

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Joint Application by BellSouth Corporation,)
BellSouth Telecommunications, Inc.,) WC Docket No. 02-307
and BellSouth Long Distance, Inc. for)
Provision of In-Region, InterLATA Services)
in Florida and Tennessee)

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Charles A. James
Assistant Attorney General
Antitrust Division

R. Hewitt Pate
Deputy Assistant Attorney General

Margaret A. Ward
Counsel to the Assistant Attorney General

Michael L. Katz
Deputy Assistant Attorney General

Communications with respect to this document should be addressed to:

Nancy M. Goodman
Chief

Laury E. Bobbish
Assistant Chief

W. Robert Majure
Assistant Chief

Luin P. Fitch, Jr.
Deborah A. Roy
Attorneys

John Henly
Jeffrey Prisbrey
Economists
Economic Regulatory Section

James Davis-Smith
Paralegal

October 25, 2002

Telecommunications and Media
Enforcement Section

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DOJ Georgia/Louisiana I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana</i> , FCC CC Docket No. 01-277 (Nov. 6, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Georgia/Louisiana II Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana</i> , FCC CC Docket No. 02-35 (Mar. 21, 2002), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
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DOJ Missouri I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Missouri</i> , FCC CC Docket No. 01-88 (May 9, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Oklahoma I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application of SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma</i> , FCC CC Docket No. 97-121 (May 16, 1997), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
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<i>FCC Georgia/Louisiana Order</i>	Memorandum Opinion and Order, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</i> , 17 FCC Rcd. 9018 (May 15, 2002), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.
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Florida PSC 50/50 Plan Order	Order Requiring Implementation of End-to-End Process Flow, Draft Version 2.1, <i>In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996 (Third Party OSS Testing)</i> , Florida PSC Docket No. 960786B-TL, <i>et al.</i> (July 30, 2002), attached to BellSouth Br. App. G-FL as Tab 51.
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Georgia PSC PMs Change Notification Order	Order Establishing a Procedure for Implementation of Changes to BellSouth's Performance Measurement Calculations, <i>In re: Performance Measures for Telecommunications Interconnection, Unbundling and Resale</i> , Georgia PSC Docket No. 7892-U (July 19, 2002), available at <www.psc.state.ga.us>.
<i>KPMG FL Final Report</i>	KPMG Consulting, BellSouth Telecommunications, Inc., OSS Evaluation Project Final Report Version 2.0, <i>In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996 (Third-Party OSS Testing)</i> , Florida PSC Docket No. 960786B-TP (July 30, 2002), attached to BellSouth Stacy Aff. as Ex. WNS-11.
Tennessee RA Comments	Comments of the Florida Public Service Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Florida and Tennessee</i> , FCC WC Docket No. 02-307 (Oct. 9, 2002).
Tennessee RA Line-Sharing Pricing Order	First Initial Order, <i>In re: Generic Docket to Establish UNE Prices for Line Sharing Per FCC 99-355, and Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123</i> , Tennessee RA Docket No. 00-00544 (Apr. 3, 2002), attached to BellSouth Br. App. F-TN as Tab 44.
Tennessee RA OSS Docket Closure Order	Final Order Approving Settlement Agreement and Administratively Closing Docket, <i>In re: Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations</i> , Tennessee RA Docket No. 01-00362 (Sept. 18, 2002), available at <http://www.state.tn.us/tra/orders/2001/0100362150.pdf>.
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BellSouth Data Restatement Policy <i>Ex Parte</i>	BellSouth Corp., BellSouth's Policy of Reposting of Performance Data, BellSouth <i>Ex Parte</i> Submission, FCC WC Docket No. 02-307 (Oct. 17, 2002).
BellSouth Stacy Aff.	Affidavit of William N. Stacy, <i>attached to</i> BellSouth Br. App. A as Tab I.
BellSouth Stockdale Aff.	Affidavit of Elizabeth A. Stockdale, <i>attached to</i> BellSouth Br. App. A as Tab J.
BellSouth Varner Aff.	Affidavit of Alphonso J. Varner for Florida and Tennessee, <i>attached to</i> BellSouth Br. App. A as Tab K.
BellSouth Varner Multistate Reply Aff.	Reply Affidavit of Alphonso J. Varner for Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (Aug. 5, 2002).
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Network Telephone Comments	Comments of Network Telephone Corporation, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Florida and Tennessee</i> , FCC WC Docket No. 02-307 (Oct. 9, 2002).
WorldCom Comments	Comments of WorldCom, Inc. on the Application by BellSouth for Authorization to Provide In-Region, InterLATA Services in Florida and Tennessee, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Florida and Tennessee</i> , FCC WC Docket No. 02-307 (Oct. 10, 2002).

