

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133k

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Generic Docket to Address Performance)
Measurements and Enforcement) **ORDER ON RECONSIDERATION**
Mechanisms)

BY THE COMMISSION: On August 1, 2003, BellSouth Telecommunications, Inc.'s (BellSouth's) North Carolina Utilities Commission-ordered Self-Effectuating Enforcement Mechanisms (SEEM) Plan and Service Quality Measurement (SQM) Plan went into effect.

On August 21, 2003, the Federal Communications Commission (FCC) released its *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking* (FCC 03-36). *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et. al.*, CC Docket No. 01-338, *et. al.* (*Triennial Review Order or TRO*).

On October 27, 2003, BellSouth filed its Motion to Modify SEEM Plan.

By Order dated November 5, 2003, the Commission requested initial and reply comments by interested parties on BellSouth's Motion. On November 25, 2003, CompSouth¹ filed its comments on BellSouth's Motion. Also, on November 25, 2003, the Public Staff filed its comments on the Motion. On December 10, 2003, BellSouth filed its reply comments in this regard. On December 22, 2003, CompSouth filed its Motion to File Supplemental Reply Comments in Response to the Reply Comments filed by BellSouth. In addition, CompSouth filed its Supplemental Reply Comments.

On January 21, 2004, DIECA Communications, Inc., d/b/a Covad Communications Company (Covad) filed a Motion to Take Administrative Notice of the January 15, 2004 *Order Denying BellSouth Telecommunications, Inc.'s Motion to*

¹ CompSouth is comprised of: ITC^DeltaCom, MCI, Business Telecom, Inc., NewSouth Communications Corporation, AT&T Communications of the Southern States, LLC, NuVox Communications, Inc., Access Integrated Networks, Inc., Birch Telecom, Talk America, Cinergy Communications Company, Z-Tel Communications, Network Telephone Corporation, Momentum Business Solutions, Covad Communications Company, KMC Telecom, IDS Telecom, LLC, Access Point, Inc., and Xspedius Corporation.

Modify Self-Effectuating Enforcement Mechanism Plan issued by the Georgia Public Service Commission (PSC).²

On February 13, 2004, the Commission issued its *Order Denying BellSouth's Motion to Modify SEEM Plan*. In its Order, the Commission found it appropriate to deny BellSouth's Motion to Modify SEEM Plan to remove penalties associated with the provisioning of line sharing. The Commission stated in its Order that to the extent BellSouth had not paid any penalties associated with line sharing in its December 15, 2003 penalty payments, BellSouth was to immediately remit said penalties.

Further, the Commission found it appropriate to: (1) grant CompSouth's Motion to File Supplemental Reply Comments, thereby allowing CompSouth's Supplemental Reply Comments to be recognized as filed in the docket; and (2) grant Covad's Motion to Take Administrative Notice of the Georgia PSC's *January 14, 2004 Order*.

On March 15, 2004, BellSouth filed its Motion for Reconsideration of the Commission's *February 13, 2004 Order*.

By Order dated March 23, 2004, the Commission requested initial and reply comments on BellSouth's Motion. After Motions for Extension of Time were granted, Initial Comments were filed on April 26, 2004 by CompSouth and the Public Staff, and Reply Comments were filed on May 17, 2004 by BellSouth and CompSouth.

BELLSOUTH'S MOTION FOR RECONSIDERATION

BellSouth specifically requested that the Commission reconsider its conclusion that BellSouth has an independent obligation to provide line sharing under Section 271(c)(2)(B)(4) of the Telecommunications Act of 1996 (TA96 or the Act). BellSouth noted that in the *TRO*, the FCC found that line sharing does not meet the impairment standard set forth in Section 251(b)(2)(d) and is, therefore, not subject to the unbundling requirements of Section 251(c)(3). BellSouth stated that the Commission's *February 13, 2004 Order* not only acknowledges this, but further states specifically that "it is undisputed that under the *TRO*, line sharing is no longer required to be unbundled under Section 251 of TA96 (See Paragraph 255 of the *TRO*)." Nevertheless, BellSouth maintained, the Commission held that line sharing should continue as a part of the SEEM plan because: (1) BellSouth must continue to provide line sharing during the *TRO*'s transitional period; and (2) BellSouth is obligated to provide line sharing under Section 271 of the Act. BellSouth stated that it is this latter point upon which BellSouth seeks reconsideration.

First, BellSouth argued, the Commission should reconsider its interpretation of Section 271 to the extent it was predicated upon the *TRO*. BellSouth noted that on March 2, 2004, the United States Court of Appeals, District of Columbia remanded

² Covad incorrectly stated in its Motion to Take Administrative Notice that the Georgia PSC's Order was issued on January 15, 2004. The Georgia PSC's Order was issued on January 14, 2004.

certain aspects of the *TRO* to the FCC for further proceedings and vacated other portions of the *TRO*. BellSouth commented that although the Court temporarily stayed its mandate, whether the FCC will seek an additional stay of and/or petition for Supreme Court review of the D.C. Circuit's Order remains to be seen. BellSouth asserted that under such circumstances, which did not exist at the time the Commission entered its *February 13, 2004 Order*, the Commission should reconsider its interpretation of the language in the *TRO* to reach its conclusion as to the requirements of Section 271.

Second, BellSouth argued, given the Commission's conclusion in the *February 13, 2004 Order* regarding Section 271, it would appear that the Commission was, to some extent, misled by the Supplemental Reply Comments of CompSouth. Specifically, BellSouth asserted, the Commission quoted the CLPs on Page 20 of the *February 13, 2004 Order*, in pertinent part, as follows:

CompSouth maintained [in its Reply Comments] that BellSouth's attempt to weaken the SEEM Plan by ignoring line sharing obligations under Section 271 must be rejected by this Commission as it has been by the Georgia PSC and the Alabama PSC.

BellSouth argued that this quotation from the *February 13, 2004 Order* reflects almost exactly the representation by the CLPs in their Supplemental Reply Comments. BellSouth maintained that the truth of the matter, however, is that neither of these state commissions ultimately ruled that Section 271 applies as the CLPs contended. BellSouth noted that at the time the CLPs filed their Supplemental Reply Comments, the Alabama PSC had voted, but an Order had not been issued. BellSouth asserted that it does not believe that there was anything in the Alabama PSC's vote that would give the CLPs the impression that the Alabama PSC had utilized Section 271 as the basis of its decision. However, BellSouth stated, even if there once was a basis for this belief, there is none now. BellSouth noted that the Alabama PSC entered its Order (a copy of which was attached as Exhibit A to BellSouth's Motion) on February 14, 2004. BellSouth commented that the Order expressly stated that it was not based on an interpretation of the requirements of Section 271. Specifically, BellSouth stated, the Alabama PSC Order stated on Page 4 the following:

We further note that nothing in our decision herein should be construed as an adoption or rejection of the CLEC argument that regardless of the FCC's *TRO Order*, BellSouth has an independent obligation under Section 271 to continue to provide line sharing. We will address that issue in future proceedings as necessary. Our decision herein to deny BellSouth's request to eliminate the penalties associated with line sharing from the SEEM Plan is, at this juncture, based exclusively on the requirement in the *TRO* that BellSouth continue to provide line sharing on a transitional/grandfathered basis.

BellSouth maintained that the CLPs were, at least initially, more accurate in their information concerning the Georgia PSC. BellSouth noted that the Georgia PSC did initially rule that BellSouth's obligation to provide line sharing was not only pursuant to the traditional mechanism created by the *TRO*, but pursuant to Section 271 as well. BellSouth stated that since that ruling was issued, however, in response to a Motion for Reconsideration filed by BellSouth in Georgia, the Georgia PSC has clarified its Order to remove any reference to Section 271 as the basis for its decision. BellSouth commented that although the Georgia PSC had not yet entered a written Order, BellSouth attached to its Motion, as Exhibit B, a copy of the transcript of the Georgia PSC's vote taken on February 17, 2004, during which the Georgia PSC indicated that it was no longer relying upon the requirements of Section 271 to support its conclusion that BellSouth should continue to be required to make penalty payments on measurements that involve line sharing.

Thus, BellSouth asserted, the representations of the CLPs notwithstanding, the fact is that, currently, the North Carolina Commission is the only Commission in BellSouth's region (and, to the best of BellSouth's knowledge, the only Commission in the country) that has ruled that line sharing is a continuing requirement under Section 271.

BellSouth further submitted that the Commission also appears to have been misled by the CLPs' mischaracterization of BellSouth's position. Specifically, BellSouth noted, the CLPs made the argument in their Supplemental Reply Comments that, in effect, BellSouth was urging the Commission to reject a ruling of the FCC set forth in the *TRO* simply because BellSouth believed it to be "illogical." Specifically, BellSouth stated, the *February 13, 2004 Order* noted on Page 21 that, "CompSouth stated that in lieu of actual legal argument, BellSouth asserted that it is 'illogical' for the FCC to lift the obligation of ILECs to provide access to line sharing as a UNE only to maintain an RBOC's [Regional Bell Operating Company's] obligation to continue access under Section 271."

BellSouth stated that, building upon this mischaracterization by the CLPs, the Commission then cited at some length to Paragraph 659 of the *TRO*, which contains a discussion of how Section 251 obligations relate to Section 271 obligations. BellSouth noted that based on this Paragraph, the Commission determined that the *TRO* did take a logical approach, and it rejected BellSouth's argument to the contrary. BellSouth maintained that the problem with this conclusion is that BellSouth has never argued that the FCC's decision in this portion of the *TRO* is illogical.

