this is not a basis for reconsideration, as it was not information previously presented for consideration by the Prehearing Officer; thus, it was not overlooked or a matter upon which a mistake was made.

Based on the foregoing, staff believes that FCCA/AT&T's Motions for Reconsideration on this point should be denied. The parties have failed to identify any mistake of fact or law made by the Prehearing Officer in rendering his decision. Since this was the only issue addressed by WorldCom, its Motion, in whole, should be denied.

PERFORMANCE MEASURES (METRICS)

As for performance measures, FCCA/AT&T contend that the permanent measures yet to be established in Docket No. 000121-TP should be used to determine BellSouth's compliance. The Prehearing Officer considered this argument at pages 5-6 of the Order. Therein, he explains that in Commission Order No. PSC-00-0260-PAA-TL, issued February 8, 2000, the Commission approved interim performance measures to be used in the OSS test. He noted that the Order explained that the interim measures would be the measures used for the test, and that there had been no indication by the Commission that it intended to incorporate a review using the permanent metrics into the third-party test or the 271 hearing process. The Prehearing Officer also noted that performance measures are not a checklist item. FCCA/AT&T has identified no mistake of fact or law in this determination. Instead, they merely reargue points raised at the Issues Identification conference. As such, staff recommends that their motion on this point should be denied.

Furthermore, the permanent metrics are being developed for purposes of monitoring on a going-forward basis and not for purposes of addressing BellSouth's 271 application. These metrics will always be subject to changes and modifications as new products and services become available. As such, requiring that the commercial data be analyzed using these metrics before making a recommendation on BellSouth's 271 application could be used to establish a perpetually moving target. Arguably, every time the permanent metrics are revised, the ALECs could contend that the commercial data needs to be re-analyzed using the newest standards. While this may not necessarily prevent the Commission from being able to make a recommendation to the FCC regarding BellSouth's application, it could result in that recommendation being loaded with caveats. For example, the Commission might have to indicate that it believes BellSouth may be in compliance, but that its recommendation is based upon third quarter 2001 performance metrics, which have been revised twice since its 271 hearing. As such, the Commission is unable to definitively state that BellSouth remains in compliance with these provisions of the Act. While this may be a slight exaggeration, it is an accurate illustration of the difficulty of addressing OSS using the permanent metrics. Furthermore, this potential outcome highlights the fact that requiring that this information be re-analyzed using the permanent metrics defeats the purpose of the third-party test, in which much

time and money has already been invested. Staff also notes BellSouth's argument that it would take BellSouth quite some time to actually implement the permanent measures, which would further delay this proceeding. Staff recommends, therefore, that the FCCA/AT&T Motion for Reconsideration on this point be denied.

CONSIDERATION OF OSS ISSUES NOT BEING TESTED

Finally, FCCA/AT&T contend that they proposed a revised sub-issue 6(c) and 18(c) to address OSS issues not being covered by the third-party OSS test. They contend that this issue was overlooked in the Prehearing Officer's order and that the rationale used to exclude the other issues is inapplicable to the proposed, revised sub-issue (c)⁵.

While staff agrees that the specific language of FCCA/AT&T's revised sub-issue (c) inadvertently was not addressed in the Order, staff believes that the arguments put forth as support for including this issue were considered and addressed in the Prehearing Officer's Order, and that the rationale contained in the Order is, in fact, applicable.

Specifically, FCCA/AT&T has already addressed these same arguments regarding this issue to the Prehearing Officer as shown on pages 31-34 of the April 24, 2001, conference transcript. Thereafter, in the Order, the Prehearing Officer explained that in setting up the third-party test, the Commission indicated that the testing process would allow the Commission "to fulfill [its] consultative role under Section 271, and may, as noted in [its] Order, ' . . . provide better, more accurate information about the status of BellSouth's systems than might be obtained through further administrative proceedings on this issue.'" Order No. PSC-01-1025-PCO-TL at p. 4, citing Order No. PSC-99-1568-PAA-TP at p. 10. The Prehearing Officer further noted that the Commission had indicated that if BellSouth's systems pass the test, it will be considered to have remedied the OSS concerns previously identified

⁵Pursuant to the Notice for the Issues Identification conference, proposed lists of issues were prefiled by the parties. FCCA/AT&T apparently submitted their revised sub-issue (c) on a hand-out that was made available at the Issues Identification conference. Staff counsel and the staff member actually participating at the conference were not, however, provided with a copy, which resulted in some confusion at the time as to whether FCCA/AT&T intended to address their arguments regarding untested OSS issues under their proposed Issues 6 and 18 as originally structured.

by the Commission in Order No. PSC-97-1459-FOF-TL. Order at p. 4. Staff believes that this discussion clearly illustrates the Prehearing Officer's understanding and rationale that the third-party test is the only venue in which the Commission intends to address OSS issues. Thus, sub-issue (c), as revised was excluded. See also Order No. PSC-01-1025-PCO-TP at pages 8-13 (listing approved issues; sub-issue (c) excluded). FCCA/AT&T do not address this additional rationale included in the Prehearing Officer's decision. Staff, however, believes that this rationale demonstrates that the Prehearing Officer considered whether further proceedings should be conducted regarding OSS, beyond the testing phase. He determined that they should not. Staff agrees, and recommends that the Commission find that FCCA/AT&T have failed to identify a mistake of fact or law in the Prehearing Officer's decision on this point.