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EVALUATION OF THE
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Introduction and Summary

The United States Department of Justice (“the Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ (“the 1996 Act”), submits this evaluation of the Joint Application filed by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (“BellSouth”), on September 20, 2002, to provide in-region, interLATA services in Florida and Tennessee. This application is BellSouth’s first for these states, and follows its successful applications for Section 271 authority in Georgia, Louisiana, Alabama, Kentucky, Mississippi, North Carolina, and South Carolina.²

As the Department has explained, in-region, interLATA entry by a regional Bell Operating Company (“BOC”) should be permitted only when the local markets in a state have been “fully and irreversibly” opened to competition.³ This standard seeks to measure whether

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

² See generally *FCC BellSouth Multistate Order*; *FCC Georgia/Louisiana Order*.

³ See DOJ Oklahoma I Evaluation at vi-vii, 36-51.

the barriers to competition that Congress sought to eliminate with the 1996 Act have in fact been fully eliminated and whether there are objective criteria to ensure that competitive local exchange carriers (“CLECs”) will continue to have nondiscriminatory access to the facilities and services they will need from the BOC in order to enter and compete in the local exchange market. In applying its standard, the Department considers whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving the construction of new networks, the use of the unbundled elements of the BOC’s network (“UNEs”), and resale of the BOC’s services -- are fully and irreversibly open to competitive entry to serve both business and residential customers.

In this Evaluation, the Department focuses on developments that have occurred since the DOJ BellSouth Multistate Evaluation and the extent to which they demonstrate whether the Department’s concerns relating to OSS change management and performance metrics have been addressed. BellSouth’s application demonstrates it has made progress in addressing issues previously identified by the Department. The Commission should review the concerns expressed in this Evaluation, and if it is satisfied that these concerns have been addressed, the Department recommends that the Commission approve BellSouth’s application.

I. State Commission Proceedings

A. Florida Public Service Commission Proceedings

The Florida Public Service Commission (“Florida PSC”) has recommended approval of the application. It conducted a comprehensive and rigorous review of BellSouth’s compliance with Section 271 that was designed with substantial input from the CLECs. The Florida PSC oversaw a robust third-party test, which has facilitated the review of BellSouth’s OSS not only in the context of proceedings before the Florida PSC but before other state commissions and the FCC as well. KPMG’s *Final Report* indicates that 97 percent of the evaluation criteria in that

test were satisfied.⁴ Further, the Florida PSC has taken steps to address areas deemed not satisfied.⁵ The Florida PSC has adopted permanent performance measures and a penalty plan,⁶ and an audit of interim measures is in progress.⁷ The Florida PSC established UNE rates in May 2001 and in September 2002 adopted a staff recommendation to adjust those rates.⁸ In addition to its actions to date, the Florida PSC has stated its intent to continue to “make every effort to remove impediments that stand in the way of facilitating a competitive environment.”⁹

B. Tennessee Regulatory Authority Proceedings

The Tennessee Regulatory Authority (“Tennessee RA”) has recommended approval of the application.¹⁰ It conducted proceedings to address BellSouth’s compliance with Section 271, and recently approved a Settlement Agreement between BellSouth and a coalition of CLECs that resolved a number of remaining issues and closed the record in the Section 271 docket.¹¹ The Tennessee RA found that BellSouth’s OSS are regional and, in accordance with the parties’ Settlement Agreement, closed the docket considering BellSouth’s OSS.¹² Also consistent with the Settlement Agreement, the Tennessee RA adopted on an interim basis the performance

⁴ *KPMG FL Final Report* at 16.