Instead, BellSouth noted, its position was based on one of the fundamental principles of legal interpretation, that a decision should not be interpreted in a manner that would render it illogical. BellSouth urged an interpretation of the *TRO* that was logical and consistent. BellSouth stated that the CLPs argued for an interpretation of the *TRO* that, if accepted, would render it patently illogical and internally inconsistent. BellSouth maintained that a routinely accepted principle of legal interpretation is that a decision, whether by the FCC, by this Commission, or by a Court, should not read in a

way that would make it internally inconsistent or illogical. BellSouth commented that as the United States Supreme Court observed in the context of statutory interpretation, "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative intent are available." *Griffin v. Oceanic Contractors, Inc.* 73 L Ed 2d 973, 982 (1982). Thus, BellSouth stated, far from taking the position the CLPs claimed, actually argued that because its interpretation of the *TRO* is clearly the more logical one, it is also the more likely.

BellSouth asserted that the conclusion that the *TRO* requires line sharing to be offered pursuant to Section 271 is unsupportable for three reasons: (1) the *TRO* does not state that line sharing is a Section 271 obligation, either pursuant to checklist 4 or otherwise; (2) the pertinent discussion in the *TRO* of continuing Section 271 obligations refers to the loop-UNE, not line sharing; and (3) line sharing is consistently treated in the *TRO* in a way that distinguishes it from the loop.

BellSouth maintained that the *February 13, 2004 Order* relies exclusively upon Paragraph 659 of the *TRO* for the conclusion that line sharing is a continuing Section 271 obligation. BellSouth argued that that paragraph, however, even if read to mean that Section 271 obligations exist independent of Section 251 obligations, contains nothing to suggest that such a Section 271 obligation exists for line sharing. BellSouth noted that in the discussion of Section 271 in the *TRO*, the FCC stated that four of the checklist items for Section 271 compliance relate specifically to network elements that have been deemed to be UNEs subject to Section 251(c)(3). BellSouth stated that these include local transport, local switching, access to databases and associated signaling, and local loop transmission from the central office to the customer's premise, i.e., checklist items 4, 5, 6, and 10. Importantly, BellSouth argued, line sharing is never mentioned.

BellSouth stated that in the *February 13, 2004 Order*, the Commission observed that Section 251 and Section 271 operate independently. BellSouth noted that the *February 13, 2004 Order*, however, contains no indication of why the Commission concluded that line sharing is a continuing Section 271 obligation. BellSouth noted that if the Commission tacitly accepted the CLPs' argument that line sharing is required pursuant to checklist item 4, then the Commission overlooked the FCC's language in Paragraph 654 of the *TRO* making clear that checklist items 4, 5, 6, and 10 "impose access requirements regarding loop, transport, switching, and signaling . . .". Again, BellSouth maintained, line sharing is never mentioned by the FCC as a requirement of any checklist item.

BellSouth commented that if the *February 13, 2004 Order* reflects a conclusion by the Commission that line sharing is a requirement of checklist item 4 because line sharing involves part of the loop (i.e., the high frequency portion of the loop or HFPL), such a conclusion cannot be reconciled with the FCC's analytical framework, both in its *Line Sharing Order* and in the *TRO*. BellSouth argued that the FCC decided almost four years ago in the *Line Sharing Order* to designate the HFPL as an unbundled network element, separate and apart from the loop itself. Specifically, BellSouth noted, as the

FCC stated in the *Line Sharing Order*, "we conclude that access to the high frequency spectrum of a local loop meets the statutory definition of a network element and satisfies the requirements of Sections 251(d)(2) and (c)(3)."

BellSouth maintained that the FCC's treatment of HFPL and the loop as separate unbundled network elements appears throughout the *TRO*. BellSouth noted that the FCC found that requesting carriers of stand alone copper loops are generally impaired on a national basis, while, at the same time, finding that carriers that request the HFPL are not impaired under any circumstances. Again, BellSouth argued, it makes no sense to conclude that the FCC went to great lengths to conduct separate analyses of line sharing and whole loops for purposes of applying Section 251, but for purposes of applying Section 271, simply lumped these two together without any distinction. BellSouth asserted that this conclusion makes even less sense when one considers that the FCC specifically found line sharing to be competitive (i.e., not to meet the impairment test), while reaching a different conclusion regarding whole loops.

More recently, BellSouth noted, the FCC made clear that line sharing has never been subsumed within the obligation to provide access to unbundled loops pursuant to checklist item 4 of Section 271. BellSouth commented that the case involved SBC Communications, Inc.'s application for Section 271 authority in Illinois, Indiana, Ohio, and Wisconsin, which was granted by Order issued on October 15, 2003, thirteen days after the date the *TRO* became effective (*Memorandum Opinion and Order*, FCC 03-243, In the Matter of Joint Application by SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, the Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin, WC Docket No. 03-167 – *SBC Order*). BellSouth noted that in the *SBC Order*, the FCC stated specifically that "one part of the required showing, as explained in more detail below, is that the applicant satisfies the Commission's rules concerning UNEs." BellSouth noted that the FCC then listed seven UNEs that incumbent LECs are obligated to provide. BellSouth stated the first UNE on the list is "local loops and subloops." BellSouth commented that the seventh UNE on this list is the "high frequency portion of the loop."

BellSouth argued that the *SBC Order* demonstrates that, even under the FCC's old unbundling rules, the loop and the HFPL were treated as separate elements. BellSouth noted that the FCC's delineation of the loop and HFPL as separate elements began in the *Line Sharing Order* and has continued to this day in the *TRO*. Thus, BellSouth commented, while checklist item 4 of Section 271 may obligate BellSouth to provide access to loops, this obligation does not extend to providing line sharing, as the Commission's *February 13, 2004 Order* erroneously concluded.

Furthermore, BellSouth stated, the historical location of the line sharing discussion in the Section 271 context has been a matter of convenience than legal necessity. BellSouth noted that this fact is clear from the *SBC* decision discussed above. BellSouth commented that in the *SBC Order*, the FCC analyzed SBC's

compliance with checklist 4 by considering the extent to which SBC was providing "unbundled local loops in accordance with the requirements of section 271 and our rules". BellSouth noted that because at the time the FCC's rules required that line sharing be unbundled, the FCC reviewed under checklist item 4 SBC's performance "for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, high-capacity loops," as well as SBC's "processes for hot cut provisioning, and line sharing and line splitting." BellSouth argued that the fact that the FCC addressed line sharing under checklist item 4 when the FCC's rules required that line sharing be unbundled does not mean that line sharing is a checklist item 4 requirement even after the FCC's rules no longer require such unbundling.

Finally, BellSouth maintained, even assuming line sharing were a requirement of Section 271 (which is not the case), the Commission lacks authority to mandate the payment of self-effectuating penalties to enforce compliance with any such requirement. First, BellSouth noted, enforcement authority for ensuring Section 271 compliance rests with the FCC, not this Commission. Second, BellSouth asserted, while the Commission may have authority to order self-effectuating penalties in connection with BellSouth's Section 251 obligations, the Commission's authority to order such penalties in other contexts is considerably more circumscribed. BellSouth argued that the lack of any legal authority by this Commission to impose self-effectuating penalties to enforce compliance with Section 271 constitutes a separate ground for granting reconsideration.

INITIAL COMMENTS

COMPSOUTH: CompSouth asserted that BellSouth's Motion for Reconsideration should be denied for two reasons: (1) The Commission's determination is correct; and (2) BellSouth has failed to identify any new law or fact warranting reconsideration.

CompSouth maintained that BellSouth's Motion for Reconsideration should be denied because the Commission's determination that BellSouth has an obligation to provide access to line sharing under Section 271(c)(2)(B)(iv) is unassailable: (1) line sharing has always been and remains a checklist item 4 loop transmission facility; and (2) RBOCs offering long distance services pursuant to Section 271 authority have an obligation to provide checklist item 4 elements irrespective of unbundling determinations under Section 251, albeit under a different pricing standard.

CompSouth argued that there can be no legitimate debate about whether or not line sharing is a checklist item 4 loop transmission facility: it is. In fact, CompSouth noted, even BellSouth itself has always asserted that line sharing is a checklist item 4 loop transmission facility. CompSouth noted that the FCC defined the "loop" in Section 271(c)(2)(B)(iv), competitive checklist item 4, as a "transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer's premises." CompSouth noted that the HFPL, used to provide line sharing, is clearly a form of loop transmission facility. Indeed, CompSouth asserted, BellSouth routinely uses the HFPL transmission channel to provide xDSL services. As a consequence, CompSouth stated, it is not surprising that

the FCC and BellSouth always considered the HFPL under checklist item 4 – local loop transmission facilities.

CompSouth maintained that the FCC and BellSouth repeatedly placed line sharing in checklist item 4. CompSouth noted that in every FCC Section 271 Order granting BellSouth long distance authority – indeed, in every FCC Order granting any RBOC such authority – the FCC placed line sharing in checklist item 4. CompSouth stated that BellSouth does not dispute this fact. Indeed, CompSouth asserted, BellSouth itself placed line sharing and line splitting in every one of its own briefs to the states and to the FCC under checklist item 4. Manifestly then, CompSouth argued, the Commission was correct that line sharing is a Section 271(c)(2)(B)(iv) network element, which BellSouth remains obligated to provide so long as it offers long distance under Section 271 authority.

