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November 6, 2001

Mrs. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

RE: Consideration of BellSouth Telecommunications, Inc.'s entry into  
InterLATA services pursuant to Section 271 of the Federal  
Telecommunications Act of 1996; Docket No. 960786-A-TL

Dear Mrs. Bayo:

Enclosed please find the original and 15 copies of AT&T Communications of the  
Southern States, Inc., AT&T Broadband Phone of Florida, Inc., and TCG South Florida,  
Inc.'s (collectively, "AT&T") Post-Hearing Statement of Issues and Positions and  
Supporting Brief.

Thank you and please contact me if there are any questions regarding this matter.

Sincerely,

Claudia E. Davant

Enclosures

cc: Parties of Record

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**CERTIFICATE OF SERVICE**

**DOCKET NO. 960786-A-TL**

I HEREBY CERTIFY that a copy of the foregoing Post-Hearing Statement of Issues and Positions and Supporting Brief has been furnished via U.S. Mail this day 6th of November, 2001, to the following parties of record:

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Claudia E. Davant

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Consideration of BellSouth Telecommunications, )  
Inc.'s entry into interLATA services pursuant to ) Docket No. 960786-A-TL  
Section 271 of the Federal Telecommunications )  
Act of 1996. ) Filed: November 6, 2001

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**POST-HEARING STATEMENT OF ISSUES AND POSITIONS  
AND SUPPORTING BRIEF OF  
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.,  
TCG SOUTH FLORIDA, INC.,  
AND AT&T BROADBAND PHONE OF FLORIDA, LLC**

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Pursuant to Order No. PSC-01-1887-PHO-TL of the Florida Public Service Commission (the "Commission" or the "PSC"), AT&T Communications of the Southern States, Inc., TCG South Florida, Inc., and AT&T Broadband Phone of Florida, LLC (collectively "AT&T") hereby submit their Post-Hearing Brief in the above-referenced docket.

**I. INTRODUCTION**

All three times that the Federal Communications Commission ("FCC") has evaluated an application from BellSouth Telecommunications, Inc. ("BellSouth") for authorization under Section 271 of the Telecommunications Act of 1996<sup>1</sup> ("the Act") to provide interLATA services, the FCC has rejected BellSouth's application.<sup>2</sup> Indeed, in the *Second Louisiana Order*, the FCC

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 251 *et seq.*

<sup>2</sup> Memorandum Opinion and Order, *In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, 13 FCC Rcd. 539 (F.C.C. Dec. 24, 1997) (No. CC 97-208, FCC 97-418) ("*South Carolina Order*"); Memorandum Opinion and Order, *In the Matter of Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana*, 13

explicitly cautioned BellSouth that it must “remedy deficiencies identified in previous orders before filing a new Section 271 application, or face the possibility of summary denial.”<sup>3</sup> The FCC specifically identified numerous problems, including deficiencies with BellSouth’s operational support systems (“OSS”); compliance problems with access to unbundled network elements (“UNEs”), interconnection, local loop transmission, switching, directory assistance services, operator call completion service, and number portability; and BellSouth’s failure to provide performance measurement data sufficient to establish that BellSouth satisfied the requirements of the Act.<sup>4</sup>

BellSouth now seeks this Commission’s recommendation that it has met the requirements of Section 271. Such a recommendation, however, is premature. Although detailed analysis of BellSouth’s OSS and a review of Alternative Local Exchange Carrier (“ALEC”) commercial experience were not the subject of the current proceeding, the Commission should note that the incomplete status of the third-party test of these systems and the number and severity of the deficiencies identified so far counsel against encouraging BellSouth’s rush to the FCC.<sup>5</sup>

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(Footnote cont’d from previous page.)

FCC Rcd. 6245 ¶ 1 (F.C.C Feb. 4, 1998) (No. CC 97-231, FCC 98-17) (“*First Louisiana Order*”); Memorandum Opinion and Order, *In the Matter of Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934 as Amended to Provide In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd. 20,599 ¶ 1 (F.C.C. Oct.13, 1998) (No. CC 98-121, FCC 98-271) (“*Second Louisiana Order*”)

<sup>3</sup> *Second Louisiana Order* ¶ 5. BellSouth’s most recent Section 271 application, from Louisiana and Georgia, is presently before the FCC, and summary denial is a very real possibility, because, as this proceeding, the Florida third-party test, and the OSS proceedings will demonstrate, BellSouth has failed to resolve the problems the FCC enumerated in the *Second Louisiana Order*.

<sup>4</sup> *Second Louisiana Order* ¶ 9-10.

<sup>5</sup> To date, KPMG Consulting has identified 131 observations and 117 exceptions as part of its OSS test. Of these, 44 observations and 59 exceptions remain open today. Moreover, the significant issues KPMG Consulting identified with BellSouth’s usage billing have prompted BellSouth to develop new billing elements. KPMG Consulting has recommended that the Commission order testing of BellSouth’s billing solution. Such testing, which would be separated from the Florida OSS Evaluation Final Report, is not expected to conclude until March 2002. See Letter from David B. Wirsching, III to Lisa Harvey, October 23, 2001.

Moreover, in the *Second Louisiana Order*, the FCC specifically commented on the absence of performance measurement data sufficient to support BellSouth's claims. This Commission is in the process of implementing permanent performance measures for Florida, and it should take the time to assess the data collected under those measures before it draws its conclusions regarding BellSouth's performance.

In addition to the deficiencies to be addressed in the OSS-related proceedings, the recent hearing in this docket revealed that even in areas not impacted by OSS, BellSouth has failed to take the steps necessary to foster competition or meet Section 271 requirements. Specifically, the hearing demonstrated that BellSouth fails to satisfy the requirements of the Act in the following key areas:

- BellSouth fails to fully provide nondiscriminatory access to UNE combinations, issue 3. In addition, BellSouth refuses to provide UNEs in combination at cost-based rates.
- BellSouth also fails to satisfy the Act with respect to unbundled local loops, issue 5. BellSouth continues to discriminate in the area of advanced services which would allow efficient provision of xDSL services to ALEC customers in Florida.
- BellSouth also fails to demonstrate that it satisfies the Act's local number portability ("LNP") requirements, issue 12. AT&T customers experience chronic number reassignment problems. Moreover, BellSouth's failure to implement adequate translations results in the loss of calling party identification when the customer changes service to an ALEC. In addition, AT&T customers have experienced other number portability problems, including loss of the ability to receive inbound calls, and difficulty porting a subset of numbers. Finally, unlike every other Incumbent Local Exchange Carrier ("ILEC"), BellSouth does not have a procedure for performing "snap backs."
- BellSouth's assignment of so-called "oddball codes" to its retail customers violates the Act's interconnection, local number portability, and dialing parity requirements, issues 2, 12, and 13.
- BellSouth also fails to meet the Act's interconnection requirements in its provision of trunking and collocation, issue 2. The hearing revealed that ALEC trunks suffer trunk blockages -- the inability of customers to complete calls -- much more often than the trunks in BellSouth's local network. Moreover,

BellSouth fails to provide collocation under terms and conditions that comply with FCC requirements.

- BellSouth fails to provide nondiscriminatory access to operator services and directory assistance (“OS/DA”), issues 7 and 8. BellSouth has not implemented a mechanism for ordering customized OS/DA routing for a specific customer in an efficient and effective manner. In addition, BellSouth fails to provide call routing options to ALECs equivalent to those it provides to BellSouth retail customers.

BellSouth has attempted to dismiss many of the deficiencies ALECs describe as isolated incidents or interpretive disputes. BellSouth tries to dispose of other issues by claiming it is implementing or planning to implement fixes for the problems. These efforts are unavailing. The evidence ALECs have presented to the Commission demonstrates that BellSouth fails to satisfy the requirements of Section 271, and promises of proposed fixes are not sufficient to demonstrate present compliance. This Commission should require BellSouth to demonstrate that it has remedied each of these deficiencies, as well as those identified in the ongoing third-party test, before it recommends that BellSouth receive Section 271 authority in Florida.

In addition, BellSouth’s application presents this Commission with the opportunity to assess whether compliance with the minimum requirements of Section 271 would be adequate to produce the level of local competition this Commission believes is appropriate in Florida. In light of the obstacles facing ALECs attempting to compete in Florida and the absence of any significant and durable local competition, AT&T submits that the Commission should deny BellSouth’s premature Section 271 application and order BellSouth to address each of the issues inhibiting ALECs and the growth of competition.

## **II. LOCAL COMPETITION IN FLORIDA – ISSUE 1**

\* \* \* \* \*

**The failure of measurable and meaningful competition to develop in Florida demonstrates that BellSouth has failed to provide appropriate access and interconnection**

**to its network facilities. Premature BellSouth entry into the long-distance market in Florida would shatter the fragile prospect for local competition.**

\* \* \* \* \*

BellSouth attempts to persuade the Commission that interLATA authority is necessary to put BellSouth on a level playing field with the ALECs. BellSouth complains that it may not compete in the interLATA market and even describes the efforts of ALECs to secure nondiscriminatory access to the elements of local service as attempts to delay BellSouth's entry into the long distance market. These claims utterly disregard the language and the purpose of the Act.

The FCC has indicated that evidence of BellSouth's performance in Florida is important to consideration of Section 271 issues. "We recognize that metric definitions and incumbent LEC operating systems will likely vary among states, and that individual states may set standards at a particular level that would not apply in other states and that may constitute more or less than the checklist requires."<sup>6</sup> Accordingly, the FCC concluded that "in evaluating checklist compliance in each application, we consider the BOC's performance within the context of each respective state."<sup>7</sup> The most telling evidence of BellSouth's Section 271 compliance would be the emergence of measurable and meaningful local competition, but such competition has not developed in Florida.

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<sup>6</sup> See Memorandum Opinion and Order, *In the Matter of 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 Texas*, 15 FCC Rcd. 18,354 ¶ 55 (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) ("SWBT Texas Order").

<sup>7</sup> *Id.*



Premature BellSouth entry into the long-distance market in Florida would shatter the fragile prospect for local competition and ensure that the goals of the Act are not realized by Florida consumers. “Congress used the promise of long distance entry as an incentive to prompt the BOCs to open their local markets to competition.”<sup>8</sup> The delays of which BellSouth complains are in reality the requirements of the Act, and the amount of time BellSouth takes to comply with the Act is within the control of BellSouth, not the ALECs.

The Act mandates that local competition must exist **before** BellSouth may enter the interLATA market. “Congress recognized that, until the BOCs open their local markets, there is an unacceptable danger that they will use their market power to compete unfairly in the long distance market.”<sup>9</sup> BellSouth’s assertion that local competition in the Florida market is meaningful -- much less “irreversible” -- is contradicted by the facts.<sup>10</sup> Local competition in Florida remains nascent, in large measure due to the success of BellSouth’s obstructing tactics over the past five years.