⁵ Florida PSC OSS Order at 16-17, 22, 24, 41, 55-57. The Florida PSC’s actions include ordering BellSouth to implement modifications to its Change Control Plan, establishing six new change management performance measures (three of which have associated performance penalties), ordering BellSouth to file a plan to improve flow-through performance, and increasing the penalty for failure to meet the flow-through benchmarks. *Id.*

⁶ Florida PSC PMs Order at 1-2; *see also* BellSouth Varner Aff. ¶¶ 156-76.

⁷ *See* BellSouth Varner Aff. Ex. PM-27; *see also id.* ¶¶ 105-09. Although the Florida interim measures were used for the third-party test, for purposes of this application BellSouth has submitted data for both Florida and Tennessee produced according to the Georgia performance measurement plan. *Id.* ¶ 16.

⁸ Florida PSC Pricing Adjustment Order at 8-9, 116.

⁹ Florida PSC Comments at 3.

¹⁰ Tennessee RA Comments at 47.

¹¹ *Id.* at 19-23 & Ex. E.

¹² *Id.* at 9; Tennessee RA OSS Docket Closure Order at 7. As provided in the Settlement Agreement, any party may file a complaint with the Tennessee RA regarding BellSouth’s OSS following the Tennessee RA’s entry of an order in the Section 271 docket. Tennessee RA OSS Docket Closure Order at 3-4. All parties will urge the Tennessee RA to resolve such complaints on an expedited basis. *Id.* at 4.

measures and penalty plan approved in Georgia, and adopted as the permanent performance measures and penalty plan those approved in Florida.¹³ The Tennessee RA has established UNE prices as well, issuing a final order in its UNE rate proceeding in February 2001 and an initial order in April 2002 on rates for a number of additional UNEs.¹⁴

II. Entry into the Local Telecommunications Markets

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.¹⁵ But the Department does not broadly presume that all three entry tracks -- facilities-based, unbundled network elements, and resale -- are open or closed on the basis of an aggregate level of entry alone.¹⁶ The following table reports CLEC entry in Florida and Tennessee in terms of shares of total residential and business lines served and shares of residential and business lines served by means of each mode of entry.

¹³ Tennessee RA Comments at 21. Under the Settlement Agreement, the Florida performance measures and penalty plan will be implemented in Tennessee no later than December 1, 2002. *Id.*

¹⁴ *Id.* at 8 & Exs. A, B; Tennessee RA Line-Sharing Pricing Order.

¹⁵ See DOJ Pennsylvania Evaluation at 3-4 (“The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or geographic areas within a state, so the Department looks for evidence relevant to each market in a state.” (Footnote omitted.)).

¹⁶ See, e.g., DOJ Georgia/Louisiana I Evaluation at 7; DOJ Missouri I Evaluation at 6-7.

CLEC Entry by State¹⁷

		Florida	Tennessee
	Total Lines¹⁸	7,224,212	2,882,381
	Total Bus. Lines	2,512,592	969,560
	Total Res. Lines	4,711,620	1,912,821
CLEC Shares	% Total Lines	17.7	11.6
	% Total Bus.	28.9	30.1
	% Total Res.	11.8	2.2
	% Bus. Fac-B	23.4	22.7
	% Bus. UNE-P	5.3	6.8
	% Bus. Resale	0.3	0.6
	% Res. Fac-B	3.2	0.3
	% Res. UNE-P	6.4	0.5
	% Res. Resale	2.1	1.5

Given the regional nature of BellSouth's OSS, the Department evaluates the state of entry regionwide, taking note that pricing or other state-specific factors may significantly affect the degree to which CLECs use a mode of entry in a particular state. In Florida and Tennessee, the levels of entry and the absence of evidence that entry has been unduly hindered by problems

¹⁷ See BellSouth Stockdale Aff. at 10 tbl.2, 18 tbl.5 (line counts as of July 2002) & Attachs. 6 at 1-3, 9 at 1-3. The second three categories report CLEC lines as percentages of total lines, business lines, and residential lines, respectively; the last six categories report percentages of business and residential lines served by CLECs by means of each mode of entry, i.e., facilities-based (service via primarily a CLEC's own network that is either connected directly to the customer premises or connected through loops leased from the BOC), UNE-platform (a combination of loop, switch, and transport elements), and resale.