CompSouth argued that BellSouth now offers-up three arguments in its Motion for Reconsideration to explain-away the historical treatment of line sharing under checklist item 4. First, CompSouth asserted, BellSouth argued that line sharing never really was a checklist number 4 item. Then, CompSouth stated, in apparent recognition that line sharing really was always considered under checklist item 4, BellSouth argued that “the historical location [under checklist item 4] of the line sharing discussion in the 271 context has been more a matter of convenience than legal necessity”. And finally, CompSouth noted, BellSouth concluded (without citation) that “[t]he fact that the FCC addressed line sharing under checklist item 4 when the FCC’s rules required that line sharing be unbundled does not mean that line sharing is a checklist item 4 requirement even after the FCC’s rules no longer require such unbundling.” CompSouth argued that each of these arguments is demonstrably incorrect.

CompSouth asserted that BellSouth’s arguments that line sharing is really not a checklist item 4 element are incorrect. CompSouth noted that BellSouth based its assertion that line sharing is no longer (or never was) a checklist item 4 element on two facts: (1) that in the *TRO*, the FCC specifically addressed whether carriers were impaired without access to the HFPL separately from other loop types in its Section 251 unbundling analysis, but only referred to “loops” when addressing checklist item 4 in its Section 271 analysis; and (2) that in the *SBC Order*, the FCC addressed the HFPL (line sharing) separately from other “loops” in its discussion of unbundling requirements pursuant to Section 271(c)(2)(B)(ii), competitive checklist item 2. CompSouth argued that both of these arguments misconstrue the significance of the treatment of loops and the HFPL.

CompSouth maintained that the FCC did not secretly remove line sharing from checklist item 4 in the *TRO*. CompSouth argued that BellSouth misconstrued the purposes of the *TRO* sections addressing Section 251 unbundling analyses and Section 271 statutory interpretation to argue that line sharing is not a checklist item 4 element. CompSouth asserted that BellSouth spent several paragraphs arguing that various “whole loops” and the HFPL (line sharing) are analyzed as separate UNEs under the *TRO* Section 251 analysis, and then leapt to the conclusion that they cannot, therefore, both

fall under "local loop transmission facilities" in checklist item 4. CompSouth argued that the Commission should not be fooled by this chicanery: in the *TRO*, all of the checklist items are considered as separate UNEs in the unbundling analysis, but lumped together under their general checklist description in the Section 271 analysis. In fact, CompSouth maintained, a passing glance at the Table of Contents in the *TRO* reveals the fallacy of BellSouth's argument. CompSouth noted that as the Table of Contents reveals quite clearly, "loops" are analyzed from Paragraph 197 to Paragraph 341 as numerous separate UNEs defined both by capacity and market levels, with differing unbundling determinations for each. CompSouth noted that yet in the discussion of Section 271 obligations at Paragraphs 649 to 653, the FCC only mentions "loops". CompSouth maintained that under BellSouth's reasoning, the FCC's failure to list all of the loop types at Paragraphs 649 through 653 should imply that not a single one of them is a checklist item 4 loop transmission facility. CompSouth argued that this is absurd. CompSouth maintained that if the FCC intended to remove a loop type that had historically always been considered under checklist 4, then it would have made that determination explicit.

Similarly, CompSouth argued, in the *TRO*'s unbundling analysis, switching (checklist item 6) and transport (checklist item 5) are addressed as numerous discrete UNEs based on market type (switching) and capacity (transport), with differing unbundling determinations for each. CompSouth noted that in discussing these checklist items in its Section 271 analysis, however, the FCC only identified them generically as "switching" and "transport." CompSouth asserted that this does not imply that certain transport or switching UNEs were being surreptitiously removed from their respective Section 271 checklist. Yet, CompSouth asserted, this is the very logic BellSouth applies in its argument that "it makes no sense to conclude that the FCC went to great lengths to conduct separate analyses of line sharing and whole loops for purposes of applying Section 251, but for purposes of applying Section 271, simply lumped these two together without any distinction."

CompSouth noted that the FCC's "separate analyses" for Section 251 unbundling determinations and "lumping together" for the Section 271 discussion makes perfect sense when one considers the purpose of the two sections: the Section 251 unbundling analysis specifically addressed whether particular network elements met the FCC's impairment standard, whereas the Section 271 analysis *generally* addressed the relationship between two statutory Sections, 251 and 271. CompSouth argued that that is why Section 251 loop, transport, and switching network elements – some unbundled and others not unbundled – were "lumped together" under their general Section 271 checklist titles: "loops, transport, and switching." The use of general terms in a general discussion does not constitute a basis to assert that there is a hidden change in the FCC's historical treatment of line sharing under checklist item 4. Accordingly, CompSouth asserted, BellSouth's argument that there is a secret change in the FCC's treatment of line sharing under Section 271(c)(2)(B)(iv) is incorrect.

CompSouth noted that in an effort to bolster its *TRO* argument, BellSouth mischaracterized the FCC's *SBC Order*. CompSouth maintained that BellSouth

represented that the *SBC Order* "made clear that line sharing has never been subsumed within the obligation to provide access to unbundled loops pursuant to checklist item 4 of Section 271." CompSouth commented that to support this statement, BellSouth cited Paragraphs 10 and 11 of the *SBC Order*. CompSouth maintained that these paragraphs do not relate to checklist item 4 in any way. In fact, CompSouth noted, they do not even mention checklist item 4 in passing; instead, Paragraphs 10 and 11 address checklist item 2 matters, something that is not even at issue in this proceeding. CompSouth asserted that not surprisingly, then, BellSouth's briefing to the Commission failed to mention that SBC's provision of line sharing is considered in the section of the *SBC Order* addressing compliance with checklist item 4. CompSouth maintained that it is inconsistent for the FCC to place line sharing in checklist item 4 in the same Order that BellSouth claimed made clear that line sharing has never been subsumed within checklist item 4.

CompSouth argued that BellSouth's claims regarding the *SBC Order* and the *TRO* also seem to confuse the provision of network elements as UNEs under checklist item 2 and the provision of "local loop transmission facilities" under checklist item 4. CompSouth argued that the FCC made it clear in the *TRO* that checklist item 2 and checklist item 4 are independent of each other. CompSouth maintained that the fact that the FCC addresses separate UNEs under checklist 2 does not foreclose those same UNEs being considered under the independent checklist item 4. CompSouth stated that in addition to local loops and line sharing being considered under both checklist items 2 and 4, the FCC requires the demonstration of nondiscriminatory access to operations support systems (OSS) under both checklist items 2 and 4. Indeed, CompSouth maintained, OSS is in the same list identified by BellSouth as "clear" evidence that separate elements listed in checklist item 2 cannot be considered under checklist item 4. However, CompSouth argued, like line sharing, the FCC considers OSS under both checklist item 2 and checklist item 4. In short, CompSouth maintained, checklist item 4 is independent of checklist item 2, and the two checklist items contain whole loops as well as the HFPL. CompSouth asserted that the *SBC Order* does not remove line sharing from its historical treatment under checklist item 4. Indeed, CompSouth maintained, because the *SBC Order* continues to consider line sharing under checklist item 4, BellSouth's assertion that the *SBC Order* supports its position that line sharing is not really a checklist item 4 element is manifestly incorrect.

CompSouth stated that BellSouth's argument that the fact that the FCC addressed line sharing under checklist item 4 when the FCC's rules required that line sharing be unbundled does not mean that line sharing is a checklist item 4 requirement even after the FCC's rules no longer require such unbundling is also demonstrably incorrect. CompSouth maintained that BellSouth's argument is directly contrary to the FCC's interpretation of Sections 251 and 271. CompSouth asserted that if Section 251 unbundling determinations could remove elements from checklist item 4, as BellSouth asserted, then checklist item 4 would not be independent of Section 251. However, CompSouth argued, the FCC made it clear in the *TRO* that access requirements under checklist item 4 are independent of Section 251 determinations.

CompSouth stated that the FCC engaged in the TRO analysis at Paragraphs 649 through 667 to explain the redundancy of the overlapping network access requirements in checklist item 2 and checklist items 4 through 6 and 10. CompSouth argued that far from rendering the statute illogical, as BellSouth asserted, the FCC's interpretation of Section 271(c)(2)(B) reconciles the access requirements contained in checklist item 2 and checklist items 4 through 6 and 10. CompSouth noted that the FCC stated in Paragraph 659 of the TRO:

In interpreting section 271(c)(2)(B), we are guided by the familiar rule of statutory construction that, where possible, provisions of a statute should be read so as not to create a conflict. So if, for example, pursuant to section 251, competitive entrants are found not to be 'impaired' without access to unbundled switching at TELRIC rates, the question becomes whether BOCs are required to provide unbundled switching at TELRIC rates pursuant to section 271(c)(2)(B)(vi). In order to read the provisions so as not to create a conflict, we conclude that section 271 requires BOCs to provide unbundled access to elements not required to be unbundled under section 251, but does not require TELRIC pricing. This interpretation allows us to reconcile the interrelated terms of the Act so that one provision (section 271) does not gratuitously reimpose the very same requirements that another provision (section 251) has eliminated.