BellSouth greatly exaggerates the level of local competition in Florida, ignoring critical trends and limitations affecting each of the three entry strategies: resale, UNEs and ALEC facilities.<sup>11</sup> Resale activity offers little probative value because evidence suggests it is neither viable nor irreversible. Resale is declining as a market entry vehicle around the country.

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<sup>8</sup> *Second Louisiana Order* ¶ 3

<sup>9</sup> Florida and nationwide consumer advocates share this concern. See Press Release, Consumer Federation of America, et al., “Consumer Advocates Call on PSC to Take Action to End BellSouth Phone Monopoly” Released October 31, 2001, attached as Exhibit A.

<sup>10</sup> See Tr. at 1792-1818.

<sup>11</sup> See Tr. at 1822-27.

UNE-based competition has failed to develop for a number of reasons.<sup>12</sup> First, BellSouth has been very slow to comply with its legal obligation to provide access to network elements. Second, as discussed in the context of checklist item 2, *infra*, the price to lease network elements in Florida is prohibitively high. Third, BellSouth continues to resist granting ALECs access to combinations of UNEs. The effects of intransigence and threatening behavior have combined to frustrate the development of UNE-based competition in Florida.<sup>13</sup>

BellSouth's conduct to date has been consistent with an incumbent trying desperately to hold on to market share until it has the unfettered opportunity to increase that share dramatically. For example, BellSouth's proposed rates for UNEs preclude competition in Florida. Indeed, not even BellSouth could profitably offer local service if required to lease UNEs at the rates it has proposed.<sup>14</sup> Moreover, BellSouth has steadfastly refused to provide nondiscriminatory access to all network element combinations, including so-called "new combinations" at cost-based rates.<sup>15</sup> This refusal prevents the innovation that competition was supposed to promote. As long as BellSouth discriminates in providing access to its network, true competition cannot occur.

Contrary to BellSouth's contention, facilities-based activity is negligible, exhibiting a traffic pattern indicative of competition focused on a select customer segment. The number of interconnection trunks and data showing interconnection usage in Florida demonstrate an ALEC market share for facilities-based carriers of less than 2%.<sup>16</sup> Moreover, the directional interconnection usage data reveals that ALECs were focused on serving customers that **received**

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *See* Tr. at 1811-12.

<sup>15</sup> *See* Section IV. A. *infra*.

local calls -- most likely, internet service providers.<sup>17</sup> This is not the type of competition envisioned by the Act.

Not only does the level of competition **today** fail to justify BellSouth's claim that it has opened its markets, the most likely effect of BellSouth's gaining interLATA authority would be for it to gain even greater dominance in the future. Unless entrants are assured nondiscriminatory access to the inherited network, only BellSouth will be positioned to offer the most profitable products, packages that combine local service with other products (such as internet access and long distance), broadly across the market.<sup>18</sup> Consequently, granting BellSouth interLATA authority will increase its market power and position at the very same time that the Act's sole financial incentive to comply with its competition-enhancing provisions is removed.

This Commission should not allow BellSouth to enter the market for long distance services until it is satisfied that BellSouth is providing ALECs truly nondiscriminatory access to its network. Actual commercial activity offers an important measure of compliance because such competition is the goal of the Act itself. Where, as here, the observed level of competition contradicts BellSouth's claims, the Commission must infuse its investigation with a healthy dose of skepticism.

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<sup>16</sup> See Tr. at 1807.

<sup>17</sup> See Tr. at 1805-06.

<sup>18</sup> For instance, BellSouth's CEO Duane Ackerman has been quoted as predicting that BellSouth would quickly win "in the 25 to 30% market share range," with a "quick couple of billion" flowing to the bottom line as profit. See Tr. at 1794-95 (citing *BellSouth Remains Confident, But Cautious About Growth*, Atlanta Journal and Constitution, June 3, 2001).

### **III. THE COMMISSION'S ROLE IS TO MAKE AN INDEPENDENT DETERMINATION OF WHAT IS REQUIRED FOR LOCAL COMPETITION TO THRIVE IN FLORIDA AND TO ASSESS BELL SOUTH'S SECTION 271 READINESS IN LIGHT OF THAT DETERMINATION**

Examination of BellSouth's case in the recent hearing revealed a consistent theme: in many instances, even when a pro-competitive alternative is technically available and indisputably more efficient, BellSouth will not provide it to ALECs unless a regulatory body or a court requires BellSouth to do so. Commissioner Deason summarized BellSouth's policy concisely: "we don't have to, so we're not going to."<sup>19</sup> Confronted with BellSouth's unwillingness to implement pro-competitive alternatives unless required to do so, the Commissioners questioned whether their consultative role in this proceeding is that of an independent body able to impose its own standards or merely that of "a field office for the FCC" limited to applying the FCC's standards.<sup>20</sup>

The Commission's role as an independent authority empowered to establish state-specific standards to encourage local competition in Florida is clear. The Act expressly permits states to adopt and impose duties under state law, even though these duties may go beyond what the Act requires. Indeed, while the Act adopts a series of minimum requirements with which all ILECs must comply, it is explicit in stating that those federal requirements are not exclusive. For example, Section 261(c) of the Act, entitled "Additional State Requirements," provides:

Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's

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<sup>19</sup> Tr. at 726.

<sup>20</sup> Tr. at 724.

requirements are not inconsistent with this part or the Commission's regulations to implement this part.<sup>21</sup>

The language and structure of the Act demonstrate Congress's intent that the FCC and the state commissions would work together in achieving the goal of robust local competition.

The FCC itself has indicated that state commissions are more than merely its field offices. In the *First Local Competition Order*, "the Commission conclude[d] that the states and the FCC can craft a partnership that is built on mutual commitment to local telephone competition throughout the country, and that under this partnership, the FCC establishes uniform national rules for some issues, the states, and in some instances the FCC, administer these rules, **and the states adopt additional rules that are critical to promoting local telephone competition.**"<sup>22</sup>

The FCC made clear that its rules "are the minimum requirements upon which the states may build."<sup>23</sup> As Florida Competitive Carriers Association ("FCCA") witness Gillan explained during the hearing, in practice these FCC minimums do not produce much competition, and in the regions of the United States where significant local competition has developed, the state commissions have imposed their own requirements.<sup>24</sup> Under their partnership with the FCC, the burden falls to the state commissions to monitor the development of local competition in each state and impose appropriate requirements at the state level to improve the access offered by individual ILECs. In the case of a particularly recalcitrant ILEC, for example, the state

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<sup>21</sup> 47 U.S.C.A. § 261(c).

<sup>22</sup> First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd. 15,499 ¶ 24 (F.C.C. August 8, 1996) (No. CC 96-98, 95-185, FCC 96-325) ("*First Local Competition Order*") (emphasis added).

<sup>23</sup> *Id.*

commission is likely to be better situated to recognize anti-competitive policies and conduct, and the commission's role as the local partner in this joint effort is to impose rules that eliminate anti-competitive practices.

The FCC has recognized the value to be gained from the diversity of state commission problem-solving. "In implementing the national rules we adopt in this Report and Order, states will help to illuminate and develop innovative solutions regarding many complex issues for which we have not attempted to prescribe national rules at this time, and states will adopt specific rules that take into account local concerns."<sup>25</sup> The FCC envisioned the partnership to be enduring. "[W]e expect this close association with and reliance on the states to continue in the future. We therefore encourage states to continue to pursue their own procompetitive policies. Indeed, we hope and expect that this Report and Order will foster an interactive process by which a number of policies consistent with the 1996 Act are generated by states."<sup>26</sup>

The FCC has not retreated from its reliance on the state commissions or its recognition of the authority state commissions have to impose additional requirements.<sup>27</sup> Indeed, this Commission is not merely an FCC field office. It has independent authority to evaluate BellSouth's stated positions and to require BellSouth to provide pro-competitive alternatives. In

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*(Footnote cont'd from previous page.)*

<sup>24</sup> See Tr. at 1835.

<sup>25</sup> *First Local Competition Order* ¶ 53.

<sup>26</sup> *Id.*

<sup>27</sup> See, e.g., Memorandum Opinion and Order, In the Matter of 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, 16 FCC Rcd. 6237 ¶ 128 n.353 (F.C.C. Jan. 22, 2001) (No. CC 01-29, FCC 00-217) ("*SWBT Kansas and Oklahoma Order*"); Memorandum Opinion and Order, In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd. 3953 ¶¶ 54, 334 (F.C.C. Dec. 22, 1999) (No. CC 99-295, FCC 99-404) ("*Bell Atlantic New York Order*").

*(Footnote cont'd on next page)*

light of BellSouth's demonstrated reluctance to comply with ALEC requests voluntarily, this Commission's intervention is essential to the success of local competition. Accordingly, the Commission should require BellSouth to remedy the deficiencies demonstrated in this proceeding, as well as in the OSS test and proceeding, before recommending that BellSouth be granted Section 271 authority in Florida.

#### **IV. BELLSOUTH FAILS TO PROVIDE ALECS NON-DISCRIMINATORY ACCESS NECESSARY TO THE GROWTH OF COMPETITION IN FLORIDA**

BellSouth has the burden of establishing that it has fully implemented the Section 271 checklist.<sup>28</sup> In evaluating an ILEC's compliance with the checklist, the FCC has examined whether the ILEC provides access to ALECs in "substantially the same time and manner" as it provides access to itself.<sup>29</sup> Where no retail analogue exists, the FCC considers whether the ILEC provides access in such a way so as to offer an efficient carrier a "meaningful opportunity to compete."<sup>30</sup> BellSouth has implemented processes that place ALECs at a significant disadvantage relative to BellSouth; thus, it has failed to offer ALECs a meaningful opportunity to compete. Accordingly, this Commission should not approve BellSouth's Section 271 application until it is satisfied that BellSouth meets the requirements of the Section 271 checklist and any additional standards the Commission deems necessary to foster local competition in Florida.

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*(Footnote cont'd from previous page.)*

<sup>28</sup> See *Bell Atlantic New York Order* ¶ 44.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

**A. BellSouth Has Failed To Demonstrate That It Provides Nondiscriminatory Access To UNE Combinations -- Issue 3**

\* \* \* \* \*

**BellSouth charges a discriminatory glue charge rather than providing at cost-based rates UNE combinations that it ordinarily combines for itself, whether or not the combination is already provided in the network. In addition, the rates BellSouth charges for UNEs fail to comply with TELRIC, as required by the Act.**

\* \* \* \* \*

On January 25, 1999, the U.S. Supreme Court upheld FCC Rule 315(b), which states: “[e]xcept upon request, an ILEC shall not separate requested network elements that the ILEC currently combines.”<sup>31</sup> Since this decision, BellSouth agrees that it is required to provide combinations of UNEs in certain circumstances, but not in others. Moreover, where it denies the obligation to provide combinations under the Act and FCC rules but chooses nonetheless to allow ALECs access, BellSouth insists it may charge ALECs non-cost-based rates, or “glue charges,” for such access.