Estimated market share will vary depending on the methodology used to estimate facilities-based lines. BellSouth offers two sets of calculations, *see id.* ¶¶ 7-13, and as explained previously, the Department relies on estimates based primarily on E-911 database entries (BellSouth's Method 2). *See, e.g.*, DOJ Georgia/Louisiana I Evaluation at 8 n.24. In any event, the effective difference between the two methods is small, resulting in estimates that CLECs serve between, respectively, 18.1 (Method 1) and 17.7 (Method 2) percent of Florida lines, and 12.9 and 11.6 percent of Tennessee lines. BellSouth Stockdale Aff. at 9 tbl.1, 10 tbl.2, 16 tbl.4, 18 tbl.5.

¹⁸ Figures report total lines in BellSouth's service area in these states, each of which has incumbent local exchange carriers other than BellSouth. *See id.* ¶¶ 17, 29.

with obtaining inputs from BellSouth lead the Department to conclude that opportunities are available to competitive facilities-based carriers serving business customers. In these states, however, there is less competition to serve residential customers via facilities (including UNE loops) and to serve business and residential customers via other modes of entry. The Department recognizes that the systems and processes serving these two states are largely the same as those at issue and approved in the Georgia/Louisiana and Multistate proceedings and therefore, notwithstanding the lower levels of competition in these states, finds the OSS sufficient to support competitive entry subject to the concerns discussed below.

III. Nondiscriminatory Access to OSS

The Department's Georgia/Louisiana II and Multistate Evaluations concluded that BellSouth's provision of access to its OSS was sufficient to merit approval of its applications.¹⁹ In each of these evaluations, however, the Department recognized that successful implementation of agreed upon improvements to the change management process would be important to preserve the CLECs' opportunity to compete.²⁰ Similarly, in its *Georgia/Louisiana* and *Multistate Orders*, the FCC found that BellSouth was offering nondiscriminatory access to its OSS²¹; however, it also noted several areas it intended to monitor and where it was prepared to take enforcement action if needed.²²

Although BellSouth continues to make progress in addressing the concerns of the CLECs and the state commissions, there are several areas which the FCC should continue to monitor in order to assure that new entrants continue to have a meaningful opportunity to compete. These

¹⁹ DOJ Georgia/Louisiana II Evaluation at 2-3, 21-22; DOJ BellSouth Multistate Evaluation at 2-3, 15.

²⁰ DOJ Georgia/Louisiana II Evaluation at 18; DOJ BellSouth Multistate Evaluation at 9-10, 11-12.

²¹ *FCC Georgia/Louisiana Order* ¶ 101; *FCC BellSouth Multistate Order* ¶ 128.

²² *See, e.g., FCC Georgia/Louisiana Order* ¶¶ 118, 158, 195; *FCC BellSouth Multistate Order* ¶¶ 137, 145, 170, 175, 179, 196, 201.

include: (1) BellSouth's adherence to the CLEC prioritization of their change requests; (2) its provision of sufficient change capacity to implement CLEC-requested OSS changes; (3) its provision for adequate pre-release testing of OSS changes; and (4) review of OSS changes implemented for BellSouth's retail operations to assure that they do not result in discriminatory access.

The Department's Multistate Evaluation welcomed the adoption of a new process under the guidance of the Florida PSC whereby BellSouth agreed to dedicate half of its new release capacity to change requests prioritized by the CLECs.²³ Unfortunately, while a substantial improvement to the earlier process, this "50/50" plan does not appear to have completely resolved concerns that BellSouth is not following the priorities of the CLECs when scheduling implementation of their change requests.²⁴ Although there may be good operational reasons for BellSouth to depart somewhat from the CLECs' priorities, to the extent practical the CLECs should be regarded as the best judges of which of their requested changes should be implemented first, and BellSouth should discuss its releases openly with CLECs when it believes constraints prevent it from following CLEC priorities.