In short, CompSouth maintained, although the price for a "de-listed" UNE may change, if that UNE falls under Section 271(c)(2)(B)(iv)-(vi) or (x), the obligation to provide nondiscriminatory access remains. CompSouth asserted that if BellSouth wants to continue to sell long distance service under Section 271 authority, it must continue to provide nondiscriminatory access to any network elements under checklist items 4, 5, 6, and 10, irrespective of whether they are "de-listed under Section 251", including line sharing under checklist item 4. Accordingly, CompSouth argued, line sharing has been and remains a checklist item 4 network element.

CompSouth asserted that there appears to be no question that if line sharing is a local loop transmission facility under Section 271(c)(2)(B)(iv), then BellSouth is obligated to provide access irrespective of any Section 251 unbundling determinations by the FCC. CompSouth noted that in apparent recognition that it has an obligation to provide access to checklist item 4 elements, BellSouth does not take issue with that obligation, but, rather, devotes its Motion for Reconsideration to challenging line sharing's historical placement in checklist item 4. CompSouth argued that it needs to be made clear that BellSouth does indeed have an obligation to provide nondiscriminatory access to all checklist item 4 elements, including line sharing regardless of any unbundling analysis under Section 251.

CompSouth asserted that BellSouth's Motion for Reconsideration should be denied because it fails to raise any new law or fact warranting reconsideration. CompSouth stated that BellSouth's Motion for Reconsideration is largely a rehash of the arguments it made in its Reply Comments regarding its Motion to Modify the SEEM Plan.

CompSouth maintained that BellSouth does, however, raise two new issues: (1) the recent decision of the United States Court of Appeals, District of Columbia; and (2) the recent decision of the Georgia PSC to remove, on its own motion, the portion of its prior order finding that BellSouth had an obligation under Section 271 to provide access to line sharing. CompSouth noted that neither of the recent decisions warrant a reconsideration of the Commission's determination.

CompSouth argued that BellSouth's assertion that "the Commission should reconsider its interpretation of the language in the *TRO* to reach its conclusion as to the requirements of 271" is not supported by the *USTA II* decision itself. CompSouth stated that the D.C. Circuit affirmed the FCC's interpretation of the relationship between Sections 251 and 271, finding that "[t]he FCC reasonably concluded that checklist items four, five, six and ten imposed unbundling requirements for those elements independent of the unbundling requirements imposed by §§ 251-52." Accordingly, CompSouth noted, the *USTA II* decision did not change the law at issue in BellSouth's Motion for Reconsideration and cannot support reconsideration.

CompSouth argued that the Georgia PSC's Order does not support the grounds upon which BellSouth seeks reconsideration of the Commission's Order. CompSouth noted that the transcript from the administrative session of the Georgia PSC, attached to BellSouth's Motion for Reconsideration, as well as the Georgia PSC's Order itself, make it clear that the Georgia PSC did not agree with the arguments made by BellSouth in its Georgia Motion for Reconsideration. CompSouth stated that, in fact, the Georgia PSC's Order flatly states that "[t]his action should not be construed as constituting agreement with the arguments raised by BellSouth in its Motion for Reconsideration."

CompSouth noted that the arguments made by BellSouth in Georgia are the same arguments made by BellSouth here. Indeed, CompSouth maintained, the Georgia PSC expressly denied BellSouth's Motion for Reconsideration. CompSouth explained that without reversing its prior decision regarding BellSouth's obligation to provide line sharing under Section 271, the Georgia PSC modified its prior Order on its own motion by removing its Section 271 determination as a basis to deny BellSouth's Motion to Modify the SEEM Plan. Importantly, CompSouth maintained, the Georgia PSC did not repudiate its Section 271 conclusions. CompSouth asserted that far from supporting reconsideration, the Georgia PSC's decision supports denial of BellSouth's Motion for Reconsideration. CompSouth argued that this Commission, like the Georgia PSC, should deny BellSouth's Motion for Reconsideration.

CompSouth maintained that BellSouth's last basis for reconsideration, that the Commission is somehow without subject matter jurisdiction, is equally without merit. CompSouth noted that BellSouth conceded the subject matter jurisdiction of the Commission when it brought its Motion to Modify the SEEM Plan. CompSouth asserted that having now lost the Motion, BellSouth cannot assert that the Commission to which it originally submitted its Motion lacks jurisdiction over the matter.

CompSouth argued that apart from this obvious problem with BellSouth's jurisdictional challenge, BellSouth relies on a demonstrably incorrect legal assertion regarding the Commission's general subject matter jurisdiction. CompSouth maintained that BellSouth's assertion that the Commission lacks authority over the SEEM Plan in the context of Section 271 enforcement is incorrect. CompSouth noted that BellSouth cited to *SBC Communication v. FCC*, 138 F.3d 410, 421 (D.C. Cir. 1998) for the proposition that "enforcement authority for ensuring Section 271 compliance rests with the FCC, not this Commission." CompSouth asserted that *SBC Communications* is, however, inapposite to the Commission's Section 271 enforcement authority. Indeed, CompSouth argued, *SBC Communications* preceded any grant of Section 271 authority. CompSouth stated that *SBC Communications* does not address enforcement of Section 271 obligations.

Moreover, CompSouth maintained, the FCC has expressly recognized state commission jurisdiction over SEEM plans in the context of Section 271 back-sliding complaints. CompSouth noted that in granting Bell Atlantic Section 271 authority for the State of New York, the FCC ordered that "[c]omplaints involving a BOC's alleged noncompliance with specific commitments the BOC may have made to a state commission, or specific performance monitoring and enforcement mechanisms imposed by a state commission, should be directed to that state commission rather than the FCC." CompSouth maintained that given the FCC's express order that Section 271 back-sliding complaints regarding enforcement mechanisms be brought before the state commissions, BellSouth's statement that "enforcement authority for ensuring Section 271 compliance rests with the FCC, not this Commission" is manifestly incorrect. CompSouth asserted that while Section 271(d)(6) does provide the FCC with enforcement powers, it does not preempt the states from acting under state law nor preclude the FCC from delegating authority to the states. CompSouth argued that it is axiomatic that if the state commissions lack the jurisdiction under Section 271 to enforce back-sliding, the FCC would not order that Section 271 back-sliding complaints be filed with the state commissions. Accordingly, CompSouth maintained, BellSouth's unsupported and vague jurisdictional challenge does not warrant reconsideration.

CompSouth recommended that BellSouth's Motion for Reconsideration should be denied because the Commission's initial determination is correct, and BellSouth has failed to identify any new factual or legal issues warranting reconsideration. CompSouth asserted that the Commission has never hesitated to answer regulatory questions put to it by companies within its jurisdiction. CompSouth maintained that in this case, BellSouth placed this question before the Commission. CompSouth asserted that the parties, including BellSouth, fully briefed it, and the Commission correctly answered it. CompSouth noted that whether the answer is the first in the country, the twenty-fifth, or the last, when the Commission's determination is correct, the Commission should stand by it. Accordingly, CompSouth asked that the Commission deny BellSouth's Motion for Reconsideration.

PUBLIC STAFF: The Public Staff noted that in the Commission's *February 13, 2004 Order*, the Commission held that BellSouth should continue to provide line sharing in

accordance with previously-established measurements and penalties during the transition period or on a grandfathered basis as established in the *TRO*. The Public Staff stated that the Commission also found that BellSouth is still obligated to provide line sharing pursuant to Section 271 of TA96.

The Public Staff maintained that BellSouth's Motion for Reconsideration challenges only the Commission's determination that line sharing is required by Section 271 of the Act. The Public Staff noted that in support of its Motion, BellSouth cited Orders from the Georgia and Alabama PSCs that denied similar Motions by BellSouth to modify the SEEM plans on the basis that the measurements and penalties were necessary during the transition period. The Public Staff stated that neither PSC used Section 271 of the Act as the basis for its decision. The Public Staff commented that the Alabama PSC expressly refused to rule on the issue of whether BellSouth has an independent obligation under Section 271 to provide line sharing, and the Georgia PSC removed any reference to Section 271 from its decision on reconsideration.

The Public Staff stated that as suggested in its initial comments, it believes that the transition period required by the FCC in the *TRO* is sufficient to justify the denial of BellSouth's motion to modify the SEEM plan at this time. The Public Staff asserted that it is unnecessary to base such a decision on Section 271 of the Act. The Public Staff commented that a state commission's authority under Section 271 requiring unbundling of a network element in the face of a decision by the FCC delisting an unbundled network element under Section 251 is a disputed issue at this time. The Public Staff stated that it believes it merits further consideration and study. As such, the Public Staff recommended that the Commission adopt the approaches of the Georgia and Alabama PSCs and refrain from basing a decision to deny BellSouth's Motion on the basis of Section 271 of the Act.

REPLY COMMENTS

BELLSOUTH: BellSouth argued that its Motion for Reconsideration of the *February 13, 2004 Order* does not impact the Commission's ultimate conclusion to retain SEEM penalties for line sharing during the three-year transitional period described in the *TRO*. Instead, BellSouth stated that it simply asked that the Commission reconsider its reliance on Section 271 as the secondary basis for the result it reached. BellSouth stated that its position is based on the following: (1) the *February 13, 2004 Order* appears to reach (without analysis) a legal conclusion that can not be sustained; (2) the *February 13, 2004 Order* appears to have been influenced greatly by misrepresentations made by the CLPs in their filings; and (3) the erroneous legal conclusion that line sharing is required by Section 271 need not be reached for the purpose of resolving BellSouth's original Motion to remove SEEM penalties.