Staff further notes that a number of the items listed by FCCA/AT&T as not being tested are, in fact, being tested. For instance, FCCA/AT&T contend that manual processes will not be tested to determine whether an electronic process should be used, even though, they contend, the Commission required BellSouth to provide electronic interfaces in its original 271 order. However, KPMG will be conducting a parity analysis of OSS access as part of the POP Functional Evaluation. This evaluation will include a comparison between retail and wholesale OSS access functions, including the available method of submission--whether it is mechanized or manual.

Staff also notes that FCCA/AT&T's assertion that the Commission has required BellSouth to provide electronic interfaces is accurate, but the Commission also included a caveat in establishing that requirement. As the Commission noted:

The FCC states that in order for an RBOC to meet the nondiscriminatory access standard, no limits may be placed on the processing of information between the interface and the legacy systems, if such limits do not permit an ALEC to perform a function in substantially the same time and manner as the RBOC performs the function for itself.

Upon consideration, we believe that BellSouth is required to demonstrate to this Commission

and to the FCC that its interfaces provide nondiscriminatory access to OSS functions. Although AT&T witness Bradbury stated that there are five characteristics of a non-discriminatory interface, we find it appropriate to recognize four of those characteristics. They are: 1) the interface must be electronic. It must require no more human or manual intervention than is necessarily involved for BellSouth to perform a similar transaction itself; 2) the interface must provide the capabilities necessary to perform functions with the same level of quality, efficiency, and effectiveness as BellSouth provides to itself; 3) the interface must have adequate documentation to allow an ALEC to develop and deploy systems and processes, and to provide adequate training to its employees; and 4) the interface must be able to meet the ordering demand of all ALECs, with response times equal to that which BellSouth provides itself.

Order No. PSC-97-1459-FOF-TL at p. 184. (Emphasis added). Thus, an interface need not be electronic in every situation.

As for flow-through, KPMG will be conducting a comparison of retail and wholesale flow-through and will report on the results of the comparison. If the comparison shows problems, this will be addressed in staff's recommendation to the Commission regarding the third-party OSS test.

As for change control/management, this will be evaluated for completeness, consistency, reasonableness and timeliness, as set forth on pages 34-35 of the Master Test Plan. KPMG will include an assessment of the process itself, as well as whether the process results in requests being effectively addressed.

Regarding repair interfaces, these are being reviewed as set forth on pages 93 and 97 of the Master Test Plan, including M&R TAFI and ECTA in the TVV5 portion of the test, M&R TAFI Functional Evaluation, and TVV6 M&R ECTA Functional Evaluation.

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Finally, staff emphasizes that even if the Commission were to determine that FCCA/AT&T's proposed sub-issue (c) had been overlooked because it was not specifically addressed, staff believes that the proposed issue should still be rejected. The Commission has been clear that the Third-Party OSS Test was the vehicle it intended to use to address OSS issues in this proceeding. The Commission has emphasized that:

Third-party testing of BellSouth's OSS systems under the plan our staff has recommended may actually provide better, more accurate information about the status of BellSouth's OSS systems than might be obtained through further administrative proceedings on this issue.

Order No. PSC-99-1568-PAA-TP at p. 10. This rationale is, in fact, not dissimilar from that used by AT&T itself in advocating that the testing process be initiated, as noted in the same Order:

They [AT&T] further argue that much time has been spent trying to evaluate the performance of BellSouth's OSS on the basis of testimony offered by BellSouth and the ALECs, instead of through the direct, impartial, and knowledgeable examination of the OSS by an independent third party. They state that thorough testing by an independent third party will, on a nondiscriminatory basis, isolate points where the OSS fail to perform properly, so that the OSS can be corrected quickly, thereby speeding the competitive process.

Id. at p. 4. And, again, as noted by the Prehearing Officer, this Commission has repeatedly stated that this test will enable the Commission to fully address its OSS concerns identified in Order No. PSC-97-1459-FOF-TL, the Final Order on BellSouth's Petition Filed Pursuant to Section 271 of the Act. See Order No. PSC-99-1568-PAA-TP, Order on Process for Third-Party Testing, Docket No. 960786-TL, at p. 10 and Order No. PSC-00-0104-PAA-TP, Order Approving Master Test Plan, Docket No. 960786-TL, at p. 5 ("... third-party testing will enable us to make a definitive determination of whether BellSouth has met this Section 271 criteria.") In that Order, the Commission identified a number of

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concerns regarding OSS, some specific and some more general. Order No. PSC-97-1459-FOF-TL at pgs. 183-186. Staff believes that the items identified by FCCA/AT&T all fall within the scope of the concerns identified in Order No. PSC-97-1459-FOF-TL; thus, the Commission has stated its believe that the test would adequately address its concerns. Therefore, even if the Commission believes reconsideration is proper on this point, the proposed sub-issue (c) should be rejected.

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ISSUE 2: Should this Docket be closed?

RECOMMENDATION: No. Regardless of the Commission's decisions in Issue 1, this Docket should remain open pending further proceedings regarding BellSouth's application of inter-LATA authority.

STAFF ANALYSIS: Regardless of the Commission's decisions in Issue 1, this Docket should remain open pending further proceedings regarding BellSouth's application of inter-LATA authority.