In its Multistate Evaluation the Department also noted concerns regarding the sufficiency of the resources that BellSouth is devoting to CLEC change requests.²⁵ The Florida PSC has addressed this issue by ordering a performance measure that requires BellSouth to implement all prioritized change requests within 60 weeks.²⁶ Although BellSouth has incorporated additional CLEC change requests in response to the requirement, some CLECs express concern that the

²³ DOJ BellSouth Multistate Evaluation at 9; *see* Florida PSC 50/50 Plan Order at 5-8.

²⁴ WorldCom Comments at 1-3. The FCC stated that it would monitor BellSouth's progress in reducing the backlog of CLEC change requests and would consider enforcement action if appropriate. *FCC BellSouth Multistate Order* ¶ 196.

²⁵ DOJ BellSouth Multistate Evaluation at 10.

²⁶ Florida PSC Change Request Implementation Order at 6.

announced schedule of releases for 2003 will not completely satisfy the 60-week requirement.²⁷

The Department is encouraged, however, that in WorldCom's view the 2003 schedule now includes nearly all of the outstanding CLEC change requests.²⁸ BellSouth also appears to be on track to fulfill its commitment to implement the 15 major CLEC change requests previously scheduled for completion this year.²⁹

The Department's Georgia/Louisiana II and Multistate Evaluations expressed concerns regarding the process by which BellSouth released changes to its OSS software, specifically the degree to which available testing caught and corrected defects prior to the commercial release.³⁰ The *FCC BellSouth Multistate Order* states the Commission's intention to monitor this issue.³¹ Although it appears that the steps taken to improve pre-release testing discussed in the BellSouth Multistate Evaluation were successful in substantially reducing the number of defects contained in BellSouth's latest August 24th release,³² the Commission should continue to monitor this area to assure that problems do not recur that would adversely affect competition.

Finally, the Commission should examine BellSouth's policies with regard to OSS changes implemented for its retail operations that may result in discrimination against CLECs. Covad has expressed concern that new OSS features have recently been implemented that would permit BellSouth's retail DSL business to process orders through the OSS in a manner not

²⁷ AT&T Comments at 10-11; AT&T Bradbury Decl. ¶¶ 22-31, 35-42; WorldCom Comments at 3-4.

²⁸ WorldCom Comments at 3.

²⁹ BellSouth Br. at 59.

³⁰ DOJ Georgia/Louisiana II Evaluation at 10, 15-16; DOJ BellSouth Multistate Evaluation at 10-12.

³¹ *FCC BellSouth Multistate Order* ¶ 201.

³² BellSouth Br. at 56.

available to competing carriers.³³ This issue appears to have been raised for the first time in this proceeding, and BellSouth's formal response is not yet available to the Department. Although the Department is therefore not in a position to complete its analysis of this complaint, the Commission should be concerned if the record, including BellSouth's reply filing, demonstrates that OSS changes are being made without appropriate consideration of whether they would preclude nondiscriminatory access to the CLECs, including whether planned enhancements for BellSouth retail operations would provide access to OSS functionality not available to CLECs.

Overall, the Department is encouraged by the progress that BellSouth has made in improving the access to its OSS and in its processes for developing and deploying OSS changes. While these improvements have provided CLECs with an opportunity to compete with BellSouth, the Commission should continue to monitor OSS developments, particularly in the area of change management, to assure nondiscriminatory access by competitors.

IV. Performance Measurement

Since the Department filed its Multistate Evaluation, there has been further progress on issues of concern with respect to BellSouth's performance measurement. Notably, BellSouth reports progress in KPMG's Florida and Georgia audits of its performance reporting systems,³⁴ and BellSouth has continued to disclose proposed changes to its performance measures pursuant to the process ordered by the Georgia Public Service Commission,³⁵ a process that appears to be working as intended.

³³ Covad Comments at 6-8. Covad asserts that OSS provisions which permit BellSouth's retail DSL business to process orders based only on a telephone number and to migrate line-sharing service for customers changing locations are not available to CLECs. *Id.*

³⁴ *See, e.g.*, BellSouth Varner Aff. ¶¶ 99, 115-16.

³⁵ *Id.* ¶¶ 73-78 & Ex. PM-14, PM-14A; Georgia PSC PMs Change Notification Order.