BellSouth stated that the CLPs have responded to BellSouth's Motion with a disingenuous attempt to convert the Commission's limited decision into a far-reaching, unsupportable, and likely unintended result. BellSouth submitted that this attempt should be rejected. Instead, BellSouth asserted, the Commission should grant

BellSouth's Motion. BellSouth stated that given the structure of the *February 13, 2004 Order*, the Commission's determination that the payment of penalties for line sharing is required by Section 271 is not necessary to reach the conclusion that SEEM penalties should apply for line sharing during the transitional period. BellSouth stated that the Commission exercised its discretion to require that line sharing penalties stay in place during the transitional period. BellSouth noted that although it had requested that the Commission exercise its discretion differently on this matter, it does not contest this aspect of the Order. Instead, BellSouth stated that its Motion for Reconsideration only seeks removal from the Order of the citation to Section 271 as a secondary basis for its decision (i.e., the same action taken by the Georgia PSC). BellSouth argued that by doing this, the Commission would bring itself in line with every other Commission in BellSouth's region that has considered this issue.

BellSouth commented that it raised in its Motion the fact that the Commission appeared to have relied on misinformation provided by the CLPs as to actions taken by the Alabama and Georgia PSCs. BellSouth also noted that the Commission appeared to have been misled by the CLPs' mischaracterization of BellSouth's argument as being that the FCC had acted illogically in the TRO. Consistent with this, BellSouth commented, the Commission cited as the sole substantive support for its decision the language of Paragraph 659 of the TRO to show that the TRO is not structured illogically. BellSouth maintained that Paragraph 659 describes how a requirement to provide a UNE pursuant to Section 271 can be reconciled with the fact that the UNE is no longer required under Section 251. BellSouth asserted that there is nothing in this Paragraph, or anywhere in the TRO, however, to support the conclusion that line sharing is a Section 271 obligation. Thus, BellSouth maintained, the *February 13, 2004 Order* appeared to offer Paragraph 659 of the TRO as a response to an argument that BellSouth actually never made. However, BellSouth stated, the *February 13, 2004 Order* never really reached the fundamental issue that is at the heart of BellSouth's true position: the fact that there is no support for the CLPs' contention, either in the TRO or otherwise, that line sharing is a Section 271 obligation. Further, BellSouth asserted, there is no legally sustainable basis for reaching this conclusion.

BellSouth noted that in response to its Motion, the Public Staff filed Comments supporting BellSouth's request. BellSouth stated that the CLPs, on the other hand, responded that: (1) line sharing is a Section 271 requirement; and (2) the Commission has jurisdiction to create mechanisms to enforce the substantive requirements of Section 271 (specifically checklist item four). BellSouth argued that both contentions are wrong.

Moreover, BellSouth opined, the CLPs' strident argument on this point begs the question of why they care so much about a portion of the Commission's *February 13, 2004 Order* that only provides a secondary basis for the decision to keep line sharing in place. BellSouth asserted that the answer is that the CLPs recognize that in two short paragraphs of the *February 13, 2004 Order*, this Commission made two rulings that have not been made by any other state commission in the country, and that are extremely significant: (1) that line sharing is a Section 271 obligation; and (2) that

SEEM penalties should be available to enforce Section 271 checklist compliance, even in the absence of a continuing Section 251 requirement. BellSouth argued that neither of these legal determinations is necessary to resolve BellSouth's Motion to remove SEEM penalties, and both obviously have far-reaching implications. Moreover, BellSouth commented, neither issue was given more than minimal consideration in the *February 13, 2004 Order*. Again, BellSouth stated, the first conclusion was apparently based only on a paragraph of the *TRO* that does not address the issue of whether line sharing is a Section 271 obligation. The second issue, BellSouth noted, although implicated in the Commission's decision, was never directly addressed at all.

BellSouth argued that issues of this magnitude deserve more thorough analysis, and the Commission may undertake this analysis if another factual scenario requires such analysis. BellSouth maintained that the Commission should not take the unprecedented step of making such far-reaching determinations based on a two paragraph analysis of a secondary basis for ruling on a Motion that did not even raise these issues. BellSouth noted that every other state commission in BellSouth's region has reached this conclusion, and this Commission should do the same.

BellSouth asserted that this Commission is the only state commission in the country that has ruled that line sharing must necessarily be subject to a SEEM penalty as a result of a Section 271 obligation. BellSouth noted that in the *February 13, 2004 Order*, the Commission, before reaching this result, cited the representation of the CLPs that both the Alabama and Georgia PSCs have ruled that SEEM penalties apply to line sharing because it continues to be a Section 271 obligation. BellSouth noted that in its Motion for Reconsideration, it stated that the CLPs had misinformed this Commission, and that the Alabama Order specifically stated that "nothing in [that] decision . . . should be construed as an adoption or rejection of the CLEC argument that, regardless of the FCC's *TRO Order*, BellSouth has an independent obligation under Section 271 to continue to provide line sharing." BellSouth commented that in the sixteen pages of Comments the CLPs filed in response to BellSouth's Motion, there was no mention whatsoever of the Alabama Order. Thus, BellSouth stated, it would appear that the CLPs concede, at least implicitly, that they misinformed this Commission on this point, but have adopted the approach of ignoring their past misstatement.

BellSouth noted that in regard to the Georgia Order, the CLPs have taken the tact of trying to mischaracterize the Georgia Order as meaning precisely the opposite of what it really means. Specifically, BellSouth stated, the CLPs make the bizarre pronouncement that "the Georgia PSC's decision supports denial of BellSouth's Motion for Reconsideration," even though the Georgia PSC granted the relief BellSouth requested. BellSouth noted that it requested that the Georgia PSC remove from its Order the finding that SEEM penalties are required for line sharing because line sharing is a Section 271 obligation. BellSouth stated that the Georgia PSC declined to grant BellSouth's Motion, and instead decided on its own Motion to grant the exact relief requested by BellSouth.

BellSouth argued that the CLPs make much of the fact that the Georgia PSC took this approach because it did not want the Order to be construed as an indication “that it agree[d] with the arguments in BellSouth’s Motion for Rehearing and Reconsideration.” Still, BellSouth asserted, the Georgia PSC ultimately determined that whether SEEM penalties should apply to line sharing as a function of Section 271 is the subject of some future debate. BellSouth noted that the Georgia PSC stated on page 11 of its ruling as follows:

It is . . . not necessary to reach the issue of whether BellSouth has an independent and ongoing obligation under Section 271 to provide line sharing in order to deny BellSouth’s Motion to Modify the SEEM Plan. The parties have raised various arguments regarding the FCC’s intent with respect to the role of the states with the respect to Section 271 obligations and the status of line sharing. Given that the Commission does not need to rule on this issue to deny BellSouth’s Motion, it makes more sense to address this question, if and when necessary, at a point when more information on the FCC’s intent is available. [emphasis added by BellSouth]

Further, BellSouth commented, the Georgia PSC stated in the Ordering clause that “the reason for taking this action is that the issue of an ongoing Section 271 line sharing obligation does not need to be resolved to address BellSouth’s original Motion.” Thus, BellSouth asserted, the Georgia PSC made exactly the decision that BellSouth requests this Commission to make: the deferral of a decision on line sharing under Section 271 to a future time if such a determination even becomes necessary.

BellSouth argued that it is extremely telling that, while the CLPs make the specious argument that the Georgia PSC’s Order undercuts BellSouth’s position, they obviously do not advocate that this Commission reach the same result as the Georgia PSC. Again, BellSouth noted that it is only requesting that the Commission not make a ruling that will be subsequently used by the CLPs to argue for broad (and likely unintended) consequences regarding Section 271 and SEEM penalties. BellSouth asserted that there is no state commission in the country, to BellSouth’s knowledge (and the CLPs cite to none in their Comments), that has ruled that line sharing is a Section 271 obligation, that the SEEM Plan is designed to enforce substantive Section 271 obligations, or that penalties should be paid for measurements relating to line sharing for this reason. BellSouth opined that there is no reason for this Commission to take this extraordinarily significant step at this time.

BellSouth argued that the most prudent course of action by this Commission would be to do as every other Commission in BellSouth’s region has done, that is, to decline to consider at this point the Section 271/line sharing issue that is presently included in the *February 13, 2004 Order* as a secondary basis for perpetuating penalties relating to line sharing during the transitional period. BellSouth stated that the CLPs ignored in their Comments the fact that there is no need for the Commission to reach this issue at this

point and continue to argue the underlying issue of whether line sharing is, or is not, a Section 271 obligation. However, BellSouth noted, even if the Commission decides for some reason that it needs to resolve this issue at this juncture, the CLPs' position must be rejected for three separate and independent reasons:

- (1) Line sharing is not a Section 271 requirement;
- (2) Even if line sharing were a Section 271 requirement, this Commission lacks jurisdiction to create substantive remedies for Section 271 violations; and
- (3) Even if line sharing were a Section 271 obligation, and even if this Commission had jurisdiction, the Commission should not extend the SEEM Plan to enforce Section 271 checklist items.