In addition, the Act requires that BellSouth must provide “nondiscriminatory access to network elements in accordance with the requirements of sections 252(c)(2) and 252(d)(1).”<sup>32</sup> Section 252(d)(1) requires that UNE pricing must be nondiscriminatory, cost-based, and may include a reasonable profit.<sup>33</sup> Based on this section, the FCC ordered that UNE rates be based on

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<sup>31</sup> *AT&T Corp. v. Iowa Utils. Bd., et al.*, 525 U.S. 366 (1999).

<sup>32</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>33</sup> *See* 47 U.S.C. § 252(d)(1).



the Total Element Long Run Incremental Cost (“TELRIC”).<sup>34</sup> BellSouth’s UNE rates have not been approved by the Commission and cannot be considered to be cost-based.

1. **BellSouth Fails to Provide Ordinarily-Combined UNE Combinations at Cost-Based Rates**

BellSouth will not provide UNE combinations to ALECs for a specific customer at UNE cost-based TELRIC prices unless the specific elements which make up the combination for that customer are physically combined at the time of the request **and** being used by BellSouth to provide service to that specific customer.<sup>35</sup> As a result of these limitations, BellSouth does not provide cost-based access to combinations that would allow ALECs to serve new customers or to provide existing customers additional lines.<sup>36</sup>

Moreover, if BellSouth does decide to provide ALECs a combination that does not fall within the limited circumstances described above, it assesses a “glue charge.”<sup>37</sup> “Glue charges” are additional non-TELRIC, non-cost-based charges that BellSouth adds to network element rates for loop/switch port and loop/transport combinations.<sup>38</sup> These additional charges have no cost basis and are set at whatever level BellSouth chooses.<sup>39</sup> By making UNE combinations unduly expensive, BellSouth disadvantages its competitors by increasing the cost of competitive alternatives. This inhibits competition, hence violating the mandate of the Act.

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<sup>34</sup> See 47 C.F.R. § 51.505(a).

<sup>35</sup> See Tr. at 1455.

<sup>36</sup> See *id.* “Under the specific circumstance where service to a location has been disconnected, but the facilities remain connected, BellSouth will allow UNE-P to be purchased at cost-based rates to serve a new customer at that location.” Tr. at 1455 n.2.

<sup>37</sup> See Tr. at 1456.

<sup>38</sup> See *id.*

<sup>39</sup> See *id.*

BellSouth's position in Florida is inconsistent with rulings from commissions in other BellSouth states. For example, the Georgia Public Service Commission found "that 'currently combines' means ordinarily combined within the BellSouth network, in the manner in which they are typically combined."<sup>40</sup> The Georgia Commission concluded that ALECs "can order combinations of typically combined elements, even if the particular elements being ordered are not actually physically connected at the time the order is placed."<sup>41</sup> The effect of the Georgia Commission's order is that BellSouth is obligated to provide UNE combinations to ALECs at cost-based rates for both new customers and additional lines for existing customers. The Louisiana Public Service Commission reached a similar conclusion: "loop/port and loop/transport combinations are ordinarily combined in BellSouth's network. Thus, BellSouth must provide combinations of typically combined elements, even if the particular elements being ordered are not actually connected at the time the order is placed."<sup>42</sup> The Kentucky Public Service Commission concurred: "AT&T argues that BellSouth should combine network elements for AT&T if BellSouth ordinarily, or typically, combines such elements for itself. The Commission agrees."<sup>43</sup> The Mississippi Public Service Commission also recently adopted this

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<sup>40</sup> See Tr. at 1460 (citing In re: Generic Proceeding to Establish Long-Term Pricing Policies For Unbundled Network Elements, Georgia Public Service Commission's Order of February 1, 2001, Dckt. No. 10692-U at 11.)

<sup>41</sup> See *id.*

<sup>42</sup> In re: Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region, Louisiana Public Service Commission's Order of September 21, 2001, Dckt. No. U-22252, Subdocket E at 11, attached as Exhibit B.

<sup>43</sup> See Tr. at 1461 (citing In the Matter of: Petition by AT&T Communications of the South Central States, Inc. and TCG Ohio for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252, Kentucky Public Service Commission's Order of May 16, 2001, Case No. 20000-465 at 5.)

view.<sup>44</sup> Finally, the Tennessee Regulatory Authority defined “the term ‘currently combines’ to include any and all combinations that BellSouth currently provides to itself anywhere in its network.”<sup>45</sup>

The FCC has recognized that it is critical for ALECs to have the ability to enter the local exchange market through the use of UNE combinations.<sup>46</sup> Furthermore, in order to provide nondiscriminatory access to its network elements, BellSouth must provide ALECs with access equal to that which it provides itself. By adding glue charges, BellSouth discriminates against ALECs because it denies ALECs equal access to network elements. BellSouth also impedes entry into the local exchange market when it forces ALECs to incur the expense of onerous glue charges. The growth of mass-market competition depends, in part, on ALECs being able to provide service in a cost-effective manner.<sup>47</sup> Glue charges impair competition by ensuring that, in many instances, it will **always** be less costly for the customer to use BellSouth rather than an ALEC.<sup>48</sup> Accordingly, BellSouth cannot meet its burden under checklist item 2 unless the Commission requires BellSouth to provide UNE combinations that it ordinarily combines for itself, regardless of whether they are already combined in BellSouth’s network, at cost-based rates free of glue charges.

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<sup>44</sup> See Order of Mississippi Public Service Commission, In Re: Consideration of the provisions of In-Region InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to Section 271 of TA 96; Final Order at 70, Dckt. 97-AD-321, Dated October 4, 2001, attached as Exhibit C.

<sup>45</sup> See Tr. at 1460 (citing Intermedia/BellSouth Arbitration Hearing Transcript at 7-8).

<sup>46</sup> See *Second Louisiana Order* ¶ 141.

<sup>47</sup> See Tr. at 1463-65.

<sup>48</sup> See *id.*

## 2. The UNE Rates BellSouth Charges Are Not TELRIC-Based

As a threshold matter, as Worldcom witness Darnell explained in his testimony, the rates BellSouth currently charges for most UNEs are BellSouth's proposed rates, which have not yet been approved by the Commission.<sup>49</sup> Moreover, BellSouth has proposed additional allegedly cost-based rates during this proceeding.<sup>50</sup> Accordingly, BellSouth does not presently have Commission-approved UNE rates that have been found to be based on TELRIC and that demonstrate the operation of an open market. Section 271 review is supposed to follow the opening of the market. The absence of UNE rates that comply with the Act provides further evidence that BellSouth's Section 271 application is premature.

The UNE rates BellSouth currently charges are of considerable importance in this Section 271 proceeding, however, because they are so high as to operate as a significant barrier to entry.<sup>51</sup> As FCCA witness Gillan explained in the hearing, the rates BellSouth charges for leasing its UNEs cannot possibly comply with TELRIC, as the Act requires. The purpose of the TELRIC model is to approximate the rates that will allow ALECs to use BellSouth's inherited infrastructure at approximately the same cost imposed on BellSouth.<sup>52</sup> Mr. Gillan performed a calculation in which he estimated BellSouth's financial results for 2000 if it had had to lease its own network at the established UNE rates.<sup>53</sup> His results, which provided a conservative

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<sup>49</sup> *See id.*

<sup>50</sup> *See* Tr. at 1727.

<sup>51</sup> *See* Tr. at 1736, 1844-45.

<sup>52</sup> *See* Tr. at 1846.

<sup>53</sup> *See* Tr. at 1811-12.

estimate, revealed that BellSouth would have been unable to operate in Florida under those terms.<sup>54</sup>

Moreover, BellSouth's Florida UNE rates differ significantly from the rates charged by other ILECs.<sup>55</sup> For example, Mr. Darnell testified that the average UNE-Platform ("UNE-P") loop cost in Florida is 21% higher than the average BellSouth UNE-P loop cost in Georgia.<sup>56</sup> The substantial disparity, combined with the calculations described in the testimony of Mr. Gillan, strongly suggest that BellSouth's UNE rates are inflated and discriminatory. Reasonable UNE rates are essential both to compliance with Section 271 and to the development of competition. As AT&T and the ALECs explain, the Commission should reject BellSouth's Section 271 application for many reasons, including BellSouth's excessive UNE rates. This Commission should set appropriate TELRIC-based UNE rates that will encourage competition before resolving BellSouth's request for Section 271 support.<sup>57</sup>

**B. BellSouth Maintains Discriminatory Policies That Inhibit Competition For Advanced Services -- Issue 5**

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**BellSouth's discriminatory policies impair ALECs' ability to provide bundled voice and data services in an efficient and effective manner. BellSouth fails to provide line sharing and line splitting in accordance with FCC mandates and BellSouth inhibits**

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<sup>54</sup> See Tr. at 1812.

<sup>55</sup> See Tr. at 1844-45.

<sup>56</sup> Tr. at 1744-45.

<sup>57</sup> Regardless of the Commission's decision on BellSouth's Section 271 compliance, however, it should revisit the issue of UNE rates and establish more reasonable rates that will provide ALECs the opportunity to compete and foster UNE-based competition in Florida.

**competition by terminating xDSL customers who switch voice service to a UNE-based ALEC.**

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Congress, when it enacted the Telecommunications Act of 1996, designed a blueprint to ensure that local telecommunications markets are open to competition, while also “encouraging the rapid deployment of new telecommunications technologies.”<sup>58</sup> One of the fundamental goals of the Act is to “promote innovation and investment . . . in order to stimulate competition for all services, including advanced services.”<sup>59</sup> The demand for advanced services has increased dramatically over the last few years. In 1998, a mere three years ago, the FCC issued its initial *Advanced Services Order*.<sup>60</sup> From the very beginning, the FCC stated that:

As the demand for high-speed, high-capacity advanced services increases, incumbent telecommunications companies and new entrants alike are deploying innovative new technologies to meet that demand. The role of the [FCC] is . . . to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers.<sup>61</sup>

BellSouth, however, maintains a number of discriminatory policies that significantly inhibit ALECs from efficiently and effectively deploying innovative advanced services technologies in Florida.

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<sup>58</sup> Memorandum Opinion and Order and Notice of Proposed Rulemaking, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, et al.*, 63 FCC Rcd. 45,140 ¶ 1 (F.C.C. Aug. 7, 1998) (No. CC 98-147, 98-11, 98-26, 98-32, 98-15, 98-78, 98-91, FCC 98-188) (“*Advanced Services Order*”).

<sup>59</sup> *Id.* ¶ 1

<sup>60</sup> *Advanced Services Order*

<sup>61</sup> *Id.* ¶ 2.