The Department has some concerns, however, regarding issues raised as to BellSouth's current policy on restating erroneously reported performance data.³⁶ This policy establishes exclusions for errors not involving one of the listed "Key Performance Measures," not involving a metric with at least 100 CLEC transactions, or not changing the reported result by at least 0.5 or 2%, as applicable.³⁷ However, as currently articulated, the policy does not clearly state exactly which errors are to be restated.³⁸

The Department is concerned about the potential effects of this policy on the accuracy of BellSouth's reported performance data. Carriers and regulators alike have an interest in the reliability of reported performance data, as inaccurate data undercut the purposes of performance measurement.³⁹ Consequently, BellSouth should provide the Commission with a clear explanation of the policy, its basis, and its impact, including the number of errors not restated or otherwise disclosed due to the policy. The Department recommends that the Commission examine the policy carefully to ensure that it does not conceal inaccuracies in BellSouth's

³⁶ See AT&T Comments at 15-16; AT&T Norris Decl. ¶¶ 5-10. Another CLEC raises a similar issue relating to restatements of performance penalty data. Network Telephone Comments at 9-10.

³⁷ See BellSouth Varner Multistate Reply Aff. ¶ 31 & Ex. PM-13; see also BellSouth Restatement Policy *Ex Parte*. Given that BellSouth's performance reporting obligations have been established by state regulators, the Department is concerned that BellSouth points to no regulatory authority for this policy. As a general matter, the scope of the obligation to correct erroneously reported performance data should not be set by the carrier whose performance is being monitored.

³⁸ For example, the policy does not state which specific Service Quality Measurements ("SQM") measures are "key" measures, how the policy applies to CLEC-specific performance data, or what is deemed "technically feasible." See BellSouth Varner Multistate Reply Aff. Ex. PM-13.

Where performance and penalty data are restated, moreover, the reasons for the restatements need to be explained. Without an understanding of the nature and cause of the error, regulators cannot readily ascertain its significance. The Department views with concern, therefore, allegations that BellSouth has failed to discuss and explain its multiple restatements of penalty payments due. See Network Telephone Comments at 9-10.

³⁹ Performance metrics not only depict present performance but also provide a basis for establishing performance benchmarks (i.e., track records of performance consistently achieved and thus presumably achievable in the future) and self-executing remedies that enable regulators more effectively to detect "backsliding" and constrain anticompetitive behavior. See DOJ Performance Measurement Reply Comments at 3; DOJ Oklahoma I Evaluation at 47-48; DOJ Massachusetts II Evaluation at 5.

performance reporting, especially as to penalty measures, or otherwise reduce the value of that reporting as an ongoing mechanism for measuring performance and preventing backsliding.

V. Conclusion

BellSouth's application demonstrates that it has made progress in addressing issues previously identified by the Department. The Commission should review the concerns expressed in this Evaluation, and if it is satisfied that these concerns have been addressed, the Department recommends that it approve BellSouth's application.

Respectfully submitted,

/s/ Nancy M. Goodman
Nancy M. Goodman
Chief

Charles A. James
Assistant Attorney General
Antitrust Division

R. Hewitt Pate
Deputy Assistant Attorney General
Antitrust Division

Michael L. Katz
Deputy Assistant Attorney General
Antitrust Division

Margaret A. Ward
Counsel to the Assistant Attorney General
Antitrust Division

W. Robert Majure
Assistant Chief

John Henly
Jeffrey Prisbrey
Economists
Economic Regulatory Section

Laury E. Bobbish
Assistant Chief

Luin P. Fitch, Jr.
Deborah A. Roy
Attorneys

James Davis-Smith
Paralegal

Telecommunications and Media
Enforcement Section

U.S. Department of Justice
1401 H Street, NW, Suite 8000
Washington, DC 20530
(202) 514-5621

October 25, 2002

Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on October 25, 2002.

/s/ Luin P. Fitch, Jr.
Luin P. Fitch, Jr.
Attorney
Telecommunications and Media
Enforcement Section
Antitrust Division
U.S. Department of Justice

Service List

Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Janice Myles
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C327
Washington, DC 20554

Christine Newcomb
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Beth Keating
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Jonathan B. Banks
BellSouth Corporation
1133 21st Street, NW, Room 900
Washington, DC 20036