BellSouth argued that Paragraph 659 of the *TRO* explains the relationship of Section 251 to Section 271. BellSouth noted that Paragraph 654 of the *TRO* states that whatever Section 271 obligations that exist independent of Section 251 relate to "checklist items 4, 5, 6 and 10 [which] separately impose access requirements regarding loop, transport, switching, and signaling." However, BellSouth stated, there is no mention of line sharing in either of these Paragraphs, or at any point in the fifteen-paragraph discussion in the *TRO* of Section 271 obligations. Thus, BellSouth commented, as it stated in its Motion for Reconsideration, the CLPs' entire argument is that the FCC intended the term "loop" to include line sharing, even though the FCC never states this intention. Further, BellSouth stated, the CLPs offer this strained interpretation despite the fact that the FCC went to such obvious pains in the *TRO* to distinguish the UNE - loop from the UNE - line sharing. BellSouth noted that it detailed in its Motion the FCC's extensive efforts to distinguish the loop from the HFPL. BellSouth stated that in response to the common sense interpretation of the *TRO* offered by BellSouth, the CLPs' Comments include an unlikely argument based, not on the language of the *TRO*, but rather on its structure. Specifically, BellSouth noted, the CLPs argue that, because the *TRO* contains a more granular analysis of network elements in the context of Section 251 than within the fifteen paragraph discussion of Section 271, this must mean that the term "loop" is intended to include line sharing by implication wherever it appears. Finally, BellSouth maintained, finding no language in the *TRO* to support their position, the CLPs are reduced to making an argument based on the Table of Contents of the *TRO*.

BellSouth asserted that when one parses through the convoluted arguments of the CLPs, they all come down to one fundamental premise: that line sharing is immutably in checklist four no matter what the FCC does. BellSouth argued that the difficulty with this position is that this is belied by the language of the Act, the *TRO*, and by other Orders by the FCC. First, BellSouth noted that, in the general context of the discussion of Section 271 in the *TRO*, the FCC stated the following:

We conclude that for purposes of Section 271(d)(6), BOCs must continue to comply with any conditions required for approval, consistent with changes in the law. While we believe that Section 271(d)(6) establishes an ongoing duty for BOCs to remain in compliance, we do not believe that Congress intended that 'the conditions required for such approval' would not change with time.

Thus, BellSouth maintained, the FCC first discusses the ongoing requirements of Section 271, then discusses the fact that these requirements will change. BellSouth noted that this discussion, of course, begs the question of what the FCC could possibly have in mind if, as the CLPs contend, the requirements considered under the general rubric of checklist items four, five, six and ten can never change. Thus, BellSouth stated, the CLPs' position would render one more portion of the TRO inexplicable.

Moreover, BellSouth stated, the CLPs' contention that the requirement to provide line sharing is necessarily a part of checklist four is contradicted by the simple language of checklist item four. BellSouth noted that this item, of course, appears in Section 271, and requires access or interconnection that includes:

- (iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. (Section 271(c)(2)(B)(iv))

Thus, BellSouth commented, the literal language of checklist four requires the provision of a loop -- not subloops, or portions of the loop (high frequency or otherwise), or isolated functionalities of the loop. BellSouth noted that the requirement is for the provision of a whole loop, nothing more and nothing less. Given this, BellSouth stated, one must ask why, under the general topic of checklist four analysis, the FCC has considered subloops and loop functionalities that are different than the whole loop. BellSouth opined that the simple answer is that, historically, the FCC has considered the requirement of checklist four to provide a loop at the same time that it considers the requirements to provide unbundled network elements that are related to the loop.

BellSouth maintained that in its Motion, it cited to the portion of the SBC Order that made clear the FCC's analytical approach. BellSouth stated that given the clarity of this provision, it bears repeating. Specifically, BellSouth noted, in the context of considering SBC's compliance with checklist item 4, the FCC stated the following:

Based on the evidence in the record, we conclude . . . that SBC provides unbundled local loops in accordance with the requirements of Section 271 and our rules. Our conclusion is based on our review of SBC's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, and high-capacity loops, as well as our review of SBC's processes for hot cut provisioning, and line sharing and line splitting. (¶ 142 with footnotes omitted) (emphasis added by BellSouth)

Thus, BellSouth opined, the FCC clearly stated that its analysis was based on the provisioning of loops, as well as other requirements related to the provisioning of hot cuts, line sharing, and line splitting that are based not upon the requirements of checklist four as expressly articulated in the Act, but rather upon the FCC's rules. BellSouth argued that in this specific instance, the rule in question is the FCC's former rule (pre-TRO) that required that line sharing be offered on an unbundled basis pursuant to Section 251.

BellSouth opined that if, as the CLPs contend, line sharing necessarily inheres in checklist item four (despite the actual language of checklist item 4), then it is impossible to make sense of the reference in the above-quoted language to the requirements of the FCC's rules; if a requirement to provide line sharing (and line splitting and hot cut provisioning) resides in checklist four, rather than the Commission's unbundling rules, then there is nothing left to be considered as part of the checklist item 4 analysis that does arise from the FCC's rules. Therefore, BellSouth noted, the above-quoted reference by the FCC to its rules would make no sense. BellSouth commented that it is noteworthy that, although BellSouth made precisely the same point in its Motion for Reconsideration, the CLPs neglected entirely to address this portion of the SBC Order in their Comments.

BellSouth argued that the CLPs did address the SBC Order, but only for the purpose of making a circular argument that requires one to accept the CLPs' conclusion as a starting premise. BellSouth pointed out that the SBC Order clearly treats the line sharing-UNE as separate from the loop-UNE. BellSouth stated that the CLPs attacked BellSouth by arguing that the FCC made this distinction in the context of the unbundling required under checklist item 2, not under checklist item 4. However, BellSouth maintained, the language of the SBC Order quoted above makes clear that the FCC's checklist four analysis included both the actual checklist item 4 requirement for the provision of the loop and the related requirements (such as line sharing) that arise from the FCC's unbundling rules (i.e., the same unbundling that is the topic of checklist item 2). Thus, BellSouth opined, the discussion of unbundling in the SBC Order is only irrelevant (as the CLPs claim) if one accepts the CLPs' conclusion that line sharing obligations reside in checklist item four, i.e., if one joins the CLPs in ignoring the above-quoted language of Paragraph 142 of the FCC's SBC Order.

Finally, BellSouth stated, the CLPs argue that line sharing must be an inherent part of checklist item four because the FCC's checklist four analysis in the SBC Order included a consideration of line sharing. In other words, BellSouth noted, the CLPs argued that since the SBC case came out after the TRO, the fact that line sharing was still considered must mean that the line sharing requirement does not arise from the unbundling rules, which were changed by the TRO. However, BellSouth opined, the reason that line sharing was considered in the SBC case was explained in BellSouth's Motion for Reconsideration: "In the SBC Order, the Commission [FCC] acknowledged that it had adopted new unbundling rules as part of the *Triennial Review Order* on October 2, 2003, but stated that for purposes of this application, it would apply the former rules because of the date SBC's application had been filed (*SBC Order*,

¶¶ 10-11).” Thus, BellSouth argued, when the FCC considered both the actual checklist item four requirements and the loop-related requirements of the FCC’s rules, it applied for the purpose of this consideration the old unbundling rules (under which line sharing was required to be provided as a UNE). Again, BellSouth asserted, although it made this point in its Motion for Reconsideration, the CLPs elected to simply ignore any portion of the *SBC Order* that they cannot align with their unlikely position.

BellSouth commented that as it noted in its Motion, this Commission has no jurisdiction to enforce compliance with the requirements of Section 271. BellSouth argued that the CLPs have responded to BellSouth’s position with: (1) a spurious waiver argument; and (2) a blatant attempt to misconstrue applicable federal law.

BellSouth asserted that the CLPs’ waiver argument is that by filing a Motion to remove line sharing from the SEEM Plan because it is no longer a Section 251 requirement, BellSouth waived any jurisdictional objection to the Commission imposing penalties pursuant to Section 271. BellSouth maintained that the CLPs cite no legal authority to support this proposition, and in fact, there is none. Apparently, BellSouth argued, what the CLPs have in mind is the principle that in some contexts (e.g., admissibility of evidence), a party may, by its actions, waive an objection that it might otherwise have. BellSouth asserted that this principle, however, has absolutely no application in this situation. First, BellSouth stated, it is a well-settled principle of law that a party cannot create subject matter jurisdiction by its actions. BellSouth maintained that if it were otherwise, then a party could, for example, vest the Commission with the authority to consider any type of legal matter, even one that is clearly outside of the Commission’s jurisdiction, e.g., criminal complaints or bankruptcy petitions. However, BellSouth opined, this is simply not possible from a legal standpoint.

Moreover, BellSouth noted, even if jurisdiction could be created by waiver, there can be no waiver in this case because BellSouth has taken no action that could form the basis for the waiver. BellSouth stated that its original Motion recited that SEEM penalties are in place to enforce Section 251 obligations, and requested that, since this obligation no longer applies to line sharing, the penalty should be removed. BellSouth stated that the CLPs raised for the first time the contention that Section 271 applies. Thus, BellSouth argued, the CLPs appear to advance the proposition that they can waive BellSouth’s rights by their actions. BellSouth commented that this would be tantamount to the CLPs filing a Complaint (or a set of Comments) so spurious that their opponent was forced to reply that their mischaracterizations should be considered criminal. BellSouth argued that under the CLPs’ analysis, this would create some sort of waiver by the CLPs, and the Commission would then be entitled to impose criminal penalties against the CLPs for their prevarication; action by the CLPs cannot constitute a waiver by BellSouth.