Digital subscriber line based service (“xDSL”) is one type of telecommunications service integral to the continued growth of the advanced services marketplace.<sup>62</sup> By employing different frequencies, providers can transport voice or data services over the same line.<sup>63</sup> Through the use of “line splitting” or “line sharing,” a customer is able to have both voice and high-speed data services without adding an additional line, because xDSL allows high-speed data to be added to the loop without impacting traditional voice service.<sup>64</sup>

Indeed, in its recent *Line Sharing Order* and *Line Sharing Reconsideration Order*, the FCC recognized the importance of access to the high frequency portion of the loop (“HFPL”)<sup>65</sup> and made it clear that ILECs must provide nondiscriminatory access to unbundled loops for the provision of xDSL services.<sup>66</sup> The ILEC “has a concrete and specific legal obligation to provide unbundled xDSL-capable loops to competing carriers.”<sup>67</sup> In order to meet the needs of Florida consumers and continue the rapid growth of advanced services and meaningful local competition

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<sup>62</sup> See Tr. at 1487.

<sup>63</sup> See Memorandum Opinion and Order, *In the Matters of Deployment Wireline Services Offering Advance Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Dckt. No. 98-147, Fourth Report and Order, CC Dckt. No. 96-98, 14 FCC Rcd. 20,912 ¶ 17 (F.C.C. Dec. 9, 1999) (“*Line Sharing Order*”).

<sup>64</sup> See Memorandum Opinion and Order, *In the Matter of 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 on Reconsideration, CC Dckt. No. 98-147; Fourth Report and Order on Reconsideration, CC Dckt. No. 96-98, Third Further Notice of Proposed Rulemaking, CC Dckt. No. 98-147; Sixth Further Notice of Proposed Rulemaking, CC Dckt. No. 96-98, 16 FCC Rcd. 2101 ¶¶ 5, 17 (F.C.C. Jan. 19, 2001) (“*Line Sharing Reconsideration Order*”).

<sup>65</sup> See *Line Sharing Order* ¶ 5; *Line Sharing Reconsideration Order* ¶ 5 (“[L]ack of access to the high frequency portion of the local loop materially diminishes the ability of competitive LECs to provide certain types of advanced services to residential and small business users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings.”).

<sup>66</sup> See *Line Sharing Reconsideration Order* ¶ 18.

<sup>67</sup> Memorandum Opinion and Order, *In the Matter of 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*

(Footnote cont'd on next page)

in Florida, ALECs must be able to offer customers xDSL service, either by itself or in combination with voice services (“bundled services”).<sup>68</sup>

BellSouth, however, consistently precludes ALECs that use UNE-P from offering customers bundled voice and data services, while at the same time BellSouth aggressively markets bundled services to its customers.<sup>69</sup> This practice has a particularly chilling effect on local competition for advanced services, given that UNE-P has been recognized as the most effective broad-based strategy for reaching most residential and small business customers.<sup>70</sup> Moreover, BellSouth’s discriminatory policies appear to extend to the broadband services it offers over fiber-fed, next-generation digital loop carrier (“NGDLC”) architecture.<sup>71</sup> In sum, BellSouth’s refusal to effectively provide for the addition of xDSL capabilities to UNE-P voice service inhibits competition in the markets for voice services, data services, and bundled services.

#### 1. **BellSouth Impairs ALECs’ Ability to Provide Line Sharing**

“Line sharing” refers to the provision of xDSL-based service (data service) by an ALEC and voice service by an ILEC on the same loop.<sup>72</sup> The FCC has repeatedly recognized that ALECs must have unbundled access to the HFPL through line sharing in order to facilitate

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*Massachusetts*, 12 FCC Rcd. 8988 ¶ 131 (F.C.C. April 16, 2001) (No. CC 01-9, FCC 01-130) (“*Massachusetts Order*”)

<sup>68</sup> See Tr. at 1483, 1487. “Bundled services are important now and will be central to the competitive marketplace in the foreseeable future.” Tr. at 1484.

<sup>69</sup> Tr. at 1483.

<sup>70</sup> See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, Fourth Further Notice of Proposed Rulemaking, 65 FCC Rcd. 2361, ¶ 273 & n.543 (F.C.C. Nov. 5, 1999) (CC Dckt. No. 96-98, FCC 99-238) (“*UNE Remand Order*”).

<sup>71</sup> See Tr. at 1483.



competition in advanced services.<sup>73</sup> Moreover, the requirement to provide line sharing is equally applicable where the loop is served by a remote terminal, as is the case in an NGDLC configuration.<sup>74</sup> NGDLC allows BellSouth to deploy fiber facilities from the central office to a remote terminal.<sup>75</sup> At the remote terminal, the fiber is connected with the copper loop to the customer's premises.<sup>76</sup> The "next generation" aspect of NGDLC arises from the availability of different plug-in cards, which allow the telecommunications carrier to provide voice service only, advanced service only, or combined voice and advanced services.<sup>77</sup> In Florida, BellSouth operates some 200 central offices, and 12,000 remote terminals.<sup>78</sup>

As the FCC has recognized, it would be inconsistent with the goals of the Act "to permit the increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the competitive provision of xDSL services."<sup>79</sup> In its *Line Sharing Reconsideration Order*, the FCC expressed concern that an ALEC might attempt to provide line-shared xDSL services by collocating a Digital Subscriber Line Access Multiplexer ("DSLAM") at the central office, only to have the ILEC migrate its customers to fiber-fed facilities at a remote terminal.<sup>80</sup> The ALEC

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<sup>72</sup> See *Line Sharing Reconsideration Order* ¶ 5.

<sup>73</sup> See *id.*; *Line Sharing Order* ¶ 5.

<sup>74</sup> See *Line Sharing Reconsideration Order* ¶ 10 ("[T]he requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal).").

<sup>75</sup> Tr. at 1485 n.4.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Tr. at 1635.

<sup>79</sup> *Line Sharing Reconsideration Order* ¶ 13.

<sup>80</sup> See *Line Sharing Reconsideration Order* ¶ 11.

would then be forced to collocate another DSLAM at the remote terminal in order to continue providing line-shared services to these customers.<sup>81</sup> To alleviate this concern, the FCC requires the ILEC to provide the option of access to the HFPL at either the central office or the remote terminal, even when the customer is served by NGDLC facilities.<sup>82</sup>

BellSouth, however, does not offer full unbundled access to the local loop, because it does not offer any feasible means of line sharing in situations where it has deployed fiber-fed Digital Loop Carrier (“DLC”) at remote terminals.<sup>83</sup> As a result, ALECs face three choices: (1) utilize traditional copper loops to deliver inferior service quality, assuming such copper loops are available; (2) engage in cost prohibitive remote terminal collocation;<sup>84</sup> or (3) forego competition for the customers served by BellSouth’s expanding fiber-fed network.<sup>85</sup> None of these three choices provides a viable avenue for ALECs to compete successfully in the advanced services marketplace.

Without a feasible means of access to the HFPL through line sharing at the remote terminal, BellSouth cannot meet the unbundling requirements set forth by the FCC. ALECs are entitled to access to unbundled loop elements, which consist of “all features, functions, and capabilities that provide transmission functionality between a customer’s premises and the central office, regardless of the technologies used to provide, or the services offered over, such

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<sup>81</sup> *See id.*

<sup>82</sup> *See id.* ¶¶ 11, 12.

<sup>83</sup> *See Tr.* at 1485, 1505-06.

<sup>84</sup> To date, no ALEC in the country has successfully deployed DSLAM assets in the central office where there are more customers to potentially spread the cost. *Tr.* at 1567. “[G]iven that they can’t succeed at the central office with the market shares they are currently obtaining, no [ALEC] is going to take the next step and deploy those assets at a remote terminal where the addressable market is even smaller.” *Id.*

<sup>85</sup> *Tr.* at 1485.

facilities.”<sup>86</sup> BellSouth’s deployment of NGDLC architecture does not change the basic characteristics or functionality of the loop element to which ALECs are entitled. As the FCC stated: “[u]sing the loop to get to the customer is fundamental to competition.”<sup>87</sup> Accordingly, BellSouth should be required to implement the FCC’s mandate and provide unbundled loop access at its remote terminals before gaining authority to enter the interLATA market in Florida.

As BellSouth witness Williams acknowledged, a technically feasible arrangement exists whereby ALECs could “virtually collocate” at the remote terminals using “line cards” with BellSouth’s DSLAM.<sup>88</sup> Indeed, other ILECS have deployed line card technology.<sup>89</sup> BellSouth, however, does not currently offer that arrangement.<sup>90</sup> BellSouth has indicated that it is testing the use of line cards and plans to deploy the technology in 2002.<sup>91</sup> If implemented in a non-discriminatory manner, ALEC access to line cards could be a feasible alternative to the cost-prohibitive option of collocating ALEC-owned DSLAMS at all 12,000 remote terminals. Moreover, BellSouth has indicated its plans to retrofit at least some of its existing remote terminals with line card technology.<sup>92</sup> Nonetheless, it is BellSouth’s current policy not to use this technology. BellSouth should be required to implement a nondiscriminatory policy prior to receiving Section 271 support from this Commission.

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<sup>86</sup> Tr. at 1511.

<sup>87</sup> *Line Sharing Order* ¶ 30; *see also id.* ¶ 29.

<sup>88</sup> *See* Tr. at 680, 689-90, 732.

<sup>89</sup> Tr. at 690.

<sup>90</sup> Tr. at 680, 689-90, 732.

<sup>91</sup> Tr. at 689-90, 732.

<sup>92</sup> Tr. at 732-33.

## 2. BellSouth Provisions Line Splitting in a Discriminatory Manner

“Line splitting” exists when one ALEC provides voice service and another ALEC, or the same ALEC, provides data service on the same loop.<sup>93</sup> The FCC has recognized that in order to compete effectively with BellSouth for both voice and data services, UNE-P ALECs must be able to offer bundled services.<sup>94</sup> Because the availability of line splitting will enhance competition in the advanced services market, ILECs must allow ALECs to “offer both voice and data service over a single unbundled loop.”<sup>95</sup> The FCC has stated that ILECs have a “current obligation to provide [ALECs] with the ability to engage in line splitting arrangements.”<sup>96</sup> Until very recently, BellSouth maintained a discriminatory line splitting policy. BellSouth’s newly adopted policy has yet to be implemented.

BellSouth apparently has now abandoned its plainly discriminatory policy of refusing to provide the splitter.<sup>97</sup> In this proceeding, BellSouth witness Williams testified that it remains BellSouth’s position that it is not legally obligated to provide the splitter in a line splitting arrangement.<sup>98</sup> Nonetheless, he further stated that:

BellSouth has revisited owning the splitter in the context of adverse decisions in Louisiana and Georgia on this issue. . . . BellSouth will now provide the splitter in line splitting arrangements as an option. BellSouth’s decision to provide the

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<sup>93</sup> See *Line Sharing Reconsideration Order* ¶ 17.

<sup>94</sup> See *id.* ¶ 18.

<sup>95</sup> *Id.* ¶ 18; see also *id.* ¶ 23.

<sup>96</sup> *Id.* ¶ 18.

<sup>97</sup> Tr. at 668, 1490-91.

<sup>98</sup> Tr. at 668.

splitter in Florida in no way reflects a change in our position with respect to BellSouth's legal obligation.<sup>99</sup>

Although BellSouth claims that it "stand[s] prepared to deliver the service," at the time of the hearing, BellSouth had no negotiated interconnection agreements containing specific line splitting provisions.<sup>100</sup> In addition, details concerning how BellSouth will provide the splitter, including terms, conditions, and pricing, are not readily available.<sup>101</sup> In fact, AT&T only became aware of the policy change on October 8, 2001, when Mr. Williams filed rebuttal testimony in North Carolina.<sup>102</sup>

Given that BellSouth maintains its position that it is not legally obligated to provide line splitters, it is reasonable to be skeptical of the long-term viability of this recent policy shift. Although BellSouth witness Williams professes the shift in policy from the witness stand, his words cannot replace actual evidence that BellSouth does in fact provide line splitters to new line splitting customers. Accordingly, the Commission should require BellSouth to fully document and implement this policy before it grants BellSouth interLATA authority. In addition, the Commission should confirm that BellSouth will make its line splitters available to UNE-P ALECs under all circumstances, including instances when xDSL is being added to an existing ALEC customer.<sup>103</sup>

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<sup>99</sup> *Id.*

<sup>100</sup> Tr. at 674.

<sup>101</sup> Tr. at 1578. It appears that rather than charging ALECs the UNE-P rate when ALECs are engaged in line splitting, BellSouth intends to charge for each of the separate elements. See Tr. at 1537, 1546. BellSouth's position on this issue imposes unjustified additional costs on ALECs and is inconsistent with the Georgia Commission's determination that the recurring rate for line-splitting should be the UNE-P rate. See Tr. at 686.

<sup>102</sup> See Tr. at 673, 1577-78.

<sup>103</sup> See Tr. at 1535. Furthermore, BellSouth should be required to deploy line splitters on a line at a time basis. BellSouth currently deploys the splitter in increments of 8, 24, and 96 ports (lines). Tr. at 1501-02. Deploying

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**3. BellSouth Inhibits Competition By Discontinuing Advanced Services To Customers Who Switch Voice Service to an ALEC UNE Service**

If a BellSouth xDSL customer switches its voice service to an ALEC that uses UNE-Loop (“UNE-L”) or UNE-P, BellSouth terminates that customer’s xDSL service.<sup>104</sup> BellSouth does not perform the disconnect because of technical limitations.<sup>105</sup> Instead, BellSouth has determined as a matter of policy that it will provide its advanced services only to customers who use BellSouth’s retail voice service or a resold BellSouth service.<sup>106</sup> This policy decision inhibits competition in voice markets. For example, if an ALEC using UNE-P attempts to compete for a Florida customer who currently is served by BellSouth voice and data, that customer is unlikely to choose the ALEC as its voice carrier,<sup>107</sup> because such a choice would require termination of BellSouth’s data service. Once again, in support of its anti-competitive policy, BellSouth relies on the absence of a legal obligation to provide data service on a UNE loop.<sup>108</sup>

BellSouth’s policy is particularly egregious in light of the rapid growth in the number of xDSL customers that BellSouth serves in Florida. At the time of the hearing, BellSouth had 133,015 high-speed data customers in Florida.<sup>109</sup> Of those customers, 43,291 were added in the

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splitters one line at a time would simplify the ordering process and prevent ALECs from expending resources for capabilities it may not use. Tr. at 1502, 1579.

<sup>104</sup> Tr. at 687.

<sup>105</sup> Indeed, for a period of time, BellSouth failed to put the proper edits into its system to implement this policy. Tr. at 711. As a result, some lines were converted to UNE-P service while BellSouth xDSL remained on the lines. *Id.*

<sup>106</sup> See Tr. at 687.

<sup>107</sup> See Tr. at 696.

<sup>108</sup> Tr. at 715, 722-23.

<sup>109</sup> Tr. at 731.

first quarter of 2001 alone, representing a 48% increase.<sup>110</sup> Because of BellSouth's policy, such rapid growth in the numbers of BellSouth xDSL customers results in a significant decrease in Florida consumers available to be served by ALECs' UNE-P service.

BellSouth notifies affected customers of its plans to disconnect their BellSouth xDSL service via a letter.<sup>111</sup> The letter implies that blame for the termination of BellSouth xDSL service lies with the ALEC, rather than with BellSouth. The letter to the customer begins by indicating that BellSouth "will no longer be **able** to provide BellSouth FastAccess Internet Service on your telephone line."<sup>112</sup> The letter goes on to state:

BellSouth FastAccess DSL service is only available where facilities permit. In order to provide this service, BellSouth must have access to the high frequency spectrum of your telephone line. Our records show a telecommunications provider other than BellSouth currently has access to this spectrum. As a result, **your FastAccess DSL service will be disconnected on . . . .**<sup>113</sup>

This letter misleads the customer by implying that the ALEC is somehow preventing BellSouth from continuing to provide its xDSL service to that customer. This is simply not true.

BellSouth's policy of terminating its xDSL customers who switch voice service providers is discriminatory and inhibits competition in voice services. Moreover, BellSouth's misleading letter informing its customers of the upcoming termination wrongfully places the blame on the ALEC. In order to protect competition in voice services in Florida, this Commission should require that BellSouth discontinue this anti-competitive policy. A company that engages in such behavior is not promoting the kind of competition Section 271 requires.

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<sup>110</sup> *Id.*

<sup>111</sup> *See* Tr. at 722; Late-filed Hearing Exhibit 26.

<sup>112</sup> Late-filed Hearing Exhibit 26 (emphasis added).

<sup>113</sup> *Id.*

**C. BellSouth Fails to Provide Adequate Number Portability -- Issue 12**

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**AT&T customers experience chronic number reassignment problems. Moreover, BellSouth's failure to implement adequate translations results in the loss of calling party identification when the customer changes service to an ALEC. In addition, AT&T customers have experienced other number portability problems. Finally, BellSouth does not have procedures for performing "snap backs."**

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The FCC has recognized that "number portability is essential to meaningful competition in the provision of local exchange services."<sup>114</sup> In fact, approximately 80% of the customers migrating from BellSouth to an ALEC choose to keep their old BellSouth number.<sup>115</sup> Number portability provides consumers flexibility and promotes competition from ALECs.<sup>116</sup> Accordingly, BellSouth must provide number portability in a manner that allows users to retain existing telephone numbers, "without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."<sup>117</sup>

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<sup>114</sup> First Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Telephone Number Portability*, 11 FCC Rcd. 8352 ¶ 28 (July 2, 1996) (CC Docket No. 95-116, FCC 96-286) ("*Number Portability Order*").

<sup>115</sup> Tr. at 1668.

<sup>116</sup> See *Number Portability Order* ¶ 28.

<sup>117</sup> 47 U.S.C. § 153(30); see also *Bell Atlantic New York Order* ¶ 367; *SWBT Texas Order* ¶ 369.



1. **AT&T customers have experienced chronic number reassignment problems**

Reassignment problems occur when a telephone number is ported to AT&T or another ALEC, yet BellSouth erroneously reassigns the number to a new BellSouth line.<sup>118</sup> When a BellSouth customer discontinues service, BellSouth places the number in a pool of numbers to be “aged” before being reassigned.<sup>119</sup> When BellSouth erroneously places an ALEC customer’s ported number in this pool, the number is available to be reassigned to a new BellSouth line.<sup>120</sup> As a result, the AT&T customer receives calls from people who are attempting to reach the new BellSouth customer.<sup>121</sup> This causes confusion and inconvenience for both the AT&T customer and the new BellSouth customer.<sup>122</sup> This problem can surface more than a year after the number was ported, disrupting the customers’ business or residential telephone use.<sup>123</sup> Furthermore, customers are likely to blame this problem on the ALEC, even though it is BellSouth’s error.<sup>124</sup> Accordingly, BellSouth should be required to resolve its chronic number reassignment problems before it is granted interLATA authority in Florida.

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<sup>118</sup> Tr. at 1668.

<sup>119</sup> Tr. at 1669.

<sup>120</sup> Tr. at 1668-69.

<sup>121</sup> Tr. at 1669.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

2. **BellSouth's failure to implement adequate translations prevents calling party identification when the customer changes service to an ALEC**

For some customers, it is important for identifying information to appear on a call recipient's caller ID box.<sup>125</sup> When a customer changes local service providers and keeps the same number, the customer should also be able to keep the calling party identification feature. This feature requires that the network carrying the call utilize ten-digit Global Title Translation ("GTT").<sup>126</sup> BellSouth, however, has failed to implement ten-digit GTT throughout Florida.<sup>127</sup>

BellSouth utilizes ten-digit GTT only in limited areas of South Florida.<sup>128</sup> In all other parts of the state, six-digit GTT remains. Six-digit GTT can identify only the city or state where the call originated, it cannot provide the identity of the caller.<sup>129</sup> BellSouth's failure to implement ten-digit GTT throughout Florida does not adversely impact BellSouth customers because BellSouth utilizes its own Calling Name Database ("CNAM") service.<sup>130</sup> Customers who port their numbers to an ALEC that does not subscribe to BellSouth's CNAM service, however, lose the caller identification feature when calling BellSouth customers because BellSouth's six-digit GTT is inadequate to identify the calling party's name.<sup>131</sup> As AT&T's

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<sup>125</sup> Tr. at 1672.

<sup>126</sup> Tr. at 1673.

<sup>127</sup> Tr. at 1673-75, 1705.

<sup>128</sup> See Tr. at 1705. It should also be noted that AT&T has experienced additional problems with the caller identification feature even after the ten-digit GTT was implemented in South Florida. *Id.* AT&T is working with BellSouth to resolve these problems. *Id.*

<sup>129</sup> Tr. at 1673.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* When AT&T requested a fix, BellSouth offered the choice between an interim semi-automated solution and a manual solution. Tr. at 1674. The semi-automated solution, however, would require AT&T to spend \$350,000 for software upgrades that would never be used for any other purpose. Tr. at 1674; Tr. at 1698-99. The manual solution would require AT&T to ask potential customers if they wanted to continue having their caller identifying

(Footnote cont'd on next page)

witness Berger explained, AT&T has had complaints about this problem from new customers, and some customers have even threatened to leave AT&T as a result.<sup>132</sup>

The disparity between the availability of the calling party identification feature for BellSouth customers and ALEC customers demonstrates that BellSouth fails to provide number portability “without impairment in quality, reliability, or convenience.”<sup>133</sup> Accordingly, BellSouth should be required to implement ten-digit GTT throughout the state of Florida before BellSouth is granted interLATA authority.

3. **AT&T customers have experienced other persistent problems with BellSouth’s implementation of number portability**

AT&T customers have experienced incidents of loss of the ability to receive inbound calls from BellSouth customers.<sup>134</sup> Loss of inbound service appears to stem from a process problem at BellSouth.<sup>135</sup> This same problem -- BellSouth’s failure to disconnect ported numbers from its switches -- also causes some ALEC customers to continue to receive bills from BellSouth for service that no longer exists.<sup>136</sup>

BellSouth has also had difficulty porting a subset of a customer’s numbers, especially when the main number, which BellSouth has used for billing, is one of the numbers ported.<sup>137</sup> Partial porting problems are particularly harmful to competition because they adversely affect

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information appear on a call recipient’s caller ID box, alerting potential customers to a limitation of AT&T’s service. Tr. at 1675.