BellSouth noted that beyond their specious waiver argument, the CLPs contended that this Commission has jurisdiction over Section 271 enforcement, but they do so without any legal support. Instead, BellSouth maintained, the CLPs offer an obvious misconstruction of the authority cited by BellSouth in its Motion. BellSouth cited in its Motion to the D.C. Circuit decision for the proposition that Section 271 enforcement

authority resides with the FCC, not state commissions. BellSouth stated that the CLPs' claim that this case is inapplicable because it occurred before Section 271 authority was granted. BellSouth stated that when one considers the actual language of the decision, however, it is obvious that the decision applies equally before and after the grant of Section 271 authority. Specifically, BellSouth maintained, the Court considered the question of how the FCC should utilize state commission determinations as to whether the Track A requirements of Section 271 have been met. BellSouth noted that the Court stated as follows:

Congress has clearly charged the FCC, and not the State commissions with deciding the merits of the BOCs' request for intraLATA authorization and interLATA service is typically interstate.

Thus, BellSouth maintained, the gravamen of this decision is that the FCC has the authority to resolve Section 271 issues because Section 271 deals with interstate services. Clearly, BellSouth argued, the services at issue remain interstate whether the specific question to be resolved arises pre-authorization Section 271 or post-authorization Section 271.

Further, BellSouth stated, the provisions of Section 271(d)(6), entitled "Enforcement of Conditions," state the remedial steps that the FCC may take if it "determines that a Bell operating company has ceased to meet any of the conditions required . . . [271] . . . for approval." BellSouth argued that there is nothing in Section 271 from which one could conclude that this Commission has jurisdiction for Section 271 enforcement.

Beyond this, BellSouth noted, the CLPs' attempted to support their position with the contention that "while 271(d)(6) does provide the FCC with enforcement powers, it does not preempt the states from acting under state law nor preclude the FCC from delegating authority to states." BellSouth stated that other than the single cryptic reference to state law quoted above, the CLPs provide no indication of how state law could empower this Commission to enforce federal statutory requirements. BellSouth maintained that suffice it to say, the CLPs "state law" argument is worth no more than the few scant words that the CLPs devote to it.

BellSouth maintained that as to the CLPs' delegation argument, they have drastically overstated the ruling of the FCC in the Bell Atlantic case in which they cite [*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, Memorandum Opinion and Order, CC Docket No. 99-404, released December 22, 1999 – the Bell Atlantic Order*]. BellSouth maintained that in the Bell Atlantic case, the FCC first discussed its powers pursuant to Section 271(d)(6)(a). BellSouth noted that the FCC then stated the manner in which it planned to handle complaints alleging that Section 271 requirements were not being met. BellSouth commented that the FCC noted both the broad role that it would have and the extremely more limited role of the state commissions. BellSouth opined that it is instructive to consider this entire

paragraph, as opposed to the limited language from the paragraph that the CLPs have quoted out of context:

Complaints. In addition to FCC-initiated enforcement actions (such as forfeitures, suspensions, and revocations), Congress provided for the expeditious review of complaints concerning failure by a BOC to meet the conditions required for section 271 approval. Such complaints may include requests for damages. The Commission will consider and resolve those complaints alleging violations of section 271 as well as the Commission's rules and orders implementing the statute. Complaints involving a BOC's alleged noncompliance with specific commitments the BOC may have made to a state commission, or specific performance monitoring and enforcement mechanisms imposed by a state commission, should be directed to that state commission rather than the FCC. (Paragraph 447 of FCC's *Bell Atlantic Order* - Footnotes Omitted)

Thus, BellSouth argued, if you consider the entire paragraph, not merely the section the CLPs quoted in their Comments, you can see that the FCC clearly reserved to itself the jurisdiction to "consider and resolve those complaints alleging violations of section 271." Beyond this, BellSouth noted, the FCC simply observed that to the extent a state commission has ordered a RBOC to do particular things, then it has the ability to enforce its own orders. BellSouth commented that the delegation of authority described in the Bell Atlantic case is extremely narrow, and in no way supports the CLPs' argument for a dramatic expansion of this Commission's ability to enforce Section 271. BellSouth asserted that the language quoted above obviously contemplates a situation in which a state commission is enforcing its prior Orders. Thus, for example, BellSouth stated, if a CLP filed a complaint alleging that BellSouth had failed to properly apply a measurement of service order intervals, or failed to pay penalties arising from that measurement, then the Commission could consider the request that it enforce its own Order. BellSouth stated that in marked contrast, the CLPs are, in effect, arguing for a dramatic expansion of the SEEM plan to enforce Section 271 obligations that are independent of Section 251 obligations. BellSouth opined that the case law cited by the CLPs provides no basis to conclude that this Commission has this enforcement power.

BellSouth stated that the purpose of both the SQM and the SEEM Plans is to ensure that BellSouth continues to meet the requirements of Section 251 after it is granted entry into the distance market pursuant to Section 271. BellSouth asserted that the fundamental structure of the SQM and SEEM Plans is designed to implement Section 251 requirements. BellSouth noted that the fact that these plans address the provision of resale service, the full panoply of available UNEs, and interconnection is a direct reflection of the fact that the plans are based on the requirements of Section 251. BellSouth argued that there is nothing in the structure of either plan to suggest that it was ever intended to enforce whatever independent checklist obligations there may be under Section 271. Further, BellSouth maintained, there is nothing in the Order

originally entered by this Commission to suggest that the SQM and SEEM Plans were created to enforce specific Section 271 obligations.

BellSouth noted that the CLPs have argued previously that the SEEM Plan functions to enforce both Sections 251 and 271 obligations. BellSouth asserted that this position, however, finds no support in the plan itself or in the Commission's Orders. Moreover, BellSouth argued, a consideration of the context in which the plans were developed undercuts this contention. BellSouth asserted that Section 251 obligations were initially broader than Section 271 obligations; that is, if all UNEs that were originally unbundled were the subject of the measurement plan, then the plan would also cover the more limited offerings required by checklist items 4, 5, 6, and 10. Thus, BellSouth stated, by developing a plan to ensure Section 251 compliance after Section 271 approval, the checklist items were also necessarily addressed. BellSouth opined that this does not mean that the plan was created to enforce the checklist requirements, and it certainly does not mean that penalties should remain in place for this purpose as the Section 251 obligations cease to apply.

BellSouth asserted that all of the above brings us full circle back to the original, fundamental question that the Commission must consider: Why make a far reaching determination regarding the application of Section 271 when it is not necessary to resolve the limited issue that was originally before the Commission? BellSouth commented that as set forth above, line sharing is not a Section 271 obligation, and even if it were, the Commission has no jurisdiction to enforce this obligation. BellSouth noted that beyond this, however, is the question that the CLPs largely ignore: Even if the Commission could expand the plan to require the payment penalties for the violation of Section 271 obligations that are independent from Section 251, why would it want to do so? BellSouth noted that this is, of course, a question that the Commission has never considered. Further, BellSouth maintained, it is one that bears thorough consideration before the Commission makes a determination. BellSouth asserted that this expansion should not occur on the basis of an inference that the CLPs will draw from an Order that the Commission entered for an entirely different, more limited, purpose, that is, to resolve BellSouth's original Motion.

BellSouth noted that in the future, network elements will obviously be removed from the list of what must be offered on an unbundled basis pursuant to Section 251. BellSouth stated that as this occurs, the CLPs will no doubt argue that these UNEs should remain subject to the SEEM Plan because, they will contend, they are subject to Section 271 obligations. Thus, BellSouth maintained, the question of whether the plan should be expanded to cover Section 271 obligations independent of Section 251 will undoubtedly come up in the future. BellSouth opined that this Commission will have ample opportunity to consider this question at that time, as well as the related jurisdictional questions. BellSouth asserted that when this issue does arise, and it is ripe for consideration, it deserves thorough consideration. BellSouth argued that there is absolutely no reason to pre-decide this issue at this juncture in the context of resolving a more limited issue that the Commission has already resolved on a different, independent basis.

BellSouth concluded that through the *February 13, 2004 Order*, the Commission became the only state commission in BellSouth's region (and, to BellSouth's knowledge, the only commission in the country) to rule that line sharing is a Section 271 obligation and that this obligation should be enforced by SEEM penalties. BellSouth argued that this conclusion should be reconsidered and removed as a basis for the *February 13, 2004 Order* for the following reasons: (1) it is based on an apparent (CLP-created) misunderstanding of the actions other state commissions have taken; (2) it misconstrues BellSouth's position; (3) it entails a decision that need not, and should not, be made at this time; (4) it is based on a conclusion regarding line sharing and Section 271 that is legally erroneous; and (5) it entails a ruling on a Section 271 enforcement issue that goes beyond the Commission's jurisdiction and is legally unsupportable for this additional reason. For all of these reasons, BellSouth argued that its Motion for Reconsideration should be granted.

COMPSOUTH: CompSouth stated that it opposes the Public Staff's recommendation that the Commission adopt the approaches of the Georgia and Alabama PSCs and refrain from basing a decision to deny BellSouth's Motion on the basis of Section 271 of the Act for two reasons: (1) the Commission has already based its decision on that determination; and (2) the Commission's determination is correct under existing law.