<sup>132</sup> Tr. at 1674.

<sup>133</sup> 47 U.S.C. § 251(b)(2); see also *Bell Atlantic New York Order* ¶ 367; *SWBT Texas Order* ¶ 369.

<sup>134</sup> Tr. at 1658-59.

<sup>135</sup> Tr. at 1666.

<sup>136</sup> Tr. at 1658-59.

customers while the customers are trying out an ALEC's service on a portion of their lines.<sup>138</sup> If a customer experiences problems during this trial period, the customer is unlikely to switch the remaining lines to the ALEC service provider.<sup>139</sup>

These continuing problems show that BellSouth fails to provide number portability of sufficient quality and reliability. Accordingly, BellSouth should be required to resolve these ongoing problems and demonstrate that it provides consistent, reliable number porting before it receives interLATA authority in Florida.

#### **4. BellSouth does not have procedures for performing "Snap Backs"**

When a customer changes local service providers from BellSouth to an ALEC and unforeseen problems at the time of the change require an immediate change back to BellSouth to keep the customer in service, the rapid reversion to BellSouth-provided service is known as a "snap back."<sup>140</sup> Snap back is necessary when a problem occurs at the time of the port and the problem cannot be immediately resolved through the collective efforts of BellSouth and the ALEC.<sup>141</sup> An efficient snap back process is necessary to ensure the customer does not experience extended disruption of service.<sup>142</sup> Every ILEC other than BellSouth has a procedure

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*(Footnote cont'd from previous page.)*

<sup>137</sup> Tr. at 1671.

<sup>138</sup> Tr. at 1672.

<sup>139</sup> *See id.*

<sup>140</sup> *See id.*

<sup>141</sup> Tr. at 1709-12.

<sup>142</sup> Tr. at 1676.

to snap the service back to the ILEC until the problem can be resolved.<sup>143</sup> BellSouth, however, does not have a procedure for performing snap backs.<sup>144</sup>

Instead of immediately snapping the customer experiencing problems at the time of the port back to BellSouth's service, BellSouth requires that the customer complete the time consuming win-back process in order to have BellSouth restore unimpaired service.<sup>145</sup> As a result, customers view switching to an ALEC as an all or nothing choice.<sup>146</sup> If a problem occurs during the port that cannot be quickly rectified, the customer must suffer the consequences. An efficient snap back process minimizes the adverse impact on the customer. BellSouth's failure to follow the example of every other ILEC and provide a process for snap back is anti-competitive. Accordingly, BellSouth should be required to implement a snap back procedure prior to being granted interLATA authority in Florida.

**D. BellSouth Assigns Special Use Codes or "Oddball" Codes to Retail Business Customers -- Issues 2, 12, 13**

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**BellSouth's assignment of oddball codes to its retail customers poses interconnection and dialing parity problems for ALECs because ALEC customers cannot call BellSouth customers who have been assigned oddball codes. Furthermore, certain oddball codes cannot be ported.**

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<sup>143</sup> Tr. at 1712.

<sup>144</sup> Tr. at 1676.

<sup>145</sup> Tr. at 1711.

<sup>146</sup> Tr. at 1677.

“Oddball” codes refer to certain NXX codes that are considered throughout the industry as special use codes.<sup>147</sup> For example, industry-recognized oddball codes include 555 and 411 for directory assistance.<sup>148</sup> Prior to 1996, BellSouth was a numbering administrator within its region.<sup>149</sup> In its role as numbering administrator, BellSouth designated and assigned to itself additional “regional” oddball codes and used them for certain internal BellSouth functions, such as retail support centers, network repair, equipment repair, or testing.<sup>150</sup> Recently, however, BellSouth has assigned some of its regional oddball codes to its retail customers.<sup>151</sup> In the retail context, these numbers allow the public to utilize a single seven-digit telephone number state-wide.<sup>152</sup> When an end-user calls the number, “a lookup is done to figure out the real telephone number that call should be routed to and it is sent forward in the network.”<sup>153</sup> For example, a chain of pizza restaurants can market a single seven-digit number statewide for ordering pizza deliveries; when a customer calls the number, the call is routed to the restaurant closest to the caller.<sup>154</sup>

The assignment of oddball codes to BellSouth retail customers significantly inhibits the ability of ALECs to compete.<sup>155</sup> First, ALEC local service customers are unable to complete

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<sup>147</sup> Tr. at 1258.

<sup>148</sup> See Tr. at 1258-60.

<sup>149</sup> Tr. at 1270.

<sup>150</sup> Tr. at 1270-71, 1670.

<sup>151</sup> Tr. at 1259; *see also* Tr. at 1670.

<sup>152</sup> Tr. at 1670.

<sup>153</sup> See Tr. at 1261.

<sup>154</sup> See Tr. at 1260-61.

<sup>155</sup> See Tr. at 1670-71.

calls to oddball codes.<sup>156</sup> As a result, ALEC local service customers cannot call retailers that advertise oddball codes, such as the pizza restaurant.<sup>157</sup> Moreover, ALEC customers using BellSouth equipment are unable to contact BellSouth repair in the event of an equipment problem.<sup>158</sup> In order to fix this problem, ALECs would be required to install prohibitively expensive and duplicative interconnection trunking to one BellSouth end office in every NPA in the LATA.<sup>159</sup> Such an inefficient remedy violates the right of ALECs to choose their point of interconnection and thwarts the purposes of the Act. In addition, such disparate treatment of ALEC customers violates the Act's dialing parity requirements.<sup>160</sup>

The second problem is that certain oddball codes cannot be ported to ALECs.<sup>161</sup> This means that a BellSouth retail customer with an oddball code number would have to change its number -- the number it has been advertising to its customers -- if it wanted to leave BellSouth. The association of such an expense with the decision to choose an alternative to the incumbent service provider imposes a nearly insurmountable barrier to competition.

This Commission has ordered BellSouth to eliminate use of certain of its oddball codes by March 31, 2003.<sup>162</sup> Assuming BellSouth complies with the Commission's order, the disparity associated with oddball codes will be resolved at that time. Until then, however, ALECs and their customers will suffer the negative consequences of the oddball codes that are currently

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<sup>156</sup> Tr. at 1670.

<sup>157</sup> Tr. at 1261-62.

<sup>158</sup> Tr. at 1670-71.

<sup>159</sup> Tr. at 1670.

<sup>160</sup> 47 U.S.C. § 271(c)(2)(B)(xii).

<sup>161</sup> Tr. at 1266-68.

assigned to retail customers. As long as BellSouth is using oddball codes for its retail customers, BellSouth cannot satisfy checklist items 1, 11 and 12.

**E. BellSouth Has Failed To Demonstrate That It Provides Nondiscriminatory Access To Interconnection -- Issue 2**

\* \* \* \* \*

**BellSouth fails to provide appropriate trunking to meet ALECs' needs, and ALEC trunk groups administered by BellSouth experience a substantially greater percentage of blocked calls than BellSouth's retail trunk groups. Furthermore, BellSouth fails to provide collocation under just, reasonable, and nondiscriminatory terms and conditions.**

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**1. ALEC trunks experience a disparate amount of trunk blockage**

BellSouth must demonstrate that it provides ALECs with interconnection equal in quality to that which it provides itself.<sup>163</sup> Interconnection involves the deployment of trunks between ALEC switches and BellSouth switches that allows the completion of calls between ALEC customers and BellSouth customers, regardless of which party originates the call. Trunks carry the calls from switch to switch within the network. When a trunk group is filled to capacity and no alternative trunks are available, additional simultaneous calls are blocked.<sup>164</sup> Hence, if sufficient interconnection trunk capacity is not available, then calls between ALEC customers and BellSouth customers will experience high levels of blocking. When a call is blocked, the

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<sup>162</sup> Order Granting BellSouth's Petition to Duplicate NXX Codes for a Limited Time, Order No. PSC-01-1484-PCO-TL, Dckt. No. 010614-TL, Issued July 16, 2001, at 4.

<sup>163</sup> See § 271(c)(2)(B)(i); § 251(c)(2)(C). The "equal in quality" standard requires BellSouth to provide interconnection that is at least indistinguishable from that which it provides itself. See *Second Louisiana Order* ¶ 77 n.219.



customer hears either a fast busy signal or a recorded message such as, “All circuits are busy.”<sup>165</sup> In determining whether an ILEC provides interconnection equal in quality to that which it provides itself, the FCC considers the incidence of trunk blockage.<sup>166</sup> Indeed, the FCC has found that “disparities in trunk group blockage indicate[] a failure to provide” equal-in-quality interconnection.<sup>167</sup>

The trunks in Florida may be put into four categories: common transport trunk groups (“CTTG”), BellSouth’s local network trunks, BellSouth-administered ALEC trunks, and ALEC-administered ALEC trunks.<sup>168</sup> Of the four, BellSouth-administered ALEC trunks experience far greater instances of trunk blockage than any of the other categories.<sup>169</sup> Specifically, in August 2001, 4.38 percent of the BellSouth-administered ALEC trunk groups for North Florida were observed blocking above a 3 percent measured blocking threshold and 4.5 percent of the BellSouth-administered ALEC trunk groups for South Florida were observed blocking above a 3 percent measured threshold.<sup>170</sup> In contrast, only 0.2 percent of BellSouth’s local network trunk groups for North Florida and none of BellSouth’s local network trunks for South Florida were

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*(Footnote cont'd from previous page.)*

<sup>164</sup> See Tr. at 1237-38.

<sup>165</sup> See Tr. at 1238.

<sup>166</sup> See *Second Louisiana Order* ¶ 77.

<sup>167</sup> *Bell Atlantic New York Order* ¶ 64.

<sup>168</sup> See Tr. at 1238-41; *see also* Hearing Exhibit 35.

<sup>169</sup> Notably, 1.5 percent of ALEC-administered ALEC trunk groups for North Florida and 3.2 percent for South Florida were observed above a 3 percent measured blocking threshold. Tr. at 1243-44, Hearing Exhibit 35. Only 0.5 percent of the CTTG trunk groups for North Florida and none for South Florida were observed above a 2 percent blocking threshold. *Id.*

<sup>170</sup> Tr. at 1243, Hearing Exhibit 35.

observed blocking over a 3 percent blocking threshold.<sup>171</sup> Moreover, BellSouth's threshold for measured blocking significantly exceeds the levels of trunk blocking observed in the states in which the FCC has granted interLATA authority.<sup>172</sup> While such a disparity continues to exist, BellSouth cannot demonstrate that it provides interconnection to ALECs equal in quality to that which it provides itself. As a result, BellSouth cannot show that it provides nondiscriminatory access to interconnection.

Rather than remedy the high incidences of trunk blockage among BellSouth-administered ALEC trunk groups, BellSouth has responded by simply inventing a new metric for measuring trunk blockage that masks its deficient performance. The trunk blocking statistics cited above came from the August 2001 Trunk Group Service Report SQM, found on BellSouth's PMAP website (hereinafter "Trunk Group Service Summary").<sup>173</sup> Although BellSouth continues to produce the Trunk Group Service Summary, in June 2000 it began producing a second report on trunk performance. This "new format," however, does not correspond to the way in which the FCC views data on trunk blocking, and as such it is flawed and misleading.

In its *Second Louisiana Order*, the FCC derived trunk blockage rates for comparison purposes by dividing the percentage of ALEC trunk groups blocked by the percentage of BellSouth retail trunk groups blocked.<sup>174</sup> Using the FCC's calculation method, ALECs' trunk blockage percentage for May was 890% greater than the trunk blocking percentage for

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<sup>171</sup> Tr. at 1242, Hearing Exhibit 35.

<sup>172</sup> See Tr. at 1244.

<sup>173</sup> Hearing Exhibit 35.

<sup>174</sup> *Second Louisiana Order* ¶ 77 n.218.

BellSouth's retail trunk groups, 492% greater in June, and 763% greater in July.<sup>175</sup> In contrast, the ALEC trunk blocking percentages reflected in the *Second Louisiana Order* were 54.5%, 69.2%, and 38.8% greater than that experienced by BellSouth for the months included.<sup>176</sup> As these numbers indicate, recent percentage blocking differences far exceed those from BellSouth's second application in Louisiana.

Rather than employing the methodology the FCC used in the *Second Louisiana Order*, BellSouth's new report gives an average of the blocking that occurs across all trunks state-wide.<sup>177</sup> This kind of measurement, however, is flawed because it masks the poor performance of specific trunk groups.<sup>178</sup> For example, if there is significant trunk blockage in Miami, and very little blockage in the other cities and towns around the state, BellSouth's new report would easily mask the blockage in Miami. The Trunk Group Service Summary, however, would show the blockage problem occurring in Miami.<sup>179</sup>

For these reasons, BellSouth's new report on trunk performance is misleading. Accordingly, this Commission should not rely on this new report to determine whether BellSouth provides nondiscriminatory access to interconnection. Instead, the Commission should base its analysis on the Trunk Group Service Summary which more closely accords with the FCC's position on this issue. The Trunk Group Service Summary shows the vast disparity in trunk performance between BellSouth-administered ALEC trunk groups and the remaining trunk

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<sup>175</sup> Tr. at 1298, Hearing Exhibit 36. These numbers reflect blocking comparisons for the BellSouth region. *Id.*

<sup>176</sup> *Second Louisiana Order* ¶ 77 n.218.

<sup>177</sup> *See* Tr. at 1245.

<sup>178</sup> *See* Tr. at 1247-48.

<sup>179</sup> *See* Tr. at 1248.

groups. Accordingly, this Commission should require BellSouth to eliminate the disparity in trunk performance prior to granting BellSouth interLATA authority.

**2. BellSouth fails to provide collocation under terms and conditions that comply with FCC requirements**

BellSouth is required to make available interconnection “at any technically feasible point within the carrier’s network . . . at least equal in quality” to that which it provides itself, “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”<sup>180</sup> ALECs use collocation as one of the primary methods of interconnection, and collocation is essential to UNE access.<sup>181</sup> BellSouth, however, fails to provide just, reasonable, and nondiscriminatory collocation.<sup>182</sup>

BellSouth fails to provide reasonable terms and conditions for collocation because it retains unilateral control over the collocation process.<sup>183</sup> Specifically, BellSouth retains the ability to unilaterally modify critical collocation terms and conditions.<sup>184</sup> For example, BellSouth believes that it may change its Collocation Handbook for whatever reason it deems appropriate, in addition to making changes in order to reflect new commission orders.<sup>185</sup> Without diligent negotiation, arbitration, or commission review, BellSouth imposes on ALECs its own interpretation of interconnection agreements and FCC rules.<sup>186</sup>

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<sup>180</sup> 47 U.S.C. § 251(c)(2).

<sup>181</sup> Tr. at 1518-19.

<sup>182</sup> Tr. at 1520.

<sup>183</sup> Tr. at 1520-24.

<sup>184</sup> *Id.*

<sup>185</sup> Tr. at 1522.

<sup>186</sup> Tr. at 1523.

Furthermore, BellSouth's recovery of "extraneous expenses" of collocation is inconsistent with TELRIC cost principles and FCC rules.<sup>187</sup> For example, requiring a collocator to pay for an upgrade of the HVAC system simply because there was a recent need for HVAC upgrade does not reflect the TELRIC approach.<sup>188</sup> The most common extraneous expense faced by ALECS is related to DC power.<sup>189</sup> BellSouth invokes double recovery for DC power because it charges ALECs a nonrecurring charge for the cabling and augment to the DC power plant, **in addition to** the DC consumption rate, the charges collocators rightfully pay so that BellSouth can recover its initial investment in the DC power plant.<sup>190</sup> For example, in Florida "BellSouth imposed an average nonrecurring charge of almost \$97,000 on AT&T to extend DC power into AT&T's collocation cage."<sup>191</sup>

Until such time as BellSouth ceases its practice of unilaterally adopting and changing critical terms and conditions related to collocation, this Commission should not grant BellSouth interLATA authority in Florida. Furthermore, BellSouth's routine large nonrecurring charges related to cabling and DC power augments over and above the recurring DC power consumption rate are inconsistent with the Act and FCC guidelines. Accordingly, BellSouth should be required to cease this practice before gaining interLATA authority.

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<sup>187</sup> Tr. at 1524. Although the specific provision allowing for BellSouth to share extraneous expenses among collocators is not found more recent versions of the Collocation Handbook, AT&T's actual experiences indicate that BellSouth continues to impose these costs on collocators. *Id.*

<sup>188</sup> Tr. at 1525.

<sup>189</sup> *Id.*

<sup>190</sup> Tr. at 1526.

<sup>191</sup> Tr. at 1527.

**F. BellSouth Fails To Provide Adequate Access To OS/DA -- Issues 7 & 8**

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**BellSouth fails to provide nondiscriminatory access to customized routing.**

**Furthermore, BellSouth fails to provide call routing options to ALECs equivalent to those it provides to BellSouth retail customers.**

\* \* \* \* \*

An ILEC is required to “permit all [ALECs] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”<sup>192</sup> In order for ALECs to obtain OS/DA services from a provider other than the ILEC, the ALEC must have access to customized routing.<sup>193</sup> As the FCC has long recognized, ILECs must provide customized routing as part of the switching function, unless they can prove that customized routing in a particular switch is not technically feasible.<sup>194</sup> Moreover, the FCC has stressed that “the mere fact that a BOC has ‘offered’ to provide checklist items will not suffice” to establish compliance with the competitive checklist.<sup>195</sup> BellSouth, however, has yet to provide an electronic ordering process for customized routing and no customized OS/DA routing arrangements are in service in any BellSouth state. Furthermore, the Originating Line Number

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<sup>192</sup> *SWBT Texas Order* ¶ 345 (citing Section 251 of the Act); see also *Verizon Massachusetts Order* ¶ 222; *SWBT Kansas and Oklahoma Order* ¶ 255. It should be noted that the FCC, in its *Second Louisiana Order*, found that BellSouth satisfied one of the three requirements of checklist item 7. See *Second Louisiana Order* ¶ 8 n.13. However, the FCC found that BellSouth remained deficient in the areas of OS/DA. See *Second Louisiana Order* ¶¶ 8, 9, 243.

<sup>193</sup> See Tr. at 1593.

<sup>194</sup> *First Local Competition Order* ¶ 418.

<sup>195</sup> *Ameritech Michigan Order* ¶ 110.

Screening (“OLNS”) customized branding arrangement offered by BellSouth provides inferior service to ALECs.<sup>196</sup>

1. **BellSouth fails to provide nondiscriminatory access to customized routing**

The FCC has made clear that BellSouth must allow ALECs to take advantage of multiple OS/DA platforms and routing options.<sup>197</sup> Moreover, the FCC specifically instructed BellSouth to modify its ordering processes to allow an ALEC to use a single routing code across the region for each routing option, as opposed to requiring the competitive LEC to use individual line class codes specific to the particular BellSouth switch serving the customer.<sup>198</sup> Under the FCC’s ruling, ALECs are free to select more than one OS/DA routing option, and BellSouth may not require the ALEC to provide actual line class codes in order to obtain the requested OS/DA routing if BellSouth is capable of accepting a single code, or indicator, on a region-wide basis. Furthermore, BellSouth witnesses have testified that BellSouth is capable of accepting a single region-wide code, or indicator, for each of the OS/DA routings that may be requested by an ALEC.<sup>199</sup>

BellSouth’s current practice, however, is that an ALEC that wishes to route the OS/DA calls of some customers to one platform and other customers to a different platform must, in each service order, identify a yet-to-be-determined line class code.<sup>200</sup> BellSouth’s practice is directly

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<sup>196</sup> Tr. at 1606.

<sup>197</sup> See *Second Louisiana Order* ¶ 224 and nn.705-06.

<sup>198</sup> *Second Louisiana Order* ¶ 224 (“If . . . a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use,” but “BellSouth should not require the competitive LEC to provide the actual line class codes.”)

<sup>199</sup> See Hearing Exhibit 46, JMB-1.

<sup>200</sup> Tr. at 1596.

contrary to the FCC's mandate in its *Second Louisiana Order*. Moreover, service orders that contain such an identifier would fall out to manual processing, because BellSouth's systems evidently cannot process such line class codes.<sup>201</sup> Thus, an ALEC order for customized routing would go through two manual translations -- the ALEC representative must translate the customer request into a line class code, and then the Local Carrier Service Center ("LCSC") representative must translate the line class code into a SOCS-compatible format.<sup>202</sup> BellSouth's current practice is unacceptable and inconsistent with the *Second Louisiana Order*.

On July 16, 2001, BellSouth and AT&T agreed in principle to contract language that will allow AT&T to use region-wide unique indicators to identify its choice of OS/DA routing option.<sup>203</sup> BellSouth, however, has yet to implement its agreement.<sup>204</sup> As the FCC noted, "a BOC's promises of **future** performance to address particular concerns raised by commenters have no probative value in demonstrating its **present** compliance with the requirements of section 271."<sup>205</sup> In this case, the agreed-upon contract language "is designed to produce an order that can be sent electronically and processed electronically."<sup>206</sup> Accordingly, this Commission should require BellSouth to implement the methods and procedures necessary to effectuate the contract language prior to granting BellSouth interLATA authority.

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<sup>201</sup> Tr. at 1596-97.

<sup>202</sup> Tr. at 1597.