CompSouth argued that the Commission should deny BellSouth's Motion for Reconsideration because of a simple principle: the Commission's legal determinations should not be modified until the legal basis for the Commission's determination changes. CompSouth maintained that this core principle forms the basis for a consistent and predictable regulatory environment. CompSouth noted that when applied to BellSouth's Motion for Reconsideration this principle compels denial of the Motion for Reconsideration. CompSouth stated that here, BellSouth is not arguing that the Commission's determination regarding its Section 271 obligations was unnecessary – the basis for the Georgia PSC's Motion to Modify its prior order. CompSouth asserted that BellSouth is arguing that the Commission's determination was incorrect. CompSouth stated that the Public Staff's recommendation is not based on an agreement with BellSouth's arguments for reconsideration, but rather, is based on the idea that the Commission's determination was unnecessary. However, CompSouth noted, whether necessary or not, the Commission did make a legal determination based on a proper record.

CompSouth asserted that under these circumstances, the Commission should adhere to its determination until circumstances change. CompSouth stated that to do otherwise, as the Public Staff recommends, creates several problems. First, CompSouth maintained, the Commission's prior order becomes essentially an advisory opinion. CompSouth stated that though the Commission's prior order is no longer a legally binding order, the Commission has stated the manner in which it will rule if presented with a similar fact pattern. CompSouth noted that as a consequence, the parties are left to debate the quasi-legal status of the regulations governing their relationship. CompSouth commented that BellSouth will take the position that it has no Section 271 obligation (as there is no binding determination), and CompSouth will take

the position that BellSouth does have a Section 271 obligation (as there is an advisory opinion). Thus, CompSouth opined, the very reason courts avoid advisory opinions (quasi-legal orders with no clear application) is the reason the Commission should deny BellSouth's Motion for Reconsideration. CompSouth asserted that creating an unclear regulatory environment only encourages unnecessary litigation.

Moreover, CompSouth noted, as set-forth in its Initial Comments, under existing law the Commission's determination is correct. CompSouth stated that nothing in BellSouth's Motion for Reconsideration nor in Public Staff's Initial Comments changes that fact. CompSouth commented that if future FCC orders render the Commission's Section 271 determination incorrect or moot, then the Commission is free to modify its February 13, 2004 Order at that time. CompSouth opined that to modify the Commission's February 13, 2004 Order now will only create confusion. Accordingly, CompSouth respectfully asked that the Commission deny BellSouth's Motion for Reconsideration.

DISCUSSION

In the February 13, 2004 Order, the Commission found it appropriate to deny BellSouth's Motion to Modify SEEM Plan to remove penalties associated with the provisioning of line sharing. The Commission found that as long as BellSouth is required to provide line sharing, whether as a Section 251 UNE (which it no longer is) or during a transition period or on a grandfathered basis, BellSouth should provide such line sharing in accordance with previously-established measurements and penalties. In addition, the Commission stated that it agreed with CompSouth's argument that BellSouth is still obligated to provide line sharing under Section 271 of the Act. The Commission noted that although BellSouth argued that it was illogical for the FCC to remove line sharing from the national UNE list in the TRO but still require line sharing under Section 271 of the Act, the Commission believed that the FCC addressed the issue in Paragraph 659 of the TRO. BellSouth's Motion for Reconsideration specifically requests reconsideration of the Commission's decision that BellSouth has an independent obligation under Section 271 to provide line sharing.

The Commission further notes that at the time of the February 13, 2004 Order, the Georgia PSC had only issued its January 14, 2004 Order Denying BellSouth Telecommunications, Inc.'s Motion to Modify Self-Effectuating Enforcement Mechanism Plan. In its January 14, 2004 Order, the Georgia PSC stated:

Even though line sharing is no longer a UNE, BellSouth still must provide it pursuant to the transitional mechanism ordered by the FCC and Section 271 checklist item 4. The Commission determines that at this time it is not sound policy to eliminate the penalties associated with line sharing. BellSouth's Motion is therefore denied. [emphasis added]

On January 26, 2004, BellSouth filed a Motion for Rehearing and Reconsideration of the Georgia PSC's January 14, 2004 Order. By Order released on

March 24, 2004, the Georgia PSC denied BellSouth's Motion for Rehearing and Reconsideration. However, the Georgia PSC determined that it was "... not necessary to reach the issue of whether BellSouth has an independent and ongoing obligation under Section 271 to provide line sharing in order to deny BellSouth's Motion to Modify the SEEM Plan." (Page 3 of Georgia PSC's *March 24, 2004 Order*). The Georgia PSC further noted on Page 3 of its *Order* that:

In modifying its order to remove this basis [the Section 271 basis] for its decision, it must be understood that the Commission is not indicating that it agrees with the arguments in BellSouth's Motion for Rehearing and Reconsideration. Towards that end, the Commission concludes that BellSouth's Motion for Rehearing and Reconsideration should be denied. The Commission on its own motion, however, modifies its January 14, 2004 Order to remove the ground for its decision related to an independent and ongoing access obligation under Section 271. In making this modification, the Commission does not alter the ultimate decision to deny BellSouth's Motion to Modify the SEEM Plan to eliminate penalties for line sharing. The reason for taking this action is that the issue of an ongoing Section 271 line sharing obligation does not need to be resolved to address BellSouth's original motion.

The Commission further notes that in the Commission's July 9, 2002 *Order and Advisory Opinion Regarding Section 271 Requirements* in Docket No. P-55, Sub 1022 which addressed BellSouth's Section 271 application, the Commission discussed line sharing under checklist item 4. The Commission noted that BellSouth had produced evidence showing that it provided access to the HFPL as a UNE. However, since the FCC has found in the *TRO* that the HFPL is no longer a Section 251 UNE, there is uncertainty about whether a RBOC is required under Section 271 obligations to make line sharing available.

In addition, the Commission agrees with BellSouth that the FCC explicitly stated in its October 15, 2003 *SBC Order* in Paragraph 11 that it would apply the old unbundling rules to SBC's application instead of the new unbundling rules under the *TRO*. In the discussion of SBC's compliance with checklist item 4, the FCC stated at Paragraph 145, "Based on the evidence in the record, we find that SBC provides nondiscriminatory access to the high frequency portion of the loop (line sharing). . . ." However, since the old unbundling rules were applied, the FCC's discussion in checklist item 4 does not provide an analysis of a Section 271 application with the *TRO* rules in place.

Based on the foregoing and the filings made on this matter, the Commission is not convinced that line sharing will no longer be required under Section 271 although it has been removed by the FCC in the *TRO* as a Section 251 UNE. However, due to the fact that the Commission's Section 271 finding in the *February 13, 2004 Order* in this docket was not required for the Commission to reach its decision to deny BellSouth's Motion to Modify the SEEM Plan to remove line sharing, the Commission believes that it

is appropriate to reconsider the *February 13, 2004 Order* in this regard. The Commission finds it appropriate to strike certain language as set forth below from the Commission's *February 13, 2004 Order*.

Finally, the Commission notes that the issue of whether line sharing is required under Section 271 will be directly before the Commission in the near future. On June 24, 2004, DIECA Communications, Inc., d/b/a Covad Communications Company (Covad) filed a Petition for Arbitration with BellSouth in Docket No. P-775, Sub 8. Issue No. 1 of that Arbitration is: "Is BellSouth obligated to provide Covad access to line sharing after October 2004?"

CONCLUSIONS

The Commission finds it appropriate on reconsideration to strike the following language from the Commission's *February 13, 2004 Order*.

In addition, the Commission agrees with CompSouth's argument that BellSouth is still obligated to provide line sharing under Section 271 of the Act. Although BellSouth argues that it is illogical for the FCC to remove line sharing from the national UNE list in the *TRO* but still require line sharing under Section 271 of the Act, the Commission believes that the FCC did address this issue in Paragraph 659 of the *TRO*, as CompSouth noted, wherein the FCC stated

In interpreting section 271(c)(2)(B), we are guided by the familiar rule of statutory construction that, where possible, provisions of a statute should be read so as not to create a conflict. So if, for example, pursuant to section 251, competitive entrants are found not to be 'impaired' without access to unbundled switching at TELRIC rates, the question becomes whether BOCs are required to provide unbundled switching at TELRIC rates pursuant to section 271(c)(2)(B)(vi). In order to read the provisions so as not to create a conflict, we conclude that section 271 requires BOCs to provide unbundled access to elements not required to be unbundled under section 251, but does not require TELRIC pricing. This interpretation allows us to reconcile the interrelated terms of the Act so that one provision (section 271) does not gratuitously reimpose the very same requirements that another provision (section 251) has eliminated.

Therefore, the Commission believes that CompSouth is correct in its assertion that the FCC found in the *TRO* that Section 271 of the Act requires BellSouth to provide unbundled access to the HFPL although the HFPL is no longer required to be unbundled under Section 251 of the Act.

The Commission notes that the FCC simply clarified that such an element (one required under Section 271 but not under Section 251) does not have to be priced based on TELRIC. Therefore, the Commission believes that BellSouth remains obligated to provide the HFPL under Section 271 of the Act, although the pricing for the HFPL no longer is required to be TELRIC-based. The Commission believes that since BellSouth is still obligated to provide the HFPL under Section 271 of the Act, it is inappropriate to remove line sharing from the North Carolina SEEM Plan.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of July, 2004.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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