<sup>203</sup> Tr. at 1598; *see also* Tr. at 1604.

<sup>204</sup> *See* Tr. at 1598; Tr. at 1608 ("BellSouth simply has not yet implemented the methods and procedures that would allow the contract language to become effective.")

<sup>205</sup> *Ameritech Michigan Order* ¶ 55.

<sup>206</sup> Tr. at 1609.



**2. BellSouth fails to provide call routing options to ALECs equivalent to those it provides to BellSouth retail customers**

BellSouth does not provide AT&T's customers with call routing options that are equivalent to those BellSouth provides to its retail customers. BellSouth provides the alternative of either routing ALEC OS/DA calls to BellSouth's own platform or using BellSouth's OLNS technology to provide those calls with either "unbranded" or ALEC-specific branding.<sup>207</sup> AT&T has purchased OLNS for use in conjunction with its UNE-P business market entry.<sup>208</sup> Although BellSouth has made the OLNS platform available to AT&T, its provision of that routing platform is highly discriminatory.

When BellSouth retail customers dial "0," they are greeted with the BellSouth brand and four menu options.<sup>209</sup> The BellSouth customer can then choose to place a call, or to have the call automatically routed to BellSouth's residence service and repair, business service and repair, or a BellSouth operator.<sup>210</sup> In contrast, when AT&T's UNE-P business customers dial "0," they are greeted with the AT&T brand and only two menu options.<sup>211</sup> AT&T's customers can choose to place a call, or have the call routed to BellSouth's operator (branded as AT&T).<sup>212</sup> AT&T's customers are not provided the options of having their calls automatically routed to AT&T's residential or business service and repair.<sup>213</sup> Instead, to reach residential or business service and repair, AT&T customers must either look up the number and then dial it, a much less convenient

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<sup>207</sup> Tr. at 1599-1600.

<sup>208</sup> Tr. at 1600. BellSouth implemented OLNS for AT&T on May 19, 2001.

<sup>209</sup> Tr. at 1600.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

option, or call the operator and have the operator connect them, a much slower option which also results in an additional charge to AT&T.<sup>214</sup> Thus, BellSouth provides its retail customers with access to OS/DA service that is superior to the OS/DA service that BellSouth makes available to ALECs and their customers.<sup>215</sup> Accordingly, this Commission should require BellSouth to provide OS/DA routing options to ALECs in parity with those it offers BellSouth retail customers prior to granting BellSouth interLATA authority.<sup>216</sup>

### **CONCLUSION – Issue 17**

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**BellSouth fails to satisfy the Section 271 checklist items identified in Issues 2-15. Moreover, BellSouth has demonstrated resistance to the pro-competitive goals of the Act. BellSouth’s application should be denied as premature.**

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Congress constructed Section 271 of the Act to require that effective local competition exist **before** an ILEC would be permitted to provide in-region interLATA service. Until local markets are open to competition, “there is an unacceptable danger that [the BOCs] will use their

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(Footnote cont’d from previous page.)

<sup>213</sup> *Id.*

<sup>214</sup> Tr. at 1600-01.

<sup>215</sup> Tr. at 1601. Initially, AT&T’s customers were provided four menu options, the second and third options being to have the call routed to “BellSouth residence service and repair” and “BellSouth business service and repair.” *Id.* However, BellSouth-branded menu choices were likely to confuse customers and the potential existed for mis-routing of calls to BellSouth’s service and repair centers. *Id.* Rather than correcting the branding and routing deficiencies, BellSouth eliminated these two options. *Id.*

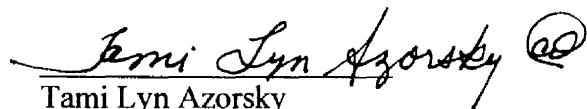
<sup>216</sup> Regarding Issue 15, AT&T hereby adopts the positions of Florida Digital Network, Inc. and the Joint ALECs concerning BellSouth’s failure to support the resale of advanced services as required by *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001), and related rulings (the “*Ascent Decisions*”).

market power to compete unfairly in the long distance market.”<sup>217</sup> The role of this Commission is to evaluate BellSouth against the requirements of the Section 271 checklist as well as its own standards for the development of local competition in Florida.

Unless this Commission is satisfied that BellSouth has remedied the deficiencies discussed above and BellSouth’s local service dominance cannot be used to compete unfairly in the provision of interLATA service, this Commission should withhold its approval. Evaluation of BellSouth’s current Section 271 application reveals that it is woefully premature. In its rush to submit its application, BellSouth has failed to remedy the shortcomings identified by the FCC in BellSouth’s three previous unsuccessful Section 271 efforts. Moreover, hearing testimony and related submissions raise serious concerns regarding BellSouth’s stated policies and demonstrate resistance to the pro-competitive goals of the Act. Accordingly, BellSouth’s Section 271 application should be denied as premature.

Respectfully submitted,

McKENNA & CUNEO, L.L.P.

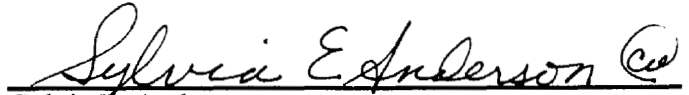


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<sup>217</sup> *Second Louisiana Order* ¶ 3.

ATTORNEY FOR AT&T COMMUNICATIONS  
OF THE SOUTHERN STATES, INC., TCG  
SOUTH FLORIDA, INC., AT&T BROADBAND  
PHONE OF FLORIDA, LLC

A handwritten signature in cursive script that reads "Sylvia E. Anderson" followed by a circled "ce" symbol. The signature is written in black ink and is positioned above a horizontal line.

Sylvia E. Anderson  
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Suite 8100  
Atlanta, GA 30309  
404-810-8070  
Fax: 404-810-5901

**Consumer Federation of America  
Florida Consumer Action Network  
Florida Public Interest Research Group  
Florida Action Coalition Team  
Consumer Fraud Watch  
Advocacy Network  
Gray Panthers  
AARP**

**Consumer Advocates Call On PSC To Take Action  
to End BellSouth Phone Monopoly**  
*New Study Shows Florida Residents Could Save \$100 million If Regulators  
Succeed In Opening Local Phone Markets to Competition*

**Embargoed for Release Until**  
Wednesday, October 31,  
10:00a.m. EDT

**Contact:**  
Mark Cooper of CFA at 301/807-1623 (cell)  
Bill Newton of FCAN at 813/230-0748 (cell)

(Tallahassee, Wed., Oct. 31, 2001) – National and state consumer advocates today called on the Florida Public Service Commission (PSC) to end BellSouth's local phone monopoly by compelling the company to open its local markets up to competition *before* it approves BellSouth's application to enter the long distance market.

At the same time, a new report released by the Consumer Federation of America (CFA) estimates that Florida consumers could save as much as \$100 million per year on their phone bills if local markets are genuinely open to competition. Authored by Dr. Mark N. Cooper, CFA's Director of Research, the report also examines how BellSouth's obstructionism is a key reason for the failure of local phone competition in Florida, and what steps state regulators must take to remedy the situation.

"The news that BellSouth is talking to AT&T about buying its long distance business intensifies the need for the PSC to break BellSouth's stranglehold on local phone service in Florida," said Cooper. "If regulators don't take action now to free up competition in the local market, BellSouth will be on course to enjoy a double monopoly in Florida—local and long distance."

"For the past five years BellSouth has shown nothing but contempt for the pro-competition provisions of the Telecom Act, and has done just about everything possible to avoid opening its local phone markets up to competition," Bill Newton, the Interim Executive Director of Florida Consumer Action Network (FCAN) said. "Until BellSouth can demonstrate that it has changed its tune and is ready to allow competitors into the market, the PSC should take a stand and not approve BellSouth's long distance application."

This morning the coalition members delivered a letter to the PSC outlining their concerns. The letter was signed by representatives of AARP, Florida Consumer Action Network (FCAN), Florida Public Interest Research Group (PIRG), Consumer Fraud Watch, Florida Action Coalition Team, Advocacy Network, the Gray Panthers, and the Consumer Federation of America.

-more-

In the letter, the groups urged the PSC to take the following steps to address the deficiencies in the local telephone market, before it resolves BellSouth's application to provide long distance:

- **Reduce Prices To Levels That No Longer Stifle Competition:** The PSC needs to lower the prices that BellSouth is allowed to charge competitors for network access, while ensuring that all competitors have fair and open access to the telecommunications grid. The Commission's recent decision to accept price increases on the basis of "inflation adjustments" is unwarranted and should be revisited, if necessary through new hearings. Overall, UNE prices should be reduced to the levels originally recommended by PSC staff.
- **Ensure Fair, Reliable Access to Support Systems:** Operating Support Systems (OSS), which provide critical functions like opening customer accounts, installing and maintaining lines, and managing customer billing, are crucial to the success of local competition. Instead of waiting until after it reaches a decision on BellSouth's 271 application to conclude its review of OSS, the PSC should make OSS an integral part of the 271 process. BellSouth's OSS must be rigorously tested and fully certified before the company is allowed into long distance.
- **Stamp Out Anti-Competitive Business Practices:** The Commission should use heavy fines to penalize BellSouth if the company fails to stop using unfair and anti-competitive business practices, or if it doesn't live up to promises to keep its local markets open.

"BellSouth would love to steamroll its long distance application through the PSC within the shortest possible timeframe," said Mark Ferrulo, Campaign Director of Florida PIRG. "But with hundreds of millions of dollars in consumer savings and the future of competition in Florida's telephone markets on the line, the PSC simply can't afford to let this happen."

The full text of the letter and the report are available online at:

- Letter: [http://www.consumerfed.org/florida\\_competition\\_letter\\_200110.pdf](http://www.consumerfed.org/florida_competition_letter_200110.pdf)
- Report: [http://www.consumerfed.org/florida\\_competition\\_200110.pdf](http://www.consumerfed.org/florida_competition_200110.pdf)
- This release: [http://www.consumerfed.org/florida\\_competition\\_release\\_200110.pdf](http://www.consumerfed.org/florida_competition_release_200110.pdf)
- You will need Adobe's free Acrobat Reader to view these documents, available at: <http://www.adobe.com/products/acrobat/readstep.html>.

Information on the groups is available online at:

- Consumer Federation of America: <http://www.consumerfed.org>
- Florida Consumer Action Network: <http://www.fcan.org>
- Florida Public Interest Research Group: <http://www.floridapirg.org/>
- AARP: <http://www.aarp.org>
- Gray Panthers: <http://www.graypanthers.org>

**FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 960786-A-TL**

**AT&T POST HEARING BRIEF**

**November 6, 2001**

**EXHIBIT B (Louisiana Order)**

**(PLACE HOLDER; COPY TO BE PROVIDED 11/7/01)**

**FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 960786-A-TL**

**AT&T POST HEARING BRIEF**

**November 6, 2001**

**EXHIBIT C (Mississippi Order)**

**(PLACE HOLDER; COPY TO BE PROVIDED 11/7/01)**